

Portions Sealed By  
Order of Judge Anna  
Mills Wagoner  
7/4/2020

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA,

versus

KENNETH LEON EVANS,  
Defendant.

)  
)  
)  
)  
)

From Franklin  
93 CRS 2261-2263

2019 OCT -8 P 2:52

FILED

\* \* \* \* \*

MASTER INDEX

Monday & Tuesday, September 9 & 10, 2019

\* \* \* \* \*

September 9, 2019, Setting of the

North Carolina Innocence Inquiry Commission

The Honorable Anna Mills Wagoner, Judge Presiding

Commissioners Attending:

Scott Bass, Commissioner (Alternate)  
John Boswell, Commissioner  
Robin Colbert, Commissioner  
Kevin Frye, Commissioner  
Rick Glazier, Commissioner  
Michael Grace, Commissioner  
Bobby Kimbrough, Commissioner (Alternate)  
Deborrah L. Newton, Commissioner (Alternate)  
Dr. Frank Perry, Commissioner  
Ashley Welch, Commissioner

## 1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Catherine Matoian, Grant Staff Attorney

5 Mackenzie Myers, Grant Staff Investigator

6 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

7 Post Office Box 2448

8 Raleigh, North Carolina 27602

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SUPERIOR COURT DIVISION

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   )  
      versus   ) From Franklin  
   ) 93 CRS 2261-2263  
KENNETH LEON EVANS,                     )  
   ) Defendant.                     )

\* \* \* \* \*

TRANSCRIPT OF HEARING, Volume 1 of 2

Monday, September 9, 2019

\* \* \* \* \*

September 9, 2019, Setting of the  
North Carolina Innocence Inquiry Commission  
The Honorable Anna Mills Wagoner, Judge Presiding

Commissioners Attending:

Scott Bass, Commissioner (Alternate)  
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Ashley Welch, Commissioner

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1 APPEARANCES:

2 Lindsey Guice Smith, Director  
3 Beth Tanner, Assistant Director  
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5 Mackenzie Myers, Grant Staff Investigator  
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9

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1 MONDAY, SEPTEMBER 9, 2019 (10:17 A.M.)

2 **THE COURT:** Good morning, everyone.

3 We're here now, ready for the hearing of Franklin County  
4 Case of State versus Kenneth Leon Evans, 93 CRS 2261-2263. And,  
5 obviously, this hearing is open to the public pursuant to  
6 North Carolina General Statute 15A-1468(a).

7 Although the hearing is open to the public, we hope that  
8 distractions will be kept to a minimum. And that door should  
9 remain closed during the hearing and no one with the exception of  
10 commission staff should come go in or out, I guess, of either door  
11 unless there is a break.

12 If there are disruptions, you will be asked to leave the  
13 hearing.

14 And no one from the public should attempt at any time to  
15 pass -- come past the ropes or attempt to speak with any  
16 commission staff in this case.

17 At this time, we're going to go around the table and  
18 have commissioners and commission staff who are at the table state  
19 their names for the record and in what capacity they are serving  
20 as a commissioner.

21 Most of y'all know each other because you were here last  
22 time. I know Mr. Grace and I were not here the last time and I  
23 think a few others. So I look forward to working with all of you.

24 Before we do that, I do believe we do have -- let's go  
25 around the table. We'll start with me. My name is Anna Mills

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1 Wagoner. I'm a resident superior court judge, and I'm from  
2 District 19C.

3 **MS. WELCH:** I'm Ashley Welch, Alternate District  
4 Attorney, from District 43.

5 **MR. GLAZIER:** I'm Rick Glazier. I'm here as a public  
6 member, and I'm the Executive Director of the North Carolina  
7 Justice Center.

8 **MS. NEWTON:** And I am Deborrah Newton. I'm criminal  
9 defense, federal and state criminal law specialist, and I am an  
10 alternate in this matter.

11 **MS. MATOIAN:** My name is Catherine Matoian, and I'm a  
12 grant staff attorney for the North Carolina Innocence Inquiry  
13 Commission.

14 **MS. SMITH:** Lindsey Guice Smith, Executive Director of  
15 the North Carolina Innocence Inquiry Commission.

16 **MS. TANNER:** Beth Tanner, Associate Director for the  
17 North Carolina Innocence Inquiry Commission.

18 **MS. MYERS:** Mackenzie Myers, Grant Legal Investigator  
19 with the North Carolina Innocence Inquiry Commission.

20 **MR. BASS:** I'm Scott Bass. I'm the director of Homicide  
21 Support Services at the North Carolina Victim Assistance Network,  
22 and I am the victim advocate alternate.

23 **MS. COLBERT:** I'm Robin Colbert. I'm the Associate  
24 Director for the North Carolina Coalition Against Sexual Assault  
25 and I'm a victim advocate.

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1           **DR. PERRY:** Frank Perry, public member, and former law  
2 enforcement.

3           **THE COURT:** That would mean FBI.

4           **MR. BOSWELL:** I'm John Boswell. I'm former -- I'm an  
5 at-large member and previously was an intellectual property lawyer  
6 and about to be reemployed as the chief operating officer of  
7 Cherry.

8           **SHERIFF FRYE:** Kevin Frye. I'm a sheriff.

9           **MR. GRACE:** I'm Mike Grace. I'm with the law firm of  
10 Grace, Tisdale & Clifton in Winston-Salem, North Carolina. I'm a  
11 criminal defense attorney.

12           **THE COURT:** All right. For the record, we do have eight  
13 voting members present as required by statute.

14           At this time, I'm going to make a formal inquiry as to  
15 whether any Commissioner needs to recuse himself or herself  
16 because of a -- or pursuant to Rule 7(c)(1) of our rules and  
17 procedures. That rule states that any Commissioner shall recuse  
18 himself or herself if he or she has had any involvement in the  
19 case during the original trial or any postconviction motions. A  
20 commissioner shall also recuse himself or herself if some event  
21 has caused him or her to become biased about a case or unable to  
22 participate in the hearing in a fair and impartial manner.

23           Are there any Commissioners who need to recuse  
24 themselves based on this rule?

25           (No response.)

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1           **THE COURT:** Seeing none, we will keep on moving.

2           Also, Rule 7(c)(3) permits Commissioners from --  
3 prohibits Commissioners from conducting an independent  
4 investigation of the case.

5           Have any Commissioners conducted an independent  
6 investigation?

7                         (No response.)

8           **THE COURT:** No.

9           And those of you who are attending as alternates, I  
10 believe you all know this, but Article 7(d) of our rules of  
11 procedures states that if an Alternate Commissioner is not  
12 fulfilling full commission duties, he or she may attend hearings  
13 of the Commission but may not participate in deliberations and may  
14 not vote. During the hearing, Alternate Commissioners may ask  
15 questions of the witnesses, and Alternate Commissioners will be  
16 asked to leave prior to deliberations.

17           I believe we have two Alternate Commissioners with us  
18 today and will have one additional one tomorrow -- victim  
19 Advocates Scott Bass and Discretionary Member Deb Newton, and  
20 Sheriff Kimbrough, I believe, will be here tomorrow as an  
21 Alternate Sheriff.

22           I will just order that all witnesses other than  
23 commission staff and expert witnesses will be sequestered until  
24 released.

25           No individual listening to the evidence is permitted to

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1 speak with witnesses about the case. The exception is that  
2 Mr. Tully will be allowed to update his client, Kenneth Leon  
3 Evans.

4 I do not believe we have any media present here at this  
5 time so I am going to now turn the hearing over to Lindsey Guice  
6 Smith, our Director, for presentation of the case.

7 Yes, ma'am.

8 **MS. SMITH:** Thank you.

9 **THE COURT:** You're welcome.

10 **MS. SMITH:** Good morning, Commissioners.

11 (Chorus of "good mornings.")

12 **MS. SMITH:** Thank you all for being here today and for  
13 some of you for driving from across the state. We appreciate you  
14 making that drive and that sacrifice.

15 This case involves the 1990 kidnapping of Euther Rea  
16 Manning. Mr. Evans was arrested and charged in this case in 1993.  
17 Mr. Evans was convicted in 1995 of robbery with a dangerous  
18 weapon, first-degree kidnapping, second-degree burglary, and  
19 larceny. On appeal, the second-degree burglary charge was vacated  
20 and remanded for an entry of judgment on breaking and entering.

21 Mr. Evans was sentenced to consecutive 40-year sentences  
22 on the robbery with a dangerous weapon, first-degree kidnapping,  
23 and breaking and entering charges for a total of 120 years.

24 The Commission opened its investigation into this case  
25 on August 16, 2016. Mr. Evans submitted a questionnaire and

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1 consent form to the Commission for his claim and has asserted his  
2 complete factual innocence to the Commission.

3 Throughout the Commission's inquiry, Mr. Evans has  
4 cooperated with commission staff in accordance with North Carolina  
5 General Statute 15A-1467(g).

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

16 Mr. Evans was convicted after a trial. The new evidence  
17 investigated by commission staff will be presented throughout this  
18 hearing.

19 You all have been provided with a commission brief which  
20 is 454 pages that describes the information available to  
21 commission staff related to the law enforcement investigation and  
22 resulting criminal litigation in this case. For the most part,  
23 we're not going to review that information during this hearing. I  
24 will refer you to page numbers in your brief as it relates to  
25 specific topics on which commission staff is testifying for your

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1 reference throughout the hearing.

2 In addition to the brief, you were provided several  
3 handouts prior to the Commission's hearing. These handouts are  
4 also included in the hearing handout notebooks which are at your  
5 seats, and they include Handout 30, which is the transcript and  
6 transcript summary of the Commission's February 26, 2019,  
7 deposition of Larry Davis; Handout 36, the transcript and  
8 transcript summary of the Commission's December 18, 2018,  
9 deposition of JoAnn Clemonts; Handout 38, the transcript and  
10 transcript summary of the Commission's August 30, 2017, interview  
11 of Kenneth Evans; and Handout 39, the transcript and transcript  
12 summary of the Commission's February 20, 2019, interview of  
13 Kenneth Evans.

14 Grant Staff Attorney Catherine Matoian was the lead  
15 investigator on this case. Grant Legal Investigator Mackenzie  
16 Myers also assisted with the investigation in this case.  
17 Throughout the hearing, I will be calling both Ms. Matoian and  
18 Ms. Myers to testify about the Commission's investigation.

19 Several witnesses have also been subpoenaed to testify,  
20 including an SBI -- sorry -- North Carolina State Crime Lab Trace  
21 Analyst, Kristen Crawford; independent DNA analyst Meghan Clement;  
22 and lay witness, Larry Davis.

23 Additionally, Pat Green, Rick Sims, and Donald Wiggins  
24 are on standby to testify via phone if Commissioners have  
25 questions for them. And Antwone Evans is also available to

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1 testify in person if Commissioners have questions for him.

2 The claimant, Kenneth Evans, is currently incarcerated  
3 at the North Carolina Department of Public Safety. Judge Wagoner  
4 issued a writ for his presence and he will testify during this  
5 hearing.

6 Commission staff has interviewed numerous other  
7 individuals who will not be called to testify. Commission staff  
8 will instead testify about these interviews and will testify as to  
9 whether each interview has been recorded and transcribed.

10 Although I do not plan to provide transcripts to each of  
11 you for all those interviews, if there is any transcript which  
12 Commissioners wish to review during the hearing, if you'll please  
13 let me know, we will be happy to provide that to you to review at  
14 a break or on the overnight recess.

15 District Attorney Mike Waters from Franklin County  
16 represents the State in this matter. I don't see Mr. Waters here  
17 this morning. Mr. Evans is represented by Kevin Tully, the  
18 Mecklenburg County Public Defender, who is right here in the back.

19 As required under the Commission's rules, the Commission  
20 held a prehearing conference on August 16 of this year with  
21 Mr. Waters in attendance and Mr. Tully in attendance via phone.

22 At the prehearing conference, District Attorney Waters  
23 was informed that he had the right to inspect evidence pursuant to  
24 North Carolina General Statute 15A-1462(a)(2). Mr. Waters was  
25 also informed that pursuant to that same section, he had the right

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1 to provide a written statement for the Commissioners'  
2 consideration and was informed that in the past some district  
3 attorneys had provided a statement and others had not. Mr. Tully  
4 [sic] did come to the Commission's office last week one day to  
5 review documents in the commission file; however, he did not  
6 choose to provide a written statement to the Commissioners for  
7 this hearing.

8 At the end of this hearing, you will be asked to  
9 determine whether there is sufficient evidence of factual  
10 innocence to merit judicial review.

11 Because Mr. Evans was convicted after a trial, his case  
12 will only move forward if at least five of eight commissioners  
13 vote that there is sufficient evidence of factual evidence to  
14 merit judicial review. If less than five Commissioners vote for  
15 further review, this case will be closed with the Commission and  
16 no appeal is available to Mr. Evans.

17 Are there any questions?

18 **MR. GLAZIER:** Just a quick question. You indicated,  
19 Lindsey, that the case was opened August 16, 2016.

20 When was the case referred and what -- who referred it  
21 to the Commission?

22 **MS. SMITH:** I'll get you the answer as to the exact  
23 date. I believe that this is a direct apply, though.

24 So he applied directly to the Commission and was not a  
25 referral.

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1           **MR. GLAZIER:** Thank you.

2           **MS. SMITH:** So the questionnaire was sent to Mr. Evans  
3 on August 1, 2016. So that date that I gave of August 16 would  
4 have been when we received that questionnaire and opened the case  
5 in our office.

6           **MR. GLAZIER:** Thank you.

7           **MS. SMITH:** Usually, those questionnaires go out as soon  
8 as we receive a letter from the claimant that they wish to have  
9 their case reviewed.

10          **MR. GLAZIER:** Thank you so much.

11          **MS. SMITH:** I'm sorry.

12               Let me correct for the record -- I said Mr. Tully came  
13 to look at files; I meant Mr. Waters. I apologize. Mr. Tully is  
14 not afforded that same right under the statute.

15               All right.

16               Judge Wagoner, at this time, the Commission would call  
17 Grant Staff Attorney Catherine Matoian.

18                               \* \* \* \* \*

19               Thereupon, CATHERINE MATOIAN, a witness having been called by the  
20 Commission, was sworn and testified as follows:

21                               EXAMINATION

22           BY MS. SMITH: (10:31 a.m.)

23               **Q.** Ms. Matoian, will you please state your name for the  
24 record.

25               **A.** My name is Catherine Matoian, M-a-t-o-i-a-n.

1 Q. And how are you employed?

2 A. I am a grant staff attorney with the North Carolina  
3 Innocence Inquiry Commission.

4 Q. How long have you been employed with the Commission?

5 A. Since January 2013.

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

9 A. We did.

10 Q. Can you tell the Commissioners what files and records  
11 you obtained and reviewed in this case?

12 A. I can.

13 The Commission reviewed an 11-page file from the  
14 Franklin County Sheriff's Office. We also received the SBI files  
15 for the Manning case and the Drake case, the crime lab files for  
16 the Manning case and the Drake case, as well as another 1990  
17 breaking and entering that Mr. Evans was a suspect in, and the  
18 Franklin County Clerk's file. The District Attorney's office did  
19 not have a file for this case.

20 Q. Can you refer -- remind the Commissioners what you're  
21 referring to when you say "the Manning case"?

22 A. Yes. The Manning case is the 1990 robbery and  
23 kidnapping case for which Mr. Evans is claiming innocence here.

24 Q. And can you remind the Commissioners what you're  
25 referring to when you say "the Drake case"?

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1           A.     The Drake case was a 1992 rape case that Mr. Evans  
2 ultimately pled guilty in. Mr. Evans admits guilt in that case  
3 and has not applied to the Commission for that case.

4           Q.     Did commission staff conduct any searches for files in  
5 this case?

6           A.     We did. Several documents that appear to be from the  
7 Franklin County Sheriff's Office file that were not in the  
8 Franklin County Sheriff's Office file were provided to the  
9 Commission in the defense files. So the Commission wanted to  
10 conduct a search of the sheriff's office to determine if there  
11 were any other records related to this case. And on March 21,  
12 2019, we searched the sheriff's office looking for files and  
13 evidence.

14           **THE COURT:** You just lost me.

15                    You said several documents that appeared to be from the  
16 Franklin County Sheriff's Office --

17           **THE WITNESS:** Right.

18           **THE COURT:** -- were not at the Franklin County Sheriff's  
19 Office?

20           **THE WITNESS:** So they were not in the Franklin County  
21 Sheriff's office that was provided to the Commission. They were  
22 in the defense files, appearing to have been provided during  
23 discovery at the time. So since --

24           **THE COURT:** You got it from the defense -- one of the  
25 defense attorneys?

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1           **THE WITNESS:** Correct.

2           **THE COURT:** Okay.

3           **THE WITNESS:** They appeared in the defense file but not  
4 in the file that was provided to us. So we conducted a search to  
5 see if we could find those pages and any other pages in the  
6 sheriff's office.

7           **THE COURT:** Thank you.

8           **Q.** What files was the Commission able to locate during that  
9 search?

10          **A.** The sheriff's office had a trailer that contained  
11 numerous boxes of files, and they were sometimes labeled with  
12 names of former deputies or years. We looked through all of the  
13 boxes that had Pat Green's name on them and any that appeared to  
14 have case files in them from the 1990s.

15               The Commission looked for jail records. We had  
16 previously asked the sheriff's office for jail records for  
17 Mr. Evans, Larry Davis, and several other individuals in this case  
18 in order to determine when they were in jail together. But the  
19 sheriff's office had indicated they did not have jail records  
20 going back to the early 1990s.

21               We were able to locate notes from Larry Davis to Pat  
22 Green asking for assistance with an unrelated charge that happened  
23 long after the Manning case. We also located a mug book that had  
24 a photograph of Mr. Evans in it.

25          **Q.** What is a mug book?

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1           A.    A mug book was a notebook with photographs of  
2 individuals who had been arrested by the sheriff's office, and it  
3 included people of various races and physical descriptions.

4           Q.    What was the significance of the mug book to this case?

5           A.    The SBI file had indicated that the victim in this case,  
6 Mrs. Manning, looked through a mug book shortly after the crime  
7 and wasn't able to identify a suspect looking through them.

8                   There was not a list of names of individuals who  
9 appeared in those mug books in the report; so we were unsure if  
10 Mr. Evans' photograph was included in the mug book the victim  
11 looked at.

12          Q.    And did you locate a photograph of Mr. Evans in the mug  
13 book that we located during that search?

14          A.    We did. However, there was no date on the photograph or  
15 any date on the mug book itself that indicated the years that it  
16 was used. The sheriff's name listed on the book was William T.  
17 Dement. And sheriff's office staff advised us that he was in  
18 office from December 1, 1976, through November 30, 1986.

19                 Commission staff was unable to determine through the  
20 book itself or through interviews with Pat Green when this mug  
21 book would've been used.

22          Q.    What else did commission staff locate during the search?

23          A.    Commission staff located reports from four other  
24 robberies of Manning's grocery store, a one-page report indicating  
25 the date Mr. Evans was indicted for this crime, an application for

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1 a pistol permit for Linwood Earl Williams, who was a boyfriend and  
2 later husband of JoAnn Clemonts, as well as jail packets for  
3 Kenneth Evans, Linwood Earl Williams, and Eddie Roy Moore with  
4 confinement histories going back to 1991.

5 Q. Can you tell Commissioners why those particular  
6 documents were important to the commission staff?

7 A. Yes. Commission staff had been told that Manning's  
8 Grocery had been robbed previously, and we were trying to find any  
9 information we could about those robberies.

10 And Linwood Earl Williams was JoAnn Clemonts' boyfriend  
11 immediately after she and Mr. Evans broke up. Eddie Roy Moore was  
12 also a name that had come up in our investigation so we wanted to  
13 collect any documents related to any of those potential  
14 investigative leads.

15 MS. SMITH: Commissioners, do you have any questions for  
16 Ms. Matoian about the search for the file at the sheriff's office?

17 THE COURT: Mr. Glazier?

18 MR. GLAZIER: Yes. I would like to follow up on one  
19 aspect, if I might, Judge.

20 THE COURT: Sure.

21 MR. GLAZIER: I understand files in boxes from past  
22 years set aside, and so most of this stuff I think may have not --  
23 they may not have assumed was directly relevant to your inquiry.

24 But you did say that one of the inquiries you made was  
25 for the jail records, they said they didn't have them, of the

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1 defendant. Clearly, they did.

2 So my question is did you ever find out why they were  
3 not responsive in that regard?

4 **THE WITNESS:** I don't know if I can answer that. We had  
5 asked the jail for those records and I'm not sure if they looked  
6 in those trailers. I will say that those were a little difficult  
7 to look through; so I'm not sure what they did themselves to look  
8 through those trailers.

9 **MR. GLAZIER:** Thank you.

10 **THE COURT:** Yes.

11 **DR. PERRY:** The current sheriff was an investigator  
12 under Green on this case; is that right?

13 **THE WITNESS:** Yes. He did some work on this case,  
14 that's correct.

15 **DR. PERRY:** Okay.

16 **THE WITNESS:** Oh, you mean when Pat Green was Sheriff?

17 **DR. PERRY:** When he -- when Green was a detective on the  
18 Evans case, wasn't he assisted by the current sheriff?

19 **THE WITNESS:** He was, yes.

20 **DR. PERRY:** But not extensively?

21 **THE WITNESS:** No. I believe Mr. Winstead did some  
22 canvassing and helped with a search party, but Pat Green was the  
23 lead investigator on the case.

24 **DR. PERRY:** Thank you.

25 **THE COURT:** Yes, sir.

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1           **MR. BOSWELL:** Did I understand that we don't know if the  
2 victim looked through a mug book that had Mr. Evans' picture in  
3 it? Is that right?

4           **THE WITNESS:** That's correct.

5           **MR. BOSWELL:** Thank you.

6           **THE COURT:** Well, whatever she looked through, she did  
7 not identify --

8           **THE WITNESS:** That's correct.

9           **THE COURT:** -- her assailant.

10          **THE WITNESS:** That's correct.

11          **MS. COLBERT:** I'm not sure if this is the proper time to  
12 ask you. You mentioned the robbery that happened at the store.

13               So in that part of your investigation, was there a  
14 police report filed in regard to the robbery?

15          **THE WITNESS:** We did locate several reports from several  
16 robberies of Manning's Grocery and we are going to talk a bit more  
17 extensively about that later on.

18          **MS. COLBERT:** Okay. Thank you.

19          **THE COURT:** All right. Thank you.

20          **Q.** Ms. Matoian, did the commission staff obtain any files  
21 from defense attorneys for Mr. Evans?

22          **A.** We did. The Commission contacted Mr. Evans pretrial  
23 attorneys, Frank and Bernadine Ballance, in January 2017.  
24 Mrs. Ballance initially indicated that if she did have the file,  
25 it would be located in a private storage facility; however, she

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1 would not look for it unless the Commission showed that she was  
2 still obligated to maintain a file for Mr. Evans. Commission  
3 staff spoke with Mrs. Ballance several times, and she indicated  
4 she was not obligated to look for the file.

5 In March 2017, the Commission served both Frank and  
6 Bernadine Ballance with subpoenas for their file. Frank Ballance  
7 then contacted the Commission and indicated that the file did not  
8 exist because they would have gotten rid of it after five years.  
9 Mr. Ballance declined to agree to let the Commission search the  
10 facility that his wife had mentioned and declined to provide an  
11 affidavit indicating he had searched for the file.

12 Mrs. Ballance agreed to search for the file herself and  
13 provided an affidavit on 3/21/2017 indicating she would not search  
14 for the file until after she retired in April 2017.

15 In April 2017, the Commission contacted Bernadine  
16 Ballance and indicated that if she did not produce the file or an  
17 affidavit detailing her efforts to search for the file by May 8,  
18 2017, the Commission would seek a court order.

19 Mrs. Ballance -- and the Commission agreed to give her  
20 to May 15, 2017.

21 On May 16, 2017, Mrs. Ballance indicated she had located  
22 at least a partial file and provided the file to the Commission on  
23 5/18/2017, and that file contained information related to both the  
24 Drake and Manning cases.

25 Q. Why did commission staff undertake the above efforts to

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1 locate the defense attorney file in this case?

2 A. Up to that point, the Commission had extremely limited  
3 information about the case and wanted to locate any information  
4 that existed, and without the additional information from that  
5 file, the case would have been very difficult to investigate.

6 Q. Did commission staff obtain any other files from defense  
7 attorneys?

8 A. We did. We obtained a file from Mr. Evans' trial  
9 attorney, Larry Norman, and we also obtained a file from Prisoner  
10 Legal Services.

11 The Commission contacted Trey Duckworth, who was  
12 Mr. Evans' appellate attorney, and he indicated he did not have a  
13 file and it may have been lost in a flood that ruined several of  
14 his files.

15 Q. Was the Commission ever able to locate a trial  
16 transcript of this case?

17 A. No, we were not.

18 Q. Can you detail the efforts taken to locate a transcript?

19 A. I can. The Commission contacted the court reporter for  
20 the trial, Melissa Lagies, L-a-g-i-e-s. She searched for the  
21 transcript and could not locate anything related to this case.

22 As I stated previously, Appellate Attorney Trey  
23 Duckworth indicated he had no files for this case. There was no  
24 transcript in the Ballance defense file or Norman defense file.

25 We contacted the Court of Appeals. They had no trial

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1 transcript. Susan Scoggins at the Court of Appeals indicated that  
2 based on the docket number, this would have been before they  
3 scanned anything in electronically, and both the trial and the  
4 briefs -- the trial transcript and the briefs from the appeal were  
5 outside of the retention period.

6 We also contacted the Supreme Court. However, because  
7 the case was not appealed to the Supreme Court, they did not have  
8 any documents. They would have needed a docket number to even  
9 search, and no docket number existed.

10 The Commission also contacted the Attorney General's  
11 office, and they had no success in locating a transcript or  
12 appellate briefs.

13 Mr. Evans did not have a copy of the transcript and no  
14 family members of his did.

15 The District Attorney's office had no records related to  
16 this case, and ADA Susan Thompson who tried the case but is now in  
17 private practice did not have a trial transcript.

18 The PLS file did not contain a trial transcript and  
19 notes in their files indicated that in 2002 they had been unable  
20 to locate any appellate briefs either.

21 **MS. SMITH:** Commissioners, because we were unable to  
22 locate a trial transcript in this case, commission staff asked  
23 numerous witnesses about their recollections of the trial. That  
24 information was provided to you in your brief.

25 Do you have any questions generally, though, about the

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1 trial transcript?

2 THE COURT: Yes.

3 MS. COLBERT: So when they told you that it was outside  
4 the retention period, did they tell you what the retention period  
5 was?

6 THE WITNESS: They did. I do not have it in front of  
7 me, though, but we can get that information and provide it to you.

8 MS. COLBERT: Yes.

9 MS. SMITH: It's seven years.

10 THE COURT: Seven?

11 Q. Ms. Matoian, did commission staff obtain any additional  
12 files in this case?

13 A. We did. The Commission obtained Department of Public  
14 Safety records for Kenneth Evans including his combined records,  
15 his medical and mental health records, phone records, and phone  
16 recordings.

17 We also obtained DPS records for Larry Davis, including  
18 combined records and probation and parole records. He had no  
19 mental health records.

20 Q. Did the Commission locate any other records in the case?

21 A. We did. We were able to look through microfilm archives  
22 at the -- for the *Franklin Times* at the Franklin County Library  
23 and located several articles related to this case.

24 We also had some indication that there had been  
25 television news coverage of this case as well, and we contacted

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1 Scher Shot Productions to determine if those news stories still  
2 existed and were told that no coverage from that time period  
3 existed.

4 MS. SMITH: Commissioners, the articles from the  
5 *Franklin Times* were provided to you on pages 437 to 447 of your  
6 briefs.

7 Do you have any questions about the files the Commission  
8 was able to locate and review in this case?

9 THE COURT: Yes, ma'am.

10 MS. COLBERT: I do have a question because -- and this  
11 is coming from my experience from before. So is the seven-year  
12 retention period for all courts or whatever in North Carolina?  
13 Or -- and what is the -- do we know the retention period for  
14 records, period, with law enforcement? Or is there such a  
15 retention period?

16 MS. SMITH: We will look that up. It's different for  
17 each agency. We'll talk a little bit about this on Wednesday but,  
18 for example, the Commission's retention period is 50 years. So I  
19 think we might have --

20 MS. COLBERT: 50?

21 MS. SMITH: Yes. We might have the longest at the  
22 State.

23 Any other questions?

24 (No response.)

25 MS. SMITH: Commissioners, Ms. Matoian just testified

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1 about the Commission's efforts to collect records from Mr. Evans'  
2 defense attorneys, and you were previously provided with the  
3 Commission's complete interview with exhibits of Defense Attorney  
4 Larry Norman, Mr. Evans' trial attorney. That was on page 302 to  
5 425 of your brief.

6 We will be discussing information from Larry Norman  
7 later on in the hearing where relevant, but if any Commissioners  
8 have questions for Ms. Matoian about that interview with  
9 Mr. Norman, now would be a good time.

10 **THE COURT:** Yes, ma'am.

11 **MS. COLBERT:** How old is Mr. Norman?

12 **THE WITNESS:** If I had to guess, in his later 50s.  
13 But I'm not exactly sure. We can look that up for you.

14 **MS. NEWTON:** Would you direct me --

15 **THE COURT:** Yes, ma'am.

16 **MS. NEWTON:** Thank you.

17 Would you direct me to -- you mentioned, Ms. Matoian,  
18 that there were mental health records from DPS.

19 **THE WITNESS:** Yes, ma'am.

20 **MS. NEWTON:** Are they contained in the brief?

21 **THE WITNESS:** No. Those were not part of the original  
22 investigation. That's a file that we obtained and we're going to  
23 testify a little about those later.

24 **MS. NEWTON:** Okay. Thank you.

25 **THE COURT:** Okay.

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1           **MR. BOSWELL:** They are in the brief that we were  
2 presented earlier; right? Mental health records?

3           **THE WITNESS:** They're --

4           **THE COURT:** Yes.

5           **THE WITNESS:** Your brief contained an assessment from  
6 Dorothea Dix, I believe. The Commission obtained complete mental  
7 health records for Mr. Evans and we are going to testify about  
8 those in a little bit.

9           **MR. BOSWELL:** Gotcha. Okay.

10          **THE COURT:** Okay.

11          **Q.** All right. We're now going to turn our attention to the  
12 law enforcement and district attorneys involved in this case.

13               Ms. Matoian, who is Susan Thompson?

14          **A.** Susan Thompson was the assistant district attorney who  
15 tried his case. She is now in private practice.

16          **Q.** And did the Commission have an opportunity to interview  
17 Ms. Thompson?

18          **A.** We did. In person on February 11, 2019.

19          **Q.** Was that interview recorded and transcribed?

20          **A.** It was.

21          **Q.** What did Ms. Thompson tell the Commission?

22          **A.** Ms. Thompson discussed discovery practices with the  
23 Commission from around the time of this case, and she indicated  
24 that at that time she did not have to turn over copies of  
25 everything but that she would allow defense attorneys to come and

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1 review files, and in particular, anything exculpatory.

2 She stated they did have issues with officers not  
3 writing down statements made by witnesses or providing statements  
4 right before at trial.

5 In her experience with Mr. Norman, she said that he did  
6 a good job for his clients and would come look at what was  
7 available to him.

8 Q. Did Ms. Thompson indicate whether defense attorneys  
9 would be able to view evidence?

10 A. She indicated that sometimes they would allow defense  
11 attorneys to look at physical evidence but they "weren't big fans  
12 of doing that."

13 If evidence was opened in a murder case, they would  
14 absolutely have worn gloves but she could not say if that would've  
15 been true in this case.

16 Q. What else did Ms. Thompson say about the case?

17 A. Ms. Thompson said that Larry Davis and JoAnn Clemonts  
18 were the most significant evidence against Mr. Evans for her, with  
19 Ms. Clemonts being more significant than Mr. Davis. She was  
20 familiar with Larry Davis from his other arrests and she stated  
21 that Ms. Clemonts was terrified of Mr. Evans because Mr. Evans had  
22 been physically abusive to her and that she was a reluctant  
23 witness.

24 Q. Did the Commission follow up with Ms. Thompson?

25 A. We did. During her interview with the Commission, she

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1 stated that she did not recall either Larry Davis or JoAnn  
2 Clemonts getting a deal for testifying in this case.

3 Larry Norman's draft closing argument pointed out that  
4 Clemonts had a probation violation hearing on the calendar the  
5 same week as the trial, and commission staff agreed to look at  
6 court records and send any relevant information to Ms. Thompson to  
7 see if it refreshed her memory.

8 We reviewed court records for both Larry Davis and JoAnn  
9 Clemonts and provided the following information to Ms. Thompson  
10 via e-mail on July 9, 2019. For JoAnn Clemonts, it doesn't appear  
11 that she had any outstanding charges at the time she gave her  
12 first statement in March 1993. She had a no operator's license  
13 charge from February 27, 1995. On April 3, 1995, this was  
14 dismissed without leave by the District Attorney's office.

15 Mr. Evans was convicted on 4/7/1995. No prosecutor was  
16 listed for that charge. Ms. Clemonts also had a probation  
17 violation hearing on April 3, 1995, and the disposition is listed  
18 as "defendant to pay under probation." Mr. Evans was again  
19 convicted on April 7, 1995, and no prosecutor was listed for those  
20 charges either.

21 For Larry Davis, he had an operating a vehicle with no  
22 insurance charge pending at the time he gave his first statement  
23 in October of 1992. He was found guilty on that charge.  
24 Mr. Davis had a pending driving while license revoked permanent  
25 charge at the time of Mr. Evans' trial. He pled guilty to a

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1 driving while license revoked on April 11, 1995. Mr. Evans was  
2 convicted on April 7, 1995, and no prosecutor was listed for that  
3 case.

4 Mr. Davis also had a possession of stolen goods felony  
5 charge pending at the time of Evans' trial, and on April 10, 1995,  
6 he pled guilty to misdemeanor larceny. No prosecutor was listed  
7 on that case as well.

8 Ms. Thompson responded to that e-mail on July 31, 2019,  
9 and said that all of those actions were very common in criminal  
10 cases and she still did not recall offering any deals for  
11 testimony in this case.

12 Q. Did the commission staff reach out to anyone else from  
13 the District Attorney's office?

14 A. We did. Documents in the file indicate that Doug Berger  
15 had limited involvement in this case. He is also now in private  
16 practice. Mr. Berger had no memory of this case. We sent him the  
17 Court of Appeals opinion and the Franklin County Sheriff's Office  
18 incident report and neither refreshed his memory.

19 Mr. Berger was able to identify a document with a  
20 description the victim gave of the suspect as being in his  
21 handwriting. There was also an addendum to a statement made by  
22 Larry Davis that appeared to be in his handwriting as well.  
23 Mr. Berger was not sure if those notes were from an interview he  
24 conducted or whether that information had been provided to him by  
25 someone else.

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1           His recollection of discovery at the time was that they  
2 provided open file discovery and defense attorneys could review  
3 all of the documents in the file.

4           **MS. SMITH:** Commissioners, do you have any questions for  
5 Ms. Matoian about commission staff's interview with the assistant  
6 district attorneys involved in the case?

7           **MR. BOSWELL:** Did they remember the trial itself?

8           **THE WITNESS:** Susan Thompson, I believe, recalled some  
9 things about the trial. That information was in your brief. We  
10 can find the page number for you.

11           **MS. SMITH:** Commissioners, we'll come back to that in  
12 just a moment. I'm just going to move forward unless anyone has  
13 any other questions about the assistant district attorneys.

14           (No response.)

15           **Q.** Let's turn our attention to the lead investigator for  
16 the Franklin County Sheriff's Office in this case, Pat Green.

17           Tell the Commissioners who Pat Green is.

18           **A.** Pat Green was an investigator at the Franklin County  
19 Sheriff's Office at the time this case took place. He eventually  
20 became the sheriff.

21           **THE COURT:** When you say "this case took place," do you  
22 mean when the investigation started; correct?

23           **THE WITNESS:** Correct. In 1990 and through 1993, when  
24 Mr. Evans was arrested.

25           **THE COURT:** Okay.

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1           **Q.**     And why did Mr. Green leave office?

2           **A.**     Mr. Green resigned in 2011 after he was arrested for  
3     embezzlement of over \$200,000 that was earmarked for undercover  
4     drug buys and drug money from the evidence room. He pled guilty  
5     in 2012 and was sentenced to three to five years in prison.

6           **MS. SMITH:** Commissioners, Handout 1 in your hearing  
7     handout notebooks is a news article related to Mr. Green's plea  
8     and Handout 2 is Mr. Green's criminal record, if you want to take  
9     just a few minutes to look at those.

10          **THE COURT:** When was he elected -- Green? Do you  
11     remember?

12          **SHERIFF FRYE:** 2006, I think.

13          **THE COURT:** Along with that, did he say that he was  
14     investigating throughout this whole time until he was elected?

15          **THE WITNESS:** I believe in my deposition of him, he said  
16     he left for a while while he was campaigning but otherwise had  
17     been employed by the sheriff's office throughout that the time.

18          **THE COURT:** We can come back to that. I was just  
19     curious. Okay.

20          **MS. SMITH:** Commissioners, before we move on, Ms. Newton  
21     had asked about any mental health records in the brief. Although  
22     that's not a DPS record, page 292 of your brief is where that  
23     Dorothea Dix report that Mr. Boswell said was in there is located,  
24     if anyone wants to look at that.

25          **MS. NEWTON:** Thank you.

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1           **MS. SMITH:** I can also let you-all know that according  
2 to Lexis, Larry Norman is 67 years old.

3           **THE WITNESS:** In our deposition with Pat Green, he said  
4 he left the sheriff's office in 2011 and he had been the elected  
5 sheriff for four years and a few months prior to that.

6           **THE COURT:** Thank you.

7           **SHERIFF FRYE:** Think we all went in in 2006.

8           **Q.** Ms. Matoian, did commission staff interview Pat Green?

9           **A.** We did. We deposed Mr. Green on January 9, 2019, and  
10 also conducted an in-person follow-up interview on March 25, 2019.  
11 Both were recorded and transcribed.

12           **Q.** What did Mr. Green tell commission staff about his  
13 documentation practices?

14           **A.** Mr. Green told the Commission that he would usually call  
15 the SBI in for a murder -- on a murder or a serious case like  
16 this. He stated that this was an unusual case for that part of  
17 the county, which was very rural.

18           Regarding documentation practices between the sheriff's  
19 office and the SBI, Mr. Green indicated that the SBI would never  
20 provide any parts of their file to the sheriff's office other than  
21 chain of custody reports.

22           Regarding his own documentation practices, Mr. Green  
23 stated that at the time, the sheriff's office only had one  
24 typewriter that was shared among deputies so most reports were  
25 handwritten. He would sometimes take handwritten notes while

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1 speaking to someone and then write out a report later.

2 Q. Who is Rick Sims?

3 A. Rick Sims is a former SBI agent, and he assisted the  
4 sheriff's office with investigating this case.

5 Q. Did commission staff interview Mr. Sims?

6 A. We did. We deposed him on January 10, 2019, and  
7 followed up with him in person on July 16, 2019.

8 Q. And were the deposition and interview recorded and  
9 transcribed?

10 A. They were.

11 Q. What did Mr. Sims say about his role in this case?

12 A. Mr. Sims said that he would assist in a case if called  
13 by the sheriff's office and that he had worked with Pat Green  
14 frequently. Mr. Sims did indicate that although Mr. Green would  
15 call them for assistance, Mr. Green would also do a lot of work on  
16 his own. Sims was one investigator for Franklin, Vance, and  
17 Warren Counties. He said that Green would keep him apprised of  
18 what was going on in a case if something happened that Sims wasn't  
19 present for.

20 There are no SBI reports from -- in the time between the  
21 report from 1991 indicating that the case was inactive until just  
22 prior to Mr. Evans' arrest in 1993.

23 Mr. Sims said it would not have been unusual for him to  
24 not work on a case for a while and then have Green call him in  
25 again when he was close to an arrest.

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1           Mr. Sims also indicated that due to caseloads, the SBI  
2       had a limited assistance policy around this time.

3           Q.     Who is David McDougall?

4           A.     David McDougall was a crime scene analyst for the SBI  
5       who worked on this case.

6           Q.     Did the Commission interview Mr. McDougall?

7           A.     We did. We deposed him on January 14, 2019, and  
8       conducted a follow-up interview in person on July 24, 2019.

9           Q.     Were the interview and deposition recorded and  
10      transcribed?

11          A.     They were.

12          Q.     What did Mr. McDougall say about his role in the case?

13          A.     Mr. McDougall said that if he was called in to a case,  
14      he would process the crime scene and then he would usually  
15      transfer all of the evidence he collected to the local agency or  
16      would sometimes help them prepare it to be submitted to a lab.

17                 Regarding what items were collected, Mr. McDougall  
18      indicated that he would work with the lead agent to determine  
19      which items should be collected, and in this case, the lead agent  
20      would have been Rick Sims.

21                 **MS. SMITH:** Commissioners, do you have any questions for  
22      Ms. Matoian about the law enforcement officers in this case?

23                         (No response.)

24                 **MS. SMITH:** Commissioners, both Rick Sims and Pat Green  
25      are under subpoena and available to testify via phone if you-all

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1 have questions for them. Mr. McDougall is out of the country this  
2 week.

3 We will have additional testimony throughout the hearing  
4 related to information provided from Rick Sims and Pat Green.

5 Prior to the end of the hearing, I will check in with you to see  
6 if anyone wants to hear from any of them, but does anyone know now  
7 that they definitely want to hear from Rick Sims or Pat Green?

8 (No response.)

9 MS. SMITH: Okay. I'll check with you --

10 THE COURT: I have a question. What SBI agent was it  
11 that indicated at one time he thought that the victim was making  
12 all this up?

13 THE WITNESS: That was Rick Sims.

14 THE COURT: Okay.

15 THE WITNESS: And we're going to testify a little bit  
16 more about that shortly.

17 THE COURT: Thank you.

18 THE WITNESS: And the page of the brief that summarizes  
19 what Susan Thompson remembered about the trial is 427.

20 MR. BOSWELL: Thank you.

21 MS. SMITH: I'm going to leave them on phone standby for  
22 now. I will get back in touch with all of you before the end of  
23 the hearing just to see if anyone needs to hear from them.

24 Q. We are now going to turn our attention to the physical  
25 evidence in this case.

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1           Ms. Matoian, did commission staff contact the clerk's  
2 office about evidence in this case?

3           A.    We did. The Commission contacted the Franklin County  
4 Clerk of Court and sent a letter requesting the release of  
5 evidence still in their custody pursuant to our statute. The  
6 clerk's office provided this request to Senior Resident Superior  
7 Court Judge Robert Hobgood, who placed the matter on the criminal  
8 docket.

9           At a hearing held on May 23, 2017, in front of Judge  
10 O'Foghludha, the DA's office indicated that he had no objection --  
11 or that he had no objection to releasing the evidence to the  
12 Commission. While the judge did not enter an order in this case,  
13 he did put on record that the statute required that evidence be  
14 turned over to the Commission by the Clerk's office, DA's office,  
15 and law enforcement across the state.

16           That same day, the Commission collected the following  
17 items that had been entered into evidence at trial: One being the  
18 do-rag; one being a package that contained tape and rope used to  
19 bind the victim; two packages containing tape used to bind the  
20 victim; and an envelope containing hair and tapings from the  
21 victim's home.

22           The clerk's office also had several photographs that had  
23 been entered into evidence.

24           Q.    And those items that the commission staff collected that  
25 day, were those all of the items that had been collected in the

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1 case?

2 A. No, they were not.

3 Q. Did commission staff contact the sheriff's office about  
4 this evidence?

5 A. We did. The sheriff's office told the Commission in  
6 2017 that it did not have any evidence related to this case. The  
7 Commission contacted the sheriff's office about the evidence again  
8 in 2019, and they again were not able to locate any evidence for  
9 this case.

10 Q. And did the commission staff conduct its own search of  
11 the Franklin County Sheriff's Office for physical evidence?

12 A. We did. We searched for evidence the same day we  
13 searched for files, on March 21, 2019.

14 Q. Tell commissioners a little bit more about that search  
15 as it relates to the physical evidence.

16 A. Sure. The sheriff's office has a main evidence room  
17 located inside their facility that contains evidence from more  
18 recent cases. All evidence in that room is bar coded and part of  
19 the sheriff's office inventory; so the Commission did not search  
20 that room.

21 The sheriff's office had previously searched its  
22 inventory and indicated they didn't have any items listed for this  
23 case. The sheriff's office also had several outbuildings that  
24 contained the files I talked about earlier and evidence that is  
25 not part of the sheriff's office inventory.

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1           They indicated that the evidence in these outbuildings  
2 is left over from previous administrations and they are working to  
3 reconcile that evidence into their system or destroy it where  
4 permitted.

5           Commission staff went through all of the outbuildings  
6 containing evidence shelf by shelf and we did not locate any  
7 evidence related to this case.

8           Q.   Did commission staff speak to anyone else regarding the  
9 unaccounted-for evidence?

10          A.   We did. During a meeting with the sheriff's office  
11 about their evidence policies and practices, some of the staff  
12 indicated that a man named Ernest Robin- -- Robertson had  
13 previously handled some evidence destruction for the sheriff's  
14 office during the time he was employed there. We spoke to him by  
15 phone on February 21, 2019.

16          Q.   Was that interview recorded and transcribed?

17          A.   It was.

18          Q.   What did Mr. Robertson say?

19          A.   Mr. Robertson said that he had come into the sheriff's  
20 office in the 1990s and had to clean up behind the previous  
21 administration regarding evidence and obtained court orders to  
22 destroy evidence. He didn't recall anything about evidence  
23 specifically related to this case. He said he made sure  
24 everything was done by the book and either obtained court orders  
25 for destruction or tried to return items to their owners.

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1           Mr. Robertson said that he had created an evidence log  
2 during the time he was handling evidence; however -- and there was  
3 no evidence inventory system prior to him coming in. He retired  
4 in 2002.

5           He also recalled that there had been an evidence room in  
6 the old sheriff's office building and he had gotten a blanket  
7 court order to destroy everything in there that didn't have a case  
8 number on it.

9           Q. Did the court file in this case contain any orders for  
10 destruction or any other documentation related to destruction of  
11 evidence in this case?

12          A. No, it did not. And we were also not able to find any  
13 documentation of destruction or a file cabinet of court orders  
14 that Mr. Robertson indicated he maintained at the sheriff's  
15 office.

16          Q. So after searching the sheriff's office, what items of  
17 evidence remain unaccounted for in this case?

18          A. Based on the list of evidence collected in the SBI file  
19 from David McDougall's report and the SBI 5 form, the following  
20 items of evidence are currently unaccounted for: An earring back  
21 from the floor of bedroom number 1; the bedspread from the bed in  
22 bedroom number 1; small pieces of tissue from the floor on bedroom  
23 number 1; footwear impression from floor of bathroom number 1;  
24 dirt samples from floor of bathroom; palm prints from sink in the  
25 bathroom and bathroom number 1; latent lifts from sink in bathroom

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1 number 1 -- and those are the items from the first crime scene,  
2 which was the victim's home.

3 From the second crime scene, which was the victim's car,  
4 what is unaccounted for are cigarette butts from the Ford LTD  
5 station wagon; latent lifts from the Ford LTD station wagon;  
6 Kleenex from the Ford LTD station wagon; duct tape from inside the  
7 victim's home; several pieces of duct tape from the victim's feet.

8 **THE COURT:** They are unaccounted for?

9 **THE WITNESS:** Yes.

10 **MS. SMITH:** Commissioners, do you have any questions  
11 about evidence collected or evidence searches in this case?

12 **MR. BOSWELL:** Run through what you do have, please.

13 **THE WITNESS:** Sure.

14 We have the do-rag, which I'm going to testify a little  
15 bit more about in just a minute; one package containing tape and  
16 rope that was used to bind the victim; two packages of tape used  
17 to bind the victim; and an envelope containing hair and tapings  
18 from the crime scene number 1, which is the victim's home.

19 **MR. BOSWELL:** And where were those found?

20 **THE WITNESS:** Those were found at the clerk's office.  
21 They had all been entered into evidence at trial. So it appears  
22 that anything that wasn't entered into evidence at trial is  
23 unaccounted for from the sheriff's office.

24 **MR. BOSWELL:** And how was it stored at the clerk's  
25 office? Do you know?

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1           If you don't know, that's okay.

2           **THE WITNESS:** Just give me one second.

3           **MR. GRACE:** Typically, John, they're stored in brown  
4 paper bags and the clerk maintains it in an evidence room.

5           **THE WITNESS:** It appears it was stored in their evidence  
6 room and that the Commission did not have to repackage any of the  
7 items that were collected.

8           **THE COURT:** Yes, ma'am.

9           **MS. COLBERT:** Let me make sure I understood about the  
10 process and let me know if that's the normal process.

11           So you subpoenaed the clerk for the evidence and they  
12 then put it on a criminal docket? Is that --

13           **THE WITNESS:** So it wasn't a subpoena. Under our  
14 statute, we just have to -- either the Director or her designee  
15 just needs to request the evidence. We have a form letter that we  
16 usually send to agencies. We sent that letter.

17           This case was unusual in that the clerk's office put it  
18 on the docket.

19           **THE COURT:** I think it probably had more to do with the  
20 judge than it did with the clerk's office.

21           **DR. PERRY:** I'm sorry, what?

22           **MS. SMITH:** It could.

23           **THE COURT:** Is it more the judge wanting it on the  
24 docket?

25           **MS. COLBERT:** Is that --

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1           **THE COURT:** Never mind.

2           **THE WITNESS:** That seemed to be at the request of the  
3 clerk's office.

4           **THE COURT:** Okay.

5           **MS. COLBERT:** So -- but that was just another step that,  
6 normally, if you did this same sort of process based on the  
7 statute around the Commission, that is really a hurdle and not  
8 necessary; right?

9           **THE WITNESS:** Correct. Usually, we request the evidence  
10 under our statute and we agree on a time and go collect that  
11 evidence.

12           **MS. SMITH:** Commissioners, I'm going to add just a  
13 little bit here because I was the attorney who did the appearance  
14 before the judge in this case.

15           Our statute, 15A-1467, indicates that any concerns  
16 related to the Commission's access to evidence is to be heard  
17 before the Commission's chair, and so that is the argument that we  
18 made before the judge there, that this wasn't even properly before  
19 him. I believe that is why he did not issue an actual order but  
20 basically just instructed them to turn it over, because the  
21 statute said they had to.

22           So Ms. Matoian is correct. Normally, we request the  
23 items and they're just provided. If someone wants to contest  
24 that, it normally is put before the Commission's chair for a  
25 hearing there.

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1           **MS. COLBERT:** And so I do have a question. Let me make  
2 sure -- I think this is what I heard.

3           So evidence -- if there is a destruction order for  
4 evidence, is there some sort of tally or a list of the evidence  
5 that is being destroyed or some sort of record? Is that --

6           **THE WITNESS:** It depends on the agency, but  
7 theoretically there should be documentation of what is destroyed.

8           **MS. COLBERT:** And what I think I heard you say is there  
9 was no documentation of the evidence destruction. There was  
10 nothing in their particular policy according to Robertson that  
11 lists any evidence that was being destroyed.

12          **THE WITNESS:** Right. There was nothing in the clerk's  
13 office file that indicated he had obtained a court order to  
14 destroy evidence or anyone at the sheriff's office had obtained a  
15 court order to destroy evidence. And we didn't find any  
16 documentation during our search of files related to the  
17 destruction of evidence.

18          **MR. GRACE:** Ms. Matoian, are you making any distinction  
19 between evidence that's gathered by the police and not offered  
20 into evidence in court?

21          **THE WITNESS:** I am. So the clerk's office -- they  
22 maintain the evidence that is entered at trial and they had that  
23 evidence and turned it over to the Commission after this hearing.  
24 The evidence we're talking about where there is no documentation  
25 of destruction, that is the evidence that would have remained at

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1 the sheriff's office.

2 MS. COLBERT: Because he was working for law  
3 enforcement. Got it. Thanks.

4 THE COURT: Okay.

5 Q. Ms. Matoian, is it the Commission's practice, if there  
6 is no record of where evidence has gone or no record of  
7 destruction, for commission staff to request to conduct a search  
8 of our own under the statute?

9 A. It is.

10 Q. And did, in this case, the Franklin County Sheriff's  
11 Office voluntarily allow the commission staff to come in and  
12 conduct that search?

13 A. Yes, they did.

14 Q. Ms. Matoian, what can you tell the Commissioners about  
15 the latent prints from this case?

16 A. Latent prints were collected from the victim's home and  
17 her car. The victim had indicated that the suspect was wearing  
18 gloves.

19 Again, the Commission has been unable to locate the  
20 latent prints during its evidence search this case.

21 The SBI 5 form and the lab reports only indicate that  
22 the latent prints from the home were submitted for comparison to  
23 Mr. Evans, who was excluded.

24 We asked Pat Green why the prints from the car were not  
25 submitted to the lab and he could not say but said that they

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1 should have been.

2 Agent McDougall's report also indicated that he  
3 collected latent prints from the home by the bathroom sink but he  
4 does not detail exactly where he dusted for prints throughout the  
5 house in total.

6 In our follow-up interview with Mr. McDougall, he  
7 indicated that he would dust all possible surfaces but would only  
8 list the actual places that he obtained prints in his final  
9 report.

10 When the commission staff asked him the locations he  
11 would've processed for prints on a vehicle, Mr. McDougall said  
12 again that he would process almost all of it but only list the  
13 locations he actually obtained latent prints.

14 Q. Were any print standards collected besides Kenneth Evans  
15 in this case?

16 A. No. It doesn't appear that the sheriff's office or the  
17 SBI collected elimination prints from the victim or her family in  
18 this case.

19 In his follow-up interview, Mr. McDougall indicated that  
20 he would have collected elimination prints if he was asked, but  
21 since he was usually only at the scene the day of the crime, he  
22 usually wouldn't be involved in collecting elimination prints.

23 Pat Green did not know why elimination prints had not  
24 been collected but said they should have been.

25 Q. What can you tell Commissioners about the gas tank of

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1 the victim's car?

2 A. The victim's husband, Esley Manning, indicated in his  
3 interview from the night of the crime that he thought the victim's  
4 car would be low on gas. The victim told the defense PI a few  
5 years after the crime that the car was just about empty but did  
6 not run out of gas. And both of Larry Davis' statements to the  
7 sheriff's office indicate that Mr. Evans told him the car was low  
8 on gas or almost out of gas. A newspaper article from the trial  
9 quotes Assistant District Attorney Susan Thompson as stating that  
10 that information had not been released to the public.

11 Q. Was there any other information about the gas tank in  
12 the file?

13 A. No. There was no documentation in Mr. McDougall's crime  
14 scene reports or any other reports in this case to indicate how  
15 much gas was in the tank of the victim's car. There are also no  
16 photographs taken by Mr. McDougall that indicate the reading of  
17 the gas tank.

18 Q. And did the commission staff follow up with  
19 Mr. McDougall about that information?

20 A. We did. Mr. McDougall indicated in his follow-up  
21 interview that he would not have noted the reading of the gas tank  
22 unless he had been specifically asked to by the case agent or  
23 local law enforcement. He could not recall any time in his career  
24 where anyone had asked him to do so.

25 Q. What can you tell --

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1           **THE COURT:** Where was the automobile? Was it towed --  
2 what happened to the automobile after she was found?

3           **THE WITNESS:** So there -- it ends up back at the  
4 victim's house, but there's no reports as to how that happened.  
5 We do know from the victim that the suspect took the keys with  
6 him, and so I'm not sure how they were able to get it back to her  
7 home.

8           **THE COURT:** So it was not held anywhere? Just went back  
9 to the victim's house?

10          **THE WITNESS:** I believe it was processed and returned to  
11 her home.

12          **THE COURT:** So you think it was processed before it was  
13 returned to her home?

14          **THE WITNESS:** Yes. Agent McDougall remembered being out  
15 in the woods at the crime scene where the car was, and there are  
16 photographs that he took at that crime scene.

17          **THE COURT:** Okay.

18          **Q.** What can you tell Commissioners about the clothing that  
19 was located inside the victim's car?

20          **A.** Mr. McDougall's report notes that there were several  
21 items of clothing in the front passenger floorboard of the  
22 victim's car. These items do not appear on his list of evidence  
23 collected and there was no further information about these items  
24 in the files available to the Commission.

25               After the Commission received photographs of the crime

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1 scene from the SBI, we located a photograph that appears to show  
2 these items of clothing.

3 MS. SMITH: Commissioners, that photograph is located on  
4 page 82 of your brief.

5 Q. Ms. Matoian, did commission staff do anything further  
6 with that photograph?

7 A. The Commission showed this photograph to Mr. Evans and  
8 Mr. Evans' cousin Jerry Moore, and neither recognized those items  
9 of clothing. The Commission also asked the victim's daughter,  
10 Jackie Manning Kemp, about the photograph and she said she was not  
11 sure if those items belonged to her mother or someone else in her  
12 family.

13 The Commission also asked Mr. McDougall about the  
14 clothing during his interview and deposition with the Commission.  
15 Even after reviewing the photograph, he was not able to recall why  
16 he did not collect these items.

17 Pat Green and Rick Sims were also unable to recall why  
18 those items weren't collected but Pat Green indicated he thought  
19 the items should have been collected.

20 MS. SMITH: Commissioners, do you have any questions for  
21 Ms. Matoian about any of this information related to the car?

22 MS. COLBERT: I think the -- I guess we're going to --  
23 when Beth -- I'm sorry, Ms. Tanner and Ms. Myers, are they going  
24 to testify? Because I see a handout of a conversation or the  
25 deposition with Pat Green in regard to McDougall's collection of

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1 evidence.

2           **THE WITNESS:** We are going to testify about that a  
3 little bit more in just a minute.

4           **MS. COLBERT:** Okay.

5           **MS. SMITH:** Commissioners, Defense Attorney Larry  
6 Norman's draft closing argument indicated some question as to how  
7 the do-rag was collected in this case. That information can be  
8 found on pages 393 to 394 of your brief.

9           There was some discussion in the file about the  
10 difference between a do-rag and a wave cap. Mr. Evans has  
11 indicated that he sometimes wore wave caps but never wore a  
12 do-rag. It appears that JoAnn Clemonts testified during the trial  
13 that she had bought a do-rag for Mr. Evans that was similar to the  
14 do-rag that was collected from the crime scene.

15           For your reference, Handout 3 includes photographs with  
16 an example of both a do-rag and a wave cap, if you would like to  
17 take a moment to look at those. The do-rag is the first  
18 photograph and the wave cap is the second photograph.

19           **Q.** Ms. Matoian, please tell Commissioners what you learned  
20 about the do-rag in this case.

21           **A.** Both the draft closing argument of Larry Norman and  
22 interviews of the victim and her husband by the defense PI  
23 indicated that the do-rag had been found in the victim's car  
24 sometime after the crime. There were no police reports related to  
25 the collection of the do-rag. Mr. McDougall's crime scene report

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1 indicated that there was a scarf found outside of the vehicle at  
2 the second crime scene, but it was not clear from that description  
3 whether that scarf was the do-rag. That scarf was not listed on  
4 McDougall's list of evidence collected from the crime scene.

5 Commission staff asked Pat Green, Rick Sims, and David  
6 McDougall about the do-rag during their depositions with the  
7 Commission. Sims and McDougall had no recollection of the  
8 collection of the do-rag. Mr. Green vaguely recalled the victim's  
9 husband calling about the do-rag in the car but could not remember  
10 any details about its collection. Mr. Green also indicated that  
11 he was confident the do-rag that came from the victim's car  
12 belonged to the suspect.

13 Assistant District Attorney Susan Thompson indicated  
14 that she recalled at least one witness saying the do-rag was  
15 similar to one worn by Evans. She recalled it being found in the  
16 car. She stated a lot of black men wore do-rags and she did not  
17 recall anything about how it had been introduced during the trial.

18 During the -- during his deposition with the Commission,  
19 Mr. McDougall indicated that his photographs should still be with  
20 the SBI. The Commission had not initially received photographs  
21 when it requested the SBI file. The Commission contacted the SBI  
22 about those photographs and they were provided to the Commission  
23 after that.

24 Q. And was there a photograph from the SBI that appeared to  
25 depict the do-rag that was collected?

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1           A.     There was.

2           MS. SMITH: Commissioners, that photograph is on page 80  
3 your brief but I'm also going to put it on the screen.

4           Q.     Ms. Matoian, did commission staff follow up with law  
5 enforcement regarding the do-rag after obtaining the photograph?

6           A.     We did. We first looked at the outer packaging of the  
7 do-rag since we were able to collect that item. The plastic bag  
8 containing the do-rag indicated that it was collected by Pat Green  
9 on March 6, 1990, so the day after the crime and the same day the  
10 victim was found. Mr. McDougall's initials did not appear on the  
11 packaging.

12                   During a follow-up interview with Pat Green, he  
13 indicated that he seemed to recall some irritation with  
14 Mr. McDougall for not collecting this item. After being read a  
15 portion of Esley Manning's PI interview related to finding the  
16 do-rag, Mr. Green did recall Mr. Manning calling him about items  
17 left in the car.

18                   Mr. Green did think he would have documented collecting  
19 it with an inventory sheet or photograph. The Commission does not  
20 have any documentation related to collection of the do-rag. And  
21 Mr. Green maintained in both his interviews -- interview and  
22 deposition that he had no reason to believe the do-rag was not  
23 involved in this crime.

24           MS. SMITH: Commissioners, Handout 4 is an excerpt of  
25 the Commission's March 25, 2019, follow-up interview with Pat

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1 Green. It includes page 72, line 19, through page 73, line 17  
2 related to the do-rag, if you want to take a moment to review  
3 that.

4 THE COURT: The date of this was when?

5 MS. SMITH: This is Handout 4.

6 THE COURT: No, no. The date.

7 MS. SMITH: The date of the interview is --

8 THE WITNESS: -- March 25, 2019.

9 THE COURT: Thank you.

10 MR. BOSWELL: Ms. Matoian, is "Rick" and "Mr. McDougall"  
11 the same person?

12 THE WITNESS: No. Rick is Rick Sims and Mr. McDougall  
13 is David McDougall.

14 THE COURT: Rick is SBI?

15 THE WITNESS: And so is Agent McDougall, yes.

16 MR. BOSWELL: So may I ask?

17 THE COURT: Uh-huh.

18 MR. BOSWELL: When he says "I think Rick was a little  
19 disgusted because he didn't do a thorough job," that "he" he's  
20 referring to, that is Mr. McDougall?

21 THE WITNESS: That's correct.

22 MR. BOSWELL: And the "he" who was ill was  
23 Mr. McDougall?

24 THE WITNESS: Can you say that one more time?

25 MR. BOSWELL: It says "he was ill." I don't know if he

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1 didn't want to get called out in the middle of the night. So that  
2 "he" that Mr. Green is referring to is Mr. McDougall?

3 **THE WITNESS:** Yes. Mr. McDougall does have some ongoing  
4 health issues and he medically retired from the SBI, and that is  
5 who Pat Green is referring to in that portion.

6 **THE COURT:** Okay. But I don't think -- question: Do  
7 you have any idea that he meant he was physically ill or he was  
8 ill because he got called out in the middle of the night -- like  
9 in a really bad mood?

10 **MR. GRACE:** I got the impression that he was just upset  
11 that he had to be out there that night.

12 **THE COURT:** That's what I --

13 **THE WITNESS:** That was our impression, that he was --

14 **THE COURT:** Not that he was physically sick?

15 **THE WITNESS:** Correct.

16 **THE COURT:** Thank you.

17 **MS. COLBERT:** So this was at the crime scene but we're  
18 not sure if this is the one -- the same do-rag that Green had in  
19 the bag? Or are we saying that because the do-rag that Green had  
20 in the bag is something that was turned over by the victim's --  
21 the secondary victim's -- the husband three days after or a day or  
22 two after, but we don't know if that is the one that was at the  
23 crime scene at the car?

24 **THE WITNESS:** Based on what -- once we were able to find  
25 that photograph and see that it appeared to be a do-rag and go

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1 back, at that time Pat Green remembered Mr. McDougall had taken  
2 that item but it had been left in the car. So that is the one  
3 that was collected, the one that appears in the photograph of the  
4 screen. So there was not --

5 THE COURT: I'm confused. Explain that again.

6 THE WITNESS: Sure.

7 THE COURT: The do-rag we have right here was found by  
8 Green the next day?

9 THE WITNESS: Right.

10 So what we've been able to determine happened was that  
11 this do-rag was found outside of the victim's car at the crime  
12 scene where her car was located. Mr. McDougall noted that in his  
13 report and it at some point made its way into the victim's car but  
14 was not collected or packaged by Agent McDougall.

15 The next -- or the same day the victim was found, the  
16 same day that that was -- the car was searched, Pat Green  
17 collected it.

