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A P P E A R A N C E S (Continued)

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1           JUDGE SUMNER:  welcome, commission members,  
2           to the North Carolina Innocence Inquiry  
3           Commission hearing this morning.  And before we  
4           get started what I want to do is, for the  
5           record, just have each commissioner and  
6           alternate commissioners that are present state  
7           their name for the record.  I'm going to start  
8           to my right with Mr. Smith.

9           MR. SMITH:  I'm Wade Smith, I live in  
10          Raleigh.

11          MS. CHILTON:  Mel Chilton, I live in  
12          Clayton.

13          MS. JOHNSON:  Susan Johnson, Currituck.

14          MR. JENKINS:  Heath Jenkins, Gaston County,  
15          and Stanley.

16          MS. ASHENDORF:  Linda Ashendorf, Charlotte.

17          MS. SURGEON:  Diane Surgeon, Lumberton.

18          MS. GREENLEE:  Jackie Greenlee, Archdale.

19          MR. BECTON:  Good morning.  Charles Becton,  
20          Durham.

21          MR. VICKORY:  Branson Vickory, Wayne  
22          County.

23          JUDGE SUMNER:  And I am Quentin Sumner, I  
24          am the chairman of this commission.  And before

1 we get started I want to recognize our newest  
2 alternate member to this commission, Ms. T.  
3 Diane Surgeon.

4 MS. SURGEON: Thank you.

5 JUDGE SUMNER: welcome aboard. And I will  
6 recognize also Ms. Linda Ashendorf, an alternate  
7 member. We're very happy to have you folks with  
8 us this morning.

9 We'll be hearing the cases of State vs.  
10 Kenneth Kagonyera and Robert Wilcoxson, file  
11 numbers 00-CRS-65086, and 00-CRS-65088  
12 respectively. They were both convicted of  
13 second degree murder in Buncombe County.

14 This hearing has been opened to the public  
15 pursuant to North Carolina General Statute 15A-  
16 1468, subsection (a).

17 Let me just remind, for the record, for the  
18 commissioners, that during this hearing I would  
19 ask that you, in order to assist our court  
20 reporter, to keep your voices up at all times.  
21 She would greatly appreciate that fact. I want  
22 to also make a formal inquiry at this time that  
23 -- note for the record, first of all, that there  
24 are eight voting members of the commission

1 present as required by statute. Further, I'd  
2 like to make a formal inquiry of each  
3 commissioner, if there's any one of you who  
4 might need to recuse yourself pursuant to  
5 Rule 6(B), subsection (1) of our Rules and  
6 Procedures. Is there any such recusal at this  
7 time?

8 (No audible response.)

9 JUDGE SUMNER: None being noted, it's  
10 deemed that each commissioner has no conflict at  
11 this time and will be able to participate at  
12 this point.

13 I'd also like to inquire, make inquiry of  
14 each commissioner whether or not any of you have  
15 had any independent or conducted any independent  
16 investigation of this matter, which would be  
17 prohibited by our Rule 6(B), subsection (3).

18 (No audible response.)

19 JUDGE SUMNER: None noted, all  
20 commissioners are deemed at this point to be  
21 unbiased and independent commissioners at this  
22 point.

23 I note again for the record all of our  
24 alternate commissioners are free to participate,

1 to be at this hearing. However, you may not be  
2 involved in the discussion or vote on the final  
3 matter at the resolution or, excuse me, at the  
4 conclusion of our hearing, but you are welcome  
5 to remain and serve.

6 At this time I want to recognize and turn  
7 over our hearing to Ms. Kendra Montgomery-Blinn,  
8 who is the executive director of our commission,  
9 Ms. Montgomery-Blinn.

10 MS. MONTGOMERY-BLINN: Thank you, Your  
11 Honor. Good morning, commissioners, and thank  
12 you for being here. I'd like to just say a  
13 couple things for the record as well before we  
14 begin the hearing. I'd like to note that all  
15 the parties and agencies that we needed to work  
16 with were cooperative, and we appreciated their  
17 cooperation during our investigation. This  
18 includes the District Attorney's office, the  
19 Sheriff's Department, defense attorneys, State  
20 Bureau of Investigation, and the Asheville  
21 Police Department.

22 I'd like to say a special thank you to  
23 Sheriff Van Duncan of the Buncombe County  
24 Sheriff's Department. He was extremely helpful

1 in our investigation, and he gave us complete  
2 access to his department, his staff, and his  
3 records.

4 North Carolina General Statutes 15A-1468(d)  
5 says, evidence of criminal acts, professional  
6 misconduct, or other wrongdoing disclosed  
7 through formal inquiry of the Commission or  
8 Commission proceeding shall be referred to the  
9 appropriate authority.

10 At the close of this hearing I will be  
11 asking the commission to consider whether any  
12 referrals need to be made in this case.

13 You are going to hear some accusations made  
14 by individuals during our investigation about  
15 the district attorney. The elected district  
16 attorney, Ron Moore, handled this case for the  
17 state and is still serving as the elected  
18 district attorney and he represented the state  
19 during our investigation. Because of this, we  
20 did not attempt to depose Mr. Moore or interview  
21 him in relation to these allegations. We did  
22 not want to make him a witness in this matter  
23 and require that he be automatically recused  
24 should the case be referred to three-judge

1 panel.

2 I just ask you, as to hear this case, to  
3 please keep in mind that the district attorney  
4 has not had an opportunity to respond to these  
5 allegations, and we only investigated them so  
6 far as they related directly to the innocence  
7 claim.

8 You will also hear accusations and claims  
9 of wrongdoing against other agencies and  
10 individuals. We were able to interview more of  
11 these agencies and individuals and give them an  
12 opportunity to respond, but again, we only  
13 investigated them so much as they related  
14 directly to our innocence investigation.

15 This case was investigated under a  
16 National Institute of Justice federal grant.  
17 Eligible expenses were paid for by the grant  
18 rather than state funds.

19 Also, North Carolina General Statute 15A-  
20 1466 requires the Commission to give priority to  
21 cases in which the convicted person is  
22 incarcerated solely for the crime for which he  
23 or she is claiming factual innocence. Kenneth  
24 Kagonyera pled guilty to this crime, and his

1 plea was consolidated with other unrelated  
2 charges for one sentence. Robert Wilcoxson pled  
3 only to this crime and is not serving for any  
4 other offenses. This case has never been  
5 prioritized in this office until the DNA results  
6 were returned in November of 2010, and then we  
7 began moving this case towards hearing.

8 I'd just like to remind you as we begin the  
9 hearing what your standard of review is. This  
10 comes directly from our statute 15A-1468, sub (c).  
11 In cases where the person entered and was  
12 convicted on a plea of guilty, if all eight  
13 voting members of the Commission conclude there  
14 is sufficient evidence of factual innocence to  
15 merit judicial review, then the case shall be  
16 referred. So I'll just ask you to keep your  
17 standard of review in mind, and I'll show this  
18 slide again when we're ready for deliberation.

19 All right, you all received the brief ahead  
20 of time. I know it was rather lengthy. The  
21 brief was meant to cover all that was known  
22 about this case before our investigation. I've  
23 got a couple of corrections to the brief, and  
24 then we'll see if there are any questions.

1           The first one, if you'll turn in your  
2           briefs to page 6. And if anybody doesn't have a  
3           copy of the brief, please raise your hand.  
4           We've got some extras. All right, on page 6 the  
5           pending release dates for the claimants needs to  
6           be added there. For Mr. Kagonyera, his release  
7           date, according to the Department of  
8           Corrections, is November 21, 2012, and for  
9           Mr. Wilcoxson, his release date, according to  
10          the Department of Corrections, is December 4,  
11          2014.

12          And when you're ready, if you will turn to  
13          page 13. Page 13 is the time line, and there's  
14          just one thing that's out of order. We're going  
15          to hand out a new page 13 for you, but I'll tell  
16          you, in case you've got notes on your page 13  
17          and don't want to replace it. I think a new one  
18          is going around now already, is that right?  
19          Have you sent it around? Okay. You can just  
20          replace your page 13 if you would like to, but  
21          what it is is the date from Kagonyera's  
22          application to the Commission was the correct  
23          date, it was just out of order chronologically.  
24          And also, we needed to add, I did not put in

1 there the CODIS hit on the bandana to  
2 Bradford Summey. That wasn't added to your time  
3 line. So that's March 28, 2007. It's in the  
4 new one that's going around, but March 28, 2007,  
5 was the date that there was a CODIS hit on that  
6 bandana that matched Bradford Summey.

7 And then the next thing just to note in  
8 your brief, you don't even need to turn to it if  
9 you don't want to, there's a blank page on page  
10 89. That's an accident. You're not missing any  
11 information, it's just an extra blank page.

12 All right, and one more thing to add to  
13 your brief, you can just sit and relax, you  
14 don't need to turn to a page. This just didn't  
15 make it into the brief. But in the brief I  
16 discussed and described Mr. Kagonyera's Motion  
17 for Appropriate Relief. Robert Wilcoxson also  
18 filed a Pro Se Motion for Appropriate Relief  
19 right after he was sentenced on October 23,  
20 2002. That's not included in your brief. You  
21 can make a note of it if you like or just  
22 listen. We're going to send it around. We're  
23 sending a handout of the Motion for Appropriate  
24 Relief around. I think you've already got it.

1 The quick summary is he was claiming ineffective  
2 assistance of counsel, that his guilty plea was  
3 unlawfully induced, and that his confession was  
4 coerced or illegally induced. His motion was  
5 denied on November 21, 2002. So that's just a  
6 supplement for you to have for your brief.

7 MS. ASHENDORF: What date was it filed?

8 MS. MONTGOMERY-BLINN: October 23, 2002.

9 All right, are there any questions about  
10 the brief or the materials that were contained  
11 in the brief?

12 (No audible response.)

13 MS. MONTGOMERY-BLINN: We're not going to  
14 go through and re-summarize the brief. We will  
15 obviously be hitting on some of the material in  
16 there and how it affects and relates to the new  
17 evidence, but this hearing will only be covering  
18 the new evidence. Any questions?

19 (No audible response.)

20 MS. MONTGOMERY-BLINN: And if you come up  
21 with questions as we go, of course, please just  
22 interrupt me and ask me or the witnesses.

23 Okay, the commission investigation, this  
24 was a lengthy and extensive investigation on

1     behalf of the commission. We did a number of  
2     different things. The commission staff  
3     conducted file reviews of the district  
4     attorney's file, the Sheriff's file, the State  
5     Bureau of Investigation file, the defense  
6     attorneys' files, the Clerk's Office, and  
7     Prisoner Legal Services files.

8             We interviewed the defense attorneys of the  
9     claimants and the and codefendants who were  
10    willing to allow us to interview their defense  
11    attorneys. We conducted DNA testing or we  
12    caused to have DNA testing conducted at multiple  
13    agencies. There was other forensic analysis  
14    done in this case that you'll be hearing about.  
15    We conducted multiple witness interviews as well  
16    as some depositions, and we'll be playing  
17    portions of the depositions today and  
18    summarizing the witness interviews for you  
19    today. We conducted multiple law enforcement  
20    interviews as well as some depositions.

21            Areas of interest were mapped. We'll be  
22    handing out those maps today and showing them to  
23    you. And we consulted with numerous experts,  
24    and you've already had one of those expert's

1 opinions or report sent to you, and we've got  
2 another one that we'll be doing today. Any  
3 questions at this point?

4 (No audible response.)

5 MS. MONTGOMERY-BLINN: All right, we're  
6 going to move right into the evidence then.  
7 we're going to talk about the eyewitness and  
8 victim interviews that we conducted in this  
9 case. We were able to locate the people that  
10 were in the home during the invasion. That was  
11 Shawn Bowman, who was the victim's son; wanda  
12 Holloway, who was Shawn Bowman's girlfriend; and  
13 Tony Gibson, who was a family friend and I  
14 believe a cousin of Shawn Bowman.

15 We did ask Mr. Bowman to be here today,  
16 Shawn Bowman, and asked him if he could come  
17 today. He did speak to us, but he has not been  
18 able to come today. We subpoenaed him to  
19 testify, but he's not picked up his subpoena or  
20 returned our calls from the last couple of  
21 weeks, and his family has been unable to contact  
22 him on our behalf.

23 So what we're going to do is we're going to  
24 have Mr. Lau, our staff attorney who was

1 assigned as lead on this case, testify. And  
2 I'll just remind you that Mr. Bowman is the son  
3 of the victim. He was present during the murder  
4 and he fled the scene before the deputies  
5 arrived. He was located and interviewed more  
6 than a month after the homicide. He was located  
7 and interviewed on October 23, 2000. The  
8 interviews that were conducted by the sheriff's  
9 department are on pages 59 through 62 of your  
10 brief, if you would like to look at them, and we  
11 also have a handout that's going to go around.  
12 With all the witnesses we try to give you their  
13 criminal information, their criminal records.  
14 So that's going to come around while we're  
15 talking.

16 All right, I call Mr. Lau to testify.

17

18 THEREUPON,

19 Jamie Lau,

20 Having first been duly

21 Sworn, was examined and

22 Testified as follows:

23 EXAMINATION BY MS. MONTGOMERY-BLINN:

24 Q. What is your name?

1 A. Jamie Lau.

2 Q. Where are you employed, Mr. Lau?

3 A. With the North Carolina Innocence Commission.

4 Q. And what was your -- were you assigned as lead  
5 investigator/staff attorney on the Kagonyera and  
6 Wilcoxson case?

7 A. Yes, I was the lead investigator on this case.

8 Q. As part of your investigation did you have cause  
9 to speak to Shawn Bowman?

10 A. I did speak with Mr. Bowman.

11 Q. Can you tell us about how you located  
12 Mr. Bowman?

13 A. I sent some letters to the house, which is the  
14 house on Church Road in Fairview, the same house  
15 where this homicide occurred. In response to  
16 one of those letters, his mother, Alma Bowman,  
17 contacted me along with his sister, Evita  
18 Bowman. During that phone call they gave me  
19 contact information for Mr. Bowman. I was able  
20 to call him on the phone and speak with him at  
21 that time.

22 Q. What date was it that you spoke to Mr. Bowman on  
23 the phone?

24 A. January 12, 2011 was the first day that I spoke

1 with Shawn Bowman.

2 Q. And can you tell us about that conversation?

3 A. To begin the conversation I explained to him who  
4 the commission was, a bit about what the  
5 commission does, and then I asked him if he'd  
6 mind telling us, telling me what he remembered  
7 from that night. He told me that they were  
8 watching a football game. It was himself, Tony  
9 Gibson, Wanda Holloway, and his father were at  
10 the home. He said that Wanda had brought the  
11 dogs outside. One of the dogs was barking, and  
12 when the dog came back into the house he asked  
13 Wanda what's wrong with that dog, or something  
14 to that extent. I'm not 100 percent sure at  
15 this point, but he said that somebody said that,  
16 did the dog see a bear? That was one thing that  
17 he remembered saying.

18 The door was left open when the dogs came  
19 in, the front door to the house, so only the  
20 screen or the storm door was closed.  
21 Individuals ran in. He stated to me that him  
22 and Kenny were tussling, meaning Mr. Kagonyera.  
23 That Detroit, Mr. Wilcoxson, shot through the  
24 bedroom door, that his daddy was shot, and then

1 the individuals took off running.

2 Q. How many people did he say he saw?

3 A. He said they -- four came in. And he was quite  
4 sure that he saw four, one in the kitchen, one  
5 at the door, one in the doorway, and one was  
6 telling Mr. Gibson to get down on the floor.  
7 Then he said that, you know, in the heat of the  
8 moment he couldn't count. So I asked him how  
9 many he personally saw, and he said three or  
10 four.

11 Q. Did you ask him about how sure he was of the  
12 identification of these individuals?

13 A. Yeah. Well, he had told me that he and Kenny  
14 were tussling and that Detroit, Robert  
15 Wilcoxson, had shot through the door. So I did  
16 ask him if he was sure that it was these  
17 individuals. He told me he was. He knew these  
18 individuals from the street, and it was the same  
19 vehicle. And I asked him what he meant by same  
20 vehicle, and he said it was the same vehicle as  
21 on the video. They had a video from a  
22 convenience store, and it was the same vehicle.  
23 So I asked him if he ever had seen the  
24 surveillance video from that convenience store

1           that night, and he told me he had not. So it  
2           was unclear how he knew it was the same vehicle  
3           that was on that security video.

4       Q.    Okay. And were you able to clarify when he's  
5           talking about recognizing them and naming them,  
6           if that was from that night or from later  
7           information that he gathered?

8       A.    I attempted to clarify that with him, and he  
9           told me that they showed him a lineup, and he  
10          picked them out immediately, and at that point  
11          in time he didn't even know that they had  
12          arrested these subjects. So I asked him, you  
13          know, because he knew these individuals from the  
14          streets, as he had said earlier with regard to  
15          knowing the vehicle and having seen these  
16          individuals previously. So I asked him if he  
17          recognized them that evening and then was able  
18          to make that lineup identification as a result  
19          of that or if it was the word on the street, if  
20          he learned later that these were the individuals  
21          before he did that lineup. And I think his  
22          words are probably best here with regard to  
23          that, and I'll just begin reading from a  
24          transcript of our conversation at page 12.

1 Q. Please do.

2 A. I said, "I'm just trying to figure out, Shawn,  
3 and I don't know if you maybe not necessarily  
4 have the answer to this, I just want to know  
5 when did you become convinced that these were  
6 the individuals who did it, before the police  
7 talked to you? When did you know that these  
8 were the individuals that did it? When, was it  
9 that night, almost immediately? Did you say  
10 that was Kenny, Robert, and Man, or was it when  
11 you heard the word on the street? When did you  
12 become certain that these were the guys who did  
13 it?

14 Shawn Bowman, when, when I knew, I mean,  
15 certain knew?

16 Yeah, when were you convinced these were  
17 the guys who did it?

18 After I just -- you know, like, after  
19 everything that came up, the car, that's the  
20 same car I see -- I knew who drive the car. I  
21 had already done seen these guys a couple of  
22 days ago, you know. One of the guys that they  
23 was hanging out with, he kept trying to call me  
24 that day, and I kept saying, why is this guy

1 calling me? Like, what's going on? You know.  
2 And I'm like, what the world, you know. And  
3 then a couple of minutes, I guess I'd say about  
4 an hour later, here they go trying to rob in my  
5 house, you know. And then I never seen the  
6 tape, and I don't know who else, who all they  
7 showed the tape to or the video of them getting  
8 out of the car at the gas station, pumping the  
9 gas. I'm not -- but they do got one."

10 I attempted, I continued to attempt to  
11 figure out whether or not he recognized them  
12 that night, and finally I say to Shawn, "I don't  
13 want to put words in your mouth, but from what  
14 I'm hearing you say, the night when they burst  
15 into your home you didn't specifically recognize  
16 them right away, but after all this was going  
17 down and you thought about it, you saw the car  
18 and all that stuff, you knew it was these guys,  
19 is that right?

20 Exactly.

21 Okay."

22 Shawn Bowman then says, "when shit was going  
23 down you ain't trying to say, oh, let me -- you  
24 know I'm trying to get at whatever I can

1           remember in there, but when you've got guns  
2           pointing in your face and you're trying to  
3           tussle and, you know, I ain't just like -- and  
4           you know, ain't no fucking robbers going, going  
5           to just come in with they face like that."

6       Q.    Okay, so that was just a little bit confusing.  
7           Just to clarify, you understand that Mr. Bowman  
8           -- what is your understanding of Mr. Bowman's  
9           recognition of these people?

10     A.    That that individual night he didn't identify  
11           these individuals specifically.  However, after  
12           he heard the word on the street, learned about  
13           the security video and the car that was alleged  
14           to have been in that security video, which he  
15           hadn't seen, he made the connection that it was  
16           this group of individuals.

17     Q.    All right.  Did you ask him -- we've divided up  
18           the people in this case to group A and group B.  
19           Group B is the individuals that were charged,  
20           investigated, and convicted, and group A is  
21           another group.

22                           MS. MONTGOMERY-BLINN:  And  
23           commissioners, this is in the first page of  
24           your brief is a cheat sheet with that.

1 Q. Did you ask Mr. Bowman if he knew any of the  
2 people from group A, the other group, the not  
3 charged group?

4 A. I did.

5 Q. And what did he say?

6 A. He said that he knew Lacy Pickens from group A.

7 Q. Okay.

8 A. And just for the commissioners, group A is  
9 Lacy Pickens, Brad Summey, and Robert  
10 Rutherford.

11 Q. Thank you. All right, were you able to speak to  
12 Mr. Bowman again?

13 A. I did. I spoke with Mr. Bowman a second time.  
14 He was with his mother and some other members of  
15 the family on March 11, 2011.

16 Q. And were any other members of the commission  
17 staff present with you?

18 A. Ms. Smith, Lindsay Guice Smith was present.

19 Q. Okay. And what did Mr. Bowman tell you that  
20 night?

21 A. That afternoon he restated what had happened the  
22 night of the murder. We had asked him about his  
23 meeting with the Buncombe County Sheriff's  
24 Office. Specifically at that point in time we

1 had spoken with the lead detective or one of the  
2 co-lead detectives on this case from the  
3 Buncombe County Sheriff's Office who had told us  
4 that Shawn Bowman was sure of his identification  
5 of Kagonyera and kept referring him to Goofy  
6 through the course of that meeting with the co-  
7 lead detective.

8 I asked Mr. Bowman if he remembered that  
9 conversation and identifying Kagonyera and  
10 referring to him continually as Goofy. He  
11 backtracked on the ID, he didn't specifically  
12 remember ID-ing them. And he said Goofy was not  
13 a word that would have been in my vocabulary,  
14 and he wouldn't have referred to Mr. Kagonyera  
15 repeatedly as Goofy through the course of that  
16 interview.

17 Q. You said he had never seen the surveillance  
18 video. Were you able to show it to him at this  
19 time?

20 A. At that point in time we had taken into custody  
21 the surveillance video. There will be more  
22 testimony with regard to that video later in the  
23 hearing, but we did show him the vehicle  
24 pictured in that security video.

1 Q. And what did he say about that?

2 A. He said that it did not look like

3 Mr. Kagonyera's car, it was not a Box Chevy.

4 Q. And was he able to identify any individuals off  
5 the surveillance video?

6 A. He was unable to identify any individuals off  
7 that surveillance video.

8 MS. MONTGOMERY-BLINN: And  
9 commissioners, we will be going through the  
10 surveillance video at length.

11 Q. Okay, what else did Mr. Bowman tell you?

12 A. We asked him specifically about an individual  
13 named Tyrell Dickey. Tyrell Dickey was one of  
14 the informants who gave a statement saying that  
15 Mr. Kagonyera had admitted to him his  
16 involvement in this crime. That statement is  
17 actually in the brief. We asked him if he knew  
18 Tyrell Dickey because we had spoken with Tyrell  
19 Dickey actually earlier that same day, and  
20 Tyrell Dickey said he was friends with Shawn  
21 Bowman, and he indicated that he did not know  
22 Tyrell Dickey.

23 Q. Mr. Bowman said he did not know Tyrell Dickey?

24 A. Mr. Bowman said he did not know Tyrell Dickey.

1 MS. MONTGOMERY-BLINN: And we'll be  
2 going through the Tyrell Dickey statement  
3 more throughout the hearing, commissioners.

4 Q. Is there anything else in your investigation or  
5 from, actually from 2000 from the sheriff's  
6 department investigation that you came across  
7 that substantiates Shawn Bowman's current  
8 statements that he did not know who the people  
9 were during the time of the crime?

10 A. Yes. One of the things and one of the reasons I  
11 was interested in how Mr. Bowman came to  
12 identify these individuals when he was first  
13 interviewed by the police, law enforcement, a  
14 month after his dad's homicide was a statement  
15 by Johnny Lackey that was made to the Buncombe  
16 County Sheriff's Office. Johnny Lackey met with  
17 the sheriff's office following the homicide and  
18 said that Shawn had called him and said somebody  
19 had killed his daddy and that Shawn was hoping  
20 it wasn't Gerald and them.

21 Q. And was that statement from Mr. Lackey given  
22 before Shawn Bowman was located by the sheriff's  
23 department?

24 A. That statement was given before Shawn Bowman was

1           located by the sheriff's department. So that  
2           statement indicated to me that Mr. Bowman had  
3           not made the identification on the night of the  
4           homicide because after the homicide he had told  
5           Mr. Lackey that someone killed his daddy and he  
6           was hoping it wasn't Gerald and them.

7           Q. All right. And you talked to Mr. Bowman about  
8           testifying here before the commission today?

9           A. I did speak with Mr. Bowman about testifying  
10          today. I hoped he would be able to testify.  
11          When I spoke with him about testifying, he told  
12          me that he had a lot going in his life -- on in  
13          his life right now and that he couldn't  
14          guarantee that he could be here. He asked me to  
15          send a subpoena and that he would let me know  
16          prior to today whether or not he'd be able to  
17          testify. I sent him that subpoena. He never  
18          picked it up. A notice was left at his home and  
19          he never picked it up, and I've been unable to  
20          contact him and speak with him since that time.

21                   MS. MONTGOMERY-BLINN: Commissioners,  
22                   do you have any questions for Mr. Lau in  
23                   regards to his interviews of Mr. Bowman?

24                   MR. JENKINS: I do have one question of

1 verification. You said that Bowman did not  
2 or did know Lacy Pickens?

3 A. Yes.

4 MR. JENKINS: But did not know  
5 Bradford Summey or did not know Robert  
6 Rutherford?

7 A. That's correct.

8 MR. JENKINS: Okay, thank you.

9 A. And I think it should also be noted that  
10 Mr. Bowman, when I asked him about Mr. Pickens  
11 and he said he knew Mr. Pickens, he immediately  
12 said to me that he didn't believe that he would  
13 be involved.

14 MR. JENKINS: Thank you.

15 MS. MONTGOMERY-BLINN: Other  
16 questions, commissioners?

17 MR. BECTON: I understood you to say  
18 that he did not use the term Goofy, would  
19 not have referred to Kenny as Goofy. Tell  
20 me again what you said about whether he was  
21 certain or uncertain when you interviewed  
22 him on 3/11.

23 A. I'm sorry. Can you -- certain or uncertain of  
24 what?

1 MR. BECTON: Of who came into his  
2 house that night.

3 A. He was, I would say uncertain. He had  
4 backtracked and said that he had not necessarily  
5 gave the statement to the police officers  
6 identifying those individuals. And he said one  
7 of the reasons he knew he didn't tell them that  
8 specifically was Kagonyera because he would  
9 never use Goofy. And that was just one of the  
10 reasons he was giving as why the statement may  
11 say that he said Kagonyera, but he doesn't  
12 believe he did because he wouldn't use that  
13 term.

14 I should note, however, and this was in  
15 your brief, I believe, that there is a  
16 handwritten statement from Mr. Bowman from  
17 October 23rd or October 24th, I believe, where  
18 he handwrites that he got a look at these  
19 individuals, and it was Kenneth Kagonyera, Larry  
20 Williams, Man, and Robert Wilcoxson.

21 MR. JENKINS: He didn't refer to him  
22 as Goofy in that statement, did he?

23 A. He did not refer to him as Goofy in that  
24 statement, no.

1 MR. JENKINS: Okay; all right.

2 MS. ASHENDORF: Can I ask a question?

3 JUDGE SUMNER: Yes, ma'am.

4 MS. ASHENDORF: There are so many  
5 names and nicknames, but who is Gerald, if  
6 he's afraid it was Gerald?

7 A. We don't know who Gerald is that he was afraid  
8 of.

9 MS. ASHENDORF: Okay. I thought I  
10 missed that.

11 A. There's a couple, there's a couple other names  
12 that pop up, and we didn't ask him specifically  
13 who Gerald was. That was just citing that  
14 Johnny Lackey statement, so --

15 Q. Gerald is not from group A or group B, right?

16 A. Correct.

17 JUDGE SUMNER: Did he go into any  
18 detail with you during the initial  
19 conversation about how these people were  
20 dressed at that time?

21 A. He couldn't specifically remember how they were  
22 dressed at that time, to the best of my  
23 recollection. And I had asked him about that,  
24 and he basically said he couldn't say what they

1           were wearing, it all happened so fast. And I'm  
2           just trying to find in my notes to be exact  
3           about that. (Mr. Lau reviews document.)

4                       This was not in response to my direct  
5           question, but this is what he said about what  
6           they were wearing. "I mean, like I sit here and  
7           say, oh, he had this color on, this one had this  
8           color on, this one had this on. No, I can't do  
9           that. I'm not even going to sit here and -- no,  
10          you can't do -- I mean, no. I'd be telling a  
11          lie if I could sit here and say that. But I can  
12          just sit here and tell you that I do know  
13          whatever it take, if it -- I mean, the truth  
14          going to have to come out."

15                      So he didn't tell me what they were  
16          wearing. He said he could not do that.

17                      JUDGE SUMNER: Mr. Smith?

18                      MR. SMITH: I take it then that he at  
19          some time said it was Kagonyera?

20          A. Yes, he did. He had said --

21                      MR. SMITH: And at some times he has  
22          said he doesn't know?

23          A. He has now said to us that -- my interpretation  
24          of all this is that he's not certain about his

1 identification of Mr. Kagonyera.

2 MR. SMITH: He has never said he's  
3 sure it wasn't Kagonyera?

4 A. He has never said he is sure it was not  
5 Kagonyera, correct.

6 MR. SMITH: But he has said he was  
7 sure it was at one time, that is, in the  
8 written note?

9 A. At one time he did say it was Kagonyera,  
10 Robert Wilcoxson, Little Larry, and Man. And  
11 Little Larry is Larry Williams, and Man is  
12 Robert or Aaron Brewton.

13 MR. SMITH: So his retreat from the  
14 written statement that it was  
15 Kagonyera is not all the way to the  
16 point where he's saying it wasn't?

17 A. Yes, that's correct.

18 MR. SMITH: It's retreating from it  
19 was to I don't know?

20 A. Yes.

21 MR. SMITH: Okay.

22 Q. And is it, just to clarify, not even so much  
23 that as much as a retreat from it was Kagonyera  
24 to I'm not sure when I decided it was Kagonyera?

1 A. Yeah. I mean, he's now -- I would characterize  
2 it, and I want to be careful here, these aren't  
3 necessarily his words, these are mine. I would  
4 characterize it that now he is unsure whether or  
5 not it was Kagonyera, and that based on what  
6 I've read to you today, I would characterize  
7 that at some point after the night of the  
8 homicide he learned information about these  
9 individuals and decided that they were the  
10 individuals that came into the home that night,  
11 and that's when he made those statements to the  
12 police and said it was these individuals.

13 MS. JOHNSON: Did I understand you to  
14 say that you showed him the video from the  
15 gas station?

16 A. I did.

17 MS. JOHNSON: When he made the  
18 statement that it didn't look like Kenny's  
19 car because it was a Box Chevy, was he also  
20 able to see the people that were pumping  
21 the gas or that went into the station? Did  
22 me make any identification of them?

23 A. He did see those individuals, you will see that  
24 video later, and he was unable to make any

1 identifications based on that video.

2 MR. VICKORY: So did you say he saw  
3 the video or he saw the photographs from  
4 the video?

5 A. He saw the portion of the video.

6 MR. VICKORY: Okay, so we haven't see  
7 the actual --

8 A. We played the portion of the video for him. We  
9 thought that maybe body language and movements  
10 and stuff of that nature could help with an  
11 identification, but he was unable to make any  
12 identification from that video.

13 MR. VICKORY: What type of  
14 conversation did you have with him  
15 initially? I know you introduced yourself  
16 as being from the Innocence Commission.

17 A. Uh-huh (yes).

18 MR. VICKORY: Did you tell him  
19 anything about new information that we had  
20 discovered or you had discovered or --

21 A. No, I didn't. My initial question to him was,  
22 could you describe to me what you remember that  
23 night? We went from there.

24 MR. VICKORY: But before that, like

1           when you're talking about why I'm here out  
2           of the blue years later --

3       A.    No, I didn't give him any information about new  
4           evidence. I mean, I can read to you, if you  
5           like, exactly what I said, but no.

6                       MR. VICKORY: I was just wondering,  
7           you know, why he -- I would be shocked if  
8           somebody came up to me and started asking  
9           me something from ten years ago. I was  
10          just wondering what he -- did he ask you  
11          any questions about that history or  
12          anything to that effect?

13       Q.   You identified yourself as from the Innocence --

14       A.   I identified myself as from the Commission. I  
15          explained a bit about what we do. I told him  
16          that we had received claims from these  
17          individuals that they were not involved with  
18          regard to the murder of his father. I said that  
19          we were investigating that claim. I didn't tell  
20          him about anything that we had, but I will say  
21          this is my exact words, "we're investigating  
22          their claim, and I can tell you I wouldn't be  
23          contacting you if this investigation had turned  
24          up some -- hadn't turned up some potential

1 information that may show that they weren't the  
2 individuals involved."

3 He said, Uh-huh (yes).

4 "Because of that, we're trying to speak with  
5 everybody who was in the house that night,  
6 including you, Wanda, and James Gibson. And I  
7 was hoping, just -- and I was just hoping you  
8 could tell me what you remember, and then I have  
9 a few questions for you."

10 MR. VICKORY: Did you discuss with him  
11 any of the concerns you might have about  
12 him being fed any information during the  
13 investigation by law enforcement or  
14 otherwise?

15 A. I'm just reviewing my notes, if you don't mind.

16 MR. VICKORY: Sure.

17 A. (Mr. Lau reviews document.)

18 MS. MONTGOMERY-BLINN: Commissioners,  
19 we do have a transcript of this interview.  
20 It's kind of lengthy, but if you would  
21 like, during a break we could copy it. We  
22 have transcripts of most of the interviews.  
23 Our intent is to summarize them for time  
24 purposes, but if there's any that you would

1           like a transcript of, we would be happy to  
2           make copies.

3       Q.    Mr. Lau, are you looking at both the phone call  
4           and the in-person interview?

5       A.    I'm looking at the transcript of the phone call.  
6           Is that the one -- that's our initial  
7           conversation.

8           Before I asked -- before he told me what he  
9           could remember from that night, here is the  
10          information I think you're wondering about, what  
11          I told him to get him to begin talking to me.  
12          And here's what I said. It begins with, and  
13          we're investigating the claim, the portion I  
14          read to you, "and I can tell you I wouldn't be  
15          contacting you if this investigation hadn't  
16          turned up some potential information that may  
17          show that they weren't the individuals involved.

18          Uh-huh (yes).

19          Because of that, we're trying to speak with  
20          everybody who was in the house that night,  
21          including you, Wanda, and James Gibson. And I  
22          was just hoping you could tell me what you  
23          remember, and then I had a few questions for  
24          you. And then maybe you could help shed light

1 on what happened that night for me. And the way  
2 we work is we don't represent any of the  
3 individuals that are incarcerated. We're not  
4 their attorneys, we're not their advocates.  
5 We're a neutral agency that tries to find out  
6 what really happened. Well, and we have reason  
7 to sort of question the version that we've been  
8 told and that was told by the district attorney.  
9 So could you just -- would you mind talking to  
10 me about that.

11 Yeah. What you want to know? What are you  
12 trying to find out?

13 Well, could you just basically first begin  
14 by telling me what you remember?"

15 So that's the setup before he begins  
16 talking to me.

17 MR. VICKORY: My question now is  
18 stepping on to something else. Did you  
19 talk to him specifically about information  
20 he might have been fed, not by you, but by  
21 law enforcement early in the investigation?

22 A. I didn't specifically ask him if he was fed  
23 information by law enforcement at the time he  
24 gave his statement, to the best of my

1           recollection.

2                   MR. VICKORY: It was your impression  
3                   that any information that was fed, and  
4                   that's probably not the right phrase, but  
5                   that he acquired was through word on the  
6                   street, and was that kind of where he was  
7                   picking it up from and why he thought these  
8                   people had been involved?

9       A.   Well, he specifically mentioned that they had  
10       these individuals, this car, Kenneth Kagonyera's  
11       car on a security video. That was information  
12       that I didn't provide to him. That was  
13       information that he told me, that they had this  
14       car on the video, and that was one of the  
15       reasons he cited for why he believed that  
16       Kenneth Kagonyera and this group was the group  
17       of individuals who committed this crime.

18                   MR. VICKORY: But he never indicated  
19                   to you why he thought that car --

20       A.   Was on that security video?

21                   MR. VICKORY: -- was on the video?

22       A.   He never indicated to me whether or not -- to  
23       the best of my recollection, and I can flip  
24       through this and get to that segment, but to the

1 best of my recollection he never indicated to me  
2 that he was told by law enforcement that a Box  
3 Chevy was shown on that video.

4 MR. VICKORY: Thank you.

5 A. Sure.

6 JUDGE SUMNER: You were with him how  
7 long on that occasion?

8 A. On this phone call, I believe it was about ten  
9 minutes. That's a guess. I can look at the  
10 call and give you the exact.

11 Q. And then the second in-person interview, how  
12 long did that last?

13 A. The second in-person interview was probably  
14 about 15 minutes. And the reason for that  
15 interview was primarily to show him the video.  
16 We had to meet in person to show him the video  
17 and to ask him whether or not that was the car,  
18 Kenneth Kagonyera's car that he had been  
19 referring to earlier.

20 Q. And then you've attempted to contact him other  
21 times, but have not been successful?

22 A. The only other time I've spoken with him was  
23 when I've spoken with him asking him to testify  
24 here today, that was the other conversation. We

1           didn't speak about this actual incident and what  
2           he remembers from this actual incident, we spoke  
3           about him coming here to testify.

4                   JUDGE SUMNER: Chief?

5                   MR. JENKINS: Do we know if Mr. Bowman  
6           has had any contact, correspondence, or  
7           through his family with anybody in group B  
8           since they were incarcerated on these  
9           charges? That may or may not have come up  
10          in your investigation. I don't know that  
11          that would -- I was just going to ask that  
12          question.

