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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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*FORSYTH CO. C.S.C.

STATE OF NORTH CAROLINA,)
versus) From Forsyth
CHRISTOPHER BRYANT,) 02 CRS38886
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
NATHANIEL CAUTHEN,) 02 CRS 38884
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
JERMAL TOLLIVER,) 02 CRS 38882
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
RAYSHAWN BANNER,) 02 CRS 38883
Defendant.)

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HEARING VOLUMES 1 THROUGH 5

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March 9, 2020, Setting of the

North Carolina Innocence Inquiry Commission

The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate, Partial Attendance)
Luther Johnson Britt, III
Robin Colbert
Seth Edwards
Melissa Essary
Sheriff Kevin Frye
Immanuel Jarvis
Deborrah L. Newton

Tori Pittman, AOC-Approved Per Diem Reporter
*PO Box 47, Wake Forest, NC 27588 * * * pittmanstenography.com*

APPEARANCES:

Lindsey Guice Smith, Director

Beth Tanner, Assistant Director

Julie Bridenstine, Staff Attorney

Catherine Matoian, Grant Staff Attorney

Mackenzie C. Myers, Grant Legal Investigator

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

Post Office Box 2448

Raleigh, North Carolina 27602

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* Quotes are noted as read or spoken.

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TRANSCRIPT OF HEARING, Volume 1 of 5
Monday, March 9, 2020

* * * * *

March 9, 2020, Setting of the
North Carolina Innocence Inquiry Commission
The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate)
Luther Johnson Britt, III
Robin Colbert
Seth Edwards
Melissa Essary
Sheriff Kevin Frye
Immanuel Jarvis
Deborrah L. Newton

1 APPEARANCES:

2 Lindsey Guice Smith, Director
3 Beth Tanner, Assistant Director
4 Julie Bridenstine, Staff Attorney
5 Catherine Matoian, Grant Staff Attorney
6 Mackenzie C. Myers, Grant Legal Investigator
7 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION
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Monday, March 9, 2020 (10:00 a.m.)

P R O C E E D I N G S

JUDGE LOCK: All right. Good morning, everyone. I'm going to call this session of Innocence Inquiry Commission to order.

This week we will be hearing the Forsyth County cases of State versus Christopher Bryant, 02 CRS 38886; State versus Nathaniel Cauthen, 02 CRS 38884; State versus Jermal Tolliver, 02 CRS 38882; and State versus Rayshawn Banner, 02 CRS 38883.

I do have several comments for the record.

First, this hearing is open to the public pursuant to NCGS 15A-1468(a).

Now, although this hearing is open to the public, distractions are to be kept to a minimum. The door should remain closed during the hearing and no one with the exception of commission staff and the victim's family should go in and out until we are on a break. If there are disruptions, you may be asked to leave the hearing.

No one from the public should at any time come past the ropes or attempt to speak with the commissioners about the case.

At this time, we will go around the table and have commissioners and commission staff who are present at the table say and spell their names for our court reporter, Ms. Pittman.

If you are serving as a commissioner for today's hearing, please indicate that; if you are an alternate who is

1 serving as a commissioner, please indicate that; last, if you are
2 an alternate who is simply attending as an alternate for the
3 purposes of observing, please indicate that.

4 We will start on my right and go around the table.

5 **MS. COLBERT:** I'm Robin Colbert, C-o-l-b-e-r-t. And I
6 am a commissioner serving as a commissioner.

7 **SHERIFF FRYE:** Kevin Frye, F-r-y-e, and I'm a
8 commissioner serving as a commissioner. I'm Sheriff in Avery
9 County.

10 **MS. ESSARY:** Melissa Essary, M-e-l-i-s-s-a, E-s-s-a-r-y,
11 serving as an alternate commissioner today.

12 **MR. JARVIS:** My name is Immanuel Jarvis,
13 I-m-m-a-n-u-e-l, Jarvis, J-a-r-v-i-s, serving as an alternate
14 commissioner.

15 **MR. BRITT:** I'm Johnson Britt, J-o-h-n-s-o-n, B-r-i-t-t.
16 I am an alternate serving as a commissioner.

17 **JUDGE LOCK:** I'm Thomas H. Lock, T-h-o-m-a-s, H,
18 L-o-c-k. I am the alternate chair and I am presiding over this
19 week's hearing.

20 **MR. EDWARDS:** My name is Seth Edwards, S-e-t-h,
21 E-d-w-a-r-d-s. I'm serving as a commissioner.

22 **MS. NEWTON:** I am Deborrah Newton, D-e-b-o-r-r-a-h,
23 N-e-w-t-o-n. I'm the Chief Justice's alternate. I'm serving as a
24 commissioner in this hearing. I'm a federal and state criminal
25 law defense attorney.

1 **MR. BASS:** I'm Scott Bass, S-c-o-t-t, B-a-s-s. I am the
2 victim advocate alternate, and I am here just observing.

3 **MS. SMITH:** Lindsey, L-i-n-d-s-e-y, Guice, G-u-i-c-e,
4 Smith, S-m-i-t-h, Executive Director of the North Carolina
5 Innocence Inquiry Commission.

6 **MS. TANNER:** Beth Tanner, B-e-t-h, T-a-n-n-e-r,
7 Associate Director of the North Carolina Innocence Inquiry
8 Commissioner.

9 **MS. MYERS:** Mackenzie Myers, that's M-a-c-k -- that's a
10 small K -- -e-n-z-i-e, M-y-e-r-s, and I'm the grant legal
11 investigator.

12 **MS. BRIDENSTINE:** I'm Julie Bridenstine, J-u-l-i-e,
13 B-r-i-d-e-n-s-t-i-n-e, and I'm a staff attorney with the North
14 Carolina Innocence Inquiry Commission.

15 **JUDGE LOCK:** All right.

16 For the record, then, we do have eight voting members of
17 the Commission present as required by statute.

18 At this time I will make a formal inquiry as to whether
19 any commissioner needs to recuse himself or herself pursuant to
20 Rule 7(c)(1) of our rules and procedures. This rule states: "A
21 commissioner shall recuse himself or herself if he or she has had
22 any involvement in the case during the original trial or any
23 postconviction motions. A commissioner shall recuse himself or
24 herself if some event has caused him or her to become biased about
25 a case and unable to participate in the hearing in a fair and

1 impartial manner."

2 Are there any commissioners who need to recuse
3 themselves based on this rule?

4 (No response.)

5 **JUDGE LOCK:** All right.

6 It appears for the record that there are none.

7 As Judge Wagoner has been recused, I am serving in her
8 place as Chair of the Commission for this hearing.

9 As defense attorney Michael Grace has been recused,
10 alternate defense attorney Johnson Britt is serving in his place.

11 As discretionary member Rick Glazier has been recused,
12 alternate discretionary member Deb Newton is serving in his place.

13 Alternate public member Emmanuel Jarvis and alternate
14 discretionary member Melissa Essary are serving as commissioners
15 due to scheduling conflicts of their respective main
16 commissioners.

17 All right.

18 Rule 7(c)(3) prohibits commissioners from conducting any
19 independent investigation of the case.

20 Have any commissioners conducted any independent
21 investigations of this case -- or these cases?

22 (No response.)

23 **JUDGE LOCK:** All right.

24 It appears that for the record that none have.

25 Let me remind those of you who are attending as

1 alternates that rule -- I'm sorry -- that Article 7D of the
2 Commission Rules and Procedures states: "If an alternate
3 Commissioner who is not fulfilling full commission duties, he or
4 she may attend hearings of the Commission but may not participate
5 in deliberations and may not vote. During the hearing, alternate
6 commissioners may ask questions of the witnesses. Alternate
7 commissioners will be asked to leave prior to deliberations."

8 We have one alternate commissioner with us as an
9 alternate, and that is victim advocate Scott Bass. He may be in
10 and out during the week because of some other obligations he has
11 this week.

12 I have previously entered an order related to the
13 management of this hearing in my capacity as Superior Court Judge
14 and Chair of the Commission.

15 All witnesses other than commission staff and expert
16 witnesses shall be sequestered until released. Those witnesses
17 should avoid watching, listening to, and/or reading any media
18 coverage of this hearing and/or receiving information from members
19 of the public who may be attending the hearing is in violation of
20 that order.

21 Mr. Bryant, his lawyer, Ms. Mumma, and Mr. Rabil may
22 speak with their clients.

23 All attorneys in this matter are reminded to act in
24 accordance with Rule 3.6 regarding trial publicity of the Rules of
25 Professional Conduct as well as the rules and statutes governing

1 the commission proceedings and the spirit of this order.

2 Claimants are subject to this order and are reminded
3 that, pursuant to statute, they must cooperate with the Commission
4 or the Commission shall discontinue its inquiry. Failure to
5 comply with this order may be deemed a failure to cooperate.

6 Claimants shall refrain from viewing any media and/or
7 discussions with any other hearing attendees that would be in
8 violation of the order -- except, of course, their attorneys.

9 Additionally, I have received several requests from the
10 media to livestream the commission hearing.

11 I have agreed to allow one pool camera in the commission
12 hearing -- that will be WRAL from here in Raleigh -- so long as
13 that camera remains out of the way of the proceedings.

14 All right. At this time, I am going to recognize
15 Executive Director of the Commission, Ms. Lindsey Guice Smith, for
16 presentation of the case.

17 Director Smith.

18 (10:14 a.m.)

19 **MS. SMITH:** Thank you, Your Honor.

20 Good morning, Commissioners.

21 (Chorus of "good morning.")

22 **MS. SMITH:** This case involves the November 15, 2002,
23 robbery and murder of Nathaniel Jones.

24 Five codefendants were charged and convicted in
25 connection with Mr. Jones' robbery and murder. All five were

1 arrested on November 20, 2002.

2 Nathaniel Cauthen and Rayshawn Banner were convicted
3 after a joint trial on August 19, 2004, of first-degree murder and
4 robbery with a dangerous weapon. Each received a life sentence
5 without the possibility of parole, which was -- and were later
6 resentenced to life with the possibility of parole.

7 Christopher Bryant, Jermal Tolliver, and Dorrell Brayboy
8 were convicted after a joint trial on May 20, 2005, of
9 second-degree murder and commonlaw robbery.

10 Christopher Bryant and Jermal Tolliver were released
11 from prison after completing their sentences on February 3, 2017.
12 Dorrell Brayboy was released from prison after completing his
13 sentence on January 3, 2018.

14 The Commission first received a claim of innocence from
15 Christopher Bryant and opened its investigation into this case on
16 March 2, 2015. On April 4, 2018, the Commission received a claim
17 of innocence from Nathaniel Cauthen. The cases were moved into
18 formal inquiry on October 31, 2019.

19 Pursuant to North Carolina General Statute
20 15A-1467(c)(1), once a case is in formal inquiry, the Commission
21 is required to use due diligence to notify each codefendant of the
22 claim and that if the codefendant wishes to also file a claim,
23 they must do so within 60 days of receipt of that notice or their
24 claim may be barred from investigation by the Commission in the
25 future.

1 Both Mr. Tolliver and Mr. Banner were provided this
2 notification via letter. Jermal Tolliver submitted his claim of
3 innocence to the Commission on November 26, 2019. Rayshawn Banner
4 submitted his claim of innocence to the Commission on January 6,
5 2020.

6 Dorrell Brayboy was killed in Winston-Salem, North
7 Carolina, on August 28, 2019.

8 Pursuant to North Carolina General Statute 15A-1460, a
9 claim of innocence must be made by a living person. Therefore,
10 the Commission does not have an open claim of innocence for
11 Dorrell Brayboy, although, when living, Mr. Brayboy did claim his
12 innocence to the commission staff.

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

23 The new evidence uncovered by the Commission staff will
24 be presented throughout this hearing along with all relevant
25 evidence for your consideration.

1 You-all have been provided the Commission brief which
2 was 2233 pages that describes the information available to
3 commission staff related to the police investigation and any
4 criminal litigation in this case.

5 For the most part, we're not going to review the
6 material that was covered in your brief in depth during this
7 hearing. I will try to refer you to page numbers in the brief as
8 it relates to topics on which the commission staff is covering for
9 your reference throughout the hearing.

10 I do recommend that you keep the case timeline handy.
11 That can be found on page 11 of your brief -- starting on page 11.
12 You may also wish to refer to the appendices of the brief
13 throughout the hearing.

14 In addition to the brief, you were also provided several
15 handouts prior to the Commission's hearing. These handouts are
16 also included in your hearing handout notebooks for reference
17 during the hearing.

18 These included Handout 92, the transcribed commission
19 interview of Dorrell Brayboy; Handout 93, the transcribed
20 interview of Jermal Tolliver; Handout 94, the transcribed
21 interview of Christopher Bryant; Handout 95, the transcribed
22 commission interview of Rayshawn Banner; Handout 96, the
23 transcribed commission interview of Nathaniel Cauthen; Handout 4,
24 the transcribed commission deposition of Jessicah Black;
25 Handout 21, a prison phone calls chart that summarizes calls made

1 between Claimant Nathaniel Cauthen and reporter Hunter Atkins and
2 calls made between Claimant Rayshawn Banner and reporter Hunter
3 Atkins; and Handout 86, the report of Dr. Hayley Cleary, an expert
4 in confessions and psychology.

5 Commissioners, in order to keep your tables kind of
6 clear for today, we've only given you one of the three notebooks
7 that you will receive before the end of the hearing with handouts.
8 So some of these are included in those later notebooks.

9 Staff attorney Julie Bridenstine and grant legal
10 investigator Mackenzie Myers are the lead investigators on this
11 case. Other commission staff -- in fact, I think all commission
12 staff -- also worked on this investigation.

13 Throughout the hearing, I will be calling
14 Ms. Bridenstine, Ms. Myers, Grant Staff Attorney Catherine
15 Matoian, and Commission Associate Director Beth Tanner to testify
16 about the Commission's investigation.

17 Several experts will also testify, including latent
18 print examiner Christopher Cavazos from the North Carolina State
19 Crime Laboratory; footwear impression expert Joseph M. Ludas;
20 forensic biology expert, Meghan Clement; and confessions and
21 psychology expert, Dr. Hayley Cleary.

22 Two of the claimants, Christopher Bryant and Jermal
23 Tolliver, have completed their sentences and have been subpoenaed
24 to testify at this hearing.

25 The other two claimants, Nathaniel Cauthen and Rayshawn

1 Banner, are currently incarcerated in the North Carolina
2 Department of Public Safety. Judge Lock has issued writs for
3 their presence, and they will also testify during this hearing.

4 Commission staff has interviewed numerous other
5 individuals who will not be called to testify. The staff will
6 instead testify about these interviews as we are not subject to
7 the rules of evidence. Commission staff will testify if the
8 interview has been recorded and transcribed.

9 I do not plan to give you all of those transcripts but
10 if someone wishes to review one of the transcripts that we have,
11 you may of course ask for it and I will provide that to you though
12 you-all may have to review that on a break or on the overnight
13 recess.

14 District Attorney Jim O'Neill from Forsyth County
15 represents the State in this matter. Mr. O'Neill has selected
16 Assistant District Attorneys Jennifer Martin and Ben White as his
17 designees in this case.

18 Christopher Bryant is represented by attorney Brad
19 Bannon; Nathaniel Cauthen is represented by attorney Julie Boyer;
20 Jermal Tolliver is represented by attorney Mark Rabil; and
21 Rayshawn Banner is represented by attorney Christine Mumma.

22 As required under the rules, the Commission held a
23 confidential prehearing conference on February 26, 2020.
24 Mr. Bannon, Mr. Rabil, and Ms. Mumma attended in person.
25 Ms. Boyer, Ms. Martin, and Mr. White attended via phone.

1 At that prehearing conference, representatives for the
2 prosecution were notified that that prehearing conference triggers
3 the District Attorney or his designees' right to inspect evidence
4 pursuant to North Carolina General Statute 15A-1468(a)(2). The
5 DA's office was also informed that pursuant to that same section
6 they had the right to provide a written statement for the
7 Commission's consideration. The defense attorneys were informed
8 that the defense is not afforded those same rights in the statute.

9 Representatives from the District Attorney's office
10 reviewed documents from the Commission's file over two days last
11 week.

12 The DA's office has provided a written statement which
13 will become part of the record. Commissioners will be provided
14 this handout later in the hearing and will have an opportunity to
15 review it prior to your deliberations. It's quite lengthy. It is
16 about 147 pages, though the statement itself is only 13 pages,
17 with exhibits, and most of those exhibits have either been
18 provided to you-all in your brief or are already handouts for you
19 in this hearing.

20 At the end of this hearing, you will be asked to
21 determine whether there is sufficient evidence of factual
22 innocence to merit judicial review. Because each of the claimants
23 was convicted after a trial in this case, each of their cases will
24 only move forward if five of eight commissioners vote that there
25 is sufficient evidence of factual innocence to merit judicial

1 review. If less than five commissioners vote for further review,
2 the case will be closed by the Commission and no appeal is
3 available. A separate vote will be taken for each claimant.

4 Throughout the hearing, I will be calling witnesses and
5 questioning them. Where possible, please hold your questions
6 until my examination of each witness is complete. Doing so is
7 going to help us move through the incredible amount of material
8 that we need to get through in a timely and efficient manner.

9 Don't worry, I will always give you an opportunity to
10 ask questions.

11 Do you have any questions?

12 (No response.)

13 **MS. SMITH:** Okay.

14 The Commission calls Staff Attorney Julie Bridenstine.

15 * * * * *

16 Thereupon, JULIE BRIDENSTINE, a witness having been called by the
17 Commission, was examined and testified on EXAMINATION as follows:

18 BY MS. SMITH: (10:24 a.m.)

19 **Q.** Ms. Bridenstine, will you please state your name for the
20 record.

21 **A.** Julie Bridenstine.

22 **Q.** And how are you employed?

23 **A.** I'm a staff attorney at the North Carolina Innocence
24 Inquiry Commission.

25 **Q.** And how long have you been employed at the Commission?

1 A. I began working here in February of 2016.

2 Q. And who was assigned to this case?

3 A. I was assigned in February 2016 and legal investigator
4 Mackenzie Myers was assigned in the summer of 2019.

5 Q. In the course of the Commission's investigation, did
6 commission staff obtain and review files and records from other
7 agencies?

8 A. Yes.

9 Q. Tell us what files and records you obtained and
10 reviewed. And as we go through each, we'll discuss any important
11 aspects of those.

12 A. We gathered the following records:

13 We collected records from the Winston-Salem Police
14 Department. We made our first verbal request for these files on
15 August 18, 2015, and faxed a formal request on August 27, 2015,
16 requesting a copy of all law enforcement files in this matter.

17 After several communications with the District
18 Attorney's office and the Winston-Salem Police Department, police
19 attorney Lori Sykes related to the Commission statutory authority
20 to obtain the file, the Commission received the file from
21 Lieutenant Tollie on November 6, 2015.

22 When we met with Lieutenant Tollie, he stated that if we
23 needed to physically view what was held in evidence, we can make
24 arrangements to do so.

25 However, at that time, we understood that to mean

1 physical evidence. Only later did we learn that the Winston-Salem
2 Police Department kept a case file in evidence that was much
3 larger than the file held in records that had previously been
4 provided.

5 Q. What was included in the file as originally provided?

6 A. It contained 425 -- 429 pages.

7 Q. And at some point, did you learn that that was not the
8 complete Winston-Salem Police Department file?

9 A. Yes, we did.

10 The records file provided included references to
11 recorded interviews in this case. In October of 2016, we sought
12 to obtain recordings or transcripts of those interviews. We
13 arranged to go to the Winston-Salem Police Department and make
14 copies of their tape-recordings on December 7, 2016. At that
15 time, as Winston-Salem Police Department personnel removed the
16 tapes, Staff Attorney Catherine Matoian noticed that the file
17 appeared to be much larger than the one we had been provided
18 earlier.

19 When asked about this discrepancy, Winston-Salem Police
20 Department personnel clarified that we had been provided the
21 records file which included only documents saved electronically
22 and that the evidence file is the complete hard copy file. The
23 Winston-Salem Police Department agreed to scan the evidence file
24 and provided it to the Commission on December 21st, 2016.

25 Q. And was there a difference between the records file and

1 the full evidence file?

2 A. Yes. The full file contained over 1,000 additional
3 pages, including handwritten notes, transcribed statements of the
4 claimants and others, written statements of the claimants, some
5 additional reports and copious other documents that were not in
6 the records file.

7 MS. SMITH: Commissioners, in your brief, there are
8 references to a full and partial Winston-Salem Police Department
9 file, and that is why there is that difference.

10 Q. Ms. Bridenstine, what else did you obtain from the
11 Winston-Salem Police Department?

12 A. We also requested and received what we usually refer to
13 as contact listings. What the Winston-Salem Police Department
14 calls Pistol records.

15 We requested that for the five defendants, Jessicah
16 Black, and Arlene Tolliver. These Pistol records list any time an
17 individual has had contact with the Winston-Salem Police
18 Department as a victim, a witness, a suspect, an arrestee, or some
19 other involved party.

20 We also obtained juvenile police records for all five
21 defendants and Jessicah Black.

22 We reviewed the Winston-Salem Police Department policies
23 and procedures from the current time period and for what was in
24 place in 2002 as it relates to: Recorded video interviews;
25 digital audio recordings and transcribing interviews;

1 investigation of cases involving juveniles; the receipt,
2 verification, and preservation of statements; and interrogation
3 warnings and waivers.

4 We also reviewed complaint reports related to the
5 investigation of this case.

6 Geneva Bryant, Christopher Bryant's mother, filed an
7 official complaint against several Winston-Salem Police Department
8 officers related to her son's interrogation and the search of his
9 bedroom. After the police department found nothing improper,
10 Ms. Bryant appealed to the Citizen Police Review Board. The board
11 agreed with the Winston-Salem Police Department's handling of the
12 matter and declined to hold a hearing on the appeal.

13 Q. Did we get anything else from the Winston-Salem Police
14 Department?

15 A. On January 24, 2020, we received two groups of documents
16 that had been located and uploaded to their electronic system in
17 August 2019 after they were relocated during the move of the
18 Winston-Salem Police Department Records Division. The documents
19 primarily related to Detective David Rose's involvement in the
20 investigation and included his field notes. The field notes were
21 not previously provided to the Commission.

22 On February 6, 2020, Captain Tollie e-mailed 48 pages of
23 documents that had been located by Sergeant Lovejoy as she
24 prepared for her commission deposition. We had already reviewed
25 some of these but it also included her handwritten notes that we

1 had not previously been provided.

2 During his deposition on February 19, 2020, retired
3 Detective Michael Rowe provided a copy of his file which included
4 his handwritten notes that were not part of the Winston-Salem
5 Police Department file and which the Commission had not been
6 provided previously.

7 We also received additional property sheets, crime scene
8 photographs, and postmortem photographs in 2018, and we received
9 additional information about when the Crime Stoppers tips came in
10 in this case after we made that request for those documents in
11 February of 2020.

12 And, finally, we collected all items of physical
13 evidence that the Winston-Salem Police Department had related to
14 this case.

15 **Q.** Other than the law enforcement files, did the Commission
16 staff obtain and review any files from other agencies?

17 **A.** Yes. We obtained copies of the files from the Forsyth
18 County Clerk's office for each of the five defendants. We also
19 collected all of the photographs and physical evidence that were
20 retained at the clerk's office, which totaled 117 items. There
21 were documents in a filing cabinet in the clerk's vault which
22 related to Nathaniel Cauthen's suppression hearing, but I
23 recognized those to be documents that we already had from the DA's
24 file and we did not copy or collect those.

25 We also obtained and reviewed a copy of the District

1 Attorney's file in this case, which was almost 11,000 pages.

2 Some additional records we have obtained include trial
3 attorney defense files for Nathaniel Cauthen. These included
4 files from Kevin Mauney, who was his original attorney, who
5 withdrew as counsel prior to trial. We obtained at least part of
6 the attorney file of Teresa Hier, who represented Nathaniel
7 Cauthen at trial after Kevin Mauney withdrew as his attorney. She
8 no longer had her file but portions were included in the file from
9 Prisoner Legal Services that she had provided as they represented
10 Nathaniel Cauthen.

11 None of the other trial attorneys who represented the
12 other defendants still had files in this case; only for Nathaniel
13 Cauthen were we able to collect files.

14 We also obtained and reviewed the appellate defender
15 file related to Barbara Blackman's representation of Nathaniel
16 Cauthen on this appeal. And, again, none of the other appellate
17 attorneys had any files related to any of the other defendants.

18 **Q.** Did you review any postconviction files?

19 **A.** Yes. We reviewed files from the North Carolina Prisoner
20 Legal Services. Attorneys there had represented Rayshawn Banner
21 and Nathaniel Cauthen on issues related to the sentencing of
22 juveniles to life without parole.

23 They also reviewed Christopher Bryant's case when he
24 wrote to them claiming innocence, although they ultimately did not
25 file anything on his behalf.

1 We have reviewed documents from the Wake Forest
2 Innocence and Justice Clinic where Christopher Bryant had applied,
3 and we learned from Mark Rabil, who leads the clinic, that the
4 case was rejected due to a conflict of interest.

5 Mr. Cauthen also applied to the clinic but his case was
6 not accepted because he was represented by Prisoner Legal Services
7 at the same time.

8 We also requested documents from the Duke Innocence
9 Project. They only had an initial memo related to Jermal
10 Tolliver's application in 2008 but indicated at that time they
11 worked with the North Carolina Center on Actual Innocence, who
12 they said they might have the rest of the file. We requested and
13 reviewed Jermal Tolliver's file from the North Carolina Center on
14 Actual Innocence. We also reviewed Center files related to
15 Christopher Bryant, Dorrell Brayboy, and Nathaniel Cauthen.

16 Jermal Tolliver, Christopher Bryant, and Nathaniel
17 Cauthen claimed innocence and requested help from the North
18 Carolina Center on Actual Innocence. Dorrell Brayboy wrote to the
19 Center claiming innocence but declined to complete a questionnaire
20 because he was afraid of getting false hope.

21 The Center closed its cases for Jermal Tolliver,
22 Christopher Bryant, and Nathaniel Cauthen without filing any
23 postconviction motions.

24 **Q.** What else did the commission staff obtain and review?

25 **A.** We reviewed files from the State Crime Lab.

1 We also reviewed the Department of Public Safety records
2 related to each of the five defendants. These records included
3 recorded phone calls from the PINS of each defendant. There was
4 an overwhelming volume of calls from as early as 2014 through the
5 present. We listened to calls around specific target dates when
6 things were happening in the case.

7 We also requested and received recordings of calls from
8 any Department of Public Safety inmate PIN made to target numbers.
9 For Hunter Atkins, there were 108 calls to him; Jessicah Black,
10 there were two calls made to her; Christopher Bryant, there were
11 62 calls made for [sic] him after he was released from prison; and
12 Jermal Tolliver, there were 14 calls made to him after he was
13 released from prison. There were no calls made to Dorrell Brayboy
14 after he was released from prison.

15 And all of these calls will be discussed in more detail
16 later in the hearing.

17 There were some newspaper articles about the case in the
18 Prisoner Legal Services file related to Nathaniel Cauthen and also
19 in the attorney file from Kevin Mauney.

20 We also searched microfilm at the Winston-Salem local
21 library and articles that were available online for any news
22 articles published between the date of the crime and the arrest of
23 the defendants, which was on November 20, 2002.

24 Teresa Hier's file for Nathaniel Cauthen also included
25 video clips of TV news segments. There were clips from TFMV, the

1 local CBS affiliate, that aired from November 18, 2002, through
2 November 20, 2002. There was also a clip from WGHP, the local Fox
3 affiliate, which did not have a date but appeared to be from after
4 the crime but before any arrests were made in this case.

5 We checked with local television stations to inquire
6 about any video of news segments that aired between the time of
7 the crime and the time of the arrest but we were unable to obtain
8 any footage due to unavailability, timing, and required production
9 fees.

10 Q. Can you describe briefly the contents of the news
11 reports that occurred prior to the arrest of the codefendants.

12 A. Yes.

13 The TV news segments that we viewed from before the
14 arrest of the defendants contained information that Mr. Jones had
15 stepped out his door Friday evening, someone beat him in the head
16 and face and taped his hands behind his back.

17 It appeared that there was a struggle.

18 The victim was beaten to death in his carport and his
19 body was found in the carport. The only thing missing was his
20 wallet. It appeared to be a random robbery that went bad. There
21 were no leads or suspects. And the news clips also showed a photo
22 of Mr. Jones wearing glasses.

23 MS. SMITH: Commissioners, if you will refer to
24 Handout 1 in your hearing handout notebooks, these are news
25 articles from the date of the crime, November 15, 2002, until the

1 arrest of the claimants on -- or all defendants on November 20,
2 2002.

3 If you'll just take a few minutes to read those.

4 **Q.** Ms. Bridenstine, what other records did commission staff
5 obtain and review?

6 **A.** There was a small file from the North Carolina State
7 Bureau of Investigation related only to their assistance in
8 lifting footwear impressions from the victim's car.

9 We also reviewed the following communications with
10 reporter Hunter Atkins: Text messages exchanged with claimant
11 Christopher Bryant and documents provided to Mr. Bryant; text
12 messages and Facebook messages with Jessicah Black; a letter to
13 Arlene Tolliver; a letter to Nelson Hartman; e-mails exchanged
14 with Chris Mumma; text messages and e-mails exchanged with retired
15 Winston-Salem Police Department Sergeant Charlie Byrom.

16 More information related to Mr. Atkins will be presented
17 later in the hearing.

18 We also reviewed school records for Arlene Tolliver.

19 **Q.** Did commission staff obtain school records for the five
20 codefendants in this case?

21 **A.** We obtained school records for Jermal Tolliver,
22 Christopher Bryant, Nathaniel Cauthen, and Rayshawn Banner. We
23 were unable to locate school records for Dorrell Brayboy.

24 At the time of this case, he was in the eighth grade at
25 Hill Middle School. This school no longer exists. A paralegal

1 with the Winston-Salem/Forsyth County Board of Education searched
2 herself for these records and was unable to locate any records for
3 Dorrell Brayboy.

4 Q. And what was contained in the school records that you
5 were able to locate?

6 A. Christopher Bryant and Cauthen were in ninth grade at
7 the time of this case. Rayshawn Banner and Jermal Tolliver were
8 in eighth grade at the time of this case.

9 The records for Rayshawn Banner and Jermal Tolliver were
10 more extensive because student files -- their student files
11 contained documents such as disciplinary records and attendance
12 records. And we learned that once a student goes to high school,
13 those types of records are no longer retained by the school
14 system.

15 In general, all of these records contained records such
16 as test scores, transcripts, report cards, individualized
17 education plans, and psychological testing.

18 Q. And why did the Commission obtain those education
19 records?

20 A. The Commission obtained these records to provide to
21 Dr. Cleary to use in her assessment of this case, and they will
22 also be discussed in more detail later in the hearing.

23 MS. SMITH: Commissioners, do you have questions for
24 Ms. Bridenstine about any of the files that the Commission staff
25 received and reviewed?

1 **MS. COLBERT:** I didn't write down the date of the
2 complaint that you mentioned that Geneva Bryant filed.

3 **THE WITNESS:** It was prior to trial, but we can look up
4 that date.

5 **MS. SMITH:** We'll look that up, Ms. Colbert.

6 Are there any other questions? We'll get you an answer
7 on that.

8 **MS. COLBERT:** Thank you.

9 **MS. SMITH:** Commissioners, Handout 2 in your hearing
10 handout notebooks is a map of various locations related to this
11 case that you may wish to refer to throughout the hearing. I also
12 put the map on the screens and I'm going to have Ms. Bridenstine
13 just point out the landmarks on that map, please.

14 **THE WITNESS:** All right.

15 This is Mr. Jones' residence on Moravia Street which
16 runs along here.

17 This is Belview Park.

18 This is Burgandy Street, which runs this way.

19 Christopher Bryant and Jermal Tolliver lived across the
20 street from each other on Devonshire Street, which is this street
21 here.

22 Rayshawn Banner and Nathaniel Cauthen lived with their
23 mother on Goldfloss Street here.

24 And Dorrell Brayboy lived on Sink Street, which runs
25 this way down here, and his house -- Dorrell Brayboy's house was

1 right here.

2 Mr. Jones' Chevron station was in a different location,
3 a different neighborhood in Winston-Salem from this neighborhood.

4 MS. SMITH: Commissioners, do you have questions about
5 the map?

6 You may want to look back at that throughout the
7 hearing.

8 We're going to turn our attention to Jessica Black.

9 In your brief, Appendix J, which began on page 2183, is
10 related to Jessica Black if you wish to refer to that.

11 Her statements to police can be found on page 390 and
12 396 of your brief. And her trial testimony is on pages 1182 and
13 1635 of your brief.

14 Q. Ms. Bridenstine, just remind the commissioners who
15 Jessica Black is.

16 A. Jessica Black was 16 years old at the time of this
17 case. She was friends with the five defendants. She had met them
18 one to two months prior to this crime. She would see them on a
19 regular basis after school and on the weekends in the neighborhood
20 where the five defendants lived.

21 Jessica Black's name was brought up initially by Jermal
22 Tolliver on November 19, 2002, as someone who was with the
23 defendants on the day of the crime.

24 Jessica Black was questioned by the police on
25 November 19, 2002, and confessed to her involvement in this case

1 as an accomplice who drove the defendants to the area of the
2 victim's house, waited while they committed the crime, and drove
3 them away from the area of the victim's house following the crime.

4 She testified for the State at both trials. She was
5 never arrested or charged.

6 When we deposed her, Jessicah Black recanted the
7 statements made to police and her testimony from both trials.

8 We also learned that she had previously recanted her
9 statements and her testimony to a reporter named Hunter Atkins.

10 **MS. SMITH:** Commissioner's Ms. Black's criminal record
11 is Handout 3 in your notebooks. If you want to take a moment to
12 look at that now.

13 Ms. Black has been subpoenaed and will testify later in
14 the hearing.

15 **Q.** Ms. Bridenstine, did the Commission depose Ms. Black?

16 **A.** Yes. I deposed Ms. Black over two days in October of
17 2019. It was video and audio recorded and later transcribed.

18 **Q.** And when you went to speak to Ms. Black -- or depose
19 her, did you know what she was going to say?

20 **A.** No, I did not.

21 **Q.** Before that deposition, were you aware that she had
22 previously recanted her testimony to reporter Hunter Atkins?

23 **A.** No. I was not aware that Hunter Atkins had spoken to
24 her about this case.

25 **Q.** Why did the commission want to depose Ms. Black?

1 **A.** Because Ms. Black was the only eyewitness who claimed to
2 see the defendants commit the crime. I had previously interviewed
3 all five defendants, and they all claimed innocence in this crime.

4 The Commission had sent out numerous items for DNA
5 testing in this case. None of the DNA profiles of the defendants
6 were found on any of the items tested. The Commission had an
7 unknown major DNA profile of a female found on the black string
8 that was wrapped up with black tape around the victim's hands, and
9 the Commission wanted to speak to Ms. Black to see what she said
10 in light of the fact that all five defendants were claiming
11 innocence. The Commission also wanted to obtain her DNA to
12 compare her profile to the unknown major female profile.

13 **MS. SMITH:** Commissioners, the transcript of Ms. Black's
14 deposition was provided to you-all prior to the hearing. It's
15 also included in your hearing handout notebook as Handout 4 if you
16 need to refer to that.

17 We are going to play a portion of that video deposition.
18 If you want to follow along, it's page 65, line 8, through
19 page 89, line 23 in the handout.

20 If you'll give me just a moment to get that cued up.

21 (Video played, 10:50 to 11:28 a.m.)

22 **Q.** Ms. Bridenstine, I believe that you have an answer to
23 Ms. Colbert's question related to the complaint filed by Geneva
24 Bryant.

25 **A.** Yeah. She made the complaint January 15, 2003. The

1 trial was held in May 2005. And the decision was made on that
2 complaint July 28, 2005. The review board determined that the
3 original resolution to the complaint was appropriate.

4 **MS. COLBERT:** Thank you.

5 **MS. SMITH:** Judge Lock, we could continue on but now is
6 a good time for a brief recess, if anyone would like.

7 **JUDGE LOCK:** Let's take a 10-minute recess.

8 (Recess taken, 11:29 to 11:45 a.m.)

9 **JUDGE LOCK:** All right. We'll come back to order.

10 **Q.** Ms. Bridenstine, after Ms. Black recanted at her
11 deposition, did you obtain Ms. Black's buccal swab to compare her
12 profile to compare with the evidence tested this case?

13 **A.** We did. At the end of the deposition, she agreed to
14 provide a voluntary DNA sample to us.

15 **Q.** And did the Commission have Ms. Black's DNA profile
16 developed?

17 **A.** We did.

18 **Q.** Just briefly describe what the results of that testing
19 were.

20 **A.** She is excluded as a contributor to the unknown major
21 female profile found on the black string. She was not included on
22 any other profiles developed but several minor profiles were
23 inconclusive due to what they call the possibility of allelic
24 dropout. Those minor profiles, they are inconclusive for all
25 individuals we had compared.

1 **MS. SMITH:** Commissioners, there will be additional
2 testimony from a DNA expert later in the hearing that will more
3 fully describe that testing.

4 **Q.** Ms. Bridenstine, after you deposed Ms. Black, what were
5 your next steps in the investigation?

6 **A.** We started to follow up with some of the things that she
7 said during her deposition to see if the information she had
8 provided was credible and verifiable.

9 **Q.** What are the things that you looked for regarding
10 Ms. Black's testimony to the Commission?

11 **A.** Whether she had been taken on a van ride with the DA's
12 office to the crime scene as she had described, her report of how
13 she ended up at the police station after the crime to be
14 interviewed, her discussions with Elizabeth Fowler about the case,
15 her visit to the mall to see Jordan Sellers on the night of the
16 crime, whether or not she told her boyfriend at the time of the
17 trial about the crime in any way, and whether or not she went to
18 the Dollar General store on the night of the crime as she had
19 reported to the police but then she had changed that in her
20 deposition, to me, and also all the people that Jessica Black had
21 testified that she had told about her recantation.

22 **Q.** So let's start by talking about your investigation and
23 Jessicah Black's claims that she was taken to the crime scene in a
24 van by the district attorney's office.

25 What did she tell you about that during the deposition?

1 A. She testified that she was taken on a tour of the crime
2 scene and the places that she had mentioned in her statement to
3 police. She was taken in a minivan. She testified that she was
4 told about this on the phone by Eric Saunders, who was one of the
5 district attorneys prosecuting the case, prior to the van ride
6 that the victim's daughter wanted to meet with her and go with her
7 on this trip. She testified that she was picked up at her house
8 by Mr. Saunders, an unidentified white male, and a black woman who
9 was introduced to her as the victim's daughter.

10 Q. Did you find anything in your investigation to verify
11 that Ms. Black had been on a ride in a van with representatives
12 from the district attorney's office and/or the victim's daughter?

13 A. There are notes in the DA's file that depict one meeting
14 between Jessicah Black and the DA's office, but they do not
15 discuss a visit to the crime scene.

16 Ms. Black does recall the visit but also several
17 additional meetings with the district attorney's office. There is
18 no mention of this van ride in the law enforcement or the district
19 attorney's files. We could not speak with Eric Saunders or Bierne
20 Harding, the assistant district attorneys who prosecuted these
21 cases, because they are deceased.

22 We did speak to Jessicah Black's grandfather, and he
23 recalled that she was picked up by law enforcement from school and
24 driven to the scene.

25 Q. Can you read from page 17, line 3, through page 18, line

1 15 of the Commission's interview with Benny Wayne Haley, who is
2 the grandfather of Jessicah Black, that was conducted on
3 December 16, 2019, by commission staff?

4 "Q Ms. Myers: Do you ever remember Jessicah getting
5 into a van and going with the DA for a ride or talking about
6 that?

7 "A Mr. Haley: I don't know nothing about that.

8 "Q Ms. Myers: Okay.

9 "A Mr. Haley: Well, wait a minute. I seem like I do
10 know something about that. Seemed like she told us that they
11 come to the school one day and somebody picked her up and had
12 her carry -- I mean, they carried her down there and she
13 showed them where she picked them boys up and where she let
14 them out at. I remember her saying something about that.

15 "Q Ms. Myers: Do you remember any other --

16 "A Mr. Haley: And I said, 'What the hell did they do
17 that for?' She said, 'I don't know, Papa.' She said, 'They
18 just come at our schoolhouse and got me and carried me down
19 there, and I had to show them where, you know, I picked the
20 boys up and then where I let them off at,' and they carried
21 her back to the schoolhouse.

22 "Q Ms. Myers: Did she tell you who picked her up?

23 "A Mr. Haley: No. She didn't say who it was or
24 nothing.

25 "Q Ms. Myers: Did she say how many people were there

1 that picked her up?

2 "A Mr. Haley: There was two of them. I remember her
3 saying that.

4 "Q Ms. Myers: Did she say if one was a male or a
5 female or if they were both males? Do you remember anything
6 about that?

7 "A Mr. Haley: No.

8 "Q Ms. Myers: Okay.

9 "A Mr. Haley: She didn't say anything about that. I
10 don't remember."

11 Q. Ms. Bridenstine, what was important about how Ms. Black
12 ended up at the police department to be interviewed?

13 A. The Winston-Salem Police Department records stated that
14 Ms. Black was contacted by phone and voluntarily agreed to come in
15 to the station to be interviewed. The Winston-Salem Police
16 Department records indicate she was told she would not be under
17 arrest. The records do not say how she ultimately arrived.

18 Ms. Black reported a different scenario. She testified
19 police came to her home and that she was off guard when police
20 arrived. She testified that her grandfather drove her to the
21 police station. She also testified that she was alone at the
22 police station.

23 Q. Did anyone else you talked to have a recount of what
24 happened when Jessicah Black was interviewed by law enforcement?

25 A. Yes. Ms. Black's grandfather, Benny Haley, talked to us

1 about what happened. Her grandmother is deceased, and Benny Wayne
2 Haley's statement to the Commission also provides his own version
3 of events from his perspective.

4 **MS. SMITH:** Commissioners, Benny Wayne Haley does not
5 have a criminal record.

6 **Q.** Can you tell commissioners what Benny Wayne Haley says?

7 **A.** He described what he remembered from November 19, 2002,
8 when the police first contacted Jessicah Black to her interview at
9 the police station to the seizure of her car. He also described
10 what he remembered hearing about this case from Jessicah Black.

11 **MS. SMITH:** Commissioners, if you will refer to
12 Handout 5 in your notebooks, this is an excerpt of the recorded
13 and transcribed interview of Mr. Haley from December 16, 2019.
14 That excerpt runs from page 7, line 16, through page 33, line 15.
15 We have cut that for you.

16 Please take some time to review that.

17 Does anyone need a few more minutes?

18 Commissioners, do you-all have any questions for
19 Ms. Bridenstine up to this point about her deposition with
20 Jessicah Black or any of the follow-up that she's testified to so
21 far?

22 **MR. EDWARDS:** I have a brief question regarding the DNA
23 testing that you testified about.

24 Was a black piece of string -- did you say some type of
25 string?

1 **THE WITNESS:** Yeah. It's been described as looking like
2 a shoestring or maybe like a string from a do-rag. And it was
3 found wrapped up in the victim's hands along with the tape that
4 bound his hands behind his back.

5 **MR. EDWARDS:** That was my next question. Thank you.

6 **THE WITNESS:** Yeah.

7 **MS. SMITH:** Yes, Ms. Colbert.

8 **MS. COLBERT:** It's my understanding that when Ms. Black
9 indicated about the van ride with the DA that she also mentioned
10 one of the victim's daughters was in the car.

11 So have you -- were there any follow-up with either
12 Ms. Paul or Ms. Richardson around whether they remembered this
13 ever happening?

14 **THE WITNESS:** Not directly from us but we have learned
15 through other sources that they denied anything like that ever
16 happened.

17 **MS. COLBERT:** Thank you.

18 **MS. NEWTON:** What were the total number of interviews
19 with law enforcement with Jessica Black?

20 **THE WITNESS:** How many total?

21 **MS. NEWTON:** Total.

22 **THE WITNESS:** Her interview was on November 19 with
23 several different officers over the course of what appears to be
24 about 3 1/2 hours. She had a meeting with the district attorneys
25 in 2003 -- October 18, 2003. And she testified at trial she had

1 meetings with the District Attorney's office, but doesn't
2 specifically mention law enforcement in her testimony.

3 MS. NEWTON: Did you figure out, then, what her
4 grandfather, Mr. Haley, was meaning -- what he was referring to
5 when he said it was about 30, 35 minutes?

6 THE WITNESS: No.

7 Based on the records that we have, it appears that she
8 was at the police station for longer than 3 hours.

9 MS. NEWTON: And that was the same time that he
10 apparently was talking about the grandparents drove her and took
11 her back?

12 THE WITNESS: Yes. And she testified at the deposition
13 that her grandfather took her there.

14 MS. NEWTON: And then waited?

15 THE WITNESS: Right.

16 MS. NEWTON: So this was the same incident.

17 He said it's 30, 35 minutes, and your records indicate
18 it's 3 hours?

19 THE WITNESS: Over 3, yes.

20 MS. NEWTON: But it was -- that one same interview?

21 THE WITNESS: Yes. It was a continuous interview.

22 MS. NEWTON: Thank you.

23 JUDGE LOCK: Did I understand, Mr. Bridenstine, that
24 there were two ADAs, a male, Mr. Saunders, and a female?

25 THE WITNESS: No. She said that there was Eric

1 Saunders, an unidentified white male, and a black female that she
2 believed was the victim's daughter.

3 MS. COLBERT: Was that the language that she used, that
4 she believed it was the victim's daughter?

5 THE WITNESS: I don't want to quote her exact language.
6 When she testified to us, it seemed that she was saying that
7 that's what she believed, that it was the victim's daughter, and
8 that Mr. Saunders had said he was going to bring the victim's
9 daughter with him.

10 MS. SMITH: Commissioners, there will be some additional
11 testimony a little later on related to Hunter Atkins where this
12 van ride comes up again.

13 Q. Ms. Bridenstine, I'm going to turn your attention now to
14 Elizabeth Fowler.

15 Why did commission staff talk to Elizabeth Fowler as an
16 investigative follow-up to Jessicah Black's deposition testimony?

17 A. Ms. Black testified during her deposition that she went
18 to her friend Elizabeth Fowler's house on the day of the crime
19 after she dropped the defendants off. She testified that she told
20 Elizabeth Fowler that she had seen the crime scene that night.
21 She also stated during the deposition that she had learned from
22 either law enforcement or the district attorneys that they had
23 found skin DNA in her car.

24 Q. Did she say whose skin DNA that was?

25 A. She said that she believed it matched -- she was told it

1 matched the victim in the case.

2 Q. And did she talk -- did she say what she talked with
3 Elizabeth Fowler about that?

4 A. She had spoken to the police about telling that
5 information to Elizabeth Fowler back around 2003.

6 Q. Thank you.

7 Remind the commissioners -- did the State Crime Lab find
8 any evidence in Ms. Black's car?

9 A. No. The police submitted three fabric sections from the
10 car that they believed could have possible blood on it based on
11 presumptive testing. The State Crime Lab examined those items for
12 blood and concluded, on August 1, 2003, that their tests failed to
13 reveal the presence of blood on the three sections that were
14 submitted.

15 Q. Did Elizabeth Fowler come up in the original
16 investigation of the case?

17 A. Yes. Her name was mentioned by Jessicah Black on
18 November 19, 2002, when she was first denying her involvement in
19 the crime. She told police that she had stopped at Elizabeth
20 Fowler's house on November 15, 2002.

21 She was later interviewed by the two district attorneys
22 in this case and Detective Mark Griffin, who was the lead
23 detective, on October 18, 2003. And during that interview,
24 Jessicah Black said that she had discussed this case with her
25 friend Elizabeth Fowler.

1 According to Detective Griffin's report on this meeting,
2 he called Elizabeth Fowler on November 3, 2003, and spoke to her.
3 Elizabeth Fowler reported to him that she was no longer friends
4 with Jessica Black. She stated that most of their conversations
5 about this case concerned the seizure of Jessica Black's car and
6 that DNA had been found inside it.

7 Jessica Black told her that she knew the defendants and
8 gave them rides from time to time. She also told us that -- or
9 she said in the report, excuse me, that Jessica Black told her
10 that the defendants had killed a man in Winston-Salem. She stated
11 that she thought this conversation had occurred the Saturday after
12 that man was killed.

13 **Q.** When did the commission staff interview Elizabeth
14 Fowler?

15 **A.** On January 8, 2020.

16 **Q.** And was the interview reported transcribed?

17 **A.** Yes, it was.

18 **Q.** What did Elizabeth Fowler tell commission staff?

19 **A.** She said that at the time of this case, they were
20 friends and they would go to each other's houses. She said she
21 lived in Welcome, North Carolina at that time. She said she did
22 not remember discussing anyone being killed with Jessica Black.
23 She was able to review Detective Griffin's report with us, and she
24 said that she did not remember any of that and did not remember
25 talking to the police. She said that she did remember Jessica

1 Black would hang out with black kids.

2 Q. Ms. Bridenstine, where is Welcome, North Carolina,
3 located in relation to Midway, North Carolina?

4 A. They are located about 4 miles apart from each other.

5 And Ms. Fowler told us that someone could easily confuse
6 Welcome for Midway.

7 Q. And why is that information relevant to this case?

8 A. Because Ms. Black initially told police on November 19,
9 2002, that she visited her friend Elizabeth Fowler on November 15,
10 2002 -- and I'm sorry, she reported that on November 19, 2002.

11 Q. Okay.

12 Is there any other significance to that?

13 A. Nathaniel Cauthen told his attorney Kevin Mauney on
14 November 20, 2002, that he went with Jessicah Black to Midway
15 twice on November 15, 2002. Christopher Bryant and Dorrell
16 Brayboy reported in 2007 and 2011 about going to Midway on
17 November 15, 2002, with Jessicah Black.

18 Christopher Bryant said that they were going to meet a
19 friend of Jessicah Black's. He also told the Commission that they
20 were supposed to go to Midway that day to meet a girlfriend of
21 Jessicah Black's.

22 Q. Okay.

23 Did you learn anything about Jordan Sellers and
24 Ms. Black's report that she went to the mall to see Jordan on the
25 night of the crime?

1 A. Jessica Black mentioned that during the time period of
2 this case she was friends with Jordan Sellers. She testified that
3 she went to the Hanes Mall on November 15, 2002, to visit Jordan
4 Sellers who worked at the Hot Topic store there. She said that
5 she was told that Jordan Sellers was not working that night.

6 She also originally told the police on November 19,
7 2002, that she went to the mall to see her friend Jordan.

8 Q. Did the Commission interview Jordan Sellers?

9 A. Yes. We interviewed her on the phone on January 29,
10 2020.

11 Q. And was that recorded and transcribed?

12 A. It was recorded but not transcribed.

13 Q. What did Ms. Sellers say?

14 A. She said that she had gone to school with Jessica
15 Black. She said that she worked at Hanes Mall but not at the
16 store Hot Topic. She said she worked at Sonic, which was in the
17 food court above Hot Topic. She said she did not remember if
18 Jessica Black ever visited her at work but it would've been
19 normal for her to do so. And she did not remember talking to
20 Jessica Black about this case.

21 **MS. SMITH:** Commissioners, do you have questions for
22 Ms. Bridenstine about either Elizabeth Fowler or Jordan Sellers?

23 **MS. COLBERT:** I don't have a question about either of
24 those two but I do have a couple more questions about what she
25 shared in her deposition with you to see if there were any --

1 anything you went back to find out in regard to her mentioning
2 that Hunter Atkins had paid her car payment.

3 **THE WITNESS:** Yes. And we will testify to that quite a
4 bit.

5 **MS. COLBERT:** Okay.

6 And the other thing that she also mentioned was
7 receiving the transcript of her testimony.

8 Did -- was there any follow-up done in regard to
9 verifying if that was true and the time period that -- when that
10 supposedly happened?

11 **THE WITNESS:** No. It's just what she told us in the
12 deposition, that she'd received it.

13 **Q.** All right.

14 Turn your attention now to Kenneth Wayne Smith.

15 What did Jessicah Black testify to in the deposition
16 related to Kenneth Smith?

17 **A.** She testified that during the time period that the
18 trials were held in this case, her boyfriend and father of her
19 child, Kenneth Wayne Smith, went with her to the trials. She told
20 the Commission that she had never talked or said anything about
21 the case to him, and we wanted to verify that statement.

22 **Q.** Did the Commission interview Kenneth Smith?

23 **A.** Yes. Commission staff interviewed him on the phone on
24 February 4, 2020.

25 **Q.** Was that recorded and transcribed?

1 A. It was recorded but not transcribed.

2 Q. What did Kenneth Smith tell the commission?

3 A. He said he did not know anything about the case. He
4 said that he went to court with Jessica Black because she was
5 pregnant with his son but that she never talked to him about it.
6 He said he was never present when Jessica Black ever spoke to
7 "her lawyer."

8 Q. Ms. Bridenstine, what can you tell the commissioners
9 about the hard drive with the surveillance video from Dollar
10 General in this case?

11 A. During the original investigation of this case, the
12 Winston-Salem Police Department collected a hard drive with
13 surveillance video from the Dollar General store, which is one of
14 the locations that Jessica Black told police that she had gone to
15 with the defendants on the night of the crime.

16 The police were initially unable to download that video
17 footage. And during one of the trials, Detective Griffin
18 testified that they were able to finally download and view the
19 footage after getting the necessary software. We collected the
20 hard drive but we did not know what software was needed to watch
21 the video.

22 Jessica Black has testified at her deposition that she
23 did not recall going to the Dollar General store on that day. She
24 said they'd gone there before but the only places that she
25 remembered going to on November 15, 2002, were the bowling alley

1 and the mall. She also remembered riding around in her car and
2 looking at the crime scene after the police arrived.

3 Q. Why did you ask Jessica Black about the Dollar General
4 store?

5 A. Jessica Black had told police and testified to taking
6 the defendants to the Dollar General store. She said that
7 Christopher Bryant and Dorrell Brayboy went into the store for
8 5 to 10 minutes.

9 Q. Did the Commission staff do anything in order to try to
10 view the footage on that surveillance video?

11 A. Yes. We first gave the hard drive to AOC staff -- the
12 audiovisual staff. They were unable to open any of the files on
13 that hard drive to view the footage.

14 We then submitted the hard drive to the North Carolina
15 State Crime Lab on September 20, 2019. On October 8, 2019,
16 analyst Jim Trevillian told us that he could not open the files on
17 the hard drive.

18 We then contacted the Winston-Salem Police Department
19 asking for any assistance that they could provide or additional
20 information about the software that was needed to view it. They
21 advised that they could not provide the Commission with any
22 assistance on the hard drive.

23 Q. What did commission staff do next?

24 A. We then reached out to the Dollar General to try and
25 determine what software was needed to look at that. We served a

1 subpoena on them on January 13, 2020, for video software
2 information. They did not respond to the Commission and they did
3 not respond to several phone calls and e-mails following up with
4 that.

5 We were finally able to talk to them on February 21,
6 2020. They agreed to contact the manufacturer for help with
7 troubleshooting and instructions on that software.

8 On February 25, 2020, analyst Jim Trevillian advised
9 that even with the codec and instructions provided by Dollar
10 General, he was not able to open the videos.

11 Q. Why was commission staff interested in viewing the
12 footage from the Dollar General?

13 A. We wanted to see ourselves if we could see any of the
14 defendants on that video surveillance footage.

15 Also, Detective Griffin had testified at the first trial
16 that he did not see anyone matching the description of the two
17 young black males walking in the store during the relevant time
18 period.

19 In the second trial, he testified that he saw several
20 young black males enter the store, but none that he could
21 positively say was Dorrell Brayboy. And this was in response to a
22 question asked by Dorrell Brayboy's defense attorney about the
23 surveillance footage.

24 Because of this discrepancy, we wanted to look at it
25 ourselves.

1 **Q.** Were you ever able to view the footage of the Dollar
2 General surveillance tape?

3 **A.** No.

4 **Q.** Did you ask Detective Griffin about the Dollar General
5 footage during his deposition on February 14 of 2020?

6 **A.** I did. He reviewed his testimony from both trials about
7 the Dollar General surveillance tape and said that he believed he
8 was viewing the tape from November 15, 2002, when he was watching
9 it.

10 When asked if he saw any of the defendants on the video,
11 he stated: "According to my testimony, no."

12 **MS. SMITH:** Commissioners, any questions about the
13 Dollar General video?

14 **MS. ESSARY:** So it was never introduced into evidence at
15 either trial?

16 **THE WITNESS:** That's correct. We collected it from the
17 Winston-Salem Police Department.

18 **MS. ESSARY:** The video -- the video itself was never
19 shown to the jury?

20 **THE WITNESS:** My recollection is -- yes, that's right.
21 They just testified about it.

22 **MS. ESSARY:** Okay.

23 **Q.** Ms. Bridenstine, Ms. Black testified that she had first
24 recanted to Hunter Atkins.

25 Were you able to determine if she had told anyone else

1 besides Mr. Atkins and the Commission what -- that what she had
2 said in 2002 was not accurate?

3 A. Yes. She told us that she told both her mother, Tamara
4 Black, and a former boyfriend, Zach Daniels, that actually she did
5 not know if these defendants committed the crime.

6 She said that she talked with Zach Daniels about it
7 because reporter Hunter Atkins had contacted Mr. Daniels' mother
8 in an effort to reach Jessica Black.

9 Q. Did the Commission interview Tamara Black?

10 A. Yes. I interviewed her on December 18, 2019, in her
11 home.

12 Q. And was that interview recorded and transcribed?

13 A. It was.

14 Q. Generally, what did Ms. Black -- Tamara Black say about
15 this?

16 A. She reported that the day after Jessica Black was
17 interviewed by the police, Jessica told her that she was scared
18 and that she told them what they wanted to hear.

19 Ms. Black also -- Tamara Black also reported that she
20 had a recent conversation with Jessica where Jessica said that
21 what she had said at the trial was not the truth.

22 MS. SMITH: Commissioners, if you'll refer to Handout 6
23 in your hearing handout notebook, that is the criminal record of
24 Tamara Black.

25 Handout 7 is the transcript of the interview of Tamara

1 Black. I'm going to have you hold reviewing that for now. We've
2 just got a few more minutes of testimony before we break for
3 lunch, and we will give you a little bit of extra time over the
4 lunch break to review that transcript.

5 Q. Ms. Bridenstine, did you talk to Zach Daniels and his
6 mother, Karen Daniels?

7 A. Yes. Commission staff interviewed both Zach and Karen
8 Daniels on February 29, 2020.

9 Q. And were those conversations recorded and transcribed?

10 A. They were both recorded but not transcribed.

11 Q. What did Karen Daniels say?

12 A. She said she had never spoken to Jessica Black about
13 this case. She said she only knew what she read in the paper and
14 what the reporter named Hunter told her. She said that reporter
15 told her that Jessica Black sat in the car while the defendants
16 robbed and killed a man. The reporter also told her that Jessica
17 Black was on the stand, pregnant and crying, and the defendants
18 went to jail.

19 She said that the reporter came to her house a year ago
20 looking for Jessica Black and that she e-mailed him to tell him
21 she did not appreciate the fact that he sent people to her house.

22 Q. What did Zach Daniels say?

23 A. He said that Jessica Black told him she was pregnant at
24 the trial and testified as a witness. She did not tell him
25 anything about the case. He did not remember speaking to Hunter

1 Atkins or any other reporter about Jessica Black.

2 MS. SMITH: Commissioners, questions for Ms. Bridenstine
3 about the Daniels?

4 You will read Tamara Black's transcript during lunch; so
5 maybe hold your questions related to her.

6 (No response)

7 MS. SMITH: All right.

8 Commissioners, before we break for lunch, I wanted to
9 give you-all some page numbers from the Jessica Black deposition
10 related to the van ride so that if you wish to look at those again
11 over the break, you may.

12 If you want to write these down, it's page 96 -- this is
13 in Handout 4. Page 96, line 1 through page 100, line 11; and then
14 again on page 235, lines 15 through 19; and again page 241,
15 line 24 through 244, line 16.

16 MR. BRITT: Repeat that last one.

17 MS. COLBERT: Yea.

18 MS. SMITH: The whole thing?

19 MR. BRITT: The last one.

20 MS. COLBERT: Two.

21 MS. SMITH: Page 241, line 24 to page 244, line 16.

22 MR. BRITT: Thank you.

23 MS. SMITH: Your Honor, at this time, I would request
24 that we break for lunch. Since we are going to have commissioners
25 review that handout over the lunch break, I would say we should at

1 least break until 1:15, maybe even 1:25.

2 **JUDGE LOCK:** All right. We will break for lunch until
3 1:25.

4 (Recess taken, 12:29 to 1:27 p.m.)

5 (Mr. Bass leaves the proceedings.)

6 **JUDGE LOCK:** All right. It looks like all the
7 commissioners are back in place. And I've got about 1:27. We
8 will resume.

9 **MS. SMITH:** Commissioners, I have just passed around to
10 you what will become Handout 101. You don't have that notebook
11 right now but if you'll take a moment to look at that, I will make
12 sure that that gets into your handout notebooks later.

13 **Q.** Ms. Bridenstine, can you explain to commissioners what
14 they are looking at in Handout 101.

15 **A.** Sure. This is Detective Griffin's report regarding his
16 meeting with ADAs Eric Saunders and Bierne Harding and Jessicah
17 Black that was at the public safety center, which is a police
18 report, on October 8, 2003, where they indicated that they
19 discussed Jessicah Black's knowledge of the incident and went over
20 her statement. They also went over some of the information she
21 provided to them about Elizabeth Fowler.

22 In the DA's file, we have found handwritten notes that
23 appear to correspond to this meeting but we don't have notes from
24 other meetings.

25 **Q.** Can you remind commissioners what Ms. Black testified to

1 at both trials regarding her meetings or interactions with the
2 District Attorney's office.

3 A. Sure. We pulled her trial testimony from both trials.

4 At the first trial, which was held for Rayshawn Banner
5 and Nathaniel Cauthen, she was questioned by Teresa Hier about
6 this. That trial was held in August of 2004 and the question is:

7 "Q Okay. And before that, when did you talk to either
8 Ms. Harding or Mr. Saunders?

9 "A I believe I have been meeting with them for the
10 past week, two weeks.

11 "Q And how many times did you meet with them?

12 "A Rough estimate, maybe three times."

13 We also pulled the trial testimony from the second trial
14 which was held for Christopher Bryant, Jermal Tolliver, and
15 Dorrell Brayboy in May of 2005. She was questioned by Bierne
16 Harding in this part of the transcript, and it states:

17 "Q Since these events, you have come to the offices of
18 the district attorney, have you not?

19 "A Yes, ma'am.

20 "Q Can you tell us on approximately how many different
21 occasions you've talked with either me or Mr. Saunders or
22 both of us?

23 "A I don't know.

24 "Q Best estimate?

25 "A I've probably talked to you-all altogether six,

1 seven times."

2 **Q.** Ms. Bridenstine, there was a question before the lunch
3 recess about the transcript or document that Ms. Black described
4 in her deposition with you back in October of 2019.

5 Were you able to speak with Ms. Black over the break?

6 **A.** I was.

7 **Q.** Did she tell you any more about that?

8 **A.** Yes. We asked her about the transcript that she said
9 she'd received from the District Attorney's office. She said that
10 she received a transcript from Eric Saunders of her testimony,
11 that it had a metal binding on it, that it had things highlighted
12 and circled, and she was told to review it; that she knew it was
13 testimony because there was back-and-forth between attorneys and
14 her.

15 She also said that it was in a storage building. She
16 didn't know where. She has not seen it in a long time but she
17 believes she still has it, it's just in storage.

18 **MS. SMITH:** Commissioners, are there any additional
19 questions about that?

20 (No response.)

21 **MS. SMITH:** You-all had an opportunity to review
22 Handout 7 over the break, which was the transcript of the
23 Commission's interview with Tamara Black.

24 Does anyone have questions about that?

25 (No response.)

1 **MS. SMITH:** Okay. Ms. Bridenstine, you may step down.

2 (Witness stands down, 1:34 p.m.)

3 **MS. SMITH:** Commission calls Associate Director Beth
4 Tanner.

5 * * * * *

6 * * * * *

7 Thereupon, BETH TANNER, a witness having been called by the
8 Commission, was examined and testified on EXAMINATION as follows:

9 BY MS. SMITH: (1:34 p.m.)

10 **Q.** Ms. Tanner, will you please state your full name for the
11 record.

12 **A.** Beth Tanner.

13 **Q.** And how are you employed?

14 **A.** I'm the associate director for the Commission.

15 **Q.** And how long have you been employed with the Commission?

16 **A.** Almost three years.

17 **Q.** Can you tell the commissioners and review for them
18 Hunter Atkins' involvement in this case.

19 **A.** Yes.

20 The Commission first learned that Hunter Atkins, a
21 reporter for the *Houston Chronicle* at the time, was looking into
22 this case when the Commission interviewed the codefendants in
23 February and March of 2018.

24 Mr. Atkins had been trying to get in contact with the
25 codefendants who had been released -- that was Mr. Brayboy,

1 Mr. Tolliver, and Mr. Bryant.

2 At the time, only Mr. Bryant had applied to the
3 Commission.

4 Also at the time, the victim's grandson, Chris Paul, was
5 playing for the Houston Rockets. We initially understood that to
6 be the connection between Mr. Atkins and the case.

7 We also learned that he had had significant discussions
8 with Jessica Black.

9 Based on our investigations, we learned that he was the
10 first person to whom Jessica Black recanted her statements.

11 Q. Does Mr. Atkins have a criminal record?

12 A. He does not. However, I learned that he has a pending
13 charge in Harris County, Texas, for harboring a runaway child.

14 Q. What did the Commission determine about Hunter Atkins'
15 involvement in this case?

16 A. As the Commission interviewed or deposed witnesses, many
17 of them reported having also been contacted by Mr. Atkins. Some
18 witnesses contacted by Hunter Atkins provided some communications
19 between them. These witnesses included one of the claimant's
20 mothers, several defense attorneys, and one of the WSPD officers.
21 Not everyone responded to Mr. Atkins or spoke with him. The
22 victim's family also reported havening talked with him.

23 The Commission was simultaneously aware from at least
24 one of the claimants that he was being repeatedly contacted by
25 Atkins in spite of the request that Atkins stop contacting him.

1 The Commission requested and received documentation of
2 the communications claimants had, if any, related to Atkins. In
3 addition, the Commission received recorded phone calls made from
4 inmates being held in the prison system by NC DPS to Atkins' phone
5 number.

6 **Q.** Can you remind the commissioners what documentation we
7 were able to collect related to Hunter Atkins' communications with
8 the various individuals.

9 **A.** Yes.

10 Text messages exchanged with Claimant Christopher
11 Bryant; text messages and Facebook messages with Jessica Black; a
12 letter to Arlene Tolliver; a letter to Nelson Hartman; e-mails
13 exchanged with Chris Mumma; text messages and e-mails exchanged
14 with retired WSPD Sergeant Charlie Byrom.

15 **Q.** Did any of the documents related to Mr. Atkins'
16 communications illustrate his initial contact with a fact witness
17 in this case?

18 **A.** Yes. Though Mr. Atkins did not talk with him, Nelson
19 Hartman received a letter from him. This letter describes
20 Mr. Atkins' opinions in the case.

21 **MS. SMITH:** Commissioners, Handout 8 is that letter to
22 Nelson Hartman. If you'll take just a moment to look at that.

23 **Q.** Ms. Tanner, did commission staff speak to Hunter Atkins?

24 **A.** We did. Mr. Atkins reached out to the Commission for a
25 general interview about the Commission not specific to this case

1 on March 19, 2019. Though we were aware that he was possibly
2 investigating this case, we did not discuss the case with him at
3 that time.

4 Q. Did the Commission ever attempt to speak to Mr. Atkins
5 specifically about this case?

6 A. Yes. The Commission first reached out to Mr. Atkins
7 after the deposition of Jessica Black by commission staff.

8 During that deposition, Ms. Black indicated that
9 Mr. Atkins was the first person to whom she had recanted her
10 statements and testimony. The Commission was able to obtain her
11 text and Facebook messages with Mr. Atkins.

12 In her deposition, Jessica Black indicated that
13 Mr. Atkins was willing to provide her interviews to her upon
14 request. However, when Ms. Black asked for them at our request,
15 he declined to turn them over. After that, the Commission began
16 contacting Mr. Atkins directly by phone and e-mail, both personal
17 and work.

18 We reached out directly to the *Houston Chronicle*, where
19 we understood he was employed. We even contacted his father and
20 requested that he share that the Commission was attempting to
21 contact him. Because we knew that he had been speaking with
22 Ms. Mumma, we also requested that she reach out to him to see if
23 he would speak to the Commission.

24 None of these attempts were successful.

25 Q. We're going to circle back to Jessica Black and the

1 claimants, but first let me turn your attention to other contacts
2 that Mr. Atkins had related to this case.

3 What has the Commission learned about Mr. Atkins'
4 contacts with witnesses in this case beside Jessicah Black and the
5 claimants directly?

6 A. Based on the DPS phone calls between Mr. Cauthen, the
7 claimant, and Mr. Atkins, and Mr. Cauthen and his mother, Teresa
8 Ingram, it appears that Mr. Atkins had established a relationship
9 with Mr. Cauthen and Mr. Banner's mother prior to speaking to
10 Mr. Cauthen on the phone. He had gone with her, Ms. Ingram, to
11 visit and interview Mr. Banner in prison prior to Mr. Banner
12 becoming a claimant.

13 A phone call between Mr. Atkins and Mr. Cauthen
14 indicates that he had first spoken to Nathaniel Cauthen on the
15 phone when Mr. Cauthen had called his mother while she was with
16 Mr. Atkins.

17 Ms. Ingram also provided juvenile court records for both
18 Rayshawn Banner and Nathaniel Cauthen to Mr. Atkins. Several
19 phone calls indicate she encouraged Mr. Cauthen to reach out to
20 Mr. Atkins. Mr. Atkins also interviewed Joseph Cauthen, who is
21 the brother of Mr. Banner and Nathaniel Cauthen.

22 Mr. Atkins' discussions with Arlene Tolliver included
23 providing her with educational records for her son, Jermal
24 Tolliver, and photos of some of the detectives related to
25 attempting to determine who was involved in the case. The

1 Commission is also aware that Mr. Atkins interviewed some of
2 Jermal Tolliver's siblings.

3 In speaking with the WSPD officers, Mr. Atkins -- it
4 appears that Mr. Atkins attempted to or did speak with certain of
5 the WSPD officers in the case.

6 Mr. Atkins also spoke with many of the defense attorneys
7 in the case. We learned that a significant amount of the records
8 that Mr. Atkins received came from Christine Mumma so we
9 interviewed her related to her conversations with Mr. Atkins.

10 Q. What, if anything, was significant about the
11 communications between Mr. Atkins and Ms. Mumma?

12 A. Ms. Mumma and Mr. Atkins discussed the case. We
13 interviewed Ms. Mumma about her discussions with Atkins and we
14 subpoenaed any records related to her communications with him,
15 which she provided.

16 She said her primary contact with him was e-mail and
17 phone calls. She did not have any text messages to produce in
18 response to the subpoena.

19 She said that she had provided some information about
20 the commission process to Atkins and talked about the case itself.
21 Her position related to sharing her files with the media such as
22 Atkins was that she would do so if she thought it would benefit a
23 case.

24 Ms. Mumma had opened files for Bryant, Tolliver, and
25 Cauthen with the Center but had closed those files. She now

1 represents Mr. Banner but did not have a case open for him, though
2 she did interview him as part of her look into the other cases.

3 In addition, Jessica Black talked about Atkins begging
4 her on multiple occasions to talk to an innocence group, though it
5 was not clear that Atkins was talking about the Commission.

6 When I interviewed Mr. Atkins, he initially denied
7 begging Ms. Black to talk to any innocence group and/or to
8 Ms. Mumma. He explained that he wanted an attorney to get an
9 affidavit from Ms. Black basically so that his story could go
10 through proper verification channels with his paper before it was
11 published.

12 After a break during that interview where he consulted
13 with his attorneys, Mr. Atkins told me he had wanted Black to talk
14 to Ms. Mumma with the intention of Black providing an affidavit.
15 He said he had generally discussed the case and the Commission
16 process with Ms. Mumma.

17 Q. Are you aware whether Ms. Mumma ever talked to Jessica
18 Black?

19 A. No. In reviewing the e-mails she produced pursuant to
20 the subpoena related to her communications with Hunter Atkins as
21 well as in interviewing Ms. Mumma, there is no indication that she
22 spoke with Jessica Black in the case. She did state that during
23 the Center's investigation they had tried to contact Ms. Black but
24 had been unsuccessful.

25 Q. What did you learn from reviewing Ms. Mumma's e-mail

1 communications with Hunter Atkins?

2 A. Mr. Atkins initiated contact with Ms. Mumma and inquired
3 about the case. Ms. Mumma required releases from the claimants
4 that -- to the cases she had investigated prior to providing
5 documents from the Center's file.

6 Throughout this process, he eventually gets releases
7 from Bryant, Tolliver, Banner, and Cauthen that satisfy the Center
8 and they release the files to him. I'm sorry -- Bryant, Tolliver,
9 and Cauthen. They release the files to him.

10 They discuss having an interview, and Mr. Atkins
11 expresses a goal of having a completed story by April 4, 2019.

12 Ms. Mumma confirmed during her interview with the
13 Commission that she and Mr. Atkins did have that discussion.

14 In addition, Ms. Mumma confirmed in her interview, and
15 her communications show, that she and Hunter discussed the
16 Commission's process, in particular the timing of investigations,
17 appointment of commissioners, and a criticism Ms. Mumma had
18 related to the experience of the Commission staff. In addition,
19 Hunter expressed to Ms. Mumma the concern that Mr. Cauthen had
20 about signing the waiver form and whether that would jeopardize
21 his case with the Commission.

22 He asked Ms. Mumma -- that's Mr. Atkins asked Ms. Mumma
23 under what circumstances would she inform the Commission that
24 Cauthen signed that form. And her response is: "If they ask, I
25 can't lie; if they don't ask, I have no reason to say anything."

1 **MS. SMITH:** Commissioners, Handout 9 is a copy of the
2 e-mails exchanged between Hunter Atkins and Ms. Mumma without all
3 of the attachments that were exchanged, if you want to take a
4 moment to review those.

5 **MS. ESSARY:** Can I ask a quick question related to
6 previous testimony? Or do you want me to wait?

7 **MS. SMITH:** Is it something that Ms. Tanner testified
8 about?

9 **MS. ESSARY:** Yes.

10 **MS. SMITH:** Yes, please. Go ahead.

11 **MS. ESSARY:** So I'm confused. Initially you said
12 Mr. Atkins would not respond to your e-mails or inquiries and then
13 it seems like you mentioned an interview that you had with him.

14 **THE WITNESS:** Yes.

15 **MS. ESSARY:** I'm confused.

16 **THE WITNESS:** No. So -- yeah. So we will talk about
17 that. And, I'm sorry, I realized that as we were looking into it.

18 **MS. ESSARY:** No worries.

19 **THE WITNESS:** Okay.

20 (Commissioners review, 1:46 to 2:10 p.m.)

21 **Q.** Ms. Tanner, you mentioned that Mr. Atkins attempted to
22 speak with some Winston-Salem Police Department officers.

23 Did the Commission's investigation reveal anything about
24 those discussions that's significant?

25 **A.** Most WSPD officers did not have a sit-down interview

1 with Mr. Atkins as far as we could determine. A former WSPD
2 Sergeant, Charlie Byrom, did report having significant discussions
3 with Mr. Atkins. He told us he had talked with Mr. Atkins a few
4 times, both about this case and a personal matter unrelated to the
5 case. He provided his text messages and e-mails with Mr. Atkins
6 regarding this case to the Commission.

7 Q. What, if anything, was significant about the
8 communications between Mr. Atkins and Sergeant Byrom?

9 A. Officer Byrom had a relatively good recollection of his
10 discussion with Mr. Atkins when we interviewed him. In addition
11 to talking with Atkins about his memory of events and his fellow
12 WSPD colleagues, he also recalled talking with Atkins about this
13 van ride that Jessicah Black remembered.

14 Byrom indicated that he told Atkins he believed the
15 person posing as a victim in the van ride was Assistant District
16 Attorney Jennifer Martin -- that that was possible.

17 And to be clear, Mr. Byrom did not go on the van ride.
18 He did not have a personal knowledge of the van ride happening,
19 but that's what he thought.

20 MS. SMITH: Commissioners, we will talk more about
21 Officer Byrom in the hearing, but Handout 10 contains the portions
22 of the interview related to these discussions with Mr. Atkins.

23 In addition, Officer Byrom recalled in his interview
24 several disciplinary issues related to his time with the
25 Winston-Salem Police Department. The portions of the interview

1 related to that also can be found in Handout 10 as well.

2 If you-all will take a few minutes to review that. It's
3 fairly short.

4 (Review, 2:11 to 2:22 p.m.)

5 Q. Ms. Tanner, did the Commission do any further
6 investigation into the issue of the van ride?

7 A. Yes. When we did interview Mr. Atkins, he confirmed at
8 his interview that Mr. Byrom and some other witnesses had
9 indicated it was possibly Jennifer Martin in the van.

10 Mr. Atkins actually found some publicly available
11 pictures of Ms. Martin and another individual, Ms. Pansy Glanton,
12 and sent those to Jessicah Black to review. Ms. Black said the
13 photos looked familiar but otherwise could not confirm that any of
14 these were the picture in the van.

15 In the audio of Hunter Atkins' calls with Jessicah
16 Black, he tells her that the victims denied being involved in the
17 van ride. And nothing that we have reviewed indicates that the
18 victim's family went on any kind of van ride with the DA.

19 Ms. Martin told the Commission that she had not done
20 that and would never do it. She also, on her own, checked with
21 Patsy Glanton about this event, and Ms. Glanton also denied going
22 on any kind of van ride with Ms. Black.

23 We have not been able to otherwise determine who that
24 person was or could have been in the van.

25 Q. What did the Commission learn about Hunter Atkins'

1 communications with Jessica Black?

2 A. Mr. Atkins attempted to contact Ms. Black for some time
3 without success despite Facebook messages. He was finally able to
4 get in touch with her by phone and then had an in-person interview
5 with her in April 2019, which happened in Winston-Salem.

6 He also had texts, Facebook messages, and other phone
7 conversations with her.

8 MS. SMITH: Commissioners, Handout 11 are the text
9 messages between Atkins and Black as provided to us by Jessica
10 Black back in October.

11 Handout 12 are the Facebook messages between Mr. Atkins
12 and Ms. Black, also provided to us by Jessica Black in October.

13 If you'll take some time to review those.

14 (Commissioners review, 2:24 to 2:39 p.m.)

15 Q. Ready?

16 A. Mm-hmm.

17 Q. Was the Commission able to get the audio of Ms. Black's
18 discussions with Mr. Atkins?

19 A. Initially, no. As I mentioned before, though Mr. Atkins
20 promised to provide her a copy of her audio from her interview
21 when she requested it, he would not provide it to her when she
22 requested, though he said that he would discuss that with the
23 Commission as to why he wouldn't do so.

24 Q. Was the Commission able to speak with Hunter Atkins?

25 A. Yes.

1 Mr. Atkins is a resident of Houston, Texas. As I
2 mentioned, we attempted to speak to him voluntarily, and that was
3 not successful.

4 We then noticed and served him for an out-of-state
5 deposition. Texas is not part of the Interstate Deposition Act so
6 the process was slightly more complicated. I first had to
7 complete the requirements to be allowed to practice in a limited
8 fashion in Texas. Then I worked with a Texas attorney to get the
9 required documents filed and served on Mr. Atkins for that
10 deposition.

11 After being served, Mr. Atkins hired an attorney who
12 said he planned to object to the depositions on the ground -- I'm
13 sorry -- the deposition on the grounds of privilege related to
14 Mr. Atkins' role as a reporter, though he expressed a willingness
15 to work with the Commission.

16 During this time, we also began receiving the DPS phone
17 calls between Mr. Atkins and Cauthen. So not only was Mr. Atkins
18 important as it related to Jessicah Black, but he became important
19 as it related to his discussions with Mr. Cauthen and the
20 claimants.

21 Therefore, simultaneous to working on the deposition, I
22 also requested and received a material witness order from Judge
23 Lock and sent that to Texas to have Mr. Atkins deemed material and
24 ordered to appear by a Texas Court in this North Carolina
25 proceeding.

1 Ultimately, through working with Mr. Atkins' attorneys,
2 we agreed to and completed an interview of Mr. Atkins in Texas,
3 though that interview was limited to the following topics:
4 General information related to incriminating discoveries as to
5 claimants and identifying what was in his file; his communications
6 with Christine Mumma; his interviews and communications with
7 Jessica Black; and his communications with the claimants and
8 their families.

9 We further agreed to Mr. Atkins' testimony here on
10 topics relevant to this inquiry as a material witness. The
11 material witness order also resulted in the production of all of
12 Atkins' audio recordings of his conversations with Jessica Black.

13 I appeared in Texas along with Harris County District --
14 Assistant District Attorney Brian Rose, where a judge entered the
15 material witness order.

16 **MS. SMITH:** Commissioners, Handout 13 is a copy of the
17 waiver and material witness order related to Mr. Atkins being
18 found a material witness, which outlines the subject matters of
19 his testimony that we will receive tomorrow.

20 If you want to take just a moment to look over
21 Handout 13.

22 **Q.** Ms. Tanner, based on the information that the Commission
23 has, were you able to piece together a timeline of initial
24 communications between Hunter Atkins and Jessica Black?

25 **A.** Yes.

1 What was important to our investigation was determining
2 when and whether Ms. Black had recanted to Atkins as she had told
3 us, and also to understand what, if anything, Mr. Atkins had told
4 her prior to that recant.

5 Based on her Facebook messages, it appears that Hunter
6 initially contacted her in January 2018, though she testified at
7 her deposition that it was "three years ago." There is no
8 indication that Mr. Atkins was working on this story at all
9 three years ago.

10 The next contact appears to be a March 6, 2019, text
11 message where Mr. Atkins says Black did not to talk when he called
12 a year ago but that he wanted to represent her fairly in his
13 story.

14 The audio files Atkins sent us did not have dates or
15 time stamps but the next text is on March 27, 2019, in which
16 Mr. Atkins says: "Thanks again for taking the time."

17 And there is a follow-up text on March 28, 2019, that
18 says: "Yesterday afternoon made for a bit of an emotional day."

19 The first audio we received from Mr. Atkins' is a phone
20 call where Black does get emotional and where the content makes it
21 appear as though this is their first substantive conversation.

22 That first substantive conversation actually occurred
23 before they met in person at the IHOP -- that's where they met in
24 person in Winston-Salem was at an IHOP.

25 After that first call, there are a few texts that are

1 primarily about setting up this IHOP meeting and then the next
2 audio is from that meeting at the IHOP.

3 Q. What did you learn from Hunter Atkins at your interview
4 with him in Houston, Texas?

5 A. Mr. Atkins told me that during his work on this case he
6 did not talk to anyone or receive any indication from anyone that
7 they had personal knowledge of either seeing the defendants commit
8 this crime or hearing the defendants admit to committing this
9 crime outside of what was already in the police records.

10 He also said that he had not received any indication
11 that anyone had any personal knowledge of either seeing Jessicah
12 Black commit this crime or hearing Jessicah Black say that she had
13 been involved in this crime besides what was already in the WSPD
14 reports and trial testimony.

15 Our understanding from Jessicah Black in her deposition
16 was that the first time she had a substantive conversation with
17 Mr. Atkins was when he "popped up on her in Winston-Salem" and she
18 agreed to meet with him at the IHOP on Peters Creek Parkway.

19 I confirmed with Mr. Atkins in his interview that his
20 first comprehensive interview with Jessicah Black was at the IHOP.
21 I specifically asked him had he had any prior comprehensive
22 interviews with Ms. Black and he said no.

23 I questioned Mr. Atkins about what information he had
24 provided to Jessicah Black prior to that interview at IHOP, which
25 he again agreed was his most comprehensive interview with her.

1 He could not recall the order in which he provided her
2 information about the case in relation to her recant to him, but
3 he did say that he only provided her factual information to
4 essentially correct her understandings of things in the case.

5 He did not recall providing her documents prior to the
6 interview at the IHOP.

7 I specifically asked Mr. Atkins if he understood
8 contamination. He indicated that he did and that as a reporter he
9 had to be careful to get the true story.

10 I also talked with Mr. Atkins about him making Jessica
11 Black's car payment. He confirmed that this was after she had
12 already recanted to him and he said it was not in exchange for any
13 information at all.

14 The text and audio as well as Jessica Black's own
15 statements support that she had already told him that what she
16 said to police and at trial was not correct before there was any
17 discussion about the car payment that he made.

18 **Q.** Did we later learn any additional information about
19 Mr. Atkins' discussions with Ms. Black?

20 **A.** Yes.

21 Upon listening to the audio of Mr. Atkins'
22 communications with Ms. Black, it appeared that Ms. Black and
23 Mr. Atkins had an almost two-hour discussion about the case in
24 which they set up another in-person meeting. The only meeting
25 in-person meeting recorded is one at the IHOP so it appears that,

1 in fact, there was a prior comprehensive discussion about the case
2 before this in-person meeting at the IHOP.

3 This call appears to be their first contact that results
4 in any significant discussion, and in this call, Ms. Black does
5 recant her statements that she made at trial and to police.

6 Q. Ms. Tanner, was there other audio related to Mr. Atkins'
7 communications with Jessica Black?

8 A. Yes, there was.

9 Q. Did commission staff review all of the audio produced by
10 Mr. Atkins pursuant to this court order?

11 A. Yes, we did.

12 Some of the audio started after a conversation had
13 already begun and some appeared to end prematurely before the
14 conversation was over.

15 I asked Mr. Atkins' attorney in Texas -- his name is
16 Russell Post -- about that issue. Mr. Post said he checked in
17 with Mr. Atkins and explained that the audio sometimes would just
18 be started later into the call and that sometimes during long
19 interviews Mr. Atkins would deliberately end a recording and begin
20 another to maintain a manageable file size.

21 MS. SMITH: Commissioners, certain relevant portions of
22 the interview with Hunter Atkins as it relates to Jessica Black
23 were provided to you as Handout 14. These are only portions.

24 We're also going to listen to portions of the audio of
25 Mr. Atkins' communications with Jessica Black, specifically from

1 that first phone call and then a little bit from the IHOP meeting.

2 The commission staff has listened to all of the audio.

3 In some instances, based on the content, we had that audio

4 transcribed, and that's true of the audio -- that phone call just

5 prior to the meeting at IHOP and it's true of the meeting at

6 IHOP -- the audio from that.

7 We're going to cue that up. I am going to let you read

8 Handout 14 while we do that.

9 Do you-all have any questions of Ms. Tanner, though,

10 before she steps down?

11 **JUDGE LOCK:** At some point during the presentation this
12 week will we be talking about the MARs that the claimants may have
13 filed?

14 **MS. SMITH:** Yes. There will be testimony about the
15 MARs.

16 **JUDGE LOCK:** I will hold that, then.

17 (Witness stands down, 2:52 p.m.)

18 (Commissioners review, 2:52 to 3:10 p.m.)

19 **MS. SMITH:** Judge Lock, before we begin play any audio,
20 I think this would be an appropriate time for about a 15-minute
21 break.

22 **JUDGE LOCK:** Sounds good to me. All right. We will
23 recess, then, until 3:25 -- 3:20 by the clock on the wall here. I
24 was looking at my watch.

25 (Recess taken, 3:10 to 3:24 p.m.)

1 **JUDGE LOCK:** All right. We'll come back to order.

2 Commissioners, in talking with our executive director
3 over the break, it appears that we're going to be hearing now some
4 audio recordings. They're fairly lengthy and we may have to go a
5 few minutes beyond 5:00 o'clock today in order to get to a good
6 stopping point, perhaps around 5:15 or 5:20.

7 I hope that does not cause anyone any undue hardship.

8 I have asked her if, at some point during the playing of
9 these recordings, she sees a natural breaking point, that she
10 might want to break just for about a five-minute comfort break.

11 All right. Whenever you're ready. Thank you.

12 **MS. SMITH:** Thank you, Your Honor.

13 Commissioners, so that you can follow along, Handout 15
14 in your handout notebooks is the transcript of the audio from
15 calls 1 and 2 between Mr. Atkins and Jessicah Black.

16 Handout 16 is a transcript of the audio for Mr. Atkins'
17 IHOP interview with Jessicah Black.

18 We are going to listen to the calls transcribed in
19 Handout 15 -- those two recordings. The first is just under an
20 hour. I plan to play it in full. The second -- again, we're
21 going to play clips of that, different portions because there is
22 some stuff on there that's not highly relevant to this case.

23 The transcripts -- because we're playing most of
24 Handout 15, you probably will not need to review that tonight.

25 Handout 16, the IHOP audio, because we're only playing

1 about five minutes of that, you will need to review that tonight.

2 Additionally, there were 10 other audio recordings.

3 We're not going to play those for you. We do not have those
4 transcribed, but the staff did create a chart with a summary of
5 those calls, and that is Handout 17. So that is another one that
6 I would like for you to review over the evening recess.

7 And then, depending on where we get here, there may be
8 one other thing for you for this evening.

9 (Audio played, 3:30 to 4:30 p.m.)

10 **MS. SMITH:** Judge Lock, the next call is -- the next one
11 we'll play is about 25 minutes long. I don't know if you want to
12 break for a bathroom break now or wait until after that call.

13 **JUDGE LOCK:** After that call, how long is the next
14 recording?

15 **MS. SMITH:** 11 minutes, 9 minutes, and then 5 minutes.

16 **JUDGE LOCK:** Folks, want to do about a five-minute break
17 now or play the next segment?

18 (Commissioners indicate willingness to continue.)

19 **MS. SMITH:** Just to clarify, these next three portions
20 are from the second recording. It's still part of this first
21 call, and we're just doing sections.

22 **MR. BRITT:** Could I ask the volume be turned down just a
23 tad? The speaker is right there and it's a little distorted.

24 **MS. SMITH:** Absolutely.

25 (Audio played, 4:30 to 4:50 p.m.)

1 (Recess taken, 4:50 to 5:03 p.m.)

2 **JUDGE LOCK:** All right. Let's come back to order.

3 **MS. SMITH:** All right. I believe on the break,
4 Mr. Edwards, you may have had a question about the audio.

5 **MR. EDWARDS:** Yes. I was just curious.

6 Number one, is this one phone call or multiple calls?

7 And then, number two, I forgot to check my watch, but
8 I'm just curious, how long the call was.

9 **MS. SMITH:** So we believe, based on context -- the calls
10 were sent to us -- or the audio clips were sent to us labeled 1
11 through 16. The ones you're listening to today -- we listened to
12 number 1 in full and number 2 we've given you portions of because
13 there's a lot of chit-chat that's not related to the case kind of
14 in between. That's what we're listening to now -- the last clip
15 and the next two.

16 It is our belief that those are all one call, that he
17 cut that off in the middle, and then began again to manage his
18 file size, as his attorney indicated.

19 There are other calls later on, potentially, where we
20 can't really tell exactly what call is what, but we've just put
21 those into a chart summary format for you-all, and we don't have
22 them transcribed and we're not listening to them.

23 Does that answer the question?

24 **MR. EDWARDS:** Yes.

25 **MS. SMITH:** And it's our understanding that this is his

1 first substantive communication with Ms. Black, is this -- what
2 you've just been hearing. Okay?

3 All right.

4 This next clip is also from audio number 2. It's
5 about -- a little over 11 minutes long.

6 **JUDGE LOCK:** What page, which handout?

7 **MS. SMITH:** It is going to be in Handout 16. If you
8 will give me just a minute, I'll get you the page number.

9 I'm sorry. This is still Handout 15. My apologies.

10 Okay. If you'll let us start playing it, we'll figure
11 out where that is real quick.

12 (Audio played.)

13 **MS. TANNER:** Page 23 of the second part of that audio.

14 **MS. ESSARY:** Top of 24 now.

15 **JUDGE LOCK:** Top of 24 now.

16 **MS. SMITH:** Yes.

17 **MS. TANNER:** Yes. Thank you.

18 (Audio played, 5:07 to 5:17 p.m.)

19 **MS. SMITH:** That was the second clip of audio 2. The
20 third clip of audio 2 is going to begin on page 33 of that same
21 transcript. It starts on line -- I think it starts on line 14.

22 (Audio played, 5:18 to 5:27 p.m.)

23 **MS. SMITH:** The final clip for today is about five
24 minutes. It is from the next interaction that we believe that
25 Mr. Atkins and Ms. Black had. This is the IHOP interview.

1 We're only playing about five minutes. You're getting
2 the full transcript of that at Handout 16. It is in four parts,
3 that transcript, because there were four audios. So that's why
4 you'll notice the break in the transcript but we've made it all
5 one handout as Handout 16.

6 You'll need to read that over the evening recess but
7 we'll play this last clip and then I'll see if you have any
8 questions for Ms. Tanner.

9 So this can be found -- the part that you're going to
10 hear is going to be labeled recording 6. At the top of the page,
11 it says "Interview with Jessicah Black 6 by Hunter Atkins,"
12 page 28, beginning on line 19.

13 (Audio played, 5:29 to 5:34 p.m.)

14 **MS. SMITH:** Commissioners, there are an additional
15 10 audio recordings. We got a total of 16. It was a little over
16 15 hours of audio between Mr. Atkins and Ms. Black.

17 We did not have all of the others transcribed. As I
18 mentioned before, we did have those summarized by staff and those
19 are at Handout 17.

20 I would ask that you take Handouts 16 and 17 home with
21 you over the overnight recess to review, and if you will indulge
22 me for about five more minutes, I'm also going to introduce for
23 you Handout 18 so that you can review it as well.

24 Before I do that, does anyone have any more questions
25 for Ms. Tanner about this material so far?

1 (No response.)

2 MS. SMITH: I am going to recall, just briefly, Julie
3 Bridenstine.

4 (Julie Bridenstine resumes the stand, 5:35 p.m.)

5 MS. COLBERT: I do have a question. I think I read
6 this.

7 Mr. Atkins -- was he originally a sports reporter?

8 MS. BRIDENSTINE: Yes. He was a sports reporter for the
9 *Houston Chronicle*.

10 JUDGE LOCK: All right. The witness remains under oath.

11 MS. SMITH: Thank you, Your Honor.

12 BY MS. SMITH: (5:36 p.m.)

13 Q. Ms. Bridenstine, were you made aware of any other
14 interviews that were conducted of Jessicah Black?

15 A. Yes. On February 26, 2020, pursuant to our statute, the
16 Commission had a confidential prehearing conference with the
17 District Attorney's office and the attorneys who currently
18 represent the claimants.

19 At this prehearing conference, we informed the parties
20 that Jessicah Black had recanted her trial testimony and briefly
21 described the contents of that recantation and the fact that she
22 first recanted to reporter Hunter Atkins prior to our deposition.

23 On March 3, 2020, when representatives of the District
24 Attorney's office came to the Commission's office to review files
25 as they are allowed to by statute, they informed the Commission's

1 director that Detective Swaim had conducted an interview of
2 Ms. Black. They provided an audio recording of that interview at
3 that time.

4 **Q.** And when was that interview conducted?

5 **A.** That interview was conducted on the same day as the
6 prehearing conference, which was February 26, 2020.

7 There is a recording from Jessica Black's workplace
8 where she asks the detectives to meet her at her house at
9 8:15 p.m. And at 8:15 p.m., the detectives interviewed Ms. Black
10 at her home.

11 **MS. SMITH:** Commissioners, Handout 18 is a transcript of
12 Detective Swaim's interview with Jessica Black from February 26,
13 2020. I'm going to have you read that transcript in full over the
14 overnight recess.

15 Detective Swaim is on telephone standby and available if
16 you have any questions. So after you read that, in the morning, I
17 will check in with you to see if you want to speak with him for
18 any reason and, if so, we can get him on the phone later in the
19 day tomorrow.

20 I'm going to remind you, then, that the homework for the
21 evening recess are Handout 16, Handout 17, and Handout 18. That
22 will allow us to keep things moving in the morning.

23 Before we break for the day, any other questions of
24 Ms. Bridenstine?

25 (No response.)

1 **MS. SMITH:** We can be off the record now, if that's
2 okay, Judge, and then I've got a couple of housekeeping matters
3 for the commissioners.

4 **JUDGE LOCK:** All right. Very well. The formal hearing,
5 then, will recess until 9:00 o'clock in the morning.

6 (Overnight recess taken, 5:38 p.m.)

7 (Volume 2 begins on page 83.)

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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA,)
versus) From Forsyth
CHRISTOPHER BRYANT,) 02 CRS 38886
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
NATHANIEL CAUTHEN,) 02 CRS 38884
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
JERMAL TOLLIVER,) 02 CRS 38882
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
RAYSHAWN BANNER,) 02 CRS 38883
Defendant.)

* * * * *

TRANSCRIPT OF HEARING, Volume 2 of 5
Tuesday, March 10, 2020

* * * * *

March 9, 2020, Setting of the

North Carolina Innocence Inquiry Commission

The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate)
Luther Johnson Britt, III
Robin Colbert
Seth Edwards
Melissa Essary
Sheriff Kevin Frye
Immanuel Jarvis
Deborrah L. Newton

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 Catherine Matoian, Grant Staff Attorney

6 Mackenzie C. Myers, Grant Legal Investigator

7 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

8 Post Office Box 2448

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10
11 C O N T E N T S

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14 JULIE BRIDENSTINE

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15 JESSICAH BLACK

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16 CATHERINE MATOIAN

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17 BETH TANNER

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18 HUNTER ATKINS

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19 MACKENZIE MYERS

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20 JASON SWAIM

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HEARING HANDOUTS

NUMBER	DESCRIPTION	ID'D
19	Text messages, Atkins - Black	88
20	Facebook messages, Atkins - Black	89
21	Call Summary, Atkins - Banner, Cauthen	265
22	Letter, Atkins - Cauthen	267
23	Text Messages, Atkins - Bryant	267
30	Aerial Map	224
102	Handwritten Notes, Rose - Griffin	222
103	Interview Timeline	223
104	Interview Chart - Detectives and Defendants, Black	223
105	Map - Griffin	223
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1 TUESDAY, MARCH 10, 2020 (9:02 a.m.)

2 JUDGE LOCK: All right. Good morning, everyone. It
3 looks like everyone is in place so we will get started.

4 Are there any housekeeping matters we need to address
5 before we proceed with any -- with further evidence?

6 Any housekeeping issues?

7 MS. SMITH: No, Your Honor. I think we are ready to
8 proceed this morning.

9 JUDGE LOCK: All right. Then you may proceed.

10 MS. SMITH: Thank you.

11 Commissioners, over the overnight recess, you were asked
12 to read Handouts 16, 17, and 18.

13 As a reminder, 16 was the audio -- the transcript of the
14 audio from that meeting at IHOP between Jessica Black and Hunter
15 Atkins.

16 Handout 17 was a chart that summarizes the ten remaining
17 calls -- or audio recordings, rather, between Mr. Atkins and
18 Ms. Black.

19 And then Handout 18 was a transcript of an interview
20 conducted by Winston-Salem Police Department officers Detective
21 Jake Swaim, Detective Adam Darga, and Jessica Black on
22 February 26, 2020.

23 The first thing we're going to do this morning is
24 play an audio -- or a video clip, rather, from that interview
25 between the WSPD officers and Ms. Black.

1 **JUDGE LOCK:** Do you know what page that would start?

2 **MS. SMITH:** I do know what page that would start. That
3 is going to start in Handout 18, page 13, line 10.

4 (Video played, 9:03 to 9:37 a.m.)

5 **MS. SMITH:** Judge Lock, the Commission would recall
6 staff attorney Julie Bridenstine.

7 **JUDGE LOCK:** All right. The witness remains under oath.

8 * * * * *

9 Thereupon, JULIE BRIDENSTINE, a witness having been called by the
10 Commission, was examined and testified on EXAMINATION as follows:

11 BY MS. SMITH: (9:37 a.m.)

12 **Q.** Good morning.

13 **A.** Good morning.

14 **Q.** Ms. Bridenstine, did commission staff learn about any
15 other interviews that the Winston-Salem Police Department did
16 related to Jessicah Black?

17 **A.** Yes. They spoke to a former roommate of Jessicah Black,
18 while trying to locate her, on February 26, 2020. His name is
19 Jorge Figueroa. Mr. Figueroa was aware that she was talking to a
20 reporter about a crime for which he believed she witnessed. He
21 believed that this crime was a shooting.

22 **Q.** Is the Commission aware of any other recent contacts
23 that the Winston-Salem Police Department has had with Jessicah
24 Black?

25 **A.** Yes. On February 27, 2020, Winston-Salem police

1 detectives met with Jessica Black at her work to get copies of
2 her text and Facebook messages with Hunter Atkins. The
3 interaction took approximately 45 minutes.

4 **Q.** Did the Winston-Salem Police Department ask Ms. Black
5 any additional questions about the case?

6 **A.** During the majority of this interaction, they talk about
7 unrelated matters such as Jessica Black's other jobs and drinks.
8 They did ask if any of the codefendants had given her gas money or
9 bought her anything on the night of the crime and she said no.

10 They also asked her if Hunter Atkins had taken her DNA
11 swab or fingerprints. She said no.

12 They asked if she had signed anything consenting to him
13 recording their conversations and she could not remember if she
14 signed something or gave verbal consent.

15 **MS. SMITH:** Commissioners --

16 **Q.** Did Ms. Black provide anything to Winston-Salem Police
17 Department officers during that interaction?

18 **A.** She allowed them to take screenshots of all of her text
19 messages and Facebook messages with Hunter Atkins.

20 **MS. SMITH:** Commissioners, a copy of the text messages
21 between Jessica Black and Hunter Atkins through October 29 were
22 previously provided to you in Handout 11.

23 Since the Winston-Salem Police Department obtained
24 additional texts between October 29 and February 26th of 2020,
25 we've included as Handout 19.

1 Similarly, the Facebook messages between Jessica Black
2 and Hunter Atkins through October 29, 2019, were provided to you
3 in Handout 12. But the Winston-Salem Police Department got
4 additional Facebook messages between October 29 and February 26.
5 Those are provided in Handout 20.

6 We did not provide the texts and messages, again, that
7 she had previously provided to the Commission, but staff did
8 double-check those, cross-reference them, to make sure that they
9 were the same and they were.

10 So if you want to take a few minutes to look at Handouts
11 19 and 20.

12 Commissioners, do you-all have any questions for
13 Ms. Bridenstine?

14 **MR. BRITT:** Did you ever ask her why she stopped
15 returning his text messages?

16 **THE WITNESS:** So that looked like it started -- it
17 happened after our deposition, and we haven't talked with her
18 about that.

19 **MR. BRITT:** Okay.

20 **MS. ESSARY:** Is this the last known contact between
21 Mr. Atkins and Jessica Black?

22 **THE WITNESS:** That we are aware of through February 27,
23 2020, when the police got the screenshots. I don't know.

24 **MS. ESSARY:** Okay.

25 **MR. JARVIS:** Do you know if this story was ever

1 published?

2 **THE WITNESS:** It was not.

3 **MS. SMITH:** Okay. If there are no further questions for
4 Ms. Bridenstine, at this time I will ask that she step down.

5 (Witness stands down, 9:44 a.m.)

6 **MS. SMITH:** Commissioners, Detective Swaim, who
7 conducted this interview is on phone standby.

8 Do any of y'all have questions for him?

9 **MR. EDWARDS:** I might.

10 **MS. SMITH:** Okay. We will make contact with him and
11 have him available a little bit later today.

12 **MR. EDWARDS:** Think you.

13 **MS. SMITH:** All right.

14 Commissioners, the commission staff has conducted a
15 deposition of Ms. Black which was provided to you as Handout 4
16 prior to the commission hearing. You've all had an opportunity to
17 read that. You've seen a portion of it on the video yesterday.

18 I'm going to call Ms. Black now to testify.

19 I do have a few questions for her, though my questions
20 are going to be limited in scope and I'm then going to allow
21 you-all to ask any questions of her that you-all have.

22 I believe that our staff has stepped out to get her.

23 Commission calls Jessicah Black.

24 * * * * *

25 Thereupon, JESSICAH BLACK, a witness having been called by the

Commission, was examined and testified on EXAMINATION as follows:

BY MS. SMITH: (9:45 a.m.)

Q. Good morning, Ms. Black.

A. Good morning.

Q. I am Lindsey Guice Smith. I'm the Executive Director of the North Carolina Innocence Inquiry Commission. I've got just a couple of questions for you this morning and then, when I'm done, the Commissioners seated around the table are going to have questions for you as well, okay?

A. Okay.

Q. Thank you for being here today.

A. Yes, ma'am.

Q. Remember to keep your voice up so the court reporter can hear you.

A. I'm sorry. Yes, ma'am.

Q. Can you state your name.

A. Jessica Black.

Q. Did you participate in the robbery or murder of Nathaniel Jones?

A. No.

Q. Were you present when others were committing the robbery or murder of Nathaniel Jones?

A. No.

Q. Have any of the five codefendants in this case -- that's Nathaniel Cauthen, Christopher Bryant, Rayshawn Banner, Jermal

1 Tolliver, or Dorrell Brayboy -- ever told you that they
2 participated in the robbery and murder of Nathaniel Jones?

3 A. No.

4 Q. Do you know who committed the robbery and murder of
5 Nathaniel Jones?

6 A. No.

7 Q. Did Hunter Atkins, the reporter, promise you anything to
8 get you to change your story?

9 A. No.

10 Q. Have you received anything in exchange for changing what
11 you told police and what you testified to?

12 A. No.

13 Q. Has anyone promised you anything?

14 A. No.

15 Q. Has anyone threatened you in any way to get you to
16 change your story?

17 A. No.

18 Q. Why did Hunter Atkins make your car payment?

19 A. Because we had not just conversations about -- about the
20 boys and what happened, we had conversations just in general about
21 life and stuff like that, and I was going through a really rough
22 time. I had lost my house, my car, and my job all in the matter
23 of two weeks. I was bouncing back and forth from staying in my
24 car to people's couches. My son was staying with my brother for,
25 like, two months until I got back on my feet.

1 And I don't ask nobody for help -- my mother, nobody.
2 And his whole thing is, like, sometimes -- sometimes, you've got
3 to have help. And I told him that I didn't want it. And I told
4 him that -- I mean, it was just -- it was a back-and-forth with
5 us. And I was, like, "Look," I said, "people don't just help
6 people to help people anymore. Everybody wants something out of
7 something."

8 And his whole thing was, "Look," he said, "I'm sending
9 this up there," he's like, "because she can't afford to lose your
10 car." And, I mean, that was about the gist of the conversation.
11 And he set up there, he said, "You don't have to worry about it."
12 He's like, "I'll never say anything to you." But that was after
13 everything was said and done. That was never discussed. It was
14 never brought up. That was just a -- a random act that he had
15 done, and that was after we had -- speaking with him and stuff
16 like that. I mean he -- he will text me and ask me how I'm doing,
17 how my son is doing. He'll text me at Christmas, he'll text me
18 birthdays. I mean, it's -- he's just -- he's just -- it's just a
19 general -- a general, I guess, thing that happened. It wasn't
20 promised, it wasn't all -- everything -- interview I done with
21 him, all that was done -- done with, all of that was done.

22 Q. Okay.

23 Has he given you anything else?

24 A. No.

25 Q. When was the last contact you had with Mr. Atkins?

1 **A.** He's been trying to reach out to me since Christmas
2 and -- since was right before Christmas, as a matter of fact, and
3 I haven't responded.

4 **Q.** What were you expecting to happen by coming forward and
5 changing your story?

6 **A.** That everything be set right, the way it should be.
7 And -- and what happened in those rooms and stuff be known.
8 Like -- like what -- I mean, just that everything was set
9 straight.

10 **MS. SMITH:** Commissioners, do you have questions for
11 Ms. Black?

12 **SHERIFF FRYE:** I do.

13 **JUDGE LOCK:** Sheriff.

14 **SHERIFF FRYE:** Hey, Ms. Black. My name is Kevin Frye.

15 **THE WITNESS:** Hi.

16 **SHERIFF FRYE:** On the night in question, that you were
17 took to the police station -- well, that night that the murder
18 happened that you was driving and seeing the blue lights and
19 everything like that, what time did you -- about did you pick the
20 boys up?

21 You said, if I remember your interview, you don't
22 remember which four out of the five?

23 **THE WITNESS:** No. And when I picked them up -- this was
24 an everyday thing that we did. Like, I would go -- I would leave
25 from school, I'd go home, make sure my grandmother didn't want me

1 to do anything. And as long as I had everything done at the
2 house, I was allowed to take off. And I had to be back home at a
3 certain time.

4 And I would go up there and I would hang out with them.
5 We'd ride around and -- and, I mean, and get high. That's what we
6 did, we'd just ride around and smoke weed. And then I'd drop them
7 back off, but I don't --

8 **SHERIFF FRYE:** Did you --

9 **THE WITNESS:** I don't know. I'd say about the time I
10 made it home, it was probably between 3:15, 3:30, and then
11 stopping by and going straight up there. So I guess 4:00 --
12 sometime after 4:00.

13 **SHERIFF FRYE:** Okay.

14 And we know you went to the mall that night. We know
15 you went to the bowling alley, the game room at the bowling alley
16 and stuff like that.

17 But before that, they told you that they needed to go
18 home and change clothes because of a party; right?

19 **THE WITNESS:** Yes. But they --

20 **SHERIFF FRYE:** Okay.

21 **THE WITNESS:** Then the plans changed and they said that
22 they wasn't going to the party and they -- they didn't change out
23 their clothes. Like their clothes -- they didn't go and do all
24 that.

25 **SHERIFF FRYE:** But you let them off?

1 **THE WITNESS:** Yeah. And I sat -- I mean, I sat there.
2 I didn't leave.

3 **SHERIFF FRYE:** You sat there and waited on them?

4 **THE WITNESS:** Yes.

5 **SHERIFF FRYE:** Do you remember -- when you let them off,
6 which four was it that got out of the car?

7 **THE WITNESS:** Dorrell -- because I had to take him to
8 his house because he was on the other end of Devonshire and
9 Nathaniel -- and I can't -- I don't remember which other two, but
10 Nathaniel was usually always with me. He was always with me.

11 **SHERIFF FRYE:** So they went in to change clothes. In
12 one interview, you said they didn't -- none of them changed any
13 clothes. In one interview, you said that they -- that you don't
14 remember whether they -- any of them changed anything.

15 **THE WITNESS:** I did.

16 **SHERIFF FRYE:** Which -- so do you -- do you know for
17 sure whether any of them changed clothes or not?

18 **THE WITNESS:** Looking back now, I'm sitting here, no, I
19 can't -- I can't remember. My mind is so gone. But then --

20 **SHERIFF FRYE:** So they could have but you don't know.

21 **THE WITNESS:** I want to say I am pretty sure they did
22 not change clothes because they wasn't in there long enough to do
23 nothing.

24 **SHERIFF FRYE:** Okay.

25 So how long were -- were they out? Once you let them

1 out, how long were they out?

2 **THE WITNESS:** Long enough to -- to go into -- just do --
3 to -- maybe 5, 10 minutes, and then come jump back in the car and
4 we took off.

5 **SHERIFF FRYE:** Okay.

6 And then where did you go from there?

7 **THE WITNESS:** I don't know exactly what order we went to
8 anything. I can't remember what order we went to but I know we
9 went to the bowling alley, I just don't -- I know it was dark. It
10 was dark when we were at the mall.

11 **SHERIFF FRYE:** Dark at the bowling alley?

12 **THE WITNESS:** It was dark when we were at the mall. It
13 was dark when we were at the bowling alley. It was -- I just
14 remember it was dark. But, I mean, it got dark early.

15 **SHERIFF FRYE:** Right.

16 And then after whichever one was last, the bowling alley
17 or the mall, you were driving back through and that's when you
18 noticed all the police officers?

19 **THE WITNESS:** When we rode down -- we rode down through
20 Midway. I do remember that. We rode down and cruised some there
21 because that -- the people, or the guys I hung out with down
22 there, it was pretty much the same with them. If they were out,
23 they -- I'd stop, they were outside. I'd never stop, get out, and
24 knock on the doors or anything like that. They were usually just
25 outside.

1 So we rode down through there. Nobody was outside.

2 **SHERIFF FRYE:** Is that where they got bud a lot of
3 times, through there? Is that where --

4 **THE WITNESS:** No. No. No, it was on -- usually, they
5 either already had it or it would be the -- those little mill
6 houses across from Belview Park.

7 **SHERIFF FRYE:** Okay.

8 **THE WITNESS:** So we rode down through Midway and then
9 when nobody was outside, we come back and rode around a little
10 bit. And then I took them home because it was time for me to be
11 home, but -- almost time for me to be home.

12 And when I dropped them off, I left from there and went
13 to a friend of mine that I went to high school with and I went to
14 her house for little bit, and then it was time for me to be home.

15 **SHERIFF FRYE:** What time did your grandma and grandpa
16 tell you to be home?

17 **THE WITNESS:** It just depended on the day. Most of the
18 time, it was between 8:00 and 9:00 o'clock. And she made me carry
19 a pager. And if she paged me, I had to be home within 20 minutes
20 of that page. If I wasn't, then she'd take my car.

21 **SHERIFF FRYE:** Did she page you this night?

22 **THE WITNESS:** I can't -- I can't remember. I think I
23 just -- I think I just went home because I -- I can't -- I
24 cannot -- I can't remember.

25 **SHERIFF FRYE:** Okay.

1 And so on the way, that's when you noticed the police
2 cars and tape and everything like that?

3 **THE WITNESS:** Yeah. When I come back --

4 **SHERIFF FRYE:** That could have been as late as 8:30,
5 9:00-ish?

6 **THE WITNESS:** Something like that, maybe.

7 But as we were coming through -- because we all -- we
8 always just rode around the neighborhood. We circled the
9 neighborhood, just -- I mean, we always took the same roads and we
10 stayed around the area just because if my grandmother paged me, I
11 need to be at home because I wasn't getting my car taken.

12 And we were at the very end. Like I could have got to
13 their house within 10, 12 minutes. So -- their little area where
14 they were at from my grandparents.

15 So we -- we always circled around, stuff like that. And
16 so we come up -- Belview Park is -- say Belview Park is right
17 here, okay, so you have a road that comes up beside there that
18 literally dead-ends at the houses. You can go -- and then you
19 make that left and it puts you all right in front of Belview Park.
20 And then you come up, and there is -- like, I think it's Burgandy
21 Street that comes down in between the park and Mr. Jones' house.
22 And then we always circled down through there.

23 This was a normal thing. This was not anything out of
24 the norm. This is something we always do.

25 **SHERIFF FRYE:** And it was normal for you to be at the

1 park; right?

2 **THE WITNESS:** Yes. We -- we'd go to the park and we'd
3 sit and we'd hang out and we'd smoke. And -- but it wasn't never
4 when people was there. It was always when the park was empty or
5 vacant because we were always sitting out there smoking. But when
6 we come around the corner and we see all these blue lights and all
7 these -- the SUVs, the cars, everything. I mean, there was
8 nothing to make you think that there was -- that -- it's not like
9 they were calm about stuff. It was like, "Oh, my God. What
10 happened? What happened?"

11 **SHERIFF FRYE:** But you just hadn't been to the park this
12 night?

13 **THE WITNESS:** No. No.

14 **SHERIFF FRYE:** When you picked them up, you didn't go to
15 the park to begin with?

16 **THE WITNESS:** Not that I recall, no.

17 **SHERIFF FRYE:** Not that you recall?

18 **THE WITNESS:** Not that I remember. I'm pretty sure --
19 we stayed -- we stayed so high all the time, and I'm telling you,
20 like I -- there were times when I would drive from one place to
21 another and not even remember driving there. Like, I mean, it was
22 just -- so I couldn't -- I can't --

23 **SHERIFF FRYE:** I think you said it was like driving to
24 Atlanta and you're like --

25 (Overlapping speakers.)

1 **THE WITNESS:** That's it. How did you get there? I
2 mean, I don't -- I don't remember. I would sit there and be
3 talking and literally just blink in the middle of a conversation
4 because I would forget my next word. That's just what it was.

5 So -- and so we come around and we see all the lights
6 and it was, "Oh, my God. What happened? What happened?"

7 And they were all -- I mean, I'm not going to say
8 "excited," but, you know, just like --

9 **SHERIFF FRYE:** Right.

10 **THE WITNESS:** Like, "What's going on?" Everybody wanted
11 to know what was going on. And there was -- I mean, there were
12 people out there, of course, trying to see what was going on and
13 stuff. And we came around, and I remember pulling one -- I can't
14 remember if I went in the park or pulling beside -- right there
15 beside the park. We were -- we pulled somewhere right there, and
16 it was to check out what was going on.

17 And it was like, "Look, come on, I need to go home,
18 let's go, let's go, let's go." But it was everybody trying to see
19 what was going on but you couldn't get close enough to really see
20 what was going on because everything was taped off all the way
21 around there, and I just remember seeing so many vehicles. And I
22 didn't know what was going on.

23 So but they never -- they never acted out of the -- what
24 a typical person would if they had seen the same thing.

25 **SHERIFF FRYE:** Okay.

1 **THE WITNESS:** So I mean ...

2 **SHERIFF FRYE:** Okay.

3 Now, let me ask you -- on the evening that you went down
4 to the police station, when your stepgranddad took you down
5 there -- is that right?

6 **THE WITNESS:** Yes.

7 **SHERIFF FRYE:** -- did he go in the station with you or
8 did he just drop you off?

9 **THE WITNESS:** He dropped me off.

10 **SHERIFF FRYE:** Did he leave or did he stay there?

11 **THE WITNESS:** I guess he -- I'm assuming he left because
12 he was there for a while.

13 **SHERIFF FRYE:** Okay.

14 Was your grandma with him?

15 **THE WITNESS:** No.

16 **SHERIFF FRYE:** Okay.

17 So our -- do you remember about what time that was?

18 **THE WITNESS:** I don't. I don't remember.

19 **SHERIFF FRYE:** Was it daylight? Dark?

20 **THE WITNESS:** I don't even remember. I was so scared, I
21 was so nervous -- because I didn't know what was going on when
22 that -- these -- when Detective Griffin and -- and the tow truck
23 people and all that showed up at the house, I didn't know what was
24 going on. And I was like, "Why are y'all taking my car? What --
25 what is going on?"

1 **SHERIFF FRYE:** Did you go to school that day?

2 **THE WITNESS:** I didn't never miss school. And if it was
3 a school day, I was at school. And I just -- I don't even know
4 what day it happened on. I don't. I don't know -- I don't -- I
5 can't keep up with details of any of that.

6 **SHERIFF FRYE:** So when you started the interview, you
7 don't remember whether it was day or nighttime; correct?

8 **THE WITNESS:** I don't.

9 **SHERIFF FRYE:** How long do you believe you were in the
10 interview?

11 **THE WITNESS:** It seemed like I was in there forever.
12 And I mean forever. It was so long.

13 **SHERIFF FRYE:** More than four hours, you would think?

14 **THE WITNESS:** I would absolutely say more than four
15 hours.

16 **SHERIFF FRYE:** More than six hours?

17 **THE WITNESS:** It seemed like that. I mean, I don't know
18 exactly how long I was in there. It was just -- it seemed
19 forever.

20 **SHERIFF FRYE:** I don't have any other questions right
21 now.

22 **JUDGE LOCK:** Ms. Colbert?

23 **MS. COLBERT:** Hi. I'm Robin Colbert.

24 **THE WITNESS:** Hi.

25 **MS. COLBERT:** So I just have a couple of questions.

1 So in your conversations, you mention that the DA, Eric
2 Sanders, picked you up with a minivan and there was an
3 African-American woman in there, and that you -- it was your
4 understanding that that was one of the -- Mr. Jones' daughters.

5 **THE WITNESS:** Absolutely.

6 **MS. COLBERT:** And did the DA tell you that, that that
7 was -- did the DA say "this is" --

8 **THE WITNESS:** Yes, yes. He said that she would -- she
9 wanted to meet me and that we were just going to go on a ride and
10 pretty much go around and, I guess, travel the same roads we
11 traveled that night. And I don't know who was driving, somebody
12 was driving. He was in the backseat with her and me.

13 And when they pulled up to get me, I mean, she shook my
14 hand and she was so friendly and super nice. And we rode around
15 and we talked and then he took me by Mr. Jones' house. And
16 pointed out, he said, "Well, right there is where he was." And --
17 and then after the ride was over, they took me home.

18 **MS. COLBERT:** Now, later did you find out that that was
19 not one of Mr. Jones' daughters?

20 **THE WITNESS:** I did not know until I sat down with
21 Hunter Atkins and he was talking to me, and he had spoke with the
22 daughters of Mr. Jones -- because I had told him, I was like, "You
23 know, I went on this van ride," and he said that the ones he
24 interviewed, between the lawyers and the daughters and -- and
25 among others, that nobody knew about this ride. And I was like --

1 I couldn't understand why nobody knew about this van ride.

2 And he said that he -- he asked them in their interviews
3 had they -- you know, did either one of them participate in that
4 ride, and they said that they would have been appalled had they
5 been asked to participate in a ride like that.

6 So that's when I was informed that it was not either one
7 of the -- of the daughters.

8 **MS. COLBERT:** And so when you talked to the police --
9 when you were interviewed by the police, did they say they
10 wouldn't charge if you testified?

11 **THE WITNESS:** They did not.

12 **MS. COLBERT:** They did not.

13 **THE WITNESS:** No.

14 **MS. COLBERT:** So when you found out -- and I really
15 sense contriteness, that you feel --

16 **THE WITNESS:** I don't even know what that means.

17 **MS. COLBERT:** -- really sorry about, you know, what has
18 happened and your involvement or noninvolvement in this, and so my
19 question then is did you make any kind of contact with the family,
20 whether it's the Pauls or the Richardsons, whether by phone or
21 whether by letter talking about how you felt about all of this was
22 happening since the time it happened and how it all came back up
23 now? Have you been in contact with them?

24 **THE WITNESS:** I've never contacted anybody. I've
25 never -- my mother did not even know the details of all of this --

1 we are very close -- until this past year, when it started coming
2 to light. And I'm like -- and I had no choice. I have literally
3 pushed this down all these years. Nobody knew anything. Nobody
4 put two and two together. Nobody put my name with all that.

5 **MS. COLBERT:** So you haven't had any contact with the
6 victim, Nathaniel Jones', family and expressed any kind of
7 sympathy about what had occurred?

8 **THE WITNESS:** No, ma'am.

9 **MS. COLBERT:** Thank you.

10 **THE WITNESS:** Yes, ma'am.

11 **JUDGE LOCK:** Mr. Jarvis.

12 **MR. JARVIS:** I have a couple of questions.

13 Do you consider Hunter Atkins a friend?

14 **THE WITNESS:** I don't because I don't know him like
15 that. I do think that his intentions are -- are good because the
16 whole -- he had been trying to get ahold of me for a few years,
17 and I had put that off and put that off. Next thing I know, he
18 popped up from Texas. He drove up here. And -- and was -- and I
19 think -- at first, I called him, and I cussed that man for
20 everything he was worth, everything he was worth, because I had
21 not told anybody about that.

22 He went to the guy I was seeing's mother's house. And
23 she didn't know anything. And he sat there and explained why he
24 was trying to get in touch with me. And she called her son and
25 her son let me know, which is why I went slap off because I was

1 like, "Here you are, putting this business out here that I have
2 not put out there, and there's a reason I have not."

3 And so he sat there and he just listened to me, and I
4 meet for about an hour and a half, I went off.

5 He -- but then he explained to me. He said, "Look, you
6 know, typically I do sports articles," he said, "and, you know,
7 I'm doing something in relation to Chris Paul," he said, "but I
8 didn't -- it's not what most think." He was like, "I want to show
9 that some good things have come out of" in -- like, in reference
10 to the boys who had already gotten out and how work had been going
11 and families had been started and stuff like that, just stuff that
12 was -- that was positive.

13 And so the more he showed me -- and he sent me -- he
14 showed me excerpts from his works and -- and stuff like that.

15 So before I would even sit down and talk to him, like, I
16 researched on him and I read up on him, and I listened. Like, I
17 made him pretty much sit there and barter, you know, back and
18 forth with me on what his intentions were on this. And I truly
19 believe his intentions are well because he -- he has spoke with
20 the fellas. He has spoke with the fellas. And he -- he has --
21 like, I said, you know, "How are they doing? What's going on with
22 them?" He's kept me -- he -- not so much up to date, but where
23 they were right then and how they were doing and, you know, just
24 stuff like that.

25 And so I -- I wouldn't say we're friends. I'd say we

1 were acquaintances, which is why, like, him trying to reach out to
2 me and I haven't responded, it's -- I just want to get it over.

3 **MR. JARVIS:** So do you trust him?

4 **THE WITNESS:** I do trust him. Absolutely I do.

5 **MR. JARVIS:** So my next question is so with this trust
6 and this relationship, this kind of him talking and researched
7 him, you've seen that when you cussed him out, he just stood there
8 and took it and apologized over and over again and tried to be
9 understanding; right?

10 **THE WITNESS:** He absolutely did.

11 **MR. JARVIS:** Do you think it's odd for a sports reporter
12 to go through all of that energy on a story?

13 **THE WITNESS:** I thought it was odd until he was -- he
14 asked me based on what he had heard me say and this -- and the
15 things that he had heard the boys say about the things that we'd
16 written and things that we went through.

17 **MR. JARVIS:** All right.

18 **THE WITNESS:** That he had a friend that was a lawyer
19 that was with one of the -- I don't know which one is which, and I
20 don't know anything about all of that. So he had a friend like
21 that, and he said, 'Jessica,' he said, "would you be willing to
22 sit down and speak with her," he said, if I could say -- because I
23 told him, I said, "I don't want to speak to any lawyers. I don't
24 want to go through this no more." And I was hell bent and
25 determined that I didn't want to do anything.

1 And he said, "Jessica," he said, "Seeing how you are
2 and seeing how you react, I would not sit you in a room with
3 somebody who would -- who would make you feel like that." He's
4 like, "This -- this lady has the best of intentions and she is
5 good at what she does." And I still -- I still refused.

6 And then when -- when Ms. Bridenstine popped up, I
7 thought that that was -- I couldn't remember the lady's name. So
8 I thought that she was in relation with that until she corrected
9 me and told me she didn't even know who he was. And I was like,
10 "Oh, okay." But that -- that's -- I mean, I really think that
11 he's -- he's got good intentions. Because I think the more he
12 researched on it, the more interested that he got into it, and the
13 more that he was trying to see that things -- things that were set
14 straight.

15 And then he -- I mean, he -- he was telling me about
16 cases -- one case that had happened up north, something with --
17 something five. It was five boys that had been charged. I mean,
18 he was just talking to me about stuff like that. And the more he
19 talked to me about it, the more it made sense and it didn't seem
20 so odd anymore.

21 **MR. JARVIS:** Okay.

22 **THE WITNESS:** And the fact that the boys, they trusted
23 him enough to talk to him, made me feel more at ease.

24 **MR. JARVIS:** Well, I hope that this Commission, that you
25 feel at ease and that you don't feel as though -- I know this is

1 difficult for you, but I'm thankful that you're here. And I hope
2 that you feel as though that we're not putting you through this
3 all over again emotionally.

4 My last question is, with the -- you know, the
5 off-and-on conversation with Hunter Atkins, we're looking at
6 transcripts and we're looking at pictures of text messages, why
7 have you not responded to him lately?

8 **THE WITNESS:** Because we'll get on the phone and it's --
9 and when we get on the phone, he'll -- it's ...

10 I don't even know because I feel like -- I feel like
11 everything that I said was said and that was just -- and that was
12 it. And he -- like I said, he still reaches out and he still --
13 it's, "How is your son doing and everything?"

14 "Okay," you know, just checking.

15 He's like, "Jessica, you know" -- and he -- he does
16 this, like, he does the same -- he's like, "I like to know that
17 they're well because I've spoke with y'all. I've formed some kind
18 of relationship with y'all, regardless."

19 So being who I am and the way I do, I do that. I do
20 stuff like that. So I couldn't judge him for doing things like
21 that, but I don't -- I don't feel like I had anything else to say
22 as far as any of that was pertained. And I felt like I --
23 everything that I had to say was said.

24 **MR. JARVIS:** Jessica, thank you.

25 **THE WITNESS:** Yes, sir.

1 **JUDGE LOCK:** Ms. Colbert.

2 **MS. COLBERT:** I just have a follow-up question to the
3 question I asked you about the police not charging you.

4 Why do you think they didn't charge you?

5 **THE WITNESS:** Because I feel like they got what they
6 wanted.

7 **MS. COLBERT:** What does that mean? I need to understand
8 what that means.

9 **THE WITNESS:** When I went in there in that
10 interrogation, when I first sat down with them, I told them the
11 exact thing I just sat here and told y'all about where we went. I
12 keep -- I was told I was lying. And it was -- it was a constant,
13 beat me down over I'm lying, I'm lying, I'm lying, I'm lying, I'm
14 lying. And I felt like the more that I would sit here and change
15 stuff up and -- and that's when they would quit asking specific
16 questions.

17 If I -- I felt like -- it was like little stuff was put
18 out there, just little stuff, and so I could sit there and pretty
19 much wrap around that, and I -- it was like, okay, so once they
20 quit asking about a certain thing, then the question was dropped
21 and another question was went on to.

22 So they kept telling me that I was facing just as much
23 time and that I could go down for accessory. I mean, they made
24 sure to make me aware of all that. And it -- I feel like -- I
25 just feel like with the aggression and stuff that come out and the

1 way that they did, I feel like they finally got what they wanted
2 and -- and let it go.

3 But they did tell me that, regardless, they can always
4 come back and charge me. And -- and, I mean, they made all that
5 clear. It wasn't -- it wasn't like, "You're going to -- you don't
6 have to go, you know, you're never going to jail, you're never
7 going to be charged, you're never -- never going to face anything,
8 you're never going to deal with anything" -- it was always made
9 clear. But there was just -- there was so much that went on.
10 And ...

11 **MS. COLBERT:** What do you think they wanted?

12 **THE WITNESS:** I believe that they already had a scenario
13 in their mind as to what had happened and then you got these five
14 young men that had constantly -- that roamed the neighborhood and
15 just hang out and do their thing. Then you have -- you have one
16 or two that have already previously done been in trouble, and I --
17 you -- I feel like they went ahead and come up with their own
18 scenario, their own story, and that they wanted something to fit
19 that and that anything that I said or them boys said didn't fit
20 it, so they just kept on until they got what they felt fit.

21 **MS. COLBERT:** Thank you.

22 **THE WITNESS:** Yes, ma'am.

23 **JUDGE LOCK:** Ms. Smith, I have had a question from one
24 of the commissioners that we take a brief comfort break before we
25 resume your testimony.

1 So let's take about a 15-minute recess.

2 And then, Ms. Black, we'll pick up with your testimony
3 after the break. I'm sure the staff will show you the facilities
4 and so forth.

5 **THE WITNESS:** Okay.

6 **JUDGE LOCK:** Thank you. We'll be in recess 15 minutes.

7 (Witness stands down, 10:14 a.m.)

8 (Recess taken, 10:14 to 10:30 a.m.)

9 **JUDGE LOCK:** All right. Looks like everyone is back
10 with us. We can bring the witness back in and pick back up.

11 **MS. SMITH:** Okay. Before we bring in Ms. Black, I just
12 want to put a couple of things on the record to remind the
13 Commissioners.

14 There will be some testimony a little later about the
15 time of sunset that day but since we're kind of talking about
16 timelines now, sunset was at 5:13 p.m. on the day of the crime.

17 As a reminder, this information was in your brief in
18 your timeline, that the last time that we are aware that anyone
19 saw the victim alive was at 6:17 p.m.

20 And then the 911 call by the painter was at 7:49 p.m.
21 Police arrived at 7:54 p.m.

22 If that is helpful to you.

23 **MS. ESSARY:** Can you tell me what exhibit Hunter Atkins'
24 first telephone conversation with Ms. Black was?

25 **MS. SMITH:** Yes. That's going to be Handout 15. Yes.

1 Handout 15.

2 (Witness, Jessica Black, resumes the stand.)

3 **JUDGE LOCK:** All right. The witness remains under oath.

4 Do other commissioners have questions of the witness?

5 **MS. COLBERT:** I just have one final questions, sir.

6 **JUDGE LOCK:** Yes, ma'am.

7 **MS. COLBERT:** So I know I had asked you previously if
8 you had had contact with the family, and you had indicated that
9 you did not.

10 So if you had an opportunity to speak to the family,
11 what would you say to them?

12 **THE WITNESS:** To Mr. Jones' family?

13 **MS. COLBERT:** Yes.

14 **THE WITNESS:** That I am so sorry that that happened. I
15 am so sorry for their loss. And I am sorry that the things went
16 like they did as far as pertaining to these younguns. And I'm
17 sorry that I gave false testimony. And I'm sorry that I just -- I
18 don't -- I'm just sorry.

19 **MS. COLBERT:** Thank you.

20 **JUDGE LOCK:** Ms. Essary.

21 **MS. ESSARY:** Hi, Ms. Black. My name is Melissa.

22 **THE WITNESS:** Go ahead, you're fine.

23 **MS. ESSARY:** I want to take you back to the time when
24 you testified -- I have to speak up for the court reporter -- when
25 you testified at the two trials.

1 When you got off the witness stand in both of those
2 trials which were about a year apart, if I remember correctly,
3 what were your thoughts about --

4 **THE WITNESS:** I was scared. Terrified. That is the
5 scariest thing I've ever been through in my whole life.

6 **MS. ESSARY:** What do you remember feeling about what you
7 had testified about in both of those trials?

8 **THE WITNESS:** I don't -- I don't remember feeling
9 anything but just being scared, just wanting it to be over.

10 **MS. ESSARY:** Did you at that time -- maybe this is too
11 specific a question.

12 What did you feel about the truth or falsity of what you
13 had testified to at that time? Do you remember feeling any which
14 way about that?

15 **THE WITNESS:** At the time, like, at the police station,
16 I didn't feel any way. I just -- I wanted to go home.

17 And -- but on the stand, with doing testimony, there was
18 so much pressure and -- and fear and -- I mean, I felt -- once --
19 I'm going to say the feelings didn't sink in until I got older.
20 As I got older and was able to process stuff as it -- as it
21 happened and was able to look at it from an adult point of view,
22 that's when the feelings kick in.

23 **MS. ESSARY:** And what were those feelings?

24 **THE WITNESS:** Horrible. Horrible. My conscience has
25 ate me so bad, so bad. And now I have a son who's 14 and going

1 through -- I'm not -- I can't -- I can't compare this right here,
2 but he's going through his own stuff when it comes to dealing with
3 the law and stuff like that.

4 And I could only imagine if my son was in that
5 predicament and how I would feel pertaining to who it was
6 testifying against them or just knowing, just knowing I know my
7 child, and -- I couldn't even imagine. I couldn't begin to
8 imagine.

9 **MS. ESSARY:** Now, you talked about when you became an
10 adult, you really thought, I guess, more about what had happened
11 at the trials.

12 Do you know when in your adult life you began to
13 realize, you know, "I didn't tell the truth at those trials"?

14 **THE WITNESS:** I mean, I already knew. I knew I didn't,
15 but it wasn't -- it didn't so much hit my conscience. It was,
16 "Okay. I'm 16, and the trials are over with, I don't have to deal
17 with it anymore." So it was out of sight, out of mind because --
18 I just went on. But when I was 19, it's like once I -- once I hit
19 19 and had my youngun, you -- any mother knows, you just -- you
20 just change your way of thinking.

21 **MS. ESSARY:** I have two daughters, and I understand
22 completely where you're coming from.

23 Let me ask you this just so I'm clear so -- because
24 we've read a lot of different documents. I want to understand
25 completely, and I think I heard this in your previous testimony.

1 Who is the first person you told anything about your
2 testimony possibly being false?

3 **THE WITNESS:** Oh, God. I don't even know. I kept that
4 stuff hid for so long, so long, and -- I can't remember. I can't
5 remember if it was Hunter or if I had told before then because, I
6 mean, when I tell you I kept it under wraps, I kept it under
7 wraps.

8 **MS. ESSARY:** Had you had long conversations about this
9 or -- let me back up.

10 Have you had conversations about your testimony since
11 you talked to Hunter about what really happened?

12 **THE WITNESS:** I had the conversation with Hunter and I
13 have not really gave detail to anybody. When the guy I was
14 dating's mother called him and told him that this reporter was
15 looking for me, I felt like I was obligated to give some sort of
16 summary. I didn't give him all the detail, but I did give him
17 around about gist of what was because --

18 **MS. ESSARY:** Is this Zach?

19 **THE WITNESS:** Yes. Because it's -- I mean, it was like,
20 you know, here this stranger is that you don't know beating on
21 your mother's door, and -- and just -- out of the water, like,
22 okay, "So you mean to tell me my son is talking to a girl that was
23 involved in this?" And, you know -- and so I felt like I had to
24 give -- I had to give him some sort of explanation as to why.

25 So I just gave him like a roundabout thing, not -- as

1 far as talking in too deep about -- like in detail about it, I've
2 not even spoke to my mother in detail about it. I just -- I did
3 the same with her. I just gave her a roundabout summary and she
4 was like, "Okay, Jessica. That's -- that's fine." She has never
5 questioned me about it.

6 **MS. ESSARY:** Why do you think that is?

7 **THE WITNESS:** Because I'm ashamed. Because I feel so
8 bad. I feel so bad that their families lost that time with them.
9 I feel so bad that they lost that time when they could have been
10 out here doing God knows what. I mean, you know, they could
11 have -- granted, yes, three were released and -- and they
12 proceeded to move on about their lives.

13 And then, like as soon -- I didn't even know about
14 Dorrell. One of my coworkers, I was sitting in the break room,
15 said something about it. And as soon as I heard his name, the
16 first person I messaged was Hunter. I was like, "Did you hear
17 about Dorrell? Please tell me that was not in relation to what
18 this went on." Because that's the first thing that went through
19 my mind was that somebody was pissed off because it was either --
20 because of Chris Paul, it being his grandfather, because you
21 have -- there's some serious fans out here, and I -- I figured
22 that was what it was in relation to. And he like -- and Hunter
23 was like, "Jessica. No, no. I've done spoke with the family.
24 It was a family thing, you know." And he just gave me the little
25 details of it or whatever.

1 And it broke my heart. I sat there and I just -- I just
2 squalled. And he was like, "Why is this hitting you so bad?"

3 And I was like, "Because here he just got out, just got
4 out, and he just had a youngun, and here -- then you lose your
5 life after all that time spent down?" It's a horrible, horrible
6 thing.

7 **MS. ESSARY:** I just have one last question.

8 What have you told your son about what happened?

9 **THE WITNESS:** I haven't told him anything. I didn't --
10 I felt like once it all come out, I could use -- maybe use it as a
11 learning experience for him, like, "Look, this is why I tell you
12 watch who you -- watch what you do, think about your actions,
13 think about what you say, think about things you do, think about
14 your environment and where you're at." And -- and -- I mean,
15 because he's -- he's brash and he makes poor -- he's making poor
16 decisions. Not so much getting out here in the streets, because
17 he can't get out away from me long enough to do anything, but, I
18 mean, just -- just -- just some poor decisions with school and
19 stuff and -- that have caught him two separate charges.

20 And I wanted to use it, but I didn't want -- I didn't
21 want to tell him what I was involved in because, the way he is,
22 it's like, "Oh, God," you know, and I -- I don't know because I
23 couldn't even begin.

24 I mean, when the -- I was at work the other day and two
25 officers come to my job, okay, to do, I guess -- to reinvestigate

1 or whatever they're supposed to be doing. I did not know that
2 they had done stopped by my house. I couldn't figure out how they
3 knew where I worked. And my son was in the game so much that he
4 just didn't even acknowledge that they were officers, he didn't
5 even know. He just knew some people had stopped by there and
6 asked where I was and he told them I was at work and told them
7 where I was at, because I'm literally within my backyard, and as
8 they -- he said that they asked him if he was my son and he said
9 yeah, and he said, "Mom, who was that?" because he did not even --
10 his mind was on that game.

11 And then when they told me they met my son, oh, my God,
12 my mind just went -- I just fell to pieces at work. I was like,
13 "Oh, God," because of something I've never discussed with him. I
14 have never let him know this. Part of the reason I have kept it
15 quiet because I did not want him involved. I didn't want him
16 thinking one way or the other whether, "Well, it's okay, you know,
17 my mama did some stuff" and -- or "was involved in some stuff, and
18 look, she's fine," or, you know, "Oh, my God, my mother was
19 involved" -- you know, I don't know how he's going to take it or
20 how -- I just don't know, and I feel like that's a discussion for
21 when he's older and is able to actually --

22 **MS. ESSARY:** I understand.

23 **THE WITNESS:** -- think about and rationalize the things
24 I'm telling him.

25 **MS. ESSARY:** That's all I have. Thank you.

1 **THE WITNESS:** Yes, ma'am.

2 **JUDGE LOCK:** Mr. Edwards.

3 **MR. EDWARDS:** Ms. Black, good morning.

4 **THE WITNESS:** Good morning.

5 **MR. EDWARDS:** My name is Seth Edwards. You said
6 something earlier, you made a comment along the lines that you
7 just can't keep up with all of the details. And I'm certainly not
8 expecting you to remember all of the details from something that
9 happened in 2002.

10 I do have a number of questions that I would like to ask
11 you. But believe it or not, you and I have something in common.
12 I have been a witness at a hearing just like this. I was called
13 as a witness for a case that I was involved in as a lawyer over
14 20 years ago and some of the same people in this room asked me
15 questions about a case I was involved in, and I had a really hard
16 time remembering many of the details from over 20 years ago. So I
17 understand the position that you are in.

18 Now, would it be fair to say that, I guess, over the
19 last 18 years, you've made a lot of different statements about
20 this particular incident; is that right?

21 **THE WITNESS:** Yes.

22 **MR. EDWARDS:** I mean, you've -- for example, this crime
23 took place on or about November 15, 2002, and within a few days,
24 you spoke to the police; is that right?

25 **THE WITNESS:** Yes.

1 **MR. EDWARDS:** And I believe they may have spoken to you
2 more than one time; is that correct -- the police?

3 **THE WITNESS:** Just the -- the interrogation and -- just
4 the interrogation, I think. I mean, maybe Detective Griffin may
5 have spoken with me a couple of other times maybe at the house,
6 but other than that --

7 **MR. EDWARDS:** Okay.

8 **THE WITNESS:** -- not with that whole group.

9 **MR. EDWARDS:** Okay.

10 So at least a couple of times, the police came to you
11 and said, "Tell me what happened" or "I'd like to follow up on
12 some more details"; is that right?

13 **THE WITNESS:** Yes.

14 **MR. EDWARDS:** And then you testified at at least two
15 jury trials; is that right?

16 **THE WITNESS:** Yes.

17 **MR. EDWARDS:** So on at least two jury trials, you had to
18 go through all the same questions again.

19 **THE WITNESS:** Yes.

20 **MR. EDWARDS:** And then pursuant to this Commission's
21 hearing, you've had to take questions from Ms. Bridenstine, who's
22 seated to your right?

23 **THE WITNESS:** Yes.

24 **MR. EDWARDS:** So she asked you about it.

25 **THE WITNESS:** Yes.

1 **MR. EDWARDS:** And then Mr. Atkins, after a number
2 of years, finally got ahold of you and he asked you about it;
3 correct?

4 **THE WITNESS:** Yes.

5 **MR. EDWARDS:** And then just a few weeks ago, as you've
6 just testified, the Winston-Salem PD, some new officers came and
7 asked you about it.

8 **THE WITNESS:** Yes.

9 **MR. EDWARDS:** And now you're having to do it once again
10 with us.

11 **THE WITNESS:** Yes.

12 **MR. EDWARDS:** Okay.

13 So you've got the police, at least two trials, Hunter
14 Atkins, Ms. Bridenstine, Williamston PD [sic], and now this
15 Commission are asking you questions about something from 18 years
16 ago; is that right?

17 **THE WITNESS:** Yes.

18 **MR. EDWARDS:** Would it surprise you to know that
19 Mr. Atkins had recorded conversations with you -- if I understand
20 correctly, almost 15 hours' worth?

21 **THE WITNESS:** No. It wouldn't surprise me. No, because
22 he always told me -- he always wanted me to know that he was
23 recording.

24 **MR. EDWARDS:** No, but my point is --

25 **THE WITNESS:** Oh.

1 **MR. EDWARDS:** I guess my point is would it be fair to
2 say that in all of the conversations that he's had with you, that
3 you've talked to him for at least 15 hours?

4 **THE WITNESS:** Yes.

5 **MR. EDWARDS:** Okay.

6 And I think you've testified earlier that when he
7 finally made that first contact with you, you were not very nice
8 to him. I mean, you "let him have it" I think were your words.

9 **THE WITNESS:** I absolutely did.

10 **MR. EDWARDS:** And, of course, we have, you know, written
11 transcripts of almost all of these interactions that I've just
12 named -- from the police to Ms. Bridenstine to the Winston-Salem
13 PD and obviously Mr. Atkins.

14 And he started out on that very first conversation, if
15 you recall, didn't he say, "I can promise you that if you have a
16 few moments now, this is the very last time I will ever bother
17 anybody about this"? He started off by saying that, didn't he?

18 **THE WITNESS:** He did.

19 **MR. EDWARDS:** And then I think a little bit later on
20 after the two of you kind of got to know each other a little bit
21 better, and he said, "Well, look, I need to go back on my promise.
22 Can I undo it?"

23 And I think you said, "Sure, you can undo it."

24 But in the very beginning, he tells you that, and he
25 says, "This is a time for you, in a way, to set the record

1 straight. If there's something else that you wanted to change,
2 this is that opportunity."

3 He said that to you, didn't he?

4 **THE WITNESS:** He did.

5 **MR. EDWARDS:** Did you immediately come back and say,
6 "Set what record straight? They were effing knuckleheads. They
7 effed up. They did something and it is what it is"?

8 **THE WITNESS:** I absolutely did because I didn't know
9 anything about Hunter, nothing as far as who he was. And then
10 more we sat there and talked, the more he finally got me to open
11 up with him because I didn't -- I didn't know him. I didn't trust
12 him.

13 But sitting there talking with him and looking him in
14 his eyes, and -- and I felt that he was genuine in what he was
15 trying to do. So -- it just -- I mean being around them, they
16 were knuckleheads. They was some knuckleheads. They -- boys at
17 that age are knuckleheads. Mine's a knucklehead. That's what
18 they are. They just -- and I don't mean that as in they get out
19 here and they cause trouble. I mean that as in they are boys.
20 They make jacked-up decisions as far as anything. I mean, just --
21 they're brash and they're just irrational and, I mean, just like
22 any child -- anybody that age.

23 **MR. EDWARDS:** Now, over the 15 hours or so that he met
24 with you and talked to you about this incident, he enlightened you
25 or informed you of some things that went on in the case that you

1 didn't know about previously; is that right?

2 **THE WITNESS:** He absolutely did.

3 **MR. EDWARDS:** All right.

4 So, for example, he -- after talking with Mr. Atkins,
5 and I feel like today you're convinced that the police and/or the
6 district attorney tricked you into thinking that if you didn't
7 tell it like they wanted it, that you were going to get charged.

8 Is that a fair statement?

9 **THE WITNESS:** It is.

10 **MR. EDWARDS:** Okay.

11 And would it be fair to say that, looking back on your
12 interviews by the police when you were 16, that they coerced those
13 statements out of you, yelled at you, I think you said, spit in
14 your face; is that right?

15 **THE WITNESS:** Yes. Yes.

16 **MR. EDWARDS:** All right.

17 Isn't it true that Mr. Atkins informed you that when you
18 went on the van ride with who you thought was a prosecutor and the
19 daughter of the victim, that it in fact was not the daughter of
20 the victim -- he told you that, didn't he?

21 **THE WITNESS:** Yes.

22 **MR. EDWARDS:** All right.

23 And so you went from, as far as Mr. Atkins, not trusting
24 him, actually giving him a really hard time, to, at the very end
25 of that relationship, and even as you sit here today, you've

1 indicated that you can trust him you feel; is that right?

2 **THE WITNESS:** Absolutely.

3 **MR. EDWARDS:** I think you may -- I think the words you
4 used when the Winston-Salem PD interviewed, you said, "He's good
5 peoples."

6 **THE WITNESS:** He is good people. I think so.

7 **MR. EDWARDS:** All right.

8 So your opinion has changed of him after all this time
9 and interaction with Mr. Atkins.

10 Would that be fair to say?

11 **THE WITNESS:** Yes.

12 **MR. EDWARDS:** And so at the very end of the last
13 recording that at least we've been provided, you ended up making
14 this statement: "Old crooked-ass damn Forsyth County popo" --
15 which popo is slang for --

16 **THE WITNESS:** Police.

17 **MR. EDWARDS:** -- police. So "old crooked-ass damn
18 Forsyth County popo, they wonder why nobody trust the effin'
19 police. This shit has me so mad, I am pissed the eff off over
20 shit they did, over shit effin' 17 GD years ago."

21 And then his last question to you that we have is this:
22 "How much of this, Jessica, has to do with the amount of
23 information that, up until the last week, you never knew?"

24 And you said, "Like, 90 percent of what the eff you told
25 me, I didn't know. This has got me so mad."

1 And that's --

2 **THE WITNESS:** Absolutely.

3 **MR. EDWARDS:** And that's how you feel?

4 **THE WITNESS:** Absolutely. Because at 16 years old, I
5 feel like -- my mother kept me sheltered. That's why the first
6 thing I did, I was told -- I was born and raised south side, okay.
7 I was told to say out of south side of Winston because it was
8 nothing but trouble over there.

9 As soon as I got in my car and got my freedom, first
10 place I went because I was told not to go there. My mother would
11 not even so much as let me go to the movies with friends and their
12 parents unless she asked -- I swear, she had to have tag numbers,
13 everything. She was not playing.

14 Then she said I was a girl, I wasn't going to get out
15 here and get in trouble and as I wasn't going to get out here and
16 do none of this.

17 So I made -- I made good grades in school. I was a good
18 child. I didn't give my mama no crap. My brother was the
19 hardhead.

20 So coming from that, and at 16 years old never being in
21 no trouble, if you can't trust nobody, you should be able to trust
22 the police. I had no reason not to believe nothing that they said
23 because it's the police. You should be able to rely -- you should
24 be able to trust them if you can't trust nobody.

25 So the more -- I mean, after the interrogation, my trust

1 went on down a little -- it went on down a little bit. That
2 was -- that was it.

3 But as I got older, I mean, there are some officers that
4 I know that -- that I know personally that I have really good
5 bonds with. But I have also known some officers that have -- that
6 I know have done some dirty stuff. And it's -- they would be like
7 regular customers of mine at stores or something, and they would
8 come in there and they would talk. And that's just -- that's
9 just -- I guess they felt that they could just sit there and cut
10 up and -- and talk about stuff like what they were. I mean, like
11 there was some stuff that just ain't right.

12 But then when he sat there and -- I wasn't -- like you
13 saw, I wasn't trying to open up to him. But the more he filled me
14 in on the stuff that was -- that was not right there, the more it
15 pissed me off so bad to know that it wasn't just me that was done
16 like that. They were done like that, and that's something that
17 they let him know.

18 And I'm like, "So I wasn't the only one?" And I -- I
19 was the impression that I was -- I didn't know that they had
20 been -- that they had done been spoke to. I didn't know any of
21 that. I thought that I was the first one. I've always thought
22 that up until here recently.

23 **MR. EDWARDS:** Mr. --

24 **THE WITNESS:** Which, in turn, they --

25 **MR. EDWARDS:** I'm sorry.

1 Mr. Atkins also informed you that, you know, back in
2 2002 the -- I'll call them "suspects," the other suspects, the
3 other boys were actually questioned about the incident before they
4 questioned you. That's what you're referring to; is that right?

5 **THE WITNESS:** Yes.

6 **MR. EDWARDS:** And it's your understanding that all those
7 other boys also admitted their involvement at least at that time?

8 **THE WITNESS:** It is my understanding. But at the same
9 time, if they went through anything what I went through over
10 there, then I can see why they come to that because they were
11 probably tired and scared. I know they were scared.

12 You know, I didn't even know that they were the age they
13 were. I thought that they were older because that's what they
14 told me. And like, when it come to Bubba -- Bubba was a big boy.
15 I greatly believed he was 18 years old. And it was not -- it's
16 not uncanny for somebody over in south side not to have a car.
17 It's -- that's just how it is. That's the part of town it is.
18 People walk all the time. It's not -- it's not uncanny. And the
19 boys did not act like -- I would have never thought there was
20 14-year-olds involved in anything. They -- I would've never
21 thought that they were that age.

22 **MR. EDWARDS:** Ms. Black, I would like to ask you a few
23 questions about what you did tell the police in 2002. And, again,
24 understanding what you've said about being scared and yelled at
25 and those type things.

1 Do you recall making a statement to them that on the
2 Friday night that this took place, November 15, 2002, that you
3 went to Bubba's house about 4:00 o'clock in the afternoon and you
4 found Bubba there as well as Dorrell Brayboy?

5 THE WITNESS: I don't --

6 MR. EDWARDS: I'm not asking you today if you remember
7 doing that. I'm -- do you --

8 THE WITNESS: I don't remember making the statements.

9 MR. EDWARDS: You agree that you told them that back in
10 2002?

11 THE WITNESS: I probably did. I -- I probably did --

12 MR. EDWARDS: Okay.

13 This statement states you could not provide the correct
14 name for Bubba at that time, you just knew his nickname; is that
15 right?

16 THE WITNESS: That is.

17 MR. EDWARDS: Okay.

18 Jermal Tolliver was across the street at his own house
19 along with the Nathaniel Cauthen.

20 Does that sound accurate? Did Jermal live across the
21 street from Nathaniel?

22 THE WITNESS: He lived across the street from Bubba.

23 MR. EDWARDS: Okay.

24 And at some point, do you recall telling the police that
25 Bubba, Rayshawn, Nathaniel, and Dorrell got in your black '86

1 Mercury Cougar?

2 **THE WITNESS:** Probably.

3 **MR. EDWARDS:** Do you recall telling the police -- again,
4 this was -- this was four days after the murder, November 19. The
5 murder was November 15th.

6 Do you recall telling them you heard -- you heard one of
7 them say in the car, "Wouldn't it be funny to rob somebody?" or
8 something to that effect?

9 **THE WITNESS:** I do remember saying that.

10 **MR. EDWARDS:** All right.

11 **THE WITNESS:** But that wasn't an initial statement.
12 That was not said initially.

13 **MR. EDWARDS:** You didn't come out with that -- you
14 didn't walk in there and just sit down and said, "Yeah, they were
15 going around saying let's go rob somebody"?

16 **THE WITNESS:** When -- when I spoke to them, the first
17 thing I told them is the exact same thing I told Ms. Bridenstine,
18 the exact same thing I told Hunter, the exact same thing I just
19 sat here and told y'all, and I was told I was lying, I was lying,
20 I was lying, I was lying, and that's -- that's when I started
21 getting hollered at and yelled at and stuff slammed on the table.
22 I mean, it just -- I was steady told I was lying but I told them
23 the exact same thing. That was my very first statement to them.

24 **MR. EDWARDS:** Now, hypothetically -- put yourself in the
25 shoes of a detective that does not holler, maybe of the demeanor

1 of the ones that visited at your home a few weeks ago. Put
2 yourself in one of their shoes.

3 If they had already interviewed four or five boys and
4 they all pretty much said, "She took us to the park, dropped us
5 off. She sat on the bench. We walked over, picked up some sticks
6 or bats, beat the man, tied him up, came back, got in your car and
7 you left, went to the bowling alley, went to the mall -- those
8 kinds of things.

9 If you're that detective and you leave out the key
10 parts, wouldn't it be fair for him to think, "Hey, maybe this girl
11 is lying"?

12 **THE WITNESS:** I'm sure it would but I also think that
13 the things that led up to those -- to whatever confessions were
14 made, I think that those need to be put in account and look at
15 what -- what was said and what -- and what -- how they were made
16 to feel because I know how I was made to feel so I can only
17 imagine.

18 **MR. EDWARDS:** Going back again to November 19, 2002, the
19 officer put in his report that you said you were certain that you
20 heard someone in the group say, "Get the eff down. Give us that
21 shit. Eff you." And then, as they were walking back towards
22 where you were supposedly on the bench or at the park, heard one
23 of them say, "Hell, yeah, we got that shit, eff him, eff him, we
24 effed him up."

25 Okay? Do you recall saying that to the police?

1 **THE WITNESS:** Yep.

2 **MR. EDWARDS:** Now, your testimony today is that you did
3 not hear that; is that right?

4 **THE WITNESS:** Yep.

5 **MR. EDWARDS:** At least you don't recall hearing that.

6 **THE WITNESS:** I didn't hear that.

7 **MR. EDWARDS:** Okay.

8 Ms. Black, this is the last little thing I want to ask
9 you.

10 When the Williamston PD [sic] interviewed you, I believe
11 it was February 26 of 2020 -- so just a few weeks ago -- that took
12 place in your home; correct?

13 **THE WITNESS:** Yes.

14 **MR. EDWARDS:** And they again asked you to go through
15 this whole incident; is that right?

16 **THE WITNESS:** They sure did.

17 **MR. EDWARDS:** And ultimately they asked you towards the
18 end that "You can't say these boys did and -- you can't say these
19 police did the crime."

20 And you said, "That's right."

21 Isn't that what you said?

22 **THE WITNESS:** That's right. I cannot not tell you one
23 way or the other.

24 **MR. EDWARDS:** Okay. All right. That's all. Thank you.

25 **JUDGE LOCK:** Commissioner Newton.

1 **MS. NEWTON:** Yes, Ms. Black. Good morning. My name is
2 Deb Newton. I'd like to ask you a couple of questions based on
3 what you've said today and based on the materials you understand
4 we've been provided.

5 **THE WITNESS:** Yes.

6 **MS. NEWTON:** Transcripts of your telephone conversations
7 with the reporter that you developed -- would you say a friendship
8 with?

9 **THE WITNESS:** No.

10 **MS. NEWTON:** You're not friends with him?

11 **THE WITNESS:** No.

12 **MS. NEWTON:** Mr. Edwards went a long way towards to
13 establish the fact that you now trust Hunter Atkins; correct?

14 **THE WITNESS:** Yes.

15 **MS. NEWTON:** But you stopped talking to him in December
16 of last year.

17 Why is that?

18 **THE WITNESS:** Because I feel like he's going to -- he
19 wants to talk more about the case and stuff. And, I mean -- now,
20 granted, the messages that he has sent me is, "Look, you know, I
21 just wanted to let you -- enlighten you on some stuff that, you
22 know, that's new or some -- some new developments," or -- I mean,
23 and he would do that. He would -- he'd -- there are times when he
24 would talk to me and he would just tell me about stuff that had
25 went on and then I'd go -- I would voice my opinion like any other

1 time.

2 But, you know, that's what he would do, and that's --
3 that's just -- he's been hitting me up with, and I didn't -- I
4 just didn't want to -- I didn't -- I just didn't -- I didn't want
5 to do it no more.

6 **MS. NEWTON:** All right.

7 So my question was, why, at the time -- around Christmas
8 of 2019, why at that time did you suddenly stop communicating even
9 a "Merry Christmas" to a man who paid your car payment --

10 **THE WITNESS:** Right.

11 **MS. NEWTON:** -- you know, in cash, I mean, gave you
12 money to help your family according to you, who apparently was
13 kind to you, earned your trust, so you told him a different story
14 than what you started out with. Why stop talking to him, even
15 "Merry Christmas"?

16 **THE WITNESS:** Because he wanted my address and he wanted
17 to send me a card and I was, like, "Look, I don't want to give you
18 my address." Because I had moved out where I moved purposely --
19 to get away from everything, to get my son away from everything.
20 And I just -- that was just it. And I didn't want to -- I just
21 didn't -- I just felt it was easier just to stop, just to stop
22 talking. I had done said what I had to say. That was it.

23 **MS. NEWTON:** Ms. Black, do you know when Mr. Bryant and
24 Mr. Tolliver got out of jail?

25 **THE WITNESS:** I don't. I mean, I know they're out. I

1 just don't know when they got out.

2 MS. NEWTON: How did you come to find out they were out
3 of jail?

4 THE WITNESS: I was told from someone else that Jermal
5 was out. I didn't know that Dorrell and Bubba had gotten out.
6 Hunter told me that.

7 I mean, he also told me that they were right there,
8 right there in the same little area and stuff, right around
9 Winston. And so I was -- that immediately tensed me right back up
10 because I was scared --

11 MS. NEWTON: It did what? I'm sorry.

12 THE WITNESS: It tensed me back up. Like, it just -- it
13 just made me nervous because I was -- because I'm always around
14 Winston and I was scared I was going to run into them and I didn't
15 know what to expect. I mean, I can't expect anything but anger
16 because I would be so mad, and -- and I couldn't imagine the rage
17 that they feel. And then Hunter said that he had spoke with them
18 and that they said that they did not have hard feelings towards me
19 because they felt like we were all done pretty badly when it come
20 to that whole situation and that since they had gotten older, they
21 just didn't -- they didn't have the hard feelings and stuff
22 anymore. But that's -- I didn't know that -- he's -- he informed
23 me of the last two specific.

24 MS. NEWTON: Did you reach out to either one of them
25 after they -- or either of the three of them after they got out of

1 custody?

2 THE WITNESS: I did not.

3 MS. NEWTON: And you didn't try to apologize to any of
4 them -- either of them?

5 THE WITNESS: No because I felt it was best I keep my --
6 I felt it was best I keep my distance. I mean, regardless of
7 whether I try to apologize or not, if I was in their shoes, I know
8 how I would react.

9 MS. NEWTON: It's a yes-or-no question.

10 Did you reach out --

11 THE WITNESS: I'm sorry.

12 MS. NEWTON: Did you reach out --

13 THE WITNESS: No.

14 MS. NEWTON: -- to them?

15 THE WITNESS: No.

16 MS. NEWTON: Did they reach out to you?

17 THE WITNESS: No.

18 MS. NEWTON: Did anybody in the family reach out to you
19 after they got out of jail?

20 THE WITNESS: No.

21 MS. NEWTON: Okay.

22 Now, there are two men who are still in custody --
23 Mr. Cauthen and Mr. Banner; right?

24 THE WITNESS: Yes.

25 MS. NEWTON: You understand they're still in custody?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** Have you communicated with either of them
3 while they've been in custody?

4 **THE WITNESS:** No.

5 **MS. NEWTON:** Once you've come to the realization that
6 you have with regard to law enforcement that you told Mr. Edwards
7 about in your -- just in the last questioning, why haven't you
8 reached out to them to apologize?

9 **THE WITNESS:** Because I -- I don't feel like -- I don't
10 feel like they want to hear -- I know I wouldn't want to hear from
11 me, okay, so I don't feel like they'd want to hear from me. I
12 don't feel like it would make a difference because I can't -- that
13 apology is not going to make up for that time.

14 **MS. NEWTON:** Have you had any communication with their
15 families after you've become enlightened about your testimony and
16 the experience you went through at 16?

17 **THE WITNESS:** No.

18 **MS. NEWTON:** Has anybody asked you to participate --
19 from the families -- participate in this proceeding?

20 **THE WITNESS:** No.

21 **MS. NEWTON:** Okay.

22 Now, when you took the stand this morning, Ms. Black,
23 you were already crying and you've been crying up until you turned
24 your attention to Mr. Seth Edwards.

25 Would you say that's a fair assessment?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** Why is that? Why were you crying?

3 **THE WITNESS:** Because my stomach -- I feel nauseous. I
4 feel -- I'm scared. And -- and I -- I just want everything set
5 right.

6 I didn't cry with him because he made me feel at ease.
7 That's why I quit crying, because he made me feel comfortable.

8 **MS. NEWTON:** Mr. Edwards did?

9 **THE WITNESS:** Yes.

10 **MS. NEWTON:** Okay.

11 Is there -- there are some people sitting behind
12 Mr. Edwards in this courtroom.

13 Do you know any of those people?

14 **THE WITNESS:** Personally, no.

15 **MS. NEWTON:** Do you know who they are?

16 **THE WITNESS:** (Nonverbal response.)

17 **MS. NEWTON:** Okay.

18 Did you have any conversations with anyone who is
19 sitting in the courtroom today before testifying today --

20 **THE WITNESS:** No.

21 **MS. NEWTON:** -- other than the commission staff?

22 **THE WITNESS:** I mean, her -- like, ain't she the one
23 that brought me in here?

24 **MS. NEWTON:** And she's commission staff.

25 **THE WITNESS:** Okay. So no, no.

1 **MS. NEWTON:** Okay.

2 So there's no one else in the courtroom that you had
3 some concern about that caused you to start crying?

4 **THE WITNESS:** No.

5 **MS. NEWTON:** Okay.

6 So what prompted that, when you first walked in?

7 **THE WITNESS:** Because I was crying before -- I started
8 crying when I got -- I started crying when I got in my car and
9 dried my face before I walked in here, before I walked into the
10 building.

11 **MS. NEWTON:** Okay.

12 **THE WITNESS:** I was crying -- I was crying coming up the
13 road, I was crying -- I've been crying all morning.

14 **MS. NEWTON:** So you said you're crying because you were
15 scared. You're scared of this proceeding?

16 **THE WITNESS:** I'm just -- just scared -- I'm just scared
17 of the whole --

18 **MS. NEWTON:** What are you scared of?

19 **THE WITNESS:** I don't know.

20 **MS. NEWTON:** Ms. Black --

21 **THE WITNESS:** It's just the whole -- the whole thing,
22 same way I was scared when I was going through them trials, it's
23 what it feels like to me.

24 **MS. NEWTON:** Well, you're testifying that you lied under
25 oath --

1 **THE WITNESS:** I know.

2 **MS. NEWTON:** -- repeatedly. And you are testifying --
3 let's be clear -- you are an adult now; correct?

4 **THE WITNESS:** Yes.

5 **MS. NEWTON:** You're 33; is that right?

6 **THE WITNESS:** Yes.

7 **MS. NEWTON:** Okay.

8 You're testifying that you, under oath, lied and put
9 several men in prison and two are still there.

10 **THE WITNESS:** Yes.

11 **MS. NEWTON:** And that you didn't do anything about that
12 for all of the time that they've been in prison.

13 **THE WITNESS:** I didn't know what to do.

14 **MS. NEWTON:** Okay.

15 So what's changed now? Why are you now willing? You
16 said you were hiding for all of those years, not telling anybody
17 in your family, said you didn't tell your mother, you didn't tell
18 your grandmother, you said you didn't tell your son, and he's 14.

19 **THE WITNESS:** Nope.

20 **MS. NEWTON:** So why now?

21 **THE WITNESS:** Because after sitting down, just like I
22 said, Hunter Atkins is the one who initially got this started,
23 okay, as far as with me. The more I have sat and finally talked
24 about it and talked and talked and talked -- I've always thought
25 about it -- but the more I have sat here and verbally come out

1 about it and I can hear myself talk about it, and I -- and being
2 the age I am now, that I can sit here and I can look back and
3 rationalize every single thing that was going on right then, it's
4 stuff that needs -- it's just stuff that needs to be set right.

5 MS. NEWTON: Now, you told Hunter Atkins that a story --
6 a dish soap story about how your mother put -- was it your
7 mother? -- put dish soap in your mouth if she caught you lying
8 about something? Or was that your grandmother?

9 THE WITNESS: She did it one time.

10 MS. NEWTON: Okay.

11 THE WITNESS: I lied about my room.

12 MS. NEWTON: And you never lied again; right?

13 THE WITNESS: Oh, no. I done stopped telling out. I
14 can't stand it.

15 MS. NEWTON: You didn't lie? Is that what you're
16 saying? Anymore?

17 THE WITNESS: (Nonverbal response.)

18 MS. NEWTON: And -- but you also, then, told Hunter that
19 you would lie if you were faced with prison to protect yourself.

20 Do you remember telling him that?

21 THE WITNESS: I told him that and that was in reference
22 to what he was going on -- as to what was going on then.

23 MS. NEWTON: Okay.

24 And you're admitting that you lied about even sitting on
25 that picnic table at trial; correct?

1 **THE WITNESS:** That particular moment, yeah.

2 **MS. NEWTON:** Okay.

3 And when you testified -- or when you told Hunter Atkins
4 that -- I'm sorry. Let me just check one thing real quick, see
5 who you told this to.

6 When you told Hunter Atkins in a recorded interview that
7 when you circled back around after going to the mall and after
8 going to the pool hall and you had the boys in the car, you
9 circled back around to the park, and there were all the SUVs, all
10 the -- you said cop cars, "Something must be going on," you were
11 surprised; right?

12 **THE WITNESS:** Yeah.

13 **MS. NEWTON:** Okay.

14 But you said -- and you said this several times in your
15 interviews with him -- somebody said, "Somebody must've got
16 killed."

17 Do you remember saying that to Hunter?

18 **THE WITNESS:** I do. Because that --

19 **MS. NEWTON:** Who said --

20 **THE WITNESS:** I don't remember which one said that, but
21 I mean --

22 **MS. NEWTON:** Somebody said that? Okay.

23 **THE WITNESS:** It was -- that's -- that would've been --
24 to me, that's normal. That would've been a normal response, to
25 me.

1 **MS. NEWTON:** I -- I'm just saying is that what you told
2 Hunter several times you heard someone say?

3 **THE WITNESS:** Yes.

4 **MS. NEWTON:** Not someone had an accident, someone --
5 someone got killed?

6 **THE WITNESS:** There was too many vehicles for that. It
7 was too much.

8 **MS. NEWTON:** And you said -- and I'm just trying to get
9 it straight.

10 And you said: "They were all jacked up and they wanted
11 to jump out of the car."

12 What did you mean by that?

13 **THE WITNESS:** I mean like just like I was telling him,
14 the normal -- they were, for one, kids, and it was like, "Oh, my
15 God, what's going on? What's going on?" Everybody was excited to
16 see what was going on, not excited as in happy excited, but
17 excited as in -- you know what I'm saying? It's in their -- I
18 don't know how to explain it, as in you sit here and you see
19 something and you're, like "Oh, God, what happened? What
20 happened?" You get excited in a way, and not excited -- not a
21 happy excited, just --

22 **MS. NEWTON:** That they jumped out of the car. You let
23 them out the car to go see what was going on; right?

24 **THE WITNESS:** Yeah. But they didn't go up -- all the
25 way up there. There was too much going on. But when you saw that

1 many vehicles and the caution tape and stuff, that's the first
2 thing come to your mind, and you look at what part of town you're
3 in. That's exactly why that statement was made.

4 MS. NEWTON: Well, let's be fair, Ms. Black. You don't
5 know why the statement was made because you don't know what any
6 individual person was thinking; right?

7 THE WITNESS: No, I don't.

8 MS. NEWTON: What you heard was: "Somebody must've got
9 killed"; right?

10 THE WITNESS: Yes.

11 MS. NEWTON: So after that statement, I think you told
12 Hunter Atkins that they jumped out of the car; right?

13 THE WITNESS: Yes.

14 MS. NEWTON: Okay.

15 Have you been -- well, do you know that the Commission
16 has interviewed your mother and your grandmother?

17 THE WITNESS: No.

18 MS. NEWTON: Okay.

19 THE WITNESS: My grandmother is dead.

20 MS. NEWTON: I'm sorry.

21 It was Mr. Atkins. Do you know that your mother told
22 this story -- that you were afraid of the boys getting out and
23 hurting you and your family?

24 Did someone tell you about that?

25 THE WITNESS: Not until you just did.

1 **MS. NEWTON:** Did you talk to your mother about being
2 afraid that someone was going to get out of jail and hurt you or
3 your family?

4 **THE WITNESS:** I was terrified because -- do you want me
5 to explain why?

6 **MS. NEWTON:** Please do. Yeah.

7 **THE WITNESS:** Okay.

8 So because at the trials, I don't even remember which
9 one it was, because there was so many feelings going on up in
10 there that there was stuff being yelled out and there were
11 comments being made to the point that I was not even allowed to go
12 outside and smoke or anything. I was made to smoke inside the
13 office. I could -- I was not allowed to be anywhere unless I was
14 escorted.

15 That's -- those are the kind of comments that come out.
16 So therefore, yes, I was scared.

17 **MS. NEWTON:** So what's changed now?

