

State v. Kenneth Manzi Kagonyera
00 CRS 65086
Buncombe County

State V. Robert Wilcoxson, III
00 CRS 65088
Buncombe County

AFFIDAVIT & REPORT
OF JOHN C. FLORY, JR.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
00 CRS 065086; 00 CRS 065088

STATE OF NORTH CAROLINA)
)
 v.)
)
 KENNETH M. KAGONYERA;)
 ROBERT WILCOXSON III)
 _____)

**AFFIDAVIT
OF
JOHN C. FLORY, JR.**

The undersigned, having first been duly sworn, deposes and says the following:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.

2. On February 25, 2011, North Carolina Innocence Commission Staff Attorney Jamie Lau contacted me regarding the above-captioned case. Mr. Lau asked if I would be willing to review screenshots obtained by the Innocence Commission and to identify the vehicle appearing in the screenshots.

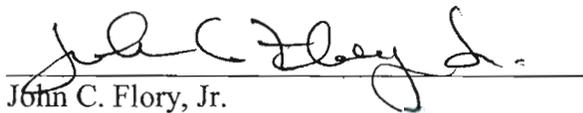
3. I have written extensively about automobiles for the past 25 years. My writings include *American Cars, 1960-1972*, published by McFarland & Company in 2004, and *American Cars, 1946-1959*, published by McFarland & Company in 2008. Currently, my third reference book, *American Cars, 1973-1980*, is in the editing and review stage and is expected to be released by McFarland & Company by the end of 2011 or early 2012.

4. On March 8, 2011, I entered into an agreement with the Innocence Commission to provide my opinion as to the make, model, and model year of the vehicle appearing in the screenshots, and to provide an opinion as to whether it is possible for said vehicle to be a 4-door 1983 Chevrolet Impala.

5. I have reviewed several screenshots and a DVD video provided to me by Mr. Lau. The attached report, titled *Report for the North Carolina Innocence Inquiry Commission* and dated March 31, 2011, is my opinion of the make, model, and model year of the vehicle appearing in the screenshots and DVD. Additionally, the attached report includes my opinion of whether the vehicle shown could be a 4-door 1983 Chevrolet Impala.

FURTHER THE AFFIANT SAYETH NOT

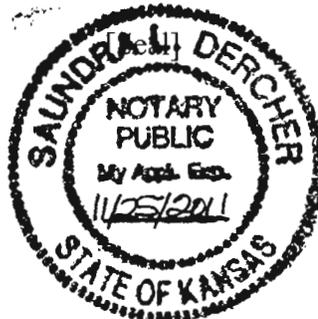
This the 4 day of April, 2011.


John C. Flory, Jr.

Sworn to and subscribed before me this 4th day of April, 2011


Notary Public

My Commission Expires: Nov 25, 2011



John C. "Kelly" Flory, Jr.

Background and Qualifications:

My background and qualifications for making these conclusions are as follows (earliest to most recent):

1. Sunflower Region CHVA (Contemporary Historical Vehicle Association) Starterator – I have written numerous short historical articles between 1983 and 1995, and I am currently calendar editor and provide a monthly special feature titled "75 years ago on the Action Era Highway". I've been a member of this automobile club for 28 years.
2. CHVA National, Action Era Vehicle Magazine – I wrote and submitted articles quite regularly between 1989 and 1999, on the new cars being officially recognized by the club, which at the time was 25 years old or older. I was recognized for the following awards on some of these articles:
 - 1989 Best Historical article award for – "The 1964 automobiles introduced"
 - 1990 Best Historical article award for – "The Roaring '65's".
 - 1992 Best Historical article award for – "Welcome to 1967"
 - 1995 Best Historical article award for – "The 1973 automobiles"
 - 1999 Best Historical article award for – "1949 – The Big Three's New Post-War Cars"
3. After 1999, my writing has been for a wider audience with several detailed reference books I have written which are published by McFarland & Company, Publishers:
 - "American Cars, 1960-1972", published in 2004
 - "American Cars, 1946-1959", published in 2008In the editing and review stage is the following:
 - "American Cars, 1973-1980", to be published by end of 2011, or early 2012.
 - Future projects are under discussion, to include trucks, pre-World War II cars, and mid-20th century cars imported to the United States.

