

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
87 CRS 13541/42/44

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(Volume I of III)

This matter coming on for hearing on April 2, 2012, at the North Carolina Judicial Center, Raleigh, North Carolina, before the Victoria L. Pittman, BA, CVR-CM-M, Court Reporter and Notary Public, the following proceedings were had, to wit:

Reported by: Victoria L. Pittman, BA, CVR-CM-M
d/b/a Pittman Stenography
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APPEARANCES BY THE COMMISSION

Chair: The Honorable Quentin T. Sumner

Members of the Commission:

The Honorable Charles L. Becton
 Ms. Mel Laura Chilton
 Dr. Jacqueline Greenlee
 Chief Heath Jenkins
 The Honorable Susan Johnson
 Wade M. Smith, Esq.
 The Honorable C. Branson Vickory, III

Linda Ashendorf, Alternate
 The Honorable Van Duncan, Alternate
 T. Diane Surgeon, Alternate

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1 MONDAY, APRIL 2, 2012 (10:03 a.m.)

2 JUDGE SUMNER: Good morning. This is the
3 North Carolina Innocence Inquiry Commission hearing
4 this morning. I convene this meeting at this time and
5 announce that we are hearing the case of State versus
6 Willie J. Grimes, file number 87 CRS 13541, 42, and 44.

7 Mr. Grimes was convicted of two counts of
8 first-degree rape, one count of second-degree
9 kidnapping in Catawba County in 1988.

10 This hearing has been opened to the public
11 pursuant to North Carolina General Statute 15A-1468(a).

12 For the record, would the Commissioners and
13 Commission staff at the table please state their names
14 and whether they are here today as a Commissioner or as
15 an alternate. And I'll start with you, sir.

16 COMMISSIONER SMITH: Wade Smith,
17 Commissioner.

18 COMMISSIONER BECTON: Good morning. Charles
19 Becton, Commissioner.

20 COMMISSIONER JENKINS: Heath Jenkins,
21 Commissioner.

22 COMMISSIONER JOHNSON: Susan Johnson,
23 Commissioner.

24 COMMISSIONER SURGEON: Diane Surgeon,
25 alternate.

1 COMMISSIONER ASHENDORF: Linda Ashendorf,
2 alternate.

3 MS. MONTGOMERY-BLINN: Kendra
4 Montgomery-Blinn, Commission staff.

5 MS. STELLATO: Sharon Stellato, Commission
6 staff.

7 MR. LAU: Jamie Lau, Commission staff.

8 COMMISSIONER DUNCAN: Van Duncan, alternate.

9 COMMISSIONER CHILTON: Mel Chilton,
10 Commissioner.

11 COMMISSIONER GREENLEE: Jacqueline Greenlee,
12 Commissioner.

13 COMMISSIONER VICKORY: Branny Vickory,
14 Commissioner.

15 JUDGE SUMNER: Quentin T. Sumner,
16 Commissioner and Chair.

17 I am confirming for the record that eight
18 voting members of the Commission are present at this
19 time as required by statute. Three alternate
20 commissioners are also present to observe and
21 participate in this hearing, but they will not be
22 present during deliberations.

23 At this time I will make a formal inquiry as
24 to whether any Commissioner needs to recuse himself or
25 herself pursuant to Rule 6(e) subsection (1) of our

1 rules and procedures. The rule states: "A
2 Commissioner shall recuse himself or herself if some
3 event has caused him her to become biased about this
4 case and unable to participate in the hearing in a fair
5 and impartial manner."

6 There being no recusals at this time.

7 I also want to confirm that no Commissioner
8 has conducted an independent investigation pursuant to
9 Rule 6(b), Subsection (3) of the Commission rules and
10 procedures.

11 None having been conducted.

12 I will now ask our Commission Executive
13 Director, Ms. Kendra Montgomery-Blinn, to begin the
14 hearing presentation.

15 MS. MONTGOMERY-BLINN: Thank you, Your Honor.

16 Good morning, Commissioners. Thank you all
17 for being with us today. We worked with many different
18 agencies during our investigation in this case. They
19 were all cooperative and we would like to thank them
20 for their assistance. I would like to note a special
21 thank you to the Hickory Police Department and the
22 Catawba County District Attorney's office.

23 The Hickory Police Department assigned
24 Investigator Nowatka to go out on with our staff, and
25 Investigator Nowatka is here today. At our request,

1 the District Attorney's office and the Hickory Police
2 Department submitted the fingerprints for comparison.
3 Both agencies met with us for case updates and
4 supported our investigation efforts.

5 I would also like to thank Ms. Tamara Elliott
6 for being here today. She is the granddaughter of the
7 crime victim, Ms. Carrie Elliott, who is now deceased,
8 and she may or not decide to speak with you at the end
9 of the hearing -- or speak to you at the end of the
10 hearing.

11 You all received your briefs. I see that you
12 have them with you and I appreciate that and I
13 appreciate you taking the time to read them. I have
14 two corrections to your briefs. These were sent out to
15 you in e-mail, and I would like to go over them for the
16 record now.

17 Two of the photographs that are in Appendix
18 C, which is the book of photographs of Willie Grimes
19 and Albert Turner, were accidentally mislabeled. I
20 e-mailed corrections to you, but we have also printed
21 them on our high-quality printer because the
22 photographs are not very good quality and we wanted to
23 give you the best quality that we can.

24 So those are coming around now. If you would
25 like to, you may just replace your entire Appendix C;

1 only two of the pages have a correction, but we thought
2 it was easier just to do an entire new Appendix C since
3 it is a short appendix.

4 Appendix D, also in your brief, is a copy of
5 the file provided us by Investigator Hunt. Our
6 original copies -- or the copies from him were not of
7 very good quality, and some of the handwritten notes
8 are extremely light in the brief -- and, again, this
9 came out to you in e-mail -- and difficult to see. We
10 did what we could on our printers to darken them a
11 little bit, so hopefully they're a little bit easier to
12 read. Those also came out to you in e-mail. If you
13 have already printed those and put them in your brief,
14 you don't need to do it again, but they are coming
15 around now as an additional -- if your printer is not
16 as good a quality as ours, you can change them and put
17 them in your brief.

18 We didn't do an entire Appendix D because
19 most of it is perfectly fine, or as good as we can make
20 it, so it's just the three pages that are very light.

21 Okay. Has everybody received those now?

22 Are there any questions about the brief?

23 Okay. This hearing is expected to last three
24 days. The brief provided to you covers the information
25 about this case that was available prior to the

1 Commission's investigation. In 2009 and 2010, after
2 the Commission received a federal grant for DNA
3 testing, I reopened a number of cases that had
4 previously been closed by the Commission in order to
5 conduct additional searches for physical evidence.

6 Mr. Grimes had not applied to the Commission,
7 but I was aware of the facts of his case from the mock
8 hearing we conducted in 2007 when the Commission was
9 first created and we needed to test our rules and
10 procedures.

11 At that time, the North Carolina Center on
12 Actual Innocence provided information and documents
13 about Mr. Grimes' case for the Commission's use. The
14 names of the people in the case and some of the facts
15 of the case were changed for the mock hearing, and I
16 had sent you all an e-mail earlier about the mock
17 hearing.

18 Years later when we conducted this audit, I
19 remembered this case and the facts of this case and
20 instructed the Commission staff to also send claim
21 documents to Mr. Grimes. We received Mr. Grimes'
22 questionnaire and consent form on October 18, 2010.

23 On October 12, 2011, we discovered that two
24 fingerprints from the crime scene had been preserved
25 and still existed at the Hickory Police Department.

1 The fingerprints were examined by the State Bureau of
2 Investigation and submitted and uploaded to the AFIS
3 fingerprint databank.

4 In December of 2011, the SBI identified both
5 fingerprints as having been made by Albert Turner. On
6 that day, I moved the investigation into formal inquiry
7 at the Commission.

8 In this hearing I will present the evidence
9 uncovered by the Commission during our formal inquiry.
10 The Commission's Associate Director, Sharon Stellato,
11 and Commission Staff Attorney, Jamie Lau, were assigned
12 as co-leads on this case for the investigation and
13 formal inquiry. They will both be called to testify
14 multiple times throughout our hearing about their
15 investigation.

16 Civilian witnesses, expert witnesses, and
17 Mr. Grimes will also be called to testify over the next
18 three days. As you see, there's an agenda at each of
19 your tables that has what I hope will be a schedule of
20 the witnesses. Each day I will give you a new agenda.
21 So that's just the agenda for today.

22 With your permission, I would like to keep
23 the witnesses sequestered during the hearing with the
24 exception of the Commission staff, the victim's family,
25 and Investigator Nowatka of the Hickory Police

1 Department.

2 Is that all right with you, Commissioners?

3 To keep the witnesses sequestered other than staff,

4 Investigator Nowatka, and the victim's family?

5 JUDGE SUMNER: There being no objections,

6 yes.

7 MS. MONTGOMERY-BLINN: Thank you.

8 And now begins the presentation of evidence.

9 And the end of this hearing you'll be asked
10 to decide whether there is sufficient evidence of
11 factual innocence to merit judicial review.

12 Because this conviction resulted from a
13 trial, your vote will be made by majority: Five of the
14 eight commissioners.

15 You may decide that there is sufficient
16 evidence and refer the case forward to a three-judge
17 panel; you may decide that there is not sufficient
18 evidence and the case will be closed; you may also
19 instruct the Commission staff to continue investigation
20 and reconvene the hearing at a later date.

21 The search for physical evidence.

22 Physical evidence was collected from the
23 crime scene, but has not been located since the trial
24 -- or much of it has not been located since the trial.

25 There was a rape kit done on the day of the

1 rape. Analysis in 1987 failed to reveal the presence
2 of semen. The victim's clothing was collected and
3 hairs were found on her robe. The victim's bedspread
4 was collected. And hairs were found on the bedspread.
5 The hairs that were analyzed, one was determined to be
6 microscopically consistent with Mr. Grimes.

7 We would have liked to have subjected all of
8 these items to DNA testing today, but have not been
9 able to locate them.

10 There were also fingerprints collected from
11 the scene that were determined to be insufficient for
12 comparison searches; there were smudges or for some
13 reason they could not be used for fingerprint
14 comparison. We would have like to have subjected them
15 to today's DNA testing, see if we could have pulled any
16 profiles out of them, but they cannot be located.

17 Two banana peels were found located outside
18 of the victim's apartment. They were not collected. A
19 partially eaten apple was found outside of the victim's
20 residence. That was collected, but discarded
21 immediately.

22 The two fingerprints that were found on the
23 banana at the crime scene were compared to Mr. Grimes
24 without a match. Those have been located and have been
25 subjected to fingerprint analysis and the analyst will

1 be here this morning that subjected them to analysis
2 for us in 2011, and he will be here to testify.

3 The Commission staff spent a significant
4 amount of time attempting to locate this physical
5 evidence, but we were only ever able to locate those
6 two fingerprints.

7 Staff Attorney Jamie Lau is going to testify
8 about the search for physical evidence and you'll be
9 able to ask him any questions that you would like.

10 The Commission calls Jamie Lau.

11 Thereupon, JAMIE LAU, having first been duly
12 sworn, was examined and testified on EXAMINATION
13 BY MS. MONTGOMERY-BLINN:

14 Q What is your name?

15 A Jamie Lau.

16 Q Mr. Lau, where are you employed?

17 A I'm employed with the North Carolina
18 Innocence Inquiry Commission as a staff attorney.

19 Q What was your role in this case, the
20 Grimes case?

21 A I was one of the co-lead investigators on
22 the case.

23 Q Mr. Lau, as part of your duties with this
24 case, did you conduct a search for the physical
25 evidence in this case?

1 A I did. I looked for the physical evidence
2 beginning in the spring of 2011.

3 Q Okay. And can you please tell us what you
4 did and walk us through your search efforts.

5 A The very first thing I did was, because it
6 was a case and there was a trial, was to contact the
7 Catawba County Clerk's office. The Clerk in Catawba
8 County reported to me that she was unable to locate
9 any physical evidence. She told me that they had
10 searched when I contacted them and that that search
11 had negative results. They were unable to find any
12 evidence.

13 Following speaking with the Catawba County
14 Clerk's office, I contacted the Sheriff's office. The
15 Sheriff largely is responsible for destruction of
16 evidence that's in the Clerk's custody when it is
17 destroyed; they transfer it to the Sheriff in most
18 counties. So I contacted the Sheriff's office.

19 Sheriff Detective Nathan Fisher, who's their
20 evidence custodian, responded to me that they did not
21 have any evidence in this matter. He submitted an
22 affidavit to the Commission stating that they had
23 searched for the evidence and were unable to find the
24 evidence and/or any records of it being destroyed.

25 Finally, I contacted Hickory Police

1 Department through their Chief of Police, Chief Atkins.
2 His lieutenant in charge of -- or captain in charge of
3 CID, Captain Whisnant, e-mailed me stating that they
4 had located records for two fingerprints that were
5 collected from the scene.

6 I confirmed with him that they actually had
7 the fingerprints because he had copied me -- on the
8 e-mail he had copied the property records showing that
9 they had the fingerprint cards, but he didn't say
10 whether or not he had physically laid eyes on those
11 fingerprint cards, so I confirmed with him that they
12 actually have those fingerprint cards. So we were able
13 to locate the latent lift cards that were collected
14 from the crime scene through the Hickory Police
15 Department.

16 Q Once you located those, what did you do?

17 A The first thing that I did when those were
18 located was I contacted the SBI. I was unfamiliar
19 with the AFIS database and having lifts uploaded
20 into that database and compared, so I contacted the
21 SBI and I asked them what they would need to query
22 those fingerprints in the AFIS database, which is
23 the statewide database of criminal offenders.

24 The SBI informed me that I would just have to
25 have those fingerprints or latent lift cards submitted

1 to the SBI and ask for the upload to take place. The
2 SBI also informed me that that could be done in one of
3 three ways: The Commission itself could submit those
4 fingerprints, the Hickory PD could submit those
5 fingerprints, and/or the District Attorney's office
6 from Catawba County could upload those fingerprints.

7 I contacted the District Attorney, Mr. Jay
8 Gaither. Mr. Gaither informed me that the Catawba
9 County District Attorney's Office would, in fact, have
10 those fingerprint lift cards uploaded or brought to the
11 SBI to upload into the AFIS database. At the District
12 Attorney's Office direction, the Hickory PD brought
13 those latent lift cards to the SBI and those cards were
14 ran through the AFIS database.

15 Q And when did you receive a report?

16 A I received a report in December of 2011.
17 That report indicated that the SBI, after querying
18 those fingerprint cards through -- or the latent
19 lift cards through the AFIS system, it returned a
20 match to an individual named Albert Lindsey Turner.

21 Q Was that a name you had seen before in
22 your investigation?

23 A I had never seen the name Albert Lindsey
24 Turner. They also compared the lift cards to Willie
25 Grimes, and they were a negative match to Willie

1 Grimes, but they matched Mr. Turner.

2 Q According to the trial testimony, had they
3 been compared to Mr. Grimes as well during the
4 investigation?

5 A Yes. At the time of the investigation,
6 the lifts had been compared to Mr. Grimes and it was
7 negative at that point in time to Mr. Grimes. The
8 lifts were not compared to the victim at that time
9 or anybody from the HPD. The only person they had
10 been compared to was Grimes.

11 Q Now, Mr. Lau, as you continued your
12 investigation, did you ever come across the name
13 Albert Lindsey Turner in the police investigation
14 files?

15 A I ultimately did come across the name
16 Albert Lindsey Turner. We were able to obtain a
17 file from Investigator Steve Hunt. He was the lead
18 investigator for the Hickory PD assigned to the rape
19 of Carrie Lee Elliott.

20 Mr. Hunt's file contained a photo lineup in
21 it, and it was the initial photo lineup shown to the
22 victim on the night of October 24, 1987, when she was
23 raped. And that photo lineup included Mr. Turner.

24 Q Now, Mr. Lau, did you continue to search
25 for the remaining physical evidence?

1 A We did continue to search for the
2 remaining physical evidence. The hope was that the
3 hairs collected from the victim's nightgown or
4 bedspread or the victim's rape kit could be located
5 to subject it to DNA testing.

6 Q And did you obtain any additional files in
7 your efforts?

8 A We obtained the file of Mr. Ed de Torres,
9 who was the -- was counsel for Mr. Grimes and
10 represented Mr. Grimes during the trial phase and
11 during his appeal.

12 Q Do you recall whether or not Mr. de Torres
13 made any motions to test the physical evidence?

14 A Well, Mr. de Torres, at the conclusion of
15 the trial after Mr. Grimes was already convicted and
16 found guilty, during the sentencing phase he had a
17 motion to have the evidence tested at that point in
18 time. It was something he asked at the conclusion
19 of the trial.

20 So I wanted to follow up with him, if he had
21 any knowledge of where the evidence went at the
22 conclusion of the trial, having made that motion. He
23 did not. He said he did not follow up on that motion
24 and, to his knowledge, no ruling was never issued on
25 the motion. When he made the motion orally at the

1 sentencing hearing, the judge said that he would take
2 it under advisement, but issued no ruling at that time.
3 And Mr. de Torres said he never followed up with
4 regards to his motion to have the physical evidence
5 tested at that time.

6 Q What --

7 A He did say, however, that in subsequent
8 years, Mr. Grimes had contacted him about the
9 physical evidence, and he had attempted to locate
10 the physical evidence in the matter. And when we
11 obtained his file we were able to find a property
12 control record that showed the transfer of the
13 evidence from the Catawba County Clerk's office and
14 out of the Catawba County Clerk's office.

15 MS. MONTGOMERY-BLINN: May I approach the
16 witness, Your Honor?

17 JUDGE SUMNER: Yes, ma'am.

18 Q Mr. Lau, I'm handing you a document.
19 Would you take a look at that and tell me if you
20 recognize it.

21 A I do.

22 Q And what do you recognize it to be?

23 A This is the evidence control form that I
24 located in the file of Ed de Torres, Mr. Grimes'
25 counsel during the trial period of this case.

1 Q And does it appear to be an exact copy of
2 the form that you located?

3 A It does, with the addition of the Bates
4 stamp number; that Bates stamp number was added by
5 the Commission when we received this file.

6 MS. MONTGOMERY-BLINN: A copy of this is
7 coming around, Commissioners.

8 Q Now, Mr. Lau, when you looked at this
9 document, how did this change your search -- your
10 continuing search for the physical evidence?

11 A Well, there was three things that this
12 document told me when I first looked at this
13 document. First, it said that the purpose that it
14 was transferred out of the Catawba County Clerk's
15 office's custody was for an appeal. That's in the
16 column that says Purpose there.

17 The second thing it showed me was it showed
18 the individual who the evidence was released to, a name
19 that we were able to make out as Poovey, P-O-O-V-E-Y.

20 And the third thing that spoke to me when I
21 looked at this document was the name Jackie Ray Brewer.
22 It appears that the evidence in Grimes was transferred
23 at the same time with the evidence of Jackie Ray
24 Brewer, or that it could have been transferred at the
25 same time. So I also was curious whether or not for

1 the possibility that the evidence had been commingled
2 with the Brewer evidence and that if the Brewer
3 evidence could be located, the Grimes evidence would
4 also be found.

5 Q Were you able to locate the Brewer
6 evidence?

7 A I was not able to locate the Brewer
8 evidence or the Grimes evidence.

9 I contacted the Court of Appeals with regards
10 to the Grimes evidence, and their records showed that
11 they never received any exhibits with regards to
12 Grimes' appeal. I also contacted several agencies
13 looking for the Jackie Ray Brewer evidence. I
14 contacted the Forsyth County Clerk's office and the
15 Forsyth Sheriff's Department because Brewer was being
16 heard in Catawba County on a change of venue from
17 Forsyth County, so I thought there was the possibility
18 that the evidence may have got back to the county of
19 origination. But both those agencies did not have the
20 Brewer evidence.

21 I contacted the North Carolina Supreme
22 Court's clerk with regards to the Brewer case, because
23 it had been appealed to the Supreme Court. They did
24 not have any evidence in the Brewer case. I also
25 contacted the Clerk's office and Sheriff's office in

1 Catawba County and they did not have any evidence in
2 the Jackie Ray Brewer case. So I was unable to find
3 the Jackie Ray Brewer case.

4 The final thing I did in that matter was I
5 contacted Mr. Brewer's defense attorney from trial,
6 Robert Elliott, and he said that he didn't know where
7 the evidence in the Brewer case ultimately ended up.

8 So after speaking with all those agencies, I
9 determined that the Brewer evidence wasn't going to be
10 located or was unavailable.

11 I also wanted to -- to find out who the
12 Poovey was. I ultimately found out that the name
13 Poovey belonged to Thomas Poovey. Thomas Poovey was
14 the evidence custodian for the Catawba County Sheriff's
15 office during the relevant period of time, in 19 -- the
16 late 1980s. He no longer works with the Catawba
17 County Sheriff's office and I believe to be deceased --
18 he's deceased currently. So I was unable to speak with
19 him. But it appears that at some point the evidence
20 was transferred to the custody of the Catawba County
21 Sheriff's Department.

22 Q Was there any other documentation in
23 Mr. de Torres' file?

24 A There was one other documentation from his
25 file. It was a "while-you-were-out" memo. The

1 while-you-were-out memo, its significance was he had
2 stated to us that he received information from the
3 Clerk's office that the evidence had been destroyed.
4 The while-you-were-out memo is a documentation of
5 the phone call from the Clerk's office that he
6 received. And he said it was during that phone call
7 when he received word that the evidence had been
8 destroyed.

9 He also had said that this -- when they gave
10 him information that the evidence had been destroyed,
11 they gave him a copy of this property control form. So
12 that was something I followed up with him on because
13 this property control form says it was released for the
14 purpose of appeal. He said he never followed up
15 whether or not the evidence was available. He received
16 this and the call saying it was destroyed and that was
17 it for him.

18 Q I am handing you a piece of paper. Will
19 you tell me if you recognize it?

20 A Yes. This is a copy of the
21 while-you-were-out note that was in Attorney Ed de
22 Torres' file.

23 Q Does it appear to a fair and accurate copy
24 of the note as you saw it in Mr. de Torres' file?

25 A Yes. This is an exact duplicate of the

1 note in Mr. de Torres' file.

2 MS. MONTGOMERY-BLINN: A copy has just come
3 around, Commissioners.

4 Q Did you learn anything else about this
5 note, Mr. Lau?

6 A All that I knew about this note is that
7 Mr. de Torres said that Ms. Lemmons called him from
8 the Clerk's office and left a message for him that
9 the evidence had been destroyed. And this was the
10 note that captured that message that he received
11 from the Clerk's office and was given to
12 Mr. de Torres by the individual who took this note
13 within his office.

14 Q Now, Mr. Lau, did you and Ms. Stellato
15 also conduct a search yourselves of the Clerk's
16 office?

17 A We did. Ms. Stellato and I, in December
18 2011, went to the Clerk's office because back in the
19 spring the Clerk herself had indicated that they
20 didn't have any evidence in this case, but we wanted
21 to follow up with her. And at that time she
22 continued to say that they didn't have or were
23 unable to locate any evidence in this case.

24 And she also allowed Ms. Stellato and I to
25 conduct our own hand search of the evidence room at the

1 Catawba County Courthouse. Obviously, it was with her
2 supervision. We picked up items of evidence and just
3 looked at their outside markings to see if we could
4 find anything relating to the Grimes case. And we were
5 unable to locate anything related to the Grimes matter.

6 Q So, Mr. Lau, have you described all of
7 your efforts to search for this physical evidence?

8 A summary of your efforts?

9 A Yes, that's a summary of everything.

10 The other thing I should point out is when I
11 contacted the Forsyth County Clerk's office and the
12 Forsyth County Sheriff's office with regards to the
13 Brewer evidence, they were unable to provide any
14 disposition records for the evidence indicating whether
15 or not it ever came back to them and/or, if it did come
16 back to them, whether or not it had been destroyed.
17 They didn't have any records of the evidence and what
18 its ultimate disposition was.

19 Q So the only physical evidence that you
20 have ever been able to locate are the two
21 fingerprints; is that correct?

22 A The two fingerprints are the only physical
23 evidence, after the search was conducted, that the
24 Commission was able to locate with regard to this
25 case.

1 MS. MONTGOMERY-BLINN: Commissioners, do you
2 have any questions for Mr. Lau about the search for
3 physical evidence?

4 I will ask Mr. Lau to step down.

5 (Mr. Lau stands down.)

6 MS. MONTGOMERY-BLINN: You can bring in
7 Special Agent Delmas.

8 The Commission, with the Hickory Police
9 Department and the Catawba County District Attorney's
10 office, was able to submit the two fingerprints to the
11 SBI for analysis and upload to AFIS, which is the state
12 fingerprint database.

13 At trial, Officer Holsclaw testified -- at
14 the original trial, Officer Holsclaw testified that he
15 and SBI Agent Bob Melton reviewed the two fingerprints
16 and compared them to Mr. Grimes with no identification.
17 He also testified that the prints were not compared to
18 anybody else, including the crime scene officers and
19 the victim.

20 The Commission has never been able to locate
21 that report or a report about this comparison in either
22 of the Hickory Police Department files or the SBI
23 files, but we did have them compared again to
24 Mr. Grimes in 2011.

25 The SBI Special Agent that did the 2011

1 comparison is here for the Commission and to explain
2 his work. And when he is brought in, the Commission
3 will call SBI Special Agent Brian Delmas.

4 Thereupon, BRIAN DELMAS, having first been duly
5 sworn, was examined and testified on EXAMINATION
6 BY MS. MONTGOMERY-BLINN:

7 Q Special Agent, please state your name for
8 the record.

9 A Brian Delmas.

10 Q And where -- what's your title and where
11 are you employed?

12 A I'm a Special Agent with the North
13 Carolina State Bureau of Investigation assigned to
14 the State Crime Lab in the Western Regional Lab in
15 Asheville as a fingerprint examiner.

16 Q And is that -- is -- fingerprint examiner,
17 is that your main job requirements with the SBI?

18 A Requirements, yes. Fingerprint
19 examination, footwear, tire tread.

20 Q And -- I'm sorry?

21 A Footwear and tire tread comparison.

22 Q Footwear and tire tread?

23 A Yes.

24 Q Okay. And how long have you been with the
25 SBI?

1 A With the SBI approximately 23 years.

2 Q Have you been doing fingerprint analysis
3 that entire time?

4 A Yes.

5 Q And I should say the fingerprint
6 comparison as opposed to analysis?

7 A Fingerprint examination --

8 Q Okay.

9 A -- which involves the processing for
10 latent prints and the comparison of latent prints.

11 Q Examination. I will try to get it right.
12 And you said you have been with the SBI for
13 23 years. Where were you employed before the SBI?

14 A Prior to that, I had approximately six
15 years with the Mobile, Alabama, Police Department
16 and ten years with the Alabama Department of
17 Forensic Sciences, involved in fingerprints in both
18 of those agencies. Four years with the Mobile
19 Police Department, I was doing major crime scenes
20 and fingerprint processing and comparing.

21 My primary duties the ten years with the
22 State of Alabama was as a death investigator, but I
23 also did the fingerprint work on the cases that I was
24 involved in.

25 Q So you've been doing fingerprint

1 examination for over 30 years; is that --

2 A Approximately 37 years.

3 Q 37 years. Tell me about your educational
4 background.

5 A I've got a degree in criminal justice
6 administration. All the fingerprint and forensic
7 science training has pretty much been on-the-job
8 training, starting with the Mobile Police
9 Department, with the initial basic training in
10 fingerprints, and then I've been to approximately
11 500 hours of continuing training with -- at the FBI
12 Academy in Quantico, Virginia, on latent prints.
13 And then numerous seminars and schools.

14 Q And you said approximately 500 hours of
15 additional training aside from on-the-job training?

16 A Correct.

17 Q And you said that was at the FBI Academy
18 as well as various other schools?

19 A The 500 hours was with the FBI Academy,
20 and then I've been to numerous other schools.

21 Q On top of the 500?

22 A Correct.

23 Q And have you taught classes about
24 fingerprint examination?

25 A I have trained examiners for latent print

1 examination.

2 Q Have you testified before in court?

3 A I have.

4 Q About fingerprint comparison?

5 A Yes, approximately 200 times.

6 Q And were you qualified as an expert in
7 fingerprint examination?

8 A Yes.

9 Q How many fingerprint examinations do you
10 think you have performed over these 37 years?

11 A Comparison?

12 Q Uh-huh.

13 A Several million.

14 Q Okay. And are there ways now that can
15 independently confirm the fingerprint comparisons
16 that you have done, such as DNA or other controls?

17 A DNA can back up, with additional evidence,
18 if that evidence is available on a particular case.

19 Q And have your cases sometimes been coupled
20 with DNA as well?

21 A Yes.

22 Q And has that backed up your results?

23 A Yeah, or vice versa; yeah, it works either
24 way. Just whoever gets their part of the case
25 worked first.

1 Q Okay.

2 MS. MONTGOMERY-BLINN: Your Honor, I would to
3 tender Agent Delmas to the Commission as an expert in
4 fingerprint analysis, examination, and comparison.

5 JUDGE SUMNER: He is qualified.

6 MS. MONTGOMERY-BLINN: Thank you, Your Honor.

7 Q Agent Delmas, did you perform fingerprint
8 analysis in the case State versus Grimes?

9 A I did.

10 Q And can you tell us, when did you do this?

11 A I received the evidence in October of 2011
12 and issued a report in November of 2011.

13 Q Do you have a copy of your report --

14 A I do.

15 Q -- with you?

16 MS. MONTGOMERY-BLINN: May I approach the
17 witness, Your Honor?

18 JUDGE SUMNER: Yes, ma'am.

19 Q Agent Delmas, will you just take a look
20 and see if I have a copy -- the same copy that you
21 have of your report.

22 A Yes.

23 Q Okay. Thank you.

24 MS. MONTGOMERY-BLINN: Commissioners, the
25 report is coming around as a handout.

1 And, again, if I may approach the witness,
2 Your Honor.

3 JUDGE SUMNER: Yes, ma'am.

4 Q Agent Delmas, this is the basic report,
5 and what I held up earlier or showed you earlier
6 included all of your notes as well; is that correct?

7 A Yes.

8 Q Okay. Thank you. And if I said that your
9 report, including notes, is about 141 pages, does
10 that sound correct to you?

11 A That sounds correct.

12 Q All right. Agent Delmas, I'm going to ask
13 you to go through your report and explain it to us,
14 but would it be helpful to you and for the
15 Commission's understanding if you first explain what
16 a latent print is and what print cards -- any terms
17 that you think we need to understand first?

18 A Yes. Latent print is a hidden -- we
19 also -- we continue to call it a latent print once
20 it's developed. It's basically just an unknown
21 fingerprint where we don't know the source of that
22 print at the time it comes into the lab.

23 A known print is just that; it's a known
24 print. Normally we also call that as an ink
25 fingerprint card where you know the source of that

1 print, where you put ink on someone's fingers and you
2 transfer the representation of the ridges on their
3 fingers onto, basically, a 10-print fingerprint card.

4 Q And in this case how many latent prints
5 were you reviewing?

6 A There were two latent prints submitted.

7 Q And were they -- did you first try to
8 determine whether or not they were of sufficient
9 quality for comparison?

10 A They both were, I felt like, were
11 sufficient for identification.

12 COMMISSIONER SMITH: I didn't understand
13 that, I'm sorry.

14 THE WITNESS: Both latents submitted I felt
15 like were sufficient for identification.

16 COMMISSIONER SMITH: Thank you.

17 Q And the latents that you received, do you
18 know where they came from?

19 A The only thing I have to go on is what was
20 written on the card. And according to that card,
21 they indicated that they came off of a banana that
22 was found on the table.

23 Q Okay. And so the card was -- that's a
24 piece of cardboard that the latents were transferred
25 to?

1 A Correct.

2 Q All right. Now, were you given any
3 information about this case?

4 A No. The only thing I know was on that
5 initial submission form, that it was a sexual
6 assault case in 1987.

7 Q So nobody from the Commission talked to
8 you about this case ahead of time and gave you facts
9 of the case?

10 A Not prior to talking to Mr. Lau a month
11 ago.

12 Q And nobody from any other agency talked to
13 you and gave you facts about the case?

14 A No.

15 Q And is that your standard procedure?

16 A On the submission form, they've got --
17 they can enter information about the case. As a
18 standard practice of myself, I generally don't look
19 at them until after I work the case. Normally, as
20 far as comparing fingerprints, that's not
21 beneficial. So...

22 Q What kind of condition were these latent
23 prints in?

24 A Latent prints, it's a black-powder lift.
25 I mean, just lift it from the initial surface where

1 it's developed and then transfer that lift using
2 tape onto a contrasting background.

3 Q And is that covered with plastic?

4 A No, it's just the tape --

5 Q The tape?

6 A The tape on the card.

7 Q And the tape is made of plastic?

8 A Correct.

9 Q And does that remain over those prints?

10 A Yes.

11 Q Okay. And prints that are 25 years old,
12 can they stay in good condition?

13 A Yes. Lifts in that manner pretty much
14 last indefinitely.

15 Q Agent Delmas, I'm going to put a slide up
16 on all of these TV screens and ask you if you will
17 take a look at it and tell me if you recognize this
18 image.

19 A Yes.

20 Q Can you tell me what it is.

21 A That's the 5x8 card with both of the
22 latent lifts on it that were submitted.

23 Q And did you -- who provided the Commission
24 this photographic image?

25 A I did.

1 Q And is this an image that you took the
2 photograph yourself?

3 A Yes.

4 Q Okay. And does this appear to be the
5 photograph that you took?

6 A Yes.

7 Q Okay. All right. Now, Agent Delmas, will
8 you tell us, what is the first thing that you did?
9 Explain to us your process now.

10 A It came in with a request for an AFIS
11 examination. So when I opened the case up, I looked
12 at the prints and determined that they were of AFIS
13 quality, so I entered on our -- and AFIS is an
14 Automated Fingerprint Identification System, which
15 is a computer database with all of the fingerprint
16 cards at this time of arrestees in the North
17 Carolina system.

18 Q Is that a statewide database?

19 A Statewide database.

20 Q Are you -- when you enter something in, do
21 you filter it and say just the western part of the
22 state, or are you getting the entire state's
23 results?

24 A We search the entire state.

25 Q I'd like to show you another image, if I

1 may.

2 Mr. Delmas, do you recognize this image?

3 A Yes.

4 Q What do you recognize it to be?

5 A That's the -- the one on the left is the
6 latent print or the lift that I entered initially
7 for the search. And the fingerprint on the right is
8 the one that I determined was made by that same
9 finger.

10 Q So is this a screen shot of the AFIS
11 system --

12 A Correct.

13 Q -- showing on your computer?

14 A Correct.

15 Q And were you the one that sent the
16 Commission this screen shot?

17 A Yes.

18 Q And does it appear to be unaltered and
19 exactly as you sent it to the Commission?

20 A Appears as I sent it, yes.

21 Q Now, can somebody have multiple sets of
22 fingerprints in AFIS?

23 A Yes.

24 Q And is that if they are charged or have
25 multiple offenses?

1 A Every time that they have been arrested
2 they stand a chance of having a fingerprint card in
3 the system.

4 Q Now, when you are running this fingerprint
5 through AFIS, is it that you have determined some
6 set markers on the latent print and then those set
7 markers are also in AFIS, or is the computer
8 actually imaging these?

9 A The easiest way to explain how AFIS works,
10 it keeps an image file -- or actually, the ridges
11 you see are kept in one file and the
12 characteristics -- and by "characteristics" I'm
13 talking about where a ridge comes to an abrupt end
14 or a ridge divides into two ridges, so they're
15 ending ridges or dividing ridges. Where a ridge
16 ends or where a ridge divides, the computer will put
17 a marker there and we call those characteristics.

18 The characteristic file is going to be kept
19 in a totally separate file than what the image file is,
20 and it's just using a logarithm method and it's
21 measuring angles and distances from those
22 characteristics. And when it marks those
23 characteristics, it's giving an indication as to what
24 direction those ridges are flowing.

25 So it could be like just taking a card and

1 every time you see a ridge, you poke a hole in it. And
2 you're running that card through and trying to match it
3 up to something in the system where the holes line up.

4 So I marked the characteristics that I want
5 the computer system to search in the system. And a lot
6 of times -- I think on this particular case I marked
7 nine characteristics because that was, I think, all
8 that was on that particular card. And you try to
9 get -- you search that through the system and you are
10 just hoping that the system had those same nine
11 characteristics on the fingerprint card -- on a
12 fingerprint card that was entered on that suspect if
13 they are, in fact, in the file.

14 Because if I mark nine and then, for whatever
15 reason, the computer didn't mark them when they --
16 because the 10-print cards are an automatic system; you
17 feed it in and the computer marks it. So if the
18 computer didn't mark the same minutiae that I marked on
19 the latent, it's not going to match up.

20 In this particular case I searched both
21 prints. I searched the one that you've got up on the
22 screen now first. And before the results came back, I
23 went ahead and entered the second print and then went
24 to the comparison screen.

25 Well, this print came back where AFIS matched

1 an individual in the system. The second print, as it
2 turns out, matched the same individual, but it did not
3 match in AFIS. We did that strictly on a manual
4 comparison. So AFIS, for whatever reason, did not
5 match the second print of this particular individual.
6 They were made by the same person and he obviously had
7 several cards in the system.

8 Q Let me back you up for just a second. And
9 you're talking about these matches.

10 How common is it when you upload a print to
11 AFIS you get a match?

12 A Percentagewise, probably less than
13 5 percent.

14 Q So it's kind of rare to get a match?

15 A Yes. I mean, we just use AFIS as a -- as
16 just an investigative tool. If it doesn't -- we try
17 to compare it against suspects that agencies submit
18 initially. And if they don't match the suspects,
19 we'll enter it in the database and see if we get
20 lucky and get a match.

21 Q Okay. And you said the first print was
22 querying through AFIS while you were uploading the
23 second print.

24 A Correct.

25 Q So you didn't know that the first print

1 was going to have a match or who it was before you
2 put the data for the second print in.

3 A Correct.

4 Q So it doesn't happen as quickly as they
5 show on TV.

6 A No.

7 Q It takes some time?

8 A Not quite.

9 Q Okay. And how many -- you said it comes
10 back with multiple matches or multiple -- I'm not
11 sure if "matches" is the correct term.

12 A Matches is not -- we call it a respondent
13 list.

14 Q Okay.

15 A It comes back with what the system thinks
16 are the 10 most likely matches in the system to
17 match the information that you entered.

18 Q And does it rank those 10 as most likely
19 all the way down?

20 A Right. It has a scoring system built in
21 that it will give -- each characteristic that you
22 mark stands a chance of a score of 350 points based
23 on the angle and the distance between the
24 characteristics. So it'll score -- each one of the
25 respondents that come back, it will give it a number

1 score.

2 Q And is that coming back to you with just
3 their State ID number or some kind of number
4 identification?

5 A It comes back with an arrest number.

6 Q Okay. So not a name?

7 A No, not a name. And then from the arrest
8 number I can look up a State ID number. And
9 they're -- under the ink print on the right-hand
10 side you see an NCO number. And I can see -- that's
11 the State ID number for that particular print.

12 Q I'm sorry. If I can ask you to turn
13 around, is that here that you're talking about right
14 now (indicating)?

15 A No. We're on the person -- it says
16 "person ID" up above there, right under the
17 fingerprint.

18 Q Okay. Right here (indicating)? This one
19 (indicating)?

20 A This number.

21 Q That's the ID number that comes back?

22 A This is the ID number. This number
23 matches this (indicating). And this is the
24 individual arrest so I can go to the arrest card
25 that that print was taken from.

1 Q And, Agent Delmas, are these the 10 most
2 likely that were returned --

3 A Yes.

4 Q -- on this print?

5 Okay. And who was -- when you looked it up,
6 who was the first most -- what was the name of the
7 first most-likely person?

8 A On this list was an Albert Lindsey Turner.

9 Q What was the name of the second
10 most-likely person?

11 A Albert Lindsey Turner.

12 Q What was the name of the third most-likely
13 person?

14 A Albert Lindsey Turner.

15 Q And what was the fourth most-likely
16 person?

17 A Albert Lindsey Turner.

18 Q And how can that happen? Is that because
19 he has multiple sets of prints in the database?

20 A Correct.

21 Q Okay. And you said then you did a manual
22 comparison.

23 A Yes.

24 Q Okay. Can you tell us about that.

25 A The manual comparison is -- that's when

1 it's already on the screen. I just look and find
2 those characteristics that I talked about earlier,
3 the ending ridges and dividing ridges on the latent
4 print, and then look at the known print and see if I
5 can find the same characteristics in the same
6 relative position of the known print.

7 Q So you're pulling a digital copy of
8 Mr. Turner's print cards; his known comparison? Or
9 his known prints?

10 A First I compared on the screen.

11 Q Uh-huh.

12 A And if I felt comfortable that it's an
13 identification, I will call a digital copy up from
14 that State ID number and look at the actual card --
15 copy of the card that's in the system and make a
16 manual comparison to the latents from that.

17 Q And if he had multiple sets of cards in
18 AFIS, would you look at them all?

19 A No.

20 Q Okay. And are you confident that all
21 would be a match if they were of sufficient quality?

22 A Yes.

23 Q And is "match" the correct term? Am I
24 using the wrong term?

25 A That's correct.

1 Q Okay. Thank you.

2 Now you said the second print, this was now
3 running through AFIS, and you said there was no results
4 from AFIS; is that correct?

5 A I got results, but they were negative
6 results.

7 Q Negative results.

8 And then what did you do with that second
9 print?

10 A Compared those -- compared it to the known
11 prints that I pulled from Albert Turner.

12 Q And what did you find?

13 A Found that it was determined to match his
14 left middle finger.

15 Q So you have two prints that you believe
16 match Mr. Turner. Do they match the same finger or
17 different fingers?

18 A Different fingers. One -- the one that
19 matched through the automated system matched the
20 left index. And the manual comparison was the left
21 middle.

22 Q Left index and left middle?

23 A Correct.

24 Q That's these two (indicating); is that
25 right? Or these two (indicating)?

1 A Those two (indicating).

2 Q Okay. Thank you.

3 MS. MONTGOMERY-BLINN: For the record, I'm
4 holding up my second -- my pointer finger and middle
5 finger.

6 Q Now, you said that -- and what standard --
7 is there a standard at which you call a fingerprint
8 a match?

9 A It's left up to each individual examiner.
10 We don't necessarily count characteristics, although
11 to individualize or -- I mean, it's ultimately what
12 we end up doing, but we look at ridge flow
13 initially, because when you are comparing prints,
14 you are looking for three patterns; or arches,
15 loops, and whorls. This one is a loop, where the
16 ridges enter one side and exit the same side, make a
17 loop and exit the same side.

18 If we look at it and the patterns aren't
19 close, aren't the same, we don't look at any other
20 detail because that's enough to know that that print
21 was not made by that individual. And once we determine
22 that the patterns could be similar, then we start
23 looking for the ending ridges and dividing ridges to
24 try to make it an individual characteristic. We also
25 look at -- at the thickness or any unique information

1 that may be on the ridges themselves.

2 Q Now, after you found these matches, did
3 you subject them to peer review?

4 A I did.

5 Q And what is peer review?

6 A Just we give the latent print and the
7 known print that we compared to another fingerprint
8 examiner and ask that they take a look to see if
9 they agree with our findings.

10 Q And you did that in this case?

11 A Yes.

12 Q And another examiner looked at them. What
13 did that examiner think?

14 A They reached the same conclusion.

15 Q How confident are you that the two latent
16 prints were made by Albert Turner?

17 A Very confident.

18 Q And it's not -- you can't give statistics;
19 is that correct?

20 A Correct.

21 Q Now, Agent Delmas, did you also do a
22 manual comparison of these prints to Willie Grimes?

23 A I did.

24 Q Okay. And can you tell us about that.

25 A I did a -- used his -- Willie Grimes' SID

1 number and pulled his known fingerprint cards from
2 the database and did a manual comparison, and it was
3 my determination that these prints were not made by
4 Willie Grimes.

5 Q Okay. And can you tell us, when I'm
6 looking at your report I see the name Willie Molley
7 Gunn at the top.

8 A Yes.

9 Q Can you tell us about that?

10 A When this case was originally submitted,
11 they submitted the suspect name of Willie Grimes and
12 they listed a State ID number across from him. And
13 the State ID number, when I called it up, came back
14 to a Willie Molley Gunn. And they did not match the
15 latent prints. But, meantime, the names did not
16 match. I had a criminal history run on Willie James
17 Grimes and saw that the SID number that I got on the
18 submission form was incorrect and then pulled the
19 correct known prints on Willie Grimes.

20 Q Okay. So Willie Molley Gunn was just
21 given to you, as you understand, by accident.

22 A Correct.

23 Q But you put it in your report because you
24 did the comparison?

25 A Because I made the comparison; correct.

1 Q Okay. Thank you.

2 Now, can you talk to us about the lifespan of
3 latent prints that are left on surfaces. I know you
4 already told us once it's collected with that tape it
5 can last indefinitely. But before it's collected, you
6 know -- different surfaces, can they affect a latent
7 print in different ways?

8 A Correct. I -- if it's a smooth, nonporous
9 surface, a print can pretty much last indefinitely,
10 depending on what the deposit is in. I mean,
11 fingerprints -- a standard fingerprint is going to
12 be primarily perspiration, but there's also going to
13 be salts and lipid material that you get from wiping
14 your face or touching other objects. And it's just
15 a transfer of foreign material on your fingers to
16 the surface is all a fingerprint is, and we have to
17 develop that.

18 And if it's strictly perspiration, it can
19 evaporate and be gone. The lifespan is going to be
20 relatively short. Very few fingerprints are of that
21 nature. Most of them have some fatty material in them
22 just from touching your hair or other parts of your
23 body, where that -- the transfer's there, and we
24 consider the life of a fingerprint to be indefinite.

25 On porous surfaces, paper and such, if

1 they're touched, the print will absorb in that -- into
2 the paper. So a powder's not going to work on those,
3 but you can use a chemical method for processing paper
4 or porous items and develop prints for -- for many
5 years after the time they were touched.

6 Q And when you spoke with the Commission
7 staff, did you hypothesize with them or talk with
8 them about the idea of what kind of surface a banana
9 peel might be?

10 A Yes, briefly. And I can't say that I've
11 ever processed any bananas on cases. But it does
12 come up from time to time where you have fruit or
13 pieces of food left behind by people at a crime
14 scene. And I had processed apples. A banana we
15 would consider a nonporous surface initially. We
16 don't -- and I don't feel like a print would soak
17 in. And we'd just handle it like we would a piece
18 of glass or a Coke can or something of that nature.

19 Reading -- looking at articles after this
20 case came up to see if any research had been done, I
21 only came across two articles. And the best method
22 that they indicate that they came across was using
23 black powder, which happened to be what was used in
24 this case.

25 Q Tell us about those two articles. Were

1 they scholarly research articles?

2 A They were research articles. One is out
3 of India and one is out of Slovenia.

4 Q And they were about fingerprints lasting
5 on different surfaces?

6 A Correct. They used apples, bananas,
7 potatoes, tomatoes. And their apples and tomatoes
8 and bananas had somewhat similar results to start
9 with up through about three days. At three days,
10 they -- the fruit stayed pretty much the same except
11 for the banana. And they could -- indicated that
12 they could still see good ridge detail when they
13 processed the banana, but because the banana peel,
14 as it starts to age and deteriorate, gets to be --
15 gets an oily film to it, so the powder starts
16 sticking to the background, and the fingerprint
17 ridges -- or the fingerprints appear to be more
18 smudged than they do on a smoother surface.

19 Although they indicated in the second
20 article -- correction, the first article, they
21 indicated that they went all the way to seven days and
22 they still could see some ridge detail on the banana.
23 But the difficulty was lifting because the oily
24 surface, the tape wouldn't stick to it, but you
25 could -- if you had photographed it, you could probably

1 see the ridge detail.

2 Q Okay. And so based on those articles and
3 your research, can you make any hypothesis about the
4 length of time that these fingerprints might have
5 existed on this banana before they were lifted?

6 A None other than it would have had to have
7 been prior to the banana starting to decompose or
8 starting to break down.

9 Q And if somebody had made the banana -- had
10 touched the banana a week before?

11 A I would say it's possible, but all of the
12 information that they gave, because of the oily
13 surface seeping, I would say it would be less likely
14 at a week than it would be at under three to five,
15 four days.

16 Q Okay.

17 MS. MONTGOMERY-BLINN: Commissioners, do you
18 have any questions?

19 COMMISSIONER BECTON: Can you show me the two
20 fingers on which you lift -- the prints were --

21 THE WITNESS: (Indicating).

22 COMMISSIONER BECTON: What hand?

23 THE WITNESS: Left.

24 COMMISSIONER BECTON: Left hand?

25 THE WITNESS: Left index and left middle.

1 COMMISSIONER BECTON: Thank you.

2 COMMISSIONER ASHENDORF: I'm just curious
3 about something.

4 THE WITNESS: Okay.

5 COMMISSIONER ASHENDORF: All of the
6 examinations you have done, if there have been DNA --
7 if there has been DNA testing done as well as
8 fingerprint examination, do they ever come out
9 different?

10 THE WITNESS: There have been different
11 results in the same case, but not necessarily because
12 we are -- the fingerprints may have one donor and the
13 DNA is going to be another donor. I mean, you don't
14 know how many people are involved in a case when we do
15 the comparison.

16 So, yeah, we've had different results, but I
17 don't know that we disagree with the fingerprint ID and
18 the DNA identification.

19 COMMISSIONER ASHENDORF: Okay. Thank you.

20 COMMISSIONER SURGEON: Could you explain why
21 the second print may not show up in AFIS.

22 THE WITNESS: Because the characteristics
23 that I marked for the system to search through for
24 whatever reason were not marked by the computer when
25 they did the high-speed card reader for their database.

1 Because they will feed a fingerprint card through
2 the -- the database system, and it will -- it's going
3 to give each fingerprint block -- if you have a
4 fingerprint card, you've got 10 blocks in there, a
5 block for each finger. It's going to have X number of
6 those characteristics of each of those blocks. And
7 that number varies depending on what finger it is.

8 On an average it's going to be somewhere
9 around 140 to 150 characteristics that the system will
10 mark in that block. If there is a smudged area in that
11 block -- and a lot of times there is -- it may throw 50
12 characteristic markers in that smudged area when
13 there's really not but maybe two or three
14 characteristics in that smudged area.

15 So it pulls characteristics -- markers away
16 from actual characteristics that are in that latent
17 print. And if it's not caught during the quality
18 control and they go in there and they mark some of
19 those, you'd like to think -- this guy had at least
20 four cards in the system that you would like to think
21 that at least one of those would mark the correct ones,
22 but it's not always the case.

23 I mean, we've had some just in testing where
24 agents that we know are in the system, we'll run their
25 prints through and, for whatever reason, it won't hit.

1 You know, in a lot of -- we have had a lot of cases
2 where, like in this one, we'll search one finger and it
3 won't hit on one but it will match the other one.

4 COMMISSIONER SURGEON: Thank you.

5 THE WITNESS: Yes.

6 COMMISSIONER SMITH: I assume, then, that the
7 Commission can feel comfortable that this absolutely is
8 not Willie Grimes' fingerprint.

9 THE WITNESS: Yes. Without a doubt.

10 COMMISSIONER VICKORY: What degree of
11 transference of DNA could there be when a -- on a
12 latent lift? I mean, could there be any touch DNA?

13 THE WITNESS: Sure. Anytime somebody touches
14 something there's a chance of a touch DNA. Part of
15 that is because, as I mentioned earlier, if somebody
16 wipes their forehead or something and touches a
17 surface, any cells or that fat tissue that was on their
18 finger will be transferred to that item.

19 What those chances are this far removed on a
20 powdered lift, I don't know. I wouldn't -- the powder
21 part of it's not going to affect it any. The time
22 factor, I'm not sure.

23 COMMISSIONER VICKORY: I noticed this wasn't
24 transferred to the DNA Section. I mean, is there any
25 chance --

1 THE WITNESS: The card was not. And there
2 was not DNA back in '87 when this was initially
3 entered. And there was no -- there wasn't a state
4 fingerprint database either. So had it been submitted
5 to -- to latent prints back in '87 or '88, we wouldn't
6 have had this because we did not have this technology.

7 COMMISSIONER VICKORY: Well, I'm talking
8 about the latent that you looked at. Was it
9 transferred? Could there be any DNA on that?

10 THE WITNESS: There possibly could be.

11 COMMISSIONER VICKORY: But it wasn't
12 transferred to the DNA Section?

13 THE WITNESS: No. It was my understanding
14 the latent print was never submitted to the laboratory.

15 COMMISSIONER VICKORY: Other than what you've
16 got.

17 THE WITNESS: Prior to when I got it, it had
18 never been submitted to the laboratory.

19 COMMISSIONER VICKORY: Right.

20 COMMISSIONER BECTON: When was this latent
21 print taken?

22 THE WITNESS: In 1987, at the time the crime
23 occurred. It was taken at the crime scene.

24 COMMISSIONER BECTON: So when you mentioned
25 that after two or three days there are less ridges on a

1 banana, the print was taken within a three- or four-day
2 period?

3 THE WITNESS: That would be -- from the
4 research history that I had access to, that would be my
5 best guess, anyway.

6 COMMISSIONER BECTON: Thank you.

7 COMMISSIONER SMITH: One other question. You
8 said this absolutely is not Willie Grimes' print.

9 THE WITNESS: Correct.

10 COMMISSIONER SMITH: You may not be able to
11 do this, but in your opinion is this absolutely Albert
12 Turner's print?

13 THE WITNESS: Yes.

14 COMMISSIONER SMITH: There's no doubt in your
15 mind it's Albert Turner's print.

16 THE WITNESS: I have no doubt that that's who
17 made that -- both of those prints.

18 And I say this case was in '87. North
19 Carolina started creating its fingerprint database in
20 1988, you know, so -- and North Carolina started
21 creating their database one arrest at a time. They
22 didn't send a thousand prints to have -- to start with
23 a huge database. For quality control, when somebody
24 got arrested, that print was entered in the database
25 and they started building their database from that.

1 JUDGE SUMNER: Chief?

2 COMMISSIONER JENKINS: You made mention
3 earlier of the different types of patterns that you
4 look at initially before you move on to the
5 characteristics --

6 THE WITNESS: Yes.

7 COMMISSIONER JENKINS: -- of the print.

8 Did the two comparisons you made between
9 Mr. Grimes -- or the comparison you made of Mr. Grimes,
10 was it of the same type of pattern?

11 THE WITNESS: I don't recall.

12 COMMISSIONER JENKINS: Okay.

13 THE WITNESS: I can't answer that without
14 looking at his prints.

15 JUDGE SUMNER: Any other questions?

16 BY MS. MONTGOMERY-BLINN:

17 Q Special Agent Delmas, I'd just like to
18 ask: Is there anything from your report or your
19 notes that I have not asked you about and the
20 Commissioners have not asked you about that you
21 would like to add?

22 A I don't believe so.

23 MS. MONTGOMERY-BLINN: Okay.

24 COMMISSIONER DUNCAN: Agent Delmas, the AFIS
25 system hit or pulled with a likeliness of match four

1 separate times on four separate prints; was that
2 correct? Did I understand that?

3 THE WITNESS: What it -- it pulled -- the
4 first four respondents on the print that is up on the
5 screen now came back to Albert Turner. So it was four
6 separate arrests. The one that is highlighted, the top
7 score, was an arrest in '09. The other three that
8 start the 606 number, those were the cards that were
9 sometime in mid-to-late '90s. The State pulled all
10 of their old arrested cards on people that were
11 arrested prior to 1988 and sent them to Printrak, who
12 had our AFIS database at that time, and did a huge
13 data-entry upgrade so all of the old arrest cards would
14 be in the database.

15 So anything -- it's my understanding anything
16 that starts with a 606 number, they were all entered in
17 that mid-'90s timeframe.

18 JUDGE SUMNER: Agent --

19 COMMISSIONER DUNCAN: Would it be --

20 JUDGE SUMNER: I'm sorry.

21 COMMISSIONER DUNCAN: Would it be fair to
22 assume that the '09 was pulled off of a newer 10-print
23 machine and that was the first one that --

24 THE WITNESS: That's an excellent possibility
25 because in '09, all counties would've been using what

1 we call a live scan or digital; wouldn't have used an
2 inked fingerprint card.

3 JUDGE SUMNER: Do you have any idea
4 approximately how many prints are in the AFIS system
5 now?

6 THE WITNESS: In North Carolina?

7 JUDGE SUMNER: Yes, sir.

8 THE WITNESS: Guessing there's somewhere a
9 million and a half to 2 million.

10 JUDGE SUMNER: Any other questions?

11 COMMISSIONER BECTON: Well, now that you
12 mention millions, you testified approximately 200
13 times. Did I understand you to say that you've
14 compared over -- I'm sorry, you've compared millions of
15 fingerprints --

16 THE WITNESS: Correct.

17 COMMISSIONER BECTON: -- over 37 years?

18 THE WITNESS: You're also -- a comparison is
19 if I took -- in this case, I've got two latent prints.
20 I compared them against three individuals. So each
21 latent print is 30 comparisons. I'm comparing that one
22 finger -- because I don't know what finger that is when
23 I've got an unknown. I'm comparing that one finger to
24 10 people -- or, correction, to 10 fingers on three
25 different people. So that's 30 comparisons on that one

1 print.

2 COMMISSIONER BECTON: All right.

3 THE WITNESS: So it's 60 comparisons on just
4 this case and I only have two prints. It's not
5 unusual, on a big case, to have 20 or 25 latent prints
6 and sometimes 40 or 50 suspects, so the numbers add up,
7 almost falsely, real high, real quick.

8 MS. MONTGOMERY-BLINN: Thank you, Agent
9 Delmas. I'd ask that Agent Delmas be released from his
10 subpoena and allowed to return to the Western lab.

11 JUDGE SUMNER: Yes, sir. You are free to go.

12 THE WITNESS: Thank you.

13 MS. MONTGOMERY-BLINN: Thank you.

14 (Witness dismissed.)

15 MS. MONTGOMERY-BLINN: The Commission did not
16 subject the fingerprints to DNA testing and that is
17 something the Commission can ask us to do, if they
18 would like us to.

19 The Commission staff went back through the
20 original police investigation and interviewed the
21 original investigators. The Commission's Associate
22 Director, Sharon Stellato, is going to testify about
23 those interviews. And the original lead investigator
24 from the Hickory Police Department will also be here to
25 testify after Ms. Stellato.

1 The Commission calls Sharon Stellato.

2 Thereupon, SHARON STELLATO, having first been duly
3 sworn, was examined and testified on EXAMINATION

4 BY MS. MONTGOMERY-BLINN:

5 Q What is your name?

6 A Sharon Stellato.

7 Q Where are you employed?

8 A The North Carolina Innocence Inquiry
9 Commission.

10 Q What is your title with the Commission?

11 A Associate Director.

12 Q What was your role in this case?

13 A Co-lead.

14 Q As part of the investigation of this case
15 did you interview the original investigating
16 officers?

17 A We did.

18 Q And can you tell us, did you interview
19 Officer Lee?

20 A Yes. Officer Lee was the responding
21 officer. He is actually the first report in your
22 brief. He is still with Hickory Police Department.
23 He was the one that had spoke with the victim and
24 canvassed the area, and he has no recollection of
25 the case.

1 Q How about Sergeant Bryant?

2 A Sergeant Bryant supervised the
3 investigation. He interviewed the victim and Linda
4 McDowell, both of those on October 26. He was also
5 the one that showed the victim the second lineup
6 that had Grimes in it. He resides in Massachusetts
7 now, and Mr. Lau spoke to him over the telephone.
8 We had to fax him some police reports to refresh his
9 memory. Ultimately, he could not recall the case
10 independently.

11 There was some indication from Investigator
12 Hunt that Sergeant Bryant used Linda McDowell as an
13 informant, and we tried to ask him about that. He said
14 that was possible, but he couldn't recall if she was an
15 informant.

16 Q How about the on-call investigator,
17 Investigator Blackburn?

18 A Yes. He interviewed the victim at Hickory
19 Police Department on the night of the crime and
20 showed the victim the first lineup that contained
21 Albert Turner. He now resides in South Carolina.
22 We did interview him in person, provided his --
23 provided the entire file to refresh his memory. He
24 had a vague images of being at the crime scene on
25 that night, but ultimately he couldn't recall

1 other -- anything other than that.

2 He did remember Turner, but not from this
3 case; he just remembered interactions with Turner.

4 Q So he did not remember why he showed
5 Albert Turner in the first lineup?

6 A He could not recall, no.

7 Q And you said you did to talk with him,
8 though, about standard lineup procedures?

9 A Uh-huh. He stated that back then, one
10 person would be a suspect and the others would be
11 fillers and that the system they had, they used
12 whatever photo was in a cabinet, the photos that
13 they had. So it might not have been the most
14 current. They might have more than one photo of an
15 individual. They would place it in a folder and
16 show it to the victim.

17 When we showed him the Turner photo -- the
18 Turner lineup, it had some handwriting on it. He
19 stated the handwriting was not his and he couldn't
20 recognize who it belonged to.

21 Q Okay. And the handwriting, can you tell
22 me, what is written on that lineup?

23 A There are numbers on the top of each
24 suspect; in the photo, I believe there's five.

25 Q For each person?

1 A For each person. There are five numbers
2 and then Albert Turner has "Turner" written on the
3 top of it -- has his name written on the top of it.

4 Q And not -- there's two copies of the
5 lineup; one with just numbers and one that has his
6 name on it --

7 A Correct.

8 Q -- is that correct?

9 A Correct.

10 Q And the one that has Mr. Turner's name on
11 it, are any of the other people's names written on
12 the lineup?

13 A No.

14 Q But he said -- Investigator Blackburn said
15 that was not his handwriting.

16 A Correct.

17 Q And he could not recall.

18 A Correct.

19 Q But you said he did -- I'm sorry, you said
20 he did remember Albert Turner from other cases?

21 A He remembered Turner from dealings with
22 him, but he couldn't be more specific why that was.

23 Q Now, how about Investigator Susan Moore,
24 who interviewed the victim at the hospital -- or at
25 home during transport?

1 A She is -- still lives in Hickory as a
2 retired reserve officer. We interviewed her, gave
3 her the reports and the trial transcript of her
4 testimony. She was unable to recall the case -- she
5 recalled that there were some elderly rapes around
6 that time --

7 Q When you say "elderly rapes," you mean
8 elderly victims?

9 A Elderly victims.
10 -- around that time. But she couldn't be
11 specific. She couldn't recall if she was
12 remembering -- she stated it was three to four elderly
13 rapes that she recalled, and she wasn't able to be
14 more -- she couldn't recall this one.

15 Q Okay. Now, how about Investigator Hunt,
16 who was with the lead investigator on the case?

17 A We interviewed him twice in person at --
18 he now works at Catawba Valley Community College.

19 Q Is she retired from the police force?

20 A He is.

21 Q Is he still a reserve officer?

22 A He is.

23 Q Who was present during that interview --
24 or those interviews, both of them, please?

25 A Myself and Mr. Lau, and then Investigator

1 Nowatka met us for the first interview -- he was
2 present for the first interview.

3 MS. MONTGOMERY-BLINN: Commissioners, I think
4 you're flipping through. The lineups are in Appendix D
5 of your brief, in case you're looking for them. You
6 don't need to look at them, but just in case you are
7 looking for them, that's where they are.

8 Q I'm sorry, Ms. Stellato. So you said that
9 you did the interviews and he was present.

10 And did Mr. Hunt have -- Mr. Hunt, did he
11 have a copy of his file?

12 A He had a personal copy of his file, yes.

13 Q So not one you provided him; his own copy?

14 A Correct.

15 Q Did he bring it to that interview?

16 A He did.

17 Q And did he allow you or Investigator
18 Nowatka to make a copy of the file?

19 A He provided the file to Investigator
20 Nowatka and then we were given a copy of that file.

21 MS. MONTGOMERY-BLINN: Commissioners, that
22 entire file is in your brief -- or a copy of that.

23 Q Now, did Investigator Hunt have any
24 independent recollection of the case?

25 A He did recall the case. He recalled the

1 victim and being -- he had a pretty good
2 recollection. He recalled the crime scene area, was
3 able to tell us where it was located at, and Willie
4 Grimes, as well as, later on in interviews, Albert
5 Turner.

6 Q Okay. Did you talk with him about that
7 interview that was done with Linda McDowell that was
8 actually done by Officer Bryant?

9 A He stated that Linda McDowell was
10 interviewed by Officer Bryant because Linda McDowell
11 was Officer Bryant's source and that she had only
12 been willing to speak with Officer Bryant.
13 Investigator Hunt believed that that was because
14 they had worked together before.

15 Q And was "source" his words?

16 A Those were his words.

17 Q And this is based on his recollection, not
18 something that was in the file?

19 A Correct.

20 Q Now, when you went through Investigator --
21 you said you got a copy during the first interview.
22 Did you bring it back here and spend some time
23 reading it?

24 A We did.

25 Q And did you go back a second time to talk

1 to Investigator Hunt again?

2 A We did.

3 Q And when you read through the file, did
4 you find some handwritten notes about a person named
5 Charlie?

6 A Yes.

7 Q Can you tell me about those.

8 A There was a handwritten note in there that
9 the District Attorney's office received a call from
10 the victim, Carrie Elliott, and she had stated that
11 a friend of hers, a black female, told her that a
12 man named Charlie had been doing weekends with
13 Willie Grimes, and that Willie Grimes had -- after
14 being asked, said why he was in prison -- or in jail
15 and bragged about raping an old white woman.

16 Q Okay. And --

17 COMMISSIONER SMITH: Excuse me. What was
18 that person's name again? The suspect? What was his
19 name?

20 THE WITNESS: The Charlie?

21 COMMISSIONER SMITH: Yes, Charlie.

22 THE WITNESS: Correct. Charlie.

23 Q And were you able to talk to Investigator
24 Hunt more about this and who Charlie was?

25 A At the bottom of the note -- which is in

1 your brief -- there were some other notes of
2 following up. They said that they called the
3 Catawba County Jail and were trying to check on a
4 Charlie and find out more about it.

5 So we asked Officer Hunt if he recognized the
6 handwriting. He stated it was his handwriting. And we
7 asked him if he could read the last name that he had
8 wrote on the note, and he was unable to read it -- to
9 identify the name.

10 MS. MONTGOMERY-BLINN: Commissioners, if you
11 are looking for this -- you don't have to, but if you
12 are -- it's Appendix D in your brief. And it's -- the
13 Bates stamp number 46 at the bottom and it's a
14 handwritten page of notes that looks like this
15 (indicating), just in case you were looking for it.

16 Q So he indicated that this part at the
17 bottom was his handwriting.

18 A Correct.

19 Q But he could not read the last name.

20 A He could read that it started with the
21 letter "S."

22 Q Okay. And were you able to determine the
23 last name?

24 A We were not.

25 Q Did he -- did you ask him about following

1 up on this information in this note?

2 A He could not recall if he followed up.

3 Q Did you attempt to locate this Charlie S.?

4 A We did. We searched court records and
5 Department of Correction's records just looking for
6 Charlie S. around that time. Ultimately, we found
7 one person who was overlapped but is now deceased.

8 Q When you say "overlap," you mean was in
9 jail --

10 A Overlapped; was in jail at the same time
11 as Willie Grimes.

12 Q Okay. But that person is deceased?

13 A Correct.

14 Q Okay. Go ahead.

15 A And then we -- during interviews, we found
16 an inmate who gave us the name of Charlie Stokes,
17 and, ultimately, we found that Charlie Stokes did
18 not overlap in jail with Willie Grimes.

19 Q Okay. And did you also do a DOC search
20 and try to find --

21 A We did, and we couldn't find anyone who
22 overlapped.

23 Q Okay. Now, also in Investigator Hunt's
24 file -- and just really on the next page,
25 Bates-stamped page 47 in the brief -- there are some

1 notes that appear to be from the Gaston Police
2 Department.

3 A Correct. I believe there are four pages
4 of Gaston Police Department reports.

5 Q Okay. Did you talk with Investigator Hunt
6 about those and their significance to the Grimes
7 investigation?

8 A We did. First, when we reviewed the file,
9 we -- in addition to those four reports, we located
10 handwritten notes that contained the name of Jerry
11 Surratt on there. And we interviewed Jerry Surratt
12 and we also asked Investigator Hunt if he knew Jerry
13 Surratt. He stated that he did know him, he
14 recalled him, but he couldn't tell us if the report
15 was related to this case or not.

16 Q You said you did interview Jerry Surratt
17 as well?

18 A We did.

19 Q And did he have any familiarity with this
20 case?

21 A He knew Investigator Hunt and he knew
22 Albert Turner very well, but he did not know Willie
23 Grimes. And he said that he didn't know anything
24 about the rape.

25 Q And Investigator Hunt did not know if they

1 were mixed in accidentally or in some way related to
2 this case?

3 A Correct.

4 MS. MONTGOMERY-BLINN: Commissioners, do you
5 have any more questions before I bring Investigator
6 Hunt in?

7 Any questions for Ms. Stellato?

8 COMMISSIONER BECTON: A few minutes ago you
9 mentioned that a search revealed that Charlie was not
10 in the Catawba County Jail at the time that Grimes was.

11 THE WITNESS: Charlie Stokes was not in the
12 jail. That was a name that we were provided by an
13 inmate. Our search revealed that Charlie Stokes was
14 not in the jail at the time of Willie Grimes. We don't
15 know if there was another Charlie; because the records
16 go back so far, we were unable to locate another one.

17 COMMISSIONER BECTON: That was my question.

18 COMMISSIONER ASHENDORF: A couple of things
19 to refresh my memory. I may or may not have read this.

20 THE WITNESS: Okay.

21 COMMISSIONER ASHENDORF: Did Linda --

22 THE WITNESS: McDowell?

23 COMMISSIONER ASHENDORF: -- McDowell, did she
24 get a reward for tipping off?

25 THE WITNESS: She did. She received a

1 thousand-dollar CrimeStopper reward.

2 COMMISSIONER ASHENDORF: Okay. That's why
3 she wanted to call directly, maybe.

4 THE WITNESS: We asked her about that later,
5 and she stated that that is not why she wanted to call
6 directly.

7 COMMISSIONER ASHENDORF: And is Investigator
8 Hunt -- this is also refreshing my memory -- is he the
9 one that was riding in the neighborhood the night of
10 the crime, but wasn't yet assigned to the --

11 THE WITNESS: Yes.

12 COMMISSIONER ASHENDORF: -- case?

13 THE WITNESS: Yes, ma'am.

14 MS. MONTGOMERY-BLINN: Any other questions,
15 Commissioners?

16 Okay. I'd ask that Ms. Stellato come down.

17 (Ms. Stellato stands down.)

18 MS. MONTGOMERY-BLINN: Does anybody need a
19 break? Or are we are okay to keep going?

20 JUDGE SUMNER: We're fine.

21 MS. MONTGOMERY-BLINN: Okay. The Commission
22 calls Investigator Steve Hunt.

23 Thereupon, STEVE O. HUNT, having first been duly
24 sworn, was examined and testified on EXAMINATION

25

1 BY MS. MONTGOMERY-BLINN:

2 Q Investigator Hunt, thank you for being
3 here today. I know we have not met. My name is
4 Kendra Montgomery and I'll be asking you some
5 questions, and then the Commissioners may ask you
6 some questions as well.

7 A Sure.

8 Q And you know -- and I think it's been
9 explained to you already -- that the Commission is
10 just a fact-finding agency. We're not advocates; we
11 don't represent Mr. Grimes. We also know that this
12 has been a long time, and I may ask you some
13 questions that you don't recall the answer to or you
14 don't know.

15 A Sure.

16 Q And that's -- we certainly understand that
17 and we just want the truth. If you don't recall it,
18 you don't know, that's fine.

19 A Absolutely.

20 Q Thank you.

21 Please state your name.

22 A Steve O. Hunt.

23 Q Where are you currently employed?

24 A Catawba Valley Community College.

25 Q What's your role there?

1 A I am the Executive Director of the Office
2 of Multicultural Affairs.

3 Q And did you retire from the Hickory Police
4 Department?

5 A I did.

6 Q When did you retire?

7 A July 1, 2004.

8 Q And are you still a reserve officer?

9 A I am.

10 Q What does that mean?

11 A That means I'm still -- I still hold my
12 law enforcement certification.

13 Q They can call you back if they need you?

14 A Yes. They haven't yet; but they can, yes.

15 Q Okay. And when you worked for the Hickory
16 Police Department, what was your -- what were your
17 duties and what was your title?

18 A Well, I worked 3 years as a patrol
19 officer. And I worked 13 -- 13, 14 years in
20 criminal investigations. And the latter part of my
21 career I worked community services. And I retired
22 as the commander of that unit.

23 Q In 1987, what was your title then and what
24 were your duties then?

25 A I was a criminal investigator following up

1 on felony criminal investigations.

2 Q Should I refer to you as Commander Hunt?

3 Is that the more appropriate title?

4 A Steve's fine.

5 Q And the Grimes case specifically, which
6 was a 1987 rape case in Hickory, do you remember
7 that case?

8 A Yes.

9 Q And have you -- I'm sorry, were you
10 getting ready to say something?

11 A No.

12 Q Okay. Have you reviewed your files to
13 refresh your recollection or refresh your memory?

14 A Somewhat, yes.

15 Q Okay. And do you have a copy of your file
16 with you today?

17 A Sure.

18 Q You said you do have some independent
19 recollection of this case.

20 A Right.

21 Q And do you remember testifying at trial in
22 July of 1988?

23 A Yes, I remember testifying, yes.

24 Q And who have you spoken with at the
25 Hickory Police Department about this case since the

1 trial?

2 A Captain Thurmond Whisnant, Investigator
3 Nowatka, Captain Gary Lee. I think that's all.

4 Q And were the substance of those
5 conversations about the Commission's investigation?

6 A Right. It was -- well, actually, it was
7 just about that I had been notified about the
8 25-year-old case.

9 Q Okay.

10 A Yeah.

11 Q Did anybody talk to you about what you
12 should say today to the Commission?

13 A Oh, no. Absolutely not. No.

14 Q And did anybody talk to you about the
15 facts of the case when the Commission staff was not
16 present?

17 A No.

18 Q Now, you met with Sharon Stellato and
19 Jamie Lau and Investigator Nowatka on January 3rd
20 and 27th of this year.

21 A If that's -- I don't remember the dates,
22 but I do remember meeting with them twice.

23 Q Okay. And I recall you telling them that
24 you used the case to teach -- or you used to use the
25 case to teach at the college; is that correct?

1 A Sure.

2 Q How come you use this case?

3 A Well, I used -- I used it when I used to
4 teach crime scene investigation just to point out to
5 the students the importance of all evidence
6 gathering.

7 Q Okay.

8 A And hair in this particular case made a --
9 made a significant difference.

10 Q Can you tell me what you mean by that.

11 A Well, a head hair that was found at the
12 crime scene was sent off to the lab and analyzed and
13 compared to the suspect that was arrested. And the
14 point I wanted to make to the students were "make
15 sure you leave no stones unturned when you are doing
16 a crime scene because what you do on the crime scene
17 can determine whether or not people get brought to
18 trial for crimes they commit or turned loose for
19 things they didn't do."

20 Q And this case was really before DNA
21 testing, before you were collecting evidence
22 thinking about DNA; is that right?

23 A Yes.

24 Q When you testified, you testified that you
25 were actually not on duty at the time that the call

1 about this rape came in. Do you remember that?

2 A Sure.

3 Q Okay.

4 A If my memory serves me correctly -- and I
5 do say that -- I was the investigator on call.

6 Q Okay. So if you testified that you were
7 not on call or not on duty, do you think your
8 testimony was more accurate?

9 A Well, if I testified that I was not on
10 duty, then I was not on duty.

11 Q Okay. But you could still be the
12 investigator on call?

13 A Sure. Absolutely. It was -- you know, it
14 was at a time of night when we wouldn't be working.
15 You know, if something -- in other words, our unit
16 had five or six criminal investigators and after
17 hours, one of us went on call. And, you know, I
18 went about my business. However, if something came
19 in that needed to be followed up on, then I would
20 get the call.

21 Q All right. So did you get the call in
22 this case?

23 A Yes.

24 Q Now, you testified that when you were at
25 the crime scene, you saw -- outside of the victim's

1 residence you saw two banana peels that you did not
2 collect and an apple core or partially eaten apple
3 that you did collect.

4 Why did you think that those items were
5 significant to this investigation?

6 A Did I say I collected those or the
7 evidence technician collected those?

8 Q Your testimony was that you noted the
9 banana peels but that you collected the apple core
10 and then discarded it later at the Police
11 Department. Do you recall?

12 A I don't recall me actually -- I would not
13 collect evidence; the crime scene investigator would
14 have collected the evidence on the scene. I did
15 make that observation, absolutely, yes, outside the
16 residence.

17 Q Make what observation?

18 A Of the fruit outside.

19 Q You remember seeing that?

20 A Oh, absolutely. Yes.

21 Q Now, is that just from your reports, or do
22 you have independent recollection of seeing that?

23 A Yes. I remember it. Actually, I thought
24 it was a little bit bizarre.

25 Q Why would you think it was bizarre?

1 A Well, you know, I'd worked a lot of
2 investigations and, you know, normally people don't
3 take fruit and eat it on their way from the scene.

4 Q So you believed that the perpetrator --
5 the rapist -- had eaten that fruit?

6 A Well -- yes. Yes. I believed the person
7 who was in her home may have eaten that fruit.

8 Q Okay. And was that based on information
9 obtained from Ms. Elliott, the victim?

10 A See, I never spoke with Ms. Elliott.
11 There was a number of other criminal investigators
12 who -- who -- and uniformed officers who interviewed
13 her. And she said that the suspect -- well, I don't
14 want to say what they said. I think you have that
15 in your record.

16 Q Okay.

17 A But there was fruit on the kitchen table.

18 Q Okay. And I'd like to, if I may, show you
19 an aerial map. And this may be a struggle for you,
20 but if you are good with maps -- and if you need to
21 stand up --

22 A I'm terrible with maps, but I will try.

23 Q Okay. If you need to, with the Judge's
24 permission, stand up and approach the screen.

25 JUDGE SUMNER: By all means.

1 Q I believe that this is a map from Hickory
2 from around the time period. And the area with the
3 yellow-dotted square the Commission understands is
4 the apartment complex that the victim lived in.