18 Back to my original question. Do you think they feel
19 any more benevolent to you now?

20 **THE WITNESS:** I don't because I think that, for one,
21 during the trials, it was the families that were -- that were
22 making the comments or not even -- not like all the families,
23 just -- I don't even know who they were, there were some people.

24 But I think that the boys have -- with them getting
25 older, that they have also sat there and -- and -- I just don't

1 think -- I don't think that they would do -- I don't think they'd
2 do that.

3 **MS. NEWTON:** Ms. Black, be clear.

4 Any of these impressions you have about the thoughts of
5 the boys, the defendants in this case, did all of that come only
6 from the reporter? Because you said you have had no contact with
7 anyone.

8 **THE WITNESS:** No. I didn't have any contact with
9 anybody.

10 **MS. NEWTON:** So are you guessing? Or are you testifying
11 to what you understand Mr. Atkins told you?

12 **THE WITNESS:** First, I felt -- I am -- I'm not -- I
13 won't say I'm guessing. I'm going by -- what I knew of them boys,
14 I never, ever felt any kind of nothing from the boys, and I would
15 never have thought them boys would ever hurt me. It's not the
16 boys that had me scared. It was the families.

17 But you never know what kind of influence there, what
18 the exact -- and went through people's heads. You never know how
19 somebody feels, and that's that, just like you said.

20 **MS. NEWTON:** Ms. Atkins [sic], are you saying if you
21 don't recant that you are subject to some sort of physical
22 violence or your 14-year-old or any member of your family if you
23 don't do that?

24 **THE WITNESS:** No. And I am terrified for them.

25 **MS. NEWTON:** Okay.

1 So you have received no threats from them or no
2 indication that they no longer are threatening you?

3 **THE WITNESS:** No, none of them has threatened me. I
4 have not got any messages, none other than messages sent out
5 yesterday to my brother's old lady.

6 **MS. NEWTON:** I'm sorry. What was that?

7 **THE WITNESS:** There were messages sent out yesterday to
8 my brother's old lady, and I don't know who they were. I didn't
9 ask. I told him I didn't see want to see them.

10 **MS. NEWTON:** What were the messages?

11 **THE WITNESS:** Said that we all deserve to die.

12 **MS. NEWTON:** And did you listen to that message?

13 **THE WITNESS:** They were sent over Messenger. And she --
14 she blocked the people. She told me she had blocked them. She
15 seen them, my brother's seen them. I told him I didn't want to
16 see them. Anybody who would spoke to me about anything, I told
17 him I didn't want to hear about it.

18 **MS. NEWTON:** How does that make you feel?

19 **THE WITNESS:** Terrified for my family.

20 **MS. NEWTON:** Is that part of why you were crying when
21 you came in or not? I'm just asking.

22 **THE WITNESS:** I'd say that -- that adds to it.

23 **MS. NEWTON:** Okay.

24 Now, has -- on the other side, you were threatened with
25 prison if you didn't -- according to you, you were threatened with

1 prison if you didn't say what you understood law enforcement
2 wanted you to say during that three-hour interview.

3 Is that what you understood the threat was?

4 **THE WITNESS:** I was told regardless whether I testified
5 or not, I could go to prison.

6 **MS. NEWTON:** Okay.

7 Did you have an attorney counsel you about that threat?

8 **THE WITNESS:** (Nonverbal response.)

9 **MS. NEWTON:** So you didn't think to hire an attorney?

10 **JUDGE LOCK:** I'm sorry.

11 Would you answer out loud for the record, please.

12 **THE WITNESS:** Oh, I'm sorry.

13 No. Did you -- are you referring to back then?

14 **MS. NEWTON:** Back then, when you were being interviewed
15 at 16 years old.

16 **THE WITNESS:** I didn't know anything about anything. I
17 didn't know anything about none of that.

18 **MS. NEWTON:** Okay.

19 Have you been promised anything?

20 Do you understand the Commission process at all? Has
21 anyone explained the process to you?

22 **THE WITNESS:** Ms. Bridenstine has.

23 **MS. NEWTON:** Okay.

24 Has -- have any of the defendants or their families said
25 anything to you about any financial gain you might get as a result

1 of recanting your testimony?

2 **THE WITNESS:** No.

3 **MS. NEWTON:** Okay.

4 Now, you've talked about how much you know about the
5 boys and how much you think of them as individuals.

6 But at the time that you were 16 and driving them
7 around, you did not know they were 14 and 15; correct?

8 **THE WITNESS:** I did not.

9 **MS. NEWTON:** At that same time, you told Hunter Atkins
10 that you were -- you drank all the time, at that time you were
11 doing weed all the time -- in fact, that's what you were doing
12 with the boys -- you were doing pain pills, and cocaine --

13 **THE WITNESS:** I was not doing --

14 **MS. NEWTON:** -- but not heroin or crack.

15 **THE WITNESS:** None of that is in reference to at that
16 age. I didn't do -- I didn't -- all I did at that age was smoke
17 weed.

18 **MS. NEWTON:** So what period of time where you also
19 drinking, using pain pills, and cocaine?

20 **THE WITNESS:** The pain pills are in reference -- I had
21 double hip replacements. I didn't take a pain pill until I was
22 almost 30 years old, okay.

23 As far as drinking, that was when I first met my son's
24 father. I don't even drink maybe once or twice a year now. Like,
25 I've never been a big drinker; it was just that was what we did.

1 We were at a party house all the time.

2 Smoking weed, yes. We smoked.

3 And, yes, I have tried cocaine, but that was after being
4 almost 30 years old. I had never done none of that then. It
5 was -- just smoking weed is all we did, was smoke weed.

6 As far as their ages, no, I didn't know. When I talk
7 about knowing them, I talk about knowing their personalities,
8 knowing how they acted and which one was which and -- and just
9 their mannerisms and how you knew based on what was said or
10 whatever which one said it as far as just in general conversation.
11 That's what I was referring to. I was not referring to their ages
12 or knowing everything about them because I only hung out with them
13 for a few months, but it was almost every day.

14 **MS. NEWTON:** Okay.

15 So I'm referring to interview of Jessica Black 4 by
16 Hunter Atkins page 15 for the record.

17 You were quoted record as saying, from lines 7 to 14 --
18 the question from Mr. Black [sic] was: "Yes, you were. You were
19 mean, you were very young then -- I mean you were very young man."

20 And you said: "Yeah. So when I finished school" -- you
21 meant not in the afternoon, but after you graduated?

22 "When I finished school, I've effin' partied my ass off
23 over there. And, I mean, we drank all the time and we smoked weed
24 all the time and ate pain pills. I didn't even -- hell, I didn't
25 even know what the eff I was eating. They was, like, 'Here take

1 this,' and I was like, 'okay,' and I was tore up. But I still --
2 I functioned, huh. And I went to work effed up, come home, and
3 get effed up. And it was just a party all the time. But as soon
4 as I got pregnant, as soon as I found out I was pregnant, I mean,
5 everything was cold turkey like immediately -- smoking cigarettes,
6 everything was cut off," and I think you did some --

7 (Overlapping speakers.)

8 **THE WITNESS:** And that was in reference to my son's
9 father, to being with my son's father, not with the boys.

10 **MS. NEWTON:** So when you say "we" did all this, who are
11 you talking about?

12 **THE WITNESS:** My son's father.

13 **MS. NEWTON:** Okay.

14 So between the time you were 16, when you were smoking
15 all that weed with the boys, and the time you were pregnant --
16 which you were pregnant at trial in 2005; correct?

17 **THE WITNESS:** Yeah.

18 **MS. NEWTON:** That was when your son was born; right?

19 **THE WITNESS:** Yep.

20 **MS. NEWTON:** So you were, like, eight months pregnant
21 then.

22 **THE WITNESS:** Uh-huh.

23 **MS. NEWTON:** So around 2004/2005, for that year and a
24 half, that's when you were doing all of that?

25 **THE WITNESS:** It's not -- I love how this -- how this

1 makes it look.

2 MS. NEWTON: So would you lie to protect yourself?

3 THE WITNESS: No. That's why I'm here.

4 MS. NEWTON: I have one more question, Ms. Black.

5 In the car driving around with the boys the day of
6 Mr. Jones' murder, were there four boys in the car or five boys in
7 the car with you?

8 THE WITNESS: I don't know.

9 MS. NEWTON: Why don't you know?

10 THE WITNESS: Because I can't remember.

11 MS. NEWTON: Is that because you were high?

12 THE WITNESS: Probably.

13 MS. NEWTON: Okay.

14 And if you remember, if you noticed, do you know if
15 anyone was wearing Air Force 1 shoes?

16 THE WITNESS: (Nonverbal response.)

17 MS. NEWTON: Have no idea?

18 THE WITNESS: No.

19 MS. NEWTON: I have nothing further. Thank you.

20 MR. JARVIS: Ms. Black --

21 MS. ESSARY: I want to follow-up really quickly.

22 MR. JARVIS: Okay.

23 MS. ESSARY: You became very distraught when Ms. Newton
24 asked you questions about taking pain pills and doing things,
25 drinking, et cetera.

1 **THE WITNESS:** Because --

2 **MS. ESSARY:** Is there anything you want to correct
3 about --

4 **THE WITNESS:** Yeah. Because the way that makes me look,
5 is it makes me look like I was dopehead and I'm just sitting
6 around, getting tore up all the time. And yes, I know how it
7 looks when I was talking to him, but I was able to talk to him
8 freely and sit here and just be relaxed about it.

9 And when I told him all the time -- I mean, like,
10 literally, when I met my son's father, I didn't do anything
11 besides smoke weed. I knew nothing about anything.

12 As far as the cocaine, I never did cocaine until I was
13 almost 30 years old. First time I ever tried it was right before
14 my hip replacements and my body hurt so bad, I could not even
15 stand to walk, and that is exactly why I tried it, because
16 somebody told me if I did, my body wouldn't hurt.

17 **MS. ESSARY:** I just trying to clarify --

18 **THE WITNESS:** As far as all this was right here?

19 **MS. ESSARY:** This -- yes, ma'am.

20 **THE WITNESS:** This right here was not -- his father -- I
21 was -- that was the only man I'd ever been with, okay, so that man
22 could tell me to jump off a bridge and I was going to do it. It
23 didn't matter. And I was just -- I was -- anything he wanted me
24 to do. And if we was sitting there, partying, it was, "Here,
25 Jessicah, take this," and I would because he wanted me to and

1 everybody else was, so why not. That's just what it was.

2 And yes, I got up and went to work -- and, I mean, this
3 is after not having an hour and a half, two hours of sleep after
4 staying up, drinking stuff all night.

5 MS. ESSARY: Are you talking about when you're 16/17?

6 THE WITNESS: No. I'm talking that statement right
7 there, referring to when I was with my son's father talking about
8 using drugs and all that.

9 MS. ESSARY: When you're in your teens? I'm just trying
10 to figure out --

11 THE WITNESS: When I was 18. I got pregnant at the
12 end -- I get pregnant when I was 18, had my son when I was 19.

13 MS. ESSARY: And please -- please understand, we're just
14 trying to get to the bottom of everything.

15 THE WITNESS: And I understand that. And I'm so sorry.

16 MS. ESSARY: Your testimony is really important, and I
17 thought I heard you say in another part of your testimony that you
18 hadn't even done a pain pill until you were 30 and then it sounded
19 like --

20 THE WITNESS: This right here, I didn't know what I was
21 taking. I don't know if it was pills -- pain pills. I do know he
22 had me taking Seroquel at one time.

23 MS. ESSARY: Take what?

24 THE WITNESS: Seroquel. Back when Seroquel first got
25 big, that was like a sleeping pill. As far as the pain pills and

1 stuff, I go off what he told me, what he gave me. As far as me
2 willingly, like, on my own taking my own initiative to go take
3 pain pills, it was by my doctor's prescription.

4 Every -- I turned down pain pills every time I got a
5 prescription before then -- every time. I always took ibuprofen
6 because ibuprofen kept the inflammation and stuff down in my body.
7 Once I got to where I couldn't take ibuprofen anymore because of
8 other health issues, they told me that the pain pills were the
9 lesser of the two evils so I had no choice.

10 **MS. ESSARY:** I want to just go back to also -- we saw a
11 little bit of the video snippet from your interview with the
12 police officers a couple of weeks ago, and you seemed very relaxed
13 with them and they put you at ease.

14 And one of the things that struck me about your
15 testimony, and I just -- we're trying to figure things out here.
16 That's what we're here for, is just to get to the truth.

17 You've freely admitted that you and the boys smoked
18 weed.

19 And do you remember smoking weed the night Mr. Jones was
20 murdered?

21 **THE WITNESS:** I don't remember not smoking weed a day
22 with them. I'm pretty sure we smoked every time we were around
23 each other. I am about 99 percent positive on that. I don't
24 remember never not smoking.

25 **MS. ESSARY:** So you're here with us today because you've

1 taken back the testimony that you provided at trial and that you
2 ultimately provided at the end of your interrogation by the
3 police. And I understand what you said went on to get that
4 testimony. I hear you completely.

5 But when I saw the police deposition, it bothered me to
6 hear you say something to the effect -- and please don't let me
7 put words in your mouth -- that you were so high, you really
8 didn't remember much.

9 Can you help me sort that out a little bit?

10 **THE WITNESS:** Because they had me thinking I -- I felt
11 like I was -- I had been got -- that I was crazy. When I told
12 them exactly what I told y'all when I first come in this room,
13 "Oh, okay, well you don't remember going here? And you don't
14 remember going here?" And talking about any relation to, like,
15 Big Lots or Dollar General or something? And it -- they were just
16 naming off places and I was like, "No, I don't remember going none
17 of them places."

18 "Well, you know, we seem to think you did." And, I
19 mean, and then that's just -- I really thought that I had done
20 gotten so stoned that I could not remember going to these places.

21 And that's how they made me feel.

22 I perfect -- I do not remember ever going to them places
23 on that date. I mean, did we ever go? Yes, yes, we did. But I'm
24 not -- I don't specifically recall going on that day.

25 **MS. ESSARY:** Is it fair to say that while they were

1 interrogating you, you were under the influence of marijuana at
2 that time and that kind of confused you during that time?

3 **THE WITNESS:** During the interrogation?

4 **MS. ESSARY:** Yes, ma'am.

5 **THE WITNESS:** I don't know. Are you talking -- I mean,
6 I don't -- I didn't smoke before I went for the interrogation.
7 I was --

8 **MS. ESSARY:** That's my question.

9 **THE WITNESS:** I was sitting -- no, no, I did not. I was
10 sitting at home. No. I was at home with my grandmother and
11 them -- no. Absolutely not. Only time I ever smoked was when I
12 was away from them.

13 **MS. ESSARY:** Thank you.

14 **JUDGE LOCK:** Commissioner Britt.

15 **MR. BRITT:** Good morning, Ms. Black. My name is Johnson
16 Britt. I just have a few questions. And I know this is an
17 intimidating situation for you to be in.

18 But let me ask you this. I'm not real clear on when you
19 actually met all these guys and where.

20 **THE WITNESS:** Okay. So the house that is beside the
21 Jermal's family's house that is -- if you're standing at the tree
22 here, you're looking at Jermal's house. The house to the left
23 that now has wooden stuff, has the windows boarded up, stuff like
24 that-- there was a woman who used to be married to one of my
25 uncles who passed away. She lived in the house next -- in that

1 house, and I used to go over there and hang out with her son, who
2 was at one time a cousin by marriage. And we used to sit out
3 there and sit on the porch and we'd smoke.

4 And he already knew the boys, all of them. I didn't.
5 And that's how I met them. They saw us out there smoking one
6 night and they walked over and everybody just started cutting up
7 and kicking it. And that's just -- that's how it ended.

8 So I went from hanging out with him to hanging out with
9 them because I had -- I had more fun with them. I clicked better
10 with them.

11 **MR. BRITT:** How old were you?

12 **THE WITNESS:** 16.

13 **MR. BRITT:** So you didn't meet them until you were 16?

14 **THE WITNESS:** Yes.

15 **MR. BRITT:** Okay.

16 Now, this occurred in November. When did you turn 16?

17 **THE WITNESS:** April 1st.

18 **MR. BRITT:** And when did you get the car?

19 **THE WITNESS:** I'm not entirely sure because my -- the
20 car I got when I was 16, when I first got my license, was a Nova.
21 I had it for a few months, my mom took it and sold it, and that's
22 when I got the Cougar.

23 **MR. BRITT:** Okay.

24 Did you drive the Nova over to the south side?

25 **THE WITNESS:** I went to the south side but that's not

1 when I met them, not when I had that car.

2 **MR. BRITT:** No, I'm saying you -- you said when you
3 got -- you told us earlier when you got that Cougar, that was
4 your, basically, ticket to freedom.

5 **THE WITNESS:** While I was at my grandmother's.

6 **MR. BRITT:** While you were at your grandma's.

7 So when you turned 16 in April, you were still living
8 with your mom?

9 **THE WITNESS:** Yes.

10 **MR. BRITT:** Okay.

11 And you got a Nova to drive.

12 **THE WITNESS:** Yes.

13 **MR. BRITT:** Did you drive that car over to the south
14 side immediately upon getting it?

15 **THE WITNESS:** I'd drive through there, like cut through
16 and, like, I would get off -- I would literally get off the
17 highway just so I could cut through town just so I could show my
18 car off.

19 **MR. BRITT:** You were going to check things out.

20 **THE WITNESS:** That's it. And I'd ride through. But I
21 didn't never stop anywhere. I'd ride drive through, and then that
22 was it because if I was spotted out in that car over there, my mom
23 was fixing to let me have it.

24 **MR. BRITT:** Okay.

25 So at what point did you move in with your grandparents?

1 **THE WITNESS:** Sometime -- I can't even -- I can't give
2 you an exact date. Me and my mother butted heads and we had --
3 we'd butt heads about something and when we did, I left and I went
4 to my grandmother's.

5 **MR. BRITT:** When you say you "left," I mean, you
6 literally packed your bags and left or you --

7 **THE WITNESS:** Literally.

8 **MR. BRITT:** You just decided, "I'm going to go stay at
9 grandma's and granddaddy's for a little while"?

10 **THE WITNESS:** Literally. I moved out. I packed my
11 stuff and left.

12 **MR. BRITT:** Okay.

13 Did your grandparents know in advance you were coming or
14 did you just show up?

15 **THE WITNESS:** Kind of like a -- I called my grandma and
16 told her what was going on. And it was pretty much a, "Well,
17 hell. Come on." And that's about how it was.

18 **MR. BRITT:** And you were -- what? -- a sophomore, junior
19 in high school?

20 **THE WITNESS:** Junior, I think.

21 **MR. BRITT:** Were you already going to school in Davidson
22 County or did you go to school in Winston-Salem at that time?

23 **THE WITNESS:** Oh, no. Davidson County.

24 **MR. BRITT:** Okay.

25 And it's not that far from the south side to the county

1 line and going into Davidson, is it?

2 **THE WITNESS:** No.

3 **MR. BRITT:** 5, 10 miles at the most.

4 **THE WITNESS:** Max.

5 **MR. BRITT:** Not even that, maybe.

6 **THE WITNESS:** (Nonverbal response.)

7 **MR. BRITT:** Okay.

8 So at what point after your mom sold the Nova did you
9 get this Cougar?

10 **THE WITNESS:** Almost immediately. My grandfather is the
11 one who bought me both cars, and he wasn't going to -- he wouldn't
12 let me be without any kind of ride.

13 **MR. BRITT:** And does -- let me ask you this.

14 Were you already smoking weed at that time?

15 **THE WITNESS:** Yeah. I'd been smoking weed since I
16 was 13.

17 **MR. BRITT:** Okay.

18 Who introduced you to weed?

19 **THE WITNESS:** Some friends -- my uncle -- I had another
20 uncle who stayed in King, and the neighborhood he stayed in, there
21 were some kids -- well, I won't say kids. I was 13, and they were
22 older kids, they were 17, 18 years old, and they were -- their
23 parents were friends with him but I was at their house, and they
24 asked if I wanted to hit it and I was like, "Okay," because it was
25 just us sitting there, and they were smoking and so I wanted to

1 smoke because I wanted to fit in. And that's just -- that was
2 what it was.

3 MR. BRITT: And so once you started smoking weed at the
4 age of 13, I take it you continued.

5 THE WITNESS: I did.

6 MR. BRITT: What was that on? A daily basis or as time
7 when you could get it?

8 THE WITNESS: When I could get away -- when I could get
9 away from my mother. My mother confronted me about smoking weed
10 when I was 15. And I told her I had been smoking. Then she
11 threatened to go and get a drug test at the store. When she
12 threatened me with that drug test, I broke down and I told her.

13 MR. BRITT: Okay.

14 Was that the incident where you told Mr. Adcock --
15 Atkins that she filled your mouth with dish soap? Or was that a
16 different incident?

17 THE WITNESS: No. That was a different incident.

18 MR. BRITT: Okay.

19 And were you buying it or were you just relying upon
20 other people to provide it to you?

21 THE WITNESS: I just always hung out with people who
22 were smoking.

23 MR. BRITT: Who had it?

24 THE WITNESS: Yeah.

25 MR. BRITT: Okay.

1 Now, when you met these guys and you started hanging out
2 with them, were you buying the weed or was one of them buying the
3 weed?

4 **THE WITNESS:** They typically always already had it.

5 **MR. BRITT:** Okay.

6 Who generally always had it?

7 **THE WITNESS:** All of them.

8 **MR. BRITT:** Everybody?

9 **THE WITNESS:** Everybody. I mean, it would be different
10 ones. It wasn't any specific one at any time, it was just some --
11 they'd either -- somebody'd roll up, somebody would break it down
12 and do their little thing. I don't even know exactly whose weed
13 it was.

14 **MR. BRITT:** Okay.

15 And when you were smoking with them, did they already
16 have it rolled into joints or would somebody have to break out a
17 bag and some rolling papers and roll joints?

18 How did that work?

19 **THE WITNESS:** There were blunts, and sometimes they
20 would already have a roll ready or have one or two rolls before I
21 got there or waiting on me.

22 **MR. BRITT:** Okay.

23 **THE WITNESS:** And then sometimes they'd have to break it
24 down and roll it up.

25 **MR. BRITT:** And so when -- you say there were blunts.

1 You're talking about a cigar?

2 **THE WITNESS:** Yes.

3 **MR. BRITT:** Was it already packed?

4 **THE WITNESS:** No. Just it all depended on if they had
5 already rolled them up or not.

6 **MR. BRITT:** Okay.

7 And so you said you were going to south side daily.

8 **THE WITNESS:** Yes.

9 **MR. BRITT:** How long would you spend there? From the
10 time you got out of school and drove there until you had to be at
11 home at night?

12 **THE WITNESS:** From the time I -- as soon as I got out of
13 school, I went to my grandma's. I always went there first because
14 if she wanted -- I had to make sure that she didn't have any
15 errands she wanted me to run, any cleaning she wanted me to do
16 around the house, anything like that.

17 And once I made sure I was in the clear there, I'd tell
18 her I was going one place and that's where I'd go. And I'd hang
19 out until I knew what time I had to be home unless she paged me.
20 And then if she paged me, I had to get home, which is -- it was a
21 convenient plus side to hanging out right there because they were
22 literally at the top of Old Lexington and she was at the bottom.
23 So it was one road that was wrapped and I could get there and I
24 could get home in 10, 15 minutes max.

25 **MR. BRITT:** And so when you were hanging out with these

1 guys and y'all were smoking, how much were you smoking on a daily
2 basis?

3 **THE WITNESS:** Multiple blunts. I don't know. Two,
4 three, four sometimes.

5 **MR. BRITT:** Okay.

6 And were they -- on those occasions, was it just
7 somebody would light up a blunt, pass it, or were there multiple
8 blunts that were being smoked at one time?

9 **THE WITNESS:** Both.

10 **MR. BRITT:** Okay.

11 And you told us earlier that you recall -- remember
12 incidents where you drove home after smoking and not remembering
13 how you got there.

14 Is that is it fair to say?

15 **THE WITNESS:** Absolutely.

16 **MR. BRITT:** How often would you have periods like that
17 where you didn't remember how you did something or what you did?

18 **THE WITNESS:** Like every day.

19 **MR. BRITT:** Okay.

20 Fair to say you were getting stoned?

21 **THE WITNESS:** Yes.

22 **MR. BRITT:** And -- but you were able to function? That
23 is, you could drive. You never stopped for an apparent DUI or
24 DWI?

25 **THE WITNESS:** No, no.

1 **MR. BRITT:** Okay.

2 **THE WITNESS:** It was just -- like, I was coherent.
3 Like, I was coherent but it was about -- like, really would just
4 forget. Like, it's like I would be out of the car and be like,
5 "Oh, I'm home."

6 **MR. BRITT:** Kind of like you were here but then it's,
7 like, "Oh, I'm over here"?

8 **THE WITNESS:** Right. It was just -- I don't even know
9 to explain it. Unless you have smoked weed and been there, I
10 don't know how to explain it.

11 **MR. BRITT:** Okay.

12 **THE WITNESS:** It's just weird.

13 **MR. BRITT:** All right.

14 And on those occasions when you didn't recall how you
15 had done something that -- did someone remind you of that and it
16 caused you to remember it?

17 **THE WITNESS:** No. Because it wasn't never like that.
18 It wasn't like, "Dang, I don't remember I got home. Do y'all
19 remember how I got here?" It wasn't never like that right there.
20 Now, it would -- I'd been in conversation and forgot what I'm
21 saying, and I'm like, "What was I talking about?" And which, in
22 turn, would let you know who was listening.

23 **MR. BRITT:** Okay.

24 **THE WITNESS:** So -- but no, that's about the only time I
25 did that.

1 **MR. BRITT:** Now, is it fair to say that when you went
2 over to the south side, in addition to picking the guys up and
3 riding around, that there were places where you would stop on a
4 frequent basis?

5 For example, would you go to Belview?

6 **THE WITNESS:** Yeah. Because we would go to sit on the
7 picnic tables and smoke.

8 **MR. BRITT:** Okay.

9 And would you, like, go to one of the guys' houses or
10 was it always the same house that you went to?

11 **THE WITNESS:** We was just always on the same street.

12 **MR. BRITT:** On the same street?

13 **THE WITNESS:** Yeah. Because I didn't never really go
14 into the houses. I went down to the brothers' house one time and
15 walked into the -- I guess the foyer, the -- right when you walk
16 into the doorway, and never went past there.

17 And they were just running in, grabbing something. I
18 don't even remember what they were grabbing, it was some random
19 day. And that was -- oh, I did go -- I met Bubba's mother one
20 time, two times maybe. Yes. She was real nice.

21 **MR. BRITT:** Okay.

22 **THE WITNESS:** And -- but I never went in Jermal's house,
23 I never went to Dorrell's. None of that.

24 **MR. BRITT:** Okay.

25 You referred to them as "knuckleheads."

1 **THE WITNESS:** Uh-huh.

2 **MR. BRITT:** What does that mean to you?

3 **THE WITNESS:** Just boys -- boys being boys. They're
4 just -- they don't do -- I don't even know how to break that down.
5 Lord, have mercy.

6 Knuckleheads. They just --

7 **MR. BRITT:** Does "knuckleheads" mean to you they go
8 beyond what would be normal misbehavior, goofing off?

9 **THE WITNESS:** That's about it, goofing off. Like, just
10 acting -- acting foolish, doing -- just doing dumb stuff to do
11 dumb stuff.

12 **MR. BRITT:** And then talking a lot of junk?

13 **THE WITNESS:** Yes.

14 **MR. BRITT:** Bragging, kind of like building themselves
15 up?

16 **THE WITNESS:** They would brag against each other.

17 **MR. BRITT:** Okay.

18 **THE WITNESS:** And then they would talk to each other and
19 shut each other down and stuff. But I mean -- but they were
20 friends. They -- it wasn't never, like, a malicious thing. It
21 wasn't never mean or anything like that, it was just them being
22 them.

23 **MR. BRITT:** They just talked smack to each other?

24 **THE WITNESS:** That was it.

25 **MR. BRITT:** And in that, because they were friends,

1 nobody ever lost their cool and got mad or they never started
2 fighting or anything like that?

3 **THE WITNESS:** They never starting fighting. I mean,
4 someone would get in their feelings a little bit. Like Rayshawn,
5 he's gotten pissed off a couple times, and his brother was the
6 only one I ever seen that could just chill him out.

7 **MR. BRITT:** Okay.

8 Of that group, who was the leader?

9 **THE WITNESS:** I would say Nathaniel.

10 **MR. BRITT:** And --

11 **THE WITNESS:** He was the logic and reasoning for all of
12 them. Like, he could -- "Look, y'all need to chill." He was --
13 if they were getting too rowdy and I was, like, "Look, I got to
14 take y'all home," he'd be like, "Look, y'all need to relax, you
15 need to fall back." He was always the voice of reasoning for all
16 of them.

17 **MR. BRITT:** Okay.

18 You said that Bubba was a big guy.

19 **THE WITNESS:** Uh-huh.

20 **MR. BRITT:** How big was he? We have -- I don't -- we
21 haven't seen him.

22 **THE WITNESS:** At that age -- well, considering the age
23 they were, he was big. He could pass about 25.

24 **MR. BRITT:** Well, I mean, was he over 6-foot --

25 **THE WITNESS:** Oh, he was -- yeah.

1 **MR. BRITT:** Was he over 6 feet tall?

2 **THE WITNESS:** I don't know. To me, he seemed like it.
3 He was a lot taller than me. I'm 5'5".

4 **MR. BRITT:** Okay.

5 **THE WITNESS:** So he was -- I would have to look up to
6 see him, talk to him.

7 **MR. BRITT:** And in terms of his stature, was he heavy?
8 You referred to him as having a big ass?

9 **THE WITNESS:** He was stocky. He was a stocky dude.

10 **MR. BRITT:** Okay.

11 You referred to him as a "big-ass fellow" in a couple --

12 **THE WITNESS:** He was like a big, old --

13 (Reporter clarification.)

14 **MR. BRITT:** Was he much bigger than the rest of them?

15 **THE WITNESS:** Yes. He looked like one of these old
16 country home-fed younguns you see out here. That's what it looked
17 like.

18 **MR. BRITT:** Okay.

19 So when -- all right. You're riding around the night
20 that you learn that Mr. -- something has happened at Mr. Jones'
21 house.

22 **THE WITNESS:** I didn't even know it was that house.

23 **MR. BRITT:** Okay.

24 **THE WITNESS:** We did not know specifically.

25 **MR. BRITT:** So you just knew that the police were at a

1 house on that street.

2 **THE WITNESS:** Yeah. We knew it was on that -- somewhere
3 around that corner there because the tape come all the way down.
4 Like, that stuff -- the tape was all the way down to the end, to
5 the -- I guess Burgandy right here. Like, it was all the way down
6 to the end of the corner. So ...

7 **MR. BRITT:** So how close did you actually get to the
8 house?

9 **THE WITNESS:** We didn't -- they allowed us to come in
10 front of the -- well, we come down slow in front of the park
11 because there were people out there and stuff, and then we turned,
12 and that's as close -- you couldn't -- you could not see from in
13 that car or anything because there was so many vehicles and so
14 many people, you couldn't -- there was so much going on, you
15 couldn't see what had happened. You couldn't see anything.

16 **MR. BRITT:** You couldn't see anybody, like, on the
17 ground or --

18 **THE WITNESS:** No. No.

19 **MR. BRITT:** Okay.

20 **THE WITNESS:** You couldn't see all that.

21 And then when we went down beside the park, we couldn't
22 see -- definitely couldn't see nothing there because that's --
23 you're going to see this corner house right here, and so it's
24 not -- you're not going to see anything, period.

25 **MR. BRITT:** And you said that there were people standing

1 outside?

2 **THE WITNESS:** Uh-huh.

3 **MR. BRITT:** Where were they standing?

4 **THE WITNESS:** Like in the intersection of the road, like
5 right up here on the sides and then right here at the road, at the
6 corner, looking.

7 **MR. BRITT:** But beyond the tape?

8 **THE WITNESS:** Oh, the police and stuff?

9 **MR. BRITT:** Yeah.

10 **THE WITNESS:** They were everywhere.

11 **MR. BRITT:** No, no, not the police. The people were
12 standing behind the tape?

13 **THE WITNESS:** Oh, yeah. They -- yeah, they were back.
14 They wasn't up on there. I'm sure the officers had them stand
15 back for a reason.

16 **MR. BRITT:** And so when the guys got out of the car,
17 where did they go?

18 **THE WITNESS:** They didn't go all the way up there. But,
19 I mean, there was -- now, there was somebody that was standing up
20 there to the -- in that intersection where I told you. And I
21 remember one or two of them had run up there and talked to them.
22 So I knew it was somebody they knew. And I figured they probably
23 come from the mill houses that's across from the park.

24 But that was it. And they run and got back in the car.
25 That was it. It wasn't nothing like -- it just -- it's not like

1 they could get up and get close and see anything. You couldn't
2 see anything.

3 **MR. BRITT:** All right.

4 Did you recognize any of the people that were standing
5 out there? Like, for example, did you see the brothers' mom? Was
6 she outside?

7 **THE WITNESS:** I don't know because I don't even remember
8 ever seeing her.

9 **MR. BRITT:** Okay.

10 **THE WITNESS:** But maybe -- I could not even tell you
11 what her face looks like. Maybe once, that -- when all the trial
12 and stuff was going on or not -- well, obviously more than once
13 because there's been two trials, but my mind was not focused on
14 that. That's not where my mind was at. My mind was on just -- I
15 was just all to pieces and couldn't do spit.

16 **MR. BRITT:** All right.

17 **THE WITNESS:** But I couldn't -- I couldn't place her
18 face to tell you.

19 **MR. BRITT:** This happened on a Friday night.

20 **THE WITNESS:** Okay.

21 **MR. BRITT:** Did you go back to the south side the next
22 day?

23 **THE WITNESS:** I went -- I don't know.

24 **MR. BRITT:** Okay.

25 Did you ever talk with any of the guys, or all of them,

1 about what they had seen?

2 **THE WITNESS:** No, because it wasn't nothing -- it
3 wasn't -- it didn't pertain to us. I mean, it was not something
4 that was discussed. It wasn't like that.

5 **MR. BRITT:** Now, you didn't go back and say, "Hey, did
6 y'all find out what happened at that house?"

7 **THE WITNESS:** I don't know.

8 **MR. BRITT:** You don't know or you don't recall?

9 **THE WITNESS:** I don't recall.

10 **MR. BRITT:** All right.

11 And so it was like the 19th, I think, is the date that
12 stands out in my mind for some reason that the police came to your
13 grandparents' house.

14 **THE WITNESS:** Yes.

15 **MR. BRITT:** And they said they needed your car.

16 **THE WITNESS:** Yes.

17 **MR. BRITT:** Did they ask you if they could take the car
18 or did they present you with a search warrant?

19 **THE WITNESS:** No. The Detective Griffin told me they
20 was taking my car.

21 **MR. BRITT:** Did they give you piece of paper?

22 **THE WITNESS:** It was in my grandpa's name. I didn't --
23 so that's who that went to. It didn't come to me.

24 **MR. BRITT:** So your grandpa got a copy of a search
25 warrant?

1 **THE WITNESS:** I would assume.

2 **MR. BRITT:** Okay.

3 And did they put your car on a rollback or a tow truck?
4 How did they move your car from your grandparents' house to the
5 Winston-Salem Police Department?

6 **THE WITNESS:** I don't remember if it was a tow truck or
7 a rollback. I remember it was Ray's Body Shop.

8 **MR. BRITT:** Okay.

9 **THE WITNESS:** That's who I remember picked it up.

10 **MR. BRITT:** And then you didn't see your car again
11 for -- what? -- two or three years almost?

12 **THE WITNESS:** I just seen my car for the first time
13 two years ago.

14 **MR. BRITT:** Two years ago?

15 **THE WITNESS:** It's been a few years.

16 **MR. BRITT:** So they kept it to 2017, '18?

17 **THE WITNESS:** I just -- we just -- my grandfather just
18 got that car back a few -- it ain't been but just a few years.
19 Like, I mean, I'm not -- three, maybe three or four.

20 **MR. BRITT:** Okay.

21 **THE WITNESS:** Maybe, something like that.

22 **MR. BRITT:** Okay.

23 **THE WITNESS:** But -- yeah, and it was cut up. It was
24 just tore all to pieces.

25 **MR. BRITT:** And on that day when they came and got the

1 car, they asked you to come to the police department.

2 **THE WITNESS:** Asked me if I'd be willing to come and
3 talk to them.

4 **MR. BRITT:**

5 Okay. Who asked you that?

6 **THE WITNESS:** Detective Griffin.

7 **MR. BRITT:** And was Detective Griffin one of the
8 officers that started the interview with you.

9 How many officers -- let me back up.

10 How many officers, when you first got to the police
11 department, do you remember being in the interview room?

12 **THE WITNESS:** All I remember is there was a room full of
13 men in there.

14 **MR. BRITT:** Were there people coming and going?

15 **THE WITNESS:** Once in a while, but they was -- mostly,
16 they stayed.

17 **MR. BRITT:** Were they talking to each other?

18 **THE WITNESS:** I did not -- I don't know because I didn't
19 pay attention. I was focused on whoever was sitting there talking
20 to me in my face at the time.

21 **MR. BRITT:** Okay.

22 Did they take turns asking you questions, saying things
23 to you?

24 **THE WITNESS:** It didn't -- it didn't start like that.
25 It started just being spoke to and it was fine, and it's like

1 the -- it seemed like the more -- the more I, I don't know,
2 aggravated or made them mad, that the more they swapped off. And
3 that's when I finally ended up with that one that wanted to holler
4 and scream and spit and all that.

5 **MR. BRITT:** Now, was Detective Griffin one of them that
6 was yelling you?

7 **THE WITNESS:** No. He was always real -- he was always
8 nice. That's the one thing I can say, he was always really nice.

9 **MR. BRITT:** Okay.

10 Let me ask you, have you ever heard a scenario of good
11 cop/bad cop?

12 **THE WITNESS:** Yes.

13 **MR. BRITT:** Looking back, was Detective Griffin the good
14 cop in the room?

15 **THE WITNESS:** There was a whole lot of them in the room.

16 **MR. BRITT:** Okay.

17 **THE WITNESS:** So I couldn't say that he was --

18 **MR. BRITT:** He wasn't the only one?

19 **THE WITNESS:** Yeah.

20 **MR. BRITT:** But there was more than one who was, let's
21 be honest, was being ugly to you?

22 **THE WITNESS:** Yeah.

23 **MR. BRITT:** And then one stands out in your mind.

24 **THE WITNESS:** I don't remember that man's name. I
25 remember what he looked like as far as his hair. I can't pinpoint

1 what his face looked like. I just remember looking at that man's
2 hair and I remember the haircut he had, and I remember how -- how
3 he looked at me, and did -- that man was -- he was -- that was a
4 mean guy.

5 MR. BRITT: Did you cry?

6 THE WITNESS: Oh, I absolutely cried.

7 MR. BRITT: Did you ask at any point if you could leave,
8 take a break --

9 THE WITNESS: I did -- no, I --

10 MR. BRITT: -- go to the bathroom, anything like that?

11 THE WITNESS: I did not find out until I was -- until
12 last year, as a matter of fact, that I could've got up and walked
13 out of there anytime I wanted. I did not know.

14 MR. BRITT: Who told you -- who told you that, Hunter?

15 THE WITNESS: Yep.

16 MR. BRITT: Okay.

17 And at the end of all that, when they had been talking
18 with you, you thought it was being recorded, didn't you?

19 THE WITNESS: I didn't know what was going on.

20 MR. BRITT: All right.

21 Were you asked to sign anything?

22 THE WITNESS: I don't recall.

23 MR. BRITT: Do you --

24 THE WITNESS: I don't recall nothing --

25 MR. BRITT: -- recall signing any papers?

1 **THE WITNESS:** (Nonverbal response.)

2 **MR. BRITT:** Okay.

3 And then they let you go home.

4 **THE WITNESS:** Yeah.

5 **MR. BRITT:** When is the next time after you left that
6 night that you had any contact with the police?

7 **THE WITNESS:** I don't remember.

8 **MR. BRITT:** Was Detective Griffin the person that made
9 any contact with you after that, or did the officers change?

10 **THE WITNESS:** Detective Griffin is the only one who
11 ever --

12 **MR. BRITT:** Griffin did?

13 **THE WITNESS:** Yes.

14 **MR. BRITT:** Okay.

15 And so do you recall how long it was before you ever met
16 Mr. Saunders or Ms. Harding?

17 **THE WITNESS:** I don't -- I don't know how long it was
18 after that.

19 **MR. BRITT:** Do you remember where you met them the first
20 time?

21 **THE WITNESS:** Courthouse, I'm sure.

22 **MR. BRITT:** Did you go to the courthouse or did they
23 come to your house?

24 **THE WITNESS:** Courthouse, I think.

25 **MR. BRITT:** Okay.

1 And you said you kept your grandparents and everybody
2 away from all of this. You didn't want them to know what you were
3 doing.

4 **THE WITNESS:** I mean, my grandfather had his -- I did to
5 try to keep everybody out of it. My mom, since I wasn't living
6 with her, it was a lot easier to keep her out of it.

7 My grandmother was -- she pretty much sat around and
8 she'd listen. She would pick up on what was being said. My
9 grandfather, his mouth itself can't hold water and the man talked
10 about everything.

11 So whatever was said to him or whatever he would
12 overhear or would hear when it come to, like, the officers out
13 there talking to me in there --

14 (Reporter clarification.)

15 **THE WITNESS:** The day that he come and got the car -- so
16 he was down there and whatever he heard is what he would take and
17 he would run with it. And that's what it was.

18 But they didn't -- they didn't jump up in there -- like,
19 it wasn't dived in there.

20 If my mother had known about everything that was
21 really -- like, the whole situation, she would probably have been
22 there from day one as far as like when it come to me going
23 downtown, she would have been there.

24 **MR. BRITT:** She would've stepped up to the plate?

25 **THE WITNESS:** Oh, she would have been there, no doubt.

1 But she would not have even allowed me to go in that room without
2 her being there.

3 MR. BRITT: She would've become, in essence, a mama bear
4 and who was going to take care of her cub.

5 THE WITNESS: Absolutely.

6 MR. BRITT: All right.

7 How many times do you recall ever talking to either
8 Mr. Saunders by himself, Ms. Harding by herself, or the two of
9 them together?

10 THE WITNESS: All of -- every one of those, as I -- a
11 lot.

12 MR. BRITT: Okay.

13 And did Mr. Saunders take notes when you talked with
14 him? Did he write things down?

15 THE WITNESS: Sometimes.

16 MR. BRITT: Did Ms. Harding?

17 THE WITNESS: Sometimes.

18 MR. BRITT: Did they ever go over those notes with you
19 to make sure that what you had told them was correct?

20 THE WITNESS: I want to say I'm sure they did, but I
21 don't, I can't --

22 MR. BRITT: You just don't remember?

23 THE WITNESS: Yes.

24 MR. BRITT: Okay.

25 And so you were notified by someone to come to the

1 courthouse because the trial -- the first trial was to start.

2 Did you receive a subpoena?

3 **THE WITNESS:** I don't remember. I remember Eric -- Eric
4 Saunders is the one who -- who pretty much -- that anything that
5 had to do with me, he is the one that pretty much I dealt with
6 because I wasn't comfortable with her, Ms. --

7 **MR. BRITT:** You weren't comfortable with her?

8 **THE WITNESS:** Yes. With Bierne as I knew her name, her
9 first name. I don't remember her last.

10 **MR. BRITT:** Okay.

11 **THE WITNESS:** So I wasn't comfortable with her. I
12 didn't like her demeanor and the way she come across. But Eric,
13 Eric was real calm, cool, and collected. He was just -- he just
14 had a way to keep you at ease so I dealt with him more.

15 And when it come time to go to court and stuff like
16 that, I mean, he had me come up there and he would discuss, "Look,
17 this is what -- this is what you need to expect, you know, when it
18 comes to the trials. This is -- go ahead and look forward, you
19 know, because they're going to cross-examine you, they're going to
20 sit you there and they're going to hit you with these kind of
21 questions." I mean, he would prepare me for what I was going
22 through or fixing to go through, but as far as subpoenas and
23 stuff, I don't -- I don't remember.

24 **MR. BRITT:** Okay.

25 Did -- was Detective Griffin the person that came and

1 picked you up?

2 **THE WITNESS:** I don't remember.

3 **MR. BRITT:** Okay. Let me back up before trial.

4 What was the van ride? How -- you know, when was it in
5 relationship to when you met Mr. Saunders and -- I'm going to call
6 her by her first name -- Bierne and the trial?

7 **THE WITNESS:** I honestly could not tell you exactly when
8 that van ride took place. And I don't -- I don't know when it
9 took place.

10 **MR. BRITT:** Okay.

11 **THE WITNESS:** I just remember going on a van ride. My
12 grandfather remembered me going on a van ride. So -- but I
13 don't -- I don't know as far in the timeline about when it took
14 place.

15 **MR. BRITT:** They picked you up from school; is that
16 correct? Or at school?

17 **THE WITNESS:** I'm pretty sure that they picked me up at
18 my grandmother's house.

19 **MR. BRITT:** Okay.

20 And they took you back there?

21 **THE WITNESS:** Yeah.

22 **MR. BRITT:** All right.

23 You said in statements that we've read that you were
24 given what you referred to as an encyclopedia.

25 **THE WITNESS:** My transcript.

1 **MR. BRITT:** The transcript.

2 **THE WITNESS:** Yeah.

3 **MR. BRITT:** When do you recall getting the transcript?

4 **THE WITNESS:** I can't say for certain. So I ain't even
5 going to try.

6 **MR. BRITT:** Okay.

7 Do you -- for example, did you get it before the first
8 trial or before the second trial?

9 **THE WITNESS:** I don't know. I would think -- I can't
10 say. I would think -- I don't know.

11 **MR. BRITT:** Okay.

12 Was -- were you ever shown the statement that the
13 Winston-Salem Police Department had prepared based on your
14 interview?

15 **THE WITNESS:** Not that I recall.

16 **MR. BRITT:** Okay.

17 That wasn't shared with you?

18 **THE WITNESS:** Not that I recall. I was just given that
19 transcript, and the transcript was -- I was told just to go over
20 it, read through it, because that there was -- that's what I
21 was -- it's in my stuff and it's packed up and I ain't got to it,
22 trying to find it.

23 **MR. BRITT:** But you still have it?

24 **THE WITNESS:** Yeah. Oh, I kept that thing packed up.

25 **MR. BRITT:** Okay.

1 Let me ask you this: Was this the scenario -- and was
2 it Mr. Saunders that gave it to you or was it Bierne?

3 **THE WITNESS:** No. Mr. Saunders.

4 **MR. BRITT:** Did Mr. Saunders basically say, "Jessica,
5 this is what you've said over the course of this case. You've got
6 to stick to this"?

7 **THE WITNESS:** So I didn't trip up, and that was all it
8 was. So I would not sit here and stumble around because -- which
9 is why I think I got it before the second one -- before the second
10 trial, because it was so you don't sit here and stumble up because
11 they saw how it didn't matter, he asked me the same questions
12 25 times, and every time, the answer was different.

13 And so my transcript had -- it had stuff highlighted in
14 there, there's stuff circled in there, and it's like all my -- all
15 my stuff. And it's, "Okay. So this is -- you know, this is what
16 you said so go ahead and take this home so you can prepare for
17 what you're fixing to go through."

18 And that's what I did.

19 **MR. BRITT:** Okay.

20 **THE WITNESS:** And -- or tried to anyway, but it was --
21 it didn't matter because I'm still going to stumble up.

22 **MR. BRITT:** And it's fair to say you got attacked on
23 cross by the defense lawyers, they came after you.

24 **THE WITNESS:** That's what they do. I mean, so I would
25 say that that's -- that's normal.

1 **MR. BRITT:** All right.

2 Now, you've told us that what you testified to was not
3 the truth.

4 **THE WITNESS:** I did.

5 **MR. BRITT:** Who was the first person that you can recall
6 ever said anything to you about a false confession regarding this
7 case?

8 **THE WITNESS:** Hunter is the only one I can remember
9 sitting down and learning about or talking with as far as being
10 completely, fully open about all this or coming -- opening up
11 fully about it. He is the first one I can remember going full out
12 with everything.

13 **MR. BRITT:** Okay.

14 Is it fair to say he made you feel at ease?

15 **THE WITNESS:** He did.

16 **MR. BRITT:** All right.

17 And was it the manner in which he talked with you or was
18 it the things that he was saying to you that put you at ease?

19 **THE WITNESS:** Some of the things he said put me at ease,
20 but then, his whole demeanor -- he was very, very calm and cool
21 and was, like -- I mean, in certain stuff I said to him, he's
22 like, "Look, Jessica, I can't even begin to try to relate you on
23 this because this is this background I come from." I mean, you
24 know, and as far -- as our outlook on things, and, I mean, but
25 we -- we just -- his whole demeanor, his mannerisms, everything

1 besides the information that he had put out there.

2 **MR. BRITT:** And you said you did some background
3 research on him.

4 **THE WITNESS:** As far as his articles and stuff because
5 that's what -- when he told me what he did and told me that he was
6 writing a piece that had to do with what he was doing, then I went
7 and looked at -- asked him for -- well, I got a link for his stuff
8 and I went through and I read some of the little articles and --
9 to see what kind of work he did.

10 And I went to his Facebook because he sent me a friend
11 request and I wouldn't -- I wouldn't accept it. And he's still
12 not on my stuff. He's never been on my Facebook at all.

13 But I did go and look through his and see what kind of
14 stuff was on there and, I mean, just to -- just to check out.
15 Obviously, I didn't do the extensive stuff he did.

16 **MR. BRITT:** All right.

17 Now, he told you he was doing a story about Chris Paul
18 having been traded to the Rockets and he recalled something --
19 recalled a story, maybe a video, of Chris Paul and his last high
20 school game, walking off the court.

21 **THE WITNESS:** Yes. And he said that the story that he
22 was doing about Chris Paul, that he was coming all the way from
23 back then and why he did that that night and what the whole
24 significance of that was, which is what brought up Mr. Jones,
25 which is what led to all this right here and are all -- what he

1 was trying to accomplish, I guess.

2 **MR. BRITT:** Do you know what he was trying to
3 accomplish? Did he tell you?

4 **THE WITNESS:** First, it was -- first, he was doing this
5 article and he just wanted to show what good has come out of a
6 really ugly situation. And then, as things went on, he talked to
7 not just me, to the others and to the family members of Mr. Jones
8 and, you know, other people, then it proceeded to be, "Well, you
9 know, I think that this could actually be taken farther than what
10 it is," and that was in reference to y'all.

11 **MR. BRITT:** Let me ask you this: Before you ever talked
12 to Hunter, had you heard any rumor, any discussion from anyone
13 these guys had been falsely convicted -- in Winston-Salem?

14 **THE WITNESS:** You know, throughout the years, you -- you
15 hear things here and there. Anytime I ever heard anything in
16 reference to this case ...

17 **MR. BRITT:** You wanted to distance yourself?

18 **THE WITNESS:** I -- that's exactly right. That is
19 exactly right.

20 **MR. BRITT:** And so when you started your conversation
21 with Hunter, initially that was a very reluctant conversation.

22 Is that fair to say?

23 **THE WITNESS:** Yes.

24 **MR. BRITT:** And the more he talked with you, the more at
25 ease you became.

1 **THE WITNESS:** Yes.

2 **MR. BRITT:** And then you ultimately opened up to him and
3 you spilled your guts.

4 **THE WITNESS:** Yes.

5 **MR. BRITT:** When all that was said and done, did you
6 ever think that, "Hey, maybe I need to go tell somebody else this
7 story"?

8 **THE WITNESS:** That is when he kept -- you know, when he
9 was coming at me with his friend, his lawyer, the lawyer friend,
10 that's what that ...

11 He asked me if I had ever received any kind of, I guess,
12 anybody trying to get in touch with me from this one. So I told
13 him about a letter that I had -- a certified letter I received
14 when I then moved to -- it was Burlington and then I moved to
15 Elon.

16 And I got a certified letter there and it was telling me
17 that it was for Jermal Tolliver's case and I tore the letter up
18 and threw it in the trash.

19 **MR. BRITT:** Did you actually read the letter?

20 **THE WITNESS:** I did read the letter.

21 **MR. BRITT:** And do you recall who that letter was from?
22 Did an individual sign the letter?

23 **THE WITNESS:** I didn't -- I didn't even -- wasn't
24 interested in the signature. I read and read what it had to do
25 with and what -- what they were doing, and I put it down like it

1 was done. It went in the trash.

2 And the reason being is because I didn't want to have to
3 go through this whole trial thing again. And I didn't know
4 what -- what it meant to have to go through with the Innocence
5 Commission or Inquiry or the other innocence people. I didn't
6 know what consisted of all that, and I thought, in my mind, it was
7 going to be big trials again. That's the first thing that popped
8 in my head. So -- and I didn't want no part of it.

9 MR. BRITT: Earlier, you were -- you responded to a
10 question. You said that Hunter Atkins is not a friend of yours.

11 THE WITNESS: I wouldn't say we're friends. Because
12 we -- we don't -- I don't know him like that. I know him -- I
13 know him from the conversations we have had and I am comfortable
14 enough to tell -- to say that I trust him. I trust what he is
15 trying to do and what he's trying to accomplish and that his
16 intentions are absolutely good.

17 MR. BRITT: How many conversations would you estimate
18 that you've had with him?

19 THE WITNESS: I don't even know. It's been a lot.

20 MR. BRITT: Okay.

21 THE WITNESS: Here and there.

22 MR. BRITT: To your knowledge, was he always recording
23 those conversations?

24 THE WITNESS: As far as I know.

25 MR. BRITT: And then it's been asked -- you almost

1 suddenly, unexpectedly might be a better word, stopped
2 communicating with him.

3 **THE WITNESS:** If you go back and look at all of the
4 times in between when we have spoken and when we have not, I have
5 done that more than one time.

6 **MR. BRITT:** So there are gaps in between the times
7 you've communicated with each other.

8 **THE WITNESS:** Correct. And I have done that quite a few
9 times. I'll talk to him and then I won't. It's like I get, I
10 don't know, I've had enough of what's going on right then and then
11 I'll quit or I'll have something going on with me and I just don't
12 have time. And then I will pick back up and talk to him and then
13 I'll break it off again.

14 So that's not the only time I've ever just stopped.

15 **MR. BRITT:** Okay.

16 What was the primary means by which you communicated?
17 Text message? Telephone calls?

18 **THE WITNESS:** Text, phone calls, and Facebook messenger.

19 **MR. BRITT:** Did you do e-mails?

20 **THE WITNESS:** Uh-uh. No.

21 **MR. BRITT:** And so when is the last time you actually
22 recall communicating with him?

23 **THE WITNESS:** Before Christmas when he asked me for my
24 address.

25 **MR. BRITT:** Okay.

1 You are very guarded about who knows where you live. Is
2 that fair to say?

3 **THE WITNESS:** Yes.

4 **MR. BRITT:** Okay.

5 And that's one of the things you didn't want him to
6 know.

7 **THE WITNESS:** Not just him. Anybody.

8 **MR. BRITT:** Do you have any idea how he showed up at
9 your boyfriend's mother's house?

10 **THE WITNESS:** Did I what?

11 **MR. BRITT:** Where he got that information? Did he ever
12 share that with you?

13 **THE WITNESS:** He told me that he's a reporter and he's
14 got --

15 **MR. BRITT:** -- sources?

16 **THE WITNESS:** -- access to find what he needs to find,
17 and so I let it go at that.

18 **MR. BRITT:** Did you -- you said that he kind of
19 explained our process.

20 **THE WITNESS:** She did.

21 **MR. BRITT:** Okay.

22 **THE WITNESS:** Or Ms. Bridenstine.

23 **MR. BRITT:** Ms. Bridenstine did?

24 **THE WITNESS:** Yes.

25 **MR. BRITT:** Did Mr. Atkins ever tell you what the final

1 result of this process could be?

2 **THE WITNESS:** Said that they could get -- the ones that
3 were incarcerated could be released and that the stuff wiped off
4 the record.

5 **MR. BRITT:** Okay.

6 Is that all he told you?

7 **THE WITNESS:** Uh-huh.

8 **MR. BRITT:** He never told you that potentially they
9 could receive money from the State of North Carolina for being
10 wrongfully convicted and incarcerated?

11 **THE WITNESS:** No. No. Because when I asked him -- when
12 he -- I asked him what would be -- if I'm sitting here and I go
13 through all that, I was like, "I don't want to go through all this
14 again."

15 And he was like -- and that's when he started telling me
16 that -- what's going to happen. He was like, "If you do, if these
17 boys -- if the boys are innocent and they are found as so, then
18 the ones who -- they would be released, whoever's not been
19 released, and that the stuff would be taken off their record," and
20 that that was all -- that's all I knew.

21 **MR. BRITT:** And you've never heard that potentially
22 someone in North Carolina -- not necessarily them, but someone in
23 North Carolina who's been wrongfully convicted and incarcerated
24 for an extended period of time could receive up to a maximum of
25 \$750,000?

1 **THE WITNESS:** No, I didn't. Let me tell you, I don't
2 keep up with none of this. I mean, anything that has to do with
3 any kind of court, law, news, any of that, I don't -- I don't. I
4 don't watch the news. I don't -- it don't come to me. I don't
5 do -- I don't keep up with courts. I don't keep up with none of
6 this. I didn't know -- I, honest to God, did not know that.

7 **MR. BRITT:** All right.

8 Don't take this wrong. I'm not a psychologist. I'm a
9 lawyer, and I've been doing this for over 30 years. And it's
10 apparent to -- clearly apparent to me that you've been traumatized
11 by this whole incident.

12 Is that fair to say?

13 **THE WITNESS:** I think we all have.

14 **MR. BRITT:** Okay.

15 At any time, have you ever sought help to deal with the
16 trauma you experienced?

17 **THE WITNESS:** I did.

18 **MR. BRITT:** How long ago was that?

19 **THE WITNESS:** I was like 19, 20.

20 **MR. BRITT:** You were 19 or 20?

21 **THE WITNESS:** Uh-huh.

22 **MR. BRITT:** And was there a -- I'm not going to ask you
23 where, what -- was there a course of treatment that was
24 established for you?

25 **THE WITNESS:** She told me I had PTSD.

1 **MR. BRITT:** Okay.

2 **THE WITNESS:** And that that could be a lifelong thing
3 and that pretty much you need a good support system.

4 **MR. BRITT:** Okay.

5 **THE WITNESS:** Because if it's -- sometimes it's stuff
6 that you can't get over yourself; sometimes it takes others, I
7 guess, being your backbone to help you get through it.

8 **MR. BRITT:** Okay.

9 And have you had that support system?

10 **THE WITNESS:** I have.

11 **MR. BRITT:** If you had to do it all over again, start
12 from the beginning, would -- I mean, granted you were 16 years old
13 at the time, would you have done the same thing now if you could
14 do it over again as you did then or would you stand up to them and
15 say, "Hell, no, this isn't the way it happened"?

16 **THE WITNESS:** I would continue to stand up to them
17 because I did for a little while, for a while.

18 **MR. BRITT:** Okay.

19 **THE WITNESS:** And then they eventually -- I'm telling
20 you, they said, "Well, you" -- they told me I was lying and lying
21 and lying and lying and lying and lying and lying and lying. It
22 didn't matter what I said. It was a lie. So --

23 **MR. BRITT:** And I'm going to wrap up my questioning and
24 just say every time you met with the DA's office, was Detective
25 Griffin there?

1 **THE WITNESS:** No.

2 **MR. BRITT:** He was never there?

3 **THE WITNESS:** I mean, he wasn't -- I don't --

4 **MR. BRITT:** Was he ever in the room? That's what I'm
5 asking.

6 **THE WITNESS:** Not that I recall.

7 **MR. BRITT:** All right.

8 So when Mr. Saunders and Ms. Harding met with you, did
9 they simply give you the piece -- say, "Hey, this is your
10 statement, stick to it," or did they ask you, "Tell us the truth.
11 Tell us independently of what the police have given us"?

12 **THE WITNESS:** I don't ever remember -- ever going over
13 that statement like that.

14 **MR. BRITT:** Okay.

15 Were you given opportunities -- well, you were given
16 opportunities at times to change what you had said. During the
17 trial you had an opportunity to testify truthfully, during the
18 cross-examination you had an opportunity to do the same thing, the
19 second trial you had those opportunities.

20 Why didn't you take advantage of those?

21 **THE WITNESS:** Because I was 16 and did what I thought I
22 was supposed to do based on the law -- the police, rather -- based
23 on who I thought I was able -- I was supposed to trust, who I
24 thought I was supposed to listen to.

25 **MR. BRITT:** Did anyone ever tell you that you could go

1 to jail for perjury?

2 **THE WITNESS:** I know you can go to jail for perjury.

3 **MR. BRITT:** All right. Okay. Thank you.

4 **JUDGE LOCK:** Commissioners, our lunch is here and has
5 been for some time.

6 I do know that Commissioner Newton has a few more
7 questions. I believe Commissioner Frye has a few more and
8 Commissioner Jarvis has a few. And, in all candor, I've got just
9 a few.

10 I'm going to suggest perhaps we take a lunch break and
11 pick back up with the testimony of Ms. Black after lunch, if that
12 would work.

13 I'm also going to suggest we take an hour. In all
14 candor, I've got a couple of administrative things I've got to
15 handle at home and need to make some phone calls. I expect the
16 rest of you may be in that boat.

17 Ms. Black, one of the staff members, I'm sure, we'll see
18 that you get some lunch. And I would remind you, please, of the
19 sequestration order. Please don't discuss your testimony today
20 with anybody over the lunch break.

21 Okay?

22 **THE WITNESS:** Completely understood.

23 **JUDGE LOCK:** All right.

24 Do you have any questions of us right now before we
25 break?

1 **THE WITNESS:** No.

2 **JUDGE LOCK:** All right.

3 Anything else, then, folks?

4 All right. We will be in recess, then, until 1:20 by
5 that clock.

6 (Witness stands down, 12:17 p.m.)

7 (Recess taken, 12:17 to 1:22 p.m.)

8 **JUDGE LOCK:** All right. It's looks like everybody is
9 here. I've got about 1:22 so we'll come to order.

10 Any housekeeping matters before we bring our witness
11 back in?

12 **MS. SMITH:** No, sir.

13 **JUDGE LOCK:** All right. Let's bring Ms. Black back in,
14 please.

15 (Witness, Jessica Black, resumes the stand.)

16 **JUDGE LOCK:** All right. Welcome back, Ms. Black. Thank
17 you. I think a couple of the other commissioners had a few more
18 questions.

19 You were able to get some lunch, I hope?

20 **THE WITNESS:** Yes.

21 **JUDGE LOCK:** All right.

22 Ms. Newton, I think, you have some more questions?

23 **MS. NEWTON:** Yes. Thank you, Your Honor.

24 **JUDGE LOCK:** All right. Yes, ma'am.

25 **MS. NEWTON:** Ms. Black, just circling briefly to clarify

1 your testimony regarding your impairment issues after
2 November 15th of 2002.

3 You testified that you were using -- you referred to in
4 this discussion with Mr. Atkins alcohol, weed, pain pills, and
5 cocaine, that you were referring to the incident after the
6 11/15/2002 murder of Mr. Jones; correct? That was after that?

7 **THE WITNESS:** Right. It's referring to the house we
8 were at, the party house we were at. That has nothing to do with
9 the whole thing.

10 **MS. NEWTON:** Okay.

11 Here's my question. Do you recall that the first trial
12 was on August 9 of 2004 -- the first two defendants?

13 **THE WITNESS:** I don't know when the trials were.

14 (Reporter clarification.)

15 **THE WITNESS:** I don't recall when the trials were.

16 **MS. NEWTON:** Okay.

17 Do you recall -- you were pregnant during one of those
18 trials; correct?

19 **THE WITNESS:** Yes.

20 **MS. NEWTON:** Okay.

21 Was it the first trial or the second trial?

22 **THE WITNESS:** I don't know. I just know I was pregnant.
23 I would assume it was the second one because -- I don't -- I don't
24 think -- I don't remember having to go back.

25 **MS. NEWTON:** I can help you but can you lift your voice

1 up just so we can hear you?

2 What is the month of your son's birth?

3 **THE WITNESS:** June.

4 **MS. NEWTON:** June. And that was the 2004 or 2005?

5 **THE WITNESS:** 2005.

6 **MS. NEWTON:** '05. Okay.

7 So if the second trial was May 20 of 2005, you would
8 have been -- you said I think you were about eight months pregnant
9 during the trial where you were pregnant and testifying; is that
10 correct?

11 **THE WITNESS:** Yes.

12 **MS. NEWTON:** Okay.

13 So is it fair to say that you were pregnant during the
14 second trial of the three boys that was tried on May 20 of 2005?

15 **THE WITNESS:** Yes.

16 **MS. NEWTON:** Okay.

17 And when did you meet Mr. Smith? Mr. Smith is the
18 father of your son; is that correct?

19 **THE WITNESS:** Yes.

20 **MS. NEWTON:** Okay.

21 When did you meet him?

22 **THE WITNESS:** I don't know. When I was 17, maybe.

23 **MS. NEWTON:** It's hard to hear you.

24 **THE WITNESS:** When I was 17, maybe.

25 **MS. NEWTON:** 17. Okay.

1 So 2003, possibly?

2 **THE WITNESS:** Yeah, possibly.

3 **MS. NEWTON:** Okay.

4 So during this discussion about, you know, the drugs and
5 the alcohol, the impairment issues, is it fair to say in -- from
6 2003 up until the 2005 trial, you were using those --

7 **THE WITNESS:** No. No, it's not fair to say because all
8 those substances were not in reference just to me. That was in
9 reference to the entire household of what everybody was using.
10 That's -- when I spoke to him, that's what it was in reference to,
11 the entire household.

12 **MS. NEWTON:** Okay.

13 Ms. Black, let me just remind you what you said. And
14 we're just looking at a transcript of what you actually told
15 Mr. Atkins. And that would be in Interview with Jessica Black 4
16 by Hunter Atkins, page 15, starting with line 7 or 8.

17 "I eff partied my ass off over there. We drank all the
18 time. We smoked weed. We ate pain pills."

19 You were including yourself at least, weren't you?

20 **THE WITNESS:** I was including myself in the partying,
21 yes. Yes, I was. But that -- that's not --

22 **MS. NEWTON:** So, Ms. Black, during the first trial,
23 August 9 of 2004, do you recall your level of impairment during
24 that trial?

25 **THE WITNESS:** I wasn't impaired during the trial.

1 **MS. NEWTON:** Okay.

2 So just before you testified, what was the last time you
3 had had any of those substances?

4 **THE WITNESS:** I don't know.

5 **MS. NEWTON:** But you were partying your ass off up until
6 you were -- is it fair to say, I you think you said you were
7 pregnant with your son? "As soon as I got pregnant, soon as I
8 found out, everything was cold turkey."

9 Is that what you said?

10 **THE WITNESS:** No, because the whole thing is being taken
11 out of context.

12 **MS. NEWTON:** Well, explain it.

13 **THE WITNESS:** Because it's not like that. When I was
14 having the conversation with him, how it's put down there or how
15 it's said was not how it was meant. They was taken out of context
16 as to how it was said.

17 **MS. NEWTON:** Okay.

18 So your words being verbatim transcribed are somehow out
19 of context?

20 **THE WITNESS:** But it -- because -- let me -- when me and
21 him were speaking, we also spoke out at my car, which was not
22 recorded. Period.

23 We also -- we have spoke a couple of times that have not
24 been recorded. And --

25 **MS. NEWTON:** Is it fair to say --

1 **THE WITNESS:** -- stuff that was -- and just like I told
2 him, I have sat there and I have wrote down to him and told him
3 don't sit here and think that it's all because I'm using.

4 He also knows about me telling him when I tried cocaine
5 and when I did pain pills or when I was on pain pills or whatever.

6 He knows about every single bit of that because I went
7 through and reclarified all of that.

8 **MS. NEWTON:** So, Ms. Black, according to your statements
9 to Mr. Atkins, at least before you became pregnant with your son
10 who was born in June of 2005, you were using impairing substances,
11 that that would include during the trial.

12 Is that fair, based on your statements?

13 **THE WITNESS:** I guess so.

14 **MS. NEWTON:** Okay.

15 So during the trial of Mr. Cauthen and Mr. Banner in
16 August of 2004, were you using alcohol?

17 On the record, please.

18 **THE WITNESS:** I guess.

19 **MS. NEWTON:** Weed?

20 **THE WITNESS:** Yes.

21 **MS. NEWTON:** Pain pills?

22 **THE WITNESS:** No.

23 **MS. NEWTON:** So when you told him that you were -- you
24 ate pain pills --

25 **THE WITNESS:** When I told him that I ate the pills,

1 that -- all I knew is that they messed with pain pills, they
2 messed with sleeping pills.

3 MS. NEWTON: How about cocaine?

4 THE WITNESS: I did not do cocaine until I was 28 years
5 old.

6 MS. NEWTON: Okay.

7 During the May 20 of 2005 trial, you were eight months
8 pregnant; correct?

9 THE WITNESS: Yes.

10 MS. NEWTON: Now, you said that while you were pregnant,
11 you had a couple of hits of marijuana of a joint I think is how
12 you put it --

13 THE WITNESS: Yes.

14 MS. NEWTON: -- is that correct?

15 Okay. So you were using marijuana. Were you using
16 marijuana during that trial?

17 THE WITNESS: I hit it one time when I had Braxton-Hicks
18 contractions going on, at -- towards -- you know ...

19 MS. NEWTON: Okay.

20 So during the May 20 of 2000 [sic] trial, you were not
21 impaired like you were during the April 9 of 2004 trial; correct?

22 THE WITNESS: No.

23 MS. NEWTON: Okay.

24 Now, Mr. Britt asked you about your treatment for PTSD.
25 You said when you were 19 or 20. Is it fair to say that was in

1 2004 you were treated for PTSD?

2 **THE WITNESS:** No. It would have been after my son was
3 born.

4 **MS. NEWTON:** After your son was born?

5 Okay. So in 2005.

6 Now, was your treatment for PTSD driven by this case or
7 your drug use --

8 **THE WITNESS:** I --

9 **MS. NEWTON:** -- or your living with your grandfather?

10 **THE WITNESS:** No. It was driven partially by this case
11 and partially by the physical abuse I was going through from my
12 son's father.

13 **MS. NEWTON:** Your son's father. Okay.

14 So physical abuse for that.

15 **THE WITNESS:** Fuck.

16 **MS. NEWTON:** You also were living with your grandparents
17 in 2002 during this -- when this case -- when this murder
18 happened; is that correct?

19 **THE WITNESS:** Yes.

20 **MS. NEWTON:** Now, again, your mother was interviewed in
21 December of 2019 by the Commission.

22 Were you being abused by her grandfather during that
23 same time?

24 **THE WITNESS:** No.

25 **MS. NEWTON:** So if your mother said that you were --

1 **THE WITNESS:** I have never been abused by my
2 grandfather. She was abused by my grandfather.

3 **MS. NEWTON:** I see. Okay.

4 So when she calls him a pedophile, she's referring to
5 herself, not you?

6 **THE WITNESS:** She sure is.

7 **MS. NEWTON:** So he didn't abuse you when you were living
8 with him?

9 **THE WITNESS:** No.

10 **MS. NEWTON:** Okay. I just wanted to clarify that.

11 Now, Ms. Black, just one other question. You've had
12 plenty of times since you were 16 years old to think about this
13 case and your involvement in it. The State called you an
14 eyewitness to the incidents, apparently, with the boys.

15 Can you point to any fact that you know of which would
16 reveal innocence on the part of any of the boys -- an alibi, a
17 timeline, a fact -- anything?

18 **THE WITNESS:** That whole evening, they were with me.
19 Okay? So what -- anything that went out before then, no, I can't,
20 because I wasn't there. But the whole evening, they were with me.

21 **MS. NEWTON:** Okay.

22 So from what time to what time were they actually with
23 you?

24 **THE WITNESS:** So from sometime between 4:00 and 4:30 up
25 until about 8:00, 8:30.

1 **MS. NEWTON:** And you're saying as you're testifying
2 under oath today that from 4:00 or 4:30 on and 11/15/2002 to 8:00
3 or 8:30 on 11/15/2002, at least the four boys you've talked about
4 that you knew were in the car with you and did not leave your
5 sight.

6 **THE WITNESS:** When we were at the mall, we separated for
7 just a little bit, that I went to go see a friend of mine who
8 worked in the mall. They went somewhere else. We were only
9 separate for just a few -- it was a very, very short period
10 because I told -- they wanted to go and do -- they wanted to go
11 and look around and do their thing. I wanted to go see my friend.

12 So therefore, I told them to meet me back at the main
13 entrance of the mall where we come in, and that is the only time
14 they were not around me. But they were at Hanes Mall.

15 **MS. NEWTON:** Up until 8:30?

16 **THE WITNESS:** Up until -- I say 8:30 because I'm
17 thinking I dropped them out right after we seen the -- the SUVs
18 and stuff.

19 **MS. NEWTON:** Okay.

20 **THE WITNESS:** So I cannot tell you for exact what time
21 that was. But the SUVs and everything were already there with the
22 caution tape already wrapped around in there, all that, before we
23 got back.

24 **MS. NEWTON:** And you had eyes on them from 4:00 to 4:30
25 to 8:30?

1 **THE WITNESS:** Yes. They were with me.

2 **MS. NEWTON:** Okay.

3 And that is your testimony today after all this time?

4 **THE WITNESS:** That is my testimony today.

5 **MS. NEWTON:** Okay.

6 Now, just one more thing. Which boys, if you can
7 possibly imagine -- take yourself back to the mall.

8 Who was with you at the mall that night?

9 **THE WITNESS:** I don't know. I can tell you for certain
10 that Nathaniel was with me because he was almost -- he was always
11 with me.

12 **MS. NEWTON:** So that's Nathaniel Cauthen -- Stinky;
13 correct?

14 **THE WITNESS:** Yeah.

15 **MS. NEWTON:** Okay.

16 Who else?

17 **THE WITNESS:** I don't even know. I don't know.
18 Rayshawn -- Rayshawn acting foolish at the bowling alley is the
19 whole reason we got kicked out of that bowling alley --

20 **MS. NEWTON:** So we've got Rayshawn.

21 How about Bubba?

22 **THE WITNESS:** I don't know which other ones were with
23 me. I can't remember.

24 **MS. NEWTON:** Okay.

25 Mel? The quiet sweet one? Was he was there?

1 **THE WITNESS:** I don't remember.

2 **MS. NEWTON:** Okay.

3 **THE WITNESS:** I remember Rayshawn because of him cutting
4 the fool up in Creekside and that officer telling me I had to get
5 him out of there or I was going to be banned.

6 **MS. NEWTON:** Okay.

7 And you don't remember anybody else at the mall?

8 **THE WITNESS:** No.

9 **MS. NEWTON:** Is there any other fact that you can point
10 to that would reveal -- other than your testimony that you
11 recanted that they are innocent of this crime?

12 **THE WITNESS:** No because I wasn't with -- I don't know
13 what went on before I got to them. I cannot say that they did or
14 did not.

15 What I can say is I did not see --

16 **MS. NEWTON:** You're saying they didn't do it within that
17 period of time?

18 **THE WITNESS:** That's exactly right.

19 **MS. NEWTON:** Okay. All right. Thank you, ma'am.

20 **JUDGE LOCK:** Commissioner Frye.

21 **SHERIFF FRYE:** Okay. First, let me try to back up and
22 try to get things clear in my head.

23 You said that you trusted the guy -- the newspaper
24 reporter, Hunter, because you looked in his eyes and could tell
25 that he cared about what was going on.

1 **THE WITNESS:** No. Going by what his -- the whole
2 process that he was trying to go to and the stuff that he was
3 expressing to me, it was -- and sitting there with him, he seemed
4 really sincere.

5 **SHERIFF FRYE:** When you were sitting there with him?

6 **THE WITNESS:** Yes.

7 **SHERIFF FRYE:** But you recanted your testimony over the
8 first -- during that first long phone conversation; correct?

9 **THE WITNESS:** No. I recanted the testimony during the
10 interview at IHOP.

11 **SHERIFF FRYE:** That was the first time you recanted your
12 testimony?

13 **THE WITNESS:** With him?

14 **SHERIFF FRYE:** Yes.

15 **THE WITNESS:** That's the first time I sat down and
16 talked to him besides --

17 **SHERIFF FRYE:** And you did have a long phone
18 conversation prior to the IHOP; right?

19 **THE WITNESS:** Yeah, when I was sitting there cussing him
20 out and he asked me to meet him at IHOP.

21 **SHERIFF FRYE:** So you never said anything during the
22 conversation?

23 **THE WITNESS:** I don't -- I don't remember because I was
24 so mad.

25 **SHERIFF FRYE:** Okay. Fair enough. I understand.

1 And I'm going to ask you something, and I know this is
2 going back a long time, you talked about that -- you told the
3 police the truth to begin with and they wouldn't -- they didn't
4 want to hear that.

5 **THE WITNESS:** That's exactly right.

6 **SHERIFF FRYE:** What exactly did you tell the police to
7 begin with or do you remember?

8 **THE WITNESS:** That I got out of school, went by my
9 grandparents. I went up there and rode around. Didn't see them
10 in the -- in no yards. So therefore, they were not outside. So I
11 went riding around the block where I normally would go because
12 they would typically be walking and then there they were, walking.

13 So I picked them up and they said they were going to go
14 to a party, they wanted to change clothes. Then they said they
15 wasn't going to a party, we was all just going to hang out. And
16 that's what we did.

17 We left from there and one of the other come first, I
18 don't know which one we went to first. We went to the bowling
19 alley and we went to the mall, we rode around Midway, we come
20 back, and then we circled back around, and that's when -- drove
21 back around because we were -- just finished smoking. That's why
22 we stayed circling and riding so much.

23 So we finished smoking, come back around, see all of the
24 SUVs, the tape, all the lights, and after that was said and done,
25 I dropped them out and then I went to Elizabeth Fowler's house.

1 And that is what I told them from the get-go.

2 **SHERIFF FRYE:** Okay.

3 Let me read what we were told from the get-go, your
4 first initial statement was.

5 That you told him that you met up with several black
6 males including Cauthen, Banner, and Brayboy, around dark
7 somewhere on Devonshire. They talked until just after dark and
8 you left. Black said she then drove to Lexington to visit with a
9 friend for one hour, returned back to Devonshire, met up with the
10 group. She took Bryant, Cauthen, and Banner to the Amoco station
11 and then back to Devonshire. Black said she left and then went to
12 visit her friend Elizabeth Fowler for about 30 minutes.

13 Is that what you told them to begin with?

14 **THE WITNESS:** No, that's not what I told them to begin
15 with.

16 **SHERIFF FRYE:** But you denied having anything to do with
17 it even there. So that's not what you told him to begin with.

18 Why would they say that was your statement to begin
19 with?

20 **THE WITNESS:** Same reason they keep telling me I was
21 lying. Same reason they keep sitting here and throwing all this
22 stuff out.

23 **SHERIFF FRYE:** What would be the point of them saying
24 that --

25 **THE WITNESS:** Because it's like --

1 **SHERIFF FRYE:** -- as opposed to what you said?

2 **THE WITNESS:** Your guess is as good as mine. I don't
3 have a clue what would be their -- I don't understand what their
4 point would be with anything.

5 **SHERIFF FRYE:** You didn't tell them about the Amoco --
6 you never said to them --

7 **THE WITNESS:** I don't even remember going to an Amoco
8 station. I don't remember doing nothing. What I do remember is
9 what I told them.

10 **SHERIFF FRYE:** Okay.

11 And so you did tell them from the very outset that you
12 went to the bowling alley; correct?

13 **THE WITNESS:** Yeah.

14 **SHERIFF FRYE:** So nobody come in there -- Detective
15 Tolliver didn't come in and tell you -- or, excuse me, Detective
16 Rose didn't come in and tell you that Tolliver told -- said that
17 you took them to a bowling alley?

18 **THE WITNESS:** No. I didn't have to. One of the
19 officers that knew me from the bowling alley is the one who threw
20 me out. So I didn't have to have an officer come in there and
21 tell me that we went to the bowling alley. I knew we were at the
22 bowling alley.

23 **SHERIFF FRYE:** So you said that right up front with
24 them?

25 **THE WITNESS:** Yes.

1 **SHERIFF FRYE:** Okay. That's all I have.

2 **JUDGE LOCK:** Commissioner Jarvis.

3 **MR. JARVIS:** I would like to go back to 2002, during the
4 whole smoking of marijuana. And the reason why I want to do that
5 is because I'm trying to get to a particular motive.

6 You said that people would just kind of -- the kids just
7 have it, you know.

8 Did you know anyone ever purchased it or they were just
9 given it? Who do you think their suppliers were?

10 **THE WITNESS:** I don't know who their suppliers were. I
11 don't know if they purchased it. I don't know. Because if they
12 went into somebody's house or anything -- I never went in nobody's
13 house. I never went -- you know, I stayed in my car anytime we
14 went anywhere.

15 **MR. JARVIS:** Okay.

16 Did you see any, you know, any cash, say, "Hey, I'll be
17 right back, I need to go get something," and they, you know, had
18 cash with them and went off to purchase something?

19 **THE WITNESS:** I never seen them with cash. I'd never
20 see them with anything but weed. But they had family or friends
21 or something that lived around the area, I mean, and we'd stop by.
22 So I mean, I -- but I could not sit here and say that they went
23 and bought it or it was given to them or -- one way or the other.

24 **MR. JARVIS:** Right.

25 You just knew that they somehow got it?

1 **THE WITNESS:** That's it.

2 **MR. JARVIS:** So not this evening, not the night in
3 question, but previous times in relationship with them, chilling
4 out, driving around, did you guys, like, go to convenience stores
5 and the guys would either pick up, you know, a candy bar or a soda
6 or whatever?

7 Did you see a lot of cash just moving around with these
8 guys?

9 **THE WITNESS:** I didn't see -- I didn't never see any
10 cash because I was never -- like, when I tell you we pulled up at
11 the store, if -- when we did go to stores and stuff like that,
12 rarely did I ever get out of a car. I always stayed in my car.
13 They'd run in, get whatever they needed to get, and that was it.

14 **MR. JARVIS:** Would they ever hook you up, get you
15 anything like a soda or whatever while you were waiting?

16 **THE WITNESS:** It wasn't like that. I always had my
17 drinks.

18 **MR. JARVIS:** All right.

19 **THE WITNESS:** I always had my stuff. They wasn't like
20 that. It was -- all I wanted to do was get high, that was it,
21 just wanted to smoke.

22 **MR. JARVIS:** Got it.

23 **THE WITNESS:** And hang out with my friends.

24 **MR. JARVIS:** So did you ever hear them talking a lot
25 about money or wanting money or talking about what they would do

1 if they got some?

2 (Reporter clarification.)

3 **THE WITNESS:** No. No.

4 **MR. JARVIS:** Was money ever a topic of discussion?

5 **THE WITNESS:** I mean, I'm sure it was a time or two. I
6 mean, they -- 14-year-old boys, I'm sure.

7 **MR. JARVIS:** Right.

8 **THE WITNESS:** And then you think here it is at this
9 time, it's -- that's when you focus on what you wear and how
10 you're looking and -- and all kinds of little stuff like that, and
11 you're old enough to want to go out, you go and do stuff. I
12 mean -- so I'm sure, but it wasn't never like something so
13 significant that it would leave a lasting memory in my mind.

14 **MR. JARVIS:** Right.

15 So in your conversations just chilling out, no one said,
16 "Hey, I just got this pair of," you know, whatever, "I just got
17 this new shirt, it cost this much," and you're like, "Wow, that's
18 really expensive" or --

19 **THE WITNESS:** I didn't pay attention to nothing like
20 that. And if I'm high, I'd be like "Mm-hmm, okay, all right, all
21 right," and I'm not paying not near a lick of attention.

22 **MR. JARVIS:** Okay. All right.

23 So you never saw really anyone have a lot of cash, a lot
24 of money. This is in the car, nobody spoke about it. It wasn't a
25 big deal. And the marijuana just showed up. There wasn't any

1 person purchasing it, it was just as they just kind of had it,
2 pulled out, rolled it up, did a little?

3 **THE WITNESS:** Well, I mean, I couldn't say anything
4 because when I -- I'd do that. I'd pop up with weed, whether I
5 was with them or with somebody else, and I just -- I had friends
6 that just give it to me.

7 **MR. JARVIS:** Right.

8 **THE WITNESS:** So I didn't have to worry about it. So it
9 wasn't never a big thing. I never thought about it. It wasn't
10 that deep.

11 **MR. JARVIS:** Okay.

12 Let me ask you a question -- changing topics here.

13 When -- up until the point that you spoke with Hunter
14 Atkins, you had denied knowing anything about anything. You said
15 in your statement at the trial you tried to remove yourself as far
16 away from -- anytime you heard it, you ran the opposite way. You
17 know what I'm talking about, kind of slid away.

18 **THE WITNESS:** Yes.

19 **MR. JARVIS:** And up until him, he was the first
20 person -- from the testimony and all the transcripts that we have,
21 it was the first time that you confided in him and told him that,
22 yes, this is actually what happened and they didn't want me to say
23 this and they kept pushing and pushing and pushing until ...

24 So up until that point, had anyone else asked you what
25 really happened and you lied to them and told them the same story

1 you told at the trial?

2 **THE WITNESS:** No because nobody ever put two and two
3 together. Nobody ever associated my name with this. Nobody.

4 And now -- now, everybody is. But they weren't. Nobody
5 ever put that -- they didn't -- they did not realize, and I was
6 not about to bring to their attention.

7 **MR. JARVIS:** What about Zach's mom, when she asked you
8 about it?

9 **THE WITNESS:** She didn't ask me about it. His mom
10 didn't speak to me like that.

11 **MR. JARVIS:** Okay.

12 What about Zach?

13 **THE WITNESS:** He didn't ask me about it either. He
14 just -- I offered a summary, like it was not in detail. I was
15 like, "Look, I was involved in stuff when I was 16 years old, and
16 pretty much I got up there," said -- and I told him about the
17 transcript and I told him about me getting up there lying on the
18 stand. Now, yes, I did tell him that.

19 **MR. JARVIS:** Okay. So --

20 **THE WITNESS:** I sure did. But I did not go in there and
21 tell him what I said on that stand. I did not tell him where we
22 went. I didn't give him details about anything. I just said,
23 "Look," I was like, "this is what happened. This is why he wants
24 to get ahold of me."

25 **MR. JARVIS:** All right.

1 So that means before you actually had the conversation
2 with Hunter Atkins and divulged what you told him, you actually
3 told --

4 **THE WITNESS:** Oh, so you meant in, like, a summary or
5 regardless, it didn't matter?

6 **MR. JARVIS:** Period.

7 **THE WITNESS:** Okay. So then yes.

8 **MR. JARVIS:** So you're saying -- you're testifying here
9 that Zach actually knew about a false testimony before Hunter
10 actually knew about it?

11 **THE WITNESS:** Only about a day ahead of time because I
12 met Hunter the next day.

13 **MR. JARVIS:** Okay.

14 **THE WITNESS:** Because I went to work that night, I got
15 off work at 8:00 o'clock in the morning and went straight to IHOP
16 and met Hunter.

17 **MR. JARVIS:** Okay.

18 And no one else up until that point had ever talked to
19 you about it, asked you about it, and you had to deny --

20 **THE WITNESS:** No. Nobody that -- I didn't talk to
21 nobody. I didn't even -- I didn't even put myself with that whole
22 situation.

23 **MR. JARVIS:** That's all I have.

24 **JUDGE LOCK:** Thank you.

25 Commissioners, we need to take about a five-minute break

1 and attend to a housekeeping matter.

2 I think staff has a handout for us.

3 During the break and after you have looked at the
4 handout, please give some thought as to whether or not you have
5 any more questions for this witness and we will try to wrap her
6 testimony up.

7 So, Ms. Black, if you will be kind enough to stay with
8 us, please. If you need a little comfort break, one of the staff
9 will assist you with that.

10 **THE WITNESS:** I'm fine.

11 **JUDGE LOCK:** We'll be in recess, then, for just five
12 minutes.

13 (Witness stands down, 1:47 p.m.)

14 (Recess taken, 1:47 to 1:58 p.m.)

15 **JUDGE LOCK:** All right.

16 **MS. SMITH:** Commissioners, I can explain what I think
17 you've started looking at, but I want to put on the record what
18 those handouts are. I think it will just be helpful for you as
19 you continue talking with Ms. Black.

20 Handout 102 is the handwritten notes of Detective Rose
21 and Detective Griffin.

22 The first -- I believe it's one, two, three -- four
23 pages from Detective Rose's notes are notes that we received at
24 his deposition or immediately prior to his deposition that we had
25 not received before.

1 The notes after that are those of Detective Griffin, and
2 those were included in the Winston-Salem Police Department file.

3 Those notes that we've handed you are related to show
4 the initial interaction with Ms. Black with law enforcement.

5 Handout 103 we put together a simplified interview
6 timeline related just to the interviews of the defendants and
7 Jessica Black. There were some questions surrounding who was
8 interviewed when.

9 You did have Appendix H, I believe -- yes, Appendix H,
10 with a more detailed version with some other people included of
11 all of the interviews that night, but we wanted to simplify that
12 for you in case that is helpful to you during this testimony.

13 Appendices in your brief G, I, and J also have more
14 detailed information about those various statements to police.

15 Handout 104 is something that Sheriff Frye had
16 requested, which is just a chart that shows which detectives
17 interviewed which defendants, and that also includes Ms. Black.

18 And then Handout 105 is something that Mr. Bass
19 requested. Detective Griffin -- there was a handwritten or
20 hand-drawn map in the Winston-Salem Police Department notes file.
21 Commission staff was not sure what that was initially and we
22 weren't able to clear that up until we deposed Detective Griffin.
23 During that, he let us know that that was a map that he drew and
24 that he used in his interview with Ms. Black. The report related
25 to that map is on page 112 of your brief.

1 If y'all want to take just a few minutes to review
2 those, and when you're ready -- oh, one other thing.

3 There is a handout, 30, in your first -- they don't have
4 it yet.

5 In a moment, you will receive your second handout
6 notebook. It has Handout 30 in it. That is an aerial map of the
7 area that the commission staff created which may also be of use to
8 you in looking at the park area and the area where the victim's
9 home is located.

10 (Commissioners review, 2:06 to 2:10 p.m.)

11 (Commissioner Essary inquires about 102.)

12 **MS. SMITH:** Handout 102?

13 **MS. ESSARY:** Yes.

14 **MS. SMITH:** The first four pages of Handout 102 are
15 Detective Rose's notes. And the second set that are Bates-stamped
16 page 413 through 419 are the handwritten notes of Detective
17 Griffin.

18 (Commissioners review, 2:10 to 2:14 p.m.)

19 (Witness resumes the stand, 2:14 p.m.)

20 **JUDGE LOCK:** All right. We'll come back to order unless
21 somebody needs a couple more minutes.

22 Ms. Black, thank you for bearing with us.

23 I believe Commissioner Bass has a few questions.

24 **MR. BASS:** Hi, Ms. Black. I'm Scott Bass.

25 I'm trying to get an idea of when Detective Griffin took

1 you to the park and the notes and reports say that he had you
2 write your name where you said you were sitting that night, and
3 then he -- I was wondering how far that picnic table where, at
4 that point you said you were sitting -- how far was that from
5 Mr. Jones' house, if you could give me some idea?

6 **THE WITNESS:** The shelter at the park is -- it's like
7 in -- it's not even quite towards -- it's not even quite in the
8 middle. It's a good -- it's a good ways from the edge of the
9 park. Then you have the road. And there's two or three houses --
10 Mr. Jones' was like the second or third house, something like
11 that. So, I mean -- but it's a good ways.

12 **MR. BASS:** Yeah.

13 And I know you -- I mean, it's been a long time ago and
14 you also said you hung out there a lot, and so I'm just trying to
15 get a little more of a better picture of the park.

16 I mean, were there playgrounds, basketball courts --

17 **THE WITNESS:** There's a --

18 **MR. BASS:** -- anything else like that out there?

19 **THE WITNESS:** When you pull into the parking lot, you've
20 got the -- you've got the area where the picnic tables are, the
21 shelter. And then there's like a little area over to the right of
22 that. There's something else. I don't know, because I haven't
23 been to that park in years. I'm sure it still looks the same,
24 but, I mean, I can't quite remember but I know it's a good
25 distance.

1 **MR. BASS:** And as best you remember from way back then,
2 typically when y'all would hang out there, were there many people
3 in the park --

4 **THE WITNESS:** No.

5 **MR. BASS:** -- doing anything?

6 **THE WITNESS:** We always went when there wasn't nobody
7 there.

8 **MR. BASS:** Yeah.

9 And typically, when y'all would hang out there, was
10 there much traffic around that neighborhood?

11 **THE WITNESS:** I mean, a car here and there, but nothing
12 major because, typically, they -- typically, if they're coming up
13 through that side of the thing, it's because they're probably --
14 they're usually getting some dope, probably; so ...

15 **MR. BASS:** All right.

16 Yeah, and I just wanted to try to get a better picture
17 of the park, and I appreciate that.

18 Okay.

19 **JUDGE LOCK:** Anybody else?

20 **MS. ESSARY:** Yes.

21 **JUDGE LOCK:** Yes, ma'am.

22 **MS. ESSARY:** Can I ask her to look at the documents just
23 to refresh her memory?

24 **JUDGE LOCK:** Sure. Of course.

25 Ms. Black, Commissioner Essary wants to show you a

1 document. The document that she is showing you I believe are some
2 notes made by Detective Rose --

3 **MS. ESSARY:** This is Detective Rose.

4 Jessica, Ms. Black, I'm Melissa again.

5 We just got handed these documents which are from
6 Detective Rose from when you were interviewed about this incident.
7 And I'm just going to let you take a look at them. They reflect a
8 little bit about the earlier testimony, and I just -- I want to
9 see what you remember and what you believe is not accurate from
10 you said, particularly that second page, or what is accurate.

11 We're trying to get a clear picture of what happened
12 when you were first interviewed.

13 (Witness reviews, 2:16 to 2:17 p.m.)

14 **THE WITNESS:** Now, it's --

15 **JUDGE LOCK:** Have you reviewed the documents now,
16 Ms. Black?

17 **THE WITNESS:** Yes.

18 **JUDGE LOCK:** Okay. Thank you.

19 Go ahead.

20 **MS. ESSARY:** So earlier there was mention that there was
21 a gap of time, potentially, according to your original interview
22 from the detective's notes, and you see now that that's reflected
23 in the notes that you're reading.

24 Does reading particularly page 2 refresh your memory in
25 any way?

1 **THE WITNESS:** No, ma'am.

2 **MS. ESSARY:** Do you remember talking about going to see
3 your friend in Lexington and leaving the defendants?

4 **THE WITNESS:** No. That's the same -- that's the friend
5 I'm referring to going to at the end of the night before I went
6 back to my grandma's.

7 **MS. ESSARY:** Okay.

8 So to get a timeline -- is there a timeline reflected in
9 that document of when that visit occurred?

10 **THE WITNESS:** Well, it's got -- it's got down here, and
11 it's got -- so I went and stayed like at -- so 6:30? I mean, I
12 don't know. I don't know. It just says I went and stayed for 30
13 minutes.

14 **MS. ESSARY:** What does it say about when you left the
15 friends -- your friends, the codefendants?

16 **THE WITNESS:** It says I took them home. Then I -- and
17 then I went to her house. I mean as far as the times, there's no
18 times on here, there's nothing, I mean, but -- except for the --
19 at school, the 800 to 1500.

20 **MS. ESSARY:** So everything there looks accurate on that
21 second page, but -- based on the best of your recollection?

22 **THE WITNESS:** No because I don't remember the one
23 stopping by Betty and JC's. And I don't remember going and taking
24 off because I didn't see anybody. I remember coming around that
25 corner, seeing them walking, picking them up, and then going and

1 doing what we did.

2 **MS. ESSARY:** Does that document refresh your memory
3 about who you picked up?

4 **THE WITNESS:** Not particularly. I mean, just like I
5 said, the only two -- the only two that I can tell you for a fact
6 was with me that night that I know for an absolute fact is
7 because, like I said, Nathaniel was always with me. He was always
8 with me no matter what. That -- if it wasn't nobody but me and
9 him hanging out, it was always me and him.

10 If Rayshawn hadn't have showed out at the bowling alley,
11 I wouldn't be able to pinpoint him either. Now, the other two, I
12 don't know. I don't know. I cannot -- I still -- whether looking
13 at this or not, I can't tell you who it was. So ...

14 **MS. ESSARY:** All right.

15 **THE WITNESS:** Picking them up -- picking up at the park,
16 just like I said, I knew -- I knew I had Dorrell because Dorrell,
17 I had to take down there in Devonshire. And -- but as far as when
18 we left and went and did everything that evening, I can't -- I
19 can't. I don't know.

20 **MS. ESSARY:** And the main thing that we're trying to
21 figure out is who was with you when this murder happened. That's
22 the bottom line, is we're trying to figure that out.

23 We understand that you've recanted your testimony about
24 the murder and listening to them go over to the house and all of
25 that, but kind of another issue is, is there now alibi testimony

1 from you about where they were at the time of the murder.

2 **THE WITNESS:** Oh, I don't even know when the murder took
3 place. I don't know what time it took place. I don't -- I mean,
4 I assume that's why y'all keep asking what time they go with me.

5 **MS. ESSARY:** Yes.

6 **THE WITNESS:** Or what time -- yes, because -- but I
7 don't know when -- I don't even know when --

8 **MS. ESSARY:** Okay.

9 **THE WITNESS:** I have never known what time that took
10 place. If that was actually happened the day of or did it happen
11 the night before? I mean, I don't know.

12 **MS. ESSARY:** And we're trying to piece things together
13 from what you told the police initially because you've told us
14 that initially you told the truth until they started pressuring
15 you.

16 **THE WITNESS:** Yeah. And then that story -- I mean, if
17 you sit there and you look and you look and just read and go over
18 every bit of that, that's -- and just like with the trials, there
19 were so many times that story swapped up because I couldn't keep
20 up with every little detail that I was supposed to remember.

21 That's my point.

22 **MS. ESSARY:** I'm not concerned about your trial
23 testimony.

24 **THE WITNESS:** No, but that's -- that's what I'm saying,
25 is everything kept just changing up because -- you shouldn't have

1 to -- one thing you don't have to remember is the truth. You
2 don't ever have to remember the truth. But when you start adding
3 all this extra on there, you've got to -- you struggle to remember
4 that.

5 So when I tell you, like, this is -- those are the exact
6 things I remember. Other than that, I can't remember. I don't
7 know.

8 **MS. ESSARY:** Okay. I appreciate it. Thank you.

9 **THE WITNESS:** Yes, ma'am.

10 **MS. ESSARY:** That's all I have.

11 **JUDGE LOCK:** Anyone else.

12 (No response.)

13 **JUDGE LOCK:** Ms. Black, I have just a very few
14 questions.

15 It's fair to say that you had a fairly rough upbringing,
16 is it not?

17 **THE WITNESS:** Well, no, it wasn't rough like -- my
18 upbringing wasn't rough.

19 **JUDGE LOCK:** Well, you were not reared in a house with a
20 lot of money, were you?

21 **THE WITNESS:** Oh, no, no. My mama made sure that,
22 regardless, me and my brother -- we had the best of the best when
23 it come to clothes, of cars, anything. She worked, I mean, hard.

24 **JUDGE LOCK:** Okay.

25 Your parents were pretty strict on you, were they not.

1 **THE WITNESS:** Now, yeah. Yeah, that was me.

2 **JUDGE LOCK:** They tried to teach you right from wrong,
3 did they not?

4 **THE WITNESS:** Absolutely.

5 **JUDGE LOCK:** You did complete high school, did you not?

6 **THE WITNESS:** Yes.

7 **JUDGE LOCK:** And, in fact, you went on and attended some
8 college, did you not?

9 **THE WITNESS:** I went to do hair and aesthetics.

10 **JUDGE LOCK:** And while your language may have been a
11 little bit salty from time to time --

12 **THE WITNESS:** It is.

13 **JUDGE LOCK:** -- and you may have bought a little dope
14 from time to time, you never had any serious trouble with the law,
15 did you?

16 **THE WITNESS:** No.

17 **JUDGE LOCK:** You've never been arrested, have you?

18 **THE WITNESS:** Yes.

19 **JUDGE LOCK:** One time?

20 **THE WITNESS:** Yes.

21 **JUDGE LOCK:** You've always had a job, have you not?

22 **THE WITNESS:** Yes.

23 **JUDGE LOCK:** What sorts of jobs have you had?

24 **THE WITNESS:** I have done everything from landscaping.
25 I worked at RJR. I've worked at multiple convenience stores.

1 I've helped do carpentry. I have been a roofers helpers. I have
2 helped do brickmason and I have helped to do a little bit of
3 everything.

4 JUDGE LOCK: Did you work at the tobacco company; is
5 that correct?

6 THE WITNESS: Yeah.

7 JUDGE LOCK: Are you still working there?

8 THE WITNESS: I am not.

9 JUDGE LOCK: Where are you working now?

10 THE WITNESS: Now I'm working at the little convenience
11 store around the corner from my house.

12 JUDGE LOCK: So you're still employed as of this day; is
13 that correct.

14 THE WITNESS: Yeah, I hope so.

15 JUDGE LOCK: Is it fair to say that you feel like that
16 you've been fairly successful in life thus far?

17 THE WITNESS: I feel like I'm content is what I am
18 because I have a roof over my head for my youngun -- or a roof for
19 my child and food and that's it. I don't go anywhere, I don't do
20 anything because it takes every dime I make to pay my bills.

21 JUDGE LOCK: You've done your best to rear your son in
22 the right way, have you not?

23 THE WITNESS: Yes.

24 JUDGE LOCK: You've tried to teach him the difference
25 between right and wrong?

1 **THE WITNESS:** Yes.

2 **JUDGE LOCK:** Do you consider yourself to be a pretty
3 good mother?

4 **THE WITNESS:** At that -- I've battled that from time to
5 time.

6 **JUDGE LOCK:** All right.

7 In your heart of hearts, do you consider yourself to be
8 a good person?

9 **THE WITNESS:** I do.

10 **JUDGE LOCK:** Okay.

11 **THE WITNESS:** It may not seem like it but, I mean, I do,
12 because I'm trying. I am so trying.

13 **JUDGE LOCK:** Is it fair to say that you have a
14 conscience?

15 **THE WITNESS:** Yeah.

16 **JUDGE LOCK:** Okay.

17 Can you tell me why you never came forward and disclosed
18 to anybody in a position of authority the false testimony you gave
19 between the time that these young men were convicted and the time
20 that Hunter Atkins contacted you?

21 **THE WITNESS:** It was out of sight, out of mind. When I
22 tell you I did everything I could possible to not have to deal,
23 cope, stress, think, anything about this -- about any of it. That
24 is the scarest I have ever been in my life, period. And I'm
25 sure they was more scared than I was, but that is a scarest I

1 have ever been in my life. I have never been through such crap in
2 my life, ever.

3 **JUDGE LOCK:** Did your conscience not bother you about
4 your false testimony?

5 **THE WITNESS:** Oh, oh, it did. It did.

6 **JUDGE LOCK:** And did it --

7 **THE WITNESS:** And it has bothered me more and more the
8 older I've watched my youngun get, it's -- it has really, really
9 bothered me.

10 **JUDGE LOCK:** During that period of time, did your
11 conscience not literally eat you alive about the false testimony?

12 **THE WITNESS:** I'm going to tell you what, anybody knows
13 you, knows will tell -- and that knows me will tell you I do
14 nothing but I sit around, and I swear to God I cry more than
15 anybody I've ever met in my life. I seclude myself off in my room
16 all the time. I stay apart from everybody because all I do is sit
17 around and cry and think and cry and think and cry and think.

18 I have done this over half of my life. So, yeah, it
19 bothers me. But I'm not going to sit here and tell them why it
20 bothers me because I don't want anybody knowing -- it's my
21 business why it's bothering me so bad.

22 **JUDGE LOCK:** Let's take a moment. Okay.

23 How about after Hunter Atkins contacted you? Why did
24 you not come forward and talk to somebody in a position of
25 authority then about your false testimony?

1 **THE WITNESS:** Because I don't know anything about none
2 of this, and when Hunter told me he had the friends and stuff that
3 he was going to talk to, I figured I was probably fixing to get
4 approached.

5 **JUDGE LOCK:** Well, that was my next question. Didn't
6 you realize at that point the cat, so to speak, was out of the
7 bag?

8 **THE WITNESS:** Yes.

9 **JUDGE LOCK:** And somebody was going to find out about
10 it?

11 **THE WITNESS:** I knew he was going to tell somebody.

12 **JUDGE LOCK:** So why didn't you go ahead and come forward
13 then and do something to right what you had done wrong?

14 **THE WITNESS:** I didn't know -- what was I supposed to?

15 **JUDGE LOCK:** It never crossed your mind to contact the
16 police?

17 **THE WITNESS:** I didn't -- I didn't want to have to deal
18 with the police, period, none. After going through all of that, I
19 didn't want -- I don't -- I don't mess with the police. That's
20 why I stay out of trouble, that's exactly why, because I don't
21 want to have to deal with it. I don't want to have to deal with
22 them. I don't ever, ever want to have to deal with them.

23 **JUDGE LOCK:** Okay.

24 There was a new DA in office by then. Did it ever cross
25 your mind to contact the DA's office?

1 **THE WITNESS:** I didn't even find out that Eric and
2 Bierne were dead until he told -- until Hunter told me. I didn't
3 even know they had passed away. I thought they were still -- I
4 thought they were still there. I didn't even know -- that's what
5 I'm saying. That's how much I don't keep up with nothing.

6 **JUDGE LOCK:** Did it ever cross your mind to talk to a
7 lawyer?

8 **THE WITNESS:** No, it didn't. It was just something that
9 I just wanted to tuck away.

10 **JUDGE LOCK:** Did you ever have any contact at all with
11 any of these five young men after their convictions, including any
12 correspondence from them?

13 **THE WITNESS:** No.

14 **JUDGE LOCK:** Have you had any contact with Elizabeth
15 Fowler since Hunter Atkins first contacted you?

16 **THE WITNESS:** No.

17 **JUDGE LOCK:** When was the last time you spoke with
18 Elizabeth Fowler?

19 **THE WITNESS:** It's been years.

20 **JUDGE LOCK:** Turning your attention to the night of
21 these crimes, when you went to see Elizabeth Fowler that night
22 after driving off and leaving these young men, what did you tell
23 her about what had happened that night?

24 **THE WITNESS:** I don't know. I don't even remember. I
25 mean, I'm sure I told her about seeing all them cop cars and

1 stuff, but I don't remember what I -- I don't remember what I said
2 to her. I don't have a clue.

3 JUDGE LOCK: But you vividly recall going to visit with
4 her; is that correct?

5 THE WITNESS: Yeah. Because they told me I was lying
6 about it, and I even gave them her name. And she told me that
7 she -- that they didn't never reach out to her. They didn't never
8 mess with her.

9 JUDGE LOCK: Well, how long was it after that before you
10 and Elizabeth had your falling out, so to speak?

11 THE WITNESS: My son wasn't even quite a year old yet so
12 2005, '6 -- well, we weren't close like that. We lost touch like
13 that after high school -- or before high school ended.

14 JUDGE LOCK: So it was still three or four years before
15 you had the falling out with her?

16 THE WITNESS: Something like that.

17 JUDGE LOCK: Did you ever talk with her about what had
18 happened that night?

19 THE WITNESS: I mean, there was nothing to -- I don't --
20 I don't remember -- if there's nothing significant to tell, so
21 there's -- if there -- anything had been, like, maybe "We hung
22 out, we went here, we went there." I mean, I don't -- I don't
23 know. I do not -- I don't know what I told her.

24 JUDGE LOCK: Well, you had been to the crime scene that
25 night with these young men after the crimes were committed, had

1 you not?

2 **THE WITNESS:** Yeah. That's why I said, if anything,
3 that's the only thing I could think that would stick out in my
4 mind, is seeing all them -- all those cop cars and stuff.

5 **JUDGE LOCK:** Well, that's what I'm asking about. Did
6 you tell her about that?

7 **THE WITNESS:** Oh, I'm sure I probably did. I probably
8 mentioned it.

9 **JUDGE LOCK:** Did you tell her that very night about it,
10 the night all this happened?

11 **THE WITNESS:** Probably. That's probably the night.
12 That would have been about the only night. It's not something
13 that I would even see a point in bringing up because it wasn't --
14 regardless of how many vehicles were there and how many cops and
15 stuff were around or anything else like that, it doesn't change
16 the fact that that's not for me, to me, in my opinion, that's
17 not -- it's not -- I'm not going to say it's something normal,
18 happens every day, but to see cops and stuff sitting everywhere or
19 sitting in groups and lights flashing and officers -- I mean, it's
20 just not -- that's not out of the ordinary to see anywhere around
21 certain parts of Winston. It's something -- no, it's not -- it's
22 not anything that I would really think twice about. It's like,
23 "Oh, we saw this," okay.

24 **JUDGE LOCK:** Well, when you saw all of those police cars
25 and saw all of the blue lights flashing, did you not learn then

1 and there that somebody had just been killed?

2 **THE WITNESS:** I didn't know what happened there at the
3 point, at that time being. I did not know what happened there.
4 And like I said, the boys -- I don't even remember which boys it
5 was -- run up there and talked to somebody and then come back. So
6 I don't -- I don't even -- I don't even remember if they said
7 somebody got killed or what.

8 I just know that when we rolled up, didn't nobody know
9 what happened because they were -- if you're that -- to me, if
10 they're that anxious to get out and find out what was going on in
11 their block, that's their area, that's where they're raised at,
12 you want to know what's going on.

13 So if they're anxious to get out and see what's going
14 on, then get out and see what's going on. It is what is.

15 **JUDGE LOCK:** When was it you first learned somebody had
16 been killed there at that house that night?

17 **THE WITNESS:** Me and my -- when the detectives come to
18 my house for them to get my car.

19 **JUDGE LOCK:** Are you telling us today that you did not
20 learn it that night on the scene?

21 **THE WITNESS:** I remember Detective Griffin telling me
22 when he needed to talk to me up there and that -- at the station
23 or wherever they had me come, and then they told me they was
24 taking my car and said they was going to take it for evidence,
25 it's like it's -- it blew, it floored me, it blew my mind, and

1 said it was used in the murder.

2 I can't remember what was said all that night. I don't.
3 I do not -- I don't. I don't know if it's because I just didn't
4 care or didn't pay attention or if I was high. I don't know. I
5 don't know -- I don't know.

6 When I do remember hearing about it is with the
7 detectives.

8 **JUDGE LOCK:** So did you not have some contact or
9 conversation with one or more of those young men between the night
10 of the murder and a couple of days later when the detective came
11 and picked up your car?

12 **THE WITNESS:** Oh, no. See, usually on the weekends I
13 didn't go over there and hang out like that. That was usually a
14 weekday thing.

15 **JUDGE LOCK:** Okay.

16 **THE WITNESS:** So typical weekends were not spent hanging
17 up there. It was usually after school. So I don't even -- I
18 don't know if I went up there on that weekend or not. But it's
19 not -- it wasn't a typical thing. So ...

20 **JUDGE LOCK:** Well, to the best of your memory, did you
21 or did you not have any contact with any of those young men
22 between the night of the murder and the time the detective came
23 and picked up your car?

24 **THE WITNESS:** I -- I don't know. I don't know because I
25 didn't have phone numbers or nothing for them. That's why I

1 always rode around and seen them. And that's why I didn't go
2 to -- like I said, I didn't go to the houses, I didn't go to the
3 doors. I rode around until I spotted them. I didn't have no
4 numbers, none. It's not like we talked on the phone. We didn't
5 do all that.

6 **JUDGE LOCK:** Ms. Black, I know from your deposition and
7 your statements that you've suffered from a number of health
8 problems through the years. I don't mean to pry into your
9 personal affairs, but can you tell us, please, what medications
10 you are on now.

11 **THE WITNESS:** I'm not on any now. I've lost my
12 insurance.

13 **JUDGE LOCK:** Okay.

14 Not taking any sort of medications?

15 **THE WITNESS:** I don't have anything. I take ibuprofen.
16 I'm not supposed to be taking.

17 **JUDGE LOCK:** Yes, ma'am.

18 You take that for pain?

19 **THE WITNESS:** I have to take it -- if I can keep my
20 swelling down, I don't hurt like that.

21 **JUDGE LOCK:** At all?

22 **THE WITNESS:** (Nonverbal response.)

23 **JUDGE LOCK:** Do you still self-medicate for your pain?
24 By that I mean, do you still use marijuana or any other sort of
25 substance of that sort to help you with your pain?

1 **THE WITNESS:** Once in a while. And my doctors know.
2 They all knew, every one of them, because I told them. Because
3 there were times it didn't matter -- because I didn't want to take
4 the pain pills like that. I wanted the ibuprofen. The ibuprofen,
5 as long as I can keep my swelling down, I don't hurt.

6 The pain pills were not helping with that. They barely
7 dulled it. And then I'd get where I couldn't sleep because you
8 can't lay on your side because of the hip replacements. Can't lay
9 on my back because of my spine. I can't do that.

10 So if I get to where I can't sleep, you're right, I
11 would call somebody over or something and let -- tell them I need
12 to hit something.

13 **JUDGE LOCK:** Yes, ma'am.

14 **THE WITNESS:** I need to smoke a joint, I need to do
15 something so I can go to sleep. And I told every one of my
16 doctors that. Every one of them knew it.

17 **JUDGE LOCK:** Do you use anything other than marijuana to
18 help you with your pain -- marijuana and ibuprofen to help you
19 with your pain?

20 **THE WITNESS:** No. Once in a while, if I'm hurting so
21 bad, like my feet, say my feet, okay, I got -- my arches are
22 collapsing. I got -- to where I raise my feet. There's some days
23 I get -- like today, they're swollen up. I don't even have
24 ankles, okay. So when I go to walk on them, it takes me an hour,
25 two hours to get up out of bed and be able to stand on my feet.

1 So if I have days like that, when they are that bad, I
2 will call my mother or somebody and be like, "Mama, do you have
3 any kind of medicine, can I please, please." They wanted me --
4 they had put me -- had me at 240 perc 10s a month. And I wouldn't
5 even take them. They tried to put me on fentanyl and I refused
6 it. It gets bad.

7 So therefore, when I'm hurting that bad, yes, I will
8 call somebody and be like, "Somebody, please bring me something"
9 because I got to be able to function and work for my child. But
10 it's not an all-the-time thing. It's not an everyday thing. It's
11 not even an every week thing.

12 **JUDGE LOCK:** Well, that was my next question.

13 How often do you use marijuana now?

14 **THE WITNESS:** It's far and few between because I pretty
15 much will take -- since I discovered the ZzzQuil, that's pretty
16 much what I take to go to sleep.

17 **JUDGE LOCK:** Do you use marijuana for anxiety also?

18 **THE WITNESS:** No, I don't, because I can't stand it.
19 Because I cannot stand to not be able to function. And I've
20 gotten -- since I've gotten older, I can't smoke it like what we
21 smoked then. I can't. If I hit -- if I'm sitting there and
22 somebody is smoking, you think a blunt -- a blunt is this long,
23 okay, I might -- if I do hit it, it's once or twice, and then
24 that's it because I've got to be able to function. I've got to be
25 able to do what I've got to be able to do, and I've got to be able

1 to think clearly, okay.

2 So that's my whole thing about that because of my
3 youngun. My youngun is with me all the time. And I mean all the
4 time. So this -- he wanted to come here and I would not let him
5 come.

6 He was like, "Mama, let me go with you." And I refused.

7 **JUDGE LOCK:** Why?

8 **THE WITNESS:** Because I didn't want him to see that
9 because I want to tell when it's -- when I want to tell him. It's
10 not for him to sit here and be put in this or broadcasted out.
11 It's not -- it's not right.

12 So I want to tell him, that I want to tell him to myself
13 and be able to explain to him what all has went on and why things
14 are the way they are. But like I said, I want to use it for an
15 example. And right now, he's not rationalizing things like that
16 and he's not getting these examples that you try to set. He's not
17 wanting to listen because he's 14 years old.

18 **JUDGE LOCK:** How often do you use alcohol now?

19 **THE WITNESS:** Once a year maybe.

20 **JUDGE LOCK:** When was the last time you used marijuana?

21 **THE WITNESS:** Maybe two and half weeks ago, something.

22 **JUDGE LOCK:** Have you smoked any marijuana today?

23 **THE WITNESS:** No.

24 **JUDGE LOCK:** Have you taken any sort of impairing
25 substance --

1 **THE WITNESS:** I just took four -- I just took four
2 ibuprofen.

3 **JUDGE LOCK:** When was that?

4 **THE WITNESS:** When we went on the first break because my
5 feet and my hands are hurting. And that's the little ibuprofen --
6 the little bitty ones that you buy at the store. It's not like
7 some high-powered ibuprofen. It's just over-the-counter
8 ibuprofen.

9 **JUDGE LOCK:** You mentioned earlier, I think in response
10 to a question from Mr. Britt, that you had sought some mental
11 health therapy years ago as a result of the trauma you had
12 suffered; is that correct?

13 **THE WITNESS:** Yes.

14 **JUDGE LOCK:** I think you said you were around 20 years
15 old at the time; is that right?

16 **THE WITNESS:** Yes.

17 **JUDGE LOCK:** And do I understand you to say that the
18 therapist has diagnosed you with PTSD?

19 **THE WITNESS:** Yes.

20 **JUDGE LOCK:** When was the last time you sought therapy?

21 **THE WITNESS:** Then.

22 **JUDGE LOCK:** Okay.

23 And I don't mean to pry, but where did you seek that
24 therapy?

25 **THE WITNESS:** A place in Lexington. DayMark, Monarch --

1 something. I don't even -- I'm not -- it's one of them.

2 **JUDGE LOCK:** Okay.

3 Did you discuss with your therapist what had happened on
4 the night of November 5th of 2002 [sic]?

5 **THE WITNESS:** Nope.

6 **JUDGE LOCK:** Did you discuss at all with your therapist
7 the murder and robbery of Mr. Jones?

8 **THE WITNESS:** No. I told my therapist about some
9 pictures I had seen that were shown to me, and they hit me harder
10 than anything. It was those pictures of Mr. Jones that they made
11 me look at. And I did, and I went on to tell her about the abuse
12 and stuff that I had went through. And I asked her not to pry and
13 don't ask questions about none of that, and that was about all I
14 volunteered on that.

15 **JUDGE LOCK:** Did you discuss at all with your therapist
16 the testimony you had given at the trials of these young men?

17 **THE WITNESS:** No.

18 **JUDGE LOCK:** Would you be willing to sign a release
19 authorizing the therapist to release to the Commission notes that
20 the therapist may have taken concerning this incident, and nothing
21 else, but just concerning the matters before this Commission?

22 **THE WITNESS:** That's fine. That's fine. But I don't
23 even know who the doctor. That's what I'm saying. I didn't --
24 it's not like I went for a long period of time.

25 **JUDGE LOCK:** But you think it was Monarch?

1 **THE WITNESS:** It's Monarch or Daymark -- one of them.
2 It's just one of the places in Lexington. There's not that many.
3 So -- but I didn't go that long. And she told me it's PTSD and
4 then all she kept telling me is that I needed a support system.
5 Support system, support system. There wasn't no point in me going
6 back.

7 **JUDGE LOCK:** Have you been, prior to this date, at any
8 time interviewed by any attorney representing any of these four
9 surviving young men?

10 **THE WITNESS:** No.

11 **JUDGE LOCK:** Have you been interviewed by any member of
12 the District Attorney's office in Forsyth County --

13 **THE WITNESS:** No.

14 **JUDGE LOCK:** -- since your testimony in these cases?

15 **THE WITNESS:** No.

16 **JUDGE LOCK:** You've expressed on several occasions your
17 dislike or distrust of the police; is that correct?

18 **THE WITNESS:** Yes.

19 **JUDGE LOCK:** In fact, you've said to me today that you
20 really don't like the police that much, haven't you?

21 **THE WITNESS:** Yes.

22 **JUDGE LOCK:** I want to turn your attention to the
23 interview that you had just about a month ago with Winston-Salem
24 police officers.

25 They visited you in your home, did they not?

1 **THE WITNESS:** They did.

2 **JUDGE LOCK:** And they recorded the interview with you,
3 did they not?

4 **THE WITNESS:** Yes.

5 **JUDGE LOCK:** In fact, they did a video recording of it,
6 did they not?

7 **THE WITNESS:** I don't know. I know he had -- they
8 wanted me to come to the station and I refused because I told him
9 I wasn't going back down there and going through none of that. So
10 then they said they could come to my house. I told him let me to
11 get my son to my brother's and come back to the house and I would
12 meet them there.

13 So I did. I remember he brought his phone. He had his
14 cell phone. And he sat it up on the speaker. And I thought -- I
15 think that's the only way they recorded. I thought that was the
16 only way they recorded. I don't know. I mean, besides the -- I
17 guess if there was little camera or whatever on whatever, I mean,
18 I don't know. But I do know that the phone was going.

19 **JUDGE LOCK:** Why did you talk so freely with the
20 officers that day in your home?

21 **THE WITNESS:** Because those officers -- it's not that I
22 have a distrust for all police, like I stated earlier, because I
23 have met some. I've got some that I would consider friends that I
24 have worked with previously that have went on to be officers that
25 I know as actual people and not officers that are just in that

1 mind frame, okay.

2 So those fellows -- for one, they're right there at my
3 age. For two, they were really calm. They were really -- they
4 were just laid back. And they were -- I mean, they were just --
5 it was their whole demeanor. They were just -- if you had -- if
6 all officers were like that right there, they would probably get a
7 little bit farther. Because those fellows had good, good
8 attitudes and they were really nice guys.

9 So I mean, they didn't -- they weren't so, I guess,
10 stern and straightforward or -- I mean, you know what I'm trying
11 to say? Like, they weren't so abrasive with what their -- what
12 they were saying or what they were asking or anything like that.
13 It's like, "Here, take your time, you know, do you remember this?
14 You know what? If you don't, it's okay. Let's go on to the next
15 thing."

16 I mean, they were just -- just like seemed like they
17 were cool guys. So I mean, it wasn't a problem. I just don't
18 have a problem talking to nobody. That's one reason I can do
19 these little convenience stores and stuff with no problem. I can
20 sit there and cut up and -- and change the way I have to talk to
21 them based on how I interpret your demeanor when you're coming to
22 me as a customer or whatnot.

23 So that's fine. But it's like -- those fellas just come
24 off as really, really, really nice. They were really calm, really
25 nice, and really laid back so they were easy to talk to.

1 **JUDGE LOCK:** Other than Mr. Hunter Atkins, have you been
2 contacted by any member of the media --

3 **THE WITNESS:** No.

4 **JUDGE LOCK:** -- including any television reporter
5 concerning this incident?

6 **THE WITNESS:** No.

7 **JUDGE LOCK:** So you have never signed any sort of
8 agreement to sell your story or anything of that sort --

9 **THE WITNESS:** No.

10 **JUDGE LOCK:** -- is that right?

11 Okay.

12 Turning your attention back to the events that led us to
13 be here, did you ever talk with any of these five young men
14 between the time of their arrest and the time of the first trial?

15 **THE WITNESS:** No.

16 **JUDGE LOCK:** Did you ever see them during that period of
17 time?

18 **THE WITNESS:** No.

19 **JUDGE LOCK:** Were they in jail, to your knowledge?

20 **THE WITNESS:** You know, I didn't even know what to think
21 about. I just stayed away from that side of town, that's just all
22 I did. I just stayed away. I didn't know if they were in jail; I
23 didn't know if they were out. I didn't know none of that.

24 But it wasn't -- it wasn't them, it was my mama told me
25 to stay away from south side because you're going to get in

1 trouble, and look what happened.

2 **JUDGE LOCK:** So did you ever talk with any members of
3 any of their families during that period of time?

4 **THE WITNESS:** No.

5 **JUDGE LOCK:** And as you sit here today, if I understand
6 correctly, you're telling us that your testimony at both trials
7 was false; is that correct?

8 **THE WITNESS:** Yes.

9 **JUDGE LOCK:** But you're also telling us, if I understand
10 you correctly, that you really don't know whether or not any of
11 these young men participated in the robbery and attack upon
12 Mr. Jones; is that correct?

13 **THE WITNESS:** Yes. Yes, it's correct.

14 **JUDGE LOCK:** That's correct.

15 You don't know one way or the other; is that right?

16 **THE WITNESS:** Not one way or the other. I just know
17 that that afternoon or that whole evening, they were with me. And
18 I know that there could be footage pulled up of where we were. So
19 they were with me, yeah.

20 **JUDGE LOCK:** Thank you very much for answering my
21 questions.

22 **THE WITNESS:** Yes.

23 **JUDGE LOCK:** Any other commissioners have questions?
24 Commissioner Britt.

25 **MR. BRITT:** Ms. Black, we were handed some documents a

1 minute ago. There are some names I want to ask you about that
2 appear in those -- the notes we were given.

3 Obviously, Bubba, Stinky, Dorrell, Rayshawn, and Mel are
4 the young men we're talking about. Okay?

5 **JUDGE LOCK:** Yes.

6 **MR. BRITT:** Over on the south side, that's predominantly
7 black neighborhood at the time, wasn't it? Or was it mixed?

8 **THE WITNESS:** Well, I mean, it was kind of mixed.

9 **MR. BRITT:** Okay.

10 Did you know two white guys, one named Rob and one named
11 Nelson?

12 **THE WITNESS:** Yes.

13 **MR. BRITT:** Who were they?

14 **THE WITNESS:** Neighbors down the street. Well, I mean,
15 at their -- it was their friends, but I know one of them lived a
16 little bit down further Devonshire. I don't know if it was Nelson
17 or if it was Rob. I just know one of them was down a little bit
18 farther. But that was their friends.

19 **MR. BRITT:** Those two guys ever ride around with you?

20 **THE WITNESS:** They had.

21 **MR. BRITT:** Okay.

22 On this day that we're talking about, did they ride
23 around with you?

24 **THE WITNESS:** I don't remember. That's why when I was
25 reading that, that's exactly what I was looking at.

1 **MR. BRITT:** Okay.

2 Do you remember seeing them that day?

3 **THE WITNESS:** I don't recall. I don't.

4 **MR. BRITT:** You're -- approximately how old were they?
5 Guessing?

6 **THE WITNESS:** I think they were closer to my age. I
7 think they were around my age.

8 **MR. BRITT:** They were high school age?

9 **THE WITNESS:** Maybe 16. They had to have been around my
10 age, like 16, maybe.

11 **MR. BRITT:** Okay.

12 Would you describe them as knuckleheads?

13 **THE WITNESS:** I sure would.

14 **MR. BRITT:** Do you know of anything that they got into?

15 **THE WITNESS:** Trouble.

16 **MR. BRITT:** Like what kind of trouble?

17 **THE WITNESS:** Any and everything. Just -- and it all,
18 everybody around there smoked weed, man, and they was -- did
19 drugs, had some thieving. It's -- just being knuckleheads, man.
20 I mean, I don't -- I don't know exactly what all they been into
21 now, I do know they had been involved in a couple things like
22 that. But as far as specifics and stuff, I don't, because I
23 didn't hang out with them like that. I didn't know them like
24 that. That was their friends.

25 **MR. BRITT:** Okay. All right. Thank you.

1 **THE WITNESS:** Mm-hmm.

2 **JUDGE LOCK:** Sheriff.

3 **SHERIFF FRYE:** Last question. This -- I just got this
4 thing.

5 So you went to Elizabeth's after you let them off;
6 right?

7 **THE WITNESS:** Yes.

8 **SHERIFF FRYE:** And you spoke to her. We got a statement
9 from Elizabeth that sometime -- and this is come a year later --
10 that you told her that these boys killed a man in Winston-Salem.

11 **THE WITNESS:** That's a year later. So that's after --
12 that's once I had done went through all this little stuff right
13 here. And that would be why it went there. Now, my story -- my
14 story had to stay the same after I done went through all this
15 stuff with these boys.

16 **SHERIFF FRYE:** So when did you tell her that these boys
17 killed a man in Winston-Salem?

18 **THE WITNESS:** Apparently, after I went through the
19 interrogation and stuff. That wasn't that night, because I wasn't
20 there that long.

21 **SHERIFF FRYE:** So it wasn't that night.

22 How long were you friends with her after all this
23 happened? Apparently you were not friends a year later.

24 **THE WITNESS:** We did -- yes, we were. We still talked,
25 we just didn't hang out. We wasn't, like, best friends like what

1 we were.

2 **SHERIFF FRYE:** Okay.

3 **THE WITNESS:** By then, I'd done pissed -- I pissed her
4 off quite a bit.

5 **SHERIFF FRYE:** Why? How?

6 **THE WITNESS:** Different ways. The last time that
7 stopped us from talking is because her and her -- her and the guy
8 she had been broke up and he come to my house, and we ended up
9 being together for about eight years.

10 **SHERIFF FRYE:** So that kind of made her kind of sad
11 about you, huh?

12 **THE WITNESS:** She did the same thing. She should be sad
13 about herself.

14 **SHERIFF FRYE:** Okay.

15 Do you remember telling her that those boys killed
16 somebody in Winston-Salem?

17 **THE WITNESS:** I'm going to tell you what, I honestly do
18 not remember telling her that, but by then, everything was all
19 over the paper. And as a matter of fact, her mother, who she
20 didn't even have anything to do with, she -- we went by her
21 mother's one day, and her mother said, "Do not bring her on my
22 property again because she is a murderer." And that was after it
23 being shown on the news and stuff.

24 So that right there -- she may have got whatever from
25 the news. I don't care. But by then, like I said, if it's -- if

1 it was after I done pissed her off over that incident, well, there
2 ain't not telling. So ...

3 **SHERIFF FRYE:** That's all.

4 **JUDGE LOCK:** Anybody else?

5 (No response.)

6 **JUDGE LOCK:** All right.

7 Ms. Black, thank you very much for being with us today,
8 and I know it was a little longer than you probably expected to be
9 here.

10 I hope you understand that your testimony is among the
11 most important evidence that we will have to consider and for that
12 reason, I don't mean to inconvenience you any more, but I am going
13 to keep you under subpoena until this hearing is completed in the
14 event that we hear something else that raises other questions we
15 want to ask you.

16 Okay? I know you've got an appointment with your son
17 tomorrow; is that correct?

18 **THE WITNESS:** Yes.

19 **JUDGE LOCK:** Okay.

20 So we will obviously allow you to accommodate that, but
21 we want to keep you under subpoena.

22 **THE WITNESS:** There's no way I can just be called?
23 Because my boss is really perturbed and this is a privately owned
24 store, and I am about to lose my job.

25 **JUDGE LOCK:** I'm very sorry. And I'm not telling you we

1 will call you back; I'm just telling you there's a possibility.

2 **THE WITNESS:** No. What I'm saying is -- so I'll be able
3 to stay home and do my -- go to work and stuff?

4 **JUDGE LOCK:** Unless we call you back, yes, ma'am.

5 **THE WITNESS:** That's what I was asking, that right
6 there.

7 **JUDGE LOCK:** Just make sure we know how to reach you.
8 You can stay on telephone standby.

9 **THE WITNESS:** Okay. That works for me.

10 **JUDGE LOCK:** All right. Thank you, Ms. Black.

11 **THE WITNESS:** Thank you.

12 (Witness stands down, 2:55 p.m.)

13 **JUDGE LOCK:** Folks, it's about eight minutes until. You
14 have some other information for us before we hear from the next
15 witness? Or is this a good time for a break so you can get him
16 online? Or what did you want to do?

17 **MS. SMITH:** Let me clear one thing up on the record.

18 That handout, 102, those handwritten notes, Detective
19 Rose's notes were the first four pages. And the fourth page of
20 that is related to an interview with Jermal Tolliver, not
21 Ms. Black. So in case there's any confusion on that, I just
22 wanted to put that on the record.

23 I think now is an appropriate time for the break. We do
24 have a staff member that needs to testify about another little
25 piece related to Hunter Atkins that is available to you before you

1 put him on the screen.

2 JUDGE LOCK: All right.

3 MS. SMITH: So we will do that immediately after the
4 break if you would like to take one for the next just couple of
5 minutes.

6 JUDGE LOCK: Sure. How long do you think that testimony
7 will take this afternoon?

8 MS. SMITH: It is maybe 45 minutes or so. There are a
9 couple of audio clips from phone calls that need to be played.
10 They're about 15 minutes apiece.

11 JUDGE LOCK: All right.

12 How long do you think your examination of Mr. Atkins
13 will take?

14 MS. SMITH: Very brief.

15 JUDGE LOCK: All right.

16 So, counsel, as we discussed at lunch, we may need to
17 stay a little beyond 5:00 today. Frankly, it depends on how many
18 questions we have of Mr. Atkins.

19 MS. SMITH: That's correct.

20 JUDGE LOCK: Otherwise, we will try to keep it on track.
21 It looks like the staff may be through before then.

22 All right. We will be in recess, then. Is 10 minutes
23 enough time, folks?

24 MS. SMITH: It's enough for me.

25 JUDGE LOCK: All right. 10-minute break.

1 (Recess taken, 2:57 to 3:08 p.m.)

2 **JUDGE LOCK:** All right. I think everybody is in place.
3 We will come back to order.

4 **MS. SMITH:** Commissioners, you do not have this yet but
5 before the end of the day, you will have Handout 106. That is
6 going to be the Commission's transcribed interview with Elizabeth
7 Fowler. There were a lot of questions about her and what she said
8 so we wanted to give that to you for homework, it is fairly short,
9 that way if you do have additional questions related to that and
10 you call Ms. Black back, you will have that.

11 Commission now calls staff attorney Catherine Matoian.

12 **JUDGE LOCK:** Ms. Matoian, you've not testified yet, have
13 you?

14 **MS. MATOIAN:** I have not.

15 (3:13 p.m.)

16 * * * * *

17 Thereupon, CATHERINE MATOIAN, a witness having been called by the
18 Commission, was examined and testified on EXAMINATION as follows:

19 **Q.** Ms. Matoian, will please state your full name for the
20 record.

21 **A.** My name is Catherine Matoian.

22 **Q.** How are you employed?

23 **A.** I am a grant staff attorney at the North Carolina
24 Innocence Inquiry Commission.

25 **Q.** And how long have you been employed at the Commission?

1 A. Since January 2013.

2 **MS. SMITH:** Commissioners, we're going to turn our
3 attention back to Hunter Atkins and discuss his communications
4 with the claimants in this case.

5 **Q.** Ms. Matoian, what did the Commission learn about
6 Mr. Atkins' communications with the claimants?

7 **A.** Mr. Atkins attempted repeatedly to talk with the
8 claimants in this case and spoke with all of the claimants. I
9 believe he even spoke with Dorrell Brayboy before his death.

10 Some of this contact happened even after he was told by
11 claimants that they were not allowed to discuss the case with him
12 due to the Commission's rule. And those contacts occurred through
13 letters, text messages, and phone calls.

14 **Q.** And, Ms. Matoian, do you have the Commission's rule
15 regarding the media in front of you?

16 **A.** I do.

17 **Q.** Can you please read that for the Commissioners.

18 **A.** The rule reads: "Once a claim is initiated with the
19 Commission, the claimant or his counsel shall not directly or
20 indirectly relay information about the Commission's investigation
21 to members of the media or the public unless specifically
22 authorized by the Executive Director or his/her designee."

23 **Q.** And what else did you learn about Mr. Atkins'
24 communications?

25 **A.** The Commission was initially aware that Mr. Atkins had

1 been trying to contact the claimants who had been released from
2 prison. We learned that during our interviews of the claimants in
3 February and March of 2018.

4 Since Mr. Bryant was the only Commission claimant at
5 that time, he was notified about the Commission's rules regarding
6 speaking to the media, and Mr. Cauthen was also notified when he
7 applied to the Commission in March 2018.

8 Based on our investigation, Mr. Banner's discussions
9 with Mr. Atkins that we have listened to happened only prior to
10 his application to the Commission. We do not have any indication
11 through our investigation that Mr. Banner spoke to Mr. Atkins
12 after he applied. And the same is true of Mr. Tolliver.

13 Q. What documentation was the Commission able to obtain
14 related to these communications?

15 A. Mr. Bryant's attorney provided text messages between
16 Mr. Bryant and Mr. Atkins from January 2020. He told us that
17 Mr. Bryant had previous communications with Mr. Atkins in 2018 and
18 2019, but the phone that had those communications had died and he
19 no longer had them.

20 His attorney advised the Commission that from what
21 Mr. Bryant could remember about his communications with
22 Mr. Atkins, Mr. Bryant provided facts to him if he knew them --
23 "he" meaning Mr. Bryant -- in response to Mr. Atkins' questions.

24 Mr. Bryant -- and also maintained his innocence to
25 Mr. Atkins.

1 Mr. Tolliver's attorney advised the Commission that
2 Mr. Tolliver had phone conversations with Mr. Atkins but never
3 texts, e-mails, or letters. Mr. Tolliver told his attorney that
4 he had complied with the Commission's rule regarding the media
5 since becoming a claimant. He said he did speak with Mr. Atkins
6 via phone prior to applying to the Commission, which was later in
7 2019.

8 The letters that Mr. Cauthen maintained as to his
9 communications with Mr. Atkins, which were letters related to his
10 MAR and providing releases to the North Carolina Center on Actual
11 Innocence for their file, and there's also another letter where
12 Mr. Atkins chastises Mr. Cauthen for telling the Commission about
13 Mr. Atkins writing him letters.

14 The Commission received information from the claimants
15 or their attorneys that Mr. Atkins was contacting them repeatedly,
16 in some cases even after they had requested that he stop.

17 Again, some of those communications were related to
18 getting releases for the Center files in these cases. And
19 Mr. Cauthen provided correspondence to that.

20 In addition, in response to a court order for phone
21 calls from any inmate PIN at the Department of Public Safety to
22 Mr. Atkins' phone number, the Commission also obtained recorded
23 phone calls between Mr. Banner and Mr. Atkins prior to his
24 application to the Commission and phone calls between Mr. Cauthen
25 and Mr. Atkins after Mr. Cauthen had become a claimant. Some

1 calls were from Mr. Cauthen's own PIN to Mr. Atkins, but the
2 majority were from other inmates.

3 All claimants had been notified by the Commission about
4 the rules regarding contact with the media multiple times during
5 our investigation and the conversations between Mr. Banner and
6 Mr. Cauthen and Mr. Atkins are about details of their case. Both
7 maintain their innocence during these phone calls with Mr. Atkins.

8 Again -- let's see.

9 Mr. Atkins' communications with -- the Commission also
10 learned that Mr. Atkins had had communication with some of the
11 claimants' families. His communication with Arlene Tolliver was
12 similar to the other families, and he also provided her
13 photographs of detectives as well as educational records related
14 to Mr. Tolliver.

15 Ms. Mumma, as we testified to yesterday, provided Atkins
16 with her files after he got releases from the claimants who had
17 open cases with her office. And she also spoke to him several
18 times throughout the case on the phone and exchanged e-mails.

19 The Commission also obtained text messages between
20 former WSPD Sergeant Charlie Byrom and Mr. Atkins. And claimants
21 also provided other letters that Mr. Atkins had sent them.

22 Those prison phone calls to Mr. Atkins also included
23 phone calls with Rayshawn Banner's attorney, Robert Leonard, who
24 is currently in prison as well.

25 **MS. SMITH:** Commissioners, Handout 21 was previously

1 provided to you-all. That is in Handout Notebook 1. That is the
2 summary of the calls from Claimants Banner and Cauthen to
3 Mr. Atkins.

4 I'm going to play for you just two of those calls. I
5 believe that there were over 100 calls.

6 **THE WITNESS:** Well over.

7 **MS. SMITH:** Well over a hundred calls between Mr. Atkins
8 and the claimants while they were incarcerated. Commission staff
9 has listened to all of those calls and summarized those for you,
10 but we will play just two of those now.

11 (Recordings played, 3:14 to 3:34 p.m.)

12 **MS. SMITH:** Commissioners, in the interest of time,
13 given the time of day and what we are trying to accomplish today,
14 I'm going to skip the other call. It is similar in substance to
15 this one in terms of the interactions that occur between
16 Mr. Cauthen and Mr. Atkins.

17 You-all, of course, have the chart so if there are at
18 any point any of those calls that you feel like you want to listen
19 to, you can let us know and we'll make those available to you.

20 That call that we were going to play does begin on
21 page 6 and ends on page 8 of Handout 21. It's actually the 6/16
22 call, 2019 -- 6/16/2019. It is call number 5 on your chart. So
23 you can look at if you feel like you need to listen to it later.
24 We'll certainly do that.

25 But I think based on your review of this chart you

1 should still have what you need in order to ask questions of
2 Mr. Atkins shortly.

3 Q. Ms. Matoian, can you provide the Commissioners a little
4 bit of context of the timing of this call between Hunter Atkins
5 and Nathaniel Cauthen on November 5, 2019?

6 A. Yes. That call was around the time that all the
7 codefendants had been notified that the case had moved into formal
8 inquiry.

9 Q. Based on your review of all of those calls and listening
10 to all of those calls, did Mr. Atkins ever tell Nathaniel Cauthen
11 or Rayshawn Banner about Ms. Black's recantation to him?

12 A. No, he did not.

13 Mr. Cauthen mentioned Jessicah Black to Hunter Atkins
14 several times and he told Mr. Cauthen that he thought that the
15 publicity from his story may make her have a change of heart, but
16 he never told her that Ms. Black had recanted to him.

17 Q. And are you aware if any of -- either Mr. Cauthen or
18 Mr. Banner know about Ms. Black's recantation as of today?

19 A. From listening to other prison phone calls, we are aware
20 that Mr. Banner's attorney told him about Ms. Black's recantation
21 after the Commission's prehearing conference. He then called his
22 mother and told her what his attorney had told him, but told her
23 not to tell Mr. Cauthen when she spoke to him. His mother
24 subsequently spoke to Mr. Cauthen and did tell him that Ms. Black
25 had recanted.

1 **MS. SMITH:** Commissioners, of course, the attorneys,
2 after the prehearing conference, were not prohibited from advising
3 their clients, but we did want to make you aware that that
4 information had been provided to one of them and then provided
5 to -- by him to his mother and by her then to the other one.
6 So ...

7 **Q.** Ms. Matoian, aside from the calls that were described in
8 this Handout 21, do we have any other calls from the claimants to
9 Hunter Atkins?

10 **A.** No, we don't.

11 By the time Mr. Atkins had begun looking into this case,
12 Mr. Tolliver, Mr. Bryant, and Mr. Brayboy had been released from
13 prison.

14 **Q.** Do we have any other communications between the
15 claimants and Mr. Atkins?

16 **A.** Yes. As I mentioned earlier, we have several letters
17 that Mr. Atkins sent to Mr. Cauthen and we also have texts between
18 Mr. Bryant and Mr. Atkins.

19 **MS. SMITH:** Commissioners, Handout 22 in your hearing
20 handout notebook 1 is a letter from Mr. Atkins to Nathaniel
21 Cauthen. Handout 23 are the texts between Mr. Bryant and Mr.
22 Atkins.

23 Those are fairly short, if you want to take just a few
24 moments to read them.

25 (Commissioners review, 3:43 to 3:45 p.m.)

1 **Q.** Ms. Matoian, commissioners have just reviewed the letter
2 in Handout 22 between -- from Mr. Atkins to Mr. Cauthen.

3 Can you provide any context for what we know about that
4 letter?

5 **A.** Yes. This letter concerned a release for the North
6 Carolina Center on Actual Innocence file for Mr. Cauthen that
7 Mr. Atkins wanted Mr. Cauthen to sign so that Mr. Atkins would be
8 able to get that Center file.

9 Mr. Cauthen had sent the Commission letters that
10 Mr. Atkins had sent him requesting that release and said that he
11 had asked Mr. Atkins to leave him alone. He was continuing to
12 contact him. And the Commission reached out to his attorney at
13 that point, and that is the context of that letter.

14 **Q.** Turning your attention back now to inmate phone calls
15 between Mr. Atkins and the claimants Rayshawn Banner and Nathaniel
16 Cauthen, can you explain generally how the inmate phone system
17 work and how money is put onto accounts for phone calls?

18 **A.** So JPay is the inmate monetary account used at NC DPS.
19 In order for inmates to make calls, they have to have money on
20 their accounts, and those calls cost ten cents a minute. In order
21 to put money on the inmate's JPay account, the person also has to
22 be an approved DPS visitor for that inmate.

23 Inmates cannot receive calls, generally speaking, in
24 prison unless they are prearranged for a specific reason. They
25 can only make outgoing calls.

1 There is no evidence that Mr. Atkins was ever able to
2 call into the prison; so the only calls were ones that the inmates
3 themselves made to Mr. Atkins, made -- you know, either solicited
4 by letter or communication with other people who were talking to
5 the claimants and asked them to call Mr. Atkins.

6 The phone calls the Commission has listened to, along
7 with other documentation, indicate that Mr. Atkins reached out to
8 Mr. Banner, Mr. Cauthen through the mail and also asked their
9 mother, Theresa Ingram, to encourage them to call him, which she
10 did based on recordings that we've listened to.

11 All calls are recorded and, as you heard, that is
12 announced at the beginning of the call. In addition, each inmate
13 is given a specific PIN that he uses associated with his name and
14 identity. Though it is against NC DPS policy to use another
15 inmate's PIN number to make calls, inmates do that relatively
16 routinely and did so in this case. Therefore, once we identified
17 a phone number associated with Mr. Atkins, we had DPS run a search
18 for calls which allowed us to get those and review them.

19 Mr. Atkins denied to the Commission realizing this was
20 happening during our interview of him. In addition to -- I will
21 say that in addition to being informed that the call is being
22 recorded, the inmate phone system also says the name of the inmate
23 calling. Mr. Atkins admitted to the Commission that he had put
24 money on the claimants' accounts, and he also discussed putting
25 money on Robert Leonard's accounts. He said that was a matter of

1 journalistic ethics.

2 The JPay records for NC DPS do not show Mr. Atkins as
3 putting any money on any inmates' accounts even after a
4 comprehensive search for his name was done and also certain
5 accounts were reviewed.

6 Q. Did we ask Mr. Atkins about his communications with the
7 claimants?

8 A. As it related to his communication with the claimants,
9 particularly Mr. Cauthen, Mr. Atkins admitted that he knew the
10 case could be closed with the Commission but pressed forward with
11 speaking to them anyways. He did not provide an explanation of
12 why except that he was battling some pride that maybe now his
13 story was being taken over by the Commission process.

14 When asked about a particular line in one of the phone
15 calls that Mr. Atkins said to Mr. Cauthen, that he had -- "he"
16 meaning Mr. Atkins -- had things that the Commission didn't have
17 and would never have and that his story and reporting would make a
18 roadmap for the Commission. Mr. Atkins explained that that -- by
19 that, he primarily meant it was Jessicah Black's recant that he
20 believed we had not yet discovered.

21 As you know, Mr. Atkins still has not published his
22 story and did not have plans to do so in the immediate future or
23 have a publication that had accepted the story.

24 He worked for the *Houston Chronicle*, who had originally
25 planned to publish the story, according to Mr. Atkins, but as of

1 2020 -- February 2020, Mr. Atkins no longer worked for the
2 *Chronicle*. Mr. Atkins also explained further that when he was
3 working on the story, he was aware that if it was published, it
4 would have to be fact checked to ensure there would be no issues
5 with the publication such as libel.

6 As to Ms. Black, he considered the first meeting with
7 her in Winston-Salem in April 2019 to be his first comprehensive
8 interview he had with her. However, as you listened yesterday,
9 the full audio recordings from Mr. Hunter showed that that may not
10 be accurate.

11 **MS. SMITH:** Commissioners, do you have any questions for
12 Ms. Matoian about the communications?

13 **MS. COLBERT:** So we are to assume that the only reason
14 why -- or did we find out that Cauthen was using somebody else's
15 PIN is he didn't have any money on his account?

16 **THE WITNESS:** We don't know. He does make phone calls
17 to his mother or phone calls from his -- and his father from his
18 own PIN. He made, I think, three or four phone calls to
19 Mr. Atkins from his own PIN --

20 **MS. COLBERT:** Did he?

21 **THE WITNESS:** -- but other than that, the majority were
22 from other PINs.

23 Mr. Banner always called from his own PIN.

24 **MS. COLBERT:** So I'm -- it's in here, but when did
25 Cauthen -- because it seems like the latter part of his calls were

1 using someone else's PIN.

2 Is that -- like, you're saying that in October, around
3 the 26th, this was a call and then the other calls from the end of
4 that, after that period, it appears that he is using somebody
5 else's PIN?

6 **THE WITNESS:** No. He began by using someone else's PIN.

7 **MS. COLBERT:** He did.

8 **THE WITNESS:** And then interspersed throughout he would
9 use his own PIN periodically.

10 **MS. SMITH:** Commissioners, that chart does include for
11 you the name of the individual whose PIN is being used so you can
12 see the various individuals whose PINs he was calling from.

13 **MR. BRITT:** Question. Our rules state that prior to
14 acceptance, there is no prohibition against the claimant --
15 purported claimant to contact the media; is that correct?

16 **THE WITNESS:** Correct. The claimant must have initiated
17 a claim with the Commission.

18 **MR. BRITT:** But once it's initiated, the rules prohibit
19 that.

20 **THE WITNESS:** The rules prohibit -- sorry. Let me read
21 it again.

22 "Once a claim is initiated with the Commission, the
23 claimant or his counsel shall not directly or indirectly relay
24 information about the Commission's investigation to members of the
25 media or the public unless specifically authorized to do so by the

1 Executive Director or her designee."

2 MR. BRITT: What are the consequences for violating the
3 rules?

4 MS. SMITH: The case may be closed.

5 MR. BRITT: By --

6 MS. SMITH: The director.

7 MR. BRITT: -- your authority or by the Commission's --
8 our authority as commissioners?

9 MS. SMITH: The Commission has ceded that authority to
10 me. I believe that the Commission still retains that authority.

11 Any other questions?

12 MS. ESSARY: So it's only Mr. Cauthen who violated that
13 rule?

14 THE WITNESS: We only have phone calls between
15 Mr. Cauthen and Mr. Atkins after he was a claimant. We know that
16 Mr. Bryant also had some communications with Mr. Atkins after he
17 was a claimant but obviously do not have recorded phone calls
18 because Mr. Bryant had been released from prison.

19 MR. EDWARDS: But you have text messages?

20 THE WITNESS: We do have the text messages, that's
21 correct.

22 MR. EDWARDS: Okay.

23 MS. COLBERT: And so in review of these, you don't
24 consider these a violation?

25 I mean, how to determine whether these are violations --

1 I mean, whether that violates the rules?

2 **MS. SMITH:** So that is a discretionary matter. It's in
3 my discretion.

4 The Commission statute says that "Failure to cooperate
5 shall result in closure by the Commission." This is in our rules.
6 And it is kind of a "may" depending on what we deem.

7 The truth of this matter is, you know, we had some
8 information that there was some communication happening. It was
9 not until we received these phone calls that we had evidence that
10 the communication had actually occurred.

11 There is -- you know, the rule says that the claimant or
12 the claimant's family. I think that it would be difficult to say
13 that someone in prison has any control over what their family is
14 doing in the community, and we have a lot of evidence that
15 Mr. Banner and Ms. Cauthen's [sic] mother was providing a lot of
16 information to Mr. Atkins.

17 I don't know that we can hold him to the standard. We
18 do now know that he was communicating. I think these calls show
19 that he is at least skirting on the edge of that and trying not to
20 give information about the Commission's investigation. He says
21 repeatedly throughout that he cannot give information about the
22 Commission's investigation. He certainly talks about the facts of
23 his case with Mr. Atkins. And so in my discretion, I made the
24 decision that we were not going to close the case. We already had
25 a hearing scheduled when we got these calls, and so that is why I

1 made that decision.

2 **MS. COLBERT:** So if the rules indicate family, how is
3 the family notified that they -- is the family notified they're
4 not supposed to discuss it with the media?

5 How would the family know that? Is there some sort of
6 notification?

7 **MS. SMITH:** So the notification goes to the claimant
8 themselves. We ask them to relay that to their family. I don't
9 recall if we directly spoke with the family in this case once they
10 did have attorneys. I know that we asked their attorneys to
11 please communicate that again to their client or the client's
12 family.

13 **THE WITNESS:** The rule -- I just want to clarify. The
14 rule says "the claimant or his counsel," and "directly or
15 indirectly." The rule itself does not use the word "family."

16 **MS. COLBERT:** Okay.

17 **MS. SMITH:** Sorry.

18 **THE WITNESS:** No, you're fine.

19 In February 2020, after we began listening to these
20 phone calls, we reached out to the parties once again and asked
21 them to make it clear that no one was to be having contact with
22 Mr. Atkins, and that included their families.

23 We do know from another phone call with Mr. Banner and
24 Mr. Cauthen's mom that she was made aware of that and that she had
25 called Hunter and told him she could not speak with him anymore.

1 **MS. COLBERT:** And so you said February 2020?

2 **THE WITNESS:** Correct.

3 **MS. COLBERT:** Do you know what date that was? Because,
4 I mean, there's clearly communication on February 12, February 18.

5 **THE WITNESS:** I need number 3. If you will give me one
6 moment.

7 **MS. COLBERT:** Sure. I mean, even in the letter, you
8 know, asking him -- telling him, why did you tell the Commission
9 that he can help him better than the Commission?

10 **THE WITNESS:** And that was -- that letter came around in
11 the earlier part of 2019, when he was trying to get that release.

12 **MS. COLBERT:** Oh, from the Center.

13 **THE WITNESS:** For the Center's file. That's correct.

14 **MS. COLBERT:** Because none of his stuff is dated; so ...

15 **THE WITNESS:** Right.

16 **MS. COLBERT:** So this letter prompted the -- for him to
17 get the release to send, get the information from the Center?

18 **THE WITNESS:** Correct.

19 The timeline as we understand it is that Mr. Atkins had
20 reached out to Mr. Cauthen and asked him to sign the release.
21 Mr. Atkins [sic] forwarded that communication on to us, and we
22 made his attorney aware that Mr. Cauthen had forwarded that
23 communication on to us.

24 And at that point, our understanding is that this letter
25 was sent, but I don't know the date.

1 **MS. COLBERT:** Yeah. I guess we could go back and look
2 at the e-mail exchange from the Center to -- because there is some
3 indication in there.

4 **MS. SMITH:** We can get that information for you.

5 **MS. COLBERT:** Yeah.

6 **MS. SMITH:** The dates -- you're asking for the date that
7 the files were exchanged?

8 **MS. TANNER:** I think -- it's July 7, I think.

9 **MS. SMITH:** Other questions?

10 **MR. BRITT:** What information do we have that Mr. Cauthen
11 and Mr. Banner were aware that the information they relayed to
12 their mother was being relayed to Mr. Atkins?

13 **THE WITNESS:** It's unclear, and I will say that I -- in
14 none of the phone calls that I listened to between Mr. Banner and
15 Mr. Cauthen and their mother, they also were not aware of most of
16 the Commission's investigation. They did not receive any details
17 of that until after the prehearing conference, which was just a
18 few weeks ago.

19 I will say that there was a letter that the Commission
20 had sent to the claimants with a few -- there was a witness named
21 Shelton we were trying to find. We had sent a picture with two
22 potential witnesses in that letter. And I believe Mr. Cauthen and
23 Mr. Banner had both told their mother about it. She had relayed
24 that information to Mr. Atkins.

25 In a phone call between Mr. Banner and his mother, she

1 asked him to go get the letter and read it to him, and she asked
2 their brother, Joseph Cauthen, to record Mr. Banner reading it for
3 the purpose of sending it to Mr. Atkins. I do not know if it was
4 actually recorded or sent to Mr. Atkins, but that is what I heard
5 on the phone call.

6 MS. ESSARY: Lindsey, may I ask you a question?

7 MS. SMITH: Yes, ma'am.

8 MS. ESSARY: What is the relevance of this to our
9 charge?

10 MS. SMITH: The relevance of?

11 MS. ESSARY: Everything we've heard different --

12 MS. SMITH: The calls?

13 MS. ESSARY: The calls.

14 MS. SMITH: I think that it goes to Mr. Atkins'
15 credibility and the work he was doing in the case while the
16 Commission was investigating. We're just making you aware of what
17 the claimants knew or didn't know with respect to the Commission's
18 investigation because Commission investigations are confidential,
19 and so we do not provide any updates about details of cases to
20 claimants throughout in order to maintain the integrity of the
21 investigation.

22 Mr. Atkins' calls with them have information, but we did
23 want you to know that there is nothing that suggests in the calls
24 that he shared the information about the recant of Jessicah Black.

25 You will get to talk to the claimants or question them

1 later this week, and so we just wanted you to have all of this
2 information available to you or in case you have additional
3 questions for Mr. Atkins about his communications with the
4 claimants.

5 MS. ESSARY: Thank you.

6 MR. EDWARDS: Catee, you stated that there are calls in
7 the jail between Cauthen and Atkins; correct -- we just heard?

8 THE WITNESS: The prison calls, yes.

9 MR. EDWARDS: And there are text messages between Atkins
10 and Bryant after Bryant was released from prison?

11 THE WITNESS: Correct.

12 MR. EDWARDS: And those were after they filed a claim
13 with the Innocence Inquiry Commission; correct?

14 THE WITNESS: That's correct.

15 MR. EDWARDS: Are there any calls from the prison
16 between Atkins and Rayshawn Banner?

17 THE WITNESS: Yes, there are. They're in the chart.

18 MR. EDWARDS: Okay.

19 THE WITNESS: He called much less than Mr. Cauthen. I
20 believe it is under five calls. He's actually the first two calls
21 and then a few more.

22 MR. EDWARDS: And were those calls before or after
23 Banner filed his claim with the Commission?

24 THE WITNESS: They were before. We do not have any
25 evidence that Mr. Banner communicated with Mr. Atkins after he

1 became a Commission claimant, which was in December -- or January
2 2020.

3 **MR. EDWARDS:** All right.

4 **MS. SMITH:** Commissioners, with respect to Ms. Colbert's
5 question, in Handout 9, those were the e-mail communications
6 between Ms. Mumma and Mr. Atkins, it appears that some files may
7 have been transferred in March of 2019 and additional files
8 transferred in July of 2019 based on Dropbox links that are in
9 there.

10 Any other --

11 **SHERIFF FRYE:** The last thing here on the text messages
12 or -- basically between Bryant and Atkins is this hoodie.

13 **THE WITNESS:** Correct.

14 **SHERIFF FRYE:** What's -- can you explain that to me?

15 **THE WITNESS:** I do not have all of the details on the
16 hoodie. I know that Mr. Bryant's brother does some work in, like,
17 T-shirt printing, and I believe he was the one that made that
18 hoodie but I do not know any other context about it.

19 **SHERIFF FRYE:** Was Mr. Atkins -- was Hunter Atkins, did
20 he ever play a part in that that you know of?

21 **THE WITNESS:** I am not able to determine that from the
22 texts.

23 **SHERIFF FRYE:** Okay.

24 **MS. SMITH:** Okay. If there are no more questions for
25 Ms. Matoian, she may step down.

1 (Witness stands down, 3:37 p.m.)

2 **MS. SMITH:** Commissioners, we will next be calling
3 Hunter Atkins to testify via videoconference. Pursuant to the
4 material witness order entered by the Harris County Court,
5 Mr. Atkins' testimony is limited to a few categories. You have
6 seen that in your handouts as well as over the break.

7 If you need to be reminded of that, that is in
8 Handout 13.

9 Judge Lock, in his discretion, will be making a
10 determination as to whether your questions are within the scope of
11 that order. So I would just ask you to be mindful of that as
12 you're asking questions.

13 I will have a few questions for Mr. Atkins first, as we
14 did not depose him; so we need to get a few things clear under
15 oath with him. And then you-all may ask any questions that you
16 have of him within that scope.

17 **MS. ESSARY:** Might I ask what tab we can find the
18 radio -- not radio -- telephone conversation, the initial one,
19 between him and Jessica Black? I know we looked at that
20 yesterday.

21 **MS. SMITH:** Yes. That initial conversation is in
22 Handout 15.

23 As you-all requested yesterday afternoon after we took
24 the evening recess, Mr. Atkins has been provided with those
25 documents that you requested. So if there is something specific,

1 you can refer him to a document, a page number, a line number, if
2 you would like to do that.

3 **MS. COLBERT:** I have a question about exactly what
4 prompted Beth to go and talk to Mr. Atkins.

5 I mean, was it as a result of all this communication? I
6 mean, what prompted you to go talk to Mr. Atkins?

7 **MS. TANNER:** So initially when we talked with Jessica
8 Black, we understood that the first person that she had talked
9 with about this recant was Mr. Atkins. So there was -- you know,
10 allegedly he had done this as part of writing a story and so there
11 was some interest in hearing that first recant that she said
12 happened and understanding what that relationship was and whether
13 he had provided her with any information before she did that.

14 As we were working through the process and to try and
15 get him voluntarily, which was not successful, and then the legal
16 process to get to Texas, we also received these DPS phone calls,
17 which as an aside, to get those, we also had to go have a hearing
18 about that. So it just took a little bit of time to get that
19 done.

20 And once we started receiving the DPS phone calls and
21 listening to them, we realized there was some extensive
22 conversation between him and one of the claimants. And so we had
23 some other questions about that.

24 So that kind of was all happening at one time, but
25 that's essentially why.

1 **MS. COLBERT:** Thank you.

2 **MS. TANNER:** Sure.

3 **JUDGE LOCK:** All right. Do I understand that we will be
4 able to see him and he will not be able to see us?

5 **MS. SMITH:** He should be able to see everybody.

6 **JUDGE LOCK:** All right.

7 And do I need to administer an oath to him or is there
8 any way --

9 (Overlapping speakers.)

10 **MS. SMITH:** Yes. He would like to affirm, and if you
11 could administer that.

12 **JUDGE LOCK:** Very well.

13 **MS. SMITH:** Can we take just a short break to get him on
14 the screen.

15 **JUDGE LOCK:** All right. Three minutes?

16 **MS. SMITH:** Yeah.

17 **JUDGE LOCK:** Three-minute break.

18 (Recess taken, 4:01 to 4:06 p.m.)

19 (Video teleconference begins.)

20 **JUDGE LOCK:** All right. Let's come back to order.

21 Good afternoon, Mr. Atkins. Are you able to hear us,
22 sir?

23 **THE WITNESS:** Yes, sir.

24 **JUDGE LOCK:** All right. Very good, Mr. Atkins.

25 My name is Tom Lock, I'm the Superior Court Judge

1 presiding over this proceeding.

2 Before your testimony, we will need to have you either
3 sworn or affirmed. I am told you prefer to be affirmed; is that
4 correct?

5 **THE WITNESS:** That is correct.

6 **JUDGE LOCK:** All right.

7 Usually I have witnesses stand when they are sworn or
8 affirmed, but I believe we will lose your face in the camera if
9 that happens so I'm just going to allow you to remain seated, but
10 if you would raise your right hand.

11 * * * * *

12 Thereupon, HUNTER ATKINS, a witness having been called by the
13 Commission, was affirmed and testified on EXAMINATION as follows:

14 BY MS. SMITH: (4:14 p.m.)

15 **Q.** Good afternoon, Mr. Atkins.

16 **A.** (Nonverbal response.)

17 **Q.** My name is Lindsey Guice Smith. I'm the Executive
18 Director of the North Carolina Innocence Inquiry Commission. I'm
19 going to have several questions for you this afternoon and then
20 when I'm done asking questions, the commissioners around the table
21 are going to have questions for you as well.

22 We are all aware of the scope of the waiver that you
23 signed and so we're going to stick within that waiver. Our judge,
24 Judge Lock, will be the one to decide if someone has kind of left
25 the scope of that. So he will be watching out for that.

1 Mr. Atkins, when you spoke with the defendants in this
2 case, did they always maintain their innocence?

3 A. Yes.

4 Q. And you spoke with Nathaniel Cauthen?

5 A. Yes.

6 Q. Rayshawn Banner?

7 A. Yes.

8 Q. Dorrell Brayboy?

9 A. Yes.

10 Q. Christopher Bryant?

11 A. Yes.

12 Jermal Tolliver.

13 Q. Jermal Tolliver, thank you.

14 And have you ever received any information that anyone
15 had personal knowledge that the defendants were involved in any
16 way with the murder of Nathaniel Jones?

17 A. In the scope of my years-long reporting, only one person
18 claimed to have overheard -- I apologize, the reason I'm pausing
19 is because I'm getting a message that there is a camera problem
20 with the video.

21 Are you able to see me?

22 Q. We can see you.

23 A. I am unable to see you. I don't know if that's a
24 problem. I apologize.

25 Q. Just you go ahead and keep talking, and we will see if

1 we can --

2 A. Oh, hi. Now I see you directly, Ms. Guice Smith.

3 Q. Okay. Thank you.

4 A. Sorry about that.

5 Q. Let me ask that question again.

6 Have you ever received any information that anyone had
7 personal knowledge that the defendants were involved in any way
8 with the murder of Nathaniel Jones?

9 A. In the years-long scope of my reporting, only one person
10 had explained -- I'm sorry -- the camera just cut out again.

11 I'm going to continue with my answer.

12 Q. Please.

13 A. One person in the scope of my reporting claimed to have
14 overheard some of the -- there you are again -- overheard some of
15 the claimants discussing a way potentially to rob Mr. Jones.

16 Then in the course of my attempt to corroborate that
17 statement, to verify it with follow-up questions, further
18 interviews, it was -- it seemed not to be a credible account. It
19 seemed not to be based on fact.

20 Q. Who was that person?

21 A. It was a relative of one of the claimants.

22 Q. And who was that relative?

23 A. Lillie Tolliver.

24 Q. Okay. Thank you.

25 A. Additionally, she had -- this was not a unique

1 conversation that she had first given to me. She had, from what I
2 understand, made similar comments during the investigation to
3 local police.

4 Q. How did you attempt to corroborate what Ms. Tolliver
5 said?

6 A. A combination thoughtful follow-up questions, asking
7 who, what, where, when, why questions, really trying to get a deep
8 sense of her confidence of her detail, what kind of details she
9 could offer about this memory she said she had. And then, in
10 comparison with the rest of my reporting, it stood alone as an
11 example that didn't make too much sense.

12 Q. What made you decide that she was not credible?

13 A. She could be prone to hearsay and speculation. She's
14 emotional. And then, as aforementioned, it is the only statement
15 about overhearing some of the claimants talking about a potential
16 way to rob Mr. Jones of that nature. The way she described it is
17 not something that I had heard anywhere else in, you know, the
18 extensive conversations I've had with many other people.

19 Q. And who did Ms. Tolliver say she overheard talking,
20 which of the claimants -- or codefendants, rather?

21 A. I should add -- I should have said this before.

22 Her account was about overhearing a discussion that
23 happened sometime before the crime; so it was not a conversation
24 she heard after the crime, just to clarify.

25 And if I recall correctly, she claimed to have overheard

1 a combination of -- I'm struggling to remember exactly who. I
2 believe she named Nathaniel Cauthen. She named Dorrell Brayboy.
3 I can't remember who else she named.

4 Q. Did you record that conversation?

5 A. I did.

6 Q. Did she say anyone else ever overheard this
7 conversation?

8 A. She did not.

9 Q. What was the context that she gave for when the
10 conversation occurred and who was around?

11 A. I believe that she explained she was the only one to
12 hear that conversation.

13 Q. Did she say how long it was before the crime that she
14 heard the conversation?

15 A. I don't recall.

16 Q. So you indicated that she overheard at least some of the
17 codefendants say that they were planning to rob Mr. Jones.

18 What were the details of what they planned to do, if she
19 recounted that?

20 A. I don't recall the specific details of her account in
21 terms of a plan. I just don't remember that.

22 Q. When was that interview with Ms. Tolliver?

23 A. I don't recall the exact date. It would have been
24 sometime in 2019.

25 Q. Do you know what month it was?

1 A. I don't know what month it was but my guess is it would
2 have been sometime between maybe -- probably was sometime between
3 late April and late October, in that range.

4 Q. So was that conversation in person or over the phone?

5 A. Although I had met her in person, that conversation -- I
6 believe it was over the phone.

7 Q. Did that occur prior to or after your first conversation
8 with Jessica Black?

9 A. After.

10 Q. Okay.

11 And that first conversation with Jessica Black was in
12 late March of 2019; is that correct?

13 A. Let me qualify.

14 In early 2018, I had a seconds-long, brief phone
15 conversation with Jessica Black, again, might have ended
16 before -- less than 10 seconds. Then, when I was able to have
17 longer conversation with Jessica Black, that was in late
18 March 2019.

19 Q. Okay. Thank you.

20 Have you have ever received any information that someone
21 had personal knowledge that the codefendants told anyone following
22 their convictions that they committed this crime?

23 A. No.

24 Q. Have you received any information that someone had
25 personal knowledge of someone besides these defendants being

1 involved in the murder of Mr. Jones?

2 A. No.

3 Q. Were all of your conversations with Jessica Black other
4 than the one at the IHOP over the phone?

5 A. Yes.

6 Q. And did you record all of your conversations with
7 Ms. Black?

8 A. No.

9 Q. Did you provide the Commission with all of the
10 recordings of your conversations with Ms. Black that you have?

11 A. Yes.

12 Q. Mr. Atkins, at the end of one of the audios from your
13 IHOP conversation, you talk about going over a list with Jessica
14 Black.

15 What is that list that you're talking about?

16 A. It's in regards to the testimony that she gave at the
17 time of the trial originally, and I wanted to thoroughly go over
18 components of it to get a better understanding and to corroborate
19 what parts of it she said she would say did happen, what parts she
20 would say did not happen.

21 Q. When did you actually go over that list with her?

22 A. At the IHOP.

23 Q. Mr. Atkins, you told Ms. Black that you could understand
24 why the Commission might want your recordings; is that correct?

25 A. Yes.

1 Q. But you did not want to cooperate with the Commission;
2 is that correct?

3 A. I was acting as a journalist might in terms of
4 protecting work product.

5 Q. But you told more than one person that you wanted to
6 help the Commission; is that correct?

7 A. I don't recall.

8 Q. You talked to Nathaniel Cauthen about helping the
9 Commission out, didn't you?

10 A. I don't recall the exact words I used. We did talk
11 about the Commission. We did talk about how the work I was doing
12 could have an effect on what the Commission might do.

13 Q. So when the Commission tried to reach out to you, you
14 didn't feel the need to just give us a call back and let us know
15 that you weren't going to work with us at all?

16 A. Correct.

17 Q. Can you explain to us how you put money onto the
18 inmates' accounts for phone calls?

19 A. Yeah. There's a website -- I can't remember exactly the
20 name of the website -- but you go, you log on, put in your payment
21 info and personal credit card or whatever, and then you select how
22 much money you want to put on a card of an inmate.

23 Q. Did you use your name when you were putting money onto
24 the inmates' accounts?

25 A. I believe so.

1 Q. So if the prison records don't show that you put money
2 on the accounts, would you know why that might be?

3 A. No.

4 Q. Did you go through anyone other than yourself to put
5 money on the accounts?

6 A. No.

7 Q. When you were putting money on the accounts, you were
8 aware that inmates other than Nathaniel Cauthen and Rayshawn
9 Banner, but particularly with respect to Nathaniel Cauthen, you
10 are aware that he was using other inmates' PINs to call you; is
11 that correct?

12 A. No.

13 Q. So when the call comes through, they have to announce
14 the name of the caller. You heard that?

15 A. Yes.

16 Q. And you are aware that, in the over 100 calls you had
17 with Nathaniel Cauthen, he only called using his name about four
18 times; is that correct?

19 A. I don't know. I -- this is not something that I dwelled
20 on or thought about at the time.

21 Q. So when you get a call from a random person, how did you
22 know it was Mr. Cauthen calling you when the name that was being
23 announced was not, in fact, Nathaniel Cauthen?

24 A. Well, sometimes I wasn't aware if exactly it was him.
25 When the call shows up on my phone, there's some identification on

1 my phone that I figured out was in relation to a call from a
2 prisoner. When I answered it, the automated message would explain
3 who the phone call was coming from.