Request:

1. *Provide opinion of the make, model, and year of the vehicle shown in pictures and DVD received from commission.*
2. *Provide opinion on the possibility that the vehicle shown is a 4-Door 1983 Chevrolet Impala or a 2-Door 1971 Oldsmobile Cutlass Supreme.*

Opinion:

1. In my review of the still pictures, I initially noticed the car has the general shape of a General Motor's design of the early 1970's, due to the angle of the rear roof area, and the shape of the rearmost portions of the car. I could also determine that it is a two-door hardtop with the rear window up, as there is a reflection off the chrome-trimmed edge where it meets the door window as the car was leaving from its parked position. From the size of the car it appears to be a mid-size model, and I noted the round top wheel openings, which were an exclusive feature of the Oldsmobile mid-size cars in the 1968 to 1972 time frame, among other GM models that had a flatter top to the wheel opening. This analysis leads me to an Oldsmobile Cutlass. Wheel openings are marked as #1 and #3 in the picture attachments "Image 5e described areas 1 and 2 highlighted.jpg", and "Image 7e described areas 3 and 4 highlighted.jpg". The more upright trailing vertical edge of the rear side window (marked in area #2), the flat to slightly concave look of the rear window, and the appearance of a slight "kick up" under the rear side window (to the right of, and slightly above marked area #3), makes it a Supreme, as all other Cutlass hardtops had more of a "fastback", or tapered look, and a more oval trailing edge to the side window. Another identifying feature that leads me to the Cutlass is the vinyl top configuration, which helps to narrow the year 1970, 1971 or 1972. Also the placement of the side marker lights low on the front fender and rear quarter, and near the bumpers were a key indicator (front marked within area #1, and the rear quarter light marked in area #4). Without a better view of the front end, it is difficult to narrow down a year, as the 1970, 1971 and 1972 models look similar. However, unless it has been reworked or restored to non-original specifications, I believe that this car is a 1971 or 1972 Oldsmobile Cutlass Supreme 2-Door Hardtop, based on the appearance of the vinyl top. 1970 and some 1971 models offered what GM called a "halo-top" meaning that the vinyl top stopped about an inch from the edge of the door top, with a chrome trim piece separating it from a body color paint area and the chrome trimmed rain trough (or channel) above the windows, with the approximately 1" wide area of paint running across the top of the door and rear window, then down the back of the rear window. Some 1971 models, and

all 1972 models offered a full-vinyl top, which means that the vinyl top covered the roof completely to the rain trough area. Across the three model years of the Cutlass Supreme in this iteration, 1970, 1971 and 1972, there is very little difference to distinguish the years from the side-view, so the car I'm describing in my report is most likely a 1971 or 1972, for two reasons. First the vinyl top design as mentioned above, and secondly that the 1970 has a bright chrome molding running low on the body between the wheels, which is not seen on the car in question. See picture attachment "1970 Oldsmobile Cutlass Supreme 2-Door Hardtop – b-w.jpg". Therefore, I conclude that the car in question is either a 1971 or 1972 Oldsmobile Cutlass Supreme 2-Door Hardtop.

From the DVD, several additional points are worth noting. At approximately 23:29:50 to 51 seconds, the passenger side door is open, and it appears that the window is up, but there is not a metal frame around the door, indicating a hardtop (frameless glass) body style. The sedan type door window is described under bullet point #2 that follows. On the DVD at approximately 23:31:08 to 11 seconds, the driver's side door is open, and I noted the same appearance with reflection off the glass, and it does not appear to have a window frame. Also, I noted the length of the driver side door looks longer than a typical sedan. I obtained rough measurements from some local collector's cars, and found that an Oldsmobile Cutlass Supreme 2-Door Hardtop door of the same vintage is about 10" longer than an Impala 4-Door sedan front door similar to the 1983 model in question.