13        A. I can tell you Mr. Isbell has told us that he  
14        has spoken with Mr. Bowman. I'm trying to rack  
15        my brain. I believe Aaron Brewton, who is also  
16        a member of group B, had said that he had spoken  
17        with Shawn or members of Shawn's family. I  
18        can't remember if it was Shawn or just members  
19        of Shawn's family. So yes, he's had some,  
20        according to those individuals. Teddy Isbell,  
21        and I believe Aaron Brewton said that he had  
22        some contact with Shawn's family, if not Shawn  
23        himself. There was some communication between  
24        group B and Mr. Bowman.

1                   MR. JENKINS: So I guess it would be  
2                   safe to say that it's possible that there  
3                   has been some information relayed back and  
4                   forth from the Defendants to the Shawn  
5                   Bowman family at some point during the past  
6                   several years?

7           A. I believe it's safe to say that, based on what  
8           Mr. Isbell told me about speaking with  
9           Mr. Bowman himself, and I believe it was Aaron  
10          Brewton saying that he has had communication  
11          with the Bowman family, I think that's accurate.

12                   MR. JENKINS: Thank you, sir.

13          A. Sure.

14                   JUDGE SUMNER: Any other questions?

15                   MS. JOHNSON: I think I have one. Did  
16          Shawn Bowman attend the trial of any of  
17          these individuals?

18          A. No. Shawn Bowman, the reason the police had not  
19          picked him up for a month -- and these were plea  
20          cases so he wasn't present for any of their  
21          pleas -- Shawn Bowman was wanted on outstanding  
22          warrants at the time this homicide occurred.  
23          When the sheriff's office first arrived, and  
24          this is in your brief, when the sheriff's office

1 first arrived at the home, only Ms. Holloway was  
2 present, and the sheriff's department did not  
3 know that Shawn Bowman had been at that home  
4 that evening, and they were unable to speak with  
5 him until just over a month after the homicide  
6 occurred.

7 At that point in time they got the  
8 statement. They spoke with him, they conducted  
9 the interviews. He ended up being incarcerated  
10 for those outstanding warrants and he was not in  
11 Buncombe County when these individuals -- he  
12 relayed to us that the next thing he heard is he  
13 received a letter in jail with the sentences of  
14 these individuals.

15 MS. MONTGOMERY-BLINN: Any additional  
16 questions?

17 (No audible response.)

18 MS. MONTGOMERY-BLINN: I ask that  
19 Mr. Lau come down temporarily.

20 JUDGE SUMNER: Thank you.

21 (THEREUPON, MR. LAU STEPS DOWN FROM  
22 THE WITNESS STAND.)

23 \* \* \* \* \*

24 MS. MONTGOMERY-BLINN: The next person that

1 was the in the house that we were able to  
2 interview was Ms. Wanda Holloway. I believe  
3 Ms. Holloway is here today, but she's indicated  
4 she does not wish to testify. She's here as a  
5 support person for the victim's family member  
6 who is here. Ms. Holloway was the girlfriend of  
7 Shawn Bowman, and she identified herself as the  
8 daughter-in-law of Walter Bowman, the deceased  
9 victim.

10 She was present at the home when the  
11 ambulance and deputies arrived. She and  
12 Mr. Bowman, the deceased victim, were the only  
13 people that were present at the home at that  
14 time. She was interviewed the night of the  
15 murder, and this is in your brief, this is just  
16 a quick refresher. She said that three men  
17 invaded the home. She said that three men  
18 invaded the home with hats and scarves on the  
19 bottom of their faces and that she did not  
20 recognize them. She did not disclose that  
21 Shawn Bowman and Tony Gibson had also been  
22 present during the murder. She was interviewed  
23 the day after the murder and continued to state  
24 that she and Walter Bowman were the only ones

1 home and had not seen Shawn Bowman in a year and  
2 a half.

3 Ten days after the murder on September 28th  
4 she was interviewed again by law enforcement and  
5 disclosed that Tony Gibson and Shawn Bowman had  
6 been present. And I understand that Ms.  
7 Holloway would like to testify, is that right?

8 MS. HOLLOWAY: (Nods head  
9 affirmatively.)

10 MS. MONTGOMERY-BLINN: Okay, so I will call  
11 Ms. Holloway.

12

13 THEREUPON,

14 Wanda Holloway,  
15 Having first been duly  
16 Sworn, was examined and  
17 Testified as follows:

18 EXAMINATION BY MS. MONTGOMERY-BLINN:

19 Q. Can you please state your name?

20 A. Wanda Holloway.

21 Q. And how do you know the Bowman family?

22 A. I was dating Shawn Bowman at the time.

23 Q. Can you speak just a little bit louder?

24 A. I was dating Shawn Bowman at the time.

1 Q. And you're still a member or a family friend  
2 with the family?

3 A. Yeah.

4 Q. And you're here today to support Ms. Bowman, is  
5 that right?

6 A. That's correct.

7 Q. Thank you for being here today.

8 A. You're welcome.

9 Q. And thank you for agreeing to testify.

10 Can you tell us what you remember about the  
11 night that Mr. Bowman was murdered?

12 A. We was watching a game on TV. We had two dogs  
13 on the inside of the house, and one dog I had to  
14 take out on a chain because he would run away.  
15 And I took him back in the house, and I let the  
16 other dog back out, which was dirty. And he  
17 kept going, like, towards the bushes barking and  
18 running back up on the porch. And I was just  
19 standing there. So I opened the door, and I  
20 said, Shawn, what's wrong with this damn dog --  
21 excuse me -- this doggone dog. And he said, you  
22 know he crazy. So I just didn't pay it no  
23 attention. So when he finished using the  
24 bathroom I took him back in the house. And I

1 left the front door open, but I left the -- you  
2 know, the door was open, but the screen was  
3 shut.

4 so I took the dogs back in the back room  
5 and shut the door, and before I took the dogs  
6 outside, Walter Bowman was in the other room  
7 asleep. So I pulled the door up so the dogs  
8 wouldn't wake him up. When I put the dogs back  
9 up I didn't open his door back up.

10 So we was just sitting there, and I was  
11 closer to the kitchen, and Tony Gibson was  
12 closer to the door. And when they ran -- well,  
13 oh, they -- the door just opened, and they just  
14 ran in like, get down, get down, get down. So I  
15 ran in the kitchen and ran up under the table.  
16 And they was like, Oh, hell, where you going?

17 Came and pulled me from up under the table  
18 by my hair. And Shawn Bowman came in the  
19 kitchen where we was at. And the man kept  
20 telling him to get down, but he wouldn't get  
21 down. So they was just standing there like, get  
22 down. He's like, I'm not getting down. what do  
23 you want?

24 You know, and by that time I heard a

1           gunshot, and they ran out. So I heard -- I know  
2           Daddy opened the door, which I called Walter  
3           Bowman Daddy. He opened the door, and I heard  
4           the door slam. So he must apparently seen the  
5           guys with the guns and whatnot and just shut the  
6           door. And I figure the guy that was standing at  
7           the door was nervous not knowing what was behind  
8           the door and what he was doing, so he shot  
9           through the door, and Daddy was still standing  
10          behind the door.

11                 So after they ran out Shawn and them got up  
12          and ran out. I called 911. I called  
13          Alma Bowman and them. By the time Alma and them  
14          got there, the ambulance had got there and was  
15          gone with Walter. Then by the time he got to  
16          the hospital, I believe we got a call saying  
17          that he died on the way to the hospital, if I'm  
18          not mistaken.

19          Q. Ms. Holloway, when this happened it was you,  
20          Shawn Bowman, Tony Gibson, and Walter Bowman?

21          A. Walter Bowman. And if I'm not mistaken, I think  
22          the cousin, Tony Hayes, was there, but I'm not  
23          for sure, but I believe Tony Hayes was there  
24          also.

- 1 Q. Maybe Tony Hayes?
- 2 A. Yeah.
- 3 Q. Okay.
- 4 A. If I'm not mistaken.
- 5 Q. And they were the only people in the house until
- 6 the --
- 7 A. Until the ambulance. Yeah, until the people
- 8 came in, and then everybody left out. Then it
- 9 was just me and Walter left there.
- 10 Q. Do you remember how many people came into your
- 11 home or the home?
- 12 A. I remember seeing three once I came from up
- 13 under the table, and I don't think that was
- 14 counting the one that was at the door.
- 15 Q. Did you see the one at the door or just --
- 16 A. No, I didn't. The gunshot, that's what let me
- 17 know there was another one. But it was one in
- 18 the kitchen by me, it looked like one was in the
- 19 middle of the floor where Tony Gibson was, and
- 20 one was standing by the door.
- 21 Q. So at least three, maybe four?
- 22 A. Yeah.
- 23 Q. And you don't know if there were more or more
- 24 outside?

- 1 A. No, I don't.
- 2 Q. Did you recognize any of those men?
- 3 A. No, I didn't.
- 4 Q. Did you ever at any point see pictures and  
5 recognize them?
- 6 A. I didn't.
- 7 Q. What about their voices, did you recognize any  
8 of their voices ever?
- 9 A. No, because I only heard one talking, that was  
10 the one that came in the kitchen and got me, and  
11 I don't remember the voice.
- 12 Q. And I'm guessing you were pretty nervous when  
13 this was happening?
- 14 A. Yeah.
- 15 Q. And pretty scared, right?
- 16 A. Uh-huh (yes).
- 17 Q. Okay.
- 18 A. Yeah.
- 19 Q. Now, right after this happened Shawn and Tony  
20 left?
- 21 A. Yeah, but I -- can I go back for a minute?
- 22 Q. Sure; of course.
- 23 A. Before all that happened, Man, which is Aaron,  
24 Aaron --

1 Q. Brewton?

2 A. -- Brewton, he kept calling Shawn's phone. I  
3 don't know what was going on or whatnot, but he  
4 kept calling, and Shawn kept telling him to go  
5 to his aunt's house, he would be down there, he  
6 was watching the game. His aunt would be my  
7 cousin, which is Cynthia Hite. So like thirty  
8 minutes later, ten minutes later call come  
9 through again. He was like, why does he keep  
10 calling me like that? why does he keep calling  
11 me like that?

12 So we was just sitting there. Then he  
13 called again, and then, you know, just like  
14 after that, then somebody came in. You know, I  
15 don't know if he was trying to get Shawn to  
16 leave the house to where they could come in, or  
17 I don't know if he was -- had anything to do  
18 with it, but before all of it happened, he kept  
19 calling Shawn wanting Shawn to meet him.

20 Q. Would you say, were Aaron Brewton and Shawn  
21 friends?

22 A. Associates maybe.

23 Q. Associates?

24 A. I wouldn't say friends. I never seen them like

1 hanging or going anywhere together, but he  
2 be's (sic), like, around. They might have spoke  
3 or whatnot, but not just like to --

4 Q. So for him to call repeatedly, you felt was  
5 unusual?

6 A. Yeah.

7 Q. One call, would that have been unusual, or was  
8 it that it was repeated calls?

9 A. No. It was repeated calls.

10 Q. Okay. So if he had called one time or he had  
11 called --

12 A. Or two maybe, okay, yeah, but like just to keep  
13 calling, keep calling, keep calling. He'd keep  
14 telling him he'll be there when the game is off.  
15 You know what I'm saying? Like, I'm watching  
16 the game and I'll be there when the game go off.  
17 And the game was still on and he was still  
18 calling like --

19 Q. Okay. Do you know what he was asking  
20 Shawn Bowman for?

21 A. No, I don't. I could just hear Shawn say, just  
22 go to your aunt's house. When the game go off  
23 I'll be there.

24 You know, like I don't know what the

- 1 conversation was about or whatnot, but I know he  
2 kept calling and Shawn kept telling him he was  
3 watching the game, and just to go to his aunt's  
4 house and he would be there.
- 5 Q. Did you know Aaron Brewton to use drugs?
- 6 A. I didn't.
- 7 Q. You don't --
- 8 A. I don't really know him like that myself.
- 9 Q. Okay. And I was getting ready to ask you, so  
10 after the shooting happened and you're calling  
11 911, is that when Shawn and Tony left?
- 12 A. They was probably leaving in the process of me  
13 calling 911.
- 14 Q. And Daddy, Walter Bowman, he was still alive at  
15 that point?
- 16 A. Yeah. I was holding pressure to his wound,  
17 trying to.
- 18 Q. So you were giving him first aid?
- 19 A. Trying to, yeah.
- 20 Q. And are you on the phone with 911 at that time?
- 21 A. Yeah.
- 22 Q. And I understand you got blood all over  
23 yourself, is that right, his blood?
- 24 A. Yeah.

- 1 Q. And you're trying to save his life?
- 2 A. Uh-huh (yes).
- 3 Q. And they leave. why?
- 4 A. Yeah, they left.
- 5 Q. why did they leave?
- 6 A. Because Shawn was wanted at the time.
- 7 Q. So he said --
- 8 A. He was like, just go ahead and call 911, you
- 9 know, and he just left.
- 10 Q. Do you need a minute?
- 11 A. Oh, no.
- 12 Q. Okay, I'm sorry. So he said -- he left. He
- 13 told you that was why he was leaving or you
- 14 assumed?
- 15 A. No, I knew why he was leaving. He didn't tell
- 16 me why he was leaving. He was like, let's just
- 17 go. And Tony -- and I believe the other Tony,
- 18 it was two Tonys, Tony Gibson and Tony Hayes. I
- 19 believe all three of them left together. well,
- 20 I know they left together, but I'm saying I
- 21 think Tony Hayes was with us, too, at the house.
- 22 Q. If Tony Hayes was there, he left with them?
- 23 A. He went too, yeah.
- 24 Q. Were you mad at them for leaving?

1 A. No. I was still -- I don't know what I was. I  
2 was still -- I don't know. No, I wasn't mad at  
3 them leaving. I don't know.

4 Q. Just too much to --

5 A. I was just glad they was still there when they  
6 came in. I'm glad I wasn't there by myself  
7 because I would have been there by myself if  
8 they would have left. So no, I wasn't mad.

9 Q. And you waited with Mr. Bowman until the  
10 ambulance arrived?

11 A. Uh-huh (yes).

12 Q. What arrived first, the law enforcement or the  
13 ambulance, if you remember?

14 A. I don't really remember.

15 Q. And you understand that Mr. Bowman passed away  
16 before he reached the hospital?

17 A. Uh-huh (yes).

18 Q. But he was alive there at the house?

19 A. When he left, yeah.

20 Q. Did he say anything to you?

21 A. He was just saying he was hurt.

22 Q. So he was still speaking at that time?

23 A. Uh-huh (yes).

24 Q. And did he say anything to you about recognizing

1 the individuals?

2 A. Huh-uh (no).

3 Q. Did Shawn Bowman ever talk to you about

4 recognizing the individuals?

5 A. No, he didn't.

6 Q. So you never had a conversation with

7 Shawn Bowman about --

8 A. Yeah, we communicated. I mean, afterwards we

9 talked, but he never said he knew who it was.

10 Q. Did he ever say that was Kenny, that was Man?

11 A. We just talked about Man the way he kept

12 calling, but he never said who he actually

13 thought it was or voices he heard that he

14 noticed or none of that.

15 Q. Did you ever hear him talk about

16 Kenneth Kagonyera and refer to him as Goofy?

17 A. No. I don't even know who he is. Okay, that's

18 the guy that got charged. I don't even know

19 him.

20 Q. You don't know them?

21 A. I know Teddy.

22 Q. Teddy Isbell?

23 A. Yeah, and I seen Teddy when he first got

24 released. I was working at Homewood Suites, and

- 1 his girlfriend was working there.
- 2 Q. Teddy Isbell's girlfriend?
- 3 A. Uh-huh (yes). And he came in the day he got
- 4 out.
- 5 Q. Did he talk to you?
- 6 A. He spoke, I spoke.
- 7 Q. What did you say?
- 8 A. He said, hey. I said, hey. That was it.
- 9 Q. You didn't talk about this?
- 10 A. Huh-uh (no).
- 11 Q. Has anybody ever tried to talk to you about this
- 12 other than the sheriff interviews?
- 13 A. No.
- 14 Q. And obviously, you met with Mr. Lau?
- 15 A. I mean, you know, people talk, not, you know,
- 16 like what happened, what happened, you know, but
- 17 nothing to like the extent of who it was or
- 18 nothing like that.
- 19 Q. Did anybody talk to you ever about what you
- 20 should say to the police or to the sheriff?
- 21 A. No.
- 22 Q. And has anybody talked to you about it since and
- 23 said this is what you should say to the
- 24 Innocence Commission?

1 A. No.

2 Q. Is there anything that you want to tell the  
3 commission?

4 A. (Witness shakes head negatively.)

5 Q. Is there anything else about that night that you  
6 remember?

7 A. No.

8 Q. Or even after that night, anything about this  
9 case that you remember?

10 A. No. That was about it. I just was interviewed,  
11 and, you know, went to trial. Nothing that I  
12 remember ever really helped. Just --

13 Q. Were you present when the people pled guilty?

14 A. I was.

15 Q. You were there in the courtroom?

16 A. I was, yeah.

17 Q. Were you present when the charges were dismissed  
18 against Aaron Brewton, Man?

19 A. I was.

20 Q. How did you feel watching those charges be  
21 dismissed against the person that had been  
22 calling that night?

23 A. I guess they just didn't have evidence enough to  
24 -- I mean, maybe he didn't have nothing to do

1           with it, I don't know. I just felt it was  
2           strange.

3       Q.    So you just don't know who did it?

4       A.    I just don't know.

5       Q.    You don't know --

6       A.    Even today, I still don't know.

7       Q.    Now, do you know a person or did you know a  
8           person named Lacy Pickens, J.J. Pickens?

9       A.    J.J. Pickens, is he dead?

10      Q.    Uh-huh (yes).

11      A.    I remember J.J. got killed at Cracker Barrel.  
12           Was that the J.J.?

13      Q.    It was during an altercation with police.

14      A.    I don't know. I remember hearing it, but I  
15           don't --

16      Q.    But you don't know him?

17      A.    I don't know him personally, no.

18      Q.    How about Bradford Summey, do you know him?

19      A.    I don't think so, and I know a lot of people by  
20           face, not names, so I don't know.

21      Q.    How about somebody named Robert Rutherford, do  
22           you know him?

23      A.    Somebody was trying to make me know who he was,  
24           and I think I kind of know, but really I --

1 Q. What do you mean by somebody was trying to make  
2 you know who he was?

3 A. Well, like Evita was trying to explain to me who  
4 he was.

5 Q. Okay.

6 A. You know, like to let me know I do know him,  
7 but --

8 Q. Evita Bowman was trying to refresh your --

9 A. Yeah, refresh my memory, but I really, I really  
10 don't know.

11 Q. You don't know. Okay, and you said the only one  
12 of the people that were charged that you knew  
13 was Aaron Brewton?

14 A. Yes.

15 Q. Is it all right if the commissioners ask you  
16 questions as well?

17 A. Uh-huh (yes).

18 Q. Thank you.

19 JUDGE SUMNER: Any questions?

20 MR. JENKINS: I have one.

21 JUDGE SUMNER: Yes, sir.

22 MR. JENKINS: Thank you for being here  
23 and testifying.

24 A. Oh, you're welcome, sir.

1                   MR. JENKINS: I know this is difficult  
2                   for you. You were dating Mr. Bowman at the  
3                   time?

4           A.    Uh-huh (yes).

5                   MR. JENKINS: How long had you been  
6                   dating him when this incident happened?

7           A.    About eight or nine years.

8                   MR. JENKINS: So a long time?

9           A.    Uh-huh (yes).

10                  MR. JENKINS: And you never heard him  
11                  talk about any of these names that Kendra  
12                  has asked you about prior to that night?

13           A.    (Shakes head negatively.)

14           Q.    Or since then?

15           A.    Huh-uh (no). No. We just talked about Man,  
16                  Aaron Brewton, because we didn't know who else  
17                  was involved. He didn't know. He couldn't  
18                  identify nobody.

19                  MR. JENKINS: Thank you.

20           A.    Uh-huh (yes).

21                  JUDGE SUMNER: Yes, ma'am.

22                  MS. ASHENDORF: Thank you for being  
23                  here.

24           A.    You're welcome.

1 MS. ASHENDORF: One question -- I have  
2 a couple of questions.

3 A. Okay.

4 MS. ASHENDORF: One question, how did  
5 it happen that Evita was asking you or  
6 prompting you to tell you you knew who  
7 Robert Rutherfordton -- Rutherford was?

8 A. Because I guess --

9 MS. ASHENDORF: How did his name come  
10 up?

11 A. I guess from the interview that they had with  
12 Shawn Bowman on another day. I'm not for sure.  
13 I'm just going to say I don't know because I  
14 don't want to lie.

15 MS. ASHENDORF: Okay.

16 A. I don't know how she know.

17 MS. ASHENDORF: Okay. And Daddy  
18 Bowman, Mr. Bowman, really never saw the  
19 people who entered because he was behind  
20 the door?

21 A. Yeah, but he opened the door and seen like --  
22 you know, he heard the commotion. I'm sure  
23 that's what woke him up when they came in, get  
24 down, get down. It woke him up. So he opened

1 the door to see what was going on. I apparently  
2 figured he seen them and shut the door back.

3 MS. ASHENDORF: And where was the  
4 shooter? Was the shooter standing --

5 A. He was in --

6 MS. ASHENDORF: -- near the front  
7 door, the --

8 A. No. He was at the door. Like the front door is  
9 here, and if you go straight like down the  
10 little hallway, the bedroom that Walter was in  
11 was right here.

12 MS. ASHENDORF: And that's where the  
13 shooter was?

14 A. That's where the shooter was, at the door where  
15 Walter was.

16 JUDGE SUMNER: Yes.

17 MR. SMITH: Did Shawn ever tell you  
18 who he thought did this?

19 A. No, sir.

20 MR. SMITH: He didn't speculate about  
21 or it just say, well, I think it was so and  
22 so?

23 A. Well, we assumed Aaron Brewton had something to  
24 do with it, but we don't know for sure.

1 MR. SMITH: Because of the calls?

2 A. Yes, but we don't know for sure.

3 MR. BECTON: Did he tell you that he  
4 could not identify any of the people who  
5 came in?

6 A. Yeah. He didn't know.

7 MR. BECTON: He didn't know?

8 A. He didn't know.

9 MR. BECTON: Did he ask you if you  
10 recognized any of the people who came in?

11 A. He didn't.

12 MR. VICKORY: Ms. Hollaway, I'm sorry.  
13 Briefly, again, I appreciate you being  
14 here.

15 A. Uh-huh (yes).

16 MR. VICKORY: The descriptions of the  
17 people that came in that night -- I know it  
18 was all happening real fast, and we're  
19 trying to break things down into little  
20 tiny segments, which is impossible, but  
21 they had masks, bandanas on?

22 A. Bandanas.

23 MR. VICKORY: Did you take that to  
24 have any gang significance or anything? I

1 know one was a blue one and one was a green  
2 one maybe. Did that mean anything to you  
3 at the time?

4 A. No.

5 MR. VICKORY: The ages of the people  
6 -- I know, I think you identified them as  
7 black males?

8 A. Correct.

9 MR. VICKORY: So you could tell that  
10 much?

11 A. Yes.

12 MR. VICKORY: From the voices and just  
13 their appearance, could you tell  
14 approximate age?

15 A. No, I couldn't. Because like I just glanced at  
16 them like when they came in the house. Once he  
17 pulled me from up under the table I really never  
18 looked back up. But from like when they first  
19 came in the house I just seen like bandanas and  
20 hats when I first started going to the kitchen.

21 MR. VICKORY: When the one that  
22 grabbed you up --

23 A. I didn't even look up. He just pulled my hair  
24 from up under the table like this, and I really

1           didn't even look back up. I just heard him and  
2           Shawn like get down, get down, and Shawn like,  
3           let her go. I'm not getting down. And he like,  
4           what do you want? And he like, ain't nothing in  
5           here.

6                     You know, I just heard them words, but I  
7           never really looked back up.

8                     MR. VICKORY: So Shawn was taking him  
9           on, I mean --

10          A.    Yeah. He wouldn't lay down. He was just  
11           like -- I'm sure they was just right there. He  
12           wouldn't get down.

13                     MR. VICKORY: Did you think at the  
14           time maybe Shawn might know who it was?

15          A.    No. I was thinking at the time Shawn was going  
16           to get his ass killed.

17                     MR. VICKORY: Were you screaming at  
18           Shawn?

19          A.    No, I wasn't saying nothing.

20                     MR. VICKORY: What was it that kept  
21           Shawn -- what did Shawn do?

22          A.    He didn't do nothing. I guess the guys just  
23           really didn't -- I don't know because he was  
24           just saying, get down. And he kept saying, I'm

1 not getting down. And like it couldn't -- it  
2 wasn't too long before that shot went off. That  
3 shot is what stopped everything. All right,  
4 once that shot went off everybody just ran out.  
5 It wasn't no more nothing, all right.

6 MR. VICKORY: When the man stood you  
7 up, I mean, how tall --

8 A. He didn't stand me up. He just -- I was up  
9 under the table, and he just came, and he's  
10 like, oh, you -- you know, and I just crawled  
11 out. I didn't get up. He just -- I didn't get  
12 up. So I just stayed down on the floor.

13 MR. VICKORY: Was he still holding  
14 your head?

15 A. Yeah, he still had my hair.

16 MR. VICKORY: I'm sure he seemed like  
17 a bigger-than-life person with a gun up in  
18 your face.

19 A. Yeah. That's why --

20 MR. VICKORY: I'm just trying to see  
21 if there's any kind of --

22 A. I understand.

23 MR. VICKORY: -- you couldn't --

24 A. I understand, but I didn't see nothing.

1                   MR. VICKORY: You couldn't tell if it  
2                   was a younger person?

3     A.     Huh-uh (no).

4                   MR. VICKORY: All right.

5                   MS. JOHNSON: Thank you again for  
6                   being here.

7     A.     You're welcome.

8                   MS. JOHNSON: When the intruders came  
9                   in the house, could you tell how many of  
10                  them had weapons?

11    A.     No, because I --

12                  MS. JOHNSON: And you said that they  
13                  were wearing bandanas and hats?

14    A.     And they had a hat or something on like the --  
15            you know, like the first one that came in, the  
16            first one I seen had a bandana and a hat.  
17            That's the first one I seen. That's what made  
18            me take off because as soon as they came in,  
19            they was just like, get down. You know, so I  
20            just took off. I didn't know what to do.

21                  MS. JOHNSON: Did they leave anything  
22                  behind at the house when they left, that  
23                  you can recall?

24    A.     Not inside the house, I don't believe, no.

1 MS. JOHNSON: Anything outside the  
2 house?

3 A. I think something was left outside, but that was  
4 from, like, you know, like evidence, like  
5 bandanas and stuff they said they found outside  
6 and stuff, but I don't know what was found. I  
7 didn't see anything. I didn't pick nothing up  
8 and give them to them.

9 MS. JOHNSON: Are you saying that the  
10 police collected that evidence that was  
11 left outside or it was left there?

12 A. Yeah. I believe in the trial they were saying  
13 it was outside. I think they found bandanas or  
14 something outside or something, a bandana or a  
15 hat or something. I don't know.

16 MS. JOHNSON: At the time that the  
17 shot was fired, do you recall them saying  
18 anything when they were running out of the  
19 house?

20 A. I don't.

21 MS. JOHNSON: That's all my questions.

22 A. I know Tony Gibson, he was just still laying  
23 there. I was like, get up, Tony, get up.

24 I thought he had been shot the way he just

1           kept laying there. But then by the time they  
2           got ready to go out the door, I had to jump over  
3           him to shut the door after they ran out because  
4           he was still just laying there.

5                       MS. JOHNSON: And he had not been  
6                       shot?

7           A. And he had not been shot.

8                       JUDGE SUMNER: Chief?

9                       MR. JENKINS: I think she has --

10                      JUDGE SUMNER: I'm sorry, sure.

11                      MS. JOHNSON: I did have one more  
12                      question.

13           A. Go ahead.

14                      MS. JOHNSON: You said there were two  
15                      Tonys?

16           A. Yeah. Tony Hayes would be Shawn Bowman's  
17           cousin, and Tony Gibson is the friend of the  
18           family.

19                      MS. JOHNSON: And you think all three  
20                      of them left together?

21           A. Yeah. If I'm not mistaken, I believe Tony Hayes  
22           was also there that night.

23                      MS. JOHNSON: How long was he at the  
24                      house, the same amount of time as all the

1 rest of you?

2 A. Oh, yeah, we had all got there at the same time.

3 MS. JOHNSON: Okay. So he did leave

4 with the others?

5 A. Yeah. If he was there that night, he did leave  
6 with the rest of them.

7 MS. JOHNSON: But you're not positive  
8 he was there?

9 A. I'm not. I'm thinking he was, though, that  
10 night; I'm thinking he was.

11 MS. JOHNSON: Okay. Thank you.

12 A. You're welcome.

13 MR. JENKINS: You testified that Shawn  
14 said there ain't anything in here?

15 A. Yeah, like --

16 MR. JENKINS: Did you hear the --

17 A. They didn't ask for nothing or nothing.

18 MR. JENKINS: Did anybody say anything  
19 about what they were looking for?

20 A. No. I guess when you come to rob somebody you  
21 coming in for something.

22 MR. JENKINS: Well, did they say  
23 anything about money?

24 A. They didn't say nothing. He was like, get down,

1 get down.

2 And he was like, what do you want? Ain't  
3 nothing in here.

4 That's all I remember them saying. I mean,  
5 it could have been more, but I really remember  
6 that.

7 MS. ASHENDORF: Did you ever wonder  
8 why Shawn was the one who was standing up  
9 to them?

10 A. I just know Shawn. That's him.

11 MS. ASHENDORF: But what reason did  
12 they have --

13 A. He came in --

14 MS. ASHENDORF: -- not to shoot him and  
15 to shoot Mr. Bowman, who didn't do anything  
16 but open the door?

17 A. Because I'm thinking the guy panicked when he  
18 shut the door back not knowing what Walter was  
19 in there doing. So he just shot through the  
20 door, and Walter happened to still be standing  
21 behind the door. And I think apparently he must  
22 have opened the door and seen he shot Walter,  
23 and they ran out, because I don't think he would  
24 have just ran out, you know. He had to open

1           that door back up and seen he had shot him, and  
2           that's why they ran out. And I can't remember  
3           if he said I shot, I don't remember none of  
4           that. That gunshot just really got me, and them  
5           dogs was in there going all crazy on that door.  
6           They was just in there like just scratching on  
7           the door and stuff. I was scared to open the  
8           door when the ambulance people and them left; I  
9           was scared to open the door. I thought they was  
10          going to jump on me.

11                       MS. ASHENDORF: You said the dogs  
12                       earlier, right before had been barking at  
13                       the bushes?

14    A.    Just the -- not the --

15                       MS. ASHENDORF: The one dog?

16    A.    The one dog, the one I can let out by hisself.  
17           He kept just like going -- and it was pitch  
18           dark, and the bushes like sit up. And so like  
19           if the neighbors would have came out on the  
20           other side, they could have seen like if  
21           somebody was standing on the other side of the  
22           bushes, but it was just so dark over there. And  
23           the dog would just like run halfway to the  
24           little bush like by the little porch steps and

1           jump back up on the porch. He just kept like --  
2           but I just, I didn't know. I mean, I just  
3           didn't know. I guess that was a sign saying  
4           somebody was in them bushes, but I just didn't  
5           know because he just -- he was a dumb dog. He  
6           just did stuff. So I'm just like, I don't know.

7                       MS. ASHENDORF: And you didn't see  
8                       anybody in the bushes?

9           A. No. It was dark, and I didn't -- I looked, but  
10           I didn't see anything.

11                      MS. ASHENDORF: You're just assuming  
12                      now that that might have been --

13           A. I'm just -- yeah.

14                      MS. ASHENDORF: But you didn't see?

15           A. Yeah. Because as soon as I took the dogs back  
16           in and by the time that I shut the door and sit  
17           down, they came in. And then later Tony Gibson  
18           said he thought -- well, maybe Tony Hayes wasn't  
19           there because I remember Tony Gibson saying he  
20           thought it was Tony in the door playing. Like  
21           it might have just been Tony there playing, had  
22           a mask or something on playing with him or  
23           something. Yeah. I'm sorry. Tony Hayes wasn't  
24           there because I remember Tony Gibson saying that

1 Tony Hayes -- he thought that was Tony Hayes in  
2 the door playing.

3 MS. ASHENDORF: At first?

4 A. Before they came in, before they actually opened  
5 the door, because Tony Gibson sat there and  
6 looked at them in the door, but he thought it  
7 was family member playing.

8 MS. ASHENDORF: Just a joke for a  
9 second?

10 A. Yeah. Yeah, so he wasn't there.

11 MS. ASHENDORF: So it was just you --

12 A. Me, Tony, and Shawn.

13 MS. ASHENDORF: -- Shawn Bowman, Tony  
14 Gibson, and Walter Bowman?

15 A. And Walter.

16 MS. MONTGOMERY-BLINN: Are there any  
17 more questions?

18 MR. BECTON: Excuse me, ma'am. Do you  
19 know if Tony Gibson or Shawn saw the car  
20 that the three or four people got in and  
21 drove off in?

22 A. No, because I'm sure by the time they got up and  
23 got out the door that car was gone. So I don't  
24 know how he would have knew, no, unless people

1 was talking and he just heard.

2 JUDGE SUMNER: Yes, ma'am.

3 MS. ASHENDORF: Were there any drugs  
4 in the bedroom?

5 A. In the bedroom? No.

6 MS. ASHENDORF: To your knowledge  
7 where Mr. Bowman was?

8 A. No. Bowman was in the living room. All of us  
9 was in the living room, and -- you mean  
10 Walter Bowman?

11 MS. ASHENDORF: Right.

12 A. No; no.

13 MR. VICKORY: Do you know whether or  
14 not Shawn had been robbed before this night  
15 of any money?

16 A. Huh-uh (no). We never had nothing like that to  
17 happen.

18 MR. VICKORY: He never mentioned to  
19 you having lost any sum of money to robbers  
20 before?

21 A. Huh-uh (no).

22 JUDGE SUMNER: Any other questions?

23 (No audible response.)

24 JUDGE SUMNER: Ms. Holloway, I want

1 to thank you for agreeing to testify.

2 A. You're welcome.

3 JUDGE SUMNER: And I do have just one  
4 very brief question.

5 A. Okay.

6 JUDGE SUMNER: I noticed that you  
7 indicated a moment ago that Tony Hayes was  
8 not there?

9 A. Correct.

10 JUDGE SUMNER: Upon further  
11 reflection, have you decided whether or not  
12 there were three or four people that came  
13 in that evening?

14 A. I said I seen three. Like, you know, I'm down  
15 like this. I see -- I know Tony's here,  
16 Gibson's there. He's laying on the floor, I see  
17 him. I see feet at the door. I see the guy  
18 right here, and I seen one in the living room,  
19 and Shawn's right here. And I assume where the  
20 shot went off, it had to be another one there.  
21 If these three is in here, and a shot went off,  
22 there had to be another person in the house.

23 JUDGE SUMNER: So you're comfortable  
24 with the fact that it was four individuals?

1 A. Yes.

2 JUDGE SUMNER: Anyone else?

3 (No audible response.)

4 JUDGE SUMNER: Thank you, ma'am.

5 A. Thank you all.

6 Q. Thank you very much.

7 (THEREUPON, MS. HOLLOWAY STEPS DOWN  
8 FROM THE WITNESS STAND.)

9 \* \* \* \* \*

10 MS. MONTGOMERY-BLINN: Well, James Tony  
11 Gibson was the other person that was in the  
12 house that survived. He was -- I guess we could  
13 have asked this -- he was a family friend, I  
14 understand, possibly a cousin of Shawn Bowman's.  
15 And he was present during the shooting, but he  
16 fled with Shawn Bowman. He was interviewed by  
17 deputies two days later and originally denied  
18 being present during the shooting, but then he  
19 came into the sheriff's department or the next  
20 day he was interviewed again and admitted this  
21 time that he had been present during the  
22 shooting and had left with Shawn Bowman.

23 The commission staff was able to locate and  
24 interview Mr. Gibson. His original statements

1 to law enforcement are in the brief. The staff  
2 calls Jamie Lau.

3 (THEREUPON, JAMIE LAU RETURNS TO THE  
4 WITNESS STAND.)

5 EXAMINATION BY MS. MONTGOMERY-BLINN:

6 Q. Mr. Lau, I believe you're still under oath.

7 MS. MONTGOMERY-BLINN: Is that  
8 correct, Judge Sumner?

9 JUDGE SUMNER: Yes.

10 MS. MONTGOMERY-BLINN: Thank you.

11 Q. Were you able to interview Tony Gibson?

12 A. I was.

13 Q. And how did you locate him?

14 A. We had did a LEXIS search, and through Facebook  
15 we also located him. His wife had a Facebook  
16 page. So through communication with his wife's  
17 Facebook page as well as seeing that they had  
18 moved to Atlanta on Facebook, we were able to  
19 identify the address and go visit him.

20 Q. So you went to Atlanta?

21 A. We went to Atlanta.

22 Q. And did you talk with him when you were in  
23 Atlanta?

24 A. I did.

1 Q. And was that, what date was that?

2 A. It was on March 2nd.

3 Q. Who all was present during your interview?

4 A. It was myself and Ms. Smith.

5 Q. And can you tell us about that interview?

6 A. When we arrived at the address an individual was  
7 in a Ford Aerostar van, I believe it was. We  
8 had records indicating that this may be the van  
9 registered to Mr. Gibson. I approached the  
10 individual in the van and I asked him if he  
11 happened to be Mr. Gibson, and he identified  
12 himself as Mr. Gibson. At that point in time we  
13 began to talk.