4 Q. Okay.

5 So did you ever put money on anyone's accounts other
6 than that of Nathaniel Cauthen and Rayshawn Banner?

7 A. And Bob Leonard.

8 Q. Robert Leonard?

9 That was an attorney involved in the case who is now
10 incarcerated; correct?

11 A. Correct.

12 Q. Mr. Atkins, we spoke with Sergeant Byrom, and he
13 reported that he told you that Assistant District Attorney
14 Jennifer Martin may have been the African-American female in the
15 van with Jessica Black.

16 Did others tell you that they believed Ms. Martin was
17 the one who rode around in the van with Jessica Black and Eric
18 Saunders?

19 A. Can you repeat the question? I'm sorry.

20 Q. Sure.

21 A. Not the part about Sergeant Byrom, but the second part,
22 "did others."

23 Q. Did anyone else other than Sergeant Byrom tell you that
24 they believed Jennifer Martin may be the person who rode around in
25 the van with Jessica Black and Eric Saunders?

1 **A.** It was discussion I had mostly rooted in speculation
2 that maybe she was, yeah, potentially, someone that could have
3 been that person, and I did have that discussion with other
4 people.

5 **Q.** Was Sergeant Byrom the first one to provide that
6 information as a possibility?

7 **A.** No.

8 **Q.** Who told you that first?

9 **A.** I mean, it was a confidential source.

10 **MS. SMITH:** Your Honor, I believe this is within the
11 scope.

12 **JUDGE LOCK:** I am going to order that you answer that
13 question, please.

14 **A.** The other person was Mark Rabil.

15 **Q.** Did anyone else tell you that?

16 **A.** I don't believe so.

17 **MS. SMITH:** Commissioners, do you have questions for
18 Mr. Atkins?

19 **MR. EDWARDS:** I do have a few.

20 **JUDGE LOCK:** Yes, sir.

21 **MR. EDWARDS:** Good afternoon, sir. My name is Seth
22 Edwards. Thank you for being with us this afternoon.

23 I want to first ask you, what first brought your
24 attention or drew your attention to this case out of
25 Winston-Salem?

1 **THE WITNESS:** So as a sports reporter, at the time doing
2 sports reporting for the *Houston Chronicle*, my role occasionally
3 would be to cover something in the daily news cycle like a game or
4 practice, but most often the value that I brought was that I would
5 do long-form sports stories with larger narratives that tackled
6 more empathic subject matter. And when the NBA player Chris Paul
7 was traded to the Houston Rockets in the summer of 2017 -- sorry,
8 I was having technical difficulties with this camera. Give me one
9 moment, please.

10 So when Chris Paul was traded to the Houston Rockets in
11 the summer of 2017, I remembered that there was this impressive
12 story related to the tragedy in his life of losing his
13 grandfather, someone he was close with. I remembered a high
14 school basketball game that he played that essentially was in
15 honor of his grandfather.

16 So I just started to research that again. I really
17 didn't know anything else about it, but that memory came back to
18 me of simply Chris Paul and his grandfather.

19 In researching it, I learned that there were five
20 teenagers convicted of the crime. That was, you know, an
21 interesting element of it that I didn't know.

22 And then what struck me was that it seemed, according to
23 the news reporting that I read, that no one had attempted to
24 interview those five teenagers, be it contemporarily at that time
25 or present day.

1 And as time went on, you know, I thought it would be an
2 interesting opportunity for me to try to speak with any of the
3 three defendants that had served their sentences and presumably
4 were free at that point. I didn't have expectations of what that
5 story might be, what I might learn. I certainly did not expect it
6 to be a years-long project where I would interview so many people
7 and take so long.

8 But the issues evolved once I was able to have more and
9 more conversations, that, over the course of months and the year,
10 continued to expand the scope of my report.

11 **MR. EDWARDS:** So would it be fair to say when you first
12 started researching this story, you were really just looking at
13 it, I guess, maybe from a human interest side, and, you know, the
14 defendants that were teenagers at the time had served their
15 sentence and maybe catch up with them and see what they were doing
16 with their lives present day?

17 Would that be fair?

18 **THE WITNESS:** Correct.

19 **MR. EDWARDS:** And at what point was it that it occurred
20 to you that, "Hey, maybe these guys are innocent"?

21 **THE WITNESS:** Well, I can't go so far as to phrase it as
22 "maybe these guys are innocent," because determining innocence,
23 so, literally, is not something that a reporter has the authority
24 to do.

25 But in terms of the credibility of their claims of

1 innocence, it accumulated over the course of, you know, months of
2 me reading back at the transcripts of the trial, which I didn't do
3 initially in the summer of 2017, having more discussions about the
4 criminal justice system, eventually learning that there was an
5 Innocence Inquiry Commission into their case added some credence
6 to this notion that maybe their claims were credible.

7 And then when I had the opportunity in 2019 -- in the
8 springtime of 2019, to sit down with them in person and have
9 in-depth discussions about their experiences, you know, that --
10 that added more credibility to those claims.

11 **MR. EDWARDS:** Now, we have been advised that,
12 obviously -- well, let me rephrase the question.

13 Jessica Black is obviously a key part in this
14 particular case. And it's my understanding that you had
15 approximately 15 hours total of interviews with her.

16 Does that sound, you know, accurate?

17 **THE WITNESS:** I never totaled them myself so I would
18 be -- it would be speculation for me to say that those 15 hours
19 are what those recordings total up to. I really don't -- I didn't
20 total this up.

21 **MR. EDWARDS:** Okay.

22 And would it be fair to say that it took you a while to
23 track her down; is that correct?

24 **THE WITNESS:** That is correct.

25 **MR. EDWARDS:** And when you finally got ahold of her for

1 the first time and spoke with her, was that a telephone
2 conversation?

3 **THE WITNESS:** Yes.

4 **MR. EDWARDS:** And would it also be fair to say that when
5 you first began speaking with her, she was very reluctant to talk?

6 **THE WITNESS:** Yes.

7 **MR. EDWARDS:** And as a matter of fact, she was pretty
8 ugly with you and told you right off the bat she did not want to
9 talk about this matter?

10 **THE WITNESS:** Respectfully, I'm not going to support
11 calling it "ugly."

12 There are times as a reporter where you have to be
13 persistent in trying to speak with somebody that might be
14 important to a story you're working or a news report. Those calls
15 are not always welcome. I understand that. I think any serious
16 journalist would understand that.

17 On top of that, in her particular experience, as she
18 would explain, it was a bad one; so it was an emotional
19 conversation.

20 **MR. EDWARDS:** And over the course of your interviews
21 with Ms. Black, there were a number of points for information that
22 you relayed to her that she was not aware of in regard to this
23 case; is that correct?

24 **THE WITNESS:** Correct.

25 **MR. EDWARDS:** As an example, she was not aware that the

1 so-called van ride that she took with one of the prosecutors --
2 she thought she was riding with the victim's daughter; isn't that
3 right?

4 **THE WITNESS:** That is according to her. She told me
5 that story. I did not introduce that story to her. I had not
6 heard that story before she explained it to me.

7 **MR. EDWARDS:** But then later, you tracked -- you
8 researched that and then you went back and told her that, in fact,
9 you had spoken with the victim's daughters, and none of them went
10 on a van ride with her; right?

11 **THE WITNESS:** According to the victim's daughters,
12 correct.

13 **MR. EDWARDS:** Right.

14 And by the end of your interviews with Ms. Black, she
15 was quite upset with the law enforcement officers and Forsyth
16 County police or sheriff's department; is that correct?

17 **THE WITNESS:** Yes.

18 **MR. EDWARDS:** That may be an unfair question on my part,
19 asking you to go back and remember that. But I do have a
20 transcript and -- of the recordings with Ms. Black, it is the very
21 last recording, and it's the last two pages.

22 Ms. Black states: "Old crooked-ass damn Forsyth County
23 popo. They wonder why nobody trusts the effin' police."

24 And then you say: "I wanted to ask -- I wanted to ask
25 one more question, then we're out of here."

1 And Ms. Black says: "This shit has me so mad, I am
2 pissed the eff off over the shit they did over shit effin'
3 17 GD years ago."

4 And then you say: "How much of this, Jessicah, has to
5 do with the amount of information that, up until the last week,
6 you never knew?"

7 And she says: "Like, 90 percent of what the eff you
8 told me, I didn't know. This shit has got me so GD mad."

9 So she was upset at the end of all of this, would that
10 be fair to say?

11 **THE WITNESS:** She was upset by what she was thinking
12 about the police in that moment and the experience she had.

13 **MR. EDWARDS:** Now, during these 15 hours or so of
14 interviews with Ms. Black, you also talked to her about research
15 involving false confessions; is that right?

16 **THE WITNESS:** Yes.

17 **MR. EDWARDS:** And you also told her about the Central
18 Park Five case out of New York?

19 **THE WITNESS:** Yes.

20 **MR. EDWARDS:** Now, in conclusion -- just as far as my
21 questions are concerned -- it's my understanding that -- or it's
22 been shown that you had a number of phone calls with Nathaniel
23 Cauthen while he was in prison and after he filed his claim with
24 the Innocence Commission; is that right?

25 **THE WITNESS:** Yes.

1 **MR. EDWARDS:** And you were aware of the rule against a
2 claimant, once he files a claim with the Innocence Inquiry
3 Commission, to not have any contact with media; is that right?

4 **THE WITNESS:** Yes.

5 **MR. EDWARDS:** You are aware of that?

6 **THE WITNESS:** (Nonverbal response.)

7 **MR. EDWARDS:** Now, obviously, that prohibition is
8 against him, technically, not against you; right?

9 **THE WITNESS:** Yes.

10 **MR. EDWARDS:** But even knowing that, you still took his
11 calls and continued to talk to him; isn't that right?

12 **THE WITNESS:** Yes.

13 **MR. EDWARDS:** Thank you, sir. Those are my questions.

14 **JUDGE LOCK:** Commissioner Newton.

15 **MS. NEWTON:** Thank you, Judge.

16 Good afternoon, Mr. Atkins. My name is Deb Newton. I'm
17 a criminal defense attorney. I have a few questions for you, and
18 thank you for being here.

19 During the course of the extensive interview and work
20 that you did in this case, did you develop any evidence of
21 alternative suspects?

22 **THE WITNESS:** No.

23 **MS. NEWTON:** When you were engaging with Jessica Black,
24 you developed a trust relationship with her. Is that fair to say?

25 **THE WITNESS:** Yes.

1 **MS. NEWTON:** Would you call that a friendship?

2 **THE WITNESS:** In the most broadest sense of defining
3 friendship as someone who you speak friendly with, that you can
4 express some amount of care for in terms of their well-being, and
5 you can laugh with when the time is appropriate, you can listen to
6 whatever personal issues they might be willing to express -- in
7 that sense, you could call it a friendship.

8 **MS. NEWTON:** Why did she stop taking your calls? Do you
9 know?

10 **THE WITNESS:** When?

11 **MS. NEWTON:** At the end of 2019, December, before
12 Christmas.

13 Have you heard from her since before Christmas of 2019?

14 **THE WITNESS:** No.

15 **MS. NEWTON:** And you have reached out to her a number of
16 times?

17 **THE WITNESS:** I'm sorry. Can you say the date again?
18 Before --

19 **MS. NEWTON:** -- Christmas of 2019.

20 **THE WITNESS:** Had I heard from her before that?

21 **MS. NEWTON:** Since before December of 2019.

22 **THE WITNESS:** I'm so sorry. The way you're phrasing it,
23 I'm just --

24 **MS. NEWTON:** I'll rephrase it.

25 **THE WITNESS:** Thank you.

1 **MS. NEWTON:** When was the last time you actually had an
2 interaction with Ms. Jessica Black?

3 **THE WITNESS:** I believe it was sometime in October.

4 **MS. NEWTON:** Of what year?

5 **THE WITNESS:** Of 2019.

6 **MS. NEWTON:** Okay.

7 Now, you've reached out to her a number of times since
8 October of 2019 even up to asking for an address to send a
9 Christmas card and wishing her merry Christmas. She never
10 responded to any of those overtures since, did she?

11 **THE WITNESS:** I don't believe so.

12 **MS. NEWTON:** Okay.

13 Do you have any opinion or information as to why she
14 stopped communicating with you?

15 **THE WITNESS:** I do not.

16 **MS. NEWTON:** Was that something that was unusual for her
17 to do, fall off the radar and then suddenly come back?

18 **THE WITNESS:** No.

19 **MS. NEWTON:** She had not done that to you before?

20 **THE WITNESS:** No, she had. There were times when --
21 yes. No, it is not unusual for her to do that.

22 **MS. NEWTON:** So when -- since you haven't heard from her
23 since October of 2019, you don't think there is anything
24 significant about her failing to respond to you?

25 **THE WITNESS:** It's not something I dwelled on.

1 **MS. NEWTON:** Okay.

2 During the course of developing -- I understand you were
3 developing a story that you intended at some point to publish.

4 Is that fair to say?

5 **THE WITNESS:** It is an aspiration.

6 **MS. NEWTON:** Okay.

7 When you develop sources like Ms. Black for stories, are
8 you in the habit of making some financial contribution to their
9 welfare?

10 **THE WITNESS:** No.

11 **MS. NEWTON:** Okay.

12 Why did you do that in this case?

13 **THE WITNESS:** So it became a matter that was separate
14 from my reporting of this story. Months had gone by into the
15 summertime. So after my comprehensive IHOP discussion with
16 Jessicah, which was in early April, months later, sometime in the
17 summer -- during those months, I had been trying to follow up with
18 her, stay in contact with her to maintain a rapport, something
19 that is normal for me to try to do in -- you know, in any
20 reporting, maintain a relationship of some kind, a connection, a
21 rapport with anybody involved in a story that I'm still working on
22 or still developing or still evolving because, you know, you never
23 know what, down the road, might happen, something unexpected that
24 is important to report.

25 But in the months after the comprehensive IHOP interview

1 in which she had recanted, by the summertime, I didn't hear from
2 her, I finally hear from her over the phone, and it sounded like
3 she was in dire straits in her life. I listened to her and we
4 talked about it.

5 She did not ask for anything. I volunteered to help at
6 a certain point, and I did it because I understood that, you know,
7 it would mean -- that money would mean more to her than it would
8 to me.

9 MS. NEWTON: So how much money are we talking about?

10 THE WITNESS: I believe \$200.

11 MS. NEWTON: Okay.

12 And why didn't you -- was there anything that you hoped
13 to hide about that transaction?

14 THE WITNESS: What do you mean by "hope to hide"?

15 MS. NEWTON: Well, if I were a friend or I was going to
16 help someone, I would just want to give it to them and let that be
17 the end of it.

18 You provided her money through some sort of a
19 complicated process, didn't you?

20 THE WITNESS: I did.

21 MS. NEWTON: Why?

22 THE WITNESS: Well, let me first be clear that it was
23 not a compensatory agreement for information or access.

24 I already had had months of -- previously, in previous
25 months, I already had information and access to her. That's not

1 what this was about. But she was not the kind of person that was
2 savvy with some kind of digital acceptance of finances, whether
3 it's some of the modern apps people use to exchange money and so
4 forth. So for her to receive money, it had to be in a cash form.
5 And then I went out of my way to try to identify whom within
6 Winston-Salem I knew that might be able to pass along the money to
7 her but that also -- and this was important to me -- I also had to
8 identify someone that had nothing to do with my reporting or the
9 story.

10 So I kept -- I have limited options in terms of the
11 number of people I knew like that, but I eventually was able to
12 find someone who could pass along that to Jessicah.

13 MS. NEWTON: Who was that person?

14 THE WITNESS: Her name is Cindy.

15 MS. NEWTON: Cindy what?

16 THE WITNESS: I don't know her last name off the top of
17 my head.

18 MS. NEWTON: And how do you know her?

19 THE WITNESS: In relation to the place where I stayed
20 when I visit Winston-Salem.

21 MS. NEWTON: Like a hotel?

22 THE WITNESS: Airbnb.

23 MS. NEWTON: Okay.

24 So it was someone that you met while you were
25 investigating this story in North Carolina, is that fair to say?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** Okay. All right.

3 So you used her to pass cash to someone who was a source
4 in this story. Is that fair?

5 **THE WITNESS:** When you run together "passing cash to
6 someone who was a source in this story," it can sound
7 inflammatory. But --

8 **MS. NEWTON:** Well, it looks bad. That's why I'm asking.

9 **THE WITNESS:** I understand that opinion.
10 It's my belief that so long as a reporter is not
11 directly and explicitly paying for information or paying for
12 access, that there are some rare circumstances in which I would be
13 human and feel compelled to help someone.

14 **MS. NEWTON:** Did you report that to your employer or get
15 reimbursed for the expenditure?

16 **THE WITNESS:** I did not.

17 **MS. NEWTON:** Okay.

18 Were there other gifts that you provided to Ms. Black?

19 **THE WITNESS:** None except -- well, except for -- a
20 birthday cake.

21 **MS. NEWTON:** Okay.

22 And -- a meal? IHOP?

23 **THE WITNESS:** A meal. But I would personally not
24 describe a meal a gift.

25 **MS. NEWTON:** Okay.

1 And did you expect anything from your generosity?

2 **THE WITNESS:** No. I did not.

3 **MS. NEWTON:** Did you receive anything for your
4 generosity?

5 **THE WITNESS:** I don't believe so.

6 **MS. NEWTON:** Did you receive continued access to this
7 particular source?

8 **THE WITNESS:** Not because of me helping her out.

9 **MS. NEWTON:** Mr. Atkins, turning to your discussions
10 with Ms. Black, did you have any off-record discussions with her,
11 discussions that you did not record?

12 **THE WITNESS:** Yes.

13 **MS. NEWTON:** Okay.

14 And how many of those did you have?

15 **THE WITNESS:** I do not know.

16 **MS. NEWTON:** Was it a number of them or --

17 **THE WITNESS:** I do not know. I would describe it as
18 "not many."

19 **MS. NEWTON:** Okay.

20 And why would you have those unrecorded discussions?

21 **THE WITNESS:** It could be that I received a call and I
22 was not in a position to have recording equipment set up. It
23 could have been moments in conversations when the subject matter
24 veered off -- veered from what I thought was relevant or
25 important.

1 **MS. NEWTON:** During any of those discussions -- sorry to
2 interrupt you -- did you want to say something?

3 **THE WITNESS:** No, that's okay.

4 **MS. NEWTON:** Okay.

5 During any of those discussions, did you discuss with
6 Ms. Black that she could possibly expect to be paid for any of the
7 exonerations if successful?

8 **THE WITNESS:** No.

9 **MS. NEWTON:** Okay.

10 Did you develop any evidence that Rayshawn was not in
11 the car with her that evening, on 11/15/2002, during the time of
12 the killing?

13 **THE WITNESS:** Can you also please elaborate on what you
14 would define as "evidence"?

15 **MS. NEWTON:** Is there anything from your reporting that
16 would lead to any suggestion or verifiable evidence that Rayshawn
17 Banner was not in Ms. Black's vehicle during the relevant period
18 of time?

19 **THE WITNESS:** It was a -- that came from a -- there are
20 consistent accounts from multiple people I spoke with about that
21 being the case.

22 In conjunction with what seems like inconsistent
23 testimony by Officer Vincent Stephens when he was called as a
24 witness to -- at the original trial in which Vincent Stephens said
25 he didn't take notes or anything about the timing of when he

1 said -- was said to have encountered teenagers involved in the
2 case.

3 MS. NEWTON: Did Ms. Black give you any information that
4 you can recall to suggest that Rayshawn Banner was not with her
5 during that relevant period of time on the date of the killing in
6 this case?

7 THE WITNESS: I don't recall.

8 MS. NEWTON: Do you recall whether she affirmatively
9 confirmed to you that he was in the car?

10 THE WITNESS: I don't recall her exact memory about
11 Rayshawn. I would suggest that -- I mean -- I would think it's
12 somewhere in the transcripts of the calls.

13 MS. NEWTON: Do you recall telling her that he wasn't
14 there that evening?

15 THE WITNESS: If it was information that I -- if that
16 was information that I introduced to her, it would have been based
17 off of my reporting up to the point whenever I introduced that
18 information.

19 I don't recall introducing that information to her
20 before asking her about Rayshawn plainly. In all likelihood -- I
21 don't recall -- it's not my recollection exactly, but in all
22 likelihood, I would have asked her about Rayshawn and I might have
23 then said, at some point after that, that, according to other
24 people, he was not there.

25 MS. NEWTON: And what is your understanding of how many

1 of the five defendants were in the vehicle with Ms. Black that
2 evening?

3 **THE WITNESS:** When you say "my understanding" --

4 **MS. NEWTON:** Based on your 15 hours and more of
5 conversation with Ms. Black.

6 **THE WITNESS:** Jessica Black?

7 **MS. NEWTON:** Right.

8 **THE WITNESS:** I don't recall the exact number but my
9 vague recollection is that it was transient and fluid throughout
10 the course of that day, that she oftentimes -- because she was old
11 enough to drive -- could ferry neighborhood kids from stop to
12 stop, you know, house to house or activity to activity. Some kids
13 jumped in, some kids jumped out.

14 So in terms of this very specific time and that date
15 that you're interested in asking about or focusing on?

16 **MS. NEWTON:** No. Just that period of time.

17 **THE WITNESS:** Meaning the day of -- the day in question,
18 November 15th of 2002?

19 **MS. NEWTON:** Let's say from 4:00 p.m. to 9:00 p.m. on
20 11/15/2002.

21 **THE WITNESS:** Yeah. From what I recall, it could vary
22 how many people were in and out of her car.

23 **MS. NEWTON:** Would it surprise you -- well, let me ask
24 you this way: Did Ms. Black ever tell you that she was an alibi
25 witness for at least two -- identifiably two other of the

1 defendants for the time period continuous from 4:00 to 4:30 on
2 11/15/2002 to 8:30 to 9:00 that evening, that they were with her,
3 eyes on, the entire period of time?

4 Did she ever tell you that?

5 **THE WITNESS:** I don't recall that she explained that to
6 me with that much specificity.

7 **MS. NEWTON:** Okay.

8 Now, finally -- thank you for answering my questions. I
9 do have one more.

10 You talked to Ms. Black about your interview with former
11 District Attorney Tom Keith.

12 Do you recall that conversation?

13 **THE WITNESS:** Yes.

14 **MS. NEWTON:** Okay.

15 With Ms. Black?

16 Did you record your conversation with District Attorney
17 Tom Keith?

18 **THE WITNESS:** Yes.

19 **MS. NEWTON:** And you've turned that over to the
20 Commission?

21 **THE WITNESS:** Well, the only audio that the Commission
22 has -- that we have agreed is the audio of Jessicah Black.

23 **MS. NEWTON:** Okay.

24 So you have an audio of you interviewing District
25 Attorney Tom Keith saying that law enforcement were bluffing when

1 they were talking to Jessica Black and threatening to prosecute
2 her?

3 **THE WITNESS:** No. He did not use the word "bluff."

4 **MS. NEWTON:** Well, then, how would you characterize his
5 statement to you?

6 **THE WITNESS:** Well, he explained that -- he unpacked for
7 me -- I asked in a general sense, you know, "Why is it that in
8 this case" -- and he was -- I will be clear. He was giving his
9 opinion. He was speculating. Because he told me that he did not
10 have, you know, specific exact memories of what his thinking was
11 at that time 17 years ago.

12 So we were doing -- we were speaking about the
13 possibilities. He was educating me about the criminal justice
14 system in North Carolina. And I asked him, you know, "Why, in all
15 likelihood, was it that at the time Jessica Black was not charged
16 with a crime in relation to these other charges" -- I guess the
17 former defendants.

18 And he explained to me and broke it down that just based
19 on her testimony, in all likelihood, it would have been very
20 difficult for prosecutors to have proven in court that, in fact,
21 she was responsible for murder to some degree. She would have had
22 to have known at the time of the crime that the victim had in fact
23 died, that it was a homicide.

24 But her testimony about her being on a picnic table with
25 her back to what would be the crime scene and overhearing things,

1 that that -- it just wouldn't have been enough for a prosecutor to
2 prove she was culpable -- not culpable -- she was responsible for
3 murder.

4 So when Jessica was explaining to me her fears for
5 several years that -- or that had been present in her for
6 several years about possibly being charged for murder because
7 there are no statute of limitations on it, that I informed her of
8 the information I learned from Tom Keith.

9 MS. NEWTON: During your interview -- and I am referring
10 to, for the record, Handout 16 -- Mr. Atkins, we have a transcript
11 of your interview of Jessica Black at the IHOP, recording 3, I
12 believe it is. I'm sorry. It's recording 4, page 73.

13 THE WITNESS: May I have a moment to follow along with
14 you?

15 MS. NEWTON: Yes, sir. Handout 16, recording 4,
16 page 73, lines 1 through 4.

17 THE WITNESS: If I could just have another moment to
18 look at it, please.

19 MS. NEWTON: Of course.

20 THE WITNESS: I'm so sorry. Can you please repeat the
21 location?

22 MS. NEWTON: Yes. It is Interview of Jessica Black 4
23 by Hunter Atkins, page 73, line 1 through 4, first two sentences.

24 THE WITNESS: One moment. Almost there. 74?

25 MS. NEWTON: 73.

1 **THE WITNESS:** 73, lines 1 through --

2 **MS. NEWTON:** -- 4.

3 **THE WITNESS:** Okay. Yes.

4 **MS. NEWTON:** So after talking to Ms. Black on the
5 previous page about who Tom Keith is, he was long-time district
6 attorney in the county, you said this: "He was a longtime DA.
7 And he explained to me, essentially, that they were bluffing.
8 They were never going to charge you because they knew they never
9 would win the argument."

10 So you told her they were essentially bluffing; correct?

11 **THE WITNESS:** Yes.

12 **MS. NEWTON:** Okay.

13 But you said Tom Keith did not tell you they were
14 bluffing.

15 **THE WITNESS:** He did not use the word "bluffing."

16 **MS. NEWTON:** Okay.

17 But that's how you conveyed it to your source?

18 **THE WITNESS:** That's how I explained it, in that
19 sentence, to Jessicah.

20 **MS. NEWTON:** Okay. Thank you, Mr. Atkins, for being
21 with us.

22 **JUDGE LOCK:** Commissioner Colbert.

23 **MS. COLBERT:** Hi, Mr. Atkins. My name is Robin Colbert.
24 Are you still employed with the *Chronicle*?

25 **THE WITNESS:** No.

1 **MS. COLBERT:** When -- what was your last day of
2 employment with the *Chronicle*?

3 **THE WITNESS:** It's a private, personal matter that does
4 not seem to be within the scope of the order requiring my
5 testimony on a limited topic.

6 **JUDGE LOCK:** I will agree with the witness as to that
7 point.

8 **MS. COLBERT:** So when did you come to North Carolina to
9 interview and talk to these folks?

10 **THE WITNESS:** In early spring of 2019.

11 **MS. COLBERT:** And so when you were in North Carolina
12 talking to those folks, were they under the impression that you
13 were working for the *Chronicle*?

14 **THE WITNESS:** Yes.

15 **MS. COLBERT:** Okay.

16 So it's fair to say, then, in spring, when you came to
17 North Carolina and had your interview with Jessicah at the IHOP,
18 you were still employed with the *Chronicle*?

19 **THE WITNESS:** Yes.

20 **MS. COLBERT:** So when you started to write -- is this
21 your -- so in your work with the *Chronicle*, so you worked as an
22 investigative reporter?

23 **THE WITNESS:** Sports reporter. I had broad latitude to
24 write about more than just a game, more than just a practice, to,
25 through sports, examine other elements of life.

1 **MS. COLBERT:** So when you began to write the story about
2 Mr. Paul's grandfather, was Mr. Paul aware that you were going
3 to -- you were digging into this piece, this tragedy that the
4 family had experienced?

5 Did you get any kind of permission from them?

6 **THE WITNESS:** Respectfully, I would ask that if you
7 would be kind to offer an explanation for how that is within the
8 scope of the order requiring my testimony on a limited set of
9 topics.

10 **JUDGE LOCK:** Do you prefer not to answer that question?

11 **THE WITNESS:** I prefer not to answer that question.

12 **JUDGE LOCK:** All right.

13 You will not be required to answer it.

14 **MS. COLBERT:** So you indicated that you talked to the
15 daughters of Mr. Jones. When you were in North Carolina, did you
16 talk to them then?

17 **THE WITNESS:** I would be grateful for -- I apologize. I
18 would be -- respectfully ask if there could be an explanation of
19 how that is within the scope of the order requiring my testimony
20 on a limited set of topics.

21 **JUDGE LOCK:** Hold on one second.

22 I believe that is outside the scope of the waiver.

23 **MS. COLBERT:** So when you were -- when you talked to the
24 Center on Actual Innocence and you got the waivers, were you still
25 employed with the *Chronicle*?

1 **THE WITNESS:** Can you please explain how that is within
2 the scope of the order requiring my testimony on a limited set of
3 topics?

4 **JUDGE LOCK:** I do believe it is outside the scope.

5 And for the record, I believe this agreement was signed
6 last week; is that correct?

7 **MS. SMITH:** It was signed last week.

8 **JUDGE LOCK:** Last week. Okay.

9 **MS. SMITH:** Your Honor, if I could put on the record, I
10 think this will clear up some confusion.

11 **JUDGE LOCK:** All right.

12 **MS. SMITH:** In his interview with Ms. Tanner last week,
13 he told Ms. Tanner that he stopped working for the *Chronicle* in
14 February of 2020.

15 **JUDGE LOCK:** Yes.

16 Does that answer your question?

17 **MS. COLBERT:** Yes, it does.

18 **JUDGE LOCK:** Okay.

19 **MS. COLBERT:** Yes, it does.

20 So during the time -- that actually answers all of my
21 questions.

22 **JUDGE LOCK:** Okay.

23 **MS. COLBERT:** So -- because I was trying to figure out
24 the timeline of communications so that does answer my questions.

25 **JUDGE LOCK:** Right.

1 **MS. COLBERT:** Thank you.

2 **JUDGE LOCK:** Commissioner Britt.

3 **MR. BRITT:** Mr. Atkins, my name is Johnson Britt. How
4 are you this afternoon?

5 **THE WITNESS:** I'm good. Thank you for asking.

6 **MR. BRITT:** I'm going to be -- I'm going to try to be
7 brief but it may not be possible for me. Let me ask you just a
8 little ...

9 What's your educational background?

10 **THE WITNESS:** I attended Northwestern University.

11 **MR. BRITT:** A school renowned for journalism.

12 **THE WITNESS:** If that is your opinion.

13 **MR. BRITT:** Yeah. Were you a journalism major?

14 **THE WITNESS:** Yes. I studied journalism there.

15 **MR. BRITT:** Did you do any postgraduate work?

16 **THE WITNESS:** In terms of postgraduate studies, I did
17 not.

18 **MR. BRITT:** Okay.

19 The *Chronicle* was not the first paper you worked for; is
20 that correct?

21 **THE WITNESS:** Correct.

22 **MR. BRITT:** What other papers have you worked for?

23 **THE WITNESS:** I was a freelance journalist in the past
24 for multiple other publications, including newspapers and
25 magazines.

1 **MR. BRITT:** What topics were you covering as a
2 freelance?

3 **THE WITNESS:** Respectfully, I would be grateful to ask
4 if you might have an explanation for how that is within the scope
5 of the order requiring my testimony on a limited set of topics.

6 **MR. BRITT:** I'm trying to determine if you've always
7 been a sports reporter, if you're an investigative-type sports
8 journalist.

9 **THE WITNESS:** Yes. I have reported on a broad number of
10 topics that include sports, that include investigative matters as
11 well.

12 **MR. BRITT:** All right.

13 And you said that you learned about -- that you recalled
14 this story about Chris Paul's grandfather when he was traded from
15 I believe New Orleans to Houston; is that correct?

16 **THE WITNESS:** It would be the Los Angeles Clippers to
17 the Houston Rockets.

18 **MR. BRITT:** Okay. Clippers. I'm sorry.

19 And you thought it would be a good story to do as a
20 follow-up in terms of where things stood?

21 **THE WITNESS:** I did not have a definitive angle. I
22 simply knew it was something that the Houston audience and the
23 *Houston Chronicle* readership at the time likely was less aware,
24 and so I just began looking into, you know, whatever information
25 was basic at first and then developed from there.

1 **MR. BRITT:** Okay.

2 Are you familiar with ESPN series 30 for 30?

3 **THE WITNESS:** I am unsure how that has to do with the
4 scope of the order requiring my testimony on a limited set of
5 topics.

6 **MR. BRITT:** Were you aware that ESPN 30 for 30 did a
7 news segment on this -- on the topic of Mr. Paul's grandfather
8 being killed?

9 **THE WITNESS:** I don't believe that ESPN 30 for 30 did
10 that program.

11 **MR. BRITT:** Okay.

12 And -- so are you continuing to work on this topic --
13 this subject matter, rather?

14 **THE WITNESS:** My focus today was to be here and to
15 answer the questions as it relates to the order requiring my
16 testimony on a limited set of topics.

17 **JUDGE LOCK:** You prefer not to answer that question?

18 **THE WITNESS:** So sorry?

19 **JUDGE LOCK:** You prefer not to answer that question?

20 **THE WITNESS:** I prefer not to answer that question.

21 **JUDGE LOCK:** I will not require you to answer it.

22 **MR. BRITT:** Did you ever discuss with any of the
23 claimants the monetary reward that they might receive from the
24 State of North Carolina if they were exonerated?

25 **THE WITNESS:** I have a limited understanding of how that

1 works, but my basic understanding is that sometimes there are
2 civil suits that follow some of these cases -- some cases of
3 exoneration, and those were discussions that, in a cursory way, I
4 had with some of the claimants.

5 **MR. BRITT:** If you would hold on just a second, please.

6 Do you recall having a conversation with Mr. Cauthen
7 which started with him asking about what happens to Dorrell's
8 share if they are found innocent?

9 **THE WITNESS:** Yes.

10 **MR. BRITT:** Do you have any idea how Mr. Cauthen would
11 know about such a topic?

12 **THE WITNESS:** I do not.

13 **MR. BRITT:** Do you recall telling him it may go to his
14 daughter?

15 **THE WITNESS:** I don't recall -- I don't recall saying
16 that. I do recall it being a brief discussion we had in which I
17 also acknowledged that I don't know.

18 I believe in that conversation prefacing that I didn't
19 know, I assumed it might go to a next of kin of some kind. But I
20 was pretty open about not knowing anything about, like, how
21 that -- where the money goes.

22 **MR. BRITT:** I stand corrected. You did say something
23 with regard to his family filing some paperwork and that
24 Mr. Cauthen interjected, "No, it would go to his daughter as his
25 next of kin."

1 So you corrected me on that. Thank you.

2 I don't have any other questions.

3 **JUDGE LOCK:** Commissioner Essary.

4 **MS. ESSARY:** Hi. I'm Melissa Essary. I'll look this
5 way.

6 I did have a question about your conversations with
7 Jessica which exceeded probably 15 or so hours. I know you don't
8 recall specifically, but you talked a lot about the night of the
9 murder; is that correct?

10 **THE WITNESS:** Yes. Ma'am, may I ask a question?

11 **MS. ESSARY:** Sure.

12 **THE WITNESS:** Is it possible for you to avert -- not
13 avert -- direct your gaze to your right? I'm on the camera that's
14 over -- waving is pointless.

15 **MS. ESSARY:** Does that work?

16 **THE WITNESS:** Yeah. I appreciate that.

17 **MS. ESSARY:** Great.

18 **THE WITNESS:** Thank you.

19 **MS. ESSARY:** So you've had a lot of questions with
20 Jessica Black about what happened the night of Mr. Jones' murder.

21 Based on all of those conversations, which were
22 numerous, what do you recall her saying about the events of that
23 night factually?

24 **THE WITNESS:** That she picked up the guys in a manner
25 that was typical for the way in which they hung out during that

1 period of time when they were friends.

2 **MS. ESSARY:** May I interject? What "guys"?

3 **THE WITNESS:** Some of the claimants as well as other
4 young men that were in the friend group in that part of the
5 neighborhood, seemed to be --

6 **MS. ESSARY:** So which of the claimants specifically do
7 you recall her stating she picked up that afternoon?

8 **THE WITNESS:** Nathaniel Cauthen. Dorrell Brayboy.

9 I apologize. If I could have a moment to think.

10 Jermal Tolliver.

11 I do not recall whether -- with confidence she had
12 explained that she had picked up either Christopher Bryant or
13 Rayshawn Banner. I just don't recall if she said that.

14 **MS. ESSARY:** So what is your recollection of what she
15 said as to those whom she remembered being with her, how long they
16 were with her in a continuous amount of time until she dropped
17 them off finally at their homes around 9:00 or 9:30?

18 **THE WITNESS:** I don't -- I don't recall specifically
19 about what went into those hours.

20 I recall asking her more pointed questions about their
21 activity at a bowling alley, Creekside Lanes, later that night.

22 **MS. ESSARY:** What is your understanding, if any, of any
23 of the codefendants being with her continually -- and I may be
24 reasking the same question; if so, I apologize.

25 What is your recollection of her answering your

1 questions as to what -- who the codefendants were with her
2 continually in her eyesight from when she picked them up when they
3 were walking on the street until they saw the tape, the crime
4 scene, and then she dropped them off?

5 **THE WITNESS:** So I definitely want to be clear that I
6 don't recall the timing with such exactitude as to say from 4:30
7 to 9:30. So if it's okay with you, I just want to give you my
8 general impression of time that -- of what I recall about the time
9 she spent with some of that --

10 **MS. ESSARY:** I could not hear the last of your comment
11 but, yes, if you would proceed with what you recall with as much
12 specificity as possible in how she answered your pointed questions
13 about what happened that night and with whom.

14 **THE WITNESS:** Thank you. I can do that.

15 So joy-riding as usual with some of those guys.
16 Eventually, she -- I can't remember with how much confidence she
17 had explained to me that they went to the mall that night, but I
18 believe that was a topic of discussion. She described it as they
19 split up, where they're at the mall but she went off to try to see
20 a friend of hers. They eventually met up again.

21 Then later they go to the bowling alley. When they get
22 to the bowling alley, it was -- it was hard to corroborate exactly
23 what time that was. It seemed to be sometime between 8:00 and
24 10:00-ish when they were there. Like -- but for that amount of
25 time, not for two hours, but it seemed to have happened somewhere

1 in that range. It seemed likelier to have happened around 10:00
2 that the --

3 (Overlapping speakers.)

4 **MS. ESSARY:** Let me interject for just a moment.

5 So to get even more specific, in answering your
6 questions, do you recall who she said she was with from about 6:30
7 to 7:30 p.m. that night?

8 **THE WITNESS:** Nathaniel Cauthen. Dorrell Brayboy. And
9 then my recollection isn't strong enough to know exactly that
10 hour. But I would say that at some point, she hung out with Chris
11 Bryant and Jermal Tolliver as well.

12 **MS. ESSARY:** Well, let me ask you this. I was a
13 journalism major also, went on to law school later. And I know we
14 have to be very specific with our facts.

15 Why is your recollection dusty as to that particular
16 very important hour during which time we believe Mr. Jones was
17 murdered?

18 **THE WITNESS:** Well, I didn't -- I never sat down to
19 write out that exact hour according to Jessica's account.

20 **MS. ESSARY:** Why not?

21 **THE WITNESS:** Because she had such emphatic and
22 thoughtful comments throughout the other interviews about, you
23 know, how her testimony was false, about how that day was simple
24 and plain, so independent of them -- in conjunction with
25 explaining to me that she knows what didn't happen according to

1 her testimony. For example, that she was on a park bench, things
2 like that -- park picnic table, excuse me.

3 That -- the Friday in question, November 15, 2002, was
4 just, like, a normal day between friends. There wasn't as much
5 emphasis on trying to remember what happened that day until, all
6 of a sudden, it became an inquiry by police.

7 So it was mostly described as just any other day that
8 was not eventful.

9 (Overlapping speakers.)

10 **MS. ESSARY:** So you did not press her on that time
11 period as to who she was with, which would relate specifically to
12 the time during which Mr. Jones was murdered?

13 **THE WITNESS:** I might have pressed her on it. I don't
14 recall exactly if I pressed her on that exact hour. It certainly
15 might have happened. It would have been important to ask her
16 about whatever she remembers from that evening.

17 But I also -- I also recall walking away from my hours
18 of conversation with her appreciating the difficulties she had
19 remembering something so specific about a day that, in reality,
20 seemed, by her account, to not be eventful.

21 **MS. ESSARY:** But it became eventful just a short few
22 short days afterward when she was interrogated by police about
23 something that had happened very recently.

24 Wouldn't you agree with that?

25 **THE WITNESS:** I would agree with --

1 **MS. ESSARY:** It wasn't just an ordinary day. In fact, a
2 few days later --

3 **THE WITNESS:** No.

4 **MS. ESSARY:** -- it became the subject -- it becomes the
5 subject of an intense police interrogation of her.

6 **THE WITNESS:** However, we don't have a record of
7 whatever original account she might have given to police in the
8 unrecorded hours about what she did that day.

9 So it's hard to corroborate from her perspective and her
10 account -- it was hard for me to corroborate exactly what she did
11 in even the most important hour or, as you describe it as an
12 important hour, between 6:30 and 7:30.

13 The consistency of that being an uneventful day,
14 according to people I spoke with, you know, that makes sense.

15 **MS. ESSARY:** Didn't you describe at some point, though,
16 that the picking up and dropping off of her friends was fluid as a
17 matter of routine?

18 **THE WITNESS:** Yes.

19 **MS. ESSARY:** In other words, it wasn't an everyday
20 event, that every -- every weekday she would pick them up after
21 she got back from her grandparents' home, and they would stay with
22 her -- all of her friends would stay with her continually. I
23 mean, that would be a stretch, wouldn't it?

24 **THE WITNESS:** I don't know. When we say "all of her
25 friends" --

1 **MS. ESSARY:** Let me retract that part of it.

2 **THE WITNESS:** I would be speculating.

3 **MS. ESSARY:** Didn't you say -- when you interviewed her,
4 didn't she say that it was sometimes very fluid as to whom she was
5 with when in the neighborhood, the south side?

6 **THE WITNESS:** Yes.

7 **MS. ESSARY:** Okay.

8 So is it fair of us as commissioners to make an
9 assumption as to who she was with between 6:30 and 7:30 p.m. when
10 Mr. Jones was murdered?

11 **THE WITNESS:** I don't have an opinion on what would be
12 fair of the Commission to assess in terms of that. It would seem
13 logical that having as many conversations as possible with the
14 people that are involved in this case might -- might inform that
15 opinion better.

16 **MS. ESSARY:** Let me ask another question, change of
17 topic -- and I do believe it's within the scope of our discussion
18 today. If not, let me know.

19 Have you spoken to each of the remaining living
20 codefendants?

21 **THE WITNESS:** Yes.

22 **MS. ESSARY:** You've interviewed them about the events of
23 that night?

24 **THE WITNESS:** Yes.

25 **MS. ESSARY:** And did they say before that or did you

1 question them as to whether they had discussed with each other
2 ahead of your conversing with them where they were that night?

3 **THE WITNESS:** I apologize. Can you rephrase the
4 question.

5 **MS. ESSARY:** I'm going to retract that. That's too
6 complex.

7 When did you interview Mr. Bryant and where?

8 **THE WITNESS:** We first spoke briefly at night on a bench
9 outside of a Chili's.

10 **MS. ESSARY:** And what was the topic of that
11 conversation?

12 **THE WITNESS:** That was just mostly trying to introduce
13 myself, show him that I was interested in having a longer
14 discussion with him.

15 **MS. ESSARY:** Did you have that longer discussion?

16 **THE WITNESS:** I did. I don't remember if it was a day
17 later or not, but it was around a day later, and we met and talked
18 about his experience.

19 **MS. ESSARY:** And what did you talk about his experience?
20 What did you learn?

21 **THE WITNESS:** Respectfully, I would be so grateful if
22 you could be more specific about that because --

23 **MS. ESSARY:** I want to focus on the events of that
24 night, which is why we're here today of course.

25 What did you learn about the events of that night? What

1 was his story -- Mr. Bryant's story?

2 **THE WITNESS:** I don't remember. I can't recall it with
3 such specificity that I would feel comfortable adhering to it
4 right now.

5 **MS. ESSARY:** Was that recorded?

6 **THE WITNESS:** It was recorded.

7 **MS. ESSARY:** Do you have that recording?

8 **THE WITNESS:** I do.

9 **MS. ESSARY:** Is that something the Commission has asked
10 for?

11 **THE WITNESS:** No.

12 **MS. ESSARY:** Okay.

13 Do you recall whether he said anything specifically
14 about where he was during that time period? Did you question him?

15 **THE WITNESS:** I do recall -- I just want to make it
16 clear that although I recall in general some things we discussed,
17 my recall is not exact enough for my response to act as --

18 (Overlapping speakers.)

19 **MS. ESSARY:** Well, did you ask him the question "Where
20 were you at the time of Mr. Jones' murder?"

21 **THE WITNESS:** I did. We went over it. And we talked
22 through it. There was --

23 (Overlapping speakers.)

24 **MS. ESSARY:** What was his response?

25 **THE WITNESS:** Well, he maintained his innocence and --

1 (Overlapping speakers.)

2 **MS. ESSARY:** I understand that. I understand that.

3 I'm asking if he told you where he was during that time.

4 **THE WITNESS:** Yeah, to the best of his memory.

5 He also explained to me that, similarly, in the same
6 vein that it was not a eventful day, which is in fact what made it
7 harder to remember even something as finite as between 6:30 and
8 7:30. So we just went into "Whatever you remember, man, whatever
9 you want -- whatever you remember, we can talk about."

10 So he remembers getting home from school that day. He
11 remembered at some point getting in the car with Jessica and his
12 friends. He -- those included the claimants except for Rayshawn
13 Banner. Bryant told me he does not remember Rayshawn Banner being
14 in the car with them that day.

15 But he did remember Nathaniel, Dorrell, Jermal, as well
16 as some other friends in the neighborhood that would have been in
17 and out. He remembered them driving out to Midway, area outside
18 of Winston-Salem. He remembered her, Jermal, and Dorrell walking
19 to an Amoco gas station at a certain point that afternoon in which
20 Brayboy got some ice cream that he didn't like and dropped it on
21 the ground or threw it on the ground because he didn't like it,
22 threw it in the trash, something like that.

23 And then he recalled -- he was not -- I would say he was
24 not 100 percent confident that he was at the bowling alley, but he
25 expressed some confidence that he was at the bowling alley that

1 night with that group.

2 And then they -- he said that Jessica dropped them off
3 at -- dropped -- he said Jessica dropped him off at his house and
4 that Dorrell stayed the night with him.

5 That's the best of my recollection.

6 **MS. ESSARY:** Thank you.

7 And what about interviewing Mr. Cauthen?

8 **THE WITNESS:** Can you be more specific with your
9 question, please?

10 **MS. ESSARY:** Yes, yes. The same line of questioning.
11 If you could just respond to your interview of him regarding the
12 events of that night.

13 Where was that interview, first of all?

14 **THE WITNESS:** Over the phone.

15 **MS. ESSARY:** Okay.

16 So you've never met in prison with Mr. Cauthen in
17 person?

18 **THE WITNESS:** Correct.

19 **MS. ESSARY:** So over the phone, what did you hear
20 Mr. Cauthen say about where he was that night?

21 And do you have recording of that?

22 **THE WITNESS:** I do. You know, I'm struggling to recall
23 exactly what he said about who he was with and where. What I --
24 the strongest memory I have -- recollection I have is that he said
25 that Rayshawn Banner was not with them driving around the car that

1 day. Rayshawn wasn't at the bowling alley. I can't remember the
2 activities that he laid out that they did do.

3 MS. ESSARY: Do you recall whether he did lay those out
4 with specificity or whether it was just to the best of his
5 recollection?

6 THE WITNESS: There were some things that he spoke about
7 with specificity and confidence. There were other things that,
8 you know, a little less confident that he thinks might have
9 happened that day, where they might have been, also consistent
10 with that day being somewhat uneventful and, you know, not having
11 perfect recall.

12 MS. ESSARY: Let's move on to Mr. Banner.

13 Have you interviewed Mr. Banner?

14 THE WITNESS: Yes.

15 MS. ESSARY: Where did interview take place?

16 THE WITNESS: In person at Bertie Correctional.

17 MS. ESSARY: Oh, in person at the correctional center.

18 Okay.

19 And to the events of that night, does he remember where
20 he was?

21 THE WITNESS: Yeah. So he said that he had contemplated
22 going to the homecoming football game that night and that he was
23 hanging out with some friends in the neighborhood -- not in the
24 car, but just at someone's house. At some point, he leaves that
25 house. When he returned to the spot where the group usually hung

1 out, they were gone.

2 I think he mentioned something about playing video games
3 with another friend either before or after that time and explained
4 that he went home in the early evening, slept on the couch.

5 MS. ESSARY: Did he recall or say anything about being
6 at a bowling alley?

7 THE WITNESS: He said he was not there.

8 MS. ESSARY: What about your interview with
9 Mr. Tolliver, if any?

10 THE WITNESS: Yeah.

11 MS. ESSARY: Where did you meet?

12 THE WITNESS: I met at that apartment where he was
13 staying at the time --

14 MS. ESSARY: And that --

15 THE WITNESS: -- in person.

16 MS. ESSARY: Same line of questioning.

17 What does he remember about the events of that night?

18 THE WITNESS: So he remembers the group hanging out that
19 day except, again, he also stated that Rayshawn was not driving
20 around with them and Rayshawn was not at the bowling alley.

21 He remembered driving around. He remembered the drive
22 out to Midway. There was a time period where he was in the car
23 with Jessicah. There was a time period -- earlier in the day, and
24 a time period when he was not in the car I think.

25 But by the evening time, he was in the car with her.

1 The group makes the drive to Midway and they go to the bowling
2 alley. He remembers the bowling alley. On the drive back, he
3 remembered looking at the crime scene. He remembered examining
4 the crime scene because it was a neighborhood spectacle that was
5 lit up with several other people from the neighborhood looking at
6 it. He remembers being dropped off at his home.

7 **MS. ESSARY:** So I know you also had a chance to talk
8 with Mr. Brayboy. Was there anything different significantly
9 about his account of that evening's events?

10 **THE WITNESS:** He expressed some but not complete
11 confidence that the group, at some point, stopped at the park that
12 day. He was the only one of the claimants to express that. And
13 he was not sure the exact time. The rest is consistent.

14 May I also, if it's okay, I wanted to add to what
15 Cauthen explained to me.

16 Cauthen did explain details about the bowling alley
17 about how he and Dorrell were, at first, in talking to some girls
18 that were there, then they go inside, Cauthen gets into a
19 disagreement with the security officer that was there, the
20 security officer kicks the group out for being rambunctious and
21 disrespectful.

22 Cauthen did remember that.

23 **MS. ESSARY:** So looking back on all five accounts given
24 by obviously the decedent, Mr. Brayboy, and the four claimants,
25 what inconsistencies were there between the four of them in their

1 accounts of that night?

2 **THE WITNESS:** Broadly speaking, in my opinion -- well,
3 the consistent -- you asked me about the inconsistencies?

4 **MS. ESSARY:** Yes.

5 **THE WITNESS:** The time -- there was not unanimity about
6 the timing they went to certain places. It was just -- but in my
7 opinion, that was an understandable inconsistency about that day.

8 They did -- they were most consistent about the general
9 timing of things, whether it was evening, earlier in the evening,
10 later in the evening, estimating the time period. But mostly
11 together, along with Jessicah, they hung out earlier in the day
12 and they made their way to the mall, they made their way to the
13 bowling alley, they made their way to the crime scene, they made
14 their way home.

15 I don't remember any -- I don't remember other glaring
16 inconsistencies that would've called into question their
17 credibility about those days.

18 **MS. ESSARY:** Was there anything about your interviews
19 with them that called into question their credibility?

20 **THE WITNESS:** Ultimately, after the amount of time that
21 I spent talking with them and getting to know them, no.

22 **MS. ESSARY:** That's all I have.

23 **MS. COLBERT:** I just have one follow-up question.

24 **JUDGE LOCK:** Yes, ma'am.

25 **MS. COLBERT:** And hopefully this is in the scope of --

1 **JUDGE LOCK:** Might want to look at the camera.

2 **MS. COLBERT:** So did you seek, Mr. Atkins, reimbursement
3 for putting money on the inmates' accounts through your newspaper?

4 **THE WITNESS:** I don't recall.

5 **MS. COLBERT:** Did your newspaper pay for your trip to
6 North Carolina?

7 **THE WITNESS:** Yes.

8 **MS. COLBERT:** That's all I had.

9 **JUDGE LOCK:** Any other commissioners?

10 Yes, sir, Mr. Jarvis -- Commissioner Jarvis.

11 **MR. JARVIS:** Yes. Immanuel Jarvis. I'm a public
12 member. I am not an attorney so these are going to be some
13 softball questions in consideration of others.

14 In your opinion in the time that you spent with these
15 individuals, what is your personal opinion in terms of the
16 veracity of their statements talking about innocence?

17 **THE WITNESS:** They consistently maintained it over the
18 course of months over many conversations.

19 And then -- I would be grateful if you could elaborate
20 on your use of the word "veracity."

21 **MR. JARVIS:** Right.

22 So we'll start with Christopher Bryant. When you met
23 with him, what was your impression of his truthfulness when you
24 interviewed him?

25 **THE WITNESS:** He was credible. Very heartfelt.

1 **MR. JARVIS:** What about that Nathaniel Cauthen?

2 **THE WITNESS:** So Nathaniel and I took -- as you know,
3 there are these many conversations that we had. It took a while
4 for us to develop a good rapport. He could be in a good mood, he
5 could be in a bad mood.

6 But when it came to talking about, you know, what he did
7 that day, November 15, 2002, or that he did not commit this crime
8 or the way in which he was interrogated by police, those were
9 memories that he spoke with confidence about almost the entire
10 time. There was a consistency to them. Ultimately, I took him to
11 be very credible when it came to those claims.

12 I would also add that it's also about looking at the
13 consistency overall of what the claimants said in combination,
14 like, when I look at it overall.

15 I did not interview them together as a group where they
16 could look at each other for facial cues or things like that. I
17 sat down individually with four out of the five.

18 My conversations with Cauthen -- of course, he was not
19 with any of these other claimants so I got independent versions
20 from them. And there was enough consistency over time for me to
21 appreciate the credibility to what they were saying in conjunction
22 with Jessica's recantation in conjunction with if they had
23 accurate memories that I could corroborate in the transcripts --
24 things of that nature.

25 **MR. JARVIS:** And the same question for Rayshawn Banner.

1 **THE WITNESS:** Very credible. To me, he seemed -- I am
2 quoted in my conversations with Cauthen as saying "clueless."
3 That might've been a bit harsh language, but I did get the
4 impression that Rayshawn was not knowledgeable about the legal
5 process that he went through and that I deemed him very credible
6 when explaining that he was not with the group that day -- or that
7 he wasn't with the group during the most important time of the
8 day, the time in question was 6:30 to 7:30, that he wasn't with
9 them that evening.

10 **MR. JARVIS:** And Jermal Tolliver -- your thoughts?

11 **THE WITNESS:** Very credible as well. I found him to be
12 thoughtful, patient, willing to say when he wasn't sure about
13 things, saying things -- "I don't know," in, you know, perfectly
14 acceptable times and seemed to have a pretty good memory. So I
15 deemed him very credible.

16 **MR. JARVIS:** And, lastly, the deceased, Dorrell Brayboy,
17 before he passed.

18 **THE WITNESS:** Very credible. Perhaps the most
19 thoughtful, most introspective of the group. So -- we spoke for,
20 you know, hours as well. I think over multiple days. And he
21 explained -- he showed confidence in discussing his background, in
22 discussing sociological issues -- that was interesting -- and he
23 too maintained his innocence emphatically and was open-minded when
24 it made sense. Very credible.

25 **MR. JARVIS:** Do you think the North Carolina Innocence

1 Inquiry Commission should continue to pursue and look and
2 investigate in this case, in your opinion?

3 **THE WITNESS:** I don't have an opinion on what the
4 Commission should or shouldn't do. It's not within the scope of
5 the order that is requiring my testimony on a limited set of
6 topics.

7 **MR. JARVIS:** Thank you, sir.

8 **MS. ESSARY:** I do have one follow-up.

9 **MS. SMITH:** Yes, ma'am.

10 **MS. ESSARY:** So Bryant, Cauthen, Banner, Tolliver,
11 Brayboy -- do you recall specifically what any of them said about
12 Jessica Black?

13 **THE WITNESS:** Yes. But, I mean, if you could be more
14 specific in asking for something --

15 **MS. ESSARY:** Yes.

16 (Overlapping speakers.)

17 **THE WITNESS:** -- she's, of course, an important part of
18 this.

19 **MS. ESSARY:** Mr. Bryant -- what did he say about
20 Jessica Black and her testimony? Or did you ask that question --

21 (Overlapping speakers.)

22 **THE WITNESS:** Yeah.

23 **MS. ESSARY:** -- at trial? Her testimony at trial.

24 **THE WITNESS:** It was Christopher Bryant's opinion that
25 she lied in her testimony.

1 **MS. ESSARY:** Did he have a basis for that or was it just
2 a conclusion?

3 **THE WITNESS:** Well, the basis was that the day they
4 spent together wasn't spent committing a crime.

5 **MS. ESSARY:** Okay.

6 What about Mr. Cauthen? Did he say anything?

7 **THE WITNESS:** The same. The same. I mean, it was their
8 understanding that she lied -- or not their understanding. It was
9 their impression that she lied.

10 But no claimant explained -- no claimant could explain
11 with personal knowledge why she lied.

12 **MS. ESSARY:** So all four -- or all five, I guess, said
13 the same thing -- that she lied but they didn't know why?

14 Is that a fair characterization?

15 **THE WITNESS:** I can -- I cannot recall exactly what
16 Rayshawn Banner had said about Jessicah Black but I do recall the
17 other four claimants saying to that effect.

18 **MS. ESSARY:** And were these interviews before or after
19 you had spoken for the first time with Ms. Black by phone?

20 **THE WITNESS:** With the exception of Nathaniel Cauthen, I
21 had spoken with the other four before I met with Jessicah Black.

22 **MS. ESSARY:** Did these interviews, in your mind, raise
23 questions about whether she had given false testimony at the two
24 trials?

25 **THE WITNESS:** It did.

1 **MS. ESSARY:** And is that one of the reasons you pursued
2 her so avidly?

3 **THE WITNESS:** It is one of the reasons. It's also just
4 inherent that anyone reporting on this case would be interested in
5 speaking with her to understand her side of things and to hear
6 what she might have to say.

7 **MS. ESSARY:** In that first telephone conversation, when
8 she began to, in essence, recant her testimony, what were you
9 feeling at that moment on the phone?

10 **THE WITNESS:** Focused.

11 **MS. ESSARY:** Were you surprised?

12 **THE WITNESS:** I don't recall exactly what I was feeling.
13 I was concentrated on asking questions that had to be asked,
14 discussing things with her that had to be discussed.

15 **MS. ESSARY:** Did you feel like you had a story at that
16 point?

17 **THE WITNESS:** No.

18 **MS. ESSARY:** That's all I've got.

19 **JUDGE LOCK:** Anyone else? Commissioner Bass?

20 **MR. BASS:** Hi, Mr. Atkins. I'm Scott Bass. And I'm not
21 a lawyer either.

22 The question I have, though, really follows up on what
23 Ms. Essary was asking, and you responded to what they said about
24 Ms. Black's testimony.

25 I'm wondering if you could go a little bit further and

1 whether they expressed any emotions about Ms. Black's testimony.

2 **THE WITNESS:** Can you elaborate on who "they" is?

3 **MR. BASS:** The claimants that you just listed the
4 four --

5 **THE WITNESS:** Can you elaborate on what kind of emotions
6 you mean? It's too broad.

7 **MR. BASS:** Well, yeah. You stated that they said they
8 thought she lied, and I'm wondering if they expressed some emotion
9 about her lying, their opinion that she lied?

10 **THE WITNESS:** Emotion, of course, is a broad spectrum of
11 responses. And in some instances, they expressed compassion and
12 understanding for what position she might have been in and ways
13 that it might have been similar to the position that they were in
14 when they were being interrogated by police.

15 In some instances, they were mad that she went and lied,
16 which of course added clout to forming a conviction of them. In
17 some instances, they were sincere and heartfelt in just hoping
18 that someday she might have a conversation about it.

19 **MR. BASS:** Thank you. Yeah, it is broad, but emotions
20 are like that. I appreciate your answer.

21 **JUDGE LOCK:** Commissioner Frye.

22 **SHERIFF FRYE:** My name is Kevin Frye. I wanted to ask
23 you -- did you talk to any of the police officers who were
24 involved in this case?

25 **THE WITNESS:** If it's okay, I would prefer to hear an

1 explanation of how that is within the scope of the order requiring
2 my testimony on a limited set of topics.

3 **JUDGE LOCK:** That is outside the scope.

4 Do you prefer not to answer the question?

5 **THE WITNESS:** I do.

6 **JUDGE LOCK:** All right. I will not require you to
7 answer.

8 Does anyone else have a question?

9 **MS. ESSARY:** I have one last question.

10 **JUDGE LOCK:** Yes, ma'am.

11 **MS. ESSARY:** In any of -- this may have been asked and
12 answered. If so, forgive me.

13 But did any of the claimants have a theory about who
14 might have committed this crime? Or facts -- theories or facts,
15 either one?

16 **THE WITNESS:** If it's okay, I would be grateful for you
17 to be more specific about the noun that you're choosing, because a
18 "theory" and a "fact" I would describe and define differently.

19 **MS. ESSARY:** They are very different, and I'm asking for
20 both.

21 **THE WITNESS:** There at times were broad speculation,
22 often based on uncorroborated gut instincts and rumors that they
23 had heard in the years about others that might have committed the
24 crime.

25 **MS. ESSARY:** Were there any more factually based

1 assertions of who they believe could have, might have committed
2 the crime?

3 **THE WITNESS:** There were not.

4 **MS. ESSARY:** Think you.

5 **JUDGE LOCK:** All right.

6 Does anyone else have a question?

7 (No response.)

8 **JUDGE LOCK:** Mr. Atkins, thank you very much for your
9 time and for your cooperation.

10 **THE WITNESS:** Thank you.

11 **JUDGE LOCK:** Did you have any more questions, Ms. Smith?

12 **MS. SMITH:** I just would put on the record that almost
13 all of the cops that the commission staff interviewed indicated
14 that Mr. Atkins had tried to speak with them but I believe only
15 one, Sergeant Byrom, indicated that he had had a substantive
16 interview with Mr. Atkins --

17 **JUDGE LOCK:** All right.

18 **MS. SMITH:** -- based on our understanding.

19 **JUDGE LOCK:** Anything else for Mr. Atkins?

20 **MS. SMITH:** No.

21 **JUDGE LOCK:** Then that concludes the testimony. Thank
22 you very much, sir.

23 **THE WITNESS:** Thank you. Have a good day.

24 (Witness stands down, video teleconference ends,

25 5:42 p.m.)

1 **MS. SMITH:** Commissioners, before we break for the
2 evening, a couple of things.

3 One, we had asked Detective Swaim to be available by
4 phone this afternoon so you-all could speak with him. He made the
5 choice on his own to drive down here and has been sitting in a
6 room all afternoon of his own, not at our request.

7 So I do not know if you want to hear from him today or
8 if you would like him to be available by phone in the morning, is
9 what I would recommend. I do not think that he needs to drive
10 here. We can see if we can get him on the screen or you can take
11 him this evening. That is up to you.

12 **JUDGE LOCK:** Does anyone have any questions of the
13 detective?

14 **MR. BRITT:** I'm so brain dead right now I can't tell you
15 who he is.

16 **JUDGE LOCK:** He talked to Ms. Black last month, in
17 February.

18 **MS. COLBERT:** Yeah.

19 **JUDGE LOCK:** Do you think you want to talk with him?

20 **MS. ESSARY:** Maybe five minutes.

21 **JUDGE LOCK:** Today?

22 **MS. ESSARY:** Briefly.

23 **MS. SMITH:** While, we're doing that, Commissioners,
24 we're going to pass around two handouts for this evening. They
25 are fairly short. They are going to be handouts 106 and 107.

1 These are going to be the transcribed interviews of the Commission
2 with two individuals that have been discussed today. One is
3 Elizabeth Fowler, a friend of Ms. Black's; and the other one is of
4 Lillie Watlington. That is who Mr. Atkins referred to as Lillie
5 Tolliver, just so that you can see what our interview with her was
6 like.

7 If you will read those over the evening recess.

8 While we're waiting on Detective Swaim to come from
9 upstairs, Mackenzie Myers with our office has some information
10 that she would like to testify to that Ms. Newton had requested
11 earlier today, if I could call Ms. Myers.

12 **JUDGE LOCK:** All right. Today, I don't believe you've
13 been sworn, have you, Ms. Myers?

14 **MS. MYERS:** No, sir, I have not.

15 * * * * *

16 Thereupon, MACKENZIE MYERS, a witness having been called by the
17 Commission, was examined and testified on EXAMINATION as follows:
18 BY MS. SMITH: (5:51 p.m.)

19 **Q.** Ms. Myers, can you tell the commissioners what you
20 learned in relation to this Ms. Newton's questions?

21 **A.** Yes. Absolutely.

22 Ms. Newton's question was whether or not we would be
23 able to obtain the Facebook messages in which Jessica testified
24 earlier that she -- that her brother's I think she used the phrase
25 "old woman" received regarding threats.

1 We reached out to her brother and also was able to get
2 in contact with, to use Jessica's phrase, "old woman" who is his
3 girlfriend is what our understanding is.

4 I was able to speak with her directly, the girlfriend,
5 and she confirmed to me that she had received -- 1, 2, 3, 4 -- 5
6 Facebook messages from people that she believed to have fake
7 Facebook accounts. She stated that she believes that these
8 people, at some level, know who her boyfriend is and therefore,
9 because they knew who he is, that they know who Jessica Black is.

10 I see some blank looks. Please let me know if I'm not
11 explaining it because I know it can get a little complicated
12 because we're talking about a couple of different people.

13 She stated that in these Facebook messages, they said
14 that they believed that the boys and Jessica Black should be
15 executed.

16 I asked her if she knew who any of these people were
17 directly. She said no.

18 I asked her if she responded back to those messages.
19 She stated that she responded by telling them that she did not
20 know anything about this case and did not know Jessica Black
21 until a couple of years prior to this.

22 She stated that she then blocked each of these people
23 from Facebook and deleted the message.

24 And I'm sorry she did -- we did -- she sent pictures to
25 one of the Commission-issued cell phones with regard to

1 screenshots of those messages. So I have those in case any
2 commissioners have questions about that.

3 While I was talking to her and looking at these
4 accounts, I did write them down and I myself used our Commission
5 Facebook page to just to see what I would be able to find about
6 people with these account names. There were a couple that -- I'm
7 not a Facebook expert, but they do not look like -- to be
8 legitimate accounts. There were a couple that I was not able to
9 find or determine.

10 But, again, I do have that information if commissioners
11 have questions or if I need to testify about any of that further.

12 Q. And, Ms. Myers, the messages that you received -- all
13 you're able to see is that those individuals are blocked; is that
14 correct?

15 A. Yes. That is correct.

16 Q. Not the actual content of the original message?

17 A. It is not the actual content.

18 What I will say is that it has -- there's a message that
19 says "unblock so-and-so." In the one that I'm looking at here,
20 one of the people that she received a Facebook message from was
21 Keith Smith. On this screenshot that she sent to us, it asks
22 "Unblock Keith" -- if she wants to unblock Keith Smith, and that
23 is what the rest of those messages also indicate.

24 MS. SMITH: Any follow-up?

25 MR. BRITT: Nothing as relates to this, that answered my

1 question.

2 **MR. BASS:** Just to make sure I'm clear, you're saying
3 these messages were characterized to you as saying all five of
4 them should be -- "executed" was the word you used?

5 **THE WITNESS:** Yes.

6 **MR. BASS:** Not singling out Ms. Black, for example.

7 **THE WITNESS:** Yes.

8 She stated that they -- the way that it was communicated
9 to me was that the messages stated -- she could not think of the
10 word. The word that she ended she up coming -- remembering was
11 "executed" was the specific word that the messages had used.

12 **MS. NEWTON:** And all of the messages were consistent on
13 that theme in her description to you?

14 **THE WITNESS:** Yes. I asked her specifically if that was
15 the case and she said that they all used that same language, of
16 the word "executed."

17 **MS. NEWTON:** Okay.

18 **MR. JARVIS:** I apologize if this seems redundant but
19 what is the date on those messages?

20 **THE WITNESS:** The date on those messages -- now, I
21 cannot see it based on the screenshots because she did block those
22 messages. However, I asked her when she received those and she
23 said that they -- she received them yesterday.

24 It is not my understanding that she received them today,
25 that it was a direct result of Ms. Black being talked about in the

1 hearing.

2 I did ask her to keep us informed should she receive any
3 other messages.

4 **JUDGE LOCK:** Any further questions of Ms. Myers?

5 (No response.)

6 **JUDGE LOCK:** Thank you very much.

7 (Witness stands down, 5:50 p.m.)

8 **MR. BRITT:** We just received some handouts --
9 Ms. Watlington and Ms. Fowler?

10 **MS. SMITH:** Yes.

11 **MR. BRITT:** Those are 106 and 107?

12 **MS. SMITH:** I believe they are. Yes, 106 and 107.

13 **MR. BRITT:** What is 105?

14 **MS. SMITH:** 105 is the hand-drawn map from Detective
15 Griffin.

16 **MR. BRITT:** Okay.

17 **MS. SMITH:** The Commission calls Detective Swaim.

18 * * * * *

19 Thereupon, JASON SWAIM, a witness having been called by the
20 Commission, was examined and testified on DIRECT EXAMINATION as
21 follows:

22 BY MS. SMITH: (5:57 p.m.)

23 **Q.** Detective Swaim, if you will just state your full name
24 for the record.

25 **A.** Jason Swaim.

1 **Q.** And how are you employed?

2 **A.** Detective with the Winston-Salem Police Department.

3 **Q.** How long have you been so employed?

4 **A.** 14 years.

5 **Q.** And I don't have questions for you, but our
6 commissioners have questions for you related to your interactions
7 with Jessica Black on February 26 and 27, 2020.

8 **A.** Yes, ma'am.

9 **MS. ESSARY:** I have a question.

10 What caused you to interview Ms. Black that day?

11 **THE WITNESS:** Based on -- so when the police department
12 was informed about the review of the case, I began working with
13 our District Attorney's office, and the District Attorney's office
14 requested I interview witnesses.

15 **MS. ESSARY:** And you spent some time at her house
16 interviewing with her, we've seen from a video today actually.

17 **THE WITNESS:** Yes, ma'am.

18 **MS. ESSARY:** And what was your impression of her
19 credibility?

20 **THE WITNESS:** Not very credible.

21 **MS. ESSARY:** What leads you to that conclusion?

22 **THE WITNESS:** The changes of her story from 17 years ago
23 until now. She can remember exact times for certain points of it
24 but then certain parts that, "I think this, I think that."

25 **MS. ESSARY:** What do you believe about her testimony

1 that she actually gave -- let me ask it another way.

2 She tells you that she gave false testimony at the
3 trial.

4 What did you come away believing about that answer to
5 your question?

6 **THE WITNESS:** I don't think that's true.

7 **MS. ESSARY:** What makes you feel that way?

8 **THE WITNESS:** She still states she picked some of the
9 defendants up. She still states she went to the mall. She still
10 states that they went to the bowling alley where they were
11 eventually kicked out by a Winston-Salem police officer. And she
12 remembers exactly that she was home by 9:00 o'clock.

13 But she -- she is now changing the fact -- or not the
14 fact, she is now changing the story that, you know, every day she
15 went there for a month or two after school and she could tell me
16 what essentially they would do every day. And they'd go to the
17 park, they'd ride around, smoke marijuana -- things of that
18 nature -- but now she's saying, "Well, I went to school, I checked
19 in with my grandparents, I went directly to south side, I drove
20 around and picked up, and you saw four -- she remembers
21 Mr. Cauthen and Mr. Brayboy and two of the others, and then went
22 to change clothes and then they went to the mall and went to the
23 bowling alley.

24 **MS. ESSARY:** What did -- with whom did you talk at your
25 department before you visited with her?

1 **THE WITNESS:** As in?

2 **MS. ESSARY:** Anyone at the police department about the
3 case.

4 **THE WITNESS:** So I was assigned as the detective should
5 anything arise that would require a law enforcement investigation
6 by my captain.

7 **MS. ESSARY:** When did that occur, sir?

8 **THE WITNESS:** I have only been -- so I had an injury --
9 around January. I don't know an exact date, but it's been
10 fairly -- fairly recent.

11 **MS. ESSARY:** Okay.

12 So, again, what conversations did you have about this
13 case with anyone in the police department or the DA's office prior
14 to your interrogation of her?

15 **THE WITNESS:** I was given the entire case file. I was
16 told to study up on the case. I wasn't employed at the police
17 department when this crime occurred.

18 So I'm also still -- I'm a homicide detective so I
19 still -- I have a current homicide investigation I'm conducting
20 now, but I read the case and tried to remember as much as I could
21 about the case.

22 But as far as conversations, the only person that I have
23 specifically had conversations with would be my sergeant, my
24 lieutenant, and my captain because there is still a detective in
25 our unit that worked on this case and they wanted to keep any kind

1 of conflict away. So I haven't -- I mean, people know -- we work
2 in a cubicle area so people know what I'm doing, but I just don't
3 talk about it.

4 **MS. ESSARY:** So have you talked with that detective
5 either directly or indirectly who worked on this case?

6 **THE WITNESS:** Not about the case specifically, no.

7 **MS. ESSARY:** Okay.

8 So other conversations, obviously.

9 **THE WITNESS:** Yeah. I mean, we're in a -- our police
10 department is under renovation right now so we moved from the
11 first floor to the second floor. So we're all in very tight
12 quarters right now.

13 **MS. ESSARY:** So obviously you've talked to him.

14 **THE WITNESS:** Yes.

15 **MS. ESSARY:** What is that detective's name?

16 **THE WITNESS:** That would be Detective S. Flynn.

17 **MS. ESSARY:** S. Flynn.

18 And do you know what his involvement was in
19 investigating this case?

20 **THE WITNESS:** From read -- he did some of the
21 interviews. I don't remember which defendants he interviewed but
22 he did interview some of the defendants in the case and was -- he
23 was assigned to CID during this investigation.

24 **MS. ESSARY:** Do you know if he interviewed Jessicah
25 Black?

1 **THE WITNESS:** No. He -- I can say he did not interview
2 Jessicah Black from what I've read in the case file.

3 **MS. ESSARY:** So if the case file that we got as
4 commissioners, there was at least one person who said they
5 witnessed what appeared to be Hispanic male jump over the
6 decedent's fence.

7 What was followed up on that based on your reading of
8 the file by the police department at the time?

9 **THE WITNESS:** At the time, they spoke with some of the
10 witnesses, I believe that was a juvenile witness that --

11 (Overlapping speakers.)

12 **MS. ESSARY:** There was one juvenile --

13 **THE WITNESS:** -- saw that.

14 **MS. ESSARY:** -- and there was one adult. There was one
15 disabled juvenile and there was one, I believe, older person.

16 Y'all correct me if I'm wrong.

17 **MS. COLBERT:** I thought both of them were.

18 **MS. ESSARY:** Not sure.

19 **THE WITNESS:** Once the suspects, which now defendants in
20 the case, were interviewed, I don't know that much follow-up was
21 done. I know there was follow-up, but I don't know how much
22 detailed follow-up was conducted.

23 **MS. ESSARY:** So as a detective, obviously you're trained
24 in forensics; is that correct?

25 **THE WITNESS:** Some, yes.

1 **MS. ESSARY:** So is it surprising to you that five boys
2 would have committed a crime in a small carport and there be only
3 one or two shoe prints that link the defendants to the crime and
4 no other forensic evidence either on their clothing or anything
5 else?

6 **THE WITNESS:** Based on the time lapse, no. From what I
7 understand -- obviously, I wasn't a police officer back then.

8 **MS. ESSARY:** Right.

9 But you've reviewed the files.

10 **THE WITNESS:** I've reviewed the files. So forensics in
11 the 17 years since has come a long way.

12 **MS. ESSARY:** Sure.

13 **THE WITNESS:** So looking now, 17 years, and the way we
14 may have preserved it back then and the way we may have seized it
15 as police officers, it's not surprising. And, you know, every
16 crime, every -- from the training I have, every crime scene is
17 different, you know. You may have some crime scenes where you have
18 tons of forensic evidence and there may be some where there's
19 minimal. And, I mean, each crime scene is different.

20 **MS. ESSARY:** What -- would you have expected more,
21 though, given the fact that there were five defendants convicted
22 of murder of being there that day?

23 **THE WITNESS:** More?

24 **MS. ESSARY:** More forensic evidence to link them to the
25 crime. It seems awfully slim, right, looking at it, even though,

1 obviously, forensic techniques have become much more
2 sophisticated, and not find any fingerprints, find any hair --
3 anything.

4 **THE WITNESS:** Well, again, from my understanding in
5 reading it, there wasn't much. It occurred, as you said, in the
6 carport. Mr. Jones was an -- even though he was 60, 61 at the
7 time, compared to the perpetrator of the crime, he was not, you
8 know, in the prime of his life, so to speak.

9 So five defendants would have easily been able to
10 overpower Mr. Jones, which could result in there not being a lot
11 of forensic evidence, if they're --

12 **MS. ESSARY:** Did you have a chance to study the autopsy
13 of Mr. Jones?

14 **THE WITNESS:** I did not. I've reviewed but I did not
15 study the autopsy.

16 **MS. ESSARY:** Well, in your review did you note that head
17 wound that he had?

18 **THE WITNESS:** There was a head wound that I remember.
19 And, again, I didn't -- I mainly focused on reading the
20 investigators' reports --

21 **MS. ESSARY:** Right.

22 **THE WITNESS:** -- and interviews. But I did look at the
23 autopsy, but I do remember there being a head wound.

24 **MS. ESSARY:** Based on what Jessicah's testimony was at
25 both of the trials, is there anything that concerns you about the

1 truth of that testimony as it relates to the conviction of these
2 young men?

3 **THE WITNESS:** As far as?

4 **MS. ESSARY:** I mean, does her testimony feel like it was
5 absolutely credible -- reading it on the page, of course?

6 **THE WITNESS:** Reading it on the page, on its face, not
7 knowing what I know now, you have to take it as credible. So I
8 would -- I would say yes.

9 **MS. ESSARY:** So you said "not knowing what I know now."
10 What do you mean by that?

11 **THE WITNESS:** So the different stories that she's told
12 at this point, obviously, I don't think any of us would
13 consider -- I mean, it would be hard to consider her credible at
14 this point.

15 **MS. ESSARY:** Even at the time of trial it would be hard
16 to consider her as having been a credible witness at that time, of
17 both trials?

18 **THE WITNESS:** Well, at the time of the trial, her story
19 really didn't change much. She did, as I would say from my
20 training, as most suspects do, they initially limit their
21 involvement in a case and then it comes out.

22 I mean, initially she still admitted to being with the
23 defendants. She still admitted to going certain places. But it
24 wasn't until later that she said, okay, she added being at the
25 park and then the crime.

1 **MS. ESSARY:** Is there anything at all in your
2 questioning of Ms. Black, in reviewing the file, that at all as a
3 detective who's been highly trained gives you pause about these
4 claimants' convictions -- anything at all that gives you pause?

5 **THE WITNESS:** No.

6 **MS. ESSARY:** Okay.

7 **JUDGE LOCK:** Anyone else?

8 **MS. COLBERT:** In your 14 years, I'm sure you've had a
9 lot of training around trauma and its impact on the brain and
10 people's ability to remember.

11 During your interview with Ms. Black, did she show any
12 signs to you that she had experienced some sort of trauma?

13 **THE WITNESS:** So she obviously -- I mean, she had some
14 bruising and things like that, but she told me that was a medical
15 condition. And she told me she had been in an abusive
16 relationship, but other than that, I mean ...

17 **MS. COLBERT:** So you have had training around the impact
18 of trauma with people's brains and their remembering and PTSD.

19 **THE WITNESS:** Some. It wasn't extensive. It's my -- my
20 career mainly revolves around -- I worked several years as a
21 vice/narcotics detective. I've recently just been transferred to
22 our criminal investigations division.

23 But -- so a lot of my training revolved around narcotic
24 investigations.

25 **MS. COLBERT:** Oh. So you haven't had --

1 **THE WITNESS:** I've had some.

2 **MS. COLBERT:** -- too much --

3 **THE WITNESS:** I've had some.

4 **MS. COLBERT:** Yeah.

5 So your training has been limited on trauma and its
6 impact on the brain and folks' ability to remember.

7 Were you aware that Ms. Black had been diagnosed,
8 according to her, with PTSD?

9 **THE WITNESS:** No, I was not aware of that.

10 **MS. COLBERT:** Are you familiar with the effects of what
11 PTSD does and its impact on memory and triggers and all of that?

12 **THE WITNESS:** Yes.

13 **MS. COLBERT:** Did you -- based on your experience on
14 that, did she exhibit in your interview any signs of what you know
15 of folks who have PTSD -- any of her mannerisms, her
16 communication?

17 **THE WITNESS:** So I have military experience too, and so
18 I'm familiar. I have friends been diagnosed with PTSD. But it's
19 from a different aspect.

20 With her, I did not. But I understand each case of
21 PTSD, again, can be different and each person with PTSD can have
22 different symptoms, as with any disorder or --

23 **MS. COLBERT:** So -- no, that's it. Thank you.

24 **THE WITNESS:** Yes, ma'am.

25 **MR. EDWARDS:** Detective Swaim, I'm considerate of the

1 time, but now that you're here, I do have a question that I think
2 I would like to ask you.

3 **THE WITNESS:** Yes, sir.

4 **MR. EDWARDS:** The commissioners, as part of our
5 preparation, had to review well over 2,000 pages prior to this
6 week.

7 And now we have three notebooks in front of us, and I am
8 going to guesstimate that's reaching about 3,000 pages. A lot of
9 those documents are interviews or transcripts where someone is
10 being questioned.

11 And on at least -- at least three sets of people have
12 interviewed Jessicah Black in a number of these transcripts. And
13 we watched your video recording of her interview, at least part of
14 it. And we have had a written transcript of that.

15 So my question is this: Just in general, what is your
16 training as a law enforcement officer in questioning just a
17 witness or a potential suspect in a crime?

18 What is your training on that?

19 **THE WITNESS:** You typically want to ask open-ended
20 questions, give them time to answer the question. You know,
21 obviously, you look at body language, things like that.

22 **MR. EDWARDS:** And where did you receive that training?

23 **THE WITNESS:** So even as a narcotics detective, I had
24 training -- I did the Police Law Institute. I've had basic
25 narcotic investigation, which goes into interview. I've had

1 interview and interrogation as well, which is taught by the
2 Justice Academy -- the North Carolina Justice Academy. Advanced
3 narcotic investigation, events, undercover -- things like that.
4 But they all touch on interview and interrogation.

5 **MR. EDWARDS:** And why do you ask open-ended questions?

6 **THE WITNESS:** You don't want to ask leading questions.
7 You don't want to lead into an answer.

8 **MR. EDWARDS:** That's all.

9 **JUDGE LOCK:** Mr. Bass.

10 **MR. BASS:** Yeah. I want to follow up on -- I'm Scott
11 Bass. Thank you for being here, Detective.

12 I want to follow up on what Ms. Colbert was asking. I
13 wondered specifically if you have had any training that includes
14 that people who've experienced intense trauma in fact actually
15 have difficulty reporting sequences of events accurately and
16 recalling things of that nature.

17 **THE WITNESS:** So I can't say I've had training. Based
18 on my experiences in the military, I have had knowledge -- I
19 wouldn't call it training. I've been made aware that the VA is
20 doing a really good job of getting things out. And the police
21 department, obviously, PTSD has become a big part of training in
22 the police department -- or not training. But I haven't had any
23 formal training on PTSD but I am aware of some of the symptoms of
24 PTSD.

25 **MR. BASS:** And I might be interpreting the response too

1 much. If I am, please correct me.

2 But it sounds like it wouldn't surprise you, based on
3 your response, that someone who had been a victim of intense
4 trauma would have difficulty reporting sequences of events?

5 **THE WITNESS:** So I guess the answer -- I do -- I am
6 aware that PTSD can cause mood swings, can cause, you know, memory
7 loss, some people call flashbacks -- things of that nature. I am
8 aware of some of the signs and symptoms of PTSD, yes.

9 **MR. BASS:** Okay.

10 And the other thing might be something to follow up on
11 later because as someone said, we've had a long day.

12 But you've reviewed the report, maybe pretty recently,
13 you said; right?

14 **THE WITNESS:** Uh-huh.

15 **MR. BASS:** I was trying to recall if there were any
16 signs of wounds on the hands of any of the accused.

17 **THE WITNESS:** To my knowledge, there was -- I don't
18 remember there being any wounds, but I don't want to --

19 **MR. BASS:** Right.

20 **THE WITNESS:** I mean, I had two big binders too that I
21 had to work and work my cases. So I was --

22 **MR. BASS:** I hear you.

23 **THE WITNESS:** -- reading it in the week.

24 **MR. BASS:** If someone was beaten to death with fists,
25 would there -- given your experience as a detective, would there

1 usually be or not be wounds on the hands of the assailants?

2 **THE WITNESS:** Again, case by case. It could be. And,
3 again, he -- Mr. Jones, the stress of the event, the shock that
4 he -- he passed based on a heart attack; so not really, you know,
5 beat to death. But I don't -- so I would say Mr. Jones probably,
6 based on his heart condition, was probably deceased pretty --
7 pretty soon in the event.

8 **MR. BASS:** I hear you. And that -- with all due respect
9 to the victim's family members in the room, I mean, but the report
10 was that -- the testimony of some of the -- was that they were
11 hitting him with their fists; correct?

12 **THE WITNESS:** Yes.

13 **MR. BASS:** Okay.

14 **THE WITNESS:** But from my -- it wasn't many punches. I
15 want to say when defendant said he punched him in the stomach, one
16 defendant in the head -- things like that.

17 **MR. BASS:** I appreciate your answer.

18 **JUDGE LOCK:** Mr. Jarvis.

19 **MR. JARVIS:** Immanuel Jarvis, I'm a public member,
20 alternate.

21 The question I have is you were talking and you were
22 alluding to about the training you have in interrogation.

23 Can you elaborate a little bit on the training you have
24 in interrogations for us.

25 **THE WITNESS:** So the main training was interview and

1 interrogation, which is -- it's sponsored by the North Carolina
2 Justice Academy, it's taught by different instructors. And I want
3 to say I had that back in 2009. It just goes into your basic
4 interview and interrogation skills and -- but, I don't ...

5 **MR. JARVIS:** Is it typical for 14-year-olds to be
6 interrogated without a parent, guardian, or any representation in
7 your training?

8 **THE WITNESS:** So during that time, they would -- a
9 juvenile would have the opportunity, but they could waive that
10 parent or guardian.

11 Now, obviously, a certain age, you can't. But -- so
12 back then, in 2002, they would have had the opportunity, and the
13 parent or guardian could refuse to come. So I wouldn't say
14 normal. Again, every situation would be different, but they would
15 have that right to have a parent or guardian.

16 **MR. JARVIS:** So my question is: Could -- they could
17 waive the right not to represent their child but automatically
18 they would have the right to represent -- a guardian would have
19 the ability to represent the child or they could waive that right
20 if they wanted to do; is that correct?

21 **THE WITNESS:** Again, 2002, I was fresh out of high
22 school, going -- from my understanding, because I know it's --
23 juvenile laws obviously have recently changed a lot.

24 From my understanding, in 2002, it wasn't a requirement
25 that they must have a parent. There was a set of juvenile rights

1 just like we have our adult *Miranda* warnings, they were juvenile
2 warnings, and -- but I'm speculating because I wasn't at the
3 juvenile --

4 (Overlapping speakers.)

5 **MR. JARVIS:** Let me ask you this question: With the
6 training that you have in interrogation, even today, if there's a
7 14-year-old, what do you think -- what do you think the
8 consequences of having a 14-year-old in an interrogation room,
9 what do you think that could bring today?

10 **THE WITNESS:** "Consequences"? What do you mean?

11 **MR. JARVIS:** If you have -- if there are a number of
12 grown men that are police officers in a small room and they are
13 talking or they are asking a juvenile which is 14 years old, do
14 you think there is a possibility that the child could change or
15 modify a story to satisfy the police?

16 **THE WITNESS:** To answer if it's a possibility, I mean,
17 there's always -- I mean, the answer -- there's always a
18 possibility for anything, but I mean ...

19 **MR. JARVIS:** That's all.

20 **THE WITNESS:** All right.

21 **MS. ESSARY:** Let me ask a question.

22 **JUDGE LOCK:** Yes, ma'am.

23 **MS. ESSARY:** Always, as a detective, you want to get at
24 the truth, and the last thing you want to do as a detective is to
25 coerce a false confession; isn't that true?

1 **THE WITNESS:** Yes.

2 **MS. ESSARY:** So how are you taught not to coerce a false
3 confession but instead to get a real confession?

4 **THE WITNESS:** I don't -- I mean, I've never been taught
5 any coercion tactics since -- in my 14 year career. So I --

6 (Overlapping speakers.)

7 **MS. ESSARY:** But isn't it true that police -- it's legal
8 for -- in the interrogation process, police can actually lie about
9 facts to try to get to a confession.

10 **THE WITNESS:** That is -- you can.

11 **MS. ESSARY:** And are you taught or were you taught in
12 interrogating, be careful of this area because that might lead to
13 false confessions? Are you taught anything about that?

14 We know false confessions happen. So I'm just curious
15 as to what your training taught you about that.

16 **THE WITNESS:** In my -- when I went, and, again, it was
17 around 2009, 2008/2009, I don't remember any training on false
18 confessions. Again, it's -- it's -- you're all -- the training
19 was based on the legal aspects you have to follow and then certain
20 techniques you want to use.

21 But I've never had any training on, "Well, you don't
22 want to do this because you might get a false confession" or
23 anything like that.

24 **MS. ESSARY:** That helps. Thank you.

25 **THE WITNESS:** Okay.

1 **JUDGE LOCK:** Sheriff.

2 **SHERIFF FRYE:** Does the term "Othello's Error" mean
3 anything to you from interview and interrogation?

4 **THE WITNESS:** It rings a bell.

5 **SHERIFF FRYE:** And what does that mean?

6 **THE WITNESS:** I remember the term. But I don't
7 really -- years ago. But ...

8 **SHERIFF FRYE:** Okay.

9 It's a term that means when you directly accuse somebody
10 that's innocent, a lot of times they will exhibit the body
11 language and phraseology of somebody that's guilty; correct?

12 **THE WITNESS:** Yes.

13 **SHERIFF FRYE:** Okay.

14 You remember that from your interview and interrogation.

15 **THE WITNESS:** I do. Yes.

16 **SHERIFF FRYE:** In interview and interrogation, they also
17 told you during that two-week -- was it a two-week block or a
18 one-week block for you?

19 **THE WITNESS:** Mine was a one-week block.

20 **SHERIFF FRYE:** During that one-week block, did they tell
21 you that with juveniles and people -- juveniles and people with
22 handicaps, with mental handicaps especially, that you do not want
23 to take everything at face value, you want to verify and get them
24 to corroborate different aspects of the story; correct?

25 **THE WITNESS:** Yes.

1 **SHERIFF FRYE:** Okay.

2 That's all I have.

3 **JUDGE LOCK:** Commissioner Newton?

4 **MS. NEWTON:** (Nonverbal response.)

5 **JUDGE LOCK:** Does anyone else have a question?

6 **MS. SMITH:** I've got follow-up.

7 **JUDGE LOCK:** Yes, Ms. Smith.

8 BY MS. SMITH: (6:21 p.m.)

9 **Q.** Detective Swaim, what is your active investigation as it
10 relates to this case?

11 **A.** As far as?

12 **Q.** Do you have an open, active investigation?

13 **A.** The case is not open, just if -- when -- from my
14 understanding of it, when the inquiry was announced, obviously, we
15 as police officers don't want to have, you know, the wrong people
16 in jail so if any new leads, anything were to come up that was to
17 be investigated, then I would investigate it as a sworn law
18 enforcement officer. That's essentially my role.

19 **Q.** And you don't have access to any of the work that the
20 Commission has done so far; is that correct?

21 **A.** That is correct.

22 **Q.** Do you complete reports about your work in a case?

23 **A.** Yes.

24 **Q.** Did you do that in this one?

25 **A.** I have not completed it yet but a supplement will be

1 completed.

2 Q. And I believe when you were here last week, it was your
3 intent to get that supplement to me this week; is that correct?

4 A. Yes.

5 Q. Okay.

6 Are we going to have that before the end of this week?

7 A. We can. I was waiting on the transcription of the
8 interview with Ms. Black to be completed by our senior office
9 assistant.

10 Q. Okay.

11 For the Commission's purpose, we already have a
12 transcript of that interview completed --

13 A. Okay.

14 Q. -- so if you could get the supplement report to us, we
15 would appreciate that.

16 A. I can have that --

17 Q. The Commissioners may wish to look at it.

18 A. I can have that today.

19 Q. Thank you.

20 MS. SMITH: That's all I have.

21 JUDGE LOCK: Any further questions from the
22 commissioners in light of Ms. Smith's examination?

23 (No response.)

24 JUDGE LOCK: Detective, thank you very much.

25 THE WITNESS: Thank you.

1 (Witness stands down, 6:23 p.m.)

2 MS. SMITH: That's all I have for this evening.

3 JUDGE LOCK: All right. 9:00 o'clock in the morning?

4 MS. SMITH: Yes.

5 JUDGE LOCK: We will be in recess until 9:00 o'clock in
6 the morning.

7 (Overnight recess taken, 6:23 p.m.)

8 (Volume 3 begins on page 374.)

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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA,)
versus) From Forsyth
CHRISTOPHER BRYANT,) 02 CRS 38886
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
NATHANIEL CAUTHEN,) 02 CRS 38884
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
JERMAL TOLLIVER,) 02 CRS 38882
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
RAYSHAWN BANNER,) 02 CRS 38883
Defendant.)

* * * * *

TRANSCRIPT OF HEARING, Volume 3 of 5
Wednesday, March 11, 2020

* * * * *

March 9, 2020, Setting of the

North Carolina Innocence Inquiry Commission

The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate)
Luther Johnson Britt, III
Robin Colbert
Seth Edwards
Melissa Essary
Sheriff Kevin Frye
Immanuel Jarvis
Deborrah L. Newton

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 Catherine Matoian, Grant Staff Attorney

6 Brian Ziegler, Staff Attorney

7 Mackenzie C. Myers, Grant Legal Investigator

8 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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10 Raleigh, North Carolina 27602

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1 WEDNESDAY, MARCH 11, 2020 (9:03 a.m.)

2 JUDGE LOCK: All right. Looks like everybody is
3 present. So we'll come to order.

4 For the record, all commissioners are present.

5 Ms. Guice Smith, are there any housekeeping matters that
6 we need to address before we resume the evidence in this matter?

7 MS. SMITH: I don't believe so.

8 We will be asking commissioners to review some handouts
9 on breaks like the lunch break, additional handouts probably over
10 the overnight break so we can make sure we get through everything.

11 We've been asked for some additional materials from
12 commissioners today. We're going to accommodate that, but that
13 may affect the schedule a little bit or how we handle getting
14 those materials out. So just bear with us in that so that we can
15 get through what we need to get through and then hopefully we'll
16 have a little better idea by the end of the day as to how far we
17 still have to go.

18 JUDGE LOCK: All right.

19 For the record, Ms. Guice Smith and I did talk this
20 morning about scheduling, and while that means we will be working
21 very hard and maybe reading handouts over lunch and at night, it
22 does appear that we can finish this week.

23 MS. SMITH: I'll let you know if that changes.

24 The Commission would recall staff attorney Julie
25 Bridenstine.

1 (Off record, regarding reswearing.)

2 **JUDGE LOCK:** You are still under oath.

3 **MS. BRIDENSTINE:** I understand.

4 (Witness, Julie Bridenstine, resumes the stand.)

5 * * * * *

6 * * * * *

7 BY MS. SMITH: (9:06 a.m.)

8 **Q.** Ms. Bridenstine, did the Commission collect physical
9 evidence in this case?

10 **A.** Yes. After we reviewed the files and the transcripts in
11 this case, we realized that the Forsyth County Clerk's office and
12 Winston-Salem Police Department still had evidence connected to
13 this case.

14 **Q.** What did you collect?

15 **A.** On January 30, 2018, we sent a letter to the
16 Winston-Salem Police Department and the Clerk's office requesting
17 that they release the evidence to us pursuant to our statute.

18 On February 5, 2018, the Winston-Salem Police Department
19 responded to us stating that they refused to turn over the
20 evidence because two of the defendants, Rayshawn Banner and
21 Nathaniel Cauthen, were still incarcerated.

22 The Clerk's office also advised that they had concerns
23 over turning the evidence to us because Mr. Banner and Mr. Cauthen
24 were still in prison.

25 **Q.** At that point, had Mr. Banner or Mr. Cauthen applied to

1 the Commission?

2 A. No.

3 Q. What did the Commission do in response to that?

4 A. We sent a letter to the Winston-Salem Police Department
5 and the Clerk on February 5, 2018, quoting our statutory authority
6 to collect evidence in this case and indicated that we would seek
7 an order before the Commission's chair as this was a challenge to
8 our authority to collect evidence.

9 The Commission also spoke District Attorney Jim O'Neill
10 on February 5, 2018, and he expressed his willingness to cooperate
11 with the Commission but did note that the Winston-Salem Police
12 Department had concerns.

13 Q. Was the Commission able to collect the evidence from the
14 Clerk's office?

15 A. We did.

16 On February 6, 2018, former Clerk Susan Frye agreed to
17 allow us to come and collect the evidence in these cases but she
18 did not allow us to take photos or videos of any evidence.

19 On February 7, 2018, the Commission collected all of the
20 evidence in the possession from the Clerk.

21 Q. Can you tell the commissioners how those items were
22 stored.

23 A. The evidence was primarily stored in six brown cardboard
24 boxes that had been wrapped in paper and stored as its own item.
25 There were also large posters and envelopes containing paper

1 evidence that had been used at both of the trials and the motions
2 to suppress.

3 When opening one of those boxes, we noted that our item
4 number 77, which were the shoes that were collected from Rayshawn
5 Banner and Nathaniel Cauthen's house that could not be excluded
6 from the footprints at the crime scene, that those items were
7 stored in an unsealed, ripped brown bag in the same box with the
8 victim's clothes and shoes, which were also in unsealed, ripped
9 brown bags.

10 We collected all items of evidence in the Clerk's
11 possession and then we repackaged or resealed any items that were
12 open.

13 **Q.** What items did you collect from the Clerk's office?

14 **A.** We collected photographs, diagrams, and other paper
15 documents. We did not collect all of those because we already had
16 some of them in our possession from other sources.

17 We collected the -- Mr. Jones' broken watch. We
18 collected tape collected from his body, pieces of tape from the
19 crime scene, three pieces of mail, a piece of a storm door handle
20 from the carport, floodlights from the carport, fibers, blue
21 fabric from the front driver's seat side area from Jessicah
22 Black's car, two other blue seat pieces from her car, clothing and
23 shoes that were collected from the homes of all of the defendants
24 in this case, suspect kits from the five defendants, fingerprint
25 cards from the five defendants, the victim's clothing, and shoe

1 prints.

2 Q. Were there any items of physical evidence that should
3 have been stored with the Clerk's office that were determined to
4 be missing?

5 A. No. The Clerk's office had everything in their
6 possession that had been entered at trial.

7 MS. SMITH: Commissioners, do you have any questions for
8 Ms. Bridenstine about the evidence from the Clerk's office before
9 we move on to the evidence from the Winston-Salem Police
10 Department?

11 MR. BRITT: What items were you not allowed to
12 photograph?

13 THE WITNESS: They just wouldn't allow us to photograph
14 anything when we were there.

15 MR. BRITT: But you collected everything?

16 THE WITNESS: We collected everything, yes, except
17 for -- there were a couple of documents related to the motions to
18 suppress we didn't collect because we already had them.

19 MR. BRITT: Thank you.

20 Q. What happened next with respect to collecting the
21 evidence from the Winston-Salem Police Department?

22 A. On February 6, 2018, District Attorney Jim O'Neill
23 contacted us and maintained that we were not entitled to collect
24 the evidence in these cases because of NCGS 15A-268, which is the
25 statute that sets out how evidence is supposed to be handled.

1 He asked that the Commission draft an order that include
2 guarantees as to how the Commission would handle evidence in this
3 case. The Commission declined as our statute outlines how we are
4 to manage evidence, codefendants, and that we are also subject to
5 the requirements of NCGS 15A-268.

6 We decided to table the issue while reviewing the case
7 to determine what testing was necessary and to interview all the
8 defendants in this case.

9 Starting in June 2019, we requested the evidence from
10 the Winston-Salem Police Department again and we had several
11 back-and-forth communications with the District Attorney's office.

12 On July 31, 2008, District Attorney Jim O'Neill advised
13 that all evidence at the Winston-Salem Police Department would be
14 released to the Commission but with written objections to cover
15 the Winston-Salem Police Department and the District Attorney's
16 office.

17 Q. And I think you just said July 31st, 2008. Did you
18 mean '18?

19 A. I did. 2018. Sorry. 2018.

20 Q. Did the Commission collect the evidence from the
21 Winston-Salem Police Department?

22 A. We did, on August 8, 2018.

23 Q. Tell the commissioners what you collected.

24 A. We collected a hat and jacket from the victim; crime
25 scene videotapes; the cell phone from Mr. Jones' pocket; several

1 red substances collected from the crime scene; a Chapstick; paper
2 bags that had covered Mr. Jones' hands; socks, boxers, and a pink
3 bag from the autopsy; Mr. Jones' blood sample; pen, paperclips,
4 cigarettes and a lighter from Mr. Jones' pockets; a hair sample
5 from the victim; a blanket that had been placed over the victim;
6 tape from Mr. Jones' face and head; a padlock, seal, and air
7 filters used by the police department; several pieces of tape from
8 Mr. Jones' body and the crime scene; three Bibles from the
9 victim's Lincoln; a beige jacket from victim's Lincoln; a blue
10 toboggan that was found in Belview Park; a piece of wire from the
11 crime scene that was found in the backyard; a business card --
12 actually, two business cards from the crime scene; black hair
13 substance; gel lifts for the shoe prints; a surveillance tape from
14 the Wilco store; a hard drive from the Dollar General store; audio
15 recordings; and latent prints.

16 **Q.** Were there any items of physical evidence that were
17 unaccounted for after the Commission collected evidence from the
18 Winston-Salem Police Department?

19 **A.** No, there were not.

20 **MS. SMITH:** Commissioners, do you have any questions
21 about that?

22 **JUDGE LOCK:** Commissioner Colbert.

23 **MS. COLBERT:** Can you explain to me -- and I know you
24 referenced a bunch of statutes, but can you explain to me the
25 objection, what -- in layman's terms the objection from the

1 Winston-Salem police -- I mean from the DA's office in regard to
2 getting the evidence from the Winston-Salem Police Department?

3 Was it around how we kept it? How we secured the
4 evidence -- I mean how the Commission secured the evidence?

5 **THE WITNESS:** I don't want to speak for what the DA's
6 office felt but it appeared that they did not think that we had
7 the authority under 15A-268 to collect it. That is the statute
8 that governs how evidence is handled and treated in general. And
9 I think there were some concerns that they had responsibility
10 under those statutes to maintain the evidence and did not want to
11 provide it to us because they felt like their obligations under
12 that statute controlled over ours.

13 **MS. ESSARY:** Do they have any obligations under that
14 statute, Julie, about how they are to preserve evidence?

15 **THE WITNESS:** Yes, that's -- sorry. That statute lays
16 out exactly how you can treat and store evidence, how long you are
17 supposed to maintain it based on what type of case.

18 **MS. ESSARY:** Given the importance of the shoes and the
19 shoe prints in this case, did they store it in accordance with
20 what the statutes would have required, if you know?

21 **THE WITNESS:** I don't know because this case happened in
22 2002; so I would have to go look and see what the statute said
23 back then.

24 **MS. ESSARY:** Okay. Thank you.

25 **SHERIFF FRYE:** Just to follow up on her point, did you

1 not say the shoes were found in ripped paper bags at the Clerk's
2 office with the victim's clothing?

3 **THE WITNESS:** Yes. It was all in the same box. And
4 the --

5 **SHERIFF FRYE:** So you --

6 **THE WITNESS:** Many of the items had not been resealed
7 and the bags were ripped, and the trial transcript also seems to
8 indicate that this was all pulled out at the trial and shown to
9 the jury. So ...

10 **Q.** Ms. Bridenstine, if you will briefly tell the
11 commissioners whether the Commission has any evidence custodians
12 on staff and if they are certified and just a little bit of
13 background on that.

14 **A.** We have two evidence custodians on staff. I'm one of
15 them; Ms. Smith is the other one. I have been attending the North
16 Carolina Association for Property and Evidence conference that's
17 held twice a year. I've taken courses from the North Carolina
18 Justice Academy on how to handle evidence. I've also been through
19 the International Association of Property and Evidence's two-day
20 course.

21 Ms. Smith has had all that training and more, and she's
22 also certified under the International Association of Property and
23 Evidence.

24 **MS. SMITH:** Commissioners, for the record, I'll add I'm
25 also president of the North Carolina Association for Property and

1 Evidence as well as the secretary of the International Association
2 of Property and Evidence.

3 Commissioners, Appendix C of your brief, on page 2029,
4 was that original list of evidence collected from the crime scene
5 and related to the crime, if you have any interest in looking back
6 at that.

7 I'm going to turn your attention now to the forensic
8 testing in this case. Appendix E of the brief was a chart of all
9 forensic testing in this case prior to the Commission's
10 investigation. That chart is on page 2035 of the brief. However,
11 Handout 24 -- that's going to be in the second hearing handout
12 notebook, the first handout of book number 2 -- is going to be an
13 updated forensic testing chart. This is going to include
14 highlighted portions of all testing that the Commission requested
15 during our investigation. You may want to refer to that as we go
16 through the various testing that has been conducted.

17 **MR. BRITT:** What was that number again?

18 **MS. SMITH:** 24. It should be the first one in book 2.

19 **Q.** Ms. Bridenstine, can you provide the commissioners with
20 a brief summary of the testing on the latent prints from the
21 original investigation.

22 **A.** Sure. All five of the defendants' latent prints were
23 compared to the identifiable latent lifts that were all collected
24 from the exterior of Mr. Jones' Lincoln car that was parked in the
25 carport. All five defendants were excluded from all identifiable

1 latent lifts.

2 The Winston-Salem Police Department at the time of this
3 case, the original investigation, uploaded the 12 identifiable
4 latent lifts into SAFIS, and one identification was made following
5 that process to Calvin Scriven. He was one of the neighbors who
6 helped respond to the scene and provide assistance to Mr. Jones as
7 911 was being called.

8 Q. What is SAFIS?

9 A. SAFIS is the State Automated Fingerprint Identification
10 System. We were not sure, based on what we read in the file, if
11 the latent prints that remain unidentified were still being
12 routinely queried through the system since they were entered back
13 in 2002 or 2003.

14 On January 11, 2019, the Commission sent a list of
15 questions to the Winston-Salem Police Department about the
16 examination that was conducted on the latent fingerprints. We
17 received a response on February 12, 2019. The Winston-Salem
18 Police Department advised that the latent prints were no longer
19 being retained routinely queried. It also didn't appear that
20 Mr. Jones' fingerprints had ever been compared to the identifiable
21 latent lifts.

22 Q. Did the Commission do anything else with respect to the
23 latent lifts in this case?

24 A. We did. We submitted these latent lifts to the North
25 Carolina State Crime Lab on April 18, 2019. We asked them to

1 compare the latent lifts from the Lincoln car to Mr. Jones' prints
2 and that any eligible prints be uploaded to the SAFIS.

3 (Reporter clarification.)

4 Q. Did the crime lab issue a report?

5 A. They did.

6 MS. SMITH: Commissioners, the latent print examiner
7 from the crime lab will testify here in just a few minutes.

8 Do you have any questions for Ms. Bridenstine about that
9 before we call him?

10 (No response.)

11 (Witness stands down, 9:21 a.m.)

12 MS. SMITH: The Commission calls Christopher Cavazos.

13 * * * * *

14 Thereupon, CHRISTOPHER CAVAZOS, a witness having been called by
15 the Commission, was sworn and testified as follows:

16 BY MS. SMITH: (9:22 a.m.)

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you please state your name for the Commission.

20 A. CJ Cavazos, C-a-v-a-z-o-s.

21 Q. Did you recently provide the Commission with a copy of
22 your CV?

23 A. Yes.

24 Q. If you'll just take a look at this and let me know if
25 that's the most recent copy.

1 A. It appears to be the most recent copy.

2 Q. Okay.

3 MS. SMITH: Commissioners, if you will refer to
4 Handout 25 in your hearing handout notebook, that is Mr. Cavazos'
5 CV.

6 Q. How are you currently employed?

7 A. I'm a forensic scientist at the North Carolina State
8 Crime Lab.

9 Q. How long have you been with the Crime Lab?

10 A. Just over six years.

11 Q. What training have you had in the field of latent print
12 analysis?

13 A. I completed the in-house training at the State Crime
14 Lab. It consisted of latent fingerprint and palm print
15 examination and comparison, latent photography, image processing,
16 processing of evidence with chemicals and powders. I was also
17 trained with the SAFIS system, which is the State Automated
18 Fingerprint Identification System. It's the statewide database.
19 And I was also trained in basic crime scene processing,
20 photography.

21 Q. Approximately how many times have you testified as an
22 expert?

23 A. This will be my fifth time.

24 Q. And that is in the field of latent print analysis?

25 A. Yes.

1 **MS. SMITH:** Judge Lock, at this point, I would tender
2 Mr. Cavazos as an expert in the field of latent print analysis.

3 **JUDGE LOCK:** All right. That tender certainly is
4 allowed.

5 **MS. SMITH:** Thank you.

6 **Q.** Mr. Cavazos, did you conduct latent print analysis at
7 the request of the Commission in this case?

8 **A.** Yes.

9 **Q.** And did you issue a report?

10 **A.** Yes, I did.

11 **Q.** Do you have that report with you today?

12 **A.** Yes.

13 **Q.** Okay.

14 Would it be helpful to refer to that during your
15 testimony?

16 **A.** Yes.

17 **Q.** Okay.

18 Can you tell us about what you did in this case and then
19 about the findings that you made.

20 **A.** The evidence I received in this case, I got ten latent
21 lifts. A latent lift is when a crime scene agent goes out to a
22 scene, normally it's done with fingerprint powder, they'll powder
23 whatever surface they need to, lift it with usually just clear
24 tape, and they'll put that tape on some sort of backing card like
25 an index card size piece of card stock paper. So I got 10 of

1 those.

2 I got a CD containing the victim's known prints. And
3 then throughout the process I retrieved two sets of known
4 fingerprints from our SAFIS database.

5 And then -- you wanted me to go through the whole
6 process?

7 Q. If you will just tell us which prints were identifiable,
8 who they were identified to, if you have any hits in SAFIS.

9 A. Sure. So from those 10 latent lifts, I was able to
10 discover five identifiable latent fingerprints and four
11 identifiable latent palm prints. From the CD, I used -- I created
12 what we call a subitem. So from that CD, I created an item that I
13 could use to compare to any of the identifiable fingerprints.

14 So what I did with those latent fingerprints and palm
15 prints, I compared them to the victim's known prints. And all of
16 those fingerprints were compared but I wasn't able to identify or
17 exclude.

18 We have a conclusion, it's called "no identification
19 detected." And that's based on the known prints. If the known
20 prints aren't good enough to either identify or exclude, then we
21 come to that conclusion, and that's what happened with these
22 victim known prints.

23 So from that, one of the identifiable fingerprints were
24 run through the SAFIS system, and I was able to identify that to
25 the right little finger of Calvin Jerome Scriven.

1 So that left, let's see, four -- the next thing I did
2 was compare four of the remaining identifiable latent fingerprints
3 and one of the palm prints. Two -- it's item 57 in my report
4 known, the known prints of Calvin Jerome Scriven, and I was able
5 to exclude those four fingerprints and one palm print. And then
6 three remaining identifiable palm prints, I compared to that item,
7 the known prints of Calvin Jerome Scriven, and I came to the
8 conclusion of no identification detected, and that's also based on
9 the knowns. The known prints weren't good enough to identify or
10 exclude.

11 So at that point, I had four fingerprints and four palm
12 prints that were still unidentified, and I ran them through the
13 SAFIS system, the statewide system, and I also ran through the FBI
14 nationwide system. Out of those eight total, seven of them were
15 ran through the systems with no identifications coming back but
16 one of the fingerprints was run through the statewide system and I
17 identified that to the right index finger of Tarshia Caprice
18 Coleman. Her known fingerprints ended up -- I created item 58 in
19 my report.

20 And then also -- so that left three unidentified
21 fingerprints and four unidentified palm prints at this point in
22 time.

23 One of those palm prints I compared to the item 58,
24 Tarshia Caprice Coleman. I identified that to the right palm of
25 this individual. And then -- so that left three fingerprints and

1 three palm prints that were still unidentified. I compared one of
2 the unidentified latent palm prints to item 58, and that came --
3 my conclusion for that one was no identification effected. The
4 palm prints -- the known palm prints weren't good enough to ID or
5 exclude.

6 And then the remaining two palm prints and remaining
7 three fingerprints I compared to item 58 and excluded those from
8 this individual.

9 So after all of that, that left three identifiable
10 latent fingerprints and three identifiable latent palm prints that
11 were unidentified.

12 **Q.** Thank you.

13 **MR. BRITT:** May I ask a question?

14 **MS. SMITH:** Yes, you may.

15 **MR. BRITT:** The remaining fingerprints and palm prints
16 that were unidentifiable, can you tell us where those were lifted
17 from?

18 **THE WITNESS:** Yes. One of the palm prints, according to
19 the latent lift, was from the driver's side front door. Another
20 one of the unidentified palm prints was from the driver side front
21 fender. And an unidentified fingerprint was also from the
22 driver's side front fender. Two of the unidentified fingerprints
23 were from the passenger rear door. And then the remaining palm
24 print was -- according to the lift, it says passenger side post
25 behind door.

1 So it looks like they were all from a car -- different
2 areas on a car.

3 **MR. BRITT:** Thank you.

4 **Q.** Mr. Cavazos, I think that you explained this, but I just
5 want to make sure that we understand it.

6 You were not able to make conclusive comparisons to the
7 victims in this case because the standards that you have for the
8 victim didn't have sufficient detail in the areas that you needed.

9 Is that accurate?

10 **A.** Correct.

11 **Q.** Okay.

12 And you called it -- you say, I think, in your report
13 that you would need major case inked impressions?

14 **A.** Yes.

15 **Q.** Can you explain to the commissioners what a major case
16 inked impression is.

17 **A.** Sure.

18 We typically can, you might've seen them, the 10-print
19 card. They have five fingers in a row and then below that the
20 other hand with the five fingers. And then on the bottom, they
21 have four fingers and the thumbs. Sometimes on the back they have
22 the palms.

23 So major case involves those, and we also -- either I
24 get them or record them. They include all the joints of the
25 fingers, the -- what we call the "writer's palm." So if you're

1 writing a piece of paper, the part that touches the paper, the
2 grip, which is between the thumb and the index finger, and it also
3 includes the extreme sides of the fingers and the tips. So it's
4 every piece of the friction ridge skin on the hands.

5 MS. SMITH: Commissioners, do you have other questions
6 for Mr. Cavazos?

7 MS. ESSARY: The prints that were lifted that were
8 unidentified, how long, typically -- and I know it's a really
9 vague question -- would those kinds of prints stay on a vehicle?

10 THE WITNESS: It really depends. If it's -- if the car
11 or if the vehicle is parked inside of a garage for quite a while
12 and it's kind of sheltered from outside elements and if nobody
13 comes in contact with it, it can last for quite a while. I can't
14 put a definitive timeline on it.

15 If the vehicle is outside and it rains or it's really
16 humid, windy -- fingerprints on a nonporous surface like metal on
17 a car, the residue kind of sits on the top. A lot of that residue
18 is made up of water. So if it's really windy, that water is going
19 to evaporate more quickly. If somebody takes their car to the car
20 wash immediately after, it's going to get typically wiped away.

21 So it kind of depends on the setting. I can't give you
22 an exact answer.

23 MS. ESSARY: Thank you.

24 Q. Mr. Cavazos, you said that the prints were uploaded into
25 SAFIS and the FBI database.

1 Are those still being routinely queried?

2 A. Yes. Anything that wasn't identified or come back with
3 somebody that I identified it to, those are being continuously
4 searched against any new cards that come to the system.

5 Q. And the Commission would get notification if there was a
6 hit on those; is that correct?

7 A. Yes. I would -- if something comes back as a potential
8 identification, I would do the comparison, issue a report like
9 normal, it would be tied to this one, and then any -- anybody that
10 gets notification on this report would also get notification on a
11 new one.

12 Q. And as of today, there have been no hits since the time
13 of your report; is that correct?

14 A. Correct. Yes.

15 Q. Okay.

16 MS. SMITH: Any other questions, commissioners?

17 (No response.)

18 MS. SMITH: I would ask that Mr. Cavazos be released
19 from his subpoena and return back to work.

20 JUDGE LOCK: He may. Thank you.

21 (Witness stands down, 9:35 a.m.)

22 MS. SMITH: Commissioners, we're going to turn our
23 attention now to the shoe prints in this case. I'm going to call
24 grant staff attorney Catherine Matoian.

25 JUDGE LOCK: Ms. Matoian remains under oath.

1 (Witness, Catherine Matoian, resumes the stand.)

2 BY MS. SMITH: (9:35 a.m.)

3 Q. Ms. Matoian, before we get started on the shoe prints,
4 could you tell the commissioners or remind them -- there was just
5 testimony about a Calvin Scriven and Tarshia Coleman.

6 If you could just remind who those people are relevant
7 to this case.

8 A. Both of those individuals were neighbors of Mr. Jones
9 and provided him assistance at the scene after his body was
10 discovered.

11 Q. Can you remind the commissioners about the shoe prints
12 in the case.

13 A. I can. Two partial shoe prints, a left and a right,
14 were located on the hood of the victim's Lincoln. The NC State
15 Crime Lab determined that those shoe prints had been made by
16 size 9 Nike Air Force 1 sneaker. Several pairs of shoes were
17 collected from all of the codefendants' home in this case by law
18 enforcement, and that included several pairs of Air Force 1s.

19 The Crime Lab issued a report during the original
20 investigation indicating that our item number 77, which were the
21 shoes collected from the home of Rayshawn Banner and Nathaniel
22 Cauthen were consistent in size, design, and wear to the shoe
23 prints found on the crime scene.

24 MS. SMITH: Commissioners, Handout 26 is a series of
25 photos of the various shoes collected in this case. You may wish

1 to refer to those as Ms. Matoian testifies. We're also going to
2 put the photos of those shoes on the screen.

3 **Q.** Ms. Matoian, will you walk the commissioners through the
4 sizes of all of the Nike Air Force 1 shoes collected in this case.

5 **A.** I can. The first picture is our item 58. The pair on
6 the right -- or, yes, the left, I'm sorry. The white pair is a
7 pair of size 9 Nike Air Force 1s collected from Mr. Tolliver's
8 home. The blue and white sneakers in the photograph are not Air
9 Force 1 sneakers.

10 And that -- the next picture is a photograph of the
11 bottom of the Air Force 1s from our item 58.

12 The next photograph is our item 67. This is a pair of
13 size 9 1/2 Nike Air Force 1s collected from the home of Rayshawn
14 Banner and Nathaniel Cauthen.

15 And, again, the next picture is a photograph of the
16 bottom of those shoes.

17 **MR. BRITT:** Just for clarification, can we go back to
18 the preceding picture.

19 The blue color on the shoes -- is that ink or is it
20 intentionally colored that way? Do we know?

21 **THE WITNESS:** Intentionally colored by the manufacturer?

22 **MR. BRITT:** No. By the -- Mr. Cauthen or Mr. Tolliver.

23 **THE WITNESS:** These were from the home of Rayshawn
24 Banner and Nathaniel Cauthen.

25 **MR. BRITT:** Okay.

1 **THE WITNESS:** Several pairs of sneakers collected
2 appeared to have some kind of writing on them, presumably by the
3 defendants, but we don't have any indication that they were asked
4 about --

5 **MR. BRITT:** Blue doesn't indicate that, for example,
6 that's the right shoe that has the blue on it, that the left shoe
7 is a separate pair of shoes?

8 **THE WITNESS:** There was no indication.

9 Ms. Bridenstine and I went and viewed these shoes in the
10 evidence room, and they appeared to be the same set of shoes.

11 **MR. BRITT:** Okay.

12 **A.** This photograph is our item number 70. This is a pair
13 of size 7 1/2 Nike Air Force 1s collected from Rayshawn Banner and
14 Nathaniel Cauthen's home.

15 And, again, the next photograph is a photograph of the
16 bottom of those shoes.

17 NCIIC number 71 is -- I'm sorry. This is our item 71.
18 It's a pair of size 7-1/2 Nike Air Force 1s collected from
19 Rayshawn Banner and Nathaniel Cauthen's home.

20 And, again, we have a photograph of the bottom of those
21 shoes next.

22 This is a photograph of our item number 73. It's a pair
23 of size 9 red and white Nike Air Force 1s collected from Joseph
24 Cauthen, who is the brother of Rayshawn Banner and Nathaniel
25 Cauthen at the Forsyth County jail on November 20, 2002.

1 Again, there's a photograph of the bottom of those shoes
2 as well.

3 This photograph is our NCIIC item number 74. It's a
4 pair of size 10 Nike Air Force 1s collected from Rayshawn Banner
5 and Nathaniel Cauthen's home.

6 And, again, we have a photograph of the soles of those
7 shoes.

8 This photograph is our NCIIC item number 77. It's a
9 pair of size 9 Nike Air Force 1s that were collected from Rayshawn
10 Banner and Nathaniel Cauthen's home.

11 And, again, a photograph of the bottom of those shoes.

12 **MS. SMITH:** Commissioners, any additional questions
13 about the photographs?

14 **MS. COLBERT:** So there weren't any shoes collected from
15 Bryant?

16 **THE WITNESS:** There were, but the photographs we've
17 provided here are only the Nike Air Force 1s.

18 **MS. COLBERT:** So Bryant didn't have Nike Air Force 1s?

19 **THE WITNESS:** No. Only the Air Force 1s were here.
20 They collected shoes from all five codefendants.

21 **MS. COLBERT:** So in regard to -- do we know what size
22 shoes -- because, I mean, there's 7s, there's 9s. I know that the
23 prints that were lifted was from a size 9 Nike Air Force.

24 Do we know what size shoes the boys wore at the time of
25 the incident?

1 **THE WITNESS:** We don't have any documentation from the
2 time of the incident of who wore what size shoe. I will say that
3 the shoes collected from the home, there were size 9s. Joseph
4 Cauthen was wearing a size 9. There were size 7 1/2s. We know,
5 from a cousin who sometimes lived in the home, that he wore a
6 size 7-1/2 as well.

7 There will be more testimony about what we know about
8 who was wearing all the shoes that were in Rayshawn Banner and
9 Nathaniel Cauthen's home in a little bit.

10 **MS. COLBERT:** Thank you.

11 **Q.** Did the Commission have anything else done with the
12 shoes?

13 **A.** We did. The Commission submitted the shoe prints in
14 this case and all of the shoes collected during the investigation
15 to independent expert Marty Ludas on July 12, 2019, and we asked
16 him to recompare the four shoes subject to comparison by the Crime
17 Lab during the initial investigation and also to compare the other
18 shoes collected from the codefendants which had not been
19 previously compared.

20 **Q.** So I just want to clarify. Some of the shoes that were
21 collected at the time of the original investigation were not
22 compared to the shoes -- the prints that were located on the hood
23 of the victim's vehicle; is that correct?

24 **A.** That's correct. And I'll note that some of those shoes
25 that were collected from the other codefendants were from other

1 brands, such as Reeboks or Timberland.

2 MS. SMITH: Commissioners, any additional questions for
3 Ms. Matoian before we call Mr. Ludas?

4 MS. NEWTON: Aside from the print impression test, was
5 there any luminol testing?

6 THE WITNESS: So what we've been able to determine from
7 the original crime lab reports was that the four shoes that were
8 compared to the shoe prints were not subject to the blood analysis
9 that other pairs of shoes were, and all of those shoes that were
10 subjected to that analysis failed to reveal the presence of blood.

11 MS. NEWTON: Why were those four not tested, if you
12 know?

13 THE WITNESS: I do not know.

14 Q. Ms. Matoian, to follow up on that, does that include the
15 pair of shoes that the crime lab said would be consistent with the
16 print that was found on the hood of the car?

17 A. Yes. Number 77, which could not be excluded from the
18 prints on the hood of the car, was not subjected to testing to see
19 if there was blood present.

20 Q. And is there a reason that the Commission didn't have
21 testing on that shoe?

22 A. Yes. We did not -- we did not conduct any DNA testing
23 on that shoe. As Ms. Bridenstine testified, when we collected
24 that item, it was in an unsealed ripped bag in the same box as the
25 victim's clothing which was also in unsealed ripped bags. Due to

1 the possibility of cross-contamination for an unknown period of
2 time, we did not conduct DNA testing.

3 MS. SMITH: Commissioners, Handout 27 is an article from
4 the Journal of Forensic Identification titled "Determining the
5 Significance of Outsole Wear Characteristics During the Forensic
6 Examination of Footwear Impression Evidence."

7 It may be helpful to take a look at that article in
8 explaining the forensic discipline in footwear impressions. You
9 may want to refer to it during Mr. Ludas' testimony that is coming
10 up.

11 I'm going to give you a few minutes to take some time to
12 review that while we get Mr. Ludas in here for his testimony.

13 That is Handout 27.

14 (Witness stands down, 9:46 a.m.)

15 MS. SMITH: Commission calls Joseph Marty Ludas.

16 * * * * *

17 Thereupon, J. MARTY LUDAS, a witness having been called by the
18 Commission, was sworn and testified as follows:

19 BY MS. SMITH: (9:52 a.m.)

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you please state your full name for the Commission.

23 A. Joseph Martin Ludas.

24 Q. Do you go by Marty?

25 A. Yes.

1 Q. Did you recently provide the commission staff with a
2 copy of your CV?

3 A. Yes.

4 Q. Does this look like a copy of that?

5 A. Yes.

6 MS. SMITH: Commissioners, Handout 28 in your hearing
7 handout notebooks is Mr. Ludas' CV.

8 Q. Mr. Ludas, what training do you have in the field of
9 footwear impression analysis?

10 A. My training goes back to 1978/1979 when I was employed
11 at the State Bureau of Investigation. At that time, there wasn't
12 a lot of agencies that were doing footwear. The FBI was doing it
13 and North Carolina was doing it. That training involved 18 months
14 of supervised training -- most of it was doing actual casework,
15 going to shoe manufacturing plants, watching how shoes were made,
16 both athletic shoes and dress shoes, going to tire track
17 manufacturing plants -- because we also did tire tracks. And
18 we -- wherever we could, we got training on that.

19 Later on, the footwear discipline increased in
20 popularity. And I was involved in seminars and training to
21 support and further advance footwear identification. Ultimately,
22 later, I was certified as an examiner. My certification has
23 expired, however. But I, at this point, still do many footwear
24 comparison cases as an independent examiner, and I do them --
25 submissions from states all around the country.

1 I have testified probably 30 times to footwear
2 identification and just recently have done quite a few
3 comparisons, and they are all basically the same.

4 Q. Have you testified for both the prosecution and defense?

5 A. I don't think I've testified for the defense.

6 Q. Okay.

7 Have you testified previously for the Commission?

8 A. Yes.

9 Q. And have you testified both about footwear and about
10 latent print impressions --

11 A. Yes.

12 Q. -- for the Commission?

13 A. Yes.

14 MS. SMITH: Judge Lock, at this time, I would like to
15 tender Mr. Ludas in the field of footwear impression analysis.

16 JUDGE LOCK: All right. Tender allowed.

17 Q. Will you generally explain for the commissioners what
18 footwear impression analysis is.

19 A. Footwear analysis is very similar to a fingerprint in
20 that there is a transfer of a medium from -- in the footwear, from
21 the outsole onto a receiving surface; for example, stepping on the
22 floor. There is usually something that transfers.

23 In a positive deposition, there's something on the shoe
24 that transfers onto the evidence surface. In a negative
25 deposition, there's something on the floor, for example, the shoe

1 steps on it, and it negates or subtracts and leaves a negative
2 impression. And this can be very important, whether it's positive
3 or negative, to help reconstruct what happened during that time
4 where that shoe made contact with the surface.

5 So when we get this transfer, this deposition, we can
6 photograph it, we can cast it if it's three-dimensional, or
7 sometimes we can even pull up the tile, the floor tile, and we
8 have it. And this impression, very importantly, is 100 percent of
9 the size of the shoe impression. So it's exactly the right size.

10 If photographs are made, we include a small ruler. So
11 when we make the enlargement, we have the ruler and that enables
12 us to make the photographs exactly the size that it was when it
13 was deposited. And in this case, this is what we did.

14 Q. Were you involved in the original analysis in this case
15 at all?

16 A. No.

17 Q. Okay.

18 Did the Commission ask you to conduct any comparisons in
19 the case?

20 A. Yes.

21 Q. And did you issue a report to the Commission?

22 A. Yes.

23 Q. I'm going to hand you what I believe is your report. If
24 you will take a look at that and let me know if that is the case.

25 A. This is my report.

1 Q. Okay.

2 Did the Commission submit to you several pairs of shoes?

3 A. Yes.

4 Q. And did you, in fact, compare those shoes to the
5 photographs of the footwear impression?

6 A. Yes.

7 Q. And was that impression to scale?

8 A. Yes.

9 Q. So that had the ruler that you were talking about in the
10 photographs?

11 A. The ruler enabled me to size it photographically and on
12 the screen so that when I compared the exemplar, which is what was
13 made from the shoe, or the actual shoe itself, when I put them
14 side by side, they were exactly the same size.

15 Q. And in this case, the commission staff provided you with
16 the actual pairs of shoes; is that correct?

17 A. That's right.

18 Q. Okay.

19 Can you tell the commissioners what you were able to
20 determine about the shoes collected and the shoe print impressions
21 in this case, if you just want to walk through whether you were
22 able to make any exclusions?

23 A. Well --

24 Q. Let me back up. There were -- I'll make this easier for
25 you.

1 There were four pairs of shoes that were originally
2 compared by the North Carolina State Crime Lab; is that --

3 A. Right.

4 Q. -- correct?

5 A. Right.

6 Q. Okay.

7 And did you also take a re-examination of those four
8 shoes to this exemplar you had from the hood of the car?

9 A. Yes.

10 Q. Okay.

11 And when you did that, did you concur with the crime lab
12 on the original four comparisons?

13 A. I did.

14 Q. Okay.

15 And you were also asked to look at several additional
16 pairs of shoes; is that correct?

17 A. Right.

18 Q. And when you looked at those shoes, were you able to
19 exclude all of the additional shoes that you examined?

20 A. Yes.

21 Q. Can you tell the commissioners what "wear pattern"
22 means.

23 A. Wear patterns simply is a shoe starts out brand new, and
24 as soon as you start walking, there is damage to the shoe and
25 wear. And it's simply -- it's a gradual thing. There's wear of

1 every day, just the abrasiveness of traction and grip onto a
2 surface. And then there's also damage. Sometimes you step on a
3 nail or a stone gets embedded. The wear, it's just very general,
4 and it can give evidence to how long the shoe has been worn.

5 Some shoes we get are completely wore out with holes in
6 them. Some shoes are almost new. And so it's just a basic
7 indicator of how much -- not how old the shoe is, but how much
8 it's worn.

9 We use that in our comparison when we have a questioned
10 print, it's remarkable -- it's very remarkable to be able to see
11 the wear because it's so obvious and quantifiable in a comparison.

12 In other words, you've got an impression and the shoes
13 look -- because of the size of the elements, which are the
14 little -- what look like graphics that are transferred and you can
15 tell that, "Wow, this is a -- this shoe is worn. This has a lot
16 of wear on it." And you look at a shoe and that shoe looks almost
17 new.

18 So you have an idea of could -- how could this shoe have
19 made this impression if it's -- if one shoe is new and the other
20 one -- and the impression that you have is old. That's part of
21 the comparison. And it's a class characteristic examination in
22 that you're just looking at general features.

23 Q. And is that kind of general wear pattern that you
24 discussed different from an individualized or a unique
25 characteristic?

1 A. Yeah. We use them together. We use -- the first part
2 is the association, where does it have similar wear, and then we
3 start looking for specific elements or cuts and nicks, an embedded
4 stone, a nail that might be embedded in the shoe.

5 If you look at your shoes in your closet, you'll find
6 all of these things exist, especially in the old shoes.

7 We go from wear pattern and then if that's consistent,
8 then we look for these unique features. They are very unique.

9 Same way with tires. It's the same type of thing. You
10 have the wear and then you move on to can we find cuts, nicks, or
11 embedded stones.

12 Q. So if you just have that wear pattern alone and none of
13 those individualized characteristics, what type of determinations
14 can you make or conclusions can be drawn?

15 A. Well, we can make limited conclusions in that if the
16 shoe looks like it's new and we're looking at an impression, a
17 questioned impression from the crime scene that's -- obviously
18 shows wear, and this is visibly -- this is very easily seen in a
19 side-by-side comparison, we can make an exclusion based on wear.

20 Q. Okay.

21 A. Because the shoe is too new to have made that.

22 Q. Do you need to have identifying characteristics to make
23 a conclusive identification from a pair of shoes to a shoe print?

24 A. Yeah. We have -- yes. We have to have compliance. The
25 wear has to be the same or very similar. And then the nicks that

1 I talked about, then they have to be in sufficient clarity. We
2 want to see them very clearly, we want to be able to measure them.
3 And then if we can see a constellation of nicks and cuts and we
4 could actually mark them, then that gives us the uniqueness of the
5 shoe and then we find that it is compliant in the -- or uniqueness
6 in the impression, and then we can find its compliance in the
7 shoe.

8 But it's very important that we first look at the
9 questioned impression and leave the shoe to the side to see wear
10 pattern and then start looking for these nicks so that we don't
11 try to -- don't see something that, you know, might not be there.

12 Q. Okay.

13 And I'm looking at your report. I want to focus in just
14 on the item marked North Carolina NCIIC item 77. That was the
15 white Nike shoes.

16 A. Yes.

17 Q. And those were the ones that were identified by the
18 crime lab as being consistent in wear pattern during the initial
19 investigation or examination; is that correct?

20 A. Right.

21 Q. And your conclusion from your report is that the left
22 and right shoes are noted to display the same size, shape, and
23 sole design --

24 A. Yes.

25 Q. -- that exists on the left and right for wear

1 impression?

2 A. Right.

3 Q. And the wear patterns on both shoes corresponded to the
4 wear patterns displayed on the photograph.

5 So the left and right shoes could have been the source
6 of the footwear impressions.

7 A. Yes.

8 Q. Okay.

9 You cannot say for certain that those shoes made those
10 impressions. Is that accurate?

11 A. No, I -- there wasn't sufficient -- there wasn't the
12 uniqueness that I could see, the compliance. It was just based on
13 the size, which is important; the shape, size, and design is
14 consistent, and the wear patterns were consistent. But I try not
15 to put too much absolute value in wear patterns.

16 But if you ask me the question could it have made it,
17 certainly, yes, and there's many issues that could not have made
18 it based on those wear pattern.

19 So there is value to wear patterns but we must limit it
20 in our comparisons.

21 Q. Okay.

22 And I'm going to hand you an article from the journal of
23 Forensic Identification Titled: "Determining the Significance of
24 Outsole Wear Characteristics During the Forensic Examination of
25 Footwear Impression Evidence."

1 Are you familiar with this article? I think we provided
2 it to you before today.

3 A. I'm familiar with the authors and the article. I
4 remember when it came out, whenever it was -- 2011 or whatever.

5 It's very important, and it was written so that there
6 was some guidance on how we testify. There were some people that
7 were taking a little bit too much liberty in what they were
8 seeing, and so Bodziak and these people, they tried to say, "Hey,
9 you need to rein this stuff back" because there was talk about
10 that footwear identification was a junk science, which is
11 unfortunate because it's like calling a paleontologist a junk
12 scientist because he can identify a bone and know that it came
13 from a certain type of dinosaur. We're doing essentially the same
14 thing with footwear.

15 So here, with the patterns, what we're finding out the
16 value is -- like, I have four or five pairs of the exact same
17 shoe. We're finding wear patterns useful, and in many cases it's
18 like, "Well, it's the same size, wrong pattern. Go back to the
19 closet and get all of his shoes." And because people wear and buy
20 the same shoes, we can use the wear patterning. And that's one of
21 the advantages of this, that we have evidence that -- let's get
22 some more shoes, and then we've got to track down size and shape,
23 sole design, next thing you know, we get the right shoe and we can
24 make a positive identification.

25 So Bill and his group here kind of just gave us some

1 technical support to the value of how we sequence our comparison.

2 Q. So I don't actually have any questions for you about the
3 article. The commissioners have been provided that so I wanted
4 you to be aware of that in case their questions refer back to the
5 article so that is why you have that.

6 MS. SMITH: Commissioners, do you-all have any questions
7 for Mr. Ludas?

8 MS. COLBERT: I do. And so let me make sure I
9 understand what -- from reading some part of this article and what
10 I hear you say, and the whole purpose of this article is to ensure
11 that, you know, that there is an understanding that this science
12 is great, but you can't just use one aspect of it when you're
13 making a comparison; right? When you are testifying, you have to
14 look at certain things.

15 So based on what I think I heard you say, that the size
16 and the wear was used in order to -- when they looked at this
17 impression on the car and the shoes to determine that these shoes
18 could have made this impression, but some of the other stuff that
19 is in this article about individual characteristics, holes -- none
20 of that stuff was used in comparing these two; right? They only
21 used general wear and class characteristics like size and all of
22 that was used when they made the determination?

23 THE WITNESS: Yes, ma'am. Exactly right.

24 What was happening is police officers were looking at
25 it, and they had an idea that that shoe -- that was the guy that

1 did it and they're seeing things and making recognition and the
2 wear patterns look good, and there was too much emphasis on that.
3 And that was not -- and it was like a red flag that people are
4 putting emphasis on this and because they want the shoe to match,
5 it does.

6 So finally published something to pull back on that, and
7 the wear pattern interpretation is very subjective and it needs to
8 be just part of the comparison process so you don't get carried
9 away and make a mistake. What's important in this case is, of
10 course, the size, the type of shoe, how popular the shoe is, and
11 how many shoes are out there and how many shoes have access at
12 that point to the hood of the car.

13 I hope I responded to that.

14 **MS. COLBERT:** Yeah. I do.

15 So based on that, and when we talk about individual
16 characteristics, are you able to look at this impression that they
17 took of the shoes on the car and the shoes that were given to you
18 to compare, to note if there was any individual characteristics
19 that you were able to tie to some of the shoes that you were given
20 when you compared it to the impression on the car?

21 Were you able to do that?

22 **THE WITNESS:** No, ma'am.

23 And let me go back to what I first said about sometimes
24 you leave a plant -- like, if you have blood on the shoe, you
25 step, and you leave a positive impression, and sometimes you

1 negate or you subtract.

2 In this case, these were negative impressions. So the
3 shoe was pulling away and leaving a negative, and it's like
4 looking like at a negative -- the old-fashioned negatives, and
5 then you look at the picture and it's confusing.

6 So in that process, it makes the comparison very
7 difficult. And the -- you don't see that very intricate details
8 that you can see in a positive transfer.

9 So -- and that's unfortunate but it's good that they
10 recognized that impression on the hood because sometimes it can be
11 overlooked and only by side lighting can you see it.

12 So it's important evidence but it's mainly a
13 classification comparison that I'm making, same type shoe, same
14 sole design, but because it's a negative impression, the intricate
15 detail that I need -- and I had looked and couldn't find anything.
16 In my initial examination of it, I'm looking at the case and I'm
17 thinking, "Well, I'll just be glad to be able to -- if I can get
18 the exact size." You know, that's what's I'm -- or what's
19 important.

20 Use the ruler so I know that I have the shoe and an
21 exemplar from the shoe, and when I do an overlay on the screen,
22 I'm getting an exact measurement and all the elements are lining
23 up.

24 Again, I'm going back to the class characteristic
25 comparison.

1 **MS. COLBERT:** Now, would it have made any difference
2 if -- I mean, even if you took, like, you know, what you call it a
3 cast or something -- of the shoe -- of the shoes that you had and
4 looked at the impression that way? Does that give any more
5 greater detail?

6 **THE WITNESS:** They did everything they could, in my
7 opinion, because a cast involves a soil, usually, a soft surface
8 that's three-dimensional. So it's a dental stone that we pour
9 into it and it collects the three-dimensional.

10 This is a two-dimensional surface, the hood of a car.
11 And you can see hand wipes on cars and shoe impressions, and this
12 is a left and right right on the hood, which it could've been a
13 police officer from 20 feet away that saw those two impressions
14 and it could be you're right up front you don't see it if you're
15 looking down on it.

16 So, obviously, there was some connection that somebody
17 went over the hood of that car relatively recently because it's
18 been removed and it looks like it could be a fresh impression
19 related to the activity that had just occurred.

20 **MS. COLBERT:** Thank you.

21 **THE WITNESS:** Okay.

22 **SHERIFF FRYE:** Sheriff Frye.

23 **THE WITNESS:** Yes, sir.

24 **SHERIFF FRYE:** So it's a negative impression, which
25 means it took something away. The something being dust, pollen,

1 whatever else.

2 **THE WITNESS:** Right.

3 **SHERIFF FRYE:** Because of that, we know it was probably
4 a fairly recent print.

5 **THE WITNESS:** That's what -- when you reconstruct, yeah.

6 **SHERIFF FRYE:** In probability.

7 **THE WITNESS:** Yes.

8 **SHERIFF FRYE:** So -- and there was no individual --
9 other than the wear characteristics, there was no identifying
10 marks.

11 Could the absence of identifying marks, looking at the
12 shoe print that you have -- the shoe that you have when you're
13 doing the comparison, would the absence of a cut, a rock, things
14 of that nature -- that in itself could lead to some credibility
15 that it's the same shoe; correct?

16 **THE WITNESS:** I don't want to say -- I would not say
17 that. I'm -- let me go back on how I compared them.

18 **SHERIFF FRYE:** Do you see what I'm saying? I may not be
19 explaining it right.

20 **THE WITNESS:** Maybe I'm not explaining how I made the
21 comparison right, and that could be my problem.

22 Okay. So I'm looking at this impression without any
23 totally -- without any prejudice, right, and so I'm seeing size
24 and shape and sole design, but I'm not seeing any -- I'm looking
25 for unique cuts and things like that too in my process.

1 Once I look at the shoe, okay, then I have a different
2 comparison that is done because later on, I'll look at the shoe
3 and I'll look for the unique cuts and damage that's on the shoe
4 and I try -- and then I'll try to find that later on to the
5 questioned impression.

6 But the lack -- the lack of correspondence, I get your
7 point now, it could be because -- there could have been a big
8 slice in that shoe, that's not unusual, that would have allowed
9 me -- and then I would have eliminated it.

10 **SHERIFF FRYE:** And it would've been eliminated; correct?

11 **THE WITNESS:** Okay. So I see where you're going with
12 that.

13 **SHERIFF FRYE:** You see where I'm going with that?

14 **THE WITNESS:** Yes, sir.

15 **SHERIFF FRYE:** Okay.

16 I didn't -- may not have explained it the best that I
17 could.

18 So what I'm saying is there was no cut, there was no
19 piece of rock, there was nothing in the shoe that you looked at
20 that would have eliminated it?

21 **THE WITNESS:** That's right.

22 **SHERIFF FRYE:** Therefore, by -- that helps a little bit
23 on the comparison, would it not?

24 **THE WITNESS:** It does. It does.

25 **SHERIFF FRYE:** Thank you.

1 **MS. ESSARY:** So following up on the sheriff's question,
2 can you give us just a rough estimate the number of times or the
3 percentage where you do find those individual characteristics in
4 shoes when you see them.

5 **THE WITNESS:** I find them most of the time in a positive
6 deposition, like a -- like if they step in blood. Most of the
7 time I will find them in a positive deposition, and that's because
8 of the clarity is so much better. And in the negative ones, it's
9 much more difficult.

10 So I guess I should be answering that in a negative
11 deposition like this, it's not uncommon to find really clear
12 identifying marks.

13 **MS. ESSARY:** So I'm kind of backing off a little bit
14 from what the sheriff asked.

15 Now I hear you saying that when you examined this, it
16 would atypical because this was a negative print, to see those
17 individual characteristics.

18 Am I restating your testimony correctly?

19 **THE WITNESS:** I hate to sound like I'm going back and
20 forth but I have to agree with both of you.

21 **MS. ESSARY:** Is it a fair statement to say that if there
22 had been negative characteristics -- let me ask it this way:
23 Because this is a negative print, what proportion of the shoe was
24 reflected on that negative print? Does that make sense? Because
25 there's absence. There's a lot of space there.

1 **THE WITNESS:** There was a -- both of them were fairly --
2 from my memory now, I haven't looked at the photographs lately,
3 they were fairly complete in -- in size. So in my comparison, I
4 was able to do that. And that helped also in determining that it
5 was the same size.

6 **MS. ESSARY:** So if you were to testify today in a trial
7 where this forensic evidence is at issue, what would your
8 testimony be with regard to the shoes collected and your
9 examination of the negative print of the shoes from the car hood?

10 **THE WITNESS:** The shoes were consistent in shape, size,
11 sole design, and also reflected a compliance of wear patterns
12 which is descriptive of the questioned print and the similarity
13 between the known print.

14 And then in my report, I also went further to say
15 another shoe -- like, for instance, he could have or somebody
16 could have another pair of shoes that have similar wear or the
17 defendant could have another pair of shoes in the closet that have
18 similar wear. But because it was only based on wear and size, I
19 made my determination.

20 **MS. ESSARY:** And, I'm sorry, what is your determination?

21 **THE WITNESS:** That it was consistent in shape, size,
22 sole design and displayed similar wear patterns; therefore, that
23 shoe could have made those impressions -- or those two shoes.

24 **MS. ESSARY:** So if you were being cross-examined by
25 defense attorney --

1 **THE WITNESS:** Yes.

2 **MS. ESSARY:** -- "could have" -- how does that translate
3 into a degree of confidence that these two matched?

4 **THE WITNESS:** I don't quantify -- I don't even try to
5 quantify it. It's just -- it's the possibility, unquantified
6 possibility, my opinion, just based on that. And I -- there's not
7 really a level -- there's not a numerical or some kind of
8 quantification that we use in this. We're just seeing consistency
9 and making it -- using the term "could have." And some examiners
10 can go further and say "probably could have" and I don't do that.
11 I'm just saying that shoe could have made that impression.

12 **MS. ESSARY:** And knowing that these Nike Air Force 1s
13 were worn by millions of people at the time, that's my
14 understanding from the record --

15 **THE WITNESS:** Right.

16 **MS. ESSARY:** -- we could just assume that's true.

17 I guess that gets into my "could have" because these
18 were so commonly worn, it was a very typical shoe and a typical
19 size, how does that add to your conclusion or not?

20 **THE WITNESS:** It doesn't. It doesn't really impact my
21 conclusion other than other people can acquire the sales and know
22 how many shoes were sold, and sometimes we get into that. But --
23 and then you get into, "Well, how many of those millions had
24 access and were in that area?" And so there's a consideration
25 there too, that -- and it's like -- I'm not trying to direct

1 attention to this one person, I just cannot eliminate; and
2 therefore, I use the term "could have." And unfortunately, in my
3 inability to be more specific, it may sound like junk science but
4 it's a limited ability of me too.

5 MS. ESSARY: I would never, ever say this is junk
6 science.

7 THE WITNESS: Right.

8 MS. ESSARY: I am just trying to figure out with what
9 degree of confidence you can link these two shoes -- excuse me --
10 the footwear impression, the negative impression, with these shoes
11 because that's a really critical piece of the -- of the only
12 forensic evidence we have in this case.

13 THE WITNESS: Yes. I think not only could -- not only
14 do I have an opinion of compliance that it could have, I think
15 that I could show that demonstrably. Like, if I had to, if I was
16 testifying in court, I would certainly make exhibits and charts so
17 that a jury -- and I could point to shape, size, sole design and
18 wear patterns, and that's mainly what I would do is try to guide
19 the jury to explain exactly what I'm looking at when I'm looking
20 at the actual shoe and a photograph and on the monitor what I'm
21 able to re-create.

22 MS. ESSARY: Sure. So the wear pattern in this case was
23 not individual. Some people, I guess, wear shoes in a very
24 distinctive manner -- their feet roll in or their feet roll out.

25 Was this wear pattern just a general wear pattern or did

1 it show anything unique about how these shoes were worn by that
2 individual?

3 **THE WITNESS:** You're getting to the point of this
4 article in that, with this wear pattern, there was people that
5 were trying to put too much -- they were saying things that they
6 couldn't say. And that's why we just call it "general wear
7 pattern."

8 It was getting to the point where people were looking
9 and they could say, "Well, that person only wore those shoes" and
10 the discipline was expanding beyond what could be said. And so --

11 **MS. ESSARY:** So you're saying comparisons were being
12 made that were inaccurate --

13 **THE WITNESS:** Yes.

14 **MS. ESSARY:** -- at that time. Okay.

15 **THE WITNESS:** Yes. By people that were allowed to
16 testify and saying that a person walked a certain way and then
17 they could detect this in a shoe, and it was going beyond the
18 expertise that they had and certainly nothing that could be
19 replicated and determined.

20 Everything that I write in my report and testify to can
21 be demonstrated visually, if necessary.

22 **MS. ESSARY:** How would you describe -- this is my last
23 question.

24 How would you describe the wear on the shoe with a sense
25 of how -- I know in this article it says wear can't be measured by

1 time because somebody could have worn the shoes a lot.

2 **THE WITNESS:** Right.

3 **MS. ESSARY:** So was this moderate wear? A lot of wear?

4 **THE WITNESS:** I would say it's moderate wear. And I
5 hate to go further than that because --

6 **MS. ESSARY:** So if I understand your testimony -- I just
7 want to lock it in my head -- there is a possibility that the
8 negative print matched these shoes, number 77.

9 **THE WITNESS:** Yes. The shoe could have been the source.

10 **MS. ESSARY:** Okay. Thank you.

11 **MS. SMITH:** Before you ask a question, I'm going to put
12 these before Mr. Ludas.

13 BY MS. SMITH:

14 **Q.** Mr. Ludas, I'm going to show you two photographs. I
15 believe these are the photographs you were provided for your
16 examination of the partial shoe prints; is that correct -- I'm
17 going to pass them around to the commissioners if you identify
18 that for me.

19 **A.** Yes.

20 **Q.** Okay.

21 And do those look like partial shoe prints or full shoe
22 prints to you?

23 **A.** Yes, they are partial, but they're not because they show
24 width dimensions. So it's like I don't need the whole
25 top-to-bottom size of the shoe if I have areas showing the width

1 because it's all proportional.

2 Q. But for a layperson, these are partial shoe prints.
3 They're not -- for a layperson, this is a partial shoe print.
4 It's not the entire surface of the bottom of each issue?

5 A. Right.

6 Q. Okay.

7 MS. SMITH: Commissioners, I'm going to pass these
8 around just so you-all can put your eyes on them in case you have
9 additional questions related to this.

10 MS. NEWTON: Is the actual print lifted off Mr. Jones'
11 vehicle?

12 MS. SMITH: These are the photographs of the prints that
13 were taken. They did not lift the print; they took photographs.

14 MS. NEWTON: Okay.

15 And these are actually those prints?

16 MS. SMITH: Yes. They've got the crime lab's number on
17 the back of them.

18 MS. NEWTON: Thank you.

19 MR. BRITT: For clarity, on any examination, you can end
20 up with one of three possible results: Exclusion -- that is,
21 there is nothing -- no characteristics from the shoe you're
22 testing or examining to the impression that is submitted.

23 THE WITNESS: Exclusion, yes.

24 MR. BRITT: All right. Second, is it's a possibility --
25 could have.

1 **THE WITNESS:** Right.

2 **MR. BRITT:** And that's based upon general wear and
3 features of size, width -- that type of thing.

4 **THE WITNESS:** Yes, sir.

5 **MR. BRITT:** And then when you look at the unique
6 characteristics of a shoe compared with an impression, if you've
7 got those unique characteristics plus the general wear plus the
8 overall character, width -- you can then say definitively that a
9 shoe made an impression.

10 **THE WITNESS:** Yes, sir.

11 **MR. BRITT:** Okay.

12 And beyond that -- that's, for all practical purposes,
13 you consider a definitive result, an identification.

14 **THE WITNESS:** Sir, that determination now, we are
15 encouraged and advised to be very careful about making those
16 because even in fingerprints, they're not wanting us to make
17 exclusion to all other shoes in the world.

18 **MR. BRITT:** Right.

19 **THE WITNESS:** But from a practical standpoint and -- you
20 know, the identification is very strong but we're not supposed to
21 say absolutely anymore, where you can absolutely exclude.

22 **MR. BRITT:** All right.

23 **THE WITNESS:** Okay.

24 **MR. BRITT:** In your opinion --

25 **THE WITNESS:** Yes, sir.

1 **MR. BRITT:** -- if you, for instance, in this case, found
2 that these Nike Air Force 1s could have made the impression on the
3 hood of the car, is it misleading for a lawyer to say or argue
4 that that was an identification?

5 **THE WITNESS:** Absolutely. It's not an identification.
6 It's -- it's compliance, limited compliance, not an
7 identification. It's class characteristics as opposed to
8 individual characteristics.

9 **MR. BRITT:** Okay. Thank you.

10 **MR. EDWARDS:** I do have a question, if I may, following
11 up on Mr. Britt's question.

12 So the size 9 white Nike shoes collected from Banner and
13 Cauthen's residence displayed the same size, shape, and sole
14 design that existed on the photograph ink impression from the
15 vehicle --

16 **THE WITNESS:** Yes, sir.

17 **MR. EDWARDS:** -- and that was in your report; correct?

18 **THE WITNESS:** Yes.

19 **MR. EDWARDS:** And for the purposes of our hearing, why
20 we're here, we have individuals that are asserting their actual
21 innocence. And, in contrast to your finding, it would've been a
22 very significant finding if you had found that every pair of shoes
23 from all of the suspects collected and none of them could have
24 made that impression, but that was not what you found; correct?

25 **THE WITNESS:** Yes. That is not what I found.

1 **MR. EDWARDS:** All right.

2 **Q.** Mr. Lewis, I have a follow-up. And I have used the term
3 that those prints were not "complete" prints from a lay witness's
4 perspective.

5 **A.** Right.

6 **Q.** Because we're not seeing the full sole of the shoe in
7 the print.

8 **A.** Right.

9 **Q.** And so you've talked a little bit about individual
10 characteristics, and you're not seeing any in these, and we
11 understand, kind of, the ins and outs of that --

12 **A.** Yes.

13 **Q.** -- but in one of those photos, one of those shoes,
14 you're only seeing what I am going to see the top of the shoe --

15 **A.** Yes.

16 **Q.** -- or where your toes would be --

17 **A.** Yes.

18 **Q.** -- into the pad of your foot, but you're not seeing the
19 heel portion of the foot.

20 **A.** Right.

21 **Q.** So what if the shoe that left that impression, if there
22 was an individual characteristic in the part that you can't see in
23 the impression -- do you understand what I'm saying?

24 I know that you've said, "Hey, I can look at these and I
25 can make some determinations," but your determinations are limited

1 to what you can see in the print --

2 A. Right.

3 Q. -- is that correct?

4 A. Yes. And if I may explain, there is a lot there. Even
5 though length and width is not there, there's dimensional and
6 there's -- I can conduct measurements, which I can do. I can draw
7 lines and measure and in determining my size, the size compliance,
8 I use these elements. And even if I don't have the entire size of
9 it, I'm confident because the shoes are made proportionally, each
10 size increment is proportional. So if I have width measurements
11 and diagonal measurements, I can rely on my size similarity
12 determination.

13 What you are talking about, of course, I -- what's not
14 there, I can't -- I can't make an opinion. It's just all what is
15 available and what I can view in my side-by-side and my overlay
16 comparison.

17 Q. So if the other part of the shoe that you're not seeing
18 the print had a unique characteristic, that could -- that's not in
19 the exemplar that you have, that could change your opinion about
20 the issue; is that correct?

21 A. Yes. If I could not explain it, yes.

22 Q. Okay.

23 Another question for you: I think we talked about how
24 these prints were maybe in dust or pollen or something like that,
25 kind of a surface that is fluid, movable -- does that have any

1 effect when you are leaving an impression? Could it be smeared or
2 anything like that?

3 Did you notice anything in the photographs or would you
4 have noticed -- because we're talking about size; right?

5 A. Right.

6 Q. You're saying, "Hey, I can measure the width based on
7 this," but the fact that it's left in a substance like dust or
8 pollen, does that have any effect of the measurement?

9 A. No, ma'am.

10 And one point I'd like to make is we're dealing with
11 photographs, and it wasn't lifted. What happens when you lift a
12 negative print often is it totally disappears in the tape or
13 the -- whatever lifting adhesive device that we use. So they
14 might have lifted it. I don't know. But most of the time, the
15 photograph is what we want. Then we can take the photograph and
16 put it into Photoshop and do contrast adjustments which do not
17 change the size or the dimensions, they just change the
18 appearance, the highs and the lows and the highlights which we are
19 able to do. And then, this dust print that you can barely see
20 shows up like a photograph that looks like an inked print. That's
21 the beauty of Photoshop and doing it digitally.

22 Q. Okay.

23 MS. SMITH: Other questions from commissioners?

24 MS. NEWTON: Good morning, Mr. Ludas. My name is Deb
25 Newton. Thank you for being here.

1 Can you hear me?

2 **THE WITNESS:** Yes.

3 **MS. NEWTON:** Okay.

4 Now, just to clarify, you did not testify at this
5 trial -- or either of trials in '04 or '05; correct?

6 **THE WITNESS:** Right.

7 **MS. NEWTON:** Okay.

8 Did you review the testimony of the -- related to the
9 print taken off of Mr. Jones' car from those two trials in
10 preparation for your testimony?

11 **THE WITNESS:** No, ma'am. When I do the work for the
12 Commission, I don't know anything about anything. I just look at
13 the evidence and I don't know the context so I go in blind.

14 **MS. NEWTON:** Okay.

15 So your testimony -- if I misstate this, tell me if I'm
16 incorrect. Your testimony is limited to your independent review
17 of the shoes that were submitted for evidence at both of those
18 trials for your opinion as to whether any of those shoes would be
19 definitively -- fit the pattern on Mr. Jones' car or did not --

20 **THE WITNESS:** Right.

21 **MS. NEWTON:** -- is that correct?

22 **THE WITNESS:** I'm testifying to my independent analysis
23 and not influenced by a previous report or anything.

24 **MS. NEWTON:** And you looked at all of the shoes? I
25 think there were five -- seven shoes? How many shoes did you look

1 at?

2 **THE WITNESS:** Well, I'm seeing nine, but there's also
3 exemplars. So an exemplar is a reproduction of the shoe; so that
4 could be duplicating.

5 **MS. NEWTON:** Okay.

6 **THE WITNESS:** But it looks like I looked at nine
7 different exemplars or shoes total.

8 **MS. NEWTON:** And of those nine, did you eliminate all
9 but number 77? Is that accurate?

10 **THE WITNESS:** Right.

11 **MS. NEWTON:** So when we get to number 77, again, you did
12 not review the testimony so you can't say whether the testimony
13 went too far, can you? Or can you?

14 **THE WITNESS:** No, I don't -- I don't know.

15 **MS. NEWTON:** You would say from what you have seen of
16 print or shoe number 77 that you cannot definitively say one way
17 or the other. You can just not eliminate the shoe.

18 **THE WITNESS:** That's correct.

19 **MS. NEWTON:** Okay. Thank you, sir.

20 **MS. COLBERT:** So I just have just a follow-up, and
21 then -- and this is what I think I heard you say about when you
22 make a determination of definity, right, is that you also consider
23 who has access to those particular pair of shoes?

24 Or you're -- well -- or those are things that should be
25 considered overall. So we don't look at what you're saying in --

1 to make a determination about whether folks who are included or on
2 trial, we have to consider that they could have been the only one
3 that's wore those shoes if other individuals have access to the
4 shoe.

5 **THE WITNESS:** Yes, ma'am. That's me getting out of my
6 lane a little bit. If I'm talking about the association of the
7 question to the known, but it's a dovetail in trying to understand
8 the value of the evidence, and I always feel like it's part of my
9 ability and experience to help explain it.

10 Sometimes we have a very, very unusual shoe that's just
11 very rare, and I've had that case, and it's like, "Well, we just
12 don't see many of these shoes," or, "I've never seen the shoe
13 before." But in this case, these are common shoes. That's one
14 level, that these are shoes. In this case, these are common
15 shoes.

16 But, again, it's like who has access -- that's something
17 to consider. It goes a little bit beyond my comparison but it's
18 something that you know and you have to -- I feel compelled to
19 explain.

20 **MS. COLBERT:** Thank you.

21 **MS. ESSARY:** Would it affect your testimony at all if
22 evidence were introduced that there were several million size 9
23 Nike Air One [sic] shoes produced within the relevant time period
24 that had a general wear pattern?

25 **THE WITNESS:** Ma'am, that wouldn't affect my testimony.

1 I think it would -- if that was introduced, I think that would
2 affect the jury. And that -- you know, it's not really -- it's
3 not really related to my comparison but I think that's what the
4 jury has to determine and evaluate. And I may or may not explain
5 that to them or I may not have the opportunity to do that.

6 MS. ESSARY: All right. Someone else might have that
7 evidence. Okay. Thank you.

8 THE WITNESS: Sounds like closing arguments or something
9 that that's reinforced.

10 MS. ESSARY: Thank you.

11 MS. SMITH: If there are no other questions, then I
12 would ask that Mr. Ludas be released from his subpoena.

13 JUDGE LOCK: All right. Anybody have any other
14 questions?

15 (No response.)

16 JUDGE LOCK: He may be. Thank you very much, sir.

17 THE WITNESS: Thank you.

18 (Witness stands down, 10:40 a.m.)

19 MS. SMITH: Judge Lock, I'd like to briefly recall
20 commission staff attorney Catherine Matoian. And then I think
21 after that, we will be ready for a break.

22 JUDGE LOCK: All right.

23 (Witness, Catherine Matoian, resumes the stand.)

24 BY MS. SMITH: (10:41 a.m.)

25 Q. Ms. Matoian, what was the Commission able to learn about

1 the shoes worn by the codefendants in this case?

2 A. During his commission interview, Nathaniel Cauthen told
3 the Commission that he and Rayshawn Banner would share shoes in
4 the house. Rayshawn Banner told the Commission that Nathaniel
5 Cauthen and Joseph Cauthen would also wear his shoes.

6 Laymond Hairston is a cousin of Rayshawn Banner and
7 Nathaniel Cauthen, and he sometimes lived with them around the
8 time of the crime. He also indicated that they all shared shoes
9 in the house. Anjuan Terry, who is another cousin of Rayshawn
10 Banner and Nathaniel Cauthen indicated that he did not share shoes
11 with them and was not sure if they shared shoes amongst
12 themselves.

13 In one of his phone calls with Hunter Atkins, Nathaniel
14 Cauthen did indicate that only Rayshawn Banner was wearing size 9
15 shoes at the time because he was the younger one. However, the
16 shoes collected from Joseph Cauthen at the Forsyth County jail
17 were also size 9 Air Force 1s.

18 Q. What was the Commission able to determine about the
19 popularity of Air Force 1s in 2002?

20 A. Numerous witnesses indicated to the Commission that Air
21 Force 1s were a popular shoe at the time and that a lot of people
22 in Winston-Salem had them. The song Air Force 1s by Nelly which
23 is about the shoes was released on an album on 11/7/2002, and that
24 song reached number 3 on the Billboard Hot 100 chart.

25 Q. The term BDPs, as they've used a lot in this case -- did

1 you determine what BDPs were?

2 A. BDPs is the nickname for Air Force 1s that some of the
3 codefendants used in their interviews. This nickname was related
4 to the Boston projects in Winston-Salem.

5 Q. Did the Commission do anything else with respect to the
6 shoe prints in this case?

7 A. We did. The Commission reached out to Nike in
8 December 2019 to determine how many different styles of shoes were
9 capable of making the shoe prints found in this case and to get
10 sales data for all of the shoes capable of making those shoe
11 prints. Nike requested a subpoena which we served on them on
12 January 9, 2020.

13 Q. Did the Commission receive a response from Nike?

14 A. We did. I spoke to Casey Kaplan in Nike's legal
15 department, and he advised that Nike could not tell the Commission
16 how many different styles of shoes were capable of making the shoe
17 prints found in this case, quote, "with any confidence" and that
18 the Commission itself would need to provide style numbers to Nike
19 in order to get the sales data.

20 In regards to any sales data that Nike did have,
21 Mr. Kaplan advised that Nike could only provide wholesale sales
22 data since their shoes are sold at so many different retailers and
23 they could not provide sales data broken down by size of shoe or
24 even region. So we would only be able to get wholesale sales data
25 for style numbers we provided for all sizes for the entire

1 country.

2 Q. Was the Commission able to provide any style numbers to
3 Nike?

4 A. Yes. The Commission looked at all of the Nike shoes
5 collected from the codefendants, photographed them, and
6 photographed the inside tag that shows the style number. The
7 Commission provided the style number for our item number 77, which
8 are the shoes from Rayshawn Banner and Nathaniel Cauthen's home
9 that could not be excluded from the shoe prints found in this
10 case.

11 The Commission also went back to the original crime lab
12 report. One additional pair of shoes, these were the shoes
13 collected from Joseph Cauthen at the jail, which is our item 73,
14 and also size 9 Nike Air Force 1s. The crime lab noted they had
15 the same sole pattern as the shoe prints at the crime scene but
16 had a different wear pattern.

17 So because these two shoes were the only two shoes we
18 had indication had the same sole pattern as the shoe print in this
19 case, those were the two style numbers we were able to provide to
20 Nike.

21 Q. What information was Nike able to give the Commission
22 based on that request?

23 A. Nike was able to provide sales data indicating that
24 77,720 pairs of shoes of the same make, model, and color of our
25 item number 77 were sold nationwide in 2001 and 2002, and

1 96,146 pairs of shoes of the same make, model, and color of our
2 item 73 were sold in 2001 and 2002.

3 Q. Do those numbers represent the total number of shoes
4 sold in 2001 to 2002 that were capable of making the shoe prints
5 found in this case?

6 A. No, they do not. Again, Nike wasn't able to provide the
7 Commission with any information about how many shoes were capable
8 of making those shoe prints and so we were only able to provide
9 the style numbers for shoes that were collected in this case noted
10 to have the same sole pattern.

11 Q. Did commission staff do anything else with respect to
12 the shoes?

13 A. Yes. The Commission reached out to Herb Hedges. He
14 worked for Nike for 30 years and is now retired. He's assisted in
15 Commission cases before. He was a footwear process manager at
16 Nike, and he also worked with assisting law enforcement and with
17 brand protection during his time there.

18 So we reached out to him to see if he was able to
19 provide us with any additional style numbers or ways to find
20 additional style numbers to provide to Nike to get additional
21 sales data.

22 Q. What did Mr. Hedges say?

23 A. Mr. Hedges indicated that previously Nike would've been
24 able to assist us with finding additional style numbers of shoes
25 capable of making that shoe print but that Nike was now moving

1 away from doing so and so he was not able to provide us with any
2 additional style numbers.

3 Q. What else did Mr. Hedges tell the Commission?

4 A. Mr. Hedges said that Air Force 1s are Nike's most
5 popular shoe, and the numbers are currently 30 to 40 million sold
6 worldwide.

7 With regards to the most common sizes for men's shoes,
8 Mr. Hedges stated that it is a bell curve, with sizes 10 1/2, 11,
9 and 11 1/2 at the top of the curve.

10 He also advised that, due to the popularity of Air Force
11 1s as a shoe, the FBI had conducted a study on them which
12 Mr. Hedges himself assisted with.

13 We sent him a photograph of the inside tag of the shoe,
14 our item number 77, and he was able to determine from looking at
15 that tag that it was not a counterfeit shoe. He indicated if it
16 had been counterfeit, that would have provided some additional
17 unique characteristics.

18 Regarding shoe analysis, Mr. Hedges stated that there is
19 a saying that you cannot prove that two people can't wear a shoe
20 the same way. He said there is a distinction between general wear
21 pattern and individualized points of identification when analyzing
22 the shoe.

23 MS. SMITH: Commissioners, do you have any additional
24 questions for Ms. Matoian about the shoes?

25 MS. ESSARY: I didn't understand what you meant when you

1 said he said Nike was moving away from providing certain
2 information.

3 What does that mean?

4 **THE WITNESS:** He said that when he was at Nike, that
5 that is information he would have been able to provide to law
6 enforcement and did provide to law enforcement, and he did not
7 explain why that change was but indicated that it was something
8 that they were no longer doing and that it was a point of
9 frustration for him.

10 **MS. ESSARY:** He felt that they were capable of giving
11 that information but were refusing?

12 **THE WITNESS:** That they are no longer providing that
13 information, correct.

14 **MS. ESSARY:** Could this Commission not subpoena that
15 information?

16 **THE WITNESS:** We did subpoena that information and their
17 response to that was that they could not tell us how many styles
18 of shoes were capable of making the shoe prints with any
19 confidence.

20 **MS. COLBERT:** I didn't -- you know, this may be
21 something -- well -- so were there any indications from any of the
22 four young boys' family members that any -- that shoes were
23 missing?

24 **THE WITNESS:** No. I don't believe there's been anything
25 in the file about anyone missing shoes or that we've learned

1 during our interviews.

2 MS. NEWTON: Just briefly.

3 You testified that the Cauthen -- Cauthen and Banner
4 said that they were sharing shoes within the house and with the
5 cousin?

6 THE WITNESS: Correct.

7 MS. NEWTON: Okay.

8 Were those statements made -- I'm not clear when those
9 statements were made. Were they made before trial or did they
10 disclose this information to the Commission during the
11 investigation?

12 THE WITNESS: It was disclosed to us during our
13 commission interviews of the codefendants.

14 MS. NEWTON: So those statements were made after the
15 trial -- both trials at which apparently or purportedly the issue
16 of the tread was important.

17 THE WITNESS: Correct.

18 MS. NEWTON: Okay.

19 JUDGE LOCK: Just to confirm, no one -- and by that I
20 mean none of the five young men and Jessicah Black ever placed
21 Joseph Cauthen with the group on the night of November 15, 2002.

22 THE WITNESS: That's correct.

23 MS. ESSARY: So I want to make sure I understand the
24 numbers here.

25 You were able to get that number roughly 70,000 as this

1 shoe, only -- this number only being manufactured in the years
2 2000/2001 or 2001/2002?

3 **THE WITNESS:** 2001 to 2002, and it is -- so our item 77
4 is the make, model, and color. There are obviously -- you saw in
5 the pictures, there are high tops, there are low tops, there are
6 different styles, there are numerous different colors. So the
7 numbers they provided us were for that shoe, make, model, and
8 color.

9 **MS. ESSARY:** Size 9?

10 **THE WITNESS:** They could not provide sales data by size.

11 **MS. ESSARY:** Okay.

12 There may be many more shoes with that same tread that
13 they, in essence, refused to give you the data on?

14 **THE WITNESS:** Correct. They -- they would only provide
15 sales data for style numbers that the Commission provided to them
16 and were not able to assist us in finding additional style
17 numbers.

18 **MS. ESSARY:** Were not able or refused?

19 **THE WITNESS:** They refused.

20 **MS. ESSARY:** Thank you.

21 **MR. JARVIS:** It appears to me when I was looking at
22 these different shoes that even though the colors and whether they
23 are high top or low top, that the tread style was the same.