5 Do you -- take a look at that and see if you
6 think that looks like an accurate depiction or not. If
7 you don't, I'm not going to push you on it, but if you
8 do --

9 A Sure. Absolutely. I -- if this is 127 in
10 front -- is that 127?

11 Q I believe it is, but I want you to testify
12 whether you can tell or not.

13 A Yes. If that's 127, that is the public
14 housing apartment complex that we're talking about.

15 Q Okay. And you stay there near it, if you
16 need to.

17 A Okay.

18 Q I just didn't want to stand right up on
19 you.

20 So that does look, to you, like it's the
21 residence that the victim lived in?

22 A Yes. Now, understand there are probably
23 six -- four to six apartments in this whole complex.

24 Q Uh-huh. And so can you see the front
25 doors and back doors, where those would be, and show

1 us, if you're able to, where you think that fruit
2 was located.

3 A It would be -- this is 127 (indicating),
4 so it would be behind here on the sidewalk that runs
5 behind the apartments.

6 Q Okay. And is that where the fruit was
7 located, then, on the sidewalk behind?

8 A Yes.

9 Q Okay. Now, if I can, while I've got you
10 up there --

11 A Sure.

12 Q -- I'd like to show you another
13 photograph. This is a photograph that was taken by
14 Investigator Nowatka of what we believe is the
15 victim's -- the residence that still exists that
16 Ms. Elliott was living in. Does it look to you --
17 do you believe it might also be that?

18 A Sure.

19 Q Okay. Does it look to you the way that it
20 did in 1987, roughly?

21 A Yes, for the most part. They didn't have
22 the screens over -- actually, they didn't even have
23 central air conditioning then.

24 Q Okay.

25 A So that would not have been there.

1 Q Can you use this photograph to illustrate
2 your testimony about trying to explain where the
3 banana peels and the apple core were located?

4 A Absolutely.

5 Q Okay. Please do.

6 A I'm thinking down out about the first
7 pole, where the line is, right in this area
8 (indicating).

9 Q Okay. And then --

10 A And we were walking -- it appears that the
11 perpetrator was walking in a southerly direction
12 from her back door.

13 Q And the banana peels -- the two banana
14 peels and the apple -- I don't know if it was a core
15 or just an apple with a bite, and you may not
16 recall --

17 A When you say "two banana peels," I --
18 there was bananas and apples back there; the number
19 I don't remember specifically saying. If I said
20 two, then it was -- it would've been two.

21 Q Okay. Some pieces of fruit were located
22 right there.

23 A Right. Absolutely.

24 Q Okay. You do have that independent
25 recollection? This looks to you where they were

1 located?

2 A Absolutely, yes.

3 Q Okay. You can sit back down if you'd like
4 to. Thank you.

5 A Okay.

6 Q Now, you just testified a little bit
7 earlier about the no-stones-unturned aspect of this
8 investigation and how those hairs were significant
9 and made a difference.

10 A Sure.

11 Q Do you think that collecting the banana
12 peels and the apple core, the part of the apple, the
13 fruit, would have also been an essential part of the
14 no-stone-unturned investigation?

15 A Sure. I -- yes, I would've thought that.

16 Q Okay.

17 A And if I may just elaborate on that just
18 for a second --

19 Q Please do.

20 A -- I would've thought that -- and my
21 evidence technician had been an 8- or 10-year police
22 officer, and when I left him on the scene to process
23 a crime scene, I -- I thought he would have got
24 that.

25 Q You would have expected him to?

1 A Yes, absolutely.

2 Q Okay. And Investigator Hunt, you have not
3 read the trial transcripts; is that correct?

4 A No.

5 Q Okay. I'd like to, if I may, read you a
6 portion of your testimony from the trial transcript
7 and see if that helps you refresh your recollection.

8 A Okay.

9 Q This is the -- during the
10 cross-examination, and I know this was in 1988.

11 The defense attorney asks you:

12 "Q Did you secure that apple core?"

13 And you respond:

14 "A I took the apple core with me to the
15 Police Department, yes."

16 And the defense attorney says:

17 "Q That was placed into evidence."

18 And you respond:

19 "A No, it was not."

20 And the defense attorney says:

21 "Q What happened to that apple core,
22 sir?"

23 And you respond:

24 "A Went in the trash can, sir."

25 And he says:

1 "Q Was it ever examined for
2 fingerprints?"

3 You responded:

4 "A It was not."

5 He says:

6 "Q You testified that you saw two banana
7 peels in the back.

8 "A That is correct. They were heading
9 south" -- this is your answer, now -- oh, no,
10 I'm sorry. This is the defense attorney
11 saying:

12 "Q They were heading south. Were both
13 of them together or were they separate?"

14 And you responded:

15 "A They were approximately 10 feet
16 apart, sir."

17 And he says:

18 "Q Were those banana peelings placed
19 into evidence?"

20 You say:

21 "A I did not collect those."

22 He says:

23 "Q You left them there?"

24 You say:

25 "A Yes.

1 "Q Did you ever mention to the officers
2 here about the banana peelings?"

3 And you respond:

4 "A I did."

5 Is that the evidence technicians you're
6 talking about?

7 A Yes. Yes. The crime scene people. I
8 don't know why I would have testified that I
9 actually collected because I never collect evidence
10 on a crime scene.

11 Q Okay. So would you like to look at this?

12 A No, no.

13 Q Okay.

14 A If that's what I said, then I was
15 incorrect there. The evidence technician would've
16 secured the evidence.

17 Q So you believe when you testified about
18 collecting and discarding the apple peel or the
19 apple core, some portion of the apple, at trial,
20 that was an error in your trial testimony?

21 And it's okay if you just don't know.

22 A Well, what I'm saying is when I say I
23 got -- I took it, I physically would not have taken
24 custody of the evidence because I have a crime scene
25 tech on the scene and he or she is going to take

1 care of that. So I don't know why I would've said I
2 personally took it.

3 Q Okay. Thank you.

4 Let's talk about when you met with our staff
5 and they asked you about Linda McDowell. Do you
6 remember Ms. McDowell?

7 A I remember talking about Ms. McDowell,
8 yes.

9 Q Okay. And they said that you or when you
10 interview -- when they met with you, you said that
11 Linda McDowell, you believe, is Officer Bryant's
12 source.

13 Can you tell me what you mean by that.

14 A A confidential source that Steve Bryant
15 had used in the past.

16 Q Is that like an informant?

17 A Absolutely, yes.

18 Q And is that something that you remember or
19 were you just speculating about that?

20 A No, I remember it.

21 Q You remember that she had worked with him
22 on other cases prior to this one?

23 A And that was -- that was information from
24 Steve Bryant himself.

25 Q Okay.

1 A Obviously, you know, she didn't call me;
2 Steve Bryant was the one that she communicated with.

3 Q And you said that she would only speak
4 with Steve Bryant. Does that make sense to you, if
5 she was an informant that had worked with him?

6 A Oh, absolutely.

7 Q And she was not willing to speak with you?

8 A No.

9 Q Okay. And does that explain while even
10 though you were lead investigator on the case, she
11 worked with Officer Bryant?

12 A Right. Even though I was the lead
13 investigator, you know, most -- most of the
14 investigation was done by folks other than me. I
15 sort of put things together and brought them to
16 trial, the interviews and those type things.

17 Q Were you aware -- you said things were
18 done by others than you -- but you were aware --
19 were you aware of everything that was going on?

20 A Oh, absolutely. Yes. I had a yellow
21 sheet from everybody who was involved in the
22 investigation. "Yellow sheet" is a supplemental
23 report.

24 Q And were you in control of what they were
25 doing?

1 A No, I was not.

2 Q Okay.

3 A When you say "in control," I mean, they
4 were -- they were preparing the supplemental reports
5 for the -- for the case file. But as far as being
6 in control, they -- you know, they wrote what they
7 were involved in doing; i.e., the ones who conducted
8 the photographic lineup and those type things.

9 But I was not in control of them.

10 Q Did they -- the things that they did, were
11 they at your direction or was it more that you just
12 received the information?

13 A I just received the information once they
14 had completed their supplemental reports.

15 Q So who was directing them on what to do?

16 A Well, no one was actually directing them
17 on what to do. Like I said, if they interviewed
18 somebody or if they showed a photographic lineup --
19 i.e., for instance, Steve Bryant, his source called
20 him; therefore, he put a lineup together. And I
21 didn't direct him on anything as far as what to do.
22 He put the lineup together, showed it to the victim.
23 You know, that's what was going on as far as the
24 investigation. Nobody was actually directing them.

25 I mean, I was receiving the information

1 once -- you know, once that was -- you know, the
2 photographic lineup was shown, I got a yellow sheet
3 saying that the photographic lineup was shown and all
4 of those type things.

5 Q So each person was out doing their own
6 independent things, and that would come back to you.

7 A Sure, yes.

8 Q And is that -- was that standard procedure
9 at that time?

10 A Well, yes. It's still standard procedure.
11 You know, if you have a major case and you have
12 investigators out doing different things, I mean,
13 not at my direction. I don't tell them what to do.
14 They do what they -- you know, if they did something
15 on the scene, then I expect a yellow sheet from
16 that.

17 Q Okay.

18 A You know, if you secured the crime scene,
19 I want a yellow sheet from you. If you showed the
20 lineup, I want a yellow sheet from you. If you
21 collected the evidence and you processed the crime
22 scene, I want a yellow sheet from you. I mean, as
23 far as going out, directing them, absolutely not.

24 Q So your job as lead was more of a
25 recipient of information as opposed to: "You, show

1 a lineup, show these people in it" --

2 A Right.

3 Q -- "You, collect this, this, and this.

4 You, go and interview -- canvass the neighborhood."

5 You weren't doing those things.

6 A No. But understand, the whole piece with
7 the lineup was the confidential informant called
8 Steve Bryant and was talking to him. So, no, I did
9 not direct him.

10 Now, if there were things that needed to be
11 done, then absolutely I would direct other
12 investigators to do that. But in this particular case,
13 no.

14 Q There was nothing you directed people to
15 do in this case.

16 A No. This case come together fairly
17 quickly.

18 Q Okay. And was there anybody that was
19 directing, that was sort of the supervisor saying,
20 "Do this, do this," and assigning out duties?

21 A Well, there's the -- the sergeant and the
22 lieutenant in charge of the unit, absolutely, yes.

23 Q Okay. And was he -- based on the reports,
24 was he telling people what they needed to do
25 specifically?

1 A Sure. But everything that I got, I got as
2 a result of those officers and those criminal
3 investigators out on the scene doing everything
4 from -- the neighborhood canvass, the photographic
5 lineup, the collection of evidence and those things,
6 I got as a result of them being on the scene.

7 Q Now, are you aware that two of the
8 fingerprints that were located on the banana were
9 collected at the crime scene?

10 A No, I was not.

11 Q Okay. Officer Holsclaw testified about
12 those at trial. Were you present during the entire
13 trial?

14 A Yes.

15 Q Do you remember Officer Holsclaw
16 testifying that those prints were compared to Willie
17 Grimes and did not match him?

18 A No, I don't remember that.

19 Q Do you remember if there was any report
20 that was generated about fingerprint comparison?

21 A Not to my knowledge.

22 Q You never saw a fingerprint comparison
23 report?

24 A Not that I can remember. If there was one
25 generated by the SBI, I'm sure that I saw it. But I

1 don't remember seeing it.

2 Q Do you know -- and I understand since you
3 don't remember it specifically in this case --

4 A Sure.

5 Q -- would it have been standard procedure
6 to compare the prints to the suspect only and not
7 the victim who lived in the home or officers who had
8 secured the scene or anybody else?

9 A Well, standard procedure would've been
10 compared to a suspect, yes.

11 Q And if they didn't match the suspect,
12 would standard procedure or your usual way of
13 handling cases have been to compare them to
14 additional people?

15 A If we had additional people to compare
16 them to, yes.

17 Q Like the victim that owned the home and
18 resided in the home.

19 A We usually didn't do it to the victim.

20 Q Okay. Why not?

21 A We just didn't.

22 Q Okay.

23 A I -- I just didn't. And that's all I
24 could say on that particular point.

25 Q Okay. Thank you.

1 Now, do you personally know or do you have
2 any recollection of Willie Grimes?

3 A Oh, I know Willie, yes.

4 Q Okay.

5 A I grew up in Hickory.

6 Q Okay.

7 A Hickory is not but so big, so, yeah.

8 Q So you knew Mr. Grimes before he became a
9 suspect in this case?

10 A Sure.

11 Q Okay. And you said you just knew him from
12 growing up.

13 A Yeah.

14 Q Can you tell me more what you --

15 A And being a police officer in the
16 community and that type stuff, yes.

17 Q Okay. Had you ever arrested him before?

18 A I don't think I ever had arrested Willie.
19 I don't think I had.

20 Q Do you remember Mr. Grimes having a large
21 mole on his face near his mouth?

22 A Yes.

23 Q And you knew him from before. Was that
24 mole something obvious?

25 A Oh, very obvious, yes.

1 Q If you were describing Mr. Grimes to
2 somebody, would you have described the mole?

3 A Yes.

4 Q If Ms. Elliott had told you or if it had
5 been in the police reports that the suspect had a
6 mole, would you have thought of Mr. Grimes then?

7 A I don't know. You know, when you're
8 working a case, you think of a lot of people,
9 especially who would do something like that to an
10 elderly woman. But Mr. Grimes, I don't know that it
11 would have ever come to my mind if --

12 Q Okay.

13 A -- she mentioned the mole.

14 Q And it didn't trigger to you, "Hey,
15 Mr. Grimes also has a mole"?

16 A No, no. Not at all.

17 Q Why not?

18 A It just didn't.

19 Q Okay.

20 A You know, Willie is not -- he's not one of
21 those persons that I had a lot of dealings with.
22 You know, once I saw him again after years, I
23 remembered the mole, but it's not something that I
24 just, you know, walked around saying "Willie Grimes'
25 got a mole." No.

1 Q Okay. Was Mr. Grimes a suspect before
2 Linda McDowell provided his name?

3 A No.

4 Q Did you have any suspects, if you
5 remember, before Linda McDowell provided his name?

6 A No.

7 Q And you said that first lineup that was
8 shown with people in it, you didn't direct that
9 lineup being shown.

10 A No.

11 Q So you don't know who was included in that
12 lineup or why?

13 A Oh, sure. I got a copy of the lineup.

14 Q Afterwards?

15 A Oh, absolutely, yeah.

16 Q Well, what would have been -- can you tell
17 me a little bit about standard procedure with a
18 lineup from the Hickory Police Department in 1987.

19 A Well, you know, we would find photographs
20 that were similar to the suspect and put six in a
21 sleeve. And there was a form -- a standard form
22 that we utilized to read to the victims and we'd let
23 them look at them, and either they would pick them
24 or not pick them -- by number. All the photographs
25 were numbered.

1 Q So if we have a copy of the lineup and one
2 just has numbers and one has a person's name written
3 on it, she would not have been shown the one with
4 the person's name; right?

5 A Oh, absolutely not. No. There would be
6 nothing on the photographs; it would have just been
7 the photographs with numbers above them, and that's
8 all.

9 Q Okay. Would -- in a lineup with six
10 people, would one of them, multiple of them -- would
11 somebody have been a suspect?

12 A Usually -- yes, usually.

13 Q And you don't know who was a suspect in
14 this first lineup or why these particular people
15 were chosen?

16 A No.

17 Q Okay.

18 A I knew Mr. Grimes, again, was a suspect
19 once Steve Bryant got the call from -- her name
20 escapes me.

21 Q From Ms. McDowell?

22 A Ms. McDowell, yes. Yes.

23 Q And that's -- and then that's the second
24 lineup that was shown; is that correct? With
25 Mr. Grimes in it?

1 A I'm not sure on the dates, which was shown
2 first.

3 Q Okay.

4 A But, you know, I know that one that was --
5 Albert Turner was in one of the lineups.

6 Q And we obtained a copy of that lineup from
7 you and from your file.

8 A Sure.

9 Q And we noted that in -- one of them is
10 just numbers, and one of the copies has Albert
11 Turner's name, or has "Turner" written on it, but
12 none of the other people have their names written on
13 it.

14 Do you know why that is?

15 A No, I don't.

16 Q Do you know why under standard procedure
17 that would be?

18 A I don't know why that name -- his name
19 would've ended up on the lineup, but I'm about
20 98 percent sure that it would not have been shown to
21 the victim with his name on it.

22 Q I understand.

23 A Yeah.

24 Q But if somebody wrote -- what I'm trying
25 to ask is if his name and nobody else's name is

1 written on the lineup -- and I know we're just
2 talking standard procedure right now, because you do
3 not recall --

4 A Sure.

5 Q -- does that mean that he was the suspect
6 in that lineup?

7 A Could possibly have been, absolutely, yes.

8 Q Okay. Going back to Mr. Grimes
9 specifically, do you recall -- you testified that he
10 turned himself in; he came down to the Police
11 Department --

12 A Yes.

13 Q -- is that correct?

14 A That's in my records.

15 Q Okay. And the files that we have don't
16 show any record of Mr. Grimes being interviewed by
17 you. Do you remember interviewing him?

18 A I don't. Mr. Grimes didn't wish to talk
19 to us at that point.

20 Q Okay. So did you -- did he invoke his
21 privilege?

22 A I'm almost certain he did.

23 Q Okay.

24 A I -- you know, I don't have everything.
25 Some of the things that were submitted in

1 evidence -- and I don't know where that information
2 is at this point, I don't have a copy of it. But I
3 always give Miranda in a situation like that and
4 give them an opportunity to speak to me.

5 Q So your standard procedure would have been
6 to have read him his Miranda rights?

7 A Oh, absolutely. Yes.

8 Q And you believe he must have invoked at
9 that time because he didn't want to speak?

10 A Right.

11 Q Okay. Would your normal procedure have
12 been to have had the suspect sign some kind of
13 document that you'd read him their rights?

14 A Yes.

15 Q Okay. Did you have Mr. Grimes sign such a
16 document?

17 A My standard operating procedure is yes --

18 Q Okay.

19 A -- but I don't have it before me, so I
20 don't -- I don't know where it is.

21 Q Okay. But you believe he did, but you
22 don't recall? This -- we're just going by standard
23 procedure or your actual recollection?

24 A My standard procedure --

25 Q Okay.

1 A -- is when I serve -- when I serve a
2 warrant on someone, I give them Miranda, especially
3 in a felon cases, and plan on interrogating them.

4 Q Now, did you ever -- before you drew up
5 the arrest warrants, did you ever go out and attempt
6 to speak to Mr. Grimes, not in custody, and just
7 talk with him?

8 A No. Again, as I said to you earlier, this
9 case came together fairly quickly and Mr. Grimes
10 showed up at my house -- my house? -- he showed up
11 at the Police Department and wanted to turn himself
12 in.

13 Q But by then you had already drawn up the
14 arrest warrants?

15 A Yes, yes. He knew the warrants -- I had
16 been on the street and I had told some people and
17 spoke with some people, and the word got back to him
18 that I was looking for him and he came and turned
19 himself in.

20 Q Okay. But before you went to the
21 magistrate and got the warrants, did you go and try
22 to talk to him and get information before he would
23 be placed under arrest?

24 A No, no.

25 Q And is that standard for you? Do you

1 normally try to talk a suspect or do you go straight
2 to the magistrate?

3 A Well, it's according to how the case is
4 coming together. You know, I looked at the totality
5 of everything I had, and I really didn't see a need
6 to do it at that point.

7 Q Okay. Did -- when Mr. Grimes turned
8 himself in, did he indicate to you, did he know why
9 he was being arrested?

10 A I don't -- I don't remember. Like I said,
11 he didn't -- he didn't -- again, my normal procedure
12 is to give him Miranda and give him an opportunity
13 to talk with me. And apparently in this case he did
14 not.

15 Q And at that time would you have told him
16 what he was specifically charged with?

17 A Oh, yeah. I would've told him what he was
18 arrested for before I ever served the paper on him.

19 Q And if he had wanted to speak to you,
20 would you have spoken with him?

21 A Yes, absolutely.

22 Q Now, what if he was intoxicated? Would
23 you have spoken to a suspect --

24 A No.

25 Q -- if he was intoxicated?

1 A Absolutely not.

2 Q And is that just a judgment call for you
3 whether someone --

4 A Yes. Yes, indeed.

5 Q Okay. If a suspect was intoxicated and
6 you chose not to speak to them and they did not
7 invoke, would you try to speak to them again later,
8 after they had dried out a little bit?

9 A Possibly. You know, I'm not sure whether
10 I would have or not. But if they come to
11 headquarters and they're intoxicated, then I'm never
12 going to try and give them Miranda or to talk to
13 them in a case this serious.

14 Q Okay. And so would you come back later to
15 do Miranda or -- or interview them if you decided to
16 do that?

17 A Maybe. Maybe.

18 Q Okay. Now, you provided a copy of your
19 file to Investigator Nowatka that we have, and you
20 said you have a copy of it before you.

21 A I do.

22 Q Okay. Do you know, was that file ever
23 turned in to the Hickory Police Department?

24 A No.

25 Q Okay.

1 A I mean, everything in my file should have
2 been in Hickory Police Department's file. That's
3 standard operating procedure. Anything -- any
4 yellow sheets, any initial reports, all those things
5 should be in the Police Department files.

6 Now, there is a certain time limit that they
7 keep them and then they purge them. But now, as far as
8 them still having the file, I don't know whether they
9 do. I'm almost certain they still have the file, but I
10 don't know if they have the whole content of the file
11 since the case had been to trial and all of that.

12 Q And let me just make sure I understand
13 that clearly. You said that yellow forms should
14 have been there. Is that because they would go to
15 both you and the file or because you would have then
16 taken them to the file?

17 A Right. The yellow sheet -- well, the
18 white sheet and the yellow sheet, which is the
19 original offense report, you know, is three-part.
20 You know, I get a part, Records gets a part, and --
21 I'm trying to think -- I don't know where the other
22 one goes, but there's three parts. Okay? And the
23 same way with the yellow sheets. When I finish my
24 yellow sheets, my secretary -- when I dictate them
25 to my secretary and she takes them to Records, she

1 tears out our copy, keeps them in our file, sends
2 them to Records, and so forth.

3 Q Any reports that you did, the same thing
4 would happen.

5 A Right.

6 Q Okay. So it's not that you give your file
7 to the master file or whatever it's called at the
8 Police Department; it's that everything goes both
9 places.

10 A Absolutely.

11 Q What about your handwritten notes when you
12 do your investigation? And I know that was 1987;
13 would they have got to the file?

14 A No. I do handwritten notes; usually, you
15 know, I'd do a supplemental off of them and then I
16 trashed them or shredded them.

17 Q Okay.

18 A You know, I would -- you know, if I made
19 some notes, just like I did on my file about grand
20 jury and that type stuff, I'd do a yellow sheet
21 usually and shred the handwritten notes or tear them
22 up.

23 Q Okay.

24 A But, no, I would not give them a copy of
25 the handwritten notes.

1 Q Okay.

2 A It was not required at the time in
3 discovery, so...

4 Q But they would've been incorporated into a
5 report?

6 A Oh, absolutely.

7 Q And I think you said -- and I just want to
8 make sure I understand -- that the Hickory Police
9 Department purges over time, or your understanding
10 was would purge pieces of the file but not the
11 entire file?

12 A Well, for the sake of space and things of
13 that nature, they would purge files. Now, what
14 portion of the file, I don't know. But I understand
15 when your associates went back to get some of the
16 stuff, it wasn't in the file. And I don't know why.

17 Q Okay. So you don't know --

18 A But I'm assuming -- well, I know that they
19 purge files, but what they purge from the files I
20 don't know.

21 Q I understand.

22 If you can, I would like to ask you about a
23 couple of documents that you have in your file.

24 A Sure.

25 Q The first one is that there's a

1 handwritten note -- and I know you already talked
2 with our investigators about this -- handwritten
3 note about a man named Charlie. And I have a copy
4 that I can hand up to you if you would like me to.

5 A I've got it.

6 Q Okay. I'm just going to hold up my copy
7 and just make sure that you and I are talking about
8 the same -- and I've got an extra copy.

9 A Okay.

10 Q Have you found yours? Does it look like
11 this?

12 A Oh, well, mine is yellow.

13 Q Okay.

14 A So it will be fairly easy to find.

15 Q All right.

16 A Well, I said it would be fairly easy to
17 find.

18 Q I'll be happy to hand you my copy.

19 A Here we go.

20 Q And I'm holding up my copy. Would you
21 just, if you can from there, does it look like the
22 same thing that you have?

23 A Yes.

24 Q Okay. And is that just yellow note paper?

25 A Yes.

1 Q So that's not a yellow sheet report like
2 we've been talking about?

3 A No. That's not an official supplemental
4 report like so (indicating).

5 Q Okay. Thank you.

6 And I believe you said that the bottom
7 portion of this note is your handwriting. Do you
8 believe that's correct?

9 A Yes.

10 Q And it says Charlie -- something. Can you
11 read what's written after Charlie?

12 A Well, I -- when your investigators came --
13 and once I reread this, it's -- I called Paul
14 Burgess, who was captain in charge of the jail --
15 Catawba County Jail at the time. And, let's see.
16 "I called Burgess at the Catawba County Jail
17 reference Charlie subject. He advised that he would
18 go through the jail sheets and try and find out,"
19 once I made him aware of this note. And he never
20 found anybody to fit that Charlie person.

21 And if you will notice on your copy, it's got
22 SO on the top, which is -- right?

23 Q I do see that, yes.

24 A And this is a note from someone to me; I
25 was known as SO, Steve O. Hunt. But I was known by

1 SO. And this was left by Steve Bryant, if my memory
2 serves me correctly.

3 Q Okay. Now you said just a second ago
4 "Charlie subject"; is that because you believe it
5 says "subject"?

6 A Yes, I believe that's what it says.

7 Q Okay. So --

8 A "Reference Charlie subject."

9 Q Okay.

10 A That we were talking about in the previous
11 note up top.

12 Q Okay. And when you met with our staff and
13 Investigator Nowatka on January 27, you were unable
14 to --

15 A I couldn't figure out what it was. But
16 once I went back and read it, it made sense to me
17 that that was "Charlie subject." Once my
18 handwriting gets cold, it's hard to read sometimes.

19 Q So after they left, you spent some more
20 time looking at it and I thought, "I think this is
21 Charlie subject"?

22 A Well, maybe not right after they left, but
23 as I was reviewing my file for this hearing today --

24 Q Okay.

25 A -- absolutely.

1 Q And that's when you said you contacted
2 Paul Burgess. And he's at the jail?

3 A No. This was back in 1988.

4 Q Oh, I'm sorry. The '88 call was to
5 Charlie Burgess [sic].

6 A Yes, yes.

7 Q Okay. So after you decided you think it
8 means "subject," you didn't do anything else?

9 A No.

10 Q Okay.

11 A I called Paul because Paul was in charge
12 of the jail and I wanted him to go through the jail
13 sheets and see if he had anybody meeting that
14 description that the note pointed out.

15 Q Okay. And that was in 1988 that you
16 called Paul as these notes indicate, not --

17 A Right.

18 Q -- in 2012?

19 A No, no. Right.

20 Q And after you decided that you think reads
21 "subject," did you call Investigator Nowatka, Jamie
22 Lau, Sharon Stellato and let them know, "I think
23 this does this mean subject"?

24 A No.

25 Q Okay. Why not?

1 A I just didn't.

2 Q Okay.

3 A I didn't see a reason to.

4 Q And I think you just said this, but I want
5 to clarify: You said that in '87 when you called
6 Paul Burgess, he was not able to find somebody named
7 Charlie in the jail.

8 A Right.

9 Q Okay.

10 A He never got back with me on that.

11 Q Okay. So not that he got back negative;
12 he just never returned your call?

13 A Right. He never got back with me. He
14 assured me that he was going to check, but he never
15 got back with me on who Charlie was.

16 Q Okay. Did you follow up with him?

17 A No.

18 Q So you don't know if there was a Charlie
19 in custody in '87.

20 A Right -- well, according to the note,
21 there was a Charlie; but according to Paul Burgess,
22 who never called me back, I don't know.

23 Q Okay. And how do you know that he never
24 called you back?

25 A I never got a call from him.

1 Q I mean, you remember that he never called
2 you back? Or you have a file or a report that says
3 he never --

4 A Oh, if he would've called me back and
5 said, "Charlie so-and-so was in jail at the time,"
6 there would be a yellow sheet in the file to reflect
7 that.

8 Q So I just want to be clear. Is it that
9 you independently recollect that he did not call you
10 back or that you are presuming he did not call you
11 back because there's no a yellow sheet?

12 A Yes. I'm presuming he didn't call me back
13 because there's no yellow sheet.

14 Q Okay. And would you have followed up with
15 him and said, "I haven't heard back from you; did
16 you check on this?"

17 A No. I called him and asked him to do it,
18 and I did not follow back up with him, no, ma'am.

19 Q Okay. Now, I'd like to ask you about --
20 also in your police file there are a couple of
21 Gaston Police Department records. And I know that
22 we talked with you about those -- or our staff
23 talked with you about those before, and I would just
24 like to go over them with you again.

25 A Okay.

1 Q And I have a copy I'd be happy to hand up
2 for you; or if you'd like to pull yours, I just want
3 to make sure we're looking at the same thing.

4 A Gaston County -- were they Gaston County
5 arrest sheets?

6 Q Yes. And if I -- why don't I hand it up
7 to you, my copy, and then you can pull your
8 originals based on my copy, if you'd like.

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

11 JUDGE SUMNER: Yes.

12 Q This is what I'm talking about; if you'd
13 like to look at your original, that's perfectly
14 fine.

15 A One second.

16 Q Are you with me?

17 A Am I with you?

18 Q Yes.

19 A Yes.

20 Q Let me know when you're ready.

21 A Yes, yes, yes. I'm just getting them out
22 here. Okay.

23 Q Okay. So I'm looking at the reports for
24 it looks like Gregory James Garvin, Jerry Thomas
25 Surratt, James McDaniel, and Sandy Vincent Sturgis.

1 And these appear to me -- and please tell me if I'm
2 correct -- from Gaston Police Department, not
3 Hickory.

4 I suppose the Gastonia Police Department.

5 A I think -- yes, I think these are from
6 Gaston County.

7 Q Okay.

8 A I -- yes, I think they are.

9 Q Okay. And do you know, these reports, if
10 they have significance to the Grimes investigation?

11 A I don't -- I don't know how these reports
12 even got in my file.

13 Q Okay.

14 A You know, someone may -- someone who was
15 working on them -- you know, I know some of these
16 people or I know at least one of these people who is
17 a burglar. I've arrested him on burglary before,
18 but I don't know why they're there.

19 Q So could it be an accidental -- that they
20 got into the file? Or could they be related to the
21 case or both?

22 A I don't want to say they were accidentally
23 put in the file because that's not normally how I
24 keep records. But what I'm thinking is I got these,
25 maybe, from another criminal investigator who was

1 working another case and just said, "Hey, take a
2 look at these guys," or something along those lines.
3 I'm not sure, but I know that one of the people
4 was -- is from Hickory and I've dealt with him
5 before.

6 Q Okay. And there is no report about these
7 files; there's no yellow sheet?

8 A No.

9 Q Okay.

10 A No.

11 Q You said you know some of these people.
12 Which ones do you know?

13 A Jerry Surratt.

14 Q Okay. Is he the one that's from Hickory?

15 A Yes.

16 Q Is he the only one that you know?

17 A Yes.

18 Q And are these reports -- do they look to
19 you like they are all from June of 1988?

20 A Yes.

21 Q And that was before the trial in the
22 Grimes case, correct --

23 A Yes.

24 Q -- if you know?

25 A Well, the Grimes case was '88. Was it

1 May?

2 Q I think it was July of 1988. It's okay if
3 you don't know.

4 A Well, I've got it on my folder here.
5 7/2/88. I'm sorry, 7/12 of '88.

6 Q Thank you. So these are prior to that?

7 A Yes. I should remember; that's my
8 birthday.

9 Q It was a good birthday present.

10 A Yeah.

11 Q Now, you said you did know Jerry Surratt.

12 A Yes.

13 Q Did you know him to associate with Willie
14 Grimes?

15 A Not really. I -- you know, Jerry and
16 Willie lived in the same geographical part of the
17 city. But as far as hanging out, I don't know that
18 I ever remember them hanging out together.

19 Q Okay.

20 A They could have, but I don't know that
21 they did.

22 Q How about Albert Turner? Do you remember
23 if Jerry Surratt hung out with Albert Turner?

24 A Probably. More so than Willie, I would
25 think. Again, Albert was one of those people --

1 street person, for lack of a better term. And
2 anywhere there was a bottle, he was going to be
3 there.

4 Q What do you mean by that?

5 A He was a local alcoholic. And, you know,
6 if Jerry Surratt happened to be in the group and he
7 showed up, then, yeah, they -- if you want to say
8 "hang around," yeah, absolutely.

9 Q And you --

10 A If there was --

11 Q Go ahead.

12 A If there was a bottle there, he was
13 somewhere close.

14 Q That's Albert Turner?

15 A Yeah.

16 Q And you believe that he would have hung
17 out with Jerry Surratt?

18 A Yeah, sure. He could have very easily.

19 Q And is that because you have independent
20 recollection of them being together or that you
21 presume now that they probably did?

22 A Well, just -- you know, when you're a
23 police officer and you ride the street and you see
24 people together and those type of things, and -- I'm
25 sure I've seen Jerry, Pothead, and Jerry Surratt

1 together before.

2 Q You said "Pothead"; is that Jerry
3 Surratt's street name?

4 A Yeah, that's his a.k.a. I'm sorry.

5 Q Okay.

6 A But yeah, again, it's typical alcoholics,
7 and they hang out. And when the alcohol is gone,
8 then they are off and running somewhere else.

9 Q Okay. Well, and you're talking about
10 Albert Turner now; right?

11 A Yeah.

12 Q And so you knew Albert Turner.

13 A Oh, absolutely.

14 Q You were familiar with him.

15 A Sure.

16 Q And you said you knew him to be an
17 alcoholic. Did you know him to be violent?

18 A I've known Albert to be in fights, yes.
19 But, again, it was that -- that whole clientele that
20 ran together, you know. And if somebody drank it
21 all, somebody got mad and they were in a fistfight.
22 But as far as just out physically, violently hurting
23 someone, no.

24 Q Did you know Albert Turner to get in
25 trouble with the law?

1 A Oh, yeah.

2 Q Did you ever arrest him before, if you
3 know?

4 A I remember one occasion I arrested Albert
5 many years ago, yes.

6 Q Was he cooperative with you, if you
7 remember?

8 A Yes, after some persuasion.

9 Q What do you mean?

10 A Well, initially he wasn't because he was
11 intoxicated. But we chatted a while and he
12 cooperated and I took him and booked him.

13 Q Okay. When you say "initially he wasn't,"
14 what do you mean by that?

15 A He was resistant, yes.

16 Q Okay. How was he resistant?

17 A Well, telling me he wasn't going. And I
18 convinced him otherwise and everything was okay.

19 Q And I think you also said at one point
20 that Albert Turner -- during the interviews with the
21 Commission staff, that Albert Turner had -- you also
22 knew him because he did some work for your mother in
23 her garden.

24 A Yes. My mother is 82 years old and very
25 independent and very quick to let me know that she

1 is Mother and I need to stay out of her business.
2 But I told her on numerous occasions I didn't like,
3 you know, Albert hanging around because of some of
4 the things he was involved in. But, you know, he
5 would go get my mother pecans and he'd go to the
6 store for her, he'd do things for her, and because
7 she saw him grow up as a kid -- so she didn't see
8 what he was doing on the street, he never let her
9 see that. But, no, I was very uneasy about him
10 being around my mother's home.

11 Q You said he went to the store for her?

12 A Sure.

13 Q Okay. And you know that from experience?

14 A Yes, yes. You know, he'd pick up stuff
15 for her. Yeah.

16 Q And did you tell that to the Commission
17 staff when they met with you?

18 A I think I told them that he worked in my
19 mother's flower garden and did things for her.

20 Q Okay. But -- does he still do that now?

21 A No. No. I think he is -- I think he is
22 all but deceased at this point. I think he's having
23 some medical issues.

24 Q So you said you were uneasy. You did not
25 approve of Albert Turner --

1 A Absolutely not.

2 Q -- helping your mother.

3 A But not only Albert, there was a number of
4 local folks Mother liked to help out, and they would
5 work in her garden and do things for her.

6 Q Why didn't you want Albert Turner to do --
7 help your mother out?

8 A Well, because I knew what Albert was out
9 there doing and I know what happens when folks get
10 intoxicated, they do things that they normally
11 ordinarily wouldn't do, and I didn't want Mother
12 subjected to that.

13 Q When he went to the store for your mother
14 did she pay him to do that?

15 A Usually.

16 Q And do you know, when -- how recent was
17 this that he was working for your mother?

18 A Last -- gosh, five years or so. Five, six
19 years or so.

20 Q If Albert Turner came back to you today
21 and said he wanted to do some more work for your
22 mother, would you --

23 A He never asked me. Remember, I said to
24 you earlier my mother's 82 and very independent and
25 she didn't approve of me trying to tell her what to

1 do. So I was real quick to say, "I don't like it,
2 but okay."

3 Q And would you feel the same way today if
4 he came back and your mother said, "He's going
5 to" --

6 A Oh, absolutely.

7 Q -- "do some work for me"?

8 A Yeah.

9 Q Would you tell her, "I think that's a bad
10 idea"?

11 A Probably not because she's already made it
12 known that she'll do what she wants to do.

13 Q Okay. Now, I just want to ask you -- and
14 I know that the Commission staff has talked to you
15 about this before -- we have been unable to locate
16 any physical evidence other than the two latent
17 prints that remains in this case.

18 Have you ever seen any of this evidence since
19 court?

20 A No.

21 Q And you have no idea where it may be
22 located now.

23 A I have no idea.

24 Q And you are not aware of it being
25 destroyed with any kind of documentation or

1 witnesses.

2 A No. Usually, I never -- you know, I've
3 prosecuted a ton of cases, and I never -- once it
4 went to trial, I never followed up on where it went
5 from there, usually destroyed, but I have no
6 knowledge at all of where this evidence went.

7 MS. MONTGOMERY-BLINN: Commissioners, do you
8 have any questions for Investigator Hunt?

9 COMMISSIONER SMITH: So far as you know, was
10 Albert Turner ever arrested in any way towards your
11 family, toward your mom?

12 THE WITNESS: Absolutely not.

13 COMMISSIONER SMITH: Was he a strong person,
14 physically? A pretty strong individual? How would you
15 describe him physically?

16 THE WITNESS: Probably today, no. At one
17 time, absolutely.

18 COMMISSIONER SMITH: 25 years ago would he
19 have been really a powerful man?

20 THE WITNESS: Maybe. Maybe. But he -- it
21 had started to take its toll on him then, alcohol and
22 the drugs.

23 COMMISSIONER SMITH: Thank you.

24 THE WITNESS: Yes, ma'am.

25 COMMISSIONER SURGEON: As the investigator,

1 would it have been your role to tell other officers
2 what to do? I mean, the evidence collection officer,
3 did you indicate to the officer what needed to be
4 collected?

5 THE WITNESS: Sure. Actually, I think I told
6 the officer very specifically I wanted everything that
7 wasn't nailed down. You know, bed linen, everything.
8 And, again, as I pointed out earlier, he'd been a
9 police officer for 10 years prior to becoming an
10 evidence technician. But, yes, I usually direct them
11 on what it is I want them to take from the crime scene.

12 COMMISSIONER SURGEON: So did you
13 specifically say, "Collect the fruit that was outside"?

14 THE WITNESS: I'm not -- I'm not -- I can't
15 say a hundred percent sure that I did. But I can't
16 imagine me going out and seeing the evidence there and
17 not telling them, "We need to get that, we need to get
18 that photographed, we need to get it collected." I
19 just -- I just know me and the way I do business.

20 COMMISSIONER SURGEON: So you had made a
21 determination as the investigating officer that that
22 fruit was evidence.

23 THE WITNESS: Oh, sure. Absolutely. Because
24 there was other fruit on the table.

25 Yes, ma'am?

1 COMMISSIONER ASHENDORF: I can understand 25
2 years later not recalling a lot of this. I've read all
3 of this and I'm having a hard time recalling things
4 just in the past week I've read it.

5 But in your testimony at the trial you did
6 say you picked up the apple core. That's pretty -- a
7 pretty definite statement.

8 THE WITNESS: I know. I know. And I don't
9 know why I would've said I picked it up because that's
10 taboo. I never, ever pick up evidence at a crime
11 scene. You photograph it, you collect it, you process
12 it. You never put your hands on it. And I don't know
13 why I would've said that.

14 COMMISSIONER ASHENDORF: And then also it
15 sounds like you did direct what some -- you said that
16 you didn't direct them, they just kind of did it on
17 their own, but then --

18 THE WITNESS: Well, the crime scene -- yeah.
19 The crime scene people, absolutely. Anytime someone
20 comes out on a crime scene and I'm the lead
21 investigator, then I am going to direct them.

22 But the point I was making is the guy who was
23 our crime scene investigator was a 10-year police
24 veteran. He knew what to collect on crime scenes. And
25 it doesn't take a lot of directing, but I tell -- you

1 know, I'm sure I told him very specifically, "We need
2 to photograph this and collect this."

3 COMMISSIONER ASHENDORF: Okay. Because I was
4 hearing --

5 THE WITNESS: I'm sorry.

6 COMMISSIONER ASHENDORF: -- that it wasn't
7 coordinated. I'm glad to hear it was.

8 THE WITNESS: Okay. But I -- yeah. But I --
9 again, I don't go over and say, "Get this piece, get
10 that piece, get those pieces," but I do say, you know,
11 "We need to get a picture of this and we need to make
12 sure we collect this."

13 And when I said I physically took it in my
14 custody, I -- I don't know I would have said that
15 because that's just taboo on a crime scene, you don't
16 do that.

17 COMMISSIONER ASHENDORF: One more thing.

18 THE WITNESS: Sure.

19 COMMISSIONER ASHENDORF: You said that Albert
20 Turner and Jerry whatever, the Gaston guy --

21 THE WITNESS: Jerry Surratt.

22 COMMISSIONER ASHENDORF: -- Jerry Surratt,
23 they used to hang out and, you know -- you knew them.

24 THE WITNESS: Sure.

25 COMMISSIONER ASHENDORF: And you had contact

1 with them.

2 THE WITNESS: Oh, yeah.

3 COMMISSIONER ASHENDORF: And you knew Willie
4 Grimes, but you didn't consider him in the same
5 category, or did you --

6 THE WITNESS: Oh, yeah. They were all in the
7 same -- in the same category, but I never seen them
8 hang out together. You know, Willie had his group and
9 Albert and Jerry, they had their group. You know, and
10 they all had their own little group that they hung out
11 with and they drank with and they just -- you know...

12 COMMISSIONER ASHENDORF: Would -- in your
13 opinion would you say that Willie was a violent person?
14 Because you didn't think Albert was.

15 THE WITNESS: You know, I never dealt with
16 Willie enough to sit here and say he was a violent
17 person. There's nothing in my 30 years in the business
18 to indicate he was a violent person.

19 COMMISSIONER ASHENDORF: Okay. Thank you.

20 THE WITNESS: Nothing at all.

21 JUDGE SUMNER: Mr. Hunt, did you have an
22 opportunity to talk to Linda McDowell?

23 THE WITNESS: No, sir. She wouldn't -- she
24 didn't want to talk to anyone but Steve Bryant.

25 JUDGE SUMNER: Did you know anything about

1 her reputation? I think you said that she was somebody
2 else's source or --

3 THE WITNESS: Right.

4 JUDGE SUMNER: Anything about her reliability
5 in terms of other cases that she might have assisted
6 the Department on in terms of veracity?

7 THE WITNESS: I don't -- again, she was
8 Steve's source and Steve felt very confident. She was
9 a confidential, reliable source for him because she
10 had -- he had gotten information from her on other
11 cases and successfully prosecuted those cases.

12 And, again, I'm basing this on what Steve
13 told me. She -- one of the issues I encountered was I
14 grew up in the neighborhood, and when I put on a badge,
15 a lot of those folks didn't necessarily care for me
16 because they felt like I betrayed them. Therefore,
17 they wouldn't talk to me. But Steve was able to get
18 her to chat with him.

19 But she had -- she had successfully given him
20 information for prosecution in the past.

21 COMMISSIONER BECTON: Sir, do you have any
22 present recollection of where you saw the apple core as
23 opposed to the bananas?

24 THE WITNESS: The same place that I pointed
25 to on the -- on the sidewalk behind the apartment. All

1 the fruit was right together. And when I say "right
2 together," not laying right beside each other, but
3 in -- sort of like someone was eating it as they were
4 leaving, and wherever they finished, they dropped it
5 and kept going.

6 COMMISSIONER BECTON: Do you recall seeing
7 more than one apple core there at the -- I ask in the
8 context of a transcript that says you saw an apple core
9 about a block away in Center Street.

10 Do you recall seeing more than one apple
11 core?

12 THE WITNESS: No. I saw one on Center
13 Street?

14 COMMISSIONER ASHENDORF: That's what it said
15 in the testimony.

16 COMMISSIONER BECTON: And you got out -- this
17 was a question:

18 "Q And you got out of your vehicle and
19 proceeded to prowl around the apartment, you go
20 around to the back of the apartment?

21 "A Yes. Well, on my way to the police
22 headquarters, I found an apple core in Center
23 Street. I remember someone -- radio
24 transmission about the suspect took some fruit
25 when he left. That's why I went back to the

1 scene to see what I can see on the exterior.

2 "Q You're telling me that South Center
3 Street at 12:30 at night you saw an apple core?

4 "A Yes, sir.

5 "Q How far is that from the apartment
6 where you found the apple?"

7 Actually, it says the "appeal."

8 "A A block.

9 "Q On Center Street?

10 "A Yes."

11 And I was going to ask: Did you see more
12 than one apple core, do you recall?

13 THE WITNESS: I don't remember seeing but one
14 apple core -- or fruit behind the apartment. I don't
15 remember the one on Center Street at all.

16 COMMISSIONER BECTON: Okay.

17 THE WITNESS: And Center Street is about a
18 block away from where the crime scene was.

19 And I said I got out and prowled around the
20 house?

21 COMMISSIONER BECTON: The next question was:

22 "Q And did you secure the apple core?

23 "A I took the apple core with me to the
24 Police Department, yes.

25 "Q That was placed into Evidence?

1 "A No, it was not.

2 "Q What happened to the apple core, sir?

3 "A Went in the trashcan, sir.

4 "Q Has it ever been encountered for
5 fingerprints?

6 "A It was not."

7 THE WITNESS: And if I picked it up on Center
8 Street, then apparently I didn't put it with the crime
9 scene. And I don't know why I would have even picked
10 it up.

11 COMMISSIONER BECTON: Okay. But you also --
12 that's why I'm asking, did you see -- were there two
13 apple cores, one by the bananas and one on Center
14 Street?

15 THE WITNESS: I can't remember. I'm sorry.

16 COMMISSIONER BECTON: Nothing further.

17 COMMISSIONER SURGEON: Did you ever talk to
18 Miss Carrie?

19 THE WITNESS: I did not spend a lot of time
20 with Ms. Elliott at all. And the reason being, she had
21 been interviewed by three or four of our investigators
22 and what I -- and I had what I felt was sufficient
23 information to move forward.

24 I didn't talk to her because I didn't want to
25 subject her to what she had been through already.

1 COMMISSIONER SURGEON: When did you first see
2 her?

3 THE WITNESS: I saw her at police
4 headquarters that night. She was being interviewed by
5 one of our female criminal investigators, which was
6 pretty well protocol then if we had somebody available
7 for the -- in a rape case, we wanted them to interview
8 them and talk with them.

9 But again, Steve Bryant, Jeff Blackburn,
10 Susan Moore, part of our investigative team, did all
11 the talking with Ms. Elliott. I didn't spend a lot of
12 time with her at all.

13 COMMISSIONER SURGEON: So when you say you
14 didn't spend a lot of time, does that mean you spent
15 some time or no time?

16 THE WITNESS: Well, I didn't spend any time
17 interviewing her or anything like that. I went by
18 headquarters that evening and I looked in on her. And,
19 actually, one of the reasons that I didn't go any
20 further was when she saw me, she was terrified. She
21 was absolutely terrified because she had just gone
22 through what she had gone through, and an
23 African-American male had done this to her, and when
24 she saw me, it was almost like a re-live.

25 So I felt better for them handling that part

1 of it at that particular time.

2 JUDGE SUMNER: Now, you were familiar with
3 both Grimes and Turner at this time; is that right?

4 THE WITNESS: Yes, sir.

5 JUDGE SUMNER: Could you tell me, as best as
6 you recall at this point, whether or not their physical
7 attributes -- if you could give me a profile right now
8 as to how they appear -- would have appeared back in
9 '87.

10 THE WITNESS: They are real close in physical
11 description. 6 foot, 200, medium to dark complexion.

12 JUDGE SUMNER: Distinguishing features?

13 THE WITNESS: Grimes had the -- Grimes had
14 the mole on one side -- I think it was the left side of
15 his face. And I think there was some fingers missing
16 on Grimes' hand. But I don't know that Albert had
17 any -- any noticeable distinguishing features about
18 him.

19 JUDGE SUMNER: Thank you.

20 COMMISSIONER DUNCAN: Investigator Hunt, was
21 it standard procedure on the night of the assault that
22 the victim was shown a photo lineup -- or to choose
23 from; correct?

24 THE WITNESS: I'm not sure that she was shown
25 one that night.

1 COMMISSIONER DUNCAN: The brief says the
2 night of the assault she was shown a photo lineup.

3 THE WITNESS: Okay. I mean, if -- if there
4 had been a suspect available, then absolutely, yes.

5 COMMISSIONER DUNCAN: So that -- and that's
6 where I was going to. So that wouldn't have been shown
7 unless there was a suspect developed at that time --

8 THE WITNESS: Right. Or somebody had
9 mentioned somebody as a suspect, yes, sir.

10 COMMISSIONER DUNCAN: Okay. Would it be
11 standard policy at that time, if you had developed a
12 suspect, that you would pull the picture with the name
13 and then pick the other folks for the lineup off their
14 booking photo or booking number?

15 THE WITNESS: Yes, sir. When you say "name,"
16 not name on the photo, but you would go through that
17 suspect and then get five others that looks close.

18 COMMISSIONER DUNCAN: Correct. And then in
19 the lineup, as you pick them before you put the lineup
20 together, would it be common practice to write the name
21 of the suspect -- for the detectives' use only -- on
22 the photo for the photo lineup and then pull the other
23 pictures by photo number for comparison?

24 THE WITNESS: Let me make sure I'm
25 understanding your question.

1 When I go to pick the suspect and five other
2 photos, would it be standard procedure for me to write
3 his name or her name on that other photograph?

4 COMMISSIONER DUNCAN: If the detectives were
5 pulling the picture, would they pull the picture of the
6 suspect that they were looking at and write his name on
7 the picture and then pull the other photos by the
8 number of the photo being as they look similar for a
9 good photo lineup for the detectives to review but not
10 to show to the victim?

11 THE WITNESS: That's possible, yes. Yes.
12 But I never did that. Again, we got to go back to the
13 way I do it. I would never do that. I would bring the
14 photographs out with the suspect, knowing who the
15 suspect was, show it to the victim.

16 COMMISSIONER DUNCAN: Yes, sir.

17 THE WITNESS: And then in my yellow sheet, I
18 would make a list of everybody who was in there.

19 COMMISSIONER DUNCAN: Do you remember
20 anything that night of the assault about that first
21 photo lineup as to who was the suspect and who they
22 were looking at or leaning towards to put that lineup
23 together?

24 THE WITNESS: No, sir, I don't.

25 MS. MONTGOMERY-BLINN: Your Honor, may I ask

1 a couple of clarifying questions?

2 BY MS. MONTGOMERY-BLINN:

3 Q Investigator Hunt --

4 MS. MONTGOMERY-BLINN: If I may approach the
5 witness --

6 JUDGE SUMNER: Yes, ma'am.

7 Q -- I'm handing you the report that I
8 believe is the report for that first lineup.

9 A Okay.

10 Q If you'll take a look at that and see,
11 does it appear to be that report of the first lineup
12 to you?

13 A Yes.

14 Q And does that refresh your recollection or
15 can you tell from there the date that that lineup
16 was shown to Ms. Elliott, the victim?

17 A Yes. On the 24th of October, '87.

18 Q Is that the same day that the rape
19 occurred?

20 A Yes.

21 Q Okay. And also, if I -- if it would be
22 helpful, I know there were some questions about
23 Center Street. And I know that you didn't recall
24 it, but you are looking at the testimony, as an
25 expert on Hickory or somebody who knows Hickory, can

1 you tell from this map where Center Street is?

2 A Let's see. That's 127. That's 8th
3 Avenue. Center Street is going to be here
4 (indicating).

5 Q Okay. And what --

6 A And that's probably why, if I did pick up
7 a banana [sic] that far from the scene, I didn't tie
8 the two together. I don't know. I just -- I can't
9 imagine me on a crime scene picking up anything
10 before we photograph it and process it.

11 Q Well, if you didn't tie -- and you may
12 stay standing or sitting, as you just choose.

13 A Okay.

14 Q If you didn't tie the two together, why
15 would you have talked about it in your testimony?

16 A If I didn't tie what together?

17 Q If you didn't think that the apple was a
18 part of the crime scene, why would it have come up?

19 A Well, because on the crime scene, you
20 know, someone -- some officer who was on the scene
21 mentioned something about fruit, I guess, on my way
22 to work or away from the crime scene. And when I
23 went back -- or if I went back, I'm trying to
24 remember if I went back or I did it while I was
25 there -- went out the back door and found the fruit,

1 as I said, going in a southerly direction.

2 Q Okay.

3 A But I don't know -- again, this is Center
4 Street, and it may be just the distance from the
5 crime scene or -- I didn't put the two together, if
6 I did pick it up. I just -- again, I just can't
7 imagine me picking it up.

8 Q Okay. You just can't recall picking it
9 up.

10 A Right.

11 Q You also said, I think, that -- and you
12 can sit down if you're comfortable -- that you
13 had -- I think in one of the answers to the
14 Commissioner's question, you said you would have
15 directed that fruit to be photographed.

16 Do you know if it was photographed?

17 A You know, as I sit here today, I can -- I
18 can't say that I saw the photographs at trial. But
19 I can't imagine them not being photographed.

20 Q So standard procedure, you would expect
21 them to be photographed.

22 A Absolutely. Photograph, collect, process.
23 That's just standard procedure.

24 Q Okay. Thank you.

25 MS. MONTGOMERY-BLINN: Returning to

1 Commissioner questions.

2 JUDGE SUMNER: Any other questions?

3 COMMISSIONER JENKINS: I just have one quick
4 question, going back to your testimony about the latent
5 print and the crime scene.

6 Did you say that it was normal procedure to
7 do elimination prints of the victim? Or it was not
8 procedure?

9 THE WITNESS: Well, it would be normal
10 procedure, you know, if you are in a house situation
11 and you find something that doesn't belong there, then,
12 to do elimination prints. But I felt pretty confident
13 that the fruit came from her home because there was
14 fruit on the kitchen table when I left.

15 So elimination prints is a part of the whole
16 process, but we didn't do elimination prints on this.

17 I'm trying to remember the weather that
18 night, and for the life of me I don't -- I don't
19 remember it, but -- no, we didn't do elimination.

20 COMMISSIONER JENKINS: Thank you.

21 COMMISSIONER BECTON: Back in 1987, did
22 either Mr. Turner or Mr. Grimes have facial hair that
23 you recall?

24 THE WITNESS: If anything, like, a little
25 scraggly beard, but nothing full beard or anything like

1 that. But I can't -- can't honestly recall.

2 COMMISSIONER BECTON: Can you say whether one
3 of them were more likely to be clean-shaven as opposed
4 to the other?

5 THE WITNESS: No.

6 COMMISSIONER JOHNSON: You said that you were
7 the supervisor of all the officers that were
8 investigating this incident; correct?

9 THE WITNESS: I was the lead investigator.
10 There was a supervisor of the unit, but I was --

11 COMMISSIONER JOHNSON: You were lead
12 investigator.

13 THE WITNESS: I was sort of -- yeah.

14 COMMISSIONER JOHNSON: So you would've
15 reviewed all of the officers' findings and their
16 information in their reports prior to obtaining a
17 warrant, possibly; correct?

18 THE WITNESS: Sure -- well, maybe not all of
19 it. Just -- again, enough to get probable cause. I
20 wouldn't have -- because some of these reports came in
21 later.

22 But, you know, when I went before the
23 magistrate for the warrant --

24 COMMISSIONER JOHNSON: Your crime scene
25 processor was Jack Holsclaw; is that correct?

1 THE WITNESS: Yes.

2 COMMISSIONER JOHNSON: And he reviewed his
3 evidence that he had collected with an SBI agent,
4 Melton. Do you remember that?

5 THE WITNESS: Bob Melton, yes.

6 COMMISSIONER JOHNSON: Do you remember them
7 coming to you and telling you that the fingerprints
8 that were collected did not match that of the person
9 that had been arrested?

10 THE WITNESS: No.

11 COMMISSIONER JOHNSON: Okay. That's all I
12 have at this time.

13 JUDGE SUMNER: Any other questions?

14 MS. MONTGOMERY-BLINN: All right. At this
15 time the Commission would like to thank Investigator
16 Hunt and ask that he be released from his subpoena and
17 allowed to return.

18 THE WITNESS: Thank you.

19 JUDGE SUMNER: Thank you, sir. You are free
20 to go.

21 (Witness dismissed.)

22 JUDGE SUMNER: This is probably a good point
23 for us to stop.

24 MS. MONTGOMERY-BLINN: We're ready for you to
25 take a lunch recess.

1 JUDGE SUMNER: Let's say 1:15.

2 (Recess taken, 12:30 p.m.)

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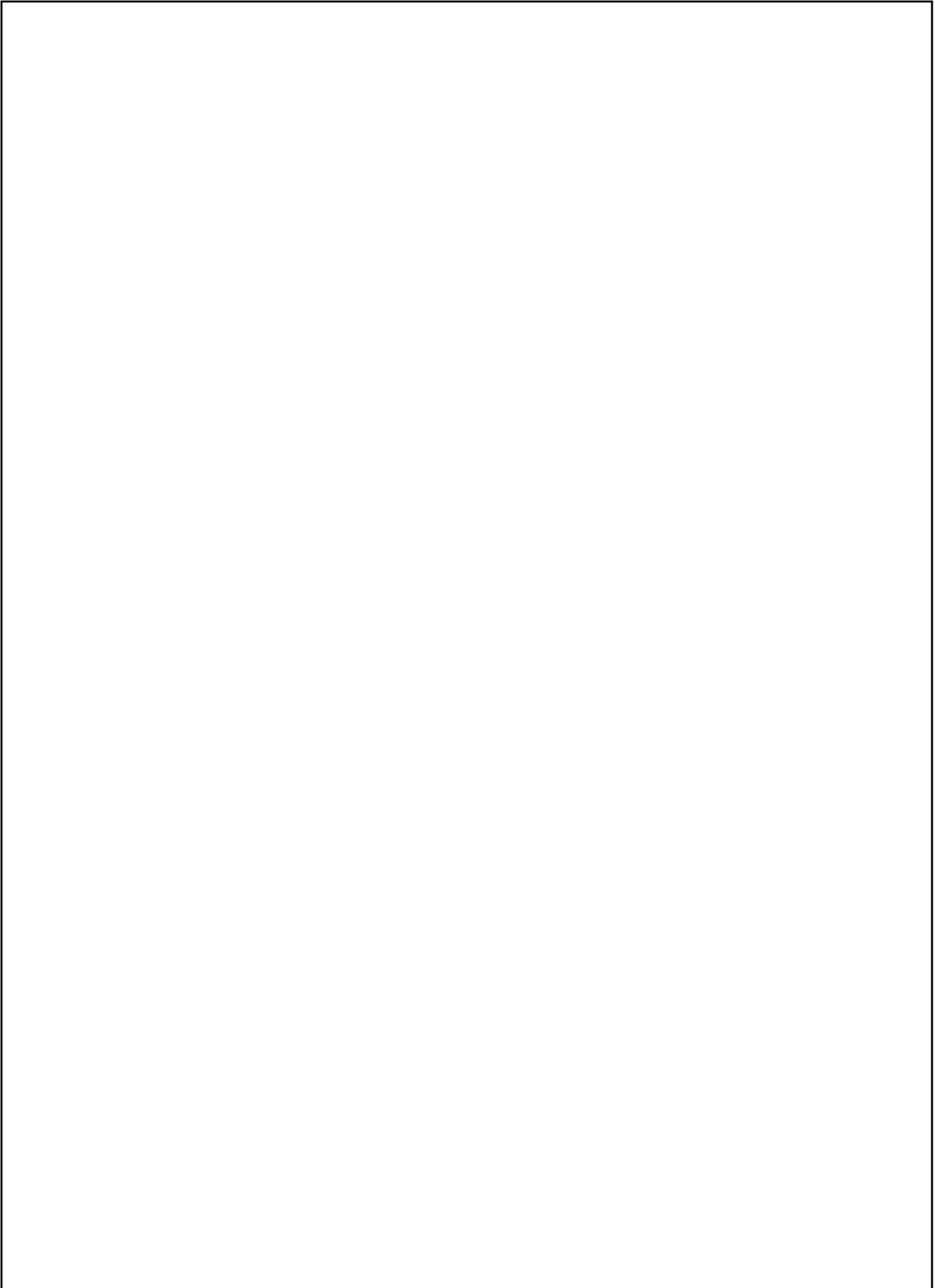
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APPEARANCES BY THE COMMISSION

Chair: The Honorable Quentin T. Sumner

Members of the Commission:

Ms. Mel Laura Chilton
The Honorable Charles L. Becton
Dr. Jacqueline Greenlee
Chief Heath Jenkins
The Honorable Susan Johnson
Wade M. Smith, Esq.
The Honorable C. Branson Vickory, III

Linda Ashendorf, Alternate
The Honorable Van Duncan, Alternate
T. Diane Surgeon, Alternate

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1 Monday, APRIL 2, 2012 (1:20 p.m.)

2 P R O C E E D I N G S

3 JUDGE SUMNER: We are back in session.

4 MS. MONTGOMERY-BLINN: Thank you, Your Honor.

5 Thank you, Commissioners.

6 We're going to talk about the attorneys now
7 in this case. We also interviewed the attorneys who
8 had previously worked on Mr. Grimes' case.

9 Commission Staff Attorney Jamie Lau is going
10 to testify about those interviews, and Mr. Grimes'
11 attorney from trial, Ed de Torres. And we will call
12 him to testify next.

13 The Commission calls Jamie Lau.

14 (Jamie Lau re-called.)

15 EXAMINATION BY MS. MONTGOMERY-BLINN:

16 Q Mr. Lau, you are still under oath.

17 As part of your work in this case, did you
18 speak to -- or at least attempt to speak to the
19 attorneys that had represented Mr. Grimes at various
20 points during the investigation, trial, and
21 postconviction?

22 A I did.

23 Q And can you talk to us about that? Maybe
24 begin with actually the prosecutors.

25 Were you able to talk with them as well?

1 A We contacted the Catawba County District
2 Attorney's office, the current individuals at the
3 District Attorney's office, and asked for their file.
4 The District Attorney's office currently only could
5 find a transcript from their original prosecutorial
6 file in this matter.

7 Q As in a trial transcript?

8 A The trial transcript, yes. The prosecutors
9 who prosecuted the original case was an Assistant
10 District Attorney, Bill Johnson, and Assistant District
11 Attorney Jay Meyer. Mr. Johnson is now deceased so we
12 were unable to speak with him. Mr. Meyer, we attempted
13 to speak with and we made phone contact with Mr. Meyer
14 after going to his home and leaving a card for him.

15 When I spoke with him on the phone, he said
16 he had no independent recollection of the case, so I
17 asked him if it would be helpful if I sent him a copy
18 of the trial transcript for his review.

19 He received the trial transcript, reviewed
20 it, we had a few other phone conversations in an
21 attempt to set up an interview, but he stopped
22 returning my calls. We tried to visit his home one
23 more time. We left a card for him on the door at his
24 home and he never responded when we left the card for
25 him at his home.

1 Q And that was Jay Meyer; is that correct?

2 A That was attorney Jay Meyer.

3 Q To your knowledge is he still practicing law?

4 A He is not still practicing law. His license
5 lapsed sometime in early 2000s, maybe mid-2000s.

6 Q How about the attorneys that represent
7 Mr. Grimes?

8 A We spoke with Mr. Grimes' original defense
9 counsel, who is Ed de Torres. He still practices in
10 Catawba County. His office is in Newton, North
11 Carolina. We also spoke with some of his
12 postconviction counsel. Noell Tin was an individual
13 who reviewed his case. We spoke with Mr. Tin. We
14 obtained what Mr. Tin had in his records, which was
15 just a copy of the trial transcript and a letter that
16 he sent the defendant.

17 Q Did Mr. Tin ever indicate whether or not he
18 had ever spoken directly with Mr. Grimes?

19 A He did not say that he had spoken directly
20 with Mr. Grimes. He said that he was given the
21 transcript by a friend of Mr. Grimes and asked to
22 review the transcript. He reviewed the transcript and
23 he thought that the case might be a good case for the
24 Center on Actual Innocence or -- or for one of the
25 Innocence Projects, and he referred the case forward.

1 Q Okay. To one of those -- to the North
2 Carolina Center on Actual Innocence?

3 A I believe it was the Center on Actual
4 Innocence, yes.

5 Q Okay.

6 A Additionally, Walter Johnson was an attorney
7 that did postconviction work for Mr. Grimes. We spoke
8 with Walter Johnson. He did not have recollection of
9 the case. He said that he would look for the file that
10 he maintained in the case. He searched for that file
11 and he could not locate any materials with regards to
12 the Grimes case. So he did not have any information to
13 provide us. He had filed an MAR for Grimes at one
14 point in time, but he had no records remaining.

15 Q Did Mr. Johnson provide you with an affidavit
16 that he no longer had a file?

17 A Yeah. He provided us with an affidavit
18 indicating that he did not have any records.

19 Q And you already mentioned that the North
20 Carolina Center on Actual Innocence received the case
21 from Mr. Tin.

22 Did you get a copy of their file?

23 A Yes. We reviewed the file from the North
24 Carolina Center on Actual Innocence, and Ms. Mumma, the
25 Center's Director, is currently representing

1 Mr. Grimes. But she provided us with their file and we
2 reviewed that file.

3 Q And did the file contain correspondence with
4 Mr. Grimes?

5 A Yeah. We reviewed the file and we reviewed
6 the correspondence between the Center and Mr. Grimes.

7 Q And in the correspondence and interviews with
8 Mr. Grimes in the Center file, was it -- did it appear
9 to you that he was consistently maintaining his
10 innocence or was there anything contradictory in that
11 file?

12 A He consistently maintained his innocence in
13 the correspondence within that file.

14 Q And that's Mr. Grimes we're talking about?

15 A That's Mr. Grimes, yes.

16 Q Okay. And I'm sorry. You were talking about
17 Ed de Torres.

18 Did you obtain a copy of Mr. de Torres' file?

19 A Yes. We obtained a copy of Mr. de Torres'
20 file in January of this year. We reviewed that file
21 and then we met with him a few weeks after we received
22 his file, after we had the opportunity to review it.

23 Q And Mr. de Torres represented Mr. Grimes at
24 trial; right?

25 A He was his trial attorney and he also filed

1 an appeal on Mr. Grimes' behalf.

2 Q Okay. And you said you interviewed him after
3 reviewing the file. Who was present during that
4 interview?

5 A Present during the interview was myself,
6 Ms. Stellato, and Investigator Nowatka from the Hickory PD.

7 Q All right. And did you ask Mr. de Torres
8 whether or not Grimes had always maintained his
9 innocence?

10 A We did. And he said that he always
11 maintained his innocence to Mr. de Torres, pretrial and
12 postconviction, and he said that Grimes was always
13 consistent with the -- with his claim of innocence and
14 the information that he provided to Mr. de Torres.

15 Q And did you give Mr. de Torres a copy of the
16 document by which Mr. Grimes waived attorney-client
17 privilege in order for the Commission to investigate
18 this case?

19 A We did give him a copy of that document. And
20 that's pretty standard. Any of the attorneys that we
21 contacted that represented Mr. Grimes would have
22 received a copy of Mr. Grimes' Waiver of Procedural
23 Safeguards to communicate and provide their files to
24 us.

25 Q And so Mr. de Torres, once he received that,

1 spoke with you about his conversations with Mr. Grimes.

2 A Yes. He spoke with us about what he could
3 remember from conversations with Mr. Grimes and he also
4 provided his notes from conversations with Mr. Grimes.

5 Q Okay. And you said that he says Mr. Grimes
6 always maintained his innocence.

7 A That's correct.

8 Q Did he say whether Mr. Grimes was consistent
9 in that claim?

10 A He said Mr. Grimes always provided a
11 consistent alibi to what he was doing on the night of
12 October 24, which is when Carrie Lee Elliott was raped.

13 Q And did Mr. De Torres offer you any opinion
14 about Mr. Grimes' innocence?

15 A He did. He said he believed that Mr. Grimes
16 was innocent, yes.

17 Q Now, you said you did talk with
18 Mr. de Torres about the consistency of the alibis. Was
19 there any indication in Mr. de Torres' file that he'd
20 interviewed or spoke to the alibis -- any alibis for
21 Mr. Grimes?

22 A Yes. As the Commission is aware from its
23 brief, Mr. de Torres, during trial, had presented alibi
24 witnesses on behalf of Mr. Grimes describing where he
25 was at on the night of October 24.

1 In that file were handwritten notes from
2 Mr. de Torres' interviews with those alibi witnesses
3 prior to trial, and then affidavits as well that those
4 witnesses had signed prior to trial indicating where
5 Mr. Grimes was and what he was doing on the night of
6 the crime.

7 Q Did Mr. De Torres indicate why he obtained
8 affidavits from those alibis prior to their testimony?

9 A Yes. He said he had secured those affidavits
10 because he hoped that by presenting them to the
11 prosecutors that they would not continue to pursue
12 Mr. Grimes for the rape. So he thought that was a way
13 to resolve the matter without having gone to trial.

14 Q And did he indicate whether or not he
15 actually did present those to the prosecutors?

16 A He said that he did provide them to the DA's
17 office.

18 Q Did he say whether he provided them to the
19 police department and Investigator Hunt?

20 A I believe he did. I believe he was -- I
21 believe he said he did not give them to the police
22 department and Mr. Hunt, that he only presented them to
23 the District Attorney's office. That's my
24 recollection. He may be able to answer that question
25 when he's testifying.

1 Q And when you went through that file you, said
2 you found the handwritten notes about the alibis, the
3 affidavits from the alibis, and you have reviewed the
4 alibis' testimony as well.

5 A Yes.

6 Q Okay. Were the affidavits consistent with
7 the testimony?

8 A Yes, to the best of my recollection, they
9 were.

10 Q Okay. Were the notes from Mr. de Torres'
11 interviews with the alibis consistent with the
12 affidavits and the testimony?

13 A Yes, the notes were consistent with the
14 alibis presented.

15 Q Okay. Was there anything you found in the
16 file that was at all inconsistent with what was
17 presented at trial and what Mr. Grime's claim is to you
18 and the Commission?

19 A Yes, there was a single page of notes that
20 may have been inconsistent. They appear to give
21 different names. And we followed up with Mr. de Torres
22 about that page of notes.

23 Mr. De Torres said that he believed it was
24 from a conversation he had with Willie Grimes. And as
25 I said, it contained potentially different names with

1 regards to who Mr. Grimes was with on the evening in
2 question.

3 Q And you said you asked Mr. de Torres about
4 that?

5 A We did ask Mr. De Torres about that.

6 Q Okay.

7 MS. MONTGOMERY-BLINN: And he'll be here to
8 testify in just a minute, Commissioners.

9 Q And, also, you testified earlier about the
10 property control forms and while-you-were-out note.
11 Did you talk to Mr. de Torres about those?

12 A We did. When I received the file from
13 Mr. de Torres, I initially reviewed the file, and that's
14 when that property control form was located, the one in
15 which it showed the evidence in the Grimes case being
16 transferred to an individual named Poovey.

17 At the time we spoke with Mr. de Torres, we
18 hadn't made out who that individual was, that it was
19 the name Poovey written on that form. We had some
20 guesses with what it could be, but we weren't sure.

21 So we showed it to Mr. De Torres and he said
22 that it appeared to be the name Poovey and that Poovey
23 was a common name in Catawba County, but he didn't know
24 who that individual Poovey was that was reflected on
25 that property control form.

1 Q Okay. And did he talk to you about whether
2 or not he had followed up on his motion at the end of
3 the trial to DNA test -- subject the evidence to
4 further testing?

5 A He said he did not follow up on that. He
6 said that to the best of his recollection, no decision
7 was ever handed down with regards to the motion he
8 made, that it just -- he made it, the judge said that
9 he would take it under advisement, and that was the
10 last he had heard of it and he had not followed up.

11 MS. MONTGOMERY-BLINN: Commissioners, do you
12 have any questions for Mr. Lau about the attorney
13 interviews before I bring in Mr. De Torres?

14 Okay. I'll ask that Mr. Lau step down.

15 (Mr. Lau stands down.)

16 MS. MONTGOMERY-BLINN: The Commission will
17 call attorney Ed de Torres. And I think he is already
18 being brought in.

19 Thereupon, ED de TORRES, having first been duly
20 sworn, was examined and testified on EXAMINATION
21 BY MS. MONTGOMERY-BLINN:

22 Q Hi, Mr. de Torres. I'm Kendra Montgomery. I
23 know we have not met in person before. I'm the
24 Director of the Commission and I know you've met some
25 of our staff already and Investigator Nowatka.

1 And I believe they have explained to you that
2 the Commission is just a neutral fact-finding agency;
3 we don't represent Mr. Grimes, we don't represent the
4 prosecution. And we'd just like to ask you some
5 questions. And if you -- I know it's been a long time;
6 if you don't remember or you do not know or you don't
7 recall, that's perfectly fine. We just want to see
8 what you remember.

9 A Very good.

10 Q Okay. Will you please state your name.

11 A Eduardo Xavier de Torres.

12 Q Okay. And how are you employed,
13 Mr. de Torres?

14 A I'm an attorney in private practice.

15 Q And are you still practicing?

16 A Yes.

17 Q And did you practice in 1987?

18 A Yes.

19 Q In what county and town do you practice?

20 A I practice in Catawba County. And that's in
21 Newton, North Carolina.

22 Q And what kind of law do you practice?

23 A I practice, right now, criminal law, as well
24 as juvenile law.

25 Q And is that the type of practice that you had

1 in 1987 too?

2 A It was probably a little more varied at the
3 time. I probably dabbled in a few other things. I did
4 a lot --

5 (Reporter admonition.)

6 A I don't do any real estate law anymore, but
7 probably did some back and '87 and '88.

8 Q Did you represent Willie Grimes in 1987?

9 A I did.

10 Q And do you have recollection of your case and
11 the work on that case?

12 A Yes.

13 Q Okay. Now, do you have a copy of your file
14 with you?

15 A I do not.

16 Q And have you had a chance to review it before
17 coming here today?

18 A I've reviewed parts of it.

19 Q Okay. If I need to, would you like me to
20 hand you documents -- if you need something to refresh,
21 please ask me and I'll give them to you.

22 A Okay. Great. Thank you.

23 Q Now, since Mr. Grimes was convicted, have you
24 continued to have contact with him over the years?

25 A Yes. He has written probably on four or five

1 occasions. I have submitted two or three copies of the
2 appeal and trial transcripts to him throughout the
3 years. I know at one time he was dealing with Prisoner
4 Legal Services on an appeal of his conviction. I've
5 also dealt with his family on occasions.

6 Q When he filed a habeas motion, do you
7 remember contacting the Governor's office on his
8 behalf?

9 A I did.

10 Q Is that --

11 A I wrote a letter to the Governor.

12 Q Is that something that you've done in many of
13 your other cases, maintained that contact, continued to
14 provide documents, write letters to the Governor?

15 A Probably this has been the case that I've had
16 more contact after the case was over than any other
17 that I've handled.

18 Q What is unique about this case?

19 A Well, in my opinion, I don't think that he
20 was guilty.

21 Q Did he --

22 A When I think of other cases that I've
23 handled, this is probably the one that haunts me still
24 to today.

25 Q So you don't feel that way about many of your

1 cases or a handful of cases?

2 A Probably just a handful of cases.

3 Q Were you court-appointed or were you
4 retained?

5 A Court-appointed.

6 Q And Mr. Grimes, you met with him multiple
7 times prior to trial?

8 A I did.

9 Q And you've spoken with him since?

10 A (Moves head up and down.)

11 Q Has he always maintained his innocence to
12 you?

13 A He has.

14 Q And I know you understand that Mr. Grimes has
15 waived attorney-client privilege and I know you
16 received those documents.

17 A Right.

18 Q And you don't have any problems, knowing all
19 of that, talking to us about your communications with
20 Mr. Grimes?

21 A I do not.

22 Q Okay. Do you remember in this case whether
23 or not Mr. Grimes received any plea offers?

24 A I don't recall that.

25 Q Okay. What did you think about your case

1 before you went to trial?

2 A I felt fairly confident because, first of
3 all, you had someone who had no criminal convictions,
4 never had any indication from anybody I talked to or
5 interviewed that he was a violent person or had some
6 sort of capability to do this, and the fact that the
7 time was fairly accurately set when the rape was
8 supposed to have been -- have occurred, right around
9 9:00 in the evening, and he was with other people about
10 a mile away from the location throughout that entire
11 night.

12 And we had people that came to court and
13 testified to that. So I thought he had a pretty good
14 alibi of not being -- not being the person. Plus the
15 fact that his physical characteristics didn't exactly
16 match very well the victim's initial description of the
17 assailant, as well as he was missing some portions of
18 his fingers. He had this -- I assume he still does --
19 he had this humongous raised scar, probably an inch
20 high, on his chest. And the perpetrator of the crime
21 had taken off his shirt during the commission of the
22 offense, and the victim never noticed any of those
23 things.

24 Her identification at the -- of the defendant
25 at the probable cause hearing was just, "Well, he looks

1 like him."

2 Q Can you describe --

3 A So it was very uncertain.

4 Q Can you describe that better? Because we
5 don't have a transcript from the probable cause
6 hearing; all we have are your notes and your
7 recollection. You said she -- please say that again.

8 A She looked down and said, "Well, that looks
9 like him."

10 Now, you've got to realize that at the time
11 he's there in handcuffs and his jail clothing, sitting
12 next to defense counsel and the only other person
13 there. So it's certainly not a difficult
14 identification, but it was very insecure at that point.

15 Q Now, at trial was she able to identify him?

16 A You know, at the voir dire hearing, she did
17 not identify him; she identified me. Mr. Grimes was
18 sitting next to me wearing a red shirt, and her
19 testimony on voir dire about the identification was
20 that "He's sitting there next to the guy in the red
21 shirt."