18 So it was just the day after the crime happened, the  
19 same day the victim was found.

20 THE COURT: This picture, this do-rag --

21 THE WITNESS: Yes.

22 THE COURT: -- was on the ground the day after Pat Green  
23 found -- on the ground?

24 THE WITNESS: Agent McDougall found it, noted it, and  
25 put it in the victim's car but did not collect it. And then the

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1 car was returned to the victims. The victims called Pat Green  
2 that they had located it and Pat Green went and collected it on  
3 March 6, 1990.

4 THE COURT: Yes, sir.

5 MR. GLAZIER: I wasn't confused until the last answer.

6 So McDougall found it and then put it in the car and  
7 didn't collect or report it, and it was from the car that it was  
8 then eventually collected?

9 THE WITNESS: Agent McDougall noted it, photographed it,  
10 but did not collect it. Other than that, you're correct.

11 MR. GLAZIER: Thank you.

12 MS. COLBERT: But McDougall said he didn't put it in the  
13 car.

14 THE WITNESS: He didn't recall anything about this.

15 MS. COLBERT: Okay.

16 THE WITNESS: I'm going to testify about him in just a  
17 second. But we followed up with him about this information as  
18 well and nothing jogged his memory about what happened.

19 MR. GRACE: The information you just related, where did  
20 it come from?

21 THE WITNESS: Pat Green.

22 THE COURT: Mr. Boswell has a question.

23 MR. BOSWELL: I don't. I just answered my own question  
24 in my head.

25 THE COURT: So y'all got this information from Pat

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1 Green?

2 **THE WITNESS:** Correct.

3 **MS. COLBERT:** And so it was noted -- I mean, based on  
4 the picture, 80, that there was a coat in the floor of the car but  
5 none of that in the -- none of that was part of any evidence that  
6 was collected or processed?

7 **THE WITNESS:** No. Agent McDougall noted both the do-rag  
8 and the photograph of the clothing in the front passenger  
9 floorboard of the victim's car. He notes the measurements of  
10 where the do-rag was and that that clothing was there but neither  
11 one of those items appears on the list of evidence collected.

12 **MR. GRACE:** When you say he "noted it," where did he  
13 note it being located?

14 **THE WITNESS:** I believe that was noted as being found  
15 33 feet away from the victim's car and the clothing was noted as  
16 being found in the front passenger floorboard. And the end of  
17 this report is a list of the evidence that he collected, and  
18 neither one of those items appears on that list.

19 **MR. GRACE:** Thank you.

20 **MS. COLBERT:** And so there is no record of whether that  
21 was the victim's coat or any member of the family's coat or --  
22 there was no listing of who that belonged to at all?

23 **THE WITNESS:** No, there was not. Like I said, we asked  
24 Mr. Evans, one of his family members, and the victim's daughter,  
25 and none were able to recognize those items of clothing today.

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1           **THE COURT:**   Okay.

2           **Q.**     Did commission staff do any follow-up after we received  
3     this photograph from the SBI?

4           **A.**     We did.   In addition to following up with Pat Green, we  
5     followed up with Rick Sims.   The photograph of the do-rag did not  
6     refresh his memory and he did not recall anything about  
7     Mr. McDermott -- Mr. McDougall's work on this crime scene or any  
8     attitude he might have had while processing the crime scenes.

9           **Q.**     Did the Commission follow up with Mr. McDougall as well?

10          **A.**     We did.   We showed him the photograph of the do-rag and  
11     that did not refresh his memory as to locating it or what he may  
12     have done with it.

13                   When told about the information from Pat Green's  
14     follow-up interview, Mr. McDougall did not ever remember having a  
15     disagreement with Rick Sims about his work on a case.   He said  
16     that since his only involvement in a case would be the crime scene  
17     work and not the actual investigation, he would usually check with  
18     the lead agent before leaving a crime scene to ensure that he had  
19     collected everything the lead agent wanted collected.

20           **THE COURT:**   So, again, the only independent --  
21     Mr. McDougall does not recall seeing that do-rag on the ground?

22           **THE WITNESS:**   No.   He does not have any memory.

23           **THE COURT:**   He does not recall picking it up and putting  
24     it in the car?

25           **THE WITNESS:**   No, he does not.

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1           **THE COURT:** So the only evidence we have of -- Pat Green  
2 is the only one that remembers any of that?

3           **THE WITNESS:** Correct.

4           **THE COURT:** Okay.

5           **MS. SMITH:** Commissioners, any further questions about  
6 the evidence collected in this case?

7           **MR. GRACE:** We have lots of questions.

8           **MS. COLBERT:** We don't have any answers.

9           **MS. NEWTON:** Could I clear just one thing that is  
10 bugging me -- it's not about the evidence -- if you don't mind.

11           It's Exhibit Number 16. Look at the date of offense of  
12 the incident of 93 CRS 2261 and 6163.

13           **THE WITNESS:** Do you mean Handout 16?

14           **MS. NEWTON:** Handout 16.

15           Is it possible that the date of the offense is wrong?

16           **THE WITNESS:** Where are you pointing out? I'm sorry.

17           **MS. NEWTON:** Second page. The date of the offense on  
18 these charges should be 3/5/90. He was arrested April 21, '94.

19           **THE WITNESS:** That is an error in the chart. We'll fix  
20 it.

21           **MS. NEWTON:** So it should be 3?

22           **THE WITNESS:** Yes.

23           **THE COURT:** Thank you.

24           **MS. SMITH:** We will have it corrected and a new one  
25 passed around at the next break.

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1           **MS. NEWTON:** That helps. Thank you.

2           **Q.** We are now going to turn our attention to forensic  
3 testing in this case.

4           Commissioners, a trace expert from the North Carolina  
5 State Crime Lab, Kristen Crawford, will be here to testify about  
6 hair analysis in this case. And independent expert Meghan Clement  
7 will be here to testify about the DNA testing conducted in this  
8 case.

9           Handout 5 in your hearing handout notebooks is a chart  
10 of forensic testing conducted in the case.

11           You received a version of this chart on page 161 of your  
12 brief that included all testing conducted prior to the  
13 Commission's involvement in the case. However, Handout 5 is an  
14 updated version of that chart which includes the testing conducted  
15 by the Commission in the case as well.

16           You may wish to refer to that chart throughout the  
17 testimony about the forensic testing in the case.

18           **MS. NEWTON:** Judge --

19           **THE COURT:** Yes.

20           **MS. NEWTON:** Could I ask if the commission staff --  
21 because it wasn't apparent to the extent -- did the commission  
22 staff ask for or receive any educational records or mental health  
23 records from -- for Mr. Evans' -- and history?

24           **THE WITNESS:** I don't know that we requested those  
25 records from DPS. And we know what Mr. Evans reported in his

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1 testing from the time that he's been in DPS. I don't believe we  
2 have anything that goes back prior to that Dorothy Dix assessment.

3 MS. NEWTON: Okay. So the Dix assessment -- and I'm  
4 sorry to jump a minute.

5 But the Dix assessment clearly relies on his self-report  
6 only. They got no educational records and they got no medical  
7 records to verify what he was telling them was accurate, that he  
8 never had any trouble except for some fight with the principal.

9 But we never got records to verify -- since Dix didn't,  
10 we never got educational records or medical records from his  
11 history?

12 THE WITNESS: No. We don't have anything prior to his  
13 time in DPS and what's reported in his DPS mental health records.

14 MS. NEWTON: Okay. Thank you.

15 Q. Ms. Matoian, please tell Commissioners about the hair  
16 analysis was conducted in this case.

17 A. The original testing in this case indicated that taping  
18 from the victim's bed were analyzed and one Negroid hair fragment  
19 was located which was not suitable for comparison.

20 The Commission submitted those same tapings to the NC  
21 State Crime Lab to have them determine exactly which hair the  
22 original analyst had identified as being the hair fragment with  
23 Negroid characteristics, and the crime lab was able to identify  
24 the hair.

25 Q. Were there any differences in the description of the

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1 hair between that 1993 examination and the 2018 examination?

2 A. Yes, there were.

3 As I just said, the original analyst described that hair  
4 as being a Negroid hair fragment. The 2018 examination by the  
5 crime lab described that hair as having mixed racial  
6 characteristics.

7 MS. SMITH: Commissioners, we do have the expert from  
8 the crime lab who will talk a little bit more about that in depth.

9 Does anyone have any questions for Ms. Matoian before we  
10 have the expert?

11 Judge Wagoner, we can either call the expert now or if  
12 you think it's time for break, we could do that first. Either  
13 way.

14 (Discussion off the stenographic record.)

15 THE COURT: All right. A couple of minutes.

16 (Recess taken, 11:39 to 11:53 a.m.)

17 THE COURT: All right.

18 MS. SMITH: Commission calls Kristen Crawford.

19 \* \* \* \* \*

20 Thereupon, KRISTEN CRAWFORD, a witness having been called by the  
21 Commission, was sworn and testified as follows:

22 EXAMINATION

23 BY MS. SMITH: (11:53 a.m.)

24 Q. Ms. Crawford, if you will please provide your full name  
25 and tell us where you're employed.

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1           A.    My name is Kristen Crawford, C-r-a-w-f-o-r-d, and I work  
2   for the North Carolina State Crime Laboratory in Raleigh, assigned  
3   to the trace evidence section.

4           Q.    And how long have you been there?

5           A.    Since September of 2005.  So I just reached my 14-year  
6   anniversary.

7           Q.    And what is your job at the crime lab?

8           A.    In the trace evidence section, I am working cases that  
9   involve fire debris evidence, hair evidence, and glass evidence.

10          Q.    And how long have you been in that role?

11          A.    Since I started.

12          Q.    I'm going to hand you a packet here.

13                Do you recognize that top document?

14          A.    Yes, I do.

15                **MS. SMITH:**  Commissioners, if you will refer to  
16   Handout 6 in your hearing handout notebooks, that is the CV of  
17   Ms. Crawford.

18          Q.    Ms. Crawford, what I handed you there, that top  
19   document -- is that your CV?

20          A.    It is, yes.

21          Q.    And does that include your experience and your  
22   education?

23          A.    It does, yes.

24                **MS. SMITH:**  Judge Wagoner, I'd like to tender  
25   Ms. Crawford as an expert in trace hair examination based on her

1 CV.

2 THE COURT: All right. She may testify as an expert in  
3 forensic -- what did you say?

4 MR. GRACE: Trace evidence.

5 MS. SMITH: Trace evidence.

6 THE COURT: Trace evidence. Thank you.

7 Q. Ms. Crawford, I've also handed you two reports, one from  
8 April 12, 1993, the original hair analysis in this case, along  
9 with the corresponding bench notes.

10 Do you see that there?

11 A. Yes, I do.

12 Q. And will that be helpful to your testimony?

13 A. Yes, it will.

14 Q. And then the third document I handed you was your  
15 8/3/2018 report related to this case.

16 Do you recognize that?

17 A. I do. This is actually the one from 8/6/2018.

18 Q. I'm sorry, 8/6/2018?

19 A. Uh-huh. It's an amended report.

20 Q. An amended report?

21 A. Yes.

22 Q. Okay. And would that help you with your testimony as  
23 well?

24 A. Yes, it would.

25 Q. Can you just explain to the Commissioners how hair

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1 analysis works?

2 A. Hair analysis is a broad term for several different  
3 types of examination that we do at the crime lab.

4 In our hair procedure, we kind of break it down into  
5 different types of exams. There's two main groups. First is a  
6 screen for DNA and then a microscopic hair examination. Under  
7 microscopic hair examination, it's broken down again into race  
8 classification, animal classification, and microscopic hair  
9 comparison. So those are kind of all the different types of exams  
10 we can do.

11 This case would have fallen under race classification.

12 Q. Okay. And then looking at that 1993 report, how does  
13 that describe the hair noted on the tapings from the bed in  
14 bedroom 1?

15 A. It says examination of the above listed evidence  
16 revealed the presence of --

17 (Reporter admonition.)

18 THE COURT: Slow down and speak a little bit louder.

19 THE WITNESS: Okay.

20 A. It says "Examination of the above-listed evidence  
21 revealed the presence of a hair fragment exhibiting Negroid racial  
22 characteristics on Item Number 4A, an evidence taken -- taping  
23 taken from the bedroom [sic] in bedroom number 1. This hair  
24 fragment is unsuitable for further comparison."

25 Q. Okay. So can you just generally tell the Commissioners

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1     what that means.

2           A.     So with race classifications, there are three general  
3     populations that we use to put hairs into. They are based on old  
4     anthropological terms and they refer to the three geographical  
5     areas where people originally descended from.

6                     So you have your European population, which is what we  
7     call Caucasoid; you have your African population, which is  
8     Negroid; and then you have your Asian population, which is  
9     Mongoloid.

10                    Those three terms are being updated currently, we just  
11    haven't quite gotten there yet. But they will change. They will  
12    still be the same three populations, they will just have a  
13    different name.

14                    But the reason -- or the way we can place them into  
15    different classifications is by the macroscopic and microscopic  
16    characteristics that are present in the hair.

17                    So macroscopically, I would look at the form, the color,  
18    maybe the length or, you know, different cosmetic treatments that  
19    might be done to it.

20                    Microscopically, I would look at pigment pattern,  
21    pigment distribution, pigment size, the medulla or maybe how thick  
22    or how thin the hair is, if it has any undulation which would be  
23    kind of like going from bigger to smaller, bigger to smaller.  
24    So ...

25           Q.     And did the Commission staff submit the evidence to you

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1 in 2018 to determine which hair was the Negroid hair fragment that  
2 was identified in that 1993 report?

3 A. Yes, they did.

4 Q. And were you able to determine which hair that was?

5 A. I did, yes.

6 Q. Okay. And the 8/3 -- I'm sorry -- the 8/6/2018 report  
7 that you have in front of you uses a little different language.  
8 It uses the language "mixed racial characteristics --"

9 A. Yes.

10 Q. -- rather than "Negroid hair fragment"?

11 A. Yes, it does.

12 Q. Can you explain to the Commissioners what accounts for  
13 that difference in the reporting language?

14 A. Okay. So hair is a subjective discipline. It is very  
15 much based on the training and experience of the examiner as well  
16 as their comfort level with, you know, the evidence that they are  
17 working with.

18 In the early '90s, I don't think "mixed racial" was an  
19 option as a race classification. I went back through our old  
20 procedures and our old training procedures for hair. The oldest  
21 hair procedure I could find was 1998, and it does list the three  
22 races plus mixed racial as an option.

23 As far as training procedures, I found a hair training  
24 procedure that just said pre-1997; so I'm not sure when it started  
25 or when it was written but it was used pre-1997, and it only lists

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1 three races as the options.

2 I think that this is because in the '40s and '50s,  
3 people mostly stayed within their race. '60s, '70s, everybody  
4 was kind of mixing, had a melting pot. So by the early '90s,  
5 when the babies from the '60s and '70s are in their 20s and  
6 30s, that's when we're going to start seeing any type of hair  
7 come into the lab and start seeing any mixed racial  
8 characteristics.

9 So as with anything in science, it always takes a couple  
10 years for it to catch up. So in 1998, they finally did put the  
11 third -- or the fourth class in there of mixed racial.

12 So I don't think that Joe Reavis had the option of mixed  
13 racial in 1993.

14 Q. Okay. And although you classified it differently -- as  
15 mixed racial versus the Negroid hair fragment -- is that hair that  
16 you examined the same hair that is named in the 1993 report?

17 A. I believe it is, yes.

18 Q. And you have attached to the 1993 report the bench notes  
19 from the analyst then, Joe Reavis.

20 A. Uh-huh.

21 Q. In those notes, there's several abbreviations.

22 Can you walk us through what the abbreviations mean?

23 MS. SMITH: And, Commissioners, those can be found on  
24 page 165 to 166 of your brief.

25 A. I printed the e-mail I had sent you --

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1 Q. Okay.

2 A. -- so that I don't accidentally misspeak. Did you just  
3 want me kind of go from top to bottom?

4 Q. That would be great, if you would just go from top to  
5 bottom.

6 A. All right. So starting at the top, item number 4, it's  
7 tapings from car door and inside house. Under 4A, he has -- let's  
8 see.

9 Do you want me to just to do the ones we had talked  
10 about or all of them?

11 Q. Just all the ones that you have listed in the e-mail.

12 A. Okay.

13 So where it says numerous fibers and then "few CHHF,"  
14 that would mean few Caucasian head hair fragments.

15 THE COURT: Say again.

16 THE WITNESS: Caucasian head hair fragments.

17 THE COURT: Okay.

18 A. "AH's" is animal hairs.

19 Below that, it says 1 NHF-NSA. And that is one Negroid  
20 hair fragment not suitable for analysis. So that means even if he  
21 did have a standard for comparison to that hair, it was not  
22 suitable for any further analysis.

23 Q. And that is the hair fragment that we've been talking  
24 about; correct?

25 A. Yes, ma'am.

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1 Q. Okay.

2 A. Below that, in 4B, there is a reference to "NUM.F,"  
3 which is numerous fibers. So those would not be hairs. And then  
4 there is a reference to "HF,C" with like a little line above it.  
5 I think that means hair fragments, Caucasian. So he just probably  
6 forgot to put the C in front of the HF and added it later.

7 And it says "No Negroid hairs/fragments" underneath  
8 that. So that means he did not find any hairs that exhibited  
9 Negroid characteristics in that taping being.

10 Under 4C, again there is the "NUM.F," which is numerous  
11 fibers. "HS," for hairs. I clarified that with Mr. Reavis, and  
12 he said he was pretty sure that it meant hairs. We were having an  
13 issue with that one. "FRG" is fragment. And then "All C" is all  
14 Caucasian. So numerous fibers, hairs, fragments, all Caucasian.  
15 No Negroid hairs.

16 4D, again, numerous fibers, hairs, fragments, all  
17 Caucasian. That's what that top line means.

18 And he has underlined below it "no Negroid hairs." And  
19 one "MFC-Fiber." Joe -- Mr. Reavis was not exactly sure what  
20 "MFC" was supposed to mean. We think it meant "manufactured," but  
21 it's a fiber. He said it's definitely not a hair. So it would  
22 not be the hair that we were talking about.

23 I think that's all.

24 Q. Okay. And so it's safe to say that, in addition to the  
25 one Negroid hair fragment that was not suitable for analysis in 4A

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1 that's recorded on that April 12, 1993, lab report, that there  
2 were some other hairs found both in items for 4A, 4B, 4C, and 4D?

3 A. Yes.

4 Q. So I just want to make sure that I understand, though,  
5 that the report only mentions the one Negroid hair fragment that  
6 was not suitable for analysis; is that correct?

7 A. Yes.

8 Q. Is there any reason why the other hairs wouldn't have  
9 been reported?

10 A. Our reporting language has changed a lot over the last  
11 couple of years. When I started in 2005, my reports probably said  
12 something like "did not reveal the transfer of any hair." That  
13 might have been a couple hundred hairs present, but we didn't  
14 actually put that in the results. Obviously, it's changed a lot  
15 since then. Now if I was writing this report, every single hair  
16 would be documented in the results.

17 But judging by the fact that when I was doing it in  
18 2007, you know, when I was first writing my first hair reports --  
19 and I know that I was not being that specific -- I would assume  
20 that in 1993 that was also the case, that this was probably  
21 totally normal. My guess is that because he was submitting the  
22 evidence for race classification, he was only reporting out the  
23 probative hairs that the agency would've wanted to know about.

24 Q. Okay. But as you just testified, you would do it  
25 differently today if you were looking at the same information?

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1           A.     Yes.

2           MR. BOSWELL:   Lindsey, can I ask a question?

3           MS. SMITH:    Yes.

4           MR. BOSWELL:   Do you mean that because many of the hairs  
5 were Caucasian and they were looking for a Negroid hair, that they  
6 wouldn't have tested the Caucasian ones, just the Negroid ones?

7           THE WITNESS:   Correct.

8           MR. BOSWELL:   Okay. I understand.

9           MS. SMITH:   Commissioners, I failed to tell you this,  
10 but that report was just before the bench notes on page 163 of  
11 your brief if you want to look at that.

12                   Are there any other questions from Commissioners for Ms.  
13 Crawford?

14                           (No response.)

15           MS. SMITH:   We have no further questions and I would ask  
16 that she be released.

17           THE COURT:    You may be released from your subpoena.  
18 Thank you so much.

19           THE WITNESS:   No problem.

20           THE COURT:    Hold on.

21           MR. BOSWELL:   I have another questions. It went too  
22 fast. So can I ask --

23           THE COURT:    Please have a seat again.

24           MR. BOSWELL:   When it says "not suitable for testing,"  
25 what does that mean? Not suitable for analysis?

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1           **THE WITNESS:** So back then -- well, it's hard to say. I  
2 don't know if he meant not suitable for analysis as in it was a  
3 fragment so nothing could be done DNA-wise because I'm not sure  
4 when we started doing DNA on hair roots. But this hair didn't  
5 have a root so you can't do anything with that.

6           Or if he meant not suitable for comparison. So if a  
7 standard from a suspect had been collected and came in, I don't  
8 know if he meant it was not suitable for comparison to a standard.

9           **MR. BOSWELL:** Right. So you -- this hair was -- you  
10 looked at this hair, it's in a bag somewhere and you've actually  
11 looked at it?

12          **THE WITNESS:** It was on a slide, yes.

13          **MR. BOSWELL:** You've looked at it?

14          **THE WITNESS:** Uh-huh.

15          **MR. BOSWELL:** Now, that we are 27 years later or  
16 25 years later, could you do more analysis now on a hair than you  
17 could have done back then?

18          **THE WITNESS:** So what I have in my notes is that it was  
19 about a centimeter long -- so that's pretty small. However, I am  
20 always of the mind-set that I'll give it a try. So if they were  
21 to get me a hair standard that was collected within five years of  
22 the date of offense of this case, then I would definitely try to  
23 do a hair comparison if I had a suspect standard and the victim  
24 standard and then any elimination or, you know, consensual  
25 partners or anything like that in the case.

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1 But I would always try.

2 MR. GRACE: Why five years?

3 THE WITNESS: Five years is generally how long it takes  
4 for your hair to completely replace itself. So -- I know. Fun  
5 fact for the day.

6 MR. BOSWELL: And which of the characteristics that you  
7 mentioned would be changed by hair treatments? If someone had  
8 their hair dyed or whatever?

9 THE WITNESS: That would depend what they did. If they  
10 bleached their hair, it's going to strip out all of the pigment  
11 and all of those interior characteristics that I really like to  
12 look at. I'm very much a pattern type person; so the first thing  
13 that always strikes me when I look at a hair under a microscope is  
14 the pattern of the pigment. So that would all be stripped out.  
15 And the hair itself would probably look very bland and just light  
16 yellow because everything is gone.

17 If they dye the hair, it depends what color. Sometimes  
18 it just kind of dyes the cuticle and some of the pigment. I have  
19 had cases where the suspect's girlfriend was blonde and she dyed  
20 her hair jet black so I couldn't do anything with it because under  
21 a scope, it just looks like this really ugly green color. And so  
22 there's no -- I know. There's no pigment to look at anymore. I  
23 can't do anything with it. There has to be something to base the  
24 comparison on, but they've covered up all of the pigment, they've  
25 covered up all of the stuff that I would use for a comparison.

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1           **MR. BOSWELL:** And I don't want to put words in your  
2 mouth. This is a question. So hair fragment that's 28 years old  
3 or 25 years old, like this one, there's nothing -- there's no  
4 analysis that you would do of that hair fragment now?

5           **THE WITNESS:** No. Like I said, if there were standards,  
6 I could have done a comparison or tried to do a comparison. But  
7 for the most part, the only thing that I believe it would be  
8 suitable for is mitochondrial DNA analysis, but we don't do that  
9 at the North Carolina State Crime Lab.

10          **MR. BOSWELL:** Okay. Those are all the questions. Thank  
11 you.

12          **MS. COLBERT:** So he opened up -- go ahead.

13          **SHERIFF FRYE:** So when it says -- now it says "mixed  
14 racial characteristics," which races are mixed in your analysis?

15          **THE WITNESS:** Well, so the form of the hair -- like if  
16 you're just visually looking at it, the form -- which was a little  
17 difficult for me because it was mounted on a slide so I couldn't  
18 see how it just sat on a table. But to me, the form looked  
19 Caucasian but it did have undulation or diameter variations; so  
20 that's kind of indicative of Negroid. So I was like, okay, you  
21 know, kind of a little bit of both.

22                 Under a microscope, the pigment pattern is what threw me  
23 because some of it was clumpy, which is very indicative of, you  
24 know, Negroid, and some of it was streaky, which is indicative of  
25 Mongoloid or Asian. So there was the kind of like all three in

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1 there.

2 I did have in here that it was possibly cosmetically  
3 treated. That could account for some of the streakiness in the  
4 pigment because it tries to pull out pigment. So it could account  
5 for that but I didn't know because there's no -- being that it's a  
6 1-centimeter hair, there was no line of demarcation which would  
7 show me here is the hair naturally, here is what they have done to  
8 it.

9 **SHERIFF FRYE:** Gotcha.

10 **MS. COLBERT:** That was my question.

11 **MR. GRACE:** I have a question as well.

12 Going forward, even if you change the names of the three  
13 categories to be PC, where do y'all start with African hair? I  
14 mean, most of your -- I assume most of your analyses are hair  
15 samples from people born here.

16 What is your baseline? Is it the old African Negroid  
17 hair? Is it going to be something that reflects the fact that  
18 very few African-Americans are purebred? I mean, are all races  
19 now.

20 **THE WITNESS:** Yeah.

21 **MR. GRACE:** A bit of everything.

22 **THE WITNESS:** I would say a lot of the cases I see now,  
23 a lot of things go out of mixed racial, more and more common. In  
24 2007, when I first started, not a lot of things I saw were mixed  
25 racially, and now it's got to be every other case or so. So it is

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1 pretty common.

2 But there is -- in our training, there is specific  
3 traits that are shared by those three geographical populations  
4 that we base everything on. So if I see traits from this one and  
5 this one in one hair here, then it's mixed racial. In this case,  
6 I saw traits from all three. So it's mixed racial.

7 I don't know if I answered your question.

8 **MR. GRACE:** Well, if you take what used to be -- or if  
9 you go back before 250 years and get the hair of an African that  
10 had the makeup, but I don't know many African-Americans now who  
11 would have --

12 **THE COURT:** Correct.

13 **MR. GRACE:** -- that purity in their blood system and in  
14 their hair.

15 **THE WITNESS:** Correct. It's basically just historical  
16 data that we know and we are applying it to now. At some point, I  
17 venture to guess we're going to get to a point where everyone is  
18 mixed racial, especially in the hair.

19 Now, just because your hair is mixed racial doesn't mean  
20 that's how you look. And I don't know if anybody was here when  
21 Lindsey Admire was testifying but she is --

22 **MS. SMITH:** Some of them were; some of them weren't.

23 **THE WITNESS:** She's Caucasian, you know. But under a  
24 microscope, her hair is mixed racial. She has Negroid  
25 characteristics in her hair. So when I was looking at her hair

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1 during training, I characterized her as mixed racial but she does  
2 not look mixed racial at all. So it is not indicative of your  
3 outward appearance or how you identify yourself.

4 **MR. GRACE:** But does it give you a bias? If you look at  
5 it -- in this country, "mixed racial" means I'm looking for  
6 someone that's black.

7 **THE WITNESS:** I guess I don't --

8 **MR. GRACE:** If it is a white/black mix, I mean the old  
9 adage if you've got 1 percent black blood in it, you're black.

10 But in this case, we're looking for someone who  
11 identifies as African-American and it's mixed racial hair.

12 Why couldn't it be someone who is not identifying as  
13 black?

14 **THE WITNESS:** I think I'm not understanding. I'm sorry.

15 **THE COURT:** I'm not either. Repeat your question,  
16 please.

17 **MR. GRACE:** Well, this sample is mixed racial. And the  
18 person that everyone assumes this hair came from identifies as  
19 African-American.

20 **THE WITNESS:** Okay.

21 **MR. GRACE:** If we identify it based on the hair, it  
22 could be someone who self-identifies or was identified by society  
23 as someone white.

24 **THE COURT:** Just like that lady you indicated.

25 **THE WITNESS:** Right. Yes. It's just many years ago,

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1 doing a race classification analysis was a lot more helpful than  
2 it is now. We actually don't perform these that often anymore.  
3 It's kind of a last-ditch effort of we don't have anything else,  
4 tell me about this.

5 **MR. GRACE:** So for our purposes, the fact that it's a  
6 mixed racial hair shouldn't mean anything to us, should it?

7 **THE WITNESS:** It wouldn't really mean a whole lot  
8 without a hair standard to do a comparison.

9 **MR. GRACE:** That was the question I was trying to get  
10 to. Thank you.

11 **MR. BOSWELL:** Maybe you answered this before, but if we  
12 had a hair standard from the person we were trying to exclude,  
13 if -- some 25 years later, would you be able to include or exclude  
14 them based on the distance in time between two hairs?

15 **THE WITNESS:** No. Those would -- if there was a hair  
16 standard collected today, it would not be suitable for comparison  
17 to the hair from 1992.

18 **MR. BOSWELL:** Okay.

19 **THE WITNESS:** If it happens to be that he was -- or  
20 whoever it is was, I don't know, a standard was collected for  
21 whatever reason within five years -- and we've had that happen,  
22 you know, in very rare cases, where it just happened to be a  
23 couple years later, that person was arrested again, another hair  
24 standard was collected, and we were able to use that from another  
25 case in this one.

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1           **MR. BOSWELL:** Right.

2           **THE WITNESS:** But as far as I know, I don't have that in  
3 this case.

4           **MR. GLAZIER:** And I apologize for prolonging this, but  
5 John's question raises another question for me.

6           So I understand that you might not be able to do it  
7 microscopically that far apart, but you would be able to at least  
8 say whether the alleged perpetrator or whoever it belonged to,  
9 current hair is exhibiting multi -- mixed racial characteristics  
10 or not; right?

11           You would at least be able to do that analysis. That  
12 wouldn't change because it's 25 years later, would it?

13           **THE WITNESS:** Probably not. It -- being -- it would not  
14 change, but the characteristics in your hair also are affected by  
15 your environment, sometimes what you eat, and any type of cosmetic  
16 treatments you do. Like I said, this one kind of looked  
17 cosmetically treated. So if it's been 20-something years and they  
18 haven't cosmetically treated their hair the same way ever since  
19 then, it would look different.

20           **MR. GLAZIER:** So you're telling us, as I understand it,  
21 that hair analysis at that level, at the racial identification  
22 level, is so subjective that the passage of time makes -- going  
23 back to Mr. Grace's comment -- essentially makes even that  
24 analysis irrelevant the longer the passage of time.

25           **THE WITNESS:** The -- I don't think it's completely

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1 irrelevant, but we do have a disclaimer. So when hair standards  
2 are collected a good bit of time after the date of offense, there  
3 is a disclaimer we put on the reports saying that hair  
4 characteristics change with the passage of time, and, you know,  
5 15 months have passed since the date of offense and the collection  
6 of the known standard from whoever just so that other people are  
7 aware that, you know, they may have gone and dyed their hair jet  
8 black so your conclusion might say it's not consistent with, but  
9 that -- it isn't, but that doesn't really mean a whole lot if they  
10 went and dyed their hair jet black.

11 **MR. GLAZIER:** Thank you very much.

12 **THE COURT:** Further questions? Last chance.

13 **MR. BOSWELL:** No, I'm good.

14 **THE COURT:** All right. Thank you so much. You may be  
15 excused.

16 (Witness stands down, 12:21 p.m.)

17 **MS. SMITH:** I am going to recall Catherine Matoian.

18 (Catherine Matoian recalled.)

19 **THE COURT:** And you are still under oath, please, ma'am.

20 \* \* \* \* \*

21 BY MS. SMITH: (12:21 p.m.)

22 **Q.** Ms. Matoian, does the commission staff have a hair  
23 standard for Mr. Evans that was collected within five years of the  
24 crime?

25 **A.** No, we do not. Hair standards for Mr. Evans were

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1 submitted to the crime lab back in 1993 with the report that  
2 Ms. Crawford was just testifying about, but that is an item of  
3 evidence that the Commission does not have.

4 Q. Did the Commission ultimately have DNA testing conducted  
5 on the hair fragment?

6 A. We did. However, the testing did not produce any DNA  
7 profile.

8 Q. What type of testing was that?

9 THE COURT: Would you repeat your question? I was  
10 writing something.

11 MS. SMITH: Sure.

12 Q. Did the Commission ultimately have DNA testing conducted  
13 on that hair fragment?

14 A. We did. And to answer Lindsey's next question, we had  
15 an MtDNA testing, that's mitochondrial DNA testing, which is done  
16 on hairs when you don't have a root.

17 Q. And was there profile developed?

18 A. No, there was not.

19 MS. SMITH: Commissioners, our independent DNA analyst,  
20 Meghan Clement, is going to testify much more about that testing  
21 and will explain those results.

22 MR. GRACE: Will you tell me again when that hair sample  
23 was taken?

24 THE WITNESS: The hair sample for Mr. Evans? I believe  
25 that was just collected in either 1992 or 1993.

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1           **Q.**   And we don't have that?

2           **A.**   We do not.

3           **MR. GRACE:**   Do we have any test results from it?

4           **THE WITNESS:**   Only the lab report that was provided in  
5 your brief, that it was submitted along with those items to be  
6 compared.   But they were not able to do any comparisons because  
7 that hair fragment was not suitable.

8           **MS. SMITH:**   Commissioners, I will refer you again to  
9 Handout 5 in your hearing handout notebooks.   That's that forensic  
10 testing chart.   It may be helpful to you as Ms. Matoian walks  
11 through some of the testing the Commission had conducted in this  
12 case.

13          **Q.**   Can you tell the Commissioners about testing that the  
14 Commission had conducted on the do-rag?

15          **A.**   We submitted the do-rag to NMS labs for STR DNA testing.  
16 The analyst vacuum-swabbed the areas of the do-rag she believed a  
17 person wearing it would have been most likely to touch.

18          **Q.**   And was any profile developed from that testing?

19          **A.**   Yes.   There was a partial STR DNA mixture profile  
20 developed.

21          **Q.**   And did commission staff have any individuals compared  
22 to that profile?

23          **A.**   Yes, we did.   The Commission initially had Mr. Evans  
24 compared to the profile and he was excluded as a contributor.  
25 Commission staff later obtained voluntary DNA samples from Pat

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1 Green, David McDougall, Larry Davis, and Jackie Manning Kemp who  
2 is the victim's daughter -- and all of these individuals were  
3 excluded from that mixture as well.

4 Q. Why did commission staff obtain a DNA sample from the  
5 victim's daughter, Jackie Manning Kemp?

6 A. The Commission was not able to obtain a DNA standard for  
7 the victim as she is deceased. Because it appears that the do-rag  
8 was found in the victim's car by her husband and turned over to  
9 Pat Green, commission staff wanted to compare Jackie Manning  
10 Kemp's profile to see if there was any familial link between her  
11 DNA and the DNA found on the do-rag. However, NMS Labs notified  
12 the Commission that due to the nature of the DNA mixture profile,  
13 they were not able to compare for any familial link and could only  
14 do a direct comparison to Ms. Kemp from which she was excluded as  
15 a contributor.

16 Q. Did the Commission obtain a DNA standard for Rick Sims?

17 A. We did not. We asked Mr. Sims for a voluntary DNA  
18 sample during his deposition, and he indicated at that time that  
19 he wanted to think about it. After the deposition, we learned  
20 from looking at the packaging of the do-rag that it was collected  
21 by Pat Green on March 6, 1990, and Mr. Sims had also indicated to  
22 the Commission that he had no reason to touch any evidence at  
23 crime scenes.

24 Based on this information from how the do-rag was  
25 ultimately found and collected, it did not appear that Mr. Sims

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1 had touched the do-rag at any point in time and we did not ask him  
2 again for the voluntary DNA sample.

3 Q. Did the Commission submit that mixture profile for  
4 consideration for upload into the CODIS system?

5 A. We did. We submitted it to the crime lab in 2018, and  
6 the crime lab notified the Commission in February 2019 that the  
7 mixture was not suitable for search or entry in the CODIS  
8 database. There are guidelines that profiles must meet in order  
9 to be searched or entered into that database, and that profile was  
10 not eligible.

11 Q. Did the Commission do anything else in an attempt to  
12 determine the source of the mixture from the do-rag?

13 A. We did. The Commission contacted both Parabon Nanolabs  
14 and Bode Cellmark Forensics to determine if this profile was  
15 suitable for genetic genealogy searching.

16 Both labs indicated to the Commission that due to the  
17 nature of the profile developed and the amount of DNA present, it  
18 was not eligible for this type of testing.

19 Q. Did the Commission have any other items tested in this  
20 case?

21 A. We did. The Commission collected the tape that had been  
22 on the victim's eyes, tape and rope used to tie her hands, and  
23 tape from the victim's mouth. The Commission had DNA testing  
24 conducted on all of these items; however, there was an  
25 insufficient amount of DNA developed at the quant stage on all of

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1       them and no further testing was conducted on those items.

2               **MS. SMITH:** Commissioners, again, I will call Meghan  
3       Clement after the lunch break. But do you-all have any questions  
4       for Ms. Matoian about the DNA testing in this case?

5               Ms. Clement will be able to go through the science a  
6       little bit more in-depth for us and talk about all of these  
7       testing results.

8               (No response.)

9               **MS. SMITH:** At this time, I think we're at a good place  
10       to break for lunch.

11              **THE COURT:** All right. Then we will break for lunch and  
12       resume at what time?

13              **MS. SMITH:** Actually, before we break for lunch, we had  
14       a little bit further questions about the collection of the do-rag  
15       so I'm going to ask Ms. Matoian to walk us through that series of  
16       events as we understand it one more time.

17              **THE COURT:** Okay.

18              **THE WITNESS:** Let me get back to my pages.

19              So what we know about the do-rag is that Mr. McDougall  
20       photographed the do-rag, which was the picture I believe on  
21       page 80 of your brief. He photographed that do-rag and noted it  
22       in his report as being found approximately 33 feet away from the  
23       victim's vehicle.

24              **THE COURT:** On the same day?

25              **THE WITNESS:** Yes. That is March 6, 1990. The victim

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1 was kidnapped March 5, 1990. She was found between 6:00 and 7:00  
2 the next morning. And after that, her car was located in the  
3 woods.

4 So Mr. McDougall had processed her home as the first  
5 crime scene. And once she was found, he then processed the second  
6 crime scene, which was the car, and that was on March 6, 1990.

7 And you can tell because those pictures are during the  
8 daytime. The pictures from her home are at night.

9 He photographed the do-rag and he noted its location in  
10 his report; however, at the end of his report, there is a list of  
11 items that he collected and that he referred to it as a scarf.  
12 The scarf does not appear on the list of items collected.

13 What we were able to learn from Pat Green after showing  
14 him the photograph and reading to him from the victim and the  
15 victim's husband's interviews with the defense PI, Pat Green then  
16 recalled that McDougall had taken that do-rag from outside of the  
17 car, it had been placed in the victim's car at some point, and not  
18 collected.

19 The victim's car was then returned back to her, based on  
20 the date of the packaging of the do-rag, that same day,  
21 March 6, 1990. The victim's husband by all accounts was eager to  
22 get all the fingerprint powder off of all of his items in his home  
23 and his car. He was cleaning the fingerprint powder off of the  
24 car and located the do-rag then.

25 He then contacted Pat Green and Pat Green collected it.

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1 So his initials are on that packaging stating that he collected it  
2 on March 6, 1990.

3 There is no report from Mr. Green collecting it. There  
4 is no chain of custody form indicating when he collected it. But  
5 that is Mr. Green's recollection now.

6 Mr. Sims and Mr. McDougall do not have any recollection  
7 as to the collection of the do-rag.

8 We know from the draft closing argument in Larry  
9 Norman's file that the location of the do-rag was brought up at  
10 trial. He indicates in there that there was some question as to  
11 how it was found and that it was found later on, after the crime  
12 scene had been processed.

13 So that is what we know about the do-rag.

14 **THE COURT:** Do we have any indication -- was there a way  
15 of testing -- or just -- deciding what the weather had been to see  
16 how long -- if it had just been there for a few hours? Or could  
17 it have been there for two days?

18 **THE WITNESS:** I don't recall seeing anything in the file  
19 about that.

20 **THE COURT:** So it was spring ...

21 **THE WITNESS:** We can check the weather report. I know  
22 the victim -- the ground was wet but may have been morning dew,  
23 because she mentioned she didn't have shoes on but she had hose  
24 on, and so when she was leaving her car and walking to the road,  
25 she recalled slipping.

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1 I do know that there was mention in the file that there  
2 was a tear in the do-rag. JoAnn Clemonts -- the draft closing  
3 argument says that JoAnn Clemonts noted that the do-rag appeared  
4 to not be in the same condition as the one she said she had seen  
5 Mr. Evans wearing before. But that's all we know about the  
6 condition of the do-rag.

7 **THE COURT:** All right. Further questions?

8 (No response.)

9 **MS. SMITH:** All right. Now I would suggest that we  
10 break for lunch. I think 45 minutes, maybe 1:15, would be fine if  
11 that's good for the Commissioners.

12 **THE COURT:** 45 minutes okay for everybody?

13 Okay. 1:15, then, we will resume.

14 (Recess taken, 12:31 to 1:20 p.m.)

15 **THE COURT:** I think we've got everybody.

16 **MS. SMITH:** The Commission will call Meghan Clement.

17 **THE COURT:** Okay. Meghan Clement.

18 \* \* \* \* \*

19 Thereupon, MEGHAN CLEMENT, a witness having been called by the  
20 Commission, was examined and testified as follows:

21 **EXAMINATION**

22 **BY MS. SMITH:** (1:20 p.m.)

23 **Q.** Good afternoon.

24 **A.** Good afternoon.

25 **Q.** Please state your name for the Commission.

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1           A.    My name is Meghan Clement.

2           Q.    And how are you employed?

3           A.    I am self-employed.  I am a forensic DNA consultant.

4           Q.    And did you recently provide commission staff a copy of  
5 your CV?

6           A.    I have, yes.

7                   MS. SMITH:  Commissioners, if you will refer to Handout  
8 7 in your hearing handout notebooks, that is Ms. Clement's CV.

9           Q.    Ms. Clement, approximately how many times have you  
10 testified as an expert?

11          A.    Slightly over 375 times now.

12          Q.    And have you testified for both the prosecution and for  
13 the defense?

14          A.    Yes, I have.

15          Q.    Have you previously testified before the Commission?

16          A.    Yes, I have.

17          Q.    Where did you go to school?

18          A.    I received my Bachelor of Science in Biology from  
19 Westfield State College in Massachusetts and my Master of Science  
20 in Forensic Sciences from the University of New Haven in  
21 Connecticut.  I also attended graduate-level courses at the  
22 University of New Mexico in Albuquerque as well as obtained  
23 graduate-level credits from the University of Virginia through  
24 courses that I actually took at the FBI Academy in Quantico,  
25 Virginia.

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1           Q.    And how long have you been working in the field of  
2 forensic biology?

3           A.    A little over 35 years now.

4           Q.    And do you have any board certifications?

5           A.    Yes. I am board certified in molecular biology through  
6 the American Board of Criminalistics.

7           MS. SMITH: Your Honor, based on Ms. Clement's CV and  
8 her testimony here, we'd ask that she should be qualified as an  
9 expert in forensic biology.

10          THE COURT: Okay. She may be testifying as an expert in  
11 forensic biology.

12          Q.    All right. Ms. Clement, have NMS Labs, Bode Cellmark  
13 Forensics, and Sorenson Forensics conducted testing in this case?

14          A.    Yes, they have.

15          Q.    And have you had an opportunity to review all of the  
16 testing done by these labs including the underlying data?

17          A.    Yes, I have.

18          Q.    Are you comfortable testifying about all of that  
19 testing?

20          A.    I am.

21          Q.    Can you just briefly describe for the Commissioners how  
22 DNA might be left on an item?

23          A.    Sure. DNA can be left on an item in any number of ways,  
24 either through directly touching an item or directly depositing  
25 blood on an item or through sexual --

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1           **THE COURT:** If you could speak up just a little bit and  
2 maybe slow down a bit too.

3           **A.** Sorry.

4           Through sexual activity, if you are cut and you're  
5 bleeding, you can directly deposit blood onto an item.

6           You could indirectly deposit DNA on items either through  
7 sneezing -- if I sneezed, I could deposit my DNA on this table  
8 without touching it. Also, shed hairs could fall off, could be  
9 deposited on somebody else's clothing as you walk by.

10          So there is virtually any number of ways DNA could be  
11 transferred to an item.

12          **Q.** And can you describe for the Commissioners a little bit  
13 more about what touch DNA is?

14          **A.** Yes. Touch DNA can refer to one of two things. Some  
15 laboratories define touch DNA as just very small quantities of DNA  
16 that may be left behind through actually touching an article. But  
17 also, touch DNA is referred to as any DNA that is left behind by  
18 the direct contact.

19          **Q.** What factors affect the amount of DNA that is left  
20 behind from touch DNA?

21          **A.** The factors that will influence how much DNA is left is  
22 how long an item is touched, the force with which it is touched --  
23 if you just touch something gently, you're not going to leave as  
24 much DNA as if you grab ahold of it and pull on it or rub your  
25 hand on it repeatedly. The amount of surface area that comes into

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1 contact -- if you touch with your tip of your finger, there's  
2 going to be less DNA than if you touch with your whole hand.

3 I'm trying to think. Some people are considered  
4 "shedders," which means that their DNA is shed more readily than  
5 others. Temperature -- if you're sweaty, you can have more DNA  
6 that comes off when you touch something than if you just washed  
7 your hands and dried them on a paper towel, there will be less DNA  
8 there to deposit. So a number of factors.

9 Q. Okay. I'm going to hand you what the Commissioners have  
10 as Handout 5, which is the forensic testing chart that was created  
11 by the commission staff.

12 Have you had a chance to look at that before today?

13 A. I have, yes.

14 Q. Do you recognize that?

15 A. I do.

16 Q. Would it be helpful for you as you testify today?

17 A. Yes.

18 Q. Does that accurately describe the testing and  
19 comparisons that were conducted in this case?

20 A. It does, yes.

21 Q. Okay. If you will start going through the testing item  
22 by item in the order that they are in Handout 5.

23 A. Sure.

24 Q. And briefly explain what the results are and what they  
25 mean.

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1           So we will start then with the do-rag. If you can  
2 explain the testing conducted on that.

3           A. Okay. In 1993, the North Carolina Crime Laboratory  
4 looked at the do-rag. They didn't recover hair from it and they  
5 did not perform any other testing as far as biology was concerned.

6           In 2018, the Commission sent the do-rag to NMS  
7 Laboratories, and here, they were able to develop a partial mixed  
8 profile on the do-rag, and they reported it as coming from at  
9 least two individuals and one of them had to have been male. One  
10 of the areas that they test is called the amyloidogenic area that  
11 looks for the X and Y chromosomes. A male has an X and a Y; a  
12 female only has two Xs. So they saw the Y chromosome and knew  
13 that at least one of the contributors had to have been male.

14           The way they had performed this testing was they  
15 performed what's called a vacuum collection methodology, an M-Vac.  
16 The way that works is they actually spray water on an article of  
17 clothing and the cells will then be vacuumed up when the water is  
18 vacuumed from that article of cloth or fabric that they are trying  
19 to obtain the DNA from. Once they have that collected, they can  
20 run it through a filter and then they use the cells that are on  
21 the filter to test. And so that's what NMS Laboratories had  
22 performed in this case.

23           The sample that they took was from what they called the  
24 underside of the do-rag, which would've been the portion that came  
25 into contact with the head and the strand area of the do-rag.

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1           Q.    Okay.  Can you tell the Commissioners what STR DNA  
2 analysis is?

3           A.    Sure.  STR DNA analysis is the most common ISO DNA  
4 that's used in all laboratories throughout the United States.  It  
5 now looks for anywhere from 22 to 27 different areas of DNA.  
6 These are areas that are well defined.  Everybody has these  
7 particular areas, we just have different expressions of them.

8                   And so on this particular case, when they obtained only  
9 a partial profile at NMS Laboratories, they only received results  
10 where approximately -- I believe it was eight different locations  
11 out of the 26 that they tested for.

12          Q.    Okay.  And in reviewing the testing the Commission had  
13 conducted on the do-rag, did you also see that the Commission had  
14 a second lab, Sorenson Forensics, do additional testing on the  
15 do-rag?

16          A.    Yes.  The do-rag was sent to Sorenson Forensics, and  
17 they also used a vacuum type collection on the entire interior  
18 portion of the do-rag and they were not able to obtain sufficient  
19 amounts of DNA that -- so that they felt they would not obtain any  
20 result.  So the testing was stopped after the quantitation  
21 results.

22                   **THE COURT:**  Can I ask a question?  This, where it says  
23 "No male DNA detected," but the one before said there was at least  
24 one male.

25                   **THE WITNESS:**  Correct.

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1           **THE COURT:** So it was because there wasn't enough on  
2 this one or saying that Sorenson found no male DNA detected?

3           **THE WITNESS:** Correct. They found very, very minor  
4 amounts of DNA, Sorenson, and it's probably because NMS had  
5 previously tested the exact same article of clothing, the do-rag,  
6 and in exactly the same way. They both used vacuuming. And so  
7 NMS Laboratories had probably collected almost all of the cellular  
8 material and DNA before Sorenson; so there was virtually nothing  
9 left for them.

10          **THE COURT:** Okay.

11          **Q.** Ms. Clement, were you made aware that the NMS testing  
12 originally, when they tested the do-rag, they did not obtain an  
13 STR DNA profile off of the do-rag due to what they called an  
14 inhibitor issue?

15          **A.** Yes. The very first portion of the testing that NMS  
16 Laboratories did yielded no results, and they subsequently  
17 identified what's called an inhibitor -- the presence of an  
18 inhibitor. And an inhibitor is simply something that will prevent  
19 the DNA from being genetically photocopied so that you can detect  
20 it further downline.

21               It was detected in their laboratory. They had noticed  
22 that there were issues, and so they had gone back and researched  
23 to determine what the issue was. Once they identified the issue,  
24 they then went to the original extract and they performed a  
25 cleanup step which filters out the inhibitor, and then they were

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1 able to go back to the extract and actually create the  
2 amplification process which allowed them to obtain results further  
3 on.

4 Q. And you had a chance to speak to NMS Labs about that and  
5 their issue?

6 A. I did, yes.

7 Q. And I think that you just said, but just to confirm,  
8 they were able to resolve the inhibitor issue which then allowed  
9 them to go back to the original extract and actually obtain a DNA  
10 profile from that testing?

11 A. Yes. It is --

12 THE COURT: One question here. Yes.

13 MR. GLAZIER: I may be jumping the gun but when you say  
14 "the inhibitor," can you tell you us what the inhibitor was and  
15 how you can account for that variable and then get past that?

16 THE WITNESS: Sure. They don't know exactly what the  
17 inhibitor was, and oftentimes you don't have in the laboratory.  
18 It can be identified by a number of means. The first thing that  
19 happens when you have a sample to extract and to be able to  
20 release the DNA, then you quantitate it. The quantitation method  
21 has got some indicators which might give you an idea there's an  
22 inhibitor present, and you can deal with it at that step.

23 It didn't happen at NMS this way. They only identified  
24 an inhibitor when they tried to amplify, and they said, "Well, our  
25 quantitation is telling us we have more than enough DNA but we're

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1 not getting any result at all so there is something that is not  
2 right here." And they went back and they looked. What they  
3 determined was that -- in their extraction process, they use an  
4 automated instrument, and there are two different types of kits  
5 that can be used for the extraction.

6 One was called a tissue kit, which is more traditionally  
7 used with biopsy tissues and used more traditionally in a medical  
8 setting, although it is also used in a forensic setting because we  
9 do DNA on biopsy samples often. The other one is called an  
10 investigator kit. So those are two names that were given by the  
11 commercial company that provides them.

12 They were using a tissue kit, and when they determined  
13 that there was a problem -- they had tested a number of samples in  
14 their laboratory on both the tissue kit and the investigator kit  
15 and found that the DNA forensic samples would work with the  
16 investigative kit but not the tissue kit.

17 So there was some chemical in the tissue kit, and they  
18 didn't quite identify it, but what they did find is when they took  
19 the extract from the samples that were extracted with the tissue  
20 kit and you run it through a cleanup, a filter cleanup, it would  
21 get the inhibitor out, and then you could then use the DNA. And  
22 that's what they did. They just filtered out the DNA from the  
23 tissue kit extract and were able to then amplify the sample to get  
24 results.

25 **MR. GLAZIER:** May I follow up?

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1           **THE COURT:** Yes, sir.

2           **MR. GLAZIER:** And this is a bit of a digression but I'm  
3 just curious. So when they identified the inhibitor as some  
4 chemical that may be involved in the tissue kit, did they then  
5 report that to the company that has that so that that particular  
6 problem is resolved and that doesn't happen in samples all across  
7 the country using that kit?

8           **THE WITNESS:** I did not get into the conversation of did  
9 they report it to the company. They certainly did document it and  
10 they went through the whole process in their laboratory of  
11 notifying all the clients that -- cases that it affected.

12           The company may have known because the company, I  
13 believe, recommends the investigator kit for traditional DNA  
14 forensic samples. And so it's just -- and the company -- I don't  
15 know whether they notified the company or not. I really can't  
16 speak to that.

17           **MR. GLAZIER:** Just curious. Thank you.

18           **MR. BOSWELL:** The contamination was in the kit, not on  
19 the do-rag?

20           **THE WITNESS:** And it wasn't a contamination, it was  
21 simply something that was preventing the genetic photocopying of  
22 the areas of DNA that were to be tested. So it doesn't change the  
23 DNA for the do-rag at all. It didn't contaminate it whatsoever.  
24 It just basically blocked analysis to go further.

25           So once you've extracted your DNA and you quantitate it,

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1 the genetically photocopied areas -- the 26 different areas where  
2 we know there are differences in the population, and what was  
3 happening is there was something in there that wasn't allowing  
4 that replication to occur. So it wasn't changing it at all and it  
5 wasn't contaminating it, it was just not allowing it to proceed.

6 **MR. BOSWELL:** Can you define what you mean when you say  
7 you "quantitate it"?

8 **THE WITNESS:** Sure. When you extract a sample, you  
9 take -- in this case, they took the vacuuming and then they filter  
10 that. They take the filter and they add chemicals to it to break  
11 open the DNA from the cells on the filter.

12 Once you have broken up the DNA and you have been able  
13 to separate that from the rest of the cellular material, you need  
14 to quantitate it to determine approximately how much DNA do I have  
15 left or how much DNA have I been able to recover. So out of the  
16 50 microliters of this liquid, and your DNA is all in there, you  
17 take 2 microliters or 1 microliter -- different labs will do it  
18 different ways -- and you then quantitate and say, "How much DNA  
19 do I have in this 1 or 2 microliters?" so that you can then  
20 project what's left in your 48 or 49.

21 So you know the total amount that you have to use and  
22 you know the approximate concentration. So that's the  
23 quantitation as to quantifying approximately how much DNA have I  
24 been able to recover.

25 **MR. BOSWELL:** Thank you.

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1           Q.    Ms. Clement, the Commission had a profile developed for  
2 the victim's daughter, Jackie Manning Kemp, and before you came in  
3 this afternoon, Ms. Matoian testified that NMS Labs was unable to  
4 compare her profile from the do-rag to determine if there was a  
5 familial link between her and the contributors to that mixture and  
6 then just did a direct comparison.

7                   Were you able to do any comparison between Ms. Kemp's  
8 profile and the mixture from the do-rag to determine if there was  
9 a familial link?

10          A.    I did look at that, and I have to make a couple of  
11 assumptions to make that comparison. The first is that I'm going  
12 to assume that this is actually a profile from two individuals.  
13 It's reported as at least two, but for me to make the comparison,  
14 I have to say, "Okay, if this is a profile from two individuals at  
15 least one of which is a male and I am seeing all of the alleles  
16 from these two individuals, then I can compare the reference  
17 sample of Ms. Kemp to that to determine whether there can be a  
18 familial exclusion."

19                   I did that, and there are two locations, loci, where  
20 there was informative information. At the -- one of them is  
21 called the TH01. There was a 7, 8, and 9 characteristics obtained  
22 from the do-rag, and Ms. Kemp has a 9.3, 9.3. So we know she had  
23 to get a 9.3 from her father. If that -- this 01 on the do-rag,  
24 7, 8, and 9, there is no 9.3; so that could not have come from her  
25 father.

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1           And then there was a second location, the VWA, which has  
2   a 14, 16, 17, and 18. Ms. Kemp has a 15 and 19; so her father had  
3   to give her either the 15 or the 19, and neither of those were  
4   seen in the do-rag which only had a 14, 16, 17, 18.

5           So I would exclude a parent from being the source of the  
6   DNA on the do-rag based on those two locations.

7           Q.   And that would be her mother and her father; correct?

8           A.   That's correct.

9           Q.   And you may have said this already but if so, I missed  
10   it.

11           Can you remind the Commissioners whose DNA was compared  
12   to the do-rag and whether those individuals were excluded?

13           A.   Yes. In the first round of testing, evidence reference  
14   profile was compared, and he was excluded.

15           In the last round of testing, Larry Davis, Pat Green,  
16   Jackie Manning Kemp, and David McDougall were all excluded as  
17   contributors to the do-rag.

18           Q.   Let's move on, then, to the hair from the tapings from  
19   the crime scene. Tell the Commissioners about the testing on the  
20   hair.

21           A.   The original testing in 1993 by the crime lab was  
22   microscopic. There was no biology performed on that.

23           In 2018, there was additional microscopic DNA testing at  
24   the North Carolina State Crime Laboratory. And then the hair was  
25   sent to Bode Cellmark Forensics for mitochondrial DNA testing.

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1 And mitochondrial DNA testing is a different kind of testing than  
2 the other traditional STR testing that I was talking about  
3 earlier.

4 In mitochondrial DNA testing, they're looking at DNA  
5 which is passed from mother to children. It's the maternal  
6 lineage. And it is found in -- not in the nucleus of the cell,  
7 which is where the STR DNA is found; it's found in the little  
8 organelles in the exterior of a cell called mitochondria. And  
9 they were unable to develop a mitochondrial DNA sequence from the  
10 hair; so they could not make any comparisons.

11 Q. And you just indicated that it did not produce a  
12 mitochondrial DNA profile.

13 Can you tell the Commissioners why that might be?

14 A. Yes. This hair was fairly small. Traditionally, we  
15 would like to consume about an inch-long hair. This hair was less  
16 than a half an inch. It was about 1 centimeter, which is about --  
17 a little bit more than a half of what we typically want when we  
18 test for mitochondrial DNA.

19 So it could be the sample size. It could have been  
20 degradation due to the age of the hair. But it was very small,  
21 just a fragment of a hair to begin with.

22 Q. The lack of a mitochondrial DNA profile, though, does  
23 that indicate that it wasn't a hair necessarily?

24 A. No, not all.

25 Q. All right. If you will move on to the testing conducted

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1 on the pieces of tape that were removed from various areas of the  
2 victim's body.

3 A. Yes. There were samples from the tape that was  
4 identified as from the victim's eyes. That sample was extracted  
5 and quantitated, and due to the very, very small amount if any of  
6 DNA in the quantitation, it did not move forward because there  
7 just simply wasn't enough there to expect to locate any type of  
8 result.

9 And then there was the next sample, which was actually  
10 several pieces of duct tape and pieces of a rope that were used to  
11 tie the victim's hands. The rope was tested separately from the  
12 tape. Again, they used a vacuum system to vacuum the sample off  
13 of the rope. But even though both of them were treated as two  
14 separate samples, after the extraction and quantitation, there was  
15 insufficient amounts of DNA identified to expect any results from  
16 moving forward. So that testing was stopped at that time.

17 And then there was DNA swabs that were taken from duct  
18 tape from the victim's mouth. And, again, once the extraction and  
19 quantitation, there was insufficient amounts of DNA obtained in  
20 order to obtain results. So that was stopped after the  
21 quantitation.

22 Q. Can you just tell the Commissioners a little bit about  
23 why quant values or low quant values may affect the ability for  
24 one to get a DNA profile if you were to continue on with testing?

25 A. Sure. Before we use any type of commercial kit on

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1 actual evidence, they go through a pretty strenuous validation  
2 process. The validation process includes using known samples of  
3 known quantities to determine what parameters you use for the  
4 testing, and then you also basically test to see how sensitive the  
5 system is for samples, how low you can go. And most laboratories  
6 will determine a threshold or cutoff where they don't expect to  
7 see any DNA profile at a specific quantitation level.

8           These quantitation kits are so sensitive they can  
9 literally see the amount of DNA in one to two cells that is left  
10 behind. And so we know that when we're seeing DNA from only one  
11 cell, if we were to amplify it, we're not going to get a  
12 reportable result for comparison even with two cells. So most  
13 laboratories determine a threshold at what point they don't take  
14 it further because, at that point, they're just using resources,  
15 time and financial resources, to test samples that they really  
16 have no expectations of obtaining results from.

17           So they create a threshold at usually about three to  
18 five cells -- maybe a little bit less, maybe a little bit more --  
19 but usually about three to five cells is required in order for you  
20 to at least see some partial results.

21           **Q.**     Okay.

22           **MS. SMITH:** Commissioners, what questions do you-all  
23 have for Ms. Clement?

24           **MR. BOSWELL:** May I ask a question?

25           **THE COURT:** Yes.

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1           **MR. BOSWELL:** The do-rag -- there is some question of  
2 how it got to be where it was and who had handled it and  
3 everything.

4           Just because you found DNA on the do-rag, we don't  
5 really know -- that doesn't indicate whose do-rag it was and that  
6 other people hadn't handled it. It just means that the only DNA  
7 you found didn't meet the individuals that you tested?

8           **THE WITNESS:** That's correct.

9           **MR. BOSWELL:** It doesn't exclude anybody except for the  
10 people -- let me say it another way.

11           We're talking about Mr. Evans. And he -- although his  
12 DNA wasn't found on there, it doesn't mean that it wasn't his  
13 do-rag; it just means we didn't find his DNA.

14           **THE WITNESS:** That's correct. It doesn't mean that he  
15 never touched it. It doesn't mean -- it's exactly what you said:  
16 The DNA that was recovered could not have originated from him.

17           **MR. BOSWELL:** It could have originated in any way,  
18 shape, or form from the time before he owned it and in the last 25  
19 years if anybody had touched it or done anything.

20           **THE WITNESS:** True. Yes.

21           **MR. BOSWELL:** I've got another question. Why was it  
22 tested -- why did we send it to two different labs?

23           **MS. SMITH:** Ms. Clement can't answer that, but I will  
24 let Ms. Matoian answer that after we let Ms. Clement go.

25           **THE COURT:** Okay. Any other questions?

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1 (No response.)

2 **THE COURT:** Okay. Thank you, ma'am. You are released  
3 from your subpoena.

4 **MS. SMITH:** Thank you.

5 (Witness stands down, 1:49 p.m.)

6 **MS. SMITH:** The Commission will recall Catherine  
7 Matoian.

8 (Catherine Matoian recalled, 1:49 p.m.)

9 **THE COURT:** You are still under oath.

10 **THE WITNESS:** To answer your question, Mr. Boswell, we  
11 sent the do-rag to a second lab because they had a technology on  
12 board at the time called STRmix that NMS Labs did not have, and  
13 that was supposed to aid in mixture dissolution for complex  
14 mixtures. So we sent it to them, and we also had them resample  
15 the do-rag because the first lab had indicated they had vacuum  
16 swabbed where they believed it was most likely that the person  
17 wearing it would have touched it, and we wanted them to vacuum  
18 swab the entire thing to make sure that we had gotten all the DNA  
19 off as possible.

20 **MR. BOSWELL:** Thank you.

21 BY MS. SMITH:

22 **Q.** Ms. Matoian, before lunch, there were some questions  
23 about the conditions outside on the day of the crime.

24 Were you able to locate any information about the  
25 weather from that time?

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1           A.    Yes.  I was able to get weather reports for March 5,  
2   1990, the day that Mrs. Manning was kidnapped, and March 6, 1990,  
3   the day that she was located.

4                   On March 5, 1990, the high temperature was 60.1 degrees  
5   Fahrenheit, the low temperature was 28.9 degrees.

6                   Does anyone want me to read the dewpoint?

7           **THE COURT:**  No, thank you.

8           A.    On March 6, 1990, the high temperature was 70 degrees  
9   Fahrenheit and the low temperature was 36 degrees Fahrenheit.

10          **Q.**    Are there any precipitation noted on those dates?

11          A.    On March 5, 1990, that was zero inches and the same for  
12   March 6, 1990; zero each day.

13          **THE COURT:**  Thank you.

14          **MS. SMITH:**  Okay.  Commissioners, we are now going to  
15   turn our attention to the victim in this case, Ms. Euther Rea  
16   Manning.

17                   Handout 8 is a map of the route that the suspect took to  
18   the victim on the night of the crime as described by the victim to  
19   police after the day of the crime.