14 Again, I explained the commission, why we  
15 were there to see him. He had indicated to me  
16 that he meant to call, he had meant to call me  
17 because his -- I had passed along my number to  
18 his wife through her Facebook page, but that he  
19 hadn't had the opportunity to yet. And then we  
20 began discussing his recollections from the  
21 night.

22 Q. And was he willing to talk with you?

23 A. He was willing to talk to us.

24 Q. And what did he tell you?

1 A. He told me that he recalled the dogs, and he  
2 said that when the dog came in, the dog -- he  
3 asked, did the dog see a bear? He said that the  
4 individuals came in.

5 Q. Was that, did he ask that because the dog had  
6 been barking?

7 A. Because the dog was acting in a -- yeah.

8 Q. Okay, go ahead.

9 A. He said that the individuals came in, pointed  
10 the gun in his face and told him to get down.  
11 And he said that he thought it was a joke and  
12 was like, stop playing or whatever.

13 Q. He said that?

14 A. He said that, yes. I asked him how many people  
15 did he remember seeing coming through the door.  
16 He said one pointed the gun in his face, he seen  
17 another one coming through in the house, and I  
18 know at least one other was behind him; at least  
19 three people.

20 Q. Was he able to give you any descriptions of the  
21 people?

22 A. He didn't give -- to my recollection, he could  
23 not recall them well enough to give a  
24 description to us.

1 Q. Now, originally the deputies showed him the  
2 bandanas and gloves that they found, and he  
3 identified them. Did you ask him about that?

4 A. I did. I asked him whether or not he recalled  
5 being shown the bandanas and gloves. I also  
6 showed him the report, the prosecution report  
7 that's in the brief that indicates that he was  
8 shown the bandanas and gloves and identified as  
9 similar in kind to the bandanas the perpetrators  
10 were wearing. He reviewed that report. He did  
11 not specifically remember being shown those  
12 items, but said it probably happened.

13 Q. In the same vein, did he remember giving a  
14 description of the intruders?

15 A. He remembered giving a description.

16 Q. But he could not remember them from his memory  
17 now?

18 A. He couldn't remember from his memory now,  
19 correct.

20 Q. Were you able to show him any portions, or even  
21 if you didn't have the equipment, at least some  
22 still photos from that gas station video that  
23 we've discussed?

24 A. I did. I showed him a still photo. He said he

1           could not make any I.D.'s off of that still  
2           photo. He said that it could be the robbers  
3           because you always have to ask what's going on  
4           when you see black people in Fairview.

5           Q. Those are his words, right?

6           A. Those were his words, yes; those were his exact  
7           words. But he could not identify anybody.

8           Q. And just to clarify, that video is quite grainy,  
9           is that correct?

10          A. Yes.

11                           MS. MONTGOMERY-BLINN: Commissioners,  
12           do you have any questions for Mr. Lau about  
13           this interview?

14                           (No audible response.)

15                           MS. MONTGOMERY-BLINN: None?

16                           MR. VICKORY: Do you remember speaking  
17           with him about the reference that he  
18           recalled one of the robbers making a  
19           comment, where's the bitch, or something  
20           like that, to which Ms. Holloway said, I'm  
21           right here? I don't know if you went over  
22           that with him or not, but --

23          A. I don't recall specifically asking him about  
24           that statement. You know, I asked him, again,

1 generally if he could tell me what he remembered  
2 from that night. (Mr. Lau reviews document.)  
3 And I'm flipping through my notes to see if he  
4 addressed that specifically, and he doesn't.  
5 Here in my notes of our conversation I don't see  
6 him specifically addressing one of the robbers  
7 stating, where's the bitch?

8 MR. VICKORY: Did he give any  
9 indication to you that he perceived the  
10 robbers seemed to know who might be in the  
11 -- not necessarily the identities, but that  
12 they might know the sexes of the various  
13 people that were present?

14 A. He never said anything to that effect.

15 MR. VICKORY: As far as he was  
16 concerned, it could have been a completely  
17 out of the blue, random robbery, or it  
18 could have been a specific knowledge of --

19 A. We didn't talk about that. I couldn't say what  
20 he believes. We didn't discuss that.

21 JUDGE SUMNER: Did he make any  
22 references to Brewton calling Shawn Bowman  
23 repeatedly during the day?

24 A. (Mr. Lau reviews document.) No, not to my

1 recollection.

2 JUDGE SUMNER: Any other questions?

3 (No audible response.)

4 MS. MONTGOMERY-BLINN: I'd ask Mr. Lau  
5 to step down.

6 JUDGE SUMNER: Thank you.

7 (THEREUPON, MR. LAU STEPS DOWN FROM  
8 THE WITNESS STAND.)

9 \* \* \* \* \*

10 MS. MONTGOMERY-BLINN: Commissioners, I'm  
11 sorry. I forgot to show you this slide.

12 (THEREUPON, A SLIDE IS SHOWN.)

13 MS. MONTGOMERY-BLINN: Commissioners, we're  
14 next to hear from a witness, Mr. Devereux. You  
15 know him as an alternate commission member, but  
16 he also represented Mr. Kagonyera. I'm not  
17 completely certain that he's here, and would  
18 this be a good time to take a very short recess?

19 JUDGE SUMNER: This would be an excellent  
20 time.

21 MS. MONTGOMERY-BLINN: Five minutes, Your  
22 Honor?

23 JUDGE SUMNER: Let's go seven, how about  
24 that?

1 MS. MONTGOMERY-BLINN: Seven minutes, thank  
2 you.

3 (THEREUPON, A SHORT RECESS WAS TAKEN.)

4 JUDGE SUMNER: Thank you folks, and I  
5 appreciate your not abusing my seven-minute time  
6 limit. Thank you.

7 MS. MONTGOMERY-BLINN: All right. The  
8 commission calls Sean Devereux.

9 JUDGE SUMNER: Mr. Devereux, you may be  
10 seated.

11

12 THEREUPON,

13 Sean Devereux,  
14 Having first been duly  
15 Sworn, was examined and  
16 Testified as follows:

17 EXAMINATION BY MS. MONTGOMERY-BLINN:

18 Q. What is your name?

19 A. Sean Devereux.

20 Q. Mr. Devereux, how are you employed or in what  
21 manner are you employed?

22 A. I'm an attorney in Asheville.

23 Q. And what kind of law do you practice?

24 A. I'm board certified as a specialist in criminal

1 defense.

2 Q. How many years experience have you had as a  
3 criminal defense attorney?

4 A. I've been practicing criminal defense law for  
5 approximately 25 years.

6 Q. And what kinds of criminal cases do you do?

7 A. Just across the spectrum. I've appeared in  
8 capital murder cases and petty offenses on the  
9 Parkway, and we do a fair amount of white collar  
10 representation now.

11 Q. In 2000, were you also doing capital murder  
12 cases at that time?

13 A. I was.

14 Q. And just to clarify, Mr. Devereux, you are also  
15 a member of the North Carolina Innocence Inquiry  
16 Commission, is that correct?

17 A. That is correct.

18 Q. And you've served on this commission in past  
19 hearings, is that correct?

20 A. I have. When Mr. Smith is unavailable they call  
21 on me.

22 Q. Thank you, Mr. Devereux. Now, in 2000, did you  
23 represent Kenneth Kagonyera?

24 A. I did.

1 Q. And you are aware that Mr. Kagonyera has waived  
2 his attorney-client privilege and given you  
3 permission to speak freely about his case?

4 A. I am aware of that, yes.

5 Q. And how did you get Mr. Kagonyera's case?

6 A. I had -- it's a long story. I'd represented a  
7 man named Freddy Wadsworth. I'd actually  
8 represented Freddy Wadsworth's father.  
9 Freddy Wadsworth is Tisha Lee's father and  
10 Anita Findlay's father. And Mr. -- if I recall  
11 correctly, Mr. Wadsworth brought Mr. Kagonyera,  
12 who was the father of his grandchild, he was  
13 dating his daughter, Tisha Lee, brought  
14 Mr. Kagonyera to see me, I think, in April of  
15 2000 on, of course, unrelated matters.

16 Q. So you were retained on unrelated matters?

17 A. That's correct.

18 Q. And then were you court appointed on the murder  
19 case that came up?

20 A. I was; I was.

21 Q. And who was your -- well, did you have co-  
22 counsel on the murder case?

23 A. I did.

24 Q. And who was that?

1 A. It was Al Messer.

2 Q. And were there two attorneys appointed because  
3 it was potentially a capital case?

4 A. That's correct.

5 Q. I'd like to talk a little bit about your  
6 representation of Mr. Kagonyera, if that's all  
7 right. Did Mr. Kagonyera ever confess to you?

8 A. Mr. Kagonyera -- the short answer is, yes. The  
9 longer answer is that he initially denied any  
10 involvement and persisted in that denial for  
11 some time. Ultimately he told us and others, or  
12 gave versions that were, that involved him,  
13 inculpatory versions.

14 Q. And was that close to the time that he pled or  
15 was that early on in the case?

16 A. I went back and constructed a time line. Is it  
17 okay if I consult that?

18 Q. Yes.

19 A. My recollection is that he first acknowledged  
20 some involvement to us. Then there was a  
21 meeting with -- in the office of the district  
22 attorney with the district attorney, myself,  
23 Mr. Messer, Mr. Kagonyera, and at least one  
24 investigator, which would have been, I want to

1 say November.

2 Q. November of what year?

3 A. Let me go back and make sure I've got this  
4 right. It was a meeting with the district  
5 attorney on November 29, 2001, and it was prior  
6 to that. And I can't tell you how much prior to  
7 that that he told us that he was involved.

8 Actually, I can. I can narrow it a little bit.  
9 My notes reflect that I had a meeting in the  
10 jail on October 24, 2001 with Damian Mills, who  
11 was -- Damian Mills was Kenneth Kagonyera's  
12 cousin or step-cousin, as he referred to him.  
13 And our reason for meeting with Mr. Mills was  
14 that Mr. Kagonyera had told us that Mr. Mills  
15 would corroborate his account that he was not  
16 there. And so at that point he must still have  
17 been telling us that he wasn't involved. That  
18 was the purpose of that meeting.

19 Q. So that's over a year after the murder?

20 A. That's correct.

21 Q. So sometime over a year after the murder is when  
22 Mr. Kagonyera first started to incriminate  
23 himself to you?

24 A. That's correct.

1 Q. Do you remember anything else about what  
2 Mr. Kagonyera told you?

3 A. At what point?

4 Q. Throughout your -- well, let me ask some other  
5 questions, and then we'll go back to that more  
6 general --

7 A. Sure.

8 Q. All right. Can you tell us about your case  
9 strategy? When you received this case, did you  
10 have a strategy that you started to put  
11 together?

12 A. Mr. Messer and I met with Mr. Kagonyera, and  
13 I've shown you folks the notes of those early  
14 meetings. In the first meetings he denied any  
15 involvement whatsoever. We started getting the  
16 discovery in, and there were statements from co-  
17 defendants, as well as others, that appeared to  
18 involve him. And he gradually from September  
19 probably would not have -- the case remained in  
20 District Court for a while. So it may have been  
21 the first of the year before he started seeing  
22 discovery, but we would -- and I can't recall.  
23 It's not generally my practice to simply copy  
24 discovery and leave it in the jail. I think

1           that's a bad idea. But he --

2           Q. Why is that a bad idea?

3           A. It would get -- you know, you leave your cell to  
4           go somewhere, and your cell mate reads it  
5           becomes a witness or it gets distributed  
6           throughout jail, and there's -- stories take on  
7           a life of their own, especially when they're in  
8           writing. Plus you know, somebody will say that  
9           a witness said such and such when it's not  
10          really the case, and that will set up all sorts  
11          of cross currents of animosity in cases  
12          unnecessarily. So it's just a bad idea.

13                 Typically what we'll do is either go over  
14          it ourselves and go through the discovery with a  
15          -- especially in a case as serious as this, or  
16          send a legal assistant that can just sit there  
17          and retrieve the discovery materials when the  
18          client is through looking at them, through  
19          reading them. But you know, we did that.

20                 And I had a growing concern. There were,  
21          if you recall, ultimately, if I'm not mistaken,  
22          five people pled guilty. One person was  
23          charged, Mr. Brewton, and the charges against  
24          him were ultimately dismissed. I'd been

1 involved in cases like this before where there  
2 were multiple defendants. Generally speaking  
3 they were robberies or a drug case of some sort,  
4 felony murder. The issue is always who's the  
5 most culpable, the person that actually fired  
6 the weapon or committed the homicide. Everybody  
7 else, other defendants are given an opportunity  
8 to be a witness rather than a defendant, and  
9 there's always a race to be that person, to be  
10 the witness. So pretty early on I think there  
11 was -- as we began to see evidence appear to  
12 mount against Mr. Kagonyera, I think that was,  
13 you know, that was what was going in my mind.  
14 I'm still answering your question about the  
15 approach we took.

16 We also heard at some point, I think  
17 Mr. Williams, Larry Williams, Little Larry  
18 Williams, in one of his early interviews gave  
19 the opinion -- I don't think he claimed to have  
20 seen it, but he was of the opinion that or  
21 expressed the opinion that Mr. Kagonyera had  
22 actually been the shooter. So that increased  
23 the concern on our part.

24 Q. Did your client, did you ask your client or have

1           him submit to a polygraph examination?

2       A.    We did.  And I'm a little unclear on when that  
3           -- I felt badly about being murky about this  
4           until I talked to some of the lawyers that  
5           represented other defendants.  I understand that  
6           very few of them still had their files.  So my  
7           bad memory may be the best memory that you have,  
8           unfortunately.  But we did.  I used, back then  
9           there was a gentleman named Steve Davenport.  
10          Steve Davenport had been with the SBI for many,  
11          24 years, I think, as an agent, and then as a  
12          polygraph examiner, and ultimately was the  
13          instructor for the polygraph.  All of the SBI  
14          polygraphers were trained for many years by  
15          Mr. Davenport.  When he retired he went into  
16          private practice, I think, down near Wake County  
17          actually, and we would frequently use Steve to  
18          administer a polygraph.

19       Q.    And why did you like to administer or why did  
20           you think it was useful to do a polygraph?

21       A.    Well, a couple reasons.  One -- and I've learned  
22           more about polygraphs since 2000.  I learned a  
23           lot from Steve, and then these days we use a guy  
24           name Terrence T.V. O'Malley.  He not only

1 administers polygraphs for us, but kind of  
2 taught me some about a polygraph. And my  
3 understanding of a polygraph is that it is -- if  
4 you -- at least certainly law enforcement  
5 administered polygraphs. If you show no  
6 deception on the polygraph, there's a very  
7 strong likelihood that you're not deceiving  
8 anyone. On the other hand, if deception shows,  
9 that means that you're holding something back,  
10 you're concerned, and that concern is being  
11 expressed physiologically. You're worried about  
12 something, but it may not necessarily translate  
13 into a lie in response to -- in other words, if  
14 you ask Mr. Kagonyera, were you present at the  
15 Bowman home on September 18th, and he shows no  
16 deception, then you can be pretty darn sure he  
17 wasn't there. If there's a deception or it's  
18 inconclusive, in my experience with the  
19 polygraph, it doesn't necessarily mean he was  
20 there, it just means that there's something he's  
21 concerned about, something he perhaps hasn't  
22 told you.

23 So and I'm using that as an example, but  
24 what it adds up to in my experience is I have

1 clients take a polygraph so that I can go to the  
2 district attorney, who I think understands  
3 polygraphs similarly, and if I have one from  
4 somebody reputable like Steve Davenport and my  
5 client has passed it, then you're in pretty good  
6 shape. I mean, at that point law enforcement,  
7 at least in our area, accepted what  
8 Mr. Davenport had to say.

9 The danger, there are several dangers of  
10 the polygraph. One is, you know, I don't think  
11 they're right. Even having said everything I've  
12 said, I still think there are lots of mistakes.  
13 Polygraphs are not infallibly by any means, and  
14 lawyers can get too dependent on a polygraph.  
15 You can have a client fail a polygraph and tell  
16 yourself, well, that's, you know, that solves  
17 the mystery, and now I know what really  
18 happened, my client is lying, and act  
19 accordingly. I think that's -- I've had enough  
20 experience in cases where the client failed the  
21 polygraph, and then there was evidence later  
22 that they shouldn't have flunked the polygraph.  
23 So you know, I don't put a whole lot of weight  
24 on them. I use them so that I can show a

1 certificate to the district attorney. So that  
2 was what we were looking for in this case.

3 Q. And do you remember what happened with  
4 Mr. Kagonyera's polygraph?

5 A. Right. He did not do well on the polygraph.  
6 And if I recall, the question had to do with --  
7 I don't think he was asked about whether he  
8 fired a weapon or not. I think the question --  
9 and I hate to say this because I don't remember  
10 it that well, but I think it had to do with his  
11 presence at the Bowman residence that night.

12 Q. And deception was indicated?

13 A. It was, yeah.

14 Q. And there's no report of his polygraph that  
15 you're aware of, is that correct?

16 A. I'm not even sure that -- sometimes  
17 Mr. Davenport would begin a polygraph, and if  
18 it, you know, he had concerns about, he would  
19 tell us, and we would not complete the  
20 polygraph. I mean, sometimes clients -- it can  
21 be a real barrier between you and your client as  
22 well because you're seen as the guy that brought  
23 the polygraph examiner in. So if it looks like  
24 it's not going to end up being a useful tool one

1 way or the other, then forgetting the whole  
2 exercise may be -- and I think that's what we  
3 did. But he wasn't -- at the time that we  
4 stopped the polygraph, deception had been  
5 indicated.

6 Q. And the only document that you have to refresh  
7 your recollection is your handwritten notes, is  
8 that right?

9 A. I have handwritten notes, and I think in our  
10 billing I think we, IDS reimbursed us or we paid  
11 out of the -- the firm paid for it.

12 Q. The time sheet?

13 A. Yeah, there's some record that we actually paid  
14 for a polygraph or an attempted polygraph.

15 Q. Now, you mentioned that you had your client meet  
16 with you and Mr. Mills and his attorney, is that  
17 correct, with Damian Mills?

18 A. That's right.

19 Q. Can you tell us about that?

20 A. Now, I don't think that -- there were meetings  
21 with several codefendants. I don't think Mr. --  
22 my notes reflect that Kenneth, Mr. Kagonyera,  
23 was present for that meeting, which appears to  
24 have taken place on October 24, 2001.

1 Q. And you said you were -- why did you arrange  
2 that meeting, if you recall?

3 A. We were -- I say we. Mr. Messer and I were  
4 telling Mr. Kagonyera, you know, look, your  
5 codefendants at that point -- I mean, not -- the  
6 sequence, as I recall it, was that Teddy Isbell  
7 gave some statements that implicated  
8 Mr. Kagonyera right around the 25th of  
9 September. The next day Mr. Williams gave  
10 statements that implicated Kenneth, and  
11 ultimately Mr. Mills did. Mr. Wilcoxson I don't  
12 think ever did. Kenneth was the holdout at that  
13 point, he and Mr. Wilcoxson were. So he was  
14 close to Damian. Damian was his cousin or  
15 related in some way, and so we said to him,  
16 well, look, Damian's saying -- this is what  
17 Damian's saying, and it does implicate you. He  
18 said, I don't care what's written down there.  
19 Damian won't tell you that. So that's why we  
20 got Damian -- got them together in a room. I'm  
21 surprised we were able to do it actually, but we  
22 did.

23 Q. Do you remember what happened at that meeting?

24 A. Yeah. I took notes of what Damian said, and

1 Damian basically repeated what he had told law  
2 enforcement, which was inculpatory. It  
3 implicated Mr. Kagonyera.

4 Q. And you don't remember what your client said or  
5 did at that meeting?

6 A. He was upset about it. I remember that but, you  
7 know --

8 Q. Did Mr. Mills indicate whether or not he would  
9 testify against your client?

10 A. You know, I don't know that -- that was a fairly  
11 -- we weren't really cross-examining Mr. Mills  
12 at that point, but I mean, we were just letting  
13 the two of them talk as much as anything else.  
14 I certainly had that -- that was what my  
15 impressions were.

16 Q. Did you know that Mr. Kagonyera's aunt met with  
17 the district attorney?

18 A. No. I didn't remember that until either your or  
19 Mr. Lau told me about it. But I do remember now  
20 that his aunt lived in D.C., lived somewhere out  
21 of town, and I remember hearing about that.

22 Q. Do you know why that meeting took place?

23 A. I don't. I mean, I -- my impression was it was  
24 an effort to persuade him that her nephew wasn't

1           involved, I would assume, but you know, I didn't  
2           know about that. I've never seen any, I don't  
3           think I've ever seen any notes of that meeting.  
4           It's certainly an unusual occurrence.

5           Q. And you were not present for that meeting?

6           A. No, I absolutely wasn't. I don't think I ever  
7           met the aunt.

8           Q. You didn't know ahead of time that that was  
9           going to happen?

10          A. Oh, no. I would have -- I think I -- what I  
11          would have done is, had I known that the aunt  
12          intended to do that, I certainly would have  
13          spoken with the aunt myself and found out what  
14          she was going to say or was going to ask. I  
15          wouldn't have sent her in there under the --  
16          certainly not.

17          Q. And you mentioned a man named Freddy wadsworth  
18          who was the father of Mr. Kagonyera's  
19          girlfriend?

20          A. That's right.

21          Q. Did you know that he met with the district  
22          attorney about the case?

23          A. As I mentioned, I've known Freddy wadsworth for  
24          years. I knew his dad. And as part of the

1 background of all this I think it's important to  
2 know that at that point for maybe ten or twelve  
3 years I had represented lots of the folks in the  
4 community that were charged with drug offenses,  
5 one of whom was a guy named Andrew Fletcher, who  
6 was the first continuing criminal enterprise  
7 case that was ever prosecuted, that I recall, in  
8 Federal Court in Buncombe County. It was a big  
9 deal at the time. Andrew Fletcher was a part  
10 owner of a place called the New Southern Depot,  
11 along with his mother Clara Mills. Clara Mills  
12 is Damian Mills' grandmother. Freddy Wadsworth  
13 was a silent or not so silent partner in that  
14 enterprise. The federal government forfeited  
15 that as part of the continuing criminal  
16 enterprise case, they forfeited that property.

17 One of the codefendants in that case was  
18 Tommy Littlejohn. Tommy Littlejohn is Aaron  
19 Brewton's father. Of course, Freddy Wadsworth  
20 is the father of Tisha Lee, Kenneth Kagonyera's  
21 girlfriend, and Anita Findlay was -- she's  
22 involved it, and we may get into that, but she  
23 was involved as well. Further, one of the folks  
24 that was involved in that -- New Southern Depot

1 was a nightclub that the government contended  
2 was purchased with drug proceeds and used to  
3 launder money and so forth. Matthew  
4 Bacoate, Sr., who was a local businessman and  
5 political figure, was also involved in that  
6 business or at least was a frequenter. We  
7 called him as a witness in the federal drug  
8 trial.

9 I think Kenneth was brought to me possibly  
10 because of all that background. I mean, I had  
11 -- you know, I know all of those folks. There  
12 were lots of people that were part of what the  
13 government considered the Booney-Fletcher  
14 organization that were later prosecuted in state  
15 court. So this was all terrain that I knew  
16 pretty well and that I had covered with the  
17 district attorney, Mr. Moore, Ron Moore. You  
18 know, these cases involving these folks and  
19 those particular dealings had, you know, been  
20 the subject of litigation before. So I knew  
21 Freddy Wadsworth pretty well.

22 Q. Okay. And did he, did Mr. Wadsworth meet with  
23 the district attorney about Mr. Kagonyera?

24 A. That was the long way around to answer your

1 question, I'm sorry.

2 He did, and I think what concerns me now --  
3 at the time I assumed that Freddy Wadsworth had  
4 Kenneth Kagonyera's best interest in mind. I'm  
5 not sure that that's the case. I mean, I've  
6 seen, gone back and looked at discovery that I  
7 don't recall. I'm sure it was there, but -- I  
8 think Mr. Wadsworth met with law enforcement  
9 early on and told them about that Kenneth  
10 Kagonyera and others had been at Anita Findlay's  
11 house the night before the Bowman homicide, and  
12 they were talking about robbing Shawn Bowman.  
13 So I didn't, I wasn't aware that -- Freddy  
14 Wadsworth would play both ends against the  
15 middle, that's for sure. And so it doesn't  
16 surprise me, it wouldn't surprise me if he had a  
17 dozen meetings with the district attorney.

18 I was there at one point one day when  
19 Mr. Kagonyera was brought over to the district  
20 attorney's office to meet with Mr. Moore, a  
21 meeting that I don't think took place actually.  
22 He was there, but I don't think that it actually  
23 happened. But I remember Mr. Wadsworth being  
24 there and somebody suggested that if

1 Mr. Wadsworth talk to the district attorney, we  
2 weren't getting anywhere. And I started to go  
3 into the room with Mr. Wadsworth, and he said,  
4 no, no, I'll do this myself.

5 And he goes in and meets with the district  
6 attorney. You know, I don't -- it obviously had  
7 to do with all of this, but I don't know what  
8 took place. So it was a little unusual.

9 Q. So you said you were going to try to get the  
10 meeting because you weren't getting anywhere.  
11 What do you mean by you weren't getting  
12 anywhere?

13 A. Well, we were going to have to either persuade  
14 Mr. Moore that, short of a trial, that, you  
15 know, Kenneth was telling the truth and that he  
16 wasn't involved or we were going to have to  
17 persuade Kenneth that he needed to make some  
18 accommodation, you know, acknowledge whatever  
19 role he had in this and make some sort of deal  
20 with the district attorney.

21 One thing I should say, I mean, again, I  
22 don't want to ramble on here, but you asked me  
23 initially our approach to the case, and I think  
24 it's important because this underlay everything.

1           In 2000, as I mentioned, I had done probably a  
2           half dozen capital cases at that point. In the  
3           summer, in July of 2000 Steve Lindsay and I, who  
4           was representing a codefendant in this case --  
5           Steve Lindsay ended up representing Mr. Isbell.  
6           Steve Lindsay and I had tried a capital murder  
7           case in Waynesville. It went about five weeks.  
8           I got an apartment in Waynesville. I also had  
9           been retained in another capital case involving  
10          a guy in Henderson County who had -- what was  
11          alleged to have shot a woman and then burned her  
12          body. That case was going on at the same time.  
13          During that time period the capital defense  
14          attorneys throughout the state had gotten  
15          organized in the sense that the capital -- the  
16          Death Penalty Resource Center had been set up.  
17          This was before, I think, there was a capital  
18          defender, but capital commentary and Mary Ann  
19          Tally were putting on Capital College, and so  
20          there was an effort to standardize practice to  
21          raise the standards of criminal defense, of  
22          capital defense, and we met frequently, at least  
23          once a year, for Capital College. In fact,  
24          right around the time that I got involved in

1 Kenneth's case I was -- I taught at Capital  
2 College.

3 All of this is to say that -- and many of  
4 us were doing post-conviction cases for old  
5 capital cases that had been handled five or six  
6 years before that, before there was that level  
7 of organization. A recurrent problem was  
8 excellent North Carolina attorneys who were not  
9 used to doing capital cases who would do a  
10 wonderful job at the first phase of the capital  
11 case only to have their client convicted. And  
12 then faced with the problem of mitigation, a  
13 second phase, which sometimes takes longer than  
14 the first phase, and they would be stuck with a  
15 jury that didn't believe what their client had  
16 -- that didn't believe them. They were left  
17 with absolutely no credibility for the effort to  
18 save their client's life. So there's a tension  
19 in capital cases between the guilt/innocence  
20 phase and the punishment that exists nowhere  
21 else.

22 Out of that came, and it's still being  
23 debated today, but there is -- some people see  
24 it as wrong-headed, but there was an effort when

1 a case was a real capital case, the sense was if  
2 you can get a second degree plea or even a first  
3 degree plea with no capital punishment out of  
4 it, do it no matter what. I mean, there was a  
5 real strong emphasis on doing that.

6 At the same time, in cases involving  
7 multiple defendants and an underlying felony you  
8 had all kinds of problems because it's very,  
9 very easy to convict someone of felony murder in  
10 the State of North Carolina. So we would have a  
11 kid who drove his friends to a convenience store  
12 robbery, somebody got killed, and this would be  
13 a young man who was an Eagle Scout or, you know,  
14 never been in any kind of trouble before, and  
15 explain to him and his parents why pleading  
16 guilty to first degree murder to avoid the death  
17 penalty was a good idea is a tough sell. But  
18 that sense that you needed to get a plea in a  
19 case that was realistically capital -- now, in  
20 this case, the Walter Bowman homicide, whoever  
21 did it, involved a home invasion and the death  
22 of somebody who was apparently not involved, not  
23 at all involved, I mean, almost totally  
24 innocent. It also took place -- it was a drug

1 deal, had drug overtones in a rural white  
2 section of Buncombe County. I think that's why  
3 Sheriff Medford, who didn't usually get involved  
4 in these things, I think that's why  
5 Sheriff Medford was involved in it.

6 So the sense that our guys were way off  
7 their turf out in Fairview in a situation that  
8 ended up in somebody, an innocent man getting  
9 killed in his own home, while there were other  
10 aspects of it that may appear not capital, I  
11 mean, the death of Mr. Bowman seems inadvertent  
12 if I'm not -- if I can use that word. Nobody  
13 went out there to kill Walter Bowman. But the  
14 case seemed to us in the beginning to have a  
15 potential, Kenneth Kagonyera certainly had a  
16 potential to get, to receive the death penalty.

17 He also, if he was the shooter, you know,  
18 that was going to be very difficult. The  
19 potential for him to be convicted of first  
20 degree murder and receive a life sentence seemed  
21 very great. We didn't think that, unless he was  
22 the shooter, that he really was realistically  
23 facing the death penalty, but it's always -- I  
24 mean, there are lots of people on death row

1           whose lawyers concluded that it wasn't really a  
2           death case. So I was very much afraid of both  
3           of those possibilities.

4                        Finally, and then I'll shut up. Finally  
5           was the fact that he was charged with, before  
6           the Bowman homicide, assault with a deadly  
7           weapon with intent to kill, inflicting serious  
8           bodily injury, a felony drug case, felony B&E,  
9           and something else, dog fighting, but it seems  
10          to me there may have been another felony. The  
11          assault, that was what I was retained to  
12          represent him on. The felony assault case was a  
13          self-defense case. We didn't really explore the  
14          merits of it to a great extent because this came  
15          along, but there were a couple problems with  
16          that. One is apart from the homicide, he could  
17          have received sentences as long as the one that  
18          he ultimately got, and secondly, there was  
19          always the possibility that the State could try  
20          him on any one of the previous felonies and have  
21          that evidence as 404(B) or character evidence at  
22          the time that he went to trial on the homicide.  
23          So those things were going on in my mind anyway  
24          from the time he was arrested.

1 Q. So you're thinking it's in his best interest to  
2 try to take a plea deal, especially a second  
3 degree murder plea?

4 A. I think that I was blinded to -- I think I  
5 locked in on something that prevented me from  
6 absorbing everything about this case that I  
7 probably should have absorbed. I mean, I think  
8 early on I decided that, as a practical matter,  
9 you know, this case ought to plead out.

10 Q. The best thing for your client would be to seek  
11 the best plea deal?

12 A. I think that, you know. I think that's -- and  
13 I've really, you know, gone over this since the  
14 case, since January I've thought about it a lot.  
15 I think that's, you know, really what was going  
16 on at least in my mind. Mr. Messer had come out  
17 of the district attorney's office a year-and-a-  
18 half before. He had never tried a murder case,  
19 that I know of, and he was young, so I was  
20 pretty much making the decisions. And I think  
21 that's what was going on, you know, going in my  
22 mind.

23 Q. And were you trying to get your client to  
24 understand this?

1     A.    You know, I was.  Capital defense, one of the  
2           things that makes certainly any client -- you  
3           need -- a defense attorney needs to have a good  
4           relationship with any client.  Capital cases  
5           take that up a notch.  Number one, your clients  
6           are almost always in custody, and so they're  
7           frustrated by being confined, you're frustrated  
8           by having to go through the rigamarole of  
9           getting to the jail and scheduling and they  
10          can't come to see you.  And but at the same  
11          time, it's so important that you have a real  
12          relationship with a client in a capital case  
13          because you are probably going to have to  
14          approach that client with what oftentimes seems  
15          to people to be an irrational choice at the end  
16          or it's certainly a very, very difficult choice,  
17          and you're going to have to approach his family  
18          about that.  So if you haven't put in the time  
19          sitting there in the jail and listening to  
20          everything that that client wants to tell you  
21          and answering every question that that client  
22          wants answered, you're not going to be able to  
23          have the conversation at the end that you need  
24          to have about taking a plea, or certainly you're

1 not prepared to go to trial. I mean, the client  
2 may not take a plea. And in the Lippard case we  
3 waited for a plea that never came and ended up  
4 spending the summer trying the case. But I had  
5 spent a huge amount of time with that client and  
6 was able to put him on the stand as a  
7 consequence.

8 I think, and I hope this doesn't sound like  
9 an excuse, but I think in the fall and spring of  
10 2000, 2001, I think was tired. I think I was  
11 worn out. I mean, I had been through -- I was  
12 doing -- been through one capital case, was  
13 doing another one, and I think I decided early  
14 on that this is a no-brainer, he needs to take  
15 this deal, and probably did not -- not probably,  
16 certainly did not spend the time either  
17 listening to what Mr. Kagonyera had to say or  
18 talking to him about why he needed to do what I  
19 thought he needed to do and then hearing why  
20 that was a bad idea from his perspective.

21 Q. But there's no doubt that if he committed this  
22 murder and the other crimes, wrapping it all up  
23 into one sentence for second degree murder is a  
24 good plea deal?

1 A. If he was in the Bowman house on the night of  
2 September the 18th, this was a -- I'm a great  
3 lawyer, but --

4 Q. So you were advising him to take what you  
5 believed to be --

6 A. Right.

7 Q. -- a good plea deal?

8 A. That's right.

9 Q. And he was not --

10 A. I'm not being a martyr here, but going back and  
11 looking at this has really -- it's been  
12 fascinating to see it in retrospect. That's  
13 right.

14 Q. Okay. And Mr. Kagonyera was not interested in  
15 that is what you're saying, at least early on?

16 A. Oh, in the beginning, no. He was -- it was a  
17 curve sort of. He was certainly not interested  
18 in the beginning, and what you're going to hear  
19 in the beginning is talk about bond and  
20 explaining why, regardless of the circumstances,  
21 you're unlikely to get bond on a first degree  
22 murder charge. You know, you're going through  
23 all that, and a certain amount of -- nothing  
24 gets your client's trust like getting them out

1 on bond, and that wasn't going to happen here.

2 He was very insistent that he hadn't done  
3 it. I think up through -- I think that -- my  
4 recollection, again, this is, what, almost  
5 eleven years ago, but ten years ago anyway when  
6 we talked to him about it, but I think the  
7 Damian Mills meeting was a turning point. I  
8 think he, you know, either -- my perception at  
9 the time was he accepted that what everybody was  
10 saying was that he had been involved, he had  
11 been there. It may have been that he just gave  
12 up. But from that -- for a brief period of time  
13 from October the 24th through the meeting with  
14 Mr. Moore and then the guilty plea on  
15 December 13, 2001, I thought he, you know, was  
16 acknowledging what had really happened, and it  
17 was over, and he had accepted it. And we  
18 knew -- and I was sure he was going to get a  
19 good deal, again, under the assumption that he  
20 had at least been there that night.

21 After that, not long after that he changed.  
22 I started hearing from him that he felt that the  
23 plea -- he wanted to withdraw the plea, thought  
24 it was a bad idea. In fact, in February we met

1 with Aaron Brewton. Aaron Brewton was the one  
2 of the six guys -- everybody said everything  
3 about Aaron Brewton that they said about Kenneth  
4 Kagonyera. Aaron Brewton from the beginning  
5 said, I didn't do it, I wasn't there. He  
6 persisted in that. He would not accept the  
7 plea. My understanding is he passed the  
8 polygraph, but I don't really -- that doesn't  
9 mean too much to me. His lawyers tried to get  
10 him -- I know because my present partner,  
11 Andy Banzhoff, was second chair for Mr. Brewton,  
12 and David Belser, with whom I practiced law for  
13 many years, was Brewton's lead counsel. They  
14 tried to get him to take a plea, he wouldn't do  
15 it, and ultimately that case was dismissed.

16 If you believe what Kenneth Kagonyera said  
17 to Ron Moore and the police officers, there's  
18 absolutely no reason under heaven why Aaron  
19 Brewton's case should have been dismissed, but  
20 -- and we met with Brewton in February of 2002  
21 because Kenneth, at that point Kenneth was  
22 saying, I don't care what I pled to, I still  
23 tell you I wasn't there.

24 So again, I'm answering your question maybe

1 more than you asked, but he did take the plea,  
2 but he never -- he went back to asserting his  
3 innocence very strongly as early as February of  
4 '02.

5 Q. Let me just go back for one second and just  
6 confirm that the aunt that met with the district  
7 attorney and Mr. Wadsworth that met with the  
8 district attorney, it was your understanding  
9 that they were to try to get Mr. Kagonyera to  
10 accept the plea offer?

