

NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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YANCEY COUNTY, C.S.C.

STATE OF NORTH CAROLINA,

versus

JOHN PRITCHARD

FROM YANCEY COUNTY

11 CRS 304

11 CRS 305

TRANSCRIPT OF HEARING, Volume 1 of 2
Tuesday, December 14, 2021

December 14, 2021, Setting of the
North Carolina Innocence Inquiry Commission
The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate)
John Boswell
Luther Johnson Britt, III
Robin Colbert
Judge Yvonne Mims Evans (Alternate)
Rick Glazier
Sheriff Bobby Kimbrough
Deborrah Newton (Alternate)
Dr. Frank Perry
Ashley Welch

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 Brian Ziegler, Staff Attorney

6 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

7 Post Office Box 2448

8 Raleigh, North Carolina 27602

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1 Tuesday, December 14, 2021 (8:48 a.m.)

2 P R O C E E D I N G S

3 JUDGE LOCK: All right. Good morning,
4 everyone. We'll come to order. I apologize again for being
5 late. I was caught in that morning traffic.

6 We are this morning hearing the Yancey County
7 case of State versus John Pritchard, 11 CRS 304 and 305.

8 This meeting is open to the public pursuant
9 to NC General Statute 15A-1468(a). It's also being
10 livestreamed. This hearing is open to the public but space,
11 of course, is limited in the hearing room; therefore, the
12 proceeding is being livestreamed by the Administrative
13 Office of the Courts to ensure that the public can view it.
14 An overflow room with the livestream is also being provided
15 here in this building.

16 Although this hearing is open to the public,
17 distractions should be kept to a minimum. The door should
18 remain closed during the hearing and only the Commission
19 staff and the victim's family should go in and out until we
20 are on a break. If you need to leave, you may step down to
21 the overflow room to view the livestream of the hearing
22 until we are on a break. If there are disruptions, you may
23 be asked to leave the hearing.

24 No one should at any time come past the ropes
25 behind me or attempt to speak with the commissioners about

1 the case.

2 At this time, we're going to go around the
3 table and have the commissioners and commission staff who
4 are at the table say and spell their names for the court
5 reporter.

6 If you are serving as a commissioner for
7 today's hearing, please indicate that. If you are an
8 alternate who is serving as a commissioner, please indicate
9 that. If you are an alternate who is attending as an
10 alternate, please also say that.

11 All right. We'll just start at my left with
12 Ms. Julie Bridenstine.

13 MS. BRIDENSTINE: Julie Bridenstine, staff
14 attorney with the Commission.

15 MS. TANNER: I'm Beth Tanner, associate
16 director of the Commission.

17 MS. SMITH: Lindsey Smith, executive director
18 of the Commission.

19 JUDGE EVANS: I am Yvonne Mims Evans,
20 alternate member.

21 MR. BASS: Scott Bass, victim advocate
22 alternate serving as an alternate.

23 MS. NEWTON: Deborrah, D-e-b-o-r-r-a-h,
24 Newton, N-e-w-t-o-n, serving as alternate defense seat.

25 MS. WELCH: I am Ashley Welch. I'm a

1 commissioner, the district attorney.

2 JUDGE LOCK: Tom Lock, Superior Court Judge
3 and chair.

4 MR. BRITT: Johnson Britt, commissioner,
5 defense attorney.

6 MR. BOSWELL: John Boswell, commissioner at
7 large member.

8 SHERIFF KIMBROUGH: Bobby Kimbrough,
9 alternate serving as a commissioner.

10 MR. GLAZIER: Rick Glazier, G-l-a-z-i-e-r,
11 serving as a commissioner.

12 DR. PERRY: Frank Perry, commissioner.

13 MS. COLBERT: Robin Colbert, victim advocate,
14 commissioner.

15 JUDGE LOCK: All right.

16 Thank you, Commissioner Glazier, for
17 following my instructions. You're the only one who spelled
18 his name, as I think I asked everyone to do.

19 Well, Mr. Bass may have. I'm sorry.

20 MS. NEWTON: I think I did.

21 JUDGE LOCK: Anyway. For the record, we do
22 have eight voting members of the Commission present as
23 required by statute.

24 All right. At this time, I will make a
25 formal inquiry for the record as to whether any commissioner

1 needs to recuse himself or herself pursuant to Rule (C)1 of
2 our rules and procedures. The rule states: "A commissioner
3 shall recuse himself or herself if he or she had any
4 involvement in the case during the original trial or any
5 postconviction motions. A commissioner shall recuse himself
6 or herself if some event has caused him or her to become
7 biased about a case and unable to participate in the
8 hearing in a fair and impartial manner."

9 So are there any commissioners who need to
10 recuse themselves based on this rule question?

11 All right. It appears not.

12 Sheriff Kevin Frye has recused himself and,
13 accordingly, Alternate Sheriff Bobby Kimbrough is serving as
14 place.

15 All right. Rule 7(C)3 prohibits
16 commissioners from conducting any independent investigation
17 of the case.

18 Have any commissioners conducted any
19 independent investigation of the case?

20 All right. It appears not.

21 Let me remind those of you who are attending
22 as alternates that Article 7(D) of the commission rules and
23 procedures state: "If an alternate commissioner is not
24 fulfilling full commission duties, he or she may attend
25 hearings of the Commission, but may not participate in

1 deliberations and may not vote."

2 During the hearing, alternate commissioners
3 may ask questions of the witnesses. Alternate commissioners
4 will be asked to leave prior to deliberations.

5 We do this morning have two alternate
6 commissioners here with us who are here in their capacity as
7 alternate commissioners, and they are, of course, Alternate
8 Defense Attorney Deb Newton and Alternate Discretionary
9 Member Judge Yvonne Mims Evans. And welcome.

10 MS. SMITH: Judge Lock, just for the record,
11 Alternate Scott Bass is also with us.

12 JUDGE LOCK: I'm sorry. I've overlooked you
13 twice today. I'm sorry, Mr. Bass.

14 All right. At this time, I am going to turn
15 the hearing over to our executive director, Ms. Lindsey
16 Guice Smith, for the presentation of the case.

17 Whenever you are ready, Mrs. Smith.

18 MS. SMITH: (8:54 a.m.) Thank you, Your
19 Honor.

20 Good morning, Commissioners. This case
21 arises from the convictions of John Pritchard for the
22 second-degree murder of the victim, Jonathan Russell
23 Whitson, as well as various drug convictions arising from
24 the sale of drugs to the victim.

25 After trial, Mr. Pritchard was convicted of

1 second-degree murder, delivery of a controlled substance
2 Schedule II, possession with intent to sell, manufacture,
3 deliver Schedule II controlled substance, and maintain a
4 vehicle/dwelling/or place for controlled substances.

5 The Commission received Mr. Pritchard's claim
6 of innocence in September of 2019. In October of 2019,
7 Mr. Pritchard submitted a questionnaire and consent form to
8 the Commission for his claim of innocence and has asserted
9 his complete factual innocence to the Commission for the
10 events of March 5 to 6, 2011.

11 At that time, Mr. Pritchard informed the
12 Commission that a forensic pathologist had concluded that a
13 drug overdose was not the cause of death for Mr. Whitson.

14 In February of 2021, the Commission learned
15 that the Wake Forest University School of Law Innocence and
16 Justice Clinic was also reviewing the case. At that time,
17 the Commission reached out to the Clinic to avoid
18 duplicating efforts in investigating Mr. Pritchard's
19 innocence claim. At that time, the Clinic officially
20 referred case to the Commission and closed its own innocence
21 investigation.

22 This case was moved to formal inquiry with
23 the Commission on June 19, 2021. Throughout this inquiry,
24 Mr. Pritchard has cooperated with the commission staff in
25 accordance with North Carolina General Statute 15A-1467(g).

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

12 Mr. Pritchard was convicted after a trial.
13 All relevant evidence uncovered during the investigation by
14 commission staff will be presented throughout this hearing
15 pursuant to North Carolina General Statute 15A-1468(a).
16 This includes evidence that may be favorable to
17 Mr. Pritchard or evidence that may be unfavorable to
18 Mr. Pritchard.

19 You have all been provided with a commission
20 brief which was 519 pages that describes, as of the time of
21 its completion, the information available to commission
22 staff related to the law enforcement investigation and
23 resulting criminal litigation in this matter. For the most
24 part, we will not review the material that's covered in the
25 brief during this hearing. I may refer you to page numbers

1 in the brief as it relates to topics on which commission
2 staff is testifying throughout the brief.

3 You have all been provided with an electronic
4 copy of the brief on the computers in front of you. That
5 electronic document is a searchable if you need to use the
6 search function.

7 In addition to the brief, you were provided
8 several handouts prior to the Commission's hearing. These
9 handouts are also included in your digital hearing handout
10 notebooks which are on the computers in front of you.

11 Throughout the hearing, I will reference
12 specific handouts when we get to a point where they are
13 relevant and will note them for the record. At that time,
14 you may want to pull those up on your computer to reference
15 them, and you will, of course, be given an opportunity then
16 to ask questions about the handouts of the witness who's on
17 the stand.

18 During the hearing, Commission Staff Attorney
19 Julie Bridenstine, who served as the lead investigator on
20 this case for the Commission, will be called to testify.
21 The claimant, John Pritchard, is currently incarcerated with
22 the North Carolina Department of Public Safety. He will
23 testify in person during this hearing.

24 Additional witnesses will be testifying too
25 via WebEx. These include expert witnesses Dr. McLemore,

1 Dr. Roberts, Dr. Ewens, Dr. Wolf, Dr. Behonick, and
2 Dr. Holstege. You have previously received all of their
3 reports.

4 Commission staff has also interviewed
5 other -- numerous other individuals who will not be called
6 to testify. Commission staff, instead, will testify about
7 those interviews and summarize those for you.

8 Commission staff will testify as to whether
9 each interview was recorded and transcribed. Most of the
10 interviews were recorded with the exception of a very few,
11 and all of those recorded have been transcribed. While I do
12 not plan to hand out every interview transcript to you, if
13 there is one that you would like in full, please ask for it
14 and you'll have an opportunity to review it on a break or on
15 the overnight recess. Similarly, if we don't have a
16 transcript but we have a recording, you may ask for the
17 recording if you feel you would like to listen to it.

18 Additionally, several individuals that
19 commission staff has interviewed or deposed have been
20 subpoenaed and are on phone standby for the hearing in the
21 event that commissioners have additional questions for them.
22 These include Dr. Brent Hall, the original medical examiner
23 in the case; former Assistant District Attorney Michael
24 Holmes; former Interim District Attorney Justice Robert Orr;
25 defense attorney Daniel Hockaday; Lieutenant Ryan Higgins;

1 former Deputy Thomas Farmer; and North Carolina crime lab
2 drug chemist, Collin Shuford. Should any of those
3 individuals need to testify, most will be available to
4 testify via WebEx rather than in person.

5 Further, Stephanie Whitson Randolph has been
6 subpoenaed and is also here under a material witness order
7 and is available to testify in person if you have additional
8 questions for her. You were provided her full deposition
9 prior to the hearing.

10 District Attorney Seth Banks from Yancey
11 County represents the State in this matter. He has assigned
12 Assistant District Attorney Milton Fletcher and former
13 Supreme Court Justice Robert Orr as his designees in the
14 case. They are here today.

15 Mr. Pritchard is represented by Mark Rabil
16 and Emily Thornton with the Wake Forest University School of
17 Law Innocence and Justice Clinic. They are also here today.

18 As required under the rules, the Commission
19 held a prehearing conference on November 16, 2021. The
20 district attorney designees, Assistant District Attorney
21 Fletcher and Justice Orr, were present in person; Mr. Rabil
22 and Ms. Thornton attended via WebEx.

23 Prior to the prehearing conference, Mr. Banks
24 was informed that the district attorney has the right to
25 inspect evidence pursuant to NC General Statute

1 15A-1468(a2). Mr. Banks was also informed that pursuant to
2 that same section, he had the right to provide a written
3 statement to the commissioners for your consideration.

4 Mr. Rabil and Ms. Thornton were informed that the defense is
5 not afforded those same rights under the statute.

6 The Commission provided a copy of most of its
7 file electronically to the district attorney's office for
8 its review on November 19, 2021, and provided subsequent
9 materials on December 9 and 10, 2021, pursuant to
10 15A-1468(a2).

11 The district attorney's office has provided a
12 written statement for the commissioners for your review.
13 That is Handout 50. It has been uploaded onto your digital
14 hearing handout notebooks and you will have an opportunity
15 to review it prior to the conclusion of the hearing.

16 At the end of the hearing, you will be asked
17 to determine whether there is sufficient evidence of factual
18 innocence to merit judicial review. Because Mr. Pritchard
19 was convicted after a trial, his case will only move forward
20 to a three-judge panel if at least five of eight
21 commissioners vote that there is sufficient evidence of
22 factual innocence to merit judicial review. If less than
23 five commissioners vote for further review, the case will be
24 closed for the Commission and no appeal is available.

25 Commissioners, do you have any questions at

1 this point?

2 Judge Lock, the Commission would call Staff
3 Attorney Julie Bridenstine.

4 JUDGE LOCK: All right. Ms. Bridenstine, if
5 you would place left hand on the Bible and raise your right
6 hand.

7 Do you swear that the testimony you will give
8 this morning before this Commission will be the truth, the
9 whole truth, and nothing but the truth so help you God?

10 MS. BRIDENSTINE: I do.

11 Thereupon, JULIE BRIDENSTINE, a witness having been called by the
12 Commission, was sworn and testified as follows:

13 BY MS. SMITH: (9:30 a.m.)

14 Q. Ms. Bridenstine, will you please state your full
15 name for the record.

16 A. Julie Bridenstine.

17 Q. And how are you employed?

18 A. I am a staff attorney with the Commission.

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

21 A. Almost six years.

22 Q. Were you assigned to investigate the Pritchard
23 case with the Commission?

24 A. I was.

25 Q. And in the course of its investigation, did the

1 commission staff obtain and review files and records from
2 other agencies?

3 A. We did.

4 Q. Can you tell the commissioners what files and
5 records were obtained.

6 A. The Commission first obtained the Yancey County
7 Sheriff's Office file and reviewed it. We then obtained the
8 Wake Forest University School of Law Innocence and Justice
9 Clinic file and reviewed that.

10 We also reviewed the trial transcript in this
11 case. Following those reviews, we sent subpoenas to the
12 Office of the Chief Medical Examiner and Watauga Medical
13 Center, that's where the autopsy was performed, and we asked
14 for all documents related to this case.

15 Q. Did the Commission obtain and review any other
16 files?

17 A. Yes. We obtained the SBI file, the state crime
18 lab file, the district attorney's office file, and the court
19 file.

20 Q. Did the Commission obtain any files from the
21 defense attorneys for Mr. Pritchard?

22 A. Yes, we did. Some of the attorneys who worked on
23 Mr. Pritchard's appeal still had some documents related to
24 their representation of Mr. Pritchard and we obtained those.

25 We received documents from attorneys Sofia

1 Hernandez, Brandi Bullock, and Robert Sirianni Junior.

2 Q. Did the Commission obtain any other files or
3 records related to this case?

4 A. Yes. We obtained records from the Department of
5 Public Safety related to Mr. Pritchard. The records that we
6 got included combined records, educational records, mental
7 health records, visitation and mail, disciplinary records,
8 and probation records. We also obtained phone records and
9 phone calls from DPS associated with Mr. Pritchard's PIN
10 number. We also obtained records from the North Carolina
11 Court of Appeals, which included the trial transcript and
12 the record on appeal.

13 Q. Any other files?

14 A. We subpoenaed and received additional materials
15 from the Office of the Chief Medical Examiner related to the
16 toxicology testing that was performed in this case and
17 related to two experts that the Commission consulted with
18 regarding this case.

19 Q. Did the Commission seek any jail or medical
20 records for the victim, Jonathan Whitson?

21 A. Yes. We sent subpoenas to both the Madison County
22 jail and the Buncombe County detention center. We were
23 looking for records related to Mr. Whitson's stay at those
24 jails prior to his death. In particular, we were looking
25 for any documents that showed whether or not he had been

1 treated for any medical conditions during his stay.

2 The Buncombe County detention center did not have
3 any records showing Mr. Whitson was treated for anything.
4 He was there a very short time. The Madison County jail
5 ultimately provided to us the medical questionnaire along
6 with other documents in their possession related to
7 Mr. Whitson's stay at their facility from January 6, 2011,
8 until March 4, 2011.

9 MS. SMITH: Commissioners, the records
10 produced by the Madison County jail were previously provided
11 to you as Handout 15 if you would like to reference that.

12 Q. Ms. Bridenstine, what did the Madison County jail
13 records show with respect to Mr. Whitson upon his intake
14 into the jail?

15 A. According to the questionnaire, he denied having
16 obvious pain. He did not appear to have withdrawal
17 symptoms. He answered "no" with respect to questions
18 related to taking any medications. He was not carrying any
19 medications. He reported that he did not use drugs and he
20 denied having any other medical problems.

21 Q. And did commission staff ever seek any other
22 medical records for the victim?

23 A. Yes, we did.

24 As you may recall from the trial transcript,
25 Mr. Whitson's girlfriend at the time, Stephanie Whitson

1 Randolph, testified that Mr. Whitson had gone to St. Joseph
2 Hospital to receive treatment for his arm.

3 Judge Lock signed a subpoena for all medical
4 records related to Mr. Whitson at Mission Hospital, which is
5 also known as St. Joseph, for the time period of January 1,
6 2010, through March 13, 2011. And Mission Hospital produced
7 all records that they had in their possession related to
8 Mr. Whitson for that time period. Those records totaled
9 377 pages.

10 Q. Generally speaking, what did those records reveal?

11 A. They showed that Mr. Whitson went to the hospital
12 on August 18, 2010, requesting detox and rehabilitation.
13 They noted track marks on his arm but no evidence of
14 infection. Mr. Whitson left the hospital after growing
15 impatient.

16 Mr. Whitson went to the hospital again on
17 December 27, 2010, and he was hospitalized there until
18 December 30, 2010. He was diagnosed with cellulitis on his
19 left arm with superficial vein thrombosis. He said his arm
20 had been hurting for a week. A CT scan revealed a small
21 probable subcutaneous abscess in his left arm. He was
22 informed that due to clots and the infection, he needed to
23 be admitted for IV antibiotics. And on December 30, 2010,
24 he was given a prescription for clindamycin upon discharge.

25 MS. SMITH: Commissioners, a chart

1 summarizing the medical records from Mr. Whitson's ER visit
2 and hospital stay at Mission Hospital was provided to
3 you-all prior to the hearing as Handout 16.

4 Q. Ms. Bridenstine, through your investigation, did
5 you uncover any additional information related to the
6 prescription that Mr. Whitson was given at Mission Hospital
7 on December 30, 2010?

8 A. Yes.

9 Q. In our deposition with Stephanie Whitson Randolph
10 on December 8, 2021, Ms. Randolph stated that she left the
11 hospital with Mr. Whitson regarding that stay on
12 December 30, 2010. She reported that Mr. Whitson didn't
13 leave with any medications. He did not fill any
14 prescriptions and he began injecting drugs again after his
15 release from the hospital.

16 MS. SMITH: Commissioners, do you have any
17 questions for Ms. Bridenstine either about the files that
18 the staff reviewed or about either of these two handouts,
19 Handout 15, the Madison County jail records, or Handout 16,
20 the medical history chart for the victim?

21 Yes, sir.

22 MR. GLAZIER: Ms. Bridenstine, on 16, in the
23 summary that you have for the Mission Hospital records, it
24 talks about at times witness -- Whitson experienced
25 diminished respiratory breathing.

1 Can you elaborate on that?

2 MS. BRIDENSTINE: Which handout?

3 MR. GLAZIER: It's the summary of 16, I think
4 it's 16, the Mission Hospital records.

5 MS. BRIDENSTINE: That is part of our
6 summary, which means it came from somewhere in the records.
7 We would probably have to go back and look and pull the
8 specific medical records to give you potentially more
9 information than what's provided in the summary. It's
10 possible that some of our experts might also be able to give
11 you more information about what that might indicate.

12 MR. GLAZIER: May I follow up?

13 JUDGE LOCK: Please.

14 MR. GLAZIER: My follow-up is following
15 exactly what you just said: Do you know whether the experts
16 did focus at all on that or whether we're going to hear from
17 any of them about that particular finding from the Mission
18 Hospital records?

19 MS. BRIDENSTINE: We provided all of those
20 records, the 377 pages, to all of the experts in this case.
21 And as you are aware, some of them addressed that in their
22 reports. I don't know if they will be able to answer the
23 questions about that.

24 MR. GLAZIER: All right. Thanks.

25 MS. SMITH: Any other questions?

1 Q. Ms. Bridenstine, we're going to turn our attention
2 to evidence in this case.

3 Did the Commission determine if there was any
4 evidence to collect in this case?

5 A. Yes, we did. We were looking for anything that
6 had been collected as part of the autopsy that might aid the
7 experts who were reviewing this case. We asked both the
8 Office of the Chief Medical Examiner and the Watauga Medical
9 Center if they had preserved any materials that were
10 collected during the autopsy of Mr. Whitson. The Office of
11 the Chief Medical Examiner did not have any materials from
12 the autopsy, but the Watauga Medical Center had the
13 histology slides and the paraffin blocks that were preserved
14 from the autopsy except for one block.

15 Initially, we were told that the paraffin -- the
16 missing paraffin block had been sent out for genetic
17 testing. Later on we inquired about the genetic testing to
18 see if we could get the results from that testing. We
19 learned that the paraffin block was not sent out for genetic
20 testing but was sent out for paternity testing. At the time
21 of Mr. Whitson's death, his ex-girlfriend was pregnant with
22 his son.

23 After being served a subpoena for the histology
24 slides and the paraffin blocks still in the possession of
25 the Watauga Medical Center, the Commission took custody of

1 those slides and paraffin blocks on July 15, 2021, in order
2 to provide them to the experts in this case.

3 Q. Can you remind the commissioners whether any
4 evidence was seized in this case.

5 A. Yes. The Yancey County Sheriff's Office seized
6 two syringes from the coat pocket of the jacket Mr. Whitson
7 had been wearing prior to his death. They provided those
8 syringes to the crime lab in order to see if the crime lab
9 could determine what substances, if any, were present in
10 those syringes.

11 The crime lab issued a report on February 2, 2012,
12 and no one from the crime lab testified at Mr. Pritchard's
13 trial, but law enforcement officers testified about the
14 results from the lab.

15 MS. SMITH: Commissioners, that crime lab
16 report was provided in your brief on page 92.

17 Q. Ms. Bridenstine, tell the commissioners what the
18 results were from that crime lab report.

19 A. The results were that the two syringes were
20 individually analyzed and were each found to contain "no
21 controlled substances indicated" and "residue amount."

22 Q. Did the Commission contact the original analyst
23 who conducted the examination of the syringes?

24 A. Yes, we did. I interviewed Collin Shuford of the
25 North Carolina State Crime Lab who, at the time that the

1 original analysis was carried out, she was going by the name
2 Collin Andrews. I spoke to her on the phone on November 1,
3 2021, and November 2, 2021. That interview was recorded and
4 transcribed.

5 Q. And why did the Commission contact Ms. Shuford?

6 A. We wanted to determine what "no controlled
7 substances indicated" meant and what "residue amount" meant.

8 We also wanted to ask if she was able to see what
9 substances, if any, were ever present in the syringes.

10 Q. And what did she tell you?

11 A. She said that because the syringes appeared to be
12 empty at the time she did the analysis, she rinsed each
13 syringe with a solvent and then ran that solvent on the gas
14 chromatography mass spectrometry system or instrument.
15 After running the solvent on the instrument, she obtained a
16 spectra or a graph that did not contain any peaks of
17 interest or any peaks that indicated the presence of
18 controlled substances.

19 She was not able to make any sort of
20 identification in this case.

21 She offered to go look at the raw spectra to see
22 if she could determine more information about what might
23 have been in the syringes. And after reviewing that raw
24 data, she called me the next day to report that she could
25 still not make any sort of identification of what was once

1 in or could have been in the syringes. She could neither
2 include nor exclude morphine. And what she was seeing could
3 have been from other controlled substances or other
4 compounds or could have been from morphine.

5 MS. SMITH: Commissioners, Ms. Shuford is on
6 standby for WebEx testimony if you have any questions for
7 her. I don't believe that Ms. Bridenstine will be able to
8 answer any additional technical questions if you have
9 anything further than kind of what she has testified to.

10 Do any of you think you have questions for
11 Ms. Shuford?

12 Your Honor, can we release her from her
13 subpoena then?

14 JUDGE LOCK: Yes.

15 MS. SMITH: Okay.

16 Any questions for Ms. Bridenstine about the
17 paraffin blocks that were collected as part of the autopsy
18 or the forensic testing of the case?

19 JUDGE LOCK: Yes.

20 MR. BOSWELL: What are paraffin blocks?

21 MS. BRIDENSTINE: That may be a question
22 that's better left for the experts, but I believe when they
23 collect certain parts of the body, they preserve them in a
24 paraffin block and that the slides are sections from the
25 tissues or organs that they collect.

1 MR. BOSWELL: Okay. Thank you.

2 MS. SMITH: Any additional questions?

3 JUDGE LOCK: Commissioner Colbert.

4 MS. COLBERT: I may have a question -- is it
5 Shuford? I do have a question around practice.

6 Ms. Bridenstine indicated that she rinsed the
7 syringes first and that that was a common practice.

8 MS. BRIDENSTINE: I can tell you what she
9 told me, which is that she said because they were -- they
10 appeared to be visually empty, she had to use a solvent to
11 rinse it to see if it could pick up anything even though it
12 looked like it was empty.

13 MS. COLBERT: And rinsing it -- I guess this
14 is a technical question for her, then. Rinsing it with a
15 solvent allows for them to pick up anything that would be
16 present in the syringes?

17 MS. BRIDENSTINE: Possibly.

18 MS. SMITH: Ms. Colbert, do you feel like you
19 need further clarification from the analyst?

20 MS. COLBERT: No.

21 MS. SMITH: Any other questions?

22 Q. Okay.

23 I'm going to turn your attention now to the law
24 enforcement this case.

25 Ms. Bridenstine, did the Commission interview any

1 law enforcement officers who were involved in the
2 investigation of this case?

3 A. Yes. We interviewed Lieutenant Ryan Higgins, who
4 was the lead investigator from the Yancey County Sheriff's
5 Office. We also interviewed Thomas Farmer, who at the time
6 was the chief deputy at the Yancey County Sheriff's Office,
7 but he is no longer in law enforcement.

8 Q. Were any other law enforcement officers involved
9 in the investigation?

10 A. Yes. Special Agent Charles Vines from the SBI.
11 He participated in a couple of witness interviews.

12 Q. Did the Commission interview Special Agent Vines?

13 A. No, we did not. His main involvement was doing
14 witness interviews, and Lieutenant Higgins was also present
15 during those interviews.

16 Q. You said that Lieutenant Higgins was the lead
17 investigator in the case; is that correct?

18 A. That's correct. And I interviewed him on the
19 phone on November 3, 2021. And that interview was recorded
20 and transcribed.

21 Q. What did you learn from the interview of
22 Lieutenant Higgins?

23 A. He responded to the death scene. When he arrived,
24 the only information he had was that there was a deceased
25 white male. No EMS personnel were present when he arrived.

1 He entered the home and saw Jonathan Whitson underneath a
2 blue blanket on the couch. Lieutenant Higgins reported that
3 it was immediately apparent that Mr. Whitson was deceased.
4 He also said there may have been a clear discharge coming
5 out of his nose.

6 Q. Did he say anything else about the scene?

7 A. He said that he took photographs that he believed
8 were tendered as evidence at the trial. He saw
9 Mr. Whitson's body underneath the blanket but he did not
10 recall any specific observations about his arms. He stated
11 that there were no obvious signs of trauma like a gunshot or
12 a stab wound.

13 Lieutenant Higgins' original report did not
14 contain a detailed description of Mr. Whitson's body and he
15 did not recall much beyond what was in his report.

16 Q. Did he see anyone else in the home?

17 A. Yes. He recalled that Christine Angel, Wade
18 Angel, and Nathan Angel were all present in the home as well
19 as two children, Christian and James Angel.

20 He reported that Annette Whitson Greene, who is
21 Jonathan Whitson's mother, arrived sometime later.

22 Two men, Derrick Van Whitson and Alan Honeycutt,
23 came by but Lieutenant Higgins did not let them inside the
24 home since it was an active scene.

25 He did not recall seeing Nikki Angel there but

1 noted that she may have wandered over because the family all
2 lived in close proximity with one another.

3 Q. What else did you learn from the interview with
4 Lieutenant Higgins?

5 A. Lieutenant Higgins recalled that he went to speak
6 with Nathan Angel at Nathan Angel's request at the jail. No
7 one else was present during this interview. Nathan Angel
8 told Lieutenant Higgins that he had terminal cancer and
9 wanted to talk about this case. No promises were made to
10 Nathan Angel.

11 And according to Lieutenant Higgins, Nathan Angel
12 told him about the relationship between Mr. Pritchard and
13 Jonathan Whitson and what occurred on Saturday, March 5,
14 2011.

15 Nathan Angel said he had personal knowledge that
16 Mr. Pritchard had a prescription for 30-milligram morphine
17 and had sold it in the past year. However,
18 Lieutenant Higgins did not know the basis of Nathan Angel's
19 knowledge.

20 Q. Do we know what Nathan Angel was in jail for when
21 he was interviewed by Lieutenant Higgins?

22 A. Yes. He was arrested on November 23, 2011 -- that
23 was three days before his interview -- and his arrest was
24 for several drug charges which included sale and delivery
25 charges for Schedule II controlled substances. His case was

1 dismissed on December 19, 2012, after his death.

2 MS. SMITH: Commissioners, you previously
3 received Handout 17, which is the criminal history for
4 Nathan Angel.

5 Q. What else did the Commission learn from its
6 interview with Lieutenant Higgins?

7 A. Lieutenant Higgins also recalled that he
8 interviewed Tammy Ayers but he did not recall why
9 interviewed her. He thought that she had information about
10 the case but he did not know why or from whom he received
11 that or he heard that.

12 Lieutenant Higgins spoke with the medical
13 examiner, Dr. Hall, on March 6. That was the same day he
14 responded to the scene. He could not recall what
15 information he provided to Dr. Hall. He thought that he
16 told Dr. Hall that it was a 29-year-old deceased male with
17 no signs of trauma. He could not recall whether he
18 mentioned finding syringes in a coat pocket but he may have
19 told him that. And although he had no information about
20 morphine at that time, Lieutenant Higgins believed Jonathan
21 Whitson died of an overdose but he was not sure if he told
22 Dr. Hall that that was his impression.

23 Lieutenant Higgins also stated that he had no
24 concerns about the cause of death in this case.

25 Q. Did he say anything else about the case?

1 A. Just that in his investigation, he never learned
2 anything about why Jonathan Whitson may have ingested
3 alcohol or when.

4 Q. You mentioned that commission staff also
5 interviewed then Chief Deputy Thomas Farmer.

6 A. Yes. I spoke to him by telephone on November 18,
7 2021. This interview was also recorded and transcribed.

8 Q. And what did you learn from Mr. Farmer?

9 A. Mr. Farmer resigned from the Yancey County
10 Sheriff's Office on March 12, 2011, after it was reported
11 that he pawned a service firearm. He later pleaded guilty
12 to a misdemeanor related to that incident. Prior to his
13 resignation, he was the chief deputy during the early days
14 of this investigation.

15 Q. And so just to do the math here, he resigned
16 approximately six days into the investigation; is that
17 correct?

18 A. That's correct.

19 MS. SMITH: Commissioners, you were
20 previously provided Handout 18, which is the criminal record
21 of Thomas Farmer.

22 Q. What did Mr. Farmer recall about the
23 investigation?

24 A. Mr. Farmer confirmed that the date of March 5 in
25 his report that referenced Lieutenant Higgins' interview of

1 Nathan Angel was a typo, that it should say March 6. He
2 understood that Lieutenant Higgins had conducted a verbal
3 interview with Nathan Angel but he did not know if anything
4 was put into writing.

5 Q. Can you remind the commissioners why that was
6 important.

7 A. We did not see any indication that Nathan Angel
8 was interviewed until the interview I just testified that
9 happened on September 26, 2011, with Lieutenant Higgins.

10 Mr. Farmer did not remember ever interviewing
11 Stephanie Whitson Randolph. He said that he documented
12 information that was relayed to him from Lieutenant Higgins
13 and his report about what Stephanie Whitson Randolph told
14 Lieutenant Higgins on March 6, 2011.

15 When he was reminded that his report also
16 indicated that he had a March 9, 2011, phone interview with
17 Stephanie Whitson Randolph, Mr. Farmer stated that he spoke
18 to her on the phone. He did not remember what was said
19 during the phone call. He wrote in his report: "See
20 interview with Stephanie Whitson." And what that meant to
21 him was to go look at Lieutenant Higgins' report of his
22 interview with Stephanie Whitson Randolph.

23 Q. And were you asking him about that because it
24 appeared to us that we were missing a report?

25 A. That's correct.

1 When Mr. Farmer was asked about Riddles or
2 Riverside store at the time in Burnsville, Mr. Farmer
3 characterized it as a hangout and a place where people could
4 buy drugs in the parking lot.

5 Q. Will you remind the commissioners why Riddles or
6 Riverside store is important in this case.

7 A. Mr. Pritchard brought it up in his interview as a
8 place where he took Jonathan Whitson on March 6, 2011.

9 Q. Did Mr. Farmer provide any information about any
10 of the documents referenced in the reports but that we were
11 not able to locate any of the law enforcement or district
12 attorney files?

13 A. We asked Mr. Farmer about the medical screening of
14 Jonathan Whitson in Madison County jail that he referenced
15 as being attached to his report but that was not included in
16 the Yancey County Sheriff's Office's file. He did not know
17 what happened to it and he speculated that it might be in
18 the SBI or the DA file.

19 Mr. Farmer's report also indicated that he had
20 obtained records related to Robbie Brown from local
21 pharmacies pursuant to a subpoena from then Assistant
22 District Attorney Virginia Thompson, but those subpoenas and
23 those records were not located during the Commission's
24 investigation and were not part of any files that we have
25 received and reviewed. Mr. Farmer did not know where these

1 records may have gone but believed he gave them to
2 Ms. Thompson.

3 Mr. Farmer also stated that when he resigned, he
4 did not take anything with him. He left his files and
5 documents at the Yancey County Sheriff's Office.

6 Q. And so just to confirm, Ms. Bridenstine, there
7 were documents that were referenced in the Yancey County
8 Sheriff's Office file that the commission staff was never
9 able to locate; is that correct?

10 A. That's correct.

11 Q. Did Mr. Farmer say anything about Dr. Hall, the
12 medical examiner?

13 A. He did. He stated that Dr. Hall would generally
14 request information about the deceased person, usually
15 biographical information. He remembered Dr. Hall stating
16 that his initial opinion about the cause of death in this
17 case was an overdose, that that was at least partly informed
18 by noticing needle track marks on Mr. Whitson's body.
19 Dr. Hall told him that the toxicology testing would confirm
20 his suspicion.

21 He also stated that at the time of the case, he
22 trusted Dr. Hall and found him to be knowledgeable,
23 competent, and thorough. He believed Dr. Hall to be highly
24 respected and he was not aware of any potential issues at
25 the time with Dr. Hall.

1 Q. Did the Commission learn anything else significant
2 from the interviews with law enforcement that was not
3 previously available?

4 A. No, we did not.

5 MS. SMITH: Commissioners, do you have
6 questions for Ms. Bridenstine about either
7 Lieutenant Higgins or Mr. Farmer?

8 JUDGE LOCK: Yes, sir, Sheriff.

9 SHERIFF KIMBROUGH: I have a question: When
10 you say that files were documented but the Innocence
11 Commission was unable to locate them, what do you mean by
12 that? Were they not found? They didn't have them? Or they
13 didn't exist?

14 MS. BRIDENSTINE: If you're specifically
15 talking about the subpoenas and the pharmacy records related
16 to Robbie Brown, we never able to locate those. They were
17 not part of the DA file or any other law enforcement file.

18 He explained why his report said "see
19 interview with Stephanie Whitson Randolph," that that was
20 just a reference to go back and look at Lieutenant Higgins'
21 interview that he conducted with her and wrote a report
22 about.

23 The Nathan Angel interview he said was
24 conducted by Lieutenant Higgins, he thought it was a verbal
25 interview, but we didn't find any documentation about what

1 Nathan Angel might've said to Lieutenant Higgins.

2 And there was one other thing -- oh, the
3 Madison County jail records. That wasn't part of the Yancey
4 County Sheriff's file, the SBI file, or the DA file, but we
5 ourselves obtained records from the Madison County jail that
6 did include a medical questionnaire, and that might be what
7 he is referencing. You received that as a handout.

8 SHERIFF KIMBROUGH: Thank you.

9 JUDGE LOCK: Commissioner Colbert.

10 MS. COLBERT: I had a question from what I
11 believe that Higgins said when he took photos of the
12 deceased, the victim.

13 In our documents, I only recall seeing three
14 photos. Did he happen to tell you how many photos he took?

15 MS. BRIDENSTINE: He did not. There were
16 more than three photos that were in the brief.

17 MS. COLBERT: Were there?

18 MS. BRIDENSTINE: Yes. And I believe they
19 came from -- we provided them from the district attorney's
20 file. They weren't in the Yancey County Sheriff's Office
21 file.

22 They included some photographs of Mr. Whitson
23 under a blanket on the couch, some photos with -- regarding
24 the syringes that were sticking out of the pocket, and then
25 there was a photo of a drawing, and that's how Lieutenant

1 Higgins characterized that to me, that was found with the
2 syringes in the pocket.

3 MS. COLBERT: So the photos -- when I say
4 three photos, you know, I'm talking about the photos that I
5 understood that Mr. -- that Higgins took -- Lieutenant
6 Higgins took? -- were the photos at the actual scene.

7 But the photos that were in the medical
8 examiner's, those -- he didn't take those; right? Those
9 were taken by Dr. Hall?

10 MS. BRIDENSTINE: Yes. And I will -- I will
11 testify to those photos a little later, but I believe those
12 were taken by Dr. Hall. It's possible they were taken by
13 his autopsy assistant, Irene Coffey.

14 MS. COLBERT: So there were more than three
15 photos taken by Lieutenant Higgins?

16 MS. BRIDENSTINE: Yes.

17 MS. COLBERT: And did he indicate how many
18 total -- total photos he took?

19 MS. BRIDENSTINE: He did not. I did not ask
20 about the photos he took.

21 MS. COLBERT: And we have all the photos
22 that -- that you were able to get from the record, we
23 already have those in our documents?

24 MS. BRIDENSTINE: We do. And he -- some of
25 those photos were admitted at trial based on the way they

1 were testified to about in the transcript. I don't remember
2 which photos specifically were entered, but I think only
3 three were entered at trial.

4 MS. COLBERT: Okay. Thank you.

5 MS. BRIDENSTINE: I do believe his report
6 also lists what photos he took, although not the number.

7 MS. COLBERT: Thank you.

8 SHERIFF KIMBROUGH: Judge, I have one more
9 question.

10 When you were speaking about Nathan Angel and
11 the interview with the information, do we have anyone --
12 that the information was vetted? Where did it come from
13 that he gave?

14 MS. BRIDENSTINE: To Lieutenant Higgins on
15 September 23, 2011? You mean when he said it was based on
16 his personal knowledge?

17 SHERIFF KIMBROUGH: Right.

18 MS. BRIDENSTINE: That's all it says in the
19 report. And Lieutenant Higgins didn't know where he got --
20 where Nathan Angel was basing that from.

21 SHERIFF KIMBROUGH: Thank you.

22 MS. SMITH: Commissioners, pages 126 to 130
23 of your brief are all of the photos that we received from
24 the district attorney's file that appear to be those taken
25 by law enforcement at the same. There are more than three.

1 I believe the three photos are the autopsy photos that are
2 found ...

3 MS. BRIDENSTINE: There were only three
4 photos taken at the autopsy, and they were all of
5 Mr. Whitson's face.

6 MS. COLBERT: For ID purposes.

7 MS. BRIDENSTINE: Correct.

8 MS. SMITH: The autopsy document, that
9 appendix is Appendix E, and it starts on page 161 of the
10 brief. That is the autopsy and then the photographs from
11 the autopsy.

12 Any additional questions about the law
13 enforcement investigation or follow-up interviews?

14 MS. COLBERT: So the photos that begin at 126
15 are all the photos that Higgins took at the crime scene that
16 we have record of?

17 MS. BRIDENSTINE: Yes.

18 Q. All right.

19 Ms. Bridenstine, I'm going to turn your attention
20 now to the attorneys in the case. We'll start with the
21 attorneys who represented Mr. Pritchard in this case.

22 Has the Commission spoken to the defense attorneys
23 in the case?

24 A. Yes, we did.

25 Q. And why did commission staff speak to those

1 attorneys?

2 A. We spoke to all of the attorneys to make sure that
3 we had their complete files, if they had them; to determine
4 what, if anything, that they remembered about the case; and
5 to see if Mr. Pritchard had either ever admitted guilt or
6 maintained his innocence with them.

7 Q. Who represented Mr. Pritchard in this case?

8 A. At trial he was represented by Daniel Hockaday.
9 Sofia Hernandez, Christine Vance, Brandi Bullock, and Robert
10 Sirianni Junior all represented him at various points during
11 his appeal. Ms. Bullock and Mr. Sirianni are the attorneys
12 who actually filed the appeal with the Court of Appeals.
13 David Belser represented Mr. Pritchard on postconviction
14 matters. Mark Rabil and Emily Thornton of the Wake Forest
15 University School of Law Innocence and Justice Clinic
16 represented him after Mr. Belser had a stroke, and they
17 referred Mr. Pritchard's case to the Commission.

18 MS. SMITH: Commissioners, we're going to
19 start first with the appellate attorneys and then work our
20 way backwards to the trial attorneys in this case.

21 Q. Julie, Ms. Bridenstine, did the Commission speak
22 to Sofia Hernandez?

23 A. Yes. Commission staff had a brief phone call with
24 her on June 11, 2021, that was not recorded.

25 Q. Did the Commission obtain a copy of her file?

1 A. Yes, we obtained a copy of her file.

2 Ms. Hernandez only represented Mr. Pritchard briefly and
3 withdrew as his attorney while his appeal was pending.

4 Q. What did she recall about the case?

5 A. She did not recall any conversations with
6 Mr. Pritchard but said there may have been one in the
7 beginning. She did not recall any conversations about his
8 guilt or innocence.

9 Q. Did commission staff obtain an affidavit from
10 Ms. Hernandez?

11 A. Yes, we did.

12 MS. SMITH: Commissioners, Handout 19 that
13 was previously provided is the affidavit from Sofia
14 Hernandez.

15 Commissioners, do have any questions about
16 that?

17 Q. Did the Commission speak to Christine Vance?

18 A. Yes. I had a brief phone call with her on
19 July 22, 2021, and it was not recorded.

20 Q. And did commission staff obtain a copy of her
21 file?

22 A. No. She did not have any files for this case.
23 Like Ms. Hernandez, she only represented Mr. Pritchard
24 briefly during his appeal and she also withdrew as his
25 attorney when the appeal was pending.

1 After she withdrew as his attorney, she said that
2 she sent all of her files and information to Brownstone PA,
3 which was the law firm that was representing Mr. Pritchard
4 on appeal.

5 Q. What did she recall about the case?

6 A. She did not recall any conversations with
7 Mr. Pritchard or anything about the case.

8 Q. And did commission staff obtain an affidavit from
9 Ms. Vance?

10 A. Yes, we did.

11 MS. SMITH: Commissioners, that is
12 Handout 20, the affidavit of Attorney Christine Vance.

13 Q. Did commission staff speak to Brandi Bullock?

14 A. Yes. I spoke to her by phone on June 21, 2021.

15 Q. Was that conversation recorded?

16 A. No, it was not.

17 Q. Did the Commission also obtain a copy of her file?

18 A. Yes. She provided what she had from her attorney
19 file. Like Ms. Vance, she worked for Brownstone PA when she
20 represented Mr. Pritchard during his appeal. She informed
21 me that she and Ms. Vance were both disciplined by the Bar.
22 Ms. Bullock said that Brownstone PA was "bad news."

23 Q. Did you ever do anything to determine whether
24 Ms. Bullock and Ms. Vance were disciplined by the Bar?

25 A. Yes. I looked at the State Bar website to look

1 for orders related to both attorneys. There was a reprimand
2 for Ms. Bullock, and it was related to conduct concerning
3 Brownstone PA as an out-of-state law firm that was not
4 authorized to practice law in North Carolina. The reprimand
5 states that Ms. Bullock aided Brownstone PA in the
6 unauthorized practice of law in North Carolina.

7 And I did not find any records for Ms. Vance.

8 Q. What did Ms. Bullock recall about the case?

9 A. She remembered that she met with Mr. Pritchard in
10 Yancey County in a courthouse in a small town. She did not
11 remember much about the case but she did recall that
12 Mr. Pritchard claimed that he was innocent.

13 Q. Did the Commission obtain an affidavit from
14 Ms. Bullock?

15 A. Yes, we did.

16 MS. SMITH: Commissioners, that is
17 Handout 21.

18 JUDGE LOCK: Commissioner Glazier.

19 MR. GLAZIER: Thank you, Your Honor.

20 On paragraph 3 of the affidavit by
21 Ms. Bullock, she states in the last sentence: "I remember
22 Mr. Pritchard claimed innocence in this case."

23 Did she say whether his claim was he didn't
24 give anything to the victim or the claim of innocence is
25 that he didn't think that the -- he didn't agree with the

1 forensic determination that morphine was involved as the
2 cause of death?

3 MS. BRIDENSTINE: I would have to check the
4 records regarding my phone call with her but I don't
5 remember her saying it had to do with morphine as the cause
6 of death.

7 MR. GLAZIER: Thank you.

8 MS. SMITH: Any other questions?

9 Q. Did the Commission speak with Robert Sirianni?

10 A. Yes, we did, but only through email.

11 Q. At what point did Mr. Sirianni represent
12 Mr. Pritchard?

13 A. Mr. Sirianni worked for Brownstone PA, which is an
14 appellate law firm with an office in Florida. He
15 represented Mr. Pritchard pro hac vice on his appeal.

16 Q. Did the Commission obtain a copy of his file?

17 A. His office provided all the documents that they
18 had left related to Mr. Pritchard, but Mr. Sirianni no
19 longer had an attorney file.

20 Q. What did he recall about the case?

21 A. He did not recall any conversations with
22 Mr. Pritchard, including whether or not he admitted guilt or
23 talked about innocence.

24 Q. And did commission staff obtain an affidavit from
25 Mr. Sirianni?

1 A. Yes, we did.

2 MS. SMITH: Commissioners, that is -- that
3 affidavit is Handout 22.

4 Q. Ms. Bridenstine, for the appellate attorneys who
5 provided documents to the Commission, did any of the
6 documents include any correspondence with Mr. Pritchard or
7 notations regarding any meetings with him?

8 A. The documents that were produced from Sofia
9 Hernandez, Brandi Bullock, and Robert Sirianni were all
10 appellate documents, pleadings, and copies of his trial
11 transcript, except that Ms. Bullock, Brandi Bullock's, file
12 had one letter from Mr. Pritchard, and that letter is
13 summarized on pages 5 to 6 of Handout 44.

14 Q. Ms. Bridenstine, I'm going to have Ms. Tanner hand
15 you the Commission's journal in this case.

16 If you'll take a look at that related to your call
17 with Ms. Bullock and see if it references anything with
18 respect to what she said about Mr. Pritchard claiming
19 innocence.

20 A. I'm just going to quote from the journal. It
21 says, quote: "She does not remember much about the case.
22 When asked if she remembered if he admitted any guilt or
23 responsibility for the case or claimed innocence, she said
24 that she remembered that Pritchard claimed innocence. She
25 does not remember details of the case," end quote.

1 Q. Ms. Bridenstine, can you tell commissioners what
2 the commission journal is.

3 A. It is a record of every action that we take in the
4 case. And everyone from the staff has access to the case
5 journal. And anytime any one of us works on the case, we go
6 into the journal and we document what we did.

7 MS. SMITH: Any other questions for
8 Ms. Bridenstine about the appellate attorneys for
9 Mr. Pritchard?

10 Q. I want to turn your attention, then, to Daniel
11 Hockaday, who represented Mr. Pritchard at his trial.

12 Did commission staff speak to Mr. Hockaday?

13 A. Yes, we did. We first reached out to him to see
14 if he had an attorney file for this case. He let us know
15 his file had been destroyed pursuant to his retention
16 policy. I then interviewed him on the phone on August 11,
17 2021. And this interview was recorded and transcribed.

18 Q. What was his assessment of the case?

19 A. He reported that he felt that the trial was going
20 their way and that they had an excellent argument because
21 the only person who could have testified that Mr. Pritchard
22 provided the drugs was the decedent.

23 He said that the 404(b) evidence of prior bad acts
24 was the, quote, "killer in the case," end quote. He also
25 remembered that Mr. Pritchard wanted to find a way to go

1 back and undo his previous drug conviction.

2 Q. Did Mr. Hockaday recall what Mr. Pritchard said
3 about the case?

4 A. Yes. He said that Mr. Pritchard said from day one
5 that it was all a big lie and a political attack on him by
6 the sheriff's department who had it out for him.

7 He always said that he was innocent and he never
8 said that he was guilty. He never asked if it was in his
9 best interest to take a plea. And he was adamant that the
10 case was going to be a trial case.

11 He also said that Mr. Pritchard did not even agree
12 that he had seen Mr. Whitson on that day.

13 MS. SMITH: Commissioners, there is an
14 excerpt from the interview with Mr. Hockaday from the
15 transcript that was previously provided to you-all as
16 Handout 23 that discusses what Mr. Hockaday's theory of the
17 defense at trial was. That is page 33, line 17, through
18 page 34, line 14.

19 You've had an opportunity to review that
20 before.

21 Do you have any questions for Ms. Bridenstine
22 about that piece?

23 Q. Did Mr. Hockaday recall doing any type of
24 investigation in this case?

25 A. Yes. He said that they tried to interview as many

1 people as they could and that they talked to some of the
2 State's witnesses. He recalled speaking to Stephanie
3 Whitson Randolph but did not remember what she told him. He
4 also spoke to Robbie Brown about 10 times before the trial.

5 And he said that he did not use a private
6 investigator in this case.

7 Q. Did he recall anything about the witnesses at
8 trial?

9 A. He said that Robbie Brown looked impaired and had
10 shades on during the trial. He said she was, quote, "all
11 over the place on the witness stand," end quote.

12 Q. What did he say about any plea negotiations that
13 may have occurred?

14 A. He said that Mr. Pritchard was not interested in a
15 plea and, quote, "took an attitude that 'I want to win and I
16 also want an apology in the paper' kind of attitude," end
17 quote.

18 He said that they did not get any offers until
19 halfway through trial. At that point, they received an
20 offer that would've allowed Mr. Pritchard to go home that
21 day on probation. Mr. Hockaday and Mr. Pritchard's daughter
22 encouraged him to take that deal.

23 Mr. Pritchard did not want the deal. He wanted a
24 not guilty verdict and an opportunity to sue people for
25 being wrongly accused.

1 Q. What did Mr. Hockaday recall, if anything, about
2 Dr. Hall?

3 A. He remembered that there was an issue regarding
4 the competency of the doctor and a report he had written.
5 Mr. Pritchard wanted him to read articles about the doctor
6 and tried to disqualify him for reasons unrelated to this
7 case.

8 He recalled that there was a case in Boone in
9 which a child had died due to either a fire or a gas leak.
10 He did not recall having any other concerns about Dr. Hall
11 and he did not speak to the district attorneys about
12 Dr. Hall.

13 He also remembered that Dr. Hall had a pending
14 driving while intoxicated charge during the trial.

15 Q. Did Mr. Hockaday consult with any experts before
16 the trial?

17 A. No, he did not. He said that he did not talk to
18 any forensic pathologists or toxicologists. He said that he
19 spoke to doctor friends who -- he would ask them questions
20 about the case and he would use them as a resource. He did
21 not think he ever specifically consulted with any doctors
22 who were forensic pathologists and he did not show any
23 doctors any autopsy documents from this case.

24 Q. Did he have any information about preexisting
25 medical conditions that the victim, Mr. Whitson, might have

1 had?

2 A. He said that he remembered the abscess on the arm
3 coming up at some point, but he didn't remember any specific
4 details.

5 Q. Did he recall anything happening after the trial?

6 A. Yes. He said that he heard that after
7 Mr. Pritchard was convicted and sentenced, Mr. Pritchard
8 went downstairs and said in a room full of people that he
9 screwed up and should've taken the deal and fell on his
10 knees. Mr. Hockaday was not present but he understood from
11 others that the statement was along the lines of, quote, "If
12 you're ever offered a plea offer, you're an idiot to reject
13 it," end quote.

14 Mr. Hockaday said that this weighed on him and he
15 wondered what he could've done to persuade Mr. Pritchard to
16 take the deal that was offered to him.

17 Q. And did commission staff obtain an affidavit from
18 Mr. Hockaday?

19 A. Yes, we did.

20 MS. SMITH: Commissioners, Handout 24 that
21 you have previously been provided is the affidavit from
22 Daniel Hockaday.

23 Do y'all have any questions for
24 Ms. Bridenstine about the defense attorneys?

25 JUDGE LOCK: Commissioner Glazier.

1 MR. GLAZIER: I just want to sort of sum this
2 up, making sure I have it right.

3 So the defendant in this case is charged with
4 second-degree murder and three other felony-related drug
5 charges, one way or the other, and in middle of the trial,
6 Hockaday is saying that the DA's office offered a
7 probationary go-home plea; is that correct?

8 MS. BRIDENSTINE: It is except that the last
9 charge, the maintaining, I think, is a misdemeanor.

10 MR. GLAZIER: Misdemeanor.

11 Follow up?

12 JUDGE LOCK: Sure.

13 MR. GLAZIER: And the defense attorney in
14 this case says that the defendant always claimed he was
15 innocent, didn't hire a PI to do any investigation, didn't
16 hire any forensics or seek any expert assistance; is that
17 correct?

18 MS. BRIDENSTINE: That is correct, except he
19 said he had friends who were doctors he would ask questions
20 about.

21 MR. GLAZIER: Thank you.

22 JUDGE EVANS: Question. The plea offer that
23 was made, do we know what the offer was?

24 MS. BRIDENSTINE: I don't know what the
25 charge itself was. Justice Orr remembered a little bit more

1 information about it and I'll be testifying about what he
2 said in just a second, but I don't believe I asked or anyone
3 told me what the actual level of the charge was that they
4 were making the offer.

5 SHERIFF KIMBROUGH: So I just want to follow
6 up with a question that was asked.

7 So he was charged with all the things that we
8 just mentioned, and in the middle of the trial, I guess, he
9 was offered a plea deal where he basically would go to the
10 house?

11 MS. BRIDENSTINE: Yes. It would've allowed
12 him to leave the jail. He was in jail before his trial was
13 pending so it would've allowed him to go home. I don't know
14 if that meant time served or something, but he would have
15 been allowed to leave and go home on probation.

16 SHERIFF KIMBROUGH: And he refused it?

17 MS. BRIDENSTINE: That's correct.

18 SHERIFF KIMBROUGH: Thanks.

19 MS. COLBERT: So my question, to piggyback on
20 that, you don't -- do we know how much time he had served as
21 of -- is there a way we could find out how much time he had
22 served as of the time that they offered him the plea?

23 MS. BRIDENSTINE: Yes. He was arrested, I
24 believe, in December 2011. We can double-check that for
25 you. The orders for arrest and the indictments are in the

1 brief. And my understanding is that he did not bond out the
2 entire time. And the trial was April 14 through 17 of 2014.

3 MS. SMITH: Any other questions related to
4 the testimony on defense attorneys?

5 MS. NEWTON: I have a quick question.

6 For Dr. Hall's DUI, do you happen to have the
7 date of the offense of his DUI? The autopsy was apparently
8 performed on March 7 of 2011.

9 Do you know when the DUI occurred?

10 MS. BRIDENSTINE: It was in 2010. There
11 might be a date from newspaper articles that were written
12 about Dr. Hall at the time. I'll testify about this later,
13 but there are no records related to that particular charge;
14 so in our searches of all the criminal records databases
15 that we have, we can't locate that information.

16 MS. NEWTON: Okay.

17 MS. BRIDENSTINE: But we might be able to
18 tell you based on articles that were written about Dr. Hall
19 what the reporters said that the date of the charge was.

20 MS. NEWTON: So it was -- you said it was
21 pending during the trial of Mr. Pritchard's case but the
22 doctor's drinking and driving charge was the year prior, it
23 was just continuing.

24 MS. BRIDENSTINE: Yes. The newspaper
25 articles indicated that he was convicted in district court.

1 I don't know exactly when that happened. He appealed it to
2 superior court, and my understanding based on newspaper
3 articles is that was not resolved until 2015. He won his
4 motion to suppress and the case was dismissed.

5 MS. NEWTON: Okay. Thank you.

6 MR. BOSWELL: Did I understand he was in jail
7 for basically about three years before the case went to
8 trial?

9 MS. BRIDENSTINE: May be closer to 2 1/2. I
10 would like to double-check just to make sure he didn't bond
11 for any reason at some point, but I believe he was in
12 custody the entire time.

13 MS. SMITH: Commissioners, we are looking at
14 that information and will have that for you shortly.

15 MR. BOSWELL: Okay. Thank you.

16 Q. I'm going to turn your attention now to the
17 prosecutors in this case. Can you remind the commissioners
18 who represented the State at Mr. Pritchard's trial.

19 A. Assistant District Attorney Michael Holmes and
20 Interim District Attorney Justice Robert Orr, who was
21 formerly a justice on the Supreme Court of North Carolina.

22 Q. Did the Commission speak to Mr. Holmes about this
23 case?

24 A. Yes. I interviewed him on the phone on
25 October 13, 2021. And this interview was recorded and

1 transcribed.

2 Q. Did you ask Mr. Holmes about any potential
3 discovery issues in the case?

4 A. Yes. We had received from Mr. Pritchard and from
5 the Wake Forest file a one-page typed interview that was
6 done by Mr. Holmes of Christine Angel on November 26, 2013,
7 prior to Mr. Pritchard's trial. That interview was not part
8 of the Yancey County Sheriff's Office file, the SBI file, or
9 the DA file. Since Mr. Hockaday no longer had a file, we
10 could not check his file to see what discovery was produced
11 to him from the district attorney's file.

12 I asked Seth Banks, the current district attorney,
13 about that interview and asked him if he knew why it was not
14 produced with the DA file when we received the DA file from
15 their office. He indicated that some of their files were
16 destroyed by a flood during a previous administration and he
17 was not sure if Mr. Pritchard's case was included with those
18 destroyed files. He told us that he provided everything
19 that they currently had in their possession. I told
20 Mr. Banks that I would ask Mr. Holmes about it, and District
21 Banks [sic] recommended that I also ask Justice Orr since he
22 had become the interim district attorney in that district
23 two weeks prior to Mr. Pritchard's trial.

24 Q. What did Mr. Holmes recall about that interview?

25 A. He said that he did not recall doing any

1 additional interviews in this case that were memorialized
2 and made part of the file. He stated that he provided this
3 interview as part of discovery because Christine Angel
4 reported information to him that was not present in police
5 reports.

6 He did not remember any other witnesses providing
7 information that would've needed to be disclosed to the
8 defense.

9 MS. SMITH: Commissioners, that interview
10 that we are referencing is on page 180 of your brief if you
11 wish to refer to it.

12 Q. Did Mr. Holmes say anything about his strategy at
13 trial?

14 A. He said that his, quote, "overall strategy was to
15 keep it as absolutely simple as possible," end quote.

16 Q. Did you ask him what he recalled about witness
17 testimony during the trial?

18 A. Yes. He said that everyone testified as he
19 expected them to except for Robbie Brown. He remembered
20 feeling surprised that her testimony was more favorable to
21 the prosecution than he thought it was going to be.

22 Q. What did he say about the plea negotiations?

23 A. He did not recall but when provided with what
24 Mr. Hockaday remembered about the plea offer being made in
25 the middle of trial, he said that it was probably true and

1 they did not really expect to win. They offered something
2 that they thought he could not refuse. He went on to say
3 that people kept telling him that these types of cases are
4 notoriously difficult to win.

5 Q. When you say "these types of cases," what are you
6 referring to?

7 A. Second-degree murder by drugs.

8 Q. What did Mr. Holmes recall about any medical
9 conditions that Mr. Whitson, the victim, might have had
10 prior to his death?

11 A. He did not recall knowing about any medical issues
12 or having -- or Mr. Whitson having any issues with his arm
13 prior to his death.

14 Q. Did Mr. Holmes, the assistant district attorney,
15 ever speak to any experts other than Dr. Hall in this case?

16 A. No. He did not speak to anyone else, including
17 the toxicologist who conducted the toxicology testing in
18 this case.

19 He did not recall talking to Dr. Hall prior to
20 trial or speaking to anyone else about cause of death in the
21 case. When asked if he had any concerns about cause of
22 death and the toxicology testing, he said he did not. He
23 also did not recall seeing any issues in this case involving
24 cause of death, and he agreed that he relied on Dr. Hall's
25 determination and nothing else.

1 Q. Was Mr. Holmes aware of any previous issues
2 involving Dr. Hall and his work as a medical examiner?

3 A. He was not. When asked about the carbon monoxide
4 poisoning cases in Boone, he said it sounded vaguely
5 familiar. He was also not aware of any substance abuse
6 issues with Dr. Hall. And at the time that he prosecuted
7 the case, he did not have any concerns about Dr. Hall and he
8 wasn't aware of any possible credibility issues.

9 He also had no idea why Dr. Hall's DWI was pending
10 from 2010 until 2015.

11 Q. Did you ask Mr. Holmes about what Mr. Hockaday
12 reported hearing happened after the trial when Mr. Pritchard
13 fell to his knees and expressed regret over not taking the
14 plea?

15 A. Yes. He said that it sounded vaguely familiar and
16 he felt it was -- he felt like it was true.

17 MS. SMITH: Commissioners, do you have any
18 questions for Ms. Bridenstine about Assistant District
19 Attorney Holmes?

20 MS. WELCH: Is he still an assistant district
21 attorney?

22 MS. BRIDENSTINE: No, he is not. He left the
23 office sometime after this case. And I understand it was
24 shortly after this case.

25 MS. WELCH: Do you know how long he had been

1 a prosecutor when he tried this?

2 MS. BRIDENSTINE: Yes. I will double-check
3 but I believe he said it was about a year he was a district
4 attorney.

5 MS. WELCH: Okay.

6 Q. Ms. Bridenstine, did the Commission have an
7 opportunity to speak to Justice Orr about what he remembered
8 about the case?

9 A. Yes. I spoke to him in person on November 16,
10 2021. And our interview was recorded and transcribed.

11 Q. Tell the commissioners how that interview came
12 about.

13 A. As I testified to earlier, District Attorney Seth
14 Banks recommended that I follow up with Justice Orr back in
15 September 2021 regarding questions that I had about the
16 Christine Angel interview that was conducted by Mr. Holmes.
17 Every commission case that proceeds to a commission hearing
18 has a prehearing conference with the State and the defense
19 attorneys before the Commission hearing. Our prehearing
20 conference was scheduled and held on November 16, 2021.

21 On November 15, 2021, District Attorney Seth Banks
22 sent an email to the commission staff and the parties that
23 Justice Orr was a member of his staff and would be attending
24 the prehearing conference as a representative of the State
25 along with Assistant District Attorney Milton Fletcher.

1 Before the prehearing conference, we asked Justice
2 Orr if he would answer questions about the case after the
3 prehearing conference and he said he would.

4 Q. Did he explain to you how he came to be the
5 district attorney in 2014?

6 A. Yes. He said that the existing district attorney
7 at the time, Jerry Wilson, who was not seeking reelection,
8 suddenly resigned during the primary. The governor needed
9 to appoint someone as acting district attorney and did not
10 want to appoint someone who was also running to be district
11 attorney. The governor asked Justice Orr if he would serve
12 as an interim district attorney and he agreed.

13 Q. And how soon after Justice Orr was appointed as
14 the interim or acting district attorney was this trial held?

15 A. He recalled that it was a week or two after his
16 appointment.

17 Q. How did he become involved in the trial?

18 A. He said that after he was appointed, he spoke to
19 Michael Holmes about the trial and became a little concerned
20 about the fact that he had not conducted a lot of legal
21 research for the case. At first, he was just going to sit
22 in on jury selection but then he decided to sit in as second
23 chair for the entire trial.

24 Q. Did you ask Justice Orr about any potential
25 discovery issues in the case?

1 A. Yes. I showed him a copy of the interview of
2 Christine Angel that was conducted by Michael Holmes. He
3 did not remember if the district attorney's office had
4 conducted any additional witness interviews that were
5 written down and produced as part of discovery.

6 He said that he did not look at case materials
7 until the Thursday or Friday before trial, which began on
8 the following Monday. He said he was skimming as he was not
9 planning to participate in the trial, and he said that he
10 never talked to any witnesses prior to trial. The only
11 member of the victim's family that he spoke to was
12 Mr. Whitson's father's, Russell Wilson.

13 Q. What did Justice Orr say about the plea
14 negotiations?

15 A. He said that a plea offer was made toward the end
16 of the first day. He felt that the evidence was not that
17 strong, with a couple of shaky witnesses. Since he was not
18 sure they could get a conviction, they made a probation
19 offer with time served and a fine.

20 Q. What did he say about the cause of death
21 determination and toxicology testing that was performed in
22 the case?

23 A. He said he did not have any concerns about the
24 morphine levels at the time. He also said that he is a
25 liberal arts guy who was relying on the medical examiner to

1 be the expert in the case and get the numbers right. He
2 never saw any issues with cause of death.

3 Q. What did he say about Dr. Hall's pending DWI at
4 the time of trial?

5 A. He said that he was concerned that Dr. Hall's DWI
6 was going to be brought up at trial. He also did not know
7 why his DWI case was delayed from 2010 until 2015, but after
8 learning who Dr. Hall's defense attorney was at the time,
9 Justice Orr said that it was typical of that defense
10 attorney to delay cases as long as possible.

11 Q. Was Justice Orr aware of any other previous issues
12 involving Dr. Hall and his work as a medical examiner?

13 A. He said he knew about the carbon monoxide deaths
14 that happened at a hotel in Boone and that Dr. Hall was
15 somehow involved. He said he could not recall ever having a
16 conversation with Dr. Hall.

17 Q. Did you ask Justice Orr about what Mr. Hockaday
18 reported hearing happened after the trial when Mr. Pritchard
19 expressed regret over not taking the plea?

20 A. Yes. He said he did not remember that.

21 Q. What else did he recall about the case?

22 A. Later on in the interview he stated that this was
23 not the strongest case he has ever seen but that it is what
24 it is.

25 Q. Did Justice Orr explain how he came to be a

1 representative from the DA's office now?

2 A. He said that the Administrative Office of the
3 Courts is paying him to consult with the district attorney's
4 office in this case.

5 Q. Ms. Bridenstine, we're going to hand you some
6 documents to go back to some of the questions that the
7 commissioners asked you about earlier.

8 A. Yeah. Okay.

9 So regarding the earlier question about how long
10 Mr. Holmes had been a district attorney, he said before he
11 was in the district attorney's office, he was practicing as
12 a defense attorney and he was only in the district
13 attorney's office for one year.

14 Regarding the question of how long Mr. Pritchard
15 was in custody at his trial, he was given, at the conclusion
16 of trial when he was sentenced, credit for 860 days, after
17 he was convicted, for time served. And his bond was set at
18 \$150,000. And at his first appearance, he was noted to be
19 in custody, which was held on December 1, 2011.

20 Q. Ms. Bridenstine, is it 860 days of credit for time
21 served or 868?

22 A. 868.

23 Q. Thank you.

24 MS. SMITH: Commissioners, do you have any
25 questions for Ms. Bridenstine about the prosecutors who

1 prosecuted this case?

2 Commissioners, on standby are
3 Lieutenant Higgins, Mr. Farmer, the law enforcement officers
4 in the case.

5 Does anyone wish to hear or ask any
6 additional questions of them?

7 May I release them from their subpoenas?

8 JUDGE LOCK: Yes.

9 MS. SMITH: Okay.

10 Also on standby are defense attorney Daniel
11 Hockaday, Assistant District Attorney Michael Holmes, and
12 Justice Orr.

13 Does anyone wish to hear from any of them
14 today?

15 May I release them from their subpoenas?

16 JUDGE LOCK: Yes, please.

17 MS. SMITH: Okay. Thank you.

18 Your Honor, this would be an appropriate time
19 for a morning recess if you would like to take a break.

20 JUDGE LOCK: 10 minutes enough time for
21 everyone?

22 10-minute break.

23 (Recess taken, 10:10 to 10:27 a.m.)

24 MS. SMITH: Your Honor, Ms. Bridenstine is
25 back on the stand.

1 JUDGE LOCK: Yes.

2 MS. SMITH: Okay. Commissioners, you were
3 previously provided Handouts 25 and 26. Those summarize
4 what several witnesses have said about various topics.

5 The first one, Handout 25, is topics related
6 to the victim, Jonathan Whitson. And then Handout 26 are
7 witness statements related to Mr. Pritchard, the claimant,
8 and Robbie Brown.

9 We are going to talk about some of those
10 throughout the next set of testimony. A lot of them are
11 rumors and so the chart will kind of walk you through
12 whether we were able to ever substantiate a rumor. We will
13 not hit on every single one of those so please do make sure
14 you've reviewed those charts.

15 And these are -- the charts encompass the
16 statements that individuals have made to the Commission
17 about all of these different topics.

18 Q. Ms. Bridenstine, can you remind the commissioners
19 who Robbie Brown is.

20 A. Yes. She was the girlfriend of Mr. Pritchard at
21 the time of this case. She was interviewed by law
22 enforcement and she also testified as a state's witness.

23 Q. Did the Commission speak to Ms. Brown?

24 A. No. Ms. Brown passed away on August 15, 2015.

25 Q. At trial, there was an exhibit that was marked as

1 Defense Exhibit Number 1. That was a letter from Robbie
2 Brown to Mr. Pritchard. That letter was introduced but it
3 ultimately was not admitted.

4 Did you ever locate that letter?

5 A. We did not. We asked Mr. Hockaday, Mr. Holmes,
6 and Justice Orr if they recalled what happened to the letter
7 and no one knew. We checked with the clerk's office and
8 learned that they did not take possession of it during the
9 trial.

10 Mr. Pritchard reported during his interview with
11 the Commission that he had a letter from Robbie Brown still
12 in his possession at prison. After his interview,
13 Mr. Pritchard mailed letters that appeared to be from Robbie
14 Brown to the Commission. None of the letters that he
15 provided appear to be the same one that was referenced at
16 trial, but one of the letters we did receive contained a
17 statement that Robbie Brown was not there, did not know
18 anything, and obtained her information from secondhand
19 gossip.

20 MS. SMITH: Commissioners, a summary of the
21 letters that Mr. Pritchard provided to the Commission after
22 his interview were previously provided to you as Handout 27.

23 You were also provided Handout 28, which is
24 Robbie Brown's criminal history.

25 Do you have any questions for Ms. Bridenstine

1 about Robbie Brown?

2 MS. NEWTON: Was she charged?

3 MS. BRIDENSTINE: In this case? I don't
4 believe so, no.

5 Q. Ms. Bridenstine, did the Commission attempt to
6 interview any other witnesses who we determined were
7 deceased?

8 A. Yes. We learned that James Whitson, who is the
9 brother of Annette Whitson Greene, passed away on June 7,
10 2015; Wade Angel, the husband of Christine Angel and the
11 father of Nathan Angel, passed away on December 25, 2015;
12 and as you might recall from the trial transcript, Nathan
13 Angel passed away prior to Mr. Pritchard's trial, and the
14 date of his death is September 26, 2012.

15 Q. Can you remind the commissioners who Christine
16 Angel is.

17 A. She is the stepgrandmother of Jonathan Whitson and
18 the mother of Nathan Angel. The house that she shared with
19 her husband, Wade Angel, is where Jonathan Whitson died.
20 She was interviewed by law enforcement on March 6, 2011, and
21 she testified at Mr. Pritchard's trial.

22 MS. SMITH: Commissioners, Christine Angel
23 does not have a criminal history.

24 Q. Did the Commission ever speak with Ms. Angel?

25 A. Yes. I spoke to her in person on her front stoop

1 of her residence in Burnsville on August 24, 2021, and that
2 is the same residence where Mr. Whitson passed away. This
3 interview was recorded and transcribed.

4 Q. What did you learn from Ms. Angel?

5 A. She reported that Jonathan Whitson died on her
6 couch and she pointed to the area in her living room where
7 the couch used to be. She said that the only thing she
8 could swear to was that Mr. Whitson laid on her couch and
9 died.

10 She reported that she had forgotten a lot of
11 things or blocked it out, and she did not remember anything
12 about his arrival or his stay at her house. She also
13 reported that she was threatened by someone with being
14 thrown in jail and thought it was the judge.

15 Q. Did she report anything about Mr. Whitson's family
16 members?

17 A. She told me that Mr. Whitson's sisters told her
18 that they did not believe that he died of a drug overdose
19 or -- excuse me -- of an overdose and that he had some kind
20 of a heart issue but she did not know.

21 She also said that Mr. Whitson's mother, Annette
22 Greene, and Mr. Whitson's sister, Nikki Angel, quote, "liked
23 to lie," end quote.

24 Q. Did she tell you about any issues with her memory?

25 A. Yes. She said that she was told she's getting

1 Alzheimer's disease and she has problems with her memory.

2 MS. SMITH: Commissioners, do you have any
3 questions for Ms. Bridenstine about Christine Angel?

4 MS. NEWTON: One.

5 MS. SMITH: Yes, Mr. Glazier.

6 MR. GLAZIER: Let Ms. Newton go.

7 MS. NEWTON: Did you ask Ms. Angel for any of
8 the victim's medical records -- I'm sorry -- yes, the
9 victim's medical records about his heart condition? Was
10 there any backup documentation of his treatment for his
11 heart condition?

12 MS. BRIDENSTINE: We did not ask her for his
13 medical records and we do not -- or we did not obtain any
14 historical information like that about what his medical
15 problems may have been when he was a kid.

16 MS. NEWTON: Or even recently?

17 MS. BRIDENSTINE: The only medical records
18 that we sought in this case were from Mission Hospital for
19 about a little bit over a year prior to his death. And then
20 we asked for any medical records related to Mr. Whitson from
21 the Buncombe County detention center and the Madison County
22 jail.

23 MS. NEWTON: Thank you.

24 MS. BRIDENSTINE: We also -- Ms. Newton,
25 frequently during interviews we would ask people if they

1 remembered if he received treatment and where, but no one
2 reported any information to us about that.