24 Did you observe this as well?

25 **THE WITNESS:** Correct. It's our understanding that

1 although the part of the shoe that you see can differ in color,
2 height, and other characteristics, that's the sole pop -- the sole
3 pattern on the bottom for Air Force 1 shoes.

4 **MR. JARVIS:** So would you say that the number that they
5 gave of 70,000 is only a partial of what the total possibilities
6 could be on Air Force 1, this imprint that was negatively placed
7 on the vehicle?

8 **THE WITNESS:** Correct.

9 **MR. BRITT:** Did you say 70,000 or 770,000?

10 **THE WITNESS:** It was 77,720 pairs of the same make,
11 model, and color of our item 77, and 96,146 pairs of our item
12 number 73, make, model, and color.

13 **MR. BRITT:** Okay.

14 **MS. SMITH:** Your Honor, I think this would be a good
15 time for a short break.

16 **JUDGE LOCK:** All right. We will be in 10-minute recess
17 then.

18 (Witness stands down, 10:50 a.m.)

19 (Recess taken, 10:50 to 11:12 a.m.)

20 **MS. SMITH:** The Commission recalls staff attorney Julie
21 Bridenstine.

22 (Witness, Julie Bridenstine, resumes the stand.)

23 **MS. SMITH:** Commissioners, we're now going to turn our
24 attention to DNA testing in this case.

25 * * * * *

1 BY MS. SMITH: (11:14 a.m.)

2 Q. Ms. Bridenstine, was any DNA testing done during the
3 initial investigation?

4 A. No.

5 Q. Did the Commission have DNA testing conducted?

6 A. We did.

7 Q. And where did the Commission have that testing
8 conducted?

9 A. We had the testing conducted at Bode Cellmark Forensics,
10 which later became Bode Technology. We also had DNA testing done
11 at the North Carolina State Crime Lab. And an independent expert
12 named Meghan Clement has also reviewed the DNA testing in this
13 case, and she has made additional comparisons for the Commission.

14 MS. SMITH: Commissioners, Ms. Clement will be here to
15 testify shortly about the results of the DNA testing.

16 Q. Ms. Bridenstine, what items did the Commission have DNA
17 tested?

18 A. We tested several items to determine if there was DNA
19 from the victim located on those items. They included the bat
20 that was collected from the Tolliver residence and also the inside
21 of two back pockets of two pairs of jeans collected from Nathaniel
22 Cauthen and Rayshawn Banner's home.

23 The Commission tested these items because of Jessicah
24 Black's testimony that she saw a rectangular object in Nathaniel
25 Cauthen's back pocket after the murder.

1 There was some suggestion that it was believed this
2 could have been the victim's wallet.

3 **Q.** Did the Commission do anything else with respect to
4 Nathaniel Cauthen's pants?

5 **A.** We did. In a prison phone call, Mr. Cauthen indicated
6 that the pants he had been wearing on the day of the murder were
7 the pants he was wearing when he was arrested. The Commission
8 attempted to find out if those clothes still existed.

9 **Q.** What did the Commission learn?

10 **A.** We learned that clothes are sent with prisoners from the
11 jail to the prison where they are processed. After they are
12 processed, the clothes are either returned to the inmate's home or
13 the prison disposes of those clothes.

14 Based on this, we were unable to locate these clothes
15 and we recognize that any clothes returned to Nathaniel Cauthen
16 would not have evidentiary value.

17 **Q.** And those would've been returned to his family; correct?

18 **A.** That's correct.

19 **Q.** Did any of the codefendants describe what Mr. Cauthen
20 was wearing on the night of the crime?

21 **A.** Yes. Christopher Bryant said that Nathaniel Cauthen was
22 wearing black jeans. Dorrell Brayboy said that Nathaniel Cauthen
23 was wearing black or white jeans. And Nathaniel Cauthen said he
24 was wearing blue jeans, but it's unclear if he was just using the
25 term "blue jeans" or if he was talking about the actual color.

1 Law enforcement collected two pairs of black jeans from
2 the home of Rayshawn Banner and Nathaniel Cauthen.

3 Q. And those two pairs of black jeans were the ones the
4 Commission had the back pockets tested on; correct?

5 A. That's correct.

6 Q. Did the Commission test any additional items looking for
7 suspect DNA?

8 A. We did. We tested a broken watch found at the crime
9 scene for red substances with their corresponding standards from
10 the crime scene; two pieces of electrical tape from the victim's
11 left hand; the adhesive and nonadhesive sides of a piece of black
12 tape collected from the victim's left hand; the nonadhesive side
13 of a piece of black tape from the face and head of the victim; the
14 adhesive and nonadhesive sides of a piece of black electrical tape
15 collected from the carport stairs; the adhesive and nonadhesive
16 sides of a piece of black tape collected from the backyard under
17 the porch; the adhesive and nonadhesive sides of a piece of black
18 tape collected from the backyard; and the adhesive and nonadhesive
19 sides of a piece of black tape collected from the backyard also
20 located under the porch; the interior of the victim's front and
21 back pockets, because his wallet was determined to be missing and
22 his family told police he had carried it in his pocket; the
23 exterior waist area of the victim's pants; two paper bags used to
24 cover the victim's hands at the crime scene; Chapstick from the
25 crime scene; three pieces of mail that were found underneath the

1 Lincoln; two floodlights from the carport; a piece of a storm door
2 handle from the carport; and two business cards found near the
3 crime scene; a piece of wire found in the backyard; and a black
4 hair substance found near the crime scene as well.

5 Q. I believe Ms. Matoian just testified to this, but did
6 the Commission have any DNA testing conducted on item 77, the
7 shoes collected from Banner and Cauthen's home that Mr. Ludas
8 testified about?

9 A. No. We did not. And as she explained before, due to
10 the possibility of contamination, we did not have that tested.

11 Q. Did the Commission have any unknown DNA profiles
12 compared to anyone?

13 A. We did.

14 Q. And who were those individuals?

15 A. The victim, all five defendants, Jessica Black, Teresa
16 Hier, and Tarshia Coleman.

17 Q. Can you remind the commissioners who Teresa Hier and
18 Tarshia Coleman are?

19 A. Teresa Hier was Nathaniel Cauthen's attorney at trial
20 and because there was an unknown female STR DNA profile developed
21 on one of the items and there was some indication from the trial
22 transcript for Rayshawn Banner and Nathaniel Cauthen that people
23 were present at the trial, including jurors and attorneys, who
24 could have handled the evidence, but the transcript didn't make it
25 clear exactly what type of handling of evidence might have been

1 occurring.

2 It's possible that Bierne Harding, the female ADA who
3 tried the case and is now deceased, handled the item containing
4 that unknown female STR DNA profile as well as other items that
5 were entered at trial.

6 And Tarshia Coleman was one of the neighbors who
7 responded to the scene to provide help to the victim when 911 was
8 called.

9 Q. And is your basis for Bierne Harding possibly handling
10 DNA during the trial based on the trial transcripts?

11 A. Yes.

12 MS. SMITH: Commissioners, we're getting ready to call
13 the DNA expert to testify on all that DNA testing, but if you have
14 any questions for Ms. Bridenstine about this basic info, now would
15 be the appropriate time.

16 (No response.)

17 MS. SMITH: If she may step down, the Commission will
18 call Meghan Clement.

19 (Witness stands down, 11:20 a.m.)

20 Thereupon, MEGHAN CLEMENT, a witness having been called by the
21 Commission, was sworn and testified as follows:

22 BY MS. SMITH: (11:20 a.m.)

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you please state your name for the record.

1 A. My name is Meghan Clement.

2 Q. And how are you employed?

3 A. I am employed independently as DNA -- independent
4 contractor for DNA consultation.

5 Q. And did you recently provide commission staff with a
6 copy of your CV?

7 A. I did, yes.

8 Q. I'm going to hand you this and ask you if that is a copy
9 of your most recent CV.

10 A. Yes, it is.

11 **MS. SMITH:** Commissioners, Handout 29 in your notebooks
12 is Ms. Clement's CV.

13 Q. Approximately how many times have you testified as an
14 expert?

15 A. I have testified -- I believe it's over 280 times now.

16 Q. And have you testified for both the prosecution and the
17 defense?

18 A. Yes, I have.

19 Q. Have you testified previously for the Commission?

20 A. I have.

21 And excuse me. 380 times, not 280. I apologize.

22 Q. Tell the commissioners a little bit about your
23 educational background.

24 A. I have a bachelor of science in biology from Westfield
25 State College in Massachusetts and a master of science in forensic

1 sciences from the University of New Haven in Westhaven,
2 Connecticut. I've also attended graduate-level courses at the
3 University of New Mexico in Albuquerque, as well as obtained
4 graduate-level credits from the University of Virginia through
5 courses that I actually took at the FBI Academy in Quantico,
6 Virginia.

7 Q. And how long have you been working in the field of
8 forensic biology?

9 A. I have been working in the field since March of 1998 --
10 excuse me, boy I'm having a tough time with numbers today -- since
11 March of 1985.

12 Q. Okay.

13 Do you have any board certifications?

14 A. I do, yes. I am board-certified as a molecular
15 biologist in -- by the American Board of Criminalistics.

16 MS. SMITH: Your Honor, at this time I'd like to ask to
17 qualify Ms. Clement as an expert in forensic biology.

18 JUDGE LOCK: Tender allowed.

19 Q. Ms. Clement, have Bode Cellmark Forensics and now Bode
20 Technology conducted DNA testing this case?

21 A. Yes, they have.

22 Q. And have you reviewed all of the testing done by Bode?

23 A. I have, yes.

24 Q. Are you comfortable testifying about it?

25 A. I am, yes.

1 Q. Has the North Carolina State Crime Lab also conducted
2 DNA testing in this case?

3 A. Yes, they have.

4 Q. And have you reviewed the testing done by the crime lab?

5 A. I have.

6 Q. And are you comfortable testifying about that?

7 A. Yes, I am.

8 Q. Okay.

9 Do you have a copy of the reports with you today?

10 A. I do.

11 Q. Okay.

12 Those would be helpful for you for your testimony today?

13 A. Yes, they would.

14 Q. Have you also completed comparisons of your own in this
15 case?

16 A. I have, yes.

17 Q. And have you submitted a report to the Commission about
18 those comparisons?

19 A. I did.

20 Q. All right.

21 I'm going to just have you describe some science for the
22 Commission now before we get into the actual testing.

23 Can you tell the commissioners what STR DNA testing is.

24 A. Yes. STR DNA testing stands for short tandem repeat DNA
25 testing. It is the most common type of DNA testing that is

1 currently performed in forensic laboratories today. And it looks
2 at specific areas of DNA where we know there are differences in
3 the population. It will determine what characteristics are
4 present at these particular areas from a known reference sample
5 and from an evidentiary sample, and they could be compared to
6 determine whether there are commonalities or differences.

7 Q. And was STR DNA testing conducted in this case?

8 A. Yes, it was.

9 Q. What is a mixture?

10 A. A mixture is when you actually have a result which
11 indicates DNA for more than one individual.

12 Q. Okay.

13 Can you talk a little bit about how various labs handle
14 mixtures and STR testing.

15 A. Yes. Different laboratories have different protocols
16 for how they interpret mixtures and what they are allowed to do
17 with mixtures. In some situations, if a laboratory gets a
18 mixture, they can determine whether there is a major profile or,
19 in other words, whether one person contributed a more -- higher
20 concentration than another individual. Different laboratories
21 will have different concentrations to be able to call major. Some
22 have of 60 percent; some use 70 percent.

23 Also, in mixtures, it -- there are some situations where
24 if a laboratory doesn't have a complete profile, they may not be
25 able to use the mixture to draw conclusions. If they only have a

1 partial and they might only have four locations, one laboratory
2 may say that's sufficient and another laboratory will say, "No, we
3 need at least seven locations where we see results in order to be
4 able to interpret a mixture." So there's different protocols in
5 different laboratories.

6 Q. Okay.

7 Tell the Commissioners a little bit about how DNA gets
8 left on items.

9 A. DNA can be left on items in any number of ways. It can
10 be left either through direct contact, so touching something,
11 through drinking a glass, but it can also be left through indirect
12 contact. If I touch the water bottle and leave my DNA and then
13 somebody else comes along and picks it up, my DNA could be
14 transferred to them through the water bottle without them ever
15 touching me. So there's both direct and indirect methods. You
16 can sneeze on someone in their vicinity and deposit DNA without
17 actually touching them.

18 So there's any number of ways DNA can be deposited.

19 Q. I think you mentioned that you could touch the water
20 bottle. So can you tell us a little bit more about what touch DNA
21 is.

22 A. Certainly. Touch DNA is simply DNA which is left behind
23 either through touching something -- and, again, different people
24 will categorize touch DNA in different ways. For instance,
25 somebody who wears an item of clothing -- the cloth of my shirt is

1 touching my skin. Some people refer to that as touch DNA. So
2 it's not necessarily a physical hand touch; it could just be
3 indirect contact.

4 Q. What factors affect the amount of DNA that's left behind
5 from touch DNA?

6 A. Well, the factors -- common factors are the force with
7 which something is touched or held. If I rub a tablecloth rather
8 than just tap it with my fingers, I'm more likely to leave more
9 DNA if rub a portion of the cloth than just tapping it.

10 The length of time that you hold an object -- if I use a
11 pen every day, my DNA is more likely -- it's more likely to have
12 more DNA on that pen than if I just picked it up to write my
13 signature and put it down and never touched it again.

14 You know, certain times of the day -- you know, if I've
15 just washed my hands and then touch an object, there's going to be
16 less cellular material for me to leave behind versus if I haven't
17 washed my hands in five hours, there's probably more likely that I
18 will deposit more DNA. So there's a lot of different factors
19 which come into play. Some people shed cells more readily than
20 others so there may be more DNA from one person than another.

21 Q. Okay.

22 Can DNA testing show when the DNA was left on an item?

23 A. No, it cannot.

24 Q. Can it tell you how it was left on an item?

25 A. No, it cannot.

1 **Q.** What factors might affect whether or not DNA is
2 degraded?

3 **A.** DNA is going to degrade from the minute it is deposited
4 outside its natural environment. The rate of degradation will
5 increase with heat, it will increase with humidity. DNA decreases
6 more readily when it's in direct sunlight. And so those are
7 really the three factors that most affect DNA degradation.

8 **Q.** Okay.

9 I think you have in front of you a forensic testing
10 chart that the commission staff provided to you earlier; is that
11 correct?

12 **A.** Yes.

13 **Q.** And is that a 14-page chart?

14 **A.** Yes, it is.

15 **Q.** Okay.

16 **MS. SMITH:** Commissioners, that is Handout 24 in your
17 hearing handout notebooks, in that second notebook. You probably
18 are going to want to flip back and follow along as Ms. Clement is
19 going to testify going along with that chart.

20 The DNA testing in the chart starts on page 3 of 14 with
21 NCIIC item 68. It's the first white block on that page.

22 **JUDGE LOCK:** Excuse me. Is that 3 of 14 or 4 of 14?

23 **MS. SMITH:** 3 of 14.

24 **JUDGE LOCK:** Halfway down?

25 **MS. SMITH:** Halfway down, yes.

1 **JUDGE LOCK:** Gotcha.

2 **Q.** Ms. Clement, does this chart accurately describe the
3 testing and comparisons conducted in this case?

4 **A.** Yes, it does.

5 **Q.** Okay.

6 If you will start with that first item there on page 3,
7 item -- NCIIC item 68, and tell us about the testing conducted and
8 the results of that testing.

9 **A.** Okay. On the pair of black jeans which was recovered
10 from Cauthen and Banner's home, two samples, the left rear pocket
11 and the right rear pocket, were tested. Partial STR DNA profile
12 consistent with a mixture of three individuals including at least
13 one male contributor was developed from the left rear pocket.
14 Cauthen was included as a possible contributor.

15 And once -- because they were collected from his home.
16 Basically what the laboratory did at this point is they subtracted
17 Cauthen's profile from the profile that they developed and then
18 they looked at the remaining portions in comparison to both of
19 victim and Rayshawn Banner.

20 They calculated a likelihood ratio. And what a
21 likelihood ratio does is it compares two alternate hypotheses, and
22 in this case the likelihood ratio suggests a strong support for
23 exclusion of the victim on this sample and limited support for
24 exclusion of Rayshawn Banner.

25 When you calculate likelihood ratios, you come up with a

1 numerical result, and these numbers have been grouped so that you
2 can give a verbal description. If it's 1 -- anywhere from zero to
3 1, it is uninformative; you really can't draw any conclusions on
4 it. From 2 to 99, it is limited support either for inclusion or
5 for exclusion. Then from 100 to 9,999, it is moderate support.
6 And from 10,000 to 999,999, it's strong support. And anything
7 over a million is very strong support.

8 So in this instance, we got strong support for the
9 exclusion of the victim being included in that mixture of DNA and
10 we got limited support for exclusion of Rayshawn Banner.

11 **Q.** Ms. Clement, some of our commissioners have been with us
12 for a while, and this language is very different -- the kind of
13 language that labs -- we're used to hearing from labs.

14 Can you just talk a little bit about the differences and
15 why this language is different and what that difference is.

16 **A.** Yes. Previously, the forensic community calculated what
17 was called a random match probability or a random probability of
18 inclusion.

19 If it was a single source, it would be how common or
20 rare is this particular profile from this one individual. If it
21 was a mixture, it was the random probability that somebody would
22 be included. In other words -- and those numbers were usually
23 reported as 1 in X. So there would be 1 in 1,000 individuals
24 would be included based on the statistics that you obtained or the
25 results that you obtained.

1 The whole community has since gone to the likelihood
2 ratio, where they are comparing two opposing hypotheses.

3 And so in this case, it would be what is, given the
4 result of the evidence, is it more likely that this result came
5 from Cauthen, the victim, and one unknown person, or Cauthen and
6 two unknown people.

7 And the result that they obtained was that it was a
8 strong support that it was more likely Cauthen and two unknown
9 individuals. It was strong support that they excluded the victim
10 from being a part of this.

11 That wasn't as strong when they looked at the -- that
12 same scenario, is it more likely that it's Cauthen, Banner, and
13 one unknown or Cauthen and two unknowns, and given that
14 comparison, it was -- you still had limited support for excluding
15 Banner but it wasn't as not as strong as when you looked at the
16 victim's profile.

17 So it's just the comparisons are different today than
18 what we used to do.

19 **Q.** Okay. Thank you.

20 I am going to let you then -- so you just did the left
21 rear pocket. In that same block for item 68, the second half of
22 that is the right rear pocket.

23 Can you tell the Commissioners what was found there.

24 **A.** Yes. There was, again, a partial DNA profile consistent
25 with a mixture of at least three individuals, including at least

1 one male. Cauthen again was included as a possible contributor
2 and in this instance, both the victim and Banner are excluded as
3 contributors. With this particular mixture, there was a -- one
4 contributor who had a higher concentration. Contributors 2 and 3
5 had such a small amount of contribution to this that it really
6 wasn't sufficient to be able to compare.

7 So due to the limited data obtained from the minor
8 contributors, no conclusions could be made to those minor types.

9 Q. Okay.

10 When you talk about "no conclusions could be made," is
11 that the same as "inconclusive"?

12 A. Basically what it is is that there's so little data
13 there that you couldn't draw any conclusions at all. There might
14 have only been three or four different characteristics that could
15 be compared versus -- and it just wasn't enough to be able to make
16 a meaningful comparison.

17 So yes, it's inconclusive.

18 Q. And is that -- no conclusions can be drawn or
19 inconclusive, is that specific to these two individuals or would
20 that apply to anyone that they were looking at?

21 A. It would apply to anyone. There is so little additional
22 information in these minor profiles that you couldn't compare it
23 to anyone.

24 Q. Thank you.

25 Moving on to item 75, which is the inside back pockets

1 of the other pair of black jeans from Cauthen and Banner's home --
2 and that is found at the bottom of page 3, that last block there.
3 If you want to go through that for us.

4 A. Yes. On the rear left pocket, a partial STR DNA profile
5 was consistent with a mixture of two individuals including at
6 least one male. And this was a minor partial profile. There
7 really wasn't much information. And due to the possibility of
8 allelic dropout, no conclusions could be made to this profile.

9 This particular profile was fairly degraded and there
10 was very limited data obtained. There was enough to be able to
11 say there was definitely at least two individuals and at least one
12 male, but that was really all you could draw conclusions about.

13 Q. Okay.

14 And then right rear pocket of that same pair of pants at
15 the top of page 4, still in that gray block.

16 A. Yes. The partial profile was consistent with a male
17 contributor, and the victim, Cauthen, and Banner are all excluded
18 as possible contributors on this one.

19 Q. Is it your understanding that the Commission only asked
20 for those three individuals to be compared to the pockets and not
21 the other codefendants because these items were collected from
22 Mr. Banner and Mr. Cauthen's home and we were looking to see if
23 the victim's DNA could be found in these pockets?

24 A. That's correct.

25 And I have to say that last night I actually did look at

1 this a little more closely, and all of the references that were
2 submitted would be excluded as well.

3 Q. Thank you for doing that.

4 Move on to the -- item 66, States Exhibit 66, on page 4.

5 A. Yes.

6 Exhibit 66, the aluminum baseball bat from Tolliver's
7 residence.

8 Bode Technology looked at three different areas. They
9 looked at the wide blunt end to the middle as one excellent
10 sample, and it was screened for human and DNA but the results were
11 below the limit of detection and, therefore, the sample was not
12 moved forward to DNA testing.

13 The second area was the middle towards the handle, and
14 this was also screened for human DNA but the results were below
15 the limit of detection and that sample did not move on.

16 And the rubber handle itself was looked at as a third
17 area. That sample was screened for human DNA and, again, those
18 results were below the limit of detection. And so none of those
19 three samples moved on to actual DNA testing.

20 Q. Can you explain to the commissioners why you wouldn't
21 move on with DNA testing when you have samples where the results
22 on the human quant were below the limit of detection.

23 A. Yes.

24 Every laboratory, prior to bringing the DNA testing
25 online, has to run what they call validation studies. And as part

1 of these validation studies, you look at the sensitivity of your
2 kit, of the commercial kit that you're using. And after running
3 hundreds and hundreds and hundreds of samples, generally you can
4 determine that if your quantitation isn't of a specific amount,
5 you're not going to get a result and at that point, there's just
6 no use in running samples that are either at that limit or below
7 if you know you're not going to obtain a result.

8 And so all three of these samples were below that limit
9 and they knew they would not get a result so there was no reason
10 to proceed with them.

11 Q. Okay.

12 If you will move on to State's Exhibit 6, the broken
13 watch.

14 A. The broken watch?

15 A partial STR DNA profile was obtained from this sample.
16 It was consistent with a male contributor and matched the DNA
17 profile from the victim. Bryant, Cauthen, Brayboy, Tolliver,
18 Banner, Black, Coleman, and Hier were all excluded as
19 contributors.

20 Q. Looking at next item, WSPD number 210746.1, the red
21 substance collected from the hood of the Lincoln, looking at the
22 substance portion, is it also your understanding that a swab was
23 taken that was a standard or a control?

24 A. Yes, that's correct.

25 Q. Okay.

1 So talking just about the substance first, what were the
2 results of that?

3 A. The results were a partial DNA profile was developed.
4 It was consistent with a male contributor and it had one
5 additional minor allele present. The major profile matched the
6 victim. And Bryant, Cauthen, Brayboy, Tolliver, Banner, Black,
7 Coleman, and Hier were excluded from that major profile. And
8 because there was only one single minor profile, it really isn't
9 sufficient to compare anyone else to.

10 Q. Okay.

11 What were the results on WSPD 210746.2, the standard
12 that was associated with that red substance?

13 A. The standard was screened for human DNA and the results
14 were below the limit of detection and, therefore, it wasn't
15 processed further.

16 Q. Is it normal for a control substance to have no DNA --
17 control standard?

18 A. Yes and no.

19 Q. Okay.

20 A. A control sample is taken so that you can determine
21 whether there is any background DNA. For instance, if there is a
22 spot of blood on the wall and you're collecting the blood, the
23 standard would be taken from close to the actual stain but from a
24 visibly unstained area so that you could determine if there was
25 background DNA.

1 So if I had sneezed on the wall and then somebody bled
2 on it, you might actually get a mixture on the blood sample. And
3 if you don't take a standard, you don't know whether that mixture
4 is two different bloods being deposited together or, by taking a
5 standard, you would be able to tell that there is DNA on the
6 background of this particular area anyway and you can then
7 subtract it to get the real profile from the blood alone.

8 So that's what a standard is for, to be able to
9 determine whether there's background evidence. So it's not
10 uncommon not to get a result, but it's -- there are occasions
11 where you will get a result as well.

12 Q. Okay. Thank you.

13 Turning your attention now to the top of page 5, NCIIC
14 item 121, that was also another red substance at marker 3.

15 A. Yes.

16 Q. Can you describe what the DNA results showed there.

17 A. There was a partial DNA profile obtained. It was
18 consistent with a male and it matched the victim, and all other
19 reference profiles were excluded as contributors.

20 Q. Moving onto the next one, WSPD number 210747, red
21 substance at marker number 2.

22 A. The partial -- there was a partial DNA profile obtained
23 from this, and it was consistent with a male and it matched with
24 the victim. And all of the sources of the other reference samples
25 were excluded.

1 Q. Okay.

2 Moving on to WSPD number 210747.2, another standard
3 associated with the red substance at marker number 2.

4 A. Yes. This standard again was screened for human DNA and
5 the results were below a limit of detection so it was not moved
6 forward.

7 Q. WSPD number 210748, the red substance from the carport
8 step.

9 A. There was a partial profile obtained. It was consistent
10 with a male and it matched the victim, and all of the sources of
11 the other reference samples were excluded.

12 Q. WSPD number 210748.2, the standard that is associated
13 with the red substance from the carport step.

14 A. This standard was screened and the results were below
15 the limit of detection so it did not forward.

16 Q. Okay.

17 Continuing on the bottom of page 5, State's
18 Exhibit 23.1, the black electrical tape from the left hand of the
19 victim, the nonadhesive side.

20 A. The nonadhesive side, there was a personal DNA profile
21 obtained consistent with a mixture of at least two individuals,
22 including at least one male contributor. And due to the
23 possibility of allelic dropout, no conclusions were made on this
24 sample.

25 Q. And that is on the entire mixture; correct?

1 A. That's correct.

2 Q. Turning to the top of page 6, State's Exhibit 23.2, the
3 black electrical tape from the left hand of the victim, this is
4 the adhesive side, along with an embedded piece of string.

5 A. Yes. There was a partial DNA profile consistent with a
6 mixture of three or more individuals including a major female and
7 at least one male. So in this case, the female profile is the
8 major or the most heavily concentrated, but there was a least
9 indication at least one male was included in this mixture.

10 The victim, Bryant, Cauthen, Brayboy, Tolliver, Banner,
11 Black, Coleman, and Hier are excluded from the major female
12 profile. And Bode had said that no conclusions on the minor
13 alleles could be made due to possible allelic dropout.

14 Q. Did you take a second look at that minor profile?

15 A. I did look at the minor profile. There were 11
16 locations where there were results on that minor profile, and when
17 I compared it to the victim, he possessed all of the
18 characteristics at those 11 locations and, therefore, I would
19 include him as a possible minor contributor to that mixture.

20 Q. Okay.

21 With respect to that major DNA profile -- female DNA
22 profile, did the Commission have anything else done with that?

23 A. Yes. They had the major DNA profile -- the major female
24 DNA profile was submitted to the North Carolina State Crime
25 Laboratory. They reviewed the results, and then they uploaded it

1 to CODIS to see if they obtained any hits, but there were no hits
2 that were identified.

3 Q. Okay.

4 Moving on to State's Exhibit 24, the black electrical
5 tape from the face and head of the victim, the nonadhesive side.

6 A. The nonadhesive side, there was a partial profile
7 consistent with a mixture of at least two individuals, including a
8 major male. That major male matched the victim's profile.

9 Bryant, Cauthen, Brayboy, Tolliver, Banner, Black, Coleman, and
10 Hier were excluded from the major profile but no conclusions could
11 be made about the minor because there just wasn't sufficient
12 amounts of information there.

13 Q. This is a good point for me to ask you, Ms. Clement, did
14 you take a look at all of these minor profiles to see if you could
15 draw additional conclusions?

16 A. I did, yes.

17 I looked at all of the minor profiles, and a lot of them
18 only had one or two locations and it just simply wasn't enough.
19 And they were in positions where you would expect to potentially
20 find artifacts and so it really wasn't sufficient to be able to
21 draw conclusions.

22 Q. Okay.

23 Turning your attention now to State's Exhibit 26.1, the
24 black electrical tape, nonadhesive side, from the carport steps.

25 A. Alleles were obtained from this sample only at

1 Amelogenin, and the Amelogenin area is sex determination; so it
2 will look for the X and the Y chromosomes. So it's not -- I mean,
3 it's informative in that if there's a male, it will tell you a
4 male is present. But it only gave results at the Amelogenin and
5 one other location called TH01, and that just simply isn't enough
6 to draw conclusions on it.

7 Q. Are you able to tell from that Amelogenin whether it was
8 a male or a female?

9 A. I would have to go back and look at that data.
10 There was an X and a Y chromosome so it does indicate
11 that there was potentially a male included.

12 Q. Okay.

13 Turn your attention now to State's Exhibit 26.2, the
14 black electrical tape, adhesive side, from the carport steps --
15 bottom of page 6.

16 A. Yes.

17 On that particular sample, again, there were only two
18 locations. One of them was the Amelogenin and then there was only
19 one other location, and, again, it's just not sufficient to be
20 able to draw conclusions.

21 Q. Are you able to look at that one and tell us whether the
22 Amelogenin is showing any male DNA?

23 A. Again, there was some indication of a Y chromosome,
24 which would indicate the possibility -- well, there is a male.

25 Q. Turn your attention to the top of page 7, WSPD

1 number 210835.1, a piece of black tape, nonadhesive side,
2 collected from the backyard under the porch.

3 A. There was a partial profile obtained, which was a
4 mixture of at least two individuals including at least one male,
5 but due to the limited amount and the possibility of allelic
6 dropout, no conclusions could be made.

7 Q. Did you take a look -- a second look at that particular
8 item and profile?

9 A. I did, yes.

10 Q. And tell the Commissioners what your analysis revealed.

11 A. When I looked at that profile, I -- there were
12 combinations of characteristics at at least three or four of the
13 locations that I felt were sufficient to compare, and I would
14 exclude the victim, Bryant, Tolliver, Brayboy, Cauthen, Banner,
15 Black, Hier, and Coleman as contributors to that mixture.

16 Q. And that's all of the individuals that were compared; is
17 that correct?

18 A. That's correct.

19 Q. Including the victim?

20 A. Yes.

21 Q. Turning your attention now to WSPD number 210835.2,
22 another piece of black tape, this is the adhesive side, collected
23 from the backyard under the porch.

24 A. Yes. The sample was screened for human DNA, but it was
25 below the limit of detection so that did not move forward.

1 Q. And the next item, WSPD 210837.1, a piece of black tape,
2 nonadhesive side, from the backyard.

3 A. That one was also screened and was below the limit of
4 detection so did not proceed.

5 Q. WSPD 210837.2, a piece of black tape, adhesive side,
6 from the backyard.

7 A. That was screened for human DNA and they were below --
8 the results were below the limit of detection so it was not moved
9 forward.

10 Q. WSPD 210838.1, a piece of black tape, nonadhesive side,
11 collected from the backyard.

12 A. That sample was also screened and gave results below the
13 limit of detection.

14 Q. WSPD 210838.2, one piece of black tape, adhesive side,
15 from the backyard.

16 A. It was screened for human DNA and was below the limit of
17 detection.

18 Q. WSPD 210840.1, one piece of black tape, nonadhesive
19 side, collected from under the porch.

20 A. That was also screened for human DNA and was below the
21 limit of detection.

22 Q. And WSPD 210840.2, one piece of black tape, adhesive
23 side, collected from under the porch -- and this is the top of
24 page 8.

25 A. Yes. That was also screened for human DNA and was below

1 the limit of detection.

2 Q. Okay.

3 Also on page 8, I'm now going to turn your attention to
4 the victim's pants pockets, starting with State's Exhibit 87.1,
5 right rear interior pocket of victim's pants.

6 A. Yes. There was a partial DNA profile obtained from this
7 sample which was consistent with a mixture of at least two
8 individuals, including a major male. The major male component
9 matched the profile of the victim. Bryant, Cauthen, Brayboy,
10 Tolliver, Banner, Black, Coleman, and Hier are excluded from the
11 major component. And due to the possibility of allelic dropout,
12 no conclusions could be made on the minor alleles present in that
13 sample.

14 Q. Looking at the next item, State's Exhibit 87.2, left
15 rear interior pocket of victim's pants.

16 A. There was a partial DNA profile obtained consistent with
17 a male contributor, and that matched the victim. And the -- all
18 of the other sources of reference samples were excluded from that.

19 Q. State's Exhibit 87.3, the left front interior pocket of
20 the victim's pants.

21 A. There was a partial DNA profile obtained which was
22 consistent with at least one male contributor -- or major
23 contributor. That major DNA profile matched the victim, and all
24 of the other individuals were excluded from the major profile.
25 And due to the possibility of allelic dropout, no conclusions were

1 made on the minor alleles that were present.

2 Q. And Exhibit 87.4, the right front interior pocket of the
3 victim's pants.

4 A. Again, there was a partial DNA profile obtained which
5 was consistent of a mixture of at least two individuals including
6 a major male. The major component matched the victim, and all of
7 the sources of the other reference profiles were excluded from the
8 major component. And due to the possibility of allelic dropout,
9 no conclusions were made for the minor alleles.

10 Q. On page 9 of 14, State's Exhibit 87.5, the entire waist
11 area of the victim's pants.

12 A. The entire waist area revealed a partial profile
13 consistent with a mixture of at least two individuals including a
14 major male. The major male DNA component matched the victim. All
15 of the reference sources were excluded from that major. And no
16 conclusions were made on the minor alleles present in the sample.

17 Q. Okay.

18 WSPD 210756.1, interior, Bag A, of two paper bags from
19 the victim's hands.

20 A. There was a partial DNA profile obtained which was
21 consistent with a male contributor which matched the victim, and
22 all of the other reference donors were excluded.

23 Q. WSPD 210756.2, interior of Bag B of the two paper bags
24 from the victim's hands.

25 A. There was a partial DNA profile obtained consistent with

1 a male which matched the victim and was different than all of the
2 other reference profiles.

3 Q. And WSPD 210756.3, another sample from the interior of
4 Bag B of two paper bags of the victim's hands.

5 A. A partial DNA profile was obtained from this sample
6 consistent with a mixture of at least two individuals including a
7 major male contributor. The major component matched the victim
8 and the reference samples from all of the other individuals that
9 were submitted were excluded from the major, but due to the
10 possibility of allelic dropout, no conclusions were made as to the
11 minor alleles present.

12 Q. And NCIIC item 124, the Chapstick?

13 A. The Chapstick revealed a partial DNA profile consistent
14 with a male which matched the victim, and all other sources of
15 references were excluded.

16 Q. All right.

17 Turn your attention now to the top of page 10. You've
18 got a couple of pieces of mail.

19 A. Yes.

20 Q. NCIIC item 28.1, if you could describe that piece of
21 mail -- the results of that testing.

22 A. Yes. There was a partial DNA profile obtained
23 consistent with a mixture of three or more individuals including
24 at least one male. There was not a lot of information obtained in
25 that partial profile. And due to the possibility of allelic

1 dropout, no conclusions could be made. They didn't compare
2 anybody.

3 Q. All right.

4 NCIIC item 28.2, the second piece of mail.

5 A. The second piece of mail revealed a partial DNA profile
6 consistent with a mixture of three or more individuals including
7 at least one male. And due to the possibility of allelic dropout,
8 no conclusions originally could be made on that particular item.

9 Subsequently, the laboratory went back and looked at
10 that with their -- it's a software program that is a probabilistic
11 genotyping, which actually calculates the likelihood ratios. And
12 so when they applied this to their probabilistic genotyping, in
13 order to declare the likelihood, they first have to designate the
14 number of individuals. And because they said three or more for
15 this particular program, they say -- they settled on four
16 individuals. And so they calculated assuming a mixture of four
17 individuals, they could only compare the two major contributions,
18 and the likelihood ratio suggests limited support for inclusion of
19 the victim; limited support for exclusion of Tolliver; strong
20 support for exclusion of Brayboy, Cauthen, and Banner; and
21 moderate support for exclusion of Bryant, Hier, and Coleman.

22 And the statistical result for Jessica Black was
23 uninformative. So for Jessica Black, it was in -- within that 1
24 range, where it just doesn't give you any information.

25 The limited support including the victim was between the

1 2 to 99, and that for exclusion, the same thing, 2 to 99 for
2 exclusion of Tolliver, but strong support for exclusion of
3 Brayboy, Cauthen, Banner.

4 Q. Thank you.

5 And then if you will move on to item NCIIC item 28.3,
6 the third piece of mail.

7 A. Yes. The third piece of mail, there was partial DNA
8 profile obtained consistent with a mixture of three or more
9 individuals including at least one male and, again, there was a
10 limited amount of information. And due to the dropout, no
11 conclusions could be made.

12 Q. Is it your understanding, on these three pieces of mail,
13 that the Commission did ask or inquire of Bode Technology as to
14 whether or not this statistical software analysis would be good
15 for these three items and that only that second piece of mail was
16 recommended by the lab to attempt that statistical analysis?

17 A. That's correct. When you have profiles where you have
18 so many locations where there's absolutely no information, it's
19 not reasonable to run it through the statistical analysis.

20 Q. Okay.

21 If you'll move on to -- skip the next item because the
22 Commission did not have any testing done on that item -- and move
23 on to State's Exhibit 34.1, the floodlight 1 from the carport.

24 A. Yes. The sample was screened for human DNA and the
25 results were below the limit of detection.

1 Q. Top of page 11, State's Exhibit 34.2, floodlight 2 from
2 the carport.

3 A. This sample did have a small amount of human DNA -- STR
4 DNA analysis was run; however, no profile was obtained.

5 Q. What does that mean when you say "no profile was
6 obtained"?

7 A. You simply get no genetic information whatsoever. You
8 might have an indication that there might be small amounts of DNA.
9 If it's too degraded, even through the process, you literally get
10 no peaks to be able to be identified by the detection
11 instrumentation.

12 Q. Thank you.

13 Moving on to State's Exhibit 31, piece of storm door
14 handle from the carport.

15 A. DNA analysis was performed but due to the limited amount
16 of information obtained, it stopped at the quantitation stage.

17 So as part of DNA analysis, the first thing that you do
18 is you try to isolate the DNA, you break open -- you take a
19 sample, add chemicals to break open the cells to release the DNA,
20 and that you quantitate to determine approximately how much DNA
21 was recovered. And this is similar to the limit of detection.

22 In this particular case, there was limited amount of DNA
23 and so they stopped.

24 Q. Did the Commission later go ahead and move forward with
25 testing on the storm door handle?

1 A. They did.

2 Q. What were the results of that testing?

3 A. They did obtain a partial DNA profile which included at
4 least one male contributor, but there was so little amount of
5 information obtained they couldn't draw any conclusions.

6 Q. Moving on to WSPD 210845, the business card from John
7 Bishop that was found near the neighbor's driveway behind the
8 house.

9 A. This sample was screened for human DNA but the results
10 were below the limit of detection so it was not processed further.

11 Q. And number -- NCIIC number 146, the business card, Hanes
12 Electric Installation and Service, from near the neighbor's
13 driveway behind the house.

14 A. The STR analysis was performed but no DNA profile was
15 obtained.

16 Q. NCIIC number 144, a piece of wire.

17 A. That was screened for human DNA but it was below the
18 limit of detection.

19 Q. Number 148, the black hair substance.

20 A. Again, this sample was screened for human DNA but the
21 results were below the limit of detection.

22 Q. Did the Commission later have microscopy performed at
23 Bode to see if there were any hairs suitable for STR DNA testing?

24 A. They did, yes.

25 Q. And what were the results of that?

1 A. There were two apparent human hairs that Bode felt were
2 suitable for DNA testing.

3 Q. And did the Commission submit those to the State Crime
4 Lab?

5 A. They did, yes.

6 Q. And what were the results of that testing?

7 A. Neither of those hairs revealed any profile.

8 Q. Can you talk a little bit about why a hair that may be
9 deemed suitable for STR testing might not reveal a DNA profile?

10 A. Certainly. Usually, to be deemed appropriate for DNA
11 testing, there has to be a portion of a root on the hair. You can
12 visually see a root microscopically, but either due to degradation
13 or there may not be sufficient amount of salient material on that
14 root to give you a profile.

15 So just because it has a root doesn't mean you're going
16 to get a result; it just means that you might get a result.

17 Q. Thank you.

18 If you'll take a look, Ms. Clement, just briefly at
19 pages 12 through 14 -- I don't believe that the Commission had any
20 additional testing on these other items, but I want to make sure
21 that's your understanding as well.

22 A. That's correct.

23 Q. Okay.

24 MS. SMITH: Commissioners, do you-all have questions for
25 Ms. Clement?

1 **MS. ESSARY:** Ms. Clement, I'm Melissa Essary. Thank you
2 for coming today. You have been a forensic biology expert for
3 many years, including the year 2002; is that correct?

4 **THE WITNESS:** Yes.

5 **MS. ESSARY:** So when you examined all of these various
6 items, in 2002, no DNA testing was done at that time.

7 Is that your understanding?

8 **THE WITNESS:** That is my understanding, yes.

9 **MS. ESSARY:** What was the availability of DNA testing,
10 however less sophisticated it was, at that time, in 2002?

11 **THE WITNESS:** In 2002, there was STR DNA testing
12 available. It was in earlier stages. The testing kits were not
13 nearly as sensitive as they are today. And a lot of laboratories
14 were still in the process of moving from the older RFLP technology
15 to the newer PCR technology or the STR technology. But it was
16 available, it just -- so something could have been done back then,
17 I guess.

18 **MS. ESSARY:** Okay.

19 So you've testified in more than 380 cases, as I
20 understand from your testimony.

21 **THE WITNESS:** Yes.

22 **MS. ESSARY:** Have any of those dated back that long ago?

23 **THE WITNESS:** Yes.

24 **MS. ESSARY:** And were you able to make conclusions
25 physically --

1 **THE WITNESS:** Yes.

2 **MS. ESSARY:** -- through DNA testing at that time?

3 **THE WITNESS:** Yes.

4 **MS. ESSARY:** Thank you.

5 **MR. EDWARDS:** Hello. I'm Seth Edwards. I believe I've
6 had you now as a witness before down in District 2.

7 How are you today?

8 **THE WITNESS:** Good, thank you. Yourself?

9 **MR. EDWARDS:** I'm fine.

10 I'm not suggesting this affects your testimony in any
11 way but I did want to just ask you, except for, I guess, on
12 page 6, State's Exhibit 23.2, where it shows a 2020 Clement
13 Consulting analysis, you actually performed that analysis -- but
14 except for that one, all of these other items you testified to,
15 you're essentially interpreting the results or explaining the
16 results of what the crime lab did or Bode; is that right?

17 **THE WITNESS:** Yes. And even on this one, I was using
18 their data in drawing my own conclusions and comparing. And there
19 was one other sample, the piece of black -- on page 7 of 14, where
20 I had also drawn additional and conclusion.

21 But, yes, I used the data that was developed from the
22 other laboratory and made my comparison using the raw data that
23 was available.

24 **MR. EDWARDS:** My other question goes to the number of
25 tests where it states no conclusions can be made on a mixture

1 profile or -- for example, due to a possible -- is it allele -- I
2 can't pronounce it.

3 THE WITNESS: "Allelic dropout."

4 MR. EDWARDS: Allelic dropout.

5 THE WITNESS: Yes.

6 MR. EDWARDS: That is not the same as excluding a
7 particular person; correct?

8 THE WITNESS: That is correct. It is not the same. Not
9 being able to draw a conclusion is different than excluding
10 someone.

11 MR. EDWARDS: So in all of these many different tests
12 where that was the result, that's not necessarily excluding all of
13 the defendants in this case or the other witnesses; it's just
14 saying there's not enough DNA profile to make a comparison.

15 THE WITNESS: Correct.

16 MR. EDWARDS: Okay. All right.

17 MS. ESSARY: I do have one more question.

18 So there are points at which your testimony is that you
19 obtained DNA profiles, particularly of the victim in this case,
20 but you also talked about other contributors, but then you exclude
21 the claimants in this case.

22 So my question is: With those other contributors, can
23 you say whether you could make a -- match a DNA profile of someone
24 if you had that to compare to?

25 You talk about one major female, and that just stuck in

1 my mind, one major female contributor -- I forget which piece of
2 evidence it was.

3 **THE WITNESS:** Right. In one of the pieces of evidence,
4 there is one major female contributor. And that certainly -- that
5 major profile basically can be separated from the rest of the DNA
6 and you can compare to that major profile.

7 And in this case, we excluded everyone from that major
8 female profile. That major profile was then uploaded to CODIS and
9 there were no hits.

10 **MS. ESSARY:** Okay.

11 **THE WITNESS:** In some of these samples, there is
12 sufficient amounts of the minor profiles that can also be compared
13 but then there are other samples where the minor profiles just
14 don't have enough information to make a comparison.

15 So there are some where it can be compared; there are
16 others where it cannot be compared. It just depends on the total
17 amount of that matter contributor that is present.

18 **MS. ESSARY:** Thank you.

19 **MR. JARVIS:** Immanuel Jarvis. Thank you so much for
20 being here today.

21 **THE WITNESS:** Thank you.

22 **MR. JARVIS:** I'm looking at State Exhibit 23-2, which is
23 electrical tape from the left hand of the victim, it's the
24 adhesive side, and there's also an embedded piece of string. In
25 the report here, in 2008, it says that the victim -- it goes on

1 through all of the different claimants here, they were excluded
2 from -- they were excluded from a match.

3 And I'm a little confused here. How is it that you can
4 have adhesive that is stated to be actually on the hand of a
5 victim but yet there is no DNA of that victim on that tape?

6 **THE WITNESS:** I'm sorry. Can you tell me which sample
7 it is?

8 **MR. JARVIS:** It's 23.2 -- 23-2.

9 **MS. SMITH:** It's page 6.

10 **MR. JARVIS:** Top of page 6. I'm sorry.

11 **THE WITNESS:** 23.2. Oh, at the top. And this is,
12 again, the major female. And when Bode performed their analysis,
13 they exclude everybody. When I actually looked at the minor --
14 and this is where I determined, or at least when I looked at it, I
15 felt that there was sufficient minor that the victim could be
16 compared, and I do include him. I -- basically, I say he cannot
17 be excluded --

18 **MR. JARVIS:** I see.

19 **THE WITNESS:** -- as a possible minor contributor to that
20 sample because I did see almost in every -- well, actually, in
21 every area where there was minor DNA, it was consistent with the
22 victim.

23 **MR. JARVIS:** And some of the other pieces of tape that
24 were actually found around the crime scene, it says that there
25 wasn't enough -- there wasn't enough, I guess -- there wasn't

1 enough DNA to be able to come to conclusive evidence of anything.

2 **THE WITNESS:** Correct.

3 **MR. JARVIS:** Could DNA be degradated [sic] or reduced
4 due to just the element being in the weather elements -- what are
5 your thoughts on a piece of tape that is naturally going to be
6 picking up whatever is around it, including human DNA -- why would
7 there be nothing found on that?

8 **THE WITNESS:** And it very likely would be affected by
9 the weather and by the surroundings. Again, as I said, a piece of
10 tape, even if it has DNA on it, if it's in direct sunlight, direct
11 sunlight tends to degrade DNA very rapidly. If it's hot and it's
12 humid outside, it could degrade the DNA.

13 And so there are a lot of things -- and it could be that
14 something on -- it could have come into contact with something,
15 some chemical or something, that is causing the DNA to degrade or
16 not to be able to be analyzed as well.

17 **MR. JARVIS:** Could you say that one of the reasons why
18 DNA could not be pulled from these elements is because these
19 elements were here long before the crime scene was established?

20 **THE WITNESS:** Possibly, in the sense that if there were
21 chemicals on the tape or something, it could -- that even once DNA
22 is deposited, it could react with it to make it not detectable.
23 But the nature of tape itself shouldn't be sufficient to not be
24 able to get DNA from it.

25 I mean, as you see, they did get DNA from a number of

1 the samples. It could be that maybe somebody wore gloves when
2 they were analyzing that or that it was a piece of tape on top of
3 a piece of tape with that little segment so it may not have come
4 into direct contact with the skin even though it has a sticky
5 portion. So it may just be that there were smaller amounts on
6 certain portions of tape than it was on the others.

7 **MR. JARVIS:** And so, lastly, as I go through the
8 evidence -- not the actual clothing because that's touch, but the
9 evidence that was found in or around the crime scene, I'm looking
10 at all of these items here that we took the time to go through, is
11 it true that there was not any sufficient DNA of the claimants
12 from your recollection in looking at this report other than the
13 clothes that the actual defendants wore during that time of the
14 incident?

15 **THE WITNESS:** Yes. There was no DNA identified on any
16 of the items of any of the claimants other than the -- their own
17 pants, basically.

18 **MR. JARVIS:** Thank you.

19 **JUDGE LOCK:** Is it likely that no detectable DNA was
20 obtained from either of the floodlights because heat from those
21 floodlights immediately degraded any DNA left by the person
22 unscrewing them?

23 **THE WITNESS:** I'm sorry. Can you ask the question
24 again?

25 **JUDGE LOCK:** Yeah, sure.

1 I mean, it's reasonable to assume that the perpetrator
2 who removed or unscrewed the floodlights from the ceiling of the
3 carport would have left DNA on those bulbs, and yet no detectable
4 DNA was -- profile was developed from either of them.

5 It that likely because the bulbs were on and they were
6 so hot that that heat immediately degraded any DNA that that may
7 have been left on them?

8 **THE WITNESS:** It's possible, certainly. It's also
9 possible that somebody wore a glove when they undid it and didn't
10 actually come into contact with it. Or it could be that they
11 simply did not leave sufficient quantities of DNA.

12 As I said earlier, some people shed more DNA than others
13 and may have had more -- you know, some people will leave it every
14 time that they touch, others may not. And so there are any number
15 of reasons. But, yes, certainly, if a floodlight was hot when
16 you're turning it to turn it off, it could potentially degrade the
17 DNA sufficiently that you wouldn't obtain a result.

18 **MS. ESSARY:** May I pick up on that same theme about
19 possible gloves?

20 In looking at all of this evidence and the limited DNA,
21 is it possible that the perpetrator or perpetrators wore gloves?

22 **THE WITNESS:** That's possible.

23 **MS. ESSARY:** Would you say that it is likely based on
24 your examination of these things? Just trying to get your opinion
25 based on your many years of testimony.

1 **THE WITNESS:** I really don't know that I have an opinion
2 as to that. I mean, certainly there were mixtures of multiple
3 individuals so there had to have been a number of individuals who
4 didn't have gloves on in order to create the mixtures that were
5 obtained. Not everybody could have worn gloves.

6 **MS. ESSARY:** Thank you.

7 **MR. BRITT:** Is there any other DNA testing that could be
8 performed that would possibly identify who these major -- minor
9 contributors are?

10 **THE WITNESS:** On a lot of the samples, no, there just
11 simply isn't enough DNA from the minor contributor to be able to
12 draw a conclusion.

13 **MR. BRITT:** Are there any of those examples that might
14 be sufficient?

15 **THE WITNESS:** There are some that certainly could be
16 compared to other individuals but I don't believe that any of the
17 minors would be sufficient to run through CODIS. I believe all
18 the samples that were eligible to be run through CODIS were.

19 **MR. BASS:** Does that include, as far as you know, the
20 major female sample from the 23-2, the black tape?

21 **THE WITNESS:** Yes. That was run through CODIS. There
22 were no hits. And I believe that is still being routinely
23 queried. So if at some point in the future a sample is submitted
24 and it hits, it will be reported out.

25 **MS. NEWTON:** I have two questions.

1 **THE WITNESS:** Certainly.

2 **MS. NEWTON:** Deb Newton. Thank you for coming. As to
3 the black tape from the left hand of the victim and the black tape
4 from the mouth of the victim, there appear to be individuals whose
5 DNA has not been identified.

6 Is that accurate?

7 **THE WITNESS:** Yes.

8 **MS. NEWTON:** Okay.

9 And of those two pieces of evidence, you say that it's
10 routinely run through CODIS, the DNA, for the unidentified DNA,
11 and no match has come back yet.

12 Has this DNA been recently run through CODIS to identify
13 any possible contributors?

14 **THE WITNESS:** Once it is uploaded to CODIS, it is
15 queried constantly. I mean, it's queried -- and I don't know
16 whether it's queried every night, but at least weekly. There are
17 at least weekly searches that occur that it will query, I believe.

18 **MS. NEWTON:** So who is the notified party once there is
19 a match?

20 **THE WITNESS:** Because the State Crime Laboratory took
21 ownership of this profile and uploaded it, they would be the ones
22 notified. And the State Crime Laboratory would then notify the
23 investigating office.

24 **MS. NEWTON:** Law enforcement?

25 **THE WITNESS:** Yes.

1 **MS. NEWTON:** Okay.

2 **THE WITNESS:** And I don't know, but they might notify
3 the Commission --

4 **MS. SMITH:** They notify the Commission.

5 **THE WITNESS:** -- simply because the Commission was the
6 one who requested it.

7 **MS. NEWTON:** Has anybody directly reached out to check
8 if there's been a positive match up to the date of this hearing?

9 **MS. SMITH:** Ms. Newton, the answer to that is no but we
10 are automatic -- that is automatically sent. We will be happy to
11 reach out today and just double-check that nothing has been sent.
12 But I have my e-mail here, and I would get that notification in
13 real time as we're sitting here. So I will be happy to reach out
14 to them, but the answer is there have not been any hits.

15 **MS. NEWTON:** Thank you.

16 Now, as a result of the answers to those questions,
17 Ms. Clement, having reviewed reports of the State Crime Lab and
18 the DNA, and -- sorry, the Bode DNA test and the State Crime Lab
19 testing, and performed your review --

20 **THE WITNESS:** Yes.

21 **MS. NEWTON:** -- as you sit here, could you confidently
22 testify that there is no -- is this a correct statement: There is
23 no forensic evidence linking any of the five codefendants in this
24 case or Ms. Black to this crime scene?

25 **THE WITNESS:** That's correct.

1 **MS. NEWTON:** Thank you.

2 **BY MS. SMITH:** (12:25 p.m.)

3 **Q.** Ms. Clement, I failed to ask you about this, and you
4 gave us a really good explanation the other day, and so I want to
5 give you an opportunity to do that.

6 Talk to the Commissioners a little bit about what
7 "stutter" is and these mixtures that are inconclusive, the minor,
8 you know, alleles within that, and what that means.

9 **A.** Certainly.

10 When you -- part of the process of the DNA analysis is
11 once you isolate your DNA, we genetically photocopy the areas
12 where we know there are differences in order to develop the
13 profile of what characteristics are present at those areas.

14 During this genetic photocopy process, it's not
15 uncommon, instead of a complete area of DNA to be photocopied, for
16 it to be shortened by one repeat. So instead of getting a peak
17 at, let's say, what might be the 16, we'll get a very strong 16
18 peak and that we'll get a very short 15 peak because you get the
19 slippage while it's photocopying basically.

20 And this is called "stutter." And in the validation
21 that's performed, you determine what your stutter cutoff values
22 are. So it's not uncommon to see a small peak, then a large peak.
23 We see it all the time. We know the approximate percentages.

24 In a lot of these samples, this minor contributor --
25 now, when you know you have a mixture, you don't know whether the

1 minor contributor, if it's in this position of stutter, whether
2 it's actually from another person or whether it's simply the
3 stutter that we typically see as part of this testing process.

4 And so a lot of the minor alleles that we're seeing were
5 in the stutter positions, and that's why they're not really --
6 that's one of the contributing factors to why it's not -- it can't
7 can be compared because it's in stutter position and it may just
8 be an artifact of the testing and not a true characteristic from
9 one of the individuals in the mixture.

10 And so when you see a lot of DNA in stutter positions,
11 as a precautionary measure, you simply don't want to draw
12 conclusions to a real contributor based on what might be just an
13 artifact of the testing.

14 **MS. SMITH:** Any other questions for Ms. Clement?

15 (No response.)

16 **MS. SMITH:** May she be released?

17 **JUDGE LOCK:** She may. Thank you very much.

18 **MS. SMITH:** Okay.

19 (Witness stands down, 12:28 p.m.)

20 (Witness, Julie Bridenstine, resumes the stand.)

21 **JUDGE LOCK:** Ms. Guice Smith, Commissioner Newton has a
22 question of you.

23 **MS. NEWTON:** Just one question. And is this correct,
24 the wallet and money and papers were not recovered -- are not in
25 evidence from the victim?

1 **MS. SMITH:** I'm going to let Ms. Bridenstine answer that
2 question for you.

3 **MS. BRIDENSTINE:** The wallet was not recovered. Money
4 was recovered from the victim's clothes at the autopsy. And there
5 was money found in the briefcase in the trunk of his Lincoln.

6 **MS. NEWTON:** Of his Lincoln?

7 **MS. BRIDENSTINE:** Yes.

8 **MS. NEWTON:** Okay. Let me clarify my question a little.
9 The wallet was missing from the victim?

10 **MS. BRIDENSTINE:** Correct.

11 **MS. NEWTON:** The money that was missing from the victim
12 has not been recovered from any of the defendants or any other
13 location?

14 In other words, there's no money that has been
15 identified as belonging to the victim recovered from anywhere
16 else?

17 **MS. BRIDENSTINE:** That's correct. And he had
18 approximately \$950 in his clothing. I believe it was either in
19 his shirt pocket or a front pocket of his pants.

20 **MS. NEWTON:** I'm not about referring to that. I'm
21 referring to the missing money, any missing money.

22 That was not recovered; correct?

23 **MS. BRIDENSTINE:** I don't know if he had money in his
24 wallet, but no one has ever said that they found money outside of
25 what was collected at the autopsy and at the crime scene and the

1 car.

2 MS. NEWTON: And papers -- there was discussion of
3 papers being in the wallet, and those papers have not been
4 recovered or not in evidence?

5 MS. BRIDENSTINE: There were no papers collected. The
6 only thing that they found were two business cards in the backyard
7 of the neighbor, and I'll be showing you in a little bit
8 approximately where that was located.

9 MS. NEWTON: Thank you.

10 MS. SMITH: All right. It is time for lunch.

11 I do have a couple of housekeeping matters before we
12 break for lunch.

13 In order to move things along this afternoon, I think it
14 would be beneficial for commissioners to read some handouts over
15 lunch break and us to take just a little bit longer to give
16 you-all time to do as you're eating or immediately following when
17 you finish eating.

18 That would be Handouts 34 to 53 -- 34 to 53 and then 56.

19 Some of those are pretty short. Most of them are, in
20 fact.

21 Handouts 46 and 48 are the motions for appropriate
22 relief for Mr. Cauthen and Mr. Banner.

23 JUDGE LOCK: What were those numbers again?

24 MS. SMITH: 46 and 48.

25 Those are a little bit longer. I have provided them to

1 you in full for context. Those MARs were related to sentencing
2 issues, but there are portions of them that I would like you to at
3 least focus on if you don't have an opportunity to read the full
4 MAR.

5 So the pages within the MARs, in Handout 46, it is
6 Bates-stamped pages 8 through 13 and 197 to 202; and in
7 Handout 47, it's Bates-stamped pages 82 to 87 and 127 to 129. So
8 if you will focus on those, and then if you want to read the
9 remainder of those MARs, you can do that over the evening recess.

10 The MARs, we also only included for you the actual MAR,
11 not the exhibits attached to the MAR. The only exhibits that we
12 provided you are the affidavits, and that's what we're going to be
13 talking about coming up this afternoon. There will be some
14 testimony related to those.

15 MS. COLBERT: Could you give me those numbers again,
16 please -- which numbers again?

17 MS. SMITH: It's -- page numbers?

18 MS. COLBERT: Yeah.

19 MS. SMITH: So I'm going to actually run through the
20 whole thing again. Handouts 34 to 53 and 56.

21 Handout 46, focus on Bates-stamped pages 8 to 13 and 197
22 to 202.

23 In Handout 48, focus on pages 82 -- I'm sorry. I've
24 just messed up.

25 Handout 46, Bates-stamped pages 8 to 13, and 197 to 202.

1 Handout 48, pages 80 to 87 and 127 to 129.

2 I will be available to you over lunch if you don't --
3 didn't get those correct.

4 Judge Lock, in looking at that amount of material, how
5 long would you like to break for lunch?

6 **JUDGE LOCK:** Would an hour and 15 minutes be enough?
7 Hour and 15 minutes?

8 **MS. SMITH:** Yes, sir.

9 **MR. BRITT:** I have a question with regard to number --
10 I'm sorry, I'm looking at the wrong exhibit. Number 34 -- it's
11 Nathaniel Cauthen summary of first interview?

12 **MS. SMITH:** So that is out of the defense attorney's
13 file, Kevin Mauney.

14 **MR. BRITT:** Okay. That answers my question.

15 **MS. SMITH:** It's not something we created.

16 **JUDGE LOCK:** All right. We'll be in recess until 1:45.

17 (Recess taken, 12:31 to 1:46 p.m.)

18 (Mr. Bass leaves the proceedings.)

19 **JUDGE LOCK:** All right. We'll come back to order.

20 **MS. SMITH:** Before we move on to testimony, I have a
21 couple other housekeeping matters from over the break.

22 First, during the break, commission staff replaced
23 pages 11 and 12 of Handout 24. That was the forensic testing
24 chart. We corrected those pages just to have all of the new
25 testing conducted by the Commission highlighted in yellow. That

1 was our intent originally, but we had missed a couple of places on
2 page 11 and 12.

3 If you -- we didn't change anything substantive about
4 the chart, just those highlights. If you had written on the
5 original version in your book, we didn't take it out. We just
6 left the pages as they were and also gave you the replacement
7 pages.

8 Another, just, note about that chart -- often the
9 Commission has an item of evidence and we may test multiple areas
10 of that item or multiple items within that item. For the chart
11 that you received, the forensic testing chart, you may have
12 noticed like a .1, .2, .3, and what I said on the record I got
13 that straight off the State's exhibit, you know, for example 87.1.

14 Just to be clear, the State's exhibit number or the WSPD
15 number is just the first part of that number. Any .1, .2,
16 et cetera, are just done to keep things straight for you-all in
17 looking at that chart so that you know that that is the same item
18 with multiple items within it or multiple areas tested.

19 We gave you yesterday Handout 104. We have updated that
20 with a corrected version over the break. This is the chart
21 related to which detectives interviewed which defendants.
22 Yesterday, the line for Cauthen included a second recorded
23 interview as well as was recorded *Bruton* statement. Those are the
24 same recording so we just corrected the chart to reflect that
25 there is only one second interview for Cauthen that's recorded,

1 and that is the taped *Bruton* statement. We have put that
2 corrected version information in your notebooks over the break.

3 Additionally, a commissioner this morning requested all
4 of the audio of the recorded police interaction with Ms. Black and
5 the codefendants.

6 This is a little over three hours of recorded material.
7 We do not have time to play that in the building today, but we
8 will send you home with a flash drive so that you can listen to
9 that as you would like to consider those interviews.

10 There will be testimony a little later on today about
11 those law enforcement interactions and when the recordings are
12 actually started in those interviews; so you'll have that context
13 as well before you go home today.

14 When we were looking at -- and pulling those, we
15 realized that although we intended to provide you in your brief
16 with all of the *Bruton* statements in their transcribed form, we
17 inadvertently left out Bryant's *Bruton* statement so that has
18 become Handout 109. So you may wish to take that with you this
19 evening as well. We talked about it in the brief but despite
20 providing everyone else's, we had left that one out inadvertently.

21 We will pass out the flash drive later today so you
22 don't have to keep up with them right now.

23 Finally, Judge Lock asked Ms. Black yesterday if she
24 would agree to sign a release for her records for the mental
25 health treatment she received. She indicated that there were two

1 possible locations that she had had that therapy. She did sign
2 those releases yesterday. We have reached out to Daymark Recovery
3 Services, they have no records.

4 We have also sent the release to Monarch in Lexington.
5 We've made multiple phone calls and sent multiple e-mails and have
6 not received any communication back.

7 I am prepared to send a staff member to Monarch tomorrow
8 if the Commissioners so desire that information during this
9 hearing.

10 **JUDGE LOCK:** I'll have to confess, I would be interested
11 in knowing what she said.

12 **MS. SMITH:** Okay. We'll make --

13 **JUDGE LOCK:** Anyone else feel the same?

14 **MS. COLBERT:** Yes.

15 **MS. SMITH:** Okay.

16 We'll make sure that some -- we'll make every effort we
17 can to obtain those records prior to the end of this hearing.

18 **JUDGE LOCK:** And, again, it's limited only to what she
19 may have said about the crimes before the Court. I am not
20 interested in what she would've said about other matters in her
21 life; that's obviously privileged.

22 **MS. SMITH:** Yes, sir.

23 Okay. That concludes the housekeeping matters.

24 I would recall to the stand staff attorney Julie
25 Bridenstine.

1 (Witness, Julie Bridenstine, resumes the stand.)

2 BY MS. SMITH: (1:54 p.m.)

3 Q. Ms. Bridenstine, did commission staff speak to officers
4 about the searches that were conducted in this case and what
5 evidence the police were looking for?

6 A. We did. In general, we learned during depositions and
7 interviews that the officers were looking for any evidence
8 connected to this case during the searches that they conducted.
9 They said that if they found evidence, they would've collected it.

10 Detective Mark Smith said during his deposition on
11 February 7, 2020, that officers were trained to seize any evidence
12 related to the crime, and pieces of tape were seized from under
13 the deck because the victim was bound with tape. He said that
14 business cards were collected from near the driveway of the next
15 door neighbor at 901 Moravia Street because they could have
16 investigative value since the victim's wallet was missing.

17 A clump of what appeared to be human hair was collected
18 from the backyard of 901 Moravia Street because it could be
19 suspect or victim hair and the blue knit cap was seized from the
20 park because it was in the area of the homicide and could have
21 been dropped by a suspect.

22 Q. Ms. Bridenstine, you've heard Ms. Clement testify about
23 a piece of black tape collected from the backyard under the porch.
24 The nonadhesive side of that tape produced a mixture profile that
25 Ms. Clement was able to exclude the victim, all codefendants,

1 Jessica Black, Teresa Hier, and Tarshia Coleman from.

2 What can you tell commissioners about this piece of
3 tape?

4 A. There are several photographs of all of the tape that
5 police collected at the crime scene in this case. The Commission
6 also had Bode Technology take photographs of the evidence that
7 they -- that we submitted to them for testing, and there are
8 photographs of this tape from them as well.

9 MS. SMITH: Commissioners, turning back to
10 handout notebook 2, Handout 30 is the aerial map around the
11 victim's home.

12 Handout 31 is a crime scene sketch.

13 And Handout 32 are photographs of the photograph of the
14 tape from the crime scene and -- as well as pictures of the tape
15 taken by Bode Technology.

16 These handouts are also going to be on your screen, and
17 Ms. Bridenstine is going to use those to illustrate her testimony.

18 Q. Ms. Bridenstine, can you please walk the commissioners
19 through all of the locations where the tape, hair, and business
20 cards were found at the crime scene using these photographs and
21 diagram.

22 A. Sure. This was a map that was originally produced by
23 the State at trial. This is an aerial map of the area where the
24 victim lived. This is Mr. Jones' house right here. It's the
25 second house in on Moravia Street, which runs this way. This

1 street up here is Burgandy. This runs along this way.

2 And this is Belview Park. There is a parking lot.

3 There is a picnic shelter.

4 And then next door neighbor at 901 Moravia is this house
5 right here on the corner. Mr. Jones' driveway exited to Moravia
6 Street. This neighbor's driveway exited out to Burgandy Street.

7 Police collected tape from under the deck at Mr. Jones'
8 house. They also collected business cards from the backyard of
9 901 Moravia near the driveway, and they collected a clump of hair
10 from, they said, near the curb line in his backyard on Burgandy
11 Street. And then the toboggan hat was collected from Belview
12 Park.

13 This is a crime scene sketch that was produced by the
14 police. They drew where Mr. Jones' body was moved to. So
15 Mr. Jones was actually found in this area in between this carport
16 step leading into the house and his Lincoln. They also collected
17 a piece of black tape from the stairs leading from the carport to
18 the back deck.

19 This is just a slightly larger diagram of the area.
20 This shows the deck that came off the carport. The piece of tape
21 was collected from here and more tape was collected from
22 underneath this deck right here.

23 This is a photo looking into the carport from Moravia
24 Street. Mr. Jones' body was located in this area of the carport
25 between the carport step and the Lincoln. He was found face-down

1 with his hands bound behind his back and he had tape wrapped
2 around his head and mouth like a gag. His feet were described as
3 pointed out towards Moravia Street. So his head would've been
4 located in this area.

5 Q. And, Ms. Bridenstine, I'm sorry if I missed this, I'm
6 going to take you back to the sketch here, and I see the body is
7 drawn toward -- not exactly in the area you just described.

8 Can you tell commissioners why that's the case.

9 A. When EMS arrived, they didn't have enough room in this
10 area to try to give him aid and to see if he was still alive so
11 they moved his body to the edge of the driveway and the front yard
12 area here on the corner, and that's where his body remained until
13 the medical examiner authorized it to be removed to the hospital
14 for the autopsy.

15 Q. And the crime scene sketch was done after his body had
16 been moved?

17 A. That's correct.

18 And I'll just back up and I'll just say that the
19 neighbors described his body at this location and the responding
20 officers described it that way as well.

21 MS. ESSARY: May I ask you a question? What is the
22 distance between, if you know, the left-hand side -- the driver's
23 side of the car and wall of the home? It looks very large there
24 but in the picture, much narrower.

25 THE WITNESS: I don't know the distance. It's described

1 as a very tight area. We might have something that describes that
2 distance. I'm not sure if we have anything beyond these that
3 actually gives some sort of measurement but we can double-check.

4 **MS. ESSARY:** It's not represented as the diagram is
5 drawn to scale.

6 **SHERIFF FRYE:** Isn't it 10 foot, 5 inches?

7 **THE WITNESS:** Yeah, I guess this is saying 10, but it's
8 not describing what the distance is here or what the length of the
9 car is, the width of the car.

10 **MS. ESSARY:** Thank you.

11 **A.** This is looking into the carport from the backyard
12 looking out now towards Moravia Street is back here.

13 This is the piece of tape that they collected that is
14 leading down from the two stairs from the carport to the back
15 wooden deck. And that's just a close-up of that same piece of
16 tape.

17 This is the deck in Mr. Jones' backyard. If you're
18 looking up the stairs or somewhere in this area where the tape was
19 collected, they also collected two pieces of tape and a piece of
20 wire underneath the deck. You can see that there are two posts
21 that are apparent in this photo.

22 And the two pieces of tape, one was collected at
23 marker 11. This is described as being under the deck. And this
24 appears to be the piece of black tape that they collected.

25 This is the other marker, 12. This is also noted as

1 being under the back deck, and this is the second piece of black
2 tape.

3 This is a clump of hair that was collected in the
4 backyard of 901 Moravia close to the Burgandy curb line.

5 These are photos now from Bode Cellmark. And this is
6 the tape that was collected from Mr. Jones' left hand. This is
7 what is described as the string or some have described it as a
8 do-rag string. This is the piece that contains the major unknown
9 female STR profile.

10 That's just a close-up of also the tape from the left
11 hand. And there's the string, again, with the unknown profile.

12 This is the piece of tape that was collected from
13 Mr. Jones' face.

14 And this is a piece of tape that was collected from the
15 backyard that is a partial mixture that Ms. Clement was able to
16 exclude the victim, all codefendants, Jessicah Black, and Tarshia
17 Coleman and Teresa Hier. Everyone that we have compared at the
18 lab is excluded from the minor partial mixture profile here.

19 **MS. SMITH:** Commissioners, do you have additional
20 questions about those photographs or Ms. Bridenstine's
21 explanation?

22 **MS. COLBERT:** So the tape that -- I mean, the string
23 people -- some people said was a do-rag, that was used to tie some
24 parts of Mr. Jones' body?

25 **THE WITNESS:** It's never described as being used to tie

1 his body. And the case file doesn't seem to really talk about it.
2 It's discovered more later that that is part of the piece of
3 evidence. He was described as being embedded or bound up with it.

4 **MS. COLBERT:** Okay. Thank you.

5 **MS. ESSARY:** Do these photographs reflect at all the
6 fence that the witness said they saw someone jump over around the
7 time of the murder?

8 **THE WITNESS:** No. And his fence is described as a
9 chain-link fence just surrounding the backyard -- so three sides.

10 **MS. SMITH:** Ready?

11 **Q.** Did the item of evidence, that piece of black tape with
12 the string -- no, I'm sorry -- the piece of black tape with the
13 DNA on it that doesn't match the victim, the defendants, Jessicah
14 Black, or any of the others we had compared, was that introduced
15 and admitted as evidence at trial?

16 **A.** No.

17 **Q.** Was the piece of tape previously tested by the North
18 Carolina State Crime Lab during the original investigation of this
19 case?

20 **A.** No.

21 **Q.** Where did we get that piece of tape?

22 **A.** We got it from the Winston-Salem Police Department.

23 **Q.** And is there any indication that piece of tape went
24 through any type of testing prior to the Commission sending it to
25 Bode Technology for DNA testing?

1 A. No, there's not.

2 Q. Ms. Bridenstine, what, if anything, did the codefendants
3 say about going through the backyard in this case?

4 A. Dorrell Brayboy is the only defendant to say that any of
5 them went into the backyard. During his taped interview on
6 November 19, 2002, he said he stood by the fence in the front yard
7 between 905 Moravia Street and 901 Moravia Street while the other
8 four ran into the backyard.

9 Rayshawn Banner said during his taped interview on
10 November 19, 2002, that the assault started after everyone jumped
11 out of Jessica Black's car on Moravia Street.

12 He was asked by Detective Shelton during this interview:
13 "Let me ask you something, Rayshawn, when -- I'm going to back up
14 just -- when -- when y'all got out of the car and saw them
15 groceries, did y'all come through the backyard; is that right?
16 Right up through backyard up to the house?"

17 After that, Rayshawn Banner then said: "I think two
18 people ran from the backyard and, like, they let them out. He --
19 they ran through the backyard and whatever. The rest of us jumped
20 out of the car."

21 Q. Did any other witnesses say anything about a suspect in
22 the backyard?

23 A. A Crime Stoppers tip came in on November 16, 2002, about
24 a possible suspect seen running from the victim's house. Police
25 interviewed one of the boys, Arnaldi "BJ" Lowery, who was reported

1 to have seen this person. The information learned by police was
2 that BJ Lowery was playing outside on November 15, 2002, and saw a
3 Hispanic or light-skinned black male who was dressed in all black
4 running from the back of the victim's carport or porch near dark.
5 He saw this person jump two fences and run into Belview Park. The
6 suspect was described as Hispanic, 20s to 30s, tall and skinny,
7 black shirt, black toboggan, black pants, black shoes, and gloves.

8 Q. Did any --

9 MR. BRITT: Can I ask a question?

10 Based upon what BJ Lowery said, where was he playing in
11 relationship to Mr. Jones' house?

12 THE WITNESS: He was playing in Belview Park or near it.
13 And he testified at trial. So if you wanted me to pull exactly
14 what was said during the original investigation, it did change a
15 little bit with the location of where he was, but he was playing
16 outside with another child around the same age. And the
17 information that was provided was that his mother was having a
18 birthday party and she had asked him to go play outside while she
19 was getting ready for people to come over.

20 MR. BRITT: And the fence that he saw this -- allegedly
21 saw this person jumping over, using the aerial photograph, do you
22 know which yard that was? Was it the one directly beside
23 Mr. Jones? Was it the one behind Mr. Jones' house?

24 THE WITNESS: They don't describe that there was a fence
25 here so I don't know if at the time that there was a fence here.

1 But there is a description that there was a fence going around
2 Mr. Jones' backyard.

3 **MR. BRITT:** And Belview is on the left?

4 **THE WITNESS:** This is Belview Park here. This is the
5 parking lot and the recreation center. And based on photos, I
6 think this is kind of a sandlot area with playground equipment in
7 it.

8 **MS. ESSARY:** And, I'm sorry, where did that young boy
9 say he was standing where he saw somebody -- when he saw someone
10 jump the fence?

11 **THE WITNESS:** He was either on the street or he was
12 actually in Belview Park. I will have to double-check for that.

13 **MS. ESSARY:** The street being Burgandy?

14 **THE WITNESS:** He actually -- I can show you where he
15 lived. This was his house. His mother was Lori Douglas, and they
16 lived here.

17 **MS. ESSARY:** Okay.

18 **THE WITNESS:** He was out playing. I think he reported
19 he was playing hide-and-seek with friends, but later he said
20 something about riding his bike or a scooter. I can't remember
21 exactly where he said at the original time of the investigation.
22 Ms. Myers knows the answer, I think.

23 (Ms. Bridenstine stands down.)

24 (Ms. Myers takes the stand, 2:09 p.m.)

25 **MS. MYERS:** Yes, I'm happy to.

1 So BJ actually lived at -- I believe it was 824 or 821,
2 and I'll have to check my notes about that. But, him, his mother,
3 whose name was Lori Douglas, and his sister Lashanda Mashack
4 actually lived in this home right here. I'm going to testify
5 about this a little bit later on today.

6 But there is some differences in what BJ remembers now
7 versus what he originally told to police and testified to.

8 There is a fence that goes -- and as Ms. Bridenstine
9 testified to, it appears to be in Mr. Jones' yard. It's
10 three-sided. And it also appears, at 901, that there is a fence
11 that kind of protrudes a little bit out into the front yard.

12 So with regard to BJ's testimony in court, what he had
13 stated was that he saw the person run from -- and jump over a
14 fence in Mr. Jones' yard. There was a rock -- and still is to my
15 understanding, a rock that sits in the corner of Mr. Jones' yard
16 right here, that the person jumped over that and then proceeded to
17 jump over a fence in -- I believe he described it as Little B's
18 yard, which we'll have testimony about that a little bit later as
19 well, who is in reference to Brian Lindsay, and then saw the
20 person run through Belview Park.

21 I hope that clears it up just a little bit. Again, he
22 does have a little bit -- his memory is a bit different today.

23 (Witness, Mackenzie Myers, stands down.)

24 (Witness, Julie Bridenstine, resumes the stand.)

25 BY MS. SMITH: (2:11 p.m.)

1 **Q.** Ms. Bridenstine, you mentioned that BJ Lowery reported
2 that the suspect was wearing gloves -- I'm sorry, not the suspect,
3 the person he saw running through the victim's home was wearing
4 gloves.

5 Did anyone else talk to the Commission about anyone
6 wearing gloves?

7 **A.** Yes. During the deposition with Jessica Black, I asked
8 if any of the defendants were wearing gloves and she said no.

9 **Q.** Okay.

10 **MS. SMITH:** Commissioners, Handout 33 in your hearing
11 handout notebooks is historical data regarding weather on
12 November 13 -- regarding the weather on November 15, 2002, if you
13 want to take a moment and look at that.

14 **Q.** Ms. Bridenstine, is there anything that you can point
15 out about that handout?

16 **A.** The handout indicates the daily temperatures hour by
17 hour. So at 5:54 p.m. that day, it was 57 degrees Fahrenheit. At
18 6:54 p.m., it was 55 degrees Fahrenheit. And it looks like rain
19 started around 8:54 p.m. And also indicates that the sunset was
20 at 5:13 p.m.

21 **Q.** Ms. Bridenstine, there has been some questions about the
22 female profile from the string.

23 Does the Commission staff know whether or not there were
24 any females on the scene on the night of the crime other than
25 Ms. Coleman?

1 **A.** There is a photo that shows a woman turning Mr. Jones'
2 body over. I can't tell if she is EMS or if she is law
3 enforcement, but she is wearing gloves in the photo.

4 **Q.** Commission staff did not, though, have any emergency
5 medical staff personnel's DNA or law enforcement DNA to compare to
6 that profile; is that correct?

7 **A.** That's correct.

8 **MS. SMITH:** All right. Any additional questions?

9 **MR. EDWARDS:** I would like to just ask -- the piece of
10 black tape found in the backyard, where -- all of the claimants
11 and other known folks would have been excluded by DNA testing;
12 correct?

13 **THE WITNESS:** That's correct.

14 **MR. EDWARDS:** We have no way of knowing if that black
15 tape was involved in this crime anyway though, do we?

16 **THE WITNESS:** That's correct.

17 **MS. ESSARY:** Does it match? Do we know that it is black
18 tape of similar type and quantity -- I mean, excuse me -- quality?

19 **THE WITNESS:** So this was a piece of black tape that was
20 collected on the carport stairs. This is one of the pieces that
21 was collected under the deck. And this is the other piece.

22 The file doesn't say which piece of tape is -- it's one
23 of these, the one that we have tested, that has a mixture profile
24 that does not match. But it's either this one near marker 11 or
25 it's this one near marker 12.

1 If you fast-forward through the photos, this is the tape
2 that was collected from Mr. Jones' hand, and this is the tape that
3 was collected from his face. And this is what was found in the
4 backyard under the porch and this is the one that has the profile
5 that excludes everyone that we have tested.

6 Everyone has described this as black tape.

7 **MS. ESSARY:** Has there any attempt either by the police
8 department or by your labs to state whether this is the same type
9 and quality of tape? In other words, is the same kind of tape?

10 **THE WITNESS:** It's all described as black tape or black
11 electrical tape. I've also seen black duct tape. Nobody has
12 made -- noted any differences among the tape.

13 **MS. ESSARY:** Okay.

14 And if this testimony is going to come later, that's
15 fine, but you did show a picture of where that tape was found and
16 then we heard the testimony of that young man who saw someone run.

17 In looking kind of at that aerial photo of the houses,
18 does where he saw -- and if this is coming later, that's fine --
19 didn't that young man testify that he saw someone running and
20 jumping match where tape was found?

21 And if we're not there yet, that's fine.

22 **THE WITNESS:** I'm going to leave it for Ms. Myers. I
23 know the original Crime Stoppers tip said that the person was
24 reported to have seen someone coming from the backyard and the
25 back carport of Mr. Jones' house, but that information changed a

1 little bit when people went and spoke to that -- the people who
2 knew BJ Lowery. He gave his descriptions at trial, and I think
3 that's in your brief so we can find some page numbers where you
4 can see the trial testimony.

5 MS. ESSARY: Thank you.

6 MS. SMITH: All right. If there are no more questions
7 about the forensics, we're going to move on to the next section.

8 Q. Ms. Bridenstine, let's talk about the prosecutors in
9 this case. Who prosecuted the case?

10 A. Eric Saunders and Bierne Harding.

11 Q. Were you able to interview Mr. Saunders or Ms. Harding?

12 A. No. They are both deceased.

13 Q. Did you ask anyone else about Mr. Saunders and
14 Ms. Harding?

15 A. Yes. We asked the defense attorneys in this case about
16 their interactions with the prosecutors and what they recalled
17 about their work on the case.

18 MS. SMITH: Commissioners, Ms. Bridenstine will testify
19 about those as we walk through the various defense attorneys that
20 we spoke with.

21 Q. Ms. Bridenstine, I will turn your attention now to the
22 various attorneys who represented the defendants in this case.

23 Has the Commission spoken to those attorneys?

24 A. Yes, we have.

25 Q. And why did the Commission speak to the attorneys?

1 A. Generally, we spoke to them to find out if they had
2 discussed the facts of the case with the defendants, if any of
3 them had admitted guilt or maintained innocence to them, and to
4 see if any of the attorneys still had files associated with their
5 work on the case.

6 We had more in-depth interviews with the attorneys who
7 represented the defendants at trial to determine whether what they
8 remembered about their representation.

9 Q. How many attorneys represented the five defendants
10 before their cases went to trial?

11 A. Eight attorneys represented them prior to trial. Three
12 attorneys who were initially appointed by the Court withdrew as
13 counsel. Those attorneys were Pete Cleary, Kevin Mauney, and
14 Danny Ferguson. They represented Christopher Bryant, Nathaniel
15 Cauthen, and Dorrell Brayboy.

16 Q. And why did those attorneys withdraw?

17 A. All three of those attorneys started new positions at
18 the Public Defender's office and withdrew so that there would not
19 be a conflict of interest.

20 Q. Tell the Commissioners who represented the defendants at
21 the trials.

22 A. Nils Gerber represented Christopher Bryant. Clark
23 Fischer represented Jermal Tolliver. Thomas Fagerli represented
24 Dorrell Brayboy. Teresa Hier, Nathaniel Cauthen. And Robert
25 Leonard represented Rayshawn Banner.

1 **Q.** Did the Commission speak with Kevin Mauney?

2 **A.** We did. We interviewed him in person on January 7,
3 2020, and this interview was recorded but not transcribed.

4 **Q.** Did the Commission also obtain a copy of his file for
5 the case?

6 **A.** Yes. Prior to the interview, we obtained and reviewed
7 his attorney file that he had kept for Nathaniel Cauthen. He
8 initially represented Nathaniel Cauthen from November 20, 2002,
9 until April of 2003.

10 **Q.** Did Kevin Mauney have any notes regarding his
11 conversations with Nathaniel Cauthen?

12 **A.** Yes. He had notes regarding his conversation that he
13 had with Nathaniel Cauthen on November 20, 2002.

14 His notes were handwritten but he also had a typed
15 summary of his conversation. His notes were divided into two
16 sections. He had one section that discussed November 15th, 2002,
17 the day of the crime, and he had another section that discussed
18 November 19, 2002, the day he was interviewed by police.

19 **Q.** Did Mr. Mauney's notes indicate that Nathaniel Cauthen
20 admitted any responsibility for this crime?

21 **A.** No. According to the notes, he denied having anything
22 to do with this crime and said that what he told the police the
23 previous night were a bunch of lies because he wanted to go home.

24 **MS. SMITH:** Commissioners, you've already reviewed the
25 handouts from this section over the break, but for the record,

1 Handout 34 are the typed notes for Kevin Mauney's file.

2 Q. What did Mr. Mauney tell commission staff about his
3 notes during that interview on January 7 of this year?

4 A. He said he would have seen Nathaniel Cauthen very
5 quickly and that he would have dictated his notes the same day.

6 MS. SMITH: Commissioners, Handout 35 in your hearing
7 handout notebook is an affidavit from Kevin Mauney, which you've
8 also reviewed over the lunch break.

9 MR. EDWARDS: On Exhibit 34, at the very bottom of it
10 where he has some handwritten notes, have y'all deciphered that?

11 THE WITNESS: Some of them. We did try to go through a
12 lot of his handwritten notes, and he had trouble reading them as
13 well.

14 I think it says something about Teresa signed paperwork
15 to allow something in home.

16 MR. EDWARDS: Search, maybe? Search?

17 THE WITNESS: Yeah. Yeah. I think that's regarding the
18 search.

19 And I think to the left it says "thinks mother was
20 there" and then something about pants, shirts, and shoes.

21 And that is Mr. Mauney's handwriting.

22 MS. ESSARY: Is that the number 4 at the bottom or is
23 that a Y?

24 THE WITNESS: I don't know.

25 JUDGE LOCK: It would appear it says "took four pairs of

1 pants and shirts and shoes," but that's my interpretation.

2 **MS. ESSARY:** I understand.

3 **Q.** Did the Commission speak to Teresa Hier?

4 **A.** Yes. We interviewed her in person on December 18, 2019,
5 and the interview was recorded and transcribed.

6 **Q.** What did she tell you?

7 **A.** She said that Nathaniel Cauthen never admitted any
8 culpability to her. She said that to the best of her
9 recollection, he never admitted to knowing that any of the other
10 defendants were involved. She also said that Nathaniel Cauthen
11 refused to take any plea because he said he was innocent.

12 **Q.** Did you ask her about the district attorneys who tried
13 the case?

14 **A.** Yes. She talked about them and their practices as
15 attorneys.

16 **MS. SMITH:** Commissioners, Handout 36 is an excerpt from
17 the recorded and transcribed interview of Ms. Hier on
18 December 18th, 2019. You also had an opportunity to read that at
19 the break, if you just want to take a moment to refresh yourself
20 on that.

21 **Q.** Were you able to locate Ms. Hier's file?

22 **A.** Yes. We obtained a copy of her file from the North
23 Carolina Prisoner Legal Services. They had received Nathaniel
24 Cauthen's attorney file as part of their representation for
25 Mr. Cauthen. We reviewed Teresa Hier's handwritten notes which

1 included her conversations with Nathaniel Cauthen.

2 Q. And did her notes indicate whether Mr. Cauthen admitted
3 any responsibility or involvement in this -- in the crime?

4 A. No. He denied having any involvement in the crime.

5 MS. SMITH: Commissioners, Handout 37 is the affidavit
6 of Teresa Hier that you also reviewed over the lunch break.

7 Q. Did the Commission speak with Robert Leonard?

8 A. Yes. We interviewed him in person at the Forsyth
9 Correctional Center, a minimum security prison, in Winston-Salem
10 on February 5, 2020. And that interview was recorded and
11 transcribed.

12 MS. SMITH: Commissioners, Handout 38 is the criminal
13 record of Robert Leonard.

14 You've had an opportunity to review that over the lunch
15 break.

16 Q. Who did Robert Leonard represent?

17 A. Rayshawn Banner.

18 Q. Was Robert Leonard disbarred from the practice of law?

19 A. Yes. He was disbarred in June of 2005.

20 Q. And when was Rayshawn Banner's trial?

21 A. It was held in August of 2004.

22 MS. SMITH: Commissioners, Handout 39 is the North
23 Carolina State Bar's Order of Discipline for Mr. Leonard, which
24 you have had an opportunity to review over the break.

25 Q. Ms. Bridenstine, what did Mr. Leonard tell you?

1 A. He said he went to see Rayshawn Banner at the juvenile
2 detention center as soon as he was appointed. He said that
3 Rayshawn Banner told him that he was at home, sleeping, at the
4 time of the crime and was not anywhere near the place.

5 Mr. Leonard said that his response to that was to tell
6 him, quote: "Rayshawn, next time you talk to police, tell them
7 what you told me and then tell me what you -- what you say
8 happened. Don't confess to them and then, you know, talk innocent
9 to me. So we just, you know -- he started out badly," end quote.

10 He also said that Rayshawn Banner did not trust him at
11 all and that his recollection from 18 years ago was that he was,
12 quote: "Kind of all over the place with what he was saying."

13 He said Rayshawn Banner's story was inconsistent with
14 what he told police. He later said during the interview that he
15 did not think Rayshawn Banner ever took responsibility for the
16 crime or admitted guilt.

17 Q. Did Mr. Leonard say anything about the plea agreement in
18 this case?

19 A. He said that he and Teresa Hier tried to get the boys to
20 take the plea. He also said that Rayshawn Banner's mother was
21 also urging him to take the plea. He said he thought Rayshawn
22 Banner was going to take the plea but he didn't.

23 Q. What did Mr. Leonard say about his defense?

24 A. He said his defense was not antagonistic with Teresa
25 Hier's defense of Nathaniel Cauthen. His defense was that

1 Rayshawn Banner did not do it.

2 Q. Did he say anything about Rayshawn Banner and his
3 assessment of his intelligence?

4 A. He said that Rayshawn Banner was the first juvenile he
5 had represented that was charged with murder. He said: "Well, of
6 course, below average and uneducated, but just unfortunately his
7 segment of society, well, I don't know how racial we're going to
8 get into here, but it's common. I mean, it's bravado, street
9 tough, you know, 'I don't take nothing off nobody. I'm blah blah
10 blah,' you know, usual attitude that you have, and he wasn't any
11 different," end quote.

12 He also said, quote: "He wasn't a 70 IQ type that I --
13 you know, that I recognized. He seemed to have -- he seemed to
14 have some intelligence. He just wasn't educated," end quote.

15 Q. Did you ask him if he got any of Mr. Banner's school
16 records?

17 A. Yes. He said he probably -- he said he did not have any
18 specific recollection of it but probably did. He said it was not
19 a capital case so he was not looking for any mitigation issues.

20 Q. What did he say about the prosecutors in the case?

21 A. He said that they were both tough litigators and good
22 prosecutors. He said he never knew of them to be dishonest.

23 Q. Did you talk to him about his closing argument?

24 A. Yes.

25 Q. Why?

1 A. He indicated in his closing argument at trial that
2 Rayshawn Banner might have been there but he was not part of what
3 was taking place. He said that Rayshawn Banner stayed out in the
4 road and did not involve himself in this.

5 Because he said this at trial, I asked him if he said
6 that based on something Rayshawn Banner had told him.

7 Q. What did he say about that?

8 A. He ultimately said he did not know if Rayshawn Banner
9 told him that.

10 **MS. SMITH:** Commissioners, Handout 40 is an excerpt from
11 the recorded and transcribed interview of Mr. Leonard from
12 February 5 of 2020. That portion of the transcript is related to
13 Mr. Leonard's closing argument. You've already an opportunity to
14 review that.

15 Q. Ms. Bridenstine, did you ask anyone else about that part
16 of Robert Leonard's closing argument?

17 A. Yes. I asked Teresa Hier about it.

18 Q. And what did Ms. Hier say?

19 A. She said that she thought that Mr. Leonard was, quote,
20 "flying off the hip," end quote, and that at the time, she was
21 probably surprised by it.

22 Q. Did the Commission learn anything else from any other
23 sources about Mr. Leonard?

24 A. Yes. Hunter Atkins talked to Mr. Leonard several times
25 in prison. These phone calls were recorded and commission staff

1 has listened to them.

2 Q. What did Robert Leonard say to Hunter Atkins?

3 A. He said that Rayshawn Banner never confessed to him and
4 had denied having anything to do with the crime.

5 Q. Did you talk to any other attorneys about Mr. Leonard?

6 A. Yes. In addition to Teresa Hier, I spoke to Clark
7 Fischer and Nils Gerber about him.

8 Clark Fischer said he was not at the top of his game at
9 that time. Nils Gerber said that he did not know if Mr. Leonard
10 had a problem at that time.

11 Teresa Hier said that she did the work and that Robert
12 Leonard benefited from that. She said that he had medical issues
13 at the time and was burned out. She said she always had concerns
14 about his representation. She also said she represented him in
15 the civil lawsuit that resulted in his disbarment.

16 MS. SMITH: Commissioners, before we move on to other
17 attorneys, are there any questions so far?

18 MS. COLBERT: Does this criminal record of Mr. Leonard
19 directly relate to this disbarment?

20 THE WITNESS: No. My understanding --

21 MS. COLBERT: This is something else he did?

22 THE WITNESS: Yeah. He was disbarred in 2005.

23 MS. COLBERT: But these, you know, happened in '11, '12,
24 and then he finally -- so this was something additional he did?

25 THE WITNESS: Correct.

1 **MS. COLBERT:** Thank you.

2 **Q.** Did the Commission interview Nils Gerber?

3 **A.** Yes. I deposed him on January 16, 2020.

4 **Q.** Why did you depose Mr. Gerber as opposed to interview
5 him?

6 **A.** We had previously asked him to do a recorded interview
7 and he said he did not want to have his interview recorded. I
8 told him that the alternative would be to do a deposition, and he
9 said that we would have to do a deposition because he would not
10 agree to a recorded interview.

11 **Q.** Was that deposition recorded and transcribed?

12 **A.** It was.

13 **Q.** Who did Nils Gerber represent?

14 **A.** Christopher Bryant.

15 **Q.** Did Mr. Gerber say anything about Jessicah Black?

16 **A.** He said that she was a star witness for the State and
17 that she was the primary witness. He also discussed his
18 impression of her at the trial and described her as a reluctant
19 witness.

20 **MS. SMITH:** Commissioners, Handout 41 in your notebooks
21 is an excerpt from the deposition of Mr. Gerber on January 16,
22 2020, related to what Mr. Gerber remembered about Ms. Black.

23 You had an opportunity to review that, but if you need
24 to refresh, please do so.

25 **Q.** What did Mr. Gerber recall about his conversation with

1 Christopher Bryant?

2 A. He could not recall what Christopher Bryant told him
3 about the case. He said he thought that Mr. Bryant was pretty
4 adamant from the beginning that he was going to go to trial. He
5 did not recall if Christopher Bryant ever admitted guilt or told
6 him that he was innocent.

7 Q. What did Mr. Gerber say about the prosecutors?

8 A. He said that Eric Saunders was very skilled and a good
9 prosecutor. He said that Bierne Harding was very competitive and
10 wanted to win when she decided the case was going to be tried. He
11 described them both as hard-nosed.

12 Q. Did you ask Mr. Gerber about the fact that Mr. Bryant's
13 statement was not used at trial?

14 A. Yes. He said that he thought it was because of the fact
15 that the officers had brought up the death penalty to Mr. Bryant
16 when they interviewed him. He said that there was an even chance
17 the case could have been overturned. He said that his argument
18 was that the statement was coerced and he was surprised that the
19 Court allowed it.

20 MS. SMITH: Commissioners, if you'll refer to Handout 42
21 in your hearing handout notebook, that was the affidavit of Nils
22 Gerber which you've already had an opportunity to review over the
23 lunch break.

24 Q. Did the Commission interview Clark Fischer?

25 A. Yes. I interviewed him on the phone on January 29,

1 2020, and this interview was recorded and transcribed.

2 Q. Who did Mr. Fischer represent at trial?

3 A. Jermal Tolliver.

4 Q. What did Mr. Fischer say?

5 A. He said that in general he remembered that he thought he
6 should have won the suppression motion, that Jermal Tolliver's
7 family was difficult, and Jermal Tolliver should've taken the
8 plea.

9 He also said that the other codefendants at their trial
10 got second-degree murder convictions instead of first-degree
11 murder convictions because of Jermal Tolliver. He also described
12 Jermal Tolliver as, quote, "not the greatest communicator in the
13 world," end quote.

14 Q. Did he indicate if he got any records related to Jermal
15 Tolliver such as school records or health records -- mental health
16 records?

17 A. He said he did not remember. He said he did not
18 remember that being much of an issue in the case, and that since
19 it was not a capital case, it was not so important.

20 Q. Did you talk to him about Jermal Tolliver's family?

21 A. Yes. He talked about Jermal Tolliver's family and the
22 fact that his family brought in a representative from the NAACP to
23 talk to Mr. Fischer. He said that he remembered Arlene Tolliver
24 as being angry. He said it was difficult to have a rational
25 discussion with her.

1 And Arlene Tolliver is Jermal Tolliver's mother.

2 **MS. SMITH:** Commissioners, Handout 43 is an excerpt of
3 the recorded and transcribed interview of Mr. Fischer on
4 January 29, 2020. You've also had an opportunity to review that,
5 but if you would like a moment to refresh yourself, please do so.

6 **Q.** Did commission staff talk to the NAACP about their
7 involvement in the case?

8 **A.** Yes. Commission staff spoke to Stephen Hairston, who
9 was the former president of the Winston-Salem/Forsyth chapter of
10 the NAACP on February 14, 2020. Commission staff learned that
11 Mr. Hairston passed away on February 29, 2020.

12 **Q.** What did Mr. Hairston say?

13 **A.** He said that he remembered male family members coming to
14 him but said he did not take up the case because the family that
15 visited him did not indicate that the claimants were innocent,
16 only that a white female should have been arrested.

17 **Q.** Did he recall which family members he spoke to?

18 **A.** He did not recall which of the codefendants' families
19 came to him or which specific family members were there. He did
20 not recall speaking with any female relatives of the codefendants.
21 He only recalled speaking to male relatives.

22 **Q.** Was commission staff able to locate any additional
23 records from the NAACP related to this contact?

24 **A.** No.

25 **Q.** Was the Commission staff able to determine which family

1 members Mr. Hairston spoke with?

2 A. No.

3 Q. What did Mr. Fischer say about the prosecutors in this
4 case?

5 A. He said that they were both, quote, "old-school
6 prosecutors." He said that Eric Saunders was a hard fighter and a
7 zealous advocate for the State.

8 Q. Did you ask Mr. Fischer about Jessica Black?

9 A. Yes. He said that she was a big part of the trial. He
10 said, quote, "She was a lying bitch, and I think the jury
11 certainly had doubts about her. And like I said, that was one
12 where she -- we got her to cry on the witness stand and she was
13 just pathetic and pitiful. I definitely thought she had very
14 limited credibility, if we want to be diplomatic about it, but
15 'lying bitch' would be my blunt assessment," end quote.

16 Q. Did Clark Fischer remember if Jermal Tolliver ever
17 admitted guilt in this case?

18 A. Yes. He said he did not remember it for sure and wished
19 he could give a specific answer. He said that Jermal Tolliver
20 admitted to being with the guys at the park.

21 MS. SMITH: Commissioners, Clark Fischer is on telephone
22 standby if you have additional questions for him at the conclusion
23 of Ms. Bridenstine's testimony about the attorneys who worked on
24 the case. There will be some additional testimony about him in
25 this section.

1 Before we move on to the next attorney, are there any
2 questions so far?

3 **MS. COLBERT:** I mean, I don't know, and maybe this is
4 something we need to ask him, but when you said that he said that
5 the other defendants got second-degree because of Tolliver, what
6 did he mean by that?

7 **THE WITNESS:** He basically said that he thought that
8 Jermal Tolliver appeared to be the least culpable. There was --
9 Mr. Fischer didn't say this, but at the trial testimony, there's
10 discussion about how he was hanging back and wasn't necessarily
11 part of the group the entire day. And he also placed himself as a
12 lookout role.

13 **MR. BRITT:** Several times you've referred that the
14 lawyers said that there were pleas -- a plea offer and they should
15 have taken it.

16 What was the plea offer?

17 **THE WITNESS:** The plea was for second-degree murder and
18 I think second-degree kidnapping. And it's -- it's in your brief.
19 I think the range was something around 15 or 16 years to something
20 higher.

21 (Comments indiscernible to the court reporter.)

22 **MS. NEWTON:** Just quickly. I'm sorry, I didn't make --
23 I'm not clear on Nils Gerber's response to the question of whether
24 his client, Chris Bryant, actually denied or admitted guilt.

25 **THE WITNESS:** He didn't remember.

1 **MS. NEWTON:** Okay.

2 And with regard to Clark Fischer, his client, Jermal
3 Tolliver, what I have is that the lawyer said to the Commission
4 that Tolliver admitted to being with the guys at the park, and
5 that's the limit of his admission.

6 **THE WITNESS:** He said that. He said other things in the
7 interview. There's a handout coming out pretty soon that goes
8 over our conversation where I was trying to determine to what
9 extent he remembered Jermal Tolliver admitting any sort of guilt.

10 **MS. NEWTON:** Okay. Thank you. Oh, one more.

11 Were you-all going to go to Brayboy? I know it's not
12 part of this, but did y'all interview his attorney and whether he
13 admitted or denied?

14 **THE WITNESS:** We did.

15 **MS. NEWTON:** And is that coming up? I didn't want to
16 take --

17 **THE WITNESS:** It is.

18 **MS. NEWTON:** I'll wait.

19 **MS. SMITH:** Commissioners, the information regarding the
20 plea offers is on page 550 of your brief if you wish to refer to
21 that.

22 **THE WITNESS:** And, Mr. Britt, my understanding is they
23 all had the same plea agreement offered to them.

24 **MR. BRITT:** Okay. I just don't recall reading it.

25 **Q.** Did the Commission speak to Thomas Fagerli?

1 A. Yes. Ms. Matoian spoke to him on the phone on
2 February 4, 2020.

3 Q. Was that recorded and transcribed?

4 A. It was.

5 Q. And who did he represent.

6 A. He represented Dorrell Brayboy.

7 Q. What did Mr. Fagerli say?

8 A. He said that he did not recall any of the defendants
9 ever making any statements to their attorneys that would make one
10 think that they were confessing to the crime.

11 He said, quote: "I am shocked that the Innocence
12 Commission is wasting their time looking into this case. I will
13 tell you that. I can't believe it," end quote.

14 He then clarified that his assertion that this was a
15 waste of the Commission's time was based only on his recollection
16 of the facts and evidence against the codefendants and not based
17 on anything that Dorrell Brayboy had told him.

18 He stated that Dorrell Brayboy denied that he had
19 anything to do with the crime. He said that, to his knowledge,
20 all five denied the crime and that he never would've allowed
21 Dorrell Brayboy to deny it on the witness stand if he had ever
22 told him that he had done it.

23 Q. Did he recall anything about the plea agreement?

24 A. Yes. He said that Dorrell Brayboy turned it down and
25 that his family would not discuss it with him.

1 **Q.** Did Mr. Fagerli recall the case?

2 **A.** Yes. He discussed some of the things that he remembered
3 at the case and at the trial. He recalled hearing that Jessicah
4 Black's testimony was compelling during the first trial but said
5 she was less compelling during Dorrell Brayboy's trial, which was
6 the second trial.

7 He also recalled going to the crime scene with Nils
8 Gerber, Clark Fischer, and a girl working for the *Winston-Salem*
9 *Journal*. He said that Mr. Fischer went to the carport and the
10 rest sat at the picnic tables at Belview Park. Mr. Fischer
11 started yelling and he said that they could all hear what he was
12 saying.

13 **Q.** Did Mr. Fagerli remember the correct details of the
14 crime?

15 **A.** No, not all of them. He recalled that Jermal Tolliver
16 led the police to the missing wallet of the victim's and that the
17 police recovered it. He said that it was damning evidence against
18 Jermal Tolliver.

19 **Q.** And remind the commissioners, was the wallet ever
20 located?

21 **A.** No. It was never located.

22 **MS. SMITH:** That concludes the section on the trial
23 attorneys, if there is any additional questions about the trial
24 attorneys.

25 **MR. EDWARDS:** Are you going to get to Exhibits 50

1 and 51, which are phone calls with Nils Gerber and Clark Fischer
2 that -- there was a memo done by Cheryl Sullivan? Are y'all going
3 to talk about that?

4 **MS. SMITH:** We are.

5 **MR. EDWARDS:** All right.

6 **Q.** I will turn your attention now to the appellate
7 attorney.

8 After the trial, were appeals filed on behalf of the
9 defendants?

10 **A.** Yes. They were all appointed counsel who all filed
11 appeals on their behalf.

12 **Q.** And were those appeals denied?

13 **A.** Yes. All five were denied.

14 **Q.** Did the Commission speak to the attorneys who
15 represented the claimants on appeal?

16 **A.** Yes. We also obtained affidavits from each attorney.
17 In general, they did not have a file or recall any conversation
18 with the defendants in this case about whether they claimed
19 innocence or admitted guilt. However, James Parish, who
20 represented Jermal Tolliver, stated that Jermal Tolliver
21 maintained his complete factual innocence in this case.

22 **MS. SMITH:** Commissioners, Handout 44 in your notebooks
23 is the affidavits of the appellate attorneys in the case. You've
24 had time to review those over the lunch break but if you want to
25 refresh, please certainly take a moment to do that.

1 Are there any questions about the appellate attorney
2 affidavits?

3 (No response.)

4 Q. Did anyone represent the defendants after the appeals
5 were denied?

6 A. Yes. Several attorneys with the North Carolina Prisoner
7 Legal Services represented Nathaniel Cauthen and Rayshawn Banner.
8 They filed motions for appropriate relief based on the changes in
9 the law due to the U.S. Supreme Court decisions that were issued
10 in 2010 and 2012.

11 The first case, *Graham versus Florida*, held that
12 juvenile offenders cannot be sentenced to life imprisonment
13 without parole for nonhomicide cases.

14 The second case, *Miller versus Alabama*, held that
15 mandatory sentences of life without the possibility of parole are
16 unconstitutional for juvenile offenders. This ruling applied to
17 juveniles who had been sentenced to life without parole in murder
18 cases.

19 Q. As result of those cases, were the life without parole
20 sentences for Nathaniel Cauthen and Rayshawn Banner overturned?

21 A. Yes. They have both been resentenced to life with the
22 possibility of parole.

23 Q. Did anyone else from North Carolina Prisoner Legal
24 Services represent any of the other defendants?

25 A. Yes. Beth McNeill represented Christopher Bryant

1 beginning in 2007. She did not file any postconviction motions on
2 his behalf.

3 MS. SMITH: Commissioner, Handout 45 is the affidavit of
4 Beth McNeill which you have had an opportunity to review.

5 Q. Did the Commission speak to any of the other attorneys
6 who worked at Prisoner Legal Services?

7 A. Yes. We spoke to all of the attorneys who have worked
8 on these cases. Beth McNeill said that Christopher Bryant never
9 admitted guilt and always maintained innocence to her. The other
10 Prisoner Legal Services attorneys said that they did not discuss
11 the underlying case with Rayshawn Banner and Nathaniel Cauthen
12 because they were solely focused on changing their sentences.

13 Q. Did you review the motions for appropriate relief filed
14 on behalf of Rayshawn Banner and Nathaniel Cauthen?

15 A. Yes.

16 Q. Did any of those motions for appropriate relief discuss
17 the facts of the case?

18 A. Yes. The motions for appropriate relief filed on behalf
19 of both Rayshawn Banner and Nathaniel Cauthen in 2011 by the North
20 Carolina Prisoner Legal Services attorney, Vernetta Alston, were
21 based solely on the *Graham versus Florida* decision. These motions
22 appeared to suggest that both Rayshawn Banner and Nathaniel
23 Cauthen had participated in some way in the crime.

24 Nathaniel Cauthen's motion for appropriate relief
25 contains some quotes from Nathaniel Cauthen when he was originally

1 sentenced. The motion made it sound as though he accepted some
2 responsibility. We have the complete transcript from that trial
3 and he never accepted responsibility.

4 Nathaniel Cauthen's motion for appropriate relief
5 contained an affidavit signed by his mother. There was one that
6 was signed by his older brother that was not made a part of that
7 MAR but was in the Prisoner Legal Services file.

8 **MS. SMITH:** Commissioners, as I previously noted before
9 lunch, Handout 46 is a copy of the motion for relief for Nathaniel
10 Cauthen with the affidavit of Teresa Ingram, Nathaniel Cauthen's
11 mother, as well as the affidavit of Ava Williams Boulware. This
12 handout does not include the other attachments or exhibits that
13 were filed with the MAR as they were very extensive. However,
14 they are certainly available if you-all would like them.

15 Handout 47 is a copy of the affidavit of Joseph Cauthen,
16 Nathaniel Cauthen's brother. That affidavit, as Ms. Bridenstine
17 just testified, was in the PLS file but was not filed with the
18 motion for appropriate relief.

19 Handout 48 is the copy of the motion for appropriate for
20 Rayshawn Banner with the affidavit of Ava Williams Boulware
21 attached. This handout also does not include the other
22 attachments or exhibits that were filed with the MAR, again, as
23 they were extensive. Those are available to you if you wish to
24 see them.

25 As I stated before, the motions for appropriate relief

1 were related to the sentencing issues. We did provide those to
2 you for review over the break. And I included specific portions
3 related to any admissions that they appear to have in them.

4 Q. Ms. Bridenstine, did you speak to Vernetta Alston about
5 her representation of Nathaniel Cauthen and Rayshawn Banner on the
6 motions for appropriate relief?

7 A. Yes, I did.

8 Q. What did she say?

9 A. She said she remembered meeting both Rayshawn Banner and
10 Nathaniel Cauthen one time. She said that neither admitted to any
11 involvement in the crime, but she could not say if either
12 explicitly claimed innocence to her.

13 She said that she drafted all of the affidavits that she
14 prepared for the motions for appropriate relief including the
15 affidavit signed by Nathaniel Cauthen's mother, Teresa Ingram, who
16 by Teresa Foley then, and his brother, Joseph Cauthen. She said
17 that she spoke with both of them.

18 She did not recall either Nathaniel Cauthen or Rayshawn
19 Banner giving her permission to put in a pleading that they bore
20 some responsibility for this crime.

21 MS. SMITH: Commissioners, Handout 49 in your notebooks
22 is the affidavit that Ms. Alston provided to the Commission.
23 You've had an opportunity to review that over the lunch break.

24 Q. Did you ever speak with Vernetta Alston about the
25 affidavit that Teresa Ingram signed?

1 A. Yes. She said that she did not recall Teresa Ingram
2 ever telling her that she thought her son Nathaniel Cauthen had
3 responsibility related to the crime.

4 Q. Did you ever speak with Ms. Alston about the affidavit
5 that Joseph Cauthen signed it?

6 A. Yes. She said that she did not recall the specific
7 exchanges of their conversation, but she remembered speaking to
8 him. She stated that the language in both affidavits was
9 specifically geared toward supporting the *Graham* legal issue. She
10 said that she wanted to make the *Graham* claim as strong as
11 possible, which dealt with the level of culpability and the
12 rehabilitative potential of youth and that the motion did not deal
13 with the validity of their convictions.

14 Q. Did you ask Teresa Ingram about the affidavit?

15 A. Yes. I asked her about it during her interview on
16 January 8, 2020, and showed it to her. She said that she did not
17 type it.

18 Q. Why did you ask her about the affidavit?

19 A. I asked her about the part of the affidavit that stated
20 she understood that Nathaniel Cauthen had to be held responsible
21 for his conduct because the affidavit made it sound like she
22 agreed that Nathaniel Cauthen should be punished for the crime.

23 I asked her if it was her intent to make it appear like
24 she thought Nathaniel Cauthen bore some sort of responsibility for
25 Mr. Jones' death. She said, quote: "Never."

1 She said that she feels that she is fair and that if you
2 did a crime, you should bear responsibility for it, but she did
3 not think that either Nathaniel Cauthen or Rayshawn Banner had any
4 sort of responsibility for Mr. Jones' death.

5 Q. Did you ask Joseph Cauthen about his affidavit?

6 A. Yes. I asked him about his affidavit during his
7 interview on January 8, 2020, and I also showed it to him.

8 Q. Why did you ask Joseph Cauthen about the affidavit?

9 A. I read out part of the affidavit to him where there was
10 a part of a paragraph that made it sound as if his brothers had
11 participated in the crime. The paragraph in question is, quote:
12 "I do not think that Nathaniel or Rayshawn understood the
13 consequences of participating in the assault of Mr. Jones. I was
14 at their trial, and based on my observations, it did not seem that
15 the boys had a grasp of the kind of time they would and did
16 receive. I remember that they thought that something -- that
17 someone would believe they were innocent and that they would get
18 to go home," end quote.

19 I asked him if either of his brothers had ever admitted
20 to any sort of participation in the crime or knowledge about the
21 crime. He said, no, and that when he signed the affidavit, he did
22 not realize he was suggesting that.

23 Q. Did the Commission ever receive any communication from
24 Nathaniel Cauthen about his motion for appropriate relief?

25 A. Yes. He wrote a letter to the Commission in April of

1 2019. In this letter, he stated that a reporter had drawn his
2 attention to the motion for appropriate relief and had sent him a
3 copy of it. He stated that the motion for appropriate relief was
4 different from the one he thought had been filed. He said it went
5 against his innocence plea.

6 Q. Did the Commission obtain files from Prisoner Legal
7 Services for both Rayshawn Banner and Nathaniel Cauthen?

8 A. Yes, we did.

9 Q. And did either file contain any indication that either
10 Rayshawn Banner or Nathaniel Cauthen admitted guilt in this case?

11 A. No. Nathaniel Cauthen's file was much more extensive
12 and contained several letters and notes from conversations with
13 him. It also contained the attorney file for Teresa Hier, who
14 represented him prior to trial and at trial. He always maintained
15 his innocence in all of the materials that we reviewed.

16 Prisoner Legal Services started out only representing
17 Nathaniel Cauthen, but they decided to file a motion for
18 appropriate relief for Rayshawn Banner as well based on the
19 Supreme Court decision in the *Graham* case. Vernetta Alston
20 explained that they did that because they were worried about a
21 possible time bar coming up and they wanted to make sure it was
22 filed for the brother in time as well.

23 Prisoner Legal Services only represented Rayshawn Banner
24 on the sentencing issue. They had an outside attorney review his
25 case for any other possible legal issues due to the fact that they

1 were representing both brothers and did not want to create a
2 conflict of interest.

3 Q. And who reviewed [sic] Rayshawn Banner for these other
4 legal issues?

5 A. Mark Montgomery, an attorney in Durham. I have spoken
6 with him and he said that he did not speak to Rayshawn Banner
7 about the case and he did not find any other postconviction
8 issues.

9 MS. SMITH: Commissioners, any question about the PLS
10 representation of Nathaniel Cauthen and Rayshawn Banner and
11 limited Christopher Bryant?

12 MR. EDWARDS: Is that dealing with the motion for
13 appropriate relief? Is that what you mean? PLS?

14 MS. SMITH: Yes. PLS.

15 MR. EDWARDS: Legal services, okay.

16 Ms. Bridenstine, in regard to the motion for appropriate
17 relief -- motions, plural, that were filed, I get that Ms. Alston,
18 I think was her name, her goal was to help with the sentencing
19 aspect and she was trying to present, I guess, her client in the
20 most favorable light. I understand that.

21 But you testified that her motion for appropriate relief
22 appears to suggest her client's involvement. Doesn't it in fact
23 state -- I mean, the defendant's lawyer that motion in fact states
24 that they were involved.

25 THE WITNESS: It does.

1 **MR. EDWARDS:** And these motions were filed in -- I
2 believe motions for appropriate relief in 2011, when Nathaniel
3 Cauthen's mother and brother -- other brother signed affidavits.
4 Of course, there was no hearing or proceeding before this
5 Commission at that point; correct?

6 **THE WITNESS:** That's correct.

7 **MR. EDWARDS:** So now, they file a claim with the
8 Commission and you interview them, of course now they say that,
9 oh, they never said that -- "my brother never said he was
10 involved"; correct?

11 **THE WITNESS:** That's correct. I spoke with them in
12 January.

13 **MR. EDWARDS:** So in 2011, Nathaniel Cauthen's other
14 brother and mother saying he needs to be punished for his conduct,
15 he just doesn't need to have life without parole. But now,
16 present day, they say, "Oh, he wasn't involved at all."

17 **THE WITNESS:** So they said that they didn't draft those,
18 and Vernetta Alston explained that she drafted them and presented
19 them to them. And she said that she did not remember either of
20 them saying that they believed that their brother and Teresa's
21 sons had any sort of responsibility in this case.

22 Vernetta Alston also told me that the way that she
23 approached this was that she was going to treat the trial record
24 like it was true and she was going to file the motion based on
25 that because it was her goal to get them a life with the

1 possibility of parole since they were facing life without the
2 possibility of parole.

3 What happened procedurally is after these were filed,
4 the *Miller* case came down and Prisoner Legal Services, through
5 other attorneys, ended up filing subsequent motions for
6 appropriate relief under the *Miller* case, but they were using
7 *Graham*, and the way that the *Graham* case was geared towards the
8 nonhomicide cases and trying to apply it to this case, and what
9 she said was that she was doing it with the assumption that
10 everything that she read in the trial record was true.

11 She also said that she did not have an opportunity, she
12 didn't think, to get a copy of the discovery. She seemed to
13 remember that she went to the Forsyth County's office at one time
14 and was able to review it with a paralegal. They did not have
15 everything in their possession when I reviewed it. They had some
16 partial transcripts -- they had the motions to suppress and they
17 had some of the discovery from Teresa Hier -- but they did not
18 have the full discovery.

19 **MS. NEWTON:** Just following up on that, these two
20 motions for appropriate relief filed in Forsyth County were
21 Nathaniel Cauthen's case and Rayshawn Banner's case, were filed
22 three days apart and the substantive language related to guilt in
23 both of these motions are almost the same.

24 I mean, it looks like the same motion. Would you agree
25 with that characterization?

1 **THE WITNESS:** Yes.

2 **MS. ESSARY:** And in these motions that seem to talk
3 about guilt, at the same time, the offer talks about techniques
4 used by the police as being potentially coercive.

5 How do you -- why was that in there if she's in fact
6 saying that she followed as true what happened in the trial? I'm
7 confused.

8 **THE WITNESS:** She did say during the interview that she
9 remembered thinking that there was a coercion issue with the
10 statements, that rang a bell for her when I met with her. So I
11 don't know if that's why that's in there fair. But that is --

12 **MS. ESSARY:** It is quite extensive, both motions.

13 **THE WITNESS:** And there are notes indicating that
14 somebody at Prisoner Legal Services was looking at the statements.

15 **MS. ESSARY:** Okay.

16 **MS. COLBERT:** So Ms. Alston's affidavit that she wrote,
17 I mean, she indicates in here what you're saying, but it
18 doesn't -- in regard to conversations she had, you know, with the
19 defendants around whether they had said that they were -- that she
20 said, in number 6, that these motions were not based on an
21 innocence claim, and I had not -- well, second one, when she said
22 they didn't admit any involvement in the death, but it doesn't go
23 to the other -- other affidavits from the mother or the brother,
24 where she's saying that they just signed and didn't read them?

25 **THE WITNESS:** Did Vernetta Alston say that?

1 **MS. COLBERT:** Yeah. Because you were saying that they
2 just --

3 **THE WITNESS:** She said that she drafted them but she had
4 conversations with them. She didn't say that, you know, she just
5 had them sign them after reading them. She didn't remember
6 specifics of her conversation, but when she looked at them, she
7 said that she drafted those. And that's also what Joseph Cauthen
8 and Teresa Ingram said, is that they didn't type those.

9 **MS. COLBERT:** But they signed them --

10 **THE WITNESS:** Yes.

11 **MS. COLBERT:** -- right?

12 **THE WITNESS:** Yes.

13 **MS. COLBERT:** But in her affidavit, she doesn't have to
14 speak to that issue either; she just speaks to the issue around
15 the defendants.

16 **THE WITNESS:** That's correct.

17 And I'll say for Nathaniel Cauthen's file, which was
18 much more extensive, there are multiple places in letters where he
19 is talking about his case and that he is innocent, and they appear
20 to correspond with the time when Vernetta Alston was representing
21 him.

22 **MS. COLBERT:** So in essence what she's saying is -- I
23 mean, I'm not a lawyer but help me understand this -- is that what
24 she filed with the Court was not correct? I mean, I don't -- what
25 is a motion for appropriate -- I mean, it's supposed to be

1 factual, right, but now she's saying that it wasn't factual?

2 I mean, is that what this affidavit said? Because it
3 seems in direct conflict with the actual motion. I mean, she's
4 saying, "Okay, I did file that, but the reason why I filed it that
5 way was because I was trying to get them not to have the death
6 penalty," right, "because they were juveniles and these cases
7 allowed me to do that." But then it says that neither one of them
8 admitted involvement, but then the MAR says they did; right?

9 MS. SMITH: Ms. Colbert, I don't know that
10 Ms. Bridenstine can characterize what Ms. Alston --

11 MS. COLBERT: Well, what I'm asking you is, is that in
12 this -- am I reading this right? That the MAR says in the motion
13 that she filed that they were involved but then the affidavit says
14 that she's saying that they're not in -- they did not admit that
15 to her.

16 MS. SMITH: I think you can answer that, Julie.

17 THE WITNESS: That's correct.

18 MS. COLBERT: And so this directly contradicts the MAR,
19 even just those sentence -- that paragraph where it says they
20 didn't admit it, but this one says, when she filed the motion,
21 that they were involved.

22 THE WITNESS: Correct.

23 MS. NEWTON: May I --

24 MS. SMITH: I'm going to the Judge Lock --

25 JUDGE LOCK: To some extent, these are issues that

1 perhaps we should discuss during deliberations as opposed to
2 asking Ms. Bridenstine to answer.

3 I mean, it's up to us to read and interpret these
4 documents.

5 MS. SMITH: Thank you.

6 Any other questions?

7 Q. Ms. Bridenstine, did any of the defendants apply to any
8 other organizations postconviction?

9 A. Yes. Christopher Bryant, Nathaniel Cauthen, Jermal
10 Tolliver, and Dorrell Brayboy all applied to the North Carolina
11 Center on Actual Innocence.

12 Christopher Bryant and Nathaniel Cauthen submitted
13 affidavits to the Wake Forest Innocence and Justice Clinic, and
14 Mark Rabil who runs that clinic told the Commission that they did
15 not work on the Nathaniel Cauthen's case because he was
16 represented by Prisoner Legal Services at the time.

17 He said that they did not work on Christopher Bryant's
18 case because Mr. Rabil was on the board of Darryl Hunt's Project
19 for Freedom and Justice, and because at the time they were talking
20 to Chris Paul's foundation about fundraising efforts, Mr. Rabil
21 declined to work on Christopher Bryant's case.

22 Q. Did the Commission obtain and review the documents from
23 the Wake Forest Innocence and Justice Clinic related to
24 Christopher Bryant and Nathaniel Cauthen?

25 A. Yes.

1 **Q.** Did the Commission obtain and review the North Carolina
2 Center on Actual Innocence files for those four defendants?

3 **A.** Yes.

4 **Q.** Did those files have all the police reports and
5 transcripts that were generated this case?

6 **A.** No. They were incomplete. They did not include the
7 complete discovery, trial transcripts, or motion to suppress
8 transcripts.

9 **Q.** Did the Center on Actual Innocence files contain
10 information that led to follow-up investigation for the
11 Commission?

12 **A.** Yes. The files for Jermal Tolliver and Christopher
13 Bryant contained memos written by Cheryl Sullivan, an attorney
14 with the North Carolina Center on Actual Innocence. They were
15 concerning phone calls she had with the trial attorneys who
16 represented Jermal Tolliver and Christopher Bryant, who were Clark
17 Fischer and Nils Gerber.

18 **MS. SMITH:** Commissioners, Handouts 50 and 51 are those
19 two memos that Ms. Sullivan wrote concerning her phone calls with
20 Nils Gerber and Clark Fischer. You have had an opportunity to
21 review that. I've got some questions for Ms. Bridenstine related
22 to that, but that I understand that Mr. Edwards may have a
23 question as well after that.

24 **Q.** Did commission staff interview attorney Cheryl Sullivan
25 and Ms. Mumma?

1 A. Yes. Commission staff interviewed Ms. Sullivan on
2 February 17th, 2020, and for Ms. Mumma in person on February 26,
3 2020.

4 Q. And were both of those interviews recorded and
5 transcribed?

6 A. Yes.

7 Q. Did the Commission staff speak to Cheryl Sullivan
8 specifically about these memos related to the phone calls with
9 Mr. Gerber and Mr. Fischer?

10 A. Yes. Regarding the phone call with Mr. Gerber and
11 Mr. Fischer, Ms. Sullivan indicated she would not have written
12 down something either man didn't say. These calls were not
13 recorded as the Center does not typically record things.

14 She could not remember specifics to these calls but she
15 said that she would either type as she went during phone calls
16 like these or she would take notes that would later get turned
17 into a memo. And that would usually be done within 24 hours.

18 Ms. Mumma also stated that she had never had an issue
19 with Ms. Sullivan putting something in a report that was not true.

20 Q. Did she indicate -- Ms. Sullivan, did she indicate
21 whether Mr. Gerber or Mr. Fischer had told her that their clients
22 had confessed?

23 A. Ms. Sullivan stated that if either had said something
24 like that to her, she would have worded that specifically in her
25 memos.

1 **Q.** What else did representatives from the Center tell us
2 about that phone call with Mr. Gerber?

3 **A.** Commission staff had noted that the Center closed
4 Mr. Bryant's case the same day as the phone call with Nils Gerber.
5 The Commission asked both Ms. Mumma and Ms. Sullivan if that phone
6 call influenced the decision to close the case. Both of them said
7 it did not.

8 They did not close any of the codefendants' cases
9 because they found additional information that they were guilty.
10 They said that they closed their cases because they didn't have
11 any additional avenues to pursue.

12 **Q.** Did you ask Mr. Gerber about any conversations he had
13 with the Center on Actual Innocence?

14 **A.** Yes. He said that he did not ever recall saying he was
15 pretty certain that the boys were guilty.

16 **MS. SMITH:** Commissioners, Handout 52 in the notebook is
17 an excerpt from the deposition interview of Mr. Gerber dated
18 January 16, 2020. You've had an opportunity to review that over
19 the break, but if you would like a few moments to refresh on that,
20 please do so.

21 **Q.** Did you ask Mr. Fischer about any conversations he had
22 with the North Carolina Center on Actual Innocence?

23 **A.** Yes. He said that he did not specifically remember his
24 conversation with Cheryl Sullivan but that he probably did tell
25 her that innocence was not an issue in this case.

1 **MS. SMITH:** Commissioners 53, is the excerpt from the
2 recorded and transcribed interview of Mr. Fischer on January 29,
3 2020, related to this issue. You've had an opportunity to review
4 that, but if you would like a few moments, please refresh.

5 **Q.** What else did Ms. Sullivan tell the Commission?

6 **A.** She said that a memo related to her interview of Jermal
7 Tolliver indicated that she had told -- that she had told
8 Mr. Tolliver that she had charted out the codefendants'
9 confessions and that they were consistent.

10 **MS. SMITH:** Commissioners, that memo is located on pages
11 2017 to 2019 of your brief.

12 **Q.** What did Ms. Sullivan say about that statement?

13 **A.** She stated that she had charted out their statements but
14 did not give the fact that she believed the statements to be
15 consistent any weight because she had later learned that police
16 played some of the codefendants' recordings of others.

17 **Q.** Did the Center ever interview Rayshawn Banner?

18 **A.** Yes. Chris Mumma interviewed Rayshawn Banner on
19 July 24, 2012.

20 **MS. SMITH:** Commissioners, that interview can be found
21 on pages 2014 to 2016 of your brief.

22 **Q.** Ms. Bridenstine, what can you tell commissioners about
23 that interview?

24 **A.** The memo from Ms. Mumma includes a sentence that says,
25 quote: "He is a pleasant person but definitely sends the message

1 that he can't be trusted," end quote.

2 The Commission asked Ms. Mumma what she meant by this
3 statement during our interview.

4 Q. And what did she say about that?

5 A. She said that she meant that Mr. Banner was a tough guy
6 and was reserved on disclosing things because he didn't trust
7 anyone.

8 Mr. Banner also had things wrong at that point and
9 believed that some of his codefendants had taken pleas.
10 Mr. Banner had a lot of anger at the time and is very different
11 now.

12 Q. Did either Ms. Mumma or Ms. Sullivan indicate that any
13 of the codefendants had ever admitted guilt to them?

14 A. No, they did not.

15 MS. SMITH: All right.

16 Commissioners, if you have any questions for
17 Ms. Bridenstine about the Center on Actual Innocence
18 investigations.

19 (No response.)

20 MS. SMITH: Commissioners, does anyone want to hear from
21 Clark Fischer, attorney Clark Fischer?

22 If not, I would just ask that he be released from his
23 subpoena.

24 MR. EDWARDS: I don't, but I would like to have another
25 question for Ms. Bridenstine.

1 **MS. SMITH:** Of course.

2 **MR. EDWARDS:** Going back to the motion for appropriate
3 relief which is Exhibit Number 46, Bates stamp page 13, the middle
4 paragraph, the attorney states: "In considering the
5 proportionality of the punishment imposed on Nathaniel, it is
6 important to consider first, that he did not intend to kill
7 Mr. Jones."

8 And this next sentence is my question. "He stated
9 repeatedly in his statements to law enforcement and in open court
10 during his trial that he did not intend to kill anyone (Trial
11 Transcript Volume 9, page 146.) He did not know what Mr. Jones --
12 he did not know that Mr. Jones was hurt badly as a result of the
13 assault."

14 So my question is: Is there some statement in the trial
15 transcript where -- or maybe even after he was convicted at
16 sentencing or at some point -- did he testify and say, "I never
17 intended to kill him"?

18 **THE WITNESS:** He never admitted guilt. He did speak at
19 sentencing, and we have that transcript and we could provide it to
20 you. I can't quote it off the top of my head, but I have looked
21 at that, and that's why earlier I said that she took some of those
22 quotes from that, but they're not the complete statement.

23 **MR. EDWARDS:** Well, so if -- I guess trial transcript
24 volume 9, 146, if he said to the judge after the trial, "I didn't
25 intend to kill him," I would like to see that if you have it.

1 **THE WITNESS:** And I can't tell you, Mr. Edwards, if
2 those exact words were used but we can get that portion of the
3 transcript.

4 **MR. EDWARDS:** Okay. Thank you.

5 **MS. SMITH:** We will do that over the next break and have
6 it ready for you this afternoon.

7 Can we release Mr. Fischer?

8 **JUDGE LOCK:** Any objection?

9 (No response.)

10 **JUDGE LOCK:** Please do.

11 **MS. SMITH:** Thank you.

12 We're going to move into another section. Do you want
13 to take a break before we do that or would you like to keep
14 moving?

15 **JUDGE LOCK:** How long do you think the next section will
16 take?

17 **MS. SMITH:** It's a pretty lengthy section but I can stop
18 in the middle of it. So it's up to you how you want to handle it.

19 **JUDGE LOCK:** Let's go another 20 minutes or so.

20 **MS. SMITH:** Okay. We will do that.

21 (Comments indiscernible to the reporter.)

22 **MS. SMITH:** Commissioners, we are moving into the law
23 enforcement section of the hearing. Officers have been placed
24 under telephone standby today to be available by phone if you have
25 any additional questions for them at the conclusion of

1 Ms. Bridenstine's testimony.

2 I know that we've already had some requests for some of
3 the officers who interviewed Ms. Black. We probably will not make
4 them available to you today but we'll try to have them available
5 in the morning so that as we go through this, if you know there's
6 an officer you want to hear from, you can let us know. Also,
7 because you're going to be listening to those audio recordings
8 over the evening recess, if there are other officers you wish to
9 hear from that you think of this evening, if you can send me an
10 e-mail or give me a call, we will make sure to have everybody
11 ready to go tomorrow on the phone or screen if we can get them on
12 a screen.

13 Q. Ms. Bridenstine, did commission staff interview law
14 enforcement officers who worked on this case?

15 A. Yes. We deposed 12 current and retired law enforcement
16 officers and we interviewed four retired law enforcement officers
17 who all worked on this case. All of these interviews and
18 depositions were recorded and later transcribed.

19 Q. Remind the Commissioners who the lead investigator was
20 in this case?

21 A. Detective Mark Griffin.

22 Q. I'm going to turn your attention now to the
23 Winston-Salem Police Department's general documentation and police
24 practices.

25 Did those officers tell you anything about their

1 training on interviews and interrogations?

2 A. Yes. In general, they indicated that they had received
3 training on interviews and interrogations through state courses
4 such as the North Carolina Justice Academy's training on
5 interviews and interrogations or through community college courses
6 and the Police Law Institute. Many of the detectives said that
7 they had received training on the job and learned how to interview
8 people through watching other detectives.

9 Detective Rowe, Mike Rowe, said he'd received training
10 on the Reid Technique prior to this case. He also said that
11 others at the Winston-Salem Police Department had also received
12 training on the Reid Technique but he did not know specifically
13 who.

14 Q. Did the Commission ask about law enforcement's practices
15 related to how they interviewed a witness versus how they
16 interviewed a suspect?

17 A. Yes. Most of the officers said that there was not a
18 difference in the way you would conduct an interview of a suspect
19 versus an interview of a witness unless the suspect was in
20 custody.

21 Detective Rose said that the information you were
22 looking for was different and that the questions would be
23 different. He said he would treat the person the way he would
24 want to be treated.

25 Detective Nieves said that the difference with suspects

1 is that you already have the information and you're trying to find
2 out what caused them to commit the crime.

3 Detective Clark said that he tried to get people to come
4 to the police station voluntarily and that cooperation was better
5 for police because they did not have to inform people of their
6 rights.

7 Sergeant Byrom said that he would try to let witnesses
8 and suspects do most of the talking and find out as much as he
9 could while taking good notes. He would try not to have a
10 preconceived notion in his head and ask questions to fit that
11 narrative. He said that he would use the good cop/bad cop
12 technique even if it was a single interview. He said that this
13 was common in the department and he used this technique on
14 Nathaniel Cauthen.

15 Randy Weavil, who was Lieutenant Weavil at the time,
16 said that he would let suspects know that he knew certain things,
17 quote, "without telling too much of the case," end quote.

18 Q. Did commission staff ask about law enforcement's
19 practices related to how they interviewed juveniles versus how
20 they interviewed adults?

21 A. Yes. In general, the police officers said that the only
22 difference was that sometimes parents or guardians had to be
23 present or give their consent and there were certain procedures
24 for custodial interviews.

25 Detective Smith said that an interview of a juvenile

1 would be less confrontational.

2 Detective Rose said that he would try to use shorter
3 words and sentences so a child would understand.

4 Lieutenant Weavil said that there was no difference in
5 how we would talk to them and said, quote, "I don't care how old
6 you were in the interview room," end quote.

7 Q. Did commission staff ask about how many officers would
8 usually be present for an interview?

9 A. Yes. The practice was to conduct interviews in teams of
10 two. One officer would usually take the lead, and the other would
11 take notes. The lead officer would be the one asking questions.
12 This was not a rule, but was, rather, a practice at the
13 Winston-Salem Police Department at the time.

14 Q. Were there any other practices that you learned about
15 from those interviews and depositions?

16 A. We asked the officers about the process of generating
17 reports. They stated that reports were typed at a later date
18 which was sometimes months later. The date on the report
19 reflected the date the report was either written or it was
20 finalized that day. These reports were based on a combination of
21 memory, field notes, and any written or taped interviews that they
22 had done with witnesses or suspects.

23 At the time of this case, which was back in
24 November 2002, officers did not have to turn their notes in to the
25 records management department to be placed with the main case

1 file. Many officers did not know what happened to their field
2 notes in this case. Some officers said in general they destroyed
3 their notes after they typed their reports, and some said that
4 they gave their notes to the case detective.

5 Q. Did the policy regarding the recording of a suspect,
6 witness, and victim interviews change at the Winston-Salem Police
7 Department sometime after this case?

8 A. It did. And the practice in 2002 regarding the
9 recording of interviews was at that time officers were not
10 required to record the entire interview. The practice was to do
11 an interview and take a taped statement, either written or
12 recorded, at the end of the interview.

13 Many of the officers said in their depositions and
14 interviews that the police department did not have the equipment
15 at the time to record the entire interview.

16 Q. I'm sorry. Did the policy change at some point?

17 A. And it did. It changed starting in 2007, where officers
18 were required at that point to record the entire interview. None
19 of the officers that we spoke to knew what caused this policy to
20 change, but Sergeant Byrom and Detective Nieves thought the policy
21 was related to the way a previous case was handled at the
22 Winston-Salem Police Department and that that recommendation came
23 as a result.

24 Q. Did you talk to the officers about how they knew when it
25 was time to record someone they were interviewing?

1 **A.** Yes. Generally, the officers said that they would
2 record once they had determined that the person that they were
3 interviewing was either involved or they had gone over everything
4 that a witness knew in a case. They would tape at the conclusion
5 of the interview and that this recording could include denials or
6 confessions by suspects.

7 Detective Flynn said that the practice was to, quote,
8 "read through the lies or the untruths and the BS and then record
9 the statement that the suspect wanted to provide going forward,"
10 end quote. He said that they would know when to start recording
11 once they felt like they were telling the truth or that they were
12 sticking with a story.

13 Sergeant Byrom said during his deposition that some
14 detectives would, quote, "go in and not record their conversations
15 after one or two interviews and then, when they finally get what I
16 would refer to as the 'take that they want,' kind of like a
17 director," end quote.

18 **MS. SMITH:** Commissioners, if you will refer to
19 Handout 54 in your hearing handout notebooks, this is an excerpt
20 from the February 19, 2020, deposition of Mike Rowe. This excerpt
21 is related to his description of when he knew it was time to start
22 recording an interview. If you'll take a few moments to read
23 that.

24 **Q.** Ms. Bridenstine, did any of the officers discuss who the
25 suspects were in this case prior to the codefendants?

1 A. Yes. Detective Rose said that he interviewed Ava
2 Williams, who said that she drove by the victim's house from 6:15
3 to 6:30 p.m. and that she saw someone she did not recognize
4 sitting in the victim's Lincoln in the carport.

5 Ava Williams reported she saw neighbor Brian Lindsay
6 loitering on Moravia Street at the time. She also informed
7 Detective Rose of a drug house across the street from the victim
8 and people in the area who she believed were drug users.

9 Detective Rowe said that he interviewed Terrence Jones
10 and Reggie Thomas as potential suspects. He had learned some
11 information that a family member of the victim had reported having
12 suspicions regarding a former employee of the victim named
13 Reginald. He said that following those interviews, Terrence Jones
14 and Reggie Thomas were no longer suspects.

15 Detective Rowe also stated that the police were looking
16 at similar crime patterns and learned of a crack house across the
17 street from the victim's house. This fact piqued their interest
18 because it would mean that a lot of people were coming and going
19 into that house.

20 Detective Rowe also said that there was a potential
21 suspect early on who was an identified Hispanic male. This is a
22 person that Arnaldi "BJ" Lowery reported he saw running from the
23 backyard of the victim's house into Belview Park on the night of
24 the crime. He said that this unidentified person was eliminated
25 as a suspect when the five defendants were arrested because the

1 time frame was wrong and the defendants were black.

2 Many of the officers stated that they were not aware of
3 any suspects prior to the defendants in this case, and Detective
4 Griffin, who was the lead detective, said that there were no
5 suspects in this case prior to the arrest of the five defendants.
6 He said he did not remember who eliminated the Hispanic male as a
7 suspect and did not recall any information related to the crack
8 house or the former employee.

9 Q. Did you ask the officers if any of the defendants were
10 suspects in the case prior to November 19, 2002?

11 A. Yes. No one was aware of any of the defendants being
12 suspects in this case prior to the time when Arlene Tolliver,
13 Jermal Tolliver's mother, called Detective Rose on November 19,
14 2002.

15 Q. Were any of the officers familiar with Arlene Tolliver
16 on November 19, 2002?

17 A. Yes. Detectives Rose, Nieves, and Poe all said that
18 they were familiar with Arlene Tolliver.

19 Detective Rose said that he had met her during a canvass
20 of the neighborhood the week before this case regarding some
21 robberies he was working on with three to four other detectives.
22 He said that he gave Arlene Tolliver his business card after he
23 knocked on her door and the Detective Poe took a BB pistol from
24 Arlene Tolliver that she said belonged to Jermal Tolliver that she
25 asked the police to have destroyed.

1 Detective Nieves said he remembered this canvass and
2 Detective Rose making contact with Arlene Tolliver in the week
3 before this homicide because he was present and he saw her.
4 Detectives Rose and Flynn were taking the lead on investigating
5 these robberies in the south side of Winston-Salem.

6 Detective Poe said that days prior to this case, he was
7 with Detectives Nieves, Rose, and Flynn. They were looking for
8 four to five guys who were committing robberies. He said he knew
9 it was based around Rayshawn Banner and Nathaniel Cauthen and
10 their friends. He said that he knew it also involved Jermal
11 Tolliver because he went to his house.

12 And Detective Flynn did not recall being familiar with
13 Arlene Tolliver prior to November 19, 2002.

14 **MS. SMITH:** Commissioners, Handout 55 in your notebook
15 is an excerpt from the recorded interview with Detective Mike Poe
16 on February 12, 2020. This excerpt is related to his recollection
17 of his interactions with Arlene Tolliver and the defendants prior
18 to November 19, 2002.

19 If you would take a few minutes to read that.

20 (Commissioners review, 3:28 to 3:32 p.m.)

21 **Q.** Ms. Bridenstine, did Detective Poe say anything else
22 about this contact with Arlene Tolliver in the week before this
23 case?

24 **A.** He said that they should have put in the reports that
25 the defendants were suspects in other robberies if it was not

1 their reports. He said that after they were arrested for murder,
2 they did not go back to those other robberies and would not want
3 to approach the defendants after they were being held on homicide
4 charges.

5 Regarding Jermal Tolliver, he also said, quote, "and
6 like I said, had that lady listened to me and kept her son away,
7 he probably wouldn't be sitting in jail for murder," end quote.

8 **Q.** Ms. Bridenstine, is any of that information in Detective
9 Poe's report?

10 **A.** It is not, and it is also not in any report from the
11 original investigation of this case.

12 **MS. SMITH:** Commissioners, any questions for
13 Ms. Bridenstine about law enforcement so far?

14 **MR. JARVIS:** Was there a question to law enforcement
15 about after that night of the incident about robberies or street
16 robberies that happened after that point?

17 **THE WITNESS:** We talked a lot about if there are any
18 other similar crimes or robberies, and the information that I got
19 is that robberies were kind of a daily occurrence in
20 Winston-Salem. They had, I think, four or five detectives who
21 were assigned solely to robberies. And they didn't have specific
22 memories of any robberies that were similar to this one but that
23 robberies were an ongoing issue.

24 **MR. JARVIS:** So you would say that this particular
25 incident was above and beyond what had normally been happening in

1 terms of the occurrences of robberies in the neighborhood?

2 **THE WITNESS:** I would say that nobody said that there
3 was a similar one to this where someone -- in this time frame,
4 where someone was beaten and tied up like Mr. Jones, but that
5 armed robberies and homicides were occurring.

6 **MR. JARVIS:** So you would say that the detectives said
7 that armed robberies and homicides were happening in the
8 neighborhood?

9 **THE WITNESS:** I don't know specifically if it was in
10 this neighborhood but they said that robberies were happening in
11 the south side of Winston-Salem, which this neighborhood is
12 located in the south side.

13 And one of the officers specifically said that he
14 remembered the string of robberies that they were talking about.
15 It might've been Poe, but it could have been a different officer,
16 said it Sprague Street and Waughtown Street, which were just above
17 the neighborhood.

18 **MR. JARVIS:** My question is: But there hadn't been
19 anything that escalated to this level of a person being bound and
20 robbed?

21 **THE WITNESS:** Nobody could remember anything like that.

22 **MR. JARVIS:** Thank you.

23 **MS. SMITH:** Any other questions?

24 (No response.)

25 **MS. SMITH:** Now would be an appropriate time for a

1 break.

2 **JUDGE LOCK:** Let's go for 13 minutes, about 3:45.

3 (Recess taken, 3:35 to 3:55 p.m.)

4 **JUDGE LOCK:** All right. Let's come back to order.

5 Everyone is in place.

6 **MS. SMITH:** I have a couple of housekeeping matters from
7 over the break.

8 We have been able to receive a response from Monarch in
9 response to the records request. Their response indicates that:

10 "We have searched our records and cannot locate the individual."

11 So we are not able to get any records for Ms. Black
12 based on the information she provided to us yesterday.

13 You also received a couple of handouts on the break.
14 You can ignore Handout 110 for right now. It's a criminal record
15 and we will talk about that later.

16 Handout 111 is going to be portions of the trial
17 transcript related to Mr. Edwards' questions.

18 I'm going to have Ms. Bridenstine tell us -- direct us
19 to what Mr. Edwards was reading, and then tell us what the page
20 that's referred there actually says.

21 **THE WITNESS:** Okay. So from Nathaniel Cauthen's motion
22 for appropriate relief, if you're looking at our Bates stamp 13,
23 but it's the original page 9 from the motion, it states, quote:
24 "He stated repeatedly in his statements to law enforcement and in
25 open court during his trial that he did not intend to kill

1 anyone," and this is from the trial transcript, volume 9,
2 page 146.

3 Volume 9, page 146, I am going to start reading from
4 line 4. It starts:

5 "THE COURT: Yeah, I'll be glad to hear you from
6 you.

7 "MR. CAUTHEN: Can I step in front of the Court,
8 please, sir?

9 "THE COURT: I can't hear you. You have to speak
10 up.

11 "MR. CAUTHEN: Can I step in front of the Court?

12 "THE COURT: No. You have to stand right there.
13 There's no secret in this case. It must be placed
14 upon the record.

15 "MR. CAUTHEN: I spent two years of my life in jail
16 for something I didn't do. I can't say, you know,
17 what I'm saying, who done it or who did
18 (unintelligible) live my life (unintelligible).
19 These people right here (unintelligible) my life
20 for stuff I didn't do (unintelligible).

21 "My mama, Teresa McCants, who (unintelligible)
22 who stopped these people right here for blaming me
23 for taking stuff I never took, for doing things I
24 never done. I had to come in here, had to pray to
25 this man every day for two years of my life, for

1 Mr. Jones, this man. I never knew this man. Never
2 hurt this man a day in my life. I'm sorry. All I
3 got (unintelligible) I really am.

4 "I can't tell you who killed this man. It's
5 not my fault that these people put me in a room and
6 make me say stuff I didn't want to say. It's not
7 my fault. Like I said (unintelligible) everybody
8 loved him because they knew him. Oh, Mr. Jones,
9 don't nobody know me. How can y'all judge me of
10 something I didn't do?"

11 Keep going?

12 **MS. SMITH:** No, that's good.

13 **Q.** Do you see anywhere on page 146 or in that excerpt where
14 Mr. Cauthen admits any kind of guilt?

15 **A.** I do not.

16 **MS. SMITH:** Does that satisfy your questions?

17 **MR. EDWARDS:** Yes.

18 **Q.** Ms. Bridenstine, let's talk a little bit about juvenile
19 records related to the defendants and Jessica Black.

20 Did the Commission staff obtain any juvenile records
21 related to the codefendants and Jessica Black from the
22 Winston-Salem Police Department?

23 **A.** We did. We obtained the juvenile records from the
24 Winston-Salem Police Department which included all police reports
25 that mentioned the defendants and Jessica Black.

1 The Commission also obtained their PISTOL records, which
2 covered their contacts with the Winston-Salem Police Department
3 through August of 2019.

4 **Q.** Why did you obtain those juvenile records?

5 **A.** Because they had -- in the original -- excuse me, not in
6 the original file. There is a report from 2012 that was made part
7 of the file that was provided to us. This report was written in
8 September of that year, and it made a reference to the defendants
9 in this case having prior contact with the police before this
10 case.

11 There were also some references in the police department
12 file to them having contacts with the police prior to this case.

13 And that report from 2012 stated, quote: "Prior to the
14 murder of Nathaniel Jones, Detective SP Flynn and DL Rose had been
15 working that Belview Park area in lieu of a recent string of
16 robberies in the area. Included in a list of potential suspects
17 in the robberies was Rayshawn Banner. While conducting the
18 robbery investigation, Detective Rose had provided Arlene Tolliver
19 with a business card," end quote.

20 We wanted to determine what the defendants and Jessicah
21 Black's prior contacts were with the Winston-Salem Police
22 Department and to understand what robberies they might have been
23 suspects in.

24 **MS. SMITH:** Handout 56 in your hearing handout notebooks
25 is a chart summarizing the police reports concerning the juvenile

1 contact they had with defendants prior to this case. This
2 information includes classifications such as "victim," "suspect,"
3 "witness," "arrestee," or "some other involvement."

4 Judge Lock, the records used to create this chart, many
5 of which are juvenile records, those records required that the
6 Commission staff to seek a court order and obtain a court order
7 and are not public records.

8 And for that reason, I would request that Your Honor
9 consider sealing this particular handout.

10 **JUDGE LOCK:** All right. That will be so ordered.

11 **MS. SMITH:** All right. You-all have already had an
12 opportunity to review those records over the lunch break, but if
13 you want to take just a few minutes to refer back to them, there
14 is going to be some additional testimony related to those records.

15 (Commissioners review, 4:03 to 4:14 p.m.)

16 **Q.** Ms. Bridenstine, what did officers say regarding whether
17 any of the defendants were suspects in any robberies near Belview
18 Park close in time to this case and prior to November 19, 2002?

19 **A.** Detective Rose said that he was not the lead working
20 that recent string of robberies in the Belview Park area with
21 Detective Flynn and he did not know why Rayshawn Banner was a
22 potential suspect in those robberies.

23 Detective Flynn said that he was not sure but that the
24 name Rayshawn Banner stuck out to him and he did not know why.

25 Detective Rowe said that robbery detectives had

1 identified the five defendants, Thayers, Tolliver, and someone
2 named Marcus as allegedly being involved in robberies of persons
3 in the Belview Park area prior to this crime. He said their names
4 did not come up during a briefing that they had on the case on
5 November 18, 2002.

6 Lieutenant Weavil said that they thought the robbery
7 detectives had talked about the defendants being involved in other
8 robberies and was looking at them for something else.

9 The majority of the officers, including lead Detective
10 Griffin, were not aware of the defendants being suspects in other
11 robberies.

12 **Q.** What did officers say about how people are classified as
13 suspects at the Winston-Salem Police Department?

14 **A.** In general, the officers reported that a suspect
15 classification is found on police reports and in the PISTOL
16 system. Some officers reported that it may not be documented in
17 their system.

18 Detective Rose said he did not see anything in the
19 PISTOL records for the defendants that indicated that they were
20 suspects in a recent string of robberies prior to this case.

21 (Reporter clarification.)

22 **MS. SMITH:** Commissioners, do you-all have any questions
23 for Ms. Bridenstine about the juvenile records, contacts records
24 you have in front of you in Handout 56 or this testimony so far?

25 **MR. EDWARDS:** Is it possible to ask a question about --

1 given the fact that it's protected or ...

2 **JUDGE LOCK:** I would say so, yes.

3 **MR. EDWARDS:** I just had a question about the record
4 listing under LLLLLLL , page 3 of 3. There's an entry for
5 November 10, 2002, which would have been five days prior to this
6 homicide; is that right?

7 **THE WITNESS:** Uh-huh.

8 **MR. EDWARDS:** Where "Willie Wall reported that a black
9 male of about 17 years old approached him with a baseball bat and
10 four other friends."

11 Do we know if that would have been, I guess, in the
12 south side area?

13 **THE WITNESS:** I don't know the answer right now but I
14 think if we look at the police reports, and we should be able to
15 get an address for you this.

16 **MR. EDWARDS:** Well, according to this entry, some of the
17 claimants were named as potential suspects in that particular
18 assault with a baseball bat; right?

19 **THE WITNESS:** It looks like the victim in that case,
20 after show-up said at LLLLLL and LLLLLLL were in the group but
21 were not the suspect who hit him in the head with the baseball
22 bat.

23 **MR. EDWARDS:** And ultimately, the -- I'll say victim or
24 complainant, the person that made the report, was not able to be
25 located for a photo lineup so the case was closed; is that right?

1 **THE WITNESS:** Yes.

2 **MR. EDWARDS:** Okay. That's my question.

3 **MS. SMITH:** Any other questions?

4 **JUDGE LOCK:** Commissioner Jarvis.

5 **MR. JARVIS:** I have a question. Does the prosecution,
6 do they have the ability of looking at juvenile records as they
7 are moving forward in a trial, typically?

8 **THE WITNESS:** Yes.

9 **Q.** Ms. Bridenstine, did Detective Rose tell you anything
10 else about his interaction with Arlene Tolliver and the collection
11 of the BB gun pistol prior to this case?

12 **A.** He said that the interaction with Arlene Tolliver that
13 he described happening just prior to this homicide should be
14 documented in the Winston-Salem Police Department PISTOL system
15 regarding Arlene Tolliver.

16 He said that it would not be in Jermal Tolliver's PISTOL
17 record since he was not present when the BB gun was collected.

18 **Q.** Following Detective Rose's deposition, did the
19 Commission obtain a copy of Arlene Tolliver's PISTOL record?

20 **A.** Yes.

21 **Q.** Is there anything in that record that indicates she had
22 an interaction with the Winston-Salem Police Department in the
23 month leading up to this case?

24 **A.** No.

25 **Q.** Did any of the officers express any concerns about

1 Arlene Tolliver and her credibility during the depositions and
2 interviews?

3 A. No.

4 Q. Did the Commission learn anything else about potential
5 robbery suspects in the area prior to November 19, 2002?

6 A. Yes. We asked about an e-mail that was part of the
7 Winston-Salem Police Department case file that was dated
8 November 18, 2002. It was sent from Detective Flynn to Sergeant
9 Southern, and it contained a list of seven black male suspects in
10 robberies on the south and west side of town.

11 MS. SMITH: Commissioners, Handout 57 in your notebook
12 is a copy of that e-mail from Detective Flynn.

13 Q. Ms. Bridenstine, are any of the names of the defendants
14 in this case listed on that e-mail?

15 A. No.

16 Q. Did any of the officers know why this e-mail was part of
17 this case file or have any additional information about it?

18 A. Detective Flynn said that Sergeant Southern requested
19 the e-mail from him but he did not know why. He said he
20 recognized the names listed in the e-mail. Many of the officers
21 did not know why this e-mail was part of the case file, including
22 Detective Griffin. And Detective Rowe said that it might have
23 been a good place to develop suspects in this case because the
24 persons listed were associated with other robberies.

25 Q. Turning back to the phone call that was made by Arlene

1 Tolliver, what did the Commission staff learn about the call that
2 Arlene Tolliver made to Detective Rose on November 19, 2002,
3 during interviews and depositions with law enforcement?

4 A. Detective Rowe stated that he learned that the robbery
5 detectives had developed suspects in this case around 2:30 p.m.
6 when he came in for work on November 19, 2002, based on Arlene
7 Tolliver's phone call to Detective David Rose.

8 His understanding was that Arlene Tolliver was reporting
9 what she believed and was not direct knowledge.

10 Both Detectives Rowe and Griffin said they never
11 determined the basis for why Arlene Tolliver felt the three
12 individuals that she named -- her son, Jermal Tolliver, Nathaniel
13 Cauthen, and Rayshawn Banner -- might have information about this
14 homicide.

15 Sergeant Charles Byrom thought he had received the phone
16 call himself from Arlene Tolliver on November 18, 2002, that her
17 son was, quote, "not acting right," end quote.

18 Q. Did the Commission ever receive any additional
19 documentation regarding this phone call from the Winston-Salem
20 Police Department?

21 A. Yes. In the week before the deposition of David Rose,
22 the Commission received a copy of his field notes for this case
23 from the Winston-Salem Police Department, and these notes were not
24 part of the original file.

25 Q. What did Detective Rose's notes say about the phone call

1 made by Arlene Tolliver?

2 A. Detective Roses's notes stated, quote: "She advised
3 that her son, Jermal Tolliver, has been acting strange since
4 murder as well as Stinky and Rayshawn. She advised she would call
5 when Jermal came home. She called at 10 minutes later, advised
6 Jermal home. Detective Flynn and I met him, asked that he
7 accompany us to PSC. Mom concurred," end quote.

8 Q. What did Detective Rose's police report dated June 13,
9 2003, say about the call made by Arlene Tolliver?

10 A. Detective Rose's report dated on that date in June said
11 that Arlene Tolliver said that Jermal Tolliver, quote, "hasn't
12 been the same since that homicide on Moravia Street," end quote,
13 and was concerned that he might know who was responsible for
14 murdering Mr. Jones.

15 When David Rose asked her to elaborate, she told him
16 that Jermal was friends with Stinky and Rayshawn and they usually
17 are roaming the streets until the early morning hours. However,
18 since the murder, he has insisted on remaining in the house and
19 has not associated with Stinky and Rayshawn.

20 She also told Detective Rose that he appeared withdrawn
21 and virtually all -- and avoided virtually all social contact.

22 He says he then asked her if she thought he might have
23 been present when the murder occurred, and she replied, quote: "I
24 don't know if he was there or not but I think he might know
25 something about it," end quote.

1 **Q.** Did you ask David Rose where he got the quotes from
2 Arlene Tolliver that were contained in his report?

3 **A.** He said that they came from Arlene Tolliver.

4 **Q.** And are those quotes noted in his notes?

5 **A.** No.

6 **Q.** Ms. Bridenstine, I know there's going to be additional
7 testimony later about Arlene Tolliver, but can you briefly tell
8 commissioners what she says today or with the Commission about
9 that phone call.

10 **A.** Arlene Tolliver said that she called the police station
11 to find out who Mr. Jones was and that the person she spoke to
12 started asking her questions about who she suspected and asked her
13 if Jermal Tolliver was acting strangely.

14 Arlene Tolliver said she told the officer no. She also
15 said that the police at the time knew who all the boys were
16 because they would sit and watch them, but that the police would
17 mainly watch Nathaniel Cauthen, Rayshawn Banner, Joseph Cauthen,
18 and their cousin Laymond.

19 Arlene Tolliver said that after this phone call ended,
20 the officer called her back and asked if they could come out to
21 her home to speak to Jermal Tolliver.

22 **MS. SMITH:** Commissioners, do you have any questions for
23 Ms. Bridenstine about that material related to Arlene Tolliver?

24 **MR. JARVIS:** I have one question. So it is true that
25 neither one of these phone calls -- or this phone call was

1 recorded?

2 **THE WITNESS:** That's correct.

3 **Q.** Ms. Bridenstine, did the officers describe how many
4 officers were involved in the investigation on November 19, 2002?

5 **A.** Yes. Estimates varied and no one had an exact number,
6 but many officers recall that most of the criminal investigations
7 division was working on it and officers were being pulled from
8 other duties to work on this case.

9 Detective Rowe estimated 30 officers were working on the
10 case that night, but Lieutenant Weavil thought there were only 8
11 to 12 officers working on the case that night.

12 The officers generally agreed that interviews of several
13 juveniles were being done simultaneously that night.

14 **Q.** What information did the officers gather from these
15 juveniles during these interviews?

16 **A.** In general, all information gathered and learned about
17 the juveniles was self-reported by the juveniles, according to the
18 officers who conducted the interviews. Officers were aware of the
19 ages of the juveniles they were interviewing on November 19, 2002.
20 No officers obtained information from anyone else about the
21 juveniles, such as through conversations with family members.

22 No officer obtained the juvenile's school records, and
23 with the exception of Sherman Williams, no one had any problems
24 with the intelligence level or education levels of the juveniles.

25 Shelley Lovejoy, Officer Lovejoy, who was the second

1 officer present during Jessica Black's taped interview, said that
2 typically the Winston-Salem Police Department would not contact
3 social services or find out other information about a juvenile's
4 home life or education level but that it would depend on the
5 amount of time you had before the interview was conducted.

6 She stated that a juvenile's education level would be
7 relevant to her in conducting the interview and that the
8 information most likely would be reported by the parents.

9 The juvenile would sometimes self-report if the police
10 asked.

11 She also imagined that a detective would have pulled
12 PISTOL records before an interview.

13 Q. How did the officers describe how information was being
14 shared with each other during the interviews?

15 A. In general, the officers said that they were listening
16 to and watching other interviews. Two of the interview rooms at
17 the public safety center had two-way mirrors and sound
18 capabilities. They described leaving interview rooms to brief the
19 lead detective and others in a conference room.

20 The officers also had meetings during that evening.
21 Some officers said that they were not aware of the information
22 that was learned by other officers at the time of the interviews.

23 Detective Rowe said that with two officers present
24 during an interview, one could go listen or pass information on
25 down the hall to other interviews in progress, bring information

1 back, try to clarify the direction of the interview, and know if
2 the interview was going, quote, "truthfully or astray," end quote.

3 He also said that Lieutenant Weavil would, quote, "pass
4 information to the other detectives so everybody can kind of see
5 where we were going, who was not being truthful, who -- who -- if
6 there were any other suspects that needed to be rounded up, look
7 for those," end quote.

8 Detective Poe said that they were -- use information
9 from other interviews and let people know that others were
10 cooperating.

11 Lieutenant Weavil said officers would step into
12 interview rooms to bring new information or relieve an officer in
13 there. He said that he was in and out of interview rooms and
14 watched multiple interviews. He said, quote: "I was more a mover
15 of information. I wasn't in one place very long. I relied on the
16 detectives to write down what they were doing there, and I was
17 funneling information back and forth to other people," end quote.

18 **Q.** What did officers say about whether or not they could
19 tell if a person being interviewed was telling the truth?

20 **A.** More than one officer described how certain nonverbal
21 cues would indicate lying. Detective Rowe listed several
22 nonverbal or body language cues and verbal cues that he said would
23 tell him if someone is telling the truth or not. Along with other
24 officers, Detective Rowe said that he could tell when the
25 information he was getting was consistent with crime scene facts,

1 other witnesses, and other defendants.

2 Detective Clark said that police would usually know the
3 truth before the interview and that deception was detected when
4 officers had information from someone else ahead of time and the
5 person being interviewed gave conflicting information.

6 Detective Tim Taylor stated, quote: "If someone is
7 adamant about staying with the same comment they may make, you
8 assume it is the truth," end quote.

9 Detective Mark Smith gave an example from his interview
10 with Dorrell Brayboy. He said that Dorrell Brayboy made eye
11 contact when they were covering his personal history but did not
12 make eye contact when his mother arrived, and that indicated lying
13 to him.

14 Randy Weavil said that he would look at what matches the
15 crime scene, what matches what others said, and, quote: "take
16 everything into totality at the end of it," end quote. He said it
17 went to the DA and court and it's for the jury to decide.

18 Detective Shelton said that the Reid Technique taught
19 police how to determine if someone was lying or not during an
20 interview but said that he found that to not necessarily be true
21 in his experience.

22 Q. Did any of the officers say anything about documenting
23 details of their reports?

24 A. They did talk about documenting denials. And Detective
25 Rose said that you may not get all the lies documented in your

1 report because it is not recorded. He said that he determined
2 that what Jessica Black told him early on in the interview about
3 not being involved was a lie when he talked to other detectives.

4 (Reporter clarification.)

5 Q. What did officers say about sharing information from the
6 investigation with the juveniles?

7 A. In general, the officers did not recall any photographs
8 or materials being shown to any of the juveniles, but several
9 officers discussed what information or types of information was
10 being shared with the juveniles from the investigation.

11 Detective Rose said that someone must've shown Jermal
12 Tolliver a photograph of shoe prints because Jermal Tolliver
13 referenced it in his taped statement but Detective Rose did not
14 think that he showed anyone photographs or documents.

15 Detective Poe said that he did not remember if they
16 showed any documents or pictures but he might have shown Dorrell
17 Brayboy a picture of a shoe print. He said he was going into
18 rooms to look at shoes and probably had a photo of a shoe sole.

19 Detective Smith said that he confronted Dorrell Brayboy
20 with omissions and factual errors in Dorrell Brayboy's story that
21 did not match with what he was told others were saying. He could
22 recall if Lieutenant Weavil came in and told Dorrell Brayboy what
23 other people were saying when he came in and told Brayboy to,
24 quote, "get right with it quick," end quote. He could not recall
25 if they told Dorrell Brayboy anything else about what others were

1 saying.

2 Lieutenant Weavil said he did not tell Dorrell Brayboy
3 what others were saying.

4 Detective Griffin said that he told Jessica Black she
5 needed to be truthful and confronted her with information from
6 other interviews to get her to be truthful.

7 Detective Rose acknowledged giving Jessica Black
8 details from Jermal Tolliver's interview about going to the
9 bowling alley and acknowledged that Detective Griffin's report
10 said that he confronted Jessica Black with information obtained
11 from Jermal Tolliver that she drove the five suspects to Belview
12 Park and waited while they went and robbed an old man in a nearby
13 house.

14 Detective Rose said that he doubted he would've laid out
15 the, quote, "whole thing" to her.

16 Detective Rose also said that Detective Flynn showed
17 Jermal Tolliver a statement regarding another interviewee that
18 clearly implicated Jermal Tolliver in the crime after Detective
19 Flynn discussed the death penalty with him.

20 Detective Rowe said that he did not provide details to
21 Nathaniel Cauthen and encouraged him to tell the truth after he
22 denied involvement the crime. He said that it was apparent at
23 that point that he was lying and he knew, based on his deduction,
24 that he was not being truthful. He said that Jermal Tolliver was
25 telling a story and Christopher Bryant was telling part of the

1 story and it was all matching and pinning together. He said he
2 had nothing to do with it so somebody was lying.

3 Sergeant Byrom said that the point of confronting
4 interviewees with what others had said was to let them know the
5 police knew that they were not being honest.

6 Lieutenant Weavil said that they told Nathaniel Cauthen
7 that other people told police that Nathaniel Cauthen was present
8 when the crime occurred. He also could not recall playing a part
9 of Nathaniel Cauthen's taped statement to Rayshawn Banner and did
10 not know what part was played.

11 Detective Shelton said that his perspective was always
12 that the subject of the interview needed to tell him what happened
13 and he didn't want to feed them information.

14 Detective Flynn said that they informed Jermal Tolliver
15 what Christopher Bryant was saying in his interview and stated
16 that they also gave him details about what his codefendants were
17 saying with regard to their roles as well as his. He said that
18 they were doing this to, quote, "again, trying to elicit a
19 response or get a truthful statement from him," end quote.

20 **Q.** Did any of the officers discuss yelling or raising their
21 voices during the interviews?

22 **A.** Yes. Detective Nieves said that he might have yelled at
23 Christopher Bryant.

24 Lieutenant Weavil did not recall raising his voice in
25 this case but said that he, quote, "owned the interview room," end

1 quote, and would put belligerent people in their place. He said
2 he might have sworn at the interviewees.

3 Detective Flynn said that, in general, he would swear at
4 and raise his voice with suspects. He said that this is an
5 interview technique that is, quote, "designed to elicit responses,
6 and sometimes you've got to speak a language people understand,"
7 end quote.

8 Sergeant Byrom said that Nathaniel Cauthen and his
9 mother were yelling at each other. He also said that Lieutenant
10 Weavil and Detective Flynn would, quote, "beat this bad cop
11 technique to death," end quote.

12 **Q.** Did you ask what the juveniles were doing on
13 November 19, 2002, when they were not being interviewed by police
14 officers but were still at the public safety center?

15 **A.** Yes. According to the interviews and depositions with
16 law enforcement, the juveniles were being physically isolated and
17 were left alone when they were not being interviewed. They were
18 allowed to use the bathroom and were given food and drink.

19 Detective Rowe said that they were isolated from the
20 time they arrived until the time they were being interviewed.

21 Sergeant Byrom said that they were scared little kids
22 and were, quote, "sweating bullets," end quote. He said that they
23 were not allowed to communicate with or each other.

24 **MS. SMITH:** Commissioners, if you would refer to
25 Handout 58 in your notebooks, this is an excerpt of the deposition

1 of Mark Griffin on February 14, 2020, that discusses how
2 interviews were conducted on November 19, 2002, in this case and
3 specifically details the interview of Jessica Black that was
4 conducted.

5 Take some time to review that. It is about 15 pages.

6 (Commissioners review, 4:37 to 4:45 p.m.)

7 Q. Ms. Bridenstine, did any officer speak to the defendants
8 about the death penalty on November 19, 2019?

9 A. Yes. Detective Nieves talked to Christopher Bryant
10 about the death penalty and Detective Flynn talked to Jermal
11 Tolliver about the death penalty.

12 Q. Was the fact that the death penalty was brought up to
13 juveniles present in any of the police reports in this case?

14 A. No. The first time it appears to have been discussed in
15 this case was at the hearings held on the motions to suppress in
16 this case in 2004.

17 Q. Did Detectives Nieves and Flynn testify at the motion to
18 suppress hearings?

19 A. No. Other officers who were present during those
20 interviews testified about it.

21 Q. What did Detective Nieves say about his conversation
22 regarding the death penalty to commission staff?

23 A. He said that he to did talk to Christopher Bryant about
24 the death penalty. He told Christopher Bryant it was administered
25 by lethal injection and made a reference that the lethal injection

1 goes into a vein in the arm. He said he discussed it as a
2 possible punishment and also talked about life imprisonment and
3 jail time but he said it was not said as a threat.

4 Q. Did he say anything else?

5 A. He said that he was incorrect and that it was poor
6 judgment on his part.

7 Q. Did Detective Nieves say why he did not include that
8 conversation in his report?

9 A. He said he did not put it in his report because he did
10 not think it was relevant. He also said that he would not put
11 everything that occurs in an interview into his report.

12 He said he had no concerns about the statements
13 Christopher Bryant gave him after this discussion because
14 Christopher Bryant's statement was consistent with what he learned
15 from other statements.

16 Q. What did Detective Nieves say about whether or not he
17 discussed his conversation about the death penalty with anyone
18 else at the Winston-Salem Police Department?

19 A. He said that he mentioned to Detective Flynn that he
20 brought up the death penalty to Christopher Bryant when they were
21 discussing the interview.

22 He also said that his supervisor, Sergeant Smith, told
23 him afterwards that he should not have brought up the death
24 penalty -- and that was about a day or two later.

25 Q. Did the Commission speak to Detective Flynn about his

1 conversation with the codefendants regarding the death penalty?

2 A. Yes. Detective Flynn said that he initially thought he
3 threatened Dorrell Brayboy with it. When he was shown Detective
4 Rose's testimony from Jermal Tolliver's hearing on the motion to
5 suppress, he said that it was Jermal Tolliver and not Dorrell
6 Brayboy that he spoke to about the death penalty.

7 He said that he told Jermal Tolliver that people
8 convicted of first-degree murder get lethal injection. He thought
9 he demonstrated on his own arm and not the arm of Jermal Tolliver.
10 He said that he knew at the time that Jermal Tolliver was too
11 young to get the death penalty.