22 That's an issue that we took to appeal for
23 the Court of Appeals, and their response was, "Well, it
24 surely had to be an error." But I distinctly remember,
25 wow, that's a really good possibility of excluding her

1 being able to identify him in court.

2 However, the judge ruled not only on that
3 issue, but on the photographic identification, and
4 allowed her to testify. When she did testify before
5 the jury, she pointed him out at the defense table.

6 Q Was she, at trial, able to pick him out from
7 the same lineup, if you recall?

8 A She didn't have a lineup at trial. I mean,
9 she had seen a lineup before. And after some time said
10 that "that looks like him there," and "I believe
11 Number 5" --

12 Q Right.

13 A -- or whatever number Mr. Grimes was. She
14 did identify him in lineup after some time.

15 However, one of the issues that we argued on
16 appeal and argued to the jury is that the person
17 that -- the assailant was described as having a mole on
18 his face. Mr. Grimes has a mole on his face. But of
19 all the identification pictures, he was the only one in
20 the pictures that had a mole. And we felt that was a
21 little bit suggestive to the victim as to -- it was the
22 only picture that really resembled anybody with a mole.

23 And how he came to be identified as a
24 possible suspect is extremely suspect.

25 Q Well, let me back you up just a minute,

1 because you talked about the mole and you just talked
2 about how you felt confident that he didn't fit the
3 description, the height, weight, all of those things,
4 but the mole -- she says that her attacker had a mole,
5 and Mr. Grimes -- it doesn't appear to be in
6 question -- did have a very large, obvious mole.

7 A But on the other hand, she had placed the
8 mole on the other side of the face on her assailant.

9 Q Uh-huh. Did she describe the mole in her
10 initial reports?

11 A No. She also testified that she thought she
12 had scratched the mole and, of course, he had no
13 scratches.

14 Q When did she first describe the mole, do you
15 remember?

16 A You've got to remember that by the time I got
17 the initial police reports it was months down the road.
18 It was after a probable cause hearing and once we got
19 into Superior Court and I was able to get discovery.

20 Q Okay.

21 A I think that she -- there was an initial
22 short report the night of the incident and then she
23 came to the police station, I believe, either the next
24 day or the day after that.

25 Q Okay. And do you know if she had talked to

1 anybody in the meantime, between the initial police
2 reports and the time when she came to the station?

3 A She apparently had talked to -- well, she had
4 talked to her daughter. She called her daughter after
5 the initial assault on her, and she came over to her
6 where she was and helped her to get to the hospital.
7 She then also -- and she talked to a police officer
8 there, and I assume that she talked to a nurse or
9 whoever was collecting the rape evidence kit.

10 She also at some point -- and it's a little
11 unclear -- talked to the next-door neighbor. The
12 next-door neighbor was a man, but he had a girlfriend,
13 and talked to her. And she indicated that she knew who
14 the person was to her but she would only tell the
15 police.

16 Q Okay.

17 A She ended up later on getting a reward --
18 now, how she could have possibly known who it was is
19 beyond me because she wasn't there, didn't see anybody.
20 Not like you saw the assailant leaving, but she did get
21 a thousand-dollar reward.

22 Q You're talking about the next-door neighbor's
23 girlfriend.

24 A Yes.

25 Q Is that Linda McDowell?

1 A Yes.

2 Q You said she did get a reward?

3 A Yes, which I didn't find out about until
4 trial was over. It came out there was an article on --

5 Q Newspaper?

6 A Yeah, it was a newspaper article in the
7 Hickory paper talking about the reward program for
8 calling in tips about crimes. I forget what the
9 name -- CrimeStoppers -- and it mentioned this rape and
10 this incident, and that's when I first became aware of
11 that that was how that information came about.

12 Q You didn't know about that prior to trial?

13 A I knew that she had called her sister and
14 said, "Oh, you know, it was Mr. Grimes that did this."
15 Her sister who was with Mr. Grimes during the time of
16 the offense. And then sister told her, "No, it
17 couldn't have been him; he was here with us."

18 Q Okay.

19 A But I didn't know that she had actually
20 gotten a reward until after that article and after the
21 trial.

22 Q Did you ever interview this woman,
23 Ms. McDowell, prior to the trial or at any point in time?

24 A I did not. I was not aware that she had any
25 kind of real knowledge or had turned him in to the

1 police or had contacted CrimeStoppers until after the
2 trial was over.

3 Q But you did have the police reports?

4 A I did have the police reports.

5 Q Okay. So did you know that she had provided
6 his name to the police?

7 A No, I did not.

8 Q Okay. And do you remember, did you or the
9 prosecutor call her to testify at trial?

10 A Neither one. She did not testify at trial
11 and I did not call her.

12 Q Did you receive discovery in this case?

13 A I did.

14 Q Okay. And it's your recollection that you
15 did not receive a report that said she was the one that
16 provided your client's name to the police?

17 A Not to my recollection.

18 Q Okay.

19 A I know I was not aware that she had gotten a
20 reward until after that newspaper article.

21 Q Okay.

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

24 JUDGE SUMNER: Yes, ma'am.

25 Q Mr. de Torres, I'm going to hand you just a

1 couple pages from the trial transcript. And I had
2 asked you a minute ago about Ms. Elliott, the victim's
3 identification of Mr. Grimes -- well, actually, not her
4 identification; you already talked about that. But
5 that she -- whether or not she reviewed the original
6 photo lineup at trial and was able to pick him again
7 from the photo lineup.

8 And will you take a look at those pages, see
9 if it refreshes your recollection and, if it does, tell
10 us what your recollection is.

11 A (Witness reviews document.) Okay.

12 Q Does that refresh your recollection?

13 A Yes.

14 Q Okay. And what do you remember now about
15 Ms. Elliott, the victim, being shown that photo lineup with
16 Willie Grimes in it at trial?

17 A Well, according to this and my recollection,
18 she, again, was very indecisive and very much unable --
19 I mean, it talks about here "Do you remember seeing
20 these pictures, are these the pictures were shown
21 before," and she couldn't recall that.

22 Q Okay.

23 A She said, "Well, they look like him, they
24 were in little blocks," but that's not much of an
25 identification.

1 And I believe what you have given me here are
2 the questions from -- I could be incorrect -- I think
3 it's from the District Attorney's questioning, and it
4 took him a while to get her to even come close to an
5 identification from the photographs.

6 This is, again, one of the issues on appeal,
7 that the judge made a ruling on the admissibility of
8 the photo identification before we even questioned or
9 had discussion. He made -- we were having the voir
10 dire on another point and he just made a complete
11 ruling for the entire identification process.

12 Q Okay. So when you had the voir dire -- and
13 just to clarify, that's when the jury's not in the
14 room; is that correct?

15 A That's correct.

16 Q You said that was when she, the victim,
17 identified you instead of Mr. Grimes initially?

18 A That's correct.

19 Q But when the jury came back in, she did
20 identify Mr. Grimes; right?

21 A That is correct.

22 Q Okay. Let's talk about the alibis. And
23 you've already talked a little bit about them, but when
24 did Mr. Grimes first tell you who he was with that
25 night that Ms. Elliott was raped?

1 A The first time we met in jail.

2 Q Okay. Would that have been a couple of days,
3 a day after his arrest, do you know?

4 A Probably within a week.

5 Q Okay.

6 A I don't have my notes here, they aren't
7 dated, but -- I don't have the -- I normally make a
8 point -- it normally takes two or three days to get the
9 appointment from the Clerk, and I normally try to see
10 the clients in jail right away.

11 Q Okay.

12 MS. MONTGOMERY-BLINN: May I approach the
13 witness, Your Honor?

14 JUDGE SUMNER: Yes, ma'am.

15 Q Mr. de Torres, I'm handing you a piece of a
16 paper.

17 MS. MONTGOMERY-BLINN: And, Commissioners,
18 this is coming around now as a handout.

19 Q Will you take a look at that and tell me if
20 you recognize it.

21 A This is a copy of my notes from the probable
22 cause -- from talking to Mr. Grimes.

23 Q Okay. So can you tell us when these notes
24 were taken?

25 A It appears on October 28, because there's a

1 note toward the bottom of the page that says "cops had
2 been at his house yesterday, 10/27/87."

3 Q Okay.

4 A So yesterday would have been 10, the date --
5 this would have been 10/28.

6 Q Okay. And is this your handwriting? You
7 recognize this?

8 A This is my handwriting.

9 Q Okay.

10 A Poor handwriting.

11 Q Do you believe that these are the notes that
12 you took the first time you met with Mr. Grimes?

13 A I do.

14 Q And can you tell from these notes who you are
15 talking to?

16 A Willie Grimes. It's the very first thing
17 noted at the top.

18 Q Is that your normal procedure, to write down
19 who you're speaking to at the top?

20 A I do. Just in case the notes get misplaced
21 out of a file, you can reidentify them.

22 Q Can you decipher these notes for us and tell
23 us, if you can, what they mean and what you believe you
24 were recording.

25 A Okay. Again, I recorded that there was a

1 probable cause hearing set for 11/17 in Hickory, that's
2 toward the top. I've got his Social Security number
3 there to the right, top.

4 I've got his first and last names, with a
5 space for his middle, which I did not get, but I think
6 that was on the paperwork. \$25,000 secured bond was
7 the amount of bond that he was being held under. Two
8 counts of first-degree rape, one count of kidnapping,
9 one count of common-law robbery, and one count of
10 first-degree burglary.

11 That Saturday, October 24, he was with Brenda
12 Smith -- which I thought I heard "Glenda" initially,
13 and then changed it -- at the 60 Fifth Street
14 Southeast, 324-4441, with his girlfriend. That they
15 had gone to Clarabell's house until 9:00, then left to
16 go to Tucker's house at 10:00. And then was at Nancy
17 McDowell's house until 4:00 in the morning.

18 That Brenda Smith was driving. That he lives
19 with her family -- his girlfriend's family. And other
20 people also saw him there at where he was living. That
21 Brenda Smith was driving. Mr. Grimes didn't have a
22 vehicle or a license.

23 The cops had been at his house yesterday,
24 10/27. That they mentioned that they were looking for
25 him -- that's not in the notes -- and then he went to

1 the Hickory Police Department. That he had worked some
2 for Manpower. That other people, like Robert Wilson
3 and Ed Wilson, who lived in Hickory, he says had a
4 resemblance to him.

5 Q Okay. Now, is it your recollection that he
6 was always consistent about who was -- who he was with
7 that night in his alibis?

8 A I think generally consistent. I think
9 somewhere in my notes, it's -- it's a discrepancy as to
10 one person, but I think generally, yes, he was very
11 much consistent.

12 Q Well, and I think that this is the
13 discrepancy, because Clarabell -- Brenda Smith did
14 testify; Clarabell did not testify. Nancy McDowell did
15 not testify.

16 So do you -- and I know you don't have your
17 entire note -- file up there, but you have affidavits
18 from alibis and you have alibis that testified and
19 other notes, but they are not -- they are different
20 from this.

21 Do you understand that difference? Can you
22 explain that to us?

23 A Probably because once we got into discovery
24 and -- and the -- at all times -- I mean, the time was
25 set, because she looked at the clock at 9:00, heard the

1 knock on door. She was watching television.

2 Q This is the victim, Ms. Elliott?

3 A The victim. Yes. And that the police
4 arrive, according to their notes, at 9:21. So there
5 was a 21-minute time span. And -- so it started at
6 9:00; it was over by -- you know, before 9:21, because
7 the person had to get away, not apprehended at the
8 scene.

9 And so the critical time was, you know,
10 8:00 to 10:00. And probably the reason Nancy McDowell
11 didn't testify is because they didn't get there until
12 later that night and it really didn't in any way
13 provide an alibi.

14 Q But this is different than what Mr. Grimes
15 testified about -- and I understand it's been 25 years,
16 and I'm certainly not trying to put any words in your
17 mouth, but I'm just trying to understand, because
18 Mr. Grimes testified, the alibis testified, we've
19 reviewed your file, we've reviewed the affidavits,
20 we've reviewed your interviews of the alibis,
21 everything -- this is the one thing that doesn't match.
22 We don't have a Clarabell. We don't have a Nancy
23 McDowell. We don't have a Tucker. And that's what I'm
24 trying to understand.

25 And maybe you don't have an answer. I'm not

1 trying to push you if you don't, but this is different.

2 And, you know, is there any -- do you think
3 that when you were speaking with him, that this was you
4 gathering what he was doing the night that Ms. Elliott
5 was raped?

6 A Yes.

7 Q Okay. And you don't --

8 A And what I don't know and really don't
9 remember whether Clarabell was the nickname for the
10 person's house that he was at.

11 Q Okay. Is it your recollection that
12 Mr. Grimes, to you -- now we're just going with your
13 recollection -- was always consistent about what he was
14 doing that night?

15 A I could say yes. You know, the more you talk
16 about a subject, the more other details come up. And
17 it's not unusual in criminal cases that what turn out
18 to be important details are not disclosed right away;
19 people don't always understand what it is that you
20 really need to hear about the case and it takes
21 sometimes a second or a third interview before you get
22 a lot of other information that might turn out to be
23 crucial in the case, or at least helpful.

24 Q Okay.

25 A But generally speaking, yes, he was always

1 consistent in where he was, where he went. They had
2 bought some food, we had a receipt from where he had
3 bought the food earlier in the afternoon. They went to
4 the lady's house to cook. He went across the street to
5 get some money that was owed. That person testified.
6 He was gone maybe 5 or 10 minutes, came back, stayed
7 there until they left with Brenda Smith.

8 Q Okay. So you remember that?

9 A Yes.

10 Q Okay. And those are the people that
11 testified at trial?

12 A Yes.

13 Q And you also interviewed them yourself?

14 A That's correct.

15 Q And you had them create affidavits -- or you
16 created affidavits that you edited?

17 A Right. What I did is I talked to them,
18 explained my purpose in talking to them -- to get
19 information both for trial and for the affidavits --
20 and then went back and typed them, submitted them, some
21 of them made changes, retyped them, and then had them
22 come into the office and have them signed and
23 notarized.

24 Q Okay. And would you have put those witnesses
25 up if you thought that they were not going to be

1 truthful?

2 A It's unethical to put somebody up that you
3 believe is not going to offer truthful testimony, no.
4 And they never -- again, they never -- I got them
5 fairly early in the process, and they never changed
6 their story.

7 Q Why did you obtain those affidavits and -- is
8 that your common practice, to have them put it down in
9 affidavits?

10 A It's not common; it's not the only case I've
11 ever done it in.

12 One of my initial impressions about the case
13 is that I didn't feel the police work was very well
14 done. For example, there were two banana peels leading
15 away from the scene of the crime when the person exited
16 out the back door; and you would figure, you know,
17 those things could have evidence on them. They could
18 have saliva, could have fingerprints -- which turned
19 out to be fingerprints on the other fruit in the home
20 where they grabbed fruit and had -- and yet just
21 disposed of those things; they just threw them away,
22 which, to me, seems almost incredulous.

23 They never talked to Willie Grimes. They
24 never talked to any of the witnesses. They never asked
25 him about an alibi. They never -- so the other side to

1 doing the affidavits, not only to be able to have more
2 than just somebody talking to you, "Okay, this is what
3 I saw," well, here is this -- you know, once they have
4 reviewed it and signed it and notarized it, it's like,
5 "Okay, this is really what I -- this is my story."

6 So I have a little more firmness to it.

7 And, secondly, I took them to the District
8 Attorney to try to point out that it couldn't have been
9 Willie Grimes, that maybe they needed to reopen
10 investigation because, you know, when I asked for
11 discovery in Superior Court, the DA said, "Just talk to
12 Steve Hunt," who was handling the investigation of this
13 case, "and get what you need."

14 I called Steve Hunt and he says, "I'm not
15 giving you anything. You've got to talk to the
16 District Attorney." So I wrote the District Attorney
17 saying, "I'm not getting any cooperation here." So I
18 thought that maybe that he could work it -- by seeing
19 the affidavits and say, "Maybe somebody ought to talk
20 to these folks now," and maybe they could go in a
21 different direction, because if it wasn't Willie Grimes
22 that did this crime, that person is still out there.

23 And so that was -- that was the secondary
24 reason for the affidavits.

25 Q And did you give them to the District

1 Attorney?

2 A Yes.

3 Q Okay. Did you provide them to Investigator
4 Hunt or anyone at the police department?

5 A I did not. He wouldn't even talk to me on
6 the phone.

7 Q Okay. And do you know whether or not the
8 District Attorney ever did?

9 A I have no idea.

10 Q So you tried to speak with Investigator Hunt?

11 A Yes. After being told to do so by the
12 District Attorney --

13 Q Okay.

14 A -- handling the case.

15 Q And your purpose in speaking with
16 Investigator Hunt was to obtain the file, to obtain
17 discovery?

18 A To get more discovery, to see what he had in
19 his file. The DA said, "Go over there, look at the
20 file, see if there's anything you need, make copies,
21 et cetera."

22 Q So there wasn't anything specific you were
23 looking for; you just knew you didn't have everything.

24 A Correct. There were things mentioned in what
25 I had gotten that weren't available, some of the SBI

1 reports, I don't think they were back in yet or --

2 Q Were you ever able to look at Mr. Hunt's
3 file, Investigator Hunt's file?

4 A No.

5 Q Okay. Did you know that there was a lineup
6 that was done prior to the one with your client in it?

7 A No.

8 Q Would you have done anything differently if
9 you had known about it or had that lineup?

10 A Well, first of all, I'd find out if anybody
11 had identified the lineup, or what the people looked
12 like that were put up and when that occurred, you know,
13 anything that was said to the victim when she viewed
14 the lineup or --

15 Q Let's come back to that just a second. I
16 want to ask you a little bit about the physical
17 evidence -- well, let's go back.

18 You said you did not receive the discovery
19 prior to trial.

20 A I received some discovery prior to trial. I
21 didn't get everything.

22 Q Okay. But you knew there was some stuff you
23 didn't have.

24 A Prior to trial I did not know there was some
25 stuff I didn't have; I thought I had everything by that

1 point.

2 Q Okay.

3 A Initially, after getting initial discovery
4 from the District Attorney, he said, "Go look at the
5 rest of the files." Steve Hunt said, "No, you can't."
6 So I went back through a letter to the District
7 Attorney so I could document -- rather than just a
8 phone call -- saying, "I need to look at what he's
9 got," you know. He provided that for -- he provided
10 some additional materials.

11 Q And --

12 A At that point, I expected that to be
13 everything.

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

16 JUDGE SUMNER: (Moves head up and down.)

17 Q Okay. I'm handing you some letters. Tell me
18 if you recognize those.

19 A I do.

20 Q Okay. And what do you recognize those to be?

21 A Well, the first -- the one on top marked, I
22 guess, 222 is a letter that I wrote to the
23 investigative assistant at the DA's office in Catawba
24 County about this case saying that I attempted to get
25 additional discovery from Investigator Hunt as she

1 suggested, and certain -- second photographic
2 identification to the prosecuting witness, the medical
3 reports of the treatment of the victim at the hospital.

4 (Reporter admonition.)

5 Q And you don't need to read them all.

6 A Okay.

7 MS. MONTGOMERY-BLINN: Commissioners, this is
8 Appendix B that I have handed up.

9 Q I just wanted to ask if -- you referenced
10 letters. Are those the letters that you referenced
11 just a minute ago?

12 A Yes.

13 Q Okay. Thank you.

14 A And then the second letter is the response
15 saying that they have an open-file policy, at least in
16 speaking, and that the only lab report is the copy that
17 they enclosed, and he says when Investigator Hunt has
18 additional material, you may examine when you receive
19 it.

20 Q Okay. Thank you. Do you remember jury
21 selection?

22 A I do.

23 Q Okay.

24 MS. MONTGOMERY-BLINN: May I approach?

25 JUDGE SUMNER: (Moves head up and down.)

1 Q I'm going to hand you some documents. Will
2 you take a look at those and tell me if you recognize
3 them.

4 A Yes. This is the jury selection notes
5 from -- the first one on a form, and the latter two are
6 just blank paper because we ran out of room on the
7 first.

8 Q Are those your notes?

9 A These are my notes.

10 Q So these are the notes that you made while
11 jurors were coming in and out.

12 A That's correct.

13 Q And do you remember anything unusual about
14 jury selection in this case?

15 A Other than the fact that every black person
16 got disqualified for -- on a peremptory challenge?

17 Q Can you say that again? I'm sorry, I'm just
18 having trouble.

19 A Every black person on the jury pool who came
20 up for questioning got peremptory challenged by the
21 State.

22 Q Were there any African-Americans on the jury?

23 A In the pool there were probably two, which is
24 kind of disproportionate -- you're talking about 1987.
25 1987, you didn't -- you know, Catawba County is

1 probably 15 percent black, and you never saw 15 percent
2 of the jury pool to be black.

3 Q Okay.

4 A I mean, that's the reality of the process of
5 the area. We're much better now, I think; but, still,
6 that was the case.

7 Q Do you recall any African-American jurors
8 being sat at your trial? And please take a look at
9 your notes and refresh your recollection.

10 A Do I recall that? No, I do not.

11 Q Will you look at your notes and see if that
12 helps you.

13 A Okay. It does appear that Juror Number 5 --
14 I'm sorry, Juror Number 4 was a black person. So I
15 would have to correct my prior answer. There was at
16 least one black juror on the jury.

17 Q Okay. And your client, Mr. Grimes, he's
18 African-American?

19 A He is.

20 Q And the victim, Ms. Elliott, do you recall?

21 A Was white.

22 Q And was that the only African-American juror
23 that was sat?

24 A That I can tell from the notes. It's the
25 only one that -- unless I misread them -- it says that

1 the person was black.

2 Q Okay. Let's talk about the physical
3 evidence. In -- well, in 1987, you --

4 COMMISSIONER JENKINS: I'm sorry to
5 interrupt. Do we have that information, the jury
6 information that you were referring to?

7 MS. MONTGOMERY-BLINN: No, sir. It's just in
8 Mr. de Torres' file.

9 COMMISSIONER JENKINS: That's all I needed to
10 know.

11 JUDGE SUMNER: Are you sure you don't want
12 it?

13 COMMISSIONER ASHENDORF: There was a --

14 COMMISSIONER JENKINS: No, you are referring
15 to it and I kept looking for it. Not a problem.

16 COMMISSIONER ASHENDORF: There was
17 information about one of the jurors that came to the
18 prosecutor and the -- are you going to get into that?

19 MS. MONTGOMERY-BLINN: I can if you'd like
20 to, Ms. Ashendorf; it's just in the trial transcript.

21 COMMISSIONER ASHENDORF: Yes, okay.

22 MS. MONTGOMERY-BLINN: Would you like me to?

23 COMMISSIONER ASHENDORF: No, it's fine. I
24 just thought it was the weirdest thing I've ever seen.

25 Q I'd like to talk about the physical evidence,

1 if that's all right.

2 A Okay.

3 Q So in 1987 there is documentation that you
4 were trying to get this evidence DNA tested.

5 A Yes.

6 Q How did you know about DNA in 1987?

7 A I had read an article in a magazine about DNA
8 evidence, and -- it was going to be the technology of
9 the future and so exclusive; if you could DNA test, it
10 was 1 in 750 million possible other people that could
11 duplicate those results. And so it seemed like --
12 because, you know, obviously, if you think that your
13 client may be guilty, I wouldn't push for DNA evidence;
14 that would be the last thing I would want because that
15 could nail -- that could be the nail in the coffin,
16 much as it is in present-day cases. If the DNA
17 matches, it's hard to argue.

18 But because he maintained his innocence all
19 along, I felt that this would be an exclusion rather
20 than an inclusion for Mr. Grimes. But at the time, the
21 SBI and the testimony of the trial transcript from the
22 SBI analyst, the SBI here, was that "We are not doing
23 DNA testing."

24 Q Okay. And after trial, at the close --
25 really at the very end of the trial, you made a motion

1 to test, and the judge took it under advisement.

2 Do you know if he ever came back and ruled on
3 that?

4 A He never did.

5 Q Okay. And did you ever follow up and put it
6 back before him?

7 A I did not follow up and I should have
8 followed up. The judge retired not too long after our
9 trial.

10 COMMISSIONER JENKINS: For clarification,
11 that was the motion to -- can you say again? The
12 motion to that the judge never ruled on, was the motion
13 to --

14 MS. MONTGOMERY-BLINN: That's in the trial
15 transcript at the end of the trial.

16 Q My understood is that you made an oral
17 motion to subject the physical evidence to DNA testing.

18 A That's correct.

19 MS. MONTGOMERY-BLINN: Is that clear?

20 COMMISSIONER JENKINS: Yes.

21 Q Now, also, but you did make a motion prior to
22 trial as well to test -- to get a suspect kit on your
23 client and to a hair comparison -- or to do physical
24 testing?

25 A Right.

1 Q And that was prior to --

2 A That was in writing.

3 Q And you followed up with correspondence to
4 the District Attorney's office on this.

5 A Correct.

6 Q Why did you make that motion?

7 A Again, because after the initial testing,
8 they didn't test any of the hairs that were collected.
9 If I recall, there was a hair that was found in the bed
10 that was not gray -- which was the victim's color; she
11 was advanced in age. And, again, because I felt that
12 that could only exclude Mr. Grimes rather than include
13 him, I definitely wanted to see what we could get --
14 what kind of evidence we could get off that to try to
15 exclude -- you know, having it match somebody else or
16 not to match Mr. Grimes.

17 Again, nowadays, they would subject that to
18 DNA testing. It would be very simple to do that.
19 Then, they could not do that and all we got at trial
20 was "consistent with Mr. Grimes." But that's -- almost
21 any negroid gray hair which has specific
22 characteristics would be consistent with Mr. Grimes.

23 Q Your desire to have that hair tested and do
24 DNA tests after trial, were those things that you
25 discussed with Mr. Grimes and he agreed with it?

1 A Yes.

2 Q He was supportive of your pushing to have
3 this evidence tested?

4 A Oh, absolutely. You certainly don't want to
5 do that on your own; your client can come screaming at
6 you, "Why did you do this?" You definitely have to
7 have the consent of your client, to do this kind of --
8 well, I think it's best that -- I mean, I suppose
9 technically you don't have to have consent of your
10 client, but I think -- I think you need to abide by his
11 wishes to some degree. You know, it's a murky area
12 between what -- who controls, but I think that's such
13 an important point that if they were opposed to it, I
14 don't know if I would do that.

15 Q Now, at that trial there was testimony that
16 fingerprints that had been located at the crime scene
17 on a banana were compared to your client and did not
18 match.

19 Did you know about that prior to trial?

20 A I did.

21 Q Okay. And did you wish -- or did you make
22 any motions that they would be compared to anybody
23 else?

24 A I asked them to look and see -- at that point
25 we had very little database, but I knew there was a

1 national database and I thought compare it to whatever
2 you could compare it to. And I believe they tried that
3 then and got no hit on the fingerprint.

4 Q Okay.

5 A My understanding now, from conversation at a
6 seminar about three weeks ago with the chief of police
7 in Hickory is that they have matched somebody, not my
8 client. I don't know who that is and I don't know if
9 they've investigated. I don't know what they're doing
10 with it or not, but that's -- I was sort of told it in
11 a conversation.

12 Q I was going to get ready to ask you if
13 anybody had told you -- had told you about the
14 Commission's investigation, and you said you did just
15 hear some things about it.

16 A Just from the chief of police. We were
17 sitting at the same table with the chief of police from
18 Newton and chief of police from Hickory. It was a
19 community seminar that we were at -- I deal with
20 juvenile justice -- and he had been -- he just brought
21 up in conversation, "Are you the person that was
22 involved in representing Mr. Grimes?" You know,
23 because he just mentioned that you guys had come over
24 to talk with him from the Commission here, and that's
25 how it came up in a conversation.

1 Q So he told you that the fingerprints had
2 matched to somebody?

3 A Had matched to somebody.

4 Q That didn't come anybody from the Commission
5 staff?

6 A No. Or at least not that I can recall --

7 Q Okay.

8 A -- because I'm sort of excited, you know,
9 because strange things happen in cases...

10 Q Okay. I would like to hand you a report from
11 the SBI and have you take a look at that and just take
12 your time and read through it.

13 MS. MONTGOMERY-BLINN: Commissioners, I just
14 handed him the SBI fingerprint report that was done in
15 2011, the one that was done through the Commission --
16 at the Commission's request.

17 A Okay.

18 Q Okay. And have you ever seen this report
19 before?

20 A Not that I can recall.

21 Q Are you familiar with the --

22 A It's dated November 15 of 2011, which is 23
23 years after the case.

24 Q Okay. And so are you familiar with reading
25 these types of reports?

1 A Yes.

2 Q Okay. What are you seeing here?

3 A I am seeing that they matched one of the
4 latent fingerprints to the left index finger of Albert
5 Lindsey Turner and the other latent print did not find
6 any identification.

7 Q And are you familiar with Albert Lindsey
8 Turner?

9 A I am not.

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

12 JUDGE SUMNER: Yes, ma'am.

13 Q I am handing you the first photo lineup.

14 A Okay.

15 Q Will you take a look at this, Mr. de Torres.

16 A Okay.

17 Q Have you ever seen this document before?

18 A Yes.

19 Q Have you ever seen this document with
20 handwriting on it before?

21 A No.

22 Q And what are you seeing here?

23 A Well, picture number two has written across
24 it "Albert L. Turner."

25 Q If I told you that this was the first

1 photographic lineup that was shown to Ms. Elliott, the
2 victim, would that be new information to you?

3 A I don't think so. Of course, this lineup
4 does not include Mr. Grimes in it. That only occurred
5 in the second lineup and after the confidential
6 informant had called CrimeStoppers.

7 Q Okay. So you knew there had been a lineup,
8 you just had not seen it; right?

9 A No, I had seen it; I had not seen it with the
10 writing on the lineup.

11 Q I'm sorry.

12 A However, I never knew that one of the persons
13 in the first lineup was actually a person that was
14 matched to the fingerprints -- which just recently,
15 apparently, happened.

16 Q So if you had had -- and I know this is a lot
17 of speculation right now -- but if you had had these
18 two documents at trial, would you have done anything
19 differently?

20 A Oh, heck, yeah.

21 Besides hammering to the jury that, you know,
22 you don't have anything physically linking my client to
23 the scene, but yet you have this Albert Turner's
24 fingerprints. You know, I would obviously want to know
25 height, weight, talk to people who knew him, see

1 criminal conviction record, you know, at least on some
2 basis -- I was hoping the police would do this, but if
3 they didn't, I would certainly of want to follow up as
4 to who he is, maybe even subpoena him to court just to
5 exhibit him next to Mr. Grimes -- or exhibit him to the
6 victim and maybe that recollection would be...

7 Q Okay.

8 MS. MONTGOMERY-BLINN: Commissioners, do you
9 have any questions for Mr. de Torres?

10 COMMISSIONER SMITH: Looking back on it --
11 and I've done this many times myself -- what do you --
12 what do you believe was the factor that caused
13 Mr. Grimes to be convicted?

14 What was the most important thing in the
15 trial that caused him to be convicted?

16 THE WITNESS: The fact that you have an
17 elderly lady, you know, who says he raped her. You
18 know, this is the kind of crime that there is normally
19 no other witnesses around, and it's also the kind of
20 crime that if you have a bad identification, it will go
21 down the road that way.

22 COMMISSIONER SMITH: Yes. Yes.

23 Her -- may I ask one additional question?

24 She's certainly got -- gets no more, from a
25 trial lawyer's standpoint, than a C on her

1 identification, does she? That is, she finally did
2 make an identification in the courtroom?

3 THE WITNESS: Right.

4 COMMISSIONER SMITH: But at one point she
5 pointed you out.

6 THE WITNESS: Correct.

7 COMMISSIONER SMITH: Was that at the probable
8 cause hearing?

9 THE WITNESS: No, that was in the voir dire
10 hearing.

11 COMMISSIONER SMITH: At the voir dire.

12 THE COURT: At the probable cause she only
13 said, "Well, that looks like him."

14 COMMISSIONER SMITH: Yes.

15 THE WITNESS: That was her identification of
16 the defendant.

17 COMMISSIONER SMITH: But at the voir dire
18 when she pointed you out, were there just two people
19 sitting at the table?

20 THE WITNESS: Correct.

21 COMMISSIONER SMITH: Just you and your
22 client?

23 THE WITNESS: Correct.

24 COMMISSIONER SMITH: And --

25 THE WITNESS: He was wearing the red shirt.

1 Her actual words were, "The guy next to the man in the
2 red shirt."

3 COMMISSIONER SMITH: Okay. Yes, sir. Thank
4 you.

5 THE WITNESS: Okay.

6 COMMISSIONER ASHENDORF: I have a couple of
7 questions. Did you know that they had had a lineup
8 number one? Did you know that? I can't remember.

9 THE WITNESS: Yes, I believe I did.

10 COMMISSIONER ASHENDORF: And when they have a
11 lineup, don't they usually put a suspect in it?

12 THE WITNESS: Well, but remember --

13 COMMISSIONER ASHENDORF: I mean, do they --

14 THE WITNESS: -- this is the initial, the
15 first lineup, and they didn't have any connection to
16 Mr. Grimes for the crime. They just went by her
17 description, and I guess they pulled police
18 photographs, just in hopes that maybe one of them would
19 hit.

20 COMMISSIONER ASHENDORF: Okay.

21 THE WITNESS: Apparently she did not identify
22 anybody there. Then came the confidential informant
23 that said it's Mr. Grimes. You know, and I know
24 this -- although I have no idea she could have possibly
25 known, she was not around Mr. Grimes on this date, and

1 now his name and his picture shows up in a lineup. And
2 then, after a period of study, she says, "That's him."

3 COMMISSIONER ASHENDORF: And --

4 THE WITNESS: But, again, he was the only one
5 in that lineup that had a facial mole, which was
6 probably the most identifiable thing that she had given
7 information to the police about.

8 COMMISSIONER ASHENDORF: I know you said
9 this, and I can't remember, but did you know during the
10 trial or before the trial that the prints on that
11 banana did not match Mr. Grimes?

12 THE WITNESS: I can't remember that.

13 COMMISSIONER ASHENDORF: Now we know whose
14 they are, but did you -- when did that come out?

15 THE WITNESS: You know, I probably knew they
16 didn't match Mr. Grimes, because obviously if they had
17 matched Mr. Grimes, that would have been a big issue
18 both at probable cause -- and, of course, he would have
19 been fingerprinted when he was arrested. That's a
20 normal part of the booking procedure. So I'm sure at
21 some point they were compared and at some point it
22 wasn't him.

23 What I did not know is that they eventually
24 matched somebody.

25 COMMISSIONER ASHENDORF: Right. But that was

1 years later.

2 MS. MONTGOMERY-BLINN: Ms. Ashendorf, if I
3 might -- and, Your Honor, if I may approach the
4 witness?

5 JUDGE SUMNER: Certainly.

6 Q I'm handing you a portion of the trial
7 transcript and will you review that and see if that
8 helps you answer Ms. Ashendorf's question.

9 JUDGE SUMNER: What page of the transcript?

10 COMMISSIONER JENKINS: What page?

11 MS. MONTGOMERY-BLINN: The transcript pages
12 are so terrible, it's hard to tell. It looks like it's
13 a 7 --

14 THE WITNESS: Probably.

15 MS. MONTGOMERY-BLINN: It's in sentencing, so
16 it's that short transcript at the end.

17 A This would have been either at the end of the
18 trial -- because it's only page 7 -- and this is after
19 asking for -- to test the evidence.

20 Q Okay.

21 A According to this and according to my
22 testimony there -- which would've been a lot more
23 recent and a lot better recollection -- it said that
24 the first mention I have of fingerprints was when that
25 evidence was introduced at trial, that there was --

1 there were prints found. So that would have been the
2 first time that I knew there were actual fingerprints.

3 Q Okay.

4 A And, again, what I asked the Court to do is
5 to submit -- we could submit those fingerprints to see
6 if it matched to anybody.

7 MS. MONTGOMERY-BLINN: Does that help?

8 COMMISSIONER ASHENDORF: Yes.

9 MS. MONTGOMERY-BLINN: Okay. Other
10 Commissioner questions? No?

11 JUDGE SUMNER: Any questions?

12 COMMISSIONER BECTON: The photographic lineup
13 that contains Mr. Grimes' picture, do we have anything
14 other than the Xerox copies?

15 MS. MONTGOMERY-BLINN: Mr. Becton, I'm sorry,
16 those are the best copies that we have. And we didn't
17 want to try to alter them ourselves by lightening them
18 or doing any kind of editing to them.

19 COMMISSIONER BECTON: And for my purposes,
20 can you show me the copy that you have that Mr. Grimes
21 is in?

22 MS. MONTGOMERY-BLINN: Absolutely. We'll go
23 back to our original copy.

24 COMMISSIONER BECTON: And my question is:
25 Can you tell on that photograph that there is a scar on

1 his -- a mole on his face?

2 COMMISSIONER ASHENDORF: No.

3 MS. MONTGOMERY-BLINN: I'll pass -- we'll get
4 our original copy, which, of course, the original
5 photos, all that they have in the police file is a copy
6 of -- they did a copy of the lineup itself and then
7 returned the photos, as I understand, back to the file
8 cabinet. So there's nothing that exists anymore other
9 than a Xerox. But I will send them around, our copies,
10 so you can see them.

11 THE WITNESS: But if I could answer, either
12 in the appeal process or in the argument to the judge
13 at trial we mentioned that -- because apparently the
14 copy that they had there was a better copy and I think
15 that the mole was noticeable, because one of our
16 arguments was he was the only one of the six people in
17 the lineup who had a mole in his face, and, therefore,
18 that was impermissibly suggestive. You know, if your
19 identification is he's got a mole on his face and he's
20 black, and then there are five pictures of somebody
21 that doesn't have a mole on their face and one does,
22 who would you pick?

23 COMMISSIONER BECTON: So at trial you had the
24 original pictures as opposed to just photographic --

25 THE WITNESS: I don't think even at trial we

1 had original pictures; I think all we had was the
2 photocopy. I could be wrong.

3 MS. MONTGOMERY-BLINN: I'm going to send
4 around --

5 THE WITNESS: But, you know, photocopies get
6 photocopied and get photocopied, and each time you lose
7 definition.

8 MS. MONTGOMERY-BLINN: What I'm going to send
9 around is our photocopy -- our original photocopy of --
10 this is the lineup, and this is -- if it helps, this is
11 the booking photo that was used in the lineup. And she
12 was shown, as far as we can tell from the police
13 report, the actual photos in a folder and then they
14 just photocopied that folder.

15 So I am going to send this around. And we --
16 please compare it to your briefs. We tried really hard
17 to do digital scans so what you got in your briefs was
18 the exact same quality as what we had, but this is the
19 most original that we have.

20 COMMISSIONER VICKORY: To compound the
21 problem you would have had without having the actual
22 pictures before the jury, the judge actually --
23 actually suppressed the photographic lineup, didn't he?

24 THE WITNESS: Yes.

25 COMMISSIONER VICKORY: In other words, you

1 weren't given the benefit of having the lineup to show
2 the jury, "Look, only one person in this lineup has got
3 a mole."

4 THE WITNESS: Right.

5 COMMISSIONER VICKORY: The judge suppressed
6 the lineup and actually allows the in-court
7 identification instead of both.

8 THE WITNESS: Right.

9 COMMISSIONER VICKORY: Have you made an
10 effort to look to see if you can locate the Clerk's
11 file, the actual file, the CRS file at the Catawba
12 County Courthouse? Have you ever tried to look at that
13 file?

14 THE WITNESS: I have not. I don't know if --
15 if they did or not. I know that the evidence section
16 of that file is gone. There was an inquiry over 10
17 years ago in one of the appeal -- appellate processes
18 that Mr. Grimes went through, and they tried to locate
19 that file and went to the Clerk. She couldn't locate
20 it and she sent me a note saying, "We can't locate this
21 file, this evidence."

22 So obviously it would have been nice, now
23 that we have DNA evidence, to compare that hair as well
24 and see if it also matched the fingerprints or matched
25 somebody else.

1 COMMISSIONER VICKORY: You actually perfected
2 the appeal for the defendant?

3 THE WITNESS: I did.

4 COMMISSIONER VICKORY: We were given -- I
5 guess you've seen this -- I'm just going to call it
6 today's Exhibit Number 1 -- but the document from the
7 inventory -- evidence room inventory, I guess, of the
8 Catawba County Clerk's office.

9 Did you request that those items of evidence
10 be sent to the Court of Appeals? Somebody requested --

11 THE WITNESS: I think in one of Mr. Grimes'
12 subsequent -- either with the Prisoner Legal Services
13 or I believe he talked to the Innocence Inquiry or
14 whoever, they requested it from the Clerk, and the
15 Clerk -- because I was the attorney of record -- sent
16 me a copy of that and a note saying that they could not
17 locate it; they didn't know where it was.

18 I'm assuming that whoever actually -- I did
19 not request it, and it was not for the purpose of the
20 initial appeal to the North Carolina Court of Appeals.

21 MS. MONTGOMERY-BLINN: Mr. Vickory, I can
22 hand this to Mr. de Torres, the document being referred
23 to, in case that would help.

24 COMMISSIONER VICKORY: That would help.
25 Yeah, the very bottom, the last three entries there, I

1 guess, deal with Mr. Grimes' case.

2 THE WITNESS: Right.

3 COMMISSIONER VICKORY: And it says the
4 purpose of it being checked out, I guess, or taken out
5 of the evidence room is "on appeal on July 14 of '88."

6 THE WITNESS: He was convicted and, you know,
7 I just think that that's the date that we appealed it,
8 is what's noted, rather than taking out.

9 COMMISSIONER BECTON: They all have 12/13.

10 THE WITNESS: I just think that they just
11 noted that the case was appealed, that's the day tat it
12 was appealed for them internally to know that they
13 would need to keep that.

14 When I got this paper that you have in front
15 of you, I believe there was a sticky note or at least a
16 note paper clipped attached -- it's got "Ed" on the
17 form, and that is written, obviously, afterwards,
18 saying that they could not locate that evidence.

19 COMMISSIONER VICKORY: And this Poovey, do
20 you know who Poovey is?

21 THE WITNESS: On the --

22 COMMISSIONER VICKORY: On the far right.

23 THE WITNESS: Right. But that should have
24 been on that Brewer case. I'm assuming that may have
25 been -- you know, we have a Judge Nathaniel Poovey --

1 COMMISSIONER VICKORY: Okay.

2 THE WITNESS: -- who is also an attorney. So
3 I -- other than it says "out to Poovey" as to that
4 first case, there was some thought that maybe they got
5 all of these things. When the Commission came and
6 talked to me at my office and I was hoping that, well,
7 maybe that was an avenue; maybe they still have that
8 out or file -- maybe the Grimes stuff got filed
9 incorrectly with the Brewer materials, but I don't know
10 if they were ever able to locate it.

11 COMMISSIONER VICKORY: Thank you.

12 JUDGE SUMNER: Any more questions?

13 MS. MONTGOMERY-BLINN: I'd like to thank
14 Mr. de Torres and allow him to be removed from his
15 subpoena.

16 JUDGE SUMNER: Thank you, sir.

17 (Witness dismissed.)

18 MS. MONTGOMERY-BLINN: In order to answer a
19 couple of questions that just came up, the Commission
20 would re-call Mr. Lau.

21 (Jaime Lau re-called.)

22 EXAMINATION BY MS. MONTGOMERY-BLINN:

23 Q Mr. Lau, you're still under oath. And I just
24 want to ask you about the Clerk's file. I know you had
25 testified earlier, briefly, about looking at the

1 Clerk's file and searching the Clerk's room.

2 Can you talk a little bit more about that and
3 what still remains at the Clerk's office.

4 A The Clerk currently has, in this case, a
5 physical file that they maintain at the Clerk's office.
6 We went to look at the file because we had been told
7 before that all they had was microfilm copy of the
8 file. We have obtained a copy of the microfilm file in
9 our office, so we have that copy. And then we went to
10 see what they have.

11 And what they had was a hard file -- that's
12 not a hard copy of the file, but it's the microfilm
13 file having been printed out and then created into this
14 new physical file for this case. They don't have the
15 original file from -- this case was heard in 1987.

16 Q And you and Ms. Stellato personally searched
17 the evidence room?

18 A We personally searched the evidence room with
19 the Clerk of Court. Of note is the evidence inventory
20 form that you guys -- or the Commission has looked at
21 today, that evidence inventory form is not in that
22 Clerk's file; the first time we saw it was when we
23 obtained Mr. de Torres' file.

24 Q So that document I handed up to
25 Mr. de Torres that we've been talking about came from

1 his file?

2 A It came from his file and it's not in the
3 Clerk's microfilm version.

4 Q And, again, you looked for someone by the
5 name of Poovey and ultimately learned that it -- that
6 there is a person by the name of Poovey that works for
7 the Hickory Police Department?

8 A The Catawba County Sheriff's office evidence
9 custodian during this period in the late '80s and
10 early 1990s was an individual named Thomas Poovey.

11 Q If the Commissioners would like to see the
12 microfilm copy of the Clerk's file, we have it here; is
13 that right?

14 A We do have a copy, yes.

15 MS. MONTGOMERY-BLINN: Do you have any
16 questions for Mr. Lau about this?

17 COMMISSIONER VICKORY: Did anybody ever say
18 why they didn't get evidence from the Hickory Police
19 Department case to the Catawba County Sheriff's office
20 evidence custodian?

21 THE WITNESS: No one ever could explain where
22 the evidence went from the Clerk's office. The only
23 record is the evidence inventory form. The Clerk's
24 office didn't know where it went; they had no records
25 of where it went. We never spoke to them about the

1 transfer to the Catawba County Sheriff's office, if
2 that makes sense.

3 I can say a lot of clerks' offices that we
4 deal with, common practice is that when they are ready
5 to destroy evidence, the Clerk's office themselves are
6 not the one that destroys it. They get an order and
7 transfer it to the Sheriff's office at that point in
8 time. So it would just be pure speculation that maybe
9 it was given to them for that purpose, but all we do is
10 have the record to show that it was transferred to a
11 Poovey, and we know that the evidence custodian at the
12 Sheriff's Department at the time was Mr. Poovey.

13 COMMISSIONER VICKORY: Don't they usually
14 return it to the agency that offered it into evidence
15 rather than the Sheriff's office?

16 THE WITNESS: The most common practice we run
17 into is that they return it to the Sheriff's -- they
18 turn it over to the Sheriff's office, who is in charge
19 of destroying the evidence, which is why when we search
20 for evidence we don't always just look at the
21 investigating agency, especially if it's a police
22 department. We go and look at the Sheriff's Department
23 as well to try and see if at one point if it went to
24 trial and is in the Clerk's custody, if it had been
25 turned over to the Sheriff's office pursuant to any

1 destruction order, because Clerks' offices that we work
2 with will very frequently get a destruction order that
3 covers a large amount of evidence from various
4 agencies, and the order will command the Sheriff to
5 destroy that evidence.

6 COMMISSIONER VICKORY: Is this a good time to
7 ask about the search of the evidence room, or is that
8 coming up sometime later?

9 MS. MONTGOMERY-BLINN: No, absolutely.
10 Please ask.

11 COMMISSIONER VICKORY: I was interested in
12 the actual process because I don't know how many of you
13 are familiar with clerks' offices evidence rooms, but a
14 lot of times they are spread out all over -- might just
15 be in the courthouse, but it might be spread out over
16 county offices all over the county seat in different
17 buildings.

18 THE WITNESS: Yeah.

19 COMMISSIONER VICKORY: Sure. When you change
20 clerks, you go from one clerk -- I know Al Jean's been
21 a long time, I think, but --

22 THE WITNESS: The Clerk, she brought us to
23 what she represented to us as the current evidence room
24 that contains all of the evidence that she retains in
25 her custody and evidence room where the property log --

1 and the property log listed the items that were in
2 there, when it was received, and if it was transferred
3 out; that was on that log.

4 That log, I can't remember specifically, but
5 I -- the log went back to 1990, not as far back as
6 1987. So as to their paper records, their paper
7 records only went back to this 1990 -- or some date
8 subsequent to 1987, and subsequent to 1988, after this
9 trial. So we looked at that paper record and we tried
10 to see whether or not we could find the item of
11 evidence on that paper record and it was not present.

12 At that point in time, Ms. Stellato, myself,
13 and an Assistant Clerk that were there, we started
14 personally inspecting the outside of packaging because
15 the evidence in the evidence room was filled-in
16 packaging; certainly not going to disturb, so we
17 started reading the markings relating to the Grimes
18 case. We were unable to find any evidence in that room
19 that we were brought to and represented as all the
20 evidence the Clerk had in her custody. We were not
21 able to identify any evidence from the Grimes case as
22 we surveyed the items of evidence in that room.

23 She then brought us to the basement of the
24 jail -- or of the courthouse, where she maintained
25 other files. There was no evidence maintained in the

1 basement. There were paper files. There were boxes on
2 one wall that included the tapes that court reporters
3 had submitted to the Clerk's office to hold in her
4 custody. And she brought us down there and let us look
5 around there, and said there was no evidence down here,
6 but maybe there is the paper file or maybe you will
7 find something relevant to this case. And we were
8 unable to locate anything there as well with regards to
9 the Grimes case.

10 COMMISSIONER VICKORY: Do you know if she was
11 the clerk in '87?

12 THE WITNESS: She was not the clerk in '87.

13 COMMISSIONER VICKORY: Do you know if there
14 was any evidence in that evidence room she showed you
15 that went back prior to 1990?

16 THE WITNESS: I don't believe there was. My
17 best recollection at this moment was, no, there was not
18 anything dated that far back.

19 COMMISSIONER VICKORY: To me that's a big red
20 flag that there might be some evidence somewhere, but
21 unless they have some record of the Clerk's changeover,
22 there is kind a disconnect.

23 THE WITNESS: I understand all those things,
24 and through our conversations, I was -- the only
25 evidence that Clerk Bogle indicated to us that she knew

1 of, that she had custody of, and that she could allow
2 us to search, didn't know any other location where
3 evidence may be stored.

4 I certainly understand that it wouldn't be an
5 outrageous occurrence if that wasn't located, because
6 it does happen with a change of administrations. But
7 as far as we know, that's all of the evidence that we
8 have and we were unable to locate it when we did our
9 own personal search.

10 COMMISSIONER VICKORY: And I'm sure you found
11 her to be a first-class clerk, for what it's worth.

12 THE WITNESS: She's very helpful and very
13 willing to assist us with whatever we needed.

14 COMMISSIONER ASHENDORF: What was the name of
15 the former clerk?

16 THE WITNESS: Her name escapes me right now.

17 COMMISSIONER ASHENDORF: Is she alive?

18 THE WITNESS: I am not entirely sure.

19 COMMISSIONER ASHENDORF: I wonder if she
20 would know.

21 THE WITNESS: I can't tell you. And perhaps
22 I can refresh on that because we did ask questions
23 about the former clerk, but it is escaping me right
24 now, her name and whether or not she is still alive.

25 JUDGE SUMNER: Anything else?

1 The Chair is going to take a moment of
2 personal privilege for about 5 minutes.

3 (Mr. Lau stands down.)

4 (Recess taken, 2:40 to 3:01 p.m.)

5 MS. MONTGOMERY-BLINN: Thank you.

6 What I would like to do, Commissioners, at
7 this time -- I know very early on I started to march
8 through the search for evidence, and it is so
9 important, and Mr. Lau just testified. I'd like to put
10 Ms. Stellato up to testify about it as well, so that
11 you have a chance to ask her all the questions you want
12 to, and then we'll get back on to where we are
13 scheduled to go.

14 Ms. Stellato?

15 (Sharon Stellato re-called.)

16 EXAMINATION BY MS. MONTGOMERY-BLINN:

17 Q All right. You are still under oath.

18 And Ms. Stellato, you're also co-lead on this
19 case with Mr. Lau.

20 A Correct.

21 Q And you've been present during those evidence
22 searches as well.

23 A Correct.

24 Q And were you present during the hand search
25 of the Clerk's office?

1 A I was.

2 Q Okay. And can you tell us about that and
3 your conversations with Ms. Bogle, the current Clerk?

4 A Ms. Bogle stated that she became Clerk in
5 November of 1999.

6 And I think to answer your question,
7 Mr. Vickory, they moved into -- the Court moved into
8 that building in 1986. And at that time, they moved
9 all of the evidence from whatever other locations they
10 had it in to a central place in the Clerk's office.

11 The former clerk was named Phyllis Hicks.
12 She was there from 1986 to 1990. And there are two
13 assistant clerks who are still in that office, and how
14 they described it is that around that time, things were
15 very bad. A lot of things went missing. They stated
16 that \$18,000 went missing from the evidence room. And
17 the SBI became involved.

18 There are some old files where they don't
19 have evidence logs in the actual court file and they
20 basically just don't have an answer for what happened
21 at that time. But they haven't been able to find
22 things prior to 1991, a log or anything prior to 1991.

23 Q And the Clerk, Ms. Hicks, do you know or has
24 anyone talked to you about whether or not she is still
25 living?

1 A One of the Assistant Clerks told us that she
2 was not living any longer; that she is deceased.

3 MS. MONTGOMERY-BLINN: And I know that this
4 is incredibly important, so are there any other
5 questions from any of the Commissioners?

6 Q Did you have anything else to add about the
7 evidence search?

8 A I just -- I should say, Clerk Bogle was
9 really familiar with the Grimes case because of other
10 agencies having been involved: The Center on Actual
11 Innocence, I believe the Denver Post did an article,
12 the defense attorney. There were a lot of people who
13 had contacted Clerk Bogle over the years about the
14 evidence, so she's done numerous searches and was
15 aware -- but she still let us go in and do another
16 search, and then she still had two assistant clerks
17 search again as well, but she -- she's been looking for
18 that evidence for some time.

19 COMMISSIONER VICKORY: Let me just ask
20 this -- I think you just said it, but the document that
21 the courtroom clerk during the trial keeps up with,
22 is -- you're saying that is not in the file?

23 THE WITNESS: It is not in the file, which,
24 in the clerk world, is shocking to them. I mean, the
25 assistants were, you know, really interested in finding

1 that because that might give information that they
2 could go off of. I don't believe that was the only
3 case that it was missing in, but it -- we looked
4 through the Grimes case, they looked through the Grimes
5 clerk file, and, no, there is no form from the trial.

6 COMMISSIONER VICKORY: This is just a wild
7 outside hunch: Did anybody ever look at the court
8 reporter's notes? Sometimes they also keep a running
9 log of the -- what's going on. And I don't know if
10 they stick those things with their notes when they go
11 to the Clerk's office.

12 THE WITNESS: The way that we found out what
13 was what was from the court reporter -- the court
14 reporter. We didn't -- because it wasn't from the
15 court file. Other than that, I don't -- we haven't
16 gone any further than that.

17 COMMISSIONER VICKORY: It probably wouldn't
18 find it, but there might be...

19 MS. MONTGOMERY-BLINN: Are there any other
20 questions?

21 And this is something that you all always
22 have the option of, continuing the hearing and
23 instructing investigation.

24 If Ms. Stellato can just stay up there, I'm
25 going to say a few things and then I would've called

1 her to testify.

2 You have heard Mr. de Torres talk about Linda
3 McDowell and the -- who was the victim's neighbor, and
4 Betty Shuford also, was one of Mr. Grimes' alibi
5 witnesses. And we were able -- the Commission staff
6 was able to speak to both Ms. McDowell and Ms. Shuford,
7 and so I'm going to ask the Commission's Associate
8 Director, Sharon Stellato, to give you some information
9 about those interviews and about them, and then they'll
10 be called to testify today.

11 EXAMINATION BY MS. MONTGOMERY-BLINN:

12 Q All right. Ms. Stellato, can you tell us,
13 what is Linda McDowell -- what name does she go by?

14 A Helen -- her name is Helen Shuford; she goes
15 by Linda McDowell.

16 Q And just as a refresher, where did she live
17 in relation to Ms. Elliott?

18 A She lived right next-door in -- it was a
19 quadriplex, so there were four apartments in one
20 building. She lived right next-door, with her
21 boyfriend, Willie Mason.

22 Q And Ms. McDowell, she was the one that,
23 according to police reports, provided the name of
24 Mr. Grimes; is that right?

25 A Correct.

1 Q Okay. And according to -- were you able to
2 determine whether or not she received any reward money
3 for that information?

4 A There was a newspaper article that indicated
5 she had received a reward, and then when we interviewed
6 her, we actually asked her about the reward, and she
7 confirmed that she did receive a thousand-dollar
8 CrimeStopper award.

9 Q Okay. And, also, just as a refresher, before
10 we get into your interview with Ms. Shuford, you
11 also -- well, let's just go into the interview with
12 Ms. Shuford.

13 Who was present when you interviewed her?

14 A Ms. Shuford --

15 Q Uh-huh.

16 A -- or Ms. McDowell?

17 Q I'm sorry, Ms. McDowell. I apologize. Thank
18 you. Ms. McDowell. We'll talk about her, then we'll
19 talk about Ms. Shuford.

20 A Mr. Lau and Investigator Nowatka.

21 Q Okay. And yourself?

22 A Uh-huh.

23 Q And were you able to confirm that she did,
24 indeed, live next-door to Ms. Elliott?

25 A She stated between 15 and 17 years she lived

1 in that apartment with Willie Mason, and that during
2 that time the victim had lived right next-door.

3 Q Okay. And what kind of relationship did she
4 tell you she had with Ms. Elliott, the victim?

5 A She stated that they were friendly, that she
6 would go over to the victim's home and visit with her.
7 That they talked about soap operas. Sometimes she
8 would pick items -- if she were going to the store, she
9 would pick up items for the victim at the grocery
10 store.

11 Q Okay. And did she say that she usually got
12 groceries for the victim, or who usually did?

13 A She stated that her -- the victim's son,
14 daughter-in-law, and other family members -- primarily
15 the son and daughter-in-law normally got the groceries.
16 That it was just if she were going out to the store,
17 Ms. McDowell would ask her if she needed -- ask the
18 victim if she needed anything.

19 Q Okay. Did you ask her about whether or not
20 she often invited people or had guests over to her
21 home?

22 A If Ms. Elliott, the victim, did?

23 Q If Ms. Elliott did.

24 A Ms. McDowell stated that the victim didn't
25 open the door, wasn't very social in that area. In her

1 words, she was not comfortable around blacks and that
2 no blacks other than herself, Ms. McDowell, were
3 allowed in the victim's home.

4 The only people that she saw visit the victim
5 were her family members; that being her son, her
6 daughter-in-law, a granddaughter, and a grandson.

7 Q Ms. Elliott's family?

8 A Ms. Elliott's family.

9 Q And were you able to talk with her a little
10 bit about the conversation that she had with
11 Ms. Elliott right after Ms. Elliott was raped?

12 A I was.

13 Q What did Ms. McDowell say?

14 A She stated that she saw the victim the next
15 day at the hospital and that the victim described the
16 man to her, and Ms. McDowell responded that it sounded
17 like Woot; that was the nickname for Willie Grimes.

18 We asked her if -- who brought up the mole,
19 if it was the victim who mentioned the mole or if it
20 was Ms. McDowell who mentioned the mole. And
21 Ms. McDowell stated it was the victim.

22 The victim told her that it was the guy who
23 goes next-door. Next-door on both ends of that
24 quadriplex were what they refer to as alcohol houses.
25 A man named Beary Allen lived on one end. The other

1 end was a man named Marsha Berry. And Ms. McDowell
2 stated that people would come and go from those houses,
3 and when the victim was describing it being one of
4 those guys, she was referring to someone who had been
5 to Beary Allen's home.

6 Q And you said -- when you talked with
7 Ms. McDowell, didn't you ask her about -- in terms of
8 how sure she was that Ms. Elliott, the victim, had
9 described the mole to her, didn't you ask her if she
10 could tell you on a scale of 1 to 10 how sure she was?

11 A I did.

12 Q And that was 1 being completely, 100 percent
13 confident and 10 being not a all?

14 A Correct.

15 Q Okay. And do you remember what she said?

16 A 2.

17 Q I'm sorry?

18 A 2.

19 COMMISSIONER BECTON: Excuse me. Who said 2
20 out of 10?

21 THE WITNESS: Ms. McDowell.

22 COMMISSIONER BECTON: I don't know if you
23 said this, Ms. McDowell or Ms. Elliott, said the 2 out
24 of 10.

25 THE WITNESS: Uh-huh. Ms. McDowell.

1 Q So just to clarify, she said 2 out of 10 that
2 she recalled Ms. Elliott being the first one to mention
3 the attacker having a mole?

4 A She didn't say being the first one. She
5 stated it was a 2, that she was confident the victim
6 told her the rapist had a mole on his face.

7 Q Okay.

8 COMMISSIONER VICKORY: Your scale -- let me
9 make sure I'm straight. 1 is the high end or the low
10 end?

11 THE WITNESS: When I asked her, I said, "On a
12 scale of 1 to 10, how confident are you?" And she
13 stated a 2.

14 And in the interview I asked her, "Would a 2
15 be with 1 being the highest?" She did nod. That's not
16 in the transcript, but she did nod. So I believe she
17 was going with 1 being the highest.

18 MS. MONTGOMERY-BLINN: And she is going to be
19 here to testify.

20 COMMISSIONER SMITH: So she said she was
21 confident that Mrs. Elliott told her that the assailant
22 had a mole; is that correct?

23 THE WITNESS: On his face -- that's correct.

24 COMMISSIONER SMITH: But did she say that she
25 said she was sure that the assailant had a mole on his

1 face after Mrs. McDowell told her Mr. Grimes had a mole
2 on his face?

3 THE WITNESS: She believes --

4 COMMISSIONER SMITH: Do we know who brought
5 up the mole first?

6 THE WITNESS: She believes that it was the
7 victim who brought up the mole first.

8 COMMISSIONER SMITH: Okay.

9 Q And you said she did confirm that she
10 received the reward, but did she know -- did she tell
11 you if she knew there would be a reward?

12 A She stated that she didn't know anything
13 about the reward; that she received a phone call
14 shortly after from a bank uptown that told her to come
15 there. And when she came there, the bank gave her a
16 thousand dollars.

17 Q And in her conversation with Ms. Elliott,
18 did -- and I know we're getting hearsay within
19 hearsay -- but Ms. McDowell, when you talked with her,
20 did she tell you if Ms. Elliott told Ms. McDowell why
21 she opened the door? What she thought when someone was
22 knocking on her door?

23 A When Ms. McDowell talked to the victim, the
24 victim was telling Ms. McDowell, "I thought it was you
25 that was at my door. I thought it was you." And she

1 kept repeating that. And that the person on the other
2 side of the door kept saying, "This is Linda. This is
3 Linda." And that the only reason that the victim
4 opened the door is because she thought it was Linda
5 McDowell.

6 Q Okay. And just to clarify, that's what
7 Ms. McDowell told you Carrie Elliott told her.

8 A Correct.

9 Q Okay. All right. Now, Ms. McDowell -- Linda
10 McDowell and Betty Shuford, are they related?

11 A They are sisters.

12 Q And did you ask Ms. McDowell if she had ever
13 had any conversations with her sister, Betty Shuford,
14 about this case?

15 A Yes.

16 Q And what did she say?

17 A She stated that she never talked to Betty
18 Shuford or any member in her family. There were other
19 members of her family -- Rachel Wilson was her sister,
20 there were other relations -- she stated she had never
21 talked to any of them about this case.

22 Q When you say there were others, you mean
23 there were other people that testified as Mr. Grimes'
24 alibi witnesses?

25 A And they were related to Ms. McDowell.

1 Q Okay. And she said she never talked to any
2 of them.

3 A Correct.

4 Q Did she say that she had talked to Betty
5 Shuford immediately following the rape?

6 A Yes.

7 Q Okay. And what did she say about that?

8 A As time went on, she told a story -- and I'm
9 just going to read it from the quotes because that's
10 probably the easiest.

11 She says, "I did ask Betty one time, I think
12 it was when -- when I found out about it or something.
13 I said, Betty, did you know the woman next-door to me
14 got raped? And I said, someone stole her damn bananas.
15 And we just laughed it off. And she said, Oh, that's
16 where Woot got them bananas."

17 Q When you say Hoot? Woot?

18 A That's what they call him.

19 Q That's Mr. Grimes?

20 A Mr. Grimes.

21 Q Okay. Well, now you also interviewed Betty
22 Shuford; right?

23 A Yes.

24 Q Did you ask her about saying "That's where
25 Woot got those bananas"?

1 A I did.

2 Q And what did she say?

3 A That she has never had a conversation like
4 that. She did not see Mr. Grimes eating any bananas on
5 that night. And that she's never had a conversation
6 with Ms. McDowell like that.

7 Q Okay. Just to back up now, Ms. Shuford is --
8 what's her full name, if you know?

9 A Betty Shuford?

10 Q Uh-huh.

11 A Sorry, I don't recall her middle name.

12 Q Is it Betty Shuford Hairston?

13 A Yes.

14 Q Okay. And at the time of the trial,
15 according to the trial transcript, was she dating -- or
16 before that had she been Mr. Grimes' girlfriend?

17 A She had been.

18 Q Okay. And just to refresh everybody's
19 memory, she testified at trial that she spoke with him
20 on the phone and then he came over to her house that
21 night; right?

22 A Correct.

23 Q And when you interviewed Ms. Shuford -- Betty
24 Shuford now, we're talking about her, not Linda
25 McDowell anymore -- who was present during that

1 interview?

2 A Myself, Mr. Lau, and Investigator Nowatka was
3 present for part of the interview.

4 Q Okay. And did Ms. Shuford's son come for
5 some time?

6 A Excuse me. Yes, and her son.

7 Q Did she confirm to you that she had been
8 dating Mr. Grimes?

9 A She did confirm that.

10 Q Okay. And did she have any independent
11 recollection or memory?

12 A She was adamant that Grimes could not have
13 done it. When we were interviewing her, her memory had
14 faded a bit as to times and what had actually happened.
15 We then let her read her transcript, asked her if it
16 was accurate and truthful. As she was reading the
17 transcription was nodding and saying that that was what
18 she remembered, and ultimately did say that that was
19 accurate and truthful.

20 Q Okay. So she indicated that she stands by or
21 that her testimony was truthful?

22 A Her trial testimony, yes.

23 Q Okay. And did you ask her if she had ever
24 talked to her sister, Linda McDowell, about the case?

25 A We did ask her that. She stated that she had

1 not talked to Linda about the case. That Linda had --
2 Linda McDowell had not told her about the reward, but
3 that she had heard about it from others.

4 Q Okay. And you said, again, that she denied
5 stating to Linda McDowell that Willie Grimes came in
6 with bananas?

7 A She denied stating that.

8 Q Okay.

9 MS. MONTGOMERY-BLINN: Before Ms. McDowell
10 and Ms. Shuford -- before Ms. McDowell comes in to
11 testify, and then later Ms. Shuford, do the
12 Commissioners have any questions for Ms. Stellato about
13 her interviews?

14 COMMISSIONER SMITH: This you couldn't
15 answer, but do we know how many bananas were taken? Do
16 we know how many bananas were in the bowl and how many
17 bananas were -- remained and how many were taken?

18 MS. MONTGOMERY-BLINN: Can you answer that?

19 THE WITNESS: The photograph that we have of
20 the crime scene has two bananas, full bananas, on the
21 table by the fruit bowl, outside of the fruit bowl.
22 And then there is testimony that there were two banana
23 peels outside of the back door.

24 COMMISSIONER SMITH: So I'm interested in how
25 she would have known that -- is it Hoot? --

1 THE WITNESS: Uh-huh.

2 COMMISSIONER SMITH: -- had those bananas.

3 If both bananas were eaten and the peels were outside
4 the apartment, how would she have known that he got
5 bananas?

6 THE WITNESS: I'm sorry? How would
7 Ms. McDowell have known that?

8 COMMISSIONER SMITH: Yes.

9 THE WITNESS: I --

10 COMMISSIONER SMITH: If he didn't bring some
11 with him somewhere...

12 THE WITNESS: When we were doing the
13 interview with her -- and I hope I'm understanding your
14 question right.

15 Is this your question: How did Ms. McDowell
16 know about the fruit?

17 COMMISSIONER SMITH: She should, "That's
18 where Hoot [sic] got those bananas."

19 THE WITNESS: Betty Shuford said that.

20 COMMISSIONER SMITH: Betty said that. All
21 right. So how did Betty know he had some bananas?

22 THE WITNESS: Because according to Linda
23 McDowell, Linda McDowell said to her, "He raped her and
24 then he took her bananas." And then Betty Shuford was
25 responding, "That's where he got those damn bananas."

1 When I asked her further about that, if --
2 you know, because she said they were laughing about
3 that, she said she guessed it was a joke.

4 COMMISSIONER ASHENDORF: Who said that?

5 THE WITNESS: Linda McDowell. And they'll
6 both be here.

7 COMMISSIONER SMITH: Okay. All right. Thank
8 you.

9 THE WITNESS: I'm happy to answer, but I just
10 don't know that I can clarify.

11 COMMISSIONER BECTON: Then Betty Shuford --
12 but in response, Betty Shuford said -- you asked her,
13 and she said, "I didn't say anything about any bananas
14 at all."

15 THE WITNESS: Correct. She said, "I didn't
16 say anything about that" -- or "I didn't know about
17 that."

18 COMMISSIONER SMITH: Okay.

19 MS. MONTGOMERY-BLINN: May I try to follow up
20 on Mr. Smith's Question? I think I understand what you
21 were trying to ask, Mr. Smith.

22 BY MS. MONTGOMERY-BLINN:

23 Q So Ms. Stellato, if we have two bananas in
24 the picture and two banana peels were found -- at least
25 four bananas -- has there ever been any testimony or

1 anything that you are aware of in the file that
2 indicated the number that were in the bowl; such as,
3 six bananas were in the bowl before the rape happened?

4 A No.

5 COMMISSIONER SMITH: And may I follow up,
6 please?

7 JUDGE SUMNER: Certainly.

8 COMMISSIONER SMITH: And there is no evidence
9 that he brought some bananas to where she was.

10 THE WITNESS: Mr. Grimes?

11 COMMISSIONER SMITH: Yeah.

12 THE WITNESS: No.

13 COMMISSIONER SMITH: No one saw him with any
14 bananas.

15 THE WITNESS: No. The first mention of
16 bananas that has happened in our investigation was in
17 our interview of Linda McDowell. Correct. Nobody --
18 there was no prior testimony about that.

19 COMMISSIONER SMITH: Okay. Thank you.

20 COMMISSIONER ASHENDORF: What's the woman's
21 name that Mr. Grimes was living with who was driving him?

22 THE WITNESS: Brenda Smith.

23 COMMISSIONER ASHENDORF: Brenda. When Brenda
24 Smith -- she took him everywhere that night -- did she
25 take him over to Betty Shuford's?

1 THE WITNESS: No. He walked over to Betty
2 Shuford's. She took him to Rachel Wilson's, which is
3 the home that you will see the other alibi witnesses --

4 COMMISSIONER ASHENDORF: Right.

5 THE WITNESS: -- testifying about.

6 And then, according to testimony, he spoke to
7 Betty Shuford on the phone later that evening, went
8 over to her home -- walked over to her home.

9 MS. MONTGOMERY-BLINN: Other questions?
10 Okay.

11 The Commission calls Linda McDowell.
12 Thereupon, HELEN MCDOWELL, having first been duly sworn, was
13 examined and testified on EXAMINATION
14 BY MS. MONTGOMERY-BLINN:

15 Q Hi, Ms. McDowell. I know we haven't met
16 before today other than just in the hallway today, but
17 my name is Kendra Montgomery, and I'm the Director of
18 the Commission.

19 I'm going to ask you some questions and the
20 other Commissioners will probably have some questions
21 for you as well.

22 I just want to make sure -- I know that you
23 met with some of our staff before, but I just want to
24 make sure you understand that we don't represent
25 Mr. Grimes, we don't represent the prosecution; we're

1 just a truth-seeking agency. And we also are well
2 aware that it's been a long, long time and we know that
3 you may have forgotten some things or we may ask you
4 questions that you just don't know the answer to. And
5 all we would like you to do is tell us the truth. And
6 if you don't know, that's okay; or if you can't
7 remember, that's okay too. Okay?

8 Will you tell us your name.

9 A Helen McDowell.

10 Q And if you'll speak up, Ms. McDowell, because
11 we have a court reporter who needs to hear everything
12 you say.

13 Do you go by Linda?

14 A Yes, ma'am.

15 Q Linda McDowell?

16 A Yes, ma'am.

17 Q And is your maiden name Shuford?

18 A Yes, ma'am.

19 Q And are you related to -- well, how many
20 sisters do you have?

21 A Well, it's only four of us living. There was
22 eight girls.

23 Q Eight girls. And Betty Shuford is your
24 sister; is that correct?

25 A Yes.

1 Q Okay. Do you remember speaking with Sharon
2 Stellato, Jamie Lau, and Investigator Nowatka who is
3 back there, on January 5 or at the start of this year?

4 A Yes.

5 Q Did they come out to your house?

6 A Yes, ma'am.

7 Q All right. And I'd like to ask you probably
8 many of the same questions that they asked you, if
9 that's okay. I know it's going to be a little bit
10 repetitive, but just please bear with me.

11 In 1987, do you remember where you were
12 living?

13 A I think 8th Avenue Drive.

14 Q 8th Avenue Drive?

15 JUDGE SUMNER: Ms. McDowell, you're going to
16 keep -- talk like you're talking to somebody back here
17 for me, please. Okay?

18 THE WITNESS: 8th Avenue Drive.

19 Q Okay. And I know I'm sitting right by you,
20 but I need everybody back there to be able to hear you
21 too. And I'll try to help you remember to speak up,
22 because I know it's hard.

23 8th Avenue Drive. Is that in Hickory?

24 A Yes, ma'am.

25 Q Okay. And was that -- were you living

1 next-door to Ms. Carrie Elliott?

2 A Yes, ma'am.

3 Q And did you know Ms. Elliott?

4 A Yes.

5 Q How did you know her? Was she somebody you
6 would call a friend?

7 A Yes. She had moved into the neighborhood.

8 Q Okay. Did you talk with her regularly?

9 A Yes, we was friends.

10 Q Did you go over to her house and visit with
11 her?

12 A Yes.

13 Q Do you know if Ms. Elliott let other
14 people -- other people from the neighborhood come into
15 her house and visit?

16 A No.

17 Q Just you?

18 A Yes.

19 Q Okay. And maybe -- what about your
20 boyfriend, Mr. Willie Mason?

21 A I never know him to be in over there.

22 Q Not him either?

23 A (Moves head side to side.)

24 Q Just you?

25 A Yes.

1 Q What about in her family? Did her family
2 come over?

3 A Yes, they came over sometime.

4 Q Nobody else from the neighborhood?

5 A No.

6 Q Okay. Did you ever see any African-American
7 men in her house?

8 A No, ma'am.

9 Q Anybody ever do any chores or work for her?

10 A No.

11 Q Did she ever hire anybody to go to the
12 grocery store?

13 A No.

14 Q Fix her sink or do some work for her?

15 A No.

16 Q What about -- did she have a telephone, do
17 you know?

18 A Yes.

19 Q And did she let people use her telephone?

20 A No. I used it.

21 Q You used it?

22 What about other people from the
23 neighborhood?

24 A No.

25 Q What if someone knocked on her door and asked

1 to use the phone?

2 A She wouldn't let them.

3 Q Would she open her door, do you know?

4 A Not since her husband passed, uh-uh.

5 Q Okay. Do you remember when her husband had
6 passed away?

7 A I can't remember.

8 Q Do you know how -- did anybody take her to
9 the grocery store?

10 A Her son or her granddaughter or sometime I
11 would take her.

12 Q Okay. Anybody else?

13 A No.

14 Q Did anybody ever bring her groceries?

15 A No.

16 Q Did you ever bring things to her?

17 A Yeah, I brought little things to her, you
18 know.

19 Q Just something that you were --

20 A Like Kentucky Fried Chicken or McDonald's or
21 something like that.

22 Q Okay. And she never hired anybody to go to
23 the grocery store for her?

24 A No.

25 Q And I know this is a memory stretch, but I'm

1 going to try to ask you who lived in each of the
2 houses, how many -- or each of the apartments that were
3 connected. How many were there?

4 A Four.

5 Q Four. Okay. You remember the one you're in;
6 right?

7 A Marsha was in the first apartment. Willie
8 Mason lived in the second, Ms. Carrie the third, and
9 Beary Allen was in the fourth one.

10 Q Okay. What I'd like to do, if I can, is show
11 you a picture, a photograph -- and it's going to come
12 up on these TV screens -- and see if that helps and if
13 it can make it more clear for us.

14 So are you able to see? And maybe if you
15 want to turn around --

16 A I can see.

17 Q You can see it there? Okay. I know there's
18 maybe just enough TV screens in here.

19 Okay. Does this picture the Commission
20 staff -- or, actually, Investigator Nowatka from the
21 Hickory Police Department took this picture recently,
22 but does it look familiar to you?

23 We believe it's the front door of the
24 apartment Ms. Elliott was in, but if you -- if it
25 doesn't help you to look at --

1 A Well, they done done a lot of work to those
2 apartments.

3 Q Okay. So it doesn't look the same anymore?

4 A No.

5 Q Okay. Let me try and see if this picture
6 helps. Does that look like the apartments to you?

7 A Yes.

8 Q Okay. And you were telling me that Marsha
9 Berry was in the first apartment. Is that this one
10 right here that you can't can really see, but you see
11 the railing to that? Would that --

12 A Yes, ma'am.

13 Q -- be Mr. Berry?

14 And then is the one right here, this door, is
15 that the one that you were in?

16 A Yes.

17 Q Okay. And this one right here that's kind of
18 backset, is that the one that Ms. Elliott lived in?

19 A Yes, ma'am.

20 Q And who did you say lived in this last
21 apartment?

22 A Beary. His name was Beary.

23 Q Beary Allen?

24 A Beary Allen.

25 Q Okay. Beary Allen. That all looks correct

1 to you? Is that how you remember it looking?

2 A Yes, ma'am.

3 Q Okay. Thank you. And thank you for your
4 patience with the photos.

5 So these houses are attached; right? They
6 all have to share the same walls?

7 A Yes, ma'am.

8 Q Okay. And were the front doors pretty close
9 to each other?

10 A Not exactly.

11 Q Okay. Now, let's talk -- let's go ahead and
12 turn and talk about Mr. Grimes, Willie Grimes; I think
13 his name was Woot. Does that sound right?

14 A Yes, ma'am.

15 Q And how did you know him?

16 A He used to date my sister.

17 Q Is that Betty Shuford?

18 A Uh-huh.

19 Q What did you think of Mr. Grimes?

20 A He's all right, I guess.

21 Q I'm sorry, can you say that again?

22 A I said he's a all-right guy.

23 Q All-right guy?

24 Were you okay with him dating your sister?

25 A I didn't have no problem with that. I wasn't

1 around him that much.