3 MR. GLAZIER: Two points, Judge, if I could.

4 One, just for the record, I think I'm
5 correct -- and I apologize I didn't do this before. My
6 questions go back.

7 At least the exhibit seems to show that she
8 had 30 prior convictions; is that correct?

9 MS. BRIDENSTINE: I would need to count.

10 MR. GLAZIER: 30 convictions total, but one
11 may have been post.

12 MS. BRIDENSTINE: Which handout?

13 MS. SMITH: 28.

14 MR. GLAZIER: The exhibit's in the record but
15 I just ...

16 MS. BRIDENSTINE: I'm counting 28 entries but
17 it looks like there might be some indication that there were
18 multiple charges she was convicted of for a few of them.

19 MR. GLAZIER: Thank you.

20 My question on -- going back to her
21 particularly, the Defendant's Exhibit 1 that was, you said,
22 proffered but not admitted, could you point to me -- I'm
23 trying to find it in the transcript -- where the proffer
24 occurred?

25 MS. BRIDENSTINE: We can get that information

1 for you.

2 MR. GLAZIER: Follow-up, Judge?

3 JUDGE LOCK: Sure.

4 MR. GLAZIER: I just don't remember and it's
5 my bad, but what was the proffer of what Defendant's
6 Exhibit 1 would have said?

7 MS. BRIDENSTINE: I do recall that the --
8 Mr. Hockaday, the defense attorney, brought it to her
9 attention on cross-examination, and I do believe that he
10 quoted a few things that he said were present but he did not
11 describe. Correct.

12 MR. GLAZIER: If I could just get the
13 pagination. I apologize. Thank you.

14 MS. SMITH: Mr. Glazier, we will find the
15 answer about Defense Exhibit 1 for you.

16 MR. GLAZIER: Thank you.

17 Q. Moving along, Ms. Bridenstine, to Floyd Ayers.
18 Who is Floyd Ayers?

19 A. Mr. Ayers is a cousin of Jonathan Whitson, and he
20 gave Mr. Whitson a ride to Christine Angel's house on
21 March 4, 2011, after Mr. Whitson got out of jail in
22 Asheville.

23 MS. SMITH: Commissioners, Floyd Ayers does
24 not have a criminal history.

25 Q. Did commission staff speak to Mr. Ayers?

1 A. Yes. I interviewed him on the phone on October 6,
2 2021. And that interview was recorded and transcribed.

3 Q. Did he have any new information to offer that he
4 did not previously provide to law enforcement and at trial?

5 A. Not much. He said that Mr. Whitson looked good
6 and did not seem sick at all when he picked him up. He was
7 not coughing. The only thing Mr. Whitson said was that he
8 was cold, he was wearing a thin jacket, and he was not
9 acting like he was on anything. Mr. Whitson told Mr. Ayers
10 that he walked to where Mr. Ayers picked him up.

11 Mr. Ayers also reported that he thought it was
12 raining the night he picked up Jonathan Whitson.

13 Q. Did the Commission look for historical weather
14 data from March 4th -- 5th -- 4th, sorry, 2011?

15 A. We did. From the time period Mr. Whitson was
16 released from jail in Asheville until the time he was picked
17 up by Floyd Ayers, the historical weather data for Asheville
18 shows that it was in the mid 40s to lower 50s in
19 temperature and it was mostly cloudy with light rain.

20 MS. SMITH: Commissioners, do you have any
21 questions from Ms. Bridenstine about Floyd Ayers?

22 Q. Can you remind the commissioners who Robert
23 Silvers is?

24 A. Robert Silvers is the grandson of Christine Angel.
25 Mr. Silvers spoke to Sheriff Gary Banks about this case on

1 April 26, 2011. He told Sheriff Banks that he knew that
2 Mr. Pritchard gave Opana to Jonathan Whitson that came from
3 Robbie Brown. Mr. Silvers offered to buy Opana from
4 Mr. Pritchard in a controlled buy and he asked for
5 assistance with his probation officer who he said wanted to
6 send him back to prison.

7 Mr. Silvers did not testify at trial.

8 MS. SMITH: Commissioners, Robert Silvers'
9 criminal history was provided to you as Handout 29.

10 Q. Did you have an opportunity to speak to
11 Mr. Silvers?

12 A. Yes. I interviewed him on the phone on August 3,
13 2021. Mr. Silvers was in prison. And this interview was
14 recorded and transcribed.

15 Q. Why did he say about the case?

16 A. He denied knowing anything about the case and said
17 he had nothing to do with it. After I read Sheriff Banks'
18 report regarding his statement to him, Mr. Silvers denied
19 saying it. He said he had no direct information or personal
20 knowledge about the case and he never spoke to any officers
21 or prosecutors after he talked to Sheriff Banks.

22 Q. Did Mr. Silvers see Jonathan Whitson before he
23 died?

24 A. Yes. He said he saw him the morning before he
25 died at his grandmother's house and Mr. Whitson seemed

1 perfectly fine. He was in good spirits. He did not seem to
2 have a cold. And he was not aware of any medical issues.
3 He did not see Mr. Whitson's arm.

4 MS. SMITH: Commissioners, do you have any
5 questions for Ms. Bridenstine about Robert Silvers?

6 SHERIFF KIMBROUGH: One question. So
7 Mr. Silvers denied ever having a conversation with the
8 sheriff?

9 MS. BRIDENSTINE: No. He said he denied that
10 he said what was reported in his statement.

11 SHERIFF KIMBROUGH: Okay.

12 MR. GLAZIER: I'm looking at Silvers'
13 criminal record, and he has a number of sale and delivery
14 and possession of drug charges; is that right?

15 MS. BRIDENSTINE: Mr. Glazier, which handout?

16 MS. COLBERT: 29.

17 MS. BRIDENSTINE: Yes. He has several.

18 MR. GLAZIER: Thank you.

19 Q. Ms. Bridenstine, who is Tammy Ayers?

20 A. Tammy Ayers was interviewed by Lieutenant Higgins
21 and Special Agent Vines on September 26, 2011, about her
22 knowledge of this crime. She did not testify at trial.

23 MS. SMITH: Commissioners, Tammy Ayers'
24 criminal history was provided to you as Handout 30.

25 Q. Did you speak to Ms. Ayers?

1 A. Yes. I interviewed her on the phone on
2 September 9, 2021. The interview was recorded and
3 transcribed.

4 Q. Is Tammy Ayers related to Floyd Ayers?

5 A. No. She is not related.

6 Q. What was her relationship to Jonathan Whitson, the
7 victim?

8 A. She said she was his ex-girlfriend. She said that
9 she was friends with Nathan Angel when Mr. Whitson died.

10 Q. What did she tell you about her knowledge of this
11 case?

12 A. She said that the day before Mr. Whitson died, she
13 was visiting Nathan Angel at his place. She knew that
14 Nathan Angel had talked to Mr. Pritchard, who was supposed
15 to come over and sell some of his medicine to Nathan Angel.
16 Nathan Angel asked her if she needed anything from
17 Mr. Pritchard because Nathan Angel knew that Mr. Pritchard
18 would only provide drugs to him. Nathan Angel had told her
19 this in the past. She told Nathan Angel that she did not
20 need any morphine that day and she understood that
21 Mr. Pritchard had 10 morphine pills.

22 She saw Mr. Pritchard arrive and talk to Nathan
23 Angel outside. She was on her way out and she said goodbye
24 to them. She did not see a transaction or drugs exchanged.

25 Q. What did Tammy Ayers know about Jonathan Whitson

1 taking morphine on that day?

2 A. She said that she heard later from Nathan Angel
3 that Mr. Whitson took nine of the pills for himself and did
4 them all. Nathan Angel got one of the pills and was upset
5 that Mr. Whitson took the rest.

6 Q. Did Tammy Ayers see Jonathan Whitson that day?

7 A. Yes. She said she said "hey" to him. She said
8 that he appeared to be, quote, "jonesing," end quote, which
9 she described as Mr. Whitson wanting something pretty bad as
10 he had been locked up and in detox. She stated he always --
11 he also seemed to be a little ill.

12 Q. Did Tammy Ayers know anything about Mr. Pritchard
13 providing drugs in the past?

14 A. Nathan Angel told her that Mr. Pritchard would
15 sell him pills. Mr. Pritchard would not come into the house
16 and Nathan Angel would have to go out to him. She saw this
17 a few times when she was over at the house.

18 Q. Was what Ms. Ayers told you consistent with what
19 she had originally told law enforcement in this
20 investigation?

21 A. No. But when I read her statement to her, she
22 said it sounded about right but she could not remember the
23 truck part and thought that Nathan Angel had gotten the
24 pills that day. She said that since her statement to law
25 enforcement was given closer in time to the event, that it

1 was accurate because her memory was not as good now.

2 Q. What were some of the main differences?

3 A. In her interview with law enforcement, Tammy Ayers
4 said that she saw Mr. Whitson leave Nathan Angel's place
5 with Mr. Pritchard in his truck. She asked Nathan Angel if
6 they were going to get some 30s, or morphine, and he said
7 that they were. As Tammy Ayers was leaving Nathan Angel's
8 place, she saw Mr. Whitson returning with Mr. Pritchard.

9 The next day she spoke to Stephanie Whitson
10 Randolph who told her that Mr. Whitson got the 30s from
11 Mr. Pritchard and they did four or five together with
12 Mr. Whitson keeping the remaining pills. She also went on
13 to describe what Robbie Brown told her, which was that she
14 knew that Mr. Pritchard sold the morphine to Mr. Whitson on
15 credit.

16 MS. SMITH: Commissioners, Tammy Ayers'
17 statement to law enforcement is on -- on pages 109 to 110 of
18 your brief.

19 Q. Did you ask Ms. Ayers how she came to be
20 interviewed by law enforcement in connection with the case?

21 A. Yes. She said that she was arrested for drug
22 trafficking and law enforcement knew of her connections to
23 Nathan Angel and Jonathan Whitson.

24 Later in the interview, she said that law
25 enforcement told her that they had been informed that she

1 was at Nathan Angel's that day. No one made her any
2 promises in exchange for her statement.

3 Q. Did she know why she wasn't called to testify at
4 trial?

5 A. No. She said that no one ever talked to her about
6 her testifying but she told them that she would not be a
7 credible witness because she was the ex-girlfriend of both
8 Jonathan Whitson and Nathan Angel and a drug offender
9 herself. She said that she was told that they had already
10 been informed of what happened.

11 Q. Did anyone you ever spoke to indicate why Tammy
12 Ayers did not testify?

13 A. No. My interview with former Assistant District
14 Attorney Michael Holmes, I read her statement to Mr. Holmes.
15 He said he did not know why she was not called and he did
16 not hear anything that sounded disfavorable to the
17 prosecution in her statement.

18 Q. Did you ever find any information about where
19 Tammy Ayers was located during Mr. Pritchard's trial?

20 A. Yes. DPS offender information shows that
21 Ms. Ayers was in prison at the time serving a sentence
22 related to drug and firearm charges that had an offense date
23 of May 11, 2011.

24 MS. SMITH: Commissioners, do you have
25 questions for Ms. Bridenstine about Tammy Ayers?

1 JUDGE LOCK: Commissioner Glazier, I believe,
2 does.

3 MR. GLAZIER: Thank you. Two quick
4 questions.

5 When she said to you that she saw Whitson
6 that -- earlier that day and he looked a little ill, did she
7 describe any details of what "a little ill" meant?

8 MS. BRIDENSTINE: I would have to check the
9 transcript.

10 MR. GLAZIER: Okay. Could you do that -- and
11 I apologize -- if you can, over lunch or something?

12 JUDGE LOCK: Mr. Glazier, could I ask you to
13 keep your voice up a little bit, please.

14 MR. GLAZIER: I'm sorry.

15 JUDGE LOCK: Thank you.

16 MR. GLAZIER: And my second question is: Am
17 I right that she said to you that she saw no transaction or
18 drugs exchanged that day?

19 MS. BRIDENSTINE: That is what she told me,
20 yes.

21 MR. GLAZIER: Okay. Thanks.

22 MS. SMITH: Mr. Glazier, you had asked about
23 Defense Exhibit 1 in the trial transcript, the letter
24 between Robbie Brown and Mr. Pritchard.

25 So it is discussed or testified about on

1 page 373 to 376 of the brief, which is pages 167 to 170 of
2 the transcript. That transcript is within the brief. It's
3 identified as Defense Exhibit 1 on page 471 to 473 of the
4 brief, which is pages 264 to 66 of the trial transcript.

5 MR. GLAZIER: Thank you so much.

6 MS. SMITH: You're welcome.

7 Q. Okay. I'm going to turn attention now to Russell
8 Wilson. Who is Russell Wilson?

9 A. He is the biological father of Jonathan Whitson.

10 MS. SMITH: Commissioners, Russell Wilson's
11 criminal history was previously provided to you as
12 Handout 31.

13 Q. Did the Commission have an opportunity to speak to
14 Mr. Wilson?

15 A. Yes. I interviewed him in person on August 30,
16 2021, and that interview was recorded and transcribed.

17 Q. Did Mr. Wilson speak to or see Jonathan Whitson
18 just prior to his death?

19 A. He did not see him but he spoke to him when he was
20 at the Madison County jail and he received a letter from
21 him.

22 Q. What did Mr. Wilson say about his interactions
23 with his son, Jonathan Whitson, prior to his death?

24 A. He said that Mr. Whitson told him in a letter that
25 he was going to straighten up, break up with Stephanie, and

1 get back together with his ex, Christine, who was pregnant
2 at the time with his son.

3 He said that Mr. Whitson called him from the jail
4 on a Friday to see if he could come stay at his house. He
5 told Mr. Whitson that he was working that weekend and could
6 not discuss it until Monday, and he did not speak to him
7 again after that.

8 He reported that he knew that Mr. Whitson had a
9 drug problem and snorted pills. He had also heard that
10 Mr. Whitson would do yard work for Robbie Brown and
11 Mr. Pritchard and they would pay Mr. Whitson with pills.

12 Q. Did Mr. Wilson know if Jonathan Whitson had any
13 preexisting medical conditions?

14 A. He said that he was not aware Mr. Whitson having
15 any issues including any issues with his arm. He did not
16 know that Mr. Whitson went to the hospital before he went to
17 jail. And Mr. Whitson never complained about pain in his
18 arm.

19 Q. Where did Mr. Wilson hear the information about
20 Jonathan Whitson being paid in pills?

21 A. He heard it from different people and at trial.
22 He said he did not have any proof that this happened. He
23 did not know who John Pritchard or Robbie Brown were prior
24 to the death of his son.

25 Q. Did Mr. Wilson speak about Stephanie Whitson

1 Randolph?

2 A. Yes. He said that Ms. Randolph told him before
3 Mr. Pritchard's trial that Mr. Pritchard used to deliver
4 drugs to her at a restaurant called the Garden Deli in
5 Burnsville. They did not speak to each other, other than
6 that one conversation before trial.

7 MS. SMITH: Commissioners, do you have any
8 questions for Ms. Bridenstine about Russell Wilson?

9 Q. Ms. Bridenstine, I'm going to hand you the
10 interview transcript of Tammy Ayers.

11 If you could turn to the piece there where she's
12 talking about Mr. Whitson being a little ill and answer
13 Commissioner Glazier's question as to whether she provided
14 any additional information about what "a little ill" meant.

15 A. I asked her:

16 "Q. Did he seem ill at all?"

17 She answered:

18 "A. Just a little."

19 She went on to describe that she understood
20 that -- after talking to Nathan, that Mr. Whitson and his
21 girlfriend had been arguing a little bit.

22 I asked her if she saw any injuries or anything on
23 his body.

24 She answered:

25 "A. I could not tell you. I didn't see -- only

1 thing you could see on him most of the time was like
2 his arms and his face."

3 She described what she thought he was wearing.
4 She said that she -- you could see his track marks had
5 healed up some as far as they weren't as viewable. And she
6 described the track marks meant where he would shoot up.

7 I asked if she had any -- if Mr. Whitson had any
8 problems there, meaning the track marks, and she said that
9 she did not have any clue.

10 I asked if she was aware if Jonathan Whitson had
11 any medical conditions at that point. She said that she
12 wasn't aware of any of that.

13 She also was asked if she talked to him when he
14 was Madison County in the jail and she said no.

15 And then I asked if she had talked to Mr. Whitson
16 briefly the day before he died. And she said yes because
17 she talked to everyone there at the house briefly, if it
18 wasn't for saying "hi" and "bye."

19 MR. GLAZIER: Thank you.

20 Q. Ms. Bridenstine, who is Nikki Angel?

21 A. She is the daughter of Annette Whitson Greene and
22 Nathan Angel, which makes her the half-sister of the victim,
23 Jonathan Whitson.

24 Q. Did Miss Angel's name come up with in the law
25 enforcement investigation?

1 A. No.

2 MS. SMITH: Commissioners, Nikki Angel's
3 criminal history was previously provided to you as
4 Handout 32.

5 Her first name is Hazel but she goes by the
6 name Nikki.

7 Q. Did the Commission ever speak to Ms. Angel?

8 A. Yes. We spoke to her in person outside her
9 residence in Burnsville on July 28, 2021. And this
10 interview was recorded and transcribed.

11 Q. What did Nikki Angel report about how her brother
12 was doing before he died?

13 A. She said that she heard that he got pneumonia from
14 walking and hitchhiking after he got out of jail, that he
15 was, quote, "real sick," end quote, that he had a fever and
16 that he was coughing a lot. She told us that she heard this
17 from her grandmother, Christine Angel, who told her that
18 Mr. Whitson had a cold and a runny nose.

19 She also heard that Mr. Whitson was drinking at a
20 bar with his brother CJ before he died and that CJ had
21 brought him home.

22 Q. Did Nikki Angel have a correct understanding of
23 the timeline of events?

24 A. No. She seemed to be under the impression that
25 her brother died the morning after he got out of jail. No

1 one else we talked to in this case ever reported that CJ was
2 around or saw his brother prior to his death. Russell
3 Wilson, who is CJ's father, told us that CJ did not see
4 Mr. Whitson after he got out of jail.

5 Q. Did Nikki Angel know anything about what her
6 brother was doing the night before he died?

7 A. She reported what she had heard but did not have
8 any personal knowledge about this. She was told that Brian
9 Silvers, Shannon Allison, and Sharon Biggs were with her
10 brother hanging out the night before he died.

11 She heard that when these people left, her brother
12 was still alive and doing fine. No one she spoke to told
13 her that her brother was doing drugs. She did not speak to
14 anyone who saw him that night until a year later.

15 Q. Were you able to talk to Brian Silvers, Shannon
16 Allison, or Sharon Biggs about this case?

17 A. Yes. We spoke to Brian Silvers, and Brian Silvers
18 denied seeing Mr. Whitson from the time he got out of jail
19 to the time that he died. We were not able to locate and
20 interview Shannon Allison or Sharon Biggs.

21 Q. Did Nikki Angel know anything about her brother's
22 drug habits?

23 A. Yes. She said that Mr. Whitson liked to shoot up
24 morphine, oxycodone, hydrocodone, and OxyContin. He also
25 liked to drink beer.

1 Q. What else did Nikki Angel report about the
2 circumstances surrounding her brother's death?

3 A. She and her mother believed that his body had been
4 moved from Nathan Angel's trailer to Christine Angel's house
5 before his death was reported. She did not have any
6 personal knowledge to support this claim. She said she
7 believed this because she understood that her brother would
8 not have been allowed to stay at her grandmother's house and
9 she did not think that he would be sleeping in just his
10 pants.

11 Q. Ms. Bridenstine, based on what Nikki Angel said
12 about the body of Jonathan Whitson being moved from Nathan
13 Angel's trailer to Christine Angel's house, did the
14 Commission follow up on that with any other witnesses?

15 A. Yes. We asked several witnesses and also heard
16 from multiple witnesses reporting to hearing the same story,
17 but no one saw this or had firsthand knowledge. We were
18 unable to determine where the story originated or confirm
19 it. But the first time we heard it other than through
20 correspondence with Mr. Pritchard was during the interview
21 with Nikki Angel.

22 Part of former Chief Deputy Thomas Farmer's report
23 contains some information he heard from James Whitson, the
24 brother of Annette Whitson Greene. James Whitson told
25 Mr. Farmer that Ms. Greene was concerned her son's body had

1 been moved. He said that this concern was based on
2 rumors -- and by "he," I mean James Whitson -- said it was
3 based on rumors that they were hearing.

4 MS. SMITH: Commissioners, you've previously
5 been provided Handout 25, which we've already talked about.
6 That summarizes which witnesses heard a similar story about
7 the victim's body being moved.

8 We are not going to testify about every
9 witness who heard this story so please continue to refer to
10 that handout throughout the testimony. And if you have
11 questions about that specifically, please let us know and
12 Ms. Bridenstine will be happy to answer them.

13 MR. GLAZIER: Your Honor.

14 JUDGE LOCK: Yes, sir.

15 MR. GLAZIER: Before you get into that, I
16 wanted to -- you just went fast on the beginning and I need
17 to get my notes clear.

18 When you were talking about what Nikki said
19 her brother's condition was or that -- what Whitson's
20 condition was, you said, I think, that she said he suffered
21 from pneumonia from walking and hiking and he had a fever
22 and was coughing a lot.

23 What else did you -- you had a couple of
24 other details. Could you go back over that.

25 MS. BRIDENSTINE: Sure.

1 She told us that he was real sick, that he
2 got pneumonia from the walking and hitchhiking, that he was
3 coughing a lot. She said that she heard this from her
4 grandmother, Christine Angel, who told her that Mr. Whitson
5 had a cold and a runny nose.

6 MR. GLAZIER: Thank you.

7 JUDGE LOCK: Commissioner Newton.

8 MS. NEWTON: Isn't that account corroborated
9 by the -- Dr. Hall's examination of the anatomy? He says
10 that the anatomic diagnosis or the condition of the body was
11 pulmonary edema and bronchial pneumonia.

12 So does that appear to support what she said
13 about her brother's condition?

14 MS. BRIDENSTINE: I would leave that to the
15 expert doctors who will testify.

16 Dr. Hall did note in his autopsy report that
17 Mr. Whitson had I believe acute pneumonia or acute
18 bronchopneumonia.

19 MS. NEWTON: Follow-up?

20 JUDGE LOCK: Sure.

21 MS. NEWTON: Were you able to establish with
22 Nikki Angel -- or did you establish with Nikki Angel, who
23 appeared to know her brother's drug habits, were you able to
24 establish with her his dosage with -- of whatever morphine
25 he was taking prior to his 60-day detox in the jail?

1 MS. BRIDENSTINE: I don't believe that we
2 talked about that particular thing during the interview.

3 MS. NEWTON: Do you recall any witnesses
4 saying about how much he was in the habit of using before he
5 detoxed for 60 days?

6 MS. BRIDENSTINE: The deposition with
7 Stephanie Whitson Randolph touches on this a little bit,
8 most specifically about what they were doing the day before
9 he died. There might be some sections that discuss prior
10 drug use.

11 And then in the medical records, which I
12 believe were summarized by Dr. Holstege in his report a
13 little bit, there is a section that discusses what he told
14 medical personnel that he was injecting per day. And my
15 recollection is he said 250 milligrams of OxyContin, but we
16 would have to check -- double-check on that.

17 MS. NEWTON: Okay. Thank you.

18 Q. Did Ms. Angel tell you if she ever saw Jonathan
19 Whitson after he got out of jail and before he died?

20 A. Yes. She said that she did not see him before he
21 died but she saw his body after he died. On the morning
22 that Jonathan Whitson died, she was with her mother, Annette
23 Whitson Greene, when they learned that he had died over a
24 police scanner.

25 She and her mother went to Christine Angel's house

1 sometime after 11:00 a.m. Present in the house were
2 Christine Angel, Nathan Angel, her aunt, her son James
3 Angel, and Christian Angel, who is the son of Nathan Angel
4 and Carrie Hinds. She thought that Carrie Hinds was also
5 there.

6 Nikki Angel saw Mr. Whitson's body on the couch at
7 Christine Angel's. Her mother was shaking him. She said
8 that there was white stuff coming out of her brother's nose
9 and brownish-reddish stuff coming out of his mouth. Her
10 mother wiped the substance from his nose. She also thought
11 he had a fever because his body was hot to the touch.

12 Q. Did she describe anything else?

13 A. Yes. She said that she was 100 percent confident
14 she saw that his left arm was swollen and that it was
15 swollen in the bend of the arm. She said she could not
16 stretch out his arm and it looked worse than before. She
17 also said that her brother was just wearing jeans and he did
18 not have on a shirt or socks.

19 Q. Ms. Bridenstine, was the information provided by
20 Nikki Angel about what Mr. Whitson was wearing at the time
21 of his death accurate?

22 A. Yes. The autopsy report described him as wearing
23 blue jeans and white briefs. His body was transported with
24 a blanket and a pillowcase.

25 Q. Was Nikki Angel aware of any preexisting medical

1 problems of Jonathan Whitson?

2 A. Yes. She said that he had gone to the hospital
3 before he went to jail for treatment related to his left
4 arm. She understood that he had a blood clot in his arm.
5 She also said that he was born with a heart murmur.

6 Q. What did Nikki Angel say about how her brother was
7 doing when he was in jail in Madison County?

8 A. She said that she spoke to him on the phone. He
9 reported that he was feeling great and had finished going
10 through withdrawal. She asked him about his arm and he told
11 her that it was okay but that it hurt and was bothering him.

12 Q. Did she have any other information about what
13 happened to her brother?

14 A. She did not have any firsthand knowledge, but she
15 reported learning from her mother that she believed that
16 Aaron Collins, who is the son of Robbie Brown, had played a
17 role in her son's death. Nikki Angel claimed that Aaron
18 Collins called her mother and told her that he had, quote,
19 "shot up," end quote, Mr. Whitson with a bunch of medicine
20 in a parking lot and had given him the, quote, "lethal
21 dose," end quote, through a phone message.

22 She heard that this had to do with the fact that
23 Mr. Pritchard was dating Robbie Brown and had discovered
24 that Robbie Brown had an affair with Mr. Whitson.

25 Q. Did the Commission do anything to assess whether

1 Aaron Collins made that declaration?

2 A. Annette Whitson Greene reported during her
3 deposition with me on November 29, 2021, that she had
4 received a call from Mr. Pritchard the evening Mr. Whitson
5 got out of jail. She said that Mr. Pritchard told her that
6 Mr. Whitson had been walking and he picked him up.
7 Mr. Pritchard told her not to worry, that Mr. Whitson was
8 doing well. Ms. Greene said she heard Aaron Collins in the
9 background of this call say something to the effect of,
10 quote, "Don't worry, I got him a good one fixed," end quote.
11 She stated she took this refer to a needle and then later
12 assumed that Aaron Collins was involved in her son's death.

13 Like Nikki Angel, Nena Angel, who is Nikki's
14 sister -- Nena Angel also heard a rumor about Aaron Collins
15 shooting up the victim and giving him the lethal dose. Nena
16 Angel also reported that Nikki Angel dated Aaron Collins
17 before Mr. Whitson died and then again after he died.

18 We asked Aaron Collins during an interview with
19 him, and he denied doing it. He said that he did not call
20 Annette Whitson Greene and leave a message. He also said
21 that the last time he saw Jonathan Whitson was two years
22 before his death.

23 Q. Did Nikki Angel report hearing about anything else
24 regarding her brother's death?

25 A. She said that she heard a voice mail message that

1 Stephanie Whitson Randolph left her mother. In this
2 message, Ms. Randolph told Ms. Greene that she bought some
3 blood pressure pills from someone that she mistook for
4 morphine. She then injected the drugs into Mr. Whitson's
5 arm and gave him the lethal dose. Ms. Randolph further said
6 that she should have been the one to go and not Mr. Whitson
7 and that she felt that bad and she should be the one in
8 trouble.

9 Nikki Angel said that she never spoke to
10 Ms. Randolph about this. She said that Ms. Randolph was
11 using drugs when her brother was in jail and was a chronic
12 drug user.

13 Q. Ms. Bridenstine, was this the first time that you
14 had heard anything about blood pressure pills being provided
15 to Jonathan Whitson the night before he died?

16 A. No. We had letters that Mr. Pritchard had written
17 in the past in our possession that also discussed it, but
18 Nikki Angel was the first witness to report this to us. She
19 was also the first witness that we interviewed in this case.

20 Based on what she said, we attempted to follow up
21 with everyone we could about this information. We spoke to
22 her sister, Nena Angel, who told us that she spoke to
23 Stephanie Whitson Randolph on the phone when they were
24 discussing funeral arrangements for her brother.

25 Ms. Randolph told Nena Angel that she had given

1 Mr. Whitson blood pressure pills instead of morphine.

2 Ms. Randolph also said that it should have been her instead
3 of Mr. Whitson. We were unable to further substantiate the
4 story. Stephanie Whitson Randolph denied it under oath at
5 her deposition.

6 Q. Let's turn to what Nikki Angel knew about John
7 Pritchard.

8 What is Nikki Angel's relationship to
9 Mr. Pritchard?

10 A. She said that she was friends with him and that
11 her mother, Annette Whitson Greene, was also friends with
12 him at the time. Mr. Pritchard told her that he was
13 innocent. She did not have any knowledge that Mr. Pritchard
14 provided the drugs to her brother, Jonathan Whitson. She
15 said that she thought that Mr. Pritchard's girlfriend
16 probably sold the drugs to Mr. Whitson.

17 She later reported that Mr. Pritchard said he had
18 not even seen Mr. Whitson that day and that she had never
19 heard of Mr. Pritchard ever providing drugs to Mr. Whitson.

20 Q. Did Nikki Angel ever speak to Mr. Pritchard after
21 her brother died?

22 A. Yes. She said that she and her mother spoke to
23 Mr. Pritchard the day after her brother died. Mr. Pritchard
24 asked them if he would be blamed and said that he did not
25 sell any drugs to Jonathan Whitson.

1 Q. Why did Nikki Angel think that Mr. Pritchard
2 thought he was going to be charged?

3 A. She said it was because the family knew he sold
4 pills and they would assume it was him.

5 Q. What did Nikki Angel know about John Pritchard
6 providing drugs in general?

7 A. She said that her father, Nathan Angel, told her
8 that Jonathan Whitson probably got the morphine from
9 Mr. Pritchard. She assumed that Nathan Angel got drugs from
10 Mr. Pritchard but she did not know if he did or not.

11 Q. What else did Nikki Angel say about John
12 Pritchard?

13 A. She said she visited Mr. Pritchard in jail and
14 told him that she was on his side. She thought he did not
15 do it. And then he told her that he did not do it.

16 Q. Did Nikki Angel tell you anything about her state
17 of mind at the time?

18 A. Yes. She reported that she had mental health
19 issues and went through a nervous breakdown before, during,
20 and after her brother died. She described being
21 hospitalized for her mental health issues. At the time, she
22 described herself as shooting up various pain pills. She
23 reported that she was currently on methadone and had been
24 for four or five years.

25 Q. Did she report anything else about her mental

1 health issues?

2 A. Yes. She told us that she frequently has nervous
3 breakdowns and has been hospitalized more than once. She
4 reported seeing things. She said that she's been diagnosed
5 with schizophrenia and bipolar disorder but she does not
6 take any medication for it even though she is supposed to.

7 When asked, she said that she did not think these
8 issues affected her ability to perceive things at the time
9 her brother died.

10 Q. Has anyone else reported anything about Nikki
11 Angel's credibility to you?

12 A. Yes. I asked Mr. Hockaday about Ms. Angel during
13 his interview. Mr. Hockaday did not remember anything about
14 Nikki Angel in connection with this case. He did not
15 remember her ever being seriously considered as a witness
16 and he said that it would have been a problem to put up a
17 convicted drug user in a trial on controlled substances.

18 Mr. Hockaday reported that he knew her well
19 through his position as a division of social services
20 attorney. He said that they removed several kids out of her
21 care for drug use and mental health issues. There was a
22 recent situation, within the last two years, in which her
23 youngest child was not going to school and was using drugs.
24 This child was supposed to be with his grandmother,
25 Christine Angel, but he was hiding out with Nikki Angel

1 instead. He said that Nikki Angel was given a chance to
2 reunify but she never complied.

3 When asked about her reputation for truthfulness,
4 Mr. Hockaday said, quote: "If it could be less than zero,
5 it would be that," end quote.

6 Other family members and friends that we
7 interviewed confirmed that Nikki Angel has mental health
8 issues and that they knew about her previous
9 hospitalizations.

10 MS. SMITH: Commissioners, do you have
11 questions for Ms. Bridenstine about Nikki Angel?

12 MS. COLBERT: Judge.

13 JUDGE LOCK: Yes.

14 MS. COLBERT: Was Nikki Angel -- it hasn't
15 been my recollection that Nikki -- that anybody other than
16 Nikki indicated seeing Jonathan's arms and there were no
17 photos of his arm that Lieutenant Higgins had taken or the
18 medical examiner.

19 MS. BRIDENSTINE: Yes. That's correct.
20 She's the only witness who has reported what his arm looked
21 like at the time of his death. Other people have discussed
22 what his arm looked like either before he died and after he
23 got out of jail or before he went to jail.

24 MS. COLBERT: Thank you.

25 MS. SMITH: Other questions?

1 JUDGE LOCK: Commissioner Welch.

2 MS. WELCH: Did y'all ask Nikki Angel where
3 she got her drugs during this time?

4 MS. BRIDENSTINE: I don't recall if I did.
5 I'd have to check the transcript.

6 MS. COLBERT: And you mentioned that you
7 talked to Nikki about the relationship that -- what kind of
8 relationship she had with Pritchard.

9 And so you're going to be testifying that --
10 that Pritchard indicated they had more of a intimate
11 relationship?

12 MS. BRIDENSTINE: That's correct. And I
13 interviewed Nikki Angel first in this case so that was
14 before I spoke to Mr. Pritchard. So I wasn't aware of
15 what -- or I should say I was not aware of how he
16 characterized their relationship at the time of the
17 interview with Nikki Angel.

18 Q. Okay.

19 Who is Nena Angel?

20 A. She is the daughter of Annette Whitson Greene and
21 Nathan Angel and sister of Nikki Angel and Jonathan Whitson.

22 MS. SMITH: Commissioners, Nena Angel's
23 criminal history was previously provided to you as
24 Handout 33.

25 Q. Did Nena Angel's name come up in the law

1 enforcement investigation?

2 A. No.

3 Q. Did the Commission ever speak to Nena Angel?

4 A. Yes. We spoke to her in person at her residence
5 in Burnsville on September 29, 2021. And this interview was
6 recorded and transcribed.

7 Q. Did Nena Angel see Jonathan Whitson prior to his
8 death?

9 A. No. She said she had not seen him since before he
10 went to jail and she did not go to Christine Angel's house
11 the morning that he died.

12 Q. What information did Nena Angel have about the
13 circumstances surrounding Jonathan Whitson's death, if any?

14 A. She did not have any personal knowledge of any of
15 those circumstances because she was not around. She
16 described what she understood happened that morning when the
17 family discovered his body. She heard rumors about his body
18 being moved. She heard that the people who moved his body
19 were Brian Silvers and Stephanie Whitson Randolph.

20 We previously had interviewed Brian Silvers and he
21 denied this to us.

22 Q. Was Nena Angel aware of any preexisting medical
23 conditions that Jonathan Whitson may have had?

24 A. She knew that he had gone to the hospital before
25 he went to jail with a blood clot but she never saw his arm.

1 Q. What did she know about John Pritchard?

2 A. She heard that he was a drug counselor and that he
3 sold pills to people. She heard this before her brother
4 died. She also heard that he sold pills to her brother
5 before he died. She thought that she heard that from Brian
6 Silvers.

7 Q. What did Nena Angel say about her sister, Nikki
8 Angel?

9 A. She said that Nikki Angel has schizophrenia and
10 nervous breakdowns. She confirmed that Nikki Angel had a
11 breakdown after her brother died.

12 When asked about Nikki's truthfulness, she said
13 that she was truthful to an extent.

14 Q. Did you talk to Nena Angel about her father,
15 Nathan Angel?

16 A. Yes. She said that her father thought the
17 sheriff's department was trying to pin Mr. Whitson's death
18 on him. She thought her dad believed that Nikki Angel was
19 trying to help Mr. Pritchard over him. She did not know why
20 she thought this, but she understood that Nikki Angel had
21 written some letters to someone.

22 MS. SMITH: Commissioners, do you have any
23 questions for Ms. Bridenstine about Nena Angel?

24 Q. Who is Aaron Collins?

25 A. He is the son of Robbie Brown, who was

1 Mr. Pritchard's girlfriend at the time. And at the time
2 that Jonathan Whitson died, he was living with
3 Mr. Pritchard.

4 MS. SMITH: Commissioners, Aaron Collins'
5 criminal history was provided to you as Handout 34.

6 Q. Did the Commission ever speak to Mr. Collins?

7 A. Yes. I interviewed him on August 3, 2021, via
8 WebEx. Mr. Collins is in prison. And this interview was
9 recorded and transcribed.

10 Q. What information did Mr. Collins provide about
11 this case?

12 A. He said that Mr. Pritchard came into the house on
13 the day Mr. Whitson died around lunchtime and said that he
14 was innocent but they were going to charge him.

15 He said that Mr. Pritchard was a, quote, "nervous
16 wreck," end quote. Mr. Pritchard also told Mr. Collins that
17 he gave Mr. Whitson 10 morphine pills. Mr. Collins said
18 that the same day or the next day, Annette Whitson Greene
19 and Nikki Angel came over to their house. They were trying
20 to help Mr. Pritchard. Nikki Angel told him that nine of
21 the morphine pills were later found under the couch.

22 (Stenographer clarification.)

23 Q. What else did Mr. Collins say about Mr. Pritchard?

24 A. He said that Mr. Pritchard was his NA sponsor.
25 Mr. Pritchard and his mother would give him painkillers on

1 occasion, but he did not know Mr. Pritchard to deal drugs to
2 others and he never saw it.

3 He also said that the morphine pills that
4 Mr. Pritchard had were round and purple with the number 30
5 marked on them and a square with the letter M on it.

6 Q. What did Mr. Collins say about his mother, Robbie
7 Brown, and whether or not she was a drug dealer?

8 A. He said that she went to a pain clinic and she was
9 the biggest drug dealer in the county. She sold many
10 things, including pills, cocaine, heroin, and pot.

11 Q. Did you ask about Robbie Brown's statement to
12 police where she said that Mr. Pritchard picked up Aaron
13 Collins at Nathan Angel's trailer?

14 A. Yes. He said that he was not at Nathan Angel's
15 trailer and Mr. Pritchard did not pick him up. He said that
16 he was in McDowell County the day before and he got home at
17 3:00 o'clock in the morning.

18 Q. When is the last time that Mr. Collins spoke to
19 Mr. Pritchard?

20 A. He last spoke to Mr. Pritchard when they were both
21 in the county jail in 2011.

22 MS. SMITH: Commissioners, do you have
23 questions for Ms. Bridenstine about Aaron Collins?

24 JUDGE EVANS: Yes, I do.

25 Was there a question asked of Mr. Collins

1 about Mr. Pritchard purchasing tobacco for him on March 5?

2 MS. BRIDENSTINE: No, there wasn't.

3 JUDGE EVANS: I believe Mr. Pritchard claimed
4 in his statement that the reason he picked up Jonathan was
5 to take him somewhere but that he had to pick up tobacco for
6 Mr. Collins.

7 MS. BRIDENSTINE: That's correct. That's
8 what Mr. Pritchard said during his interview.

9 Mr. Collins said that he was in McDowell
10 County the day before Mr. Whitson died and he got home at
11 3:00 o'clock in the morning.

12 JUDGE LOCK: Sheriff?

13 SHERIFF KIMBROUGH: I just had a question
14 about the people/person that you interviewed.

15 Did any of them say or indicate whether the
16 victim was left-handed or right-handed?

17 MS. BRIDENSTINE: Yes. And I believe it was
18 Nikki Angel who indicated he was left-handed, but we will
19 double-check on that.

20 JUDGE LOCK: Commissioner Glazier.

21 MR. GLAZIER: Thank you, Your Honor.

22 Just to follow on the exhibit chart that you
23 have, am I correct that while he had no personal knowledge,
24 he -- Collins says he heard Stephanie give -- that Stephanie
25 gave the victim blood pressure pills that looked like a

1 Percocet; is that correct?

2 MS. BRIDENSTINE: Which handout are you
3 referring to?

4 MR. GLAZIER: The summary chart.

5 MS. BRIDENSTINE: Which number?

6 MR. GLAZIER: 25. Page 2. Bottom of the
7 page.

8 MS. BRIDENSTINE: That's correct.

9 MR. GLAZIER: And then he then said to you
10 that he knew that the victim -- or he heard that the victim
11 injected those pills.

12 MS. BRIDENSTINE: That's what he heard.

13 MR. GLAZIER: Thanks.

14 SHERIFF KIMBROUGH: Your Honor, am I allowed
15 to go backwards and ask a question?

16 JUDGE LOCK: Yes, sir.

17 SHERIFF KIMBROUGH: I was reading something
18 in one of the reports where it said that the doctor found
19 needle marks on his left arm.

20 MS. BRIDENSTINE: Dr. Hall wrote on his
21 autopsy report with a question mark, something to the effect
22 of needle marks, and the body diagram showed that it was the
23 left arm.

24 SHERIFF KIMBROUGH: And his sister or someone
25 said that he was left-handed?

1 MS. BRIDENSTINE: I believe so.

2 MS. SMITH: We can provide you information.

3 MS. BRIDENSTINE: Okay.

4 Yes. It was during our conversation when she
5 was talking about how she understood that he was at the
6 hospital and they were talking about possibly amputating his
7 arm. She said that he didn't want his arm taken because he
8 was a bull rider and he used his left arm. And then she
9 goes on to say he was left-handed so he didn't want his arm
10 taken off.

11 SHERIFF KIMBROUGH: Thank you.

12 MS. BRIDENSTINE: Mm-hmm.

13 All right. Ms. Newton, going back to your
14 question of whether or not Nikki Angel reported where her
15 drugs came from, there's nothing in the transcript. We
16 didn't go over that.

17 Regarding any descriptions of Jonathan
18 Whitson and how he used drugs and the amounts, if you look
19 at Stephanie Whitson Randolph's deposition, page 32 talks
20 about whether or not drugs were used in jail and withdrawal
21 symptoms.

22 Pages 36 to 38 talk about how he appeared to
23 her after he got out of jail.

24 And then page 15, there is a discussion there
25 regarding Jonathan Whitson's history of drug use.

1 MS. NEWTON: I have a follow-up.

2 MS. SMITH: Handout 41, if that's helpful.

3 MS. NEWTON: May I follow up?

4 JUDGE LOCK: Yes.

5 MS. NEWTON: Stephanie Randolph's statement
6 appears to suggest, from what she said, that the pills were
7 30 milligrams of morphine that he would inject into both of
8 his arms daily prior to custody. And then when he got out
9 after the 60 days, she indicated he got 10 pills on the 5th.
10 They -- he put three in water and injected into both of them
11 those three pills. She left for an hour and a half, took
12 five pills with her apparently so he wouldn't use them when
13 she was gone, then she came back, he did the same procedure
14 with the water and three pills and injected into both of
15 them, I guess outside of the truck or something, and she
16 also said they used and used up until 2:00 a.m.

17 So there was no indication of exactly the
18 amounts but it's still the 30-milligram pills she definitely
19 said before and she definitely said after, when he was using
20 apparently at least three pills every so many hours, it
21 looked like what she was saying.

22 So it sounded like, and I guess it's not
23 definite, but it sounded like his use after 60 days'
24 sobriety was three pills at a time between two people, and
25 she said she was injected less than he was by him. So who

1 knows how much, really, they did each. But after 60 days'
2 sobriety, that's what apparently he was using the day after
3 he got out of jail.

4 Is that consistent with what you understood
5 she was saying?

6 MS. BRIDENSTINE: I would say to rely on the
7 deposition transcript. Some of the points you brought up do
8 not -- are not consistent with my recollection; so I would
9 just say refer to the transcript.

10 MS. NEWTON: Okay. Thank you.

11 MS. BRIDENSTINE: And I would also point out
12 that there were differences between what she told us during
13 the deposition and what she testified to and told law
14 enforcement.

15 MS. NEWTON: Okay. I was just going from
16 your timeline.

17 MS. BRIDENSTINE: Yes. Yes.

18 MS. NEWTON: Okay. All right.

19 So the experts -- we're going to have some
20 expert testimony related to the possible effect of sobriety
21 and then back to morphine use?

22 MS. BRIDENSTINE: Yes, I do anticipate that.

23 MS. NEWTON: Okay. All right. Thank you.

24 Q. Ms. Bridenstine, I apologize if I missed this, but
25 were you able to locate whether or not there was any

1 information about tobacco use?

2 A. Tobacco use? I didn't -- are you talking about
3 Aaron Collins?

4 Q. I apologize. My note is related to Nikki; so
5 hold, please.

6 A. Okay.

7 Q. Where Nikki Angel got her drugs?

8 A. She didn't tell us that.

9 Q. Okay.

10 Who is Danny Edwards?

11 A. Danny Edwards was listed by Mr. Pritchard as a
12 possible witness we should speak to on his behalf. There
13 was also a subpoena and a writ in the court file for his
14 attendance at Mr. Pritchard's trial but he never testified.

15 Q. Did his name come up in the law enforcement
16 investigation?

17 A. No, it did not.

18 Q. Okay.

19 And what was his relationship to Nikki Angel?

20 A. They dated at some point, and I understand that
21 they have a child together.

22 MS. SMITH: Commissioners, Danny Edwards'
23 criminal history was provided to you as Handout 35.

24 Q. Did you ever speak to Danny Edwards?

25 A. Yes. Mr. Edwards is in prison. I interviewed him

1 via WebEx on August 3, 2021. This interview was recorded
2 and transcribed.

3 Q. And what did Mr. Edwards say about this case?

4 A. He said that he was with Jonathan Whitson the day
5 before he died. He claimed that Mr. Whitson got out of jail
6 three weeks prior and he and Mr. Whitson were working
7 together that day. They brought beer to their work and they
8 started drinking at 9:00 a.m. and continued throughout the
9 rest of the day.

10 They did Xanax and methadone together. Around
11 3:30 to 4:00 o'clock, they were at the Riverside gas
12 station. Mr. Pritchard came by in his truck. He said that
13 Mr. Whitson went to the truck and spoke to Mr. Pritchard.

14 An hour later, when they were back at Christine
15 Angel's house, Mr. Pritchard came by and Mr. Whitson went
16 out to Mr. Pritchard's truck again.

17 Mr. Edwards did not see the transaction but knew
18 it happened because they had morphine and Roxicet pills
19 afterwards, and Mr. Whitson had said he was going to buy
20 pills from Mr. Pritchard. They started using the drugs
21 after Mr. Pritchard left. Mr. Edwards left around 7:30 to
22 8:00 p.m.

23 One of the people he said was there that day was
24 Nikki Angel.

25 Mr. Edwards heard from others that after

1 Mr. Whitson finished the pills Mr. Pritchard gave him,
2 people came over to where he was staying and provided more
3 pills to him.

4 (Stenographer clarification.)

5 Q. What did Mr. Edwards know about Mr. Pritchard at
6 the time?

7 A. He said that he knew that a lot of people would
8 buy pills from Mr. Pritchard but that he did not.

9 Q. And how did Mr. Edwards come to be a possible
10 witness for Mr. Pritchard?

11 A. Mr. Edwards was in jail at the same time as
12 Mr. Pritchard was prior to Mr. Pritchard's trial.
13 Mr. Edwards did not believe that Mr. Pritchard provided the
14 drugs that killed Jonathan Whitson, but Mr. Pritchard wanted
15 Mr. Edwards to say that Mr. Pritchard did not sell pills to
16 Mr. Whitson that day.

17 Mr. Pritchard told Mr. Edwards that he did not do
18 it. Anytime they spoke about it, Mr. Pritchard said he did
19 not do it.

20 Q. Ms. Bridenstine, were there -- the details that
21 Mr. Edwards provided about Jonathan Whitson's whereabouts
22 the day before he died consistent with the original
23 investigation in this case and the Commission's
24 investigation?

25 A. No. Mr. Whitson was not out of jail for three

1 weeks prior to his death. He was only out approximately a
2 day and a half before he died.

3 No one during the original investigation and no
4 one that the Commission has asked has said that they saw
5 Danny Edwards with Jonathan Whitson or said that Jonathan
6 Whitson was working the day before he died.

7 The events as Mr. Edwards described them just
8 don't line up with other -- with what other people said was
9 going on that day.

10 Q. Has anyone else reported anything about
11 Mr. Edwards' credibility to you?

12 A. Yes. I asked Mr. Hockaday about Mr. Edwards
13 during his interview. Mr. Hockaday initially did not know
14 anything about Danny Edwards in connection with this case
15 and did not remember anything about him being subpoenaed for
16 trial.

17 Later on in the interview, he recalled
18 Mr. Pritchard mentioning Mr. Edwards.

19 Mr. Hockaday reported that Mr. Edwards has been in
20 and out of prison his whole life. When asked about
21 Mr. Edwards' reputation for truthfulness, he stated, quote:
22 "0.0. If he got on the stand, it would take a good hour to
23 get to the first question after asking him what his
24 convictions would be. It's not good."

25 During an interview with former Chief Deputy

1 Farmer, he said that at times Danny Edwards was credible and
2 at other times, he was deceptive.

3 MS. SMITH: Commissioners, do you have any
4 questions for Ms. Bridenstine about Danny Edwards?

5 Q. Who is Brian Silvers?

6 A. Brian Silvers' name came up during trial as a
7 person who possibly saw Jonathan Whitson outside Christine
8 Angel's residence along with CR, who is Charles Robert
9 Hensley, the day before Jonathan Whitson died.

10 Robbie Brown is Brian Silvers' aunt.

11 MS. SMITH: Commissioners, Brian Silvers'
12 criminal history was provided to you as Handout 36.

13 Q. Did the Commission ever speak to Mr. Silvers?

14 A. Yes. We spoke to him outside his residence on
15 August 4, 2021. This interview was recorded and
16 transcribed.

17 Q. What was his relationship to Jonathan Whitson?

18 A. He said that he was best friends with Jonathan
19 Whitson and Mr. Whitson's stepfather, Nathan Angel.

20 Q. Did Brian Silvers know Mr. Pritchard?

21 A. Yes. He knew him. Mr. Pritchard was dating his
22 aunt, Robbie Brown.

23 Q. Did Brian Silvers know anything about any medical
24 issues that Jonathan Whitson might've been experiencing?

25 A. He heard from Robbie Brown that Mr. Whitson went

1 to the hospital before he went to jail with an infected arm.
2 He was told it might have to be amputated.

3 Q. Did Brian Silvers see Jonathan Whitson on March 5,
4 2011?

5 A. He said that he did not see Mr. Whitson after he
6 got out of jail. He did not even know he was out of jail
7 until someone called him to say that he had died.

8 He went over to Christine Angel's house with
9 Charles Robert Hensley and they watched the hearse leave
10 with the body. He said that Charles Robert Hensley also did
11 not know that Mr. Whitson had gotten out of jail.

12 Q. What information did Brian Silvers have about the
13 circumstances surrounding Jonathan Whitson's death?

14 A. He said he understood from Nathan Angel that four
15 people had shared two morphine pills, including Mr. Whitson,
16 that day.

17 Q. Did he say anything with respect to whether or not
18 Mr. Whitson was snoring on that day?

19 A. Yes. He said Nathan Angel told him that
20 Mr. Whitson was snoring loudly the morning he died.

21 Q. Did Brian Silvers know anything about the rumor
22 regarding Jonathan Whitson's body being moved?

23 A. Yes. He said that Annette Whitson Greene made up
24 the rumor and said that he and others were there and carried
25 the body from the trailer to the couch. He said it was a,

1 quote, "bald-faced lie," end quote. He did not know why she
2 would say that.

3 MS. SMITH: Commissioners, do you have any
4 questions for Ms. Bridenstine about Brian Silvers?

5 JUDGE LOCK: Commissioner Glazier.

6 MR. GLAZIER: I am looking at back at the
7 chart where it says no personal knowledge. Heard
8 from Nathan Angel right after the victim died that Stephanie
9 Whitson Randolph bought blood pressure pills at Lincoln Park
10 and injected the victim and then injected and did not feel
11 right.

12 Is that correct?

13 MS. BRIDENSTINE: Yes. There's some
14 additional information there that he heard that Stephanie
15 Whitson Randolph thought they were Roxi 30s, and that after
16 he injected them, it did not feel right. They looked up the
17 pill on a website and identified them as blood-pressure
18 medication.

19 MR. GLAZIER: Thank you.

20 DR. PERRY: Who did he say made up the lie
21 about the movement of the body?

22 MS. BRIDENSTINE: Annette Whitson Greene, who
23 is Jonathan Whitson's biological mother.

24 DR. PERRY: Any reason from him?

25 MS. BRIDENSTINE: He said he didn't know why

1 she would do that.

2 DR. PERRY: Do we have anyone else commenting
3 on that issue of a reason for it?

4 MS. BRIDENSTINE: She discussed a little bit
5 during her deposition about that so we can pull the pages.
6 I don't recall exactly what she said but she talked, I
7 believe, a little bit about that. It might be in the chart.

8 Annette Whitson Greene did not have personal
9 knowledge about the story that the victim's body was moved
10 but she had heard several stories about the victim being
11 moved to Christine Angel's trailer.

12 JUDGE LOCK: Sheriff?

13 SHERIFF KIMBROUGH: If I have a medical
14 question, I guess we're going to have medical experts;
15 right?

16 MS. BRIDENSTINE: Yes.

17 SHERIFF KIMBROUGH: Okay.

18 Q. Who is Carrie Hinds?

19 A. She was the ex-girlfriend of Nathan Angel. They
20 have a child together. That's Christian Angel.

21 MS. SMITH: Commissioners, you've been
22 previously been provided the criminal history of Carrie
23 Hinds. That is Handout 37.

24 Q. Did Carrie Hinds' name come up in the original law
25 enforcement investigation?

1 A. No.

2 Q. Did the Commission ever speak to Carrie Hinds?

3 A. Yes. I interviewed her by phone on October 13,
4 2021. And this interview was recorded and transcribed.

5 Q. What did Ms. Hinds have to say about this case?

6 A. She said that she saw Jonathan Whitson for
7 20 minutes the day before he died. Someone had just dropped
8 him off at Christine Angel's house around 3:00 p.m. He
9 looked good and he did not look sick. He did not appear to
10 be under the influence of anything. He talked to her about
11 staying clean. When she left, Stephanie Whitson Randolph
12 was just arriving.

13 Q. Did she say anything else?

14 A. Yes. That day, she said she could tell that
15 Nathan Angel was out of drugs because he was not, quote,
16 "messed up," end quote. Nathan Angel was staying at
17 Christine Angel's house because he was very sick at that
18 time.

19 She was not aware of any parties going on that day
20 and she was only there for about an hour and a half, but she
21 heard that Mr. Whitson hung out with Brian Silvers and
22 Stephanie Whitson Randolph.

23 She also reported that she heard the blood
24 pressure pills rumor about Stephanie Whitson Randolph.

25 Q. Did Ms. Hinds know about any medical issues that

1 Jonathan Whitson was having at the time?

2 A. She believed that he had an issue with his arm
3 before he went to jail. She knew that he went to the
4 hospital. She thought it had healed up before he went to
5 jail and that it was not a concern when he was in jail.

6 MS. SMITH: Commissioners, do you have any
7 questions for Ms. Bridenstine about Carrie Hinds?

8 Q. Who is Emma Wheeler?

9 A. She is the sister of Nathan Angel.

10 MS. SMITH: Commissioners, Ms. Wheeler has no
11 criminal history.

12 Q. Did the Commission ever speak to Ms. Wheeler?

13 A. Yes. I spoke to her on the phone on September 30,
14 2021. That interview was recorded and transcribed.

15 Q. Did Ms. Wheeler have any information for the
16 Commission about this case?

17 A. She said that she learned about Jonathan Whitson's
18 death on the phone and she went to Christine Angel's house.
19 She saw Mr. Whitson's body covered up with a blanket. She
20 was not around when they found syringes in Mr. Whitson's
21 coat pocket. And she had no other information to provide to
22 the Commission.

23 MS. SMITH: Commissioners, any questions on
24 Emma Wheeler?

25 Q. Who is Lacey Pritchard?

1 A. She is one of the daughters of John Pritchard.

2 MS. SMITH: Commissioners, you've previously
3 been provided the criminal history of Lacey Pritchard, which
4 is Handout 38.

5 Q. Did the Commission speak to Lacey Pritchard?

6 A. Yes. I interviewed her on the phone on
7 November 30, 2021. And this interview was recorded and
8 transcribed.

9 Q. Did she have any information about the case?

10 A. She did not have any personal knowledge about this
11 case. She was not living in the area at the time that this
12 happened and she did not know the people involved except for
13 Mr. Pritchard's girlfriend, Robbie Brown.

14 She reported that she had heard that Jonathan
15 Whitson was partying at Nathan Angel's trailer the night he
16 died from someone who came to Mr. Pritchard's trial, but she
17 did not know who she spoke to and this person did not
18 testify. She understood that this person was there to
19 possibly testify on behalf of her father. She thought her
20 name might have been Nikki.

21 She said she also spoke to an older gentleman who
22 was a friend of Jonathan Whitson's uncle. She understood
23 that this man was there to possibly testify for her father.
24 He told her that Jonathan Whitson was partying with people
25 the night before he died.

1 Q. Did Lacey Pritchard ever speak to Robbie Brown
2 about this case?

3 A. No. She said they never spoke about the case.

4 MS. SMITH: Commissioners, do you have any
5 questions about Lacey Pritchard?

6 Q. Who is Annette Whitson Greene?

7 A. She is the mother of Jonathan Whitson.

8 MS. SMITH: Commissioners, you've previously
9 been provided the criminal history of Annette Whitson
10 Greene, which is Handout 39.

11 Q. Did Ms. Greene's name come up in the law
12 enforcement investigation?

13 A. Yes. She went to Christine Angel's house after
14 learning that her son had died. Law enforcement tried to
15 interview her in the beginning but she was too upset to
16 speak with them.

17 Q. Did the Commission ever speak to Ms. Greene?

18 A. Yes. I deposed her on November 29, 2021.

19 Q. And why did you depose rather than just interview
20 her?

21 A. We tried to set up multiple times to interview her
22 voluntarily in person or over the phone. Ms. Greene
23 initially agreed but when we scheduled a time to meet with
24 her in person and appeared at her residence, she told us
25 that she was not feeling well enough to do an interview.

1 After that, she stopped responding to our attempts
2 to reschedule.

3 We then set -- we then scheduled a deposition and
4 she was served a subpoena to appear and testify. She did
5 not appear at that deposition on October 21, 2021.

6 When we tried to get ahold of her, we learned
7 later that day she reported that she had COVID-19 and she
8 had gone to see a doctor. After that, we made several
9 attempts to contact her to try to reschedule but she did not
10 respond.

11 We filed a motion for a material witness order.
12 Ms. Greene was subpoenaed for the hearing on the motion
13 before Judge Lock on November 8, 2021. Ms. Greene did not
14 appear and we requested a show cause order and an order for
15 her arrest based on her failure to appear at the deposition
16 and at the hearing before Judge Lock. Judge Lock issued
17 both of those orders and set bond at \$10,000 secured.

18 On November 23rd, 2021, she was arrested and she
19 posted bond later that day. The show cause hearing was held
20 on November 29, 2021. Ms. Greene appeared and agreed to do
21 the deposition so Judge Lock held the show cause order in
22 abeyance until she completed her deposition. After her
23 deposition, he dismissed the show cause order, released her
24 bond, and we did not pursue the material witness order for
25 her.

1 Q. When did you depose Ms. Greene?

2 A. Immediately after her court appearance on
3 November 29, 2021.

4 Q. And during that deposition, did you learn anything
5 about mental health issues afflicting Ms. Greene?

6 A. Yes. She said that she had a nervous breakdown
7 after her son died and that it affects her memory. She
8 reported spending two weeks at an inpatient treatment
9 facility. She said that she currently takes medication for
10 depression and has been diagnosed with manic depression and
11 bipolar disorder. She is also currently on methadone.

12 Q. What, if anything, did Ms. Greene report about how
13 her son, Jonathan Whitson, was doing prior to his
14 incarceration in the Madison County jail from January 6,
15 2011, to March 4, 2011?

16 A. Ms. Greene reported that her son had a blood clot
17 in his arm which she attributed to a needle from -- to an
18 infection from a needle or a piece of cotton getting stuck.
19 She believes that he was told that the heart -- that the
20 clot could travel to his heart and kill him.

21 It was her understanding that he left the hospital
22 against doctor's orders because they suggested amputating
23 his arm. She got this information from Mr. Whitson and
24 added that he did not want to lose his arm so he never
25 acknowledged the problem after that.

1 Ms. Greene was not aware of Mr. Whitson taking any
2 medication for his arm after he left the hospital and
3 speculated that if he were to have filled a prescription, he
4 would've done that at the hospital pharmacy before he left.

5 She also said that at the time he went to jail, he
6 was living with his stepfather, Nathan Angel.

7 Q. Did Ms. Greene say anything else about Jonathan
8 Whitson's health?

9 A. She described Jonathan Whitson's arm as being
10 swollen to twice its normal size. She believed the arm
11 problems were caused by an abscess. She did not know
12 whether he had asthma but reported that he had a hole in his
13 heart from birth until age 10 which may or may not have
14 closed.

15 She stated that she saw him briefly at Nathan
16 Angel's house before he went to jail, and other than his arm
17 being swollen, he did not appear to be ill.

18 She did not know if he sought any treatment for
19 his arm after leaving the hospital but before going to jail.

20 Ms. Greene did not know when Mr. Whitson started
21 using drugs, but she thought he primarily used morphine.
22 She thought that he snorted pills and started injecting
23 after he met Stephanie Whitson Randolph.

24 She saw him fixing a needle one time and then go
25 into a room with Ms. Randolph. Ms. Greene believed that

1 Ms. Randolph provided drugs for her -- from her dad to
2 Mr. Whitson and that Mr. Whitson also got drugs from Robbie
3 Brown.

4 Q. What did Ms. Greene know about her son's health
5 while he was in jail?

6 A. She did not know much. She said that she spoke to
7 Mr. Whitson over the phone shortly before he released -- he
8 was released and he seemed in good spirits but complained of
9 pain in his arm. He otherwise did not seem sick.

10 Her understanding was that he initially went
11 through withdrawal when he got to jail.

12 Q. Did Ms. Greene speak to her son after he got out
13 of jail?

14 A. No. She did not see him until he was deceased.

15 She reported receiving a call from Mr. Pritchard
16 the evening Mr. Whitson got out of jail. She said that
17 Mr. Pritchard told her that Mr. Whitson was walking and he
18 picked him up. Mr. Pritchard told her not to worry, that
19 Mr. Whitson was doing well.

20 Ms. Greene said she heard Aaron Collins in the
21 background of this call saying something to the effect of,
22 "Don't worry. I got him a good one fixed."

23 Ms. Greene heard from Nathan Angel, who told her
24 that Mr. Whitson and Ms. Randolph got morphine from
25 Mr. Pritchard the day before Mr. Whitson died. Nathan Angel

1 also told her that Aaron Collins and Mr. Whitson were
2 together the whole day before Mr. Whitson's death.

3 She reported that she later heard that
4 Ms. Randolph was also with him at some point and that they
5 went to Robbie Brown's.

6 Q. Did Ms. Greene see her son after his death?

7 A. Yes. She said that she heard the emergency call
8 over her brother's scanner and then went to the Angel
9 residence with Nikki Angel, where her son was deceased on
10 the couch.

11 Ms. Greene said that when she got to the residence
12 with Nikki Angel, Christine Angel, William Angel, and Nathan
13 Angel were there with some kids, including James.

14 Ms. Greene's sister, Rebecca Grindstaff, and her fiancé,
15 Larry McIntosh, also came over. No medical personnel were
16 present.

17 Ms. Greene described her son as looking like he
18 was asleep on the couch with a cover pulled up. She was
19 very upset and did not pay attention to the way his arms
20 looked. She did say that Nikki Angel told her that
21 Mr. Whitson's arm was swollen and it looked like the blood
22 had settled.

23 Q. Did you learn anything else about Nikki Angel from
24 Ms. Greene?

25 A. Ms. Greene said that she was not sure when Nikki

1 told her about Mr. Whitson's arm being swollen because they
2 both had nervous breakdowns around that time.

3 She stated that Nikki Angel was on medication for
4 treatment related to diagnoses of schizophrenia,
5 manic-depression, and bipolar disorder. She added, though,
6 that she had no reason to doubt Nikki Angel's description of
7 Mr. Whitson's arm and that Nikki Angel reported seeing the
8 swelling to other family members on the day that her son
9 died.

10 Q. Did the Commission learn anything about the
11 relationship between Ms. Greene and Mr. Pritchard?

12 A. Yes. She said that they became friends with
13 Mr. Pritchard after meeting him through Nathan Angel but she
14 did not know what kind of a relationship Nathan Angel and
15 Mr. Pritchard had.

16 She reported that after her son's body was
17 transported from the scene, she, Nathan Angel, and Nikki
18 Angel went to Mr. Pritchard's house where Mr. Pritchard told
19 them that law enforcement had informed him that he might be
20 arrested for the death.

21 According to Ms. Greene, Aaron Collins was also
22 present.

23 Ms. Greene did not know if Mr. Pritchard was a
24 drug dealer but heard people on the street say that he gave
25 morphine to Ms. Randolph who gave it to Mr. Whitson.

1 Ms. Greene said that she had never received any
2 drugs from Mr. Pritchard and never knew him to give drugs to
3 anyone. Mr. Pritchard told her that he was a counselor.
4 The last time Ms. Greene recalled speaking with
5 Mr. Pritchard was at her son's funeral.

6 Q. What did Ms. Greene say about the rumors
7 surrounding her son's death?

8 A. She stated that after her nervous breakdown she
9 asked her other children to ask around and try to find out
10 what happened to Jonathan Whitson. She said she's heard
11 different stories. She said that Brian Silvers allegedly
12 talked about moving Jonathan Whitson's body.

13 Q. Did Ms. Greene report having any other personal
14 knowledge surrounding the circumstances of her son's death?

15 A. No.

16 MS. SMITH: Commissioners, do you have any
17 questions for Ms. Bridenstine about Annette Whitson Greene?

18 SHERIFF KIMBROUGH: I do. I just want to
19 make sure I heard right. I was reading and trying to
20 multitask.

21 Did you say Ms. Greene said that, at birth,
22 her child had a hole in his heart and had some
23 complications?

24 MS. BRIDENSTINE: She said that he was born
25 with a hole in his heart, that she knew it was there until

1 the time he was 10, but she didn't know if it had closed up
2 or not.

3 SHERIFF KIMBROUGH: Were we able to
4 substantiate that, that he in fact had complications?

5 MS. BRIDENSTINE: We would have to
6 double-check the hospital records to see if there were any
7 references to his heart. If they're not in those medical
8 records, I'm not aware of anything substantiating that other
9 than what I've already testified to about other people
10 having heard he might have an issue with a heart murmur.

11 MS. SMITH: We will pull up those and
12 double-check to see if there's any additional information
13 for you.

14 Any additional questions about Annette
15 Whitson Greene?

16 Q. Who is Stephanie Whitson Randolph?

17 A. She was the girlfriend of Jonathan Whitson and she
18 was with him the day before he died.

19 MS. SMITH: Commissioners, you've previously
20 been provided the criminal history of Stephanie Whitson
21 Randolph, which is Handout 40.

22 You've also been previously been provided the
23 digest and full transcript of the Commission's deposition
24 Stephanie Whitson Randolph, which is Handout 41.

25 Ms. Bridenstine is going to testify about

1 that deposition. I would refer you to that full transcript
2 if you have any additional questions for her after her
3 testimony.

4 Q. Ms. Bridenstine, did you attempt to speak with
5 Stephanie Whitson Randolph in this case?

6 A. Yes. She was originally subpoenaed for deposition
7 on September 22, 2021. Several days prior to the
8 deposition, her husband called and said that Ms. Randolph
9 was not in a good place and wanted to put this behind her.
10 He said that she was not coming to the deposition. I told
11 him if she did not come, we would move to enforce the
12 subpoena.

13 On the day of the deposition, she did not appear.
14 She exchanged text messages with the Commission about why
15 she did not appear for several hours. Initially, she said
16 that she was running late. When it became apparent that she
17 was not going to show up after several hours, we left and
18 told her via text message that we were going to seek
19 enforcement of the subpoena with the Court.

20 The Commission moved for a material witness order
21 and scheduled a hearing on the motion with Judge Lock on
22 October 27, 2021. The hearing was rescheduled because
23 Ms. Randolph told me over text message that she was not
24 coming to the hearing and we did not believe that she had
25 been served with a subpoena.

1 Several days later, we found out that a sheriff's
2 deputy in Yancey County had served her with the subpoena
3 over the telephone.

4 For the second hearing date on the motion for
5 material witness that was scheduled on November 8, 2021, we
6 hired a private investigator to serve her with a subpoena
7 for the hearing and we asked the Yancey County Sheriff's
8 Office to serve her with the subpoena. Neither the private
9 investigator nor the sheriff's office was able to locate
10 her.

11 Q. What happened after the Commission could not
12 locate her?

13 A. On November 8, 2021, we moved for a show cause
14 order and an order for her arrest to show cause why she
15 should not be held in criminal contempt for her failure to
16 appear at the deposition. Judge Lock issued both orders and
17 set her bond at \$10,000 secured.

18 Ms. Randolph was arrested in McDowell County on
19 probation violations not related to this case in late
20 November.

21 Q. Was she ever arrested on the show cause order?

22 A. Yes. She appeared in court in Yancey County on
23 the probation violations on December 6, 2021, and she was
24 served with Judge Lock's orders then.

25 A new hearing date was set in Johnston County on

1 December 8, 2021, and it is our understanding that a
2 probation officer who was present in Yancey County informed
3 the judge there that probation was working on absconder
4 warrants and suggested that a bond increase would likely be
5 needed to secure her presence. That Yancey County judge
6 modified her bond in this case to \$100,000 secured.

7 Q. Was Ms. Randolph present at that show cause
8 hearing?

9 A. Yes. She appeared on a writ and was transported
10 by the Yancey County Sheriff's Office to Johnston County.
11 She agreed to sit for a deposition on the Commission's
12 representation that we would not seek to enforce the show
13 cause order if she did so.

14 Judge Lock also granted the pending material
15 witness order that was filed in October and reset her bond
16 back to the original \$10,000 secured.

17 Q. Did Ms. Randolph sit for the deposition?

18 A. Yes. I deposed her immediately following the
19 hearing.

20 Q. And what did you learn from Ms. Randolph's
21 deposition?

22 A. Ms. Randolph indicated that she met Jonathan
23 Whitson through a friend about three months before he went
24 to jail in January 2011. She denied dating Mr. Whitson or
25 having any romantic links and suggested that other people

1 thought they were a couple because they spent a lot of time
2 together.

3 Q. Did she say anything about Jonathan Whitson's drug
4 use?

5 A. She stated that she and Mr. Whitson were both drug
6 users when they met. She would use pills by snorting or
7 ingesting them. Mr. Whitson would inject pain pills by
8 crushing them in a spoon, adding water, and drawing the
9 solution into a syringe, which he would then inject into his
10 arm. She said that he injected in both arms. According to
11 Ms. Randolph, he did this daily and he always had track
12 marks.

13 She stated that she never injected any drugs prior
14 to meeting him but he would inject them into her when they
15 were together.

16 Q. What did Ms. Randolph say about Mr. Pritchard
17 providing drugs to Jonathan Whitson?

18 A. She knew Mr. Whitson to get them from
19 Mr. Pritchard. She described a time before this case when
20 Mr. Pritchard picked her up from work with Mr. Whitson and
21 gave Mr. Whitson some morphine pills in the truck. She said
22 that this happened a month before Mr. Whitson went to jail.

23 She also knew that Mr. Pritchard had a morphine
24 prescription because she saw a prescription bottle for
25 30 milligrams morphine with his name on it at Robbie Brown's

1 house previously and she said that this happened in the fall
2 of 2010.

3 Q. What did Ms. Randolph say about places in
4 Burnsville where people could get drugs?

5 A. She knew Riddles store or Riverside to be a place
6 where a person could buy drugs. Mr. Whitson had gone there
7 to meet people in the past, but she doesn't know if it was
8 to buy drugs.

9 She also said that Lincoln Park was an apartment
10 complex where drugs were sold. She had been there with
11 Mr. Whitson before to buy drugs from a person called
12 Bam-Bam. They bought what were supposed to have been pink
13 Percocets but were allegedly birth control pills instead,
14 and she said that this happened before Mr. Whitson went to
15 jail.

16 Q. Did Ms. Randolph say anything else about Bam-Bam?

17 A. She said she also heard from someone at Nathan
18 Angel's trailer about someone else buying pills from Bam-Bam
19 that turned out to be blood pressure medication, but she
20 never heard that rumor in relation to her getting blood
21 pressure pills and providing them to Mr. Whitson.

22 She denied ever buying pills that turned out to be
23 blood pressure pills and denied ever telling anyone that
24 this happened the night before Mr. Whitson died.

25 She also denied that they used anything other than

1 morphine on March 5, 2021 -- excuse me -- 2011.

2 Q. What did Ms. Randolph say about any medical
3 problems that Jonathan Whitson might've had at the time?

4 A. Ms. Randolph was aware of a problem with
5 Mr. Whitson's arm. He was hospitalized for three days and
6 she stayed with him. His arm was swollen and red, much
7 bigger than normal size. He called an ambulance which took
8 him to the hospital.

9 Ms. Randolph could not recall whether it was a
10 blood clot or an abscess or both. She knew that he was
11 given medication while he was in the hospital but he did not
12 leave with any medications. She left with him and he did
13 not fill any prescriptions.

14 To Ms. Randolph's knowledge, Mr. Whitson did not
15 use any medication that was prescribed for his arm but began
16 injecting drugs again after his release from the hospital.
17 She recalled doctors at the hospital telling him that if he
18 kept using, he could die of a blood clot. She never heard
19 any discussion about possible amputation.

20 At the time Mr. Whitson left the hospital, his arm
21 hurt but it was improving; however, Ms. Randolph said that
22 when he got home and took the bandage off, it still looked
23 bad but it was less swollen.

24 Q. Did Ms. Randolph speak to Jonathan Whitson while
25 he was in jail?

1 A. She said they spoke on the phone a few times while
2 he was jail. She said he was anxious to get out but seemed
3 in good spirits. He said he -- he did not say he felt bad.
4 She did not know if he used drugs while he was in jail but
5 he did tell a story about someone hiding a bottle of vodka
6 in a drink machine, which he drank.

7 She does not know if he went through withdrawal at
8 jail. While Mr. Whitson was in jail, Ms. Randolph said she
9 stopped using drugs and she herself did not go through a
10 withdrawal.

11 Q. What did Ms. Randolph say about March 5, 2011, the
12 day before Mr. Whitson died?

13 A. She said on March 5, Mr. Whitson called
14 Ms. Randolph around lunchtime to say he was out of jail, and
15 she met him at Nathan Angel's trailer a few hours later.
16 Mr. Whitson appeared upbeat and happy. She could not recall
17 if he was coughing. She said he had a fever and he said it
18 was from something other than using or not using drugs.