12 Q. Did Detective Flynn say why he talked to Jermal Tolliver
13 about the death penalty and lethal injection?

14 A. He said he did this to elicit a, quote, "truthful
15 response," end quote. He said that he did not do it in other
16 cases in which juveniles were too young to receive the death
17 penalty and that it was not a common practice at the Winston-Salem
18 Police Department. He said he did not put the death penalty
19 conversation in his report because it was an interview technique.

20 Q. What did other officers say about whether they were
21 aware of the officers bringing of the death penalty in those
22 interviews?

23 A. Detective Rowe said he never talked to anybody about the
24 death penalty himself. The first he heard about it being
25 discussed in this case was late in the investigation on the night

1 of November 19, 2002. He said that he heard that Detectives Flynn
2 and Nieves had mentioned the death penalty to other codefendants.
3 He said that it was unique to this case and he never heard of it
4 happening in other cases in which juveniles were too young to
5 receive the death penalty. He said it was not proper.

6 Other officers were either not aware that this occurred
7 or said that it was not a common tactic at the Winston-Salem
8 Police Department.

9 Detective Griffin was not aware other detectives had
10 brought up the death penalty and said he learned about it during
11 the deposition.

12 Detective Poe said that he would not do something like
13 that because it would scare a confession out of someone.

14 Q. Did the Commission talk to Detective Flynn about the
15 video surveillance at Hanes Mall?

16 A. Yes. His report contains the following statement
17 regarding an action he took on November 19, 2002. Quote: "I
18 contacted mall security in an attempt to obtain video surveillance
19 of the suspects trying to use the victim's teller card. I met
20 with negative results in this search," end quote.

21 I asked him about that to try to determine what
22 "negative results" meant. He did not know if it meant that there
23 was no video surveillance or that someone watched it and no one
24 matching the defendants was on it.

25 MS. SMITH: Commissioners, if you'll refer to Handout 59

1 in your notebooks, this is an excerpt of the deposition of
2 Detective Sean Flynn on January 30, 2020, that discusses the video
3 surveillance at Hanes Mall.

4 (Commissioners review, 4:50 to 4:52 p.m.)

5 **MS. SMITH:** Commissioners, do you have any questions for
6 Ms. Bridenstine about the matters that we've just talked about
7 with the death penalty issue or the mall security footage before
8 we move on?

9 **MR. EDWARDS:** Was there any evidence as far as the ATM
10 card or ATM use, was there any evidence that the victim's bank
11 card was used anywhere -- like bank records or anything?

12 **THE WITNESS:** There were a couple of reports that talked
13 about checking the victim's credit report after the crime and not
14 seeing activity on that, but nothing specifically related to bank
15 records.

16 We tried to obtain that information and it was through
17 subpoena. It happened so long ago the bank didn't have records.

18 **MS. ESSARY:** Would that include any credit cards that
19 Mr. Jones might have had in his wallet?

20 **THE WITNESS:** We were specifically looking for the ATM
21 information and the bank, but the credit report checks didn't show
22 any activities on his cards.

23 **MS. NEWTON:** Could I ask a quick question related to
24 Arlene Tolliver that you talked about, but I just can't confirm
25 anything.

1 Did anyone actually -- did she testify at the trial?

2 **THE WITNESS:** No.

3 **MS. NEWTON:** Did anyone actually interview her or record
4 an interview? Do we have a transcript of anything regarding her
5 phone call to the police that you talked about?

6 **THE WITNESS:** She appears in the reports because they
7 went to the Tollivers' residence on November 19th. I don't
8 remember her specifically being quoted like an interview. She did
9 not go to the station. There are a couple of phone calls that she
10 had with Detective Rose. There was that first phone call that
11 came in, and then there is a second phone call where she said
12 where Jermal Tolliver had come home. They went to her house, met
13 with Jermal and Arlene Tolliver there, and then there's a
14 discussion of a third phone call that happened during Jermal
15 Tolliver's interview where Detective Rowe spoke to Arlene Tolliver
16 again.

17 And I think that around November 25 they went to the
18 Tolliver residence and Arlene Tolliver made some sort of comment
19 to the officer, who responded that she didn't think her son could
20 have done something like that.

21 **MS. NEWTON:** Am I to understand she is deceased?

22 **THE WITNESS:** No. She's --

23 **MS. NEWTON:** She's not?

24 **THE WITNESS:** She's not.

25 **MS. NEWTON:** Oh. Except for reports that law

1 enforcement talks about her interactions with them, is there a
2 direct interview recorded with her since she did not testify by
3 anyone?

4 **THE WITNESS:** No.

5 **MS. NEWTON:** So there is nothing that we have that we
6 have heard on a transcript or a recording being questioned as to
7 why she actually called the police that day?

8 **THE WITNESS:** That's correct. We have interviewed her
9 so we have that, but there is nothing from the original
10 investigation of the case.

11 **MS. NEWTON:** Okay.

12 So you interviewed her. Is there a transcript of that
13 somewhere? I just couldn't find it.

14 **THE WITNESS:** We have a transcript.

15 **MS. NEWTON:** Do we have it?

16 **MS. SMITH:** You have an excerpt from it. You don't have
17 the complete transcript. If that's something you would like, we
18 can make that a handout for tonight.

19 **MS. NEWTON:** The excerpt is where?

20 **MS. SMITH:** Handout 79.

21 **MS. NEWTON:** Thank you.

22 **MS. SMITH:** It's just one page. But if you want the
23 whole thing, we can certainly pull that.

24 **MS. NEWTON:** Well, Thayers Tolliver.

25 **MS. SMITH:** I'm sorry. That's Thayers Tolliver.

1 **MS. NEWTON:** And the other one was Yolanda Tolliver. I
2 just couldn't find --

3 **MS. SMITH:** You're correct. There is no -- we have not
4 provided you an except. There's an excessive amount of testimony
5 coming up about Arlene Tolliver.

6 **MS. NEWTON:** Oh.

7 **MS. SMITH:** However, if you would like to read that
8 transcript, we'll certainly provide it.

9 **MS. NEWTON:** I asked only because I couldn't find it.
10 And you mentioned that she had a dispute as to -- apparently she
11 was the reason that they became a suspect on the 19th. And you
12 had referred to that she had a dispute with what law enforcement
13 said the subject of her call was.

14 **THE WITNESS:** And Ms. Myers is planning to testify about
15 Arlene Tolliver and that might clear up some questions.

16 **MS. NEWTON:** Thank you.

17 **MS. ESSARY:** Can I ask a general question in light of
18 the Hanes Mall video information here.

19 Was there ever any video evidence produced at any of the
20 locations mentioned by anyone where the boys might have been --
21 including the bowling alley, the Hanes Mall, the Max whatever that
22 was, the Dollar General -- is there any video?

23 **THE WITNESS:** So they checked all of those locations.
24 There was not video from the bowling alley. Someone on the 18th,
25 so the day before this, checked the ATMs at the Hanes Mall, and

1 the machines themselves did not have video capabilities. And I
2 have not --

3 MS. ESSARY: So no video surveillance, according to this
4 police officer deposition, was obtained from Hanes Mall. They
5 didn't have any video cameras working?

6 THE WITNESS: He said he could not -- from his
7 deposition, he said he didn't know if it meant that there were no
8 video from the time period or that somebody looked at it and told
9 him that he did not -- that they did not see the defendants on it.

10 The police reports indicate that they went to the
11 bowling lane, they went to Maxways, and there was no video
12 capabilities at those locations. There was a surveillance from
13 the Dollar General that I testified about yesterday.

14 MS. ESSARY: That no one could read and it wasn't clear
15 if it had been read at the time of the trial.

16 THE WITNESS: At the time of trial the issue was the way
17 that it was transferred from the hard drive, the time wasn't
18 corresponding with what they thought. So they thought if you
19 should be looking at 5:00 p.m. maybe they were looking at
20 5:00 a.m. So the officer testified that he waited for it to get
21 dark and so he thought he was looking at the relevant time period,
22 and he watched as much as he could from that day and didn't see
23 any defendants on it at the first trial.

24 At the second trial, his testimony was a little
25 different. He said that he did not see -- he saw several black

1 males coming in but not two, and he didn't see Dorrell Brayboy.

2 And then at the deposition, he looked at all of his
3 testimony from those two trials and said to me that, according to
4 his testimony, he did not see the defendants on that footage.

5 But other than that, we don't have any indication that
6 there was any surveillance collected.

7 **MS. ESSARY:** Do you know if the police were
8 interviewing -- if I'm getting ahead, please stop me -- did the
9 police ever seek to corroborate some of the boys' first statements
10 that they weren't involved that was consistent with them being at
11 the bowling alley and -- bowling alley and help me, y'all -- and
12 the mall?

13 In other words, were there any witnesses that might've
14 placed them there that night?

15 **THE WITNESS:** There is nothing to indicate that they
16 followed up with things like that -- bowling alley or other
17 locations.

18 There is an interview with Jermal Tolliver's sister, I
19 think, on November 25, 2002, and then she also contacted the
20 police a year later and came in and did a recorded interview.

21 They had a conversation and an interview with Nelson
22 Hartman, I think, also on November 25th. That's the day where I
23 think they got a comment form Arlene Tolliver. But other than
24 that, there wasn't any other investigation into those -- the
25 people that the defendants knew at the time although they were --

1 **MS. ESSARY:** Including the security guard at the bowling
2 alley when they were allegedly thrown out?

3 **THE WITNESS:** That officer is named Vince Stephens, and
4 he came in November 19, 2002, and made an identification to the
5 defendants but there's no description about what that
6 identification looked like or how that was carried out or what
7 time that occurred. But he did that on the 19th.

8 **MS. ESSARY:** When you say he made an identification of
9 Rayshawn, in what context -- that he had thrown out of the bowling
10 alley?

11 **THE WITNESS:** He was -- they found out that Vince
12 Stephens was working as an off-duty security officer at the
13 bowling alley and that he'd had a recent interaction with some
14 juveniles on that night, and so they went and talked to him about
15 it. And he came to the police station and identified the
16 defendants that he said were there at the bowling alley on the
17 15th at the police station.

18 **MS. ESSARY:** Did he give him them a time they were at
19 the bowling alley?

20 **THE WITNESS:** I think he did. I will have to look that
21 up. I don't want to --

22 **MS. ESSARY:** That's fine.

23 **MS. SMITH:** Any other questions? We will look that up.
24 Working on that.

25 **Q.** Ms. Bridenstine, what did the officers say about

1 obtaining taped *Bruton* statements from the defendants after
2 obtaining the taped confessions?

3 A. Several of the officers said that they did get taped
4 *Bruton* statements in other cases involving multiple defendants but
5 could not say how common it was. Several officers only remembered
6 taped *Bruton* statements being obtained in this case.

7 Detective Rowe, who was a homicide detective for
8 21 years at the Winston-Salem Police Department, thought it was
9 common practice to get *Bruton* statements.

10 Lieutenant Weavil said he had never done *Bruton*
11 statements in another case and was unaware of others doing them in
12 other cases. He said that Assistant District Attorney David Hall
13 asked that the police take those *Bruton* statements that night.

14 Q. Did the commission staff have an opportunity to speak to
15 former Assistant District Attorney David Hall about his
16 involvement with the *Bruton* statements?

17 A. Yes. The Commission spoke to him on the phone on
18 February 18, 2020. This interview was recorded but not
19 transcribed. And David Hall is currently a superior court judge
20 in Forsyth County.

21 Q. Was that phone call recorded and transcribed?

22 A. It was recorded but not transcribed.

23 Q. What did he say?

24 A. He said that the Winston-Salem Police Department
25 contacted him because at the time they were not authorized to take

1 out felony warrants without contacting the DA's office. He
2 thought he might have been on call and this is why he was
3 consulted that night.

4 He said that if a case involved two or more suspects who
5 admitted involvement in a case, it was customary to take *Bruton*
6 statements so as not to violate the *Bruton* rule at trial.

7 He said that there had been an issue with *Bruton*
8 statements previously so it became common practice for law
9 enforcement to get those statements ahead of time in an abundance
10 of caution because they did not know if the cases would be joined
11 or severed for trial. He recommended that the police get *Bruton*
12 statements in this case during that phone call.

13 He said he also remembered telling Assistant District
14 Attorney Eric Saunders that he thought Jessicah Black should be
15 charged in this case.

16 Q. What did the officers who were asked say about the fact
17 that Jessicah Black was never charged?

18 A. Detective Rose said that he thought that she could have
19 been charged with the crime but the decision would be with the
20 prosecution.

21 Detective Rowe said that it was common for cooperating
22 accomplices to never be charged or arrested in homicide cases and
23 that it was the district attorney's decision.

24 Detective Poe said, quote: "That would have had nothing
25 to do with police department, everybody -- nobody is going to go

1 out on that limb and say we're not charging this girl. First of
2 all, you've got five young black males and one white female.
3 We're not -- no. There's nobody that's going to hang theirself
4 out on that, I can tell you," end quote.

5 He said that he felt that Jessica Black should have
6 been charged but he knew it was a trial strategy. She had the
7 least culpability and they needed noncodefendant witnesses.

8 Detective Griffin said that the decision not to charge
9 her was made by the DA's office and he did not know why she was
10 not charged. He said he spoke to the district attorney about it
11 and he was only authorized to charge the five defendants and not
12 Jessica Black.

13 Q. Did any of the officers tell you how important they
14 thought Jessica Black was as a witness?

15 A. Yes. Detective Rowe said that he thought you could make
16 the case without her. Detective Griffin said that she was very
17 important and that she corroborated the statements that they had.

18 Q. Did the officers tell you how confident they were that
19 they got this right?

20 A. Yes. They all indicated they were all completely
21 confident except for Sergeant Byrom. Sergeant Byrom said that at
22 the time, he was very confident but that changed after he talked
23 to reporter Hunter Atkins. He said that he had concerns about the
24 process now.

25 Of the officers who stated that they were still

1 confident, the generally said that it was because the evidence
2 added up, the information they learned was consistent, and they
3 confessed.

4 Detective Flynn said that he was very confident because,
5 quote: "They all had intimate details. They all kind of told on
6 each other. There was, from what I remember, physical evidence.
7 There was the statement from the witness, Ms. Black. And then,
8 like I said, plus they had intimate knowledge of only things that
9 the people involved would know," end quote.

10 Detective Griffin said that he was very confident. He
11 said that the information gathered during the interviews would not
12 have been known by anyone other than the perpetrator and the
13 corroboration that they received from Jessica Black.

14 Q. Were any of the officers aware of additional suspects
15 after the five defendants were arrested in this case?

16 A. No.

17 Q. What did the officers who were asked -- what did the
18 officers say about how information concerning the additional
19 suspects would be handled once a person or persons had already
20 been arrested?

21 A. In general, the officers said that information like that
22 would've gone to the case detective or lead detective who was in
23 charge of the case. Some officers said that any follow-up
24 investigation is a team decision and that supervisors such as
25 sergeants or lieutenants would be involved deciding what follow-up

1 investigation needs to be done.

2 Q. What did officers say about the fact that there was no
3 follow-up done regarding the several names that were brought up by
4 the juveniles who were questioned on November 19, 2002? Those
5 names include Sherman Williams, also known as Jed; Marcus;
6 Shelton; Anjuan Terry; and Joseph Cauthen, who is also known as
7 Black.

8 A. In general, the officers said that they did not know why
9 these individuals were not contacted and that it would have been
10 the decision of the case detective or a supervisor to contact them
11 or not.

12 Detective Nieves said it would be a decision by the lead
13 detective or the District Attorney's office.

14 Detective Poe said that the names were not followed up
15 on because they had five defendants who all confessed, physical
16 evidence, including the shoes, and the girl that drove them.

17 Detective Taylor said he would follow up with new
18 suspects unless he interviewed someone who provided great detail
19 and confessed.

20 He said, quote: "If we get another phone call about
21 somebody else possibly being involved and we feel like we've got
22 the right people, we wouldn't go and follow-up on that," end
23 quote.

24 Detective Rowe said that there were no other hands-on
25 suspects brought to his attention, that there were names of other

1 people who ran with these guys.

2 Sergeant Byrom said that at the direction of
3 supervisors, detectives would go out to substantiate or refute
4 whether they are a viable suspect and exhaust investigative leads.
5 Sergeant Byrom said he did not have a good reason for why they
6 were not followed up on.

7 And Detective Griffin, who was the lead detective, said
8 he did not know why any of these individuals were not contacted
9 after November 19, 2002.

10 Q. Did Detective Griffin have any notes that mentioned any
11 of these individuals named by the juveniles on November 19, 2002?

12 A. Yes. He had a page from his handwritten notes that he
13 said looked like a to-do list. Included on the list were the
14 names Anjuan and Black, Jed and Marcus.

15 MS. SMITH: Commissioners, if you will refer to
16 Handout 60 in your notebooks. That is a page of Detective
17 Griffin's notes.

18 Do you-all have any questions for Ms. Bridenstine
19 regarding the law enforcement officers?

20 Does anyone know now which officers they would like to
21 hear from tomorrow or would you like to get back to me this
22 evening -- if you wish to hear from any of them?

23 JUDGE LOCK: Perhaps, I want to think about it,
24 Detective Sergeant Byrom.

25 MS. SMITH: Byrom.

1 **MS. ESSARY:** Which officer testified there were as many
2 as 30 officers during this interview process?

3 **MS. SMITH:** Was that Rowe?

4 **THE WITNESS:** I think it's Rowe.

5 **MS. SMITH:** Ms. Essary, I know that yesterday you
6 mentioned you might want to hear from the detectives who had
7 interviewed Jessica Black specifically. I don't know if that is
8 still the case.

9 **MS. ESSARY:** Let me think about that tonight.

10 **MS. SMITH:** Okay.

11 There is a chart that we handed out yesterday, that's
12 going to be Handout 104, that tells you which detectives
13 interviewed which defendants. That may also assist you-all this
14 afternoon or evening as you're kind of deciding. And you can let
15 me know.

16 I think that the trajectory would be that we would try
17 to have them here in the afternoon tomorrow -- and by "here," I
18 mean on the phone if that is okay with you-all or video if we can
19 get them there just to save resources and keep them from leaving
20 their jobs for those who are still employed by Winston-Salem or
21 otherwise have other employment.

22 I don't know how much time you-all feel you can indulge
23 me. I have another section I would like to get through. I would
24 say 30 minutes or so, give or take.

25 **JUDGE LOCK:** Before you do ...

1 Ms. Bridenstine, you did say Detective Sergeant Byrom is
2 the officer who expressed some reservations now about the manner
3 in which the interviews were conducted; is that correct?

4 **THE WITNESS:** That's correct.

5 **JUDGE LOCK:** Do you have his interview -- it's not one
6 of our handouts, is it?

7 **THE WITNESS:** It's not one of our handouts but we have
8 his deposition transcript.

9 **JUDGE LOCK:** How long is it?

10 **MS. SMITH:** If you could give me a moment, we can find
11 it.

12 It's 94 pages.

13 **JUDGE LOCK:** I really don't have time to read all that.
14 But would it be possible to get just that portion of the
15 deposition in which he expresses that concern about the manner in
16 which the interviews were conducted -- just that one portion?

17 **MS. SMITH:** Yes.

18 **MS. ESSARY:** Similarly, the two detectives who said -- I
19 think when they were interviewing just Tolliver, and I'm not sure
20 that they mentioned while interviewing him, that he could get
21 death by lethal injection -- is that correct? Was that just as to
22 Tolliver or was that Bryant as well?

23 **THE WITNESS:** Christopher Bryant and Jermal Tolliver.
24 So it was Detective Nieves with Christopher Bryant and Detective
25 Flynn with Jermal Tolliver.

1 **MS. ESSARY:** And is that on deposition?

2 **THE WITNESS:** Those are both depositions.

3 **MS. ESSARY:** I would love to see excerpts and the
4 context surrounding questions where that was then answered.

5 **MS. SMITH:** Okay.

6 **MS. TANNER:** Commissioner Essary, as to the bowling
7 alley, in your brief, the detailed timeline on brief page 2067 and
8 2100 talk about that also.

9 **MS. ESSARY:** Let me write that down. 2067 and 2100?

10 **MS. TANNER:** Yeah. It's on the detailed timeline.

11 He testified at trial, and that can be found on
12 page 1362 of your brief from the initial -- from first trial.

13 **MS. ESSARY:** Who testified at trial?

14 **MS. TANNER:** Stephens.

15 The second trial, if their -- essentially, if their
16 testimony was the same, we didn't give it to you again, but that's
17 there.

18 I am right now pulling together all of the reports from
19 WSPD related to that, including he had a handwritten report, and
20 we'll give that to you a handout. It's like five pages.

21 **MS. ESSARY:** So Stephens was called by the State?

22 **MS. TANNER:** I don't know who he was called by but he
23 was called at the trial. Sorry, yeah, it was the State -- it is
24 the State. I just read that. I'm sorry. So that is page 1362.
25 And we'll pull together a handout for you that's the police

1 records from his interactions and what he remembers.

2 MS. SMITH: If no one has no additional questions for
3 Ms. Bridenstine, I would ask that she step down.

4 MS. ESSARY: I'm sorry. One more. I do have one more
5 question.

6 Understanding that we've got a lot of juveniles being
7 interrogated in different rooms at the same time, sometimes being
8 left alone, more officers are ferrying through the situation, do
9 we know -- is there any way to tell from the records we have which
10 juvenile confessed first?

11 THE WITNESS: Yes. So the timeline that is in your
12 appendix, the long one, it's 40 pages, but there's a handout we
13 just did that I think that is shorter, under 10 pages, I'll say
14 that, yes, with the caveat that I don't know exactly when. I can
15 tell you that Jermal Tolliver provided initial information that
16 led to them talking to other people, but he did not discuss his
17 own involvement.

18 And then by -- it looks like, based on the police
19 reports and how they're written, Dorrell Brayboy is the first --
20 it's the simplified, the short one.

21 MS. COLBERT: I have a question, if I may, Judge.

22 JUDGE LOCK: Yes.

23 MS. COLBERT: What officer -- so I don't know if it may
24 not have been one of these officers, but, you know, now Tolliver's
25 mom is saying that's not what she said. Is it one of these

1 officers she talked with around she suspected that her son knew
2 something or was that a random call to the police department?

3 **THE WITNESS:** So Detective Rowe said that he was
4 canvassing the neighborhood about a week before the crime occurred
5 and he stopped at Arlene Tolliver's house and gave her a business
6 card, and that she had that business card and used that to call on
7 November 19, 2002.

8 **MS. COLBERT:** Okay. And Rowe was -- we already have him
9 in our packet, right, because I think -- yeah.

10 **THE WITNESS:** To go back to your question, since they
11 weren't recorded, we're relying on the times if they're provided
12 in the reports.

13 And so I can tell you when the interview started where
14 they indicated that they implicated themselves, and it really
15 looks like Dorrell Brayboy's interview, where he began to
16 implicate himself, began at 8:30.

17 Jessicah Black's happened sometime after Detective
18 Bishop joined the interview room at 9:00 p.m. that night.

19 Nathaniel Cauthen's first confession occurred at some
20 time during his interview from 9:10 to 10:00 p.m.

21 Christopher Bryant is noted to confess following the
22 death penalty conversation, 45 minutes into his interview that
23 started at 9:00, so maybe 9:45.

24 And then Jermal Tolliver's is after that, at 10:04, some
25 point after that.

1 And then Rayshawn Banner is interviewed and first starts
2 denying sometime after 11:10 p.m. but then subsequently confesses.

3 MS. ESSARY: Was that the long handout you're referring
4 to?

5 THE WITNESS: This was the short one.

6 (Comments indiscernible to the court reporter.)

7 MS. SMITH: That is Handout 103.

8 MS. ESSARY: Thank you.

9 MS. SMITH: Commissioners, we're passing around
10 Handout 112. This is related to the report of the offense against
11 Willie Wall that Mr. Edwards had asked for. This is the entire
12 juvenile report. It also includes a map.

13 There is a red dot on the map where this crime happened.
14 We have also handwritten on the map where the victim's home is
15 just for your reference.

16 Your Honor, since these are juvenile records, I would
17 simply request that this handout be sealed.

18 JUDGE LOCK: All right. So ordered.

19 MS. SMITH: Are there any additional questions for
20 Ms. Bridenstine before I let her step down?

21 MS. ESSARY: Are we going to talk about the autopsy
22 results? We read about the --

23 MS. SMITH: We provided it in your brief, and I don't
24 think that we planned any additional testimony on those.

25 If you have questions about that, we are certainly happy

1 to answer what we can, but we're not medical professionals so
2 there may be questions that we couldn't answer about that.

3 MS. ESSARY: I'm asking as it relates to these
4 documents.

5 MS. SMITH: Okay.

6 MS. ESSARY: So here is the question, whether you can
7 answer it now or under oath, I remember reading from the autopsy
8 that none of the injuries on Mr. Jones were consistent with being
9 hit by a baseball bat, including anything on his head.

10 Is that your --

11 THE WITNESS: That's my recollection.

12 MS. ESSARY: And I think that's important because we've
13 got an incident a few days before Mr. Jones' murder involving a
14 baseball bat.

15 Does that make sense?

16 MS. SMITH: It does.

17 Any questions for Ms. Bridenstine?

18 (No response.)

19 MS. SMITH: You may step down.

20 (Witness stands down, 5:24 p.m.)

21 MS. SMITH: Commissioners, we're going to turn our
22 attention to possible leads in this case.

23 The Commission staff followed up with various
24 individuals that were listed in the Winston-Salem Police
25 Department file as possible leads but for which WSPD had not

1 followed up.

2 As you've heard, the Commission did not connect any
3 forensic evidence to anyone other than the victim.

4 In addition, none of the Commission's interviews
5 resulted in anyone saying they had direct knowledge of who
6 committed this crime and did not result in anyone admitting to
7 committing the crime themselves.

8 Handout 108 is a chart that details these leads and the
9 work that the Commission did to follow up on those. I am not
10 going to have you review that now. It is a little bit lengthy,
11 but would ask that you do that over the overnight recess.

12 Additionally, Handouts 61 to 70 are the criminal records
13 of the individuals that are listed in that chart who had criminal
14 records. I would ask that you just take a quick look at those on
15 the overnight recess as well. So that's going to be Handout 108
16 and Handouts 61 to 70.

17 We will give you an opportunity in the morning to ask
18 any questions about this section but we thought that that might be
19 the most efficient way to get through that material.

20 At this time, I will recall staff legal investigator
21 Mackenzie Myers.

22 **JUDGE LOCK:** All right. I believe Ms. Myers has been
23 previously sworn.

24 **MS. SMITH:** That's correct.

25 **JUDGE LOCK:** She remains under oath.

1 (Witness, Mackenzie Myers, resumes the stand.)

2 BY MS. SMITH: (5:26 p.m.)

3 Q. Ms. Myers, I'm going to put a map of the Moravia Street
4 area on the screens.

5 MS. SMITH: Commissioners, this is also Handout 71 in
6 your notebooks if you find it useful to look at that on paper as
7 well.

8 Q. Ms. Myers, will you kind of walk the Commissioners
9 through this map and tell them what the various colored dots mean.

10 A. Sure. Absolutely.

11 So this home right here with the blue dot, this was
12 Mr. Jones' home. This is 905 Moravia Street.

13 This dot right here -- I'm not sure, it looks like a
14 mustard yellow to me from right here -- is 901 Moravia Street.
15 That is the home of Brian Lindsay. You'll also be hearing
16 testimony in just a few minutes about Stephen Lindsey, who also
17 resided there and was a brother of Brian Lindsay.

18 This address right here is 911 Moravia Street. This is
19 the home of Shaquita Moore. She lived there with her grandmother,
20 Johnnie Mae Spann. Again, we'll get into this a little bit more.

21 Tarshia Coleman, it's spelled T-a-r-s-h-i-a, it's
22 actually pronounced "Tasha," but she lived across the street at
23 916 Moravia. She lived in a trailer. I'm not sure that this map
24 actually depicts that. Her daughter is Shaquita Moore and lived
25 across the street from her. And we know from our Commission

1 interview her with her that she resided directly across the street
2 from 911 Moravia Street. So, again, that would be right down in
3 here, I'm assuming, but it's not shown on this map.

4 This is the church -- this church is still here;
5 however, these homes right here are no longer -- this is now a
6 parking lot extended into -- or for the church.

7 Ms. Bridenstine testified earlier that this is Belview
8 Park.

9 And "BJ" Arnaldi Lowery lived right here at 821 Moravia
10 Street, and he lived there with his mother, Lori Douglas, and his
11 sister Lashanda Mashack.

12 Q. Could you show them where Calvin Scriven lived.

13 A. Yes, I apologize. Calvin Scriven resided right here, in
14 this home. This is 824 Moravia Street. He was -- and I'll
15 testify about him in just a minute as well.

16 Q. Okay. Thank you.

17 Did you talk to anyone about Belview Park?

18 A. Yes. Commission staff spoke to Brian Manns. He was the
19 manager of the Recreation Center of Belview Park in November of
20 2002. Commission staff talked to him twice over the phone. Both
21 of those interviews were recorded and transcribed.

22 Mr. Manns stated that on November 15 of 2002, which was
23 a Friday, that Belview Rec Center would close at 6:00 p.m. which
24 is when he closed it that night. As he was leaving the recreation
25 center, he stated that he saw a group of teenagers sitting on the

1 picnic tables right outside of the rec center.

2 He estimated that there were approximately 10 of them
3 but he stated that he was -- this was not out of the ordinary to
4 see people in that area when the weather permitted.

5 He stated that after closing the rec center, he drove
6 out of the parking lot, put up the chain across the entryway into
7 the parking lot, and stated he would have been on the road at or
8 around 6:03 p.m. When he put the chain up for the parking lot,
9 there were no cars in that parking lot.

10 So if I may, it might help a little bit if I show where
11 that was.

12 So this is -- as Ms. Bridenstine stated, this is Moravia
13 Street. This is Burgandy.

14 So from Moravia Street to get into the parking lot, you
15 would be driving, it looks like, right into there. There is --
16 and there's still a gate, a chain-link -- a chain-link, really,
17 that goes across this entryway right here. So he placed that up
18 and then exited the parking lot.

19 This is the covered area with picnic tables, and then
20 this is the rec center right here.

21 Q. Did Mr. Manns say anything else to commission staff?

22 A. Yes. He stated that people seem to think that he
23 quote-unquote "holds the key" to this case and that people have
24 been hunting him down for years over this.

25 Q. Did he know any of the defendants in the case?

1 A. He did. He stated that he knew Christopher Bryant and
2 Jermal Tolliver and that they had participated in a spelling bee
3 contest at the rec center but he was unaware of how old they were
4 or when that was.

5 Q. Did you speak with anyone else who had information about
6 Belview Park from the night of the crime?

7 A. We did. Commission staff spoke to Leatrice Ward. She
8 stated that one of her sons did not wear a coat that day and that
9 the temperature had dropped and it was very cold. She drove to
10 Belview Park to meet her son's activity bus that night. Ms. Ward
11 wasn't sure of the time that she ended up driving around to that
12 area but did tell commission staff that it was dusk. When she
13 went by the park, the chain was up across the entrance of the
14 parking lot, and she didn't see anyone in the park at that time.
15 She stated that the rec center was closed as well.

16 She reported to commission staff that she knew
17 Christopher Bryant, Jermal Tolliver, Nathaniel Cauthen, and
18 Rayshawn Banner.

19 We also interviewed her daughter Brittany Ward, who
20 stated that she remembered driving around with her mother looking
21 for her brother because her brother, again, wasn't wearing a
22 jacket that day and it was very cold. She remembered that it was
23 before 6:00 p.m. because the rec center hadn't closed yet and it
24 closed at 6:00 p.m.

25 She stated they drove around for at least 30 minutes

1 because it had been light out when they first started driving and
2 then became dark. She stated that they drove around the streets
3 in the neighborhood and never saw any of the defendants, who she
4 knew.

5 Q. Did the Commission speak with any of the individuals who
6 were originally interviewed by law enforcement and who were
7 neighbors of Mr. Jones?

8 A. Yes, we did.

9 We spoke to Tarshia Coleman, Calvin Scriven, Stephen
10 Lindsey, Arnaldi "BJ" Lowery, and Ava Boulware.

11 Commission staff made multiple attempts tips to locate
12 Brian Lindsay but were able to find him in order to conduct an
13 interview.

14 Commission staff also interviewed several people that
15 had not previously been interviewed by the police during the
16 original investigation. These people included Brian Manns, whom I
17 just testified about; Monti Mitchell or Monte Mitchell, who is the
18 son of Monticello Mitchell; Shaquita Moore; Leatrice Ward;
19 Brittany Ward; Lori Douglas; and Lashanda Mashack.

20 Q. I will turn your attention now to Tarshia Coleman. Tell
21 the commissioners again who she is.

22 A. Sure. Ms. Coleman resided at 916 Moravia Street. So,
23 again, that would be kind of diagonally across from where
24 Mr. Jones lived. She resided in a trailer and her mother was
25 Johnnie Mae Spann, who lived right next door to Mr. Jones.

1 She called 911 and checked the pulse of Mr. Jones.

2 Commission staff interviewed Tarshia Coleman on
3 November 26 of 2019, and this interview was recorded and
4 transcribed.

5 **Q.** Was Ms. Coleman's Commission interview different from
6 when she was interviewed by Winston-Salem Police Department in
7 2002?

8 **A.** No. There were no significant differences between what
9 she told police in 2002 and what she told commission staff when we
10 interviewed her.

11 **Q.** Why were you interested in Ms. Coleman's mother?

12 **A.** Ms. Coleman indicated to commission staff that her mom
13 had been home that entire day -- so, really fast, her mom, again,
14 lived right here, so this is right next door to Mr. Jones' home.

15 So she indicated that her mother was at home all day,
16 including the day of the crime. Ms. Coleman indicated that she
17 had asked her mother whether or not she had seen or heard anything
18 unusual on November 15 of 2002, and she stated that her mother did
19 not hear or see anything unusual.

20 **Q.** Did commission staff obtain a voluntary DNA buccal swab
21 for Ms. Coleman?

22 **A.** We did. And the purpose for asking Ms. Coleman for the
23 voluntary DNA swab was because she touched Mr. Jones on his wrist
24 in order to check his pulse.

25 **Q.** Who is Shaquita Moore?

1 A. Shaquita Moore is the daughter of Tarshia Coleman. She
2 lived with her grandmother in the home next door to Mr. Jones at
3 911 Moravia Street. She was interviewed by commission staff on
4 February 24 of 2020. This conversation was recorded but it was
5 not transcribed.

6 Q. Why did the Commission want to talk to Shaquita Moore?

7 A. Well, Lashanda Mashack, who I will testify about in just
8 a minute, had told the Commission that she had heard that Shaquita
9 Moore's uncle whose name was Tommy Spann -- excuse me -- Tommy
10 Spann had been telling people that the defendants put tape on
11 Shaquita Moore's windows because it overlooked the crime scene,
12 and we want to determine whether or not she did actually have tape
13 on her window.

14 Q. What did Shaquita Moore say about that?

15 A. Ms. Moore stated she believed that on the night of the
16 crime that she had been working and came home a little bit later.
17 She stated that there was not any tape on her window and that her
18 window did in fact overlook Mr. Jones' home and she was able to
19 see his body that night.

20 Q. Did she know of any issues that Mr. Jones had in the
21 neighborhood?

22 A. She did not. She stated that no one had problems with
23 Mr. Jones and that she thought that the person who had committed
24 this crime was someone who didn't live in the neighborhood and did
25 not know Mr. Jones because had they known him, they would have

1 known that they could have just asked him for the money and he
2 would have given it to them.

3 Q. Let's talk briefly about Calvin Scriven. Who is Calvin
4 Scriven?

5 A. Calvin Scriven was dating Tarshia Coleman at the time of
6 the crime and was at her home on that night. He lived down the
7 street from the victim in the direction of Belview Park.
8 Mr. Scriven went to check on Mr. Jones after the painter, Claude
9 Walker, had come over to the home and told Mr. Scriven that
10 something was not right.

11 Mr. Scriven was interviewed by commission staff on
12 November 26 of 2019, and this interview was recorded and
13 transcribed.

14 Q. Was Mr. Scriven's interview with the Commission
15 different from when he was first interviewed with the
16 Winston-Salem Police Department?

17 A. It was not. His interview with the Commission was
18 consistent and commission staff asked Mr. Scriven if he would be
19 willing to provide a voluntary DNA buccal swab since he had gone
20 to the victim's aid and he stated he would not provide a sample.

21 MR. BRITT: I have a question. Did Mr. Scriven explain
22 why the painter came to his house?

23 THE WITNESS: So --

24 MR. BRITT: To either the house next door to Mr. Jones'?

25 THE WITNESS: Mr. Scriven was actually at 916 Moravia

1 Street that night; so although he lived right here, because he was
2 dating Tarshia Coleman, who lived --

3 **MR. BRITT:** -- across the street.

4 **THE WITNESS:** Right. He was at her home.

5 Mr. Walker had actually gotten a little lost in the
6 neighborhood, saw Mr. Scriven out, had asked where Mr. Jones
7 lived. Mr. Scriven had directed him across the street, and so
8 that's how he ended up coming back and asking for help.

9 **MR. BRITT:** Okay.

10 **Q.** Did commission staff ask Mr. Scriven where he touched
11 Mr. Jones?

12 **A.** Yes. He stated that he touched Mr. Jones on his neck in
13 order to feel for a pulse and that his hand may have touched the
14 black tape that was Mr. Jones' head.

15 **Q.** Who is Stephen Lindsay?

16 **A.** Stephen Lindsay resided next door to Mr. Jones at
17 901 Moravia Street. Commission staff interviewed him on January 6
18 of 2020, and his interview was recorded and transcribed.

19 **Q.** Why did commission staff wanted to speak with Stephen
20 Lindsay?

21 **A.** We wanted to speak with Mr. Lindsay because he was the
22 next door neighbor of Mr. Jones and according to police reports he
23 had been home all day. He was also the brother of Brian Lindsay
24 whom commission staff was trying to locate in order to interview.

25 Mr. Lindsay told commission staff that he did not

1 remember the night that Mr. Jones was killed, indicated to us that
2 he probably was home. He did not remember speaking to the police
3 that day and he said that he did not know of anyone who had issues
4 with Mr. Jones.

5 Commission staff also asked Mr. Lindsay if he had
6 contact information for his brother, Brian Lindsay, but he stated
7 that he did not have contact information for him.

8 When we asked about his brother, Brian, he told
9 commission staff that Brian didn't have anything to do with this
10 crime.

11 Q. Turn your attention now back to Brittany Ward. Who is
12 she again?

13 A. Sure. Brittany Ward is someone who grew up with the
14 defendants. She is the daughter of the Leatrice Ward, who I
15 talked about a little bit earlier. She was interviewed by
16 commission staff on January 22 of 2020, and this interview was
17 recorded and transcribed.

18 Q. Why did we interview her again?

19 A. There was a handwritten note in Nathaniel Cauthen's PLS
20 file regarding Brittany Ward indicating that Tony Lindsey's uncle
21 was missing a patch of hair, and we wanted to find out more about
22 that handwritten note with her name on it.

23 Ms. Brittany Ward was shown the handwritten note and
24 stated that the uncle of Tony Lindsey looked to her as if he'd
25 gotten into a fight because he had a patch of hair missing, and

1 she assumed that she saw this a couple of days after Mr. Jones was
2 killed.

3 When asked how confident she was about seeing this
4 missing patch of hair, Ms. Ward said, quote: "I mean kind of
5 confident," unquote.

6 Q. Was Ms. Ward able to further identify the uncle of Tony
7 Lindsey?

8 A. She was not. She indicated that he would sometimes come
9 to Tony and Stephen Lindsay's home but that he did not live there
10 and she was not able to provide a name.

11 MS. SMITH: Commissioners, any questions so far?

12 MS. ESSARY: I'm a little bit confused about the uncle
13 and exactly who and the hair?

14 THE WITNESS: Sure. I understand. That's a little
15 confusing.

16 Tony Lindsey was somebody who went to Parkland High
17 School. He was -- I believe he was a senior that year. He was
18 playing football that night. Tony Lindsey resided in the home
19 with his uncle, Stephen Lindsay, and his mom, whom we've not
20 testified about, and Brian Lindsay was also his uncle.

21 So he resided -- Tony Lindsey, the high school student,
22 excuse me, also lived in 901 Moravia Street next to Mr. Jones and
23 was friends with Brittany Ward.

24 MS. ESSARY: Okay.

25 So would you state again what Brittany Ward testified to

1 as to his uncle? Are we talking about Brian Lindsay?

2 **THE WITNESS:** So she stated that it was his uncle and
3 she knew it wasn't Stephen Lindsay and that sometimes this other
4 uncle would sometimes be at that home. So she was not able to
5 tell us it was Brian Lindsay -- she could not name him.

6 **MS. ESSARY:** Okay.

7 And so how did she -- how did you get to know about her
8 first name? Was it previously something that the police had
9 looked at?

10 **THE WITNESS:** There was -- she had spoken to police
11 before, I believe. So this -- or excuse me, and Ms. Bridenstine
12 might have to correct me on this -- but she was, I believe,
13 interviewed by an attorney for Mr. Cauthen's PLS -- or his MAR,
14 and there were notes in there that she had told the attorney that
15 she had seen this person, Tony Lindsey's uncle, with the missing
16 patch of hair after the crime. And so we were able to obtain that
17 file, saw that note, and wanted to follow up with Ms. Ward.

18 **MS. ESSARY:** And she also testified what about his
19 physical appearance?

20 **THE WITNESS:** So she didn't testify. She only spoke to
21 us during this interview. She stated that he was missing a patch
22 of hair.

23 **MS. ESSARY:** And looked a little beaten up?

24 **THE WITNESS:** She did not say that he had looked a
25 little beaten up.

1 **MS. ESSARY:** I'm sorry.

2 **THE WITNESS:** That's okay.

3 **MS. ESSARY:** Did you say something about his physical
4 appearance?

5 **THE WITNESS:** I did not.

6 **MS. ESSARY:** Did I make that up?

7 (Overlapping speakers.)

8 **Q.** Ms. Myers, did you say -- did you say that she said he
9 looked as if he'd gotten into a fight because he had a --

10 (Overlapping speakers.)

11 **MS. ESSARY:** Thank you.

12 **THE WITNESS:** I'm sorry. Yes.

13 So because of the missing patch of hair, to her, it
14 seemed like he had gotten into a fight. So I apologize.

15 **MS. ESSARY:** Thank you.

16 Did Brian Lindsay's brother whom you did interview who
17 did not have contact information for his brother state why he did
18 not have contact information for his brother?

19 **THE WITNESS:** He told commission staff that he was -- he
20 had been out of touch with his family members for a while. And so
21 I do not have a reason as to why he doesn't have it other than
22 that, that he just had not been in contact with his family.

23 **MS. ESSARY:** So we don't know anything about Brian
24 Lindsay's whereabouts in the country?

25 **THE WITNESS:** We tried extensively to be able to track

1 him down. We did go back to 901 Moravia Street, which had been a
2 listed address for him. We spoke to one of his sisters who also
3 told us that she did not have contact information for him, that
4 she sometimes sees him. And I had given her a business card to
5 pass along to him should she come in contact with him.

6 We had information, after trying to -- we tried to serve
7 him with a subpoena for a deposition. And at that time, we
8 thought that he did reside at 901 Moravia Street. We found out
9 from the Forsyth County Sheriff's Department -- or Office, excuse
10 me, that they had gotten word that he was homeless. So we did
11 attempt to try to find him at three different homeless shelters in
12 the Winston-Salem area.

13 We did end up speaking to somebody who worked for one of
14 the agencies in Winston-Salem who was able to use a database
15 system that a lot of the shelters use to document who comes and
16 receives services, and he was not documented in that database.

17 **MS. ESSARY:** Do we know anything about his age or work
18 status in 2002, when this murder happened?

19 **THE WITNESS:** I do not -- to my recollection, I do not
20 believe that we have any indication that he was working. I would
21 be more than happy to go back and try to just double-check that
22 and make sure that I'm correct about that. But off the top of my
23 head, my understanding --

24 **MS. ESSARY:** Would we be concerned if we didn't have his
25 testimony from her immediately after the murder with the clump of

1 hair referred to --

2 **THE WITNESS:** Sure.

3 **MS. ESSARY:** -- a clump of hair in the backyard of the
4 decedent.

5 **THE WITNESS:** Sure. And in just a few minutes, I'll be
6 testifying about Ava Boulware, who did see him the night of the
7 crime, and that might be able to answer a little bit about that --
8 hopefully.

9 **MS. ESSARY:** Okay.

10 **Q.** Tell the Commissioners a little bit more about Arnaldi
11 "BJ" Lowery.

12 **A.** Sure. BJ is what he still goes by today, that's his
13 nickname. He's the son of Lori Douglas. He was first interviewed
14 over the phone about this crime by Detective Barker, and he also
15 testified at both trials in this case.

16 Commission staff interviewed him on February 3 of 2020,
17 and this interview was recorded and transcribed.

18 **Q.** What did he tell commission staff at that interview?

19 **A.** BJ first told commission staff that he remembered
20 playing outside and then going home.

21 I showed BJ a police report where he was interviewed
22 over the phone by Detective Barker, and he stated he didn't
23 remember saying anything that was in the police report and said
24 that he would have remembered speaking to a police officer over
25 the phone.

1 He did state that he remembered playing hide-and-go-seek
2 around a house that was located next to Belview Park, and he also
3 told commission staff that this home was no longer there and that
4 it was currently an empty lot.

5 Q. Did he remember riding his bike down Moravia Street?

6 A. No, he did not.

7 Q. Who did he think he was outside playing hide-and-go-seek
8 with?

9 A. BJ believed that he was with his sister, but that he
10 didn't think that Monte was there because Monti didn't live in the
11 Belview area. He also did not remember someone named TT being
12 there, who is Monte's sister, and so therefore, he did not
13 remember asking her what time it was either.

14 Q. What did BJ tell commission staff about what he saw in
15 the park?

16 A. BJ stated that he saw a person running out of the park,
17 which he thought was out of the ordinary at that time. He could
18 not tell if the person was someone he knew or not because it was
19 dark outside. He said that even though there were streetlights,
20 the trees were blocking the light so it was still very dark where
21 they were playing.

22 Q. Did commission staff ask BJ what he remembered about
23 testifying at trial?

24 A. Yes. Commission staff showed him both of his trial
25 transcripts from both of the trials, and he stated he didn't

1 remember testifying at either of them. He also said that he did
2 not remember that the day that this crime took place was also the
3 day of his mother's birthday.

4 Q. Does he remember being shown pictures of possible
5 suspects in this case?

6 A. No, he does not.

7 Q. What did he tell commission staff that he remembered
8 about that day?

9 A. He stated that he remembered someone running through the
10 park. I had him draw a map of what he remembered, and the drawing
11 is inconsistent with his statements to police and his testimony at
12 trial. And otherwise, he just remembered a little about that day.

13 Q. Have we said yet how old he was at the time?

14 A. At the time of this crime, he was 10 years old. And at
15 the time of the first trial, he was 12.

16 Q. Ms. Myers, who is Ava Boulware?

17 A. In 2002, Ava Boulware went by Ava Williams. She was
18 extremely close with Mr. Jones. On the night of the, Ms. Boulware
19 drove by Mr. Jones' house and saw someone in his car. Commission
20 staff interviewed Ms. Boulware by telephone on March 6 of 2020,
21 and this interview was recorded and transcribed.

22 Q. Can you tell commissioners about what Ms. Boulware
23 communicated to commission staff.

24 A. Sure. Ms. Boulware stated that, in November of 2002,
25 she was residing at 928 Aureole Street, which is -- and was living

1 in the home that was directly behind Mr. Jones' house.

2 On her way home from work, she drove by Mr. Jones' home
3 to get to hers and stated this would have been around 5:30 p.m.
4 She did not see a car in Mr. Jones' carport at that time.
5 Ms. Boulware stated there was a football game that night that
6 started at 7:00 p.m. at Parkland High School. Her oldest
7 daughter, who was attending college at that time, was in town with
8 her friends and staying in a hotel.

9 Ms. Boulware stated -- wanted to be on time for the game
10 and needed to check her daughter and her friends in to the hotel
11 first because she did not want to be late for the football game.
12 Ms. Boulware drove by Mr. Jones' home on her way out of the
13 neighborhood and stated this would have been sometime between
14 6:00 p.m. and 6:30 p.m.

15 When she drove by the home, she noticed someone in
16 Mr. Jones' car which was parked in the carport. She stated the
17 person appeared to be smaller than Mr. Jones and she believed it
18 to be one of his grandsons. She stated that she beeped her horn
19 and waved and proceeded to drive out of the neighborhood.

20 Q. Did Ms. Boulware tell commission staff that she noticed
21 anything else about the person that she saw in Mr. Jones' car?

22 A. Yes. She stated that she noticed they were pressing the
23 brake pedal because she saw the brake lights of the car flashing
24 on and off. Ms. Boulware stated this made her think that it was
25 someone who wasn't -- inside the car that wasn't familiar with the

1 car and that they were in the process of moving it out of the
2 carport and driving it into the driveway.

3 Ms. Boulware stated that it looked like the person wore
4 a ballcap. She said that she was confident that this is what they
5 had on their head, but that if it was not a ballcap, that the
6 person likely had a small Afro -- or a short Afro, excuse me.

7 Q. Did Ms. Boulware notice whether or not the light in the
8 carport was on at that time?

9 A. She did not notice it because it was still dusk out.

10 Q. Did she pass by Belview Park on her way out of the
11 neighborhood?

12 A. She did. Ms. Boulware stated that she does not remember
13 seeing anyone in Belview Park and did not notice Brian Manns' car
14 in the parking lot when she drove by.

15 Q. Did she see anyone else outside at this time?

16 A. She did. Ms. Boulware stated that she saw Brian Lindsay
17 outside of his home at 901 Moravia Street, walking up and down the
18 sidewalk on a telephone. She saw him the first time she drove by
19 Mr. Jones' home around 5:30 p.m. and again the second time,
20 between 6:00 p.m. and 6:30 p.m. She stated this was not out of
21 the ordinary to see Brian Lindsay outside like this and that they
22 waved to one another when she drove by.

23 MS. SMITH: Commissioners, information related to
24 Ms. Boulware's interviews with law enforcement can be found on
25 page 84 of your brief. Additionally, her testimony from the

1 Cauthen and Banner trial is provided and summarized on page --
2 beginning on page 1596 of your brief.

3 At the time of the original investigation, as Ms. Myers
4 testified, Ms. Boulware was going by Ava Williams.

5 Q. Did the Commission staff show Ms. Boulware the
6 affidavits with her signature on them that were in support of c
7 and Rayshawn Banner's motions for appropriate relief?

8 A. Yes. Ms. Boulware stated that it is her signature on
9 those affidavits but that she does not have a clear memory of
10 doing this.

11 She stated she did not type the contents in the
12 affidavit and she would not have provided this for Nathaniel
13 Cauthen or Rayshawn Banner because she did not know them well
14 enough to say any of the things in the affidavit.

15 MS. SMITH: Commissioners, you may wish to refer back to
16 Handouts 46 and 48 for those affidavits that you read earlier
17 today.

18 Q. Did Ms. Boulware say whether or not the language used is
19 something she would have said?

20 A. She did. And she said that some of the language in the
21 affidavits is something that she has previously said about
22 Christopher Bryant but reiterated that she would not have said
23 these things about Nathaniel Cauthen or Rayshawn Banner.

24 Q. Did Ms. Boulware know any of the defendants in this
25 case?

1 **A.** Yes. She stated that she has -- she knows all of the
2 defendants but has known Christopher Bryant the best and for the
3 longest. Ms. Boulware stated that if Christopher Bryant had been
4 in the park that night, she would've seen him and believed that
5 had he been there, he would have done something to get her
6 attention as she was driving by.

7 **MS. SMITH:** Commissioners, any questions so far?

8 **MS. COLBERT:** Was -- at the time of this affidavit, was
9 her last name Boulware?

10 **THE WITNESS:** I believe it was Boulware at that time. I
11 believe that's how she signs her name as well on there.

12 **Q.** Let me turn your attention now to Lashanda Mashack.

13 Did commission staff interview Ms. Mashack?

14 **A.** Yes. Ms. Mashack was interviewed on January 8 of 2020,
15 and this interview was recorded and transcribed. She is the
16 sister of BJ Lowery and the daughter of Lori Douglas, who I will
17 be testifying about in just a minute.

18 **Q.** Did Ms. Mashack know any of the defendants?

19 **A.** She did. She stated that she grew up in the
20 neighborhood with them and she would often see them at the rec
21 center. She also said that she went to school with the defendants
22 but that they were in a different class and she -- and that some
23 of them were in what she described as, quote-unquote, the "slow
24 class."

25 **Q.** Where did Ms. Mashack reside in November of 2002?

1 A. She lived at 821 Moravia Street, which is located on the
2 other side of the park from where Mr. Jones lives. And it's the
3 one with the purple dot on the map.

4 Q. What did she remember from November 15, 2002?

5 A. Ms. Mashack stated that she had come home from
6 basketball practice and the street that night was blocked off so
7 she had to enter the neighborhood from a different way.

8 Her mom was having a birthday party that night, and when
9 she arrived home, she found out about Mr. Jones. She has never
10 spoken to her brother, BJ, about what he saw because they are
11 six years apart and do not communicate about things like that.
12 She heard about what had been -- what he had seen and that he
13 testified in court through her mom.

14 Q. Did Ms. Mashack ever hear anything about who had
15 committed this crime?

16 A. She told commission staff that she had heard rumors that
17 Tommy Spann, the uncle of Shaquita Moore and the brother of
18 Tarshia Coleman, was telling people that the defendants had placed
19 tape over Shaquita windows -- excuse me, Shaquita Moore's window
20 because it faced Mr. Jones' home. Ms. Mashack stated, quote:
21 "They aren't even smart enough to think that deep into something
22 like that," end quote.

23 Q. And did Shaquita Moore ever tell this to Ms. Mashack?

24 A. She did not.

25 Q. And you've already testified, but just to reiterate, did

1 the Commission ask Ms. Moore if she had tape on her window the day
2 that Mr. Jones was killed?

3 A. We asked her, and she stated she's never had tape on her
4 window.

5 Q. Was Ms. Mashack aware of anyone in the neighborhood that
6 Mr. Jones had argued with or had -- or that had any kind of
7 substance abuse problem?

8 A. Ms. Mashack stated that Tommy Spann was using drugs and
9 that she knew this because he was living with her father, who was
10 also using drugs with Tommy Spann. She was not aware of any
11 argument he had with Mr. Jones, however.

12 Q. Was Ms. Mashack aware of anyone in the neighborhood that
13 was missing a patch of hair?

14 A. She was not. I asked her about Tommy Spann, and she
15 stated that he was bald. So it wasn't him.

16 Q. Who is Lori Douglas?

17 A. She is the mother of Lashanda Mashack and Arnaldi "BJ"
18 Lowery. Her birthday falls on November 15, and she was having a
19 birthday party that night at her home. She lived down the street
20 from Mr. Jones and on the other side of Belview Park, again, at
21 821 Moravia Street, which is where that purple dot is on the map.

22 This interview with Ms. Douglas took place on January 9
23 of 2020 and it was recorded and transcribed.

24 Q. What did Ms. Douglas tell the Commission happened on the
25 night of November 15, 2002?

1 A. Ms. Douglas stated she was having a little get-together
2 for her birthday and that she sent her 10-year-old son, BJ Lowery,
3 and his friend, Monte, outside to play while it was still
4 daylight.

5 Ms. Douglas stated that she told them to go outside and
6 ride their skateboards and that about 15 to 20 minutes later, they
7 came back inside and said that the police were out and that they
8 had seen some guys running.

9 Ms. Douglas said she couldn't remember the names of the
10 guys BJ saw running but stated that commission staff had mentioned
11 their names when explaining the case that the Commission was
12 investigating.

13 Q. Did you tell Ms. Douglas the names of the defendants
14 again?

15 A. I did. And she said that BJ saw Christopher Bryant and
16 Dorrell Brayboy, but that she wasn't sure how many people he saw.
17 Ms. Douglas then said -- told BJ to go tell the police.

18 Q. What else did she say?

19 A. Sorry.

20 The next day, the police came to her home and she told
21 them that BJ was in school. She said they came back and spoke to
22 him when he was out of school.

23 Commission staff asked Ms. Douglas if BJ knew the
24 defendants before the crime, and she said yes because they had
25 played at the recreation center. She said BJ would've recognized

1 them.

2 Ms. Douglas then told commission staff that she thought
3 that the police brought pictures to show BJ and that he picked out
4 the guys he saw running.

5 Q. Did commission staff speak to anyone else about a photo
6 lineup being shown in the case?

7 A. We did not speak to anyone else who said that a photo
8 lineup was shown or used. BJ told commission staff that he did
9 not remember being shown any pictures of anybody.

10 Q. And has BJ ever identified to law enforcement or
11 otherwise who the person was that he saw running?

12 A. No, he has not.

13 Q. And Ms. Douglas remembers speaking to the private
14 investigator who was hired by attorney Teresa Heir, Mr. Whapham?

15 A. No, she did not. She said that she doesn't remember
16 saying anything about a person being at a picnic table and that BJ
17 wasn't riding his bike that day because his bike had been stolen.

18 Q. And was that information that you gleaned from
19 Mr. Whapham's report?

20 A. I believe that was information -- and I'll have to
21 double-check this -- that we learned from our commission interview
22 with Ms. Douglas.

23 Q. Did Ms. Douglas tell commission staff about any rumors
24 that were going on in the neighborhood?

25 A. Yes. She stated that there were a lot of rumors about

1 Tommy Spann, who resided next door to Mr. Jones at 911 Moravia
2 Street, being involved as well as Brian Lindsay. Ms. Douglas
3 stated that she did not think Tommy lived in the home at that time
4 and told commission staff that he was on drugs and would smoke
5 crack with her daughter's father.

6 Ms. Douglas didn't think that Tommy had anything to do
7 with this because Mr. Jones was a father figure to him.

8 Q. Did Ms. Douglas tell commission staff anything else
9 about what BJ saw?

10 A. Yes. She said that BJ, quote: "Saw the guys" -- excuse
11 me -- "saw the guy when he jumped the rock or whatever, jumped the
12 fence or whatever, from Mr. Jones' home -- house and come around
13 where there ain't no fence and cut through the park. I said,
14 'Well, where -- where were you-all at?" and he said, 'Mom, we was
15 just coming down the sidewalk on -- by the picnic table when we
16 saw them and we just stopped and we just saw them, just kept on
17 booking it through the field down by the park, through the field,"
18 end quote.

19 Q. Who is Monti Mitchell?

20 A. He is the son of Monticello Mitchell, who was attending
21 the birthday party of Lori Douglas on November 15, and he was
22 outside playing with BJ that night.

23 Q. Did commission staff speak with Monte Mitchell?

24 A. Commission staff reached out to Monte Mitchell on
25 February 19 through a Facebook message. Because Mr. Mitchell

1 resides out of the state, he had never been spoken to prior to
2 commission staff reaching out to him.

3 **Q.** Did commission staff speak with him over the phone?

4 **A.** We were unable to speak with him on the phone; however,
5 he did tell commission staff that -- over Facebook, again, that he
6 remembered seeing someone run through the park that night but he
7 stated it was too dark to tell if that person was a male or a
8 female.

9 **MS. SMITH:** Any questions, commissioners?

10 **MS. ESSARY:** I do have one. I seem to remember from our
11 brief that there was maybe a mentally disabled person who also saw
12 the runner but was not interviewed by the police.

13 Does that ring a bell?

14 **THE WITNESS:** Yes, it does. And that's actually Monte
15 Mitchell.

16 **MS. ESSARY:** Okay.

17 **THE WITNESS:** His father had been interviewed by Ken
18 Whapham, who was the private investigator that was hired by the
19 defense on behalf of Nathaniel Cauthen, and his father, whose name
20 is also Monticello Mitchell, had told them that his son had
21 Klinefelters syndrome and that when -- after the police had
22 arrived at Mr. Jones' home, that his son told him about what he
23 had seen, and that Mr. Mitchell, the father, had believed that his
24 son was just making that up based on seeing the police there.

25 He relayed that to the police officers that he spoke to

1 and believed that that's why detectives never followed up with his
2 son.

3 Q. Ms. Myers, I want to direct your attention to the phone
4 records originally obtained by the Winston-Salem Police Department
5 regarding the Willard Cab Company.

6 Did commission staff have an opportunity to review those
7 records?

8 A. Yes. They were provided to the Commission in the full
9 WSPD file. And the phone records cover all documented phone calls
10 to the Willard Cab Company on November 15 of 2002.

11 Q. Can you remind the Commissioners again the significance
12 of the Willard Cab Company.

13 A. Sure. Willard Cab Company reached out to the
14 Winston-Salem Police Department to report that they had received
15 several phone calls within a short amount of time from someone
16 requesting a cab be sent to 905 Moravia Street on November 15 of
17 2002.

18 Kenneth Gary, who was the dispatcher and cashier for
19 Willard Cab Company testified at the Cauthen and Banner trial
20 about this, which was the first trial. He stated that the caller
21 sounded like a young black male.

22 Q. Did the commission staff review these records for
23 particular phone numbers?

24 A. Yes. Commission staff reviewed the records for the
25 phone numbers of Terry Jones, Reginald Jones, Anjuan Terry, James

1 Davis, and the Cricket phone belonging to Teresa Banner, who is
2 Teresa Ingram, so the mother of Nathaniel Cauthen and Rayshawn
3 Banner. The Cricket number that they had was a phone that she
4 shared with her sons -- so Joseph Cauthen, Nathaniel Cauthen, and
5 Rayshawn Banner.

6 None of these numbers appeared in the Willard Cab
7 Company's phone records on November 15 of 2002.

8 **Q.** Did commission staff search for any other numbers?

9 **A.** Yes. Commission staff searched for Mr. Jones' home
10 phone number because one of the women who cleaned his home on the
11 day of the crime told police that she had called a cab around
12 1:50 p.m. from Mr. Jones' telephone, but that number did not
13 appear in the Willard Cab Company phone records.

14 **MS. SMITH:** Commissioners, any questions for Ms. Myers?

15 **MS. ESSARY:** Did the cab company telephone records have
16 the number of phone calls that had come from Mr. Jones' home
17 seeking a cab?

18 **THE WITNESS:** It was difficult to be able to decipher
19 which phone number that was from. One of the things that the
20 records also says is that sometimes if -- if the number is coming
21 from a cell phone, it wouldn't be -- the number that would be
22 showing up in the records wasn't the actual cell phone number, it
23 was the carrier number from the actual phone company. So it is --
24 assuming that the person called from a cell phone number, it would
25 be difficult to be able to narrow down what number that actually

1 came from.

2 **MS. ESSARY:** So were you ever able to talk to anybody
3 who actually talked to the other -- talked to the person seeking
4 the cab?

5 **THE WITNESS:** No, we were not.

6 And Willard Cab Company was unable to decipher which one
7 of their cabdrivers was dispatched to the home. There were
8 actually two cabdrivers that were dispatched, but Kenneth Gary and
9 one of the other women who works for the company was not able to
10 figure out who the cabdrivers were.

11 **MS. ESSARY:** But this is physically what's in the cab
12 company's records?

13 **THE WITNESS:** Sure. And we were not able to decipher
14 which number would have been making --

15 **MS. ESSARY:** But not a phone number, but the
16 incidence -- the fact that these calls were made.

17 **THE WITNESS:** So there were -- the time period that this
18 person called happens to also fall within the time period that
19 Willard Cap Company said was the busiest time of night for them as
20 well. So there are a lot of calls that are within that time
21 period from when this call could have been made.

22 **MS. ESSARY:** What's that time period?

23 **THE WITNESS:** I believe that they said it was from 4:00
24 to 8:00 p.m., or specifically from 4:00 to 6:30. I know I'm
25 giving you a wide time frame so I would need to go back in the

1 records and double-check that, which I can do in just a second
2 from my laptop and let you know.

3 MS. ESSARY: Someone from the cab company was called at
4 both the first and second trials for the defense?

5 THE WITNESS: If you would give me one moment to look at
6 the --

7 MS. ESSARY: Okay. That's fine.

8 THE WITNESS: There was a chart that was provided to
9 you-all in the brief, and I believe it has it on there. I believe
10 Kenneth Gary only testified at the first trial and not at the
11 second trial.

12 MS. SMITH: While Ms. Myers is looking that up, we're
13 coming to the end of our day but I do want to go over with you the
14 handouts that you're going to look at this evening. So if you
15 want to get your pens ready ...

16 Handout 108 is that possible leads chart that the
17 Commission staff had put together about additional leads we
18 followed up on.

19 Handout 61 to 70 are criminal records associated with
20 the individuals named in Handout 108 where they have a criminal
21 record. If you don't see one, you can assume for that section
22 that they do not have one.

23 Handout 109 is going to correspond with the flash drives
24 that we will pass around. These are the audio recordings of the
25 interviews with the five codefendants and Jessica Black as well

1 as their taped *Bruton* statements. I believe Mr. Britt asked for
2 these earlier today. Again, that's about three hours of audio,
3 but you-all should listen to that as you want to, to kind of hear
4 how those interviews go.

5 As Ms. Bridenstine testified earlier today, we do not
6 have audio of the entire interaction with law enforcement.

7 So we'll send those home with you. We respectfully ask
8 that you bring us our flash drives back. They cost a lot of
9 money.

10 Handout 113, if you will look at that tonight, it is
11 going to be the records we have related to the bowling alley and
12 Officer Stephens, who was off-duty officer that night and was
13 working security at the bowling alley.

14 **MS. NEWTON:** We don't have 113.

15 **MS. MATOIAN:** We're passing them around.

16 (Overlapping speakers, unintelligible crosstalk.)

17 **MS. SMITH:** Handout 114 is an excerpt from the Sergeant
18 Byrom deposition that was requested by a commissioner related to
19 his assertion now that there were issues with the interviews of
20 the codefendants.

21 And Handout 115 is an excerpt from the Flynn deposition.

22 Handout 116 is an excerpt from the Nieves deposition.

23 And if I'm not mistaken, those were requested in relation to
24 information related to the death penalty being discussed with the
25 codefendants.

1 So, again, the ones you're going to look at tonight are
2 108, 61 to 70, 109, 113, 114, 115, 116, and your flash drives that
3 are coming around.

4 **MS. NEWTON:** Can I ask a question?

5 **MS. SMITH:** Yes.

6 **MS. NEWTON:** In your Handout 24, the forensic testing
7 chart, there is no mention of the toboggan.

8 Did you-all do anything with that piece of evidence and
9 where was it found?

10 **MS. SMITH:** If you will allow us to look at that this
11 evening, Ms. Matoian is probably the best person to testify about
12 that. And we can certainly look at it now, but in the interest of
13 time for the evening, we can probably get you your answer first
14 thing in the morning.

15 **MS. NEWTON:** Thank you.

16 **MS. SMITH:** Ms. Myers, are you able yet to answer
17 Ms. Essary's question, or would you like to wait?

18 **THE WITNESS:** I would like to wait to answer that
19 tomorrow morning, and I apologize for that.

20 **MS. ESSARY:** No worries.

21 **THE WITNESS:** I don't have it right here in front of me.
22 But what I can tell you about Brian Lindsay --

23 **MS. ESSARY:** No worries.

24 **THE WITNESS:** -- his birthdate is June 12th of 1964.
25 He -- in 2002, he had an address on Patterson Avenue in

1 Winston-Salem. There were some -- his employment record that we
2 were able to find does not give dates of employment; however, it
3 does list some of the places that he has worked. But we have no
4 indication of when he was employed at those places.

5 MS. ESSARY: Thank you.

6 THE WITNESS: You're welcome.

7 MS. SMITH: All right, Your Honor. I would request that
8 we recess until tomorrow morning.

9 JUDGE LOCK: That motion is allowed. 9:00 o'clock in
10 the morning.

11 (Overnight recess taken, 6:10 p.m.)

12 (Volume 4 begins on page 647.)

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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA,)
versus) From Forsyth
CHRISTOPHER BRYANT,) 02 CRS 38886
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
NATHANIEL CAUTHEN,) 02 CRS 38884
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
JERMAL TOLLIVER,) 02 CRS 38882
Defendant.)

STATE OF NORTH CAROLINA,)
versus) From Forsyth
RAYSHAWN BANNER,) 02 CRS 38883
Defendant.)

* * * * *

TRANSCRIPT OF HEARING, Volume 4 of 5

Thursday, March 12, 2020

* * * * *

March 9, 2020, Setting of the

North Carolina Innocence Inquiry Commission

The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Luther Johnson Britt, III

Robin Colbert

Seth Edwards

Melissa Essary

Sheriff Kevin Frye

Immanuel Jarvis

Deborrah L. Newton

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 Catherine Matoian, Grant Staff Attorney

6 Brian Ziegler, Staff Attorney

7 Mackenzie C. Myers, Grant Legal Investigator

8 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

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10 Raleigh, North Carolina 27602

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1 THURSDAY, MARCH 12, 2020 (9:09 a.m.)

2 JUDGE LOCK: All right. We'll come to order. Good
3 morning, everyone.

4 All right. Ms. Guice Smith.

5 MS. SMITH: Thank you. Commissioners, over the
6 overnight recess, you had several handouts to review and some
7 audio recordings to review.

8 It's my understanding after speaking with all of you
9 this morning that no one wishes to hear from any law enforcement
10 officers who were involved in the original investigation; is that
11 correct?

12 JUDGE LOCK: That's correct.

13 MS. SMITH: And I have asked Judge Lock to release them
14 from their subpoenas, and you've done that; correct?

15 JUDGE LOCK: That's correct.

16 MS. SMITH: All right. We're going to communicate that
17 to them this morning.

18 Commissioners, do you have -- before we move on, does
19 anyone have any questions from the materials you reviewed last
20 night about -- particularly about the possible leads section that
21 we turned into a handout?

22 (No response.)

23 MS. SMITH: Okay. Great.

24 Handout 24, the forensic testing chart, has been
25 modified one more time.

1 One of our commissioners asked yesterday afternoon about
2 the toboggan and we realized that we had inadvertently left that
3 information about the testing the Commission had done on the
4 toboggan off of that chart. So if you turn to page 12 of
5 Handout 24, and that's in the second notebook, the last thing
6 highlighted there is the toboggan. It's the second block on that
7 page.

8 I'm going to recall Ms. Matoian to testify about that
9 briefly.

10 **MS. NEWTON:** My page 12, Exhibit 24, the last item is
11 not contained --

12 **MS. SMITH:** The last highlighted item?

13 **MR. BRITT:** Is it the NCIIC --

14 **MS. SMITH:** Yes, NCIIC 141, blue toboggan.

15 **MS. NEWTON:** I have it now.

16 **JUDGE LOCK:** All right. The witness, of course, remains
17 under oath.

18 (Witness, Catherine Matoian, resumes the stand.)

19 BY MS. SMITH: (9:11 a.m.)

20 **Q.** Ms. Matoian, can you tell commissioners what the
21 Commission had requested with regard to DNA testing on the
22 toboggan.

23 **A.** Yes. We requested STR DNA testing, which Ms. Clement
24 explained to you yesterday, on that toboggan that was found in the
25 center of Belview Park.

1 Bode Cellmark Forensics was able to develop a partial
2 STR DNA profile that was consistent with a mixture of at least two
3 individuals including at least one male contributor. However, no
4 conclusions could be made on that mixture due to the possibility
5 of allelic dropout, which Ms. Clement also explained to you
6 yesterday what that means.

7 **Q.** Were you able to speak with Ms. Clement this morning?

8 **A.** I was.

9 **Q.** And did she say whether she had anything to add about
10 this profile?

11 **A.** She had nothing to add to this profile. She also
12 believed it was too partial to draw any conclusions.

13 **MR. BRITT:** Was the DNA extracted from a hair that was
14 removed or was it touch -- perspiration?

15 **THE WITNESS:** It was touch DNA.

16 **MR. BRITT:** Okay.

17 **MS. SMITH:** Any other questions about that?

18 (No response.)

19 **MS. SMITH:** I'd ask that Ms. Matoian step down.

20 (Witness stands down.)

21 **MS. SMITH:** And the Commission will recall legal
22 investigator Mackenzie Myers.

23 **JUDGE LOCK:** Good morning, Ms. Myers.

24 **MS. MYERS:** Good morning, Judge Lock.

25 **JUDGE LOCK:** You remain under oath also.

1 (Witness, Mackenzie Myers, resumes the stand.)

2 BY MS. SMITH: (9:12 a.m.)

3 Q. Ms. Myers, before the evening recess last night,
4 commissioners had some questions related to Brian Lindsey.

5 A. I believe we answered those. I think it was
6 Commissioner Essary that had questions about Brian Lindsey.

7 Did you have follow-up questions or -- okay.

8 I believe the other questions were in regard to Willard
9 Cab Company that you had.

10 Okay. Willard Cab Company, their -- and please correct
11 me if I am not remembering your question correctly -- Willard Cab
12 Company stated that the busiest times of night for them were
13 between the hours of 6:00 p.m. and 8:00 p.m. and that they had
14 received a lot of phone calls coming from a person that was
15 requesting a cab be sent to 905 Moravia Street.

16 In looking at the records that WS -- or Winston-Salem
17 Police Department originally received from Willard Cab Company,
18 they did notate a specific number that had called fairly
19 frequently within that time period. It was underlined in the
20 records that the Commission had received from the Winston-Salem
21 Police Department. We did look up that phone number, we did a
22 reverse search on that, and I was not able to find anybody whose
23 number that was related to back in 2002. I was only able to find
24 somebody who had that number in the Winston-Salem area between
25 2011.

1 **MS. ESSARY:** That's all I had.

2 **THE WITNESS:** Okay.

3 **MS. NEWTON:** My apologies.

4 On this toboggan, was there -- is there any way to get
5 the staff member who was answering questions about that -- were
6 you answering questions about that?

7 **THE WITNESS:** No, I wasn't.

8 **MS. NEWTON:** I just wanted to follow up with two
9 questions on that at some point.

10 **MS. SMITH:** Okay. Can we do that in just a little bit?

11 **MS. NEWTON:** Sure. That's fine.

12 **MR. BRITT:** Can I ask a question.

13 **MS. SMITH:** Yes.

14 **MR. BRITT:** With regard to the reverse search, the
15 individual that you did link that number to in 2011, did they live
16 on Moravia Street?

17 **THE WITNESS:** They did not live -- well, I take that
18 back. Let me -- give me just one moment, please.

19 I do not have documented that that person lived on
20 Moravia Street at that time. The person that the phone number did
21 belong to had a birthdate in 1988 and had a robbery conviction out
22 of South Carolina, and that is what I documented from.

23 **MR. BRITT:** Okay. I know I said Moravia Street because
24 that's where Mr. Jones lived. None of the defendants lived on
25 Moravia Street.

1 **THE WITNESS:** None of the defendants in this case lived
2 on Moravia Street, no.

3 **MR. BRITT:** Was there an address associated with the
4 street on which one or more of them lived?

5 **THE WITNESS:** Not for this phone number.

6 **MR. BRITT:** Okay.

7 **MS. ESSARY:** To follow up on that, I'm not sure I
8 understood.

9 So when you talked to this person who's had this number
10 since 2011, they live in Winston-Salem?

11 **THE WITNESS:** So what I did was I looked at the phone
12 number that was originally highlighted by the Winston-Salem Police
13 Department. I took that phone number and did a reverse search in
14 Lexis for that. I did not actually speak to this person.

15 **MS. ESSARY:** Okay.

16 **THE WITNESS:** And I looked up to see if they had any
17 history with the North Carolina Department of Public Safety and
18 was able to see that they had a conviction out of South Carolina
19 for robbery and that this phone number was associated with them in
20 2011.

21 **MS. ESSARY:** May we have that name for the record?

22 **THE WITNESS:** Yes, you may. That name is Ricky Vernard
23 Johnson, Junior.

24 **MS. ESSARY:** So that's all we know about him? We don't
25 know where he lived in 2002?

1 **THE WITNESS:** I do not know offhand. I can look for
2 that and see if I'm able to decipher that. Because he was
3 underage, sometimes we're not able to find out where they were
4 residing as a child.

5 **Q.** Do you know how old he would have been in 2002?

6 **A.** In 2002 -- I'm not very good at math -- but in 2002, he
7 would have been --

8 **MS. ESSARY:** -- 15.

9 **MR. BRITT:** -- 15 or 16.

10 **THE WITNESS:** Okay.

11 **MS. SMITH:** Commissioners, we will look for some
12 additional information about him over for the next break.

13 **Q.** All right.

14 Ms. Myers, I want to turn your attention now to family
15 members of the codefendants.

16 Did commission staff speak to any family members of
17 Dorrell Brayboy?

18 **A.** Yes. We contacted Lisa Moore, who is the mother of
19 Dorrell Brayboy, and we also spoke to Deonia Cole, who was the
20 fiancée of Dorrell Brayboy, and she is also the mother of his
21 child.

22 **MS. SMITH:** Commissioners, Handout 72 -- this is still
23 in the second handout notebook -- is the criminal record of Lisa
24 Moore, if you want to take a moment to review that.

25 **Q.** Ms. Myers, what did Lisa Moore tell the Commission?

1 **A.** Ms. Moore was interviewed by the commission staff over
2 the telephone on December 11 of 2019. This interview was recorded
3 and it was transcribed.

4 Ms. Moore told commission staff that Dorrell, her son,
5 never said he was involved in this crime. She did not remember
6 ever being present for a taped statement with him and any
7 detectives, but she did recall that a detective did tell Dorrell
8 that he knew he was a lookout in this crime.

9 Ms. Moore also stated that she didn't know any of the
10 other boys involved in this and that she did not know Jessicah
11 Black.

12 **MS. SMITH:** Commissioners, Handout 73 is the criminal
13 record of Deonia Cole.

14 **Q.** What did Ms. Coble tell commission staff?

15 **A.** Ms. Cole was interviewed by commission staff on
16 December 18 of 2019. Again, this phone call was recorded and it
17 was transcribed.

18 Ms. Cole stated that she knew both Christopher Bryant
19 and Jermal Tolliver and that when the two of them and Dorrell
20 Brayboy would hang out, she only heard the three of them talk
21 about how they did not do this crime.

22 **MR. BRITT:** Which codefendants did she know?

23 **THE WITNESS:** She knew Christopher Bryant and Jermal
24 Tolliver. And she was the fiancée of Dorrell Brayboy.

25 **Q.** Did commission staff interview any family members of

1 Christopher Bryant?

2 **A.** We did. We interviewed his mother, Geneva Bryant; his
3 sister, Shameka Bryant; and his brother, James Bryant. Commission
4 staff also briefly spoke to his brother, Willie Bryant. All of
5 the family members of Christopher Bryant relayed the same
6 information to commission staff that they had previously stated to
7 police.

8 James Bryant, however, had never been interviewed by the
9 Winston-Salem Police Department and he was not home the day of the
10 crime or the day that Christopher Bryant was arrested by police.

11 **MS. SMITH:** Commissioners, Handout 74 is the criminal
12 record of Willie Bryant if you want to take second to look at
13 that.

14 **MS. COLBERT:** I have a question. Isn't Geneva Bryant
15 the one that made the complaint -- the complaints to -- prior to
16 the trial and after?

17 **THE WITNESS:** Yes.

18 **MS. COLBERT:** When you interviewed her, did she bring
19 any of that up and her concern about her complaints about how her
20 son was treated, not being addressed in a satisfactory manner?

21 **THE WITNESS:** I do not recall. That's something that I
22 would need to go back and look at the transcript for. What
23 commission staff knew at that time was that the complaint was
24 filed by Willie Bryant, his oldest brother. I believe it wasn't
25 until we received that complaint that we were able to tell that it

1 was actually filed by Geneva Bryant.

2 Commission staff did attempt to talk to Mr. Willie
3 Bryant about that, but he stated that that was a conflict of
4 interest at the time because he was still employed by the City of
5 Winston-Salem.

6 BY MS. SMITH:

7 Q. Did the Commission interview any family members of
8 Nathaniel Cauthen and Rayshawn Banner?

9 A. Yes. We interviewed his mother, Teresa Ingram, and his
10 brother, Joseph Cauthen. We also interviewed his cousins Anjuan
11 Terry and Laymond Hairston.

12 Q. Let me turn your attention first to Teresa Ingram.

13 MS. SMITH: Commissioners, Handout 75 is the criminal
14 record of Teresa Ingram.

15 It has the last name McCants on there because Ms. Ingram
16 has gone by the last name McCants.

17 Q. Tell commissioners about your interview with Ms. Ingram.

18 A. Ms. Ingram, again, the mother of Nathaniel Cauthen and
19 Rayshawn Banner, was interviewed by commission staff on January 8
20 of 2020 in her home, and this interview was recorded and it was
21 transcribed.

22 Ms. Ingram stated that on November 15th of 2002, she had
23 worked the midshift that day and believes that she was off work at
24 7:00 p.m. When she arrived home, her son Rayshawn was at home and
25 asleep on the couch. Ms. Ingram stated that she -- that he did

1 not leave the home the rest of that night. Ms. Ingram also stated
2 that she saw her other sons, Nathaniel Cauthen and Joseph Cauthen
3 around 10:00 p.m. that night, which was Nathaniel Cauthen's
4 curfew, and that Nathaniel and Joseph both told her that a man had
5 been killed up the street.

6 Q. Ms. Myers, please tell the Commission about Joseph
7 Cauthen's interview with commission staff.

8 A. Joseph Cauthen was also interviewed on January 8 of 2002
9 [sic], and this interview was recorded and it was transcribed.

10 He stated that when he got home for good on the night of
11 November 15, that he saw his brother Nathaniel Cauthen and his
12 brother Rayshawn Banner. He stated that he did not discuss
13 anything regarding this crime with them. He stated that he had
14 never heard them talk about this case at all at that time and he
15 stated that he never saw the codefendants the weekend after
16 Mr. Jones was killed, and he's also never talked -- or, excuse me,
17 never heard any of the defendants in this case talk about the
18 crime.

19 Q. Did he tell you anything else about his brothers?

20 A. When asked by commission staff, he stated that he did
21 not see any of his brothers with money, new clothes, or tape. He
22 did not see blood on their clothes or on their shoes either.

23 He also stated that he did not know of them to commit
24 robberies, although he did say that he believed that Rayshawn had
25 gotten in trouble once for taking a dog.

1 **Q.** Did Joseph Cauthen tell you anything about his
2 interactions with the Winston-Salem Police Department?

3 **A.** When asked if the police were ever at his house asking
4 about robberies prior to Mr. Jones, he said, quote: "I think half
5 the stuff that went on on the south side they believed was linked
6 to somebody in my family so they came a lot," end quote.

7 **MS. SMITH:** Commissioners, you were previously provided
8 over the overnight recess Handout 68, which was the criminal
9 record of Joseph Cauthen.

10 **Q.** Ms. Myers, did the Commission staff interview or depose
11 Anjuan Terry?

12 **A.** Yes. Anjuan Terry was deposed by commission staff on
13 February 13 of 2020.

14 **MS. SMITH:** Commissioners, you were already provided a
15 criminal history for Anjuan Terry. That was Handout 70.

16 **Q.** Ms. Myers, did commission staff ask Mr. Terry about
17 whether or not he had ever heard Rayshawn Banner or Nathaniel
18 Cauthen talk about this case?

19 **A.** Yes. He stated that he had never heard them talk about
20 this case or talk about committing any crimes, including
21 robberies. Mr. Terry also said that he never saw any of his three
22 cousins -- Rayshawn Banner, Nathaniel Cauthen, or Joseph
23 Cauthen -- with adhesive tape or new clothes around the time of
24 this crime.

25 **MS. SMITH:** Commissioners, I'm going to direct your

1 attention now to Laymond Hairston. You should have received his
2 criminal record as Handout 69 on the overnight recess.

3 **MS. NEWTON:** Excuse me. On Handout Number 70, Anjuan
4 Terry's criminal record, there is a document behind that which
5 appears to be Bates-stamped number 41. It looks like notes -- law
6 enforcement notes.

7 **MS. SMITH:** I believe that you just have a mistake in
8 your notebook. I apologize.

9 **MS. NEWTON:** You don't have that?

10 **MR. EDWARDS:** I've seen that piece of paper somewhere.

11 **MS. NEWTON:** Okay.

12 (Discussion off the record, logistics.)

13 **MS. COLBERT:** I have a question -- back to Joseph
14 Cauthen.

15 So when you interviewed him in regard to the incident,
16 did it ever come up why he signed this affidavit, that they did
17 participate -- as part of the MAR?

18 **THE WITNESS:** I will need to go back and look at the
19 transcript in order to --

20 **MS. COLBERT:** And the discrepancy in that, why would he
21 sign that he did?

22 **THE WITNESS:** And if I could have just a few moments,
23 I'll get you an answer to that specifically.

24 **JUDGE LOCK:** With regard to Joseph Cauthen, is it fair
25 for me to conclude that there was no evidence to suggest that the

1 police ever showed Joseph Cauthen that pair of size 9 Air Force 1
2 sneakers, the tread of which was determined to be consistent with
3 the wear pattern and so forth of the impression on the hood of the
4 Lincoln?

5 **THE WITNESS:** My understanding of the police's
6 interaction with Joseph Cauthen and the pair of shoes was that a
7 couple of days after his brothers were arrested, he was in jail on
8 an unrelated crime, I believe it was for a probation violation,
9 and they told Joseph Cauthen that they needed that pair of shoes
10 and they seized them from him at that time.

11 But other than that, there's -- I do not have any
12 recollection of them speaking to him about it.

13 **JUDGE LOCK:** Okay.

14 So was that pair of shoes actually seized from Joseph or
15 was it seized from the house? I thought it was from the house.

16 **THE WITNESS:** The pair of -- so I think that there is
17 some confusion about that. The pair of shoes that is -- that
18 Joseph Cauthen was wearing was a red and white pair of Air Force
19 1s. To my knowledge, and perhaps someone will have to correct me
20 on this, but those were not -- that was not the pair of shoes that
21 was thought to have made the impression on the hood of the car.

22 **JUDGE LOCK:** That was my memory also.

23 Did Joseph stay in the same -- or live in the same
24 house?

25 **THE WITNESS:** Yes, he did.

1 **JUDGE LOCK:** And from what room was the pair of shoes
2 seized that was determined to have been consistent with the entire
3 impression on the hood of the Lincoln?

4 **THE WITNESS:** I will have to get you that answer. I do
5 not recall that off the top of my head.

6 **JUDGE LOCK:** I don't remember either.

7 **THE WITNESS:** If you will give me just one moment, I'll
8 make sure I have that answer for you.

9 **JUDGE LOCK:** Thank you.

10 **THE WITNESS:** Welcome.

11 **MS. NEWTON:** I have number 73, item number, as Joseph
12 Cauthen's size 9. And 77 was the size 9 that was subject of
13 the -- that's what I have, if that helps.

14 You asked if there was a connection to that. It was not
15 77 that he was referring to from Joseph Cauthen.

16 **THE WITNESS:** Okay. Thank you.

17 **JUDGE LOCK:** Commissioner Jarvis.

18 **MR. JARVIS:** Could you just repeat the time that Teresa
19 Ingram or Teresa McCants came home from that second shift, you
20 said she worked second shift, and she found Rayshawn sleeping?

21 What time approximately did she say that she came home?

22 **THE WITNESS:** She believed that the midshift ended at
23 7:00 p.m.

24 **MR. JARVIS:** Thank you.

25 **THE WITNESS:** Welcome.

1 **MR. BRITT:** Am I correct, didn't she work, like, at RJR
2 in Tobaccoville or King, North Carolina?

3 **THE WITNESS:** She did not. I believe that at that time,
4 she told commission staff she was working at McDonald's and it was
5 either McDonald's or Bojangles.

6 **MR. BRITT:** I remember there was -- someone worked --

7 **THE WITNESS:** It was Jessicah Black who had worked --

8 **MR. BRITT:** And no, she worked -- I thought she
9 worked -- but somebody had taken their mother to work and had had
10 to go back and get her in the relevant time frame.

11 **THE WITNESS:** That was Arlene Tolliver and it was Lillie
12 Watlington that did that.

13 **MS. ESSARY:** So is there any testimony that the
14 Commission has is discovered about anyone else in the house with
15 Rayshawn Banner prior to 7:00 p.m.?

16 **THE WITNESS:** Yes. I will talk about that now, if
17 that's okay.

18 Jessica Byrd was dating Joseph Cauthen at the time.
19 Commission staff spoke to Ms. Byrd on the phone. It was on -- one
20 moment please -- on February 21st of 2020. This phone call was
21 recorded but it was not transcribed.

22 She stated that, like I said, she was dating Joseph
23 Cauthen at the time, and she remembered being at their home on
24 November 15 of 2002. She stated that she would often skip school
25 to spend time with Joseph Cauthen.

1 She said that while her and Joseph were at home, they
2 heard his mother, Theresa Ingram, come home from work at some
3 point and that his mother did not like them being together because
4 she did not want Jessica to be skipping school to be with Joseph
5 Cauthen. So they were attempting to sneak out of the home so that
6 Teresa Ingram could not see them.

7 She stated that when she was leaving the house with
8 Joseph to avoid being caught by the mother, that she believed that
9 she'd actually seen Nathaniel Cauthen on the couch, but she was --
10 that was to the best of her memory, was that it was Nathaniel
11 Cauthen and not Rayshawn.

12 BY MS. SMITH:

13 **Q.** Ms. Myers, you may have already said this, but did
14 Joseph Cauthen provide any additional information about when he
15 saw either of his brothers at home that day?

16 **A.** He just stated that when he arrived at home that night,
17 from what I recall, based on his interview, he was not sure
18 exactly what time that was at that time when he came back home and
19 was it for the rest of the night, but that he did see both of his
20 brothers at that time.

21 **MR. BRITT:** You said that Joseph's girlfriend was
22 slipping in and out of the house to avoid Ms. Ingram.

23 Did Ms. Ingram see her?

24 **THE WITNESS:** She did not that night, no. And she left
25 the home with Joseph Cauthen; so they both snuck out of the home

1 and walked up the street.

2 **MR. BRITT:** So in interviewing Ms. Ingram, she doesn't
3 place Joseph at the house --

4 **THE WITNESS:** Not --

5 **MR. BRITT:** -- at the time she comes home from work?

6 **THE WITNESS:** At the time that she came home from work,
7 she only saw Rayshawn sleeping on the couch.

8 **MR. BRITT:** She doesn't account for Nathaniel?

9 **THE WITNESS:** At that time, she stated that Nathaniel
10 was not there but that Nathaniel and Joseph came back home at
11 10:00 p.m.

12 BY MS. SMITH:

13 **Q.** Ms. Myers, one of the commissioners had a question about
14 your interview with Geneva Bryant --

15 **A.** Yes.

16 **Q.** -- and the complaint that she had filed against the
17 Winston-Salem Police Department.

18 Do you have any information for her now?

19 **A.** I do, Commissioner Colbert.

20 To address your question, when commission staff
21 interviewed Geneva Bryant about that, she stated, quote: "I
22 understand he lodged some sort of a complaint against the City
23 when this case was pending," but she did not recall anything else
24 about that.

25 **MS. COLBERT:** Thanks.

1 **THE WITNESS:** And I apologize. That was not Geneva
2 Bryant's quote, that was our quote.

3 But all she stated was that she did not -- she was not
4 aware of that.

5 **MS. COLBERT:** She was not aware that -- she doesn't
6 recall --

7 **THE WITNESS:** I'm sorry, yes.

8 **MS. COLBERT:** -- filing a complaint?

9 **THE WITNESS:** Yes. She stated, quote: "If he did, I
10 don't -- not that I" -- and then she asked us if he made a
11 complaint with the City, with the police department. And we asked
12 her if she was aware of that, and she stated no.

13 BY MS. SMITH:

14 **Q.** Ms. Myers, was the reason you were asking her about
15 Willie Bryant making the complaint because at the time commission
16 staff didn't know that Geneva Bryant had made a complaint.

17 Is that accurate?

18 **A.** That is correct.

19 **Q.** So you didn't ask her specifically if she had made a
20 complaint?

21 **A.** No. I'm sorry. My testimony was confusing about that,
22 but no.

23 **Q.** Later, you received documentation from the Winston-Salem
24 Police Department that confirmed that Geneva Bryant had filed the
25 complaint?

1 A. Correct.

2 Q. Now, tell the Commissioners or remind them again who
3 Laymond Hairston is.

4 A. Yes. Mr. Hairston is a cousin of Nathaniel Cauthen and
5 Rayshawn Banner. His mother is the sister of their mother, Teresa
6 Ingram.

7 Commission staff interviewed Mr. Hairston on February 4
8 of 2020. This interview took place at Harnett Correctional
9 Institution. We were not able to get a recording of this
10 conversation based on the way that Mr. Hairston was being housed
11 at that time. And so therefore, there is not a transcription for
12 this interview.

13 Q. What did he say?

14 A. He stated that he used to live with Rayshawn Banner and
15 Nathaniel Cauthen on Goldfloss Street along with his mother. He
16 said that at that time, when he was living there, that he was in
17 and out of the house.

18 Q. Did he say anything else about Jessica Black?

19 A. Commission staff showed him a photograph of Jessica
20 Black and he stated that he did not recognize her in the photo but
21 that he remembered that she and Nathaniel Cauthen were, quote,
22 "messaging around," unquote.

23 He also said that she drove a black car and that she had
24 given him a ride one time.

25 Q. Did Mr. Hairston describe any contacts that he had with

1 the codefendants since this crime occurred?

2 A. He stated that he had seen Nathaniel Cauthen in the
3 county jail in 2003 and 2015 and 2016. He stated that Nathaniel
4 Cauthen denied his involvement in this crime on those -- at those
5 times that he saw him. He stated that he has not seen Rayshawn
6 Banner.

7 He also said that he has never seen any of the
8 defendants do anything violent and believed that they were all
9 innocent.

10 Q. Did commission staff speak to any of the family members
11 of Jermal Tolliver?

12 A. We did. Commission staff spoke to his mother, Arlene
13 Tolliver; his sister Lillie Watlington; his brother, Thayers
14 Tolliver; and his sister Yolanda Tolliver.

15 Q. Let's talk first about Arlene Tolliver. Who is Arlene
16 Tolliver?

17 A. Arlene Tolliver is Jermal Tolliver's mother. We
18 interviewed her on January 9 of 2020, and this interview was
19 recorded and transcribed.

20 MS. SMITH: Commissioners, Handout 76 is the criminal
21 record of Arlene Tolliver if you want to take a moment to look at
22 that.

23 Q. What did Arlene Tolliver know about the other defendants
24 in this case?

25 A. Arlene stated that Jermal and Christopher would hang out

1 constantly, and she stated that Nathaniel -- Nathaniel and
2 Rayshawn were bullies and that she had seen them commit robberies.
3 She then said that Dorrell Brayboy was one of the bullies as well.

4 Q. What else did she say about them?

5 A. Arlene stated that Rayshawn, quote, "had no emotions in
6 his eyes," unquote, and would see him and Nathaniel, quote, "do a
7 lot of robberies," unquote, and that Christopher and Jermal didn't
8 care to hang around them.

9 Arlene also told commission staff that Detective Rowe
10 spoke to her about Nathaniel and Rayshawn along with their older
11 brother, Joseph, being suspects in a murder where a woman was
12 killed and her apartment was set on fire. She said that this was
13 two or three years before Mr. Jones was killed.

14 Arlene stated that, quote: "They would fight people,
15 they would get out there and fight, fight, fight, all the time,
16 bullying people and stuff," unquote.

17 Q. Slow down for the court reporter.

18 A. Sorry.

19 Q. How did Arlene say she saw Nathaniel and Rayshawn commit
20 robberies?

21 A. Arlene told commission staff, quote: "I would be, like,
22 sitting in my window when I'd get off work, unwind, just looking
23 out the window, staring out the window, thinking, and they come
24 down the street and this be, like, late at night, and the older
25 brother would come up the street and take the money," end quote.

1 Arlene said that Nathaniel and Rayshawn attempted to rob
2 a Mexican grocery store that was referred to as a WIC store and
3 that after they did this, they attempted to commit a robbery on
4 her home because they thought she was at work. Arlene said they
5 tried to change their shirts in her home but that she, quote, "ran
6 them back out," end quote.

7 Arlene stated this occurred prior to the homicide but
8 remembered that it was cold and dark outside when this happened
9 and that she saw the police, quote, "flying up and down the street
10 every which way," end quote. And stated that, quote, "When I seen
11 the police come flying down the street, I know who they looking
12 for," end quote.

13 **Q.** What did Arlene Tolliver tell the Commission staff about
14 November 15, 2002?

15 **A.** Arlene stated that she got off work at 7:00 p.m. and
16 that her daughter, Lillie, picked her up from work around
17 8:00 p.m. They drove by the crime scene on their way home and saw
18 Mr. Jones' body laying out in the rain and saw them place a canvas
19 over his body.

20 When she arrived home, Jermal was just waking up.
21 Jessica Black then came to the home a little after 10:00 p.m.
22 that night, and that she saw one person in the front of her car
23 and thinks there was another person in the back. Jermal got in
24 the car with her and they drove to the park. Arlene said that
25 Jermal wanted to know what was happening.

1 When he got back home, he told Arlene that a man had
2 been killed.

3 **Q.** Did Arlene say whether she noticed anything different
4 about Jermal the weekend after Mr. Jones was murdered?

5 **A.** No. She stated that he was acting normal and said,
6 quote: "Nothing changed about my son. Nothing changed. This is
7 what I'm telling you. Nothing changed. I know how a person would
8 react when they are guilty about something, I ain't stupid," end
9 quote.

10 **Q.** Did Ms. Tolliver think Jermal had something to do with
11 Mr. Jones' death?

12 **A.** No. She said that she knew he didn't have anything to
13 do with it and that he'd been there, quote -- excuse me, that had
14 he been there, quote: "He would try to stop someone. He would
15 really -- he would go down hurt for something like that because he
16 has respect for older people, period, period, period," end quote.

17 **Q.** I think we talked about this earlier this week but
18 remind the Commissioners again what Arlene Tolliver told
19 commission staff about why she called the police.

20 **A.** Arlene stated that she had called the police station to
21 find out who Mr. Jones was and that the person she spoke to
22 started asking her questions about who she suspected and asked her
23 if Jermal was acting strangely. Arlene said that she told the
24 officer no.

25 Arlene also said that the police at the time knew who

1 all the boys were because they would sit and watch them, but that
2 the police would mainly watch Nathaniel, Rayshawn, Joseph, and
3 their cousin Laymond.

4 Arlene said that after this phone call ended, the
5 officer called her back and asked if they could come out to her
6 home to speak to Jermal.

7 Q. Did Arlene Tolliver say whether Jermal had ever admitted
8 responsibility for this crime?

9 A. Arlene stated that Jermal has never admitted
10 responsibility in this crime and never told her that he knew
11 anything about this case. Arlene also told commission staff that
12 she had never heard Jermal or any of the other defendants talk
13 about planning a robbery.

14 Q. At the time of the crime, was Ms. Tolliver suffering
15 from mental illness?

16 A. Yes. Ms. Tolliver stated that she had been diagnosed
17 with bipolar depression and that at the time of November 2002 she
18 was not on any kind of medication.

19 Q. Did commission staff speak to Arlene Tolliver anytime
20 after January 9, 2020, when we first interviewed her?

21 A. Yes. We spoke to Ms. Tolliver on January 22nd of 2020.

22 Q. Why did commission staff visit Arlene Tolliver that day?

23 A. Ms. Tolliver had provided commission staff previously on
24 January 9, when we first interviewed her, with a letter that was
25 sent to her from the reporter Hunter Atkins, and we came by to

1 return that original copy to her. Commission staff also asked
2 Arlene if she would be willing to sign a voluntary release so that
3 the Commission could obtain her education records, which she did
4 sign.

5 Q. Did she provide any additional information to the
6 commission staff that she had not previously provided?

7 A. Yes. Ms. Tolliver stated that her granddaughter,
8 Tyquaisha, who she believed was 8 or 9 at the time of the crime,
9 said that she had seen Jed running the day of the crime with a
10 bloody shirt on. Arlene stated that she asked her granddaughter
11 about this a while ago, and that her grand -- granddaughter did
12 not remember much about this.

13 Q. Did her granddaughter live with Arlene Tolliver at the
14 time of the crime?

15 A. No, she did not.

16 Commission staff briefly spoke to Arlena Tolliver, who
17 is another older sister of Jermal Tolliver. She is also the
18 mother of Tyquaisha. She stated that on that date, she was not at
19 mother's home and that she didn't learn about this crime or
20 anything that happened until after the fact.

21 MS. SMITH: Commissioners, questions about Arlene
22 Tolliver?

23 MR. EDWARDS: Yes. I can't put my fingers on the
24 exhibit, but what was the name of the detective that said that he
25 went to Ms. Tolliver's residence and gave the business card?

1 **THE WITNESS:** It was Detective Rowe.

2 **MR. EDWARDS:** Rowe. Okay.

3 And so did you ask Ms. Tolliver if she remembered
4 Detective Rowe coming and giving her his business card?

5 **THE WITNESS:** If you would give me just one moment so I
6 could double-check that.

7 And I apologize. It was Detective Rose that gave her
8 the business card.

9 To answer your question, commission staff had asked
10 Ms. Tolliver if she had ever received a business card from any of
11 the detectives at Winston-Salem Police Department. She had stated
12 that Rowe probably had left her a card but that it's been so long
13 ago. And she stated that "I probably left that crap behind, all
14 of that behind. I just didn't want to stay over there no more."

15 She was referring to the home she lived on on
16 Devonshire.

17 **MR. EDWARDS:** Did she have any recollection, which I
18 believe it would have been a few days prior to the homicide, of a
19 detective telling her "You better watch out for your son,
20 Nathaniel Cauthen and Rayshawn, they're trouble and if your son
21 keeps hanging with them, he's going down the wrong path" -- I'm
22 paraphrasing, but there was some transcript to that effect.

23 Did she have any memory of that, if you recall?

24 **THE WITNESS:** I do not recall her having a memory of
25 that specifically. I know it was -- I believe it was Detective

1 Shelton who specifically had that memory.

2 **MR. EDWARDS:** So -- Ms. Tolliver, when you interviewed
3 her in January of this year, she denies calling the Winston-Salem
4 Police Department and telling them, "Look, my son is not acting
5 right. I think he knows something about this murder."

6 **THE WITNESS:** That is correct. She denied that and
7 stated she wanted to know who Mr. Jones was and that that is why
8 she made the phone call to the police.

9 **MS. NEWTON:** I have Handout 55. I think that's what
10 you're referring to, it says Mike Poe was interviewed by
11 Ms. Myers. And on the 13th page -- page 13, he's talking about
12 "We told Jermal Tolliver's mother, 'If you want your son to get in
13 a lot of trouble, keep hanging out with Stinky and Rayshawn.'"

14 **THE WITNESS:** Thank you. And I apologize. Thank you
15 for correcting me.

16 **MS. NEWTON:** So it's Mike Poe.

17 May I ask a question?

18 **THE WITNESS:** Sure.

19 **MS. NEWTON:** You went by this pretty quickly and I just
20 would like to clarify.

21 You talk about Jessicah Black -- after Arlene Tolliver
22 was picked up by Lillie at work and then went by the crime scene
23 and home, you said that Jermal was waking up when they got home.
24 Then you said about 10:00 o'clock -- I think you said about
25 10:00 o'clock, Arlene Tolliver said that Black circled back or

1 came by and picked him, her son, up and there were others in the
2 car.

3 THE WITNESS: Yes.

4 MS. NEWTON: 10:00 o'clock?

5 THE WITNESS: Yes, ma'am.

6 MS. NEWTON: Okay.

7 So she was unaware if her son had been with Black
8 earlier in the evening.

9 THE WITNESS: She -- by the time that she had got home,
10 I believe that she had stated that it would have taken about
11 20 minutes to go from where she worked back to the home, which, by
12 my estimate, would be -- she would be back home around, let's say,
13 8:30 p.m. if Lillie, her daughter, had picked her up at
14 8:00 o'clock.

15 That by the time she got home, that he was asleep in the
16 home. So she did not know of him at least being with anybody else
17 between that time period.

18 MS. NEWTON: Because she was not there.

19 THE WITNESS: Correct.

20 MS. NEWTON: So it's absence of information. She just
21 didn't know.

22 THE WITNESS: Because she was not in the home, that is
23 correct.

24 MS. NEWTON: So did she tell you if her son said
25 anything about why he was leaving at 10:00 o'clock to get in

1 Jessica Black's car with anyone? Did she know anything about
2 that?

3 **THE WITNESS:** I believe that she stated that he was
4 curious to know what had -- what was happening up the street.

5 **MS. NEWTON:** Before he left to get in Jessica Black's
6 car?

7 **THE WITNESS:** Yes, which is what prompted him to get
8 into Jessica Black's car.

9 **MS. NEWTON:** How did -- did she have any idea how her
10 son knew that Jessica Black would know that?

11 **THE WITNESS:** No. She did not state that to commission
12 staff.

13 **MS. NEWTON:** Did she say how long he was gone?

14 **THE WITNESS:** She did not.

15 **MS. NEWTON:** Okay. Thank you.

16 **MS. COLBERT:** I have a question to piggyback
17 Mr. Edwards' question.

18 Did -- so in your conversation with her, did she mention
19 when she called the police, the officer she spoke with? And if
20 she didn't, it appears that, based on the connection -- she
21 connects the call with the officers, to them coming out, being the
22 same officers.

23 Did she have the names of any of these officers?

24 **THE WITNESS:** She did not have the name of the officer
25 that she spoke to on the phone at the police station. I don't

1 recall if she -- I believe they were -- she was familiar with
2 Detective Rowe. I do not recall if that was the person that
3 originally came out to speak with Jermal and bring him down to the
4 police station. So I'd be happy to look that up to tell you
5 specifically.

6 MS. SMITH: Ms. Myers, did you want to look at that
7 later?

8 THE WITNESS: I would. Just so that I can --

9 MS. SMITH: Okay.

10 THE WITNESS: -- be sure.

11 MS. NEWTON: I have one more question about
12 Ms. Tolliver.

13 THE WITNESS: Sure.

14 MS. NEWTON: Okay.

15 Yesterday the question came up, at least in my mind,
16 when there was testimony about Arlene Tolliver being the impetus
17 on the 19th of November of 2002 for law enforcement abandoning
18 their to-do list on the other suspects, according to law
19 enforcement, when she called and said, "My son might know
20 something about this."

21 Did you-all question her -- I mean, according to law
22 enforcement, my impression is that's when these five boys became
23 suspects, and then they started confessing and then it ended.

24 So did you-all question her about the difference between
25 what she said she called the police about and what the police said

1 she called them about?

2 **THE WITNESS:** We did. And Ms. Tolliver was adamant that
3 the reason she called the police was because she wanted to know
4 who Mr. Jones was and that it had nothing to do with her son.

5 **MS. NEWTON:** And all the conversation with you about --
6 that you just testified to about her saying that these boys were
7 the ones that officers were always chasing and she saw them
8 engaging in robbery and strong-arm -- so that's why -- is that why
9 she told you those things, because law enforcement were always
10 looking for them to be involved anyway?

11 **THE WITNESS:** From what Ms. Tolliver told us, she --
12 when asked about whether or not she had actually seen them commit
13 robberies, she -- what I testified to before with regard to what
14 she had seen, there were a couple of different times in that
15 interview with Ms. Tolliver when we asked her more specific
16 questions about when she saw these things occur or when she heard
17 about these things occur, and her answer would change a little bit
18 from that she saw it to she heard it from somebody to she doesn't
19 know where she heard it from.

20 **MS. NEWTON:** So her testimony is --

21 **MS. ESSARY:** I'm sorry. Go ahead.

22 **MS. NEWTON:** But she was adamant that what law
23 enforcement says her phone call was about, that her son had
24 information about that murder of Mr. Jones or that incident with
25 Mr. Jones, was not what she said on the phone call?

1 **THE WITNESS:** Correct.

2 **MS. NEWTON:** And there was no recording of that call in
3 to law enforcement?

4 **THE WITNESS:** There is no recording of that -- or at
5 least none that the Commission has been able to obtain.

6 **MS. NEWTON:** Did she ask her if she dialed the police
7 department or the sheriff's department directly or did she dial
8 911?

9 **THE WITNESS:** I don't know which one she called.

10 **MS. NEWTON:** All right. Thank you.

11 **MS. ESSARY:** When you interviewed her, deposed her most
12 recently, she said at the time this happened, in '02, she had been
13 diagnosed or undiagnosed bipolar?

14 **THE WITNESS:** She was already diagnosed.

15 **MS. ESSARY:** And was not on any medication at the time
16 of these events in 2002?

17 **THE WITNESS:** That is correct.

18 **MS. ESSARY:** Including the time when she called the
19 police?

20 **THE WITNESS:** That is correct.

21 **MS. ESSARY:** When you talked to her and deposed her, was
22 she currently medicated or did you ask?

23 **THE WITNESS:** We interviewed her, and she stated that
24 she was medicated.

25 **MS. ESSARY:** So is the first time we heard of this

1 8-year-old saying she saw Jed running from Mr. Jones' house in the
2 context of her interview recently?

3 **THE WITNESS:** Correct. It was a follow-up interview.
4 We had gone there to return the original letter from Hunter Atkins
5 that she allowed us to make a copy of. And that is when she gave
6 us that information.

7 **MS. ESSARY:** And there's no other evidence of that child
8 saying it at the time, after these crimes were committed -- at or
9 after?

10 **THE WITNESS:** No, there is not.

11 **MS. ESSARY:** Thank you.

12 **MS. SMITH:** Commissioners, a couple of things.

13 One, if you-all would like the full transcript of the
14 Commission's interviews with Arlene Tolliver, we can provide those
15 to you for review on a break.

16 Ms. Tolliver is also on standby. She has been
17 subpoenaed. So if you wish to hear from Arlene Tolliver, you can
18 let me know that as well.

19 **MR. BRITT:** I have a question. I don't know if you can
20 answer the question, Ms. Myers.

21 In your interview with Ms. Tolliver, she said that she
22 called the police department that night to find out who Mr. Jones
23 was?

24 **THE WITNESS:** Yes.

25 **MR. BRITT:** Was there an explanation why that phone call

1 took place two and a half days later or almost three days later?

2 **THE WITNESS:** I believe what she told commission staff
3 was that because she had been hearing so much about Mr. Jones that
4 she wanted to know who he was, and that's why she made that phone
5 call then.

6 **Q.** Ms. Myers, there was a question, I believe, from a
7 commissioner about the business cards.

8 What did Detective Rose tell commission staff about
9 leaving a business card?

10 **A.** Sure. Detective Rose stated in his deposition with
11 Ms. Bridenstine that -- and I'm going to quote directly from the
12 transcript here. This is on page 127. It begins at line 8.
13 It's -- Ms. Bridenstine had previously asked about what happened
14 while they were -- police were canvassing this neighborhood.

15 Detective Rose stated: "We were doing a canvass. We
16 were just knocking, going door to door. In that community, there
17 had been a series of robberies. Detective Poe was investigating
18 robberies. We were going door to door trying to generate
19 information, 'Hey, have you seen anything? What's going on?' We
20 left cards. That's how she had my card and how she called me."

21 **Q.** Is it your understanding that that canvass was sometime
22 before this crime?

23 **A.** Yes. That is correct.

24 **MS. SMITH:** Commissioners, page 108 of your brief is a
25 supplement report from the Winston-Salem Police Department.

1 The very first sentence states: "I learned that
2 Detective Rose had received a telephone call from Ms. Arlene
3 Tolliver informing him that her son was possibly involved in or
4 knew who killed Mr. Jones."

5 And then it goes on to repeat from that report what
6 we've already testified about, but that is what the records show
7 how the call was made.

8 **THE WITNESS:** And, Commissioner Colbert, I believe, to
9 answer your question with regard to the officers that came out to
10 the home, Ms. Tolliver stated that it was Rowe and Rose and that
11 there were others but she did not know who they were.

12 **MR. BRITT:** Another question regarding Ms. Tolliver.
13 Did she testify at trial?

14 **THE WITNESS:** She did not testify at trial.

15 **MR. BRITT:** She was not called as a witness?

16 **THE WITNESS:** No, sir.

17 **MR. BRITT:** Okay.

18 BY MS. SMITH:

19 **Q.** Let me turn your attention now to Lillie Watlington, who
20 I believe has also gone by the name Lillie Tolliver.

21 **A.** Correct.

22 **MS. SMITH:** Commissioners, Handout 77 is the criminal
23 record of Lillie Watlington. If you'll take a moment to review
24 that.

25 As you will recall, Handout 107, which you read over the

1 overnight recess -- no, you didn't -- I hadn't given it to you.
2 I'm sorry.

3 Handout 107 is the -- I did give that to you last
4 night -- transcribed interview of the Lillie Watlington.

5 Did you-all read 107 last night?

6 I'm sorry.

7 Q. Remind Commissioners, for the record, who Lillie
8 Watlington is and when commission staff interviewed her.

9 A. Sure. Lillie Watlington is the oldest sister of Jermal
10 Tolliver. She was 22 years old the time of this crime.
11 Commission staff interviewed Ms. Watlington on January 10th of
12 2020 and this interview was recorded and transcribed.

13 Q. What did Ms. Watlington tell commission staff about the
14 night of November 15, 2002?

15 A. Ms. Watlington stated that she left to pick her mother
16 up from work and Jermal had gone to sleep in his room. When they
17 arrived home, Jermal came downstairs and told Lillie and their
18 mother, Arlene, that Nathaniel and Rayshawn came over to get him
19 to walk to go by Mr. Jones' home. They asked him if he had seen a
20 dead body. She stated that Jermal, quote, "basically was just
21 freaked out like he had never seen a dead body," end quote.

22 She saw Jermal in the fetal position, crying that night.

23 Q. Did she know of any of the defendants to be violent?

24 A. No, she did not.

25 Q. Did she say whether Jermal ever told her that he was

1 involved in the crime?

2 A. No. He never did.

3 Q. Turning your attention to Thayers Tolliver.

4 Who is there is Thayers Tolliver?

5 A. He is the brother of Jermal Tolliver and he goes by the
6 nickname Gizmo. He also has a child with Christopher Bryant's
7 sister, Shameka Bryant. Thayers was 19 years old at the time of
8 this crime. He was interviewed by commission staff on January 10
9 of 2020, and this interview was recorded and transcribed.

10 MS. SMITH: Commissioners, Handout 78 is the criminal
11 record of Thayers Tolliver if you want to take a moment to review
12 that.

13 Q. What did Thayers Tolliver tell commission staff about
14 when he was questioned by the police?

15 A. Thayers described the situation as hostile.

16 MS. SMITH: Commissioners, Handout 79 is an excerpt from
17 the Commission's January 10, 2020, interview of Thayers Tolliver.
18 That excerpt is related to the Thayers Tolliver's description of
19 his interview with law enforcement. If you want to take just a
20 minute to look at that.

21 Q. Ms. Myers, did commission staff ask Thayers Tolliver to
22 read over the transcript of his statement to the police?

23 A. Yes. Thayers said that it was all correct. He further
24 stated that when he told police he saw his brother Jermal with
25 Stinky, Rayshawn, Bubba, Dorrell, and Nelson standing post. He

1 said that they were looking for the police. Thayers said that
2 this was not unusual for them to do because they were always
3 getting into something but he did not know specifically what they
4 were watching the police for on November 15 of 2002.

5 MS. SMITH: Commissioners, do you have any questions
6 about Thayers Tolliver?

7 (No response.)

8 Q. Let me turn your attention to Yolanda Tolliver. Who is
9 Yolanda Tolliver?

10 A. Yolanda Tolliver was 16 years old at the time of the
11 crime and she is also one of Jermal Tolliver's sisters. She was
12 interviewed by commission staff on January 22 of 2002 and this
13 interview was recorded and transcribed.

14 Q. Do you mean 2020?

15 A. 2020. Thank you for correcting me.

16 MS. SMITH: Commissioners, Yolanda Tolliver does not
17 have a criminal record.

18 Q. What did Yolanda Tolliver tell commission staff about
19 when she was interviewed by police?

20 A. Yolanda stated that she remembered the police took
21 Thayers and Jermal down to the police station in separate cars and
22 kept them in separate rooms. She stated she didn't think she had
23 a choice in whether or not she could go to the police station that
24 day. She stated she waited in the room for an hour before an
25 officer came in to speak with her.

1 She stated when the officers came into the room, they
2 told her what had happened and asked her if she knew if her
3 brother or his friends were involved in the crime. Yolanda said
4 that she didn't understand why they were asking her if her brother
5 had anything to do with it and said, quote: "I knew for a fact
6 that he couldn't have did nothing like this, if that was -- if
7 that's what they was assuming, because my brother has a heart. He
8 wouldn't even hurt a fly," end quote.

9 **Q.** Did commission staff show Yolanda Tolliver the
10 transcript of her taped statement with police?

11 **A.** Yes.

12 **Q.** Will you remind the Commissioners what Yolanda said in
13 her transcribed statement to police.

14 **A.** Yes. Yolanda stated she heard her brother Jermal and
15 Christopher Bryant talking about how Anjuan, Black, Nathaniel, and
16 Rayshawn went to Mr. Jones' home on November 15 of 2002. They had
17 watched him drive home while sitting in the park. Anjuan and
18 Black went to one side of his home and Nathaniel and Rayshawn went
19 to the other side of his home. Yolanda stated that Dorrell
20 Brayboy was with them but did not go down to the house but said he
21 knew what was going on because they had been plotting this.

22 Yolanda also stated she had overheard Stinky and
23 Rayshawn talking about robbing people plenty of times.

24 **MS. SMITH:** Commissioners, Handout 80 in your hearing
25 handout notebooks -- this is the last one in notebook 2 -- is an

1 excerpt from the Commission's interview with Yolanda Tolliver on
2 January 22, 2020, that describes what she says happened during her
3 interview with police on November 19, 2002.

4 This one's a little lengthy, but if you want to take
5 some time to review that now.

6 **MS. SMITH:** Yes.

7 **MR. EDWARDS:** Can you tell us -- I assume it's in the
8 brief -- where Yolanda's original interview that you just
9 referenced is -- can be found?

10 **MS. SMITH:** If you'll give us one moment, we certainly
11 can. Page 331 of the brief, there's a supplemental report that
12 talks about Yolanda Tolliver's interactions.

13 **MS. NEWTON:** Ms. Smith, you referred us to supplement --
14 the report in the brief, supplement page 108, regarding a
15 telephone call with Arlene Tolliver to the police station.

16 That is a supplement by it looks like Griffin, who says
17 that he learned from Detective Rose -- learned from Detective Rose
18 that Rose had received a telephone call from Arlene Tolliver
19 informing him. So it's like second- and thirdhand.

20 **MS. SMITH:** Yes. Griffin was the lead detective and so
21 our understanding is he wrote the case report for the case.

22 **MS. NEWTON:** But my question is, is there anyplace in
23 the brief or in the materials where Detective Rose actually
24 reports what Arlene Tolliver directly -- what Arlene Tolliver
25 said?

1 **THE WITNESS:** We're checking on that. We'll get right
2 back to you.

3 **MS. ESSARY:** Was Yolanda Tolliver called at either trial
4 as a witness for the State?

5 **THE WITNESS:** No, ma'am.

6 Commissioner Edwards, the transcript of Yolanda Tolliver
7 with the Winston-Salem Police Department is also on page 343 of
8 your brief. It's right after that supplement.

9 **MR. EDWARDS:** Thank you.

10 **THE WITNESS:** You're welcome.

11 **MS. SMITH:** Commissioners, on the bottom of page 122 of
12 your brief, that is Detective Rose's report on the bottom of that.
13 It's also page 5 of 14 of his report, is a paragraph starting
14 with: "On 11/19/02, I was at work when I received a telephone
15 call from" -- it says Arlena Tolliver, but it goes on to describe
16 that she has a son named Jermal.

17 So that's page 122 of the brief.

18 **MS. NEWTON:** Thank you.

19 I'm sorry. That was that troublesome report that
20 starts, like, at the middle of a sentence.

21 And it's your understanding that Griffin is writing this
22 on behalf of Rose? Or that Rose is actually reporting it himself?

23 **MS. SMITH:** His name is at the bottom of each page of
24 the report as the reporting officer.

25 **MS. NEWTON:** Okay.

1 And this is the report from, actually, the date of
2 11/15/02 that he wrote June 13 of '03.

3 **THE WITNESS:** So the date of the original report, like
4 you said, is November 15, but the date that it was actually
5 written and put together or at least submitted to records was on
6 June 13 of 2003.

7 **MS. NEWTON:** Right. So it looks like eight months
8 later, they prepared the report.

9 **THE WITNESS:** Correct.

10 **MS. NEWTON:** And this appears to be a recitation
11 directly from Rose, an excerpt from his actual report, even though
12 it's a partial report. I'm assuming this is how you got the
13 records.

14 **THE WITNESS:** This would be how we received it.

15 **MS. NEWTON:** Okay.

16 **THE WITNESS:** If you would just give me one moment.

17 **MS. NEWTON:** You see how it starts "partial"?

18 **THE WITNESS:** I'm sorry. I'm not following you when you
19 say that it's starting partial. Do you mind --

20 **MS. NEWTON:** Page 121 is a heading, and page 122 begins,
21 small c, "current time, Ava's mother."

22 **THE WITNESS:** So the purpose of doing that would be we
23 did not -- we would have received the full report. We put this in
24 specifically, I think, to direct your -- commissioners' attention
25 to that -- the bottom of that page regarding the phone call made

1 by Arlene Tolliver.

2 **MS. SMITH:** Commissioners, we -- because of the way that
3 the reports were done in this case by Winston-Salem Police
4 Department, throughout your brief -- and we explain this in the
5 brief -- we broke up reports to direct you to specific pieces.
6 However, in the appendices, the very last appendices to your
7 brief, you will have the complete reports of all of the ones we
8 mention throughout.

9 So you should be -- I'm going to find the page, but you
10 should have his complete report, all 14 pages, in that last
11 appendices. That appendix starts on page 2144 and we will find
12 the page of that specific report.

13 **MS. ESSARY:** And while you're looking, did Detective
14 Rose have any report about Ms. Tolliver's call more
15 contemporaneous with when it actually would have been made to him?
16 Or is this the first report we have written by him?

17 **THE WITNESS:** I believe that this is the first report
18 written by him.

19 One of the things that Ms. Bridenstine had asked law
20 enforcement officers during their depositions was how reports were
21 written. And so our understanding of what was reported to us by
22 police officers that were both deposed and interviewed was that
23 they would -- it is difficult for them to get a report out
24 immediately after a crime occurs. Additionally, investigations
25 are ongoing so they rely on notes that they take or their memory

1 or other supplements of other officers and end up writing it later
2 on.

3 So he might have started this report and written that
4 part contemporaneously with that phone call, but there is no way
5 for us to know because, based on the date that he would have
6 turned these notes in to Records, we've got that date happening in
7 2003. So he could have started the report more in line --

8 **MS. ESSARY:** We don't know.

9 **THE WITNESS:** Correct.

10 **MS. ESSARY:** Thank you.

11 **MR. BRITT:** The supplement is dated December 6, 2002,
12 upper right-hand corner.

13 **MS. SMITH:** So, Commissioners, if you'll turn your
14 attention to page 2220 of the brief, 2220, that is the 14-page
15 supplemental report by Detective Rose, and it says "date of
16 original report" is 11/15/02. Our understanding from the
17 depositions from the officers is that that would have been the
18 date of the crime.

19 "Today's date" is listed as June 13, 2003, on that
20 report. And it's our understanding from those depositions and
21 interviews that that would have been the date that the report was
22 submitted.

23 **MR. BRITT:** What page is that?

24 **MS. SMITH:** 2220 is Detective Rose's full report. It's
25 14 pages. There are handwritten notes from Detective Rose, and we

1 are getting those together for you to hand out, as Ms. Essary has
2 just asked whether there was something more contemporaneous in
3 time. So we will pass those around.

4 **MS. NEWTON:** Thank you.

5 **MS. SMITH:** Commissioners, there was a question from a
6 Commissioner about what Mr. Cauthen told commission staff -- this
7 is Joseph Cauthen -- told commission staff about the affidavit
8 that he signed for the motions for appropriate relief.

9 We are going to pass out the transcript of that portion
10 of Joseph Cauthen's interview with the commission staff as
11 Handout 117.

12 Additionally, there were questions about where exactly
13 the shoes were located in the Cauthen and Banner home that were
14 ultimately NCIIC item 77 that were identified as having the
15 same -- I'm not going to quote the expert -- the pair of shoes
16 that could not be excluded from the shoe prints on the vehicle.
17 I'm going to pass that out as 118.

18 And we'll have a little bit more testimony about that in
19 a moment.

20 That -- there will be further testimony about what is
21 contained in Handout 118.

22 **MS. COLBERT:** Thank you.

23 (Commissioners review, 10:20 to 10:22 a.m.)

24 **MS. ESSARY:** Exhibit 77, that is the shoes at issue, do
25 we have them isolated after they were picked up?

1 **MS. NEWTON:** The shoes start at 26.

2 **MS. ESSARY:** Thank you.

3 Are the shoes in Exhibit 77 on any of these pictures
4 that you've just handed us of shoes taken from the crime scene?
5 I'm trying to match them.

6 **MS. NEWTON:** Typed -- on the exhibit itself, it's
7 typed -- it's further down. It will say NCIIC number 77,
8 collected from Banner and Cauthen.

9 **MS. ESSARY:** Yes. Right. I'm trying to match those
10 shoes -- I can't find them in these pictures.

11 **MS. NEWTON:** The one in the front is the --

12 **MS. SMITH:** She's talking about 118.

13 **MS. NEWTON:** Oh.

14 **MS. ESSARY:** I'm trying to match the pictures of the
15 shoes.

16 **MS. COLBERT:** Well, in the pictures that we have, there
17 is no shoestring. So that may be what's throwing you off.

18 **MS. ESSARY:** No, but these are hightops.

19 **MS. SMITH:** Commissioners, I can put someone on the
20 stand that can testify about that.

21 **JUDGE LOCK:** Thank you, Ms. Guice Smith.

22 **MS. SMITH:** Ms. Myers, please step down.

23 (Witness stands down.)

24 (Witness, Julie Bridenstine, resumes the stand.)

25 **BY MS. SMITH:** (10:26 a.m.)

1 **Q.** All right.

2 Ms. Bridenstine, if you could use Handout 118 to tell
3 the Commissioners what you know about which shoes in these photos
4 are the shoes in Commission Number NCIIC 77.

5 **JUDGE LOCK:** Excuse me.

6 For the record, we have changed witnesses --

7 **MS. SMITH:** We have.

8 **THE WITNESS:** -- to address the issues about the shoes.

9 **MS. SMITH:** Yes.

10 **JUDGE LOCK:** Thank you.

11 **A.** The property sheets in the Winston-Salem Police
12 Department indicate that the shoes that are labeled State's
13 Exhibit 77 are our item 77 as well, were located in a box in the
14 front bedroom.

15 The last photograph in your Handout 118 shows a box.
16 There was either an indication in police reports and from
17 testimony that the officers took the shoes out and put it next to
18 the box so that they could take a photo of them.

19 If you remember from the picture of the shoes yesterday
20 in Handout 26, the shoes in question had what appeared to be maybe
21 an R or some sort of similar marking on that. And it's faint in
22 this picture, but if you look towards the middle, you can see the
23 shoe that has that same design on it.

24 **MS. ESSARY:** So the middle pair among the three white
25 pairs taken out of the box for photographing is Exhibit 77.

1 **THE WITNESS:** That's correct.

2 **MS. ESSARY:** So what I'm seeing is not a black stripe on
3 that left shoe of that pair in the middle.

4 **THE WITNESS:** That shoe, I believe, belongs to a
5 different pair.

6 The pair that appears to be 77 would be the -- it looks
7 like the right is actually where you expect the left.

8 **MS. ESSARY:** They're next to each other, but they're in
9 the wrong place.

10 **THE WITNESS:** Correct.

11 **MS. ESSARY:** Now I see. Thank you.

12 So the testimony is that these were in a box. Where was
13 that box located? Do we know?

14 **THE WITNESS:** It was located in the front bedroom. The
15 shoes were -- that were collected from Banner and Cauthen
16 residence were marked differently. Sometimes they were marked as
17 southeast bedroom, front bedroom, east bedroom or just box in
18 front bedroom. These shoes were noted to be collected from the
19 box in the front bedroom.

20 And when we interviewed Teresa Ingram, Nathaniel Cauthen
21 and Rayshawn Banner's mother, we had her draw a diagram of her
22 house as she remembered it from the time, and what she told us is
23 that all three of her sons shared one bedroom. It was a
24 two-bedroom house. And so it appears that those shoes likely came
25 from the same bedroom but they are not designated that way in the

1 police reports.

2 **MS. ESSARY:** Thank you.

3 **MR. BRITT:** Question -- we have information that
4 Rayshawn and Joseph wore the same size shoe?

5 **THE WITNESS:** We have information that the brothers
6 shared shoes, and Joseph Cauthen was at the jail with shoes when
7 the shoes were collected from him that were a size 9. And then
8 Exhibit 77, the shoes that Mr. Ludas testified could not be
9 excluded from the shoe print, are also a size 9 Nike pair of
10 shoes.

11 **MR. BRITT:** Do we have any evidence that either Joseph
12 or Rayshawn said that those shoes in 77 were either Joseph's or
13 Rayshawn's?

14 **THE WITNESS:** There is a clothing chart in your brief
15 that breaks down what each boy said about who was wearing what
16 shoes.

17 There was testimony that Nathaniel Cauthen, I believe,
18 was wearing a pair of white Nikes -- or at least some people said
19 that. If you look at that chart, that will clarify that issue.

20 I'll say that they marked the shoes and sometimes white
21 or blue or white, that it could be difficult to know what exactly
22 they're referring to because a lot of these shoes appear to be
23 mostly white in the pictures with perhaps some blue detail or red
24 detail.

25 **MR. BRITT:** And that's my point. You have multiple

1 white shoes that are not -- in the descriptions, it's always white
2 but it's never white with a color. I mean, we have multiple pairs
3 of pink shoes in this room today. So -- and they're all
4 different.

5 I mean, that's -- the issue for me is who was wearing
6 what shoe on the night in question because there are multiple
7 white pairs of shoes that are size 9s.

8 **THE WITNESS:** That's correct.

9 **MS. SMITH:** Commissioners, any additional questions for
10 Ms. Bridenstine at this moment about the Handout 118, photos of
11 the shoes and the inventory of seized property?

12 While Ms. Bridenstine is on the stand, I'm going to ask
13 a couple of other questions that were left over from yesterday or
14 earlier today.

15 BY MS. SMITH:

16 **Q.** Ms. Bridenstine, has commission staff talked to the
17 State Crime Lab between yesterday and today?

18 **A.** Yes.

19 **Q.** And were they able to tell commission staff whether or
20 not there had been any hits on that profile that was entered into
21 CODIS from the string?

22 **A.** Yes. As of yesterday and today, there have been no hits
23 on CODIS. We spoke to Amanda Overman at the crime lab and she
24 reported that the Commission will be notified if and when there is
25 a hit.

1 **MS. SMITH:** Commissioners, we are going to pass around
2 Handout 119. These are going to be Detective Roses notes and
3 include information about his interactions with Arlene Tolliver.

4 **MS. NEWTON:** Ms. Smith, is this the witness I could ask
5 about -- to circle back to the toboggan?

6 **MS. SMITH:** In a few moments I am going to do that, yes.

7 **Q.** Ms. Bridenstine, while commissioners are looking at
8 Handout 119, can you remind them of when the Commission staff
9 obtained these notes of Detective Rose?

10 **A.** Approximately within the week before his deposition, we
11 were provided these notes. I went over them with Detective Rose
12 at the deposition, and he verified that they were his notes.
13 There was either a page or two that he did not believe were his
14 handwriting but he marked that on the exhibit. It just had to do
15 with some numbers that he said he didn't think he had written.

16 **MS. NEWTON:** Thank you for 119.

17 (Commissioners review, 10:34 to 10:38 a.m.)

18 **MS. SMITH:** Commissioners, do you have any questions --
19 follow-up questions for Ms. Bridenstine related to Detective Rose
20 and Arlene Tolliver?

21 (No response.)

22 **MS. SMITH:** I believe that Ms. Newton had some follow-up
23 questions related to the toboggan and Ms. Bridenstine will answer
24 those if she can.

25 **MS. NEWTON:** Thank you. You moved past that DNA test a

1 little quickly and so I have now caught up. And that is on
2 page 12 of Exhibit 24; correct -- the DNA test notes?

3 **THE WITNESS:** The ones that we provided to you this
4 morning?

5 **MS. NEWTON:** The new.

6 **THE WITNESS:** Yes. We updated the listing to include
7 the toboggan.

8 **MS. NEWTON:** Okay. And so I have a couple of questions
9 about that. Thank you for circling back to it.

10 I understood you to say that you contacted over the
11 break Meghan Clement, the analyst, about this question.

12 What did she say about running the DNA from that
13 toboggan from the database?

14 **THE WITNESS:** Which database?

15 **MS. NEWTON:** Did you contact Meghan Clement to have a
16 conversation with her about the toboggan testing over the break?

17 **THE WITNESS:** Yes. And what she had told us previously
18 and also today is that she could not draw any additional
19 conclusions on that toboggan.

20 **MS. NEWTON:** And did she explain why again.

21 **THE WITNESS:** My understanding is with the ones that she
22 couldn't include, that they were -- it was due to the possibility
23 of allelic dropout and so you just can't draw any conclusions on
24 it.

25 **MS. NEWTON:** And tell me again what that means --

1 "allelic dropout."

2 MS. SMITH: We might need to have Ms. Clement answer
3 that question for the science.

4 MS. NEWTON: She's explained it before.

5 MS. SMITH: Yes.

6 MS. NEWTON: Okay.

7 But as a result of that explanation, she couldn't
8 identify or eliminate the five defendants and the three witnesses
9 from that DNA sample?

10 THE WITNESS: That's correct. No conclusions could be
11 drawn on that.

12 MS. NEWTON: And that also means it can't be run
13 routinely through the database to identify anyone; right?

14 THE WITNESS: If you're talking about CODIS database,
15 then that's correct.

16 MS. NEWTON: Yes.

17 THE WITNESS: There would not be enough data or alleles
18 on that to be able to be eligible to be uploaded into CODIS.

19 MS. NEWTON: And just the last question, who determined
20 that there was -- there were no conclusions to be made? She
21 testified that she was reviewing records of the State Crime Lab
22 and Bode. So did Bode and the State Crime Lab test this?

23 THE WITNESS: This was tested at Bode Cellmark
24 Forensics, which is now Bode Technology. And Ms. Clement got the
25 entire case file from Bode and reviewed all of that, including all

1 of the raw data, to see if she could make any additional
2 conclusions for us. And she testified about the items yesterday
3 that she felt like she could.

4 **MS. NEWTON:** Felt like she could not make any
5 conclusions?

6 **THE WITNESS:** That she could make additional
7 conclusions.

8 She agreed with Bode on everything, if I'm understanding
9 her testimony correctly, except for two items that we have listed
10 in this chart where she was able to provide additional
11 information, and that is on your chart.

12 **MS. NEWTON:** Well, specifically about the toboggan, she
13 agreed with Bode that nothing can be determined as far as an
14 identifier or running it through the database based on the DNA
15 that was recovered off of the toboggan by Bode.

16 **THE WITNESS:** That's correct.

17 **MS. NEWTON:** And the State Crime Lab, just to be clear,
18 did not test any of this DNA evidence. There is no report from
19 them on the toboggan.

20 **THE WITNESS:** Not on the toboggan. They looked at two
21 hairs.

22 **MS. NEWTON:** What?

23 **THE WITNESS:** They examined two hairs -- two apparent
24 human hairs. Someone at Bode looked at that clump of hair,
25 thought that they found that two were human -- they thought were

1 human hairs because they appeared to have a root. We sent that to
2 the crime lab.

3 MS. NEWTON: Was off the toboggan?

4 THE WITNESS: No.

5 MS. NEWTON: No, I'm only talking about the toboggan.

6 So the State Crime Lab didn't test anything related to
7 the toboggan.

8 THE WITNESS: That's correct.

9 MS. NEWTON: It was only Bode.

10 THE WITNESS: That's correct.

11 MS. NEWTON: Okay. Thank you.

12 MR. BRITT: Question. Ms. Bridenstine -- so the term,
13 phrase "no conclusions could be drawn," does that include you
14 can't determine whether it was male or female?

15 THE WITNESS: I can't answer that. I know that when
16 they do an STR test, they are looking for whether or not there is
17 a male present because they look at the sex chromosome but, I
18 can't answer that for you.

19 MR. BRITT: Could that also possibly mean they can't
20 tell if it was a person who was white, black, Latino, Native
21 American?

22 THE WITNESS: We did not receive data like that, but I
23 don't know the answer to your question.

24 MR. BRITT: Okay. That's it.

25 BY MS. SMITH:

1 Q. Ms. Bridenstine, I want to turn your attention to
2 page 12, NCIIC item 141. Will you please read what the
3 highlighted portion says about the 2018 Bode Cellmark Forensics
4 testing.

5 A. Sure. It is a report that, on November 9, 2018, STR DNA
6 analysis, a partial STR DNA profile consistent with a mixture of
7 at least two individuals, including at least one male contributor,
8 was developed. No conclusions can be made on mixture profile due
9 to possible allelic dropout.

10 Q. So does that mean that Bode Cellmark determined that at
11 least one male is present in the DNA in that mixture?

12 A. That's correct.

13 Q. Can you also refer to that same block, the 2003 crime
14 lab testing. Can you tell commissioners what the crime lab did in
15 2003.

16 A. Regarding the toboggan hat, on August 1, 2003, they
17 conducted blood examination, and their test failed to reveal the
18 presence of blood.

19 Q. And that is the only testing the crime lab has done on
20 the toboggan?

21 A. That's correct.

22 Q. And the commission staff did not submit the toboggan to
23 the State Crime Lab for additional DNA testing?

24 A. That's correct.

25 Q. Okay.

1 **MS. NEWTON:** Thank you.

2 **MS. SMITH:** Any other questions about the toboggan?

3 **MS. ESSARY:** And this toboggan was just found in Belview
4 Park; correct?

5 **THE WITNESS:** That's correct.

6 **MS. SMITH:** I would ask that Ms. Bridenstine step down.

7 (Witness stands down, 10:46 a.m.)

8 **MS. SMITH:** And I would like to recall Ms. Myers
9 briefly.

10 (Witness, Mackenzie Myers, resumes the stand.)

11 BY MS. SMITH: (10:46 a.m.)

12 **Q.** Ms. Myers, I believe where we left off with your
13 testimony was related to Yolanda Tolliver and the Commission's
14 interview with Ms. Tolliver.

15 **A.** Correct.

16 **Q.** Did commission staff ask Yolanda Tolliver anything about
17 her mother, Arlene Tolliver, calling the police?

18 **A.** Yes. Yolanda stated, quote: "I guess because she was
19 assuming that Stinky and Rayshawn had something to do with it or
20 so that's what I would assume. So I'm thinking that she was
21 thinking that it would probably help them solve it if she was, I
22 guess, going to pin them down to question them to see if they knew
23 anything about it," end quote.

24 **MS. SMITH:** Commissioners, do you have any questions
25 about Yolanda Tolliver and what you read in Handout 80?

1 **MR. EDWARDS:** So, again, your interview with her was in
2 January of this year; correct?

3 **THE WITNESS:** Correct.

4 **MR. EDWARDS:** And almost 18 years ago, Yolanda -- who is
5 the sister of Jermal Tolliver; correct?

6 **THE WITNESS:** Correct.

7 **MR. EDWARDS:** She also told police almost 18 years ago
8 that Jermal, the weekend after the murder, was acting funny, he
9 was keeping to himself, not himself; correct?

10 **THE WITNESS:** Correct.

11 **MR. EDWARDS:** And she also told police that one night
12 when she was up with her baby, she overheard a conversation and
13 Christopher Bryant and Rayshawn Jermal -- they were all talking
14 about the murder and how they had committed the murder.

15 She told them that, didn't she?

16 **THE WITNESS:** That is what she told police at that time.
17 She told commission staff that that was not true.

18 **MR. EDWARDS:** I know. Again, January of 2020, she says
19 that's not true. But when she was 16 years old, she told police
20 that she overheard them talking about how they cased it out, they
21 saw Mr. Jones, one of them ran down the street and jogged back to
22 make sure the coast was clear, and then they approached his house
23 and committed the assault.

24 She told them that; correct?

25 **THE WITNESS:** Correct.

1 **MR. EDWARDS:** She overhead them talking?

2 **THE WITNESS:** That's what she said.

3 **MR. EDWARDS:** And she overheard how two of them went to
4 one side and two of them went to the other side and who jumped on
5 the car and those kinds of things.

6 **THE WITNESS:** She stated -- she talked about Anjuan and
7 Black going to one side and Stinky and Rayshawn going to the other
8 side of the home, yes.

9 **MR. EDWARDS:** And she also told them 18 years ago that
10 Rayshawn and Nathaniel bragged all the time about committing
11 robberies.

12 **THE WITNESS:** That is what she said at the time, yes.

13 **MR. EDWARDS:** And I believe she also said 18 years ago
14 that after this murder was committed, that she personally
15 witnessed several of them with lots of cash, with dollar bills,
16 and they were maybe dividing some money up.

17 **THE WITNESS:** Right. That is what she said at the time.

18 **MR. EDWARDS:** And so now, 18 years later, when she's
19 34 years old, she denies ever saying any of that to the police;
20 correct?

21 **THE WITNESS:** She states that she did tell police that
22 but that none of it was true.

23 **MR. EDWARDS:** Okay.

24 Now, I understand the claimants are saying that they
25 were 14 and 15, they were coerced, they didn't know what they were

1 doing.

2 What is Yolanda Tolliver's excuse for making all of this
3 up when she was 16 years old? Did she give you one?

4 **THE WITNESS:** Well, Yolanda Tolliver said that the
5 reason why she told police that was because she was scared, she
6 was tired, she felt like they were not trying to hear anything she
7 had to say unless she said exactly what she believed they wanted
8 her to say. She stated that she wanted to be able to tell them
9 something so that she and her brothers could go home.

10 **MS. SMITH:** Commissioners, does anyone want to hear from
11 Arlene Tolliver?

12 **MR. JARVIS:** I do.

13 **MS. SMITH:** Okay. We will get in touch with her and
14 make her available later.

15 **BY MS. SMITH:** (10:50 a.m.)

16 **Q.** Ms. Myers, I'm going to turn your attention now to
17 individuals who have been identified as being friends with the
18 defendants and claimants.

19 Who did commission staff speak to in that group?

20 **A.** Commission staff spoke to Nelson Hartman, Derrick
21 Garlington, Donavan West, Dwayne House, and Brandon Odom.

22 Commission staff also interviewed Marcus Shavers, who is
23 discussed in the possible leads handout that you-all received
24 yesterday.

25 We also interviewed Jessica Byrd, whom I testified about

1 a little bit about earlier. And, again, she was the person that
2 was dating Joseph Cauthen at the time of the crime.

3 We interviewed these people because they were identified
4 as being friends of the codefendants and we wanted to determine if
5 they knew anything about the codefendants, their involvement in
6 this crime.

7 Q. Who is Nelson Hartman?

8 A. Nelson Hartman was friends with all five of these
9 defendants and he lived in the same general neighborhood as all of
10 them as well.

11 Q. Did commission staff interview Nelson Hartman?

12 A. Mr. Hartman was interviewed on December 20 of 2019 at
13 Albemarle Correctional Institute, and this interview was recorded
14 and transcribed.

15 MS. SMITH: Commissioners, Handout 81 in your third
16 notebook is the criminal record of Nelson Hartman.

17 Q. Did Mr. Hartman know all five of the codefendants?

18 A. Yes, he did. He stated he was friends with all five of
19 them.

20 Q. And what did Nelson Hartman tell commission staff about
21 the night of the crime?

22 A. Mr. Hartman stated he was supposed to go to the bowling
23 alley with the defendants the night of the crime but that he had
24 to watch his nieces and nephews for his sister.

25 He walked down to Christopher Bryant's house where he

1 said he saw Jermal, Stinky, Jed, and Christopher in Jessica
2 Black's car, and he told him that he couldn't go to the bowling
3 alley with them at that time.

4 He stated that he did not see Rayshawn Banner or Dorrell
5 Brayboy.

6 Q. Did Mr. Hartman tell commission staff that he saw
7 Rayshawn Banner with money the weekend after the crime?

8 A. Yes. He said he remembered telling this to detectives
9 as well. He said he didn't know where the money came from but
10 that it wasn't unusual for Rayshawn to have money. So he didn't
11 think anything about it at the time.

12 Q. Did she say how much money he saw Rayshawn Banner with?

13 A. He said that he saw Rayshawn Banner with \$20.

14 After Nelson read through the police report that the
15 commission staff showed him, he stated that he told police he saw
16 Rayshawn -- excuse me.

17 After we had shown him the police report in which he
18 told police that he had seen Rayshawn with 20s, 50s, and 100s,
19 he stated to commission staff that he never told this to police
20 and that he told the police that he had only seen Rayshawn Banner
21 with \$20 and that that was not unusual.

22 Q. Did he ever see any of the codefendants with tape?

23 A. No, he did not see them with tape. He said he
24 remembered the detectives asking him about that too, and he told
25 them no.

1 Q. Did Mr. Hartman ever hear the defendants talking about
2 committing robberies or know them to commit robberies?

3 A. No. Mr. Hartman stated that he had never heard of any
4 of the defendants admit any involvement or knowledge of this crime
5 or robberies.

6 Q. Let me turn your attention to Donovan West. Who is
7 Donovan West?

8 A. Donovan West was a friend of all of the defendants and
9 he was interviewed on December 10th of 2019 at Maury Correctional
10 Institution, and this interview was recorded and transcribed.

11 **MS. SMITH:** Commissioners, Handout 82 is the criminal
12 record of Donovan West.

13 Q. What was Mr. West's relationship with the defendants?

14 A. He stated that he grew up with all five defendants and
15 that he hung out with them every day.

16 Q. Did he say whether he talked to the police about this
17 case?

18 A. No. Donovan told commission staff that the police had
19 left a business card at his home asking him to call them but that
20 he never called the police back and that they never came back to
21 his house to try to speak to him.

22 Q. Did Mr. West say anything else to commission staff?

23 A. He stated that he didn't believe that the defendants
24 committed this crime. He stated that they would steal things and
25 that he would steal things as well, but they never committed any

1 kind of crime like this.

2 Q. Who is Derrick Garlington?

3 A. Derrick Garlington is also a friend of the defendants.
4 He was interviewed by commission staff on February 24 of 2020, and
5 this interview was also recorded and transcribed.

6 MS. SMITH: Commissioners, Handout 83 is the criminal
7 record of Derrick Garlington.

8 Q. Please tell the Commissioners why commission staff
9 interviewed Derrick Garlington.

10 A. Commission staff interviewed Derrick because he was
11 named as a defendant in some of the juvenile records of the
12 claimants' files and he was documented as somebody that they had
13 gotten in trouble with.

14 Nathaniel Cauthen also named Derrick as being involved
15 in prior conversations about planning robberies in his taped
16 interview with the police on November 19th of 2002.

17 Q. What did Derrick Garlington tell commission staff?

18 A. He told commission staff that he didn't know anything
19 about this crime, that he had never heard any of them talk about
20 this crime, and that he hasn't spoken to any of them about this
21 crime.

22 Q. Did he say whether or not he knew the defendants to
23 commit similar crimes to this?

24 A. He stated he didn't know anything about that because
25 he'd always gotten in trouble on his own.

1 **Q.** Ms. Myers, who is Dwayne House?

2 **A.** Dwayne House is a childhood friend of the defendants who
3 was interviewed by commission staff on February 22nd of 2020.
4 This interview was recorded but it was not transcribed.

5 **MS. SMITH:** Commissioners, Handout 84 in your hearing
6 notebooks is the criminal record of Dwayne House. If you'll take
7 just a moment to look at it.

8 **Q.** Did Mr. House say whether he saw any of the defendants
9 on the night of the murder?

10 **A.** He stated that he believes that he saw Nathaniel,
11 Rayshawn, and Dorrell near, Dacien -- it's D-a-c-i-e-n -- and
12 Devonshire Streets.

13 **Q.** Did he ever hear any of the defendants talk about the
14 crime?

15 **A.** No. He stated that he never heard them talk about this
16 and couldn't imagine them committing a crime like this. Dwayne
17 stated he thinks they were scared and pressured into saying things
18 that they shouldn't have said because they thought it might help.

19 **Q.** Did Dwayne know about any of the codefendants to commit
20 crimes?

21 **A.** No, he did not. He stated they would get in fights but
22 that he can't see them beating an old man.

23 He also said that if the defendants had done it, he
24 believes that they would've told him.

25 **Q.** Did he say anything else?

1 A. Yes. He also stated that he recently saw Christopher
2 Bryant and that Christopher Bryant told him that the police got
3 them to say things that weren't true because they were scared.

4 Q. Who is Brandon Odom?

5 A. Brandon Odom is also a childhood friend of the
6 defendants who was interviewed by commission staff on February 23
7 of 2020. This interview was recorded but it was not transcribed.

8 **MS. SMITH:** Commissioners, Handout 85 is the criminal
9 record of Brandon Odom, if you want to take a moment to look at
10 backpack.

11 Q. What did Mr. Odom say about November 15, 2002?

12 A. He stated that he was locked up at this time; otherwise,
13 he would have been with the defendants because he stated that he
14 was always with them.

15 Q. Have any of the defendants ever talked to him about this
16 case?

17 A. Yes. Mr. Odom stated that he saw them all while he was
18 incarcerated and that all five of them told him that they were
19 innocent. He also stated that he was so close with them that had
20 he done it, he would know about it because one of them would have
21 told him.

22 Q. I think you just said "had he done it."

23 Did you mean to say "had they done it"?

24 A. Had they done it. I apologize. Had they done it, they
25 would've told him.

1 **MR. BRITT:** Was he the individual who was in jail with
2 them talking about this case?

3 **THE WITNESS:** That was Dedrick Crump, not Brandon Odom.

4 **Q.** Has he ever been questioned by the police about this
5 case?

6 **A.** Yes. Well, no, I apologize, he has not. However, he
7 stated that the police came to his home looking for him so that
8 they could take him to the police station and question him. He
9 stated that his mother told police at that time that he was not
10 home and that he was locked up.

11 Mr. Odom stated that, quote: "They were just picking
12 people up," end quote.

13 **Q.** Did he say anything else to commission staff?

14 **A.** He did. He stated, quote -- excuse me. He said that
15 being locked up, quote, "saved him from doing time with them," end
16 quote.

17 **Q.** Did commission staff receive a call this week from an
18 individual?

19 **A.** We did. Commission staff received a phone call from a
20 person named Cameron Fox.

21 **MS. SMITH:** Commissioners, Handout 110 in your third
22 notebook is a DPS printout of the criminal record of Cameron Fox.

23 **Q.** Can you tell the Commissioners what Cameron Fox told you
24 on that call.

25 **A.** Yes. Cameron Fox called the Commission on February

1 10 --

2 Q. Do you mean March 10?

3 A. March 10 of 2020. Thank you.

4 He stated that he was from Winston-Salem, that he had
5 gone to high school with Chris Paul, he had attended West Forsyth,
6 that he had spent time with all five defendants in the North
7 Carolina Department of Corrections, and that he had talked to them
8 extensively about their involvement in this case.

9 Q. What else did he say?

10 A. He stated that he had spoken to Jermal Tolliver while he
11 was still incarcerated in the Forsyth County jail -- this was
12 prior to the trials happening -- and that Jermal Tolliver told
13 Mr. Fox that he did not have anything to do with this case but
14 that his codefendants were going to prison.

15 Q. Did he say anything else?

16 A. He stated that he also spoke to Dorrell Brayboy and a
17 person that he knew to be Black and that they had stated that
18 Jermal Tolliver and Christopher Bryant had very little to do with
19 this crime.

20 Q. Did he say anything else?

21 A. I had asked Mr. Fox what Nathaniel Cauthen had asked
22 him -- or, excuse me -- had told him. Mr. Fox stated: "Who is
23 Nathaniel Cauthen?"

24 I asked him: "What did the fifth codefendant tell you?"

25 And Mr. Fox stated: "I didn't know there was a fifth

1 codefendant."

2 He also stated that he knew specific details of this
3 case and had mentioned that the victim had a bag placed over his
4 head.

5 I asked him who he received this detail from, and he
6 stated he did not know because he did not know specific details
7 about this case.

8 Q. Did he say anything else?

9 A. I believe that was everything that he communicated to
10 commission staff.

11 Q. Did you ask him how he found out about the Commission's
12 investigation in this case?

13 A. I did ask Mr. Fox that, and he stated that he believed
14 he either saw it on Instagram or Facebook.

15 Q. Did you ask him if he had been watching the live feed?

16 A. He stated that he was not watching the live feed but,
17 again, believed that he had been -- he had seen something about
18 this hearing on Instagram or Facebook.

19 Q. Where does Mr. Fox live now?

20 A. He currently resides in Atlanta, Georgia, and is a
21 manager for CiCi's Pizza.

22 Q. And is that where he was calling from?

23 A. Correct.

24 MS. SMITH: Commissioners, do y'all have any questions
25 about the information that we have just presented related to the

1 codefendants, their families, their friends, or Mr. Fox?

2 MS. ESSARY: May I go back and request something?

3 MS. SMITH: Yes, ma'am.

4 MS. ESSARY: Any police notes related to the interview
5 of Yolanda Tolliver.

6 MS. SMITH: We will look and see if we have any of
7 those.

8 MS. ESSARY: Or any audio recording, if one was made.

9 MS. SMITH: Of her?

10 MS. ESSARY: Yes.

11 MS. NEWTON: I also have a request.

12 Apparently on the forensics, you've given us the
13 curriculum vitae and the chart and notes from the staff but I
14 don't see Ms. Clement's actual report on testing. If you limit
15 the paper -- if she wrote up her report on her evaluation of the
16 Bode testing on the toboggan, I would like to see that.

17 MS. SMITH: Ms. Clement's report is two pages long. It
18 does not go into detail about each of the items specifically that
19 she determined she could not make additional conclusions about.
20 It goes into detail about the two items that she believed she
21 could make additional conclusions about, and then I believe
22 there's just a general summary that, for the remaining items, she
23 agrees with the assessments of Bode Cellmark.

24 MS. NEWTON: Well, then that maybe you can answer just
25 my one specific question.

1 What DNA was actually being tested on the toboggan? Was
2 it a lift? Was it a touch? Was it a sample? Was it --

3 **MS. SMITH:** I'll be happy to the look back at the notes
4 from the lab to see what they sampled on the toboggan.

5 **MS. NEWTON:** Great.

6 **MS. SMITH:** I think I know the answer but I don't want
7 to misspeak.

8 **MS. NEWTON:** That's what I need to know. Thank you.

9 **MS. SMITH:** All right, Your Honor.

10 Handout -- when we come back from this break, we're
11 going to hear testimony from confessions expert Dr. Hayley Cleary.
12 Y'all have previously been provided her report as Handout 86 prior
13 to this hearing. I believe all of you have reviewed that.

14 Also, there is Handout 100 in that third notebook which
15 you may wish to look at prior to that testimony.

16 This is the case law and some previous testimony by
17 Associate Director Beth Tanner in a prior Commission hearing
18 related to the full scope of the case law surrounding the
19 confession experts. So we wanted to give you-all that to look at
20 ahead of that testimony when we come back.

21 **MR. BRITT:** Which number?

22 **MS. SMITH:** Handout 100.

23 If you-all brought back your flash drives and are done
24 with those, we need to add some additional materials to those not
25 related to the materials you had last night but we would like to

1 use the same ones, if that is possible.

2 Can we go on a break, Judge Lock?

3 **JUDGE LOCK:** Yes. The next testimony will be by video;
4 is that correct?

5 **MS. SMITH:** That is correct.

6 **JUDGE LOCK:** All right. We will be in about a 15-minute
7 recess.

8 (Recess taken, 11:06 to 11:26 a.m.)

9 **JUDGE LOCK:** All right. We'll come back to order. It
10 appears everyone is present.

11 **MS. SMITH:** Yes. Your Honor, we're having a little bit
12 of feedback issues here. AOC can't really figure out what's going
13 on so we're going to proceed. Hopefully, it will be okay. If it
14 becomes too problematic, then we will regroup on that. They have
15 tried to call in, like, a tech or something to figure that out.

16 At this time, the Commission calls Dr. Hayley Cleary.

17 **JUDGE LOCK:** Ms. Guice Smith, I am going to ask that,
18 because of the nature of this testimony, that you lay the
19 foundation for the introduction of such testimony under Rule 702
20 of our rules of evidence.

21 **MS. SMITH:** Yes, sir.

22 **JUDGE LOCK:** Thank you.

23 **MS. SMITH:** Will you swear her in.

24 * * * * *

25 Thereupon, HAYLEY CLEARY, a witness having been called by the

1 Commission, was affirmed and testified as follows via video
2 teleconference:

3 BY MS. SMITH: (11:27 a.m.)

4 Q. Good morning, Dr. Cleary.

5 A. Good morning. I can hear you but I can't see who's
6 speaking. I can see some of the Commissioners.

7 Q. Okay. It is possible that the cameras will readjust
8 when they detect my voice. Okay. But I'm sorry if they don't.

9 (Discussion off the stenographic record, re:
10 logistics.)

11 A. I can't see about maybe seven of the Commissioners.

12 Q. Okay.

13 A. But that's okay. I can hear you.

14 Q. Okay.

15 Can you tell the Commission about your educational
16 background.

17 A. Yes. I have undergraduate degrees in psychology and
18 Russian studies from the University of Virginia. I have a
19 master's degree in public policy from Georgetown University, and a
20 Ph.D. in developmental psychology from Georgetown University.

21 Q. Can you repeat where that last degree was from.

22 A. Georgetown University.

23 (Discussion off the stenographic record re:
24 technology.)

25 Q. Why did you seek those particular degrees?

1 A. So psychology is the study of human behavior which I
2 have always found very fascinating, and when I decided to go to
3 graduate school, at the time, Georgetown University had the first
4 and only dual degree program in developmental psychology and
5 public policy. And I found that very fascinating because
6 psychology had what to say to inform policy and, you know, support
7 evidence-based policymaking. So I thought it was important to be
8 trained in both of those areas.

9 Q. Where do you work?

10 A. Virginia Commonwealth University in Richmond, Virginia.

11 Q. And what is your role at Virginia Commonwealth
12 University?

13 A. So I am an associate professor of criminal justice and
14 public policy with tenure. My obligations as a faculty member at
15 VCU involve primarily research and teaching and, to a smaller
16 degree, service to the University, the community, and the
17 discipline.

18 Q. What type of scientific or specialized research are you
19 currently involved in?

20 A. Many ongoing projects. So to provide an overview, I am
21 in the middle of a study of parents' knowledge and understanding
22 of interrogation practices of juveniles and advice to youth
23 regarding *Miranda* waiver.

24 I am involved in a study with the State Department of
25 Juvenile Justice about their therapeutic correctional practices.

1 I also do some work in the area of adolescent sex offending. I
2 have an upcoming study on policing and youth interactions in
3 street context using body-worn camera footage. I am working on a
4 paper regarding the role of trauma and coerced and unreliable and
5 false confessions among juveniles.

6 Q. You said among juveniles?

7 A. Yes.

8 Q. Prior to your work at Virginia Commonwealth University,
9 can you outline your other jobs and training for the Commission.

10 A. Yes. So my first job out of graduate school was for the
11 City of Philadelphia Department of Behavioral health. I was an
12 analyst in a public health capacity for about a year. I then
13 worked for about a year for a statewide children's advocacy
14 organization in Virginia, and then I moved into a one-year
15 teaching faculty position in the Department of Psychology at VCU
16 where I was teaching psychology courses. And then I transitioned
17 into what's called a tenure-track line, which is primarily
18 research-focused, in the criminal justice department within the
19 School of Public Policy at VCU, and that's where I've been for
20 about the past seven years, eight years.

21 Q. And if you have any additional experience or research
22 other than that you just outlined specifically related to police
23 interrogation and juvenile suspects, can you tell Commissioners
24 about that.

25 A. Sure. So previously, that was an overview of my current

1 projects. I have done a number of projects in the past that have
2 been published in peer-reviewed journals. I did an observational
3 study of videotaped interrogations of juveniles in collaboration
4 with some law enforcement partners. That study was published in
5 2014.

6 I did a study of law enforcement interrogators regarding
7 their experiences with conducting adult and juvenile
8 interrogations and their training in conducting interrogations. I
9 was involved in two different studies that are completed and
10 published regarding parents' and adolescents' knowledge about the
11 legal system, including the *Miranda* rights and, sort of, the
12 parameters of legal police interrogation practices.

13 And most recently, I wrote a theoretical piece outlining
14 the ways in which research from developmental psychology applies
15 to the practice of juvenile interrogations and highlights the ways
16 in which youth are rendered especially vulnerable to coercion
17 interrogation because of their developmental immaturity.

18 Q. Is there anything else you believe is important about
19 your research, experience, or education that we have not outlined
20 yet for the Commissioners?

21 A. I think we have covered it.

22 Q. Okay.

23 How many years have you been studying police
24 interrogations and confessions?

25 A. About 15.

1 Q. In how many cases have you been consulted or retained as
2 an expert in the area of interrogation of juvenile suspects,
3 adolescent development, police interrogation outside of juvenile
4 suspects, and confessions made by defendants in criminal cases?

5 A. So all of those pieces are related from the research
6 perspective; so in total, I think it's about 20 cases that I have
7 either been retained on or just consulted with attorney clients
8 about.

9 Q. And of those cases, how many times were you consulted or
10 retained by a criminal defendant?

11 A. I would say maybe 18 of the 20.

12 Q. And have those been in state criminal cases?

13 A. As opposed to?

14 Q. Federal.

15 A. Oh, yes. State, yes.

16 Q. And the other cases that were not related to criminal
17 defendants, what types of cases were those?

18 A. They were postconviction relief cases.

19 Q. What's your typical role in the case when you are hired
20 as a consultant and/or retained?

21 A. So it typically falls within one of two categories.
22 Sometimes it's general testimony, where I'm simply asked to
23 educate the Court about psychological research pertaining to
24 adolescent development and/or the practice of police
25 interrogation. In other instances, it's more specific testimony

1 in which I apply that research to the facts of the specific case
2 and talk through the factors relevant to a specific case.

3 Q. What is your specialized training or knowledge that you
4 use in evaluating these cases?

5 A. Principally, it's the scientific method. That is what
6 distinguishes psychology as a social science, and all of the
7 research and training that is inherent in a Ph.D. is founded on
8 the scientific method, which involves, you know, understanding the
9 existing literature, what we know and what we don't know,
10 formulating a reasonable and defensible hypothesis, designing a
11 rigorous study to test that hypothesis, and applying the
12 appropriate statistical analytical techniques to examine whether
13 the data support or do not support that hypothesis.

14 Q. How many interrogations have you reviewed in your
15 career?

16 A. I would say at least 115.

17 Q. When you evaluate a case related to a criminal
18 defendant's statements in that case, what are the principles and
19 methods that you use?

20 A. So I begin with a thorough and comprehensive review of
21 the literature because it is constantly changing. The study of
22 police interrogations and the study of adolescent development is
23 growing very rapidly. So first I make sure I fully understand the
24 landscape of the literature, especially any new or recent work.
25 And then I evaluate the facts of the case as they are provided to

1 me through documentation in light of that scientific research and
2 that documentation -- things that I consider to be risk factors
3 based on expertise in the area.

4 Q. Explain to the Commission why those principles and
5 methods are reliable.

6 A. Just like the research studies themselves, they are
7 grounded in science, which is grounded in the scientific method.

8 So inherent in that method is, you know, the idea of
9 striving for objectivity, for scientific rigor. So, for example,
10 it involves evaluating all aspects of the documentation and not
11 just those in support of, you know, one side or the other, but
12 examining sort of the totality of the evidence in light of what we
13 know about youth interrogations.

14 Q. Is there a body of research and literature related to
15 why individuals may make statements about their participation in
16 crimes that may ultimately be determined to be false?

17 A. An extensive body of literature.

18 Q. Can you give us a brief timeline of that body of
19 research and specialized knowledge over the last decade.

20 A. Sure. So I would say that the study of interrogation,
21 confessions, and false confessions really started in earnest in
22 the 1970s. It has progressed exponentially since then. In the
23 last decade, there's been a particular explosion of research on
24 interrogations, confessions, and false confessions from many
25 different aspects using many different types of research methods.

1 Q. Is there a body of research and literature related to
2 specifically to why juveniles may make statements about their
3 participation in crimes that may ultimately be determined to be
4 false?

5 A. Yes.

6 Q. And has that also grown exponentially over the last
7 decade?

8 A. Yes, in different ways. So I would answer that question
9 in two parts. On the one hand, we study interrogation of youth in
10 some ways as a subset of the general interrogation literature.
11 And we -- people like me who specialize in developmental science
12 also bring in the relevant literature from basic science and
13 developmental psychology -- so what we understand about how
14 adolescents think and behave and make decisions in many different
15 contexts and sort of the neurobiological basis of that, and we
16 apply it to the specific context of police interrogation.

17 So that particular subset is comparatively newer but has
18 definitely grown tremendously in the last decade.

19 Q. Okay.

20 Do you discuss this body of research in your report?

21 A. Yes.

22 Q. That's the report you provided to the Commission;
23 correct?

24 A. Correct.

25 Q. In criminal cases where you evaluated the statements of

1 a criminal defendant, what are the types of facts or data that you
2 use?

3 A. So certainly the interrogation itself, whether that is
4 an audio recording or a video recording or both. The transcript
5 of that interrogation, if it's available. I look at police
6 documentation such as police reports, consent searches, police
7 policies and procedures. I also evaluate, if it's available,
8 information related to the defendant such as forensic evaluations
9 or school records. Those are the types of materials that are
10 typically relevant to my examination. Lab reports.

11 Q. In this case, were you provided sufficient facts and
12 data?

13 A. Yes.

14 Q. And you outline those sufficient facts or data starting
15 on page 2 of your report; is that correct?

16 A. That's correct. Am I permitted to reference my report?

17 Q. You are.

18 A. Okay. Yes. That's correct.

19 Q. And that list on page 2 is a list of items that you
20 reviewed as provided by commission staff; correct?

21 A. Correct.

22 Q. In this case, did you use the same reliable principles
23 and methods that you've just talked about?

24 A. I did.

25 Q. And did you apply those principles and methods to the

1 facts of the case as you understood them to be?

2 A. Yes.

3 Q. Based on your analysis of this case, do you believe that
4 you have specialized knowledge that will assist the Commission in
5 evaluating these defendants' relative educational levels and any
6 documented psychological issues the defendants may have had, their
7 age as it relates to the interviews and interrogations in this
8 case, and the interrogation techniques the police used?

9 A. Yes, I do.

10 Q. Based on your analysis of this case, do you believe you
11 can testify as to your understanding as to whether any factors
12 exist in this case that could provide additional information as to
13 these defendants and Jessica Black's statements to police?

14 A. Yes.

15 Q. Dr. Cleary, have you ever testified as an expert in the
16 area of psychology of juvenile interrogations and confessions?

17 A. Yes.

18 Q. How many times?

19 A. Only one case has progressed to in-court testimony.

20 Q. And in what court were you admitted as an expert?

21 A. The State of Colorado.

22 Q. And what areas were you admitted in?

23 A. The psychology of juvenile interrogations and false
24 confession.

25 Q. When you've testified, was there a determination made

1 that your testimony in those areas would be helpful to the trier
2 of fact to understand the evidence?

3 A. Yes.

4 Q. Have you ever been rejected as an expert in any area in
5 any courtroom?

6 A. No.

7 Q. Have you formulated opinions in the cases before the
8 Commission regarding these defendants' confessions?

9 A. Yes.

10 Q. Did you provide your report and your CV to the
11 Commission staff?

12 A. Yes.

13 Q. And does it contain your opinions and the basis of those
14 opinions?

15 A. Yes.

16 MS. SMITH: Judge Lock, I would now like to tender
17 Dr. Cleary as an expert in juvenile interrogations, confessions,
18 and psychology.

19 JUDGE LOCK: All right. That tender certainly is
20 allowed.

21 Now, for the record, my ruling as to this tender should
22 not be viewed as an attempt to in any way bind any judge or group
23 of judges that might later consider these claims in any context.

24 With that understanding, please proceed.

25 Q. Dr. Cleary, when you were contacted by the Commission,

1 did commission staff make it clear that we were not seeking any
2 particular opinion from you?

3 A. Yes, absolutely.

4 Q. And did commission staff make it clear that we would
5 present your findings no matter what they were, even if you found
6 nothing?

7 A. Yes.

8 Q. I want to turn to your report and start by having you
9 describe what you reviewed in preparation for this report.

10 A. Sure.

11 Q. Can you just walk us through that.

12 A. Sure. So the way that I organized the report in an
13 effort to be as helpful as possible is, in the first section, I
14 provide a general overview of what we know about false confession
15 in general.

16 So if you look at section IV, subsection A, "The
17 Occurrence of False Confessions," this basically walks you through
18 the notion that we have several sources of documented or proven
19 false confession. The National Registry of Exonerations maintains
20 a database of wrongful convictions and tracks which among those
21 involved a false confession. So that is one source of information
22 we have about false confessions that have actually been
23 definitively determined to be false. That number continues to
24 grow.

25 And that is one of the few sources of archival data to

1 allow us to examine commonalities in cases of documented false
2 confessions, which is a very important place for us to start when
3 we look at the psychological principles or components that may
4 apply in these cases.

5 In subsection B, I talk about false confessions
6 specifically among juvenile defendants. So from those archival
7 cases as well as self-report studies and research in psychology
8 using other methods, we know that adolescents are overrepresented
9 in cases of documented false confessions compared to their
10 proportion of the population in general. That is also the case
11 for -- well, let me back up.

12 We know that -- this is one of the reasons why we know
13 the youth is a risk factor for false confessions, and we have
14 documented false confessions in older adolescents as well as
15 younger adolescents.

16 In subsection C, I talk about the -- what psychologists
17 call the typology of false confession. So from a research
18 perspective, we study and discuss false confessions in three
19 categories. So voluntary false confessions are a relatively small
20 proportion. These are cases that do not involve police coercion
21 but they are cases in which an individual volunteers in the
22 absence of coercion admission of guilt that turns out to be false.
23 These cases are highly associated with mental illness or the
24 desire to protect someone else.

25 The second two categories are what we call

1 police-induced false confessions. In the first, which we call
2 coerced-compliant confessions, these are interrogations that begin
3 typically with a denial from the defendant or the suspect and,
4 over the course of time, coercive techniques are used and/or other
5 risk factors are present which lead the suspect to comply and
6 eventually provide an admission of guilt that turns out not to be
7 true.

8 In many cases, perhaps even most cases, these
9 confessions are quickly recanted after the pressure of the
10 interrogation subsides.

11 The third and final category we call
12 coerced-internalized false confessions, and these are very similar
13 to coerced-compliant confessions except they involve an additional
14 psychological component whereby the defendant comes to believe
15 that he or she actually committed the crime because they are so
16 psychologically distressed or tormented and their perception of
17 reality becomes distorted and they begin to actually question or
18 even believe that they actually committed the crime.

19 So that is the framework of false confessions that we
20 use as psychology researchers to study this phenomenon.

21 Shall I continue?

22 Q. Yes, please.

23 A. Okay. In subsection D, I talk about documented evidence
24 that we have from archival studies in which -- there are a few
25 cases where multiple false confessions for the same crime have

1 occurred. So cases in which there are two or more or as many as
2 five codefendants who are interrogated about the same crime and
3 they end up implicating one another. We saw this in the Central
4 Park Five case, in which those individuals were later exonerated
5 with DNA evidence.

6 So I include this information to demonstrate that we do
7 have some documented evidence that not all interrogations involve
8 a single suspect and not all false confessions involve a single
9 false confessor. There have been incidences where multiple false
10 confessors were involved.

11 And then finally, section E in the general research
12 section talks about public misunderstanding and misconceptions
13 about false confession.