20                   I'm also going to put that map on the screen.

21          **Q.**    Ms. Matoian, can you describe what the victim told  
22   police about where the suspect took her?

23          A.    I can.

24                   When the victim was interviewed by the SBI and the  
25   sheriff's office on March 6, 1990, at the hospital after she was

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1 located, she said that although her face and eyes had been taped,  
2 she was able to see a little through the piece of the tape near  
3 her eyes, and she said that she saw a sign that said that they  
4 were in Moulton, North Carolina.

5 She didn't say that she -- any other landmarks or  
6 anything else she was able to see. So she said that she saw a  
7 sign indicating that they were in Moulton and then she is  
8 eventually left here at the marking that says "victim's car."

9 And that is the route that she described to police the  
10 day after the crime.

11 **Q.** Ms. Matoian, did the account that the victim gave to the  
12 private investigator who was hired by the defense attorneys differ  
13 from the account she told police?

14 **A.** It did. Mrs. Manning provided more detail to the  
15 defense PI about that route and she was -- it was not the same  
16 route that she described to police.

17 **MS. SMITH:** Commissioners, Handout 9 is a map of the  
18 route the suspect took the victim on the night of the crime as  
19 described by the victim to the private investigator in 1993, three  
20 years after the crime. And I will put that map on the screen as  
21 well.

22 **THE WITNESS:** So to orient you to the other map, you see  
23 where it has the victim's car marked on this map? The victim's  
24 car is down here.

25 On this particular route that she gave -- was sometimes

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1 able to give routes and other times not, but I have pointed out  
2 some of the landmarks she was able to note.

3 The victim's home is right here. She recalled going  
4 down to Gold Sand School, which is now Laurel Mills Elementary.  
5 They turned right at the school and went up to Alert, which is  
6 over here. She then said that they came out at Bill's Place,  
7 which is up towards the top of the map.

8 And I will note that that is an approximation of where  
9 that was. That was a store, and this location was described to us  
10 by the victim's daughter. It's no longer in existence so we  
11 weren't able to determine an exact location for it. But she  
12 indicated -- Ms. Kemp indicated that if you turn off of 401, it  
13 was on Lickskillet Road, which is what is marked up there.

14 The victim also mentioned being on 39 at some point.  
15 401, right over here, and 39 are merged as you go through  
16 Louisburg, and then 39 goes off to the west and 401 stays to the  
17 right. So 401 is where you would turn off to go to Bill's Place.

18 The next landmark that she described was the Inez Fire  
19 Department, which is way at the top of the map. She then recalled  
20 leaving the fire department and seeing a sign that said  
21 Centerville, 3 miles, before her car was eventually left in the  
22 woods.

23 When the Commission traveled this route, you go off of  
24 the Inez Fire Department on 58, down to the Vaiden Road, there is  
25 a sign that says Centerville, 3 miles, but obviously we couldn't

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1 determine if that was there in 1990 or not.

2 Q. And, Ms. Matoian, the second map there, is that -- when  
3 you spoke with the victim's daughter, did she provide any  
4 information as to what her mother had told her about the route?

5 A. Yes, she did. What she told the Commission was similar  
6 to the version that was told to the PI about the route her mother  
7 was taken on. And we also looked at Larry Norman's notes from the  
8 trial that appear to be notes from when the victim was testifying,  
9 and this route is also similar to what she testified to at trial  
10 according to those notes. Again, we don't have a trial  
11 transcript.

12 THE COURT: One question. What was the time frame or  
13 time period between the statement she gave to law enforcement and  
14 the one she gave to the PI? A number of years, I'm assuming?

15 THE WITNESS: It was. The statement she gave to law  
16 enforcement was March 6, 1990. I cannot recall the exact date  
17 that she spoke to the PI. I believe it was in October of 1993.

18 THE COURT: Okay.

19 THE WITNESS: It was after Mr. Evans was arrested.

20 THE COURT: Okay. Yes, sir.

21 MR. GLAZIER: Moulton, on the left-hand map -- where  
22 would it be approximately on the right-hand map?

23 THE WITNESS: So it would be south of that map. You can  
24 see here that the victim's car and the locations associated with  
25 Mr. Evans that I'm going to talk about shortly are up near the top

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1 of the map, here. And on this map, those same locations are  
2 toward the bottom.

3 So Moulton would be south.

4 **MR. GLAZIER:** So a follow-up, please.

5 **THE COURT:** Uh-huh.

6 **MR. GLAZIER:** So the description that she identified,  
7 seeing Moulton, to the police is the opposite direction from the  
8 fundamental description she then gives at trial and to the PI.

9 **THE WITNESS:** Correct. They're different directions.

10 **MR. GLAZIER:** Okay. Thanks.

11 **Q.** Ms. Matoian, can you point out on these maps where  
12 Mr. Evans says he was prior to the crime and where he was living  
13 at the time of the crime?

14 **A.** I can.

15 **THE WITNESS:** Is there a map that's easier for everyone  
16 to see where I'm pointing, where these locations are on these  
17 maps?

18 **THE COURT:** That one, I guess.

19 **THE WITNESS:** This one's good? Okay.

20 **A.** Mr. Evans had indicated that he was at Linda Collier's  
21 home which is here, on Raymond Tharrington Road, and he then  
22 walked up to Perry's Store. That is approximately 1.6 miles.

23 I will say there was one interview where Mr. Evans  
24 indicated he had been at Pleasant's Garage. That was run by Simon  
25 Perry and Tommy Perry, who were brothers. Pleasant's Garage is

1 over here on 58 and 561, where they meet. It's actually very  
2 close to Manning's Grocery. So that's Pleasant's Garage. So from  
3 Linda Collier's home to Pleasant's Garage is approximately  
4 3.8 miles.

5 From Tommy Perry's Store, this is where Mr. Evans' home  
6 was on the Vaiden Road. That's the same road that the victim's  
7 car was found on. And the victim's home was over here on Laurel  
8 Mills-Centerville Road.

9 MS. SMITH: Commissioners, any questions about the  
10 locations related to the crime?

11 MR. BOSWELL: How far is it from the victim's car to  
12 Evans' home?

13 THE WITNESS: It was -- according to the PI map, it was  
14 half a mile.

15 THE COURT: Yes, ma'am.

16 MS. COLBERT: So this happened -- the route that she  
17 gave was immediately after the victimization; right?

18 THE WITNESS: Correct.

19 MS. COLBERT: So we understand how trauma affects  
20 someone's memory or lack thereof during that time.

21 And so there was no conversation that Ms. Manning had  
22 between this report and the report to the private investigator  
23 that happened before the trial; right?

24 THE WITNESS: Correct.

25 MS. COLBERT: So there was no other recorded instance of

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1 her talking about where she was and all of that between that time.

2 **THE WITNESS:** No.

3 There's -- after her initial statement, there is a  
4 report from when she looks through the mug books and attempts to  
5 make a composite drawing and also a report from when she was  
6 polygraphed, but there is no other interviews that the Commission  
7 has been able to locate where she discusses the route that the  
8 suspect took her on.

9 **MS. COLBERT:** And the polygraph, they only asked her  
10 those three questions -- I think it was three -- and it had  
11 nothing to do with route or anything?

12 **THE WITNESS:** Correct.

13 **MS. COLBERT:** Okay.

14 **THE COURT:** Me again for clarification. The victim's  
15 car and Mr. Evans' home are on the same road? Is that what you  
16 said?

17 **THE WITNESS:** Yes.

18 **THE COURT:** A dirt road? Is it a dirt road like it  
19 looks in this picture?

20 **THE WITNESS:** No. It's not a dirt road. It is paved.

21 So Mr. Perry's store is still standing today. It is at  
22 the corner of Schloss Road and what everyone calls "the Vaiden  
23 Road" but it's just Vaiden Road.

24 **THE COURT:** Okay.

25 **THE WITNESS:** But -- so Mr. Evans has indicated that he

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1 walked home from Perry's Store to his home, which I believe is --  
2 I think it's a little less than -- around 2 miles to Evans' home.  
3 And so the victim's car is further down Vaiden Road, close to the  
4 intersection of Vaiden and 58.

5 **THE COURT:** Okay.

6 **MS. SMITH:** Any other questions about the maps?

7 (No response.)

8 **Q.** Okay. Ms. Matoian, did the commission staff reach out  
9 to the victim, Mrs. Manning?

10 **A.** We did. The Commission sent a letter to the victim on  
11 September 18, 2018, notifying her of our investigation moving into  
12 the formal inquiry stage and informing her of our intention to  
13 depose her about this case.

14 **Q.** And did she respond to that letter?

15 **A.** No, she did not. We were subsequently made aware that  
16 the victim had passed away on September 28, 2018; so 10 days  
17 later.

18 **MS. SMITH:** Commissioners, the victim's prior interviews  
19 with law enforcement were provided to you on pages 31 to 33 of  
20 your brief, 39 to 40, and 96 to 97. Her prior interview with the  
21 private investigator was provided on pages 185 to 213 of your  
22 brief.

23 **Q.** Was the Commission able to speak to any members of the  
24 victim's family?

25 **A.** We were. The Commission was able to depose the victim's

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1 daughter, Jackie Manning Kemp, on January 10, 2019.

2 Esley Manning, who is the victim's husband, is now  
3 deceased as well.

4 Q. Was the deposition of Jackie Manning Kemp recorded and  
5 transcribed?

6 A. It was.

7 MS. SMITH: Commissioners, interviews of Esley Manning,  
8 the victim's husband, and Jackie Kemp, her daughter, by law  
9 enforcement can be found on pages 24 to 27 of your brief. Esley  
10 Manning's interview with the PI can be found on pages 215 to 221  
11 of the brief.

12 Q. When you deposed Ms. Kemp, what, if anything, did she  
13 say about the items that were stolen from her home -- her parents'  
14 home rather?

15 A. Ms. Kemp described the gun that was taken from her  
16 parents' home as a small, old antique-looking gun. It was not on  
17 display, but she had always just seen it lying around. She did  
18 not think that the watch that had been stolen had diamonds on it.  
19 She said it was a man's watch but didn't recall much else about  
20 it. She did recall that her mother's -- her mother had diamonds  
21 on when she was kidnapped and none of those were taken from her.

22 Q. Is there any particular reason you asked Ms. Kemp about  
23 a watch with diamonds on it?

24 A. I did. JoAnn Clemonts told law enforcement and the  
25 defense private investigator that shortly after the crime,

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1 Mr. Evans had given her a gold women's watch with diamonds on it  
2 and Roman numerals. She said he later took it back and said it  
3 belonged to his wife. In law enforcement reports about the --  
4 what was stolen, the watch was only described as a gold Elgin,  
5 E-l-g-i-n, watch that belonged to Esley Manning.

6 I asked Ms. Kemp about the watch in an effort to  
7 determine if the watch that JoAnn Clemonts had described matched  
8 the description of the watch that was stolen from the Mannings.

9 Q. What did Ms. Kemp say about suspects in the case?

10 A. Ms. Kemp indicated she didn't recall any suspects in the  
11 initial investigation but recalled that Mr. Evans became a suspect  
12 because he told someone in jail that he had kidnapped a lady. She  
13 recalled that Mr. Evans' family had lived on the Manning family's  
14 farm as tenants when Evans was a little boy.

15 MS. SMITH: Commissioners, you were provided reports  
16 from the SBI file in your brief indicating a suspicion on the  
17 SBI's part that the victim may have been fabricating her account  
18 of the crime. Those reports can be found on pages 93 to 95 of  
19 your brief.

20 Q. Ms. Matoian, did you ask law enforcement that was  
21 involved in this case about that suspicion of possible  
22 fabrication?

23 A. We did. In his deposition with the Commission, former  
24 SBI Agent Rick Sims explained that report by saying that it was an  
25 unusual case for him. He found it unusual that none of the

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1 victim's jewelry had been taken. He noted that she wasn't hurt  
2 other than the bruises from the tape and the hypothermia and that  
3 she also seemed rather calm.

4 Sims' report noted that the victim changed details of  
5 her account, but the report didn't say what details had changed.  
6 And Mr. Sims in his deposition was not able to tell us what  
7 details had changed. Sims said that he no longer had the  
8 suspicion after the victim had been polygraphed.

9 He also noted that Esley Manning and Jackie Kemp were  
10 calm but stated that he didn't know what their personalities were  
11 like, although he thought they would have been upset.

12 During his deposition with the Commission, Pat Green  
13 recalled Sims expressing those suspicions but said he didn't share  
14 them. He had known the victim for a long time and knew her to be  
15 talkative and speculated that the victim may have added details as  
16 she spoke.

17 In a phone call with Dave McDougall before his  
18 deposition, he told the Commission that this was a case that they  
19 thought had been staged.

20 **THE COURT:** When you say "he," do you mean  
21 Mr. McDougall?

22 **THE WITNESS:** Mr. McDougall, that's correct.

23 **A.** And we asked him about this during his deposition and  
24 interview with the Commission. Mr. McDougall said that they were  
25 sure the crime had happened after they found the victim's car but

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1 did recall finding it to be an unusual case.

2 He recalled Esley Manning complaining about the  
3 fingerprint powder all over the house, which Mr. McDougall found  
4 strange, and Mr. McDougall described the house as immaculate. He,  
5 meaning Mr. McDougall, also found it strange that Esley Manning  
6 did not join the search party but acknowledged that people can  
7 react differently to different situations.

8 Q. Did you ask Jackie Kemp about the documents in the SBI  
9 file that indicated there was a suspicion that the victim had lied  
10 about the crime?

11 A. We did. She did not recall her mother being confronted  
12 with that information, and when we asked her if her mother had any  
13 reason to fabricate any part of her account, Ms. Kemp responded  
14 "No, because why? I mean, what would she benefit from it?" She  
15 was not sure if this information was brought up at trial.

16 When she showed Ms. Kemp the report about her, meaning  
17 Ms. Kemp, and her father's behavior and demeanor, she stated that  
18 her father had recently had open-heart surgery and they were  
19 actually scared he was going to have a heart attack that night,  
20 and she stated, "I mean, now, we were not acting like idiots. We  
21 weren't screaming and, you know, anything like that. You know, we  
22 tried to be, you know, professional."

23 Q. Were the SBI reports related to Agent Sims' suspicions  
24 located in the defense files that you reviewed?

25 A. No, they were not.

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1           Q.    Did any witness recall whether this information had been  
2 brought up at the trial?

3           A.    No one could recall whether or not this had been brought  
4 up at the trial. The Commission showed Trial Attorney Larry  
5 Norman Sims' reports and he didn't recall seeing them before.  
6 Mr. Norman also indicated he believed he would have been entitled  
7 to see a document like that in discovery.

8                   The Commission also asked ADA Susan Thompson about this  
9 report. Ms. Thompson stated that people act differently after  
10 they have been victimized and stated that this was just the  
11 opinion of an investigator, which is not evidence. She didn't  
12 recall hearing this information from investigators.

13                   As I stated earlier, Ms. Thompson said that she would  
14 usually let defense attorneys look at everything but she is not  
15 sure if the defense would have been shown this report. And she  
16 did not recall this issue being brought up at the trial.

17                   Pat Green also said he was not sure if that information  
18 was disclosed to the defense since it came from the SBI file. He  
19 said that if that information had been in his file, he would have  
20 turned it over to the defense.

21           Q.    Did the Commission learn anything else regarding the  
22 possibility that the victim fabricated any portion of her account  
23 of this crime?

24           A.    Kenneth Evans gave the name of a relative, Ida  
25 Yarborough, in his PLS questionnaire as someone who might have

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1 information about his case and he provided her contact information  
2 to the Commission.

3 In an interview with Ida Yarborough by the Commission,  
4 Ms. Yarborough stated that she had been told in the 1990s by a  
5 black man named Mr. Harvey that a white woman had told Mr. Harvey  
6 that the victim had been upset at her husband for forgetting her  
7 birthday and stayed out all night and then panicked and made up a  
8 story about the kidnapping the next morning.

9 Q. Was the day of the crime the victim's birthday?

10 A. No. It was her wedding anniversary.

11 Q. Was the Commission able to locate this Mr. Harvey?

12 A. Ms. Yarborough did not initially remember Mr. Harvey's  
13 last name. However, she did call the Commission back and indicate  
14 that his last name had been Brandon and that he has been deceased  
15 for about three years. So the Commission was unable to interview  
16 him.

17 Q. Was the Commission able to verify any of that  
18 information provided by Ms. Yarborough?

19 A. No, we were not.

20 MS. SMITH: Commissioners, any questions so far on the  
21 information related to the victim?

22 THE COURT: Yes, ma'am.

23 MS. COLBERT: So Kemp's husband was never interviewed?  
24 I mean, I don't see any record of the daughter's husband, who  
25 called the police. Was he never interviewed? He was never asked

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1 any questions?

2           **THE WITNESS:** It doesn't appear from the files we have  
3 that he was interviewed, just Jackie Manning Kemp and her father,  
4 Esley Manning.

5           **THE COURT:** Other questions right now?

6           **DR. PERRY:** Do you have a complete list of SBI polygraph  
7 results -- well, not the results, but who was polygraphed?

8           **THE WITNESS:** In this case?

9           **DR. PERRY:** Mm-hmm.

10          **THE WITNESS:** In this case, from the documents that we  
11 have, only Mrs. Manning and Kenneth Evans were polygraphed.

12          **DR. PERRY:** Okay.

13          **THE COURT:** Yes.

14          **MR. GLAZIER:** Just on the polygraph for a minute, but  
15 were there -- and I may have missed it, but are the charts  
16 available and -- or the full list of the ten questions other than  
17 those three -- other than that short summary report?

18          **THE WITNESS:** I thought we had provided all the  
19 information we had about those in the brief, but we will  
20 double-check and see if there's anything else.

21          **MR. GLAZIER:** And I may have missed it; so ...

22          **MS. COLBERT:** So getting back to the husband. So y'all  
23 never talked to him?

24          **THE WITNESS:** We didn't interview him, no.

25          **MS. COLBERT:** And y'all didn't interview him because he

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1 wasn't ever interviewed before or that -- I mean ...

2           **THE WITNESS:** He just didn't come up as someone to  
3 interview in our investigation but we --

4           **THE COURT:** This is the daughter's husband?

5           **THE WITNESS:** Yes.

6           **THE COURT:** Okay. He lived next door or something like  
7 that?

8           **MS. COLBERT:** He was the one that called the police;  
9 right?

10          **THE WITNESS:** Correct.

11          **THE COURT:** Other questions?

12                   (No response.)

13          **MS. SMITH:** Ms. Colbert, are there particular questions  
14 that you would like him to be asked? Because we will certainly  
15 make an effort to go interview him today or tomorrow.

16          **MS. COLBERT:** I'm just curious as to why he was never  
17 interviewed. He was part of the family, he could've been able to  
18 provide some information. You know, I can make the assumption  
19 that he was probably with the child at the house when the police  
20 came because they did mention that, you know, the father brought  
21 home Tylenol or something for the child.

22                   But there is no record of being interviewed at all from  
23 anyone.

24          **THE WITNESS:** Right.

25                   What we know about him is, like you said, that he called

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1 the police. Ms. Kemp mentioned in her deposition that he  
2 thought -- they had a dog that kind of went back and forth between  
3 both houses and that the dog had been barking for quite a while,  
4 and so they -- he had heard the dog barking and they speculated  
5 that the suspect had been in the house at the time that the dog  
6 was barking.

7 So that's what we know about him, but we can make an  
8 effort to locate him.

9 **THE COURT:** Yes, ma'am.

10 **MS. NEWTON:** Thank you.

11 Did you track down the watch that was discussed and that  
12 suspected it might have been the watch that was missing from the  
13 Mannings' home?

14 I mean, did you eliminate the watch as being the one  
15 from the Mannings' home?

16 **THE WITNESS:** The watch from the Mannings' home was  
17 never found. Neither was the gun. So we weren't able to make any  
18 determination about the watch.

19 I'm going to testify about it again in a little bit, but  
20 JoAnn Clemonts now says that Mr. Evans never bought her a watch or  
21 brought her a watch all, and we haven't been able to locate that  
22 watch either. So we just aren't able to tell.

23 **MS. NEWTON:** And Clemonts -- when police talked about  
24 that watch, she said it was -- it was given to her?

25 **THE WITNESS:** By Mr. Evans, yes.

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1           **MS. NEWTON:** And did she happen to mention whether it  
2 was a man's or woman's watch?

3           **THE WITNESS:** In her police reports, I believe she  
4 describes it as a woman's watch.

5           **MS. NEWTON:** Okay. And it was a man's watch that was  
6 missing from the Mannings' house?

7           **THE WITNESS:** That's how Ms. Kemp described the watch to  
8 us during her deposition, correct.

9           **MS. NEWTON:** Okay. Thank you.

10          **THE COURT:** But the victim had a diamond watch that  
11 was --

12          **THE WITNESS:** The husband's watch was stolen.

13          **THE COURT:** Okay.

14          **THE WITNESS:** The victim's watch was actually found in  
15 the house. I believe it may have been up on the TV, but her watch  
16 was still in the home. The husband's watch had been taken.

17          **THE COURT:** Okay.

18          **THE WITNESS:** None of her diamond rings had been taken.

19          **THE COURT:** Any other questions?

20                 Okay. Yes.

21          **MR. GLAZIER:** And this, again, I may be jumping ahead,  
22 but you said none of her diamond -- she was wearing the diamond  
23 rings at the time of the alleged abduction?

24          **THE WITNESS:** Yes. There is a photograph that -- I can  
25 find the page in the brief for you, but there is a photograph that

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1 they take of her hands to show the markings, and she is wearing  
2 rings in those. And the fact that her rings were not taken was  
3 noted in the report.

4 MR. GLAZIER: Okay. I see. I wanted to make sure.  
5 Thanks.

6 Q. Let me turn your attention now to any identification the  
7 victim made of her kidnapper.

8 What was the Commission able to determine about whether  
9 the victim had ever identified Kenneth Evans as the person who  
10 kidnapped her?

11 A. Nothing in the files provided to the Commission  
12 indicated that the victim had ever identified Mr. Evans as the man  
13 who kidnapped her.

14 The files did indicate that Mr. Evans -- the victim was  
15 familiar with Mr. Evans prior to this crime and that his family  
16 used to live on the Mannings' farm so that she had known him prior  
17 to this crime.

18 Q. Can you tell the Commissioners how the victim described  
19 the suspect?

20 A. The victim initially described the suspect as being 6'  
21 to 6'2" and light-skinned. She indicated he had blotches or large  
22 freckles on his cheeks. She described him in her SBI interview as  
23 being 6'1" to 6'2" and a light-skinned, good-looking black male.

24 A document sent to the defense by ADA Doug Berger  
25 indicates that the victim described the suspect as being 6' to

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1 6'2", a light-skinned black male about 200 pounds with blotches or  
2 large freckles on his cheeks.

3 The victim told the PI that the suspect was very tall --  
4 I'm sorry, quote "very tall" -- about 6' or so. She called him a  
5 light-skinned, good-looking black male. There were freckles  
6 around the nose. And in the second interview with the PI, she  
7 described the suspect as 160 to 170 pounds and being about 5'10"  
8 to 6'.

9 And I will clarify that she did describe him at one  
10 point as being a light-skinned, good-looking black male in the PI  
11 interview, but she also described him as what she called an "Is  
12 You," as in "Is you white or is you black?" and indicated that she  
13 was not able to tell.

14 We looked at the victim's height, and the victim was  
15 listed as being 5'3" and 138 pounds in her SBI polygraph report.  
16 And the Commission looked at DMV records to determine that her  
17 husband was listed as being 5'7".

18 Although the victim in the *Drake* rape case was unable to  
19 describe her attacker due to it being dark, she was familiar with  
20 Kenneth Evans personally and described him to the SBI as being  
21 5'8", slightly built, and with light skin.

22 **THE COURT:** That's the lady who was raped later?

23 **THE WITNESS:** That's correct.

24 **THE COURT:** Okay.

25 **Q.** Can you tell the Commissioners what the staff has been

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1 able to determine about Mr. Evans' height and weight during that  
2 time period?

3 A. I can. The polygraph report from this case in 1990  
4 indicates that Mr. Evans was 5'9" and 136 pounds. And DCI reports  
5 for Mr. Evans from 1992 list him as 5'7", 144 pounds. And another  
6 one is 5'8" and 130 pounds.

7 Q. What about any markings on Mr. Evans' face?

8 A. Mr. Evans currently has some markings across his cheeks  
9 and nose that he referred to in a commission interview as  
10 "pop-pops." He indicated to the Commission that he had those at  
11 the time of the crime.

12 Commission staff located three photographs of Mr. Evans  
13 closer in time to the crime during its search of the sheriff's  
14 office; however, the quality of those photographs was poor.

15 We were able to locate several photographs of Mr. Evans  
16 from around the time of the crime from a family member of his  
17 named Archie Lee.

18 MS. SMITH: Commissioners, Handout 10 --

19 THE COURT: One question here.

20 Yes.

21 MR. GLAZIER: I just want to make sure my summary notes  
22 are correct.

23 So the DCI records and the polygraph records indicate  
24 that Evans at the time in reality was somewhere between 5'7" and  
25 5'9" and was somewhere between 136 and 144 pounds. The two

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1 descriptions that the victim gave were that the person was between  
2 5'10" and 6'2" and somewhere between 160 and 200 pounds.

3 Is that an accurate summary?

4 **THE WITNESS:** That's correct, except the lowest weight  
5 that we have for Mr. Evans listed is 130 pounds. He goes from 130  
6 to 144.

7 **MR. GLAZIER:** All right. Thank you.

8 **THE COURT:** Yes.

9 **MS. SMITH:** Handout 10 includes photographs of Kenneth  
10 Evans. These are from around Christmas 1991. You should have  
11 color copies in your notebooks. These are the best photographs  
12 that we could find in terms of clearness from around the time of  
13 the crime, though it is some time after the crime.

14 **Q.** What else did the commission staff do to determine  
15 whether the victim had ever identified Kenneth Evans as the  
16 suspect in this case?

17 **A.** Because the Commission was unable to locate a trial  
18 transcript in this case, commission staff asked numerous witnesses  
19 about their recollection of the victim identifying Mr. Evans as  
20 the suspect.

21 We talked to Defense Attorney Larry Norman about this,  
22 and he indicated he did not believe that the victim had identified  
23 Mr. Evans as the kidnapper. Mr. Norman stated, "It's kind of  
24 tough to believe, but I guess it's possible she just didn't  
25 recognize him for whatever reason but I don't recall her pointing

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1 at him or saying 'He's the guy that did it.'"

2 Norman identified a document from his file with the  
3 victim's name on it as being the type of notes he would take  
4 during the witnesses' testimony. He indicated that document did  
5 not describe the victim identifying Mr. Evans.

6 Both Rick Sims and David McDougall could not recall  
7 whether the victim had identified Mr. Evans as her attacker.

8 Pat Green indicated that he thought that Evans became a  
9 suspect because the victim contacted him sometime after the crime  
10 and stated that she could see through a slit in the duct tape and  
11 the more she thought about it, she thought that it had been  
12 Mr. Evans who had worked on their tobacco farm.

13 Mr. Green also thought the victim had identified  
14 Mr. Evans as the kidnapper through a photographic lineup and  
15 during her testimony at trial.

16 ADA Susan Thompson could not recall whether the victim  
17 had identified Mr. Evans at the trial or if she had identified  
18 Mr. Evans -- "she" meaning the victim -- had identified Mr. Evans  
19 through a lineup. She indicated that it would not have concerned  
20 her that the victim did not identify Evans even though she knew  
21 him. Thompson said she would have asked the victim why she hadn't  
22 identified Evans, and it would have depended on how well she knew  
23 him.

24 **THE COURT:** Yes.

25 **MR. GLAZIER:** The statements from Green saying that he

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1 thought he got a call from the victim saying the more she thought  
2 about it, that she identified him through the slit in the tape --  
3 is there any note in the file that you were able to find in any  
4 file that documents that conversation?

5 **THE WITNESS:** No. The only documentation we have in the  
6 file about the victim looking at photographs is that report about  
7 her looking through the mug book.

8 **MR. GLAZIER:** Would you agree -- how would you  
9 characterize the importance of a call from the victim to the  
10 investigators saying, "I've thought about it, and I think I can  
11 now identify who my assailant was"?

12 Would you consider that to be important evidence that  
13 ought to have been documented in the file?

14 **THE WITNESS:** I don't know that I can characterize that  
15 but we did ask Pat Green if that was the type of interaction that  
16 he would have documented as part of his investigation, and he said  
17 that he would have documented something like that.

18 **MR. GLAZIER:** Thank you.

19 **Q.** Ms. Matoian, does the information related to the victim  
20 identifying Mr. Evans as a suspect appear anywhere else in the  
21 files?

22 **A.** No. There are no reports in any of the files related to  
23 the victim ever identifying Mr. Evans as the man who kidnapped  
24 her.

25 Mr. Pat Green indicated that this contact with the

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1 victim should have been documented. The only report related to  
2 the lineups is the victim looking through the mug books where she  
3 was not able to identify anyone and the partial composite drawing.

4 Agent Sims did not recall showing the victim a photo  
5 lineup and stated that if he had been present during that, that it  
6 would have been documented in this file as well.

7 Q. Did anyone else that the commission staff spoke with  
8 recall the victim identifying Kenneth Evans through a lineup or  
9 otherwise?

10 A. No. The victim's daughter, Jackie Manning Kemp,  
11 indicated to the Commission that both of her parents knew Evans.  
12 Her mother never indicated Mr. Evans was a suspect prior to the  
13 police notifying her that he was the suspect.

14 Ms. Kemp also testified during her deposition that her  
15 mother never identified Mr. Evans as her attacker but that she did  
16 believe that Mr. Evans had committed the crime because of the  
17 information police had given to her about Evans.

18 No one the Commission interviewed besides Pat Green  
19 recalled the victim identifying Mr. Evans as the man who attacked  
20 her.

21 MS. SMITH: Commissioners, are there any additional  
22 questions about this information?

23 (No response.)

24 Q. Ms. Matoian, in his SBI interview the night of the  
25 crime, the victim's husband, Esley Manning, mentioned that he had

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1 been kidnapped from his store a few years prior to the crime and  
2 that the suspect in that case had never been caught.

3 Did commission staff learn anything else about the other  
4 crimes involving Esley Manning or his store?

5 A. We did. The files the Commission reviewed indicated  
6 that Esley Manning was known to carry large amounts of cash on  
7 him. The Commission contacted both the sheriff's office and the  
8 SBI and provided them with Esley Manning's description of that  
9 crime where he said he was kidnapped, and the SBI was unable to  
10 locate any files.

11 The sheriff's office provided documents related to a  
12 1984 larceny of Esley Manning's store. It did not appear to match  
13 the description given by Esley Manning of the time that he was  
14 kidnapped. In that case, \$6,000 was stolen from a cigar box when  
15 Esley Manning had left the store.

16 The Commission also located additional records related  
17 to robberies of Esley Manning's store during its search of the  
18 sheriff's office, which included in 1983 theft of 13 cases of  
19 Coca-Cola, a 1985 armed robbery of Esley Manning in which the  
20 suspect used a gun and taped up Mr. Manning with black electrical  
21 tape, stole money and Manning's car and left it on Highway 58, and  
22 a 1993 robbery of approximately \$142 from the store.

23 MS. SMITH: Commissioners, Handout 11 is a copy of the  
24 report of that 1985 armed robbery of Esley Manning. This report  
25 is the closest in description to what Esley Manning told

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1 investigators the night that Mrs. Manning was kidnapped, though it  
2 does not involve him being taken from his store.

3 Commission staff was unable to locate any reports  
4 related to a kidnapping of Mr. Manning from his store.

5 If you'll take a moment to review Handout 11.

6 **THE COURT:** Is this Tommy's the same Tommy Perry that  
7 took this report, is the one that -- where Mr. Evans was  
8 supposedly playing pool or something that night?

9 **THE WITNESS:** Yes. Mr. Perry was a sheriff's deputy at  
10 one point.

11 **THE COURT:** Before Tommy Perry resigned from the  
12 sheriff's office?

13 **THE WITNESS:** Right.

14 **THE COURT:** Just running a pool hall.

15 **MR. GLAZIER:** Just a question on those other allegations  
16 at the time of the robbery of Mr. -- of the store.

17 And, again, I may have missed it in the record, but do  
18 we have information on any of those where the alleged perpetrator  
19 was charged and convicted?

20 **THE WITNESS:** No. There were a few suspects in some of  
21 the cases that we had documentation for, but it didn't appear that  
22 anyone had ever been charged.

23 **MR. GLAZIER:** In any of them?

24 **THE WITNESS:** Correct.

25 **MR. GLAZIER:** Thank you.

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1           **THE COURT:** Yes, Dr. Perry.

2           **THE WITNESS:** And I will say that that's from the  
3 documents that we have. I don't know that we've been able to find  
4 everything about those cases.

5           **MR. GLAZIER:** Thank you very much.

6           **DR. PERRY:** Any information about any submissions to  
7 DOI, Department of Insurance?

8           **THE WITNESS:** For this case, there's no indication that  
9 there was any insurance claim filed. I believe in a few of the  
10 reports related to Esley Manning there was a box to check if there  
11 was going to be an insurance claim, but I can't remember if any  
12 were. But I will double-check that information.

13           **MS. COLBERT:** So in the documents that we had, there was  
14 an indication that there was some where \$5,000 was stolen? Is  
15 that right?

16           But this is the only evidence that -- documentation that  
17 you have via the police that -- other crimes that may have been  
18 similar to what was reported?

19           **THE WITNESS:** So in his interview with the SBI for this  
20 case, the night that his wife had been kidnapped, Esley Manning  
21 mentioned that his store had been robbed and he had been kidnapped  
22 a few years prior to that. That was all the information that was  
23 in there about that crime; so the Commission tried to find  
24 documentation to get more information about that crime.

25           What we have given to you as Handout Number 11 is the

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1 closest match to that information but he had indicated he was  
2 actually kidnapped. This report indicates that they stole his car  
3 but he was not kidnapped.

4 The robbery where \$6,000 was stolen from was 1984.  
5 That's a separate robbery.

6 MS. COLBERT: Okay. Did you find evidence in regard to  
7 that?

8 THE WITNESS: There were some suspects listed in that.  
9 I believe the robbery happened -- Mr. Manning had gone home for  
10 dinner. He left someone in charge of the store. When that person  
11 went to go help someone pump gas, the \$6,000 was stolen then. So  
12 there were names of some people who had been seen in the store  
13 around that time, but it didn't appear from what we had that  
14 anyone had been arrested.

15 MS. COLBERT: Thank you.

16 Q. Ms. Matoian, was Jackie Manning Kemp able to provide any  
17 additional information about this crime?

18 A. Yes. Ms. Kemp recalled her father being the victim of  
19 armed robberies about two or three times. She recalled that on  
20 one night, her father had driven his truck under the shed because  
21 it was a cold night and he wanted to warm it up and he went back  
22 in the store.

23 When he came out, someone pushed him inside and tied him  
24 up. The suspect told her father they were going to kill him, and  
25 she was not sure what year this had happened. No one was arrested

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1 and her father didn't have any suspicions as to who had done it.

2 Ms. Kemp said that her father always carried a lot of  
3 cash on him and Ms. Kemp also stated in her deposition that her  
4 family believed the suspect in the victim's kidnapping was there  
5 for her father and that the victim happened to have come home  
6 first.

7 Q. Did commission staff learn any additional information  
8 about robberies of country stores during its investigation?

9 A. We did. During our interview of ADA Susan Thompson, she  
10 indicated that the owners of country stores in that area at the  
11 time were known to carry cash around and that these stores and  
12 their owners were frequently robbed and would most likely be  
13 robbed by locals who were familiar with the stores and their  
14 owners.

15 Many of the owners didn't use cash registers and just  
16 had boxes with large amounts of money. The store owners were  
17 known to bring that money home from the stores, and the owners of  
18 the stores would be very well known in their respective areas.

19 MS. SMITH: Commissioners, any additional questions  
20 about the robberies of Esley Manning?

21 THE COURT: Yes.

22 MS. NEWTON: Were you able to determine by anyone's  
23 anecdotal testimony or any of the notes about the defendant  
24 testifying?

25 THE WITNESS: It doesn't appear that Mr. Evans testified

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1 from what we can --

2 MS. NEWTON: And he doesn't say he testified?

3 THE WITNESS: At this current moment in time, Mr. Evans  
4 doesn't really recall anything about the trial at all.

5 MS. NEWTON: The police report indicates that Mr. Frank  
6 Ballance did not want him to testify, and that's one of the  
7 reasons -- the question was solely related to competency.

8 So did you see any notations in any of the defense  
9 records or any people that you talked to that indicated that the  
10 jury heard Mr. Evans' criminal record, his history of criminal  
11 convictions?

12 THE WITNESS: I have not been able to tell that from any  
13 of the notes in the defense file and it's not included in  
14 Mr. Norman's draft closing argument.

15 MS. NEWTON: Because before and after, in Franklin  
16 County, there are breaking and enterings -- in Franklin County --

17 THE WITNESS: Yes.

18 MS. NEWTON: -- in his record.

19 THE WITNESS: Yes.

20 MS. NEWTON: So you haven't been able to determine with  
21 anything just to clarify that the jury heard that?

22 THE WITNESS: Correct.

23 MS. NEWTON: Okay. Thank you.

24 Q. Did the Commission learn anything about a possible  
25 conversation that the victim may have had related to Mr. Evans not

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1 committing this crime?

2 A. Yes. In his commission questionnaire, Mr. Evans  
3 indicated that his wife Shirley Evans' aunt, Pauline Morton, had  
4 talked to the victim after the trial, and the victim had told her  
5 Evans did not commit the crime.

6 Mr. Evans also said his son, Antwone Evans, was also  
7 present during this conversation.

8 Q. Did the Commission reach out to Ms. Morton?

9 A. We did. We attempted to interview her on October 24,  
10 2018, and on that day, Mr. Evans' wife, Shirley Evans, advised the  
11 Commission that Ms. Morton had passed away on June 28, 2018.

12 And I actually clarify that. Mr. Evans and Shirley  
13 Evans have been separated for quite some time but are not legally  
14 divorced.

15 MS. SMITH: Commissioners, Handout 12 is the criminal  
16 record of Pauline Morton if you want to take just a second to  
17 review that.

18 Q. Did commission staff do anything else to follow up on  
19 this information?

20 A. Yes. When commission staff first talked to Shirley  
21 Evans about trying to locate her aunt, Pauline Morton, Ms. Evans  
22 volunteered that her aunt had told her that the victim told  
23 Ms. Morton that Mr. Evans hadn't done this.

24 She -- Ms. Evans initially indicated a willingness to  
25 sign an affidavit for the Commission about this information and we

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1 scheduled a meeting with her on October 28, 2018. On that date,  
2 Shirley Evans did not show up for the meeting and indicated she  
3 did not wish to speak to the Commission.

4 She was subsequently served with a subpoena for a  
5 deposition.

6 On November 28, 2018, the date of the deposition,  
7 Shirley Evans did not show up. She contacted the Commission to  
8 say she had read the subpoena incorrectly and had traveled to the  
9 Franklin County Courthouse.

10 The Commission rescheduled a meeting with her on  
11 December 5, 2018, and Ms. Evans did not show up for that meeting  
12 either.

13 Q. Was the Commission ultimately able to interview Shirley  
14 Evans?

15 A. We did. In person on December 7, 2018.

16 Q. Was that interview with Ms. Evans recorded and  
17 transcribed?

18 A. It was.

19 MS. SMITH: Commissioners, Handout 13 is the criminal  
20 record of Shirley Evans, if you want to take a moment to review  
21 that.

22 Q. What information was Shirley Evans able to provide about  
23 what her aunt, Pauline Morton, had told her?

24 A. During this interview, Ms. Evans executed an affidavit  
25 for the Commission indicating that, in February of 2018, she was

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1 at a family gathering and her aunt, Pauline Morton, had said that  
2 she had gone to the victim's home with Antwone Evans, and during  
3 that meeting, the victim said that Mr. Evans had not committed  
4 this crime.

5 She also thought that her son had told her about this  
6 meeting within the last five years but did not know when the  
7 meeting had occurred.

8 MS. SMITH: Commissioners, Handout 14 is the affidavit  
9 of Shirley Evans. If you'll take a few moments to review that.

10 Q. Did the Commission do anything else to follow up on this  
11 information?

12 A. We did. On the date of Ms. Evans' scheduled deposition,  
13 November 28, 2018, she did not show up but her son, Antwone Evans,  
14 did. He agreed to be deposed by the Commission on that date  
15 without being subpoenaed.

16 Q. Was the deposition reported and transcribed?

17 A. It was.

18 MS. SMITH: Commissioners, Antwone Evans does not have a  
19 criminal record.

20 Q. What did Antwone Evans say during this deposition?

21 A. Antwone said that he thought he had gone to the victim's  
22 home with Pauline Morton around the time that he was a teenager,  
23 but couldn't remember the exact age. He recalled that the victim  
24 greeted them warmly but did not know they were coming. He said  
25 that during that meeting, the victim had told Ms. Morton it -- she

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1 didn't know who had kidnapped her because she had duct tape over  
2 her eyes. He said, "It sounded to me she really didn't want to  
3 blame him," meaning Mr. Evans. His perception was that the victim  
4 didn't believe Evans had committed the crime.

5 Commission staff asked Antwone Evans if Ms. Morton had  
6 ever spoken to a lawyer about this meeting with the victim and he  
7 said she did not because she was the type of person who would "lay  
8 it on the altar" and leave God to fix it.

9 **MS. SMITH:** Commissioners, at this time, we're going to  
10 play portions of the deposition with Antwone Evans that relates to  
11 his version of the meeting that he says occurred between Pauline  
12 Morton and Ms. Manning.

13 Handout 15 in your hearing handout notebooks is a  
14 transcript of those portions that you may want to follow along  
15 with.

16 **THE COURT:** Yes. Question?

17 **MS. WELCH:** Is Antwone Evans the son of Kenneth Evans?

18 **THE WITNESS:** I'm sorry. I should have been clear about  
19 that.

20 Yes. He is the son of Kenneth and Shirley Evans.

21 **MS. WELCH:** Okay. Thank you.

22 (Video played, 2:43 to 2:56 p.m.)

23 **MS. SMITH:** Commissioners, Antwone Evans was subpoenaed  
24 to be on phone standby but he is here this morning of his own  
25 choosing. So we are going to finish some questions for

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1 Ms. Matoian related to some follow-up that we did related to this,  
2 but if anyone wants to hear from him, he is here today and  
3 available to testify when we get through with this section.

4 **THE COURT:** Okay.

5 **Q.** Ms. Matoian, did the Commission do anything to follow up  
6 on the information provided by Antwone Evans?

7 **A.** We did. We attempted to locate several members of  
8 Shirley Evans' family to ask what they had heard from Ms. Morton  
9 about this potential meeting between the victim and Ms. Morton.

10 Commission staff interviewed Deborah Moore, who is  
11 Shirley Evans' sister, and Deborah Moore's daughter, Tamira, in  
12 person on 12/13/2018. And that interview was recorded and  
13 transcribed.

14 Ms. Moore did not remember being present when Ms. Morton  
15 was talking about this meeting, and her daughter Tamira also did  
16 not know about this meeting.

17 Ms. Moore suggested speaking to her cousin, Bobbie Long,  
18 who had lived with Ms. Morton for a period of time. And Tamira  
19 also suggested speaking to her sister, Dynekia Brodie.

20 **MS. SMITH:** Commissioners, Deborah Moore and Tamira  
21 Moore do not have criminal records.

22 **Q.** Who else did the commission staff interview from  
23 Mr. Evans' family?

24 **A.** Commission staff interviewed Mr. Evans' aunt, Patience  
25 Griffin, by phone on February 26, 2019. This was also recorded

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1 and transcribed. And we contacted her because Antwone Evans  
2 indicated she may have information about the case.

3 Ms. Griffin was not aware of this meeting between  
4 Ms. Morton and the victim.

5 **MS. SMITH:** Commissioners, Patience Griffin does not  
6 have a criminal record.

7 **Q.** Who else did the commission staff interview from  
8 Mr. Evans' family?

9 **A.** Commission staff interviewed Bobbie Long in person on  
10 December 13, 2018. That was also recorded and transcribed.  
11 Bobbie Long is the cousin of Shirley Evans that was named to us by  
12 both Antwone Evans and Deborah Moore.

13 Ms. Long remembered that Ms. Morton said she had gone to  
14 visit the victim with Antwone Evans to ask her to reduce the  
15 charges against Mr. Evans and that the victim had said no.  
16 Ms. Long believed that Ms. Morton told her about this meeting  
17 fairly soon after it had happened and her understanding was that  
18 the victim told Ms. Morton that Mr. Evans had committed the crime.

19 **MS. SMITH:** Commissioners, Bobbie Long does not have a  
20 criminal record.

21 **Q.** Who else did commission staff interview from Mr. Evans'  
22 family?

23 **A.** Commission staff interviewed Dynekia Brodie, who is the  
24 sister of Tamira Moore and the daughter of Deborah Moore. Dynekia  
25 said that her aunt Pauline had told her that Mr. Evans was

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1 innocent because he had maintained his innocence in this case but  
2 she did not know if her aunt had ever spoken to the victim and she  
3 had no information about that meeting.

4 MS. SMITH: Commissioners, Dynekia Moore does not have a  
5 criminal record.

6 Q. Did commission staff ask Jackie Manning Kemp about the  
7 meeting between Pauline Morton and her mother during Ms. Kemp's  
8 deposition?

9 A. We did. Ms. Kemp recalled that someone associated with  
10 Mr. Evans' family had called the victim about 10 years ago and  
11 wanted to know if the victim would agree to let him go, and the  
12 victim said, "Under no circumstances."

13 Ms. Kemp also recalled her mother telling her a woman  
14 associated with Evans had come to her house and someone was in the  
15 car with that woman. Her mother told her that the woman was  
16 trying to tell her that it wasn't Mr. Evans and that he hadn't  
17 been in the area that night.

18 I described what we had heard about Ms. Morton's meeting  
19 with the victim, and Ms. Kemp said that she didn't think her  
20 mother would have said that Mr. Evans didn't do the crime.

21 Ms. Kemp also stated that Mr. Evans had called the  
22 victim seven or eight years ago and that the victim had hung up  
23 immediately.

24 According to Ms. Kemp, the victim was terrified after  
25 receiving that phone call and reported it.

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1           Q.    Did the Commission do anything to follow up on this  
2 phone call from Kenneth Evans to the victim?

3           A.    We did.  The Commission obtained Mr. Evans' prison phone  
4 calls and DPS records related to his phone calls.  Case management  
5 notes from his DPS files indicate that there was a contact with  
6 Mr. Evans by DPS staff on February 2, 2009, where they "discussed  
7 an issue concerning him accidentally calling the victim of his crime  
8 on the telephone."

9                Mr. Evans explained this phone call by saying his son  
10 had a number similar to the victim's.  The report for this case  
11 management note says that the number -- it lists the same number  
12 for the number that was called and the number that was supposed to  
13 have belonged to his family member.

14               So Mr. Evans was saying that the phone number he was  
15 trying to call was his son's, was similar to the victim's.  The  
16 report lists the same phone number, (919)497-7645, for both of  
17 those numbers so we weren't able to tell where those numbers were  
18 one digit off.

19               Mr. Evans was told to be very careful while dialing and  
20 Mr. Evans indicated he might be able to get his son to change his  
21 number.

22               The account in the DPS records was consistent with what  
23 Mr. Evans told the Commission about this phone call in our 2019  
24 interview with him.

25           Q.    Did the commission staff learn anything else about the

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1 victim's phone number and Antwone Evans' phone number?

2       A.     Yes. The case management notes related to DPS staff  
3 speaking with Mr. Evans about this phone call to the victim are  
4 dated February 2, 2009, but those notes do not indicate exactly  
5 when that call happened.

6             We checked with DPS to get records of phone calls made  
7 by Mr. Evans in 2009. The earliest record they have goes back to  
8 February 25, 2009 -- so a few weeks after this contact in the case  
9 management notes happened. So they don't have any phone records  
10 for the period of time that the phone call was made.

11            But the phone calls from 2/25/2009 to 12/31/2009  
12 indicate that Mr. Evans called the number listed in the case  
13 management notes twice, and that number was (919)497-7645, several  
14 times during that time period -- so after that 2/2/2009 contact in  
15 his case management notes.

16            Using Lexis, the Commission was able to locate a phone  
17 number associated with the victim in this case that was  
18 (919)496-7645. So they're one digit different.

19            There is no indication that Mr. Evans called that number  
20 that was associated with the victim during the 2/25/2009 to  
21 December 31, 2009, phone calls that we have.

22            There was also no recording of that phone call going  
23 back that far.

24            **THE COURT:** Questions?

25                    (No response.)

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1           **Q.**    Did the commission staff ask law enforcement about this  
2   alleged meeting between the victim and Pauline Morton?

3           **A.**    We did.   And Pat Green told the Commission during his  
4   deposition that the victim had never contacted him to say anything  
5   like that.   And if she had, he would've gone straight to the  
6   district attorney's office with that information.

7                   Rick Sims also indicated that he had never heard  
8   anything about the victim saying that Mr. Evans was not the person  
9   who kidnapped her.

10           **MS. SMITH:**   Commissioners, any questions about the  
11   information that Kenneth Evans provided the Commission related to  
12   the meeting between Pauline Morton and the victim as well as  
13   Antwone Evans' statement about that meeting?

14                   (No response.)

15           **MS. SMITH:**   Commissioners, does anyone want to hear from  
16   Antwone Evans?

17           **THE COURT:**   Anybody need to hear him?

18                   (No response.)

19           **MS. SMITH:**   May he be released from his subpoena?

20           **THE COURT:**   I believe so.   Last chance.   Anybody?

21                   (No response.)

22           **THE COURT:**   Yes, ma'am.

23           **MS. SMITH:**   If we could take a recess, the court  
24   reporter is having a computer issue, and now is a good time.

25           **THE COURT:**   10 minutes?   15 minutes?

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1           Take 15 minutes. Thank you.

2                   (Witness stands down, 3:05 p.m.)

3                   (Recess taken, 3:05 to 3:24 p.m.)

4           **THE COURT:** All right. We will resume and come back to  
5 order, please.

6           **MS. SMITH:** The Commission briefly recalls Ms. Matoian.

7           **THE COURT:** Thank you.

8           You're still under oath.

9                   (Catherine Matoian recalled.)

10   **BY MS. SMITH:** (3:24 p.m.)

11           **Q.** Ms. Matoian, earlier this afternoon one of our  
12 commissioners had a question about insurance. Were you able to  
13 locate the answer to that question?

14           **A.** We were. We looked back at the records for the four  
15 robberies of Manning's Grocery that we were able to find. In two  
16 of them, there was no indication that there was any insurance  
17 filed and, in two of them, they indicated that it was not filed  
18 for insurance purposes. So two we do not know, there's no  
19 indication; in two it says that there was no insurance filing.

20           **DR. PERRY:** Thank you.

21           **MS. SMITH:** Commissioners, I believe it was Mr. Glazier  
22 who had a question about the polygraph of the victim and whether  
23 or not we had any additional records related to the polygraph.

24                   We have on the break, I believe, put into your notebook  
25 what is now Handout 41 towards the back. That is the only -- that

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1 is actual polygraph report that was in the SBI file.

2 It does not include the additional questions that were  
3 asked, Mr. Glazier, but it does include those three questions from  
4 the report.

5 The other thing that this report has that wasn't in the  
6 written report is the score -- the numerical evaluation. There  
7 toward the bottom of that report.

8 **MR. GLAZIER:** Thank you.

9 **MS. NEWTON:** I have a question, if I might.

10 **THE COURT:** Yes, ma'am.

11 **MS. NEWTON:** Looking at -- it may be out of order or out  
12 of organization order for you, if you don't mind.

13 It relates to the location of any possible helpful  
14 information on the juvenile background.

15 From looking at his record, it appears he began  
16 committing crimes soon after he was 16 years old and was  
17 committing crimes from thereafter until he went to prison, ramping  
18 up to a lot of felonies during the period of time that he was  
19 accused of this date of offense.

20 So the question is, one, did you discover whether he had  
21 a juvenile record, because it starts at 16 in North Carolina; and,  
22 two, in all of those offenses, they all appeared to be, except  
23 one, in Franklin County.

24 Did Franklin County not have any records relating to a  
25 recommendation for mental health assessment and treatment or

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1 anything on probation that would have educated the Commission on  
2 his education level and his mental health stability?

3 And the reason I ask is the Dix report indicates that he  
4 self-reported an eighth-grade education. The Commission's reports  
5 are going to indicate that he self-reported a twelfth-grade  
6 education, and based on his interviews and what I read in the  
7 brief, it indicates he quarrels with facts that really aren't at  
8 issue from the trial or from statements.

9 **THE WITNESS:** So to the first part of your question, we  
10 do not have any records from when Mr. Evans was a juvenile. We  
11 have what's available to us through either CIPRS records or  
12 through reports that we found during our search of the sheriff's  
13 office.

14 During the sheriff's office search, we did not find any  
15 records related to when he was a juvenile. We would've copied any  
16 information we would've found out about Mr. Evans during that  
17 search and did not locate any.

18 To the second point of your question about his  
19 background, the Commission has the Dix assessment. We have his  
20 mental health records from prison that Mackenzie will testify  
21 about shortly. Other than that, there was nothing in the files  
22 that was --

23 **MS. NEWTON:** Even from any other criminal offenses? He  
24 started at 16 with crimes in Franklin County.

25 **A.** Right. We did not -- during our search of the sheriff's

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1 office file, we did not find any records for any other crimes that  
2 he committed. We have some SBI files from the *Drake* case and  
3 another case that were both around the same time as the *Manning*  
4 case, but we did not locate any other records of Mr. Evans during  
5 our search of the sheriff's office file.

6 MS. NEWTON: Probation? Anywhere else?

7 THE WITNESS: We searched -- Mackenzie will testify  
8 about that in a minute. She reviewed the DPS record and is going  
9 to testify about those. I believe he didn't have any probation or  
10 parole records, though.

11 MS. NEWTON: I wonder maybe if the judge ordered some  
12 sort of assessment because of his youth when he started committing  
13 offenses.

14 And so you didn't find anything?

15 THE WITNESS: We don't have any record of that.

16 MS. NEWTON: Okay. Thank you.

17 MS. SMITH: Any other questions for Ms. Matoian before I  
18 call Ms. Myers?

19 (No response.)

20 DR. PERRY: How old would he have been --

21 THE WITNESS: For this case?

22 DR. PERRY: Yes.

23 THE WITNESS: I believe he was almost 30, but if you'll  
24 give me a second, I can find the exact date.

25 DR. PERRY: Deb, does that sound right?

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1           **MS. NEWTON:** In this case, well, allegedly he was 26  
2 years old -- a couple months after he was 26 years old.

3           I mean -- sorry -- a couple months before he turned 26  
4 years old.

5           **THE COURT:** Yes, ma'am.

6           **MS. COLBERT:** Did you mention there were other questions  
7 that was asked other than these three through the polygraph?  
8 Additional questions than the three that are here? Because I  
9 don't remember seeing any reference about more questions other  
10 than these three.

11           **MS. SMITH:** There -- our understanding of polygraphs is  
12 that there are often baseline questions asked that are not in the  
13 test questions. These three are the test questions that would  
14 have been asked.

15           **MS. COLBERT:** Gotcha.

16           **THE WITNESS:** If you'll just give me one second.

17           **THE COURT:** Did you want to say something?

18           **MR. GRACE:** No.

19           **MS. COLBERT:** So with that being said, then the same  
20 thing happened with Mr. Evans. There were three questions, and  
21 those would have been the baseline questions based on your  
22 experience in polygraph questions. So there would have been  
23 additional questions inquired of him as well that we don't have a  
24 record of?

25           **THE WITNESS:** So I asked Rick Sims during his deposition

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1 how polygraphs would have worked at the time, and he indicated  
2 that there would usually be a preinterview done of the suspect and  
3 said that that would be kept in the polygrapher's file. And he  
4 said that he would not have received a copy of that for his file.  
5 He would have only received the actual polygraph report that we  
6 provided to Commissioners in the brief and in the handout, that  
7 the polygraph files would have been kept separately.

8 I believe we checked with the SBI about that and were  
9 not able to locate anything related to this.

10 **THE COURT:** I just have a remark. I thought you said  
11 these are test questions?

12 **MR. GRACE:** They're not test questions.

13 **THE COURT:** These aren't test questions.

14 **MR. GRACE:** Test questions are "How old are you?"  
15 "What's your name?"

16 **THE WITNESS:** Right. The questions documented there are  
17 the case-relevant questions from the actual polygraph test.

18 **THE COURT:** I thought you said they were test questions.  
19 No?

20 **THE WITNESS:** I think Ms. Smith said that, but yeah,  
21 it's the questions from the actual test.

22 **THE COURT:** Okay.

23 **MS. COLBERT:** And to -- there's two -- there's 41 and  
24 42, and 41 has a minus sign by the first question, and then 42 has  
25 a --

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1           **THE WITNESS:** That's related to Mr. Evans. 41 is --

2           **MS. COLBERT:** 41 is --

3           **THE WITNESS:** And we were going to talk about Mr. Evans'  
4 when we got to that.

5           **MS. COLBERT:** Okay. Gotcha.

6           **MS. SMITH:** 41 is the victim.

7           **THE WITNESS:** Right. She was talking about 42 as well.

8           **MS. SMITH:** 41 is the victim. We'll get to 42 later.

9           **MS. COLBERT:** Okay.

10          **MS. NEWTON:** Can I ask a follow-up question?

11          **THE COURT:** Yes, I'm sorry.

12          **MS. NEWTON:** It's okay.

13               Just -- you keep referring back -- and this issue is  
14 bothering me because it appears as if there is no way to discover  
15 that anyone has actually done a substantial investigation --  
16 unless you've done it or we have it later -- substantial  
17 investigation over his capacity because that Dix report -- you  
18 referred me back to that. That Dix report is all but not useful  
19 because he went into Dix on September 7, '94, at Mr. Ballance's  
20 request, who specifically, as I read it, requested -- he said  
21 because he -- the attorney said because he did not want the  
22 defendant to testify, he wanted an evaluation of capacity to  
23 proceed only, but the evaluator only saw Mr. Evans on  
24 September 15. The report was dated and signed, giving literally a  
25 diagnosis on the 16th, and it clearly relies on Mr. Evans'

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1 self-report -- no records, no instruments given, testing, medical  
2 and mental health or educational records to verify anything that  
3 was true -- or at least in court didn't refer to it.

4           So it appears as if everyone -- at least in the only  
5 mental health assessment we have, this evaluator was relying on  
6 Mr. Evans to tell, for example, "What -- How did you do in  
7 school?"

8           "Eighth grade. I was fine, but I had a problem with the  
9 principal."

10           Well, then you would say he told you-all that he was --  
11 he went through the twelfth grade, which of course he clearly did  
12 not do both.

13           And I don't see that there is -- which is why I asked  
14 about the prior offense records. Surely, a judge would've checked  
15 into that. Based on his responses, he doesn't sound as if he has  
16 any idea what happened during that period of time. He's  
17 quarreling with people who do say they remember all the facts.

18           I just raise that because there doesn't appear to be  
19 competent documentation of his capacity to actually know facts  
20 he's reciting, and that's bothersome.

21           **THE WITNESS:** Right. The Commission just has not  
22 located anything in our gathering of documents that would provide  
23 any additional insight into that.

24           The Commission -- we ourselves did not do any additional  
25 investigation into Mr. Evans' capacity. We reviewed the CPS

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1 mental health records and did not locate anything in them at that  
2 time that indicated we needed to go further into that. So that  
3 has not been part of our investigation.

4 MS. NEWTON: Thank you.

5 MS. SMITH: All right. May Ms. Matoian step down?

6 THE COURT: Yes.

7 (Witness stands down, 3:36 p.m.)

8 MS. SMITH: Commission calls Legal Investigator  
9 Mackenzie Myers to stand.

10 \* \* \* \* \*

11 Thereupon, MACKENZIE MYERS, a witness having been called by the  
12 Commission, was sworn and testified as follows:

13 MS. SMITH: Commissioners, we are now going to turn our  
14 attention to Kenneth Evans. Handout 16 in your hearing handout  
15 notebooks is the criminal record of Kenneth Evans, and this is the  
16 corrected version that we put in there during a break earlier this  
17 morning.

18 THE COURT: Okay.

19 MS. SMITH: If you want to take just a moment to look at  
20 that.

21 EXAMINATION

22 BY MS. SMITH (3:36 p.m.)

23 Q. Ms. Myers, will you please state your full name for the  
24 record.

25 A. Mackenzie Catherine Myers.

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1 Q. And how are you employed?

2 A. I am employed with the North Carolina Innocence Inquiry  
3 Commission.

4 Q. And what is your title here at the Commission?

5 A. I am a grant legal investigator.

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

7 A. Since January of 2019.

8 Q. What files did the Commission review related to  
9 Mr. Evans?

10 A. The Commission obtained DPS records for Mr. Evans  
11 including his combined records, his medical and mental health  
12 records, and his phone calls.

13 Q. And do those DPS records include any admissions of guilt  
14 by Mr. Evans?

15 A. No. However, the one time it is noted, Mr. Evans says  
16 that he is innocent.

17 MS. SMITH: Commissioners, Handout 17 in your hearing  
18 handout notebooks is a chart with information obtained from  
19 Mr. Evans' DPS records.

20 Judge Wagoner, Handout 17 contains information from  
21 records that are protected both by federal and state law regarding  
22 the education and mental health of Kenneth Evans. Furthermore,  
23 this information was received by the Commission pursuant to DPS'  
24 requirement that we get it through court order.

25 I would request at this time that that particular

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1 document, Handout 17, be sealed from the public record.

2           **THE COURT:** Handout 17 will be sealed by order of the  
3 Court and will not be opened except upon further instructions by  
4 this Court.

5           **MS. SMITH:** Commissioners, Handout 18 is a chart with  
6 information from Mr. Evans' DPS phone calls. This chart does not  
7 include details of calls where Mr. Evans talks about his plans  
8 generally for when he gets out of prison. It generally tells  
9 individuals that the Commission is working on his case or the  
10 times where he discusses the money that he may receive from the  
11 Commission's process, which he discusses routinely.

12           If you will please take a look at both Handout 17 and 18  
13 and take the time you need to review those.

14           **THE COURT:** If anybody needs more time, holler.

15           Everybody ready? Okay. We'll move on.

16           **Q.** Ms. Myers, in Handout 18, Mr. Evans makes multiple  
17 references to a Jack or Johnny Evans.

18           Can you tell the Commission what we know about Jack or  
19 Johnny Evans?

20           **A.** I can. Records related to an earlier robbery of Esley  
21 Manning's store mentioned a man named Johnny Evans being at the  
22 store around the time of the robbery of Manning's Grocery.

23           Commission staff wrote to Evans and asked if Johnny  
24 Evans was a relation to him. Mr. Evans confirmed that Johnny  
25 Evans was a relative of his. After that, DPS phone records

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1 indicate Evans told several family members that Johnny Evans had  
2 committed the crime and that there was DNA linking him to the  
3 crime.

4           Antwone Evans had told the Commission during his  
5 deposition that he had been told that Uncle Jack had committed the  
6 crime.

7           **Q.** Did the Commission follow up with Mr. Evans about Johnny  
8 Evans -- that being Kenneth Evans?

9           **A.** We did.

10           Mr. Evans brought up Johnny Evans during his  
11 February 27, 2019, interview with the Commission. Commission  
12 staff asked Mr. Evans why he thought Johnny Evans had committed  
13 the crime and Evans said he thought so because of the letter he  
14 received from the Commission and that he "just made a wild guess  
15 because his name happened to come up."

16           Commission staff clarified with Mr. Evans that the  
17 Commission's letter did not implicate Johnny Evans in the crime  
18 but was just trying to obtain information for our investigation.

19           Mr. Evans indicated he understood this.

20           **MS. SMITH:** Commissioners, the portion of the interview  
21 related to Johnny Evans can be found on pages 164 to 166 of  
22 Handout 39 that was provided to you prior to the Commission  
23 hearing.

24           **Q.** Ms. Myers, did anything in the Commission's  
25 investigation indicate that Johnny or Jack Evans had anything to

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1 do with this crime?

2 A. No. Johnny Evans' name only appeared in the report  
3 related to the earlier robbery of Esley Manning's store.

4 Q. Ms. Myers, Handout 18 also includes information from a  
5 call with Kenneth Evans' cousin Anthony Carter where Carter says  
6 that he was in prison with Pat Green and talked to Pat Green about  
7 paying JoAnn Clemonts and Jerry Moore to testify against Evans.

8 What can you tell Commissioners about this?

9 A. The Commission spoke with Anthony Carter over the phone  
10 on July 9th of 2019. In that call, Carter told the Commission he  
11 had heard from "people talking" that Pat Green gave JoAnn Clemonts  
12 and Jerry Moore drugs or money to testify against Evans. Carter  
13 said he had found out this was true.