2. Included with this report is a scan of a factory picture from a sales brochure for a 1983 Chevrolet Impala 4-Door Sedan. This picture is attached in "1983 Chevrolet Impala 4-Door Sedan.jpg". It is scanned in black and white, rather than in color, to make a comparison of the features easier. Clearly, the Impala sedan has a center pillar between the front and rear doors, that does not appear in the still pictures (see marked area #2 in picture attachment "Image5e described areas 1 and 2 highlighted.jpg"), the DVD, nor in the postcard picture attached of the 1972 Oldsmobile Cutlass Supreme 2-Door Hardtop. The 1983 sedan has a chrome-trimmed, body color frame around the windows on both the front and rear doors.

Notice also in the attachment, "1983 Chevrolet Impala 4-Door Sedan.jpg", that the front side marker light is vertical, and very near to the headlights, whereas the Cutlass has a horizontal side marker light as shown in area #1 of attachment "Image5e described areas 1 and 2 highlighted.jpg". Also notice the rear side marker light is vertical and above the rear bumper, not below or in-line with the bumper as in marked area #4 in picture attachment "Image7e described areas 3 and 4 highlighted.jpg". All of these differences in

features result in my opinion that the car in the still pictures and video are definitely not a 1983 Chevrolet Impala 4-Door Sedan.