14 And there is a pretty substantive body of research in
15 the psychology and law about laypeople's misunderstanding about
16 false confessions, and specifically jurors' misunderstanding about
17 false confessions. And this is relevant because in many of these
18 cases -- and probably in actually most of these cases of
19 documented false confessions, the false confessor was ultimately
20 convicted. And there is an abundance of psychological research
21 that explains why people find it so hard to believe that someone
22 would admit to something that they didn't actually do, especially
23 something really heinous like a violent crime, like a rape or a
24 murder. It's very counterintuitive from a human information
25 processing perspective.

1 But we have research on various psychological
2 processes -- for example, the fundamental attribution error, which
3 explains why people tend to attribute, sort of, others' behaviors
4 to that person's internal state or characteristic and tend to
5 downplay or undervalue the influence of social or environmental
6 factors.

7 And the fundamental attribution error is one of the most
8 widely studied phenomena in psychology. We see it play out time
9 and time again in many different contexts having nothing to do
10 with police interrogation, but it's a good example of how the
11 general public, including the people who typically support jury
12 work, sometimes don't understand the psychological elements and
13 processes that are relevant to police interrogation and
14 confessions, especially those involving adolescents.

15 Q. Thank you, Dr. Cleary.

16 In your report, you evaluated each of these areas and
17 applied the research to the facts of this case; is that correct?

18 A. That's correct.

19 Q. If you will now just kind of walk us through your
20 findings starting there in section V, with letter A and then just
21 walk through the report.

22 A. Sure.

23 So interrogation researchers like myself typically
24 discuss risk factors for coerced unreliable and false confession
25 in two overarching categories. The first is called dispositional

1 risk factors, and those are risk factors inherent to the suspect
2 themselves. There are two -- currently, two sort of well-known
3 and well-documented dispositional risk factors for false
4 confession. The first is adolescence, or being minor and having
5 developmental immaturity. The second is mental impairment, which
6 could be either intellectual disability or a mental illness like a
7 diagnosed psychiatric disorder.

8 The second type of risk factor which I will discuss in
9 detail later on are called situational risk factors, and those are
10 characteristics of the environment or the interrogation process
11 that render certain individuals particularly susceptible to
12 coercion or false confession.

13 So in the report, I began by discussing dispositional
14 risk factors. And adolescence is perhaps the most well-known and
15 widely understood risk factor for false confession because
16 adolescents exhibit developmental immaturity. And as
17 psychologists, we've known about this for a long time, right,
18 we've known that youth exhibit immature decision-making and
19 problems with impulse control and, you know, all of those
20 behavioral things that -- that parents of teenagers have known
21 for years. But in the last 15, 20 years, what's been fascinating
22 and really helpful for this work is this explosion of cognitive
23 neuroscience research on the adolescent brain.

24 So with the advent of functional magnetic resonance
25 imaging, fMRI, we have tools to study the way the adolescent brain

1 develops over time, and what we've learned from that process is
2 directly relevant to youth decision-making in stressful contexts
3 such as in interrogation.

4 So there are subcomponents of this broad construct of
5 developmental of immaturity, and I have categorized them into kind
6 of the major components that are relevant to these questioning
7 contexts.

8 So the first is future orientation.

9 So this is sort of a subcomponent of what we call
10 psychosocial immaturity, which we know very well that adolescents
11 are limited compared -- compared to adult function. So
12 adolescents are less able to think about the future in purposeful
13 ways. They are less able to make plans now that affect their
14 outcomes later. And they are less able to think about the future
15 consequences of their behavior. And this is tied to the literal
16 changes in their brains, particularly the prefrontal cortex, which
17 is sort of the decision-making component of the brain, which is
18 the last physical structure to physically develop in the
19 adolescent brain and isn't fully complete, we know now, until, on
20 average, the mid-20s in human development.

21 So the physical delays in the adolescent brain manifest
22 in ways pertaining to youth behavior and decision-making. Future
23 orientation is an important component of that.

24 So at this point, would you like me to talk about the
25 particular case or stay in a discussion about the science?

1 Q. I would like you to, for each section, talk about the
2 science and then go ahead and talk about the case-specific --

3 A. Okay.

4 Q. Yeah.

5 A. Okay. Thank you.

6 So when we apply what we know about limits regarding
7 future orientation specifically to the interrogation context, we
8 see tremendous evidence, over and over again, where -- cases of
9 documented false confessions among juveniles, where kids say, "I
10 just said what they wanted me to say or what I thought they wanted
11 to hear so that I could go home." And we hear it over and over
12 and over again in these documented cases of confession because of
13 their huge limits in future orientation, youth are less able
14 compared to adults to withstand the pressures of interrogation so
15 that focused on immediate here and now that is biologically rooted
16 becomes very compelling and it becomes less able -- youth become
17 less able to resist those pressures and less able to think about
18 how, for example, it may be something they didn't do, might feel
19 like a good idea now, but it might cause serious problems down the
20 road.

21 Certainly, adults can struggle with this as well, but
22 from a developmental science perspective, youth are biologically
23 less able to handle that uncertainty compared to adults.

24 And so in the interrogation context, the immediate
25 reward can become really compelling, right, so adolescents are

1 biologically wired to attend to immediate rewards at the expense
2 of future consequences, both good and bad, right. So the idea of
3 being relieved from a stressful interrogation or getting away from
4 an uncomfortable or psychologically painful environment can be
5 overwhelming to you. And we see this in cases of documented false
6 confessions and I see indicators of this propensity in the current
7 case as well.

8 So, for example, three of the defendants -- Nathaniel
9 Cauthen, Jermal Tolliver, and Christopher Bryant -- testified in
10 their suppression hearings that they just wanted to go home and
11 that -- and they were specifically responding to interrogators'
12 questions by saying, "I want to go home."

13 So, for example, there was -- at Nathaniel Cauthen's
14 suppression hearing, one of the attorneys asked him why he changed
15 his story when he had been denying and denying and saying, "I
16 didn't do it, I didn't do it," and he testified that the
17 detectives said to him, "If you tell me anything concerning this
18 man's case, I will let you go home."

19 And that prospect, the prospect of being able to go home
20 if you comply with authority figures' requests and say something
21 that you believe they want to hear is incredibly powerful to a
22 youth, especially a youth who is intellectually compromised.

23 In Jermal Tolliver's case, he testified that he asked to
24 go home about three times, and each time they told him, "We still
25 have more questioning to do."

1 Bryant -- Christopher Bryant also asked to go home and
2 was told that they weren't finished questioning him yet.

3 And, in fact, the judge in Christopher Bryant's
4 suppression hearing asked him, quote: "So you're telling this
5 Court that the reason you said you were there and knew anything at
6 all about it was because you just wanted to go home?" And he
7 said: "Yes. I just wanted to go home."

8 And what I want to articulate here is that while that
9 may seem unreasonable to an adult, it's very consistent with the
10 developmental literature on adolescents' limited future
11 orientation and their difficulty with self-regulation and impulse
12 control.

13 So youth are biologically -- neurobiologically primed to
14 think about going home in this instance more than the potential
15 trouble they might get in or the legal ramifications of saying
16 that you were there and present for a crime.

17 So that's a good, kind of, overview of adolescent future
18 orientation, which is a subcomponent of development immaturity.

19 I can talk now about adolescent interrogative
20 suggestibility.

21 **Q.** Yes. That would be great.

22 **A.** Excellent. Excuse me.

23 So from a psychological standpoint, suggestibility in
24 general refers to a vulnerability to influence from others. And
25 someone could be suggestible in other contexts besides

1 interrogation. Both adults and youth can show a predisposition
2 towards suggestibility, but because of their developmental
3 immaturity, youth are sort of predisposed to compliance that can
4 stem from suggestibility, particularly in the interrogative
5 context.

6 So when we talk about suggestibility in the
7 interrogation context, we call it "interrogative suggestibility."
8 And several psychologists have developed tools and tests to
9 measure and quantify interrogative suggestibility. And the way
10 that we see that play out in police interrogation is suspects'
11 propensity to change their statements in response to feedback from
12 questioners, from interrogators -- so either positive feedback or
13 negative feedback. So positive feedback can be things --
14 implications that you're saying what the person wants you to hear,
15 they're pleased with your, sort of, performance so far.

16 Negative feedback would be the opposite of that. It's
17 either a direct statement or an implication that the information
18 you're providing is not what the questioner wants to hear. So it
19 can be kind of severe and overt like calling someone a liar or it
20 can be really kind of subtle and suggestive. So the example I
21 used in my report is, "Are you sure it wasn't daylight yet,"
22 right.

23 So individuals who are prone to suggestibility, and
24 youth in general, are more likely than adults to be sensitive to
25 that kind of negative feedback, more likely to change their

1 statements in response to it.

2 So we actually saw -- I saw indicators of interrogative
3 suggestibility primarily in Jessica Black's statement. So even
4 though she is not a defendant in this case, she was questioned by
5 police. And she recounts in her testimony that, for example --
6 there was this issue of whether she took the defendants to the
7 mall on the night in question. So she was asked several times if
8 she took them to the mall on Friday night. And after several
9 times, her story shifts and she began to say that she stopped by
10 the mall to meet with her friend.

11 So specifically she says, quote: "I remember. Yeah. I
12 did have to make a pit stop at the mall because I was going to go
13 and meet one of my friends, Jordan. And she wasn't there and I
14 then had to find them in the mall" -- "them" being the
15 defendants -- "and tell them to come on because they wanted a
16 ride."

17 So in that statement, she is kind of -- it seems like
18 kind of warming up to this idea that she was present in the mall
19 but that statement indicates that the defendants were already
20 there and she met them there.

21 The detective then replies applies to her, quote: "When
22 did you have time to take them to the mall if y'all were out doing
23 this other stuff?"

24 And so "take them to the mall" suggests a different
25 scenario. It suggests that she has physically transported them to

1 the mall.

2 And I realize that that might seem like a trivial
3 semantic difference, but from a psychological perspective,
4 individuals who are vulnerable to suggestion might interpret that
5 to mean they are supposed to agree with this idea that she took
6 them to the mall, she transported them to the mall.

7 So it is much more than just a minor difference in word
8 choice. Those kinds of implications, especially if they are
9 repeated over and over and especially if the person is
10 psychologically compromised, like emotional or under duress, they
11 can receive that feedback, even if it's not intentional or
12 intentionally deceptive on the part of questioners, and they can
13 incorporate it into their narrative.

14 And we see indicators that this happened to Jessica
15 Black. She began crying and she said, "You know, y'all kept
16 saying, Didn't you take them to the mall? Did you take them to
17 the mall? And I didn't remember going to the mall."

18 But ultimately, of course, she does state that she did
19 take them to the mall.

20 So to me, this is -- this is a concern, and it suggests
21 that it could be an indication of a person in a psychologically
22 compromised state who is potentially incorporating elements of a
23 story that were not suggested by her but were suggested to her.

24 We see other examples of it as well with Jessica Black.
25 So, for example, she was asked several times about a wallet, and

1 she told investigators that she never saw an actual wallet but she
2 saw, quote, "an imprint in Stinky's pocket and it looked like a
3 wallet but none of them ever carried around wallets."

4 And then the detectives, instead of seemingly being open
5 to the idea that she didn't see a wallet, they continued to ask
6 her questions as if she did see a wallet.

7 So, for example, the detective asked her if it was thick
8 or thin and whether it stuck out of Cauthen's back pocket, and she
9 replied: "Maybe an inch, maybe 2 inches -- I don't know."

10 He then asked her another question about the wallet.
11 She said: "I want to say his left back pocket."

12 So, to me, these are indicators that Jessicah Black --
13 and this is related to the issue of compliance which I talk about
14 in the next section of the report -- may be constructing a story
15 unintentionally or even subconsciously that she believes is
16 consistent with the information that she is being asked to
17 provide.

18 And we have seen this play out in a number of different
19 contexts, both in the lab, experimentally, in psychological
20 research, and also in cases of documented false confessions.

21 There is additional evidence of suggestibility
22 specifically for Jessicah Black. When I reviewed her deposition
23 that she gave to the Innocence Commission, she stated directly
24 that the police were feeding her details and making suggestive
25 statements. She was forthcoming in the -- with the idea that she

1 tried to answer with what she thought they wanted to hear. So,
2 for example, quote -- she told the Commission investigators: "I
3 changed the color of the tape that the -- the defendants
4 allegedly, you know, bound the victim with three damn times
5 because I was trying to guess at what color the tape was."

6 And individuals who are prone to suggestibility are also
7 prone to guessing because they are trying to be cooperative. They
8 are trying to provide information that they believe will be
9 helpful or that they believe that the investigator wants to hear.

10 So these are examples of what we call statement shifts
11 in interrogation, where a defendant or an interviewee initially
12 says one thing but receives information, either directly or
13 through implication, that the information they provided thus far
14 is not what the questioner wants to hear. And so over time, these
15 statement shifts will occur where their story will begin to change
16 and details will begin to conform, and the statement you end up
17 with at the very end is oftentimes quite different from the
18 interviewee original statement.

19 And this is really kind of part and parcel of the same
20 vulnerability that leads adolescents to be more compliant than
21 adults.

22 So this is a very well-known principle in developmental
23 psychology in general, right. Compliance is basically the
24 tendency to acquiesce to requests from others, often to avoid
25 conflict or confrontation. So just like suggestibility,

1 individuals of any age can have compliant personalities but,
2 again, just like suggestibility, adolescents as a group,
3 irrespective of their personalities, in general, on average, are
4 more likely to exhibit compliance compared to adults because of
5 their developmental trajectory.

6 And particularly in the context of police interrogation
7 this is accentuated, right, because you have, on the one hand, an
8 adult and a youth, and there is this power differential that
9 predisposes the youth to compliance because they are members of
10 the subordinate class, right. In the United States, youth cannot
11 vote, they cannot drive, they cannot purchase alcohol -- it's a
12 socially restricted class largely because of these principles of
13 the developmental immaturity that we all sort of understand on
14 some kind of intuitive level.

15 But when you take that differential and apply it to the
16 interrogation context, you have additional vulnerabilities that
17 lend themselves to adolescent compliance.

18 So not only is the detective or the investigator an
19 adult and the suspect is a child, but the detective has this legal
20 authority figure role, right. They are imbued with the powers of
21 arrest, the power to -- the authority to wear a weapon. They are
22 agents of the law. And the suspect is not only a child,
23 developmentally speaking, but also a suspect in a crime. They are
24 in trouble. They are in a legally vulnerable place.

25 So you have these roles -- these social roles and legal

1 roles that are conflated, and they sort of doubly advantage the
2 investigator because this person has legal authority and legal
3 knowledge about how interrogations work and how the law works and
4 this a juvenile suspect, just by virtue of their status as a
5 juvenile suspect, is sort of doubly disadvantaged because they are
6 youth from a brain development perspective and they are also less
7 knowledgeable about the law and less knowledgeable about police
8 practices.

9 And many studies have borne this out, including some of
10 my own. And when you put those factors together, what you end up
11 with is a juvenile suspect who is vulnerable or predisposed to
12 doing what it is they think -- doing or saying what it is they
13 think the investigator wants to hear. And so that's what we call
14 compliance-related interrogation behaviors.

15 We have seen this in numerous empirical studies using
16 many different methods. And sometimes it is not just these kind
17 of statement shifts or gradual changes in the information they're
18 providing, but they are sort of high-stakes decisions, like waving
19 one's *Miranda* rights or even falsely confessing to a crime.

20 So those developmentally driven vulnerabilities are
21 operational, essentially, throughout this context. And I saw
22 evidence of that in -- in many ways throughout the defendants in
23 this case.

24 And so I'll discuss those briefly. I am now looking at
25 Jermal Tolliver. I am on page 12 of the report back.

1 So I should -- before I provide any more detail, I
2 should add one more important piece that pertains to adolescent
3 compliance specifically in juvenile cases, this is not necessarily
4 a factor in adult cases, and that is the role of a parent, right.
5 So parents are kind of legally and practically involved in
6 juvenile interrogations in different ways compared to
7 interrogations of people who are legal adults.

8 And in this case, the mothers of several of the
9 defendants themselves created situations, in my view, that
10 demanded compliance or compliant behaviors from their sons.

11 So Jermal Tolliver's mother, who was the one who
12 originally voluntarily reached out to the police, she told -- it
13 came out in the documentation that she wanted him to tell the
14 truth, right, and we see this not only multiple times throughout
15 this case but in many cases involving coerced unreliable and false
16 confessions of juveniles where the parent says: "Tell the truth,
17 tell the truth, tell the truth." And parents don't always realize
18 that they might be creating situations of legal jeopardy for their
19 children.

20 And if we step back from interrogation context and think
21 about the difficult position that parents are in when their
22 children are questioned by police -- the impossible position
23 they're in, right -- because on the one hand, parents are supposed
24 to protect youth from police coercion, to help youth advocate for
25 their legal rights, that is presumably what our laws requiring

1 police to notify parents about the interrogation or requiring
2 parents to be there, but at the same time, parents are supposed to
3 educate their children and socialize their children to obey the
4 law, to do the right thing, to be a good person, and to tell the
5 truth.

6 And so in this particular context, we see mothers
7 frequently and repeatedly urging their sons to tell the truth and,
8 by extension, communicating pragmatically to their youth who had
9 been denying their involvement up until that point that those
10 denials are not the truth.

11 So in sort of a strange way, it can operate similarly as
12 a detective interrogating a youth and saying, "Tell the truth"
13 because the idea is that -- or what the youth might hear is, "I've
14 been telling you I'm not involved in this situation," and what
15 they're hearing is, "You don't believe me that that's the truth,"
16 when these repeated invocations to tell the truth communicate to
17 youth that they need to change their story because what they've
18 been saying heretofore is not the truth.

19 And yielding to that pressure, whether it comes from a
20 detective or from a parent, is an example of an adolescent's
21 compliance with those requests. And, again, from a developmental
22 psychological perspective, youth are predisposed to exhibit those
23 compliance behaviors on account of their developmental immaturity.

24 We saw similar examples with Christopher Bryant, where,
25 you know, the police told him, "We need to speak with you about an

1 incident," and they opened the patrol car door for him and he gets
2 in. They use words like, "We have to interview you downtown."
3 And Bryant actually said in his hearing, he said: "I didn't know,
4 you know what I'm saying, that you're supposed to ask your parents
5 or to have rights."

6 So to me, this is an indicator that Christopher Bryant
7 was following instructions and didn't understand that he had the
8 legal right to decline to go with the police officers.

9 Q. Thank you, Dr. Cleary.

10 If you will turn your attention now -- I believe it's to
11 page 15 of your report, the mental impairment as a dispositional
12 risk factor and walk the Commission through that one.

13 A. Sure. So after adolescence, the second well-known
14 dispositional or person-related risk factor of false confession is
15 mental impairment. And that can take the form of intellectual
16 disability, which is what was formally known as mental
17 retardation, or mental illness, such as a diagnosed psychiatric
18 condition.

19 And just like juvenile status, we know that persons with
20 intellectual disability are overrepresented in cases of documented
21 false confession. And we are beginning to understand the specific
22 mechanisms through which intellectual disability renders someone
23 particularly vulnerable to false confession, and it has to do with
24 the way that they process information, gullibility, an unusual or
25 heightened desire to please others -- that kind of thing.

1 So I evaluated the school and prison educational records
2 for all of the defendants that I received, and I believe that --
3 so all four living defendants had consistent academic failures.

4 So Rayshawn Banner was tested at a full scale IQ of 71.
5 That is considered borderline intellectually mentally deficient.
6 He also had documented disabilities regarding processing verbal
7 material.

8 Christopher Bryant did not have an IQ evaluation as a
9 student, but he received an IQ test in a correctional facility and
10 scored a 79, which is considered below average.

11 Nathaniel Cauthen's full scale IQ was tested at 70,
12 which is the second percentile. So that means that 98 percent of
13 the population has an IQ higher than Nathaniel Cauthen. It is
14 considered in an educational context as educationally mentally
15 disabled.

16 And then Jermal Tolliver also had a very low full
17 scale IQ, was tested at 66, which is considered extremely low
18 mental disability.

19 So these are severe cognitive deficits that are directly
20 relevant to the interrogation context.

21 **Q.** Thank you.

22 If you will move now to the bottom of page 16, the
23 situational risk factors for false confessions. You talk about
24 maximization techniques.

25 If you could just briefly go through what those are.

1 A. Sure. So maximization refers to a family of
2 interrogation techniques intended to heighten the suspect's
3 anxiety and make them feel like confession is inevitable --
4 essentially, to stress them out.

5 And I saw numerous examples of different maximization
6 techniques in this case. One is this practice of accusing
7 suspects of lying and shutting down any attempt to deny their
8 involvement in the matter.

9 So these could be -- you know, these are aggressive,
10 overt, you know, "You're lying. You're a liar." Also repeatedly
11 telling the suspects to tell the truth and tell the truth. We saw
12 that in numerous interrogations and also with Jessicah Black.

13 Perhaps the most concerning maximization technique that
14 I saw from a developmental perspective is exaggerating the
15 seriousness of the consequences.

16 So as best I can tell, these individuals were threatened
17 with the death penalty, which we know is not even available to
18 adolescents. But Jermal Tolliver, Christopher Bryant, Nathaniel
19 Cauthen, and Dorrell Brayboy were also told that they would get
20 the death penalty, that, you know, they would get the lethal
21 injection: "Which -- which arm do you want it in?"

22 This process of heightening the suspects' fear of what
23 will happen to them if they don't confess is very, very palpable
24 and it's a very effective way to obtain confessions, true
25 confessions and false confessions. It creates fear and anxiety,

1 and youth are particularly vulnerable to that.

2 When we talk about -- and I'm on the bottom of page 19
3 here -- confrontation with evidence, this is another very commonly
4 used maximization technique, and this involves a police officer
5 coming into an interrogation room, expressing their absolute
6 certainty in a suspect's guilt to the point where they don't even
7 want to hear the idea that you're not involved or that you weren't
8 there or that you're innocent, they're shutting -- again, shutting
9 down denials and presenting the suspect with supposed evidence of
10 their guilt, right, support for the investigator's certainty in
11 their guilt. And it can be real evidence, actual evidence from,
12 you know, forensics or something like that, or eyewitness
13 testimony, or it can be fabricated evidence, completely falsified.
14 When it's false evidence, we call that the false evidence ploy,
15 but it doesn't have to be completely fabricated.

16 So in this situation, the five boys were interrogated
17 more or less simultaneously, as far as I can tell, and from what I
18 was able to piece together, the investigators would take snippets
19 of recordings from one person's statement, from one person's
20 interrogation and take it to another part of the police station
21 where a different interrogation was occurring and play it for that
22 suspect and say, basically, "Your friends are ratting you out."
23 We've seen this happen before. It's not terribly uncommon.

24 And so from the suspect's perspective, they're being
25 presented with evidence of someone else's voice saying that "I,

1 myself, was there or that I was participating in this crime," and
2 it increases the pressure to confess and it increases the
3 difficulty of fighting back against that narrative.

4 So the evidence ploy is an incredibly powerful. And we
5 see that being used -- I saw that being used on a number of
6 different defendants in this case.

7 Q. Will you talk now about the prolonged attention and
8 isolation as a maximization technique.

9 A. So this is a highly effective interrogation technique.
10 Because of everything we know about human psychology, human beings
11 need social support, especially at times of uncertainty or
12 distress. And when you seclude someone from their support system
13 and use these additional maximization techniques to heighten their
14 fear and anxiety, it creates this very powerful situation that
15 promotes confession, including false confessions.

16 So four of the five defendants came to the police
17 station in the midafternoon hours of November 19th, 2002, without
18 their parents, without another individual, and they were isolated
19 from their families in that way. They were interrogated by
20 multiple detectives, at least two, as far as I can tell in each
21 situation. And then they would be left alone, right, and that
22 itself can be incredibly stressful, being questioned in an
23 accusatory fashion and then being left alone with their thoughts.
24 And then the detective comes back in with more accusatory and
25 potentially threatening questions and then leaves one alone again.

1 So if you look at the sum total of time where the youth
2 were at the police station, it's about eight or nine hours for all
3 of them except for I believe it was -- Banner, Raymond Banner
4 [sic] was picked up later on.

5 And so we know that prolonged isolation and detention is
6 an incredibly powerful tool to increase the propensity to confess.

7 **Q.** All right.

8 If you will move on to the other strategies for
9 intimidation.

10 **A.** Sure. So these are -- I can of use this is a catchall
11 category of things that increase the likelihood that a person will
12 confess.

13 So aggressive confrontation like yelling, raising your
14 voice, also controlling the physical space. So police
15 interrogators are taught to construct this isolated and sparse
16 interrogation room that feels cold and uninviting. So that's the
17 actual space of the room. Also physical space in the sense of
18 personal space. So interrogators are explicitly taught to
19 encroach upon suspects, to get very, very close to them, to get in
20 their face, basically, as an intimidation tactic, which can be
21 very effective.

22 We also know that most -- most, if not all, of the
23 detectives were armed while they questioned the suspects. This
24 doesn't have to be an explicit intentional threatening tactic. It
25 may just be departmental policy in some departments, but it can

1 still have the effect of increasing suspects' fear and anxiety.

2 And so at the end of the day, when you put all of these
3 maximization techniques together, it creates this incredibly
4 stressful environment that makes it incredibly challenging even
5 for mentally capable individuals to withstand, and we have seen
6 this borne out in laboratory research with perfectly mentally
7 healthy college-educated individuals who are -- who are part of
8 this constructive environment in which they falsely confess
9 because the pressures of the situation become too intense.

10 Q. All right.

11 Let me turn your attention to the bottom of page 23 of
12 your report, the *Miranda* Rights Comprehension and Waiver section.

13 If you could briefly walk the Commissioners through
14 that.

15 A. Sure. So we have an extensive body of research on
16 cognitive and linguistic factors associated with the comprehension
17 of the actual *Miranda* warning. And this is above and beyond just
18 reading or listening comprehension in general. So we've had
19 studies that have looked at the actual language of *Miranda* warning
20 forms from all over the country and examined readability
21 estimates, like grade level reading estimates of the words that
22 commonly appear in the *Miranda* warnings, both adult and juvenile
23 *Miranda* warning.

24 And what we find, to sort of briefly sum up the body of
25 research, is they're hard to understand, they involve a number of

1 tricky words and legal words like "appoint" and "counsel" that are
2 not universally understood. And when you have cognitive
3 limitations or intellectual deficits, those known comprehension
4 problems become even more pronounced.

5 And so Rayshawn Banner was the only defendant in this
6 case to be *Mirandized*. The other four were never actually
7 *Mirandized*.

8 So they went through the *Miranda* warnings with Rayshawn
9 Banner. And, you know, when you consider the way that *Miranda* is
10 often presented in context with Banner's academic skills and his
11 reading comprehension problem -- in fact, one of his school
12 evaluations specifically noted that he was slow in processing
13 verbal material.

14 So there is reason to believe that, like many youth in
15 his position, Rayshawn Banner may not have fully understood even
16 the words in the *Miranda* warning potentially, but more than that,
17 the implications of what those warnings mean and what it means to
18 give up those rights.

19 Q. Thank you.

20 Looking now at page 25 of your report, if you will talk
21 a little bit about youth perceptions of custody and appreciation
22 of legal jeopardy.

23 A. Sure. So psychologists, and particularly developmental
24 psychologists such as myself, are very much interested in
25 understanding youths' perception of what it means to be in police

1 custody. And this is very important because although this body of
2 research isn't very large yet, what we're seeing is that the way
3 people perceive being free to leave a questioning session is
4 oftentimes very different from the way that legal authority
5 figures evaluate those situations.

6 And we know from psychological research on situational
7 pressures and information processing and decision-making under
8 duress that people in general and youth in particular may commonly
9 fail to understand what it means to be in police custody and what
10 it means to be free to leave.

11 In fact, there was one recent study with adults that
12 actually measured people's knowledge about whether they are
13 factually free to leave versus how they feel, whether they felt
14 free to leave, and a number of the participants -- and these are,
15 again, adult, mentally healthy participants -- felt that even
16 though they sort of cognitively factually understood that
17 technically they were free to leave, they did not feel free to
18 leave. And this was not even in a real-life interrogation
19 context. This was in a contrived laboratory setting.

20 So if we apply everything that we know about how youth
21 process information in situationally stressful environments and
22 their limitations in terms of interacting with authority figures,
23 it is very reasonable to believe that youth in an interrogation
24 setting would not feel that they could just get up and walk out of
25 the door. Most adults, from what we know so far, don't feel like

1 they can get up and walk out of the door.

2 And when we look at actual interrogations, we don't see
3 adults -- or we don't see anyone getting up, you know, walking
4 past the interrogators, and leaving even if they've been told that
5 they are free to do so.

6 **Q.** Thank you, Dr. Cleary.

7 **MS. SMITH:** Now would actually be a good time to stop
8 for lunch, Your Honor, if that works for you.

9 **JUDGE LOCK:** All right. I think that does.

10 Let me ask the Commissioners. Would 45 minutes be
11 enough time since considering this witness is testifying remotely?

12 **MS. COLBERT:** Yes.

13 **JUDGE LOCK:** And, Dr. Cleary, will 45 minutes be enough
14 time for you?

15 **THE WITNESS:** I believe so.

16 **JUDGE LOCK:** Let's take a lunch recess, then, until --
17 it's 12:35 according to our clock. Let's take a lunch recess,
18 then, for 45 minutes until 1:20.

19 All right. We will stand in recess. Thank you, Doctor.

20 (Recess taken, 12:35 to 1:21 p.m.)

21 **JUDGE LOCK:** We will come back to order again.

22 Good afternoon, Dr. Cleary.

23 And, Commissioners, after Dr. Cleary has finished her
24 direct testimony and she has been tendered to us for questioning,
25 the court reporter has asked if we would be so kind as to avoid

1 speaking over each other and avoid speaking over the witness
2 because there is some slight time delay between her speaking and
3 us hearing, and you may have noticed that.

4 All right. Ms. Director, please continue.

5 MS. SMITH: Thank you. Commissioners, we did try to
6 work on the audio feedback with AOC over lunch. We were just not
7 successful in fixing that, but we will move forward anyway.

8 Q. Dr. Cleary, I'm going to turn your attention now to
9 page 28, the top of that page, subsection F, Interrogators'
10 Presumption of Suspects' Guilt.

11 If you want to briefly talk about that for
12 commissioners.

13 A. Sure. So interrogation is, by definition, a
14 guilt-presumptive process. Interrogators are trained not to
15 accusatorily interrogate someone unless they are reasonably
16 certain that person is guilty.

17 And the problem with that is that it leads to
18 confirmation bias. It leads to a tendency to ignore
19 information -- ignore or discount information that is counter to
20 one's idea of what the truth may be.

21 And so we see -- I saw many examples of the presumption
22 of guilt and also confirmation bias in the interrogations and
23 confession statements of -- these five statements. We see
24 repeatedly when the defendants are denying and those denials are
25 being rejected because the interrogators communicated to the

1 suspects that they were entirely certain of their guilt.

2 Q. Thank you.

3 If you will look now on page 29 of your report and talk
4 about confirmation bias.

5 A. So confirmation bias is a very basic, fundamental
6 principle in psychology where human beings in general tend to
7 either seek out actively or simply attend to information that is
8 consistent with their own internal narratives and to either ignore
9 or deemphasize information that is counter to those narratives.

10 And the reason that we worry about this particularly in
11 interrogation contexts is because it leads to what we call tunnel
12 vision by investigators whereby detectives will disregard,
13 sometimes, information about a suspect's guilt or innocence if
14 they think a suspect is guilty.

15 The other problem with that specifically in
16 interrogations is that lab studies show that interrogators are
17 more likely to use maximization types of tactics and more
18 aggressive lines of questioning if they think the suspect is
19 guilty.

20 So it's sort of a problem that begets additional
21 problems and it leads investigators to discount information that
22 might actually be relevant to the investigation.

23 So in this case, there were two different Crime Stopper
24 calls that suggested that there might be other individuals
25 involved in the crime. Mr. Mitchell's son reported a Hispanic

1 male from the victim's house. There was an additional Crime
2 Stoppers call that actually named three individuals that the
3 caller argued or claimed was specifically responsible for the
4 crime. And that that information was passed to the lead
5 detective. His response, as far as I can tell from the police
6 reports, was that five suspects had already been arrested in the
7 case. I could not find any indication that the officers in this
8 case followed through on any of those other leads other than
9 pulling the police records for the individuals named in that call.

10 There were a couple of other individuals' names that
11 surfaced as part of the investigation, but I did not see
12 indications in the police reports that those leads were very
13 actively followed through on. Once the confession was secured, it
14 seems as though the investigation effectively stopped, and that's
15 very common in interrogations in general and it's also very
16 consistent with documented cases of false confessions.

17 Q. Thank you.

18 If you'll turn now to page 30, section H, and talk about
19 confession contamination and inconsistencies in the suspects'
20 statements.

21 A. Sure. So confession contamination is the process by
22 which confessions that are false are -- include information that
23 should only be known to the actual perpetrators and the
24 investigators, and that information is communicated, sometimes
25 accidentally, to suspects either by the interrogators themselves

1 through the process of questioning or through community avenues
2 such as local news or community gossip. And those details about
3 often very accurate and colorful details about the crime find
4 their way into the false confessor's narrative because they were
5 not offered originally by the suspect himself. He or she received
6 that information from another source.

7 And police officers are taught to avoid confession
8 contamination because it's a serious problem, and the best way to
9 avoid it is to create what we call a holdback list. So it's a
10 list of information pertaining to the crime that investigators
11 specifically do not mention in the course of the investigation and
12 they're waiting for the suspect him or herself to provide that
13 information for the first time. And that increases the likelihood
14 that information is actually reliable.

15 And so confession contamination can occur through a lot
16 of different avenues, but it's a very common factor in documented
17 cases of false confession.

18 Q. Thank you.

19 If you'll now take a look at page 37 and talk about
20 confession statements that are not corroborated by physical
21 evidence.

22 A. Right. So this is really the key ingredient in good
23 policing and avoiding or mitigating confession contamination. So
24 when a person admits guilt or makes incriminating admissions about
25 a crime, the information they provide is supposed to be supported

1 by additional outside types of information. And, ideally, that's
2 physical evidence from the crime scene or, you know, surrounding
3 areas. It could be DNA evidence. It could be eyewitness
4 evidence.

5 But you want -- everyone wants for the person who
6 confesses for that information to be supported by an additional
7 outside source of information. And what we see -- what I saw in
8 this case is the complete absence of that, actually.

9 So the -- there was no blood evidence found in Jessicah
10 Black's car, which several of the defendants testified was -- or
11 admitted to police, excuse me, that was how they left the victim's
12 house. There were between 10 to 12 fingerprints lifted from the
13 crime scene. None of those fingerprints matched the defendants.

14 And so this point in particular, the lack of
15 corroboration by physical evidence, is perhaps the biggest red
16 flag when we're looking at coerced unreliable or false confessions
17 because it means there is nothing else connecting the suspect to
18 the crime except for this statement which, as we discussed already
19 today, can be compromised in a lot of ways.

20 Q. Okay. If you will turn your attention to page 38, the
21 top of that, letter J, "False Confessions and the Phenomenology of
22 Innocence." Did I say that right?

23 A. That's pretty close, yes.

24 So this is a comparatively brief point, but
25 psychological research on interrogations and confessions has

1 revealed this, sort of, unintuitive or surprising idea that people
2 who are actually innocent are sometimes surprisingly cooperative,
3 and -- with police, and it runs counter to, kind of, common
4 perceptions about innocence.

5 So as people, as citizens, I think sometimes we have
6 this idea that if someone is innocent, they're going to fight it
7 tooth and nail, they're going to deny until they're blue in the
8 face, until they can't speak anymore, and sometimes that does
9 happen.

10 But what we have found in laboratory studies and in
11 talking with exonerated individuals who falsely confess, sometimes
12 that actually facilitates the confession because they believe that
13 it's all going to get sorted out eventually, right, that "I have
14 nothing to hide, and so there's no reason why I shouldn't talk to
15 investigators. I didn't do anything wrong." And that they find
16 themselves in this coercive and stressful environment that can
17 elicit false confession, and that willingness to believe that
18 everything will get sorted out eventually and everything is going
19 to work out sooner or later doesn't pan out for them.

20 Q. Okay.

21 And then turning your attention to the bottom of
22 page 38, letter K, the "Role of Parents in Juvenile
23 Interrogations."

24 A. Sure. So I touched on this earlier, and I apologize if
25 I have been too verbose in the past -- that's what professors

1 do -- so I will try to restrain myself.

2 I will just briefly add that, you know, the role of
3 parents is unique and -- to juvenile interrogations, and it's a
4 uniquely complicating factor because on the law and policy side
5 but also on the police investigator side, parents may presume to
6 serve this protective function. But in reality, in cases of -- in
7 conversations with police officers and attorneys, we see that
8 parents are actually sometimes recruited as allies of the police
9 and they are used intentionally or unintentionally as an extension
10 of the investigator.

11 We've seen situations where police have asked parents to
12 participate in the questioning because they believe that the child
13 will talk to the parent when they won't talk to investigators.
14 The other thing to really keep in mind here is that parents are
15 often as misinformed about the law and about interrogations as
16 their children are. And if the parent also believes that
17 everything is going to get sorted out, if the parent also does not
18 understand the police can lie -- which research shows that parents
19 and adults don't understand -- then that can severely handicap
20 individuals in an interrogation context.

21 Q. Thank you.

22 A. I've lost video but I can still hear you.

23 Q. Okay. It may come back in a minute.

24 A. I see you now.

25 Q. Okay.

1 I am now on page 40, the top of page 40, letter L. Talk
2 a little bit about "Law Enforcement Policy and Practice Regarding
3 Electronic Recording of Interrogations and/or Confession
4 Statements."

5 A. Sure.

6 So law and policy on electronic recording is a much
7 larger issue. What is relevant to this matter is that it is most
8 advantageous and most transparent when we have a complete and full
9 electronic recording of the interrogation session -- so not just
10 the confession statement, which is what we have in the current
11 case.

12 And the reason that's important is all of those types of
13 maximization techniques and also minimization techniques, which I
14 didn't talk about because I wasn't able to view, those are likely
15 to surface and be observable in the interrogation process leading
16 up to the confession.

17 And so in the absence of a full recording of the entire
18 process, people like me are left to reconstruct the situation
19 factually to the best of my ability by combining suppression
20 hearing testimony, police reports, and police documentation.

21 As I pointed out in the report, police documentation is
22 not likely to be a complete or fully accurate representation of
23 what actually occurred for a lot of reasons, many of which are
24 benign, some of which may not be benign. But in the current case,
25 we just have the confession statement, which it's very important

1 to remember is the very tail end of a very long conversation and
2 process, which means --

3 (Reporter clarification.)

4 A. Right.

5 Between -- a process involving interrogators, in this
6 case multiple interrogators, and suspects, and those conversations
7 and if they involved additional types of coercive tactics, are all
8 essentially off the record. And by the time we get to the audio
9 recording of the confession statement, what we see is really a
10 narrative that is being guided by the police officers and they are
11 sort of constructing the narrative, what -- they're asking direct,
12 you know, pointed questions that often have yes-or-no answers, and
13 kind of laying the groundwork for telling the story that they have
14 been working through sometimes for a long time prior to that.

15 So what we are seeing in the audio recording is not a
16 complete and accurate representation of the full scope of the
17 interaction between suspects and police.

18 Q. Thank you.

19 On page 42 you have your summary and conclusions in this
20 case. Can you just walk the Commissioners through what your
21 summary and conclusions are.

22 A. Sure.

23 So in this case, we have five defendants, four of whom
24 are living. They were all either 14 or 15 years old at the time,
25 which is what we consider middle adolescence from a developmental

1 standpoint. And there are numerous developmental immaturity
2 factors associated with the middle adolescence that play out as
3 risk factors for coerced or unreliable or even false confessions.

4 I took note of many risk factors for false confessions
5 in this case, not just their status as adolescents but their
6 intellectual limitations, which can compromise them in numerous
7 ways throughout the process.

8 Four of the five defendants were isolated for --
9 perceived to be in police custody, even if the police didn't
10 consider them to be in custody, for an extended period of time.
11 We know that is a risk factor for false confession.

12 In my view, the police exhibited confirmation bias when
13 they failed to investigate fully other leads. Once they secured
14 the confession, from what I can tell, the investigation more or
15 less concluded.

16 We see numerous evidence of -- numerous indications of
17 maximization technique. So, you know, threats of the death
18 penalty, accusing suspects of lying, yelling and using aggressive
19 verbal and physical confrontation strategies -- those are known
20 risk factors for false confessions.

21 And then when we examine the statements themselves, what
22 we see is that they are wildly inconsistent among themselves. So
23 some of the statements are internally inconsistent, right, where a
24 single defendant said one thing earlier and a different thing
25 later. There are also numerous inconsistencies across the

1 interrogations where the suspects are providing different stories
2 and different details that contradict one another. And then,
3 finally, there are inconsistencies between the confession
4 statements and the physical evidence.

5 And so when you look at that in totality, I see a number
6 of risk factors that are consistent with documented cases of false
7 confessions. And I have come to that conclusion based on the
8 extensive scientific literature on how psychological constructs
9 operate in this context, the specific research on police
10 interrogation and confession, and the huge body of research on
11 adolescent development and decision-making in general.

12 **Q.** Okay. Thank you, Dr. Cleary. That's the questions I
13 have for you today, but I am certain that some of the
14 commissioners around the table are going to have questions for
15 you.

16 The court reporter has asked them to take turns, speak
17 loudly so that we can hear them and hear your responses as well.

18 **JUDGE LOCK:** All right.

19 Commissioner Newton.

20 **MS. NEWTON:** Good afternoon. Thank you for being with
21 us this afternoon. My name is Deb Newton, and I have a question
22 related to the statement that you made that after the coercive
23 environment of police interrogation has concluded, quite often
24 they will quickly recant.

25 Is that what you said?

1 **THE WITNESS:** Yes, that's common.

2 **MS. NEWTON:** Okay. That's common.

3 Now, in this case, you have reviewed -- have you
4 reviewed the testimony of the one testifying codefendant?

5 **THE WITNESS:** I'm not sure what you mean. I'm sorry.

6 **MS. NEWTON:** Were you provided the transcript of
7 testimony at any of the trials?

8 **THE WITNESS:** Yes.

9 **MS. NEWTON:** Okay.

10 Did you see the testimony of Mr. Brayboy?

11 **THE WITNESS:** I believe so.

12 **MS. NEWTON:** Okay.

13 And you did not see testimony by any of the other four
14 defendants in this case; is that correct?

15 **THE WITNESS:** I would have to revisit my files but if
16 that is consistent with the trial transcripts, I have the trial
17 transcripts.

18 **MS. NEWTON:** Would you be surprised that the other four
19 did not testify? Would that surprise you?

20 **THE WITNESS:** No.

21 **MS. NEWTON:** Okay.

22 So except for the one defendant who did testify, the
23 other four boys apparently did not testify at their trials. So my
24 question relates to that.

25 After the interrogation in 2002, when all the boys on

1 11/19/2002 were within the coercive environment of law enforcement
2 questioning in which they confessed all during the period of time
3 or progressive period of time that day -- and Ms. Black, I'm
4 including her --

5 THE WITNESS: Okay.

6 MS. NEWTON: -- the trials were in 2004 and 2005.

7 In the interim, you are aware that they all had
8 attorneys representing them. That's correct?

9 THE WITNESS: Yes.

10 MS. NEWTON: Okay.

11 THE WITNESS: Yes.

12 MS. NEWTON: So my question then, Doctor, is this: Once
13 the pressure is relieved, can the coerced juvenile testify
14 truthfully at trial?

15 THE WITNESS: Can the coerced juvenile testify
16 truthfully at trial?

17 That would be a decision between the defendant and the
18 attorney.

19 MS. NEWTON: Well, my question goes to your expertise.
20 You're testifying that a generic juvenile under this kind of
21 extreme pressure with the factors that you've mentioned in law
22 enforcement custody with the extended interrogation, the yelling,
23 the threats, the threat of jail, promises that he can go home if
24 you give me what I want -- under that environment, when that
25 pressure is relieved, how do you explain -- or can the juvenile

1 then -- you said they would quickly recant, and I took that to
2 mean once the pressure is relieved, you're out of law enforcement
3 pressure, then they say, "I didn't mean to say that, they were
4 pressuring me."

5 And that's what you meant; correct?

6 **THE WITNESS:** That's correct.

7 **MS. NEWTON:** Okay.

8 So if the trial is two years later and they have an
9 attorney defending them who, obviously, you know, would be
10 assisting with that, facilitating the environment of their
11 testimony, can the juvenile under those circumstances later
12 testify truthfully? In other words, if they were coerced to say
13 something in that environment, can they then testify truthfully to
14 what they actually experienced notwithstanding their coerced
15 confession?

16 **THE WITNESS:** Do you mean do they have the developmental
17 capacity to tell the truth on the stand?

18 **MS. NEWTON:** Well, you were testifying that they were so
19 pressured to confess that they confessed, they wanted to go home,
20 didn't want to go to jail -- those factors.

21 Does the -- in your experience and all of your work,
22 does the pressure continue to influence them to the extent that
23 they are afraid to testify?

24 **THE WITNESS:** I see. I understand.

25 I would say we know a little bit less about that because

1 we -- we know a lot less about that because it hasn't been studied
2 because in cases of documented false confessions, the information
3 comes to light that the confession was false typically so
4 many years after the actual trial occurred that it's very hard to
5 capture those moments as they occur.

6 And to circle back to your original question as I
7 understand about recantation, that -- when it happens, it could
8 happen with anyone. So sometimes in these cases of documented
9 false confessions, they recant to their attorney. Sometimes they
10 recant to a family member. Sometimes it's to the media. So --
11 but it's not a prerequisite to determining that a confession was
12 false or even coerced.

13 **MS. NEWTON:** Okay.

14 So your testimony is -- and your opinion is limited to
15 the circumstances of the initial confession and the environment
16 itself but not -- you're not opining in any way on whether the
17 juvenile would later be able to freely testify to the truth?

18 **THE WITNESS:** That's correct as I understand your
19 question.

20 **MS. NEWTON:** Okay.

21 Now, I have one other question. Your testimony appeared
22 to rely upon generality in the demographic, A, children. You
23 repeatedly said "children" and "youth." You didn't use any other
24 specific influences like conditioning of the juvenile whose
25 confession was coerced and -- or are there cultural -- any

1 cultural biases or -- because you were more generally testifying
2 about children and their development and their -- and their youth,
3 essentially, as far as the coercive environment, did you in this
4 case take into account the specific facts with regard to these
5 two -- or these five, not including Ms. Black, these five
6 individuals in their cultural experiences, their possible snitch
7 bias, for example, or snitch culture, bias against doing that,
8 their -- the scrutiny that they experienced as young black males
9 in the community -- you know, from law enforcement and their
10 reactions to that?

11 Did you take into account any of those specific
12 characteristics when you formed your opinion?

13 **THE WITNESS:** To the extent that we have research to
14 support those -- those conditions, right. So when I look at the
15 literature on adolescent development and talk about youth and talk
16 about children, I am talking about the components of the
17 literature that are directly applicable to the interrogation
18 context.

19 So certainly there is research on how persons of color
20 and racial and ethnic minorities have more negative attitudes
21 towards law enforcement, and, you know, the majority race culture.
22 And there is abundant research from sociological and criminal
23 justice research in that area. It hasn't been specifically
24 studied yet in the interrogation context. So I tried to be
25 judicious in directly applying the literature that was most

1 relevant and most well understood.

2 **MS. NEWTON:** Okay.

3 So would you agree that there is at least the argument
4 or the possibility that, with that kind of cultural conditioning
5 and bias against law enforcement, that it could also work the
6 other way? They could come in not trusting, not truth-telling
7 until the story develops?

8 Is that something that you can accept? And why not or
9 why?

10 **THE WITNESS:** So give me a moment to think about that.

11 I feel much more comfortable talking about generalities
12 regarding youth development because that is widely understood from
13 a scientific perspective. I am certainly not disagreeing that
14 there are biases against law enforcement. I'm not disagreeing
15 with that at all.

16 I'm saying that I don't think, as social scientists, we
17 understand enough about --

18 (Reporter clarification.)

19 **THE WITNESS:** -- how that might play out in the
20 interrogation room to -- I would not feel comfortable saying that
21 these five individuals were concerned about snitching or were cop
22 bashers because I don't think that we have enough general
23 research. You know, in general, there are limitations associated
24 with applying research on people in the aggregate to case-specific
25 information, right?

1 So are there cultural biases against law enforcement in
2 some communities? Certainly.

3 Was that a factor here? I don't know.

4 **MS. NEWTON:** So does that mean you would be
5 uncomfortable identifying each of the five defendants as to the
6 three categories of their confessions -- the confabulation one,
7 the coerced-compliant pressure, or the wanting to protect with the
8 mental health?

9 Are you comfortable identifying each defendant as to
10 which category you would put them in or not?

11 **THE WITNESS:** No. Because those are cases of documented
12 false confessions.

13 **MS. NEWTON:** Maybe I phrased that question badly. Let
14 me rephrase it.

15 After your review of this case, these five defendants,
16 if I named Nathaniel Cauthen, are you comfortable saying whether
17 he would be in the first category, the coerced-compliant pressure
18 category, or the mental health, want to protect other category?

19 Or are all five of them, in your estimation, in the
20 coerced-compliant category?

21 **THE WITNESS:** I would not be comfortable category --
22 categorizing them as any type of documented false confession.

23 **MS. NEWTON:** Okay. Thank you. Thank you, ma'am.

24 **JUDGE LOCK:** Sheriff Frye -- Commissioner Frye.

25 **SHERIFF FRYE:** Hey, Doctor. How are you today?

1 **THE WITNESS:** Fine, thank you.

2 **SHERIFF FRYE:** You said that you have done roughly 20
3 consultations, 18 of them have been for the defense.

4 Does that mean two of them have been for the
5 prosecution?

6 **THE WITNESS:** No, sir. Those other two were
7 postconviction relief cases through a state agency.

8 **SHERIFF FRYE:** Okay.

9 You also said you have reviewed roughly 115
10 interrogations.

11 Are these interrogations with false confessions or just
12 interrogations general?

13 **THE WITNESS:** In general.

14 **SHERIFF FRYE:** Okay.

15 Out of the -- out of the interrogations you have
16 reviewed, how many ended up with false confessions?

17 **THE WITNESS:** That's a question I can't answer. We
18 don't know.

19 **SHERIFF FRYE:** Okay.

20 So I'm trying to hurry up and get through this real
21 quick.

22 In the instances of multiple false confessions, would
23 you say that that is generally frequent, moderate, or rare to have
24 those in terms of when you have multiple false confessions, a
25 group?

1 **THE WITNESS:** I'm not trying to be evasive, but I
2 don't -- I don't know how to answer that because I don't know what
3 to compare it to.

4 (Reporter clarification.)

5 **THE WITNESS:** I don't know what to compare it to.

6 So what is the reference group? If you're talking about
7 proportion of cases involving multiple suspects that end up being
8 false confessions, that's an unanswerable question because we
9 cannot determine base rates for false confessions.

10 **SHERIFF FRYE:** But there is a body of work, a body of
11 knowledge that talks about false confessions. And they -- in that
12 body of work that you have studied and has been out there, what is
13 the proclivity of false confessions?

14 In terms of as many interviews or interrogations as go
15 on, how often does this happen?

16 **THE WITNESS:** That's a fair question that has no answer.
17 We can't answer that because police agencies don't maintain a
18 database or repository of all of the interrogations they conduct
19 from which a subset would end up in confession from which a subset
20 would be false confession.

21 So we don't have the denominator to the equation that we
22 would need to answer that.

23 **SHERIFF FRYE:** Okay.

24 And let's go to this case specifically. Do we know what
25 each of the five defendants and Jessicah -- do we know what each

1 of their initial stories was when they first went in and talked to
2 the officers the very first time? Do we know what those stories
3 consisted of?

4 **THE WITNESS:** We know they denied involvement. I don't
5 know what that narrative around that denial is because it wasn't
6 recorded.

7 **SHERIFF FRYE:** So -- and that's what I'm getting at.
8 We do not know what initially was said to the officers
9 other than all of them denied involvement; correct?

10 **THE WITNESS:** Correct.

11 **SHERIFF FRYE:** It is not -- it is not abnormal for any
12 juvenile to deny involvement initially, whether they did it or
13 not; correct?

14 Whether they did something or not? I mean, kids will
15 deny anything to you if you confront them with something a lot of
16 times; right?

17 **THE WITNESS:** I think that's fair, yes.

18 **SHERIFF FRYE:** I think it's real fair. I've got two
19 kids.

20 **THE WITNESS:** Speaking from experience.

21 **SHERIFF FRYE:** I think it's really fair. A lot of times
22 they'll try their best to get out of something until they figure
23 out that there is evidence or there's something that you confront
24 them with. They will deny it. "No, I didn't to do that."

25 Okay.

1 Taking that as a generality and since we don't know, it
2 is possible, when the officers are going from one to the other,
3 one is given a piece of information and then they go to the other
4 one and say, "Okay. Now, this one's told me you went to the mall
5 at this occasion. You need to tell me you went to the mall.
6 You're not telling me the truth. Tell me the truth now."

7 That is a practiced interview technique to get to the
8 truth; correct?

9 **THE WITNESS:** Yes.

10 **SHERIFF FRYE:** Okay.

11 That's all I wanted to say.

12 **JUDGE LOCK:** Commissioner Colbert.

13 **MS. COLBERT:** Hi, Doctor. Robin Colbert. You know, I
14 think this kind of will piggyback on Ms. Newton's questioning
15 because it looks like that you're working on -- you've got
16 something forthcoming around race and juvenile interrogations.

17 **THE WITNESS:** Right.

18 **MS. COLBERT:** So I look forward to seeing some of that.

19 But I had a question around the parental piece and the
20 adolescence knowledge because you've referenced that and then you
21 bring it up again, and there's been -- some of your publications
22 have dealt with that; right?

23 Particularly in the sense of you bring in what we know
24 about the mother saying "tell the truth" in regard to that, but
25 then when we think about, you know, false confessions or pressure

1 around the power dynamics and illiteracy and all of the stuff that
2 you talk about, and bring -- you know, when the defendants false
3 confess.

4 And so tell me about your thoughts around the parents
5 actually contributing to false confession or their relationships
6 around providing information or believing that could have been any
7 kind of involvement around some of the pressures that you talk
8 about.

9 **THE WITNESS:** Do you mean the parents in this case or
10 parents in general?

11 **MS. COLBERT:** Parents in general.

12 **THE WITNESS:** So -- sorry. I'm moving around because
13 the motion -- okay -- the lights went out. I was being too still.

14 So parents -- let me back up.

15 There are a handful of studies about parents' knowledge
16 about the legal system and legal practices. I've been involved in
17 most of that. And what we find is that parents, and specifically
18 parents of adolescents -- but this is probably reflective of
19 adults in general -- are just as misinformed about the legal
20 process as juveniles are.

21 Specifically regarding interrogation, most parents we
22 have surveyed don't understand, for example, that the police can
23 lie. And if you think about how that plays out in the police
24 interrogation, if a parent is consenting for police to question
25 his or her child and a parent is even sitting in on a questioning

1 session believing that everything that the detective is saying is
2 true, that can color the parent's perception of the process and
3 the parent's perception of the potential outcomes of the process.

4 So although we need to understand this better from a
5 research perspective, the studies that we have so far give us
6 little hope that parents are adequately positioned and capable of,
7 you know, buffering against coercion or helping their child
8 advocate for their rights, which is presumably why we have these
9 notification policies at the state level and at the department
10 policy level to either notify or involve parents in the process.

11 **MS. COLBERT:** And so let me ask you this: Based on --
12 so if parents or -- and then you've taken it to other adults, so
13 it could be the parent, it could be a sibling, it could be anybody
14 involved in that youth's life, not understanding or having
15 knowledge around this, being brought in in some of these
16 instances, but maybe, you know, more in general, in these
17 situations at different intervals -- so it could be different
18 intervals during the interrogation, different intervals around,
19 you know, whether it's their interaction with, you know, anybody
20 of authority in the criminal justice system -- whether it's law
21 enforcement, whether it's the prosecutor -- with not understanding
22 those things and then -- and as a result of that, have you seen
23 instances where then parents feel, you know, somewhat obligated on
24 providing information that they fully don't understand in helping
25 to get to the quote-unquote "truth."

1 **THE WITNESS:** I have seen that in my, you know,
2 consultation work in the past.

3 **MS. COLBERT:** And tell me a little bit about, like,
4 examples of how you've seen that.

5 **THE WITNESS:** So I think the best way to answer that
6 question is it's important to remember that all parents and
7 families are different, and sometimes we make assumptions about
8 how parents would or should, kind of, protect their kids that are
9 not always accurate.

10 I will give you an example from a different area of
11 research that I work on, adolescent sexual offending. We have
12 seen cases when youth are convicted of sexual offenses and
13 sometimes subjected to sex offender registration because the
14 parent reported a consensual relationship between two teenagers
15 because the mom didn't like the daughter's boyfriend, for example.

16 So it can be -- parents' role or behavior can be
17 counterintuitive, and sometimes --

18 (Reporter clarification.)

19 **THE WITNESS:** I said sometimes we make assumptions about
20 how parents should behave or do behave in these legal contexts
21 with their children that don't actually play out that way.

22 **MS. COLBERT:** And so -- and specifically in this case,
23 when there is an interaction with, you know, the two moms, and
24 later on -- and, you know, based on what was provided to you -- I
25 don't think this is part of what was provided to you -- we see,

1 you know, parents and other family members attesting or affirming
2 to certain information that is contradictory to, you know, if we
3 say these folks -- you know, because the boys are now saying that
4 they didn't do any of this, but in previous documents we see
5 parents and family members attesting to that, you know, they
6 needed to take responsibility for their actions.

7 Is that the kind of stuff that you've seen in some of
8 the work that you've done?

9 **THE WITNESS:** Yes. So we have seen situations where a
10 parent cooperated with police and compelled their children to
11 cooperate with police because they want their child to take
12 responsibility for their actions. We see that in true confession
13 cases and in false confession cases.

14 **MS. COLBERT:** I think that's all I have.

15 **JUDGE LOCK:** Dr. Cleary, I believe you stated that you
16 had spent some time studying the so-called Central Park Five
17 confessions which have been described as multiple suspect false
18 confessions; is that correct?

19 **THE WITNESS:** I have not studied the cases or done a
20 workup of the cases.

21 **JUDGE LOCK:** Are you familiar with those confessions?

22 **THE WITNESS:** Yes.

23 **JUDGE LOCK:** If you could do so, could you compare --
24 now, while you quite properly have not expressed any opinions as
25 to the truth or falsity of the confessions in these cases, could

1 you compare the circumstances under which the confessions were
2 made in the Central Park Five case with statements of the
3 defendants in this case and then could you contrast the
4 circumstances of those confessions with those in this case.

5 **THE WITNESS:** Certainly.

6 So to begin, I -- and to reiterate for the record, I am
7 not drawing specific conclusions about the truth or falsity of the
8 confessions in this case.

9 If we purely examine the circumstances surrounding the
10 interrogations among the five youth in the Central Park Five case
11 and the five youth in this case, the similarities are astonishing
12 to me.

13 So in both of these cases, investigators questioned the
14 youth separately, sometimes for extended periods of time. Both
15 cases appeared to have or involve what's called a "prisoner's
16 dilemma," which is when each suspect is presented with the notion
17 that some other suspect is implicating them and, you know, "You
18 might as well confess because another person in another room is
19 saying that you're guilty or you're involved."

20 Another similarity involves the -- the absence of a
21 parent in the interrogation process.

22 I believe, if memory serves, one of the defendants in
23 the current case -- I believe it was Dorrell Brayboy but, please
24 correct me if I am mistaken -- had a mother sitting in on the
25 confession statement.

1 The Central Park Five youth also had parents in the
2 confession statement, but the parents were not present in the
3 interrogation.

4 Another similarity involves the lack of physical
5 evidence implicating the suspects of the crime. In both cases,
6 the only, as far as I understand, incriminating information was
7 the confession statements themselves.

8 In terms of contrast, I would have to go back and check,
9 but I believe at least one of the Central Park Five defendants was
10 a little bit older. But my first thought when I reviewed this
11 high volume of material was the remarkable similarities between
12 that case, which of course we know now, is a documented false
13 confession, and the current case.

14 **JUDGE LOCK:** All right. Thank you.

15 One other question. Would you agree with this
16 statement: That while coercion is a factor that can contribute to
17 the making of a false confession, a coerced confession is not
18 necessarily a false confession?

19 **THE WITNESS:** Yes.

20 **JUDGE LOCK:** All right.

21 **THE WITNESS:** I agree.

22 **JUDGE LOCK:** Thank you very much.

23 **THE WITNESS:** Yes, sir.

24 **MS. ESSARY:** I just have a couple of questions, Doctor.
25 My name is Melissa Essary.

1 I would like to refer you to page 43 of your report
2 where you name eight factors associated with known false
3 confessions that were present in this case, although you obviously
4 have not opined as to whether these confessions were false.

5 Are there any of those that you would put near the top
6 of the list in terms of being, in this case, a very significant or
7 more than -- perhaps more significant than some of the others? Or
8 is that a fair question?

9 **THE WITNESS:** It's a fair question. I'm not sure I
10 can --

11 **MS. ESSARY:** May I ask --

12 **THE WITNESS:** -- answer it to your satisfaction.

13 **MS. ESSARY:** Let me rephrase it.

14 When you reviewed all of the materials in this case, was
15 there evidence that alarmed you as it related to these known risk
16 factors?

17 **THE WITNESS:** All of the above. So I would say that I
18 have seen cases where just one of these factors is present and
19 given the case circumstances was enough to warrant significant
20 concern about the reliability of the confession.

21 This is the most extensive -- this case has the most
22 numerous and extensive indicators of known indicators of false
23 confessions that I have seen so far. That might be a product of
24 the fact that there are five defendants and thus five times the
25 number of interrogations and, you know, intellectual ability

1 information, but any one of these alone is certainly a red flag.

2 When you have multiple risk factors and you combine
3 them, there can be a compounding effect.

4 **MS. ESSARY:** That's helpful.

5 You have mentioned that you have worked with, either in
6 research or some other context, law enforcement training. And I
7 think everyone would assume here that confessions are coerced to
8 get at the truth.

9 So how have you worked with law enforcement to help them
10 identify what not to do or what to do in order -- there's a lot of
11 negatives in this to not get -- to reduce the incidence of false
12 confessions?

13 **THE WITNESS:** Certainly. So there has been widespread
14 recognition, that I certainly cannot take credit for, in
15 recent years centered around raising awareness about false
16 confessions. So, I mean, I don't want to overstate my individual
17 contributions when in 2000 -- gosh, what year was it? -- 2014, I
18 think, *The New York Times* scientific edition published an article
19 about my research that talks about youth vulnerabilities in the
20 interrogation context. That article was in the print edition. It
21 got a lot of press. But there have been national-level trainings.

22 So, for example, the International Association of Chiefs
23 of Police offers a training on juvenile interrogation that is
24 based on developmental evidence and best practices. We see, at
25 the national level, interrogation training companies moving in

1 this direction as well, at least most of them.

2 **MS. ESSARY:** Are you saying that this training is in
3 response to the dilemma of what we know now as an incidence, a
4 rate of false confessions or just interrogative techniques
5 generally?

6 **THE WITNESS:** Not in response to a rate of false
7 confessions because we can't know the rate, but to the general
8 problem of false confessions, which is a sort of permeating the
9 public consciousness now. I mean, the general public is more
10 aware that false confessions can occur, which, whereas 20 years
11 ago, psychologists were fighting hard to raise that awareness
12 because it is so counterintuitive.

13 **MS. ESSARY:** The last question that I have, and you may
14 not have the answer to, goes back toward the beginning of your
15 report where you cite several studies relating to the incidence of
16 false confession, one of them, I think, is from The Innocence
17 Project.

18 Do we have any -- that's on page 4 of your report,
19 Doctor, first paragraph.

20 Do we have any data relating to the demographics,
21 particularly for the black or brown defendants who've falsely
22 confessed and were later DNA exonerees?

23 Do we have any information about the percentage of those
24 exonerees who falsely confessed; i.e., whether they were black or
25 brown? Has that study been done?

1 **THE WITNESS:** We do have that information. I don't have
2 a specific percentage of the top of my head, but people of color
3 are overrepresented in cases of documented false confessions
4 probably because they are overrepresented in the criminal justice
5 system processes in general.

6 **MS. ESSARY:** That's all I have.

7 **JUDGE LOCK:** Commissioner Jarvis.

8 **MR. JARVIS:** Hi. My name is Immanuel Jarvis. I have
9 some questions here. They are more general questions, and you may
10 or may not be able to answer them.

11 I know that at the beginning of testimony, you were
12 tendered as an expert witness in psychology; is that correct?

13 **THE WITNESS:** Yes, sir.

14 **MR. JARVIS:** And also, would that mean that you would
15 have a good understanding about mental illness in general? Would
16 that be correct?

17 **THE WITNESS:** In general, yes. I am not a clinical
18 psychologist. I am a development psychologist. But I am, in
19 general, yes.

20 **MR. JARVIS:** Okay.

21 Would that lead to having some overall average knowledge
22 and symptoms about mental illnesses -- certain mental illnesses?

23 **THE WITNESS:** In general, yes.

24 **MR. JARVIS:** Would you have knowledge about a mental
25 illness called bipolar?

1 **THE WITNESS:** Yes.

2 **MR. JARVIS:** Okay.

3 If an individual displayed bipolar tendencies, would one
4 of the symptoms be from that, would you say in your expert opinion
5 or your general knowledge, forgetfulness or confusion with
6 questions?

7 **THE WITNESS:** I think we have reached the point where I
8 don't feel comfortable speaking to symptomatology.

9 **MR. JARVIS:** I understand. Thank you.

10 **JUDGE LOCK:** Does anyone else have a question?

11 (No response.)

12 **JUDGE LOCK:** Thank you very much.

13 Ms. Guice Smith, any further examination?

14 **MS. SMITH:** No further questions from me, Your Honor.

15 **JUDGE LOCK:** Dr. Cleary, thank you very much for your
16 work in this case and for your time today.

17 **THE WITNESS:** It's been my pleasure, thank you.

18 (Witness stands down, video teleconference
19 completed, 2:17 p.m)

20 **MS. SMITH:** As we do that, we've got a couple of
21 questions that had come up earlier today that we're going to
22 respond to. And then I believe after that, we will be trying to
23 get Arlene Tolliver on the phone for you-all.

24 So at this time, let me call Beth Tanner -- recall Beth
25 Tanner.

1 (Witness, Beth Tanner, resumes the stand.)

2 BY MS. SMITH: (2:18 p.m.)

3 Q. All right.

4 Ms. Tanner, did you have any communications with Hunter
5 Atkins' attorney after his testimony earlier this week?

6 A. Yes.

7 Q. Can tell the Commissioners about that.

8 A. Yes. Late last evening we received a communication from
9 Mr. Atkins' attorney where he essentially took issue with some of
10 the summaries that we had prepared regarding the audio between he
11 and Jessica Black.

12 So in your handouts you have some transcripts,
13 straight-up transcripts of the audio. And then commission staff
14 did summaries of some other audio.

15 What is now Handout 120 is Mr. Atkins' positions about
16 recording 12 and recording 16.

17 I have reviewed the summaries that the Commission staff
18 prepared myself in light of his position. I am satisfied that our
19 summary adequately represents what those calls contain.

20 Nonetheless, in order to avoid any issue, you have Mr. Atkins'
21 position behind Handout 120. And to make absolutely sure, now on
22 your flash drive, are the full recording of that audio recording
23 12 and recording 16.

24 MS. SMITH: Commissioners, we would just ask that you
25 review that audio as you see fit over the evening recess tonight.

1 And I would ask that if you have any questions of Ms. Tanner, you
2 ask them now before I have her step down.

3 MS. NEWTON: Just remind me. Who would be testifying
4 about the hair?

5 MS. SMITH: I'm going to call her in just a moment.

6 THE WITNESS: Not me.

7 MS. SMITH: You may step down.

8 (Witness stands down, 2:20 p.m.)

9 MS. SMITH: Commissioners, also in your handout
10 notebooks is Handout 121. A Commissioner had requested any
11 recordings of -- or notes from Yolanda Tolliver's interview with
12 law enforcement in the original investigation.

13 We were not able to locate any notes in the files that
14 we received from the Winston-Salem Police Department, but we did
15 locate an audio clip. It's just under 10 minutes. It has also
16 been put on your flash drive. And Handout 121 just serves as a
17 placeholder to say that that is what that is.

18 So if you will review that on the overnight recess.

19 The Commission recall staff attorney Julie Bridenstine.

20 (Witness, Julie Bridenstine, resumes the stand.)

21 BY MS. SMITH: (2:21 p.m.)

22 Q. Ms. Bridenstine, earlier today there were some questions
23 surrounding the testing that the Commission had requested to be
24 done on the toboggan.

25 Can you provide commissioners additional information

1 about that.

2 A. Yes. We went back and looked through the Bode case file
3 to see what notes had been made about anything that the analyst
4 observed as part of their testing. They observed that there was
5 no visible staining. They swabbed the interior of the hat. We
6 also spoke to Bode Technology on the phone and we were told that
7 if an analyst had observed any loose hairs or apparent fibers,
8 they would have noted that in their report.

9 Q. And there were none of those noted in the report; is
10 that correct?

11 A. That's correct.

12 Q. And when you say the interior of the hat was swabbed,
13 was that the entirety of the interior of the hat?

14 A. Yes.

15 Q. Okay.

16 And when you say the interior of the hat, is that the
17 part of the hat that would sit on one's head?

18 A. Correct.

19 Q. Okay.

20 MS. SMITH: Any other questions about that?

21 MS. NEWTON: Yes, just briefly. Thank you.

22 The statement "a partial STR DNA profile consistent"
23 and -- that's short tandem repeat DNA profile consistent with a
24 mixture of at least two individuals including at least one male
25 contributor was developed in their conclusion.

1 So there was no hair, as I understand you just
2 testified; correct?

3 **THE WITNESS:** The test was performed based on the
4 swabbing that was done of the hat.

5 **MS. NEWTON:** So it was -- there's no visible staining, I
6 think you testified?

7 **THE WITNESS:** Correct.

8 **MS. NEWTON:** Okay.

9 So the swabbing would have been of the skin or --

10 **THE WITNESS:** I can't testify to that. I can tell you
11 that a swabbing means that they are trying to scrape the interior
12 and whatever they collect, they test.

13 **MS. NEWTON:** I see. So it was nonspecific as to what
14 they were actually testing.

15 **THE WITNESS:** I don't know if they could tell you what
16 type of cell they're getting, but they're just testing whatever is
17 in the sample. And then the DNA test showed that there was some
18 DNA present, but as it states in the handout, it was a mixture
19 profile that they cannot draw conclusions on.

20 **MS. NEWTON:** And you said that it was -- the reason for
21 the lack of conclusion is it was possible allelic dropout?

22 **THE WITNESS:** Correct.

23 **MS. NEWTON:** Okay.

24 That means that there's insufficient genetic material or
25 something is missing; right?

1 **THE WITNESS:** They do not think that they can draw
2 conclusions on that sample because there is a possibility of that
3 allelic dropout.

4 **MS. NEWTON:** Okay. Thank you.

5 **MS. SMITH:** Ms. Newton, to clarify for the record, if
6 you recall what Ms. Clement testified to yesterday, she said a lot
7 of times when you're looking at clothing or something like a hat,
8 you're looking for wearer DNA. So you're looking for DNA that
9 might have rubbed off from the surface of what someone was
10 wearing.

11 And so here, the inside of the hat that would've touched
12 the head portion of someone's head is what was tested.

13 **MS. NEWTON:** But we are clear there was no actual hair
14 fiber or follicle that was -- at least identified by the lab.

15 **MS. SMITH:** There were no hairs -- apparent hairs from
16 the hat and hair was not tested. It was the swabs from the
17 interior of the hat.

18 **MS. NEWTON:** Did the Commission actually look at the
19 toboggan or have someone independently do that aside from Bode?

20 **THE WITNESS:** We did not open the package and examine
21 it. Bode took it, opened the package, and they make notes on what
22 they observe about how it is packaged, how they unpackage it, and
23 what they see.

24 And what we were told is that they are trained, if they
25 see any apparent hairs or fibers or, for instance, if there had

1 been visible staining, they will note that.

2 **MS. NEWTON:** Do you know how the toboggan was preserved?
3 That testing was -- I'm sorry. Let me step back.

4 The test by Bode was 11/9/2018; correct --

5 **THE WITNESS:** Yes.

6 **MS. NEWTON:** -- from the handout?

7 Okay.

8 So was there any notation in the report, since we don't
9 have it, how the toboggan was preserved from 2002?

10 **THE WITNESS:** I could try and look for that. There are
11 notes, potentially, in the State Crime Lab about how it was
12 packaged. And there are notes in the Bode file about how they --
13 they note how things come to them and how they're packaged, if
14 it's in a paper bag, if it's in a cardboard box, how it's sealed.
15 They make notes about that.

16 **MS. NEWTON:** Okay.

17 And the only other testing on that toboggan was in 2003
18 by the crime lab?

19 **THE WITNESS:** Correct.

20 **MS. NEWTON:** Okay.

21 Thank you for again coming back to testify about that.

22 **THE WITNESS:** Sure.

23 **MS. SMITH:** Thank you.

24 **JUDGE LOCK:** Did you have a question about that?

25 **MR. BRITT:** No.

1 **MS. SMITH:** If there are no other questions, I would ask
2 Ms. Bridenstine step down.

3 (Witness stands down, 2:27 p.m.)

4 **MS. SMITH:** And if we could just be at ease for one
5 moment while we try to get Ms. Tolliver on the phone.

6 **JUDGE LOCK:** Take about a two-minute comfort break.

7 (Recess taken, 2:27 to 2:33 p.m.)

8 **JUDGE LOCK:** All right. Let's come back to order.

9 Yes, ma'am.

10 **MS. SMITH:** Thank you. Judge Lock, we have Arlene
11 Tolliver on the phone. I would call Arlene Tolliver now.

12 **JUDGE LOCK:** And we need to swear her. I suppose we do.

13 **THE WITNESS:** I don't know if she's got a Bible with
14 her.

15 **JUDGE LOCK:** All right.

16 (Overlapping speakers, indiscernible to the
17 reporter.)

18 **JUDGE LOCK:** Ms. Tolliver, I know you cannot see us and
19 we cannot see you, but there are eight commissioners sitting here
20 around the table discussing your son's case.

21 **THE WITNESS:** I understand it's better eye to eye.

22 **JUDGE LOCK:** Thank you for taking our phone call. And
23 you said you've got a Bible.

24 Do you mind placing your hand on the Bible and raising
25 your right hand just letting me know when you've done that.

* * * * *

Thereupon, ARLENE TOLLIVER, a witness having been called by the Commission, was examined and testified on EXAMINATION as follows via teleconference:

(2:35 p.m.)

MS. SMITH: Ms. Tolliver, my name is Lindsey Guice Smith. I'm the Executive Director of the North Carolina Innocence Inquiry Commission.

I actually don't have any questions for you today but our commissioners around the table do and so I'm just going to ask them to state their name so you know who's talking to you and then I'll allow them to ask the questions they have of you.

Okay?

THE WITNESS: All right.

MR. JARVIS: Hi. My name is Immanuel Jarvis. I'm a public member on this commission.

Good afternoon. How are you today?

THE WITNESS: Fine.

MR. JARVIS: Thank you so much for being willing to be on this call. I know that it was probably great anticipation for this phone call today so I'm going to try to be as pleasant as I can with my questioning.

My series of questions are going to be revolving around the couple days after the incident, and it's going to start off with a phone call that was initiated between you and the police

1 officer.

2 Could you tell me -- who was the one who initiated that
3 phone call days after the incident in question?

4 **THE WITNESS:** I did.

5 **MR. JARVIS:** Okay.

6 And do you remember asking for any specific detective or
7 did you just call in?

8 **THE WITNESS:** I just called in.

9 **MR. JARVIS:** Okay.

10 So you didn't call -- you didn't ask for any specific
11 person when you called?

12 **THE WITNESS:** No.

13 **MR. JARVIS:** Do you remember, did you call just 911 or
14 did you just call a specific number?

15 **THE WITNESS:** I just called the number.

16 **MR. JARVIS:** And when you called in, what was your
17 purpose for calling?

18 **THE WITNESS:** I wanted to know -- when I found out
19 that -- somebody had told me somebody named Mr. Jones had been
20 killed, because see, I had came to the area the night I got off of
21 work, and they had the whole yard roped off and the police was all
22 around and stuff like that, didn't know what was going on.

23 **MR. JARVIS:** Ms. Tolliver, why did you wait days to call
24 versus one day to call?

25 **THE WITNESS:** Because I was -- I was curious about --

1 when this happened, I found out the man's name, and I wanted to
2 know who the man was because the street was just like -- I mean,
3 it was just like filled.

4 **MR. JARVIS:** Okay.

5 And when you made that phone call, what exactly did you
6 ask?

7 **THE WITNESS:** I asked who this man -- I wanted to know
8 who this man was. And they connected me -- they connected me to,
9 I guess, the detectives division.

10 **MR. JARVIS:** Okay.

11 When you spoke to the detective, was this the first time
12 that you had ever spoken to this individual?

13 **THE WITNESS:** Yes. On this, yes.

14 **MR. JARVIS:** Do you remember the name of the individual
15 or the detective that you spoke to on the phone?

16 **THE WITNESS:** It was a man.

17 **MR. JARVIS:** Okay.

18 But this was the first time that you had ever spoken to
19 this individual; is that correct?

20 **THE WITNESS:** Yes.

21 **MR. JARVIS:** How did your son come up in the
22 conversation?

23 **THE WITNESS:** He asked me had I seen anything strange
24 going on. And, you know, what was strange for me was how still
25 the street was. That's just what I was saying was strange,

1 because the street was always active.

2 MR. JARVIS: So you were telling him how quiet the
3 streets were, how they were after the incident; is that correct?

4 THE WITNESS: Yes.

5 MR. JARVIS: Okay.

6 And so after you were making that comment about how
7 quiet the streets had been, again, how did your son come up in the
8 conversation?

9 THE WITNESS: I think he brought it up.

10 MR. JARVIS: Okay.

11 How did he bring it up?

12 THE WITNESS: He brought it up and he asked -- he knew
13 his name.

14 MR. JARVIS: So he knew his name.

15 Did he know your name?

16 THE WITNESS: Did he know my name?

17 MR. JARVIS: Did he know who you were?

18 THE WITNESS: Not at the moment.

19 MR. JARVIS: So he didn't know who you were
20 specifically, but he specifically knew your son's name?

21 THE WITNESS: That was after we had started getting into
22 the conversation.

23 MR. JARVIS: Okay.

24 So prior to this conversation --

25 THE WITNESS: He wanted to know who I was to him.

1 **MR. JARVIS:** All right. Got it.

2 And once you identified yourself to him, he was able to
3 correlate your son with you; is that correct?

4 **THE WITNESS:** Yeah.

5 **MR. JARVIS:** Okay.

6 **THE WITNESS:** Yeah. And yes, he asked had I seen
7 anything else. I'm just going step-by-step through what I seen.

8 **MR. JARVIS:** Okay.

9 **THE WITNESS:** And what I remember. Okay. I remember --
10 I told him I recalled seeing cars come up the street. That was
11 Rayshawn and them, and they was scrubbing something on the
12 sidewalk.

13 **MR. JARVIS:** Could you be repeat that again? They were
14 doing what on the sidewalk?

15 **THE WITNESS:** Scrubbing something on the sidewalk. And
16 somebody went to look and see and it looked like -- it appeared to
17 be a credit card or something. And they left it there.

18 **MR. JARVIS:** Okay.

19 According to some of the notes that we have from the
20 detective who spoke with you, he wrote on his notes that you
21 advised that your son had been acting strange since the murder as
22 well as a Stinky and Rayshawn.

23 Could you elaborate on why he would say something like
24 that.

25 **THE WITNESS:** I never told him anything like that. He

1 got -- I think he got my statement mixed up with my daughter.

2 **MR. JARVIS:** Okay.

3 So did he have a conversation with your daughter?

4 **THE WITNESS:** Yes, he had a conversation with my
5 daughter in the hallway.

6 **MR. JARVIS:** Was that -- so that wasn't a phone
7 conversation. That was an in-person conversation; is that
8 correct?

9 **THE WITNESS:** Yeah. They had a phone conversation and I
10 told him on the phone, he hadn't done anything strange.

11 **MR. JARVIS:** Could you repeat that one more time?

12 **THE WITNESS:** He hadn't done anything. He hadn't been
13 acting strange, that's what I said.

14 **MR. JARVIS:** Okay.

15 So is it true --

16 **THE WITNESS:** That he was just normal. He was just
17 normal.

18 **MR. JARVIS:** So would you -- is it true that Yolanda had
19 a conversation with the detective?

20 **THE WITNESS:** Oh, yeah. He spoke to all my children
21 down there.

22 **MR. JARVIS:** Okay.

23 And was that -- I want to ask one more time. Was that a
24 face-to-face conversation or was that over the telephone, that
25 particular day?

1 **THE WITNESS:** They took Yolanda downtown.

2 **MR. JARVIS:** Okay. So when you --

3 **THE WITNESS:** Without my permission.

4 **MR. JARVIS:** So when you had the conversation on the
5 phone, you never stated that your son had been acting strangely.
6 Is that correct or is that false?

7 **THE WITNESS:** That's false.

8 **MR. JARVIS:** Okay. But you're saying today that you
9 believe --

10 **THE WITNESS:** He wasn't acting strange. The only part
11 where he was acting strange for was -- he's never seen a dead
12 body. He's never, ever been to a funeral.

13 **MR. JARVIS:** Okay. All right.

14 **THE WITNESS:** He's never, ever seen a dead body.

15 **MR. JARVIS:** So according to the notes of the detective,
16 he said that you would call the detective back in 10 minutes when
17 your son came home.

18 How did that conversation came up when you voluntarily
19 tell the detective that you would give him a call back when your
20 son got home?

21 **THE WITNESS:** Could you repeat that again? Because your
22 voice is --

23 (Overlapping speakers.)

24 **MR. JARVIS:** I'm sorry.

25 What I'm trying to ask is according to the detective's

1 report, he states that you will give him a call back when your son
2 came home, and it said that 10 minutes.

3 **THE WITNESS:** On the phone, yeah. Yeah. When he got
4 out of school. See, look, like I told -- I'm telling you like I
5 told him. I have nothing to hide. My son had nothing to hide.
6 He wanted to question him and therefore he came and did, and I
7 called him back.

8 **MR. JARVIS:** Did you say anything about Stinky or
9 Rayshawn to the detective?

10 **THE WITNESS:** No, just I saw coming down the street
11 pushing something on the sidewalk.

12 **MR. JARVIS:** Okay.

13 And I ask you this, ma'am, because according to the
14 detective's handwritten notes, he said not only you said your son
15 was acting strange, but you also said Stinky and Rayshawn were
16 acting strange.

17 Is that something that you can recall or no?

18 **THE WITNESS:** That's something I don't recall because --
19 I don't remember that. The only thing he asked me about, had my
20 son been acting strange. And that's when I elaborate -- I
21 elaborate like I'm elaborating now.

22 My son never seen a dead body, and that shook him up
23 when Jessicah came and got them at 10:00 o'clock and took them
24 around the corner.

25 **MR. JARVIS:** All right.

1 So you're saying that you did tell the detective that
2 your son was acting strange, but you're saying that the only
3 reason why you said that is because your son had never seen a dead
4 body; is that correct?

5 **THE WITNESS:** Yeah. He' never seen one.

6 **MR. JARVIS:** Okay. That's all I have. Thank you so
7 much.

8 **JUDGE LOCK:** Commissioner Edwards.

9 **MR. EDWARDS:** Mrs. Tolliver, good afternoon. My name is
10 Seth Edwards.

11 **THE WITNESS:** Uh-huh.

12 **MR. EDWARDS:** I have few, I guess, background questions
13 for you. I'm not going to ask you for your specific address, but
14 what city do you live in presently?

15 **THE WITNESS:** Winston-Salem.

16 **MR. EDWARDS:** Okay. You still live in Winston-Salem.

17 Now --

18 **THE WITNESS:** I sure do.

19 **MR. EDWARDS:** -- your daughter Yolanda, does she live in
20 Winston-Salem?

21 **THE WITNESS:** Yes, she does.

22 **MR. EDWARDS:** And your son Thayers -- I believe I'm
23 pronouncing that right -- Thayers Tolliver, does he also still
24 live in Winston-Salem?

25 **THE WITNESS:** All my children live in Winston-Salem

1 except one.

2 **MR. EDWARDS:** Now, I'm going to follow up on some of the
3 questions that Mr. Jarvis asked you.

4 Do you understand that a few days after Mr. Jones was
5 killed that Yolanda told the police that Jermal was acting
6 differently over the weekend because he kept to himself and that
7 was not normal?

8 Are you aware that she said that to the police?

9 **THE WITNESS:** No. I'm aware of the harassment they did
10 to get that. I'm aware of that.

11 **MR. EDWARDS:** All right.

12 **THE WITNESS:** But I'm not aware of that.

13 **MR. EDWARDS:** Are you aware that the police also spoke
14 with your son Thayers Tolliver; correct?

15 **THE WITNESS:** Yes.

16 **MR. EDWARDS:** And I'm looking at a police report that
17 your son Thayers said he knew the victim, Mr. Jones, he thought he
18 was a nice man, that he had done some work on your son's car at
19 the gas station.

20 Are you aware of that?

21 **THE WITNESS:** Hmm?

22 **MR. EDWARDS:** Mr. Tolliver --

23 **THE WITNESS:** No, I'm not -- no. I'm not -- no, I
24 wasn't aware of that. I didn't know if he had done some work on
25 my son's car. It must've been before I was staying where was

1 staying because --

2 **MR. EDWARDS:** Well, your son Thayers also told the
3 police that you, his mother, told him that Friday night, which was
4 Friday night, would have been the night of the murder, that Jermal
5 knew something about the murder.

6 Did you ever tell Thayers that Jermal knows something
7 about the murder?

8 **THE WITNESS:** No.

9 **MR. EDWARDS:** Thayers also told police -- or it's in the
10 police report I'll say, that he went to Jermal to ask him what he
11 knew about it, and Jermal said he didn't know anything about it.

12 Mr. Tolliver --

13 **THE WITNESS:** No.

14 **MR. EDWARDS:** Okay.

15 Thayers Tolliver told the police that Jermal was acting
16 differently because he usually goes to bed late and that Friday
17 night he went to bed early.

18 Do you know anything about that?

19 **THE WITNESS:** I know that my son is no good when the sun
20 goes down. He's ready to go to sleep.

21 **MR. EDWARDS:** Okay.

22 I would like to ask you about one other thing, and that
23 is we have some statements from some of the police officers --

24 **THE WITNESS:** Uh-huh.

25 **MR. EDWARDS:** -- that say -- they say that a few days

1 prior to Mr. Jones' homicide, they were going through the
2 neighborhood, kind of canvassing the neighborhood, and they
3 indicate that they had a conversation with you. They state that
4 they walked up and -- let's see.

5 **THE WITNESS:** Can you start that question over again?

6 **MR. EDWARDS:** Yes, ma'am. It's my fault.

7 This is from Officer Poe. You know, he says: "I was
8 standing there with the other detectives, and Nathaniel Cauthen,
9 who goes by Stinky, was sitting on the porch. And Jermal came
10 outside. And we told all of them, 'We know what you guys are up
11 to. We know you're doing dirt out here, and if we catch you --
12 we're going to catch you if you do it.'"

13 And then Officer Poe says: "And we told Jermal
14 Tolliver's mother -- this is exactly what I told her, quote, 'If
15 you want your son to get in a whole hell of a lot of trouble, you
16 let him keep hanging around Stinky and Rayshawn, and he's going to
17 get in trouble,'" end quote.

18 Do you recall an officer ever telling you that that --

19 **THE WITNESS:** Not in that -- not like that. That's not
20 what he told me.

21 **MR. EDWARDS:** Well, do you recall what he told you?

22 **THE WITNESS:** Yeah, I sure do. What.

23 **MR. EDWARDS:** Did he tell you?

24 **THE WITNESS:** As a matter fact, when he said -- when he
25 wrote that statement, that statement was behind a break-in down

1 the street and they came down to my house because I reported
2 something about some jewelry. What.

3 MR. EDWARDS: Okay.

4 So what did the detectives say to you?

5 THE WITNESS: They was -- they didn't tell me anything.
6 They was telling me -- you know, they always seen about the
7 neighborhood, they kept watch of the boys all the damn time. I
8 see what you think I don't see.

9 And the thing was, I was seeing them being around all
10 the time, watching.

11 But this particular time, they done watched enough to
12 know that these boys didn't really like being around these boys
13 and didn't hang around these boys like this. And he told me -- he
14 urged me to keep my son off from around them because they had
15 suspicions on them on another case.

16 MR. EDWARDS: So the detective was talking about Stinky
17 and Rayshawn?

18 THE WITNESS: Yes.

19 MR. EDWARDS: And, I mean, as my mother used to tell me,
20 "You're known for the company you keep, and so you've got to be
21 careful about who you're hanging out with."

22 Is that essentially what he said?

23 THE WITNESS: That's right. And I constantly stayed on
24 him about this, to the point when I go to work, I made sure an
25 adult was at my house.

1 **MR. EDWARDS:** Those are my questions.

2 **THE WITNESS:** But, you know, it's also said too, you
3 can't always protect your children and watch them every minute.

4 **MR. EDWARDS:** I agree with that statement.

5 **JUDGE LOCK:** Commissioner Newton.

6 **MS. NEWTON:** Thank you, ma'am, for being here. My name
7 is Deb Newton, and I have a couple of questions, if you don't
8 mind.

9 **THE WITNESS:** Sure.

10 **MS. NEWTON:** Ms. Tolliver, in response to Mr. Edwards'
11 questions -- the man who was just talking to you, you said --

12 **THE WITNESS:** Yes.

13 **MS. NEWTON:** You said you were "aware of the harassment
14 they did to get it," and I think you are referring to Yolanda's
15 statement.

16 Is that what you said?

17 **THE WITNESS:** Yeah. They coerced -- they coerced all of
18 them.

19 **MS. NEWTON:** What -- what harassment are you talking
20 about? What exactly do you mean?

21 **THE WITNESS:** They coerced -- they was doing, like,
22 harassing things, you know, but it didn't bother me because it
23 didn't affect me and it didn't affect my kids, you know. They was
24 watching these boys' just about every move. When I see these boys
25 break out running, and them all that -- you know, see Jermal

1 standing in the field, you know, like a deer caught in headlights
2 after they done what all they got done.

3 MS. NEWTON: Okay.

4 If I can direct you to your response to Mr. Edwards, he
5 was talking about Yolanda gave a statement that said --

6 THE WITNESS: Yeah.

7 MS. NEWTON: -- that your son was not acting right after
8 this murder. And the initial statement that the law enforcement
9 officer wrote down about your phone call was that you also had
10 concerns about your son after that, Mr. Jones' murder.

11 So when Mr. Edwards asked you that, you said "I'm aware
12 of the harassmt they did to get Yolanda's statement." And I
13 want to know what you mean by "harassmt they did to get's
14 Yolanda statement."

15 What do you mean by that?

16 THE WITNESS: Do you know how many hours they kept my
17 children down?

18 MS. NEWTON: Yolanda specifically, are you referring
19 to --

20 THE WITNESS: Both of them.

21 MS. NEWTON: Okay.

22 Well, what were you talking about with regard to
23 Yolanda?

24 THE WITNESS: Well, Yolanda, she's not a scary person.
25 You can holler at her, and she wind up being -- and she would

1 break down and start crying.

2 MS. NEWTON: Now, you weren't with her when law
3 enforcement questioned her; is that right?

4 THE WITNESS: No, I was not.

5 MS. NEWTON: Okay.

6 And so did Yolanda tell you she was harassed?

7 THE WITNESS: Yes.

8 MS. NEWTON: And what did she tell you happened to her
9 with the police?

10 THE WITNESS: She tell me they kept leading her.

11 MS. NEWTON: To say what?

12 THE WITNESS: They didn't want to hear what she was
13 trying to tell them so they started leading her.

14 MS. NEWTON: Is that what she said?

15 THE WITNESS: Yeah. She would say the same thing today.
16 And I think this is what she need to happen.

17 MS. NEWTON: Well, of course. And what did she tell you
18 she was trying to tell the police?

19 THE WITNESS: Well, she was trying to tell them that --
20 I guess, that they had nothing to do with it, as everybody else
21 done said. Those three boys done say --

22 (Reporter clarification.)

23 THE WITNESS: Yeah. I say those boys have maintained
24 their innocence for 14 years.

25 MS. NEWTON: Now, Ms. Tolliver, I'd like to thank you

1 for answering that.

2 I'd like to turn your attention to the people you've
3 talked to since -- you agree you called law enforcement on the
4 19th of November of 2002; is that right?

5 **THE WITNESS:** Yeah. Because I wanted to know who he
6 was.

7 **MS. NEWTON:** Why did you want to know who Mr. Jones was?

8 **THE WITNESS:** Because, like I said, the atmosphere of
9 the street. It was, like, dead -- you know, like nothing. It was
10 just like standing still almost.

11 **MS. NEWTON:** Okay.

12 So certain people were missing that you're used to
13 seeing on the street; is that right?

14 **THE WITNESS:** It's always -- the street is always active
15 with kids and people all the time, even people sometimes be
16 standing around our door. We saw none of that.

17 **MS. NEWTON:** What I would like to know is after that
18 phone call, how many times -- how many people have you spoken to
19 about your phone call to the police department that day up to
20 today?

21 **THE WITNESS:** What do you mean? Can you elaborate on
22 that? What do you mean?

23 **MS. NEWTON:** Yes, ma'am.

24 Since you made that phone call in November 19 of 2002 to
25 the police department, how many times have you -- how many people

1 have you spoken to about that phone call up until today?

2 Can you tell me that?

3 **THE WITNESS:** I don't think anybody. I don't know.

4 **MS. NEWTON:** You haven't been interviewed --

5 **THE WITNESS:** I don't think anybody.

6 **MS. NEWTON:** Have you talked to a reporter about it?

7 **THE WITNESS:** You talking about Hunter?

8 **MS. NEWTON:** Yes. Yes, ma'am.

9 **THE WITNESS:** Yeah, years after.

10 **MS. NEWTON:** Okay.

11 And did you talk to any lawyers?

12 **THE WITNESS:** Yes.

13 **MS. NEWTON:** How many lawyers did you talk to?

14 **THE WITNESS:** There was two ladies, I think.

15 **MS. NEWTON:** Two ladies.

16 Was that recently or back then?

17 **THE WITNESS:** This was not long ago. About a month or
18 two ago maybe.

19 **MS. NEWTON:** Okay.

20 And did you talk to any investigators about it?

21 **THE WITNESS:** Yes.

22 **MS. NEWTON:** How many of those people did you talk to?

23 **THE WITNESS:** There were -- let's see. There were two
24 people.

25 **MS. NEWTON:** Two. Okay.

1 Now, did you talk to the district attorney?

2 **THE WITNESS:** Nope.

3 **MS. NEWTON:** Okay.

4 Did you testify?

5 **THE WITNESS:** Nope.

6 **MS. NEWTON:** Okay.

7 So you talked to a couple of people -- quite a few
8 people about that phone call that day; right?

9 **THE WITNESS:** Yeah, I guess. I mean, if you're talking
10 about Hunter and them, yeah.

11 **MS. NEWTON:** Yeah.

12 And did Hunter tell you --

13 **THE WITNESS:** I think after that -- you know, this is
14 the only time this has been brought up, after all of these years.

15 **MS. NEWTON:** I understand.

16 And did Hunter talk -- you call him by his first name.

17 Did you get to know him pretty well?

18 **THE WITNESS:** Not really. I just remember that name.

19 **MS. NEWTON:** Okay.

20 Did he meet you in person or talk to you on the phone?

21 **THE WITNESS:** He met me in person and then recorded the
22 whole thing.

23 **MS. NEWTON:** Okay.

24 And did you meet him once or multiple times?

25 **THE WITNESS:** I think Hunter came twice.

1 MS. NEWTON: Okay.

2 And did he tell you about the harassment?

3 THE WITNESS: Hmm?

4 MS. NEWTON: Did Hunter tell you about any harassment of
5 your kids?

6 THE WITNESS: Any harassment?

7 MS. NEWTON: Harassment by the police about your kids.

8 THE WITNESS: No. I told Hunter.

9 MS. NEWTON: You did? Okay.

10 And Hunter talked to you about that phone call?

11 THE WITNESS: Yes.

12 MS. NEWTON: Okay.

13 THE WITNESS: He asked me to elaborate just like you
14 did.

15 MS. NEWTON: Okay.

16 And did you tell him that you never said that your son
17 was acting strange?

18 THE WITNESS: No. He was never acting strange. The
19 people -- I done heard them saying that he was ball -- he was
20 balled up. He was not. He do this because I have given my
21 children the choice of sleeping in their pants, and he makes a
22 tent out of his. And before morning, of course you're going to be
23 balled up. I balled up.

24 Did I kill anybody? No.

25 MS. NEWTON: And, Ms. Tolliver, you agree that your son

1 reacted to seeing a dead body on the 15th of November?

2 You agree with that; right?

3 THE WITNESS: Well --

4 MS. NEWTON: Okay.

5 THE WITNESS: -- yeah.

6 MS. NEWTON: What was his reaction?

7 THE WITNESS: They had the man laying out in his yard
8 for the longest time.

9 MS. NEWTON: And what was your son's reaction that you
10 saw to having seen that, in your opinion?

11 THE WITNESS: He just told me he just never seen a dead
12 body.

13 MS. NEWTON: And how was he acting?

14 THE WITNESS: Never have. And was -- he was just
15 shocked, you know, he was a little bit in shock a little bit --

16 MS. NEWTON: Was he quiet?

17 THE WITNESS: -- because he never seen that.

18 MS. NEWTON: Okay.

19 Did he go out with his friends?

20 THE WITNESS: Not that --

21 MS. NEWTON: Did he go out with his friends after that,
22 Ms. Tolliver?

23 THE WITNESS: Did I what?

24 MS. NEWTON: Did your son go out with his friends after
25 that before you called the police -- after he saw the dead body?

1 **THE WITNESS:** He still acted, like I said, he still
2 balled.

3 **MS. NEWTON:** Was he crying?

4 **THE WITNESS:** Was he fighting?

5 **MS. NEWTON:** Crying. Crying.

6 Was he crying? Did you see him cry?

7 **THE WITNESS:** No.

8 **MS. NEWTON:** Yolanda said he was crying so I just
9 wondered if he was.

10 **THE WITNESS:** When he cries is when I move his stuff.

11 **MS. NEWTON:** Okay. Thank you, ma'am. Thank you for
12 taking my questions.

13 **THE WITNESS:** Mm-hmm.

14 **JUDGE LOCK:** Commissioner Britt.

15 **MR. BRITT:** Ms. Tolliver, good afternoon. My name is
16 Johnson Britt. I just have a couple of questions.

17 You said that the police led Yolanda?

18 **THE WITNESS:** Yeah. They led a lot of them.

19 **MR. BRITT:** What do you mean by that?

20 **THE WITNESS:** What I mean by that is portions of what
21 I've seen and what I've heard of the evidence and stuff like that,
22 even the reporting, they were exhausted when they were down there.
23 They came and got my son like 3:30 or 4:00 o'clock in the evening,
24 and it was 1:00 o'clock in the morning when they told me they was
25 arresting him.

1 **MR. BRITT:** Right.

2 But when you say that the police led her when they were
3 interviewing --

4 **THE WITNESS:** They made her -- they came back and got
5 her and took her down there. She was -- she was the one crying
6 when she came back.

7 **MR. BRITT:** She was the one what?

8 **THE WITNESS:** She was the one crying when she got back
9 from the police station.

10 **MR. BRITT:** Let me just ask you this: By saying that
11 the police led her, are you suggesting or are you saying that
12 they --

13 **THE WITNESS:** This come -- this came from her own mouth.

14 **MR. BRITT:** Okay.

15 **THE WITNESS:** See, when they -- when they took them down
16 here -- can you understand this? They were kids. They did not
17 understand -- they didn't understand nothing about the law.

18 **MR. BRITT:** Yes, ma'am.

19 And are you talking about the type of questions that she
20 was asked or are you just saying that the police were directing
21 her in a way that they wanted it to go?

22 **THE WITNESS:** Yeah. Yeah, yeah, yeah, yeah.

23 **MR. BRITT:** Yes to both? Was that "yes" to both,
24 Ms. Tolliver?

25 **THE WITNESS:** I would -- what did you say? I didn't

1 hear it.

2 **MR. BRITT:** Was that yes to both of my questions? One,
3 that the manner in which they were asking her questions or that
4 they were just directing the way they wanted the investigation to
5 go?

6 **THE WITNESS:** It was the way they wanted the
7 investigation to go, and that's the way it went for them.

8 **MR. BRITT:** Okay.

9 And did both Jermal and Yolanda ride with the police
10 downtown?

11 **THE WITNESS:** Huh?

12 **MR. BRITT:** Did they ride -- when they left your house
13 that day, did they ride with the police? How did they get
14 downtown?

15 **THE WITNESS:** They took them downtown.

16 **MR. BRITT:** The police took them downtown?

17 **THE WITNESS:** Yeah.

18 **MR. BRITT:** Did you --

19 **THE WITNESS:** They told -- they told me -- they told me
20 that they would have them back in about an hour.

21 **MR. BRITT:** So is that the reason you didn't go
22 downtown?

23 **THE WITNESS:** No. They did not invite me.

24 **MR. BRITT:** Okay.

25 So you didn't feel like you needed to go downtown with

1 your kids?

2 **THE WITNESS:** I felt like I should have. I should've
3 walked out of there because they lied, because when I contact with
4 them -- I had to contact them to find out what was taking so long.

5 **MR. BRITT:** That's when you called the police
6 department?

7 **THE WITNESS:** Yeah. I called them. I wanted to know
8 what was taking so long.

9 **MR. BRITT:** Okay.

10 Now, let me back up to something you had said earlier.

11 You said that after Mr. Jones was killed, the streets
12 became still, as in quiet?

13 **THE WITNESS:** Right. Yeah.

14 **MR. BRITT:** And based on what you said, it sounds like
15 there was always a lot of activity going on on the street.

16 **THE WITNESS:** Yeah. There were always kids out there
17 playing or moving around and people sitting out on their porches
18 and stuff. None of that.

19 **MR. BRITT:** Okay.

20 And, Ms. Tolliver, did you have any trouble with Jermal
21 running the streets?

22 **THE WITNESS:** No. He always was in the house on time.
23 When I tell him to be back at a certain time, he was back in that
24 house.

25 **MR. BRITT:** And he had grown up with Rayshawn and Stinky

1 and these other boys?

2 **THE WITNESS:** Well, they was always, like, it was --
3 those boys always tried to hide out from them.

4 **MR. BRITT:** They tried to hide out from who?

5 **THE WITNESS:** And they always -- from Rayshawn and
6 Stinky and them because of the simple fact they run hot.

7 **MR. BRITT:** Okay.

8 So are you --

9 **THE WITNESS:** And my rules -- my rule was to stay away
10 from them.

11 **MR. BRITT:** Okay.

12 So are you saying that Rayshawn and Stinky were trouble
13 for your boys?

14 **THE WITNESS:** Yes, yes. They were the bullies on the
15 street, according to law enforcement. They said they were a
16 menace to society.

17 **MR. BRITT:** And let me -- let me ask you a couple of
18 other questions, and this deals with activity before Mr. Jones was
19 killed.

20 Were you aware of any robberies that were taking place
21 on your street --

22 **THE WITNESS:** Yeah.

23 **MR. BRITT:** -- and in the area?

24 **THE WITNESS:** Oh, yeah.

25 Can I just say this?

1 **MR. BRITT:** Yes, ma'am.

2 **THE WITNESS:** When I get off of work at night, I'm kind
3 of keyed up, I'm wired up, and I sit up at night because, you
4 know -- sit around and just think a little bit. And, you know, I
5 have my quiet time. And I put all my lights out at my house and
6 open my blinds and I look at my window. And there's a lot of
7 things I see, I hear, I don't repeat. But yeah, I see a lot.

8 **MR. BRITT:** Okay.

9 And did you ever report to the police what you saw or
10 what you heard?

11 **THE WITNESS:** No. It wasn't my business.

12 **MR. BRITT:** Did the police ever come around knocking on
13 doors and investigating robberies and things that were happening
14 on the street before Mr. Jones' murder?

15 **THE WITNESS:** Only that one house -- only that one house
16 that was broken into. And they -- they knew them two other kids.

17 **MR. BRITT:** You talking about Rayshawn and Stinky?

18 **THE WITNESS:** Yeah. They knew they did it.

19 **MR. BRITT:** Did you talk to them about that?

20 **THE WITNESS:** They was walking up, going door-to-door.

21 **MR. BRITT:** Were they giving -- did you talk to a police
22 officer at your door?

23 **THE WITNESS:** Yeah. That's when he told me to keep my
24 son away from them.

25 **MR. BRITT:** Okay.

1 Did he give you a business card?

2 **THE WITNESS:** He probably did.

3 **MR. BRITT:** Okay.

4 And did you hold on to that card?

5 **THE WITNESS:** No. I don't think I did. I lay stuff
6 down and forget about it.

7 **MR. BRITT:** And do you remember when that was prior to
8 you learning that Mr. Jones had been killed?

9 **THE WITNESS:** I learned that -- I learned that the night
10 I got off of work and I came in contact with a officer. The
11 officer was canvassing the neighborhood.

12 **MR. BRITT:** Yes, ma'am.

13 **THE WITNESS:** And it was officer -- according to on his
14 badge, it was Officer Lovett.

15 **MR. BRITT:** I'm sorry. Can get you repeat?

16 **THE WITNESS:** And he had knocked on my door. And like I
17 told him, I had just got off of work.

18 **MR. BRITT:** Okay.

19 Can you repeat that name -- that officer's name again?
20 I didn't quite catch it.

21 **THE WITNESS:** I think his name was Officer Lovable
22 (phonetic). That was on his little bar.

23 **MR. BRITT:** Okay.

24 **THE WITNESS:** I don't know. It was a catchy name -- he
25 was tall -- but I don't know.

1 **MR. BRITT:** And was that before or after Mr. Jones was
2 killed?

3 **THE WITNESS:** That was the night they was still
4 investigating.

5 **MR. BRITT:** Okay.

6 The night that all the police were out there when you
7 rode by --

8 **THE WITNESS:** Yeah.

9 **MR. BRITT:** -- when you came from in from work?

10 **THE WITNESS:** Yes.

11 **MR. BRITT:** And --

12 **THE WITNESS:** I'm just telling you things that I
13 remember.

14 **MR. BRITT:** That's right. That's all we're asking.

15 And do you recall if Jermal was at home when you came
16 home -- when you got in from work?

17 **THE WITNESS:** Yes.

18 **MR. BRITT:** Was anyone else there?

19 **THE WITNESS:** He was at home. He walked right into me.
20 He woke up out of his sleep, still warm from that sleep.

21 **MR. BRITT:** Okay.

22 So you remember him having just awakened when you came
23 in?

24 **THE WITNESS:** Yeah.

25 **MR. BRITT:** And that was about what time?

1 **THE WITNESS:** I got off at 7:00. My daughter came and
2 got me like about 8:00. I got home, when I came through the area,
3 it was like -- it was like after 8:00 it was going on down there.

4 **MR. BRITT:** And where did you work back then?

5 **THE WITNESS:** It might have been like 8:00 or something.

6 **MR. BRITT:** Where did you work back then?

7 **THE WITNESS:** Medical Manor. In Clemmons.

8 **MR. BRITT:** I'm sorry?

9 In Clemmons, North Carolina?

10 **THE WITNESS:** Uh-huh.

11 **MR. BRITT:** How long a drive is it from Clemmons to your
12 house at that time?

13 **THE WITNESS:** Depending on how they drive.

14 **MR. BRITT:** If you go the speed limit and take the most
15 direct way -- let me ask it that way.

16 **THE WITNESS:** I would say like -- like, when I get off
17 of work, it takes me, like, anywhere from maybe 10 to 15 minutes
18 to get home, because traffic isn't so heavy at 11:00 o'clock.

19 **MR. BRITT:** Yes, ma'am. So --

20 **THE WITNESS:** You know, at 11:00 -- anytime -- anytime
21 after -- I'd say it calms down about 6:00, maybe.

22 **MR. BRITT:** Okay.

23 **THE WITNESS:** Maybe 7:00, traffic calms down.

24 **MR. BRITT:** Did you work a shift?

25 **THE WITNESS:** Yeah I worked a piece of shift that night.

1 **MR. BRITT:** Okay.

2 You only worked a part of the shift?

3 **THE WITNESS:** Yeah.

4 **MR. BRITT:** What time did the shift start?

5 **THE WITNESS:** I'd be on the clock at 3:00.

6 **MR. BRITT:** And what time -- if you would work the whole
7 shift, how long -- what time would you have gotten off?

8 **THE WITNESS:** When I work a whole shift, I get off at
9 11:00 o'clock.

10 **MR. BRITT:** And you were getting off at 7:00 that night?

11 **THE WITNESS:** Yeah. I got off at 7:00 because my
12 daughter was late coming back to get me.

13 **MR. BRITT:** Okay. Were you --

14 **JUDGE LOCK:** And, you know, that -- that's expected out
15 of her. I had to run her down.

16 **MR. BRITT:** Were you scheduled to only work part of the
17 shift that night?

18 **THE WITNESS:** Yeah. I only worked part of the shift.

19 **MR. BRITT:** Okay. Thank you, ma'am.

20 **JUDGE LOCK:** Anyone else?

21 (No response.)

22 **JUDGE LOCK:** Ms. Tolliver, thank you very much for your
23 time this afternoon.

24 **THE WITNESS:** Uh-huh. You're welcome.

25 **JUDGE LOCK:** All right. Good-bye.

1 (Witness stands down, 3:12 p.m., teleconference
2 concluded.)

3 MS. SMITH: May we let her know that she's released from
4 her subpoena?

5 JUDGE LOCK: Yes, please.

6 MS. SMITH: Thank you. The staff can call her.

7 Commissioners, we have about 15 minutes before our court
8 reporter needs to leave for the day.

9 I think what I want to do is just give you-all some
10 handouts to review tonight that will make the remainder of the
11 staff's testimony tomorrow be pretty short because there just
12 won't be any down time while you are reviewing.

13 And as soon as I'm doing that, I would suggest we take
14 the evening recess since we've only got about 15 minutes anyway.

15 It will take me a few minutes to go over all of these
16 and tell you what they are. So if you want to get out a pen and
17 paper and write them down.

18 MR. BRITT: We already have them?

19 MS. SMITH: They're in your notebooks.

20 MR. BRITT: Okay.

21 MS. SMITH: Yes. And they at this point should all be
22 in Notebook 3. So if it's just that you want to carry home the
23 big notebook, you can certainly do that -- or you can pull them
24 out.

25 We've already mentioned number 120, the Hunter Atkins

1 recordings. Those are on your flash drives.

2 **MS. TANNER:** Everybody has their flash drive; right?

3 **MS. SMITH:** 121 is the Yolanda Tolliver audio that's
4 also on your flash drive.

5 Handout 87 is the DPS mental health and education
6 summaries for the codefendants.

7 Handout 88 is a DPS calls chart related to Rayshawn
8 Banner.

9 Handout 89 is a DPS calls chart related to Nathaniel
10 Cauthen.

11 Handout 90 is a DPS calls chart related to Jermal
12 Tolliver.

13 Handout 91 is a DPS calls chart related to Christopher
14 Bryant.

15 You have already been provided and read prior to the
16 hearing Handouts 92, 93, 94, 95, and 98. Those are the
17 transcripts of staff's interviews with five codefendants.

18 So if you want to look at those again before tomorrow's
19 testimony, you can do that this evening.

20 **MR. EDWARDS:** Say that again, they're transcripts?

21 **MS. SMITH:** 92, 93, 94, 95, and 98.

22 If you will also review Handouts 96 and 97, these are
23 two records from Cauthen DPS records.

24 Handout 99 is the district attorney's statement, if you
25 wish to review that this evening.

1 As I stated at the beginning of the hearing, the actual
2 statements is about 13 pages. The full document is 147 pages, I
3 believe.

4 I will just tell you-all what is attached to that.
5 Exhibit 1 is the photo of Nathaniel Jones. That was provided by
6 also on page 1455 of the Commission brief; Exhibit 2 is the
7 transcript of the 2002 interview by law enforcement with Jessica
8 Black, which was provided on page 396 of the brief; Exhibit 3A is
9 Rayshawn Banner's *Bruton* statement, which was provided on page 323
10 of your brief; Exhibit 3B, Dorrell Brayboy's *Bruton* statement was
11 provided on page 202 of your brief; Exhibit 3C was Christopher
12 Bryant's *Bruton* statement, and we provided that as a handout
13 earlier this week though I'm not entirely sure which handout
14 number that was right off, but I can find that for you.

15 **MS. NEWTON:** I think it's just an insert in front of my
16 notebook.

17 **MS. SMITH:** Exhibit 3D is Nathaniel Cauthen's *Bruton*
18 statement, which was provided on page -- in full on page 242 of
19 your brief; Exhibit 3E, Jermal Tolliver's *Bruton* statement,
20 provided in full on page 290 of your brief; Exhibit 4, the text
21 messages and Facebook messages between Hunter Atkins and Jessica
22 Black. We provided these as Handouts 11, 12, 19, and 20 during
23 the hearing; Exhibit 5 is a photo of the victim's car and carport
24 light. That exact picture has not been provided in the Commission
25 brief, but photos of the victim's car and carport can be found on

1 pages 828, 830, 838, 942, 944, and 946 of the Commission brief;
2 and Exhibit 6 is the photo of the shoe print. Shoe print photos
3 were provided on pages 540, 542, 840, 842, 999, and 1001 of the
4 Commission brief. In addition, the SBI report regarding the shoe
5 print multiple photos of the shoe print can be found on page 481
6 of your brief.

7 So I tell you all of that to let you know that you
8 probably have already seen most, if not all, of those exhibits
9 before when you're reviewing that handout tonight.

10 The Christopher Bryant *Bruton* statement was Handout 109
11 this week.

12 Additionally, on page before, letter b.1., the DA's
13 office has indicated that there is a typo and that the word
14 "excludes" should be replaced with the word "exculpatory" to read:
15 "There is no new DNA evidence that exculpatory any of these
16 defendants."

17 We would request you also look at page 9, 4.c. The DA's
18 office has also indicated there is a typo, and it should -- right
19 now, it says: "To this day, Hunter Atkins has published," but the
20 DA's office has indicated the typo should read: "To this day,
21 Hunter Atkins has not published."

22 The District Attorney's office also provides some case
23 law related to the expert on false confessions. As you're aware,
24 we've already given you today Handout 100, which is the full
25 breadth of the confessions research.

1 Okay. That is all I have for today.

2 If you missed any of those numbers, I will be happy to
3 provide them to you before you leave the building.

4 **MS. ESSARY:** Just one last question. We were given
5 Handout 121. So have you added Yolanda Tolliver's audio with the
6 police or with someone else?

7 **MS. SMITH:** That was -- what was requested was any notes
8 or audio from Yolanda Tolliver's interactions with the law
9 enforcement.

10 **MS. ESSARY:** Yes.

11 **MS. SMITH:** So it is the audio of Yolanda Tolliver's
12 police interview statement --

13 **MS. ESSARY:** Something.

14 **MS. SMITH:** -- is on there.

15 **MS. ESSARY:** Thank you.

16 **JUDGE LOCK:** All right. Commissioners, remember we are
17 meeting at 8:30 in the morning.

18 Anything else?

19 **MS. SMITH:** That is all.

20 **JUDGE LOCK:** All right. Then we will be in recess until
21 8:30 tomorrow morning.

22 (Overnight recess, 3:20 p.m.)

23 (Volume 5 begins on page 840.)

24

25

NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA,)	
versus)	From Forsyth
CHRISTOPHER BRYANT,)	02 CRS 38886
Defendant.)	

STATE OF NORTH CAROLINA,)	
versus)	From Forsyth
NATHANIEL CAUTHEN,)	02 CRS 38884
Defendant.)	

STATE OF NORTH CAROLINA,)	
versus)	From Forsyth
JERMAL TOLLIVER,)	02 CRS 38882
Defendant.)	

STATE OF NORTH CAROLINA,)	
versus)	From Forsyth
RAYSHAWN BANNER,)	02 CRS 38883
Defendant.)	

* * * * *

TRANSCRIPT OF HEARING, Volume 5 of 5
Friday, March 13, 2020

* * * * *

March 9, 2020, Setting of the
North Carolina Innocence Inquiry Commission
The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Luther Johnson Britt, III
Robin Colbert
Seth Edwards
Melissa Essary
Sheriff Kevin Frye
Immanuel Jarvis
Deborrah L. Newton

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 Catherine Matoian, Grant Staff Attorney

6 Brian Ziegler, Staff Attorney

7 Mackenzie C. Myers, Grant Legal Investigator

8 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

9 Post Office Box 2448

10 Raleigh, North Carolina 27602

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HEARING HANDOUTS

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87	**SEALED - Mental Health Record and Education Summary **	845
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89	DPS Call Chart - Nathaniel Cauthen	848
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1 FRIDAY, MARCH 13, 2020 (8:35 a.m.)

2 JUDGE LOCK: All right. Folks, looks like everyone is
3 in place. I think folks are ready to start so we'll come to
4 order.

5 And, Ms. Guice Smith, please proceed.

6 MS. SMITH: The Commission recalls legal investigator
7 Mackenzie Myers.

8 Is she under oath, Your Honor?

9 JUDGE LOCK: I'm sorry. Yes, she is.

10 (Witness, Mackenzie Myers, resumes the stand.)

11 BY MS. SMITH: (8:37 a.m.)

12 Q. Ms. Myers, did commission staff review all -- review DPS
13 records for the five defendants in this case?

14 A. We did.

15 MS. SMITH: Commissioners, Handout 87 is a summary
16 prepared by commission staff that provides details from the DPS
17 records regarding the education records, IQ tests results, and
18 mental health records of the codefendants in this case. You-all
19 reviewed that on the evening recess.

20 Judge Lock, in order to obtain those DPS records, the
21 Commission had to obtain a court order, and those records are not
22 public. Mental health and education records are also governed by
23 additional federal laws. Because we quoted directly from those
24 records in the handout, I would ask that you consider sealing
25 that.

1 **JUDGE LOCK:** All right. I will certainly sign such an
2 order.

3 **Q.** Ms. Myers, did the Commission do anything else related
4 to the defendants' DPS records?

5 **A.** We obtained the prison phone calls for all five
6 defendants associated with their individual PIN numbers from the
7 Department of Safety.

8 We also obtained the prison phone calls associated with
9 the cell phone numbers for the three defendants who had finished
10 their prison sentences, and those were Christopher Bryant, Jermal
11 Tolliver, and Dorrell Brayboy.

12 **Q.** Did commission staff obtain DPS phone records for
13 Christopher Bryant, Nathaniel Cauthen, Jermal Tolliver, Rayshawn
14 Banner, and Dorrell Brayboy while they were custody of the
15 Department of Public Safety?

16 **A.** Yes, we did.

17 **Q.** Explain to the Commissioners what was received and
18 reviewed.

19 **A.** Sure. DPS maintains phone calls for a certain amount of
20 time before they are purged from their system. The Commission
21 obtained all available phone calls made from each of the
22 defendants' unique PIN numbers. Originally, the Commission
23 entered into a consent order with DPS signed by Judge Wagoner
24 August 2 of 2018 to obtain any records of phone calls maintained
25 by DPS for all calls made by each codefendant's unique PIN

1 numbers.

2 Q. What were the date ranges and the total number of calls
3 made by Christopher Bryant's PIN number?

4 A. Although DPS had provided records of phone calls made,
5 these included number called, date, time, and the duration of that
6 call, the actual recorded calls are purged according to a
7 schedule, and so the dates of the actual recordings provided for
8 each defendant varied.

9 Q. What can you tell us about the date ranges of phone
10 calls provided for each of the codefendants?

11 A. DPS had recordings for Christopher Bryant from
12 February 18, 2014, to February 2 of 2017, when he was released
13 from DPS custody. The total number of phone calls made were
14 1,469.

15 Q. What about Nathaniel Cauthen?

16 A. DPS had recordings for Nathaniel Cauthen from
17 November 17 of 2015 to March 6 of 2020. And the total number of
18 phone calls was 86.

19 Q. What about Jermal Tolliver?

20 A. DPS had recordings for Jermal Tolliver from March 6 of
21 2014 through February 2 of 2017, when Tolliver was released from
22 prison. The total number of phone calls for Jermal Tolliver
23 was 338.

24 DPS also had recordings for Rayshawn Banner from
25 March 20th of 2014 through March 5th of 2020. And the total

1 number of phone calls for Rayshawn Banner was 886.

2 DPS also had recordings for Dorrell Brayboy from
3 February 11 of 2014 through November 1 of 2017. And the total
4 cost for Dorrell Brayboy was 375.

5 Q. Did commission staff review all of the calls obtained
6 from DPS from the dates stated above?

7 A. Due to the sheer volume of calls that the Commission
8 obtained, commission staff identified key time periods and focused
9 on those calls specifically. Commission staff listened to calls
10 from all codefendants that occurred in 2017 around the time Bryant
11 and Tolliver were released from prison.

12 Q. Related to Mr. Banner and Mr. Cauthen, what additional
13 calls did the Commission listen to?

14 A. Commission staff listened to their phone calls around
15 the time that both men were interviewed by the Commission, phone
16 calls around the time they applied to the Commission, phone calls
17 around the time of Dorrell Brayboy's murder, phone calls made on
18 the same day that they called Hunter Atkins, and calls from
19 Mr. Cauthen around the time he had indicated he spoke to
20 Mr. Atkins when he had called his mother and Mr. Atkins was
21 present.

22 Commission staff has also listened to phone calls from
23 around the time claimants were notified of this hearing.

24 Q. Did commission staff have any assistance in reviewing
25 these calls?

1 **A.** We did. Again, because of the sheer volume of the
2 amount of phone calls we received from DPS, we had the help of
3 several pro bono students and interns, and commission staff also
4 listened to calls as well.

5 In total, the approximate number of phone calls -- the
6 approximate number of hours spent listening to phone calls from
7 volunteers alone was approximately 200 hours. In addition,
8 commission staff listened approximately 150 hours of phone calls.

9 **MS. SMITH:** Commissioners, Handouts 88, 89, and 90
10 contain relevant information from the PIN numbers and calls made
11 from those PIN numbers of Rayshawn Banner, Nathaniel Cauthen, and
12 Jermal Tolliver.

13 The charts do not include details of calls where the
14 defendants only talked about getting out of prison or future plans
15 without specifically talking about the case.

16 You-all reviewed those last night.

17 Do you have any questions about the calls in the charts
18 from Handouts 88, 89, or 90?

19 **MS. NEWTON:** During the course of some of the telephone
20 calls of a couple of the defendants, there was the matter of newly
21 discovered evidence that was discussed that was attributed to one
22 of the lawyers in their case as well possibly -- I couldn't quite
23 understand what they were talking about -- possibly Hunter Atkins.

24 Did the Commission, after reviewing those records,
25 pursue any evidence of a trail of blood that -- from the crime

1 scene that was not in the first two trials ever put into evidence
2 or pursued?

3 **THE WITNESS:** In terms of the trail of blood, that is --
4 to my recollection, is not something that we discovered throughout
5 our investigation this case. So I personally am not aware of
6 where that comes from.

7 **MS. NEWTON:** Did the Commission note that conversation
8 and ask the defendants about that or the sources in the interviews
9 with those people about, you know, was there a trail of blood that
10 was not pursued or not tested at the original investigation?

11 **THE WITNESS:** So I note that with -- obviously, we
12 documented that in the phone calls that we listened to. In terms
13 of when we were following up with law enforcement specifically, we
14 asked them about the search that they did of Belview Park and the
15 surrounding area of Mr. Jones' home. And there was no indication
16 from any law enforcement officer that there was a trail of blood.

17 **MS. NEWTON:** In any of the files from the defense
18 lawyers or in gathering records from law enforcement and, you
19 know, the physical evidence, was there anything found that might
20 have indicated someone made note of a trail of blood or any swabs
21 or that sort of thing that they just simply just didn't pursue
22 after 11/19/2002 where all the boys and Jessica Black
23 confessed -- allegedly confessed?

24 **A.** Not to my knowledge of reviewing the records. I can
25 confer with my -- with Ms. Bridenstine to make sure that my

1 recollection of that is correct.

2 MS. NEWTON: Thank you.

3 THE WITNESS: You're welcome.

4 BY MS. SMITH: (8:46 a.m.)

5 Q. Ms. Myers, did the Commission staff have several swabs
6 that were noted as "red substance tested"?

7 A. Yes.

8 MS. SMITH: Any other questions?

9 MS. NEWTON: Can I follow up, then on your question?

10 MS. SMITH: Sure. She's probably not going to be able
11 to answer it any further than that. So if you have questions
12 about that, it may be more appropriate for us to recall someone
13 else later.

14 MS. NEWTON: Let me ask one. I think she may.

15 The swabs -- are you aware of the location the swabs
16 were taken from?

17 THE WITNESS: I am not. So that will be something that
18 somebody else will have to testify to.

19 MS. ESSARY: And this does relate to your testimony.
20 What was the name of the first claimant whom you said had a much
21 lower total phone calls during that time?

22 THE WITNESS: The much lower total of phone calls? I
23 believe that was Nathaniel Cauthen.

24 MS. ESSARY: The number was 80-something.

25 THE WITNESS: It was 86, I believe. Let me double-check

1 that really quickly, though. 86.

2 **MS. ESSARY:** Thank you.

3 BY MS. SMITH: (8:47 a.m.)

4 **Q.** Ms. Myers, did Christopher Bryant and Dorrell Brayboy
5 make calls from prison?

6 **A.** They did. There are no charts for Mr. Bryant or
7 Mr. Brayboy because, while they generally discussed their release
8 from prison, neither mentioned anything specific related to this
9 case.

10 **Q.** Ms. Myers, did the Commission request any other phone
11 calls from DPS?

12 **A.** We did. The Commission sought and obtained an
13 additional court order for DPS calls from all PINs at DPS made by
14 two numbers for Christopher Bryant and phone numbers for Jermal
15 Tolliver, Dorrell Brayboy, Jessicah Black, and Hunter Atkins.

16 **Q.** What was the purpose of obtaining those records?

17 **A.** The Commission wanted to make sure that there was not
18 any communication going on between Mr. Banner and Mr. Cauthen with
19 the three defendants that had been released from prison using
20 other people's PINs.

21 The Commission also wanted to determine if Mr. Banner or
22 Mr. Cauthen had contact with Jessicah Black and Hunter Atkins.

23 **Q.** Did the Commission find any communication between
24 Mr. Banner or Mr. Cauthen and Mr. Bryant, Mr. Tolliver,
25 Mr. Brayboy, and Jessicah Black?

1 **A.** No, we did not.

2 **MS. SMITH:** Commissioners, Ms. Matoian testified earlier
3 this week about the phone calls between Mr. Cauthen and Mr. Banner
4 with Ms. Hunter Atkins.

5 Do you-all have any questions about the calls made to
6 Christopher Bryant's phone number after his release?

7 **MR. EDWARDS:** I have a question. Would you know -- have
8 any idea if any of the incarcerated defendants sent a letter to
9 one of the defendants that had been released?

10 **THE WITNESS:** We would not have known that based on
11 this.

12 **MR. BRITT:** I have a question.

13 With respect to our rules, are each of the claimants --
14 or are all claimants notified what those rules are regarding
15 communication with media?

16 **MS. SMITH:** They are.

17 **MR. BRITT:** And so how was that done?

18 **MS. SMITH:** In this case, that was done via letter and
19 also, once they had attorneys, to their attorneys.

20 **MR. BRITT:** Do we have copies of those?

21 **MS. SMITH:** Yes.

22 **MR. BRITT:** Okay.

23 **MS. SMITH:** We'll get them for you.

24 BY MS. SMITH: (8:50 a.m.)

25 **Q.** Ms. Myers, is there anything else with respect to

1 Christopher Bryant's calls after he was released?

2 A. Yes. Mr. Bryant had two phone numbers that the
3 Commission was able to obtain the records for.

4 For the first number, Mr. Bryant had after his release
5 from prison, Mr. Bryant talked about his prison and postrelease
6 experiences generally. The only thing Mr. Bryant said about his
7 case was that he was reluctant to talk to Jermal Tolliver when
8 they were first released because Jermal Tolliver's family was the
9 reason they were in prison.

10 Q. What about the second number that the Commission had for
11 Mr. Bryant?

12 A. In those calls, Mr. Bryant spoke about the case and this
13 hearing in more detail.

14 MS. SMITH: Commissioners, Handout 91 is a chart of the
15 relevant information from the phone calls that other inmates made
16 to Christopher Bryant's second phone number. If you want to take
17 a moment to review that.

18 MS. NEWTON: What's the exhibit?

19 THE WITNESS: 91.

20 MS. SMITH: 91. You-all did have an opportunity to
21 review it over the break, but you may want to refresh on that.

22 (Commissioners review, 8:51 to 8:52 a.m.)

23 MS. SMITH: Commissioners, do you have any questions
24 about that -- those calls for Ms. Myers?

25 MR. BRITT: Mr. Bowden is listed. He is an inmate?

1 **THE WITNESS:** Yes, sir.

2 **MR. BRITT:** Okay. It's not -- it's not clear on the
3 chart.

4 **MS. SMITH:** Okay.

5 **THE WITNESS:** And so the purpose of this chart -- and I
6 apologize that it's not clear -- the way that we tried to title
7 this was that these were calls from prison to Bryant. This was
8 the second cell phone number that we were able to obtain.

9 So I appreciate you pointing that out. In this chart,
10 the name that is under the "to" column, those are people that are
11 in DPS custody that are making the phone call to Christopher
12 Bryant.

13 **MR. BRITT:** I would just note that in the first entry,
14 he states that individual was interviewed in prison.

15 **THE WITNESS:** Correct.

16 **MR. BRITT:** Was the second person ever interviewed?

17 **THE WITNESS:** He was not.

18 **MR. BRITT:** Okay.

19 **MS. ESSARY:** Is it a fair statement, based on previous
20 testimony, if any of the claimants had called out from another PIN
21 number, you would not have access to those records?

22 **THE WITNESS:** We would not have access to those phone
23 numbers unless we specifically knew that that -- that one of the
24 claimants was using a particular PIN number. Then we could ask
25 DPS for calls associated with that unique PIN number. That is why

1 the Commission asked for calls related to specific numbers outside
2 of prison, so that would be able to try to see what calls were
3 being made from these claimants to outside.

4 **MS. ESSARY:** Okay.

5 BY MS. SMITH: (8:53 a.m.)

6 **Q.** Ms. Myers, did the Commission review phone calls made
7 from prison for a number for Jermal Tolliver after his release?

8 **A.** We did. Mr. Tolliver did not discuss his case but did
9 talk about his postrelease conditions and about life outside of
10 prison.

11 **Q.** Did the Commission get phone calls made from prison to a
12 number for Dorrell Brayboy after his release?

13 **A.** There were no phone calls made from prison to Dorrell
14 Brayboy's number after he was released from prison.

15 **Q.** Did commission staff review phone calls made from DPS to
16 a number for Jessicah Black?

17 **A.** We did. There were two phone calls from prison to
18 Jessicah Black. Neither of those calls had said anything to do
19 with this case.

20 **Q.** Now, all of the phone calls that you were able to
21 review, did any of the codefendants admit their guilt in this
22 crime?

23 **A.** No. None of the phone calls that the Commission
24 reviewed, the defendants never made any admission of guilt in this
25 crime at all.

1 **Q.** Did the Commission ultimately obtain some additional
2 phone calls for the defendants?

3 **A.** We did. On March the 5th of 2020, the District
4 Attorney's office provided a disk with one phone call from
5 Mr. Banner to his mother while he was in the Forsyth County jail
6 for this resentencing in 2016 and five calls from Mr. Cauthen to
7 his mother while in the Forsyth County jail for his resentencing
8 in April of 2016.

9 **Q.** What were the contents of those calls?

10 **A.** Teresa Ingram told Mr. Banner about a conversation she
11 had had with Mr. Jones' family about them forgiving the boys and
12 the fact that the other codefendants had been released.

13 Mr. Cauthen and Ms. Ingram discussed his resentencing,
14 that Mr. Jones' family's reaction to the resentencing, the police
15 investigation, and their innocence. Mr. Cauthen also talks about
16 writing a book and asking his mom to contact a man about
17 publishing.

18 In his DPS calls, Mr. Cauthen has talked about writing
19 an autobiography and a fiction book.

20 **Q.** Did Mr. Banner or Mr. Cauthen admit to guilt of the
21 crime during those phone calls from the Forsyth County detention
22 center?

23 **A.** No, they did not.

24 **MS. SMITH:** Any additional questions for Ms. Myers about
25 the DPS calls?

1 **MS. ESSARY:** Yes.

2 Is there any evidence that the claimants knew that while
3 they were in prison their phone calls were being taped?

4 **THE WITNESS:** Yes. They're put on notice of that -- I
5 believe it's right when they pick up the phone or place their PIN
6 number in, but they are notified that they're being recorded.

7 **MS. ESSARY:** Thank you.

8 **THE WITNESS:** You're welcome.

9 **MS. SMITH:** I'm going to ask that Ms. Myers step down.

10 (Witness stands down.)

11 **MS. SMITH:** Commission recalls staff attorney Julie
12 Bridenstine.

13 (Witness, Julie Bridenstine, resumes the stand.)

14 **MS. SMITH:** Commissioners, for your reference the red
15 blood substance is noted on page 39 of your brief and page 66 of
16 your brief. Those are the police reports related to that.

17 Page 908 of your brief is the testimony related to that.
18 And page 2029 is Appendix C of the brief which outlines the
19 evidence collected.

20 BY MS. SMITH: (8:57 a.m.)

21 **Q.** Ms. Bridenstine, what can you tell the commissioners
22 about the red substance that was collected?

23 **A.** Police collected four areas that had a red substance.
24 They were from the hood of the Lincoln; marker 3, which is the
25 carport step; marker 2, which was in between the Lincoln car and

1 the house in the carport; and also another red substance from the
2 carport step.

3 Q. And is there any additional indication in any of the
4 files that you've reviewed or through your investigation of any
5 additional red substance or blood-like substance?

6 A. No.

7 Q. There's been testimony this week about the red substance
8 and the testing that was done on that; is that correct?

9 A. That's correct.

10 Q. And all of the red substance that could be identified
11 was identified as belonging to the victim; is that correct?

12 A. That's correct.

13 MS. SMITH: Any other questions?

14 MS. NEWTON: Just briefly to follow up.

15 In Handout Number 24 -- I think that's the forensic
16 chart that staff did -- and it does indicate that the red
17 substance is on the hood of the Lincoln. Number 3, it does not
18 say exactly where it is, but -- where the substance was lifted
19 from.

20 But in Handout 32, the photograph of the carport
21 indicates 2, 3, and 4, are all from inside the carport and around
22 where Mr. Jones' body would have fallen, apparently, before
23 medical personnel removed him from the carport.

24 Is that your understanding of all of the red blood --
25 red substance that was recovered and tested, all within the

1 carport?

2 **THE WITNESS:** That's correct.

3 **MS. NEWTON:** Okay.

4 So other than Handout 32 and references in Handout 24,
5 is there any documentation that law enforcement or -- recovered
6 evidence that you-all discovered that law enforcement discovered
7 or swabbed a, quote, "trail of blood" anywhere other than within
8 the carport?

9 **THE WITNESS:** No.

10 **MS. NEWTON:** What do you make of the conversation that
11 was being had on the jail phone related to the trail of blood
12 information that the -- one of the defendants was talking about
13 attributed to a lawyer?

14 **THE WITNESS:** I don't think I can speculate on that.

15 **MS. NEWTON:** And the lawyer questioned about was that a
16 statement that was made to one of the defendants or to Hunter
17 Atkins -- identifying that there's newly discovered evidence of a
18 trail of blood?

19 **THE WITNESS:** I am not clear on which lawyer that call
20 references; so the answer is no, we haven't talked to a lawyer
21 about a trail of blood.

22 **MS. NEWTON:** You didn't. Okay. Thank you. Nothing
23 further.

24 **MS. SMITH:** Okay.

25 Commissioners, you previously heard testimony about a

1 fifth codefendant in this case, Dorrell Brayboy.

2 BY MS. SMITH: (9:01 a.m.)

3 Q. Ms. Bridenstine, did Mr. Brayboy apply to the
4 Commission?

5 A. No, he did not. We were able to interview him in
6 March 2018. He was killed in Winston-Salem in August 2019. And
7 he did not apply to the Commission prior to his death and we are
8 not able to review -- we are only able to review living defendant
9 claims of innocence.

10 MS. SMITH: Commissioners, Handout 92 in your notebooks
11 is the transcribed interview of the Commission's interview with
12 Dorrell Brayboy.

13 You've had an opportunity to review that before this
14 hearing and again on the overnight recess.

15 Do you-all have any questions for Ms. Bridenstine about
16 that interview?

17 (No response.)

18 Q. Ms. Bridenstine, was the Commission able to obtain any
19 educational records for Dorrell Brayboy?

20 A. No. We were not able to get his school records. We
21 requested those records from the Winston-Salem/Forsyth County
22 public school system, and they searched several locations and were
23 not able to find any records related to Mr. Brayboy. The middle
24 school that he attended is no longer the same school, and they
25 searched and were just not able to find where those records might

1 be located.

2 Q. What did you learn about Mr. Brayboy from his DPS
3 records as it relates to education level and mental health?

4 A. His IQ score in 2005 on the revised beta IQ examination
5 was 83. And there are no records that indicated that he received
6 any ongoing mental health services or treatment while he was at
7 Department of Corrections.

8 Q. Do any of the DPS records that were provided to the
9 Commission indicate that Mr. Brayboy ever admitted participating
10 in this crime?

11 A. No.

12 Q. During your interview of Mr. Brayboy, did he maintain
13 his innocence with you?

14 A. Yes.

15 Q. Can you remind the Commissioners what Mr. Brayboy said
16 about his whereabouts on the night of November 15, 2002.

17 A. Mr. Brayboy told the Commission that he remembered most
18 of November 15, 2002. He said he did not go to school that day
19 because his mother and sister had gone to court. After court, he
20 said he went to Christopher Bryant's house around 2:30 or 3:00 and
21 played video games. Around 3:30 or 4:00, he walked to the Amoco
22 station with Bryant, Tolliver, and Donovan West.

23 Jessica Black and Nathaniel Cauthen came over around
24 6:00 p.m. Then Mr. Brayboy, Mr. Bryant, Mr. Tolliver,
25 Mr. Cauthen, and Ms. Black went to the park near Moravia Street

1 and hung out in Jessica's car. He said that they probably walked
2 around the park. He said that they stayed there for about
3 15 minutes and walked home around 6:30 while it was still kind of
4 light outside.

5 Around 7:00 or 7:30, Mr. Brayboy got in a car with Jed
6 and went to Jed's grandmother's house until about 8:30. And at
7 that time, Mr. Brayboy came back to Devonshire Street and saw
8 Rayshawn Banner, Nathaniel Cauthen, and Jermal Tolliver. They
9 went to Christopher Bryant's house around 8:45 and Jessica Black
10 was still there. Nathaniel Cauthen, Rayshawn Banner, and Jermal
11 Tolliver were there. They went to the bowling alley but Nathaniel
12 Cauthen got into an altercation and an officer made them leave.

13 Ms. Black took them back to Christopher Bryant's house
14 where Mr. Brayboy said that he spent the night. He also said he
15 thought they drove by the crime scene.

16 **MS. SMITH:** Commissioners, do you have any questions for
17 Ms. Bridenstine about Dorrell Brayboy?

18 **MS. ESSARY:** Given the fact that this was an interview
19 and not a deposition, I'm assuming he was not subpoenaed for this.
20 Or is that correct?

21 **THE WITNESS:** That's correct. It was a voluntary
22 interview and he agreed for us to interview him at his house.

23 **MS. ESSARY:** So did you meet with any resistance from
24 him, since he was already out of prison, in getting that
25 interview?

1 **THE WITNESS:** No.

2 **MS. ESSARY:** If you remember.

3 **THE WITNESS:** It took us a little bit of time to locate
4 him because we didn't have a good phone number, but we were able
5 to find him and he agreed to talk to us.

6 **MS. ESSARY:** Okay. Thank you.

7 **MS. NEWTON:** Can I follow up with a question? I'm not
8 sure if you're the right person to answer it, but it's pretty
9 straightforward.

10 I just want to be clear about the defendants' -- all
11 five of them -- testimony on the issue of guilt as to under-oath
12 testimony.

13 So as to Mr. Bryant, he testified in a subsequent
14 suppression hearing -- I know about the confessions -- but he
15 actually testified under oath in a suppression hearing that he was
16 not guilty; isn't that correct?

17 **THE WITNESS:** I would have to refer back to the
18 transcript, but I do recall that there was some reference to he
19 did not commit the crime from his motion to suppress testimony.

20 **MS. NEWTON:** Did he testify?

21 **THE WITNESS:** He did.

22 **MS. NEWTON:** March 23 of 2004, just for reference,
23 that's what I have. And he did in fact testify, following up from
24 yesterday's expert about -- after the pressure was off, that they
25 would quickly recant. So he did actually testify under oath at

1 that suppression hearing, but he did not testify at trial;
2 correct?

3 **THE WITNESS:** That's correct.

4 **MS. NEWTON:** And as to Mr. Tolliver, he did not testify
5 at trial.

6 Do you have him testifying under oath in any other
7 proceeding after the confession?

8 **THE WITNESS:** Jermal Tolliver and Christopher Bryant and
9 Nathaniel Cauthen all testified at the suppression hearings. So
10 did Dorrell Brayboy. The only defendant who did not testify was
11 Rayshawn Banner.

12 **MS. NEWTON:** Okay.

13 So you're saying Tolliver and Cauthen also testified at
14 the suppression hearing?

15 **THE WITNESS:** They all testified except for Rayshawn
16 Banner.

17 **MS. NEWTON:** And did Mr. Tolliver deny his involvement
18 at the suppression hearing?

19 **THE WITNESS:** Ms. Newton, I don't remember the exact
20 language that was used but the -- of the four who testified, they
21 all made references when they were talking about their
22 interactions with the police about not committing the crime, is my
23 recollection.

24 We have provided in our appendix regarding a summary of
25 all defendant statements. There is at least a portion from, I

1 believe, the suppression hearings for all four who testified about
2 what they said about the crime, and I would just ask you to refer
3 back to that.

4 **MS. SMITH:** Commissioners, that begins on page 575 of
5 your brief. We have provided you with a summary of the
6 suppression hearing, digests of the testimony of the codefendants,
7 and the actual transcript of that testimony, if you would like to
8 review that at some point, to see their statements under oath.

9 **MS. NEWTON:** And, finally, you, I believe -- make sure I
10 understood what you said -- Rayshawn Banner did not testify at all
11 in any proceeding.

12 **THE WITNESS:** That's correct.

13 **MS. NEWTON:** Okay. Thank you.

14 BY MS. SMITH: (9:08 a.m.)

15 **Q.** Ms. Bridenstine, I'm going to turn your attention to
16 Jermal Tolliver.

17 **MS. SMITH:** Commissioners, I will be calling
18 Mr. Tolliver in a few moments to testify. I'm going to just ask
19 Ms. Bridenstine a few questions first. When I call him, I will
20 have a couple of questions for him, a series of questions, and
21 then will allow you to ask any questions that you have of him.

22 **Q.** Ms. Bridenstine, what did you learn about Mr. Tolliver
23 from his DPS records as relates to his education level and mental
24 health?

25 **A.** The highest grade he completed was the seventh grade.

1 His IQ score in 2005 was reported as 75 the revised Beta IQ exam
2 and as 62 on the Wechsler Adult Intelligence Scale.

3 His mental health records indicated that he had been
4 referred for services as a mentally delayed inmate but he did not
5 receive treatment.

6 MS. SMITH: Commissioners, you were previously provided
7 Handout 93 to read prior to today. That is a transcript of the
8 commission staff's interview with Mr. Tolliver from February 19,
9 2018.

10 Q. Ms. Bridenstine, did Mr. Tolliver's DPS records indicate
11 whether he ever admitted to participating in this crime?

12 A. The answer is no, he did not.

13 Q. During your interview with Mr. Tolliver, did he maintain
14 his innocence with you?

15 A. Yes.

16 Q. Remind the Commissioners what Mr. Tolliver told you
17 about his whereabouts on November 15, 2002.

18 A. Mr. Tolliver said that he was supposed to go to the mall
19 that day but he missed the bus. He remembered that Jessica Black
20 came over to the house around 6:00 p.m. and took him, Dorrell
21 Brayboy, and Rayshawn Banner to her house and then brought them
22 back to Christopher Bryant's house.

23 He said that he went to the Amoco around 6:00 p.m. but
24 was not sure of the time. He said that at some point, they
25 dropped Sherman Williams or Jed off that day and that was at

1 Belview Park, but they did not hang out there.

2 He said they saw a lot of detectives and a big crowd of
3 people when they dropped Sherman Williams off. He remembered
4 asking what happened and learning that a man had died. He thought
5 it was around 7:00 or 8:00 p.m.

6 He did not know if this was before or after he went to
7 the bowling alley. He mentioned that Nathaniel Cauthen was there
8 that night and he did not remember if Sherman Williams went to the
9 bowling alley.

10 **Q.** Ms. Bridenstine, did you have any conversations about
11 Hunter Atkins with Mr. Tolliver?

12 **A.** Yes. That's when I learned that Hunter Atkins had
13 contacted Jermal Tolliver to talk to him about the case. That was
14 during our interview on February 19, 2018. And this was the first
15 time I was aware that Mr. Atkins was investigating this case.

16 **MS. ESSARY:** Could you give that date again.

17 **THE WITNESS:** February 19, 2018.

18 **MS. SMITH:** Any additional questions for Ms. Bridenstine
19 about Jermal Tolliver?

20 (No response.)

21 **MS. SMITH:** At this time, I would ask that
22 Ms. Bridenstine step down and the Commission would call Jermal
23 Tolliver.

24 (Witness stands down, 9:11 a.m.)

25 **MS. SMITH:** It will just take us just a moment to get

1 him in the room.

2 * * * * *

3 Thereupon, JERMAL TOLLIVER, a witness having been called by the
4 Commission, was sworn and testified as follows:

5 BY MS. SMITH: (9:12 a.m.)

6 Q. Good morning, Mr. Tolliver.

7 A. Good morning.

8 Q. My name is Lindsey Guice Smith. I'm the Executive
9 Director at the North Carolina Innocence Inquiry Commission.

10 A. Yes, ma'am.

11 Q. I'm going to have some questions for you this morning,
12 and then when I am done, the Commissioners seated around the table
13 will all have an opportunity to ask you questions. Okay?

14 A. Yes, ma'am.

15 Q. I would just ask you to keep your voice up for the court
16 reporter so that she can hear you.

17 A. Yes, ma'am.

18 Q. And make sure to give verbal responses to all the
19 questions.

20 A. Yes, ma'am.

21 Q. Can you please state your full name for the record.

22 A. Jermal Matthew Tolliver.

23 Q. Can you spell your first name.

24 A. J-e-r-m-a-l.

25 Q. I'm going to turn your attention to the case at hand.

1 Did you rob Nathaniel Jones?

2 A. No, ma'am.

3 Q. Did you kill Nathaniel Jones?

4 A. No, ma'am.

5 Q. Were you involved in any way in the robbery and death of
6 Nathaniel Jones?

7 A. No, ma'am.

8 Q. Were you present when Nathaniel Jones was robbed, tied
9 up, and killed?

10 A. No, ma'am.

11 Q. Were you nearby when Nathaniel Jones was robbed, tied
12 up, and killed?

13 A. No, ma'am.

14 Q. Did you see the crime being committed?

15 A. No, ma'am.

16 Q. Did you ever participate in any way in a plan to commit
17 this crime?

18 A. No, ma'am.

19 Q. Are you aware of who committed the crime?

20 A. No, ma'am.

21 Q. Did any of your other codefendants in this case -- so
22 that would be Christopher Bryant, Dorrell Brayboy, Nathaniel
23 Cauthen, or Rayshawn Banner -- ever tell you that they had
24 involvement in this crime?

25 A. No, ma'am.

1 Q. Did any of your other codefendants in this case --
2 Christopher Bryant, Dorrell Brayboy, Nathaniel Cauthen, or
3 Rayshawn Banner -- ever tell you that they had any knowledge of
4 who committed this crime?

5 A. No, ma'am.

6 Q. Other than your statements to police on November 19,
7 2002, have you ever told anyone else that you committed this
8 crime?

9 A. No, ma'am.

10 Q. Where were you on November 15th, 2002?

11 If you want to start in the afternoon and walk us
12 through your day.

13 A. Yeah, because the morning is kind of blurry.

14 Q. Okay. Start in the afternoon.

15 A. The afternoon -- I came in from school, and my mom -- I
16 was in there talking to my mom. And she never said anything about
17 detectives or anything about to come by, they just popped up.

18 Q. I'm sorry. Let's go back to the date of the crime.

19 A. Oh, the date of the crime.

20 Q. Yes.

21 What were you doing that afternoon?

22 A. That afternoon -- that it happened? The 15th?

23 Q. Yes, sir.

24 A. That afternoon. Me and a few of my friends were at
25 Bryant's house, like, and it was, like, I want to say about 3:00

1 or something, because we supposed to go to the mall but it started
2 raining and so we revised -- we changed our plan and went back to
3 Bryant's house.

4 And from there, I went to my house. And that's --

5 Q. You stayed at your house the rest of the evening?

6 A. Yes, ma'am. Until -- until Jessicah came and picked us
7 up.

8 Q. Where did you go when she came and picked you up?

9 A. Soon as we got in the car, we went to go drop Jed off
10 and that's on Moravia Street. Soon as we got around there, we see
11 lights and everything, so everything -- so we pulled to the curb.
12 So everybody gets out of the car. So we're walking up. And this
13 is the girl I know from school, her name was Latoya Mashack, so I
14 asked her, I'm like, "What happened?"

15 She like, "Somebody killed Mr. Jones."

16 So I'm like, "Who is Mr. Jones?"

17 Q. What did you do after you pulled up and saw the flashing
18 lights and talked to Ms. Mashack?

19 A. We left and we went to Davidson County -- yeah, Davidson
20 County, because she had to do something for her grandma or
21 something -- she was checking on her or something. And after
22 that, we went to Creekside Lanes.

23 Q. Okay.

24 What did you do at Creekside Lanes?

25 A. Walked around talking to people. We kind of, like, all

1 like -- me and Bryant, we kind of like went, just, like, where the
2 games were. And, like, everybody was just doing their own little
3 thing.

4 Q. Who all was with you then?

5 A. That night it was myself. I want to say -- no. Myself,
6 Bryant, Brayboy, Cauthen -- yeah. Yeah. It was -- yeah. It was
7 me, Brayboy -- me, Brayboy, Bryant, Cauthen, Ms. Black.

8 Q. Was Rayshawn Banner with you?

9 A. Not at the bowling alley, no.

10 Q. Not at the bowling alley.

11 A. No.

12 Q. Did he go with you when you went to take Jed home?

13 A. No.

14 Q. And when you went to take Jed home, you saw the flashing
15 lights -- did Jed actually go home at that point?

16 A. Jed stayed around there, yes.

17 Q. He did not go home?

18 A. He didn't leave with us, no. He didn't go to the
19 bowling alley with us.

20 Q. I want to take you back in time to before you see the
21 flashing lights. I think you said a minute ago that you were at
22 Christopher Bryant's house.

23 A. Mm-hmm.

24 Q. Can you provide any more information about the time
25 period between when you left school and when you saw the flashing

1 lights.

2 A. What did I do? Yes, ma'am. Where all we went? I think
3 Bryant's sister got sick.

4 What else did I do? There's something else. Y'all got
5 to forgive me. It's early in the morning.

6 Q. Is your memory foggy?

7 A. Yeah. I don't remember everything but I remember a few
8 things, a lot.

9 Q. Do you know who else you were with while you were at
10 Bryant's house?

11 A. Brayboy. You talking about in the daytime?

12 MS. NEWTON: Can we ask the witness to keep his voice
13 up? I'm having a hard time hearing him.

14 Q. If you could keep your voice up.

15 A. I'm sorry.

16 Q. This is in the daytime after school when you're at
17 Mr. Bryant's house.

18 Do you remember who else was there with you?

19 A. Yes. It was Bryant, Bryant's sister, Bryant's mom. I
20 can't remember. At this time, I can't remember who exactly who
21 else was there, but I know it was the three of us.

22 Q. Okay.

23 What happened after you were at Bryant's house until the
24 time that you saw the flashing lights?

25 A. We was supposed to go to the mall. We didn't go. What

1 else? I can't really remember at this time. I don't want to just
2 say anything.

3 Q. It's fine if you can't remember. We don't want you to
4 make anything up.

5 A. Yes, ma'am.

6 Q. To the best of your memory, how did it happen that
7 Jessica Black -- that you ended up in the car with Jessica
8 Black?

9 A. Yeah. She came and picked us up about -- I want to say
10 about -- what time was it? I don't want to get the time wrong.

11 Q. Do you remember if it was light or dark outside?

12 A. It was getting dark, I want to say. Yeah.

13 Q. And after she picked you up, did you immediately go to
14 take Jed home or was there anything else that happened?

15 A. I think we sat there for a minute. I want to say we sat
16 there. Yeah, we may have sat there for a minute.

17 Q. Were you smoking marijuana that day?

18 A. Yes, ma'am.

19 Q. Mr. Bryant -- I'm sorry.

20 Mr. Tolliver, if you didn't commit these crimes, why did
21 you tell police that you did when they interviewed you on
22 November 19, 2002?

23 A. Because they wouldn't accept that I didn't.

24 Q. What do you mean by that?

25 A. I told -- when I first got down there, as soon as they

1 said something about it, I let them know that I didn't do it. So
2 they left out of the room, left me in there for about 15,
3 20 minutes by myself, and just kept coming back in, different
4 detectives coming back in, asking me different questions -- my
5 whereabouts. I'm telling them, but they're not listening. They
6 didn't like -- they didn't accept the fact that I was like, "No, I
7 didn't do it."

8 So then they started asking me who I hang around.
9 That's how they got all my codefendants. They asked me who I hang
10 around. So they picked all of them up and then after that, it's
11 pretty much -- oh, yeah, I did -- I did take them out to the
12 mall --

13 Q. Why did you do that?

14 A. -- with the wallet -- I don't know. They wasn't
15 listening to nothing else. I don't know. I figured I had to say
16 something.

17 Q. So did you know if a wallet had been thrown out near the
18 mall?

19 A. I know for a fact it wasn't threw out by us, whatever it
20 was.

21 Q. Did you just make that up?

22 A. I made it up totally.

23 Q. Did anybody suggest that to you?

24 A. Yes. They'd mentioned the wallet to me. They, like,
25 "Well, where's the wallet? We don't have a wallet? We can't find

1 the wallet? Where's it at?"

2 I'm like, "I don't know. What wallet?"

3 Q. Were you told that you could leave the police
4 department?

5 A. Not at any time, no.

6 Q. Did you feel like you could leave at any time?

7 A. No.

8 MS. SMITH: Commissioners --

9 A. No, ma'am. I'm sorry.

10 MS. SMITH: -- do you have questions for Mr. Tolliver?

11 MR. JARVIS: I do. My name is Immanuel Jarvis. I'm a
12 public member on the Commission. Thank you for coming in.

13 First question I have is how old were you at the time of
14 this incident on November 15, 2002?

15 THE WITNESS: 15 at the time.

16 MR. JARVIS: 15 years old?

17 THE WITNESS: Yes, sir.

18 MR. JARVIS: And what grade were you in?

19 THE WITNESS: The eighth.

20 MR. JARVIS: Eighth grade?

21 And what school did you attend?

22 THE WITNESS: Philo Middle.

23 MR. JARVIS: Philo?

24 THE WITNESS: Yes, sir.

25 MR. JARVIS: Did you like school?

1 **THE WITNESS:** I really didn't take to it too well.

2 **MR. JARVIS:** How were your grades?

3 **THE WITNESS:** Not too good.

4 **MR. JARVIS:** Did you attend class every day?

5 **THE WITNESS:** No, sir.

6 **MR. JARVIS:** Did you miss a lot of class?

7 **THE WITNESS:** Yes, sir.

8 **MR. JARVIS:** Had you ever been suspended from school?

9 **THE WITNESS:** Yes, sir.

10 **MR. JARVIS:** For what reason?

11 **THE WITNESS:** Different type of misconduct -- stuff like
12 that.

13 **MR. JARVIS:** Okay.

14 So how long had you known Jessicah Black?

15 **THE WITNESS:** Not long. Maybe two or three months --
16 maybe.

17 **MR. JARVIS:** When she came by, did she ever get out of
18 the car and actually come inside your house?

19 **THE WITNESS:** Never.

20 **MR. JARVIS:** Never?

21 **THE WITNESS:** Never in my house.

22 **MR. JARVIS:** Okay.

23 What about Bryant's house? Did she ever walk into
24 Bryant's house?

25 **THE WITNESS:** I can't recall but I could say she sat on

1 the porch with us.

2 **MR. JARVIS:** Okay.

3 So how did you know that one day, November 15, 2002,
4 that Jessica was actually driving by?

5 **THE WITNESS:** She pulled up right in front of the house.

6 **MR. JARVIS:** Okay.

7 And you guys were -- where were you at when she pulled
8 up?

9 **THE WITNESS:** In front of Bryant's house.

10 **MR. JARVIS:** Okay.

11 So you're in the front, outside?

12 **THE WITNESS:** Outside.

13 **MR. JARVIS:** So you saw her?

14 Okay. That's all I have right now.

15 **JUDGE LOCK:** Commissioner Colbert.

16 **MS. COLBERT:** Hi, Mr. Tolliver. I'm Robin Colbert.

17 **THE WITNESS:** How are you?

18 **MS. COLBERT:** Were you -- how did you happen to go to
19 the police station? I mean, what were the circumstances that you
20 ended up at the police station?

21 **THE WITNESS:** My mom, she made a call.

22 **MS. COLBERT:** Your mother may have called the police?

23 **THE WITNESS:** She -- no, she did call the police.

24 **MS. COLBERT:** When she called the police -- why did she
25 call the police? Do you know?

1 **THE WITNESS:** I still ask myself that to this day but
2 she told me that, she -- like, she knows we run around the
3 neighborhood so she figured we may have heard something or
4 anything.

5 **MS. COLBERT:** And then your mom called the police. And
6 then what happened? Did your mom take you to the police station?

7 **THE WITNESS:** No. She -- they said they would bring me
8 back. They told her they would bring me back in about an hour or
9 so.

10 **MS. COLBERT:** So how did you get to the police station?

11 **THE WITNESS:** The detectives.

12 **MS. COLBERT:** Do you remember what detectives took you
13 to the police station?

14 **THE WITNESS:** I remember their faces.

15 **MS. COLBERT:** Had you ever seen those detectives before,
16 like when y'all were running around the neighborhood?

17 **THE WITNESS:** I have.

18 **MS. COLBERT:** So you were familiar with them?

19 **THE WITNESS:** Yes.

20 **MS. COLBERT:** And they took you to the police station?

21 **THE WITNESS:** Yes, ma'am.

22 **MS. COLBERT:** How did you -- what time -- do you
23 remember what time they took you to the police station?

24 **THE WITNESS:** Around 3:30, 4:00.

25 **MS. COLBERT:** So it was around 3:30 or 4:00 o'clock?

1 **THE WITNESS:** Yes, ma'am.

2 **MS. COLBERT:** Do you remember what time you ultimately
3 left the police station? Or did you ever leave the police
4 station?

5 **THE WITNESS:** I left it in handcuffs with no shoes on.

6 **MS. COLBERT:** What time was that?

7 **THE WITNESS:** I want to say after 12:00 -- 11:00 or
8 12:00, yes, ma'am.

9 **MS. COLBERT:** Where did they take you after you left the
10 police station?

11 **THE WITNESS:** To be fingerprinted -- no. To the
12 detention center. I'm sorry. To the youth detention center.

13 **MS. COLBERT:** So they took you to youth detention
14 center?

15 **THE WITNESS:** (Nonverbal response.)

16 **MS. COLBERT:** Was your mom or anybody present, an adult
17 present, other than yourself?

18 **THE WITNESS:** No, ma'am.

19 **MS. COLBERT:** When you got to the detention center, were
20 you able to call someone and let somebody know that you were
21 there?

22 How did your parents know you were at -- I mean, how did
23 your mom know you were at the detention center?

24 **THE WITNESS:** They evidently -- they called her before I
25 left the -- when they arrested us, when they told her that we were

1 under the arrest at the police station.

2 MS. COLBERT: And that was around midnight of the same
3 day?

4 JUDGE LOCK: Yes, ma'am.

5 MS. COLBERT: Thank you.

6 THE WITNESS: No problem.

7 MR. BRITT: Mr. Tolliver, my name is Johnson Britt.
8 I've got a few questions.

9 You said that you don't know why your mother called the
10 police?

11 THE WITNESS: I am -- I don't know why she called them
12 to question us.

13 MR. BRITT: In all of these years, you've never asked
14 your mother why?

15 THE WITNESS: Yes, I -- yes, sir.

16 MR. BRITT: And what explanation did she give you?

17 THE WITNESS: The one I just -- the one about where she
18 said that she thought we may have heard something or -- because we
19 constantly running around the neighborhood.

20 MR. BRITT: And when you say "we" were constantly
21 running around the neighborhood, who did you run around the
22 neighborhood with?

23 THE WITNESS: Me and some of my codefendants sometimes
24 or it may be some people that you guys don't have on paper.

25 MR. BRITT: Okay.

1 And so did you see Mr. Jones' body?

2 THE WITNESS: When we went up to the crime scene that
3 night, yes.

4 MR. BRITT: How close did you get?

5 THE WITNESS: Not too close. I got -- I was still on
6 the side where the park was, but you could see the yard from right
7 there. You could see the yard, the carport and all of that.

8 MR. BRITT: And where did you see Mr. Jones' body?

9 THE WITNESS: Just laying there. Like, it was covered
10 up though.

11 MR. BRITT: So you never actually saw it?

12 THE WITNESS: I never actually saw him, him. I wasn't
13 that close, no.

14 MR. BRITT: Okay.

15 Had you ever seen a dead body before?

16 THE WITNESS: Not before then, not personally. I never
17 attended funerals or none of that stuff.

18 MR. BRITT: Okay.

19 How did that affect you?

20 THE WITNESS: I don't think it had the effect that
21 people thought. I was just -- it was just like, wow.

22 MR. BRITT: I mean, did the way that you were -- that
23 you acted in the days after seeing the body, did the way that you
24 acted change?

25 THE WITNESS: Not to me.

1 **MR. BRITT:** Okay.

2 Did you withdraw? Do you know what I mean by
3 "withdraw"?

4 **THE WITNESS:** When you say withdraw, you mean towards
5 family or period?

6 **MR. BRITT:** Kind of staying away from people and not
7 interacting with people --

8 **THE WITNESS:** Oh, no.

9 **MR. BRITT:** -- family, friends?

10 **THE WITNESS:** No.

11 **MR. BRITT:** Did you get quiet?

12 **THE WITNESS:** No.

13 **MR. BRITT:** How would you describe your personality?

14 **THE WITNESS:** I mean no, sir. I'm sorry.

15 I was the same, I think. I don't -- I don't see a
16 change. I didn't see a change in me.

17 **MR. BRITT:** Okay.

18 And with your friends, what was your personality like?

19 Were you loud? Were you quiet?

20 **THE WITNESS:** Quiet.

21 **MR. BRITT:** Mischievous?

22 **THE WITNESS:** No. Just quiet.

23 **MR. BRITT:** What kind of things --

24 **THE WITNESS:** Silent. Just quiet and laid back.

25 **MR. BRITT:** What kind of things did y'all do together?

1 **THE WITNESS:** Ride bikes, fix bikes. The worst -- the
2 worst trouble, we may break a window or steal a candy bar or
3 something like that, not kill nobody.

4 **MR. BRITT:** Okay.

5 So you got in some trouble.

6 **THE WITNESS:** Yes, sir.

7 **MR. BRITT:** Okay.

8 Of your friends, who would you consider the leader to be
9 when y'all were together?

10 **THE WITNESS:** Excuse me?

11 **MR. BRITT:** Of your friends, of your codefendants, when
12 y'all were together, who was the leader?

13 **THE WITNESS:** I don't -- we don't have a leader.

14 **MR. BRITT:** Nobody took charge --

15 **JUDGE LOCK:** No.

16 **MR. BRITT:** -- saying, "We're going to go to the park or
17 we're going to go to the store"?

18 **THE WITNESS:** No. It might be one person's idea and
19 everybody may agree upon it. There's no leader.

20 **MR. BRITT:** Okay.

21 Would you describe anyone in that group as a follower?

22 **THE WITNESS:** Not really. I mean, I guess everybody's a
23 leader and a follower at some point. I mean, we were friends.

24 **MR. BRITT:** You said you knew Jessicah Black.

25 **THE WITNESS:** Yes. For a short period of time, yes,

1 sir.

2 MR. BRITT: When and how did you meet Jessica Black?

3 THE WITNESS: There's this house next door to the house
4 my mom used to stay in, and she used to go with the boyfriend of
5 the woman who stayed there.

6 MR. BRITT: And that's guy that was called Opie?

7 THE WITNESS: Opie. Yes, sir.

8 MR. BRITT: And so how long did you know her before
9 Mr. Jones was killed?

10 THE WITNESS: Probably not long.

11 MR. BRITT: A month? Two months? When did she start
12 hanging out with Opie?

13 THE WITNESS: I want to say about a month and a half
14 or -- I know about a month, but -- month and a half, I think.

15 MR. BRITT: And did Opie hang out with you --

16 THE WITNESS: Not really, no.

17 MR. BRITT: -- and your friends?

18 THE WITNESS: We may have stood on their porch and
19 smoked weed from time to time, but other than that, no.

20 MR. BRITT: And so was it -- you met Jessica Black
21 because of Opie, the relationship she had with Opie?

22 Did you meet her because she smoked weed with you?

23 THE WITNESS: Yes.

24 MR. BRITT: And so she -- she would come to the
25 neighborhood a lot, wouldn't she?

1 **THE WITNESS:** Uh-huh. Yes, sir. I'm sorry.

2 **MR. BRITT:** Would she come every day?

3 **THE WITNESS:** Almost -- just about.

4 **MR. BRITT:** As soon as school got out?

5 **THE WITNESS:** Just about that time, yes, sir.

6 **MR. BRITT:** At what time did school get out?

7 **THE WITNESS:** I want to say about 2:30, 3:00-ish.

8 **MR. BRITT:** Okay.

9 And she didn't go to school in Winston-Salem, did she?

10 **THE WITNESS:** No, sir.

11 **MR. BRITT:** She went over in Davidson County?

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** How far was it from Winston-Salem to where
14 she stayed?

15 **THE WITNESS:** I want to say about 10 -- maybe 10, 12
16 minutes.

17 **MR. BRITT:** Okay.

18 And you said earlier that day or the day -- the night
19 this happened, the group went over to Davidson County?

20 **THE WITNESS:** We did.

21 **MR. BRITT:** What you do over there?

22 **THE WITNESS:** We went to her grandma's house.

23 **MR. BRITT:** Was her granddaddy there?

24 **THE WITNESS:** Her grandma.

25 **MR. BRITT:** Her grandmother?

1 **THE WITNESS:** I'm not sure. I didn't see anyone. She
2 just went in the house.

3 **MR. BRITT:** Did y'all stay in the car?

4 **THE WITNESS:** Yes. I've never seen her grandmother.

5 **MR. BRITT:** Okay.

6 And was it dark then?

7 **THE WITNESS:** It was dark.

8 **MR. BRITT:** Was that before or after you saw the police?

9 **THE WITNESS:** After.

10 **MR. BRITT:** So the first recollection you have of
11 Mr. Jones being killed is you said y'all were in the park and you
12 saw a big crowd of detectives?

13 **THE WITNESS:** No. My first recollection is when we
14 pulled up and I seen all the lights.

15 **MR. BRITT:** And that was after you had been to the
16 bowling alley?

17 **THE WITNESS:** No. We went to the bowling alley after
18 that.

19 **MR. BRITT:** All right.

20 So when you pulled up, where had you been?

21 **THE WITNESS:** Coming from Bryant's house to drop Jed
22 off.

23 **MR. BRITT:** Okay.

24 And Jed lived near there?

25 **THE WITNESS:** Yeah. He stayed on Moravia.

1 **MR. BRITT:** He stayed on Moravia?

2 **THE WITNESS:** On Moravia.

3 **MR. BRITT:** And so did you have to pass Mr. Jones' house
4 to get to Jed's?

5 **THE WITNESS:** According on which way you came, but the
6 way we came, we didn't pass his house.

7 **MR. BRITT:** So from -- thank you.

8 Now, Chris lived up on Devonshire?

9 **THE WITNESS:** Yes, sir.

10 **MR. BRITT:** And so if you came from Chris's house to
11 Jed's house, which -- what streets would you take?

12 **THE WITNESS:** You would make a right on Urban and go all
13 the way down to the bottom of the hill, all the way to the dead
14 end, and make a left.

15 **MR. BRITT:** Urban and Moravia intersect?

16 **THE WITNESS:** Yes.

17 **MR. BRITT:** Right there near the church?

18 **THE WITNESS:** Yes.

19 **MR. BRITT:** Did you drive by the park?

20 **THE WITNESS:** Yes, sir -- no -- yeah. Yeah, you'll come
21 from the end -- yeah. Yeah. You'll ride by the park. The church
22 is -- would be on your right if you're coming from the way I'm
23 talking about.

24 **MR. BRITT:** Okay.

25 And the park would be on your left; is that correct?

1 **THE WITNESS:** Yes, sir.

2 **MR. BRITT:** And do you recall where Mr. Jones' house was
3 located?

4 **THE WITNESS:** Yes. Yes.

5 **MR. BRITT:** Was it on the right or the left?

6 **THE WITNESS:** It's on the left.

7 **MR. BRITT:** And so where did Jed live in relationship to
8 Mr. Jones?

9 **THE WITNESS:** He stays -- and if you're coming up that
10 street, you turn on -- as soon as you make a left on Moravia at
11 the end that I came from, it will be your -- I think the second or
12 third house on the right, with the fence on the outside.

13 **MR. BRITT:** Okay.

14 Was that before you get to Mr. Jones'?

15 **THE WITNESS:** Yes. Yes, sir.

16 **MR. BRITT:** So it's near the church? Or is it not
17 quite --

18 (Overlapping speakers.)

19 **THE WITNESS:** It's -- no, you don't pass the church.
20 You know, it's another church down there too. It's a white church
21 on the corner and then when you turn, it's another church, the
22 bigger church that's right there in the middle, right across from
23 the park.

24 **MR. BRITT:** All right.

25 So Jed lived before you got to the bigger church?

1 **THE WITNESS:** Yes, depending on which way you came.

2 **MR. BRITT:** The way you've testified that y'all came.

3 **THE WITNESS:** Yes, sir.

4 **MR. BRITT:** Okay. Thank you.

5 Did anybody say anything about the police being there?

6 **THE WITNESS:** At what time?

7 **MR. BRITT:** When y'all first saw them.

8 **THE WITNESS:** Why would -- no.

9 **MR. BRITT:** You didn't say, "Wow, what happened? Let's
10 stop. Let's say" --

11 **THE WITNESS:** When we got -- yeah, everybody -- I mean,
12 yeah, we just stopped and everybody got out.

13 **MR. BRITT:** Okay.

14 Did the police talk to you then?

15 **THE WITNESS:** No, sir.

16 **MR. BRITT:** Did anybody talk to you?

17 **THE WITNESS:** Nobody but Latoya Mashack.

18 **MR. BRITT:** Okay.

19 And so then y'all went on about your business after
20 that?

21 **THE WITNESS:** We went on to proceed to Davie County
22 [sic], then the bowling alley.