14 When commission staff asked him how he found out that it  
15 was true, Carter said because Evans had not done the crime.

16 Carter said that he asked Pat Green about this while  
17 they were in prison together and Green said he had not done  
18 anything like that.

19 Q. Is this consistent with what Mr. Carter provided to  
20 Kenneth Evans in his phone call on November 13, 2018?

21 A. No.

22 MS. SMITH: Commissioners, a summary of the contents of  
23 that call can be found on page 3 of Handout 18. That's the  
24 November 18, 2018, call.

25 Q. Did commission staff ask Pat Green about Anthony Carter?

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1           A.     We did. And Pat Green indicated he thought he may have  
2 arrested Anthony Carter before. He said it was possible that  
3 Carter tried to talk to him about his case while they were in jail  
4 but he was not sure.

5           MS. SMITH: Commissioners, do you have any questions for  
6 Ms. Myers based on the information contained in Handouts 17 or 18?

7           MR. BOSWELL: May I ask a question?

8           THE COURT: Yes.

9           MR. BOSWELL: This starts in 2017. Do we have phone  
10 calls prior to that?

11          THE WITNESS: The phone records that we were able to  
12 obtain from DPS, I believe in terms of -- let me get back to you  
13 on that. I don't want to --

14          MR. BOSWELL: I'm only wondering if there was anything  
15 -- if the first time he started talking about his case was 2017 or  
16 if we have records or reference of why it sort of starts here.

17          THE WITNESS: Let me get back to you specifically about  
18 those calls.

19          MR. BOSWELL: Sure.

20          Q.     Ms. Myers, did the Commission ask for calls from DPS for  
21 the time period after Mr. Evans' applied to the Commission?

22          A.     Yes.

23          MS. SMITH: Does that answer your question, Mr. Boswell?

24          MR. BOSWELL: Might I imply [sic] to that that we didn't  
25 ask for anything before that?

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1           **Q.**   Did we ask for recorded calls prior to that other than  
2           that period in 2009 where we were trying to determine when  
3           Mr. Evans called the victim?

4           **A.**   That is correct. We only requested for recorded phone  
5           calls after the time he applied to the Commission.

6           **MR. BOSWELL:** Thank you.

7           **THE COURT:** I'm just curious. If they were available,  
8           would you want to see earlier ones?

9           **MR. BOSWELL:** No. The reason I was asking about this is  
10          because he's talking a lot about the crime, and to some extent, if  
11          we're going to look at this as some evidence one way or the other,  
12          it would be interesting to know. But I don't know that it's worth  
13          doing or we could do it, whether he had -- in his previous  
14          conversations, had admitted to any involvement with the crime, and  
15          that's why I was just wondering. But I'm not suggesting that  
16          people go back for 20 years and listen to phone calls.

17          **MS. SMITH:** It is our understanding based on what we  
18          requested that DPS will not have any calls -- recorded calls prior  
19          to 2009 because we were trying to get those in that time period.  
20          We have not requested the calls between the 2009-'10 period  
21          through 2016.

22          The judge can issue a judicial subpoena if anyone would  
23          like those.

24          **THE COURT:** I'm just wondering how long it's going to  
25          take to get it.

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1           **MS. SMITH:** Well, it depends on what you put in your  
2 order.

3                   (Overlapping speakers.)

4           **MR. GRACE:** The problem is transcribing it.

5           **THE COURT:** Transcribing it, yeah.

6                   (Reporter clarification.)

7           **THE COURT:** I would be happy to order it. As Mr. Grace  
8 kindly pointed out that getting it's not the problem; somebody  
9 transcribing it is the problem.

10          **MS. SMITH:** So we don't transcribe them but our staff  
11 would have to listen to the calls before the Commission hearing  
12 ends tomorrow.

13          **THE COURT:** It's your call.

14          **MR. BOSWELL:** No. I don't think so.

15          **THE COURT:** Are you sure?

16          **MR. BOSWELL:** I think we would be looking for a needle  
17 in a haystack that's probably not there.

18          **THE COURT:** All right. I will not order it.

19          **Q.** Ms. Myers, are there time periods within the calls that  
20 we did get where Mr. Evans goes through periods of time where he  
21 does not talk about the case?

22          **A.** Yes.

23          **Q.** Did commission staff obtain records related to other  
24 crimes that Mr. Evans was suspected of or charged with?

25          **A.** We did. The Commission obtained the SBI file and crime

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1 lab file for the Drake case. Although the Commission didn't  
2 specifically request the file, the crime lab also provided their  
3 file for July 17, 1990, breaking and entering in Franklin County  
4 where Evans was a suspect. And that is the King case.

5 Q. Was Mr. Evans linked by physical evidence to either the  
6 Drake or King case?

7 A. Yes. In both cases, Mr. Evans' latent prints were found  
8 at the crime scenes.

9 Q. Was the Commission able to determine if Mr. Evans was  
10 polygraphed in any of the other cases?

11 A. The only polygraph information located in the files  
12 obtained by the Commission is related to the Manning case.

13 MS. SMITH: Commissioners, you were provided information  
14 related to other cases in which Mr. Evans pled guilty on pages 111  
15 to 136 of your brief. Those included the Drake, Speed and Hardy  
16 cases.

17 This is also a good time to point out that Handout 42 in  
18 your hearing handout notebooks is an additional polygraph report  
19 related to Mr. Evans' polygraph in the Manning case. That  
20 contains the same information that was provided on the report in  
21 your brief except that it does have the numerical evaluation of a  
22 plus 9 toward the bottom of that.

23 THE COURT: What handout is that?

24 MS. SMITH: That's going to be 42 at the very back.

25 THE COURT: Okay. Thank you.

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1           **MS. SMITH:** Are there any further questions of Ms. Myers  
2 about these other crimes?

3           **MR. GLAZIER:** One question.

4           **THE COURT:** Yes.

5           **MR. GLAZIER:** So if you could go back to Exhibit 42.  
6 Tell me what that is and what it says.

7           **MS. SMITH:** This is the polygraph report of Kenneth  
8 Evans in the Manning case. He was polygraphed in April of 1990, a  
9 little over a month after the crime. It has at the bottom, the  
10 three questions which were already provided in a report in your  
11 brief, but right above that, it has the numerical evaluation of a  
12 plus 9. And right above that is the opinion of NDI, which is "no  
13 deception indicated."

14           **MR. GLAZIER:** And may I follow up on that?

15           **MS. SMITH:** You may.

16           **MR. GLAZIER:** As I recall, the plus scores usually go  
17 from -- you can have, what is it, a minus 3 to plus 3 often on the  
18 deception chart or the nondeception chart going forward on each  
19 question.

20           Is this indicating that on those questions he scored  
21 plus 3 on all three questions?

22           **MS. SMITH:** I don't think anyone on our staff has an  
23 answer for exactly what that numerical evaluation means. We  
24 simply know that the higher the plus value, it's moving further  
25 toward no deception indicated; when you get into the negative

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1 values, that's moving to deception indicated.

2 THE COURT: Could somebody on your staff maybe perhaps  
3 reach out to somebody from the SBI and just give us -- explain how  
4 they come up with these numbers?

5 MS. SMITH: Certainly can.

6 MR. GLAZIER: Again, just maybe more of a comment than  
7 anything, but my recollection is it's sort of in the -- you're  
8 sort of -- going below minus 2, minus 3, it indicates deception;  
9 when you're going over 3, it indicates nondeception, as this does;  
10 in between is inconclusive. But a plus 9 is pretty rare.

11 MR. GRACE: I think he's right.

12 (Overlapping speakers.)

13 THE COURT: So that's why if just -- somebody could give  
14 an affidavit or -- SBI?

15 MS. SMITH: We will have somebody reach out to the SBI.

16 MR. GLAZIER: Thank you very much, Judge.

17 THE COURT: Thank you.

18 MS. SMITH: Any other questions for Ms. Myers before I  
19 have her step down?

20 MS. NEWTON: On the criminal record, do I have this  
21 accurate? That the three offenses related to Ms. Manning are the  
22 last set of sentences that Mr. Evans is being held on in North  
23 Carolina?

24 THE WITNESS: Yes. That is correct.

25 MS. SMITH: Okay.

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1           **THE COURT:** Thank you, ma'am. You may step down.

2                   (Witness stands down, 3:58 p.m.)

3           **MS. SMITH:** Commission will recall Ms. Matoian.

4                   (Catherine Matoian recalled.)

5 BY MS. SMITH: (3:58 p.m.)

6           **Q.** Ms. Matoian, was there information in the files reviewed  
7 by the commission staff that was related to Mr. Evans' alibi?

8           **A.** There was.

9           **Q.** Has Mr. Evans been consistent about his alibi?

10          **A.** Mr. Evans has generally been consistent about the  
11 locations of where he was the night of the crime. He has  
12 indicated that he was at Linda Collier's house before going to  
13 Tommy Perry's store with the exception of the interview where --  
14 with his defense attorneys -- I'm sorry -- with law enforcement  
15 where he said that he went to Pleasant's Garage and then -- before  
16 going home to his family home on Vaiden Road.

17                   He has not been consistent about who was present at the  
18 family home when he got there.

19          **MS. SMITH:** Commissioners, Handout 19 is a chart related  
20 to the various alibis provided by Mr. Evans from the original  
21 investigation through the Commission's investigation.

22                   If you'll take a few moments to review that.

23          **Q.** Ms. Matoian, what investigation did commission staff do  
24 into Mr. Evans' alibi?

25          **A.** The files indicated that Carrie Williams, Evans'

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1 grandmother, had passed away before his trial. His aunt, Mary  
2 Alice Moore, has died since the trial. Tommy Perry, the owner of  
3 the store, is also deceased. Larry Norman's file indicated that  
4 Mary Alice Moore, Jerry Moore, and Tommy Perry all testified at  
5 the trial.

6 In a 1994 interview with his defense attorneys, Evans  
7 also named his nephew Greg Evans as someone who was at the family  
8 home on Vaiden Road the night of the crime.

9 In his PLS questionnaire, Mr. Evans named his mother and  
10 father as people who can testify to him being home the night of  
11 the crime. However, both of those individuals are now deceased.

12 Q. Did to the Commission interview Jerry Moore?

13 A. We did. In person on 7/10 and 7/25/2019.

14 Q. And are those interviews recorded and transcribed?

15 A. They are.

16 MS. SMITH: Commissioners, Handout 20 is the criminal  
17 record of Jerry Moore.

18 Q. What did Mr. Moore tell commission staff?

19 A. Mr. Moore had very little recollection of this case. He  
20 did say that he recalled testifying at the trial and that the case  
21 had to do with some coins that Mr. Evans had. Mr. Moore said he  
22 didn't know if Mr. Evans had stolen the coins but that he had seen  
23 Mr. Evans with the coins. Mr. Moore said that Evans would  
24 occasionally stay at the house on Vaiden Road but was in and out.

25 When shown a possible interview report indicating that

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1 Mr. Moore said Mr. Evans was home between 9:30 and 10:00,

2 Mr. Moore said he had no reason to lie about where Mr. Evans was.

3 During the second interview, on July 25, 2019, Mr. Moore  
4 said that Mr. Evans had come home and changed that night and left  
5 again but was not sure about the time.

6 Other documents related to Jerry Moore do not include  
7 the detail that Mr. Evans had changed after coming home and  
8 leaving again.

9 When commission staff asked Mr. Moore how he could have  
10 been sure he was thinking of the night of the crime when it  
11 doesn't appear he was interviewed until 1993, Mr. Moore said he  
12 was not sure. He recalled hearing about the crime after it  
13 happened but didn't know how he recalled what night that it was.

14 Q. Did the Commission interview Greg Evans?

15 A. We did. In person on September 4, 2019.

16 Q. And was that interview recorded and transcribed?

17 A. It was.

18 MS. SMITH: Commissioners, Handout 40 is the criminal  
19 record of Greg Evans.

20 It is further to the back of the book.

21 Q. What did Greg Evans tell commission staff?

22 A. Greg Evans would have been about 10 years old at the  
23 time the crime happened. He did not recall anything about the  
24 night of the crime, and his knowledge of the crime consists -- his  
25 knowledge of the crime consisted of information he had heard from

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1 other family members.

2 He did say that Mr. Evans stayed at the family home on  
3 Vaiden Road most nights, but that Mr. Evans had a lot of  
4 girlfriends and that if he wasn't there, he was usually staying in  
5 a woman's house.

6 Commission staff showed him notes from the defense file  
7 from August 1994. These notes indicate that Greg Evans recalled  
8 breaking a knob on the radio attempting to record something for  
9 Mr. Evans on the night of the crime. In our interview, Greg Evans  
10 recalled that he was always playing around with the radio.

11 The notes indicate defense attorneys spoke to Greg Evans  
12 and Mary Alice Moore, and they were satisfied that Mr. Evans was  
13 home between 9:30 and 10:00.

14 Greg Evans did not think that he would have lied for  
15 Mr. Evans but did acknowledge that the notes were from 1994, which  
16 was four years after the crime had happened.

17 Q. Did commission staff learn anything else about  
18 Mr. Evans' alibi?

19 A. We did. The Commission spoke to Mr. Evans' cousin,  
20 Anthony Carter, over the phone on July 9, 2019.

21 Q. And was that interview recorded and transcribed?

22 A. It was.

23 MS. SMITH: Commissioners, Handout 21 is the criminal  
24 record of Anthony Carter.

25 Q. What did Mr. Carter tell commission staff?

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1           A.     During that phone call, Mr. Carter indicated that  
2 Mr. Evans had been with him at a different family home in a  
3 different area on the night of the crime.

4                     We asked Mr. Carter if he had ever told anyone that  
5 Evans was with him on the night of the crime and he said he had  
6 not. When commission staff told Mr. Carter that Mr. Evans had  
7 stated he was at the family home on the Vaiden Road that night,  
8 Mr. Carter said that he thought Evans had been at the other family  
9 home earlier that evening before the crime but may have been  
10 mistaken.

11           Q.     Did the Commission learn anything else about Mr. Evans'  
12 alibi?

13           A.     We did.

14                     When the Commission went to pick up the photographs of  
15 Mr. Evans from his relative, Archie Lee, Archie Lee indicated that  
16 there was a man who was with Mr. Evans on the night of the crime  
17 and knew Mr. Evans had not committed the crime.

18                     Archie Lee did not know this man's name but did give  
19 directions to his house and indicated that the man worked at the  
20 dump.

21           Q.     Was commission staff able to locate this man?

22           A.     We did. We followed Archie Lee's directions and the  
23 woman who answered the door indicated that her husband, William  
24 Serratt, worked at the dump. And the Commission interviewed  
25 William Serratt on September 3, 2019.

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1           **THE COURT:** Mr. Serratt did what? Worked?

2           **THE WITNESS:** He worked at the dump. So it matched  
3 Archie Lee's description of the person.

4           **THE COURT:** Okay.

5           **Q.** Was that interview recorded and transcribed?

6           **A.** It was.

7           **MS. SMITH:** Commissioners, William Serratt does not have  
8 a criminal record.

9           **Q.** What did Mr. Serratt tell commission staff?

10          **A.** Mr. Serratt indicated that -- said he did not know where  
11 Mr. Evans was the night of the crime. Mr. Serratt did remember  
12 coming home himself from the hunting club in Centerville and  
13 seeing law enforcement everywhere on the night of the crime and  
14 feeling like he needed to get home.

15               He learned about the kidnapping of Mrs. Manning later  
16 on.

17               Mr. Serratt did recall that sometime after the crime he  
18 was at Pleasant's Garage and Mr. Evans had walked over from  
19 Manning's Grocery, where he had just gotten beer. Mr. Serratt  
20 gave Mr. Evans a ride to Louisburg that day. And Mr. Serratt  
21 found out later that Mr. Evans was arrested on the day that he had  
22 seen him at Pleasant's Garage.

23          **Q.** And when was Mr. Evans arrested for this crime?

24          **A.** Mr. Evans was not arrested for this crime until April  
25 of 1993, after he was already in jail and had pled guilty in the

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1 Drake case.

2 Q. So this information from Mr. Serratt about Mr. Evans  
3 purchasing a beer at Manning's Grocery sometime after the crime  
4 doesn't appear to have happened right within the time frame of the  
5 crime?

6 A. Correct.

7 MS. SMITH: Commissioners, do you have any questions for  
8 Ms. Matoian about Mr. Evans' whereabouts on the night of the  
9 crime?

10 MS. COLBERT: So in the handout, 19, it mentions  
11 something about his -- two Williams?

12 THE WITNESS: We're going to testify about them in just  
13 a moment.

14 MS. NEWTON: I have one sort of related to his  
15 whereabouts, about where he thought he was.

16 In the brief, it talks about the perpetrator alleging to  
17 the victim that he had debts that he needed to pay and he was  
18 getting a thousand dollars.

19 In the now-sealed mental health records to the  
20 Commission, there was an indication, for the first time that I saw  
21 in this record, that Mr. Evans has a polysubstance history.

22 Do you know what his drug of choice was?

23 THE WITNESS: I do not know off the top of my head what  
24 substances he was using.

25 MS. NEWTON: Do you know if it was cocaine or --

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1           **THE WITNESS:** I don't. Let me check and see. I can't  
2 recall off the top of my head.

3           **MS. NEWTON:** It does appear as if Anthony Carter's drug  
4 of choice was cocaine.

5           **THE WITNESS:** He does appear to have charges related to  
6 cocaine.

7           **MS. NEWTON:** Convictions -- multiple?

8           **THE WITNESS:** Yes.

9           **MS. NEWTON:** Thank you.

10          **MS. SMITH:** I would ask that Ms. Matoian step down and I  
11 would recall Ms. Myers.

12                   (Witness stands down, 4:16 p.m.)

13                   (Mackenzie Myers recalled.)

14 BY MS. SMITH: (4:16 p.m.)

15          **Q.** Ms. Myers, do you know if Mr. Evans was known to use  
16 cocaine?

17          **A.** Yes, he was.

18          **THE COURT:** Do you know if Mr. Evans was what?

19          **MS. SMITH:** Known to use cocaine.

20          **THE COURT:** Thank you.

21          **Q.** Who was Linda Collier?

22          **A.** Evans said that he was at Linda Collier's house prior to  
23 going to Tommy Perry's store on the night of the crime. Evans, in  
24 the PI interview, have her listed as Linda Collins. It is  
25 actually Collier. We were able to verify through the address and

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1 birth date that Linda Collier is the same person who was  
2 interviewed by the PI, Dan Williams.

3 Q. And did the Commission interview Ms. Collier?

4 A. We did. On August 13 of 2019.

5 Q. Was that interview recorded and transcribed?

6 A. Yes.

7 Q. What did Ms. Collier tell commission staff?

8 A. Ms. Collier said Evans' name sounded familiar to her;  
9 however, she did not recall being interviewed by anyone in this  
10 case. She also did not have any information about the crime. She  
11 does not have a son named Dan, as named in the PI interview, but  
12 she did provide contact information for her son, James Collier.

13 Q. Did the Commission follow up with James Collier?

14 A. We did. We spoke to James Collier over the phone on  
15 August 14 of 2019.

16 Q. And what did Mr. Collier say?

17 A. Mr. Collier said the name Kenneth Evans sounded familiar  
18 to him but he was in college at the time. He indicated the  
19 Commission should speak to his brother, Andy, who was younger and  
20 around at that time.

21 Q. And did the Commission interview Andy Collier?

22 A. We did. By phone on August 14 of 2019.

23 Q. What did Andy Collier tell commission staff?

24 A. Andy Collier was familiar with a guy named Kenny who  
25 would come and play basketball on the weekends every once in a

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1 while. He knew that this Kenny had been convicted of rape. Andy  
2 had heard about this crime but -- meaning the Manning crime, but  
3 didn't know that Evans was connected to it. He doesn't remember  
4 Kenny trying to sell a gun to him or anyone else that they played  
5 basketball with.

6 Q. Who are Donald and Larry Wiggins?

7 A. Donald and Larry Wiggins are brothers. In an August 20,  
8 1994, interview with defense attorneys, Mr. Evans indicated that  
9 he had been playing pool with the brothers at Tommy Perry's store  
10 on the night of the crime. It does not appear that either brother  
11 was interviewed by either the State or the defense.

12 MS. SMITH: Commissioners, Handout 22 is the criminal  
13 record of Donald Wiggins. Larry Wiggins does not have a criminal  
14 record.

15 Q. Did the Commission interview Larry Wiggins?

16 A. We did. By phone on July 16 of 2019.

17 Q. Was that interview recorded and transcribed?

18 A. It was.

19 Q. What did Mr. Wiggins say?

20 A. Mr. Wiggins said that he was not familiar with  
21 Mr. Evans. He also did not know anything about the crime. He  
22 said there was not a pool table at Tommy Perry's store but he did  
23 have cornhole boards. They went there almost every day after  
24 work.

25 Mr. Wiggins also said there was no way for him to know

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1 what time or day that Evans was talking about.

2 Q. And did the Commission interview Donald Wiggins?

3 A. We did interview Donald Wiggins on July 16 of 2019 by  
4 phone.

5 Q. And was that interview recorded and transcribed?

6 A. It was.

7 Q. What did Donald Wiggins tell commission staff?

8 A. Donald Wiggins said that Kenneth Evans was his cousin  
9 and that their grandparents were siblings. He didn't recall ever  
10 hanging out with Evans at Perry's store.

11 Donald Wiggins recalled hearing about this crime and  
12 knew the Mannings ran a store. He also said that he and Evans  
13 talked about the case while they were in prison together at Nash  
14 Correctional.

15 Wiggins said he asked Evans what made him do something  
16 like this and Evans said that he was strung out. Donald thought  
17 this conversation happened in Johnston County.

18 Q. And did commission staff do anything to follow up on the  
19 information provided by Donald Wiggins?

20 A. We did. We contacted DPS and received an offender  
21 commonality report that indicated that Mr. Wiggins and Mr. Evans  
22 had been in Johnston Correctional Institution together from  
23 March 10 of 2003 until October 14th of 2003 and were in the same  
24 housing area from April 9 of 2003 to June 6 of 2003 during that  
25 time.

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1           They were also at Nash Correctional Institute together  
2           from January 11 of 2005 until March 29 of 2005.

3           Q.    Did the Commission then follow up with Donald Wiggins  
4           again?

5           A.    We followed up with Donald Wiggins again on August 19 of  
6           2019.

7           Q.    Was that interview recorded and transcribed?

8           A.    It was. And that interview was also in person with  
9           Mr. Donald Wiggins.

10          Q.    What did Mr. Wiggins say about Mr. Evans' statements to  
11          him about the crime?

12          A.    Mr. Wiggins said that Evans had indicated he had been  
13          high and then woken up in jail after committing the crime.

14          Q.    Ms. Myers, can you remind the Commissioners when  
15          Mr. Evans was arrested for this crime?

16          A.    Mr. Evans was arrested for the Manning kidnapping in  
17          April of 1993, which was a little bit over three years after  
18          the -- Mrs. Manning was kidnapped.

19          Q.    What else did Mr. Wiggins say?

20          A.    Mr. Wiggins said that Evans had made these statements  
21          about the crime while in a group counseling session while they  
22          were in prison. Mr. Wiggins remembered the name of another  
23          individual who was present during these sessions, and that man's  
24          name is Lester Hawkins.

25          Q.    And did Ms. Commission staff interview Lester Hawkins?

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1           A.     We did. Commission staff interviewed Mr. Hawkins at  
2 Central Prison on August 30th of 2019.

3           Q.     And was that interview transcribed and recorded?

4           A.     It was.

5           MS. SMITH: Commissioners, Handout 23 is the criminal  
6 record of Lester Hawkins if you want to take a moment to look at  
7 that.

8           Q.     What did Mr. Hawkins say in that interview?

9           A.     Mr. Hawkins was familiar with both Evans and Donald  
10 Wiggins from before they were in prison. Mr. Hawkins said he  
11 married a cousin of Mr. Evans and he recalled being in Johnston  
12 Correctional Institution with both Mr. Wiggins and Mr. Evans.

13           Mr. Hawkins did not recall Mr. Evans making any comments  
14 about his crimes, whether saying he was guilty or saying he was  
15 innocent. Mr. Hawkins said he did not usually ask people about  
16 what they were in for because it was not his business.

17           When commission staff told -- told Mr. Hawkins about  
18 what Mr. Wiggins said about Evans, that he had woken up in jail  
19 before after being high and committing this crime -- committing  
20 the crime, Mr. Hawkins said he did not recall Evans saying  
21 anything like that but that it sounded like something he, meaning  
22 Mr. Hawkins, would have said about his crime because he had woken  
23 up in jail after being high.

24           Mr. Hawkins did not recall being in a group counseling  
25 session while at Johnston. He said he was in a Bible circle or

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1 study and thinks Mr. Evans may have been a part of it but didn't  
2 think that Mr. Wiggins was.

3 MS. SMITH: Commissioners, do you have any questions for  
4 Ms. Myers?

5 THE COURT: Mr. Evans allegedly told Mr. Wiggins that he  
6 woke up in jail in what year?

7 THE WITNESS: When Mr. Wiggins was asked about the time  
8 frame, I believe, if I am recalling correctly -- we can make sure  
9 that I have this period down -- I believe he said it was in the  
10 early 2000s that he recalled this conversation with Mr. Evans.

11 THE COURT: But when -- I'm sorry. I wasn't clear.  
12 When did Mr. Evans allegedly wake up in jail high? What  
13 year?

14 THE WITNESS: So that was not clear from the first  
15 interview with Mr. Wiggins.

16 During the follow-up in-person interview with  
17 Mr. Wiggins, the Commission explained to Mr. Wiggins that  
18 Mr. Evans had been in prison for two different sets of crimes --  
19 that he had pleaded guilty to the rape case and then he was on  
20 trial for the Manning kidnapping case.

21 Mr. Wiggins said that he was sure that it was about the  
22 Manning kidnapping case and not the rape case that he was -- that  
23 he had pleaded guilty to.

24 THE COURT: But -- yeah. My question is when did he say  
25 this to Mr. Wiggins, number one? That might've been in 2000?

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1           **THE WITNESS:** Correct.

2           **THE COURT:** Okay. But what time frame was he speaking  
3 of is my question.

4           Was it 1990 or 1993?

5           **THE WITNESS:** And that was -- assuming from what the  
6 Commission learned from Mr. Wiggins, that that would have been a  
7 conversation that -- from 1990.

8           **THE COURT:** In 1990?

9           **THE WITNESS:** Yes.

10          **THE COURT:** Okay. But he wasn't in jail then.

11          I'm sorry, did I --

12          **MR. GLAZIER:** That was my question.

13          **THE COURT:** Okay.

14          **MS. SMITH:** Any other questions for Ms. Myers?

15          Commissioners, Donald Wiggins is on phone standby to  
16 testify via phone if anyone feels like they need to hear from him.  
17 If you will let me know, we can arrange to have him on the phone.

18          **THE COURT:** Donald Wiggins is the one he said this stuff  
19 to?

20                 Did you want to ask a question?

21                 No thank you? Anybody?

22          **MS. NEWTON:** Can I just raise one issue as to whether  
23 anybody wants to question him?

24          **THE COURT:** Sure.

25          **MS. NEWTON:** Is anybody interested whether Donald

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1 Wiggins was making that statement for any purpose to help himself  
2 in a criminal case?

3 THE COURT: Surely, you asked him.

4 MS. NEWTON: I mean, after the fact, it would be  
5 apparent, substantial assistance.

6 THE COURT: Is he incarcerated now?

7 THE WITNESS: No, he's not.

8 MS. SMITH: No, he is not.

9 THE COURT: Sure, if you want to ask him that. Or ask  
10 him --

11 MS. NEWTON: Well, I don't know that I do, but if  
12 anybody else is interested. I mean, did he get a sentence  
13 reduction? Do you know?

14 THE WITNESS: So our understanding was that -- the  
15 Commission asked Mr. Wiggins this. If he -- this was something he  
16 communicated to anybody else about the statement that Mr. Evans  
17 had said, and he said that he had not.

18 MS. NEWTON: Okay.

19 THE WITNESS: So to our knowledge, no, he did not  
20 receive any kind of reduction in his sentence.

21 THE COURT: Is that okay?

22 All right. So I guess the answer is no.

23 MS. SMITH: Can we release him from his subpoena?

24 THE COURT: Yes. Tell him thank you.

25 MS. SMITH: We certainly will.

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1           Ms. Myers, I don't have any other questions.

2           If the Commissioners have no other questions, I would  
3 ask that she step down.

4           **THE COURT:** Okay. Thank you, ma'am.

5                       (Witness stands down, 4:28 p.m.)

6           **MS. SMITH:** The Commission would recall Catherine  
7 Matoian.

8                       (Catherine Matoian recalled.)

9 BY MS. SMITH: (4:28 p.m.)

10          **Q.** Ms. Matoian, can you remind the Commissioners how guns  
11 were involved in this case?

12          **A.** The victim indicated that the suspect had a sawed-off  
13 shotgun with him during the commission of the crime. And,  
14 additionally, an antique pistol was stolen from the victim's home  
15 during the commission of the crime.

16          **MS. SMITH:** Commissioners, Handout 24 is a chart related  
17 to everything the Commission has learned about a sawed-off  
18 shotgun.

19                 Handout 25 is a chart related to everything the  
20 Commission has learned about the gun stolen from the victim's  
21 husband.

22                 If you will take some time to review those handouts,  
23 that's 24 and 25.

24          **Q.** Ms. Matoian, what did the commission staff do to follow  
25 up on the gun-related information?

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1           A.     In JoAnn Clemonts' interview with defense attorneys, she  
2     had stated that Mr. Evans had given his sawed-off shotgun to  
3     Anthony Carter and that Carter had used that gun to shoot his  
4     mother's boyfriend.

5           Q.     Did you ask Mr. Carter about this during your phone  
6     interview on July 9, 2019?

7           A.     I did. And he indicated that he had shot his mother's  
8     boyfriend. He said he used a shotgun but it was a shotgun he  
9     purchased from a hardware store. He indicated he didn't know  
10    Mr. Evans to have a gun and also stated that Evans would've gotten  
11    in trouble with his grandmother for having a gun.

12                  Their grandfather did have a shotgun that was kept in  
13    the house on Vaiden Road but it was not a sawed-off shotgun.

14          Q.     Was commission staff able to determine any additional  
15    information about Mr. Carter shooting his mother's boyfriend?

16          A.     Court records indicate that Mr. Carter was charged with  
17    assault with a deadly weapon with intent to kill inflicting  
18    serious injury. That crime occurred on March 29, 1991. He was  
19    arrested on April 3, 1991, and convicted on May 14, 1991. So that  
20    offense took place after the Manning crime took place.

21          Q.     Did the commission staff ask Mr. Evans about guns during  
22    its interviews of Mr. Evans?

23          A.     We did. Documents from the defense file of Mr. Evans  
24    indicate that he said he did have a sawed-off shotgun and had sold  
25    it to a guy at a carwash. The notes also say that someone named

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1 Samuel Thorpe helped him saw it off.

2 Mr. Evans denied ever having a sawed-off shotgun in  
3 commission interviews, and when shown the notes and asked why his  
4 defense attorneys would lie about this information, Mr. Evans  
5 continued to deny ever having a sawed-off shotgun.

6 Q. Did the Commission interview Samuel Thorpe?

7 A. No. He's deceased.

8 MS. SMITH: Commissioners, questions?

9 THE COURT: Yes. Question?

10 MR. GLAZIER: Am I correct -- and maybe you are going to  
11 get to this as well -- but it looks like the third block on page 1  
12 of the exhibit, Evans was also asked in the polygraph if he had  
13 ever pulled a gun on the victim. He answered no and the test  
14 showed no deception.

15 THE WITNESS: That's correct.

16 THE COURT: And that was the polygraph I guess we just  
17 saw?

18 MS. SMITH: Any other questions?

19 MS. NEWTON: Okay. I do have one about that.

20 With regard to the polygraph examination of an  
21 individual who confabulates, did anyone ask the question of any of  
22 the polygraph technicians about reliability of any of those kinds  
23 of statements?

24 THE WITNESS: We didn't interview the polygraph  
25 examiners.

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1           **MS. SMITH:** Commission staff is currently speaking with  
2 someone from the State Bureau of Investigation that hopefully will  
3 be able to come and testify probably tomorrow about polygraphs  
4 generally and can hopefully answer that question, generally  
5 speaking.

6           **THE COURT:** Okay.

7           **MS. NEWTON:** Okay. Thank you.

8           **THE COURT:** Sheriff has a question.

9           **SHERIFF FRYE:** On the Carter shooting his mother-in-law.

10          **THE WITNESS:** His mother's boyfriend.

11          **SHERIFF FRYE:** Mother's boyfriend, yes. Okay.

12               Carter shooting his mother's boyfriend -- did it say in  
13 the warrant what kind of weapon was used?

14          **THE WITNESS:** I will double-check but I don't believe  
15 so. We got that information from CIPRS records, not like the full  
16 court records. So I can check and see if that information is in  
17 there.

18          **SHERIFF FRYE:** I would like to see what kind of -- you  
19 know, if it has any description of the weapons.

20          **MS. SMITH:** Any other questions about the guns?

21          **MR. GRACE:** I have question that tangentially relates to  
22 the gun.

23               Did the victim -- alleged victim in this case write out  
24 a statement?

25          **THE WITNESS:** We have nothing in Mrs. Manning's

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1 handwriting. The interviews we have of her are typed-up SBI  
2 reports and the typed-up what appears to be a transcript between  
3 her and the PI, Dan Williams.

4 **MR. GRACE:** When you have a moment -- it doesn't have to  
5 be right now -- could you find that particular report that  
6 indicates that she told whoever is writing that report that it was  
7 a sawed-off shotgun?

8 **THE WITNESS:** Sure.

9 **SHERIFF FRYE:** I don't remember seeing that. I remember  
10 seeing it was a long gun.

11 **THE COURT:** I'm not sure if it says it here.

12 **THE WITNESS:** I will pull the actual report, but on the  
13 first page of the chart she said he was brandishing a long gun  
14 "not a pistol, possibly a sawed-off shotgun." And then also in  
15 other part said the suspect had a gun that was not the gun that  
16 was stolen from her home and it was 6 to 8 inches.

17 **THE COURT:** So do we have --

18 (Overlapping speakers.)

19 **MR. GRACE:** I would like to find the report because I  
20 have read three here in the last five minutes, reports, and none  
21 indicate that it was a shotgun.

22 **THE COURT:** Couldn't the SBI --

23 (Overlapping speakers.)

24 **MS. NEWTON:** Are you talking about the one that was  
25 stolen or the one that they say that he was using?

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1           **MR. GRACE:** The one that he allegedly used.

2           And I'm specifically interested in which report contains  
3 the information that the alleged victim said it was a sawed-off  
4 shotgun.

5                       (Reporter clarification.)

6           **THE COURT:** Gotcha.

7           **MS. SMITH:** If you will give us a few minutes, we're  
8 going to see if those are in your brief; if not, we will get  
9 copies of those reports for you.

10           **MR. GRACE:** Well, I have the reports. I'm just trying  
11 to get a reference to the particular report that contains it,  
12 contains her statement saying it was a sawed-off shotgun.

13           **MS. SMITH:** Right. So we're going to try to pull the  
14 reports and see.

15           **MR. GRACE:** It doesn't have to be today. I can receive  
16 it tomorrow or anytime soon.

17           **THE COURT:** Tomorrow will be fine.

18           **MR. GRACE:** Yeah.

19           **MS. SMITH:** Any more questions about the guns before we  
20 move on?

21                       (No response.)

22                       (Commissioners have *sotto voce* conversations.)

23                       (Reporter clarification.)

24           **MR. BOSWELL:** The incident report which is on -- starts  
25 on page 17 of our brief and goes to the third page that, which is

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1 on page 19 of our brief, says "The gun used by suspect was a short  
2 gun, possibly a sawed-off shotgun. It was not a handgun according  
3 to victim."

4 THE COURT: Is that the one that Pat Green wrote?

5 MR. BOSWELL: Yeah.

6 MR. GRACE: And my question is where is it that she  
7 says -- even in that, what John just read, it doesn't indicate  
8 that that's what the victim is saying.

9 MR. BOSWELL: Right.

10 MR. GRACE: It simply is it's possibly a sawed-off  
11 shotgun.

12 MR. BOSWELL: Right.

13 MR. GLAZIER: Can I follow up?

14 THE COURT: Yes.

15 MS. NEWTON: Just to follow Mr. Grace's comment. In  
16 reading on 19, it says "The gun used by the suspect was a short  
17 gun, possibly a sawed-off shotgun. It was not a handgun according  
18 to the victim."

19 So what may be -- it's unclear, but I'm reading that  
20 that the victim said it wasn't a handgun but not necessarily that  
21 the victim said any of the rest of the sentence. That's a  
22 summation by the officer not by the victim -- or you could read it  
23 that way.

24 THE COURT: Yes.

25 MR. GRACE: That's how I read it.

1           **MR. BOSWELL:** Got it.

2           **THE COURT:** His assumption that it was a sawed-off  
3 shotgun?

4           **MR. GLAZIER:** A possibility. Yes, thank you.

5           **THE COURT:** So she can try to find that tomorrow  
6 throughout the day maybe?

7           **MS. SMITH:** Commissioners, page 189 of your brief is a  
8 transcript of an interview between the victim and the PI  
9 investigator.

10           At the top of page 189, it says "You said he had a gun?"

11           And the victim's responds "He had a sawed-off looking  
12 shotgun thing, as best as I can remember. It scared me to death."

13           "Did he have it in one or both hands?"

14           The victim responds "I do not know. I screamed when I  
15 saw him. I said don't kill me because I've got a baby. I had a  
16 new grandbaby that was little over a year old and I just screamed  
17 and I said don't kill me, take anything you want, I've got a baby.  
18 A grandbaby is what I meant to say, but I've got a baby. He said,  
19 I'm taking you. That's what he said." [AS READ]

20           **THE COURT:** Lindsey, I think this statement was given to  
21 a private investigator and this was in 1993, three years after  
22 this happened. So that's her saying it then but we still don't  
23 have any indication of who said it first in 1990.

24           **MS. SMITH:** That is correct. We do not have, as  
25 Ms. Matoian testified, any handwritten statement of the victim.

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1           **THE COURT:** Yeah.

2           **MS. SMITH:** We simply have typewritten reports. And  
3 then we have this transcript, three years -- four years later of  
4 what she is saying to PI investigators then.

5           **THE WITNESS:** We also don't have any recordings of the  
6 early interviews with Mrs. Manning.

7           **MR. GLAZIER:** I think it's worth noting, although it  
8 takes us out of purely the gun note, the rest of that page,  
9 page 189 -- the next sentence is "At the time, did you recognize  
10 his voice?

11           "No. I did not, but it was a person who did not talk  
12 normally like a black in our area. He sound more like he was  
13 raised in the city or something like that."

14           "Could you distinguish whether it a black male or a  
15 white male by the voice?"

16           "I would say that it was black."

17           Just find that to be interesting question and answer  
18 related to someone who allegedly grew up in that area and she knew  
19 and --

20           **DR. PERRY:** Didn't she say later it seemed to be an  
21 affectation?

22           **MR. GLAZIER:** Yes.

23           **THE COURT:** She said that somewhere.

24           **THE WITNESS:** She said that later in that interview,  
25 that's correct.

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

2           And Mr. Grace, does that satisfy the question?

3           We don't have any reports in her handwriting.

4           **MR. GRACE:** Well, I mean, that satisfies -- that answers  
5 the question. The fact that it doesn't exist is an answer to the  
6 question as well.

7           **MS. SMITH:** Okay.

8           **Q.** Ms. Matoian, I am going to turn your attention to Reece  
9 Wardrick.

10           **MS. SMITH:** Commissioners, that interview can be found  
11 on pages 156 to 157 of your brief.

12           **Q.** Please tell the Commissioners what you were able to  
13 learn about Reece Wardrick.

14           **A.** In our initial searches, commission staff was unable to  
15 locate Reece Wardrick. That is through Lexis searches, CIPRS  
16 searches, DCIN, and CJ Leads searches, we were not able to locate  
17 anyone named Reece Wardrick.

18           We also were not initially able to locate anyone named  
19 Gene Wardrick or Tony Wardrick with addresses in Louisburg.

20           The interview notes spell Gene, G-e-n-e, but say  
21 "mother." So we looked for both a G-E-N-E Gene and a J-E-A-N Jean  
22 and were unable to locate either.

23           Commission staff asked numerous witnesses in this case,  
24 including Pat Green who wrote on those notes from the interview of  
25 Reece Wardrick, if they knew how to get in contact with Reece

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1 Wardrick. Those witnesses were all familiar with the Wardrick  
2 family in the Louisburg area but did not know anyone by those  
3 names.

4           Anthony Carter indicated that he thought he knew a Reece  
5 Wardrick that had died in a car accident but the Commission was  
6 unable to verify that information.

7           Andy Collier thought that the name Reece Wardrick  
8 sounded familiar; however, he was not able to provide the  
9 Commission any information that assisted in locating Reece  
10 Wardrick.

11           Commission staff located a Tony Wardrick in Lexis who  
12 had addresses in Durham, North Carolina, and contacted him to see  
13 if he was the Tony Wardrick named in the interview. Mr. Wardrick  
14 was not familiar with this case and didn't know Mr. Evans. He  
15 did, however, state that he had a sister named Jean Wardrick. She  
16 had a son, but his name was Lamarck and he is only in his late  
17 20s now, which is inconsistent with the age provided for Reece  
18 Wardrick in those interview notes. He had never heard of a Reece  
19 Wardrick.

20           Tony Wardrick indicated he did not become familiar with  
21 that side of his family until the late 1990s and had done  
22 genealogical research about them to learn more about his father's  
23 side of the family. He offered to contact his sister and cousin  
24 in Louisburg to see if they knew who Reece Wardrick was. Tony  
25 Wardrick later advised commission staff that both of those

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1 individuals did not know a Reece Wardrick.

2 Commission staff also attempted to speak to numerous  
3 people with the last name Wardrick in the Louisburg area. We  
4 spoke to a man named Milton Wardrick. He was familiar with the  
5 Tony Wardrick the Commission spoke to him and his sister Jean. He  
6 did not know of a Reece Wardrick. The Commission spoke to  
7 approximately five other Wardricks in the Louisburg area and no  
8 one knew Reece Wardrick.

9 Q. Has commission staff been able to locate anyone by the  
10 name of Reece Wardrick?

11 A. No, we have not.

12 MS. SMITH: Commissioners, do you have any questions for  
13 Ms. Matoian about Reece Wardrick or material from those notes?

14 (No response.)

15 Q. Ms. Matoian, who is Gregory Phelps?

16 A. Gregory Phelps was interviewed by Pat Green in 1990, and  
17 at that time, he indicated that Mr. Evans had made statements to  
18 him about kidnapping the victim.

19 When he was interviewed by the defense PI three years  
20 later, he denied giving these statements to Pat Green and  
21 indicated that he was not a "rat."

22 MS. SMITH: Commissioners, Handout 26 is the criminal  
23 record of Gregory Phelps, if you will just take a moment to look  
24 at that.

25 Q. Ms. Matoian, what did Pat Green say about Mr. Phelps?

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1           A.     In his commission deposition, Mr. Green stated that  
2     Mr. Phelps had not provided information on a case for him before  
3     and was not a CI for him.

4                     He did recall later in the deposition that Phelps would  
5     be forthcoming with information about other things when he got in  
6     trouble. This was usually related to drugs. As best as Mr. Green  
7     could tell, Mr. Phelps was credible. He did not recall Mr. Evans  
8     being a suspect prior to the Phelps interview in 1990.

9           Q.     And what did Mr. Green say about what Mr. Phelps told  
10    the private investigator?

11          A.     Regarding Mr. Phelps telling the PI that he had not  
12    given those systems to Mr. Green, Mr. Green stated "I have never  
13    written anything down from anybody unless they were sitting in  
14    front of me and telling me exactly what they were saying."

15                    Mr. Green assumed that Mr. Phelps didn't want to come to  
16    court or be made out a rat.

17                    **MS. SMITH:** Commissioners, the interview of Gregory  
18    Phelps by Pat Green can be found on page 104 of your brief.

19                    The interview of Gregory Phelps by the private  
20    investigator can be found on pages 229 to 234 of your brief.

21          Q.     Did the Commission interview Gregory Phelps?

22                    **MR. GLAZIER:** I have a question, Madam Chair.

23                    **THE COURT:** Yes. Questions.

24                    **MR. GLAZIER:** I just want to make sure I understand what  
25    Green said about Phelps.

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1           He said that he came to him when he was generally in  
2 trouble even though he wasn't a confidential informant and that he  
3 generally had found this guy to be credible; is that correct?

4           **THE WITNESS:** That's correct.

5           **MR. GLAZIER:** And he did that and said that despite the  
6 fact by the time this case came around, this man had 22  
7 convictions.

8           **THE WITNESS:** I have not counted Mr. Phelps'  
9 convictions.

10          **MR. GLAZIER:** I did.

11          **THE WITNESS:** I trust what you're saying.

12          **MR. GLAZIER:** Thanks.

13          **Q.** Did commission staff interview Gregory Phelps?

14          **A.** We did. By phone at June 10, 2019. It was recorded and  
15 transcribed.

16          **Q.** And what did Mr. Phelps say?

17          **A.** Mr. Phelps currently lives in Missouri. He recalled  
18 being in jail with Mr. Evans in Franklin County at some point, and  
19 he recalled Mr. Evans talking about his case but said that  
20 Mr. Evans had indicated that he had not committed this crime.  
21 Mr. Phelps did not recall being interviewed by police about this  
22 case. He did recall having a conversation with Mr. Evans about  
23 this crime and said that Evans said law enforcement was trying to  
24 pin the crime on him.

25           The Commission summarized his interview with Pat Green

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1 to him, and Mr. Phelps said he didn't recall speaking to Green  
2 about this case or Evans telling him the information contained in  
3 that interview. Mr. Phelps did not recall ever providing  
4 information on anyone during the time that he was in jail.

5 Commission staff also summarized what he told the  
6 defense PI, and Mr. Phelps said that what was in the PI interview  
7 was accurate, that he was not "a rat" and had no need to be.

8 Q. Who is Eddie Roy Moore?

9 A. Eddie Roy Moore is named in Mr. Phelps' interview with  
10 Pat Green as a trustee. And the interview seems to indicate that  
11 Mr. Phelps talked to Eddie Roy Moore before talking to Pat Green.

12 Q. And did commission staff interview with Eddie Roy Moore?

13 A. No, we did not. He's deceased.

14 MS. SMITH: Commissioners, Handout 27 is the criminal  
15 record of Eddie Roy Moore.

16 MS. COLBERT: What is a trustee?

17 THE WITNESS: A trustee is someone who, from my  
18 understanding, gets special privileges at the jail because they  
19 have proven themselves to be trustworthy.

20 MS. COLBERT: Thank you.

21 Q. Who is Jimmie Godfrey?

22 A. In Mr. Phelps' interview with the defense PI, he said  
23 that Jimmie Godfrey had been in jail with Mr. Phelps and  
24 Mr. Evans. He does not indicate in the interview that Godfrey had  
25 participated in any conversations with Mr. Phelps and Mr. Evans

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1 about the crime but did name him as being in the same cell.

2 Q. Did the Commission interview Jimmie Godfrey?

3 A. We did. At the Pitt County jail on September 4, 2019.

4 Q. Was that interview recorded and transcribed?

5 A. It was.

6 MS. SMITH: Commissioners, Handout 28 is the criminal  
7 record of Jimmie Godfrey, if you want to take just a moment to  
8 look at that.

9 Q. What did Mr. Godfrey tell commission staff?

10 A. Mr. Godfrey indicated that he had known Mr. Phelps since  
11 he was a child. He did not know Mr. Evans and did not recognize a  
12 picture of him. Mr. Godfrey said that he was at the jail in  
13 Louisburg for a few weeks in 1990 before going to prison on other  
14 charges but he did not remember Mr. Phelps being in there at the  
15 time. He did recall seeing Mr. Phelps in prison later, though.

16 Commission staff showed Mr. Godfrey Phelps' statement to  
17 the sheriff's office, and Mr. Godfrey said he did not recall  
18 anyone talking about that crime while he was in the Louisburg  
19 jail. He said he would have remembered someone talking about  
20 kidnapping and gagging a woman. He also said that he would have  
21 told someone if someone had confessed to kidnapping a woman to him  
22 while they were in jail.

23 Mr. Godfrey says that he himself steals when he is high,  
24 but he does not condone violence.

25 Mr. Godfrey said that Greg Phelps was a liar and he

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1   agreed with Phelps' assessment to the PI and the Commission that  
2   he would only have ratted on someone if he was facing a long  
3   sentence. He gave the example that Phelps would not have provided  
4   information to law enforcement if he was facing six months but may  
5   have if he was facing six years.

6           **MR. BOSWELL:** Godfrey said he's the one -- he doesn't  
7   condone violence?

8           **THE WITNESS:** Yes. But Mr. Godfrey said that he will  
9   steal when he is high but does not condone violence.

10          **MR. GRACE:** There you go splitting hairs again, John.

11          **MR. BOSWELL:** I guess if you brandish a firearm but  
12   don't shoot anybody, it's not violent.

13          **MR. GRACE:** That's not violent, no.

14          **MS. SMITH:** Commissioners, questions?

15          **THE COURT:** Yes.

16          **DR. PERRY:** So Phelps -- let's see -- is called a liar?

17          **THE WITNESS:** By Mr. Godfrey, yes.

18          **DR. PERRY:** By Godfrey.

19                But he did not recall any conversations about kidnapping  
20   in jail in Franklin County?

21          **THE WITNESS:** No. I did show him the interview report  
22   from the conversation between Mr. Phelps and Pat Green to see if  
23   he recalled hearing any information like that from anyone while he  
24   was in the jail at that time, and he did not.

25          **DR. PERRY:** Did he elaborate on he could see Phelps

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1 telling Green about Evans' involvement if he were facing six years  
2 as opposed to six months?

3 **THE WITNESS:** He didn't speak specifically to this case.  
4 He just indicated in general, and gave that example, that he  
5 thought it was correct that Mr. Phelps would've only provided  
6 information based on how much time he was facing. And the example  
7 that Mr. Godfrey gave was six months versus six years.

8 **DR. PERRY:** But his characterization of Phelps is that  
9 if he's talking to law enforcement, he's probably lying?

10 **THE WITNESS:** I don't know if I would characterize that  
11 way. He said he knew him to be a liar in general. He gave an  
12 example of them being in prison together and Mr. Phelps getting  
13 Mr. Godfrey in trouble from things Mr. Phelps was doing but didn't  
14 elaborate.

15 **DR. PERRY:** Thank you.

16 **MS. SMITH:** Any other questions?

17 **MR. BOSWELL:** Yeah. I'm still trying to sort all this.  
18 Mr. Godfrey doesn't say that he knows anything about what  
19 Mr. Evans has done; he's just talking about Mr. Phelps.

20 **THE WITNESS:** Correct. He knew Mr. Phelps. He did not  
21 know Kenneth Evans and did not recognize a picture of him, which  
22 is why we showed him the interview report, to see if he remembered  
23 anybody talking about a crime like that while they were in jail  
24 together.

25 **MR. BOSWELL:** Right. But Mr. Godfrey never told the

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1 police he heard anything about it?

2           **THE WITNESS:** No. It doesn't appear he was ever  
3 interviewed before. He was just named in that PI interview.

4           **MR. BOSWELL:** Okay.

5           **MS. SMITH:** This would be a great place to take the  
6 evening recess.

7           **THE COURT:** Especially since it's three minutes before  
8 5:00. I think we'll second that. There's no objection to taking  
9 a recess for the evening now?

10                   (Chorus of nos.)

11           **THE COURT:** All right. 9:30 tomorrow morning?

12           **MS. SMITH:** 9:00 o'clock.

13           **THE COURT:** 9:00 o'clock tomorrow morning.

14                   (Overnight recess taken, 4:57 p.m.)

15                   (Volume 2 begins on page 203.)

16           ///

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NORTH CAROLINA GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA,                     )  
   )  
      versus                                     ) From Franklin  
   ) 93 CRS 2261-2263  
KENNETH LEON EVANS,                     )  
      Defendant.                             )

\* \* \* \* \*

TRANSCRIPT OF HEARING, Volume 2 of 2

Tuesday, September 10, 2019

\* \* \* \* \*

September 9, 2019, Setting of the  
North Carolina Innocence Inquiry Commission  
The Honorable Anna Mills Wagoner, Judge Presiding

Commissioners Attending:

Scott Bass, Commissioner (Alternate)  
John Boswell, Commissioner  
Robin Colbert, Commissioner  
Kevin Frye, Commissioner  
Rick Glazier, Commissioner  
Michael Grace, Commissioner  
Bobby Kimbrough, Commissioner (Alternate)  
Deborrah L. Newton, Commissioner (Alternate)  
Dr. Frank Perry, Commissioner  
Ashley Welch, Commissioner

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1 APPEARANCES:

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3 Beth Tanner, Assistant Director

4 Catherine Matoian, Grant Staff Attorney

5 Mackenzie Myers, Grant Staff Investigator

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8 Raleigh, North Carolina 27602

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1                   Tuesday, September 10, 2019 (9:06 a.m.)

2                   **THE COURT:** I believe all commissioners are present so  
3 we will proceed with the hearing.

4                   **MS. SMITH:** Good morning, Commissioners. We have had a  
5 request to have the DNA expert, Meghan Clement, back for one more  
6 question. She is getting ready to go into a deposition in  
7 15 minutes. We are getting her on the screen now.

8                   Commissioner Boswell had a question; so once she is up  
9 there, we will proceed with that and then the other questions you  
10 may have, you may of course ask.

11                  **MR. BOSWELL:** It's okay if she's just on the phone; she  
12 doesn't have to be on the video.

13                  **MS. SMITH:** I think this is easier for the technology we  
14 have in the room.

15                               (Discussion off the record.)

16                                       \* \* \* \* \*

17 Thereupon, MEGHAN CLEMENT, a witness having been recalled by the  
18 Commission, was resworn and testified as follows:

19                               (VIA TELECONFERENCE)

20                  **MS. SMITH:** Good morning, Meghan.

21                  **THE WITNESS:** Good morning.

22                  **MS. SMITH:** We had a question for you from Commissioner  
23 Boswell so I'm going to let him ask that and then if other  
24 commissioners have questions, we will allow them to do that as  
25 well.

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1           **MR. BOSWELL:** Hi, Meghan. This is John Boswell. It  
2 occurred to me last night there was one other question I wanted to  
3 ask you. Thank you for being available this morning.

4           With respect to the do-rag, there was DNA that had been  
5 vacuumed off of it, but none of the DNA was connected to  
6 Mr. Evans.

7           I guess I wanted to ask the question if someone had worn  
8 that do-rag for some period of time, would you expect that they  
9 would've deposited DNA onto the do-rag?

10          **THE WITNESS:** My answer to that is generally I never  
11 expect anything. However, having said that, it is not uncommon to  
12 find DNA on an item of clothing when somebody has worn it.  
13 Typically, the more they wear an item of clothing, the more DNA  
14 you find from the individual. So we oftentimes, and I would say  
15 more often than not, find DNA from an individual when they've worn  
16 an article of clothing including something like a do-rag or a  
17 baseball cap or something like that.

18          **MR. BOSWELL:** And if you found DNA on an article of  
19 clothing, would it be more likely that a person who wore that  
20 article of clothing was the contributor of that DNA as opposed to  
21 someone who just randomly touched it?

22          **THE WITNESS:** Generally, yes. You would find the  
23 wearer's DNA more often than you would find somebody who has just  
24 touched it, picked it up, moved it to another location.

25          **MR. BOSWELL:** Okay. That was my question.

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1           **THE COURT:** Yes.

2           **SHERIFF FRYE:** Follow-up, Meghan. And thank you for  
3 being here.

4           The length of time between the time the item was  
5 collected and tested, though, would play a significant role in the  
6 degradation of DNA. And how it was packaged, the environmental  
7 factors it was in -- that could degradate [sic] the DNA that would  
8 have been present; correct?

9           **THE WITNESS:** Certainly the longer period -- the longer  
10 it is from the time that the DNA is deposited until the item is  
11 collected and subsequently tested, the more likely there is  
12 degraded DNA.

13           In this do-rag, the DNA on the do-rag was clearly  
14 degraded, which is evidenced by the fact that only a partial  
15 profile was obtained and the profile that was obtained was only,  
16 at best, smaller areas of DNA that were tested.

17           So, yes, there was clearly indication of degradation of  
18 the DNA on the do-rag. But yes, you are correct in that the  
19 length of time it takes for an article to be collected, what it's  
20 been exposed to -- if it's exposed to a lot of sun, a lot of heat,  
21 a lot of humidity, it could increase the rate of degradation. But  
22 certainly, it will not affect -- if you get results, those are  
23 true results and true DNA. Degradation isn't going to change a  
24 DNA type from one to another.

25           **SHERIFF FRYE:** Correct. Okay. Thank you.

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1           **THE COURT:** Other questions?

2           (No response.)

3           **THE COURT:** I guess that's it. Thank you.

4           **MS. SMITH:** Thank you, Meghan.

5           **THE WITNESS:** You're welcome.

6           (Witness stands down, 9:14 a.m.)

7           **MS. SMITH:** If you will bear with us, we're going to  
8 have the criminal specialist -- a criminal specialist from the SBI  
9 back on the screen in just a moment.

10          (Technology issues.)

11          **MS. SMITH:** Good morning.

12          My name is Lindsey Guice Smith. I'm the Executive  
13 Director of the North Carolina Innocence Inquiry Commission. I  
14 don't know if you have a Bible in front of you or if you just wish  
15 to affirm, but our chair, Judge Wagoner, will either swear you in  
16 or affirm you.

17          **THE WITNESS:** I've got a Bible.

18                               \* \* \* \* \*

19          Thereupon, AMANDA NOSALEK, a witness having been called by the  
20 Commission, was sworn and testified as follows:

21                               EXAMINATION

22                               [VIA VIDEO TELECONFERENCE]

23          BY MS. SMITH (9:18 a.m.)

24           **Q.** Can you please state your name for the Commission.

25           **A.** Sure. Amanda Nosalek.

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1 Q. And how are you employed?

2 A. I'm employed with the North Carolina State Bureau of  
3 Investigation.

4 Q. And what is your role with the SBI?

5 A. I'm currently the polygraph program coordinator.

6 Q. And how long have you been in that role?

7 A. Been in this role for approximately two years.

8 Q. Were you contacted by commission staff yesterday  
9 afternoon?

10 A. Yes.

11 Q. And after we contacted you, were you also provided  
12 polygraph reports for Euther Rea Manning and Kenneth Evans?

13 A. Yes, I was.

14 Q. And have you had an opportunity to review those reports?

15 A. I have.

16 MS. SMITH: Commissioners, those are in your Hearing  
17 Handout Notebooks as Handouts 41 and 42.

18 There are also the other reports related to the  
19 polygraph in your brief. Ms. Manning's begins on page 91 and  
20 Mr. Evans' is on page 106, if you wish to look at those.

21 Q. Ms. Nosalek, you were not involved with the polygraphs  
22 of either Ms. Manning and Mr. Evans; is that correct?

23 A. That is correct.

24 Q. So you can't testify about the specifics of how those  
25 particular polygraphs were administered; correct?

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1           A.    I cannot.

2           Q.    Are you able to provide the Commissioners some general  
3 information about polygraphs and about what they are seeing on  
4 these polygraph reports?

5           A.    Absolutely.

6                   Do they have specific questions about the reports?

7           Q.    I think we will have a couple of specific questions but  
8 I was hoping that you could generally just go through the  
9 polygraph process for the Commissioners and then we could ask some  
10 questions about the numerical score that we're seeing.

11          A.    Okay. I will just kind of walk you through what a  
12 polygraph looks like.

13                   So if you were going to come in and take a polygraph --  
14 well, let me back up.

15                   Initially, it would be a detective or an investigator  
16 that would contact a polygraph examiner and tell them they were in  
17 need of a polygraph. At that point, the polygraph examiner would  
18 ask questions about the investigation, what has been discovered or  
19 what they found out up to that particular point, and then the  
20 examiner would determine whether or not that it was even suitable  
21 to conduct a polygraph at that point in the investigation.

22                   If everybody decides to go forward with the polygraph  
23 examination, then there would be an appointment made and we  
24 would -- we call the person that comes in to take the exam the  
25 "examinee."

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1           So the examinee would arrive, and it would just be the  
2       examinee and the examiner in the polygraph suite, which looks like  
3       an interview room. It would just be a room with chairs.

4           And there are three parts to every polygraph. So the  
5       first thing that would happen is what is called a pretest  
6       interview. And then there's an in-test phase, where we attach the  
7       equipment and record physiological data. And then there's a  
8       posttest interview where that equipment is again taken off and  
9       removed from the examinee and the examiner and the examinee will  
10      discuss the results of the polygraph.

11          There are certain things during the pretest interview  
12      that we are -- that are required to do. First, we're just going  
13      to get some biographical data. And at that time, the examiner  
14      will be determining whether or not that examinee is suitable to  
15      take a polygraph -- so are they mentally and physically capable of  
16      having a polygraph administered to them. And if the examiner  
17      feels like they are, then they would move forward and then they  
18      would talk about some case facts and get the examinee's version of  
19      whatever they are there to take a polygraph about.

20          And all that is used to determine what questions are  
21      asked during the in-test phase.

22          Q.     Can you tell us a little bit about how polygraphs are  
23      scored?

24          A.     Absolutely. So each panel of a polygraph are scored on  
25      certain criteria. That criteria is based on current research.

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1           For the SBI, at this time, we use the current research  
2   that comes out of the federal polygraph school in Columbia, South  
3   Carolina. So there's going to be certain criteria in each panel  
4   that we can score. And it depends on -- it depends a little bit  
5   on the format that is used for each polygraph. It also depends on  
6   what scoring system you're going to use. So it changes a little  
7   bit. The criteria that's used to score doesn't change in each  
8   panel, but depending on the format that is administered as well as  
9   the scoring mechanism that is used, that score may look a little  
10  bit different.

11        Q.    Okay. And I want to turn your attention, then, to the  
12  polygraph report of Ms. Manning and just have you walk the  
13  Commissioners through what we're seeing on that report in terms  
14  of -- I think we understand the information at the top, but maybe  
15  starting with number of tests, about two thirds of the way down.

16        A.    Okay. Sure.

17           So to administer a valid test -- and, again, I'm going  
18  to speak on what the rules are currently, right, so what are the  
19  standards currently. I'm not exactly sure what the standards were  
20  in 1990, but I'm going to assume that they weren't too horribly  
21  different.

22           So the number of tests would be the number of actual  
23  charts that are run. So when it says "tests," it wasn't that --  
24  we do one polygraph test, but you have to administer at least  
25  three charts or three series within that test for it to be a valid

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1 test, to collect enough physiological data to be able to evaluate.

2 So like our -- currently, our standards are we have to  
3 run a minimum of three series, three charts, and we can't run more  
4 than five. So this particular -- what this "4" means is that they  
5 ran -- they asked the same questions four separate times.

6 Q. Okay. And then can you move on to the Opinion section  
7 and describe what those -- the different initials mean?

8 A. Absolutely. Yeah. Absolutely.

9 So there are going to be different outcomes of each  
10 polygraph. So -- and this is what the outcomes would be. So  
11 "NDI" is no deception indicated, "DI" would be deception  
12 indicated, and "I" would be inconclusive. I'm not exactly sure  
13 what the "R," "S," "RE," "C," and "NS" -- I'm not sure what those  
14 stand for.

15 Q. Are those just characterizations that you-all would not  
16 use today?

17 A. We would not use those today. Yes.

18 Q. Okay. And then if you will tell us what the numerical  
19 evaluation means.

20 A. So polygraphs are numerically evaluated, and it would  
21 depend again on which scoring system that you use. This one  
22 appears that they use either what we would call a three-point  
23 scale or a seven-point scale. So within that three-point scale,  
24 at each evaluation point -- so there's going to be certain spots  
25 that you evaluate on the polygraph chart, and each spot gets a

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1 numerical value.

2           So on a three-point scale, you're either going to give  
3 it a plus or a minus, which would be a plus 1 or minus 1. And  
4 then after you run all four of those tests, you're going to add in  
5 each spot those numbers to come up with a spot total for each  
6 spot, and then you would come up with a grand total based on those  
7 spots.

8           Now, let me explain this spot just a little bit.

9           So you guys have seen the three questions that were  
10 asked under Remarks.

11           Q.    Yes, ma'am.

12           A.    Those are what we would call the relevant questions.  
13 Each one of those relevant questions is a spot. So there would be  
14 three spots on this particular exam that was run, and the total of  
15 those three spots is calculated in each spot, and then a grand  
16 total is determined.

17           Now, what plus 6 means -- again, there are -- depending  
18 on the format that is run, the -- there are different cutoff  
19 scores. I don't know what format was run. That information is  
20 not provided on this report.