19 She did not see his arms at this time.

20 Mr. Whitson called Mr. Pritchard to, quote, "see
21 about getting something," end quote. A little while later,
22 she saw Mr. Pritchard's truck drive up and Mr. Pritchard
23 went outside -- I'm sorry, Mr. Whitson went outside.
24 Ms. Randolph stayed inside Christine Angel's house.

25 She saw Mr. Whitson either lean his head into the

1 truck or get into the truck. About 5 to 10 minutes later,
2 Mr. Whitson came back inside and had 10 pills which he said
3 came from Mr. Pritchard, although Ms. Randolph did not
4 witness a transaction and did not know if Mr. Whitson had
5 any money that day. She believes the pills were purple but
6 they might have been blue.

7 When Mr. Whitson came back, he and Ms. Randolph
8 went into Ms. Whitson's Jeep and injected three pills' worth
9 of morphine. Ms. Whitson left to meet her godmother, Jane
10 Honeycutt, who is now deceased, and Mr. Whitson gave five of
11 the morphine pills to her to hold on to so that he would not
12 use them. Mr. Whitson was acting like he felt really good
13 after using the morphine. He was not coughing.

14 Ms. Randolph went to Hardee's and a gas station
15 with her godmother and returned to Christine Angel's house
16 about 90 minutes later. She did not know what happened to
17 the other two pills. She did not think Mr. Whitson had them
18 on him, but he might have.

19 When Ms. Randolph got back to the Angel residence,
20 she returned the five pills to Mr. Whitson. She and
21 Mr. Whitson went into the bathroom and began injecting more
22 of the pills. She thought they started with three pills.
23 Mr. Whitson was injecting into both arms. She did not
24 recall noticing swelling in his arm. She thought they used
25 about the same amount, maybe six injections apiece.

1 She was not sure what time she left but the family
2 was still awake. She felt high but like she did not overdo
3 it.

4 Mr. Whitson never expressed anything about feeling
5 physically bad to her. He cried when she left because she
6 said she did not want to hang out with him anymore because
7 she did not want to do drugs anymore.

8 She believed they used about the same amount when
9 they were together but thought that he also used when she
10 was not around. When she left, Mr. Whitson said he was
11 going to lay down but there was still residue left in the
12 spoon that could have been injected just by adding water.

13 She went home to her parents' house and watched TV
14 with her mother before going to bed.

15 Q. What, if anything, did she say about alcohol or
16 other drug use that day?

17 A. She never saw him drink that day and she never
18 heard about him drinking that day. She never heard about
19 him using any other drugs that day.

20 MS. SMITH: Commissioners, do you have
21 questions for Ms. Bridenstine?

22 (Witness stands down, 12:05 p.m.)

23 MS. SMITH: Commissioners, Ms. Randolph has
24 been subpoenaed and ordered to be present here today as a
25 material witness. She is here and available to testify.

1 Earlier this morning, commission staff was
2 made aware that Stephanie Randolph had more information
3 today, while she was awaiting her testimony. She was
4 reviewing her deposition and reported remembering some more
5 information.

6 And so at this time, I'd ask that
7 Ms. Bridenstine step down. I'd like to call the
8 Commission's staff attorney Brian Ziegler to briefly testify
9 about that.

10 Thereupon, BRIAN ZIEGLER, a witness having been called by the
11 Commission, was sworn and testified as follows:

12 EXAMINATION BY MS. SMITH: (12:06 p.m.)

13 Q. Mr. Ziegler, what did you do when you were made
14 aware that Ms. Randolph had additional information?

15 A. I went to the room where she's waiting and I spoke
16 with her. And that conversation is recorded.

17 Q. Did you take notes?

18 A. I did.

19 Q. Can you tell us what information Ms. Randolph
20 provided?

21 A. Yes. She was reviewing the transcript of her
22 deposition and said that there were a few questions that she
23 was asked that she now remembered additional information
24 about.

25 Specifically, she told me in relation to a

1 question about individuals that she knew to have provided
2 drugs to the victim.

3 She told me that she now -- in addition to the
4 names that she said during her deposition, she now recalled
5 an individual named Paul Hughes would provide Percocet 15s
6 and possibly other drugs to Jonathan Whitson. And she
7 remembered now that Nathan Angel's brother William, who she
8 knew as "Mote" would share his 200-milligram morphine pills.
9 She described those pills as being green and oblong shaped.

10 But with some follow-up questions, Ms. Whitson
11 said that she did not see either of those individuals on
12 March 5, 2011.

13 She also said that in relation to a question about
14 her seeing Mr. Pritchard on March 5, 2011, in her
15 deposition, she mentioned seeing his truck and Mr. Whitson
16 go up to that truck.

17 This morning she said in addition to that
18 instance, after she had come back from Hardee's, she saw
19 Mr. Pritchard drive his truck back to the Angel residence
20 and drop off Nikki Angel. She said that that lasted a short
21 time and she was not aware of Jonathan Whitson having any
22 interaction with Mr. Pritchard at that point in time.

23 And she also said that she recalled, during the
24 time that Jonathan Whitson was in jail, the only drugs she
25 did were -- I believe she said snorting, she snorted two

1 15-milligram Percocet pills and otherwise was clean during
2 the time Mr. Whitson was in jail. And she expressed that
3 she thought that any diminished tolerance that he had, she
4 also would've had based on her drug use during that time.

5 MS. SMITH: Any follow-up questions for
6 Mr. Ziegler?

7 JUDGE LOCK: Commissioner Glazier.

8 MR. GLAZIER: I'm looking at -- several
9 questions.

10 One, did she indicate what caused this
11 epiphany of new information?

12 MR. ZIEGLER: She didn't specifically say but
13 she was reading through her testimony and the transcript of
14 her deposition.

15 MR. GLAZIER: The second question is: On the
16 conviction chart, it shows, in 2019, a methamphetamine
17 conviction as well as a child abuse conviction which I'm
18 assuming was tied in.

19 Do we know -- quite frankly, do we know if
20 she is clean today?

21 THE WITNESS: She described herself as sober
22 today which she said helped her recall things now, but
23 that's all I can relay is that's what she said today.

24 MR. GLAZIER: Okay. Thank you.

25 MS. SMITH: Any additional questions for

1 Mr. Ziegler?

2 Okay. I would ask that he step down.

3 (Witness stands down, 12:10 p.m.)

4 MS. SMITH: Judge Lock, now would be the
5 appropriate time for a lunch recess.

6 During that recess, I would request that
7 commissioners consider whether they would like to hear from
8 Ms. Randolph. And if so, we'll call her right after lunch.
9 She is here and available to you if you've got follow-up
10 questions for her after her deposition and these additional
11 follow-up questions this morning.

12 MR. BOSWELL: Can I ask a question? Is she
13 here -- is she in from jail or is she here from her home?

14 MS. SMITH: She made bond and has come on her
15 own.

16 MR. BOSWELL: Okay.

17 MR. GLAZIER: And, I apologize, what's the
18 charges that she is pending on? They're not -- the ones
19 that are showing on the record are from 2019. So I
20 apologize.

21 JUDGE LOCK: Probation violations.

22 MS. SMITH: The probation violations.

23 MR. GLAZIER: Okay. Thank you.

24 JUDGE LOCK: 1:00 o'clock? That enough time
25 for everybody?

1 (Recess taken, 12:10 to 1:08 p.m.)

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

4 Ms. Smith, I have surveyed the commissioners
5 and the alternates, and it does appear that there are a
6 couple of folks who would like to hear from Ms. Randolph.
7 So I'm going to ask in just a minute that she be brought in.

8 MS. SMITH: Okay.

9 JUDGE LOCK: I would ask the commissioners,
10 though, that if you would, just cut to the chase, so to
11 speak, and go directly to the issues about which you would
12 like to question her.

13 I think first, though, there was some other
14 issue you wanted to discuss with us. There was a matter you
15 wanted to cover; is that right?

16 MS. SMITH: Yes. While the staff gets
17 Ms. Randolph from upstairs, I will recall -- or wherever she
18 is in the building -- I will recall Ms. Bridenstine.

19 JUDGE LOCK: All right. She remains under
20 oath, of course.

21 Thereupon, JULIE BRIDENSTINE, a witness having been recalled by
22 the Commission, testified as follows:

23 EXAMINATION BY MS. SMITH: (1:10 p.m.)

24 Q. Ms. Bridenstine, over the lunch recess, was
25 commission staff able to pull together some information from

1 the medical records of the victim, Jonathan Whitson?

2 A. Yes. From the Mission Hospital records that we
3 received --

4 MS. SMITH: Commissioners -- I'm sorry.
5 Commissioners, this is going to be Handout 51. You should
6 have all been provided that just within the last few
7 minutes.

8 A. And what Handout 51 is, it talks about three of
9 the questions that were brought up concerning Mr. Whitson:
10 His reported drug issues or what he reported about his use
11 of drugs, anything related to his heart, and then the third
12 area that's addressed in this handout are any respiratory
13 concerns there might have been about Mr. Whitson during his
14 hospital visits. They're summarized in a chart and then
15 attached are the relevant records that address what's
16 discussed in the chart.

17 MS. SMITH: Commissioners, we will give you
18 time to look at that. And then over -- you know, you can
19 look at it over the next break. And then if you have
20 additional questions, we can address those this afternoon.

21 If you have any immediately, please feel free
22 to ask them but we have attached the corresponding records
23 there and likely that is as much as we can speak to what is
24 there.

25 JUDGE LOCK: Yes, Commissioner Glazier.

1 MR. GLAZIER: Just a quick question.

2 Do we know whether or not, after
3 December 30 -- 29, the victim sought any medical care
4 provider that we could get records from?

5 MS. BRIDENSTINE: I'm not aware of any, and
6 the witnesses that we talked to who were possibly aware of
7 how he was doing in that short time period said that he was
8 not taking medication.

9 Stephanie Whitson Randolph said she was with
10 him at least some of the time.

11 MR. GLAZIER: A follow-up?

12 JUDGE LOCK: Sure.

13 MR. GLAZIER: And the sheriff may be heading
14 there: Do we have any records prior to 2010 from his -- any
15 medical care provider on anything from birth until 2010?

16 THE WITNESS: No.

17 SHERIFF KIMBROUGH: That's where I was going
18 with the original question. And we kept hearing there were
19 some heart issues at birth. I was wondering, do we have any
20 records prior to what I see here or any records pertaining
21 to that along, from birth, I guess, for different things?

22 MS. BRIDENSTINE: We do not.

23 SHERIFF KIMBROUGH: Thank you.

24 JUDGE LOCK: Commissioner Britt.

25 MR. BRITT: Would that include pharmacy

1 records from the hospital?

2 MS. BRIDENSTINE: We requested all medical
3 records, and I don't recall if pharmacy records were part of
4 it.

5 MR. BRITT: So, for example, December 27, we
6 don't know if he was prescribed any type of antibiotic.

7 MS. BRIDENSTINE: There is some indication
8 that he was -- they admitted him to give him IV antibiotics
9 during his stay, and then we know upon discharge he was told
10 or prescribed something -- I can't remember the name of the
11 antibiotic. He was told to follow up with care, I think, in
12 a couple of weeks. And there is no indication that he
13 filled it.

14 MS. SMITH: Commissioners, the medical
15 records that we do have from the limited time period are 377
16 pages. If you-all would like those, we are more than happy
17 to make those available to you.

18 MR. GLAZIER: Judge, I would like a copy of
19 those records.

20 JUDGE LOCK: All right.

21 MS. SMITH: Your Honor, we will make those
22 Handout 52 and we'll get those to the commissioners the next
23 opportunity that we have, probably for review over the
24 overnight recess. Those are medical records of the victim.
25 He is deceased, but I would just ask you to consider whether

1 Handout 51, this chart start with some limited medical
2 records, and the full medical records should be sealed from
3 the public records should that -- the case move forward and
4 have a public record.

5 JUDGE LOCK: All right. I will certainly be
6 happy to order that at the conclusion of the hearing, yes.

7 MS. SMITH: Okay. Thank you.

8 Any additional questions for Ms. Bridenstine
9 at this time?

10 MS. COLBERT: Judge, may I?

11 JUDGE LOCK: Yes, Commissioner.

12 MS. COLBERT: I have -- not related to this,
13 but I have a question in regard to what Mr. Collins said and
14 what Ms. Whitson Randolph said in regard to what the pills
15 looked like, right, because I can't remember if both said
16 the pills were round and purple with a 30 on them or one of
17 them said that the pill was square.

18 MS. BRIDENSTINE: I don't recall exactly what
19 Mr. Collins said and I can look that up, but I know he said
20 there was a 30 on them. I believe said they were purple.

21 She said during her deposition that the
22 pills, she thought, were purple, round, with a 30.

23 Mr. Collins said the pills had an M on them
24 with a square around it. So that was where the square came
25 from.

1 MS. COLBERT: Okay. Thank you.

2 SHERIFF KIMBROUGH: Can I ask questions that
3 may be irrelevant, but it just keeps burning me.

4 Is there no way or no records to validate or
5 verify the hole in the heart or any heart condition that he
6 had at birth? Those records don't exist or --

7 MS. SMITH: So we will make an effort to see
8 if we can locate medical records. We have limited
9 information about Mr. Whitson's background, and so we're
10 working on that now to see if we can locate anything related
11 to that and we can just report back later in the hearing as
12 to whether we can find any information.

13 SHERIFF KIMBROUGH: I appreciate that.

14 MS. SMITH: Should we determine that there
15 may be records, we may need a judicial subpoena from Judge
16 Lock.

17 JUDGE LOCK: Sure.

18 MS. SMITH: Okay.

19 JUDGE LOCK: Or you might look again,
20 Sheriff, at the autopsy report to see if there is any
21 reference to it during the examination.

22 SHERIFF KIMBROUGH: Thank you, Judge.

23 MS. SMITH: Any additional questions before
24 Ms. Bridenstine steps down?

25 All right. She'll be back. Don't worry.

1 (Witness stands down, 1:16 p.m.)

2 MS. SMITH: At this time, the Commission will
3 call Stephanie Whitson Randolph.

4 I'm not sure if staff has been able to get
5 her.

6 MR. ZIEGLER: She's on her way.

7 JUDGE LOCK: All right. Ms. Randolph, good
8 afternoon.

9 THE WITNESS: Good afternoon.

10 JUDGE LOCK: I'm going to ask that you either
11 be sworn or affirmed, whichever you prefer, and if you would
12 please stand when you take the oath or affirmation.

13 Thereupon, STEPHANIE WHITSON RANDOLPH, a witness having been
14 called by the Commission, was sworn and testified as follows:

15 JUDGE LOCK: You may recall I met you about
16 two weeks ago.

17 THE WITNESS: Yes, sir, you did.

18 JUDGE LOCK: All right. Thank you for being
19 here.

20 We have heard a summary of your deposition
21 testimony, but a couple of the commissioners did have some
22 questions, just follow-up questions they wanted to ask you.

23 All right?

24 THE WITNESS: Okay.

25 JUDGE LOCK: Do staff attorneys have any

1 questions first?

2 MS. SMITH: We do not.

3 JUDGE LOCK: All right.

4 Commissioner Newton.

5 MS. NEWTON: Thank you, Your Honor.

6 Good afternoon, Ms. Randolph. I have some
7 questions related to your drug use with Mr. Whitson.

8 THE WITNESS: Yes, ma'am.

9 MS. NEWTON: My questions will specifically
10 refer to the amount of OxyContin or any other narcotics that
11 you customarily used.

12 So let's go to just before Mr. Whitson went
13 into jail in 2011.

14 Do you recall that he served a 60-day
15 sentence in 2011?

16 THE WITNESS: I don't remember how long it
17 was but that sounds about right, to the best of my
18 knowledge.

19 MS. NEWTON: So a 60-day sentence, if he got
20 out 4 March, would be January, February -- would've gotten
21 out 4 March -- so sometime in the beginning of January of
22 2011.

23 Do you recall that?

24 THE WITNESS: I do believe it was the 31st
25 that it started.

1 MS. NEWTON: The 31st?

2 THE WITNESS: I believe so.

3 MS. NEWTON: Of December?

4 THE WITNESS: Of January.

5 MS. NEWTON: Of January.

6 THE WITNESS: Of January. I believe so.

7 MS. NEWTON: Before he went into custody,
8 were you using -- by "using," I mean injecting -- OxyContin
9 or any other narcotics into your body along with Mr. Whitson
10 present?

11 THE WITNESS: When we would use -- drug use?

12 MS. NEWTON: Yes.

13 THE WITNESS: We would do it together. I
14 mean, he would inject me. I never done it to myself but --
15 what -- I'm sorry. Do you --

16 MS. NEWTON: That's okay. I'll be clearer.

17 Before he went into jail, do you recall the
18 frequency of shooting up with Mr. Whitson on any given day?
19 Like how many times a day would you shoot up together?

20 THE WITNESS: I mean, every day that I was
21 there. But he -- he would more than I knew about, I mean,
22 because he -- he done more than I did. So I knew he was
23 doing it a lot more than I did.

24 MS. NEWTON: I'm interested in what you
25 observed.

1 THE WITNESS: Do what?

2 MS. NEWTON: I'm interested in what you were
3 present for.

4 THE WITNESS: At least three times more
5 than -- I would go one time, and he would go three times, at
6 least.

7 MS. NEWTON: And by going one time and three
8 times, he would shoot you up once and himself up three
9 times? Or three times in a day?

10 THE WITNESS: In my presence, I always seen
11 him do it three times in a day.

12 MS. NEWTON: Okay.

13 THE WITNESS: Not back -- it wasn't
14 back-to-back-to-back.

15 MS. NEWTON: I understand. Okay.

16 So for three times a day, you -- he would
17 inject you and himself with whatever the narcotic was;
18 correct?

19 THE WITNESS: No, ma'am. I just would have
20 one shot.

21 MS. NEWTON: Okay. In the day?

22 THE WITNESS: Yes, ma'am.

23 MS. NEWTON: Okay. And he would do it three
24 times in a day?

25 THE WITNESS: Yes.

1 MS. NEWTON: So twice, you didn't
2 participate; correct?

3 THE WITNESS: I didn't see him when he done
4 the -- I mean, he was in my presence but not right in front
5 of me, you know.

6 MS. NEWTON: Yes, ma'am.

7 THE WITNESS: I'm sorry.

8 MS. NEWTON: So when he injected you, do you
9 remember how many pills he watered down to inject?

10 THE WITNESS: I guess, depending on what he
11 had -- like, most of the time, it was the morphine 30s
12 because he pretty much got those for free.

13 MS. NEWTON: Okay.

14 THE WITNESS: And he would -- I mean, he
15 would do at least three at a time, but no more than four at
16 a time.

17 MS. NEWTON: Okay. So three, maybe four of
18 30 milligrams -- do you recall the drug he was using?

19 THE WITNESS: It was morphine.

20 MS. NEWTON: Okay. Was it a brand name of
21 any certain kind that you knew of?

22 THE WITNESS: That's all I know about.

23 MS. NEWTON: Like OxyContin? Does that sound
24 familiar?

25 THE WITNESS: Yes, but this was morphine. I

1 think it's two separate things, two separate brands.

2 MS. NEWTON: Okay. And so did you -- so
3 after he injected himself with what sounds like, at least
4 twice a day, 90 milligrams -- is that fair to say?

5 THE WITNESS: Yes, ma'am.

6 MS. NEWTON: Three pills, injected twice, and
7 then he shared with you one time.

8 How many injections would you get the one
9 time you participated?

10 Like, he would inject you, he'd inject
11 himself -- is that all of the three pills or would there be
12 multiple injections?

13 THE WITNESS: There was more left, if that's
14 what you're asking.

15 MS. NEWTON: Right.

16 THE WITNESS: I don't know how to clarify the
17 dosage it would've been because I was new to what he knew.

18 MS. NEWTON: It's fair to say you injected
19 some of it, but he injected himself with more of the three
20 pills in that one time a day?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: Okay. So we've got, by my
23 count, 270 milligrams in the course of the day, but you were
24 injected with some of that, one time a day; correct?

25 THE WITNESS: Yes, ma'am.

1 MS. NEWTON: Okay. Now, then he went to
2 jail.

3 THE WITNESS: Correct.

4 MS. NEWTON: And you understand that was a
5 60-day sentence? If you know?

6 THE WITNESS: That sounds right.

7 MS. NEWTON: Okay. During that time, did you
8 use any -- any narcotics in any way, snorting it or
9 swallowing it or injecting it?

10 THE WITNESS: I had two Percocet
11 15 milligrams and I snorted it, and that's all I had.

12 MS. NEWTON: Okay. Now, when Mr. Whitson
13 left jail on 4 March of 2011, did you see him immediately
14 after he got out of jail?

15 THE WITNESS: No, ma'am.

16 MS. NEWTON: How long after he got out of
17 jail did you actually see him?

18 THE WITNESS: I don't really know when he got
19 released --

20 MS. NEWTON: Okay.

21 THE WITNESS: -- so ...

22 MS. NEWTON: So tell us when you saw him
23 first, if you can recall.

24 THE WITNESS: I seen him on the 5th at like
25 3:15.

1 MS. NEWTON: Is that the afternoon or the
2 morning?

3 THE WITNESS: The afternoon.

4 MS. NEWTON: Okay. And in your observation
5 or your knowledge, your personal knowledge, had he been
6 using any drugs before you saw him?

7 THE WITNESS: I didn't -- he seemed normal.
8 And to me, normal was -- he was always under the influence.
9 But he didn't -- I couldn't tell any difference. He didn't
10 say anything about he'd used anything so I don't know.

11 MS. NEWTON: So you didn't know whether he
12 had drugs on board, but he looked like he normally does when
13 he's high?

14 Is that what you're saying?

15 THE WITNESS: I guess so. He looked normal.

16 MS. NEWTON: Okay. How many -- if you can
17 answer this, how many years had you been using drugs with
18 him or how long had you used?

19 THE WITNESS: I had known Jonathan for a
20 period of three months, and that was my stint.

21 MS. NEWTON: I see. Okay.

22 So when did you -- when did you first use
23 drugs with him after he got out of jail?

24 THE WITNESS: On the 5th at --

25 MS. NEWTON: Okay.

1 THE WITNESS: I mean, I got down to
2 Nathan's -- Angel's about 3:00, a little after 3:00, maybe
3 3:15 or so.

4 MS. NEWTON: And tell the Commission what you
5 observed him putting in the needles to inject.

6 THE WITNESS: He -- it was -- he had morphine
7 30s. They were purple. That's what he had that day.

8 MS. NEWTON: Okay. And how many -- the first
9 time you used together on the 5th, how many pills did he put
10 in the syringe?

11 THE WITNESS: He had -- he put three pills in
12 the spoon and drewed -- mixed it up and drewed it up that
13 way.

14 MS. NEWTON: Okay. All right.
15 So was that the same amount that you were
16 accustomed to using when you were using with him before he
17 went to jail?

18 THE WITNESS: Yes, ma'am.

19 MS. NEWTON: Okay. How many times did you
20 use with him before you understood he had passed away?

21 THE WITNESS: Say that again? I'm sorry.

22 MS. NEWTON: Between the 5th and when you
23 knew he had died, how many times were you present when he
24 was injecting drugs?

25 THE WITNESS: I do believe I left -- I can't

1 remember if it was 10:00 that night, like actually left for
2 home, or 2:00 in the morning. I'm pretty sure it was
3 10:00 o'clock, but I'm uncertain of which one it was.

4 MS. NEWTON: If you had said that you had
5 used and used, what did that indicate to you that you were
6 doing with him that night?

7 THE WITNESS: We just -- we hung out in his
8 granny's bathroom and just talked. And he would just use
9 and use, but I -- I used with him, but -- I mean, I don't
10 know how many times I -- or he had injected me. It
11 wasn't -- I don't know how many times.

12 MS. NEWTON: You don't recall how many times
13 you were injected?

14 THE WITNESS: No. I would say --

15 MS. NEWTON: Do you remember --

16 THE WITNESS: -- probably safely say at least
17 six through the time that we was there in the bathroom.

18 MS. NEWTON: You were injected six times?

19 THE WITNESS: I would say -- I would say so.

20 MS. NEWTON: Thank you.

21 THE WITNESS: I would say so, no more than
22 that.

23 MS. NEWTON: How many times was he injected?
24 Did you see him inject?

25 THE WITNESS: Yes. But I have no idea how

1 many times he had ...

2 MS. NEWTON: So you say he put three pills in
3 a spoon and then mixed it up so that he could pull it up in
4 the syringe; right?

5 THE WITNESS: Yes, ma'am.

6 MS. NEWTON: How many times did you watch him
7 go through that process that you recall that night?

8 THE WITNESS: I don't honestly know. I
9 didn't -- I mean, we were kinda -- he didn't do them
10 back-to-back-to-back. We were talking and just --
11 obviously, I was high.

12 MS. NEWTON: Do you know how many pills you
13 started out with?

14 THE WITNESS: 10. I mean, he had --

15 MS. NEWTON: Do you know how many pills were
16 left when you finished?

17 THE WITNESS: I don't think any, but I don't
18 know.

19 MS. NEWTON: Okay. Thank you, ma'am.

20 THE WITNESS: Yes, ma'am.

21 MS. NEWTON: I have nothing further.

22 SHERIFF KIMBROUGH: I've got two quick
23 questions.

24 JUDGE LOCK: Yes, sir, Sheriff.

25 SHERIFF KIMBROUGH: So you say when you-all

1 used the drugs, he always injected you?

2 THE WITNESS: Yes, sir.

3 SHERIFF KIMBROUGH: Have you ever injected
4 him?

5 THE WITNESS: No, sir.

6 SHERIFF KIMBROUGH: Do you know whether he
7 was left-handed or right-handed?

8 THE WITNESS: I don't -- I want to say maybe
9 right, but I don't -- I don't know for sure.

10 SHERIFF KIMBROUGH: When you left that night,
11 you said 10:00 or 2:00, was he awake, asleep, or what was he
12 doing when you left?

13 THE WITNESS: He was awake, talking.

14 SHERIFF KIMBROUGH: All right. Thank you.

15 JUDGE LOCK: Commissioner Glazier?

16 MR. GLAZIER: Just a follow-up.

17 When you saw him that afternoon and evening
18 and you were injecting, how would you describe the condition
19 of his arm?

20 THE WITNESS: He -- it seemed fine. He --
21 one of his hands, he had been in fight when he was in jail
22 where he hit a guy. Other than that -- his knuckles was
23 swollen, but I don't remember which one it was. But his --
24 everything else was fine, seemed to be.

25 MR. GLAZIER: Did you see either arm other

1 than the knuckles swollen up?

2 THE WITNESS: Not -- not to the best of my
3 knowledge that I remember.

4 MR. GLAZIER: Did you see him where he was
5 either wearing a short-sleeve shirt or no shirt?

6 THE WITNESS: No, sir.

7 MR. GLAZIER: Thank you.

8 JUDGE LOCK: Yes, sir, Commissioner Bass.

9 MR. BASS: There was a comment that -- that
10 night, whether it was 10:00 p.m. or 2:00 a.m., you described
11 him as being awake, but there was a suggestion that he was
12 crying.

13 Do you know what he was crying about?

14 THE WITNESS: He didn't want me to leave. I
15 pretty much had told him I didn't want to hang out anymore,
16 I needed to go home because my mom and dad needed me home --
17 or wanted me home, and he didn't want me to leave.

18 MR. BASS: Thank you.

19 MR. GLAZIER: Sorry, at least one other
20 question.

21 JUDGE LOCK: Sure.

22 MR. GLAZIER: Knowing him for at least the
23 period of time you did, would it have been possible or even
24 likely that he did more drugs one way or another after you
25 left when he was upset and still crying because you left?

1 THE WITNESS: No, I don't think so. He
2 wasn't, like, upset and mad or anything, he just didn't want
3 me -- I'm sorry?

4 MR. GLAZIER: Didn't want you to go?

5 THE WITNESS: Yeah. He wanted me to stay and
6 my parents needed me home.

7 MR. GLAZIER: Thank you.

8 THE WITNESS: Yes.

9 JUDGE LOCK: All right. Anything else from
10 anybody?

11 Yes, ma'am, Ms. Smith.

12 MS. SMITH: I do have one question.

13 Ms. Randolph, we have some medical records
14 for Mr. Whitson from Mission Hospital in Asheville.

15 Are you ever aware of him getting care
16 anywhere other than Mission?

17 THE WITNESS: Not that I know of. I mean,
18 that was the only time I knew that he'd ever been to get
19 care.

20 MS. SMITH: Okay. Thank you.

21 THE WITNESS: You're welcome.

22 JUDGE LOCK: Anybody else?

23 MR. BRITT: Ms. Randolph, let me ask you a
24 question: Were you using prior to your relationship with
25 him?

1 THE WITNESS: "Using"? Like --

2 MR. BRITT: Were you snorting? Injecting?

3 THE WITNESS: Yes. I had been, yes. No, not
4 injecting, no, sir. I never injected. He always done that,
5 but I didn't know that until he done it the first time.

6 MR. BRITT: And what size syringe were you
7 using?

8 THE WITNESS: I don't remember because he
9 handled that stuff. I didn't.

10 MR. BRITT: Was it as big as, say, this
11 highlighter that I'm holding in terms of its width? Was it
12 smaller? Narrow?

13 THE WITNESS: It was smaller, like an
14 insulin -- I don't know if --

15 MR. BRITT: Like an insulin syringe?

16 THE WITNESS: I don't know if they come in
17 different sizes, but it was like that.

18 MR. BRITT: And so when you said he would
19 inject you, you would only get a part of what was in that
20 syringe?

21 THE WITNESS: What do you --

22 MR. BRITT: You said he mixed three pills in
23 a spoon.

24 THE WITNESS: Right.

25 MR. BRITT: He put that mixture into a

1 syringe?

2 THE WITNESS: Yeah. He drew up a full -- a
3 full syringe.

4 MR. BRITT: And so you only got a portion of
5 that syringe or did you get the whole syringe?

6 THE WITNESS: I got the whole syringe.

7 MR. BRITT: Okay. And so every time you used
8 with him, he injected you and he mixed another batch and
9 injected himself?

10 THE WITNESS: No, sir. He didn't mix another
11 batch always.

12 MR. BRITT: And to your knowledge, how long
13 had he been using? How long had he been injecting?

14 THE WITNESS: He said since he got out of
15 high school but I don't know when he graduated or whatnot.

16 MR. BRITT: Did he ever complain about his
17 arm?

18 THE WITNESS: He did before he went to the
19 hospital.

20 MR. BRITT: Okay. What were his complaints?

21 THE WITNESS: That he couldn't -- it was sore
22 and really painful. He couldn't lift to about like this
23 far, is what he had said. But other than that, that's all
24 that I remember.

25 MR. BRITT: And was that the arm he injected

1 himself in?

2 THE WITNESS: He did both arms, sir.

3 MR. BRITT: He did both arms.

4 Did he have marks up and down his arm or just
5 primarily in the bend?

6 THE WITNESS: From what I remember, primarily
7 in the bend. He would use on, like, this side too, like on
8 the bottom occasionally.

9 MR. BRITT: You were referring to your
10 forearm?

11 THE WITNESS: Yes, sir.

12 MR. BRITT: And you said he got out of jail.
13 Do you know how long he had been out of jail
14 when you saw him?

15 THE WITNESS: I don't know how long he had
16 been out.

17 MR. BRITT: And when you first saw him, did I
18 understand you to say that you he looked like he was high?
19 Was that --

20 THE WITNESS: I mean, he didn't really look
21 high. I mean, he just looked normal. And I guess normal
22 was -- I don't know. He was happy and -- I don't know.

23 MR. BRITT: And was that his reaction when he
24 had been shooting up?

25 THE WITNESS: Yeah.

1 MR. BRITT: All right. Thank you. I don't
2 have the other questions.

3 JUDGE LOCK: Commissioner?

4 MS. NEWTON: I would just like to follow up
5 with you on two things.

6 When Mr. Britt asked you about drawing up the
7 three pills in the needle, just to clarify, he would not put
8 all three pills of the substance in one draw, would he? Or
9 would he put all of it in?

10 THE WITNESS: From my understanding, when you
11 mix all of it together, it's like doing -- you would have
12 30 -- like, if it was three pills, if it was 30 milligrams
13 apiece, it was all of same amount, dosage.

14 MS. NEWTON: So he would draw a third of it
15 up, shoot you with it, draw a third of it -- the rest of it
16 and shoot himself up with the rest of it. Is that how he
17 did it?

18 We're trying to figure out if, when he gave
19 you a shot, you got three pills or just a portion of three
20 pills.

21 THE WITNESS: I guess three pills.

22 MS. NEWTON: So you told Mr. Britt that he
23 would not mix up another batch for himself.

24 THE WITNESS: I mean, sometimes he would, but
25 he didn't do it every time. You know what I mean? Another

1 batch, not of three more; sometimes he would just add one.
2 Most of the time, it was no more than two.

3 MS. NEWTON: Okay. So did you understand
4 when he put the needle in your arm and plunged it that you
5 were getting three pills or less than three pills?

6 THE WITNESS: The same amount that he would
7 be getting. It would be three pills, from my understanding.

8 MS. NEWTON: So you got three --

9 THE WITNESS: From my understanding, not a
10 total as six. Does that make sense?

11 MS. NEWTON: Yes. That's what we're trying
12 to figure out.

13 THE WITNESS: Okay.

14 MS. NEWTON: So when he drew up the three
15 pills, when he mixed up the one mixture of three pills --

16 THE WITNESS: Yes, ma'am.

17 MS. NEWTON: -- would he put some of the
18 mixture in a syringe and shoot you up and then use the rest
19 of it for himself, making it only three pills?

20 THE WITNESS: He would draw a little bit up
21 of one syringe and then draw a little bit up on the other
22 one and then -- until the syringe was full on each.

23 Does that answer your question?

24 MS. NEWTON: Yes.

25 THE WITNESS: Okay.

1 MS. NEWTON: Thank you very much.

2 THE WITNESS: You're welcome.

3 MS. NEWTON: Now, the other question I had,
4 you corrected me on the OxyContin, but we understood that he
5 had reported to the hospital that he was IV injecting
6 OxyContin.

7 So checking behind that, morphine is stronger
8 than OxyContin. Is that your understanding of that drug?

9 THE WITNESS: I don't know which one is
10 stronger and I don't know what he would've said.

11 MS. NEWTON: Well, do you know where he got
12 the morphine from?

13 THE WITNESS: Yes, ma'am.

14 MS. NEWTON: Where did he get it from?

15 THE WITNESS: From Johnny Pritchard.

16 MS. NEWTON: Now, had you seen him get
17 morphine from Johnny Pritchard before?

18 THE WITNESS: Yes.

19 MS. NEWTON: And had he gotten morphine from
20 any other source in your presence before?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: And who also provided morphine
23 to Mr. Whitson?

24 THE WITNESS: It was a guy named Tim, but I
25 don't know his last name. And it was morphine 15s.

1 MS. NEWTON: Okay.

2 THE WITNESS: It was either morphine 15s or
3 morphine 5s, I can't remember which one it was. It was one
4 or the other.

5 MS. NEWTON: Do you recall --

6 THE WITNESS: Not very many of them.

7 MS. NEWTON: -- that was before he went to
8 jail or after he went to jail?

9 THE WITNESS: I'm sorry?

10 MS. NEWTON: Did that individual give him the
11 morphine before he went to this 60-day jail sentence or
12 after?

13 THE WITNESS: From what I know, everything
14 was before -- previous, that he had dealings with people.

15 MS. NEWTON: Okay.

16 THE WITNESS: I don't know what he had --

17 MS. NEWTON: So after he got out of jail on
18 4 March 2011, do you know where he got the morphine that you
19 shot up with him until it was gone on the 5th or the morning
20 of the 6th?

21 THE WITNESS: He got that from Johnny
22 Pritchard.

23 MS. NEWTON: Okay. All right. Thank you.

24 THE WITNESS: You're welcome.

25 JUDGE LOCK: All right. Anybody else?

1 Thank you very much for being with us.

2 And, folks, if there is no objection, I'm
3 going to release her from the subpoena at this time.

4 All right. You are released from your
5 subpoena and are free to go if you would like.

6 Thank you again for being here today.

7 THE WITNESS: Thank you.

8 (Witness dismissed, 1:40 p.m.)

9 MS. SMITH: Commissioners, before I recall
10 Ms. Bridenstine, we do have some additional information on
11 Mr. Whitson's medical records.

12 He was born at the Spruce Pine Community
13 Hospital, that's what it's now called -- or, I'm sorry,
14 that's what it was called then. It is now under the Blue
15 Ridge -- it is now Blue Ridge Regional, which is under
16 Mission Health, which is the largest medical care provider
17 in western North Carolina.

18 We are requesting medical records from
19 Mission Health from birth to 10 years of age and from 2005
20 to 2010, which are the five years prior to the last set of
21 records that we got for him.

22 The attorney there is awaiting a judicial
23 subpoena that we will bring to Your Honor here shortly.

24 SHERIFF KIMBROUGH: Thank you.

25 MS. SMITH: All right. The Commission

1 recalls Julie Bridenstine.

2 Thereupon, JULIE BRIDENSTINE, a witness having been recalled by
3 the Commission, testified as follows:

4 MS. SMITH: Commissioners, we are now going
5 to turn our attention to Mr. Pritchard.

6 Handout 42, which you were previously
7 provided, is the criminal record of Mr. Pritchard.

8 BY MS. SMITH: (1:43 p.m.)

9 Q. Ms. Bridenstine, what files did the Commission
10 review related specifically to Mr. Pritchard?

11 A. We obtained and reviewed letters he had in his
12 possession from Robbie Brown. We obtained his DPS records,
13 including his combined records, education records, mental
14 health records, visitation and mail records, disciplinary
15 records, and phone records.

16 We also interviewed Mr. Pritchard on August 5,
17 2021.

18 MS. SMITH: Commissioners, Handout 43 is a
19 summary of Mr. Pritchard's DPS records.

20 Judge Lock, in order to obtain DPS records,
21 the Commission had to obtain a court order, and those
22 records are not normally public record.

23 Further, mental health and education records
24 are governed by additional federal laws. Because this
25 handout in particular pertains to those records, I would

1 request that Your Honor consider sealing Handout 43.

2 JUDGE LOCK: All right. I will order it
3 sealed at the conclusion of the hearing. Yes.

4 MS. SMITH: Thank you, Your Honor.

5 Q. Ms. Bridenstine, did the DPS records include any
6 indication of Mr. Pritchard's participation or
7 nonparticipation in the crime?

8 A. His mental health records reflect a few times
9 where he expressed that he was innocent.

10 Q. Did the Commission listen to every phone call that
11 Mr. Pritchard made while he has been in prison?

12 A. No. We listened to the first 10 calls made from
13 his PIN after the following significant dates: The date of
14 his conviction, the date Robbie Brown died, the date he
15 applied to the Commission, the date he executed his waiver
16 of procedural safeguards and privileges for formal inquiry
17 status at the Commission, and the date we interviewed him in
18 prison.

19 So we listened to 50 calls in all.

20 Q. And were there a significant number of calls
21 provided by DPS?

22 A. Yes. I believe there were over 5,000 calls total.

23 Q. In any of those calls reviewed, did Mr. Pritchard
24 talk about this case?

25 A. Yes. He talked frequently about his case, his

1 beliefs surrounding the case, the various groups and people
2 who have investigated his case, and the Commission's
3 investigation.

4 Q. In any of the calls reviewed, did Mr. Pritchard
5 ever indicate that he was involved in this crime?

6 A. No. In a call he made on July 8, 2014, to his
7 sister, he denied giving pills to Jonathan Whitson after he
8 was released from jail, but he did admit that Jonathan
9 Whitson owed him money from a previous time in which
10 Mr. Pritchard gave Jonathan Whitson pills to sell.

11 Q. Did the Commission learn anything else from
12 Mr. Pritchard's DPS phone calls?

13 A. In a call made to his daughter, Lacey Pritchard,
14 on July 18, 2014, he discussed trying to get an affidavit
15 from Robbie Brown to help him on his next trial. He also
16 asked his daughter to write a check to Robbie Brown for
17 \$1,000 as Ms. Brown was caring for some of his personal
18 items.

19 Q. Did you ever talk to Lacey Pritchard about her
20 conversations with her father after he was convicted?

21 A. Yes. During our interview, I asked if she'd ever
22 had conversation with Mr. Pritchard about giving Robbie
23 Brown money. She said there was no conversation and that
24 Robbie Brown owed her father money because she stole his
25 personal belongings after he was convicted.

1 Ms. Pritchard said that Mr. Pritchard was trying
2 to get an affidavit from Robbie Brown for his lawyer stating
3 that she was lying about what she reported to law
4 enforcement, that she was told what to say, and that she was
5 forced to do it.

6 When asked if Mr. Pritchard offered Robbie Brown
7 money in exchange for an affidavit, Lacey Pritchard said no.

8 Q. What did Mr. Pritchard's probation records reveal?

9 A. They show that Mr. Pritchard was generally
10 compliant with his probation. His only violation came when
11 he was charged with this case, and his probation was revoked
12 after he was convicted.

13 The records also show that a March 4, 2011, drug
14 test was negative for all substances that were screened,
15 which included opiates. We know from Mr. Pritchard's
16 medical records that he had a morphine prescription at this
17 time and that he called the VA Hospital asking for a refill
18 on March 3, 2011, and again on March 10, 2011.

19 During his period of probation, Mr. Pritchard
20 spent several weeks in an in-patient program for PTSD and he
21 also had major back surgery.

22 Q. Did Lacey Pritchard have any information about
23 Mr. Pritchard's probation at the time this case happened?

24 A. She said that she understood that Mr. Pritchard
25 was allowed to take his pain medication, including morphine,

1 during probation and that he was being monitored for it
2 through testing to make sure he was taking an appropriate
3 amount.

4 Q. Was there anything else in Mr. Pritchard's DPS
5 records related to his participating or not participating in
6 this crime?

7 A. No.

8 Q. Ms. Bridenstine, did we receive letters from
9 Mr. Pritchard that talked about this crime?

10 A. Yes, we did. He provided letters to the
11 Commission explaining what he said happened. We also
12 received correspondence from him that was part of the Wake
13 Forest file and one letter that was in Appellate Attorney
14 Brandi Bullock's file.

15 MS. SMITH: Commissioners, you previously
16 received Handout 44, which contains a summary of all
17 correspondence that we have from Mr. Pritchard.

18 You've also had the opportunity to review the
19 transcript of his interview with the Commission's staff
20 prior to this hearing. That digest and transcript are
21 Handout 1.

22 Q. Ms. Bridenstine, just briefly remind commissioners
23 what Mr. Pritchard said during his interview with the
24 Commission about what happened on March 5, 2011, the day he
25 was alleged to have provided morphine to Jonathan Whitson.

1 A. Mr. Pritchard said he spoke to Nathan Angel who
2 told him that Jonathan Whitson was out of jail.
3 Mr. Pritchard told him that Robbie Brown wanted Mr. Whitson
4 to do yard work for her. Nathan Angel said he would have
5 Mr. Whitson call Mr. Pritchard when he got back to Nathan
6 Angel's trailer.

7 Sometime between 2:00 and 2:35 p.m., Mr. Whitson
8 called Mr. Pritchard.

9 Mr. Pritchard drove to Nathan Angel's trailer to
10 ask him to do yard work for Robbie Brown. While he was
11 there, Mr. Whitson asked if he would take him to the store.
12 Mr. Pritchard agreed and they left together to go to Riddles
13 grocery store, where Mr. Pritchard dropped Mr. Whitson off.
14 Mr. Pritchard left to dump some garbage and then returned to
15 pick up Mr. Whitson. They left Riddles and drove to Fred's,
16 another store.

17 Mr. Whitson went inside to pick up tobacco for
18 Mr. Pritchard who was getting it for his roommate, Aaron
19 Collins. Later, Mr. Pritchard asked Mr. Whitson to do yard
20 work for Robbie Brown. Mr. Whitson said that he could not
21 because the abscess on his arm was still hurting and had
22 gotten worse. He said he was going to get it checked out
23 and did not want to do yard work because of the pain.

24 Mr. Whitson appeared to be sick and was sweating.
25 He showed Mr. Pritchard his left arm, which was black and

1 blue, swollen with pus, and looked red going up the arm.

2 Mr. Pritchard dropped Mr. Whitson off at 3:20 p.m.
3 back at Nathan Angel's trailer. He saw Stephanie Whitson
4 Randolph when he dropped him off.

5 He said that Mr. Whitson never asked him for drugs
6 and he never provided any drugs to Mr. Whitson.

7 MS. SMITH: Commissioners, do you have any
8 questions for Ms. Bridenstine about the Commission's
9 interview with Mr. Pritchard or any of the other materials
10 related to Mr. Pritchard before we call him?

11 Okay. I'd ask that Ms. Bridenstine step
12 down.

13 (Witness stands down, 1:51 p.m.)

14 MS. SMITH: Your Honor, at this time, the
15 Commission calls John Pritchard. And it will take just a
16 moment for them to bring him in.

17 JUDGE LOCK: Sure.

18 MS. SMITH: I do have some questions for him
19 before the commissioners ask questions.

20 JUDGE LOCK: And I anticipate there may be a
21 lot of questions for him from the commissioners at some
22 point during the testimony. Just let me know if you need a
23 recess.

24 MS. SMITH: Absolutely.

25 JUDGE LOCK: All right.

1 Good afternoon, Mr. Pritchard.

2 THE WITNESS: Good afternoon.

3 JUDGE LOCK: Before you sit down, sir, I want
4 to ask that you be either sworn or affirmed.

5 Do you have any objection to being sworn?

6 THE WITNESS: No, sir.

7 JUDGE LOCK: I know it may be a little
8 difficult for you but there's a Bible there on the table.
9 Thereupon, JOHN PRITCHARD, a witness having been called by the
10 Commission, was sworn and testified as follows:

11 JUDGE LOCK: All right. Thank you very much,
12 sir. You may be seated.

13 If you've got no objection, I think it's
14 easier for the court reporter if you don't mind just
15 removing your mask so she can better understand you.

16 THE WITNESS: Yes, sir.

17 JUDGE LOCK: All right. Thank you.

18 And if you would, just for the record, tell
19 us your name.

20 THE WITNESS: My name is John Herbert
21 Pritchard II -- III.

22 JUDGE LOCK: And you are the claimant in this
23 case?

24 THE WITNESS: Yes, sir.

25 JUDGE LOCK: All right. Thank you.

1 DIRECT EXAMINATION BY MS. SMITH: (1:53 p.m.)

2 Q. Good afternoon, Mr. Pritchard.

3 A. Good afternoon.

4 Q. My name is Lindsey Guice Smith. I'm the executive
5 director here at the Commission. I've got some questions
6 for you today and then when I'm done asking questions, the
7 commissioners around the table may also have questions for
8 you. Okay?

9 A. Okay.

10 Q. We're just going to ask that you keep your voice
11 up so that the court reporter here can hear you, and answer
12 all questions with a verbal response. Okay?

13 A. Yes, ma'am.

14 Q. I want to turn your attention today to March 5 of
15 2011.

16 A. Yes, ma'am.

17 Q. Can you tell us whether or not you saw Jonathan
18 Whitson on March 5, 2011.

19 A. Yes, ma'am, I did.

20 Q. And can you walk us through that day and how you
21 came to see him.

22 A. Yes, ma'am. I was going to my mailbox to check on
23 my mail and it was about 1:00, 1:30. Coming back -- I'm on
24 Turtle Trot Road. Down on Bunny Hop, which intersects with
25 Turtle Trot, Nathan Angel was riding his four-wheeler and he

1 stopped me and he was asking me if I had any work for him
2 that he could do around my place, and I told him no, that I
3 didn't.

4 And he talked about a few other things, and then
5 he brought up Jonathan Whitson and said that Jonathan was
6 out of jail and staying at his place.

7 And, you know, I asked him, I said, "Well, when
8 you get back to your place, how about asking Jonathan to
9 give me a call," because I wanted to see if he could do some
10 work for me.

11 And anyway, I went back to my house -- Nathan left
12 and I went back to my house and got up the garbage and all
13 of that stuff and put in the back of my truck. And I was
14 getting ready to go to empty it in the public dump that they
15 have up there on -- off of 19/23, East 19/23. And as soon
16 as I got to -- on the end of Bunny Hop and English Branch
17 Road, right to the right of me was Nathan's trailer and his
18 mother's house -- grandmother's house.

19 And anyhow, I went to the trailer. I was getting
20 ready to go into the trailer, but Jonathan was at the road
21 right there, the little driveway, and I said, "Listen, I
22 need to talk to you about doing some work."

23 And he says, "Sure."

24 I said, "But I've got to go dump this garbage and
25 I've got to get some chewing tobacco for Aaron."

1 And he said, "Okay." And he says, "Can I get a
2 ride to the store?"

3 And I said, "Sure. No problem."

4 So he got into the truck. We went to the store --
5 was going to the store, and I was going to go to the left to
6 Fred's because Aaron had give me enough money to buy some
7 chewing tobacco from there, and as soon as I got to the end
8 of Jack's Creek Road and 19/23 there, I was getting ready to
9 take a left, and he said, "No, I want to go to Riddles."

10 I says, "Well, I can't go over to Riddles." I
11 says, "You know, I'm not supposed to go."

12 So I dropped him off and went and dumped the
13 garbage, which is about it not even 30 seconds -- 30,
14 40 seconds down the road from where the store is at. And I
15 got finished emptying the garbage and came back. And as I
16 was coming back, he was on the side of the road. I picked
17 him up and we went to Fred's, and he went into Fred's for me
18 and got the chewing tobacco.

19 He come back out. He got in the truck. We was
20 going back on the way home and everything, to the trailer,
21 and I talked to him about doing some yard work for Robbie
22 Brown. I said, "She has nobody to do it and I can't go up
23 there. Would you do it?"

24 And he said, "Sure." He said, "But I got to wait
25 till my -- I'm feeling better."

1 And I said, "What do you mean?"

2 He said, "My arm is still messed up."

3 And then I said, "What?" And he showed it to me.

4 It was swollen and everything. And he was sweating. And he
5 had like -- I want to say he looked like he had a fever.

6 And, anyhow, he told me -- he said that he
7 wouldn't be able to do it until after his arm healed up.

8 And I said, "Well, okay. Yeah, fine. That's great," I told
9 him.

10 So I dropped him back off. This time, I took him
11 up to the trailer and dropped him off.

12 As soon as I dropped him off, Nate Angel come back
13 out there and asked me again, "Can I do some work for you?"

14 I said, "No, I don't have anything that you can
15 do." And the reason why is because Nate was known to steal
16 stuff. You know, he took my handicap sticker -- or, not
17 sticker -- tag and some other things. So I just didn't
18 really trust him to mess with him.

19 So dropped Jonathan off, went back to my trailer,
20 and that was it.

21 Q. Is that the last time that you saw Mr. Whitson?

22 A. Yes, ma'am. Mm-hmm.

23 Q. And so you said a minute ago, and I think you
24 cleared this up, but you said you didn't have any work for
25 Nathan but you had some work that Jonathan could do at

1 Robbie's; is that correct?

2 A. Yes.

3 Q. And I think what you just said, that the reason
4 you didn't have any work for Nathan is because he was known
5 to steal?

6 A. Yes, ma'am.

7 Q. Is that the only reason you didn't have work for
8 him?

9 A. Well, not only that, but just -- I just -- I
10 didn't particularly -- didn't like him that much, to tell
11 you the truth.

12 Q. Okay.

13 A. And he told me -- well, Robbie told me that he had
14 stolen some stuff from her too.

15 Q. And you didn't have those same concerns about
16 Jonathan Whitson?

17 A. No, ma'am. Because he had been doing some work
18 before for Robbie, and that's why I mostly asked him because
19 I knew that he did some work for her.

20 Q. Was it pretty common for him to do work for
21 Robbie?

22 A. Yes, ma'am.

23 Q. Did she pay him to do the work?

24 A. I believe she did, yes, ma'am.

25 Q. Do you know how she paid him?

1 A. No. I don't know that.

2 Q. Do you know if she paid him with drugs?

3 A. She might have.

4 Q. Do you have any personal knowledge of that?

5 A. No, not really. See, I never did watch her when
6 she interacted with anybody, you know. I really didn't -- I
7 didn't pay any attention.

8 Q. And on March 5, 2011, were you and Robbie living
9 together?

10 A. No, ma'am.

11 Q. Had you ever lived with her?

12 A. Yes, ma'am. I lived with her, I would say, about
13 three months before, until I went to court. And then the
14 Court made me have to move out. And I moved into her aunt's
15 trailer park down there next to -- off of Jack's Creek Road.
16 The road I was living on was Turtle Trot.

17 Q. All right.

18 The other thing that you testified to a moment ago
19 is that when you got to the intersection, you were going to
20 turn left and head to Fred's, but Mr. Whitson wanted you to
21 turn right to head to Riddles?

22 A. Yes, ma'am.

23 Q. And you said you weren't supposed to go to
24 Riddles.

25 What did you mean by that?

1 A. Well, see, because I was on probation and I knew
2 that that place was sort of a drug hangout and things like
3 that, and I didn't want my probation officer seeing me
4 parked in that parking lot.

5 Q. Do you remember what Mr. Whitson was wearing that
6 day?

7 A. Yes, ma'am. He had on a tan coat/jacket and it
8 was a flannel shirt underneath it. And jeans.

9 Q. Do you know if the flannel shirt was long sleeves
10 or short sleeves?

11 A. It was long sleeves.

12 Q. And so -- go ahead.

13 A. Because when he went to show it to me, he took his
14 arm out of his jacket and he pulled his sleeve up, and as
15 soon as he pulled his sleeve up, I could see it was swollen.

16 Q. Okay.

17 On March 5, 2011, you had an active prescription
18 for morphine 30-milligram tablets; is that correct?

19 A. Yes, ma'am, I did.

20 Q. Did you take your morphine as prescribed?

21 A. Yes, ma'am, as is prescribed.

22 Q. And was that one pill every eight hours?

23 A. Yes.

24 Q. Three times a day?

25 A. Three times a day.

1 Q. Did you ever miss a dose?

2 A. No, ma'am. Because my back was really hurting
3 bad. I'd just gotten in an accident not too long before
4 that, before they started prescribing me that, and my back
5 was really hurting bad. I mean -- so I took it as -- as
6 needed.

7 Q. Do you have any idea how many pills you had
8 remaining in your prescription on March 5, 2011?

9 A. No, ma'am. But my pills were not even with me on
10 March 5th.

11 Q. Where were they?

12 A. They were in the trailer, locked up in my room.

13 Q. In your trailer?

14 A. Yes, ma'am.

15 Q. Was that common practice, for you to keep them
16 locked up in your room?

17 A. Yes, ma'am.

18 Q. Why did you keep them locked up?

19 A. Because of Aaron was staying with me at the time,
20 and he was known to break in and take things.

21 Q. And what is Aaron's relationship to Robbie Brown?

22 A. That's her son.

23 Q. That's her son?

24 A. Yes, ma'am.

25 Q. And so he was living with you in your trailer at

1 the time?

2 A. Yes, ma'am.

3 Q. Robbie was living somewhere separately?

4 A. Yes. She was staying in her house off of Charlie
5 Brown Road.

6 Q. Charlie Brown Road?

7 A. Yes, ma'am.

8 Q. What was your practice with respect to requesting
9 a refill for your prescription?

10 In other words, at what point would you ask for a
11 refill on your morphine prescription?

12 A. The date that it was supposed to be active -- I
13 mean, refilled is -- I would call about maybe four days
14 ahead of time and they would have to check with the doctor,
15 and then the doctor would call back and they would let me
16 know if they obtained it.

17 Q. And so when you say "four days ahead of time," you
18 mean about four days prior to running out of your pills --

19 A. Yes, ma'am.

20 Q. -- you would give them a call --

21 A. Yea, ma'am.

22 Q. -- to see if they would refill it?

23 A. Yes, ma'am.

24 Q. Did you have active refills remaining or did they
25 have to prescribe -- represcribe that every time?

1 A. Every time that I asked, yes, ma'am.

2 Q. And did you have -- your prescription, was it a
3 30-day supply?

4 A. Yes, ma'am.

5 Q. And so if that was three times a day, if my math
6 is correct, that would be 90 pills.

7 Is that accurate?

8 A. Yes, ma'am.

9 Q. Okay.

10 And so when you call four days ahead and check
11 with a doctor, if they represcribed that, did you then have
12 to go pick up that prescription?

13 A. Yes, ma'am.

14 Q. And where did you pick that up at?

15 A. Sometimes I would have to pick it up but right
16 there at the end, before my surgery and everything, they
17 would mail it to me.

18 Q. Okay.

19 They would mail it to you?

20 A. Yes, ma'am. And then I would --

21 Q. Just through the regular mail?

22 A. Yes, ma'am.

23 Q. Or did they have like a FedEx or something like
24 that that brought it to you?

25 A. No, ma'am. It was regular mail. And I would have

1 to sign for it when he brought it and give it to me.

2 Q. Did you tell Aaron Collins that you gave Jonathan
3 Whitson 10 morphine pills on March 5, 2011, and that you
4 were worried about getting in trouble for that?

5 A. No, I did not.

6 Q. Do you know any reason why Aaron Collins would say
7 that you had given -- that you had told him that you had
8 given Jonathan Whitson 10 morphine pills and were worried
9 about getting in trouble?

10 A. No, ma'am. He -- the reason why he was saying
11 that is because when I heard from Nathan later on that
12 day -- and it was on a Sunday -- Nathan had told me that
13 Stephanie Whitson was telling the police that I had given
14 her 10 pills -- or given Jonathan 10 pills. So that was
15 where conversation come up.

16 Q. And so you had heard that Stephanie Whitson was
17 telling the police that you had given Mr. Whitson 10 pills?

18 A. 10 pills. And also that I went to her -- to his
19 mother's house. And so that's why mostly we talked, because
20 I went and had to call Robbie and tell Robbie that, you
21 know, "Hey, the police might be coming around to talk to you
22 because she is saying this."

23 Q. So you had just heard that that's what she was
24 saying and you were worried that they were going to believe
25 that?

1 A. Well, I didn't worry about it. I just figured,
2 you know, better let her know because if they showed up and
3 everything, you know, I wouldn't want her to be surprised by
4 it.

5 Q. Okay.

6 Did you tell Robbie Brown that you gave Jonathan
7 Whitson eight morphine pills on March 5, 2011?

8 A. No.

9 Q. Do you have any reason why she would be saying
10 that?

11 A. Because I told her that I had gave him 10 pills.

12 Q. You told her that you gave him 10 pills?

13 A. No, ma'am. I told her that, you know, they said
14 that I had gave him 10 pills.

15 Q. Okay.

16 So you told Robbie Brown that someone had said
17 that you had given Jonathan Whitson 10 pills?

18 A. I told her Nathan told me.

19 Q. Nathan told you?

20 A. Uh-huh.

21 Q. And when you say "Nathan," you're referring to
22 Nathan Angel --

23 A. Angel, yes, ma'am.

24 Q. -- who was the stepfather of Jonathan Whitson;
25 correct?

1 A. Yes, ma'am. Mm-hmm.

2 Q. Okay.

3 After you were convicted, did you try to get
4 Robbie Brown to provide an affidavit taking back what she
5 had told police in the case?

6 A. No. I didn't even know it until they gave it to
7 me in the discovery when I was in jail.

8 Q. Explain what you mean by that.

9 A. I was in jail, and they -- my attorney had gotten
10 ahold of the discovery that they were going to use in the
11 trial. And in the discovery, it had her statement, but it
12 was not signed. And so that's when I asked her, I told
13 her -- when she called that weekend or I called her that
14 weekend, she told me, she said that she didn't sign that,
15 she didn't sign it or date it.

16 Q. Do you recall ever asking your daughter to provide
17 a thousand dollars to Robbie Brown?

18 A. I think what it was is that Robbie was going to
19 need an attorney for her conviction that she had -- or her
20 arrest that she was getting for. And I told my daughter
21 Lacey to go ahead and give her a thousand dollars.

22 Q. And was that an arrest related to this crime or
23 some other crime?

24 A. No. It was related to some other crime.

25 Q. Was it also related to drugs?

1 A. Yes, ma'am.

2 Q. Okay.

3 And was that crime after you were already in jail?

4 A. No, ma'am. It was before.

5 Q. Do you recall saying in a phone call from prison
6 to your daughter, Lacey, in reference to providing that
7 thousand dollars to Robbie Brown, quote, "I know it's
8 something I shouldn't be doing but it's the only way I can
9 get her to sign that affidavit and probably get her to help
10 me out on this next trial"?

11 A. No.

12 Q. You don't recall saying that?

13 A. No, ma'am. I don't.

14 Q. If there's a recorded phone call in which you say
15 that, do you know why that would be there if you didn't say
16 it?

17 A. Not unless I, you know, was more or less saying
18 that I had this affidavit saying that she, you know, accused
19 me of giving Jonathan 10 pills.

20 Q. Okay.

21 A. It might've been that, I mean, but I don't
22 remember it right offhand.

23 Q. Is it fair to say if there is a recording where
24 you said that, that you probably did say it?

25 A. Yes, ma'am.

1 Q. In 2014, did you tell your sister on the phone
2 from prison that Mr. Whitson owed you money from a time when
3 you had given him pills to sell sometime before he went to
4 jail in 2011?

5 A. No, I don't believe so.

6 Q. Did Jonathan Whitson owe you money because he was
7 supposed to sell pills?

8 A. He did owe me some money but it was from whenever
9 he did work around the -- Robbie's house and everything and
10 I would give him the money. She would tell me to pay him,
11 and I would pay him. And the -- you know, it got to the
12 point where he asked me for some money.

13 Q. So he owed you money?

14 A. Yes, ma'am.

15 Q. Did you ever give him pills to sell?

16 A. No, ma'am.

17 Q. Did he ever owe you money from any pills that you
18 had given him?

19 A. No, ma'am.

20 Q. So if there is a recorded phone call where you say
21 that you -- that he owed you money from a time when you had
22 given him pills before he went to jail, do you know why
23 that -- you would have said that in a phone call?

24 A. I'm not sure. I don't know why I would've said --
25 I mean, because I never did that.

1 Q. Okay.

2 If there's a recording of a phone call where you
3 say that, is it accurate or fair to say that you made that
4 statement?

5 A. I might have. I may have.

6 Q. But you don't know why you would have said that?

7 A. No, ma'am.

8 Q. Did you give Jonathan Whitson pills in your truck
9 in front of Stephanie Whitson after you picked her up from
10 Little Tokyo restaurant sometime prior to Mr. Whitson going
11 to jail in 2011?

12 A. No, ma'am.

13 Q. Do you know why Ms. Whitson would have said that
14 you had done that?

15 A. I'm not sure. Ms. Whitson had a thing that she
16 was really upset with me because the reason I told Jonathan
17 I could not sell him any pills is because she was the
18 daughter of a bondsman.

19 Q. Would it -- if she wasn't the daughter of a
20 bondsman, which you have sold him pills?

21 A. No.

22 Q. Did you ever sell any pills to anyone?

23 A. No, ma'am.

24 Q. Did you ever give any pills to anyone?

25 A. Robbie Brown.

1 Q. When was that?

2 A. That was right around December.

3 Q. Of 2010?

4 A. Yes, ma'am.

5 Q. How many pills did you give her?

6 A. I think I gave her five pills one time.

7 Q. Five?

8 A. Yes.

9 Q. Was that the only time?

10 A. Yes, ma'am. But I believe that she'd been going
11 into the safe and getting pills out that she didn't tell me
12 about.

13 Q. So I want to back up just a little bit.

14 The five pills that you gave her, were those
15 morphine 30-milligram pills?

16 A. Yes. Mm-hmm.

17 Q. And when you say she was going into the safe and
18 getting pills out, was this when you were still living with
19 her?

20 A. Yes, ma'am.

21 Q. Did you keep your pills in a safe then?

22 A. Yes, ma'am.

23 Q. Was that a safe that she had access to?

24 A. Yes, ma'am.

25 Q. Why do you believe that she was going into the

1 safe to get pills?

2 A. Because whenever I would get my pills out to take
3 the medication, it looked like it was getting smaller and
4 smaller.

5 Q. So did you ever run out of pills before your
6 prescription was over?

7 A. Yes, ma'am.

8 Q. Did that happen more than one month?

9 A. I'm not sure. I'm not -- I don't think so. I'm
10 hoping not.

11 Q. Do you think that this was around the December
12 2010 time frame when you were giving the pills or was this
13 some other time period?

14 A. No. This is 2010, December.

15 Q. Okay.

16 Did you provide Jonathan Whitson any drugs on
17 March 5, 2011?

18 A. No, ma'am, I did not.

19 Q. Did you give Jonathan Whitson morphine on March 5,
20 2011?

21 A. No, ma'am.

22 Q. Did you provide to Nathan Angel any drugs on
23 March 5, 2011?

24 A. No, ma'am.

25 Q. Did you provide to Stephanie Whitson any drugs on

1 March 5, 2011?

2 A. No, ma'am.

3 Q. Where you -- did you provide anyone else morphine
4 on March 5, 2011?

5 A. No, ma'am.

6 Q. Not Robbie Brown?

7 A. Uh-uh.

8 Q. Not Aaron Collins?

9 A. No. Not Aaron Collins.

10 Now, he -- like I said, he was known to break in,
11 and he had this little screwdriver he could take and unscrew
12 the screws and the lock that I had up there. So I didn't
13 catch on to that until probably about -- I would say about a
14 month after he moved in.

15 Q. And when did he move in?

16 A. It was right around in February.

17 Q. Of 2011?

18 A. 2011, yes, ma'am.

19 Q. Did Mr. Whitson ever ask you for morphine?

20 A. No, ma'am.

21 Q. Did he ever ask you for any kind of drugs?

22 A. Well, he asked me if I would sell him some, and I
23 said no. I said, "I would not sell to you because of the
24 fact that your girlfriend, Stephanie Whitson, is a
25 bondsman's daughter."

1 Q. And was that specifically morphine that he was
2 asking for?

3 A. I believe so, yes, ma'am.

4 Q. Were you involved in any way in the distribution
5 of morphine to Jonathan Whitson before he died on March 6,
6 2011?

7 A. No, ma'am.

8 MS. SMITH: All right. Commissioners, do you
9 have questions for Mr. Pritchard?

10 JUDGE LOCK: Any questions? Commissioner
11 Glazier. Sheriff?

12 SHERIFF KIMBROUGH: I just have one.

13 JUDGE LOCK: Yes, sir, Sheriff.

14 SHERIFF KIMBROUGH: I know you've answered
15 the question and I know it may be redundant, but you said
16 you'd never sold or given Mr. Whitson any type of narcotics?

17 THE WITNESS: Yes.

18 SHERIFF KIMBROUGH: So you're saying that if
19 by chance there is a recording of you saying that he owed
20 you money for pills that you gave him to sell, you don't
21 know why you would have said it?

22 THE WITNESS: No, ma'am -- no, sir.

23 SHERIFF KIMBROUGH: All right.

24 MR. GLAZIER: My question is going to follow
25 that, but I have a few other questions first.

1 How long had you been on a prescription for
2 morphine?

3 THE WITNESS: About a year and a half.

4 MR. GLAZIER: About a year and a half.

5 And did you always ask, every 90 days, for a
6 refill?

7 THE WITNESS: No. Every 30 days.

8 MR. GLAZIER: I'm sorry. Every 30 days.

9 Did you have to visit the doctor to get the
10 refill each time?

11 THE WITNESS: Sometimes I would. Right there
12 in the beginning, I did. But as I kept seeing the doctor
13 and everything ...

14 MR. GLAZIER: So there were times you got a
15 refill without seeing the doctor and the doctor would just
16 prescribe a refill?

17 THE WITNESS: Yes, sir.

18 MR. GLAZIER: Okay. Did you ever seek,
19 during that year and a half, to get a refill faster than
20 30 days?

21 THE WITNESS: I'm not sure. I may have but
22 I'm not sure.

23 MR. GLAZIER: So I'm going to be very direct
24 with you, Mr. Pritchard.

25 THE WITNESS: Yes, sir.

1 MR. GLAZIER: I want to believe what you're
2 saying.

3 THE WITNESS: Yes, sir.

4 MR. GLAZIER: But I believe you lied to this
5 Commission in two questions, and I want to give you a chance
6 to explain why.

7 There is a conversation that we know of that
8 the Sheriff has referred to which has you saying that you
9 had given pills previously to the victim; correct?

10 I'm just double-checking I'm correct in that
11 conversation.

12 You said a minute ago that you never said
13 that. It's hard for me to understand why we would have a
14 recording of your voice saying that.

15 So I'm going to give you a chance right now
16 to tell me why you lied to the Commission -- and there may
17 be a legitimate reason -- but I want to know why you lied to
18 the Commission since you clearly said that.

19 THE WITNESS: Well, it's -- for one, it's
20 been over 10 years, you know, and I don't remember back that
21 far, you know, most of it. But I might have said it,
22 explaining that -- why Robbie had wrote the statement or
23 something like that, but I'm not sure.

24 MR. GLAZIER: Mr. Pritchard, I'm going to ask
25 you as well to think again, other than the one time you say

1 you gave Robbie five pills, did you ever give or sell any of
2 your morphine to anyone else during that year and a half?

3 THE WITNESS: No, sir.

4 MR. GLAZIER: I may have other questions
5 later. Thank you.

6 THE WITNESS: Okay.

7 JUDGE LOCK: Mr. Boswell.

8 MR. BOSWELL: Why would you be arranging for
9 people to work for Robbie?

10 THE WITNESS: Why? Because she had this big
11 yard and everything that she couldn't really handle because
12 of her condition.

13 MR. BOSWELL: What was her condition?

14 THE WITNESS: She was -- she had to use a
15 cane. She had back problems, had back surgeries and things.

16 MR. BOSWELL: But why would you be involved
17 in arranging that for her, I guess is my question?

18 THE WITNESS: Because at that time, we were
19 going together. I mean, I just moved out of her house, I
20 guess; so it may be to help her or something.

21 MR. BOSWELL: Earlier, you said could not go
22 to Robbie Brown's house.

23 Why could you not go to Robbie Brown's house?

24 THE WITNESS: Because I was on probation.

25 MR. BOSWELL: And that was a part of your

1 probation?

2 THE WITNESS: Yes. Yes. Okay. All right.

3 Yes, sir. Also that's probably why I said
4 that about the pills.

5 MR. BOSWELL: All right. Well, do me a favor
6 and explain -- I don't understand. So if you'll just sort
7 of explain to me why you couldn't go to Robbie Brown's
8 house.

9 THE WITNESS: Because in January 26, I went
10 to court in Burnsville, and I was convicted for selling two
11 morphine and four oxycodones to Mrs. -- I'm trying to think
12 of her name -- it was a friend of Robbie's. I can't think
13 of her name right now.

14 MR. BOSWELL: And so you were put on
15 probation?

16 THE WITNESS: For that, yes, sir.

17 MR. BOSWELL: And what were the terms of that
18 probation?

19 THE WITNESS: The terms was that I could not
20 go and be around Robbie because she had a conviction of
21 felonies and was a convicted felon for the past 10 years.

22 SHERIFF KIMBROUGH: So can I ask a question?
23 I'm just trying to get an understanding or wrap my mind
24 around ...

25 So you said that you sold drugs in the past?

1 THE WITNESS: I didn't -- what I did is I
2 took drugs to this girl, and I got money from her, but that
3 was all set up by Robbie Brown. And she wasn't able at the
4 time so I took them to her.

5 SHERIFF KIMBROUGH: So you sold drugs in the
6 past.

7 But you said that you wouldn't sell to this
8 particular guy or this person because they were related to a
9 bail bondsman?

10 THE WITNESS: Yes, sir.

11 SHERIFF KIMBROUGH: So the reason you
12 wouldn't sell was because they were a bail bondsman or you
13 wouldn't sell drugs?

14 THE WITNESS: I don't sell drugs.

15 MR. GLAZIER: One follow-up to that line of
16 questions.

17 I asked you whether you had ever sold or
18 given drugs to anyone other than the five pills to Robbie.

19 THE WITNESS: Yes.

20 MR. GLAZIER: You said no.

21 THE WITNESS: Yeah.

22 MR. GLAZIER: But you just said you were
23 convicted and on probation for giving drugs to someone else.

24 THE WITNESS: Yes, and I just remembered
25 that. I honestly, truly did.

1 MR. GLAZIER: Do you remember anybody else,
2 before we finish, that you gave or sold drugs to in the last
3 year and a half before the trial and conviction of yourself?

4 THE WITNESS: No, sir.

5 MR. GLAZIER: Are you certain of that?

6 THE WITNESS: Yes, sir.

7 MR. GLAZIER: Thank you.

8 JUDGE LOCK: Commissioner Britt.

9 MR. BRITT: Mr. Pritchard, just so I
10 understand, on January 26, 2010, you were convicted of
11 maintaining a dwelling, and selling or delivering Schedule
12 II controlled substance.

13 THE WITNESS: Uh-huh.

14 MR. BRITT: Is that correct?

15 THE WITNESS: Yes, sir.

16 MR. BRITT: You were placed on probation.

17 THE WITNESS: Yes, sir.

18 MR. BRITT: As a condition of your probation,
19 were you prohibited from associating with other people that
20 had been convicted of selling drugs or that you knew sold
21 drugs?

22 THE WITNESS: I believe it was, but I thought
23 the stipulation said that it had to be 10 years, within
24 10 years.

25 MR. BRITT: So had Robbie been convicted of

1 selling drugs?

2 THE WITNESS: Yes, sir. Prior to that, yes,
3 sir.

4 MR. BRITT: From the same location?

5 THE WITNESS: Yes, sir.

6 MR. BRITT: And when you moved into the new
7 trailer, you said you had a lockbox.

8 THE WITNESS: No. I didn't have the lockbox
9 with me. I locked it in my room.

10 MR. BRITT: You locked it in your room.

11 So it was -- while your room was locked, it
12 was out, loose on the shelf or in the bathroom?

13 THE WITNESS: No. I had it in the -- in the
14 register, the air register.

15 MR. BRITT: Okay. But you said someone had
16 access to that room?

17 THE WITNESS: Yes.

18 MR. BRITT: Who was that?

19 THE WITNESS: That was Aaron Collins.

20 MR. BRITT: Why did Aaron have access to that
21 room?

22 THE WITNESS: He had this little screwdriver,
23 it's bent on one end, Phillips head on one end and a flat
24 nose on the other end, right, and it was bent and you could
25 get the screws out of the lock.

1 MR. BRITT: So he could pick your lock?

2 THE WITNESS: Well, it wasn't picking the
3 lock. It's --

4 MR. BRITT: Or taking it apart.

5 THE WITNESS: Taking apart, yes, sir.

6 MR. BRITT: And had you ever suspected Aaron
7 of taking your medicine?

8 THE WITNESS: Yes.

9 MR. BRITT: Had you ever confronted him about
10 taking your medicine?

11 THE WITNESS: Yes, sir.

12 MR. BRITT: Did he admit that he had taken
13 it?

14 THE WITNESS: He said no.

15 MR. BRITT: And your relationship with
16 Jonathan, how long had it lasted?

17 THE WITNESS: I met Jonathan in the summer of
18 2010, the latter part of the summer, and February was the
19 last time I seen him -- I mean, January was the last time I
20 seen him until March 5.