11 A. No, I don't know that.

12 Q. No?

13 A. I don't know. Honestly, I have no idea what  
14 Freddy Wadsworth's agenda was.

15 Q. Okay.

16 A. I mean, I assumed in the beginning that, you  
17 know, he was assisting his common law son-in-  
18 law, or his daughter's boyfriend, but I don't  
19 know that for sure. I think the aunt -- my  
20 impression with the aunt, I think the aunt -- I  
21 recall the aunt, speaking to her on the phone,  
22 and I think she was upset with me for suggesting  
23 that he ought to take a plea. Now, in cases  
24 like this you want to spend time talking to the

1 family. I don't know why she didn't -- you  
2 know, I don't think we met with her. I don't  
3 think she came to the office. She may have, but  
4 I don't remember that. But I think what I would  
5 have said to her is, this is what we're up  
6 against and you need to be talking to Kenneth  
7 about making a deal. So I really don't know  
8 what she -- I don't think she went over to the  
9 district attorney's office to tell him that she  
10 thought her nephew was guilty; I don't believe  
11 that.

12 Q. Okay. You've already testified that you tried  
13 many other capital cases out of Buncombe County,  
14 is that right, or handled those?

15 A. I've tried, yeah.

16 Q. So you're aware of cases that began capital and  
17 pled?

18 A. Sure.

19 Q. Was it common, was it a common practice in 2000  
20 for everybody in a multiple defendant murder  
21 case to get a second degree murder plea?

22 A. I can't recall that ever happening.

23 Q. And what do you mean? What was not common about  
24 that?

1       A.    I mean, the district attorney would typically  
2            build their case by deciding in their mind,  
3            based on what the investigation showed, who was  
4            the least culpable if they needed a witness.  
5            Sometimes they didn't, and they would try  
6            everybody.  But I can remember at least three  
7            cases that we tried, the same basic fact  
8            pattern, robbery, multiple defendants, and in  
9            those cases one of them they -- the district  
10           attorney -- our client was the least culpable, I  
11           think, but we had to try it to prove that.  In  
12           the other case the client was the most culpable,  
13           and everybody ganged up on him, and he -- we  
14           tried that all the way through.  That was the  
15           first capital case I tried.  We tried that all  
16           the way through the verdict at the penalty  
17           phase.  So you know, people are lining up to  
18           come testify against each other, generally  
19           speaking, in these kinds of cases.

20       Q.    And you also said that your client tried to  
21            withdraw his plea immediately after entering it?

22       A.    I've gone back and looked at Mr. Messer, who is  
23            not -- we're not practicing together.  We  
24            haven't since -- about that same time he opened

1 his own office. But we've talked about this,  
2 and I've also looked at an affidavit that he  
3 prepared. His recollection is that he didn't  
4 hear about Mr. Kagonyera's dissatisfaction with  
5 the plea until they went to sentencing, and at  
6 sentencing Mr. Kagonyera attempted to withdraw  
7 the plea on his own. I withdrew as there was no  
8 longer a need for two counsel after the guilty  
9 plea. So somewhere along in there I withdrew  
10 as --

11 Q. So you don't have any direct knowledge about  
12 Mr. Kagonyera's attempt to withdraw his plea?

13 A. Yes, I do. He got in touch with me. He was  
14 writing to me saying, why are you getting out of  
15 my case, and I want to withdraw my plea. I  
16 mean, he was unhappy.

17 Q. Did he say why he wanted to withdraw his plea?

18 A. Yeah, he didn't do it. I wasn't there. I  
19 wasn't -- you know.

20 Q. Because of innocence is why he wanted --

21 A. Yeah, absolutely. Yes, he did. That's right.  
22 One other thing, and I know, I mean, a little  
23 bit about where all this is headed, but I was  
24 surprised to -- or not surprised, but it was

1 interesting to notice last night that as early  
2 as April of '01 he was writing me letters  
3 saying, where's the DNA? why do you not have  
4 those DNA results back? I mean, I got a letter  
5 from -- it's dated, I don't know when I received  
6 it, but I'm sure I got it pretty close to the  
7 date of April 6, 2001.

8 So you know, he never -- sometimes you'll  
9 have a client who says they're innocent. They  
10 acknowledge that they had done something and  
11 peace reigns after that. I mean, they pretty  
12 much accept something. But that didn't happen  
13 with Ken, with Kenneth.

14 Q. Did you ever talk with Mr. Kagonyera or start to  
15 plan out what you would have presented if you  
16 had gone to trial?

17 A. We did. I mean, initially when Mr. Wadsworth  
18 brought him in we understood that Tisha Lee was  
19 going to say, would say that Mr. Kagonyera was  
20 with her either in Pisgah View or some -- I  
21 can't recall. Kenneth's grandmother lived on  
22 White Fawn Drive, that's about a half a mile  
23 from my house. I know the grandmother's house  
24 well. But if he had been with Tisha, that would

1           certainly --

2           Q.   Alibi?

3           A.   If he had an alibi, it would have been very  
4           important. I know that I received from the  
5           interview notes that Ms. Lee was interviewed,  
6           and she did not say that, at least not according  
7           to the notes. And my -- I don't remember  
8           talking to Tisha, but I do remember talking to  
9           her father, Freddy Wadsworth and, you know, we  
10          had hopes of that in the beginning.

11                   And I remember talking to Kenneth about  
12          that, but -- and also there was a, there was  
13          this whole business about he and several of the  
14          people that ended up being defendants in this  
15          case had broken into an apartment, Anthony  
16          Lewis's apartment in Pisgah View pretty close in  
17          time to the Bowman shooting. Accounts vary, but  
18          I think from my notes from conversations with  
19          him, it may have taken place earlier on the  
20          18th, like early morning hours of the 18th.

21                   There was a -- Anthony Lewis was upset  
22          about his house being broken into, and the word  
23          was that he was looking for Kenneth with a gun.  
24          Kenneth obtained the gun, himself got a gun from

1 Nita Findlay's, his girlfriend's sister's  
2 apartment.

3 Q. Freddy Wadsworth's other daughter?

4 A. Freddy Wadsworth's other daughter, that's right.  
5 It was a gun that he got from there, and  
6 Teddy Isbell, who was the first cooperating  
7 witness, knew about Mr. Kagonyera getting the  
8 gun. So what the account was initially is  
9 Kenneth must have been the one because he got  
10 this gun. Well, when we interviewed Kenneth  
11 originally, the time sequence according to what  
12 he told us was out of whack and it couldn't have  
13 happened that way. So I recall being interested  
14 in, you know, let them stake themselves out on  
15 Kenneth did it with this gun and then go in  
16 there and show them he didn't even have that gun  
17 until a week later, whatever it was. Remember,  
18 he wasn't picked up right away. So he was --  
19 Kenneth was out for a while thereafter. So that  
20 was discussed as a potential defense.

21 Q. Okay; all right. So let's talk about when your  
22 client did --

23 A. And I think the other thing -- I'm sorry. The  
24 reasons for meeting with Damian Mills,

1 Mr. Jack Stewart, who represented Wilcoxson, was  
2 very experienced at trying these cases.  
3 David Belser, who represented Aaron Brewton, was  
4 very experienced. Some of the other guys had  
5 lawyers that didn't typically try cases, and so  
6 sometimes when you got multiple defendants and  
7 the ranks of appointed counsel are kind of thin,  
8 you've got guys that you're afraid are going to  
9 roll because of the lawyer's concern about going  
10 to trial.

11 I think we met with Brewton and Brewton's  
12 lawyer, to be perfectly frank, because his  
13 lawyer was not considered somebody who would go  
14 to trial. And we were trying to -- if  
15 Damian Mills was really telling the truth and  
16 our guy wasn't really there, then we were going  
17 to -- there's a witness for us, and we're going  
18 to tell his lawyer, hey, you know, come on,  
19 let's try this. So you know, that's -- in  
20 talking to Damian, that's why I think we met  
21 with Belser and Brewton because, you know, they  
22 did -- Belser would have gone to trial, I think.  
23 So you know, we were looking, we were hunting.  
24 At the time that the State is looking for

1 witnesses to testify that all this had happened  
2 the way they thought it did, we were looking for  
3 witnesses to say different.

4 Q. Okay. So let's turn to when your client did  
5 start to make admissions and when he did  
6 ultimately confess that day in the district  
7 attorney's office.

8 A. Uh-huh (yes).

9 Q. Why did Mr. Moore, the district attorney, want  
10 to meet with him, or did you understand that he  
11 did?

12 A. He wanted -- well, I mean, in any set of  
13 circumstances like these a district attorney is  
14 going to want to interview a potential witness.  
15 So if your client's saying this is the way it  
16 happened, he's going to want to hear it from  
17 your client's mouth. And I think after Damian  
18 Mills told -- that didn't pan out, and after the  
19 polygraph, Kenneth talked to us about it, said  
20 -- I mean, basically, in retrospect I have to  
21 wonder if he didn't just, you know, just give --  
22 just memorize the discovery. But he, you know,  
23 he gave us a version that put him there at the  
24 scene, not the shooter.

1 Q. well, did Mr. Moore --

2 A. So we said, okay, fine. Do you want us to go --  
3 and I got a letter from him right around -- I  
4 noticed that last night, too. I got a letter  
5 from him right around the same time saying I  
6 want to talk to -- I have a proffer, I think, or  
7 a word to that effect, that I want to make to  
8 Mr. Moore. I want to talk to Mr. Moore about  
9 what really happened in this case, and there was  
10 something else about counterfeiting money in the  
11 projects. So he wanted -- he asked us to talk  
12 to Mr. Moore.

13 Q. So it was your client that wanted to arrange  
14 that meeting?

15 A. well, we certainly would have encouraged that  
16 all along, but yeah, he -- you know, that may  
17 have been the trigger.

18 Q. And you said your client, you know he would have  
19 had access to his discovery even if it was not  
20 with him at all times in the jail? You would  
21 have sent somebody over to sit and let him read  
22 it?

23 A. well, I'm sure other lawyers didn't do it the  
24 way we did it. There were four people besides

1           him or five people in custody, some of whom had  
2           discovery. You've got -- I mean, I've -- as I  
3           as looking through this last night, I found a  
4           page in the discovery that I got from the State  
5           in this case, or maybe got from Mr. Lau, of  
6           discovery from another client, another capital  
7           murder client, the Hendersonville guy who was in  
8           the Buncombe County Jail at the same time.  
9           Somebody had a page of that discovery, and there  
10          were notes. It looked like inmates' notes on  
11          what my client, that client was saying in the  
12          jail. So you know, they've got a lot of time on  
13          their hands. Folks have a lot of time on their  
14          hands in jail, and they learn each other's cases  
15          for good reasons and bad reasons. So they could  
16          -- it would have been the easiest thing in the  
17          world to find out what was being said about it  
18          by each other.

19        Q.    Okay. And let me just clarify, you don't have a  
20              copy of the brief that was provided to the  
21              commissioners, right?

22        A.    Absolutely --

23        Q.    You've never read it?

24        A.    No, I have not.

1 Q. You don't know what's in it?

2 A. I do not.

3 Q. And you --

4 A. I asked for it and was told I couldn't see it,  
5 so --

6 Q. I apologize.

7 A. Which makes it -- no, I understand that. But  
8 no, I haven't seen it.

9 Q. And also just to clarify, you obviously do know  
10 some of the evidence we've uncovered because  
11 we've asked you about it, but I've never sat  
12 down, and Mr. Lau has never sat down and told  
13 you our whole investigation?

14 A. Absolutely not.

15 Q. You don't know what I'm presenting today?

16 A. No, I do not.

17 Q. Or tomorrow?

18 A. No, I don't.

19 Q. And hopefully not on Saturday?

20 A. Right.

21 Q. Okay. All right, so let me ask you this:

22 Mr. Kagonyera has stated in a deposition under  
23 oath to me that he is innocent and that he made  
24 up the confession from the discovery that he had

1           because he felt pressured to take a plea  
2           agreement. I know you can't answer whether  
3           that's true or not, but is it possible?

4           A. That's certainly possible, and that was the  
5           concern. That's always the concern. I mean,  
6           I've had clients tell me, okay, whatever, I'll  
7           just say whatever. And you say, no, you know,  
8           I'm not asking you to do that either. I mean,  
9           yes, you're facing the death penalty. Yes,  
10          you're facing life in prison. No, I think going  
11          to trial is a bad idea, but don't make up  
12          anything, I mean, what a horrible position to  
13          be in.

14                 But I will say that last night I went back  
15          through and read witness statements, and I was  
16          really struck by Ms. Holloway, Anita,  
17          Renita Holloway. There are at least five  
18          versions. She's, as I recall, she was there in  
19          the home at the time that Walter Bowman was  
20          shot. The first four or five accounts she gives  
21          -- the one she gives -- and one of them appears  
22          to have been the 911 call, so six accounts. If  
23          that, if there's any truth to what she said the  
24          first five times, then what Kenneth Kagonyera

1 told us and told the district attorney couldn't  
2 have happened. So could he have made it up?

3 Yes, he could have.

4 Q. And just to go back -- I'm sorry, I'm going to  
5 just jump back one more time to that earlier  
6 question about not giving you the brief. We  
7 didn't provide you any documents in this case?

8 A. No.

9 Q. Mr. Lau didn't provide you with any documents?

10 A. Absolutely not, no.

11 Q. I think you had mentioned something about  
12 discovery and may have been -- we didn't provide  
13 you any documentation, is that right?

14 A. No. I have some -- that's right. There are  
15 some motions that were filed, which I got from  
16 Mr. Kagonyera's file in the clerk's office in  
17 Buncombe County. I went over and pulled those.  
18 And also I think there's some stuff -- well, I  
19 went and got those.

20 Q. Some of our -- some of our, some of the  
21 Commission's motions you got from the court  
22 file?

23 A. Right.

24 Q. Okay. So the file that you have up there, none

1 of that is from the Commission or the Commission  
2 staff?

3 A. No; no.

4 Q. Okay. Do you remember in the discovery that you  
5 received from the district attorney very early  
6 on in the case that the first Crime Stoppers  
7 call that came in, there were a couple Crime  
8 Stoppers calls, but the first one that came in  
9 named J.J. Pickens, Robert Rutherford, and  
10 Bradford Summey as the killers?

11 A. Summey, yeah, I do. I didn't remember that when  
12 I first met with Mr. Lau and Ms. Smith. I do --  
13 I mean, I've seen it since then. It's not  
14 uncommon to have lots of people calling the  
15 sheriff's office when something like this  
16 happens initially, there's always a false lead  
17 or two. But I do remember that, that's right.  
18 And I -- there were other statements in there of  
19 people I didn't have any idea about. There was  
20 a Carlos Smith mentioned at one point, I know  
21 he's certainly a candidate; Lacy Pickens; and I  
22 didn't know Robert Rutherford then. I've since  
23 learned about him a little bit, but I certainly  
24 knew Lacy Pickens and Brad Summey.

1 Q. You knew who they were or are?

2 A. Oh, yes, I did indeed.

3 Q. Now, do you remember with that Crime Stoppers  
4 call a handwritten note on there that said  
5 J.J. Pickens was in jail at the time of the  
6 murder?

7 A. I remember it from recently, but I don't  
8 remember it from 2000.

9 Q. Is that in your discovery --

10 A. Uh-huh (yes).

11 Q. -- that you received back in 2000?

12 A. I think it is, yeah.

13 Q. Now, would it have changed your strategy in  
14 handling this case back in 2000 and 2001 if you  
15 had realized that J.J. Pickens was only serving  
16 weekends and was actually not in custody on the  
17 day of the murder?

18 A. It -- I think so, yeah. It would have, yeah.

19 Q. Now, again, back in 2000 and 2001 before your  
20 client accepted the plea agreement, did you have  
21 any results from DNA testing?

22 A. No.

23 Q. Did you know before your client accepted the  
24 plea agreement that on March 7, 2001, your

1 client and all of the other codefendants were  
2 excluded from DNA on the bandanas that had been  
3 located?

4 A. I absolutely did not know that.

5 Q. And that's March 7, 2001. Is that before your  
6 client pled?

7 A. It is.

8 Q. Would you have --

9 A. It's also before the meeting that I recall where  
10 he gave a -- it's really before he -- at a time  
11 when he was still absolutely -- he hadn't said  
12 anything to us to indicate that he was involved  
13 at that point. He had asked for the DNA,  
14 however.

15 Q. But you didn't have it?

16 A. No.

17 Q. Okay. Would you have considered that evidence  
18 to be exculpatory and assumed it would have been  
19 turned over to you?

20 A. As I understand it, what was, what that meant in  
21 March of 2001 was that several bandanas and  
22 gloves had been found near the scene, up the  
23 road. The bandanas, in any event, two of them,  
24 maybe three had been sent to the SBI lab.

1           Presence of saliva had been detected, and then  
2           further the DNA in that saliva or whatever was  
3           on the bandana, that all of the codefendants had  
4           been excluded as contributing to that DNA. Is  
5           that what --

6       Q.   That's what you understand now, is that correct?

7       A.   That's my question is, is that what -- you're  
8           asking me, would that have made a difference.  
9           If that's what it means, yeah, it sure would  
10          have.

11      Q.   And if that's what it means, you did not know  
12          that prior to the plea?

13      A.   Absolutely not.

14      Q.   And would knowing that have changed your  
15          strategy in this case?

16      A.   I would certainly hope so.

17      Q.   And you said that your client did ask you about  
18          the DNA results?

19      A.   Repeatedly over the years, he did.

20      Q.   Not just before he pled, but over the years?

21      A.   The note I've -- you know, I noticed this this  
22          morning, and I remember various times at which  
23          he raised that issue. But there's a letter to  
24          me in the file from April 6, 2001, which is a

1 month and a day before you're telling me that  
2 result was obtained. He's writing to me saying  
3 it's been six months since we gave DNA, I'd like  
4 to see the results.

5 Q. Did you pursue those results?

6 A. I did not.

7 Q. Why not?

8 A. At that time it was not all that long after the  
9 O.J. Simpson case. We heard a lot about DNA  
10 from clients. I mean, clients would ask for DNA  
11 in a bad check case. I mean, you just -- they  
12 wanted it. I remember talking to Kenneth about  
13 it, and there was a -- I don't remember. I  
14 remember thinking -- I didn't see how -- what he  
15 could be excluded from that would rule him out.  
16 I remember having that discussion with him. And  
17 I don't recall that it specifically had to do  
18 with the bandanas, but I remember thinking, you  
19 know, there are lots of contributors here. You  
20 could still have been at the scene, you could  
21 still have been at the car, and none of your DNA  
22 would be anywhere. So why was, why, Kenneth, do  
23 you think that's going to make a difference?

24 I really don't recall ever being focused on

1 the bandanas and the possibility that everybody  
2 would be ruled out. In that note from Kenneth  
3 on April the 6th he says something to the effect  
4 that DNA results might show that some of the  
5 defendants were involved and some of them  
6 weren't, which I thought was an interesting, in  
7 retrospect an interesting observation.

8 Q. Mr. Kagonyera said that?

9 A. Uh-huh (yes). And I think that reflects  
10 conversations that he and I had had. Now,  
11 always in your mind is -- sometimes you would  
12 get lab results back, sometimes they wouldn't  
13 get anything and you wouldn't hear from them. I  
14 think in my mind always was if the district  
15 attorney gets anything in this case that's as  
16 substantive as that, I will certainly -- it will  
17 certainly be turned over to us. So was I  
18 actively pursuing it? No. But, you know, did I  
19 -- was I expecting to see it? Yes, if there,  
20 had there been a result.

21 Q. Did you view the surveillance video from the gas  
22 station?

23 A. But let's be clear about this. I should have  
24 pushed to see it. I mean, there's no question

1           that we were preoccupied with the statements of  
2           the witnesses and meeting with Damian and the  
3           talk about that, but, you know, we should have,  
4           we should have pushed for it. In my experience,  
5           our district attorney had been straightforward  
6           about providing -- there were district attorneys  
7           in our district that I worried about providing  
8           discovery. At that time I didn't worry about  
9           Ron Moore's office, but that's not an excuse for  
10          not -- for before we pled looking at the file  
11          and saying, wait a second, where is this? You  
12          know, why don't we have this? So --

13        Q. Did you view the surveillance video from the gas  
14          station?

15        A. I have no recollection of looking at the  
16          surveillance video.

17        Q. Were you aware that there was surveillance video  
18          from the gas station?

19        A. I don't -- I remember seeing there's an  
20          inventory sheet or an evidence log that reflects  
21          that somebody saw one. One of the officer's,  
22          Sprinkle, if I'm not, Detective Sprinkle, if I'm  
23          not mistaken, that, you know, that it existed  
24          and there was some discussion about it

1           portraying three black males, that's all I  
2           remember about it. But I don't -- I don't  
3           remember ever looking at it.

4       Q.    You never viewed it?

5       A.    I don't, I really don't think I did.

6       Q.    Why not?

7       A.    That's a good question. I don't know; I don't  
8           know. I mean, I should have. There again, the  
9           guys that -- Jack Stewart, David Belser, and  
10          others that were working on the case, even  
11          though we had codefendants who at any time might  
12          have chosen to testify against each other, we  
13          also looked after each other pretty much. And  
14          so, for example, there was at one point in the  
15          case something came up about the gun, and I know  
16          there was a -- one of the -- somebody in the  
17          jail was saying that Kenneth had been the  
18          shooter. And Mr. Seimens, Jim Siemens was  
19          another one of the lawyers, he told Mr. Messer,  
20          he gave us a heads-up about, you know, they're  
21          saying Kenneth might be the shooter. So it was  
22          kind of a network.

23                I don't recall anybody ever talking about  
24                the surveillance. That's -- or I think it's

1 really not a surveillance as much as a security  
2 -- as I understand it, it's a security video  
3 from the convenience store, and I can't -- I  
4 remember hearing since then that it was  
5 difficult to tell anything about it or that it  
6 had been taped over. I mean, there was some  
7 problem. I don't remember it, you know, hearing  
8 until this year that there was anything about it  
9 that would have helped us. To this day I don't  
10 know whether there is or not at this point, but  
11 that's not to say that I shouldn't have looked  
12 at it.

13 Q. After your client pled on March 28th and 29th,  
14 2003, another person, not one of the  
15 codefendants, not one of the people that was  
16 charged, confessed to this crime. Did you know  
17 about that?

18 A. Not until January of this year.

19 Q. Not until the commission contacted you?

20 A. That's right.

21 Q. So was that information ever sent to you? I  
22 know it was after your client pled, but was it  
23 ever sent to you by the district attorney or the  
24 sheriff's department post conviction?

1 A. No, certainly wasn't.

2 Q. What would you have done if it had been sent to  
3 you or if you had received it?

4 A. My understanding is that Robert Rutherford, who  
5 by 2000 -- when was that? When did he make his  
6 statement?

7 Q. March 28th and 29th, 2003.

8 A. In February of 2003 my partner was involved in a  
9 federal drug case in Asheville. Rutherford was  
10 a government witness in that case. We weren't  
11 partners at the time, but Andy Banzhoff knew  
12 about Rutherford. Right around that I certainly  
13 knew -- if I'd seen something saying that  
14 Lacy Pickens and Brad Summey were involved, that  
15 somebody had said that, I certainly would have  
16 followed up on it at that point.

17 Q. Even though your client was -- it was post  
18 conviction and you no longer represented him?

19 A. I would have, yeah.

20 Q. Okay. Would you have sent it to your client?

21 A. Oh, yeah.

22 Q. Or your former client?

23 A. Yeah. I would have done that, certainly. I  
24 mean, I say that. I mean, I'm the guy that

1           didn't look at the video either, but I would  
2           certainly -- I think that would have made such  
3           an impression that I would have, yes.

4       Q.   Did you know that there was a CODIS hit in 2007  
5           from one of those bandanas? A CODIS hit is a  
6           DNA hit through the state --

7       A.   Right.

8       Q.   -- national DNA databank --

9       A.   Right.

10      Q.   -- that was a hit that matched somebody else  
11           that had been named in that confession who was  
12           not in the original suspect group, Brad Summey?

13      A.   I didn't know that until I was told in January.

14      Q.   You didn't know about it back in 2007?

15      A.   (witness shakes head negatively.)

16      Q.   Was that ever sent to you by the district  
17           attorney or the sheriff's office or SBI, anybody  
18           post conviction?

19      A.   Absolutely not.

20      Q.   What would you have done if it had been, if you  
21           had received it or known about it, if anything?

22      A.   If -- and at that point I presume that I would  
23           have known that Rutherford said that Pickens and  
24           Summey were involved in the shooting, and then

1 on top of that you now have a confirmation  
2 that's at least a CODIS confirmation that  
3 Summey, that there was some of Summey's DNA on  
4 the bandanas. Yeah, I would have, I certainly  
5 would have done something at that point.

6 Q. Would you have sent it to your client or your  
7 former client?

8 A. I would have. I think at that point that -- I  
9 mean, then, if not -- if I'd have known post  
10 conviction about the DNA being available in  
11 March of 2001, I certainly would have let --  
12 because I was doing post conviction work during  
13 that time, and that would have struck me. You  
14 know, the Innocence Commission wasn't around  
15 then, but that certainly is grist for an MAR.  
16 When you now -- I don't know that a federal  
17 inmate saying I was involved in a murder  
18 necessarily would have set -- I mean, people say  
19 lots of thing when they're in jail for lots of  
20 different reasons. But the combination of an  
21 exclusionary DNA result that excludes all of the  
22 codefendants, then a statement indicating  
23 Summey, then a confirmation that Summey's DNA  
24 was somehow on the bandana certainly would have,

1 I certainly would have felt obliged to pass that  
2 on, at least pass it on to Mr. Kagonyera.

3 Q. Let me ask you, when Mr. Lau first interviewed  
4 you in January, did he tell you about this or  
5 did you just learn about it through the course  
6 of the interview and your looking at the files?

7 A. I don't think he told -- Mr. Lau and Ms. Lindsey  
8 told me precious little our first meet, I  
9 remember. And I understand why, but I don't  
10 think they did tell me then. How did I find  
11 out? I can't, you know, I can't imagine finding  
12 out anywhere other than from somebody at the  
13 commission, but it may not have been in January.  
14 It may have been that the -- I think there are  
15 recitations about that in the various papers  
16 that were filed in Mr. Kagonyera's file in the  
17 Clerk's office.

18 Q. The motions that the Commission filed with the  
19 clerk's office?

20 A. Uh-huh (yes).

21 Q. Can you tell us a little bit about what Buncombe  
22 County was like in 2000: I have a couple  
23 questions about that or, you know, anything else  
24 you want to expand on. But was it common for

1 the district attorney to be a part of  
2 interrogations prior to arrest?

3 A. It tapered off, Mr. Moore's involvement tapered  
4 off, but there was a period of time in there,  
5 and I would say it was, that he was still doing  
6 this in 2000, that Ron Moore was a very hands-on  
7 prosecutor. And he used to -- remember, this  
8 had -- all these folks -- I say all of them.  
9 Let me back up a second. Pickens, Summey, and  
10 Shawn Bowman were first string varsity drug  
11 dealers in Buncombe County. Those guys were  
12 players. The rest, our clients, were second  
13 string, JV, want-to-bes.

14 Q. You're talking about, when you say your clients,  
15 you're talking about Mr. Kagonyera?

16 A. I'm talking about Kagonyera, Brewton. Isbell  
17 was older and had been around some, but he was  
18 not a heavy hitter. None of these guys were,  
19 none of the people that ended up being  
20 convicted. Mr. Moore handled all the drug cases  
21 for a long period of time. I notice at the end  
22 of this case a guy named Bill Boyum, who had  
23 gone to the U.S. Attorney's Office and come  
24 back, I think is what happened, returned to

1 Mr. Moore's office as an assistant district  
2 attorney. I think he picked up the case at some  
3 point. But for years all the drug cases were  
4 handled by Mr. Moore, and he spent a lot of time  
5 with what was then known as the Metropolitan  
6 Enforcement Group. It was a multi-agency drug  
7 task force, and he would be out nights riding  
8 around with those guys.

9 Q. Mr. Moore?

10 A. Mr. Moore, the district attorney, was with those  
11 guys on raids and kicking doors down and, you  
12 know, interviewing people at the scene. I mean,  
13 I've been called by a client to his house at  
14 2 o'clock in the morning to find the district  
15 attorney there with the drug agents, that kind  
16 of thing. So he did -- I mean, it's -- you  
17 know, I don't know many district attorneys that  
18 do that, but he did interview people. I mean,  
19 he would -- the object a lot of times was if  
20 they arrested some -- not even -- they wouldn't  
21 arrest somebody. If they had a search warrant,  
22 they found evidence, or they stopped somebody  
23 along the side of the road, they'd want that  
24 person to roll before they were arrested, before

1           there was a lot of publicity, before the word  
2           was out. So they would try to do, they being  
3           Mr. Moore and the MEG agents, would try to do an  
4           interview as soon as possible. So people  
5           were -- I can remember a guy getting busted with  
6           two kilos that never got charged, never got  
7           charged. He gave a statement, set some people  
8           up, and went on down the road.

9           Q. And Mr. Moore would then prosecute the cases  
10           that he participated in the investigation?

11          A. He would use that person to make cases against  
12           other people. I mean, Shawn Bowman was one of  
13           those guys. Shawn Bowman, my recollection is  
14           Shawn Bowman had been arrested with -- he had  
15           been arrested with a significant quantity of  
16           cocaine, did a little bit of time in the annex,  
17           which is the work-release, and then was back on  
18           the street at some point.

19          Q. Was it common for Sheriff Medford to be a part  
20           of the interrogations, do you know?

21          A. It was not common for Sheriff Medford. Sheriff  
22           Medford had been a detective in the sheriff's  
23           office before he went to the police department  
24           and before he was elected sheriff. My memory of

1 him is that he was a general crimes  
2 investigator, homicide lots of times. You know,  
3 there were some cultural aspects of all this.  
4 Ron Moore has been very involved in the black  
5 community for one reason or another. He's  
6 coached Little League, and he was involved in  
7 Mr. Bacoate's program. He prided himself on his  
8 knowledge not just of the black community, but  
9 he knew a lot about the streets.

10 sheriff Medford, I'd be surprised if  
11 Sheriff Medford was ever in the projects, the  
12 Buncombe County projects in Asheville. He did  
13 not -- it's very unusual to see him involved in  
14 the interview of Larry Williams. I don't  
15 understand why. I mean, he was the sheriff, and  
16 he certainly was -- but that's odd to me that  
17 that happened.

18 Q. Did that give you concerns that the sheriff was  
19 involved?

20 A. Sheriff Medford is now in federal prison. For  
21 many years it was a problem in the office  
22 because had a Confederate flag on his desk, I  
23 remember that. And so he was not somebody that  
24 you would expect to conduct a sensitive

1 interview of a 16-year-old African-American kid.  
2 So yeah, I was struck by it. And it appears  
3 from the notes that he goes in to a number of  
4 people there interviewing Mr. Williams, and then  
5 the sheriff goes in by himself and interviews  
6 him, and that's when Mr. Williams comes forward  
7 and says that he was involved and the others  
8 were as well.

9 At the bottom of that interview, I just  
10 noticed this this morning, at the bottom of that  
11 interview there's a note that he then told  
12 Forest weaver that he'd been frightened and that  
13 wasn't true. He immediately recanted. Forest  
14 weaver was an African-American officer, veteran  
15 officer, great officer who was frequently  
16 brought in because people would talk to Forest.

17 Q. And he's actually from the police department,  
18 not the sheriff's department, right?

19 A. That's right; yeah, that's right. So he tells  
20 the sheriff that he did it, a 16-year-old kid  
21 says, yeah. This is the day after Isbell comes  
22 in. And immediately when the sheriff comes out  
23 and Forest weaver goes to talk to him, he tells  
24 Forest -- Forest weaver would have been

1           sympathetic. I mean, he was a police officer,  
2           he's a real police officer, he's not coddling  
3           anybody, but it's interesting to me that he told  
4           Weaver that what I told the sheriff is not, 15  
5           minutes ago is not true.

6       Q.    Okay. And you just said that Sheriff Medford is  
7           now in federal prison. Why is he in federal  
8           prison?

9       A.    He was prosecuted for his involvement -- there  
10           were video poker owners and operators that were  
11           paying the sheriff's department to be permitted  
12           to run video poker machines in Buncombe County,  
13           and that and money laundering. He's serving 15  
14           years, I think, in federal prison.

15      Q.    So he's no longer the sheriff, I suppose  
16           that's --

17      A.    He's not.

18      Q.    All right. Now, are you familiar with a program  
19           -- and I'm almost done, Mr. Devereux. I thank  
20           you for your patience. Are you familiar with a  
21           program called Life on Life's Terms? I believe  
22           it's now called New Life Options.

23      A.    I am.

24      Q.    And who runs that program?

1 A. A gentleman named Matthew Bacoate. I think it's  
2 Matthew Bacoate, III, if I'm not mistaken.

3 Q. And what do you understand that program to be?

4 A. It's a program for dealing with people that  
5 suffer with various substance abuse addictions.  
6 They have AA meetings, NA meetings, various  
7 sorts of counseling. It's religious based to  
8 some extent, as I understand it. I don't know  
9 that Mr. Bacoate has any special professional  
10 training. As I mentioned, his father was at the  
11 margins of the drug community some years ago.  
12 And my impression is, and I think this is right,  
13 is that Mr. Bacoate had some trouble with the  
14 law a while back himself. I want to say it was  
15 drug-related, I'm not positive of that.

16 In any event he runs the program, runs  
17 these meetings. But one component of what was  
18 then, it was Life on Life's Terms in 2000, one  
19 component of that is this kind of a diversion  
20 program, an effort to come up with an  
21 alternative -- some sentencing in criminal cases  
22 an alternative to prison time. That's how it's  
23 advertised.

24 Q. Okay. So it works with the court system in that

1           respect?

2           A.    What happens is, if you -- defense attorneys,  
3           the way we utilize the program, is if you had a  
4           client who was facing a mandatory active  
5           sentence, for example, a mandatory minimum in a  
6           traffic -- certain cases carry mandatory minimum  
7           sentences.  So if you have over 28 grams of  
8           cocaine, you get a certain amount of prison  
9           time, certain number of kilos of marijuana.  The  
10          court can't do anything about it.  If you're  
11          convicted of that offense, you almost have to  
12          receive that sort of sentence.  Also, many times  
13          you will have offenders who qualify as an  
14          habitual offender, which also has implications  
15          at sentencing.

16                 The practice for quite some time, and  
17                 certainly was the practice in 2000, was to get  
18                 your client into Mr. Bacoate's program and you  
19                 would get a recommendation, not necessarily -- I  
20                 don't know that I ever used him directly with a  
21                 court.  He had a great deal of influence with  
22                 Mr. Moore.  He could talk Mr. Moore into  
23                 reducing a -- to get, for you to get a non-  
24                 trafficking offense.  So somebody that would be

1 looking at 25 to 35 months in prison, for  
2 example, would now be eligible for probation and  
3 usually would get probation. The same way with  
4 someone who had qualified as an habitual  
5 offender. It was within the district attorney's  
6 discretion to not charge that person as a  
7 habitual offender, and without the habitual  
8 implications at sentencing, the defendant would  
9 frequently get probation. So Mr. Bacoate had  
10 access to the district attorney and considerable  
11 influence with the district attorney.

12 Q. So the clients would -- please explain or  
13 correct me if I'm wrong, the clients would  
14 complete the program prior to pleading or being  
15 convicted or being sentenced?

16 A. Well, all different variations. I mean, it was  
17 very unstructured.

18 Q. Okay.

19 A. You would send your client to Life on Life's  
20 Terms, they would pay a certain amount of money  
21 to participate in the program. There was  
22 apartments, sort of an old apartment building  
23 that was part of the program, and so some folks  
24 stayed there. It was an inpatient program.

1           There were no medical facility or no, as I say,  
2           no trained addiction specialists or anything,  
3           but other people would sign up for the program  
4           and go to an unspecified number of AA meetings  
5           or NA meetings, at the end of which time  
6           sometimes Mr. Bacoate would give you a  
7           certificate, give them a certificate that said  
8           they had completed the program, other times he  
9           would go upstairs and talk to Mr. Moore and your  
10          client would get probation.

11        Q.    So there wasn't a set checklist of what to do  
12           with it, it varied case by case?

13        A.    Right.

14        Q.    And how about you mentioned the fees, was there  
15           a set fee schedule or, that you know of?

16        A.    No, there was not.

17        Q.    You said you did use this program with some of  
18           your clients, is that right?

19        A.    I did.

20        Q.    What was your client feedback about the program?

21        A.    I mean, I've had clients go to Mr. Bacoate's  
22           program for ten years so there have been lots of  
23           different, I've had lots of different feedback.

24        Q.    Was it positive?

1 A. It was positive in the sense that you almost  
2 always got good results if you had somebody in  
3 the program.

4 Q. By good results, do you mean free of addiction  
5 and drug dependency?

6 A. No, good results in -- I mean, sometimes that,  
7 too. I mean, I think there was some of that  
8 level of legitimacy to it. At least, I mean, AA  
9 and NA, you know, those are good programs  
10 regardless, and I think it did help people in  
11 that regard. But more often the lawyers were  
12 just looking for results in court.

13 Q. For their plea agreement or --

14 A. Uh-huh (yes).

15 Q. Did any of your clients ever indicate that they  
16 had problems or concerns about the program? And  
17 if you can't discuss that, I understand.

18 A. I've had clients that did feel as if they were  
19 being taken advantage of in various ways. At  
20 some point I and several other lawyers were  
21 concerned about it to the degree that we -- and  
22 there was a lot of talk about Life on Life's  
23 Terms and its successor program, which is New  
24 Life Options. At some point I made a referral

1 of several of my clients to the U.S. Attorney's  
2 Office and to the Buncombe County Sheriff's  
3 Department.

4 Q. Okay.

5 A. And I know from, that judge -- I mean, I don't  
6 know how much -- I don't want to compromise  
7 anybody's investigation, but I think I can say  
8 without doing that and with complete certainty  
9 that the program was and remains under  
10 investigation at this point.