21           What I can tell you is that a plus 6 on this  
22 particular -- whatever format they ran to the cutoff score, a plus  
23 6 meant that there was no deception indicated.

24           Q.    Okay.

25           A.    But I -- without knowing the format, I don't know what

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1 the cutoff scores would've been.

2 Q. Okay.

3 THE COURT: Yes. We have a question here.

4 MS. SMITH: And if you'll please identify yourself --  
5 she can't see us -- and then ask your questions.

6 MR. GLAZIER: Hi. This is Rick Glazier. And, again,  
7 thank you for being with us.

8 Assume it was a three-point scale. What would be the  
9 cutoff -- normal cutoff on a three-point scale?

10 THE WITNESS: Well, it's not based on the scale; that  
11 cutoff score is going to be based on the format.

12 So let me give you an example that may help illustrate  
13 it a little bit better.

14 So we run what's called a zone comparison test. It  
15 would be one format of the test. There would be three relevant  
16 questions, kind of like this test, where there's three relevant  
17 questions. And the cutoff scores for that particular zone  
18 comparison test by today's standards would be a plus 6 or a minus  
19 6. So it's based on a continuum -- an infinity scale.

20 So anything from plus 6 and above -- so plus 6, plus 7,  
21 plus 8, plus 9 -- would be no deception indicated. If the score  
22 fell between a plus 5 and a minus 5, that would be your  
23 inconclusive range. A minus 6, minus 7, and so on would be  
24 deception indicated.

25 MR. GLAZIER: Thank you very much.

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1           **THE WITNESS:** You're welcome.

2           **MR. BOSWELL:** This is John Boswell.

3           What is the highest or the lowest score under the scale  
4 that we're talking about that you would be able to get?

5           **THE WITNESS:** That varies, right, I mean, there's so  
6 many variables and so many combinations.

7           So at each spot -- to try to illustrate on this phone --  
8 this is harder on the phone.

9           So each spot would be -- like spot 1, spot 2, and spot  
10 3 -- in each spot for one test, so let's say test 1, it would be  
11 -- there would be three scoring criteria. So there would be three  
12 channels that were scored within each spot. So you -- there would  
13 be a series of pluses and minuses.

14           So let's say spot 1, test 1, there would be three pluses  
15 and minuses. So depending on how that turned out, there could be  
16 a ton of combinations. But to give you an example, this  
17 particular four-test run, three spots, there is going to be -- on  
18 spot 1, there's going to be four scores that are going to be  
19 totaled to come up with that spot total. So there's going to be a  
20 total of 12 spots or 12 numbers that are added together to  
21 calculate the plus 6 at the end.

22           **MR. BOSWELL:** Thank you.

23           **Q.** I'm going to have you turn your attention to that next  
24 polygraph report for Kenneth Evans. If you'll just point out the  
25 relevant information there for the commissioners as well, walk us

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1 through what we're seeing now that we have a little bit better  
2 understanding of what we're looking at.

3 A. Yeah, absolutely.

4 So, again, it looks like four charts were run, or four  
5 series -- four tests were run. The opinion of the examiner was  
6 NDI, so no deception indicated. The numerical evaluation was a  
7 plus 9. And then under Remarks would be the three relevant  
8 questions that were asked.

9 Let me point out, too, that the minuses after each  
10 question that are in parentheses, that doesn't indicate a  
11 numerical score. That indicates how the examinee answered the  
12 question, whether they answered with a negative no, and if it's a  
13 plus, it would be they answered with a positive yes.

14 Q. Thank you.

15 MS. SMITH: Commissioners, do you have any other  
16 questions for Ms. Nosalek?

17 THE COURT: I do. This is Anna Mills Wagoner.

18 My question is Mrs. Manning had a plus 6 numerical  
19 evaluation and --

20 THE WITNESS: Yes.

21 THE COURT: -- Mr. Evans had a plus 9.

22 THE WITNESS: Right.

23 THE COURT: Does that -- tell me what that means, if you  
24 can, 9 to a 6. Does that mean --

25 THE WITNESS: No. You can't. You can't.

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1           That plus 6 and plus 9, they really -- they don't hold  
2 any more value the bigger the number. It's going to be the same  
3 call.

4           So, again, let me compare it in today's terms. If I'm  
5 running a zone comparison test, I run four charts, I come up with  
6 my grand total of a plus 6. That is NDI. If it was a plus 12,  
7 it's still going to be NDI. So it doesn't mean any more for it to  
8 be a plus 6 or a plus 12. The cutoff score is a plus 6 and above;  
9 it doesn't matter how high that score is.

10           **THE COURT:** Well, then what's the point? I mean, it  
11 seems like to me maybe a plus 9 -- maybe I would rather have a  
12 plus 9 than a plus 6 if I'm being polygraphed.

13           **THE WITNESS:** Well, it does seem that way but that is  
14 not what the current research states.

15           The current research states that anything above that  
16 plus 6 for a particular format or zone comparison -- and I'm not  
17 saying that this is a zone comparison because I don't know the  
18 format -- but I'm just saying that that score of a plus 6 and a  
19 plus 9 both fell within the range of the examiner making a call of  
20 no deception indicated.

21           **THE COURT:** But this is back in 1990. And you don't  
22 know exactly --

23           **THE WITNESS:** 1990.

24           **THE COURT:** -- how they did it back then?

25           **THE WITNESS:** I have no idea.

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1 I've been a polygraph examiner for 10 years. I  
2 graduated from polygraph school in 2009. So, I mean, things  
3 change. Research changes. There is a lot that stays the same in  
4 polygraph and has for many, many, many years, but I'm just -- I  
5 don't have enough information in these reports to speak on the  
6 format that was used and the cutoff scores for that particular  
7 test.

8 **THE COURT:** Okay.

9 **MS. NEWTON:** Good morning. This is Deb Newton. I'm an  
10 alternate commissioner.

11 I have a couple of questions about what is actually  
12 being tested if you don't mind answering that just fundamentally.

13 **THE WITNESS:** Sure. So specifically what's being tested  
14 in these exams?

15 **MS. NEWTON:** Yeah. How is the score being achieved? Is  
16 it monitoring heart rate, level of anxiety -- I mean, what exactly  
17 is giving the examiner the score?

18 **THE WITNESS:** Sure. Absolutely.

19 So we measure -- we have components that we attach to  
20 the examinee that measure physiological reactions of the examinee.

21 So in -- we have added components. We haven't taken any  
22 away. So I'm going to tell you the three that I'm sure that they  
23 used back in 1990. They used pneumographs, which are going to  
24 measure respiratory reaction; they use a cardio cuff, which is  
25 going to measure cardio reaction; and then they measured something

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1 called EDA, which is -- something called an EDA, which measures  
2 galvanic skin response, which is sweat gland activity.

3 So they're going to measure the sweat gland activity,  
4 the heart rate, heart blood flow -- so volume through the heart --  
5 as well as respiratory reaction. All three of those reactions are  
6 physiological reactions.

7 So they are going to look -- the examiner is going to  
8 look for where during that chart, at what question spot did the  
9 examinee have an increase in physiological reaction, and that's  
10 where they get the points.

11 **MS. NEWTON:** So those three indicators -- respiratory,  
12 heart, and skin or sweat -- all are reliant upon anxiety in the  
13 person being examined based on the question.

14 **THE WITNESS:** Sure.

15 **MS. NEWTON:** An anxiety-type response.

16 **THE WITNESS:** Let me -- sure. Let me talk about that  
17 for a second.

18 Anxiety is consistent; physiological reactions are not  
19 consistent. So a physiological reaction happens momentarily and  
20 then subsides back to what we would call homeostasis or a  
21 baseline. So if somebody comes in to my -- I tell this to  
22 everybody and I truly mean it. Everybody that I meet as a  
23 polygraph examiner is anxious or nervous. Whether you did it or  
24 you didn't do it, everybody is; right?

25 **MS. NEWTON:** Right.

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1           **THE WITNESS:** So that is what your baseline is that  
2 particular day.

3           **MS. NEWTON:** I see. That makes sense. So there's a  
4 level of anxiety going in just because you're doing the polygraph  
5 exam.

6           **THE WITNESS:** Right.

7           **MS. NEWTON:** Okay.

8           **THE WITNESS:** Absolutely.

9           **MS. NEWTON:** So that brings me to my question.

10           If a witness is suggestible or confabulates -- in other  
11 words, if there is something about that particular witness that  
12 indicates no -- or that results in no particular problem with  
13 telling an untruth in self-interest, would the polygraph still  
14 register deception?

15           In other words, if there is no anxiety related to the  
16 question for that particular witness, is there some failsafe?

17           **THE WITNESS:** So let me see if I understand your  
18 question correctly.

19           So if I asked somebody if they did something and they  
20 don't -- they have no like -- just personally, they're like, "I  
21 don't care that I did it. I have no qualms about doing it," would  
22 I register deception if they didn't care about it?

23           Is that what you're asking?

24           **MS. NEWTON:** If they lied about it, would it -- or  
25 confabulating or accustomed to telling a certain story, does that

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1 make sense?

2           **THE WITNESS:** So if they believe it, like -- well, let  
3 me say this. That there is a consequence for lying, right, so  
4 they know -- even if they tell the story and they know they're not  
5 telling the truth, there's a consequence to that. They don't want  
6 to get caught.

7           So, I mean, the research says that you're going to show  
8 a physical reaction to that if you're not telling the truth even  
9 if you told that story a hundred thousand times.

10           **MS. NEWTON:** Okay. Thank you.

11           In your experience, if someone is impaired during an  
12 incident and then later is polygraphed when they are not impaired,  
13 does that -- do you have any experience with that affecting the  
14 integrity of the test?

15           **THE WITNESS:** No, not if they were impaired at the time  
16 that the incident occurred and are not impaired during the time of  
17 the polygraph.

18           Being impaired during the time of the polygraph  
19 examination?

20           **MS. NEWTON:** No, during the time of the incident.

21           In other words, if impairment is part and parcel of the  
22 crime or maybe they don't recall it in some sort of an impaired  
23 state, do you have any experience with a later polygraph revealing  
24 a no deception when in fact they are responsible for the crime by  
25 other evidence?

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1           **THE WITNESS:** I don't have any experience with that, no.

2           **MS. NEWTON:** Okay. Thank you.

3           **THE COURT:** Mr. Boswell?

4           **MR. BOSWELL:** This is John Boswell again.

5           Looking at these reports -- and do you have any  
6 indication of what the writing is up at the top right?

7           Looks like ATT #6 on one and ATT #5 on the other, then  
8 360 M-12-2.

9           Do you know what any of that might mean?

10          **THE WITNESS:** Yes. That is going to be an attachment  
11 number.

12          So on SBI reports, if we are attaching something to a  
13 particular report, we assign it an attachment number that matches  
14 the report number so that they stay together.

15          **MR. BOSWELL:** Got it.

16          And then in your experience, how reliable are polygraph  
17 tests?

18          **THE WITNESS:** That's a loaded question.

19          **MR. BOSWELL:** And the reason I ask is we are being asked  
20 to evaluate this information in determination of whether someone  
21 was wrongly convicted, and so it's important to understand -- I  
22 assume these things are not admissible in court but, you know --  
23 so just talk about the science and your experience about the  
24 reliability of polygraph tests and what makes them more or less  
25 reliable, please.

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1           **THE WITNESS:** Sure. Yes. Absolutely.

2           So there are numbers that we put to certain -- to a  
3 particular format. So let me give you an example. The zone  
4 comparison test that we run -- typically that's what I run most of  
5 the time -- has a 92 percent accuracy rate.

6                       (Reporter clarification.)

7           **THE WITNESS:** 92 percent on the known comparison.

8           **MR. BOSWELL:** And speak a little bit slowly so the court  
9 reporter can get what you're saying.

10          **THE WITNESS:** Okay. I'm sorry.

11          So -- but what goes into that number and how do we get  
12 that number? That number is going to be based on research, and  
13 that research is conducted at Fort Jackson in Columbia, South  
14 Carolina, where they bring people and they do mock -- one of the  
15 ways that they do research is they do mock testing and they come  
16 up with these numbers. So they may tell somebody to lie on  
17 purpose and they see how reliable the test is.

18          They also may go back and take polygraph examinations  
19 that have been conducted where somebody admits to a certain crime;  
20 so they take the test, they fail it -- or maybe they pass it, and  
21 then they admit to a certain crime. So these numbers are  
22 calculated in lots of different ways.

23          But there are lots of things that go into the  
24 reliability of the exam.

25          First of all, is it a valid format that's being used?

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1 Did the examiner do their job correctly? Did they formulate the  
2 questions according to the best practices and what the current  
3 standards are? Did they administer the test correctly?

4 And the fact that -- did they run the right number of  
5 tests? The right number of charts? Did they -- the test data  
6 analysis, did they use current best practices when they calculated  
7 the score and looked at that data that was collected?

8 So the reliability of a polygraph exam is based on a  
9 lot.

10 Are they using a valid format that's researched and  
11 validated? Does your examiner have the experience and the  
12 training that's required to do it? And was it administered in a  
13 proper way according to best standards today?

14 So there's a lot that goes into the reliability of a  
15 polygraph exam. Unfortunately, these reports that I'm given, it's  
16 hard to say.

17 **THE COURT:** Robin, did you have a question?

18 **MS. COLBERT:** Yes.

19 This is Robin Colbert. Thank you for being here.

20 Which, you know, to me, opens up a lot of questions --

21 **THE WITNESS:** Sure.

22 **MS. COLBERT:** -- around the polygraph stuff.

23 And, you know, if I look at that -- some of the things  
24 that you shared with -- so let's look at some of the  
25 commonalities, right. This is the same examiner, right, that did

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1 both of these?

2 THE WITNESS: Correct.

3 MS. COLBERT: So we assume the spot, the zone comparison  
4 is all the same.

5 THE WITNESS: Right.

6 MS. COLBERT: What I think I'm hearing you say, that we  
7 don't weight the fact that one of them had 6 and one of them had 9  
8 because that's irrelevant because we have the scale.

9 THE WITNESS: That's right.

10 MS. COLBERT: So we don't use that to determine that one  
11 is more truthful than the other. That's what I'm hearing you say;  
12 right?

13 THE WITNESS: That is correct.

14 MS. COLBERT: The other thing that you raise as far as  
15 an examiner -- so there are some things that need to be taken into  
16 account if the subject -- the subjectability of the examiner;  
17 right?

18 THE WITNESS: Absolutely. Yes.

19 MS. COLBERT: Because when I look at this form and -- so  
20 even, whether it's -- the person, you know, it could be the tone  
21 that the examiner's using, understanding that the person that  
22 you're examining is the victim -- because it says that on the  
23 form. It could be the tone that the examiner is using,  
24 understanding that the person that you are examining is the  
25 suspect.

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1           So all of that plays in the part of, you know, this  
2       determination, right, with the polygraph?

3           **THE WITNESS:** Absolutely. You are correct.

4           **MS. COLBERT:** And then the other thing you mentioned  
5       about whether somebody's lying -- so cognitive dissonance could be  
6       a part of this. If I believe to the core of me that I have the  
7       right -- as an example, because that woman is my wife and I own  
8       her so I have the right to batter her, that could also play a part  
9       in how -- because I believe that --

10          **THE WITNESS:** Absolutely. Absolutely.

11          **MS. COLBERT:** -- in something like this; right?

12          **THE WITNESS:** Yes.

13          **MS. COLBERT:** Okay. Thanks.

14          **THE WITNESS:** You're welcome.

15          **THE COURT:** I have an additional question. This is Anna  
16       Mills Wagoner again.

17                If I could draw your attention to Ms. Manning's  
18       polygraph, and under Remarks --

19          **THE WITNESS:** Sure.

20          **THE COURT:** The first question, "Have you told the  
21       complete truth in your statement," there is a parentheses and  
22       plus 1, and it seems to be saying that maybe she changed  
23       something.

24                Do you see that?

25          **THE WITNESS:** I tried to read that, and I cannot figure

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1 out what that says. It does look like "changed" -- but what I  
2 think happened -- and, again, this is speculation on my part.

3 So it looks like originally that the examiner put a  
4 minus there, which would indicate that the examinee responded no  
5 when asked "Have you told the complete truth in your statement,"  
6 but I would imagine that when they ran the test that she actually  
7 said yes and he just put that minus there in error and he changed  
8 to a plus to indicate a yes answer rather than a no answer.

9 But that's pure speculation on my part.

10 **MS. SMITH:** Judge Wagoner, Ms. Matoian can testify about  
11 what we know about that.

12 **THE COURT:** Great. Okay. Thank you.

13 Other questions? By anyone?

14 (No response.)

15 **THE COURT:** All right. Thank you so much.

16 **MS. SMITH:** Thank you for your time.

17 (Witness stands down, 9:46 a.m.)

18 **THE COURT:** Yes, ma'am.

19 **MS. COLBERT:** I mean, I did some overnight processing  
20 last night and so I had three questions, and I don't know, you  
21 know, who on staff or someone would be testifying around this and  
22 so I had a question about Mr. Evans' attorney, Mr. Norman, whether  
23 -- it's Norman; right?

24 **MS. SMITH:** It is.

25 **MS. COLBERT:** Whether -- was he a local attorney from

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1 the area of Franklin County?

2 And did we ever --

3 **MS. SMITH:** Let me call Ms. Matoian to the stand and she  
4 may be able to answer these questions. If there are things we  
5 don't have answers to, we will be happy to look them up. But I  
6 think she will be the best one to answer.

7 **THE COURT:** While she's getting ready, we will welcome  
8 Sheriff Kimbrough from Forsyth County who is our Alternate  
9 Sheriff.

10 Good to see you. Welcome.

11 **SHERIFF KIMBROUGH:** Thank you.

12 **MS. SMITH:** Do you want to reswear her?

13 \* \* \* \* \*

14 \* \* \* \* \*

15 Thereupon, CATHERINE MATOIAN, a witness having been called by the  
16 Commission, was sworn and testified as follows:

17 **THE WITNESS:** To answer your question, Larry Norman is a  
18 local attorney right across from the courthouse.

19 **MS. COLBERT:** In Franklin County; correct?

20 **THE WITNESS:** Yes.

21 **MS. COLBERT:** And so did we ever find out whose coat  
22 that was in the car?

23 **THE WITNESS:** No. We have not been able to find out  
24 whose coat that was.

25 I showed the picture of the items to the victim's

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1 daughter and she didn't recognize it. She said it had been a long  
2 time and she just wasn't sure who those items belonged to.

3 Mr. Evans did not recognize it and we also showed it to  
4 Mr. Evans' cousin, Larry Moore [sic], and he didn't recognize  
5 those items either.

6 MS. COLBERT: And in regard to the victim's daughter,  
7 there are no other family members that are still alive today in  
8 regard to victim notification about this hearing or any other  
9 information you're able to glean?

10 I know we talked about yesterday that there was no  
11 interview of the son-in-law.

12 THE WITNESS: We're going to change that, if you will  
13 give us just a minute.

14 The victim's daughter is the only member of the family  
15 that we spoke to. She was an only child. There were no other  
16 children. So we spoke to her and deposed her, and she was aware  
17 of the case. And through speaking with her, her children are also  
18 aware of the case.

19 MS. COLBERT: And no siblings of the victim either that  
20 you are aware of?

21 THE WITNESS: Not that I'm aware of. We only spoke to  
22 the victim's daughter.

23 MS. COLBERT: Thank you.

24 BY MS. SMITH: (9:49 a.m.)

25 Q. Ms. Matoian, if you will refer to Handout 41, there were

1 some questions during the previous testimony about the notation  
2 "changed."

3 Can you tell the Commissioners what you learned during  
4 investigation about that notation?

5 A. Okay. During my deposition of Rick Sims, he pointed out  
6 this notation in the polygraph report. He said the "DS" stands  
7 for Dawn Spiddle, S-p-i-d-d-l-e. She was a secretary, and he  
8 recalled calling her to ask about the question being listed as the  
9 negative sign at first. And she said that the victim had actually  
10 said yes and so that she changed the report to indicate the plus  
11 and then made that notation next to it indicating that she had  
12 changed it because the answer was originally listed wrong in the  
13 original report.

14 Q. Okay.

15 MS. COLBERT: So was there a conversation with the  
16 examiner around the changing of the report? Is that when you  
17 talked to Ms. Spiddle or --

18 THE WITNESS: We didn't talk to Ms. Spiddle. Mr. Sims  
19 just made us aware of what that notation meant during our  
20 interview of him.

21 THE COURT: Question?

22 MR. GLAZIER: Thank you.

23 Are we aware -- and it may be in the records; so I  
24 apologize if it is and I missed it.

25 But are we aware of whether the prosecutor and the

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1 defense attorneys were given all of the information and review of  
2 the polygraph reports of both the victim and the suspect?

3 **THE WITNESS:** The prosecutor indicated that she would  
4 have been given the entire SBI file. The polygraph reports do not  
5 appear in any of -- copies of those don't appear in any of the  
6 defense files we got. They did have copies of some SBI reports.

7 Like I testified to yesterday, Ms. Thompson indicated  
8 that she would have let defense attorneys look at most everything  
9 involved in a case, but I don't know specific to the polygraph  
10 report.

11 **MR. GLAZIER:** Okay. Strike the question because there's  
12 no one to answer.

13 **THE COURT:** Okay.

14 **MR. GLAZIER:** Thank you.

15 **Q.** Ms. Matoian, was the Commission able to interview Tommy  
16 Kemp, the victim's son-in-law?

17 **A.** We were. In person last night.

18 **Q.** What did Mr. Kemp remember about the crime?

19 **A.** Mr. Kemp's recollection of the crime was similar to both  
20 Jackie Kemp and Esley Manning's accounts both at the time and  
21 Jackie Kemp's recollection now.

22 He did recall his father-in-law, Esley Manning, calling  
23 them to say that the victim was not at the house after he had  
24 dropped off the items at their house and Esley Manning saying  
25 something wasn't right.

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1           Mr. Kemp recalled going over to their house and  
2 immediately knowing something was wrong because he saw duct tape  
3 and a spot of blood on the floor. So that is why he called the  
4 sheriff's office.

5           He did stay home with the children that night and  
6 described the entire experience as "surreal."

7           He did not recall ever being interviewed by law  
8 enforcement.

9           Regarding the dog barking, he did remember the dog  
10 barking but did not know for how long before Mr. Manning called to  
11 say that the victim was not home. He recalled going outside to  
12 tell the dog to be quiet but he did not see anything unusual when  
13 he went outside.

14           His recollection was that the entire time that it took  
15 for her to go missing between when she had dropped Jackie Kemp off  
16 and between when Mr. Manning called to say that she was not home  
17 was a very short period of time.

18           He recalled being present for the trial but did not  
19 recall many details or what evidence was presented to convict  
20 Mr. Evans. He indicated that he did not ever recall the victim  
21 identifying Mr. Evans as the man who kidnapped her. He was  
22 consistent with Jackie Kemp in that he stated the victim believed  
23 that Mr. Evans had committed the crime based on what she was told  
24 by law enforcement, but had never said "I recognize Kenneth Evans  
25 as the man who kidnapped me."

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1           Q.    What did Mr. Kemp say about the victim knowing Kenneth  
2   Evans?

3           A.    Mr. Kemp said that the entire family knew Mr. Evans and  
4   he would come into the store occasionally.  He didn't recall  
5   seeing Mr. Evans in the store in between the time of the crime and  
6   when he got arrested for the crime.  So that's where he appeared  
7   to live.

8           Q.    What did Mr. Kemp say about Esley Manning and other  
9   robberies of Manning's Grocery?

10          A.    Mr. Kemp indicated that Esley Manning was known to carry  
11   a roll of cash that they joked was "enough to choke a mule."  He  
12   particularly carried a lot of cash around the 1st of the month  
13   because he cashed a lot of checks.

14                Similar to Ms. Kemp, he indicated that they all believed  
15   that the suspect had been waiting for Esley Manning and the victim  
16   had come home alone that night.  Mr. Kemp said that Esley Manning  
17   and the victim usually got home from the store together.  The  
18   store would usually close around 9:30 but that night was different  
19   in that Ms. Manning came home by herself.

20                And he also recalled Manning's Grocery being robbed  
21   several times.

22          Q.    Did Mr. Kemp provide any information about the area  
23   where the victim's car was left?

24          A.    He did.  He stated that Vaiden Road was known for  
25   criminal activity.  Mr. Kemp believed that the person who

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1 kidnapped the victim had to have known where they were going as  
2 the path the car was left on, it was behind a trailer and was not  
3 immediately visible as a path from the road.

4       **Q.**     Were there any photographs from the SBI file or the  
5 private investigator file that orient the path the victim's car  
6 was found on to the trailer?

7       **A.**     No, there were not.

8       **MS. SMITH:** Commissioners, do you have any questions for  
9 Ms. Matoian about Tommy Kemp?

10       **MR. GRACE:** Are we restricted to just Tommy Kemp?

11       **MS. SMITH:** No.

12       **MR. GRACE:** I have a question, then.

13       **MS. SMITH:** Absolutely.

14       **MR. GRACE:** Help me, if you can -- and you may not be  
15 able to. But in two of the first reports taken, the alleged  
16 victim indicated that the assailant wore -- in one account she  
17 said a brownish hat; in the next account she called it a cap.

18               Is it only when your investigator talks to her that she  
19 talks about a hood, a hoodie, and the do-rag even though she  
20 admitted to your investigator that she never saw the do-rag, that  
21 it was covered by the hoodie?

22       **THE WITNESS:** That was the defense investigator.

23       **MR. GRACE:** Right.

24       **THE COURT:** The defense investigator.

25       **MR. GRACE:** The defense investigator.

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1           Is there any place, anywhere, any report that indicates  
2   how she got from a hat to a hoodie -- a brownish hat to a hoodie?  
3   And did anyone screw down on that in any questions of her?

4           **THE WITNESS:** No. I don't believe that there is any --  
5   there are any other reports of conversations with the victim to  
6   reconcile those differences in the description. She mentions the  
7   dough-face mask in the defense PI interview that was not mentioned  
8   in previous interviews.

9           **MR. GRACE:** I was going to ask that next.

10          **THE WITNESS:** We've tried looking that up on Google  
11   without much success, and we've also asked several witnesses if  
12   they knew what a dough-face mask was, and no one has been able to  
13   give us any answers that would help us figure out what that was.

14          **MR. GRACE:** Did you confirm with the officers who took  
15   these reports, those accounts?

16                 In my experience, officers do a pretty good job of  
17   writing down the important stuff. If it's important and it wasn't  
18   written down, it usually wasn't said.

19                 And so we have three different investigators who took  
20   reports about descriptions and did we go back around and talk to  
21   them and confirm that this is exactly what was said?

22          **THE WITNESS:** Not directly related to her descriptions  
23   of what he was wearing. All of them recalled interviewing  
24   Mrs. Manning but didn't recall the details. We allowed them to  
25   read their reports. Pat Green was asked several times about how

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1 he wrote his reports, and he has always indicated that he did not  
2 write down anything that anyone didn't say.

3 MR. GRACE: All right. Thank you.

4 THE COURT: Yes, ma'am.

5 MS. COLBERT: I had a question.

6 You mentioned that Mr. Kemp said there was blood on the  
7 floor? I don't remember anything about -- I remember blood -- a  
8 blood spot on the bedspread, but I don't remember any reference to  
9 blood being on the floor.

10 THE WITNESS: Right. He said it was a very small -- it  
11 was a very small dot. I can look back at the crime scene photos  
12 and see if we see anything like that. I do recall the blood spot  
13 on the bedspread. He may be mistaken about that. I'm not sure.

14 MS. COLBERT: Okay.

15 THE COURT: Other questions?

16 (No response.)

17 THE COURT: We will keep moving.

18 MS. SMITH: Okay.

19 THE COURT: I think the carpet is in the book that was  
20 sent to us maybe at page 68 or 69.

21 MS. COLBERT: But there's no circle or any indication --

22 THE COURT: The pair of shoes, page 67.

23 THE WITNESS: I do recall the crime scene report listing  
24 a burn in the carpet.

25 MS. COLBERT: Yes.

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1           **THE COURT:** Maybe that was it, and not ...

2           **MS. SMITH:** I'd ask that Ms. Matoian step down.

3                   (Witness stands down, 9:59 a.m.)

4           **MS. SMITH:** I'm going to call Associate Director Beth  
5 Tanner.

6                               \* \* \* \* \*

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

9                               EXAMINATION

10          BY MS. SMITH: (10:09 a.m.)

11           **Q.** Ms. Tanner, yesterday there were some questions about  
12 retention policies related to clerks' offices, the Court of  
13 Appeals, and law enforcement.

14                   Can you let the Commissioners know what you have learned  
15 about those retention policies.

16           **A.** Yes. I think the question related to the transcript  
17 that we were looking for. So essentially -- and so that folks  
18 understand, the way the appellate rules are is that if a criminal  
19 defendant is indigent, they put in an order for a transcript.  
20 That transcript is created and is delivered to the parties. And  
21 then it's used by the parties as part of the record on appeal.

22                   So we were looking to see what the Court of Appeals'  
23 retention schedule is. These are the current functional  
24 schedules. And as we have understood it from talking with the  
25 Deputy Clerk of the Court of Appeals and also with General

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1 Counsel's office for the Administrative Office of the Courts, this  
2 has been in place at least since 2016.

3           So there is a section in the retention schedule -- this  
4 is actually in 12.4, Court Records -- and it discusses briefs,  
5 respondent's motions, and petitions concerning each case in the  
6 Court of Appeals. We confirmed that that is where a document like  
7 a transcript that came in would be on this retention schedule.  
8 They are to retain it until adjudicated plus five years and then  
9 destroy.

10           Currently, the Court of Appeals has everything online so  
11 they actually just keep it until there is a data storage issue.  
12 So they might have it longer than five years. That is not what  
13 they were doing back in the '90s.

14           Elizabeth Croom, who is in the General Counsel's office  
15 for the Administrative Office of the Courts, also told us that  
16 when the cases are completed at the Court of Appeals, the practice  
17 is for them to be returned to the superior court clerk and for  
18 that clerk to actually return it to the parties.

19           There is a retention schedule for the superior court  
20 clerks through AOC -- I'm sorry -- Administrative Office of the  
21 Courts, and this is actually Policy 5. And 5.14 says that when a  
22 typed transcript is returned to the clerk -- meaning the superior  
23 court clerk -- by the Court of Appeals or the Supreme Court, that  
24 the disposition instructions are to return it to one of the  
25 parties involved in the action.

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1           When we spoke with Deputy Clerk Scroggins -- Scoggins at  
2 the Court of Appeals, she said, "We don't do that."

3           So it would appear that they definitely do not have it  
4 at the Court of Appeals, and we double-checked with them. The  
5 retention policy now under the functional schedule is five years;  
6 so they would be obviously way beyond that. And I double-checked  
7 our journal, commission journal from when we originally requested  
8 the transcript from the Court of Appeals in 2018, and we were told  
9 then as well that their retention policy was five years and that  
10 they looked for it and could not find it.

11           Yes, ma'am.

12           **MS. COLBERT:** So my question then really goes back to  
13 the question from yesterday. Even when they had it destroyed, do  
14 they list what they are destroying?

15           **THE WITNESS:** The clerk's retention schedule does not  
16 require that they list what they are destroying the way that you  
17 would for, like, physical evidence.

18           **MS. COLBERT:** And when you say the "parties," who are  
19 the parties? Parties -- the defendant and the --

20           **THE WITNESS:** Yes. And the State. Yes.

21           And also the Attorney General's office for criminal  
22 appeals, just so you know. Now, it goes there as well, the  
23 transcript.

24           **MS. COLBERT:** This is a statewide process?

25           **THE WITNESS:** Yes. This is the functional schedule for

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1 all North Carolina state agencies.

2 So there was a pretty big revamp for that like in 2016;  
3 so that's why everybody keeps going back to this is where the  
4 schedule got started. But there's been a functional schedule in  
5 place for a long time, but nobody knows what that retention policy  
6 was beyond that.

7 Q. Did you find information on the functional schedule for  
8 law enforcement files?

9 A. Yes. That is under the state functional schedules 11.3,  
10 Criminal Investigations. Case records, law enforcement case  
11 records, which is reports, correspondence, interviews and other  
12 records for felony cases are to be retained until disposition and  
13 exhaustion of any appeals plus 20 years.

14 Again, I will say these were all revamped in 2016 and  
15 nobody can tell me what was the rule before that.

16 MS. COLBERT: Now, when you say "law enforcement," are  
17 you talking about under the purview of the governor or are talking  
18 about local law enforcement as well?

19 THE WITNESS: It is conducted by public law enforcement  
20 agencies and criminal intelligence information compiled by public  
21 law enforcement agencies. There may also be individual retention  
22 schedules for your local agencies.

23 MS. COLBERT: That's different from that?

24 THE WITNESS: (Moves head up and down.)

25 THE COURT: Yes, sir, Mr. Glazier.

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1           **MR. GLAZIER:** Thank you, Judge.

2           Can you just repeat? I just want to make sure I  
3 understand. I'm not sure it affects this case at all, but what  
4 records does law enforcement have to keep for 20 years?

5           **THE WITNESS:** This is under the state functional  
6 schedule that I found.

7           So reports, correspondence, interviews, and other  
8 related records for felony cases.

9           **MR. GLAZIER:** For 20 --

10          **THE WITNESS:** Yeah. And there's two categories.  
11 There's another category for misdemeanor cases, and that is like  
12 3 years.

13          **MR. GLAZIER:** For 20 years from -- the trigger date is  
14 what?

15          **THE WITNESS:** Retained until disposition of case and  
16 exhaustion of any appeals plus 20 years, then destroy.

17          **MR. GLAZIER:** Okay. Thank you.

18          **THE COURT:** And do I recall that you-all searched -- you  
19 went to the clerk's office in Franklin County and looked but you  
20 didn't find anything?

21          **THE WITNESS:** We went to the sheriff's department and  
22 looked. We did not go to the clerk's office.

23          **THE COURT:** Okay. Did you try to go to the clerk's  
24 office?

25          **THE WITNESS:** We did. They had a file.

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1           **THE COURT:** Okay. That's all. Okay.

2           Yes, ma'am.

3           **MS. NEWTON:** Not related to this -- you may not be the  
4 right witness, but let me just ask this question. I guess someone  
5 will answer it.

6           What did you-all make of the fact that he only appealed  
7 the second-degree burglary and not the kidnapping?

8           **THE WITNESS:** I don't recall seeing any document -- and  
9 you can ask Catee again.

10          I don't recall seeing any document that provided us any  
11 explanation as to why that decision was made, like any attorney  
12 notes, that I can recall. We can double-check that because we did  
13 have some attorney notes, but I just don't recall seeing anything  
14 that reasoned out this discussion with Mr. Evans or why that was  
15 done.

16          **MS. NEWTON:** Thank you.

17          **THE WITNESS:** No problem.

18          **Q.** Ms. Tanner, despite what functional schedules may say,  
19 is it the Commission's practice to follow up with all agencies  
20 about whether they have a file or a transcript even if it's  
21 outside of the retention policy?

22          **A.** Yes.

23          **Q.** And has it been the Commission's experience, not  
24 necessarily for this case but just generally speaking, that we  
25 often find files when other folks think they are gone or that are

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1 outside of that retention policy?

2 A. Yes.

3 Q. Okay. I'm going to turn your attention now to DPS phone  
4 calls.

5 A. Yes.

6 Q. We talked yesterday a little bit about phone calls the  
7 Commission received and what the policies and retention policies  
8 are related to phone recordings at the Department of Public  
9 Safety.

10 Can you provide the Commissioners with some additional  
11 information about that --

12 A. Yes.

13 Q. -- policy?

14 A. So the Department of Public Safety's official records  
15 retention policy is that they keep the recordings -- so the actual  
16 audio recordings of phone calls -- for two years. The records  
17 that just list the numbers called by the inmates from the inmate  
18 phone system are kept longer.

19 But their contract with the data retention management  
20 system that runs the inmate phone system is that the calls have to  
21 be kept for two years.

22 However, the way that the system works is they don't go  
23 in and like purge, you know, every two years the calls that are  
24 older than that. As they run out of space, the data system just  
25 gets rid of the older calls. There's not really any routine to

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1 that that the department has been able to explain to us.

2 So what happens, then, is though there is a two-year  
3 retention schedule, sometimes you can go beyond that and get  
4 calls. You just have no idea what that will look like. It could  
5 be 10, it could be 15, it could be -- you just don't know.

6 But that is kind of how the process works for them.

7 Q. Is it possible that, outside of that two-year period,  
8 you may be missing some calls and may not have all the calls --

9 A. Yes.

10 Q. -- if they may go back further than the two years?

11 A. Yes. We have been cautioned by the department that  
12 let's say we could go back and get calls from 2014, that may not  
13 be every call that, say, Mr. Evans had made in 2014 because it's  
14 almost like a random selection, it sounds like, is what they get  
15 rid of first.

16 Q. And did commission staff obtain additional phone  
17 recordings for Mr. Evans last night?

18 A. We did.

19 Q. And did the Commission have a court order in place for  
20 DPS records in this case?

21 A. We did. We have a consent order in place for Mr. Evans'  
22 DPS records.

23 Q. And is that how we were able to obtain those calls?

24 A. It is.

25 Q. How many calls were provided?

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1           A.    I believe it was over 150?  120?

2           Q.    Does 129 calls sound right?

3           A.    Yes.  That sounds right.  129 calls.

4           Q.    Over 22 hours of recordings?

5           A.    Yes.

6           Q.    And did those calls run from February 17, 2014, to  
7 June 10, 2016?

8           A.    Yes.

9           Q.    Do you recall how many total calls of Mr. Evans the  
10 Commission has listened to?

11                   Does 470 sound right?

12           A.    That does.  470 sounds right.

13           Q.    And those run from that February 17, 2014, date through  
14 August 28 of this year?

15           A.    Yes.

16                   **MS. SMITH:**  Commissioners, Handout 18, I believe, has  
17 been re-passed around to you with updated information from the  
18 calls we listened to last night.  I believe it's the first ten  
19 calls or so on that list starting on page 1 and going on to page 2  
20 that are calls that reflect from last night where Mr. Evans was  
21 speaking about the case or about his innocence or guilt.

22           Q.    Ms. Tanner, in those calls, does -- the additional calls  
23 from last night, does Mr. Evans admit guilt?

24           A.    He does not.

25           Q.    Does he maintain his innocence in those calls?

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1           A.    He does.

2           Q.    And are there multiple calls out of the 470 commission  
3 staff has listened to where Mr. Evans makes no mention of this  
4 case?

5           A.    Yes.   Yes.   So what we have noted for you is the  
6 relevant calls.

7           THE COURT:   Yes.

8           MR. GLAZIER:   Quick follow-up question, if I might.

9           So between the calls which are now from 2014 through the  
10 present and the file notes that we have plus the interviews that  
11 you've done, is there at any point at any time in the almost 30  
12 years of the case where the defendant has admitted guilt or  
13 confessed in any way?

14          THE WITNESS:   No.

15          MR. GLAZIER:   Thank you.

16          THE COURT:   Yes, sir, Sheriff.

17          SHERIFF FRYE:   Follow up on that.

18          On line 24 of these calls, it says Evans --

19          THE COURT:   Hold on. I think it's page 3 of 6.

20          SHERIFF FRYE:   It's page 3 of 6.

21          THE WITNESS:   Page 3 of 6 line 24?

22          SHERIFF FRYE:   It says "Evans tells Williams that he  
23 received a letter from the Commission that the person he believes  
24 committed the crime is Uncle Jack," that you're working with him  
25 because he's going to receive a lot of money.

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1 Did we ever send him a letter saying Uncle Jack was the  
2 one that we thought that done this?

3 THE WITNESS: We did not. We also -- I'm sorry.

4 SHERIFF FRYE: Did we ever tell him that he was going to  
5 get a lot of money for it?

6 THE WITNESS: We did not.

7 SHERIFF FRYE: Okay.

8 THE COURT: All right. Yes, sir.

9 THE WITNESS: I'm sorry.

10 I believe Ms. Matoian may have a follow-up to that piece  
11 when she gets back into Mr. Evans' testimony.

12 THE COURT: Okay. Dr. Perry.

13 DR. PERRY: Thank you, Judge.

14 Call 9, page 2 -- is that true or false, the last  
15 sentence of his conversation with Johnson? I think it's true.

16 THE WITNESS: I'm sorry, the sentence that starts with  
17 "Evans goes on to tell Faye"?

18 DR. PERRY: Right. And that he passed a polygraph.

19 All of that was not brought up in court?

20 Is that true?

21 THE WITNESS: We do have the polygraph examination  
22 reports that indicate that he passed the polygraph.

23 DR. PERRY: We don't know that --

24 THE WITNESS: He was excluded.

25 And as far as it being brought up in court, I will need

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1 to go back and look at the notes from Mr. Norman. We don't have a  
2 trial transcript; so ...

3 DR. PERRY: But no testimony about that except his  
4 statements. Thompson had no recall.

5 THE WITNESS: Right. What we have is what we've been  
6 able to re-create from the witness interviews that we've already  
7 talked about.

8 DR. PERRY: Do you have any corroboration of that claim  
9 from any witness?

10 THE WITNESS: That none of it was brought up in court?

11 DR. PERRY: Yes.

12 THE WITNESS: We do not have any documents as far as I'm  
13 aware that tells us that it was brought up in court, but we don't  
14 have anybody that remembers this was not brought up in court.

15 DR. PERRY: Including Green?

16 THE WITNESS: Including?

17 DR. PERRY: Pat Green.

18 THE WITNESS: Yes.

19 MS. SMITH: Ms. Matoian probably has a more complete  
20 answer for your question, Dr. Perry, if Ms. Tanner can stand down.

21 THE COURT: Yeah. We have a question here.

22 MS. SMITH: Okay.

23 MS. WELCH: With jail phone calls, do you know if they  
24 pulled these based on, say, a phone card number that he was  
25 assigned or an inmate number that he was assigned?

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1           So in other words, in the prison system, you've got to  
2   have a number that's assigned to you to call out; is that right?

3           **THE WITNESS:**   Yes.

4           So for the -- now, these are prison phone calls.  So for  
5   the prison phone calls, those were pulled based on his inmate PIN  
6   number, and I -- we can let Catee talk a little bit more about  
7   this.  We do look and listen for other options to see if there is  
8   a reason to pull certain phone numbers from other inmates.  That  
9   is part of our investigation generally.

10          **MS. WELCH:**  You read my mind.

11          **THE WITNESS:**  But these are from his inmate PIN number.

12          **MS. WELCH:**  But in y'all's investigation and sort of  
13   your experience, you're aware that when they provide you inmate  
14   phone calls, that's not always all the phone calls; that it's sort  
15   of a common practice in the prison system that they may switch  
16   numbers to make phone calls?

17          **THE WITNESS:**  Yes.  That is correct.

18          So what we generally do is start -- I'm going to talk  
19   about our general practice, and then I think Catee can follow up  
20   with what was done in this case.

21          But what we generally do is we're going to listen to the  
22   inmate PIN -- like the ones from his PIN, and we're going to hear  
23   those and look for any information that we might have to say,  
24   "Hey, we need to look for some other numbers."

25          The Department of Public Safety requires that we get a

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1 judicial subpoena for the particular phone numbers that might be  
2 implicated in that. But if we do have an investigative avenue  
3 that we can continue to follow up on that is outside of the inmate  
4 PIN, we are aware of that.

5 We have to identify the phone number is what I mean. So  
6 we have to be able to identify "This is the phone number we think  
7 might be being called with some other PIN."

8 MS. WELCH: Sure.

9 And then he says too, in this phone call number 9 --

10 THE WITNESS: Yes, ma'am.

11 MS. WELCH: He tells his friend "In my case, I didn't do  
12 that ... They need to tell her to write an affidavit, but she's  
13 not going to do that. She's staying with her daughter Jackie  
14 now."

15 I'm going assume he's talking about the victim is  
16 staying with her daughter.

17 How does he know that? Do we know?

18 THE WITNESS: We do not know how he knows that from the  
19 calls, I do not believe, but I'll go back and double-check that  
20 and make sure that somebody didn't tell him that information.

21 MS. WELCH: Thank you.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Okay.

24 (Witness stands down, 10:17 a.m.)

25 MS. SMITH: We would recall Ms. Matoian.

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1 (Catherine Matoian recalled.)

2 **THE COURT:** And you are still under oath.

3 **THE WITNESS:** To your question, Dr. Perry, about the  
4 call number 9, the last sentence about passing a polygraph, the  
5 fingerprint, and the palm print -- from Larry Norman's draft  
6 closing argument, that indicates that he did bring up the palm  
7 prints and that fact that those were not identified to Mr. Evans.  
8 That was part of his draft closing document.

9 Again, we don't have trial transcripts so I don't know  
10 that he actually said that in court. But we do know that was part  
11 of his draft. The draft did not mention anything about the  
12 polygraph.

13 **DR. PERRY:** I have a question about the chain of  
14 attorneys.

15 **THE COURT:** Yes, sir.

16 **DR. PERRY:** He began with -- is it Frank Ballance? Is  
17 that Senior?

18 **THE WITNESS:** Senior, yes.

19 **DR. PERRY:** That became Congressman?

20 **THE WITNESS:** Correct.

21 **DR. PERRY:** And ended with Norman?

22 **THE WITNESS:** Yes.

23 **DR. PERRY:** And there were two between; is that correct?  
24 A total of four?

25 **THE WITNESS:** After Frank Ballance got off the case, his

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1 wife, Bernadine Ballance, got on the case. And then I believe  
2 there was one more before Norman who was on the case for a very,  
3 very short period of time. I think there's a chart in your brief  
4 about that.

5 And then Larry Norman represented him for the trial and  
6 then Trey Duckworth represented him on appeal.

7 **DR. PERRY:** Thank you.

8 BY MS. SMITH: (10:19 a.m.)

9 **Q.** Ms. Matoian, yesterday there was a question -- I believe  
10 from Sheriff Frye, but I could be wrong -- about the gun that  
11 Anthony Carter used to shoot his mother's boyfriend.

12 **A.** Yes. We were able to get the microfilm court file from  
13 that case. It listed the gun as a .410 gauge shotgun. There was  
14 nothing else in the file that indicated the appearance or length  
15 of the shotgun so we don't know whether or not it was sawed off.

16 **SHERIFF FRYE:** Thank you.

17 **Q.** Before we move on --

18 **A.** Oh, and I'm sorry. I believe there was a question about  
19 Uncle Jack from the letter. Mackenzie testified -- or Ms. Myers  
20 testified about that yesterday.

21 "Uncle Jack" refers to Johnny Evans that the Commission  
22 wrote a letter about asking Mr. Evans if Johnny Evans was related  
23 to him and then Mr. Evans began telling family members that there  
24 were DNA matches to Johnny or Jack Evans. So that is who Uncle  
25 Jack is.

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1           **SHERIFF FRYE:** But the information that he is relating  
2 in the phone calls that the Commission told him that we had a DNA  
3 evidence on Jack -- Uncle Jack and all this is completely false?

4           **THE WITNESS:** That is correct. We have no DNA evidence  
5 or anything linking Jack or Johnny Evans to the crime and we have  
6 never told Mr. Evans that he is going to receive money.

7           **MR. GLAZIER:** I do want to follow up on that, just to be  
8 clear.

9           I don't read that to say that you told him he was going  
10 to receive money. I read that to say he believed he was going to  
11 receive money, and it was common knowledge in 2018, at that point,  
12 because there had been a number of exonerations that everybody who  
13 was exonerated ends up getting money through suit or through State  
14 Court Claims Act or whatever it would be, and that is immensely  
15 well known in the prison population.

16           Would that be accurate?

17           **THE WITNESS:** I don't know how well known that  
18 information is in the prison population. I just wanted to clarify  
19 that the Commission had not had any conversations with him about  
20 money.

21           **MR. GLAZIER:** Right. Thank you.

22           **THE COURT:** It's usually well documented in the media,  
23 particularly in Raleigh, *News & Observer*, when claimants receive  
24 money from the State for wrongful convictions.

25           Yes, ma'am.

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1           **MS. NEWTON:** So apparently this information came from  
2 his aunt, Ms. Williams. In the jail phone call, she tells him  
3 that.

4           **THE WITNESS:** I do recall that as well.

5           **MS. NEWTON:** Are you speaking about Patient?

6           **THE WITNESS:** 6/13/2018, Patient Williams says that --  
7 to Evans, apparently in a jail call, that Evans -- that "the  
8 Commission is working with him because he is going to receive a  
9 lot of money, and the Commission will get part of that money."

10          **MR. GRACE:** Is that paid to the individual  
11 Commissioners?

12          **THE COURT:** I didn't get my check.

13          **MR. GRACE:** I didn't get mine either.

14          **MS. NEWTON:** And so, I mean, in light of the fact that  
15 he consistently -- the defendant consistently appears to be  
16 suggestible to information -- once he gets it, he keeps repeating  
17 it as true. It looks like that might have been suggested to him  
18 by a family member, that then he tells how much money he's getting  
19 and that sort of thing.

20               I just wanted to make that ...

21          **THE WITNESS:** Sure.

22          **THE COURT:** Yes.

23          **DR. PERRY:** Was Pat Green still in prison when Evans  
24 filed with the Commission?

25          **THE WITNESS:** I would have to check the dates on that.

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1 I don't believe so. But let us double-check.

2 **DR. PERRY:** Evans filed when?

3 **THE WITNESS:** He filed his claim with the Commission in  
4 August of 2016, and I believe Pat Green was convicted in 2012 and  
5 received a 3-to-5-year sentence.

6 **MS. SMITH:** If there are no more questions about those  
7 pending matters from last night, we will move on to the next  
8 portion.

9 We are going to turn our attention now to Larry Davis.

10 Commissioners, Mr. Davis has been subpoenaed and is  
11 present and will be called to testify after Ms. Matoian.

12 **Q.** Who is Larry Davis?

13 **A.** Larry Davis testified against Mr. Evans at the trial.  
14 We also have statements from him to the sheriff's office  
15 indicating that Mr. Evans had told him about kidnapping the victim  
16 while they were in jail together. And Mr. Davis has also told the  
17 Commission that Mr. Evans tried to sell him a gun that was similar  
18 to the one stolen from the victim's husband.

19 We learned through our investigation that Larry Davis  
20 dated JoAnn Clemonts' mother at one point and is also a cousin of  
21 Shirley Evans.

22 We had followed up with Shirley Evans about this, and  
23 she didn't have any idea about Larry Davis' involvement in the  
24 case and didn't seem to know him as her cousin.

25 **MS. SMITH:** Commissioners, Mr. Davis' interview can be

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1 found on pages 139 to 145 of your briefs.

2 Handout 29 is Larry Davis' criminal record if you want  
3 to take a moment to look at that.

4 Q. Ms. Matoian, did commission staff interview Larry Davis?

5 A. The Commission subpoenaed Mr. Davis for a deposition on  
6 December 13, 2018. Approximately 17 minutes into the deposition,  
7 Mr. Davis became agitated, said he didn't need to answer our  
8 questions without a lawyer, and that the Commission could "lock  
9 him up."

10 Mr. Davis then walked out without being released from  
11 his subpoena.

12 THE COURT: This is 18 minutes into it, you said?

13 THE WITNESS: About 17 minutes, yes, ma'am.

14 THE COURT: Okay.

15 MS. SMITH: Commissioners, we are just going to play a  
16 portion of that video for you.

17 MR. GRACE: While that's happening, would you tell me  
18 again where his -- could I get the page number again for his  
19 record? Handout?

20 THE WITNESS: It's Handout 29.

21 MR. GRACE: Thank you.

22 THE COURT: Okay.

23 (Video played, 10:26 to 10:40 a.m.)

24 THE COURT: If we might, could we have break before we  
25 go further?

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1           **MS. SMITH:** Sure. This would be a good time.

2           **THE COURT:** 15-minute break.

3                   (Recess taken, 10:40 to 11:00 a.m.)

4           **THE COURT:** Okay. Everybody is present. We are ready  
5 to start back up.

6                   Yes, ma'am.

7           **MS. SMITH:** Before we move on with additional testimony  
8 related to Larry Davis, I have a couple of questions related to  
9 questions Commissioners had earlier today.

10          **Q.** Ms. Matoian, when was Pat Green released?

11          **A.** Pat Green was convicted on August 17, 2012, and was  
12 released from prison on April 13, 2016, so about four months  
13 before Mr. Evans applied to the Commission.

14          **DR. PERRY:** Thank you.

15          **Q.** Can you tell Commissioners about Mr. Evans and whether  
16 there is any indication based on our review of records that he was  
17 using other people's PIN numbers?

18          **A.** In this case, there was nothing to indicate that  
19 Mr. Evans was routinely using another inmate's PIN to call anyone.  
20 He primarily was calling family members, and there were no  
21 significant periods where he wasn't doing so. And there were very  
22 few times that Evans allowed another inmate to use his PIN. I  
23 think we counted only three times in the 400-some calls we had.

24                   So we didn't feel we had any indications that he was  
25 regularly making calls on another inmate's PIN and didn't have the

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1 basis to get a judicial subpoena for those records outside of our  
2 court order.

3 Q. Mr. Grace had asked a question about the victim's  
4 description of what the suspect was wearing, I think, over time.

5 Can you provide any additional information about that?

6 A. I can. I looked back at Larry Norman's notes that he  
7 had indicated to the Commission were the type of notes he would  
8 have taken during someone's testimony. That's on pages 405 to 408  
9 of your brief. There are a few places where it's noted the victim  
10 describing what the suspect is wearing.

11 On the first page, which would be 405, our Bates stamp  
12 193, down towards the bottom, she -- there's a mention of khaki.  
13 And I can't read the word, but some type of mask.

14 On page 406, towards the middle -- it's circled -- she  
15 talks about -- or the notes indicate there was a discussion of  
16 dust cap on that page.

17 On 407, towards the middle, there is a mention of a  
18 "dust cap on face. Could not see hair."

19 And then down a few lines after that, "could not see  
20 hairline because of dust cap." That is on page 407.

21 And 408, there's a portion of the notes that has a star.  
22 If you go above that a few lines, it says "dust cap left." And I  
23 can't see there.

24 And -- so that's what those notes say. I looked back at  
25 the draft closing argument, and there is nothing in the draft that

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1 indicates Mr. Norman pointed out the differences between her  
2 description of his clothing at the time.

3 He does point out the differences between Mr. Evans'  
4 physical appearance and the physical appearance that Mrs. Manning  
5 described of the suspect.

6 **SHERIFF FRYE:** Thank you.

7 **Q.** Turning your attention now back to Larry Davis, did  
8 commission staff have any additional contact with Mr. Davis?

9 **A.** Mr. Davis called the Commission the day after that  
10 deposition -- so December 14, 2018 -- and he expressed concerns  
11 for his safety if Mr. Evans was to be let out of prison.

12 He was not willing to complete the deposition. We  
13 advised him that we would be seeking enforcement of the subpoena  
14 and he said the Commission could do what it needed to do.

15 Commission staff reached out to Mr. Davis by mail on  
16 January 24, 2019, to complete the deposition; however, Mr. Davis  
17 refused to accept that package.

18 On February 2, 2019, the Commission filed a motion  
19 requesting Alternate Chair Judge Thomas Lock to issue a material  
20 witness order for Mr. Davis as Judge Wagoner was out of the  
21 country at the time. Judge Lock signed an order and set a hearing  
22 for February 19, 2019, for Mr. Davis to be heard on this matter.  
23 He also issued a judicial subpoena for Mr. Davis' presence at that  
24 hearing.

25 Mr. Davis was served with the order and judicial

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1 subpoena on February 7, 2019. On February 8, 2019, Mr. Davis  
2 contacted the Commission and stated that he refused to appear. We  
3 offered transportation to the hearing but he refused and he stated  
4 that the Commission could "lock him up."

5 On February 19, 2019, commission staff contacted  
6 Mr. Davis by phone and again offered to give him a ride to  
7 Fayetteville for the hearing. Mr. Davis indicated he was not  
8 coming and that the Commission should "lock him up."

9 Mr. Davis did not show up for the hearing on  
10 February 19, 2019. On that same day, Judge Lock issued an order  
11 finding Mr. Davis to be a material witness not amenable or  
12 responsive to a subpoena or court order and refused an opportunity  
13 to be heard as outlined in the statute.

14 Judge Lock issued an order for Mr. Davis' arrest and for  
15 him to be held pending a hearing on February 26, 2019.

16 Mr. Davis was arrested pursuant to that order on  
17 February 20, 2019, and was released on bail the next day.

18 Mr. Davis contacted the Commission on February 25, 2019,  
19 and said the Commission "didn't have to lock him up."

20 He indicated he planned to attend the hearing on  
21 February 26, 2019, and would call if he needed a ride.

22 On February 26, 2019, Mr. Davis appeared in Fayetteville  
23 for the scheduled hearing. In the hallway prior to the hearing,  
24 Mr. Davis apologized to the commission staff for his prior  
25 interactions with us and indicated his willingness to cooperate

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1 moving forward.

2           During the hearing, Mr. Davis indicated to Judge Lock  
3 that he was willing to complete the deposition and the Commission  
4 deposed him after the hearing.

5           During that deposition, he also voluntarily agreed to  
6 provide his DNA sample to the Commission.

7           **Q.** Did the Commission have Mr. Davis' DNA compared to the  
8 mixture from the do-rag in this case?

9           **A.** We did. And he was excluded as a contributor to that  
10 mixture.

11           **MS. SMITH:** Commissioners, prior to the hearing, you  
12 were provided Handout 30, which is a transcript with select  
13 exhibits from Larry Davis' second deposition with the Commission.

14           We're not going to play that deposition. We do have  
15 Mr. Davis here. But do you-all have any questions for Ms. Matoian  
16 of that deposition?

17           **MR. GRACE:** Not about the deposition, but I have a  
18 question about whether Davis -- whether or not Davis and Evans  
19 were locked up together and how long in the county jail.

20           **THE WITNESS:** So we have Mr. Evans' assignment records  
21 for the Franklin County jail from 1991 going forward. We were not  
22 able to locate any jail packets for Mr. Davis. That was one of  
23 those items we'd asked the sheriff's office for and they indicated  
24 they didn't have and we didn't locate it during our search. So we  
25 don't have any confinement history of Mr. Davis to compare.

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1           **MR. GRACE:** Would that indicate that he wasn't in jail?  
2 Or just that the records --

3           **THE WITNESS:** No. I believe his criminal record  
4 indicates that he was frequently in trouble with the law in  
5 Franklin County. So I don't know whether or not he was in jail  
6 during those time periods.

7           We do know that there were -- that he was being arrested  
8 during that time.

9           **MR. GRACE:** Well, I could see where he was charged and  
10 I'm looking at his criminal convictions, but it doesn't  
11 necessarily mean that he spent any time in the jail during that  
12 period of time. And they would not generate a record to prove a  
13 negative.

14           **THE WITNESS:** Right. We just don't have any records to  
15 say whether or not he was in jail.

16           **THE COURT:** Mr. Glazier, did you have a question?

17           **MR. GLAZIER:** Thank you, Judge.

18           So I think you said that we're going to hear from Davis.

19           **THE WITNESS:** Yes.

20           **MR. GLAZIER:** So just in prep for that, if you could go  
21 back and just -- with regard to the deposition so that I've got it  
22 clear because there's a number of conflicting statements and I'm  
23 trying to get this straight before he testifies -- can you  
24 summarize two things for me from the multiple times you have  
25 talked to him?

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1 Does he ever indicate -- I guess there's really three  
2 questions.

3 Does he ever indicate that Evans told him he committed  
4 the crime in any way?

5 Second question, it appears what he focuses on is the  
6 sale of the gun, and if you could summarize that for me.

7 And, three, what statement specifically does he say  
8 Green lied about when he wrote notes up?

9 **THE WITNESS:** I may have to ask you to repeat the third  
10 one when I get there.

11 So the -- during his deposition with the Commission on  
12 February 26, 2019, Mr. Davis, as of that deposition, had no  
13 recollection of Mr. Evans ever making statements to him about  
14 committing the crime.

15 I believe in the exhibits you were provided with that  
16 deposition that he had marked up, he had indicated those lines  
17 were lines that he just did not recall ever saying. He did not  
18 recall Mr. Evans saying those things to him and he did not recall  
19 saying those things to Pat Green.

20 What he recalls about this case is that Mr. Evans tried  
21 to sell him a gun that he later found out from Pat Green was the  
22 gun that was stolen from the victim. That is what he recalls.  
23 That's what he remembers testifying about at trial.

24 And if you could repeat your third question.

25 **MR. GLAZIER:** I think you answered it. It was the --

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1 what portions of what Green wrote down he allegedly said that he  
2 disagreed that he never said, and I think that's -- again, I think  
3 I understand, which is all he knows about this case is the gun  
4 issue and that he claims he never told Green that Evans admitted  
5 any other part of the crime or being involved in it and no one  
6 told him that Evans was involved in the crime.

7 **THE WITNESS:** That's what he recalls now.

8 **MR. GLAZIER:** Okay. Thanks.

9 **THE COURT:** Is that what he said lately? That's not  
10 what he said a long time ago?

11 **THE WITNESS:** We have his statements that indicate  
12 Mr. Evans made statements to him about the crime.

13 **THE COURT:** Yeah.

14 **THE WITNESS:** He does not recall that now.

15 Again, we don't have a trial transcript. I don't have  
16 notes for Mr. Davis like the notes we have for the victim or any  
17 of the other individuals from the trial, although it does appear  
18 he testified at the trial. So I just don't have a lot of  
19 information about what he testified about.

20 **MR. GLAZIER:** Thanks.

21 **MR. BOSWELL:** We have -- when you say the "statements"  
22 that he gave a long time ago, these are the ones that Larry -- I  
23 mean --

24 **THE COURT:** Green.

25 **MR. BOSWELL:** -- Green wrote down.

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1 Do we have anything that Davis wrote down or signed?

2 THE WITNESS: We have nothing in Mr. Davis's handwriting  
3 or that he signed.

4 MR. BOSWELL: Or that he signed.

5 MR. GLAZIER: Well, that leads to a follow-up to John's  
6 question.

7 THE COURT: Yes.

8 MR. GLAZIER: Does Davis ever remember signing a  
9 statement or giving a verbatim written statement?

10 THE WITNESS: I believe I asked him about that, if you  
11 could give us just a moment to find the page.

12 MR. GLAZIER: Thank you.

13 MS. SMITH: Any other questions?

14 THE COURT: I have a question.

15 Did not Mr. Davis say in his February 2019 deposition  
16 with you-all that he and Mr. Evans were locked up at the same in  
17 the jail at the same time? Somebody was upstairs and somebody was  
18 downstairs?

19 THE WITNESS: Correct.

20 Mr. Davis did recall seeing Mr. Evans in jail. I  
21 believe the only thing he recalls Mr. Evans saying to him was his  
22 plans to escape from the jail but not anything about the crime.

23 THE COURT: Okay.

24 MR. GLAZIER: One other follow-up, if I might, Judge.

25 THE COURT: Yeah.

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1           **MR. GLAZIER:** And I know you're checking on that other  
2 matter.

3           In your discussions with the prosecutor, did she  
4 remember Davis testifying as to Evans ever saying he was involved  
5 in the crime?

6           **THE WITNESS:** I can't recall from my interview with her.  
7 I remember -- she remembers him testifying and thought that he was  
8 an important witness.

9           There is a newspaper article that quotes Susan Thompson  
10 as saying that Mr. Davis testified about Evans telling him that he  
11 had left the car out in the woods because it was almost out of gas  
12 that we testified about earlier that we just haven't been able to  
13 verify. So it appears that that may have been part of the trial  
14 testimony but we just don't know.

15           **MR. GLAZIER:** Okay. Thank you.

16           **THE COURT:** And did Mr. Green, in one of these  
17 documents -- when you interviewed him not too long ago, was he the  
18 one that said Davis would lie when it suited him or something like  
19 that?

20           **THE WITNESS:** We're going to testify about what  
21 Mr. Green said about Mr. Davis in just a moment.

22           **THE COURT:** Okay. Thank you.

23           **DR. PERRY:** Following up on Mr. Glazier's question --  
24 maybe you answered it; Robin was bothering me at that point.

25           The DA, ADA, said that that was not public information

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1 about -- have if we corroborated that? Is that what you asked?  
2 No?

3 **THE COURT:** About the gas?

4 **THE WITNESS:** I looked back at other newspaper articles  
5 that we have been able to find -- I can't say that we have been  
6 able to find every piece of media about the case -- and we weren't  
7 able to find the television news spots. But in the newspaper  
8 articles we have been able to find, there was no mention of the  
9 car gas tank in those.

10 **DR. PERRY:** And no one has ever speculated on how Evans  
11 knew that?

12 **THE WITNESS:** No.

13 **MR. GLAZIER:** Well, follow-up. No one has ever  
14 speculated on how Davis knew or allegedly understood it from Evans  
15 because we don't know whether -- we don't know who to believe  
16 here.

17 **THE WITNESS:** We don't have a trial transcript so we  
18 don't know what anyone was asked about that particular situation.