21 MR. BRITT: Were you aware that he had gone
22 to jail in Madison County?

23 THE WITNESS: For driving without a license,
24 yes, sir.

25 MR. BRITT: And were you aware of when he got

1 out of jail?

2 THE WITNESS: The only way I was aware is
3 that Nathan Angel told me that he was out.

4 MR. BRITT: As I understand it, you were a
5 drug counselor.

6 THE WITNESS: Yes, sir. Had been.

7 MR. BRITT: For how long?

8 THE WITNESS: Let's see. I would say
9 14 years.

10 MR. BRITT: When did that occupation end?

11 THE WITNESS: Whenever I was working with
12 Alpha-Omega and the place closed down.

13 MR. BRITT: Who is Alpha-Omega?

14 THE WITNESS: It's a mental health and
15 substance abuse program.

16 MR. BRITT: So you were working with people
17 with mental addictions?

18 THE WITNESS: Yes.

19 MR. BRITT: And let me follow up on something
20 that you were asked.

21 You admit that you gave Robbie pills or sold
22 her pills?

23 THE WITNESS: Gave her.

24 MR. BRITT: Gave her pills.

25 THE WITNESS: Yeah.

1 MR. BRITT: But as a drug counselor or former
2 drug counselor, why would you have done that?

3 THE WITNESS: Well, at the time, she was out
4 of her medication and she was hurting and I was living with
5 her and I wasn't a counselor at that time and had not
6 planned to go back to being a counselor, and I just give
7 them to her.

8 I mean, I'm sorry, but I had feelings for her
9 and I didn't want her to hurt.

10 MR. BRITT: So you're telling this Commission
11 you never gave or sold any pills to Jonathan?

12 THE WITNESS: Never.

13 MR. BRITT: And you understand there's a
14 distinction between selling and giving?

15 THE WITNESS: Yes, sir.

16 MR. BRITT: I don't have any other questions.

17 JUDGE LOCK: Commissioner Bass.

18 MR. BASS: Just following up on the same
19 thing, there was something earlier that you said that --
20 you've answered questions about your selling and giving
21 pills or not doing so, but it sounded like there was at
22 least one occasion when Robbie sold some pills to someone,
23 you delivered them, and then took the money back to her?

24 THE WITNESS: Yes, sir.

25 MR. BASS: Is that something that happened on

1 multiple occasions?

2 THE WITNESS: No, sir. Just that one time.

3 JUDGE LOCK: Commissioner Welch?

4 MS. WELCH: Thank you.

5 Sir, you said something that I don't know
6 that I understand, which you said that the victim in this
7 case owed you money for work that he had done for Robbie.

8 THE WITNESS: Yes.

9 MS. WELCH: Could you explain that to me?

10 THE WITNESS: Okay. She would get to the
11 point where she wouldn't want to give him any more drugs and
12 he would come and ask me for money.

13 MS. WELCH: What kind of work was he doing
14 for her?

15 THE WITNESS: He was doing yard work, you
16 know, cut the grass and weed eat and things of that sort,
17 cutting trees and so forth.

18 MS. WELCH: So how is it that he owed you
19 money for work that he was doing?

20 THE WITNESS: Because it was for Robbie, not
21 me.

22 MS. WELCH: I'm still having a hard time
23 understanding.

24 THE WITNESS: Okay. Robbie is the one that
25 asked him to do the work. And when he got finished doing

1 the work, she didn't have anything to give him -- I don't
2 know whether she was giving him pills, I don't know whether
3 she was giving him money -- but she didn't have anything so
4 he came and borrowed some money from me.

5 MS. WELCH: He borrowed money from you for
6 work that he actually did?

7 THE WITNESS: Yeah.

8 MS. WELCH: And you say that that's how he
9 owed you money?

10 THE WITNESS: Yes, ma'am.

11 MS. WELCH: For pills?

12 THE WITNESS: Not for pills.

13 MS. WELCH: And do you remember having -- as
14 part of your probation having to get drug screens by your
15 probation officer?

16 THE WITNESS: Yes, ma'am.

17 MS. WELCH: And during this -- early March of
18 2011, were you taking these opiates that you were prescribed
19 three times a day for your back?

20 THE WITNESS: Yes, ma'am.

21 MS. WELCH: Then why was the drug screen on
22 March 4 clean for no opiates?

23 THE WITNESS: I'm not sure why.

24 MS. WELCH: And did I understand you to say
25 that you couldn't sell pills to the victim in this case

1 because he was seeing a young lady whose father was a
2 bondsman?

3 THE WITNESS: Yes, ma'am.

4 MS. WELCH: And would you agree that Robbie
5 had been convicted before of selling drugs?

6 THE WITNESS: Yes, ma'am.

7 MS. WELCH: So she was a drug dealer?

8 THE WITNESS: She was, yes.

9 MS. WELCH: And you were in a relationship
10 with her?

11 THE WITNESS: Yes. But I didn't know it at
12 the beginning. I met her at an NA meeting, okay, and got to
13 know each other kind of well, and I was getting ready to
14 move from my place where I had been staying with
15 Ms. Gramblin, and Robbie offered me to move in with her.

16 MS. WELCH: So when did you figure out that
17 she was a drug dealer?

18 THE WITNESS: Well, one day when she borrowed
19 my truck and she didn't come back for like four hours, and
20 when she had been doing -- she had been doing drugs.

21 MS. WELCH: She was doing drugs or she was
22 selling drugs?

23 THE WITNESS: She was doing them. Crack
24 cocaine.

25 MS. WELCH: When did you figure out that she

1 was selling drugs?

2 THE WITNESS: When she was selling drugs -- I
3 mean, I kind of had an idea. She had this girl that came
4 over, Jackie Black -- no, Jackie -- yeah, it may have been
5 Jackie Black. She was a friend of Robbie's, and Robbie
6 would tell me that she had just sold some drugs to her and
7 had some money.

8 MS. WELCH: Is that the same woman that you
9 sold drugs to?

10 THE WITNESS: No.

11 MS. WELCH: Or gave drugs to?

12 THE WITNESS: No, ma'am.

13 MS. WELCH: Who was it that you gave drugs
14 to?

15 THE WITNESS: It was a Waldrop -- it was an
16 informant set up by Burnsville. Trying to think of her
17 first name. I can't think of it right now.

18 MS. WELCH: Is that the only time you're
19 saying that you actually delivered drugs to somebody?

20 THE WITNESS: Yes, ma'am.

21 MS. WELCH: Was that one time?

22 THE WITNESS: One time.

23 MS. WELCH: And an informant got them.

24 THE WITNESS: Yes, ma'am.

25 MS. WELCH: That's bad luck.

1 THE WITNESS: No, it's not bad luck. That's
2 just the way things go with me.

3 MS. WELCH: And you've written a lot of
4 letters to lawyers and commissions throughout the years.

5 THE WITNESS: Yes, ma'am.

6 MS. WELCH: And if I'm understanding, you
7 allege that the sheriff in Yancey County, Sheriff Banks,
8 conspired with the ADA and conspired with your trial
9 attorney.

10 Am I right?

11 THE WITNESS: I believe so, yes, ma'am.

12 MS. WELCH: And that the Clerk was involved
13 in this too; correct?

14 THE WITNESS: Yes. Mm-hmm.

15 And I'll tell you -- if you ask me, I'll tell
16 you why.

17 MS. WELCH: Okay.

18 THE WITNESS: All right. During the trial,
19 when it would start, Judge Coward would sit in this way.
20 And then when the trial would start, the witness would be
21 over on the left side, and he would turn his chair.

22 Soon as he turned his chair, Gary Banks
23 and -- well, Daniel Hockaday already had his phone on the
24 table and so did Michael Holmes had his phone on the table,
25 and they were texting each other back and forth.

1 And I got up from one of the texts and I was
2 looking over Daniel Hockaday's shoulder to see who the text
3 was coming from, and it was from Sheriff Banks. And the
4 Clerk of Court, Tammy McIntyre, seen me when I got up and
5 looked at the phone, and she said -- stopped and she says,
6 "Mr. Hockaday, your son has just got in a wreck in Bunn City
7 (phonetic) and he wants you to call him." So I figured she
8 was warning him that had I seen it.

9 MS. WELCH: Were you able to see what the
10 text said?

11 THE WITNESS: No, I didn't see it all. No,
12 ma'am. I just seen the one was, you know, from Banks.

13 MS. WELCH: Had his son gotten in a wreck?

14 THE WITNESS: Ma'am?

15 MS. WELCH: Had your attorney's son actually
16 gotten in a wreck?

17 THE WITNESS: I'm not sure. I never seen --
18 he didn't leave. He didn't, you know, say like, "Judge, I
19 need you to dismiss the court, I got to go check on my son."
20 He didn't say that.

21 MS. WELCH: Thank you.

22 SHERIFF KIMBROUGH: I've got a question,
23 follow-up question.

24 JUDGE LOCK: Yes, sir.

25 SHERIFF KIMBROUGH: Mr. Pritchard, so you say

1 you met Robbie at an NA meeting?

2 THE WITNESS: Yes, sir.

3 SHERIFF KIMBROUGH: You met her at the
4 meeting, she was there for NA counseling or NA services?

5 THE WITNESS: Using drugs, yes, sir.

6 SHERIFF KIMBROUGH: Using drugs.

7 So when you met her, you knew she was using
8 drugs?

9 THE WITNESS: She had been using. That's
10 what I was under the assumption, that she had been using.

11 SHERIFF KIMBROUGH: Were you a counselor
12 then?

13 THE WITNESS: Yes, sir. Mm-hmm. I sure was.

14 SHERIFF KIMBROUGH: So was that before the
15 charges or after the charges that you got that you were a
16 counselor?

17 When did you stop being a counselor?

18 THE WITNESS: October of 2009.

19 SHERIFF KIMBROUGH: 2009.

20 THE WITNESS: They closed the doors in
21 Alpha-Omega.

22 SHERIFF KIMBROUGH: When did you get the
23 charges that you got?

24 THE WITNESS: I got them in January of 2010.

25 SHERIFF KIMBROUGH: All right. Thank you.

1 JUDGE LOCK: Commissioner Glazier.

2 MR. GLAZIER: The exact same questions.

3 JUDGE LOCK: All right. Commissioner

4 Boswell.

5 MR. BOSWELL: One of the things that this
6 Commission has do is to try to judge the credibility of the
7 witnesses.

8 THE WITNESS: Yes, sir.

9 MR. BOSWELL: Help me understand why
10 Stephanie would say that you sold pills to Jonathan.

11 What incentive would she have to frame you
12 for this crime?

13 THE WITNESS: Well, it might be because she
14 had been using drugs with Jonathan Whitson and she would
15 have been a prime suspect.

16 MR. BOSWELL: Can you think of any reason she
17 would've fingered you as opposed to any other person?

18 THE WITNESS: Well, the thing is, is I was
19 new in that town and she had already told Robbie that I was
20 trying to fool around on her with Nathan Angel's daughter,
21 Nikki Angel.

22 SHERIFF KIMBROUGH: I don't understand what
23 you mean, "fool around on her."

24 What do you mean?

25 THE WITNESS: Mess -- going out with her and

1 all.

2 MR. BOSWELL: Going out with who?

3 THE WITNESS: With Nikki Angel.

4 MR. BOSWELL: I'm sorry. Why would Stephanie
5 finger you for this crime because you were fooling around
6 with Nikki Angel?

7 THE WITNESS: Well, okay, you have to know
8 that Robbie was selling Jonathan and Stephanie pills, all
9 right, and if she wanted to keep on the good side of her,
10 you know, she did certain things. She told her crap, and
11 they -- Robbie listened to her.

12 I mean, I did give Nikki a ride to the store,
13 you know, to get some cigarettes, but that was it.

14 JUDGE LOCK: Commissioner Glazier.

15 MR. GLAZIER: I do have a series, I'm sorry,
16 Judge.

17 So despite some of the discussion today,
18 could it be -- well, let me ask a couple of predicate
19 questions first.

20 You agree that you took Jonathan that
21 afternoon to the corner of the road near Riddles and he
22 walked down to Riddles while you did -- dropped the garbage
23 off; is that right?

24 THE WITNESS: No.

25 MR. GLAZIER: Okay.

1 THE WITNESS: You've got to know where
2 Riddles is at. It's at -- between a road and a highway that
3 goes into Burnsville, 19/23.

4 MR. GLAZIER: Right.

5 THE WITNESS: And I let him off in that area
6 because I didn't want to even see my truck in Riddles
7 parking lot.

8 MR. GLAZIER: That's what I said.

9 You dropped him off --

10 THE WITNESS: Yes, sir.

11 MR. GLAZIER: -- and he went on to Riddles
12 and you went on and dropped the garbage; is that right?

13 THE WITNESS: Yes, sir.

14 MR. GLAZIER: Then when you finished --

15 THE WITNESS: I came back.

16 MR. GLAZIER: -- at some point, you came
17 back --

18 THE WITNESS: He was standing on the side.

19 MR. GLAZIER: -- you went to get the chewing
20 tobacco.

21 THE WITNESS: Yes, sir.

22 MR. GLAZIER: Do you believe that he picked
23 up or bought the pills that he used that day at Riddles?

24 THE WITNESS: He may have. I'm not sure. I
25 didn't ask him. I didn't ask him if he had drugs or

1 whatever, nothing like that.

2 MR. GLAZIER: So could it be that Stephanie
3 is partly accurate in saying that she believed that he got
4 the drugs from you in the sense that you took him to the
5 place that he got the drugs? She wouldn't know whether you
6 gave it to him or not or whether he bought it at Riddles or
7 not, but he came back with the drugs?

8 Is that plausible?

9 THE WITNESS: It's plausible.

10 MR. GLAZIER: Thank you.

11 THE WITNESS: Yes, sir.

12 JUDGE LOCK: Yes, Judge Evans.

13 JUDGE EVANS: Thank you.

14 Mr. Pritchard, when you served as a drug
15 counselor, did you also serve as an NA sponsor?

16 THE WITNESS: Yes, ma'am.

17 JUDGE EVANS: Were you ever a sponsor for
18 Aaron Collins?

19 THE WITNESS: No, ma'am.

20 JUDGE EVANS: You were never his sponsor?

21 THE WITNESS: Never his sponsor. He never
22 even got clean. He never went to a meeting.

23 JUDGE EVANS: So he never attended NA?

24 THE WITNESS: No, ma'am.

25 JUDGE EVANS: And on March 5, you've

1 testified that you were going to Fred's to get tobacco
2 because you didn't want to be seen at Riddles; is that
3 correct?

4 THE WITNESS: Yes, ma'am.

5 JUDGE EVANS: Did you know that Aaron Collins
6 has made a statement to the Commission that he was not there
7 on March 5, he was not at home until after midnight so he
8 would not have given you money to buy tobacco for him?

9 Did you know that?

10 THE WITNESS: Well, he's lying because he was
11 right there. He's one that asked me. In fact, he says,
12 "Where you going?"

13 I says, "I'm going to take the garbage up."

14 He said, "Well, I'll take it up," because I
15 have let him use the truck before.

16 And I said, "No, I'm taking it up."

17 And he said, "Well, can you get me some
18 chewing tobacco?"

19 And I said, "I ain't got no money."

20 He said, "Well, I've got enough. They got it
21 at Fred's for a certain price" and he gave me that price.

22 JUDGE EVANS: And it's your testimony that
23 you believe he broke into your lockbox and stole some of
24 your morphine?

25 THE WITNESS: Not a lockbox. My room.

1 JUDGE EVANS: Into your room?

2 THE WITNESS: Yes, ma'am.

3 JUDGE EVANS: So he pried open the hinges
4 from the door to your room.

5 THE WITNESS: He didn't pry it. He took the
6 screws out of the -- they've got the little latch that
7 screws off -- four screws around it that the latch goes
8 across and you put the lock in, he undid that part and it
9 came all the way off.

10 JUDGE EVANS: And he got into your room and
11 got into your lockbox.

12 THE WITNESS: He didn't get in my lockbox.
13 He got into my room.

14 JUDGE EVANS: And what did he do in your
15 room? Do you know?

16 THE WITNESS: He went through everything that
17 I had.

18 JUDGE EVANS: Where was your lockbox?

19 THE WITNESS: My safe at that time was at
20 Robbie Brown's house.

21 JUDGE EVANS: Where did you keep your
22 morphine when you moved out of Robbie Brown's house?

23 THE WITNESS: I said in the register.
24 There's a register right up underneath my computer. I put
25 it down in there.

1 JUDGE EVANS: Do you think Mr. Collins found
2 your morphine in the register?

3 THE WITNESS: Yes, ma'am. I know he did.

4 JUDGE EVANS: To your knowledge, did Robbie
5 Brown ever give or sell your morphine to anyone?

6 THE WITNESS: That I am aware of, no, ma'am.

7 JUDGE EVANS: Did you ever suspect that she
8 was?

9 THE WITNESS: Yes, ma'am. I did suspect.

10 JUDGE EVANS: And when did you suspect it?

11 THE WITNESS: I suspected it when I had moved
12 to the trailer.

13 JUDGE EVANS: What made you suspect it then?

14 THE WITNESS: Because of the fact that all of
15 the pills were not there when I got them from it.

16 JUDGE EVANS: Those are my questions.

17 JUDGE LOCK: Commissioner Newton.

18 MS. NEWTON: Thank you, Your Honor.

19 Mr. Pritchard, I'm also having some trouble
20 with your answers.

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: So I would like to ask you a
23 couple of direct questions about your private medical
24 condition, if you don't mind.

25 Would you answer that question?

1 THE WITNESS: Yes, ma'am.

2 MS. NEWTON: Okay. You testified before this
3 Commission that both you and Robbie had a back problem.

4 THE WITNESS: Yes, ma'am.

5 MS. NEWTON: Is that what you said?

6 THE WITNESS: Mm-hmm.

7 MS. NEWTON: Okay. Do you know, first, what
8 her back problem is?

9 THE WITNESS: No. But I know by the way that
10 she hurt and everything that it was extensive. And she had
11 said that she had some private doctor that had monitored
12 over the years for that back problem. And she had -- oh, it
13 was a motorcycle -- she got in a motorcycle accident and
14 that's when it really hurt her.

15 MS. NEWTON: So let's go to your back
16 problem.

17 THE WITNESS: Okay.

18 MS. NEWTON: Is that your only medical
19 condition for which you sought the prescription pain
20 medication?

21 THE WITNESS: Yes, ma'am.

22 MS. NEWTON: And when did you first have a
23 back injury or condition?

24 THE WITNESS: It was in 2008, I believe. I
25 was working at Alpha-Omega in Madison -- no, not Madison,

1 was it -- yeah, Madison, Madison County, not Marion.

2 But I had been in a car and we had been out
3 going to a client's house, and the driver, she had made a
4 turn to go into -- back into Alpha-Omega, where it was at,
5 and she got hit from behind. And I was in the car, and it
6 twisted, that's when I injured my back.

7 MS. NEWTON: And did you go to the emergency
8 room?

9 THE WITNESS: Yes, ma'am.

10 MS. NEWTON: Okay. Did you have a physician
11 who was monitoring your condition from that accident?

12 THE WITNESS: Yes, ma'am.

13 MS. NEWTON: What was your doctor's name, if
14 you remember?

15 THE WITNESS: I can't remember.

16 MS. NEWTON: Okay.

17 And, now, you said that you started working
18 at Alpha-Omega around 2009?

19 THE WITNESS: Yes, ma'am.

20 MS. NEWTON: How long after that accident?

21 THE WITNESS: It was about -- I would say for
22 about almost -- about a year and four months, somewhere.

23 MS. NEWTON: Did they pay you at Alpha-Omega?

24 THE WITNESS: For the back injury?

25 MS. NEWTON: No. Do they -- did they pay you

1 to work as a counselor?

2 THE WITNESS: Yes, ma'am.

3 MS. NEWTON: Okay. So after 2009, did you
4 have a job?

5 THE WITNESS: No.

6 MS. NEWTON: So when did -- do you know that
7 in North Carolina there's something called the
8 North Carolina Controlled Substance Reporting System?

9 Do you -- have you ever heard of that?

10 THE WITNESS: No, ma'am.

11 MS. NEWTON: So every prescription that you
12 have ever filled will be in some database somewhere in
13 North Carolina.

14 Are you aware of that?

15 THE WITNESS: Yes, ma'am. Yeah, I believe
16 so, yes, ma'am.

17 MS. NEWTON: When was the first pain
18 medication that you filled as a prescription?

19 THE WITNESS: Where was it?

20 MS. NEWTON: When?

21 THE WITNESS: When was it?

22 MS. NEWTON: When?

23 THE WITNESS: When I went to the VA Hospital
24 in -- that was in 2008.

25 MS. NEWTON: That was before your accident?

1 THE WITNESS: Yes, ma'am.

2 MS. NEWTON: What did you go to the VA
3 Hospital for?

4 THE WITNESS: I was going there for PTSD.

5 MS. NEWTON: Did you get pain medication for
6 PTSD?

7 THE WITNESS: No. They gave me Depakote
8 and -- what do you call it? -- Zoloft.

9 MS. NEWTON: When was your first pain
10 medication prescription?

11 THE WITNESS: When was it? It was in the --
12 I would say -- I'm trying to get straight with this -- I
13 think it was the latter part of 2008 when I got
14 re-inscribed [sic].

15 MS. NEWTON: That was before your accident?

16 THE WITNESS: No. After the accident.

17 MS. NEWTON: Okay. And so later in 2008, you
18 started getting what prescription pain medication? What
19 were you getting?

20 THE WITNESS: At first, I was getting
21 oxycodone, Percocet. And then he changed it to 15-milligram
22 morphine. And then from 15-milligram morphine to
23 30-milligram.

24 MS. NEWTON: When did you go to 30-milligram
25 morphine?

1 THE WITNESS: I would say in 2009.

2 MS. NEWTON: So when you were -- are there
3 any other -- well, you started getting pain medications in
4 late 2008; correct?

5 THE WITNESS: Mm-hmm. Yes, ma'am.

6 MS. NEWTON: And you lost your job in 2009,
7 sometime a year later or so; is that correct?

8 THE WITNESS: Yes, ma'am.

9 MS. NEWTON: That latter part of 2009?

10 THE WITNESS: Yes, ma'am. October.

11 MS. NEWTON: So what Schedule II controlled
12 substance did you deliver to -- I think you told the
13 district attorney here an undercover operation for your
14 January 26, 2010, offense? What controlled substance was
15 that?

16 THE WITNESS: That was morphine and
17 oxycodone.

18 MS. NEWTON: Okay. Was that the 15-milligram
19 or the 30?

20 THE WITNESS: 15.

21 MS. NEWTON: The 15?

22 So you started selling your 15-milligram
23 oxycodone at least to one undercover on January 26th of
24 2010; right?

25 THE WITNESS: Yes, ma'am.

1 MS. NEWTON: Did he pay you? Or she?

2 THE WITNESS: She paid me.

3 MS. NEWTON: Okay. How much was it?

4 THE WITNESS: \$40.

5 MS. NEWTON: For each pill?

6 THE WITNESS: No.

7 MS. NEWTON: For how many pills?

8 THE WITNESS: All told -- \$40 all totaled.

9 MS. NEWTON: How many pills did you sell?

10 THE WITNESS: Two morphine and four
11 oxycodone.

12 MS. NEWTON: Now, in March 5, 2011, you were
13 then charged for the second time for this offense we're here
14 at this commission hearing about; is that correct?

15 THE WITNESS: March when?

16 MS. NEWTON: For the offense date of March 5
17 of 2011.

18 THE WITNESS: 2011.

19 MS. NEWTON: 2011.

20 THE WITNESS: Okay.

21 MS. NEWTON: And what controlled substance
22 were you accused of selling for this offense?

23 THE WITNESS: 30 milligram. And that was in
24 December of 2011.

25 MS. NEWTON: Okay. And was it 30 milligrams

1 of morphine?

2 THE WITNESS: Yes, ma'am.

3 MS. NEWTON: During the time that you were on
4 probation for the January 26, 2010, were you working as a
5 condition of your probation?

6 THE WITNESS: No, I wasn't working.

7 MS. NEWTON: Okay. Thank you.

8 JUDGE LOCK: Commissioner Glazier.

9 MR. GLAZIER: Thank you. One last series of
10 questions, Mr. Pritchard.

11 THE WITNESS: Yes, sir.

12 MR. GLAZIER: I notice on your records, and
13 you just related it, that you had a PTSD diagnosis in 2006.

14 Can you tell us what caused that trauma?

15 THE WITNESS: When I was in Vietnam.

16 MR. GLAZIER: And it was a delayed reaction
17 from your service in Vietnam?

18 THE WITNESS: Yes, sir.

19 MR. GLAZIER: All right. Thank you.

20 Now, I'm just going to ask one last question.

21 Mr. Pritchard, you don't know me, but take
22 for granted that I believe in this process more deeply than
23 you can possibly know.

24 THE WITNESS: I hope so.

25 MR. GLAZIER: I do.

1 And I also believe that sometimes things
2 happen and sometimes you're put in impossible sort of
3 circumstances, and sometimes we try to spin answers that we
4 think might help us when they're not.

5 And so I'm going to ask you one last time:
6 Is there any -- and let me state that, at least for me, how
7 you answer this question is pretty important to me as an
8 individual commissioner.

9 THE WITNESS: Okay.

10 MR. GLAZIER: Is there anything that you have
11 said today that you want to rethink and give us any
12 explanation or different answer to?

13 THE WITNESS: It was the one where -- about
14 did I ever sell any drugs before, and I had forgotten about
15 that January 10 -- January 26, 2010.

16 MR. GLAZIER: And you still assert that other
17 than that time and the gift to Robbie you have never given
18 or sold drugs to anyone?

19 THE WITNESS: No. I haven't.

20 MR. GLAZIER: Thank you.

21 THE WITNESS: Yes, sir.

22 JUDGE LOCK: Anyone else? Last chance.

23 All right.

24 MS. SMITH: Judge, the staff would propose
25 that we take a brief break. We would like to play for you

1 all those phone calls -- the recordings of those phone
2 calls.

3 JUDGE LOCK: With Mr. Pritchard present?

4 MS. SMITH: It's up to you whether you would
5 like him present or would like him to step out, but we would
6 like him to remain on-site in case there's additional
7 questions after that.

8 JUDGE LOCK: Sure. Let's play them with him
9 present. And we'll take a brief recess.

10 (Recess taken, 2:52 to 3:15 p.m.)

11 MS. SMITH: Commissioners, Handout 52 was
12 uploaded onto your electronic notebooks over the break.
13 That is Mr. Whitson's medical records, the whole 377 pages
14 that are from, I believe, January of 2010 until his death.

15 And we are still working on seeing what we
16 can get from the hospital at those other time frames.

17 When Mr. Pritchard comes back in, we have the
18 phone calls queued up to play for you-all. Barring any
19 technical glitches, Mr. Fitts is going to be able to play
20 those for us.

21 We have queued them up to the specific place
22 where that's talked about. These calls are typically about
23 15 minutes long. Rather than listening to the entirety of
24 the phone call, we're just going to cut to the areas that I
25 referenced in my questions for Mr. Pritchard.

1 They're, of course, available in their
2 entirety if you-all would like to hear them. All 5,000
3 calls are available, if you would like to hear them.

4 MR. BOSWELL: We'll take that under very
5 serious consideration.

6 MS. SMITH: Thank you.

7 And if we could just maybe be at ease until
8 he comes in.

9 (Court at ease, 3:15 to 3:17 p.m.)

10 JUDGE LOCK: All right. We will come back to
11 order.

12 Mr. Pritchard is back with us. Of course, he
13 remains under oath for any further questions.

14 Yes, ma'am, Ms. Smith.

15 MS. SMITH: Yes, Your Honor.

16 So the first call that we are going to listen
17 to a portion of is from July 8, 2014. This is a call
18 between Mr. Pritchard and his sister. According to our
19 records, this is his first recorded phone call in the prison
20 records.

21 And we have queued that up at the 5:10 mark.
22 It's about a 20-second clip related to him discussing
23 providing drugs to the victim.

24 (Audio played.)

25 MS. SMITH: Would you like to have

1 Commissioners ask any questions on that one?

2 JUDGE LOCK: Yes, sir, Commissioner Glazier.

3 MR. GLAZIER: Was that your voice,

4 Mr. Pritchard?

5 THE WITNESS: I believe so, yes, sir.

6 MR. GLAZIER: So what did you mean in that
7 conversation?

8 THE WITNESS: What did I mean?

9 MR. GLAZIER: Yeah.

10 THE WITNESS: I mean that he owed money, you
11 know. He asked me if he could buy some drugs and I told him
12 no, you know, he owed me money and I wasn't going to give
13 him any drugs.

14 MR. GLAZIER: Well, but the conversation you
15 said, as I understand it, that he owed you money for the
16 drugs.

17 Do you --

18 THE WITNESS: No, I don't think that's --

19 MR. GLAZIER: Mr. Pritchard, I wouldn't dig
20 yourself any deeper.

21 THE WITNESS: Mm-hmm.

22 JUDGE LOCK: Any questions?

23 Sheriff, do you have one?

24 SHERIFF KIMBROUGH: No, I was going to ask
25 the same question: Was that you?

1 And is that -- what I heard you say, did you
2 say it? Or did I mishear something?

3 THE WITNESS: No. It may have been something
4 that, you know, I said and I didn't, you know, have no
5 reason to be saying it, you know. I was so confused at the
6 time, I had just gotten sentenced and everything, but I
7 don't -- I don't remember saying that I sold him drugs.

8 JUDGE EVANS: Could we replay that for just a
9 moment, please.

10 JUDGE LOCK: Mr. Fitts, could you replay
11 that, please.

12 MR. FITTS: Yes. Just a second to line it
13 back up.

14 (Audio played.)

15 SHERIFF KIMBROUGH: So you're saying that he
16 owes money for drugs that he didn't pay you for.

17 THE WITNESS: That's probably what I said,
18 yes. I mean, like I said, I was so confused and everything,
19 shaken up, you know, given a 20-year and all.

20 And that wasn't my sister. That was my
21 sister-in-law.

22 JUDGE LOCK: Commissioner Newton.

23 MS. NEWTON: Mr. Pritchard, it was clear from
24 the second time you heard that recording that he was
25 going -- you told him to go to Robbie's to cut the grass to

1 pay off the drug debt he owed you from a previous case, and
2 he owed you for that, and that's how you were going to let
3 him pay you, performing grass cutting.

4 Now, is that what you just heard yourself
5 say?

6 THE WITNESS: Yes, ma'am. I heard what you
7 said.

8 MS. NEWTON: Thank you.

9 JUDGE LOCK: Anybody else?

10 Yes, ma'am.

11 JUDGE EVANS: And if that's what you heard
12 yourself say, what did you mean by that?

13 THE WITNESS: What I meant is that the money
14 that I had loaned him, he was buying drugs with it but I
15 didn't give him any drugs.

16 JUDGE EVANS: I'm finished.

17 JUDGE LOCK: Yes.

18 MS. NEWTON: Mr. Pritchard, you said "He was
19 supposed to sell them for me and he didn't do it so I told
20 him to go over and cut the grass."

21 Now, did you hear yourself say that
22 Mr. Whitson was supposed to sell the drugs for you and
23 because he didn't do it, that's why he owed you money?

24 Didn't you just hear yourself say that?

25 THE WITNESS: Yes, ma'am.

1 MS. NEWTON: Okay. Thank you.

2 JUDGE LOCK: Judge, did you have another
3 question?

4 JUDGE EVANS: No.

5 JUDGE LOCK: Anybody else?

6 Next recording.

7 MS. SMITH: Okay. Mr. Fitts.

8 Commissioners, this call is from July 18,
9 2014. This is a call between Mr. Pritchard and his
10 daughter, Lacey. And we are going to cue it at 5:15.

11 This is a little longer clip.

12 (Audio played.)

13 MS. SMITH: Commissioners, do you have any
14 questions for Mr. Pritchard about that recording?

15 SHERIFF KIMBROUGH: You said you knew it was
16 wrong and you shouldn't be doing that; right?

17 THE WITNESS: Knew it was wrong?

18 SHERIFF KIMBROUGH: Yeah. You said in the
19 recording that you knew it was wrong and you shouldn't be
20 doing that.

21 Was you saying you knew you shouldn't be
22 doing it, it was wrong to be giving money for her to write a
23 statement for you -- what did you mean by that?

24 THE WITNESS: I knew it was wrong because of
25 the fact that, you know, she wasn't going to be able to pay

1 me back the money and everything, and I wanted my furniture
2 and stuff, I wanted that back. And she did have the dogs
3 and everything she was taking care of, and they needed their
4 shots of stuff.

5 SHERIFF KIMBROUGH: Did you want her to write
6 a letter for you?

7 THE WITNESS: I did ask her if she would
8 write saying that she did not say those things because
9 that's what she said in court.

10 They said that, you know, "You're perjuring
11 yourself, Ms. Brown," and she said, "No, I'm not," and she
12 turned right to Sheriff Banks and she said, "They wrote
13 that, not me."

14 JUDGE LOCK: Commissioner Colbert.

15 MS. COLBERT: Did Ms. Brown get the thousand
16 dollars?

17 THE WITNESS: Did she get it?

18 MS. COLBERT: Yeah.

19 THE WITNESS: I'm not sure if she did or not.
20 I'm not sure.

21 SHERIFF KIMBROUGH: Judge, I have one last
22 question.

23 So you said, "I didn't sell any drugs";
24 right?

25 And I know that when we previously talked,

1 you were confusing selling versus giving, right, there's a
2 difference between selling versus giving?

3 THE WITNESS: Uh-huh.

4 SHERIFF KIMBROUGH: Like you mentioned that
5 the young lady, Robbie, you gave her the drugs because she
6 was in pain but you didn't sell them to her; right?

7 THE WITNESS: Uh-huh.

8 SHERIFF KIMBROUGH: So did you give Jonathan
9 drugs?

10 THE WITNESS: Who?

11 SHERIFF KIMBROUGH: Mr. Whitson.

12 THE WITNESS: No. I did not give him no
13 drugs.

14 MR. GLAZIER: Just a couple of quick
15 questions unrelated to this.

16 JUDGE LOCK: Yes.

17 MR. GLAZIER: When you were retired or were
18 forced to retire from your counseling job when they ended --
19 the facility ended, what was your income? How did you make
20 money?

21 THE WITNESS: My income, I was a substance
22 abuse counselor that handled DWI cases.

23 MR. GLAZIER: After you ended your
24 counseling --

25 THE WITNESS: Okay. Where did I make money

1 then?

2 MR. GLAZIER: How did you -- yeah. What was
3 your income? How did you make money?

4 THE WITNESS: Well, the only way I made some
5 money before my income, employment checks come in.

6 MR. GLAZIER: Unemployment?

7 THE WITNESS: Yes, sir. Unemployment.

8 Mm-hmm.

9 And -- but I worked on this lady's furnace
10 and stuff, and that was all -- you know, I got money from
11 her for doing her furnace.

12 MR. GLAZIER: Did you file tax returns every
13 year?

14 THE WITNESS: I didn't file for that year,
15 no.

16 MR. GLAZIER: Did you file for tax returns in
17 2008?

18 THE WITNESS: Yes.

19 MR. GLAZIER: 2009?

20 THE WITNESS: No. 2009, I don't think I did.

21 MR. GLAZIER: 2010?

22 THE WITNESS: 2010. No, I was -- I didn't.

23 MR. GLAZIER: 2011?

24 THE WITNESS: No. I didn't really know
25 because, see, the employment only lasts but so long, and

1 then I started getting my disability money for my back and
2 everything.

3 MR. GLAZIER: So you had two -- you had
4 unemployment and then you got disability money?

5 THE WITNESS: Yes.

6 MR. GLAZIER: Do you remember how much you
7 got in disability checks per month, average?

8 THE WITNESS: It was about \$1600.

9 MR. GLAZIER: And how about in unemployment
10 for the months you were unemployed that you got checks?

11 THE WITNESS: I got about 16.

12 MR. GLAZIER: Any other sources of income for
13 those couple of years?

14 THE WITNESS: No, not that I can think of,
15 no, sir.

16 MR. GLAZIER: Did you have savings that you
17 had accumulated over the course --

18 THE WITNESS: I had credit cards.

19 MR. GLAZIER: Did you have a savings account?

20 THE WITNESS: Yes, sir, I had a savings
21 account.

22 MR. GLAZIER: How much did you have in your
23 savings account when you got unemployed?

24 THE WITNESS: I'm thinking about \$500,
25 somewhere around there.

1 MR. GLAZIER: Thank you.

2 THE WITNESS: Mm-hmm. I wasn't very good
3 with saving money.

4 JUDGE EVANS: Mr. Pritchard, did you hire
5 Mr. Hockaday as your lawyer or was he court appointed?

6 THE WITNESS: I hired him.

7 JUDGE EVANS: How did you pay him?

8 THE WITNESS: I paid him with -- I had some
9 cash from the Social Security disability. They sent me a
10 large check, and I paid him some on that, and then the rest
11 of it I got from the credit card, I'm pretty sure, because
12 he had to talk to Robbie, he didn't get the credit and pay
13 it off, and -- but he said what he needed was, he needed
14 \$1600 so he could check out the autopsy report.

15 MR. GLAZIER: I'm sorry. I've got to follow
16 that.

17 So for this felony that he represented you
18 on, you paid him a total of only \$1600 for the whole trial?

19 THE WITNESS: No, sir.

20 MR. GLAZIER: How much did you pay him?

21 THE WITNESS: 10,000.

22 MR. GLAZIER: \$10,000. And you only had \$500
23 in your savings account and you had \$1600 you were getting
24 from Social Security?

25 THE WITNESS: Yes, sir.

1 MR. GLAZIER: And no other income?

2 THE WITNESS: No other income.

3 MR. GLAZIER: And then you had extra money
4 when you were in prison to pay Robbie the \$1,000?

5 THE WITNESS: Mm-hmm.

6 MR. GLAZIER: Where did that come from?

7 THE WITNESS: I finally got my compensation
8 for PTSD.

9 MR. GLAZIER: From the VA?

10 THE WITNESS: VA.

11 MR. GLAZIER: How much was that?

12 THE WITNESS: It was \$4300.

13 MR. GLAZIER: Thank you.

14 JUDGE LOCK: Commissioner Bass.

15 MR. BASS: Again, just trying to be clear,
16 regarding the thousand dollars you were asking be sent to
17 Robbie Brown, in your statement, "I know it's something I
18 shouldn't be doing" -- specifically that statement, why was
19 it something you shouldn't be doing?

20 THE WITNESS: Because I shouldn't have been
21 paying money for her keeping my furniture and stuff. I
22 shouldn't have had to have done that, you know. I mean, she
23 had borrowed \$2,000 from me previously and never paid it
24 back; so I just didn't feel like I owed her, you know.

25 MR. BASS: It sounded pretty clear that the

1 person you were talking to didn't want you doing it.

2 THE WITNESS: Yeah.

3 MR. BASS: And then, again, you know, of
4 course, all of this is very personal about you, and I have a
5 couple of questions.

6 You mentioned just now again PTSD, and it's
7 mentioned in your record, and if you would be willing to say
8 a little bit about what caused the PTSD.

9 THE WITNESS: Yes, sir. I was over in
10 Vietnam in '72 and '73, and we took on fire from the coast
11 and -- when we was doing a suicide run. And, I don't know,
12 it just -- having them fire on me and hearing it on the --
13 on the hull and everything, it just -- I freaked out.

14 MR. BASS: And PTSD symptoms include a range
15 of things?

16 THE WITNESS: Yes, sir.

17 MR. BASS: Would you be able to tell us what
18 were some of the symptoms you experienced?

19 THE WITNESS: All right. Not only that, my
20 friend -- my dearest friend when growing up, he went and
21 joined the Army and he got killed over in Vietnam. And when
22 I had gotten out and everything, his mother -- when she told
23 me that he had gotten killed over in Vietnam, and then she
24 said it was from friendly fire. And I said, "What?"

25 And she said, "Yeah. Y'all were firing on

1 them. He got killed." And I just felt bad. I mean, I
2 really did.

3 MR. BASS: And I can certainly appreciate
4 that.

5 At then, again, PTSD can have a range of
6 symptoms. Can you tell us some of the symptoms that you
7 experienced?

8 THE WITNESS: Yes, sir. You know, not being
9 able to sleep. Swinging -- if I had a partner or something,
10 in the middle of the night, swinging, fighting. Suicidal
11 thoughts.

12 MR. BASS: And also in the records was
13 something about -- I think the term was reported "past heavy
14 drug use" apparently earlier in your life.

15 THE WITNESS: Mm-hmm. Yes, sir.

16 MR. BASS: I would love to know a little bit
17 about how heavy that was when it was at its worst.

18 THE WITNESS: It was pretty -- pretty heavy
19 there at the end. I mean, I didn't think I could become
20 addicted and I got addicted to opiates. And I had went to
21 treatment for it in 2000 -- no, in 1984, yeah, 1984. And I
22 got introduced to Narcotics Anonymous, and I've been staying
23 clean ever since.

24 JUDGE LOCK: Commissioner Colbert.

25 MS. COLBERT: Do you remember when and how

1 you found out that Ms. Brown died?

2 THE WITNESS: Yeah. When I came back a year
3 later, I believe it was a year later, it was in 2015 --
4 2016 -- 2016, but I came back and -- to Burnsville to see if
5 I could get a bond reduction because they were going to
6 check -- have my case appealed. And the appellate attorney,
7 Robert Sirianni, didn't do it on time -- like I say, I don't
8 know nothing about all of that.

9 But anyhow, what happened was he had to ask
10 permission to have write certerial [sic] entered in. And he
11 didn't offer any arguments. And -- but I went back to
12 Burnsville, and when I went back to Burnsville, the deputy
13 there who was a cousin of Robbie said that Robbie had died.

14 MS. COLBERT: So from the time on the call in
15 July of 2014 when you were instructing someone on the phone
16 to give Ms. Brown the thousand dollars, you never heard from
17 Ms. Brown that she had received it or from the person that
18 she had sent it?

19 THE WITNESS: And she clicked the phone.

20 MS. COLBERT: I'm sorry? I don't understand.

21 THE WITNESS: Should made the phone -- you
22 see, there's certain numbers you can put in there that if
23 you receive a call from the prisons, it would stop it. And
24 she did that.

25 MS. COLBERT: Are you referring to Ms. Brown?

1 THE WITNESS: Yes, ma'am.

2 MS. COLBERT: So you don't know whether she
3 got the money or the person -- so you never verified with
4 Lacey --

5 THE WITNESS: My daughter.

6 MS. COLBERT: -- that she did indeed send
7 Ms. Brown the money?

8 THE WITNESS: Yeah, I never knew.

9 MS. COLBERT: So you never knew whether the
10 money was sent --

11 THE WITNESS: Or what.

12 MS. COLBERT: -- or she received it.

13 SHERIFF KIMBROUGH: I just have one more
14 question. I keep pondering everything that you said in
15 reference to Robbie and also that Mr. Whitson owed you money
16 for the drugs that he didn't sell and so he was doing manual
17 labor for you to do yard work.

18 And so my question is this: I guess -- I
19 just want to thank you also for your service.

20 I'm just trying to wrap my head around so
21 many things as relates to you, is that -- so my question is:
22 This one time where you sold to undercover, was that the
23 only time you sold drugs or had you sold drugs prior to
24 that?

25 THE WITNESS: No, sir.

1 SHERIFF KIMBROUGH: So you just sold drugs
2 one time in your life?

3 THE WITNESS: One time. And I didn't really
4 know that I was selling them. Robbie just told me to give
5 them to this girl. I'm trying to think of her name now.
6 Waldrop was her name, last name was Waldrop, but I can't
7 remember her first name. But Robbie asked me -- because she
8 was dating -- she was dating her cousin, which was across
9 the road.

10 SHERIFF KIMBROUGH: So then my last question:
11 You only sold drugs one time. So how many times have you
12 given drugs to someone?

13 THE WITNESS: Just to Robbie.

14 SHERIFF KIMBROUGH: You sold drugs one time
15 and you've only given drugs to somebody one time?

16 THE WITNESS: Yes, sir.

17 SHERIFF KIMBROUGH: Again, thank you for your
18 service.

19 Thank you, sir.

20 THE WITNESS: Thank you.

21 JUDGE LOCK: All right. Anything else?

22 Were those all the recordings?

23 MS. SMITH: That is.

24 JUDGE LOCK: All right. Does anyone have any
25 further questions for Mr. Pritchard?

1 All right. Yes.

2 MS. SMITH: I was just going to say, Your
3 Honor, he is under writ for tomorrow as well.

4 If Commissioners would like for him to be
5 potentially available after the experts testify, we could
6 have DPS bring him back tomorrow; otherwise, if not, then I
7 would ask that you release him from his writ so they don't
8 have to come back tomorrow.

9 JUDGE LOCK: Where is he being housed?

10 UNIDENTIFIED SPEAKER: Pender County, sir.
11 Burgaw.

12 JUDGE LOCK: All right. Does anyone think
13 you might want to question Mr. Pritchard again tomorrow?

14 Are you sure? Otherwise, I'm going to
15 release the writ.

16 All right, Mr. Pritchard. Thank you so much.

17 (Witness stands down, 3:42 p.m.)

18 MS. SMITH: Judge Lock, at this time, I will
19 recall Julie Bridenstine.

20 JUDGE LOCK: All right.

21 MS. SMITH: All right.

22 Commissioners, we are now going to turn our
23 attention to Dr. Brent Hall, who was the original medical
24 examiner in this case.

25 Dr. Hall was deposed by Ms. Bridenstine on

1 July 17 of 2021. His entire deposition transcript along
2 with a digest was provided to you-all as Handout 2.

3 Judge Lock, at this time, the Commission
4 would request that page 13, lines 4 through 12 be redacted
5 from Handout 2 should it become public record as part of
6 this process. Those particular lines detail the medications
7 that Dr. Hall is currently taking in great detail.

8 Similarly, we request that Dr. Hall's
9 personal cell phone number on page 19, line 16, be redacted
10 should this become public record.

11 JUDGE LOCK: All right. And there would be
12 an unredacted copy, though, kept in the file under seal?

13 MS. SMITH: Absolutely. So the file that the
14 Commission keeps will remain -- will have an unredacted
15 copy. That would also be provided to the parties in the
16 event that the case moves forward.

17 JUDGE LOCK: All right. Yes.

18 MS. SMITH: It's just for the public record
19 piece, given that those items are not particularly relevant
20 to this process.

21 JUDGE LOCK: All right. So ordered.

22 MS. SMITH: Commissioners, you were also
23 previously provided Handout 45, which is the criminal
24 history of Dr. Hall.

25 Thereupon, JULIE BRIDENSTINE, a witness having been recalled by

1 the Commission, testified as follows:

2 EXAMINATION BY MS. SMITH: (3:43 p.m.)

3 Q. Ms. Bridenstine, can you remind the Commissioners
4 who Dr. Hall is and what role he played in this case.

5 A. Dr. Hall was the original medical examiner in this
6 case. He conducted the autopsy of Jonathan Whitson on
7 March 7, 2011, at the Watauga Medical Center. That was one
8 day after Mr. Whitson died.

9 He testified at Mr. Pritchard's trial about the
10 autopsy and cause of death in this case.

11 Q. And did the Commission become aware of any
12 possible controversies surrounding Dr. Hall?

13 A. Yes, we did.

14 Q. When did the Commission first become aware of
15 those possible controversies?

16 A. There was mention about Dr. Hall's possible
17 driving while intoxicated history when he was cross-examined
18 by Mr. Pritchard's trial attorney. There was also testimony
19 that he had resigned prior to Mr. Pritchard's trial, but the
20 circumstances surrounding the resignation was not clear.

21 Q. Did the Commission ever determine what led to
22 Dr. Hall's resignation?

23 A. Yes. When we reviewed the Wake Forest University
24 School of Law Innocence and Justice Clinic file, we found
25 that the file contained several articles related to

1 Dr. Hall's driving while intoxicated history and his work on
2 three autopsies in Boone, North Carolina, that led to his
3 resignation.

4 MS. SMITH: Commissioners, you've previously
5 been provided Handout 46, which are all the articles
6 regarding Dr. Hall that are from the Wake Forest Innocence
7 and Justice Clinic's file. These articles came to the
8 Commission with some handwritten notes on them and are
9 provided as we received them. Those notes are not from the
10 Commission staff.

11 Q. Ms. Bridenstine, what do those articles reveal?

12 A. That Dr. Hall resigned as a result of three
13 autopsies that he performed on hotel guests who died after
14 staying at a Best Western Hotel in Boone, North Carolina.
15 Two of the people died in April of 2013. Dr. Hall had not
16 completed the autopsy reports when the third person stayed
17 in a nearby room after the hotel had reopened that section.
18 That third person also died in June 2013. Toxicology
19 testing performed by the Office of the Chief Medical
20 Examiner confirmed that all three people died of carbon
21 monoxide poisoning.

22 The articles also discuss the fact that Dr. Hall
23 was charged with a DWI in 2010 that was ultimately dismissed
24 in superior court in 2015 and the fact that he was charged
25 again with DWI and other charges in 2018. He ultimately

1 resolved this case with an Alford plea to DWI at a
2 probationary sentence in February of 2019.

3 Based on his drinking and driving offenses, he
4 entered into agreements with the North Carolina Medical
5 Board to temporarily stop practicing medicine. He has
6 resumed the practice of medicine but there are monitoring
7 conditions in place for him.

8 Q. Did Dr. Hall address the drinking and driving
9 charges in his deposition?

10 A. Yes. He admitted to the 2018 charge but would not
11 admit to the 2010 charge. He repeatedly said that there was
12 no record of it.

13 Q. And is there a record for the 2010 charge?

14 A. No. We could not find any indication in our
15 searches of criminal history databases that Dr. Hall was
16 ever charged in 2010 with DWI.

17 Q. Did Dr. Hall address the controversy surrounding
18 the Best Western Hotel deaths?

19 A. Yes, he did. He explained what happened from his
20 perspective.

21 Q. And what did he say about what he based the cause
22 of death on in this case?

23 A. He said that the morphine caused the victim to
24 develop acute pneumonia and that the cause of death was
25 morphine toxicity. He said that this opinion was based on

1 the level of morphine found in the urine sample of
2 Mr. Whitson which, according to the medical text Besalt
3 was -- the level was at a toxic amount.

4 He also said that he did not see any signs of
5 aspiration pneumonia in this case.

6 Q. Did he say anything else about his findings?

7 A. He called this a marginal case and explained that
8 the level of morphine in the urine was in the low toxic
9 range. He said he would have rather it be high.

10 Q. Based on what Dr. Hall said during his deposition,
11 did you reach out to anyone else in this case?

12 A. Yes. I spoke to Irene Coffey, Dr. Hall's
13 assistant at the autopsy, on December 9, 2021. This
14 interview was recorded and transcribed.

15 Q. Why did you reach out to Ms. Coffey?

16 A. Dr. Hall said during the deposition that she might
17 have taken additional photographs during the autopsy and not
18 have downloaded them.

19 Q. What did she say about that?

20 A. She said that she was sure that Dr. Hall took the
21 photographs for this autopsy. She said that all photographs
22 taken during the autopsy should have been included in the
23 autopsy file at the hospital and that Dr. Hall should also
24 have them in his own file.

25 Q. Did she say why there were notations regarding

1 injuries on the body diagram in the autopsy report but no
2 photographs taken of those injuries?

3 A. She said that Dr. Hall usually made the decisions
4 about what photographs to take during an autopsy. She said
5 that they would take photographs of body parts that are
6 significant to their cases. She did not know why there were
7 no photographs of the injuries that were noted in his
8 report. She said that sometimes he took photographs of
9 injuries that were also noted in his report and sometimes he
10 would just note the injuries in his report and not take
11 photographs.

12 Q. Did Ms. Coffey remember anything else about this
13 autopsy?

14 A. No. She said she did not remember anything about
15 this autopsy, including how Mr. Whitson's body looked at the
16 time of the autopsy.

17 Q. Did she say anything else?

18 A. Yes. She said that Dr. Hall was a good medical
19 examiner who was thorough. She never had any concerns about
20 his work. She was not aware of any alcohol issues until
21 after he resigned. And when she worked with him, he never
22 appeared to be under the influence.

23 MS. SMITH: Commissioners, do you have
24 questions for Ms. Bridenstine related to Dr. Hall based on
25 what she's testified here about today as well your review of

1 her full deposition of Dr. Hall?

2 SHERIFF KIMBROUGH: I guess the question I
3 would have would be they noted the injuries during the
4 autopsy, but no photos; so I guess the answer would be that
5 he just didn't do it.

6 MS. BRIDENSTINE: Based on what Irene Coffey
7 said, she said that any photographs that were taken would've
8 been included in the autopsy file, and there are only three
9 autopsy photos. They're all of Mr. Whitson's face. And
10 they've been described to us as identification photos.

11 SHERIFF KIMBROUGH: So my question would be,
12 then: Is that -- I'm not a doctor, but in an autopsy, what
13 would be the procedure if you found injury on the body? Is
14 there not a procedure or protocol when there are injuries
15 found on a body, to take photos? Or is that up to the
16 doctor, at his discretion or her discretion?

17 MS. BRIDENSTINE: I believe that that
18 question would be better asked of the experts who are going
19 to be called.

20 SHERIFF KIMBROUGH: Thanks.

21 MR. GLAZIER: I apologize.

22 Is Dr. Hall testifying?

23 MS. SMITH: So we do have Dr. Hall on standby
24 to testify. I intended to call him after the other experts
25 because I think that you may have questions for him after

1 you have heard their testimony.

2 So as long as you-all plan to have questions
3 for him, he will remain on standby and be called at the end
4 tomorrow.

5 MR. GLAZIER: Thank you.

6 MR. BOSWELL: Where is the autopsy in the
7 records?

8 MS. SMITH: One moment and we'll find that
9 for you.

10 MS. TANNER: It's in the brief.

11 (Overlapping speakers.)

12 MR. BOSWELL: It's in the brief?

13 MR. BRITT: Exhibit E of the brief.

14 MR. BOSWELL: Thank you.

15 MS. TANNER: You got it?

16 MS. SMITH: Any additional questions for
17 Ms. Bridenstine?

18 We will find that page number for you,
19 Mr. Boswell.

20 MR. BOSWELL: I can find it. Thank you.

21 MS. SMITH: Okay.

22 MS. COLBERT: Can you go over again this 2010
23 phantom conviction or charge of driving -- DWI or DUI that
24 supposedly Dr. Hall had?

25 MS. BRIDENSTINE: Sure. So the newspaper

1 articles indicate that he was charged with DWI in 2010.

2 There was a question, I believe, posed by his --

3 Mr. Pritchard's defense attorney of Dr. Hall during the

4 trial that referenced that case.

5 From reading the articles, what we can gather

6 from those is that that case proceeded to trial in district

7 court and Dr. Hall lost. According to the articles, he

8 appealed to superior court and it was pending until sometime

9 in 2015 when Dr. Hall won a motion to suppress the evidence.

10 And based on that, his case was dismissed.

11 MS. COLBERT: And so when you asked him about

12 it, his response was what again?

13 MS. BRIDENSTINE: He said there was no record

14 of it.

15 MS. COLBERT: Yeah. That's what I thought I

16 heard.

17 MR. BRITT: Does it show up on the DMV report

18 or was it expunged?

19 MS. BRIDENSTINE: We didn't find it anywhere.

20 We can double-check that information. But if he had gotten

21 it expunged, then my understanding is that it wouldn't be

22 available in any criminal database.

23 MR. GLAZIER: On page 19, you ask him if he's

24 currently an independent -- he's back being an independent

25 pathologist when you interviewed him?

1 MS. BRIDENSTINE: Yes.

2 MR. GLAZIER: And that's after the DWI and
3 the Alford -- the second DWI Alford plea and probation
4 agreement in 2019 and apparently after the head injury that
5 he suffered as well?

6 MS. BRIDENSTINE: He did say that he is
7 working as an independent consultant. And my understanding
8 is that he does autopsies independently. His probation
9 sentence was for a year.

10 MR. GLAZIER: For who does he do the
11 autopsies?

12 MS. BRIDENSTINE: I don't recall if that was
13 asked but I know he has a website and he advertises himself
14 as a consultant.

15 MR. GLAZIER: Thank you.

16 MR. BRITT: Is he still licensed in
17 North Carolina?

18 MS. BRIDENSTINE: He is. He was allowed to
19 resume the practice of law but there are some conditions.

20 Exhibits 11, 12, and 13 of the deposition are
21 the documents that I was able to get from the North Carolina
22 Medical Board website, and they detail what the conditions
23 are for Dr. Hall.

24 MS. SMITH: Ms. Bridenstine, you said "resume
25 the practice of law." Did you mean medicine?

1 MS. BRIDENSTINE: I'm sorry. Medicine, yes.

2 (Discussion off the stenographic record.)

3 MS. SMITH: Any other questions?

4 Okay. We will keep him under subpoena and
5 plan to call him tomorrow.

6 Q. Ms. Bridenstine, did the Commission speak to any
7 experts in this case?

8 A. Yes, we did.

9 Q. How many experts did the Commission ultimately
10 speak to?

11 A. We spoke to seven experts and we deposed Dr. Hall,
12 the original medical examiner.

13 MS. SMITH: Commissioners, as a reminder, you
14 were provided copies of Handouts 3 through 14 prior to the
15 hearing for your review and consideration. Those include
16 the reports and CVs for all of the experts for which the
17 Commission intends to call. Refer to them during
18 Ms. Bridenstine's testimony about the experts as well as
19 during the testimony by the experts.

20 You will note that the reports contain the
21 list of materials that each expert reviewed prior to writing
22 their reports so you will have a good idea of what they saw
23 before they completed their reports.

24 Q. Generally speaking, Ms. Bridenstine, what types of
25 materials did the experts receive in this case?

1 A. Though there were some differences, which is
2 reflected in the reports, in general, all of the experts
3 except for Dr. Jason Hudson, they reviewed the trial
4 transcript, law enforcement files, documents related to the
5 autopsy, documents related to Mr. Whitson's stay in the
6 jail, the hospital records of Mr. Whitson, the deposition of
7 Dr. Hall, and a letter from Mr. Pritchard to Dr. Roberts.

8 They also received the other expert reports.

9 The forensic pathologists also reviewed the
10 autopsy slides.

11 The toxicologists received standard operating
12 procedures and policies related to the toxicology testing in
13 this case that came from the Office of the Chief Medical
14 Examiner.

15 Last week, we provided to them the depositions of
16 Annette Whitson Greene and Stephanie Whitson Randolph along
17 with the transcript of the interview of Nikki Angel. We
18 asked them to review certain page ranges that contained
19 information related to what those witnesses knew about
20 Mr. Whitson's medical conditions, how he appeared to be
21 feeling before he died, how he appeared at death, and
22 Ms. Randolph's denial to the allegation that she provided
23 any pills including blood pressure medication to Mr. Whitson
24 before he died.

25 MS. SMITH: Commissioners, Ms. Bridenstine

1 mentioned that Dr. Hudson did not review these materials.

2 She will testify about why that is in just a moment.

3 Q. Which experts did the Commission speak to in this
4 case?

5 A. We spoke to Dr. Christena Roberts, a forensic
6 pathologist who was originally hired by Mr. Pritchard when
7 he was represented by postconviction attorney David Belser.
8 This was prior to Mr. Pritchard applying to the Commission.

9 Dr. Roberts continued to work with Mr. Pritchard's
10 current attorneys, Mark Rabil and Emily Thornton, after
11 David Belser had a stroke.

12 We spoke to Dr. Andrew Ewens, a forensic
13 toxicologist who consulted with Dr. Roberts in this case.

14 We spoke to Dr. Jerri McLemore, a forensic
15 pathologist and medical examiner in Forsyth County.

16 We spoke to Dr. Jason Hudson. He is the chief
17 toxicologist for the Office of the Chief Medical Examiner in
18 Raleigh.

19 We spoke to Dr. Christopher Holstege, a professor
20 of emergency medicine and pediatrics and chief of the
21 division of toxicology at the University of Virginia School
22 of Medicine. Dr. Holstege is a medical toxicologist.

23 We spoke to Dr. Barbara Wolf, a forensic
24 pathologist and medical examiner in Leesburg, Florida.

25 And, finally, we spoke to Dr. George Behonick, a

1 forensic toxicologist with AXIS Forensic Technologists,
2 which is a lab based in Indiana.

3 Q. Ms. Bridenstine, you've given us a lists of seven
4 individuals. Using the slide behind you, can you please
5 provide the commissioners with a general overview of why we
6 talked to seven individuals.

7 A. Yes. In order to understand cause of death in
8 this case, we recognized that we needed two types of
9 experts: A forensic pathologist and a forensic
10 toxicologist.

11 Mr. Pritchard's defense team had originally
12 consulted with one such team, which is on the slide and
13 labeled Team A. As I will explain later, their opinions
14 were relevant, but we decided that we needed to hire
15 independent experts for the Commission.

16 The Commission then reached out to the people
17 listed under Team B, which is Dr. Jerri McLemore, the
18 forensic pathologist who works out of Forsyth County, and
19 Dr. Jason Hudson, who's the chief toxicologist for the
20 Office of the Chief Medical Examiner. We originally hired
21 them to be our independent experts in this case. And for
22 reasons I will shortly testify to, they also could not
23 ultimately serve as independent experts for the Commission,
24 though they also provided relevant information to us about
25 this case.

1 We then began looking for independent experts to
2 hire in their various fields that would be relevant for this
3 case, and that's Team C, which are the three experts who are
4 listed on the slide.

5 Q. And can you tell us about those three experts
6 listed as Team C.

7 A. Yes. We hired Dr. Barbara Wolf, Dr. George
8 Behonick, and Dr. Christopher Holstege to serve as experts
9 in this case. We learned through our investigation that we
10 needed a team of three doctors to look at this case: A
11 forensic pathologist to review the autopsy and the slides; a
12 toxicologist with a Ph.D. to review and interpret the
13 toxicology testing that was performed this case; and a
14 medical doctor who is a toxicologist with a clinical
15 background who deals with drug overdoses on a regular basis.

16 MS. SMITH: Commissioners, we are now going
17 to walk through each of these teams and talk with
18 Ms. Bridenstine about how the Commission interacted with
19 them.

20 After you receive this background testimony,
21 then we'll be calling each of these individuals in turn.

22 Q. Let's begin with Dr. Christena Roberts. Why did
23 the Commission speak with her?

24 A. During our investigation of Mr. Pritchard's case,
25 we realized that he had been working with Dr. Roberts in

1 reviewing this case and the cause of death.

2 Associate Director Beth Tanner called and spoke to
3 Dr. Roberts. She learned that Dr. Roberts was also working
4 with Mark Rabil, director of the Wake Forest clinic, and he
5 had an open investigation into this case.

6 After this conversation, Ms. Tanner spoke to
7 Mr. Rabil about referring this case to the Commission. The
8 Commission then obtained Wake Forest's file on this case.
9 And we also obtained an unsigned draft affidavit from
10 Dr. Roberts regarding her opinion on cause of death for
11 Mr. Pritchard's case.

12 MS. SMITH: And, Commissioners, that unsigned
13 draft affidavit was provided for you in your brief on pages
14 516 to 519.

15 Q. Ms. Bridenstine, when did the Commission speak to
16 Dr. Roberts?

17 A. Beth Tanner and I spoke to her in late May 2021
18 after receiving and reviewing her draft affidavit. She
19 reported to us that it was her opinion that morphine
20 toxicity did not cause Mr. Whitson's death. She also
21 reported that she has -- had consulted with a forensic
22 toxicologist, Dr. Andrew Ewens, who agreed with her
23 assessment in this case.

24 Q. And why did the Commission speak to these other
25 experts in this case?

1 A. It's the Commission's practice to hire its own
2 independent experts for our cases. We always explain to
3 potential experts that we are not seeking any particular
4 opinion, that we are a neutral state agency looking for the
5 truth, and that we will present whatever the expert opinion
6 is in our case.

7 Because Dr. Roberts and Dr. Ewens were hired by
8 Mr. Pritchard, we felt that we needed to hire a forensic
9 pathologist and a forensic toxicologist to review the case
10 for the Commission.

11 Since we had the opinion of Dr. Hall that
12 Mr. Whitson's death was caused by morphine toxicity and the
13 opinion of Dr. Roberts that Mr. Whitson's death was not
14 caused by morphine toxicity, we wanted to hire independent
15 experts to conduct a neutral review and tell us what their
16 opinions are regarding what caused the death in this case.

17 Q. Ms. Bridenstine, remind the commissioners who
18 Dr. Andrew Ewens is.

19 A. He is a forensic toxicologist who consulted with
20 Dr. Roberts about the toxicology testing that was performed
21 in this case.

22 Q. Did the Commission ever receive a report from
23 Dr. Ewens?

24 A. Yes, we did. After we realized that Mark Rabil
25 and Dr. Roberts had consulted with him in this case, I

1 reached out to Dr. Ewens and requested that he provide his
2 opinion to us. He provided a rough draft of an affidavit he
3 was working on at the time, and he provided it to us on
4 June 15, 2021.

5 Q. Tell the commissioners how the Commission came to
6 obtain the completed report of Dr. Ewens.

7 A. Dr. Roberts told us that she -- there were certain
8 documents and materials that she wanted to review in this
9 case in order to complete a report.

10 Because we were able to locate the histology
11 slides and the paraffin blocks that were collected during
12 the autopsy as well as many additional documents and files
13 that Dr. Roberts had not reviewed yet through her work with
14 Mr. Pritchard's defense attorneys, we executed an agreement
15 with her in order for her to complete a final report. We
16 felt that since Dr. McLemore and Dr. Wolf had been provided
17 opportunities to review those materials and autopsy samples,
18 that we should give Dr. Roberts the same opportunity.

19 We executed an agreement with Dr. Roberts to be
20 paid for five hours of work in November of 2021. And after
21 we received the agreement from her, I sent the histology
22 slides, paraffin blocks, and additional documents for her to
23 review.

24 Dr. Roberts then asked me if the Commission wanted
25 the completed report from Dr. Ewens as she was going to

1 reference her conversations with him in her final report. I
2 told her yes. And when she submitted her report, she sent
3 to me the final report from Dr. Ewens.

4 Q. Did the Commission speak to Dr. Ewens about his
5 report?

6 A. Yes. After we received it, I reached out to him
7 and spoke about his testifying for the Commission. He
8 agreed to accept the subpoena for his testimony.

9 I also sent to him the same materials that I had
10 sent to Dr. George Behonick and Dr. Christopher Holstege as
11 well as all the expert reports from everyone else and told
12 him that he was welcome to review them prior to the
13 commission hearing so that he had the same understanding of
14 this case as the other experts did.

15 MS. SMITH: Commissioners, do you have any
16 questions so far about Team A?

17 Q. Can you tell us which experts the Commission spoke
18 to after speaking with Dr. Roberts.

19 A. Ms. Tanner reached out to forensic pathologist
20 Dr. Jerri McLemore, who is the medical examiner for Forsyth
21 County, after the phone call with Dr. Roberts. The
22 Commission had previously worked with Dr. McLemore on
23 another commission case a few years ago.

24 Dr. McLemore reviewed the cause of death for that
25 case and also testified at a commission hearing.

1 Dr. McLemore agreed to be an expert in
2 Mr. Pritchard's case and executed an agreement to be paid
3 for her services.

4 The day after Ms. Tanner spoke to Dr. McLemore,
5 she spoke to Dr. Jason Hudson, who is the current chief
6 toxicologist at the Office of the Medical Examiner in
7 Raleigh. Ms. Tanner had called their office to see what
8 materials they had other than documents related to the
9 autopsy that was performed, and she called specifically to
10 see if they had the histology slides or other samples from
11 the autopsy.

12 She spoke to Dr. Hudson and explained
13 Dr. McLemore's involvement in this case. She also explained
14 the need for the Commission to hire a toxicologist to review
15 this case and then Dr. Hudson agreed to be an expert.

16 Both Dr. McLemore and Dr. Hudson executed
17 agreements to be paid for their services and they received
18 case materials from the Commission on June 10, 2021.

19 Q. And you mentioned looking for histology slides and
20 tissue samples.

21 What did the Commission learn about what was
22 preserved from the autopsy?

23 A. We learned that the Office of the Chief Medical
24 Examiner has a retention policy of five years and they had
25 nothing other than documents in their possession related to

1 this autopsy.

2 They recommended checking with the hospital where
3 the autopsy was performed. We checked with that hospital,
4 which is Watauga Medical Center, and learned that they still
5 had the histology slides and the paraffin blocks from the
6 autopsy. They did not have anything left other than
7 documents related to the autopsy that they had already
8 produced to us.

9 Q. What did the Commission do next?

10 A. We issued a subpoena to take possession of the
11 histology slides and the paraffin blocks. I arranged to
12 pick up the slides and paraffin blocks and transfer them to
13 Dr. McLemore on the same day so that she could review them.

14 On July 15, 2021, I picked up the histology slides
15 and paraffin blocks from the Watauga Medical Center in
16 Boone, and then later I traveled to Winston-Salem and met
17 with Dr. McLemore at a café to give her the histology slides
18 and the paraffin blocks.

19 Q. What happened when you met with Dr. McLemore?

20 A. I gave her the histology slides and the paraffin
21 blocks and she signed the commission chain of custody form.
22 She then told me that her initial thoughts on this case were
23 in line with Dr. Hall's findings and that she did not
24 disagree with him. She said that she thought the likely
25 cause of death was aspiration bronchial pneumonia but she

1 was reserving her opinion until she looked at the histology
2 slides and paraffin blocks. She said that unless she saw
3 something in those slides, her findings would be consistent
4 with Dr. Hall's findings.

5 Q. Did she say anything else?

6 A. Yes. She said that she felt pressured by
7 Ms. Tanner to take the case. She said that she tried to
8 tell Ms. Tanner that she did not think she had time, but she
9 thought Ms. Tanner was desperate. She then said that her
10 employment contract with the Office of the Chief Medical
11 Examiner does not allow her to testify against a
12 North Carolina medical examiner.

13 I asked her if that was just for current medical
14 examiners or if it also included past medical examiners,
15 since Dr. Hall has not been a medical examiner since 2013.
16 Dr. McLemore told me that no one has told her the answer,
17 but she believed that it included past medical examiners.

18 She said that she had consulted with the Office of
19 the Chief Examiner's legal counsel, Ashton Roberts. She
20 said this had not been a previous -- had not been an issue
21 with the previous commission case that she had worked on.
22 She also said that since she believed her opinion would
23 likely be in line with Dr. Hall's, she would not be
24 violating her contract as she would not be testifying
25 against him.

1 She said that her preliminary opinion, which could
2 change after viewing the slides, was that the cause of death
3 was complication of drugs, morphine toxicity, bronchial
4 pneumonia.

5 We talked about the toxicology report briefly and
6 then I left.

7 Q. Did the Commission put any pressure on
8 Dr. McLemore to serve as an expert in this case?

9 A. No, we did not. We had used her on a previous
10 case and contacted her to see if she was available for this
11 one. We were not desperate to have her serve as an expert
12 in this case and she was the first person we reached out to
13 about it and she agreed to do it.

14 Q. When you met with Dr. McLemore, did you think that
15 you were going to speak about the case?

16 A. No. I thought I was just there to give her the
17 evidence so that she could complete her review and I was not
18 aware to what extent she had already begun reviewing the
19 materials in this case.

20 Q. What happened as a result of your conversation
21 with Dr. McLemore?

22 A. The Commission decided that a new forensic
23 pathologist was needed to serve as an independent expert for
24 this case. We also decided that any forensic pathologist
25 needed to come from outside North Carolina, with no ties to

1 the state, in order to avoid any potential conflicts due to
2 that contract language.

3 We also learned later that state employees of the
4 Office of the Chief Medical Examiner would have a conflict
5 with serving as experts as well in our cases. Had we known
6 about Dr. McLemore's contract provision, we never would've
7 hired her as an expert in the first place.

8 We also reached out to Dr. Hudson to see if he had
9 a similar provision in his contract that would preclude him
10 from testifying against a North Carolina medical examiner.

11 Q. Ms. Bridenstine, I will get to Dr. Hudson in just
12 a little bit.

13 Did anything else happen with Dr. McLemore?

14 A. Yes. I spoke with her on the phone the day after
15 I met with her in Winston-Salem and gave her the slides and
16 the paraffin blocks. She said she had looked at the
17 histology slides. She told me that her opinion was still
18 the same and that Mr. Whitson had aspiration
19 bronchopneumonia.

20 Ms. Tanner and I also had additional phone calls
21 with Dr. McLemore about this case. During a recorded phone
22 interview on July 27, 2021, she talked about her opinion of
23 what the cause of death was. She discussed her employment
24 contract and she discussed her prior knowledge of Dr. Hall.

25 MS. SMITH: Commissioners, you were

1 previously provided Handout 47, which is the transcript of
2 the interview of Dr. McLemore that was conducted on July 27,
3 2021, by Ms. Bridenstine and Ms. Tanner.

4 MR. GLAZIER: So let me get this straight.

5 We are hearing or reading an expert's opinion
6 who you just said the Commission, if they'd known everything
7 about, would not be seeking the opinion of someone who says
8 she has a contract that says she can't testify against a
9 state medical examiner's opinion and, lo and behold, she
10 does not.

11 Is that where we are?

12 MS. BRIDENSTINE: Yes.

13 MR. GLAZIER: Thank you.

14 MS. SMITH: Commissioners, I'm going to add
15 in my personal -- not personal -- my professional comment
16 here.

17 As director, I am charged with presenting to
18 you-all all relevant evidence. Because Dr. McLemore had
19 already provided an opinion, we believe -- I believe as
20 director that it's important for you to have that, but we
21 also wanted you to have the context of how that opinion came
22 to us.

23 You'll have an opportunity to ask
24 Dr. McLemore questions because she is going to testify
25 today. So ...

1 JUDGE LOCK: Commissioner Colbert.

2 MS. COLBERT: Didn't you say we have used or
3 the Commission has used her previously?

4 MS. BRIDENSTINE: Yes.

5 MS. COLBERT: Okay. I just wanted to be
6 sure. Okay. Thank you.

7 Q. And, Ms. Bridenstine, can you clarify for the
8 commissioners why Dr. McLemore felt she did not have a
9 conflict in the prior case with respect to her employment
10 contract?

11 A. She said that that case predated the current
12 system for how the Office of the Chief Medical Examiner
13 employs and contracts with medical examiners around the
14 state.

15 Q. After your phone call with -- or phone interview
16 with Dr. McLemore, did the Commission ever again discuss
17 with her that employment contract?

18 A. Yes. Ms. Tanner and I spoke to her on the phone
19 on August 17, 2021. Dr. McLemore reported that she met with
20 the chief medical examiner and legal counsel. She said that
21 she was told that she can never work on a case that
22 originated from the current medical examiner system, but
23 that she could write a report and testify in this case.