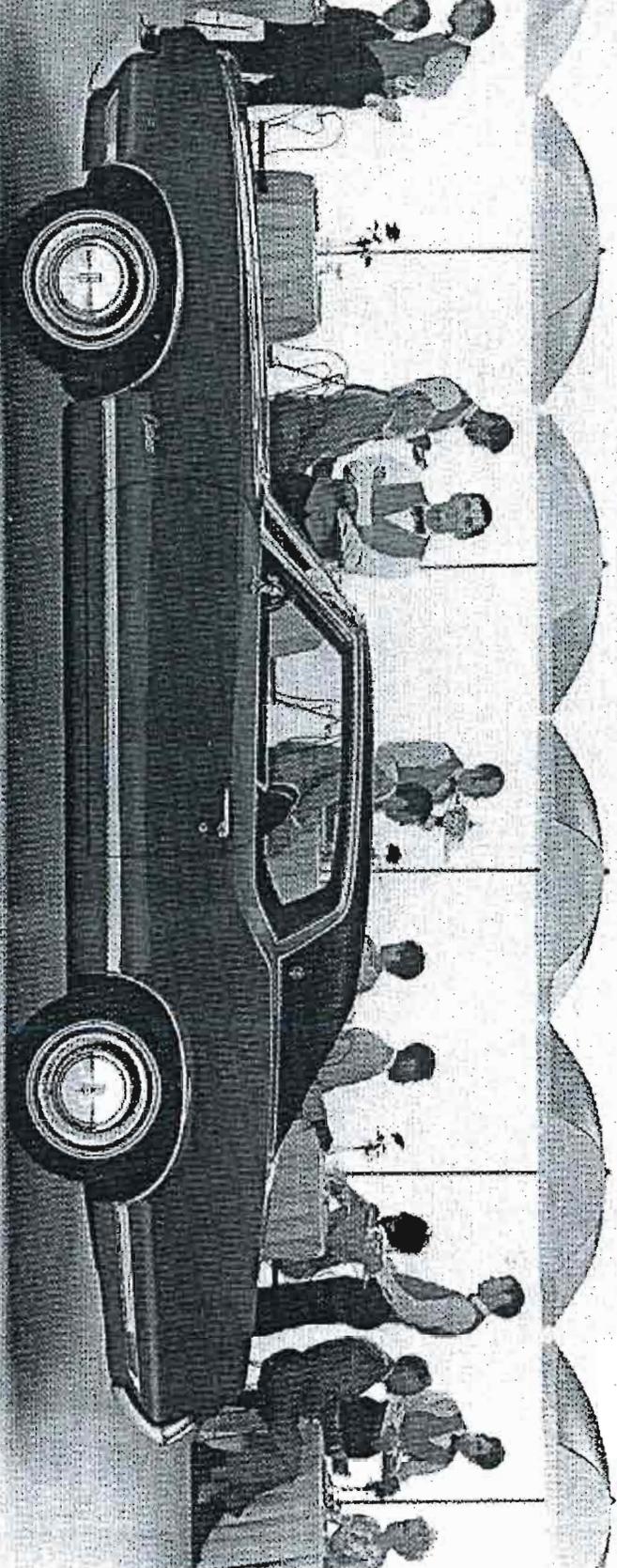


Image 5e described areas 1 and 2 highlighted.doc

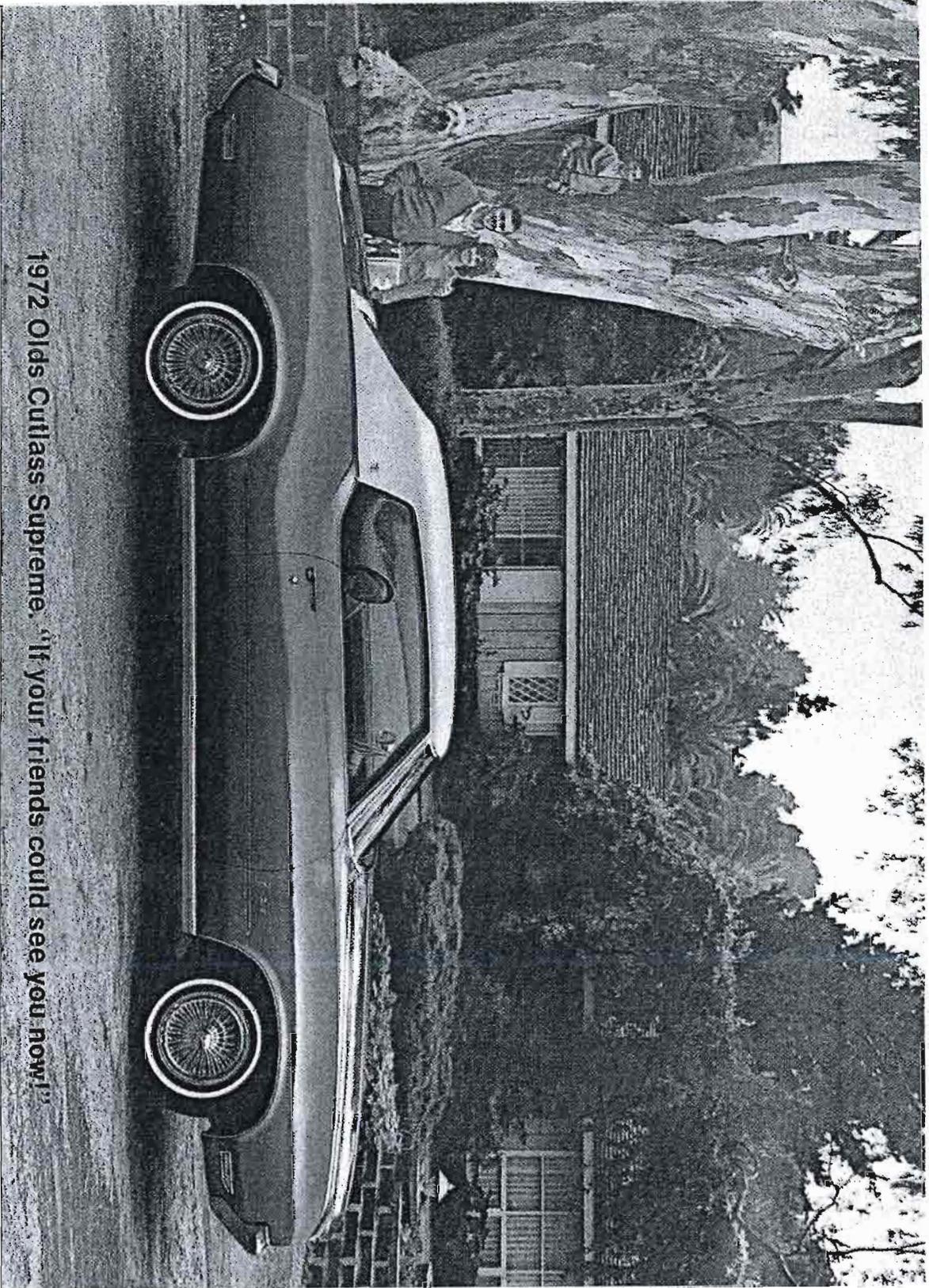


Image 7e described areas 3 and 4 highlighted.doc

Wouldn't it be nice to have an Escape Machine?