23 **MR. BRITT:** Okay.

24 And so the next day, on Saturday, did you see any of
25 your buddies?

1 **THE WITNESS:** More than likely, yes, sir.

2 **MR. BRITT:** Did y'all talk about Mr. Jones getting
3 killed and wondering what happened to him?

4 **THE WITNESS:** No. Nobody discussed it.

5 **MR. BRITT:** Okay.

6 **THE WITNESS:** We were young.

7 **MR. BRITT:** And so the police come to your house because
8 your mom has called them.

9 **THE WITNESS:** Yes, sir.

10 **MR. BRITT:** And you go to the police -- they ask you to
11 go to the police department with them.

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** And they start questioning you about what
14 happened to Mr. Jones.

15 **THE WITNESS:** Yes, sir. Well, that's not exactly how it
16 went.

17 **MR. BRITT:** Okay.

18 How did it go?

19 **THE WITNESS:** We were leaving my mom's house. They
20 were quiet. Then I asked them, I was like, "What's going on?"

21 They're like, "We'll tell you when we get downtown -- I
22 mean when we get to the public safety center."

23 So I'm like, "Okay." I didn't do nothing.

24 So eventually, like, we get a little bit -- like two
25 more minutes down the road, then they start asking me questions

1 about it. They're like, "What do you know about what happened
2 around the corner?"

3 I'm like, "What you mean?" At this time, it's still not
4 registering.

5 So then they come with -- they gave me, like -- what
6 they say? They said, "What about the murder of the man that
7 happened around the corner from your mom?"

8 I'm like, "I don't know what are you -- what you're
9 talking about. I don't -- like, yeah, I'm aware of it."

10 "We know."

11 And that's when, like, they just kept bombarding me with
12 different questions.

13 **MR. BRITT:** How many officers did you ride with?

14 **THE WITNESS:** Two.

15 **MR. BRITT:** Were they in uniform or were they in
16 plainclothes?

17 **THE WITNESS:** Plainclothes.

18 **MR. BRITT:** Were those the officers that tried to
19 interview you?

20 **THE WITNESS:** Yes, sir.

21 **MR. BRITT:** For the entire time you were at the --

22 **THE WITNESS:** Not the entire time, no. I was --

23 **MR. BRITT:** How many other officers do you remember
24 trying to interview you?

25 **THE WITNESS:** Numerous. Even a lieutenant.

1 **MR. BRITT:** How did they act towards you?

2 **THE WITNESS:** At first, they were calm, but they got
3 aggressive, and -- yeah. They were --

4 **MR. BRITT:** When you say "got aggressive," what do you
5 mean by that?

6 **THE WITNESS:** Hands on the table. Like, "We know you
7 did this" and stuff like that.

8 **MR. BRITT:** They raised their voices?

9 **THE WITNESS:** Yes, sir.

10 **MR. BRITT:** And so you're initially in a room, an
11 interview room?

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** They didn't leave you there for a period of
14 time?

15 **THE WITNESS:** They kept leaving me there, yeah.

16 **MR. BRITT:** When they -- after the first time you were
17 left in the interview room, did they come back and start asking
18 you questions all over again?

19 **THE WITNESS:** Yes.

20 **MR. BRITT:** At any time, did a today police officer tell
21 you pieces of information?

22 **THE WITNESS:** Yes.

23 **MR. BRITT:** Like what kind of things did they tell you?

24 **THE WITNESS:** They'll ask me like -- you know, they'll
25 say, "Where is the wallet?" Or, "How did you -- where is the --

1 how did you get" -- like -- I don't want to say anything wrong.

2 MR. BRITT: Let's talk about the wallet.

3 JUDGE LOCK: Yes, sir.

4 MR. BRITT: You said that you left with the police and
5 went to the mall --

6 THE WITNESS: Yes, sir.

7 MR. BRITT: -- to look for the wallet.

8 THE WITNESS: Yes, sir.

9 MR. BRITT: And it's your testimony that you made that
10 up.

11 THE WITNESS: I made that up, yes, sir.

12 MR. BRITT: Why did you make up going to the mall?

13 THE WITNESS: Because it was already in our plans in the
14 first place.

15 MR. BRITT: What was already in your plans?

16 THE WITNESS: Going to the mall.

17 MR. BRITT: Had you told the police that?

18 THE WITNESS: Yes, that's why they had me --

19 MR. BRITT: How did you tell the police that you've
20 gotten to the mall?

21 THE WITNESS: The city bus.

22 MR. BRITT: Where was Jessicah?

23 THE WITNESS: At the time?

24 MR. BRITT: Yes.

25 THE WITNESS: I don't know.

1 **MR. BRITT:** And what day did you tell them that you went
2 to the mall?

3 **THE WITNESS:** The day that they questioned me.

4 **MR. BRITT:** That very day?

5 **THE WITNESS:** That day that they questioned me.

6 **MR. BRITT:** And so --

7 **THE WITNESS:** But we didn't -- we never went to the mall
8 that day.

9 **MR. BRITT:** You never went?

10 **THE WITNESS:** No. We never went that day. I think we
11 went the next, day and that's when Jessica was around -- there.

12 **MR. BRITT:** Did you tell them a certain location at the
13 mall where this wallet was thrown away?

14 **THE WITNESS:** I just said out the bus window. I never
15 said --

16 **MR. BRITT:** Who did you say threw it out the bus window?

17 **THE WITNESS:** I don't recall that.

18 **MR. BRITT:** So you just said that y'all threw it out but
19 you didn't make up who actually threw --

20 (Overlapping speakers.)

21 **THE WITNESS:** I said -- I said a name, but I don't
22 recall whose name I said at this time.

23 **MR. BRITT:** Well, was it Christopher? Was it Rayshawn?

24 **THE WITNESS:** I can't -- I don't remember whose name I
25 said.

1 **MR. BRITT:** Was it Dorrell was? Was it Nathaniel?

2 **THE WITNESS:** I can't remember. It was a bunch of lies.
3 I can't remember exactly what I said -- whose name I said.

4 **MR. BRITT:** And you actually got out with them and
5 showed them --

6 **THE WITNESS:** I stood -- no. I stood on the side of the
7 curb while they just looked around.

8 **MR. BRITT:** And were you actually in the mall parking
9 lot area or were you on the street?

10 **THE WITNESS:** We were -- you know where the McDonald's
11 is? We were right there on that hill. They were canvassing the
12 hill right there and then across the street on the other side, and
13 that's it.

14 **MR. BRITT:** Do you know the names of the streets?

15 **THE WITNESS:** I don't. But I know that McDonald's is
16 right here. And on the other side, you've got the Toys "R" Us.
17 So it's in the middle of that, all that area in between there.

18 **MR. BRITT:** Would that have been near a bus stop?

19 **THE WITNESS:** Yes, sir.

20 **MR. BRITT:** They don't find anything.

21 **THE WITNESS:** No, sir.

22 **MR. BRITT:** Got back to the police department. What
23 then happens?

24 **THE WITNESS:** Just some more questions. Oh, I left
25 out -- they bought me something to eat.

1 **MR. BRITT:** Okay.

2 **THE WITNESS:** Yeah.

3 **MR. BRITT:** But you go back to the police department or
4 to the public safety center. And they resume questioning?

5 **THE WITNESS:** And I told them again I didn't do it. And
6 I tell them that is -- I've been lying to them, and they don't
7 believe it.

8 **MR. BRITT:** So you tell them that you've been lying to
9 them --

10 **THE WITNESS:** Yes.

11 **MR. BRITT:** -- about the wallet?

12 **THE WITNESS:** About -- yes, about even --

13 **MR. BRITT:** About where you went?

14 **THE WITNESS:** Yes.

15 **MR. BRITT:** And so they continue to question you?

16 **THE WITNESS:** And badgering me, yes, sir.

17 **MR. BRITT:** When did you become aware -- or did you
18 become aware that any of your friends were there?

19 **THE WITNESS:** I -- it was a little later, but I don't --
20 the way they's like -- the way they said it, it was like, "Oh,
21 he's in there saying you did this, Oh, he's in there saying you
22 did that."

23 **MR. BRITT:** Okay.

24 **THE WITNESS:** And that was about -- I want to say
25 probably about an hour, hour and a half after I was down there.

1 **MR. BRITT:** And then at some point, you say you just
2 kind of gave up. Is that fair -- a fair description?

3 **THE WITNESS:** Yeah. I kind of stopped fighting. I was
4 like, man, I didn't -- "I don't know what you want me to say, but
5 okay."

6 **MR. BRITT:** All right.

7 Now, you understand that we have had an opportunity to
8 listen to the recorded statement that you gave --

9 **THE WITNESS:** Yes, sir.

10 **MR. BRITT:** -- the police?

11 **THE WITNESS:** Yes, sir.

12 **MR. BRITT:** And in it, you make certain admissions. You
13 understand that?

14 **THE WITNESS:** Yes, sir.

15 **MR. BRITT:** You implicate your friends.

16 **THE WITNESS:** Yes, sir.

17 **MR. BRITT:** And you implicate yourself in this crime.

18 **THE WITNESS:** Yes, sir.

19 **MR. BRITT:** Can you explain why you implicated yourself
20 and then your friends?

21 **THE WITNESS:** Yes.

22 **MR. BRITT:** Okay. Please do.

23 **THE WITNESS:** Because I thought I was going home. I did
24 exactly what they asked me to do.

25 **MR. BRITT:** Explain for me why you thought you were

1 going to go home if you're telling the police that you and your
2 friends went to do a like, a man got beaten up, and then you
3 learned that he dies.

4 What makes you think you were going to go home?

5 **THE WITNESS:** Now?

6 **MR. BRITT:** No, then.

7 **THE WITNESS:** Oh, then? I don't know. I was a kid. I
8 don't know. I just thought if I did what they said, they were
9 going to return me to my mom.

10 **MR. BRITT:** Well, today what makes you think that they
11 were going to let you go?

12 **THE WITNESS:** Today as a man now, I know I was a fool.

13 **MR. BRITT:** During the time that you were locked up --
14 not prison, but detention center -- did you get transferred to the
15 jail at some point?

16 **THE WITNESS:** Yes. When I was -- when I turned 16.

17 **MR. BRITT:** Did you and Rayshawn, Nathaniel,
18 Christopher, or Dorrell -- were you in the same cells?

19 **THE WITNESS:** Not the same cell, no. But they -- in the
20 detention center, they kept us -- how you say it?

21 **MR. BRITT:** Separated?

22 **THE WITNESS:** Yes. Like, they had us on, like, timer.
23 Like these two would come out together, then the three of us will
24 come out together.

25 **MR. BRITT:** But did you ever talk with them while you

1 were in jail?

2 **THE WITNESS:** Yeah.

3 **MR. BRITT:** And did you ever ask any of them, "Hey, why
4 did you say this stuff about me?"

5 **THE WITNESS:** Yes.

6 **MR. BRITT:** What did they tell you?

7 **THE WITNESS:** The same thing I said. "We didn't know
8 what to do. We were scared. We didn't know what to do."

9 **MR. BRITT:** And did you ever talk with them about
10 exactly what it is that they said that you did?

11 **THE WITNESS:** Yeah.

12 **MR. BRITT:** Not the police, your friends.

13 **THE WITNESS:** Yeah. But I never really cared too much
14 because I knew it was a lie. Like, I never really, like, got
15 angry with them over it or none of that because I knew we were all
16 lying.

17 **MR. BRITT:** And did they ever ask you about what it was
18 that you said?

19 **THE WITNESS:** Yeah. It was in paper, yeah.

20 **MR. BRITT:** It was in the paper?

21 **THE WITNESS:** No. It was in paper, like we couldn't --
22 we all like, our lawyers and stuff, was sending us papers.

23 **MR. BRITT:** When you got your discovery?

24 **THE WITNESS:** Uh-huh.

25 **MR. BRITT:** So it was when you got your discovery that

1 you realized that your friends may have ratted you out?

2 **THE WITNESS:** No. I knew that before then. We -- we
3 seen each other before then.

4 **MR. BRITT:** Okay. What about in prison? Were you ever
5 housed with any of them, at the same units?

6 **THE WITNESS:** For a little while at Foothills, but they
7 never kept us around each other long.

8 **MR. BRITT:** And while you were in prison, did you talk
9 about the case?

10 **THE WITNESS:** Not to nobody that don't have -- it don't
11 concern, really. Like if somebody --

12 **MR. BRITT:** I'm talking about to your friends.

13 **THE WITNESS:** Not really, no. Not about the case, no.

14 **MR. BRITT:** You got out.

15 **THE WITNESS:** Yes, sir.

16 **MR. BRITT:** How long have you been out now?

17 **THE WITNESS:** I got out February 3, 2017.

18 **MR. BRITT:** So you're no longer on post supervision
19 release.

20 **THE WITNESS:** None of that.

21 **MR. BRITT:** Since you've been out, have you talked to
22 them about what happened?

23 **THE WITNESS:** Not really, no. Like, we've -- we've
24 talked but not really -- because my lawyer told me don't talk
25 to -- talk about the case.

1 **MR. BRITT:** Okay.

2 Your lawyers who represent you before the Commission?

3 **THE WITNESS:** Period.

4 **MR. BRITT:** Okay.

5 The -- have you talked to Hunter?

6 **THE WITNESS:** I have.

7 **MR. BRITT:** How did you come in contact with Hunter?

8 **THE WITNESS:** Through Facebook. He kept trying to
9 contact me through Facebook. And at first, I was like it's
10 somebody trying to get a story, uh-uh. So it took me a while to
11 even sit down with him.

12 **MR. BRITT:** What made you sit down with him?

13 **THE WITNESS:** Hmm. He had a certain type of, like -- he
14 wanted it too bad, and I wanted to know what he wanted to know.

15 **MR. BRITT:** What did he tell you? Did he tell you why
16 he wanted to talk to you?

17 **THE WITNESS:** He told me it was about my case.

18 **MR. BRITT:** Did he tell you it was -- it had to do with
19 Chris Paul?

20 **THE WITNESS:** I know he was a reporter out in Houston.
21 He didn't really say too much that it had to do with him.

22 **MR. BRITT:** So did Hunter tell you that he was trying to
23 help you get this straightened out?

24 **THE WITNESS:** No. He just told me things didn't look
25 right.

1 **MR. BRITT:** Okay.

2 Did he ever ask you for anything if he was able to help
3 you?

4 **THE WITNESS:** Meaning?

5 **MR. BRITT:** Did he ask you if you got money, would you
6 give him any?

7 **THE WITNESS:** No, sir.

8 **MR. BRITT:** Did he ask you if he wrote a book about
9 it that -- or if you wrote a book about what happened to you, that
10 you would split any money with him?

11 **THE WITNESS:** No, sir.

12 **MR. BRITT:** Are you aware that he was talking to other
13 people?

14 **THE WITNESS:** "Other people" meaning --

15 **MR. BRITT:** Your friends, I'm sorry.

16 **THE WITNESS:** Oh, yeah. Yeah.

17 **MR. BRITT:** And was he --

18 **THE WITNESS:** They told me he was trying --

19 **MR. BRITT:** -- telling you what they were saying?

20 **THE WITNESS:** No, they were saying, no. But he told me
21 he was talking to them.

22 **MR. BRITT:** Did he tell you he had talked to Jessicah?

23 **THE WITNESS:** No. Last I heard from him, he told me
24 that he got in contact with her over the phone but it was brief.
25 He never told me anything else.

1 **MR. BRITT:** When is the last time you talked to him or
2 communicated with him?

3 **THE WITNESS:** I want to say not really since this has
4 been going on. Not really -- not since I've been assigned a
5 lawyer and all that, no. I haven't talked to him about anything.

6 **MR. BRITT:** So did you stop talking to him when you
7 applied for the Commission and the Commission approached you?

8 **THE WITNESS:** Not right -- I stopped talking to him when
9 my lawyer told me to stop talking to him.

10 **MR. BRITT:** Okay.
11 You filed your claim in 2019?

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** Okay.
14 So you haven't spoken with Hunter since then?

15 **THE WITNESS:** Not since it took -- I want to say -- I
16 can't say -- I haven't spoken to him, no. But the last text I got
17 from him was, like, three months ago.

18 **MR. BRITT:** Okay.
19 As a point of reference, you filed your claim around
20 Thanksgiving --

21 **THE WITNESS:** Yes, sir.

22 **MR. BRITT:** -- of last year.

23 **THE WITNESS:** Yes, sir.

24 **MR. BRITT:** Have you talked -- when I say last year,
25 2019.

1 Have you talked with him since then?

2 THE WITNESS: Since November last year? I want to
3 say -- I might be wrong, I think so, but not about the case. He
4 sent my mom some flowers, and that was the last -- I think that
5 was the last time I heard from him.

6 MR. BRITT: Do you still use Facebook?

7 THE WITNESS: Not really no, not much.

8 MR. BRITT: Has he tried to reach you on Facebook?

9 THE WITNESS: No, sir.

10 MR. BRITT: Text messages?

11 THE WITNESS: No, sir.

12 MR. BRITT: E-mails?

13 THE WITNESS: No, sir.

14 MR. BRITT: All right. Thank you.

15 MR. EDWARDS: Mr. Tolliver, good morning.

16 THE WITNESS: Good morning.

17 MR. EDWARDS: Back in 2002, when you were 14, running
18 around the neighborhood, did you -- did one of these guys -- were
19 you closer to one of them a little bit more than maybe the others?

20 THE WITNESS: Yeah.

21 MR. EDWARDS: Who was that?

22 THE WITNESS: Bryant.

23 MR. EDWARDS: Christopher Bryant?

24 THE WITNESS: Yeah.

25 MR. EDWARDS: Okay.

1 So the two of you were a little bit closer?

2 **THE WITNESS:** Yeah. Because my brother has a baby by
3 his sister. So it kind of --

4 **MR. EDWARDS:** And he went by Bubba; is that right?

5 **THE WITNESS:** Yes, sir. Correct.

6 **MR. EDWARDS:** And Nathaniel Cauthen, his nickname was
7 Stinky?

8 **THE WITNESS:** Uh-huh.

9 **MR. EDWARDS:** Now, who went by the nickname Black?

10 **THE WITNESS:** Rayshawn.

11 **MR. EDWARDS:** Okay.

12 So Rayshawn Banner goes by the nickname Black.

13 Did you have a nickname?

14 **THE WITNESS:** No.

15 **MR. EDWARDS:** Okay.

16 I hadn't heard of one this week.

17 **THE WITNESS:** No. Jermal, that's it.

18 **MR. EDWARDS:** So you're just Jermal?

19 **THE WITNESS:** Yes, sir.

20 **MR. EDWARDS:** All right.

21 Now, I understand, Mr. Tolliver, that you and -- as well
22 as the other defendants assert, allege that when you gave these
23 statements back in 2002 to the police, that they were coerced.

24 **THE WITNESS:** Yes, sir.

25 **MR. EDWARDS:** I get that. I want to ask you about one

1 particular thing, and it involves the shoe print on the hood of
2 Mr. Jones' vehicle that was found by the police and testified to
3 at the trials.

4 Now, we have the detective's notes from 2002 -- and,
5 again, I understand your position on, you know, the statement that
6 you made -- but the detective and his notes indicate that at some
7 point during the -- your interrogation, he called your mother --

8 **THE WITNESS:** Yes, sir.

9 **MR. EDWARDS:** -- and you her mother said she was going
10 to come down to the public safety center and make you talk.

11 **THE WITNESS:** Mm-hmm.

12 **MR. EDWARDS:** And the officer told you that your mother
13 said for you to tell the truth or for you talk with him.

14 Do you remember that?

15 **THE WITNESS:** I do remember that.

16 **MR. EDWARDS:** All right.

17 One of the things that you said following that was
18 Rayshawn -- according to the cop: "Rayshawn stood on the car,
19 trying to get in the van."

20 Do you recall telling the police that Rayshawn stood on
21 the car?

22 **THE WITNESS:** I don't recall. I really don't.

23 **MR. EDWARDS:** Okay.

24 Now, do you recall at trial the testimony that -- well,
25 let me back up.

1 At the time that that statement was made to the police
2 about Rayshawn standing on the car, as far as you know, no Air
3 Force 1s had been confiscated and tested, and that there had been
4 no comparison between anybody's shoes and that shoe print; right?

5 **THE WITNESS:** At the time?

6 **MR. EDWARDS:** Yeah. The time that you were at the
7 police center, just a few days after.

8 **THE WITNESS:** Oh, no. No. There's no way I could
9 have -- no.

10 **MR. EDWARDS:** Right.

11 So do you recall the testimony at the trial that the
12 shoe print essentially matched one of the Air Force 1s that was
13 taken from Rayshawn and Nathaniel's house?

14 **THE WITNESS:** I don't recall saying that.

15 **MR. EDWARDS:** No. I'm saying, not -- my question is do
16 you recall the trial --

17 **THE WITNESS:** At the trial.

18 **MR. EDWARDS:** -- the prosecutor putting some evidence, a
19 witness getting up there and testifying, that the shoe -- pair of
20 Air Force 1s taken from Rayshawn and Nathaniel's house matched the
21 shoe print that was --

22 **THE WITNESS:** -- found.

23 **MR. EDWARDS:** -- impression of the hood of the car?
24 Do you remember that testimony?

25 **THE WITNESS:** I do remember that.

1 **MR. EDWARDS:** Okay.

2 Ms. Bridenstine, who's sitting to your right, do you
3 recall her interviewing you back in February of 2018?

4 **THE WITNESS:** I do.

5 **MR. EDWARDS:** All right.

6 And do you recall her asking you about if you remember
7 what shoes everybody was wearing that night?

8 **THE WITNESS:** I remember the interview. I can't
9 remember every question.

10 **MR. EDWARDS:** Okay.

11 And I believe she asked you: "Do you recall what shoes
12 Rayshawn Banner was wearing?"

13 And -- reading from the transcript, and you said: "No,
14 but I know that they said that shoe print they found matched
15 Rayshawn Banner's shoe print" -- meaning "they" being the
16 testimony at the trial.

17 **THE WITNESS:** The people in the -- uh-huh.

18 **MR. EDWARDS:** Okay.

19 And there's some discussion about Air Force 1s and how
20 popular they were back in 2002 and still popular.

21 **THE WITNESS:** Uh-huh.

22 **MR. EDWARDS:** Is that a fair statement?

23 **THE WITNESS:** That's fair to stay.

24 **MR. EDWARDS:** All right.

25 I guess my point is, even though in your statement that

1 you made in 2002 to the police, at that time, the police had no
2 way of knowing whether Rayshawn Banner's or Nathaniel Cauthen's
3 shoes were a match to the shoe print on the hood of that car?

4 **THE WITNESS:** Uh-huh.

5 **MR. EDWARDS:** All right.

6 But that's ultimately what they determined.

7 **THE WITNESS:** That's true.

8 **MR. EDWARDS:** All right.

9 **THE WITNESS:** They said it was -- the exact shoe print?

10 **MR. EDWARDS:** They said it was consistent with -- in
11 size, shape, I forget the third -- and wear pattern of the shoes
12 taken from Rayshawn and Nathaniel's house.

13 But aside from what you said, I want to ask you, really,
14 about what your family said. Now, Mr. Britt has asked you this
15 morning about the day after and the weekend following Mr. Jones'
16 murder, how you were acting --

17 **THE WITNESS:** Yes, sir.

18 **MR. EDWARDS:** -- and were you acting any differently and
19 those kinds of things.

20 Now, within a few days of Mr. Jones' murder, the police
21 talked to your mother. They talked to Yolanda, your sister. They
22 talked to, I believe, your brother -- is it Thayers?

23 **THE WITNESS:** Thayers, yes, sir.

24 **MR. EDWARDS:** All three of them?

25 **THE WITNESS:** Yes, sir.

1 **MR. EDWARDS:** According to the police, now, all three of
2 them told the police that after Mr. Jones was killed, that you
3 were not yourself, that you were keeping to yourself, you went to
4 your room, some of them even said they saw you basically balled up
5 in a fetal position, you know, like a little -- like a baby in
6 their mama's womb, crying.

7 **THE WITNESS:** Uh-huh.

8 **MR. EDWARDS:** Do you remember that?

9 **THE WITNESS:** I remember the statements but they're
10 inaccurate.

11 **MR. EDWARDS:** So that's not true?

12 **THE WITNESS:** That's not true.

13 **MR. EDWARDS:** All right.

14 No, Yolanda -- you were 14 at the time; she was 16 at
15 the time.

16 **THE WITNESS:** I was 15.

17 **MR. EDWARDS:** Oh, so you were 15?

18 **THE WITNESS:** She was 16.

19 **MR. EDWARDS:** She was 16 at the time --

20 **THE WITNESS:** Yes, sir.

21 **MR. EDWARDS:** -- is that right?

22 **THE WITNESS:** Yes, sir.

23 **MR. EDWARDS:** And she had a small baby at the time when
24 Mr. Jones was killed.

25 **THE WITNESS:** Yes, sir.

1 **MR. EDWARDS:** Now, why would your sister, who's not a
2 suspect in this crime -- why would she tell police that on the
3 Sunday following Mr. Jones' murder -- so Mr. Jones was killed on
4 Friday, on that following Sunday, she tells police that she
5 overhears you and Christopher Bryant, or Bubba --

6 **THE WITNESS:** Yes, sir.

7 **MR. EDWARDS:** -- whom you've indicated you were closer
8 to than the others.

9 **THE WITNESS:** Yes, sir.

10 **MR. EDWARDS:** Why would she say that she heard the two
11 of you talking about being at the park with a white girl and
12 watching Stinky, Rayshawn, Anjuan, and Black go to the man's
13 house?

14 **THE WITNESS:** My sister told me the reason she said
15 that, she said she was under the same type of attack that we were.

16 **MR. EDWARDS:** Even though she was not a suspect in the
17 crime?

18 **THE WITNESS:** Even though. They made her feel like one,
19 I guess.

20 **MR. EDWARDS:** Why would she say that -- in addition, the
21 other boy there, Dorrell Brayboy -- she said that "Dorrell did not
22 go all the way to the house but he knew what the other boys were
23 doing"? She did say that Bubba was doing most of the talking
24 during this conversation.

25 Let me just stop.

1 Do you remember -- it would have been -- the Sunday
2 following the murder, was Bubba over at your house and were y'all
3 talking about the crime?

4 **THE WITNESS:** We didn't do a crime. There was no crime
5 to talk about.

6 **MR. EDWARDS:** I didn't ask if you were talking about
7 what you did, but were you just discussing it?

8 **THE WITNESS:** No. No, sir. Discussing -- what would we
9 discuss?

10 **MR. EDWARDS:** I'm just asking you. Two days afterwards,
11 did he come over to your house, "Man, I can't believe what just
12 happened to that old man"?

13 **THE WITNESS:** No. We were kids. We weren't thinking
14 about stuff like that. Like, after we seen it, it's, like,
15 forgotten. Like, nobody's really thinking -- just think about it.
16 I'm pretty sure -- I know everybody in here's been 15 before. So
17 after you -- the only thing we worried about is remote control
18 cars and bubblegum.

19 **MR. EDWARDS:** Well, do you recall if Christopher Bryant
20 or Bubba even came over to your house that weekend?

21 **THE WITNESS:** I can't say, but we stayed right across
22 the street from each other, like ...

23 **MR. EDWARDS:** I understand this is, you know, almost
24 18 years ago and it's hard to remember details.

25 **THE WITNESS:** I mean, I don't want to say yes to

1 something that I didn't -- that I don't mean to say yes to.

2 **MR. EDWARDS:** Now, again, why would Yolanda tell police
3 a detail such as one of the boys went jogging down in front of
4 Mr. Jones' house to make sure everything was okay, then jogged
5 back and told the rest of the group it was okay to go, you know,
6 commit this robbery?

7 Why would she just make that up?

8 **THE WITNESS:** The same way that you made up the rest of
9 the story.

10 See, I don't know. I don't know. You've got me wanting
11 to ask her now. I've never asked her that because I've never
12 really dug that deep down into her statement. She told me, from
13 2006 or '7, she said that's not even her statement.

14 **MR. EDWARDS:** Would this have been a true statement when
15 Yolanda told the police, the day after Mr. Jones' murder, she said
16 that she did not see "them," which is all the boys -- she did not
17 see them or the white girl the day after, which would have been
18 Saturday.

19 She said that Christopher Bryant stays at their house
20 all the time.

21 So that would be a true statement. He was over there a
22 lot; right?

23 **THE WITNESS:** Over where?

24 **MR. EDWARDS:** At your house back during that time.

25 **THE WITNESS:** Yeah, back and forth. I was at his house,

1 he was at my house. Like I said, we were right across the street
2 from each other. Like, you take three steps, and I'm in his front
3 yard.

4 **MR. EDWARDS:** "She advised that Jermal Tolliver cried
5 while in bed and he stayed in one spot. She stated that she got
6 up and asked Jermal Tolliver what was wrong and he told her that
7 it was none of her business."

8 Did that happen?

9 **THE WITNESS:** No, sir. I don't recall. It doesn't even
10 sound familiar.

11 **MR. EDWARDS:** Ms. Tolliver stated that "Jermal Tolliver
12 got up and asked for a cigarette and talked to her. She stated
13 that he told her that if he spoke to the law, something bad was
14 going to happen."

15 Did you say that to her?

16 **THE WITNESS:** I didn't ever smoke cigarettes at that
17 time.

18 **MR. EDWARDS:** Well, did you say that to her?

19 **THE WITNESS:** No, sir.

20 **MR. EDWARDS:** One more thing. Do you recall an incident
21 a few days before Mr. Jones was killed -- I'm not sure if it was
22 just a couple of days; it could have been a week -- when
23 detectives were kind of walking around the neighborhood and they
24 walked up in your yard, and you were out on the porch and I think
25 Rayshawn and Nathaniel Cauthen were out there and your mother.

1 Do you recall a detective or two speaking with your
2 mother?

3 **THE WITNESS:** I don't. I don't. No, sir.

4 **MR. EDWARDS:** Those are my questions. Thank you.

5 **JUDGE LOCK:** Commissioner Essary.

6 **MS. ESSARY:** Thank you for coming today, Mr. Tolliver.
7 My name is Melissa Essary, and I want to go back to the night of
8 the murder when you were the interrogation room.

9 Do you remember how long you were in that room before
10 they started recording your confession?

11 **THE WITNESS:** Yes. They started immediately.

12 **MS. ESSARY:** I'm asking how -- from the time you got in
13 the police -- let me actually retract that.

14 From the moment you were in the interrogation room --
15 when they started questioning you in the interrogation room, not
16 in the police car, I understand they started asking then -- but
17 from the interrogation room, how many hours were you in there
18 before you gave your taped confession?

19 Do you remember?

20 **THE WITNESS:** I want to say a long time. I can't even
21 remember.

22 **MS. ESSARY:** Okay.

23 Was it hours?

24 **THE WITNESS:** I want to -- yes, before I gave a taped
25 confession?

1 MS. ESSARY: Yes.

2 THE WITNESS: Yes.

3 MS. ESSARY: You said earlier that there were numerous
4 police officers that came and went --

5 THE WITNESS: Yes, ma'am.

6 MS. ESSARY: -- during that time; is that correct?

7 THE WITNESS: Yes, ma'am.

8 MS. ESSARY: Were you being told what your other
9 codefendants were telling at any time about you or the incident?

10 THE WITNESS: Yes, sir -- I'm sorry. Yes, ma'am. I'm
11 sorry.

12 MS. ESSARY: So can you -- I know this is hard, but
13 you've had a lot of years to think about what happened in those
14 hours in that room; is that correct?

15 THE WITNESS: Yes, ma'am.

16 MS. ESSARY: And I know you're 15, but you don't forget
17 stuff like that.

18 Is that a fair?

19 THE WITNESS: Certain stuff you don't forget. Yes.

20 MS. ESSARY: When you started confessing -- and I know
21 you may have answered this already -- why did you confess to a
22 crime of murder?

23 THE WITNESS: Because I thought I was going home. I
24 just thought that's what they wanted me to do.

25 MS. ESSARY: What led you to believe that?

1 **THE WITNESS:** I just thought about the questioning and
2 stuff would stop. I just got -- I was just tired.

3 **MS. ESSARY:** Were you physically tired?

4 **THE WITNESS:** Physically tired. I was drained, yes,
5 ma'am.

6 **MS. ESSARY:** So, again, you've had a lot time over
7 the years to think about what happened.

8 **THE WITNESS:** Yes, ma'am.

9 **MS. ESSARY:** And you stated earlier that the police had
10 their hands on the table.

11 **THE WITNESS:** Yes, ma'am.

12 **MS. ESSARY:** Do you remember what the distance was
13 between you and the police?

14 **THE WITNESS:** Oh, no. We were right, like, on the
15 table -- we were right here. One of them might stand on one side
16 over here while the other one is over -- it was a lot. It was a
17 lot at once.

18 **MS. ESSARY:** So you said that their tone of voice
19 changed from being fairly calm.

20 **THE WITNESS:** It was -- yes.

21 **MS. ESSARY:** What was the worst it got -- in your memory
22 now, what was the worst their tone of voice got? What happened?

23 **THE WITNESS:** When I said something that they didn't
24 agree with, that didn't go with the lines of the story --

25 **MS. ESSARY:** What would he do?

1 **THE WITNESS:** -- or if I said, no, I just didn't do it.
2 Like, if I just didn't want to talk no more, they would get mad
3 and be like, "You might as well finish." You know, slam their
4 hands on the table, spittle flying.

5 **MS. ESSARY:** What made you say Rayshawn got on the car?
6 That's a very specific statement.

7 **THE WITNESS:** Because, like, in our group, like -- he
8 was, like, the fighter. Like, he was a great fighter. So it's
9 not to say that he would doing anything about it for no reason, it
10 was just, like, you know, in a group, you got people that can run
11 fast, swim fast, or they're good at certain things. Know what I
12 mean? And he was a good --

13 **MS. ESSARY:** I guess my question is that's a very
14 specific fact. That's just, "Yes, we did the robbery. We had
15 talked a little bit about it beforehand."

16 That's a very specific fact that you testified to.
17 Where did that fact come from? It's very specific.

18 **THE WITNESS:** I couldn't tell you. It just came.

19 **MS. ESSARY:** It just came to your mind?

20 **THE WITNESS:** Honest to God, it just came. Yes, ma'am.

21 **MS. ESSARY:** So they didn't suggest that to you?

22 **THE WITNESS:** No, not really. It's just something that
23 just -- I was rolling it.

24 **MS. ESSARY:** So they never said anything to you about
25 other codefendants stating Rayshawn was on the car?

1 **THE WITNESS:** I can't -- so, they did a lot of saying,
2 "Well, this was said and this was said," but I can't say exactly.
3 I can't say word for word that that's exactly what they -- what
4 happened.

5 **MS. ESSARY:** When you were talking about taking a bus to
6 the mall, you saw someone, you don't remember who, throw the
7 wallet out that was missing from the crime scene.

8 **THE WITNESS:** Yes, ma'am.

9 **MS. ESSARY:** How did you come up with that statement?

10 **THE WITNESS:** The wallet -- they told me about the
11 wallet.

12 **MS. ESSARY:** But that was, again, a very specific
13 statement.

14 **THE WITNESS:** They told me about that.

15 **MS. ESSARY:** They told you about what?

16 **THE WITNESS:** The wallet. They was like -- they just
17 asked me out of the blue, "Where's the wallet? The man had a
18 wallet. He's missing the wallet. Some family member said he had
19 a wallet and it's not there."

20 **MS. ESSARY:** So why would you say: "We took the bus" --
21 a very specific statement.

22 **THE WITNESS:** Yes, ma'am.

23 **MS. ESSARY:** "We took the bus, and one of us threw it
24 out the window to get rid of it."

25 **THE WITNESS:** It's just --

1 **MS. ESSARY:** It's a very specific statement.

2 **THE WITNESS:** It's just what I said. It's all a part of
3 a big lie. I was just trying to -- I didn't know how to get
4 myself out of the situation. I was just saying anything.

5 **MS. ESSARY:** And when you started confessing, what was
6 the demeanor of the police officers with you at that time?

7 **THE WITNESS:** After when I started confessing, I guess
8 it was just back to normal.

9 **MS. ESSARY:** Do you remember?

10 **THE WITNESS:** I can't remember -- I can't remember
11 nothing that stood out after that. Nothing --

12 **MS. ESSARY:** So you've had a lot of time in prison to
13 think about that night, and I want to ask you what stands out to
14 you, 18 years later, about what happened that night that you have
15 never forgotten? What is it that you've never forgotten?

16 **THE WITNESS:** That I never -- I never went back home to
17 my mom like they said I was.

18 **MS. ESSARY:** Okay. Thank you.

19 **JUDGE LOCK:** Sheriff Frye.

20 **SHERIFF FRYE:** Yeah. Couple things.

21 When you met with Ms. Bridenstine and the Commission
22 interviewed you --

23 **THE WITNESS:** Yes, sir.

24 **SHERIFF FRYE:** -- by her, did you tell her that you and
25 your brother and Jessicah and Rayshawn went to a ballgame?

1 **THE WITNESS:** To a ballgame? A ballgame? That day?

2 **SHERIFF FRYE:** Mm-hmm.

3 **THE WITNESS:** I don't recall saying that.

4 **SHERIFF FRYE:** When she was asking you what was yunz
5 doing the day of -- the day that murder happened, you said you --

6 **THE WITNESS:** Yeah. I don't remember saying nothing
7 about no ballgame.

8 **SHERIFF FRYE:** And then later on, she said she got to
9 talking about the -- Ms. Bridenstine brought up about the bowling
10 alley, and you went, "Oh, yeah."

11 **THE WITNESS:** Yeah, the bowling alley. I didn't say
12 anything about no game. I ain't been to no game.

13 **SHERIFF FRYE:** So you didn't say anything about that?

14 **THE WITNESS:** No, sir.

15 **SHERIFF FRYE:** Why that even come up, that you mentioned
16 a ballgame?

17 **THE WITNESS:** I couldn't tell you. This is my first
18 time hearing of it.

19 **SHERIFF FRYE:** Okay.

20 So when you were dropping Jed off at his place -- was it
21 his house, his uncle's house?

22 **JUDGE LOCK:** His -- I want to say his aunt's house.

23 **SHERIFF FRYE:** His aunt's house?

24 **THE WITNESS:** His aunt's house.

25 **SHERIFF FRYE:** Okay.

1 You said you watch -- you see the police arrive.

2 **THE WITNESS:** No, I didn't see them arrive.

3 **SHERIFF FRYE:** You did not see them arrive.

4 **THE WITNESS:** I didn't see them.

5 **SHERIFF FRYE:** They were already there?

6 **THE WITNESS:** They was already there when we got there.

7 **SHERIFF FRYE:** So if you said you seen them arrive, that
8 would have been wrong; correct?

9 **THE WITNESS:** Yes.

10 **SHERIFF FRYE:** Okay.

11 The interview that the police done -- and I think you
12 said just a while ago that they would come in, they'd talk to you,
13 they'd leave, leave you alone for a while, they'd come in and
14 they'd talk to you and then leave and leave you alone for a
15 while --

16 **THE WITNESS:** Yes, sir.

17 **SHERIFF FRYE:** -- right?

18 **THE WITNESS:** (Nonverbal response.)

19 **SHERIFF FRYE:** And when you first got in there, the very
20 first time you sat down and talked to them, the very first thing,
21 did you tell them the complete truth then?

22 **THE WITNESS:** Up to a -- when I first sit down, did I
23 admit my innocence? Yes, I did.

24 **SHERIFF FRYE:** And what did you tell them you done then?
25 Do you remember?

1 **THE WITNESS:** It was like -- I can't remember what I
2 told him I did.

3 **SHERIFF FRYE:** But whatever it was --

4 **THE WITNESS:** It didn't involve that, I know that.

5 **SHERIFF FRYE:** Kids get things mixed up; right? I
6 mean --

7 **THE WITNESS:** I know now.

8 **SHERIFF FRYE:** You said something about "Y'all been
9 15 years old." Yeah, we all have. So we've all been 15 and we
10 get things mixed up.

11 If you had got something wrong in your story and they
12 come back and said, "Hey, listen, so-and-so told us this, is this
13 what happened?"

14 **THE WITNESS:** And if it's correct and I remember it, I
15 would say yes.

16 **SHERIFF FRYE:** You would've said yes?

17 **THE WITNESS:** I would've said yes. Yes, sir.

18 **SHERIFF FRYE:** Okay.

19 So at some point during this, they asked you about a
20 wallet. You didn't know nothing about a wallet but --

21 (Overlapping speakers.)

22 **THE WITNESS:** First I heard about it.

23 **SHERIFF FRYE:** -- you come up with a story --

24 **THE WITNESS:** I didn't tell them nothing about no
25 wallet.

1 **SHERIFF FRYE:** -- about throwing it out of a bus.

2 **THE WITNESS:** Yes, sir.

3 **SHERIFF FRYE:** When they took you out there, they took a
4 whole big group of people out to look; right?

5 **THE WITNESS:** Yes, sir.

6 **SHERIFF FRYE:** And they bought you lunch.

7 **THE WITNESS:** Yes.

8 **SHERIFF FRYE:** Or dinner.

9 **THE WITNESS:** No. McDonald's. Yes, sir.

10 **SHERIFF FRYE:** What did you -- do you remember what you
11 got? What they bought you?

12 **THE WITNESS:** I want to say -- it's McDonald's so it
13 couldn't have been more than a burger and a fry.

14 **SHERIFF FRYE:** Okay.

15 So that you got a burger and fries and a drink.

16 **THE WITNESS:** Yeah.

17 **SHERIFF FRYE:** Were they nice to you?

18 **THE WITNESS:** I mean, of course. They were trying to
19 get me to, you know, finish what -- the lie I'd started. Of
20 course.

21 **SHERIFF FRYE:** So they were --

22 **THE WITNESS:** They didn't know at the time that it was a
23 lie. Yes.

24 **SHERIFF FRYE:** And then when you got back, were they
25 still nice to you --

1 (Overlapping speakers.)

2 **THE WITNESS:** No. Not really. Because they didn't
3 nothing --

4 **SHERIFF FRYE:** -- when they didn't find the wallet?

5 **THE WITNESS:** Yeah.

6 **SHERIFF FRYE:** Was they like --

7 **THE WITNESS:** They were kind of upset. Yeah. They were
8 kind of upset.

9 **SHERIFF FRYE:** Did you tell them, "Yeah, I lied to you"?

10 **THE WITNESS:** Yes. But they still didn't believe me.

11 **SHERIFF FRYE:** Okay.

12 So how long was it after you got back to the police
13 station from McDonald's and looking for the wallet till you
14 actually give them your recorded statement?

15 Was it shortly after?

16 **THE WITNESS:** I can't remember what time we came back.
17 I don't know -- I know it was -- I don't even know what time it
18 was. I know -- I think it was dark.

19 **SHERIFF FRYE:** When they were out there looking for the
20 wallet?

21 **THE WITNESS:** No. When we got back.

22 **SHERIFF FRYE:** When you got back. Okay.

23 So, in total, if you had to add up how many -- them
24 coming in, going out, coming in, going out, in total, how much
25 time do you think you were sitting there talking to one or more

1 detectives -- total?

2 You were there for a long period of time, but sometimes
3 they were in and sometimes they were out.

4 **THE WITNESS:** Mm-hmm.

5 **SHERIFF FRYE:** How long of total time do you think you
6 were there actually talking to an officer versus the time that
7 they were out of the room?

8 **THE WITNESS:** I don't know. Because, you know, time to
9 a child is as a long time. So --

10 **SHERIFF FRYE:** And time being alone seems like a long,
11 long time.

12 **THE WITNESS:** Uh-huh. And so I don't -- I can't
13 really -- really say, but it felt long. That's what I can say.
14 It felt like I was sitting wide --

15 (Overlapping speakers.)

16 **SHERIFF FRYE:** So did it seem like there was more time
17 that you were alone or more time that they were with you?

18 **THE WITNESS:** I want to say with me.

19 **SHERIFF FRYE:** With you?

20 **THE WITNESS:** Yeah.

21 **SHERIFF FRYE:** More time that they were with you?

22 **THE WITNESS:** Yeah because I was -- the questions were,
23 like, constant. And then after the first two went out, somebody
24 else would come in.

25 **SHERIFF FRYE:** Okay.

1 **THE WITNESS:** And then there'd be, like, times where
2 nobody came in for about 15, 20 minutes, I'm saying. I'm just
3 guessing. And then same thing over and over again.

4 **SHERIFF FRYE:** Now, Jed was quite a bit older than the
5 rest of you?

6 **THE WITNESS:** Yes, sir.

7 **SHERIFF FRYE:** Did he have a car?

8 **THE WITNESS:** No, sir.

9 **SHERIFF FRYE:** But he was -- was he older than Jessicah?

10 **THE WITNESS:** Yes, sir.

11 **SHERIFF FRYE:** But he hung out with you guys?

12 **THE WITNESS:** Yes, sir.

13 **SHERIFF FRYE:** Were you -- or did yunz hang out with
14 him?

15 **THE WITNESS:** We'll say both.

16 **SHERIFF FRYE:** Both?

17 **THE WITNESS:** Both. Yeah.

18 **SHERIFF FRYE:** Okay.

19 So when you were taking Jed home and you seen all the
20 lights, I guess -- is that what you --

21 **THE WITNESS:** Yes, sir.

22 **SHERIFF FRYE:** You didn't see them arrive there. They
23 were already there.

24 **THE WITNESS:** They were already there.

25 **SHERIFF FRYE:** Who got out of the car?

1 **THE WITNESS:** Everybody.

2 **SHERIFF FRYE:** Everybody got out of the car?

3 **THE WITNESS:** Everybody got out of the car.

4 **SHERIFF FRYE:** And who was in the car and riding.

5 **THE WITNESS:** Jessicah.

6 **SHERIFF FRYE:** She was driving.

7 **THE WITNESS:** Driving. Myself, Bryant, Jed. Jed --
8 Dorrell and Cauthen.

9 **SHERIFF FRYE:** Okay.

10 Rayshawn?

11 **THE WITNESS:** Was not there.

12 **SHERIFF FRYE:** Rayshawn wasn't with you?

13 **THE WITNESS:** Was not there.

14 **SHERIFF FRYE:** Okay.

15 So all of yunz got out and Latoya Mashack --

16 **THE WITNESS:** Yes, sir.

17 **SHERIFF FRYE:** -- told you what happened; right?

18 **THE WITNESS:** She said -- all she said was somebody
19 killed Mr. Jones.

20 **SHERIFF FRYE:** Somebody -- did you know Mr. Jones?

21 **THE WITNESS:** I did not.

22 **SHERIFF FRYE:** Okay.

23 And that was probably around what time?

24 **THE WITNESS:** The time that the murder happened?

25 Probably about 8:00-ish, I think.

1 **SHERIFF FRYE:** About 8:00-ish? Okay.

2 That's all I have.

3 **JUDGE LOCK:** Did you have anything?

4 **MS. NEWTON:** Yes, sir. Thank you.

5 **JUDGE LOCK:** Ms. Newton.

6 **MS. NEWTON:** Good morning, Mr. Tolliver. Thank you for
7 being with us. My name is Deb Newton, and I'm an attorney, a
8 criminal defense attorney.

9 I have a few questions I would like to ask you, with
10 your patience.

11 **THE WITNESS:** Yes, ma'am.

12 **MS. NEWTON:** And you understand we're just looking for
13 what you can remember and the truth.

14 **THE WITNESS:** Yes, ma'am.

15 **MS. NEWTON:** You understand that?

16 **THE WITNESS:** Yes, ma'am.

17 **MS. NEWTON:** Now, I'm going to jump around a little bit.
18 We have transcripts and we have briefs and writeups about what you
19 told the police.

20 **THE WITNESS:** Yes.

21 **MS. NEWTON:** Do you recall telling the police about the
22 bat in your kitchen and then the bat was in your yard?

23 Do you remember telling police anything about a bat?

24 **THE WITNESS:** I do remember say something about a bat.
25 Yes, I do.

1 **MS. NEWTON:** Explained that to us.

2 **THE WITNESS:** I don't know. It just came up. It was in
3 the house.

4 **MS. NEWTON:** How did it come up? Well, first, when --

5 **THE WITNESS:** They -- oh. They say they didn't know
6 what he had got with or something.

7 **MS. NEWTON:** Is this when you were being questioned at
8 the police station --

9 **THE WITNESS:** Yes, yes. Yes, ma'am.

10 **MS. NEWTON:** -- by law enforcement?

11 **THE WITNESS:** Yes, ma'am.

12 **MS. NEWTON:** And I think you just said "they don't know
13 what he was hit with."

14 **THE WITNESS:** Yes.

15 **MS. NEWTON:** Is that what -- after -- in response to
16 something?

17 **THE WITNESS:** They're like, "What you hit him with?" I
18 be like, "No. I was like, we've got stuff like that in our house,
19 but no."

20 **MS. NEWTON:** Okay.

21 Had you already told them that you saw someone hit
22 Mr. Jones?

23 **THE WITNESS:** I don't recall. Probably in the lying
24 statement, yes, I probably did.

25 **MS. NEWTON:** But then that they said, "What did you do

1 with it?"

2 **THE WITNESS:** I can't recall.

3 **MS. NEWTON:** And so, again, can tell us what you said in
4 response to the suggestion about a bat.

5 **THE WITNESS:** What do you mean?

6 **MS. NEWTON:** Well, who brought up the bat?

7 **THE WITNESS:** Oh. Me.

8 **MS. NEWTON:** You said something?

9 **THE WITNESS:** I brought up the bat, but at the same
10 time, they were making it -- they were saying a blunt object or
11 something.

12 **MS. NEWTON:** Okay.

13 And then what did you say about that?

14 **THE WITNESS:** Nothing. I just -- I don't know. I don't
15 know what I said. Whatever I said, it made them go get that bat.

16 **MS. NEWTON:** Well, when they said something about a
17 blunt object, is that why a bat came to your mind?

18 **THE WITNESS:** Yes, ma'am.

19 **MS. NEWTON:** Okay.

20 And when you said something about a bat, do you remember
21 exactly what you said to them about a bat?

22 **THE WITNESS:** I don't.

23 **MS. NEWTON:** Okay.

24 At any point, did you suggest that you owned a bat?

25 **THE WITNESS:** I may have. I may have, yes.

1 **MS. NEWTON:** And what did you say about that?

2 **THE WITNESS:** Well, I can't recall. If I did, I can't
3 recall. But I know it was in my house. It was -- yeah, it was my
4 brother's bat.

5 **MS. NEWTON:** Okay.

6 It was your brother's bat.

7 **THE WITNESS:** Yes.

8 **MS. NEWTON:** Okay.

9 And you offer the bat for them to go get or look at
10 or --

11 **THE WITNESS:** It wasn't not for them to get. I
12 didn't -- they asked could they search the house and I was just
13 like yes.

14 **MS. NEWTON:** Okay.

15 And to your knowledge, that bat was still in your house?

16 **THE WITNESS:** Yes.

17 **MS. NEWTON:** Okay.

18 And was it in the kitchen or in the yard? Do you
19 recall?

20 **THE WITNESS:** I don't recall.

21 **MS. NEWTON:** Okay.

22 And you don't recall if you told them one or both of
23 those things, do you?

24 **THE WITNESS:** I don't. I may have. I know there's a
25 good chance I did tell them or say something about a bat.

1 **MS. NEWTON:** Was anyone of your friends in possession of
2 your bat at any time that day?

3 **THE WITNESS:** No.

4 **MS. NEWTON:** Okay.

5 And so when you went to the police station on the 19th
6 of November, do you recall that the bat was still at your house?

7 **THE WITNESS:** Still at my mom's house.

8 **MS. NEWTON:** Okay.

9 **THE WITNESS:** Yes, ma'am.

10 **MS. NEWTON:** Now, you were asked questions this morning
11 about when you actually went to the mall. And let's clear that
12 up.

13 The plan was to go to the mall on the 15th.

14 **THE WITNESS:** Yes, ma'am.

15 **MS. NEWTON:** And the 15th was a Friday; right?

16 **THE WITNESS:** Yes, ma'am.

17 **MS. NEWTON:** By the way, was that homecoming?

18 **THE WITNESS:** I thinking so. I'm thinking something
19 like that was going on at that time, yes, ma'am.

20 **MS. NEWTON:** There was a football game that night.

21 **THE WITNESS:** It was something going on. I'm not sure.

22 **MS. NEWTON:** Okay.

23 And had you-all talked about going to the homecoming
24 game at some point?

25 **THE WITNESS:** I'm not sure.

1 MS. NEWTON: You weren't involved in that that day?

2 THE WITNESS: Yeah.

3 MS. NEWTON: So you did not -- you talked about going to
4 the mall with some of your friends on Friday.

5 THE WITNESS: Yes.

6 MS. NEWTON: But you did not go, and you said it was
7 raining?

8 THE WITNESS: Yes, ma'am.

9 MS. NEWTON: Okay.

10 THE WITNESS: It started raining. Excuse me.

11 MS. NEWTON: It started raining. Okay.

12 So why would that change whether you're going to go to
13 the mall?

14 THE WITNESS: We were taking the bus.

15 MS. NEWTON: Okay.

16 THE WITNESS: We didn't want to be in the rain, wet on
17 the bus.

18 MS. NEWTON: Gotcha.

19 So you did go to the mall Saturday; is that correct?

20 THE WITNESS: Yes, ma'am.

21 MS. NEWTON: Okay.

22 So you went Saturday, not Friday?

23 THE WITNESS: Not Friday.

24 MS. NEWTON: You led the police to believe that you went
25 Friday.

1 **THE WITNESS:** Friday.

2 **MS. NEWTON:** Was that a mistake or was that an
3 intentional lie on your part?

4 **THE WITNESS:** It was -- I lied to them intentionally.
5 Yeah. And I lied to the police intentionally.

6 **MS. NEWTON:** About going to the mall Friday?

7 **THE WITNESS:** About -- no.

8 **MS. NEWTON:** Okay.

9 **THE WITNESS:** Not about the real plan. I told them the
10 truth about what we were supposed to do.

11 **MS. NEWTON:** Okay.

12 **THE WITNESS:** And then, when they made me lie, then I
13 lied about it.

14 **MS. NEWTON:** Then you said, "Oh, it was Friday and we
15 threw a wallet out."

16 **THE WITNESS:** Yes.

17 **MS. NEWTON:** But it wasn't Friday, it was Saturday.

18 **THE WITNESS:** It wasn't -- we never threw the wallet out
19 Saturday either.

20 **MS. NEWTON:** Okay.

21 And I mean going to the mall.

22 **THE WITNESS:** Yes.

23 **MS. NEWTON:** You went to the mall Saturday.

24 **THE WITNESS:** Yes, ma'am.

25 **MS. NEWTON:** Did not see anybody throw a wallet?

1 **THE WITNESS:** No, ma'am. No wallet was ever, you know
2 what I'm saying, in our possession.

3 **MS. NEWTON:** Okay.

4 As far as you're aware.

5 **THE WITNESS:** Period. I've never seen none of them with
6 a wallet either.

7 **MS. NEWTON:** Got it. Okay.

8 When police questioned you, did you have any money on
9 you?

10 **THE WITNESS:** Nope.

11 **MS. NEWTON:** Okay.

12 **THE WITNESS:** Oh, I'm sorry. No, ma'am.

13 **MS. NEWTON:** That's okay. You're fine. That's
14 perfectly fine.

15 There was some statement that you made regarding a
16 credit card that was being used at the mall on Saturday.

17 Was that something you told the police?

18 **THE WITNESS:** A lie.

19 **MS. NEWTON:** It was a lie.

20 **THE WITNESS:** A lie.

21 **MS. NEWTON:** What did you tell the police about the
22 credit card?

23 **THE WITNESS:** I just told that we went to the mall and
24 somebody scanned them at an ATM.

25 **MS. NEWTON:** Okay.

1 And that was a complete lie.

2 **THE WITNESS:** Complete, bald-faced lie.

3 **MS. NEWTON:** You made all that up.

4 **THE WITNESS:** Mm-hmm.

5 **MS. NEWTON:** Okay. And on Saturday --

6 **THE WITNESS:** I'm sorry. Yes, ma'am.

7 **MS. NEWTON:** -- when you went to the mall, did anybody
8 have a credit card?

9 **THE WITNESS:** No, ma'am.

10 **MS. NEWTON:** Okay.

11 You didn't see anybody with a credit card?

12 **THE WITNESS:** No, ma'am.

13 **MS. NEWTON:** Where is the ATM at the mall?

14 **THE WITNESS:** At that time, I mean, when you walk in the
15 door -- they're all over the mall.

16 **MS. NEWTON:** Okay.

17 So there are a lot of them.

18 **THE WITNESS:** Yeah.

19 **MS. NEWTON:** But you knew that before.

20 **THE WITNESS:** Yes, ma'am.

21 **MS. NEWTON:** Did you have a credit card or a -- use a
22 debit card?

23 **THE WITNESS:** Never. Never.

24 **MS. NEWTON:** Thank you for clearing that up.

25 Now, Mr. Tolliver, you were asked about Hunter Atkins.

1 **THE WITNESS:** Yes, ma'am.

2 **MS. NEWTON:** You know Hunter Atkins to be a reporter;
3 correct?

4 **THE WITNESS:** Yeah.

5 **MS. NEWTON:** Okay.

6 You seem to express some distrust about --

7 **THE WITNESS:** At first I did, but now he made a believer
8 out of me.

9 **MS. NEWTON:** Why do you believe him now? I mean, why do
10 you trust him more now?

11 **THE WITNESS:** Because he pulled up facts that my lawyer
12 couldn't even pull up in court.

13 **MS. NEWTON:** So you believed him because of stuff other
14 people told you that he has been doing?

15 **JUDGE LOCK:** No. The stuff that he did, like the stuff
16 that, like, everything he said that, you know what I'm saying,
17 it's like he's seen -- like, he believe in us. He wanted to hear
18 what we had to say.

19 **MS. NEWTON:** Okay.

20 **THE WITNESS:** He was the first person who wanted to hear
21 what we had to say.

22 **MS. NEWTON:** I understand.

23 My question is: Are you getting the information about
24 Hunter Atkins' development of the facts directly from Hunter
25 Atkins or are other people telling you that -- like your mother

1 and your lawyer and --

2 **THE WITNESS:** Oh, no. I haven't talked to Hunter in a
3 minute.

4 **MS. NEWTON:** That's my question.

5 **THE WITNESS:** Yeah. I haven't talked to --

6 **MS. NEWTON:** Are other people telling you what he's
7 developing?

8 **THE WITNESS:** Oh, no. Nobody's told -- I have heard
9 nothing from him whatsoever.

10 **MS. NEWTON:** Okay.

11 Mr. Tolliver, you say that you believe in him now or
12 don't distrust him now because of what he's doing.

13 **THE WITNESS:** Uh-huh.

14 **MS. NEWTON:** I'm trying to figure out how you know.

15 If you're not talking to Hunter Atkins, how do you know
16 what he's doing?

17 **THE WITNESS:** Oh, I'm talking about when I was.

18 **MS. NEWTON:** Okay.

19 **THE WITNESS:** Not -- you know, when I was.

20 **MS. NEWTON:** How many conversations have you actually
21 had with Hunter Atkins about your case?

22 **MS. SMITH:** Before or after? Like, before it came to
23 this point or after?

24 **MS. NEWTON:** I'm not concerned about your agreement with
25 the Commission.

1 **THE WITNESS:** Okay.

2 **MS. NEWTON:** I'm concerned about how many times -- I
3 don't need to go in it or anything.

4 **THE WITNESS:** Okay.

5 **MS. NEWTON:** How many times have you talked to Hunter
6 Atkins?

7 **THE WITNESS:** Whoo. A lot.

8 **MS. NEWTON:** A lot?

9 **THE WITNESS:** Yes, ma'am.

10 **MS. NEWTON:** Would that be more than 10 times?

11 **THE WITNESS:** More than 10 times, yes, ma'am.

12 **MS. NEWTON:** Okay.

13 And is that in person or on the phone?

14 **THE WITNESS:** I only talked to him on the phone -- I
15 mean, in person once, and that's when he came down here.

16 **MS. NEWTON:** And how long was that conversation?

17 **THE WITNESS:** Not long. That's when he got the
18 interview from us.

19 **MS. NEWTON:** Okay.

20 And other than that, you talked to him on the phone?

21 **THE WITNESS:** Other than that, I haven't talked to him
22 on the phone but -- probably about -- yeah, you're right, about --
23 yeah, you're right.

24 **MS. NEWTON:** Okay.

25 And every time you talk to him, do you go over the facts

1 of what happened at the police station?

2 THE WITNESS: No.

3 MS. NEWTON: Okay.

4 THE WITNESS: No, ma'am.

5 MS. NEWTON: It was just different conversations?

6 THE WITNESS: Yes, ma'am.

7 MS. NEWTON: How many times do you think you've told
8 your story about law enforcement interrogating you, questioning
9 you?

10 THE WITNESS: To whom?

11 MS. NEWTON: To anybody. Like, altogether.

12 THE WITNESS: Oh, I don't -- I've never just talked
13 about it to anybody but, like, after developing trend and my
14 story, probably about every chance I got.

15 MS. NEWTON: Right. So 20, 30 -- anytime?

16 THE WITNESS: Yes, ma'am.

17 MS. NEWTON: So you've told your story a lot?

18 THE WITNESS: Yes. To people that I know I could trust.

19 MS. NEWTON: I understand. Thank you, sir.

20 Now, the day of the incident that resulted in Mr. Jones
21 passing away, on the 15th of November of 2002, you said, upon
22 questioning this morning, that you were using marijuana?

23 THE WITNESS: Yes, ma'am.

24 MS. NEWTON: How much marijuana did you smoke that day?

25 THE WITNESS: That day, probably about a blunt or two.

1 **MS. NEWTON:** A blunt's like a cigar; correct?

2 **THE WITNESS:** Yes. A blunt or two, yes.

3 **MS. NEWTON:** You were -- you alone smoked a blunt, not
4 sharing that with other people.

5 **THE WITNESS:** Not sharing it. Yes, ma'am.

6 **MS. NEWTON:** And did you use any other drugs that day?

7 **THE WITNESS:** No, ma'am.

8 **MS. NEWTON:** Who else was smoking marijuana that day?

9 **THE WITNESS:** Everybody.

10 **MS. NEWTON:** Oh, okay.

11 So you're comfortable with everybody was smoking on that
12 day?

13 **THE WITNESS:** Yes, ma'am.

14 **MS. NEWTON:** Did you -- was anyone using drugs that day?

15 **THE WITNESS:** No, none of us did any other drugs.

16 **MS. NEWTON:** Now, you understand, I think, weed is a
17 drug; right?

18 **THE WITNESS:** Yeah, I understand. Yes, ma'am.

19 **MS. NEWTON:** Okay.

20 So besides marijuana, was there alcohol or pills or
21 cocaine?

22 **THE WITNESS:** No, none of that. No, we don't do none of
23 that. No. We never did none of that.

24 **MS. NEWTON:** What about a Jessica Black? Did you see
25 her using anything else?

1 **THE WITNESS:** I've only seen her do weed with us. I've
2 never seen her do anything else.

3 **MS. NEWTON:** Okay.

4 Now, after -- let's move on. Thank you very much for
5 that.

6 You were questioned after you saw the police lights in
7 the evening Mr. Jones passed away?

8 **THE WITNESS:** Yes, ma'am.

9 **MS. NEWTON:** You were asked if you saw the dead body,
10 and you said essentially it was covered.

11 **THE WITNESS:** Yeah. But I seen, like, the body, like
12 the -- you know.

13 **MS. NEWTON:** The outline?

14 **THE WITNESS:** Uh-huh.

15 **MS. NEWTON:** Okay.

16 And, again, I was unclear. Did that affect you
17 emotionally as a 15-year-old child who had never seen someone who
18 had died before?

19 **THE WITNESS:** Yeah. But not as -- it's not how people
20 think, like -- it never, like -- it's not nothing like -- I never
21 just like -- in a long time, I never just thought about the dead
22 body, no, ma'am.

23 **MS. NEWTON:** Okay.

24 Was it, "Wow, that's shocking?"

25 **THE WITNESS:** Yeah. At the time, yeah, I'm like, "Wow."

1 **MS. NEWTON:** Because someone passed away?

2 **THE WITNESS:** Yes.

3 **MS. NEWTON:** And you didn't know him; right?

4 **THE WITNESS:** I never knew him.

5 **MS. NEWTON:** Were you in any way scared or affected by
6 it?

7 **THE WITNESS:** Maybe a little more worried about my
8 safety in the neighborhood. But ...

9 **MS. NEWTON:** Okay.

10 **THE WITNESS:** Yeah.

11 **MS. NEWTON:** So you were worried about your safety
12 because someone died?

13 **THE WITNESS:** Yeah. I was a kid. Like, we run around
14 there all the time, but ...

15 **MS. NEWTON:** Okay.

16 As a result of that, do you think that -- you heard
17 Mr. Britt and a couple people questioning you about your reaction
18 to Mr. Jones passing away.

19 **THE WITNESS:** Yes, ma'am.

20 **MS. NEWTON:** And you said just now that you might have
21 been scared because, you know, somebody died in the neighborhood.

22 Do you think you reacted to that? We've told you, I
23 think, in our questioning, that other people have said that you
24 acted strange, you acted differently.

25 **THE WITNESS:** Uh-huh.

1 **MS. NEWTON:** Did you act strange after you knew that
2 Mr. Jones had passed away in your neighborhood?

3 I mean, that's the question.

4 **THE WITNESS:** Yeah, that's what I'm -- like, to me,
5 like, you're asking me; right? Like, to me --

6 **MS. NEWTON:** Yes, sir.

7 **THE WITNESS:** Like, I don't think I acted different
8 because, like, I'm not outside myself examining myself.

9 **MS. NEWTON:** Okay.

10 **THE WITNESS:** But, I mean, like, to them, like, I don't
11 know. I don't feel like I was.

12 **MS. NEWTON:** So you didn't act strange as a result of
13 the fact that you were scared because you were involved or your
14 friends were involved in --

15 (Overlapping speakers.)

16 **THE WITNESS:** No, none of that. It was just as a point
17 of our safety, like, hey, if something could happen to this man,
18 then something could happen to us.

19 **MS. NEWTON:** Okay.

20 But, again, you weren't acting any way differently
21 because you thought that police were going to find out you and
22 your friends were involved in attacking Mr. Jones?

23 **THE WITNESS:** No, ma'am.

24 **MS. NEWTON:** Okay. Thank you.

25 Now, what is your understanding of this process, the

1 result that you might have as a result of this process?

2 And asked a different way, were you promised anything or
3 do you believe you're going to receive anything as result of this
4 process?

5 THE WITNESS: Nothing but my name cleared.

6 MS. NEWTON: Yes, sir.

7 THE WITNESS: That's all I want. That's all I want.

8 MS. NEWTON: Okay.

9 Now, going back to the officers who drove you downtown,
10 could you describe them -- ethnicity?

11 THE WITNESS: One of them, white male.

12 MS. NEWTON: Both?

13 THE WITNESS: And I will never forget the mustache.

14 MS. NEWTON: Okay.

15 So they were both white males?

16 THE WITNESS: Yes, ma'am. One of them had, like, a
17 bushy mustache.

18 MS. NEWTON: So there was not a black officer and there
19 was not a Hispanic.

20 THE WITNESS: Not with me. Not with me, no.

21 MS. NEWTON: Okay.

22 And the whole time, it was white males?

23 THE WITNESS: No. It was white males. I seen one black
24 female. And I seen a baldheaded guy in a white shirt.

25 MS. NEWTON: Okay. And that's in the interrogation?

1 **THE WITNESS:** That's what I remember of just straight on
2 out of my head.

3 **MS. NEWTON:** Okay.

4 Did you have any prior interactions with -- in the
5 neighborhood, when you-all were acting up or stealing candy,
6 whatever you were doing, did you have any prior interactions with
7 these officers?

8 **THE WITNESS:** Yeah. I don't want to say -- I've seen
9 before, but I don't want to say it's because of that.

10 **MS. NEWTON:** No, that's okay.

11 But you had prior interactions with these officers?

12 **THE WITNESS:** Yes, ma'am.

13 **MS. NEWTON:** Okay.

14 As a general matter, did you trust them as a result of
15 those interactions?

16 **THE WITNESS:** No.

17 **MS. NEWTON:** Why?

18 **THE WITNESS:** Because every time, like, either me and my
19 friends will wind up, like, being blamed for it -- one of my
20 friends.

21 **MS. NEWTON:** Okay.

22 So is it fair to say you had a distrust of the officers
23 when they were taking you down there?

24 **THE WITNESS:** Yes.

25 **MS. NEWTON:** Okay. All right.

1 **THE WITNESS:** I felt like if I didn't go, it would make
2 me look guilty.

3 **MS. NEWTON:** Because of how they treated you in the
4 neighborhood?

5 **THE WITNESS:** (Nonverbal response.)

6 **MS. NEWTON:** Okay. Thank you.

7 Now, you were asked by Ms. Robin, I believe, about your
8 mother's phone call to police when she suggested that you might
9 have heard something because y'all are always around the
10 neighborhood.

11 **THE WITNESS:** Yes, ma'am.

12 **MS. NEWTON:** Is it fair to say --

13 **THE WITNESS:** Yes, ma'am.

14 **MS. NEWTON:** -- that's what she called the police about?

15 **THE WITNESS:** Yes, ma'am.

16 **MS. NEWTON:** Had you heard anything about what happened
17 to Mr. Jones?

18 **THE WITNESS:** No, ma'am. I would've been the first one
19 that said something.

20 **MS. NEWTON:** What?

21 **THE WITNESS:** I said I would've been the first one that
22 said something.

23 **MS. NEWTON:** But you didn't hear anything.

24 **THE WITNESS:** No, ma'am.

25 **MS. NEWTON:** Everybody was quiet.

1 **THE WITNESS:** (Nonverbal response.)

2 **MS. NEWTON:** Was that usual? Would you normally have
3 heard something?

4 **THE WITNESS:** Of that -- I don't -- of that magnitude, I
5 probably wouldn't have, being my age.

6 **MS. NEWTON:** Okay.

7 Did you testify -- after -- there's some suggestion in
8 this hearing that, you know, because you were young, law
9 enforcement could exert some influence by making you scared in
10 that interrogation.

11 So after you were out of the interrogation, I think you
12 said you didn't go home. So you were in custody the whole time --

13 **THE WITNESS:** Handcuffs.

14 **MS. NEWTON:** -- is that correct?

15 **THE WITNESS:** Yes, ma'am. I've never went back home.

16 **MS. NEWTON:** Until you were released.

17 **THE WITNESS:** From 2002 all the way till -- like I --
18 matter of fact, I tell you I got released from prison, 2017.

19 **MS. NEWTON:** So it's after you were interrogated and you
20 said all of the things that you said, did you testify in court
21 under oath to the truth of what happened in that interrogation
22 room?

23 **THE WITNESS:** No. My lawyer didn't allow me to testify.

24 **MS. NEWTON:** At the trial?

25 **THE WITNESS:** At the trial.

1 **MS. NEWTON:** Okay.

2 Did you understand that you had the right to testify
3 regardless of what your lawyer said?

4 **THE WITNESS:** Not really. I thought I was supposed to
5 just do what he said. He was like, "It wouldn't look good if you
6 testified."

7 **MS. NEWTON:** Did you tell your lawyer you wanted to tell
8 them you were lying to the police?

9 **THE WITNESS:** I want -- yes, I did. Yes.

10 **MS. NEWTON:** And you sat there and heard the police say
11 what you said; right?

12 **THE WITNESS:** And he -- yes. He said -- my lawyer said
13 that I shouldn't testify because it would -- we would all be like
14 the other two.

15 **MS. NEWTON:** Okay.

16 The other two? Who?

17 **THE WITNESS:** Life sentences.

18 **MS. NEWTON:** Okay.

19 But you did testify in another hearing.

20 **THE WITNESS:** I think I did. Sure.

21 **MS. NEWTON:** Okay.

22 **THE WITNESS:** I'm not sure.

23 **MS. NEWTON:** At that hearing did you say that you were
24 not guilty?

25 **THE WITNESS:** As I recall, I'm sure I did.

1 **MS. NEWTON:** Were you telling the truth then?

2 **THE WITNESS:** Yes, ma'am.

3 **MS. NEWTON:** Okay.

4 And you were under oath then. You remember that; right?

5 **THE WITNESS:** Yes, ma'am.

6 **MS. NEWTON:** And in that hearing, did you deny the
7 confession statements that you made to police?

8 **THE WITNESS:** Yes.

9 **MS. NEWTON:** Okay.

10 **THE WITNESS:** Every time I had a chance.

11 **MS. NEWTON:** Okay. I just have one more question,
12 Mr. Tolliver.

13 Mr. Jones died as a result of whatever happened in that
14 carport with him.

15 You had -- as Ms. Essary said, you've had all this time
16 to think about it and talk to anybody you wanted to talk to, even
17 after you got out of jail.

18 Do you know what I mean by "word on the street"?

19 **THE WITNESS:** Word on the street? I think I do, yes.

20 **MS. NEWTON:** All right.

21 So you have an interest in knowing what happened to this
22 man if you're not guilty --

23 **THE WITNESS:** I do.

24 **MS. NEWTON:** -- is that fair?

25 **THE WITNESS:** I really do.

1 **MS. NEWTON:** Do you know any word on the street of who
2 attacked Mr. Jones that night?

3 **THE WITNESS:** I don't.

4 **MS. NEWTON:** You haven't heard anything.

5 **THE WITNESS:** I haven't heard anything. Anything.

6 **MS. NEWTON:** Thank you.

7 **THE WITNESS:** Yes, ma'am.

8 **JUDGE LOCK:** Mr. Tolliver, I have just a very few
9 questions concerning your trial.

10 You have a pretty good memory of your trial, do you not?

11 **THE WITNESS:** I'm pretty sure I can -- I'll try my best.

12 **JUDGE LOCK:** All right.

13 Now, you were tried together with Mr. Bryant and
14 Mr. Brayboy; is that correct?

15 **THE WITNESS:** Yes, sir.

16 **JUDGE LOCK:** And you telling us that your lawyer advised
17 you not to testify before the jury?

18 **THE WITNESS:** Not testify, yes, sir.

19 **JUDGE LOCK:** Mr. Brayboy did testify before the jury --

20 **THE WITNESS:** He did.

21 **JUDGE LOCK:** -- did he not?

22 **THE WITNESS:** He did.

23 **JUDGE LOCK:** What do you remember about his testimony?

24 **THE WITNESS:** I remember him -- they kept asking him,
25 "So why would you lie on your friends?" And, "You know them so

1 good, have they ever done anything to you," and stuff like that.

2 "Why would you lie on them?"

3 And he said the same thing that I'm sitting here telling
4 you today.

5 **JUDGE LOCK:** Did Mr. Brayboy talk to the jury about his
6 statement to the police?

7 **THE WITNESS:** Yeah. He said it was a lie. What.

8 **JUDGE LOCK:** I'm sorry. I didn't mean to interrupt you.

9 **THE WITNESS:** I'm sorry. He told them it was a lie.

10 **JUDGE LOCK:** At any point either before or during the
11 trial, were you ever offered a plea bargain?

12 **THE WITNESS:** I was.

13 **JUDGE LOCK:** What was the plea bargain you were offered?

14 **THE WITNESS:** 14 to 16 years.

15 **JUDGE LOCK:** And you knew at that point that Mr. Cauthen
16 and Mr. Banner had already been convicted of first-degree murder,
17 did you not?

18 **THE WITNESS:** I did.

19 **JUDGE LOCK:** Why did you not take the plea bargain?

20 **THE WITNESS:** Because I didn't do it.

21 **JUDGE LOCK:** Thank you very much.

22 Does anyone else have any questions? Mr. Edwards.

23 **MR. EDWARDS:** Yes, sir. I do.

24 Ms. Newton just asked you if you heard any word on the
25 street as to who might have done -- committed this murder.

1 Now, when Ms. Bridenstine interviewed you, did she ask
2 you who you think killed Mr. Jones and you said, "I heard Banner
3 did"?

4 **THE WITNESS:** Yeah, that it -- that was probably a old
5 statement.

6 **MR. EDWARDS:** I mean, that was -- it was in 2018. It
7 was a couple years ago when she -- when this lady to your right
8 interviewed you.

9 **THE WITNESS:** I said that? I said Banner did it?

10 **JUDGE LOCK:** Tell us what you remember, sir.

11 **THE WITNESS:** No, I don't remember saying -- I don't
12 remember saying -- I don't think any of my codefendants did it.

13 **JUDGE LOCK:** Sheriff Frye.

14 **SHERIFF FRYE:** Another question. Ms. Mashack -- is that
15 right?

16 **THE WITNESS:** Yes, sir.

17 **SHERIFF FRYE:** What did she tell you had happened?

18 **THE WITNESS:** She just said Mr. Jones got killed --
19 somebody killed Mr. Jones.

20 **SHERIFF FRYE:** Somebody killed Mr. Jones?

21 **THE WITNESS:** Her exact words.

22 **SHERIFF FRYE:** Okay. That's all I have.

23 **JUDGE LOCK:** Any other commissioners?

24 **MS. ESSARY:** Point of clarification.

25 On the night of Mr. Jones' murder, do you remember

1 whether you were with Rayshawn Banner that night?

2 **THE WITNESS:** I was not with him that night, no.

3 **MS. ESSARY:** Thank you.

4 **JUDGE LOCK:** Commissioner Jarvis.

5 **MR. JARVIS:** I have a couple questions. I may be
6 jumping around just a little bit, okay, bear with me.

7 So the day after that Friday night, so Saturday morning,
8 you wake up.

9 Did you go outside? You know, it's Saturday, did you go
10 outside to just hang out?

11 **THE WITNESS:** Yeah, I'm pretty -- I'm pretty sure I did,
12 yes.

13 **MR. JARVIS:** Who did you hang out with?

14 **THE WITNESS:** The same people -- as soon as I wake up, I
15 go straight across the street to Bryant's house.

16 **MR. JARVIS:** Okay.

17 **THE WITNESS:** We sit outside --

18 **MR. JARVIS:** The next day.

19 **THE WITNESS:** Yes. We sit outside, talk, we may walk to
20 the store or stuff like that, go to the store for our moms or
21 something like that.

22 **MR. JARVIS:** Do you specifically remember leaving the
23 neighborhood that Saturday the next morning?

24 **THE WITNESS:** That Saturday? I don't recall leaving
25 that Saturday. I don't recall it.

1 **MR. JARVIS:** Okay.

2 Here's the reason why I'm asking you this, is because
3 the testimony that you've made this morning, there's instances
4 multiple times where commissioners asking how did you feel, were
5 you shaken up, were you scared.

6 **THE WITNESS:** Mm-hmm.

7 **MR. JARVIS:** The reason why we're asking you these
8 questions is there's testimony and documentation that your mom was
9 saying that you were scared, that you were crying, that you were
10 distancing yourself from people, you didn't want to talk.

11 So we've got to -- we're trying to reconcile where this
12 is coming from.

13 **THE WITNESS:** I understand. I understand.

14 **MR. JARVIS:** So in one testimony, is that -- earlier,
15 you said that you didn't feel really different.

16 But then a little later -- I think Commissioner Newton
17 was speaking with you -- you felt that you weren't -- you were
18 having some concerns about your safety?

19 **THE WITNESS:** Yeah. But -- yeah. Yeah, that's true.

20 **MR. JARVIS:** Okay.

21 So that's the reason why I'm asking you. So I'm going
22 to ask you again.

23 So that next morning, did you have concerns of your
24 safety in terms of walking in the neighborhood or were you just
25 rattled and wanted to stay close to home?

1 **THE WITNESS:** Like I said, I believe my mom and them
2 were overexaggerating or something because I do not recall feeling
3 like anything that they said.

4 **MR. JARVIS:** Okay.

5 Let me turn your attention to the whole wallet
6 situation. I just want to get some clarification here.

7 So the 19th, when they picked you up that afternoon,
8 took you to the safety center.

9 **THE WITNESS:** Yes. sir.

10 **MR. JARVIS:** You were there for a while. The whole
11 thing of a wallet comes up. According to your testimony here
12 today, you made it up.

13 Was it the same afternoon or evening when they took you
14 to look for this wallet?

15 **THE WITNESS:** That I made it up?

16 **MR. JARVIS:** Was it -- yes.

17 **THE WITNESS:** Yes.

18 **MR. JARVIS:** Okay.

19 I wanted to make sure. Okay.

20 Where do you live now?

21 **THE WITNESS:** On the North side, the Enclaves on
22 Brownsboro Road.

23 **MR. JARVIS:** How far away is that from where you were
24 the night in question?

25 **THE WITNESS:** The police station?

1 **MR. JARVIS:** No, no, the night in question. So in terms
2 of your neighborhood.

3 **THE WITNESS:** Oh, where I lived? Oh, way across town.
4 Way -- I don't even go over there no more.

5 **MR. JARVIS:** Okay.

6 Why not?

7 **THE WITNESS:** I mean, it's bad memories.

8 **MR. JARVIS:** Yeah, I bet.

9 **THE WITNESS:** Bad memories. Nothing good came out of
10 that.

11 **MR. JARVIS:** What do you do now?

12 **THE WITNESS:** I cut hair on the side.

13 **MR. JARVIS:** What do you do all day? You say you cut
14 hair on the side.

15 **THE WITNESS:** Cut hair, watch my nieces, my lady's son.

16 **MR. JARVIS:** Okay. You said your lady's son?

17 **THE WITNESS:** Yeah. My girlfriend.

18 **MR. JARVIS:** Do you have any children?

19 **THE WITNESS:** I don't have any.

20 **MR. JARVIS:** Okay.

21 You mentioned a little while ago that you just want to
22 get your name back.

23 **THE WITNESS:** That's it.

24 **MR. JARVIS:** If you got your, quote-unquote, "name
25 back," what would you do?

1 **THE WITNESS:** I would start living my life the way I
2 wanted to. You know many times I've been turned down for jobs
3 because -- just because of this? I just stopped looking.

4 **MR. JARVIS:** So if you got your name back, what would be
5 the first thing you would do?

6 **THE WITNESS:** Go get me a job.

7 **MR. JARVIS:** What type of job would you look for?

8 **THE WITNESS:** I like warehouse work, heavy lifting --
9 stuff like that.

10 **MR. JARVIS:** That's all. Thank you so much.

11 **JUDGE LOCK:** Any other commissioners?

12 (No response.)

13 **JUDGE LOCK:** Mr. Tolliver, thank you very much. Sir.

14 **THE WITNESS:** No problem. Thank you. Thank y'all for
15 giving me a chance to express myself.

16 (Witness stands down, 10:49 a.m.)

17 **JUDGE LOCK:** Commissioners, it's probably about time for
18 a recess.

19 Now, Commissioners, as you may be aware, Chief Justice
20 Beasley is scheduled to hold a press conference at 11:00 o'clock,
21 and she will be making some announcements, I understand, about
22 court operations in the immediate future because of the
23 coronavirus.

24 Those of us involved in court administration I believe
25 need to watch that conference, and I'm sure the lawyers are

1 interested in what she may have to say too.

2 So for that reason, our recess may be just a bit longer
3 than usual, perhaps until 11:15 or so. But we will try to find
4 out. I guess it will be livestreamed.

5 MS. SMITH: It will be livestreamed on the Judicial
6 Branch's Facebook page.

7 JUDGE LOCK: All right.

8 (Discussion off the stenographic record re:
9 technology and logistics.)

10 JUDGE LOCK: Anything else?

11 MS. SMITH: Yes, sir.

12 Is Mr. Tolliver released from his sequestration order?

13 JUDGE LOCK: Yes, he is.

14 MS. SMITH: Thank you.

15 JUDGE LOCK: He's not to talk with other claimants, but
16 he may talk to his lawyer, of course.

17 MS. SMITH: Yes.

18 JUDGE LOCK: All right. Thank you very much. We will
19 be in recess.

20 (Recess taken, 10:50 to 11:15 a.m.)

21 JUDGE LOCK: All right, folks. We'll come back to
22 order. Thank you for your patience during this extended break.

23 (Discussion off the stenographic record re:
24 possible need for more breaks.)

25 MS. SMITH: Thank you, Your Honor.

1 **JUDGE LOCK:** All right. Call your next witness.

2 **MS. SMITH:** Commission recalls staff attorney Julie
3 Bridenstine.

4 While Ms. Bridenstine's coming up, Commissioners, you've
5 been given Handout 122 over the break. These are the
6 communications that commission staff had with the claimants and/or
7 their attorneys related to the Commission's rule regarding the
8 media that Mr. Britt asked for.

9 You probably can just wait to review those on the next
10 break, unless you need them for your questioning of the next
11 witness, but those are there on Handout 122.

12 (Witness, Julie Bridenstine, resumes the stand.)

13 BY MS. SMITH: (11:16 a.m.)

14 **Q.** Ms. Bridenstine, before we turn our attention to
15 Rayshawn Banner, there was some testimony and questions in the
16 last -- with the last witness, Jermal Tolliver, related to whether
17 or not he knew about the shoe print on the car while he was being
18 questioned by officers or whether that was some information that
19 he gave to the officers independently.

20 Do we have any records or information in the documents
21 we've reviewed or interviews we've conducted that would shed any
22 additional light on that?

23 **A.** Yes. If you look at the taped interview of Jermal
24 Tolliver with the Winston-Salem police officers back on
25 November 19, 2002, that was his first taped statement, that would

1 be on page 286 of your brief, and it is on page 25 of that
2 transcribed interview. There is a conversation on that page
3 concerning that Mr. Tolliver had indicated earlier that someone
4 may have stepped up to the victim's car, and Mr. Tolliver said,
5 "Yeah, Rayshawn."

6 He also indicated that he didn't know where the car was
7 but he knew that the kind of shoe he had on were the shoe prints
8 that he saw in the picture.

9 During my deposition of Detective David Rose, who was
10 one of the officers present during that interview, he looked at
11 this part of the transcript and he agreed that the taped interview
12 suggested that someone had shown Mr. Tolliver a photo of a shoe
13 print, but he did not know who that might have been.

14 Q. I'm going to turn your attention now to Rayshawn Banner.

15 MS. SMITH: Commissioners, you were previously provided
16 Handout 95 to read prior to today, which is the recorded and
17 transcribed interview between Mr. Banner and commission staff from
18 2/21/2018. That was Handout 95, if you wish to refer to it.

19 Q. Ms. Bridenstine, what did you learn about Mr. Banner
20 from his DPS records as it relates to his education level and
21 mental health?

22 A. The highest grade that Mr. Banner completed was the
23 eighth grade. His IQ score was reported as 82 on the revised beta
24 IQ exam in 2004. And it was noted to be 72 on the Wechsler Adult
25 Intelligence Scale in 2005.

1 His mental health records indicated that he had been
2 referred for services and had received anger management treatment
3 at the prison.

4 **Q.** Ms. Bridenstine, did Mr. Banner's DPS records indicate
5 that he ever admitted to participating in this crime?

6 **A.** No.

7 **Q.** During your interview with Mr. Banner, did he maintain
8 his innocence?

9 **A.** Yes.

10 **Q.** If you will remind the Commissioners what Mr. Banner
11 told you about his whereabouts on the night of 2002 [sic] when you
12 interviewed him.

13 **A.** Mr. Banner said that he remembered that he went to a
14 store by himself that afternoon and then he met up with a friend
15 named Shelton. He later said that Sherman Williams was Shelton.
16 Shelton had bus passes and they were going to go to the mall but
17 they did not end up going.

18 They were at Christopher Bryant's house, standing in
19 front of the house, it was around dark, Jessica Black pulled up
20 in her car and a couple of people got in the car, including his
21 brother, Nathaniel Cauthen. He did not see Nathaniel Cauthen
22 again until he got home -- until Nathaniel Cauthen got home after
23 2:00 a.m.

24 He thought they were going to a football game and a club
25 but later learned that that did not happen. He said that day he

1 stopped at his friend Dwayne House's home, who was not home. He
2 then ran into another friend. And following that, Rayshawn Banner
3 went home himself.

4 He said he went to sleep and his mother came home
5 looking for a phone. His brother Joseph Cauthen came home at some
6 point and dropped off the family phone.

7 He said that that night he got a phone call from Jed and
8 he told us that Jed is not who we understood as Sherman Williams.
9 Jed told him that someone had been killed at Belview Park. When
10 Nathaniel Cauthen came home that night, Nathaniel Cauthen told him
11 that someone had been killed and that he had seen the crime scene
12 and the police cars.

13 MS. SMITH: Any questions for Ms. Bridenstine before I
14 call Mr. Banner?

15 (No response.)

16 MS. SMITH: Okay. I ask that she step down.

17 (Witness stands down, 11:20 a.m.)

18 MS. SMITH: The Commission calls Rayshawn Banner.

19 * * * * *

20 Thereupon, RAYSHAWN BANNER, a witness having been called by the
21 Commission, was sworn and testified as follows:

22 BY MS. SMITH: (11:21 a.m.)

23 Q. Good morning, Mr. Banner.

24 A. Good morning.

25 Q. My name is Lindsay Guice Smith. I am the Executive

1 Director at the North Carolina Innocence Inquiry Commission.

2 I've got several questions for you today, and then when
3 I'm done asking questions, all of the commissioners around the
4 table may also have questions for you. Okay?

5 A. Yes, ma'am.

6 Q. Can you please state your full name for the record.

7 A. Rayshawn Dernard Banner.

8 Q. Turning your attention to this case, do you ever recall
9 Jessica Black running over your foot with her car?

10 A. Yes.

11 Q. When did that occur?

12 A. Right around the time I got out of school.

13 Q. On the day of the crime?

14 A. Yes.

15 Q. Are you sure about that?

16 A. Not actually, but I think it was that Friday, yes.

17 Q. What did you do when she ran over your foot?

18 A. Nothing. Got mad, said something. But that was about
19 it.

20 Q. Did it hurt?

21 A. No.

22 Q. Did you rob Nathaniel Jones?

23 A. No, ma'am.

24 Q. Did you kill Nathaniel Jones?

25 A. No, ma'am.

1 Q. Were you involved in any way in the robbery and death of
2 Mr. Jones?

3 A. No, ma'am.

4 Q. Were you present when Mr. Jones was robbed, tied up, and
5 killed?

6 A. No, ma'am.

7 Q. Were you nearby when Mr. Jones was robbed, tied up, and
8 killed?

9 A. No, ma'am.

10 Q. Did you see the crime being committed?

11 A. No, ma'am.

12 Q. Did you ever participate in any plan to commit this
13 crime?

14 A. No, ma'am.

15 Q. Are you aware of who committed the crime?

16 A. No, ma'am.

17 Q. Did any of the other codefendants in this case -- that
18 would be Christopher Bryant, Jermal Tolliver, Dorrell Brayboy, or
19 Nathaniel Cauthen -- ever tell you they had any involvement in the
20 crime?

21 A. No, ma'am.

22 Q. Did any of the other codefendants in this case --
23 Christopher Bryant, Jermal Tolliver, Dorrell Brayboy, or Nathaniel
24 Cauthen -- ever tell you they had any knowledge of who committed
25 the crime?

1 A. No, ma'am.

2 Q. Other than your statements to police on November 19,
3 2002, have you ever told anyone else that you committed this
4 crime?

5 A. No, ma'am.

6 Q. Where were you on November 15, 2002? If you want to
7 start in the afternoon.

8 A. In the afternoon? We was at Christopher Bryant's house.
9 After that, we was going to go out. It never happened. They
10 left. I went home and went to sleep.

11 Q. Where were you supposed to go?

12 A. To the football game and probably to a nightclub -- a
13 teenage nightclub.

14 Q. Do you know why you didn't go out that night?

15 A. No.

16 Q. Do you know what time you left Christopher Bryant's
17 house?

18 A. No.

19 Q. So you said you went home and went to sleep.

20 A. Yes.

21 Q. Where did you sleep?

22 A. On the couch.

23 Q. Why did you sleep on the couch?

24 A. I was watching TV at the time.

25 Q. Do you know what you were watching on TV?

1 A. No, ma'am.

2 Q. Did you at any point that night after you fell asleep on
3 the couch get back up and leave the house?

4 A. No, ma'am.

5 Q. After you were at Mr. Bryant's during the afternoon, was
6 that during the daylight or had that been evening at that point?

7 A. It was still daylight.

8 Q. After you left Mr. Bryant's house, did you see any of
9 your codefendants that day?

10 A. No, ma'am.

11 Q. Did you see your brother Nathaniel Cauthen that day?

12 A. No, ma'am.

13 Q. I'm talking about in the evening.

14 A. At the -- yeah, during that time. Like, as we was all
15 at Christopher Bryant's house, I seen him. That was the last time
16 I seen him.

17 Q. If you didn't commit these crimes, why did you tell
18 police that you did?

19 A. Because that was -- I heard the recording that
20 detectives played for me that stated that my brother seen me hit
21 the man first, and so I figured he lied, I lied, and I just wanted
22 to go home.

23 Q. You said you heard a recording. That was a recording of
24 who?

25 A. Nathaniel Cauthen, my brother.

1 Q. Your brother. And in that he said that --

2 A. I hit Mr. Nathaniel Jones first. So I just lied. I
3 mean, they told me just to tell them the truth and they'll send me
4 home.

5 Q. They told you you could go home?

6 A. Yes.

7 Q. When they said, "Tell us the truth and you can go home,"
8 you're telling me what you told them was a lie.

9 Why didn't you tell them the truth?

10 A. Why? I just made up a lie. I just wanted to go.

11 Q. You thought that making up a lie was going to get you
12 home sooner?

13 A. That's what they told me.

14 Q. Do you remember some shoes being taken from your home in
15 this case?

16 A. Yes, ma'am.

17 Q. Did you hear about that happening?

18 A. Yes, ma'am.

19 Q. You weren't at home when they came to your house --

20 A. No, ma'am.

21 Q. -- to take the shoes; right?

22 A. No, ma'am.

23 Q. Okay.

24 Based on a description of that search and the
25 photographs of that search, it appears that there were a box of

1 shoes in a bedroom in the house.

2 Do you know where that box of shoes was?

3 A. Not off the top of my head, no.

4 Q. I'm going to show you what we have marked -- a portion
5 of what we have marked as Handout 118 and see if that's familiar
6 to you.

7 MS. SMITH: Commissioners, I am handing him the fourth
8 page of that handout that shows the box of shoes.

9 Q. Does that look familiar to you?

10 A. Yes, ma'am.

11 Q. Why were your shoes in a box?

12 A. I don't know. That's where we put shoes at.

13 Q. You kept your shoes in a box?

14 A. Yeah. Even -- no, not really. They was really laying
15 around. Either they was laying around on the floor or they was in
16 the closet.

17 Q. Are you familiar with the box, though? Is that
18 something that was at the house?

19 A. Not that I remember, no.

20 Q. Okay.

21 There appear to be, in this picture that you just looked
22 at, a lot of shoes.

23 A. Yes.

24 Q. Did you have a lot of shoes?

25 A. Yes.

1 **Q.** And in the area where those shoes were, it's described
2 as a bedroom. Were those shoes that belonged to just you or other
3 people?

4 **A.** Me and my brothers.

5 **Q.** And your brothers are Nathaniel Cauthen and Joseph
6 Cauthen?

7 **A.** Yes, ma'am.

8 **Q.** So those shoes could have belonged to any of you;
9 correct?

10 **A.** Yes, ma'am.

11 **Q.** What size shoe did you wear back in 2002?

12 **A.** 8 1/2.

13 **Q.** Do you know what size shoes Nathaniel Cauthen wore?

14 **A.** Right around the same size.

15 **Q.** And what about Joseph Cauthen?

16 **A.** Probably 9.

17 **Q.** Did you-all share shoes amongst yourselves?

18 **A.** Sometimes, yes.

19 **Q.** Would you wear a size 9 shoe of your brother Joseph at
20 the time?

21 **A.** Sometimes.

22 **MS. SMITH:** All right.

23 Commissioners, do you have questions?

24 **JUDGE LOCK:** Commissioner Essary.

25 **MS. ESSARY:** Yes.

1 Hello. My name is Melissa Essary. When Jessica ran
2 over your foot that day with her car, did it hurt?

3 THE WITNESS: No, ma'am.

4 MS. ESSARY: Did you look down at your shoe?

5 THE WITNESS: Yeah -- not really.

6 MS. ESSARY: Were there any marks on your shoe that you
7 remember from the tires?

8 THE WITNESS: Not that I remember.

9 MS. ESSARY: Do you remember what kind of shoes they
10 were when you looked down?

11 THE WITNESS: No.

12 MS. ESSARY: Do you remember what shoes you wore that
13 day?

14 THE WITNESS: If -- not remember, but probably a pair of
15 white Air Force One Nikes.

16 MS. ESSARY: And would that have been size 8 1/2, 9?

17 THE WITNESS: 8 1/2.

18 MS. ESSARY: And where would those shoes normally be
19 kept at the house?

20 THE WITNESS: Probably on the floor near the closet.

21 MS. ESSARY: That's all I have.

22 MR. EDWARDS: Good morning, Mr. Banner.

23 THE WITNESS: Good morning.

24 MR. EDWARDS: What was your nickname back in 2002?

25 THE WITNESS: I didn't have a nickname. I was just

1 going by Rayshawn.

2 **MR. EDWARDS:** I guess there's been some testimony --
3 we've been here all week, and we've read thousands of pages of
4 documents, and some folks have said you went by Black.

5 Was that true?

6 **THE WITNESS:** No. I didn't start going by Black until I
7 got in prison.

8 **MR. EDWARDS:** Okay. So you go by that now.

9 **THE WITNESS:** Yes.

10 **MR. EDWARDS:** Okay.

11 You've been asked this morning about the shoes that you
12 were wearing.

13 **THE WITNESS:** Yes.

14 **MR. EDWARDS:** And you are aware that during your trial,
15 your initial trial before the jury, a witness for the State got up
16 and testified that one of the pairs of the Air Force 1s taken from
17 your house essentially matched the shoe print on the hood of
18 Mr. Jones' car.

19 Are you aware of that testimony?

20 **THE WITNESS:** Not off the top of my head, no, sir.

21 **MR. EDWARDS:** All right.

22 So you don't recall a witness testifies that one of the
23 shoes from your house appeared to match the shoe print on top
24 of the -- on the hood of the car?

25 **THE WITNESS:** No, sir.

1 **MR. EDWARDS:** Are you aware that back in 2002, after
2 Mr. Jones was killed, that Jermal Tolliver said that you are the
3 one that stood on Mr. Jones' -- the hood of his car to unscrew the
4 light?

5 **THE WITNESS:** No, sir.

6 **MR. EDWARDS:** You don't remember that?

7 **THE WITNESS:** No, sir.

8 **MR. EDWARDS:** Are you aware either -- has someone told
9 you, either your attorney or someone else in connection with this
10 case, that the Innocence Commission, this group here, re-examined
11 those Air Force 1s again, you know, all these many years later,
12 and we've had a witness that testified this week that the right
13 shoe from a pair of size 9 white Nike shoes collected from Banner
14 and Cauthen's residence had the same size, shape, and sole design
15 from the impression that was taken off the hood of the car?

16 Were you aware of that?

17 **THE WITNESS:** No, sir.

18 **MR. EDWARDS:** And he also testified to the same thing
19 about the left shoe because there was a left shoe print and a
20 right shoe print on the hood of that car.

21 Did you hear that at least being talked about?

22 **THE WITNESS:** Not -- not to my knowledge, no, sir.

23 **MR. EDWARDS:** All right.

24 This expert this week also testified that it is possible
25 that another pair of Air Force 1s, size 9, could have been the

1 source of the impressions on hood of the car but they have to
2 display the exact wear pattern characteristics -- in other words,
3 you couldn't go to the Footlocker and get a pair of Air Force 1s,
4 size 9, that have never been worn necessarily and match that up.

5 Does that make sense to you?

6 **THE WITNESS:** Not really.

7 **MR. EDWARDS:** Okay. Those are my questions.

8 **JUDGE LOCK:** Commissioner Newton.

9 **MS. NEWTON:** Thank you, sir.

10 Mr. Banner, good morning.

11 **THE WITNESS:** Good morning.

12 **MS. NEWTON:** Thank you for being here.

13 You understand that this Commission is not trying to
14 trick you. We're trying to get your honest memory and
15 understanding of what happened to you during the course of your
16 case --

17 **THE WITNESS:** Yes, ma'am.

18 **MS. NEWTON:** -- you understand that? Okay.

19 In that light, I'm going to -- I'm a criminal defense
20 attorney, and I'm going to ask you some questions, okay?

21 You testified when the staff just questioned you about
22 sharing shoes.

23 **THE WITNESS:** Yes.

24 **MS. NEWTON:** Are you clear about what size shoes you
25 wore?

1 **THE WITNESS:** Am I clear?

2 **MS. NEWTON:** Yeah. Were they 8 1/2 or 9?

3 **THE WITNESS:** 8 1/2. My brother wore a 9 so I might
4 wear that every now and then.

5 **MS. NEWTON:** Okay.

6 So -- and for the record, yours brother's name is?

7 **THE WITNESS:** Joseph Cauthen.

8 **MS. NEWTON:** Joseph Cauthen. Okay.

9 And other than Joseph Cauthen, who else did you share
10 your shoes with?

11 **THE WITNESS:** Besides my brothers, nobody.

12 **MS. NEWTON:** Nobody else in the neighborhood shared
13 shoes with you?

14 **THE WITNESS:** No.

15 **MS. NEWTON:** So only you and Joseph Cauthen --

16 **THE WITNESS:** Me and my brothers, that's it.

17 **MS. NEWTON:** Okay.

18 And you said you wore an 8 1/2 and he wore a 9?

19 **THE WITNESS:** Yes.

20 **MS. NEWTON:** So he wouldn't wear your shoes, but you
21 would wear his shoes?

22 **THE WITNESS:** I mean, he had a lot of shoes. I mean --
23 no, he wouldn't wear mine. I would wear his.

24 **MS. NEWTON:** You would wear his but he wouldn't wear
25 yours?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** Okay.

3 On the night that Mr. Jones passed away, were you
4 wearing your brother's shoes?

5 **THE WITNESS:** No. I was probably wearing mine.

6 **MS. NEWTON:** What makes you think so? What makes you --

7 **THE WITNESS:** Because I have a pair of white Air Force
8 1s and I know those -- for a fact, those are mine.

9 **MS. NEWTON:** Well, do you remember that from the
10 evidence you got in the discovery and talking to lawyers or do you
11 independently remember what you put on your feet that day?

12 **THE WITNESS:** I'm probably sure I know what I put on my
13 feet that day, what I was wearing to school that day.

14 **MS. NEWTON:** Okay.

15 The 8 1/2s?

16 **THE WITNESS:** Yes.

17 **MS. NEWTON:** Okay. All right. Thank you.

18 Now, I'm curious about your lack of testimony in your
19 defense.

20 You did not testify; is that correct?

21 **THE WITNESS:** Yes.

22 **MS. NEWTON:** It is correct that you did not testify?

23 **THE WITNESS:** Yes. I did testify.

24 **MS. NEWTON:** Now, we had some -- some, you know, by --
25 before this Commission about the reasons why you might have

1 falsely confessed.

2 And you maintain today you falsely confessed; correct?

3 **THE WITNESS:** Yes.

4 **MS. NEWTON:** Okay.

5 And I believe you maintain that you falsely confessed
6 because you were coerced by law enforcement.

7 Is that accurate?

8 **THE WITNESS:** Yes.

9 **MS. NEWTON:** Okay.

10 Tell me why any actions that you contend -- not what
11 they were, but any actions you contend law enforcement used to get
12 you to falsely state facts.

13 Why did they convince you to falsely tell facts about
14 yourself that would put you in prison? What about what they did
15 was so much pressure from you -- on you?

16 **THE WITNESS:** They told me -- when I first went down
17 there, they talked about it. They told me did I know I could get
18 the death penalty for it. And then that's when they brought me in
19 the tape recorder and played my brother confession, and that's
20 when I lied.

21 **MS. NEWTON:** Now, hearing your brother's confession and
22 the thinking there's a possibility you would get the death
23 penalty, why would that convince you to change your story from
24 "I'm not guilty" to lie?

25 **THE WITNESS:** Because before, when they was at my house,

1 they told -- I asked them where my brother was at, and they said
2 he'd be on the way home soon. So when we went downtown, I
3 figured -- when they played the recording, I lied, figuring I were
4 going to go home just like the rest of them did.

5 MS. NEWTON: What about that that made you think you
6 were going home?

7 THE WITNESS: I ain't. I just -- I didn't -- really, I
8 didn't want to be there, period. I didn't want to be around none
9 of that.

10 MS. NEWTON: Okay.

11 How many times have you met with someone, anyone, to
12 tell your story about law enforcement?

13 THE WITNESS: I don't know.

14 MS. NEWTON: Like, since 2002, about how many times have
15 you told this -- "I'm not guilty, they coerced me," facts?

16 THE WITNESS: I can't even count.

17 MS. NEWTON: How many lawyers have you had? That you
18 told it to?

19 THE WITNESS: Probably one, but different people have
20 came to see me and question me about it.

21 MS. NEWTON: Okay.

22 And did you talk to -- is it more than five people?

23 THE WITNESS: I don't think so.

24 MS. NEWTON: No? Just about five people?

25 THE WITNESS: Give or take, yeah, probably so, I guess.

1 I don't know.

2 MS. NEWTON: You're smiling.

3 JUDGE LOCK: No, because I'm trying to figure out how
4 many people really --

5 MS. NEWTON: I need to know. This is for you.

6 THE WITNESS: Probably, like, three or four.

7 MR. EDWARDS: You've only told your story three or four
8 times?

9 THE WITNESS: If I can count, yeah.

10 MS. NEWTON: Okay.

11 And each time you said they pressured you, and did they
12 tell you you were going to go home if you told them what they
13 wanted to hear?

14 THE WITNESS: Yeah.

15 MS. NEWTON: Did they tell you anything else that they
16 would give you that you wanted as a result of you telling them
17 what they wanted to hear?

18 THE WITNESS: No, ma'am.

19 MS. NEWTON: Just you get to go home?

20 THE WITNESS: Yeah.

21 MS. NEWTON: Did you ever go home?

22 THE WITNESS: No.

23 MS. NEWTON: Okay.

24 So let's go to your testimony or lack of it.

25 There was a suppression hearing. Were you there -- to

1 suppress evidence?

2 THE WITNESS: Meaning?

3 MS. NEWTON: Did you attend a hearing that was not the
4 trial in your case?

5 THE WITNESS: No, I don't think so.

6 MS. NEWTON: Where people got up and talked on the
7 witness stand?

8 THE WITNESS: Yeah, I was there.

9 MS. NEWTON: Okay.

10 Did you have the opportunity to testify in response to
11 what the State's evidence was?

12 THE WITNESS: I was told not to testify.

13 MS. NEWTON: Who told you that?

14 THE WITNESS: My lawyer.

15 MS. NEWTON: Who was your lawyer?

16 THE WITNESS: Robert Leonard.

17 MS. NEWTON: Robert Leonard told you not to testify?

18 And was this after you heard what they said or before
19 you got to court?

20 THE WITNESS: This is probably during court.

21 MS. NEWTON: After you heard what the State said about
22 you?

23 THE WITNESS: Yes.

24 MS. NEWTON: And you sat there and you listened to them
25 tell what you said was true; right?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** And did you want to tell the truth?

3 **THE WITNESS:** Yes.

4 **MS. NEWTON:** So did you tell your lawyer, "I want to
5 explain that"?

6 **THE WITNESS:** Yes.

7 **MS. NEWTON:** And what did he say?

8 **THE WITNESS:** He told me not to take the stand.

9 **MS. NEWTON:** Did he tell you why?

10 **THE WITNESS:** He said so my other -- so my codefendants'
11 testimony or what they said wouldn't be held against me.

12 **MS. NEWTON:** Okay.

13 And you chose at the suppression not to take the stand?

14 **THE WITNESS:** Yes.

15 **MS. NEWTON:** Okay.

16 Now, your trial was after that suppression hearing;
17 right? You went to trial later?

18 **THE WITNESS:** Yes.

19 **MS. NEWTON:** Okay.

20 After that suppression hearing, did you talk to anybody
21 else who gave you advice not to testify at your trial?

22 **THE WITNESS:** No, ma'am.

23 **MS. NEWTON:** Was Leonard your attorney at trial?

24 **THE WITNESS:** Yes, ma'am.

25 **MS. NEWTON:** And going in, you knew you weren't going to

1 testify?

2 **THE WITNESS:** Far as I knew, yes.

3 **MS. NEWTON:** Did you ever ask him if you could testify?

4 **THE WITNESS:** I asked him. He told me he didn't want me
5 to.

6 **MS. NEWTON:** Did you ask anybody else --

7 **THE WITNESS:** No, ma'am.

8 **MS. NEWTON:** -- "Tell the judge I want to testify"?

9 **THE WITNESS:** No, ma'am.

10 **MS. NEWTON:** Okay.

11 How many times have you talked to Hunter Atkins, the
12 reporter?

13 **THE WITNESS:** He came to see me at the prison once. I
14 probably talked to him over the phone maybe two or three times.

15 **MS. NEWTON:** And did he tell you anything about what
16 would happen as a result of your possible exoneration in this
17 case?

18 Were you promised anything?

19 **THE WITNESS:** No, ma'am.

20 **MS. NEWTON:** Okay.

21 Did he tell you that you might receive some money?

22 **THE WITNESS:** No, ma'am.

23 **MS. NEWTON:** Did he tell you that you would
24 definitely -- you know, just get out of jail? Did he tell you --
25 promise you anything?

1 **THE WITNESS:** No, ma'am.

2 **MS. NEWTON:** Did anybody promise you any of those
3 things?

4 **THE WITNESS:** No, ma'am.

5 **MS. NEWTON:** Okay.

6 Are you expecting any of those things?

7 **THE WITNESS:** No, ma'am.

8 **MS. NEWTON:** Why are you going through this process?

9 **THE WITNESS:** So I can get home.

10 **MS. NEWTON:** So you do want to get out of jail?

11 **THE WITNESS:** Yes.

12 **MS. NEWTON:** Now, the day that you were with your
13 friends the day that Mr. Jones passed away on November 15 of 2002,
14 what, if any, drugs were you using? I take it -- I think weed is
15 a drug, okay?

16 **THE WITNESS:** Okay.

17 **MS. NEWTON:** What, if any, drugs were you using?

18 **THE WITNESS:** Maybe I smoked occasionally, but nothing
19 really.

20 **MS. NEWTON:** On that day --

21 **THE WITNESS:** On that day, none.

22 **MS. NEWTON:** You didn't smoke any pot?

23 **THE WITNESS:** No.

24 **MS. NEWTON:** Everybody else was, but you weren't?

25 **THE WITNESS:** I wasn't with everybody that day.

1 **MS. NEWTON:** Okay.

2 You were sleeping?

3 **THE WITNESS:** Yes, ma'am.

4 **MS. NEWTON:** Okay.

5 Were you playing sports at that time?

6 **THE WITNESS:** Yes, ma'am.

7 **MS. NEWTON:** Were you going to play in the homecoming
8 game?

9 **THE WITNESS:** I doubt it. No. I was playing Pop-Warner
10 football at that time.

11 **MS. NEWTON:** Okay.

12 So you weren't in high school?

13 **THE WITNESS:** I wasn't in high school.

14 **MS. NEWTON:** Okay.

15 So you didn't smoke pot every day like they did?

16 **THE WITNESS:** No.

17 **MS. NEWTON:** Okay.

18 Just to be clear, you told law enforcement the story you
19 told them because you thought you were going to go home and for no
20 other reason?

21 **THE WITNESS:** Yes, ma'am.

22 **MS. NEWTON:** Okay.

23 Now, Mr. Banner, I want to talk to you about your
24 understanding -- your relationship with these law enforcement
25 officers.

1 There's some suggestion about, you know, why you might
2 have told the story related to your age, okay.

3 What was the ethnicity of the law enforcement officers
4 who questioned to you? Were they black? White? Hispanic?

5 **THE WITNESS:** White.

6 **MS. NEWTON:** Were they all male?

7 **THE WITNESS:** Yes.

8 **MS. NEWTON:** So they were all white males?

9 **THE WITNESS:** Yes.

10 **MS. NEWTON:** Had you encountered those law enforcement
11 officers before this day that you were being questioned?

12 **THE WITNESS:** Not that I know of, not off the top of my
13 head.

14 **MS. NEWTON:** Okay.

15 Did you know them --

16 **THE WITNESS:** No.

17 **MS. NEWTON:** -- or have any relationship with them at
18 all?

19 **THE WITNESS:** No.

20 **MS. NEWTON:** Okay.

21 So when you went in, is it true that you did -- well,
22 did you trust law enforcement when you went in for that
23 questioning?

24 **THE WITNESS:** No.

25 **MS. NEWTON:** And why is that?

1 **THE WITNESS:** I just didn't.

2 **MS. NEWTON:** Tell me why you didn't trust them. You can
3 be honest.

4 **THE WITNESS:** I mean, I don't trust a lot of people.

5 **MS. NEWTON:** Was it because they were law enforcement or
6 because they were somebody you had known before, because they were
7 white? What was it?

8 **THE WITNESS:** They was law enforcement.

9 **MS. NEWTON:** Law enforcement. Okay.

10 And had you experienced something with law enforcement
11 in your neighborhood that led you not to trust them?

12 **THE WITNESS:** Nah, I just been in trouble a lot so I
13 know how -- I know how to carry, I knew what they can -- I just
14 been ...

15 **MS. NEWTON:** You just clearly didn't trust them.

16 **THE WITNESS:** Yeah.

17 **MS. NEWTON:** So when you went in that day, were you
18 inclined to be honest with them about anything? Did you want to
19 talk to them at all?

20 **THE WITNESS:** No, ma'am.

21 **MS. NEWTON:** You didn't.

22 You just wanted to get out of there?

23 **THE WITNESS:** Yes.

24 **MS. NEWTON:** Okay.

25 Did you lie to them to start with because you didn't

1 trust them?

2 THE WITNESS: Did I lie to start with?

3 MS. NEWTON: Yes.

4 THE WITNESS: Nah, I told them I didn't want to talk to
5 them to start with.

6 MS. NEWTON: Okay. Got it. Yeah.

7 And did you lie to them to get out of the room?

8 THE WITNESS: Yes, ma'am.

9 MS. NEWTON: At the beginning?

10 THE WITNESS: Yes, ma'am.

11 MS. NEWTON: Not when you were confessing. You were
12 just telling them anything you thought would get you out of the
13 room?

14 THE WITNESS: Yes, ma'am.

15 MS. NEWTON: Okay.

16 Now, you understand that if you denied participating in
17 the crime, that makes sense about you lying, because then you
18 could leave because you weren't involved; right?

19 THE WITNESS: Yes.

20 MS. NEWTON: So could you understand how they might have
21 thought you were lying when you denied the crime? Do you
22 understand that?

23 THE WITNESS: Yes.

24 MS. NEWTON: Okay.

25 I'm trying to understand why you didn't testify at any

1 of the hearings. You were the only one that did not.

2 **THE WITNESS:** I was told not to. I wanted to. I was
3 just told not to.

4 **MS. NEWTON:** You relied on your lawyer; right?

5 **THE WITNESS:** Yes.

6 **MS. NEWTON:** Is that right?

7 **THE WITNESS:** Yes, ma'am.

8 **MS. NEWTON:** Okay.

9 Now, you were clear that you denied this confession and
10 the statements that you made -- they just weren't true.

11 Those statements weren't true?

12 **THE WITNESS:** Yes, ma'am.

13 **MS. NEWTON:** Okay.

14 You had a long time -- and you've spent that time in a
15 very hard way since you went to jail that day; right?

16 **THE WITNESS:** Yes.

17 **MS. NEWTON:** You've had a long time to think about what
18 happened to Mr. Jones, haven't you?

19 **THE WITNESS:** What happened?

20 **MS. NEWTON:** What happened to him.

21 **THE WITNESS:** I didn't really think about it.

22 **MS. NEWTON:** You haven't?

23 **THE WITNESS:** No.

24 **MS. NEWTON:** Now, you're doing time for a crime that
25 caused Mr. Jones' death.

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** And you have no interest in knowing, if
3 you're not guilty, who did it?

4 **THE WITNESS:** I mean, I know I ain't guilty but, I mean,
5 I don't -- I don't care who did it. I just want my name cleared.

6 **MS. NEWTON:** Well, you understand if -- you know, it's
7 discovered who did it --

8 **THE WITNESS:** Yes.

9 **MS. NEWTON:** -- that will clear your name? You
10 understand that; right?

11 **THE WITNESS:** Yes.

12 **MS. NEWTON:** So you've never inquired or asked anyone or
13 listened to anyone talk about who might have done it?

14 **THE WITNESS:** No, ma'am.

15 **MS. NEWTON:** Okay.

16 And you understand what "word on the street" means?

17 **THE WITNESS:** Yes.

18 **MS. NEWTON:** Now, you've been in prison but, you know,
19 word gets back to the population; right?

20 **THE WITNESS:** Yes.

21 **MS. NEWTON:** Okay.

22 Has there been any word on the street that you've become
23 aware of about what actually happened to Mr. Jones? His family
24 would like to know.

25 **THE WITNESS:** No, ma'am.

1 **MS. NEWTON:** Is there anything else that I haven't asked
2 you that you would like to say about this situation?

3 **THE WITNESS:** No, ma'am.

4 **MS. NEWTON:** Okay. Thank you.

5 **JUDGE LOCK:** Sheriff Frye.

6 **SHERIFF FRYE:** Go ahead.

7 **JUDGE LOCK:** Mr. Britt.

8 **MR. BRITT:** Mr. Banner, my name is Johnson Britt. I've
9 got just a few questions to ask you.

10 You said the police played your brother's recording?

11 **THE WITNESS:** Yes, sir.

12 **MR. BRITT:** And you listened to what he had to say?

13 **THE WITNESS:** Yes, sir.

14 **MR. BRITT:** Do you recall what was on that recording?

15 **THE WITNESS:** The only part that they played is when he
16 said that I had hit him first.

17 **MR. BRITT:** Okay.

18 And you testified that that was a lie.

19 **THE WITNESS:** Yes.

20 **MR. EDWARDS:** And I take it it was a lie then and it's a
21 lie now.

22 **THE WITNESS:** Yes.

23 **MR. BRITT:** You decided that when you heard your
24 brother's lie that you would lie also.

25 **THE WITNESS:** Yes.

1 **MR. BRITT:** Why didn't you just say "I didn't hit him"?
2 **THE WITNESS:** I told them that too.
3 **MR. BRITT:** Why didn't you stick with that?
4 **THE WITNESS:** I don't know.
5 **MR. BRITT:** Now, correct me if I'm wrong, when you left
6 with the police from your house that day, you were under arrest?
7 **THE WITNESS:** Yes.
8 **MR. BRITT:** They put handcuffs on you?
9 **THE WITNESS:** Yes.
10 **MR. BRITT:** Did they ever take the handcuffs off of you?
11 **THE WITNESS:** Yes. When I got downtown to the
12 interrogation room.
13 **MR. BRITT:** What did they tell you that you were under
14 arrest for?
15 **THE WITNESS:** They said I was under arrest for the
16 murder of Mr. Jones.
17 **MR. BRITT:** At the house?
18 **THE WITNESS:** At my house.
19 **MR. BRITT:** They didn't tell you that they were
20 arresting you for resisting?
21 **THE WITNESS:** No.
22 **MR. BRITT:** At one point, they didn't have a warrant,
23 did they?
24 **THE WITNESS:** Not that I know of.
25 **MR. BRITT:** You never saw a piece of paper until later

1 on?

2 THE WITNESS: No, sir.

3 MR. BRITT: You were a juvenile.

4 THE WITNESS: Yes.

5 MR. BRITT: They didn't -- do you know what a juvenile
6 petition was?

7 THE WITNESS: No.

8 MR. BRITT: Do you know what it is?

9 THE WITNESS: No, sir.

10 MR. BRITT: A juvenile petition is a warrant for the
11 juvenile court system.

12 You got that later that night, didn't you?

13 THE WITNESS: No, sir.

14 MR. BRITT: You never got served with a juvenile
15 petition?

16 THE WITNESS: No, sir.

17 MR. BRITT: You were 15 at the time?

18 THE WITNESS: I was 14 at the time.

19 MR. BRITT: You were 14.

20 Had you ever been involved in the court system -- the
21 juvenile court system?

22 JUDGE LOCK: Yes, sir.

23 MR. BRITT: On more than one occasion?

24 THE WITNESS: Yes, sir.

25 MR. BRITT: Had you ever been locked up as a juvenile?

1 **THE WITNESS:** Yes, sir.

2 **MR. BRITT:** Did you ever go to what used to be called
3 "training school"?

4 **THE WITNESS:** No, sir.

5 **MR. BRITT:** Okay.

6 Placed on juvenile probation?

7 **THE WITNESS:** Yes, sir.

8 **MR. BRITT:** And were supervised?

9 **THE WITNESS:** Yes, sir.

10 **MR. BRITT:** Now, that night, after all was said and
11 done, all of y'all ended up, except for maybe Mr. Bryant, the
12 oldest -- or was Dorrell the oldest?

13 **THE WITNESS:** I think my brother was the oldest.

14 **MR. BRITT:** You think Nathaniel was the oldest?

15 Is that your brother Nathaniel?

16 **THE WITNESS:** Yes, sir.

17 **MR. BRITT:** He went to the county jail?

18 **THE WITNESS:** After I think -- after he turned 16, he
19 went into the county jail.

20 **MR. BRITT:** Okay.

21 So at the time, he was 15.

22 **THE WITNESS:** Yes, sir.

23 **MR. BRITT:** Did all of y'all go to detention?

24 **THE WITNESS:** Yes, sir.

25 **MR. BRITT:** Were you all housed together?

1 **THE WITNESS:** Yes, sir.

2 **MR. BRITT:** Were you in the same unit?

3 **THE WITNESS:** Yes, sir.

4 **MR. BRITT:** Did y'all talk with each other that night
5 and the days, following like --

6 **THE WITNESS:** No, sir.

7 **MR. BRITT:** -- like, "What have we gotten ourselves
8 into?"

9 **THE WITNESS:** They -- they all had us -- only time we
10 was ever together is when we probably went to court. That was it.
11 Other time, they kept us all separated.

12 **MR. BRITT:** Did you ever talk to your brother?

13 **THE WITNESS:** Only when my mom came and visited us
14 together.

15 **MR. BRITT:** Did you ask him why he lied?

16 **THE WITNESS:** Yeah.

17 **MR. BRITT:** And what did he say?

18 **THE WITNESS:** He just lied. He said he just lied.

19 **MR. BRITT:** Did he ever ask you why you lied?

20 **THE WITNESS:** No.

21 **MR. BRITT:** The -- ultimately, there's a statement that
22 you make that you implicate yourself and you implicate everyone
23 else.

24 Do you understand that?

25 **THE WITNESS:** Yes, sir.

1 **MR. BRITT:** Why did you lie about your brother's
2 involvement?

3 **THE WITNESS:** I just told what I feel like I thought he
4 wanted to hear.

5 **MR. BRITT:** Not understanding the consequences are that
6 you're in prison right now.

7 **THE WITNESS:** At that time, no, sir, I didn't
8 understand.

9 **MR. BRITT:** Okay.

10 You and your brother were tried together?

11 **THE WITNESS:** Yes, sir.

12 **MR. BRITT:** Did y'all ever talk with each other during
13 your trial?

14 **THE WITNESS:** Yeah, but not really.

15 **MR. BRITT:** Did you talk about the case?

16 **THE WITNESS:** No. No, sir.

17 **MR. BRITT:** Did you ever talk to your mom about it?

18 **THE WITNESS:** Have I talked to my mom about the case?

19 **MR. BRITT:** Yes.

20 **THE WITNESS:** Yes.

21 **MR. BRITT:** Did you tell her why you lied?

22 **THE WITNESS:** Yes.

23 **MR. BRITT:** Did she ask you why you lied?

24 **THE WITNESS:** Yes.

25 **MR. BRITT:** What did you tell her?

1 **THE WITNESS:** That I just wanted to go home. I just
2 lied every -- just get up out -- just get out of there.

3 **MR. BRITT:** Well, had -- you said you had been involved
4 in the juvenile court system.

5 **THE WITNESS:** Yes, sir.

6 **MR. BRITT:** What was the most serious thing you'd ever
7 been charged with before this?

8 **THE WITNESS:** I can't remember off the top of my head.

9 **MR. BRITT:** Damage to property? Break-ins? Stealing?

10 **THE WITNESS:** Probably breaking and entering or damage
11 to property.

12 **MR. BRITT:** Okay.

13 How about your brother? Was he involved in the juvenile
14 court system at all?

15 **THE WITNESS:** No, sir.

16 **MR. BRITT:** He never got in trouble?

17 **THE WITNESS:** No, sir.

18 **MR. BRITT:** Is it fair to say y'all ran the streets back
19 that?

20 **THE WITNESS:** Meaning?

21 **MR. BRITT:** You did.

22 Meaning what -- y'all were out on the street a lot?

23 **THE WITNESS:** Yes, sir.

24 **MR. BRITT:** Up and down the street --

25 **THE WITNESS:** Yes, sir.

1 **MR. BRITT:** -- doing stuff together -- you, your
2 brother, other friends?

3 **THE WITNESS:** Yes, sir.

4 **MR. BRITT:** Maybe messing with people, just goofing --
5 you know, goofing off?

6 **THE WITNESS:** We didn't mess with nobody.

7 **MR. BRITT:** Okay.

8 Now, Belview Park -- was that a hangout?

9 **THE WITNESS:** Not for me, it wasn't.

10 **MR. BRITT:** Okay.

11 What about your brother?

12 **THE WITNESS:** Far as I know, it wasn't for him either.

13 **MR. BRITT:** Because y'all actually didn't live very
14 close to Belview Park, did you?

15 **THE WITNESS:** No, sir.

16 **MR. BRITT:** It was several blocks away.

17 **THE WITNESS:** Yes, sir.

18 **MR. BRITT:** And would you describe those as being large
19 blocks, large city blocks?

20 **THE WITNESS:** Yes, sir.

21 **MR. BRITT:** If you walked from your house to Belview,
22 how long would it take?

23 **THE WITNESS:** Probably about 10 minutes.

24 **MR. BRITT:** If you drove from your house to Belview, how
25 long would it take?

1 **THE WITNESS:** About 5.

2 **MR. BRITT:** All right.

3 In fact, of the entire group of you that were charged,
4 you and Nathaniel lived further from Belview than anyone except
5 maybe Dorrell; is that right?

6 **THE WITNESS:** Yes, sir.

7 **MR. BRITT:** Dorrell didn't live in the exact
8 neighborhood with y'all, did he?

9 **THE WITNESS:** No, sir.

10 **MR. BRITT:** In fact, he lived literally on the other
11 side of what you might call the neighborhood.

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** He lived further away from y'all than you
14 lived from Belview.

15 **THE WITNESS:** Yes, sir.

16 **MR. BRITT:** Was Dorrell someone that y'all hung out with
17 a lot?

18 **THE WITNESS:** Yes, sir.

19 **MR. BRITT:** How did you know him?

20 **THE WITNESS:** I met Dorrell through a mutual friend when
21 we used to hang out on the street.

22 **MR. BRITT:** Okay.

23 And Christopher was your neighbor?

24 **THE WITNESS:** Yeah.

25 **MR. BRITT:** I'm sorry. He wasn't your cross-street

1 neighbor, he was within a couple of blocks of you?

2 **THE WITNESS:** Yes, sir.

3 **MR. BRITT:** How did you know him?

4 **THE WITNESS:** We went to school together.

5 **MR. BRITT:** And how about Jermal? How did you know him?

6 **THE WITNESS:** We went to school together as well.

7 **MR. BRITT:** Were y'all all in the same grades?

8 **THE WITNESS:** No, sir.

9 **MR. BRITT:** How long had you gone to school with him?

10 **THE WITNESS:** I went to school with them when they was
11 in middle school.

12 **MR. BRITT:** All right.

13 **THE WITNESS:** And I was probably in sixth grade.

14 **MR. BRITT:** And at the time you got arrested were you in
15 junior high school?

16 **THE WITNESS:** Yeah, I was still in middle school.

17 **MR. BRITT:** You were still in middle school?

18 How about them?

19 **THE WITNESS:** They was in middle -- high school.

20 **MR. BRITT:** Which high school?

21 **THE WITNESS:** Parkland -- I believe Christopher Bryant
22 went to Parkland, but I don't believe Jermal Tolliver was going to
23 school at that time.

24 **MR. BRITT:** And was Parkland the high school the
25 football game was to be held?

1 **THE WITNESS:** Yes.

2 **MR. BRITT:** Do you know where Dorrell was going to
3 school then?

4 **THE WITNESS:** Dorrell was going to Hill Middle School.

5 **MR. BRITT:** How far away from where you lived was that?

6 **THE WITNESS:** A ways. That's near Sprague Street.

7 **MR. BRITT:** And how did you get to school? Did you
8 walk, ride a bus?

9 **THE WITNESS:** Rode a bus.

10 **MR. BRITT:** How often did you see Dorrell, like, during
11 the week?

12 **THE WITNESS:** Probably every day.

13 **MR. BRITT:** Okay.

14 So it wasn't unusual, even though he didn't live in your
15 exact neighborhood, that he hung out with y'all?

16 **THE WITNESS:** Yes, sir.

17 **MR. BRITT:** Did you consider Dorrell, Christopher,
18 Nathaniel -- sorry.

19 Would you consider Dorrell, Jermal, and Christopher your
20 best friends?

21 **THE WITNESS:** No. No, sir.

22 **MR. BRITT:** Okay.

23 Who were your best friends?

24 **THE WITNESS:** My best friend? I also had another person
25 I hung out with named Dwayne House.

1 **MR. BRITT:** Where did he live?

2 **THE WITNESS:** Right around the corner from me.

3 **MR. BRITT:** And in your statement, you don't include
4 him --

5 **THE WITNESS:** No.

6 **MR. BRITT:** -- in committing this crime.

7 **THE WITNESS:** No, sir.

8 **MR. BRITT:** So did you just randomly pick these other
9 people to put in your statement?

10 **THE WITNESS:** Which other people?

11 **MR. BRITT:** Your brother, Christopher, Jermal Tolliver,
12 Dorrell.

13 **THE WITNESS:** I hung out with them, but I also hung out
14 with Dwayne House, but Dwayne didn't hang out with them.

15 **MR. BRITT:** So you picked one group of friends to
16 include and not another group?

17 **THE WITNESS:** Sir?

18 **MR. BRITT:** While you were being questioned, did you
19 ever see your brother Nathaniel?

20 **THE WITNESS:** No, sir.

21 **MR. BRITT:** Y'all you weren't in the same room?

22 **THE WITNESS:** No, sir.

23 **MR. BRITT:** And how many different police officers do
24 you remember questioning you?

25 **THE WITNESS:** Three.

1 **MR. BRITT:** Just three?

2 **THE WITNESS:** Yes, sir.

3 **MR. BRITT:** Did all three question you at the same time
4 or did they alternate?

5 **THE WITNESS:** Alternate.

6 **MR. BRITT:** Were they all three in the room the entire
7 time?

8 **THE WITNESS:** No, sir.

9 **MR. BRITT:** Did one take the lead more than anybody
10 else?

11 **THE WITNESS:** Yes, sir.

12 **MR. BRITT:** How did he -- describe how he questioned you
13 or --

14 **THE WITNESS:** He would make a statement and then he
15 would ask me a question. I would give him an answer. And he'd
16 ask another question. And that would go back and forth.

17 **MR. BRITT:** Was he -- was he easygoing? Was he angry?

18 **THE WITNESS:** Naw, he was just talking regular.

19 **MR. BRITT:** He talked regular?

20 **THE WITNESS:** Yes, sir.

21 **MR. BRITT:** Did anybody ever yell at you?

22 **THE WITNESS:** No, sir.

23 **MR. BRITT:** Did anybody ever pound on the table?

24 **THE WITNESS:** No, sir.

25 **MR. BRITT:** The guy who talked regular, was that the guy

1 who said something to you about the death penalty --

2 THE WITNESS: Yes, sir.

3 MR. BRITT: -- or was it somebody else?

4 THE WITNESS: Yes, sir.

5 MR. BRITT: Since you've been in prison, have you ever
6 had the opportunity to talk to your brother?

7 THE WITNESS: Yes, sir.

8 MR. BRITT: Have y'all ever been housed in the same
9 place?

10 THE WITNESS: Yes, sir.

11 MR. BRITT: Did you ask him why he said the things that
12 he did?

13 THE WITNESS: Yes, sir.

14 MR. BRITT: What did he say?

15 THE WITNESS: Same thing. He said he lied.

16 MR. BRITT: Did he ever ask you why you said the things
17 you did?

18 THE WITNESS: No, sir.

19 MR. BRITT: It's been said that you were considered a
20 pretty good fighter.

21 Is that true?

22 THE WITNESS: I mean, I guess.

23 MR. BRITT: Why would somebody say that you were a
24 pretty good fighter?

25 THE WITNESS: I guess because they see me fight.

1 **MR. BRITT:** Okay.

2 Could you throw a good punch?

3 **THE WITNESS:** I could.

4 **MR. BRITT:** You said that Hunter came to see you in
5 prison.

6 **THE WITNESS:** Yes.

7 **MR. BRITT:** Do you remember when that was?

8 **THE WITNESS:** If I'm not mistaken, it was probably
9 around the summertime, probably before -- about -- I know it was
10 around -- probably around the summertime, though.

11 **MR. BRITT:** Summertime of, like, last summer?

12 **THE WITNESS:** Last summer.

13 **MR. BRITT:** Did you know he was coming to see you?

14 **THE WITNESS:** Did I know? Yes.

15 **MR. BRITT:** How did you know he was coming to see you?

16 **THE WITNESS:** Because he asked me could he do an
17 interview, and the prison asked me before I signed the consent to
18 do an interview.

19 **MR. BRITT:** Okay.

20 Why did he tell you he was interested in your case?

21 **THE WITNESS:** He said that he was -- he said he read the
22 case and he was verifying and he wanted to know all the details
23 about it, but nothing else after that.

24 **MR. BRITT:** Okay.

25 How many times did you call him? Obviously, he can't

1 call you.

2 **THE WITNESS:** I'd say about three times.

3 **MR. BRITT:** How did you know the number to call?

4 **THE WITNESS:** He gave it to me.

5 **MR. BRITT:** When he give it to you?

6 **THE WITNESS:** He mailed me.

7 **MR. BRITT:** You got a letter?

8 **THE WITNESS:** Yes. With the address.

9 **MR. BRITT:** And so then why did you call him?

10 **THE WITNESS:** Why?

11 **MR. BRITT:** Why did you call him initially?

12 **THE WITNESS:** Just because he wanted -- he said he
13 wanted to ask me follow-up questions, but I -- and my mom wanted
14 me to call him, but I never really called him like that.

15 **MR. BRITT:** Were you aware he was already talking to
16 your mother?

17 **THE WITNESS:** At the time, my mom told me, but before
18 she told me, I didn't know.

19 **MR. BRITT:** Were you aware that he was talking to
20 Nathaniel?

21 **THE WITNESS:** After, yes. After he said that he had
22 seen all of us, yes.

23 **MR. BRITT:** Did he ever mention Chris Paul?

24 **THE WITNESS:** Had he ever mentioned Chris Paul?

25 **MR. BRITT:** Did he ever mention Chris Paul?

1 **THE WITNESS:** Not to me.

2 **MR. BRITT:** Do you know who Chris Paul is?

3 **THE WITNESS:** Yes, sir.

4 **MR. BRITT:** So Hunter never told you that part of his
5 initial interest in the case was to do a story about -- a
6 follow-up on Chris Paul's -- a story about his grandfather dying?

7 **THE WITNESS:** No, sir. He never told me about that.

8 **MR. BRITT:** He approached you from the standpoint of it
9 was going to be all about you and what happened to you?

10 **THE WITNESS:** Yes, sir.

11 **MR. BRITT:** Did he ever ask you for anything?

12 **THE WITNESS:** No, sir.

13 **MR. BRITT:** Did he ask you if you were released and got
14 money, if you would share it with him?

15 **THE WITNESS:** No, sir.

16 **MR. BRITT:** Did he tell you he was going to possibly
17 write a book?

18 **THE WITNESS:** No, sir.

19 **MR. BRITT:** Did he ever tell you about a newspaper
20 article?

21 **THE WITNESS:** Not that I recall it.

22 **MR. BRITT:** And he never told you that he was going to
23 write a newspaper article about what he was doing?

24 **THE WITNESS:** No, sir.

25 **MR. BRITT:** Let me -- this is going to be my last set of

1 questions.

2 You specifically recall wearing a pair of white Nike Air
3 Force 1s that Friday.

4 **THE WITNESS:** Yes, sir.

5 **MR. BRITT:** And when I say "white," I don't mean white
6 with red or white with blue, I mean everything about the shoe was
7 white.

8 **THE WITNESS:** Yes, sir.

9 **MR. BRITT:** Lowtops? Hightops?

10 **THE WITNESS:** Hightops.

11 **MR. BRITT:** And you said you were a size 8 1/2.

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** Did you buy the shoes or did your mom buy
14 those shoes for you?

15 **THE WITNESS:** My mom.

16 **MR. BRITT:** Okay.

17 And when your mom bought you a new pair of shoes, would
18 she ever buy you shoes that were a little bit larger than what
19 your foot measured so that you could wear them longer?

20 **THE WITNESS:** No, sir. She would always ask me did they
21 feel fine.

22 **MR. BRITT:** Okay.

23 And you're absolutely certain that you were wearing an
24 8 1/2?

25 **THE WITNESS:** Yes, sir.

1 **MR. BRITT:** Did your brother -- not Nathaniel, your
2 other brother, Joseph --

3 **THE WITNESS:** Yes, sir.

4 **MR. BRITT:** Did he also wear a -- he wore a size 9.

5 **THE WITNESS:** Yes, sir.

6 **MR. BRITT:** Did he have a pair of all white Nike Air
7 Force 1s?

8 **THE WITNESS:** No, sir.

9 **MR. BRITT:** Were you the only one who had a pair --

10 **THE WITNESS:** Yes, sir.

11 **MR. BRITT:** -- of all white Nike Air Force 1s?

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** Okay.

14 And Nathaniel's foot was bigger than yours?

15 **THE WITNESS:** No. His foot was smaller than mine.

16 **MR. BRITT:** His foot was smaller? What size did he
17 wear?

18 **THE WITNESS:** He wore a 8 1/2 -- 7 1/2 to a 8.

19 **MR. BRITT:** Okay.

20 Did he ever wear your shoes?

21 **THE WITNESS:** Sometimes, not a lot.

22 **MR. BRITT:** Did he ever wear those white Nike Air Force
23 1s?

24 **THE WITNESS:** Not that I recall.

25 **MR. BRITT:** He wasn't wearing them that night?

1 **THE WITNESS:** No, sir.

2 **MR. BRITT:** Has anyone ever told you or shown you any
3 new evidence that would -- that they say would benefit your case?

4 **THE WITNESS:** Have they -- say that again.

5 **MR. BRITT:** Has anyone ever told you or shown you any
6 new evidence that they say would help you with your case?

7 **THE WITNESS:** That would help me?

8 **MR. BRITT:** Yes.

9 **THE WITNESS:** Not that I recall of.

10 **MR. BRITT:** Not that you recall?

11 **JUDGE LOCK:** Yes.

12 **MR. BRITT:** Thank you. I don't have any other
13 questions.

14 **JUDGE LOCK:** Sheriff.

15 **SHERIFF FRYE:** Just a couple.

16 When you first got to the police station, you were in
17 handcuffs. You and the police didn't get along when they come --
18 when they come and got your brother and everything, you didn't
19 want to go with them, did you?

20 **THE WITNESS:** No, sir.

21 **SHERIFF FRYE:** And they're like, "Yeah, you need to
22 come," and an altercation happened?

23 **THE WITNESS:** Yes, sir.

24 **SHERIFF FRYE:** A little scuffle, maybe?

25 **THE WITNESS:** No, no, sir, no scuffle.

1 **SHERIFF FRYE:** Just what?

2 **THE WITNESS:** Naw, they said -- when they came -- when
3 they came and got me, they thought I was my brother. I told them
4 I wasn't. They walked out of the house. They told him that he
5 needed to get in the car. They told me I needed to get in the
6 car.

7 I got my phone. I called my mom. My mama told me not
8 to go. I didn't go. My brother went.

9 **SHERIFF FRYE:** Okay.

10 So when they come back --

11 **THE WITNESS:** When they came back, that's -- I was
12 asleep in the house when they came back.

13 **SHERIFF FRYE:** Oh, you were asleep in the house?

14 **THE WITNESS:** I was woke up by my mom. When I got up, I
15 had my hands in a hoodie, and they told me I needed to take my
16 hands out of my hoodie. And I was asking for what. They just
17 like, "You need to take your hands out your hoodie."

18 Before I took my hands out the hoodie, two detectives
19 pulled two guns out on me. I threw my hands up and I was placed
20 under arrest and took out the house.

21 **SHERIFF FRYE:** Okay.

22 When you were taken to the police station, right off the
23 bat, the guy tells you -- the detective that's interviewing you,
24 he tells you you could get the death penalty for this?

25 **THE WITNESS:** No. They let me sit for a while before

1 they came in.

2 **SHERIFF FRYE:** Okay.

3 So you sat there alone?

4 **THE WITNESS:** Yes.

5 **SHERIFF FRYE:** But when he come in, he come in and said,
6 "Look, you could get the death penalty for this."

7 **THE WITNESS:** No. He said, "Tell me what happened."

8 I said, "I don't know what happened."

9 Then he was like, "Well, I'm going to play you a tape
10 recorder." He played the tape recorder.

11 **SHERIFF FRYE:** Of your brother?

12 **THE WITNESS:** Of my brother. He's like, "You know you
13 could get the death penalty for this." That's when I started
14 lying.

15 **SHERIFF FRYE:** That's when you started lying, right off
16 the get-go; right?

17 **THE WITNESS:** Yes, sir.

18 **SHERIFF FRYE:** And then you give your statement. That's
19 pretty much it right after that.

20 **THE WITNESS:** Yes, sir.

21 **SHERIFF FRYE:** Okay.

22 So how long did he talk to you before he come back and
23 done the recorded statement?

24 **THE WITNESS:** About 30 minutes.

25 **SHERIFF FRYE:** About 30 minutes?

1 **THE WITNESS:** Yes.

2 **SHERIFF FRYE:** And later on he come back and done the
3 recorded statement?

4 **THE WITNESS:** Yes, sir.

5 **SHERIFF FRYE:** That's all I have.

6 **JUDGE LOCK:** Mr. Jarvis.

7 **MR. JARVIS:** My name is Immanuel Jarvis. You realize
8 that this Commission -- this has eight people on it, around here;
9 right?

10 **THE WITNESS:** Yes, sir.

11 **MR. JARVIS:** So we have attorneys, we have criminal
12 defense attorneys, we have prosecution, we have a judge, we have
13 advocate for victims, and then we just have a regular member.

14 Guess what? That's me. I'm the regular member. So I
15 have some questions to ask you as well, but it may not be as
16 sophisticated as some of the attorneys.

17 Are you ready?

18 **THE WITNESS:** Yes, sir.

19 **MR. JARVIS:** All right.

20 So your testimony -- you testified a little while ago
21 that -- or you were asked about running the streets.

22 Tell me a little about, out on a typical day, boys
23 14 years old, you had a 15-year-old with you, right, 16-year-olds
24 with you -- were you considered one of the leaders?

25 **THE WITNESS:** Yes, you could say that.

1 **MR. JARVIS:** Were you the loudest one out of the group?

2 **THE WITNESS:** Maybe, yes.

3 **MR. JARVIS:** Would -- if somebody considered you mouthy,

4 would they be right about that?

5 **THE WITNESS:** Yes.

6 **MR. JARVIS:** Were you a person who kind of just spoke

7 your mind?

8 **THE WITNESS:** Yes.

9 **MR. JARVIS:** Would you be a person that, if someone come

10 at you and they got beef, you got beef too; right?

11 **THE WITNESS:** Yes.

12 **MR. JARVIS:** How many fights have you got -- did you get

13 into between all the way up until 2002 to the day in question?

14 **THE WITNESS:** I can't recall.

15 **MR. JARVIS:** Okay.

16 Was it more than two?

17 **THE WITNESS:** No, sir.

18 **MR. JARVIS:** No more than two fights?

19 **THE WITNESS:** I don't think so. No, sir.

20 **MR. JARVIS:** Okay.

21 I know that earlier this -- today, you were talking

22 about, I think, a quote that you said was you really didn't mess

23 with nobody.

24 We have your record -- juvenile record of all of the

25 incidents that you've had.

1 Give me a little bit more detail about "didn't mess with
2 anybody." So you said you hadn't been in more than two fights.

3 THE WITNESS: No, sir.

4 MR. JARVIS: Anything else? So -- no one talked bad,
5 you had a beef with another group of people?

6 THE WITNESS: No, sir.

7 MR. JARVIS: Okay.

8 Let's go to the interrogation because that's really
9 important to this Commission here.

10 How long would you say -- and, again, I know it's a long
11 time ago, I get it -- how long would you say that you were
12 actually in that interrogation room from start to finish?

13 THE WITNESS: Probably about 2 hours, 30 minutes.

14 MR. JARVIS: Okay. 2 hours, 30 minutes. All right.

15 So you just testified to this a little while ago, that
16 you first came in, they asked you the question, you said that "I
17 don't know what you're talking about. I didn't do anything."

18 And then they put down a recorder, they pressed the
19 recorder, and whose voice was on the other end of that recorder?

20 THE WITNESS: My brother's.

21 MR. JARVIS: Your brother. You understood that that was
22 your brother?

23 THE WITNESS: Yes.

24 MR. JARVIS: Okay.

25 And what exactly did you hear him say?

1 **THE WITNESS:** Exactly I heard him say that I hit
2 Mr. Nathaniel Jones first.

3 **MR. JARVIS:** Did they stop it? Is that all --

4 **THE WITNESS:** That's all I heard.

5 **MR. JARVIS:** Prior to that, did the cops tell you why
6 they were questioning you?

7 **THE WITNESS:** No, sir.

8 **MR. JARVIS:** Before the recording, did you know what
9 happened to Mr. Jones?

10 **THE WITNESS:** No, sir.

11 **MR. JARVIS:** Okay.

12 So when they said -- when you heard the recording, it's
13 your brother stating that you hit first.

14 What was the next thing that you said?

15 **THE WITNESS:** The next thing that I said?

16 **MR. JARVIS:** To the cops.

17 **THE WITNESS:** First, I -- I didn't really say nothing.

18 **MR. JARVIS:** Okay.

19 What did they say after they hit stop.

20 **THE WITNESS:** After they hit stop, he said, "Do you want
21 to tell us the truth now?"

22 **MR. JARVIS:** And then after they said, "Do you want us
23 to tell the truth now," [sic], what was the next statement that
24 you said?

25 **THE WITNESS:** Next statement that I said? Started

1 lying.

2 **MR. JARVIS:** What did you say?

3 **THE WITNESS:** First thing I said probably was -- I can't
4 remember off the top of my head.

5 **MR. JARVIS:** Did you say -- okay. So let me ask you
6 this question.

7 Where did Bubba come into the conversation?

8 **THE WITNESS:** Bubba didn't come into the conversation
9 until later.

10 **MR. JARVIS:** Later.

11 And how did he come into the conversation even later?
12 Do you remember?

13 **THE WITNESS:** Because they asked me where I was at
14 during the early time of that day.

15 **MR. JARVIS:** All right.

16 And so you said Bubba -- "I was with Bubba"; right?

17 **THE WITNESS:** I said we was all outside his house.

18 **MR. JARVIS:** All outside his house. Okay.

19 And then -- so how did Dorrell come into the
20 conversation when you started lying?

21 **THE WITNESS:** Same way. All of us was just out in front
22 of his house.

23 **MR. JARVIS:** And then is it -- okay. So continue on.
24 "All of us were in front of the house" -- and then continue with
25 the lie. I want to hear it.

1 **THE WITNESS:** First I said we was on the front of his
2 house, then we went to the park. I said Christopher Bryant
3 planned it. And he said he was going to him first. And then we
4 all ran over. I put me and my brother in the middle of the
5 street. That was it.

6 **MR. JARVIS:** When was the first time the death penalty
7 was brought up to you in conversation with the police?

8 **JUDGE LOCK:** After they played the tape recorder.

9 **MR. JARVIS:** After?

10 **THE WITNESS:** After.

11 **MR. JARVIS:** Okay.

12 And what did they say about it?

13 **THE WITNESS:** They was like, "You know you could get the
14 death penalty for this. So just tell us what we want to know so
15 you can go."

16 **MR. JARVIS:** Have you ever spoken with a psychologist
17 before?

18 **THE WITNESS:** No, sir, not that I recall.

19 **MR. JARVIS:** Have you ever spoken with anyone that has
20 spoken to you about young people being interrogated or questioned?

21 **THE WITNESS:** No, sir.

22 **MR. JARVIS:** Have you ever been told that -- from a
23 psychologist that when young people are questioned without a
24 guardian, sometimes they say whatever needs to be said?

25 **THE WITNESS:** Yes, sir.

1 **MR. JARVIS:** Have you heard that before?

2 **THE WITNESS:** Yes, sir.

3 **MR. JARVIS:** Who told you that?

4 **THE WITNESS:** Who told me that?

5 **MR. JARVIS:** Yeah. Where have you heard that?

6 **THE WITNESS:** Who told me that? I can't remember.

7 **MR. JARVIS:** Have you heard it recently, in the last
8 year?

9 **THE WITNESS:** Last year? No, sir.

10 **MR. JARVIS:** Have you heard this in the last two years?

11 **THE WITNESS:** Possibly.

12 **MR. JARVIS:** Okay.

13 But it's been relatively recent. You've been
14 incarcerated since 2002. You never went home.

15 **THE WITNESS:** No, sir.

16 **MR. JARVIS:** But until -- but just recently you've heard
17 that someone has said it, you just heard that --

18 **THE WITNESS:** Yes.

19 **MR. JARVIS:** -- adolescents, when they're interrogated
20 for a long period of time without their guardian, can be coerced
21 into saying anything?

22 **THE WITNESS:** Yes, sir.

23 **MR. JARVIS:** But you don't remember who told you that?

24 **THE WITNESS:** No, sir.

25 **MR. JARVIS:** What do you think about that statement?

1 **THE WITNESS:** What I think about it? It's a true
2 statement.

3 **MR. JARVIS:** Why is that?

4 **THE WITNESS:** I was scared. I didn't have my mom with
5 me. Normally, when I get in trouble, I always have my mom with
6 me. I didn't have my mom with me. I was scared. I mean, being
7 that I heard my brother say that, so ...

8 **MR. JARVIS:** Did you ever ask for your mom?

9 **THE WITNESS:** Yes, sir.

10 **MR. JARVIS:** What did they say when you asked for her?

11 **THE WITNESS:** Told me she couldn't come.

12 **MR. JARVIS:** And how old were you at this time?

13 **THE WITNESS:** 14.

14 **MR. JARVIS:** You were 14 years old?

15 **THE WITNESS:** Yes, sir.

16 **MR. JARVIS:** Did you ever ask if you could leave?

17 **THE WITNESS:** Could I ask could I leave?

18 **MR. JARVIS:** Yeah. Did you ever ask?

19 **THE WITNESS:** I asked could my mom come get me.

20 **MR. JARVIS:** And they said?

21 **THE WITNESS:** No.

22 **MR. JARVIS:** No further questions. Thank you.

23 **JUDGE LOCK:** Yes, ma'am.

24 **MS. COLBERT:** Hi. I am Robin Colbert.

25 **THE WITNESS:** How you doing?

1 **MS. COLBERT:** Good.

2 Mr. Banner, are you familiar with the North Carolina
3 Prisoner Legal Services?

4 **THE WITNESS:** Prison Legal Services? Yes, ma'am.

5 **MS. COLBERT:** Do you remember working with an attorney
6 from the Prisoner Legal Services?

7 **THE WITNESS:** Yes.

8 **MS. COLBERT:** Do you remember what she helped you
9 with -- or did she help you? I mean, what were your interactions
10 with this attorney from the Prisoner Legal Services?

11 **THE WITNESS:** They asked me a bunch of questions.

12 **MS. COLBERT:** Did they?

13 **THE WITNESS:** Yeah, because I was -- certain people did
14 certain things, so they always came did follow-up questions.

15 **MS. COLBERT:** So are you familiar with the term "motion
16 for appropriate relief"?

17 **THE WITNESS:** Have heard of it, yes, ma'am.

18 **MS. COLBERT:** What do you know about that?

19 **THE WITNESS:** Not too much.

20 **MS. COLBERT:** Do you remember participating in such a
21 process or document?

22 **THE WITNESS:** Meaning?

23 **MS. COLBERT:** So, you know, like everyone's been saying,
24 we have a lot of documents involving this case, and one of them is
25 a motion for appropriate relief from an attorney from the North

1 Carolina Prisoner Legal Services.

2 It was about getting you resentenced.

3 THE WITNESS: Yes, ma'am.

4 MS. COLBERT: So that rings a bell for you now?

5 THE WITNESS: Yes, ma'am.

6 MS. COLBERT: And in that document -- do you remember
7 the attorney showing you the document?

8 THE WITNESS: She mailed it to me.

9 MS. COLBERT: Did you have an opportunity to read it?

10 THE WITNESS: Yes.

11 MS. COLBERT: And did you know that in the document it
12 basically says that you were responsible for -- that you, indeed,
13 did commit this crime?

14 THE WITNESS: Yes.

15 MS. COLBERT: "Rayshawn and the other children behaved
16 recklessly on November 15, and his actions contributed to the loss
17 of life."

18 THE WITNESS: Yes.

19 MS. COLBERT: And so you agreed --

20 JUDGE LOCK: I didn't even -- I didn't even know that
21 she done that. Some -- somebody else did that and she said she
22 did the MAR for me.

23 MS. COLBERT: Did you know what -- what the purpose of
24 the MAR was for --

25 THE WITNESS: No, sir -- no, ma'am.

1 **MS. COLBERT:** -- do you know its purpose? That it was
2 to get you resentenced?

3 **THE WITNESS:** After, when she told me, yes.

4 **MS. COLBERT:** Did it -- so according to our records,
5 when it initially happened -- and this was back in 2012, that was
6 denied.

7 Do you remember that?

8 **THE WITNESS:** No, ma'am.

9 **MS. COLBERT:** Do you remember them doing it again?

10 **THE WITNESS:** No, ma'am.

11 **MS. COLBERT:** Something similar?

12 **THE WITNESS:** No, ma'am.

13 **MS. COLBERT:** So what is your current sentence? Do you
14 know what your current sentence is?

15 **THE WITNESS:** Life with the possibility of parole.

16 **MS. COLBERT:** When did that happen? Because that wasn't
17 the original sentence; right?

18 **THE WITNESS:** No, ma'am.

19 **MS. COLBERT:** What was the original sentence?

20 **THE WITNESS:** Life with parole.

21 **MS. COLBERT:** Life without parole?

22 **THE WITNESS:** Without parole.

23 **MS. COLBERT:** Yeah. And so when -- now, it's a
24 possibility of parole.

25 Do you know when that happened?

1 **THE WITNESS:** 2017, August 31st.

2 **MS. COLBERT:** That's really good. It's -- they
3 probably -- it happened -- the judge signed it on the 13th of
4 August.

5 **THE WITNESS:** Okay.

6 **MS. COLBERT:** So, yeah, that would be engraved in your
7 mind.

8 Do you have -- because that's very important, isn't it,
9 to you actually coming out of prison?

10 **THE WITNESS:** Yes, ma'am.

11 **MS. COLBERT:** Do you have a lawyer? Are you represented
12 by legal counsel?

13 **THE WITNESS:** Yes.

14 **MS. COLBERT:** Who's your legal counsel?

15 **THE WITNESS:** Christine Mumma.

16 **MS. COLBERT:** Do you remember having a telephone
17 conversation -- because we also have records here from
18 conversations when you were in prison, from calling in prison.

19 Do you remember having a conversation with your mom
20 saying: "A white man from Elizabeth City came to see me to make
21 sure that you were doing -- filling out the paperwork for the
22 Innocence Inquiry Commission"?

23 Do you remember telling your mom that?

24 **THE WITNESS:** Not off the top, but I think so, yes.

25 **MS. COLBERT:** Do you remember who this gentleman was?

1 **THE WITNESS:** Do I remember who he was?

2 **MS. COLBERT:** Yes.

3 **THE WITNESS:** If I see him again, I probably could.

4 **MS. COLBERT:** So not necessarily who he was, but what
5 his role was?

6 **THE WITNESS:** I don't.

7 **MS. COLBERT:** He just came to make sure you were filling
8 out the papers.

9 **THE WITNESS:** I guess so, yes.

10 **MS. COLBERT:** Okay.

11 So your brother actually -- when he did this motion to
12 get you resentenced -- to get the resentence, his was approved
13 first. Is that -- do you know why -- do you know that was a
14 catalyst or the reason why yours was approved? Because his got
15 approved?

16 **THE WITNESS:** I don't know.

17 **MS. COLBERT:** You and your mother didn't discuss that at
18 all?

19 **THE WITNESS:** Not that I know of.

20 **MS. COLBERT:** And so since you've been -- when did
21 you -- when did you -- the lawyer that you have now -- who is your
22 lawyer?

23 **THE WITNESS:** Christine Mumma.

24 **MS. COLBERT:** So how long has she been your lawyer?

25 **THE WITNESS:** It's been a good 3 months now.

1 **MS. COLBERT:** Oh, it's only been 3 months? Okay.

2 And so when -- was she your lawyer when Hunter Atkins
3 was trying to contact you?

4 **THE WITNESS:** No.

5 **MS. COLBERT:** How did she end up being your lawyer?

6 **THE WITNESS:** I guess because of this process.

7 **MS. COLBERT:** Did she contact you or your mom tell you
8 about her or how did she --

9 **THE WITNESS:** Contact me.

10 **MS. COLBERT:** She contacted you?

11 **THE WITNESS:** Yes.

12 **MS. COLBERT:** So have you been in touch with her since
13 these proceedings began?

14 **THE WITNESS:** Have I -- yes.

15 **MS. COLBERT:** Yes.

16 And she's been talking and advising you as an attorney?

17 **THE WITNESS:** Yeah, right.

18 **MS. COLBERT:** As your lawyer --

19 **THE WITNESS:** Yes.

20 **MS. COLBERT:** -- she's provided information to you?

21 So what I'm hearing you say is that when you -- when the
22 person from the Prisoner Legal Services -- do you remember what
23 her name was -- in regard to you doing this motion for appropriate
24 relief, where you could have -- be resentenced? Do you remember
25 who you talked to?

1 **THE WITNESS:** No, ma'am.

2 **MS. COLBERT:** Who the attorney was?

3 **THE WITNESS:** No, ma'am.

4 **MS. COLBERT:** Who informed you that you had -- your
5 sentence was changed?

6 How did you get notification that the sentence had
7 changed?

8 **THE WITNESS:** I got -- because I had went to Forsyth
9 County for it -- and I went to court for it.

10 **MS. COLBERT:** Uh-huh.

11 **THE WITNESS:** And that's -- I can't remember -- I can't
12 remember her name off the top of my head right now.

13 **MS. COLBERT:** There was a woman that was there --

14 **THE WITNESS:** Yes.

15 **MS. COLBERT:** -- and there was a proceeding.

16 **THE WITNESS:** Yes.

17 **MS. COLBERT:** And at that time, they told you that?

18 **THE WITNESS:** Yes.

19 **MS. COLBERT:** Okay. Thank you.

20 **THE WITNESS:** You're welcome.

21 **JUDGE LOCK:** Commissioner Essary.

22 **MS. ESSARY:** Just a couple more questions.

23 Do you remember at your trial Jessica Black putting you
24 at the scene of the crime and saying that you guys did it between
25 you?

1 Do you remember that?

2 **THE WITNESS:** Yes, ma'am.

3 **MS. ESSARY:** What are your feelings today about Jessicah
4 Black?

5 **THE WITNESS:** Same as they always been.

6 **MS. COLBERT:** What's that?

7 **THE WITNESS:** She shouldn't never lied.

8 **MS. ESSARY:** Thank you.

9 **JUDGE LOCK:** Commissioner Newton.

10 **MS. NEWTON:** Yes. Thank you, sir.

11 I have a couple of follow-up questions with your
12 patience, Mr. Banner.

13 Did law enforcement take your shoes from you when they
14 questioned you?

15 **THE WITNESS:** Yes, ma'am.

16 **MS. NEWTON:** Okay.

17 So they took them off your feet?

18 **THE WITNESS:** Yes, ma'am.

19 **MS. NEWTON:** Okay.

20 And those were the shoes -- were those the same shoes
21 you had on --

22 **THE WITNESS:** No, ma'am.

23 **MS. NEWTON:** -- on the 15th?

24 **JUDGE LOCK:** No, ma'am.

25 **MS. NEWTON:** The shoes they took from you, what did they

1 look like?

2 THE WITNESS: It was red and white Air Forces, Nikes.

3 MS. NEWTON: Okay.

4 And they belonged to Joseph?

5 THE WITNESS: No. They belonged to me.

6 MS. NEWTON: Those were yours. Okay.

7 And the ones you had on on the 15th, I believe you said
8 they were hightop whites; is that correct?

9 THE WITNESS: Yes, ma'am.

10 MS. NEWTON: Now, you said they were 8 1/2.

11 THE WITNESS: Yes, ma'am.

12 MS. NEWTON: Okay.

13 Do you remember what your shoes looked like that you had
14 on your feet?

15 THE WITNESS: A white, red Nike sign.

16 MS. NEWTON: Could you, pick them out if I showed you a
17 picture?

18 THE WITNESS: Yes.

19 MS. NEWTON: When you were at trial, did you see
20 pictures of the shoes you both had on on the date that Mr. Jones
21 passed away --

22 THE WITNESS: No, ma'am.

23 MS. NEWTON: -- and the shoes that they took from you?

24 THE WITNESS: No, ma'am.

25 MS. NEWTON: No what?

1 **THE WITNESS:** No, ma'am, they never showed me no shoes.

2 **MS. NEWTON:** At your trial, did the State show the
3 jury --

4 **THE WITNESS:** Yes.

5 **MS. NEWTON:** Okay.

6 So they showed the jury both the shoes you had on on the
7 15th and the shoes you had on when they interviewed you?

8 **THE WITNESS:** Not that I remember. I know they showed
9 us the shoes they had. They had shoes lined up in the courtroom.

10 **MS. NEWTON:** Okay.

11 May I approach the witness?

12 **JUDGE LOCK:** Yes.

13 **MS. NEWTON:** Mr. Banner, if you would, I'm going to hand
14 you a stack of pictures. And this is Handout Number 26 for the
15 record.

16 Can you just flip through those and, first, pull out the
17 shoes that you had on when you were interviewed on the 19th of
18 November.

19 Just flip them over and keep them in order, if you don't
20 mind. There you go.

21 Okay.

22 Now, which shoes are you pointing to?

23 **THE WITNESS:** Red and white Air Force 1s.

24 **MS. NEWTON:** And when did you have those shoes on?

25 **THE WITNESS:** When did I -- I had those on the day that

1 they picked me up.

2 MS. NEWTON: On the 19th of November of 2002?

3 THE WITNESS: Yes.

4 MS. NEWTON: Okay. Now, for the record, I'm identifying
5 this as NCIIC Exhibit Number 73.

6 And if you could pick out the ones you had on your feet
7 on the 15th of November.

8 And you're pointing to these?

9 THE WITNESS: Yes, ma'am.

10 MS. NEWTON: Okay.

11 For the record, it's NCIIC number 77.

12 And, Mr. Banner, are you pointing to these white hightop
13 Nikes?

14 THE WITNESS: Yes.

15 MS. NEWTON: And those were the shoes you had on on the
16 15th of November; correct?

17 THE WITNESS: Yes.

18 MS. NEWTON: And are those the ones that you're
19 describing as an 8 1/2.

20 THE WITNESS: Yes.

21 MS. NEWTON: Okay. Great. And that is number -- did I
22 say number 77?

23 MS. SMITH: Yes, ma'am.

24 MS. NEWTON: Okay. Thank you very much.

25 MS. ESSARY: I have another question.

1 Mr. Banner, I don't remember the shoes I had on three
2 days ago.

3 How do you remember the shoes you had on the night of
4 the murder?

5 **THE WITNESS:** Because I knew -- it's just something
6 stuck in my head. I know what I had on and I know what shoes that
7 I liked to wear.

8 **MS. ESSARY:** When I questioned you earlier, I asked you
9 what shoes you had on when Jessica Banner [sic] ran over your
10 foot, and you said you didn't know.

11 Is that still correct?

12 **THE WITNESS:** I remember I had on some white Nikes.

13 **MS. ESSARY:** You remember now it was some white Nikes?

14 **THE WITNESS:** Yes.

15 **MS. ESSARY:** Were those the same white Nikes that you
16 just pointed out?

17 **THE WITNESS:** Yes.

18 **MS. ESSARY:** So you wore those all day?

19 **THE WITNESS:** Yes.

20 **MS. ESSARY:** Okay. One more follow-up.

21 Do you remember where you were when the sun was starting
22 to set the night of the murder?

23 **THE WITNESS:** Probably on my way -- on my way to another
24 part of town, probably getting ready to walk east on, but we
25 decided not to go. He left. I went in the house and went to

1 sleep.

2 MS. ESSARY: And when you say "he" --

3 THE WITNESS: I was with another person.

4 MS. ESSARY: What is that person's name?

5 THE WITNESS: Marcus.

6 MS. ESSARY: You were with Marcus?

7 THE WITNESS: Yes.

8 MS. ESSARY: About when the sun was going down?

9 THE WITNESS: Yes.

10 MS. ESSARY: And when you went home, you said you
11 watched TV.

12 THE WITNESS: For a little bit.

13 MS. ESSARY: Do you remember how long you watched TV?

14 THE WITNESS: No. I mean, I fell asleep watching TV.

15 MS. ESSARY: Any idea what time you started watching TV?

16 THE WITNESS: No, ma'am.

17 MS. ESSARY: Do you remember if it was dark outside?

18 THE WITNESS: Little light, little dark. In between. I
19 know it was getting dark.

20 MS. ESSARY: It was getting dark. And you watched TV
21 and then fell asleep.

22 THE WITNESS: Yes.

23 MS. ESSARY: And when did you wake up?

24 THE WITNESS: When did I wake up? I woke up when my
25 brother walked in the house.

1 **MS. ESSARY:** What time was that?

2 **THE WITNESS:** Don't remember.

3 **MS. ESSARY:** Was it -- is there anything that would help
4 you refresh your memory?

5 **THE WITNESS:** No.

6 **MS. ESSARY:** Was it a dark outside?

7 **THE WITNESS:** I know it was dark then but I don't
8 remember what time.

9 **MS. ESSARY:** And that was Joseph; is that right?

10 **THE WITNESS:** Yes.

11 **MS. ESSARY:** Okay.

12 Is that -- did you tell the police all of this?

13 **THE WITNESS:** Did I tell the police all this?

14 **MS. ESSARY:** Yes.

15 **THE WITNESS:** Not that I remember.

16 **MS. ESSARY:** Why did you so quickly falsely confess to
17 this crime?

18 **THE WITNESS:** Why?

19 **MS. ESSARY:** Why?

20 **THE WITNESS:** Because I -- I seen -- when they told me
21 my brother was coming back and I seen Brayboy and his mom leaving,
22 so after I heard that, they told me, "You can go ahead, tell us
23 the truth so you can go on get up out of here," I lied.

24 **MS. ESSARY:** So you thought you saw Brayboy getting to
25 leave the police department?

1 **THE WITNESS:** When I seen Brayboy and his mom leave out
2 the interrogation room, I thought they was leaving to go.

3 **MS. ESSARY:** Okay.

4 You also thought your brother had gotten to leave at
5 that point.

6 **THE WITNESS:** Yes.

7 **MS. ESSARY:** Did you see him leave?

8 **THE WITNESS:** No, ma'am.

9 **MS. ESSARY:** That's all.

10 **JUDGE LOCK:** Anybody else?

11 Ms. Guice Smith, do you have some additional questions?

12 **MS. SMITH:** I don't but I was going to show him the
13 photographs, but Ms. Newton took care of that.

14 **JUDGE LOCK:** All right. Mr. Banner, thank you very
15 much, sir. You're excused.

16 **MS. SMITH:** May he be released from the sequestration
17 order?

18 **JUDGE LOCK:** Oh, yes. Sir, the sequestration order is
19 released. You certainly may talk with your attorney about the
20 case but please do not talk with any of your other codefendants --

21 **THE WITNESS:** Yes, sir.

22 **JUDGE LOCK:** -- if you were going to have any contact
23 with him.

24 **THE WITNESS:** Yes, sir.

25 **JUDGE LOCK:** Thank you sir.

1 (Witness stands down, 12:36 p.m.)

2 **MS. SMITH:** Commissioners, before we break for lunch, I
3 want to clarify something on the record.

4 Ms. Colbert asked some questions about a male attorney
5 that visited Mr. Banner in prison. The Commission's statute
6 requires that we notify codefendants of a formal inquiry and give
7 60 days for codefendants to apply.

8 It was not entirely clear to us whether Mr. Banner
9 understood the consequences and the gravity of that and so we
10 asked IDS to have someone advise him about his rights under that
11 and that he may be barred if he did not apply.

12 And so that is the man that you see made reference to in
13 the calls, that was Tommy Routten. That's someone IDS appointed
14 for that limited purpose of providing that advice.

15 I have nothing further before lunch.

16 **JUDGE LOCK:** All right. Folks, I need to take a full
17 hour for lunch. I've got to issue a memo to the bar in Johnston
18 County concerning court next week. My phone is blowing up today.

19 So we will be at lunch until, let's just say, 1:45.

20 (Recess taken, 12:37 to 1:46 p.m.)

21 **JUDGE LOCK:** All right. Looks like everybody is here.
22 Let's come back to order.

23 Ms. Guice Smith.

24 **MS. SMITH:** Yes, Your Honor. The Commission recalls
25 staff attorney Julie Bridenstine.

1 (Witness, Julie Bridenstine, resumes the stand.)

2 **MS. SMITH:** Commissioners, you've already heard
3 testimony related to the Commission staff's interview with
4 Nathaniel Cauthen. I'm calling Mr. Cauthen in a few minutes to
5 testify, and I have a few follow-up questions for him based on
6 information that we learned after our interview with him. You'll,
7 of course, have an opportunity to ask him questions.

8 Mr. Cauthen's interview transcript was previously
9 provided to you-all before the hearing and again on the overnight
10 recess last night and can be found as Handout 98.

11 BY MS. SMITH: (1:47 p.m.)

12 **Q.** Ms. Bridenstine, what did you learn about Mr. Cauthen
13 from his DPS records as it relates to his education and mental
14 health?

15 **A.** The highest grade Mr. Cauthen completed was the ninth
16 grade. His IQ score was reported as 76 on the revised beta IQ
17 exam in 2004. His mental health records indicates that he has had
18 numerous referrals and treatments for multiple diagnoses for
19 mental health conditions. He also has had at least three suicide
20 attempts in prison.

21 **Q.** Did Mr. Cauthen's DPS records indicate if ever admitted
22 to participating in the crime?

23 **A.** No.

24 **Q.** Did you locate any other DPS records that pertain to
25 Mr. Cauthen's innocence claim in this case?

1 **A.** Yes. There were suicide notes addressed to his mother,
2 Teresa Ingram, and to his brother, Rayshawn Banner, from 2014. In
3 those notes, he denied committing the crime and maintained his
4 innocence. There was a discipline report from that 2014 attempt
5 that detailed the circumstances surrounding the suicide attempt
6 which was an attempted hanging.

7 There was a letter in his DPS records that Mr. Cauthen
8 addressed to the Parole Commission in 2018 that said he made a
9 mistake by lying to the police because they forced it upon him and
10 his codefendants. He stated that he did not commit this crime.

11 **MS. SMITH:** Commissioners, Handout 96 in your hearing
12 handout notebook is a copy of the two documents related to
13 Mr. Cauthen's suicide attempt from his DPS records.