24 She said that she was told that she could not work
25 with the Commission again. She also said that her previous

1 work with the Commission was okay because it happened before
2 the current system.

3 She was told that the position is that this
4 prevents bias for or against the North Carolina medical
5 examiners who are being reviewed.

6 Q. Did the Commission ever obtain Dr. McLemore's
7 employment contract with the chief -- Office of Chief
8 Medical Examiner?

9 A. Yes. We served a subpoena on the Office of the
10 Chief Medical Examiner for documents. As part of that
11 request, we asked for the most recent employment contract
12 for Dr. McLemore. The Office of the Chief Medical Examiner
13 produced the current contract between the State and Wake
14 Forest Baptist for autopsy services. This is the contract
15 that Dr. McLemore was referring to in her conversation with
16 us.

17 MS. SMITH: Commissioners, you were
18 previously provided Handout 48, which is that employment
19 contract.

20 The provision in question is paragraph 16 on
21 page 9 of that handout, which states, quote: "Ensure that
22 any pathologist employed by vendor does not enter into any
23 contract or accept any additional employment to act as an
24 expert witness in opposition to OCME. This includes
25 publishing a report for litigation and/or offering testimony

1 that conflicts with the report or testimony of, one, a
2 professional staff member of the OCME; two, another
3 pathologist under contract with OCME; or, three, another
4 local medical examiner in the North Carolina Medical
5 Examiner system."

6 Commissioners, you also previously received
7 Dr. McLemore's report as Handout 3 and her CV as Handout 4.

8 Q. Ms. Bridenstine, what did Dr. McLemore conclude
9 was the cause of death in her report?

10 A. She stated that her opinion was that morphine
11 contributed to death. She determined that the cause of
12 death in this case was pneumonia due to obtundation due to
13 morphine intoxication. She said that the manner of death
14 was accident.

15 Q. Did the Commission provide any additional
16 materials to Dr. McLemore after she issued her report?

17 A. Yes. We gave her additional materials that we
18 also provided to the other experts and we also gave her the
19 other expert reports that were issued in this case.

20 MS. SMITH: Do any commissioners have any
21 additional questions for Ms. Bridenstine about Dr. McLemore?

22 Q. Ms. Bridenstine, I want to turn back to Dr. Jason
23 Hudson.

24 Based on what we learned about Dr. McLemore's
25 employment contract, did we determine if Dr. Hudson had a

1 similar contract provision?

2 A. Yes. The day after I met with Dr. McLemore in
3 Winston-Salem, I spoke to Dr. Hudson and asked him if he had
4 a contract provision that stated he could not testify
5 against a North Carolina medical examiner. He informed me
6 that he did not have an employment contract since he is a
7 state employee and that Dr. McLemore is an independent
8 contractor through a regional autopsy center.

9 He said that he thought that the contract
10 provision was about preventing independent contractors from
11 testifying against OCME pathologists. He said that there
12 was nothing that would preclude him from offering an opinion
13 in this case and that he did not have any conflicts.

14 He also brought up the fact that he cannot testify
15 about manner and cause of death but only about interpreting
16 the toxicology report.

17 Dr. Hudson said that his only issue was that he
18 did not think he could accept payment for his services as he
19 is a state employee and the Commission is a state agency.
20 He does not bill state employees for any work that he does.
21 He said that he was willing to work for free.

22 Q. Did the Commission ultimately end up continuing
23 with Dr. Hudson as a forensic toxicology expert in this
24 case?

25 A. No, we did not. We continued to consult with him

1 for a few weeks as we understood he would continue to work
2 as a forensic toxicologist for free. But on August 5, 2021,
3 I received an email from him asking that we put a, quote,
4 "hold status," end quote, on his involvement in this case.

5 He indicated that through Dr. McLemore, our
6 request for his involvement had come to the attention of the
7 chief medical examiner and the office counsel was
8 determining the process for the Office of the Chief Medical
9 Examiner's involvement in these types of reviews.

10 Q. What happened to Dr. Hudson's hold status?

11 A. On August 23, 2021, I received an email from
12 Dr. Hudson saying OCME was not allowing him to serve as an
13 expert or testify in this case since this case was an OCME
14 case and he is a current employee of OCME, regardless of
15 whether he was paid or unpaid.

16 He went on to say that he had received permission
17 to speak to the Commission, quote, "regarding the scope of
18 analysis, limits of detection, and other nuances of the tox
19 report so that the appropriate information is translated to
20 the experts and Commission for their interpretation.
21 However, I will not be able to provide testimony or
22 interpretive opinions for the Commission," end quote.

23 Q. Did the Commission do anything to determine if the
24 Office of Chief Medical Examiner's position of not
25 authorizing Dr. Hudson's expert for the Commission was based

1 on any policy?

2 A. Yes. As part of the subpoena that we served on
3 the Office of the Chief Medical Examiner, we requested,
4 quote, "any current policies related to expert consultation,
5 expert retention, and expert testimony by any employee of
6 the Office of the Chief Examiner," end quote.

7 The Office of the Chief Medical Examiner produced
8 a secondary employment policy from the State of
9 North Carolina Office of Human Resources and stated that it
10 used this policy to determine employee availability to serve
11 as experts.

12 MS. SMITH: Commissioners, you previously
13 received the secondary employment policy as Handout 49.

14 Does anyone have any questions for
15 Ms. Bridenstine about Dr. Hudson?

16 SHERIFF KIMBROUGH: Yes, I have one.

17 JUDGE LOCK: Yes, sir.

18 SHERIFF KIMBROUGH: I guess maybe it's a
19 question for the doctor. When she -- I was looking at the
20 evaluation where she says that Dr. Hall's opinion that the
21 decedent died from morphine toxicity is not entirely
22 incorrect.

23 I just want to know, what does that mean?

24 MS. BRIDENSTINE: She will be testifying, we
25 think, later today. And I believe you're referring to

1 Dr. McLemore's report?

2 SHERIFF KIMBROUGH: Right.

3 THE WITNESS: Yes.

4 SHERIFF KIMBROUGH: Okey-doke. Thank you.

5 Q. Ms. Bridenstine, did the Commission reach out to
6 additional experts in this case?

7 A. We did.

8 Q. Who else?

9 A. I corresponded with a previous expert, Dr. Sharon
10 Kelly, that the Commission had worked with on a previous
11 case. She is a professor in the psychiatry and
12 neurobehavioral sciences department at the University of
13 Virginia, and I asked her if she knew of any forensic
14 pathologists outside the state of North Carolina who might
15 be able to review the cause of death in a drug overdose
16 case.

17 She said that she did not know of any forensic
18 pathologists but she recommended contacting Dr. Christopher
19 Holstege, the chief toxicologist at the University of
20 Virginia School of Medicine.

21 Based on Dr. Kelly's recommendation, I reached out
22 to Dr. Holstege and spoke to him on the phone to ask if him
23 if he could recommend any forensic pathologists who might be
24 available to work on this case.

25 Q. Did Dr. Holstege have any recommendations?

1 A. Yes. After explaining the facts of this case, he
2 said that he could possibly serve as an expert as he deals
3 with drug overdoses in the clinical setting and he also
4 works closely with forensics.

5 He said that since he is a clinical MD
6 toxicologist, he can opine on manner and cause of death.

7 He also said that as a medical toxicologist, the
8 Commission would need a toxicologist with a Ph.D. to explain
9 the toxicology report.

10 He offered to review some of the case materials
11 for free and asked if it would be okay for his fellows to
12 also look at the case as he thought it would be good for
13 their educational program.

14 Q. Did the Commission provide materials to
15 Dr. Holstege?

16 A. Yes, we did.

17 Q. Did Dr. Holstege have any recommendations for
18 additional experts for the Commission?

19 A. Yes. As I said, he didn't know of any forensic
20 pathologists, but after Dr. Hudson could no longer serve as
21 our forensic toxicologist, I asked Dr. Holstege if he knew
22 of any forensic toxicologists outside the state of North
23 Carolina.

24 He recommended a couple of toxicologists,
25 including Dr. George Behonick, a forensic toxicologist who

1 Dr. Holstege had worked with in the past.

2 Dr. Holstege also told me that when he works on
3 cases, it is usually with a team of three doctors: A
4 forensic toxicologist who can opine on the toxicology test
5 and the validity of the test; a forensic pathologist who can
6 look at the autopsy and the slides; and a medical
7 toxicologist like him who can discuss the clinical side of
8 medicine as he cares for patients with drug issues and drug
9 overdoses all the time.

10 Q. Did Dr. Holstege ultimately agree to serve as an
11 expert in this case?

12 A. Yes, he did. He executed an agreement for his
13 services on September 27, 2021.

14 When he was consulting with the Commission, he
15 wanted to find out more about what the "trace" designation
16 meant for the morphine found in the femoral blood sample.

17 Dr. Hudson provided some information about that to
18 me that I passed on to Dr. Holstege. And after he executed
19 his agreement, I sent to him the remaining materials he
20 would need to review this case.

21 MS. SMITH: Commissioners, do you have any
22 questions about Dr. Holstege for Ms. Bridenstine?

23 Q. Ms. Bridenstine, you mentioned Dr. George
24 Behonick. Remind the commissioners who Dr. Behonick is.

25 A. Dr. Behonick is the director and chief

1 toxicologist of AXIS Forensic Toxicology, which is a lab
2 based in Indianapolis. Dr. Holstege recommended that I
3 reach out to him after Dr. Hudson put his status on hold for
4 the Commission.

5 Q. Did Dr. Behonick agree to be a forensic
6 toxicologist expert for the Commission?

7 A. Yes, he did. After I explained the case and the
8 need for a forensic toxicologist, he agreed and executed an
9 agreement through AXIS Forensic Toxicology with the
10 Commission on August 26, 2021.

11 Q. Did Dr. Behonick make any special requests for the
12 Commission?

13 A. He said that in order to do a review in this case,
14 he would need certain documents from the Office of the Chief
15 Medical Examiner regarding the standard operating procedures
16 and policies that were in place at the time of the
17 toxicology testing on Mr. Whitson's samples. Specifically,
18 he wanted to know all the standard operating procedures and
19 analytical methods that were in place at the time to perform
20 the toxicology testing, all standard operating procedures
21 regarding the reporting of drug values from toxicology
22 testing, the cut-off values for positive results for
23 screening tests, and the lowest limit reported for
24 confirmation tests for opiates, a list of all drugs and
25 substances that were screened during the toxicology testing.

1 Dr. Behonick also wanted to confirm that raw data
2 no longer existed for the toxicology testing that was
3 performed in this case.

4 Q. Did you provide those documents to Dr. Behonick?

5 A. I did. I also provided them to Dr. Holstege for
6 his review. And after serving a subpoena on the Office of
7 the Chief Medical Examiner, they produced the requested
8 documents to the Commission. They also confirmed that they
9 no longer had the raw data from the toxicology testing
10 because it was outside their retention period.

11 MS. SMITH: Commissioners, do you have
12 questions for Ms. Bridenstine about Dr. Behonick?

13 Q. Did the Commission hire an independent forensic
14 pathologist as an expert in this case?

15 A. Yes, we did. We hired Dr. Barbara Wolf, who is a
16 forensic pathologist and medical examiner in Leesburg,
17 Florida.

18 Q. Tell the commissioners how Dr. Wolf came to be the
19 forensic pathologist independent expert for the Commission.

20 A. I researched and spoke to several forensic
21 pathologists who work outside of the state of North
22 Carolina who offer -- who also offer their services as
23 experts. I also asked Dr. Behonick if he had any
24 recommendations for any forensic pathologists who might be
25 able to serve. He recommended a forensic pathologist named

1 Dr. Tracy Corey, a medical examiner in Florida. I contacted
2 Dr. Corey, who informed me that she no longer takes cases,
3 but she referred me to Dr. Wolf, who works in the same
4 office as Dr. Corey. She said that Dr. Barbara Wolf was a
5 board-certified forensic pathologist who was well versed in
6 drug overdose cases.

7 Q. Did Dr. Wolf ultimately agree to be a forensic
8 pathologist expert for the Commission?

9 A. She did. We also provided the histology slides
10 for her review and she executed her agreement on
11 September 22, 2021.

12 MS. SMITH: Commissioners, do you have any
13 questions for Ms. Bridenstine about Dr. Wolf?

14 MR. BOSWELL: Not really about Dr. Wolf, but
15 the slides that you're -- are these the same slides that
16 you're getting back and sending them to someone else and
17 getting back and sending them to someone else?

18 MS. BRIDENSTINE: Yes. So I got them from
19 Watauga Medical Center. I gave them to Dr. McLemore. She
20 reviewed them and she shipped them back to me. I then gave
21 them to Dr. Barbara Wolf. She shipped them back to me. I
22 then shipped them to Dr. Roberts.

23 MR. BOSWELL: Thank you.

24 Q. Ms. Bridenstine, at this point, have all the
25 experts that we've discussed so far received the reports of

1 all of the other experts in this case?

2 A. Yes. Except for Dr. Hudson. Since he was not
3 authorized to work for the Commission, we did not send him
4 additional materials after he told us that.

5 MS. SMITH: Commissioners, as I call each
6 expert today and tomorrow, please make sure that you pull up
7 their reports. That will provide you with a list of what
8 they were provided as well as what their expert opinions are
9 in the case.

10 These, again -- these, again, are Handouts 3
11 through 14.

12 As we have explained to you, please remember
13 that Team A and B have relevant information but they were
14 ultimately not hired by the Commission as our independent
15 experts. We will tender them as experts because they have
16 expertise and allow them to provide those opinions but we
17 believed it was necessary to hire these independent folks
18 that were neither tied to the defense nor had the
19 restrictions in their employment with OCME.

20 The only exception to this is you will not
21 hear from Dr. Hudson, as he has not been given permission to
22 proceed at all with the Commission.

23 As we hired independent experts which are
24 denoted up here as Team C, I don't intend to march through
25 every single report. You-all have had an opportunity to

1 read them and I believe that that would be a waste of your
2 time.

3 I will have some qualifying questions for
4 each expert. I will also have a few pointed questions for
5 them after we have tendered them as experts. And then
6 you-all get to ask any questions that you have of them as
7 well.

8 Before we begin calling our experts, does
9 anyone have any more questions for Ms. Bridenstine?

10 MR. GLAZIER: Thank you, Your Honor.

11 I'm just trying to -- in lieu of the expert
12 parade coming, I want to try to get, not the lineup, I
13 understand what you did and I think what you did was exactly
14 right, by the way. I agree with you.

15 But I am trying to figure out who they are.
16 In my reading -- and I want a summary from you.

17 My reading of the expert reports, at least at
18 this point, is that Dr. Roberts, Dr. Ewens, Dr. Wolf, and
19 Dr. Holstege have significant concerns with the Hall
20 determinations. Dr. Behonick has a toxicology report that
21 is somewhere in the middle, for lack of a better way of
22 saying it. Dr. McLemore is the only one that seems in full
23 agreement with Hall.

24 As a starting point, and I know that's
25 global, is that an accurate summary?

1 MS. BRIDENSTINE: I don't think I can
2 characterize the reports for you.

3 MR. GLAZIER: All right.

4 SHERIFF KIMBROUGH: Based on her report -- I
5 just want to make sure I'm understanding her report -- when
6 I say "her," Dr. McLemore -- she says that he's not entirely
7 incorrect.

8 MS. BRIDENSTINE: She did say that in her
9 report. And she will be testifying, I believe, next.

10 MS. SMITH: Yes.

11 MR. BOSWELL: Is Dr. McLemore next?

12 MS. SMITH: She is.

13 Any other questions about the experts?

14 Before we move on to them, we do have a few
15 items that came up earlier in the hearing that we want to
16 clarify with you-all.

17 MS. BRIDENSTINE: So earlier there was a
18 question about whether or not Stephanie Whitson Randolph's
19 dad is a bondsman. That was asked during the deposition and
20 she confirmed that he is -- or he was a bondsman at the
21 time. You can find those questions on page 69 and 70 of her
22 deposition.

23 She also said that she did not -- she said
24 that the status of her father as a bondsman didn't prevent
25 anyone from giving her drugs that she was aware of.

1 There was also a question about whether or
2 not Dr. Hall's 2010 DWI charge was in DMV records. We have
3 DCIN records that include DMV and there is nothing regarding
4 the 2010 charge in those records.

5 MR. GLAZIER: Your Honor, before we proceed
6 can we take a quick five-minute break?

7 JUDGE LOCK: We certainly may.

8 Just for our planning purposes, how many
9 experts do you have on tap for this afternoon?

10 MS. SMITH: I'm not entirely sure how long
11 Dr. McLemore will take. We need to finish by 6:00 o'clock
12 today so I would like to assess where we're at when we're
13 done with her as to whether we move on to the next one or
14 wait until tomorrow morning.

15 JUDGE LOCK: Okay. Very good.

16 MS. SMITH: So I do think it's a great time
17 for a break.

18 JUDGE LOCK: All right. Let's break until
19 about a quarter till.

20 (Recess taken, 4:37 to 4:50 p.m.)

21 JUDGE LOCK: All right. Let's come to order.
22 I think Dr. McLemore is available. And I understand she
23 does not have a camera on her computer so this will be voice
24 only.

25 MS. SMITH: That is our understanding.

1 JUDGE LOCK: All right. Whenever you're
2 ready.

3 MS. SMITH: All right.

4 Commissioners, you may recall that
5 Dr. McLemore -- or that there was testimony earlier that the
6 Commission had retained Dr. McLemore early in our
7 investigation to evaluate the autopsy and review the cause
8 of death determination in this case.

9 We have provided previously with
10 Dr. McLemore's report -- again, that's Handout 3. And her
11 CV is Handout 4.

12 You will want to refer to that throughout her
13 testimony.

14 And at this time, the Commission calls
15 Dr. Jerri McLemore.

16 JUDGE LOCK: All right. Dr. McLemore, this
17 is Tom Lock. I'm chair of the Commission. I know you
18 cannot see me, but I need to have you sworn or affirmed.

19 Do you have any particular objection to being
20 sworn?

21 THE WITNESS: Yes, I do.

22 JUDGE LOCK: All right. Do you have any
23 objection to being affirmed?

24 THE WITNESS: No, I do not.

25 JUDGE LOCK: All right.

1 Do you affirm, then, to -- that the testimony
2 you will give the Commission this afternoon will be the
3 truth, the whole truth, and nothing but the truth? Is this
4 your solemn affirmation?

5 THE WITNESS: It is.

6 JUDGE LOCK: Thank you very much.

7 Thereupon, JERRI MCLEMORE, MD, a witness having been called by the
8 Commission, was affirmed and testified as follows via telephonic
9 connection:

10 EXAMINATION BY MS. SMITH: (4:51 p.m.)

11 Q. Dr. McLemore, my name is Lindsey Guice Smith. I'm
12 the executive director of the Innocence Inquiry Commission.
13 I am going to ask you a series of questions today, first,
14 starting with your qualifications and then moving into your
15 review of the case.

16 When I'm done asking questions, the commissioners
17 who are seated around the table -- and I know you don't have
18 a camera but I'm not sure if you can see us -- but we have
19 eight main commissioners and three alternate commissioners
20 around the table, and all of them or any of them may have
21 questions for you.

22 We do have a court reporter present today so I
23 would just ask that you keep your voice up and, of course,
24 respond audibly for us because the court reporter needs to
25 take that down, but also we can't see you.

1 A. Yes.

2 Q. Okay.

3 Did you provide a report and CV to the Commission?

4 A. Yes, I did.

5 Q. And do those documents outline your training,
6 education, experience, and any certifications that you have?

7 A. Yes, they do.

8 Q. Approximately how many times have you testified as
9 an expert in forensic pathology before?

10 A. About 300 times.

11 Q. And what types of cases have those been? Are
12 those typically criminal cases or have there also been civil
13 cases?

14 A. There have been a handful of civil cases, about
15 15.

16 Q. And the remainder would be criminal?

17 A. And the remainder is -- well, the remainder are
18 cases that fell under the medical examiner system, yes.

19 Q. Okay.

20 And in what jurisdictions have you testified?

21 A. I have testified in federal court, district court,
22 superior court in New Mexico, Iowa, and North Carolina.

23 Q. And that includes state court in North Carolina?

24 A. Yes, it does. And I testified at one
25 court-martial at Fort Hood.

1 Q. And I believe you said other than around 15 civil
2 cases, the remaining cases in which you've testified have
3 been under your purview with the state medical examiner's
4 office.

5 Does that mean that your testimony has always been
6 for the State versus testimony for a criminal defendant?

7 A. Actually, no. And it's -- my testimony is neither
8 for the State nor is it for a defendant. It's in my
9 capacity as the medical examiner or forensic pathologist in
10 the institution I am working in.

11 Q. Okay.

12 And have you ever been hired as an independent
13 consultant on behalf of a criminal defendant?

14 A. I have been hired -- well, not hired, but I've
15 been asked to consult on a prior case before the
16 North Carolina Commission. But otherwise, that's about the
17 only one.

18 Q. And when you say "the Commission," you're talking
19 about the Innocence Inquiry Commission?

20 A. Correct.

21 Q. In reviewing this case, did you rely on your
22 training and experience as outlined in your CV?

23 A. Yes, I did.

24 Q. In reviewing this case, did you utilize reliable
25 principles and methods in the field of forensic pathology?

1 A. Yes, I did.

2 Q. Were you provided sufficient facts or data in your
3 review of the case?

4 A. Yes, I was.

5 Q. Did you also have a chance to review the
6 microscopic slides that were made during the autopsy?

7 A. Yes. I actually requested to have the slides to
8 review.

9 Q. Did that also include -- so that included
10 histology slides and paraffin blocks?

11 A. It was a review of the histology slides.

12 Q. Okay.

13 Based on your analysis in this case, do you
14 believe that you have specialized knowledge that will assist
15 the Commission in evaluating the autopsy that was performed
16 by Dr. Hall and the cause of death of Jonathan Whitson?

17 A. Yes.

18 Q. Have you formulated opinions in the case before
19 the Commission regarding the cause of death?

20 A. Yes, I have.

21 Q. Does your report contain your opinions and the
22 basis of that opinion?

23 A. Yes, it does.

24 MS. SMITH: Judge Lock, I would like to
25 tender Dr. McLemore as an expert in forensic pathology.

1 JUDGE LOCK: All right. That tender
2 certainly is allowed.

3 Q. Dr. McLemore, when you were contacted by the
4 Commission, did commission staff make it clear that they
5 were not seeking any particular opinion in the case?

6 A. Yes, they were -- yes, they did.

7 Q. And did commission staff make it clear that they
8 would present your findings no matter what those findings
9 were?

10 A. Yes.

11 Q. Since you issued your report, you also have been
12 provided with additional materials.

13 Did you have an opportunity to review those?

14 A. Very limited, but yes, I did.

15 Q. And that included the reports by other experts who
16 have reviewed this case; is that correct?

17 A. Yes. That's correct.

18 Q. Did you have a chance to review those reports?

19 A. Yes.

20 Q. Did any of the additional materials provided or
21 reports that you received change anything in your report or
22 in your opinion as to the cause of death of Mr. Whitson?

23 A. No, it did not.

24 Q. And what is your opinion in this case?

25 A. My opinion as to Mr. Whitson's cause of death?

1 Q. Yes, ma'am.

2 A. My opinion is that his cause of death was due to
3 aspiration pneumonia due to his obtundation due to his use
4 of morphine or drug intoxication.

5 Q. And the manner of death?

6 A. The manner of death I deemed as accident.

7 Q. Did anything other than the morphine cause
8 Mr. Whitson's death?

9 A. The morphine led to the chain of events that
10 ultimately led to his death.

11 Q. And were there any other contributing factors to
12 his cause of death?

13 A. I did not see any other contributing factors.

14 Q. Can you tell the commissioners what aspiration
15 pneumonia is.

16 A. Yes.

17 Aspiration pneumonia is, in -- especially in
18 people who are -- lack or who have decreased mental
19 awareness, have somnolence, or are somehow depressed
20 respiratorily. I mean, they're not breathing much, they're
21 not at their full functions mentally, they can aspirate or,
22 in a way, vomit up secretions or stomach contents. Because
23 they are not at full mental capacity, they can actually lose
24 that gag reflex that helps prevent that secretions or those
25 stomach contents from entering the windpipe and going into

1 the lungs.

2 And when that happens, then the lungs fight back
3 from this foreign material and cause inflammation leading to
4 pneumonia.

5 Q. Is that a common finding in drug overdoses?

6 A. Yes, it is a common finding in some degree in
7 drug-related deaths.

8 Q. And how does aspiration pneumonia contribute to
9 the death in these drug overdose cases?

10 A. So pneumonia basically means there is filling up
11 of the air spaces in the lungs. That's what pneumonia of
12 any kind means. When that happens, air cannot move from the
13 lungs to the blood and therefore go to other parts of the
14 body.

15 So the worse the pneumonia, the greater risk that
16 the person will not get enough oxygen throughout the body,
17 and this can lead to death.

18 Q. How long does aspiration pneumonia take to
19 develop?

20 A. It's variable. But it can -- it can start causing
21 problems in as little as -- in a few hours. Sometimes it
22 takes even, you know, longer, like 12 hours. The longer it
23 takes, the more likely a person is going to have symptoms of
24 developing that pneumonia, like cough or a fever or things
25 like that.

1 Q. Dr. McLemore, none of the other experts in this
2 case who reviewed the slides found that Jonathan Whitson had
3 aspiration pneumonia.

4 What was it in your review that made you think he
5 had this aspiration pneumonia caused by using morphine?

6 A. The examination of the lung tissue under the
7 microscope, looking at the histology slides, the pattern of
8 changes in the lung tissue are classic for aspiration
9 pneumonia.

10 Q. Dr. McLemore, you use the term "aspiration
11 pneumonia," but Dr. Hall's autopsy indicates that he noted
12 acute pneumonia; is that correct?

13 A. That's correct.

14 Q. Are acute pneumonia and aspiration pneumonia the
15 same thing?

16 A. They can be.

17 Q. Can you explain that?

18 A. They're both pneumonias. And, again, pneumonia is
19 anytime inflammation or any other material is filling up the
20 airways.

21 He -- his use of the word "acute" is most likely
22 related to the fact of the type of cell that is trying to
23 fight the material, the foreign material -- in this case, a
24 cell called a neutrophil, or in other terms, it's also
25 called acute inflammation.

1 Q. Is acute bronchial pneumonia a common finding in
2 drug overdoses, as Dr. Hall found in this case?

3 A. Well, acute bronchial pneumonia can also be
4 aspiration pneumonia because, again, the cells that are
5 trying to eliminate the foreign material are what's termed
6 as neutrophils or acute inflammation.

7 Q. How long does acute bronchial pneumonia take to
8 develop?

9 A. Again, it's the same thing. Acute inflammation --
10 acute bronchial pneumonia is like aspiration pneumonia. It
11 can take a few hours to anywhere from even 15 hours.

12 Q. So I want to make sure that we understand.

13 When you say that you saw characteristics or
14 pattern -- patterns of changes that were classic
15 characteristics of aspiration pneumonia, are those patterns
16 different than acute bronchial pneumonia?

17 A. Well, acute pneumonia can be construed to mean
18 aspiration pneumonia. Acute pneumonia, to me, is a more
19 general term.

20 Q. Okay.

21 If Dr. Hall reported that he did not see any signs
22 of aspiration pneumonia in this case, would that then be a
23 different opinion or inconsistent with your opinion?

24 A. Yes.

25 Q. And if he said that he didn't see any signs of

1 aspiration bronchial pneumonia, would that be different your
2 opinion?

3 A. I'm not sure I would understand the term, you
4 know, "aspiration bronchial pneumonia."

5 Again, aspiration pneumonia, just because of where
6 it is, the inflammation and the foreign material go out
7 small airways, these are the bronchioles, and that's where
8 the inflammation tends to start and then spread out through
9 the rest of the lung.

10 So aspiration bronchial pneumonia can be
11 aspiration pneumonia.

12 Q. Okay.

13 I want to turn to the toxicology report that was
14 issued in this case. What does the level of 15 milligrams
15 per liter morphine in the urine indicate to you?

16 A. It indicates that there has been a prior, fairly
17 recent use of morphine.

18 Q. Is 15 milligrams per liter in the urine a lethal
19 level of morphine?

20 A. I don't think you can tell just from a urine
21 level. We typically don't make calls from just levels in
22 urine.

23 Q. And have you ever heard of 14 milligrams per liter
24 of morphine in urine being a cutoff point for toxicity
25 resulting in death?

1 A. I would have to pass that on to a toxicologist as
2 far as what they consider.

3 Q. Okay.

4 Can you determine that a drug was lethal based on
5 the level reported in urine at the time of death?

6 A. In a vacuum, no.

7 Q. Are there other circumstances that would allow you
8 to make that determination?

9 A. So usually in autopsies we're not looking at one
10 single finding. So just giving me, "Oh, this is a certain
11 level in the urine, what does that mean," I don't know. I'd
12 have to look to see what the rest of the autopsy showed.
13 I'd have to look at tissue under a microscope, which I did.

14 So taking everything into account, you know,
15 that's -- you know, that's how you use whether or not, you
16 know, is that level of morphine, you know, important.

17 Q. Can you draw any conclusions from the designation
18 of "trace" morphine in the femoral blood?

19 A. The only conclusion with that, again, it was a
20 really recent use of morphine then.

21 Q. What does the designation of ethanol at
22 40 milligrams per liter in the aorta blood mean?

23 A. Well, if it's a real value, then 40 milligrams is
24 equal to .04 percent. So that's a relatively low level of
25 ethanol.

1 Q. And I misspoke, and so correct this, if this makes
2 a difference: It's 40 milligrams per deciliter in the aorta
3 blood.

4 A. Right. 40 milligrams per deciliter. So that is
5 the same as .04 percent.

6 Q. And when we're talking about .04 percent, if we
7 were looking at blood alcohol levels in the context of a .08
8 being the limit -- the legal limit for driving in
9 North Carolina, is .04 half of the legal limit?

10 A. Yes.

11 Q. And that is the .04 percent that we're talking
12 about here?

13 A. Correct.

14 Q. Does that amount, the 40 milligrams per deciliter
15 or .04 percent, indicate whether or not Mr. Whitson consumed
16 any alcohol before he died?

17 A. Well, that's a tricky question. That's hard to
18 know. Unfortunately, at the time of Mr. Whitson's death,
19 the common practice to transport toxicology specimens to the
20 toxicology laboratory at that time was through USPS. It was
21 not uncommon for us to get low levels of ethanol detected
22 because the tissues sat on docks or a sat in hot vans and
23 they started to ferment and actually produced their own
24 ethanol.

25 That's why I'm saying if this is a true value. If

1 it is a true value and it's not due to postmortem
2 fermentation of the tissue, then it is still a low level of
3 ethanol.

4 Q. And when you say it was not uncommon for low
5 levels of ethanol to be detected because of this postmortem
6 fermentation due to the shipping process, is .04 percent the
7 type of level that you're talking about seeing commonly?

8 A. Actually, yes.

9 Q. If we were to assume that it is not postmortem
10 fermentation, would you be able to tell how much alcohol
11 Mr. Whitson had consumed prior to his death?

12 A. Not really. I mean, we're talking about alcohol
13 at one point in time. And at this point, it's at his death.
14 That could have been low level -- presuming that no alcohol
15 was found in the urine or if they even tested for it, if
16 there was no ethanol in the urine if they tested for it,
17 then .04 is a very low level.

18 Q. And if there is no alcohol in the urine, does that
19 mean that it had not metabolized out?

20 A. So it could mean that or, like I said, it could be
21 an erroneous level because it was caused by postmortem
22 fermentation of tissues.

23 Q. And, again, assuming that it's not postmortem
24 fermentation, would you be able to tell when Mr. Whitson
25 consumed alcohol?

1 A. No. But if there's no -- I'll take that back.

2 But if there is no alcohol in the urine, then it
3 had to have been pretty quick because it didn't have time to
4 metabolize.

5 Q. Okay.

6 And you reviewed medical records for Mr. Whitson's
7 hospital stay in December 2010; correct?

8 A. Correct.

9 Q. Could the cellulitis, blood clots, and probable
10 abscess that he is described as having in the records have
11 contributed to his death?

12 A. I don't think so.

13 Q. What's the basis for that opinion?

14 A. Well, cellulitis in and of itself, although it may
15 be painful, usually doesn't cause death unless there is
16 breakout of the bacteria into the bloodstream, at which
17 point it's called bacteremia, or, if it's very severe and
18 widespread, it's sepsis.

19 Q. Do we have any way of knowing based on the
20 materials that you were able to review whether or not there
21 was any bacteremia or sepsis in Mr. Whitson?

22 A. I don't have any -- any evidence based on looking
23 at the tissue under the microscope that there was any degree
24 of sepsis or other infectious process going on.

25 Q. Are there any guidelines about how cause and

1 manner of death should be determined and reported?

2 A. There's guidelines based on the National
3 Association of Medical Examiners. They produced a booklet
4 that details how to formulate cause and manner of death
5 statements. There is also guidance from the World Health
6 Organization.

7 Q. Okay.

8 How confident are you in your cause of death
9 determination in this case?

10 A. Very confident.

11 Q. And, Dr. McLemore, I'm going to reference -- one
12 of our handouts is the transcript of your interview with us,
13 and I'm just going to pull it up really quick.

14 And I am sorry you don't have this in front of
15 you, but I'm going to read from it. This is from page 44,
16 line 10.

17 Our staff attorney Julie Bridenstine asked:

18 "Q. And how confident do you need to be until you
19 issue a cause of death after you do an autopsy?"

20 And your response was:

21 "A. Depends on the situation. But for this one,
22 I mean, it's more likely."

23 Ms. Bridenstine asked:

24 "Q. So in your opinion, this is a more likely
25 than not?"

1 And you responded:

2 "A. Yep."

3 A. Correct.

4 Q. Okay.

5 So I just want to clarify that that assessment of
6 more likely than not is not any different than what you're
7 saying today. I think you just said to me now that you were
8 pretty certain.

9 A. Yeah. I'm very confident, and that -- that
10 exceeds the bar of more likely than not.

11 JUDGE EVANS: Could she repeat that?

12 Q. Could you repeat that, please.

13 A. Yeah. I'm very confident in the cause and the
14 mechanism of the death here, and that exceeds the bar in --
15 usually in these type of cases, that more likely than not.

16 MS. SMITH: Commissioners, what questions do
17 you-all have for Dr. Jerri McLemore?

18 SHERIFF KIMBROUGH: Good evening,
19 Dr. McLemore.

20 THE WITNESS: Good evening.

21 SHERIFF KIMBROUGH: So I just have two
22 questions on the evaluation, autopsy finding of the original
23 report.

24 It says: "While sparse in description in
25 some areas, especially descriptions of the histologic

1 findings, Dr. Hall's opinion that the decedent died from
2 morphine toxicity is not entirely incorrect."

3 You may have answered that, but I guess my
4 question is: From your opinion, morphine was a contributing
5 factor or did he die from morphine toxicity?

6 THE WITNESS: Morphine certainly was
7 contributing, and it was actually a direct result because of
8 the complications of the morphine, not toxicity per se, but
9 intoxication.

10 SHERIFF KIMBROUGH: So that's what you mean?

11 THE WITNESS: So -- yes. Aspiration
12 pneumonia is a direct complication of morphine intoxication.

13 SHERIFF KIMBROUGH: Okay. And I guess my
14 last question would be based on a lot of the evidence that
15 you were given, were you able to determine or able to find
16 that the decedent had any type of heart issues or lung
17 issues?

18 THE WITNESS: Yeah -- no, I did not. Other
19 than the aspiration pneumonia, I couldn't find any other
20 pathology, except in the lungs there was foreign material,
21 crystalline material around some of the lung vessels that is
22 consistent with filler from pills or tablets that can't
23 quite be crushed up.

24 SHERIFF KIMBROUGH: Thank you, ma'am.

25 MS. SMITH: If I may ask a follow-up to that.

1 JUDGE LOCK: Yes.

2 Q. Dr. McLemore, just for the record, that was
3 Sheriff Kimbrough, who is one of our commissioners, asking
4 you those questions. And I'll ask our other commissioners
5 to identify themselves so that you know who you're speaking
6 with.

7 A follow-up question on the filler from the pills
8 and tablets, is that something that would have developed
9 from this instance of drug use or some prior instance of
10 drug use or can you tell?

11 A. It would be difficult to tell. However, the
12 crystalline material was within the vessel wall and there
13 was no -- typically when this happens, there is a type of
14 inflammation, if it sits there long enough, that occurs
15 called granulomatous inflammation, and that had not
16 occurred.

17 SHERIFF KIMBROUGH: So I guess my follow-up
18 question would be: What you found, would that be consistent
19 with somebody who has been using for an extended period of
20 time or would that be found in somebody who just used it
21 maybe say that particular time, in a 12-hour span?

22 THE WITNESS: So without the inflammation
23 accompanying this crystalline material in the vessel, that's
24 more consistent with a more recent use.

25 SHERIFF KIMBROUGH: Thank you.

1 MR. GLAZIER: This is Rick Glazier, Doctor.
2 Good afternoon.

3 THE WITNESS: Good afternoon.

4 MR. GLAZIER: I have some questions, and I'll
5 be going through your report. And I'm looking to start on
6 the paragraph under Evaluation of Autopsy Findings of
7 Original Report.

8 In your first sentence, you say: "While
9 sparse in description in some areas, especially descriptions
10 of histologic findings" -- could you tell me what was
11 "sparse" when you were saying that? What should have been
12 there that wasn't?

13 THE WITNESS: Yes. Dr. Hall basically -- I
14 think it was a total of two short sentences in his
15 description of the lung findings. He did not describe the
16 crystalline material. He did not describe the pattern of
17 inflammation and the large colonies of bacteria and
18 macrophages that were in the lungs.

19 This kind of description would actually --
20 for someone reading the report, would actually bring up the
21 possibility of aspiration pneumonia.

22 MR. GLAZIER: Were there other things that
23 were sparse in the report?

24 THE WITNESS: The rest of the -- the rest of
25 the organs, the liver and the kidneys and those major organs

1 were essentially normal. And so, you know, the description
2 actually fit the findings.

3 MR. GLAZIER: The rest of your sentence,
4 Doctor, says: "While sparse in description in some areas,"
5 et cetera, "Dr. Hall's opinion that the decedent died from
6 morphine toxicity is not entirely incorrect."

7 So what part of his opinion was incorrect?

8 THE WITNESS: I would probably -- as I put my
9 cause of death, obviously there are more factors that I felt
10 caused his death.

11 So it wasn't just simply the morphine
12 toxicity, although morphine can be toxic, but that implies
13 that it's a morphine level that is in a high toxic range or
14 the direct effects of the drug on the system that leads to
15 death.

16 I don't think that's entirely correct. I
17 think it's the complications of the morphine intoxication.

18 MR. GLAZIER: Thank you, Doctor.

19 In the next paragraph, you mentioned that
20 there was "no mention of subcutaneous or noticeable abscess
21 of the arm or anywhere else on the body in the autopsy
22 report," and that you couldn't assess the body -- you
23 weren't able to confirm or eliminate the possibility that an
24 abscess exists.

25 If there are medical records and anecdotal

1 evidence that confirms there was serious issues for some
2 length of time with the arm, including a swollen arm,
3 including treatment in hospital where there was the
4 potential of amputation, would that change your opinion in
5 any way?

6 THE WITNESS: Well, that would -- that would
7 certainly confirm that there was probably an abscess or
8 cellulitis there.

9 But, again, the pattern of inflammation that
10 I'm seeing in the lungs is not from sepsis due to any other
11 site away from the lungs that spread to the lungs. It's
12 also not a pattern of community-acquired pneumonia. This
13 was a pattern of aspiration.

14 MR. GLAZIER: You also mentioned that one of
15 the reasons your view is that way, besides the lack of
16 changes to the organs that were suggestive of sepsis, was
17 the lack of anecdotal complaints of fever or other symptoms.

18 If there was evidence from multiple witnesses
19 that the victim suffered from fever shortly before his
20 death, would that change your opinion?

21 THE WITNESS: Not really. If he's developing
22 aspiration, at that point, that can also give you a fever.

23 MR. GLAZIER: What if that fever was
24 multiple days prior to the event?

25 THE WITNESS: Then he probably does have some

1 problems related to abscess or cellulitis. But, again, the
2 pattern of changes in the lungs is not from pneumonia caused
3 by sepsis. It's not -- it's not the same as
4 community-acquired pneumonia. This is a pattern of
5 aspiration.

6 MR. GLAZIER: Thank you, Doctor.

7 SHERIFF KIMBROUGH: Doctor, I've got one more
8 question for you. This is Bobby Kimbrough again.

9 I'll go back to the heading on the original
10 report where you said "while sparse in description in some
11 areas," and then you go down to the second paragraph and you
12 say "no mention ... noticeable abscess of the arm or
13 anywhere else on the body was in the original autopsy
14 report."

15 I mean, are you saying -- I'm not trying to
16 put words in your mouth, but was the original autopsy report
17 sparse in description of the whole report?

18 THE WITNESS: I would say yes, it was.

19 JUDGE LOCK: Dr. Perry.

20 DR. PERRY: Dr. McLemore, my name is Frank
21 Perry, and the previous two commissioners have asked that
22 you direct your attention to page 3, the same paragraph.

23 Perhaps it's the manner that you express
24 yourself, which is fine, but in the evaluation first
25 paragraph, continuing, "Dr. Hall's opinion," et cetera, "is

1 not entirely incorrect," and then you go from that manner of
2 expression to your conclusions at the bottom of page 5.

3 To say "not entirely incorrect" is certainly
4 different from "is entirely correct."

5 What percentage would you put on that sparse
6 characterization not at the beginning of that statement, but
7 at the end?

8 THE WITNESS: I'm not --

9 DR. PERRY: What do you mean, Doctor, by "not
10 entirely incorrect"? Is that less than 50 percent in your
11 assessment or 30 percent?

12 THE WITNESS: So I don't think I can
13 quantitate it as far as the percentage. It's not entirely
14 incorrect because he was considering the morphine as being
15 part of the death, if not all of it, the way it was written.

16 And I don't disagree that morphine played a
17 role in this person's death.

18 DR. PERRY: But is there any way for
19 laypersons that you could perhaps, say for discussion here,
20 put a quantity on that as far as "not entirely incorrect"?
21 Would that be 20 percent correct?

22 THE WITNESS: I'm not sure -- if I put
23 percentage on it, I'm picking a number out of the air.

24 What I -- basically, we both agree that
25 morphine played a role in this person's death. It's just

1 the mechanism of how this death came about that we probably
2 disagree on.

3 DR. PERRY: But the level of causation you
4 would agree on as well; right?

5 THE WITNESS: Yeah. There's intervening
6 factors as far as the direct results -- the complications
7 versus the morphine in and of itself because of the level
8 and its effects on the body.

9 DR. PERRY: So that statement -- and I'm just
10 trying to understand your manner of writing.

11 That statement is not inconsistent with your
12 conclusion a page and a half later as to what you really
13 think happened?

14 THE WITNESS: Correct.

15 DR. PERRY: I think Executive Director Smith
16 said you characterized -- how did you put that? That you
17 were more certain than not as to your conclusions, with
18 greater than 50 percent?

19 MS. SMITH: "More likely than not" in your
20 determination of cause of death.

21 DR. PERRY: More likely than not as you end,
22 which is fine, that's an affirmation of what you've come to
23 see. But at the beginning, it just seems weaker, Doctor.

24 Am I making sense here?

25 THE WITNESS: Not really.

1 DR. PERRY: "Not entirely incorrect" just
2 seems rather weak.

3 You use the word "sparse" and then you end
4 with "not entirely incorrect."

5 I'm trying to grasp, what is that? 20
6 percent that Dr. Hall got right?

7 THE WITNESS: Well, we both agree that
8 morphine had a role in the death.

9 DR. PERRY: All right. Thank you.

10 SHERIFF KIMBROUGH: So, Dr. McLemore, I guess
11 I've got to come back to one more question. So he said
12 that -- well, you said that report was relatively sparse;
13 right?

14 THE WITNESS: Yes.

15 SHERIFF KIMBROUGH: So I guess my next
16 question -- and I'm not trying to -- I guess I just should
17 ask the question: Could the investigation or the autopsy
18 have been sparse?

19 And then I guess my other question would be:
20 Had you had the body and done the original autopsy, is it
21 possible that the findings would be different?

22 THE WITNESS: That's asking for speculation.
23 I can't -- just from a person's -- how they write the
24 reports, that doesn't really have any indication of how the
25 autopsy was performed physically.

1 So that's -- I don't know if I can say yes or
2 no, you know, whether the autopsy was performed itself
3 adequately or not.

4 As far as if I had done the autopsy, given
5 what I saw in the lungs, I would probably come to the
6 same -- I most likely would come to the same conclusion.

7 JUDGE LOCK: Commissioner Boswell.

8 MR. BOSWELL: Dr. McLemore, this is John
9 Boswell. I'm one of the commissioners. There was a lot of
10 evidence that the victim was snoring loudly before he was
11 found dead.

12 Can you speak to what that might indicate?

13 THE WITNESS: So whenever we hear, for
14 anybody -- we have -- every day we have morning report where
15 we go through the cases for the day and talk about the
16 circumstances. Whenever anybody says "and they were heard
17 to snore loudly," we kinda figure okay, that's -- that's a
18 bad sign.

19 Snoring loudly indicates that the person is
20 in a deep sleep, whether they are obtunded or whether it's
21 from some kind of mental incapacity -- and, again, that
22 rattling in the back is a defective gag reflex with
23 secretions going down the windpipe. So snoring loudly is
24 not a good sign.

25 MR. BOSWELL: Would that be -- would this

1 statement be accurate in your opinion: In both your opinion
2 and in Dr. Hall's opinion, but for the morphine, this person
3 would not have died?

4 THE WITNESS: Correct.

5 MR. BOSWELL: Thank you.

6 JUDGE LOCK: Commissioner Newton.

7 MS. NEWTON: If nobody else?

8 JUDGE LOCK: Go ahead.

9 MS. NEWTON: Dr. McLemore, I heard you say
10 some very specific words with regard to how this drug killed
11 this man, and I just want to clarify with you that that is
12 what you said.

13 As laypeople, we are quibbling over -- or I
14 am -- quibbling over whether toxicity or acute respiration
15 is different.

16 So I just wanted to ask you about the first
17 words you used. You said, as I understand it, that the
18 manner in which the morphine killed this individual was --
19 you said it led to a chain of events, and then you said it
20 depressed him respiratorily, meaning the drug caused a
21 depression of his ability to breathe.

22 Is that an accurate assessment of what you
23 said, by "depressed respiratorily"?

24 THE WITNESS: Yes, although that's a pretty
25 awkward way of saying it, and I apologize. Yeah.

1 MS. NEWTON: I'm not a doctor so I'm just
2 trying to understand what exactly the drug did.

3 So once the drug, instead of being toxic in a
4 way that we all understand toxic to mean, it depressed him
5 in his breathing, and then you describe that he then vomited
6 the contents of his stomach with the depression, or you said
7 "loss" of a gag reflex, then those contents entered the
8 lungs and you said within a couple of hours could have
9 caused his death.

10 Is that fair to say how he died and why he
11 died?

12 THE WITNESS: Yes.

13 MS. NEWTON: Okay.

14 So I want to ask you --

15 Your Honor, may I ask the Commission staff a
16 question at this point, before my question first?

17 JUDGE LOCK: Sure.

18 MS. NEWTON: Ms. Smith, do we know that --
19 the actual commercial name for the morphine that was sold to
20 him?

21 MS. SMITH: We do not.

22 MS. NEWTON: I've heard the term Opana in
23 this case being used. Nobody confirmed what it was.

24 MS. SMITH: Opana is not morphine.

25 THE WITNESS: Yeah. Opana --

1 MS. NEWTON: -- is Oxymorphone?

2 Doctor, do you want to speak on that?

3 THE WITNESS: No -- she's right. Opana is
4 the tradename for Oxymorphone.

5 MS. NEWTON: Is that morphine compound?

6 THE WITNESS: No, it is not. No. It's two
7 separate drugs.

8 MS. NEWTON: Got it. Okay.

9 So is morphine -- I don't know what the drug
10 was then.

11 So is morphine a drug that would have
12 suppressed his ability to breathe in the way that you
13 described, then, leading to, within a couple of hours,
14 death -- possibly?

15 THE WITNESS: Yes.

16 MS. NEWTON: Okay.

17 THE WITNESS: Yes.

18 MS. NEWTON: And what effect would the part
19 of morphine that causes a high or mental impairment -- is
20 that the kind of mental incapacity you're talking about when
21 John Boswell asked you about he was snoring and you said he
22 was in a deep sleep and with mental incapacity, secretions
23 would've gone down his windpipe.

24 THE WITNESS: Right. Right. So any
25 narcotic -- and morphine is a narcotic, they work on the

1 body by producing somnolence, right, people get sleepy,
2 people nod off. When they go -- when they go into sleep,
3 it's usually a very deep sleep. And -- because it also
4 depresses or suppresses respiratory function, your breathing
5 is slower, it's usually -- you know, it starts getting more
6 shallow and it takes -- you have a long time interval
7 between taking in breath and letting it out. It slows that
8 all down.

9 And the way we clear secretions at night from
10 our lungs is usually our lungs are able to take input
11 breaths and expel all of that. That's one of the mechanisms
12 that helps. And then the gag reflex is working.

13 But when you have a narcotic on board which
14 suppresses or slows down these functions, you are at high
15 risk for aspirating.

16 MS. NEWTON: Thank you, Doctor.

17 JUDGE LOCK: Commissioner Bass.

18 MR. BASS: Dr. McLemore, Scott Bass. I'm
19 looking at page 4. There's a line that says: "Opiates like
20 heroin/morphine and opioids like Oxymorphone, hydrocodone,"
21 et cetera, "can be associated with aspiration pneumonia."

22 And I know it's not a big factor in this
23 situation, but can substantial alcohol use also be
24 considered associated with aspiration pneumonia?

25 THE WITNESS: Yes. High levels of alcohol,

1 again, just like opiates and narcotics, they also slow down
2 those functions.

3 MR. BASS: So it sounds like, given that
4 you're saying that but for the morphine this wouldn't have
5 happened, had it been alcohol, you would say but for the
6 alcohol, this wouldn't have happened?

7 THE WITNESS: Correct.

8 JUDGE LOCK: Anybody else? Mr. Glazier.

9 MR. GLAZIER: This is Rick Glazier again,
10 Doctor.

11 In your review of the records, were you sent
12 the victim's full records from Mission Valley Hospital?

13 THE WITNESS: I believe I was.

14 MR. GLAZIER: And did you review all the
15 records including the time back in the year before when he
16 came into the hospital complaining of and having an
17 infection along with an IV site secondary to his drug abuse?

18 THE WITNESS: Yes.

19 MR. GLAZIER: Okay. And then the doctor
20 writes that he was concerned about a deep line abscess. An
21 IV was placed, labs were obtained. There didn't appear to
22 be an evidence of a very, very deep abscess, but there did
23 appear to be an abscess at that time that had formed.

24 Were you aware of that?

25 THE WITNESS: Yes.

1 MR. GLAZIER: If that abscess went untreated
2 for months, would that have potentially led to a serious
3 body infection?

4 THE WITNESS: It could have.

5 MR. GLAZIER: Thank you.

6 JUDGE LOCK: All right.

7 Anybody else? Any further questions?

8 Dr. McLemore, thank you very much for being
9 with us this afternoon.

10 THE WITNESS: Thank you.

11 MS. SMITH: May she --

12 JUDGE LOCK: Yes. She may be released from
13 her subpoena.

14 Thank you, Dr. McLemore.

15 THE WITNESS: Thank you.

16 (Witness stands down, 5:39 p.m.)

17 MS. SMITH: All right. Commissioners, it is
18 5:40. I am not going to call the next expert this afternoon
19 given the amount of time that I believe that will take.

20 I do want to give an update before we finish
21 this afternoon related to the medical records that we
22 subpoenaed this afternoon.

23 That subpoena was for all records from Spruce
24 Pine Community Hospital now known as Blue Ridge Regional
25 Hospital for the time period of 1/20/1982, which is when

1 Mr. Whitson was born, to 12/31/1992.

2 In addition, we requested all records from
3 Mission Hospital for the time period of 1/1/2005 to
4 1/1/2010. So that's the five years prior to Mr. Whitson's
5 death. Spruce Pine Community Hospital is where Mr. Whitson
6 was born.

7 Both of these hospitals now fall under the
8 Mission Health network. The records from Spruce Pine
9 Community Hospital where he was born have never been
10 scanned. They will need to be physically located in order
11 for the records to be provided to the Commission. They are
12 going to work on that, but I cannot promise that we will
13 receive those by the end of the hearing, but they are
14 working on it.

15 The records from Mission Hospital were
16 provided right away via secure encrypted email. It is
17 26 pages long. It indicates that Mr. Whitson sought medical
18 attention only one time during the requested five-year time
19 period, and this was for dental pain on August 8, 2007. It
20 was specifically noted in the records that he had four
21 molars that were significantly decayed and he went to the ER
22 seeking help.

23 This is going to be found in Handout 53. I
24 believe that has been uploaded to the Google Drive so you'll
25 be able to access that on the overnight recess to review

1 those records if you would like to do so.

2 I will also remind you that today the items
3 that were uploaded for you, Handout 50, the district
4 attorney statement, you should review that on the overnight
5 recess or sometime during the day tomorrow prior to the
6 conclusion of the hearing.

7 You were also provided today Handout 51,
8 which was Mr. Whitson's medical records chart related to the
9 few items that you-all had asked about during the day. I
10 think you reviewed that during the hearing, but if you would
11 like to review it overnight, do that as well.

12 Handout 52 has been uploaded. That is the
13 Mission Hospital medical records from January 2010 until
14 Mr. Whitson's death. That is the, I believe, 377-page
15 medical record; so you'll need to review those on the
16 overnight recess.

17 And then, of course, these new records are
18 Handout 53.

19 MR. BASS: So I know that some of those
20 documents you just referenced are on this laptop.

21 Are they also on Google Drive?

22 MS. SMITH: Everything should be on the
23 Google Drive now. There are a few things that maybe haven't
24 made it to the physical laptop yet, but you will be able to
25 access those via the Google Drive overnight.

1 Is there anything else that anyone needs this
2 afternoon? I'm going to give you, then, quickly, kind of
3 the trajectory for tomorrow.

4 It was our intent to kind of walk through the
5 experts by moving next to Dr. Roberts and Dr. Ewens, who
6 were the defense experts, and then having the Commission's
7 independent experts finish us off; however, based on the
8 number of questions that you-all probably are going to have
9 for the Commission's experts, I anticipate, instead, maybe
10 calling them earlier in the day to give you-all plenty of
11 time to ask those questions while we're fresh in the
12 morning.

13 We have testimony tomorrow. I believe it's
14 all going to be experts and then ending with Dr. Hall. So
15 it is just kind of a long day of experts' testimony.

16 I do anticipate, based on timing today, that
17 we will go beyond 5:00 o'clock tomorrow. So come prepared
18 for that. If we happen to be here beyond 7:00 p.m. tomorrow
19 night, we will be able to order dinner for you, but I do
20 think we will wrap up hopefully with testimony before
21 6:00 o'clock tomorrow depending on how many questions there
22 are from commissioners.

23 (Discussion off the stenographic record.)

24 JUDGE LOCK: Everybody good to start at 8:30
25 in the morning? And I will try to leave earlier in the

1 morning.

2 MS. SMITH: Yes, 8:30. Thank you.

3 (Overnight recess, 5:44 p.m.)

4 (Volume 2 begins on page 327.)

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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,	FROM YANCEY COUNTY
	11 CRS 304
versus	11 CRS 305
JOHN PRITCHARD	

TRANSCRIPT OF HEARING, Volume 2 of 2

December 15, 2021

December 14, 2021, Setting of the
North Carolina Innocence Inquiry Commission
The Honorable Thomas Lock, Judge Presiding

Commissioners Attending:

Scott Bass (Alternate)
John Boswell
Luther Johnson Britt, III
Robin Colbert
Judge Yvonne Mims Evans (Alternate)
Rick Glazier
Sheriff Bobby Kimbrough
Deborrah Newton (Alternate)
Dr. Frank Perry
Ashley Welch

Reported by: Victoria L. Pittman, BA, CVR-CM-M, RCP
AOC-Approved Per Diem Reporter

1 APPEARANCES:

2 Lindsey Guice Smith, Director

3 Beth Tanner, Assistant Director

4 Julie Bridenstine, Staff Attorney

5 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

6 Post Office Box 2448

7 Raleigh, North Carolina 27602

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1 WEDNESDAY, DECEMBER 15, 2021 (8:55 a.m.)

2 JUDGE LOCK: All right. Looks like
3 everybody's here in place with their bright shining faces,
4 so we'll get started.

5 MS. SMITH: All right. I'm going to briefly
6 recall Ms. Bridenstine this morning, and then we'll move
7 forward with our experts.

8 JUDGE LOCK: All right. Good morning,
9 Ms. Bridenstine.

10 MS. BRIDENSTINE: Good morning.

11 JUDGE LOCK: You remain under oath.
12 Thereupon, JULIE BRIDENSTINE, a witness having been called by
13 the Commission, was recalled and testified as follows:

14 EXAMINATION BY MS. SMITH: (8:55 a.m.)

15 Q. Ms. Bridenstine, were you contacted by Mark Rabil,
16 the attorney for Mr. Pritchard yesterday afternoon?

17 A. Yes. He sent me an email and he let me know that
18 Lacey Pritchard is watching the livestream of the hearing,
19 and she told him over text message that she never gave money
20 to Robbie Brown.

21 MS. SMITH: Commissioners, before we move on
22 to the experts, do you have any other questions for Julie at
23 this time?

24 MS. NEWTON: I have one.

25 MS. SMITH: Yes, ma'am.

1 MS. NEWTON: Could you please clear up the
2 relationship -- it may be in something I have missed --
3 between Stephanie Whitson Randolph and Jonathan Whitson, the
4 victim.

5 MS. BRIDENSTINE: Yes.

6 So in the trial transcript, she testified
7 that they were dating at the time of his death.

8 MS. NEWTON: I'm sorry, I didn't hear that.
9 Someone coughed.

10 MS. BRIDENSTINE: She testified during
11 Mr. Pritchard's trial that they were dating at the time of
12 his death. At my deposition of her, she testified that they
13 never had a romantic relationship, that other people were
14 under the impression that they were dating, but they were
15 not in fact dating.

16 MS. NEWTON: Is her middle name Whitson?

17 MS. BRIDENSTINE: Her last name is Whitson --
18 her maiden name.

19 MS. NEWTON: I'm sorry. Is the name
20 Stephanie Randolph Whitson or Stephanie Whitson Randolph?

21 MS. BRIDENSTINE: Her name is Stephanie
22 Whitson Randolph.

23 MS. NEWTON: And she has same middle name as
24 the victim's last name?

25 MS. BRIDENSTINE: My understanding is Whitson

1 is her maiden name. Randolph is her married name, her
2 current name.

3 Before the trial, she got married to a man
4 named Brandon Randolph. At the time this case was
5 investigated, she -- her name Stephanie Whitson.

6 MS. NEWTON: I'm sorry. Am I missing
7 something? Jonathan Whitson is the victim.

8 MS. BRIDENSTINE: They have the same last
9 name, that's correct.

10 MS. NEWTON: And they're not related?

11 MS. BRIDENSTINE: I do not know if they
12 related. I am not aware of any close relationship but I do
13 not know why they have the same last name.

14 MS. NEWTON: In the DA statement that we were
15 provided, she is referred to as his wife.

16 MS. BRIDENSTINE: They were -- to my
17 knowledge, they were never married.

18 MS. NEWTON: Okay. Thank you.

19 MR. BASS: So if I recall correctly, I asked
20 a question yesterday about why Jonathan Whitson was crying,
21 and she said because she wanted to break up. That sounds a
22 little at odds with whether they were boyfriend/girlfriend
23 or not.

24 MS. BRIDENSTINE: She -- with the deposition,
25 she testified something to the effect of she didn't want to

1 hang out with him anymore and she didn't want to do drugs
2 anymore, is my recollection of the deposition, but I would
3 check the transcript.

4 MR. GLAZIER: I'm sorry, just a reminder
5 of -- rather than pulling it up, she didn't want to do drugs
6 anymore, didn't she have -- or wasn't she in sort of
7 under -- or was convicted of drugs in 2019?

8 MS. BRIDENSTINE: That's correct.

9 MR. GLAZIER: Thank you.

10 (Witness stands down, 8:58 a.m.)

11 MS. SMITH: Commissioners, you may recall
12 that earlier there was testimony that the Commission had
13 retained Dr. Barbara Wolf, a forensic pathologist, as the
14 Commission's independent expert related to evaluating the
15 autopsy and cause of death determination in this case.

16 You were previously provided a copy of
17 Dr. Wolf's report as Handout 9 and her CV as Handout 10.
18 You'll want to refer to that throughout her testimony today.

19 She is going to be via WebEx, and we are
20 ready to call her as soon as Mr. Fitts can get her on the
21 WebEx.

22 (Pause in the proceedings.)

23 MS. SMITH: All right. Good morning,
24 Dr. Wolf.

25 THE WITNESS: Good morning.

1 JUDGE LOCK: Thank you for being with us this
2 morning.

3 My name is Tom Lock. I am a superior court
4 judge here in North Carolina and I am the chair of the
5 Innocence Inquiry Commission.

6 I assume you are sitting right now in
7 Florida; is that correct?

8 THE WITNESS: I am.

9 JUDGE LOCK: All right.

10 We do ask that testimony given to the
11 Commission be under oath or affirmation. I will confess to
12 some reservations about my authority to administer an oath
13 to someone who is presently out of state, but unless you
14 have a notary public or someone else who may be authorized
15 under Florida law to administer an oath to you, I'm just
16 going to do this virtually.

17 I generally ask folks to stand when taking
18 oaths or for affirmations, but if you stand, we'll lose
19 sight of you.

20 So if you would, I just ask that you remain
21 seated and raise your right hand.

22 Do you swear or affirm that the testimony you
23 will give before the Commission this morning will be the
24 truth, the whole truth, and nothing but the truth? Is this
25 your solemn affirmation?

1 THE WITNESS: Yes, I do.

2 JUDGE LOCK: All right. Thank you very much.

3 I'm going to turn you over at this time to our executive
4 director, Ms. Lindsay Guice Smith.

5 Thereupon, BARBARA WOLF, MD, a witness having been called by the
6 Commission, was sworn and testified as follows via WebEx
7 technology:

8 EXAMINATION BY MS. SMITH: (9:04 a.m.)

9 Q. Good morning, Dr. Wolf.

10 A. Good morning.

11 Q. Could you please tell the Commissioners about your
12 education and experience.

13 A. Certainly. I took my undergraduate and my medical
14 degree in a combined accelerated six-year program at Boston
15 University, actually between Boston University and Harvard.

16 After that I had a one-year fellowship. I then
17 had several hospital staff positions before relocating to
18 Albany, New York, in 1990.

19 At that time, I took the position of director of
20 anatomic pathology for Albany Medical College. And I was
21 also working with the medical examiners and coroners in
22 surrounding areas.

23 In 1996, I decided to pursue full-time forensic
24 pathology so I stepped down from the directorship at the
25 medical college where I was also a full professor of

1 pathology to, again, pursue full-time forensic work.

2 In 1997, I became the chief medical examiner for
3 the County of Rensselaer, which is in the Albany area. And,
4 in 1999, I became the position of director of forensic
5 medicine for the medicolegal investigation unit of the New
6 York State Police. At that time -- well, that was a
7 part-time position; so I was also working with the coroners
8 and medical examiners in roughly 20 states -- 20 counties in
9 the state of New York, predominantly on-call for homicides.

10 In 2001, I decided it was time to relocate to
11 Florida so I took a position in the medical examiner's
12 office in West Palm Beach. Three years later, I went to the
13 office in Fort Myers.

14 And then, in 2007, I took my current position.

15 Q. And what is your current position?

16 A. I am the Chief Medical Examiner for Florida's
17 Districts 5 and 24, which are six counties in central New
18 York [sic].

19 Q. Overall, how many years have you been working as a
20 forensic pathologist?

21 A. Roughly 30.

22 Q. And do you have any other professional positions?

23 A. Yes. I am currently on the board of directors for
24 the National Association of Medical Examiners. I also serve
25 as the chair of their inspection and accreditation

1 committee, which is the accrediting body for medical
2 examiners and coroners throughout the country and
3 internationally, in some cases.

4 I serve as a commissioner on the Florida Medical
5 Examiners Commission, the board that oversees the activity
6 of Florida medical examiners, which was a government
7 appointment -- government appointment. Excuse me.

8 Q. Thank you.

9 Do you have any academic appointments?

10 A. Currently, no. But when I was -- actually, we
11 don't have a medical school in our district so I don't.

12 When I was in New York, I, as I said, was a full
13 professor of pathology at Albany Medical College and at
14 times during my career I also had academic positions at
15 Boston University and Harvard.

16 Q. And do you have any government appointments?

17 A. Well, I mentioned the Florida Medical Examiners
18 Commission. I was previously the full pathologist sitting
19 on the Florida Child Abuse Death Review Committee. That --
20 I was on it for about 10 years up to being the chairman.
21 That board reviews all child deaths in Florida related to
22 injury or neglect.

23 While in New York, I was appointed by several
24 governors to the New York State Commission on Corrections
25 which reviews all deaths of individuals in jails or prisons

1 in New York as well as the Medical Review Board for the
2 Commission on Quality of Care for the Mentally Disabled.
3 That board reviews all deaths of individuals in mental
4 health facilities throughout New York.

5 Q. Do you have any scientific appointments or serve
6 on any committees related to that?

7 A. Well, I already mentioned my work on the National
8 Association of Medical Examiners. I am also a faculty
9 member of the National District Attorneys Association and a
10 faculty member of the International Firearms Specialist
11 Association.

12 Q. Okay.

13 And are you currently involved in or have you
14 previously been involved in any kind of scientific research
15 or have any scientific publications?

16 A. Yes. To date, I have somewhere in the realm of I
17 think 130 peer-reviewed journal articles, abstracts, a
18 textbook, and multiple book chapters.

19 Q. Are any of those related to forensic or general
20 pathology?

21 A. All of them would be.

22 Q. Do you have any certifications?

23 A. Yes. I am board certified by the American Board
24 of Pathology in anatomic pathology, hematopathology, which
25 deals with blood and related organs, and in forensic

1 pathology.

2 Q. Approximately how many autopsies have you
3 conducted during your career?

4 A. Somewhere in excess of 10,000.

5 Q. Is there anything else that you believe that's
6 important about your experience or education that we've not
7 outlined today?

8 A. Not off the top of my head.

9 Q. Great.

10 Did you provide your report and a CV to the
11 Commission?

12 A. I did.

13 Q. Do those documents outline how many times you've
14 testified as an expert and in what types of cases?

15 A. I don't believe I submitted a list of cases. I
16 can say that I've testified in most states in the country,
17 in some cases in federal court, mostly at the county level.

18 Q. Do you have specialized training or knowledge that
19 you use in evaluating cases involving cause of death?

20 A. Yes, I do.

21 Q. And is that part of what you've described to us
22 today?

23 A. Yes, it is.

24 Q. In approximately how many cases have you issued
25 opinions on cause of death in your career?

1 A. Do you mean as a death certificate or in courtroom
2 testimony?

3 Q. Either or both.

4 A. Oh, I'm sorry.

5 Well, the death certificates would be basically
6 the same as the autopsies performed, somewhere in excess of
7 10,000. As far as courtroom testimony, it's somewhere over
8 5,000, and the majority of those would include testimony as
9 to cause and manner of death.

10 Q. Thank you.

11 When you make a determination of cause of death in
12 a case, what are the principles and methods that you rely
13 on?

14 A. Okay. That may vary widely depending on the type
15 of death I'm dealing with.

16 In some cases, an elderly person with a medical
17 history, I may just perform a chart review. In other cases,
18 I may perform a full autopsy with various laboratory studies
19 as needed. And the extent and procedures of that autopsy
20 would vary with the case.

21 Q. Did you apply those principles and methods when
22 you reviewed this case?

23 A. Yes, I did.

24 Q. In this case, were you provided sufficient facts
25 and data?

1 A. I was supplied with everything that, to my
2 knowledge, was available. There were other materials
3 apparently weren't available, namely autopsy photographs.

4 Q. Okay.

5 And you outlined all of what you reviewed in
6 page 1 of your report; is that correct?

7 A. Yes. But subsequent to the report, I've reviewed
8 several additional expert reports and transcripts of
9 depositions and interviews.

10 Q. And did you also have a chance to review the
11 microscopic slides that were made during the autopsy?

12 A. Yes, I did.

13 Q. In this case, did you use those reliable
14 principles and methods from your training and experience in
15 forming your opinion?

16 A. Yes, I did.

17 Q. Did you apply those principles and methods to the
18 facts of the case as you understood them to be?

19 A. Yes, I did.

20 Q. Based on your analysis in this case, do you
21 believe you have specialized knowledge that will assist the
22 Commission in evaluating the autopsy that was performed by
23 Dr. Hall and the cause of death of Jonathan Whitson?

24 A. Yes, I do.

25 Q. Have you formulated opinions in the cases that are

1 here before the Commission regarding cause of death of
2 Mr. Whitson?

3 A. Yes, I have.

4 Q. And the report and CV that you provided to the
5 Commission, does it contain your opinions and the basis of
6 those opinions?

7 A. Yes, it does.

8 MS. SMITH: Judge Lock, I would now like to
9 tender Dr. Wolf as an expert in forensic pathology.

10 JUDGE LOCK: All right. That tender
11 certainly is allowed.

12 THE WITNESS: Thank you.

13 Q. Dr. Wolf, when you were contacted by commission
14 staff, did commission staff make it clear that we were not
15 seeking any particular opinion in the case?

16 A. Yes, they did. They indicated that they were a
17 neutral body.

18 Q. And did commission staff make it clear that they
19 would present your findings no matter what those ended up
20 being?

21 A. Yes, they did.

22 Q. I'm going to turn to your report and just have you
23 briefly describe what materials you reviewed in preparation
24 for writing your report.

25 A. In general, with the exception of the additional

1 materials I received after the report, the materials I
2 reviewed and took into consideration are all listed on
3 page 1 and 2 of the -- of my report.

4 In general, they included the autopsy materials,
5 autopsy slides, the only three photographs that were
6 available, medical records, law enforcement and jail
7 records, various expert reports and affidavits, as well as
8 the transcript of the trial of Mr. Pritchard, and a
9 deposition transcript from Dr. Hall.

10 Q. And you've mentioned that you were provided
11 additional materials after you issued your report in the
12 case.

13 What were those materials?

14 A. Those materials were depositions and an interview
15 from two witnesses to the scene as well as from an involved
16 party, Ms. Whitson.

17 Q. And did you also receive the other expert reports
18 after you issued your report?

19 A. Some of them were subsequent; others were prior to
20 issuing my report.

21 Q. Did any of the additional materials that you
22 reviewed change anything in your report or your opinions?

23 A. No, they did not.

24 Q. What is your opinion in this case? What was the
25 cause and manner of death?

1 A. My opinion is that the cause of death was morphine
2 toxicity with the contributory condition of pneumonia, and
3 that manner of death was homicide -- excuse me. Let me step
4 back -- and the manner of death was accidental.

5 Q. Are there any guidelines out there about how
6 forensic pathologists should make interpretations?

7 A. Well, interpretations are largely based on
8 experience and training. But as far as procedures and
9 things to take into account and perform when doing an
10 autopsy, there are numerous guidelines, including the
11 National Association of Medical Examiners autopsy practice
12 guidelines. In Florida, we have similar to the name --
13 publication, the Florida Association of Medical Examiners
14 practice guidelines. And then there are numerous valuable
15 textbooks and journals.

16 Q. And are those the same guidelines that are used in
17 determining cause of death -- how one should determine cause
18 of death?

19 A. Yes, they are.

20 Q. Is it important for a forensic pathologist to be
21 aware of the law enforcement investigation and what
22 witnesses reported?

23 A. Okay. The easy answer to that is yes. But in
24 some cases, it depends on the case. For example, I may not
25 need law enforcement information if the death was totally

1 medically related; so -- but in general, yes.

2 Q. Is that important particularly in a suspected drug
3 overdose case?

4 A. Yes, it is.

5 Q. Why would that be?

6 A. A bit of a long-winded answer here.

7 The interpretation of postmortem toxicology and
8 its bearing on cause of death is in many cases not
9 straightforward. There are many variations in how a certain
10 concentration of a drug or drugs should be interpreted or
11 can be interpreted. And in some cases, we have to look at
12 not just the concentration of the drug, which can be very
13 different from death to death, but also at such things as
14 medical history, the scene, and information about the
15 circumstances of death.

16 An individual may die of a certain -- toxicity of
17 a certain concentration of a drug or he or she may die of it
18 on account of the same concentration, but dying, for
19 example, in a car crash. So drug-related deaths are not
20 always straightforward and frequently need ancillary
21 information.

22 Q. What does the term "tolerance" mean in the context
23 of a drug user?

24 A. Okay. Tolerance refers to the fact that in many
25 cases, with habitual use of certain drugs, the body develops

1 what is called tolerance. That means that the given
2 concentration won't make -- have the same effect on the
3 person and the person will require a higher dose to receive
4 the same effect.

5 Q. And what happens to that tolerance when a regular
6 drug user abstains from using drugs?

7 A. The tolerance would dissipate.

8 Q. And is there any particular time period for that
9 dissipation?

10 A. It would depend on the drug.

11 Q. Is there any dissipation rate or anything like
12 that that we can draw a conclusion to with respect to
13 morphine?

14 A. I would defer that to a toxicologist.

15 Q. Thank you.

16 I want to turn now to Dr. Hall's findings and
17 testimony in this case which you've had an opportunity to
18 review.

19 Is Dr. Hall a forensic pathologist?

20 A. No. To my knowledge, he is not board certified in
21 forensic pathology -- or was not. He is board certified in
22 anatomic and clinical pathology which deal with natural
23 disease. But also, my understanding was, was that he would
24 on some occasions perform essentially forensic autopsies for
25 the Medical Examiner's Office in North Carolina.

1 Q. And so does one have to be board-certified in
2 forensic pathology in order to be called a forensic
3 pathologist?

4 A. There's no standard answer to that. Some people
5 would say that it requires board certification; others might
6 use the term for someone who has a great deal of experience.

7 Q. Okay.

8 A. I guess the gold standard, though, is board
9 certification.

10 Q. What are the differences between an anatomic or
11 clinical pathologist and a forensic pathologist?

12 A. Okay. Actually, three different things there.

13 Anatomic pathology is the basic field of pathology
14 that deals with natural disease through the study -- through
15 the use of autopsies, the examination of cervical --
16 surgical specimens such as biopsies, oncology such as Pap
17 smears, but they deal with natural diseases.

18 Clinical pathology is a separate certification
19 that deals with -- how to put it? -- when working with
20 hospital laboratories such as blood banking, clinical
21 history, clinical chemistry, and others.

22 Forensic pathology is a subspecialty of anatomic
23 pathology that requires training and experience in injury to
24 the body and particularly in the evaluation of deaths that
25 may not be natural in origin.