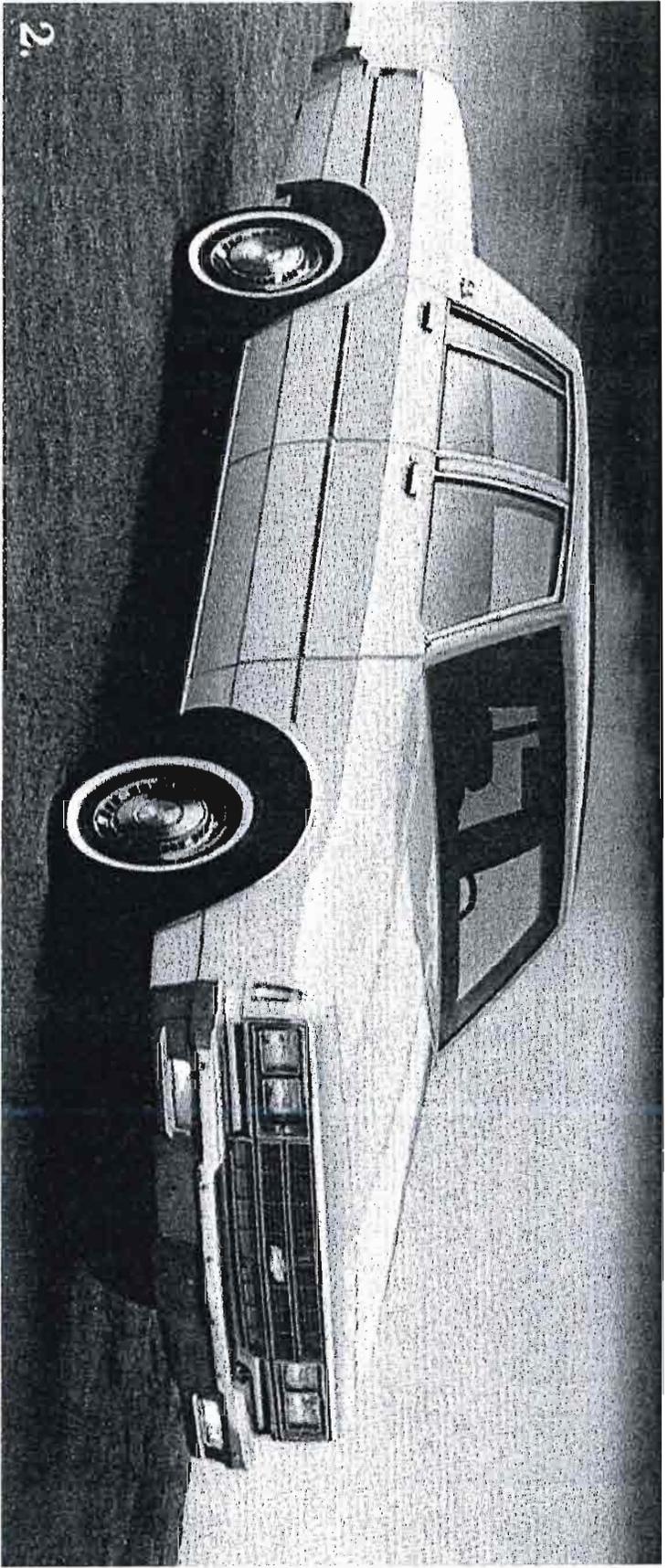


1970 Oldsmobile Cutlass Supreme 2-Door Hardtop – b-w.doc



1972 Olds Cutlass Supreme. "If your friends could see you now!"

1972 Oldsmobile Cutlass Supreme 2-Door Hardtop – b-w.doc



1983 Chevrolet Impala 4-Door Sedan.doc