2 Q Did he treat your sister well?

3 A Yes, ma'am.

4 Q Was he ever violent with your sister?

5 A Not that I know of.

6 Q Okay. Were you surprised when you found out
7 that Mr. Grimes had raped Ms. Elliott?

8 A Yes -- well, yes, ma'am.

9 Q And why were you surprised?

10 A Well, when she was telling me about it,
11 that's what really -- you know, really upset me.

12 Q Upset you -- obviously you were upset that
13 your friend had been raped.

14 Were you also upset that it was Mr. Grimes
15 that did it?

16 A Yes, ma'am.

17 Q And what you mean when you say "upset" about
18 that?

19 A Well, when she described him to me, that's
20 when I said, "You talking -- I know you're not talking
21 about Woot."

22 She said, "The guy that goes down to
23 Mr. Beary.

24 Q The guy that goes down to Mr. Beary's.

25 A Yes.

1 Q And did you know Woot or Mr. Grimes to go
2 down to Mr. Beary's?

3 A Yeah, he used to go down there.

4 Q And so you said she described him to you. Do
5 you remember what she said?

6 A Yes. She told me -- she said, "Linda, you
7 know the guy. The guy with the mole on his face.
8 He's -- that tall guy with the mole on his face."

9 Q So she knew she was talking about --

10 A Uh-huh.

11 Q -- but she did not know his name.

12 A No.

13 Q Do you remember where you were speaking to
14 her at?

15 A She was -- I can't remember. She was in --
16 she wasn't at that apartment.

17 Q She wasn't back at home?

18 A Uh-uh.

19 Q And do you remember how long after she was
20 raped it was that you talked with her?

21 A I think it was like maybe a week or so.

22 Q A week or so?

23 A Uh-huh.

24 Q Do you remember what else she told you about
25 that day?

1 A She just described him to me. That's all she
2 said to me. That's all she told me.

3 Q Just described what this person looked like.

4 A Willie Grimes.

5 Q Okay. She described Willie Grimes to you.

6 A Yes, ma'am.

7 Q Do you remember anything else she said about
8 his description?

9 A No, ma'am. Just said the mole on his face.

10 Q Okay. And did she you tell anything about
11 what her rapist said to her?

12 A No, ma'am, she did not. All she said, that
13 the guy came, and -- he came and knocked on her door
14 and said -- and she asked who it was, and he said,
15 "Linda." And she said, "Who?" She knew we was going
16 to the movies that night.

17 Q You and your boyfriend were going to the
18 movies that night?

19 A Yes.

20 Q Okay. Go ahead.

21 A So she thought maybe we was -- had got back
22 early or something. And he kept saying my name to her.

23 Q She said that the man kept saying, "This is
24 Linda"?

25 A "This is Linda."

1 Q Okay. Did she say that the man disguised his
2 voice or anything like that?

3 A She just said he kept saying, "This is
4 Linda."

5 Q Okay. Now, do you remember when you spoke
6 with Ms. Stellato and Mr. Lau you said that you thought
7 that this conversation was the next day at the
8 hospital? Does that sound -- I know you just told us
9 now you don't know where it was and it was a week
10 later. And I know it's been a long time...

11 A I don't know.

12 Q Okay. Did she tell you that the person that
13 raped her took fruit from her house?

14 A Bananas.

15 Q Bananas. Did she tell you how many?

16 A No.

17 Q Did she say anything about what he took from
18 her house?

19 A No.

20 Q Do you know if he took any other property?

21 A No, ma'am.

22 Q Okay. No, you don't know? Or, no, he
23 didn't?

24 A I don't know.

25 Q Okay. Thank you.

1 Now, when she described this person, did she
2 say that he had a mole first, or did you say --

3 A No, I did not. She told me, "You know, the
4 guy with the mole on his face."

5 Q Okay. And how confident are you that she is
6 the first one that mentioned the mole between the two
7 of you?

8 A Well, I don't know.

9 Q If it was on a scale of 1 to 10.

10 A What was the question again?

11 Q How confident are you that she said he had a
12 mole before you said Willie Grimes or Woot?

13 A I'd say a 5 -- I'm going to say a 5.

14 Q A 5? So just sort of somewhere in the
15 middle?

16 A Uh-huh.

17 Q Okay. Now, did you tell her what his name
18 was?

19 A She knew the guy, but she just didn't know
20 his name.

21 Q Okay. And did you say -- did you tell her
22 what his name was?

23 A I said, "Woot?" That's what I said, "Woot?"

24 Q And you knew him to also be Willie Grimes;
25 right?

1 A Yes, ma'am.

2 Q Did you tell her, "It's Willie Grimes"?

3 A No, I said Woot.

4 Q Okay. So you never said the words to her
5 Willie Grimes; you just said Woot.

6 A Woot.

7 Q If she had asked you his full name, would you
8 have told her?

9 A Yes, ma'am.

10 Q And the police report says that you -- that
11 when she called the police, she said you would only
12 tell his name to the police. Is that true?

13 A Yes, ma'am.

14 Q That is true. Okay. How come you would only
15 tell his name to the police?

16 A I don't know, she's -- she -- I mean, she
17 described him to me.

18 Q I just want to back up and make sure that --
19 you told her his name was Woot; right? But you didn't
20 say Willie Grimes?

21 A No, ma'am.

22 Q But you would have if she had said, "What's
23 his real name?"

24 A Yes, ma'am.

25 Q Okay. And then if she told the police, "My

1 neighbor knows who he is but will only tell his name to
2 the police," is that -- did she misunderstand you?

3 A I don't know.

4 Q Okay. I'm sorry. I'm know I'm confusing
5 you. Maybe I'll come back to that if I think of a
6 better way to word that for you.

7 Now, do you remember, Ms. McDowell, if you --
8 did you call the police and tell them about Mr. Grimes?

9 A I don't remember.

10 Q Okay. Do you remember talking to Officer
11 Bryant?

12 A Yeah, Steve Bryant, I remember talking to --
13 COMMISSIONER BECTON: Keep your voice up,
14 please.

15 A -- Steve Hunt and another officer.

16 Q You remember Officer Bryant and Officer Hunt?

17 A (Moves head up and down.)

18 Q Did you know either of those officers before?

19 A I did not know Officer Bryant, but I knew
20 Steve Hunt.

21 Q You knew Hunt, but not Officer Bryant?

22 A (Moves head side to side.)

23 Q And did you receive a reward from the Police
24 Department?

25 A Yes.

1 Q A CrimeStoppers tip?

2 A Yes.

3 Q Do you remember how much it was?

4 A A thousand, I think.

5 Q And did you know that you would get a reward
6 before you spoke to the police?

7 A No, ma'am.

8 Q So that was a surprise?

9 A Yes.

10 Q A nice surprise?

11 A Yes.

12 Q Now you said you knew Officer Hunt but not
13 Officer Bryant. Had you ever been a witness for the
14 police before?

15 A No, ma'am.

16 Q Have you ever been an informant for the
17 police?

18 A No.

19 Q And when I said "informant," I mean somebody
20 who gives information to the police about other cases.
21 Had you ever done that?

22 A No.

23 Q Do you remember talking with your sister,
24 Betty Shuford, about this case?

25 A After it happened, I had went over -- went

1 over to her house -- that's when she was in Berlin.

2 And I said, "Willie Grimes raped that" -- well, "white
3 lady," and she said, "Is that where he got those damn
4 bananas from?" And that's all we said; nothing else
5 was said after that.

6 Q Okay. So she said, "Is that where he got
7 those bananas from?"

8 A Uh-huh.

9 Q And you don't -- didn't have any more
10 conversation about the bananas?

11 A We never talked about it again.

12 Q And do you remember when you initially called
13 the police and you were speaking to the police, telling
14 them that your sister said he came home that night in a
15 green shirt?

16 A I don't remember that.

17 Q Okay. I'm just going to read you a line from
18 of the police report and see if that helps you
19 remember -- if you remember any of this.

20 It says, "McDowell advised that Shuford told
21 her that Grimes was wearing a green-colored
22 pullover-type shirt while he was at her house."

23 Do you remember your sister telling you that
24 Mr. Grimes had on a green pullover shirt?

25 A I don't remember that.

1 Q Okay.

2 A I don't.

3 Q And it says, "McDowell advised that was on
4 Saturday night. And she and Mason" -- which was your
5 boyfriend, right, Willie Mason? -- "left around
6 8:55 p.m. and did not return until late." Do you
7 remember that?

8 A I know we went to the movies.

9 Q Okay. So you do remember leaving that
10 Saturday night?

11 A Yes, ma'am.

12 Q Okay. I'm going to review another line from
13 that police report, and this is the police report of
14 when Ms. Elliott called the police. It says,
15 "Ms. Elliott advised that McDowell told her that she
16 would give the name to the police only and no one
17 else."

18 Does that sound right to you?

19 A Maybe.

20 Q Maybe? So you wanted to give Mr. Grimes'
21 name only to the police and not to other people?

22 A Yes, ma'am.

23 Q Okay. So you do remember that now?

24 A Yeah.

25 Q Okay. How come? Why didn't you want to tell

1 Ms. Elliott Mr. Grimes' name?

2 A Well, one reason, she didn't ask.

3 Q Okay. She didn't ask.

4 A She just described him to me, and -- she know
5 who it was, but she didn't know the name.

6 Q If she had asked you, "What is his name?" you
7 would have said, "Willie Grimes"?

8 A Yes, ma'am.

9 Q Okay. Thank you.

10 Now, you didn't testify at trial, right,

11 Ms. McDowell?

12 A No, I didn't.

13 Q If you had been asked to, would you have?

14 A I don't know -- no, I didn't even know -- all
15 I know is that I went to court, but Steve Hunt and -- I
16 can't remember this other guy -- at court talked to me,
17 they took me in the little room and told me I could go
18 home.

19 Q Okay. So you did go --

20 A Uh-huh.

21 Q -- and you would have testified?

22 A I was with -- to be with Ms. Carrie.

23 Q I'm sorry?

24 A I went to the courthouse to be with

25 Ms. Carrie.

1 Q Oh, to be with Ms. Carrie. Okay.

2 A Uh-huh.

3 Q Now, do you know -- so you didn't stay and
4 watch the trial.

5 A No, ma'am.

6 Q And do you know that your sisters and your
7 mother testified that Mr. Grimes was with them that
8 night?

9 A Not till they was telling me about it.

10 Q Okay. So you didn't know about it until --

11 A No, ma'am.

12 Q -- just recently?

13 A No.

14 Q And so did you ever talk to them about that?

15 A Well, we never talked about the trial.

16 Q Did you know that they testified at all at
17 the trial?

18 A No, ma'am, not till those guys was telling.

19 Q Okay. Do you -- I know that your mother has
20 passed away and some of your sisters have passed away;
21 did you talk to them on a regular basis?

22 A Yeah, we talked all the time. We never
23 talked about that.

24 Q Were you estranged from your family? Meaning
25 you never spoke to them?

1 A No.

2 Q Did you get together at Christmas?

3 A Yes.

4 Q Easter?

5 A Thanksgiving, yeah.

6 Q And you just didn't talk about this?

7 A No.

8 Q Was it on purpose that you didn't talk about
9 this or --

10 A I guess we just didn't talk about it.

11 Q Okay. Did you want to talk about it?

12 A No, ma'am.

13 Q So you didn't know until we came and talked
14 to you that they had been there to testify at trial?

15 A Yes, ma'am.

16 Q Okay. Do you know when you went -- I know
17 you said you were there with Ms. Carrie -- you were
18 also under subpoena; right? You got a subpoena sent to
19 you?

20 A No, ma'am.

21 Q No?

22 A No, I did not.

23 Q Now, if Mr. Grimes was with your family that
24 night and they went to court and they said that --
25 well, let me back up.

1 Do you think your mother, was she a truthful
2 person?

3 A Yes, ma'am.

4 Q Did you always know her to tell the truth?

5 A As far as I know, yes.

6 Q How about your sister, Betty Shuford? Is she
7 a truthful person?

8 A I don't know. I don't know.

9 Q You don't know? Okay.

10 How about your sister, Rachel Wilson? Was
11 she a truthful person?

12 A Yes.

13 Q Did you always know her to tell the truth?

14 A Yes, ma'am.

15 Q Well, why do you think they went to court and
16 said that Mr. Grimes was with them?

17 A I don't have no idea.

18 Q Okay. Let's talk about somebody else. Let's
19 talk about a man named Albert Turner. His street name
20 was LeeLee. Did you know him?

21 A No, ma'am.

22 Q So you don't know if you ever saw him at
23 Ms. Elliott's apartment because you don't know who he
24 is?

25 A I know what -- she didn't allow no -- well,

1 no black guys didn't go to her apartment.

2 Q Okay. So if he's African-American, he
3 wouldn't have been at her apartment.

4 A No, ma'am. She wouldn't have let him in
5 nowhere.

6 (Reporter requested a repeat.)

7 A What was the question?

8 Q I think I said if he was African-American,
9 she wouldn't have let him in her apartment?

10 A No. She don't like black guys in her
11 apartment.

12 Q And she wouldn't have let, really, anybody in
13 her apartment is what you said earlier, other than
14 people she knew; her family and you?

15 A Yes, ma'am.

16 Q Okay. And you don't know if you would have
17 seen him at Beary Allen's house because you don't know
18 who this is?

19 A No, ma'am.

20 Q Okay. Who else have you talked to about this
21 case?

22 A About now?

23 Q Uh-huh. Well, back in 1987. You said you
24 talked to Officer -- you remember talking to Officer
25 Hunt; you don't know about Officer Bryant.

1 A It was two of them -- it was another guy with
2 Steve Hunt, but I just didn't catch his name. I don't
3 remember his name.

4 Q And are you confident that it was Steve Hunt
5 that you spoke to?

6 A Yes.

7 Q And you know Steve Hunt?

8 A Yes, ma'am.

9 Q So you would recognize him if you saw him?

10 A Yes, ma'am.

11 Q And you knew him back in 1987?

12 A Yes, ma'am.

13 Q And how did you know him?

14 A He goes to Mt. Zion Church.

15 Q Okay. So you would have recognized him?

16 A Yes, ma'am.

17 Q Now you said before that you had never been
18 somebody that gave information to the police?

19 A Pardon me?

20 Q You said before 1987 you had never given
21 information to the police.

22 A Not that I know.

23 Q How about after that?

24 A No.

25 Q Ever been a witness in a case?

1 A No, ma'am.

2 Q A victim in a case?

3 A Uh-uh.

4 Q Not called the police about something else
5 that was going on?

6 A I called the police about some black guys
7 beating up a white guy in my neighborhood.

8 Q Okay. And was that prior to Ms. Elliott's?

9 A No, no.

10 Q Okay. That was after this?

11 A That was -- yeah.

12 Q After Ms. Elliott was raped? That was
13 another time?

14 A This was in '95. I think '95, '97, something
15 like that.

16 Q '95, '97? And that's the only time?

17 A That I can remember.

18 Q Okay. And you've never been given
19 CrimeStoppers reward money any other time?

20 A Not that I know of.

21 Q Okay. Now, you said Betty Shuford is your
22 sister. Did you drive here with her?

23 A Yes, ma'am.

24 Q So you came down together in the same car?

25 A Yes, ma'am.

1 Q Did you talk about the case in the car on the
2 way down?

3 A No, ma'am.

4 Q Okay. Talked about other stuff?

5 A Just directions to get here.

6 Q Okay. Did you talk about your family and
7 other things or just silent the whole car ride?

8 A Well, we listened to gospel music. And she
9 was --

10 Q Okay.

11 A What else did she talk about?

12 Q Okay. Do you remember speaking with a
13 reporter named Susan Greene from the Denver Post a
14 couple years ago?

15 A No.

16 Q No? Do you remember talking to anybody else
17 about this case?

18 A No, ma'am, not as I know.

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

21 JUDGE SUMNER: You may.

22 Q Ms. McDowell, I'm going to hand you a
23 document. Will you take a look at it and tell me if
24 you recognize it, if you have seen it before.

25 And if you'd like me to, I'll come up and

1 read it with you if that would be easier.

2 A This the one we just got in the mail?

3 Q Is that a subpoena?

4 A Yes, ma'am.

5 Q Subpoena. Okay. And is that -- did you
6 receive that? May I come up -- if it's all right, can
7 I stand here and read it with you?

8 So this says "subpoena"; right? Is that
9 Catawba County?

10 A Yes, ma'am.

11 Q And this says "Willie Grimes." And this is
12 your name right here, Linda McDowell; is that right?

13 A Yes, ma'am.

14 Q And this says July 5, 1988; is that right?

15 A Yes.

16 Q July 5 -- okay. And this is signed by -- and
17 you might not be able to make it out -- it looks to me
18 like it says E.X. de Torres. Does that sound right to
19 you?

20 A I have no...

21 Q Okay. So do you think maybe you were
22 subpoenaed to court back in 1988?

23 A I didn't get one of those.

24 Q Okay. If you were, you didn't receive it?

25 A Not -- no, ma'am.

1 Q Okay. Now, Ms. Shuford [sic], have you been
2 convicted of anything other than some minor traffic
3 offenses?

4 A I had a -- my cousin took out on me for
5 assault, but it never went through court.

6 Q You were never convicted of that; right?

7 A No.

8 Q So you don't have any criminal convictions?

9 A No, I don't.

10 Q All right. Now, is there anything else that
11 you remember that I haven't asked you about?

12 About Ms. Elliott being raped? About
13 Mr. Grimes? Anything?

14 A No, ma'am.

15 Q Anything else that you think is important
16 that we should know about?

17 A No, ma'am.

18 Q And if you will be patient, the Commissioners
19 may have some questions for you as well.

20 A Okay.

21 MS. MONTGOMERY-BLINN: Commissioners?

22 COMMISSIONER GREENLEE: Can you tell me, was
23 your sister angry that you identified Woot as the
24 person that was the rapist?

25 THE WITNESS: She wasn't towards me. I never

1 seen her angry.

2 COMMISSIONER SMITH: Might you have mentioned
3 the mole to Ms. Elliott before she mentioned the mole
4 to you?

5 THE WITNESS: No, sir.

6 COMMISSIONER SMITH: And you are positive
7 that you said -- that she said it first?

8 THE WITNESS: She said it first.

9 COMMISSIONER SMITH: Okay.

10 COMMISSIONER SURGEON: How did you find out
11 about the rape?

12 THE WITNESS: I think her son -- I think --
13 her son or granddaughter -- her son was telling me
14 about it -- told me about it.

15 COMMISSIONER SURGEON: When?

16 THE WITNESS: I don't remember the date, the
17 day they told me.

18 COMMISSIONER SURGEON: Do you remember where
19 you were when you first heard about it?

20 THE WITNESS: I think it was at Catawba
21 Memorial Hospital.

22 COMMISSIONER SURGEON: How did you get to the
23 hospital? Why were you there?

24 THE WITNESS: Do the question --

25 COMMISSIONER SURGEON: Why were you at the

1 hospital?

2 THE WITNESS: I went to see about Ms. Carrie.

3 COMMISSIONER SURGEON: Why were you going to
4 see her at the hospital?

5 THE WITNESS: Because I had heard she got
6 raped.

7 COMMISSIONER SURGEON: How did you hear about
8 it?

9 THE WITNESS: Through -- it's either her
10 granddaughter or her son called -- was telling me.

11 COMMISSIONER SURGEON: And so that's when you
12 first talked to her about it?

13 THE WITNESS: Yes, ma'am.

14 COMMISSIONER SURGEON: What did she tell you?

15 THE WITNESS: She just told me that -- she
16 said, "Linda, you know who it is. The guy, the tall
17 guy with the mole on his face."

18 COMMISSIONER SURGEON: And what did you say?

19 THE WITNESS: That's when I said, "Are you
20 talking about Woot?" Because she said he goes down to
21 Mr. Beary's.

22 COMMISSIONER SURGEON: Does anybody else go
23 down to Mr. Beary's?

24 THE WITNESS: Yes, it's a lot of...

25 COMMISSIONER SURGEON: Did anybody else go

1 there that could have fit the description?

2 THE WITNESS: Not -- (Moves head side to
3 side) -- not that I know of.

4 COMMISSIONER SURGEON: So then based on her
5 description, is that how you concluded that it was
6 Mr. Grimes?

7 THE WITNESS: Well, that's the only person I
8 know that went -- goes back down there.

9 COMMISSIONER SURGEON: So that's how you
10 determined that he was the one who did it?

11 THE WITNESS: Yes, ma'am.

12 COMMISSIONER SURGEON: What did you do after
13 making that determination?

14 THE WITNESS: Nothing.

15 COMMISSIONER SURGEON: Who did you talk to
16 next?

17 THE WITNESS: If I'm not mistaken, I -- it
18 was Steve Hunt and the other guy that was with him. I
19 don't remember.

20 COMMISSIONER SURGEON: How did you talk to
21 them?

22 THE WITNESS: What you mean about --

23 COMMISSIONER SURGEON: Well, did you call
24 them? Did they call you?

25 THE WITNESS: I think Steve Hunt called me

1 first -- called me.

2 COMMISSIONER SURGEON: And he called you for
3 what purpose?

4 THE WITNESS: About the -- this crime.

5 COMMISSIONER SURGEON: Why was he calling
6 you?

7 THE WITNESS: Because I knew the name of a
8 guy that -- that did this to her.

9 COMMISSIONER ASHENDORF: Did you tell him the
10 name?

11 THE WITNESS: Willie Grimes.

12 COMMISSIONER ASHENDORF: Did you tell Steve
13 Hunt?

14 THE WITNESS: Yes, ma'am.

15 COMMISSIONER SURGEON: When did you first
16 talk to your sister?

17 THE WITNESS: I don't know. I know it was --
18 I do know that it was at night, I know that. It was a
19 night. I don't remember what night through the week.

20 COMMISSIONER SURGEON: Did you talk to
21 Mr. Hunt, the officer, before you spoke to your sister?

22 THE WITNESS: No. Talked to Betty -- I went
23 to Betty's house and we was -- I think she was having a
24 cookout or something, and I just up and mentioned it to
25 her.

1 COMMISSIONER SURGEON: What did you mention
2 to her?

3 THE WITNESS: I said, "Woot" -- I said, "Woot
4 raped that lady," and she said, "Well, what lady?" I
5 said, "The lady next-door," I said, "Because she said
6 he took her bananas." And that's when she said,
7 "That's where he got those damn bananas from." Those
8 was her words.

9 COMMISSIONER SURGEON: And when was this?

10 THE WITNESS: At -- I was at my sister
11 Betty's house.

12 COMMISSIONER SURGEON: Did she ever tell you
13 that he was at her house and with your family?

14 THE WITNESS: No. None of this came out
15 until they came to my house and sit down talking to me
16 about it. None of that came out.

17 COMMISSIONER SURGEON: So during the time of
18 the trial your family did not know that you were the
19 one that had said that Willie Grimes did it?

20 THE WITNESS: Rachel knew. Carolyn knew. A
21 lady named Betty Jean knew.

22 COMMISSIONER SURGEON: Okay. Now is it my
23 understanding that your sister Betty was dating
24 Mr. Grimes?

25 THE WITNESS: Yes, ma'am.

1 COMMISSIONER SURGEON: And she didn't know
2 that you said that Mr. Grimes did it?

3 THE WITNESS: No, ma'am.

4 COMMISSIONER JENKINS: Where did your sister
5 Betty live in relation to your house?

6 THE WITNESS: She lived in Berlin.

7 COMMISSIONER JENKINS: Which is how far from
8 where you lived?

9 THE WITNESS: Oh, God. Probably about 2 or
10 3 miles.

11 COMMISSIONER JENKINS: Did she visit with you
12 often?

13 THE WITNESS: They never came to visit me at
14 that apartment.

15 COMMISSIONER JENKINS: And you said that she
16 mentioned the bananas to you.

17 THE WITNESS: Yes, sir.

18 COMMISSIONER JENKINS: How did she know
19 anything about bananas, did you know?

20 THE WITNESS: Because I said something about
21 the lady missing bananas.

22 COMMISSIONER JENKINS: So she knew about the
23 bananas because you had told her about the bananas.

24 THE WITNESS: Yes.

25 COMMISSIONER JENKINS: But she never

1 mentioned the bananas before you told her about them?

2 THE WITNESS: No.

3 JUDGE SUMNER: You're absolutely sure you've
4 never been an informant for anybody in the Hickory
5 Police Department before; is that right?

6 THE WITNESS: Pardon me?

7 JUDGE SUMNER: You're absolutely certain that
8 you've never provided information to the Hickory Police
9 Department before about any crime that you can think
10 of.

11 THE WITNESS: Not that I know of.

12 JUDGE SUMNER: And you do not know Steve
13 Bryant.

14 THE WITNESS: I heard of that name before,
15 but I don't -- I don't know him by face.

16 JUDGE SUMNER: Okay. Thank you.

17 COMMISSIONER BECTON: Ms. McDowell, earlier
18 you said you talked to your mother and sister on the
19 phone during that period of time. How often would you
20 be talking to them on the phone?

21 THE WITNESS: I used to talk to my mom every
22 day on the phone.

23 COMMISSIONER BECTON: And what about your
24 sister Betty Shuford?

25 THE WITNESS: We talked about every other

1 day.

2 COMMISSIONER BECTON: And Rachel?

3 THE WITNESS: Well, when she was living, we
4 talked -- I just stayed at -- be at her house all the
5 time.

6 COMMISSIONER BECTON: Was there a Carolyn
7 too?

8 THE WITNESS: Yes.

9 COMMISSIONER BECTON: How often did you talk
10 to her?

11 THE WITNESS: She was my next-door
12 neighbor -- well, when I was -- I had my own apartment,
13 but I was staying there. She was my next-door neighbor
14 in Ridgecrest.

15 COMMISSIONER BECTON: Thank you.

16 COMMISSIONER SMITH: You're positive that
17 Betty Shuford said to you, "That's where he got those
18 bananas"?

19 THE WITNESS: Yes, sir.

20 COMMISSIONER SMITH: And did that tell you
21 that she must have already known that he had some
22 bananas? If she said, "That's where he got those
23 bananas," wouldn't that imply that he knew -- that she
24 knew he had some bananas?

25 THE WITNESS: I don't know -- I guess, yeah.

1 COMMISSIONER SMITH: Did that sound to you
2 like she already knew he had taken some bananas?

3 THE WITNESS: No, because I asked her
4 something -- as I said, Miss -- they said bananas was
5 missing out of the lady's house. And she said those --
6 "That's where he got those damn bananas."

7 COMMISSIONER SMITH: All right. And doesn't
8 that cause you to think that she must have known
9 already that he had some bananas?

10 THE WITNESS: I never thought of that.

11 COMMISSIONER SMITH: If she said to you, "Oh,
12 I see. That's where he got those bananas," wouldn't
13 that imply to you that he already knew that -- that she
14 already knew that he had some bananas?

15 I'm adding words, but that's the kind of
16 sound it seems she was trying to impart to you. "Oh,
17 that's where he got those bananas."

18 Is that the way she said it?

19 THE WITNESS: Yes, sir.

20 COMMISSIONER SMITH: Did she say anything
21 else about bananas?

22 THE WITNESS: No, sir.

23 COMMISSIONER SMITH: Okay. Thank you.

24 MS. MONTGOMERY-BLINN: Ms. Ashendorf?

25 COMMISSIONER ASHENDORF: Back to the bananas.

1 Did Ms. Carrie tell you -- this woman had just been
2 raped, did she tell you that the person who raped her
3 took two bananas?

4 THE WITNESS: Went out the back door. When
5 he went out the back door, he took her bananas.

6 COMMISSIONER ASHENDORF: But how did you know
7 that?

8 THE WITNESS: Ms. Carrie told me that.

9 COMMISSIONER ASHENDORF: She told you that he
10 took bananas?

11 THE WITNESS: Yes, ma'am.

12 COMMISSIONER ASHENDORF: Okay. And one more
13 question. You did not call Officer Steve Bryant and
14 tell him that you knew the name of -- you told Steve --
15 what's the other officer's name?

16 (Several Commissioners say "Hunt")

17 THE WITNESS: Hunt.

18 COMMISSIONER ASHENDORF: You told Officer
19 Steve Hunt -- he called you and you told him, but you
20 didn't tell Officer Hunt that you didn't know or you
21 wouldn't tell him, and then you called Officer Steve
22 Bryant to tell him?

23 THE WITNESS: I might have. I don't know. I
24 don't remember. I might have. I don't remember. I do
25 remember talking to Steve Hunt.

1 JUDGE SUMNER: Mr. Vickory and then
2 Ms. Greenlee.

3 COMMISSIONER VICKORY: Ms. McDowell, I think
4 I got confused in your testimony. I'm not sure if I
5 followed everything. If I could start back to the
6 night that your neighbor was raped. Now, you went to
7 the movies that night; is that right?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER VICKORY: And with your
10 boyfriend?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER VICKORY: And do you remember
13 about what time it was?

14 THE WITNESS: Uh-uh.

15 COMMISSIONER VICKORY: Did you speak with
16 Ms. Elliott before you went to the movies?

17 THE WITNESS: She knew we was going to --
18 yeah. She knew was going to the movies. That was
19 early up in that day.

20 COMMISSIONER VICKORY: How did that
21 conversation come up? I mean, were you over to her
22 house or she over at your house?

23 THE WITNESS: Yeah, we was sitting outside.

24 COMMISSIONER VICKORY: Outside?

25 THE WITNESS: Uh-huh.

1 COMMISSIONER VICKORY: And so you let her
2 know you were going to the movies.

3 THE WITNESS: Yeah. Because since her
4 husband passed, I always knock -- you know, knock on
5 her door and let her know that it's me.

6 COMMISSIONER VICKORY: So did you go over and
7 knock on the door that afternoon and tell her that, or
8 were you sitting out on the porch? I mean --

9 THE WITNESS: We were sitting on the porch
10 that day.

11 COMMISSIONER VICKORY: And were you at your
12 porch or her porch?

13 THE WITNESS: Hers.

14 COMMISSIONER VICKORY: Okay. Did you sit out
15 there on the porch with her a lot?

16 THE WITNESS: Yes, we sat out there a lot.

17 COMMISSIONER VICKORY: Okay. So y'all were
18 just shooting the breeze, just talking to each other.

19 THE WITNESS: Just watching the cars go up
20 and down the highway.

21 COMMISSIONER VICKORY: Okay. And so later on
22 that night you go with your boyfriend to the movies.

23 THE WITNESS: Yes.

24 COMMISSIONER VICKORY: Okay. And after the
25 movies, did you go somewhere else after the movies?

1 THE WITNESS: No.

2 COMMISSIONER VICKORY: Did you go anywhere
3 before the movies?

4 THE WITNESS: No.

5 COMMISSIONER VICKORY: So you came right back
6 to your place?

7 THE WITNESS: Yes. Because the kids was
8 there --

9 COMMISSIONER VICKORY: Ma'am?

10 THE WITNESS: The kids was there.

11 COMMISSIONER VICKORY: The kids were at your
12 place?

13 THE WITNESS: At the apartment.

14 COMMISSIONER VICKORY: Okay. And when you
15 got back home, about what time of night was it, do you
16 think?

17 THE WITNESS: I don't remember what time it
18 was.

19 COMMISSIONER VICKORY: If the movie lasted
20 about two hours, I take it -- this was a movie at the
21 theater, I presume. Is that right?

22 THE WITNESS: Yes.

23 COMMISSIONER VICKORY: So, I mean, did it
24 take very long to get to that movie theater?

25 THE WITNESS: No, it's uptown.

1 COMMISSIONER VICKORY: Okay. So when you got
2 back to your house was there any activity over there at
3 Ms. Elliott's house?

4 THE WITNESS: Not that I can remember.

5 COMMISSIONER VICKORY: There weren't police
6 around or crime scene -- you know, yellow tape up or
7 anything like that anywhere?

8 THE WITNESS: I don't remember the yellow
9 tape.

10 COMMISSIONER VICKORY: Do you remember seeing
11 anybody out there when you got back from the movies?
12 Police cars or anything like that?

13 THE WITNESS: I don't remember all that.

14 COMMISSIONER VICKORY: Well, when you came
15 inside, did the kids that were there at your house say,
16 "Hey, you ain't going to believe what happened.
17 There's all this activity over next-door"? Did they
18 say anything to you?

19 THE WITNESS: The kids was asleep.

20 COMMISSIONER VICKORY: And there wasn't
21 anybody there that was awake when any of that action
22 was going on outside?

23 THE WITNESS: They never said anything about
24 it.

25 COMMISSIONER VICKORY: So you just came on

1 back home and went to bed.

2 THE WITNESS: Uh-huh.

3 COMMISSIONER VICKORY: Did you stay up
4 anytime after that, or did you just go straight back
5 and go to bed and go to sleep?

6 THE WITNESS: I don't know. I think we
7 stayed up a little bit because I -- I don't remember
8 when I went up. I don't remember. I swear, I don't
9 remember.

10 COMMISSIONER VICKORY: Well, I guess I'm
11 trying to -- when did you become aware -- in this time
12 that I'm talking about, when did you become aware there
13 had been this rape of your neighbor?

14 THE WITNESS: I think the grandson -- or
15 maybe say her son or her granddaughter came over to get
16 some stuff from her house that next day.

17 COMMISSIONER VICKORY: So it's the next day?

18 THE WITNESS: Yeah.

19 COMMISSIONER VICKORY: Okay. Had you been
20 over to her house and knocked on the door before that?

21 THE WITNESS: Not before that, uh-uh.

22 COMMISSIONER VICKORY: So how was it that you
23 got alerted that there was somebody over at her house?

24 THE WITNESS: Because the door was open.

25 COMMISSIONER VICKORY: Her door was open?

1 THE WITNESS: No. The apartment door was
2 open.

3 COMMISSIONER VICKORY: Your door was open?

4 THE WITNESS: Uh-huh.

5 COMMISSIONER VICKORY: And you saw somebody
6 coming up to her house?

7 THE WITNESS: Bobby and the -- his daughter.

8 COMMISSIONER VICKORY: Is that when you went
9 outside?

10 THE WITNESS: That's what they was telling me
11 about Ms. Carrie.

12 COMMISSIONER VICKORY: Okay. When they get
13 to the point where you realized he was out there up to
14 the point where he told you something, that's what I --
15 when you saw somebody outside, did you go outside or
16 yell through the door or whatever? Or how did that
17 happen?

18 THE WITNESS: I just went outside. I don't
19 remember no tapes -- no tape or anything.

20 COMMISSIONER VICKORY: That's all right.
21 When you went outside, did you approach him or just
22 yell out to him or did you walk over there to her
23 apartment?

24 THE WITNESS: No.

25 COMMISSIONER VICKORY: Tell me what you did.

1 THE WITNESS: I just went to the door and
2 then that's -- before when they got down to her
3 sidewalk, that's when they was telling me about it.

4 COMMISSIONER VICKORY: Okay. And what did
5 they tell you?

6 THE WITNESS: He said, "My mother got raped."

7 COMMISSIONER VICKORY: Last -- the night
8 before? Did he say when it was?

9 THE WITNESS: The night before. I said,
10 "What?"

11 COMMISSIONER VICKORY: And what did he tell
12 you? Did he tell you anything else at that point?

13 THE WITNESS: Not that I can -- not that I
14 can think of. I don't remember what it is.

15 COMMISSIONER VICKORY: Well, did you ask him
16 anything or ask anybody anything at that time? Like,
17 "What in the world? What happened? Who did it?" Or
18 anything like that?

19 THE WITNESS: No, they -- when I went to the
20 hospital, that's when I asked them.

21 COMMISSIONER VICKORY: Okay. How did you
22 find out about the hospital?

23 THE WITNESS: Because they was over there
24 getting some stuff out of her apartment that Sunday.

25 COMMISSIONER VICKORY: And they told you she

1 was at the hospital?

2 THE WITNESS: Yes.

3 COMMISSIONER VICKORY: Okay. So did you go
4 to the hospital right then?

5 THE WITNESS: Not right then. I went I think
6 that next day or so.

7 COMMISSIONER VICKORY: How long did she stay
8 at the hospital?

9 THE WITNESS: I don't remember.

10 COMMISSIONER VICKORY: Do you think maybe you
11 went there that day?

12 THE WITNESS: I don't remember.

13 COMMISSIONER VICKORY: When you did go up to
14 the hospital, did you already know what room she was
15 in?

16 THE WITNESS: No. They told me what room she
17 was in.

18 COMMISSIONER VICKORY: And who is "they"?

19 THE WITNESS: Her son.

20 COMMISSIONER VICKORY: Okay. So when you did
21 get up there --

22 THE WITNESS: I went --

23 COMMISSIONER VICKORY: Ma'am?

24 THE WITNESS: No.

25 COMMISSIONER VICKORY: Did you go straight to

1 her room to talk to her?

2 THE WITNESS: I don't -- I might be getting
3 the house and the hospital mixed up.

4 COMMISSIONER VICKORY: Okay. That's why I'm
5 trying to go slow with you so you can try to remember.

6 THE WITNESS: I think I went and visited her
7 at the house.

8 COMMISSIONER VICKORY: So you think you might
9 not have visited her at the hospital?

10 THE WITNESS: I think it was at the house.

11 JUDGE SUMNER: Keep your voice up, please,
12 ma'am.

13 THE WITNESS: I think it was at the house.

14 COMMISSIONER VICKORY: So when you saw her
15 son the next morning after the rape -- you know, after
16 you had gone to the movies the night before -- was he
17 just coming to the house to visit his mother or was he
18 coming to get some stuff?

19 THE WITNESS: I think he was coming to get
20 some stuff from over there.

21 COMMISSIONER VICKORY: Okay. And she came
22 home later on or was she there that next morning?

23 THE WITNESS: I can't remember that.

24 COMMISSIONER VICKORY: But you think now that
25 maybe when you talked to her it occurred at the house

1 there next to you?

2 THE WITNESS: No, she had done moved out to
3 Highland.

4 COMMISSIONER VICKORY: Oh, okay. That was
5 out to her daughter's house or somebody else's house?
6 Some other family member's house?

7 THE WITNESS: No, they had got her a
8 one-bedroom apartment in Highland.

9 COMMISSIONER VICKORY: Okay. So that was a
10 good time after the rape then; is that right?

11 THE WITNESS: Yes. She stayed -- she wasn't
12 there long.

13 COMMISSIONER VICKORY: She what?

14 THE WITNESS: She didn't live there long.

15 COMMISSIONER VICKORY: But you're saying when
16 you talked to her about the rape, she had already
17 established another residence?

18 THE WITNESS: Yes, she was at another.

19 COMMISSIONER VICKORY: She wasn't staying
20 with somebody at that time?

21 THE WITNESS: No, she was in Highland
22 Apartments.

23 COMMISSIONER VICKORY: Well, Ms. McDowell,
24 you know, I don't want to really beat around the bush
25 with you about this, we know the answers to these

1 questions about whether or not you've been an
2 informant. Did you have a code name in the past?

3 THE WITNESS: No, sir.

4 COMMISSIONER VICKORY: You don't need to tell
5 us any junk; you need to tell us the truth.

6 THE WITNESS: I am telling the truth. I just
7 don't remember it.

8 COMMISSIONER VICKORY: Have you ever been
9 paid to give information to the police --

10 THE WITNESS: Not that I --

11 COMMISSIONER VICKORY: -- or for the State?

12 THE WITNESS: Just that one time, that's the
13 only time I remember.

14 COMMISSIONER VICKORY: You think that's not
15 maybe something you wouldn't forget, whether or not you
16 received money from the police for information?

17 THE WITNESS: That's the only time I --
18 that's the only time I can remember.

19 COMMISSIONER VICKORY: But if the police tell
20 us that you were an informant for them, are they not
21 telling us the truth?

22 THE WITNESS: I don't know what I could tell
23 the police.

24 COMMISSIONER VICKORY: You say the bank
25 called you up about picking up some money?

1 THE WITNESS: Yes.

2 COMMISSIONER VICKORY: And it was a thousand
3 dollars?

4 THE WITNESS: Yes.

5 COMMISSIONER VICKORY: Was it cash or a
6 check?

7 THE WITNESS: They give cash.

8 COMMISSIONER VICKORY: CrimeStoppers pays
9 cash, don't they?

10 THE WITNESS: Uh-huh.

11 COMMISSIONER VICKORY: The police pay cash?

12 THE WITNESS: (Moves head from side to side.)

13 COMMISSIONER VICKORY: That's right. You
14 haven't gotten any from the police.

15 When CrimeStoppers called you up, did they
16 call you by name or call you by some other information,
17 a number or something like that?

18 THE WITNESS: No.

19 COMMISSIONER VICKORY: How did you get the
20 money?

21 THE WITNESS: They -- I got a call, said go
22 to -- I think it was Capital Bank in Hickory. And I
23 just went right into Capital Bank and gave them my name
24 and they just gave me the money.

25 COMMISSIONER VICKORY: Who did you give the

1 name to?

2 THE WITNESS: I don't remember that. I don't
3 remember.

4 COMMISSIONER VICKORY: I mean, that's a
5 significant day in your life, receiving a thousand
6 dollars.

7 THE WITNESS: But I don't remember who it
8 was.

9 COMMISSIONER VICKORY: Did you walk up to the
10 teller's window there and give this information or tell
11 them your name? Or did you just walk in the middle of
12 the bank and shout out "I'm Linda McDowell" --

13 THE WITNESS: No, I did not.

14 COMMISSIONER VICKORY: -- "I'm here for my
15 thousand dollars"?

16 THE WITNESS: No, I did not. I think it was
17 a little office from there. I don't remember.

18 COMMISSIONER VICKORY: All right.

19 Ms. McDowell, you are under oath, now, this
20 is the time to straighten anything out.

21 THE WITNESS: I am.

22 COMMISSIONER VICKORY: Is there anything you
23 can tell us that you haven't told us correct on?

24 THE WITNESS: As far as I know, I'm -- I'm
25 telling the truth.

1 COMMISSIONER VICKORY: Okay. Thank you.

2 JUDGE SUMNER: Ms. Greenlee.

3 COMMISSIONER GREENLEE: That's --

4 JUDGE SUMNER: Took care of you? Chief?

5 COMMISSIONER JENKINS: Just so I make sure
6 that I understand this right. You were in her new
7 apartment when you first -- go back to when you first
8 found out about the rape from Ms. Elliott, when she
9 talked to you about it. Where were you at?

10 THE WITNESS: Ms. Elliott wasn't in her
11 new -- I couldn't -- I can't remember, but it wasn't in
12 that new apartment. I know it wasn't in that new
13 apartment because she had just moved in the new
14 apartment and I went to visit her there. I already
15 knew she had been raped.

16 COMMISSIONER JENKINS: You already knew that
17 by talking to her or someone else?

18 THE WITNESS: About what?

19 COMMISSIONER JENKINS: You already knew about
20 the rape at that time --

21 THE WITNESS: Yeah, I --

22 COMMISSIONER JENKINS: -- because you had
23 already talked to --

24 THE WITNESS: Because they had done got her
25 another apartment at that time.

1 COMMISSIONER JENKINS: Did -- can you tell me
2 again exactly what Ms. Elliott said to you about what
3 happened to her.

4 THE WITNESS: She just said, "I was raped and
5 the guy that did it was the guy with the mole on his
6 face -- he had a mole on his face."

7 COMMISSIONER JENKINS: And you said what to
8 her?

9 THE WITNESS: I said, "You talking about
10 Woot?"

11 COMMISSIONER JENKINS: And what did she say?

12 THE WITNESS: She said she didn't know his
13 name, just the guy that goes down to Mr. Beary's.

14 COMMISSIONER JENKINS: Did she give you any
15 other details about what had happened?

16 THE WITNESS: She just told me about how bad
17 she was messed up.

18 COMMISSIONER JENKINS: Did she say she had
19 ever seen this person before in the neighborhood?

20 THE WITNESS: Yes. She seen him before.

21 COMMISSIONER JENKINS: Did she go into any
22 details of where she had seen him before?

23 THE WITNESS: Going to Mr. Beary's.

24 COMMISSIONER JENKINS: That's the only place
25 she had --

1 THE WITNESS: Yes.

2 COMMISSIONER JENKINS: -- saw this man
3 before, was down at Mr. Beary's house?

4 THE WITNESS: Yes.

5 COMMISSIONER JENKINS: How certain are you
6 that Woot is the one who raped Ms. Elliott?

7 THE WITNESS: I don't know.

8 COMMISSIONER JENKINS: Do you think it's
9 possible that he is not the one that did it?

10 THE WITNESS: I just -- the only thing I'm
11 just -- when she described it, that's the only person I
12 know that goes down there with that mole on his face.

13 COMMISSIONER JENKINS: So that was the person
14 with the closest description that you knew.

15 THE WITNESS: Yes, sir.

16 COMMISSIONER JENKINS: Okay. And it's real
17 important, and I know these questions have been asked
18 numerous times, but your testimony is that you had
19 never gave information to the police prior to --

20 THE WITNESS: Not that I know of, no.

21 COMMISSIONER JENKINS: Never received any
22 cash?

23 THE WITNESS: Not that I know of, uh-uh.

24 COMMISSIONER JENKINS: Never called any
25 particular police officers within the Hickory Police

1 Department to give them information about any type of
2 investigation?

3 THE WITNESS: No, not that I know of. If it
4 is, I don't remember what it was.

5 COMMISSIONER JENKINS: Do you remember
6 specifically what you told the police in exchange -- do
7 you remember exactly what you said to the police
8 when -- for them to pay you a thousand dollars?

9 THE WITNESS: They just ask -- I think, if
10 I'm not mistaken, I think they asked for Willie Grimes'
11 name and they told me that -- something about it's --
12 there's a reward or something. I don't remember. I
13 really don't.

14 COMMISSIONER JENKINS: When you had a
15 discussion with the police, who first brought up
16 Mr. Grimes' name or the nickname? Who first mentioned
17 that? Did you first mention it?

18 THE WITNESS: I probably was.

19 COMMISSIONER JENKINS: Okay. And what did
20 you say to them, do you remember?

21 THE WITNESS: Uh-uh.

22 COMMISSIONER SMITH: What did you tell the
23 police to get the thousand dollars? How did you earn
24 the thousand dollars?

25 THE WITNESS: I didn't know nothing about

1 getting no thousand dollars till they asked -- they
2 asked me who was the guy, and I said that the guy that
3 she described to me was Willie Grimes. I think that's
4 what it was. I don't --

5 COMMISSIONER SMITH: Did you tell them that
6 you had any other information that it was Willie
7 Grimes?

8 THE WITNESS: Not that I know of. Only time
9 I really talked to the police, I think it was at the
10 courthouse, and I -- I don't remember talking to them
11 outside. I don't know. I don't remember.

12 COMMISSIONER BECTON: When you say the only
13 time you believe you talked to the police was at the
14 courthouse, do you mean that was the time when you came
15 to the trial to be with Ms. Elliott and they took you
16 to the room and told you they didn't need you?

17 THE WITNESS: Yes. They just told me I could
18 go home.

19 COMMISSIONER BECTON: Do you recall who
20 called you to tell you about picking up the thousand
21 dollars?

22 THE WITNESS: I don't -- honest to God, I
23 don't remember.

24 JUDGE SUMNER: Ms. Surgeon and then
25 Ms. Ashendorf.

1 COMMISSIONER SURGEON: You said you talked to
2 Ms. Elliott and learned that she had been raped and
3 that based on the description that she gave, you
4 determined that it was Woot?

5 THE WITNESS: Yes, ma'am.

6 COMMISSIONER SURGEON: And that you would
7 only tell the police officer the name.

8 THE WITNESS: I guess.

9 COMMISSIONER SURGEON: I'm sorry?

10 THE WITNESS: I guess. I don't remember, but
11 I guess.

12 COMMISSIONER SURGEON: So did you call the
13 police officer or did the police officer call you?

14 THE WITNESS: I don't -- I don't remember. I
15 swear I don't remember. I don't remember.

16 COMMISSIONER SURGEON: But the officer that
17 you spoke to was Officer Steve Hunt.

18 THE WITNESS: I remember talking to Steve
19 Hunt. It was another guy -- another officer there with
20 him, but I don't know -- I can't remember his name.

21 COMMISSIONER SURGEON: Okay. So where did
22 you talk to them?

23 THE WITNESS: At the Newton courthouse.

24 COMMISSIONER SURGEON: At the courthouse?

25 THE WITNESS: I talked to Steve Hunt and

1 another police at the -- they wasn't dressed in police
2 uniforms so I don't know what you call it.

3 COMMISSIONER SURGEON: Was this after -- just
4 after talking to Ms. Elliott?

5 THE WITNESS: No, this was during the trial.

6 COMMISSIONER SURGEON: Well, before the
7 trial -- before the trial you talked with an officer
8 and gave the name of Willie Grimes, did you not?

9 THE WITNESS: I probably did. I just don't
10 remember who I talked to.

11 COMMISSIONER SURGEON: Well, did you talk to
12 this officer on the telephone or in person?

13 THE WITNESS: I don't remember. I really
14 don't remember. All I remember is -- right now all I
15 remember is the courthouse.

16 COMMISSIONER SURGEON: So you don't remember
17 whether you talked to this officer and gave a name and
18 you don't remember whether you talked to someone on the
19 telephone or in person.

20 THE WITNESS: I don't remember.

21 COMMISSIONER SURGEON: And you don't remember
22 who you talked to other than Steve Hunt, but you don't
23 remember whether it was on the phone or in person.

24 THE WITNESS: No, I don't remember.

25 COMMISSIONER SURGEON: And you don't remember

1 if you called him or he called you.

2 THE WITNESS: No, I don't. I don't remember.

3 COMMISSIONER SURGEON: Okay. Now, you said
4 that you talked to your sister Betty Shuford.

5 THE WITNESS: Yes.

6 COMMISSIONER SURGEON: And this was -- was
7 this before or after you talked to the officer?

8 THE WITNESS: I don't remember that either.

9 COMMISSIONER SURGEON: Did you talk to her on
10 the telephone or did you talk to her at her house or
11 your house?

12 THE WITNESS: We was at -- I was at her
13 house.

14 COMMISSIONER SURGEON: When did you go to her
15 house after talking with Ms. Elliott?

16 THE WITNESS: I don't remember what day it
17 was. I don't know.

18 COMMISSIONER SURGEON: And you said that you
19 told her about Ms. Carrie had been raped.

20 THE WITNESS: Uh-huh.

21 COMMISSIONER SURGEON: And that Ms. Carrie
22 told you that the person stole some bananas.

23 THE WITNESS: Yes. She had -- I said --
24 yeah, she said something about Willie Grimes went out
25 the back door -- well, he -- the guy went out the back

1 door with her bananas. She was missing the bananas.

2 COMMISSIONER SURGEON: And you said your
3 sister said what?

4 THE WITNESS: I said -- when I was saying
5 something to her about it, she said, "Oh, that's where
6 Woot got those damn bananas." That's what she said.

7 COMMISSIONER SURGEON: Did she say anything
8 else?

9 THE WITNESS: She just laughed. Because she
10 always laugh at everything, so... She just laughed.

11 COMMISSIONER SURGEON: Okay. So now you're
12 saying that your sister was involved with a man that
13 you are now saying -- or you were then saying had raped
14 Ms. Carrie and that your sister's response was, "That's
15 where she [sic] got those bananas," and then laughed?

16 THE WITNESS: Him. Yeah.

17 COMMISSIONER SURGEON: I'm sorry?

18 THE WITNESS: "That's where he got the
19 bananas."

20 COMMISSIONER SURGEON: Right. "That's where
21 he got those bananas."

22 THE WITNESS: Uh-huh.

23 COMMISSIONER SURGEON: And that then she
24 laughed.

25 THE WITNESS: Yes. She laughed at a lot of

1 stuff.

2 JUDGE SUMNER: Ma'am?

3 THE WITNESS: She laughed at a lot of stuff.
4 She just think people joking -- are jokers and stuff.

5 COMMISSIONER SURGEON: Did you ever talk to
6 Willie Grimes?

7 THE WITNESS: After this happened?

8 COMMISSIONER SURGEON: Yes.

9 THE WITNESS: No, ma'am. I have not seen
10 Willie Grimes. No, I haven't. I have not seen him
11 since this happened.

12 COMMISSIONER ASHENDORF: I don't think
13 anybody has.

14 Ms. McDowell, did Willie Grimes ever visit
15 your apartment?

16 THE WITNESS: You're talking about on
17 8th Avenue Drive or Ridgecrest?

18 COMMISSIONER ASHENDORF: When you lived
19 next-door to Ms. Carrie.

20 THE WITNESS: No, ma'am.

21 COMMISSIONER ASHENDORF: He never did? Okay.
22 You've been asked this a million different
23 ways, and I know you're getting tired and I know it's
24 been 25 years since this has happened.

25 Mr. Hunt said that he spoke with you and that

1 you would not tell him the name of the person that you
2 think did -- committed this rape. And are you telling
3 me that he didn't tell us the truth?

4 THE WITNESS: No, I don't -- I swear I can't
5 remember. I can't remember.

6 JUDGE SUMNER: Keep your voice up, please.

7 THE WITNESS: I can't remember every little
8 thing.

9 COMMISSIONER ASHENDORF: Thank you.

10 JUDGE SUMNER: Anything?

11 COMMISSIONER BECTON: You said Mr. Grimes had
12 never visited you at 8th Avenue. Did he visit you when
13 you lived at some other place?

14 THE WITNESS: No, he was just in our
15 neighborhood.

16 COMMISSIONER BECTON: I'm sorry?

17 THE WITNESS: He was just in the
18 neighborhood.

19 COMMISSIONER BECTON: So he never visited you
20 at any other place that you lived at?

21 THE WITNESS: Uh-uh.

22 MS. MONTGOMERY-BLINN: Okay. The Commission
23 would like to relieve Ms. McDowell from her subpoena.

24 JUDGE SUMNER: Thank you ma'am.

25 (Witness dismissed.)

1 MS. MONTGOMERY-BLINN: The Commission calls
2 Ms. Betty Shuford.

3 Thereupon, BETTY HAIRSTON, having first been duly
4 sworn, was examined and testified on EXAMINATION
5 BY MS. MONTGOMERY-BLINN:

6 Q Ms. Shuford, my name is Kendra Montgomery,
7 and I'm the Director of the Commission. And I'm going
8 to ask you some questions. And I know you've already
9 spoken with a couple of people here at the table.

10 A Uh-huh.

11 Q I'm going to ask you some questions, and then
12 the rest of these people, the Commissioners around the
13 table, may have some questions for you as well.

14 A Okay.

15 Q And I know Ms. Sharon and Mr. Jamie have
16 talked to you -- or Ms. Stellato and Mr. Lau have
17 explained that the Commission doesn't represent
18 Mr. Grimes, doesn't represent the prosecution; we're
19 just truth-seeking -- we're just looking for the truth.

20 I also understand it's been a long time.

21 A Uh-huh.

22 Q And that when I ask you some questions you
23 may not know or you may not remember, and that's okay.
24 We just want the truth. And if you don't know or you
25 can't remember, that's all right.

1 A Okay.

2 Q Okay. Will you tell us your name.

3 A Betty Alberta Hairston.

4 Q So it's Ms. Hairston now; is that right?

5 A Yes.

6 Q And is your maiden name Shuford?

7 A Yes, ma'am.

8 Q Do you know Mr. Willie Grimes?

9 A Yes, I do.

10 Q How do you know him?

11 A Well, I used to talk to him a long time ago.

12 Q Okay.

13 A So friends.

14 Q When you say you "used to talk," you mean
15 date?

16 A Yes.

17 Q Romantic relationship?

18 A Uh-huh.

19 Q Now, in 1987 were you dating him then?

20 A Yes.

21 Q Okay. And how long did you and he have a
22 romantic relationship?

23 A Probably about 8 years.

24 Q Now, since he has been incarcerated have you
25 kept in touch with him?

1 A No, ma'am.

2 Q Have you written to him or visited him?

3 A No.

4 Q Have any members of your family kept in touch
5 with him that you know of?

6 A No.

7 Q Now, can you describe what Mr. Grimes was
8 like to us? Was he -- well, just tell us a little bit
9 about his personality.

10 A Well, he treated me and my family real nice.
11 He took me -- like, they was his kids.

12 Q Your kids like his kids? Is that what you
13 mean?

14 A Yes.

15 Q He treated your kids like his kids.

16 A Like his.

17 Q But you and he don't have any children
18 together?

19 A No, ma'am.

20 Q Okay. Was he ever violent with you?

21 A No, ma'am.

22 Q Did he ever force you to have sex?

23 A No.

24 Q Were you ever afraid of him?

25 A No, ma'am.

1 Q Did you ever know him to be violent with
2 anybody else?

3 A No.

4 Q How about alcohol? Did Mr. Grimes drink?

5 A Yes, he did.

6 Q Would you say he drank a lot?

7 A Not a lot, but he drank, you know, with his
8 friends and stuff like that.

9 Q Did he drink every day?

10 A Not every day.

11 Q Okay. How many times a week would you say he
12 drank?

13 A I'd say about four.

14 Q And would you say he would get intoxicated or
15 drunk on those times?

16 A Most times I seen him drink -- drunk about
17 three times, really.

18 Q In the eight years, only drunk three times?

19 A I mean, he drink, but -- you know, drunk
20 like, no.

21 Q Okay. So would you describe him as maybe
22 having some alcohol, feeling relaxed, but not drunk?

23 A Yes.

24 Q Okay. And Ms. Shuford, if you will put your
25 hands down, it's easier for us to hear you if you've

1 got your hands down.

2 A Okay.

3 Q Thanks. And I know -- again, I know I'm the
4 one asking the questions, but all of the people back
5 there need to hear you. And this lady right here is
6 our court reporter, and she is trying to record
7 everything you say, so we're going to ask you -- if you
8 will be patient with us, we're going to ask you to
9 speak up and sometimes we might ask you to repeat
10 something. Okay?

11 A Okay.

12 Q All right. Now, going back to 1987, when you
13 first heard that they were looking for Willie Grimes
14 for the Carrie Elliott rape -- when did you first hear
15 about that?

16 A Well, I had went to church and came back.

17 Q Are you talking about the night that
18 Ms. Elliott was raped?

19 A Yes.

20 Q Okay. Go ahead and tell us about that.

21 A I had went to church and came back and they
22 was telling me about it but --

23 Q So that night people were telling you about
24 it?

25 A Yes. Well, he was at my sister house and him

1 and his -- well, me and him had broke up, so him and
2 his other friend had went to the grocery store.

3 Q Is that Brenda Smith when you say "other
4 friend"?

5 A Yes.

6 Q Did he also have a romantic relationship with
7 Ms. Smith?

8 A Yes.

9 Q Okay. And you knew about that.

10 A Yes.

11 Q And were you upset about that?

12 A No.

13 Q Okay. You were broken up.

14 A Yeah.

15 Q He was with Ms. Smith.

16 A Right.

17 Q You're okay with that.

18 A Yes.

19 Q All right. You said that -- I just want to
20 be clear. Are we talking about -- and I know you may
21 not remember dates, but the night that Ms. Elliott was
22 raped, you said that was the night you went to church?

23 A Yes.

24 Q Okay. And please go ahead and tell me what
25 you were trying to say before I interrupted you.

1 A Okay. Him and Brenda, well they -- well, I
2 call him Woot, so --

3 Q Woot?

4 A Yeah.

5 Q You mean Willie Grimes when you say that?

6 A Yeah.

7 Q Okay.

8 A Him and my sister and more friends, they
9 hang -- they used to hang together at my sister house.

10 Q Which sister?

11 A Rachel. She's deceased.

12 Q Rachel Wilson?

13 A Yes.

14 Q Okay. Go ahead.

15 A And him and Brenda had went to the grocery
16 store because they was going to cook. So they went to
17 the grocery store and got some chitlins and stuff like
18 that for my sister to clean. But then -- I done forgot
19 what it was, but they had went and got the chitlins and
20 stuff for her to clean so they could all get together
21 and eat.

22 Q And how -- you weren't with them when that
23 happened? Were you with --

24 A Not Willie.

25 Q So how do you know that? Some people just

1 told you that?

2 A Yes, because they have -- well, I went to my
3 sister house when I got out of church, and they was all
4 there.

5 Q Okay. So you went directly to your sister's
6 house?

7 A Yes.

8 Q And everybody was there?

9 A Uh-huh.

10 Q Now if I told you that at trial you testified
11 that you called your sister's house, do you still think
12 you went there or do you think you called there?

13 A I probably called, but I...

14 Q Okay. You don't know? You're not sure? You
15 think you went there?

16 A I know he was there, though, because they had
17 bought the chitlins and took them to my sister house.

18 Q Okay. Go ahead.

19 A Let me see. What else?

20 Q Did you talk to him that night, either in
21 person or on the phone at your sister's house?

22 A No, not that I remember.

23 Q Okay. So how did you know he was there?

24 A Because my -- I had went down there. I did
25 go down there.

1 Q Okay. So you saw him?

2 A Yes.

3 Q Okay. Now, again, at trial you said you
4 didn't go down there; you said you called on the phone
5 and talked to him. But you are saying you went down
6 there; you remember seeing him now?

7 A Him and Brenda was there.

8 Q Okay. And Brenda, that's Brenda Smith we're
9 talking about; right?

10 A Uh-huh.

11 Q And she was there when you went there and saw
12 them?

13 A Yes.

14 Q Okay. Go ahead.

15 A I think -- I'm not for sure, I think he had
16 kept my son and they had went to the grocery store with
17 him.

18 Q Okay. How old was your son?

19 A He was about 4 or 5 years old then.

20 Q Okay. And you said you're not for sure, but
21 you think?

22 A I'm not for sure.

23 Q Okay. After you got out of church, you saw
24 him, and then what happened?

25 A Okay. He had -- he had called and asked me

1 could he come to my house.

2 Q So now he called you. Had you gone back home
3 now?

4 A Yes.

5 Q Okay.

6 A From my -- it's been so long, I couldn't tell
7 you. Okay. So he came to the -- he wanted to talk to
8 me. So he came to my house and we talked and I was in
9 my bed. He slept on the sofa.

10 Q Okay.

11 A That's all I remember. So the next morning I
12 went to work.

13 Q And was he still at your house when you went
14 to work?

15 A Yes.

16 Q And do you remember what time that was?

17 A I had to be at work at 7:00.

18 Q And do you remember where you worked then?

19 A Dalda Mills (phonetic).

20 Q And do you remember what night of the week,
21 what day of the week this was?

22 A I'm not for sure, but I think it was on a
23 Saturday.

24 Q And did you normally go to church at night on
25 Saturday?

1 A I had went to a anniversary.

2 Q So you remember that, going to an
3 anniversary?

4 A Yes.

5 Q Is that a celebration at the church?

6 A Yes, ma'am.

7 Q Now, did you ever notice that night any
8 scratch marks or scabs or cuts or anything on him?

9 A Uh-uh.

10 Q Do you think you would have noticed that?

11 A I didn't really pay it no attention.

12 Q So you might not have noticed even if he had
13 been scratched?

14 A (Moves head side to side.)

15 Q Do you remember what he was wearing when he
16 came over to your house?

17 A (Moves head side to side.)

18 Q Now, when did you first hear that he was
19 wanted for rape?

20 A I think it was when I got out of church. I'm
21 not for sure.

22 Q So that night is when you found out?

23 A Yes.

24 Q Okay. Now, did -- when you heard that
25 night -- this is before he came over to stay at your

1 house you think you heard?

2 A Yes.

3 Q Now, did you hear that Carrie Elliott had
4 been raped or did you just know that there had been
5 somebody raped?

6 A Somebody was raped.

7 Q And did you hear at that time that
8 Mr. Grimes -- Willie Grimes -- was the suspect? Or was
9 wanted for it?

10 A I heard that, yes.

11 Q That same night?

12 A Uh-huh.

13 Q And then he came and stayed at your house
14 that night?

15 A Yes.

16 Q Do you remember who you heard it from?

17 A Not really. I can't recall the name.

18 Q Now, Ms. Shuford, this is different -- this
19 is pretty different than what you said at trial.

20 A It's been a long time.

21 Q I'm sorry?

22 A I said it's been so long.

23 Q It's been so long. Okay. So what I'd like
24 to do, if it's okay, is read you some of what you said
25 at trial and you tell me if you remember it or not.

1 A Okay.

2 Q And just bear with me, if you will.

3 A Okay.

4 Q Would you prefer that I give it to you or
5 would you prefer that I read it to you?

6 A You can read it.

7 Q Okay. So right here you are telling the
8 attorney that you had known him for nine years. Does
9 that sound right?

10 A Uh-huh.

11 Q And that you and he were no longer dating.
12 Does that sound right?

13 A Yes.

14 Q And that it had been about two years since
15 the last time you dated. Does that sound right?

16 A Approximately.

17 Q Okay. But that you still see each other but
18 you're not talking to each other.

19 A Right.

20 Q And you say here, "He was staying with me and
21 we broke up, and he was still coming back and forth and
22 stayed with me at times." Does that sound correct?

23 A Yeah.

24 Q And it says here that you went over to church
25 that night at Davis Chapel and that you went with

1 Mrs. Hunt. Does that sound right?

2 A Yes.

3 Q Okay. Do you know Mrs. Hunt? Do you still
4 know who she is?

5 A A member of my church, I think.

6 Q Okay. Is she related in any way to
7 Investigator Steve Hunt, if you know?

8 A (Moves head side to side.)

9 Q And the attorney asked you approximately what
10 time that was, and you said "about 11:00," and he says,
11 "In the evening?" And you said "yes," to go to church.

12 Does that sound right?

13 A Yes.

14 Q And he -- okay. Here the attorney says:

15 "Q Did you have occasion to speak with
16 Willie Grimes that evening of October 24,
17 1987?"

18 And you say:

19 "A Yes, sir."

20 And he says:

21 "Q How did you come to speak with him?"

22 And you say -- and this is from the trial
23 back in '88. You say:

24 "A Well, I called him down there."

25 He says:

1 "Q You called at Rachel Wilson's house?"

2 And you said:

3 "A Yes."

4 And he says:

5 "Q Who answered the phone?"

6 You said:

7 "A Les."

8 He says:

9 "Q Who is that?"

10 And you said:

11 "A The one that just testified from up
12 here."

13 And he says:

14 "Q That is William Robinson."

15 And you said:

16 "A Yes."

17 And he says:

18 "Q And who did you ask to speak with?"

19 And you said:

20 "A Willie Grimes."

21 Does this sound right or do you just not
22 remember?

23 A I don't remember, but it sounds right.

24 Q Okay. And he's asking you if you spoke to
25 Willie Grimes. And you said yes, and it was around

1 11:00 at night, and you talked for more than an hour.

2 And then you say:

3 "A I think it was close to 45 minutes."

4 And the attorney says:

5 "Q Did he indicate he was wanting to
6 come over to your house?"

7 And you said:

8 "A Yes, sir."

9 And you said:

10 "A At first I told him no and then he
11 told me he had something to talk to me about,
12 and so I told him he could come up here."

13 And he says:

14 "Q Did you then see Willie Grimes at
15 your home?"

16 And you say:

17 "A Yes, sir. It had to be around
18 12:30."

19 And he says:

20 "Q In the morning?"

21 And you say:

22 "A Yes, sir."

23 Does that sound right?

24 A Well, yes.

25 Q But you don't really remember?

1 A (Moves head side to side.)

2 Q Now, since you don't really remember, I'm not
3 going to go through the whole thing, but what I want to
4 ask you is: Do you think that your memory was pretty
5 fresh in 1988, at the time of the trial? Do you think
6 you remembered well then?

7 A Yeah, back then, yes.

8 Q Do you -- but do you think your memory is
9 pretty good today?

10 A (Moves head side to side.)

11 Q Okay. And remember to say out loud. I guess
12 can you repeat that out loud.

13 A Okay. Not really today.

14 Q When you went to trial in 1988, did you tell
15 the truth?

16 A Yes.

17 Q Did you try to help Mr. Grimes?

18 A What do you mean "help"?

19 Q When you went to trial and testified for
20 him --

21 A Oh, yes.

22 Q -- you wanted to help him.

23 A Yes.

24 Q Would you have lied for him?

25 A No.

1 Q Why not?

2 A Because I won't.

3 Q You still cared about him; right?

4 A I still wouldn't have lied for him.

5 Q Why not?

6 A Because. I wouldn't tell no lie.

7 Q And you know that some other members of your
8 family testified too; right?

9 A Yes.

10 Q Your mother, your sister, some friends. Do
11 you remember them testifying?

12 A Not my mother, but I remember Rachel.

13 Q Rachel Wilson?

14 A Uh-huh.

15 Q Did you ever talk to those people that
16 testified before they testified about what they should
17 say?

18 A No.

19 Q Did you ever talk about what they were going
20 to say?

21 A No.

22 Q Did you ever get together and say, "This is
23 when it happened, this is what happened," everybody
24 talked about it?

25 A No.

1 Q Did they ever tell you what they were going
2 to say?

3 A No.

4 Q Did you ever get together and say, "Just tell
5 the truth"?

6 A No.

7 Q So you didn't talk about it at all?

8 A No, ma'am.

9 Q Did anybody talk to you and tell you what to
10 say?

11 A No, ma'am.

12 Q After the trial did you ever talk to any of
13 those people that had testified? Your sister?

14 A Have I did what, now?

15 Q After the trial did you ever talk to your
16 sister? I know you've got lots of sisters. Let me
17 back up. Rachel Wilson, did you ever talk to her about
18 it?

19 A All we said, that we don't think he did
20 nothing like that -- would do nothing like that.

21 Q You don't think he would do anything like
22 that?

23 A No.

24 Q And did you ever talk with any of the other
25 people that testified at the trial?

1 A No.

2 Q Did anybody ever tell you later on that they
3 regretted testifying?

4 A No, ma'am.

5 Q Or that they said something wrong when they
6 testified?

7 A No.

8 Q How about your sister Linda McDowell? Have
9 you ever talked to her about this?

10 A Nope.

11 Q Not once? Not ever?

12 A Uh-uh.

13 Q What about in the car ride down here?

14 A No. We didn't talk about it.

15 Q You drove down here together, though; right?

16 A Yes.

17 Q What about back in 1987 when Mr. Grimes was
18 being arrested? Did you talk to your sister about it
19 then?

20 A I don't think so. I think we told her that
21 we didn't think that he did nothing like that, you
22 know, if we did talk.

23 Q When you say "we," who do you mean?

24 A Me and my sister Rachel.

25 Q Okay. That night when Mr. Grimes came over

1 to your house, did he have anything with him?

2 A No, not I --

3 Q How about any bananas? Did he have any
4 bananas with him?

5 A I can't remember all that.

6 Q Okay. Do you think you would remember if he
7 came over with bananas?

8 A You think I remember?

9 Q I said do you think you would remember if he
10 showed up with some bananas?

11 A Yes, if he would have showed up.

12 Q Do you think that is something you would
13 remember?

14 A Yes.

15 Q Did you ever tell your sister that he came
16 over with bananas that night? Or did I say "your
17 sister"? I mean Linda McDowell.

18 A I can't remember that.

19 Q Okay. Were you ever having a phone
20 conversation -- or not a phone, maybe an in-person,
21 just a conversation with your sister Linda McDowell
22 when she told you that Ms. Carrie had been raped? Do
23 you remember that? Ever having a conversation about
24 it?

25 A Tell the truth, I don't remember that because

1 she had made us so mad because -- when she said it, and
2 we didn't have nothing to say to her. I mean, you know
3 what I'm saying? I mean --

4 Q Let me just back up and ask you about that.
5 So you said she "made us mad." Made who mad?

6 A Me and my sister and William and --

7 Q Okay. When you say your sister, which sister
8 do you mean?

9 A Rachel.

10 Q Rachel Wilson. And you said William? Who's
11 William?

12 A William Robinson.

13 Q William Robinson? Who's he?

14 A A friend of ours.

15 Q Was he a neighbor of Rachel Wilson's?

16 A Yeah -- not a neighbor. He lived about a
17 block from her.

18 Q Okay. And you said that your sister Linda
19 made you all mad. What do you mean?

20 A I mean -- because she wasn't there when it
21 happened so how does she know?

22 Q Did you ever talk to your sister about that
23 and say, "We're mad at you"?

24 A No, I didn't tell her we were mad at her.

25 Q Did you ever have a conversation with your

1 sister where she said the person that raped Ms. Carrie
2 stole some bananas, took some bananas, and you
3 responded, "That's where Woot got them damn bananas"?

4 Doest that sound at all familiar?

5 A I did not say that. I don't remember that.

6 Q Okay. You just don't remember?

7 A (Moves head side to side.) Uh-uh.

8 Q Okay. Ms. Shuford, have you been convicted
9 of anything other than minor traffic offenses, driving
10 offenses?

11 A No, ma'am.

12 Q No criminal convictions?

13 A No.

14 Q Okay.

15 MS. MONTGOMERY-BLINN: Commissioners, do you
16 have any questions for Ms. Shuford?

17 COMMISSIONER SMITH: What did he want to talk
18 about when he came to your house that night, Willie
19 came, and he wanted to talk? Had something happened he
20 wanted to talk about?

21 THE WITNESS: He didn't talk about it.

22 COMMISSIONER SMITH: I'm sorry?

23 THE WITNESS: He didn't talk about -- we were
24 just talking, but he wasn't talking about nothing that
25 was serious, you know.

1 COMMISSIONER SMITH: But didn't you testify a
2 few minutes ago that he said to you he had something he
3 wanted to talk about?

4 THE WITNESS: Yes.

5 COMMISSIONER SMITH: Do you remember what
6 that was?

7 THE WITNESS: Must not have been -- not
8 nothing important. Not nothing about --

9 COMMISSIONER SMITH: Was he upset?

10 THE WITNESS: -- the lady.

11 No.

12 COMMISSIONER SMITH: Was he upset when he
13 came to your house?

14 THE WITNESS: No, sir.

15 COMMISSIONER SMITH: Did he have any marks
16 anywhere on him?

17 THE WITNESS: I didn't pay it -- no, I didn't
18 pay it no attention. I wasn't paying him no attention.

19 COMMISSIONER SMITH: Had he had anything to
20 drink?

21 THE WITNESS: Yes, he had -- yes.

22 COMMISSIONER SMITH: Would you say he was
23 under the influence --

24 THE WITNESS: I don't think he was --

25 COMMISSIONER SMITH: -- of alcohol?

1 THE WITNESS: I don't think he was too drunk
2 when he came up there.

3 COMMISSIONER SMITH: But he was somewhat
4 drunk?

5 THE WITNESS: Drinking.

6 COMMISSIONER SMITH: Did he tell you where he
7 had been that night?

8 THE WITNESS: He told me he had went to
9 Claremont to the grocery store and went down to my
10 sister house and they were down there talking and
11 drinking.

12 COMMISSIONER SMITH: Thank you.

13 COMMISSIONER JENKINS: Can I follow up with
14 that? Which sister's house did he say?

15 THE WITNESS: Rachel Wilson.

16 COMMISSIONER GREENLEE: When he came to your
17 house you already knew that this rape had taken place?

18 THE WITNESS: Yes, ma'am.

19 COMMISSIONER GREENLEE: Did you feel
20 uncomfortable with him staying in the house with you,
21 knowing that?

22 THE WITNESS: No, ma'am.

23 COMMISSIONER GREENLEE: Was there a period of
24 time where you didn't talk to your sister because she
25 reported that he was the rapist?

1 THE WITNESS: Well, me and her really don't
2 talk like that anyway, you know. We talk, but not no
3 stuff like that. We didn't talk about that. There's
4 never been any...

5 COMMISSIONER ASHENDORF: When he came to your
6 house that night, you had already heard someone say
7 that someone had been raped, but you didn't know who it
8 was or that he had been accused, or did you?

9 THE WITNESS: I heard it -- I don't know the
10 lady name, but I did hear that, that he had raped her.
11 But it -- he didn't rape that woman because he were
12 down at my sister house.

13 COMMISSIONER ASHENDORF: Well, I know, but
14 you had heard someone --

15 THE WITNESS: Yeah.

16 COMMISSIONER ASHENDORF: Can you remember who
17 told you?

18 THE WITNESS: So many people was talking
19 about it so I really can't point --

20 COMMISSIONER ASHENDORF: People at church?

21 THE WITNESS: I can't point out who said it.

22 COMMISSIONER ASHENDORF: People at church?

23 THE WITNESS: Oh, no. No.

24 COMMISSIONER ASHENDORF: Wasn't that the
25 night you were at church?

1 THE WITNESS: Do what, now?

2 COMMISSIONER ASHENDORF: Was that the night
3 you were at church?

4 THE WITNESS: Yes.

5 COMMISSIONER ASHENDORF: And did you stop
6 by --

7 THE WITNESS: I heard it from my sister
8 house.

9 COMMISSIONER ASHENDORF: From Rachel's?

10 THE WITNESS: Yes.

11 COMMISSIONER ASHENDORF: So you think you
12 stopped by there, but you're not positive?

13 THE WITNESS: Right.

14 COMMISSIONER ASHENDORF: Okay. And then you
15 went back home.

16 THE WITNESS: Okay.

17 COMMISSIONER ASHENDORF: So you just saw him
18 down there, but yet he called you on the phone for 45
19 minutes and told you he had something to tell you.

20 THE WITNESS: Like I said, I couldn't
21 remember, you know...

22 COMMISSIONER ASHENDORF: Okay. It sounds to
23 me like he --

24 THE WITNESS: Say it.

25 COMMISSIONER ASHENDORF: Well, sounds like he

1 was living with one woman and wanting to be with you
2 again.

3 THE WITNESS: That's what it was.

4 COMMISSIONER BECTON: You got out of church
5 around 11:00 that night?

6 THE WITNESS: Yes. They had revival -- not a
7 revival, they had a anniversary singing program.

8 COMMISSIONER BECTON: And did I understand
9 you to say that you thought it was after midnight --
10 what time was it when Woot came by your house that
11 night after telling you that he needed to talk to you?

12 THE WITNESS: I don't know because I was in
13 the bed when he came. You know, I opened the door for
14 him and he came -- opened the door, let him in the
15 house.

16 COMMISSIONER BECTON: You got out of the
17 anniversary about 11:00, you talked on the phone for
18 about 45 minutes. Remember that?

19 THE WITNESS: I can't remember talking to him
20 on the phone.

21 JUDGE SUMNER: Anyone else?

22 COMMISSIONER JENKINS: He called and said he
23 needed to talk to you about something. Was that
24 something he did often?

25 THE WITNESS: Huh?

1 COMMISSIONER JENKINS: Did he call you often
2 to say, "I need to talk about something"?

3 THE WITNESS: He always come by my house. I
4 mean, you know. Like, if I'm at home or something,
5 he'll -- he kept my little boy all the time, you know.
6 Keep him and bring him back at night or either the next
7 morning, stuff like that.