1 Q. Did you agree with Dr. Hall's findings in this
2 case?

3 A. I agreed with some of the findings rendered in his
4 report. I disagreed with some of the opinion that he
5 offered.

6 Q. And can you explain that a little -- in more
7 detail for the Commissioners.

8 A. Certainly. And if I may, I'm referring to my
9 report to refresh my recollection.

10 Q. Yes, ma'am.

11 A. Dr. Hall rendered the cause of death -- well,
12 initially as pending, which is appropriate if the cause of
13 death isn't obvious and he's waiting for the laboratory
14 studies. After receiving the toxicology report, he amended
15 the cause of death to read morphine toxicity and the manner
16 of death as accidental.

17 I agree with that as it's stated, but I would also
18 add that pneumonia, bronchopneumonia was a contributing
19 cause of death.

20 In particular, with a drug such as morphine that
21 depresses the central nervous system and therefore depresses
22 heartbeat and respiration, something else in the body that
23 is impairing respiration may make the person more
24 susceptible to the drug -- in this case, pneumonia. So I
25 would have included that as contributory.

1 As far as opinions, Dr. Hall, in the trial
2 transcript and I believe also in his deposition,
3 testified that -- and if -- I actually am quoting here,
4 "Mr. Whitson's urine concentration of 15 milligrams per
5 liter indicates a lethal level of morphine." That is an
6 opinion with which I respectfully disagree.

7 Concentration of drugs and their potential effect
8 on the body can only be interpreted from blood studies.

9 Urine is considered outside the body and the
10 concentration does not accurately reflect the blood level.
11 For example, if a person has had a lot of any liquid to
12 drink, the urine will be more dilute, and that will change
13 the drug concentration. In general, urine is used as a
14 screen to see what might be in a deceased's system to be
15 followed up by blood testing.

16 So there is no such thing as lethal concentration
17 of a drug in the urine. It is a -- it can corroborate the
18 presence of a drug in the blood, but not that drug's
19 concentration.

20 The second opinion that I respectfully disagree
21 with is Dr. Hall's opinion as to the pneumonia that was
22 found in Mr. Whitson's lungs.

23 You'll find that that pneumonia was a result of
24 the morphine toxicity. He stated that in drug overdoses,
25 there is often a lot of fluid in the lung that we call

1 pulmonary edema. That is true. It is a very nonspecific
2 finding that occurs because as the heart stops pumping,
3 slowly blood backs up into organs. And you see it in organs
4 such as the lung and liver.

5 However, Dr. Hall said that this fluid in the lung
6 was a good medium for bacteria to grow on. There are two
7 things here. First of all, pneumonia does not develop
8 because the person has fluid in their lungs. The vast
9 majority of drug overdoses that we see, and in my office now
10 it's usually four or five deaths a day related to drugs, we
11 see the edema without the pneumonia. It's a separate thing.

12 Additionally, examining Mr. Whitson's microscopic
13 slides that were prepared by Dr. Hall, it is my opinion that
14 the pneumonia that he had was preexisting, that it did not
15 develop after the drugs he took on the afternoon/evening
16 before his death. It happened -- it was -- it started
17 earlier than that. It is older under the microscope.

18 Q. Thank you.

19 Was there anything that Dr. Hall did not to do
20 that you would've done if you had conducted this autopsy?

21 A. Okay. The main thing that -- and I'm not
22 referring to opinions here, just procedures.

23 Q. Yes, ma'am.

24 A. Dr. Hall took only three photographs of
25 Mr. Whitson's face. He didn't take any photographs of

1 Mr. Whitson's body, and that is standard, to take full-body
2 photographs in a forensic autopsy. Not having those
3 photographs led to several questions that I was unable to
4 answer, such as whether or not he had an abscess in his arm
5 or elsewhere.

6 Q. And so because of those -- that lack of
7 photographs, you felt limited in your review.

8 Is that an accurate assessment?

9 A. In that regard, yes.

10 Q. Do you normally feel limited in your review if
11 you're reviewing cases where you weren't present at the
12 autopsy?

13 A. Okay. I will say that it's always better to see
14 the actual autopsy. However, it is the standard of practice
15 for a forensic pathologist to document the findings in the
16 autopsy both in written form and with photographs so that it
17 can be reviewed by someone else if the occasion comes up,
18 such as another forensic pathologist.

19 So in most cases, although I would never say it
20 wouldn't be better to see the body, but if procedures are
21 properly followed, I am usually able to make my
22 interpretations without difficulty.

23 Q. Would you have obtained any cultures in this case?

24 A. Probably not based on the information that I
25 understand that Dr. Hall had at the time about the scene and

1 the circumstances of death.

2 So at the start of the autopsy, individuals such
3 as Mr. Ayers, who gave Mr. Whitson a ride the night he was
4 released from jail, indicated that he appeared in good
5 health.

6 Starting with that alone, I probably would not
7 have initially performed cultures. However, when I was
8 doing the internal examination and evaluating the lungs,
9 based on the degree of pneumonia that would be present and
10 would be easy to see and feel with the naked eye, I then
11 would have done at least lung cultures.

12 Q. Did you say "lung"?

13 A. Lung. Because of the pneumonia.

14 Q. And if you had seen an abscess or cellulitis on
15 his arm, would you have considered doing any cultures then?

16 A. Yes, I would. Under that circumstance, I would
17 have attempted to take a culture of the abscess itself, and
18 I would also have taken blood culture to determine whether
19 or not the deceased had what we call sepsis, which is a
20 systemic infection after the organism, bacteria or virus,
21 gets in the bloodstream and travels to the various organs.

22 Q. And is a culture the best way to tell whether
23 someone has sepsis?

24 A. Yes. Again, in the decedent.

25 Q. Thank you.

1 Can you tell the commissioners what a culture is.

2 A. A culture is taken as either blood drawn from a
3 blood vessel or a swab taken of an abscess or some other
4 tissue that is then submitted to the microbiology laboratory
5 and essentially they treat it to see if bacteria or other
6 organisms grow. And that may take, you know, several days
7 or more.

8 Q. I'm going to turn back now to some of Dr. Hall's
9 findings. He had found that Mr. Whitson had acute pneumonia
10 at the time of death that was, I believe, developed because
11 of the morphine.

12 You've already indicated that you do not think
13 that the pneumonia was a cause of the morphine but was there
14 prior to the morphine.

15 A. If I may rephrase. I'm sorry.

16 The morphine did not cause the pneumonia.

17 Q. Thank you.

18 Is the pneumonia that you were seeing acute
19 pneumonia? Is that how you would describe that?

20 A. Well, this will be a bit of a long explanation.

21 There was a lot going on in Mr. Whitson's -- in
22 his lungs under the microscope. Probably the best way to
23 classify it would be acute and chronic pneumonia.

24 What Mr. Whitson's lungs showed -- included things
25 that we see under microscope that are called granulomas.

1 They are small nodules composed of cells that come from the
2 body trying to eliminate foreign material.

3 In this case, the granulomas contained material
4 that had the appearance or was consistent with crushed pill
5 fragments, and that certainly doesn't develop overnight. It
6 takes time. I don't know how much time, but definitely not
7 a day or two.

8 He also had some areas of aspiration. That
9 means -- well, it essentially refers to a situation where
10 someone -- something goes down the wrong pipe, some people
11 say. Contents of the stomach may actually get into the
12 respiratory system and then set up a reaction against it.
13 He had a component of that as well.

14 Whenever there's something in an organ that's not
15 normal, the body reacts to it and tries to eliminate the --
16 what's not normal, including pill fragments or stomach
17 content or bacteria or viruses.

18 Which is the third component here. He had -- as
19 far as the acute side, he had what are called acute
20 inflammatory cells in the lungs indicating that a recent
21 reaction was set up, not only to foreign material but also
22 something in his system.

23 So yes, he had acute pneumonia but he had chronic
24 factors in his lungs as well.

25 Q. When you say "chronic factors," can you just

1 describe that a little bit more.

2 A. Well, the granulomatous reaction and -- to what
3 appear to be pill fragments, as I said, is not something
4 that would develop in a day or two. So "chronic" means
5 longer than at or about the period --

6 (Stenographer clarification.)

7 A. Chronic refers to something that developed over
8 time, not something that occurred at or about the time of
9 death.

10 Q. Thank you.

11 Are you able to characterize how extensive
12 Mr. Whitson's pneumonia was?

13 A. I would describe it as did Dr. Hall, as moderate.
14 On a scale of mild/moderate/severe, I would say moderate.

15 Q. Can you tell us the difference between -- we
16 talked about acute pneumonia, but the difference between
17 that and aspiration pneumonia.

18 A. Well, aspiration pneumonia can be acute. If
19 someone aspirates foreign material near the time of death,
20 the body will react to it, and that could be also an acute
21 process. But pneumonia without aspiration would just be the
22 inflammatory cells without foreign material.

23 Q. So the aspiration indicates some kind of foreign
24 material?

25 A. Yes. You typically get aspirate content.

1 Q. And what, if anything, can you say about the
2 features of aspiration that you saw here in terms of timing,
3 when that might've occurred?

4 A. No, I cannot.

5 Q. You did see the features of aspiration in
6 Mr. Whitson's slides; correct?

7 A. Yes, I did.

8 Q. Is acute pneumonia a common finding in drug
9 overdose cases, as Dr. Hall has stated in this case?

10 A. No, it is not. And if we do see it, it's a
11 completely separate process.

12 Q. What about aspiration pneumonia? Is that a common
13 finding in drug overdoses?

14 A. Occasionally. We more see it in people, in fact
15 elderly people who are neurologically impaired. It is not
16 something we often see in drug overdoses.

17 Q. How does aspiration pneumonia contribute to death
18 in a drug overdose case?

19 A. As with all the pneumonia active here, pneumonia,
20 if it's severe enough, makes -- adds difficulty in breathing
21 and it would add to the central nervous system effects of
22 the drug if that drug is, for example morphine, a central
23 nervous system depressant.

24 Q. How long does aspiration pneumonia take to
25 develop?

1 A. There's no answer to that. It's certainly not
2 immediate or, I would say, at or about that time of death,
3 because it does take some time for the body to react to the
4 foreign material, and it is that reaction that we call
5 pneumonia.

6 Q. And when you say "some time to react," I mean, can
7 we characterize that in any way? Are we talking hours?
8 Days? You know, longer than that?

9 A. Referring specifically to aspiration, I would say
10 hours to days.

11 Q. Hours to days?

12 A. Yes.

13 MS. SMITH: I'm about to remedy the situation
14 with the air-conditioning. I can't hear anymore so we're
15 working on that.

16 MS. TANNER: There's no in-between.

17 MS. SMITH: Apologies, Dr. Wolf. We have a
18 bit of an air-conditioning and heat situation going on in
19 our room here. Yesterday we were boiling; today it's
20 pumping out air very forcefully.

21 THE WITNESS: No problem.

22 Q. What about pulmonary edema and congestion? Is
23 that common to see in overdose deaths?

24 A. It's very typical of overdose, yes. But it is
25 also, as I explained earlier, a very nonspecific finding.

1 It's just a reflection of the fact that the heart didn't
2 stop pumping immediately, such as in gunshot wounds to the
3 heart, but stopped more slowly and not pumping effectively
4 toward the end, and therefore, fluids back up into organs.

5 That is pulmonary edema. Sometimes we see
6 congestion of the liver. And we see it in numerous types of
7 deaths where there's not a sudden stop of the heart -- drug
8 overdoses, heart attacks, drowning, et cetera.

9 Q. And you may have answered this before, but is
10 pulmonary edema and congestion related to pneumonia?

11 A. No.

12 Q. Could Mr. Whitson's acute pneumonia have been
13 caused by morphine?

14 A. No. In my opinion, the process had started
15 earlier than his ingestion of the morphine.

16 Q. Are you able to tell when he developed the acute
17 pneumonia?

18 A. No, I can't. All that I can say is there were
19 components of the pneumonia that may have been days old as
20 well as older, maybe weeks to months, being the granuloma
21 with the foreign body reaction.

22 Q. I'm going to turn to the toxicology report.
23 Understanding you're not a toxicologist and we do have
24 toxicologists who will testify -- you've talked about this a
25 little bit -- but just to clarify, what does the level of

1 15 milligrams per liter of morphine in the urine indicate to
2 you?

3 A. That concentration only indicates that the drug
4 was or is present at the time of death in the person's
5 blood. The concentration itself is meaningless to me.

6 Q. What does the designation of ethanol at
7 40 milligrams per deciliter in the aorta blood mean?

8 A. 40 milligrams per deciliter is a low level of
9 alcohol that may indicate that the person ingested some
10 alcohol at some point prior to death. In a decomposed
11 individual, it might indicate -- it might be a postmortem
12 artifact because the body produces bacteria as it decomposes
13 and -- sorry. I think -- alcohol, my fault. So bacteria
14 can produce alcohol.

15 But in the case of Mr. Whitson, there was no
16 evidence in the indications that he was decomposed described
17 in the autopsy. So my opinion would be that at some point
18 prior to his death, he had ingested some alcohol.

19 Q. Can you tell based on just that information
20 whether or how much he had consumed -- alcohol?

21 A. No, I can't. Because we know from the
22 circumstances and the testimonies of witnesses that
23 Mr. Whitson was sleeping for a period and heard snoring
24 loudly before he was found dead. That would give the time
25 for the body to start or completely eliminate the alcohol.

1 So without knowing when the alcohol was consumed,
2 I can't tell you what concentration that would have been at
3 that point. It would obviously have been higher because it
4 will go down with time.

5 Q. Can you tell how much morphine Mr. Whitson
6 consumed?

7 A. No.

8 Q. Can you tell when he consumed morphine based on
9 the trace finding in the femoral blood?

10 A. No.

11 Q. Can you draw any conclusions from that designation
12 of trace morphine in the femoral blood?

13 A. Just that it was present although not
14 quantifiable, and that is confirmed by the finding of
15 morphine in the urine.

16 Q. And that's because when we see morphine in the
17 urine, we know that that has metabolized out of
18 Mr. Whitson's system.

19 Is that accurate?

20 A. It's been excreted, yes.

21 Q. Okay.

22 A. It's out of his system.

23 Q. So at some point, then, it was in his system?

24 A. Correct. Both the blood and the urine toxicology
25 confirm that.

1 Q. What, if any, conclusions can you draw from the
2 toxicology report that you've reviewed in addition to that?

3 A. That's basically it. That -- and I'm sure
4 toxicologists will have much more to say. But what I would
5 conclude looking just at the toxicology is that morphine at
6 some point was present in the body in a higher concentration
7 than just the trace that was identified at autopsy. And we
8 already spoke about the alcohol.

9 Q. You reviewed the medical records from
10 Mr. Whitson's hospital stay in December 2010.

11 Could the cellulitis and probable abscess that he
12 described -- is described as having in those records
13 contributed to his death?

14 A. That is a very difficult question to answer
15 because largely of the lack of photographs and a more
16 detailed description. Several witnesses indicated that at
17 or about the time of death, his left arm appeared swollen.
18 That indicates that an infection could be present but,
19 again, I don't have any photographs to look at. However --
20 again, this is a case where we need to look at other
21 information than just the autopsy and toxicology.

22 The description of, for example, Mr. Ayers, who
23 picked him up on that night after he was released, is that
24 he looked good, healthy. That would indicate to me that he
25 was not septic, which means he did not have infection

1 involving his entire body. Therefore, the abscess itself,
2 in my opinion, if it was present, would not have been a
3 contributing factor to death.

4 Q. Can you tell the Commissioners what sepsis is.

5 A. Okay. Sepsis is when an infection -- either
6 bacteria, virus, or some other organism -- gets into the
7 bloodstream and then spreads throughout the body. And you
8 may get many organs affected by the drug in the body -- I'm
9 sorry -- bacteria or virus, and the person will be
10 clinically sick. High fever, problems with the lungs -- it
11 would be a total body infection, essentially.

12 Q. Can sepsis cause death?

13 A. Yes, it can.

14 Q. Can an abscess ultimately cause sepsis?

15 A. Yes, it can.

16 Q. Do you know if Mr. Whitson had sepsis?

17 A. I can't give the definitive answer without
18 cultures done at autopsy, but based on observations of
19 people who saw him prior to his death, my opinion is that he
20 was not septic.

21 Q. And so how would you determine if he had sepsis?
22 Is that just through the cultures?

23 A. Yes. Or evidence of infection in other organs.
24 You could see inflammatory cells, the body's response, in
25 other organs such as liver, et cetera. You would see it

1 under the microscope. In this case, outside of the lung, I
2 did not see evidence of infection.

3 Q. And you had slides from various organs.

4 Is that accurate?

5 A. Yes, I did.

6 Q. Which organs were you able to review slides for?

7 A. Pretty much all of them, all of the major organs.

8 Q. What contributed to the cause of death in this
9 case?

10 A. In my opinion, the cause of death was morphine
11 toxicity with the contributing condition of pneumonia.

12 Q. What are the most common signs that indicate a
13 person died from a morphine overdose?

14 A. A very typical scenario is someone that lapses
15 into a coma, may appear to be sleeping, and it's the --
16 frequently, the loud snoring is described, and then they
17 die. So it would depend on when in that process the person
18 was observed.

19 But typically with a narcotic, an opiate which
20 morphine is, because it depresses the central system,
21 initially the person might appear uncoordinated, coughing,
22 fever, et cetera, but that would only indicate that a
23 secondary -- something secondary was going on.

24 The signs and symptoms of just pneumonia are -- of
25 just a morphine overdose is usually lapsing into sleepiness,

1 unconsciousness, and death.

2 Q. How common are cases in which a trace of a drug is
3 found in the blood and the drug is ruled to be the cause of
4 death?

5 A. It's not the most common scenario, and that's why
6 when we do see something like that, we have to look back at
7 information as to how the person was behaving ahead of time,
8 and if there was a prolonged period where the person may
9 have been metabolizing the drug, reducing the level, which
10 in Mr. Whitson's case, he did have that prolonged period.

11 Q. From the materials that you reviewed, what things
12 did you see in this case that are consistent with drug
13 overdose deaths?

14 A. Okay. First of all, the history. Secondly, the
15 findings of pulmonary congestion and edema. Congestion in
16 the lungs seen in the autopsy slides. And the
17 circumstances, though I think I already mentioned that. The
18 toxicology in light of the circumstance that there was a
19 prolonged period of sleeping before he died.

20 Q. And are any of those things consistent with deaths
21 other than those caused by drug overdoses?

22 A. Well, you know, there are various poisons, toxins,
23 anything that would cause the heart to pump slowly can cause
24 that congestion and edema. It's a nonspecific finding; so
25 you would have to rule out what we call a competing cause of

1 death, meaning something else that the person could've died
2 of.

3 In this case, outside of the lungs, his organs
4 were anatomically normal. The lung, in my opinion, had, as
5 I said, moderate pneumonia. That could have progressed,
6 but, in my opinion, was not severe enough nor was he
7 clinically sick enough to have caused death at that point.

8 So we have to look at everything including the
9 circumstances, the autopsy, the toxicology, medical history,
10 if there is any, and interpret them all together in light of
11 the case.

12 Q. Thank you.

13 Dr. Wolf, was morphine a contributing factor in
14 Mr. Whitson's death?

15 A. Yes, it was.

16 Q. Did morphine directly contribute to his death?

17 A. Yes, it did.

18 Q. Was acute pneumonia a contributing factor in
19 Mr. Whitson's death?

20 A. In my opinion, yes.

21 Q. Did acute pneumonia directly contribute to his
22 death?

23 A. It contributed, yes.

24 Q. Can you tell if the pneumonia that Mr. Whitson had
25 could have, alone, killed him?

1 A. My opinion based on the degree of severity and the
2 lack of significant clinical symptoms is that pneumonia
3 would not have caused death at that point. If it
4 progressed, it could have caused death, if it got worse, if
5 he got septic. But in my opinion, it did not cause -- it
6 would not have, alone, caused the death at that point.

7 Q. Can you tell if the morphine that Mr. Whitson used
8 could have, alone, killed him?

9 A. If it could have? Yes --

10 Q. Would it have?

11 A. -- alone, yes.

12 There's no way to tell that.

13 Q. Could Mr. Whitson have died without the morphine?

14 A. There is no reason that he would've died at the
15 point in time that he did without morphine.

16 As I said earlier, later on, if the pneumonia
17 progressed and he didn't get treatment, he could have died,
18 but not at the time and in the circumstances of his death.

19 Q. If Mr. Whitson had not had morphine -- trace
20 morphine in his blood at the time of death, what would you
21 have ruled the cause of death to be?

22 A. That's tough because it's hindsight. If he had
23 had nothing in his system and only the pneumonia, I would
24 probably have called it pneumonia or I might have called it
25 undetermined, but probably pneumonia although I would be

1 surprised because it doesn't seem to be severe enough. But
2 different people react differently to different insults to
3 the body.

4 Q. And does your answer change at all if we saw
5 morphine in the urine but no trace morphine in the blood?

6 A. Essentially, no, because the urine would indicate
7 that the morphine was present at some point in the blood.

8 So the urine confirms that it was in his blood,
9 and after ruling out other potential causes of death, I
10 would still -- and if he had a long period of essentially
11 sleeping it off, I would still have concluded that morphine
12 toxicity was the cause.

13 Q. If Mr. Whitson had not had any pneumonia at the
14 time of his death, what would you have ruled the cause of
15 death to be?

16 A. Morphine toxicity.

17 Q. What does "competing cause of death" mean?

18 A. Okay. I got into that a little bit earlier.
19 Competing cause of death refers to something else in the
20 body that could have caused death. For example, with a drug
21 case, because we can't interpret just the concentration
22 alone, I would make sure that there was nothing else that
23 caused his death -- heart disease, whatever.

24 As an example, if a person has cancer that's
25 spread throughout their body that they could easily have

1 died of but shot themselves, committed suicide, the cause of
2 death would still be that gunshot wound even though at some
3 point, if he had not had the gunshot wound, we would've
4 expected him to die from the cancer.

5 In this case, we don't know if he would have died
6 as consequences of the pneumonia because we don't know if he
7 had lived at that point, gotten worse, got treatment, then
8 he may have survived.

9 So in this case, I would not consider the
10 pneumonia a competing cause of death, but a contributory,
11 and other -- i.e., the autopsy and the microscopic slides,
12 other contributing causes of death were ruled out. He
13 didn't have liver disease, he didn't have kidney disease --
14 all the other organs were normal.

15 Q. Dr. Wolf, was morphine the but-for cause of
16 Jonathan Whitson's death -- meaning but for the morphine,
17 Mr. Whitson would've lived?

18 A. Okay. The answer is yes, but that's a
19 qualification. He would have lived -- he would not have
20 died at the time he did. I am being a little facetious here
21 to kind to bring the point home. He could've woken up,
22 walked out to the street and gotten hit by a car the next
23 day. So I can't say how long he would've lived; but I can
24 say that he would not have died at that point without the
25 morphine.

1 Q. Is there a difference between how a forensic
2 pathologist determines cause of death and the legal
3 definition surrounding causation?

4 A. Okay. I don't exactly know what the legal
5 definition is but I can tell you that for a forensic
6 pathologist, the cause of death is that which sets the
7 process in motion toward death -- that results in death.

8 Q. How confident are you in your cause of death
9 determination in this case?

10 A. I am confident to a reasonable degree of medical
11 certainty.

12 Q. And is that determination in this case based on
13 the information that you have before you, understanding that
14 there are things that you are missing, like photographs of
15 the body that you didn't have for your review?

16 A. Yes. My opinion is based on everything I have in
17 front of me.

18 Q. Okay.

19 MS. SMITH: Commissioners, that is all the
20 questions that I have for Dr. Wolf. I'm sure that you-all
21 have questions, I would just request that you state your
22 name before you ask your questions so she knows who's asking
23 the question.

24 JUDGE LOCK: Dr. Wolf, this is Tom Lock. I'm
25 the chair of the Commission. I'm going to ask just two or

1 three questions that will seem fairly redundant but I'm
2 going to couch them in the legalese.

3 THE WITNESS: Certainly, Your Honor.

4 JUDGE LOCK: You've stated that you do hold
5 your opinions to a reasonable degree of medical certainty;
6 is that correct?

7 THE WITNESS: I do.

8 JUDGE LOCK: All right. Now, one of the most
9 important issues before this Commission obviously is the
10 proximate cause or causes of the decedent's death.

11 Under North Carolina law, a proximate cause
12 is defined as a real cause, a cause without which the death
13 would not have occurred. And there may be more than one
14 proximate cause of death.

15 So is it your opinion to a reasonable degree
16 of medical certainty that morphine toxicity was a proximate
17 cause of the decedent's death?

18 THE WITNESS: Yes, it is.

19 JUDGE LOCK: And is it also your opinion that
20 morphine toxicity was the primary proximate cause of his
21 death?

22 THE WITNESS: Yes, it is.

23 JUDGE LOCK: All right. Thank you very much.
24 Commissioners.

25 SHERIFF KIMBROUGH: Good morning, Dr. Wolf.

1 My name is Bobby Kimbrough. I'll try to be brief, but I
2 have about maybe three or four questions.

3 THE WITNESS: Certainly.

4 SHERIFF KIMBROUGH: I just want to make sure.
5 You said you reached this conclusion based on the
6 information and based on the evidence that you received.

7 So I guess my question would be that if you
8 had been provided more material, more evidence, more pics,
9 could your -- or would your opinion have changed?

10 THE WITNESS: In my opinion, no, it would
11 not.

12 The main question being whether or not he had
13 an abscess. However, based on the clinical -- meaning
14 descriptions of Mr. Whitson before his death, I have no
15 reason to believe that that abscess was a contributory
16 factor, if it existed. The pictures would have enabled me
17 to answer that question but it would not, in my opinion,
18 have affected my opinion of the cause of death.

19 SHERIFF KIMBROUGH: I guess then my next
20 question is, and we've heard so much about heart conditions
21 or holes in the heart, based on what you observed or had you
22 been present or had you had the body, could we have
23 determined whether or not he had any heart condition for
24 things that would cause him --

25 THE WITNESS: As far -- you know, here, I'm

1 limited by taking Dr. Hall's description at face value, and
2 I have no reason not to, but if there was a hole in the
3 heart or coronary artery disease, that would have been seen
4 at the autopsy and there was no description in the autopsy
5 or finding on the microscopic slides. A hole in the heart,
6 that would be seen. Coronary artery disease could be seen
7 both with the naked eye and under the microscope.

8 It is very common for young children to have
9 findings that suggest they have what is loosely called a
10 hole in the heart, but in most cases, those resolve as the
11 child grows. And no hole in the heart was found at autopsy.

12 SHERIFF KIMBROUGH: And so I guess my next
13 question would be, and I guess you kind of -- you said that
14 pneumonia existed prior to the morphine; correct?

15 THE WITNESS: Correct.

16 SHERIFF KIMBROUGH: So then my last question
17 would be: Minus the pneumonia, could he have survived the
18 usage of morphine found in his body -- minus the pneumonia?

19 THE WITNESS: Okay. There is no answer to
20 that. The reason being that there are so many individual
21 variations in how one is affected by a drug that we can't
22 look at just the presence of the drug.

23 I have no way of knowing what the
24 concentration was before he metabolized the drug to the
25 level that it was found at autopsy. So, unfortunately,

1 there is no absolute answer to that.

2 SHERIFF KIMBROUGH: I appreciate you. Thank
3 you.

4 THE WITNESS: Certainly.

5 JUDGE LOCK: All right. Commissioner
6 Glazier.

7 MR. GLAZIER: Thank you, Your Honor.

8 Good morning, Doctor. My name is Rick
9 Glazier.

10 THE WITNESS: Good morning.

11 MR. GLAZIER: I appreciate your extraordinary
12 experience and qualifications and your exceptional testimony
13 today and thank you for it.

14 I just have three groups of questions.

15 One is: Have you had a chance to read
16 Dr. Holstege's report?

17 THE WITNESS: Doctor?

18 MS. SMITH: Holstege.

19 MR. GLAZIER: Holstege's report?

20 THE WITNESS: I do not recall but I would
21 have to look and see if I had that.

22 May I ask what his specialty is?

23 MS. SMITH: He's a medical toxicologist.

24 THE WITNESS: A medical toxicologist. I am
25 sure that I was given that report. I do not recall his

1 specific opinion.

2 MR. GLAZIER: All right. Well, that takes
3 care of the second question, then, which I was going to ask
4 you if you agreed or disagreed with his opinion; so ...

5 THE WITNESS: I can certainly answer if you
6 give me the opinion whether or I agree or disagree.

7 MR. GLAZIER: I'm getting there.

8 His main opinion is: "Based on the
9 information available to me at this time with the
10 limitations of the autopsy performed, the cause of death
11 would be better listed as acute bronchial pneumonia with
12 pulmonary emphysema as a contributing factor. The manner of
13 death therefore, be listed as natural."

14 THE WITNESS: For all of the reasons we
15 discussed, I respectfully disagree with that.

16 MR. GLAZIER: All right. Thank you.

17 Do you remember reading Dr. Roberts' report?

18 THE WITNESS: Yes, I did.

19 MR. GLAZIER: Do you have an opinion about
20 whether you agree or disagree with the opinions Dr. Roberts
21 expresses?

22 THE WITNESS: Well, Dr. Roberts expressed a
23 number of opinions, but as far as her overall opinion of the
24 cause of death, I would disagree.

25 MR. GLAZIER: Thank you.

1 The last series of questions. When you're
2 describing morphine toxicity, is that a description based on
3 the history of prolonged usage and what you're seeing, that
4 is, the toxicity is the body buildup over time?

5 THE WITNESS: No, sir. Toxicity refers to --
6 I guess the more colloquial term is "overdose." So morphine
7 toxicity is referring to what's happening at or about the
8 time of death.

9 MR. GLAZIER: Thank you.

10 JUDGE LOCK: Commissioner Boswell.

11 MR. BOSWELL: Dr. Wolf, I'm John Boswell.
12 I'm one of the commissioners.

13 THE WITNESS: Good morning.

14 MR. BOSWELL: What was the actual mechanism
15 of death in your opinion?

16 THE WITNESS: Okay. Mechanism, when you're
17 dealing with an opiate or a narcotic as morphine is, is that
18 they are central nervous system depressants. Other drugs
19 like cocaine stimulate the central nervous system. The
20 brain has areas that control bodily function, including
21 heartbeat and respiration. So in a case where the cause of
22 death is solely a drug, an opiate toxicity, it would be that
23 depression of the centers of the brain cause the heart and
24 lungs to -- their function to be depressed and eventually
25 cease.

1 In this case, we have the added I would say
2 "insult" or "finding" in his lungs of the pneumonia, which
3 would also make breathing more difficult. And that's why I
4 would say it contributed.

5 MR. BOSWELL: So was it the case that those
6 two things put together just simply caused him to stop
7 breathing and his heart to stop beating? Is that the
8 layman's expression of what happened?

9 THE WITNESS: Yes.

10 MR. BOSWELL: Okay.

11 We had -- Dr. McLemore testified yesterday
12 that she believes that the victim aspirated, vomited, and
13 some of that stomach matter went into his lungs and that
14 caused aspiration pneumonia and that that could have
15 resulted in as little as two or three hours.

16 Do you agree with that?

17 THE WITNESS: No, I don't. I think it would
18 take longer than that.

19 MR. BOSWELL: Okay.

20 She also indicated that the granulomas that
21 she saw in the lungs, at least some of them had not -- had
22 been there so -- such a short period of time that the lung
23 had not had the opportunity to sort of attack it and create,
24 you know, some sort of encapsulation.

25 Did you see any of that yourself?

1 THE WITNESS: Yes, I did.

2 MR. BOSWELL: In other words, were some of
3 the granulomas there for a long time and some shortly?

4 THE WITNESS: Yes. Although how shortly, I
5 would not say at or about the time of death, because there's
6 still a body reaction even though they're not encapsulated.
7 But essentially, yes, there were acute, meaning recent, and
8 chronic, meaning older, granulomas.

9 MR. BOSWELL: We heard I think more than one
10 witness indicate that the victim was snoring. And what does
11 that indicate to you?

12 THE WITNESS: Okay. Without knowing if he
13 snored under normal circumstances, I can't draw a definitive
14 conclusion. However, a typical scenario that we often hear
15 from witnesses of people who die of overdoses is that before
16 they're found unconscious or dead, they have a period of
17 abnormally loud or prominent snoring.

18 MR. BOSWELL: And what causes that snoring --
19 how is the snoring related to, you know, opioid toxicity?

20 THE WITNESS: I can't answer that. We see it
21 not just with opiates. It can occur with any variety of
22 drugs.

23 MR. BOSWELL: Okay.

24 THE WITNESS: It indicates a prolonged
25 period. But the anatomy that causes the snoring, I'm sorry,

1 I don't know.

2 MR. BOSWELL: And then one of the points we
3 learned yesterday is that at the time this autopsy was done,
4 some of the samples were shipped just by U.S. mail and it
5 wasn't uncommon for alcohol to be found in a sample because,
6 I guess, it fermented during shipment.

7 THE WITNESS: Okay.

8 MR. BOSWELL: Is that -- does that sound like
9 at least a plausible reason why there could be alcohol in
10 some of the samples?

11 THE WITNESS: Okay. Well, I mentioned
12 earlier that decomposition can cause bacteria to grow, and
13 bacteria can produce alcohol. However, when we do an
14 autopsy, at least nowadays, we put samples of blood, other
15 organs and fluids into test tubes with particular
16 preservatives that should stop that process of
17 decomposition.

18 So not knowing what was done in this case, I
19 can't answer that. But it is possible.

20 MR. BOSWELL: Thank you very much for your
21 testimony and your time.

22 JUDGE LOCK: Commissioner Perry, did you have
23 any questions?

24 DR. PERRY: Just request five minutes.

25 JUDGE LOCK: All right. Other commissioners

1 would like breaks?

2 MR. BASS: Just one question.

3 JUDGE LOCK: Doctor, could you bear with us
4 while we take about a five-minute recess, a little comfort
5 break?

6 THE WITNESS: Certainly.

7 JUDGE LOCK: All right. We'll be in recess,
8 then, for about -- Commissioners, let's keep it to about
9 five minutes, if we can.

10 (Recess taken, 10:22 to 10:30 a.m.)

11 JUDGE LOCK: We'll come back to order.

12 Dr. Wolf, thank you very much for bearing
13 with us.

14 I believe Commissioner Bass had a couple of
15 questions.

16 MR. BASS: Hi, Dr. Wolf. My name is Scott
17 Bass. I think I only have two questions.

18 One is: What is the difference between
19 pneumonia due to morphine toxicity versus pneumonia due to
20 morphine intoxication?

21 THE WITNESS: Those -- the terms would be --
22 those two terms would be interchangeable.

23 MR. BASS: Okay. Thank you.

24 And the other thing, had -- is it possible --
25 have you seen heavy use of alcohol contribute to death in a

1 fashion similar to what you've concluded morphine did in
2 this situation?

3 THE WITNESS: Alcohol is also a central
4 nervous system depressant; so, yes, in very high levels, it
5 could present a similar circumstance.

6 MR. BASS: Okay. Thank you.

7 JUDGE LOCK: Were there other questions?
8 Anybody?

9 Well, Dr. Wolf, I think that was it then.

10 Thank you again very much for your work in
11 this case and for being with us this morning.

12 THE WITNESS: Thank you very much,
13 Commissioners.

14 (Witness stands down, 10:32 a.m.)

15 MS. SMITH: Commissioners, while Mr. Fitts is
16 working on the technology, you may recall earlier that
17 the -- there was testimony that the Commission had retained
18 Dr. George Behonick related to evaluating the toxicology
19 testing that was conducted in this case.

20 You've previously been provided with a copy
21 of Dr. Behonik's report as Handout 11 and his CV as
22 Handout 12.

23 You will want to refer to that throughout his
24 testimony and as soon as he is available to be on the
25 screen, we are calling Dr. George Behonick.

1 (Discussion off the stenographic record.)

2 MS. SMITH: Good morning, Dr. Behonick. Can
3 you hear us?

4 THE WITNESS: Yes. Good morning. Can you
5 hear me?

6 MS. SMITH: We can.

7 JUDGE LOCK: Good morning, Dr. Behonick. I
8 am Tom Lock. I am A superior court judge here in
9 North Carolina and I am chair of the Innocence Inquiry
10 Commission.

11 Testimony before the Commission must be under
12 oath or affirmation so I'm going to ask if you would raise
13 your right hand.

14 Do you swear or affirm that the testimony you
15 will give before the Commission this morning will be the
16 truth, the whole truth, and nothing but the truth? Is this
17 your solemn affirmation?

18 THE WITNESS: I do.

19 JUDGE LOCK: Thank you very much, sir.
20 Thereupon, GEORGE BEHONICK, MD, a witness having been called by
21 the Commission, was sworn and testified as follows via WebEx
22 technology:

23 EXAMINATION BY MS. SMITH: (10:35 a.m.)

24 Q. Dr. Behonick, I don't know if you can see us, but
25 we can see you.

1 My name is Lindsay Guice Smith. We've spoken
2 previously. I am the executive director here at the
3 Innocence Inquiry Commission.

4 I'm going to ask you a series of questions and
5 then when I'm done, we've got commissioners around the table
6 who also may have questions for you. Okay?

7 A. Yes.

8 Q. Could you just briefly describe for the
9 commissioners you education and experience.

10 A. My educational background, beginning with my
11 undergraduate degree, was from The Citadel. I graduated in
12 May of 1980 with a degree, a bachelor's of science in
13 biology. I completed a master's of science degree from
14 Hahnemann University in Philadelphia in 1983. The area of
15 specialty was pathology. And my terminal degree, my highest
16 earned academic degree is the Ph.D. in pharmacology and
17 toxicology from St. John's University in New York, which was
18 awarded in 1997.

19 Q. And tell us about your employment history.

20 A. My employment history began with an interim
21 transitional year as a research associate with the United
22 States Army Medical Research Institute of Chemical Defense.
23 That was in Aberdeen Edgewood area, Maryland.

24 I completed that in 1998 and began my tenure as a
25 forensic scientist, forensic toxicologist with the Virginia

1 Division of Forensic Science, Western Laboratory in Roanoke,
2 Virginia. That time span included from October of 1998 up
3 to December of 2004.

4 In January 2005, I assumed duties as the director
5 of forensic toxicology at UMass Memorial Medical Center in
6 Worcester, Massachusetts, department of hospital
7 laboratories. Our laboratory was charged with the
8 responsibility of conducting all postmortem toxicological
9 analysis for the Commonwealth of Massachusetts.

10 In November of 2009, I became affiliated with, at
11 the time, the laboratory was known as AIT Laboratories,
12 headquartered in Indianapolis, Indiana. And I have been in
13 continuous employment with that group since.

14 Now, in July of 2016, the forensic business unit
15 from AIT Laboratories was purchased by an independent group
16 of investors incorporated as AXIS Forensic Toxicology, and
17 that is when I assumed duties as the director and forensic
18 toxicologist to this current day.

19 Q. How long have you been working as a forensic
20 toxicologist?

21 A. 23 years.

22 Q. Do you have any professional positions other than
23 that employment or other professional affiliations?

24 A. I have professional membership affiliations with
25 the Society of Forensic Toxicologists as a member and with

1 the American Academy of Forensic Sciences, toxicology
2 section, as an associate member.

3 Q. Are you currently involved in any scientific or
4 specialized research?

5 A. That is not a primary duty right now. Obviously,
6 we are a service laboratory that does postmortem toxicology.
7 But because of the nature of our work, there is certainly an
8 academic or a research interest in a lot of the things that
9 we're doing.

10 For example, right now, I have a manuscript where
11 I am first author on which is pending acceptance with the
12 Journal of Analytical Toxicology, awaiting several
13 revisions. And that work basically is based on our
14 experience as an outsource toxicology laboratory with our
15 case experience. So we do publish actively in that regard.

16 Q. Do you have any certifications?

17 A. I do. I am board certified by the American Board
18 of Forensic Toxicologists. I hold the title Fellow,
19 American Board of Forensic Toxicology. I gained that
20 certification in 2004 and have successfully requalified
21 several times since.

22 Q. Is there anything else you believe is important
23 about your experience or education that I have not covered
24 with you so far today?

25 A. No.

1 Q. Did you provide a report and a CV to the
2 Commission?

3 A. I did.

4 Q. Do those documents outline how many times you've
5 testified as an expert and in what types of cases?

6 A. That was a separate request for the number of
7 testimonies rendered. Today, currently, this is my 55th
8 testimony since 2011. Testimonies in terms of court or
9 hearings primarily are on behalf of the State or prosecution
10 only because of the nature of our clientele. We service
11 medical examiners and coroners, and the nature of those
12 investigations are such that they are primarily driven by
13 states' attorney offices, district attorneys, and so on. So
14 that is how that particular division of labor would fall
15 out.

16 We also -- or I also testify in civil cases. And
17 in civil cases, I have testified on both behalf of plaintiff
18 and defendant.

19 Q. What is your specialized training or knowledge
20 that you use in evaluating toxicology testing?

21 A. So the simplest way to state it is that the
22 knowledge and experience that's applied in evaluating a case
23 or trying to interpret a case is represented by the
24 cumulative knowledge that's been gained over the years, and
25 that includes my experience as working as a bench

1 toxicologist in Virginia. It includes my experience as
2 being a testifying toxicologist both in Virginia and
3 Massachusetts prior to coming to AIT/AXIS Forensic
4 Toxicology. It includes the cumulative body of knowledge
5 acquired through my formal education and Ph.D. program as
6 well as continuing education efforts through attendance at
7 various continuing education workshops and sponsored events
8 by the professional organizations I outlined.

9 For example, I attended a workshop in September at
10 the SOFT meeting, Society of Forensic Toxicologists,
11 meeting, in Nashville. That was an all-day workshop and it
12 was on the emergence of the novel psychoactive substances,
13 which are a particularly big problem right now in the United
14 States. Additionally, I stay abreast of what is in the
15 current literature. And I also have at my disposal my peer
16 toxicologists that I can talk with throughout the country.

17 So it's a cumulative body of experience, formal
18 training, education, continuing education, knowledge of the
19 literature, scientific literature, the authoritative texts
20 related to our field that come to bear when you're looking
21 at a case.

22 Q. Thank you.

23 When you evaluate toxicology testing, what are the
24 principles and methods that you use?

25 A. Well, certainly when it's something done

1 internally from our laboratory, we are an accredited
2 laboratory so all of our analytical methods have been vetted
3 or validated in terms of performance. This would include
4 things like limits of linearity, limits of detection,
5 interferences, and so on.

6 We would certainly look at raw data in terms of
7 quality control, calibration data. So those are the
8 up-front kind of things that are looked at when you're --
9 when you look at a case.

10 Now, in an instance where I am asked to look at
11 work from another laboratory, obviously I'm going to look at
12 the methods that were employed in testing. I will certainly
13 review those in terms of do they meet or are they in line
14 with what we do as an industry. Are they acceptable, good
15 laboratory practices in forensic toxicology, and do the
16 procedures and processes follow in good order and are they
17 consistent with good laboratory practice in postmortem
18 forensic toxicology or maybe in human performance
19 toxicology.

20 So those are just some of the things that come to
21 bear when you're looking at this type of data.

22 Q. Did you apply those principles and methods when
23 you reviewed this case?

24 A. I did.

25 Q. In this case, were you provided sufficient facts

1 and data?

2 A. I was.

3 Q. And you outlined those materials that you were
4 provided starting on the first page of your report entitled
5 "Enclosure 1"; correct?

6 A. That is correct.

7 Q. And that is the list of items that you reviewed as
8 provided to you by the Commission; correct?

9 A. Correct.

10 Q. Since you issued that report, you've also been
11 provided with and reviewed other reports by the other
12 experts who have reviewed this case; is that correct?

13 A. That is correct.

14 Q. Based on your analysis of this case, do you
15 believe you have specialized knowledge that will assist the
16 Commission in evaluating the toxicology testing that was
17 performed by the Office of the Chief Medical Examiner's
18 toxicology laboratory in Raleigh, North Carolina?

19 A. Yes.

20 Q. Have you formulated opinions in the cases that are
21 before the Commission regarding the toxicology testing?

22 A. Yes.

23 Q. Do your report and CV contain your opinions and
24 basis for those opinions?

25 A. My report does, yes.

1 Q. Thank you.

2 MS. SMITH: Judge Lock, I would now like to
3 tender Dr. Behonick as an expert in forensic toxicology and
4 postmortem toxicological interpretation.

5 JUDGE LOCK: All right. That tender is
6 allowed.

7 Q. Dr. Behonick, when you were contacted by the
8 Commission, did commission staff make it clear that they
9 were not seeking any particular opinion?

10 A. Absolutely. And it was very -- made clear to me
11 without a doubt.

12 Q. And did commission staff make it clear that they
13 would present your findings no matter what those findings
14 were?

15 A. Yes.

16 Q. I'm going to turn your attention to your report
17 and just have you briefly describe what you reviewed in
18 preparation for the report.

19 A. So enclosure 1 to the report was the nominal list
20 of materials and documents that were reviewed. And the way
21 I formatted my report, I did it in different sections or
22 parts.

23 The first part was a summary of the case history;
24 the second part was discussion of the postmortem analytical
25 toxicology which was performed; the third part was an

1 interpretation of the toxicology data; and the final part or
2 next to final part was any opinions or conclusions I drew
3 from the review of those materials; and the last part would
4 be my cited references that I used in reaching those
5 conclusions and opinions.

6 Q. You testified a minute ago that you had reviewed
7 additional materials in this case after you issued your
8 report.

9 What materials were you provided and reviewed
10 after you issued the report?

11 A. Well, most recently, last week, there was a set of
12 transcripts that were provided to me. This included the
13 sister of the decedent, the mother of the decedent, and
14 another person of interest or a friend or acquaintance of
15 the decedent. Prior to that, there were several other
16 reports that were proffered by other experts in the case
17 that were provided to me for my review.

18 Q. Did any of those additional materials, after
19 reviewing them, change anything in your report or your
20 opinions?

21 A. No.

22 Q. One of the other experts' reports that you were
23 provided in this case was Dr. Andy Ewens.

24 A. Yes.

25 Q. Do you agree with Dr. Ewens' report or opinions?

1 A. You may have to just kind of summarize some of his
2 main points, but I think the one area that I do disagree
3 with is the ability to try to go back retrogradely and
4 determine what the morphine concentration was in a
5 postmortem case using a retrograde calculation or
6 calculation of body burden and using things like half-life
7 of the drug and so on.

8 As forensic toxicologists, we have sort of a set
9 of guidelines and a framework from which we offer opinion
10 testimony or expert testimony. That sort of calculation is
11 not sanctioned or recommended, advised by this particular
12 set of guidelines; so that is not a calculation I would
13 engage in or endorse.

14 Q. Thank you.

15 Are there any guidelines about whether or not a
16 toxicologist can opine as to the absolute cause of death in
17 a case?

18 A. Again -- and the document that I'm referencing,
19 which is probably something that should be introduced here
20 so you know exactly what I'm referring to, the name of this
21 document is "Guidance (connectivity issue) and Testimony
22 (connectivity issue) in Toxicology."

23 (Stenographer clarification.)

24 A. Yes. The document I am referencing is entitled
25 "Guidelines for Opinions and Testimony in Forensic

1 Toxicology." It is a document promulgated by ANSI, it's
2 abbreviated ANSI/ASB, Best Practice Recommendation 037,
3 1st Edition, 2019.

4 And this is -- ANSI is the American National
5 Standards Institute. And this is in conjunction with the
6 American Academy of Forensic Science Standards Board. And
7 it's a very helpful document, very clear, and it spells out
8 what -- and what should be avoided when you're offering
9 opinion testimony or interpretive testimony in forensic
10 toxicology.

11 Q. Thank you.

12 What can a toxicologist opine on as it relates to
13 cause of death?

14 A. Well, I'm going to actually refer to the document
15 and read directly from the document. This is a prohibition.
16 "A toxicologist should not opine as to the absolute cause of
17 death of an individual. However, this does not preclude a
18 toxicologist from addressing the toxicological impact of any
19 substances found in the toxicological analysis of specimens
20 from the case."

21 So although I am not proffering or offering a
22 cause of death, I certainly can talk to you about the
23 mechanisms of action, how a drug brings about a lethal
24 outcome or a fatal outcome, or how a combination of drugs
25 can bring about a fatal outcome.

1 "Additionally, a toxicologist should not perform
2 extrapolation calculations for drugs other than alcohol."

3 And this is what I alluded to earlier about trying to look
4 at a postmortem blood concentration and then go back in time
5 and say this is what it may have been or could have been
6 based on pharmacological data of drug.

7 "Likewise, a toxicologist should not calculate the
8 dose of a drug based on a postmortem drug concentration in
9 blood."

10 And the reason many of these prohibitions are put
11 in place is because there are just too many variables in
12 postmortem cases that we cannot account for. And it's much
13 more harmful to try to do a calculation or make an estimate
14 and give somebody the wrong impression or give somebody
15 something that's inaccurate and scientifically indefensible.
16 So this is why these prohibitions are put in place for
17 forensic toxicologists.

18 Q. Thank you.

19 Turning now to your opinion in this case, what is
20 your opinion in this case?

21 A. So looking at the toxicology report that was done
22 back in 2011, the results indicated the presence of morphine
23 in a femoral blood specimen. And having had the advantage
24 of looking at the clinical history of this decedent or
25 hearing testimony related to his activities and whereabouts

1 during the time in question of his death, this finding is
2 consistent with what was revealed in those documents in
3 terms of testimony from other witnesses, what actually
4 occurred over that period of time -- I believe it was the
5 weekend of March 4th, 5th, 6th, 2011.

6 So the toxicology finding is certainly consistent
7 with that history and what happened.

8 The one thing that was a little bit of an unknown
9 at the time was the presence of alcohol. And it was
10 determined to be present in an amount of 40 milligrams per
11 deciliter. That is the same thing as saying 0.04 percent
12 weight by volume. And the reason I point that out is just
13 to give you some reference of how much alcohol does that
14 really mean. We know that, for example, in driving under
15 the influence cases or driving intoxicated, we know the
16 legal statute is 0.08 percent. What was found in the
17 postmortem blood of this decedent was about one half of
18 that, 0.04 percent.

19 Now, the document that was provided to me last
20 week, and it was the testimony -- or it was the transcript
21 testimony given by the decedent's sister, helped shed some
22 light on that because she made a reference to the decedent
23 having been in the company of another person at a bar. So
24 that at least in my mind clarified the potential for where
25 that alcohol originated from.

1 Q. Dr. Behonick, it is important for a forensic
2 toxicologist to be aware of law enforcement's investigation
3 and what witnesses reported?

4 A. Absolutely. And it's not just law enforcement's
5 investigation, documentation of the scene, a decedent's
6 medical and social history, but it's also what a forensic
7 pathologist or a medical examiner uncovers in their own
8 investigation, whether that is the external exam, an
9 internal exam of the body, as well as additional ancillary
10 studies that might be histology or microanatomy studies and
11 any other kind of specialized studies, for example, the
12 heart or the brain.

13 So we do not practice the interpretation of
14 forensic postmortem toxicology in a vacuum. It's not as
15 simple as just looking at a result and looking at a number
16 and coming to a conclusion. It's important to consider
17 every piece of information that's available, and sometimes
18 it may be incomplete, it may be inaccurate, and you've got
19 to consider that when you're weighing exactly how
20 significant is that information relative to the toxicology
21 finding that you're looking at.

22 Q. I want to focus on the sections of your report
23 titled "Part 2: Postmortem Analytical Toxicology" and
24 "Part 3: Interpretation of Postmortem Toxicology Data." I
25 have a few questions about those sections.

1 Can you explain which part of the toxicology
2 testing is the screening portion and which part of the
3 toxicology testing is the confirmation portion?

4 A. Okay. So if you refer back to the toxicology
5 report -- and this is from the Office of the Chief Medical
6 Examiner, Raleigh, North Carolina, you will see midway on
7 the page, the specimens which were received. There was a
8 femoral blood specimen. And for that result, morphine was
9 reported semiquantitatively as being present in trace
10 amount.

11 That finding represents a confirmation finding;
12 that is, a confirmed test that was done basically off the
13 screen of the aorta blood which is listed below that on the
14 report. So the laboratory did the presumptive testing or
15 screening testing in the aortic blood, and it was done by a
16 method known as liquid chromatography/mass spectrometry.
17 That was the screening methodology or an analytical
18 technique performed on the specimen.

19 The presumptive positive from that, which was
20 morphine, was then referred to testing by gas
21 chromatography/mass spectrometry, which then resulted in a
22 confirmed result.

23 In terms of the alcohol result, that was performed
24 on I believe it was the aorta blood, and this was done by a
25 method known as gas chromatography. I should further state,

1 headspace gas chromatography flame ionization detection.
2 This essentially is a screening and confirmation method in
3 one because two columns were used to identify the alcohol.
4 So this is one of those methods where you can consider that
5 both a screening and confirmation method that was done
6 simultaneously, and that's what revealed the concentration
7 of 40 milligrams per deciliter of alcohol.

8 Additionally, there was testing done on a urine
9 specimen which revealed a concentration of 15 milligrams per
10 liter of morphine -- free morphine, and that was done by
11 GC/MS.

12 Q. In looking at the urine screenings, can you tell
13 whether or not they screened for alcohol in the urine as
14 well?

15 A. There is no indication of that on the report. The
16 only test result listed for urine was for the morphine.

17 Q. Can you tell what kinds of drugs were part of the
18 screening tests in this case?

19 A. The list of drugs certainly are what was contained
20 on the report. As you see there, that included the
21 benzodiazepine class, cocaine, opiates and opioids, of which
22 morphine was determined to be present, nicotine, and then
23 there is a very broad category, "other organic bases."

24 And what I was able to learn from Dr. Winecker,
25 because I did speak to her, they were using, you know, a

1 very broad spectrum toxicology screen at that time, which
2 probably was on the order of almost 400 different drug or
3 drug metabolites, and that's what would have been included
4 in those other organic bases.

5 It would be impractical to try to list every drug
6 or drug class that they tested for on a single toxicology
7 report just because it would just be too long. It would be
8 too long of a report to try to just say that all of these
9 were tested and are either negative or -- it would only
10 report positive findings.

11 Q. Did the screening portion of the toxicology
12 testing, if you were able to tell, include blood pressure
13 medication?

14 A. I did indeed discuss this issue with Dr. Winecker
15 once it was revealed to me that this possibility of a blood
16 pressure medicine being used was revealed to me. And
17 Dr. Winecker did affirm to me that that organic base screen
18 that would have been done of aortic blood would've also
19 included a number of antihypertensive or blood pressure
20 medications -- now, not necessarily fully inclusive, and
21 without knowing specifically what agent would have been
22 involved, it's impossible to say whether or not it was
23 indeed tested for at the time back in 2011.

24 Q. And you've referred to Dr. Winecker. So just to
25 clarify, Dr. Winecker was the toxicologist who did the

1 testing in this case 2011; is that correct?

2 A. She was the chief toxicologist at the Office of
3 the Chief Medical Examiner in Raleigh at the time, yes.

4 Q. Thank you.

5 If you know, what sorts of effects could taking
6 too much blood pressure medication have on a person?

7 A. It's a very difficult question to answer because
8 there are a number of different classes of drugs which are
9 used to treat hypertension or high blood pressure. For
10 example, there are thiazide diuretics, an example would be
11 hydrochlorothiazide, and this is a drug that reduces blood
12 pressure by increasing the excretion of sodium and water.

13 Now, a side effect of that could be something
14 known as hypokalemia, which is a reduced or diminished
15 concentration of potassium in the circulating blood, which
16 in itself can have deleterious effects to a person. This
17 type of medication would also be especially risky for
18 patients which have cardiac arrhythmias, left ventricular
19 hypertrophy, ischemic heart disease, congestive heart
20 failure.

21 (Technology failure.)

22 MS. SMITH: I think we have lost the volume.
23 Can you hear me?

24 THE WITNESS: How about now?

25 MS. SMITH: I can hear you now.

1 (Stenographer clarification.)

2 THE WITNESS: That's correct. Yeah. That's
3 the statement.

4 A. So this would be a risky medication for somebody
5 that has those predisposed conditions.

6 Another class of antihypertensive drugs would be
7 beta-blockers. The prototype for this class would be
8 propranolol, and that's spelled p-r-o-p-r-a-n-o-l-o-l. And
9 this medication decreases blood pressure by decreasing
10 cardiac output. It does so by reducing the sympathetic
11 outflow from the autonomic nervous system. And it can
12 inhibit a substance known as renin, which produces
13 angiotensin II and the secretion of aldosterone. Again,
14 that's how the mechanism works to reduce blood pressure.

15 For patients that are asthmatic or if they suffer
16 from angina or peripheral vascular disease, they could be at
17 a risk for side effects or toxicities of this drug class.

18 Q. Thank you.

19 A. ACE inhibitors would be a third category, and
20 these are angiotensin-converting enzyme inhibitors. They
21 lower blood pressure by decreasing peripheral vascular
22 resistance. An example would be lisinopril. That is an
23 example of ACE inhibitor. Some of the side effects that
24 could be associated with that would be hypercalcemia, that
25 would be increased calcium in the blood. And, again, for

1 people with certain predisposed conditions, this could prove
2 toxic.

3 So the answer to the question about what could a
4 blood pressure medicine do to someone, you would first have
5 to really be able to answer, well, what particular agent in
6 question are you talking about. And of that, which
7 particular class of agents in terms of mechanism of action
8 would be involved in that drug.

9 Q. Thank you.

10 Can you tell the commissioners what "trace amount
11 of morphine in the femoral blood" means.

12 A. So that notation "trace" -- it's a little bit of
13 an older notation used in quantitative toxicology testing,
14 and what it refers to is a small amount of drug or minimal
15 amount of drug relative to what is the lowest calibration
16 point for the test assay.

17 So in this particular case, the lower limit of
18 detection or the lowest limit of quantitation for the assay
19 was 50 nanograms per milliliter. So the actual case
20 specimen had the presence of morphine which met criteria for
21 identification both in terms of its mass spectral data and
22 its retention time, but it was below the lower limit of
23 quantitation, and therefore it was only reported as "trace."

24 So when you read that, it translates to an amount
25 of morphine being less than 50 nanograms per mil.

1 Q. And do we know how close to zero the trace
2 morphine level was in the femoral blood sample?

3 A. No. Without a review of the actual data, you
4 could not be able to speculate on that.

5 And of course, at the time, the North Carolina
6 Office of the Chief Medical Examiner, the toxicology
7 laboratory, they were working under American Board of
8 Forensic Toxicology guidelines and standards, and the
9 standard records retention policy is five years by ABFT; so
10 those records, the hard copy, you know, are long gone.

11 Q. Do you know what the possible range was?

12 A. Well, we know from the confirmatory method that
13 the lower limit of quantitation was 50 nanogram per mil.
14 From the screening method, the LCMS training method, they
15 had a detection limit of 10 nanogram per mil.

16 So one would infer that at least there had to be
17 at least enough to trigger a positive from the screen which
18 would have been at least 10 nanogram per mil or higher, but
19 it did not satisfy meeting the quantitative criteria of
20 being above what the limit of quantitation was.

21 Q. I want to turn now to part 4 of your report,
22 "Opinions and Conclusions."

23 Why does the finding of 40 milligrams per
24 deciliter indicate that Mr. Whitson consumed alcohol before
25 he died and not related to postmortem decomposition?

1 A. There was no indication from the autopsy or from
2 the scene that decomposition was an issue with this cadaver
3 or with this decedent.

4 So normally in postmortem cases, when that is
5 apparent, that's going to be noted to the toxicology
6 laboratory in the way of a history or in the condition of
7 the remains, and it will alert us to the possibility that
8 the alcohol that could be detected may be secondary to that
9 decomposition process.

10 That was not the case for this decedent so it
11 wasn't mentioned either in the scene or in the autopsy.

12 Q. Is it possible that Mr. Whitson did not consume
13 any alcohol at all before he died?

14 A. In my opinion, that's highly unlikely. There is
15 nothing to suggest that this was just a neoformation of
16 alcohol or spontaneous formation of alcohol in vitro. And I
17 think what probably buttresses my opinion in that regard is
18 the statements that were made by this decedent's sister in
19 that additional testimony provided to me last week.

20 Q. Could the ethanol that was detected in the aorta
21 blood sample be attributed to the blood sample itself
22 creating ethanol, as Dr. McLemore suggests in her report?

23 A. I don't believe that, no.

24 Q. Are you able to tell how much alcohol Mr. Whitson
25 had consumed?

1 A. No. We have no idea what he was drinking or how
2 much he was drinking or when the drinking may have started
3 or ended.

4 Q. How does alcohol affect the central nervous
5 system?

6 A. Alcohol is broadly categorized as a central
7 nervous system depressant, and it's going to exert most of
8 its effects on the brain. And it's going to happen in a
9 concentration-related fashion.

10 So at low concentrations, it's going to be the
11 higher centers of the brain that are going to be first
12 affected. It's the frontal lobe section of the brain. It's
13 the part of the brain that regulates things like our
14 inhibitions, judgment, and our critical thinking.

15 This is where, for example, at the office
16 Christmas party, for example, and you have the young, nerdy
17 kind of guy that is quiet and self-reserved, and after one
18 or two drinks, he is already dancing up a storm, very
19 loquacious, very outgoing and so on. And what that is,
20 that's the release of inhibition. That's the inhibition
21 that is being removed at that time.

22 Now, as I said, the effects escalate with
23 increasing concentrations. You get up to a blood alcohol
24 of, say, 0.10 percent, and now you can start to see or
25 experience some sensorimotor deprivations, there's changes

1 in vision, and there can already be some indication of
2 sensorimotor imbalances in coordination. And obviously, if
3 it escalates up to the point where you get up to a .35 or
4 above and the drug -- or the alcohol itself could be enough
5 to cause lethality in the form of acute alcohol poisoning.

6 So there's this whole spectrum of effects that
7 occur over that range of concentrations.

8 Q. How does morphine affect the central nervous
9 system?

10 A. Morphine is an opiate and it's going to direct its
11 mechanism of action by way of receptors. The receptors are
12 noted as mu, kappa, and delta receptors. They're located
13 throughout the body.

14 The mu receptors are related to analgesia, which
15 is the therapeutic purpose for morphine, is to provide pain
16 relief or analgesia, but those receptors are also sites of
17 action that bring about the euphoric feeling or the high,
18 and they also play a role in the negative or serious toxic
19 side effect, which could be respiratory depression.

20 Q. I want to go back and I'm going to try to ask this
21 question so please correct me if I'm asking it incorrectly.

22 Because we are seeing a .04 alcohol concentration
23 in Mr. Whitson's blood, that could mean that he consumed a
24 drink or two immediately prior to death.

25 Is that accurate?

1 A. That's true. It could be, yes.

2 Q. Because we do not have a screening of the alcohol
3 concentration in the urine, we have no way of knowing
4 whether or not he had begun to metabolize the alcohol out of
5 his system; is that correct?

6 A. That's fair to say that. And urine is a good
7 corroborative matrix or specimen type for that purpose, as
8 well as vitreous humor. The vitreous humor is the fluid
9 from the eye. That holds exceptionally high corroborative
10 value when you're trying to interpret a blood alcohol
11 result.

12 It's preferable to have either urine or vitreous
13 in combination with the alcohol result. And that also helps
14 us when we're trying to discern whether or not is that
15 alcohol the result of postmortem neoformation because of
16 decomposition.

17 Q. And it's your understanding that we also don't
18 have the vitreous either?

19 A. Right. Right. The only specimens that were
20 submitted were 6 milliliters of blood obtained from a
21 femoral vessel, the blood that was obtained from the aorta,
22 a urine specimen, and a portion of liver tissue. Those were
23 what was submitted to the toxicology laboratory.

24 Q. And so based on the .04 concentration in the
25 blood, the only conclusion that we can draw is that he had

1 .04 blood concentration at the time of death?

2 A. That is the blood concentration that was measured
3 in the postmortem sample, yes.

4 Q. Okay.

5 Going to turn now back to the urine levels -- or
6 the morphine levels in the urine.

7 Is 15 milligrams per liter in the urine a lethal
8 level of morphine?

9 A. And that's a trick question. And the reason I'm
10 saying it's a trick question -- well, the reason it's a
11 trick question is because you cannot discern or infer
12 lethality, toxicity, or impairment from a urine positive
13 finding.

14 The urine merely is chemical evidence an
15 individual was exposed to or used a drug, but you
16 cannot infer those other interpretive-type conclusions, if
17 you would, as you would in a blood specimen.

18 Q. So when Dr. Hall says that the level of morphine
19 at 15 milligrams per liter that was detected in
20 Mr. Whitson's urine is a lethal amount, that is not
21 something that you would agree with?

22 A. That doesn't support the conclusion of lethality.
23 It -- what it merely suggests or does demonstrate is that
24 the person used or was exposed to the drug morphine or a
25 morphine-containing drug.

1 Q. And is the reason that we can't focus on those
2 concentrations in urine because there are other factors that
3 come into play, such as how much someone may have had to
4 drink -- not alcohol necessarily, but how much liquid
5 someone may have consumed or something along those lines?

6 A. The more basic answer to that question is to think
7 of it this way: Urine is a sequestered fluid, and by being
8 a sequestered fluid, I mean that any drug or drug metabolite
9 that was circulating in the blood has already been excreted
10 from the blood and resides in the urine. It's no longer
11 circulating to the point where it's going to reach the
12 target organ or set of receptors to bring about an effect;
13 so this is downstream, long gone from the blood.

14 Now, what you were referring to as far as
15 someone's hydration status or how well hydrated they are,
16 whether it's a dilute urine or concentrated urine, yes, that
17 can have an impact on the overall concentration that you're
18 measuring. Obviously, a more concentrated urine drug is
19 going to be higher whereas in a dilute urine, the
20 concentration would be lower.

21 Q. Dr. Hall references 14 milligrams per liter of
22 morphine in the urine being a cutoff point for toxicity
23 resulting in death.

24 Is that an accurate statement?

25 A. It is a statement that I would not make, and I am

1 sure what he may have been looking at was either some case
2 reports or some published data in literature which reported
3 urine concentrations in fatal cases. But I don't
4 necessarily automatically associate that with being a cause
5 of death. And while -- and you can't. You can't because of
6 the reasons I aforementioned, that you're not going to be
7 able to infer lethality from a urine concentration.

8 Q. From the toxicology testing conducted, can you
9 tell how much morphine Mr. Whitson consumed?

10 A. No.

11 Q. Can you tell when Mr. Whitson consumed morphine
12 based on the finding of trace morphine in the femoral blood?

13 A. Generally, blood affords you a limited window of
14 detection measured by hours as opposed to a urine, where
15 urine has an advantage in many ways because it extends that
16 window of detectability or window of detection.

17 So you can detect drug use in a person from a
18 urine specimen that may have been two or three days before
19 or even longer, depending on the drug. That's not true for
20 blood. Blood, you're looking at sort of a window that's
21 defined by hours.

22 Q. Can you draw any conclusions from the designation
23 of trace morphine in the femoral blood?

24 A. The most significant interpretation is the drug is
25 present. The drug is there. And it goes back to what I

1 think I said earlier in my testimony about, you know, trying
2 to interpret drug concentrations by themselves. It's not
3 the only criteria that you're going to apply in trying to
4 discern whether or not something is lethal or toxic.

5 You've got to look at the entire context of a case
6 which, in a postmortem case, would be all those things that
7 I mentioned -- the scene history, the decedent's medical and
8 social history, the autopsy findings -- collectively, all of
9 that information has to be consolidated, systematically
10 reviewed, and then a conclusion can be drawn.

11 Q. Is there a certain point at which a morphine drug
12 level in the blood could be determined to be toxic?

13 A. There are reports of toxic and lethal and
14 therapeutic concentrations in the literature, yes, there
15 are.

16 The point of emphasis, though, that I want to
17 make, when you're looking at it in a postmortem setting,
18 it's not the magnitude of the concentration alone that can
19 be used to discern whether or not it played a role in
20 someone's death or it had a role in someone's death. You've
21 got to look at that in the totality of the case information.

22 Q. What does the term "tolerance" mean in the context
23 of a drug user?

24 A. So "tolerance" refers to the desensitization of
25 response to a drug, and this is something that practically

1 manifests where a person needs to use an increased dose or
2 needs to use more of a drug to achieve the desired effect.

3 Now, most often we think of it or we talk about it
4 in terms of pain relief, analgesia. So you could have a
5 chronic pain patient that may be prescribed a drug like
6 morphine or some other drug like oxycodone or hydrocodone
7 for the treatment of pain. Over time, a person develops
8 tolerance to that drug to where you're not getting the
9 desired effect, the pain relief effect. So a dosing
10 adjustment increase has to be made to get that same effect.

11 And the same can hold for illicit drugs that are
12 abused or misused to try to get euphoric effects. Over
13 time, a person develops a tolerance and the person has to
14 use more of the drug to get that high or euphoric effect.

15 Q. What happens to tolerance when a regular drug user
16 abstains from using drugs?

17 A. Abstinence can certainly remove tolerance; so it
18 can -- it can cause tolerance to disappear. And it's not
19 necessarily well defined as to how much time somebody has to
20 be off a drug or withdrawn from a drug to be abstinent in
21 order for that tolerance loss to occur, but we do know that
22 it occurs with abstinence and certainly with prolonged
23 abstinence as well.

24 Q. Okay.

25 Is it possible that the finding of morphine in the

1 blood was due to Mr. Whitson ingesting something other than
2 morphine?

3 A. When morphine is reported on a toxicology report,
4 one of the first questions that should enter your mind is
5 what are the potential sources of that morphine, and I will
6 outline some of those potential sources.

7 Number one, the morphine you see could have been
8 derived as a metabolite of codeine. Codeine produces
9 morphine as a minor metabolite. However, if you do not see
10 codeine, then it's unlikely that the morphine that's there
11 is because it's a metabolite of the codeine. I've never
12 seen a case where morphine was detected in the absence of
13 codeine and yet it was a codeine-containing drug that was
14 ingested by the person.

15 The second possibility for morphine being revealed
16 on a toxicology report comes from the use of a
17 morphine-containing drug. And I will just name several
18 examples: MSContin is an example of an oral form of
19 morphine; Kadian is an oral form of morphine. So if
20 somebody is using or taking that drug, you would expect to
21 see that as a finding in the blood.

22 The third possibility for morphine being present
23 is that it is a metabolite of heroin. And there are
24 other -- there are other elements to discerning whether or
25 not the morphine originated from heroin by looking at things

1 like 6-acetylmorphine, which would be a chemical footprint
2 or fingerprint for heroin use as well as the collective
3 scene investigation and what's known about the clinical
4 history and social history of a decedent or a prescription
5 history, for that matter.

6 So there are other -- there are additional
7 information sources that could help you discern whether or
8 not it is heroin.

9 Another minor -- I wouldn't say "minor," but I
10 would say another possibility would be morphine derived from
11 brewing up poppy seeds, unwashed poppy seeds and brewing it
12 as tea to where persons are trying to extract the morphine
13 and codeine that are contained in the poppy seeds.

14 So that would be another potential source.

15 Q. Dr. Behonick, you mentioned that it could be a
16 metabolite of heroin, but is there anything from what you're
17 seeing in this case to suggest that that could be the case
18 here?

19 A. No. There was no suggestion in the clinical
20 history of this decedent that would've pointed to heroin
21 use, and there was certainly nothing else in the toxicology,
22 namely 6-acetylmorphine that would've pointed you in the
23 direction of it being heroin.

24 Q. What is Opana?

25 A. Opana is a -- it's a commercial drug. It's a

1 tradename drug for Oxymorphone hydrochloride, and it's a
2 drug that's prescribed for the treatment of moderate to
3 severe pain.

4 Q. Based on the findings in the toxicology report, is
5 it possible that Mr. Whitson ingested Opana?

6 A. There's nothing in the toxicology findings that
7 would suggest Opana or Oxymorphone hydrochloride was
8 ingested or used. And the reason for that conclusion is
9 twofold: Number one, it wasn't picked up on the general
10 screen, the liquid chromatography/mass spec screen done by
11 the laboratory; nor was it picked up in the confirmation
12 testing that included the morphine. Oxymorphone would've
13 been part of that confirmation testing.

14 So it was neither picked up in the screen or the
15 confirmation testing.

16 Q. Is it possible that Mr. Whitson took a drug that
17 was not screened for by the toxicology testing performed by
18 the Office of Chief Medical Examiner?

19 A. That's always a possibility in any postmortem
20 case, and it is something that, as toxicologists, we
21 emphasize to our clients, our end-users, whether it is
22 medical examiners or forensic pathologists, to be very
23 conscientious in providing us history about a decedent.

24 And there may be a prescribed drug or a drug that
25 is not part of our normal test profiles or panels that could

1 have been implicated in a case. And in such case, you'd
2 have -- as a laboratory, you'd have to make alternative
3 arrangements to try to test for that drug.

4 But this speaks more completely to what you
5 mentioned before. Why is it important for us to have the
6 scene information and the full decedent information, case
7 history, prescription history -- these are the reasons why.

8 When we look at a toxicology result, we want to
9 look at that with eyes wide open in knowing what we knew
10 about a particular decedent.

11 Q. From the materials that you reviewed, what things
12 did you see that are consistent with drug overdose deaths?

13 A. Obviously, the finding of morphine is a pertinent
14 finding, especially in someone that, from all appearances,
15 was using it illicitly -- there was no prescription for
16 morphine, there was no medical reason to be using morphine.
17 So that would be a prime indicator right off the bat.

18 And some of the descriptions that were provided by
19 witnesses about his appearance in terms of sleeping on the
20 couch and snoring loudly and so on and so forth, that can be
21 suggestive of an opiate intoxication. It's not what I would
22 consider to be exclusive to that, but it can give an
23 indication that an opiate was involved.

24 The opioid methadone, which we see -- and we went
25 through a number of cases of opioid poisoning by methadone,

1 many times that's the type of thing you would hear in the
2 history. Well, person, John Doe, was laying on a couch and
3 he sounded like he was breathing kind of funny or he's
4 snoring loudly and didn't really think anything of it, and
5 then, you know, a while later, we went back and he was cold
6 and blue and was dead.

7 So, I mean, those are the kind of scenarios we
8 hear about in terms of case histories. But, again, I'm not
9 going to just hang my hat on that and say that's
10 pathognomonic for that particular reason. It can be a
11 manifestation of poisoning by an opiate or an opioid.

12 MS. SMITH: All right. Those are my
13 questions. I'm sure the commissioners have questions.

14 JUDGE LOCK: Commissioners?

15 Commissioner Boswell.

16 MR. BOSWELL: Dr. Behonick, this is John
17 Boswell. I'm one of the commissioners here.

18 Would -- if the lab had tested for urine
19 in -- I mean, I'm sorry -- for alcohol in the urine, would
20 we have a report that urine is zero? I just want to make
21 sure that they didn't test for it and because they didn't
22 find it, it wasn't on the toxicology report.

23 THE WITNESS: I see no indication where it
24 was tested on the report; so it only appears to me that the
25 morphine was tested in the urine.