11 Q. By federal agents?

12 A. Uh-huh (yes), at least by them.

13 Q. Do you know anything about Teddy Isbell's  
14 relationship, Teddy Isbell one of the  
15 codefendants in the case --

16 A. Right.

17 Q. -- his relationship with Matt Bacoate, the  
18 person that ran the program?

19 A. I've known Mr. Isbell for a long time.  
20 Mr. Isbell was, in September of 2000 was a  
21 participant. Mr. Isbell had an addiction  
22 problem and was enrolled at Life on Life's Terms  
23 and lived at, it's now 60 Flint Street, at one  
24 point it was on Hillside, and I can't recall. I

1           didn't pay too much attention at the time. But  
2           he was in the program and, ultimately, if he  
3           wasn't working for Mr. Bacoate in some capacity  
4           then, he did ultimately. He's still at -- he  
5           did some time in prison as a consequence of his  
6           involvement in all of this, but to this day he  
7           lives at 60 Flint Street. I'm not really --  
8           which is the address of Life on Life's Terms.  
9           I'm not quite sure what his relationship with  
10          Mr. -- he's still -- I know they -- Mr. Isbell  
11          came to see me yesterday. He certainly talks to  
12          Mr. Bacoate still.

13        Q.    Do you know if he ever acted as an informant?  
14            You may not know.

15        A.    For Mr. Bacoate? Well, part of what was going  
16            on at Life on Life's Terms was that -- and this  
17            was a source of concern among defense attorneys.  
18            Mr. Bacoate would frequently, on his own,  
19            arrange meetings between criminal defendants and  
20            the district attorney. He would take them up  
21            there to talk to Mr. Moore sometimes when they  
22            had counsel. He had some relationship with one  
23            of the bondsmen, bail bonds ladies in Buncombe  
24            County, and he would -- somebody get, you know,

1 a drug dealer would get arrested, Mr. Bacoate  
2 would be over there helping get that person out  
3 on bond, and soon enough they would be talking  
4 to Mr. Moore.

5 We referred to -- I say we, the defense bar  
6 referred to Life of Life's Terms as a snitch  
7 school, is how we --

8 Q. Snitch school?

9 A. Snitch school, yeah. Mr. Moore used to go to the  
10 meetings, the district attorney used to attend  
11 meetings at Life on Life's Terms.

12 Q. The district attorney attended meetings at  
13 Life --

14 A. He would show up for, like, I don't know whether  
15 they were NA meetings or what sort of -- they  
16 have regular meetings of the participants, and  
17 he would be, he would go to meetings and, you  
18 know, talk to the folks there.

19 Q. And now, is that rumor or do you know that?

20 A. No, no, I know that's the case.

21 Q. Now, Mr. Bacoate told the Commission staff  
22 attorney while under oath that he got a reward  
23 for providing information in this homicide case  
24 for bringing Mr. Isbell in. Did you know that?

1 A. I didn't know that.

2 Q. Would that have changed your strategy if you had  
3 known that?

4 A. Well, eleven years have passed since Mr. Bowman  
5 was killed. I have notes, I went back and  
6 looked at my handwritten notes, and I've made  
7 notes about Mr. Bacoate's involvement, Life on  
8 Life's Terms and so on, but I wasn't really as  
9 sensitive to that then as I am now. And looking  
10 back, the case began, at least the case that was  
11 made against my client appears to have begun  
12 with Mr. Bacoate bringing Teddy Isbell, who was  
13 a participant in his program and perhaps an  
14 employee of his, to Sam Constance, who was a  
15 detective in the sheriff's office at that point.  
16 Mr. Isbell gives, says, I heard on, if I recall  
17 correctly, says, I heard on the street that  
18 Mr. Kagonyera and Mr. Wilcoxson were involved in  
19 this robbery.

20 Detective Constance says, well, how do you  
21 know that?

22 That's just what I hear.

23 Did you have anything to do with it?

24 No, I didn't.

1           At that point -- and I'm not saying this is  
2 true, I'm just saying what's in the notes and  
3 how it strikes me now. Lieutenant Constance or  
4 Detective Constance, as he was then, went and  
5 spoke with Mr. Bacoate's girlfriend who had  
6 accompanied him to the sheriff's department, if  
7 I recall.

8 Q. Do you mean Mr. Isbell's girlfriend?

9 A. I mean, sorry, Mr. Isbell's girlfriend. And she  
10 says, no. According to her statement in the  
11 file she says, no, Mr. Isbell told me in the  
12 presence of his mother that he was actually  
13 there when the shooting occurred. Detective  
14 Constance contacts Mr. Isbell's mother. She  
15 confirms that that's what Mr. Isbell had said.  
16 Mr. Isbell is picked up later in the afternoon  
17 for further questioning at the Interstate Motel,  
18 and he says, I don't want to talk to anybody  
19 without Ron Moore. I want the district attorney  
20 here and Mr. Bacoate before I'm questioned any  
21 further.

22           Again, there's a lot, he says a lot, but he  
23 implicates others, he implicates himself, he  
24 unimplicates himself, he pled, he withdrew his

1           plea, and he still came -- aside from  
2           Aaron Brewton, he came out of this better than  
3           anybody in the case. If Mr. Kagonyera was  
4           telling the truth and if the district attorney  
5           believed Mr. Kagonyera when he told his story to  
6           Mr. Moore in his office, then Teddy Isbell was  
7           right in the middle of this. And the treatment  
8           of Teddy Isbell seems extraordinary under all of  
9           those circumstances.

10        Q. Let me ask you, you just said, you characterized  
11        the case as beginning with Mr. Bacoate bringing  
12        Teddy Isbell into the Sheriff's Department.  
13        would you in the same vein characterize it as  
14        ending with Aaron Brewton's charges being  
15        dismissed and him being released to Life on  
16        Life's Terms, Mr. Bacoate's program?

17        A. I would.

18        Q. All right. I think I am through with my list of  
19        questions, but I know the commissioners may have  
20        some questions. And I would like to just thank  
21        you, Mr. Devereux, for coming down here to  
22        testify, for cooperating so much with our  
23        investigation, and providing your file and  
24        testimony today.

1 JUDGE SUMNER: Any questions?

2 MR. SMITH: I wanted to ask about the  
3 Mills meeting, what that meeting must have  
4 been like for you. Did that take place at  
5 your office?

6 A. well, it didn't. It took place -- I have notes  
7 from that meeting. It took place in the jail.  
8 Both Mr. Mills and --

9 MR. SMITH: All right.

10 A. -- Mr. Kagonyera were still in custody at that  
11 time.

12 MR. SMITH: And just the three of you  
13 were present?

14 A. No. I think that Mr. Messer, the other  
15 attorney, was there.

16 MR. SMITH: Yes.

17 A. And Mr. McDowell, who was Mr. Mills' attorney.

18 MR. SMITH: And did Mr. Mills confront  
19 Kagonyera pretty starkly, that is, state  
20 pretty starkly that he was involved?

21 A. Mr. Mills, if I recall correctly, is younger  
22 than Mr. Kagonyera, and I think he had lived  
23 with Ms. McLean, the grandmother. They had  
24 lived together with -- I think he looked up to

1 Mr. Kagonyera. I don't remember him getting in  
2 Mr. Kagonyera's face or anything. I think there  
3 was a lot of kind of mumbling and, you know,  
4 looking -- not looking each other in the eye  
5 sort of talk.

6 what I was primarily interested in was the  
7 substance of it. And I don't have a strong  
8 recollection of the meeting itself. I did take  
9 notes, but --

10 MR. SMITH: But the substance, I  
11 assume, was that he -- did he accuse  
12 Kagonyera of being involved?

13 A. what I remember is he was talking to us. I do  
14 have a recollection of Mr. Kagonyera sitting  
15 over to my left and sort of looking off into  
16 space, and we're, Mr. Messer and I are talking  
17 to Mr. Mills. Now, his attorney was there and,  
18 I think, if I'm not mistaken, Mr. Mills  
19 negotiated a pretty favorable deal, too. But  
20 what he had to say did certainly implicate  
21 himself and Mr. Kagonyera. It also tracked the  
22 discovery pretty closely.

23 MR. SMITH: And you had indicated it  
24 was sort of a turning point for you?

1 A. Well, it wasn't -- it was and it wasn't. I  
2 mean, you're thinking all along, I've got a  
3 client who's charged with assault with a deadly  
4 weapon, intent to kill, inflicting serious  
5 injury, and a drug case, and this felony  
6 breaking and entering, and there are four or  
7 five people that put him at least in the car  
8 going out to the Bowman's house.

9 MR. SMITH: Right.

10 A. So let's say we get a not guilty and he walks  
11 out of the courtroom, where are we at that  
12 point? So I think that -- and this, in  
13 retrospect, may have been terribly unfair to  
14 Mr. Kagonyera, but I think I was, you know, I  
15 wanted him to hear it from Mr. Mills. I'd seen  
16 what Mr. Mills had said. Now, had Mr. Mills  
17 said, that's right, Kenneth, we -- you know,  
18 these guys are twisting my arm and making me say  
19 this. that would have made a huge difference to  
20 me, but that's not what happened.

21 MR. SMITH: But the effect of what  
22 Mr. Mills said was that Mr. Kagonyera was  
23 involved in this event. Did Mr. Kagonyera  
24 get up and scream and say, oh, no, I

1                   wasn't?

2       A.    He was very frustrated.  You know, he wasn't  
3            happy with the meeting.  He didn't -- he wasn't  
4            violent or he didn't, you know, say anything  
5            untoward, but --

6                   MR. SMITH:  All right.

7       A.    And during the same time period, and I'm sure  
8            that this will be presented to you at some point  
9            during this proceeding, but there is a note that  
10           appears to be from one of the defendants to  
11           another.  I'm not sure, I remembered it, but  
12           it's addressed to Engine, E-n-g-I-n-e.  And it's  
13           a plea from somebody to Engine to tell the truth  
14           and straighten this all out.  And it refers to  
15           -- whoever Engine is, Engine has a cousin, you  
16           can tell from the context of the note.  I wish I  
17           remembered, and I wish I knew who wrote that  
18           because I think that would shed some light on  
19           the relationship between all of these people and  
20           their lawyers during that time period.  It's  
21           later because at that point whoever Engine is  
22           has already entered a plea.  But it's one of the  
23           codefendants saying you know this is wrong, you  
24           know we weren't involved, you shouldn't have

1 entered a plea, and the least you can do is come  
2 forward and say that I wasn't involved. It may  
3 have been from Brewton to Mr. Kagonyera, but  
4 it's a pretty compelling document, and I hope  
5 somebody during this proceeding can shed some  
6 light on it.

7 MR. SMITH: Thank you; thank you.

8 MR. BECTON: Did you use -- I was  
9 writing down pretty intensely at the time  
10 you were testifying about the October  
11 meeting. And I wrote that your client said  
12 that Damian could corroborate him and help  
13 prove he was not involved. I have in red  
14 ink here, and I don't know if you -- I want  
15 to ask you if this is what you said: Mills  
16 actually implicated Kenny and Kenny was  
17 really upset.

18 A. That's correct.

19 MR. BECTON: Is that what you recall  
20 saying?

21 A. What we had -- we're talking to Kenneth and  
22 saying, Kenneth, help us out. We need a theory  
23 of defense here, need a theory of the case.

24 MR. BECTON: Okay.

1 A. There are people that are saying -- and he knew  
2 them as well as we did, but we went down the  
3 list of who was saying what about him. And in  
4 the course of that I said, Kenneth, your own  
5 cousin says you're involved. And he said, I  
6 don't believe that. I want to hear that from  
7 Damian's own lips. So that's why we arranged  
8 the meeting with Damian.

9 JUDGE SUMNER: Yes, ma'am.

10 MS. ASHENDORF: Sean, you said  
11 something about Renita Holloway, and can  
12 you remember what you said, because I got  
13 confused by whatever you said?

14 A. Yeah. What I tried to do -- I'll give you  
15 another long-winded answer. I'm sorry, I don't  
16 get to be a witness very often. When I knew  
17 that, about the DNA coming back in March of '01  
18 excluding everybody and then subsequently the  
19 story about Pickens and Summey knowing what I  
20 know about this whole world rings very true to  
21 me, and then the fact that there's some, or very  
22 much confirmation that Summey was involved,  
23 Summey's DNA is involved. So take that -- what  
24 you're looking for is the theory of the case. I

1 mean, it's not enough to go in on one of these  
2 and just say, well, I can prove beyond a  
3 reasonable doubt. There's got to be some  
4 coherent response to what the State has to say,  
5 a story, as it were. And I don't mean you  
6 construct a fiction, but -- and so that was what  
7 I felt like I never had. You know, Tisha Lee  
8 will say I was with her. That didn't pan out.  
9 Damian will say I was with him. That didn't pan  
10 out. So as much as the evidence that we had  
11 against us, I mean, you know, had I looked at  
12 the security video and we could have determined  
13 anything from that, that might have made a  
14 difference, you know, maybe. But I think an ex  
15 -- DNA that excluded everybody available to us  
16 in March of 2001 would have, we'd put on a new  
17 lens at that point; you would look at the case  
18 in a new way. And I tried to ask myself, how --  
19 what that would have meant.

20 The example I gave is Ms. Holloway. So I'm  
21 going back through the last week or so thinking,  
22 okay, suppose that I know that the DNA, my guys  
23 are excluded. I'm going to go back through the  
24 file. If it's not our guys, who is it? well,

1 here's Crime Stoppers, Lacy Pickens, and Summey.  
2 All of a sudden that's underlined. That means a  
3 whole lot more now than it did before. The fact  
4 that those guys would have been -- that probably  
5 got on everybody's Crime Stoppers reports during  
6 that time period for all sorts of things. So it  
7 didn't mean -- they were operators. But if it's  
8 not our guys, who is it? So we would have  
9 looked at that.

10 Now, Ms. Holloway, and maybe I'm reading  
11 too much into this, but she gives -- and I  
12 understand she testified here. I've never met  
13 her, I wouldn't know her if I saw her. But the  
14 first four or five statements she gives say I  
15 was the only -- are absolutely clear, I'm there  
16 by myself with Walter Bowman, and these guys  
17 come in. The fifth version all of a sudden  
18 becomes there were four or five guys, they had  
19 guns, they had bandanas, they had -- it just, it  
20 changes completely. And so knowing that three  
21 guys -- knowing that the DNA -- there's a good  
22 chance that it wasn't our folks, and there are  
23 three people that are identified in a Crime  
24 Stopper let's take a look at them again, you

1 know. That starts to fit. That starts -- it  
2 starts making sense.

3 And then I had -- when I was notified -- I  
4 mean, my first reaction when I heard from  
5 Mr. Lau, he can tell you, is Jamie, you know,  
6 there are a lot of cases that you all could be  
7 looking at, but this is -- I worked on this  
8 case, you know. And it wasn't until I sat down  
9 with him and, you know, gradually and looked at  
10 the file and went back and put it all together,  
11 because I think it was deceptively simple.  
12 There was a lot more to it than met the eye.

13 I went back through knowing that what I  
14 know now. I mean, I had told Kenneth, Kenneth,  
15 all these people say different things about you.  
16 I mean, all these people implicate you,  
17 Larry Williams, Damian, Teddy Isbell, Bowman.  
18 But if you go back and you look at their  
19 statements, if they're all -- if Ms. Holloway is  
20 telling the truth, Bowman's statement doesn't  
21 mean anything because he wasn't there. And his  
22 statement, what he says is certainly  
23 inconsistent with the three -- with it being  
24 Pickens and Summey, and it also is inconsistent

1 with the DNA results.

2 so all of a sudden you've got a theory of  
3 the case, and you've also got a shield, and  
4 you've got a weapon. And you start picking  
5 these people's stories apart, and when they're  
6 looked at closely, and I should have been doing  
7 this all along, I think, they don't hold up. I  
8 mean, what you're looking at in all these cases  
9 is the story of the story, how the story  
10 evolved. And I didn't do that properly maybe  
11 because nothing triggered that, but I think what  
12 would have triggered that catalyst to going back  
13 and putting it together in that way would have  
14 been the DNA. Knowing that, wait a second, this  
15 can't be, this cannot have happened the way  
16 these people are saying, so why did they say  
17 that? And what does that mean about who really  
18 did it?

19 And then I think the Pickens -- and I can't  
20 stress enough, Pickens was -- you know, if you  
21 had asked me out of all the -- if you had listed  
22 all the names in this case, a hundred names, and  
23 said pick five people who could have shot  
24 walter, Pickens would have been on my list,

1           Holloway would -- I mean, Summey would have been  
2           on my list, Rutherford probably now, but -- so I  
3           think things would have changed.

4                     We were bumping along looking for a theory  
5           of the case and not finding it, and then  
6           deciding the risk is so -- it's not that I  
7           didn't believe Kenneth. I don't think I ever  
8           really -- you don't do that. I mean, Mr. Smith  
9           can tell you, you really don't ever know, you  
10          know. It wasn't that I decided, well, he's  
11          lying so he needs to go to prison. It's just  
12          that the risk benefit was never our way. I  
13          mean, it was always he's looking at probably  
14          eight, nine, ten, maybe fifteen years even  
15          without this case, so why risk his life?

16                    On the other hand, I think the DNA shifts  
17          everything. That gives them -- now we're on the  
18          offensive a little bit. So that's why it would  
19          have made -- and her -- what -- and I may be all  
20          wrong about her. I mean, it's not, I'm not  
21          working on the case now, and I'm not casting any  
22          aspersions on her whatsoever, but I'm just  
23          saying that if you take those new facts and go  
24          back and look at everything in the file, it's a

1 very different case.

2 MR. SMITH: But his confession in your  
3 presence with the district attorney must  
4 have given you comfort --

5 A. Oh, sure; yeah.

6 MR. SMITH: -- that it's what you  
7 thought?

8 A. That's right. Well, not so much the -- I mean,  
9 again, and I'm not here to be a, my own personal  
10 psychoanalysis or anything but, you know, I'm  
11 not sure I was wanting to go through another  
12 five-week death penalty case at this point. And  
13 you know, so was I looking for a way out?  
14 Maybe, you know.

15 MR. SMITH: It is rare, isn't it, in  
16 our work to sit down with our client with a  
17 district attorney and have our client say  
18 he did it?

19 A. Sure.

20 MR. SMITH: And once that happens, you  
21 feel comfort, don't you?

22 A. You do. But that comfort, I will have to say,  
23 was -- when I go back and look in the clerk's  
24 file, this isn't anything I got from these

1 folks, and I see that in 2006 Mr. Kagonyera,  
2 who's off in prison, is halfway through his  
3 sentence or something, doesn't have any real  
4 reason to still be threatened about this, files  
5 a motion to get the DNA results and sends it to  
6 the DA and says, I know you've got results that  
7 rule me out. And I think probably Rutherford,  
8 who's from back home, or one of those guys is  
9 talking and it's getting, word is getting out.  
10 He's saying that, and I think to myself, that's  
11 six years after he wrote me that letter, five  
12 years after he wrote me that letter wanting the  
13 DNA, and he's still -- that's not -- you know,  
14 that's pretty compelling. You go, life goes on.

15 And then two years later he files an MAR  
16 saying, Mr. Moore, I know you've got the DNA and  
17 I know you got a confession from Rutherford, and  
18 Pickens and Summey were involved, and you better  
19 -- let's do something about it. The comfort  
20 that I had that day in the district attorney's  
21 office evaporated in the face of those things.

22 MR. SMITH: May I ask --

23 JUDGE SUMNER: Yes, sir.

24 MR. SMITH: But going back to that

1 moment and looking at the signs you had  
2 going down the road, you had deception on  
3 the polygraph?

4 A. Uh-huh (yes).

5 MR. SMITH: You had the confrontation,  
6 mild as it might have been, with Damian  
7 Mills. You had him sitting down with the  
8 DA and admitting he did it. That's a lot,  
9 isn't it?

10 A. Oh, it is, absolutely.

11 MR. SMITH: And have you ever had a  
12 case before in which you had those three  
13 kinds of things comforting you as a lawyer,  
14 and it turned out not to be true?

15 A. No. That's very -- I mean, that's why my  
16 reaction when I heard from the Innocence  
17 Commission is, you know, why this case? That's  
18 not to say that I don't understand it now.

19 JUDGE SUMNER: I'm certainly not  
20 trying to be a Monday morning quarterback  
21 of you, I would not dare to do that --

22 A. Right.

23 JUDGE SUMNER: -- but I think you,  
24 correct me, if you will, you said in 2001,

1 I believe, your client was saying what  
2 about the DNA, and your response was what  
3 again, now?

4 A. Every client we had in those days was asking for  
5 DNA about everything, and so I remember talking  
6 to him about that. I think I would have said,  
7 we'll get, I mean, if it's there, we'll get it,  
8 we'll get the report. But asking him how  
9 exactly he thought that was going to help him,  
10 what DNA exactly? You know, I mean, I guess I  
11 probably -- there's a note in there that  
12 indicates that the bandanas were sent off.  
13 There were two bandanas, and there were five  
14 people. I think remember having that  
15 conversation. So what if your DNA is not on --  
16 you know, maybe you didn't wear a bandana or you  
17 didn't -- I remember looking and trying to --  
18 and I can't remember now what it was, but what  
19 he was wearing, who was wearing what and so on.

20 So I mean, I just didn't see how that was  
21 going to make -- it's -- I don't know why I  
22 didn't think of it, but the fact that everybody  
23 would have been excluded, you know, didn't occur  
24 to me. I think that's what it -- had he, it

1 just excluded, him, I still don't think it would  
2 have meant that much. But the fact that  
3 everybody was excluded, that plus Summey later.

4 JUDGE SUMNER: Yes, ma'am.

5 MS. SURGEON: When you talked with  
6 Mr. Kenny, did you get the impression that  
7 he was going to just admit this because it  
8 was in his best interest and do an Alford  
9 type plea or something?

10 A. Right; yeah. I did not -- I think generally I  
11 try hard to have a good relationship with  
12 clients, especially clients in this situation,  
13 and that's a function of the time you spend with  
14 them. For one reason or another, I did not have  
15 that relationship with Mr. Kagonyera, probably  
16 because I didn't spend the time with him. I had  
17 so -- I have a client right now who's serving  
18 five life sentences, and I get a Christmas card,  
19 you know, from him. That -- we got along fine.

20 And so I think Mr. Kagonyera expressed  
21 frustration with me, you know. I mean, I don't  
22 -- yeah, resignation, it could very well have  
23 been. I mean, I remember saying, specifically  
24 addressing that with him because he was

1 frustrated by a lot of things and not real  
2 communicative and, you know, I mean, I -- you  
3 know, I always wondered if there's, still wonder  
4 if there's not more to the story. I mean, the  
5 thing you always worry about is the client not  
6 telling you -- it's what we call the long black  
7 veil syndrome. They didn't commit the murder  
8 because they were in the arms of their best  
9 friend's wife, and they don't want to tell you  
10 they were in the arms of their best friend's  
11 wife. I don't care if they were in the arms of  
12 their best friend's wife. For my purposes, that  
13 gets them out of the crime they're charged with.

14 I felt like there was something. You know,  
15 Kenny, tell me what it is, you know. Where were  
16 you? Were you with Tisha? Were you with -- you  
17 know. So I was frustrated, he was frustrated.  
18 Did he throw up his hands at the end of the day  
19 and say, I'll tell them whatever they want to  
20 hear and take 15 years? You know, quite  
21 possibly, yes, ma'am. And he still, you know,  
22 may have gotten a decent deal even without the  
23 murder. What I -- the reason I'm here is that's  
24 not a reason for somebody to go through life

1 with a murder conviction for something they  
2 didn't do, if that's -- I mean, I'm not here to  
3 advocate for him, but that troubles me.

4 MS. ASHENDORF: And I'm not here to  
5 trouble you, but --

6 A. Oh, I agreed to be here. I'm fine.

7 MS. ASHENDORF: -- if I had been your  
8 client, and they -- I mean, is it customary  
9 when a client -- when DNA is taken --

10 A. Right.

11 MS. ASHENDORF: -- and your client  
12 asks you to get the DNA results, rather  
13 than thinking all the things that you  
14 thought --

15 A. Right.

16 MS. ASHENDORF: -- it would have been  
17 a simple call to the DA?

18 A. Right; yeah. Right, to call the DA and say,  
19 where's the DNA?

20 MS. ASHENDORF: Right.

21 A. You know, that's true. And what you would --  
22 what normally would happen was you -- discovery  
23 would be parceled out. So one day you would go  
24 to the DA's office --

1 MS. ASHENDORF: Right.

2 A. -- and there would be an envelope with the lab  
3 results in it. And I think I -- you know, I  
4 fully expected to see that. Before that ever  
5 came, as far as I knew, he's telling me, okay --  
6 you know, when he -- and I don't think, going  
7 back to your question, you know, I don't think I  
8 thought -- I would have taken him over there if  
9 I thought he was just -- I mean, I didn't know.  
10 I really didn't know whether he was telling me  
11 the truth or not. But I think I had a right to  
12 expect that -- and he did, not me, Kenneth had a  
13 right to expect that he could see that lab  
14 result. And you know, you do, you do, you're --  
15 lawyers are busy. We form opinions about cases,  
16 and those opinions can be changed radically  
17 overnight by a tiny piece of evidence. And I --  
18 or not -- or any piece of evidence.

19 And I would have expected that to come in  
20 the course of -- I mean, I don't know the last  
21 time that I filed, before that I don't recall  
22 filing specific discovery or what we call Brady  
23 Motion looking for exculpatory evidence. There  
24 were lawyers in Buncombe County in 2000 that did

1 not file the form discovery motion because we  
2 had open file. Mr. Vickory can tell you, we had  
3 open file in Buncombe County before it was the  
4 law. So we really trusted the district  
5 attorney's office.

6 Now, even though I had a right to expect  
7 it, there's still a note in there that says it's  
8 sent off, and I never saw it. And that -- I'm  
9 not making an excuse for that. I should have  
10 done that.

11 MR. VICKORY: May I ask an  
12 additional --

13 JUDGE SUMNER: Sure.

14 MR. VICKORY: But you would not be  
15 surprised, would you, if you had a client  
16 go in and commit a robbery and leave no  
17 DNA?

18 A. Right; that's right.

19 MR. VICKORY: I mean, wouldn't you be  
20 shocked if you had a client walk into a  
21 store and commit a robbery and leave some  
22 DNA?

23 A. I don't think I've ever had a case -- I can't  
24 think of a case that I've had, except maybe a

1 sex crime, where DNA made the difference. It  
2 doesn't -- it happens on television, but it  
3 really doesn't --

4 MR. VICKORY: And we know, don't we,  
5 that DNA is very often not a part of a  
6 case?

7 A. That's most often not a part of it. And it's  
8 gotten better, you know, more precise now since  
9 -- made us all aware of DNA, but in those days  
10 it -- I mean, even 11 years ago I don't think it  
11 was as significant as it was now. But again, I  
12 should have seen that, I should have pushed for  
13 that.

14 JUDGE SUMNER: Yes, sir.

15 MR. JENKINS: Mr. Devereux, going back  
16 to your earlier testimony about the  
17 girlfriend. I think, the question was, or  
18 we had established a new theory based upon  
19 his starting out saying he didn't commit  
20 the crime and then --

21 A. Right.

22 MR. JENKINS: -- or saying he didn't  
23 commit the crime after he said he did, that  
24 she would testify that she was at home with

1           him during the crime. Did you ever  
2           establish that as an alibi that you felt  
3           that would hold in court?

4       A.    She told her statement to the officers. Again,  
5           I wouldn't rely on that. But she said that she  
6           wasn't with -- she specified she had seen him  
7           that day, but he wasn't with him during the  
8           11:30 time period. And I remember being -- you  
9           know, when that -- in the beginning thinking,  
10          well, if that's the case, we're in good shape.  
11          I don't recall speaking to her. I may have  
12          spoken to, I think I spoke to -- because I saw  
13          -- Kenneth was in custody, but Freddy Wadsworth  
14          was in and out of the office, and remember  
15          talking to him about it. What worries me now is  
16          that I accepted, I assumed that Mr. Wadsworth  
17          had Kenneth Kagonyera's best interest in mind.  
18          He may have been looking after his daughter. So  
19          I maybe shouldn't have assumed -- maybe Tisha  
20          was -- you know, who knows? I don't know.

21                   MR. JENKINS: I guess my question, had  
22                   it come down to it, he never had an alibi  
23                   during the crime?

24       A.    No. I mean, and you know, again, I'm not here

1 to advocate or be a martyr. You've got four  
2 guys. Somebody -- you would like -- I'd like to  
3 see an alibi from somebody, but you had that in  
4 a way from Brewton, and Brewton never -- Brewton  
5 just said, no, and ended up finally that -- I  
6 mean, that's the part of the case that after --  
7 I mean, that was after my client was already  
8 gone, but to dismiss against Brewton is pretty  
9 astonishing.

10 MR. JENKINS: My other question, I  
11 guess at some point you had to have a  
12 private meeting with your client to discuss  
13 the plea. Did he ever at any time convince  
14 you by giving you any details of the crime  
15 or going into any great detail of the crime  
16 that he had committed it?

17 A. There was -- no. That's a great question.  
18 There are times when something a client tells  
19 you, maybe even inadvertently, you know they  
20 were there, and then you do have the kind of  
21 comfort that Mr. Smith is talking about; this  
22 really -- he really did do this. I don't  
23 remember that. I mean, I remember him -- if  
24 you look at what, if you look at what he says to

1 -- I'm assuming you all have seen the statement  
2 that was written down in the DA's Office. He's  
3 going along and he names everybody that was  
4 there, and then somewhere right in the middle of  
5 the -- now, of course, it's not recorded, it's  
6 what the officer wrote down, but all of a sudden  
7 he tosses in Mr. Isbell's name. He has not  
8 mentioned that Isbell is even there, he just  
9 says Mr. Isbell did this and that and the other.  
10 And it's almost like, you know, I've got to work  
11 everybody in somehow. I mean, here's the list  
12 of characters and here's what happened and, you  
13 know. And if you, as I say in response to  
14 Linda's question, when you go back and look at  
15 -- when you know things you know now, the  
16 statements that seemed so powerful at the time,  
17 looked at against each other, really there's  
18 some significant inconsistencies. So there  
19 never was a moment when I felt he's telling me  
20 stuff that he could only know if he was here.

21 Last night when I was reading the statement  
22 that he made in the district attorney's office  
23 and the statement that the other guys made, I  
24 said to myself, if what Ms. Holloway told the

1           dispatcher and the first four officers that  
2           interviewed her over a 12-hour period is true,  
3           then these guys weren't there. It just doesn't  
4           -- it's not at all consistent with what --  
5           they're not consistent with each other and  
6           they're certainly not consistent with what she  
7           said at the beginning.

8                       MR. JENKINS: And I just have one more  
9                       question, and this is, I guess, more  
10                      curiosity than anything. I know Mr. Smith  
11                      asked the question, was it kind of unusual  
12                      to meet with the district attorney. The  
13                      same could probably be said about two  
14                      codefendants meeting together --

15       A.    Yeah, that was --

16                      MR. JENKINS: -- for one to confront  
17                      the other to say you were involved in the  
18                      crime. That was something I needed to --

19       A.    I don't recall ever doing that, and I did it  
20              twice in this case, yeah.

21                      MR. JENKINS: That's all I have,  
22                      Mr. Chairman.

23                      MS. MONTGOMERY-BLINN: Commissioners,  
24                      that's page 101 of the brief, the statement

1           that was just being referred to; 101.

2           JUDGE SUMNER: Mr. Vickory has a very  
3           quick question because he knows that I am  
4           used to eating this time of day. No, no,  
5           no, no, I can most certainly wait for one  
6           more question. Yes, sir.

7           MR. VICKORY: I'm just interested in  
8           -- I'm sure all the DA's offices provided  
9           discovery back in 2000, provided  
10          discoveries in different ways, many  
11          different ways. How did Ron do it then? I  
12          mean, did he let you look in his file or  
13          did he --

14        A.    No; no.

15          MR. VICKORY: -- just give you all  
16          copies?

17        A.    No, no, we got copies.

18          MR. VICKORY: You never got to  
19          actually thumb through his file yourself?

20        A.    In his office, no. We would get -- they would  
21          copy everything for us. But you know, that  
22          office -- I know you know Ms. Dreyer in that  
23          office, she's the assistant. She and I have  
24          done battle over the years royally. I've had

1 her tell me on the eve -- give me something on  
2 the eve of trial that just killed their case.  
3 So you know, I trusted them. And I guess I just  
4 expected if there's, if anything that comes back  
5 from the SBI is going to end up in an envelope  
6 and we'll pick it up. I mean, they asked me  
7 about it, I said, I'm sure it's in there, you  
8 know, but it's not. And I could say, and we  
9 didn't get it.

10 MR. VICKORY: well, that's obviously  
11 the hardest --

12 A. No. They copied, they copied everything. We  
13 didn't go through their file.

14 MR. VICKORY: The hardest thing for me  
15 to wrap my head around is why there wasn't  
16 -- have you gone to Ron or Ms. Dreyer or  
17 anybody and asked, what in the world is  
18 going on?

19 A. He and I had a case not long -- we're not -- we  
20 had a case not long ago and alluded, the subject  
21 of the Innocence Commission came, and I said,  
22 look, I think it would be better if you and I  
23 didn't discuss this, so we didn't. I haven't.  
24 I mean, I -- whatever the outcome here, I intend

1 to ask him about it.

2 MR. BECTON: This may be about your  
3 comment and may bring you some comfort, but  
4 as I understand it, before you entered the  
5 plea, Mills had implicated your client in  
6 the jail. The alibi you thought you had in  
7 his girlfriend did not pan out. On  
8 September 26th Larry Williams had  
9 implicated your client. On September 26th  
10 Damian Mills had implicated your client.  
11 On September 25th Teddy Isbell had  
12 implicated your client. On September 24th  
13 Aaron Brewton had implicated your client.  
14 On 9/23, actually, Brewton told Fair that  
15 your client was involved. On 10/8 somebody  
16 named Bryson said that your client told him  
17 about the case.

18 A. Millis, yeah.

19 MR. BECTON: On 10/21 somebody named  
20 Bryson said your client implicated the  
21 other people who were charged, and you were  
22 still searching for a theory of the case.  
23 Oh, and on 10/31 someone said that your  
24 client was the shooter?

1 A. That's right.

2 MR. JENKINS: One other comment, if  
3 Mr. BECTON is finished, about the  
4 discovery, about the open file system. I  
5 personally have been involved in a county  
6 where the same has gone on way before the  
7 discovery laws came into place. You took  
8 the file to the district attorney's office,  
9 they copied everything for the defense.  
10 And we always had an agreement that  
11 anything that came forward on the lawyer's  
12 side went to the DA's office. So I  
13 certainly understand your --

14 A. A lab report would have -- I mean, generally we  
15 have -- there's a shelf in Mr. Moore's front  
16 office, and very rarely are there weeks that  
17 something for our firm is not on the shelf from  
18 some agency or something, you know. So that's  
19 the way it works. So there are -- or in a case  
20 like this, sometimes he'll mail you the results  
21 of like a lab test. But none of the attorneys  
22 in this, as I understand it, nobody except  
23 perhaps way late in the case Mr. Isbell's third  
24 attorney may have gotten a copy of the DNA, but

1 none of the rest of us did.

2 JUDGE SUMNER: Thank you, sir.

3 A. Thank you, Judge.

4 MS. MONTGOMERY-BLINN: I'll ask that  
5 Mr. Devereux be released, Your Honor.

6 JUDGE SUMNER: Certainly.

7 (THEREUPON, MR. DEVEREUX IS RELEASED  
8 AS A WITNESS.)

9 \* \* \* \* \*

10 JUDGE SUMNER: This would probably be an  
11 appropriate place for us to take a brief moment  
12 to relax.

13 (THEREUPON, THE LUNCHEON RECESS WAS  
14 TAKEN FROM 1:40 P.M UNTIL 2:32 P.M.)

15 JUDGE SUMNER: Let me just say this for all  
16 of your benefits at this point. We've got a,  
17 well, we've got a certain amount of materials  
18 we've got to cover in order to be sure we can  
19 finish in the next two days, so we may have to  
20 run a little bit longer than 5:00, all right?  
21 So there are plenty of cookies in back and --

22 MS. ASHENDORF: As long as you're buying  
23 drinks at the end of the day.

24 JUDGE SUMNER: I am, all the soft drinks

1 are on me. We'll try not to make it too much  
2 longer for you, all right?

3 MS. MONTGOMERY-BLINN: I'm going to send  
4 our makeshift coasters around in case anybody  
5 needs one.

6 JUDGE SUMNER: Okay.

7 MS. MONTGOMERY-BLINN: Commissioners, I  
8 have two things to hand out to you right now.  
9 The first one is from Mr. Becton. It is a chart  
10 that he made up about -- I'll let Mr. Becton  
11 explain it, actually. I'll just pass it around,  
12 and you may take one to Mr. Devereux as  
13 requested.

14 MR. BECTON: I simply listed each of the bases  
15 on which the people charged gave statements,  
16 when their statements were given, and who they  
17 implicated, and what they -- if they implicated  
18 others. There's a separate chart of all the  
19 people who were listed as suspects and what  
20 people charged or others said about them. And  
21 there's also a Crime Stoppers chart showing who  
22 was implicated at various times during the two-  
23 or three-year period.

24 MS. MONTGOMERY-BLINN: Okay.

1 JUDGE SUMNER: And thank you for your  
2 efforts also.

3 MS. MONTGOMERY-BLINN: Thank you,  
4 Mr. Becton.

5 MR. BECTON: Oh, and obviously, I've used  
6 initials, so if it says no, that means he didn't  
7 make a statement made, but he implicated KWB.  
8 That would be Kenny, Williams, and Aaron, I guess.  
9 Yeah.