8 COMMISSIONER JENKINS: But when he said, "I
9 need to talk to you about something," did that sound
10 urgent to you or did that sound normal for him to say
11 that?

12 THE WITNESS: You know what he wanted. You
13 want to know the truth? You know what he wanted.

14 (Laughter.)

15 (Discussion off the record.)

16 COMMISSIONER JOHNSON: Are you aware that
17 your sister Linda collected a reward for the
18 information that she provided?

19 THE WITNESS: Well, I heard that she did.
20 I'm not -- I heard that she did.

21 COMMISSIONER JOHNSON: That night that you
22 said that you got home from church you are saying is
23 the same night that this rape occurred; correct?

24 THE WITNESS: Uh-huh.

25 COMMISSIONER JOHNSON: So you think within a

1 couple of hours that news -- because you're saying that
2 you were home in the bed when he called you. So if
3 this occurred around 9:00 and you're in church, do you
4 think it could have been another night other than the
5 night that you are saying that you went home?

6 Did the news travel that quickly about that,
7 that he would have already heard it at your sister's
8 house that he was being accused of this rape?

9 THE WITNESS: I can't answer that.

10 COMMISSIONER JOHNSON: That's okay.

11 COMMISSIONER DUNCAN: Ms. Shuford, did your
12 sister Linda, did you ever know of her to provide
13 information to the police before? Had you ever heard
14 her say anything about talking to the police or knowing
15 the Hickory Police Department or anybody that worked
16 there?

17 THE WITNESS: She didn't say.

18 COMMISSIONER DUNCAN: Do you know her to be
19 pretty truthful?

20 THE WITNESS: Who, Linda?

21 COMMISSIONER DUNCAN: Yes, your sister.

22 THE WITNESS: I guess she is. I don't know.

23 COMMISSIONER JOHNSON: I didn't hear you.

24 THE WITNESS: I said I don't know. I don't
25 know about her being -- you know, after all this

1 happened so...

2 COMMISSIONER JENKINS: I have another
3 question, I think. Do you know of any motivation that
4 your sister would have had to bring up Willie Grimes'
5 name to the police?

6 THE WITNESS: Do I have what, now?

7 COMMISSIONER JENKINS: Do you know of any
8 motivation -- do you know of any reason why she would
9 have brought up his name to the police?

10 Was she angry with him? Or was there any
11 motivation? Was there any reason why she would have
12 brought his name up that you know of?

13 THE WITNESS: I don't know why Linda did
14 that.

15 COMMISSIONER JENKINS: You don't have any
16 idea in your own mind?

17 THE WITNESS: Well, she lived over there --
18 her friend lived over there close to the lady, so she
19 would be over to her friend house. So I guess she
20 just -- I guess her and the lady was talking. I don't
21 know.

22 COMMISSIONER JENKINS: Okay. Thank you.

23 COMMISSIONER BECTON: You said she had a
24 friend that lived close to Ms. Elliott. Who was that
25 friend?

1 THE WITNESS: Who, Linda's friend?

2 COMMISSIONER BECTON: Yes.

3 THE WITNESS: Dicky [sic] Mason.

4 COMMISSIONER BECTON: Is that the person she
5 was living with?

6 THE WITNESS: Well, she had her own place,
7 but she'd go over there and stay with him sometime.

8 COMMISSIONER BECTON: Okay.

9 COMMISSIONER JENKINS: Ma'am, do you know
10 Albert Lindsey Turner or Albert Turner?

11 THE WITNESS: Yes, I do.

12 COMMISSIONER JENKINS: How do you know him?

13 THE WITNESS: I been knowing him.

14 COMMISSIONER JENKINS: Ma'am?

15 THE WITNESS: I been knowing -- I don't know
16 nothing about him, but I know him. I know he live in
17 Hickory. That's all I know.

18 COMMISSIONER JENKINS: Do you remember
19 anything about him that night, seeing him or anything
20 like that, or in that time frame?

21 THE WITNESS: Uh-uh. I wasn't -- I don't be
22 around him like that.

23 COMMISSIONER VICKORY: Well, what's he look
24 like? I mean, what's his general description?

25 THE WITNESS: He's kind of tall. Brown skin.

1 And wear braids in his hair.

2 COMMISSIONER VICKORY: Long hair?

3 THE WITNESS: Uh-huh.

4 COMMISSIONER VICKORY: Any markings on his
5 face, like -- like Woot --

6 THE WITNESS: Oh, didn't pay no attention to
7 that.

8 COMMISSIONER VICKORY: -- had or anything?
9 Woot's got a mark on his face, doesn't he?

10 THE WITNESS: Yes.

11 COMMISSIONER VICKORY: Does Albert have
12 anything like that?

13 THE WITNESS: I haven't even looked at him
14 like that.

15 COMMISSIONER VICKORY: Well --

16 THE WITNESS: I'm telling the truth.

17 JUDGE SUMNER: Thank you.

18 COMMISSIONER DUNCAN: Ms. Shuford, just one.
19 You said you did know that --

20 THE WITNESS: Albert?

21 COMMISSIONER DUNCAN: Yes.

22 THE WITNESS: Yes, I know him.

23 COMMISSIONER DUNCAN: How do you know him?

24 You responded to that pretty quickly. How do you know
25 him or what do you know about him?

1 THE WITNESS: I don't know nothing about him,
2 I just know him -- know of him. I know what he looks
3 like and everything. I know some of his family.

4 COMMISSIONER ASHENDORF: Have you ever known
5 him to be violent?

6 THE WITNESS: Drunk.

7 COMMISSIONER ASHENDORF: Drunk? Could he be
8 violent when he was drunk?

9 THE WITNESS: I don't -- see, I don't hang
10 with him like -- I don't hang, you know -- I don't be
11 around him like that, but I know him.

12 COMMISSIONER SURGEON: He wears braids now?

13 THE WITNESS: I haven't seen him in a while.
14 I heard he'd been sick, so I don't -- I haven't seen
15 him.

16 COMMISSIONER SURGEON: Back in 1987, how did
17 he wear his hair?

18 THE WITNESS: Drink, all I know. See, I
19 don't know nothing about him; I just know him. I don't
20 be around him like that.

21 COMMISSIONER SURGEON: How did he wear his
22 hair?

23 THE WITNESS: Braided back.

24 JUDGE SUMNER: Anything else?

25 Thank you, ma'am.

1 MS. MONTGOMERY-BLINN: All right. The
2 Commission would like to release Ms. Shuford --
3 Ms. Hairston from her testimony and her subpoena.

4 THE WITNESS: Okay.

5 JUDGE SUMNER: She's free to go. Thank you.

6 (Witness dismissed.)

7 (Recess taken, 4:54 to 5:03 p.m.)

8 JUDGE SUMNER: Thank you. Yes, ma'am.

9 MS. MONTGOMERY-BLINN: Mr. Grimes, as you
10 heard and have read -- because you have the
11 transcript -- presented eight alibi witnesses. Many of
12 the witness have now passed away, but the Commission
13 staff was able to interview those that were surviving.
14 And you've already heard from Ms. Shuford.

15 The Commission's Associate Director, Sharon
16 Stellato, will describe the remaining interviews. And
17 this will be the last testimony of the day.

18 The Commission calls Ms. Stellato.

19 (Sharon Stellato re-called.)

20 EXAMINATION BY MS. MONTGOMERY-BLINN:

21 Q Ms. Stellato, you're still under oath.

22 And I'd like to go through your interviews of
23 the alibi witnesses. Begin with Ms. Brenda Smith. At
24 trial Ms. Smith testified that she dropped Mr. Grimes
25 off at Rachel Wilson's house and picked him up the next

1 morning. Were you able to interview Ms. Smith?

2 A No. She is deceased.

3 Q Okay. How about Rachel Wilson? At trial she
4 testified that Mr. Grimes was at her home that evening
5 for all but about 15 minutes when he walked across the
6 street to Richard Wilson's.

7 A She is deceased. She did have two teenage
8 daughters who were home that evening. They were 14
9 years old at the time and they were not interviewed.

10 Q When you say they were home that evening,
11 according to whom? According to her testimony?

12 A According to her and the other alibi
13 witnesses.

14 Q Okay. Go ahead.

15 A They were 14 at the time and were not
16 interviewed at the time. One of -- they were twin
17 girls. One of them is now deceased. The other
18 daughter, her name is Barbara Wilson, and she remembers
19 her mom -- and we interviewed her by phone about
20 this -- and she remembers her mom, Rachel Wilson, being
21 very upset about the conviction and her mom always
22 telling her that Grimes was innocent.

23 Ms. Wilson also stated she remembers Grimes
24 being about the house on the night of the rape, and a
25 whole bunch of other people being there as well. But

1 she can't remember who was there.

2 Q Okay. Carolyn Shuford testified at trial
3 that she saw Mr. Grimes at Rachel Wilson's house at
4 8:30, leave about 8:45 to go to Richard Wilson's, and
5 that he was gone about five minutes when he came back.

6 Were you able to speak with her?

7 A Deceased.

8 COMMISSIONER BECTON: What was the first
9 name?

10 MS. MONTGOMERY-BLINN: Carolyn Shuford.

11 COMMISSIONER ASHENDORF: Mother of Rachel
12 Wilson; right?

13 MS. MONTGOMERY-BLINN: This was another
14 sister, I believe. Yes. This was a sister who
15 testified at trial that she saw him at the house for a
16 little while and then called -- left and then called
17 later that night and spoke to him on the phone.

18 Q Lib King testified at trial that she saw
19 Mr. Grimes at Rachel Wilson's house, and she was there
20 from about -- she testified she was there from about
21 8:30 until about 8:50.

22 Is she still living?

23 A She is. And we were able to interview her.
24 She does remember seeing Grimes that night at Rachel
25 Wilson's home, stands by her testimony.

1 Q Does she remember specifics or she just tell
2 you that she was truthful at trial?

3 A She remembered a few specifics. She
4 remembered -- she lived near Brenda Smith. She
5 recalled when the police came looking for Mr. Grimes on
6 a Tuesday. So she was very clear about that. And then
7 when we got back to the night, she remembered entering
8 the home and being there about 20 minutes and seeing
9 Willie Grimes there.

10 Q Okay. Did you talk to her about the distance
11 from what's been testified about as Berlin, where
12 Mr. Grimes said he was that evening, to Ms. Elliott's
13 hours, the victim's home?

14 A We did -- well, she just stated it would not
15 have been possible for him to walk from Berlin to the
16 victim's home because of the distance.

17 Q And later on, the Commission did maps, and
18 we'll talk about that later on.

19 A Uh-huh.

20 Q How about Ms. Lucille Shuford? This was the
21 mother of Linda McDowell and Betty Shuford. And at
22 trial she said that she spoke with Mr. Grimes on the
23 phone when she called the house -- or when he called
24 her house looking for Allen Shuford.

25 Is she still living?

1 A She is not living.

2 Q Richard Wilson at trial testified that
3 Mr. Grimes came to his house around 9:00 to get some
4 money that he was holding, stayed for a few minutes,
5 and headed back toward Rachel Wilson's house. Is he
6 still living?

7 A He is still living. We interviewed him. He
8 does recall seeing Grimes that night. He was
9 inconsistent about the timing. He stated that he had
10 been to Rachel Wilson's house, which differs from the
11 testimony he gave at trial. He stated that he didn't
12 give the testimony at trial because he was never asked
13 about being at Rachel Wilson's house.

14 We reviewed his testimony with him and he
15 stated that he was truthful then and his memory was
16 better at the time.

17 Q Okay. And how about William Robinson? At
18 trial he testified that he came over to Rachel Wilson's
19 to borrow a cooking pot and brought the pot back and
20 came home and stayed until late at night drinking and
21 talking with Mr. Grimes.

22 Were you -- is he still living?

23 A He is living and we were able to interview
24 him. His wife was present as well.

25 Q Okay. And what did he say during the

1 interview?

2 A Mr. Robinson stated that he was with Grimes
3 the whole night except when he went back home to return
4 a cooking pot. He had gone over to Rachel Wilson's to
5 get a pot to cook something in, brought it back to his
6 wife, and then returned to Rachel Wilson's home to
7 drink with Willie Grimes.

8 When we interviewed him he had his times
9 earlier in the day, stating that he had gone there
10 about 3:00 p.m., but his wife recalled the night and
11 she believes it was later in that -- in the day.

12 He reviewed his testimony and stated he was
13 truthful at trial. His wife recalled it being late in
14 the evening, after dark.

15 Mr. Robinson stated that he still believed it
16 was light outside, but did testify truthfully at trial.

17 Q Okay. And Ms. Shuford just testified.

18 MS. MONTGOMERY-BLINN: Commissioners, do you
19 have any questions for Ms. Stellato about the
20 interviews of these alibi witnesses?

21 JUDGE SUMNER: Appears to be none.

22 MS. MONTGOMERY-BLINN: Okay. All right.
23 I'll ask that Ms. Stellato come down.

24 (Ms. Stellato stands down.)

25 MS. MONTGOMERY-BLINN: If Your Honor please,

1 I think this is an appropriate time to take an evening
2 recess and resume tomorrow at 9:00, if that's all right
3 with you.

4 JUDGE SUMNER: I concur. We will be resuming
5 tomorrow morning at 9:00 a.m.

6 (Overnight recess taken, 5:11 p.m.)
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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
87 CRS 1354/42/44

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Volume II of III

This matter coming on for hearing on April 3, 2012, at the North Carolina Judicial Center, Raleigh, North Carolina, before the Victoria L. Pittman, BA, CVR-CM-M, Court Reporter and Notary Public, the following proceedings were had, to wit:

Reported by: Victoria L. Pittman, BA, CVR-CM-M
d/b/a Pittman Stenography
POB 47
Wake Forest, NC 27588

APPEARANCES BY THE COMMISSION

Chair: The Honorable Quentin T. Sumner

Members of the Commission:

The Honorable Charles L. Becton

Ms. Mel Laura Chilton

Dr. Jacqueline Greenlee

Chief Heath Jenkins

The Honorable Susan Johnson

Wade M. Smith, Esq.

The Honorable C. Branson Vickory, III

The Honorable Van Duncan, Alternate

T. Diane Surgeon, Alternate

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1 TUESDAY, APRIL 3, 2012 (9:05 a.m.)

2 P R O C E E D I N G S

3 JUDGE SUMNER: I think we are all present and
4 accounted for. We're going to resume at this point.
5 Ms. Montgomery-Blinn?

6 MS. MONTGOMERY-BLINN: Thank you, Your Honor.

7 Good morning. Welcome back. I know your
8 time is valuable so we are just jumping back into the
9 hearing. We're going to talk about Mr. Grimes and he
10 is going to be called to testify in a few minutes.

11 The Commission staff interviewed Mr. Grimes
12 three times over the course of this investigation.
13 Staff Attorney Jamie Lau is going to testify and give
14 you an overview of those interviews.

15 Mr. Grimes is still incarcerated. He is at a
16 minimum-security facility. And because of his security
17 status, we were able to writ him to this building for
18 live testimony.

19 The Commission calls Jamie Lau.

20 (Jamie Lau re-called.)

21 EXAMINATION BY MS. MONTGOMERY-BLINN:

22 Q Mr. Lau, you are still under oath from
23 yesterday.

24 A Okay.

25 Q How many times did you interview Mr. Grimes?

1 A I spoke with Mr. Grimes on three different
2 occasions.

3 Q And where was he located when you spoke with
4 him?

5 A He is currently located at Gaston
6 Correctional Center.

7 Q And is that part of the North Carolina
8 Division of Prisons?

9 A Yes, that is.

10 Q And when you spoke with Mr. Grimes, were
11 those interviews recorded and transcribed?

12 A Yes, those interviews have been recorded and
13 transcribed.

14 Q Was it an audio recording?

15 A It is an audio recording.

16 Q And who was present for each of those
17 interviews?

18 A The first interview was Ms. Lindsey Guice
19 Smith of the Commission and myself and Mr. Grimes.

20 The second and third interviews was myself,
21 Ms. Sharon Stellato, Mr. Grimes, Investigator Dustin
22 Nowatka from Hickory PD, and Mr. Grimes' defense
23 attorney, Christine Mumma.

24 Q During the second interviews had the case
25 been moved into formal inquiry by that time?

1 A Yes. The case had been moved into formal
2 inquiry, which triggered Mr. Grimes' right to counsel
3 at that point through our formal inquiry.

4 Q And you said his counsel was present?

5 A His counsel was present, yes.

6 Q Now, did Mr. Grimes provide to you an account
7 of his activities on the evening of October 24?

8 A He did. He provided an account on each of
9 the interviews. The accounts were largely consistent;
10 however, some of the times were different or varied
11 through the interviews we had with him from his trial
12 testimony with regards to what time he showed up at
13 various places or what time he left various places.

14 Q Did he always place himself with the same
15 people?

16 A Yes, he did.

17 Q At the same locations?

18 A Yes, he did.

19 Q And in the same chronological order?

20 A Yes.

21 Q Okay. And now in order to -- well, did you
22 look for some other files in order to confirm or
23 corroborate or disconfirm some of the things that
24 Mr. Grimes was telling you?

25 A Well, one of the things that we were

1 interested in is whether he has consistently maintained
2 his innocence over the 25-year period. And the best
3 way that we can go about doing that is to obtain files
4 from the various agencies which he has spoken with
5 during that period of time.

6 So, yes, we did obtain several files. We
7 obtained the Department of Public Safety's file, which
8 is his DOC file, and that includes case manager notes
9 with regards to conversations he's had with his case
10 managers at the various facilities he has been in,
11 psych exam evaluation notes as well as medical records.

12 We obtained the Parole Commission's -- a
13 partial file from the Parole Commission. The Parole
14 Commission provided us with the statements made to them
15 by Mr. Grimes.

16 We received his clemency file. We also
17 received a file from the North Carolina Prisoner Legal
18 Services as well as the Center on Actual Innocence in
19 which he applied.

20 Q Okay. Let's just go through those very
21 briefly.

22 A Sure.

23 Q So the Department of Corrections, which is
24 now the Division of Adult Corrections, you said you had
25 case manager notes, medical and psychological records?

1 A That's correct.

2 Q And was that a large amount of files?

3 A It was a very large file, especially with
4 regards to the medical records. It was -- it was
5 beyond a Banker's box; six volumes of medical records.

6 Q And did a member of the Commission staff read
7 through every single one of the records?

8 A Yes, a member of the Commission staff went
9 through each page.

10 Q Okay. And who was that?

11 A That was Ms. Smith.

12 Q Okay. And did you speak with her about her
13 review of all those files?

14 A Yes. She did a report about her review of
15 the file.

16 Q Okay. And did she mark or note any places
17 where Mr. Grimes expressed guilt or remorse or that he
18 had had any involvement in the rape of Carrie Elliott?

19 A No.

20 Q Did she mark or note any places where
21 Mr. Grimes expressed that he was innocent and had not
22 raped Ms. Elliott?

23 A Yes, she did.

24 Q Okay. And was that multiple places in the
25 file?

1 A Yes. There were -- there were several
2 different places in the file and the various reports
3 where he was maintaining his innocence to the person
4 who was speaking with him.

5 Q And, also, were there also any medical
6 references about Mr. Grimes' mole and whether or not he
7 had any medical treatment for that mole that we've
8 heard about before?

9 A Specifically, Ms. Smith wasn't looking for
10 medical records related to the mole, but Mr. Grimes
11 himself has spoken with us regarding the mole. And
12 that mole was removed shortly after he entered the
13 Division of Adult Correction.

14 Q Okay. You said you reviewed the Parole
15 Commission files and you were able to review the
16 written statements by Mr. Grimes to that Commission?

17 A That's correct.

18 Q Okay. And in those statements has he
19 expressed innocence or guilt or made any statements to
20 that effect?

21 A He expressed his innocence in -- there are
22 only a few letters, a handful of letters -- I think
23 there're about five letters that he wrote, and in three
24 of those letters he is expressing innocence. The other
25 ones he doesn't express guilt; he's just asking for

1 updates or general information about his review.

2 Q Okay. And you said you obtained the file
3 from the North Carolina Center on Actual Innocence?

4 A Yes.

5 Q And I think you might have testified about
6 this yesterday, but is he consistent in his claim of
7 innocence throughout that file as well?

8 A Yes, he is.

9 Q And you mentioned North Carolina Prisoner
10 Legal Services?

11 A Yes.

12 Q Is he also consistent in maintaining his
13 innocence throughout that file?

14 A He maintains his innocence in that file as
15 well.

16 Q And I think you mentioned the clemency file
17 from the Governor's office.

18 A Yes. He wrote to the Governor's office
19 himself seeking clemency based on innocence.

20 Q Okay. And we have read the articles in the
21 brief from the Denver Post. Did a member of the
22 Commission staff attempt to locate any notes or
23 recordings from the Denver Post?

24 A Ms. Stellato was trying to ascertain whether
25 there were any notes or records remaining from the

1 reporter who wrote that series to review those records,
2 and she contacted the reporter. And the Commission
3 staff also contacted the Denver Post. The reporter no
4 longer works for the Denver Post and we were told that
5 there are no records available anymore for any articles
6 they wrote; specifically, Susan Greene, who was the
7 reporter, submitted an affidavit saying that she no
8 longer has those materials.

9 Q Okay.

10 MS. MONTGOMERY-BLINN: Commissioners, do you
11 have questions for Mr. Lau before Mr. Grimes comes in?

12 No? Okay. I'll ask that Mr. Lau step down.

13 (Mr. Lau stands down.)

14 MS. MONTGOMERY-BLINN: The Commission calls
15 Willie J. Grimes.

16 Thereupon, WILLIE J. GRIMES, having first been
17 duly sworn, was examined and testified on EXAMINATION
18 BY MS. MONTGOMERY-BLINN:

19 Q Mr. Grimes, hi. My name is Kendra
20 Montgomery. I know I haven't met you before, but I am
21 the Director of the Commission staff and I'm going to
22 be asking you some questions today. And then these
23 people around the table are the Commissioners, and they
24 may have questions for you as well. And I know you've
25 already met with Ms. Stellato and Mr. Lau and other

1 members of our staff. And I know they've explained to
2 you that, as the Commission, we do not represent you,
3 we do not represent the prosecution either; we are just
4 a neutral fact-finding agency. But I also understand
5 that it's been a long time.

6 And we're going to ask you some questions.
7 It's really important that you tell us the truth. If
8 you don't remember or you're confused, I really want
9 you to tell me "I'm confused" or "I don't remember."
10 Don't try to help us out by giving us what you think;
11 just tell us what you truly remember.

12 Do you understand?

13 A (Moves head up and down.)

14 Q Okay. Thank you. Can you tell us -- and
15 also, please, when you answer, speak very loudly and
16 make sure you say everything out loud. Don't just nod
17 at me because that lady right there is a court reporter
18 and she's trying to get down everything that you say.
19 Okay?

20 A Yes, ma'am.

21 Q Thank you, sir.

22 All right. Can you tell us your name.

23 A Willie J. Grimes.

24 Q And how old are you, Mr. Grimes?

25 A 65.

1 Q Where do you reside now?

2 A Dallas, North Carolina.

3 Q Dallas, North Carolina?

4 Are you in a prison?

5 A Yes, ma'am.

6 Q What is the name of that one?

7 A Gaston Correctional Center.

8 Q Mr. Grimes, do you go out during the day on
9 work release?

10 A Yes, ma'am.

11 Q And where do you go on work release?

12 A Pinedale Utility, plumbing.

13 Q I'd like to talk about 1987. Where did you
14 live in 1987?

15 A On 38 West Street, Hickory, North Carolina.

16 Q And were you living with Ms. Smith,
17 Ms. Brenda Smith?

18 A Yes, ma'am. I was renting from her.

19 Q You were renting from her?

20 A Yes, ma'am.

21 Q And you paid her rent?

22 A Yes, ma'am.

23 Q Okay. And did you also have a romantic
24 relationship with Ms. Smith?

25 A Yes, ma'am.

1 Q Okay. Now, were you exclusively dating
2 Ms. Smith? Did you date other people as well?

3 A Not really -- not really, but I did see other
4 womens at times, but it wasn't dating.

5 Q Not dating, but saw multiple people?

6 A Uh-huh.

7 Q How about Betty Shuford? Did you see
8 Ms. Shuford at that time too?

9 A I was not dating her, but I knew -- I was
10 being a friend of her.

11 Q Where did you work?

12 A Country Chop -- Shops. Hickory Country Shop.

13 Q Country Shop?

14 A Yes.

15 Q What kind of schedule? Did you work days?
16 Nights? Weekends? Weekdays?

17 A I worked five days a week from 8:00 to 4:00.

18 Q Okay. Did you have any other jobs?

19 A I worked part-time at a car wash over the
20 weekends.

21 Q Did you own a car?

22 A No, ma'am.

23 Q Did you drive your friends' cars?

24 A No, ma'am.

25 Q Why not?

1 A I did not have any license.

2 Q Did you know how to drive?

3 A Yes, ma'am.

4 Q Mr. Grimes, are you from Hickory?

5 A I'm from Cleveland County from next to
6 Shelby, North Carolina.

7 Q Shelby? How long have you lived in Hickory?

8 A I lived in Hickory for about nine years.

9 Q How old were you in 1987?

10 A 41.

11 Q How tall were you in 1987?

12 A Six-one and a half, which I would say 6'2".

13 Q Okay. How much did you weigh in October of
14 1987?

15 A About 165 pounds.

16 Q By the time that you went to trial in 1988,
17 you testified that you had gained weight. Is that
18 accurate?

19 A Yes, ma'am.

20 Q How much did you weigh by the time of trial?

21 A About 225.

22 Q And how come you gained weight, if you know?

23 A Well, I think it came from not running,
24 drinking and eating a lots when I got locked up.

25 Q So not running, eating and drinking a lot

1 when you got locked up?

2 A (Moves head up and down.)

3 Q Okay. Now, did you have a mole in 1987?

4 A Yes, ma'am.

5 Q Where was the mole located?

6 A Right beside my left -- on my left jaw right
7 above my mouth.

8 Q Right here, on your left cheek?

9 A (Indicating) right there.

10 Q Has that mole been removed?

11 A Yes, ma'am.

12 Q When was it removed?

13 A 1991.

14 Q And was that when you were at the Department
15 of Corrections?

16 A Yes, ma'am.

17 Q The mole -- back in 1987, would you say that
18 was a pretty noticeable mole on your face?

19 A It was about a half an inch in diameter,
20 about big as the end of my left finger.

21 Q And was it raised up? Was it -- if somebody
22 felt your face, would they feel it?

23 A Yes, ma'am.

24 Q And how did you wear your facial hair?

25 A The way I've got it right now.

1 Q Okay. So a mustache?

2 A Mustache and no beard or anything.

3 Q Did the mustache cover up the mole?

4 A No, ma'am.

5 Q Mr. Grimes, I would like to hand you a
6 photograph. Will you take a look at that picture?

7 MS. MONTGOMERY-BLINN: Commissioners, this is
8 the booking photo. It's in your brief under the
9 booking photos. This is the booking photo from
10 Mr. Grimes' day of arrest. Oh, it's also coming around
11 as a handout.

12 Q Mr. Grimes, do you recognize this photograph?

13 A It don't look like me.

14 Q It says October 27, 1987.

15 Now, you say it doesn't look like you. What
16 do you mean?

17 A The beard.

18 Q You don't remember having a beard?

19 A Not that much.

20 Q And I know it's not a great quality
21 photograph, but you are saying you did not have a beard
22 at that time?

23 A No, ma'am, not like that.

24 Q Okay. Just a mustache that went on the top
25 of your lip?

1 A Yes, ma'am. I never wore a beard like that.

2 Q Okay. About your hair on your head?

3 A Yeah, it was real bushy. I had bushy hair.

4 Q So like in this picture?

5 A Yeah. Might be a little bit longer than the
6 picture.

7 Q In 1987, Mr. Grimes, did you have any fingers
8 missing?

9 A Yes, ma'am.

10 Q Okay. And which hand?

11 A Right there (indicating).

12 Q Okay. And that's your right hand.

13 A Yes.

14 Q And it's your -- not your thumb?

15 A Index and middle finger.

16 Q Okay. And those were missing in 1987?

17 A Yes, ma'am.

18 Q Mr. Grimes, at your trial you described
19 yourself as tongue-tied. Can you tell you me what you
20 mean by that?

21 A There's words that I cannot say plain, and
22 there are words, when I say them, a lot of people think
23 I said something different from what I be saying.

24 Q In 1987 did you drink alcohol?

25 A A -- yes, ma'am.

1 Q Okay. Did you -- how often -- how many days
2 a week would you say you drank alcohol?

3 A Oh, probably three to four days.

4 Q And how many times a week would you say you
5 became drunk or intoxicated?

6 A None.

7 Q I'm sorry?

8 A Not any.

9 Q Not any?

10 A No, ma'am.

11 Q When you drink -- or when you drank in 1987,
12 how much would you drink?

13 A Oh, about a fourth of a pint or close to a
14 half of a pint.

15 Q A fourth of a pint to a half of a pint?

16 A Yes, ma'am.

17 Q And that was not enough to make you become
18 drunk?

19 A No, ma'am.

20 Q How would you feel when you had that much to
21 drink?

22 A Oh, I could feel it, but I would be aware of
23 everything I do.

24 Q So relaxed?

25 A Yes, ma'am.

1 Q Would you be more impulsive?

2 A I don't think so.

3 Q Okay. Let's talk about Saturday, October 24,
4 1987. Do you remember that day?

5 A Yes, ma'am.

6 Q Okay. Can you tell us what you did that day.
7 When you woke up, whose house were you at?

8 A When I woke up it was about 25 past 7:00. I
9 was -- where I was staying, I was at Brenda Smith house
10 at the time. The reason I woke up at that time is
11 because she was coming in from work and she got home
12 about 25 past 7:00 and looked at me in the room that
13 she was at there.

14 Q What did you do when you woke up?

15 A Well, when I woke up, I lay there for a while
16 and she came back to the door and asked me would I ride
17 with her to the post office. And I told her yes, but I
18 would have to take a wash-off, a shower, before I go.

19 Q Did you do that?

20 A Yes, ma'am.

21 Q And did you shave?

22 A No, ma'am, not at that time.

23 Q Okay. So you took a shower; you went to the
24 post office?

25 A Yes, ma'am.

1 Q And then what?

2 A Then we returned back to her house and I went
3 back to my room where I was listening at the radio for
4 a while, and she came in and asked me could I ride with
5 her to Catawba, down to her cousin's house, which her
6 cousin was named Lib Finger.

7 Q Lib Finger?

8 A Yes, ma'am.

9 Q Did you agree to ride with her?

10 A Yes, ma'am.

11 Q Okay. And did you do anything before you
12 left?

13 A Yes, ma'am. I told her at that time I needed
14 to take a shave before we went.

15 Q Did you always shave?

16 A I shaved it every morning, during some time
17 every morning; I shaved it every morning before I went
18 to work.

19 Q And, again, you had a mustache so you shaved
20 the rest of your face?

21 A Yes, ma'am.

22 Q Okay. And then what were you wearing when
23 you went with Ms. Smith?

24 A When I went with her I had on a pair of --
25 brown shirt, a long-sleeved striped green and white

1 shirt, brown pant sleeves, and a brown jacket, black
2 shoes.

3 Q Let me just make sure I got it all right.
4 Black shoes, brown pants, a striped shirt, and a brown
5 jacket?

6 A Yes, ma'am.

7 Q What color was the striped shirt?

8 A It was sort of green with little light red
9 stripes.

10 Q Okay. And did you have on a green sweater at
11 the time?

12 A No, ma'am.

13 Q And then you and Ms. Smith went to Lib
14 Finger's house?

15 A At first when we left it was about -- when we
16 left there it was about 12:30, and we went by one of
17 her friend's house, Ms. Carson house.

18 Q Ms. Carson?

19 A Yes.

20 Q Go ahead.

21 A And we spent about a hour and a half there,
22 they sat there and talked for about an hour and half
23 before we got ready to go to Claremont. We got ready
24 to go to Claremont. I asked Brenda to carry me by
25 Richard Wilson's house to see was he home because I

1 have left some of money with him. She carried me by
2 his house and he was not home so we were -- rode on to
3 Claremont.

4 Q To Claremont?

5 A On the way to Claremont we stopped at the
6 Winn-Dixie supermarket, got some seafood and meat.

7 Q Was that the receipt that was shown at trial?

8 A Yes, ma'am.

9 Q And you said you bought some seafood. Did
10 you buy any other kind of food or meat at that time?

11 A Well, not at that time. We only bought
12 shrimp and crab fish at that time, but...

13 Q Was there another time --

14 A Then -- then I went out of the car and I
15 forgot to buy some meat. I was going to buy some hog
16 maul to go with some hog chitlins that I had already
17 bought.

18 Q Okay. And so you bought that?

19 A And so I went back and bought two packs of
20 hog maul.

21 Q All right.

22 A Then we went on down to Claremont.

23 Q Claremont?

24 A On down to -- which I called Catawba, on the
25 other side of Claremont.

1 Q Where did you go in Claremont?

2 A At Lib Finger's house.

3 Q Lib Finger's?

4 A Yes, ma'am.

5 Q Do you know around what time this was?

6 A We arrived at her house about 5:00 or five
7 past 5:00, something like that.

8 Q Okay. And what did you do at Ms. Finger's
9 house?

10 A Well, we was sitting there talking for a
11 while and we warmed the food back up that we had
12 bought, which they fixed it the Winn-Dixie, but we
13 warmed back up to eat it.

14 After we got through eating, Lib Finger asked
15 me did I have a drink. And I told her no. And she
16 said she would like to have one and I told her that if
17 so, if Brenda would carry me back up to the liquor
18 store, that I would go and buy her a pack.

19 So we would pick it up there. We got up
20 there about 25 past 6:00 and the liquor store was
21 closed. They said that they were out for lunch and
22 would be back at 7:00, so we sat there and waited until
23 they got back.

24 Q Did they come back?

25 A Yes, ma'am. When they opened up, I bought a

1 pint of Canadian Mist and we carried it back to Lib
2 Finger's house.

3 Q Okay. And when -- go ahead.

4 A So we got back there, they sat around talking
5 for a while and they opened the liquor. And Lib Finger
6 took -- made her a glass full but I made me a little
7 glass with some Coke -- Coca-Cola, which probably
8 less -- probably about an ounce of liquor because I
9 wasn't intending drinking anything.

10 And that -- that was about all I drunk at her
11 house that day.

12 Q Mr. Grimes, do you need a drink of water
13 right now? Are you okay?

14 A My mouth is sort of dry.

15 Q I thought maybe you were sounding a little
16 bit dry. We can get you some ice water too.

17 (Water tendered to witness.)

18 Q A little better?

19 A Yes, ma'am.

20 Q We will give you some ice too.

21 So you said you had about an ounce to drink?

22 A Yes, ma'am.

23 Q Okay. And then what happened?

24 A We stopped there for a few minutes. And Lib
25 Finger's sister and her son came in. He stayed for

1 about five minutes and left. So at that time it was
2 about 20 minutes to 8:00. So Brenda and Lib sat there
3 and talked for about 10 more minutes, 10 or 15 more
4 minutes, and Brenda looked at her watch and she said,
5 "Oh, it's getting late, we better get back because I've
6 got to get back and get ready to go to work."

7 Q Brenda had to go to work?

8 A Yes, ma'am.

9 Q Okay.

10 A So we left there and went back to Hickory.
11 And I asked her to drop me off in Berlin at Rachel
12 Wilson's house.

13 Q At Richard Wilson's house?

14 A Rachel.

15 Q Rachel Wilson's house. Thank you.

16 And you said in Berlin. Is that a
17 neighborhood in Hickory?

18 A Yes, ma'am.

19 Q Why did you want to go to Rachel Wilson's
20 house?

21 A Well, most of the time I always -- I had to
22 carry that meat back by her house so that she -- she
23 were going to cook me some chitlins and that hog maul
24 was going to be mixed in with the chitlins.

25 So when I went back by there, she told me

1 that she would cook the chitlins and make steak after
2 she got off from work.

3 Q This is Rachel Wilson that was going to cook
4 the chitlins for you?

5 A Yes, ma'am.

6 Q Do you know what time this was, Mr. Grimes?

7 A Well, when we arrived at her house, it was
8 about 25 past 8:00, between 25 past 8:00 and 8:30.

9 (Air handling noise.)

10 MS. MONTGOMERY-BLINN: Commissioners, can you
11 hear down there? I know that some air has just come.

12 JUDGE SUMNER: It sounds like a hurricane.
13 Mr. Grimes, if you keep your voice up for me.

14 Q Mr. Grimes, we're just doing our best to hear
15 you because I guess the vents just decided to come on
16 very loudly. If they don't settle down, we could take
17 a break and talk to the building people.

18 MS. MONTGOMERY-BLINN: But should we keep
19 going, Your Honor?

20 JUDGE SUMNER: We're fine.

21 Q All right. So when you arrived there you
22 said it was about 8:25; is that right?

23 A It was between 8:25 and 8:30, somewhere
24 around there.

25 Q Okay. And did Mrs. Smith stay, Brenda Smith?

1 A She sat out in the car. She didn't get out
2 the car. I thought she were leaving at the time, but
3 she didn't. About 10 minutes later -- well, right
4 before Lib -- Elizabeth King came in and she told me
5 that Brenda was still sitting out there and blowing the
6 horn.

7 And I went back to the door about -- I think
8 it was about 15 to 9:00 or a little later and told her
9 to go ahead, that I was going to stay on over there
10 because I had to see Richard -- try to see Richard
11 Wilson to get the money from.

12 Q So you said Elizabeth King. Did anybody else
13 come?

14 A Carolyn Shuford.

15 Q Carolyn Shuford?

16 A Yes, ma'am.

17 Q And when did they leave? Or did they stay,
18 Elizabeth King and Carolyn Shuford?

19 A Elizabeth King left about five minutes until
20 9:00, I think. Carolyn Shuford, she was -- she stayed
21 there up until about 25 past 9:00.

22 Q And you said at that time you looked out and
23 Brenda Smith was blowing her horn. Did you talk to
24 Ms. Smith?

25 A No, I just told her that I was going to stay

1 there and told her she could go on home.

2 Q So you decided you were going to spend some
3 time here, at this house, at Rachel Wilson's?

4 A Yeah, I were going to stay there up until --
5 I went over there to see Richard Wilson to pick up some
6 money also. And he wasn't home at the time and I had
7 to wait until he got home.

8 Q Okay. Now, let's talk about Richard Wilson.
9 Was he -- did he live near -- I'm sorry, did he live in
10 the same neighborhood?

11 A Yes, ma'am.

12 Q Okay. Did he live near Rachel Wilson?

13 A Yes, ma'am.

14 Q Where was his house in relation to Rachel
15 Wilson's house?

16 A It was two houses up the street on the
17 opposite side.

18 Q Two houses up the street on the opposite
19 side?

20 A Yes, ma'am.

21 Q If you looked out Ms. Rachel Wilson's door,
22 could you see Richard Wilson's house?

23 A Yes, ma'am.

24 Q Okay. And you said you wanted to see Richard
25 Wilson about some money. Can you tell us about that?

1 A On Friday night when I got off -- evening
2 when I got off from work, I went by Richard Wilson's
3 house and asked him to hold \$80 for me because I had to
4 carry some money to Cleveland County because I had to
5 pay some tax on my land that they was going to
6 foreclose if I wouldn't have paid the tax on it. So I
7 gave him \$80 for him to hold for me up until Saturday
8 night or Sunday morning.

9 Q And then you were going to take it to
10 Cleveland County?

11 A Yes, ma'am.

12 Q Now, why couldn't you keep -- why couldn't
13 you hold your own \$80?

14 A Well, I was -- I generally go out on Friday
15 night and drink a little bit. And a lot of times when
16 I go out and go to messing around, I spend a whole lot
17 of money that I don't need to be spending. So I wanted
18 to make sure I didn't mess the money up because I knew
19 I had to have the money to pay my -- not the rent, but
20 the tax on my land.

21 Q So you knew you were going to be drinking
22 that weekend?

23 A I always drunk a little bit on Friday night.
24 Not much, but I always drunk on Friday night. That's
25 every week.

1 Q And you didn't trust yourself enough to hold
2 your own money when you were drinking?

3 A I tend to spend a little more than I intend
4 to. So at that time I wanted to make sure I didn't
5 mess the money up because I had to have that money for
6 my tax.

7 Q So would you say you're impulsive when you
8 are drinking?

9 A Well, some people might say so, but I don't.

10 Q But you didn't trust yourself with your own
11 money?

12 A No, ma'am, I didn't.

13 Q Okay. And when you were looking for Richard
14 Wilson earlier that day, if you had located him and
15 your money, was it your intention to have taken it up
16 that same day or still have to gone up on Sunday?

17 A Well, I had thought of asking him could he
18 carry me to Cleveland County that Saturday -- that
19 Saturday -- but I didn't never get in touch with him or
20 nothing like that. He didn't never say whether he
21 could carry me or not because --

22 Q Okay.

23 A -- his car wasn't running right or something
24 like that.

25 Q And when you say "carry" you, you mean drive

1 you?

2 A Drive me, yes, ma'am.

3 Q Okay. So did Richard Wilson come home? Did
4 you go to his house that night?

5 A Yes, ma'am. I looked out the door about
6 9:00 and he were pulling into the yard at that time.

7 Q Is that when you went over?

8 A And at that time, at 9:00, I told Rachel
9 Wilson that I had to go up to Richard Wilson's house
10 for a few minutes, that I would be right back.

11 So I went up to Richard Wilson's house a
12 couple minutes past 9:00, sat down and talked to him
13 for a few minutes and got the money. And about, I
14 guess, 13 or 14 minutes past 9:00, I told him I had
15 to -- was going to go back down to Rachel Wilson's
16 house. And he told me okay and walked with me to the
17 door, I don't know if he stayed to the door or not, but
18 I went on back down to Rachel Wilson's house.

19 Q Okay. When you got back to Ms. Wilson's
20 house, who was there?

21 A When I got back to her house she was there,
22 Carolyn Shuford was there, and William Robinson came in
23 right behind me when I was going into the house.

24 Q Did you say William Robinson?

25 A Yes, ma'am.

1 Q All right. And what happened?

2 A So he asked me how long was I going to be
3 there and I told him I would be there for a while, not
4 long. And at the time, he asked me did I want to drink
5 something and I told him not really because I wasn't
6 intending to drink nothing that night. And he told me
7 that he had a fifth of liquor, but he came to borrow a
8 pot from Rachel Wilson to cook some type of meat, and
9 he were going to carry it back home and be back in
10 about 5 or 10 minutes. So he carried it back home and
11 he was back about 9:30.

12 Q And you said he mentioned he had some
13 alcohol. Did he bring that back with him?

14 A Yes, ma'am. He brought it back and brought
15 it into the house.

16 Q And what happened next?

17 A He asked me did I want a drink. And I told
18 him I didn't really want no -- want one, but I would
19 take a small drink, which I poured about 2 ounces and
20 mixed it. And that was all I drunk that night.

21 Q Did he drink too?

22 A Yes, he drunk a -- three different mixed
23 while we sat there and talked.

24 Q Go ahead. What happened next?

25 A At that time also I called Brenda Smith and

1 asked her -- as she got ready to go to work, and she
2 said she were getting to go to work, why. Asked her --
3 asked me why, and I told her, "Well, I had decided to
4 come on home, if you could come and pick me up." She
5 asked me was I -- she asked me was I still at Rachel's
6 house and I told her, yes, I was at Rachel's house.
7 But I guess she thought I said Richard Wilson's house
8 for some reason because when she came over there, she
9 stopped at Richard Wilson's house instead of coming to
10 Rachel Wilson house.

11 Q And you know that?

12 A Well, I heard -- I heard a horn blow. And
13 when I looked out, she had done turned around and was
14 leaving.

15 Q Okay. And when you called Brenda Smith, did
16 you call her on Rachel Wilson's phone?

17 A Rachel Wilson phone.

18 Q Okay.

19 A Richard didn't have a phone.

20 Q And how far away was it from Rachel Wilson's
21 house, where you were, to Brenda Smith's house, where
22 you were living?

23 A I think between eight and nine blocks,
24 something like that.

25 Q Is that a distance that you sometimes walked?

1 A Yes, ma'am.

2 Q How long did it take you to walk that
3 distance?

4 A Somewhere around 25 -- 25 minutes to a half
5 hour.

6 Q And why didn't you just walk home that night?

7 A I just wasn't -- at the time, when I first
8 called, I didn't think that she were ready to go to
9 work. I didn't know she had to go to work earlier that
10 night. But I think she had to pick up her coworker,
11 which was her boss, and they had to go in earlier.

12 Q And she worked the night shift; is that
13 right?

14 A Yes, ma'am.

15 Q So if you had wanted to just walk home, you
16 could have; right?

17 A Yes, ma'am.

18 Q But you just didn't feel like it?

19 A No, it wasn't -- it wasn't that I didn't feel
20 like it; after she didn't come, I just told William
21 Wilson [sic] that I would stay down and talk to him for
22 a while.

23 Q When you say William Wilson, do you mean
24 William Robinson?

25 A I mean William Robinson.

1 Q He's the one that came over with liquor and
2 had borrowed the cooking pot; right?

3 A Yes, ma'am.

4 Q So you stayed and hung out and talked with
5 him?

6 A Yes, ma'am.

7 Q Did you make any other phone calls or talk to
8 anybody else on the phone that night?

9 A Yes. About five minutes later, after I had
10 done hung up, I called Ms. Shuford, her name was
11 Ms. Lucille Shuford.

12 Q Ms. Lucille Shuford?

13 A Yes.

14 Q Is she Betty Shuford's mother?

15 A Yes, ma'am.

16 Q Okay. Why did you call her?

17 A I called her to see was Larry Shuford there
18 because I were going to ask Larry Shuford to carry me
19 to Cleveland County the next day instead of having
20 Brenda to carry me, because I knew Brenda were going to
21 be -- might have been sleepy when she got off from work
22 because she had to work all night that night.

23 Q Is Larry Shuford also Allan Shuford; is that
24 the same?

25 A Allan Shuford.

1 Q Allan Shuford? And you just call him Larry?

2 A Yes.

3 Q Okay. And is that Ms. Lucille Shuford's son?

4 A Yes, ma'am.

5 Q Okay. So you were asking him if he could
6 drive you tomorrow?

7 A I was going to, but I didn't never get in
8 touch with him. I didn't talk to him. He wasn't home.

9 Q Okay. But you spoke to Ms. Lucille Shuford
10 on the phone?

11 A Yes, ma'am.

12 Q How long did you talk with her?

13 A I talked to her about eight minutes. And I
14 was getting about ready to hang up and -- when I got
15 about ready to hang up, Carolyn Shuford walked in her
16 door and asked her who was she talking to, and she told
17 her that she were talking to me. And she came to the
18 phone, kidding, I guess, and asking me what did I want.

19 So I talked to her a couple minutes and she
20 gave the phone back to Ms. Shuford. I talked to her
21 for about two more minutes and hung up.

22 Q And is Carolyn Shuford one of Ms. Lucille
23 Shuford's daughters?

24 A Yes, ma'am.

25 Q And Rachel Wilson is too?

1 A Yes, ma'am.

2 Q And Betty Shuford?

3 A Yes, ma'am.

4 Q And a woman named Linda McDowell; right?

5 A Yes, ma'am.

6 Q And Carolyn Shuford had been -- you said she
7 had been there earlier and left --

8 A Yes, ma'am.

9 Q -- where you were.

10 Did anybody else talk on the phone with Ms.
11 Lucille Shuford?

12 A William Robinson, for about half a minute,
13 just talk -- asked her what she was doing, told her
14 that he loved her -- he always played with her -- and
15 gave me the phone right back.

16 Q Okay. So he took the phone from you for half
17 a minute and gave it back?

18 A Yeah.

19 Q And what did you do the rest of that evening?

20 A Well, we sat around talking for I guess -- me
21 and William sat there until 11:15 anyway, and talked.
22 And at about 11:15 Betty Shuford called -- was calling
23 her sister Rachel Shuford, but actually William
24 Robinson answered the phone. And when she asked to
25 speak to Rachel, William told her that I was there.

1 And instead of speaking to Rachel, she wanted to talk
2 to me. So we were -- we went to talk to one another on
3 the phone. And I think I talked to her on the phone up
4 until about almost 12:00, about five minutes until
5 12:00.

6 And at about five minutes until 12:00 we were
7 getting ready to hang up and I asked her could I come
8 up there and spend the night. And she said, "For
9 what?" And I said, "Well, I don't feel like going all
10 the way over yonder, and I got to go to Cleveland
11 County in the morning."

12 At first she said no and asked me how much
13 had I been drinking. I told her I hadn't been
14 drinking, but just took a swallow. Then she turned
15 around and said, yes, I could come on up there and
16 sleep on the couch. And I went up there.

17 Before I went, I talked to Rachel for about
18 10 minutes, and about 12:15 I went up to Betty
19 Shuford's house and I spent the night up there.

20 Q How far away was Betty Shuford's house from
21 Rachel Wilson's house?

22 A About four to -- maybe four minutes' walk.

23 Q Okay. And you said you got to Betty
24 Shuford's at around what time?

25 A 12:15.

1 Q And did you stay there all night?

2 A Yes, ma'am.

3 Q When you went to Betty Shuford's, did you
4 bring anything with you?

5 A No, ma'am.

6 Q Did you have anything to eat with you?

7 A No, ma'am.

8 Q Did you have any fruit?

9 A No, ma'am.

10 Q Any bananas?

11 A No, ma'am.

12 Q All right. So you said you did stay the
13 night there? What happened in the morning?

14 A Well, earlier, she had got up to use the
15 bathroom and she looked in there and asked me was I
16 awoke, and I told her, yeah, I was woke. So she came
17 in here and she talked -- sat and talked for about an
18 hour, and then she went back to bed.

19 At about 7:00 -- five past 7:00, I got up and
20 went in there and washed my face and got ready to
21 leave, and she asked me was I fixing to leave. And I
22 told her, yeah, I were walking back down to Rachel
23 Wilson's house because I were going to have Brenda to
24 pick me up to carry me to Cleveland County.

25 Q Did you still have on the same clothes that

1 you described to us a few minutes ago?

2 A Yes, ma'am.

3 Q And is that what you did, then, walked to
4 Brenda Smith's?

5 A No, I walked down to Rachel Wilson's house.

6 Q I'm sorry. Rachel Wilson's house?

7 A Yes, ma'am.

8 Q And then did Ms. Smith pick you up at Rachel
9 Wilson's?

10 A Well, when she came, got off from work, I
11 don't know why, but when she came back over there, she
12 stopped at Richard Wilson's house again that next
13 morning, but William Robinson had also came over that
14 morning and I was out there talking to him when she
15 pulled up.

16 Q So you saw her pull up at Richard Wilson's?

17 A Yes. So I told William Robinson that I was
18 going to get her to carry me on to Cleveland County to
19 carry that money down there.

20 Q About what time was this?

21 A At that time it was about 7:30 or 25 to 8:00.

22 Q In the morning?

23 A Yes.

24 Q On a Sunday?

25 A Yes, ma'am.

1 Q All right. And is that what she did? Did
2 she take you there?

3 A Well, she said she had to go by her house
4 first to check on the kids and all of that. And we
5 left there, got ready to go to Cleveland County. And a
6 friend, Ms. Carter, called again, and she wanted to go
7 by there for a few minutes before she goes. So she
8 went by there and I told her I said, "Well, if you're
9 going to carry me to Cleveland County, we better go
10 ahead, because you might get sleepy or whatever."

11 Q Is that because she'd been up all night
12 working?

13 A Yes. And she said, "Okay, let's go." So we
14 left and she carried me down there -- she carried me to
15 Robert Vinson's house, which was my cousin where I were
16 going to leave the money.

17 Q Did you say Robert Vinson?

18 A Yes, ma'am.

19 Q Okay.

20 A So when we got there, his wife had gone to
21 church, I guess, and he wasn't home. So I couldn't
22 leave the money there and I had to leave the money down
23 there because I had to work that next day. So I got
24 her to carry me to my niece's house, which her name was
25 Shirley Howard at the time, but her maiden name was

1 Shirley Whiteside. And I left the money with her and
2 then we returned back to Hickory.

3 Q So was your family, Robert Vinson, was he
4 going to pay the taxes for you?

5 A Yes, ma'am.

6 Q Okay. Now, Mr. Grimes, this is a lot of
7 detail from a day that was 25 years ago. Why do you
8 think you remember this specific day so well?

9 A Main reason is because I knew I had to pay
10 them tax and I had done saved the money and everything
11 to pay the tax. But that was the main reason I
12 remember it so well, because I had to carry that money
13 down there to Cleveland County to pay the tax because
14 they was going to take the land if I -- if it wouldn't
15 have been paid that next week.

16 Q Do you think that -- have you gone over this
17 day in your head many times since then?

18 A Yes. I can say so because -- well, since
19 I've been in prison, I've always thought about it
20 because I know where I was and I know what I did and I
21 know I wasn't into no crime that night, you know, and
22 it bugged me for years, almost ran me crazy when I
23 first went to prison, but...

24 Eventually I got over it and I saw that I
25 wasn't going to get no help or anything, but I kept on

1 trying every way I thought to try to get some help, but
2 I never did.

3 Q Let's talk about people that testified for
4 you at trial. Nine people testified for you about that
5 night, the things you just talked about. Which of
6 those people did you talk to after you were arrested
7 but before they testified?

8 A I didn't talk to but two peoples after I had
9 been arrested.

10 Q Who was that?

11 A Betty Shuford and Brenda Smith.

12 Q Did anybody else write you or visit you in
13 jail or call you?

14 A No, ma'am.

15 Q When you spoke with them, did you guys talk
16 about the night, the things that happened that night?

17 A No, ma'am.

18 Q Did you talk with them about what they would
19 say at trial?

20 A No, ma'am.

21 Q Why not?

22 A Because I feel like I was innocent and I
23 didn't even think it were going to go to trial.

24 Q Have you kept in touch with Betty Shuford now
25 over the years?

1 A No, ma'am.

2 Q Have you kept in touch with Brenda Smith over
3 the years?

4 A No, ma'am. I think Brenda died in about '91.

5 Q Who have you kept in touch with?

6 A No one but my sister, Gladys Perkins; my
7 classmate, Louis Ross; my fiancée, Shirley Clemmons;
8 one friend, Kathy Sloane.

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

11 JUDGE SUMNER: You may.

12 Q Mr. Grimes, I'm going to hand you some notes.
13 Will you take a look at those --

14 MS. MONTGOMERY-BLINN: And they are coming
15 around, Commissioners, although you also saw them
16 yesterday; they're coming around again.

17 Q Now, Mr. Grimes, have you seen these before?

18 A I seen them one time.

19 Q When did you see them?

20 A When Mr. Lau showed them to me about a month
21 or so ago.

22 Q So when these two people who are sitting next
23 to me came out and spoke to you?

24 A Yes, ma'am.

25 Q They showed you these?

1 A Yes, ma'am. The last time they was out.

2 Q Okay. And this is not your handwriting?

3 A No, ma'am.

4 Q And do you know that these came from your
5 attorney?

6 A They say it did. I don't know.

7 Q Okay. Do you know -- I'm looking at some of
8 the names on here. It says Clarabell. Do you know who
9 that is?

10 A No, ma'am.

11 Q How about Tucker? It looks like it says
12 Tucker, left Tucker's house. Do you know who Tucker
13 is?

14 A I knew a couple people by the last name of
15 Tucker, but I don't know who they are talking about,
16 which one or who.

17 Q How about it says, "Nancy McDowell's house
18 until 4:00 a.m." Do you know a Nancy McDowell?

19 A I know a Nancy McDowell, but I never have
20 been at her house at no 4:00 in the morning. Actually,
21 I didn't go to her house that much, period.

22 Q At the bottom it says Robert Wilson and
23 Edward Wilson -- or Ed Wilson, and it says "look like
24 him." Do you know who Robert and Ed Wilson are?

25 A No.

1 Q You mentioned that you did know Nancy
2 McDowell. Is that Linda McDowell's mother-in-law?

3 A Yes.

4 Q Okay. And you said you don't know Robert or
5 Ed Wilson?

6 A No.

7 Q And you don't know -- the information in
8 these notes, as best as we can tell what it is, you
9 don't know where it came from?

10 A They say it came from my lawyer. I don't
11 know where it came from.

12 Q Do you think it came from your lawyer talking
13 to you?

14 A No, ma'am.

15 Q Do you think your lawyer might have talked to
16 anybody else?

17 A He had to if he wrote these. It wasn't me.

18 Q It says at the bottom "works some for
19 Manpower." Did you work for Manpower?

20 A Yes, ma'am.

21 Q Okay. Do you know if your lawyer talked to
22 anybody else around the time that you were arrested?

23 A No, ma'am, not by my knowledge.

24 Q Do you know if he talked to Betty Shuford or
25 Brenda Smith?

1 A I don't know if he talked to anyone.

2 Q Let's talk about the day that you were
3 arrested, Mr. Grimes. Do you remember what day of the
4 week that was?

5 A It was on Tuesday.

6 Q Tuesday. Okay. And what happened?

7 A I had went to work that day and I worked a
8 normal day. Got off from work. When I got off from
9 work, I went by Rachel Wilson's house for about 10
10 minutes. And then when -- and went on over to Brenda
11 Smith. And when I got there, Brenda Smith told me that
12 the police had came by there with some warrants.

13 And I asked her for what, and she said she
14 didn't know. And I asked her could she carry me to the
15 Police Department to find out. I didn't take time to
16 eat or anything, I just went straight to the Police
17 Department.

18 Q She drove you there?

19 A Yes, ma'am.

20 Q Do you know about what time that was?

21 A It was about 5:30 or 20 minutes to 6:00.

22 Q What did you think the warrants were for?

23 A I didn't have no idea because I know I hadn't
24 did anything, so I knew they couldn't have no warrants
25 on me. That's the reason I went up there, to find out.

1 Q All right. What happened when you got there?

2 A I was asking them about did they have any
3 warrants on me. And all the police officers said no,
4 they didn't know nothing about any. And I said, "Well,
5 Brenda Smith told me that Steve Hunt came by with some
6 warrants on me."

7 So they told me to hold on for a minute, that
8 they would get in touch with Steve Hunt on the radio.

9 Q Steve Hunt?

10 A Steve Hunt, yes, ma'am.

11 Q Okay. Did you know Steve Hunt?

12 A I used to know him. He used to pass the
13 house a whole lots walking his dog and this and that,
14 but I didn't know him personally.

15 Q Okay. Go ahead.

16 A So when they called him, he told them yeah,
17 he had some warrants, just hold me there until I got --
18 until he got there.

19 So when he showed up, he asked me, "Do you
20 know you got some warrants on you?" And I said, "No."
21 And I said, "For what?" And he went to saying it and
22 told me what they were for and I told him, "No way,
23 there ain't -- I haven't did anything." And he asked
24 me did I know where that place was and I told him no,
25 not offhand.

1 And he asked me by name of the lady and I
2 didn't know her name, so -- he said, "You're for sure?"
3 And I said, "Yeah. I know I ain't did nothing," and I
4 told him I would take a lie detector test or whatever.
5 He said, "Just sit over there and let me get my
6 papers."

7 So he went to writing stuff down. He told
8 them to go ahead and book me. And I said, "But I
9 haven't did anything." And he said -- told me, "You
10 better be quiet because you is in a lot of trouble and
11 I don't want to talk to you right now about it."

12 And I said, "But I haven't did anything"
13 again. He said, "I'm telling you, you better be quiet
14 because you're in a lot of trouble." After he told me
15 that, then I -- I meant to get up there for them to
16 fingerprint me or whatever and he asked me, "Do you
17 have any tattoos?" And I told him, "No, I don't have
18 no tattoos," but I had a mole and a cut on my neck and
19 a cut on my chest.

20 Q Was this a fresh cut or do you mean an old
21 scar?

22 A A scar.

23 Q So it wasn't something that was bleeding?

24 A No, ma'am.

25 Q Okay.

1 A And when I got up he said, "Oh, you are
2 missing two fingers." And I said, "Yes, sir." And
3 that's all he said to me, period.

4 Q Were you intoxicated at this time?

5 A I wasn't intoxicated, but I had drunk a --
6 about half -- a half -- about a half a pint of wine or
7 something like that on the way from work.

8 Q What were you wearing?

9 A I were wearing a pair of blue jeans, a
10 short-sleeved shirt, and a pullover green sweater.

11 Q Can you look at that picture that I handed
12 you earlier if you still have it.

13 Does that look like the clothes you were
14 wearing that day?

15 A You can't tell the color of the sweater, but
16 I guess it would be green.

17 Q The shirt that you were wearing, did it have
18 a collar that came out?

19 A Yes.

20 Q So you had the collar kind of pop out over
21 the sweater?

22 A Yes, because the sweater was almost like a
23 v-neck sweater.

24 Q Did you wear that sweater a lot?

25 A I wore it to work. I didn't wear it on the

1 weekends.

2 Q And when you wore it, did you always wear a
3 shirt underneath it?

4 A Yes.

5 Q A collared shirt?

6 A Well, I wore different type of shirts.

7 Q Okay. What kind of material was the sweater?

8 A Sort of wool like.

9 Q Did Mr. Hunt -- Investigator Hunt ever come
10 back and try to talk to you later on about the case?

11 A No, ma'am.

12 Q Would you have talked to him if he had?

13 A Yes, ma'am.

14 Q Did any other officers ever try to talk to
15 you about the case?

16 A No, ma'am.

17 Q Would you have talked to them if they had?

18 A Yes.

19 Q Mr. Grimes, do you know a man named Albert
20 Turner whose street name is LeeLee?

21 A I know him in a way and I don't know him. I
22 have seen him close up to -- just two times, but it was
23 during the same -- probably the same period of one
24 going-on night.

25 Q Did you know his brother, Robert Turner?

1 A Yes, I know him real good.

2 Q Was Robert Turner a police officer?

3 A Yes, sir.

4 Q Okay. So you said you had seen Albert Turner
5 about close up -- close up about two times?

6 A Yes.

7 Q Do you remember when that was? Was it close
8 to the time of your arrest? Years earlier?

9 A A month before.

10 Q Were you ever arrested while you were with
11 Mr. Turner?

12 A No, ma'am.

13 Q Were you with Mr. Turner the day before your
14 arrest?

15 A Before? No, ma'am.

16 Q The day of your arrest?

17 A No, ma'am.

18 Q Can you tell me about that time that you said
19 you did see him close up? Where were you?

20 A We was at Beary Allen's house one Saturday
21 night.

22 Q Now, Mr. -- go ahead.

23 A And it was about 11:00 or 11:15 that night.
24 We were sitting around talking, and Beary Allen asked
25 him to leave and he wouldn't leave.

1 Q Beary Allen asked Albert Turner to leave?

2 A Yes. So Beary asked me to make him leave and
3 I told him I couldn't make him leave. So he asked me
4 would I go over there next-door and call the police to
5 ask them to come out there to make him leave. And I
6 told him I would go and ask the people next-door to
7 call the police.

8 Q Did Beary Allen have a telephone?

9 A No, ma'am.

10 Q Now, did people regularly hang out at Beary
11 Allen's house?

12 A Yeah. A few of us did, yes, ma'am.

13 Q And you regularly hung out at Beary Allen's
14 house?

15 A Right smart, yes, ma'am.

16 Q Okay. Do you know if Albert Turner regularly
17 hung out at Beary Allen's house?

18 A No, ma'am.

19 Q No, you don't know? Or no, he didn't?

20 A He didn't.

21 Q So you went over to use the phone. Whose
22 house did you go to to use the phone?

23 A I went to Ms. Elliott's house; I didn't know
24 who she was, but that's whose house I went to.

25 Q You now know that her name was Carrie

1 Elliott?

2 A Yes.

3 Q But at the time you did not know what her
4 name was?

5 A No, ma'am.

6 Q And she lived next-door to Beary Allen?

7 A Yes, ma'am.

8 Q Okay. And did she let you use the phone?

9 A No, ma'am. She came to the door and asked me
10 what I want. She didn't open the door or nothing. She
11 had the screen door closed and I told her, and she
12 called the police for me.

13 Q So you didn't go inside the house and use the
14 phone?

15 A No, ma'am.

16 Q Okay. And did the police come?

17 A Yeah, they came, but Albert had left.

18 Q Albert had left?

19 A Yes.

20 Q Okay. So you said you -- that was when you
21 spoke with Ms. Carrie Elliott.

22 A Yes, ma'am.

23 Q And that was about a month before your
24 arrest?

25 A Yes, ma'am. That was the only time I ever

1 talked to her in my life.

2 Q On the day of October 24, 1987, did you ever
3 go to Carrie Elliott's house?

4 A No, ma'am.

5 Q Did you go to Beary Allen's house?

6 A I went by there, but he -- I have -- I didn't
7 know that he had moved. He moved sometime that week.
8 I hadn't been by there that week. And I went by there
9 and he had moved that day.

10 Q On the day that you just described to us you
11 did go by Beary Allen's house?

12 A Yes.

13 Q When did you do that?

14 A I went by there -- oh, you're referring on
15 the 27th?

16 Q I'm talking about October 24, the day that
17 the --

18 A I mean, the 24th? No, I didn't go by his
19 house on the 24th.

20 Q Okay. Did you rape Carrie Elliott?

21 A No, ma'am.

22 Q Did you hurt Carrie Elliott?

23 A No, ma'am.

24 Q Did you ever go into Ms. Carrie Elliott's
25 house?

1 A No, ma'am.

2 Q Mr. Grimes, after you were arrested, did you
3 ever make bond?

4 A No, ma'am.

5 Q So you stayed in jail waiting for your trial?

6 A Yes, ma'am.

7 Q Did you ever talk to any people in the jail
8 about your case and what you were charged with?

9 A No, ma'am. I didn't talk to anyone about my
10 case.

11 Q Do you remember anybody named Charlie in jail
12 with you?

13 A No, ma'am.

14 Q Charles?

15 A I remember a Charles, but I -- I didn't talk
16 to him about my case.

17 Q Do you remember Charles' last name?

18 A I think it was Charles Hall.

19 Q And you said you didn't talk to him about
20 your case?

21 A No.

22 Q Were you ever offered any plea -- plea deals,
23 plea bargains?

24 A He didn't never tell me about no plea bargain
25 up until after we had done with the court. Then he

1 said that they offered me two life sentence plea
2 bargain. And I had told him that -- he said the reason
3 he didn't never mention it to me because I told him I
4 wouldn't even take a year plea bargain because I know I
5 was innocent.

6 Q Was that your attorney? When you say "he,"
7 are you talking about Mr. de Torres?

8 A Yes, ma'am.

9 Q Now, Mr. Grimes, you had a suspect kit or a
10 rape kit done on you, and that was at your request; is
11 that right?

12 A Yes, ma'am.

13 Q Why did you want that?

14 A Because I knowed I was innocent and I knew
15 that if they had something, mine wouldn't match nothing
16 they had because I knew I hadn't did anything.

17 Q What evidence did you think they could
18 compare that to? What did you think had been
19 collected?

20 A I didn't have no idea. My lawyer tried about
21 four times to try to find out what they had or see what
22 kind of evidence they had, but they always told him
23 they didn't have anything.

24 Q Prior to this offense, what are all of the
25 things that you have been charged with?

1 A I have been charged with two DWIs and one
2 having a blue light in my car one time.

3 Q Okay. Now, did you ever have a trespass
4 charge that was dismissed in 1985?

5 A 1985?

6 Q November?

7 A No, not in '85, not no trespass.

8 Q How about in -- let's go way back to January
9 of 1971. You were in the military; right?

10 A Yes, ma'am.

11 Q And did you have a charge of larceny and they
12 reduced your grade to Private First Class?

13 A Yes, ma'am.

14 Q And that was back in '71 when you were in
15 your 20s; right?

16 A Yes, ma'am.

17 Q Is that it? Those are the only things?

18 A All I remember.

19 Q Okay. Have you been up for parole?

20 A Yes, ma'am.

21 Q Have they ever told you why your parole
22 wasn't granted?

23 A No, they didn't tell me why it wasn't
24 granted, but at the time -- a couple of months after I
25 was up, I got another letter and they put me up on the

1 MAP program.

2 Q What is the MAP program?

3 A A MAP program where they set up a certain
4 length of time and certain things that you have to do
5 in that certain length of time that you will
6 automatically get out. And they gave me a two-year
7 MAP. And the first month -- first six months, I had to
8 do a whole lot of classes but I had done did all the
9 classes that they required before I got the MAP. So I
10 didn't have to do anything. So I -- when I got there,
11 I just went to go into classes, like HRD or
12 forthability (phonetic) or different kind of classes
13 like that. Then the second six months I went to a
14 couple classes and went to working on the clothes house
15 and...

16 Q In the what?

17 A Clothes house.

18 Q Clothes house?

19 A Yes.

20 Q Okay.

21 A And then after I made my letters, I've been
22 on work release for about eight months.

23 Q Now you mentioned a little bit of time ago
24 writing to lots of people or contacting lots of people
25 over the years, so your attorney, Mr. Torres, you've

1 written to him since your conviction?

2 A Yes. I wrote to him two or three times
3 trying to find out what Exhibit Number 5 was, and a
4 couple of people tried to give -- get a DNA test done.
5 That's when he told me that they had done did away with
6 my evidence and got rid of my evidence or something
7 back in '90 or '91.

8 Q Okay. You said --

9 A Prisoner Legal Services kept my case for
10 about four years. And he kept telling me that reading
11 the -- he read the transcript three or four times and
12 said, "Your transcript shows a lot of innocence, but
13 without any type of evidence or anything, we won't be
14 able to help you."

15 And I tried to file a clemency on my own back
16 in '96. I wrote a few places like Inside Edition.

17 Q Did you file a habeas, request for habeas?

18 A Yeah, I tried to file one on my own. I filed
19 it always through the State Courts and then filed it in
20 the United States District Court, and they sent it back
21 to me and told me that I needed a lawyer to file it;
22 that I had good claims to file on, and I needed a
23 lawyer to file it.

24 Q Did you ever talk to any lawyers?

25 A So that's when we went and hired Walter

1 Johnson out of Greensboro.

2 Q Walter Johnson?

3 A And we paid him to try to -- and I wanted him
4 to file the same motion that I had filed, but he didn't
5 never file anything. I never did get my money back,
6 never could get my transcript or nothing back from him.

7 Q You said "we hired." Who do is "we"?

8 A My sister is the one who paid him, Gladys
9 Perkins.

10 Q Okay. How about an attorney named Noell Tin.

11 A Noell Tin, a good friend of mine from the
12 Jehovah's Witnesses and the Moose. He's the one that
13 talked to him and got him to -- paid him to read my
14 transcript. And when he read the transcript, he said
15 all the paperwork point as I was innocent, but it would
16 cost so much to do an investigation and this and that,
17 and we probably couldn't come up with the money so
18 that -- he said, "But, I have been working on a case
19 like yours with the Innocence Project and I could go
20 back to the Innocence Project and refer you to them to
21 see would they would take your case, because that would
22 be the best way for you to go."

23 So he got in touch with the Innocence
24 Project. And I guess that's where I -- I got to meet
25 Ms. Mumma from -- when I got the questionnaire from

1 them and fill it out, I sent it back in.

2 Q Are you talking about Ms. Christine Mumma?

3 A Yes, ma'am.

4 Q Okay.

5 A And this were back in 2003.

6 Q Okay.

7 A And I think she kept on working on it for
8 about six years or something like that.

9 Q So you've worked with and contacted a lot of
10 attorneys and people over these years. Why?

11 A Because I knew I was innocent and I wasn't
12 going to give up just do the time for something I
13 didn't do.

14 MS. MONTGOMERY-BLINN: Commissioners, do you
15 have any questions for Mr. Grimes?

16 COMMISSIONER SMITH: Just very briefly.
17 Where were you born? What is your birthplace?

18 THE WITNESS: Cleveland County.

19 COMMISSIONER SMITH: And did you have a lot
20 of brothers and sisters?

21 THE WITNESS: I had six brothers -- it was
22 six boys and three girls.

23 COMMISSIONER SMITH: Are some of them living
24 now? I know you have one sister. Are some of the
25 others living?

1 THE WITNESS: No, sir.

2 COMMISSIONER SMITH: They're all gone? Is
3 the one sister still living?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER SMITH: Where does she live?

6 THE WITNESS: Well, they call it Kings
7 Mountain out towards Marsh Lake on Stony Point Road.

8 COMMISSIONER SMITH: Yes, sir. And where did
9 you go to school when you were a little boy?

10 THE WITNESS: I went to elementary school at
11 Vance Grove, Douglas and left there in 7th grade. From
12 7th grade to 12th grade, I was Douglas High in
13 Lawndale, North Carolina.

14 COMMISSIONER SMITH: In which town?

15 THE WITNESS: Lawndale.

16 COMMISSIONER SMITH: All right, sir. And
17 when you were in the military, what branch of service
18 were you in?

19 THE WITNESS: Army.

20 COMMISSIONER SMITH: Did you volunteer or
21 were you drafted?

22 THE WITNESS: Drafted.

23 COMMISSIONER SMITH: How long were you in the
24 Army?

25 THE WITNESS: Two years.

1 COMMISSIONER SMITH: And when you got out of
2 the Army, where did you go?

3 THE WITNESS: I came back to Cleveland County
4 and went to work in Hickory, North Carolina.

5 COMMISSIONER SMITH: And you are on work
6 release now?

7 THE WITNESS: Yes, sir.

8 COMMISSIONER SMITH: Is that going well?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER SMITH: What kind of work do you
11 do on work release?

12 THE WITNESS: I'm mostly something like a
13 handyman around the plumbing company because they would
14 not let me go from place to place on work release by
15 being a inmate, so you have to have somewhere
16 permanent. So I run the shop and clean up and do a
17 whole lot of odds -- all the bookkeeping and carrying
18 around the shop.

19 COMMISSIONER SMITH: Are you in good health
20 now?

21 THE WITNESS: Well, I have some small
22 defects. I think I got prostate problems, but they're
23 not giving me no bad problems or nothing.

24 COMMISSIONER SMITH: So you're in reasonably
25 good health?

1 THE WITNESS: Reasonable -- pretty good
2 health, yes, sir.

3 COMMISSIONER SMITH: Thank you, sir.

4 COMMISSIONER GREENLEE: Can you tell me, you
5 mentioned that you went to Ms. Elliott's house when you
6 were over at Beary Allen's to use the phone.

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER GREENLEE: Did she open the
9 door?

10 THE WITNESS: No, ma'am. She talked to me
11 through the door.

12 COMMISSIONER GREENLEE: Could she see you
13 from a window or anything when you went over there?

14 THE WITNESS: Went over to her house or went
15 over to Beary Allen house?

16 COMMISSIONER GREENLEE: When you went over to
17 use the phone, to ask to use the phone, could she see
18 you from either her door or window?

19 THE WITNESS: Oh, she opened the door, but
20 she didn't open the door -- screen, she had a door
21 screen block.

22 COMMISSIONER GREENLEE: Okay. So you were
23 able to see her and she was able to see you?

24 THE WITNESS: Yes, ma'am.

25 COMMISSIONER GREENLEE: Did you ever drive at

1 all during this period of time?

2 THE WITNESS: No, ma'am, because I had -- my
3 license had been took at that time. It were time for
4 me to get them back, but I wouldn't drive because I
5 didn't want to get in no type of trouble and I wanted
6 to make sure I could get my license back.

7 COMMISSIONER GREENLEE: How long had it been
8 since you had lost your license?

9 THE WITNESS: It had been three years, I
10 think. I know it were two years because I lost it, I
11 think, in '85 or something like that.

12 COMMISSIONER GREENLEE: And how did you get
13 to work every day?

14 THE WITNESS: Allan Shuford. Allan Shuford
15 drove me to work every day.

16 COMMISSIONER GREENLEE: Every day?

17 THE WITNESS: Yes, ma'am.

18 COMMISSIONER GREENLEE: Thank you.

19 JUDGE SUMNER: And you never went inside
20 Carrie Elliott's house; is that right?

21 THE WITNESS: No, ma'am -- I mean, no, sir.

22 JUDGE SUMNER: And never walked from Rachel's
23 house to her house at any time, sir?

24 THE WITNESS: No, sir.

25 JUDGE SUMNER: Do you know how far that is in

1 terms of distance between those two points?

2 THE WITNESS: To me it would seem like about
3 10 blocks, something like that.

4 JUDGE SUMNER: Thank you.

5 COMMISSIONER JENKINS: Sir, you had mentioned
6 earlier -- she was reviewing what you had been charged
7 with or convicted of, that -- or convicted of that you
8 had been caught with a blue light in your car.

9 THE WITNESS: Yes.

10 COMMISSIONER JENKINS: Can you tell me a
11 little bit about that.

12 THE WITNESS: Well, we had -- I had a
13 flashlight that was -- the lens were painted blue. And
14 one night we was just driving around, me and another
15 friend, and he was in front of me and we went to
16 playing and I went (indicating) turning the light --
17 flashlight on and off, and the police was behind me.
18 They pulled me over and charged me for having a blue
19 light.

20 COMMISSIONER JENKINS: Was there a vehicle in
21 front of you, or y'all were just --

22 THE WITNESS: My friend was -- that we was
23 following one another.

24 COMMISSIONER JENKINS: Okay. What about
25 the -- you had mentioned going to Carrie Elliott's

1 house to use the telephone and you also mentioned going
2 to Beary Allen's house.

3 THE WITNESS: Yes.

4 COMMISSIONER JENKINS: Beary Allen.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER JENKINS: And Mr. Allen lived
7 near Ms. Elliott; right?

8 THE WITNESS: Next door.

9 COMMISSIONER JENKINS: Was there someone else
10 in that area that went by Beary or last name Berry or
11 first name Beary that you're aware of?

12 THE WITNESS: No, I used to call him Beary
13 Allen all the time. His real name was Beary Allen --
14 well, it wasn't no other Berry lived there.

15 COMMISSIONER JENKINS: Okay.

16 COMMISSIONER VICKORY: Mr. Grimes, appreciate
17 you coming up here today to speak with us.

18 Now, your lawyer testified yesterday and
19 mentioned your scars and that's come up a couple times.
20 The scars are where -- where are they on your chest?
21 If you could just kind of -- I'm not asking you to pull
22 your shirt up, necessarily.

23 THE WITNESS: Right here (indicating).

24 COMMISSIONER VICKORY: Well, is it -- you
25 said it was a raised scar. Is it still raised or has

1 it gone back down some?

2 THE WITNESS: No, it's still the same way.

3 COMMISSIONER VICKORY: Can you pull your
4 shirt down? I don't know how far up it is. Not sure
5 if it's high enough for us to see.