1 Now, you know, just to kind of expound on
2 that point a little bit, I can tell you what we do in our
3 laboratory, and that is when we have a positive blood
4 alcohol result for a case and when vitreous humor is
5 submitted, we are -- we automatically reflex alcohol testing
6 to the vitreous to have that corroborative specimen. If
7 vitreous was not available but urine was available, we
8 reflex to the urine for the alcohol testing.

9 And it's just that it's -- it provides you an
10 additional layer of information. It provides you an
11 additional element of interpretation when you're trying to
12 look at alcohol results. So it's desirable to do that.

13 Now, in this case, it doesn't appear that
14 that was done.

15 MR. BOSWELL: We had -- you had a question
16 earlier where one of the possible reasons that another
17 expert indicated why there might be alcohol or ethanol in
18 the -- in a sample was because maybe it fermented in transit
19 because it was being sent by United States Postal Service as
20 opposed to overnight mail, and you said you didn't believe
21 that.

22 What was the basis for thinking that that was
23 not likely in this case?

24 THE WITNESS: It would take some extreme
25 environmental conditions to produce that. And the other

1 premise for saying that is because, in all likelihood --
2 and, again, I don't know this for a fact, but in all
3 likelihood, the blood was collected in a vessel that most
4 likely contained sodium fluoride and potassium oxalate as
5 preservatives. And the reason sodium fluoride is added as a
6 preservative to postmortem blood samples is for that very
7 reason, to prevent in vitro formation of alcohol.

8 MR. BOSWELL: And that was --

9 THE WITNESS: Now, I can't say for certain
10 whether that was the type of specimen container used because
11 it wasn't described on the autopsy report, but good
12 laboratory practice would deem or dictate that you use that
13 preservative in your collection.

14 MR. BOSWELL: And would that have been true
15 back in 2011 as well?

16 THE WITNESS: Yes.

17 MR. BOSWELL: And would the fact that this
18 was collected in March, when it wouldn't be particularly
19 hot, also suggest that it didn't have fermentation as a
20 result of extreme conditions?

21 THE WITNESS: It would make it less likely,
22 yes. When you're talking about the in vitro formation of
23 alcohol, you're talking about some pretty extreme
24 conditions, where temperature as well as time of exposure to
25 those temperatures would have to come into play to be

1 contributing factors to that occurring.

2 MR. BOSWELL: Those are my questions. Thank
3 you very much for your testimony.

4 JUDGE LOCK: Commissioner Bass.

5 MR. BASS: I'm Scott Bass, and forgive me if
6 you've answered these but there's still a question in my
7 mind.

8 In 24 hours from a person's death to an
9 autopsy, would a blood alcohol level change?

10 THE WITNESS: Not unless there was something
11 that was particularly unusual or atypical about the
12 conditions. For example, extreme conditions where the body
13 would have been in some way affected through thermal injury,
14 say thermal burns, injuries where the cavities would've been
15 exposed where bacteria proliferate very rapidly and so the
16 bacteria metabolize sugars and so forth to produce that
17 fermentative effect. So there would have to be some very,
18 very extreme circumstances for that to occur.

19 Now, depending on the position of a body,
20 movement of a body, can alcohol sort of move from areas of
21 higher concentration to lower concentration? Yeah, that's
22 possible. For example, if a body is reclining and you start
23 moving it around, any alcohol that is in the gastric, in the
24 stomach, could diffuse out from an area of higher
25 concentration to a lower concentration.

1 But that would only, I think, again, be
2 evident in concentrations that are extremely high. And, you
3 know, I can think of my own personal experience where I had
4 a case one time where it was a suicide by alcohol ingestion,
5 and the vitreous alcohol was in excess of 0.89, the blood
6 alcohol concentration was in excess of 1 percent.

7 Now, part of that had to do with the fact
8 that the decedent consumed an extraordinary amount of
9 alcohol but he was sitting in a reclined kind of position.
10 So the body was sitting upright in a recliner just as I am
11 sitting right now, and that occurred over a number of days
12 where he was sitting like that. And then obviously when the
13 body was removed and it was put on the litter, you start --
14 the stomach was full of alcohol and now that alcohol
15 distributes to other spots.

16 And so the bottom line was the results that
17 we saw quite likely were affected by that diffusion of
18 alcohol because there was so much there and because of the
19 position of the body. So those would be the types of
20 conditions that -- that you would be concerned about when
21 you're trying to interpret a result.

22 MR. BASS: And in general, if a person were
23 drinking and went to sleep for eight hours, in that
24 eight-hour period of time of sleeping -- what can you say
25 about changes in blood alcohol level during that eight hours

1 of sleeping?

2 THE WITNESS: I will make a general statement
3 about postmortem alcohols in that regard. And generally,
4 most people die with -- in a postabsorptive state with
5 respect to alcohol. Meaning that the alcohol that they
6 consumed has been absorbed and it's distributed to the body
7 and it's already being metabolized and eliminated. That's
8 for most postmortem cases.

9 Now, there are exceptions to that. You could
10 have somebody in a bar that's drinking, they finish their
11 last drink, they get in their vehicle, and in five minutes,
12 they wrap their vehicle around a tree. Now, obviously they
13 didn't have time to absorb that last drink; so there can be
14 exceptions to it.

15 But most people die in a postabsorptive
16 state -- in other words, the blood alcohol has already
17 peaked and it's coming down. And generally, alcohol is
18 eliminated at a rate of 0.015 percent per hour. And there
19 are some ranges that could be quoted with that, but I use
20 the range 0.015 percent. So that means, in two hours' time,
21 you would've eliminated 0.03 percent alcohol.

22 So as long as the heart is still contracting,
23 as long as blood is circulating, the alcohol is going to
24 metabolize.

25 MR. BASS: And at that rate over eight hours,

1 how much would be metabolized?

2 THE WITNESS: Well, the rate would be at a
3 rate of 0.015 percent. That's the average. It's probably
4 more appropriate to state it as a range anywhere from 0.01
5 percent per hour up to maybe about 0.025 percent per hour.

6 But the thing with postmortem cases, you
7 really don't know when the drinking started or when it
8 ended; so to try to go back and say, "Well, this is what his
9 BAC would've been at six hours before" would be kind of a
10 futile exercise to do that.

11 I think you can generally infer that if there
12 is a period of survival when drinking has ended, and this --
13 again, as long as the heart is contracting and blood is
14 circulating, alcohol is going to metabolize.

15 MR. BASS: Thank you.

16 JUDGE LOCK: Any other questions?

17 Yes, Commissioner Newton.

18 MS. NEWTON: Dr. Behonick, my name is Deb
19 Newton. I'm alternate defense seat commissioner. Thank you
20 for your testimony. I do have one question in follow-up
21 with the executive director's question.

22 At the outset, you said that in your
23 capacity, you can say how a drug could bring about a fatal
24 outcome.

25 Is that what you said you could tell us?

1 THE WITNESS: The mechanisms of action, yes.

2 MS. NEWTON: Yes, sir.

3 So you said that, like alcohol, morphine is a
4 depressant to the central nervous system.

5 Did I get that right?

6 THE WITNESS: Yes.

7 MS. NEWTON: Okay.

8 And it can cause respiratory depression, use
9 of morphine, like alcohol?

10 THE WITNESS: Yes.

11 MS. NEWTON: You mentioned the mu, along with
12 kappa and delta, but with the mu, that depresses -- or that
13 affects the analgesic response, pain response, euphoria, and
14 respiratory depression; correct -- it's all involved in
15 that; correct?

16 THE WITNESS: Yes.

17 MS. NEWTON: So you were asked by the
18 director about tolerance, the definition of tolerance and
19 desensitization to the effects of the drug.

20 When someone abstains, you said the tolerance
21 disappears and it's questionable just how long that might
22 take, but tolerance will disappear.

23 Is that what you said?

24 THE WITNESS: Yes.

25 MS. NEWTON: What you were not asked is what

1 I am interested in.

2 What happens or what is the effect of the
3 drug on the body when the person uses the same dose as was
4 being used prior to abstention after, let's say, a 60-day
5 abstention from that dose?

6 And I'm asking could that contribute to or
7 bring about a fatal outcome?

8 THE WITNESS: It can. And that's a very
9 well-known phenomenon because we see it oftentimes with
10 decedents that have been incarcerated, they've been in jail
11 or in prison for a period of time where they are drug-free
12 or abstinent from the drug, that then get back out on the
13 street and they resume their previous drug habits, which
14 means going back to their drug of choice as well as a dose
15 or an amount that they were previously experienced with and
16 it meets with disastrous outcomes.

17 MS. NEWTON: Can you describe what you are
18 referring to as "disastrous outcomes"? What exactly
19 happens?

20 THE WITNESS: Well, in -- I mean, the most
21 severe outcome would be death -- could be death, yes.

22 MS. NEWTON: In your statement, you could say
23 how the drug can bring about a fatal outcome. Can you
24 describe how that actually kills a person?

25 THE WITNESS: So with a drug like morphine,

1 one of the ways that it works is it occupies mu receptors.
2 The mu receptors are integrally involved with the
3 respiratory process, which is an involuntary process. And
4 mechanistically, what happens is opiates such as morphine
5 depress the body's responsiveness to CO2 concentrations,
6 carbon dioxide concentrations.

7 So in a normal physiologic state, we have
8 chemoreceptors throughout our body, and these chemoreceptors
9 monitor oxygen blood saturation and our CO2 or carbon
10 dioxide concentrations.

11 When that starts to become imbalanced, where
12 the CO2 starts to gain in excess to O2, these receptors are
13 going to send signals to the brain and tell the brain,
14 "You've got to breathe more deeply or you've got to breathe
15 more frequently to blow off the CO2 and take in more
16 oxygen."

17 That's the normal physiologic response.

18 The problem with an opiate like morphine and
19 other opioid drugs like Fentanyl or oxycodone, in excess,
20 they blunt that response, they mute that response. So a
21 person can now start to experience decreased respirations,
22 bradypnea, which is a slowed rate of respiration, and unless
23 it's somehow interrupted or changed, that can proceed all
24 the way to apnea, where a person completely stops breathing.

25 And then at that point, within minutes, you

1 can have critical organ functional derangement, you know,
2 such as in the brain, anoxic brain encephalopathy, anoxic
3 brain injury, or even for the heart, cardiac arrest. So it
4 becomes a cascade if it's not interrupted.

5 MS. NEWTON: And just one follow-up. Your
6 Honor, may I?

7 JUDGE LOCK: Sure.

8 MS. NEWTON: When you mentioned apnea, an
9 indicator of apnea, could that be possibly snoring with --
10 you can see that?

11 THE WITNESS: Well, apnea is the cessation of
12 breathing. So you're not breathing at that point.

13 But the things like snoring or snoring
14 loudly, breathing in a very strange or labored kind of way
15 certainly can be the signs that somebody is already
16 experiencing the respiratory decline or respiratory
17 depression.

18 So decreased respirations -- decreased depth
19 of respirations, the quality of respirations are affected.
20 So all of that -- that could be an actual clinical or
21 outwardly manifestation of those changes occurring.

22 MS. NEWTON: Thank you, Dr. Behonick.

23 JUDGE LOCK: Anybody else?

24 All right. Dr. Behonick, thank you very much
25 for your time and work in this case and for being with us

1 today.

2 THE WITNESS: Okay. You're quite welcome.

3 MS. SMITH: Thank you.

4 (Witness stands down, 11:54 p.m.)

5 MS. SMITH: Your Honor, now would be an
6 appropriate time for the lunch recess.

7 JUDGE LOCK: What time is the next witness
8 slated?

9 MS. SMITH: When we tell them to be slated.
10 It's 11:54. So if you-all are okay with a shorter lunch,
11 maybe 12:30? That would be about 35 minutes.

12 JUDGE LOCK: Does that give everybody enough
13 time to eat and maybe make phone calls? All right. 12:30,
14 then.

15 Recess to 12:30.

16 (Recess taken, 11:55 a.m. to 12:35 p.m.)

17 JUDGE LOCK: All right. We will come back to
18 order.

19 Whenever you're ready, Ms. Smith.

20 MS. SMITH: Just one moment.

21 All right. Commissioners, you may recall
22 that earlier there was testimony that the Commission had
23 retained Dr. Christopher Holstege related to the
24 cause-of-death determination in this case.

25 You've previously been provided a copy of

1 Dr. Holstege's report as Handout 13 and his CV as Handout
2 14. You will want to refer to those throughout his
3 testimony.

4 And we now call Dr. Christopher Holstege.

5 Dr. Holstege, can you hear us?

6 THE WITNESS: I can. Very clearly. Can you
7 hear me?

8 MS. SMITH: We can. Thank you.

9 Your Honor.

10 JUDGE LOCK: Dr. Holstege, good afternoon to
11 you. Sir, my name is Tom Lock. I am the chair of the
12 Innocence Inquiry Commission. I'm a superior court judge
13 here in North Carolina.

14 Testimony before the Commission must be under
15 oath or affirmation so I'm going to ask if you would please
16 simply just raise your right hand. You may remain seated
17 because if you stand up, we'll lose sight of you.

18 Do you swear or affirm that the testimony
19 before the Commission this afternoon will be the truth, the
20 whole truth, and nothing but the truth?

21 THE WITNESS: I do.

22 JUDGE LOCK: Thank you very much.

23 All right, Ms. Smith.

24 MS. SMITH: Thank you.

25 Thereupon, CHRISTOPHER HOLSTEGE, MD, a witness having been

1 called by the Commission, was affirmed and testified via WebEx
2 technology as follows:

3 EXAMINATION BY MS. SMITH: (12:37 p.m.)

4 Q. Dr. Holstege, I am Lindsey Guice Smith. We've
5 spoken on the phone before today. I'm going to ask you
6 several questions today and then we've got the commissioners
7 here in the room. All of them will have an opportunity to
8 ask you questions as well at the conclusion of my questions.
9 Okay?

10 A. Okay.

11 Q. Dr. Holstege, did you provide the Commission with
12 a copy of your CV?

13 A. I did.

14 Q. And does that CV outline all of your education and
15 your work experience?

16 A. It does.

17 Q. Do you have any certifications?

18 A. I do. I am a boarded medical toxicologist and a
19 boarded emergency physician. I am also a physician who
20 practices medicine in Virginia and in South Carolina.

21 Q. And will you tell the Commissioners what your
22 current job is.

23 A. Yeah. I'm employed at the University of Virginia.
24 I've been at the University of Virginia since 1999. I'm
25 chief of the division of medical toxicology, a program that

1 I started in 1999 and now has 10 physicians within it.

2 I'm also a professor of pediatrics and emergency
3 medicine at the University Virginia and I'm the director of
4 the Blue Ridge Poison Center, which serves a 3 million
5 population of Virginia.

6 Q. What does it mean to be a medical toxicologist?

7 A. So a medical toxicologist is a physician who cares
8 for patients who encounter drugs or other substances,
9 poisons, and that can be in a number of different realms.
10 That can be in the hospital, presenting to the emergency
11 department. It could be in the intensive care unit, could
12 be in clinics, which we have in our own program, could be by
13 telemedicine and telehealth, and it can be in the
14 laboratory, forensics.

15 Q. How many years have you been practicing as a
16 medical toxicologist?

17 A. Over 20 years.

18 Q. Do you do any kind of work specifically related to
19 patients who use drugs and abuse substances?

20 A. Constantly. It's a large part of my practice and
21 our program. In regards to our clinical program at the
22 University of Virginia, we have about 500 patients per year
23 that are primarily transferred in who are critically ill.
24 We also manage the patients at 48 other hospitals. We do
25 over 2,000 consults from those hospitals, and we're really

1 the gatekeepers for transfers into our hospital. But then
2 we also do about another 20,000 calls related to the poison
3 center, and many of those cases that we manage have to do
4 with substance use and misuse.

5 Q. How long have you been treating, patients with
6 substance abuse issues and patients experiencing drug
7 overdoses?

8 A. Since I started practicing medicine, which goes
9 back to 1993.

10 Q. Is there anything else that you believe is
11 important about your experience or education that we've not
12 outlined for the Commissioners so far?

13 A. No. I think it -- I would hope that that is it.

14 Q. Okay.

15 In how many cases have you consulted or issued an
16 opinion regarding cause and manner of death?

17 A. Yeah. So with the poison center, first of all, we
18 have death (technology issue) each year, they're called
19 death abstracts.

20 And those death abstracts are about 25 per
21 year over 20 years, so about 500 that are written. Those go
22 to our national organization and then they go to the CDC.
23 That gets published in a national report.

24 I also am involved with legal cases associated
25 with both local and federal government. The ones I'm

1 primarily involved with have been associated with cyanide
2 toxicity, there's three cases that I've been directly
3 involved with the cause of death, one murder in regards to
4 ethylene glycol toxicity, and then one murder in regards to
5 opioid toxicity.

6 Q. And in the cases where you've been retained as an
7 expert, who is retaining you? Is it the prosecution or
8 defense or civil litigants?

9 A. It's a mix. For the cyanide cases I mentioned,
10 it's been the prosecution; ethylene glycol, the prosecution;
11 the opioid, it was the defense. There's other work that
12 I've done that I've not been with deaths such as drug
13 toxicity in sexual assaults as well as consulted with other
14 groups in government regards to poisonings.

15 Q. What is your specialized training or knowledge
16 that you use in evaluating these cases?

17 A. That goes back to my training in biochemistry,
18 medicine, and toxicology. But it's what's available in the
19 clinical evidence, what's available in analytics, and those
20 analytics can be laboratory testing, it can be ancillary
21 such as electrocardiograms, radiology. All of that plays a
22 role in regards to how we look at the cause of death.

23 Q. Did you apply your specialized training or
24 knowledge to this case?

25 A. I did.

1 Q. And in this case, were you provided sufficient
2 facts or data?

3 A. If you mean by that sufficient facts and data to
4 come to an opinion based on those facts and data, yes. If
5 it -- if you're referring to would I have liked to have
6 other data, I would've also liked to have had other data
7 too.

8 Q. Okay.

9 Since you issued your report, you've been provided
10 and reviewed other reports by the other experts retained in
11 this case; is that correct?

12 A. Correct.

13 Q. And based on your analysis in this case, do you
14 believe that you have specialized knowledge that will assist
15 the Commission in evaluating the cause of death of Jonathan
16 Whitson?

17 A. I think so.

18 Q. Does your report contain your opinions regarding
19 cause of death and the basis for those opinions?

20 A. My report has in it that I don't know what the
21 cause of death was in this and the reasons for that.

22 Q. Thank you.

23 MS. SMITH: Judge Lock, I'd like to tender
24 Dr. Holstege an expert in medical toxicology.

25 JUDGE LOCK: All right. That tender

1 certainly is allowed.

2 Q. Dr. Holstege, when you were contacted by the
3 Commission, did the staff make it clear that they were not
4 seeking any particular opinion?

5 A. Yes.

6 Q. Did the commission staff make it clear that they
7 would present your findings regardless of what your opinion
8 was?

9 A. Yes.

10 Q. And the additional materials you reviewed after
11 your report, what materials did that encompass?

12 A. Yeah. There were only two reports that were given
13 to me afterwards, and that did not impact anything in my
14 report.

15 Q. Thank you.

16 What is your opinion in this case?

17 A. Simply my opinion is I don't know what caused the
18 death. My opinion also is that I cannot claim morphine as
19 the cause of death.

20 Q. I'm going to turn back to -- or turn to the
21 background section that begins on page 3 of your report.
22 Focusing on pages 3 and 4, can you walk us through what you
23 found relevant about Mr. Whitson's hospital stay from
24 December 27, 2010, to December 30, 2010?

25 A. Yeah. So the -- a few things. The admission on

1 12/27/2010, he admits to using -- IV drug use, which is
2 always a concern to me in my practice when people are
3 injecting drugs. There's always the risk of injecting other
4 materials, and they often do. It includes infectious
5 materials as well as other particulate materials and other
6 substances.

7 It's interesting, he states that -- admits to
8 prior IV drug use, but "I am not a druggie," not admitting
9 to his substance use, which is very common to me in my
10 clinical practice.

11 They talk about his arm pain and swelling in that
12 report, that he, 10 days ago, a friend injected morphine
13 into his left antecub, which is the front part of your
14 elbow.

15 The laboratory data show a white count of 13 with
16 a left shift. That means that there's signs of infection.
17 When you see that, that's systemic. And that there are a --
18 they did a CAT scan, which I got to give credit to the
19 medical team for doing that, that showed a small
20 subcutaneous abscess that was about 8 millimeters, which is
21 pretty small, but still an abscess nonetheless, surrounding
22 left arm cellulitis, which means infection of the skin with
23 what is known as also superficial vein thrombosis. It's not
24 the deep veins that are at risk for a clot going to the
25 lungs, but he does have some clotting of the veins there

1 because of the infection too.

2 There's some -- he also notes IV injection of
3 OxyContin three times a day. He talks about 250 milligrams
4 of this per day, intravenous.

5 And so a number of things that come up in that
6 case. He was hospitalized, which I would've done too. It
7 was the appropriate thing. They started antibiotic
8 treatment. Then they discharged him, expectation for him to
9 take antibiotics, 300 milligrams clindamycin orally four
10 times a day for 14 days, which is the appropriate therapy,
11 especially with an IV drug abuser who has signs of
12 cellulitis.

13 Q. Dr. Holstege, I think that you just said that
14 there was a report of Mr. Whitson self-reporting OxyContin
15 use up to 250 milligrams a day; is that correct?

16 A. Correct.

17 Q. And is OxyContin the same thing as morphine?

18 A. It's an opioid, so different, but works very
19 similarly to morphine.

20 Q. Would a dosage of 250 grams of Oxy -- milligrams,
21 sorry -- OxyContin have the same effects as 250-milligram
22 dosage of morphine if it's being shot up?

23 A. Different -- there could have -- yeah. It's being
24 shot up, and that gets to be a bit challenging too.

25 I find it interesting, 250 milligrams is a large

1 dose. So clinically, I typically -- if I have someone with
2 a fracture, for example, I will start on 5 to 10 milligrams
3 every 4 hours for pain. And so you may use, if you're doing
4 10 milligrams six times a day, 60 milligrams a day. This is
5 four times that amount. That's a large amount. And
6 certainly patients who I have who have more chronic pain or
7 just are having breakthrough pain, we go higher on, but
8 250 milligrams is a fairly large dose.

9 Q. Also in the medical records from Mission Hospital
10 is the prescribing of an antibiotic -- and I'm going to
11 butcher this name -- clindamycin?

12 A. That's good.

13 Q. Was it good?

14 A. That was good.

15 Q. What can you tell us about that antibiotic that he
16 was prescribed?

17 A. Yeah. The antibiotic is used for skin infections.
18 It's the appropriate antibiotic to use in someone who -- you
19 know, IV drug use. And they're going to do it for 14 days.
20 So you want to do it for a set time period to make sure the
21 infection resolves.

22 As you, I'm sure, all are aware, as physicians, we
23 always want them to finish their antibiotics or the
24 infections can come back. We do it long enough to hopefully
25 stop the infection. A little challenging sometimes if you

1 have an abscess because the antibiotics can't get quite into
2 that abscess because the abscess is small.

3 I agree with what they did in management. That's
4 not big enough for me to incise and drain, but it's
5 something to keep an eye on to make sure that it does not
6 enlarge.

7 The antibiotics, often with small abscesses, may
8 take, but not always.

9 Q. In your review of the materials provided to you,
10 did you see anything that would indicate that Mr. Whitson
11 completed the full 14-day dose of that prescription?

12 A. No. And so if (indiscernible) before he went to
13 prison he may be able to have gotten one week, but there's
14 no mention of it with his entrance into jail. I don't
15 notice the continuation of his clindamycin while he was
16 incarcerated, and so I have no evidence that that was
17 continued, then, for the further -- for another week.

18 So I don't -- I don't have evidence that he
19 completed that full 14 days.

20 Q. What happens or can happen if a person doesn't
21 complete the antibiotic course?

22 A. Yeah. If you don't finish your antibiotics, that
23 may mean that it's only partially treated and then infection
24 can come back.

25 Q. What is sepsis?

1 A. It is the body's kind of extreme response to
2 infection. And typically sepsis is when the organism gets
3 into the bloodstream and infects the body more diffusely and
4 the body's response to that. That includes inflammatory
5 response, typically. I commonly see people who are septic
6 who come into the emergency department. There's various
7 phases of sepsis, but you can get into the worst phase,
8 which is septic shock, when your blood pressure drops and
9 you have to go to critical care.

10 But in the emergency departments, for example, we
11 often see people who come in with sepsis and it is the
12 systemic, full-body response to an infection.

13 Q. Can an abscess cause sepsis?

14 A. Yes.

15 Q. How would you determine if a person has sepsis?

16 A. It can be difficult. As I said, there's different
17 phases of sepsis and how people look. It depends on their
18 health status prior. That's one of the challenges I have
19 when I teach my residents and fellows here at the University
20 of Virginia. But it's based on signs, symptoms, and
21 laboratory studies, and there's still actually quite a bit
22 of debate in the literature as to exactly the definition.
23 There's defining factors that we use for sepsis, and pretty
24 important during this time right now with COVID and other
25 diseases, influenza for example, to try and determine when

1 patients come in, but difficult for us clinicians.

2 Q. Can sepsis cause death?

3 A. Yes.

4 Q. I want to turn to your summary, which begins on
5 page 21 of your report. Why is the history pertaining to
6 your patients who use or misuse various substances
7 notoriously unreliable?

8 A. Yeah. You know, we've published quite a bit in
9 regards to clinical toxicology and management, and we really
10 bring this to light a lot both in our publications and in
11 our teaching with residents, fellows, medical students,
12 nursing students.

13 The problem that we have in our patient population
14 particularly -- so in medicine, we often will get the
15 diagnosis based on the history. It's exceedingly important
16 for me as a clinician. However, in our overdose patients,
17 those who are suicidal or those who are substance users,
18 there's issues that arise. One is they don't want to admit
19 what's going on, there's manipulation of health care
20 workers, they have altered memories of the events depending
21 on when they're doing their substance use. Sometimes it's
22 things that they don't realize that they receive, that
23 they're buying things off the street. Social situations
24 often are very difficult to navigate.

25 And so -- and sometimes they're just trying to

1 cover up what really, truly occurred.

2 And I really, in my clinical practice, much more
3 important when we have our patients coming in, managing
4 them, we look at the clinical, the physical examination as
5 well as ancillary tests. Again, the laboratories, other
6 tests such as the electrocardiogram are extremely important,
7 digital imaging.

8 Q. Can you tell us how much or when Mr. Whitson --
9 how much morphine or when Mr. Whitson consumed the morphine
10 from the trace level that was found in his femoral blood?

11 A. No.

12 Q. Can you draw any conclusions from that designation
13 of trace morphine in the femoral blood?

14 A. No.

15 Q. In your report, you say that you would not expect
16 the trace level to stop respirations, result in aspiration
17 pneumonia, or cause death.

18 Can you explain how you come to that conclusion.

19 A. Yeah. We do have data -- so the thing about
20 evidence-based medicine and what we know in the literature,
21 we know that people take morphine therapeutically. I give
22 morphine regularly in my practice.

23 We know what levels are when people get certain
24 doses. For example, if you come in with a fracture, I give
25 you 10 milligrams of morphine, I know that your morphine

1 levels may go up to, for example, the literature suggests
2 25 nanograms per mil.

3 And so there's therapeutic levels, depending on
4 your pain, what we're trying to accomplish with the
5 morphine. And then there's levels that actually go higher,
6 where we know we can start running the props, especially if
7 they're opiate naïve. That's all pinned to what the
8 clinical picture when you look at levels, but with trace
9 level that's below, like George Behonick very clearly stated
10 in his report when he looked into where the cutoffs were,
11 the level below 50 nanograms per mil was a lower level.
12 It's in the therapeutic range, not a range where I think
13 someone would stop breathing and certainly die.

14 MR. GLAZIER: Can he repeat the level he just
15 said? Because it wasn't clear whether he said 15 or 50.

16 Q. Can you repeat the level? We you didn't hear
17 whether you said 50 or 15.

18 A. Yes. From George Behonick's report, it was
19 50 nanograms per mil was the cutoff for trace. And so at a
20 level -- when they say "trace," then my understanding from
21 my colleagues who are doing the analytics, then, that means
22 that the level is somewhere below. It could be 1 nanogram
23 per mil, that could be 40 nanograms per mil.

24 But, again, those are not levels where I would see
25 someone stop breathing or die. Otherwise, all my patients

1 who I'm giving morphine to would be dying.

2 Q. For a person with that level of morphine, under 50
3 nanograms per milliliter, would you expect that person to be
4 able to drive a car?

5 A. Yeah. And so I put in my report also I found it
6 interesting the Canadians have used a cutoff for inebriated
7 driving of 80, 8-0 nanograms per mil. And so we do know
8 that patients who are receiving opioids, depending on what
9 they're using them for, certainly can drive.

10 Q. What about walk around?

11 A. Yes.

12 Q. Be able to be woken up if asleep?

13 A. Yes.

14 Q. How much, if any, of an additive effect does
15 ethanol have when used in combination with morphine?

16 A. Yeah. So ethanol and morphine work by two
17 different mechanisms. Opioids work at the opioid receptors,
18 makes sense, whereas ethanol works at a channel called the
19 GABA channel, that causes sedation. It's a similar channel
20 where, for example, benzodiazepines work, like Valium. They
21 also work at a few other channels such as what's known as
22 the NMDA receptor.

23 What does this all mean? It means that opioids
24 and alcohol can cause people to be sedated. It's why as a
25 physician if someone's taking an opioid, I tell them not to

1 mix them. And so they both have additive effects,
2 potentially, for sedation.

3 Q. I want to turn now to Dr. Hall's findings and
4 testimony in the case.

5 Did you agree or disagree with Dr. Hall's
6 findings?

7 A. Disagree.

8 Q. What did you disagree with him about?

9 A. The urine. He talked about the urine level and
10 that the urine level indicated that -- in fact, I'm looking
11 at his exact wording. But he talked about that was what he
12 really attributed for Mr. Whitson's death for morphine
13 toxicity.

14 And I completely disagree with that.

15 Q. Is 15 milligrams per liter in the urine a lethal
16 level of morphine?

17 A. We cannot determine lethality based on a morphine
18 urine level. That is a basic, fundamental principle that we
19 have. Urine levels and urine positivity means past
20 exposure. It does not mean what is occurring at that time,
21 either in the living or the dead.

22 Q. And Dr. Hall says that 14 milligrams per liter of
23 morphine in the urine is a cutoff point for toxicity
24 resulting in death.

25 Is that an accurate statement?

1 A. No.

2 Q. Why must there be an appreciable level of morphine
3 found in the blood for the cause of death to be called a
4 death by acute toxicity of morphine?

5 A. Yeah. If you think about -- if someone dies from
6 a drug, by death, that means that there's cellular death,
7 the cells stop functioning. When cells stops functioning,
8 we cannot metabolize drugs anymore. The circulation is no
9 longer flowing, it's not going to the liver, and you can't
10 metabolize and you're not excreting in the urine because the
11 kidneys have stopped working too.

12 Morphine is metabolized in the liver and morphine
13 can be excreted in the urine. Both stop at death. So if
14 morphine was the cause of someone's death, the morphine
15 level would still be there in the blood when they did the
16 analysis.

17 Q. In your report, you state, quote: "If the patient
18 died due to morphine, even with the additive effects of
19 ethanol, I would expect the level to be measurable above
20 50 nanograms per milliliter."

21 Can you explain why you would expect that.

22 A. Correct. Again, to attribute a death to morphine,
23 even with an ethanol level of 40 milligrams per deciliter, I
24 do not -- it would not cause death at those lower levels
25 even with the ethanol. If that were the case, I'm --

1 hopefully my patients are not compliant with ethanol. I
2 would have a lot of my patients dying too, and that's not
3 what we're seeing.

4 And, again, I can't stress enough, a level less
5 than 50 nanograms per mil is an exceedingly low level.
6 That's a therapeutic level, not a toxic level where we see
7 death.

8 In fact, I'm a bit intrigued that Dr. Hall
9 actually mentioned in one of his statements that he uses the
10 textbook Besalt. The textbook Besalt, we all use. There is
11 nothing in the book of Besalt that talks about a urine level
12 being used to 40 (connectivity issue) nanograms per mil --
13 to relate to death.

14 But certainly it clearly states case in Besalt,
15 the death range that we see even with the additive effects
16 of other drugs, their ranges are somewhere around the range
17 of 200 nanograms per mil at the lowest up to thousands at
18 the highest.

19 So, again, I'm a bit intrigued that the Besalt
20 reference was used. That says something completely
21 different.

22 Q. Thank you. Talk a little bit now about ammonia --
23 I'm sorry, pneumonia.

24 What does aspiration pneumonia look like?

25 A. Yeah. Aspiration pneumonia is pretty common in

1 overdoses. If you think about it -- and I'll give you an
2 analogy. In my University of Virginia student population,
3 the biggest concern I have is alcohol. They get sedated,
4 they've been drinking a lot of alcohol, how do students tend
5 to die? It's that alcohol coming back up when they're
6 sedated and getting into their lungs. They are basically
7 vomiting into their lungs and then they aspirate or they
8 inhale the vomit material into their lungs.

9 A very common occurrence that we see in our
10 practice is aspirant pneumoniae. We often will intubate
11 people and put them on life support to prevent that from
12 occurring. That is a very common occurrence for us, and I
13 often -- every week, patients come through the unit that I'm
14 managing that we're preventing from having aspiration
15 pneumonitis.

16 Q. How long does aspiration pneumonia take to
17 develop?

18 A. Yeah. It depends on the amount of material that's
19 aspirated. So you can have an aspiration pneumonia fairly
20 quick if a large amount of material is aspirated or it can
21 occur slowly if you have just small amounts that are
22 entering the lungs and slowly causing the lungs to become
23 inflamed.

24 Q. When you say "fairly quick," can you give us any
25 kind of time frame on what "fairly quick" means?

1 A. Minutes. In other words, if I have a patient --
2 I've had this happen to me in the emergency department --
3 comes in and they suddenly start to vomit, that can go
4 directly into the airway really quickly.

5 Q. Dr. Hall has stated that acute pneumonia is a
6 common finding in drug overdose cases.

7 Is that an accurate assessment or statement?

8 A. Aspiration pneumonia is a common occurrence.
9 Pneumonias themselves are a rare occurrence. It is
10 typically the pneumonias, acute pneumonias occur because of
11 the aspiration. So the acute pneumonia -- like if we're
12 thinking of pneumococcus pneumonia, other pneumonias, those
13 are rare and typically are my with patients who are in the
14 ICUs longer.

15 Q. Can an acute pneumonia alone cause death?

16 A. Yes. If it's extensive and you can't oxygenate or
17 move the carbon dioxide out, it can cause death. It's one
18 of the problems that we're having with COVID right now.

19 Q. When a patient comes into the ER as a drug
20 overdose from morphine, what does that typically look like?

21 A. Variable. So it depends -- everything in
22 toxicology is about dose, how much of the substance is in
23 their system. So if you think about morphine, if they come
24 in just with altered mental status, meaning that they are --
25 they look inebriated or they're sleepy, their pupils can be

1 pinpoint, their respirations may be depressed, their
2 breathing, they can talk if you stimulate them, or they can
3 be extreme, where they're not -- they're not breathing, they
4 need to have what they call bag-assisted breathing or are on
5 life support, or depends on whether or not they take the
6 antidote.

7 And we see a lot of public use of Narcan,
8 naloxone, where people are sedate but get naloxone, wake up,
9 and come in to us.

10 So we see a variable. They may be just a little
11 sedate or they can be comatose.

12 Q. Dr. Holstege, in your opinion, what was the cause
13 of death in this case?

14 A. It's not clear to me.

15 Q. Can you say what contributed to the cause of death
16 in this case?

17 A. It's difficult for me to say what's contributed
18 when we don't know clearly what the cause is. He's a
19 substance abuser. I can suppose that that is certainly a
20 contributor to that because we commonly see complications
21 that are associated with substance use. But, again, it's
22 just not clear to me what caused his death.

23 Q. From the materials that you reviewed, what things
24 did you see that are consistent with drug overdose deaths?

25 A. Yeah. The most obvious is the needle track marks.

1 In fact, the quote was "needle marks are present in the left
2 antecubital fossa on the left forearm." We can certainly
3 see lungs that have what they talk about, pulmonary edema
4 and congestion. In the end stages, you can see the
5 capillaries get leaky and they'll get pulmonary edema, but
6 there's many other things that can cause that too.

7 Q. What are the questions that you have in this case
8 that are left unanswered?

9 A. So the primary one, the one that's I think the
10 most challenging right now and what we do a lot of work with
11 our pathology folks and the laboratory teams in clinical
12 chemistry, is the analytics.

13 If we don't get an answer in the analytics -- and
14 this is routine in my practice -- we have really done much
15 more extensive analytics, actually, at the University of
16 Virginia because we're working closely with the Virginia
17 Department of Health and with the forensic team in Richmond,
18 Virginia.

19 But I would like to see more analytics. In fact,
20 I put in place in our own team -- we collect extra blood and
21 urine at the beginning so that we can go back and do
22 analytics if the common testing that we do doesn't show us
23 the answer.

24 Other issues in this case, you know, certainly
25 there's the potential of doing cultures, there's pictures of

1 various parts of the body, there's testing on various items
2 that were maybe found at the scene, from spoons to needles
3 to syringes. The scene pictures that could occur. There's
4 further history with the family about sudden death, such as
5 cardiac dysrhythmias or QTC prolongation where they talk
6 about familial QT.

7 I didn't see any of that in the records.

8 Q. And do you feel like if you had all of those
9 things that you may have been able to determine the cause of
10 death?

11 A. Yes.

12 Q. Are you able to tell us whether morphine caused
13 Mr. Whitson's death?

14 A. The level is too low to quantitate. It did not
15 cause the death.

16 Q. Did morphine directly contribute to his death?

17 A. By "directly" if we mean that that is what caused
18 him to -- his heart to stop, again, I would have to say no,
19 it did not directly cause his death.

20 Q. Was morphine a contributing cause of Mr. Whitson's
21 death?

22 A. Again, it's hard to tell because it's trace. I
23 would put the emphasis more on that substance use. Does it
24 contribute? Potentially.

25 Q. Did morphine play any role in Mr. Whitson's death?

1 A. Again, I apologize to the panel. I wish I could
2 answer that question for you directly.

3 If I had a level that was more than trace, I could
4 answer that question. I cannot answer that question.

5 Trace, again, is fairly meaningless to me other
6 than that he was exposed. There's small levels that are
7 there, and I don't know what the small levels even are
8 because they didn't quantify them because they were too
9 small.

10 MS. SMITH: Commissioners, those are my
11 questions for Dr. Holstege. I'm sure you-all will have
12 questions for him.

13 JUDGE LOCK: All right. Sheriff.

14 SHERIFF KIMBROUGH: Good afternoon,
15 Dr. Holstege. This is Bobby Kimbrough. I guess you
16 answered one of my questions, was -- when you spoke about
17 not enough evidence provided to you to reach a conclusion.

18 So I guess my next question would be -- so I
19 was looking at your report, and you said for the cause of
20 death to be called death of acute toxicity of morphine,
21 there must be appreciable levels of morphine in the blood,
22 which is not the case here.

23 So my question is: Is that a fact or an
24 opinion? In order for something to be classified morphine
25 toxicity, does it have to be in the blood? Is that an

1 opinion or is that a fact?

2 THE WITNESS: Sir, from my perspective, that
3 is a fact. That is a basic teaching that I do and that's a
4 basic teaching -- my and other forensic teaching, and what
5 we talked about in my textbook that I wrote.

6 I cannot tell somebody -- I cannot state that
7 someone died from a substance that I cannot detect or
8 quantify levels.

9 So I would actually tell you it's my opinion
10 but it's also a fact and it's part of my teachings.

11 SHERIFF KIMBROUGH: So let me ask you one
12 more question.

13 So did you read Dr. Wolf's opinion?

14 THE WITNESS: I read all of the opinions.

15 SHERIFF KIMBROUGH: So I guess my question
16 would be, is: If what you're saying is a fact, then how did
17 she conclude that morphine was the cause of death? If
18 that's a fact -- is she ignoring the facts? I mean, you may
19 not can answer, but I'm just baffled by, you know, if that's
20 a fact, how do we ...

21 THE WITNESS: Yes, sir. And I agree with you
22 on that because I'm baffled too.

23 Part of the reason -- and just for the group,
24 just to understand my background a little bit more. I work
25 closely with a clinical response group of the FBI for this

1 very reason. It's not all about levels. It's also about
2 how do we see that happening in clinical practice.

3 But I've got to admit, this case -- and when
4 this case came before me, I was a bit stunned at some of the
5 assumptions that were made and some of the definitive
6 statements that were made. Again, I can't yet understand
7 that someone is stating that morphine was the cause of
8 death.

9 I give you one other -- because I think we're
10 maybe coming in on this. You cannot have -- for example, if
11 a patient's morphine levels were higher earlier and then
12 came down and then he died later, the question still comes:
13 Why did he die when the morphine levels were so low and he
14 was able to metabolize them? And if he aspirated and that
15 was part of the death from the morphine, he should've been
16 coughing and doing other reactions to that aspiration which
17 were not documented by anybody. In fact, he would have been
18 awake at that time with a level that low and would have been
19 them asking for help.

20 So it's counterintuitive to me why you would
21 say that morphine caused this death.

22 And in the current environment, what I see
23 currently in my practice, there can be other substances that
24 can certainly be injected -- he had the cardiomyopathy and
25 there's dysrhythmias, there's a whole host of things that

1 can lead to a death with substance users. Substance users
2 are exceedingly challenging in regards to my medical
3 practice as to what's bringing them in for their care, but
4 it also makes it exceedingly challenging as to the diagnosis
5 when they die also.

6 SHERIFF KIMBROUGH: Thank you, sir.

7 JUDGE LOCK: Commissioner Glazier.

8 MR. GLAZIER: Thank you, Doctor. And the
9 point we're getting to is really sort of the crucial point
10 in the case, I think. And I appreciate your candor.

11 First, can you repeat -- I'm going to ask you
12 a couple of questions.

13 Can you repeat the name of the textbook that
14 you authored, to start with.

15 THE WITNESS: Yes. So it's "Criminal
16 Poisoning: Clinical and Forensic Perspectives." This was
17 published, I think, back in 2010, if I recall correctly. I
18 was the chief editor on it, and it was also edited by two --
19 with two people from the FBI and one of my colleagues at
20 Indiana University. There's authors from a number of
21 various different universities who were -- did different
22 sections in that book.

23 MR. GLAZIER: And when you looked at this
24 case, did you by any chance run your concerns or theories or
25 thoughts by any colleagues to get your own second opinion

1 about what you were thinking and seeing?

2 THE WITNESS: No, I didn't. I keep, usually,
3 my opinions -- you know, the cases to myself. The only ones
4 that I dialogued with this from a training perspective and
5 not the specifics of the case but some aspects of the case
6 were with my fellows. I have four fellows who train with
7 me.

8 MR. GLAZIER: And did you talk about any
9 aspect of this case with your four fellows?

10 THE WITNESS: The only aspects that I
11 dialogued with was just the tenets of how you do analysis on
12 drug levels, but not the specifics of the case itself.

13 MR. GLAZIER: Would there be other colleagues
14 of yours across the country that you would recommend as
15 another source to look at this case given your very
16 different view -- not inconsistent with several other people
17 we're going to hear from, but inconsistent with one we have
18 heard from, in Dr. Wolf?

19 So do you have a recommendation of any
20 national expert that you think we ought to talk to?

21 THE WITNESS: Yeah. If you are interested, I
22 can send some names. But Brent Furbee, who is emeritus at
23 Indiana University is who trained me 20 years ago now, does
24 forensic work, also was editor on the book. There are
25 others also that I can send you if they have time. I am

1 happy to send you names of others.

2 MR. GLAZIER: Thank you.

3 Can I ask one last question because I think
4 you've answered a bunch: Is there any text, authoritative
5 treatise or text that would support the view in this case
6 that based on the .15 finding in the victim, that that would
7 allow a cause of death to be attributed to morphine
8 toxicity?

9 THE WITNESS: So you're talking about the
10 urine level that was found; correct?

11 MR. GLAZIER: Right. Because that's really
12 the only level we have.

13 THE WITNESS: Correct. The answer is no.

14 MR. GLAZIER: So, again, let me be clear,
15 because I wasn't -- I didn't ask the most articulate
16 question.

17 You're saying that there is no authoritative
18 treatise that you know of that would allow any pathologist
19 at this point, or toxicologist, to state with certainty that
20 the cause of death was morphine toxicity based on the
21 morphine -- limited morphine information we have in this
22 case?

23 THE WITNESS: Correct.

24 MR. GLAZIER: Thank you.

25 JUDGE LOCK: Commissioner Boswell.

1 MR. BOSWELL: Dr. Holstege, this is John
2 Boswell. This is interesting. We are hearing markedly
3 different opinions from different doctors, and what I glean
4 from previous testimony is the opinion that the toxicity of
5 morphine, which was higher than it was at death because
6 there's morphine in the urine, that that level of toxicity
7 prior to the death coupled with pneumonia either from
8 aspiration or previous pneumonia sort of created a level of
9 sedation and difficulty breathing that caused the CO2 level
10 to rise or the lung -- the breath to stop, the heart to
11 stop, which led to the death.

12 I think I'm articulating that in the way I
13 understood the previous experts.

14 So speak to me about why that is an
15 implausible theory in this case.

16 THE WITNESS: Sir, that's a plausible theory
17 in regards to the aspiration.

18 I still am puzzled why the patient, if they
19 aspirated, why the morphine level is not at high levels. So
20 in other words, they're opining, if I understand your
21 comment correctly, that the patient aspirated, laid on the
22 couch for a while, the morphine was then metabolized, they
23 could no longer detect it, it was less than trace, and then
24 the patient died.

25 Is that what I'm understanding?

1 MR. BOSWELL: More or less, yes.

2 THE WITNESS: Let me tell you, I can also
3 make a lot of speculative in a drug abuser, and I got to
4 admit, I'm a little incensed at people making that up,
5 because I can make up that I had a cardiomyopathy and had a
6 dysrhythmia, I can make up that someone suffocated them -- I
7 can make up a lot things that may have happened.

8 What it comes back down to for you as a panel
9 to understand, and again, I'm stunned that anybody would
10 make this up -- if the patient died, and I will tell you I
11 take care of a lot of these patients. When they aspirate,
12 they will be coughing, they will not be doing well with that
13 aspiration, and if they are talking about that they have an
14 aspiration large enough to then kill them, that should have
15 occurred, then, when the morphine level was still elevated.

16 So to have time pass when the aspiration was
17 that big to cause their death and then later on they die
18 when the morphine has been metabolized now hours later and
19 we can't detect it, it's below trace, that is a made-up
20 story.

21 And that's -- I don't know why someone would
22 do that. But as a clinician who takes care of these
23 patients all of the time, that is not plausible.

24 But what I will tell you what is potentially
25 plausible -- there's lots of things that are plausible. One

1 of them is cardiac dysrhythmia. One is he injected
2 something else that they didn't detect.

3 I wish we had more blood and urine to do more
4 analytics. We do not have that. In my practice, we see a
5 lot of substances that are injected -- these are mixed
6 drugs, and they very rarely get what they think that they're
7 getting.

8 And so this was a suboptimal forensic
9 toxicology and suboptimal analysis. And so I got to admit,
10 I'm frustrated at this case. And part of the reason I
11 agreed to come on this case, it's just, again, stunning to
12 me that this was diagnosed the way it was.

13 MR. BOSWELL: Does the witnesses' reporting
14 heavy snoring from the victim while he was sleeping on the
15 couch that went on for quite some period of time, does that
16 mean anything to you?

17 THE WITNESS: So snoring can occur for many
18 reasons. Certainly we see it with opioids. My wife snores.
19 There's many people who snore.

20 Again, you know, yes, it can be associated
21 with opioid toxicity. It can be associated with many
22 things. It's one of the things that you could say, yeah,
23 that's related, but it would certainly be nice to have a
24 morphine level that also went along with that. That's part
25 of the whole picture that we're looking at. I can't say

1 that a patient who's snoring who has an aspiration that's
2 secondary to morphine even though the morphine is no longer
3 there.

4 MR. BOSWELL: If the aspiration happened at a
5 point in time when the morphine level was high enough to
6 sedate the gag reflex and then the pneumonia happened over
7 the next couple of hours but there wasn't further
8 aspirations, would you still have a gag reflex if you had
9 the stomach contents already into your lung but not actively
10 coming through?

11 THE WITNESS: At the time of death, that
12 morphine level was below trace. At the time of death, he
13 had a gag reflex; right? There's not morphine there that
14 they are detecting at levels that would depress his gag. If
15 that were true, my patients who are getting morphine
16 wouldn't have a gag either.

17 So that, again, doesn't make sense to me.

18 MR. BOSWELL: No, I didn't ask a good
19 question. Let me try again.

20 Assuming that the aspiration happened at a
21 time when he was heavily sedated as a result of morphine but
22 it was a one-time event and then the time of death he was no
23 longer aspirating but the stomach contents were already in
24 the lungs creating the pneumonia, would -- would you have a
25 gag reflex if the stomach contents were already in the lung

1 but you weren't continuously aspirating?

2 THE WITNESS: Yeah. Your gag reflex stays
3 intact as long as something is not suppressing it.

4 So for example, the patients who I have who
5 have opioid overdoses, they subsequently are intubated,
6 which is certainly going to give them a gag reflex. Even
7 after intubation, right, I have somebody who is sedate from
8 opioid who has an aspiration pneumonia, I just intubated
9 them, they will still be coughing because of that
10 endotracheal tube I put in place and I have to give them
11 other drugs to sedate them.

12 But depending on how much morphine is in
13 their system, and by far the majority of my overdoses that
14 come in presedate and then I aspirate when I intubate them,
15 I had to give them additional drugs to keep them down
16 because that gag reflex is still intact and that
17 endotracheal tube irritates them.

18 MR. BOSWELL: So am I understanding that
19 while the gag reflex would be back, but if they already had
20 the material in their lung, they would be coughing -- they'd
21 wake up coughing because they would no longer be sedated
22 enough to prevent from coughing. So even if they weren't
23 gagging, they'd be coughing if the material was in the
24 lungs?

25 THE WITNESS: Correct. And so, you know,

1 other questions I think to ask further pathologists too, but
2 when I looked at it, you're absolutely right. He's got a
3 morphine level that's trace, it's less than 15 nanograms per
4 mil. His gag reflex would be intact at the time and so
5 would his coughing. And so all the things would be
6 occurring.

7 Now, if they're arguing that he had so much
8 aspiration that his carbon dioxide levels went up and that
9 was a narcotic and that caused him not to wake up, that's
10 pretty spectacular. That's a lot of aspiration to do that.
11 You're locking up all of your airways for the most part with
12 vomit, and I'm not sure that was seen at the autopsy. That
13 is not what I read.

14 MR. BOSWELL: Thank you.

15 THE WITNESS: You're welcome.

16 SHERIFF KIMBROUGH: Dr. Holstege, I've got
17 another question for you that just came to me.

18 THE WITNESS: Yes, sir.

19 SHERIFF KIMBROUGH: You want to fact check me
20 because I was going back over my notes.

21 So in the original report, it says morphine
22 contained -- condition obtained was 15.

23 So does that mean, that that was the amount
24 of morphine that was detected in the blood, the urine, or
25 what?

1 THE WITNESS: Yeah. So the morphine -- the
2 15 milligrams per liter in the urine, which was stated to be
3 a lethal level of morphine, that was in the urine, not the
4 blood.

5 Remember the levels --

6 SHERIFF KIMBROUGH: Right.

7 THE WITNESS: It was trace. They never gave
8 us a quantifiable level.

9 SHERIFF KIMBROUGH: Okay.

10 MS. COLBERT: Hi. I'm Robin Colbert. I
11 just had -- I want to run a statement by you that one of the
12 experts had said when somebody questioned the individual,
13 and it went something like this: But for the morphine, this
14 individual would not have died.

15 THE WITNESS: And, again, I have to ask how
16 can you state that if the morphine level was trace?

17 What people are doing is making assumptions
18 that the morphine contributed or was directly a result of
19 the death. We can't say that. I don't know if there was
20 another substance there that caused the death. I don't know
21 if there was a whole nother issue that arose with this
22 patient -- other infections like cardiomyopathy, a
23 dysrhythmia.

24 And so this -- I would absolutely agree if he
25 had a detectable level that was a level that's associated

1 with death, detectable on quantitative, quantified --
2 50 nanograms per mil would give us some clue.

3 I have no clue with a trace what that level
4 is. This is someone who certainly had used drugs earlier in
5 the evening. We don't know what those were -- was it
6 morphine, was it something else.

7 But certainly seemed to be functioning at
8 that time.

9 So, again, it's hard -- I'm a scientist. I'm
10 a physician. I like absolutes. I really need that blood
11 level to tell me that morphine was the thing that resulted
12 in this patient's death.

13 But trace just doesn't do it for me.

14 MS. COLBERT: Thank you.

15 JUDGE LOCK: Mr. Glazier.

16 MR. GLAZIER: Thank you, Judge.

17 I want to follow up. Earlier, you had kindly
18 given us the name of another national expert that we might
19 use.

20 I want to go to the textbook issue because
21 you also answered that question.

22 I'm going to ask it in the positive. Given
23 what you just said, that you cannot take the trace level in
24 the blood and the .15 in the urine and equate that to
25 morphine toxicity, can you give us a citation or come up

1 within a fairly short period of time citations to treatise
2 or authority besides the one you've given us that would back
3 that up as well?

4 THE WITNESS: I would go back to Besalt. I
5 think Besalt is pretty good about, you know, where are the
6 lethal levels and what are you using.

7 If you -- I would have to think through who
8 states, but I mean, it's ...

9 MR. GLAZIER: Would it be fair to say it's
10 sort of black-letter textbook law?

11 THE WITNESS: It's an assumption by all of us
12 that we're not using urine exposure. Urine does not tell us
13 what's going on at the time either during life or death.
14 Urines are very useful to us. We certainly know he was
15 exposed to morphine. I just don't know what kind -- how
16 that contributed.

17 So that's why it's so important, when we're
18 doing the testing in forensics and what we're doing in our
19 clinical practice, why we grab a blood right away, what was
20 the level at the time in the blood. The urines only tell us
21 that they were past exposed, and that can be days ago.

22 MR. GLAZIER: Thank you.

23 JUDGE LOCK: Any further questions?

24 All right. If not, Doctor, thank you very
25 much for being with us this afternoon. Thank you for your

1 time in working this case.

2 THE WITNESS: You're welcome. Good luck to
3 you on all of your decisions.

4 (Witness stands down, 1:32 p.m.)

5 MR. GLAZIER: Judge, before we go to the next
6 witness, can I ask the executive director a question?

7 JUDGE LOCK: Sure.

8 MR. GLAZIER: And after your answer, maybe --
9 I don't know if it needs to be an under oath answer, but I
10 leave that to the discretion of the chair.

11 Ms. Guice Smith, did -- when Dr. Wolf
12 testified this morning and talked about that "but-for"
13 cause, had she ever told you or your staff that before?

14 MS. SMITH: I would like to call on
15 Ms. Bridenstine to go through what our conversations with
16 Dr. Wolf were and when we learned that information.

17 MR. GLAZIER: That would be really helpful.

18 MS. SMITH: Absolutely.

19 (Discussion off the stenographic record.)

20 JUDGE LOCK: Is the next witness on standby,
21 the next expert?

22 MS. SMITH: Is she on the phone yet?

23 MR. FITTS: She's not on the phone yet.

24 JUDGE LOCK: Okay. You want to do that now,
25 then?

1 MS. SMITH: Let's call Ms. Bridenstine to go
2 through that question with Mr. Glazier. And then while
3 we're doing that, if you can work on getting Dr. Roberts
4 ready.

5 Your Honor, will you want to take a break
6 before we have --

7 JUDGE LOCK: That might be good. She will be
8 a little bit, won't she?

9 MS. SMITH: Probably not as lengthy as the
10 last three experts, but I do anticipate it will probably
11 take us an hour.

12 JUDGE LOCK: Okay.

13 Thereupon, JULIE BRIDENSTINE, a witness having been called by
14 the Commission, was recalled and testified as follows:

15 EXAMINATION BY MS. SMITH: (1:33 p.m.)

16 Q. Ms. Bridenstine, we have provided commissioners
17 with Dr. Wolf's report. In Dr. Wolf's report, does she say
18 that morphine was the but-for cause of Mr. Whitson's death?

19 A. No, she does not.

20 Q. Did there come a point after she issued her report
21 that commission staff spoke with Dr. Wolf?

22 A. Yes. Specifically about the facts of the case. I
23 believe after she issued her report, we've had two
24 conversations with her about her opinions and one was last
25 Wednesday.

1 Q. And in that conversation prior to last Wednesday,
2 had Dr. Wolf ever informed commission staff that the
3 morphine was the but-for cause of Mr. Whitson's death?

4 A. No.

5 Q. In that conversation with Dr. Wolf last Wednesday,
6 December 8, is that the first time that she informed
7 commission staff that morphine was the but-for cause of
8 Mr. Whitson's death?

9 A. Yes.

10 Q. Do you have any additional information to provide
11 as to what she said about that?

12 A. I could tell you a little bit more about our
13 previous conversation with Dr. Wolf, if you give me a second
14 to find our journal entry on it.

15 On October 11 of this year, I had a WebEx meeting
16 with Dr. Wolf, Lindsey Guice Smith, and Beth Tanner to talk
17 about her findings in this case, and I detailed the
18 conversation in our journal. And during that conversation
19 we talked about her opinion, and she informed us that you
20 cannot say "but for the morphine, he would not have died."
21 She indicated that morphine --

22 MR. GLAZIER: Wait a minute. I'm sorry.

23 Did you just say she said "you cannot say but
24 for"?

25 MS. BRIDENSTINE: That was my interpretation

1 of what she said.

2 Last week, she talked about how -- and she
3 testified today about how it was at this point in time.
4 Back then, she was saying that morphine could have killed
5 alone or pneumonia could have killed alone, that you had
6 competing causes of death in this case. She would've called
7 the death as morphine toxicity and acute pneumonia. She
8 described how she would've listed it out, the different ways
9 she might have listed it on a death certificate.

10 She did say that morphine was a contributing
11 factor for death. She would not agree it was a but-for
12 cause. She did not think that Dr. Hall got it wrong because
13 morphine is sufficient to be a cause of death, but she would
14 have said that acute pneumonia contributed to the cause of
15 death.

16 And she again stated that she believed
17 morphine is the cause of death. If there was no pneumonia
18 and just morphine, she would've been happy calling it
19 morphine toxicity, that morphine contributed to death in
20 this case. If he did not have morphine and just had
21 pneumonia, she would've called it pneumonia.

22 And she also indicated that she was
23 completely confident based on the information that we had
24 provided to her.

25 MR. GLAZIER: Thank you.

1 JUDGE LOCK: Commissioner Britt, did you have
2 some questions?

3 MR. BRITT: When was the last conversation
4 with her, what date?

5 MS. BRIDENSTINE: Last Wednesday, December 8,
6 I believe. And I was not present for that conversation, but
7 Ms. Smith and Ms. Matoian spoke with her on the phone.

8 JUDGE LOCK: Any other questions?
9 Thank you very much.

10 MR. GLAZIER: Your Honor, may I request that
11 we -- and I don't know we can get it in time, but it -- I
12 may have a motion to do something else about the hearing.

13 But it would be really important for me to at
14 least see the textbooks that are being referred to, that
15 were referred to by the last witness just to pick up the
16 article if we could pull them offline.

17 JUDGE LOCK: They may be online. If staff
18 can locate them online, I would ask that you could provide
19 those if at all possible.

20 I don't know that the published textbooks
21 would be available to us online in time for this meeting.

22 MS. TANNER: We'll work on it.

23 JUDGE LOCK: You can work on it? Okay.
24 Thank you.

25 All right. Thank you. Let's take about a

1 five-minute recess, then. We'll come back at quarter until
2 2:00.

3 (Recess taken, 1:40 to 1:52 p.m.)

4 JUDGE LOCK: All right. Looks like everyone
5 is in place. Let's come back to order. And I believe the
6 next witness is with us, it looks like.

7 MS. SMITH: Thank you, Judge Lock. I'm going
8 to let Ms. Tanner let you-all know what she found out over
9 the break.

10 MS. TANNER: Just before we get started with
11 our next witness, we have contacted the witness we just
12 talked to. He is going to send us a copy of the chapter
13 from the Besalt book on morphine; so that will hopefully
14 give us what we need.

15 He's also going to check the other book he
16 referenced working on himself, any relevant information and
17 chapters, and send those to us. But I want to make sure
18 before I leave that piece that there is nothing else that
19 you guys wanted. Besalt is, as I understand it, sort of
20 the -- what they use.

21 Anybody else need anything else? Is that all
22 we were looking for?

23 JUDGE LOCK: Thank you very much.

24 MS. TANNER: Uh-huh.

25 MS. SMITH: Commissioners, you may recall

1 that earlier there was testimony the Commission had received
2 a draft affidavit from Dr. Roberts related to her review of
3 this case when she was retained by Mr. Pritchard's
4 postconviction attorney and later by Wake Forest University
5 School of Law Innocence and Justice Clinic. We provided
6 that to you in your brief.

7 We also provided additional materials for
8 Dr. Roberts to review, and she completed a final report for
9 the Commission. You've been provided a copy of that as
10 Handout 5 and a copy of her CV as Handout 6.

11 You'll to refer to those throughout her
12 testimony.

13 The Commission now calls Dr. Christena
14 Roberts.

15 Dr. Roberts, can you hear us?

16 THE WITNESS: I can.

17 MS. SMITH: Great. We can hear you as well.

18 Your Honor.

19 JUDGE LOCK: All right. Good afternoon,
20 Dr. Roberts. Dr. Roberts, my name is Tom Lock. I'm a
21 superior court judge here in North Carolina and chair of the
22 Innocence Inquiry Commission.

23 Your testimony this afternoon will need to be
24 under oath or affirmation. I'm going to ask that you simply
25 remain seated since, if you stand up, we won't be able to

1 see.

2 If you would just raise your right hand.

3 Do you swear or affirm that the testimony you
4 will give to the Commission this afternoon will be the
5 truth, the whole truth, and nothing but the truth?

6 THE WITNESS: Yes.

7 JUDGE LOCK: Thank you very much.

8 We're seeing a thumbnail image of you rather
9 than the entire screen on the monitor. That's what we're
10 working on.

11 (Discussion off the stenographic record.)

12 Thereupon, CHRISTENA ROBERTS, MD, a witness having been called
13 by the Commission, was affirmed and testified as follows via
14 WebEx technology:

15 EXAMINATION BY MS. SMITH: (1:55 p.m.)

16 Q. All right. Dr. Roberts, my name is Lindsay Guice
17 Smith. We've spoken over the phone prior to today. I'm
18 going to ask you some questions about -- a few questions
19 about your qualifications and then some questions about your
20 review in this case.

21 When I am done, then the Commissioners who are
22 seated all around the table here will also likely have some
23 questions for you. Okay?

24 A. Okay.

25 Q. Did you provide a report and CV to the Commission?

1 A. Yes, I did.

2 Q. And do those documents outline your training,
3 education, and experience?

4 A. Yes.

5 Q. Have you done any presentations that are
6 specifically relevant for this case?

7 A. Yes. I did some morphine toxicology research and
8 presented that at the American Academy of Forensic Sciences.
9 The way that research came about was a physician in Florida
10 somehow became involved in hospice deaths for the medical
11 examiner's office. There was supposedly free morphine
12 versus total morphine being higher, and subsequently ruled
13 eight deaths in the hospice systems as homicides and
14 intentional overdose.

15 And so the Medical Examiner's Commission formed a
16 committee to review all those cases with physicians and
17 toxicologists and decided that all of those cases actually
18 just represented normal morphine levels within a hospice
19 patient.

20 And so I, along with Dr. Bruce Goldberger, who's
21 the president of the American Academy of Forensic Sciences
22 and has a laboratory at the University of Florida, and
23 Dr. Julia Martin, and we did a study of free and total
24 morphine levels and found that there was extreme
25 variability, and we supported the conclusions of the

1 Commission that those did not represent overdoses.

2 Q. How did you become involved in the case that we're
3 hearing today?

4 A. I had worked with attorney David Belser in
5 Asheville, North Carolina, in the past. He asked me to get
6 involved in this case on behalf of Mr. Pritchard and his
7 family.

8 Q. In reviewing this case, did you rely on your
9 training and experience as outlined in your CV?

10 A. Yes.

11 Q. In reviewing this case, did you utilize reliable
12 principles and methods in the field of forensic pathology?

13 A. Yes.

14 Q. In this case, were you provided sufficient facts
15 or data for your review?

16 A. Yes.

17 Q. Did you also have a chance to review the
18 microscopic slides that were made during the autopsy?

19 A. I did.

20 Q. Based on your analysis in this case, do you
21 believe that you have specialized knowledge that will assist
22 the Commission in evaluating the autopsy that was performed
23 by Dr. Hall and the cause of death of Jonathan Whitson?

24 A. Yes.

25 Q. Have you formulated opinions in the case before

1 the Commission today regarding the cause of death?

2 A. Yes.

3 Q. Does your report contain your opinions and the
4 basis for those opinions?

5 A. It does. And I would add that since I wrote this
6 report, just this past Friday I was given additional
7 information -- depositions of family members that were not
8 testifying at trial -- and I think that they contained very
9 important information about the clinical presentation in
10 this case, and so I would like to include that information
11 today as well.

12 Q. Absolutely.

13 MS. SMITH: Judge Lock, at this point, I'd
14 like to tender Dr. Roberts as an expert in forensic
15 pathology.

16 JUDGE LOCK: All right. That tender
17 certainly is accepted.

18 Q. Dr. Roberts, when you were contacted by the
19 Commission, did commission staff make it clear that we were
20 not seeking any particular opinion from you?

21 A. Yes, you did.

22 Q. Did the Commission staff make it clear that we
23 would present your findings no matter what they were?

24 A. Yes.

25 Q. Did the Commission also inform you that since the

1 Commission is a neutral state agency and you had been hired
2 by Mr. Pritchard's defense counsel prior to our
3 investigation, that we would be seeking our own independent
4 forensic pathologist to conduct a review as well?

5 A. Yes.

6 Q. Have you had an opportunity to review the other
7 expert reports in this case?

8 A. I have.

9 Q. Did anything in those reports change the opinion
10 that you have provided in your report?

11 A. There was only one item in Dr. McLemore's report,
12 and I included this in my final report, is that she had
13 knowledge that in this time frame it was common practice for
14 the toxicology samples to be sent through the mail to the
15 laboratory, and so as we talk about whether or not there was
16 an alcohol production, then that would be important there.

17 Q. Okay.

18 And you said that you also received other
19 materials this past week, deposition and interview
20 transcripts that would supplement, I guess, your opinion or
21 your findings of this case.

22 Is that accurate?

23 A. Yes.

24 Q. Okay.

25 What is your opinion in this case?

1 A. Well, I believe I am disagreed with Dr. Hall's
2 opinion that this is acute morphine toxicity. You cannot
3 use urine to tell the acute values of the blood at the time
4 of death. It only tells what the levels were over
5 several days.

6 I do not believe that the clinical presentation
7 and the toxicology reports support a diagnosis of acute
8 morphine toxicity.

9 Q. What is or was the cause and manner of death?

10 A. As it stands right now, and I'd like to detail
11 what I think should have been done and what was done, but as
12 it stands right now, it could either be called
13 bronchopneumonia with contributing factor of emphysema and a
14 natural cause of death, or probably more appropriately
15 undetermined.

16 Q. I want to turn now to the discussion section of
17 your report that begins on page 8. You talk there about the
18 elimination half-life of a drug.

19 Why is that important to you in the context of
20 drug overdoses?

21 A. Well, elimination half-life is the amount of
22 time that the body clears a drug from the system half the
23 amount. And so if you're at a lethal concentration, it's
24 incredibly important to know what that gap is, how much time
25 has to pass before half of that lethal dose will then be

1 eliminated from the body. And then it takes that time again
2 to get to a quarter, and half that time again to get to 18.

3 So in this particular case, when you're looking at
4 morphine, there are several preparations of morphine, and
5 you have to know what the elimination half-life is in order
6 to make those calculations.

7 Q. In your report, you note that Dr. Ewens, a
8 toxicologist, had informed you that he calculated the
9 highest concentration of morphine in Mr. Whitson's death
10 would have been after the second round of injections as
11 described by Stephanie Whitson, who goes now by Stephanie
12 Whitson Randolph.

13 Why is that important information to you?

14 A. Well, morphine is a respiratory depressant drug,
15 and so knowing through the course of the day, as detailed by
16 Stephanie of when they did injections, it would be important
17 to know when the highest concentrations are because
18 morphine's respiratory depressant effects are dose
19 dependent. And so when the concentration is highest is when
20 you would have the highest amount of respiratory depression
21 and the greatest risk for death.

22 Q. I want to turn to the toxicology report that was
23 issued in this case.

24 Can you draw any conclusions from the designation
25 of trace morphine in the femoral blood?

1 A. Trace is just that the drug is present but it's
2 low -- below the cutoff levels. It is not present at a
3 therapeutic, super therapeutic, or toxic level.

4 Q. What is an appreciable level of morphine in the
5 blood?

6 A. Well, that was language I used in my first
7 affidavit, and that just refers to the fact that Dr. Hall
8 was calling this acute morphine toxicity based on levels in
9 the urine. Urine only shows you use over several days.

10 In order to have acute toxicity from a drug, you
11 actually have to have a measurable amount in the blood. And
12 in this case, it was trace -- that's not even in the
13 therapeutic range, let alone a super therapeutic or toxic
14 range.

15 Q. Turning now to levels of morphine in the urine, is
16 15 milligrams per liter a lethal level of morphine in urine?

17 A. No. There is no such thing as calling that a
18 lethal level for what was in the body on or around time of
19 death.

20 Urine shows use over several days. It changes
21 throughout the day based on concentration and liquid intake
22 and it does not in any way tell you what the person's blood
23 levels were on or about the time of the death.

24 Q. Is 14 milligrams per liter of morphine in the
25 urine a cutoff point for toxicity resulting in death as

1 indicated by Dr. Hall?

2 A. No. Again, for the same reasons that I just
3 stated.

4 Q. What conclusions can you draw from the toxicology
5 report in this case?

6 A. The only conclusions that you can draw is that
7 there was recent use of morphine and perhaps heroin. Heroin
8 breaks down very quickly into morphine and 6-AM which was
9 not tested for, I believe. And it just tells you recent
10 use.

11 And the trace level shows you that, again, recent
12 use but the body had had time for the elimination half-life
13 to metabolize that off to the point where it was below the
14 detection level.

15 Q. I want to turn now to Dr. Hall's findings and
16 testimony in this case.

17 Are there any things that you think Dr. Hall could
18 have done during the autopsy that he did not do or that you
19 would have wanted to do if you were conducting the autopsy?

20 A. Yes, certainly.

21 When you do an autopsy, you can't always determine
22 cause and manner of death in the isolation of the autopsy
23 findings. You have to put that together with medical
24 history, which I see no indication in the report that was
25 sought.

1 This is a 29-year-old male who's dead suddenly.
2 We certainly would want to know his medical history. We
3 know from testimony that he had a history of asthma and a
4 lot of breathing problems and some sort of congenital
5 malformation of his heart, and we did get more information
6 about that in the depositions.

7 In addition, at autopsy, since we have a sudden
8 death of a young man who was in apparent good health, again,
9 you wouldn't want to just jump to the conclusion that this
10 is going to be a drug overdose case, but you would also want
11 to do the appropriate cultures. And so in a sterile method
12 before the autopsy is performed, you would want to do blood
13 cultures and you would want to do viral cultures and
14 cultures of the lungs as well.

15 Q. And are those all done --

16 A. And I would add also -- I'm sorry. I have one
17 more thing to add to that.

18 The only photographs that we received for this
19 case are identification photographs of the face. We have
20 report from the medical records from the family that he also
21 had an abscess and a blood clot in his arm, and so as there
22 are no photographs taken of that, I cannot independently
23 evaluate that.

24 Q. And all of those things that you just outlined to
25 us, are those all things that you would have done if you

1 were conducting that autopsy?

2 A. Yes.

3 Q. Are you aware whether there any standard operating
4 procedures in North Carolina with respect to how to conduct
5 an autopsy?

6 A. The last time I checked in reference to a case,
7 there were not applied to this time frame. I don't know if
8 they're in place now.

9 Q. Would you characterize it as a commonplace
10 practice for a pathologist to not take these extra steps
11 that you've outlined?

12 A. No, I would not think it's commonplace. I would
13 think that based on my training and experience, it would be
14 expected that you would take these cultures.

15 Q. Dr. Hall found that Mr. Whitson had acute
16 pneumonia at the time of his death.

17 Do you agree with that assessment?

18 A. I agree that he had bronchopneumonia, but I agree
19 with Dr. Wolf's assessment that it appears by the level and
20 widespread nature of this bronchopneumonia that it was
21 present prior to that evening, that it was already
22 preexisting.

23 Q. Dr. McLemore has stated that Mr. Whitson had
24 aspiration pneumonia caused by morphine.

25 Do you agree with that assessment?

1 A. No, I don't because his clinical presentation of
2 that evening when we go through the timeline does not match
3 the time frame for that to occur. He may have had terminal
4 aspiration as well, that's a very commonplace finding at
5 autopsy, but I don't believe that we have evidence that he
6 was obtunded or snoring long enough for him to have
7 developed that pneumonia that day. I believe it was
8 preexisting.

9 (Stenographer clarification.)

10 THE WITNESS: "Terminal," yes.
11 T-e-r-m-i-n-a-l.

12 THE STENOGRAPHER: Thank you.

13 Q. Dr. Roberts, you used the term "obtunded" a moment
14 ago.

15 Can you tell us what that means.

16 A. So consciousness is on a level or scale. So when
17 you're alert and conscious, and then if you're under the
18 influence of a central nervous system or a respiratory
19 depressant drug, then you can become kind of groggy and out
20 of it, and then as you become more towards unconsciousness,
21 obtunded is basically very lethargic, difficult to arouse,
22 to the point where you're unconscious.

23 Q. Were you able to tell or classify how extensive
24 Mr. Whitson's acute pneumonia was at the time of death?

25 A. Just that its presence in the slides was, I think,

1 too extensive to have formed in just a few short hours. It
2 appeared to be preexisting.

3 Q. Are you able to tell when he developed the
4 pneumonia beyond that?

5 A. No.

6 Q. You noted that there are granulomas.

7 Can you tell us what a granuloma is.

8 A. Certainly. So when you're taking a pill and
9 you're crushing it and then making a fluid and injecting it,
10 there is a lot of large inactive particles in there, and
11 they'll end up in different parts of the body -- in the
12 lung, in this case. He had had a thrombosis from it. And
13 then the body, when it sees these particles, wants to wall
14 it off because it's an irritant.