19 **MR. GLAZIER:** Somebody knew about it. One of the two  
20 knew about the car and -- yeah. Okay.

21 **SHERIFF KIMBROUGH:** Can I ask a question?

22 **THE COURT:** Sure.

23 **SHERIFF KIMBROUGH:** I may be off, but I was just  
24 curious.

25 I was looking at the deposition, and it says --

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1 (Reporter clarification.)

2 **SHERIFF KIMBROUGH:** I was looking at the deposition. On  
3 line 7, it says CL asked Davis how he connected Evans saying he  
4 wanted to escape from the kidnapping, and Davis said he read about  
5 it, kidnapping, in the paper.

6 In the first deposition I was looking at, and you were  
7 asking -- or someone was asking Davis to read something, and he  
8 said either could not read -- or that his sight, that he could not  
9 read?

10 **THE WITNESS:** Mr. Davis is currently -- I think he's  
11 described to me as being legally blind. I don't know what the  
12 condition of his vision was like at the time but he is here and  
13 available to testify.

14 **SHERIFF KIMBROUGH:** Just curious.

15 **THE COURT:** So we think he might be legally blind,  
16 right, but we don't know?

17 **THE WITNESS:** Correct.

18 **THE COURT:** Okay.

19 **THE WITNESS:** Regarding the question about Mr. Davis  
20 writing anything down, if you go to Handout 30, I believe there is  
21 information about that on the following pages, page 10, page 15,  
22 page 35 through 38, 55 through 56, page 106, and 108 to 109.

23 **MR. GLAZIER:** A follow-up question?

24 **THE COURT:** Yes.

25 **MR. GLAZIER:** These appear to suggest, first, he doesn't

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1 know whether he signed anything; and then a bunch of this seems to  
2 refer to notes that Green wrote down that he is being asked to  
3 say; right?

4 **THE WITNESS:** Right.

5 **MR. GLAZIER:** But there's -- he again says, "I don't  
6 know if I signed anything."

7 **THE WITNESS:** Correct.

8 **MR. GLAZIER:** Okay. Thank you very much.

9 **Q.** Ms. Matoian, has commission staff had any additional  
10 contact with Mr. Davis?

11 **A.** We have. Mr. Davis contacted the Commission of March 1,  
12 2019, and said that he had talked to his stepdad, who was a former  
13 law enforcement officer, about the Drake case. He thought the  
14 Commission needed to talk to someone named Smoke Meat who had done  
15 something to the mayo at the Golden Corral "where it happened."

16 He stated he was going to get Smoke Meat's DNA for the  
17 Commission. The Commission told him we were only looking into the  
18 Manning case and did not need him to do any investigative work for  
19 the Commission. We didn't follow up on this information as it did  
20 not appear to have anything to do with the Manning case.

21 **THE COURT:** Smokey who used to work at the Golden  
22 Corral? Is that what you said?

23 **THE WITNESS:** He said Smoke Meat, who had done something  
24 to the mayo at the Golden Corral where it happened.

25 **THE COURT:** He was referring to the rape?

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1           **THE WITNESS:** To the Drake case, which did not happen at  
2 the Golden Corral.

3           **THE COURT:** The court reporter has a question.

4           **THE STENOGRAPHER:** "Smoked Meat"?

5           **THE WITNESS:** "Smoke Meat."

6           **THE STENOGRAPHER:** Thank you.

7           **THE COURT:** Oh, I thought it was like Smokey and the  
8 Bandit.

9           **Q.** Did the Commission do anything else with respect to  
10 Mr. Davis?

11           **A.** The Commission obtained Mr. Davis' combined and  
12 parole/probation commission -- or records from DPS. There was no  
13 information relevant to this case in those records and he had no  
14 mental health records.

15           **Q.** And you mean there was no information relevant to the  
16 Manning case?

17           **A.** Relevant to the Manning case. I'm sorry.

18           **Q.** [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22           **A.** [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

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MS. SMITH: [REDACTED]

SHERIFF FRYE: There's been -- and I may have missed it  
somewhere along the line.  
In Exhibit -- well, in Exhibit 29, and even before that,  
there's -- a few pages before that, there is a note, but  
especially in Exhibit 29 and Exhibit 30 where we have "LD" and  
it's highlighted down at the bottom.  
Does Mr. Davis recognize that as his writing at all?  
THE WITNESS: Those -- that was what he wrote during --

1 he wrote the "LD" himself to mark his highlights and his markings  
2 on those exhibits during our deposition of him. Those were not on  
3 the original copies.

4 SHERIFF FRYE: Those were not on the original exhibits?

5 THE WITNESS: Correct.

6 SHERIFF FRYE: Okay.

7 THE COURT: Sorry.

8 MR. BOSWELL: He did that to show --

9 SHERIFF FRYE: Yeah. Okay. I understand now.

10 THE COURT: Mr. Davis is going to testify we think, yes?

11 THE WITNESS: He's here.

12 THE COURT: And are these things he marks through -- are  
13 they going to be up on the board so he can explain to us --

14 THE WITNESS: We have them available for him.

15 THE COURT: Okay.

16 May I ask another question? Maybe my mind is just gone.

17 If you could refresh my memory as to what put -- what  
18 made law enforcement go to Mr. Evans in 1993. Was it Mr. Davis?

19 THE WITNESS: In 1993?

20 THE COURT: Uh-huh.

21 THE WITNESS: In 1993 -- so he is arrested in the Drake  
22 case in September, and then in October there is I believe the  
23 Reece Wardrick interview -- I testified yesterday we just haven't  
24 been able to locate a Reece Wardrick. And then Mr. Davis gave a  
25 statement shortly after that. So that appeared to begin the

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1 reinvestigation.

2           **THE COURT:** That was -- primarily Mr. Davis?

3           **THE WITNESS:** Correct.

4           **THE COURT:** Because back in the '90s -- or '91, Green  
5 had said to him "You passed -- or we're going to leave you alone  
6 now" or something?

7           **THE WITNESS:** Right. He became a suspect in April of  
8 1990, so little less than a month after the crime, and that was  
9 where the Greg Phelps initial statement came in.

10          **THE COURT:** Okay.

11          **THE WITNESS:** He was polygraphed. And then after that,  
12 there didn't appear to be, from the documents we have, much  
13 investigation from that point on until when additional witnesses  
14 came forward in 1992 -- late 1992.

15          **THE COURT:** Okay. Thank you.

16          **SHERIFF KIMBROUGH:** If my memory serves, the polygraph  
17 stated he showed no deception; right?

18          **THE WITNESS:** Correct.

19          **MR. GLAZIER:** May I?

20               Just out of curiosity -- I know there's no record  
21 directly of the trial. Do we have any record from either the  
22 defense attorney or the prosecution of the jury composition of  
23 that trial?

24          **THE WITNESS:** There are documents related to jury  
25 selection in both of those files. I can't remember much

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1 information about them off the top of my head but I believe there  
2 is some of the file.

3 MR. GLAZIER: I would like to see those.

4 THE COURT: I'm sure back then they didn't have to write  
5 down the race.

6 MR. GLAZIER: Well, probably not. I'm just curious.

7 Q. [REDACTED]

8 [REDACTED]  
9 A. [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
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17 THE COURT: [REDACTED] [REDACTED]  
18 [REDACTED] [REDACTED]  
19 SHERIFF KIMBROUGH: [REDACTED]  
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23 THE WITNESS: [REDACTED]  
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1           **SHERIFF KIMBROUGH:** And my last question. Mr. Green  
2 couldn't corroborate or did not corroborate the conversation about  
3 him telling Davis about the gun?

4           **THE WITNESS:** He did not recall that.

5           **SHERIFF KIMBROUGH:** And it wasn't documented anywhere?

6           **THE WITNESS:** It wasn't documented in the interviews  
7 that we have.

8           **THE COURT:** Yes.

9           **MR. GLAZIER:** Thank you, Judge. And this is sort of  
10 following the Sheriff's questions but from a different point of  
11 view.

12                   Is there anything in any of the defense files or in  
13 anything you know from the prosecution file about whether the  
14 defense attorneys in this case filed -- and I recognize different  
15 era, different time, different county -- filed a basic discovery  
16 request and then followed that with a basic discovery motion?

17           **THE WITNESS:** I believe there was a discovery motion in  
18 the trial. They also asked for a bill of particulars in the  
19 motion as well.

20           **MR. GLAZIER:** And a follow-up -- and did the basic  
21 discovery motion contain a *Brady/Giglio* request?

22           **THE WITNESS:** Let us check on that for you.

23           **MR. GLAZIER:** Thank you.

24           **THE COURT:** Yes, sir.

25           **MR. BASS:** I'm not sure how relevant it is but I'm

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1 trying to remember -- did the supposedly stolen gun ever turn up?

2 **THE WITNESS:** That gun has never been located.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 **Q.** What else did Pat Green say about Larry Davis?

10 **A.** The Commission asked Mr. Green about the differences  
11 between his handwritten notes and the final reports of his  
12 interviews with Mr. Davis.

13 Mr. Green indicated that those differences could be  
14 explained by details he overlooked initially and then remembered  
15 Mr. Davis saying later.

16 Commission staff also showed Mr. Green the statements  
17 that Mr. Davis had marked and highlighted during his deposition  
18 with the Commission that you-all have copies of. And Mr. Green  
19 stated that Mr. Davis was a liar and Mr. Green said, "I have no  
20 reason to make it up, wouldn't have made it up, never made up  
21 anything. What I wrote down is what he told me."

22 **THE COURT:** So Mr. Green was out of custody when he said  
23 this? Out of prison?

24 **THE WITNESS:** Yes. Mr. Green was released in 2016. We  
25 spoke to him in early 2019.

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1           **MS. SMITH:** Commissioners, the statement that Larry  
2 Davis marked and highlighted during his deposition with the  
3 Commission -- I think most of you already know this, but were  
4 provided to you with Handout 30, the deposition of Larry Davis.  
5 Those are marked within that handout as Exhibits 17, 29, and 30.

6           **SHERIFF KIMBROUGH:** [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9           **THE WITNESS:** [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED]

16           **THE COURT:** [REDACTED]

17           **THE WITNESS:** [REDACTED]

18           **THE COURT:** [REDACTED]

19           **THE WITNESS:** [REDACTED]

20           **THE COURT:** [REDACTED]

21           **MR. BOSWELL:** Did I understand that after Mr. Davis'  
22 deposition and he did this marking, you went back and talked to  
23 Pat Green?

24           **THE WITNESS:** Yes.

25           **MR. BOSWELL:** Would that be the first time or the second

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1 time?

2 THE WITNESS: That was the second time.

3 MR. BOSWELL: So you went and showed these markings to  
4 Pat Green?

5 THE WITNESS: Correct.

6 MR. BOSWELL: And that's when he said, "Well, Larry  
7 Davis is a liar"?

8 THE WITNESS: Correct.

9 MR. BOSWELL: Did he give you any more information to  
10 sort of shed any more light on this?

11 THE WITNESS: No. He had told us during the first  
12 interview before we had asked any information about Larry Davis

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 We then interviewed Mr. Davis and then took those  
17 marked-up documents back to Pat Green, and he -- that is what he  
18 said; he said that Mr. Davis was a liar and no reason to make it  
19 up.

20 THE COURT: Okay.

21 MR. GLAZIER: So it may seem tangential, but I don't  
22 think it is in the scheme of credibility as it relates to all of  
23 this, but I want to go back to the judge's question because I'm  
24 still sort of recovering from the answer.

25 MR. BOSWELL: Rick, can you speak up just a little bit?

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1           **MR. GLAZIER:** Yeah. I'm sorry.

2           So when you went to look and found this box that was  
3 marked "Pat Green" and went in and saw small amounts of ledger and  
4 drugs in it -- when was that?

5           **THE WITNESS:** There actually was no ledger, it was just  
6 the --

7           **MR. GLAZIER:** Notes?

8           **THE WITNESS:** -- bags, and they would have notes on the  
9 bags. I can't recall the dates.

10          **MR. GLAZIER:** Oh, I mean what year.

11          **THE WITNESS:** The date that we did this?

12          **MR. GLAZIER:** Yes.

13          **THE WITNESS:** Oh, it was our search in March of 2019.

14          **MR. GLAZIER:** So in March of 2019, in the sheriff's  
15 office, there's a box with just drug packets in it from Pat  
16 Green's transactions from years ago, not marked in an evidentiary  
17 way, and Pat Green was indicted, arrested, charged, convicted, and  
18 served time for embezzlement on drug money, and that's just  
19 sitting in the sheriff's office?

20               Am I getting this right?

21          **SHERIFF KIMBROUGH:** So are you -- when you say drug  
22 packets, are you saying drug ID packets or drug packets containing  
23 drugs?

24          **THE WITNESS:** They're plastic evidence bags that contain  
25 substances in them that appear to be drugs with notes on --

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1           **MR. GRACE:** Good answer. "Appear to be drugs."

2           **THE WITNESS:** That had notes on them about the person  
3 and I believe how much money was exchanged.

4           **MR. GLAZIER:** I'm just curious as a follow-up. From a  
5 systemic point of view, did the Commission then notify the  
6 sheriff's office and the DA's office that the office had these  
7 packets sitting in a box?

8           **THE WITNESS:** People from the sheriff's office were in  
9 the room with us while we were searching and were aware of that.

10           We also found an unpackaged knife in a folder related to  
11 another case and we made them aware of that as well. I don't  
12 believe we notified the DA's office.

13           **MR. GLAZIER:** Okey-dokey.

14           **THE COURT:** Yes, sir.

15           **DR. PERRY:** [REDACTED]

16 [REDACTED]

17           **THE WITNESS:** [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21           **DR. PERRY:** [REDACTED]

22           **THE WITNESS:** [REDACTED] [REDACTED]

23           **SHERIFF KIMBROUGH:** [REDACTED]

24 [REDACTED]

25           **THE WITNESS:** [REDACTED]

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1                   **SHERIFF KIMBROUGH:** [REDACTED]

2                   **THE WITNESS:** [REDACTED]

3                   **SHERIFF KIMBROUGH:** And his statement was given before  
4 Mr. Green went to prison?

5                   **THE WITNESS:** Yes. Mr. Green -- he was the sheriff when  
6 he was arrested in 2011 and then obviously left office after that.  
7 He went to prison in 2012 when he was convicted and was released  
8 in 2016. And this all happened in 1992 and 1993.

9                   **SHERIFF KIMBROUGH:** Right. Right.

10                  **THE WITNESS:** To answer Mr. Glazier's question, in the  
11 Ballance file, there is a letter from Bernadine Ballance to  
12 District Attorney David Waters dated May 19, 1993, requesting  
13 discovery and indicates that they "voluntarily disclose any  
14 information which you have which may tend to exculpate my client  
15 pursuant to *Brady versus Maryland*."

16                  **Q.** Ms. Matoian, are you looking at the court file?

17                  **A.** I'm sorry. That is the court file.

18                         And in the court file as well, there is a motion filed  
19 May 13th -- May 19, 1993, that's a motion for disclosure of the  
20 favorable information that also mentions *Brady*. We did not see  
21 anything in the court file related to *Giglio*.

22                  **MR. GLAZIER:** Thank you.

23                  **SHERIFF KIMBROUGH:** Can I ask one last question? I  
24 promise I won't say anything else before I leave.

25                  **MR. GRACE:** We're going to hold you to that.

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1           **SHERIFF KIMBROUGH:** I promise I won't.

2           So the evidence in this case is Larry Davis and the  
3 other inmate that was in jail with him -- statements?

4           **THE WITNESS:** What other inmate?

5           **SHERIFF KIMBROUGH:** I was reading in the notes where  
6 somebody gave directions as to how they got there.

7           **THE WITNESS:** Talking about Mr. Phelps?

8           **SHERIFF KIMBROUGH:** Phelps.

9           **THE WITNESS:** Mr. Phelps did not testify at trial.  
10 Prior to the trial, Mr. Phelps had told the defense PI that he did  
11 not give that statement to Pat Green and that he was not a rat.  
12 So he did not testify at trial.

13           Mr. Davis testified at trial and Mr. Evans'  
14 ex-girlfriend JoAnn Clemonts also testified at the trial.

15           **SHERIFF KIMBROUGH:** And that was it?

16           **THE WITNESS:** I don't have a trial transcript so I don't  
17 know. It appears law enforcement testified, Larry Davis  
18 testified, JoAnn Clemonts testified, the victim did, and we're  
19 also aware that a few of Mr. Evans' family members testified --  
20 and Tommy Perry as well.

21           **SHERIFF KIMBROUGH:** Thank you.

22           **MS. SMITH:** Your Honor, we would request just a short  
23 recess to -- we've got a witness that we have just been able to  
24 locate and we're able to put on the phone, but he only has about  
25 10 minutes. This is the original polygraph examiner.

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1           **THE COURT:**   Okay.

2           **MS. SMITH:**   And he's going to be able to hopefully  
3   answer some questions for you-all about those polygraphs of  
4   Ms. Manning and Mr. Evans.

5           **THE COURT:**   So he is the man who did it?

6           **MS. SMITH:**   Yes, Mr. Keane.

7           So just be at ease for a few minutes.

8           **THE COURT:**   We'll be at ease for a few moments.

9                       (Court stands at ease, 11:39 to 11:40 a.m.)

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\* \* \* \* \*

Thereupon, RON KEANE, a witness having been called by the Commission, was affirmed and testified as follows:

EXAMINATION.

(VIA TELECONFERENCE)

BY MS. SMITH: (11:40 a.m.)

Q. Good morning, Mr. Keane. My name is Lindsey Guice Smith. I'm the Executive Director of the North Carolina Innocence Inquiry Commission.

I'm going to have just a couple of questions for you and then I believe our Commissioners probably have some questions for you as we try to understand some polygraph reports.

We are looking at a polygraph report dated --

THE COURT: Exhibit number, please?

MS. SMITH: This will be in Commissioners' Handout 41.

THE COURT: Thank you.

Q. -- dated May 18, 1990. It says the examiner was RW Keane.

Can you confirm that you are RW Keane?

A. Yes. I'm looking at the report right now myself.

Q. Okay. And that is an examination of Ms. Euther Rea Manning.

A. Yes. That's correct.

Of course, to qualify things, I have no recollection of this. It was almost 30 years ago. But, yes, that would be my

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1 report.

2 Q. Okay. And then the second report that you have in front  
3 of you is dated April 20, 1990?

4 MS. SMITH: Commissioners, that would be Handout 42.

5 A. Yes.

6 Q. And that was of a Kenneth Leon Evans?

7 A. Yes.

8 Q. And it's correct that you also have no personal  
9 recollection of that polygraph as well?

10 A. Correct.

11 Q. Okay. I'm going to -- our Commissioners have some  
12 general questions, I think, about how you would have done tests  
13 back in the early '90s and about what maybe these scores mean.

14 So I'm going to let them ask you those questions as they  
15 have them.

16 They will just identify themselves to you so that you  
17 know who you're speaking with and then you can answer those  
18 questions.

19 A. Certainly. Go ahead.

20 THE COURT: Who wants to go first? Not me.

21 MR. GLAZIER: I'll go ahead and ask.

22 Mr. Keane, my name is Rick Glazier. Thank you so much  
23 for being available today.

24 On the first one, the report of the examinee Euther Rea  
25 Manning, under Remarks, there is a change on the parentheses

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1 following the first question "Have you told the complete truth in  
2 your statement?"

3 Do you have any recollection of how that change occurred  
4 and whether you were notified of that change on the document?

5 **THE WITNESS:** No. The change is administrative. I have  
6 no recollection. But it would have been administrative. "DS" is  
7 the secretary at the time, Dawn Spiddle, spelled like it sounds.

8 So either I wrote a different sign by error or she typed  
9 it wrong and just changed that. It has no significance other than  
10 administrative change. There is no change in whether the person  
11 passed or failed the test, et cetera.

12 **MR. GLAZIER:** Thank you. And can you tell me whether or  
13 not you were using a three- or seven-point scale?

14 **THE WITNESS:** I think it was a plus or minus 6, but I'm  
15 not positive. I can't remember.

16 If it was plus 3 or minus 3, her test would have been  
17 inconclusive.

18 **MR. GLAZIER:** Okay.

19 **THE COURT:** I'm confused.

20 **MR. BOSWELL:** Mr. Keane, this is John Boswell.

21 On Ms. Manning's test there is a plus 6 on the numerical  
22 evaluation and on Mr. Evans' there is a plus 9.

23 Can you just generally explain what those numbers mean?  
24 Or what they probably mean from your recollection?

25 **THE WITNESS:** Well, what it means is that the amount of

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1 reaction we saw on the test -- and I'm at a disadvantage not  
2 seeing the charts that were run by me, so we use -- I'm assuming,  
3 since I said there was no deception on her test, so the scale must  
4 have been plus or minus 6. And his was plus 9.

5 Now, I'm sure you're questioning, "Well, how could both  
6 of them pass the test?"

7 It's one of the reasons why we don't like to test  
8 victims. They don't have the same fear of detection as a suspect  
9 would if that makes any sense to you. So the reactions may not be  
10 as strong.

11 And those are the things we are -- we base our  
12 conclusion on the test.

13 **MR. BOSWELL:** Would you explain sort of what the plus 9  
14 means and what the plus 6 means?

15 **THE WITNESS:** Yes. We ask three sets of questions on  
16 the test. Three of them are controls and three are the questions  
17 that you have before you about committing or not committing the  
18 crime. And we compare the reactions of the control questions with  
19 the questions specific to the crime.

20 And his reactions on the test, on the charts, he showed  
21 greater reaction to the control questions and not to the crime  
22 questions.

23 **THE COURT:** I'm sorry. So what would that mean?

24 **THE WITNESS:** I'm sorry. Did someone say something?

25 **THE COURT:** Yes. I'm sorry. This is Judge Wagoner.

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1           So if he showed more --

2           **THE WITNESS:** It doesn't mean he is more truthful or  
3 less truthful, the score. It's just the reactions that he shows  
4 on the test. We're measuring respiration, galvanic skin response  
5 to a clip on the finger, and relative blood pressure. So we see  
6 those reactions. Some people may react just to one particular  
7 thing, such as blood pressure changes. But we're comparing the  
8 crime questions or the lying questions in her case to the control  
9 questions.

10           Now, the reason -- as I said, the reason why we don't  
11 like to test victims is because they don't have the exact same  
12 fear of detection -- some people. So therefore, the reactions  
13 won't be as strong. But it was enough for her to get that score.

14           **THE COURT:** Yes, ma'am.

15           **MS. COLBERT:** So, Mr. Keane, this is Robin Colbert.

16           So when you said he expressed a greater reaction to the  
17 test questions, is it because -- I think we had heard that, you  
18 know, initially when folks are polygraphed, that their physiology  
19 or whatever score because, you know, they are getting ready to be  
20 tested, that they have this reaction initially and that's why you  
21 do the test questions. And then when you start getting to the  
22 other questions, that kind of levels out.

23           **THE WITNESS:** I'm not sure I understand completely.

24           We ask questions. We open the test with two or three  
25 neutral questions -- "Is your name Ron Keane? Are you in

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1 Raleigh?" -- questions like that -- so they can understand the  
2 spacing of the questions, the timing, which are probably every  
3 five seconds or so.

4 I just don't -- I'm at a disadvantage here not seeing my  
5 charts so I could tell you what they reacted to more.

6 But the -- the fact that he had a plus 9 means that  
7 his -- what we are measuring on the test, his physical responses  
8 were easy to see and clear for him to have a plus 9 on that test,  
9 and that's pretty significant for a suspect.

10 **THE COURT:** Okay.

11 **THE WITNESS:** In the sense of it -- in the sense of  
12 indicative of truthfulness, if that helps.

13 **THE COURT:** Thank you.

14 **MR. BOSWELL:** And this is John Boswell again. I don't  
15 want to put words in your mouth, but did you just say that you  
16 felt pretty confident that he was not being deceptive? There was  
17 no deception indicated based on that plus 9 score?

18 **THE WITNESS:** Well, I'd be more confident, as I said, if  
19 I had my charts in front of me so I could review them.

20 But, you know, as I said, we are measuring the fear of  
21 detection, and his score is indicative to me that he's probably  
22 innocent, you know, but polygraph has its limitations too; so --  
23 scientifically.

24 **MR. BOSWELL:** Thank you very much.

25 **THE COURT:** Thank you.

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1 Other questions?

2 MS. NEWTON: Sir, this is Deb Newton. I'm an alternate  
3 on the Commission.

4 I have -- you had Mr. Evans sitting in front of you,  
5 didn't you?

6 THE WITNESS: He's the suspect; right?

7 MS. NEWTON: Yes.

8 THE WITNESS: Yes, of course. He's sitting on one side  
9 of the polygraph instrument and I am standing behind it.

10 MS. NEWTON: And you watched him walk in; correct?

11 THE WITNESS: The secretary usually placed them in the  
12 room.

13 MS. NEWTON: Okay. Did you see him standing?

14 THE WITNESS: He would have stood after the test, yes.

15 MS. NEWTON: About how tall would you say he was, just  
16 with your casual observation?

17 THE WITNESS: I couldn't tell you if he was 10 feet or  
18 2 feet. I have no recollection.

19 MS. NEWTON: How tall are you?

20 THE WITNESS: You know, if you're going to ask me to  
21 compare myself to him, I have no recollection.

22 MS. NEWTON: Do you recall anything unique about his  
23 face?

24 THE WITNESS: Of course not.

25 MS. NEWTON: Okay. How about whether his skin was light

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1 or dark?

2           **THE WITNESS:** If that report didn't have that he was a  
3 black male, I couldn't tell you who he was.

4           **MS. NEWTON:** Okay. Thank you, sir.

5           **THE COURT:** Yes, sir, Mr. Glazier.

6           **MR. GLAZIER:** This is just a follow-up to Ms. Newton's  
7 questions.

8           On the report you have in front of you for Kenneth Leon  
9 Evans, it does list an approximate height and weight. And that  
10 would have been your best attempt at it at the moment that you  
11 were reporting that information simultaneously with the report; is  
12 that right?

13           **THE WITNESS:** We don't question him about -- his height.  
14 I'm sure that my secretary would have asked him that, probably.

15           **MR. GLAZIER:** Okay.

16           **THE WITNESS:** If not, or I would've.

17           **MR. GLAZIER:** Okay. Thanks.

18           **THE COURT:** Other questions?

19           **THE WITNESS:** Sure.

20           **THE COURT:** I don't think we have any.

21           I just want to thank you so very much for making  
22 yourself available. You've answered a lot of questions that we  
23 could not figure out.

24           **THE WITNESS:** Okay. Well, you called me in a move to  
25 Charleston, South Carolina.

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1           **THE COURT:** Well, at least the hurricane is gone.  
2     That's good.

3           **THE WITNESS:** We've lived here a week and a half and we  
4     get a hurricane.

5           **THE COURT:** That's fine. Don't move to my neighborhood.  
6     All right. Thank you so very much.

7                     (Witness stands down, 11:51 a.m.)

8           **DR. PERRY:** May I ask you, sir, Judge --

9           **THE COURT:** Sure.

10          **DR. PERRY:** What was your question about *Giglio*?

11          **MR. GLAZIER:** My question was whether or not -- the  
12     system back then was you had to do a two-step to get discovery.  
13     You had to file a request for discovery under the statute that  
14     included your -- whatever you were seeking, including -- normally,  
15     a standard request would have a request for *Brady* and *Giglio*  
16     exculpatory evidence. And then you would then file your motion to  
17     get that.

18                     And so I was asking did the attorneys do the basic step  
19     of filing the request for *Brady/Giglio* and then was there a motion  
20     because some of the evidence we've clearly heard that's easily and  
21     what should have been disclosed as *Brady* and *Giglio* it appears --  
22     we don't know for certain, but it appears from the files it  
23     wasn't, and that's what I was getting at.

24          **DR. PERRY:** Thank you.

25          **MR. GLAZIER:** Does that answer?

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1 DR. PERRY: Yes, sir.

2 MR. GLAZIER: Okay.

3 THE COURT: Yes.

4 MS. SMITH: I will recall Ms. Matoian.

5 THE COURT: Okay.

6 (Catherine Matoian recalled, 11:52 a.m.)

7 MS. SMITH: While she's coming back to the stand, we're  
8 going to pass out Handout 43.

9 Commissioners, this is all of the information that we  
10 have from the Larry Norman file related to jury selection which  
11 Mr. Glazier had asked for.

12 If you all could take just a few minutes to look at  
13 that.

14 MR. GRACE: Is it obvious what it is? Or is it, you  
15 said, related to --

16 MS. WELCH: It's the jury cards --

17 MS. SMITH: It is the jury pool --

18 THE COURT: Okay.

19 (Overlapping speakers.)

20 MS. WELCH: The jury pool and his notes.

21 MS. SMITH: Some notes for voir dire and the chart of  
22 jurors and, yes, the chart that shows the strikes and all of that,  
23 and some handwritten notes.

24 THE COURT: Has everybody basically deciphered that, for  
25 what it's worth?

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1 All right. Questions?

2 MS. SMITH: Thank you.

3 Any questions for Ms. Matoian about that material?

4 MS. COLBERT: I agree with -- I think there were some  
5 comments before that this -- if it wasn't for Mr. Norman and all  
6 of his records, that we would not have literally anything.

7 THE WITNESS: It has been the records we have of what  
8 happened at the trial.

9 MS. COLBERT: Yeah.

10 MS. NEWTON: And may I --

11 THE COURT: Yes, ma'am.

12 MS. NEWTON: And following up with that comment --  
13 thanks for saying that -- this is Deb Newton.

14 I need to just piece together some information. The  
15 victim was very clear that the perpetrator had freckles. And  
16 now -- this is from the closing notes of the defense. That he had  
17 freckles and she repeated that a couple of times. So she was  
18 apparently adamant about that. That he was 6-foot tall -- and  
19 according to the report, he was 5'9", the report of the polygraph  
20 interview, that he did not have a mustache, and that he was  
21 light-skinned.

22 Now, Mr. Evans appears to have a mustache. The  
23 composite shows no mustache and very prominent freckles.

24 The media photograph on page 443 appears to show a  
25 mustache. And Exhibit 10. The handout, he's clearly got, you

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1 know, not a heavy mustache, but he's clearly wearing a mustache.

2 So my question is did you ask anyone, "At the time, Did  
3 Mr. Evans wear a mustache?"

4 And my other question is -- you have interviewed  
5 Mr. Evans; correct?

6 **THE WITNESS:** Correct.

7 **MS. NEWTON:** Personally?

8 Okay. So are his freckles prominent?

9 **THE COURT:** We're going to see Mr. Evans, are we not?

10 **THE WITNESS:** Correct.

11 **MS. NEWTON:** Because Exhibit 10 is -- you know, it's  
12 just not that -- I mean, composite page 40 is -- you know, she's  
13 clearly saying freckles and the closing notes clearly says she is  
14 adamant about the freckles. But this photograph of him doesn't  
15 appear to show at least prominent freckles. And, you know, he had  
16 a mustache and there is some inconsistency between the media  
17 photograph and this photograph about whether he could be  
18 considered light-skinned.

19 So I'm -- you know, the brief is not putting that  
20 information right in front of us.

21 **THE WITNESS:** I think you've summarized what we know  
22 about -- I testified yesterday about the victim's description of  
23 the suspect. We have provided that photo from Christmas of 1991  
24 in your handouts for the Commissioners to be able to judge for  
25 themselves.

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1 I don't believe that anyone we talked to has been able  
2 to tell us about Mr. Evans' facial hair at the time of the crime  
3 or has told us anything about his facial hair at the time of the  
4 crime. But we do -- I can go over what I testified about  
5 yesterday in regards to Mr. Evans' physical description versus the  
6 victim's description.

7 MS. NEWTON: Well, the only thing that appears to me to  
8 be something that would clearly eliminate him is the prominence of  
9 the freckles as far as what she could see. I mean, being that  
10 seems to be -- I have freckles. I don't have the kind of freckles  
11 that people immediately, I don't think, from a distance, or, you  
12 know, in an emergency situation, say that's the first thing they  
13 see. But you have seen people who have prominent freckles.

14 So that's what I'm wondering about.

15 THE WITNESS: As far as the freckles go, we know from  
16 the draft closing argument of Larry Norman that he asked -- he  
17 indicates to the jury that Mr. Evans does not have any freckles.  
18 We have provided that picture from Christmas 1991 which is the  
19 best quality photo we've been able to find closest in time to the  
20 crime so that Commissioners are able to judge for themselves what  
21 the prominence of those freckles may be.

22 We do still have the originals of those photos if you  
23 feel the copies are not sufficient and would like to look at them  
24 directly.

25 MS. NEWTON: I don't --

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1           **THE COURT:** Yes, sir.

2           **MR. GLAZIER:** Well, I know we're going to see him and we  
3 can make our own judgment.

4           I'm just going to ask you: Does the man have prominent  
5 freckles or doesn't he in your estimation?

6           **THE WITNESS:** I don't know that I can characterize them  
7 as prominent. Mr. Evans has markings on his face. Whether or not  
8 they're prominent would be up to the Commissioners to decide.

9           **MR. GLAZIER:** Thanks.

10          **THE COURT:** Anything else?

11                   (No response.)

12          **THE COURT:** Alrighty.

13          **Q.** Ms. Matoian, who is Billy Glenn Solomon?

14          **A.** In one of the interviews with Pat Green, Larry Davis  
15 stated that Billy Glenn Solomon said that Evans came to his house  
16 "the next day" but does not specify when that was with a bunch of  
17 quarters and also told -- Mr. Evans also told Solomon he took a  
18 lady in the woods and taped her up.

19           **MS. SMITH:** Commissioners, that portion of that  
20 interview can be found on page 140 of your brief.

21           Handout 32 is Billy Glenn Solomon's criminal record, if  
22 you want to take just a minute to look at that.

23           **THE COURT:** And is it correct that Mr. Solomon did not  
24 testify?

25           **THE WITNESS:** I don't have anything in Mr. Norman's file

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1 to indicate that Mr. Solomon testified.

2 Q. Did commission staff learn anything else about Billy  
3 Glenn Solomon during its investigation?

4 A. We did. We asked Pat Green about Billy Glenn Solomon  
5 during his deposition, and Mr. Green said his recollection was  
6 that Billy Glenn Solomon was a pathological liar and he didn't  
7 recall Mr. Solomon having any involvement in this case.

8 Mr. Evans -- Mr. Evans knew Mr. Solomon, and he has  
9 indicated in documents in the defense file and to the Commission  
10 that Mr. Solomon and Evans --

11 (Overlapping speakers.)

12 THE COURT: So, again, the only thing we have from  
13 Mr. Solomon is what Mr. Green wrote down on page 140?

14 THE WITNESS: Yes. And that information -- I'm going to  
15 testify about it -- well, I can just do it now.

16 So when we originally got the file from the sheriff's  
17 office, that page that talks about Billy Glenn Solomon appeared  
18 behind the first page of the Larry Davis interview. But if you  
19 see at the top, it says Walt Christopher Best with a line  
20 underneath it.

21 THE COURT: Yes.

22 THE WITNESS: We were initially not sure if that page  
23 was a second page of Larry Davis' interview or an interview with  
24 Walt Christopher Best.

25 After we conducted the search, we found the file that --

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1 the original of the file that the sheriff's office had sent to us  
2 and saw that those pages were stapled together indicating they  
3 were part of the same interview.

4 But in that, it appears that Billy Glenn Solomon told  
5 Larry Davis that Mr. Evans had come to his house the next day,  
6 although we do not know when the next day is, and he had a bunch  
7 of quarters and also talked about taking a lady in the woods and  
8 taping her up.

9 DR. PERRY: Excuse me. A bunch of what?

10 THE WITNESS: Quarters.

11 THE COURT: Quarters. Like 25 cents.

12 THE WITNESS: We do not have any indication in the files  
13 that we have that Billy Glenn Solomon was ever interviewed  
14 directly by law enforcement.

15 THE COURT: So what would --

16 THE WITNESS: And Pat Green did not recall him being  
17 involved in this case.

18 THE COURT: So the writing we have here is by Pat Green,  
19 but it's what Davis told him that Solomon said?

20 THE WITNESS: Yes. So it's what Larry Davis told Pat  
21 Green that Billy Glenn Solomon told Larry Davis that Kenneth Evans  
22 told Billy Glenn Solomon.

23 SHERIFF KIMBROUGH: So who wrote this?

24 THE WITNESS: Pat Green.

25 THE COURT: Based on what Davis told him?

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1           **MR. GLAZIER:** And so this is what we call rank triple  
2 hearsay?

3           **MS. WELCH:** That's right.

4           **THE WITNESS:** So Mr. Evans knew Billy Glenn Solomon and  
5 he has indicated in documents in the defense file and to the  
6 Commission that Mr. Solomon and Mr. Evans' cousin Jerry Moore, who  
7 did testify at the trial, had actually committed the Senator Speed  
8 robbery that Mr. Evans had pled guilty to as part of the group of  
9 cases involving the Drake case.

10           Tommy Kemp told the Commission last night that Billy  
11 Glenn Solomon lived close to where the victim's car was found and  
12 he also stated that Mr. Solomon had come into the Mannings'  
13 grocery store on a daily basis and that Esley Manning had extended  
14 him credit before.

15           Mr. Kemp said that he had a gut feeling that Solomon may  
16 have known something about the crime but that it was only a gut  
17 feeling and he didn't have anything to substantiate it.

18           Mr. Solomon never said anything to him, Mr. Kemp, directly  
19 indicating that he knew anything about the crime.

20           We looked at CJ Leads, and Mr. Solomon's height was  
21 listed as 6'3". In DCIN, he was listed as 6'4" and 183 pounds.  
22 Mr. Kemp indicated that he thought that Billy Glenn Solomon had a  
23 mustache but we don't have any pictures of him from around the  
24 time to substantiate that or not.

25           **MR. BOSWELL:** And is he deceased?

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1           **THE WITNESS:** He is deceased.

2           **Q.** Ms. Matoian, you talk a little there about those being  
3 the second page of notes that we've now learned is the second page  
4 of notes from a Larry Davis interview.

5           Did the Commission find out after the interviewing and  
6 deposing of Mr. Davis?

7           **A.** We did.

8           **Q.** And so we're going to ask him about those today?

9           **A.** Correct.

10          **MR. GLAZIER:** Before we switch gears, I'm just going  
11 back and trying to process what you were talking about with  
12 Mr. Solomon.

13          So when Mr. Kemp told you he had a gut feeling that  
14 Solomon knew something about the crime and that he lived close to  
15 where the victim's car was found and that he had been at the store  
16 before and had asked for credit, did he ever indicate that he told  
17 investigators that or ever told Green that information?

18          **THE WITNESS:** Mr. Kemp was never interviewed by law  
19 enforcement --

20          **MR. GRACE:** Oh, that's right.

21          **THE WITNESS:** -- so he doesn't appear to have told them  
22 that information.

23          **MR. GLAZIER:** Gotcha.

24          Okay. Strike that. Thank you.

25          **Q.** Who is Walt Christopher Best?

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1           A.     So Walt Christopher Best is that name that appears at  
2 the top of the page where Billy Glenn Solomon was interviewed. So  
3 it's just his name. It doesn't say anything else about him.

4           Q.     Did the Commission interview Mr. Best?

5           A.     We did. This was, again, prior to us knowing that that  
6 was actually the second page of Larry Davis' interview.

7                     Mr. Best is currently in prison in Florida and we  
8 interviewed him over the phone on February 18, 2019.

9           Q.     Was the interview recorded and transcribed?

10          A.     It was.

11                    **MS. SMITH:** Commissioners, Handout 33 is the criminal  
12 record of Walt Christopher Best, if you flip to that.

13          Q.     What did Mr. Best tell commission staff?

14          A.     At the time of -- like I said, at the time of the  
15 interview, we just weren't sure if he'd ever been interviewed by  
16 law enforcement before, and that was what was in the interview of  
17 him.

18                    So Mr. Best was not familiar with Mr. Evans, Mr. Davis,  
19 or any of the other details involved in this case. He did state  
20 that he would have been in the Franklin County jail around this  
21 time. He lived in Raleigh but had committed some breaking and  
22 enterings with his cousin Marvin Raines in the Louisburg area but  
23 he did not have any information related to this case or anyone  
24 involved in it.

25                    **MS. SMITH:** Commissioners, Handout 34 is the criminal

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1 record of Marvin Raines, if you want to take a moment to look at  
2 that.

3 Q. Did the Commission follow up with Marvin Raines?

4 A. We did. He is currently in federal prison at Butner.  
5 Commission staff spoke with him over the phone on April 3, 2019.

6 Mr. Raines indicated that he hadn't lived in Franklin  
7 County in the 1990s, but had been held in jail there prior to  
8 being transported to Wake County.

9 Mr. Raines stated that he did not know Kenneth Evans,  
10 Larry Davis, or Pat Green. He knew nothing about this case or any  
11 of the people involved in it, and he indicated that his cousin  
12 Walt Christopher Best was a liar.

13 Q. Was that interview recorded and transcribed?

14 A. It was recorded but due to its content and short length,  
15 it was not transcribed.

16 MS. SMITH: Commissioners, do you have any additional  
17 questions for Ms. Matoian related to Larry Best -- sorry -- Larry  
18 Davis.

19 THE COURT: Ms. Newton has one.

20 MS. NEWTON: Walt Christopher Best -- were you able to  
21 determine whether he was actually in custody on the date of  
22 offense?

23 THE WITNESS: We were not able to find jail packets for  
24 Mr. Best during our search of the Franklin County Sheriff's Office  
25 for him or Mr. Raines. They were certainly people we were looking

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1 for, but we did not locate anything for them and the sheriff's  
2 office doesn't have any records going back that far.

3 MS. NEWTON: Was he an alternate -- did you wonder  
4 whether he was an alternate suspect --

5 THE WITNESS: Mr. Best?

6 MS. NEWTON: -- Best?

7 THE WITNESS: No. We only -- we have no indication that  
8 he was a suspect in this case. We spoke to him because his name  
9 appeared at the top of that page and we wanted to know if Billy  
10 Glenn Solomon had provided that information to him.

11 MS. NEWTON: You don't know what he looks like?

12 THE WITNESS: No. But we can look at his DCIN and look  
13 at his height and weight.

14 MS. NEWTON: Okay. Because it appears from his criminal  
15 record that he was certainly committing these types of crimes at  
16 the time but it wasn't clear that he was actually -- unless he was  
17 in pretrial detention, he wasn't actually serving a sentence from  
18 the date of conviction at the time of the offense, at least from  
19 these records from what I can see.

20 So unless he was in pretrial detention, which he very  
21 easily could have been, before and after, he was committing B&Es,  
22 felony B&Es, then that would be -- that would eliminate him as far  
23 as that, and, of course, the freckles.

24 THE WITNESS: We can look at his information to see if  
25 we can find more information about when he was being held and his

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1 physical description.

2 MS. NEWTON: Okay. Thank you.

3 THE COURT: Yes, Mr. Glazier.

4 MR. GLAZIER: That leads to the same question as to  
5 Billy Glenn Solomon.

6 Do we know if he was in custody at the time of the  
7 alleged --

8 THE WITNESS: He was another one of the individuals we  
9 would have certainly gotten incarceration records for if the jail  
10 had had them, but we didn't locate any for him during the search.  
11 We can try looking at his court records as well and see if that's  
12 able to provide us any information.

13 MR. GLAZIER: Thank you.

14 MS. NEWTON: Even maybe a driver's license that would  
15 help with the physical description.

16 THE WITNESS: Sure.

17 THE COURT: Yes, Sheriff.

18 SHERIFF FRYE: Okay. Billy Glenn Solomon is 6'3"?

19 THE WITNESS: He was listed as 6'3" and 6'4".

20 SHERIFF FRYE: 6'4"?

21 Do we have any DNA profile, familial or otherwise, for  
22 Mr. Solomon?

23 THE WITNESS: No. He was deceased so we were not  
24 able -- we didn't get a DNA profile from him. We also didn't seek  
25 one from family. We didn't have any indication that he was

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1 involved in the case other than this.

2           **THE COURT:** Except for Mr. Kemp thinking he knew  
3 something.

4           **MS. NEWTON:** He was also 180 pounds -- 6'4", 180. So  
5 appears to be a little bit outside of the -- at least the victim's  
6 description.

7           **MR. GLAZIER:** Well, I'm going to ask the question, and  
8 understand he was deceased, but do you have any pictures or  
9 information about Solomon?

10           You said he appeared to have a mustache.

11           **THE WITNESS:** I was able to locate -- in his obituary,  
12 there was kind of a poor quality photograph of him, but I don't  
13 know when it was. We can look back at his DMV records and see if  
14 we're able to get any photographs of him as well.

15           **MR. GLAZIER:** Okay. Thanks.

16           **THE COURT:** Would there be a mug shot of him somewhere  
17 like in Franklin County? A booking shot?

18           **THE WITNESS:** So he was one of the individuals that we  
19 would've looked for any information about while we were there,  
20 whether he was in a mug book or otherwise, and we didn't locate  
21 any photographs of him there.

22           **THE COURT:** Yes.

23           **MR. BASS:** I was, similarly, wondering about the mug  
24 book that we referred to yesterday, whether any of these people  
25 were in that book.

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1           **THE WITNESS:** No. I looked at the -- there was a list  
2 of names of all the people who were in the mug book and I would've  
3 gotten pictures of anybody else whose name had come up in this  
4 case, and none of them did.

5           **THE COURT:** Okay. No further questions on this? Can we  
6 move on?

7           **MS. SMITH:** Yes.

8           Your Honor, the next witness is Larry Davis. I have  
9 less than 20 questions for him. I'm sure Commissioners may have  
10 questions for him. We can take him now or we can take him after  
11 lunch, whichever is your preference.

12          **THE COURT:** Now or later?

13           Do you think we can do him in 20, 30 minutes?

14          **MS. SMITH:** I would not put a guess on how long it would  
15 take commissioners to ask questions --

16          **THE COURT:** I think we eat lunch.

17          **MR. GLAZIER:** Yeah. That's what I --

18          **THE COURT:** We'll eat lunch and come back at -- does he  
19 have someplace to eat?

20          **MS. SMITH:** We will provide him food, yes.

21           1:00 o'clock?

22          **THE COURT:** 1:00 o'clock? Is that enough time?

23          **MS. SMITH:** That will give the staff some time to look  
24 up some of the things that --

25          **THE COURT:** All right. We will be in recess until

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1 1:00 p.m. Thank you.

2 (Recess taken, 12:15 to 1:06 p.m.)

3 **THE COURT:** I guess we are ready.

4 **MS. SMITH:** The Commission calls Larry Davis. It will  
5 be just a minute.

6 \* \* \* \* \*

7 Thereupon, LARRY DAVIS, a witness having been called by the  
8 Commission, was sworn and testified as follows:

9 BY MS. SMITH: (1:09 p.m.)

10 **Q.** Good afternoon, Mr. Davis.

11 **A.** 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've got some questions for you today. And when I am  
15 done, the Commissioners that are all sitting around the tables  
16 here may have some questions for you as well.

17 **Okay?**

18 **A.** Yes, ma'am.

19 **Q.** All right. Will you please state your name for the  
20 record.

21 **A.** Larry Donnell Davis.

22 **Q.** You've been deposed by commission staff attorney  
23 Catherine Matoian earlier this year.

24 **Do you recall that?**

25 **A.** Yes. I think it was some ladies.

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1                   **THE COURT:** Could you speak up just little bit, sir?  
2 The court reporter, this lady sitting down here near me, has to  
3 hear your answers.

4                   Okay?

5           A.     I think it was the ladies that I talked to -- some lady.

6           Q.     Some lady?

7                   Is this Ms. Matoian here beside me?

8           A.     I think so.

9           Q.     Do you recall Mr. Kenneth Evans ever talking to you  
10 directly about the kidnapping of Ms. Manning?

11          A.     Yes, I do.

12          Q.     What do you recall about that?

13          A.     We was at a place named James Scott in Louisburg. It's  
14 where people hang out at. And wasn't but me and him and two or  
15 three more people, we were drinking up there, and he showed me a  
16 .32 pistol that he wanted to sell or something -- I can't  
17 remember. He were telling me about what he had did with  
18 Ms. Manning. So I went to Sheriff Pat Green and told him. And he  
19 said something about a .32 pistol that had been tooke from her  
20 and everything.

21          Q.     So what did he tell you --

22          A.     I can't remember.

23          Q.     -- that he did with Ms. Manning?

24                   **THE COURT:** When you say "he" -- Ms. Smith, would you  
25 indicate who "he" is?

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1 Q. What did Kenneth Evans tell you he did with Ms. Manning?

2 A. He just told me something about he had left her tied up  
3 or something and had her hid -- he told me that.

4 I can't remember everything he told me.

5 Q. Do you recall ever hearing Kenneth Evans talk to anyone  
6 else about the kidnapping of Ms. Manning?

7 A. No, ma'am. Only thing -- no, not as I knows, no.

8 Because I had asked the ladies that was interviewing me,  
9 the three ladies, I asked them more than one time about the .32  
10 pearl-handled pistol. And I asked did she have the paper and she  
11 said, "I don't have that paper." And then that got me to  
12 wondering, why wouldn't she have that paper? And I asked her  
13 again. Later on, I asked -- they was interviewing with me. And,  
14 you know, after I told them about that, they didn't have -- that's  
15 what started that whole thing.

16 Q. And so when you say "the paper" about the .32 pistol,  
17 what do you mean?

18 A. I just thought maybe they have a paper about when I told  
19 Pat Green.

20 Q. You thought there would be a paper about when you told  
21 Pat Green?

22 A. Yes.

23 Q. Okay. Do you recall talking to Pat Green about the  
24 case?

25 A. Yes.

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1 Q. What do you recall telling him?

2 A. I just told him same thing Kenneth Evans told me when we  
3 was up there in front of James Scott place.

4 Q. And what was that?

5 A. About Kenneth Evans want to sell me a gun -- or showed  
6 me a gun. And I went and told him about what he said about the  
7 woman and whatever he done to her. And I don't know whether he  
8 took a statement or not, but when I went -- well, I'll let y'all  
9 ask the questions. I'm sorry for talking.

10 Q. That's okay. Go ahead.

11 A. No, I was just saying like when we went -- just like  
12 these ladies was telling me about when we went to -- she said  
13 that -- let me take my time. She said that did I read about it  
14 somehow, about when me and Kenny -- this be like six months before  
15 time or a year before time when we was at James Scott, hanging  
16 out, drinking.

17 Then I went in jail about six months or a year, I don't  
18 remember when. I didn't even know Kenneth Evans was upstairs. I  
19 didn't even have no idea he was upstairs. And the ladies asked  
20 me, said -- after telling her that he would be a fool for telling  
21 me why he was in there, I say he didn't tell me why he in there;  
22 he told me what he going to do. He said he were going to jump out  
23 the window and they were going to take his blood.

24 And that's what I told her. He didn't tell me why he  
25 was in there. He told me what he were going to do.

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1           And then I didn't -- I didn't even know he was upstairs,  
2 period, until they came and got me -- he came to my cell, that's  
3 when he told me this stuff. But he didn't tell me why he was in  
4 there, that we got -- got locked up after the fact.

5           So then some people came to me. The sheriff sent  
6 somebody over there to get me and told me I need to get dressed.  
7 So I thought I were going home because I were there for DWI or  
8 something, I done forgot. I was ready to go. I thought I were  
9 going home. I were getting dressed. I were happy.

10           And then next thing I know, they came into the  
11 courtroom, swearing me in, then I testify against Kenny. And I  
12 had to tell them the same thing. Couldn't make it up. That's  
13 being truthful.

14           Q.    So what did you testify to?

15           A.    I remember about the gun. I remember what he was saying  
16 about the lady. That's all I remember. I don't remember  
17 everything that he did to her. That's something I do remember.

18           But I had to tell the truth for -- for me to tell Pat  
19 Green before all of this happened.

20           Q.    Do you recall when you were deposed by Ms. Matoian on  
21 February 26 of this year telling her that you did not recall  
22 Kenneth Evans giving you specific details about the crimes?

23           A.    I can't recall. If he did, I was afraid.

24           Q.    What were you afraid of?

25           A.    Because when I first started off with them, she were

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1 telling me one thing. Then they go -- they take a break and go  
2 outside. Then they would come back where I'm at and turn the  
3 whole question around on me and tell me something different. I  
4 mean, tell the question another way. I ain't got but a  
5 eighth-grade education. I can't understand, you know, because I'm  
6 just afraid. I didn't know. I were -- how can I say it? I were  
7 pressured. But I mean, I'm not going to tell no lie if I can help  
8 it. I'm not.

9 Q. Who pressured you?

10 A. Ma'am?

11 Q. Who pressured you?

12 A. She did. I mean, because -- it was just like when she  
13 asked me something, the ladies, they left -- after I had already  
14 answered the question, they would come back and ask the same  
15 question over but in a different way, and I don't understand stuff  
16 like that sometimes. And then they kept saying -- just like she  
17 saying about -- you must -- you read this in the paper or  
18 something. I said -- then I told her, that's what you saying? I  
19 read it? But all the time, I didn't read no paper. Me and him  
20 locked up in jail. I couldn't have read no paper because we was  
21 locked up. And then when I was locked up, I had -- then we went  
22 to court. And after we went to court and I said what I just said,  
23 I went to prison just like he did. I couldn't read no paper. I  
24 couldn't even see no paper.

25 Q. So are you talking about you never read the interview

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1 notes --

2 A. No.

3 Q. -- that Pat Green took when you met with him?

4 A. Not as I knows of, no.

5 Q. Okay.

6 A. I don't remember seeing them, no.

7 Q. So do you recall when you met with commission staff  
8 earlier this year and were deposed them showing you or reading to  
9 you I guess --

10 A. Yes.

11 Q. -- statements that were written by Pat Green?

12 A. Yes. But I still -- like I say, I can't remember that  
13 far back. But I know what I told them. Then when I said if I try  
14 to tell you something that I remember back then, I don't remember.  
15 But I know I told the truth back then. I can't remember that far  
16 back then.

17 Q. So do you recall, when you met with commission staff  
18 earlier this year, going through these notes and putting an X by  
19 things that you did not remember telling Pat Green?

20 A. Yes. I remember a lot, yes.

21 Q. And you remember highlighting things that you did  
22 remember saying?

23 A. Yes.

24 Q. Okay. I am going to hand those up to you.

25 A. I can't read them, Miss.

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1 MS. NEWTON: He's blind.

2 THE COURT: Well, let's see. He saw them in February,  
3 didn't he?

4 MS. SMITH: He did. He's now saying something different  
5 than what he said in February.

6 THE COURT: I'm worried about what he's going to be able  
7 to see.

8 MS. SMITH: I'll read them to him.

9 THE COURT: Okay.

10 Q. Okay. Mr. Davis, I know you can't see these. I'm  
11 putting these papers in front of you. These are the papers that  
12 Ms. Matoian showed you back in February. I'm just going to read  
13 the statement. The first one you highlighted, it's my  
14 understanding that that means that you recall saying this. So you  
15 are going to correct me if I'm wrong, okay?

16 It says "He was walking around. He saw him at the pool  
17 room."

18 A. Oh, yeah. I know -- yeah.

19 Q. Okay.

20 A. We was up there -- talking about where James Scott's is.

21 Q. Okay. "He told me he had did something to the woman.  
22 He had tied her up, woods, got some money."

23 A. I told you that. I just said that.

24 Q. So what you told Ms. Matoian in February was that you  
25 did not recall saying that to Mr. Pat Green.

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1           A.    I remember -- I told her that I could remember signing  
2 the papers and telling him that -- or she signed some paper. Or  
3 I -- I don't remember signing no paper. I don't. I don't  
4 remember signing no paper.

5           **THE COURT:** Ms. Smith, I want to make sure he  
6 understands the difference between what he told -- what he might  
7 have told Pat Green a long time ago and what he told the  
8 commission staff a few months ago.

9           **MS. SMITH:** Okay.

10          **Q.**    So what you told Ms. Matoian a few months ago, the  
11 commission staff, was that you did not remember telling Pat Green  
12 that Kenneth Evans had told you "he had did something to this  
13 woman. He had tied her up, woods, got some money"; right?

14          **A.**    I remember telling Pat Green exactly what Kenneth Evans  
15 told me when we was at the pool room because it was fresh on my  
16 mind and I told him.

17          **Q.**    Okay. And what was that?

18          **A.**    I can't recall what I told him back then it's been so  
19 long ago.

20          **Q.**    Okay.

21          **A.**    But I knew about the .32 pistol. That's something I do  
22 know.

23                   And then I know when we went to court, I got -- he was  
24 in jail, I was in jail. And this was like five, six months later.  
25 And I had to tell the truth because I told the same thing to the

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1 Court -- people at the courthouse. And then I went to jail and  
2 he -- went to prison and I went to prison.

3 Q. So is your testimony today that you -- that what Pat  
4 Green wrote down is what you told him?

5 A. Yes.

6 Q. Okay. So it is your testimony today that Kenneth Evans  
7 told you that "he had did something to the woman. He had tied her  
8 up, woods, got some money"?

9 A. Yes.

10 Q. Okay. Is it --

11 A. And about the .32 pistol, too, it's supposed to be in  
12 there.

13 Q. Is it your testimony today that "he said she lived in  
14 Centerville, a white woman"?

15 A. I can't remember. But I knew that's where she stayed,  
16 anyway.

17 Q. Okay.

18 A. Because she runs a store -- well, she used to run.  
19 She's dead now.

20 Q. Is it your testimony today that you remember telling Pat  
21 Green "He told me again while he was in jail that he had kidnapped  
22 a white woman in" -- I can't read that word. "He said the woman  
23 didn't see him. He had his face covered up and had something over  
24 his face"?

25 A. If I did said that, that must've been when I went to

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1 court, when they came and got me to go to court. I can't recall,  
2 but if I did said that when I went back to court -- when I had to  
3 go to court. I didn't go to court but one time.

4 Q. Do you remember telling Ms. Matoian that you didn't say  
5 these things?

6 A. No, I do not.

7 Q. Or you didn't remember saying these things?

8 A. I can't -- I can't recall, no.

9 Q. Is it your testimony today that you recall telling Pat  
10 Green "Kenneth said that he kidnapped her, an old white lady, and  
11 he stole her car and he hid her the car, woods, left her in woods,  
12 and" --

13 A. That's exactly why -- we just answered awhile ago.  
14 You're asking me the same question over and over again.

15 Q. And I'm asking you the same questions because Pat Green  
16 wrote this down multiple times.

17 A. Yes. Yes.

18 Q. Okay.

19 A. Yes.

20 Q. Is your testimony today that you remember telling Pat  
21 Green "the car was almost out of gas"?

22 A. Yes. Like I said, a lot of stuff I can't recall.

23 Q. Okay. I'm going to ask you some questions about another  
24 piece of paper. We did not show you this piece of paper back in  
25 February. We didn't realize at the time that it was a second page

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1 to an interview that you did with Pat Green.

2 Do you know who Walt Christopher Best is?

3 A. Say that again.

4 Q. Do you know who Walt Christopher Best is?

5 A. No, ma'am. Not -- not as I knows of.

6 Q. Do you know who Billy Glenn Solomon is?

7 A. I heard of him. I don't know -- yeah, I heard of him.

8 I don't know him.

9 Q. Did you ever have conversation with Billy Glenn Solomon?

10 A. Never.

11 Q. So if Pat Green wrote down in an interview with you that  
12 Billy Glenn Solomon stated that Kenneth Evans came to Billy  
13 Glenn's house the next day with a whole bunch of quarters, do you  
14 recall ever telling Pat Green that?

15 A. I don't recall.

16 Q. Do you remember knowing anything about a bunch of  
17 quarters?

18 A. I don't recall. I can't remember.

19 Q. Do you recall telling Pat Green that Kenneth told Billy  
20 Glenn Solomon that he took a lady in the woods and taped her up?

21 A. I can't recall. I don't remember. But I know what he  
22 had told me, though.

23 Q. Is there anything else that you know about Mr. Evans'  
24 involvement in the kidnapping of Ms. Manning?

25 A. I can't recall. Not as I knows of.

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1           Q.    Do you have an explanation for why your testimony under  
2   oath in February that you didn't recall telling Pat Green that  
3   Mr. Evans had told you he had kidnapped a woman is different than  
4   your testimony under oath today?

5           A.    No, ma'am.  He did -- I just said what he did.  That he  
6   got -- about the .32 pistol and took the woman.  I mean, he did  
7   what he say he did, but I can't remember all of -- what all of  
8   that back then.  But I know when I went to court, I told the same  
9   thing that -- when he told me he was at James Scott, because I  
10  didn't even he was -- like I said, I didn't even know he was up  
11  there in jail until he came down there and told me about what he  
12  wanted to do.  He said he needed a change, they were going to take  
13  his blood, he was going to jump out the window.  And after then, I  
14  went -- like I said, I didn't even know he was up there -- up  
15  there in jail.

16                   I thought I were going home.  All I had was DWI or  
17  something.  I thought I were going home.  I were happy.  Next  
18  thing I know, I go into the courtroom.  I had to tell the same  
19  thing to them.  And then next thing I know, they put back on my  
20  clothes and lock me up.  And then I went to prison and he went to  
21  prison.  I couldn't -- that was it.

22           Q.    Mr. Davis, what is James Scott's place that you keep  
23  referring to?

24           A.    It's a place right there in Louisburg.  It's like a pool  
25  room, a place to drink at.  But that day, he won't open -- he

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1 won't open. Everybody was on the outside. And whenever I was up  
2 there, when he showed me the .32 pistol and was telling me about  
3 what he had did.

4 Q. Do you remember when that was?

5 A. No, ma'am. I can't recall.

6 Q. Okay.

7 MS. SMITH: Commissioners, questions?

8 THE COURT: Yes, sir. Mr. Frye.

9 SHERIFF FRYE: Hey, Mr. Davis.

10 THE WITNESS: How you doing, sir?

11 SHERIFF FRYE: I know that time makes it really hard to  
12 remember things but I want to ask a couple of questions.

13 THE WITNESS: Yes, sir.

14 SHERIFF FRYE: [REDACTED]

15 [REDACTED]

16 THE WITNESS: [REDACTED]

17 SHERIFF FRYE: [REDACTED]

18 [REDACTED]

19 THE WITNESS: [REDACTED]

20 SHERIFF FRYE: [REDACTED]

21 [REDACTED]

22 THE WITNESS: [REDACTED]

23 SHERIFF FRYE: You heard this information. You went to  
24 him first?

25 THE WITNESS: I went to him. Swear to God, I went to

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1 him.

2           **SHERIFF FRYE:** And whatever you told him -- and we're  
3 having difficulty wrapping our heads around that now -- but  
4 whatever you told him then is what you testified to?

5           **THE WITNESS:** Yes, sir.

6           **SHERIFF FRYE:** Did anyone ever tell you to testify to  
7 anything?

8           **THE WITNESS:** I didn't even know I was going to be  
9 testifying. Like I told you, I didn't even know he was upstairs.

10          **SHERIFF FRYE:** But did anyone ask you, tell you, "Hey,  
11 you need to say this"?

12          **THE WITNESS:** Oh, no. No. No.

13          **SHERIFF FRYE:** You just told what you remember?

14          **THE WITNESS:** I just told them, when I went to court --  
15 on my mama's life, when I went to court, I told them -- because  
16 like I said, I didn't even know he was upstairs.

17          **SHERIFF FRYE:** Did anyone offer you a reduction in any  
18 kind of jail time?

19          **THE WITNESS:** No, sir.

20          **SHERIFF FRYE:** Or anything else?

21          **THE WITNESS:** No, sir.

22          **SHERIFF FRYE:** Did anyone give you any money for this  
23 information?

24          **THE WITNESS:** No, sir.

25          **SHERIFF FRYE:** That's all the questions I have.

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1 THE WITNESS: No, sir.

2 THE COURT: Yes, sir.

3 MR. GLAZIER: Hi.

4 THE WITNESS: Hi.

5 MR. GLAZIER: My name is Rick Glazier. I have a few  
6 questions for you, Mr. Davis.

7 THE WITNESS: Yes, sir.

8 MR. GLAZIER: [REDACTED]

9 [REDACTED]

10 THE WITNESS: [REDACTED]

11 MR. GLAZIER: So when you had any information that you  
12 thought might be useful, you went to a detective with it?

13 THE WITNESS: Yes, I did, sir.

14 MR. GLAZIER: What made you think this was going to be  
15 useful?

16 THE WITNESS: I don't know. I just -- only thing I  
17 know, he were waving around a .32 pistol and had told me this  
18 stuff; so I went and told him what he told me.