6 THE WITNESS: (Witness complies.) It's right
7 there (indicating).

8 COMMISSIONER VICKORY: Okay. Right in the
9 middle of your chest.

10 THE WITNESS: Yeah.

11 JUDGE SUMNER: Any commissioners want to get
12 a closer look?

13 (Commissioners approach.)

14 COMMISSIONER VICKORY: Mr. Grimes, would you
15 say that scar has kind of gone down a little bit over
16 the years?

17 THE WITNESS: I don't think so. I think more
18 hair's done got up there and it's not silver like it
19 used to be. The hair mostly cover it.

20 COMMISSIONER VICKORY: Did you refer to it
21 sometime along the way as like grapes or something?

22 THE WITNESS: Yeah, I had a bunch of grapes
23 on my left jaw right here (indicating).

24 COMMISSIONER VICKORY: So that was just from
25 where the -- that knife that cut you?

1 THE WITNESS: No, I was born with that. It
2 was a birthmark.

3 COMMISSIONER VICKORY: I gotcha.

4 THE WITNESS: The reason I had it removed was
5 because they thought it was cancer when I -- when I was
6 having checkups.

7 COMMISSIONER VICKORY: Okay. So the grapes
8 you are talking about was that mole -- we've been
9 calling it a mole.

10 THE WITNESS: Yeah. It was a birthmark.

11 COMMISSIONER VICKORY: Okay. I believe
12 during trial you were asked on the stand about, you
13 know, how well you knew or how you knew or if you knew,
14 I guess, Ms. Elliott.

15 Do you remember testifying about that? And,
16 again, I'm not asking you to repeat it or anything;
17 just asking if you remember testifying back in '88.

18 THE WITNESS: Yeah, I remember them asking
19 me. I think the only thing I said, I think, was I knew
20 her, but I had never talked -- really talked to her.

21 COMMISSIONER VICKORY: Yeah. For the other
22 Commissioners, it's on page 250 of the transcript.

23 Do you have a copy of your transcript?

24 THE WITNESS: Yes.

25 COMMISSIONER VICKORY: Specifically around

1 line 12, I believe you -- you were asked if you know
2 Ms. Carrie Lee Elliott -- and you tell me if this is
3 what you said. The transcript says that your answer
4 was:

5 "A I just know her by name from this
6 warrant. I had seen her a couple of times, but
7 I did not know who she was. I had not been
8 close enough to speak to her to say hello or
9 anything like that."

10 Do you remember saying that at trial? Is
11 that --

12 THE WITNESS: Yeah.

13 COMMISSIONER VICKORY: When was it that you
14 recall this incident when you came up from Beary
15 Allen's that you spoke to her?

16 THE WITNESS: Try and use the phone?

17 COMMISSIONER VICKORY: Yes, sir.

18 THE WITNESS: It was a month -- month before
19 she got raped, I guess.

20 COMMISSIONER VICKORY: Did you not remember
21 that incident when you were testifying?

22 THE WITNESS: I didn't even think about it.
23 I didn't -- no, sir.

24 COMMISSIONER VICKORY: How late was it, would
25 you say, at night, when you went up there?

1 THE WITNESS: I guess -- it was about 11:00,
2 11:15, something like that.

3 COMMISSIONER VICKORY: Did she act nervous
4 when she came to the door or anything? Did she yell
5 through the wood door? Or did she just go ahead and
6 open the main door up?

7 THE WITNESS: At first it took her a little
8 while before she opened the door, like she were trying
9 to see who it what was or this and that. And she
10 just -- when she opened the door, she didn't open it
11 completely. You know, it got a little pull, a chain on
12 it? She pulled it open to where the chain would hold
13 the door and looked through there and talked to me
14 through there.

15 COMMISSIONER VICKORY: And what did you ask
16 her or what did you say to her when she opened the door
17 up?

18 THE WITNESS: I said, "Ma'am, Beary Allen
19 asked me to come over here to ask you to call the
20 police for him."

21 COMMISSIONER VICKORY: So you asked her to
22 call, or did you ask to use the phone?

23 THE WITNESS: No, I asked her to call the
24 police.

25 COMMISSIONER VICKORY: Okay. So you didn't

1 ask if you could use her phone; you just asked her to
2 call.

3 THE WITNESS: Yes, sir.

4 COMMISSIONER VICKORY: Do you know Linda
5 McDowell who lived on the other side of her?

6 THE WITNESS: Yes, sir.

7 COMMISSIONER VICKORY: Had you ever talked to
8 her?

9 THE WITNESS: Oh, a number of times. I mean,
10 for over two -- two or three years I talked to her
11 because she was Betty Shuford's sister.

12 COMMISSIONER VICKORY: Right.

13 THE WITNESS: And me and Betty lived together
14 for about seven years.

15 COMMISSIONER VICKORY: Did you ever talk to
16 Linda about Ms. Elliott?

17 THE WITNESS: No.

18 COMMISSIONER VICKORY: About her
19 peculiarities or anything like that?

20 THE WITNESS: No, I never have talked to her.

21 COMMISSIONER VICKORY: Did you find it
22 unusual that Ms. Elliott didn't open the door up
23 without the chain on it, or was that just -- you
24 expected that?

25 THE WITNESS: I thought it was usual for a

1 person like that because if -- being a woman, she
2 shouldn't open the door no way, not knowing a person.

3 COMMISSIONER VICKORY: Did you know anything
4 about whether she had a man living there or a husband?

5 THE WITNESS: No, sir.

6 COMMISSIONER VICKORY: Did you ever find out
7 about that later on?

8 THE WITNESS: Later on I had heard that her
9 husband was -- had died or something like that.

10 COMMISSIONER VICKORY: Was that like during
11 the trial you found out about that?

12 THE WITNESS: Yes.

13 COMMISSIONER VICKORY: Okay. Your
14 relationship with Linda McDowell, what did you think of
15 Linda?

16 THE WITNESS: Well, I think she is a jealous
17 type of person that feels like she don't get attention
18 like her other sisters did or something. And she feels
19 down or against them and whoever they deal with for
20 that.

21 COMMISSIONER VICKORY: Were you ever friendly
22 with Linda? Like, I guess it -- I believe
23 Ms. Montgomery-Blinn referred to as a "romantic
24 relationship."

25 THE WITNESS: No.

1 COMMISSIONER VICKORY: Nothing like that?

2 THE WITNESS: No.

3 COMMISSIONER VICKORY: Did you ever visit in
4 her house or anything?

5 THE WITNESS: Not at her house. She used to
6 come to our house.

7 COMMISSIONER VICKORY: Did you ever have any
8 run-ins with her? I guess that's what I'm working
9 around to.

10 THE WITNESS: No.

11 COMMISSIONER VICKORY: Any reason you can
12 think of that she would ever have any problem with you?

13 THE WITNESS: No, sure don't. The only thing
14 I think she was jealous because her sister was
15 having -- I mean, getting things done or getting things
16 that she wasn't getting because, you know, I did a lot
17 of things for different peoples and this and that when
18 I was out there, and a lot of people, you know, was
19 jealous or something.

20 COMMISSIONER VICKORY: Did you ever -- did
21 Linda ever ask you to do anything for her or --

22 THE WITNESS: Well, I have helped her pay the
23 bills a couple times when she had her own apartment
24 because she wasn't able to do them. That was at the
25 other place with me and Betty's relationship. That was

1 right before she went to talking to Willie Mason,
2 living with Willie Mason.

3 COMMISSIONER VICKORY: Did -- after you
4 helped pay some bills, did you ever refuse to let --
5 did she ever ask you after that and you say, "No, I
6 can't do it"?

7 THE WITNESS: No. No, I -- uh-uh.

8 COMMISSIONER VICKORY: Thank you, Mr. Grimes.

9 COMMISSIONER DUNCAN: Good morning,
10 Mr. Grimes. You said that you would go to Beary
11 Allen's house pretty regular.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER DUNCAN: How did you get there
14 normally?

15 THE WITNESS: Normally, a lot of times Brenda
16 would drop me off over there. A few times I had walked
17 over there.

18 COMMISSIONER DUNCAN: So you have walked that
19 distance?

20 THE WITNESS: Yes. From Brenda's house.

21 COMMISSIONER DUNCAN: You said you knew
22 Albert Turner just a little bit, but you did know Bobby
23 Turner.

24 THE WITNESS: Robert.

25 COMMISSIONER DUNCAN: Robert Turner.

1 THE WITNESS: Yes.

2 COMMISSIONER DUNCAN: And he was a police
3 officer?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER DUNCAN: How did you know him?

6 THE WITNESS: Well, he was talking to a girl
7 named Flossie Robinson, and Flossie Robinson and Betty
8 Shuford were best of friends. And Flossie would be at
9 the house a lot of times, and he would come there to
10 see Flossie because he was married.

11 COMMISSIONER DUNCAN: Okay. And you say that
12 you had a romantic relationship with Ms. Shuford;
13 correct?

14 THE WITNESS: Yes, sir.

15 COMMISSIONER DUNCAN: And Ms. Smith, is that
16 correct, as well?

17 THE WITNESS: Yes, sir, but not at the same
18 time.

19 COMMISSIONER DUNCAN: Okay. Any of the other
20 ladies that we have talked about that were in your kind
21 of comings and goings, catching rides, and that kind of
22 thing? Any of the rest -- any other romantic
23 relationships there with any of the other ladies?

24 THE WITNESS: Not no names that you have
25 called.

1 COMMISSIONER DUNCAN: Okay. Thank you, sir.

2 THE WITNESS: You're welcome.

3 COMMISSIONER GREENLEE: Mr. Grimes, when you
4 were over to Beary Allen's house and you said that he
5 wanted you to call the police, what kind of behavior
6 was Albert Turner exhibiting that he wanted you to call
7 the police about?

8 THE WITNESS: Well, at the time I was over
9 there, there was a girl there named Peggy that I was
10 associating with part-time this and that, you know. He
11 was there and he didn't want to leave because I guess
12 he was sort of liking the girl too or whatever, and he
13 didn't want to leave that night. And Beary kept asking
14 him to leave. And I didn't actually know why he didn't
15 want to leave, but Beary asked me to make him leave and
16 I told him I couldn't make him leave, you know, it
17 wasn't up to me.

18 And he asked me, well, would I -- said he
19 didn't want to leave his house, asked me would I go
20 over to Ms. Carrie's house and ask her to call the
21 police, and that's what I did.

22 COMMISSIONER GREENLEE: Was Albert Turner --
23 was he acting inappropriately in some kind of way?

24 THE WITNESS: Yeah. He was talking loud to
25 Beary Allen and he would cuss him a couple times. But

1 the second time I've seen Beary Allen [sic] -- I mean,
2 after -- was when he came back after the police left
3 and jumped on me and I wouldn't fight him, and then he
4 eventually left. And I ain't never seen him no more.
5 Because he came back over there and jumped on me
6 because he said that the police had been looking for
7 him or something about something. And if he would have
8 been there, they would have arrested him. And I guess
9 that's the reason he came back to jump on me, for
10 having the police called.

11 COMMISSIONER VICKORY: Let me ask you one
12 more thing about Beary's. I kind of got lost in the
13 timeline, I guess. You mentioned going back over to
14 Beary's later on and he had moved out. When was that?

15 THE WITNESS: That was that Sunday after the
16 rape.

17 COMMISSIONER VICKORY: Okay. But it was
18 before you -- it was after the rape but before you got
19 arrested?

20 THE WITNESS: Yeah.

21 COMMISSIONER VICKORY: Had you heard about
22 the rape at that point --

23 THE WITNESS: No, sir.

24 COMMISSIONER VICKORY: -- or anything?

25 THE WITNESS: No, sir. I didn't hear nothing

1 about the rape up until Tuesday evening when I got off
2 from work.

3 COMMISSIONER VICKORY: Okay. So -- but you
4 went back right over there within the two doors down of
5 Ms. Elliott's house the day after the rape --

6 THE WITNESS: Yes.

7 COMMISSIONER VICKORY: -- looking for a
8 drink, I guess it would be.

9 THE WITNESS: Well, I was looking for Beary
10 Allen.

11 COMMISSIONER VICKORY: Okay.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER VICKORY: And he had moved out
14 sometime?

15 THE WITNESS: That week -- he moved out
16 sometime the week before -- before the rape. I didn't
17 know he had moved.

18 COMMISSIONER VICKORY: Did he have a
19 pretty -- I mean, let me just make sure I'm -- he kind
20 of ran a liquor house. Is that what you're saying?

21 THE WITNESS: He didn't run a liquor house,
22 but we bought some liquor and carried it there and we
23 drunk it there. He had quit drinking. He -- when I
24 first went to going over there, he drunk heavy. And
25 for some reason he just quit drinking at all.

1 COMMISSIONER VICKORY: Did a lot of people go
2 over there, though, to drink?

3 THE WITNESS: Oh, it would be about six or
4 seven peoples, yes.

5 COMMISSIONER VICKORY: And you say it was
6 within a month that you and Mr. Turner had your run-in
7 over there at Beary's?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER VICKORY: Was it later on that
10 night when he came back and jumped on you, or was
11 later -- like a few days later?

12 THE WITNESS: No, it was the same -- same
13 night.

14 COMMISSIONER VICKORY: Okay. Well -- okay --
15 okay.

16 COMMISSIONER DUNCAN: And you may have said,
17 when did that occur?

18 We know that the assault of Ms. Elliott
19 occurred on the 24th. When did that occur, when the
20 fight -- or you went over and called the police and
21 then he came and jumped on you? About when did that
22 take place?

23 THE WITNESS: A month before time, before the
24 rape.

25 COMMISSIONER DUNCAN: About a month before?

1 THE WITNESS: Yes, sir.

2 JUDGE SUMNER: Mr. Grimes, you frequented
3 Mr. Allen's house, Beary Allen's house -- how often
4 would you be over there?

5 THE WITNESS: Oh, about two times a week,
6 something like that.

7 JUDGE SUMNER: And were you ever running with
8 a white woman around over there in the yard or
9 something, in the apartment?

10 THE WITNESS: I was messing around with
11 her -- Peggy, part-time, yes, sir.

12 JUDGE SUMNER: And who was this lady that you
13 would be taking the meat to that prepared it for you?

14 THE WITNESS: Rachel Wilson.

15 JUDGE SUMNER: Rachel Wilson's house. And
16 what was she supposed to fix for you? What was she
17 going to fix for you?

18 THE WITNESS: Chitlins.

19 JUDGE SUMNER: You know that stuff is bad for
20 you, don't you?

21 THE WITNESS: No, sir.

22 JUDGE SUMNER: You didn't know that?

23 THE WITNESS: I was born on that.

24 JUDGE SUMNER: All right. Thank you.

25 Anybody else?

1 COMMISSIONER VICKORY: Let me go back. Was
2 any particular night of the week a bigger night than
3 the others there at Beary Allen's house? Like Saturday
4 night? Were there people on Saturdays than other
5 nights?

6 THE WITNESS: I would say more people would
7 be there on Friday nights because most peoples would go
8 different places on Saturdays.

9 COMMISSIONER VICKORY: Did you -- after the
10 run-in that you had with Mr. Allen [sic], did you come
11 back to Beary's house several more times during the
12 month before the rape? Or before he moved out?

13 THE WITNESS: Yes.

14 COMMISSIONER VICKORY: And you never saw
15 Mr. Allen over there again.

16 THE WITNESS: I've never seen Albert over
17 there no more; Mr. Allen was there, but --

18 JUDGE SUMNER: Right. I'm sorry. Yeah,
19 you're right.

20 During these trips that you went back, did
21 you -- did Beary Allen ever tell anybody that was at
22 the house, "Look, I'm moving out in a couple days?"

23 You were shocked when you went back there?

24 THE WITNESS: Yeah. I didn't know he had
25 moved. I wouldn't have went back if I knew he had

1 moved.

2 COMMISSIONER VICKORY: People ever get
3 dropped off over there? Just left there to go into
4 Mr. Allen's house by other people?

5 THE WITNESS: Yeah, at times.

6 COMMISSIONER VICKORY: So if somebody had
7 been dropped off on that Saturday night, showed up at
8 Mr. Allen's house and he was moved, they would be
9 looking for a phone, probably, wouldn't they? To call
10 for a ride?

11 THE WITNESS: Well, if -- I suppose they
12 would have to find another way home or something like
13 that.

14 COMMISSIONER VICKORY: Was it generally known
15 among the clientele there at Beary Allen's house that
16 Ms. Elliott was the only one in that complex that had a
17 telephone?

18 THE WITNESS: I don't know because I didn't
19 never know people using the phone. I tell you the
20 truth, I never have seen anyone go to Ms. Elliott's
21 house.

22 COMMISSIONER VICKORY: But you knew and
23 Turner knew; right?

24 THE WITNESS: Yeah.

25 COMMISSIONER VICKORY: You knew from your

1 prior experience and Albert knew from that prior
2 experience the month before.

3 THE WITNESS: I guess. I don't know how he
4 knew because I hadn't never seen him over there before.

5 COMMISSIONER VICKORY: But he knew you
6 called -- didn't he know you went down there to
7 Ms. Elliott's to call?

8 THE WITNESS: Oh, he know I called that
9 night.

10 COMMISSIONER VICKORY: So he knew Ms. Elliott
11 had a phone too?

12 THE WITNESS: Yes. Yeah.

13 COMMISSIONER VICKORY: All right. Thank you.

14 MS. MONTGOMERY-BLINN: Your Honor, I have a
15 clarifying question, if I may.

16 JUDGE SUMNER: Yes, ma'am.

17 EXAMINATION BY MS. MONTGOMERY-BLINN:

18 Q Mr. Turner [sic], you mentioned a woman named
19 Peggy, a white woman. When you talked with
20 Ms. Stellato and Mr. Lau, you talked about Pam -- Pam and
21 Linda, who were sisters.

22 Is Peggy Pam, or is that somebody different?

23 Do you remember when you talked in one of the
24 interviews with Ms. Stellato and Mr. Lau, you told them
25 about two young women named Pam and Linda who went to

1 Beary Allen's house?

2 A Yeah.

3 Q You had a relationship with Pam. Is Peggy a
4 different person, or is Peggy Pam?

5 A Pam.

6 Q So when you say "Peggy," are you talking
7 about the same or person you referred to as Pam?

8 A Yes.

9 Q And how old was Pam, do you remember?

10 A About 23 or 24.

11 Q And you said she was white?

12 A Yes.

13 Q And you would see her at Beary Allen's house?

14 A Yes.

15 Q Okay. And you had a romantic relationship?

16 A Yes.

17 Q What I refer to as a romantic relationship.

18 Thank you, I just wanted to clarify that.

19 A Yes, ma'am.

20 JUDGE SUMNER: Any other questions?

21 Mr. Grimes, thank you.

22 (Witness dismissed.)

23 MS. MONTGOMERY-BLINN: Your Honor, I will ask
24 that Mr. Grimes be released and the deputies be
25 permitted to return.

1 JUDGE SUMNER: He is free to go.

2 MS. MONTGOMERY-BLINN: Thank you. Would you
3 like a break before --

4 JUDGE SUMNER: Let's take a break.

5 (Discussion off the record.)

6 JUDGE SUMNER: All right, folks. We are at
7 ease.

8 (Recess taken, 10:58 to 11:19 a.m.)

9 JUDGE SUMNER: All right. We are back in
10 session.

11 MS. MONTGOMERY-BLINN: Commissioners, we do
12 have a map that we were going to give you tomorrow of
13 Hickory with some of these places labeled on it. And
14 also, when Investigator Nowatka testifies, he lives and
15 works in Hickory, if you want to ask him questions
16 about distances, too. I know there have been a couple
17 questions about that.

18 And also what I'd like to do at this moment,
19 before we move into the experts about the hair
20 examination, I'd like to call Ms. Stellato -- re-call
21 Ms. Stellato to talk about this set of houses and who
22 lived there because I know there were some questions
23 about that as well.

24 So the Commission re-calls Sharon Stellato.

25 (Sharon Stellato re-called.)

1 EXAMINATION BY MS. MONTGOMERY-BLINN:

2 Q Ms. Stellato, you are still under oath.

3 When you interviewed people from Hickory,
4 witnesses in this case, did you talk to them about the
5 quadriplex that Ms. McDowell testified about where she
6 lived, the victim lived, Beary Allen lived?

7 A We did.

8 Q Okay. And I'm going to put a picture up on
9 the slide. Did Commission staff create the added --
10 the arrows and text box on this image?

11 A We did.

12 Q Okay. Now, what is the image itself?

13 A It is the quadriplex.

14 Q Okay. And where is that? Is that an aerial
15 photograph?

16 A Yes.

17 Q And was that from around the time period in
18 the '80s?

19 A It is, yes.

20 Q Okay. And was that obtained by the
21 Commission staff?

22 A It was.

23 Q Okay. Who did -- which witnesses gave you
24 information about who lived in each of these
25 apartments?

1 A Several. Willie Mason, Linda McDowell,
2 Willie Grimes. I'm happy to go through the book, but
3 there were several witnesses that we interviewed that
4 had information about people who lived there at that
5 time.

6 Q Okay. And did you combine the information
7 that they gave you to label these houses on this photo?

8 A Along with the trial transcript of testimony,
9 yeah.

10 Q Okay. And was everybody that you spoke to
11 consistent about who lived in which apartment?

12 A Yes.

13 Q Okay. And if you would just stand up near
14 one of these screens, one of these many screens, and
15 point out for us where each person lived.

16 A So Beary Allen is on the end next to Carrie
17 Elliott. And then on the other side of Ms. Elliott is
18 Willie Mason; and Linda McDowell lived with -- stayed
19 with him. And then on this end is Marshall Berry. A
20 lot of people called him Marsha, but it's Marshall.

21 Q So there are two "Berrys"; a Beary Allen on
22 the one end and a Marsha Berry on the other end?

23 A And both are -- or were older white men.

24 Q Both Beary Allen and Marshall Berry?

25 A Yes.

1 Q And just to be clear, we're looking at one
2 roof but it is four apartments that are down below.

3 A The arrows been -- or the names being on the
4 opposite sides don't mean anything. You get in the
5 front, you go out the back. All of them have four
6 front doors, all of them have four back doors, and they
7 are really small one-bedroom/two-bedroom apartments.

8 Q And was this public housing?

9 A It is public housing.

10 Q And it still exists today?

11 A It does.

12 Q And you've been out to see it?

13 A We have.

14 Q Okay. And I think there was -- you can sit
15 back down.

16 I think there was some description about a
17 liquor house or drinking and Beary Allen's house.

18 Can you describe that to us.

19 A The people that we interviewed described both
20 of the "Berry" homes as being what they call the liquor
21 houses. Beary Allen's being that people would come
22 there and drink; not that he sold liquor from there,
23 but people would come there on Friday and Saturday
24 nights and drink. And then Marshall Berry, on the
25 other end, the same thing; he was known to keep his --

1 from the interviews we conducted -- to keep his door
2 open, his blinds open, people would just come and go
3 into his home as they pleased.

4 Q And when you talked to witnesses, did you ask
5 him who had telephones in the quadriplex?

6 A We did ask them that.

7 Q And what answers did you get?

8 A Ms. Elliott had a phone and Marshall Berry
9 had a phone.

10 There was some testimony earlier about the
11 movement -- Beary Allen have moved out around the time
12 of the rape, and Marshall Berry apparently moved out
13 around that time as well.

14 We went to Public Housing and tried to get
15 more information about that. It doesn't go back that
16 far, but it was pretty common, from what we can tell,
17 that people were moved to other public housing areas,
18 and the records just don't go back that far.

19 Q Okay. And there was some testimony about a
20 911 call or -- well, I guess maybe 911 didn't exist
21 then. A call to the police that Ms. Elliott made or
22 made from her home. Were you ever able to obtain any
23 records about police calls from 1987?

24 A There was no 911. Actually, if you read the
25 trial transcript, she -- the victim was unable to

1 remember the number for the police department. We
2 attempted to locate records of any police phone calls,
3 and they don't go back that far.

4 Q Okay.

5 MS. MONTGOMERY-BLINN: Commissioners, do you
6 have any questions about this to help understand some
7 of the location testimony that you heard?

8 COMMISSIONER JENKINS: You just mentioned
9 phone calls, that there were no records of calls for
10 service to that address during that period?

11 THE WITNESS: No, sir.

12 COMMISSIONER JENKINS: There were no records?

13 THE WITNESS: They don't go back that far.

14 Everything prior to at least the mid-1990s
15 and even after that was done by paper, and they don't
16 have anything from -- Investigator Nowatka can probably
17 testify more to that later, but they don't have
18 anything that far back.

19 MS. MONTGOMERY-BLINN: Any other questions?

20 Okay. Thank you, Ms. Stellato.

21 (Ms. Stellato stands down.)

22 MS. MONTGOMERY-BLINN: In 1988, the hairs
23 that were found at the crime scene were sent to the
24 State Bureau of Investigation for microscopic hair
25 analysis or comparison to Mr. Grimes' hair.

1 The analyst concluded that one of the hairs
2 found at the scene was microscopically consistent to
3 Willie Grimes' hair and could have originated from
4 Mr. Grimes. I want the expert to explain the science
5 to you and to help you understand how it was done in
6 1988 and what the status of microscopic hair analysis
7 is today.

8 The hair analyst that did comparison in 1988
9 was Troy Hamlin, and he is here today, and I will call
10 him to testify. And after Mr. Hamlin's testimony we're
11 going to bring in another expert in case you have any
12 additional questions and to talk about the state of the
13 science.

14 Your Honor, I'm not sure if I'll get through
15 all of my questions before we want to take a lunch
16 break, so I'm just letting you know for timing to
17 interrupt me at any point that you all start feeling
18 ready for lunch.

19 JUDGE SUMNER: It's 11:30 now; how about
20 12:30. Is that good?

21 MS. MONTGOMERY-BLINN: Okay. Yeah. Sure.

22 JUDGE SUMNER: All right.

23 Thereupon, TROY HAMLIN, having first been duly
24 sworn, was examined and testified on EXAMINATION
25 BY MS. MONTGOMERY-BLINN:

1 Q What is your name, please?

2 A Just a second please.

3 Q Okay. Whenever you're ready to go.

4 A Okay. My name is Troy Hamlin.

5 Q Okay. Where are you employed, Mr. Hamlin?

6 A I'm currently the Deputy Director of the
7 Crime Laboratory for City-County Bureau of
8 Identification in Raleigh.

9 Q Okay. How long have you been working there?

10 A Approximately two years.

11 Q And where were you employed before that?

12 A With the State Bureau of Investigation Crime
13 Laboratory.

14 Q And how long have you been with the -- oh,
15 I'm sorry.

16 A For approximately 28 years.

17 Q Were you employed with the SBI in 1988?

18 A Yes, I was.

19 Q And will you tell us about your work with the
20 SBI.

21 A Primarily -- in 1988, I was primarily
22 assigned a couple duties. One was a hair examiner,
23 which encompassed most of my time. I also did glass
24 examinations and some physical match comparisons.

25 Q Okay. And can you tell us about your

1 educational background.

2 A Yes. I've got a Bachelor of Science degree
3 in forensic science from the University of Central
4 Florida with a minor in chemistry. I also have a
5 Master of -- Master's of Liberal Arts degree from NC
6 State University.

7 Q Now, during the 28 years that you were with
8 the SBI and the additional 2 years, have you attended
9 training classes, additional continuing education
10 classes, those types of things?

11 A Yes, I have.

12 Q Can you briefly describe some of that for us.

13 A I completed a one-year, in-house training
14 program as far as hair examination with the North
15 Carolina State Bureau of Investigation. I also
16 attended outside training. I attended the FBI hair and
17 fiber school. I can't remember exactly what date that
18 was. I also attended the first International Symposium
19 on Hair Identification and Examination. That was back
20 in 1985. I attended numerous local -- I mean regional
21 forensic science meetings, Southern Association of
22 Forensic Scientists meeting.

23 Q Okay. And have you ever been a trainer
24 yourself?

25 A Yes, I have.

1 Q Okay. And a supervisor?

2 A Yes, I have.

3 Q Have you testified in trial before as an
4 expert in hair analysis?

5 A Yes, I have.

6 Q Do you know about how many times?

7 A Over a hundred.

8 Q And before 1988 had you received those --
9 that -- you talked about that one-year, in-house
10 training. Was that before 1988?

11 A Oh, yes. That was upon becoming employed.

12 Q And when was that?

13 A January of 1981.

14 Q So by 1988, you had been doing hair analysis
15 for at least seven years --

16 A About seven years.

17 Q -- and had training.

18 And before 1988 had you testified as an
19 expert in hair analysis?

20 A Yes, I had.

21 MS. MONTGOMERY-BLINN: Your Honor, I would
22 like to tender Deputy Director Hamlin to the Commission
23 as an expert in hair analysis.

24 JUDGE SUMNER: He is duly qualified.

25 MS. MONTGOMERY-BLINN: Thank you.

1 Q Deputy Director Hamlin, would you talk to us
2 just a little about hair analysis in general? What is
3 it you are doing when you are looking at a comparison
4 and what are you looking for?

5 A When we do an examination -- a hair
6 examination, what we are looking for is we are
7 comparing the standards that are submitted from an
8 individual, comparing those to questioned samples that
9 may be collected either at the crime scene or from the
10 victim themselves. And we do this by -- by a
11 microscopic comparison back in -- okay, referencing
12 everything from 1988, and what we would do is look at
13 the structure of the hair.

14 And typically a -- our example we would use
15 is to talk about the variation within the population,
16 looking at the microscopic characteristics of hair.
17 And we'd explain this to the jury by using a pencil:
18 Where the length of the pencil representing the length
19 of the hair, the eraser end of the pencil representing
20 the root of the hair, and the tip of the pencil
21 representative of the tip of the hair. And what we
22 would discuss is three components of hair and how they
23 vary within the population.

24 Just as this pencil has a thin outer layer of
25 paint, so does a hair have a thin outer layer. This

1 outer layer is called a cuticle. And the cuticle
2 consists of scales. And this will vary in the
3 population as to how far, how close apart the scales
4 lie into the shaft of the hair, and also how much
5 damage is associated.

6 There are variations, moving toward the
7 center of the hair, which on the pencil is represented
8 by the wooden portion. On the hair, this is called the
9 cortex. And within the cortex there exist pigment
10 particles. Now, these pigment particles have different
11 sizes, different shapes, different colors; most
12 importantly, they have different patterns. Just like
13 the wood grain from pine will vary from the wood grain
14 from oak, so will the pigment pattern vary from
15 individual to individual within the population.

16 Moving towards the tip -- center of the hair,
17 which on the pencil is represented by the lead portion,
18 on the hair this is called the medulla. This medulla
19 can run throughout the length of the shaft of the hair
20 or it can be absent altogether or there can be places
21 where it's absent and it's present.

22 Once we remove the questioned hairs, we are
23 then comparing them with the known hair samples. And
24 we do this by comparison microscopy. What comparison
25 microscopy allows you to do is get a side-by-side view

1 of two hairs, a questioned and a known. It's
2 essentially two microscopes and you're looking in,
3 seeing one on one stage and one hair on the other,
4 side-by-side view of two hairs under the same lighting
5 conditions and the same magnification so that you can
6 compare and contrast the characteristics of the
7 cuticle, cortex, and medulla to determine whether or
8 not they are consistent with one another or whether or
9 not they're different.

10 Q Thank you. If I may go back to ask you a
11 couple of questions about that.

12 A Yes.

13 Q You said the standard hair, that's the hair
14 that's given to you from, I guess, the suspect or
15 whoever it is that is the known person; is that right?

16 A The known samples.

17 Q Okay. And that would be from somebody's
18 suspect kit or rape kit?

19 A That's correct.

20 Q Okay. And then the questioned sample, this
21 is the hair that's found at the crime scene that you
22 know --

23 A Or from the victim or from the suspect;
24 unknown, questioned hairs.

25 Q Now, if you say from the victim, you don't

1 mean plucked out of the victim's head, do you?

2 A No, no, no. That's the known standard.

3 Q Okay. So this would be something, maybe,
4 that they took off of the victim's body?

5 A Clothing or pubic hair combings or something
6 along that...

7 Q Okay.

8 (Reporter admonition.)

9 Q I'm a fast talker too, so we could both drive
10 poor Tori pretty crazy.

11 And so I've got standard hair and questioned
12 hair.

13 A Uh-huh.

14 Q Are those the right terms?

15 A Yes.

16 Q Great. And so when you're looking at a hair
17 comparison, are you able to determine whether it is
18 human hair or animal hair?

19 A Yeah. There are a number of things that you
20 can determine prior to the comparison process. One of
21 them is you can determine whether or not the --
22 number one, whether or not the hair is animal or human.
23 If it is human, what race it originated from. It could
24 originate from an African-American, which
25 scientifically we call that negroid hair; or a

1 Caucasian individual, individuals of the white race; or
2 Mongoloid individuals, individuals of the American
3 Indian or Eskimo race.

4 We also can determine body area, whether or
5 not it's pubic hair or head hair or limb hair. And
6 with only pubic hair and head hair do we do actual
7 comparisons back to a standard.

8 Q Why is that?

9 A Because limb hairs or other body hairs lack
10 the variation and characteristics that head hair and
11 pubic hair have.

12 Q Okay. So you said you can determine race.
13 Is that to a certainty or a likelihood? Meaning, are
14 you saying this is probably from somebody who is
15 African-American, Caucasian, or --

16 A Yes, sometimes, because you -- it -- normally
17 you can, with a high degree of certainty, say that it
18 comes from a particular race, but of course you have
19 mixed racial characteristics with a lot of hairs which
20 you cannot say.

21 Q Okay. So if somebody is biracial, you
22 wouldn't be able to tell one way or another or --

23 A Well, they would have some mixture of both
24 characteristics.

25 Q So you'd be able to tell this is from a

1 person who is biracial, or you would just say "we can't
2 tell"?

3 A We would usually say that it is consistent
4 with mixed racial characteristics.

5 Q And then you said the part of the body it
6 originated from. Is that a certainty or a likelihood?

7 A It is a high degree of certainty.

8 Q Okay. And is that -- and we're still talking
9 about 1988?

10 A Uh-huh.

11 Q Are we also talking about today with those
12 particular questions?

13 A With the -- yeah, as far as identifying as to
14 species, as to race, as to body origin.

15 Q Okay. And I have heard you previously
16 describe, when you were speaking with the Commission
17 staff, that hair comparison is a corroborative tool.

18 Can you explain what you mean by a
19 "corroborative tool"?

20 A Collaborative tool.

21 Q Collaborative. Okay.

22 A I was wondering what you were --

23 Q Would you explain that.

24 A A collaborative tool. And hair, in itself,
25 cannot provide identity, but it can assist in a -- in a

1 criminal investigation along with other evidence.

2 That's why I say it is collaborative.

3 Q So what do you mean by it "cannot provide
4 identity"?

5 A Hair -- a microscopic examination of hair
6 cannot provide positive identity of an individual.

7 Q Okay. Now, when you're doing this comparison
8 and you have them, as you just described, under the
9 microscope, is there an empirical set of
10 characteristics, sort of a checklist you're going
11 through for the standard hair and the questioned hair?

12 A No, it's not a standard checklist because
13 what you're doing is you're examining the hair side by
14 side, and the question has been asked: What
15 characteristics do you look at? And I think most hair
16 examiners would agree that you're looking at all of
17 them. You're looking at characteristics along the
18 shaft of the hair to determine whether or not those
19 characteristics associated with the cuticle, cortex,
20 and medulla are consistent with one another or whether
21 or not they're different.

22 Q So it's not -- and I don't know if you're
23 familiar with fingerprint analysis at all, and we've
24 had some testimony that it's sort of like you're
25 looking at different markers and putting them down;

1 it's not the same as that. It's --

2 A No, you're not looking at points of
3 identification --

4 Q Thank you.

5 A -- I'll say that.

6 Q Okay. So when you have a result and you're
7 comparing and you say, you know, you can't identify
8 somebody, what can it do?

9 A It can provide, like I said, collaborative
10 evidence. There is a wide variation of characteristics
11 within the population.

12 And if I may go back in perspective a little
13 bit, we cannot quantify the results of hair
14 examination; in other words, we cannot give
15 probabilities. But in the '80s, there were a lot of --
16 I guess you could say -- not disagreement, but there
17 wasn't -- what I'm saying is there wasn't a lot of
18 guidelines to what your conclusions should be or how
19 important hair evidence was.

20 There came out, actually, I think in the
21 later '70s -- '70s, yes, in the '70s, there came out
22 with two articles written by Barry Gaudet, one of them
23 was titled An Attempt to Determine Probabilities in
24 Human Hair Comparisons -- Human Scalp Hair Comparisons;
25 one of them was called Probabilities in Human Pubic

1 Hair Comparisons. This was probably one of the first
2 papers that tried to deal with probabilities. Most --
3 the results were that -- for the human scalp hair
4 comparisons, he reached the conclusion that it is
5 estimated that if one human scalp hair found at a scene
6 of a crime is indistinguishable from at least one of a
7 group of about nine dissimilar hairs from a given
8 source, the probability that it could have originated
9 from another source is very small, about 1 in 4500.
10 And with the pubic hair comparisons, his calculations
11 came up to 1 in 800.

12 Now, these studies were important. We didn't
13 use them in court -- personally, I felt like the
14 estimations were too high -- but they did serve to show
15 that there is a wide variation in the characteristics
16 that we look at.

17 In 1985, there was held the first proceedings
18 of the International Symposium on Forensic Hair
19 Comparisons. And this was meant to provide guidance
20 and research for the discipline of forensic hair
21 comparisons.

22 And in that -- actually, I attended that
23 symposium -- there were a number of conclusions that
24 were made that actually supported the work we were
25 doing at the time as far as the significance of

1 forensic examinations.

2 And if I may quote some of these sources,
3 this was -- this was a paper presented, Human Hair
4 Comparisons Based on Microscopic Characteristics by
5 Harold --

6 (Reporter admonition.)

7 A Human Hair Comparisons Based on Microscopic
8 Characteristics by Hal Debman. And one of the quotes
9 in here is that "Although in the future the comparison
10 process may be improved through new procedures, this
11 author believes microscopical hair comparisons, when
12 properly conducted, are presently very discriminating
13 and can be the basis for a strong association."

14 Throughout the proceedings there were other
15 offers -- other papers that offered similar conclusions
16 that reinforced the significance of hair comparisons.
17 And this is another -- this is actually a panel which
18 stated, "The consensus from all reports received that
19 microscopical examinations of hair, unlike
20 fingerprints, did not present a positive identification
21 to be made except in a rare few instances -- or few
22 rare instances. An examination of similarity of
23 structure, color, pigmentation, and other
24 characteristics can be strong probative value in the
25 majority of cases when considered along with other

1 evidence."

2 Should've marked this.

3 Q Can I ask you, while you are looking for
4 that -- you don't have any extra copies of those
5 articles with you, do you?

6 A No.

7 Q Do you mind if at some point during a break
8 we take them and make a copy of them?

9 A That would be fine.

10 Q Thank you.

11 A This is another panel discussion. This is
12 Barry Gaudet, actually the author of these two
13 articles. He is talking about the hair examination
14 with the Royal Canadian Mounted Police. He's saying
15 that "The system receives over a thousand cases in
16 which hair comparison is involved, and every year
17 examiners spend a total of more than 200 workdays
18 attending court, giving testimony. These figures
19 demonstrate our belief that forensic hair comparisons
20 are valuable and that hair comparison evidence is good
21 evidence."

22 Q That one is from the 1985 symposium?

23 A That's from the -- all of this is from the
24 1985 symposium.

25 Q Okay.

1 A And this is a presentation by Richard Bisbee,
2 Michigan State Police, in which he states that "Human
3 hair has innate qualities making it one of the most
4 useful types of associative evidence. Hair is personal
5 evidence originating directly from the individual like
6 fingerprints. Hair evidence does not require
7 additional circumstantial evidence connecting it to a
8 subject, unlike toolmarks and fibers. Hair is
9 continually falling from the body. Consequently, it
10 has often -- it is often present at the crime scene on
11 the participants' clothing. Hair is persistent. It
12 adheres well to surfaces and clothing. Hair is not
13 destroyed and even after extensive fluid and tissue
14 decomposition, hair remains useful for identification
15 and comparison."

16 And then in attendance on that was Peter
17 Deforce, which is actually a defense attorney -- a
18 defense expert, excuse me, and he discusses in here
19 "I'm going to discuss the evidential value of hair.
20 Then I will discuss some of the defense expert's
21 perspective on the hair question. Although I do some
22 civil work and occasionally prosecution work as well, I
23 would like to share with you some of the perspective I
24 have in doing defense work. I think we all agree that
25 hair is good evidence. It is an appealing kind of

1 evidence because of its ubiquitous [sic], its frequency
2 of occurrence at crime scenes, and its stability as
3 contrasted with some of the biological types of
4 evidence."

5 He goes on to say, "First of all, to do a
6 bona fide re-examination will take many hours, and I do
7 not work for free so it makes for very large bills,
8 which I think are ridiculous in light of the fact that
9 I do not anticipate finding something different. In
10 other words, my prediction about being able to come up
11 with an exclusion that would please the defense at the
12 end of the examination, I think, is an outside chance."

13 So these were some of the comments and things
14 that we were listening to as we were going through this
15 symposium that aided us and reinforced our conclusion
16 or statements of the conclusions.

17 Q Okay. So how about since? That was 1985, or
18 since 1988, how has hair changed as a science, if at
19 all since that time?

20 A Well, it's changed drastically with the
21 advent of DNA. Now, again, let's put this in
22 perspective. In 1988, in serology, they were reporting
23 out blood group O, which is 43 percent of the
24 population and that was forensically significant.
25 Okay? Just as we were reporting out hair results

1 without the -- with the caveat that it does not provide
2 positive proof of identity.

3 Since that time, with DNA -- which is a much
4 more superior technology and can provide positive
5 identification, number one, serology has gone away --
6 the conventional serology ABO blood grouping has gone
7 away because you have a superior technology.

8 And also microscopic examination of hair
9 still exists, but it is used as a screening technique.
10 In other words, if hairs are found to be consistent,
11 then they're automatically subjected to DNA analysis.

12 Q Okay. And I understand that, in 1988, at the
13 SBI, cases weren't subjected to peer review, but you
14 actually are the one that instituted that change.

15 A Yes, I did.

16 Q So you've added peer review in now.

17 A I can't remember exactly what year.

18 Q Okay. So back in 1988, no peer review; but
19 now is peer review standard?

20 A Yes.

21 Q Okay. And peer review -- I'm sorry, can you
22 define "peer review," please.

23 A A peer review is taking your results from an
24 analyst and having another analyst competent in that
25 area of expertise -- and usually is a senior analyst --

1 will go behind you. And if it's a quote-unquote -- if
2 it's consistent with, they'll actually look at the
3 slides that you -- that you consider to be consistent
4 with and see whether or not they agree or disagree.

5 Q And is that a blind verification?

6 A I have turned it into a blind verification;
7 at first, it was not.

8 Q Okay. But again, in 1998, none of that. No
9 blind verification, no peer review; right?

10 A No, there was a lot of consultation. If you
11 ever had a question on a hair examination, you would
12 always consult with another examiner; that was done on
13 a regular basis.

14 Q Okay. And I believe that the SBI -- at the
15 time, in 1988, you were able to form an opinion about
16 the origin of a hair. And that -- has that changed?

17 A Yes.

18 Q So how has that changed?

19 A Right now the -- we do not -- because DNA
20 will actually provide the source justification, the
21 only thing that is stated now is that the hair is
22 microscopically consistent with.

23 Q Okay. And so none of that "could have
24 originated from"?

25 A That's correct.

1 Q So they won't say that anymore?

2 A No.

3 Q Okay. And let's talk about that language.

4 What does "microscopically consistent with" mean?

5 A Microscopically consistent means that when
6 you're looking at two hairs side by side under the
7 lighting conditions and the same magnifications, there
8 are significant differences.

9 Q Okay. Is that the same thing as a match?

10 A The -- we never refer to the word "match."

11 Q Okay.

12 A The FBI does. But we always said
13 "microscopically consistent."

14 Q Okay. And is that the same thing as saying
15 "this is this person's hair"?

16 A No.

17 Q Okay. And then what about that opinion about
18 the origination? When you say, "This hair, the
19 questioned hair, could have originated from Subject A,"
20 what does that mean?

21 A That means that it either, in fact,
22 originated from that person or it originated from
23 another individual of the same race whose hair had the
24 same microscopic characteristics.

25 Q So back in 1988 and today you would never say

1 "This hair is this person's hair."

2 A No, ma'am.

3 Q Okay. Let me ask you a hypothetical. If a
4 hair is collected at a crime scene -- a questioned
5 hair -- and the person is arrested based on that crime,
6 and then that person is held in jail for some period of
7 time, seven months. And maybe at the jail things are
8 different -- maybe their shampoo is different, maybe
9 it's, you know, hard water versus soft water or
10 different kind of water, maybe they're eating different
11 foods, not having the same things to drink, maybe the
12 seasons have changed, maybe they have had different
13 haircuts -- and then, seven months later, the suspect
14 kit existed for this person. And those two hairs -- or
15 hairs from the scene and hairs from the suspect kit are
16 given to an analyst to compare.

17 Does that -- and I know that it's just a
18 hypothetical or that it's, you know, could be varied
19 for each case, but does that change anything about the
20 analysis when in time this suspect hair was taken?

21 A Well, normally, hair does not change over
22 time --

23 Q Okay.

24 A -- unless it's been cosmetically treated
25 or --

1 Q Is that like a perm or a dye? Is that what
2 you're saying?

3 A A dye, a bleach, if they've been out in the
4 sun for a prolonged period of time. Or if they've got
5 their hair cut, the length will change. So some of
6 those things will change, but we have actually taken
7 hairs, and then, several years later, gone back to the
8 same subjects and collected more hairs, and the
9 microscopic characteristics are the same.

10 Q Okay. Would you prefer a hair to be
11 collected as close in time to the crime or does it not
12 matter to you?

13 A Oh, I would prefer that, yes.

14 Q Okay. So why would you prefer it if it
15 doesn't change?

16 A Because of the -- of the possibility that
17 some type of treatment or other things that could
18 change the characteristics could be introduced --

19 Q So it could change?

20 A -- over time.

21 It could with a cosmetic treatment, being in
22 the sun for a long period of time to bleach out the
23 hair, cutting the hair, perming the hair, things like
24 that.

25 Q Okay. Now, I understand that in your

1 training -- and I think you testified back in trial in
2 1998, I know it's been a while, but that part of your
3 training was taking a hundred hairs and matching them
4 to a hundred hairs. Do you remember that?

5 A Yeah. There were actually a number of tests
6 that I did in order to establish variability. That was
7 one of them. Also went throughout the complex and
8 asked for volunteers to donate head and pubic hair and
9 then I looked at all of those. I also did a number of
10 what's called competency tests; that's taking matching
11 tests in order to determine whether or not the hairs
12 are different or consistent with one another.

13 So there were a number of different tests I
14 took to -- really what I was doing was establishing
15 this variability because, again, you can't quantitate
16 these results. It's not like -- well, it's not like
17 ABO blood grouping, where you can say that 43 percent
18 of the population, so a lot of it -- and I've got
19 references that tell that a lot of it depends on the
20 experience and how often you look at hairs.

21 Q Okay. And who was administering these tests?
22 These were different agencies, or --

23 A No, this was internal.

24 Q Okay. So you were administering these tests
25 yourself?

1 A No, no, not while I was in training, no.

2 Q I'm sorry, when you say "internal," you mean
3 the SBI was -- this was part of your SBI training?

4 A Yes. It was part of my SBI training.

5 Q So they were saying, "Go out and collect
6 these hairs and compare them"?

7 A Yes. Part of my training program.

8 Q And you collected the hairs yourself or they
9 were giving you a hundred hairs?

10 A I was -- it's been a long time ago. I think
11 it was a combination of both. People -- we kind of --
12 of course, we didn't have e-mail back then, we just
13 said, you know, we'd like some volunteers to donate
14 head hair and pubic hair. I also went around and asked
15 people would they mind doing it as far as my training,
16 because I was -- what I was doing, I was collecting and
17 making up a library of different hair samples.

18 Q What would the library be used for?

19 A Just for my reference to determine this
20 variability within the population.

21 Q But you said you can't put any statistics on
22 it, even with a library.

23 A No.

24 Q Okay. And when you did the 100 to 100, did
25 you have any controls in there, any that didn't match

1 up, any that weren't going to match up? Or did you
2 have a hundred that you knew would match to this other
3 hundred?

4 A Pretty much we knew it was going to match.

5 Q Okay. And I'm sorry, I used the term
6 "match," and I -- you just told me I need to say
7 "microscopically consistent."

8 A That's quite all right.

9 Q I apologize.

10 Now, you talked about DNA. So can you tell
11 us how DNA -- well, have you had any hair cases that
12 you have done -- any comparisons you've done where it
13 was later subjected to DNA analysis?

14 A Yes.

15 Q Okay. Can you tell us about that.

16 A There was one, Viktor Gunnarsson case,
17 Swedish national that was murdered. And we found a
18 number of his -- a number of head hairs in the trunk
19 that were consistent with his.

20 Q With Mr. Gunnarsson's?

21 A Yes.

22 Q The victim?

23 A The victim. It was in the suspect's vehicle.

24 Q Okay.

25 A Those were -- this was right at the beginning

1 of mitochondrial DNA. Those were subjected to DNA
2 analysis. And I think that was the first DNA --
3 mitochondrial DNA analysis on hair in North Carolina,
4 that's why I remember that one.

5 And the mitochondrial DNA did match.

6 Q It did match?

7 A It did match, yeah.

8 Q Okay. Any others?

9 A There was one -- actually, Branny knows more
10 about it than I do because I just helped. It was
11 Bonita Greene Murphy, and I really don't know the
12 particulars of that one.

13 Q Okay.

14 A I just helped get the hair.

15 Q And that was a case in which you had done
16 microscopic hair comparison?

17 A Yes.

18 Q And that was in 1988?

19 A No. I don't know what year it was. I really
20 don't.

21 Q Okay. Do you remember -- was it around the
22 '80s, do you remember?

23 A Probably.

24 Q And do you know, did you come back to testify
25 at trial recently in that case?

1 A No. No.

2 Q Okay. The Anita Greene Murphy, that's the
3 victim's name in that case?

4 A I think it was Bonita.

5 Q Bonita, I'm sorry.

6 A Okay.

7 Q Are you talking about the Dwayne Dail case?

8 A No, that was another one, but the hair was
9 not subjected to DNA in that analysis, as far as I
10 know.

11 Q Other evidence from the scene was --

12 A Yes.

13 Q -- was subjected to DNA analysis?

14 A Uh-huh.

15 Q And Mr. Dail was ultimately exonerated?

16 A Yes.

17 Q Can you tell me about the Bonita Greene
18 Murphy case?

19 A I don't know, I really don't.

20 Q Do you know what was subjected -- you said
21 you had done hair comparison and something was
22 subjected to DNA.

23 A Yes.

24 Q Was it the hair or other evidence?

25 A It was the hair.

1 Q And what were the results of that?

2 A I don't know.

3 Q You do not know?

4 A I do not know.

5 Q Okay. Do you think it would be important
6 that you find that out?

7 A No. There's probably been others. Those are
8 just the ones that come to mind.

9 Q But you didn't want -- you know that some
10 work that you did was later subjected to DNA evidence
11 and you didn't want to find out whether the DNA said,
12 yes, it is this person, or, no, it's not?

13 A No, not particularly.

14 Q Okay. Let's talk about the Willie Grimes
15 case from 1988. Do you remember that case?

16 A Personally, no.

17 Q Okay.

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

20 JUDGE SUMNER: Yes, ma'am.

21 Q I'm going to hand you some documents. Will
22 you take a look at those and tell me if you know what
23 they are.

24 A Yes, I recognize these.

25 Q Okay. What do you recognize these to be?

1 A This is the laboratory report, my case notes
2 from this case.

3 Q Okay. Does what I handed you appear to be
4 your entire report and notes?

5 A I believe it does.

6 Q Okay.

7 MS. MONTGOMERY-BLINN: Commissioners, the
8 report is Appendix -- in Appendix A of your brief, but
9 this is coming out to you as a handout right now with
10 the report and the notes as well.

11 Q And you said you don't have any independent
12 recollection about this case?

13 A No, not really.

14 Q Looking at your report, can you tell us what
15 items you were given for analysis.

16 A Sure. I was given a number -- I was given a
17 number of standards; that being the head hair of Willie
18 Grimes and the pubic hair of Willie Grimes. I was also
19 given the pubic hair of Carrie Elliott and the head
20 hair of Carrie Elliott. Those were the standards.

21 In addition to that, I received the blood of
22 Willie Grimes, saliva and blood of Carrie Elliott,
23 vaginal smears of Carrie Elliott and vaginal swabs --
24 because they were all in a rape kit; I didn't do
25 anything with those items -- and a saliva sample.

1 Okay. Along with that we received a number
2 of questioned samples which were the pubic hair combing
3 from Willie Grimes, pubic hair combings from Carrie
4 Elliott, panties from Carrie Elliott, hair from the bed
5 at scene, and a paper bag containing nightgown and a
6 robe.

7 Q Okay. And what did you do with these items?

8 A I examined the questioned items for the
9 presence of hair. And if hair was found, I would
10 compare those back to the known standards. And in this
11 particular case, the victim was white and the purported
12 suspect was black. So, therefore, I was looking for
13 hairs of negroid origin on those items belonging to the
14 victim.

15 Q And coming into this, did you know that?
16 That the victim was white and the suspect is
17 African-American? That was told to you?

18 A Actually, if you look on the submission
19 sheet, it says the race of the victim and the suspect.
20 But even if it didn't, when I opened up the hair exam
21 -- the hair, I could tell if it was a individual of the
22 black race or an individual of the white race.

23 Q Okay. And had some of the suspect hairs
24 already been, I guess, collected and put in a bag? Or
25 did you do all of the collection, if you can tell?

1 A Well, I didn't do any of the collection. The
2 panties -- I received the panties and nightgown and
3 robe, but I did receive hair containing -- excuse me, a
4 sealed plastic bag containing hair from bed at the
5 scene.

6 Q Okay.

7 A So somebody else collected that.

8 Q And then you did further hair collection off
9 of clothing; is that right?

10 A Yes.

11 Q Okay. And when -- I'm sorry, can you tell
12 me, when were these items submitted to you?

13 A May 27, 1988.

14 Q Okay. And your report is dated June 28,
15 1988?

16 A Yes.

17 Q Okay. Were you told -- would you have been
18 told -- or I know you don't have independent
19 recollection, so based on this, were you told that the
20 victim had already identified the suspect or picked the
21 suspect from a lineup?

22 A No, I didn't know that.

23 Q So once you sorted -- or once you collected
24 the hairs, what did you do next?

25 A Well, then I would examine the hairs. And on

1 these items there were some fragments. What fragments
2 are, when I was using my illustration as a pencil, is
3 fragments are just a part of the hair, not the full
4 hair itself.

5 If you have enough of it you can do a
6 microscopic comparison; however, if there is not enough
7 there that you feel that -- it contains sufficient
8 number of characteristics, then you just say that it's
9 a negroid hair and it's not suitable for any
10 forensic -- it doesn't have any forensic significance.

11 Q So you can still tell race from a fragment,
12 but that's it? Well, from a small piece.

13 A Some -- for the most part.

14 Q Okay. And is a fragment, is that just a
15 broken -- a piece of hair that broke off?

16 A Yes.

17 Q And were there any hairs that were sufficient
18 for you to be able to use for comparison?

19 A Yes. There was one.

20 Q Okay. And will you describe that one.

21 A It was a -- it was a negroid head hair which
22 I found to be consistent with the head hair of Willie
23 Grimes.

24 Q How long was that hair?

25 A About an inch long.

1 Q And did it have a root?

2 A No.

3 Q So it was a fragment?

4 A Yes.

5 Q So you -- if all you have is that fragment
6 without a root, you can't tell how long a suspect's
7 hair -- or how long the actual attacker's hair was.

8 A That's correct.

9 Q How do you decide -- is there a certain set
10 of criteria about what is going to be suitable for
11 comparison, a checklist you're looking for? Or is that
12 a judgment call?

13 A No, it's not a set list or a checklist that
14 you have. What you're actually looking at, you're
15 looking at a side-by-side view of two hairs, okay, and
16 you're looking at the characteristics. Because a
17 checklist, there's so much variation in actually what
18 you are seeing -- and we did provide checklists, but
19 that was just to give a general overall.

20 To give you an example why we didn't
21 include -- why we don't put much stock in a checklist,
22 because you can have a color or a -- what we call a
23 medulla pattern, and you have certain classifications.

24 For example, with colors it can be red-brown,
25 brown-red, other people will describe things

1 differently. Okay. You, from one case to the other,
2 may describe things a little bit differently because
3 you're just looking at the color of it and say, well,
4 it's red-brown. But is it red-brown or brown or
5 brown-red or any variation or any hue in between;
6 that's just one, that's color. Okay?

7 So that's why it's very important that
8 what -- to emphasize the fact -- we don't look at
9 characterization by checklist; we actually have to have
10 a side-by-side view of the two hairs.

11 Q Okay. So when you have found this hair that
12 was suitable, you said you compared and it was --

13 A Microscopically consistent.

14 Q Okay. And how many of the hairs from the
15 suspect kit did you compare this one to?

16 A Approximately 60.

17 Q Okay. So you compared it to 60.

18 A Uh-huh.

19 Q And were each of those microscopically
20 consistent?

21 A No. When you're looking at a hair sample,
22 hair will vary. It's why you don't ask for one hair
23 for a standard. For example, your hair on this side of
24 your head could vary slightly from this. There is
25 actually a range of characteristics throughout the head

1 and the pubic region. That's why you ask for more than
2 one hair. That's why we like to have a representative
3 sample of hair. Because what we do is we look at this
4 range of variation and we see whether or not this hair
5 falls within the range of variation and then we look at
6 and determine whether or not it's consistent with
7 having originated from that source.

8 Q Okay. So the questioned sample could have
9 come from -- I guess let me back up.

10 So when you're saying that hair varies, would
11 your best-case scenario be to have multiple question
12 samples, then, that you could compare?

13 A Oh, yeah. Sure.

14 Q Okay. But you can do it with one?

15 A Yes.

16 Q So you said you compared 60 hairs. And
17 how -- I'm sorry, did you say how many were
18 microscopically consistent?

19 A No.

20 Q Okay. Is that in your notes? Can you tell
21 us?

22 A No.

23 Q And how many hairs did you have from the
24 subject?

25 A I had a hundred.

1 Q Okay. And you just --

2 A Approximately a hundred.

3 Q And would you normally have compared all 100?

4 A Uh-uh.

5 Q You stop when you have the microscopically
6 consistent?

7 A No. What you're looking for, you're making
8 sure you have -- when you are looking at the
9 standard -- and, of course, this is based on your
10 experience. When you're looking at the standard, you
11 mount a number of hairs -- I mean, I think at one time
12 we were asking for 25 hairs, the more the better. And
13 you're looking at this range of characteristics. And
14 when you feel like you have a suitable comparison,
15 there is really no -- I mean, a suitable representative
16 sample, then there is really no need to mount any more.

17 Q Okay. And you don't know -- so you compared
18 60; one or some were microscopically consistent?

19 A Yes.

20 Q And did you take any photographs or do any
21 diagrams of this?

22 A No.

23 Q Now, is that -- was that routine in 1988?

24 A Actually, photographs were dissuaded. And if
25 I may use a reference here, again from our symposium --

1 and I think this delineates it or explains it very well
2 why photographs were not taken at that time.

3 And this was actually a discussion. And it's
4 talking about the subcommittee -- one of the hair
5 subcommittees is what was talking, and this individual
6 said, "The subcommittee is strongly opposed to showing
7 side-by-side photomicrographs of actual similarities or
8 dissimilarities unless under very special
9 circumstances, particularly in hair examinations. To
10 show one small segment of something on the order of
11 less than, in many cases, a few millimeters, to show a
12 side-by-side comparison, if you were to be objective
13 about it, you would show the whole length of the
14 hair" -- again, remember, I said you're looking,
15 whatever you have, you're looking at the entire length;
16 you're not just looking at one little portion of it --
17 "you would show the whole length of the hair in which
18 you base your opinion, which would probably involve
19 maybe 400 photographs, maybe, depending on what
20 magnification you used.

21 "Along the length, these photographs should
22 show similarities and, conversely, show dissimilarity
23 between two hairs that, it is my own personal view, can
24 be highly inflammatory to a jury."

25 So the consensus back in 1985 and 1988, and I

1 still think the consensus is, that photographs do not
2 show a true and accurate representation of what you're
3 looking at.

4 Q And you think that that's the same consensus
5 today; that that hasn't changed.

6 A Sure.

7 Q What about a diagram?

8 A Some people use a diagram just to show the
9 structure of the hair, and I did the same thing by
10 using a pencil.

11 Q Okay. So you didn't draw any diagrams
12 yourself.

13 A No, I never use diagrams, no.

14 Q And I know you already said nobody in this
15 case did peer review, but you said that sometimes you
16 consult with people. Did you in this case?

17 A I have no idea.

18 Q Okay. It doesn't show that in your bench
19 notes?

20 A No.

21 Q Can you just take a look at your bench
22 notes -- because I do not understand them -- and just,
23 page by page -- I see your report, and then the first
24 one at the bottom, it says Bates stamp 29.

25 What is this page?

1 A That is the submission sheet.

2 Q And this comes from the agency that submits
3 the hair sample?

4 A Yes.

5 Q Okay. And the next page says page number 30.
6 What is this?

7 A This is my handwritten notes. We didn't have
8 computers back then. So actually you handwrote your
9 reports and then they were typed for you. And this
10 is -- that's what that is.

11 Q Okay. So is this the same language that is
12 typed up into this report?

13 A Yes.

14 Q Okay. And the next page?

15 A This is item 6, which is the nightgown.

16 Q Okay. And what does this evidence
17 description, what does that say about the nightgown?

18 A That there were five negroid hairs mounted,
19 also in a sealed manila envelope, hair from nightgown,
20 and those hairs were not -- were too limited; they were
21 less than a quarter of an inch.

22 Q Okay.

23 A Very small fragments.

24 Q And does that say something about a cutting
25 from the nightgown?

1 A Yeah. It says a sealed manila envelope
2 containing cuttings from nightgown. That's probably
3 where serology has -- usually that's what that is.

4 Q Not that you cut the nightgown --

5 A No.

6 Q -- that came with it.

7 A No.

8 Q Okay. The next page is page 32. What does
9 that say?

10 A This is actually the rape kit from the
11 victim, and it states here "only pubic hair combings
12 opened."

13 Q Okay. The next page?

14 A And this is item 3 that was a hair from the
15 bed. It says, "10 Caucasian hairs not mounted. 8
16 negroid hairs mounted. 7 of those were fragments, they
17 were too limited." And it says, "One negroid head hair
18 consistent with suspect's head hair." And that little
19 squiggly line means approximately 1 inch.

20 Q I'm sorry, that the bottom thing that says --
21 what does that say again, that very bottom line?

22 A One negroid head hair consistent with
23 suspect's head hair, approximately 1 inch.

24 Q Okay. And up there it looks like you've been
25 checking off some things about the hairs. It looks

1 like you checked broken, medium. Is that where you
2 were looking at now --

3 A It's just an overall characterization of the
4 hair. Again, not -- you don't take those checklists
5 and do a comparison.

6 Q Okay. The next page, which is marked number
7 34?

8 A This is a paper bag containing the white
9 panties. There was no hair on that.

10 Q The next page?

11 A This is a head hair standard from Willie
12 Grimes. And it says 7A through 7E were in a sealed --
13 7A through 7E, and this is 7A, were in a sealed manila
14 envelope, suspect kit. And this is approximately a
15 hundred negroid head hairs; 60 were mounted.

16 Q And what does it say down at the bottom?

17 A It says -- this is the form: Wavy, kinky
18 form, approximately 3 inches.

19 Q Okay. And you've done the same checklist
20 there.

21 A Yes.

22 Q The next page, which is marked 36.

23 A This was the pubic hair standard from Willie
24 Grimes. There were approximately 75 hairs in that
25 standard. I mounted approximately 35.

1 Q Now, you said that you knew that the
2 suspect -- or the questioned hair was a head hair;
3 right?

4 A Yes.

5 Q So why did you mount the pubic hairs?

6 A Just -- we normally mount -- it's as a matter
7 of course in case we find things that appear to be a
8 pubic hair in the evidence, we can go ahead and compare
9 it to that.

10 Q Okay. But you didn't use these for
11 comparison --

12 A No.

13 Q -- because you knew you had head hair.

14 A Right.

15 Q Okay. Please continue.

16 A The next one is the pubic hair combings from
17 the suspect. And nothing was done with those; they
18 weren't opened because we noted that it was taken on
19 May 24, 1988.

20 Q Okay. And had it been taken immediately,
21 what would you have been looking for?

22 A The presence of the Caucasian hair.

23 Q Okay. The next page, please, which is 38.

24 A Blood of suspect, not examined.

25 Q Okay.

1 A Saliva samples of suspect, not opened. And
2 pubic hair combings from the victim is the last one.
3 And I noted in there that were no hairs.

4 Q Okay. Thank you. And so it looks like the
5 questioned hair was 1 inch and your notes show that the
6 rape kit hairs for Mr. Grimes were 3 inches --

7 A Yes.

8 Q -- is that right?

9 But you said the one questioned hair was a
10 fragment because there was no root.

11 A Uh-huh.

12 Q Okay. All right. So the result of your
13 report or your conclusions -- yeah, the results of
14 analysis, can you read that to us.

15 A "Examination of item 3" -- which would be the
16 hair removed from the bed at scene -- "revealed the
17 presence of a negroid head hair which found to be
18 microscopically consistent with the head hair of Willie
19 Grimes. Accordingly, this hair could have originated
20 from Willie Grimes."

21 Q If that hair still existed today and I was
22 asking you, "What do you think I should do with it,"
23 what would you recommend?

24 A Submit it for DNA analysis.

25 Q Now, do you remember testifying in this

1 trial?

2 A Not really.

3 Q Okay. Have you reviewed a transcript of your
4 testimony?

5 A Yes, I have.

6 Q And so you've recently read that and reviewed
7 your testimony.

8 A Yes.

9 Q Are you still comfortable with your
10 testimony?

11 A Yes.

12 Q Would you change anything about it?

13 A Well, yeah. Tell them to submit it for DNA
14 analysis. I'd have the DNA component today.

15 Q Okay. If you'll just give me one minute,
16 please, I think you've answered a lot of the questions
17 already I had.

18 When you testified, you testified that it was
19 rare to see two individuals in the general population
20 whose hair is the same or has the same microscopic
21 characteristics. Do you still agree with that
22 statement?

23 A Yes, I do.

24 Q And what do you mean --

25 A Although it's not unique, I do. And let me

1 again go back to this international symposium and some
2 of the -- some of the views that were expressed by some
3 of the experts of the day, if I may.

4 Q Of course.

5 A And this was a part of the discussion -- I
6 don't know if it was one of the subcommittees --
7 Committee on Forensic Hair Comparisons, Subcommittee on
8 Report Writing, Conclusions, and Court Testimony.

9 And it states in here, "When a questioned
10 hair exhibits similar macroscopic and microscopic
11 characteristics" -- now, hair examiners, there was no
12 consensus back then on terminology, so you would use
13 "match," you would use "consistent," or you could use
14 "similar"; they all meant the same thing. Okay? So
15 that's why you hear a lot of different terminology,
16 because really there -- there's a thing called SWG,
17 scientific working groups, and they kind of developed a
18 lot of terminology and everything. We didn't have that
19 back in 1985.

20 But anyhow, it says, "When a questioned hair
21 exhibits similar macroscopic and microscopic
22 characteristics to the known comparison sample, two
23 possibilities exist as to the source of the questioned
24 hair: It has either originated from the donor of the
25 known sample or there is a coincidental match. We are

1 aware two individuals may have hair -- may have
2 matching hair characteristics and the two hair samples
3 cannot be differentiated by present-day methodology.
4 Hence, the chance of a coincidental match can occur.
5 The probability from the published research" -- it's
6 talking about Gaudet -- "coauthored by a
7 biostatistician and verified by other statistician has
8 shown when a positive hair comparison has been made by
9 a qualified hair examiner, the chances of coincidental
10 matches are relatively rare. The hair could match that
11 of another individual, but it is much more likely to
12 have originated from the same source to which it was
13 compared."

14 So these are some of the -- some of the
15 information that we had back then to help us form our
16 conclusions at that time, and that helped us form the
17 conclusion that it is rare that I see two individuals
18 in the population whose hair has the same
19 characteristics.

20 And in addition to that, again, during my
21 training, I was getting all these samples and looking
22 at it and getting the variability within the population
23 established.

24 Q So the terminology there was "relatively
25 rare"?

1 A Yes.

2 Q And I think you said right before you started
3 reading it that that does not mean unique.

4 A Correct.

5 Q And unique would be the only person.

6 A Correct.

7 Q Okay. And I think you also just said -- and
8 I want to make sure I understood this -- "match" does
9 mean "consistent"?

10 A We never used "match" because we felt like it
11 was too strong. That FBI did use "match." When you
12 say "match," you match a fingerprint together. Okay?
13 Match -- and it's just how you use the terminology.

14 We always felt that "match" was more or less
15 in the fingerprint world, when you say "That
16 fingerprint matches that fingerprint." What we
17 preferred was to say "consistent with." In other
18 words, those characteristics are consistent with
19 another and there are no discernible differences.

20 Q Okay. Such a match to you is more of that
21 unique as opposed to relatively rare?

22 A Well, no, because the FBI uses match to mean
23 that they are consistent with. It's just who uses
24 what.

25 Q Okay. When you met with --

1 A Can I just provide one more?

2 Q Of course.

3 A This is from Harold Debman, again, just
4 trying to explain where we came up with the terminology
5 to say that it's rare other than our own personal
6 experience.

7 He states, "We rarely see hairs from one
8 person that will match in the known sample of another
9 person. Now, we're not saying that we routinely
10 compare every hair sample with every other hair sample
11 that we get, but if hairs do not generally exhibit
12 differences from different people, I think we would see
13 more often instances in which a hair sample from one
14 individual would match in the sample or among hairs on
15 the other sample."

16 Q But we still -- and I know I've asked you
17 this before, but I want to make sure -- but there's no
18 statistics; we can't quantify "rare."

19 A Cannot quantify results with microscopic hair
20 examinations.

21 Q When you -- do you remember meeting with some
22 of the Commission staff to talk about --

23 A Yes.

24 Q -- going through this?

25 Okay. And they were talking to you about

1 "rare" as well, and they were asking you about how
2 that's changed from 1988, and you said -- and I'm
3 looking for it, if that would be helpful -- that you
4 would say it's not quite as rare today as you thought
5 it was in 1988.

6 Does that sound right? And I can look for
7 it. And you have a transcript of that interview?

8 A Yeah, I have a transcript up here somewhere.

9 Q Okay.

10 A If you could give me the page number.

11 Q We're looking for it too. And I appreciate
12 that.

13 While they're looking for it, let me just go
14 back to a quick question. When we were talking about
15 "match," in your trial testimony when you were
16 testifying about the 100 hairs to 100 hairs, you used
17 the word "match" there.

18 A Uh-huh.

19 Q Was that -- is that different?

20 A No, not really.

21 Q Okay. So that was just --

22 A Not really. We try to use word "consistent"
23 for the most part.

24 Q Okay. But you just -- you mean the same
25 thing?

1 A Yes.

2 Q I'm looking at that interview now, and it's
3 on page 56. And Ms. Stellato says to you:

4 "Q Could you say today, now, that it
5 would -- that it would be less rare? Would you
6 still make the same statement it is rare that
7 you could or would see two individuals in a
8 general population whose hair is the same and
9 has the same microscopic consistent
10 characteristics? Would you still make that
11 statement if you had two black males, 30 years
12 old, the same hair length, would it still be
13 rare?"

14 And you respond:

15 "A Well, not quite as rare, but it would
16 still be rare."

17 A Correct.

18 Q Okay. So --

19 A But what they did was they -- when I say it's
20 rare that I see two individuals in the general
21 population -- that's always been my statement, that's
22 in the general population. What they are doing is also
23 saying that is it rare that you'll see two individuals
24 -- if you had two black males, 30 years old, the same
25 hair length, would it still be as rare?

1 No, it wouldn't, because you've got more than
2 one of the characteristics: The same hair length,
3 okay? And they are both of black origin.

4 However, I also did say: You are only
5 looking at one characteristic; you're not looking at
6 the microscopic characteristics. You're looking at a
7 visual saying I can see your hair and it's brown and
8 it's about 5 inches long. Okay?

9 When you drill down a little bit more and
10 look at the microscopic characteristics, that's where
11 you see all the characteristics associated with the
12 cuticle, cortex, and medulla.

13 So that's what I meant by that statement.

14 Q Okay. Let me try to do a hypothetical
15 because that's how I think about this best.

16 If I took a football stadium and I filled it
17 up with people and I gave you, you know, somebody's
18 hair, you would say, "It is rare that this hair is
19 going to be consistent with multiple people in this
20 stadium." Is that correct?

21 A Well, again, we're starting to talk about
22 numbers again. And that's --

23 Q Sorry.

24 A And I don't -- didn't discuss numbers other
25 than the fact that what I have done as part of my

1 training and as part of the gathering of other people's
2 hair for standards in our library, is determine the
3 variability of hair. But to come out and say that it
4 would be rare that I'd see people in a football
5 stadium --

6 Q And I'm not trying to throw you.

7 A I don't know.

8 Q Let me ask you this --

9 A Well, I know that. And it's very -- and this
10 is what's frustrating about hair examination because
11 you can't quantify it.

12 Q Well, let me just try to ask the second part.
13 If that helps, great; if it doesn't, we'll move on.

14 If I filled the stadium -- got everybody out
15 of the stadium and now I've filled it up with
16 30-year-old African-American men and you had a
17 questioned hair that you had already determined was an
18 African-American hair, would it be less rare now to
19 find people who are consistent with?

20 A If they're from the same race and they have
21 the same hair length, you've got two characteristics.

22 Q Okay.

23 A So would definitely decrease it somewhat.

24 Q So this is what you mean by the less rare;
25 we've grabbed a subset of the population.

1 A Yes.

2 Q Okay. Thank you. Thank you for bearing with
3 me on that.

4 At the trial in 1988, the attorney asked you
5 if damage to hair will correct itself over a period of
6 time. And you responded, "It will change over a period
7 of time."

8 What did you mean by that?

9 A Do you know what page that's on?

10 Q I don't, but we will find it. Page 124. And
11 the attorney says:

12 "Q The damage will correct itself during
13 a period of time, will it not?"

14 And you respond:

15 "A It will change over a period of
16 time."

17 And I wasn't sure if you were talking about
18 the damage or just the hair itself changing.

19 A Well, the attorney was talking about the
20 scales. Okay? And scales, again, as I said before,
21 can have damage associated with it, you know, from
22 cosmetic treatments, from washing, from brushing your
23 hair.

24 And what I meant by that -- we were talking
25 specifically about the cuticle -- the damage will

1 correct itself during a period of time because your
2 hair's actively growing. So if you've got damaged
3 scales -- and that's what we were talking about,
4 scales -- as the hair grows out, the damage will
5 correct itself if not damaged again.

6 Q Okay. And so that goes back to when you said
7 you would rather have your known hairs collected as
8 close in time to the crime as possible.

9 A There could be slight changes, yes.

10 Q Okay. Now, have you reviewed -- I know you
11 reviewed the trial transcripts and your testimony.
12 Have you also read the closing arguments that were
13 given?

14 A Yes, I did.

15 Q Okay. And the Commission provided those to
16 you; is that right?

17 A Yes.

18 Q You were not present during the closing
19 arguments in this case.

20 A No.

21 Q And do you know, did the prosecutor consult
22 with you while he was preparing his closing arguments?

23 A I don't -- oh, preparing his closing
24 argument?

25 Q Uh-huh.

1 A No.

2 Q Did he consult with you at any point?

3 A I don't recall.

4 Q Okay.

5 A Back then, it -- I will say this: It was
6 very infrequent that we had a pretrial meeting; it's
7 much more prevalent today.

8 Q Okay. It would be rare, right, that the
9 prosecutor would do that.

10 A Yeah, it would be rare.

11 Q Okay. So in the closing the prosecutor
12 said -- and I'm quoting now from the transcript, this
13 is to the jury and I understand you're not in the
14 room -- "You heard the SBI agent talk about how he
15 identifies hair and how no two individuals have the
16 same type of hair, and that hair was consistent with
17 the hair from the defendant" -- this is page 8 on the
18 second part of the trial transcript.

19 A I see it.

20 Q Did you testify that no two individuals have
21 the same type of hair?

22 A No, I did not.

23 Q Is that an accurate statement?

24 A That isn't -- no.

25 Q Okay.

1 A That insinuates identity.

2 Q Okay. He also said, and I'm quoting again,
3 "The State submits" -- this is actually the other
4 prosecutor, I believe -- "the State submits" -- no,
5 this is the same place. "The State submits the only
6 place this hair could have come from is the defendant,
7 from his head, and if it came from him -- and it came
8 from him when he was assaulting this lady."

9 Did you tell the prosecutor that?

10 A No.

11 Q Would you have said that?

12 A No.

13 Q Okay. Thank you for your patience. The
14 Commissioners may have some questions for you as well.

15 JUDGE SUMNER: Any questions?

16 COMMISSIONER SMITH: May I ask one?

17 THE WITNESS: Yes, sir.

18 COMMISSIONER SMITH: Following up on the
19 discussion about the prosecutor's statement, on page 23
20 of the prosecutor's statements he says, "It is remotely
21 possible that somewhere in the world somebody else may
22 exist with the same type of hair."

23 That's not an accurate statement, is it?

24 THE WITNESS: No, sir.

25 COMMISSIONER SMITH: It winds it down too

1 tight.

2 THE WITNESS: Because he says there is a
3 remote possibility -- which I'd never use that
4 terminology -- that someone in the world could have
5 that hair. And I would never use that statement.

6 COMMISSIONER SMITH: It's -- we can't say how
7 many people might have that characteristic, but it
8 would certainly be a lot of people in the world,
9 wouldn't it?

10 THE WITNESS: Yes.

11 COMMISSIONER SMITH: Would it be millions?

12 THE WITNESS: I have no idea.

13 COMMISSIONER SMITH: Okay. Could be.

14 THE WITNESS: Could be.

15 COMMISSIONER SMITH: Thank you.

16 JUDGE SUMNER: Any other questions?

17 COMMISSIONER VICKORY: I have some further.

18 Troy, were there any roots on any of these hairs? And
19 you may have said that already, I don't know.

20 THE WITNESS: No. Questioned hairs, no.
21 They were all fragments.

22 COMMISSIONER VICKORY: So even if we did have
23 these hairs today, we couldn't do a nuclear DNA-type
24 analysis; is that right?