10 MS. MONTGOMERY-BLINN: Okay.

11 MR. BECTON: And I have when the police  
12 were done and, I guess, whenever the charge was  
13 dismissed.

14 MS. MONTGOMERY-BLINN: All right, thank  
15 you, Mr. Becton, Judge Becton. There's one more  
16 handout about to go around right now, and this  
17 is when Mr. Devereux was testifying before lunch  
18 he mentioned an Engine, a letter to Engine, and  
19 it's not in your briefs and it actually wasn't  
20 part of our hearing because we've never been  
21 able to actually verify who Engine is. We did  
22 show it to Mr. Kagonyera. We've showed it to  
23 the claimants, and Mr. Kagonyera does not  
24 recognize it. It was in Mr. Devereux's file.

1           The presumption that we made was that it was  
2           from his client, but when we interviewed him,  
3           Mr. Kagonyera didn't recognize it. He said some  
4           people had tried to nickname him Engine, but  
5           that that wasn't his regular street name. So  
6           we're passing it around so you can take a look  
7           at it since Mr. Devereux mentioned it, and I'm  
8           just telling you that I cannot say for sure who  
9           it's from or who it's to, but it was in  
10          Mr. Devereux's file when he provided to us in  
11          discovery.

12                 All right, we're going to turn now to  
13          forensic testing, specifically DNA testing.  
14          There is a DNA component to this investigation.  
15          There was testing done in 2001 during the  
16          investigation. There was a CODIS hit in 2007,  
17          and the Commission has subjected evidence to  
18          further DNA testing.

19                 In 2000 the gloves and bandanas were  
20          located along a roadside, and they became a part  
21          of the sheriff's department's investigation.  
22          And I'd like to call Mr. Lau to explain more to  
23          you about those gloves and bandanas and how they  
24          were located and what they look like.

1 Mr. Lau.

2 (THEREUPON, JAMIE LAU RETURNS TO THE  
3 WITNESS STAND.)

4 EXAMINATION BY MS. MONTGOMERY-BLINN:

5 Q. Okay, Mr. Lau, I believe you're still under  
6 oath.

7 Can you tell us a little bit about the  
8 gloves and bandanas that were located by the  
9 sheriff's department, if you know when they were  
10 located and who collected them?

11 A. The gloves and bandanas in this case were  
12 collected by Deputy Eddie Davis of the Buncombe  
13 County Sheriff's Office. We spoke with  
14 Deputy Davis and he confirmed that he was the  
15 individual that collected these items. And they  
16 were collected on the roadside near the Bowman  
17 house the day after the crime.

18 Q. And was there anything other than gloves and  
19 bandanas located at that time?

20 A. There was a blue shirt that was also located.  
21 In a minute I'm going to show you Eddie Davis'  
22 map from the day he collected the items or from  
23 when he collected the items. It's unclear if  
24 the shirt was collected the same day as the

1 bandanas because it wasn't submitted into  
2 evidence until four days later.

3 Q. And these gloves and bandanas, is it correct  
4 that they were identified by Tony Gibson?

5 A. Tony Gibson, who I testified about earlier,  
6 according to the prosecution summary, identified  
7 these gloves and bandanas as similar in color  
8 and type as the ones worn by the perpetrators.

9 Q. Okay. So have you seen these gloves and  
10 bandanas?

11 A. I have.

12 Q. Okay. And can you tell us about their  
13 condition, and if you've got a photograph to  
14 illustrate?

15 A. We do have photos of these items. I just want  
16 to get out of everybody's way.

17 Q. You may stand, if you need to.

18 A. Thanks. Items 9 and 10, item 9 is a pair of  
19 gloves, and that's how it was submitted as  
20 evidence, as the pair. Item 10 is a gray  
21 bandana. Item 11 is a single glove, it was a  
22 brown colored glove. Item 12 was a red bandana.  
23 And I just want to point out, this is how item  
24 12 was when we reviewed these evidence items.

1           Item 12 was tied in the back right here. So  
2           it's tied, and that's how it was when we  
3           received it. Item 13 is a second red bandana,  
4           and item 14 is another brown glove, which  
5           appears to be a match to the prior brown glove  
6           that you guys saw.

7           These items, their condition, they're in  
8           pretty good condition having been ten years.  
9           There's no sign of weathering, I guess, it  
10          doesn't appear. They're clean. They just  
11          appear like bandanas you might pull out of a  
12          drawer or something of that nature. There  
13          doesn't appear to be exposure to the sun,  
14          fading, or anything of that nature.

15          Here is a map of sort of the critical areas  
16          with regard to this homicide. The security  
17          video that you've heard referenced quite a bit  
18          this morning was at this Kounty Line - Reynolds  
19          Station. That was approximately 5.9 miles from  
20          the Bowman residence. The Bowman residence is  
21          down here. This is Church Road. Church Road  
22          runs north and it connects right here to Blue  
23          Ridge Road. So the bandanas were found in this  
24          area along Church Road before you got to the

1 intersection where it intersected with Blue  
2 Ridge.

3 The navy blue t-shirt that I spoke about,  
4 it was found along Old Fort Road just after --  
5 if you took a left on Church Road onto Blue  
6 Ridge Road here, it was found just after you  
7 turn from Blue Ridge onto Old Fort Road.

8 Here is the sketch from the, here's the  
9 sketch from Eddie Davis that he made, and this  
10 sketch was provided to us by Mr. Davis when we  
11 spoke with him at the Buncombe County Sheriff's  
12 Office. When we spoke with Mr. Davis, he  
13 indicated that he maintained his own file and  
14 that he would search to see if he could find  
15 items from his file that we had not previously  
16 seen before. At that point in time he provided  
17 us with this envelope with this hand drawn map  
18 on it, as well as inside this envelope were some  
19 photos that he took when they originally  
20 collected the bandanas.

21 If you look at this map, I tried to inset  
22 just for your guys' reference a more zoomed-in  
23 version of the map you saw before. Here is  
24 Church Road running away from the Bowman

1 residence. Here is where it intersects Blue  
2 Ridge Drive, and then here is Old Fort Road that  
3 it runs into. You can see the bandanas were  
4 collected, the pair of gloves, a second glove,  
5 another glove, and then the bandanas, bandana 1,  
6 5, and 6.

7 If you want to know which -- according to  
8 the Buncombe County evidence control form,  
9 bandana 1 is one of the red bandanas. It  
10 doesn't specify which red bandana it is. Item 2  
11 is one of the brown gloves. Item 3 is one of  
12 the brown gloves. Item 4 was the pair of gloves  
13 you saw. Item 6 is the gray bandana that you  
14 saw, and item 5 is a red bandana. And then you  
15 can see here on Old Fort Road where the blue  
16 shirt was located.

17 Q. Now, Mr. Lau, in the brief is a witness that the  
18 sheriff's department spoke to name Matthew Cox,  
19 and he said that they drove off in a particular  
20 direction. Can you tell us with your map what  
21 that direction is?

22 A. When we spoke with --

23 Q. And you can go back with that clicker.

24 A. When I spoke with Mr. Cox as a part of my

1 investigation, I spoke with him when we were  
2 talking about the suspects, which direction he  
3 saw the suspects after the homicide had  
4 occurred.

5 Q. Mr. Cox was a neighbor of the Bowman's, is that  
6 correct?

7 A. Mr. Cox was the neighbor. If you're staring at  
8 the Bowman household, he was the neighbor  
9 immediately on the right of the Bowman  
10 household.

11 Q. And he was just a 16-year-old at the time of  
12 the --

13 A. Mr. Cox was a teenager at that time. I believe  
14 16 is accurate.

15 Mr. Cox said that the suspects ran from the  
16 Bowman's house by his house. And if you're  
17 looking at Church Road, if you're looking here  
18 at Church Road, his house would have been north  
19 of the Bowman household. So if the suspects ran  
20 from the Bowman household past his house, they  
21 would be headed in this direction, north, and  
22 that's what he indicated to us.

23 I tried to clarify with Mr. Cox whether or  
24 not he then saw the vehicle going that

1 direction, and at that point in time we got  
2 disconnected and were unsuccessful in our  
3 attempts to speak with him again. So we didn't  
4 verify with him specifically which direction the  
5 vehicle was going. We just know that the  
6 suspects ran from the Bowman household in this  
7 direction along Church Road.

8 Q. Thank you. And Mr. Lau, as part of your  
9 investigation, did you explore the possibility  
10 that these gloves, bandanas, items collected  
11 were not at all related to this homicide, but  
12 may be related to some other incident?

13 A. I did. In order to investigate whether or not  
14 these bandanas could have come from another  
15 incident, the way I accomplished that was I  
16 subpoenaed records from the sheriff's  
17 department. I subpoenaed records of all their  
18 investigative records from September 4th to  
19 September 19, 2000, in all property and violent  
20 crimes.

21 Q. And why did you go back to September 4th?

22 A. Because when we looked at the bandanas we had to  
23 be realistic and set some date with which they  
24 could have been deposited on the roadside. Not

1           having seen that they were weathered at all or  
2           had any fading, we thought that September 4th  
3           was a realistic date that we could go back to  
4           with regards to the investigative records.

5       Q.    And what did you do when you got those reports  
6           from the sheriff's department?

7       A.    I reviewed each report that I received in  
8           response to that subpoena.

9       Q.    All right. And tell us about those reports.

10      A.    There were no reports which indicated that any  
11           property or violent crimes had occurred where  
12           the perpetrators were identified as having worn  
13           bandanas or gloves, bandanas specifically. I  
14           actually cannot directly recall whether  
15           gloves --

16      Q.    Okay. Were any of those reports pulled as  
17           possibilities or anything that you focused on  
18           particularly?

19      A.    I did notate three reports. I pulled out three  
20           reports, and what was in those reports, one was  
21           a breaking and entering that occurred on Church  
22           Road. It occurred between January 2000 and  
23           September 2000. It wasn't reported until this  
24           period of time, but the owner had last secured

1           the house in January 2000 and hadn't been back  
2           or had not noticed this item missing. The last  
3           time he had seen the item missing was in January  
4           -- excuse me, the last time he had noticed  
5           having the item in his possession was in January  
6           2000 and did not know when that item disappeared  
7           between that point in time and the report in  
8           September 2000.

9           Q.    Okay. And another report?

10          A.    I'm sorry, yes. A second was for a storage  
11          facility located off of Highway 74. It was  
12          reported on September 16th that a storage  
13          facility had been broken into. The facility had  
14          last been secured at 4:30 p.m. on  
15          September 15th. There were no suspects and no  
16          indications that bandanas had been used. It was  
17          some of the storage units had been broken into.

18          Q.    And is that the same as with the first, no  
19          suspects or indications of bandanas?

20          A.    Yes, that's correct.

21          Q.    And the last report?

22          A.    The last report I noted solely because of the  
23          source of the report. The last report was a  
24          report of a runaway child dated September 18th.

1           The report was reported by Heather Sommerset.  
2           Heather Sommerset is the individual who,  
3           according to police records, first located these  
4           bandanas and notified the sheriff's department  
5           that there were bandanas along the side of the  
6           road on Church Road. Other than that, there was  
7           nothing significant. I just thought that that  
8           name having appeared in a police report the day  
9           before she appears in this evidence control form  
10          indicating to the law enforcement that those  
11          bandanas were there, it just -- the similarity  
12          between the names made me flag it.

13        Q. Now, obviously, Mr. Lau, you cannot confirm that  
14          these gloves and bandanas are from this  
15          incident?

16        A. No. There's no way I could say with certainty  
17          that these were the bandanas and gloves used at  
18          the incident, but these are the efforts that I  
19          undertook to try and see if there were other  
20          incidents where bandanas and gloves were used  
21          during that time period.

22                    MS. MONTGOMERY-BLINN: Commissioners,  
23                    do you have any questions about the gloves  
24                    and bandanas for Mr. Lau?

1 MR. JENKINS: You talked about the --  
2 give me just a minute. The lady who  
3 reported the runaway is also the person who  
4 found the bandanas. Do we know who found  
5 the shirt?

6 A. I can look on the form. I don't have it in  
7 front of me, but it's possible it's notated on  
8 that form.

9 MR. JENKINS: But it's not the same  
10 person who found the bandanas?

11 A. I don't believe it's the same individual who  
12 found the bandanas, no.

13 MR. JENKINS: And my other question  
14 is, did Deputy Davis indicate why he would  
15 maintain this information in a separate  
16 file of his own instead of putting it with  
17 the homicide investigative file?

18 A. It was just their common practice, the ID techs,  
19 they kept their own files with regard to cases.  
20 And he indicated that that was his practice at  
21 the time. And he maintained all these files,  
22 continued to have them in his possession. And  
23 he actually left the interview with us, went,  
24 searched through his files, found these ones,

1 and brought them back to us when we were  
2 speaking with another officer.

3 MR. JENKINS: So he was an  
4 identification technician?

5 A. Yeah, he was a crime scene tech.

6 MR. JENKINS: Okay. That's all I  
7 have.

8 MR. BECTON: Did Sommerset work for  
9 the postal service, a driver?

10 A. She was the driver, yes.

11 MS. ASHENDORF: Jamie, it almost  
12 looked like those things were strategically  
13 placed in, I mean, in a line. They weren't  
14 just discarded. They were -- it looked  
15 like they just were placed there.

16 A. I can't speak. All I can show you is --

17 MS. ASHENDORF: Which makes you think  
18 someone could have placed them there with  
19 someone else's DNA on them?

20 A. This is the hand drawn map, and that's all we  
21 know about their location.

22 MS. JOHNSON: Is there any indication  
23 from the sheriff's office files whether or  
24 not they did a canvas of the neighborhood

1           when that crime occurred and why they did  
2           not locate these items?

3       A.    They did a canvas of the neighborhood the next  
4           morning. My understanding is that these were  
5           located as part of that canvas. I don't know,  
6           and I can't speak to whether or not that meant  
7           they spoke with the postal worker and she said  
8           they were here or how they came about that, but  
9           they did canvas the neighborhood the following  
10          morning.

11       Q.   Mr. Lau, weren't these found the following  
12          morning?

13       A.    Yes.

14       Q.    So we don't know whether these were found  
15          before, during, or after the canvas, is that  
16          right?

17       A.    Correct.

18                   MS. JOHNSON: well, it says in the  
19                  time line that September the 18th is the  
20                  date of the crime, and then it says  
21                  September the 20th four gloves and three  
22                  bandanas were located alongside the road  
23                  and collected by deputies. So is that,  
24                  you're saying it was not on the 20th, it

1           was actually on the 19th that they located  
2           those instead of two days later?

3       A.    That's my understanding, and I'll double-check  
4           to make sure that if the brief is incorrect,  
5           that it's fixed. But I believe it was the 19th  
6           that they were located.

7                    JUDGE SUMNER: Any other questions?

8                    MR. BECTON: You asked Cox about the  
9                    direction in which the subjects ran.

10       A.    Uh-huh (yes).

11                   MR. BECTON: Did he see a car at all?  
12                   You asked if he saw a car going in that  
13                   direction.

14       A.    We got --

15                   MR. BECTON: They would have been  
16                   running to the car as opposed to away from  
17                   the car.

18       A.    We got disconnected at that point. We were  
19           unable to make contact with him after that  
20           point.

21                   MR. BECTON: Okay.

22       A.    So we didn't have the opportunity to verify  
23           whether he saw the car and which direction that  
24           car was headed, if he did see a car.

1 MR. BECTON: But they ran north?

2 A. Yes.

3 MR. BECTON: Presumably toward their  
4 car as opposed to away from their car,  
5 right?

6 A. I mean, I can't --

7 MR. BECTON: I'm asking.

8 A. I would say, yes, presumably towards their car.  
9 I can't say if their car was parked in that  
10 direction.

11 MR. BECTON: Was Cox's house south of  
12 the Bowman's or north of the Bowman's?

13 A. North.

14 MR. BECTON: So they ran past his  
15 house, but still hadn't gotten to  
16 presumably their car?

17 A. That's my understanding. That's what  
18 Matthew Cox told me.

19 Q. Mr. Lau, could I just ask that the photos that  
20 were turned over to you by the sheriff's  
21 department identification tech of the items long  
22 the roadside, do those show the items -- and I'm  
23 not trying to get you to draw a conclusion. Do  
24 the items, are they laid, placed, or are they

1 crumpled heaps?

2 A. I would be happy to pass those photos around if  
3 it's something the commissioners would like to  
4 see. Sure.

5 Q. Okay.

6 A. I can actually pass them now, if you want.

7 Q. Sure.

8 MR. JENKINS: I've got another  
9 question while you're doing that.

10 JUDGE SUMNER: Go ahead.

11 MR. JENKINS: I don't want to get too  
12 technical with this, but we don't have any  
13 indication of how far apart these sketches  
14 are, items are on the road?

15 A. No, we don't.

16 MR. BECTON: But we know to the bend  
17 it's three-tenths of a mile, from the house  
18 to the curve?

19 A. It's approximately, it's approximately, from the  
20 Bowman residence to where Church Road and Blue  
21 Ridge Road intersect, it's approximately 1.5  
22 miles.

23 MR. BECTON: Okay. What's the point  
24 three then? I thought there was --

1 A. The point three is the approximate distance  
2 between the bandanas and the navy blue shirt.

3 MR. BECTON: Okay.

4 MR. JENKINS: Do we know if this is a  
5 heavily housed area? Is this a rural  
6 community?

7 A. (Witness does not respond.).

8 MR. JENKINS: I guess my question is,  
9 are there a lot of houses in between this  
10 1.5 miles or is this just a stretch of land  
11 where these bandanas were thrown out? Do  
12 we know that?

13 A. It's not a subdivision. There is not houses on  
14 top of houses.

15 MR. JENKINS: Okay. Thank you. I'm  
16 just trying to think in my mind.

17 JUDGE SUMNER: More rural is what  
18 you're saying; more rural?

19 A. It's a rural -- it's not a subdivision. I'm  
20 sorry, the pictures are going around. Are there  
21 any additional questions?

22 MS. MONTGOMERY-BLINN: May I approach  
23 the witness, Your Honor?

24 JUDGE SUMNER: Yes.

1 A. Thank you.

2 Q. I've just handed you the evidence logs from the  
3 gloves and bandanas. Does that help you answer  
4 the question about what day they were collected  
5 or submitted?

6 A. I see the date that they were submitted on the  
7 20th.

8 Q. Submitted on the 20th. Does it say what date  
9 they were collected?

10 A. They were submitted on the 20th.

11 Q. Okay.

12 MR. JENKINS: These pictures answered  
13 the question I just asked regarding the  
14 houses. You see plenty of them.

15 MS. MONTGOMERY-BLINN: Are there any  
16 more questions for Mr. Lau?

17 MS. ASHENDORF: So they canvassed on  
18 the day after, the 19th, but those weren't  
19 located until the 20th?

20 A. They were submitted into evidence on the 20th.  
21 And why I say that is because sometimes items  
22 are collected and they don't get submitted into  
23 evidence until --

24 MS. ASHENDORF: Right.

1 A. I'm looking through my notes right now for the  
2 specific day in which they were identified as  
3 collected by Mr. Davis when I spoke with him.

4 MS. MONTGOMERY-BLINN: May I approach  
5 the witness, Your Honor?

6 JUDGE SUMNER: Yes, you may.

7 Q. Mr. Lau, I'm handing you an investigative report  
8 and asking you to take a look at that paragraph  
9 right there. And if you would, read it for the  
10 commissioners.

11 A. According to the prosecution report, and this is  
12 why I've been careful -- on Tuesday, on  
13 September 19, 2000, while the neighborhood  
14 canvas was being conducted by officers, a  
15 subject by the name of Heather Sommerset, 6 Flat  
16 Top Mountain Road, who was a postal carrier, had  
17 spotted several what appear to be bandanas near  
18 the end of Church Road near the intersection of  
19 Blue Ridge Development Road lying on the sides  
20 of the road. Officers responded, and the items  
21 were collected for evidence purpose.

22 So according to the prosecution report,  
23 they were collected on September 19th, the  
24 morning after. They were submitted into

1 evidence on September 20th, 2000.

2 MR. BECTON: Do the cones represent  
3 where items were found?

4 A. The cones have numbers on them, and those  
5 numbers should correspond to the numbers on the  
6 hand drawn sketch.

7 MS. MONTGOMERY-BLINN: May Mr. Lau  
8 step down now?

9 JUDGE SUMNER: Yes. No further  
10 questions?

11 MR. BECTON: I have one other. The  
12 shoulders of the road look awfully narrow  
13 on all the places, and there are curves in  
14 it. Is that where you would park a car?

15 JUDGE SUMNER: Repeat that,  
16 Mr. Becton, please.

17 MR. BECTON: I was just looking to see  
18 where you would park a car. I see two sort  
19 of sheriff's department cars parked on the  
20 left side of the road.

21 MS. MONTGOMERY-BLINN: Can Mr. Lau,  
22 step down.

23 JUDGE SUMNER: Thank you, sir.

24 (THEREUPON, JAMIE LAU STEPS DOWN FROM

1 THE WITNESS STAND.)

2 MS. MONTGOMERY-BLINN: And commissioners,  
3 we're about to bring a couple of DNA experts in  
4 to explain the testing that they conducted and  
5 give you all of the details and answer all of  
6 your questions. I'd like to give you a quick  
7 overview so you have a roadmap of where we're  
8 going and the context to put their information  
9 in, but please, when they come in, know that  
10 they are the DNA experts and I am not.

11 In 2001 during the investigation the gloves  
12 and bandanas were sent to the SBI for comparison  
13 with suspects. They compared it to everybody in  
14 group B. The SBI located some profiles on the  
15 bandanas, but they excluded the people from  
16 group B. And the SBI did not use the language  
17 excluded in their report, and we're going to ask  
18 them a lot about that report to make sure that  
19 we understand their language. And they also --  
20 the victim was also not a match.

21 A DNA profile was obtained from one of the  
22 bandanas, a complete profile. It was for an  
23 unknown person. They weren't able to compare it  
24 to anybody that they could find a match to, and

1           it was uploaded to the databank, CODIS, the DNA  
2           databank for regular query.

3           Also in 2001 at that time serology was  
4           conducted. It was conducted on the bandanas in  
5           order of isolate where to test, but it was also  
6           conducted on the van door that was seized from  
7           Robert Wilcoxson's van. They did some testing  
8           there for blood, and there was presumptive  
9           indications for blood, but it could not be  
10          confirmed. We will be giving you the bench  
11          notes to this. It was not subjected to DNA  
12          testing. The serologist that did this testing  
13          is no longer with the SBI, but the commission  
14          has asked an independent expert to review this  
15          report and the bench notes, and she will be here  
16          to testify.

17          In 2007 there was a CODIS hit on this  
18          unknown profile, the one from the bandana that  
19          had been uploaded to the data bank. This was  
20          before the Commission got the case. That CODIS  
21          hit was a match to Brad Summey. He's one of the  
22          people from group A. In 2010 when the  
23          Commission became aware, had the case and became  
24          aware of this CODIS hit, they asked the SBI to

1 do a direct comparison to confirm the CODIS hit  
2 or not. And so they compared the DNA from that  
3 bandana to a profile from Brad Summey that the  
4 Commission obtained voluntarily from Mr. Summey,  
5 and it was a match.

6 In 2010 the Commission submitted the gloves  
7 and bandanas to LabCorp for further testing.  
8 During the course of the investigation the  
9 Commission was able to obtain DNA samples from  
10 all of the people in group A and all of the  
11 people in group B to submit for direct  
12 comparison, as well as the victim's profile.  
13 And I will note, and I think you've heard, that  
14 Lacy Pickens from group A is now deceased, but  
15 his DNA had been preserved by the Asheville  
16 Police Department because he was shot in a  
17 police altercation, and they had saved that from  
18 the autopsy or from that altercation. His DNA  
19 was there, and they allowed us to go to court.  
20 They didn't oppose getting the DNA so we would  
21 have it for comparison. So we were able to  
22 obtain everybody's DNA.

23 with more modern technology and extensive  
24 testing, LabCorp was able to obtain additional

1 profiles from the gloves and bandanas. They're  
2 going to come in here with all of those reports  
3 and explain that all to you, but they did  
4 exclude everybody from group B again from all of  
5 the additional profiles. Lacy Pickens' DNA  
6 could not be excluded from a pair of gloves.  
7 The analyst will explain what cannot be excluded  
8 means in this situation. Robert Rutherford's  
9 DNA could not be excluded from a bandana. The  
10 analyst will again come and explain what not be  
11 excluded means, and they will give you  
12 statistics about that, or at least I hope they  
13 will.

14 In 2011 the Commission submitted the panel  
15 from Robert Wilcoxson's van door to LabCorp for  
16 DNA testing. It was able to be located in 2011  
17 and we submitted it. I just note for you that  
18 there was no indication that the killers had  
19 blood on themselves, but we just wanted to test  
20 it to be overcautious, especially since it had  
21 been subjected to testing back then. Partial  
22 profiles were obtained in some areas on the van  
23 door. From those profiles they either were  
24 insufficient from comparison or the victim's DNA

1 was excluded each time, but some were just  
2 insufficient. They were very partial profiles.  
3 Again, an analyst that did that testing will be  
4 here to answer any questions you have.

5 In 2011 the Commission submitted the blue  
6 t-shirt, the navy blue t-shirt to LabCorp.  
7 Again, just to note here, it's unclear if it was  
8 related to the gloves and bandanas or not. It  
9 was found at a further distance from them, but  
10 to be overly cautious we decided to submit it,  
11 and a partial profile was obtained off of the  
12 blue t-shirt. Every person from group A and  
13 every person from group B was excluded from that  
14 partial profile. It was just a partial profile  
15 from one part of the t-shirt. That analyst will  
16 be here to testify.

17 So I'm ready to bring in the DNA analyst  
18 unless anybody has any questions for me and my  
19 brief knowledge and this brief roadmap.

20 (No audible response.)

21 MS. MONTGOMERY-BLINN: No?

22 JUDGE SUMNER: No questions?

23 (No audible response.)

24 MS. MONTGOMERY-BLINN: All right.

1 JUDGE SUMNER: You may call her.

2 MS. MONTGOMERY-BLINN: First, as she's  
3 coming in, to let you know, Ms. Clement from  
4 LabCorp, Inc. is coming in, and she's going to  
5 testify about the serology that was done back in  
6 2001 since that analyst from the SBI is no  
7 longer with the SBI. She's reviewed that, the  
8 bench notes, is going to explain it. Then Tim  
9 Baize from the SBI is going to come in and talk  
10 to you about the CODIS hit. He was the one that  
11 received the CODIS hit and did the direct  
12 comparison. Then Shawn Weiss from LabCorp is  
13 going to come in. He is the analyst that did  
14 all of the Commission testing that was done at  
15 LabCorp. So he is the one that actually did the  
16 testing. So that's why we'll have three coming  
17 in. And I think she's probably at the back door  
18 right now.

19 The Commission calls Meghan Clement.

20 JUDGE SUMNER: Please be seated.

21 MS. MONTGOMERY-BLINN: Commissioners, we  
22 are handing out this serology report from the  
23 SBI, and the bench notes, and Ms. Clement's CV.  
24 This is all coming around. I think the CV is

1           already coming around. The serology report and  
2           the bench notes are coming out right now from  
3           the SBI, and that's what Ms. Clement reviewed at  
4           the request of the Commission.

5

6           THEREUPON,

7                     Meghan Clement,

8           Having first been duly

9           Sworn, was examined and

10          Testified as follows:

11         EXAMINATION BY MS. MONTGOMERY-BLINN:

12         Q.    Ms. Clement, how are you employed?

13         A.    I'm employed as a technical director in the  
14             forensic identify department at Laboratory  
15             Corporation of America Holdings, Incorporated,  
16             which has trademarked the name LabCorp.

17         Q.    So we can call it LabCorp, is that right?

18         A.    Yes.

19         Q.    And how long have you been employed at LabCorp?

20         A.    I've been employed there since November of 1994.

21         Q.    And before that, where were you employed?

22         A.    Prior to that I was employed at the Tarrant  
23             County Medical Examiner's Office in Fort Worth,  
24             Texas. I was employed there from March of 1991

1 through November of 1994. And prior to that I  
2 was employed at the Albuquerque City Police  
3 Department Crime Laboratory in Albuquerque, New  
4 Mexico from March of 1985 through March of 1991.

5 Q. And tell us about your education.

6 A. I have a bachelor of science in biology from  
7 Westfield State College in Massachusetts, and a  
8 master of science in forensic sciences from the  
9 University of New Haven in West Haven,  
10 Connecticut. I've also attended graduate level  
11 courses at the University of New Mexico in  
12 Albuquerque as well as obtained graduate level  
13 credits from the University of Virginia through  
14 courses that I took at the FBI Academy in  
15 Quantico, Virginia.

16 Q. And have you testified before as a DNA expert in  
17 court or in other proceedings?

18 A. Yes, I have.

19 Q. About how many times, do you think?

20 A. I believe it's approximately 340 times now.

21 Q. And have you testified before this Commission  
22 before as a DNA expert?

23 A. Yes, I have.

24 MS. MONTGOMERY-BLINN: Your Honor, if

1                   everybody has --

2       Q.    And Ms. Clement, your CV has been passed around.  
3            I think I should grab it and just show it to  
4            you.

5                   MS. MONTGOMERY-BLINN:  If I may, Your  
6            Honor.

7                   JUDGE SUMNER:  Yes, ma'am.

8       Q.    Just to confirm that this is, indeed -- will you  
9            just take a look at that and tell me if it is,  
10           indeed, your current curriculum vitae?

11      A.    (Witness reviews document.)  Yes, it is.

12                   MS. MONTGOMERY-BLINN:  Your Honor, I'd  
13            ask that Ms. Clement be accepted before the  
14            Commission as an expert and permitted to  
15            testify as an expert in DNA technology and  
16            testing?

17                   JUDGE SUMNER:  Any questions on the  
18            tender of Ms. Clement?

19                   (No audible response.)

20                   JUDGE SUMNER:  She's deemed to be  
21            qualified.

22                   MS. MONTGOMERY-BLINN:  Thank you, Your  
23            Honor.

24      Q.    All right.  Ms. Clement, did the Commission ask

1           you to review a serology report in this matter?

2       A.    Yes.

3       Q.    And were you able to do that?

4       A.    I was, yes.

5       Q.    And do you have a copy of that report before  
6            you?

7       A.    I do have a copy of the report.

8       Q.    And what agency is this report from?

9       A.    The agency was the State Bureau of Investigation  
10           here in North Carolina.

11      Q.    And did you also review bench notes for this  
12            report?

13      A.    I did, yes.

14                    MS. MONTGOMERY-BLINN:  And does every  
15                    commissioner have a copy of this now?

16                    (No audible response.)

17                    MS. MONTGOMERY-BLINN:  Everybody has  
18                    one?  Okay.

19      Q.    Now, Ms. Clement, I understand that you did not  
20            do this testing, but you've been asked as an  
21            independent expert to review this report and  
22            explain what the report and the bench notes  
23            mean.  Do you feel comfortable doing that?

24      A.    Yes, I do.

1 Q. Okay. would you mind just walking us through  
2 this report and telling us what it means and  
3 what the results are?

4 A. Certainly. Generally, in any report the  
5 original page, obviously, has the type of case,  
6 the location, and then it has a list of the  
7 items that were submitted. In this particular  
8 case there were numerous items submitted, and I  
9 don't know if you want me to go through every  
10 single one of them, but there were a variety of  
11 reference samples submitted from known  
12 individuals. These were submitted as blood  
13 samples. And then there were various questioned  
14 samples that were submitted to be used to  
15 identify whether there were any potential body  
16 fluids that could be used for DNA testing.

17 Q. And can you tell us what those question samples  
18 were?

19 A. Certainly. There were gloves; there was a gray  
20 bandana; there was a couple of different red  
21 bandana; and multiple other types of gloves.  
22 Most of them were cotton gloves, but there were  
23 -- let's see, item 9 was a pair of cotton  
24 gloves; item 10 was a gray bandana; item 11 was

1 a cotton work glove; item 12 was a red bandana;  
2 item 13 was a red bandana; and item 14 is a  
3 cotton glove.

4 where you see underneath an original item  
5 number something which is listed as the same  
6 number dash one or dash two, what that indicates  
7 is there was, indeed, a cutting taken from that  
8 original item which was subsequently tested.

9 Q. And can you tell what type of testing was done  
10 on these items?

11 A. Certainly. There were -- originally most of the  
12 evidence items were looked at using a type of  
13 light to determine whether something would  
14 fluoresce, indicating it could be a body fluid,  
15 and then if something fluoresced, they would  
16 subject it to various types of serology tests.  
17 And serology is simply the identification of  
18 body fluids. So each of these items was looked  
19 at with the light, looked at to see whether  
20 there were any hairs that were present on the  
21 items, and if there was something that was  
22 visible, it was then tested.

23 For some of the items such as the scarves  
24 where there was nothing visible, cuttings may

1           have been taken to determine whether there were  
2           any body fluids in areas that the analyst  
3           indicated or thought there might be a body  
4           fluid.

5       Q.    And I'm sorry, go ahead and tell us what  
6           happened with these items when they tested them.

7       A.    Shall I start with the item number 1 and just go  
8           through?

9       Q.    Please, that would be --

10      A.    Okay.

11      Q.    Whatever order makes the most sense to you or is  
12           chronological.

13      A.    Certainly. I talked about the gloves in the  
14           samples. Another item that was submitted was a  
15           vehicle door panel. On the vehicle door panel  
16           -- and if you turn to page, the back of the  
17           third page are the actual analyst's notes. He  
18           indicates that there were some very faint stains  
19           visualized by fingerprint powder, and so that  
20           was covered by taped paper, and underneath it  
21           was smudged. He tested these particular stains  
22           for the presence of blood. The test is called  
23           the phenolphthalin test, and he tested the red  
24           areas, and he did obtain a positive result from

1           that area.

2           He then went on to test it for what's  
3           called an ABACard, and it looks for anti-human  
4           hemoglobin to determine whether it's human blood  
5           or not, and he got a negative result on that.  
6           He performed two tests, and he got a negative  
7           result. He did not have sufficient quantity,  
8           you'll see under this, underneath the  
9           phenolphthalin there's something called  
10          Takayama, and there's a QNS, which generally  
11          stands for quantity not sufficient. So he ran  
12          out of material and had nothing else to test at  
13          that point. And he makes a note he used it all,  
14          so he used all of the stain that he had  
15          collected, and he cannot say it's human. The  
16          reason he cannot say it's human is because the  
17          anti-human hemoglobin gave a negative test. The  
18          phenolphthalin is only a presumptive test, so  
19          that only tells you whether it might be blood or  
20          not.

21        Q.    So can anybody say whether whatever they tested  
22               was blood or not?

23        A.    No.

24        Q.    Now, when you say that the --

1 A. Not scientifically.

2 Q. Not scientifically, thank you. When you say --  
3 it might be blood, right? It might not be  
4 blood?

5 A. That's correct. That's about the best you can  
6 say.

7 Q. Okay. When you said that the Takayama test was  
8 negative, does negative mean that it is not  
9 human blood or does negative mean it is either  
10 not human blood or there was an insufficient  
11 quantity or for some reason the test couldn't be  
12 performed?

13 A. Any of the above. It could be that there just  
14 was insufficient amounts of the red stain to  
15 give a positive result, it could be that it was  
16 negative for blood. You really don't know when  
17 you get a negative result, you don't know why.

18 Q. Negative does not necessarily mean that it's not  
19 blood?

20 A. That's correct.

21 Q. It could mean that? It could mean that the test  
22 was incorrect in some way or unable to be  
23 performed in some way?

24 A. He used controls, and he does indicate that the

1 positive and the negative controls were  
2 accurate. So it would just potentially mean  
3 that either the sample was too weak to give a  
4 positive result if it truly were blood, or that  
5 it wasn't blood. I mean, there's really no way  
6 to tell one way or the other.

7 Q. Okay. And you said phenolphthalin is only a  
8 presumptive test. Can you just tell us a little  
9 bit more about why that's only presumptive?

10 A. Certainly. The phenolphthalin test is a  
11 presumptive test, and it will cross-react with  
12 numerous fluids, chemicals, et cetera, that  
13 truly are not blood. So it's just an indication  
14 that it could be blood if you get a positive  
15 result.

16 Q. And you can't say anything about likelihood or  
17 probability, is that correct?

18 A. No, I cannot.

19 Q. Okay. Can you tell us about -- now, was that  
20 all the testing that was conducted on the van  
21 door?

22 A. Yes, that's correct.

23 Q. And does it indicate whether the van door was  
24 sent on for further testing such as DNA testing

1 or returned, or what happened with the van door?

2 A. In this particular report the remaining evidence  
3 -- so basically the van door was held for pickup  
4 by the investigating agency.

5 Q. And it was not subjected to further DNA testing?

6 A. Not according to this report, no.

7 Q. Not according to the report. And the analyst  
8 that did this report, his indications are that  
9 he used the substance up in this type of  
10 serology testing, is that correct?

11 A. That is correct; that is correct. And in his  
12 report he does clearly state that it revealed  
13 chemical indications, however, further testing  
14 was inconclusive.

15 MS. MONTGOMERY-BLINN: Commissioners,  
16 before I move to the gloves and bandanas,  
17 does anybody have any questions about the  
18 van door?

19 (No audible response.)

20 Q. Ms. Clement, would you tell us about the next  
21 set of testing that was done?

22 A. Certainly. The next few pages of the notes are  
23 simply the reference samples that were submitted  
24 and indicate which samples they belong to, what

1 numbers they were given, what they contained,  
2 and most of the known reference samples had  
3 generally two tubes of blood, a purple top tube,  
4 and a red top tube, as well as hair reference  
5 samples. So that would be item 2, item 3,  
6 item 4, item 5, item 6, item 7, and item 8 were  
7 all in reference to samples that were submitted  
8 as knowns for various individuals.