19 MR. GLAZIER: I see.

20 THE WITNESS: That's only thing I know was -- because he  
21 had told me what he had did.

22 MR. GLAZIER: [REDACTED]

23 [REDACTED]

24 THE WITNESS: [REDACTED] [REDACTED]

25 MR. GLAZIER: [REDACTED]

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1 [REDACTED]  
2 THE WITNESS: [REDACTED]  
3 MR. GLAZIER: [REDACTED]  
4 THE WITNESS: [REDACTED] [REDACTED]  
5 MR. GLAZIER: [REDACTED]  
6 [REDACTED]  
7 THE WITNESS: [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
8 [REDACTED] [REDACTED]  
9 MR. GLAZIER: [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 THE WITNESS: [REDACTED] [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED]  
15 MR. GLAZIER: [REDACTED] [REDACTED]  
16 THE WITNESS: [REDACTED]  
17 MR. GLAZIER: [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 THE WITNESS: [REDACTED]  
21 MR. GLAZIER: [REDACTED]  
22 THE WITNESS: [REDACTED]  
23 MR. GLAZIER: [REDACTED]  
24 THE WITNESS: [REDACTED]  
25 MR. GLAZIER: I see. That's all the questions I have.

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1           **THE COURT:** Yes, sir.

2           **DR. PERRY:** Mr. Davis, my name is Frank Perry and I live  
3 in Franklin County.

4           **THE WITNESS:** Yes, sir. Okay.

5           **DR. PERRY:** When is the last time you heard from Pat  
6 Green?

7           **THE WITNESS:** I don't -- I had wrote him when he got  
8 locked up because me and the lady who we had that conversation to  
9 about he do one thing wrong, he -- he's bad, you know, and that  
10 kind of strike me a little bit about. But when he went to prison,  
11 I wrote him. But he didn't never write me back.

12           **DR. PERRY:** And you wrote him for what purpose? To sort  
13 of build him up?

14           **THE WITNESS:** I were going to send him -- I were going  
15 to just write him, talk to him because, you know, I know who he  
16 is. When you're in prison, talk to somebody.

17           **DR. PERRY:** [REDACTED]  
18 [REDACTED] [REDACTED] [REDACTED]

19           **THE WITNESS:** [REDACTED]  
20 [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]

25           **DR. PERRY:** [REDACTED]

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1 THE WITNESS: [REDACTED]

2 DR. PERRY: Oh, I see.

3 THE WITNESS: Yes, sir.

4 DR. PERRY: Thank you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Yes, ma'am.

7 MS. COLBERT: Hi, Mr. Davis.

8 THE WITNESS: How you doing?

9 MS. COLBERT: I am Robin Colbert.

10 And so when you talked to Detective Green, you  
11 indicated -- in regard to this case with Mr. Evans, that you  
12 indicated that you only told him about the gun.

13 THE WITNESS: Yeah. I told him about the .32 gun and  
14 whatever else he had told me. See, he -- I got candy in my mouth.  
15 Can I spit it out?

16 I told him about -- now I can talk.

17 I told him about the .32 pistol. Then I told him  
18 about -- see, he had told me a lot of stuff that he had done to  
19 this woman. It won't just the .32 pistol. And then I went and  
20 told Mr. Green what he told me.

21 MS. COLBERT: So when you say "he" told me, you're  
22 talking about Mr. Evans told you?

23 THE WITNESS: Yeah. When Mr. Evans told me, he flashed  
24 his .32. I remember he had on a little coat, hat, and shorts,  
25 talking about he done this, that, and the other. He started

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1 running his mouth about this woman, what he had did to her. So I  
2 went to told Pat Green because I do -- I didn't know whether to  
3 believe him or not, but I went and told him anyway. That's the  
4 main thing.

5 MS. COLBERT: Right. And when you shared with -- when  
6 you shared with Detective Green about the gun, are -- so what I  
7 think I'm hearing you say, that was the only thing you shared with  
8 him --

9 THE WITNESS: No, ma'am.

10 MS. COLBERT: -- based on what Mr. Evans told you?

11 THE WITNESS: I shared more than the gun. I shared  
12 about him going, doing whatever he did -- about going to Pat or  
13 whatever had the woman tied -- all that. But see, I can't  
14 remember all the way back then I -- but I do remember the .32  
15 pistol fresh out of my head.

16 MS. COLBERT: Okay. So there was a lot of information  
17 that Mr. Evans shared with you; however, today, based on what  
18 Mr. Evans shared with you and what you told Detective Green, the  
19 only information that you recall was about the gun and nothing  
20 else; right?

21 THE WITNESS: Right. I can't remember everything back  
22 then. I can't. Besides what I know -- like I said, besides what  
23 I know that when she read it to me over here, her talking about  
24 it, but -- because it ain't fresh on my mind. But like I said ...

25 MS. COLBERT: So if I was to say to you that there is an

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1 indication that you may have told Detective Green about the  
2 vehicle running out of gas or almost running out of gas -- do you  
3 remember saying that?

4 **THE WITNESS:** I can't -- I recall it but it's still --  
5 you know, I recall it, but I just don't remember it. It's been so  
6 long ago.

7 **MS. COLBERT:** Yes. You recall hearing that? Are you  
8 saying you recall hearing that from Mr. Evans or you just recall  
9 hearing that?

10 **THE WITNESS:** I just recall hearing that. It's been so  
11 long ago.

12 **MS. COLBERT:** But you distinctly recall -- you  
13 distinctly remember Mr. Evans telling you about the .32 caliber  
14 gun with the pearl handle?

15 **THE WITNESS:** Yes. He showed me that.

16 **MS. COLBERT:** Oh, he showed you the gun?

17 **THE WITNESS:** Yes. That's something I do know.

18 And he was telling me about what he did to this woman  
19 and -- or whatever. But like I said, I told Pat Green, he wrote  
20 stuff down. I don't remember signing no paper or nothing. And  
21 like I said, when I went to court, he was upstairs -- he was  
22 upstairs. I didn't even know Kenneth Evans was upstairs, period.  
23 He came down to -- came down to see -- because upstairs and down,  
24 and I came to his cell, and as he were going out, I told -- I tell  
25 him later on that he -- he don't tell me what you been there for,

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1 but I forgot about, it's been so long. Like I said, I didn't even  
2 know he was upstairs. I swear I didn't. Came downstairs, he said  
3 he get a chance, I'm going to jump out the window and then he's  
4 going to take my blood. And then next thing I know, I don't know  
5 if it's a hour or two later, but that the same day, they came and  
6 got me out my cell and say, "Larry, we'll put on your clothes."

7 I say, "Okay. No problem." I said, "Well, I'm going  
8 home." I were happy. I'm thinking I was going home.

9 Got there, put on my clothes, went over there, they  
10 swore me in, and again, it seems like I saw it on that side  
11 somewhere, and then that's when I told them the same thing he had  
12 told me about the gun and everything. I just can't go back that  
13 far because I can't remember.

14 **MS. COLBERT:** Right.

15 **THE WITNESS:** But I did not tell no lie because I had to  
16 tell -- what I told Pat Green, I had to tell the people in court  
17 the same thing because I didn't even know I were going to court.  
18 I didn't even know he were going to be in there until I went in  
19 there.

20 **MS. COLBERT:** So they never told you that they were  
21 coming to pick you up to get you to testify in court that day?

22 **THE WITNESS:** No, ma'am. I swear to God. I did -- like  
23 I said, I didn't even know Kenneth Evans was in there until he  
24 came down the stairs. And I still didn't know then was I going --  
25 have to go to testify against him until I got in the court. You

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1 know, it was just being honest. I swear.

2 MS. COLBERT: Thank you.

3 THE WITNESS: Yes, ma'am. Thank you.

4 THE COURT: All right. Now, I see Mr. Glazier.

5 MR. GLAZIER: A couple more questions, Mr. Davis.

6 THE WITNESS: Yes, sir.

7 MR. GLAZIER: In the statement that Detective Green  
8 wrote about what you told, he said that you told him that you and  
9 Evans were friends.

10 Is that true?

11 THE WITNESS: Yeah. I didn't have no problem against  
12 him whatsoever. I don't have no problem, you know.

13 MR. GLAZIER: Okay. And he also wrote that you talked a  
14 lot, the two of you.

15 THE WITNESS: Yeah, we had talked a lot. We had talked  
16 before, you know. Because he used to go with my cousin.

17 MR. GLAZIER: Well, when you were interviewed by the  
18 commission staff in February, you specifically said twice that the  
19 fact that Pat Green wrote that you and Evans were friends and  
20 talked a lot was untrue and you marked an X over or by it and said  
21 that's not true.

22 THE WITNESS: Yeah. Because I used to talk to Kenneth  
23 Evans. I mean, we won't like -- we won't like hanging out every  
24 day, seeing him every day. I see him like, what, maybe once a  
25 week because he were going with my cousin Deborah, Deborah Brodie.

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1           **MR. GLAZIER:**   Gotcha.

2           **THE WITNESS:**   And then when I go over there, I see him.  
3   But it won't like we, you know, drinking buddies or shaking hands  
4   or, you know, going to the movies or stuff like that.   But then,  
5   just like y'all -- the questions about the statement about the  
6   scarf he had on his head.   I gave him a ride to Perry's store and  
7   he had a black scarf on his head.   When I gave him a ride to  
8   Perry's store, he got out and then that's when most -- most of the  
9   stuff that's supposed to have happened happened.

10          **MR. GLAZIER:**   So I want to ask two different type -- two  
11   different other questions.

12                You had said earlier you had heard of Billy Glenn  
13   Solomon?

14          **THE WITNESS:**   I heard of him.

15          **MR. GLAZIER:**   What did you hear about him?

16          **THE WITNESS:**   I don't know him like that.   I don't know  
17   him that good.

18          **MR. GLAZIER:**   Well, when you say you heard, what -- I'm  
19   just asking what it is you heard.

20          **THE WITNESS:**   I heard his name before.

21          **MR. GLAZIER:**   Okay.

22          **THE WITNESS:**   That's all I'm saying.   I heard his name,  
23   sir, not -- that's all.   What I say I heard, that's what I mean, I  
24   heard his name before.

25          **MR. GLAZIER:**   So the Mannings' store -- had you been in

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1 the Mannings' store before?

2           **THE WITNESS:** Oh, yeah. I went to that store, the one  
3 across the road. And plus, the lady gave me a DNA test after the  
4 interview when we were there. I did everything she asked.

5           **MR. GLAZIER:** No, I know. I'm just saying.

6           **THE WITNESS:** Okay.

7           **MR. GLAZIER:** And did you know -- before all this  
8 happened, did you know Mr. Manning at all? Did you have occasion  
9 to talk to him?

10           **THE WITNESS:** Yeah, I knew Mr. Manning and -- I knew  
11 Mr. Manning but I didn't know his wife. Yeah, I think -- yeah, I  
12 knew Mr. Manning because I used to go to the store. There's two  
13 stores right there beside -- right across the road from each other  
14 and, you know, we go over there and get gas or whatever.

15           **MR. GLAZIER:** So were there a lot of people in the  
16 community who went to the store pretty often?

17           **THE WITNESS:** I don't know. I stay in Louisburg.

18           **MR. GRACE:** Okay.

19           **THE WITNESS:** And this is in the country. This is way  
20 out in the country.

21           **MR. GLAZIER:** Okay. Thank you.

22           **THE WITNESS:** Yes, sir. Thank you.

23           **THE COURT:** Let me just ask one other -- one question,  
24 sir.

25           **THE WITNESS:** Yes, ma'am.

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1           **THE COURT:** When you went to court, you said you thought  
2 you were getting dressed because you're going to go home; right?

3           **THE WITNESS:** Yes, ma'am.

4           **THE COURT:** When you went to court, did anybody sort of  
5 whisper to you, "Just tell them the same thing that you told Pat  
6 Green"?

7           **THE WITNESS:** No, ma'am. All's I know, when I went --  
8 when they put my hand on the Bible, I looked and saw Mr. Evans  
9 sitting in the chair. That's when they asked me what he told me,  
10 what he said, and I told them the same thing. And then next thing  
11 I know, they got me and take me right back. And then they dress  
12 me -- that was about that day, maybe a week.

13           **THE COURT:** And off you went to prison?

14           **THE WITNESS:** Yes, ma'am. Went to prison. Swear to  
15 God, I did. Went to prison.

16           **THE COURT:** Okay. Mr. Glazier?

17           **MR. GLAZIER:** Going back to the car. What color was the  
18 car?

19           **THE WITNESS:** I don't know. I don't remember.

20           **MR. GLAZIER:** And do you know where it was found?

21           **THE WITNESS:** I know it were found in some woods  
22 somewhere. But I can't think that far back. That's all I know.

23           **MR. GLAZIER:** Thank you.

24           **THE WITNESS:** Back then, I can't recall. It's been so  
25 long ago.

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1           **MS. COLBERT:** Mr. Davis, did you indicate that you gave  
2 Mr. Evans a ride to Perry's store?

3           **THE WITNESS:** Yes, ma'am.

4           **MS. COLBERT:** Was that the same day?

5           **THE WITNESS:** I have no idea.

6           **MS. COLBERT:** But you're saying you're -- are you saying  
7 you don't remember the day or you have often given him rides?

8           **THE WITNESS:** That is the first time I gave him a  
9 ride -- yeah, that's the first time I gave him a ride. I saw him  
10 walking, I picked him up. He had on a do-rag hat or a scarf,  
11 whatever you call it. I gave him a ride up at Perry's store.

12           **MS. COLBERT:** Was that the same day that -- do you  
13 recall what day that was? Was that the same day of the incident  
14 that happened with Ms. Manning?

15           **THE WITNESS:** I don't know. I don't recall.

16           **MS. COLBERT:** And you said he had a cap on his head?

17           **THE WITNESS:** Yes, ma'am. Come out of Perry's store  
18 because the other store like 2 miles -- no, 2 to 3 miles away, he  
19 was walking to it, to the lady, Ms. Manning or whatever name.  
20 Yes, ma'am.

21           **MS. COLBERT:** And you said he had a hat on his head?

22           **THE WITNESS:** A wave cap, a do-rag, when I put him off  
23 at Perry's store.

24           **MS. COLBERT:** So he had a wave cap on?

25           **THE WITNESS:** Yes, ma'am.

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1           **MS. COLBERT:** Is that the one with the ties on it or is  
2 that the one that --

3           **THE WITNESS:** I don't know. It were black with a tie  
4 around -- I think both of them had it, if I'm not mistaken.

5           **MS. COLBERT:** Thank you.

6           **THE WITNESS:** Yes, ma'am.

7           **THE COURT:** Any further questions?

8                   (No response.)

9           **THE COURT:** All right, Mr. Davis. Thank you very much  
10 for coming. You're free to go. You have a good day.

11                   (Witness stands down, 1:42 p.m.)

12           **MS. SMITH:** All right.

13                   Okay. I will recall Ms. Matoian.

14           **THE COURT:** Okay. And you're still under oath.

15                   (Catherine Matoian recalled.)

16   BY MS. SMITH: (1:44 p.m.)

17           **Q.** Ms. Matoian, do you have any additional information for  
18 the Commissioners related to the ride that Mr. Davis gave to  
19 Kenneth Evans to Perry's store?

20           **A.** Yes.

21                   Mr. Davis provided that information to the Commission in  
22 his deposition in February. He said that he just remembered that  
23 during the deposition and had not -- did not think he told anyone  
24 before. We had not seen that in any documents related to  
25 Mr. Davis before. It's on pages 103 to 106 of -- I'm sorry -- 103



1 to 105 of the interview. No, it does goes on to 106 a little bit.  
2 I'm sorry.

3 We asked Mr. Evans about this during his interview with  
4 the Commission in February 2019, and he said that this did not  
5 happen.

6 **MS. SMITH:** Commissioners, there was a question a little  
7 bit earlier today about photographs and descriptions of Walt  
8 Christopher Best, Billy Glenn Solomon, and Marvin Raines. We are  
9 going to pass around Handout 43 -- 44, which are photographs of  
10 those individuals. Ms. Matoian is going to tell us a little bit  
11 more about that.

12 Judge Wagoner, these photographs, with the exception of  
13 one, all come from DCIN. The Commission has an MOU with DCIN that  
14 the information we receive from them is confidential. And I will  
15 leave it in your discretion as to whether or not the photographs  
16 should be sealed from the public record but I did want to alert  
17 you that that is what they are.

18 **THE COURT:** They will be sealed from the public record.

19 **Q.** Ms. Matoian, if you will tell the Commissioners what  
20 you've learned -- and you can start with Mr. Raines because he is  
21 the first photograph we have there.

22 **A.** Marvin Lovell Raines, who is in the first photograph,  
23 would have been about 22 years in March 1990. The physical  
24 descriptions that we have been able to locate for him list him as  
25 6'3", 284 pounds; 6'3", 272 pounds; and 6'3", 284 pounds.

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1           **THE COURT:** This is Mr. Raines?

2           **THE WITNESS:** That's Mr. Raines --

3           **THE COURT:** Okay.

4           **THE WITNESS:** -- who is that first picture.

5           You have two pictures of Billy Glenn Solomon that are  
6 next. Billy Glenn Solomon would've been about 28 years old in  
7 March 1990. His physical descriptions are listed as 6'3",  
8 183 pounds; 6'4", 183 pounds; and 6'3", 180 pounds.

9           And I will add the caveat that we haven't been able to  
10 determine the exact dates that these heights and weights were  
11 given. These were just ones we have been able to find through our  
12 searches.

13           And then the last individual you have two pictures of is  
14 Walt Christopher Best. Walt Christopher Best would have been  
15 about 17 years old in March 1990. The descriptions we have been  
16 able to find for him are 5'8", 230 pounds; 5'8", 198 pounds; and  
17 5'8", 230 pounds.

18           With the understanding that we were not able to locate  
19 jail records for the Franklin County jail to determine when these  
20 individuals might have been in that particular jail, this is what  
21 we've been able to find out about their various criminal cases  
22 from both around the time of the crime and in 1992 when the  
23 reinvestigation started.

24           **THE COURT:** At least to me, the photographs of Mr. Billy  
25 Glenn Solomon, even though it looks like they were probably taken

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1 a number of years apart, don't even halfway look like the same  
2 person. But we're sure that's the same person?

3 **THE WITNESS:** Yes. That came from Billy Glenn Solomon's  
4 obituary. I'm not sure what --

5 **THE COURT:** The one with the flower or the one with  
6 where he looks at --

7 **THE WITNESS:** That one, the one with the flower.

8 **THE COURT:** And then this one came from records?

9 **THE WITNESS:** A DMV photo.

10 (Discussion off the stenographic record.)

11 **THE COURT:** Okay. Let's move on.

12 **THE WITNESS:** Okay.

13 Again, with the understanding that we do not have jail  
14 records to determine who was in jail when, this is what we've been  
15 able to find out about these three individuals and their various  
16 charges around the relevant times this case.

17 For the dates of the crime from the records we have  
18 reviewed, it does not appear that Marvin Raines, Walt Christopher  
19 Best, or Billy Glenn Solomon were in custody on March 5 or  
20 March 6, 1990. Billy Solomon appears to have been serving a  
21 probation sentence at that time. Marvin Raines and Walt  
22 Christopher Best do not appear to have been serving any sort of  
23 sentence at the time of the crime.

24 The earliest date for arrest for Marvin Raines for 1990  
25 was 3/28/1990. The earliest date of arrest for Walt Christopher

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1 Best for 1990 was 3/27/1990. Billy Glenn Solomon did not have any  
2 arrest -- dates of arrest in the year 1990.

3 Regarding who may have been in jail in the 1992 era when  
4 the case opened back up, Marvin Lovell Raines was committed to a  
5 10-year prison sentence on July 16, 1990, and was released on  
6 February 11, 1996. Walt Christopher Best was sentenced to three  
7 years as a youthful offender on September 24, 1990. His DCIN  
8 records do not show any Franklin County cases after that 1990  
9 conviction, and his arrests are for Wake or Harnett County in the  
10 early 1990s.

11 Billy Glenn Solomon was arrested for a Franklin County  
12 case on November 16, 1992, that was disposed of in December 1993.  
13 He received a split sentence with 6 months' confinement and 5  
14 years of supervised probation. There is no information about his  
15 bond but CJ Leads records do not show him as being confined in  
16 jail prior to the disposition of the case.

17 **THE COURT:** Questions?

18 (No response.)

19 **MS. SMITH:** We are now going to turn our attention to  
20 JoAnn Clemonts.

21 Commissioners, Handout 35 is the criminal record of  
22 Ms. Clemonts, if you'll take just a moment to look at that.

23 **Q.** Ms. Matoian, who is JoAnn Clemonts?

24 **A.** JoAnn Clemonts was a girlfriend of Mr. Evans. She told  
25 law enforcement in a 1993 interview and testified at the trial

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1 that Mr. Evans had taken her car for a few days in March 1990 and  
2 had come back with several bags of change.

3 **MS. SMITH:** Commissioners, Ms. Clemonts' prior  
4 statements can be found on pages 148 to 149, 238 to 245, 259 to  
5 261, and page 265 of your brief.

6 **Q.** Did commission staff interview Ms. Clemonts?

7 **A.** We did. We deposed Ms. Clemonts December 18, 2018.

8 **MS. SMITH:** Commissioners, you were previously provided  
9 Handout 36, which is the transcript of this deposition with the  
10 Commission.

11 Do you have any questions for Ms. Matoian at this time  
12 about that deposition?

13 Mr. Glazier?

14 **MR. GLAZIER:** Just again, in summary form, reading it,  
15 is she consistent at least in the statements that we have in that  
16 this indicates that Evans never admitted or confessed anything  
17 about the crime to her and she knew nothing about the crime until  
18 the police questioned her? Is that consistent?

19 **THE WITNESS:** Ms. Clemonts has never indicated in any of  
20 her interviews or to the Commission that Mr. Evans had ever  
21 confessed to committing the crime to her.

22 **MR. GLAZIER:** And did she say consistently that the  
23 first she heard about it was when the police came to talk to her?

24 **THE WITNESS:** I believe so, yes.

25 **MR. GLAZIER:** Did she ever indicate that she saw the

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1 pistol -- the .32 caliber?

2           **THE WITNESS:** No, she's never made any mention of the  
3 antique pistol in any of her statements.

4           **THE COURT:** Yes, sir.

5           **MR. BOSWELL:** There was some confusion, in my mind  
6 anyway, about during the time the crime who was living with her.

7           Did we ever get clarity?

8           **THE WITNESS:** We are going to get into all of that  
9 shortly.

10           **MR. BOSWELL:** I thought so. Then I will hold my  
11 question then.

12           **MS. SMITH:** Commissioners, at the time of the  
13 Commission's deposition of Ms. Clemonts, we were aware that she  
14 was receiving treatments for cancer.

15           Prior to this hearing, staff spoke with Ms. Clemonts  
16 over the phone to assess her ability to testify at this hearing.  
17 Ms. Clemonts had indicated her cancer had returned and she had had  
18 a stroke since our deposition. She was extremely difficult for  
19 commission staff to understand. Based on that phone call, I  
20 determined that Ms. Clemonts would not be needed at the commission  
21 hearing due to those health issues.

22           Because she is not here, I do want to provide you-all an  
23 opportunity to see at least a portion of the videotaped  
24 deposition. It is about 51 minutes. We've cut off just the  
25 beginning portion where we have asked our introductory questions

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1 and we will start it where the substantive questions begin. It is  
2 about 51 minutes at that point. I'm happy to play it all; I'm  
3 also happy to play just until you-all are satisfied that you've  
4 seen what you need to see, however you kind of want to proceed  
5 with that, but I did want to offer you the opportunity to see her  
6 testimony.

7 **THE COURT:** But we do have the go-by right here;  
8 correct?

9 **MS. SMITH:** You do have the go-by. You've already read  
10 her deposition, but I know that sometimes actual seeing of a video  
11 is -- can be different than just reading the transcript.

12 **THE COURT:** Do y'all want to get into this? Do you have  
13 some of it that we want to watch or what?

14 **MR. BOSWELL:** What was your question?

15 **THE COURT:** We can see 51 minutes of it or part of it or  
16 whatever we decide.

17 **MS. SMITH:** Correct.

18 **DR. PERRY:** Part of it.

19 **THE COURT:** I'd say part of it too.

20 **MS. SMITH:** I will just hit play and I'll let Your Honor  
21 and the Commissioners kind of decide when they've seen what they  
22 want to see.

23 **THE COURT:** Okay.

24 **THE WITNESS:** Should I step down?

25 **MS. SMITH:** Yes, you may step aside.

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1 (Witness stands down, 1:56 p.m.)

2 THE COURT: But it starts about midway -- about how far  
3 through?

4 MS. MATOIAN: Give me one second. I may be able to find  
5 you the page number. So you're going to start on page 9 of the  
6 transcript.

7 THE COURT: Page 9. Thank you.

8 MS. SMITH: Commissioners, so you're aware, this video  
9 is in two clips because of the way that our video recording  
10 equipment works. It cuts off at a certain point then moves to  
11 another clip.

12 (Video played, 1:56 to 2:09 p.m.)

13 THE COURT: I've got indication that people have seen  
14 enough.

15 Okay. Thank you.

16 MS. SMITH: All right. I will recall Ms. Matoian.

17 (Catherine Matoian recalled.)

18 BY MS. SMITH: (2:09 p.m.)

19 Q. Ms. Matoian, did commission staff do anything to follow  
20 up on the information provided by Ms. Clemonts in her deposition?

21 A. We did. In her deposition, you just heard Ms. Clemonts  
22 indicate that she thought the police had come to arrest Mr. Evans  
23 at her home on the day of the crime and search her Cordoba on that  
24 date. This is inconsistent with the information the Commission  
25 has in its files and with Ms. Clemonts' prior interviews.

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1           We asked Pat Green, Rick Sims, and Dave McDougall if  
2           this information was accurate. None recalled Mr. Evans being a  
3           suspect the day of or the day after the crime and none recalled  
4           ever searching another vehicle in relation to this case other than  
5           the victim's vehicle.

6           And Mr. Sims' recollection was that they were never able  
7           to search the vehicle Ms. Clemonts mentioned and verify it had  
8           tape and twine in it.

9           Q. Did commission staff's investigation involve developing  
10          a timeline of when Mr. Evans and Ms. Clemonts were dating?

11          A. It involved an attempt to do so, yes.

12          Q. And what can you tell Commissioners about that timeline  
13          and its relevance to the case?

14          A. So there is inconsistent information in the files about  
15          whether or not Mr. Evans and Ms. Clemonts were still dating in  
16          March of 1990 or in 1990 at all.

17          Ms. Clemonts told law enforcement that Mr. Evans was  
18          still living with her and took her car in March 1990; however, in  
19          an affidavit in the defense file, Ms. Clemonts indicated that she  
20          and Mr. Evans had broken up in 1989, which would have been before  
21          the crime happened.

22          Mr. Evans has maintained that he was no longer dating  
23          Clemonts at the time and was living with his family on the Vaiden  
24          Road.

25          The polygraph report from April 1990 lists an address

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1 for Mr. Evans that is associated with his wife, Shirley Evans',  
2 family. Shirley Evans indicated she was not exactly sure when she  
3 and Mr. Evans separated but thought it was between 1984 and 1985.  
4 She did know that she had left Mr. Evans by the time this crime  
5 happened in March 1990. We should note that Mr. Evans maintained  
6 a relationship with Shirley Evans' family after they were  
7 separated.

8 Commission staff asked Mr. Evans if there were any other  
9 dates -- if there were any other dates -- any other events  
10 occurred around the time he stopped dating Ms. Clemonts. He  
11 indicated that Ms. Clemonts had a sister named Sharron Clemonts  
12 who had died around the time that they broke up. Ms. Clemonts --  
13 we were able to determine that Sharron Clemonts died in August of  
14 1988.

15 We attempted to clear up the timeline during  
16 Ms. Clemonts' deposition as well. She was not able to provide  
17 dates but did testify that she began dating and living with  
18 Lynwood Earl Williams immediately after she stopped dating  
19 Mr. Evans. This is consistent with what she told the defense PI  
20 in 1993.

21 Ms. Clemonts also told the Commission that there was no  
22 back-and-forth between herself, Mr. Evans, and Mr. Williams once  
23 Mr. Williams moved in with her. She also stated that she wouldn't  
24 have let Mr. Evans borrow her car after she was with Mr. Williams.

25 Q. What did Mr. Evans say about JoAnn Clemonts and Lynwood

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1 Earl Williams?

2 A. Mr. Evans indicated to the Commission that Ms. Clemonts  
3 was dating Mr. Williams at the same time as him. There was some  
4 kind of overlap. This is also consistent with what Mr. Williams  
5 told attorneys and the PI back around the time of the trial.

6 Mr. Williams indicated that he, Ms. Clemonts, and  
7 Mr. Evans had hung around each other and that Mr. Williams and  
8 Mr. Evans had had a falling out over Mr. Evans being physically  
9 abusive to Clemonts.

10 Q. Did the Commission interview Lynwood Earl Williams?

11 A. Mr. Williams is deceased so we were unable to interview  
12 him.

13 MS. SMITH: Commissioners, Lynwood Williams' prior  
14 statements can be found on pages 247 to 250 and 262 to 264 of your  
15 brief.

16 Q. Did the commission staff do anything else to attempt to  
17 determine when Lynwood Williams and JoAnn Clemonts began dating?

18 A. We did.

19 In an interview with the defense, Mr. Williams indicated  
20 he had started working for Container Systems around the time he  
21 started dating Ms. Clemonts. Container Systems was purchased by  
22 UFP LLC in 2014. Commission staff contacted UFP and they  
23 indicated they had only bought Container Systems' assets and did  
24 not have any records.

25 They did provide contact information for the former VP

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1 of Container Systems. We spoke to him, and he advised they no  
2 longer had any employment records going back to the 1990s. He did  
3 recall Mr. Williams working for them in the 1990s and thinks he  
4 drove trucks but did not recall any dates.

5 Q. Did the staff do anything else related to the timeline  
6 between Kenneth Evans, Lynwood Earl Williams, and JoAnn Clemonts?

7 A. The Commission looked at CIPRS records, which are court  
8 records, and those will list addresses related to various cases  
9 that people have, but they do not indicate when the address  
10 information was obtained or how it was obtained, whether it was  
11 self-reported or not.

12 But commission staff looked at these records for JoAnn  
13 Clemonts, Lynwood Earl Williams, and Kenneth Evans to determine if  
14 there was any addresses listed for various charges that would help  
15 clear up the timeline.

16 Q. And what did the records show?

17 A. Lynwood Earl Williams did not have any CIPRS records  
18 until 1991, which was after this case took place. Both JoAnn  
19 Clemonts and Kenneth Evans do not have any overlap in addresses in  
20 their CIPRS records.

21 None of the addresses reported by Kenneth -- for Kenneth  
22 Evans for his cases appear to be associated with an address for  
23 JoAnn Clemonts. We did note in the reports that there was an  
24 assault on a female charge for Mr. Evans that listed Shirley  
25 Evans, his wife, as the victim, and that was from December 1989.

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1           During the 1989 and 1990 periods, Mr. Evans' addresses  
2   are listed as a house associated with Shirley Evans' family that I  
3   mentioned previously and also in Castalia, North Carolina.

4           **Q.**   Ms. Matoian, can you tell commissioners about JoAnn  
5   Clemonts' daughters, Latoshia and Sharron?

6           **A.**   I can.

7           Latoshia Perry is Ms. Clemonts' oldest daughter. She  
8   was born on April 5, 1987. Interviews and statements from around  
9   the time of the crime indicate that Latoshia was a baby when  
10   Mr. Evans and Ms. Clemonts got together.

11           Clemonts' younger daughter, Sharron Williams, was born  
12   on March 6, 1992. Interviews and statements from around the time  
13   of the crime indicate that Sharron Williams' father is Lynwood  
14   Earl Williams, and Lynwood Earl Williams and JoAnn Clemonts got  
15   married the same year that Sharron was born.

16           **Q.**   Has Mr. Evans ever claimed to be the father of either of  
17   the daughters, Latoshia or Sharron?

18           **A.**   In his 2019 commission interview, Mr. Evans said he  
19   moved in with Clemonts when Latoshia was 3 or 4 years old.  
20   Commission staff asked Mr. Evans if he was Latoshia's father and  
21   he said that Ms. Clemonts thought he was at one point but that he  
22   was not.

23           We did see this in his DPS phone calls that Mr. Evans  
24   has indicated to family and friends that Ms. Clemonts told him  
25   that he was Sharron Williams' father.

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1           Q.    What did Ms. Clemonts tell the Commission about Sharron?

2           A.    Ms. Clemonts indicated that Sharron was Lynwood Earl  
3 Williams' daughter and that she and Williams got married in 1992,  
4 the same year that Sharron was born.

5           Q.    What was the Commission able to determine about when  
6 Lynwood Williams and JoAnn Clemonts began dating?

7           A.    While we were searching for other individuals in the  
8 Franklin County vital records index, commission staff located  
9 entries for twin boys with cause of death listed as fetal death  
10 and mother listed as JoAnn Clemonts. We then searched for and  
11 located an obituary on microfilm from the *Franklin Times* that  
12 indicated the date of death for the twins was April 1st, 1990, so  
13 less than a month after the crime happened.

14               Both Clemonts and Lynwood Earl Williams were named in  
15 the obituary as the parents of the boys. Commission staff then  
16 obtained a death certificate for the twins who were listed as  
17 "Baby Boy One" and "Baby Boy Two." And the cause of death was  
18 listed as prematurity.

19               The address listed on the death certificates indicates  
20 that Ms. Clemonts was living on First Street on the date that they  
21 died, which was April 1, 1990. In her affidavit from the Ballance  
22 file, Ms. Clemonts indicated that she had been living with  
23 Mr. Evans on Savage Street when they lived together.

24               And we did talk to Latoshia Perry, Ms. Clemonts' oldest  
25 daughter, and she told the Commission that she had confirmed with

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1 her mother that Lynwood Earl Williams was the father of the twins.

2 Q. Did the Commission's investigation uncover any  
3 information about the Cordoba, the vehicle that Ms. Clemonts said  
4 Mr. Evans took in March of 1990?

5 A. The Ballance defense file had DMV records in it that had  
6 been obtained by the Ballances during their representation of  
7 Mr. Evans.

8 There was an entry for JoAnn Clemonts related to a '77  
9 Chrysler Cordoba which matches the information that she provided  
10 in other interviews.

11 The Commission asked the DMV to explain what the records  
12 meant for that. The DMV provided an affidavit with attachments  
13 for all the information they had related to the vehicle. The  
14 records indicated that JoAnn Clemonts had bought the Cordoba on  
15 February 10, 1989, and the affidavit also indicates they were  
16 unable to determine what happened to the car after that date that  
17 she bought it.

18 The records in the Ballance file had an entry listed for  
19 the Cordoba that said ACT DT 020990. So the Commission asked the  
20 DMV what "ACT DT" stood for and received a response with their  
21 hypothesis as to what that date could mean listed in the DMV  
22 records. They indicated that 2/9/1990 is the last date that any  
23 action was done to the title record for that car. They stated  
24 that this was a common occurrence of a cancellation of a title to  
25 another state when no other title records are found for a

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1 particular vehicle. But, again, the DMV did not have any records  
2 that showed what happened to the car on that date.

3 **MS. SMITH:** Commissioners, Handout 37 is the affidavit  
4 from DMV as well as an e-mail with their explanation as to what  
5 the "ACT DT" entry could mean. If you'll take a few moments to  
6 review that.

7 **THE WITNESS:** If I could correct something real quick.  
8 I referred to the first page of Handout 37 as an affidavit and  
9 it's a title certification, not an affidavit. I misstated.

10 **THE COURT:** I think we're ready.

11 **Q.** Ms. Matoian, did commission staff do any other  
12 investigation related to Ms. Clemonts' Cordoba?

13 **A.** We did. Ms. Clemonts had told law enforcement that she  
14 had sold that Cordoba to Brenda Kingsberry.

15 The Commission spoke to Brenda Kingsberry McKnight over  
16 the phone on August 29, 2019. Ms. McKnight did not know JoAnn  
17 Clemonts and she was able to name for us all of the cars she's  
18 ever owned, and none of them were a Cordoba. She indicated that  
19 she had also purchased all of her cars from dealerships, not  
20 individuals.

21 Commission staff also asked her if her or anyone in her  
22 family ran a junkyard as Ms. Clemonts has told the Commission she  
23 thought she had junked the car, and Ms. McKnight said no.

24 **MS. SMITH:** Commissioners, Ms. McKnight does not have a  
25 criminal record.

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1           Do you have any questions for Ms. Matoian related to  
2           this information about JoAnn Clemonts?

3           **MR. BOSWELL:** Can you summarize? What this all appears  
4           to mean is that in February of 1990 -- what happened to the car?

5           **THE WITNESS:** We don't know. The most the DMV was able  
6           to describe it as the last date any action was taken on that  
7           title, but they don't know what that action was. And their  
8           hypothesis was that that was something that could happen if the  
9           car had been transferred to another state, but they don't have the  
10          documentation themselves so they are unable to tell. But it's the  
11          last -- the most they are able to say is that it's the last date  
12          that any action was taken on that title.

13          **THE COURT:** Yes.

14          **MR. BASS:** I might have missed it, but were there any  
15          law enforcement records that the commission staff found that  
16          indicated that Mr. Evans was searched with dogs and they found him  
17          under a trailer or house?

18          **THE WITNESS:** Not in this case.

19          We also looked at the SBI files for the Drake case, and  
20          that was not consistent with the information about his arrest, in  
21          the Drake case either.

22          **THE COURT:** There was one -- at one point in here,  
23          Ms. Clemonts told you that her car "blowed up."

24          Was there any -- did you find any evidence that the car  
25          blew up?

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1           **THE WITNESS:** No, I did not.

2           **THE COURT:** Yes.

3           **MR. GLAZIER:** One quick question just kind of  
4 recapitulating.

5           Earlier you talked about conversation you had with the  
6 prosecutor -- this was yesterday -- and that she indicated the two  
7 biggest pieces of evidence were the testimony of Davis and  
8 Clemonts; is that correct?

9           **THE WITNESS:** That's correct.

10          **MR. GLAZIER:** Okey-dokey.

11          **MR. BOSWELL:** So the twins were born just after the date  
12 of this crime?

13          **THE WITNESS:** Yes. The crime happened on March 5, 1990,  
14 and they were born and died on April 1, 1990.

15          **MR. BOSWELL:** Okay.

16          **THE COURT:** But they did not belong to Mr. Evans; they  
17 belonged to Mr. Williams supposedly?

18          **THE WITNESS:** Correct. Or that's what the obituary  
19 says.

20          **MR. BOSWELL:** So the evidence with the car and with this  
21 would seem to suggest that they weren't living together when this  
22 crime happened.

23          **THE WITNESS:** That is for the Commissioners to  
24 determine.

25          **MR. BOSWELL:** I understand.

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1           **MR. GRACE:** I have a question that maybe you can help me  
2 with. Did we ever get her medical records from when she was hit  
3 in the eye with the tire?

4           **THE WITNESS:** No. She declined to provide a release for  
5 those medical records. And I can't remember if she said in the  
6 deposition or not if she had told the police about that or if he  
7 had been charged with that. We didn't see anything in the court  
8 records related to an assault on Ms Clemonts.

9           **MR. GRACE:** But she did indicate she had gone to the  
10 hospital, didn't she?

11           **THE WITNESS:** She did.

12           **THE COURT:** Yes.

13           **DR. PERRY:** Judge, once again, Mr. Glazier's question --  
14 ADA Thompson said and the defense attorneys' files indicate that  
15 the best evidence, again, was Clemonts and Davis at trial?

16           **THE WITNESS:** That is what Ms. Thompson said during her  
17 interview. The defense files both indicated that Larry Davis and  
18 JoAnn Clemonts had testified. They're both included in that draft  
19 closing argument. But I don't know that there is anything in the  
20 defense file that classifies them as the best evidence against  
21 him.

22           **DR. PERRY:** Did Ms. Thompson unpack that any further? I  
23 don't recall.

24           **THE WITNESS:** She said that both of them were the  
25 biggest pieces of evidence against Mr. Evans, with JoAnn Clemonts

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1 being more important. In Ms. Thompson's estimation, she described  
2 JoAnn Clemonts as a reluctant witness and thought that that made  
3 her more believable to jurors because she did not want to be  
4 testifying.

5 DR. PERRY: Thank you.

6 THE COURT: All right.

7 Next?

8 MS. SMITH: Commissioners, now would be the -- before we  
9 turn to Kenneth Evans would be the appropriate time for me to find  
10 out if anyone wants to hear from Pat Green or Rick Sims. We've  
11 got them on phone standby to be available via phone. I just need  
12 to know so that we can let them know whether they will be  
13 testifying this afternoon.

14 THE COURT: That would be the SBI.

15 MS. SMITH: Pat Green is the detective from the Franklin  
16 County Sheriff's Office and then Rick Sims was the SBI agent that  
17 was assigned to the case.

18 THE COURT: So the defrocked sheriff and the SBI agent?

19 MS. SMITH: Correct.

20 THE COURT: Would anyone like to hear from any or both  
21 of those?

22 MR. GRACE: If it's a vote, I don't care to hear from  
23 either one.

24 THE COURT: Does anybody want to hear from any of them?

25 MR. GLAZIER: No.

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1           **THE COURT:**   Okay.

2           **MR. BOSWELL:**   I'm not sure what I would ask them.

3           **THE COURT:**   Hold on.

4           All it takes is one person.   We don't have to have a  
5 majority.

6                           (Discussion off the record.)

7           **MR. BOSWELL:**   I don't need to talk to them.

8           **DR. PERRY:**   No.

9           **THE COURT:**   No?

10          **MR. BOSWELL:**   Robin, you can ask if you want.

11          **MS. COLBERT:**   Thank you, Mr. Boswell, for giving me  
12 permission.

13          **MR. BOSWELL:**   I'm just saying if you want to do it, I  
14 will support you.

15          **MS. COLBERT:**   No.   No, I'm not really interested in  
16 hearing from a --

17          **THE COURT:**   All right.   So I think we're okay to keep  
18 going.

19          **MS. COLBERT:**   -- defrocked sheriff, as you put it.

20          **MS. SMITH:**   I can leave them under subpoena until we  
21 finish up just in case.

22          **THE COURT:**   That's fine.

23          **MS. SMITH:**   Okay.   All right.

24               We will turn our attention then to Kenneth Evans.

25          **Q.**   Ms. Matoian, did the commission staff interview

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1 Mr. Evans?

2 A. We did, on August 30, 2017, and February 27, 2019.

3 Q. And were both of those interviews recorded and  
4 transcribed?

5 A. They were.

6 MS. SMITH: Commissioners, you were already provided  
7 those transcripts with the select exhibits as Handouts 38 and 39.

8 Q. Did commission staff do anything to follow up on the  
9 interview of Mr. Evans?

10 A. We did. In the February 27, 2019, interview, Mr. Evans  
11 indicated that he had written to PLS for assistance with divorcing  
12 his wife for Ms. Clemonts.

13 The Commission followed up with PLS to determine if they  
14 provided assistance with divorces. PLS indicated that they would  
15 currently send a packet to inmates but could not say what  
16 assistance would have been provided in the 1990s.

17 She did indicate their system had a record of Evans  
18 contacting them on civil claims in the 1990s but the system did  
19 not log what those contacts were for and that those documents were  
20 past their retention policy. So it's just listed in their  
21 database as a contact under a civil claim.

22 MS. SMITH: Commissioners, do you have any questions for  
23 Ms. Matoian about the Commission's interviews with Mr. Evans that  
24 you were previously provided?

25 THE COURT: Yes.

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1           **MR. GLAZIER:** Quick question -- and, again, it's a  
2 summary question.

3           Were there any serious -- recognizing small differences,  
4 but were there any serious inconsistencies in the two statements  
5 that you obtained?

6           **THE WITNESS:** From Mr. Evans?

7           **MR. GLAZIER:** Uh-huh.

8           **MS. COLBERT:** I don't know if I could qualify anything  
9 as a "serious inconsistency."

10          There were some inconsistencies between the two  
11 interviews and from his statements as a whole.

12          **MR. GLAZIER:** All right. Thank you.

13          **THE COURT:** Anyone else? Questions about --

14          **MR. BASS:** As I recall, one of the inconsistencies was  
15 about whether he had or had not owned a sawed-off shotgun.

16          **THE WITNESS:** That's correct. Let me find that. I  
17 can't find the pages.

18          Mr. Evans -- there are notes from a defense attorney  
19 from 1994 that indicated that Mr. Evans had a sawed-off shotgun.  
20 Mr. Evans maintained to the Commission that that was not true,  
21 that he had never had a sawed-off shotgun. We allowed him an  
22 opportunity to look at those notes and he still maintained that he  
23 did not have a sawed-off shotgun.

24          **MR. BASS:** I think where I noticed it first was in the  
25 sawed-off shotgun -- Handout 24, the timeline about the sawed-off

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1 shotgun. And he -- early on, it sounded like he was acknowledging  
2 having one and then later was denying he ever had one.

3 THE WITNESS: That's correct.

4 THE COURT: Yes.

5 SHERIFF FRYE: In your interview with Mr. Evans, he  
6 talks about the Speed break-in.

7 THE WITNESS: Correct.

8 SHERIFF FRYE: And he denies having -- he gives you two  
9 people that he believes done the break-in; that he didn't do that.

10 THE WITNESS: Yes. Jerry Moore and Billy Glenn Solomon.

11 SHERIFF FRYE: But yet he pled guilty --

12 THE WITNESS: He did.

13 SHERIFF FRYE: -- to that?

14 Did you talk about the rape case that he was involved  
15 in?

16 THE WITNESS: We did talk to him about the rape case.  
17 During our interview, he admitted guilt in that case.

18 THE COURT: And pled guilty?

19 THE WITNESS: He did.

20 THE COURT: Yes, ma'am.

21 MS. COLBERT: I may have missed this. Did y'all ever  
22 talk to him about these coins, this 100 and -- whether -- what did  
23 he say about that? I don't remember. Could you ...

24 THE WITNESS: Sure. We asked him about the coins, in  
25 particular JoAnn Clemonts saying he had the First Citizens bags of

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1 coins. The coins that were stolen from the victim was described  
2 as being in like a plastic container or a jar. Mr. Evans has  
3 denied to the Commission ever having large amounts of change.

4 **MR. BOSWELL:** Who are the people who say he had change?  
5 It was Clemonts and who else?

6 **MS. COLBERT:** It was his relatives.

7 **MR. GRACE:** Davis?

8 **THE WITNESS:** Jerry Moore said that he had quarters.  
9 And if you will give me one second --

10 **MR. BOSWELL:** Have we interviewed Jerry Moore?

11 **THE WITNESS:** We interviewed Jerry Moore. Jerry Moore  
12 didn't recall much about the case. He did recall going to trial  
13 and testifying about Mr. Evans having some coins. He told us he  
14 did not know whether or not Mr. Evans had stolen those coins. He  
15 just remembered having to testify about the coins.

16 Mr. Norman's draft closing argument indicates that Jerry  
17 Moore, while he was testifying, had stated that the time that he  
18 saw Mr. Evans with those coins happened well before the robbery  
19 took place. I don't have a trial transcript to know how that came  
20 out at the trial, but that's what the draft closing argument says.

21 I believe that the Reece Wardrick interview also  
22 mentions Mr. Evans with some coins. Again, we have not been able  
23 to locate anyone named Reece Wardrick.

24 Billy Glenn Solomon allegedly told Larry Davis that  
25 Mr. Evans had come to his house with a bunch of quarters. Billy

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1 Glenn Solomon is deceased so we have not been able to follow up  
2 with him about that.

3 MR. BOSWELL: Got it. Thank you.

4 THE COURT: Yes.

5 DR. PERRY: The plea with respect to Senator Speed -- he  
6 qualified that plea, didn't he?

7 THE WITNESS: I would have to look at the plea  
8 transcript.

9 DR. PERRY: I don't want to create labor but -- I think  
10 the Sheriff's question prompted -- he said he was pretty much  
11 backed into that plea.

12 But the rape -- I don't recall a qualification on that.

13 THE WITNESS: Want us to check that for you real quick?

14 MR. BOSWELL: Thank you.

15 DR. PERRY: But with you, he denied the Speed --

16 THE WITNESS: Correct.

17 And notes from the defense file indicated he denied  
18 guilt in that instance.

19 DR. PERRY: But he had never denied the Drake rape?

20 THE COURT: I thought he said he took that Speed plea  
21 for somebody else.

22 SHERIFF FRYE: He did.

23 DR. PERRY: Yes.

24 THE COURT: He didn't do it but he --

25 DR. PERRY: Yes. That's what I recall.

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1           **THE COURT:**  -- just took the fall.

2           **DR. PERRY:**  Maybe for Solomon?

3           **THE WITNESS:**  He indicated that Jerry Moore and Billy  
4           Glenn Solomon had committed the Speed robbery.  I believe there's  
5           notes in the defense file that indicate that Mr. Evans knew about  
6           it and provided information to Senator Speed for \$20 or something  
7           like that -- for some amount of money about who had committed the  
8           crime and then ended up being implicated in the crime himself.

9           I'm not seeing anything in the plea transcript specific  
10          to the Speed case.

11          **DR. PERRY:**  I think the judge is right.  I think he --  
12          what you just both dictated is correct.  Thank you.

13          **THE WITNESS:**  Okay.

14          **DR. PERRY:**  I don't recall a qualification on the Drake  
15          plea.

16          **THE WITNESS:**  No.  There -- he pled in the Drake, Speed,  
17          and Hardy cases.  He's indicated his guilt in the Drake case to  
18          the Commission.  There is the memo from his defense attorney to  
19          Mr. Evans regarding the Drake case where Mr. Evans had initially  
20          denied any involvement and then had told his attorneys that the  
21          sex had been consensual and was somewhat related to drugs.

22          But to the Commission, he has admitted to the rape.

23          **DR. PERRY:**  Thank you.

24          **SHERIFF FRYE:**  Just clarification -- the first time he  
25          was talked to about the Drake case, he denied it.  Then,

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1 afterwards, he come back, he qualified and said it was consensual  
2 and everything else, and then he ended up pleading to it.

3 Is that not correct?

4 **THE WITNESS:** That's correct based on what we have in  
5 the file.

6 **SHERIFF FRYE:** That's the way I understood it.

7 **THE COURT:** Any other questions?

8 (No response.)

9 **THE COURT:** All right. Ms. Smith, do y'all have --

10 **MS. SMITH:** That's all I have for Ms. Matoian.

11 **THE COURT:** Okay.

12 **MS. SMITH:** May she step down?

13 **THE COURT:** Okay. You may step down.

14 (Witness stands down, 2:40 p.m.)

15 **MS. SMITH:** Your Honor, the next thing we have is Mr.  
16 Evans. I don't know if anyone needs a break before we do that for  
17 a few minutes.

18 **THE COURT:** Sure. Yes.

19 **MS. COLBERT:** Unanimous head nods.

20 **THE COURT:** All right. Until five minutes before 3:00.  
21 Will that be sufficient? 10 minutes. 10-minute break.

22 (Recess taken, 2:41 to 2:58 p.m.)

23 **THE COURT:** We ready?

24 **MS. SMITH:** Commissioners, I will be asking a limited  
25 set of questions to Mr. Evans for the record since the commission

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1 staff has conducted a lengthy interview of Mr. Evans which has  
2 been recorded and transcribed and which you have all been  
3 provided. Obviously, once I am done, you will be able to ask him  
4 any questions you have and I want to give you plenty of  
5 opportunity to do so.

6 **THE COURT:** All right.

7 **MS. SMITH:** Commission calls Kenneth Evans.

8 \* \* \* \* \*

9 Thereupon, KENNETH EVANS, a witness having been called by the  
10 Commission, was sworn and testified as follows:

11 **THE COURT:** Just talk as loud as you can, okay?

12 **THE WITNESS:** Okay.

13 **THE COURT:** All right. Ms. Smith's going to ask you  
14 questions first.

15 BY MS. SMITH: (3:01 p.m.)

16 **Q.** Mr. Evans, good afternoon.

17 **A.** Hey.

18 **Q.** My name is Lindsey Guice Smith. I'm the Executive  
19 Director of the North Carolina Innocence Inquiry Commission. I  
20 have got several questions for you today.

21 When I'm done asking questions, all of the Commissioners  
22 around the table may also have questions for you. Okay?

23 **A.** Yes, ma'am.

24 **Q.** And if you will be speak loudly so that the court  
25 reporter can hear your verbal responses.

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1           A.    Yes, ma'am.

2           Q.    Can you state your name for the record.

3           A.    Kenneth Leon Evans.

4           Q.    Mr. Evans, did you break into the Mannings' home?

5           A.    No, ma'am.

6           Q.    Did you take a plastic jar full of change from the  
7 Mannings' home?

8           A.    No, ma'am.

9           Q.    Did you take an antique pistol from the Manning home?

10          A.    No.

11          Q.    Did you take a watch from the Manning home?

12          A.    No, ma'am.

13          Q.    Did you kidnap Euther Rea Manning?

14          A.    No, ma'am.

15          Q.    Did you leave Ms. Manning out in the woods?

16          A.    No, ma'am.

17          Q.    Did you have any involvement in this crime?

18          A.    No, ma'am, I didn't.

19          Q.    Have you ever told anyone that you committed this crime?

20          A.    No, I didn't.

21          Q.    Have you ever been to James Scott's place?

22          A.    James Scott? Yes, ma'am.

23          Q.    And what is that?

24          A.    That's a pool room.

25          Q.    And when did you go there?

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1           A.    I can't recall that, but I've been there.

2           Q.    More than one time?

3           A.    Yes, ma'am.

4           Q.    Did you frequent it often?

5           A.    Well, when I used to -- we used to go play pool.

6           Q.    And who did you go with?

7           A.    I probably go with a couple of friends and my cousin  
8 Jerry.

9           Q.    Is that Jerry Moore?

10          A.    Yes, ma'am.

11          Q.    And who were the friends that you would go with?

12          A.    Just some of -- anyones that I was, you know, with at  
13 that time.

14          Q.    Do you remember their names?

15          A.    Right now I can't recall all their names, but I know a  
16 couple of them.

17          Q.    Okay. Tell us the couple you know.

18          A.    I know one name is -- well, my brother, he used to go  
19 there with me. That's -- his name is Willie Williams. And I used  
20 to go with Joshua Tony. And I used to go with David Brodie. And  
21 I used to go with Billy Solomon and I used to go with James  
22 Solomon and all of them. We all was around the area.

23          Q.    Did you ever go there with Larry Davis?

24          A.    No, ma'am. I never go'd there with him.

25          Q.    Did you know Larry Davis?

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1           A.    Yes, I did.

2           Q.    Did you ever see Larry Davis there?

3           A.    Well, Larry Davis, he'd just come by every now and then,  
4 drop by, and just, you know, speak to all of us. And then he'll  
5 probably, you know, because -- I was married to his cousin in the  
6 family and he will probably come to our house and I might see him  
7 sometime drive along down the highway and he would like, you know,  
8 speak to me and whatnot.

9           Q.    Did you ever see him at James Scott's place?

10          A.    Yes, ma'am.

11          Q.    Did you ever show Larry Davis a pearl-handled pistol?

12          A.    No, ma'am, I didn't.

13          Q.    Did you ever have a pearl-handled pistol?

14          A.    No, ma'am.

15          Q.    Did you ever tell Larry Davis that you kidnapped  
16 Ms. Manning?

17          A.    No, I didn't.

18          Q.    Did you ever tell him you kidnapped anyone?

19          A.    I never kidnapped nobody, no, ma'am.

20          Q.    Did you ever tell him that you taped up a woman?

21          A.    No, ma'am.

22          Q.    Did you ever tell Larry Davis that you'd left a woman in  
23 the woods?

24          A.    No, ma'am.

25          Q.    Did you ever tell Larry Davis that you left a woman's

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1 car in the woods because it was low on gas?

2 A. No, ma'am.

3 Q. Do you have any idea why Larry Davis would say that you  
4 showed him a pearl-handled pistol?

5 A. Well, I'm going to tell you, Larry is a person that,  
6 when he go and get locked up to jail, he would do a little  
7 something to try to get out of what he is get into, and then he  
8 try to -- like, he'll testify against somebody that commit a crime  
9 and ain't commit the crime, but he'll say the person commit that  
10 crime to get out of his position.

11 Q. Do you know why Larry Davis would say that you kidnapped  
12 a woman?

13 A. No, ma'am.

14 Q. Do you have any direct knowledge of who committed the  
15 crime against Ms. Manning?

16 A. No, I don't, because I wasn't there. I was at home at  
17 the time when the crime happened.

18 Q. How do you know when you were at home?

19 A. At 9:00 o'clock, it was -- at the time when I got home,  
20 when my aunt, Mary Alice Moore, and my grandmother was there, and  
21 the crime that happened at the same time, at 9:00 o'clock, they  
22 said, Ms. Rea Manning had got kidnapped.

23 Q. Where did you hear that?

24 A. Well, you know how people and rumors, they talk, and  
25 then all of a sudden you hear that from other peoples.

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1 Q. So you were at home when you heard that?

2 A. Yes, ma'am.

3 Q. And you heard that from someone in the home?

4 A. No, ma'am. I heard that on the -- you know like  
5 somebody out in the street early in the morning, like when you  
6 wake up in the morning, somebody talk about somebody had got  
7 kidnapped, and that's how I heard about it.

8 Q. So you heard it the next morning?

9 A. Right. I heard it, yes.

10 Q. Are you familiar with the area where Ms. Manning's car  
11 was located off of Vaiden Road?

12 A. I'm going to say that -- I live on the Vaiden Road, but  
13 it's a different road that she was on that I heard of.

14 Q. The dirt road?

15 A. No, ma'am. I lived up on -- 483 Vaiden Road, I lived  
16 right down the road. Where -- it's not where she was at that --  
17 when I heard, I heard that she was on the other road of the Vaiden  
18 Road.

19 Q. Another part of Vaiden Road?

20 A. Right. Yes, ma'am.

21 MS. SMITH: Commissioners, what questions do you have  
22 for Mr. Evans?

23 THE COURT: I will start off.

24 Mr. Evans, explain to me how you knew the Manning  
25 family.

1           **THE WITNESS:** I knew the Manning family when I used to  
2 work on them with -- at the farm. I used to farm for all of them  
3 when I was coming up, doing -- raised up around them.

4           **THE COURT:** Did you work on the farm a lot?

5           **THE WITNESS:** Yes, ma'am.

6           **THE COURT:** And was the farm right next to your house --  
7 their house?

8           **THE WITNESS:** Yes, ma'am. It was between our house and  
9 her house.

10          **THE COURT:** And then when you got through working with  
11 them, you got older, what did you do then?

12          **THE WITNESS:** I moved along and then I went up towards  
13 Louisburg and moved up in Louisburg. And then I got married when  
14 I was 19, in 1983, and we stayed at Kimbrell Avenue.

15          **THE COURT:** Tell me how you got to be friends -- I think  
16 it is Tommy James? Is he the man that owned the place?

17          **THE WITNESS:** You talking about Tommy Perry?

18          **THE COURT:** Used to be in the sheriff's department?

19          **THE WITNESS:** Yes, ma'am.

20          **THE COURT:** Okay. Tell me how you ended up going to his  
21 place that night.

22          **THE WITNESS:** I went -- I was at his place when I left  
23 Ms. Linda Collier house. And so I walked down the highway. And  
24 when I walked down the highway, I said I'm going on down to Tommy  
25 Perry place, and I'm going to stay there until, you know -- and

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1 then he got a pool room there. So I stayed at his store until he  
2 got ready to leave. When he left, that when I took and left and I  
3 walked to home from there.

4 THE COURT: And about what time was that?

5 THE WITNESS: I'm going to give that estimate like a  
6 quarter to 9:00, in between a quarter until 9:00 until about 10  
7 minutes till 9:00 because I was at home at 9:00 o'clock because  
8 the store wasn't that far from where my grandmother lived.

9 THE COURT: Okay.

10 MR. GRACE: Where you were raised up, sir?

11 THE WITNESS: I was raised in Franklin County.

12 MR. GRACE: You ever spend any time in the city? Living  
13 in the city anywhere?

14 THE WITNESS: Well, I had lived up into Virginia.

15 MR. GRACE: Where in Virginia?

16 THE WITNESS: Woodbridge and Lorton and Falls Church.

17 MR. GRACE: When did you live there?

18 THE WITNESS: I just stayed off and on up there with my  
19 mother when she was living up there. When I was 16 years old, she  
20 had got me up there because she wanted me to go to Job Corps in  
21 D.C. over at Potomac Job Corps Center.

22 MR. GRACE: Did you do that?

23 THE WITNESS: I went for a little bit but I didn't stay  
24 all the way into it.

25 MR. GRACE: Did you come back down south?

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1           **THE WITNESS:** Right. I come back down south.

2           **MR. GRACE:** Those are all the questions I have now.

3 Thank you.

4           **THE COURT:** Yes, ma'am.

5           **MS. COLBERT:** So -- hi, I'm Robin Colbert, Mr. Evans.

6           So were you born in the Virginia area or were you born  
7 in North Carolina?

8           **THE WITNESS:** No. I was born in Washington, D.C. I was  
9 born in Columbia Hospital for Womens.

10          **MS. COLBERT:** And then when did you move to North  
11 Carolina?

12          **THE WITNESS:** My mother moved me down here because she  
13 couldn't take care of me when I had asthma, and me and my sister,  
14 she moved me right when I was a little baby.

15          **MS. COLBERT:** And you were living with your grandmother?

16          **THE WITNESS:** Right. She brought me home to my  
17 grandmother because she didn't know how to take care of us when we  
18 was having the asthma, me and my sister.

19          **MS. COLBERT:** And you were the older of you two? You  
20 were the oldest?

21          **THE WITNESS:** No, ma'am. I was the baby.

22          **MS. COLBERT:** Okay. And you were a baby when you moved  
23 down here?

24          **THE WITNESS:** Right.

25          **MS. COLBERT:** But you were born in D.C.?

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1           **THE WITNESS:** Exactly.

2           **MS. COLBERT:** Thank you.

3           **THE WITNESS:** You're welcome.

4           **THE COURT:** Yes, sir.

5           **MR. GLAZIER:** Mr. Evans, what drugs did you use in the  
6 '80s and early '90s?

7           **THE WITNESS:** I used marijuana.

8           **MR. GLAZIER:** Anything else?

9           **THE WITNESS:** Yes. I used cocaine.

10          **MR. GLAZIER:** Did you abuse alcohol at all?

11          **THE WITNESS:** No. I drank every once in a while but not  
12 -- not often.

13          **MR. GLAZIER:** When you got your marijuana, who did you  
14 normally get it from?

15          **THE WITNESS:** I normally used to get my marijuana from  
16 some peoples over at -- out of Louisburg going towards Henderson.

17          **MR. GLAZIER:** Do you remember names?

18          **THE WITNESS:** No, sir. I mean, I know some names, but I  
19 don't know if they -- certain person that used to sell it, one of  
20 them name was a Neil guy.

21          **MR. GLAZIER:** How about cocaine? Where did you get your  
22 cocaine from?

23          **THE WITNESS:** They name was Tim Civil.

24          **MR. GLAZIER:** Did he live in the area?

25          **THE WITNESS:** Right. He lived near Wood, North

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1 Carolina.

2 MR. GLAZIER: Thank you.

3 THE COURT: Yes, sir.

4 DR. PERRY: Hello, Mr. Evans. My name is Frank Perry,  
5 and I live in Franklin County.

6 THE WITNESS: Okay.

7 DR. PERRY: And I understand that you came down -- that  
8 you were born in Washington, D.C., is what you were just saying --

9 THE WITNESS: Right.

10 DR. PERRY: -- and came down at what age, please, sir?

11 THE WITNESS: I was a little baby at the time when my  
12 mama was -- well, she couldn't take care of me when I had asthma.  
13 I'm going to say about 1 years old or something like that.

14 DR. PERRY: To the Louisburg area?

15 THE WITNESS: To my grandmother in Centerville.

16 DR. PERRY: Centerville.

17 THE WITNESS: Right.

18 DR. PERRY: And the date of this kidnapping --

19 THE WITNESS: Right.

20 DR. PERRY: -- was that under Sheriff Dement? Who was  
21 sheriff? Dement?

22 THE WITNESS: No. That was under Pat Green. Sheriff  
23 Pat Green.

24 DR. PERRY: No, in 1990, Pat Green was working for the  
25 sheriff's department.

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1           **THE WITNESS:** It might have been Sheriff Walter --  
2 Arthur Earl Johnson.

3           **DR. PERRY:** Is that right?

4 I left the area for a while and came back much later.

5           **THE WITNESS:** Okay. Arthur Earl Johnson had it then.

6           **DR. PERRY:** How much interaction have you had -- I  
7 understand that some of this was worked by the current sheriff,  
8 Kent Winstead.

9           **THE WITNESS:** Yeah, Kent Winstead.

10          **DR. PERRY:** Did he ever interview you --

11          **THE WITNESS:** No, sir.

12          **DR. PERRY:** -- when he was a deputy?

13          **THE WITNESS:** No, sir.

14          **DR. PERRY:** But did Pat Green, who was a detective?

15          **THE WITNESS:** Yes. Pat Green did.

16          **DR. PERRY:** How many times, sir?