14 Handout 97 is a copy of the letter that Mr. Cauthen
15 wrote to the Parole Commission in 2018.

16 Judge Lock, in order to obtain the DPS records, the
17 Commission had to get a court order. Those records are not public
18 record. Given the sensitive nature of the records related to
19 Mr. Cauthen's suicide attempt, I would request that you seal
20 Handout 96.

21 **JUDGE LOCK:** All right. So ordered.

22 I think that you will be preparing a written order, will
23 you not?

24 **MS. SMITH:** Yes, sir. We will prepare one for all of
25 the sealed.

1 **JUDGE LOCK:** Yes. Thank you.

2 **MS. SMITH:** Commissioners, if you want to take a moment
3 to review Handouts 96 and 97.

4 (Commissioners review, 1:50 to 1:55 p.m.)

5 **Q.** Ms. Bridenstine, during your interview with Mr. Cauthen,
6 did he maintain his innocence with you?

7 **A.** Yes.

8 **Q.** If you will, remind the Commissioners what Mr. Cauthen
9 told you about his whereabouts on November 15, 2002.

10 **A.** Yes.

11 Nathaniel Cauthen said that he was with Jessica Black
12 and Christopher Bryant's house that day no later than 5:00 p.m.

13 Christopher Bryant, Dorrell Brayboy, and Jed had gone to
14 a store. He left with Jessica Black, and none of the other
15 defendants were with him at that point. They got back to his
16 neighborhood around 7:00 to 8:00 p.m. and at that point, they
17 picked up Jermal Tolliver, Christopher Bryant, Dorrell Brayboy,
18 and Jed. They took Jed home and found out that the victim had
19 died.

20 He said Jed lived about 11 doors down from the victim.
21 He and Jed jumped out the car and went to look at the crime scene.
22 They found out from a bystander that someone had killed a man.
23 Nathaniel Cauthen said that he saw the body.

24 They left and he went then to the bowling alley with
25 Jed, Jermal Tolliver, Christopher Bryant, Dorrell Brayboy, and

1 Jessica Black. He said that he got into an argument with an
2 officer there, and the only time he said he saw Rayshawn Banner
3 was around 3:30 to 4:00 p.m., when he said that they split up the
4 money that their mother had left for them.

5 **Q.** Ms. Bridenstine, did the Commission staff have any
6 communications about Hunter Atkins with Mr. Cauthen?

7 **A.** Yes. The Commission learned that Hunter Atkins had been
8 contacting Mr. Cauthen and his family to try to start talking to
9 him about this case in March of 2019. He sent to us the materials
10 that he had received from Mr. Atkins from March through May of
11 2019. He sent us a total of three letters regarding Mr. Atkins
12 with the correspondence he had received from Mr. Atkins.

13 Because Mr. Cauthen was a claimant with the Commission,
14 we sent him letters in response to each of those letters reminding
15 him of the Commission rule about not speaking to the media.

16 **MS. SMITH:** Commissioners, do you have questions for
17 Ms. Bridenstine?

18 **MR. BRITT:** With respect to the letters that were
19 received from DPS about the suicide attempt, did you ever ask him
20 if he actually wrote these? Or someone else?

21 **THE WITNESS:** I haven't spoken to Mr. Cauthen about
22 those letters.

23 **MR. BRITT:** Okay. Thank you.

24 **MS. SMITH:** If there are no additional questions, I
25 would ask that Ms. Bridenstine step down.

1 (Witness stands down.)

2 **MS. SMITH:** The Commission calls Nathaniel Cauthen.

3 * * * * *

4 Thereupon, NATHANIEL CAUTHEN, a witness having been called by the
5 Commission, was affirmed and testified as follows:

6 BY MS. SMITH: (1:59 p.m.)

7 **Q.** Good afternoon, Mr. Cauthen. My name is Lindsey Guice
8 Smith. I am the Executive Director of the North Carolina
9 Innocence Inquiry Commission. I have got some questions for you
10 today, and then when I am done asking questions, all of the
11 Commissioners around the table may have questions for you as well,
12 okay?

13 **A.** (Nonverbal response.)

14 **Q.** If you will keep your voice up and answer with words so
15 that our court reporter here can hear you, okay?

16 **A.** Yes, ma'am.

17 **Q.** All right.

18 Can you please state your full name for the record.

19 **A.** Nathaniel Arnold Cauthen.

20 **Q.** Did you rob Nathaniel Jones?

21 **A.** No, ma'am, I did not.

22 **Q.** Did you kill Nathaniel Jones?

23 **A.** No, ma'am, I did not.

24 **Q.** Were you involved in any way in the robbery and death of
25 Nathaniel Jones?

1 A. No, ma'am, I wasn't.

2 Q. Were you present when Mr. Jones was robbed, tied up, and
3 killed?

4 A. No, ma'am, I wasn't.

5 Q. Were you nearby when Nathaniel Jones was robbed, tied
6 up, and killed?

7 A. No, ma'am, I wasn't.

8 Q. Did you see this crime being committed?

9 A. No, ma'am.

10 Q. Did you ever participate in any way in a plan to commit
11 this robbery?

12 A. No, ma'am.

13 Q. Are you aware of who committed the crime?

14 A. No, ma'am.

15 Q. Did any of the other codefendants in the case -- that
16 being Christopher Bryant, Jermal Tolliver, Dorrell Brayboy, or
17 Rayshawn Banner -- ever tell you that they had any involvement in
18 this crime?

19 A. No, ma'am.

20 Q. Did any of the other codefendants in this case -- that
21 being Christopher Bryant, Jermal Tolliver, Dorrell Brayboy, or
22 Rayshawn Banner -- ever tell you that they had knowledge of who
23 committed this crime?

24 A. No, ma'am.

25 Q. Other than your statements to police on November 19,

1 2002, have you ever told anyone else that you committed this
2 crime?

3 A. No, ma'am.

4 Q. Where were you of November 15, 2002?

5 A. At the particular time -- I don't know when the crime
6 was happening, but I was with Jessica Black.

7 Q. Okay.

8 Why don't you walk us through -- did you go to school
9 that day?

10 A. Yes, ma'am.

11 Q. What time did you get home from school?

12 A. I got home -- from November the 15th or November the
13 19th?

14 Q. November the 15th, the day of the crime.

15 A. November the 15th, I got off at -- I got off at a store
16 bus stop because this was my first day at Independence. I had
17 been expelled from school, and I had to learn the route. And I
18 got off at the quickest route to my neighborhood, and it was right
19 down the street.

20 And when I left from my bus stop, I went straight to
21 Christopher Bryant's house.

22 Q. Okay.

23 And then what happened after you got to Christopher
24 Bryant's house?

25 A. Well, we were supposed to be getting into a fight with

1 Jermal Tolliver's older brother. It never occurred. We stayed at
2 the house for probably about -- until 5:00 o'clock, I'd say, and
3 then all of -- Christopher Bryant, my little brother Rayshawn,
4 Jermal Tolliver, Dorrell Brayboy, Shelton, Jed -- they all went to
5 the store, and I stayed at Christopher Bryant's house.

6 Q. Was Jessica Black with them or was she with you?

7 A. Jessica Bryant had just pulled -- I mean Jessica Black
8 just pulled up when everybody had left. I waved her down. I seen
9 her car coming past the house, I waved her down. She turned
10 around and came back to pick me up. We circled the block to look
11 for my codefendants. We didn't see them. So I took her to
12 another location on Longview, a neighborhood that's closest to the
13 neighborhood of Christopher Bryant's and my neighborhood.

14 Q. When the others left to go to the store, do you know
15 what store they were going to?

16 A. I don't even know what store they went to at all.

17 Q. Did they leave on foot or in a car?

18 A. They left on foot.

19 Q. When you went with Jessica Black, did you ride in her
20 car?

21 A. Yes, ma'am.

22 Q. And you went to this other neighborhood, Longview?

23 A. Yes, ma'am.

24 Q. What were you doing in the Longview neighborhood?

25 A. Well, I just went to a house that I'm normally known to

1 be at, which is a neighborhood where everybody is known to be at.
2 So my cousin, Anjuan Terry, my cousin Laymond Hairston, they was
3 all there, and a couple of other -- the residents that was --
4 house that we was at, his name is Papa -- I don't know his real
5 government name -- but we stopped there and we picked up a friend
6 of mine and we took him to another neighborhood.

7 Q. Did you say "Papa"?

8 A. Yes, ma'am.

9 Q. Okay.

10 Which friend did you pick up there?

11 A. Papa.

12 Q. You picked up Papa?

13 A. Yes, ma'am.

14 Q. Okay.

15 And was that his house that you were at?

16 A. No, that wasn't his house. He was just there like
17 everybody else.

18 Q. Okay.

19 When you were there, were you there to buy drugs?

20 A. No, ma'am.

21 Q. Okay.

22 Where did you go after you left that house when you had
23 Papa in the car?

24 A. We went to -- we went to another neighborhood across
25 town named Fairchild.

1 Q. Fairchild?

2 A. Yes, ma'am.

3 Q. What did you do in that neighborhood?

4 A. Nothing. We just -- he just went to go see his
5 baby-mother. And that when he left, we left there, we went to
6 another location, an apartment complex. By this time, it was
7 already dark so we went to another location behind Baptist
8 Hospital at a Circle K convenience store.

9 Q. So when you're going to all of these locations, what is
10 your purpose for going to them?

11 A. Nothing. We was just dropping him off. We were just
12 escorting him to and from this house.

13 Q. Okay.

14 After you went to that location behind the hospital, the
15 Circle K --

16 A. Yes, ma'am.

17 Q. -- what did you do after that?

18 A. Then me and Jessica went back to the neighborhood where
19 we stopped. We stopped, she performed oral sex for me, then we
20 went to her grandmother house, and then we went back to
21 Christopher Bryant house.

22 Q. When you went to her grandmother's house, did you get
23 out of the car?

24 A. No, ma'am.

25 Q. You stayed in the car?

1 A. Yes, ma'am.

2 Q. Did she get out of the car?

3 A. Yes, ma'am.

4 Q. Did she go in the house?

5 A. Yes, ma'am.

6 Q. How long was she in the house?

7 A. Probably nor more than 5 to 10 minutes.

8 Q. And then after she came back out to the car, you went
9 back to Christopher Bryant's house?

10 A. Yes, ma'am.

11 Q. What did you do when you got there?

12 A. When we got back there, she actually rode over my little
13 brother foot. So I had to calm my little brother down from
14 actually attacking her. Then Christopher Bryant, Dorrell Brayboy,
15 Shelton, Jed -- we all got into her car -- we all got into her car
16 and took Shelton and Jed to Moravia Street.

17 Q. Okay.

18 Do you know what time that was?

19 A. I do not. But it was after dark because it was -- it
20 was completely dark.

21 Q. When you say that she rolled over Rayshawn's foot --

22 A. Yes, ma'am.

23 Q. -- was he hurt?

24 A. I mean, not to the extent where he needed to be
25 hospitalized. She rolled over his foot and he was still able to

1 walk, you know what I'm saying? He was limping, but, you know
2 what I'm saying, he was still able to walk.

3 Q. So he didn't get in the car with you-all?

4 A. No, ma'am.

5 Q. What happened when you got to Moravia Street?

6 A. Well, we all got at Jed's -- oh, no. Shelton went to
7 the house that he lived in on the corner. That's it. We got back
8 in the car. After he talked to his uncle, and got back into the
9 house -- got back into the car. When we got back into the car, we
10 took Jed to his father house. When we took Jed to his father
11 house, he got some money and we took the money that he got from
12 his daddy back to his aunt.

13 Q. Where is Jed's father's house?

14 A. I don't know.

15 Q. Was it on Moravia Street?

16 A. No, ma'am.

17 Q. Okay.

18 So after you drop Shelton off, you went to Jed's aunt's
19 house. Is that where Jed was living?

20 A. Yeah, at the particular time, yes, ma'am.

21 Q. At the time he was living there.

22 And that was Moravia Street?

23 A. Yes, ma'am.

24 Q. Okay.

25 Then you took Jed to his father's house?

1 A. Yes, ma'am.

2 Q. Then what happened?

3 A. Then after that, we went to the bowling alley.

4 Q. Okay.

5 Before you went to the bowling alley, did you happen to
6 see cop cars on Moravia Street?

7 A. No, ma'am.

8 Q. Okay.

9 You go to the bowling alley. What happens then?

10 A. We only stay for probably about 5 to 10 minutes.

11 Q. Why were you only there 5 to 10 minutes?

12 A. Because I got kicked out.

13 Q. Why?

14 A. Well, the officer that was there, he was trying to kick
15 me out but by the time he was trying to kick me out, I had -- I
16 was already leaving, reporting back to Jessica's car. And when he
17 reported out to the parking deck where we was at, I was already in
18 the car and we were pulling out.

19 Q. When you left the bowling alley, where did you go?

20 A. We went back to Jed house. That's when we seen all the
21 polices.

22 Q. Do you know what time that was?

23 A. No, ma'am, I do not.

24 Q. Okay.

25 What did you do when you saw the police?

1 A. Me -- me and Jed jumped out the car because Jessica was
2 trying to turn around. Me and Jed jumped out the car, we ran down
3 the street. We ran down the street, we stood on the far corner of
4 Belview Park.

5 So we was actually -- like this is the corner, and we
6 were actually looking across the street where you're at to the
7 crime scene.

8 Q. Okay.

9 Who else was with you?

10 A. At this particular point, it was me and Jed. Brayboy,
11 Jermal Tolliver, and Christopher Bryant didn't report until after
12 me and Jed already had went to the corner to see what was going
13 on.

14 Q. Were they in the car with you at that point?

15 A. Yes, ma'am.

16 Q. So they do get out of the car at some point?

17 A. Yes, ma'am.

18 Q. Okay.

19 What did you see from where you were standing?

20 A. Well, at first, what I seen, I didn't see nothing until
21 the homeless man on the corner pointed the dead body out. And
22 then I seen Mr. Jones. I only seen partially his body laying on
23 the ground.

24 Q. Do you know who the homeless man was?

25 A. No, ma'am, I do not.

1 Q. It's not somebody you knew by name?

2 A. No, ma'am.

3 Q. Were you smoking marijuana that day?

4 A. Yes, ma'am.

5 Q. How much marijuana had you had that day?

6 A. I only smoked one joint.

7 Q. One joint?

8 A. Yes, ma'am.

9 Q. Okay.

10 Were others that were with you smoking that day as well?

11 A. No, ma'am.

12 Q. No one else in the car was smoking marijuana that day?

13 A. No, ma'am.

14 Q. Jessica Black smoking with you that day?

15 A. No, ma'am.

16 Q. Mr. Cauthen, if you didn't commit these crimes, why did
17 you tell police on November 19, 2002, that you had committed them?

18 A. Because I was scared for my life.

19 Q. Why were you scared?

20 A. Because I thought the police was going to do something
21 to me.

22 Q. What did you think they were going to do?

23 A. Harm me in any type of way that if I didn't -- if I
24 didn't admit to this crime, that I felt that my life was in danger
25 to the point where Lieutenant Weavil was going to do something to

1 me because he was the only one actually talking to me at this
2 particular time.

3 Q. Did he make any threats to you?

4 A. Yes, ma'am, he did.

5 Q. What were those threats?

6 A. He threatened that I would do the rest of my life in
7 prison. He threatened me with lethal injection. He threatened me
8 to shoot me. I mean, acted -- I mean, what else would he want me
9 to say?

10 Q. So is it your testimony today that you did not provide
11 incriminating statements until after Detective Weavil had
12 threatened you?

13 A. Yes, ma'am.

14 MS. SMITH: Commissioners, do you have questions?

15 JUDGE LOCK: Ms. Newton.

16 MS. NEWTON: Good afternoon, Mr. Cauthen. My name is
17 Deb Newton. I'm a criminal defense attorney.

18 Do you understand that we are here reviewing this matter
19 on your behalf?

20 THE WITNESS: Yes, ma'am.

21 MS. NEWTON: And it is -- it's an impartial body, but we
22 are looking at this at the request that you have said that you are
23 not guilty.

24 THE WITNESS: Yes, ma'am.

25 MS. NEWTON: That you are, in fact, innocent.

1 You understand that?

2 **THE WITNESS:** Yes, ma'am.

3 **MS. NEWTON:** So in light of that, I'd like to ask you a
4 few questions.

5 Now, how many times have you told the facts that you say
6 you are not guilty of the confessed facts that you told law
7 enforcement? How many times have you told that story to people?

8 **THE WITNESS:** As far as like during my trial or after
9 the fact?

10 **MS. NEWTON:** From 2002 until you're sitting here now,
11 how many times have you repeated that you are not guilty and told
12 lies?

13 **THE WITNESS:** From 2020, I've been saying I've been
14 innocent. November -- from November 20 of 2015, I been claiming
15 my innocence.

16 **MS. NEWTON:** Okay.

17 You meant in November 15, 2002 --

18 **THE WITNESS:** No. I got arrested November 19th. So I
19 been claiming my innocence November the 20th of 2002.

20 **MS. NEWTON:** Of 2002?

21 **THE WITNESS:** Yes, ma'am.

22 **MS. NEWTON:** Okay. I just want to get that straight.

23 Now, I want to ask you about your shoes. We've had a
24 lot of testimony about the shoes that you were wearing.

25 At your trial, did they admit photographs before the

1 jury of the actual shoes that you were wearing?

2 **THE WITNESS:** At this particular point, they were just
3 showing the exhibits of the shoes.

4 **MS. NEWTON:** Okay.

5 And could you tell us what size shoe you wear.

6 **THE WITNESS:** What size shoe I wear?

7 **MS. NEWTON:** Size.

8 **THE WITNESS:** Right now I wear a size 7 1/2.

9 **MS. NEWTON:** Back then what size did you wear?

10 **THE WITNESS:** A 7 1/2.

11 **MS. NEWTON:** Okay.

12 And did you have on a pair of 7 1/2 the day that you
13 were arrested?

14 **THE WITNESS:** I had on a pair of 8s.

15 **MS. NEWTON:** And whose shoes were those?

16 **THE WITNESS:** They were my shoes.

17 **MS. NEWTON:** They were your own shoes?

18 **THE WITNESS:** Yes, ma'am.

19 **MS. NEWTON:** Would you be able to identify them?

20 **THE WITNESS:** Yeah. They called Jordans.

21 **MS. NEWTON:** Okay.

22 And can I just ask you to pick them out if you saw a
23 picture of them?

24 **THE WITNESS:** Yes, ma'am.

25 **MS. NEWTON:** May I approach the witness, Judge?

1 **JUDGE LOCK:** You may. Or you can put them on the board,
2 if you like. Do you know which photograph it is?

3 **MS. SMITH:** I don't.

4 **MS. NEWTON:** No, I would not like to suggest that. I
5 would like to show him the pictures.

6 **JUDGE LOCK:** All right. You most certainly may.

7 **MS. NEWTON:** So we were wearing 8 1/2?

8 **THE WITNESS:** Yes, ma'am.

9 **MS. NEWTON:** And this is Exhibit -- Handout 26, for the
10 record.

11 Can you just flip through those photographs and show us
12 first the shoes you had on the date that you were arrested.

13 If you don't mind, flip them over -- let's keep them in
14 order.

15 **THE WITNESS:** Yes, ma'am.

16 **MS. NEWTON:** Can you do that with your cuffs on? Thank
17 you.

18 Now, these are the shoes you had on on the 19th when law
19 enforcement was talking to you that I am talking about.

20 **THE WITNESS:** No, ma'am, these are not. These are not
21 the shoes that I wore.

22 **MS. NEWTON:** Sir, I'm asking you to look and see if you
23 can pick out the shoes you had on that day.

24 **THE WITNESS:** Oh.

25 **MS. NEWTON:** Yeah.

1 And, again, it's the day that you were questioned, on
2 the 19th of November.

3 So you didn't pick out any of the shoes.

4 Can you tell us what the shoes were that you had on?
5 What color were they?

6 **THE WITNESS:** The shoes that I had on was called
7 Jordans, number 11. They were blue and white. The actual shoes
8 that I had on the night are the same shoes that I got arrested in,
9 the same shoes that they actually -- when I got convicted, was the
10 same shoes that I reported to prison with in 2004.

11 **MS. NEWTON:** You said they were blue and white Jordans?

12 **THE WITNESS:** Yes, ma'am.

13 **MS. NEWTON:** Were they Air Force?

14 **THE WITNESS:** No, ma'am.

15 **MS. NEWTON:** No? They were something else? What were
16 they called?

17 **THE WITNESS:** Jordans.

18 **MS. NEWTON:** Just Jordans?

19 **THE WITNESS:** Yes, ma'am.

20 **MS. NEWTON:** Okay.

21 And I'm going to direct you right back to that
22 photograph. Those are not the shoes?

23 **THE WITNESS:** No, ma'am.

24 **MS. NEWTON:** And none of the shoes in this photograph
25 are the shoes that you had on?

1 **THE WITNESS:** Yes, ma'am. None of them are the shoes
2 that I wore.

3 **MS. NEWTON:** And you had on the same shoes the day -- on
4 the 15th that you had on on the 19th?

5 **THE WITNESS:** Yes, ma'am.

6 **MS. NEWTON:** When you were at trial, did you actually
7 see your shoes?

8 **THE WITNESS:** No, ma'am.

9 **MS. NEWTON:** Never did? Okay.

10 Did you share shoes with anybody else in your house or
11 in your neighborhood?

12 **THE WITNESS:** Yes, ma'am, my brother.

13 **MS. NEWTON:** Which brother?

14 **THE WITNESS:** I share shoes with all of my brothers.
15 Joseph Cauthen, Rayshawn Banner. I share shoes with my cousin,
16 Laymond Hairston, Anjuan Terry.

17 **MS. NEWTON:** And did they wear the same size shoes or
18 did you -- did you wear their shoes as well?

19 **THE WITNESS:** I wore their shoes.

20 **MS. NEWTON:** Okay.

21 Were any of the shoes in these photographs shoes that
22 you also wear?

23 **THE WITNESS:** Yes, ma'am.

24 **MS. NEWTON:** Okay.

25 And I'm going to take you back to those.

1 Can I ask, in Handout Number 26 again, what shoes would
2 you also wear?

3 THE WITNESS: Yeah, as far as, like, these shoes?

4 MS. NEWTON: Yes.

5 THE WITNESS: Or would I wear the same brand?

6 MS. NEWTON: No, just in those -- these actual shoes.

7 Do you see any shoes that you would -- you recognize
8 that you would wear?

9 THE WITNESS: These black ones right here.

10 MS. NEWTON: Okay.

11 And that is NCIIC number 70.

12 Who owns those shoes?

13 THE WITNESS: Me.

14 MS. NEWTON: Those are also your shoes?

15 THE WITNESS: Yes, ma'am.

16 MS. NEWTON: So what size are they?

17 THE WITNESS: 8 1/2 -- or probably 8s.

18 MS. NEWTON: 8s? Okay.

19 THE WITNESS: Or 8 1/2.

20 MS. NEWTON: Did you share those shoes with anybody?

21 THE WITNESS: And probably was -- these shoes are
22 actually too small for anybody feet --

23 MS. NEWTON: Okay.

24 THE WITNESS: -- know what I'm saying, but they were my
25 actual shoes.

1 **MS. NEWTON:** And so did you see any more -- did you wear
2 any more of those -- the shoes in this list?

3 **THE WITNESS:** These right here.

4 **MS. NEWTON:** And that's NCIIC number 71.

5 Whose shoes are those?

6 **THE WITNESS:** Them are my shoes.

7 **MS. NEWTON:** Okay.

8 Did you share those shoes with anyone?

9 **THE WITNESS:** Too small for anybody feet.

10 **MS. NEWTON:** And what size were they?

11 **THE WITNESS:** 7 1/2.

12 **MS. NEWTON:** Okay. And any other shoes that you would
13 wear?

14 **THE WITNESS:** I wore these.

15 **MS. NEWTON:** Okay.

16 And that's NCIIC number 73.

17 And those are actually your shoes?

18 **THE WITNESS:** No, they're not actually my shoes.

19 **MS. NEWTON:** Okay.

20 Whose shoes are those?

21 **THE WITNESS:** My brother shoes.

22 **MS. NEWTON:** Which one?

23 **THE WITNESS:** My little brother, Rayshawn.

24 **MS. NEWTON:** Rayshawn? Those are Rayshawn's shoes?

25 **THE WITNESS:** These are the actual shoes that he was

1 wearing.

2 MS. NEWTON: And he was wearing number 73 on what day?

3 THE WITNESS: On November the 15th.

4 MS. NEWTON: On the 15th?

5 THE WITNESS: Yes, ma'am.

6 MS. NEWTON: Okay.

7 And what size are they?

8 THE WITNESS: They're probably 8s or 8 1/2s or 9.

9 MS. NEWTON: Because he wears an 8 1/2 or a 9?

10 THE WITNESS: Yes, ma'am.

11 MS. NEWTON: Okay.

12 And you would wear those sometimes?

13 THE WITNESS: Yes, ma'am.

14 MS. NEWTON: Okay.

15 But you were not wearing them on the 15th of November;

16 correct?

17 THE WITNESS: No, ma'am.

18 MS. NEWTON: Okay.

19 But Rayshawn was, you're clear, on the 15th of November?

20 THE WITNESS: Yes, ma'am.

21 MS. NEWTON: How do you remember that?

22 THE WITNESS: Because these are the actual shoes that he
23 had to take off when she ran over his foot -- Jessica Black ran
24 over his foot, to inspect his foot. These are the actual shoes.

25 MS. NEWTON: Okay.

1 And any other shoes that you would wear?

2 **THE WITNESS:** No, ma'am.

3 **MS. NEWTON:** Okay. Thank you, sir.

4 And so on the 15th of November of 2002, the shoes that
5 were presented at trial -- you did not see your -- the shoes you
6 had on that day presented at trial?

7 **THE WITNESS:** No, ma'am.

8 **MS. NEWTON:** Okay.

9 Did you tell your lawyer that?

10 **THE WITNESS:** I never was questioned. My lawyer never
11 asked me any questions.

12 **MS. NEWTON:** Okay.

13 **THE WITNESS:** Compared to am I aware that I wore that
14 night.

15 **MS. NEWTON:** Okay.

16 And who was your lawyer for the trial?

17 **THE WITNESS:** Teresa Hier.

18 **MS. NEWTON:** Okay.

19 Now, I think Ms. Smith asked you about what you told law
20 enforcement.

21 Why did you tell them something to implicate yourself in
22 a serious crime that you didn't do?

23 **THE WITNESS:** Because I didn't know no better. I was a
24 child. I was 15 years old. I was forced to say something that I
25 didn't want to say. And the only way I knew to get out of the

1 situation that I was in was to comply with what they was asking me
2 for.

3 MS. NEWTON: Did someone tell you if you would tell them
4 what they -- tell them in the affirmative what they were saying
5 you needed to say, that you would go home?

6 THE WITNESS: Yes, ma'am.

7 MS. NEWTON: They actually told you you would go home?

8 THE WITNESS: Yes, ma'am.

9 MS. NEWTON: Who told you that?

10 THE WITNESS: Lieutenant Weavil.

11 MS. NEWTON: Okay.

12 Now, let's talk about these officers. How many officers
13 actually questioned you?

14 THE WITNESS: Actually questioned me?

15 MS. NEWTON: Yes. On the 15th of November of 2002.

16 THE WITNESS: Two.

17 MS. NEWTON: And what were their ethnicity? Were they
18 Hispanic, white, or black?

19 THE WITNESS: White.

20 MS. NEWTON: And they were male; right?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: Now, had you had any prior interactions
23 with these law enforcement officers?

24 THE WITNESS: One.

25 MS. NEWTON: Okay.

1 And was that a positive interaction?

2 **THE WITNESS:** No, ma'am.

3 **MS. NEWTON:** Okay.

4 Were you around the neighborhood when others had
5 interaction with these law enforcement officers.

6 **THE WITNESS:** No.

7 **MS. NEWTON:** Okay.

8 So when you went into the interview, did you trust these
9 officers?

10 **THE WITNESS:** No, ma'am.

11 **MS. NEWTON:** And so what was your feeling about the
12 officers?

13 **THE WITNESS:** At first, I didn't have no feeling. At
14 first, I didn't have no feeling about it.

15 **MS. NEWTON:** Okay.

16 I guess I'm wondering, were you inclined to be chatty
17 with them and tell them anything when you first went in?

18 **THE WITNESS:** No, ma'am.

19 **MS. NEWTON:** Okay.

20 And why is that?

21 **THE WITNESS:** I don't trust the police.

22 **MS. NEWTON:** And why don't you trust the police? Why
23 didn't you trust the police?

24 **THE WITNESS:** I've known for the police to be violent.

25 **MS. NEWTON:** And you thought back then, when you were --

1 in 2002?

2 Do you remember thinking that at the time you went in to
3 talk to the police?

4 **THE WITNESS:** No. Because that's not what was said at
5 the particular time. What was said was, "We need you down for
6 questioning. We have you implicated in a murder." That's what
7 was said to me at first.

8 **MS. NEWTON:** My question, Mr. Cauthen, is: How did you
9 feel about the police at the time you were being taken to the
10 police station in 2002?

11 **THE WITNESS:** I felt no way.

12 **MS. NEWTON:** Okay.

13 But you didn't trust them.

14 **THE WITNESS:** No, ma'am.

15 **MS. NEWTON:** You had a prior bad interaction with these
16 officers.

17 **THE WITNESS:** Yes, ma'am.

18 **MS. NEWTON:** And were you inclined to be talkative and
19 talk to them?

20 **THE WITNESS:** No, ma'am.

21 **MS. NEWTON:** Okay.

22 Now, you understand the concept of -- you know, people
23 would lie to get out of trouble, not to get into trouble; right?

24 **THE WITNESS:** Yes, ma'am.

25 **MS. NEWTON:** So you apparently went in not trusting them

1 and telling them you didn't have anything to do with it, as I
2 understand your first comments; correct?

3 **THE WITNESS:** No. My knowledge of the situation was I
4 was being put in a situation that I had no knowledge of in the
5 first place, which they said that I had something to do with.

6 **MS. NEWTON:** Mr. Cauthen, didn't you first go in and
7 completely denied having to do with any of it?

8 **THE WITNESS:** Yes, ma'am.

9 **MS. NEWTON:** Okay. All right.

10 And I'm trying to find out if you did that so that you
11 could get out of there because you didn't trust them or if they
12 surprised you with facts and you said, "I didn't have anything to
13 do with that" --

14 **THE WITNESS:** No, ma'am.

15 **MS. NEWTON:** -- which a person would do.

16 **THE WITNESS:** No, ma'am. Just like you're asking me a
17 question right now, did I kill Mr. Jones. No, ma'am I didn't.

18 You're asking me a question right now, did I have any
19 implications of knowing what happened to Mr. Jones? No, ma'am, I
20 didn't. You're asking me a question have I had any intentions of
21 harming Mr. Jones? No, ma'am, I didn't, because I wasn't there.

22 **MS. NEWTON:** And that was your attitude with the police
23 that day.

24 **THE WITNESS:** Yes, ma'am.

25 **MS. NEWTON:** Okay. All right.

1 When they told you you could go home if you told them
2 that you did it, did you trust that?

3 **THE WITNESS:** This was hours after. This was hours
4 after. This was after I done been crying. This is after I been
5 ask to go home. This is after the police had already threatened
6 me several times.

7 What you want me to do? I'm 15 years old. I can't read
8 or write. I know no better. The only thing I know is my mama's
9 at home. I don't know where I'm at.

10 What you want me to say? Any kid would do that. Any
11 kid would actually sit right here and lie to make a situation
12 better so they can go home.

13 If you threaten me with lethal injection, I don't even
14 like needles, yeah, you giving me. If you've got a gun on your
15 side, yes, you scaring me. If I ask you several times after time
16 after time, "I'm ready to go home. I had nothing to do with
17 this," what do you -- what else you want from me?

18 As you asking me right now, but see, now I'm a little
19 older, my mind has developed, so now I can take the lashes that
20 you're giving me right now because I have knowledge of the
21 situation. I know who I am. I understand the situation.

22 So if you ask me again did I harm Mr. Jones? No, ma'am,
23 I didn't.

24 **MS. NEWTON:** And you told the officers as soon as you
25 got there, even if you didn't trust them, that you just didn't

1 have anything to do with Mr. Jones.

2 **THE WITNESS:** Yes, ma'am, I did.

3 **MS. NEWTON:** And you have, at all times, maintained
4 that; correct?

5 **THE WITNESS:** I have to.

6 **MS. NEWTON:** Why is that?

7 **THE WITNESS:** Like I say, I'm scared of the police. I
8 am fearful of the police. I done seen times where police just
9 actually shoot people for no reason.

10 **MS. NEWTON:** Mr. Cauthen, I want to turn your attention
11 to the trial.

12 When you went to trial, you and your brother were
13 sitting together at the table; correct?

14 **THE WITNESS:** Yes, ma'am.

15 **MS. NEWTON:** You each had your own lawyers; is that
16 right?

17 **THE WITNESS:** Yes, ma'am.

18 **MS. NEWTON:** Did you have a relationship with your
19 lawyer so that you could talk about things?

20 **THE WITNESS:** No, ma'am.

21 **MS. NEWTON:** Why is that?

22 **THE WITNESS:** I actually spoke to my lawyer at least
23 twice out of the whole two years I was in the county jail.

24 **MS. NEWTON:** Your trial attorney?

25 **THE WITNESS:** Yes, ma'am.

1 **MS. NEWTON:** Okay.

2 So you sat there when witnesses were called by the State
3 to say that you confessed.

4 You heard that from the State's witnesses; correct?

5 **THE WITNESS:** I was instructed to sit there.

6 **MS. NEWTON:** Mr. Cauthen, my question is: You sat there
7 in open court while the State's officers talked about what you
8 confessed; correct?

9 **THE WITNESS:** Yes, ma'am.

10 **MS. NEWTON:** And you heard them talk about what
11 everybody confessed to; correct?

12 **THE WITNESS:** Yes, ma'am.

13 **MS. NEWTON:** I'm wondering why you didn't testify.

14 **THE WITNESS:** They told me it was in my best interest --
15 my lawyer.

16 **MS. NEWTON:** Now, if I sat here and said something about
17 you that wasn't true, wouldn't you be compelled to tell your jury
18 or anybody else, "No, that's not true"?

19 I'm just wondering why you didn't insist on telling the
20 truth.

21 **THE WITNESS:** Hypothetically speaking --

22 **MS. NEWTON:** No. I want to know directly what you
23 remember.

24 **THE WITNESS:** What I remember of them saying that I
25 actually committed a crime?

1 **MS. NEWTON:** Why you didn't decide you wanted to
2 testify.

3 **THE WITNESS:** Because they said I was a criminal child.
4 It was in my best interest not to get up there, incriminate myself
5 even more.

6 **MS. NEWTON:** Now, you said "they." Let's break that
7 down.

8 Who --

9 **THE WITNESS:** Well, my lawyer.

10 **MS. NEWTON:** Who told you that?

11 **THE WITNESS:** My lawyer, Teresa Hier.

12 **MS. NEWTON:** Teresa?

13 **THE WITNESS:** Yes, ma'am.

14 **MS. NEWTON:** And she told you exactly what?

15 **THE WITNESS:** That it was in my best interest not to get
16 on the stand.

17 **MS. NEWTON:** And did you ask her what she meant by that?

18 **THE WITNESS:** No, ma'am, I did not.

19 **MS. NEWTON:** What did you understand she meant by that?

20 **THE WITNESS:** I'm 15 years old, 17 years old. I don't
21 know how to read or write. I don't know no better.

22 **MS. NEWTON:** What did you understand she meant by that?

23 **THE WITNESS:** I didn't understand none of it.

24 **MS. NEWTON:** Okay.

25 Now, you did testify at the suppression; right?

1 **THE WITNESS:** Yes, ma'am.

2 **MS. NEWTON:** Did you have different lawyer?

3 **THE WITNESS:** No, ma'am, I did not.

4 **MS. NEWTON:** Okay.

5 So why did you testify at that hearing?

6 **THE WITNESS:** Because they told me that's what I had to
7 do.

8 **MS. NEWTON:** "They" who?

9 **THE WITNESS:** My lawyer.

10 **MS. NEWTON:** You have to be very clear, okay?

11 **THE WITNESS:** Well, my lawyer.

12 **MS. NEWTON:** Now, in that case, she told you to testify?

13 **THE WITNESS:** Yes, ma'am.

14 **MS. NEWTON:** But she didn't -- told you not to testify
15 before a jury --

16 **THE WITNESS:** Yes, ma'am.

17 **MS. NEWTON:** -- on a murder charge?

18 **THE WITNESS:** Yes, ma'am.

19 **MS. NEWTON:** Now, did you tell the truth when you
20 testified at the suppression hearing?

21 **THE WITNESS:** Yes, ma'am.

22 **MS. NEWTON:** And what did you tell them about the
23 confessions you allegedly made about your involvement when you
24 testified under oath at the suppression hearing.

25 **THE WITNESS:** I told them that -- I told them I was

1 forced to say something that I didn't want to say.

2 MS. NEWTON: Okay.

3 Did you deny the confession?

4 THE WITNESS: Deny the confession?

5 MS. NEWTON: Deny the fact that you told law
6 enforcement, when they interrogated you.

7 THE WITNESS: No. I'm not denying it now.

8 MS. NEWTON: Sir?

9 THE WITNESS: I'm not denying it now. I made the
10 statement.

11 MS. NEWTON: Did you deny the truth of those statements?

12 THE WITNESS: Yes.

13 MS. NEWTON: Yes? Okay.

14 Now, on November 15 of 2002, during that whole day that,
15 at the end of it, Mr. Jones passed away as a result of whatever
16 happened to him, I think you just testified that you were -- you
17 had some sort of a sexual relationship with Jessicah Black; is
18 that correct?

19 THE WITNESS: It wasn't sexual relationship. I was
20 15 years old.

21 MS. NEWTON: I'm sorry.

22 Didn't you say that she gave you oral sex when you went
23 to her grandmother's?

24 THE WITNESS: That doesn't mean it was a relationship.

25 MS. NEWTON: Oh, I see the difference. Okay.

1 So how long had that been going on?

2 **THE WITNESS:** Was just a one-time thing.

3 **MS. NEWTON:** She only did that one time?

4 **THE WITNESS:** Yes, ma'am.

5 **MS. NEWTON:** How long were you-all together, hanging
6 around each other?

7 **THE WITNESS:** Say a couple months.

8 **MS. NEWTON:** Okay.

9 So suddenly, on this date, she gave you oral sex?

10 **THE WITNESS:** Yes, ma'am.

11 **MS. NEWTON:** But that didn't happen before or after?

12 **THE WITNESS:** What you mean it didn't happen before or
13 after?

14 **MS. NEWTON:** She had never done that before and she
15 didn't do it after.

16 **THE WITNESS:** No, ma'am.

17 **MS. NEWTON:** Just the one time?

18 **THE WITNESS:** Yes, ma'am.

19 **MS. NEWTON:** Do you know why that was the occasion that
20 she gave you oral sex?

21 **THE WITNESS:** Naw.

22 **MS. NEWTON:** You don't know what happened?

23 Okay. So what kind of -- you said you were smoking pot.
24 How much pot did you smoke?

25 **THE WITNESS:** One joint.

1 MS. NEWTON: Just one. Is that a blunt or a joint?

2 THE WITNESS: Blunt, joint -- the same.

3 MS. NEWTON: Were you pretty high? You were a kid?

4 THE WITNESS: Pretty high?

5 MS. NEWTON: Uh-huh.

6 THE WITNESS: At the particular time, no, I wasn't high.

7 MS. NEWTON: You were not? Okay.

8 THE WITNESS: I was just mellowed out.

9 MS. NEWTON: Okay.

10 And about what time do you think you smoked that blunt?

11 THE WITNESS: It were during the daytime. It was light
12 actually, what time? I don't know.

13 MS. NEWTON: Not around lunch or after? Before?

14 THE WITNESS: What you mean around lunch?

15 MS. NEWTON: Do you recall?

16 THE WITNESS: After I get out of school, it's
17 4:00 o'clock. It's after 4:00.

18 So anything -- it could be from around 5:00 o'clock --
19 it could be anywhere. You're asking me -- it was still daytime
20 when I smoked that joint.

21 MS. NEWTON: Okay.

22 I'm just asking were you high?

23 THE WITNESS: At this particular time, no.

24 MS. NEWTON: At which time?

25 THE WITNESS: At nighttime, no.

1 MS. NEWTON: Okay.

2 So between 4:00 and 6:00 were you high?

3 THE WITNESS: At 4:00 and 6:00 was I high?

4 MS. NEWTON: Mm-hmm.

5 THE WITNESS: No.

6 MS. NEWTON: Are you saying you didn't get high from the
7 blunt or you didn't smoke the blunt?

8 THE WITNESS: I say by this time, like I say, I'm
9 mellowed out. It's nighttime. And so probably several hours I'm
10 done from when I first smoked the joint.

11 MS. NEWTON: Okay.

12 Mr. Cauthen, do you understand the process of the
13 Innocence Commission? Who explained that to you?

14 THE WITNESS: What you mean?

15 MS. NEWTON: The Innocence Commission, what this process
16 may result in.

17 THE WITNESS: Yes, ma'am.

18 MS. NEWTON: Who explained that to you?

19 THE WITNESS: I believe Ms. Bridenstine right here.

20 MS. NEWTON: Okay.

21 Is there anyone else that talked to you about this
22 process?

23 THE WITNESS: Yeah, my lawyer.

24 MS. NEWTON: And who's your lawyer now?

25 THE WITNESS: Julie Boyer.

1 **MS. NEWTON:** Okay.

2 And did she explain what might result as a result of
3 this process?

4 **THE WITNESS:** Yes, ma'am.

5 **MS. NEWTON:** Do you understand that you may get -- you
6 know, it's a possibility -- people have gotten money as a result
7 of wrongful convictions?

8 **THE WITNESS:** Yes, ma'am.

9 **MS. NEWTON:** You understand that? Okay.
10 Have you been promised anything like that?

11 **THE WITNESS:** No, ma'am.

12 **MS. NEWTON:** Okay.

13 Did you speak to Hunter Atkins?

14 **THE WITNESS:** Yes, ma'am.

15 **MS. NEWTON:** How many times did you speak to him?

16 **THE WITNESS:** I spoke to Hunter Atkins several times.

17 **MR. EDWARDS:** Several meaning more than 10?

18 **THE WITNESS:** Hunter Atkins became a positive advocate
19 for me.

20 **MS. NEWTON:** Okay.

21 What do you think of him?

22 **THE WITNESS:** He's a good guy. I mean, I never -- he
23 never gave me no bad intentions about him.

24 **MS. NEWTON:** Okay.

25 So you developed a friendship, you think, with him?

1 **THE WITNESS:** Pretty much so.

2 **MS. NEWTON:** What do you think his motivation is to get
3 involved?

4 **THE WITNESS:** I never really wanted to find it.

5 **MS. NEWTON:** You don't have an opinion about that?

6 **THE WITNESS:** Naw.

7 **MS. NEWTON:** But you do trust him?

8 **THE WITNESS:** As far as, like, trust him in what way?

9 **MS. NEWTON:** You talk to him freely; right?

10 **THE WITNESS:** To a certain extent. Mr. Hunter
11 actually -- he actually presented me with knowledge that I didn't
12 know about my case.

13 **MS. NEWTON:** Like what?

14 **THE WITNESS:** Like as far as, like, the actual testimony
15 of this preliminary hearing you talked about first. I never knew
16 that it was a transcript behind that. He presented me with that.

17 I never knew about the North Carolina Prisoner Legal
18 Service. I never knew about the actual MAR that were filed in
19 false pretense because I never gave my attorney that I
20 actually say that I was guilty of a crime that I didn't do.

21 **MS. NEWTON:** Till Hunter told you about that?

22 **THE WITNESS:** Yeah. He presented me with the papers.
23 He never told me. He sent me the papers.

24 **MS. NEWTON:** And that lawyer, did that lawyer ever get
25 your permission to make those admissions?

1 **THE WITNESS:** No. She had my permission to file my MAR
2 because I fell under the Juvenile Rights Act. I never gave her
3 permission to say that I was willing to plead guilty for a reduced
4 punishment or a lower crime.

5 **MS. NEWTON:** She never sent you that pleading --

6 **THE WITNESS:** No, ma'am. She send me Exhibits 1
7 through 8. The actual -- the actual exhibit is 1 through 12.

8 **MS. NEWTON:** Gotcha.

9 And she didn't send you the motions that she filed on
10 your behalf?

11 **THE WITNESS:** No, ma'am.

12 **MS. NEWTON:** Okay. So you didn't know that she admitted
13 responsibility for you.

14 **THE WITNESS:** No, ma'am.

15 **MS. NEWTON:** Okay.

16 Do you -- as you sit here, you've had a long time to
17 think, like all the others have, since 2002, when you were
18 questioned and you say coerced by law enforcement.

19 You might imagine that Mr. Jones' family would want to
20 know if you didn't -- you-all didn't do it, who beat this man;
21 right?

22 **THE WITNESS:** (Nonverbal response.)

23 **MS. NEWTON:** So you've had plenty of time to think about
24 that and interact with people, to the extent you could, in prison.

25 Do you know what I mean by "word on the street"?

1 **THE WITNESS:** Yes, ma'am.

2 **MS. NEWTON:** So can you point to any word on the street
3 or any -- any information that you've gotten in all these years to
4 indicate who might have harmed Mr. Jones that night?

5 **THE WITNESS:** I wish I knew. I honestly wish I knew.

6 **MS. NEWTON:** Okay.

7 Now, just to be clear, are you bound in your mind by
8 some snitch code that you don't want to tell on anybody else?

9 **THE WITNESS:** I have no snitch code when it's compared
10 to me, and me doing the rest of my life in prison.

11 **MS. NEWTON:** Well, my question is: Do you feel like you
12 can't tell us?

13 **THE WITNESS:** No.

14 **MS. NEWTON:** Okay.

15 So if you knew, you would tell us?

16 **THE WITNESS:** Yes, ma'am.

17 **MS. NEWTON:** And you've not heard anything about what
18 happened to Mr. Jones?

19 **THE WITNESS:** No, ma'am.

20 **MS. NEWTON:** Okay.

21 And do you know if any new evidence to -- that would
22 lead to indicate that you were actually innocent of this crime?
23 Do you know of anything?

24 **THE WITNESS:** Like, you're asking me a question do I
25 have any information or knowledge?

1 **MS. NEWTON:** Anything that we haven't heard or that
2 didn't come out at trial?

3 **THE WITNESS:** No, ma'am.

4 **MS. NEWTON:** Okay.

5 Finally, is there anything else that you would like to
6 say? I mean, this is your hearing.

7 **THE WITNESS:** I would just like to go home.

8 I would actually like for somebody to actually come
9 forward and tell the truth. I would actually like for somebody
10 to, please, because I don't like being in chains. I don't like
11 being in shackles. And I don't like my name being put in
12 something that I did not do.

13 Yeah, I was wrong for saying I did a crime, but I had no
14 other choice, in my mind, at the age of 15 years old.

15 Now that I'm 33 years old, yeah, I would like for
16 somebody to please come forward. I would like for somebody to
17 please actually take their guilt.

18 **MS. NEWTON:** Thank you, sir.

19 **JUDGE LOCK:** Mr. Edwards.

20 **MR. EDWARDS:** Briefly.

21 Mr. Cauthen, good afternoon.

22 **THE WITNESS:** Yes, sir.

23 **MR. EDWARDS:** In regard to a phone call that you had
24 with Mr. Atkins, I believe on November 6 -- well, let me ask you
25 this: Where are you currently housed?

1 **THE WITNESS:** In Warren/Forsyth County -- I mean Warren
2 Correctional.

3 **MR. EDWARDS:** And back in November, you were in Warren
4 Correction; correct?

5 **THE WITNESS:** Yes, sir.

6 **MR. EDWARDS:** And we've -- I mean, we've got notebooks
7 of documents, records, we've listened to phone calls, we've
8 listened to taped interviews all week long. And we heard a phone
9 call between you and Mr. Atkins on or about November 5, where you
10 and Mr. Atkins talk about what's going to happen to Brayboy's
11 share if you get a settlement.

12 Do you remember that?

13 **THE WITNESS:** Yes, ma'am -- yes, sir.

14 **MR. EDWARDS:** And so at some point, there had been some
15 discussion, I guess, between you and Mr. Atkins that, in the event
16 you guys are exonerated, that there very well could be some kind
17 of financial settlement; is that right?

18 **THE WITNESS:** May I elaborate?

19 **MR. EDWARDS:** Yes. I'm asking you to.

20 **THE WITNESS:** The actual conversation started about --
21 Mr. Hunter Atkins actually gave me the details of how Dorrell
22 Brayboy was murdered. He actually sent me photos of Brayboy when
23 he was released from prison and actually sent me the actual
24 article of Dorrell Brayboy being murdered.

25 Now, at this particular point, Dorrell Brayboy has a

1 newborn child -- am I correct?

2 So my question was who would get his share of the money
3 if we was exonerated.

4 Now, I know about particular thing where we'll be funded
5 for us doing all this time in prison. I know about that.

6 My question was will his mother get the money or will
7 his daughter get the money because now Brayboy is no longer here,
8 God rest his soul. That's my brother. Out of all my
9 codefendants, he was the main one that I loved the most besides my
10 little brother.

11 So my sympathy goes out to his daughter because she no
12 longer has a father.

13 Now, me, my little brother, my codefendants -- we should
14 be that little girl's father because Brayboy is no longer here.
15 He lost his life behind a man and don't nobody know who killed
16 him. Don't know nobody who killed this man. And we lost our
17 life.

18 Actually, yeah, I'm going to be protective of this
19 little girl because Brayboy can't do it. Who going to keep her
20 from the world?

21 **MR. EDWARDS:** Okay.

22 So you were asking because you were concerned for his
23 daughter or --

24 **THE WITNESS:** That's the only reason.

25 **MR. EDWARDS:** You weren't asking him --

1 **THE WITNESS:** Naw.

2 **MR. EDWARDS:** -- because you wanted to know if the money
3 was going to be split four ways or five ways?

4 **THE WITNESS:** And I really don't even care about the
5 money. I joke about the money because this is what I've been
6 through. Yeah, I'm entitled to that. I'm entitled to my life
7 back. I'm entitled to all of that. I should want that. I should
8 have that. But until this makes it to the next stage, I don't
9 know if I'm going to get that.

10 But if me joking and having fun and -- with the money,
11 when it comes to Dorrell Brayboy and his daughter, I, as a brother
12 of Dorrell Brayboy, will stand up for her at any given time.

13 **MR. EDWARDS:** Ms. Smith, I'm having trouble finding the
14 handout that dealt with juvenile, I guess, petitions or
15 complaints. I can't remember what number that was.

16 **MS. TANNER:** 56 and 112. Is that what you're looking
17 for?

18 **MR. EDWARDS:** Yes. If I could have just a moment.

19 **MS. TANNER:** 112 is the actual document that you had us
20 pull, Commissioner.

21 Is that what you were looking for?

22 **MR. EDWARDS:** Yes.

23 **MS. TANNER:** And 56 is the summary.

24 **MR. EDWARDS:** Just a moment.

25 Those are my questions. I don't have any further.

1 **JUDGE LOCK:** Sheriff.

2 **SHERIFF FRYE:** My name is Kevin Frye.

3 So that night when you were taking -- you, Dorrell,
4 Bubba, and Jessicah were taking Jed back to his place; is that
5 right?

6 **THE WITNESS:** Yes, sir.

7 **SHERIFF FRYE:** Seeing all the lights, police lights and
8 everything -- did you get out of the car?

9 **THE WITNESS:** I was the first one that got out the car.
10 I was sitting in the front seat.

11 **SHERIFF FRYE:** Okay.

12 Describe to me -- how close did you get to where
13 everything was?

14 **THE WITNESS:** As far as, like, the crime scene?

15 **SHERIFF FRYE:** Yeah.

16 **THE WITNESS:** I'd say I'm sitting right here, to
17 probably about where that gentleman is back there in that corner.

18 **SHERIFF FRYE:** Okay.

19 What did you see?

20 **THE WITNESS:** I just seen -- I just seen -- at first, I
21 just seen the lights. And then, like I said, the homeless guy
22 pointed the man out to me. And Mr. Jones was laying in between --
23 he was laying in between the carport, that's the only thing I
24 seen.

25 **SHERIFF FRYE:** Was he covered up with a sheet?

1 **THE WITNESS:** No, sir, he was not.

2 **SHERIFF FRYE:** But he was laying in between --

3 **THE WITNESS:** He was just laying --

4 **SHERIFF FRYE:** He was in the carport?

5 **THE WITNESS:** Just laying there.

6 **SHERIFF FRYE:** What happened then? Did yunz leave right
7 there --

8 **THE WITNESS:** Yeah, I just --

9 **SHERIFF FRYE:** -- or did you watch them do stuff?

10 **THE WITNESS:** Yeah. I ain't -- I just left right there.
11 We all got back into the car.

12 **SHERIFF FRYE:** Never seen them put a sheet over him?

13 **THE WITNESS:** No, sir.

14 **SHERIFF FRYE:** Those are my questions.

15 **JUDGE LOCK:** Yes, sir, Mr. Jarvis.

16 **MR. JARVIS:** Hi. My name is Immanuel Jarvis, I'm a
17 public member here on the Commission.

18 I'm just going to ask you some of the same questions
19 that I asked Rayshawn, okay?

20 How old were you at the time of this incident?

21 **THE WITNESS:** I was 15.

22 **MR. JARVIS:** 15.

23 And how old was your little brother?

24 **THE WITNESS:** My little brother was 14.

25 **MR. JARVIS:** And when you went down to the police

1 station or the public safety center, how long -- what time did you
2 get there, approximately?

3 **THE WITNESS:** Same time of like -- I assume probably
4 about 5:00 o'clock, 4:30.

5 **MR. JARVIS:** And what time was the interrogation over,
6 from start to finish, would you say?

7 **THE WITNESS:** From the time I got there until late that
8 night. I got -- I didn't even give my testimony until late that
9 night. I didn't give the full testament until after I seen my
10 mother. This is well over after dark.

11 **MR. JARVIS:** Okay.

12 So would you say it's 8:00 o'clock? 9:00 o'clock?
13 10:00 o'clock? What time would you guess?

14 **THE WITNESS:** No, I know the actual time because I have
15 the actual -- so it was around 10:00 o'clock, 11:00 o'clock when I
16 actually gave my first statement.

17 **MR. JARVIS:** Okay.

18 Did you ever -- did the police ever provide you with a
19 recording of any of the other codefendants admitting guilt?

20 **THE WITNESS:** That's the first thing that were presented
21 to me.

22 First they gave me Jermal Tolliver recording, and then
23 they showed me a written affidavit from Christopher Bryant.

24 **MR. JARVIS:** Okay.

25 And what did the recording say?

1 **THE WITNESS:** I cannot remember.

2 **MR. JARVIS:** Okay. And do you remember what the
3 affidavit said?

4 **THE WITNESS:** I just remember the names where
5 Christopher Bryant say that we actually committed a crime.

6 **MR. JARVIS:** What were your thoughts when you heard
7 this?

8 **THE WITNESS:** I mean, at first, I'm like, "Naw, that's
9 not -- that's not right." This is what I told the detective,
10 "Naw, that's right, they're lying. I ain't" -- the detective say,
11 "It's got to be right. He's the one wrote it. You've got to tell
12 us something."

13 And at that particular time, I'm like, "Naw, I ain't --
14 I don't know what you talking about. I had nothing to do with
15 it." And it went from there. And it just continued.

16 **MR. BRITT:** Was there more than -- was there just one
17 recording that you heard or were there multiple?

18 **THE WITNESS:** Just one.

19 **MR. JARVIS:** Just one.

20 Was there only one affidavit or were there multiple?

21 **THE WITNESS:** Just one.

22 **MR. JARVIS:** Okay.

23 When was the death penalty discussion -- you brought
24 that up. How was it brought up?

25 **THE WITNESS:** The way he started -- he started off with

1 saying that I was going to do the rest of my life in prison,
2 first. That's how we started off. I'm like, "Naw, I ain't going
3 to prison. I had nothing to do with it."

4 "Well, we're going to give you the lethal injection.
5 We're going to give you -- we're going to give you the death
6 penalty now."

7 And I'm like, "Yo, when you start talking all this for,
8 know what I'm saying?"

9 "You got to tell us something, you got to tell us
10 something. They implicate you in something."

11 I'm like, "Naw, that ain't -- I had nothing to do with
12 that."

13 And then just went on from there, like he wouldn't stop
14 picking. He continued on going and going and going. And then
15 they left.

16 When they left, I sat in the room. I don't know how
17 long I sat in this room, but I sat in this room. Then he came
18 right back, continuing on with it and continuing on with it.

19 Still I denied it. He left again. When he left again,
20 a black man came in there, name Byrom. He talked to me, he asked
21 me questions, and I told him straight out like, "Look, man, I
22 don't know what y'all think y'all got on me, but I had nothing to
23 do with this."

24 This is when I actually asked to go home after this
25 particular point, because I'm like, yo, he's scaring me. Like, I

1 had nothing to do with this. I'm ready to go home.

2 He took me to the bathroom. When he took me to the
3 bathroom, I went back. It was just all she wrote after that.

4 **MR. JARVIS:** Did -- when you asked to go home, what was
5 their answer?

6 **THE WITNESS:** Like, "You can't go home right now."

7 So then I asked for my mother. Like, "Can I speak to my
8 mother?"

9 Like, I had no -- and then my mother showed up. When my
10 mother showed up, they took me to an interrogation room. Now, I
11 know it's an interrogation because it's black. It's got a black
12 mirror. So, you know, I watch movies and stuff like that. This
13 is what I know an interrogation room to be.

14 After that, my mother came in, she talked to me. And me
15 and my mama had a bad dispute in there because I don't think my
16 mother was saying that I would actually have something to do with
17 it. I think she were actually asking me if I had something to do
18 with it, and I took it the wrong way. And I started crying and --
19 started busting out crying. I'm like, yo, ain't no way my mama
20 believes them over me. And then after that, man, it was just
21 like, look, he came back in there -- I remember Detective Rowe,
22 Lieutenant Weavil came back in there, like, "Man, look, just tell
23 us anything. Tell us something, so you can go home."

24 **MR. JARVIS:** Real quick.

25 You're saying that the detectives said, "Tell me

1 anything"?

2 **THE WITNESS:** Yes, sir. "Tell me what you know. Tell
3 me what can you provide."

4 **MR. JARVIS:** Over the course of time, did the verbiage
5 escalate in terms of did they talk to you louder, were they
6 yelling, screaming?

7 **JUDGE LOCK:** No. By this time, I believe they already
8 knew that I would lie on myself. At this particular time, they
9 actually used my mother against me to force me to say something I
10 didn't want to say after the fact that they already threatened me.

11 Now, this is me thinking, growing up. Now, this is me
12 thinking as a young man, this is not me thinking as 15 years old.
13 But in my mind, I'm like, what else can I tell these people to get
14 me out of this room?

15 **MR. JARVIS:** Tell me a little bit about your criminal
16 history prior to the arrest.

17 **THE WITNESS:** Like as far as being arrested?

18 **MR. JARVIS:** Arrested, getting in trouble -- anything.

19 **THE WITNESS:** I was never the trouble type. I was
20 always reported by the police. It was never the trouble type. I
21 got into one incident. I was driving a motor vehicle -- and the
22 vehicle was my mother's. She didn't press charges on me so I'm
23 driving a car with no license, basically. I did my six months
24 probation. I think I probably had a couple more hours left on my
25 probation time, but that's about it.

1 **MR. JARVIS:** Okay.

2 Was there any incidents of throwing rocks or vandalism?

3 **THE WITNESS:** Not that I've been arrested for, no, sir.

4 **MR. JARVIS:** What about any kind of fights or
5 altercations?

6 **THE WITNESS:** I was in a lot of fights. I was -- now,
7 that's one main thing that I always had a problem with, fighting
8 in the neighborhood. But it was just neighborhood fights. It
9 wasn't no me going out, jumping on any other ordinary person. No,
10 it was just neighborhood fights, boys that I grew up with from
11 different neighborhoods.

12 **MR. JARVIS:** All right.

13 Would you say that you ran the streets?

14 **THE WITNESS:** No, sir.

15 **MR. JARVIS:** But were you out a lot?

16 **THE WITNESS:** Yes, sir.

17 **MR. JARVIS:** Okay.

18 Were you the type of person that would instigate fights
19 or you wouldn't mess with people unless they mess with you?

20 **THE WITNESS:** Basically. I wouldn't -- I wouldn't
21 initiate a fight unless one of my cousins was in a fight or my
22 little brother was in a fight. As far as me just going out,
23 beating up people, no.

24 **MR. JARVIS:** So if a person in the neighborhood recalls
25 you as a bully, would they be saying that -- would you say it's

1 false?

2 **THE WITNESS:** No, I ain't -- as far as me actually
3 fighting a person, I ain't lost too many fights on the street.
4 But that's how I grew up in the family. I grew up learning how to
5 myself, I grew up learning how to protect my little brother.

6 **MR. JARVIS:** I believe it's you -- we've been reading
7 probably 3500 pages of documents. So -- but I believe it was you.

8 Is there a book that you're working on; is that correct?

9 **THE WITNESS:** I actually wrote one book and I have
10 another one in process.

11 **MR. JARVIS:** Okay.

12 When did you start that book?

13 **THE WITNESS:** After 2015, after I tried to kill myself.

14 **MR. JARVIS:** Tell me about these -- before you walked
15 in, we actually read the letter -- the letters to your mom, the
16 letters to your brother.

17 **THE WITNESS:** Which one, when I tried to suicide?

18 **MR. JARVIS:** Yes. Tell us about that.

19 **THE WITNESS:** I mean, at that particular point, it's
20 2014. The prison that I was at, I stayed there for seven years.
21 The things that I was actually doing -- I actually learned how to
22 talk to people through that prison. Like, I was -- I was an
23 outsider. Me, personally, like, I was isolated. I didn't like
24 being in prison. I didn't like being around prisoners. I didn't
25 like being around the police.

1 I'm saying I was congested in the place where I was
2 wrongfully accused, and I shouldn't be here. So I didn't lash out
3 at people because I learned my lesson. I learned my lesson
4 actually growing up fighting people. I actually learned my lesson
5 of being in prison and seeing things that I did not like seeing.

6 I done seen people get cut for no apparent reason. I
7 done seen people get stabbed for no apparent reason. I done seen
8 the police beat people up for no apparent reason. And I done seen
9 prisoners beat people for no apparent reason as well as prison
10 guards and people who don't even deserve -- I done seen things
11 that you wouldn't actually see on the street.

12 So I took that as like as either this or that because
13 wasn't nobody giving me no help. I done wrote multiple
14 projects -- innocence projects and been denied. I done wrote
15 people out of different states from different innocence projects
16 and still got turned down. Like, this right here is -- came by
17 the grace of God. I promise you now, I don't know how it
18 happened. I don't know why it happened. But I'm glad that it's
19 happening, I'm saying, and I took that as like this is the
20 epiphany of my life. This is what people need to see.

21 Because I grew up, couldn't read or write. I grew up in
22 and out of school. No, I wasn't a bad kid but I never was in
23 school.

24 **MR. JARVIS:** Right.

25 So that is what your book is about, would you say that's

1 correct?

2 **THE WITNESS:** No, my book is -- I took this actual
3 situation right here, I took this actual situation and I flipped
4 it. I made it into a book where it's a fantasy and I made it into
5 a book where it's reality. I took my situation of being in
6 prison, I took my situation of living out there in the world, I
7 took my situation as growing up, and I took my situation of
8 becoming a young man in prison. I took the good with the bad and
9 I emerged it to a book. It's just how God put it in by hand.

10 Like, I'm not the person who thought of it. It became
11 in my head, and I started to put on paper. It became my outlet.
12 It became my salvation to actually make myself feel whole.
13 Because with my book, it took so much out of me, it actually took
14 all the pain and the hurt out of me in dealing with this situation
15 and putting it on paper so people can actually see, okay, this kid
16 is really smart. This cat really didn't deserve to be in prison
17 for the rest of his life.

18 If this don't happen, I still publish my book, you see
19 what I'm saying?

20 **MR. JARVIS:** So I know multiple times in this time that
21 we've been together you've spoken about not being able to read or
22 write.

23 So when did you learn how to read or write?

24 **THE WITNESS:** I'd say throughout the course -- like, I
25 had a couple of prisoners, older men, actually saw me as a son or

1 a nephew, and actually two of them took me to the side and asked
2 me, "Hey, look man. You can't read or write. You need to learn
3 how to read or write." And it became a priority for me. It
4 became a priority to the point where I had to understand, I had to
5 comprehend, I had to apprehend, I had to learn how to actually
6 know what I'm dealing with at all situations at all times because,
7 like me being here now, you can actually tell throughout all of my
8 codefendants, they are slow to the fact -- and I'm not by saying
9 that they are not -- but they've been stagnated in theirself as
10 little kids, know what I'm saying.

11 I actually took my "kidness" and just turned it into me
12 as far as, like, growing up, knowing what I needed to know, know
13 what I'm saying, learning how to actually read and understand.
14 And if I didn't understand something, I was able to ask somebody.
15 I was able to be like, "Look, I don't understand this. Can you
16 teach me this?" Plenty of times where I need help, know what I'm
17 saying, but after I was taught, I was able to actually just learn
18 and continue on and learn and to continue on an learn.

19 **MR. JARVIS:** So let me ask you a question. We have seen
20 a number of writings from you.

21 Are you the person who is penning this writing or is
22 there someone writing for you?

23 **THE WITNESS:** Me writing.

24 **MR. JARVIS:** This is your penmanship?

25 **THE WITNESS:** Yes, sir.

1 **MR. JARVIS:** Let me ask you a question. If you were
2 released from prison, what would you do?

3 **THE WITNESS:** I would like to have -- I'd like to have
4 fun. But as far as, like, what would I do when I get out? My
5 thing is to go to the studio, like, music -- like, all types of
6 music -- country music, bluegrass, jazz, blues, rock, country,
7 rap, R&B -- I love music. Music is influential for everybody.
8 Sometimes it can be bad; sometimes it can be positive. It's all
9 how you take it.

10 **MR. JARVIS:** That's the end of my questions.

11 I do want to make this comment. I really appreciate
12 your comments concerning your friend, Dorrell Brayboy, and your
13 desire, your emotional desire to be something that he cannot be
14 for his daughter.

15 **THE WITNESS:** Thank you.

16 **MR. JARVIS:** I appreciate that.

17 **THE WITNESS:** Commissioner Colbert.

18 **MS. COLBERT:** Hi. I'm Robin Colbert. How are you?

19 **THE WITNESS:** How are you?

20 **MS. COLBERT:** Good.

21 I know you didn't get a chance to testify at your trial,
22 but after you were convicted, you did have an opportunity to
23 address the Court.

24 Do you remember that?

25 **THE WITNESS:** Yes, ma'am.

1 **MS. COLBERT:** Do you remember what you said?

2 **THE WITNESS:** I remember the whole thing, but --

3 **MS. COLBERT:** Do you mind if I read it to you?

4 **THE WITNESS:** Yes, ma'am.

5 **MS. COLBERT:** "I spent two years of my life in jail. I
6 am sorry. I really am. It's not my fault. Don't nobody know me.
7 15-year-old kids done done this, 14-year-old kids done done this.
8 I'm sorry that this man lost his life. I really am. I've got to
9 spend the rest of my life in prison. That's not right. That is
10 not justice."

11 Tell me what you meant by that.

12 **THE WITNESS:** Going through this trial and seeing the
13 many things that they was doing, the way they was presenting
14 stuff, saying that it was actual evidence when it was exhibits,
15 the way that everything was just unprofessional, me growing up
16 seeing this now, to what you said now, I had no clue what I was
17 saying.

18 Now, to the point where it came from my soul and my
19 heart, yeah, because that's true. I don't know who done it.

20 I'm 15 years old. My little brother, 14 years old. Me
21 and my little brother was named the ringleaders out of all five
22 kids. And you've got two 15-year-olds. That's not right.

23 And then you give me natural life? I have no life, you
24 see what I'm saying. I'm sitting here, I'm defenseless. I know
25 nothing. I don't know nothing at all.

1 As far as me growing up in prison, I knew nothing. I
2 would be sitting here telling you a lie if I did. I didn't know
3 whether I was coming or going at 15 years old, you see what I'm
4 saying. So me saying that was actually, yo, pleading my case
5 because don't nobody want to hear me.

6 I was told that I -- it was best -- in my best interest
7 not to get on the witness stand and say that I was innocent. That
8 was -- that's what was told to me. Why would you tell me that
9 when you know it's in my best interest to get up here and plead my
10 innocence, you see what I'm saying.

11 Now I'm sitting up here for the rest of my life. I
12 don't know who going to help me. I'm living in the lowest
13 probably I could ever live in my life. My mother don't have
14 money. We're living in a two-bedroom shack. She's working as
15 hard as she can, and God bless her soul, that's the woman I love.
16 "Mama, hey, how you doing?" Because now I'm up here telling the
17 truth.

18 **MS. COLBERT:** Do you remember Ms. Ava Boulware in the
19 neighborhood?

20 **THE WITNESS:** Ms. who?

21 **MS. COLBERT:** It may have been Williams at the time, Ava
22 Williams.

23 **THE WITNESS:** Yes, ma'am.

24 **MS. COLBERT:** I know you mentioned that you did not --
25 you only saw certain pages of your MAR and you didn't realize what

1 it said.

2 Did they send you copies of what Ms. Ava did?

3 **THE WITNESS:** As far as?

4 **MS. COLBERT:** When she said -- because she also sent
5 something to the Court -- an affidavit.

6 **THE WITNESS:** No, ma'am. In my MAR, it just states that
7 she drove by and seen the car light, the brake light of Mr. Jones'
8 flashed. That's the only thing I remember from my MAR.

9 **MS. COLBERT:** Do you remember her being in the
10 neighborhood?

11 **THE WITNESS:** I don't remember her at all because I
12 barely was in the neighborhood.

13 **MS. COLBERT:** Thank you.

14 **THE WITNESS:** Yes, ma'am.

15 **JUDGE LOCK:** Commissioner Britt.

16 **MR. BRITT:** Mr. Cauthen, I'm going to be brief.

17 You said you were 15 years old, and you couldn't read
18 and write.

19 **THE WITNESS:** Yes, sir.

20 **MR. BRITT:** All right.

21 How did you know that the piece of paper that you were
22 shown by Christopher Bryant was an affidavit?

23 **THE WITNESS:** I just know their names. I just knew the
24 names and what it was actually -- I don't know what was actually
25 written on the paper. Only thing I remember is Christopher Bryant

1 name. I knew his name because me and him went to school together.
2 And they actually was telling us -- or actually saying by name who
3 doing what and who done what. I don't actually remember reading
4 the actual affidavit; I just remember seeing the name.

5 MR. BRITT: You recognize written names?

6 THE WITNESS: Yes, sir.

7 MR. BRITT: You recognized what each person was said to
8 have done?

9 THE WITNESS: No, sir, I do not.

10 MR. BRITT: You did not?

11 THE WITNESS: No, sir.

12 MR. BRITT: All right.

13 Do you remember the fact that they recorded your
14 statement?

15 THE WITNESS: Yes, sir, I do.

16 MS. COLBERT: Why did you tell the police that Rayshawn
17 was the first person to hit Mr. Jones?

18 THE WITNESS: I mean, it was just a lie.

19 MR. BRITT: I'm sorry?

20 THE WITNESS: It was just a lie.

21 MR. BRITT: So you told a lie to get your little brother
22 and your best friend in the world implicated in this?

23 THE WITNESS: May I just -- not necessarily, but it was
24 the first thing that came to my mind and the first thing that --
25 it was just a lie. That's all it was.

1 **MR. BRITT:** Now, you've told us in certain terms that
2 you would do whatever it took to take care of your little brother
3 and protect him, protect your mom.

4 **THE WITNESS:** Yes, sir.

5 **MR. BRITT:** You weren't protecting him when you said
6 that.

7 **THE WITNESS:** No, sir, I was not.

8 **MR. BRITT:** Why didn't you make up that lie about one of
9 the other young men?

10 **THE WITNESS:** Now, actually, I did. But see, the
11 recording was turned off. When I actually tried to give the first
12 lie, the police got mad and threw the recorder across the table
13 and stormed out the room.

14 **MR. BRITT:** Now, let me ask you this: You've heard the
15 recording that Rayshawn did, his statement? No, I'm sorry.

16 You told the police Rayshawn jumped on the hood of the
17 car, didn't you.

18 **THE WITNESS:** I don't remember.

19 **MR. BRITT:** You don't remember it?

20 **THE WITNESS:** As far as the actual -- the whole
21 recording, no, sir, I do not remember.

22 **MR. BRITT:** You now know that the footprint -- the shoe
23 print that was on the hood of Mr. Jones' car was made by a shoe
24 similar to the ones that Rayshawn was wearing?

25 **THE WITNESS:** At this particular point, I knew that same

1 shoe that they said was found on the foot -- on the hood of
2 Mr. Jones' car was the same shoe print that my little brother had
3 on.

4 **MR. BRITT:** And it's your testimony that you actually
5 saw Mr. Jones' body underneath his carport?

6 **THE WITNESS:** I seen him in the carport. Underneath his
7 carport? Or --

8 **MR. BRITT:** Yes.

9 **THE WITNESS:** I just seen him laying on the floor in the
10 carport. I only remember that because the car -- the car was
11 actually, I believe, out of the carport in between -- like, I
12 don't actually remember where he was actually at, but I remember
13 seeing him in the carport.

14 **MR. BRITT:** Was he on his back? Was he on his stomach?

15 **THE WITNESS:** He was on his back.

16 **MR. BRITT:** Were the police there?

17 **THE WITNESS:** Yes, sir, the police and the ambulance was
18 there.

19 **MR. BRITT:** Many of those people were already there?

20 **THE WITNESS:** Yes, sir.

21 **MR. BRITT:** And when you saw him, he was uncovered?

22 **THE WITNESS:** Yes, sir.

23 **MR. BRITT:** And was Nathaniel with you -- excuse me --
24 was Rayshawn with you at that time?

25 **THE WITNESS:** No, sir.

1 **MR. BRITT:** So Rayshawn was not with you?

2 **THE WITNESS:** No, sir.

3 **MR. BRITT:** Was Jermal?

4 **THE WITNESS:** Jermal.

5 **MR. BRITT:** Jermal?

6 **THE WITNESS:** Yes, sir.

7 **MR. BRITT:** Was Christopher?

8 **THE WITNESS:** Yes, sir.

9 **MR. BRITT:** Was Jessicah?

10 **THE WITNESS:** Yes, sir.

11 **MR. BRITT:** And Dorrell?

12 **THE WITNESS:** Yes, sir.

13 **MR. BRITT:** If Rayshawn was not with you when this
14 allegedly happened, why did you include him?

15 **THE WITNESS:** Why did I include him?

16 **MR. BRITT:** Yeah.

17 **THE WITNESS:** It was lie. It was all a lie.

18 **MR. BRITT:** You understand how difficult that is to
19 understand?

20 **THE WITNESS:** At this point, being 33, yes, sir.

21 **MR. BRITT:** All right. Let me ask you this: Was your
22 mama a disciplinarian?

23 **THE WITNESS:** Like whoopin' us?

24 **MR. BRITT:** Yes.

25 **THE WITNESS:** Yeah.

1 **MR. BRITT:** If you lied to your mama, what would happen?

2 **THE WITNESS:** She'd whoop me anyway.

3 **MR. BRITT:** All right.

4 So why did you think that lying to the police was going
5 to have any different consequence?

6 **THE WITNESS:** It was just a lie. I can't -- I can't
7 tell you what to expect out of this lie. The only thing I knew
8 was to lie to get me out of trouble, to get me out of a situation
9 that I had no clue or anything about because this is what the
10 police wanted to hear from me.

11 This is the only thing I know to say. The first thing
12 that comes to my mind, yeah, it was a lie. Yeah, I probably
13 shouldn't have said the lie, but it was the first thing to get me
14 out of harm's way when it came to the police.

15 **MR. BRITT:** So you were lying to avoid trouble yourself?

16 **THE WITNESS:** I was lying to actually not be threatened
17 by the police and beat up by the police.

18 **MR. BRITT:** So was it your natural tendency to lie to
19 avoid trouble?

20 **THE WITNESS:** Like as far as like?

21 **MR. BRITT:** I'm talking about then. Was it your natural
22 tendency to lie about things that you had done or hadn't done to
23 avoid getting in trouble?

24 **THE WITNESS:** Previously?

25 **MR. BRITT:** At the time.

1 **THE WITNESS:** When I was 15 years old?

2 **MR. BRITT:** At the time this happened.

3 **THE WITNESS:** Yes, sir. And, sir, that's all kids.

4 **MR. BRITT:** All right. Thank you.

5 I don't have any other questions.

6 **MS. ESSARY:** I have a follow-up question.

7 **JUDGE LOCK:** Ms. Essary.

8 **MS. ESSARY:** I just want to make sure I understand
9 something. My name is Melissa. Thank you for being here,
10 Mr. Cauthen.

11 So you've mentioned I think it's Officer Weavil. Could
12 you talk more about him?

13 **THE WITNESS:** Lieutenant Weavil, he's a tall man. And
14 at this time, he were bigger than me. So I was naturally, like --
15 growing up, I was the type that was fearless. I was the type that
16 was very, very rebellious. I was the type that -- to say anything
17 at any given moment for no apparent reason. Lieutenant Weavil --
18 he scared me. Now, this is a person that I actually admitted to
19 my mother, I wouldn't dare admit to nobody else, this man actually
20 scared me. No other police officer -- was like a brush-off to me.
21 But him, no. That man scared me for my life.

22 **MS. ESSARY:** What was it about him that scared you so
23 much?

24 **THE WITNESS:** It's just the way that he talked, his
25 demeanor, his posture, the way he approached me about it. I'm

1 talking about the man actually stood there and stared me down with
2 his arms crossed and told me he was going to give me the lethal
3 injection and kill me. That man scared me for my life.

4 MS. ESSARY: How many hours, approximately, did he
5 question you?

6 THE WITNESS: He was --

7 MS. ESSARY: I mean, I understand that others did as
8 well, but him in particular, I just want to focus on him.

9 THE WITNESS: He was the main one questioning me out of
10 the whole ordeal, Lieutenant Weavil. He was the main one
11 questioning me until actually, after everything -- after my
12 mother, I see Lieutenant one more time after that. And then after
13 that, I ain't seen him no more.

14 MS. ESSARY: Who is the officer who brought you Jermal's
15 taped confession to listen to before you confessed?

16 THE WITNESS: I cannot remember.

17 MS. ESSARY: Did you listen to Jermal's confession?

18 THE WITNESS: I mean, I listened, but I didn't listen.
19 I just listened to him saying that we committed a crime, and
20 that's it.

21 MS. ESSARY: And was it your understanding that the
22 police wanted to line up your story of what happened, your false
23 story of what happened, with Jermal's?

24 THE WITNESS: I don't know what their intentions was at
25 this particular time, at 15. I don't know what's going on.

1 **MS. ESSARY:** So back to Chris Bryant's affidavit -- was
2 it ever read to you by a police officer?

3 **THE WITNESS:** No, ma'am, but I read it after I was
4 convicted in the transcript.

5 **MS. ESSARY:** After you learned how to read?

6 **THE WITNESS:** Yes, ma'am.

7 **MS. ESSARY:** Do you remember that first trial, when
8 Jessica Black took the stand and testified against you?

9 **THE WITNESS:** Yes, ma'am.

10 **MS. ESSARY:** What were you thinking at the time?

11 **THE WITNESS:** She's lying. She lied about the whole
12 thing. I mean, as we did. I can't -- me, personally, as a
13 person, growing up in prison and dealing with my own situation,
14 Jessica Black was probably put in the same situation we was, but
15 it was worded different. In my mind, I'm thinking, "Oh, these
16 five black boys, they lying on you. Them niggers don't care about
17 you. The best thing you need to do is tell on them and get
18 yourself out of trouble, because they probably telling on you."
19 That's in my mind. I don't know if it's actually true.

20 But dealing with these officers and the way they was
21 talking to me versus Jessica -- now, let's just actually say I'm
22 33 years old and I'm actually thinking about the actual -- she is
23 an accessory. She provided us with transportation there and from
24 there, according to her statement, according to everybody's
25 statement too.

1 So why she don't get charged? Now, she's a key witness.
2 How is that? If she don't have the car, we don't get there. If
3 the car is not there, we don't leave from there. See what I'm
4 saying?

5 **MS. ESSARY:** I understand.

6 Are you angry at her today?

7 **THE WITNESS:** I mean, I'm angry -- I'm angry at the fact
8 that 18 years down the line, and she got a slap on the wrist. She
9 got a slap on the wrist, when I'm in prison with multiple people
10 with the same scenario -- with the same scenario.

11 **MS. ESSARY:** Thank you.

12 **JUDGE LOCK:** Ms. Newton.

13 **MS. NEWTON:** If you don't mind, I'd like to follow up
14 with you on two things.

15 When Ms. Essary was just questioning you -- the lady you
16 were just speaking to -- you said, in response, that Lieutenant
17 Weavil threatened you with a needle.

18 Is that what you told her?

19 **THE WITNESS:** Yes, ma'am.

20 **MS. NEWTON:** Now, do you understand that you are under
21 oath or affirmation?

22 **THE WITNESS:** (Nonverbal response.)

23 **MS. NEWTON:** Do you understand that you need to be as
24 clear and consistent with what you tell us as you possibly can be?

25 Do you understand that?

1 **THE WITNESS:** I wouldn't -- yes, ma'am. I wouldn't be
2 telling you if it wasn't true.

3 **MS. NEWTON:** Well, I asked about why were you scared for
4 your life, and you said your life was in danger with Lieutenant
5 Weavil. And you said to me because he threatened you with life in
6 jail and that he was going to shoot you.

7 Do you remember that?

8 **THE WITNESS:** I remember that.

9 **MS. NEWTON:** That was today.

10 **THE WITNESS:** (Nonverbal response.)

11 **MS. NEWTON:** You didn't tell me that he threatened you
12 with a needle.

13 Why did you not say that when I asked you that direct
14 question?

15 **THE WITNESS:** Are you asking me did I remember telling
16 you? Or are you asking me why didn't I tell you that?

17 **MS. NEWTON:** I'm asking you --

18 **THE WITNESS:** I'm just giving you some of the
19 abbreviations that was said to me during this investigation,
20 during this interrogation.

21 **MS. NEWTON:** We're not asking you for your
22 abbreviations. We're you asking for the facts, and all of them.

23 **THE WITNESS:** Excuse me, but didn't I mention that
24 lethal injection was brought into it?

25 **MS. NEWTON:** Now, I have another question for you. I'm

1 trying to figure out what you're -- you're raging a little bit
2 about the fact that you were doing life in prison when Mr. Jones
3 lost his life, okay.

4 Now, I understand how you might be upset about that if
5 you're innocent. I understand that completely.

6 But are -- do you understand how Mr. Jones' died? Do
7 you understand what killed him?

8 **THE WITNESS:** Yes, ma'am.

9 **MS. NEWTON:** What do you understand killed Mr. Jones?

10 **THE WITNESS:** Said he had heart disease.

11 **MS. NEWTON:** Okay.

12 And you understand that someone assaulted him and that
13 complication wound up killing him. You understand that; correct?

14 **THE WITNESS:** Yes, ma'am.

15 **MS. NEWTON:** Now, if someone assaulted him and he died
16 as a result of heart disease, do you believe that person -- not
17 you, just hypothetically, as you said -- do you believe that
18 person deserves life in prison for that assault if heart disease
19 was ultimately --

20 **THE WITNESS:** You're asking for my personal opinion?

21 **MS. NEWTON:** Yes. What do you believe about that?

22 **THE WITNESS:** I don't deserve being in prison. A lot of
23 people in there for a lot of things. You got some people that's
24 partially guilty for their crime. You got some people who are
25 actually innocent of the crime. And then you've got people who

1 maliciously did their crime.

2 MS. NEWTON: No. My question is if someone hit
3 Mr. Jones --

4 THE WITNESS: I don't believe you should -- you should
5 spend the rest of your life in prison.

6 MS. NEWTON: Okay.

7 THE WITNESS: I believe you deserve some time. I do
8 believe that. But as far as you serving -- no, because you've got
9 to think about it. Just personally, you've got to think about it.

10 If Mr. Jones was attacked and they got to him in time
11 before he had his heart attack --

12 MS. NEWTON: He might have died; right?

13 THE WITNESS: Do you believe that the person should
14 actually serve for purpose of doing a longtime life sentence or
15 just going to prison for a small, minimum time?

16 MS. NEWTON: My question is: Are you upset about life
17 in prison because it was an assault, but that his heart killed
18 him?

19 THE WITNESS: No. I'm upset because I was falsely
20 accused.

21 MS. NEWTON: Okay.

22 And do you believe that someone might have hit him but
23 had nothing to do with his heart disease would deserve life in
24 prison?

25 THE WITNESS: I don't believe they deserve life in

1 prison. I do not.

2 **MS. NEWTON:** Okay. Thank you.

3 **JUDGE LOCK:** Mr. Cauthen, I have just three or four
4 questions, sir.

5 Did I understand you to say a few minutes ago that you
6 gave your false statement during the interrogation after you saw
7 your mother?

8 **THE WITNESS:** Yes, sir.

9 **JUDGE LOCK:** All right.

10 And you said that they -- that is, the police -- used
11 your mother against you; is that correct?

12 **THE WITNESS:** Yes, sir.

13 **JUDGE LOCK:** What do you mean by that, sir?

14 **THE WITNESS:** I mean, like, up until my mother, I denied
15 all -- I denied everything they threw at me up until my mother.
16 And then when my mother came in, she actually asked me a question:
17 "Did you do this?" Or -- whatever she said, it was -- it was in
18 reference to her being, like, asking me was I the one or me and my
19 little brother was the actual ones that had something to do with
20 this.

21 Now, the only reason why I say this, because the night
22 that it happened, my mother were actually home with my little
23 brother and my older brother. When I came in the house, it was on
24 the news. So in my mind, I'm thinking, like, "I can't believe my
25 mama just actually think I have something to do with this or

1 actually saying I have something to do with it." You see what I'm
2 saying?

3 So now in my mind I'm like, "Look, man, I'm going to
4 just say what I need to say so I can go home. I can correct this
5 or any way possible, I need to just say what I need to say" so --
6 because it was all a lie. That's the only thing I'm focused on,
7 making something up so these people can leave me alone.

8 **JUDGE LOCK:** Did the police give you the chance to talk
9 to your mother alone?

10 **THE WITNESS:** No, sir.

11 **JUDGE LOCK:** What did you tell your mother had happened?

12 **THE WITNESS:** I told my mother, I say -- in actual
13 words, I say, "Damn, my mama even believe I killed somebody."
14 Them were my actual words to my mother.

15 **JUDGE LOCK:** Your words to your mother were what?

16 **THE WITNESS:** "Aw, damn. I can't believe my mama
17 actually believe I killed somebody."

18 **JUDGE LOCK:** Well, did you ever tell your mother you
19 killed anybody?

20 **THE WITNESS:** No, ma'am -- no, sir. Excuse me.

21 **JUDGE LOCK:** Did your mother tell you to tell the truth?

22 **THE WITNESS:** Yes, sir.

23 **JUDGE LOCK:** And you respected your mother, did you not?

24 **THE WITNESS:** I respected my mama to this point, yes,
25 sir.

1 **JUDGE LOCK:** Yes, sir.

2 And you always, I take it, for the most part, obeyed
3 your mother, did you not?

4 **THE WITNESS:** Yes, sir, I did.

5 **JUDGE LOCK:** Well, then, after your mother told you to
6 tell the truth, why did you tell the police officer you killed
7 Mr. Jones?

8 **THE WITNESS:** Because that was the best lie I could give
9 because that's the only thing I knew that these people would
10 actually leave me alone.

11 **JUDGE LOCK:** But why did you lie if your mother had told
12 you to tell the truth?

13 **THE WITNESS:** Because my mama didn't even believe me at
14 this particular point. I'm not saying my mother will roll for
15 what she did and I'm not saying it's my mother fault that I
16 actually said what I said. But after my mother left and they came
17 back in, it's like they used her against me when they were like,
18 "Well, look, just tell us anything and we can let you go home."

19 So I'm like --

20 **JUDGE LOCK:** Excuse me. Go ahead.

21 **THE WITNESS:** So, I mean, what more you want me to keep
22 telling you? I didn't do it. I didn't do it. I didn't do it.

23 In my mind, I might as well say, "Okay, I did it." As
24 a 15-year-old kid, in my mind, it's telling me, "Okay, I might as
25 well go on and say I did it because these people is not going let

1 up. These people is not going to stop saying that I did something
2 when I continuously tell you I didn't do it."

3 We -- actually, what do you want me to say if you say,
4 "Mr. Cauthen, I know you did it. Mr. Cauthen, I know you did it,"
5 and I keep telling you, "Sir, I didn't do it. Sir, I didn't do
6 it"? I mean, where do we go from there? We at a stand point,
7 right there.

8 But as a 15-year-old kid ...

9 **JUDGE LOCK:** Now, just then, you used the phrase "after
10 my mother left and they came back in."

11 So did they give you the chance to speak to your mother
12 alone?

13 **THE WITNESS:** No, sir.

14 **JUDGE LOCK:** Well, what did you mean by that? Why did
15 you say that then --

16 **THE WITNESS:** What you mean?

17 **JUDGE LOCK:** -- you just told me?

18 **THE WITNESS:** Did I speak to my mother alone? The two
19 detectives was in there with my mother. I never got to speak to
20 my mother alone at no particular point.

21 **JUDGE LOCK:** What did you mean when you said "when my
22 mother left and they came back in"?

23 **THE WITNESS:** Yeah, they took -- they escorted my mother
24 out. They escorted my mother out and came back in.

25 **JUDGE LOCK:** I see. All right. Thank you, Mr. Cauthen.

1 **THE WITNESS:** Yes, sir.

2 **JUDGE LOCK:** Anybody else?

3 (No response.)

4 **JUDGE LOCK:** Thank you very much sir. You may step
5 down.

6 (Witness stands down, 3:23 p.m.)

7 **JUDGE LOCK:** Mr. Cauthen, please remember not to talk to
8 any of the other claimants --

9 **THE WITNESS:** Yes, sir.

10 **JUDGE LOCK:** -- until this hearing is over.

11 You certainly may talk to your lawyer.

12 **THE WITNESS:** Yes, sir.

13 **JUDGE LOCK:** All right. Let's take a recess about -- 10
14 minutes enough, folks? Or do you need 15?

15 Let's take about a 10-minute recess.

16 (Recess taken, 3:24 to 3:40 p.m.)

17 **JUDGE LOCK:** Are we ready to proceed?

18 **MS. SMITH:** Yes. Your Honor, would you like to tell the
19 folks in the audience what our plan is for the evening?

20 **JUDGE LOCK:** Thank you.

21 For the benefit of the Commissioners and for spectators,
22 we will stay in session until this matter is completed. It
23 appears that now means we will be going beyond 5:00 o'clock.

24 After the -- all the testimony and final wrap-up, of
25 course, spectators will be asked to leave while we conduct our

1 deliberations. There's no way of predicting how long those will
2 take. But once they are over, we will reconvene and announce our
3 decision.

4 **MS. SMITH:** Okay.

5 Before we begin, I wanted to let you-all know that
6 Handout 91 has been corrected and replaced in your notebooks.
7 This was something that was noted by Mr. Britt. The chart there
8 on the DPS calls should've said "from" and not "to." So we've
9 made that correction to make it less confusing.

10 **MR. BRITT:** That explanation was sufficient.

11 **MS. SMITH:** Just for the record.

12 The Commission recalls Ms. Bridenstine.

13 (Witness, Julie Bridenstine, resumes the stand.)

14 BY MS. SMITH: (3:41 p.m.)

15 **Q.** Ms. Bridenstine, I want to turn your attention now to
16 Christopher Bryant.

17 What did you learn about Mr. Bryant from his DPS records
18 as it relates to his education level and mental health?

19 **A.** The highest grade he completed was the eighth grade.
20 His IQ score in 2005 on the revised beta IQ exam was 79 and he had
21 no mental health records at DPS --

22 **MS. SMITH:** Commissioners, you were previously provided
23 Handout 94 to read prior to today. That's the transcript of the
24 Commission's interview with Christopher Bryant from February 23,
25 2018.

1 Q. Ms. Bridenstine, do Mr. Bryant's DPS records indicate
2 that he ever admitted to participating in this crime?

3 A. No.

4 Q. During your interview with Mr. Bryant, did he maintain
5 his innocence?

6 A. Yes.

7 Q. Can you remind the Commissioners what Mr. Bryant told
8 you about his whereabouts on November 15, 2002.

9 A. Yes.

10 Mr. Bryant said that he came home from school. His
11 sister's friends were home with his sister. He went to the Amoco
12 gas station at some point.

13 He said that they were supposed to go to the mall but
14 did not go. He said that he was home when one of the friends'
15 mothers came over to pick up this friend around 8:00 p.m. He said
16 that Rayshawn Banner was over around 4:00 p.m. but he was not
17 around with them after that point. He said that he did not get
18 along with Rayshawn Banner. He said that Jermal Tolliver was also
19 over that day. He said that Jessicah Black came over around
20 8:00 p.m. She came along that night with Nathaniel Cauthen and
21 Dorrell Brayboy.

22 He said that Sherman Williams, who also goes by Jed, and
23 possibly Shelton was also with him. He said that he got into
24 Jessicah Black's car with Jermal Tolliver, Dorrell Brayboy,
25 Nathaniel Cauthen, and Jed. They dropped Jed off at his house and

1 saw the police on Moravia Street after 9:00 p.m. They talked to
2 some bystanders about what had happened. He then went home and
3 the others went to the bowling alley.

4 He said that Jessicah Black and Nathaniel Cauthen were
5 more than friends.

6 Q. Ms. Bridenstine, did you have any conversations about
7 Hunter Atkins with Mr. Bryant?

8 A. Yes. I learned that Hunter Atkins had been contacting
9 the defendants to talk to them about this case. During our
10 interview with Mr. Bryant on February 23, 2018, I reminded him of
11 the Commission rule that claimants are not allowed to speak to the
12 media about their cases.

13 Q. Did the Commission ever communicate with Mr. Bryant
14 about the rule regarding the media again?

15 A. Yes. We had learned from Nathaniel Cauthen that
16 Mr. Atkins had reached out to him at the prison. We sent
17 Mr. Bryant a letter in May of 2019 reminding him of the
18 Commission's rule about not speaking to the media because we were
19 aware that Mr. Atkins had contacted Mr. Cauthen and was likely
20 trying to contact Mr. Bryant as well. We also reminded him again
21 of this rule in person in October of 2019 when we obtained an
22 affidavit of indigency from him as part of our process of moving
23 his case into formal inquiry.

24 MS. SMITH: Commissioners, do you have any questions for
25 Ms. Bridenstine?

1 (No response.)

2 MS. SMITH: Okay. I would ask that she step down.

3 JUDGE LOCK: She may.

4 (Witness stands down.)

5 MS. SMITH: The Commission calls Christopher Bryant.

6 * * * * *

7 Thereupon, CHRISTOPHER BRYANT, a witness having been called by the
8 Commission, was sworn and testified as follows:

9 BY MS. SMITH: (3:45 p.m.)

10 Q. Good afternoon, Mr. Bryant.

11 A. Hey. How you doing?

12 Q. Good. My name is Lindsey Guice Smith. I'm the
13 Executive Director of the North Carolina Innocence Inquiry
14 Commission. I'm going to ask you some questions today and then
15 when I'm done asking you questions, all of the commissioners
16 around the table may have questions for you as well, okay?

17 A. Uh-huh.

18 Q. I'd just remind you to keep your voice up and be sure to
19 respond verbally so that our court reporter here can hear you,
20 okay?

21 A. Yes, ma'am.

22 Q. Could you please state your full name for the record.

23 A. Christopher Levon Bryant.

24 Q. Did you rob Nathaniel Jones?

25 A. No.

1 Q. Did you kill Nathaniel Jones?

2 A. No.

3 Q. Were you involved in any way in the robbery and death of
4 Nathaniel Jones?

5 A. No, not at all.

6 Q. Were you present when Mr. Jones was robbed, tied up, and
7 killed?

8 A. Not at all.

9 Q. Were you nearby when Nathaniel Jones was robbed, tied
10 up, and killed?

11 A. Not at all, no.

12 Q. Did you see this crime being committed?

13 A. No.

14 Q. Did you ever participate in any plan to commit any part
15 of this crime?

16 A. No, not at all.

17 Q. Are you aware of who committed the crime?

18 A. No.

19 Q. Did any of the other codefendants in this case -- that
20 being Jermal Tolliver, Dorrell Brayboy, Nathaniel Cauthen, or
21 Rayshawn Banner -- ever tell you that they had any involvement in
22 the case?

23 A. Never. They never.

24 Q. Did any of the other codefendants in this case -- that
25 being Jermal Tolliver, Dorrell Brayboy, Nathaniel Cauthen, or

1 Rayshawn Banner -- ever tell you that they had any knowledge of
2 who committed this crime?

3 A. Uh-uh. Never.

4 Q. Other than your statements to police on November 19,
5 2002, have you ever told anyone that you committed this crime?

6 A. Never. I never told nobody I had anything to do with
7 it.

8 Q. Tell the Commissioners where you were on November 15,
9 2002. Let's start with the afternoon.

10 A. I came home from school. We was on the front porch at
11 my mama house. That's kind of where everybody kind of hung out
12 at. I was there for a little while and then, you know, we went to
13 the bus stop to see if we could go to the mall because they had
14 some bus passes for us to go to the mall. So we went there, and
15 it started like drizzling a little bit so we went back to my
16 house.

17 We went back to my house. And after we got back to my
18 house, we stayed at my house for little while. And after we was
19 there, Jessicah and a few other people pulled up in a car or
20 whatever, and they hung out at the house for little while, then a
21 few people got in the car with her, they left. And then, like
22 around -- I can't -- I don't want to speculate on the time, but it
23 was like around nighttime when she came back. And then that's
24 when I got in the car with her around 7:30, 8:00 o'clock -- not to
25 speculate, but that's the time that I kind of remember.

1 Q. Okay.

2 And then what happened after that?

3 A. We got in the car. We went down -- we went to drop Jed,
4 Sherman Williams, off on Moravia Street. And that's the first
5 time I ever seen, like, police cars and stuff like that up the
6 street at Mr. Jones' house. But I never knew like -- I never knew
7 Mr. Jones. I never met him, nothing, never met Mr. Jones a day in
8 my life.

9 So we went up there to the little sign, like the stop
10 sign, like right there where his house at, and somebody said
11 somebody got hurt. That's what I heard, somebody got hurt. I
12 didn't even know nothing about nobody dying.

13 So we got back in the car, went back to my mama house.
14 I told my mama somebody got hurt down the street, and that was
15 that. And then we went to the bowling alley and then we went to
16 Midway, and then we came back to my house and Brayboy spent the
17 night at my house. Jermal Tolliver went home, and Nathaniel --
18 Nathaniel Cauthen and Jessicah Black left together.

19 Q. Okay.

20 Was Rayshawn Banner with you?

21 A. He wasn't never with us, no. He were never with us. He
22 was with us in the evening, but he wasn't with us during those
23 little outings we went on.

24 Q. So was he over at your house earlier in the day?

25 A. Yeah, he was at my house earlier in the day but it was a

1 lot of kids. I had -- Robert was there, Sherman -- Sherman,
2 Jed -- it was a few people at my house.

3 Q. Was that pretty typical?

4 A. Yeah, it was typical. It was a typical day. Everybody
5 would get out of school and come over to my house because Jermal
6 Tolliver, he stayed right across the street from us. So that was
7 a typical day for us.

8 Q. Was your house kind of the hangout spot?

9 A. It wasn't a hangout spot, but my mama, she's real nice
10 so she, like, let the kids come over and, you know, feed them and
11 stuff like that. So it was a typical day. It wasn't no different
12 day. It was just a regular day for us.

13 Q. So do you know where Rayshawn went when you-all left?

14 A. He used to talk to my sister's friend. So he used to
15 come around and -- because my sister's friend, they was liking
16 each other. So he had come around, but after we had left, he was
17 already gone. Him and Marcus Shavers had left.

18 Q. Okay.

19 You don't know where they went?

20 A. Yeah. I don't know where they went.

21 Q. Okay.

22 You said that you got out of the car when you saw the
23 police lights and everything like that.

24 A. Uh-huh.

25 Q. Did you walk over toward the crime scene?

1 A. We walked towards the stop sign. Like, you couldn't go
2 all the way over there where his house at. So we stopped right
3 there, and it was like -- it was some people out there, and we
4 talked with some of them. I asked them, like, "Yo, what
5 happened?" And they was like, "Somebody got hurt," and that was
6 that, like ...

7 Q. Did you know the people you were talking to?

8 A. No. No. It was just like a crowd of people. You know,
9 if something happens, people crowd around just to see what's going
10 on and stuff.

11 Q. So what happened after you left the crime scene when you
12 saw the blue lights?

13 A. You say where we went to after we left?

14 Q. Yeah. Who was with you in the car and where did you go?

15 A. It was -- when we first went down there, we was dropping
16 Jed off. So it was me, Jed, Nathaniel Cauthen, Jermal Tolliver,
17 and Dorrell Brayboy and Jessicah Black.

18 Q. Okay.

19 Did Jed get back in the car with y'all?

20 A. Uh-uh. Uh-uh. He didn't go to the bowling alley or
21 nothing with us.

22 Q. But everybody else that you just named went to the
23 bowling alley?

24 A. Yeah. Yeah.

25 Q. And then I think you said you went to Midway. Was

1 that --

2 A. Yeah, we went to Midway.

3 Q. Was that before or after the bowling alley, if you
4 remember?

5 A. I don't want to speculate but it was one of the two,
6 like, we went to the bowling alley first or to Midway. I don't
7 remember which one.

8 Q. What did you do in Midway?

9 A. We went to go see one of Jessica's friends, but the
10 house was burnt down or something. So we left, like -- and that
11 was it.

12 Q. And then after that, did she take you back to your
13 house?

14 A. Yeah. She dropped us -- dropped me and Dorrell Brayboy
15 off at my house because he spent the night at my house because he
16 stayed on Sink Street. And Jermal, he went across the street to
17 his house. And Nathaniel and Jessicah left because, you know,
18 they was kind of talking, like, doing each other.

19 Q. And you don't know where they went after that?

20 A. Uh-uh. No, ma'am.

21 Q. Okay.

22 (Reporter clarification.)

23 Q. Were you smoking marijuana on that day?

24 A. Probably so. Probably so.

25 Q. Was that typical?

1 A. Yeah. I had just kind of started smoking, though. I
2 wasn't really no big smoker at the time, but I had kind of just
3 started smoking marijuana.

4 Q. Do you know if the other people that were with you that
5 day were also smoking marijuana?

6 A. I mean, I wasn't with them all day; so I don't know,
7 like, if they smoked marijuana during that time.

8 Q. Did any of your codefendants, when you were with them,
9 smoke marijuana while you were with them, if you recall?

10 A. I don't recall. I don't recall.

11 Q. Do you recall if Jessica Black smoked marijuana in your
12 presence that day?

13 A. I don't recall either.

14 Q. Mr. Bryant, if you did not commit these crimes, why did
15 you tell the police that you did when you were interviewed on
16 November 19, 2002?

17 A. If y'all was in that room with me -- I was threatened
18 with the death penalty. Like, every time I told them I wasn't
19 involved or I never -- the same thing I'm telling you now. I
20 never met Mr. Jones. I never even shook his hand. I never
21 nothing. I don't even know him. They told me I was lying. I'm
22 lying, I'm lying.

23 So my thing, I -- if I tell the truth, if I'm trying to
24 tell you the truth and you're telling me I'm lying -- like, every
25 time I tell you I don't know this man or whatever, like, I'm

1 lying, I'm a 'ing liar, and that's all it was, like, and they
2 threatened me with the death penalty. Somebody on the phone right
3 now asked me which arm you want the death penalty, hold out your
4 arm, that's the vein, that's the vein.

5 I was scared. I was 15. I was still into the
6 remote-controlled cars and stuff like. I ain't -- I didn't -- I
7 ain't never been in no trouble, like, as far as dealing with no
8 murder or robberies or nothing like that. I ain't never been in
9 no trouble like that.

10 So I was scared. I mean, I was scared. And I regret
11 every day that I, you know, said what I said.

12 **MS. SMITH:** Commissioners, questions?

13 **JUDGE LOCK:** Ms. Newton.

14 **MS. NEWTON:** Yes. Good afternoon.

15 **THE WITNESS:** Good afternoon, ma'am.

16 **MS. NEWTON:** Thank you for being here. And I'm Deb
17 Newton. I'm one of the Commissioners and -- sitting in this
18 hearing, and I am a criminal defense attorney. I have a couple of
19 questions for you, okay?

20 **THE WITNESS:** Okay.

21 **MS. NEWTON:** Mr. Bryant, according -- you testified at
22 your suppression hearing, didn't you?

23 **THE WITNESS:** Yes, ma'am.

24 **MS. NEWTON:** Okay.

25 You did not testify at your trial; correct?

1 **THE WITNESS:** Yes.

2 **MS. NEWTON:** Okay.

3 Now, did you have the same lawyer for both the
4 suppression hearing and the trial?

5 **THE WITNESS:** Yes, ma'am.

6 **MS. NEWTON:** Okay.

7 And why did you choose not to testify at trial?

8 **THE WITNESS:** I was told not to.

9 **MS. NEWTON:** Who told you that?

10 **THE WITNESS:** Nils Gerber, my lawyer that I only seen
11 two times out of the whole time while I was in jail.

12 **MS. NEWTON:** Okay.

13 Did he tell -- when did he tell you not to testify?

14 **THE WITNESS:** I don't recall. It was just -- I remember
15 him telling me that it wouldn't -- he don't think it would be in
16 my best interest to testify.

17 **MS. NEWTON:** Now, do you recall the trial? You're
18 sitting at counsel table.

19 **THE WITNESS:** Say what now?

20 **MS. NEWTON:** You're sitting at the table with your
21 lawyer during the trial; correct?

22 **THE WITNESS:** Uh-huh.

23 **MS. NEWTON:** And you had two other people with their
24 lawyers at the trial; correct?

25 **THE WITNESS:** Yes, ma'am.

1 **MS. NEWTON:** There was a jury, there's a judge; right?

2 **THE WITNESS:** Uh-huh.

3 **MS. NEWTON:** You watched the State put up evidence and
4 testimony about all of the confessions and all the things that you
5 said that you did and your codefendants did; right?

6 **THE WITNESS:** Yes, ma'am.

7 **MS. NEWTON:** At what point in that process did your
8 lawyer tell you not to testify?

9 **THE WITNESS:** I can't really recall, but I know he told
10 me not to testify -- because I wanted to testify.

11 **MS. NEWTON:** When did you tell him you wanted to
12 testify?

13 **THE WITNESS:** I told him on a few occasions that I think
14 I should be eligible to testify on my behalf, but I don't recall
15 when. I can't --

16 **MS. NEWTON:** Was that in court or was it before you --

17 **THE WITNESS:** It was before court. I think it was
18 before court, if I'm not mistaken.

19 **MS. NEWTON:** Before trial?

20 **THE WITNESS:** Yeah, it was before trial.

21 **MS. NEWTON:** Okay.

22 Now, did he explain to you why you could not testify?

23 **THE WITNESS:** I don't think he did, but at the time, I
24 didn't really understand the law. So it might have just went over
25 my head.

1 **MS. NEWTON:** Okay.

2 But did you tell him, "I" -- after listening to all of
3 that, "That's not true" or "I want to testify"?

4 **THE WITNESS:** I thought maybe he could, you know --
5 like, he was my lawyer. So I thought everything was supposed to
6 go through him before it get to me. So I didn't --

7 **MS. NEWTON:** Did you tell your lawyer the truth?

8 **THE WITNESS:** Yeah, I told my lawyer the whole truth.

9 **MS. NEWTON:** Did you tell your lawyer that everything
10 you told the police was --

11 **THE WITNESS:** I told him all of that, ma'am.

12 **MS. NEWTON:** After you had the interview with law
13 enforcement on November 19 of 2002, what was the first time that
14 you told anyone that everything you told the police was a lie?

15 **THE WITNESS:** Pete Clary. That was my -- that was the
16 first lawyer I had that came to see me.

17 **MS. NEWTON:** How much time after 11/19/2002 went by
18 before you --

19 **THE WITNESS:** The first time -- before -- when I was
20 at --

21 (Overlapping speakers.)

22 **MS. NEWTON:** Let me get my question out.

23 How much time went by -- after you made all of those
24 statements to law enforcement that you say were not true, how much
25 time went by before you told someone that what you said to the

1 police was not true?

2 **THE WITNESS:** Are you taking about telling, like, an
3 authority figure or like --

4 **MS. NEWTON:** Anyone. Any person.

5 **THE WITNESS:** Oh, then -- the same -- the same day and
6 the next day.

7 **MS. NEWTON:** Who did you tell?

8 **THE WITNESS:** I told my mother. I told my brother. I
9 told -- I told a few people.

10 **MS. NEWTON:** Okay.

11 **THE WITNESS:** I told a few people once I realized what
12 had happened, like, once I understood, like, what I just did.

13 **MS. NEWTON:** Okay.

14 Why would you say that you were compelled to tell those
15 facts to the police that you say are not true?

16 **THE WITNESS:** You said -- none of those was facts.
17 Everything that I got was gave to me by the police officers.

18 **MS. NEWTON:** Oh. you mean they told you that?

19 **THE WITNESS:** Yeah. They told me -- they told me some
20 of the things, and then I just, like, helped them out, like, as
21 far as, like, if they tell me, like, "Oh, well, this was, like,
22 this," so then I just give some imaginary stuff. And if it
23 weren't right, then they'll let me know it ain't right, and "Oh,
24 this not right."

25 And then, you know, I'll just say some stuff to fit into

1 what they've got going on.

2 MS. NEWTON: So you were trying to figure out what they
3 wanted to hear and give it to them?

4 THE WITNESS: I was telling them what they want to hear
5 so they can let me go home.

6 MS. NEWTON: Now, did someone tell you that you were
7 going to go home if you did that?

8 THE WITNESS: Yeah. Yeah, they did.

9 MS. NEWTON: Who told you that?

10 THE WITNESS: It was a detective. I don't know his
11 name. It was several detectives in and out of the rooms.

12 MS. NEWTON: So when you testified in the suppressing
13 hearing, your lawyer said, "I want to put you up. You need to
14 testify"; right?

15 THE WITNESS: You said what, now?

16 MS. NEWTON: During the suppression hearing -- not the
17 trial.

18 THE WITNESS: Okay.

19 MS. NEWTON: You testified in the hearing before the
20 trial.

21 THE WITNESS: Uh-huh.

22 MS. NEWTON: Okay.

23 So you took an oath and you swore to tell the truth.

24 THE WITNESS: Uh-huh.

25 MS. NEWTON: Did you tell the truth at that hearing?

1 **THE WITNESS:** Yes, I did.

2 **MS. NEWTON:** Okay.

3 Now, why did your lawyer say you needed to testify at
4 that hearing?

5 **THE WITNESS:** To -- I guess to speak about the
6 confessions.

7 **MS. NEWTON:** Okay.

8 Did something change between you testifying in that
9 hearing and the time of your trial that made your lawyer not want
10 you to testify a second time?

11 **THE WITNESS:** I don't recall, ma'am. I don't recall.
12 Like, it's been so long, I don't recall, like, like, some of the
13 conversations we had on the -- on the court stuff. I don't --
14 some of the stuff, I just didn't realize.

15 **MS. NEWTON:** Okay.

16 Did you understand that the jury did not know about what
17 you testified to at the suppression hearing?

18 **THE WITNESS:** I didn't.

19 **MS. NEWTON:** You didn't understand?

20 **THE WITNESS:** I didn't understand.

21 **MS. NEWTON:** Okay. All right.

22 Now, you understood that the Court ruled, as a result of
23 this suppression hearing, that the evidence came in; right?

24 **THE WITNESS:** What? Say that again for me, please.

25 **MS. NEWTON:** You understand that the evidence you were

1 trying to suppress --

2 THE WITNESS: Yeah.

3 MS. NEWTON: -- the Court ruled it could come in?

4 THE WITNESS: Yeah. Yes, ma'am.

5 MS. NEWTON: But yet your lawyer still didn't want you
6 to testify?

7 THE WITNESS: He still didn't want me to testify.

8 MS. NEWTON: Did you say at that hearing that you were
9 not guilty, that you were innocent?

10 THE WITNESS: Yes, ma'am. If I'm not mistaken, if they
11 asked me, I'm sure I told them.

12 MS. NEWTON: Okay.

13 Now, you said that you went with your friends in
14 Ms. Black's car by Mr. Jones' house on November 15th of 2002.

15 THE WITNESS: Uh-huh.

16 MS. NEWTON: The night that he passed away; right?

17 THE WITNESS: Uh-huh.

18 MS. NEWTON: Who do you remember was in the car?

19 THE WITNESS: When we went down there?

20 MS. NEWTON: When all the police were there.

21 THE WITNESS: Oh. It was me -- it was me, Jessicah
22 Black, Nathaniel Cauthen, Jermal Tolliver, and Dorrell Brayboy.
23 And we had dropped Jed, Sherman Williams, off at his stepdad house
24 on Moravia Street.

25 MS. NEWTON: And Rayshawn was not there?

1 **THE WITNESS:** Naw, he wasn't with us.

2 **MS. NEWTON:** Okay.

3 Was he there with you earlier?

4 **THE WITNESS:** Earlier in the day, like around school
5 time because him and Robert was supposed to get in a fight or
6 something.

7 **MS. NEWTON:** Oh, a fight. And they never got --

8 **THE WITNESS:** Naw, they never got in a fight. Uh-huh.

9 **MS. NEWTON:** But when is last time you saw Rayshawn that
10 day?

11 **THE WITNESS:** I ain't seen Rayshawn no more that day.

12 **MS. NEWTON:** Okay.

13 **THE WITNESS:** I never seen him no more that day.

14 **MS. NEWTON:** Well, my question concerns when you rode by
15 Mr. Jones' house. When --

16 **THE WITNESS:** We never rode -- we never rode past his
17 house.

18 **MS. NEWTON:** When Jessica was driving and you saw the
19 police cars, I think you said that you -- well, you --

20 **THE WITNESS:** We seen it from when we dropped Jed off.
21 Jed house is right here. And Mr. Jones' house is on the other, by
22 the church, to my understanding.

23 **MS. NEWTON:** My mistake. You didn't ride by, you rode
24 near. But you saw the police.

25 **THE WITNESS:** Yeah, we seen -- yeah.

1 **MS. NEWTON:** Did you hear anybody in the car say
2 anything as a result of seeing all those cars? Like, "Oh"?

3 **THE WITNESS:** Uh-huh. I ain't hear nobody say nothing.

4 **MS. NEWTON:** Nobody said a thing.

5 **THE WITNESS:** I didn't hear nobody say nothing.

6 **MS. NEWTON:** I mean, you see all these police cars.

7 **THE WITNESS:** Yeah.

8 **MS. NEWTON:** You know someone's going to say something.

9 **THE WITNESS:** I don't recall nobody saying nothing.

10 Now, if they did, I don't recall.

11 **MS. NEWTON:** And you didn't say anything.

12 **THE WITNESS:** Uh-uh. I told my mama somebody got hurt
13 later on when I went back to the house.

14 **MS. NEWTON:** Okay. All right.

15 Did any of you get out of the car to go see what's going
16 on?

17 **THE WITNESS:** Yeah. Yeah. I know I got out the car.

18 Because I remember I was at the stop sign and I talked to
19 somebody. I don't know who she was, but she said somebody had got
20 hurt.

21 **MS. NEWTON:** That's how you found out that somebody got
22 hurt.

23 **THE WITNESS:** Yeah.

24 **MS. NEWTON:** Okay.

25 Did you hear someone say, when you see the police cars,

1 just to refresh your recollection -- do not say you heard it if
2 you didn't.

3 THE WITNESS: Yeah, I know. I know. I understand.

4 MS. NEWTON: When you-all were in the car and saw the
5 police cars, did someone say, "Someone must've gotten killed"?
6 Did you hear that?

7 THE WITNESS: No, I didn't hear that, ma'am.

8 MS. NEWTON: Okay. All right.

9 Now, you said that Nathaniel and Jessicah were dealing
10 with each other.

11 THE WITNESS: Uh-huh.

12 MS. NEWTON: There seems to be some discrepancy.

13 THE WITNESS: Yeah.

14 MS. NEWTON: Were they in a, like, romantic
15 relationship?

16 THE WITNESS: Naw, they -- they done kissed and stuff,
17 but I wouldn't say they was in a romantic relationship. I mean, I
18 seen them kiss, but I don't know what they done did, like, outside
19 of that.

20 MS. NEWTON: And how long was that going on that you
21 saw?

22 THE WITNESS: I don't -- you say how long it was going
23 on?

24 MS. NEWTON: Yeah.

25 THE WITNESS: I'm not sure. I'm not sure.

1 **MS. NEWTON:** And you said the only -- that you smoked a
2 little pot that night?

3 **THE WITNESS:** Yeah. I probably did. I ain't saying I
4 did because I don't know, but it's a possibility because I
5 remember smoking though.

6 **MS. NEWTON:** And did you see anybody else smoking pot
7 that night.

8 **THE WITNESS:** Uh-huh.

9 **MS. NEWTON:** You weren't smoking pot in the car?

10 **THE WITNESS:** I don't remember. I don't recall.

11 **MS. NEWTON:** Okay.

12 Now, when you went in to see law enforcement -- I want
13 to take you back to that interview with law enforcement.

14 Can you tell me the ethnicity of the law enforcement
15 officers that interviewed you? Were they Mexican, white, or
16 black?

17 **THE WITNESS:** I think it was one of them like a Spanish
18 guy.

19 **MS. NEWTON:** Okay.

20 And then -- that interviewed you?

21 **THE WITNESS:** Uh-huh.

22 **MS. NEWTON:** Had you had any prior interactions with
23 those law enforcement officers in the neighborhood?

24 **THE WITNESS:** Not that I recall. I don't remember
25 seeing none of them that -- I don't --

1 **MS. NEWTON:** So you didn't have any particular feelings
2 about any of them?

3 **THE WITNESS:** Not with that particular detectives, no.
4 I don't recall ever meeting them.

5 **MS. NEWTON:** Okay.

6 So when you went in to see them, did you have a
7 generalized feeling about law enforcement? Did you trust them or
8 did you not trust or did you care?

9 **THE WITNESS:** Oh, I trusted them. I trusted them.

10 **MS. NEWTON:** You did trust them.

11 **THE WITNESS:** I trusted them because they the authority.

12 **MS. NEWTON:** Okay.

13 So when you went in and said, "I don't know what you're
14 talking about, I didn't do that," or whatever it is you said, did
15 you immediately say, "I'm not involved in that"?

16 **THE WITNESS:** Yeah. Because when they put the picture
17 out there, I didn't even -- like, I didn't -- still didn't know
18 what they was talking about.

19 **MS. NEWTON:** Okay.

20 Until they started being --

21 **THE WITNESS:** Aggressive.

22 **MS. NEWTON:** -- aggressive?

23 **THE WITNESS:** -- telling me I was a 'king liar and all
24 this.

25 **MS. NEWTON:** Did you ever start crying?

1 **THE WITNESS:** Yes. Yes, ma'am.

2 **MS. NEWTON:** And were -- what made you believe that if
3 you told them what they wanted to hear you were going to go home?

4 **THE WITNESS:** That's the way they was presenting it to
5 me, like -- and for me to be naïve -- like, I was 15. I wasn't --
6 I didn't know. I was naïve. Like, I thought I could trust them,
7 like, me by -- I didn't know, by me telling them that I was
8 involved -- I didn't think that I was going to end -- I thought
9 maybe they would find out, like, "Oh, yeah, they didn't do it" or
10 whatever. It took so long. Y'all just don't understand.

11 **MS. NEWTON:** Yeah, I think we have ideas.

12 Now, do you know who Hunter Atkins is?

13 **THE WITNESS:** Yes, I do.

14 **MS. NEWTON:** How many conversations have you had with
15 Hunter Atkins?

16 **THE WITNESS:** I had a lot of conversations with
17 Mr. Hunter Atkins.

18 **MS. NEWTON:** What do you think about him?

19 **THE WITNESS:** I like Hunter Atkins.

20 **MS. NEWTON:** Why?

21 **THE WITNESS:** Because he's -- he's -- he really stepped
22 in and took a look at the things that people wasn't willing to
23 look at.

24 **MS. NEWTON:** Uh-huh. Okay.

25 **THE WITNESS:** And he really -- I mean, he brung a

1 blessing to my life. I mean, I don't know what's going to happen
2 here today, but I know he done blessed my life.

3 MS. NEWTON: What do you think is in it for him? I
4 mean, why you think he's involved? He's from Houston. So why do
5 you --

6 THE WITNESS: It's probably a story for him.

7 MS. NEWTON: You think?

8 THE WITNESS: It's probably a story for him.

9 MS. NEWTON: Okay.

10 Has anybody explained -- Hunter or anyone explained to
11 you the Innocence Commission process and what might happen if you
12 are ultimately determined not guilty?

13 THE WITNESS: Well, ain't nobody explained it to me. I
14 learned everything on my own by being in prison.

15 MS. NEWTON: Are you expecting anything to result or
16 were you promised anything as a result of this process?

17 THE WITNESS: To get this charge off my back. That's
18 it.

19 MS. NEWTON: Okay.

20 That's important to you.

21 THE WITNESS: Just so I can have my life back, like,
22 that's all. So I can have -- so I ain't got to tell these people
23 that I've got a felony that I didn't do. And like -- and that's
24 it, like, that's all. Like, I just want my name back.

25 MS. NEWTON: Does that affect your job prospects?

1 **THE WITNESS:** I mean, I thought it would, but the
2 Lord -- the Lord done blessed me where I have a decent, good job.
3 Like, to this day, I make, you know, make a good little nice
4 amount money for the job that I'm doing now. I got certified as a
5 forklift driver.

6 **MS. NEWTON:** Did anybody promise you money as a result
7 of this process?

8 **THE WITNESS:** No, ma'am.

9 **MS. NEWTON:** No? Okay.

10 Did Hunter Atkins actually talk to you about that and
11 whether he was expecting anything?

12 **THE WITNESS:** Uh-uh. No. He ain't never speak to about
13 no money.

14 **MS. NEWTON:** Did he talk to you about, you know, writing
15 an article or something that might benefit you in some way?

16 **THE WITNESS:** Uh-uh. He had asked me -- he had asked me
17 one day how did I feel, like, if I had anything I wanted to say to
18 the Pauls family, like -- because when I was in prison, I had
19 wanted to write a letter. I wanted to write a letter to them, but
20 I ain't know how they would feel, you know, so ...

21 **MS. NEWTON:** Did you write it?

22 **THE WITNESS:** I never wrote it.

23 **MS. NEWTON:** Okay.

24 So my last question, Mr. Bryant -- and thank you for
25 your candor -- you've had a long time since 2002 to think about

1 what happened, and you understand that Mr. Jones -- do you
2 understand why he died?

3 THE WITNESS: No.

4 MS. NEWTON: You don't understand what actually killed
5 him?

6 THE WITNESS: I mean, from reading the newspaper and
7 stuff, like, from when it first happened and stuff.

8 MS. NEWTON: What do you understand he died from?

9 THE WITNESS: From a heart attack.

10 MS. NEWTON: Okay.

11 And do you understand that he was assaulted?

12 THE WITNESS: Yes. I heard that too.

13 MS. NEWTON: Okay.

14 So you were accused and in fact punished --

15 THE WITNESS: Punished. Punished for --

16 MS. NEWTON: -- for your purported involvement in that.
17 You're out of jail now.

18 THE WITNESS: Yes, ma'am.

19 MS. NEWTON: But in all this time, you have an interest,
20 if you are in fact innocent, in what happened to Mr. Jones.

21 THE WITNESS: Absolutely.

22 MS. NEWTON: Is that fair?

23 THE WITNESS: Yes. I want justice for not just us but
24 for him as well, though, like, he didn't deserve that.

25 MS. NEWTON: And you would understand his family would

1 like that answer as well?

2 **THE WITNESS:** Yes. And I would definitely like for them
3 to get that.

4 **MS. NEWTON:** So my question is -- you understand what I
5 mean by "word on the street"?

6 **THE WITNESS:** Yes.

7 **MS. NEWTON:** Okay.

8 Have you made it your business to see if you can hear or
9 find out anything about what happened?

10 **THE WITNESS:** What you mean? Like, with --

11 **MS. NEWTON:** Do you know what the word on the street is
12 who did it?

13 **THE WITNESS:** Uh-uh. I ain't heard nothing like --
14 people got their insinuations and stuff, but you can't -- some of
15 the stuff you can't take at face value.

16 **MS. NEWTON:** Well, what kind of an insinuation have you
17 heard?

18 **THE WITNESS:** I mean, I done heard probably one of the
19 family members might have did it. All type of crazy stuff. But,
20 you know, I mean, I ain't got nothing to do with that.

21 **MS. NEWTON:** Okay. All right.

22 And you wouldn't want to speculate, certainly.

23 **THE WITNESS:** Uh-uh. And I done heard, you know,
24 somebody might have knew him and waited for him, all type -- I
25 done heard all type of stuff.

1 **MS. NEWTON:** Okay.

2 But nothing specific about who might have actually
3 assaulted him?

4 **THE WITNESS:** Uh-uh. No, ma'am.

5 **MS. NEWTON:** Okay.

6 And before I let you go, is there anything that you can
7 think of after all of this time that is a fact that didn't come
8 out at your trial that might show that you are not guilty?

9 **THE WITNESS:** Just, I mean, people just telling the
10 truth. Just tell the truth, that's all. Just tell the truth.
11 That's all.

12 **MS. NEWTON:** Okay.

13 Mr. Bryant, this is your opportunity. Is there anything
14 else that I or no -- that no one at this point has asked you that
15 you would like to say to the Commission?

16 **THE WITNESS:** We didn't -- I didn't have nothing to do
17 with Mr. Jones' murder. I never was involved. I never
18 participated in it. I would never do nothing like that to nobody.
19 I got a 73-year-old mother, and, like, she got diagnosed with
20 breast cancer when I was in there. So I went through a lot of
21 stuff too as well. And I'm sorry for what happened to Mr. Jones
22 but I didn't have no part in it. And I will go to my grave until
23 the day I'm dead knowing that I didn't do this. I didn't have no
24 part in it.

25 **MS. NEWTON:** Thank you, sir.

1 **JUDGE LOCK:** Commissioners?

2 **MR. EDWARDS:** Mr. Bryant, good afternoon. My name is
3 Seth Edwards.

4 **THE WITNESS:** Hey. How you doing, Mr. Seth.

5 **MR. EDWARDS:** Okay.

6 You have this claim today before the North Carolina
7 Innocence Inquiry Commission. And you have at least applied to
8 other innocent-type projects in the past; isn't that right?

9 **THE WITNESS:** Yes, sir.

10 **MR. EDWARDS:** And you've said that Nils Gerber was your
11 attorney at the trial; isn't that right?

12 **THE WITNESS:** Yes, sir.

13 **MR. EDWARDS:** And we've been provided a memorandum of a
14 conversation that one of these other innocence projects had with
15 you attorney where Mr. Gerber said he was going off memory, but he
16 "was pretty certain the boys were guilty." He said: "All five
17 made a plan and followed through with it."

18 Why would he say that?

19 **THE WITNESS:** Why would he say that?

20 I never told him nothing like that. He was supposed to
21 fight for me. He never fought for -- he didn't like my brother,
22 either. He didn't like my oldest brother that worked for the
23 City, like -- I guess my brother was on him a lot and, you know,
24 because he -- I only seen him two times.

25 I only seen him two times the whole time while as I was

1 incarcerated. He never came to see -- only thing he came to see
2 me about was taking a plea bargain, and I told him I'm not taking
3 no plea bargain because I didn't do it. I was willing to go in
4 there -- I told my mama, "They probably going to give me a life
5 sentence, but I'm going to get out soon," and that's -- I mean,
6 and that's how it happened. They done gave me time for something
7 I didn't do.

8 **MR. EDWARDS:** Now, Mr. Gerber also told this other
9 innocence project that -- in regard to the statements that you
10 made to the police -- and I understand that you and the other
11 codefendants are saying that they were not true, that they were
12 coerced, you were scared --

13 **THE WITNESS:** They was coerced.

14 **MR. EDWARDS:** -- all of that.

15 Mr. Gerber made the statement that, in his opinion, the
16 confessions were coerced but that they were still true.

17 Why would he say that?

18 **THE WITNESS:** Can't be true. How can they be true?

19 **MR. EDWARDS:** Well, what --

20 **THE WITNESS:** What makes them true? What makes the
21 statements true?

22 **MR. EDWARDS:** Well, I mean, what he's saying is a
23 coercion -- a confession or statement that somebody gives, you
24 might give a statement because you're scared to death, but that
25 doesn't necessarily mean it's a lie.

1 **THE WITNESS:** Oh, well these was. These was.

2 **MR. EDWARDS:** Now, aside from this statements that you
3 and your codefendants made, one thing I do want to ask you about,
4 and that is the police, after Mr. Jones was killed, they talked
5 with Jermal Tolliver's mom.

6 **THE WITNESS:** Uh-huh.

7 **MR. EDWARDS:** Talked with his sister, talked with his
8 brother.

9 **THE WITNESS:** Uh-huh.

10 **MR. EDWARDS:** And his sister Yolanda -- you probably
11 remember her.

12 **THE WITNESS:** Yeah, I know Yolanda Tolliver.

13 **MR. EDWARDS:** Okay.

14 She was 16 at the time.

15 **THE WITNESS:** Uh-huh.

16 **MR. EDWARDS:** Just had a baby?

17 **THE WITNESS:** Uh-huh.

18 **MR. EDWARDS:** And she said, okay, that this crime took
19 place on a Friday night.

20 **THE WITNESS:** Uh-huh.

21 **MR. EDWARDS:** She said on that Sunday night, which would
22 have been November 17th, 2002, that she was at home with her baby,
23 and that you were over at her house with Jermal Tolliver.

24 **THE WITNESS:** Uh-huh.

25 **MR. EDWARDS:** And, of course, everybody knows you went

1 by Bubba.

2 **THE WITNESS:** Yeah.

3 **MR. EDWARDS:** Which you're a good-sized fellow.

4 **THE WITNESS:** Yeah.

5 **MR. EDWARDS:** And earlier today, Jermal Tolliver -- I
6 asked him, you know, all these guys you ran around with, was there
7 one in particular that you were little bit closer to than the
8 other, and he said you.

9 **THE WITNESS:** Yeah.

10 **MR. EDWARDS:** Okay. So back in that time.

11 **THE WITNESS:** Uh-huh.

12 **MR. EDWARDS:** Well, Yolanda told police -- again, she
13 said that Sunday night following Mr. Jones' murder, she was at
14 home with her baby, you were over at Jermal's house, and she heard
15 the two of -- you and Jermal talking about being at the park with
16 a white girl and watching Stinky, Rayshawn, Anjuan, and Black go
17 to the man's house.

18 **THE WITNESS:** That's a lie.

19 **MR. EDWARDS:** Now, back then, in 2002, who went by
20 Black?

21 **THE WITNESS:** Rayshawn.

22 **MR. EDWARDS:** Okay.

23 So the statement here that she is saying that she
24 overheard you say -- you and Jermal say Stinky, Rayshawn, Anjuan,
25 and Black go to the man's house -- so Rayshawn and Black were the

1 same person -- back then?

2 **THE WITNESS:** Yes.

3 **MR. EDWARDS:** All right.

4 So you say that she didn't hear you say that.

5 **THE WITNESS:** No.

6 **MR. EDWARDS:** All right.

7 She also says that she heard you and Jermal say that the
8 other four split up on each side of the house to wait for the man,
9 meaning Mr. Jones.

10 Did you say that?

11 **THE WITNESS:** I never said that. Only time I ever
12 implicated myself or the others was when I was in the
13 interrogation room. That's the only time I ever implicated
14 anybody.

15 **MR. EDWARDS:** All right.

16 So two nights after Mr. Jones was killed, were you even
17 over at Jermal's house? Do you remember?

18 **THE WITNESS:** I don't recall if I was over there. I
19 might've been, though. It's a possibility I was. But we didn't
20 talk about no Mr. Jones.

21 **MR. EDWARDS:** She said -- this is, again, Yolanda --
22 said she overheard you and Jermal -- or Jermal talking, and that
23 they said one of the others was sitting at the picnic table and
24 watched a man drive down to his house. She said that either you
25 or Jermal said the other boy there, that was Dorrell Brayboy --

1 Did you talk with Jermal and say that?

2 **THE WITNESS:** No. That's a lie.

3 **MR. EDWARDS:** She said that either you or Jermal said
4 that Dorrell did not go all the way down to the man's house.

5 **THE WITNESS:** That's a lie.

6 **MR. EDWARDS:** Now, again, going back to 2002 -- I know
7 you were young, all you boys were young.

8 **THE WITNESS:** Uh-huh.

9 **MR. EDWARDS:** Would it be fair to say that Rayshawn and
10 Nathaniel Cauthen, who were brothers, were kind of known to run
11 around the neighborhood and to get into some trouble?

12 **THE WITNESS:** I mean, probably a little bit, but not
13 nothing major as this, not nothing major as this. Probably steal
14 something out the store or something, but not no killing or
15 robbing nobody. We never did nothing like that. We never did
16 nothing like that.

17 **MR. EDWARDS:** So these conversations that Yolanda -- who
18 was not a suspect, she was not an eyewitness to any crime, she was
19 not implicated in the crime -- the statements that according to
20 the police she said that she overheard you and Jermal talking
21 about witnessing and watching Mr. Jones being assaulted, you're
22 saying that --

23 **THE WITNESS:** That's a lie. I would never watch nobody
24 get killed. I would never do that.

25 **MR. EDWARDS:** So you would deny that earlier in that

1 day, that night, all five of y'all were riding around in a car
2 with Jessicah talking about hitting a lick?

3 **THE WITNESS:** No. I didn't -- we didn't ride around
4 talking about hitting no licks. That ain't -- I didn't even talk
5 like that.

6 **MR. EDWARDS:** Those are my questions. Thank you.

7 **JUDGE LOCK:** I think Commissioner Colbert had a question
8 first.

9 **MS. COLBERT:** Hi, Mr. Bryant.

10 **THE WITNESS:** Hey, how you doing, ma'am.

11 **MS. COLBERT:** Fine. Thank you.

12 So do you know -- I know in March of 2011 that you sent
13 a letter to the Center on Innocence.

14 Do you know why they closed your case? Did they ever
15 send you a letter saying why the closed your case?

16 **THE WITNESS:** They --

17 **MS. COLBERT:** You remember that?

18 **THE WITNESS:** They probably did. I probably
19 disappointed and just -- you know, like, I don't remember why. I
20 know they did close it though.

21 **MS. COLBERT:** So you had mentioned that Rayshawn --
22 somebody's sister had a friend that Rayshawn like.

23 **THE WITNESS:** Yeah, that --

24 **MS. COLBERT:** Was that Jasmine Carter?

25 **THE WITNESS:** No. That was my sister's friend Lashanda

1 Beacote.

2 MS. COLBERT: Okay.

3 So you know, we have evidence to support that your --
4 your mother's Geneva Bryant; right?

5 THE WITNESS: Yes, ma'am.

6 MS. COLBERT: Now, she made a complaint, didn't she?

7 THE WITNESS: I didn't -- you know, I didn't even know
8 that.

9 MS. COLBERT: Yeah.

10 You know, your mother made a complaint about how you
11 were treated or expressed the concern with law -- to, you know,
12 law enforcement about you being down there and how you were
13 treated.

14 But you weren't aware of that?

15 THE WITNESS: I didn't -- I didn't know that until my
16 brother had told me something about it a few -- like a few days
17 ago or whatever.

18 MS. COLBERT: Okay.

19 THE WITNESS: Because they wanted -- I think the
20 Commissioners wanted to talk to him, and he was, "I don't know,
21 don't" -- you know, like, I -- I don't know. He didn't want to
22 talk, really.

23 MS. COLBERT: You had mentioned that while you were
24 serving your time in prison, you had really wanted to contact with
25 the Pauls.

1 **THE WITNESS:** Yeah.

2 **MS. COLBERT:** But you just didn't know how to do that.

3 **THE WITNESS:** I just didn't know how they would take it.

4 **MS. COLBERT:** How they would receive it?

5 **THE WITNESS:** Uh-huh.

6 **MS. COLBERT:** If you had that opportunity, what would
7 you say to them?

8 **THE WITNESS:** I would just want to let them know, like,
9 I -- I didn't do that. I didn't -- I didn't commit that crime and
10 I would never take nobody's life. I would never do that. And I
11 wouldn't hang around nobody that would do that.

12 **MS. COLBERT:** So you mentioned that you really enjoyed a
13 good relationship with Mr. Hunter Atkins.

14 **THE WITNESS:** I mean, I was -- I felt like he had his --
15 I feel like he had good intentions. And I feel like the Lord
16 doesn't bring nobody into your life for no reason. Like, he
17 brings people into your life of a reason, to make a purpose, you
18 know? So I took it as that.

19 **MS. COLBERT:** Thank you.

20 **JUDGE LOCK:** Commissioner Essary.

21 **MS. ESSARY:** If I could ask a follow-up question.

22 Did Yolanda Tolliver testify about the conversations
23 that Mr. Edwards has just talked about at your trial?

24 **THE WITNESS:** I don't recall her getting on no witness
25 stand. I don't recall.

1 **MS. ESSARY:** Well, do you think you would remember if
2 her --

3 **THE WITNESS:** I think I would remember if she got on the
4 witness stand because, I mean, the people that got on the witness
5 stand, I kind of remember a few of them.

6 **MS. ESSARY:** Is this the first time that you have heard
7 what she said? Or have you heard this before?

8 **THE WITNESS:** I can't remember if I ever heard that. I
9 can't recall, like -- that don't make no sense. I can't believe
10 that she would say something like that. Like -- and I still, to
11 this day, I still see this girl. Like, that ain't nothing that
12 she heard me or her brother say. I know that because we was -- we
13 was, like, into remote-control cars and stuff. We ain't killing
14 nobody.

15 **MS. ESSARY:** Did she -- has she ever told you that's
16 what she told police?

17 **THE WITNESS:** No. I ain't never talked to her about it.
18 I never talked with Ms. Arlene Tolliver about nothing. I never
19 talked to nobody about nothing. Because I know what I did as far
20 as me making my false confession, I know they went through the
21 same thing they went through so I ain't bitter to nobody about
22 nothing.

23 **MS. ESSARY:** Would that include Jessicah Black?

24 **THE WITNESS:** Yeah. Jessicah Black as well. Like, I
25 know she -- I don't know what made her lie on us or whatever, but

1 I know she probably went through the same thing we went through.
2 It's more than likely that's what happened with her. Like, I
3 don't -- I don't see how five people can confess to a crime they
4 didn't commit.

5 **MS. ESSARY:** Ms. Newton, I think, asked this question
6 but we're eight commissioners here trying to find the truth.

7 **THE WITNESS:** And I'm trying to bring it to you.

8 **MS. ESSARY:** Is there anything else you would like to
9 add to what you've already testified to to help us?

10 **THE WITNESS:** I did -- I'm going to bring this up. I
11 did say I wasn't at the bowling alley, but I was at the bowling
12 alley of the night of November 15, 2002, because I seen two of my
13 classmates there.

14 But the only reason -- and I think in one of my things,
15 I said something about me not being at the bowling alley. But it
16 was only because I was trying to get somebody to hear me. Like, I
17 was just trying to get somebody to hear me out. Like, I just
18 wanted them to see the credibility of the case, like, to see,
19 like, all the flaws that's in it. Like, that's all I was
20 trying --

21 **MS. ESSARY:** So what you're saying is at some point, you
22 told somebody -- do you remember who you told? -- that you were
23 not at the bowling alley?

24 **THE WITNESS:** I don't remember. I think I was
25 responding on a thing. I was just trying to get somebody's

1 attention. I was just -- because that -- I was getting turned
2 down every single way, and I don't know why. I just felt like
3 maybe it was because Chris Paul, you know. And I'm -- you know, I
4 like him. He plays good ball.

5 But my thing is, like, I thought it was maybe because of
6 that. You know, like -- I mean, I'm 15. Like, I stay in, you
7 know, Devonshire Street. Like, my family ain't got no type of
8 money like that. So I just felt like we was just overlooked. We
9 were just overlooked, man.

10 So that's why --

11 **MS. ESSARY:** I want to make something clear because you
12 have now brought to our attention --

13 **THE WITNESS:** Okay.

14 **MS. ESSARY:** -- a lie that you told, that you weren't at
15 the bowling alley.

16 **THE WITNESS:** Uh-huh.

17 **MS. ESSARY:** And I appreciate your bringing that to our
18 attention.

19 **THE WITNESS:** Uh-huh. I'm trying to just give y'all the
20 truth.

21 **MS. ESSARY:** Are there any other lies about this that
22 you have told anybody other than that and what you told the police
23 which were saying is false?

24 **THE WITNESS:** No, ma'am, not that I recall. I know the
25 bowling alley situation. That's the only thing that I probably --

1 I shouldn't have did that, but I was just -- I was just trying to
2 get some help.

3 MS. ESSARY: Do you think if you admitted to the bowling
4 alley, somehow that would link you to the crime?

5 THE WITNESS: I just -- no. I just thought maybe
6 they'll look at it, like, okay. He was at the bowling alley
7 because, you know, it's stuff that showed that I was at the
8 bowling alley. Like, you got Jackie Rose and Timothy Sheppard,
9 they went to my school. They know I was at the bowling alley.
10 They seen me.

11 So I just -- by detectives, by Stephens -- Vincent
12 Stephens saying I wasn't there, I thought it would look credible
13 by him saying that, you know. So I just kind of went with that
14 for that time being. But, you know, like, I just want to tell
15 y'all the truth because I --

16 MS. ESSARY: Was several years ago?

17 THE WITNESS: Yes, ma'am.

18 MS. ESSARY: Okay.

19 And it stayed on your mind.

20 THE WITNESS: Yeah. And I just -- I mean, the truth is
21 the truth, and I just wanted -- like you say, y'all want the
22 truth, and I'm going to give y'all all the truth and whatever
23 y'all don't get, y'all -- I'm sure y'all will figure it out.

24 MS. ESSARY: Thank you.

25 JUDGE LOCK: Commissioner Jarvis.

1 **MR. JARVIS:** Hi. Good afternoon.

2 **MS. SMITH:** Hey. How you doing?

3 **MR. JARVIS:** My name is Immanuel Jarvis.

4 **THE WITNESS:** How you doing, Mr. Jarvis.

5 **MR. JARVIS:** Good.

6 So tell me your release date.

7 **THE WITNESS:** I got out February 3rd, 2017.

8 **MR. JARVIS:** And when did you apply to this particular
9 Commission? Do you remember?

10 **THE WITNESS:** I don't recall. I don't recall. I just
11 know I --

12 **MR. JARVIS:** We have documentation. I just wondered.

13 **THE WITNESS:** I got a packaging slip that the prison
14 give you, and I just used to write in -- write all of them, write
15 them.

16 **MR. JARVIS:** And how many different innocent
17 organizations have you reached out to?

18 **THE WITNESS:** I done reached out to a lot, even some
19 that ain't even in North Carolina.

20 **MR. JARVIS:** And what was the response back?

21 **THE WITNESS:** Some of them ain't respond back, and I
22 felt like some of them probably was because it's -- probably was,
23 like, way out or something. But I don't think nobody never
24 really -- like, some people, you know, took an interest, you know.
25 Like Prisoner Legal Service came down there to see me

1 when I was down there. And, you know, they said the case didn't
2 make sense to them. But then, eventually, they just -- I guess
3 they couldn't do nothing else. Like, they -- they -- stuff ran
4 out on what they could use to help us, you know.

5 **MR. JARVIS:** Okay.

6 So you testified today that you were released from
7 prison on February 3, 2017.

8 **THE WITNESS:** Yes, sir.

9 **MR. JARVIS:** That's over two -- no, three years ago.

10 **THE WITNESS:** Uh-huh.

11 **MR. JARVIS:** And recently, probably about a year and
12 half or two years, according to our record that we have here, I
13 believe it was 2018, you applied to this particular Commission.

14 Now, since then, you're out. You testified just now
15 that you have a good job.

16 **THE WITNESS:** Uh-huh.

17 **MR. JARVIS:** Would you say life is doing pretty well
18 right now?

19 **THE WITNESS:** I would say -- I would say I'm doing okay
20 but I'm not, like -- like, as far as mentally, like, I'm still
21 okay. But, like, that's stuff right here bothers me. Just for
22 people to look at me and think that I am capable of doing
23 something like that, that really bothers me.

24 **MR. JARVIS:** And so was that the reason why that you
25 went on? Even though you're out, even though you have a job, even

1 though you're making some money, is this the reason why you
2 applied to this Commission?

3 **THE WITNESS:** I been trying to -- I been trying to prove
4 my innocence since I first got locked up. Back then, I really
5 didn't know the protocol or how to go about doing stuff. But
6 as -- like, as time went on, me going to law libraries and trying
7 to get myself -- like, my mama, she had caught breast cancer, man.
8 They had to remove one of her breasts. So I didn't know what was
9 going to happen to my mother. If something would happen to my
10 mother while I was in there, like, that would've -- that would
11 have killed me, like. And I'm already in prison for something I
12 didn't do. So that would have really, like, killed me.

13 **MR. JARVIS:** How old were you when you were
14 incarcerated?

15 **THE WITNESS:** I was 15.

16 **MR. BRITT:** 15.

17 And do you remember what time you actually walked into
18 the public safety center?

19 **THE WITNESS:** It was in the evening time.

20 **MR. JARVIS:** Evening.

21 Was it dark already?

22 **THE WITNESS:** Naw, it was evening time.

23 **MR. JARVIS:** Evening. So about 5:00? 4:00?

24 **THE WITNESS:** Naw, it was probably about 4:00 because I
25 was fixing on my moped, and I can't walk down the street, and it

1 was -- it was in the daytime because it was two detective standing
2 on my front porch.

3 MR. JARVIS: Okay.

4 THE WITNESS: And it was daytime. Yeah.

5 MR. JARVIS: And by the time you had finished your
6 statement, which you were saying today is a false statement, what
7 time was it when you were all done with that?

8 THE WITNESS: Oh, about -- oh, about 11:00, 12:00? It
9 was late. It was late.

10 MR. JARVIS: Okay.

11 THE WITNESS: It was late.

12 MR. JARVIS: Did they ever provide you with any
13 recordings of any other codefendants saying anything implicating
14 you?

15 THE WITNESS: I'm not sure. They did a lot of stuff. I
16 can't -- some of the stuff, I can't even recall because I was,
17 like, so in shock. Like, some of this stuff I can't even
18 remember.

19 MR. JARVIS: Did they claim that other codefendants
20 implicated you in the crime?

21 THE WITNESS: Yeah. They said Jermal Tolliver said I
22 was the lookout. And I know, like -- I know Jermal Tolliver. He
23 would -- I know, like a -- like, me and him would be together,
24 like -- that ain't nothing we would do. That's what I'm telling
25 y'all. Like, that ain't nothing that none of my -- the ones

1 that's locked up for this, like, they in prison for something they
2 didn't do.

3 **MR. JARVIS:** How do you feel about that?

4 **THE WITNESS:** I mean, it's emotional, you know what I'm
5 saying, for me to have to know that they didn't do it. And, like,
6 it's -- it's emotional, man. It's -- it's emotional, man.

7 **MR. JARVIS:** Let me ask you this question: Have you
8 ever spoken with a psychologist about young people or juveniles or
9 kids being forced to admit guilt ever?

10 **THE WITNESS:** No, I haven't -- I haven't talked to no
11 psychologist or nothing like that, not that I know of.

12 **MR. JARVIS:** So have you ever spoken to a psychologist
13 about adolescent interrogation at all?

14 **THE WITNESS:** I don't think so. I mean, I never had the
15 opportunity for somebody to present one to me or nothing.

16 **MR. JARVIS:** Okay. All right.

17 So in the last -- since 2002, that Tuesday, which was, I
18 think, was the 19th, have you ever been able to talk to the other
19 codefendants about their experience in the public safety center?

20 **THE WITNESS:** You know, all -- me and my codefendants
21 was all in the same dorm together when we was at Foothills.
22 Jermal, you know -- since Jermal has been out, I talked to his
23 experience and, you know, his experience is -- you know, he
24 still -- I ain't going to say he bitter about nothing, he's -- you
25 know, he's getting along well, you know.

1 I had the situation where, like, when I see a police,
2 like, I get nervous and stuff, and I ain't never had no record,
3 like. I get nervous. Like, they make me nervous. They make me
4 nervous.

5 MR. JARVIS: So prior to this particular event on that
6 Friday night, had you ever gotten in trouble before with the
7 police?

8 THE WITNESS: Yeah, I done got in trouble with the
9 police.

10 MR. JARVIS: What type of things happened?

11 THE WITNESS: Oh, stealing. I stole some candy bars out
12 of Food Lion. Just some stealing stuff. Like, stealing, like,
13 little candies, like some Zero bars. I stole, like, some -- a box
14 of Zero bars, you know. Like -- like, as far as, like, robbing or
15 some major crimes, I never did nothing like that. Never. Never
16 been involved in no crimes like that's -- that's life-changing.

17 MR. JARVIS: When you referred to "stealing," did you do
18 that by yourself or did you do that with other people?

19 THE WITNESS: Oh, I might -- I might go in a store and
20 steal me a Butterfingers or something.

21 MR. JARVIS: By yourself?

22 THE WITNESS: Yeah, I probably would, you know.

23 MR. JARVIS: Did you ever do any kind of -- any theft
24 with other people?

25 THE WITNESS: Oh, naw. I mean, we -- we like -- like,

1 it wasn't like no theft. Like, it would just be like going in a
2 store, like probably come back from the swimming pool or
3 something, then, you know, you've got the little store on the
4 side. You go in there, there's a bunch of kids in there, and
5 then, you know, you throw a little candy bar in your pocket or
6 something -- stuff like that.

7 I mean I was 14, 15, like, that's ...

8 **MR. JARVIS:** Okay.

9 **THE WITNESS:** And it wasn't all the time but it was
10 just, you know, during then, if I had no money, sometimes, you
11 know.

12 **MR. JARVIS:** Where do you live now?

13 **THE WITNESS:** I stay in a townhouse. I stay at --

14 **MR. JARVIS:** How far away is that from East Devonshire?

15 **THE WITNESS:** Oh. I stay on the north side of
16 Winston-Salem. It's -- it's probably about 20 minutes -- 20
17 minutes from there.

18 **MR. JARVIS:** Do you go back to this area?

19 **THE WITNESS:** Yeah, my mama -- my mama stay right there.
20 My mama stay at the same house. My mama stay at the same house.

21 **MR. JARVIS:** All right.

22 So you mentioned in testimony just earlier that you
23 still talk to the Tollivers; is that correct?

24 **THE WITNESS:** Yeah. I mean, I talk to Jermal Tolliver.

25 **MR. JARVIS:** What about Yolanda?

1 **THE WITNESS:** Not really. I mean, I see her and I'll
2 say "Hey" or whatever, but I don't really, like -- like, get down
3 and, "Hey, what's up." Like, we don't do all that. But I mean, I
4 didn't even know that.

5 **MR. JARVIS:** So you didn't know that she actually
6 implicated you in the crime?

7 **THE WITNESS:** I didn't know that. I didn't know that.

8 **MR. JARVIS:** This is the first time you're hearing that?

9 **THE WITNESS:** To my knowledge.

10 **MR. JARVIS:** That's all. Thank you.

11 **JUDGE LOCK:** Sheriff Frye.

12 **SHERIFF FRYE:** Hey. How are you?

13 **THE WITNESS:** Hey. How you doing, Sheriff?

14 **SHERIFF FRYE:** Good. My name is Kevin Frye.

15 I want to go back to when you guys were taking Jed home
16 and you seen all the lights and everything.

17 Who all got out of the car?

18 **THE WITNESS:** You say -- can you repeat yourself,
19 please.

20 **SHERIFF FRYE:** Okay.

21 When yunz were taking Jed home and you pulled up and you
22 seen all the police lights and everything, who all got out of the
23 car?

24 **THE WITNESS:** Well, I know I got out of the car because
25 I remember I seen -- I talked to a person or two at the stop sign.

1 So I know I got out of the car. I can't recall who else got out
2 of the car. I can't -- I can't recall.

3 SHERIFF FRYE: Okay.

4 THE WITNESS: But I know it was probably somebody else
5 got out of the car as well.

6 SHERIFF FRYE: What did you see?

7 THE WITNESS: I ain't see -- only thing I seen was the
8 tape and, you know, the police cars and stuff like that. I didn't
9 see nothing else. I didn't see no dead body or nothing.

10 SHERIFF FRYE: You didn't see no body there at all?

11 THE WITNESS: No, I didn't see no body.

12 SHERIFF FRYE: Didn't see anything covered up --

13 THE WITNESS: Uh-huh.

14 SHERIFF FRYE: -- with a sheet?

15 THE WITNESS: Uh-uh.

16 SHERIFF FRYE: Okay.

17 THE WITNESS: I wasn't right -- like I say, I was right
18 there by the stop sign. So if -- if you know where Mr. Jones'
19 house at, like, his house is right here. So I couldn't see no
20 body, wherever they had him at, like, I didn't see no body.

21 SHERIFF FRYE: Okay. Okay. That's all I have.

22 JUDGE LOCK: Anyone else?

23 (No response.)

24 JUDGE LOCK: Mr. Bryant, thank you very much, sir.

25 THE WITNESS: That's it?

1 **JUDGE LOCK:** You can step down.

2 **THE WITNESS:** Y'all be good. Thank y'all.

3 **JUDGE LOCK:** The sequestration order against you is
4 lifted, except you are asked not to discuss the case with any of
5 the other claimants. You certainly make discuss it with your
6 lawyer.

7 **THE WITNESS:** Okay. Yes, sir.

8 **JUDGE LOCK:** Thank you, sir.

9 **THE WITNESS:** Okay. Thank you.

10 (Witness stands down, 4:37 p.m.)

11 **MS. SMITH:** Commissioners, we will have another handout
12 for you shortly. If you will give us just a few moments.

13 (Indiscernible commentary of Commissioners.)

14 **MS. SMITH:** There were some -- there were several
15 questions throughout the day about the Center and why they closed
16 the case -- the Center on Actual Innocence and why they closed the
17 case.

18 We're going to provide for you the portion of the
19 Commission staff's interview with Ms. Mumma which talks about her
20 reason for closing the case just so that you have that, as you
21 seemed to have a lot of questions about that. So that will come
22 around in a few minutes.

23 It's probably, Your Honor, a good time for recess. I
24 need to check in.

25 **JUDGE LOCK:** All right. About how much time do you

1 think you need?

2 MS. SMITH: Five minutes. Honestly, just a quick
3 comfort break.

4 JUDGE LOCK: They always seem to stretch out five extra
5 minutes, but we'll take a five-minute break.

6 MS. SMITH: It does. But after this, we won't have very
7 much left and then it will be all ...

8 MS. ESSARY: Lindsey -- and I'm sorry to bother you with
9 this.

10 Do we have, either in the brief or here, whether Yolanda
11 Tolliver was called at the second trial as a State's witness?

12 MS. SMITH: The answer is no, she was not.

13 MS. ESSARY: That's what I thought.

14 JUDGE LOCK: All right. Five-minute recess.

15 (Recess taken, 4:39 to 4:52 p.m.)

16 JUDGE LOCK: Looks it's like everyone is here. We will
17 come back to order. All right.

18 MS. SMITH: Thank you, Your Honor.

19 At this time, I have been informed that the family would
20 like to make a victim impact statement.

21 JUDGE LOCK: All right.

22 MS. SMITH: And so we -- according to our rules, that is
23 closed to the public.

24 JUDGE LOCK: All right.

25 At this point, as Ms. Guice Smith said, the victim

1 impact statements are not part of the public proceedings. So I
2 will be asking everyone to leave except for the Commissioners,
3 commission staff, the victim's family, and the attorneys of the
4 claimants. They may remain.

5 I don't know who else is here, but members of the press
6 do need to leave for this portion of the proceeding. I know this
7 proceeding has been live streamed, and I will ask the cameraman
8 sever the connection during this portion of the proceeding.

9 **MS. SMITH:** Your Honor, I don't know if anyone is here
10 from the District Attorney's office, but they would be allowed to
11 stay as well.

12 **JUDGE LOCK:** Oh, I'm sorry. Thank you. All right.
13 Yes. And someone from the DA's office from Forsyth County, you
14 are certainly welcome to stay.

15 (Livestream ceased, 4:54 p.m.)

16 (Closed to the public.)

17 **MS. SMITH:** And then Mr. Charles Paul is going to give
18 the statement for the family.

19 **JUDGE LOCK:** Very well.

20 **MS. SMITH:** If you want to come forward, sir.

21 **MR. CHARLES PAUL:** Well, on behalf of my family, I just
22 want to let y'all know we appreciate it and thank everybody for
23 being here.

24 But a lot of times during this process, it's been tough,
25 mostly on my wife and her sister to relive this all over again.

1 We're standing strong, but we just wanted to let you-all know that
2 it always gets lost as Chris Paul's grandfather, but this is my
3 wife, this is my wife's dad, and her sister's, somebody that they
4 loved very much.

5 And I just want y'all to know that we appreciate it and
6 that on behalf of my wife and her sister, this is a man we loved
7 and miss every day, and there's nothing we can do to bring him
8 back. We just want to let y'all know that.

9 Thank you.

10 **JUDGE LOCK:** Thank you, Mr. Paul.

11 Were there any other members of the family who wanted to
12 address the Commission?

13 **MS. SMITH:** I don't believe so.

14 So we would now reopen the hearing to the public.

15 **JUDGE LOCK:** All right. Thank you.

16 **MS. SMITH:** We'll give -- I believe it's WXII just a few
17 minutes to get the camera back up.

18 (Livestream recommenced.)

19 (Back on the open record, 4:56 p.m.)

20 **MS. SMITH:** Commissioners, thank you for your patience
21 and attention during this hearing.

22 Handout 122 [sic], I believe, in your hearing handout
23 notebooks is a statement from myself. This statement is in
24 response to certain portions of the District Attorney's statement
25 that addressed commission staff and its work on this case.

1 Notwithstanding any factual errors that may be contained
2 in the District Attorney's statement, I want to bring your
3 attention to page 12, section 4, paragraphs E and F.

4 Paragraph E, the District Attorney's office
5 characterizes my decision to move this case into formal inquiry as
6 taking a position on the innocence of the defendants.

7 Commissioners, that is not accurate.

8 It is not my job to prove innocence to you. Neither I
9 nor commission staff have ever expressed an opinion as to the
10 defendants in this case. And there has been no testimony to that
11 effect this week.

12 My role is to put cases before you where there is new
13 evidence of innocence.

14 When I present a case, the statute requires that I
15 present not only the new, but all relevant evidence in this
16 nonadversarial hearing.

17 I have done so.

18 In order for me to put a case before the Commission, my
19 threshold is that there must be something new. It is incumbent
20 upon the Commissioners to determine whether there is sufficient
21 evidence of innocence to merit judicial review.

22 Neither I nor any of you are tasked with opining on the
23 defendants' innocence.

24 In paragraph F, the District Attorney's office states
25 that commission staff has confirmation bias and has, quote,

1 "decided that there is enough evidence to show the defendants'
2 actual innocence and, therefore, they must present it in such a
3 way as to confirm their decision," end quote.

4 Commissioners, I would submit to you that commission
5 staff has provided you what we learned from an extensive and
6 exhaustive investigative effort, not only by our lead
7 investigators on the case, but by the entirety of our
8 investigative team. We presented every bit of that to you this
9 week, whether it helped the defendants or not.

10 When commissioners had questions that the Commission
11 staff did not have answers to immediately, we sought and obtained
12 those answers for you, as we have done so in every hearing the
13 Commission has ever held.

14 Our staff continually works to ensure that we do not
15 suffer from confirmation bias. We meet regularly on cases and we
16 challenge one another to ensure that we are doing everything we
17 can in a case to follow up on an avenue, intending to learn as
18 much as we can about the case and the truth, whether that hurts
19 the claimants' case or not.

20 Staff currently has over 1,050 comp hours, much of which
21 was earned as we all pulled together to investigate this case. If
22 you do the math, that is six months for a full-time employee.

23 Our job as commission staff and my job as director is to
24 seek the truth, wherever that truth leads. In the search for
25 truth in this case, I am confident that we have fully equipped you

1 to determine whether there is sufficient evidence of innocence to
2 merit judicial review.

3 That concludes the evidence in this case.

4 If you believe there is some other document or item that
5 you have not been provided that you need in order to consider
6 before you deliberate, please let me know now because we need to
7 put that into the record before we break for deliberations. Once
8 we begin deliberations, the only way to obtain materials that you
9 have not previously been provided is to reopen the hearing and do
10 so on the record.

11 You are now asked to decide whether you conclude there
12 is sufficient evidence of factual evidence to merit judicial
13 review.

14 Each of the claimants' convictions resulted from a
15 guilty verdict after a trial. Therefore, five of eight
16 Commissioners must conclude that there is sufficient evidence of
17 factual innocence to merit judicial review in order for each
18 claimant's case to move forward to a three-judge panel.

19 Separate votes will be taken for each claimant.

20 You have three options for each claimant: You may
21 decide that there is sufficient evidence of factual innocence to
22 merit judicial review and the claimant's case will be referred to
23 a three-judge panel; you may decide that there is not sufficient
24 evidence of factual innocence to merit judicial review, and the
25 claimant's case will be closed. There is no right to appeal that

1 decision; you may also instruct commission staff to continue the
2 investigation and reconvene the hearing at a later date.

3 If there are no further inquiries or no additional
4 information needed, at this time, I would ask Judge Lock to close
5 the hearing to the public for deliberations.

6 Deliberations are confidential and are done off the
7 record.

8 **JUDGE LOCK:** Before doing that, Commissioner Britt has
9 asked if he might be allowed to speak briefly on the record about
10 this matter.

11 **MS. SMITH:** Absolutely.

12 **JUDGE LOCK:** Commissioner Britt.

13 **MR. BRITT:** I just wanted to say this. I want to
14 commend you and your staff for the professional job in which you
15 carry out your duties.

16 I was an assistant district attorney and a district
17 attorney for 30 years. My job as a district attorney, as is the
18 job of every district attorney in this state, is to seek the truth
19 and to do justice. It is not to be that of a mere advocate.

20 I find Mr. O'Neill's comments in his report offensive.
21 I find that it is offensive to this Commission. And I would
22 highly recommend that Mr. O'Neill and/or his staff reread the
23 mandate that established this Commission.

24 This Commission is unique to every criminal justice body
25 in this country. And North Carolina stands out for doing what we

1 are doing here.

2 We may not all have been in agreement and we may not
3 always be in agreement, but to attack you, to say that you are
4 biased is unfounded and, as I said, highly offensive.

5 Thank you.

6 **JUDGE LOCK:** Commissioner Colbert, did you wish to make
7 some statement?

8 **MS. COLBERT:** Well, I -- I mean, you mentioned something
9 about additional evidence to be on the record.

10 I mean, I think from the Handout 124, that recent one we
11 got, I think I need another page.

12 **MS. SMITH:** Okay.

13 **MS. COLBERT:** Because the question is asked that the
14 answer isn't -- it's probably on the next page.

15 **MS. SMITH:** What page does that end on?

16 **MS. COLBERT:** 28.

17 **MS. TANNER:** I'll get 29 for you and so we will add 29
18 to Handout 124.

19 **MS. COLBERT:** But I want to wholeheartedly support
20 Commissioner Britt's statement. I agree wholeheartedly with what
21 he said.

22 **MS. ESSARY:** I would like to join Commissioner Britt's
23 statement and commend this staff on the amazing amount of work you
24 have done in a very professional, very neutral, and very thorough
25 fashion. I, like Mr. Britt, was offended by the District Attorney

1 of Winston-Salem/Forsyth County's statements about this
2 Commission.

3 I want to go on the record about that.

4 **JUDGE LOCK:** All right.

5 I will simply add that this is the second of these
6 hearings over which I have presided. I also have served as the
7 senior judge on a three-judge panel, and so I am very familiar
8 with the Commission's work.

9 I have never detected any bias on the part of any
10 attorney or investigator in any of the cases.

11 Thank you very much for your professionalism.

12 **MS. NEWTON:** Judge, may I?

13 **JUDGE LOCK:** Yes.

14 **MS. NEWTON:** Very briefly. I'm sorry to jump in behind
15 you. Love to have you to have the last word.

16 **JUDGE LOCK:** That's all right.

17 **MS. NEWTON:** I'd just like to add that I read the
18 District Attorney's response in this case and obviously just heard
19 Ms. Smith's response. I just found it insubstantial. I wasn't
20 offended, you know, as a lawyer, but I was disappointed in the
21 lack of substantial detail that they took in writing the report as
22 opposed to the kind of materials that we have received.

23 And to make the kind of conclusions that they have made,
24 that no further hearing is necessary based on saying that there is
25 no new DNA evidence and the statements are unreliable, is, quite

1 frankly, disingenuous when there wasn't DNA to start with and a
2 lack of reliability of the statements could have swayed the jury.

3 So with lack of corroboration to the confessions, you
4 know, I found that an incredibly disingenuous summary. So I just
5 wanted to say that since we were mentioning it.

6 **SHERIFF FRYE:** I want to say -- and I have served on
7 this Commission a long time.

8 I don't think we've ever had a case brought before us
9 that didn't deserve the review that we have given it. I think we
10 give it heartfelt review every time that it's brought before us.

11 It's not just -- and I guess maybe it's being a cop for
12 30-some years, I don't get hurt very much, you know, as far as
13 getting my feelings hurt, but I think there is an ignorance in
14 many cases about what this Commission does. And through that
15 ignorance, there is a bias against what this Commission does. And
16 I think that's the problem that we face every time, whether it be
17 from a district attorney or a judge or whoever, is just their
18 ignorance of what we do as far as this staff and Ms. Guice, your
19 staff in this room. You are professional. You give us everything
20 that there is. You give us an abundance of everything that there
21 is to look at, each and every case.

22 **MS. ESSARY:** I would add that the legislation creating
23 this Commission is very clear about this Commission's role as a
24 neutral fact-finding body, and all one has to do to understand the
25 role of this Commission in rejecting as many cases as you do,

1 frankly, from the hearing process, is simply to look at the record
2 of this Commission factually.

3 **MS. TANNER:** I have the last page.

4 **MS. SMITH:** All right.

5 Ms. Tanner will pass around the last page of
6 Handout 124. And then, if there's nothing further, Your Honor, I
7 would just ask that the hearing be closed for deliberations.

8 **JUDGE LOCK:** All right.

9 At this time, the hearing will be closed to the public
10 for deliberations. Only the eight voting Commissioners and the
11 Commission's Director may be present during deliberations which
12 will take place in this room. And, of course, I think it goes
13 without saying that the live feed will be terminated at this
14 point.

15 All other persons are asked to excuse themselves from
16 the room. You certainly are free to remain outside until the
17 Commission has reached a decision.

18 (Live feed severed, 5:08 p.m.)

19 (Commission deliberates, 5:08 to 8:00 p.m.)

20 **JUDGE LOCK:** All right. Let the record please reflect
21 the presence of all eight commissioners.

22 In my capacity as Alternate Chair of the North Carolina
23 Innocence Inquiry Commission, I will be entering an order in the
24 case of each of the four claimants.

25 I will be entering a written order that will contain

1 findings of fact. Given the hour, it will be Monday morning
2 before these orders are filed.

3 The findings of fact will be slightly different in each
4 of the cases, but each will contain the following finding as
5 Finding of Fact Number 7:

6 That, after considering the evidence, the Commission has
7 concluded by a vote of 5 to 3 that there is sufficient evidence of
8 factual innocence to merit judicial review.

9 Each order also will contain the following decree:

10 Therefore, pursuant to NCGS 15A-1468(c), and as
11 Alternate Chair of the Commission, the undersigned refers this
12 case to the Honorable L. Todd Burke, Senior Resident Superior
13 Court Judge of Judicial District 21, and respectfully requests
14 that the Chief Justice of the North Carolina Supreme Court appoint
15 a three-judge panel and issue commissions to its members to
16 convene a special session of Superior Court of Forsyth County to
17 hear evidence relevant to the Commission's recommendation, this,
18 the 13th of March, 2020.

19 Each order will be signed by me, Thomas H. Lock, I am
20 the Senior Resident Superior Court Judge of Judicial District 11B,
21 comprised of Johnston County, Alternate Chair of the North
22 Carolina Innocence Inquiry Commission.

23 Now, I believe under the rules and regulations, a roll
24 call vote is required; is that correct?

25 Are there any matters before that?

1 **MS. SMITH:** That is the last matter.

2 **JUDGE LOCK:** And I believe, for the record, that should
3 be conducted in each case; is that correct?

4 **MS. SMITH:** That's correct.

5 **JUDGE LOCK:** All right.

6 I will call upon you to poll the Commissioners, if you
7 would, please.

8 **MS. SMITH:** In the case of State versus Christopher
9 Bryant, if you will go around the table, we will start with
10 Ms. Colbert, and state your yes or no vote.

11 **MS. COLBERT:** Yes.

12 **SHERIFF FRYE:** Kevin Frye, no.

13 **MS. ESSARY:** Melissa Essary, yes.

14 **MR. JARVIS:** Immanuel Jarvis, yes.

15 **MR. BRITT:** Johnson Britt, yes.

16 **JUDGE LOCK:** Tom Lock, no.

17 **MR. EDWARDS:** Seth Edwards, no.

18 **MS. NEWTON:** Deb Newton, yes.

19 **MS. SMITH:** In the case of State versus Nathaniel
20 Cauthen.

21 **MS. COLBERT:** Robin Colbert, yes.

22 **SHERIFF FRYE:** Kevin Frye, no.

23 **MS. ESSARY:** Melissa Essary, yes.

24 **MR. JARVIS:** Immanuel Jarvis, yes.

25 **MR. BRITT:** Johnson Britt, yes.

1 **JUDGE LOCK:** Tom Lock, no.
2 **MR. EDWARDS:** Seth Edwards, no.
3 **MS. NEWTON:** Deb Newton, yes.
4 **MS. SMITH:** In the case of State versus Jermal Tolliver.
5 **MS. COLBERT:** Robin Colbert, yes.
6 **SHERIFF FRYE:** Kevin Frye, no.
7 **MS. ESSARY:** Melissa Essary, yes.
8 **MR. JARVIS:** Immanuel Jarvis, yes.
9 **MR. BRITT:** Johnson Britt, yes.
10 **JUDGE LOCK:** Tom Lock, no.
11 **MR. EDWARDS:** Seth Edwards, no.
12 **MS. NEWTON:** Deb Newton, yes.
13 **MS. SMITH:** In the matter of State versus Rayshawn
14 Banner.
15 **MS. COLBERT:** Robin Colbert, yes.
16 **SHERIFF FRYE:** Kevin Frye, no.
17 **MS. ESSARY:** Melissa Essary, yes.
18 **MR. JARVIS:** Immanuel Jarvis, yes.
19 **MR. BRITT:** Johnson Britt, yes.
20 **JUDGE LOCK:** Tom Lock, no.
21 **MR. EDWARDS:** Seth Edwards, no.
22 **MS. NEWTON:** Deb Newton, yes.
23 **JUDGE LOCK:** Thank you.
24 **MS. SMITH:** I think that concludes the matters here
25 today, Your Honor.

1 **JUDGE LOCK:** Yes. And I will sign the other order that
2 you had submitted to me governing the sealing of those matters
3 pursuant to the oral orders I entered in the course of the
4 hearing.

5 I do, once again, want to thank all Commissioners for
6 their hard work and thoughtful consideration in this case.

7 I especially want to thank commission attorneys and
8 staff for very thorough and fine and professional presentations in
9 this most challenging case.

10 With that, that adjourns this proceeding.

11 **MS. SMITH:** Thank you, Your Honor.

12 (Proceedings concluded, 8:06 p.m.)

13 (Transcript ends, page 1184, Volume 5.)