9 Q. Those would be the blood that was drawn from  
10 somebody for a direct comparison?

11 A. That's correct. Item 9 was a pair of blackish-  
12 brown work gloves. There was nothing seen with  
13 the visual eye. You can see a note, there's a  
14 crime scope, which is negative, indicating there  
15 was nothing that fluoresced, which could  
16 indicate that there was a potential body fluid.  
17 There was no hair identified, and no stain. It  
18 does appear that he swabbed it and did try to  
19 perform a phenolphthalin test to see if maybe  
20 there was something he couldn't see with his  
21 visual eye. That gave him a negative result, so  
22 nothing further was done with these items.

23 Item 10 was a gray bandana. Again, he did  
24 not see anything visually. He has a note, crime

1 scope, but it appears that he forgot to  
2 designate whether it was positive or negative.  
3 There's nothing after that. He did check a  
4 likely spot, and you can see under the  
5 phenolphthalin it was negative. He did not  
6 observe any hair. He then went and took a  
7 portion of cutting from an area, and I guess  
8 this is also probably checked a likely spot  
9 apparently where he thought a mouth might be  
10 because he tested for amylase. And amylase is  
11 an enzyme found in saliva, which breaks down our  
12 food. And so he performed an amylase test on  
13 this cutting that he took. And he actually took  
14 both the front and the back cuttings and  
15 combined them, and he did obtain positive, a  
16 strong positive result for the presence of  
17 amylase. And so those samples were retained and  
18 sent on for DNA testing.

19 Then item 11 was a brown knit glove from a  
20 left hand. He did not see anything visually.  
21 The crime scope did not show any areas that  
22 fluoresced. He did not see any hair. He  
23 apparently swabbed it and did test for  
24 phenolphthalin, which gave him a negative

1 result, and so no further analysis was performed  
2 on item 11.

3 On item 12 we have a red bandana. It was  
4 knotted in a circle. He did not see anything  
5 visually. The crime scope was negative. There  
6 was no hair collected from it. He did test a  
7 portion of an area that he considered a likely  
8 spot. It was negative for phenolphthalin,  
9 however, he also subjected it to amylase looking  
10 for the presence of amylase and saliva, and that  
11 also gave a negative result. And if at the  
12 bottom you see a little cc, that stands for  
13 cloth control. Items of clothing, oftentimes  
14 you will take a sample away from where you are  
15 testing to be sure that you're not getting a  
16 positive response from a background material  
17 from something that might be on there either  
18 from the wash or from somebody else who had  
19 handled it or something like that. So the cc is  
20 the cloth control, and that also gave a negative  
21 result.

22 On item 13, another red bandana, Marlboro  
23 Country, it visually did not have anything on  
24 it. The crime scope showed no fluorescence.

1           There was no hair collected. He checked the  
2           likely spot which he identified as 13-1, and it  
3           gave a negative phenolphthalin result. However,  
4           it did give a one-plus positive for amylase,  
5           which is a weak positive result for the presence  
6           of amylase. He also checked the cloth control  
7           area. You can see a different area that gave a  
8           negative control. So that gives him confidence  
9           that the positive amylase is not all over the  
10          bandana, it's actually coming from the spot that  
11          he thinks -- from somebody who wore it. This  
12          sample was retained for DNA testing.

13                 And then item 14 is the last item. It was  
14          a brown knit glove from a right hand. There was  
15          nothing that fluoresced under the crime scope.  
16          There was no hair that was collected.  
17          Apparently he took a swab and tested it for  
18          phenolphthalin, which gave a negative result.  
19          He also tested it for amylase, that also gave a  
20          negative result, so there was nothing further  
21          done with this item.

22          Q.     So those items now, the ones that he did  
23          positive for amylase, which is a test for human  
24          saliva or for saliva --

1 A. Correct.

2 Q. -- he submitted those where?

3 A. There were samples. Those samples were  
4 transferred to another agent in the DNA analysis  
5 unit for DNA testing.

6 Q. And what does the report indicate happened with  
7 the rest of the evidence?

8 A. The remaining evidence was all held for pickup  
9 by the investigating agency.

10 Q. Is there anything else in this report and bench  
11 notes that you see that you haven't testified  
12 about, any tests that were done that are not  
13 reported or inconclusive?

14 A. No, all of the tests were reported.

15 Q. And you've just covered all of the tests that  
16 were done?

17 A. Yes.

18 MS. MONTGOMERY-BLINN: Commissioner  
19 questions?

20 (No audible response.)

21 MS. MONTGOMERY-BLINN: No? We'll ask  
22 that Ms. Clement be excused.

23 JUDGE SUMNER: Thank you, ma'am.

24 Q. -- and then I'll ask Mr. Baize to come in.

1 A. Thank you.

2 (THEREUPON, MS. CLEMENT IS EXCUSED  
3 FROM THE WITNESS STAND.)

4 \* \* \* \* \*

5 MS. MONTGOMERY-BLINN: We're going to go  
6 ahead and send around the next report. This is  
7 the DNA report from 2001 that Mr. Baize is on  
8 his way in to testify about.

9 The Commission calls Mr. Baize.

10

11 THEREUPON,

12 Timothy Baize,

13 Having first been duly

14 Sworn, was examined and

15 Testified as follows:

16 EXAMINATION BY MS. MONTGOMERY-BLINN:

17 Q. What is your name?

18 A. Timothy Baize.

19 Q. Where do you work, Mr. Baize?

20 A. I work at the State Crime Lab.

21 Q. How long have you worked there?

22 A. It will be seven years this August.

23 Q. Can you tell us, did you work anywhere before  
24 then?

1 A. Before that I worked about three-and-a-half  
2 years for LabCorp.

3 Q. For LabCorp, and before that?

4 A. Nowhere.

5 Q. Okay. can you tell us about your education?

6 A. I have a bachelor's of science degree in biology  
7 from East Carolina University, I also took  
8 coursework in biochemistry from North Carolina  
9 State University.

10 Q. Can you tell us about your training in DNA  
11 testing and technology?

12 A. Prior to working for the SBI, I did work for  
13 LabCorp for three-and-a-half years. After that  
14 I did an in-house testing program where it  
15 tested mixed samples as well as known and  
16 unknown samples for the SBI. I had to complete  
17 and pass competency and proficiency tests as  
18 well as complete a supervised casework program  
19 working cases under a qualified DNA analyst.

20 MS. MONTGOMERY-BLINN: May I approach  
21 the witness, Your Honor?

22 JUDGE SUMNER: Yes.

23 Q. Mr. Baize, I'm handing you what I believe is  
24 your CV or your statement of qualifications, is

1           that correct?

2       A.    Yes, it is.

3       Q.    And is that a current statement?

4       A.    Yes.

5       Q.    And have you testified before, Mr. Baize?

6       A.    Yes, I have.

7       Q.    And have you been qualified during that  
8           testimony as an expert in DNA testing and  
9           technology?

10      A.    Yes.

11      Q.    And do you know how many times approximately  
12           you've testified?

13      A.    Approximately 28 times.

14      Q.    That sounds like exactly.

15                    MS. MONTGOMERY-BLINN: Your Honor, I  
16                    would ask that Mr. Baize be submitted  
17                    before the commission as an expert in DNA  
18                    testing and technology and be allowed to  
19                    testify as such.

20                    JUDGE SUMNER: Any questions on the  
21                    tender?

22                    (No audible response.)

23                    JUDGE SUMNER: He's deemed to be  
24                    qualified.

1 MS. MONTGOMERY-BLINN: Okay. Thank  
2 you, Your Honor.

3 Q. Now, Mr. Baize -

4 MS. MONTGOMERY-BLINN: May I approach  
5 the witness, Your Honor?

6 JUDGE SUMNER: Yes.

7 Q. You may already have a copy of this. I'd like  
8 to hand you an SBI laboratory report from 2001.  
9 Do you have a copy of this?

10 A. I do.

11 Q. You do, okay. If you would like to keep your  
12 copy, that's fine.

13 A. Okay.

14 Q. Now, Mr. Baize, I understand you did not work  
15 for the SBI in 2001?

16 A. That's correct.

17 Q. And you, this report here, your name is not on  
18 this report, you did not conduct this test?

19 A. I did not.

20 Q. But are you willing to testify about this  
21 report, the testing that was conducted, and the  
22 results?

23 A. Yes.

24 Q. Thank you. First off, do we have the -- does

1 the entire report include the report as well as  
2 the bench notes?

3 A. (Witness reviews document.) I believe it does.

4 Q. As far as you can tell?

5 A. Yes.

6 Q. And is that 22 pages?

7 A. (Witness reviews document.) Yes.

8 Q. Can you walk us through this report and tell us  
9 what was tested, what kind of testing was done,  
10 and what the results were?

11 A. With this, this testing, what was asked to be  
12 tested were blood stains from Walter Bowman.  
13 There were two of those. There was a blood  
14 stain prepared from Robert Wilcoxson, III, a  
15 blood stain from Larry Williams, a blood stain  
16 from Teddy Isbell, a blood stain from  
17 Kenneth Kagonyera, a blood from Aaron Brewton, a  
18 blood stain from Damian Mills, as well as a  
19 cutting from a gray bandana, and a cutting from  
20 a red scarf. All those items were asked to be  
21 looked for for a DNA profile. There were all  
22 extracted, and then the DNA profiles were  
23 compared to those standards from the blood  
24 stains.

1 Q. Were profiles obtained from those two cuttings,  
2 from the bandanas or scarves?

3 A. Yes, they were.

4 Q. And I believe that the report talks about  
5 item 10 first. would you like to talk about  
6 that one first?

7 A. Sure. The D --

8 Q. Go ahead.

9 A. I'm sorry.

10 Q. Yes, you just -- please.

11 A. The DNA profile obtained from the cutting from  
12 the gray bandana, which was the laboratory items  
13 10-1, did not match the DNA profile obtained  
14 from the blood stains of the victim, Walter  
15 Bowman, or the DNA profile obtained from the  
16 blood stain of the suspects, Robert  
17 Wilcoxson, III, Larry Williams, Teddy Isbell,  
18 Kenneth Kagonyera, Aaron Brewton, and Damian  
19 Mills.

20 Q. What can you tell us about the profile that was  
21 obtained from this bandana? Was it a full  
22 profile, a partial profile, a fragment; can you  
23 tell us more about that?

24 A. This profile that was obtained was a full

1 profile. It was a profile from a, what we call  
2 a single source. It came from one individual.

3 Q. And when you say a full profile, can you tell us  
4 very roughly, what does that mean?

5 A. A full profile means that every area that was  
6 tested gave a conclusion. We test -- currently  
7 we test 16 areas. At the time this was done, I  
8 do believe they do test 16. There were a couple  
9 of slight differences, but there were still 16  
10 tested. And all 16 areas gave a result, and  
11 that indicates a full profile.

12 Q. Okay. Now, you said that the results were that  
13 it did not match any of the comparison profiles?

14 A. That's correct.

15 Q. What does did not match mean in this context?

16 A. That means that the profiles obtained from the  
17 blood stains, they were not a match in comparing  
18 them to the unknown profile. They didn't match  
19 up. We look at each area. If there's at least  
20 one spot that does not match in a single source,  
21 then that person did not contribute to that  
22 profile.

23 Q. Is that the same as excluded?

24 A. Excluded typically is used with mixtures. If

1           we're talking about a single source profile,  
2           it's either did not match or we will say match.

3       Q.    So it's even more than excluded?

4       A.    Uh-huh (yes).

5       Q.    And does that mean those people whose blood  
6           stains it was compared to, could that possibly  
7           be their DNA that was located in this part of  
8           this bandana?

9       A.    No, it could not have been.

10      Q.    Not possible?

11      A.    Not possible.

12      Q.    Now, I understand that does not mean that those  
13           people didn't touch or handle the bandana, is  
14           that correct?

15      A.    That's correct. The area that was tested showed  
16           a profile that did not match any one of those.

17      Q.    Okay. Now, what was done with that unknown  
18           profile then?

19      A.    That unknown profile was searched through the  
20           state CODIS database. At the time that it was  
21           searched there was no hit, there was no matching  
22           offender. At that point it continues to be  
23           searched in the CODIS database until there is a  
24           hit.

- 1 Q. And is that just a routine computer search that  
2 is done periodically?
- 3 A. Yes, it is.
- 4 Q. And when you say until there is a hit, is that  
5 because other people's DNA is continually being  
6 uploaded into CODIS?
- 7 A. Correct. There's multiple offenders are added  
8 all the time, as well as forensic unknowns, and  
9 suspects from other cases are continually being  
10 added.
- 11 Q. Now, if you don't mind, just to make sure that  
12 we completely or that I completely understand  
13 it, that profile, that full profile that was  
14 obtained off of the cutting of the gray bandana  
15 could not possibly be the profile of Walter  
16 Bowman?
- 17 A. (Witness nods head affirmatively.)
- 18 Q. Robert Wilcoxson?
- 19 A. (Witness nods head affirmatively.) Correct.
- 20 Q. Okay. Can you say it out loud for the court  
21 reporter?
- 22 A. I'm sorry, correct.
- 23 Q. Could not possibly be Walter Bowman?
- 24 A. Correct.

1 Q. Robert Wilcoxson?

2 A. Correct.

3 Q. Larry Williams?

4 A. Correct.

5 Q. Teddy Isbell?

6 A. Correct.

7 Q. Kenneth Kagonyera?

8 A. Correct.

9 Q. Aaron Brewton?

10 A. Correct.

11 Q. Or Damian Mills?

12 A. Correct.

13 Q. Thank you.

14 All right, and so that was uploaded in  
15 CODIS. What else -- was anything else done with  
16 that gray bandana?

17 A. At that time, no, it was not.

18 Q. Okay. And can you tell us about the next item,  
19 I believe it's 13, 13-1.

20 A. The DNA profile that was obtained from the red  
21 scarf, which was laboratory item 13-1, was  
22 consistent with a mixture for multiple  
23 contributors, and additional bands were present  
24 which could not be accounted for by the standard

1 submitted.

2 Q. What does that mean, can you tell us? First  
3 off, what does mixture mean?

4 A. A mixture is a sample that contains the DNA  
5 profile from more than one individual. The fact  
6 that there were additional bands, again, just  
7 means that there were multiple people. These  
8 individuals did not have those bands.

9 Q. Can you say anything about how many people it  
10 was, just two or more, or can you specify  
11 further?

12 A. Just from looking at the bands present, it  
13 appears that there were at least two, and that's  
14 pretty much all that I can say.

15 Q. So there was at least two profiles in the  
16 mixture of profiles?

17 A. Uh-huh (yes).

18 Q. That was compared to the blood stains that were  
19 submitted?

20 A. Correct.

21 Q. Okay. And can you tell us what those results  
22 were?

23 A. The DNA profile obtained from the blood stains  
24 of the victim, Walter Bowman, and the DNA

1 profile obtained from the blood stain of the  
2 suspects, Robert Wilcoxson, III, Larry Williams,  
3 Teddy Isbell, Kenneth Kagonyera, Aaron Brewton,  
4 and Damian Mills was not present in the mixture.

5 Q. What does was not present mean?

6 A. That was kind of an older wording. Was not  
7 present, nowadays we would say that they were  
8 excluded from that profile.

9 Q. So looking at this report and the bench notes,  
10 if you were doing this today you would use the  
11 word excluded?

12 A. That's correct.

13 Q. Now, does excluded mean the same thing that we  
14 just went through, it could not possibly be  
15 their DNA?

16 A. It does. It more or less means that they could  
17 not have -- they most likely did not contribute  
18 to that profile. We're not saying it didn't  
19 match. With excluded we're basically saying  
20 that they were not present, they were not there,  
21 so they could not have contributed to that  
22 mixture profile.

23 Q. But again, of course you can't say that these  
24 people never touched that bandana, just that

1           portion that a profile was obtained from could  
2           not be theirs?

3           A.    That's correct.

4           Q.    Okay.  Now, will you just take a look at -- and  
5           I know you've seen these bench notes before, but  
6           will you just take a look at them and go through  
7           them and tell us if you see anything in there  
8           that you've not just testified about or that's  
9           not, and that's not in the report?  Because they  
10          do not mean anything to us so if you can walk us  
11          through.

12          A.    (Witness reviews document.)  I don't believe  
13          that there is.  Basically, everything that was  
14          done with the samples is reported out.

15          Q.    And what was done with the cuttings and the  
16          blood stains, were they returned or were they  
17          maintained at the SBI, if you can tell?

18          A.    They were maintained at the SBI.  The procedure  
19          at that time, they were saving those.  I'm not  
20          entirely sure exactly what the procedure was,  
21          but they were saving those for a period of time.

22          Q.    So they, according to this report, at least at  
23          that time were maintained at the SBI?

24          A.    Yes, they were.

1 MS. MONTGOMERY-BLINN: Commissioners,  
2 before I move to the next report, do you  
3 have any questions about this report? And  
4 we can start passing out the next one.

5 MR. BECTON: I note that on page 2,  
6 item 15-1 was referring to a red bandana.  
7 You have the summary on page is 2 refers to  
8 a red scarf. Are they one in the same  
9 thing?

10 MS. MONTGOMERY-BLINN: I'm sorry,  
11 Mr. Becton, were you asking a question?

12 MR. BECTON: Just a clarification.  
13 Item 13-1 on page 2 talks about cutting  
14 from a red scarf. This is item 13-1. On  
15 page 2 on the DNA sample submission form,  
16 13-1 is referred to as cuttings from a red  
17 bandana. Are they one and the same?

18 A. Yes, they were one and the same. The red scarf  
19 was how it was initially entered into the  
20 system. The body fluid analyst probably just  
21 used bandana just to keep things easy.

22 MS. MONTGOMERY-BLINN: Any more  
23 questions about -- oh, yes.

24 MR. SMITH: How do you choose a

1 cutting? Where does the cutting come from?

2 A. It depends on what the body fluid analyst  
3 tested. I believe the area that was tested  
4 tested positive for saliva, and that was the  
5 area that he cut.

6 MR. SMITH: Another question. please.

7 So the entire bandana would be examined?

8 A. Yes.

9 MR. SMITH: The whole piece of cloth  
10 is examined?

11 A. Yes.

12 MR. SMITH: It isn't like you just  
13 randomly choose a spot?

14 A. No. In this instance the bandana itself was  
15 looked at by the body fluid analyst, and he  
16 noticed one spot that was particularly of  
17 interest. That's the area that he focused on  
18 and took a cutting of to send to the DNA  
19 analyst.

20 MR. SMITH: But you can't be sure that  
21 there wouldn't be DNA on some other part of  
22 the bandana that you just didn't look at?

23 A. That's correct.

24 MR. SMITH: So it's conceivable that

1 people would have touched this scarf and no  
2 DNA would be found on the scarf that would  
3 be connected to those individuals?

4 A. That's correct.

5 MR. SMITH: It's not a failsafe  
6 system.

7 A. True; that is correct.

8 MR. SMITH: The fact that no DNA is  
9 found on this scarf of these people doesn't  
10 mean that those people didn't touch the  
11 scarf?

12 A. That's correct.

13 MS. MONTGOMERY-BLINN: Any more  
14 questions about that report, commissioners?

15 (No audible response.)

16 Q. Mr. Baize, I'd like to turn your attention now  
17 to an October 1, 2007, report.

18 MS. MONTGOMERY-BLINN: Commissioners,  
19 this has just been passed around. Have you  
20 all received it?

21 (No audible response.)

22 MS. MONTGOMERY-BLINN: Has it made  
23 it's way all the way around? It's coming.

24 MS. ASHENDORF: It's coming.

1 MS. MONTGOMERY-BLINN: It's coming,  
2 okay. We'll wait until it's around.

3 Q. While it's coming around I'll just ask,  
4 Mr. Baize, were you employed at the SBI on  
5 October 1, 2007?

6 A. Yes, I was.

7 Q. And is this report your report?

8 A. Yes, it is.

9 Q. Do you have a copy of the report and bench notes  
10 in front of you?

11 A. Yes, I do.

12 Q. Okay. And does the report indicate -- I'm  
13 trying to sort out how many pages it is. It  
14 looks like we don't have a total of page numbers  
15 so I will just count how many I have. Is the  
16 report that you're holding 14 pages?

17 A. I believe it was. (Witness reviews document.)  
18 Yes.

19 Q. And does the report that you're holding end with  
20 a telephone log?

21 A. Yes, it does.

22 Q. All right. Can you tell us what this report  
23 states or what is this report?

24 A. This report is classified as a notification of

1 CODIS hit. What this is is once we receive a  
2 CODIS hit confirmation in our laboratory, we  
3 will make a phone call to the investigating  
4 officers to let them know that there was a CODIS  
5 hit. We then typically will wait up to at least  
6 30 days to wait to receive a standard. If we  
7 don't receive a standard in that time, we then  
8 issue a report that basically just says there  
9 was a CODIS hit, and we called and let somebody  
10 know who that person was, and that information.

11 Q. Can you back up and just tell us, what is a  
12 CODIS hit?

13 A. A CODIS hit is when the CODIS database has a hit  
14 to either a convicted offender, a suspect  
15 standard, or another forensic unknown. The  
16 system will issue a report, which then goes to  
17 our database section. They then do a  
18 confirmation, which is they will take the sample  
19 on file for that convicted offender, run that  
20 sample to make sure that that matches what was,  
21 what the hit was made to as far as the offender  
22 sample. There's also some intel that's done.  
23 That is then given to us, and we would then make  
24 the phone call letting the officers know that

1           there was a hit.

2       Q.   And you said there's a couple different kinds of  
3           CODIS hits. Is this the type where there was an  
4           unknown? Tell us about this type of CODIS hit.

5       A.   This was a CODIS hit for the unknown from the  
6           gray bandana that was entered to a convicted  
7           offender.

8       Q.   And who was the CODIS hit to?

9       A.   The CODIS hit was to a Bradford Summey.

10      Q.   All right. And you said that you wait 30 days  
11           for a standard. Can you tell us a little bit  
12           more about what you mean and what you mean even  
13           by a standard?

14      A.   Our policy now is that we wait 30 days before we  
15           issue a report. I believe at this time there  
16           was no set amount of time to wait. But what we  
17           will do is we will make the phone call to let  
18           them know who the offender was and that we need  
19           an additional DNA standard, which typically is  
20           either a cheek swabbing or a blood sample. If  
21           we don't receive that in a certain amount of  
22           time, we would then issue a report.

23      Q.   So what you would be asking for in this case  
24           would be a standard from, a cheek swabbing from

1 Brad Summey to compare to that DNA as opposed to  
2 just the CODIS database profile?

3 A. That's correct.

4 Q. And so in this particular situation there was a  
5 CODIS hit on the gray bandana to Brad Summey,  
6 and then what did you do next?

7 A. Once I received the information on the CODIS hit  
8 I made the phone call to Detective -- I  
9 attempted to get in touch with  
10 Detective Sprinkle. He was the investigator  
11 listed on the SBI-5. I was informed that he no  
12 longer worked there. I was then given  
13 Lieutenant John Elkins' number. I called him  
14 and then gave him the offender information, and  
15 he said that he would speak to the DA and then  
16 get back to me.

17 Q. And did he get back to you?

18 A. No, he did not.

19 Q. And are you looking at your phone log on the  
20 back page?

21 A. Yes, I was.

22 Q. And do you have any independent recollection of  
23 this or are you just looking at your notes?

24 A. Just looking at my notes.

1 Q. And if they had gotten back to you or somebody  
2 had gotten back to you from any agency, would  
3 you have noted that here?

4 A. Yes. I would have noted that they had obtained  
5 the sample and they were sending it in or they  
6 weren't going to be able to, that type of thing.

7 Q. And are there situations where agencies choose  
8 not to send a sample, for whatever reason that's  
9 pertinent to their investigation?

10 A. There's many times where we'll make the phone  
11 call, and then we don't get the sample within  
12 that allotted time, and then we -- we issue many  
13 of these reports.

14 Q. And if they told you, if an agency called you  
15 back and said, we're not going to submit a  
16 sample, we don't need one, would you have noted  
17 that on this phone log?

18 A. I would have noted that on there as well as in  
19 the report itself.

20 Q. Okay. So that -- okay. And it also notes in  
21 here that you spoke to somebody named  
22 Roney Hilliard. Can you tell me about that?  
23 That was -- was that the person that told you  
24 Detective Sprinkle was not there?

1 A. Yes. I called and left a message to have  
2 Detective Sprinkle call me back.

3 Detective Roney Hilliard called me and told me  
4 that Sprinkle was no longer there, and then he  
5 gave me Lieutenant John Elkins' number.

6 Q. So after nobody responded to let you know that  
7 they wanted to send the standard or didn't want  
8 to send the standard, what did you do?

9 A. I then -- it was a few months later. I then  
10 issued this report and sent it out.

11 Q. When you say sent it out, who did this report go  
12 to?

13 A. These reports, one would have gone to the DA's  
14 office or should have gone to the DA's office,  
15 and another one should have gone to the name on  
16 this report, which was Detective Eddie Davis.

17 Q. And Eddie Davis from the --

18 A. Buncombe County Sheriff's Department.

19 Q. And which DA's office?

20 A. The Buncombe County DA's office.

21 Q. And how do those reports go to those offices?

22 A. At this time during 2007 we would have printed a  
23 copy of the reports and given those to our  
24 evidence tech. She would have put them in the

1 mail and sent them out.

2 Q. Is there any return receipt confirmation or  
3 just --

4 A. There is not.

5 Q. And when the report was sent out, would it have  
6 been this entire report or would it have just  
7 been the first couple pages?

8 A. It would have just been the first page.

9 Q. Will you take a look at and go through the bench  
10 notes for this report and just tell us, is there  
11 anything in here that is not in the report or  
12 that you have not just testified about? Because  
13 we do not understand what all of these notes  
14 mean.

15 A. (Witness reviews document.) It does not  
16 appear. The notes that are attached with this  
17 report, these are actually the notes produced by  
18 the database analyst who did the confirmation.

19 Q. And that's not you?

20 A. Correct.

21 Q. But you were the one who made those direct --  
22 these are your notes from the phone log?

23 A. That's correct.

24 Q. You're the one who made those phone --

1 A. Yes.

2 Q. There's a fingerprint verification in here, a  
3 memorandum?

4 A. Uh-huh (yes).

5 Q. Can you tell us -- let me see. I'm not sure  
6 what page it's on.

7 MR. JENKINS: Next-to-the-last, or  
8 next-to-the-last piece of paper.

9 MS. MONTGOMERY-BLINN: Next-to-the-  
10 last? Thank you.

11 Q. Yes, it says memorandum. Can you tell us what  
12 that means?

13 A. Part of the CODIS verification is a fingerprint  
14 identification. The DNA database will pull the  
15 database card, which is the blood stain as well  
16 as the fingerprint card taken at the time of  
17 arrest for the conviction. Our section will  
18 process the blood stain to make sure that it  
19 matches up with what was entered in the system.  
20 The fingerprint card is sent to the latent  
21 evidence section. They then pull fingerprints  
22 from, I believe the AFIS system, and they  
23 compare those to what's on the card to make sure  
24 that that matches up with that individual as

1 well. They then issue a memorandum that says  
2 that.

3 Q. So at the time that this report was done there  
4 was a CODIS hit to Brad Summey, but nobody sent  
5 you anything for a direct comparison, so no  
6 direct comparison had been done in this report?

7 A. Correct.

8 MS. MONTGOMERY-BLINN: Commissioners,  
9 questions about this report, the CODIS hit?

10 MR. SMITH: May I ask a question the  
11 way an English major would ask a question,  
12 rather than a science major? What is the  
13 meaning of this with respect to whether it  
14 is almost for sure that Brad Summey touched  
15 this gray bandana?

16 A. In reference to the CODIS hit?

17 MR. SMITH: Yes.

18 A. It's a very high possibility. CODIS basically  
19 gives us probable cause or gives the agency  
20 probable cause to get another DNA standard. We  
21 then use that DNA standard to make the  
22 comparison. We don't rely on the information in  
23 CODIS to make that comparison until we get a new  
24 standard.

1 JUDGE SUMNER: Did you get that in  
2 this case?

3 A. Oh, we did eventually get that, yes.

4 MS. MONTGOMERY-BLINN: I'm about to  
5 pass that out.

6 JUDGE SUMNER: Oh, I'm sorry.

7 MS. MONTGOMERY-BLINN: That's all  
8 right. I can pass it out now, if you're  
9 ready.

10 MR. BECTON: Before you go there, you  
11 mentioned that you only sent the first page  
12 to Detective Eddie Davis and to the DA's  
13 office. Is that the first page that we  
14 have here?

15 A. Yes, the very first page.

16 MR. BECTON: I know I see Summey's  
17 name in four different places in here, but  
18 I do not see it on the first page. So does  
19 he not get Summey's name, he only gets the  
20 database number 200600021?

21 A. That's correct. Up until just about a month or  
22 so ago we did not put the offender's name on the  
23 report. We have since changed that. But at  
24 this time they would not have gotten that name

1 unless they spoke to the agency and then asked  
2 them who it had hit to.

3 MR. BECTON: What's to keep the DA  
4 from saying, well, of course I have a hit.  
5 I've got four people that have already pled  
6 guilty, if he only sees a little number  
7 there?

8 A. Yeah, and that -- you know, they're always  
9 welcome to call us as well and ask us about this  
10 information, but I never received any  
11 information, any calls back in this.

12 MS. JOHNSON: But you did make that  
13 initial call to the law enforcement agency  
14 and advise them that you did get a hit and  
15 who it was?

16 A. Yes, I did.

17 JUDGE SUMNER: With a named individual  
18 being attached to that also?

19 A. Yes. I gave them everything. There's a hit  
20 page as well as with the intel. I would have  
21 given the name, any information as far as Social  
22 Security number, date of birth, where they -- if  
23 the intel said where they possibly may be, I  
24 would have given all that information.

1 MS. ASHENDORF: Who did you give that  
2 to?

3 A. That was given to Lieutenant Elkins.

4 JUDGE SUMNER: Chief?

5 MR. VICKORY: Going back to the  
6 memorandum, all that really says is, is  
7 that saying that the sample that was  
8 submitted to CODIS -- I'm a little confused  
9 of how they matched the fingerprint to the  
10 CODIS hit. Can you explain that to me?  
11 I'm confused about -- I know it's an SID  
12 number that's assigned to the FBI or the --

13 A. I can --

14 MR. VICKORY: -- when they are  
15 fingerprinted, but --

16 A. I can try. When the cards come to us it's a  
17 folded card that has all their information on it  
18 with their fingerprints, and then inside is  
19 attached a piece of filter paper which we then  
20 put the blood stain on. Those fingerprints are  
21 then compared to the AFIS database, I believe,  
22 where they pull the fingerprints again to make  
23 sure that what they have pulled matched what was  
24 on the card that we said was the offender sample

1 from Summey.

2 MR. JENKINS: Okay. I understand now.

3 You also have a fingerprint card that's

4 associated with --

5 A. Yes.

6 MR. JENKINS: -- the standard?

7 A. That's correct.

8 JUDGE SUMNER: Chief, yours is

9 probably in there, too.

10 MR. JENKINS: Yeah, probably is.

11 That's all.

12 MR. VICKORY: You never did talk with

13 Ron Moore or let him know Summey had

14 matched up or --

15 A. No, I did not.

16 MR. VICKORY: What do you do

17 today?

18 A. Today our policy is once we receive the CODIS

19 confirmation that a hit has been made, we have,

20 I believe, five business days to notify the

21 investigating officer. Our policy is if we

22 cannot get in touch with them within the first

23 couple of days, we are then supposed to go up

24 the chain to his supervisor, his or her

1 supervisor. If we cannot get in touch with that  
2 person, we would then call the DA's office at  
3 that point.

4 MR. VICKORY: Do you send -- you don't  
5 send these reports anymore?

6 A. No, the reports still go out. In fact, now with  
7 our current paperless system, as soon as I  
8 release this report it goes up to the FA web,  
9 which is readily available for the DA's office  
10 to pull up and see this report, and it now will  
11 have the offender information or the offender  
12 name as well as the number there.

13 MR. JENKINS: But what goes up on that  
14 website doesn't have any kind of a --  
15 there's no index to it or anything.  
16 Doesn't it just come in a mass bundle of  
17 information to the DA's --

18 A. It does.

19 MR. JENKINS: -- whoever pulls up the  
20 computer information for the DA's office?

21 A. It does. We are still sending a paper copy to  
22 the law enforcement officer as well, so there  
23 should still be two going out.

24 MR. JENKINS: You see the potential

1                   problem though, don't you?

2       A.     Oh, yes, sir.

3                   MR. JENKINS: In a case like this  
4                   you've got an officer who's -- the  
5                   investigator is gone, and the DA's office  
6                   gets the case where, a 2007 case says we  
7                   might have a match here on this old case,  
8                   but it doesn't notify or alert anybody the  
9                   match to somebody who's not already in  
10                  prison for this event. We've got a  
11                  problem.

12                  MS. MONTGOMERY-BLINN: Are there any  
13                  more questions about that particular  
14                  report? Okay, yes.

15                  MR. JENKINS: I'm going to -- if I can  
16                  take up everybody's time. It's to expound  
17                  on your question.

18                  MR. VICKORY: Yes.

19                  MR. Jenkins: You said that this was a  
20                  CODIS hit. Is there a number associated  
21                  with that to say this is one in so many  
22                  million chances?

23       A.     No. At the time, no, there's not.

24                  MR. JENKINS: Okay. That's not until

1 the next --

2 A. That's not until we would get the standard and  
3 then compare it back to the evidence to do the  
4 numbers.

5 MR. JENKINS: That's all.

6 Q. Okay. Can I draw your attention to the next  
7 report, which was July 26, 2010. I believe  
8 that's the next report in this case. Please  
9 correct me if you have any additional ones.

10 A. That is correct.

11 Q. Okay. And do you have bench notes for that one?

12 A. I do.

13 Q. You do?

14 A. Yes.

15 Q. And Mr. Baize, I just want you to know the  
16 Commission right now does not -- has not been  
17 given the bench notes yet for that report. So  
18 I'm going to ask you to go through those bench  
19 reports and just be aware the commissioners do  
20 not have them in front of them. We have two  
21 pages, which is the report. And is the report  
22 itself two pages?

23 A. Yes, it is.

24 Q. And Mr. Baize, are you the analyst from -- that

1 signed on this report, that did this report?

2 A. Yes, I am.

3 Q. And was this report or this type of testing done  
4 on behalf of a request by the North Carolina  
5 Innocence Inquiry Commission?

6 A. Yes, it was.

7 Q. And can you please tell us what was submitted  
8 and what type of testing you did and what the  
9 results are?

10 A. What was submitted were buccal swabs from  
11 Bradford Summey, and I, again, did a DNA  
12 analysis on the buccal swabs to compare them  
13 back to the items previously tested, which were  
14 the gray bandana and the red scarf.

15 Q. Are buccal swabs cheek swab saliva?

16 A. Yes, they are.

17 Q. Or saliva or skin cells, whatever comes onto the  
18 swab?

19 A. Yes, from the inside of the cheek.

20 Q. Okay. All right, please go ahead.

21 A. So in this case I received the standards. I  
22 then did our normal extraction and DNA analysis  
23 to get a profile for this Bradford Summey. I  
24 then compared that to the original profiles

1           obtained by special agent Mark Beaday.

2           Q.    what were the results?

3           A.    The DNA profile obtained from the cutting from  
4           the gray bandana, which was laboratory 10-1, and  
5           that was previously submitted and analyzed,  
6           matched the DNA profile obtained from  
7           Bradford Summey. I then did population  
8           statistics on that, and the probability of  
9           randomly selecting an unrelated individual with  
10          a DNA profile that matches the DNA profile  
11          obtained from the cutting from the gray bandana  
12          is one in greater than one trillion, which is  
13          more than the world's population in the N.C.  
14          Caucasian, black, Lumbee Indian, and Hispanic  
15          populations.

16          Q.    So does that mean if you lined up one trillion  
17          people, only one of them would match this  
18          bandana?

19          A.    That's correct.

20          Q.    And that one would be Brad Summey?

21          A.    That's correct, unless he has an identical twin.

22          Q.    An identical twin. And again, you said that  
23          this was a full match for all of the points, all  
24          the loci from the bandana to Mr. Summey?

1 A. That's correct.

2 Q. Now, does this mean that Brad Summey touched  
3 this bandana?

4 A. It means that his DNA profile was on the  
5 bandana.

6 Q. So somebody could have put it there, but his --

7 A. His profile was there.

8 Q. -- his DNA profile is on this bandana for sure?

9 A. That's correct.

10 Q. And in DNA testing match is not a word you get  
11 to use unless it's that situation, right?

12 A. Correct. Everything that shows up in the  
13 unknown profile has to match, has to be exactly  
14 the same as what would be in the standard for us  
15 to say a match.

16 Q. Now, will you take a look at your bench notes.

17 A. Okay.

18 Q. And just take a minute to please go through  
19 them, and keep in mind we only have this report,  
20 and tell us if there's anything else in those  
21 bench report, bench notes that's not in this  
22 report, that you have not testified to, or that  
23 is of any significance.

24 A. (Witness reviews document.) There is not.

1 MS. MONTGOMERY-BLINN: Commissioners,  
2 questions about this report?

3 (No audible response.)

4 JUDGE SUMNER: Appears to be none.

5 MS. MONTGOMERY-BLINN: All right.

6 Commissioners, any questions for Mr. Baize?

7 (No audible response.)

8 MS. MONTGOMERY-BLINN: None? All  
9 right. We'll ask that Mr. Baize be  
10 released, Your Honor.

11 JUDGE SUMNER: Thank you, Mr. Baize.

12 (THEREUPON, MR. BAIZE IS RELEASED FROM  
13 THE WITNESS STAND.)