25 THE WITNESS: Correct.

1 COMMISSIONER VICKORY: It would be
2 mitochondrial DNA?

3 THE WITNESS: It would be mitochondrial, yes.

4 COMMISSIONER VICKORY: And that doesn't come
5 back to say, "That's the guy."

6 THE WITNESS: No. Mitochondrial is less
7 specific than nuclear DNA. Nuclear DNA, you can get
8 figures like 1 in 60 million trillion billion,
9 something outrageous. But you can't do that with
10 mitochondrial.

11 COMMISSIONER VICKORY: All an examiner can
12 really say is that the person whose hair it was is in
13 the same mother line -- the mother's side of the
14 family, I guess.

15 THE WITNESS: Yes. It is maternally related.

16 COMMISSIONER VICKORY: Would it be of any
17 value now, 25 years after the fact, if -- I don't know
18 how much you know about the case.

19 THE WITNESS: Not a lot.

20 COMMISSIONER VICKORY: If there's evidence of
21 a fingerprint matching to somebody that we now find is
22 the prime suspect or, excuse me, the original suspect,
23 I guess -- would it be of any value now to have a
24 comparison and do a comparison of that person's hair?

25 THE WITNESS: To --

1 COMMISSIONER VICKORY: To the suspect, of
2 what was in the bed, if you had those.

3 THE WITNESS: If I had those, yes. Of
4 course, we could do a microscopic and then try to do
5 DNA even though it would be mitochondrial.

6 COMMISSIONER VICKORY: Would there be any
7 value to looking at the hair, the known exemplars of
8 this person that -- who left the fingerprint on the
9 banana in the lady's apartment? Look at his hair and
10 compared them to your notes?

11 THE WITNESS: No, not really. I couldn't
12 make any -- any conclusion by doing a microscopic,
13 again, as I've emphasized prior, and comparing it to a
14 checklist.

15 COMMISSIONER VICKORY: Your testimony, when
16 you gave it -- or particularly more often when -- I
17 guess you testified a lot more back in those days about
18 hair because now we use DNA so much, but you weren't
19 saying, "That guy's the one who left the hair," now,
20 were you?

21 THE WITNESS: No, sir.

22 COMMISSIONER VICKORY: You're saying he could
23 have been.

24 THE WITNESS: He could have been.

25 COMMISSIONER VICKORY: He wasn't excluded.

1 THE WITNESS: Correct. And it's consistent
2 with coming from that individual because we know the
3 wide variation in the population of these microscopic
4 characteristics, but you still can't quantitate it and
5 you still can't infer identity.

6 COMMISSIONER VICKORY: Thank you.

7 COMMISSIONER SURGEON: I think I'm a little
8 confused. Was there -- during the testimony, did you
9 say that there was a match or that it was consistent
10 with?

11 THE WITNESS: Consistent with is what I'd
12 like to use. What Ms. Blinn said, then, when I was
13 talking about the work I had done, I'd say "match."
14 And it's kind of interchangeable, but we actually
15 prefer to say "microscopically consistent."

16 COMMISSIONER SURGEON: So when you testified,
17 what did you say?

18 THE WITNESS: I believe I said
19 microscopically consistent.

20 BY MS. MONTGOMERY-BLINN:

21 Q I'd like to just follow up on Mr. Vickory's
22 question, if I can -- and you may not have any opinion
23 about this, but what Mr. Vickory just told you is we
24 have somebody else whose fingerprint was located at the
25 crime scene; we don't know what that means. And then

1 you've obviously compared Mr. Grimes' hair.

2 It's been 25 years now --

3 A Right.

4 Q One man's remained in prison, one man hasn't.
5 Would there be any value, in your opinion, to taking a
6 hair from these two men who are both still alive but
7 have had completely different lives for the past 25
8 years and comparing them to see if they are consistent
9 with each other?

10 A Oh, Lord.

11 Q And you -- if that's too far --

12 A That would be stretching. I'll be honest
13 with you, that would be stretching it.

14 Q I withdraw my question. Thank you.

15 COMMISSIONER DUNCAN: I guess the question
16 is: Is there any value in it?

17 THE WITNESS: After 25 years, I really
18 couldn't answer that question. I really don't -- I
19 don't know how much they've changed, separately or
20 together, whatever, they're still the same. I really
21 couldn't draw a conclusion.

22 JUDGE SUMNER: Any other questions?

23 COMMISSIONER GREENLEE: Is there any research
24 or data that exists today that differs from the
25 research of 1988 around hair analysis that would

1 dispute how that is done? Or --

2 THE WITNESS: To dispute -- of course, we
3 have DNA now, and DNA is proof of identity. So we do
4 have -- and that was very well researched, and we can
5 apply DNA methods to the hair examinations.

6 COMMISSIONER GREENLEE: So the data from 1988
7 around hair analysis is pretty much the same today?

8 THE WITNESS: The -- well, there really
9 wasn't data because we couldn't quantify the results.
10 That's why I read all of these opinions and read
11 information that we had received about people stating
12 it was rare. And hair evidence is good evidence, even
13 by defense attorneys -- defense expert saying it was
14 good evidence. But how did we get to the
15 quantification of it? We couldn't do that until we got
16 to DNA.

17 JUDGE SUMNER: Chief?

18 COMMISSIONER JENKINS: Are you aware of any
19 statistics that are being kept at the present to where
20 cases where hair analysis has been made and there has
21 been "consistent with" or a "match," whatever
22 terminology is used, to where DNA has shown that those
23 analyses were not correct?

24 THE WITNESS: Yeah. I'm aware of one; not by
25 our agency, but by the FBI. That's been several years

1 ago, and they came up with it's 89 percent. Actually,
2 I called last week to see if they've updated that, and
3 they said they're in the process of updating those
4 statistics.

5 Now, 89 percent, you can either look at it as
6 11 percent error rate or you can look at it as
7 89 percent confidence level. However, you have to look
8 at one thing with the FBI -- to be honest with you, I
9 felt that we've always been a little bit more
10 conservative.

11 For example, they would call a blond hair --
12 and we've really not talked about featureless hairs,
13 but blond hair, gray hair, and an individual --
14 African-American individual whose hair is opaque, you
15 can't see through it, those are called featureless
16 hairs. And they all look -- one thing I realized in my
17 training is that they all look the same because they --
18 you don't have those features that you have in the
19 other types of hairs. But they will call those, and we
20 will not.

21 So -- and the state crime laboratory does not
22 keep statistics. I personally feel like it would be
23 better than 90 percent, and -- but the only one we have
24 out there right now is the FBI, and that's been several
25 years ago. They are currently updating -- as I was

1 told, they were collating their information.

2 COMMISSIONER JENKINS: I have another
3 question, and let me state this before I ask you this
4 question: I can't imagine being in hair analysis and a
5 new technology coming out and every case that you ever
6 worked being scrutinized or reviewed or looked at
7 because what you were going on was the information you
8 had at the time, the research you had at the time.

9 But I think Ms. Blinn was asking you some
10 questions about maybe one of your cases that ended up
11 where DNA indicated that your hair analysis may have
12 been incorrect.

13 THE WITNESS: It could have, yes. It could
14 have.

15 COMMISSIONER JENKINS: Did you follow up on
16 that case at all, have any idea --

17 THE WITNESS: No, no. Because we -- at the
18 time all this started happening was around 2002-2003.
19 Now, I was actually -- around 2002, I was the
20 supervisor of the section. And then when we felt like
21 this new technology was more advantageous or could
22 provide more quantitative results, that's when I said
23 we're stopping rendering an opinion because we have
24 this superior technology now.

25 So I have actually no problem with having

1 superior technology. We've gotten it in other
2 disciplines and -- and I'm very happy and embrace the
3 fact that we do have this superior technology.

4 But at that time we were finding a lot of
5 cases were matching, some were not matching, and we
6 kind of expected that.

7 COMMISSIONER JENKINS: Thank you.

8 JUDGE SUMNER: Anyone else?

9 Mr. Hamlin, thank you, sir.

10 THE WITNESS: Thank you. Appreciate it.

11 MS. MONTGOMERY-BLINN: Your Honor, I'd just
12 ask that Deputy Director Hamlin allow us to copy his
13 articles and then be released from subpoena.

14 JUDGE SUMNER: If he'd be so kind.

15 MS. MONTGOMERY-BLINN: Thank you.

16 (Witness dismissed.)

17 JUDGE SUMNER: With that said, we're going to
18 stop at this point.

19 (Recess taken, 12:49 to 2:04 p.m.)

20 JUDGE SUMNER: Thank you, folks. We are back
21 in session.

22 MS. MONTGOMERY-BLINN: All right. The
23 Commission calls Dr. Max Houck, H-O-U-C-K.

24 Thereupon, MAX HOUCK, having first been duly
25 sworn, was examined and testified on EXAMINATION

1 BY MS. MONTGOMERY-BLINN:

2 Q What is your name?

3 A Max Michael Houck. The last name is spelled
4 H-O-U-C-K.

5 Q Thank you. And how are you employed,
6 Dr. Houck?

7 A Currently I'm principal analyst with Analytic
8 Services, Incorporated. That's a not-for-profit policy
9 institute in Arlington, Virginia. I'm also vice
10 president of my own company, Forensic and Intelligence
11 Services, LLC, in Alexandria, Virginia.

12 Q And can you tell us about your past
13 employment, other places you've worked before this.

14 A Sure. The first full-time job that I had out
15 of graduate school was as an application specialist
16 with Oxford Instruments, and that was in Madison,
17 Wisconsin. And I trained companies that bought the
18 equipment, demonstrated the equipment, and ran samples
19 for customers.

20 My next job was as a Criminalist II in the
21 Tarrant County Medical Examiner's office in Fort Worth,
22 Texas. At that laboratory I was responsible for trace
23 evidence and also instituted their forensic
24 anthropology program.

25 From there I went to the FBI Laboratory in

1 Washington, DC, back when it was in Washington, DC, and
2 not in Quantico, Virginia. And there I was assigned to
3 the Trace Evidence Unit. And I was a supervisory
4 physical scientist. I was there for about seven years
5 and worked numerous cases involving hairs, fibers,
6 fabric, and rope. And I was also a research associate
7 at the Smithsonian Institution, where the FBI did their
8 anthropology examinations.

9 From the FBI I went to West Virginia
10 University in Morgantown, West Virginia. And there I
11 directed the Forensic Science Initiative, which was an
12 office that used grant and award funds to provide
13 resources to state and local forensic science
14 laboratories and service providers. So we did things
15 like training, research, resource provision, a variety
16 of things to improve state and local forensic science
17 service provision.

18 And then after that -- I was there for nine
19 years, and then about a year ago I came to AnSer.

20 Q Thank you. Will you tell us about your
21 education.

22 A Sure. I have a Bachelor's in Science in
23 anthropology from Michigan State University. I also
24 have a Master's in physical anthropology with an
25 emphasis in forensic technology, also from Michigan

1 State University. My Bachelor's was awarded 1984; my
2 Master's in 1988. And I also have my Ph.D. in applied
3 chemistry from Curtin University in Perth, Australia,
4 and that was awarded to me in 2010.

5 Q Okay. Are you a member of professional
6 associations?

7 A I am.

8 Q And I know it's a lot, so will you focus on
9 ones that have to do with hair analysis or trace
10 evidence.

11 A Sure. I'm a Fellow of the American Academy
12 of Forensic Sciences and also a member of the American
13 Statistical Association. I'm a member of some other
14 professional organizations like the International
15 Association for Identification, but that relates more
16 to forensic science than to actual trace evidence.

17 Q Okay. Are you a member of the American
18 Society of Crime Laboratory Directors?

19 A I'm an academic member.

20 Q Okay. Now, how about some advisory
21 committees. You served on a number of advisory
22 committees as well; is that right?

23 A I have.

24 Q Can you tell us about a few of those?

25 A I served on a couple of advisory committees

1 for the FBI director, Louis Freeh, when I was at the
2 laboratory. I was Chairman of the Forensic Science
3 Educational Program Accreditation Commission; for six
4 years I was chairman of that group.

5 I also recently served on the Subcommittee on
6 Forensic Science that is run by the Office of Science
7 and Technology out of the White House.

8 Q And how about publications? You've been
9 published numerous times; is that right?

10 A Yes.

11 Q Can you tell us about some of those
12 publications, and maybe focus specifically on hair
13 analysis.

14 A Right. Broadly, in terms of books, I have a
15 textbook -- a major introductory textbook in forensic
16 science called Fundamentals of Forensic Science that's
17 published by Elsevier, with my coauthor, Dr. Jay
18 Siegel.

19 I've also edited two books of case studies of
20 trace evidence. The first one is called Mute
21 Witnesses; the second one is called Trace Evidence
22 Analysis. Both of those were also published by
23 Elsevier. I contributed a chapter and an introduction
24 to each of those books.

25 I've done some work in the area of hair and

1 fiber research. Two papers of particular note: One
2 was a bibliography on resources for hair examiners, so
3 a review of literature that was available for hair
4 examiners in their study, research, and training; and
5 then also I did a study that correlated microscopic
6 hair comparisons with DNA analysis in a number of
7 forensic science cases.

8 Q Okay. And have you testified before in court
9 as an expert on hair comparison?

10 A I have.

11 Q Do you know roughly how many times?

12 A Probably around 30 times at the local, state,
13 and federal levels.

14 Q Okay. I've got your CV here. Are there any
15 major parts that relate to hair comparison on that
16 list?

17 A One other thing that I would add is I was
18 Chairman of the Scientific Working Group on Materials
19 Analysis, which essentially is trace evidence, and
20 that's a working group or a committee run by the FBI,
21 and I was chairman of that for about five years. And
22 one of the subgroups on that working group was hair.
23 And so this was a group of professionals who worked in
24 crime laboratories and we devised training and
25 practitioner guidelines for a variety of trace evidence

1 types, including hair.

2 Q Okay. And you've also -- aside from that,
3 you've also been an academic teacher, as well?

4 A Correct.

5 Q And that was at West Virginia.

6 A Correct.

7 MS. MONTGOMERY-BLINN: Your Honor, I would
8 tender Dr. Houck as a hair expert -- an expert in
9 microscopic hair comparison to the Commissioners.

10 JUDGE SUMNER: He is duly qualified.

11 MS. MONTGOMERY-BLINN: Thank you.

12 Q Now, Dr. Houck, I understand -- you and I
13 spoke earlier and you've spoken with members of our
14 staff and you have sort of a presentation that you give
15 to explain how microscopic hair comparison works. Is
16 that right?

17 A Yes.

18 Q And I would like to just hand you this and
19 let you go through your presentation. If you'll allow
20 me and the Commissioners to ask you some questions on
21 the way, we'd appreciate it --

22 A Sure.

23 Q -- if you could explain in general to us
24 microscopic hair comparison.

25 A Absolutely. My pleasure. If you have

1 questions at any time, please feel free to ask.

2 The basis of what we're talking about, and
3 actually the basis of any type of forensic evidence,
4 broadly, is transfer and persistence. Now, this is a
5 two-sided coin. The notion for this was developed by a
6 French forensic scientist, Edmond Locard, and sometimes
7 it carries his name as the Locard Exchange Principle.

8 The idea is that when two items come into
9 contact, information is exchanged. If you've ever
10 stepped in mud and then stepped on your kitchen floor,
11 you know how this works. If you own a dog or a cat,
12 you know exactly how this works. You come in contact
13 with those sources and it transfers to you and then you
14 transfer those later on, et cetera, et cetera.

15 What we're looking at is not that activity;
16 what we're looking at is the remnants, the leftovers of
17 that activity. I refer to that as proxy data, much as
18 in a proxy vote, right, you're giving someone an
19 authorization to vote for you. Same idea. It's proxy
20 data; it's not the actual event, it's the stuff that's
21 left over. You see a muddy footprint in your kitchen,
22 you have a pretty good idea of how it got there. Okay?

23 All evidence is transfer evidence in that
24 regard; it goes from one location to another and is
25 found there or it's lost or it's ignored. Okay.

1 Relationships and context matter. It's not
2 simply that I have this envelope of evidence around me.
3 I have a dog and two cats. If you looked at my
4 clothing, you'd probably find evidence of that. But
5 it's the relationship; it's the context of the evidence
6 and where it's found and what it means.

7 So, for example, if you look at the upper
8 left-hand example, if you have a crime occur at a point
9 where the victim and the criminal are unknown to each
10 other and to the scene, you will look for very
11 different kinds of evidence than if you have a
12 spouse-on-spouse crime occur where they both
13 cohabit. For example, the upper right. If you
14 find, say, for example, the wife's hairs on the
15 husband's clothing, I would not be surprised. I would,
16 in fact, expect that. Okay? So the context and the
17 relationships involved matter greatly. And that
18 pertains more to trace evidence than to perhaps other
19 types of evidence.

20 I'm going to talk about hairs specifically in
21 this context. The basis for the method of hair
22 examination and hair comparison is rooted -- no pun
23 intended, sorry -- in -- it's how my head works,
24 sorry -- in a number of methods. For example,
25 anthropology, zoology, comparative biology, comparative

1 anatomy, microscopy, even histology, and it's a sort of
2 a mash-up of all of these different sciences pulled
3 together.

4 For a while studying hairs was en vogue among
5 physical anthropologists, and you can see a number of
6 publications in the '50s or so where they really
7 focused in on hairs for a bit, and then it fell out of
8 favor because they found other things to study.

9 Mammologists still study hairs quite a bit,
10 but it's all based on comparative biology, having known
11 samples and comparing questioned samples to those
12 knowns to place them in context.

13 Because hairs are small, you have to use a
14 microscope.

15 Any hair examination is fundamentally about
16 these questions, and typically in this order. So the
17 first question is: Is it a hair? There are a lot of
18 things that look like hairs that are not and you have
19 to distinguish them.

20 Is it human? That's typically the question.
21 When we get to that -- we'll get to each of these in
22 turn.

23 What part of the body is it from? Some types
24 of hairs have more information in them than others,
25 and, therefore, they are of more or less use depending

1 on that.

2 What is the person's ancestry? Is there any
3 damage, disease, or treatment in the hair? And is it
4 suitable for comparison?

5 First of all, is it a hair? Despite what we
6 may think, we don't pay too much attention to them when
7 we're combing through them, brushing, shampooing or
8 ignoring them, but hairs are, in fact, fairly
9 complicated biological structures. They are easily
10 identified by their shape and structure, and that's one
11 the first things you learn as a hair microscopist: Is
12 this a hair?

13 All hairs have some major landmarks. The
14 first is the root, and that is the portion within the
15 skin that grows. Then there's the shaft; that's the
16 part that we see on top of people's heads or on their
17 bodies. And then there's the tip, and the tip is that
18 far end -- the point furthest away from the skin.

19 In the shaft and, in fact, throughout the
20 shaft, hairs have three main anatomical marks: The
21 cuticle, the medulla, and the cortex.

22 The cuticle is an overlapping -- a
23 surrounding, several layers of scales, sort of like
24 shingles on a roof or fish scales, and it's a
25 protective layer for the hair, which is why hairs

1 persist so long as evidence and also even in
2 archaeology. They are very, very durable materials.

3 The cortex is the main mass of the hair.
4 That's where a lot of the structures that we use for
5 comparison identification are. The cortex is made up
6 of a series of very long, thin, needle-shaped cells,
7 and they're surrounded by and embodied by the pigment,
8 which gives hair its color.

9 The medulla is a series of hair cells that
10 run throughout the length of the hair, and they are
11 variably expressed. As you can see in this picture,
12 sometimes it's consistent or continuous; sometimes it's
13 fragmented; and sometimes it's -- it varies a great
14 deal. It varies a great deal.

15 So all of these characteristics, broadly, are
16 what we look at. And we'll get into more detail in a
17 minute about the exact characteristics, but this is
18 just an orientation so you have a sense of what hairs
19 are like.

20 Hairs -- all hairs grow in three phases:
21 There's the actively growing phase, called anagen. All
22 the growth happens in the skin and then it just pushes
23 it up sort of like those ice cream treats you get as a
24 kid; it just pushes it up from the bottom and the hair
25 comes out the top of the head -- or out the top of the

1 skin. Hairs can persist in the anagen phase for
2 several years -- seven, eight, nine years -- just
3 depends on a person's biology.

4 At some point, though, the follicle gets a
5 signal, it starts to shut down production, and goes
6 into this transitional phase, which is catagen, that's
7 probably going to last about two weeks. And then the
8 hair, the follicle stops production completely and goes
9 into a resting phase, or telogen.

10 You can see in the diagram there that the
11 root on the telogen hair dries up and becomes small and
12 hard. These are the ones, when you brush your hair or
13 shampoo your hair, these are the ones that fall out.
14 Typically no more than about 10 percent of a person's
15 scalp hairs are in telogen phase.

16 Once the hair gets released, the follicle
17 gets a signal that it's time to start up again and it
18 cycles back to the anagen phase. So it's cyclical
19 until the follicle stops for some reason.

20 So now that we've determined that it is a
21 hair based on its structural morphology, next question
22 is: Is it human? Luckily, human hairs and animal
23 hairs look very, very different. There are a number of
24 characteristics up there that distinguish the two.
25 Humans tend to have a fairly even shaft diameter. The

1 pigmentation is even. The color is uniform, at least
2 naturally, it's uniform. We do a lot of strange things
3 to our hair, so that is something else we take into
4 account. The scales -- remember, if you remember the
5 cuticle that I mentioned, the scales, the free edge of
6 those, the shape of them, is of one type; it's called
7 embrocate in humans. And it varies greatly in animals,
8 and that's an aid to identification.

9 And human hairs can be quite long; animal
10 hairs, by comparison, the shaft varies a great deal.
11 The pigment varies -- and, in fact, animals will have
12 color bands; that is, abrupt changes in color. If you
13 have pets, you may have noticed this.

14 The scale pattern varies by species. They
15 may even vary within a hair for that species. And most
16 animal hairs, other than decorative ones like horse
17 manes and tails, are less than 3 inches long.

18 So, for example, that is a microscopic image
19 of a dog hair (indicating). Now, what you are looking
20 at is -- that large black line running down the middle,
21 that is all the medulla. Okay? That's the medulla;
22 that's the hair cells running down the length of the
23 hair shaft. And that little, thin, brown part you see
24 is the cortex and the pigmentation from this dog's
25 hair. And that's one of the major indicators that it's

1 an animal hair, is the medulla is more than half the
2 width of the hair shaft.

3 That is a goat hair. And, again, all those
4 cells that you see running down the middle that look
5 like flagstones in a walkway, that's all the
6 medullation. You look at that, and all you need is one
7 glance, and you know that it's not human; you may not
8 know it's a goat, but you know it's not human.

9 There's mink. And, again, all of those
10 little hair cells down the middle. That is an
11 immediate indicator that this is not a human hair.
12 And, in fact, if you look very carefully on the image,
13 you can see the little lines that sort of are sticking
14 out on the edge of the hair, those are the scales.
15 Mink have what are called spinous scales. And, again,
16 that's a way to tell that it's, in fact, mink.

17 That's a deer hair, and they have what's
18 called a wineglass root. And that's what I mean when I
19 said the shafts can vary a great deal in diameter. The
20 shaft neck's way down to that very thin area down by
21 the root. And that, again, is a classic indicator that
22 it's not a human hair.

23 And then, by comparison, there is a human
24 hair. You're not going to mistake that for any of the
25 images that I just showed you.

1 All right. So this is a fairly diagnostic
2 method of determining whether it's human or not human.

3 Person's ancestry, that gets a bit tricky.
4 Hairs are a polygenic trait; that is, there is more
5 than one set of genes that code for a person's
6 ancestry. It is a broad, fluid type of designation.
7 And simply because somebody's hair exhibits certain
8 characteristics does not mean either the rest of their
9 characteristics will type that way or they may not even
10 self-identify them that way.

11 And so most hair examiners currently are
12 fairly cautious about estimating ancestry unless there
13 are some clear demarcators. There are certain traits
14 that tend to align with the main three groups that you
15 see here -- people of African history and Asian
16 ancestry or European ancestry -- but they are not
17 exact.

18 Area of the body. Head and pubic hairs
19 contain the most information. They are the largest
20 hairs. They vary the least. They're the most
21 consistent with an individual. And they have the best
22 information for making comparisons.

23 Typically, facial hairs, limb hairs, chest
24 hairs, armpit hairs, other types of hairs can be
25 identified as being hairs and being human, and that's

1 probably about it. They just simply aren't going to
2 have enough information to allow a comparison.

3 Damage, disease, and treatment. A wide
4 variety of things can happen to hair, it's one of the
5 few parts of our body that is actually exposed to the
6 elements a good deal. The upper right -- and these are
7 just examples, just to give you a sense of some of the
8 things you might see -- upper right is burned hair or
9 singed hair.

10 The lower right is a disease called
11 trichorrhhexis nodosa, and it exhibits itself with the
12 way the hairs are produced in these little node-like
13 beads that run along the hair.

14 Lower left is hair cut by glass in an auto
15 accident. Safety glass may not be big, the little
16 cubes may not be big, but at 60 miles an hour, they're
17 still really sharp. And so what happens is they hit
18 the hair and they start to scoot across it. They don't
19 have enough mass to cut it right off and they scoot
20 along the edge of the hair until they come out the
21 other side. So you see these really long, fine tips on
22 the cut hairs.

23 And then the upper left is a gray hair that
24 has been dyed very bright red.

25 Another question that has to be asked as you

1 progress through a hair exam is: Is it suitable for
2 comparison? Hairs may not be suitable for a variety of
3 reasons, some of which are listed here: They are
4 damaged; they are too short; they're too light in
5 color; they might be too dark in color; it's a
6 fragment, that is, it does not have a root and it's
7 very short; there may be extreme treatment, so extreme
8 bleaching or extreme dyeing can obscure those internal
9 characteristics that we've been looking at; and it just
10 may not be suitable for comparison -- at least for
11 microscopic comparison.

12 Suitable hair samples may be compared with
13 suitable known hair samples of the same type; head to
14 head, pubic to pubic. You can't compare apples to
15 oranges in that regard.

16 The comparison process itself, as far as
17 microscopy goes, uses a microscope; in fact, it uses
18 two. These are much like the microscopes you probably
19 used in biology class in high school or college, it's
20 just that there's two of them; they're side by side,
21 and there is a device on top that gives you a
22 split-screen view. So what's on the right-hand side
23 and what's on the left-hand side are side by side at
24 the same time for comparison, because a lot of
25 information is going through the examiner's brain when

1 they're comparing these images. And it's a fairly
2 dynamic process; you're moving from root to tip, you're
3 changing magnifications so the image is getting larger,
4 you are adjusting the illumination. It's not as simple
5 as one picture and another picture; it's a dynamic
6 process.

7 All of the characteristics that are available
8 are used. I often get asked that on the stand: "Well,
9 how many characteristics did you compare?" And my
10 answer is: "All of them." Whatever is available on
11 the hair, that's what's used. And the questioned hair
12 must fall within the variation established by the known
13 sample. The known samples are crucial; you have to
14 have an adequate known example in order to effect a
15 proper hair comparison. It's representative; that's
16 the main thing.

17 If you think of any -- in this room of
18 people, is this representative of the population of the
19 building? The county? The town? Of the state? Of
20 the country? It becomes less representative as you go
21 out simply because there's only a handful of people in
22 the room. So what you want from a known hair sample is
23 anywhere from 25 hairs up -- more is always better --
24 from all areas of the head or pubic region.

25 All right. That is key.

1 This is a list -- you can probably find
2 another half dozen or so lists -- of traits. This is
3 one set to give you an idea of the range of traits that
4 we look at when we do a hair comparison. These are
5 qualitative traits. And it is -- hair comparison, hair
6 examination, is overtly a subjective evaluation of
7 objective criteria.

8 So I can point to, say, a cuticle and I could
9 see the cuticle, it's sort of thick here and the
10 scales, you can see the free ends, they protrude out,
11 it's a little yellow, and you see how it sort of blends
12 with the pigmentation here on the end; I can describe
13 all of these things and point them out to you. They
14 are objective criteria, but it's a subjective
15 evaluation of those based on my education, training,
16 and experience. So there is no formula for this.

17 This is roughly what we are looking for.
18 What you want to be able to determine is a nice, clear
19 distinction. Either the questioned hair, shown on the
20 left, questioned hair exhibits the same characteristics
21 in the same way as the known sample, and you could take
22 the questioned hair -- not that you would, but you
23 could take that questioned hair and drop it into the
24 known sample and you wouldn't be able to distinguish
25 it. All right? There's nothing different about it

1 inherently. And, therefore, you have a positive
2 association.

3 Or the two hairs are different. In the
4 example on the right, the hairs are manifestly
5 different in their color, the qualities of the
6 pigmentation, variety of things that I could sit here
7 and list out.

8 So the conclusions that you can draw from a
9 hair comparison are listed here. There is no standard
10 wording, but this captures the essence of what should
11 be in a hair comparison result. You can have a
12 positive association, an exclusion, or a negative
13 association, or an inconclusive result.

14 So we'll look at the positive association
15 first. The typical wording would be something like
16 that "Q1" -- or the questioned head hair -- "exhibits
17 the same microscopic characteristics as the known head
18 hairs and, accordingly, could have come from the same
19 source; i.e., the person who supplied the known head
20 hair sample."

21 Any hair comparison -- microscopic hair
22 comparison report should have that codicil in there as
23 well, that "It should be noted that the microscopic
24 comparison of hairs is not a method of positive
25 identification.

1 Exclusion. It's the opposite. "Head hair
2 exhibits similarities to and differences from the K1
3 head hair sample. Accordingly" -- oops, I got those
4 backwards, I grabbed the wrong ones, I apologize. I
5 will switch those around.

6 The one listed for "exclusion" should read
7 the bottom, which is that "Q1 head hair is
8 microscopically dissimilar to the K1 head hair sample
9 and, accordingly, could not have come from the same
10 source."

11 And then inconclusive, "There are
12 similarities and differences and no conclusion could be
13 drawn."

14 Q Dr. Houck, can I just interrupt to ask
15 quickly, I just want to confirm. You just said, for
16 the positive association, "It should be noted that
17 microscopic comparison of hair is not a positive
18 identification."

19 A Correct.

20 Q Did you say you would expect that to be in a
21 report?

22 A Yes.

23 Q Written in a report?

24 A It should be written in the report and also
25 brought out during testimony.

1 Q And what about in 1988, though? Would that
2 have been in written reports in 1988?

3 A I have seen reports from that time period
4 that had that statement in there. And, again, it's a
5 matter of jurisdictional and laboratory protocols, and
6 that would vary. At that time there were no
7 standardized approaches to this type of wording in
8 reports.

9 Q Okay. Thank you.

10 A Sure.

11 Q Please continue.

12 A And again, just to clarify -- I apologize,
13 the description underneath that should go under
14 "exclusion" and vice versa. And I will change those
15 for you before I leave.

16 Now, up until this point we've been talking
17 about the microscopic comparison of hairs; that is, the
18 physical hairs themselves and the way they look.

19 In late '90s, a new method, a new type of DNA
20 analysis was being applied in anthropology and also
21 rolled over into forensic science, mitochondrial DNA
22 analysis. That's a different type of DNA analysis than
23 the type you are used to thinking about when you hear
24 "forensic DNA."

25 It doesn't come from the nucleus of the

1 cells; it comes from structures within the cell called
2 mitochondria. They have their own little DNA packet.
3 And it's useful in samples of, say, hairs, bone, and
4 teeth because there are more samples per cell; it's a
5 fairly robust molecule, lasts really well, and is
6 useful for exclusion and some level of positive
7 inclusion.

8 A couple of differences between nuclear, or
9 the type of DNA analysis you are used to thinking of,
10 and mitochondrial, is -- one is that it is maternally
11 inherited. So all maternal relatives on one side of
12 the family would have the same mitochondrial DNA
13 sequence. So a mother and all of her children will
14 have the same mitochondrial sequence; the father would
15 have a different one, but he would share that with his
16 mother.

17 This type of DNA analysis was first applied
18 forensically at the FBI laboratory because it really
19 strengthened that type of evidence, hairs, because now
20 you had the microscopic examination of the hairs, what
21 they looked like, combined with a genetic analysis of
22 the hairs, the information contained within them. And
23 that provided a much stronger type of analysis and
24 conclusions for those hairs.

25 So they are complementary techniques; one is

1 not a screening method for the other, and the other is
2 not a confirmatory test for the former. The reason for
3 this is -- and I'll explain the two terms that I'm
4 going to use here. The first is -- two terms from
5 biology. One is called genotype and the other is
6 called phenotype.

7 Genotype is your genetic makeup. It is your
8 genetic sequence; all the genetic material that's
9 inside of you makes up your genotype. The phenotype is
10 the expression of those -- of that genetic information
11 in a particular environment.

12 So perhaps your genes code for you to be tall
13 but for some reason during childhood you had poor
14 nutrition and you didn't get to achieve that genetic
15 potential and so now you are shorter than you otherwise
16 might have been, as an example.

17 Phenotype is fluid. So think of it as your
18 genes plus the environment. Okay? I'm originally from
19 Buffalo, New York. We don't get a lot of sunny days up
20 there. If I moved, say, down to Key West and became a
21 landscaper, I would be out in the sun more often, I
22 would be doing more physical labor, my diet would
23 change; there would be a variety of things in my
24 environment that might affect -- or would affect my
25 body, but might affect my hair. Simply being outside

1 in the sun more often, I would have some sun bleaching.
2 My skin would tan, and that might affect the rate of
3 growth for my hairs. A variety of things.

4 So you need to be aware not only of the
5 genetic component of the individual, but also its
6 expression in a particular environment.

7 By combining microscopic hair comparisons, a
8 phenotype examination, with mitochondrial DNA analysis,
9 a genotype examination, you are capturing both types of
10 information and you are producing a much, much stronger
11 result, either exclusion or inclusion.

12 They also both act as sort of a check against
13 each other. The genetic indicator is obvious, but I
14 will give you an example of the phenotypic example.

15 Say there is a bank robbery and then there is
16 a ski mask left behind -- this is based on an actual
17 case that a colleague of mine worked. Inside the ski
18 mask is a hair, and the hair is taken for mitochondrial
19 DNA analysis and a sequence is produced. The sequence
20 is the same as the suspect. No one has looked at the
21 hair at this point. When it was examined
22 microscopically by a defense expert, turns out that the
23 hair from the ski mask has been dyed red. Suspect
24 doesn't have red hair, doesn't have dyed hair, hasn't
25 had his hair cut such that it would obscure red hair on

1 the far end, and because nobody looked at the hair, the
2 DNA analysis is now in question. Could have been any
3 maternal relative, some of the sequences in the
4 mitochondrial genome repeat among unrelated
5 individuals, so it's not as exacting as standard DNA
6 that you think of.

7 So in comparison -- or in combination, the
8 two methods complement each other strongly.

9 So in terms of this, I did a study when I was
10 at the FBI laboratory with a colleague, Bruce Budowle,
11 and we looked at cases. And this is based on cases.
12 This is not research samples where we knew the answer;
13 these are based on cases where we just had the evidence
14 available. And we had hair examiners do the normal
15 casework, microscopic examination, and then those hairs
16 were sent off for mitochondrial DNA analysis. So we
17 could have a positive association, an inconclusive, and
18 exclusion, or no exam. For some reason, we're just not
19 going to look at those hairs, probably because they are
20 too small.

21 So you can see there were 80 microscopic
22 associations, 97 mitochondrial associations, 19
23 microscopic exclusions, and 64 mitochondrial
24 exclusions, and then a number of the inconclusive and
25 no exams. If we break this out as a cross-reference,

1 what you see is, of those that were suitable for
2 comparison, 69 of the associations agreed between
3 microscopic and mitochondrial associations; and 17 of
4 the exclusions, all of them agreed as well. There was
5 no instance where a microscopic exclusion resulted in a
6 mitochondrial inclusion, but there were 9 instances
7 where microscopic inclusion was actually countered by a
8 mitochondrial exclusion.

9 And there is a perfectly reasonable
10 explanation for that. That is, phenotype; those hairs
11 did, in fact, look similar enough for the result at
12 that microscopic comparison to get the result; to say a
13 positive association. Now, it's not a form of positive
14 identification, but there is enough variation in
15 biology that those hairs, the questioned hairs, looked
16 enough like the known hairs for the examiner to reach
17 that conclusion.

18 The analogy I make in this is with blood
19 typing and DNA analysis. If, at a crime scene, there
20 is a bloodstain and the lab types it and it's Type A,
21 and a suspect is developed and they type that
22 individual and their blood type is also type A;
23 therefore, based on that exam, you can't exclude the
24 suspect of having left that stain at the scene.

25 Later, if you do DNA analysis -- nuclear DNA

1 analysis -- and you exclude the suspect from having
2 left that stain because the DNA doesn't match, okay,
3 does that mean that the original exam was wrong? No.
4 The stain and the suspect are still Type A.

5 It's not a question of accuracy; it's a
6 question of resolution. DNA is a far more specific
7 test than any morphological test, or even other types
8 of chemical tests like ABO typing.

9 So in this case those hairs did, in fact,
10 look enough like the known sample for the examiner to
11 come to that conclusion; it's just that was actually
12 not the case.

13 So the question here is -- in terms of
14 microscopic accuracy -- microscopic hair comparisons
15 work, but that's why we have always said they're not a
16 form of positive personal identification. We know
17 there is enough variance in that type of information to
18 not go beyond that threshold.

19 Q Dr. Houck, can I just --

20 A Sure.

21 Q -- ask a question about that. And I know I'm
22 just reiterating what you said, but I just want to make
23 sure I understand.

24 If somebody did a microscopic hair comparison
25 to another person -- me -- somebody has a hair, they

1 look at it and they say, "This is consistent with
2 Ms. Montgomery-Blinn's hair, it could have come from
3 Ms. Montgomery-Blinn," but then later on we DNA test
4 that hair and it's not my hair, I am ruled out; both
5 people can still be right.

6 A The actual -- the observations obtained can
7 both be substantiated.

8 Q Thank you.

9 A Mitochondrial DNA analysis is now standard --
10 it is now standard for hair comparisons. In fact, at
11 the FBI laboratory, when I was there, and we instituted
12 the mitochondrial DNA analysis, it was policy that if
13 there was a positive association microscopically, the
14 hairs automatically went over for mitochondrial DNA
15 analysis. It became a routine test.

16 There are now, I think, four or five regional
17 laboratories in the US that do mitochondrial DNA
18 analysis, and a couple of private ones as well that do
19 it. So it's now routine -- a routine method for hair
20 comparisons.

21 I have some information here -- obviously it
22 will go on the record; I don't want to go through all
23 of it -- but essentially it says that mitochondrial DNA
24 analysis is a solid technique, it's valid, it can be
25 done on, for example, as little as about an inch or

1 less of hair. So it takes a very small amount of
2 sample to be able to do this type of test. So this is
3 now a routine part of forensic hair examination.

4 About -- in one study, about 93 percent of
5 hairs provided mitochondrial DNA information. So
6 it's -- partly why it's become routine is because data
7 can be gotten out of most of the hairs. Hairs up to 30
8 years with no significant environmental damage still
9 work. And that heteroplasmy -- it's a big word for
10 saying nonrelated individuals may share the same
11 sequence, somewhere between 9 and 14 percent.

12 Q Thank you, Dr. Houck.

13 I'm going to give you a hypothetical example,
14 and I know we're talking about phenotype versus
15 genotype, and I think this is just going to what you
16 were talking about there.

17 Imagine that hair is collected at a crime
18 scene and at that time a person is arrested -- or close
19 in time -- and put in jail, and they spent about seven
20 months in jail before a suspect kit is taken.
21 Presumably in jail, maybe some things are different;
22 maybe the water's different, the shampoo's different, I
23 don't know how much they're going outside, I don't know
24 if their diet has changed. And then, so, seven months
25 later, a suspect kit is taken and you're comparing the

1 hair from the suspect kit seven months later to the
2 hair from the crime scene that was taken at that time.

3 Could you see differences? Could that make
4 the comparison more difficult?

5 A It would certainly be something that I would
6 note, the timeline; six months is long enough that it
7 would be of interest to me as a hair examiner to pay
8 attention to, and I would take that -- I would keep
9 that in my mind as I'm looking at the known sample. If
10 the known sample all has -- is uniform; and that is
11 that I'm seeing the same things in all the hairs in
12 that known sample, that is going to strengthen my
13 perception of the known samples. So now when I go to
14 the questioned, those same characteristics ought to be
15 there if it is a positive association.

16 In that time frame, certainly there could be
17 changes. Diet, health, exposure to sunlight, a variety
18 of things could effect changes in the short-term.

19 Q You are looking at what you referred to as a
20 questioned hair, the hair that's left at a crime scene.
21 Is one hair enough for you to do a comparison and find
22 a positive association or find consistency?

23 A One --

24 Q One questioned hair. If all you have is one
25 questioned hair?

1 A If you have a suitable known sample, yes.

2 Q Okay. And the language -- when you are doing
3 a comparison and you have your report, what type of
4 language are you using? If you find this consistent,
5 what type of language would you say in your report?

6 A Largely what you saw on the monitor when I
7 read off. If there is positive association, it would
8 say, "The questioned hair exhibits the same microscopic
9 characteristics as hairs in the known sample and,
10 therefore, could have come from the same source." And
11 then the individual that the known sample came from.

12 Q Okay.

13 A And then the codicil about not a means of
14 positive identification.

15 Q The part that you said about could have
16 originated from and naming the person, would you still
17 put that in a report today that you were writing?

18 A Sure.

19 Q If you are doing your comparison and you have
20 hairs from your suspect kit -- and you said you'd like
21 to have at least 25; is that what you said?

22 A I always like more, but 25 is about a
23 minimum.

24 Q The minimum?

25 A I've worked with less, but I'm happier with

1 more.

2 Q Would you compare all of the ones that you
3 had or would you compare some partial amount, stop when
4 you have one that is consistent with?

5 A I'm not sure I understood.

6 Q If you have 25, would you compare all 25 to
7 your suspect or your sample -- or your questioned hair?

8 A Oh. The smaller the number of knowns --
9 known hairs, the more likely I am to examine all of
10 them. If I have, say, a hundred known hairs, I'll
11 probably sample, simply because it's a lot of hairs.
12 If I -- say I get a hundred hairs in, maybe I mount 25
13 on glass microscope slides for examination, I mount 25.
14 Let's say I see a lot of variance, some are really
15 light, some are really dark, some are really thin, some
16 are a bit larger, I will go back and remount more.

17 If I only get 25 in, I'm more than likely to
18 mount all of those and use all of those for
19 examination. And, again, it depends on the quality of
20 that known sample.

21 Q Okay. Are you familiar with standard
22 procedures or routine procedures in 1988 for
23 microscopic hair comparison?

24 A I have reviewed written procedures as they
25 existed in some labs at that time period.

1 Q And you started at the FBI in '92; is that
2 right?

3 A Correct.

4 Q How have things changed since 1988?

5 A The actual method, absent the mitochondrial
6 DNA analysis, is largely the same. What has changed is
7 there is more research on hairs and their value as
8 evidence. There are more guidelines. For example, the
9 working group that I chaired, that was the first one of
10 its kind in I think in the world -- definitely North
11 America, but I think in the world -- to look at hairs
12 and come up with standard operating procedures and
13 training protocols and that sort of information, how
14 hair examiners standardize their approaches.

15 Q Is peer review something that is standard
16 today?

17 A Peer review is recommended --

18 Q Okay.

19 A -- today and is standard in the major
20 laboratories that I am aware of that do forensic hair
21 comparisons routinely.

22 Q How about in 1988?

23 A There are now about 400 crime laboratories in
24 the United States. They don't all share the same
25 protocols, even today. And in 1988 there were fewer

1 and there wasn't as much standardization of any of the
2 methods at that point. And so peer review was done, I
3 know it was done at the FBI at least from the cases
4 I've reviewed, but whether or not it was done at the
5 state or local level for laboratories would vary by
6 jurisdiction.

7 Q How about photographing the hair?

8 A Photographing is easier now with digital
9 cameras because before you would -- there's a special
10 adapter that you put on top of the microscope and then
11 you put the camera on top of that, and you would get
12 everything set to the parameters that you know would
13 work, you would take a picture, wind the film, take
14 pictures, wind the film, and then send them off to the
15 lab. They'd come back developed and you would hope you
16 would have some that were useful. Now, with digital
17 cameras, it's much easier to make sure that you get
18 good photos every time.

19 Some laboratories require photographs be
20 taken for all positive associations. Some hair
21 examiners dislike taking photographs because if you
22 remember when I was talking about the exam process,
23 it's dynamic; I'm going from root to tip, I'm changing
24 magnification, I'm moving around in both samples
25 because they are independently movable. It's not a

1 static thing. Some hair examiners feel that taking a
2 photograph produces the static image and will mislead
3 the inexperienced as to what was actually done in the
4 exam. So for a while there were examiners who would
5 purposefully not take photographs because they thought
6 it was not indicative of the exam that they had
7 conducted.

8 Q Okay. The language that we have been using
9 here -- or you have been using is "consistent with."
10 What about "match"? Does that mean the same thing?
11 Can you explain the differences, similarities?

12 A Sure. If you and I were hair examiners and
13 worked at a laboratory and I would bring a case to you
14 and say, "I want you to take a look at these, the hairs
15 on these three slides, I think they match but there's
16 something odd about them. I want you to tell me if you
17 see anything funny." If I tell you that, we know what
18 we're talking about because we're peers.

19 On the stand, I am sure if you go back and
20 look at all of my transcripts, it's in there somewhere;
21 but I try really hard not to say the word "match"
22 because it could be misleading.

23 That's a realization that the forensic
24 community came to after the O.J. Simpson case and the
25 use of the term in that highly televised testimony. So

1 we have changed our thinking on the use of that word
2 and we're now more specific. It's more cumbersome
3 because now I have to say "shares the same microscopic
4 characteristics as the known" instead of just saying
5 "match."

6 So in a peer-to-peer conversation, we might
7 use "match." But it would not go in a report and it
8 should not be used in testimony.

9 Now, it previously probably was, but it's --
10 again, it's one of those things when I say "match," I
11 know what I mean. So when I testify to match, I'm not
12 overstating because in here, in my head, I am not
13 overstating.

14 Q You said it wouldn't go in a report. Are you
15 talking about an FBI report --

16 A Again, wording would vary by jurisdiction; it
17 would not go in an FBI report.

18 Q So in 1988, the FBI was not using the
19 language "match" in a report or in an official
20 capacity.

21 A To my knowledge; correct.

22 Q Okay. You talked about some studies. Are
23 there any other studies that you think would be
24 helpful -- and I know you said that they are -- each
25 study is going to stand on its own, each particular

1 study, as opposed to a large set of data.

2 Any there any other studies that you think
3 would be helpful to us?

4 A I think the -- I mean, there are a number
5 of -- maybe a half-dozen clinical studies that address
6 the accuracy, the specificity of microscopic hair
7 exams. The problem with those is the statistics don't
8 relate to a larger population; there are just actual
9 clinical studies. They are one-offs. It would be as
10 if there was a medical study that said, "This group of
11 50 people responded to this treatment." How does that
12 play out to the rest of the population? Don't know;
13 it's only 50 people.

14 And that's what these clinical studies are
15 like. They are useful. They tell us something, but
16 it's not such that we can then take those numbers or
17 take those methods and apply them broadly in casework.

18 MS. MONTGOMERY-BLINN: May I approach the
19 witness?

20 JUDGE SUMNER: Yes, ma'am.

21 Q Dr. Houck, I know we showed you these earlier
22 during the lunch break. These are three studies that
23 the Commission heard about this morning; two are from
24 the 1970s and one is from 1985.

25 A Right.

1 Q Are you familiar with those?

2 A Yes.

3 Q And are they just what you were saying; that
4 they are clinical studies?

5 A That's how I would characterize them, yeah.

6 Q And the studies you showed to us on the
7 slides, one I believe was from 2002 and one was from
8 2005 --

9 A Right.

10 Q -- is that right?

11 And, again, clinical studies.

12 A Clinical studies. The first one, on
13 microscopic and mitochondrial DNA, no one had ever
14 looked at that. No one had ever had enough samples or
15 had access to that methodology to make that kind of
16 cross-comparison. And so the FBI, being the only lab
17 at the time doing mitochondrial DNA analysis, felt it
18 would be useful to try this and see as a cross-check,
19 to find out exactly what the strength of each exam was
20 alone, but then also together.

21 Q Okay. And those studies I just handed you --
22 I'm sorry, the third one is not actually a study, it's
23 just --

24 A It's a proceeding.

25 Q Yeah. Those were before mitochondrial DNA

1 was being used?

2 A Yes.

3 Q Okay. Before the Commission hearing, I think
4 we asked you to look at an article about the US
5 Attorney from the DC District.

6 A Yes.

7 Q And what did that article say that the US
8 Attorney is doing?

9 A The US Attorney, based on -- I think it's
10 two, because that's the only information that I've seen
11 is that one article -- based on two older cases of now
12 DNA exclusions that were hair comparison inclusions or
13 associations, they are planning to do a large-scale
14 review of all hair examinations, all hair cases, by the
15 FBI.

16 Q And when we contacted you we asked you if you
17 could review the report and bench notes from a specific
18 case; and that was the Willie Grimes case. Did you
19 have an opportunity to do that?

20 A Yes.

21 Q And, of course, I understand we do not have
22 the hair; we could not provide you the hair or images
23 or diagrams of the hair. You were limited by just the
24 report and the notes.

25 But were you able to review that report and

1 review those notes?

2 A Yes.

3 Q Okay. And did you feel that that was a
4 fairly standard hair analysis from 1988?

5 A It was.

6 Q Was there anything about that hair analysis
7 that stuck out to you as unusual?

8 A As far as the exam itself, no.

9 Q Okay. Anything as far as not the exam
10 itself?

11 A Well -- and this is Monday-morning
12 quarterbacking, obviously, but I always ask for more
13 known samples; not just of one individual, but other
14 individuals involved in a circumstance.

15 So, for example, if there is an issue of one
16 individual has been identified as a suspect but there
17 might've been, say, three other people involved at the
18 time or in the room at the time or had access to the
19 scene at the time, I would probably ask for those known
20 standards as well, hair samples from them, just so
21 that, for my examination, I know that I am not -- I am
22 not biasing my view by looking at one person against
23 one sample. I have, say, three or four people who
24 might plausibly have been in the room at the time to
25 compare against the questioned hair so I can say "not

1 only does the questioned hair" -- if that is the
2 case -- "not only does the questioned hair look like
3 this known sample, it also does not look like any of
4 the other people involved or at least alleged to be
5 involved at the time."

6 Q So would you have wanted to have mounted the
7 victim's hair and analyzed those in this case?

8 A I typically would do that.

9 Q Okay. In this case the analyst testified
10 that it is rare that you would see two individuals in
11 the general population whose hair is the same or has
12 the same microscopic characteristics.

13 Would you agree with that statement, that
14 it's rare?

15 A Yes.

16 Q What if you take that -- the testimony was
17 about the general population, what if you take it down
18 to a subset and narrow it down to all African-American.
19 Would it become less rare?

20 A No, actually, it becomes more rare. Anytime
21 that you start adding criteria to a statement, it, by
22 its very nature, becomes more specific. So all human
23 head hair; all brown human head hair; all brown human
24 head hair with characteristics of someone of African
25 origin; of this length; of all these characteristics

1 that you see.

2 So as you add those on, those limitations on,
3 it tends to become specific. It's like saying all
4 Fords -- or all automobiles; all Fords; all Ford F-150
5 pickups; all blue Ford F-150 pickups. Right? The
6 number of those decreases. So the chance of finding
7 one at random also drops; right? The random-match
8 probability increases.

9 Q Now, if I gave you a hair and you looked at
10 it and you determined that it was from somebody of
11 African-American origin --

12 A Right.

13 Q -- and I said -- and you said "this is rare
14 that you're going to find multiple people that would be
15 microscopically consistent with this hair in the
16 general "population" --

17 A Right.

18 Q -- if I narrowed it down to just the
19 African-American population or just African-American
20 males around age 30, is it getting a little bit less
21 rare now? So I'm narrowing your -- that population.

22 A Right. There are no base rates for these
23 characteristics. And, again, in my experience, the --
24 you go with the hairs. All right? I try not to think
25 about, you know, any stereotypes that may be involved

1 either socially or, you know, within the science.
2 Well, it's a brown -- you know, there's a statement
3 that you might see -- in fact, you might see in these
4 articles about brown Caucasian head hairs being
5 featureless. Right? Or all looking very similar.
6 And, in fact, that's what Gaudet, in the one paper,
7 picked: Brown and Caucasian head hairs, because the
8 assumption is they're going to have more similarities
9 than if he had blond, red, African-American, Asian, a
10 variety of hairs.

11 So I don't think that that necessarily is
12 going to change the appreciation of the characteristic
13 that that hair is going to exhibit.

14 Q When you spoke with our staff after reviewing
15 the trial transcript and the reports, I believe you
16 said that if you had the opportunity back then -- and I
17 know, again, we're looking at this many, many years
18 later, there's more information -- that you would have
19 tried to counsel the prosecutor not to use the physical
20 evidence based on a single hair.

21 Can you explain what you meant by that.

22 A Sure. In a number of cases -- let me start
23 that over a different way.

24 As an expert, I have a privileged position in
25 working any case. I'm bringing them information that

1 is needed for that case that nobody else has. So in
2 working with either a prosecutor or defender, I try to
3 give them the best information that I can about the
4 evidence that I look at based on my education,
5 training, and experience.

6 Depending on what that hair looked like, I
7 probably would have said, "I don't know that you want
8 to use this" -- right? -- "If this is the only piece of
9 evidence you have, physical evidence" --

10 Q The only piece of physical evidence?

11 A Physical evidence that you have. "And if you
12 don't have strong circumstantial evidence otherwise,
13 this might not be the one you want to pick to
14 prosecute."

15 Q And, of course, if you weren't consulted, you
16 wouldn't have an opportunity to say that.

17 A Right. Sometimes you just get the subpoena.

18 Q Also when you were talking with our staff you
19 talked about an unlikely explanation you gave about,
20 sort of, you're playing the lottery and some people
21 have one unusual hair or one funky hair, I think was
22 how you described it.

23 A Yeah.

24 Q I really understood it when you described
25 that.

1 A Right.

2 Q Would you please explain that for the
3 Commission.

4 A Sure. If you look at -- look around the room
5 and look at people's hair, and you'll get a sense of
6 the variation that's in the hairs that you see on their
7 head. That's an aggregate. That's an aggregate
8 picture; some hairs are darker, some are lighter, some
9 people's hair color is more uniform, some people have
10 more variation.

11 Every so often you'll find some hair that is
12 just -- it's different. Okay? I have one in one of my
13 eyebrows, and it just is black and grows straight out
14 the front and looks nothing like any of the other
15 hairs. Everybody has one or two of those on their
16 body. You have several million hair follicles on your
17 body; everybody has something that's a little off.

18 That's why there's so much emphasis on, one,
19 a suitable known sample, because you don't want to have
20 your perception thrown off by a bad sampling of hairs.

21 Like my hair is growing a little gray at the
22 temple. If you only took samples from the sides, but
23 the questioned hair came from the top -- right? --
24 you're probably not going to make a positive
25 association because the characteristics would be very

1 different.

2 So you want to make sure that in the known
3 sample it's representative. In the questioned
4 sample -- that's why there's so much emphasis on: Is
5 this hair suitable? Does it have characteristics in it
6 that might lead you to think it's one of those off, odd
7 hairs? And that's why the emphasis is placed on that.

8 Q And you also had an opportunity to review the
9 closing arguments in this -- the prosecutor's arguments
10 in this case.

11 A I did.

12 Q Okay. And the prosecutor said to the jury,
13 "No two individuals have the same type of hair" and
14 that "this hair was consistent with the hair from the
15 defendant."

16 That statement, "no two individuals have the
17 same type of hair," do you think that's an accurate
18 statement?

19 A No.

20 Q Okay.

21 A I mean, it's -- to my ear, as a hair
22 examiner, that overstates the -- it overstates the
23 level that kind of evidence can achieve.

24 Q Two individuals can have the same type of
25 hair?

1 A How -- how much do you want to mince those
2 words?

3 Q Okay.

4 A Because it's a different way of -- it's a
5 different way of saying that.

6 When I say it's rare to find two people at
7 random who have the same hair characteristics, that's
8 different than saying no two people have the same
9 hairs. That implies you've looked.

10 Q Okay.

11 A All right. So no two people.

12 What I'm saying is it's rare to find; I'm not
13 saying no two people. I haven't looked at everybody's
14 hair. Okay?

15 So asking me, "Well, do you think this hair
16 could match?" That's like asking me what's on page 137
17 of a book I just started. I don't know. I would have
18 to look.

19 Q All right. The prosecutor also said, "It is
20 still remotely possible that somewhere in the world
21 somebody else may exist with the same type of hair,"
22 and the defendant -- he goes on to say, "The defendant
23 and his attorney urge you to say that it could be this
24 other person."

25 So "remotely possible," is that scientific

1 language that you've seen in hair analysis reports or
2 studies?

3 A No. And, in fact, that is why the wording on
4 the reports -- the "could have come from" -- is phrased
5 that way. There are no good statistics for this.
6 There are no -- there is no baseline study. There is
7 no database against which to check all of this.

8 So to say that it's "remotely possible" that,
9 to me, implies numbers. All right? You're saying it's
10 either a chance -- it's either 50 percent or 5 percent;
11 5 percent is smaller. I don't know. I don't know
12 those percentages. Those percentages don't exist for
13 reporting on hair comparisons.

14 Q And just as a cross-field comparison with
15 mitochondrial DNA, multiple people can have the same
16 mitochondrial DNA; my sister and I, for example.

17 A Correct. And, again, that's why combining
18 the phenotype exam with the genotype exam, the hair
19 exam probably mitochondrially could not separate you
20 from your sister or your mother; the microscopic hair
21 exam probably could --

22 Q Okay.

23 A -- without too much trouble.

24 Q If we still had this hair, the one from the
25 1988 report, today, what would you recommend that we do

1 with it?

2 A I would recommend a microscopic examination.
3 I would recommend a microscopic comparison with
4 whatever known sample was available, including any
5 other known samples of hairs from individuals who might
6 have been involved at the scene. And then, if there is
7 a positive association, send it off for mitochondrial
8 DNA analysis.

9 MS. MONTGOMERY-BLINN: Commissioners, do you
10 have any questions for Dr. Houck?

11 COMMISSIONER SMITH: If you had a case and
12 you had a lot of evidence to support the prosecution, a
13 hair -- consistent hair finding would be useful to a
14 jury, but if the hair is all you had, you might not --
15 you might not recommend to the prosecutor that you go
16 forward with that case.

17 Is that what you said?

18 THE WITNESS: In general, that it is a
19 principle, because I have had prosecutors call up and
20 say, "Hey, I've got one red polyester fiber on the
21 victim and the guy was wearing a polyester sweatshirt."

22 "Is that it? Is that all you have? Because
23 that's not good." Right?

24 It's that -- that cumulative tenet of the
25 more evidence, the better; the less likely it is at

1 random or chance or contamination or whatever. Right?

2 So a single hair? I've had cases where I
3 have had a single hair and it has been excellent
4 evidence; in fact, I didn't even do a comparison. It
5 was a body hair, so postpuberty, that was found on the
6 thigh of a 9-year-old girl who had been sexually
7 assaulted and strangled. I couldn't say that it was,
8 in fact, a pubic hair, but it was roughly that area of
9 the body. I couldn't do a comparison because it wasn't
10 a legitimate pubic hair. But I knew it was a hair, it
11 was a human hair, and it came from an adult, and this
12 was a 9-year-old girl. So we sent that off for
13 mitochondrial DNA analysis.

14 So when I say one hair, circumstances will
15 dictate. But in this case, only one hair, I
16 wouldn't -- I don't know that I would be -- I would
17 testify to my results without question, but I don't
18 know, if I were a prosecutor, that I could console him
19 and say, "This is going to go in your favor."

20 Sir?

21 COMMISSIONER VICKORY: But, in this case --
22 again, as the D.A. was looking at in 1987 and '88, if
23 he called you up and said, "You know, I've only got --
24 on the side of circumstantial evidence, I've got this
25 one hair that's microscopically -- you say it's

1 microscopically consistent, but I've got direct
2 evidence of a witness who is absolutely sure,
3 positively, that is the guy who did it," that wasn't an
4 unreasonable action for him, was it, to prosecute the
5 case with that kind of information?

6 I realize now we've got a lot of hindsight,
7 but...

8 THE WITNESS: Right. Right. I'm not a legal
9 expert. And every prosecutor has to pull together what
10 they think is their best case, their best narrative.
11 And obviously it would have been their call.

12 On the basis of physical evidence, if they
13 had nothing else? I would really try to counsel them
14 of the dangers of doing that because a few good
15 questions from a defense attorney that wouldn't
16 necessarily -- it wouldn't destroy my testimony, but
17 it's a matter of doubt.

18 COMMISSIONER VICKORY: Right. But here they
19 had an eyewitness.

20 THE WITNESS: Right. And on the legal side,
21 from the prosecution side, that is probably fairly
22 convincing evidence for the prosecutor to go forward
23 with the case.

24 COMMISSIONER VICKORY: Do you get a lot of
25 prosecutors asking you about, "How far can I go in my

1 closing argument," things like that, things of that
2 nature?

3 THE WITNESS: Regrettably, I have never had
4 one ask. And I have read a lot of closing arguments
5 that completely overstated either my results or others'
6 results.

7 COMMISSIONER VICKORY: Have you ever been
8 present for a closing argument and then gone back later
9 and read the transcript of it?

10 THE WITNESS: No.

11 COMMISSIONER VICKORY: Have you seen how they
12 play out differently?

13 Have you ever been -- well, in a hearing
14 you've testified in, for example, and then later read
15 your transcript?

16 THE WITNESS: Yes.

17 COMMISSIONER VICKORY: Of course, you know
18 how -- what you meant when you were talking, but I
19 guess what I'm saying is sometimes lawyers speak in --
20 especially in closing argument -- "hyperbole" is not --
21 maybe not the right word, but you know, you're bringing
22 it all together as it fits into your theory.

23 THE WITNESS: Well --

24 COMMISSIONER VICKORY: And in this case, you
25 know, the judge didn't stop him, the defense lawyer

1 didn't object --

2 THE WITNESS: Right.

3 COMMISSIONER VICKORY: -- while he was making
4 the statements. You know, I might say, "You know
5 there's not another red convertible in that parking lot
6 that day," but the way I said it was not definitive,
7 not conclusive, not --

8 THE WITNESS: Right.

9 COMMISSIONER VICKORY: -- as an expert.

10 THE WITNESS: Right.

11 COMMISSIONER VICKORY: Whereas, the expert
12 says something different.

13 THE WITNESS: And that's exactly the point.
14 In fact, I was speaking earlier -- I teach a course on
15 this exact issue. I call it Perspectives in Testimony;
16 it's actually an introduction to professional cultures
17 and systems thinking. If I titled it that, nobody
18 would take it, so I call it Perspectives in Testimony.

19 And one of the things that I talk about is
20 that, look, I went -- for lack of a better phrase, I
21 went to science school and lawyers go to law school.
22 Okay? They learn how to use words differently than I
23 do. Right? They get to use all of the rhetorical
24 tools that get taught. In science, we are not allowed.
25 Right? There's only a very few. And hyperbole is a

1 good example.

2 An attorney -- either side -- can easily say,
3 "This is the worst case that I have ever seen." I
4 don't get to say that. That's not on my list of
5 approved rhetorical figures. I can't do that.

6 So, manifestly, when they're doing their
7 closing arguments, they're going to use different words
8 and they're going to use -- they're going to use
9 different words and they may use the same words
10 differently.

11 My favorite example is I was talking with an
12 attorney and I was talking about data that I had
13 generated, and he used a statistical phrase "standard
14 error of the mean." Which means you have a number of
15 sets of data, and each one of those has an average, and
16 what you're doing is finding how much variation there
17 is between those averages. The "standard error" or
18 variance of the mean.

19 And he said, "What does that mean?"

20 And I said, "Well, every time I take a
21 measurement, there is little bit of error, so I take
22 multiple measurements, add them up, and then do
23 statistical set."

24 "Wait. There is error every time you make a
25 measurement? What kind of scientist are you?"

1 Because in his mind "error" is mistake. In
2 my mind, "error" is "variance" and is something to be
3 captured and understood and then controlled for in the
4 methodology. You reduce the error. It's always there,
5 though.

6 To him it was a mistake, it was bad, it was,
7 you know, something to be avoided. So, obviously, in
8 those closing arguments when attorneys -- either side
9 -- either side, obviously -- use the language, they're
10 going to use it differently than the scientist would.

11 COMMISSIONER VICKORY: Have you ever been
12 qualified as an expert in fingerprints?

13 THE WITNESS: Absolutely not.

14 COMMISSIONER VICKORY: Okay. Nothing
15 further.

16 MS. MONTGOMERY-BLINN: Any other Commissioner
17 questions?

18 JUDGE SUMNER: Thank you, sir.

19 THE WITNESS: Thank you. I appreciate the
20 opportunity.

21 MS. MONTGOMERY-BLINN: I'd like to release
22 Dr. Houck from his subpoena to let him catch a flight
23 back to DC. Thank you, sir.

24 THE WITNESS: Thank you.

25 (Witness dismissed.)

1 MS. MONTGOMERY-BLINN: Commissioners, wold
2 you like a brief break before I say a few more things,
3 or would you like me to go through it now?

4 (Discussion off the record.)

5 JUDGE SUMNER: We'll move on.

6 MS. MONTGOMERY-BLINN: All right.

7 We are going to move into talking about our
8 interviews with Albert Turner. The Commission was able
9 to interview Mr. Turner on three occasions -- really
10 two were interviews, one was just a very quick stop --
11 and each of these interviews has been transcribed. And
12 what I would like to do is give you the transcripts of
13 the two interviews now, and I think maybe it would be
14 appropriate just to break for the evening, if Your
15 Honor agrees, and allow you to read these at your
16 leisure tonight, and just ask that you read them before
17 we resume tomorrow at 9:00, if this is appropriate to
18 all of you.

19 JUDGE SUMNER: That's fair.

20 MS. MONTGOMERY-BLINN: Okay. An afternoon
21 snack has been delivered to the conference room if you
22 want to stop before you leave.

23 JUDGE SUMNER: Anything before we adjourn for
24 the evening?

25 Very good. 9:00 tomorrow morning. Do your

1 homework before we come back.

2 MS. MONTGOMERY-BLINN: Thank you.

3 (Recess taken, 3:18 p.m.)

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
87 CRS 13541/42/44

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Volume III of III

This matter coming on for hearing on April 4, 2012, at the North Carolina Judicial Center, Raleigh, North Carolina, before the Victoria L. Pittman, BA, CVR-CM-M, Court Reporter and Notary Public, the following proceedings were had, to wit:

Reported by: Victoria L. Pittman, BA, CVR-CM-M
d/b/a Pittman Stenography
POB 47
Wake Forest, NC 27588

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Reported by: Victoria L. Pittman, BA, CVR-CM-M
d/b/a Pittman Stenography
POB 47
Wake Forest, NC 27588

APPEARANCES BY THE COMMISSION

Chair: The Honorable Quentin T. Sumner

Members of the Commission:

The Honorable Charles L. Becton
Ms. Mel Laura Chilton
Dr. Jacqueline Greenlee
Chief Heath Jenkins
The Honorable Susan Johnson
Wade M. Smith, Esq.
The Honorable C. Branson Vickory, III

The Honorable Van Duncan, Alternate

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1 WEDNESDAY, APRIL 4, 2012 (9:08 a.m.)

2 P R O C E E D I N G S

3 JUDGE SUMNER: Good morning. And I believe
4 we are about ready to resume at this point.

5 MS. MONTGOMERY-BLINN: Okay. Good morning.
6 Welcome back, Commissioners. You have already read the
7 transcripts, so we're going to move right into talking
8 about those in the hearing.

9 In 2011, the fingerprint comparison showed
10 that two prints left from the banana at the crime scene
11 were made by Albert Turner. Mr. Turner was also in the
12 first photo lineup that was shown to Ms. Elliott. The
13 Commission staff interviewed Albert Turner two times
14 and went back a third time to ask him one more
15 question, and also spoke to many other people about him
16 and about his other criminal charges and convictions.

17 Staff Attorney Jamie Lau will testify about
18 the interviews with Mr. Turner. And Associate Director
19 Sharon Stellato will testify about interviews with
20 other witnesses.

21 The Commission calls Jamie Lau.

22 (Jamie Lau re-called.)

23 EXAMINATION BY MS. MONTGOMERY-BLINN:

24 Q Mr. Lau, you are still under oath.

25 Were you able to locate Albert Turner?

1 A Yes, we were able to locate Mr. Turner.

2 Q Where is he -- where was he when you talked
3 with him or found him?

4 A Mr. Turner is currently in the Carolina Oaks
5 Nursing Home in Lenoir, North Carolina.

6 Q How did you find him?

7 A We found him -- we first learned that he was
8 in a nursing home by speaking with an individual named
9 Roger Craft. Roger Craft is a resident of Hickory.
10 There is a location in Hickory, Ridgefield Plaza, which
11 people tend to spend a lot of time, and he was outside
12 of Ridgeview Plaza. Investigator Nowatka asked him if
13 he had seen Albert Turner, and he said he was in a
14 nursing home.

15 Subsequent to learning that from Craft, we
16 then went to the Mitchell Funeral Home. Bernice
17 Mitchell is one of Albert Turner's sisters. So we
18 spoke with the Mitchells, and they told us he was in
19 the nursing home in Lenoir. They didn't specifically
20 know the name of the nursing home, so then we started
21 calling nursing homes and asking if Mr. Turner was
22 there, and he was in the Carolina Oaks Nursing Home in
23 Lenoir.

24 Q Before you went to speak to Mr. Turner, did
25 you put together his criminal history?

1 A We did put together a criminal history for
2 Mr. Turner.

3 MS. MONTGOMERY-BLINN: May I approach the
4 witness, Your Honor?

5 JUDGE SUMNER: Yes, ma'am.

6 Q Mr. Lau, I'm handing you a document. Will
7 you please tell me if you recognize this.

8 A This is the history that we were able to
9 consolidate for Mr. Turner. I would say that we didn't
10 have all of this information prior to going to visit
11 Mr. Turner. We put this history together as we were
12 obtaining files. Because of the time that has passed
13 since many of these occasions, we -- it sort of came in
14 piecemeal. We had to compile this through getting
15 records from the Sheriff's Department, from the Hickory
16 Police Department, as well as court records.

17 The -- for several of these offenses they no
18 longer had the incident reports or anything of that
19 nature, so the Sheriff's Department, for instance, had
20 arrestee cards showing when he was arrested and booked
21 into the Sheriff's Department. So we compiled this
22 through various sources.

23 Q Okay. And Mr. Lau, the document that you
24 have right now, is that -- do you recognize this as a
25 document that was created by the Commission staff?

1 A This was a consolidation that was created by
2 the Commission staff of the materials that we received
3 from various agencies.

4 Q And have you reviewed this document?

5 A I have reviewed this document.

6 MS. MONTGOMERY-BLINN: Commissioners, this
7 has come around as a handout now.

8 Q Now, can you tell us, you said this came from
9 different agencies. Did it come from court records?

10 A It came from court records.

11 Q Sheriff Department records?

12 A The Sheriff Department provided us records
13 from their jail of bookings for Mr. Turner, including
14 bookings that were only recorded by their paper system.
15 They went through and pulled their bookings from their
16 paper cards that they still had in their files.

17 Q And also Hickory Police Department records?

18 A And Hickory Police Department records, yes.

19 Q And, Mr. Lau, do you have many of the files
20 on these if the Commissioners would like more
21 information?

22 A It really depends on the offense and the
23 charge. In some cases, we do have the file; in other
24 cases, we do not. It's sporadic. Basically I would
25 say my best response to that question is: If it's from

1 about '95 after, there's a possibility that we'd have
2 the file; before that, it's -- it becomes more remote.

3 Q Okay. And just, Mr. Lau, this chart does
4 include criminal convictions, but it also includes
5 dismissed charges and not guilty charges as well?

6 A That's correct. This was all of the offenses
7 he has been charged with, not just those that he has
8 been convicted for.

9 Q Okay. And during your review of documents,
10 were you looking to see if Albert Turner could have
11 been in custody during the time that Ms. Elliott was
12 raped?

13 A Yes.

14 Q And where did you check to see that?

15 A We checked the Department of Correction's
16 records as well as at the Catawba County Jail.

17 Q What did the Department of Correction's
18 records show?

19 A It showed that during the period of time when
20 Ms. Elliott was raped, he had been serving a three-year
21 sentence, but he had been paroled prior to when she was
22 raped. So if he served the entire three years, he
23 would have been in custody; but given that he was
24 paroled, he was out of custody at the time.

25 Q Not in custody?

1 A Not in custody.

2 Q And how about the Catawba County Detention
3 Facility?

4 A He was also not in custody at the Catawba
5 Detention Facility during the period of the rape.

6 Q Okay. Now, Mr. Lau, did you and the
7 Commission staff, based on some of the information
8 contained in here, put together a map of the relevant
9 locations that we have heard testimony about in
10 Hickory, as well as the locations where Mr. Turner was
11 residing?

12 A Yes, I did.

13 MS. MONTGOMERY-BLINN: May I approach, Your
14 Honor?

15 JUDGE SUMNER: Yes.

16 Q Mr. Lau, will you take a look at the page
17 that I've just handed you and tell me if you recognize
18 it.

19 A This is a map that was put together showing
20 some of the relevant locations.

21 Q Who put this map together?

22 A This map was put together by myself.

23 Q Okay. And can you please tell us,
24 describe --

25 MS. MONTGOMERY-BLINN: And this is coming

1 around as a handout. And let's let the Commissioners
2 get this.

3 Q And, actually -- yes, also put the map up
4 here, if it would be helpful to illustrate your
5 testimony. If you would like to stand and describe
6 this map to us, and explain it to us, please.

7 A Sure. One of the first things I did when the
8 match came back to Mr. Turner was I started looking at
9 the records that were available in the court system and
10 started mapping out some of the locations that his
11 address was listed as.

12 As we collected more records, I went back and
13 I put in Mr. Turner's addresses from court records and
14 the consolidation of records between the period of '82
15 through '92. These are the addresses that he reported
16 when he was arrested between that period of time. And
17 those locations are shown in blue. He has more arrests
18 during that period than actual locations shown up here,
19 because in several of those arrests he reported a
20 common address, so the address was reported multiple
21 times.

22 The most frequent address that he reported
23 during that period of time was an address, 23 9th
24 Avenue Drive Southeast, which these are all -- I don't
25 know if you guys recall -- or if the Commission recalls

1 the overhead view of the public housing, but these are
2 all units within that public housing complex. And 23
3 9th Avenue Drive Southeast is the most frequently
4 reported address during this period of time for
5 Mr. Turner.

6 Q So the blue pins are Mr. Turner?

7 A The blue pins are Mr. Turner, yes.

8 Q Okay. And what is the green pin?

9 A The green pin is the victim's residence.

10 Q That's Ms. Elliott?

11 A That's Ms. Elliott. That's 104 8th Avenue
12 Drive Southeast.

13 Q Okay. Go ahead.

14 A The red pins, these locations here, Richard
15 and Rachel Wilson's home are the two red pins on top.
16 The red pin here (indicating) is Betty Shuford's home.

17 Q Those are the locations that Mr. Grimes
18 testified he was at that evening and then those people
19 testified as well at trial that he was at those
20 locations?

21 A Those are the locations Mr. Grimes testified
22 regarding where he was at that evening.

23 And this section here (indicating) is the
24 section that the Commissioners continue to be -- to
25 hear the word "Berlin." This section of town here,

1 where these red pins are (indicating), is the Berlin
2 section of Hickory.

3 It should be noted that these residences are
4 no longer here, they have been destroyed, and it's just
5 vacated property now.

6 Q And the yellow pin, Mr. Lau?

7 A The yellow pin is the reported address of
8 Brenda Smith's home. If you recall, Brenda Smith is
9 who Mr. Grimes was renting a room from during the
10 period in 1987 when this crime occurred.

11 Q Thank you, Mr. Lau.

12 MS. MONTGOMERY-BLINN: Commissioners, before
13 we move on, do you have any questions about the two
14 documents that have been sent out to you from Mr. Lau?

15 No? Okay. We can always come back to them.

16 Q Mr. Lau, what was the --

17 COMMISSIONER BECTON: I do have a question.

18 MS. MONTGOMERY-BLINN: Okay. Yes.

19 COMMISSIONER BECTON: Are all of the streets
20 shown on this map that you know? I ask -- I'm asking,
21 you have a 2nd Avenue and then 2nd Street Southwest.
22 As the crow flies from the red to the green, there are
23 very few streets there.

24 Is it your understanding of what it looked
25 like in 1987?

1 THE WITNESS: So if you're moving from the
2 red to the green?

3 COMMISSIONER BECTON: As the crow flies --

4 THE WITNESS: Yes.

5 COMMISSIONER BECTON: -- there are very few
6 streets -- there are no direct streets and very few
7 streets at all. What was in this area? Was this a
8 wooded area? Industrial area? What was there?

9 THE WITNESS: This is a current map of
10 Hickory. I can't speak to whether or not this is
11 accurate with regard to how it looked in 1987.

12 COMMISSIONER BECTON: Okay.

13 THE WITNESS: When Investigator Nowatka comes
14 up here, he may be able to provide additional insight
15 with regards to 1987 Hickory.

16 COMMISSIONER BECTON: Okay.

17 COMMISSIONER VICKORY: Jamie, I've got one
18 thing, too. To the gap in charges from 1985 to 1988,
19 how much of that time -- do you know the exact times he
20 was in prison? He was pretty active there up until
21 1985, and for three years he just stops.

22 THE WITNESS: He was in prison during a
23 portion of that period of time; that's that three-year
24 sentence. I don't have immediately available the exact
25 period of time, but we can get that for you.

1 COMMISSIONER VICKORY: I would just be
2 interested when he got out.

3 THE WITNESS: Yeah. I don't have the exact
4 date when he got out, but we can get that information
5 to you.

6 (Discussion off the record.)

7 Q Mr. Lau, I'm handing you some of the files.
8 Take a look at that and see if that helps you answer
9 Mr. Vickory's question.

10 A He was incarcerated in the Department of
11 Corrections between November 1985 and he was returned
12 to Catawba on parole and released in April of 1986 --
13 April 30, 1986. He was readmitted to the Department of
14 Corrections in April of 1989.