17          **THE WITNESS:** Well, he came to me, and -- I'm going to  
18 say when he came to me, him and Rick Sim [sic], they only  
19 interviewed me when they came to jail of Franklin County, the old  
20 jail. And they -- Pat Green and Rick Sim, SBI, asked me would I  
21 go and take a polygraph test because he wanted to tell the  
22 Sheriff, Arthur Earl Johnson, that I wasn't the one.

23               He said that if I go take the polygraph test that day,  
24 that was on a Friday, him and Rick Sims, that they would let -- we  
25 would go up and take the polygraph test here in Raleigh, and if I

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1 pass the test they was going to let me -- they were going to go  
2 back and tell the sheriff that I passed the test on this  
3 polygraph, that, okay, after that, they said that they was going  
4 to let me go and then they let me out. They let me out and then  
5 they came back and regot [sic] me again for the same charge.

6 DR. PERRY: And what was the time frame?

7 THE WITNESS: The time frame was like after I had got --

8 DR. PERRY: After you passed the test.

9 THE WITNESS: After I passed the test, they let me go  
10 for about a month ago -- about a month.

11 DR. PERRY: Okay. Who is --

12 THE WITNESS: But then I told -- then, after that, they  
13 came back right about 3 -- I'm going to say about 2, 3 years later  
14 to get me for the same charge by Larry Davis saying that I came to  
15 him with this stolen pistol and sold to him.

16 DR. PERRY: Who suggested first that you have the  
17 polygraph and that they would tell the sheriff?

18 THE WITNESS: That's -- Pat Green, Sheriff Pat Green.

19 DR. PERRY: Green suggested that?

20 THE WITNESS: Yes, sir.

21 DR. PERRY: Did he seem sincere when he made that  
22 comment?

23 THE WITNESS: Well, when he came around to the cell when  
24 I was in the cell, he asked me would I mind going and doing it,  
25 and I said I would do it. And they waited. And then the

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1 deputy -- the jailer came and told me that he going to go ahead on  
2 and tell Sheriff -- I mean Pat Green, Detective Pat Green that I'm  
3 ready to go have the polygraph test done.

4 DR. PERRY: So prior to this case -- going back even to  
5 the Senator Speed break-in --

6 THE WITNESS: Okay. Right.

7 DR. PERRY: -- you had not had any interaction with  
8 these investigators?

9 THE WITNESS: Right.

10 DR. PERRY: You had never given a statement to Pat  
11 Green --

12 THE WITNESS: No, sir.

13 DR. PERRY: -- or Kent Winstead or the SBI?

14 THE WITNESS: No, sir. I never gave them no statement,  
15 no.

16 DR. PERRY: What is your impression of the way you were  
17 treated by Franklin County Sheriff's Office?

18 THE WITNESS: I feel that I was treated unfairly because  
19 some things that go on in Franklin County -- somebody else could  
20 do something, but they'll come back and get me for it. And I  
21 don't be the one that do it because -- but see, the reason why I'm  
22 saying this is it could be something like a break-in take place,  
23 even though my record is a breaking and entering, that's what --  
24 and they'll come to me and try to get me with the breaking and  
25 entering and let me -- well, I'll take a plea bargain for it just

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1 to get that off, to clear a record.

2 But my grandma always told me, she said, "You need to  
3 stop taking somebody else's charge for something that you ain't  
4 done," but I would take it. Just like when Mr. James Speed place  
5 got broke into -- I didn't do it. It were my cousin done it, but  
6 I just took the blame for it just to keep him out of trouble.

7 THE COURT: Tell me, do you remember, sir, anything  
8 about your trial when you went in a court and your lawyer's name  
9 was --

10 THE WITNESS: James, James T. Duckworth, and Larry Davis  
11 -- I mean Larry Norman.

12 THE COURT: Do you remember when you went to court? Do  
13 you remember who testified in the case?

14 THE WITNESS: No, ma'am. Nobody but Larry Davis. And  
15 they said Ms. JoAnn Clemonts.

16 THE COURT: Well, you were there, weren't you --

17 THE WITNESS: Yes, ma'am.

18 THE COURT: -- but you just can't remember?

19 THE WITNESS: I ain't never seen no one up there to  
20 testify, didn't nobody show up -- got up there to the stand.

21 THE COURT: Did you testify? Did you get up there and  
22 testify on your behalf?

23 THE WITNESS: No, ma'am.

24 THE COURT: Did you and your lawyer talk about that?

25 THE WITNESS: No. He said if I -- he told me -- well,

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1 this is what he told me. If I wanted to testify, they're going to  
2 bring up everything that I have in my past history.

3 THE COURT: Which is true.

4 THE WITNESS: Right.

5 THE COURT: All right.

6 MR. BOSWELL: Mr. Evans, I'm John Boswell. Did I  
7 understand you to say that you were in jail when they came to you  
8 about taking a polygraph test?

9 THE WITNESS: Yes, sir.

10 MR. BOSWELL: Do you remember why you were jail?

11 THE WITNESS: Yes, sir. I was in jail on a breaking and  
12 entering charge.

13 MR. BOSWELL: Okay. And so do you remember  
14 Ms. Clemonts? When did you and she -- when did you and she break  
15 up?

16 THE WITNESS: I can't recall when we broke up, but I  
17 kind of recall of that time that we had broke up, when she had her  
18 second child.

19 MR. BOSWELL: Do you remember -- did you stay in touch  
20 with her after you broke up?

21 THE WITNESS: No, sir.

22 MR. BOSWELL: Did you hear about her or hear anything  
23 that was going on in her life after you broke up?

24 THE WITNESS: No, I haven't.

25 MR. BOSWELL: Did you hear about her having twins that

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1 died?

2           **THE WITNESS:** Yes, sir.

3           **MR. BOSWELL:** How long after you guys broke up did she  
4 have twins that died?

5           **THE WITNESS:** Well, I was going with her when she had  
6 twins because she said that that was me and her two twin children  
7 at the time when they died. But when she's had the next child,  
8 that were we broke up.

9           **MR. BOSWELL:** So when you -- when she had the babies  
10 that died, the twin babies --

11           **THE WITNESS:** Right.

12           **MR. BOSWELL:** -- that died --

13           **THE WITNESS:** Right.

14           **MR. BOSWELL:** -- were you living with her then?

15           **THE WITNESS:** Yes, sir.

16           **MR. BOSWELL:** You were?

17           **THE WITNESS:** Yes, sir.

18           **MR. BOSWELL:** You remember that?

19           **THE WITNESS:** Yes, sir.

20           **MR. BOSWELL:** Okay.

21           **THE COURT:** Now, those twin babies were yours or  
22 Mr. Williams' or whose?

23           **THE WITNESS:** She said that -- to be truthful, she was  
24 telling that were me and him; so I can't recall who the father was  
25 of those children because I never had a DNA taken from me neither

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1 one, you know.

2 THE COURT: Okay. Thank you.

3 MR. GRACE: Mr. Evans, who did you work on the farm for?

4 THE WITNESS: Mr. Esley Manning and his wife and his  
5 son-in-law.

6 MR. GRACE: Who actually ran the farm? Who was the  
7 boss?

8 THE WITNESS: Mr. Esley Manning, her husband.

9 MR. GRACE: Was Ms. Manning around the farm at any  
10 point?

11 THE WITNESS: No, sir. I mean, she'll come every now  
12 and -- you know, like, to check on -- you know, like when they got  
13 to go and sell tobacco and stuff like that, she will come around  
14 and, you know, just check around and everything.

15 MR. GRACE: Were you around her during those times?

16 THE WITNESS: No, sir.

17 MR. GRACE: Did you know her from her working in the  
18 store?

19 THE WITNESS: Yes, indeed.

20 MR. GRACE: Did you go in the store often when she was  
21 working?

22 THE WITNESS: I used to go to her store all the time and  
23 I go to all three of the stores that are down in Centerville.

24 MR. GRACE: Did she know you by name?

25 THE WITNESS: Yes, sir.

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1           MR. GRACE: Called you by name when y'all talked?

2           THE WITNESS: Yes, sir.

3           MR. GRACE: Did y'all have conversations about --

4           THE WITNESS: No, sir. We don't never have a  
5 conversation. It just speak to them and I just go in and get  
6 whatever I need to get and go on out.

7           MR. GRACE: Thank you.

8           THE WITNESS: You're welcome.

9           THE COURT: Mr. Frye?

10          SHERIFF FRYE: You said that your grandmother told you  
11 you needed to quit taking the blame for what other people did.

12          THE WITNESS: Right.

13          SHERIFF FRYE: How many breaking and enterings have you  
14 done?

15          THE WITNESS: Well, I done a quite few on my own.

16          SHERIFF FRYE: Okay.

17          THE WITNESS: And whenever they come to me and I know  
18 that I done that, that when I go ahead on and take a plea bargain  
19 and go run with it because I know I was wrong about what I did.

20          SHERIFF FRYE: How many did you not do that you took the  
21 fall for?

22          THE WITNESS: I'm going to say three or four.

23          SHERIFF FRYE: You took the fall for three or four?

24          THE WITNESS: Exactly.

25          SHERIFF FRYE: That you didn't do?

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1           THE WITNESS: Right.

2           SHERIFF FRYE: How did you break into houses?

3           THE WITNESS: Well, sometime I just go and just sit and  
4 plot, and I said, "Well, this right here is the house I'm outside  
5 going to hit."

6           SHERIFF FRYE: So what do you mean you sit and plot? I  
7 mean, how --

8           THE WITNESS: I mean, you know, like you just wait and  
9 see somebody it's not there and somebody might leave.

10          SHERIFF FRYE: Did you go in a back door or window?

11          THE WITNESS: Go in the back door or window, whatnot.

12          SHERIFF FRYE: Did you break the door open?

13          THE WITNESS: No. I just break a window or whatnot.

14          SHERIFF FRYE: Okay. Did you smoke cigarettes a lot?

15          THE WITNESS: Yes, I do.

16          SHERIFF FRYE: What kind did you smoke?

17          THE WITNESS: Newport.

18          SHERIFF FRYE: Newports?

19          THE WITNESS: Yes, sir.

20          SHERIFF FRYE: Okay. Do you remember? Did they have a  
21 white filter or --

22          THE WITNESS: No, they have a brown filter.

23          SHERIFF FRYE: Brown filter?

24          THE WITNESS: Yes, sir.

25          SHERIFF FRYE: Okay. So you would just sit and wait

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1 until you got an opportunity sometimes?

2 THE WITNESS: True.

3 SHERIFF FRYE: Sit outside the house and watch it for a  
4 little bit?

5 THE WITNESS: That's right.

6 SHERIFF FRYE: Okay.

7 THE WITNESS: I mean, that what I was -- normally did,  
8 when I did what I did, but other people places, I wasn't, no.

9 SHERIFF FRYE: Right.

10 Did you do that with -- at the Drake house when you  
11 raped that woman?

12 Did you stand outside for a while?

13 THE WITNESS: No, because I know her. I knew her.

14 SHERIFF FRYE: You knew her?

15 THE WITNESS: Yeah. I knew her.

16 SHERIFF FRYE: How did you know her?

17 THE WITNESS: Well, me and -- we had a little talk a  
18 lots of time, and I've been knowing Debbie Drake for a minute, you  
19 know, and she kind of like, on the sides, like she'll do a little  
20 drugs and everything. And really, you know, I just go and stop by  
21 her house all the time.

22 SHERIFF FRYE: You stopped by her house all the time?

23 THE WITNESS: Yep.

24 SHERIFF FRYE: Not just once or twice?

25 THE WITNESS: Yeah. A little -- couple -- a couple, her

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1 and -- every now and then.

2 SHERIFF FRYE: Did you do drugs together?

3 THE WITNESS: Yeah, we had did some marijuana.

4 SHERIFF FRYE: Did some marijuana together. How about  
5 cocaine?

6 THE WITNESS: Yes, a little cocaine too.

7 SHERIFF FRYE: Okay. But the night that you raped  
8 her --

9 THE WITNESS: Right.

10 SHERIFF FRYE: -- was the house locked?

11 THE WITNESS: No. I just went through the window.

12 SHERIFF FRYE: Which window?

13 THE WITNESS: The side.

14 SHERIFF FRYE: And it was unlocked?

15 THE WITNESS: No. I just lift it up.

16 SHERIFF FRYE: But it was unlocked?

17 THE WITNESS: Yes.

18 SHERIFF FRYE: You didn't have to break it or anything?

19 THE WITNESS: Right.

20 SHERIFF FRYE: You just lifted it up, crawled through  
21 the window?

22 THE WITNESS: Right.

23 SHERIFF FRYE: Is that the way you would break into  
24 other houses?

25 THE WITNESS: Well, if it --

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1           **SHERIFF FRYE:** Did you ever break a door or anything  
2 like that?

3           **THE WITNESS:** No, I never broke a door, no.

4           **SHERIFF FRYE:** Did you have any tools that you would  
5 use?

6           **THE WITNESS:** No, no tools.

7           **SHERIFF FRYE:** A knife, maybe?

8           **THE WITNESS:** No. No, sir.

9           **SHERIFF FRYE:** Nothing like that to open the doors or  
10 windows?

11          **THE WITNESS:** No, sir.

12          **SHERIFF FRYE:** Just tried to find one open?

13          **THE WITNESS:** Right.

14          **SHERIFF FRYE:** That's all the questions I have.

15          **THE COURT:** Yes, sir.

16          **DR. PERRY:** Mr. Evans, the other B&Es --

17          **THE WITNESS:** Right.

18          **DR. PERRY:** -- did you know every one of those  
19 individuals or did you know none of them or some of them?

20          **THE WITNESS:** I didn't know some of them. I just --  
21 just -- like if it's a house down in the woods, a long way out in  
22 the -- like in a path, it might be a house I might not know who  
23 live there.

24          **DR. PERRY:** And your motive was simply greed?

25          **THE WITNESS:** Right.

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1 DR. PERRY: In the case of the Manning --

2 THE WITNESS: Right.

3 DR. PERRY: -- you knew her, as you were asked. You  
4 knew her husband. They knew you.

5 Did they ever extend you credit in the store?

6 THE WITNESS: Yes. Yes, sir. I mean, when I work on  
7 the farm with them, they always gave me credit, yes.

8 DR. PERRY: With the other B&Es, your motive then was  
9 not personal; as you indicated, it was simply you wanted leads.

10 THE WITNESS: Right.

11 SHERIFF FRYE: You would have no motive, or would you,  
12 to kidnap Ms. Manning?

13 THE WITNESS: No. I never kidnapped --

14 DR. PERRY: Or rob Ms. Manning?

15 THE WITNESS: I never robbed nobody in my life. I never  
16 kidnap nobody in my life.

17 DR. PERRY: You never had angry words with her husband  
18 for anything that you owed them --

19 THE WITNESS: No. Because --

20 DR. PERRY: -- or they owed you?

21 THE WITNESS: No. Because my grandfather, he always  
22 worked with Mr. Manning at the store.

23 DR. PERRY: So the relationship was three generations?

24 THE WITNESS: Right.

25 DR. PERRY: Thank you.

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1           **THE COURT:** Yes, sir.

2           **MR. GLAZIER:** Frank asked what I was going to ask.

3           **MS. COLBERT:** So, Mr. Evans, so your grandparents had a  
4 house on the Manning farm?

5           **THE WITNESS:** Yes, ma'am.

6           **MS. COLBERT:** And were they sharecroppers?

7           **THE WITNESS:** Yes, ma'am.

8           **MS. COLBERT:** And so that was why you were able to -- so  
9 you worked the farm --

10          **THE WITNESS:** Right.

11          **MS. COLBERT:** -- and then they gave y'all -- extended  
12 you credit --

13          **THE WITNESS:** Yes, ma'am.

14          **MS. COLBERT:** -- until the crop was done; right?

15          **THE WITNESS:** Yes, ma'am.

16          **MS. COLBERT:** And then based on what y'all brought with  
17 the crop, you were able to pay all --

18          **THE WITNESS:** -- our debt.

19          **MS. COLBERT:** Yeah.

20                 And so your grandfather also kind of hung out at the  
21 store or worked at the store?

22          **THE WITNESS:** Yes. He always -- like when somebody  
23 pulled up to the gas tank to pump gas, he'll pump the gas for the  
24 peoples.

25          **MS. COLBERT:** Okay.

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1           **THE WITNESS:** And he will always like probably clean up  
2 around the store or mow the grass or whatnot.

3           **MS. COLBERT:** Okay. So it sounds like y'all had a long  
4 history with the Mannings.

5           **THE WITNESS:** We had a long time with them before I get  
6 to the age to leave and move on.

7           **MS. COLBERT:** Yeah. So all that time before you got  
8 married --

9           **THE WITNESS:** Yes.

10          **MS. COLBERT:** -- 19, you were on the farm?

11          **THE WITNESS:** No. I was off the farm when I got 19.

12          **MS. COLBERT:** So you moved?

13          **THE WITNESS:** I moved on up to Louisburg up in -- up on  
14 Kimbrell Avenue.

15          **MS. COLBERT:** But you were still in the area in Franklin  
16 County?

17          **THE WITNESS:** Right.

18          **MS. COLBERT:** Thank you.

19          **THE WITNESS:** You're welcome.

20          **THE COURT:** Yes.

21          **MS. WELCH:** Good afternoon, sir.

22          **THE WITNESS:** Yes, ma'am.

23          **MS. WELCH:** We've got copies of some of your jail phone  
24 calls, and you were talking to somebody -- I forget who -- but you  
25 asked them if they knew that Ms. Manning had died.

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1                   How did you find out that he she had died?

2                   **THE WITNESS:** I gets the *Franklin Times* paper.

3                   **MS. WELCH:** Okay.

4                   **THE WITNESS:** And it was in the *Franklin Times* paper  
5 when I gets it every week.

6                   **MS. WELCH:** And do you remember when that would be? How  
7 long ago it was that she passed away?

8                   **THE WITNESS:** It were last year. Last year.

9                   **MS. WELCH:** And then help me a little bit where you were  
10 when you figured out that it was reported that she had been  
11 kidnapped.

12                   **THE WITNESS:** I was at home with my grandmother.

13                   **MS. WELCH:** Do you -- okay.

14                   Do you remember talking to the individuals from the  
15 Innocence Commission I believe twice -- first in 2017 and then  
16 again this year?

17                   **THE WITNESS:** Yes, ma'am.

18                   **MS. WELCH:** And do you remember in 2017 that you told  
19 them that you had heard that she had been kidnapped on the scanner  
20 in Mr. Perry's store?

21                   **THE WITNESS:** Yes, ma'am.

22                   **MS. WELCH:** So help me understand that.

23                   **THE WITNESS:** Okay. When I was at Tommy Perry store  
24 that night, all of a sudden there's something that came across the  
25 scanner on Mr. Tommy Perry -- in Tommy Perry's store. And then

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1 when Tommy Perry took and say he going to go ahead on and close  
2 the store because he -- I mean, at the time, I didn't think that  
3 nothing was going on at the time. So -- but the scanner was right  
4 there on top of his thing and it went out that somebody had  
5 kidnapped Ms. Rea Manning before we even left the store. So  
6 that's when I started walking over towards my house.

7 MS. WELCH: So you weren't home when you found out. You  
8 were at Mr. Perry's store?

9 THE WITNESS: Ma'am?

10 MS. WELCH: You weren't at your house then. You were at  
11 Mr. Perry's store?

12 THE WITNESS: Yes, ma'am. I was at his store at that  
13 night when he closed it.

14 MS. WELCH: Thank you, sir.

15 THE WITNESS: Yes, ma'am.

16 MR. GRACE: How far did you get in school?

17 THE WITNESS: I went all the way to the ninth.

18 MR. GRACE: Where did you get the primary education? In  
19 Louisburg?

20 THE WITNESS: Right down there on -- right down there on  
21 Schloss Road -- down there to Centerville.

22 THE COURT: Yes.

23 MS. NEWTON: Good afternoon, Mr. Evans. My name is Deb  
24 Newton. I'm an alternate.

25 THE WITNESS: Okay.

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1           **MS. NEWTON:** I'd like to ask you a couple of questions  
2 related to your trial.

3           **THE WITNESS:** Yes, ma'am.

4           **MS. NEWTON:** Did you discuss with your attorney about  
5 testifying at your own trial?

6           **THE WITNESS:** No, ma'am.

7           **MS. NEWTON:** You didn't have a conversation about that?

8           **THE WITNESS:** No, ma'am.

9           **MS. NEWTON:** Okay. And you were sitting there when the  
10 witnesses testified against you?

11           **THE WITNESS:** Right.

12           **MS. NEWTON:** Okay. And did you tell your lawyer they  
13 were not telling the truth?

14           **THE WITNESS:** Yes. I think I recall on that part I told  
15 him that they supposed -- the lawyer supposed to have brought out  
16 a map to where I was at and where Ms. Rea Manning was living at  
17 and where Tommy Perry store was at. And he never brought that map  
18 out, and I wanted to know why he said that he was going to bring a  
19 map to say where I was at when --

20           **MS. NEWTON:** But you didn't testify.

21                   Did you decide you didn't want to testify for some  
22 reason?

23           **THE WITNESS:** I wanted to testify but he -- like he told  
24 me, if I testify, he's going to bring up everything that I have  
25 been locked up -- I mean got charged for in my past.

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1 MS. NEWTON: And you still didn't want to testify?

2 THE WITNESS: Yes, I did.

3 MS. NEWTON: Okay. Did you call any witnesses? Did  
4 anyone else testify on your behalf?

5 THE WITNESS: Yes.

6 MS. NEWTON: Who?

7 THE WITNESS: My aunt, Mary Alice Moore.

8 MS. NEWTON: Okay.

9 THE WITNESS: Alice Faye Johnson. They wanted -- I  
10 wanted my grandmother. My grandmother -- I'm going to take this  
11 back. My grandmother wanted to come and testify but Pat Green was  
12 telling her that he didn't want her there because of her age  
13 limit.

14 MS. NEWTON: Well, the two people who did testify, what  
15 did they know about this kidnapping?

16 THE WITNESS: Well, they know that I didn't do it. They  
17 know that --

18 MS. NEWTON: How did they know -- what did they testify  
19 about where you were?

20 THE WITNESS: My aunt, she testified -- my aunt Mary  
21 Alice, she testified that I was at home at the time.

22 MS. NEWTON: Was she there with you?

23 THE WITNESS: Yes, ma'am.

24 MS. NEWTON: Have you told anybody that she was home  
25 with you at 9:00 o'clock that night?

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1           **THE WITNESS:** Yes, ma'am. Because they had tried to --  
2 they tried to get her to tell a tale about like -- saying like  
3 when she -- when I went into my room and went to lay down, they  
4 asked her how can she say that I was in my room after I shut the  
5 door. I think Pat Green the one told her that. He said that  
6 if -- when I left in the house, how did the window -- how did he  
7 think I could've went to the window and left out in the window or  
8 something.

9           **MS. NEWTON:** So did you leave through the window?

10          **THE WITNESS:** No, ma'am.

11          **MS. NEWTON:** Did you go to bed?

12          **THE WITNESS:** I went straight to bed.

13          **MS. NEWTON:** By yourself in your room?

14          **THE WITNESS:** Yes, ma'am.

15          **MS. NEWTON:** Okay. What time do you think you went to  
16 bed?

17          **THE WITNESS:** I went to bed right at 9:00 -- about a  
18 little after 9:00 after I got home at 9:00.

19          **MS. NEWTON:** Okay. The other witness -- was she also at  
20 your house when you --

21          **THE WITNESS:** No, ma'am.

22          **MS. NEWTON:** And what did she testify to?

23          **THE WITNESS:** The only thing she testified -- that is  
24 Alice Faye Johnson. She testified that I used to come to her  
25 house to be with her mom and cut her grass and, you know, do

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1 little stuff.

2 MS. NEWTON: She was a character witness?

3 THE WITNESS: Yes, ma'am.

4 MS. NEWTON: Okay. Now, during your trial, do you -- we  
5 don't have the transcript so we can't read that.

6 THE WITNESS: Right. Okay.

7 MS. NEWTON: Do you recall anybody talking about the  
8 polygraph that you took during the trial?

9 THE WITNESS: No, ma'am.

10 MS. NEWTON: Did you your lawyer talk to you about that  
11 evidence?

12 THE WITNESS: No, ma'am.

13 MS. NEWTON: Did you ask about it?

14 THE WITNESS: Well, no, I didn't.

15 MS. NEWTON: All right. Now, on the night that you were  
16 apparently at Linda's house and then you walked over to the pool  
17 room -- you remember saying that?

18 THE WITNESS: Yes, ma'am.

19 MS. NEWTON: What time did you -- well, did you start  
20 drinking or doing drugs at Linda's house?

21 THE WITNESS: No, ma'am. We was just around there  
22 playing basketball with her little -- I was around there playing  
23 basketball with her little children. She had some little children  
24 around about like 17.

25 MS. NEWTON: And you're 26 old right now.

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1           THE WITNESS: Exactly.

2           MS. NEWTON: Okay. So how long did you stay with Linda?

3           THE WITNESS: I stayed at her house at least about an  
4 hour before I --

5           MS. NEWTON: You didn't do any drugs or any drinking  
6 there?

7           THE WITNESS: No, ma'am.

8           MS. NEWTON: Okay. And then when you got to the pool  
9 room, did you do any drugs or any drinking there?

10          THE WITNESS: No, ma'am.

11          MS. NEWTON: None?

12          THE WITNESS: No, ma'am.

13          MS. NEWTON: Did you ever drink?

14          THE WITNESS: Yes, I did.

15          MS. NEWTON: Okay. What did you drink?

16          THE WITNESS: I drank beer. And I probably drank a  
17 little liquor every now and then.

18          MS. NEWTON: All right. So you were also using cocaine  
19 at the time, I think you've also answered that question.

20          THE WITNESS: Right.

21          MS. NEWTON: Okay. So were you not using cocaine that  
22 day?

23          THE WITNESS: No, ma'am.

24          MS. NEWTON: Why not?

25          THE WITNESS: Because I -- I just didn't have no money

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1 that day.

2 MS. NEWTON: So when did you start using cocaine in your  
3 life?

4 THE WITNESS: I start using cocaine when I was up in  
5 Virginia.

6 MS. NEWTON: How old were you?

7 THE WITNESS: I'm going to give that age around about  
8 20.

9 MS. NEWTON: Okay. So are we talking crack, powder --  
10 what were you using?

11 THE WITNESS: Powder.

12 MS. NEWTON: Powder cocaine?

13 THE WITNESS: Yes, ma'am.

14 MS. NEWTON: And so how often? Quite often? Or not  
15 often?

16 THE WITNESS: Not that often, just every once in a  
17 while.

18 MS. NEWTON: How often?

19 THE WITNESS: I'm saying like if I do it today, I  
20 probably won't do it no more in about two more days.

21 MS. NEWTON: Okay. So at that time, when you were 20 --

22 THE WITNESS: Right.

23 MS. NEWTON: -- how often did you use cocaine -- by the  
24 time you were 26 years old --

25 THE WITNESS: How often --

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1 MS. NEWTON: -- were you using it by the time you were  
2 26?

3 THE WITNESS: About three times.

4 MS. NEWTON: Three times a day? A week?

5 THE WITNESS: A day -- something like that.

6 MS. NEWTON: It's your testimony.

7 THE WITNESS: Yes, ma'am.

8 MS. NEWTON: How often were you using it?

9 THE WITNESS: I weren't using it that regular. I was  
10 using it every once in a while.

11 MS. NEWTON: So how would you pay for your cocaine?

12 THE WITNESS: Well, sometime I might go and get  
13 something like --

14 MS. NEWTON: A breaking and entering.

15 THE WITNESS: -- I might work with somebody, help  
16 somebody. And like I'll say like this man might want me to work  
17 on his yard, cut his grass. I might get somebody like --

18 MS. NEWTON: Mr. Evans, did you have a job at the time?

19 THE WITNESS: Yes, I had a job.

20 MS. NEWTON: Okay. You're doing odd jobs?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: For pocket change, like that?

23 THE WITNESS: Yes, ma'am.

24 MS. NEWTON: Okay. And then -- but no regular job;  
25 right?

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1 THE WITNESS: Well, I had a regular job, yes.

2 MS. NEWTON: What were you doing?

3 THE WITNESS: I was working at Toney's Lumber Company.

4 MS. NEWTON: Okay. Was that full-time?

5 THE WITNESS: Yes, indeed.

6 MS. NEWTON: Oh, good. Okay.

7 THE WITNESS: Yeah.

8 MS. NEWTON: So at 26, you were working at Toney's  
9 Lumber. How long did you work there?

10 THE WITNESS: I worked there for about like a year and a  
11 half, something like that.

12 MS. NEWTON: Okay. Was that at the time this incident  
13 happened?

14 THE WITNESS: No, ma'am.

15 MS. NEWTON: Was it before or after?

16 THE WITNESS: This is before.

17 MS. NEWTON: Before. And so you didn't have that job at  
18 the time this happened?

19 THE WITNESS: Right.

20 MS. NEWTON: Okay. But you were still using cocaine?

21 THE WITNESS: Right.

22 MS. NEWTON: Okay. You didn't use any by the time you  
23 got to the pool room that night; correct?

24 THE WITNESS: No, ma'am.

25 MS. NEWTON: And didn't use any at the pool room that

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1 night?

2 THE WITNESS: No, ma'am.

3 MS. NEWTON: You're completely sober?

4 THE WITNESS: Sober.

5 MS. NEWTON: Okay. Did you normally drink or use drugs  
6 while you were shooting pool with your friends?

7 THE WITNESS: No, ma'am.

8 MS. NEWTON: Okay. So when you used cocaine, under what  
9 circumstances would you do it? Would you do it with the woman  
10 that you raped or by yourself or --

11 THE WITNESS: Well, I do it around friends.

12 MS. NEWTON: But not --

13 THE WITNESS: I mean, you know, we might have friends,  
14 we'd get together, and we all lit together, and then we'd just put  
15 the money together and we would get a little bit together and we  
16 all do it at one time.

17 MS. NEWTON: All right. So you said you walked home  
18 about 8:45?

19 THE WITNESS: Right.

20 MS. NEWTON: And you got home about 9:00; right?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: Okay. Did you leave?

23 THE WITNESS: Leave from home? No, ma'am.

24 MS. NEWTON: Now, Mr. Evans, at the time that this was  
25 going on at 26, do you remember what your facial hair was?

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1 THE WITNESS: Yes, ma'am.

2 MS. NEWTON: What was it?

3 THE WITNESS: I had like wavy hair at the time.

4 MS. NEWTON: Okay. And how about your facial hair?

5 THE WITNESS: I didn't have no facial hair.

6 MS. NEWTON: May I approach the witness, Judge?

7 THE COURT: Sure.

8 MS. NEWTON: Do you mind?

9 THE COURT: Maybe just clarify what you mean by "facial  
10 hair."

11 MS. NEWTON: Now, Mr. Evans, I want to show you a  
12 photograph that is Exhibit 10.

13 THE WITNESS: Okay.

14 MS. NEWTON: And in the photograph, you have a mustache;  
15 is that correct?

16 Is that you in that photograph?

17 THE WITNESS: That's not my picture.

18 MS. NEWTON: That's not --

19 (Reporter clarification.)

20 MS. NEWTON: He said, "That's not my picture."

21 Can you repeat that?

22 THE WITNESS: Yes. This not my picture.

23 MS. NEWTON: Okay.

24 THE WITNESS: This is not my picture.

25 MS. NEWTON: All right. Let me hand this back.

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1 Is that Exhibit 10?

2 MS. TANNER: This is Handout 10?

3 MS. NEWTON: Okay. And Handout 10, is that supposed to  
4 be him?

5 MS. SMITH: Yes.

6 MS. NEWTON: Okay. Do you recognize the room that  
7 you're in? Have you ever seen that room before?

8 THE WITNESS: No, ma'am.

9 MS. NEWTON: And you're sure that's not you?

10 THE WITNESS: Yes, ma'am.

11 MS. NEWTON: Okay.

12 THE COURT: Do you know who it is?

13 THE WITNESS: No, I don't.

14 MS. NEWTON: Now, the gentleman in this picture has  
15 facial hair; right?

16 THE WITNESS: Right.

17 MS. NEWTON: Okay. And what kind of facial hair is  
18 that? Is it --

19 THE WITNESS: This right here is -- you talking about  
20 mustache?

21 MS. NEWTON: This guy. Yeah. Mustache.

22 THE WITNESS: Okay.

23 MS. NEWTON: Okay. Now, as you're sitting here, do you  
24 also have a mustache?

25 THE WITNESS: Yes, ma'am.

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1 MS. NEWTON: Okay. Now, when you were 26, did you have  
2 that same little mustache?

3 THE WITNESS: No, ma'am.

4 MS. NEWTON: When did you start growing that?

5 THE WITNESS: I grewed this right here around about like  
6 when I was like 30 -- when I was about 30, almost 31 years old.

7 MS. NEWTON: Oh.

8 THE WITNESS: I'm just now getting this here, yes,  
9 ma'am.

10 MS. NEWTON: Okay. Now, I'm going to show you a  
11 composite -- page 40 -- a composite sketch.

12 Did anybody ever show you that picture?

13 THE WITNESS: No, ma'am.

14 MS. NEWTON: You've never seen that?

15 THE WITNESS: Never seen it.

16 MS. NEWTON: Do you know what that is?

17 THE WITNESS: Well, they say it's freckles.

18 MS. NEWTON: But I mean that sketch itself.

19 THE WITNESS: I mean, it looks like freckles.

20 MS. NEWTON: Okay. And now --

21 THE WITNESS: I don't have -- that would -- they said in  
22 the case that I was supposed to have freckles on my face.

23 MS. NEWTON: Okay. Have you ever had freckles?

24 THE WITNESS: No, ma'am.

25 MS. NEWTON: You haven't never done anything to get rid

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1 of freckles?

2 THE WITNESS: No, ma'am.

3 MS. NEWTON: Okay. Mind if I get closer?

4 THE WITNESS: Yes, ma'am.

5 MS. NEWTON: I'm a little nearsighted. Yeah. You've  
6 got a few spots here, but what is that?

7 THE WITNESS: Right now, it just looks like  
8 puff-puffs -- you know, like pimples?

9 MS. NEWTON: Sure. And the spots on your face, do they  
10 look like the spots on this composite to you?

11 THE WITNESS: No, ma'am.

12 MS. NEWTON: Okay. Thank you. Now, I'm going to ask  
13 you to look at this again.

14 Are you sure this isn't you?

15 THE WITNESS: Yeah, I want to look at that because this  
16 is not me. This is not me. No, ma'am. I'm being honest. It's  
17 not me.

18 MS. NEWTON: Okay. Thank you very much.

19 THE WITNESS: You're welcome.

20 MS. NEWTON: Just a few more, Judge.

21 Do you know anybody with freckles?

22 THE WITNESS: No, ma'am, I don't.

23 MS. NEWTON: That kind of freckles in Louisburg?

24 THE WITNESS: No, ma'am, I don't.

25 MS. NEWTON: You said you went to school up to the ninth

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1 grade.

2 THE WITNESS: Yes, ma'am.

3 MS. NEWTON: Okay. What kind of classes were you in?  
4 Were you in advanced classes or were you in any special classes?

5 THE WITNESS: Yes, ma'am. I was in special class.

6 MS. NEWTON: Why?

7 THE WITNESS: Special ed because it couldn't get my  
8 class -- I couldn't, you know, keep up with my classmates.

9 MS. NEWTON: Okay. All right. Did you fall behind in  
10 years?

11 THE WITNESS: Yes, I did.

12 MS. NEWTON: How many?

13 THE WITNESS: I fall behind a lot of times.

14 MS. NEWTON: Okay. How old were you when you left  
15 school? Do you recall?

16 THE WITNESS: I was like 16.

17 MS. NEWTON: Okay. And that was ninth grade?

18 THE WITNESS: Yes, ma'am. I mean, no -- yes. It was  
19 going to the ninth grade. Now, I quit before I went to the ninth  
20 grade, yes.

21 MS. NEWTON: So you finished eighth grade?

22 THE WITNESS: Right.

23 MS. NEWTON: All right. But you were in special ed;  
24 right?

25 THE WITNESS: Yes, ma'am.

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1           MS. NEWTON: Okay. During school, did you have any  
2 mental treatment or any diagnosis that you're aware of?

3           THE WITNESS: No, ma'am.

4           MS. NEWTON: In all of your criminal offenses that you  
5 were actually convicted of, did a judge ever order as a condition  
6 of probation you get any mental health treatment?

7           THE WITNESS: The only thing that he had me doing was I  
8 had to go get a -- at the CP -- not CP, but Dorothea Dix, just  
9 as -- you know, I couldn't -- he said I was competent enough to  
10 stand trial. I went to --

11          MS. NEWTON: That was before your trial?

12          THE WITNESS: Right.

13          MS. NEWTON: The man who assessed you, how many times  
14 did you meet with him?

15          THE WITNESS: Excuse me?

16          MS. NEWTON: The man who said you were competent, how  
17 many times did you meet with him?

18          THE WITNESS: Just once.

19          MS. NEWTON: Okay. And then the next you go to real  
20 court; right?

21          THE WITNESS: Yes.

22          MS. NEWTON: Okay. Did you sign any permission slips to  
23 get your education records or your mental health records?

24          THE WITNESS: No, ma'am.

25          MS. COLBERT: Okay. Now, back to the question about the

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1 criminal probation -- did a judge ever order you to get any mental  
2 health treatment for any reason?

3 THE WITNESS: No, ma'am.

4 MS. NEWTON: Okay. So your lawyer never said, "He's got  
5 this particular problem and needs treatment"?

6 THE WITNESS: Right. Right. No, ma'am. I ain't never  
7 had --

8 MS. NEWTON: That never happened?

9 THE WITNESS: No, ma'am, never happened.

10 MS. NEWTON: Do you know that you have any kind of a  
11 mental health issue?

12 THE WITNESS: No, ma'am, I don't.

13 MS. NEWTON: Okay. You just have an eighth grade  
14 education, but otherwise you can read?

15 THE WITNESS: Yes, ma'am.

16 MS. NEWTON: You can read.

17 And you can write?

18 THE WITNESS: Yes, ma'am.

19 MS. NEWTON: Okay. And you understood what was going on  
20 during your trial?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: Okay. So did you and your lawyer talk  
23 about the appeal?

24 THE WITNESS: Well, yes, we did. We talked about it.

25 MS. NEWTON: Why didn't you appeal the kidnapping and

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1 the robbery with a dangerous weapon and the larceny?

2           **THE WITNESS:** I thought I had -- I thought I did -- I  
3 thought I did appeal that case, and I think they just denied me of  
4 that appeal.

5           **MS. NEWTON:** Well, you only appealed the second-degree  
6 burglary but apparently not the kidnapping, and I was just  
7 wondering why.

8           **THE WITNESS:** I don't know. I thought I did that  
9 myself.

10           **MS. NEWTON:** Okay. So, Mr. Evans, what result are you  
11 hoping for with this procedure?

12           **THE WITNESS:** Well, I was just hoping that I can go on  
13 with my life and -- now, I just feel so sorry about what happened  
14 to the Mannings, you know. And I just wish they had the right  
15 person of this crime who did this crime because I've been around  
16 them too long and I never have done anything to these people  
17 because even though I worked with them through all the years, but  
18 this is something I never done.

19           **MS. NEWTON:** On the jail phone calls -- we got a copy of  
20 some of your jail phone calls.

21           **THE WITNESS:** Yes, ma'am.

22           **MS. NEWTON:** And there was some talk in those jail phone  
23 calls with your family about getting money out of, you know, a  
24 positive result here.

25           **THE WITNESS:** But see, that's one thing about --

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1           **MS. NEWTON:** Wait.

2           Who raised that? How did that come up?

3           **THE WITNESS:** Well, you know, when you -- when they  
4 was -- we set there and talk on the phone, and they said like I  
5 might have talked to my aunt, and she say that -- or my wife, they  
6 might say, "Well, if you need to do this crime, they can do like  
7 other peoples" that they getting out of prison right now through  
8 the innocence people. How they -- you know, like giving them this  
9 much money for what they ain't done and how many years they done  
10 spent in prison, and how much they are going to get and how much  
11 they can get for whatever they did not do in prison and now they  
12 going to set them free to give them that much money. So that's  
13 how that came about.

14           **MS. NEWTON:** So how did you decide to write to the  
15 innocence commission? What made you decide to finally write to  
16 the innocence commission?

17           **THE WITNESS:** Okay. That's a good one because I really  
18 didn't know but I had to go through some sources to figure out how  
19 can I get around to this case, on Ms. Rea Manning case because I  
20 almost like to gave up because I didn't know who to go to get this  
21 case started back.

22           I went to Albemarle in 2016. And I was talking to a  
23 guy, and I asked him, I said, "Man, I am in here on a crime that I  
24 never did in my life and I don't know who I can go and get to help  
25 me get this back in court."

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1           So he told me -- his name is Sherman. I'm going to give  
2 you his name. His name is Sherman White.

3           MS. NEWTON: White?

4           THE WITNESS: Yes. Sherman White. And he said, "If you  
5 get a chance, you come and talk to me. We going to talk and we  
6 going to find out how to get you back into court."

7           MS. NEWTON: Was he an inmate?

8           THE WITNESS: Yes, ma'am.

9           MS. NEWTON: Okay. So was he a writ-writer at the jail?  
10 Would he write motions for people?

11          THE WITNESS: Yes.

12          MS. NEWTON: Did help you with --

13          THE WITNESS: Yes, indeed. He helped me get to where  
14 I'm at right today.

15          MS. NEWTON: Oh.

16          THE WITNESS: And I told him about all that I have done  
17 or not done in this case that I'm working with. And he told me to  
18 sit down and tell me -- tell him everything that what happened and  
19 what didn't happen. So I told him, and that's what put me through  
20 the innocence requirement.

21          MS. NEWTON: Thank you, Mr. Evans. I have nothing  
22 further.

23          THE WITNESS: You're welcome.

24          THE COURT: Follow-up for anyone? Questions?

25          MR. BOSWELL: A minute ago I asked you if you were

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1 living with Ms. Clemonts when the twin babies died.

2 THE WITNESS: Yes.

3 MR. BOSWELL: Did you go to the hospital with her when  
4 that happened?

5 THE WITNESS: No, sir.

6 MR. BOSWELL: Who did?

7 THE WITNESS: I don't know who went with her but I  
8 didn't go because I was there when she told me after it happened.  
9 Me and her were living in Savage Street in Franklinton.

10 MR. BOSWELL: On Seventh Street?

11 THE WITNESS: Savage Street.

12 MR. BOSWELL: Savage Street --

13 THE WITNESS: Right.

14 MR. BOSWELL: -- when that happened?

15 THE WITNESS: Exactly.

16 MR. BOSWELL: So she went to the hospital and she told  
17 you about it after the fact?

18 THE WITNESS: Yes. She told me after.

19 I did not go with her to the hospital.

20 MR. BOSWELL: Okay.

21 SHERIFF FRYE: Final follow-up.

22 You said you like Newport cigarettes?

23 THE WITNESS: Yes, indeed.

24 SHERIFF FRYE: Menthol or regular?

25 THE WITNESS: Menthol.

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1           **SHERIFF FRYE:** Okay. Good enough. Thank you.

2           **MR. BOSWELL:** Do you remember what is written on a  
3 Newport cigarette?

4           **THE WITNESS:** Yes. It's got Newport and then they got  
5 the lines going around.

6           **THE COURT:** Newport what?

7           **THE WITNESS:** 100.

8           **MR. BASS:** Hi, Mr. Evans. I'm Scott Bass.  
9 You said you used to smoke a lot and you mentioned  
10 Newports.

11          **THE WITNESS:** Right.

12          **MR. BASS:** You said that you did some breaking and  
13 enterings.

14          **THE WITNESS:** Yes.

15          **MR. BASS:** Did you smoke when you were doing those  
16 crimes?

17          **THE WITNESS:** Yes, sir.

18          **MR. BASS:** Okay. Just curious. Thank you.

19          **THE WITNESS:** You're welcome.

20          **MR. BOSWELL:** Can I show a picture?

21          **THE COURT:** Absolutely.

22          **MR. BOSWELL:** Let me show you a picture.

23 Can you see that? Do you recognize that cigarette?

24          **THE WITNESS:** Yes, sir.

25          **MR. BOSWELL:** What is that?

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1           **THE WITNESS:** That looks like a -- not a Newport might  
2 but might be another brand cigarette not a Newport.

3           **THE COURT:** For the rest of us, tell us what exhibit  
4 that was or wherever you were.

5           **MR. BOSWELL:** That's page 73 of the brief.

6           **THE COURT:** Thank you. That was the brief that was sent  
7 out to us?

8           **MR. BOSWELL:** Yes.

9           **THE COURT:** Hold on.

10          **MS. SMITH:** I have a follow-up. Is it okay if I go  
11 ahead and ask?

12 BY MS. SMITH: (3:44 p.m.)

13          **Q.** Mr. Evans, the scar on your head, when did you get that?

14          **A.** When I was little when me and my cousin were in the tree  
15 playing, trying to get everything. And all of a sudden, she got  
16 her pocketbook stuck into a tree and I tried to go up in the tree  
17 to get it, and she took and throwed a brick and it hit me upside  
18 the head.

19          **Q.** Do you know a man named Archie Lee?

20          **A.** Yes, ma'am.

21          **Q.** And who is that to you?

22          **A.** That's my cousin.

23          **Q.** That's your cousin?

24                I'm going to show you again what's is marked Handout 10.  
25 This is those photographs that I know you said are not you.

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1 Do you see on the forehead there that looks like a scar?

2 A. No, ma'am.

3 Q. You don't see a scar?

4 A. No, ma'am.

5 Q. Okay. If Archie Lee gave us these photographs and told  
6 us they were you and that they were taken around Christmas 1991,  
7 is he just mistaken?

8 A. I think he's mistaken.

9 Q. Okay.

10 THE COURT: Okay. Anything else?

11 MS. NEWTON: I'm sorry. May I approach the witness?

12 THE COURT: Yes.

13 MR. BOSWELL: Where are those photographs?

14 MS. SMITH: Handout 10.

15 MS. NEWTON: Mr. Evans, do you mind if I see your scar?  
16 That's a nice scar you've got there. It's a big scar.

17 Is that a scar?

18 THE WITNESS: Yes, that's where I got hit with a brick.

19 MS. NEWTON: Got it.

20 THE WITNESS: My cousin hit me with a brick at the time  
21 we was going up in the tree to try to get her pocketbook. And my  
22 grandma, she wanted to -- she wanted not to stitch it. She put  
23 some smut in it --

24 (Reporter clarification.)

25 THE WITNESS: Smut. Yeah, like smut in a chimney.

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1 MS. NEWTON: How old were you?

2 THE WITNESS: I was like I'm going to say about 12 or  
3 somewhere around 9 or 12 years old.

4 MS. NEWTON: Thank you.

5 THE COURT: Commissioners have any further questions?  
6 Mr. Boswell? You look like you do.

7 MR. BOSWELL: No. But I might and so I was wondering if  
8 we could keep him under subpoena for just a few minutes after he  
9 leaves the room.

10 THE COURT: Sure. We can do that.

11 MS. NEWTON: Is there any way to photograph the scar to  
12 preserve what he looks like today?

13 MR. GRACE: Well, that scar ain't going anywhere.

14 MS. NEWTON: Well, I mean for the purposes of the  
15 record, just because we looked at that, just to preserve that.

16 THE COURT: There's nothing going to happen except  
17 whatever happens here.

18 MS. NEWTON: Okay.

19 THE COURT: I think that's it.

20 MS. NEWTON: Okay.

21 THE COURT: So can you have him have a seat out there  
22 and we will call him back if we need him.

23 Is that it?

24 MS. SMITH: That's correct.

25 THE COURT: All right. Sir, thank you. We're going to

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1 let you go back out there and sit. And if any individuals have  
2 any other questions they want to ask you, we'll call you back in,  
3 okay?

4 **THE WITNESS:** Yes, ma'am.

5 **THE COURT:** So don't let him leave yet.

6 **THE BAILIFF:** Yes, ma'am.

7 **THE COURT:** All right. Thank you.

8 (Witness stands down, 3:55 p.m.)

9 **THE COURT:** Thank you, sir.

10 **MS. SMITH:** I'm going to recall Ms. Matoian just briefly  
11 to follow up on a couple of things that were -- that Mr. Evans  
12 testified about and see if we can't clear up a couple of things  
13 and then allow you-all to ask any questions of her that may help  
14 you figure out things that you still have questions about.

15 (Catherine Matoian recalled.)

16 **BY MS. SMITH:** (3:55 p.m.)

17 **Q.** Ms. Matoian, I believe it was Commissioner Welch picked  
18 up on some information that Mr. Evans provided about a scanner at  
19 Tommy Perry's store and hearing about this crime before he left  
20 the store.

21 Can you tell Commissioners what we learned during our  
22 investigation about that?

23 **A.** I can. Mr. Evans did indicate to the Commission and  
24 also I believe earlier in one of the defense files that he had  
25 heard about the kidnapping over the scanner at the store.

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1           Page 440 of your brief is the second page of a newspaper  
2 article from the night of the crime that indicated that there was  
3 another woman in Franklinton who was robbed that same night. The  
4 newspaper article indicates that that crime was also reported  
5 around 10:00 o'clock, which would be after the time Mr. Evans said  
6 he left the store.

7           We -- in the Ballance defense file, there are notes for  
8 their preparation to cross Tommy Perry, and one of those pages  
9 says "Report of robbery of schoolteacher in Franklinton by man  
10 with a butcher knife came over radio while you were at store. KE  
11 was there with you."

12           That's all we have. We don't have many reports of  
13 interviews with Tommy Perry to know if that information came from  
14 him or where it came from, but that is just another possible crime  
15 that there is some indication also came over the scanner that  
16 night.

17           **THE COURT:** Yes, sir.

18           **MR. GLAZIER:** I don't know if there's other questions.

19           **MS. SMITH:** I'm going to allow you-all to ask questions  
20 of Ms. Matoian.

21           **THE COURT:** As you go.

22           **MR. GLAZIER:** Well, this is a different topic.

23           **MS. SMITH:** I think that's fine.

24           **MR. GLAZIER:** I'm am going to preface it with a comment  
25 and my comment is I found him to be incredibly believable,

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1 credible, except for this issue with the picture.

2 And I'm just -- to get a sense of -- because I tend to  
3 think it looks like him and is him. It doesn't mean it can't be  
4 someone else.

5 Do we have a sense of why -- I mean, has this ever been  
6 shown to him?

7 **THE WITNESS:** No. We just obtained those photographs  
8 from his family member, Archie Lee, a couple weeks ago -- it may  
9 even have been last week.

10 So that picture has never been shown to him before. The  
11 picture was provided to us along with some others that were of  
12 unknown dates of Mr. Evans. We do have the photographs that we  
13 found of Mr. Evans at the Franklin County Sheriff's Office that I  
14 mentioned were of poor quality for viewing the markings on his  
15 face. The scar is visible in those as well.

16 **MR. GLAZIER:** So the other pictures -- let me follow up.

17 **THE COURT:** Sure.

18 **MR. GLAZIER:** Thank you.

19 The other pictures that you've got from Lee, were any of  
20 those shown to him to ask if they were good pictures him?

21 **THE WITNESS:** To Mr. Evans?

22 **MR. GLAZIER:** Yes.

23 **THE WITNESS:** No. We haven't shown Mr. Evans any of  
24 these pictures we got from Archie Lee.

25 **MR. GLAZIER:** I would be curious if we end up taking a

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1 break -- following Mr. Boswell's comment about holding him for a  
2 few minutes, I wonder if you can show him the other pictures and  
3 ask him if those are him.

4 **THE COURT:** Like the mug shots or whatever Franklin  
5 County had?

6 **MR. GLAZIER:** I recognize we're dealing with someone who  
7 has been traumatized by being in prison for 30 years. And having  
8 represented someone in this circumstance, I can fully appreciate  
9 the PTSD that occurs after circumstances like this, and I  
10 understand he's not -- he's got his own issues.

11 Again, I found him to be intensely credible but I'm just  
12 trying to figure out is he -- why he isn't admitting this is him,  
13 if those pictures are different, if he has a different self-image  
14 of who this is versus who he thinks he is -- I'm trying to get  
15 through that in my mind.

16 **THE COURT:** We have one commissioner who does not think  
17 it's him either.

18 **MR. GRACE:** That's a good-sized man in that picture.  
19 Look at the shoulders, across ...

20 **MR. GLAZIER:** It may not be.

21 **MR. GRACE:** That's a good-sized man.

22 **MS. NEWTON:** One of the reasons I asked about that scar  
23 is I had to get up close. But at that distance, I'm not -- you  
24 know, if the scar is generally in the same place. But anyway ...

25 **MR. GLAZIER:** I mean, I'm just curious. There may be no

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1 answer -- again, because I found the rest of his testimony to be  
2 incredibly credible.

3 MS. NEWTON: But the scar doesn't look just like what I  
4 saw.

5 MR. BOSWELL: I don't mean this rudely, but what  
6 difference does it make?

7 MR. GLAZIER: Well, it may not. But I -- it may affect  
8 me a little bit in how I view the final credibility. I just want  
9 to be sure that I understand why he -- if it's not him, that's  
10 fine; if it is and we believe it to be him, I want to know why --

11 MR. BOSWELL: Not doing anything criminal in this?

12 MS. NEWTON: No. The reason I was asking -- that might  
13 help, John -- is that I approached him with a composite and the  
14 photograph. The victim says clearly no mustache. Clearly all  
15 these freckles -- prominent freckles. And the defense lawyer's  
16 closing note, which is all we have from the trial, indicate that  
17 that was a point he insisted on for the jury. And in this  
18 photograph, he clearly has a mustache. In today's hearing, he  
19 had, you know, very similar mustache on him today.

20 MR. GRACE: Do we know when this picture was taken?

21 MS. NEWTON: I don't. See, that's a thing.

22 So I was asking him, "When did you grow the mustache?  
23 Did you have it then?" And he said no. "I said when did you  
24 start growing it?" And he said, "When I was 31. I just was able  
25 to grow it."

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1           Now, take into account that he is a special ed in  
2 school. We don't know what his perceptions are. No one  
3 apparently ordered him into any assessment for treatment and Dix  
4 only saw him for a day.

5           So all of that said, we don't know what his perceptions  
6 are.

7           But I was trying to figure out if he had a mustache on  
8 the night of the incident because this picture has one and he has  
9 one in court, but he said he didn't and the lawyer's notes  
10 indicated -- they were insisting you know, that the victim was  
11 insisting at trial that the man had no mustache and had prominent  
12 freckles. And the composite has no mustache and prominent  
13 freckles.

14           So ... but he said he'd never even seen the composite  
15 before.

16           **MR. GRACE:** But I tend to agree with John. I don't know  
17 that it matters because the victim also said he had a mask on and  
18 clearly he doesn't have freckles.

19           **MS. NEWTON:** No. He has some on the left side, but I --  
20 why would -- the attorney's closing notes -- again, we don't have  
21 the transcript. But it was -- it was prominent in his closing  
22 about the physical description by the victim, and that was one of  
23 those things and I just wanted to know if he often had a mustache  
24 or not which he said he clearly did not.

25           **THE COURT:** She said there were different times he had

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1 different kind of things, one of which -- face would have been  
2 covered.

3           **MR. GRACE:** A doughy mask? I mean, she's not able to  
4 give any description. And her first statement or one of her first  
5 statements was he had a doughy mask on. I don't know what  
6 description she could give of his face.

7           **MS. NEWTON:** But according to the closing notes, she  
8 gave the description, or someone did, of him because he is arguing  
9 before the jury about it.

10           **THE COURT:** Well, she probably did, I guess, when she  
11 testified.

12           **MR. GLAZIER:** Well, I take back my request. I think  
13 John and Mike are right. I don't think it matters. I mean, I  
14 think the rest of it does, but this the self-image of whether this  
15 is or not probably doesn't make a difference.

16           **THE WITNESS:** I will just note that the two photographs  
17 that we got from Archie Lee, the back just indicates "Xmas '91."  
18 It doesn't have any mark --

19           **THE COURT:** It says --

20           **THE WITNESS:** "Xmas '91." It doesn't have any other  
21 date information.

22           **THE COURT:** Yes, sir.

23           **MR. BOSWELL:** Remind me when those babies died.

24           **THE WITNESS:** April 1, 1990. So about three weeks after  
25 the crime happened.

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1           **MR. BOSWELL:** Three weeks after the crime happened.

2           **THE COURT:** Somewhere I know there's a picture -- but  
3 somewhere there's something I read this weekend that talked  
4 exactly about the cigarette.

5           Do you know if it's in the defense notes or the  
6 investigator's notes? Does that ring a bell? It was either  
7 Iceberg or Icelandic ...

8           **THE WITNESS:** Alpine.

9           **THE COURT:** What?

10          **THE WITNESS:** Alpine.

11          **THE COURT:** Well, I was close I guess.

12          **MR. BOSWELL:** Was that the brand of cigarette?

13          **THE WITNESS:** That was the brand of one of the  
14 cigarettes that was found.

15          The victim smoked -- let me find her daughter's  
16 interview.

17          **THE COURT:** That was the other question. Was she  
18 smoking?

19          **MR. GLAZIER:** My comment is different, and that is I  
20 smoked Newports back then too.

21          **THE COURT:** Where were you?

22          **MR. GLAZIER:** Not in Franklin County.

23          **DR. PERRY:** So what's wrong with Franklin County?

24          **MR. GLAZIER:** I just wasn't in Franklin County.

25          **MR. GRACE:** Me too.

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1           **THE COURT:** Yes, sir.

2           **MR. BASS:** And I think this has already been clearly  
3 established, but I know I was interested in the cigarette butts  
4 and there were photos of them, but they were never tested for DNA.  
5 Only the do-rag was tested, and it excluded Mr. Evans. But the  
6 cigarette butts weren't even tested.

7           **THE WITNESS:** So the do-rag was tested by the Commission  
8 for DNA. Only at the time do they do -- they checked it for  
9 hairs. The Commission did DNA testing on the do-rag. We have not  
10 been able to locate the cigarettes.

11          **THE COURT:** Have you looked with the drugs at the  
12 sheriff's department on the floor with the bag?

13          **THE WITNESS:** The victim's daughter told us that her  
14 mother did smoke, and that she smoked Virginia Slims.

15          **THE COURT:** Okay. Do we need him brought back or does  
16 anybody have anything else they needed to ask?

17          **MR. BOSWELL:** I appreciate it. No. I just wanted to  
18 have a minute to finish my thinking before we dismissed him and he  
19 was gone.

20          **THE COURT:** He has nowhere else to be.

21          **MR. BOSWELL:** I gotcha. But I can't think of anything  
22 else I want to ask. Thank you. But I wanted to suss out those  
23 couple of things before we had him leave.

24          **THE COURT:** Okay. So I guess that we can tell him he  
25 may leave and thank him very much.

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1           **MS. SMITH:** He is released?

2           **THE COURT:** He is released.

3           **MS. SMITH:** That will allow them to get him back to DPS.  
4           Last call if anyone would like to hear from Pat Green or  
5           Rick Sims.

6                       (No response.)

7           **MS. SMITH:** May I release them from their subpoenas?

8           **THE COURT:** Do you want to hear from them? I don't.

9           **MS. SMITH:** Okay. They may be released?

10          **THE COURT:** Speak now or forever hold your peace.

11                       (No response.)

12          **MS. SMITH:** Ms. Matoian, you may step down.

13                       (Witness stands down, 4:06 p.m.)

14          **THE COURT:** So is that the close of the evidence?

15          **MS. SMITH:** Not just -- I've got a thing to say.

16          **THE COURT:** Okay.

17                       (4:07 p.m.)

18          **MS. SMITH:** All right. Thank you all for your patience  
19          and attention during this hearing. This concludes the commission  
20          staff's presentation of this case.

21               The commission staff did have contact with the victim's  
22          daughter, Jackie Manning Kemp, and Ms. Kemp chose not to attend  
23          this hearing and has chosen not to provide any kind of victim  
24          impact statement this hearing.

25               Commissioners, now is the time where you have to let me

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1 know if there is any additional material that you wish to review  
2 before we move to deliberations.

3 During deliberations, you will only be able to consider  
4 what has been presented and provided to you already. You will not  
5 be able to ask for additional materials that have not been  
6 presented. So now is the time that you let me know if there is  
7 any other questions you have for any of the staff, anyone else you  
8 want to hear from, or any other additional materials you would  
9 like for us to pull together for you.

10 (No response.)

11 **MS. SMITH:** You are now asked to decide whether you  
12 conclude that there is sufficient evidence of factual innocence to  
13 merit judicial review.

14 Mr. Evans' conviction resulted from a guilty verdict  
15 after a trial; therefore, five of the eight of you must conclude  
16 that there is sufficient evidence of factual innocence to merit  
17 judicial review in order to move the case forward to a three-judge  
18 panel.

19 You will have three options today:

20 The first is that you may decide that there is  
21 sufficient evidence of factual innocence to merit judicial review,  
22 and the case will be moved forward to a three-judge panel.

23 You may also decide that there is not sufficient  
24 evidence of factual innocence to merit judicial review, and the  
25 case will be closed with no right to appeal.

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1           Or you may instruct the commission staff to continue its  
2 investigation and reconvene this hearing at a later date.

3           At this time, I would ask that Judge Wagoner close the  
4 hearing to the public for deliberations. And after deliberations  
5 are complete, we will come back on the record with the court  
6 reporter for the Commission's opinion.

7           **THE COURT:** So at this time, pursuant to the rules and  
8 North Carolina General Statutes, I will close the deliberations to  
9 the public and I guess release all of our alternates who are here  
10 as well. And we will see you tomorrow or later today. Thank you.

11           (Discussion off the record.)

12           **MS. SMITH:** If everyone wants to take a break ...

13           (Deliberations, 4:09 to 5:15 p.m.)

14           **THE COURT:** All right.

15           Before we go any further, I am going to ask all the  
16 members of the Commission to put their vote on the record.

17           Yes, sir. State your name and your vote.

18           **MR. GLAZIER:** My vote is to send this case to a  
19 three-judge panel.

20           **MS. WELCH:** I'm Ashley Welch. My vote is not to send it  
21 to a three-judge panel.

22           **THE COURT:** I'm Anna Mills Wagoner. My vote is to --  
23 there is sufficient evidence of factual innocence to send it to  
24 the three-judge panel.

25           **MR. GRACE:** I'm Mike Grace. I vote to confer it to the

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1 three-judge panel.

2 **SHERIFF FRYE:** Sheriff Kevin Frye. I voted not to send  
3 it to a three-judge panel.

4 **MR. BOSWELL:** John Boswell. I voted to send it to a  
5 three-judge panel.

6 **DR. PERRY:** Frank Perry. I voted to send it to the  
7 three-judge panel.

8 **MS. COLBERT:** Robin Colbert. I voted to send it to the  
9 three-judge panel.

10 **THE COURT:** That's it.

11 All right. So in the matter of the State of North  
12 Carolina versus Kenneth Evans, 93 CRS 2261 through 2263, after  
13 carefully considering the evidence that's been heard over two days  
14 of testimony, the Commission has concluded by a vote of 6 to 2  
15 that there is sufficient evidence of factual innocence to merit  
16 judicial review.

17 Wherefore, pursuant to North Carolina General Statute  
18 15A-1468(c), and as Chair of the Commission, the undersigned  
19 refers this case to the Honorable John B. Dunlow, Senior Resident  
20 Superior Court Judge for Judicial District 9, and respectfully  
21 requests that the Chief Justice of the North Carolina Supreme  
22 Court form a three-judge panel and issue commissions to its  
23 members to convene a special session of Superior Court of Franklin  
24 County to hear evidence relevant to the Commission's  
25 recommendation.

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1           This, the 10th day of September 2019 and my name.

2           All right. Now -- and I will also note for the record  
3   that I have also entered an order sealing certain documents  
4   considered during the Commission hearing September 9 through 10,  
5   and I have already signed that.

6           There being no further business, this concludes the  
7   business of the Commission and this hearing is now adjourned.

8           Thank you all very much.

9                   (Hearing closed, 5:18 p.m.)

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1 STATE OF NORTH CAROLINA                   )  
  )  
2 COUNTY OF WAKE                            )

3  
4 CERTIFICATE

5 I, Victoria L. Pittman, BA, CVR-CM-M, the officer before whom  
6 the foregoing proceeding was held, do hereby certify that said  
7 hearing, pages 1 through 432 inclusive, in two volumes, is a true,  
8 correct, and verbatim transcript of said proceeding.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action in  
11 which this proceeding was heard; and, further, that I am not a  
12 relative or employee of any attorney or counsel employed by the  
13 parties thereto, and am not financially or otherwise interested in  
14 the outcome of the action.

15 Signed and dated at Cabo san Lucas, Baja California, Mexico,  
16 on the 6th day of October 2019.

17  
18 

19 \_\_\_\_\_  
20 Victoria L. Pittman, BA, CVR-CM-M  
21 AOC-Approved Per Diem Court Reporter

22 Date Requested: September 10, 2019  
23 Date Delivered: October 6, 2019  
24 Total pages: 433  
25

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