15 And so there's little cells called macrophages, I
16 had referred to them as Pac-Man cells, and they will try to
17 block off these foreign materials. And several of them get
18 together and you'll have several nuclei in that cell to wall
19 that off. And that takes days to weeks. It is not part of
20 an acute pneumonia. It is a chronic condition.

21 Q. And so you've described these granulomas
22 potentially coming from crushed-up pills.

23 Would you say that those came from the drug use on
24 the night prior and day prior to Mr. Whitson's death or
25 would those have come from some drug use from some other

1 prior time?

2 A. It had to have come from his drug use prior to him
3 even being in jail because it takes days to weeks for these
4 things to form. They cannot form overnight.

5 Q. Are those granulomas a feature of aspiration in
6 the lungs?

7 A. Well, you can have aspiration and not die from it,
8 and then over days to weeks, you can develop that.

9 Usually an aspiration, you're in the airways and
10 then you can have the body try to wall that off. But it's,
11 again, a chronic thing and not an acute thing.

12 Q. Is acute pneumonia a common finding in drug
13 overdoses, as Dr. Hall has stated in this case?

14 A. We can have very early aspiration pneumonia as
15 Dr. McLemore states, and that takes hours to days to
16 develop. So if you have a clinical presentation of somebody
17 doing drugs and then, you know, they're difficult to arouse,
18 people try to get them to stay awake, they're seen snoring,
19 you know, for 12 hours or more -- then you can develop
20 within that time frame an aspiration pneumonia, but it's
21 early -- very early in acute.

22 Q. And when you looked at the slides for this case,
23 did you see aspiration pneumonia in the slides?

24 A. I saw acute bronchial pneumonia and there was some
25 evidence of aspiration of gastric contents as a nonspecific

1 finding at autopsy, and you can see it in all types of
2 deaths.

3 Q. Specifically thinking about aspiration pneumonia,
4 is that a common finding in drug overdose deaths?

5 A. It can be. But, again, very early in acute and it
6 would have to be a situation where I just described.

7 The other way that someone can die in a drug
8 overdose is they will try to do the same amount -- or
9 they'll take too much or it's a different drug they're not
10 used to and they'll actually die from direct cardiac
11 toxicity, and that's a kind of crime scene where the person
12 is slumped over the bathroom, the needle might still be in
13 their arm or the needle and the spoon are there on the floor
14 next to them, and they're just slumped over and they died
15 suddenly. They die too quickly to develop aspiration
16 pneumonia.

17 Q. How long does aspiration pneumonia typically take
18 to develop?

19 A. Again, early acute aspiration pneumonia, hours
20 to days.

21 Q. Could Mr. Whitson's acute pneumonia have been
22 caused by morphine?

23 A. Well, it's more likely just acute bronchial
24 pneumonia based on the information that we have now about
25 his clinical presentation. He was coughing and had a fever

1 so it's more likely community acquired or acquired in the
2 jail.

3 Q. So tell us a little bit about that. I believe
4 what you're referring to is some of the materials you
5 reviewed and the transcripts you were provided last week.

6 What did you find in those materials that had an
7 impact on what your opinions are?

8 A. So specifically -- and there's a couple of
9 different categories here. So one I'll address is about the
10 pneumonia and the other I'll address about the competing
11 cause of death, which would be sepsis.

12 So depositions were provided for Nikki Angel, who
13 was the sister of the decedent. And she had indicated that
14 her grandmother told her that when Mr. Whitson arrived that
15 night, it was cold and rainy. And she told him that,
16 "You're going to be dead with a cold out walking in the cold
17 and rain," because he was very sick. She said that he was
18 coughing and that he had complained of a fever and he had a
19 runny nose, as they described him as being real sick.

20 Then with the deposition -- and I'm just going to
21 stick to the topic of the pneumonia and then come back to
22 her testimony for other things.

23 I had a deposition from the mother, she did not
24 address being sick, and then deposition from Stephanie
25 Whitson who was with him that day and allegedly using the

1 drugs.

2 She had indicated that he told her that he had
3 been carrying a fever or having a fever over the past -- I
4 don't think she quantified the number of days. She had
5 asked him whether he felt that was from withdrawal from
6 pills, and he said, no, that it was from something else but
7 he didn't clarify what that something else was and she
8 didn't ask.

9 The other -- and I'm glad you asked me questions
10 about this. Do you want me to detail the medical records
11 here before he went to jail or --

12 Q. That's fine.

13 A. Okay.

14 So let me double-check the dates to see if I have
15 this right. And I am referring to my report now on page 6.

16 On December 27, he went to the emergency
17 department via ambulance complaining of pain, redness, and
18 swelling in his arm. He reported that a friend had injected
19 him with a solution of drugs in the vein in his left
20 antecubital fossa, which is the front of your elbow, and the
21 pain and redness had worsened over the week. And then when
22 he developed a fever and chills, he was encouraged to go to
23 the emergency department.

24 At the emergency department, with a CT scan, he
25 was diagnosed with a blood clot within the vein of that arm

1 and it was noted that his skin was red and very swollen and
2 indurated -- "indurated" means soft tissues were very
3 hard -- and there was a probable abscess or an infection in
4 his arm.

5 So that was treated with IV antibiotics,
6 clindamycin. And when he was discharged, he still had a
7 part induration of his arm as noted by the physician and he
8 still had pain extending in his arm.

9 So he was discharged on December 30. He was
10 supposed to follow up in two weeks in clinic and he was
11 supposed to take IV antibiotics -- sorry -- oral
12 antibiotics, clindamycin, four times a day.

13 So we know from the recent deposition from
14 Stephanie that she was with him during that hospitalization.
15 He was not sent home with medications to take, and that's
16 typical. They usually don't give them to you in the
17 hospital. They write you a prescription for them and you go
18 to have it filled. She had stayed with him for a couple
19 of days. She did not see him take any prescription
20 medications nor did she know that he even filled the
21 prescription.

22 She did note him to be injecting drugs at that
23 time and did not see him take any prescription medications.
24 So without that antibiotic, that infection is inadequately
25 addressed. It is not -- if you don't take the antibiotics,

1 then you're going to get the infection again.

2 We don't know if that prescription was filled. He
3 was certainly not seen taking those prescription
4 medications. And then he was incarcerated seven days after
5 he got out of hospital. We know from reviewing the jail
6 records that he was not given any medication during the time
7 that he was in jail. He received no medical care.

8 So we know from the records that this infection
9 was inadequately treated. We know from family's phone calls
10 with him at the jail shortly before he was discharged -- and
11 that is in the deposition of Annette Greene, his mother --
12 that even shortly before he was released from jail, he was
13 complaining about that arm hurting and aching.

14 The mother, when he died, noted that his left arm
15 was up behind his head in the pillow. And if you review the
16 crime scene photos, you'll see that his arms are down under
17 the blanket. Nikki Angel, his sister, testified that when
18 her mother was out of the room after he was discovered dead,
19 that she lifted his arm and she could see that it was
20 swollen and -- from the shoulder to the elbow, but
21 especially in the area of the elbow and that it was red.
22 And so she witnessed that. And then the blanket was put up
23 so that when the police took photographs, no photographs
24 showed his arm and then, of course, at autopsy they did not
25 take photographs of his arm.

1 Q. Could --

2 A. So it's a very high likelihood based on all of
3 this that he still had an infection in his arm.

4 Sorry to interrupt you.

5 Q. No, that's okay.

6 Having reviewed all of that information, could
7 cellulitis and the probable abscess that he is described as
8 having in December 2010 have contributed to his death?

9 A. Yes.

10 Q. How do you know that?

11 A. Well, because cellulitis can become a bloodstream
12 infection or sepsis, which can lead to death. And then a
13 blood clot can also embolize to different places in the
14 body, go to the heart, go to either the lungs or the brain.

15 Q. Did Mr. Whitson have sepsis?

16 A. I don't know. The cultures weren't done. You can
17 sometimes see indications on the microscope slides. The
18 lungs already had bronchopneumonia so it makes it difficult
19 to see in there. You could perhaps see some signs around
20 the blood vessels of the heart, but I found from the
21 histology slides there was a lot of what's called artifact
22 tissue fracturing of the heart material, where large chunks
23 were missing. That is either from poor fixation from
24 putting too thick of sections of heart in or it could be
25 some, you know, process of the fixation or the blade that

1 was doing the cutting. But there was large pieces of that
2 tissue missing so I didn't see any signs of sepsis on the
3 slides. But there also was cytolysis, which means the
4 breakdown of cells after death, so that makes it harder.
5 The culture certainly would have helped within that respect,
6 especially the lung cultures and the blood cultures.

7 Q. And can sepsis cause death?

8 A. Yes.

9 Q. Are there any guidelines about how the cause of
10 death should be determined?

11 A. There's no national standards. It is from your
12 training and experience.

13 Q. How often would you say deaths are classified as
14 undetermined?

15 A. It's a small percentage of medical examiner cases.

16 Q. And what does "undetermined" mean?

17 A. Well, again, cause of death can often be
18 determined by autopsy and combining that with other
19 investigative factors. The manner of death is based on how
20 something came about. So let's say that you have somebody
21 that has been in a car wreck and died and they have blunt
22 force trauma. Well, did somebody run them over with a car?
23 That's homicide. Did they accidentally run their car into a
24 tree? That's accident. Did they purposely run their car
25 into a tree? That's suicidal.

1 And so "undetermined" is when it's not a natural
2 cause of death, but you can't decide on the other categories
3 so it is listed as undetermined.

4 Q. What contributed to the cause of death in this
5 case?

6 A. Well, I think that it's important, before I answer
7 that question, to discuss the clinical presentation here and
8 what the root cause was.

9 Q. Okay.

10 A. It was alleged that -- it's alleged that this is
11 acute morphine toxicity.

12 So over the course of the day, the two did equal
13 number of injections of crushed morphine pills that were
14 made into a liquid. As we talked about earlier, the highest
15 concentration would've been after the second injections.
16 And so since morphine is a dose-dependent respiratory
17 depressant, the highest point of that day where they would
18 have the most respiratory depressant effects would have been
19 after that second injection. They were both up, walking
20 around and talking. They were not laying on the couch,
21 nodding off. They weren't obtunded. Stephanie actually
22 went and met her godmother, which we know from the recent
23 depositions, at Hardee's -- we knew that she met somebody;
24 we didn't know who. And she stated that she was walking and
25 talking just fine and her godmother didn't even know that

1 she was high.

2 Then they went back to the residence and allegedly
3 did more drugs.

4 So I think what was key at trial was the timeline
5 and the information that was provided. So it appeared that
6 Christine Angel was offered on the stand that Jonathan
7 Whitson was seen snoring loudly for more than 12 hours
8 before he was found dead. And as you look at what she
9 actually testified and the other witness statements, that's
10 not accurate.

11 She actually testified that she went to bed, in
12 police statements, at 8:00 o'clock, 9:00 o'clock, and
13 10:00 o'clock.

14 Stephanie Whitson said she left at 10 till 10. So
15 let's say 10:00 o'clock.

16 Greene said that she told him to go to bed, but
17 she testified that she never actually saw him go to bed.

18 And then we knew initially that he got up three
19 times during the night and each time he did, he went into
20 her room and said that he loved her. So he was up, walking
21 and talking.

22 What we know now from the additional discovery is
23 the police had interviewed Nathan Angel, which is Jonathan
24 Whitson's father -- stepfather, and that is present in
25 discovery as handwritten notes from the police officer or

1 investigator that interviewed him. It was not typed up as a
2 supplemental to include in the police reports and because he
3 was dead at the time of trial, it's my understanding that
4 the jury never heard his statements.

5 So what his statement was, after Stephanie left,
6 Jonathan actually left Christine Angel's home and came to
7 his house, which was some, I think -- somewhere, they said,
8 300 yards away.

9 He had a home that had electrical issues, that's
10 why he was staying with Christine Angel at the time.

11 So in those handwritten statements by an officer,
12 Nathan Angel stated that Jonathan came to his place and they
13 stayed up for an unknown amount of time talking, hanging
14 out. Then when they decided to go up to the house, they
15 both walked up to the house and then they talked for some
16 time more. We don't know what that time frame this.

17 But we do know that when Nathan Angel went to bed,
18 Jonathan was sitting in the living room, sitting up,
19 watching TV. He was not laying on the couch obtunded or
20 groggy. He was not in any way ever, in any witness
21 statements, to have ever said that he was groggy or out of
22 it or couldn't be aroused.

23 Then, from Nathan Angel's statement, we know that
24 at 4:00 or 4:30, he was seen to be snoring loudly. And
25 Wade, who is their father, shook Jonathan and he stopped

1 snoring as loudly. So he was arousable. He was arousable
2 at that point.

3 There's conflicting information at 8:00 or 8:30,
4 perhaps 9:00 a.m. he was still snoring. Nobody tells of
5 volume.

6 There's some information that Granny says he was
7 snoring at 10:30 when she came home from the grocery, but
8 then she testified that she wouldn't know because she was in
9 the kitchen, cooking.

10 At 10:40, when Nathan Angel's son shook Jonathan,
11 he -- no. It wasn't Nathan Angel, it was the one who
12 testified. I want to make sure I have that right.

13 So when the witness shook him that morning, they
14 knew he was dead right away. And so it's unlikely that he
15 was snoring 10 minutes prior and then died.

16 I initially thought perhaps that they knew he was
17 dead right away and didn't tell EMS to come and try to
18 revive him because he must've been cold and stiff at that
19 point, which meant that he would have been dead for a little
20 while.

21 Nikki Angel's deposition says that she was really
22 upset that they didn't call the ambulance because he was
23 still hot to the touch when she got there and she felt like
24 he could have been revived.

25 So the takeaway point from this is the clinical

1 presentation is critical.

2 After the two of them did the same amount of
3 drugs, they were up, walking and talking, people didn't even
4 know they were high, they were not laying around, people
5 having to try to wake them up. And this is extremely
6 important for respiratory-depressant drugs, especially when
7 the highest dosage was at midday.

8 It was assumed and was sort of adopted at trial
9 that he went to bed at 9:00 and snored all throughout the
10 evening, and that wasn't the case whatsoever. We don't know
11 what time he went to bed but we do know that the three times
12 he came into Granny's room had to be after he returned back
13 to the house with Nathan Angel, his stepfather, because he
14 wasn't even in the home to be able to go into her room three
15 times. So whatever time it was, whether it was 11:00 or
16 midnight when they got back to the house, then he had to
17 have gone into her room three times after that because he
18 wasn't physically in the house.

19 And so all of this is my basis for there's
20 absolutely -- you cannot call this acute morphine toxicity.
21 It's not consistent with the clinical picture that we see.

22 Q. And, Dr. Roberts, I know that in the materials you
23 reviewed, everything you saw indicated that Mr. Whitson and
24 Stephanie Whitson injected the same amount of morphine.

25 Would your assessment of this change at all if you

1 learned that Mr. Whitson had actually injected more morphine
2 than Stephanie Whitson?

3 A. Even if he had injected more, let's say double,
4 then I would expect her to be just be acting high, and if he
5 injected enough for it to be a respiratory depressant and
6 toxic, that he would have distributed symptoms of that. He
7 would be groggy. Typical cases where you read the history,
8 people are getting high together, one person does too much
9 and the other person's trying to keep them awake, saying,
10 "Don't go to sleep, don't go to sleep, you have to stay
11 awake," and they'll yell at that person and say, "Oh, you're
12 ruining my high." And then they go to sleep and they're
13 snoring. And that's not the clinical picture at all.

14 Q. All right.

15 And you may have answered this, but I just want to
16 be clear on the record: Did morphine directly contribute to
17 Mr. Whitson's death?

18 A. No.

19 Q. Was morphine a contributing factor in
20 Mr. Whitson's death?

21 A. Not in my opinion, no.

22 Q. Did morphine play any role in Mr. Whitson's death?

23 A. I would say that in a broader category, his
24 chronic drug use probably contributed to his death --
25 whether was cellulitis or sepsis, blood clot perhaps. I

1 think chronic drug use probably was important.

2 Q. Thank you.

3 MS. SMITH: Commissioners, that's all the
4 questions that I have for Dr. Roberts. But I'm sure that
5 some of you may have questions.

6 JUDGE LOCK: Commissioners, any questions?
7 Commissioner Boswell.

8 MR. BOSWELL: Dr. Roberts, this is John
9 Boswell. I'm one of the Commissioners.

10 The granulomas that you saw in the lungs, how
11 long, if ever, would it take for the body to get rid of
12 those in the sense that you didn't see them anymore?

13 THE WITNESS: Well, we don't really get rid
14 of them per se. They just kind of -- it gets walled off.
15 And then -- if you're looking at in three-dimensional, it's
16 walled off and very tiny, but then when you're doing your
17 microscope slides, you're cutting into that and so you see
18 the granular material in there.

19 Eventually, the body might just scar it over
20 as calcification, but that takes a very long time.

21 MR. BOSWELL: Did you see any evidence of
22 sepsis in any of the slide material from the heart or the
23 lungs or the liver or anything?

24 THE WITNESS: I did not see it in the lungs
25 or kidney. And then, again, it could've been present in the

1 lungs but you have acute bronchopneumonia and so it would be
2 harder to see that.

3 MR. BOSWELL: Those are my questions. Thank
4 you for your testimony.

5 THE WITNESS: You're welcome.

6 JUDGE LOCK: Other questions?

7 All right. Well, Dr. Roberts, thank you very
8 much for your time and work in this case and for being with
9 us this afternoon.

10 THE WITNESS: You're very welcome.

11 (Witness stands down, 2:37 p.m.)

12 MS. SMITH: It will take us just a few
13 minutes to get Dr. Ewens on the phone so we would appreciate
14 just a short break, Your Honor.

15 But before we do that, just wanted to provide
16 an update. The hospital records for Mr. Whitson from birth
17 to 10 years, the hospital is working very hard to get those.
18 They have a goal of 5:00 p.m. today, if they can get them to
19 us. They are on microfilm and they are very difficult and
20 time-consuming. So that is the update that we have on that.

21 JUDGE LOCK: Thank you.

22 Let me make one other statement,
23 Commissioners. You may have noticed that since the lunch
24 break, Ms. Smith does not spend quite as much time
25 qualifying the witnesses as experts.

1 Please rest assured that is not because she
2 thinks the witnesses who have been called since lunch are
3 any more credible or less credible than witnesses called
4 yesterday or this morning. It was at my request in an
5 effort simply to expedite and streamline the procedures
6 because we do understand we're operating under some time
7 constraint, and it was also based on my earlier review of
8 the CVs of all of these witnesses. It's my belief that all
9 of them would easily qualify as expert witnesses before any
10 superior court judge of this state if tendered.

11 So just offer that statement for your
12 benefit.

13 All right. 10 minutes be enough to come
14 back?

15 MS. SMITH: Absolutely. Yes.

16 JUDGE LOCK: All right. 10-minute break.

17 (Recess taken, 2:39 to 2:54 p.m.)

18 JUDGE LOCK: All right, folks. Looks like
19 everybody's in place. We'll come back to order.

20 MS. SMITH: Commissioners, given that we have
21 already heard from five experts between yesterday and today,
22 I'm briefly recalling Ms. Bridenstine just to give you a bit
23 of a roadmap of what we expect to hear from Dr. Ewens in a
24 few minutes.

25 Is she still under oath, Your Honor?

1 JUDGE LOCK: Yes. Yes.

2 Thereupon, JULIE BRIDENSTINE, a witness having been called by
3 the Commission, was recalled and testified as follows:

4 EXAMINATION BY MS. SMITH: (2:55 p.m.)

5 Q. Ms. Bridenstine, understanding that you are not an
6 expert witness or have no medical expertise, to preface
7 Dr. Ewens, can you let the Commissioners know what important
8 points we expect to hear from him kind of in light of what
9 we've heard from the other experts.

10 A. Sure. We are specifically looking for him to
11 explain how he was able to estimate the concentration of
12 morphine throughout time in the blood of Mr. Whitson.

13 And then there two points in his report that we
14 wanted to understand what the -- how he came up with those
15 opinions, and that would be from paragraph 10 and 13 of his
16 reports where he states, quote: "When a person dies from a
17 morphine or ethanol overdose, they usually die because the
18 concentration of morphine or ethanol in the brain of the
19 respiratory center is so high that the person stops
20 breathing," end quote.

21 And then the other point is, quote: "With only
22 trace concentrations of morphine in the blood, the effect on
23 Mr. Whitson's breathing would be negligible to nonexistent
24 at the time of his death," end quote.

25 (Witness stands down, 2:55 p.m.)

1 MS. SMITH: Commissioners, so you may recall
2 that earlier there was testimony that Dr. Christena Roberts
3 had consulted with a forensic toxicologist to evaluate the
4 toxicology testing when she was reviewing the case for
5 Mr. Pritchard through the Wake Forest School of Law
6 Innocence and Justice Clinic prior to the Commission's
7 investigation.

8 At the request of Dr. Roberts, Dr. Ewens
9 finalized his report and provided it to the Commission.
10 You've previously been provided that report as Handout 7 and
11 Dr. Ewens' CV as Handout 8. And you'll want to refer
12 to those throughout his testimony.

13 The Commission now calls Dr. Andrew Ewens.

14 JUDGE LOCK: Good afternoon, Dr. Ewens.

15 Dr. Ewens, my name is Tom Lock. I am a
16 superior court judge and I am chair of the Innocence Inquiry
17 Commission.

18 We are going to ask that you testify to us,
19 please, under oath or affirmation. If you would please
20 raise your right hand.

21 Do you swear or affirm that the testimony you
22 will give to the Commission this afternoon will be the
23 truth, the whole truth, and nothing but the truth?

24 THE WITNESS: I do.

25 (Discussion off the stenographic record.)

1 JUDGE LOCK: Thank you very much, sir.
2 Thereupon, ANDREW EWENS, a witness having been called by the
3 Commission, was recalled and testified as follows:

4 EXAMINATION BY MS. SMITH: (3:57 p.m.)

5 Q. Dr. Ewens, my name is Lindsay Guice Smith. I'm
6 the executive director here at the Commission. We spoke on
7 the phone last week.

8 I have a few questions for you today, and then
9 potentially the Commissioners around the room will have
10 questions when I am done. Okay?

11 A. Okay.

12 Q. Can you tell the Commission how you became
13 involved in this case.

14 A. Yeah. I was asked by Dr. Roberts to take a look
15 at this case while it was under review by Dr. -- not Dr. --
16 by Mr. Mark Rabil at Wake Forest University.

17 Q. And have you been paid anything in connection with
18 the case?

19 A. No. I am doing this case solely pro bono.

20 Q. Did you provide a report and a CV to the
21 Commission?

22 A. Yes, I did.

23 Q. And do those documents outline your training,
24 education, and experience?

25 A. Yes.

1 Q. They also have the number of times you've
2 testified as an expert and in what types of cases?

3 A. Yes. Correct.

4 Q. Based on your analysis in this case, do you
5 believe you have specialized knowledge that will assist the
6 Commission in evaluating the toxicology testing that was
7 performed by the Office of the Chief Medical Examiner's
8 toxicology lab in Raleigh, North Carolina?

9 A. Yes, I do.

10 Q. Does your report contain your opinions and the
11 basis for those opinions regarding the toxicology testing?

12 A. Yes, it does.

13 MS. SMITH: Your Honor, based on the
14 information provided in Dr. Ewens' report and CV, I'd like
15 to tender him as an expert in antemortem and postmortem
16 toxicological interpretation.

17 JUDGE LOCK: All right. That tender is
18 allowed.

19 Q. Dr. Ewens, when commission staffers talked to you,
20 did they explain to you that our agency is neutral and
21 independent?

22 A. Yes.

23 Q. After you provided your report to the Commission,
24 did you receive some additional materials including other
25 expert reports from the Commission?

1 A. Yes, I did.

2 Q. Has anything in the documents that you received
3 after providing your report changed your opinions or your
4 report in any way?

5 A. No. My opinion is the same.

6 Q. And what is your opinion in this case?

7 A. My opinion is that I don't think it can be
8 concluded that Mr. Whitson's death was caused by morphine.

9 Q. Are there any guidelines about whether or not
10 toxicologists can opine as to the cause of death -- the
11 absolute cause of death in a case?

12 A. Not that I'm aware of. I think it's usually best
13 to be a collaboration between pathologists and
14 toxicologists.

15 Q. And did you collaborate with Dr. Roberts in this
16 case?

17 A. Yes. We talked about the case.

18 Q. Could the ethanol that was detected in
19 Mr. Whitson's aorta blood sample be attributed to anything
20 other than Mr. Whitson drinking alcohol?

21 A. Well, in the aorta, it was .04 grams per
22 deciliter. So it could cause mild intoxication but
23 certainly not close to being to the level that would cause
24 death.

25 Q. And thank you for that, but my question, I think,

1 is a little bit different.

2 Is there anything other than ingestion or
3 consumption of alcohol that would cause Mr. Whitson's level
4 blood alcohol level in the aorta blood sample to be .04?

5 A. Oh, I see what you're saying.

6 Yes. It is possible. You could have fermentation
7 after death within the body or you could have fermentation
8 in a blood sample that was collected. And the time
9 difference between when Mr. Whitson died and when he was
10 autopsied and blood was collected is fairly short so that's
11 probably not very likely that there was fermentation in the
12 body, but it could be very possible that there was
13 fermentation in the blood sample after it was collected,
14 especially if there was already bacteria in Mr. Whitson's
15 blood.

16 Q. And when you say bacteria in the blood, what kinds
17 of things would that be from?

18 A. If he had sepsis.

19 Q. Moving on, turn to paragraph 10 in your report.
20 You state, quote: "When a person dies from a morphine or
21 ethanol overdose, they usually die because the concentration
22 of morphine or ethanol in the brain at the respiratory
23 center is so high that the person stops breathing," end
24 quote.

25 What is the basis for that opinion?

1 A. So that is based on basically the most critical
2 principle of toxicology, that is: The dose makes the
3 poison.

4 So at a low concentration, a drug is going to have
5 very little effect. As that concentration increases, the
6 effect of that drug will also increase. And this is -- this
7 has been known since the 1500s. A Swiss physician named
8 Pericles [sic] coined the phrase "the dose makes the
9 poison," basically saying that anything can be poisonous
10 depending on how much you give, you can even die from
11 drinking too much water, and it's just the amount or the
12 concentration that is going to cause that effect.

13 Q. I want to go back real quick back to the reasons
14 why alcohol may appear in the blood sample after a person
15 dies that's not from ingesting alcohol.

16 You said it could be -- it could develop in a
17 blood sample that's already been collected by, like,
18 bacteria, like sepsis.

19 Is it possible that it could also develop in that
20 sample during transport to the lab from the medical
21 examiner, for example, if that transport is through the
22 USPS?

23 A. Well, that's when it would occur. There would --
24 you would have blood in the vial, and I'm saying if someone
25 already had bacteria in their blood from something like

1 sepsis, that would then allow the bacteria to ferment inside
2 the vial. And if you're shipping this in a nonrefrigerated
3 or not frozen manner, then the chances of those bacteria
4 being able to grow and ferment would be higher than if this
5 were shipped frozen.

6 Q. So would you have to have some bacteria in the
7 blood in order for that to occur?

8 A. Yes.

9 Q. In other words, if the blood didn't have any
10 bacteria, would it create alcohol on its own just by virtue
11 of being shipped?

12 A. No. But you could get bacterial contamination
13 during the collection depending on how it's done. So it
14 could be through -- maybe the needle that they're using
15 brushes up against the body or something else. That could
16 also cause it.

17 I'm just saying, like, if you have a condition
18 where someone already has bacteria in their blood to begin
19 with, then they're ready to go. They might even be
20 producing some ethanol in the body before collection.

21 Q. Okay.

22 If there were preservatives in the test tube or
23 sample container for that blood, would those preservatives
24 prevent the formation of ethanol if the person had some kind
25 of bacteria?

1 A. It's meant to reduce that from happening, but it's
2 still possible for it to -- for bacteria to grow and ferment
3 even with preservatives, especially if they're being shipped
4 without being refrigerated or frozen.

5 Q. And is a --

6 A. So it makes it less likely. I'm just saying the
7 preservatives make it less likely but not impossible.

8 Q. And is the value of a .04 the type of value you
9 would expect to see if the blood was fermenting after it had
10 been collected?

11 A. I don't know exactly. I believe it sounds like a
12 reasonable concentration.

13 Q. Thank you.

14 A. And that it would all depend on conditions and how
15 much bacteria, how much probably sugar that's in the blood.
16 So all the different -- there's lots of variation and
17 factors that can go into determining how much alcohol would
18 be produced. So it's not like you could just say, yes when
19 you would see fermentation in the vial of blood which
20 produces .04. Can't say that. It's dependent on too many
21 variables.

22 Q. Thank you.

23 I'm going back -- and I apologize for jumping from
24 these two things. When we were talking about that
25 paragraph 10 of your report, you used the phrase "usually

1 die."

2 What are the circumstances for which people die
3 from morphine overdoses even when the concentration of
4 morphine is not high enough to stop them from breathing?

5 A. It could be something where it impairs them to the
6 point where they could have an accident, like driving a car
7 and die from traumatic injury, or it could even have
8 something where it impairs them so that they get into a
9 certain position that might not be able to allow them to
10 breathe, that they could die because they're too impaired to
11 get themselves out of that position.

12 So this could be, like -- it's called positional
13 asphyxia. Like if someone is impaired and they fall off a
14 bed and somehow get pinned between the bed and a dresser or
15 something to a point where they can't breathe, if they are
16 so impaired they can't get out of that position, that they
17 could die from that.

18 Q. Looking at the designation of trace morphine in
19 the femoral blood, can you draw any conclusions from that
20 designation?

21 A. You can only say that at some point in time
22 Mr. Whitson had consumed morphine. But beyond that, you
23 can't make interpretations.

24 Q. In paragraph 13 of your report, you state, quote:
25 "With only trace concentrations of morphine in the blood,

1 the effect on Mr. Whitson's breathing would be negligible to
2 nonexistent at the time of his death," end quote.

3 What is the basis of that opinion?

4 A. Again, that's the core principle of toxicology.
5 If you have very low concentrations of a drug, it doesn't
6 matter how toxic it is, if those concentrations are too low
7 to cause death, death is not going to happen. You have to
8 have a concentration that reaches to a high enough level
9 where it is going to cause death.

10 And so there's also a principle called
11 "threshold."

12 So the threshold pretty much means at very low
13 concentrations of drug, nothing is happening. For -- in
14 order for a drug to cause its effect, it has to bind to a
15 receptor on a cell and then elicit a response in that cell.
16 If the concentration is so low it's not really binding onto
17 very many receptors and not activating very many cells,
18 there's going to be no appreciable effect on the person.

19 Below -- if you have a concentration that's below
20 this threshold level, you won't see any effect from that
21 drug. It's not until the concentration gets higher than a
22 threshold concentration that you'll start to see
23 physiological effects from that drug.

24 So at a level that says trace, we have no idea
25 what the actual concentration is; so it could be zero if

1 that concentration was below that threshold with no
2 physiological effects occurring. But we don't know because
3 it is not quantitated.

4 Q. Okay.

5 On pages -- sorry -- paragraphs 15 to 18 of your
6 report, you've included some extrapolation calculations or
7 estimates.

8 Is it standard practice for toxicologists to try
9 to figure out how much morphine is in the blood throughout a
10 relevant period of time?

11 A. I don't know that I would say it's standard
12 practice. What practice you do on which case really depends
13 on the case and what information you need to find out.

14 Basically all I was doing was applying reported
15 half-lives of morphine and trying to see how much drug was
16 still in Mr. Whitson's body at a certain time based on those
17 half-lives, and those half-lives were published in Besalt's
18 "Deposition [sic] of Toxic Drugs in Man."

19 Q. Can you repeat that? Besalt's "Deposition of
20 Toxic Drugs" --

21 A. The book is called "Deposition of Toxic Drugs and
22 Chemicals in Man," and this is the 12th edition, by Randall
23 Besalt.

24 Q. Thank you.

25 Is there any speculation that's involved in doing,

1 kind of, those extrapolations or estimations?

2 A. There is. There is no solid timeline that I can
3 go of off as to when Mr. and Mrs. Whitson had taken the
4 morphine, but there was some testimony from Mrs. Whitson
5 about relative amounts of time as to when they were taking
6 the different doses of morphine.

7 She had stated that it was -- probably the first
8 session was around 3:45, second session was sometime before
9 6:00 p.m. because she had left to go eat dinner at that
10 time, and then sometime around 8:30 or so.

11 So there is some speculation as to when those --
12 when each dose was actually taken.

13 Q. Aside from the Besalt book that you have just
14 shown us, is there any other literature that supports these
15 calculations being made in a case like the one before us?

16 A. I can't think of a book or something about that,
17 but it's -- basically all you're doing is applying the
18 half-life to the time interval between when they took one
19 dose and the next dose or the last dose and when Mr. Whitson
20 was found dead.

21 So it's a very simple calculation. You're just
22 applying the half-life of that drug to the case.

23 Q. Could Mr. Whitson have survived --

24 A. So I --

25 Q. Sorry. Go ahead.

1 A. Sorry.

2 I would just say it's probably not standard
3 practice, but I believe that it's done in many cases.

4 Q. Could Mr. Whitson have survived the peak
5 concentration of morphine in his body but still died from
6 the effects of taking morphine? Is that a possibility?

7 A. It's possible if the concentration of morphine was
8 so high that set into motion something that continued on its
9 own without the morphine that then eventually led to death.

10 Q. Do you have any examples of what types of things
11 that could be?

12 A. It could be something like morphine is blocking
13 the cough reflex. It can also cause people to get nauseous.
14 They could vomit and aspirate the vomit into their lungs.
15 Somehow they live for many, many hours after that, then
16 maybe they would still have time to metabolize the morphine.
17 But at that point, the morphine is just -- it's not -- it's
18 no longer acting on them at the time that they die.

19 MS. SMITH: All right. Commissioners, those
20 are my questions for Dr. Ewens.

21 Do commissioners have questions?

22 JUDGE LOCK: Commissioner Glazier.

23 MR. GLAZIER: Thank you, Judge.

24 Thank you, Doctor. Regardless of the
25 accuracy of the extrapolations, would it be correct to say

1 that with only trace amounts of morphine in the blood and
2 only 1.5 in the urine, that there was less than threshold --
3 appears to be less than threshold amounts of morphine
4 consumed?

5 THE WITNESS: Yeah. I think that's a safe
6 assumption to say at the time of the death, the trace
7 amount, I'm sure, was below Mr. Whitson's threshold.

8 MR. GLAZIER: Okay. Thank you.

9 THE WITNESS: And -- sure.

10 MR. GLAZIER: Thank you.

11 JUDGE LOCK: All right. Any other
12 commissioner have any other questions?

13 If not, Doctor, thank you for much for being
14 with us.

15 THE WITNESS: Thank you.

16 (Witness stands down, 3:18 p.m.)

17 MS. SMITH: All right, Commissioners. At
18 this point, the last witness would be Dr. Hall, if
19 commissioners have questions for him.

20 While I originally did not have any questions
21 for him, based on some of the testimony over the last
22 two days, I do have one question for him. I wasn't sure if
23 commissioners also might want to ask him questions.

24 And I'm happy to tell you what my question is
25 and see if that's a question that you-all want answered.

1 JUDGE LOCK: Okay.

2 MS. SMITH: My question is just to know
3 whether or not he recalls whether there were preservatives
4 in the tubes, the blood collection tubes, in 2011 in this
5 case.

6 That's the question that I would have for
7 him.

8 I would also ask him -- I'm sorry. I would
9 also ask him whether it was shipped refrigerated or frozen.

10 He had said in his deposition it was shipped
11 via U.S. Postal Service, and so those would be our
12 questions.

13 JUDGE LOCK: All right. Will he be
14 testifying live or virtually?

15 MS. SMITH: He would be testifying via WebEx
16 as well.

17 JUDGE LOCK: How long would it take to get
18 him on the line?

19 MS. TANNER: Hopefully very quickly. He's
20 expecting us.

21 MR. BOSWELL: Lindsey, I would be interested
22 to know about the preservative too. I'm not sure that I
23 would necessarily call him just to ask that question, but if
24 we're going to call him, let's ask that question.

25 MS. SMITH: Okay.

1 MS. TANNER: Dr. Hall is ready if y'all are
2 ready, we just need to get him on the line.

3 JUDGE LOCK: We're ready whenever you are.

4 (Discussion off the stenographic record.)

5 MS. SMITH: Commissioners, while we wait on
6 Dr. Hall, the update on the resources that were requested,
7 Dr. Holstege has not provided those chapters yet. Staff is
8 currently contacting Dr. Roberts to see if she has those,
9 also contacting the public libraries in Wake County and the
10 N.C. State Library to see if any of them have those.

11 So that is the update on that.

12 And as of now, we're still waiting on the
13 hospital records.

14 (Discussion off the stenographic record.)

15 MS. SMITH: Commissioners, I will remind you
16 that the WebEx is still live and so all comments can be
17 heard by the public at this time.

18 (Discussion off the stenographic record.)

19 JUDGE LOCK: All right. Let's come back to
20 order then.

21 MS. SMITH: Good afternoon, Dr. Hall.

22 THE WITNESS: Hey.

23 MS. SMITH: Can you hear us clearly?

24 THE WITNESS: Yes, ma'am. Can you hear me?

25 MS. SMITH: I sure can.

1 JUDGE LOCK: All right. Dr. Hall, my name is
2 Tom Lock. I'm a superior court judge and I'm the chair of
3 the Innocence Inquiry Commission.

4 I think Ms. Smith will have a couple of
5 questions for you and then perhaps a couple commissioners
6 will have some questions.

7 We do ask that testimony before the
8 Commission be under oath or affirmation. So if you would
9 raise your right hand, please.

10 And do you swear or affirm that the testimony
11 you will give before this Commission this afternoon will be
12 the truth, the whole truth, and nothing but the truth?

13 THE WITNESS: Affirm, yes, sir.

14 JUDGE LOCK: Thank you very much, sir.
15 Thereupon, BRENT HALL, MD, a witness having been called by the
16 Commission, was sworn and testified as follows via WebEx
17 technology:

18 EXAMINATION BY MS. SMITH: (3:28 p.m.)

19 Q. Hello, Dr. Hall.

20 A. Hey.

21 Q. My name is Lindsay Guice Smith. I'm the executive
22 director here at the Commission. As Judge Lock pointed out,
23 I just have a couple of questions for you.

24 So that you're aware, the Commissioners in the
25 room have been provided prior to this hearing a full copy of

1 your deposition transcript with Ms. Bridenstine, a staff
2 attorney with the Commission. So they've already got your
3 full testimony there.

4 And I just have a couple of quick follow-up
5 questions for you and then they may have some questions as
6 well.

7 In thinking back to the samples -- the blood
8 sample that was collected at Mr. Whitson's autopsy, do you
9 know whether that sample would have been put into a vial or
10 container with any kind of preservatives in it?

11 A. It's been a while but to the best of my
12 recollection, those were collected with either purple top or
13 gray top tubes, and they both have a preservative.

14 Q. What is the purpose of that preservative?

15 A. It is to stop the cellular breakdown.

16 Q. Would it also prevent any fermentation of the
17 blood?

18 A. No, won't prevent it because you could still get
19 a -- I mean, if the -- it would slow it down but it wouldn't
20 prevent it. If a sample was delayed in shipping, for
21 instance, and was out in the hot sun, you may get an
22 increase in alcohol level, for instance.

23 Q. And as I recall, you said in your deposition that
24 the samples would've been shipped using the United States
25 Postal Service.

1 Is that accurate?

2 A. That's correct. Yes, ma'am.

3 Q. And do you recall whether, when those samples were
4 shipped through the United States Postal Service, if they
5 were shipped refrigerated or frozen in any way?

6 A. No, ma'am. I usually do the autopsy one day and
7 ship them very next day. They're typically kept in the
8 refrigerator after collection and before shipment.

9 Q. And then when they were shipped, would they be
10 shipped with any kind of special designation like overnight
11 or just through the regular mail?

12 A. It's just through the regular mail.

13 MS. SMITH: Commissioners, those are my
14 questions for Dr. Hall.

15 Do any of you have questions?

16 JUDGE LOCK: Sheriff.

17 SHERIFF KIMBROUGH: Hello, Dr. Hall. How you
18 doing, sir?

19 THE WITNESS: Good. Hope you're all right.

20 SHERIFF KIMBROUGH: I'm good. Thank you.

21 I've got maybe one question, just trying to
22 get an understanding on something.

23 Can you tell me if it is fact or opinion for
24 the cause of death to be called a death by acute toxicity of
25 morphine, there must be appreciable levels of morphine in

1 the blood?

2 Is that something that has to be factual or
3 that's an opinion that someone could come to?

4 THE WITNESS: There has to be certain levels
5 of morphine in the body, either in the blood or in the
6 urine.

7 SHERIFF KIMBROUGH: Thank you.

8 JUDGE LOCK: Anyone else?

9 All right. Dr. Hall, thank you very much for
10 your time during the deposition and your time this
11 afternoon.

12 THE WITNESS: Yes, sir. Hope y'all have a
13 good evening.

14 JUDGE LOCK: Thank you, sir. You also.

15 (Witness stands down, 3:32 p.m.)

16 MS. SMITH: Commissioners, we do have a staff
17 member following up on the hospital records to see how far
18 along they are in that process. We are still working on
19 getting the chapter from the Besalt text.

20 So those things are still outstanding.

21 I would like to remind you if you haven't had
22 a chance to read it yet, that Handout 50, which was
23 previously provided to you, is the statement of the district
24 attorneys -- the district attorney for you to review. That
25 statement indicates that six experts were hired on behalf of

1 the defendant. I will remind you that Dr. Christena Roberts
2 and Dr. Andy Ewens were hired by the defense prior to the
3 Commission's involvement in this case.

4 Dr. Jerri McLemore and Dr. Hudson were
5 originally contacted by the Commission to serve as the
6 Commission's independent experts; however, based on the
7 conflicts and terms in their employment contracts or
8 restrictions on secondary employment were unable to serve in
9 those roles.

10 Dr. Barbara Wolf, Dr. George Behonick, and
11 Dr. Christopher Holstege were ultimately hired by the
12 Commission as independent experts. All were told that the
13 Commission was seeking their opinion regardless of what that
14 opinion was and that any opinion rendered would be presented
15 to the Commissioners if this case went to hearing.

16 As you have heard over the last couple
17 of days, all of them -- all of those opinions were provided
18 to you.

19 Dr. Wolf, Doctor Behonick, and Dr. Holstege
20 were not hired on behalf of the defendant.

21 The Commission's victim services coordinator,
22 Emma Paul, has had contact with three members of the
23 victim's family. All have chosen not to attend this hearing
24 this week. None have chosen to provide a victim impact
25 statement; so you will not hear from the victim's family

1 members in this case.

2 Normally, what I would do now is close -- do
3 a brief closing with your standard of review; however, once
4 I close the hearing, no additional evidence can come in. So
5 if you-all would like to hold to see if -- what the update
6 is on the medical records and those texts, we can do that.
7 Or you can choose to proceed without those.

8 And we should have an update, I believe,
9 shortly as to the medical records and when they anticipate
10 being able to get those to us, if it will happen.

11 JUDGE LOCK: Yes, sir, Sheriff.

12 SHERIFF KIMBROUGH: I know that I asked for
13 the birth records, but I am good now. I don't necessarily
14 need that.

15 JUDGE LOCK: How about the excerpt from the
16 treatise? I know, Representative Glazier, you were
17 interested in that.

18 MR. GLAZIER: I think when we get into
19 discussions if it becomes a major issue, I would ask us to
20 extend our -- or delay our decision. But if it's not an
21 issue for anybody else, I'm ready to proceed.

22 MS. SMITH: And, Your Honor, if I may, I will
23 remind the Commissioners that if we were to extend this
24 hearing, it would have to be completed before December 31st
25 of this year as we do have commissioners that will be

1 leaving us that are in this room. And the only other option
2 to do that beyond December 31 is we would re-present this
3 hearing in its entirety to a new group of commissioners.

4 So ...

5 JUDGE LOCK: This is purely my personal
6 opinion and observation. I'm not sure I would understand
7 the learned treatises if I were to read the pages
8 themselves, but perhaps we can just wait four or five
9 minutes to see if they can get copies of the treatise
10 scanned and emailed to us.

11 Would that satisfy your need?

12 MR. GLAZIER: Yes.

13 MS. COLBERT: I'm interested in seeing it as
14 well.

15 JUDGE LOCK: All right. It appears that a
16 couple of folks would be interested. Why don't we take
17 about --

18 (Stenographer clarification.)

19 MS. NEWTON: Your Honor, I have a question
20 about alternate commissioners.

21 JUDGE LOCK: Will deliberations be taking
22 place in this room or some other time?

23 MS. SMITH: They will take place in this
24 room; so everyone who is not a voting member or myself will
25 need to leave for deliberations. You are more than welcome

1 to stick around for the decision. We are also happy to give
2 you a call and let you know the outcome, if that is your
3 preference.

4 When we come back on the record, because I
5 know some of you haven't participated before, it's very
6 brief, just for Judge Lock to read what the opinion is into
7 the record and then we can go home; so ...

8 JUDGE LOCK: That's entirely up to you.

9 MS. NEWTON: So you'll begin deliberations
10 once you get the records or decide how to --

11 JUDGE LOCK: Yeah. We'll take about a
12 five-minute break right now just to see if they can get the
13 excerpts from the treatises.

14 Yes, ma'am, Judge Evans.

15 JUDGE EVANS: Before you take a break, I
16 would like to ask Ms. Bridenstine a question about two
17 people that we heard -- we read about but didn't hear about
18 any attempts to contact.

19 JUDGE LOCK: All right. Why don't we do that
20 now while staff members are trying to locate that treatise.

21 Ms. Bridenstine, if you could come back up,
22 please.

23 And of course the witness remains under oath
24 as she has the last two days.

25 Thereupon, JULIE BRIDENSTINE, a witness having been called by

1 the Commission, was recalled and testified as follows:

2 JUDGE EVANS: (3:38 p.m.) Ms. Bridenstine, in
3 Mr. Pritchard's statement and in the statements of some
4 other witnesses, there was testimony that Wade Angel was in
5 the home and made an attempt to wake up Jonathan Whitson at
6 some time to stop him from snoring.

7 Was there ever any effort on the part of the
8 Commission to interview Wade Angel?

9 MS. BRIDENSTINE: Yes. But Wade Angel passed
10 away prior to the Commission's investigation. I don't
11 remember the exact date. I testified about that yesterday,
12 but we determined that he died, and so -- he would've been
13 interviewed had we ...

14 JUDGE EVANS: I missed that yesterday. I
15 apologize.

16 Secondly, there was testimony in someone's
17 statement that William Angel, Nathan Angel's brother, was
18 present at Nathan's trailer when Jonathan was there on the
19 night of March 5 drinking.

20 Was there ever any attempt to contact William
21 Angel?

22 MS. BRIDENSTINE: Yes.

23 William Angel, from my understanding from my
24 conversation with Christine Angel, lives at Christine
25 Angel's house. I left my card there and asked him to call

1 me. I also sent a letter to their residence.

2 I believe Ms. Angel told me that he was not
3 living there at the time that Mr. Whitson passed away, and
4 there were some indications in our searches for his
5 whereabouts that indicated that he might have had an address
6 in Tennessee at the time. And I can also check the journal,
7 but I spoke to another relative who told me something about
8 Mr. Angel as well.

9 So I can follow up with that and confirm
10 those details for you.

11 JUDGE EVANS: Well, you're satisfied from
12 your investigation that he was not present on March 5?

13 MS. BRIDENSTINE: I would say I didn't have
14 much information to suggest that he was there, but some
15 people did indicate that they believed that he was there,
16 including Mr. Pritchard. His name came up from someone else
17 that I can't remember right off the top of my head, but he
18 wasn't listed in the police reports as somebody who was
19 present that morning. And of the witnesses who were
20 interviewed for the police investigation and at the trial
21 testimony, and his name did not come up.

22 JUDGE EVANS: All right. Thank you.

23 MR. BOSWELL: Your Honor, I have two
24 questions for Ms. Bridenstine, if I can.

25 JUDGE LOCK: Sure.

1 MR. BOSWELL: Do we have a record of the
2 terms of Mr. Pritchard's probation?

3 MS. BRIDENSTINE: We would have to -- I would
4 have to double-check, but we obtained the probation records
5 from DPS that they have for Mr. Pritchard. So we could look
6 and see if those terms were listed -- if that was part of
7 their probation record that was provided to us.

8 MR. BOSWELL: The reason I ask is because he
9 testified that under his probation terms, there were some
10 places he couldn't go -- you know, he couldn't to Robbie's
11 house. And I was just wondering if we had any corroboration
12 of that in his actual probation terms or if that -- because
13 we didn't see that in any records.

14 MS. BRIDENSTINE: I did not personally review
15 them so let me check for you and I will let you know if that
16 came with his probation file to us.

17 MR. BOSWELL: Okay.

18 And the other question was in his testimony,
19 he testified about taking morphine pills according to
20 their -- to the prescribed amount and times. And then I --
21 did we -- did the police ever seize his morphine bottle or
22 was there any record of there being more pills gone than
23 should have been gone based on the amount of time he last
24 filled it and the number of pills he should have taken?

25 MS. BRIDENSTINE: No. And he wasn't arrested

1 in this case until several months later. But the District
2 Attorney's Office did subpoena his medical records from the
3 VA Hospital, and they obtained the records all from around
4 the date of Mr. Whitson's death and a little bit over a
5 year, I believe, prior to that. So we have the records from
6 the hospital.

7 And, additionally, former Chief Deputy Farmer
8 said in his report that he had tried to obtain prescription
9 records for both Robbie Brown and John Pritchard. He tried
10 a couple of pharmacies in the area. He was able to find
11 prescription records for Robbie Brown right after
12 Mr. Whitson's death but he wasn't able to locate anything
13 for Mr. Pritchard.

14 MR. BOSWELL: Any pharmacy records for
15 Mr. Pritchard?

16 MS. BRIDENSTINE: Correct. But after he was
17 indicted in -- for this case, the District Attorney's Office
18 did obtain his medical records which included his
19 prescription records from the VA that showed when he was
20 first prescribed, when he would fill the prescription. And
21 they're actually in your brief, his prescription records
22 themselves, that go back in time from -- I think it was like
23 March 10, 2011, and back. And you can -- you can see how
24 often he was refilling those prescriptions and on the dates.

25 MR. BOSWELL: Did -- was there any evidence

1 that the pills were being prescribed or received more often
2 than they should have been based on his prescribed
3 consumption rate?

4 MS. BRIDENSTINE: I would say I would check
5 the prescription records because they showed how often --
6 when they were actually filled. And I believe he was
7 refilling them pretty consistently every month. I don't
8 recall if he got it a few days early or not based on the
9 quantity they were giving him.

10 MR. BOSWELL: Okay. Thank you. Those were
11 the questions that I had left over.

12 MS. NEWTON: Your Honor, may I ask a
13 question?

14 JUDGE LOCK: Sure.

15 MS. NEWTON: Ms. Bridenstine, the issue came
16 up with one of the witnesses that it took an hour for the
17 family to call 911 after they realized that he had died.

18 Did you in any of your interviews hear about
19 that issue as to why that happened?

20 MS. BRIDENSTINE: I don't recall hearing
21 anyone say that there was a delay in a call to 911.

22 MS. NEWTON: There was about a 50-minute
23 delay in a call to 911, I think it was.

24 MS. BRIDENSTINE: Ms. Newton, do you recall
25 where you saw that?

1 MS. NEWTON: It seems like it might -- well,
2 I'll look and see if I can find that now.

3 And I know that it was one of the doctors who
4 also mentioned it for the defendant, that there was a delay
5 in the call. It seems like you said at one point something
6 about the delay and that you didn't get any information
7 about that -- some part of what you were talking about.

8 You don't recall?

9 MS. BRIDENSTINE: We definitely talked to
10 witnesses who reported hearing a rumor that his body was
11 moved before the police were called, from Nathan Angel's
12 trailer to Christine Angel's house. But we were never able
13 to confirm from anyone that that did in fact happen.

14 MS. NEWTON: Okay. Let me see if I can find
15 it. Thank you.

16 JUDGE LOCK: Commissioner Boswell, I believe
17 I may do this.

18 I will simply take judicial notice of the
19 fact that it is a regular term and condition of probation
20 under North Carolina General Statute 15A-1343, all cases in
21 which someone is placed on supervised probation, that that
22 person not knowingly associate with any known or previously
23 convicted users, possessors, or sellers of any such illegal
24 drugs or controlled substances and not knowingly be present
25 at or frequent any place where such illegal drugs or

1 controlled substances are sold, kept, or used.

2 So that would be in all cases of supervised
3 probation, notwithstanding any other special conditions of
4 probation that the judge may have imposed.

5 MR. BOSWELL: Fair enough. Thank you.

6 MS. SMITH: Do you wish to have the staff
7 testify about what we found in his records?

8 MR. BOSWELL: Not unless you're going to tell
9 me it's something different than what he just said.

10 MS. SMITH: No, sir.

11 JUDGE LOCK: I saw Judge Evans out of my eye
12 and she started nodding.

13 JUDGE EVANS: I was kind of whispering it
14 over here too.

15 JUDGE LOCK: Did you to want to take a
16 five-minute break and then see if you have anything to
17 report to us before you close the hearing?

18 MS. SMITH: In one moment.

19 Are there any other questions from
20 commissioners of Ms. Bridenstine? She is going to answer
21 one of your questions in a moment. She's just pulling that
22 up now.

23 But any others that are outstanding before we
24 do that and then take a break?

25 Ms. Bridenstine, after you've had a moment to

1 look at that, I believe what you're looking for are
2 references to the Commission's attempts to locate William
3 Angel or talk to others about William Angel.

4 When you've had a chance to do that, if you
5 will please provide that information to commissioners.

6 (Discussion off the stenographic record.)

7 MS. SMITH: I would recommend that you take a
8 slightly longer break, get beverages or anything that you
9 might want to be in here for your deliberations.

10 JUDGE LOCK: 4:00 o'clock?

11 MS. SMITH: That sounds great, 4:00 o'clock.

12 JUDGE LOCK: All right. It is now 12 till.
13 We'll be in recess until 4:00 o'clock.

14 (Recess taken, 3:49 to 4:15 p.m.)

15 JUDGE LOCK: All right. Now it looks like
16 everybody is in place and we will come back to order.

17 Yes, ma'am, Ms. Smith.

18 MS. SMITH: During the break, Commissioners
19 were provided two handouts.

20 Handout 54 is the chapter from Besalt book
21 about morphine.

22 Handout 55 -- I'm going to let Ms. Tanner
23 explain what the Commission did there. That is excerpts
24 from Dr. Holstege's book, but I'll let her explain more.

25 MS. TANNER: So Dr. Holstege never got back

1 to us about the specific chapters of his own book which he
2 was referencing or indicated that we should review. This is
3 his book. We found the material online. We provided you
4 with the table of contents, and we've done a quick scan
5 through the book and pulled the chapters that might be
6 relevant. I'm sorry, I have not had time to read those
7 chapters yet, but I'll be happy to do that as soon as
8 possible.

9 MR. GLAZIER: Page 81.

10 MS. TANNER: Excellent.

11 MS. SMITH: Okay.

12 Ms. Bridenstine -- do y'all want to take a
13 break to read that now or would you like to read that once
14 you start your deliberations?

15 JUDGE LOCK: During deliberations.

16 MS. SMITH: Okay.

17 Ms. Bridenstine remains on the stand, Your
18 Honor.

19 JUDGE LOCK: All right.

20 MS. SMITH: Prior to the break,
21 Ms. Bridenstine had been asked about our efforts to locate
22 William Angel.

23 Q. Have you found any additional information that you
24 can provide to the Commissioners about that,
25 Ms. Bridenstine?

1 A. Yes. So when I went to interview Christine Angel,
2 I asked her about William Angel. She said he was currently
3 living with her and he had remodeled her house or helped
4 remodel some of her house and changed the layout, including
5 the area where Jonathan Whitson passed away on the couch.

6 She said that he was not living there at the time.
7 She gave me a phone number that she said was his phone
8 number. I called it and spoke to his niece, who was in
9 Tennessee, I believe. She did not know if he was living in
10 Tennessee at the time.

11 I also mailed a letter to Ms. Angel's residence
12 addressed to William and did not hear back from him.

13 After looking through the materials, his name did
14 not come up in the police investigation, no one identified
15 him at the time as being at the house. There was nothing in
16 the trial transcript that indicates William Angel was
17 around.

18 From our interviews, Nikki Angel listed the people
19 that she believed were present that morning and she did not
20 include her uncle, William Angel.

21 Annette Whitson Greene said during her deposition
22 that she thought William Angel was there and present that
23 morning. Stephanie Whitson Randolph during her deposition
24 with the Commission said that he would come up sometimes to
25 the house. She was not sure if he was living there at the

1 time. She did not mention seeing him there when she was
2 with Mr. Whitson prior to his death.

3 Mr. Pritchard mentioned him in his interview with
4 us and said that he understood that William Angel and Nathan
5 Angel moved Mr. Whitson's body.

6 Looking through our searches to find him in
7 LEXIS-NEXIS and CJLeads and DCIN criminal history searches,
8 he does have addresses listed pretty much throughout both
9 North Carolina and Tennessee, including Burnsville for this
10 time period. It does not appear that he was incarcerated at
11 the time in either state, although it does appear he was
12 given three years' supervised probation in 2008, which means
13 he might've been on probation from a North Carolina case at
14 the time.

15 JUDGE EVANS: All right. Thank you.

16 MS. BRIDENSTINE: Regarding the other issue
17 about when the death was reported and if there was a delay
18 in report, Nathan Angel was interviewed by police on
19 September 26, 2011. He is the only person to report a time
20 when he thought that 911 was called -- or when the body was
21 discovered, when Mr. Whitson was discovered deceased, and he
22 said approximately 10:40 a.m. The police reports indicate
23 that the call came in at 11:33 a.m.

24 So Nathan Angel is the only person at the
25 time of the investigation to put a time on when Mr. Whitson

1 was discovered deceased.

2 MS. NEWTON: So -- can I, Your Honor?

3 JUDGE LOCK: Sure.

4 MS. NEWTON: In following up on that, on --
5 page 10 of the brief, it has a timeline -- Scott was kind
6 enough to point that out to me. It talks about a sequence
7 of having breakfast after 10:30, that Christine cooks
8 breakfast and everybody but the victim eats.

9 And then he said -- or then the timeline says
10 that Nathan tells Christian Angel, approximately 10:40 a.m.,
11 to wake up the victim and that Christian discovers him dead
12 on the couch and that they were in that residence -- Nathan,
13 Christine, Wade, Christian, James Angel and another young
14 son of Nathan's were there.

15 And then the -- page 39 of the police report
16 and the timeline there report that Yancey County got the
17 call -- the 911 call at 11:33, and that is consistent with
18 the police report.

19 So no one else mentioned -- following up this
20 question, Ms. Bridenstine -- no one else mentioned to you
21 that that was a -- kind of a long delay?

22 MS. BRIDENSTINE: No one else told us what
23 time it was when they found Mr. Whitson's body and
24 discovered that he was deceased. The only time that I'm
25 aware of is from Nathan Angel, who reported it roughly

1 over -- a little bit -- six months after Mr. Whitson's
2 death.

3 The other information that's present in that
4 particular timeline entry comes from information that was
5 reported in other police reports. So the time just comes
6 from Nathan Angel. The additional information in there
7 comes from other people who spoke to the police as well.

8 MS. NEWTON: So the police report -- the
9 further police reports did not document anything unusual
10 about that or document where that came from, from any other
11 witnesses who were also present?

12 MS. BRIDENSTINE: When the police discovered
13 Mr. Whitson's body, nobody put a time on it or indicated
14 that there was a delay in calling 911.

15 We have obviously heard from people now who
16 have heard the story that there was a delay because
17 Mr. Whitson's body was moved, but nothing like that was
18 reported at the time except that James Whitson, Annette
19 Whitson Greene's brother, said that they had heard rumors
20 and that Annette Whitson Greene was concerned her son's body
21 had been moved.

22 MS. NEWTON: Okay. It was interesting. She
23 said they -- the timeline said they were eating breakfast,
24 not lunch. And, you know, it's closer to 10:40 -- anyway.
25 I just wanted to know if there was anything else related to

1 that.

2 Thank you. Thank you, Judge.

3 MS. SMITH: Are there other questions for
4 Ms. Bridenstine?

5 May she step down?

6 JUDGE LOCK: Yes.

7 (Witness stands down, 4:23 p.m.)

8 (Discussion off the stenographic record.)

9 MS. SMITH: Commissioners, the latest update
10 that I have on the medical records, which I know you have
11 now indicated you may not need, they are still working on
12 those.

13 I can put us a placeholder as Handout 56 in
14 the event that they come in prior to you completing your
15 deliberations, and they will come as Handout 56 if we
16 receive them.

17 It sounds like maybe we'll get something in
18 the next little bit, but the lady who has the answers is
19 missing. So -- we're trying.

20 Thank you all for your patience and attention
21 during this hearing. This concludes the Commission's
22 presentation of this case.

23 Do any commissioners wish to review any
24 additional documentation before we move to deliberations?

25 Outside of Handout 56, which we will accept

1 if it comes in during deliberations, you may only consider
2 what has been presented and provided to you during the open
3 hearing during your deliberations. So if there is anything
4 that you think we haven't presented or provided to you that
5 you would like to consider, now is the appropriate time to
6 let me know.

7 You are now asked to decide whether you
8 conclude there is sufficient evidence of factual innocence
9 to merit judicial review.

10 As a reminder, Mr. Pritchard has been
11 convicted of four separate crimes: Second-degree murder;
12 delivery of a controlled substance Schedule II, which is a
13 Class H felony; possession with intent to sell, manufacture,
14 and deliver a Schedule II controlled substance, which is a
15 Class H felony; and maintaining a vehicle, dwelling, place
16 for controlled substances, which is a misdemeanor.

17 As a body, we are not charged with the review
18 of misdemeanors so you will only consider three of the four
19 convictions. You will not be considering the maintaining a
20 vehicle, dwelling, or place for controlled substance.

21 Furthermore, you have heard evidence in this
22 case regarding both the cause of death, the possession of
23 controlled substances, and the delivery of controlled
24 substances. You are charged with considering all relevant
25 evidence, which includes consideration of the evidence you

1 have heard related to each of these convictions and whether
2 each conviction individually merits judicial review.

3 Please note that a claim of factual innocence
4 in our statute includes the following: A claim on behalf of
5 a living person convicted of a felony in the general court
6 of justice of the State of North Carolina asserting complete
7 innocence of any criminal responsibility for the felony for
8 which the person was convicted and for any other reduced
9 level of criminal responsibility relating to the crime.

10 In this case, Mr. Pritchard has been
11 convicted of three distinct felonies, each of which have
12 their own statutory elements.

13 Each of these crimes deserves your separate
14 consideration and you must ultimately vote on each distinct
15 felony.

16 You have three options as to each felony.
17 You may decide that there is sufficient evidence, and the
18 cases will be referred to a three-judge panel.

19 Mr. Pritchard's convictions resulted from a
20 guilty verdict after a trial; therefore, five of eight
21 commissioners must conclude that there is sufficient
22 evidence of factual innocence to merit judicial review in
23 order for the case to move forward to a three-judge panel.

24 You may decide that there is not sufficient
25 evidence and the case will be closed.

1 You may also instruct the commission staff to
2 continue the investigation and reconvene the hearing at a
3 later date. Again, with the caveat that we will need to
4 reconvene before the end of the year or we need to rehear
5 the case in its entirety.

6 At this time, I would ask Judge Lock to close
7 the hearing to the public for the Commission's confidential
8 deliberations.

9 JUDGE LOCK: All right.

10 Before I do that, let me first make sure that
11 the three commissioners for whom there are alternates
12 attending feel well and are able to proceed with the
13 deliberation.

14 So that would --

15 You feel okay, Mr. Britt?

16 MR. BRITT: Yes.

17 JUDGE LOCK: Ms. Colbert, you feeling well?

18 MS. COLBERT: Yes. Thank you.

19 JUDGE LOCK: Ms. Newton, you are --

20 MS. NEWTON: Mr. Glazier.

21 JUDGE LOCK: Mr. Glazier?

22 All right. One last thing, I know that one
23 of the Commissioners wanted to say something to staff before
24 we adjourn and go into deliberations.

25 MS. SMITH: Do you want that on the record

1 for this hearing?

2 JUDGE LOCK: It's fine for it to be on the
3 record. Yes.

4 MS. SMITH: Okay.

5 JUDGE LOCK: Commissioner Boswell.

6 MR. BOSWELL: I just wanted to express my
7 appreciation for all of the hard work the staff did, as
8 every case I have ever been in, the investigation has been
9 exhaustive. You guys have put forth a very clear,
10 well-organized, well-reasoned case and with all the evidence
11 that anybody could hope for, and I wanted to express my
12 appreciation and my thanks for that.

13 MS. SMITH: Thank you.

14 MR. GLAZIER: Ditto.

15 JUDGE LOCK: All right.

16 With that, then, this hearing is -- the
17 evidence is closed. Deliberations will be closed.

18 The proceeding is recessed until we reach a
19 decision.

20 MS. SMITH: Correct.

21 JUDGE LOCK: Thank you, folks.

22 (Deliberations, 4:30 to 5:53 p.m.)

23 JUDGE LOCK: All right. We will come back to
24 order in the case of State versus Pritchard.

25 The Court will be signing -- the Chair will

1 be signing the following order: An Opinion of the
2 Commission.

3 This matter came on for hearing before the
4 North Carolina Innocence Inquiry Commission (hereafter "the
5 Commission") on December 14 and 15 of 2021 pursuant to NC
6 General Statute 15A-1460 through 1475. After careful review
7 of the evidence presented, the Commission hereby makes and
8 enters the following findings of fact.

9 Number 1: On March 6, 2011, Jonathan Whitson
10 was found dead in his family's home at 410 English Branch
11 Road in Burnsville, North Carolina.

12 2: In the autopsy report dated March 7,
13 2011, Medical Examiner Dr. Brent Hall identified Jonathan
14 Whitson's cause of death as morphine toxicity.

15 Number 3: On April 17, 2014, John Pritchard
16 was convicted after a jury trial of second-degree murder,
17 delivery of a Schedule II controlled substance, possession
18 with intent to manufacture, sell, or deliver a Schedule II
19 controlled substance, and maintaining a vehicle or dwelling
20 place for controlled substances. He received a sentence
21 totaling 170 minimum, 213 months maximum.

22 Number 4: On September 30, 2019,
23 Mr. Pritchard applied to the Commission. Mr. Pritchard
24 submitted a questionnaire and consent form to the
25 Commission. Pritchard asserted his complete factual

1 innocence related to the death of Jonathan Whitson and the
2 Commission began an inquiry pursuant to Article 92, Chapter
3 15A, of the North Carolina General Statutes.

4 Number 5: Throughout this inquiry,
5 Mr. Pritchard has fully cooperated with commission staff, in
6 accordance with NC General Statute 15A-1467(g).

7 6: On December 14 and 15, 2021, the
8 Commission held a full evidentiary hearing in this matter
9 pursuant to NC General Statute 15A-1468.

10 Number 7: During the hearing, the Commission
11 considered testimonial and documentary evidence. The
12 evidence included among other things: (a) 519-page brief
13 provided to the Commission by the commission staff prior to
14 the hearing; (b), supplemental documentation provided prior
15 to and during the hearing, including transcripts of
16 interviews and depositions conducted by commission staff,
17 two audio recordings, 55 handouts, and a PowerPoint
18 presentation; (c), expert reports and evaluations by
19 Dr. Jerri McLemore, Dr. Christena Roberts, Dr. Andy Ewens,
20 Dr. Barbara Wolf, Dr. George Behonick, and Dr. Christopher
21 Holstege; (d) live testimony by commission staff attorneys
22 Julie Bridenstine and Brian Ziegler, additional testimony by
23 John Pritchard, Stephanie Randolph, Dr. Brent Hall,
24 Dr. Jerri McLemore, Dr. Christena Roberts, Dr. Andy Ewens,
25 Dr. Barbara Wolf, Dr. George Behonick, and Dr. Christopher

1 Holstege; (e), affidavits from Attorneys Daniel Hockaday,
2 Christine Vance, Robert Sirianni Junior, and Sofia
3 Hernandez; and, (f), a statement provided by the District
4 Attorney's Office of the 35th prosecutorial district.

5 At this time, I will be asking, since our
6 votes, Commissioners, are of public record, I will be
7 asking -- and because the vote is not unanimous, I'll be
8 asking that Ms. Guice Smith conduct a roll call of the
9 Commission.

10 We will do it as to all three of the felony
11 charges.

12 We will start first with the offense of
13 delivery of a Schedule II controlled substance.

14 When your name is called, please answer yes
15 or no.

16 A "yes" vote means that you do find
17 sufficient evidence of factual innocence to merit judicial
18 review of the claimant's conviction and to refer the matter
19 to a three-judge panel. A "no" vote means that you do not
20 find sufficient evidence of factual innocence to merit
21 judicial review of the conviction or to refer the matter to
22 a three-judge panel.

23 So, again, "yes" means that you would refer
24 the matter on; "no" means no.

25 We'll start first with the charge of delivery

1 of the Schedule II controlled substance.

2 MS. SMITH: Commissioner Colbert.

3 MS. COLBERT: No.

4 MS. SMITH: Commissioner Perry.

5 DR. PERRY: Yes.

6 MS. SMITH: Commissioner Glazier.

7 DR. PERRY: No.

8 MS. SMITH: Commissioner Kimbrough.

9 SHERIFF KIMBROUGH: No.

10 MS. SMITH: Commissioner Boswell.

11 MR. BOSWELL: No.

12 MS. SMITH: Commissioner Britt.

13 MR. BRITT: No.

14 MS. SMITH: Commissioner Lock.

15 JUDGE LOCK: No.

16 MS. SMITH: Commissioner Welch.

17 MS. WELCH: No.

18 JUDGE LOCK: All right. That then would be a
19 vote of seven to one that there is not sufficient evidence
20 of factual innocence to merit judicial review of that
21 charge.

22 Now as to the vote of manufacturing, selling,
23 or delivering a Schedule II controlled substance.

24 Ms. Smith.

25 MS. SMITH: Commissioner Colbert.

1 MS. COLBERT: No.

2 MS. SMITH: Commissioner Perry.

3 DR. PERRY: Yes.

4 MS. SMITH: Commissioner Glazier.

5 DR. PERRY: No.

6 MS. SMITH: Commissioner Kimbrough.

7 SHERIFF KIMBROUGH: No.

8 MS. SMITH: Commissioner Boswell.

9 MR. BOSWELL: No.

10 MS. SMITH: Commissioner Britt.

11 MR. BRITT: No.

12 MS. SMITH: Commissioner Lock.

13 JUDGE LOCK: No.

14 MS. SMITH: Commissioner Welch.

15 MS. WELCH: No.

16 JUDGE LOCK: Again, that is a vote of seven

17 to one that there is not sufficient evidence of factual

18 innocence to merit judicial review of that offense.

19 Now, as to the charge of second-degree

20 murder.

21 Ms. Smith.

22 MS. SMITH: Commissioner Colbert.

23 MS. COLBERT: Yes.

24 MS. SMITH: Commissioner Perry.

25 DR. PERRY: Yes.

1 MS. SMITH: Commissioner Glazier.

2 MR. GLAZIER: Yes.

3 MS. SMITH: Commissioner Kimbrough.

4 SHERIFF KIMBROUGH: Yes.

5 MS. SMITH: Commissioner Boswell.

6 MR. BOSWELL: Yes.

7 MS. SMITH: Commissioner Britt.

8 MR. BRITT: Yes.

9 MS. SMITH: Commissioner Lock.

10 JUDGE LOCK: No.

11 MS. SMITH: Commissioner Welch.

12 MS. WELCH: No.

13 JUDGE LOCK: All right.

14 That vote, then, is six to two; that is, six
15 to two, there is sufficient evidence.

16 So the opinion will contain the following
17 findings, and I'm picking up at paragraph 8.

18 After carefully considering this evidence,
19 the Commission has concluded by a vote of seven to one that
20 there is not sufficient evidence of factual innocence to
21 merit judicial review of Pritchard's convictions of delivery
22 of a Schedule II controlled substance and possession with
23 the intent to manufacture, sell, or deliver a Schedule II
24 controlled substance, Yancey County case number 11 CRS 305.

25 Paragraph 9: The Commission has further

1 concluded by a vote of six to two that there is sufficient
2 evidence of factual innocence to merit judicial review of
3 Pritchard's conviction of second-degree murder in Yancey
4 County case number 11 CRS 304.

5 Finally, paragraph 10: As to the charge of
6 maintaining a vehicle or dwelling place for purposes of
7 keeping controlled substances, that conviction is a
8 misdemeanor; and therefore, it is not statutorily eligible
9 for review by the Commission.

10 Wherefore, pursuant to NCGS 15A-1468(c),
11 Yancey County case number 11 CRS 305 is now closed.

12 Pursuant to NCGS 15A-1469(a), and as chair of
13 the Commission, the undersigned refers Yancey County case
14 number 11 CRS 304 to the Honorable Gary M. Gavenus, senior
15 resident superior court judge for North Carolina Judicial
16 District 24, and respectfully issues -- sorry -- and
17 respectfully requests that the Chief Justice of the Supreme
18 Court of North Carolina appoint a three-judge panel and
19 issue commissions to its members to convene a special
20 session of the Superior Court in Yancey County to hear
21 evidence relevant to the Commission's recommendation.

22 A copy of this opinion shall be filed with
23 the Clerk of Superior Court of Yancey County and delivered
24 to Judge Gavenus, the District Attorney's Office for the
25 Prosecutorial District 35, and to counsel for the convicted

1 person.

2 This, the 15th day of December, 2021.

3 It will be signed Thomas H. Lock.

4 All right. Is there any further business
5 before the Commission?

6 MS. SMITH: No, Your Honor.

7 JUDGE LOCK: If not, this concludes the
8 business of the Commission. The hearing of State versus
9 John Pritchard, 11 CRS 304 and 305 from Yancey County is now
10 adjourned.

11 Thank you, folks.

12 (Hearing concluded, 6:03 p.m.)
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1 STATE OF NORTH CAROLINA)
2 COUNTY OF WILKES)

3 CERTIFICATE

4 I, Victoria L. Pittman, BA, CVR-CM-M, the officer before
5 whom the foregoing proceeding was held, do hereby certify that
6 said hearing, pages 1 through 555 inclusive, in two volumes, is
7 a true, correct, and verbatim transcript of said proceeding.

8 I further certify that I am neither counsel for,
9 related to, nor employed by any of the parties to the action in
10 which this proceeding was heard; and, further, that I am not a
11 relative or employee of any attorney or counsel employed by the
12 parties thereto, and am not financially or otherwise interested
13 in the outcome of the action.

14 Dated at Elkin, North Carolina, the 4th day of February,
15 2022.

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17
18 

19 _____
20 Victoria L. Pittman, BA, CVR-CM-M
21 AOC-Approved Per Diem Reporter

22
23 Date Requested: 12/15/21
24 Date Delivered: 02/04/22
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