15 COMMISSIONER VICKORY: Thank you.

16 THE WITNESS: Sure.

17 Q Okay. The first time you interviewed
18 Mr. Turner, what date was that?

19 A The first interview of Mr. Turner was on
20 January 4, 2012.

21 Q And who was present during those interviews?

22 A Ms. Stellato, myself, and Investigator
23 Nowatka of Hickory PD.

24 Q Did Mr. Turner appear to be sober to you?

25 A He did.

1 Q Okay. And he was in the nursing home?

2 A He was in the nursing home, that's correct.

3 Q Was he mobile? Was he able to move around?

4 A Yes, he was.

5 Q Did he get up and walk with you?

6 A We, in fact, took a walk with him -- while we
7 were interviewing Mr. Turner, we were initially placed
8 in a public space. We were placed in the cafeteria of
9 the nursing home. The cafeteria was open. There were
10 no doors shutting off the cafeteria from the nursing
11 home at large, so as we were speaking to him, a crowd
12 began building.

13 We subsequently terminated that interview and
14 Mr. Turner followed us out and began smoking a
15 cigarette on the porch of the nursing home. At that
16 time, we reengaged with Mr. Turner to speak with him
17 some more, because he was outside, away from the crowd
18 that had gathered inside the nursing home. As we were
19 speaking to him on the porch of the nursing home while
20 he was smoking a cigarette, a crowd began to build
21 again.

22 So at that point in time we asked him if he
23 would like to take a walk with us, and we walked down
24 to a store, got sodas, and then walked back. So he was
25 very mobile.

1 Q Was Mr. Turner willing to speak with you?

2 A He was.

3 Q Did he indicate he was willing to speak with
4 you?

5 A He indicated that he would speak with us
6 again; we were welcome to come back and talk to him.
7 He made no -- he made no indication that he didn't want
8 to speak with us.

9 Q Okay.

10 A The entire time he spoke with us freely and
11 indicated that he'd continue to do so at any time.

12 Q Okay. Did you ever lie to Albert Turner
13 during the interviews?

14 A No. We didn't lie to him. We asked him our
15 questions and he answered them.

16 Q When you first arrived, what was it that
17 Mr. Turner immediately talked to you about?

18 A When we first arrived, he immediately talked
19 to us about a cyst on his neck and a cyst that had been
20 removed. It was the first time I knew that Mr. Turner
21 had this cyst or anything on his neck, and it was
22 something that he brought up to us. In part, it
23 appeared, when we were speaking with him, that he was
24 having some issue receiving his Social Security check
25 and the nursing home being paid for his period there.

1 I don't know the specifics of what issue he
2 was having, but he wanted to speak with us about that
3 immediately upon our arrival and started talking to us
4 about his health generally.

5 Q Did you ever indicate to Mr. Turner that you
6 could help him with that or that you were there to help
7 him with that?

8 A No. Specifically -- specifically, we told
9 him we were not there for that purpose and could not
10 help him.

11 Q Okay. And did Mr. Turner tell you where he
12 lived in 1987?

13 A Mr. Turner told us that he was staying in
14 Sunny Valley in 1987. Sunny Valley is another public
15 housing project in Hickory, North Carolina. And I can
16 point it out to you on the map where that location is.

17 That is right here, on 3rd Avenue Southeast.
18 These two blue pins, 98 3rd Avenue Southeast is the
19 Sunny Valley housing project in Hickory, North
20 Carolina. And he was staying there during that period
21 of time is what he indicated to us.

22 Q Did he tell you he ever stayed with anybody
23 else?

24 A He said that he would stay at Beary Allen's
25 residence from time to time.

1 Q And is that -- do you understand that to be
2 the same Beary Allen that lived next-door to Ms. Carrie
3 Elliott?

4 A Yes, I do.

5 Q Did you ever ask him if he went to
6 Ms. Elliott's home?

7 A We did ask him about Mrs. Elliott, and he did
8 indicate to us that, he had been to her home on two
9 occasions to use the phone.

10 Q Okay. Did he say whether anybody was with
11 him at those times?

12 A He said he was with a woman named Peggy
13 Shuping.

14 Q Did he indicate his relationship with
15 Ms. Shuping?

16 A Ms. Shuping was a girl that he dated during
17 this period of time. There was also -- he also
18 indicated that she was a prostitute, so...

19 Q And did he tell you whether or not he used
20 the phone or whether or not Ms. Shuping used the phone?

21 A He said that Ms. Shuping used the phone on
22 those two occasions and that he just stood inside the
23 residence.

24 Q Okay. And when you talked with him about
25 Willie Grimes, did he talk -- did he have any idea

1 whether or not Willie Grimes had been the one that
2 raped Ms. Elliott?

3 A He said that -- and the Commissioners have
4 read the interview -- but he said that the night before
5 Mr. Grimes was arrested he had been with Mr. Grimes
6 that night. And Mr. Turner believed that to have been
7 the night when the rape occurred. So Mr. Turner said
8 that he was with Willie Grimes on the night that the
9 rape occurred.

10 Mr. Turner also told us that he was present
11 when Mr. Grimes was arrested. He said that the police
12 came looking for Mr. Grimes the next day and that
13 Mr. Grimes was picked up by the police on the following
14 day.

15 Q That the police came and arrested Mr. Grimes?

16 A That the police came and arrested Mr. Grimes.

17 Q Did you ask him if he would testify about
18 that?

19 A We did. We said, "If that was the night that
20 the rape occurred, would you be willing to testify that
21 Mr. Grimes was with you?" And he said yes.

22 Q And did he admit that or did he deny -- did
23 you ask him if he had raped Ms. Elliott?

24 A We did. And he denied that he had raped her.
25 He denied that he had ever had consensual sex with her.

1 He denied that he had ever forced his way into her
2 home. We asked him a series of questions and he denied
3 each of those.

4 Q And did you ask him or did Ms. Stellato ask
5 him whether or not he would tell you if he had raped
6 Ms. Elliott?

7 A Ms. Stellato did ask him. We were speaking
8 with Mr. Turner -- this was part of our walk. We went
9 to the convenience store -- and she said, "Albert,
10 would you tell us if you had raped Ms. Elliott or would
11 you lie to us?" And he said, well, he would lie to us;
12 he would not tell us.

13 MS. MONTGOMERY-BLINN: Commissioners, it
14 would be my intention to call Ms. Stellato to talk
15 about the interviews that were conducted before the
16 second Mr. Turner interview.

17 So do you have any questions for Mr. Lau
18 about the first interview with Mr. Turner?

19 COMMISSIONER VICKORY: Not so much about the
20 interview but about the map. You have been around this
21 area --

22 THE WITNESS: Yes.

23 COMMISSIONER VICKORY: Jamie, on -- is this
24 legend down here at the bottom correct? Is that about
25 a thousand feet, that marker?

1 THE WITNESS: I can tell you -- and this
2 is -- and I want to be specific about this -- I have
3 done a Google map with the two addresses between the
4 residence, Rachel Wilson's residence in Berlin and the
5 victim's home, and according to Google Maps, that's
6 about one and a half miles.

7 Now, this image, when I put it together, I am
8 not sure if the scale adjusts as it's cropped, so I
9 can't tell you specifically if that scale is absolutely
10 accurate. But I can tell you that, according to the --
11 inserting the addresses between the residences in
12 Berlin and the victim's address, it's about one and a
13 half miles between those two markers.

14 COMMISSIONER VICKORY: Google Maps would be a
15 by-the-road type of calculation rather than a bird's
16 straight line?

17 THE WITNESS: It would.

18 COMMISSIONER VICKORY: The Sunny -- I'm
19 really kind of interested in the Sunny Valley distance.

20 THE WITNESS: Okay.

21 COMMISSIONER VICKORY: Is that only about
22 2000 feet from the victim's home to Sunny Valley?

23 THE WITNESS: I can't say specifically, but
24 it's not very far; it's definitely a short walk between
25 the two.

1 COMMISSIONER VICKORY: All right. Thank you.
2 That's all right.

3 COMMISSIONER DUNCAN: The lady that he dated
4 that went by the street name of Cookie, who was that?

5 THE WITNESS: The woman he dated that went by
6 the street name of Cookie was a woman named Linda Kay
7 Walton. And Ms. Stellato and I were able to interview
8 Ms. Walton, and she's going to speak specifically about
9 what Ms. Walton told us.

10 COMMISSIONER DUNCAN: Okay. I got a little
11 confused right before between all the names of the
12 interview, and I was trying to...

13 THE WITNESS: It's understandable.

14 COMMISSIONER JOHNSON: Did Mr. Turner
15 observe -- did you observe any signs of confusion with
16 him? Was he ever a little mixed up on other things,
17 other than what occurred during the night of the rape?

18 THE WITNESS: I would have a hard time
19 personally characterizing it as confusion. He appeared
20 to be thoughtful in his answers. He didn't appear to
21 be confused by anything we were asking him. So I don't
22 know how to characterize his responses, whether or not
23 they were a result of his confusion, because he
24 appeared to understand everything that we asked him, or
25 something else.

1 COMMISSIONER JOHNSON: Do you know why he was
2 in a nursing home?

3 THE WITNESS: He was in the nursing home --
4 according to what we were told, he was found in a
5 vacant home hemorrhaging from multiple portions of his
6 body. And he told us a similar story, that he was
7 found in this vacant home, he was checked into the
8 hospital, and then after being checked into the
9 hospital, he was entered into the nursing home.

10 COMMISSIONER JOHNSON: Okay.

11 MS. MONTGOMERY-BLINN: Okay. Thank you,
12 Mr. Lau.

13 (Mr. Lau stands down.)

14 MS. MONTGOMERY-BLINN: The Commission calls
15 Sharon Stellato.

16 (Sharon Stellato re-called.)

17 EXAMINATION BY MS. MONTGOMERY-BLINN:

18 Q Ms. Stellato, you are still under oath.

19 After you spoke with Mr. Turner, were you
20 able to interview multiple witnesses and ask about
21 Mr. Turner?

22 A We were.

23 Q And how did you determine who to interview?
24 How did you end up with this group of people that you
25 had interviewed?

1 A We pulled all of the police reports and court
2 records that we could locate from Mr. Turner's arrest
3 and we interviewed several of the victims that we could
4 find that were still alive.

5 And then after our first interview with
6 Albert Turner, we interviewed some of the people that
7 he had mentioned. And those interviews led us to other
8 people. So -- and it was kind of word of mouth; they
9 were just telling us other people who might have
10 information.

11 Q Okay. And when you say "the victims," it's
12 the alleged victims from the assault charges?

13 A Yes.

14 Q Okay. Let's talk about Linda Walton, also
15 known as Cookie. What was it that Mr. Turner told you
16 about Cookie?

17 A He had told us that he had a -- you know, a
18 long relationship with Ms. Walton and that we should
19 talk to her. So we did interview her.

20 Q And who was present when you interviewed her?

21 A Myself, Mr. Lau, Investigator Nowatka, and
22 her mother, Ms. Walton's mother.

23 Q Okay. And did Ms. Walton confirm that she
24 had dated and been with Mr. Turner?

25 A They had dated for -- she stated

1 approximately six to seven years.

2 Q Okay. So what did she tell you about
3 Mr. Turner?

4 A She stated that he drank a lot. He was not a
5 drug user, but he did drink a lot, and he was
6 physically abusive to her multiple times when he was
7 drinking.

8 Q Did you ask her about some of those specific
9 instances?

10 A We did. Court records had shown that he hit
11 her over the head with a liquor bottle, but she
12 actually didn't speak about that. She told us that he
13 had stabbed her one time using his knife.

14 In the first interview with Mr. Turner, he
15 had stated -- or I believe the second interview, I'm
16 sorry, he had stated that it was her knife; Ms. Walton
17 said it was actually his knife.

18 Q Okay.

19 A And then she also stated that he had forced
20 her to have sex with him three to four times when he
21 was drinking.

22 MS. MONTGOMERY-BLINN: Commissioners, we are
23 going to move on, but I'll stop between each witness in
24 case you have questions about each interview with each
25 witness.

1 Are there any questions about Linda Walton,
2 the interview with Linda Walton? And we can always
3 come back to them, too. I just want to do a natural
4 pause there.

5 Q How about Martha Farris?

6 A Martha Farris was listed as a victim on one
7 of the assault on a female charges, and she is actually
8 the sister of Albert Turner.

9 Q Okay. Did you know that she was his sister
10 when you went to interview her?

11 A We did not.

12 Q Who was present for that interview?

13 A Myself, Mr. Lau, Investigator Nowatka.

14 Q Okay. And what did Ms. Farris say?

15 A She lived in -- or she still lives in public
16 housing. She stated that Mr. Turner would stay with
17 her from time to time. We asked if he was violent and
18 she stated he was not violent, "He just drinks too
19 much."

20 When we asked her about the assault charge,
21 she stated that he had pushed her and hit her in the
22 face because she wouldn't let him come into her home.

23 Q And you said that she lived in public
24 housing. Was Mr. Turner -- was there any trouble with
25 him that she described with public housing?

1 A He was banned from public housing, she
2 stated, because he had cussed out the Housing Authority
3 people.

4 Q Okay. She said that he wasn't violent but
5 she described one time where --

6 A Uh-huh.

7 MS. MONTGOMERY-BLINN: Commissioners, any
8 questions about Martha Farris?

9 Q Okay. How about a woman named Juanita
10 Propst?

11 A Juanita Propst was also listed as a victim in
12 one of the police reports, and we found her and located
13 her in Sunny Valley and interviewed her.

14 Q Who was present for that interview?

15 A Myself, Mr. Lau, Investigator Nowatka.

16 During the interview, she called out --
17 Ms. Propst called out her boyfriend, who was in her
18 home, and the setting we were in had a lot of people
19 coming kind of in and out, milling around in that area.

20 Q Okay. Did Ms. Propst indicate whether or not
21 she knew Mr. Turner?

22 A She did. She stated she had known him since
23 she was a little girl.

24 Q Okay. And when you went to interview her,
25 why was the reason that you had located her and decided

1 to interview her?

2 A We had a police report that he had assaulted
3 her in 2008.

4 Q Okay. What happened when you asked her about
5 the assault?

6 A When we asked her, she told us about a rape
7 that had happened when she was a child by Mr. Turner.

8 Q And can you tell us what she said about that.

9 And let me just back up. Were all of these
10 interviews recorded?

11 A They were.

12 Q Audio recorded?

13 A They were.

14 Q And have they been transcribed by an official
15 transcriptionist?

16 A Yes.

17 Q Okay. And it looks like you are looking at
18 the transcript right now of the interview with
19 Ms. Propst?

20 A Correct.

21 Q Please go ahead.

22 A I told her:

23 "Q We saw a police report with your name
24 on it, can you tell us what happened there?
25 Can you tell us about that?"

1 She stated:

2 "A About him raping me or what?

3 Q Can you speak a little bit more slowly for
4 Ms. Pittman, and nice and loud, please. Thank you.

5 A Sorry.

6 Ms. Propst stated:

7 "A Well, I wasn't nothing but 9 years
8 old, and I got a whooping for it. I, me and my
9 sister, was supposed to have been babysitting
10 and everything, and he just took me, you know.
11 My daddy told me I could walk with him to his
12 wife's job, and he took me in the woods and
13 raped me at the age of 9.

14 "Q You were 9?"

15 She responded affirmatively.

16 "Q How old do you think he was?

17 "A Oh, Lord. He was about at least 30
18 or 20 or something, maybe older."

19 I asked her:

20 "Q Did you tell anybody?"

21 She stated:

22 "A I told my daddy and my mama, but they
23 didn't do nothing about it. I got a whooping
24 for it."

25 Q Did you ask her about any other people that

1 he might have been violent with?

2 A We did. First we asked her about the 2008
3 report, and she indicated that she -- that -- her words
4 were she saw him later and, "Well, he jumped on me for
5 no reason at all, because he was telling me, talking
6 about how he wanted to screw me again and all of this,
7 and that it was good and all of this. So I went down
8 there and I took a warrant out on him again."

9 Q And that was the 2008 assault --

10 A Correct.

11 Q -- that she was describing?

12 And was that a conviction?

13 A It was.

14 Q Okay. Please go ahead.

15 A We asked her about other people that he
16 associated with or that she knew him to assault. She
17 told us that he had assaulted Cookie, who was Linda
18 Walton, Peggy, and a girl named Peanut who was his
19 girlfriend.

20 She stated he was a very cruel person.

21 During that interview when we were asking her
22 those questions, she stated, "Let me get my boyfriend.
23 He has some information." Her boyfriend's name was
24 Ambrose. He came out and talked to us. He stated that
25 Turner was mean when he was drinking and used to beat

1 his cousin. His cousin is Linda Walton, Cookie.

2 Q Okay. So that -- I'm sorry, Cookie is
3 Ambrose's cousin?

4 A Cousin.

5 Q Okay. Please go ahead.

6 A And that he witnessed Mr. Turner assault her.

7 Q That Mr. Ambrose witnessed Mr. Turner
8 assaulting Ms. Walton?

9 A Ms. Walton, uh-huh.

10 Q Did he say anything else?

11 A The only -- we asked him about other women
12 and he stated that Mr. Turner had so many women, he
13 couldn't tell us all the rest of them.

14 MS. MONTGOMERY-BLINN: Commissioners, do you
15 have any questions about the interview with Juanita
16 Propst?

17 Q How about James Hedrick?

18 A James Hedrick is the son of a victim that was
19 listed on a police report. The victim's name was Lundy
20 Hedrick, and she was an elderly white woman when Turner
21 assaulted her. She is now deceased. And we
22 interviewed her son.

23 Q That's James Hedrick?

24 A James Hedrick.

25 Q Okay. And when you went to interview

1 Mr. Hedrick, did you know -- did you have a police
2 report?

3 A We had the police report, but we didn't know
4 the details of the assault.

5 Q Okay. And what did Mr. Hedrick tell you?

6 A He told us that he was not present for the
7 assault on his mother but that she had told him about
8 it. He stated his mother told him that Turner had
9 pushed her over a shopping cart. Turner had approached
10 her wanting money. When she refused, he pushed her
11 over a shopping cart. She cut her knees and her hands
12 but was not hurt badly.

13 Q Did his mother tell him anything about --
14 else about the assault or Mr. Turner?

15 A She told him that Mr. Turner always carried a
16 knife or a gun, and that his mother called Mr. Turner
17 the bully of the neighborhood.

18 Mr. Hedrick was also a cab driver at the
19 time, so he was familiar with Mr. Turner and that area.

20 Q Did he say whether he gave Mr. Turner --
21 whether he drove Mr. Turner around?

22 A He did drive him around.

23 Q And where did he say he drove him to?

24 A He drove Mr. Turner and his friend Peggy
25 Shuping several places, but, predominantly, he recalled

1 driving him back and forth to Beary Allen's home.

2 Q And do you believe that to be the same Beary
3 Allen that lived next-door to Ms. Elliott, the victim?

4 A He confirmed that address.

5 COMMISSIONER SMITH: I'm sorry, I didn't get
6 the name of this witness.

7 MS. MONTGOMERY-BLINN: James Hedrick,
8 H-E-D-R-I-C-K.

9 COMMISSIONER SMITH: Okay. Thank you.

10 Q Okay. Did Mr. Hedrick tell you anything
11 else?

12 A He told us that when he would drive
13 Mr. Turner and Peggy Shuping around, he knew that
14 Mr. Turner pimped out Peggy Shuping and hustled her on
15 the street for money. Peggy Shuping was always bruised
16 on her face and one day she told Mr. Hedrick that
17 Albert Turner had hit her in the head with a hammer.

18 MS. MONTGOMERY-BLINN: Any questions,
19 Commissioners, about the James Hedrick interview?

20 Q Okay. How about Lisa Archer?

21 A Lisa Archer was listed as a victim on a
22 police report for injury to personal property.

23 Q And were you able to interview Ms. Archer?

24 A Over the telephone.

25 Q Okay. And what did she tell you?

1 A She stated that she was driving through
2 Hickory when Mr. Turner was walking, drunk, beside the
3 road, and he threw a liquor bottle at her windshield.
4 She said that her windshield was busted out. She did
5 not know Mr. Turner and she did not know why he threw
6 the bottle at her.

7 Q Okay. Are these the assault victims that you
8 were able to locate or that were still living?

9 A Correct.

10 Q Okay. And you interviewed-- did you
11 interview other people about Mr. Turner?

12 A We interviewed seven other people, both about
13 Willie Grimes and Albert Turner. All of those
14 witnesses didn't provide direct evidence about the
15 rape, just character about Mr. Grimes and Mr. Turner.

16 Q Not any direct evidence about other crimes
17 that either man had committed?

18 A No.

19 Q Ms. Stellato, did you meet with Ms. Elliott's
20 family?

21 A We did. We met with the victim's family on
22 two occasions. Present were her son, Bobby Elliott,
23 and her granddaughter, Tamara Elliott, who is here
24 today.

25 Q Okay. And Ms. Tamara Elliott, who is here

1 today, did she indicate to you that she was an adult in
2 1987?

3 A She was an adult.

4 Q And did they remember their grandmother
5 talking to them about what happened to her?

6 A Yes, they did. Ms. Elliott stated that she
7 remembered her grandmother saying the attacker had a
8 mole and that her grandmother was confident in
9 identification of Mr. Grimes.

10 Q Okay. And I know most of the time when you
11 were meeting them you were just explaining the
12 Commission process.

13 A We were updating them, per statute, on the
14 Commission process and then answering any questions
15 they had.

16 Q Okay. And were you able to ask them any
17 questions about their grandmother and some of her
18 habits?

19 A On the second interview, when we came back,
20 we wanted to let them know what was going on in the
21 case. And we did ask about their grandmother's habits
22 as far as the grocery store and associating with other
23 people.

24 Q Okay. And what information did they provide?

25 A They stated that they -- Mr. Elliott and

1 Ms. Elliott took her to the grocery store usually one
2 to two times a week. They did know her to associate
3 with Linda McDowell, but that was the only person in
4 that area that they knew her to associate with.

5 They stated that she didn't let anyone into
6 her house, that she was very protective even when her
7 husband was alive. Her husband had passed away a year
8 prior to the rape. That they locked both of the doors
9 and that she did not come out and sit on her porch.

10 Q Did you ask them if they knew or recognized
11 Albert Turner?

12 A We showed them photographs of Albert Turner
13 from 1987 -- or 1988.

14 Q And did they know him?

15 A They did not recognize him.

16 Q Okay. And they didn't know anybody who she
17 hired to go to the grocery store or do work for her?

18 A We briefly explained some of the information
19 that Mr. Turner had told us and asked them about it.
20 They said that she would not have let anyone into her
21 home to use the telephone.

22 Q Okay.

23 MS. MONTGOMERY-BLINN: Before I re-call
24 Mr. Lau to talk about the second interview with
25 Mr. Turner, do you have any questions for Ms. Stellato

1 about the witnesses?

2 COMMISSIONER SMITH: Just briefly. What did
3 the other people say about Mr. Grimes? You said some
4 of them discussed Mr. Grimes.

5 THE WITNESS: Everyone who spoke about
6 Mr. Grimes stated he was a nice and quiet guy.

7 COMMISSIONER SMITH: Thank you.

8 COMMISSIONER VICKORY: Did the family -- did
9 the granddaughter remember the neighbor, Linda
10 McDowell?

11 THE WITNESS: They did remember Linda
12 McDowell.

13 COMMISSIONER VICKORY: Did they think that
14 she would be allowed into the victim's home?

15 THE WITNESS: No, they stated that they knew
16 she associated with Linda McDowell. They did know her
17 to let Ms. McDowell into her home, but no one other
18 than that.

19 COMMISSIONER VICKORY: No other women either?

20 THE WITNESS: Not that they -- we were
21 predominantly asking them about males, and then the
22 African-American -- and those were the only questions
23 that they answered.

24 COMMISSIONER VICKORY: I'm trying to get kind
25 of a sense of, you know, where -- how strong she might

1 draw the line. For example, if -- that Linda was in
2 the home or came in the home, if she had a man with her
3 that followed her in, did they seem to feel that she
4 would be, "Whoa, whoa, stop it and you get out, but you
5 can come in"?

6 THE WITNESS: We actually asked Linda
7 McDowell about that because she was living with Willie
8 Mason, and we asked, "Did Willie Mason ever go over
9 there with you?" She stated that it could have
10 happened a couple times, but that she didn't know
11 Ms. Elliott to be comfortable even with Willie Mason
12 coming over.

13 COMMISSIONER VICKORY: Okay.

14 THE WITNESS: But other than that, we didn't
15 get any further information.

16 COMMISSIONER VICKORY: Okay.

17 MS. MONTGOMERY-BLINN: Other questions,
18 Commissioners?

19 Okay. I will ask that Ms. Stellato come down
20 and I will re-call Jamie Lau.

21 (Ms. Stellato stands down.)

22 (Jamie Lau re-called.)

23 EXAMINATION BY MS. MONTGOMERY-BLINN:

24 Q Mr. Lau, you are still under oath. And you
25 just heard Ms. Stellato testify about the other

1 interviews that you did.

2 After interviewing those witnesses, did you
3 go back and speak with Mr. Turner again?

4 A We did.

5 Q And when was it that you went the second
6 time?

7 A It was in February; the exact date was
8 February 24, 2012.

9 Q And was Mr. Turner still at the nursing home?

10 A Mr. Turner was still at the nursing home.

11 Q And did he again appear to be sober to you?

12 A He appeared sober, yes.

13 Q Okay. Did he cooperate again with this
14 interview?

15 A He did.

16 Q And who was present this time?

17 A It was myself, Ms. Stellato, Investigator
18 Nowatka, and Mr. Turner.

19 Q And where did you meet with him this time?

20 A On this occasion we were actually walked to
21 Mr. Turner's room in the nursing home. When we arrived
22 and were escorted by staff to his room, we found him in
23 his room, watching TV. He said we could come in and
24 sit down. We interviewed him while in his room.

25 Q Okay. And this was -- nobody else was in his

1 room?

2 A It was a private interview, the door was
3 shut, and it was just the four of us.

4 Q And, again, this interview was recorded?

5 A This interview was recorded and transcribed.

6 MS. MONTGOMERY-BLINN: Commissioners, this is
7 the transcription -- the two transcriptions that you
8 read last night.

9 Q All right. What did he say this time about
10 Ms. Elliott, the victim, and whether or not he knew
11 her?

12 A Well, this time he said that he knew the
13 victim. In fact, he said he knew her real good. And
14 we asked her -- we then asked him to describe what she
15 looked like and he was unable to describe what she
16 looked like; something we commonly ask following up
17 when somebody tells us they know someone because it
18 helps us ascertain how much contact they have had with
19 them.

20 Q Okay. And did he tell you whether or not he
21 had ever been to her apartment?

22 A He said he had been to her apartment. He
23 said he had been to her apartment -- I think he said 10
24 occasions -- or about 10 occasions. He said that he
25 had been inside the apartment and sat on the couch in

1 the living room when Peggy Shuping would go over there
2 to use the phone.

3 Q And did he talk about bringing her any fruit?

4 A He spoke about Peggy would bring her fruit
5 when they would go over there to use the phone. He
6 said that Peggy would buy fruit specifically with her
7 food stamps and then bring it over there.

8 Q And bring to Ms. Elliott?

9 A And bring it to Ms. Elliott, yes.

10 Q And did you ask any more details about that,
11 follow-up details?

12 A Well, we asked him with regards to fruit
13 because we knew that the fruit bowl was located on the
14 kitchen table, we asked him specifically had he been in
15 the kitchen at any point in time. He said no, he had
16 never been beyond the living room. Had he been in the
17 bedroom at any given time; he said no, that the living
18 room was the only place he had ever been.

19 We asked him about fruit and he said he
20 recalled putting fruit into a fruit bowl. So we asked
21 him about what he could recall about putting fruit into
22 a fruit bowl. He said that there was a table in the
23 living room and it had a glass -- white and green glass
24 bowl on it and that he recalled putting fruit into the
25 white and green glass bowl in the living room -- on a

1 table in the living room.

2 Q He said he had put the fruit in himself?

3 A He said he put the fruit into -- he
4 specifically recalled having put the fruit into a white
5 and green glass bowl.

6 Q Okay. And you said based on the crime scene
7 photographs, what kind of container was the fruit in,
8 at least on that day in October?

9 A Well, from what we understood, the fruit was
10 in a bowl on the kitchen table. If the Commissioners
11 would look in Appendix A of their brief, they will find
12 a picture of the kitchen table. And there is a plastic
13 bowl on the kitchen table.

14 When we spoke with Officer Blackburn --
15 Ms. Stellato testified on Monday that Officer Blackburn
16 had vague recollections of being at the scene. And
17 Officer Blackburn had told us that the reason the fruit
18 was printed, he believed, was because the fruit had come
19 out of that plastic bowl on the table, so...

20 Q Okay. Now, did you ask him again about being
21 with Mr. Grimes during the rape and the arrest?

22 A We did ask him similar questions to what we
23 had asked in the first interview with regards to him
24 being with Grimes on the evening before Grimes was
25 arrested, because he told us he was with him the night

1 before the police came looking for Grimes and had
2 arrested Grimes.

3 So we asked him again about that day. He
4 told us that Grimes wasn't with him, in fact, in the
5 evening. That Grimes was with him earlier in the day,
6 in the afternoon.

7 He also stated that Grimes wasn't with him
8 when Grimes was arrested; that he had heard Grimes had
9 been arrested and Grimes was arrested on a tractor
10 somewhere up in the -- near the Sunny Valley housing
11 project.

12 Q Okay. Now, Mr. Grimes testified yesterday
13 and told you during interviews that he had been at
14 Beary Allen's house sometime prior to the rape and
15 called the police or went to have Ms. Elliott call the
16 police on Mr. Turner. Did you talk to Mr. Turner about
17 that?

18 A We did speak with Mr. Turner about that.

19 Q And did he recall that?

20 A He recalled that. He essentially confirmed
21 what Mr. Grimes had told us, because he had heard that
22 from Mr. Grimes in a previous interview, that
23 Mr. Grimes had went to the victim's house to ask the
24 victim to call the police because Mr. Turner was
25 causing a disturbance at Beary Allen's home.

1 When we spoke with Mr. Turner about that, he
2 recalled that happening, and he confirmed that it had
3 occurred.

4 Q Did he know whether or not Mr. Grimes had
5 gone into Ms. Elliott's house to use the phone or
6 whether Ms. Elliott had called the police?

7 A He didn't know. He had left before the
8 police arrived and he didn't see whether or not Grimes
9 had went in the apartment or not.

10 Q But did he indicate to you that he did know
11 that it was Ms. Elliott's apartment where the phone was
12 used?

13 A Yes.

14 Q Okay.

15 A He said -- his recollection was that Grimes
16 had went to Ms. Elliott's home -- or apartment.

17 Q Now, Ms. Stellato just testified about the
18 people that you interviewed that were allegedly victims
19 of assault charges and assault convictions from
20 Mr. Turner.

21 Did you talk with Mr. Grimes [sic] about
22 those instances?

23 A We did.

24 Q Okay. And did you talk to him about carrying
25 a knife?

1 A We had spoke with him -- and this came up in
2 the first interview. We had asked him whether or not
3 he -- it was a habit of his to carry a knife with him.
4 And on the first interview he said that he never had a
5 knife with him. We had -- subsequently, between the
6 first interview -- and this is what I was speaking
7 about with regards to compiling that criminal record,
8 we received several police reports and Sheriff's
9 Department records, we received several records after
10 our first interview with Mr. Turner. Among those
11 records were these instances when he -- in one of them
12 he was assaulted while carrying a knife, while having a
13 knife on his person -- I'm sorry, he was arrested while
14 having a knife on his person. And then another
15 occasion he had been arrested for slicing with a razor
16 blade a hotel owner. So we asked him about those
17 occasions and having some sort of blade or knife with
18 him on those occasions.

19 Q And what did he say?

20 A He said that he did slice the hotel owner.
21 He said it was after the hotel owner had started
22 trouble with him. It was in self-defense, I suppose.
23 He said that he was arrested with a knife at one point
24 in time. He said he had the knife on him because he
25 was cutting a pear earlier in the day and he put it in

1 his pocket after cutting a pear. And then he had been
2 arrested with a knife.

3 But while we were talking, he then
4 described -- we were talking about Mr. Hedrick, James
5 Hedrick, Lundy Hedrick's son, because after Lundy
6 Hedrick had been assaulted by Mr. Turner, James Hedrick
7 confronted Albert Turner about that assault and he told
8 us that he had pulled a knife on Mr. Hedrick when
9 Mr. Hedrick confronted him about that assault.

10 Q Okay. Now, when you talked with him about
11 the assaults, did he ultimately talk about each of them
12 or did he deny them completely?

13 And I'm talking about the ones where you
14 interviewed somebody and then came back to him.

15 A Mr. Turner -- he didn't deny the assaults
16 completely. When he was initially asked about the
17 assaults, he didn't initially say, "Yes, I assaulted
18 this person" or, "Yes, I remember that assault." But
19 when we showed him the record, he recalled each assault
20 and he would tell us what occurred -- his version of
21 what occurred with regards to each of those assaults.

22 Q Okay. When you talked with him about Juanita
23 Propst's account of him having sex with her when she
24 was a little girl, what did he say?

25 A Well, we asked him specifically about Juanita

1 Propst and the 2008 assault. We didn't ask him about
2 the rape; we asked him about the 2008 assault and we
3 asked him what happened on that occasion. And his
4 response was that "She came talking to me about some
5 rape." So I then asked him, I said, "Well, did you
6 rape Ms. Propst?"

7 And he said, "Well, I had sex with her."

8 And I said, "Well, how old was she?"

9 And he said he believed her to be 12. I
10 said, "How old were you?"

11 He said, "I was about 14 or 15 years old."

12 And I said, "Mr. Turner, that's not true, is
13 it? You were older than that." And he said he didn't
14 know.

15 Juanita Propst is currently 47. I believe
16 her to be 47 -- about 47. And Mr. Turner is 65. So
17 even when she was 12 years old, he was significantly
18 older.

19 Q And I just want to confirm what you just said
20 when you -- just a minute ago. "I said this, he said
21 that," you're paraphrasing, not reading from a
22 transcript?

23 A I'm not reading directly from the transcript;
24 I'm paraphrasing how that went. The Commissioners have
25 the transcript in front of them and you can read that

1 portion.

2 Q And did Investigator Nowatka also ask him
3 about the situation with Juanita Propst?

4 A Yes.

5 Q Okay. And is that also recorded and part of
6 the transcript?

7 A That's also recorded and part of the
8 transcript.

9 Q Okay. Now, after the second interview with
10 Mr. Turner, did you ever go back to see him again?

11 A We did go back a third time.

12 Q And why did you go back?

13 A We went back because he had mentioned the
14 cyst that was on his neck in the very first interview
15 that we spoke with him. We had never asked to see the
16 cyst. However, when I was looking at DOC records, I
17 noticed that DOC had a notation on his record that he
18 had a 1-inch scar on the back of his neck. I wanted to
19 see what that scar looked like, if he was willing to
20 show it to us.

21 So we went back with the purpose of looking
22 at the scar on the back of Mr. Turner's neck.

23 Q Okay. And was that right before this
24 hearing?

25 A That was. That was actually last week.

1 Q Did I send you back after we discussed it?

2 A We discussed it and you asked that we go back
3 and see if we could see the cyst on Mr. Turner's neck.

4 Q Okay. And was Mr. Turner still in the
5 nursing home?

6 A He was still in the nursing home.

7 Q Okay. Now, who was present when you went
8 back last week?

9 A When we went back it was myself, Investigator
10 Nowatka, and the Commission's paralegal, Aschante
11 Pretty.

12 Q And did I ask Ms. Stellato to stay here and
13 help me to continue to prepare for the hearing?

14 A You did.

15 Q Okay. Thank you. And was Mr. Turner willing
16 to speak with you?

17 A He was.

18 Q Okay. And was he willing to show you the
19 scar?

20 A He was.

21 Q Okay. And did you actually touch the scar?

22 A I did.

23 Q All right. Did you take -- or did
24 Investigator Nowatka take a photograph?

25 A Investigator Nowatka took a photograph of the

1 scar.

2 Q Do you recognize this image, Mr. Lau?

3 A This is the photograph taken by Mr. Nowatka.

4 Q Okay. And do you feel like it's an accurate
5 depiction of what you saw that day?

6 A It is. I would say the one thing of note is
7 that this was taken in the sunlight, so I think the
8 sunlight sort of causes a glare from the photo, but for
9 the most part, it's an accurate depiction.

10 Q Would you stand and just show us -- indicate
11 where that scar is.

12 A So Mr. Turner has a scar on his neck from
13 beginning about here (indicating) down to this area
14 here (indicating). It is a light scar on his neck.

15 And when I felt it, I wanted to see if it was
16 raised in any way, and it was not raised. You couldn't
17 tell by feel that there was anything there. And you
18 would have to look -- and you would have to look --
19 it's a light scar, so you'd have to look at it and
20 then...

21 Q Okay.

22 A It's similar to this.

23 Q All right. Thank you.

24 Now, each time that you spoke with
25 Mr. Turner, did he -- did he always deny raping

1 Ms. Elliott?

2 A He always denied raping Ms. Elliott.

3 Q And you asked him each time?

4 A We asked him each time.

5 Q And he was --

6 A Well, not the -- oh, indeed, I did ask him
7 the third time; yes, we asked him each time.

8 Q But the third, that was not a complete
9 interview; it was just to look at the scar?

10 A No, the entire interaction the third time I
11 saw Mr. Turner was probably about four minutes in
12 length, and we saw Mr. Turner and we asked him if we
13 could talk to him, he said we could. We asked him
14 about the cyst he had on his neck. We asked him when
15 it was removed. It was removed, according to him, in
16 the early '70s.

17 DOC medical records -- we were able to look
18 through DOC medical records. There is no record for
19 the cyst having been removed in the files provided to
20 us by DOC. But his self-reported medical history to
21 DOC matches what he told us; that the scar was removed
22 in 1971. So the early '70s. So when he reported his
23 medical history to DOC, he includes that in there and
24 it indicates the early '70s.

25 So we asked him about the cyst. We asked him

1 if he would mind showing us the scar. He showed me the
2 scar. He let me run my fingers over his scar. I asked
3 him if there was anything else he wanted to say about
4 the rape of Ms. Elliott. He said he was not involved
5 in the rape. He did not rape her. And then we asked
6 to take the photo. We photographed the scar and then
7 that was the entire interaction.

8 Q So in each interview with Mr. Turner he was
9 always cooperative with you?

10 A Yes, he was.

11 Q And was he always consistent in his denial
12 that he did not rape Ms. Elliott?

13 A He was consistent with his denial of raping
14 Ms. Elliott.

15 MS. MONTGOMERY-BLINN: Commissioners, do you
16 any questions for Mr. Lau?

17 COMMISSIONER SMITH: Just one. Did he bring
18 up the idea of supplying fruit to Ms. Elliott only
19 after you told him his fingerprints were on the peels?

20 THE WITNESS: He did. We --

21 COMMISSIONER SMITH: It was after -- he
22 didn't volunteer that before you ever told him about
23 the banana peels.

24 THE WITNESS: Before we told him about the
25 banana peels, my best recollection is all he had told

1 us was that he did use the phone on two occasions,
2 during that first interview.

3 We didn't bring up the fingerprints on the
4 banana at that time. We had at one point spoke with
5 him about physical evidence matching him from the
6 residence and why would that be there, and he didn't
7 provide an explanation short of "I had been to the
8 residence to use the phone those two occasions."

9 When we asked him specifically about
10 fingerprints on a banana, that's when he told us that
11 Peggy Shuping would sometimes bring fruit to the
12 victim.

13 COMMISSIONER SMITH: Okay. Thank you.

14 MS. MONTGOMERY-BLINN: Other questions,
15 Commissioners?

16 COMMISSIONER VICKORY: Jamie, along those
17 lines of Wade's questions, as early as, like, page 15
18 in the interview, that first interview, at that point
19 there is no way he knew -- at that early in the
20 interview, I don't think he knew who you were really
21 with; he just knew you were from an agency for the
22 State. Is that correct?

23 THE WITNESS: I can't speak to his
24 understanding. I would say, you know, we didn't -- we
25 didn't go in there and say, "We are the Innocence

1 Commission. Grimes has made a claim to us. This is
2 what we have."

3 COMMISSIONER VICKORY: Right.

4 THE WITNESS: Yes. We didn't put all our
5 cards out there on the table when we first spoke with
6 him. We just asked him if he was willing to speak with
7 us and began asking questions. So I'm not sure if it's
8 as early as page 15, but I don't know if it was clear
9 to him from the very start what -- what-all we were
10 there to speak about.

11 COMMISSIONER VICKORY: I mean, there wasn't
12 any kind of public dissemination of this fingerprint
13 issue or anything like that at that point, was there?

14 THE WITNESS: No, there was no public
15 dissemination of the fingerprint.

16 COMMISSIONER VICKORY: You genuinely felt, I
17 take it, from the conversation early on, that he
18 thought you all were there for some other reason,
19 maybe.

20 THE WITNESS: Initially he thought we were
21 there because of this Social Security medical reason.
22 We told him very early on that that wasn't our purpose;
23 that our purpose was to discuss with him this case that
24 occurred in 1987 that we were looking into.

25 COMMISSIONER VICKORY: I guess when you get

1 in that very -- the very first time he mentions going
2 in Ms. Elliott's apartment, at least my reading of the
3 interview, I would suspect at that point he didn't have
4 any idea that you all were kind of zeroing in on him as
5 being the possible rapist.

6 Would that be a fair characterization, do you
7 think?

8 THE WITNESS: I think that's a possible
9 characterization. I mean, I don't remember the very
10 first time without looking through the transcript, but,
11 sure.

12 COMMISSIONER VICKORY: Yeah, that was just
13 kind of surprising to me that he even acknowledged
14 going inside of her apartment before he ever
15 realized -- before y'all ever said that he left
16 something behind or left any physical evidence
17 connecting him to the apartment. He just acknowledged
18 going in there early on.

19 THE WITNESS: Uh-huh.

20 COMMISSIONER VICKORY: And acknowledged going
21 in there with, I guess, Ms. Shuping.

22 THE WITNESS: Shuping.

23 COMMISSIONER VICKORY: Was going in to use
24 the phone and he said, "I went in there with her a
25 couple times."

1 THE WITNESS: Uh-huh. And he said he stood
2 in the living room during those times.

3 COMMISSIONER VICKORY: Right. Okay. I'm
4 just -- I know it's not a fact question, it's more of a
5 feel question, but I got the impression early on that
6 he didn't have any reason to believe he was a suspect
7 in the rape of Ms. Elliott.

8 THE WITNESS: Well, I will say early on he
9 was shown that photo lineup that he was included. It
10 was mentioned, to my recollection, pretty early on that
11 he was included as a suspect in one of the first -- in
12 the very first photo lineup shown by the Hickory PD
13 that night. But short of that, I don't know what other
14 reason he would have had.

15 COMMISSIONER VICKORY: Okay.

16 COMMISSIONER JOHNSON: In the transcript,
17 when you ask him how big that cyst was, he said it was
18 as big as his fist and like an orange.

19 THE WITNESS: Yes.

20 COMMISSIONER JOHNSON: Did anybody mention --
21 that you interviewed through this process -- that he
22 had a cyst or a mark? And do we know how large that
23 might've been? And was it growing during the time
24 before he had it removed?

25 THE WITNESS: Nobody mentioned to us anything

1 about the cyst on his neck. He was the only one who
2 mentioned it. He indicated to us -- when he said the
3 fist, he indicated the location that it was on his
4 neck, and he sort of held his fist up here (indicating)
5 to indicate that it was as large as his fist on the
6 back of his neck. And then he told us that it had been
7 removed in the early '70s.

8 COMMISSIONER JOHNSON: Thank you.

9 MS. MONTGOMERY-BLINN: Okay. Thank you,
10 Mr. Lau.

11 (Mr. Lau stands down.)

12 MS. MONTGOMERY-BLINN: Do we need a break or
13 are we okay?

14 (Recess taken, 10:07 to 10:28 a.m.)

15 JUDGE SUMNER: All right.

16 MS. MONTGOMERY-BLINN: As you have heard and
17 read, the Hickory Police Department assigned an
18 investigator to accompany our Commission staff on their
19 investigation. And I would like to give you the
20 opportunity to ask Investigator Nowatka any questions
21 that you may have.

22 So the Commission calls Investigator Nowatka.

23 Thereupon, DUSTIN NOWATKA, having first been duly
24 sworn, was examined and testified on EXAMINATION

25 BY MS. MONTGOMERY-BLINN:

1 Q What is your name?

2 A Dustin Steven Nowatka.

3 Q Where are you employed?

4 A With the City of Hickory Police Department.

5 Q What is your title with the Police
6 Department?

7 A Right now I am a homicide/major case
8 investigator.

9 Q How long have you been with the Hickory
10 Police Department?

11 A Going on 15 years.

12 Q Were you assigned to work with the Innocence
13 Inquiry Commission during their investigation?

14 A Yes, I was.

15 Q Okay. And what were you -- what was your
16 role? What were you explained your role to be?

17 A It was explained by my chief and my commander
18 of my unit, my Captain Whisnant -- and I apologize,
19 I'll slow down -- that I was to help and assist with
20 the investigation with anything that may be needed. I
21 was advised not to open the investigation at this time,
22 but just to help and assist your Commission with the
23 investigation.

24 Q Okay. And did you go on interviews with
25 Ms. Stellato and Mr. Lau?

1 A Yes, I did.

2 Q And have you been at this hearing each day
3 and listened to the testimony of Ms. Stellato and
4 Mr. Lau and the witnesses testify?

5 A Yes, ma'am.

6 Q Okay. And were you present during the two
7 interviews with Mr. Grimes -- the last two interviews
8 with Mr. Grimes --

9 A Yes, ma'am.

10 Q -- at the jail -- or at the prison?

11 And were you also present for all three
12 interviews with Mr. Turner at the nursing home?

13 A Yes, I was. There were certain -- there were
14 some times, though, during that interview, I was not
15 present, during the first and second.

16 Q Okay. Well, when you heard Ms. Stellato and
17 Mr. Lau testify, was that consistent with your
18 recollection for the interviews that you were a part
19 of?

20 A Yes.

21 Q Okay. Do you have anything add to their
22 testimony?

23 A Not at all.

24 Q Any corrections?

25 A Not at all.

1 Q Okay. Investigator Nowatka, I would like to
2 show you the map that was used earlier during Mr. Lau's
3 testimony.

4 MS. MONTGOMERY-BLINN: And I'll put it back
5 up on the seven TVs.

6 Q Investigator Nowatka, are you familiar with
7 this part of Hickory right now, today?

8 A Yes, ma'am.

9 Q Okay. And are you familiar with what this
10 part of Hickory was like in 1987?

11 A No, ma'am.

12 Q Okay. Are you familiar -- how back -- how
13 long have you been in Hickory?

14 A I've been in Hickory since 1997.

15 Q Okay. The places that were described and
16 that you visited, I know you maybe aren't aware of the
17 blue pins, but the green pin that represents Ms.
18 Elliott's home, are you familiar with that place and
19 that location?

20 A Yes, ma'am. And let me explain. The reason
21 why I'm familiar with that -- this area, this used to
22 be my district that I worked on when I was working in
23 patrol. I did eight years on the road.

24 Q Okay. Does this look like an accurate
25 depiction of the area that you patrolled, the area that

1 you're familiar with?

2 A Yes, ma'am.

3 Q Okay. And there has been a question about
4 the distance between the green pin, which is where
5 Ms. Elliott lived, and the red pins. Do you know --
6 can you estimate that distance?

7 A I could give you the distance, and I believe
8 here in the Commission since I have been present,
9 probably wanted to know if it was an aerial passage or
10 a crow's flight through that. Of course, it would be a
11 lot smaller, but if you were to take the road route and
12 you were to walk and travel the road route, it is
13 correct with what Mr. Lau said earlier, about a mile, a
14 mile and a half, somewhere in that range.

15 Q Okay.

16 A If you were to take it by aerial, which is
17 very common -- and let me explain the reason why --
18 where, not far from where the first pin is, if I could
19 show on the map --

20 Q Please do.

21 A -- to explain. From this pin (indicating),
22 this red pin here to the green pin, I go -- I
23 understand that we are trying to see what this space
24 would be, and I could guess -- I can guesstimate right
25 now by looking at it and by working that area, that

1 it's about a mile if you were to look at -- or just shy
2 of a mile on an aerial or nautical mile or crow's
3 travel.

4 But what I want to explain is that this
5 little section of Little Berlin right here -- and this
6 section right here (indicating), this first block that
7 you see here is 4th Avenue Place, there is a couple of
8 streets that are not named right here, but that is the
9 Salvation Army. And it's very common for folks to come
10 out of the Salvation Army and cut through people's
11 yards almost to the point where you would see some
12 defined paths that would actually take them through
13 this neighborhood here (indicating), which is Kenworth,
14 across 127 and, of course, over to the Ridgeview area
15 is where the victim's housing and most of the blue pins
16 for Mr. Turner's residences were.

17 Q Okay. So there's not any obstacles that you
18 know of that would stop somebody from being able to
19 walk that direct distance referred to "as the crow
20 flies"?

21 A Well, there are -- there are residences, but
22 not -- and even if there was fences, it does not stop
23 folks from going that route --

24 Q Okay.

25 A -- because it's faster and easier for them to

1 stay off the road.

2 Q And you're talking about, of course, today?

3 A Even today.

4 Q You don't know for sure about 1987?

5 A I don't know for sure. I do know, by seeing
6 maps in the past from the '70s, '80s, I've looked at
7 maps in the past for other cases, some of the -- there
8 was less housing in this area also --

9 Q Okay.

10 A -- including along or behind the Salvation
11 Army. So there was more open property even back then
12 than there is today.

13 Q Okay. No large obstacles that you are aware
14 of in the '80s, like a large factory or anything that
15 would stop that?

16 A Not at all. The only large factory is right
17 down here (indicating). And it was Joan's Fabrics was
18 down here.

19 Q Okay. How long -- if you can answer, how
20 long do you think it would take somebody to walk that
21 direct route from the green pins to the red pins? Walk
22 or -- walk.

23 A I would say, if they are walking, probably
24 20, 25 minutes.

25 Q Okay. And less time if they ran?

1 A Less time if they ran.

2 Q Okay. Thank you.

3 A There's not -- and let me reevaluate, too.

4 There's not much hillage also; it is fairly flat.

5 Q Okay. Now, the area where the green pin is
6 and the blue pins, is that public housing?

7 A Yes.

8 Q Okay. And is that an area, when you were on
9 patrol, that you were regularly called to?

10 A Yes, ma'am.

11 Q Okay. So was it -- is it considered a
12 high-crime area?

13 A Yes, ma'am.

14 Q Okay. Do you have anything to add to the
15 testimony that you heard today or through the past
16 three days?

17 A No, ma'am.

18 Q Okay.

19 MS. MONTGOMERY-BLINN: Commissioners, what
20 questions do you have for Investigator Nowatka?

21 COMMISSIONER DUNCAN: I -- let me make sure I
22 do it by the name correctly. Ms. Propst, in her
23 testimony talking about the assault that occurred a
24 number of years back, she said she was 9. I remember
25 reading through the interview, you all had kind of

1 dialed in on age of 11 or 12. And 30 of the --
2 Mr. Turner.

3 Did you do any work -- were you able to
4 substantiate any of that timeline as far as knowing
5 approximately when that might have happened or --

6 THE WITNESS: And, again, it is going based
7 on the interview with Ms. Propst and the interview with
8 Mr. Turner trying to figure out the common truth or the
9 truth between the two of them; we really don't know.
10 But based, I think, on what they both said, it seemed
11 more like Turner's dates were not adding up based on
12 his statements. And then he later -- if the
13 transcripts show it, I think he retracts his age at
14 that time. I can't recall exactly what he says, but I
15 think it's in there as to what he says.

16 But we really were trying to figure out -- we
17 could get an idea, but we couldn't pinpoint exactly the
18 time. Now, they may have -- the Commission may have,
19 but I have not.

20 COMMISSIONER DUNCAN: No other substantiation
21 on the timeline, though, just basically from those two
22 interviews and gleaning what you got from that.

23 THE WITNESS: I want to say I remember we
24 asked Ms. Propst if her father was still alive, maybe
25 to get some information, but I don't remember what the

1 outcome was on that or if she even answered that.

2 Again, there were so many people around her,
3 I'm not a hundred percent sure.

4 COMMISSIONER BECTON: Was there any
5 indication from anyone, including Turner, that she was
6 ever over 12?

7 THE WITNESS: No, and I think that was what
8 we were going to talk about or we were going to try to
9 do was to interview her father, but I'm not sure
10 exactly -- or family members of that, but I'm not sure
11 if we -- what we decided on that or if there was
12 something that was involved, maybe, that they're
13 deceased now. I cannot remember what the outcome of
14 that was.

15 And, of course, it would probably be more
16 respectful to go back to her and find out if she would
17 allow us to interview those parents to talk about that
18 case, too. That is normally how -- if I was to re- --
19 if I was to investigate a case like that, I would want
20 the -- especially in an older case like that, I would
21 want the victim's approval to allow us to go do that,
22 and I think that may have been one of the reasons why I
23 can't answer that right now, because I don't think we
24 ever did anything on that.

25 COMMISSIONER BECTON: Given their ages now,

1 whether she was 9, 11, or 12, he would still be
2 20-something years older than she is.

3 THE WITNESS: That's correct.

4 MS. MONTGOMERY-BLINN: Other questions?

5 COMMISSIONER VICKORY: Just, have you asked
6 any of the older heads around the police department
7 there, you know, where records might go? I mean, I
8 know that you've probably racked your brain over this
9 question already, but it seems like we have some things
10 but we don't have other things and...

11 THE WITNESS: Yes. That's probably a good
12 question. We had a system before our RMS system, it's
13 our Records Management System that we do have now,
14 that's all computerized. We did have a computerized
15 system prior to that called the AS/400 system, and that
16 is another software program.

17 That came into play, I believe, in 1994, and
18 it went on until 2004; we had about it 10 years. I
19 used to have -- and I am very familiar with that
20 system, so I have access to that system -- or did have
21 access to that system, but now they've limited our
22 access to that system.

23 So we had a sergeant who was in control of
24 that, and all of the records that the Commission were
25 requesting, especially previous records like that, they

1 tried to pull it or tried to find and match off that
2 system. They had a purging system for that also,
3 because that software and our hard drives were not
4 large enough to hold all of those items. So there are
5 questions as to how the supervisors who ran that
6 position purged those -- those records.

7 We could never pinpoint exactly -- if you
8 were to say, "Can you tell us exactly what your general
9 order or your standard operating procedure was on
10 purging, could you tell that to us right now," I
11 couldn't tell you that because it seemed like every
12 time they changed supervisors, they would change the
13 way they did things. And they were kind of given
14 that -- I guess, that approval to manage it the way you
15 want to; there was really no set management.

16 Today, now -- I can honestly tell you now,
17 from 2004 until today, that has changed. I'm sorry to
18 go back and forth, but now I'm going to go back.

19 Beyond 1994 -- 1994 on back, everything was
20 pretty much filed as the card system that you would see
21 in most -- in the past in most libraries. And that's
22 how they did everything. Everything was paper. They
23 had, again, different supervisors working that
24 different area, and I know that everything back beyond
25 1992, everything beyond that was purged and they only

1 kept certain things out of those -- those items. So we
2 don't really have a running history as to that paper.

3 I believe, if I'm not mistaken, they were
4 required to have at least 10 years. I'm not a hundred
5 percent sure; you probably know that or a clerk would
6 know more about that, or our supervisors would know
7 more about that. But I think after 25, 30 years, they
8 decided to do away with most of that paperwork.

9 COMMISSIONER VICKORY: I know it's not
10 unusual in some of my efforts to locate old files that
11 you find the agency's files, but then find out that the
12 individual officer, like investigators, had their own
13 files that were basically their own documents that they
14 kept with them and then, when they retired, they took
15 them with them.

16 Do you know if any of those old
17 investigators, former investigators might have taken
18 some files with them?

19 THE WITNESS: And that's another good
20 question too. We even looked at that aspect of -- I
21 believe when they did the system, from 1994 on back, if
22 a case was assigned or, for instance, Mr. Turner had an
23 older case and he had a name and there was an
24 investigation and a report number to that, I think that
25 where we ran into a problem on that was linking that to

1 the investigator that actually worked it. They would
2 just leave it as the report number or an OCA number,
3 but never put on there who was the investigating
4 officer for that case. And that was a big problem,
5 too. And I guess it's probably something that was
6 overlooked -- I can only guess, now, again, I'm
7 assuming that it was overlooked, and now they've
8 realized, "Hey, that was a problem," because we could
9 never go back to our old cases, like you're talking
10 about, and maybe associate that case file by the card
11 with the investigating officer and see if they had
12 their files, by chance.

13 But if I'm not mistaken, I believe a lot of
14 those cards did not have names of the investigators.
15 And we made that -- some of -- we do still have some
16 30-year-old and 35-year-old employees who have been
17 there that long, we actually have a 41-year veteran
18 that still works for our department. So a lot of
19 things that I would try to find out from them about was
20 to talk to them.

21 And, again, the records clerk for our CID
22 division at the time, she still works for us. And that
23 was basically her explanation as to why we can't
24 cross-reference those case files.

25 COMMISSIONER VICKORY: Obviously the thing

1 that jumped out to most of us right off the bat was why
2 Turner wound up in the first lineup. I mean, that --
3 and I've been trying to run that through my brain
4 throughout this hearing.

5 Do you have an opinion of it? I mean, if you
6 don't, I mean, I'm just -- I'm guessing that maybe he
7 was just, you know, as has been described, the local
8 bully and had a history of domestic violence. I mean,
9 maybe that's just somebody thinking "this is the most
10 likely suspect, so let's put him in the lineup." But I
11 was wondering if there was something more there.

12 THE WITNESS: That is correct. If you were
13 asking if I have an opinion, yes, the opinion --
14 especially if you look at the photographs between the
15 two back in that time frame, are very similar. If they
16 were being described, I would think that probably that
17 is the reason, maybe, an officer or investigator said
18 "that sounds like -- height and weight and
19 descriptionwise, that sounds like Albert Turner."

20 And because he was known on the street for
21 pretty much living in the streets and being an
22 alcoholic, that I'm assuming most investigators and
23 officers there had quite a bit of run-ins with him.

24 Again, I guess, how would you explain that?
25 Not every run-in or every confrontation is reported

1 like it is even today; we do a lot of FI cards or cards
2 that you would actually -- field interview cards that
3 you would do today and everything is electronic.

4 Back in the day, in those days, from talking
5 to previous investigators, they didn't do those cards
6 but they had a working knowledge as to why -- different
7 run-ins with him.

8 So, again, I am only speculating. And my
9 opinion is, yes, that there is -- that's probably the
10 reason why they put him in first, just like you said.

11 COMMISSIONER VICKORY: Thank you.

12 THE WITNESS: I hope I answered that. I'm
13 not sure. I went around the long way to answer it.

14 COMMISSIONER VICKORY: That's all right.
15 Thank you.

16 COMMISSIONER BECTON: Are you saying both
17 because he was known to have a criminal record and also
18 because, at that time, he fit the first description
19 Ms. Elliott ever gave?

20 THE WITNESS: That's possible. And the fact
21 that he was known to have a lot of interactions with --
22 with being on the street and drinking and being around
23 and near that close proximity of that public housing.

24 COMMISSIONER DUNCAN: Not to beat that to
25 death, but did you ever determine which investigator --

1 and I think it was Investigator -- Mr. Hunt, who led
2 the investigation, Investigator Bryant was very active
3 with the investigation, did you ever find who put that
4 lineup sleeve together? Did you talk to that
5 particular investigator or were you able to determine
6 who exactly did that?

7 THE WITNESS: I think, on memory -- I think
8 the Commission would be able to tell you more -- I
9 think it was Bryant, if I'm not mistaken. Is that -- I
10 believe that's who it was. They may be able to tell
11 you or clarify that, but I thought it was Steve Bryant.
12 I may be wrong, but I'm not sure, again, who exactly
13 put that lineup together offhand. We did look into
14 that.

15 COMMISSIONER JENKINS: Okay. Maybe that's a
16 question for a little further. I'd just be interested
17 to know if he remembered any reason whatsoever why
18 Mr. Turner made that initial lineup.

19 THE WITNESS: I -- that was a big question
20 that they had when they came to see me, and I couldn't
21 answer them without letting them talk to him. That was
22 one of the interviews I was not part of because they
23 did that by phone, so I did not hear that -- that
24 interview -- or witness that interview.

25 JUDGE SUMNER: Is Steve Bryant still alive?

1 THE WITNESS: He is, yes, sir. But he has
2 not worked for us, I want to say, since 1996 -- I was
3 told '96 or '97 is when he left our department.

4 MS. MONTGOMERY-BLINN: Further questions?

5 COMMISSIONER VICKORY: Yeah, I think
6 Blackburn -- J.M. Blackburn says, "I made up the lineup
7 of six males and showed them to the victim."

8 THE WITNESS: Okay. Sorry.

9 JUDGE SUMNER: Any other questions?

10 THE WITNESS: And that was another interview
11 that I was not part of, either; that was all done by
12 the Commission.

13 JUDGE SUMNER: Thank you, sir.

14 MS. MONTGOMERY-BLINN: Thank you,
15 Investigator Nowatka.

16 (Witness dismissed.)

17 MS. MONTGOMERY-BLINN: Commissioners, I would
18 like to re-call Mr. Lau briefly just to answer some of
19 those questions about the officers.

20 (Jamie Lau re-called.)

21 EXAMINATION BY MS. MONTGOMERY-BLINN:

22 Q Mr. Lau, I know you testified about this on
23 Monday, but we just kind of hit the highlights then and
24 it's been a little while, so I'd like to talk with you
25 again about the interviews with the officers. And I'd

1 also like to just hand up the part of the report that's
2 in the Commissioners' briefs that describes the first
3 lineup.

4 Mr. Lau, which officer, according to that
5 report and according to your investigation, who did the
6 first lineup with Ms. Elliott, the one that included
7 Albert Turner?

8 A Officer Blackburn.

9 Q Okay. And were you able to speak with
10 Officer Blackburn?

11 A We did speak with Officer Blackburn.

12 Q And where is Officer Blackburn located?

13 A He is currently located in Columbia, South
14 Carolina. He operates a cleaning business that he is
15 the owner of there.

16 Q Did you speak with him in person?

17 A We spoke with him in person, yes.

18 Q Did he remember this case?

19 A He had vague recollections in his mind, but
20 he couldn't remember specifics beyond what was in the
21 reports. When I say "vague," he described having, you
22 know, a picture in his mind of him and Steve Bryant
23 being in the victim's apartment. He said he believed
24 that the fruit came out of the fruit bowl, but he
25 couldn't be any more specific than that. And he said

1 that the reports were the best with regards to what he
2 could recall from the night.

3 Q Okay. And present for the interview were you
4 and Ms. Stellato?

5 A That's correct.

6 Q Okay. And so he could not remember
7 administering that lineup?

8 A He could not remember specifically showing
9 that lineup to the victim. He also could not explain
10 why the report that is in the brief was dated
11 April 1988 as opposed to October 1987. He said perhaps
12 he had been behind on paperwork, but he didn't have any
13 other recollection other than what was in the report.

14 Q But that's -- thank you. And that is the
15 date submitted, not the date administered.

16 A That's the date submitted, yes, yes.

17 Q And he couldn't remember why Mr. Turner was
18 in the lineup.

19 A He could not remember why Mr. Turner was in
20 the lineup.

21 Q Okay. But you did talk with him about his
22 standard procedures when he did lineup; right?

23 A We did speak with him about the standard
24 procedures.

25 Q And did he say whether or not in a lineup

1 somebody would be a suspect?

2 A He said that the general procedure was that
3 you had a suspect and you put fillers around that
4 suspect, individuals that are similar, but would
5 surround the suspect that you had in mind.

6 Q And you showed him that lineup where
7 Mr. Turner's name is written in hand?

8 A We did show him the lineup.

9 Q And was that his -- did he recognize that as
10 his handwriting?

11 A He did not recognize the handwriting on
12 lineup.

13 Q Okay. And you also -- but he -- and I know
14 Ms. Stellato testified about this on Monday, but he did
15 remember, did he know Albert Turner?

16 A He did remember Albert Turner. He couldn't
17 remember specifically. He said that he remembered him
18 from his dealings as an officer on the street in
19 Hickory.

20 Q Okay. And you also interviewed Sergeant
21 Bryant; is that right?

22 A We spoke with Sergeant Bryant, yes.

23 Q Okay. And he was -- what -- did Sergeant
24 Bryant remember the case?

25 A Sergeant Bryant didn't have any independent

1 recollection of the case. We faxed records to Sergeant
2 Bryant to refresh his memory. He is currently residing
3 in Massachusetts, so we faxed him the records. He
4 reviewed those records, and then we interviewed him
5 over the phone. And, again, no independent
6 recollection; he could only speak to what was in his
7 written reports.

8 Q And did you also ask him about the statement
9 that Officer Hunt made that Linda McDowell had been an
10 informant for Sergeant Bryant?

11 A We did ask him about that.

12 Q And did he recall that?

13 A He didn't specifically recall Linda McDowell
14 being an informant. He said that it was possible that
15 Linda McDowell knew him or knew of him because of his
16 work as a patrol officer and that's why she could have
17 wanted to speak with him, but he couldn't be certain if
18 that was the case and he did not recall her having been
19 an informant.

20 Q Okay.

21 MS. MONTGOMERY-BLINN: Commissioners, do you
22 have questions to follow up on that?

23 COMMISSIONER VICKORY: I think we've been
24 assuming all along that Albert Turner was the
25 subject -- or the suspect in that first lineup.

1 Did -- every agency kind of has their
2 different spots -- or back in those days had their own
3 little spots in general that they used.

4 Did you talk to him about that? I mean, was
5 Albert Turner the suspect? Or was he just throwing six
6 pictures up of black males who frequented that area?

7 THE WITNESS: We were trying to ascertain
8 that, and no one we spoke with could confirm whether or
9 not that was the case. And the reason that we were
10 trying to ascertain that is when you look at the lineup
11 itself, Albert Turner is the only name that is spelled
12 out and written on that lineup. And then it is
13 surrounded by five other individuals, and they're only
14 identified by number.

15 I think another thing I should add is when we
16 spoke with Officer Blackburn, he recalled interviewing
17 the victim the night of the crime. He didn't
18 specifically recall what questions were asked or
19 anything about it, but he recalls being at the Hickory
20 PD interviewing the victim the night of the crime.

21 He recalls from his report that on that night
22 during that interview they showed the victim the photo
23 lineup that included Albert Turner. He recalled Susan
24 Young, Officer Young, being with him and present during
25 that interview. So we spoke with Ms. Young and we

1 asked her whether or not that was her handwriting on
2 that photo lineup and whether or not she made those
3 notations on that lineup or could recall showing that
4 lineup to the victim on that night. She said that it
5 was not her handwriting, she didn't recognize it as her
6 handwriting. And she said that she didn't know if
7 Mr. Turner was the suspect.

8 So we tried to ascertain that by speaking
9 with the officers that were present, but both of those
10 individuals said it wasn't their handwriting and each
11 of those individuals could not recall whether or not
12 Mr. Turner was the subject in that lineup and
13 surrounded by filler or why that lineup came to be what
14 it was.

15 COMMISSIONER VICKORY: Okay. Thank you.

16 MS. MONTGOMERY-BLINN: Other questions?

17 All right. Thank you, Mr. Lau.

18 (Mr. Lau stands down.)

19 MS. MONTGOMERY-BLINN: This hearing has
20 focused on Willie Grimes and his actions and what he
21 did that day in October of 1987. But we have not
22 forgotten Ms. Carrie Elliott. She was the victim of a
23 violent and brutal rape in her home. Ms. Elliott has
24 passed away, but her daughter [sic], Tamara Elliott, is
25 here to make sure that Ms. Elliott's voice is heard.

1 At this time I'd like to ask that the
2 Commission hearing be closed to the public and just the
3 Commissioners and the Commission staff and Investigator
4 Nowatka remain so that Ms. Elliott can make a statement
5 to the Commission.

6 JUDGE SUMNER: All right. At this point,
7 this hearing is closed to the public, all the press;
8 only the victim's family and Detective Nowatka will be
9 allowed to remain at this point.

10 (Hearing closed to the public.)

11 MS. MONTGOMERY-BLINN: Thank you. And we
12 will just wait until we've got all the cameras and
13 microphones off.

14 Ms. Elliott, would you like to come up?

15 (Tamara Elliott, Victim Impact Statement.)

16 THE COURT: Just identify yourself for the
17 record for us, please.

18 MS. ELLIOTT: My name is Tamara Elliott. I
19 am Carrie Elliott's granddaughter.

20 JUDGE SUMNER: All right. Go right ahead,
21 ma'am.

22 MS. ELLIOTT: This is my grandmother and my
23 grandfather (indicating). My grandmother was always a
24 warm, caring person. We spent a lot of time with my
25 grandmother. There were five of us kids, and my father

1 was my grandmother and grandfather's only child. Now,
2 she was my father's stepmother. My grandfather married
3 her when my father was about 3 and a half or 4, because
4 his mother had died previously. And she was my
5 father's stepmother, but to him she was Mom. I mean,
6 that was -- you know, she was the one that raised him.

7 And we spent a lot of time with my
8 grandparents when we were small. And she was a good
9 person. She was a kind person. And I never heard her
10 say anything bad about anybody. She took people at
11 their value. She accepted -- I mean, she accepted
12 anybody. I never heard her say bad things about
13 people. And she was a good person.

14 And I trust her judgment. And, you know,
15 what she said happened, happened. And I don't think
16 she would have said it was someone else if it was not.
17 I cannot see my grandmother saying it was another
18 person when it was not that person. And I just trust
19 my grandmother's judgment.

20 And that's all I have to say.

21 JUDGE SUMNER: Thank you.

22 MS. MONTGOMERY-BLINN: Thank you, ma'am.

23 COMMISSIONER SMITH: Is it possible to pass
24 the photograph around so we can see it?

25 MS. MONTGOMERY-BLINN: Do you mind if we do

1 that?

2 COMMISSIONER SMITH: Thank you very much.

3 (Impact statement concluded.)

4 MS. MONTGOMERY-BLINN: Your Honor, I'd ask
5 that we reopen the proceedings and continue.

6 (Open session resumes.)

7 MS. MONTGOMERY-BLINN: Commissioners, is
8 there anybody that you need me to recall? Would you
9 like me to ask Ms. Stellato or Mr. Lau or Investigator
10 Nowatka to come back up for any questions? I'm done
11 presenting evidence to you.

12 Okay. All right. This concludes the
13 presentation in this case.

14 I would like to take a moment to thank all of
15 the Commissioners for your patience during this
16 hearing. I'd like to thank you for your careful review
17 of a lengthy brief and interview transcripts. Thank
18 you for your attention and thoughtful consideration
19 during these past three days. Your dedication to the
20 Commission is inspiring.

21 I would also like to take a moment to thank
22 the amazing Commission staff. They have worked
23 tirelessly during these past months investigating this
24 case and organizing this hearing. Thank you to Sharon
25 Stellato, Jamie Lau, Lindsey Guice Smith, Stormy Ellis,

1 Adam Wrenn, Aschante Pretty, and our intern, Gabrielle
2 Miles. This Commission staff is the best team that I
3 have ever had and maybe ever will have working for the
4 Commission. Thank you.

5 You are now asked to conclude -- or to decide
6 whether you conclude there is a sufficient evidence of
7 factual innocence to merit judicial review or if there
8 is not. Because this conviction was from a trial, your
9 vote will be by majority. You may decide that there is
10 sufficient evidence and the case will be referred to a
11 three-judge panel; you may decide that there is not
12 sufficient evidence, and the case will be closed; and
13 you may instruct the Commission staff to continue
14 investigation and reconvene the hearing at a later
15 date.

16 The standard is sufficient evidence of
17 factual innocence to merit judicial review.

18 At this time I will ask the Commission to
19 either take a break or begin their deliberations.

20 JUDGE SUMNER: I think we are ready to
21 proceed on.

22 This will close -- this will end the first
23 portion of this hearing. At this point, the Commission
24 hearing will be closed to the public.

25 Investigator, I want to thank you also, sir,

1 for being here. Staff, thank you. And family, thank
2 you also.

3 (Deliberation, 11:03 a.m. to 1:13 p.m.)

4 JUDGE SUMNER: All right. Thank you. We are
5 now in session again. And before I go further, let me
6 first thank the Elliott family for their presence here
7 today. Thank you for the words that you gave us and
8 thank you for your presence also.

9 I would like to thank Ms. Montgomery-Blinn
10 for the good job that she and her staff have done
11 personally, Jamie and Sharon, thank you, folks. The
12 entire staff, thank you.

13 I'd also like to thank the Commission members
14 I serve with. As I've said before oftentimes, it is a
15 pleasure to be with you. I value your thoughts and
16 your opinions, and I'm most appreciative of the
17 opportunity to be with you.

18 At this time, the issue before us would be:
19 Is there sufficient evidence of factual innocence in
20 this matter to merit judicial review?

21 And I will start with Sheriff Johnson at this
22 time. Your vote, ma'am?

23 COMMISSIONER JOHNSON: Yes.

24 JUDGE SUMNER: Chief Jenkins?

25 COMMISSIONER JENKINS: Yes.

1 JUDGE SUMNER: Mr. Becton?

2 COMMISSIONER BECTON: Yes.

3 JUDGE SUMNER: Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 JUDGE SUMNER: Mr. Vickory?

6 COMMISSIONER VICKORY: Yes.

7 JUDGE SUMNER: Dr. Greenlee?

8 COMMISSIONER GREENLEE: Yes.

9 JUDGE SUMNER: Ms. Chilton?

10 COMMISSIONER CHILTON: Yes.

11 JUDGE SUMNER: The Chair votes yes also.

12 This being the unanimous opinion, at this
13 point the Commission makes the following opinion and
14 order.

15 This matter came on for hearing before the
16 North Carolina Innocence Inquiry Commission on
17 April 2nd, 3rd, and 4th, 2012, pursuant to N.C. General
18 Statute 15A-1460 and -- through 1475.

19 After careful review of the evidence
20 presented, the Commission hereby makes and enters the
21 following findings of fact:

22 Number 1, on October 24, 1987, Carrie Lee
23 Elliott was raped while in her apartment at 104 8th
24 Avenue Drive Southeast, Hickory, North Carolina;

25 Two, on July 8, 1988, a jury found Willie J.

1 Grimes guilty of two counts of first-degree rape and
2 one count of second-degree kidnapping. At sentencing,
3 Grimes received a consolidated life sentence for his
4 rape convictions and an additional nine years for his
5 second-degree kidnapping conviction;

6 Third, on October 18, 2010, Grimes submitted
7 a questionnaire and consent form to the Commission.
8 Grimes asserted his complete factual innocence of the
9 rape and kidnapping of Carrie Lee Elliott. The
10 Commission began an inquiry pursuant to Article 92,
11 Chapter 15A of the General Statutes;

12 Four, throughout the Commission's inquiry,
13 Grimes has fully cooperated with Commission staff in
14 accordance with N.C. General Statute 15A-1467,
15 subsection (g);

16 Five, on April 2nd, 3rd, and 4th, 2012, the
17 Commission held a full evidentiary hearing in this
18 matter pursuant to North Carolina General Statute
19 15A-1468;

20 Six, during the hearing, the Commission
21 considered testimonial and documentary evidence as well
22 as summaries by Commission staff. This evidence
23 included, among other things: A, a 463-page brief
24 provided to the Commission by staff before the hearing;
25 B, supplemental documentation provided during the

1 hearing; C, live testimony by Ms. Helen Linda Shuford
2 McDowell, Ms. Betty Shuford Hairston, Attorney Ed de
3 Torres, retired Hickory Police Department Lieutenant
4 Steve Hunt, Hickory Police Department Investigator
5 Dustin Nowatka, Commission staff attorney Jamie Lau,
6 Commission Associate Director Sharon Stellato, and
7 claimant, Willie J. Grimes, expert testimony from SBI
8 Special Agent, Brian Delmas, an expert in fingerprint
9 comparison, Max M. Houck, Ph.D., an expert in
10 microscopic hair analysis, City-county Bureau of
11 Identification Deputy Director Troy Hamlin, expert in
12 microscopic hair analysis; and, D, evidence presented
13 to the Commission concerning latent fingerprint
14 examination and comparisons;

15 Seven, after carefully considering this
16 evidence, the Commission has concluded by a unanimous
17 decision that there is sufficient evidence of factual
18 innocence to merit further judicial review.

19 Wherefore, pursuant to North Carolina General
20 Statute 15A-1469, subsection (a) and as Chairman of the
21 Commission, the undersigned refers this case to the
22 Honorable Timothy S. Kincaid, Catawba County Senior
23 Resident Superior Court Judge, and respectfully
24 requests that the Chief Justice appoint a three-judge
25 panel not to include any trial judge who has had

1 substantial previous involvement in this case, and
2 issue commissions to its members to be in a Special
3 Session of the Superior Court of Catawba County to hear
4 relevant evidence -- excuse me, to hear evidence
5 relevant to the Commission's recommendations.

6 This, the 4th day of April, 2012, Quentin T.
7 Sumner, Senior Resident Superior Court Judge, Nash
8 County, Chairman, North Carolina Innocence Inquiry
9 Commission.

10 There being no further business before this
11 Commission, this meeting is concluded and adjourned.
12 Thank you.

13 (Hearing adjourned, 1:19 p.m.)
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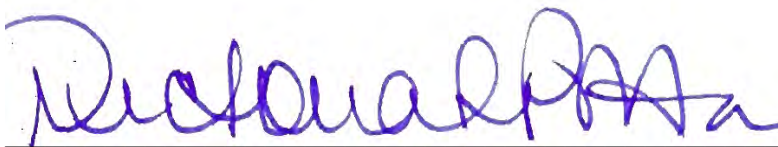
1 STATE OF NORTH CAROLINA)
)
2 COUNTY OF WAKE)

3
4 CERTIFICATE

5 I, Victoria L. Pittman, BA, CVR-CM-M, the officer
6 before whom the foregoing proceeding was held, do hereby
7 certify that said hearing, pages 1 through 641 inclusive, is
8 a true, 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
11 in which this proceeding was heard; and, further, that I am
12 not a relative or employee of any attorney or counsel
13 employed by the parties thereto, and am not financially or
14 otherwise interested in the outcome of the action.

15 Dated at Wake Forest, North Carolina, the 19th day of
16 April, 2012.

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19

20 Victoria L. Pittman, BA, CVR-CM-M

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23 Date requested: 4/4/12
24 Date delivered: 4/20/12
25 Total pages: 642