14 MS. MONTGOMERY-BLINN: And the Commission  
15 will call Mr. Shawn Weiss.

16

17 THEREUPON,

18 Shawn Weiss,

19 Having first been duly

20 Sworn, was examined and

21 Testified as follows:

22 EXAMINATION BY MS. MONTGOMERY-BLINN:

23 Q. All right. Well, tell us your name, please.

24 A. Shawn, S-h-a-w-n, Weiss, W-e-I-s-s.

1 Q. And where are you employed?

2 A. Laboratory Corporation of America Holdings,  
3 trademarked name, LabCorp.

4 Q. All right, and have you been employed any places  
5 before that?

6 A. Roche Biomedical Laboratories, but that later  
7 became LabCorp, so I've been with the same  
8 company 21 years.

9 Q. Tell us about your educational background.

10 A. I have a bachelor of science in biochemistry  
11 from North Carolina State. All my other  
12 training is continual with the changing of the  
13 technology. I've been working in the DNA field  
14 for over 21 years.

15 Q. Have you testified before in court as a DNA  
16 expert?

17 A. Yes.

18 Q. Do you know how many times?

19 A. Over 155 times.

20 Q. Okay. And Mr. Weiss, I've handed out what I  
21 believe is your curriculum vitae.

22 MS. MONTGOMERY-BLINN: May I approach  
23 the witness, Your Honor?

24 JUDGE SUMNER: Yes, ma'am.

1 Q. Will you please just take a look and tell me if  
2 that is, indeed, your CV and if it is accurate  
3 and current?

4 A. Yes, last updated November 2010.

5 Q. All right.

6 MS. MONTGOMERY-BLINN: Your Honor, I  
7 ask the Mr. Weiss be permitted to testify  
8 before the Commission as an expert in DNA  
9 testing and technology.

10 JUDGE SUMNER: Any questions from the  
11 commissioners on the tender?

12 (No audible response.)

13 JUDGE SUMNER: He's deemed to be qualified.

14 Q. Okay. Mr. Weiss, I'd like to draw your  
15 attention to, and if you don't have it, I'll  
16 hand you a copy up, of a lab report from  
17 November 2, 2010.

18 A. Yes.

19 Q. And you have your copy of that report?

20 A. Correct.

21 Q. And just to verify that we are looking at the  
22 same report, it is eight pages and ends with  
23 your signature and Meghan Clement's signature?

24 A. Yes. This is a combination of two reports and a

1 letter.

2 Q. Okay. But I am holding the same thing that you  
3 are, from what I've just said to you?

4 A. Yes.

5 Q. All right. Can you please tell us what type of  
6 -- well, tell us about this report, what was  
7 submitted, what type of testing was done, and  
8 what the results were.

9 A. In July 2010 we were submitted a pair of black  
10 gloves, also submitted a single brown glove, two  
11 different red bandanas, another brown glove, and  
12 then reference samples from Walter Bowman,  
13 Robert Wilcoxson, Larry Williams, Jr., Teddy  
14 Isbell, Kenneth Kagonyera, Aaron Brewton,  
15 Damian Mills, Bradford Summey,  
16 Lacy Pickens, III, and then later we were  
17 submitted, January 2011, Robert Rutherford's  
18 reference sample. So I think that's ten  
19 reference samples.

20 we also, the gloves and the bandanas we ran  
21 PCR analysis of DNA. This is preliminary chain  
22 reaction. We ran what's called an ABI Minifiler  
23 kit. This is different than the regular  
24 profiler co-filer kits or the Identifiler.

1 Minifiler is designed for -- it's a little more  
2 sensitive than the current kits. Fewer  
3 laboratories run it. However, it still runs  
4 eight of the thirteen CODIS markers that are  
5 available, but it is highly sensitive.

6 Q. Is it something that you tend to use when you're  
7 looking at older evidence?

8 A. That's correct, older evidence or degraded or  
9 evidence that might have been exposed to  
10 elements outside as DNA breaks down over time  
11 and being exposed to outside exposure.

12 Q. Now, you said you were running this. How did  
13 you obtain whatever you're running this on? Did  
14 you cut these items? Did you swab them? Did  
15 you scrape them? Please tell us about that  
16 process.

17 A. The gloves, the black gloves, again, that was a  
18 pair of gloves. We swabbed the inside of these  
19 gloves. The brown gloves, there was two  
20 individual brown gloves. We also swabbed the  
21 inside of these to find out who was wearing  
22 these gloves. And then the two bandanas, we  
23 also swabbed those. These items we didn't take  
24 any cuttings from.

1 Q. Now, those, when you say swabbed, did you swab  
2 the entire surface that you're talking about?

3 A. In our practice we try to swab no more than  
4 half. We always try to preserve some of the  
5 evidence in case another laboratory wants to  
6 test it. In this situation we were swabbing  
7 about half of inside area of these gloves and  
8 the bandana.

9 Q. So a larger surface area than just a small  
10 cutting would be?

11 A. That's correct.

12 Q. Okay. All right, and so then when you swabbed  
13 them, that's when you ran the Minifiler on  
14 whatever you obtained on the swabbing?

15 A. That's correct.

16 Q. Okay. And can you please tell us about what  
17 results you obtained?

18 A. For the black pair of gloves and also one of the  
19 bandanas we obtained mixtures from more than one  
20 individuals. Actually, on these samples three  
21 or more individuals. So these were mixtures  
22 that were seeing a lot of different individuals.  
23 We compared these to all ten reference samples.  
24 Actually, on the first report, to nine reference

1 samples. We were able to exclude all nine  
2 individuals to the black gloves and one of the  
3 bandanas.

4 Q. Can you tell us just so that we've got it in our  
5 head the item numbers for those items?

6 A. Sure. The black gloves is item 9; the bandana  
7 is item 13. We also obtained a mixture of three  
8 or more individuals from glove 11. In this  
9 situation we were able to exclude all the  
10 reference samples except for Larry Pickens, III.  
11 He could not be excluded as a contributor to the  
12 DNA, the mixture in the sample.

13 Q. Do you mean Lacy Pickens?

14 A. Oh, Lacy Pickens, yes. However, due -- we were  
15 seeing additional peaks that failed to meet  
16 reporting standards at all the markers that were  
17 obtained, and that was at eight, eight markers.  
18 Each one of those we were seeing additional  
19 activity that failed to meet reporting  
20 standards. Because of that, we weren't able to  
21 calculate any statistical estimates for that  
22 item.

23 Q. Now, when you say there was additional activity,  
24 you're talking about the mixture, is that right?

1 Is that what you mean?

2 A. Correct. In our testing we have thresholds.  
3 When we see a DNA peak it has to meet that  
4 threshold. If the peak does not come above that  
5 threshold, we cannot report it. So this mixture  
6 was seeing a lot of additional activity that  
7 didn't meet our threshold. The reason we have  
8 to set threshold is in what we call  
9 electroforesis sometimes you might have  
10 artifacts or peaks that may or may not be DNA.  
11 So we have to draw a line to say anything below  
12 this we're not going to make a conclusion about  
13 because it doesn't meet our threshold. This is  
14 standard in all DNA testing laboratories.

15 Q. Okay. So let me just make sure that I  
16 understand. We're talking about item 11 right  
17 now, the single glove?

18 A. Correct.

19 Q. All of the other people that you compared it to,  
20 Walter Bowman, Robert Wilcoxson, Larry Williams,  
21 Teddy Isbell, Kenneth Kagonyera, Aaron Brewton,  
22 Damian Mills, and then later Robert Rutherford,  
23 all of those people are excluded?

24 A. That's correct.

1 Q. It cannot be their DNA?

2 A. That's correct.

3 Q. And we're left now with Lacy Pickens?

4 A. Yes. He is the only person we could not exclude  
5 from that mixture.

6 Q. Now, can you tell me more about -- I know you  
7 cannot exclude. You said you cannot do stats  
8 because of that mixture. You cannot tell us  
9 statistically probabilities, right?

10 A. That's correct. Because of that additional  
11 information, we don't know if we're having  
12 dropout from that mixture or information that's  
13 not coming out. Because of that, we're not --  
14 it's always been in the forensic field that you  
15 can't calculate statistical estimates for a  
16 sample that you know that we might have fallout  
17 from some results that could be present,  
18 however, are not strong enough to give us a  
19 result to call.

20 Q. Is there anything unusual about Mr. Pickens'  
21 profile that's also unusual about the profile  
22 that was obtained on this glove?

23 A. Yes. One of our markers or addresses is labeled  
24 what we call FGA. He had an allele at one of

1           these that is kind of rare. We have a ladder  
2           that we compare to the population. He was  
3           actually falling below the ladder. We saw this  
4           same allele on the glove also.

5       Q.    When you say the ladder, I'm not sure I  
6           understood what you meant there.

7       A.    When we're making comparisons, when a DNA  
8           profile -- our computer program is comparing it  
9           to known calls within the population. So all  
10          the possible combinations we're seeing at that  
11          marker we have to run what we call a ladder when  
12          we're doing our testing.

13      Q.    So this is saying that Lacy Pickens has one of  
14          the alleles. And how many alleles are there in  
15          somebody's DNA?

16      A.    There's thousands, but four at this marker, most  
17          individuals either have one or two.

18      Q.    Okay. And his is an unusual one or rare one  
19          that is not in -- that is uncommon for the world  
20          population?

21      A.    That's correct.

22      Q.    And whoever's DNA is on the inside of this glove  
23          also has that same rare allele that is unusual  
24          for the rest of the population?

1 A. That's correct.

2 Q. But you can't give me any statistics? We can't  
3 say -- when we say unusual, that's about all we  
4 can say, or rare?

5 A. That's correct, because, again, the mixture is  
6 not giving us all the information that possibly  
7 could be there.

8 Q. Okay. Can you speculate any more or say any  
9 more about this?

10 A. No.

11 Q. Have I exhausted all that you can say about  
12 this?

13 A. Yes.

14 Q. Okay. All right, now, I believe you said that  
15 item 12, the red bandana, excludes everybody?

16 A. Yes. We retained very little results for the  
17 sample. We only got results at three markers.  
18 So it was insufficient for inclusionary  
19 purposes, however, we were able to exclude all  
20 individuals that were compared to that sample.

21 Q. And let me just clarify, so item 9, item 12, and  
22 item 13 are excluding all the people that the  
23 Innocence Commission asked you to compare them  
24 to?

1 A. We get to 13 --

2 Q. Oh, I'm sorry. I thought you had already --

3 A. -- on the second report.

4 Q. Okay, I apologize. Well, let me just ask you  
5 about what excluded means at this point. It  
6 means that the DNA you obtained could not be  
7 those people that you compared it to?

8 A. That's correct.

9 Q. But it does not mean that those people didn't  
10 ever touch these items, just that you were not  
11 able to obtain their DNA on the location that  
12 you swabbed on these items?

13 A. Yes.

14 Q. And it doesn't mean that whoever's DNA is on  
15 those items wore the items last?

16 A. That's correct. DNA can't tell time. If five  
17 people wore or put on the same glove, there's a  
18 lot of factors involved. Different individuals  
19 shed cells at different rates. Also time, if I  
20 wore it for five minutes, and someone else wore  
21 it for two days, the person that wore it longer  
22 is actually going to deposit more cells there.  
23 But our testing can't determine how long  
24 somebody wore it or who wore it before the other

1 person wore it.

2 Q. Can testing even pick up maybe the store clerk  
3 or the person who packaged it in the  
4 manufacturing facility, those kinds of things?

5 A. Yes, especially with the Minifiler kit that  
6 we're running is very sensitive, and it's not  
7 unusual to pick up people that are handling  
8 evidence.

9 Q. Okay. All right, now I apologize. I think you  
10 were about to go to item 13 or wherever you're  
11 next to go in your report, please do.

12 A. We just talked about bandana 12. Glove 14,  
13 again, is a mixture for more than one  
14 individual. At least one of them is a male, and  
15 again, same situation, we could not exclude Lacy  
16 Pickens, III. Again, we weren't able to  
17 calculate statistical estimates because at the  
18 markers we're seeing additional peaks that  
19 failed to meet reporting standards. So again,  
20 we weren't able to calculate statistical  
21 estimates. And then the source, I mean, all the  
22 other reference samples are excluded. So it's  
23 the same situation that we saw with the other  
24 glove 11 sample.

1 Q. Did those gloves appear to be a pair to you?

2 A. Yes. We were wondering that also when we  
3 received them, but they were packaged  
4 individually.

5 Q. But one was a right glove, one was a left glove,  
6 the same type, as far as you could tell?

7 A. That's correct. They were both brown in color,  
8 and they appeared to be a pair.

9 Q. Okay. And the same thing about the rare allele,  
10 Lacy Pickens' rare allele is also the same rare  
11 allele as is located on the profile in that  
12 other glove?

13 A. That's correct. Again, we're seeing an allele  
14 that's rare, and again, it falls below the  
15 ladder that we compare it to in testing.

16 Q. Now -- oh, I'm sorry. Can you go to the next  
17 report then that you have?

18 A. Yeah. The next report we were provided a sample  
19 from Robert Rutherford. We compared them to the  
20 same samples, glove 9, glove 11, bandana 12,  
21 bandana 13, and glove 14. We were able to  
22 exclude him from all items except for the  
23 bandana 13. We could not exclude him as a  
24 contributor to the DNA of the sample. And this

1           time we were able to calculate statistical  
2           estimates. Using six markers of the nine that,  
3           or eight that we tested we were able to come up  
4           with a random match probability of including --  
5           of somebody that would be included in that  
6           mixture. We compared this to the African-  
7           American, Caucasian, and Hispanic populations.  
8           So for African-Americans it's 1 in 370, for  
9           Caucasian it's 1 in 311, and for Hispanic it's 1  
10          in 1,390. What does this mean? If you could go  
11          out and randomly pick 100,000 people at random  
12          and test them, you would expect anywhere from  
13          300 to 400 individuals would also, of those  
14          100,000 people chosen at random, could also be  
15          in this sample.

16        Q. Now, did the Commission ask you to also take a  
17           look at what you had found from this item and  
18           compare it and combine it with what the SBI had  
19           found from their original testing of this item?

20        A. Yes.

21        Q. And tell us what that means, what -- or explain  
22           to the Commission what it was that we asked you  
23           to do.

24        A. We were informed that the SBI, North Carolina

1 SBI also tested bandana 13, and they were able  
2 to obtain some results at different markers than  
3 we were able to obtain. So we were able to --  
4 we were asked to combine their results with our  
5 results to come up with a statistical estimate.  
6 Again, the probability of randomly selecting an  
7 unrelated individual with a DNA profile that  
8 would be included in the mixture of the DNA  
9 obtained from the bandana, this time we're  
10 taking our six markers and four of their markers  
11 for a total of ten. The statistical estimates  
12 for African-American is 1 in 6,060, for  
13 Caucasians it's 1 in 4,440, for Hispanic it's 1  
14 in 25,600. And again, I can use the same  
15 example. If you took 100,000 people at random,  
16 tested them, now we're, instead of being up in  
17 the 300, 400 range of individuals that could be  
18 included in that mixture, now we're down to  
19 about 25 or 30 individuals could be included in  
20 that same mixture.

21 Q. That was out of 100,000?

22 A. Correct. And again, these are just estimates.

23 Q. What if you broke that down to just the African-  
24 American population?

1 A. African-American population is 1 in 6,060. So  
2 you're talking around 20 individuals if you took  
3 about 100,000 people and tested them at random.

4 Q. Now, you've got your bench notes there. Is  
5 there anything in the bench notes that's not in  
6 this report that you haven't testified about  
7 today?

8 A. No, just the other reports.

9 Q. Okay. The van door, the blue t-shirt reports?

10 A. That's correct.

11 Q. Okay.

12 MS. MONTGOMERY-BLINN: Before we get  
13 to those let me ask the commissioners if  
14 they have any questions about these  
15 reports.

16 MR. SMITH: Can we do -- I'm sorry,  
17 did I interrupt you?

18 MR. JENKINS: No, no, no. Go ahead.

19 MR. SMITH: No, you go; you go.

20 MR. JENKINS: How often does a report,  
21 a DNA report from one agency go to another  
22 lab to create one DNA report, Is that  
23 something you do routinely?

24 A. Yes. Because we're a private laboratory, we're

1 getting results from laboratories all across the  
2 country, and they will ask us to take their  
3 results and combine it. Sometimes we won't even  
4 test a sample, and they'll ask us to compare it  
5 to a sample that we tested.

6 MR. JENKINS: Is the reason that you  
7 would be able to obtain a sample larger  
8 than their sample is because they were  
9 taking it from a different place on the  
10 item or is it because -- can you further  
11 explain that because I don't think I  
12 understand?

13 A. Yes. Even though if you have the bandana, and  
14 we take a swabbing from this side, and they take  
15 a swabbing from another side, there might be  
16 more cells present on one side of the bandana  
17 versus the other. So it's not unusual for  
18 different laboratories to get same but similar  
19 results. One might get more than the other. As  
20 a private laboratory we're usually getting  
21 evidence secondhand, meaning someone has already  
22 tested or looked at the items.

23 The other thing is with this Minifiler kit  
24 we're actually picking up -- our markers are

1 different sizes. The Minifiler is actually  
2 picking up the larger sizes. In their report  
3 they were actually picking up the smaller sizes.  
4 And the markers that they were picking up are  
5 not included in the Minifiler kit.

6 MR. JENKINS: Okay. That answers my  
7 question. The other question I have is,  
8 going back to this report where you have a  
9 unique allele, I think you were saying.

10 A. Allele.

11 MR. JENKINS: Allele, excuse me. But  
12 all you can really say about that is that  
13 there's a unique allele there, but that's  
14 as far as you can go with it?

15 A. That's correct.

16 MR. JENKINS: You couldn't say that  
17 three more or five more in this room could  
18 have the same thing?

19 A. That's correct.

20 MR. JENKINS: Okay.

21 A. Yeah, because the mixture, we're seeing three or  
22 more individuals, it's, we can't put any  
23 statistical estimates on that. And then if we  
24 just chose that one marker and put it on it,

1           then we would be biased by picking and choosing  
2           what we want to do. We have to look at the  
3           overall profile. But we can make the comment,  
4           yes, there is something unique here that this  
5           person also has, however, we can't put  
6           statistical estimates because we're not seeing  
7           all the information present at that marker.

8                       MR. BECTON: Well, I guess I have a  
9                       follow-up then. Using your, I think, your  
10                      statistics, if you took 100 African-  
11                      American men at random and Rutherford was  
12                      one of them, am I to understand you to say  
13                      that Rutherford and 19 others out of the  
14                      that 100,000 would be a match for what you  
15                      found?

16       A.    Yes, that's possible. The example, if you could  
17           put all those 100,000 people in like a stadium -

18                       MR. BECTON: Right.

19       A.    -- and then if you look at the --

20                       MR. BECTON: And Rutherford was one of  
21           them.

22       A.    Correct.

23                       MR. BECTON: Are you saying only 19  
24           other people --

1     A.    Correct, and that's just an estimate.  And what  
2            you would do is if you look at the bandana  
3            profile, and you start going through and you see  
4            the numbers that are on the chart, you say, if  
5            that -- you know, have everyone stand up and  
6            say, if you have that, you have to stay  
7            standing.  By the time you go through all the  
8            numbers, you would have approximately 20  
9            individuals still standing that would have that  
10          same profile that we were seeing.

11                   MR. VICKORY:  The threshold levels  
12                   that you use, are they different than the  
13                   SBI's?

14     A.    There in the field, most labs range anywhere,  
15            what we call RFUs or peak heights, anywhere from  
16            75 to 150.  However, different machines might  
17            give different thresholds, so each machine might  
18            be different even in the same laboratory, and  
19            all that's found out through validation.  With  
20            electrophoresis some of these scanners, they have  
21            a tendency to -- what we call noise or baseline  
22            noise, to be more on one machine versus another.  
23            So we're constantly monitoring these machines to  
24            make sure that the thresholds stay about the

1 same. So most laboratories are somewhere  
2 between 75 and 150, but every laboratory is  
3 different.

4 MR. VICKORY: I guess I've never seen  
5 statistics this low with the SBI. I was  
6 wondering, do they cull them out at a  
7 different level than you do?

8 A. The main reason that these are so low is because  
9 we have mixtures with three or more individuals.  
10 So the computer program is taking all the  
11 different combinations of those numbers and  
12 calculating, could this person be an 8-8, and 8-  
13 12, an 8-14, an 8-15. So it's taking all those  
14 possible combinations. When you see high  
15 numbers, that profile becomes more unique and  
16 you can say, given the size of that number, one  
17 in greater than the world population that, yes,  
18 that DNA came from that person. Most of those  
19 are from single source samples. When you get in  
20 the mixture calculations, those numbers tend to  
21 come down because now it's possible for more of  
22 the population to be actually included in that  
23 mixture.

24 MR. VICKORY: I guess I'm just kind of

1           wondering why the SBI -- do they report it  
2           differently than you do, I guess, is what  
3           I'm getting at?

4       A.    They might be using a likelihood ratio where  
5           we're using a random match probability.  There's  
6           three or four different calculations that  
7           forensic laboratories can use for statistical  
8           estimates.  Likelihood ratios have a tendency to  
9           be a lot higher, but likelihood ratio in this  
10          situation wouldn't apply because we can't come  
11          up with theories of prosecution and defense for  
12          our mixture calculation because there's too many  
13          individuals that possibly could be in the  
14          mixture.

15                   MR. JENKINS:  So we don't, just for a  
16                   point of clarification, we don't really  
17                   know which method the SBI uses in  
18                   comparison on a sample that's a mixture?  
19                   Do we know that for sure?

20       Q.    Do you know this?

21       A.    A lot of times they have a tendency to use  
22           likelihood ratios, but they just started doing  
23           calculations on mixtures not too long ago.  I've  
24           been to a couple court cases where they don't

1 even calculate statistics. But more and more  
2 courts across the country, because we testify  
3 across the country, are requiring if you're  
4 going to say someone's included, you have to  
5 include some kind of statistical estimate to put  
6 a weight onto that evidence. But until recently  
7 they haven't calculated statistical estimates on  
8 mixtures.

9 I've seen reports where mixtures sometimes  
10 you can determine a major and a minor component,  
11 and they'll say -- they'll calculate saying --  
12 they'll pull out that profile and calculate just  
13 for the major or just for the minor. This  
14 statistical estimate here, we're doing all the  
15 possible combinations because we're seeing it  
16 from three or more individuals. And again,  
17 that's going to make that profile more rare, and  
18 that's why the numbers are coming down.

19 Q. Can I ask then, is the conclusion -- and I know  
20 you cannot say anything conclusory about this,  
21 but that another lab might do exactly what you  
22 did, but come up with different statistics?

23 A. Yeah. I mean, they -- it's not unusual. You  
24 know, if someone has a different -- we use the

1 FBI PopStats program. Someone might use another  
2 program that might throw in -- there's data  
3 values that are involved in these calculations,  
4 and that's for small population subset groups.  
5 Some might use a higher to be more conservative,  
6 someone might use a lower one to be less  
7 conservative. You know, in a situation that  
8 would apply to, say, a subset of Lumbee Indians.  
9 That way you would have a higher data value. So  
10 different labs will put in different  
11 calculations into their statistical estimates.  
12 And again, there's different programs out there  
13 also.

14 Q. We've got more reports.

15 MS. MONTGOMERY-BLINN: Any questions  
16 about this report, any more about this  
17 report?

18 (No audible response.)

19 MS. MONTGOMERY-BLINN: Is the next  
20 report going around? Okay.

21 Q. While it's going around, Mr. Weiss, if I can  
22 just turn your attention to the April 20, 2011,  
23 report. And again, I don't have bench notes for  
24 this, but you do, is that correct?

1 A. (Witness does not respond.)

2 Q. You have bench notes? You've reviewed the bench  
3 notes for this?

4 A. Yes.

5 Q. You conducted the testing for this report?

6 A. Yes.

7 Q. And as soon as it gets around, I'll start asking  
8 you -- okay.

9 If you will, take a look at the report and,  
10 please, tell us what was tested, how was it  
11 tested, and what results did you get?

12 A. March 31, 2011, we were given a door panel.  
13 This was a complete door panel. We looked at  
14 six different areas. The first three areas we  
15 looked at, at the bottom of this door panel  
16 there was like a carpet area on the side of the  
17 panel. We saw some staining. We did a  
18 presumptive test for blood on these items. They  
19 came back negative for blood so we stopped  
20 testing on those, those areas of the door.

21 Next we looked at an area near the handle  
22 of this door panel. We could tell where someone  
23 else was swabbing in this area. We also saw a  
24 serology report where it was very -- some blood

1 was determined to be on this door.

2 Q. Was that from the SBI, that serology report?

3 A. That's correct.

4 Q. You looked at the parts that they had tested to  
5 decide where to do your testing?

6 A. That's correct.

7 Q. I'm sorry. Please, go ahead.

8 A. And we could tell that some very large areas  
9 were swabbed. We swabbed in those areas and  
10 around those areas. We tested three different  
11 areas around the door handle and we obtained  
12 some very limited results. Two of those areas  
13 we only obtained two results, two of our  
14 markers.

15 Q. Two out of how many markers?

16 A. We tested -- again, we used the Minifiler kit,  
17 those test for eight markers, also what we call  
18 Amelogenin to determine whether it was male or  
19 female, and one of the samples actually gave us  
20 one marker. So again, we're getting very  
21 limited results. We compared this to Walter  
22 Bowman and we were able to exclude him from two  
23 of the areas, and then one of the other areas we  
24 could not draw a conclusion. We're just not

1           seeing enough information to say whether that  
2           DNA from that sample came from him or not. So  
3           that sample was insufficient.

4       Q.    Would that be insufficient for anybody or just  
5           Walter Bowman?

6       A.    We said insufficient for inclusionary purposes.  
7           We could actually compare somebody and exclude  
8           him. Because we were seeing similarities to  
9           Walter Bowman, we just could not, we could not  
10          exclude him on the one area.

11      Q.    That's one out of eight --

12      A.    The other two areas --

13      Q.    -- possible alleles?

14      A.    We only got results at two markers.

15      Q.    Okay. So he -- I'm sorry, please continue.

16      A.    So two of the areas we were able to exclude him,  
17           and then one of the areas it was insufficient  
18           for inclusionary purposes, and we could not make  
19           a conclusion whether he was included or  
20           excluded. And if you're looking at the report  
21           of the sample that we labeled F, area F, is the  
22           one that we could not make a conclusion whether  
23           he was there or not.

24      Q.    And do you know what type of substance you were

1 getting DNA from? Could you tell if it was  
2 blood or sweat or saliva or skin cells?

3 A. No. Again, we were looking at a very shiny area  
4 that appeared to be already swabbed. We could  
5 not determine whether that DNA came from what  
6 type of cell. Whether it was skin cells,  
7 saliva, blood, we could not tell.

8 MS. MONTGOMERY-BLINN: Commissioners,  
9 do you have any questions about this  
10 report?

11 (No audible response.)

12 MS. MONTGOMERY-BLINN: No? Okay.  
13 We're going to send another report around,  
14 the last one.

15 Q. And just as that's going around, Mr. Weiss, I'm  
16 looking at the April 22, 2011, supplemental  
17 certificate analysis. Is that also what you're  
18 looking at?

19 A. Yes.

20 Q. And it's three pages?

21 A. Correct.

22 Q. And are you the person who, the scientist who  
23 conducted this testing and drafted this report?

24 A. Yes.

1 Q. All right. will you please walk us through this  
2 report?

3 A. April 18, 2011, we got a t-shirt and we were  
4 asked to see if we could determine who was  
5 wearing this t-shirt. We took two samples from  
6 this area, from the collar area of the t-shirt.  
7 We swabbed and cut mainly because we were  
8 limited on the time that we had to process this  
9 sample, so we did two preps at once. Again, we  
10 took one of the preps to amp to our Minifiler  
11 kit, and the other sample we aamped to what we  
12 call Identifiler Plus kit. Identifiler Plus kit  
13 is a new kit that we have in our laboratory.  
14 It's the new, improved Identifiler, if you could  
15 say. It's designed to help filter out  
16 inhibitors that prevent us from getting results.

17 On this sample of the swabbing, it gave us  
18 results at four markers. And again, we tested  
19 eight, nine if you count Amelogenin, and we  
20 compared it to all ten reference samples, and  
21 were able to exclude all ten individuals.

22 Q. Okay. So that means the ten people that you  
23 compared it to, their DNA was not present in the  
24 portion of the shirt that you tested?

1 A. That's correct.

2 Q. And of course, just as we went through before,  
3 that doesn't mean that those individuals didn't  
4 have any contact with that shirt or touch that  
5 shirt, just not on the portion that you tested?

6 A. That's correct.

7 Q. And it doesn't mean that whoever last wore that  
8 shirt's DNA is located on that shirt?

9 A. Yes.

10 Q. And --

11 A. And then also the shirt cutting, we weren't able  
12 to get any results from that prep.

13 Q. From the second prep?

14 A. That's correct.

15 Q. And if the Commission would like you to, are you  
16 capable of cutting and testing other areas on  
17 the shirt?

18 A. Yes.

19 MS. MONTGOMERY-BLINN: Commissioners -

20 Q. Oh, and I'm sorry, the area of the shirt that  
21 you tested was the collar of the shirt?

22 A. Yes. When we have shirts, when we're trying to  
23 find out who wears a shirt we usually go for the  
24 collar area and also the armpits of the shirt.

1           Again, we were limited on the time that we had  
2           to process this sample so we only tested one  
3           area, but we took a cutting and a swabbing to  
4           try to get results. One of the reasons we took  
5           a swabbing, this shirt had really -- it was a  
6           really dark color, and clothing dyes sometimes  
7           inhibit PCR, so it sometimes is better to swab,  
8           other times it's better to cut, so we did both  
9           processes.

10        Q.    And did you select the collar in part because  
11           there was some wear on the collar?

12        A.    Yeah. It looked like there was a little bit of  
13           wear on the collar area of the shirt.

14                        MS. MONTGOMERY-BLINN: Commissioners,  
15                        questions about this report or any general  
16                        questions at all for Mr. Weiss?

17                        JUDGE SUMNER: There appear to be  
18                        none.

19                        MS. MONTGOMERY-BLINN: All right.  
20                        I'll ask that Mr. Weiss be allowed to step  
21                        down and leave.

22                        JUDGE SUMNER: Thank you, sir.

23        A.    Thank you.

24                        (THEREUPON, MR. WEISS STEPS DOWN FROM

1 THE WITNESS STAND.)

2 \* \* \* \* \*

3 MS. MONTGOMERY-BLINN: Your Honor, would  
4 you like to take a short break before we move  
5 into the next part of our presentation?

6 JUDGE SUMNER: We'll take about five  
7 minutes.

8 (THEREUPON, A SHORT RECESS WAS TAKEN.)

9 MS. MONTGOMERY-BLINN: All right, we are  
10 now going to turn our focus to what we've  
11 labeled group B. Just a reminder, in the front  
12 of your briefs is that handout that summarizes  
13 the names of group B and group A just to keep  
14 them straight because I know it's kind of  
15 complex. But group B, this is the group that  
16 was the focus of the sheriff's investigation.  
17 It includes Kenneth Kagonyera, Robert wilcoxson,  
18 Larry Williams, Teddy Isbell, Damian Mills, and  
19 Aaron Brewton. Kagonyera, wilcoxson, Williams,  
20 and Mills pled to second degree murder. Isbell  
21 ultimately pled to conspiracy to commit armed  
22 robbery. Charges were dismissed against  
23 Aaron Brewton, He pled to some other charges at  
24 the time. And the Commission staff was able to

1 interview each person from group B. So we're  
2 going to go through our interviews and discuss  
3 these people.

4 Kenneth Kagonyera, all of his sheriff's  
5 interviews are included or summarized in your  
6 brief. He denied involvement in the crime in  
7 three separate interviews with the sheriff's  
8 department. On November 30, 2001, Mr. Kagonyera  
9 confessed to District Attorney Ron Moore, the  
10 district attorney's investigator, and his  
11 attorneys. That confession is on page 101 or  
12 the summary report of that confession is on page  
13 101 in the brief. As you've noted, none of the  
14 interviews are recorded, so we don't have  
15 transcripts, we just have the sheriff's  
16 department summaries or, in that case, the DA  
17 investigator's summary.

18 Mr. Kagonyera pled guilty on December 13,  
19 2001. He also pled to an unrelated assault with  
20 a deadly weapon with intent to kill, inflicting  
21 serious injury, cruelty to animals, drug  
22 possession, and breaking and entering. The  
23 convictions were consolidated for one sentence,  
24 and he was sentenced to the mitigated range for

1 144 to 189 months.

2 (THEREUPON, MR. KAGONYERA'S RECORD IS  
3 DISPLAYED ON THE SCREEN.)

4 MS. MONTGOMERY-BLINN: This is  
5 Mr. Kagonyera's record. And while you're taking  
6 a look at that, I am going to be calling Mr. Lau  
7 to testify. And this record includes the things  
8 that he pled to.

9 (THEREUPON, JAMIE LAU RETURNS TO THE  
10 WITNESS STAND.)

11 EXAMINATION BY MS. MONTGOMERY-BLINN:

12 Q. All right, Mr. Lau, you are still under oath.  
13 Can you tell us when Mr. Kagonyera first  
14 contacted the North Carolina Innocence Inquiry  
15 Commission?

16 A. Sure. Mr. Kagonyera first contacted the  
17 Commission on August 26, 2008, by letter. He  
18 stated in that letter that DNA could prove his  
19 innocence.

20 Q. Okay. And as part of the Commission procedures  
21 we routinely send out a questionnaire. Was that  
22 done in this case?

23 A. It was.

24 Q. And when did his returned and completed

1 questionnaire arrive at the Commission?

2 A. February 23, 2009.

3 Q. And what did he write on that questionnaire  
4 about his innocence or guilt?

5 A. He wrote that he was innocent because he did not  
6 commit this crime. He had no knowledge of it.  
7 He says that DNA and a confession of a federal  
8 inmate will prove his innocence.

9 Q. Did you have the opportunity to interview  
10 Mr. Kagonyera?

11 A. I did have the opportunity to speak with  
12 Mr. Kagonyera. We met three times.

13 Q. Three times. And is Mr. Kagonyera currently in  
14 custody?

15 A. Yes, he is.

16 Q. Were all those meetings in the Department of  
17 Corrections facility?

18 A. They were.

19 Q. Tell us about the first meeting.

20 A. The first meeting we didn't speak in regards to  
21 this crime. We met him on March 1, 2010. We  
22 didn't conduct an interview of him at that time.  
23 At that time we met with him to have him  
24 complete the Affidavit of Indigency because the

1 decision had been made to move the case into  
2 formal inquiry.

3 Q. You say to complete a -- did you give him all of  
4 his options regarding an attorney, and he chose  
5 to complete the Affidavit of Indigency?

6 A. Yes, that's correct. I explained to him that he  
7 had the opportunity to complete that form. I  
8 also explained that completing that form doesn't  
9 insure that he will be deemed indigent or that  
10 he would be given an attorney. I just explained  
11 to him that if that's the form he opted to sign,  
12 we would submit it to the judge and see what  
13 would happen from there.

14 Q. And did you also bring the documents should he  
15 have chosen to waive his right to an attorney or  
16 hire his own attorney?

17 A. I did.

18 Q. All right. And was Mr. Kagonyera ultimately  
19 determined to be indigent by a judge?

20 A. Yes. Judge Sumner reviewed that affidavit and  
21 deemed him indigent and assigned counsel.

22 Q. Okay. And did Indigent Defense Services assign  
23 a specific attorney to represent Mr. Kagonyera?

24 A. Yes, that's correct.

- 1 Q. And who is that attorney?
- 2 A. That attorney is Mr. Frank wells.
- 3 Q. And when Mr. wells was appointed to represent
- 4 Mr. Kagonyera, what's the next thing that
- 5 happened in regards to the case?
- 6 A. Mr. wells met with Mr. Kagonyera. At that time
- 7 he had with him a copy of the Commission's
- 8 waiver of procedural safeguards. He reviewed that
- 9 form with him presumably, and that form was
- 10 signed by Mr. Kagonyera and submitted to the
- 11 Commission.
- 12 Q. And his attorney as well?
- 13 A. And his attorney signed that form as well.
- 14 Q. Okay. When's the next time you met with
- 15 Mr. Kagonyera?
- 16 A. I met with him on November 17, 2010 to conduct a
- 17 full interview at that time.
- 18 Q. And who was present during that interview?
- 19 A. Ms. Smith from the Commission and also
- 20 Mr. wells, his attorney.
- 21 Q. Now, to note, for convenience sake, you also
- 22 later on were present while I conducted a
- 23 deposition of Mr. Kagonyera, is that correct?
- 24 A. That is correct.

1 Q. And the --

2 A. Mr. Wells was also present at that deposition,  
3 and Ms. Pretty from our Commission was also  
4 there.

5 Q. Thank you. And that deposition. you've prepared  
6 that as a handout to go home with the  
7 Commissioners tonight, is that correct?

8 A. Yes, that deposition has been given to each of  
9 the commissioners, is my understanding.

10 Q. The transcript of that or it has been or will  
11 be, is that correct?

12 A. The transcript has been or will be given to each  
13 commissioner before they leave tonight.

14 (THEREUPON, A DISCUSSION WAS HAD OFF  
15 THE RECORD WHICH WAS NOT REPORTED BY THE  
16 COURT REPORTER.)

17 Q. So in order to be efficient and save time and  
18 knowing that the commissioners will enjoy reading  
19 that deposition tonight, what I'd ask you to do,  
20 Mr. Lau, is just tell us, was he consistent in  
21 the second interview with the later deposition,  
22 and describe any inconsistencies or any  
23 additional information from this interview.

24 A. Our interview on November 17, 2010 was

1 consistent with the later deposition that we  
2 conducted. There are a few things that were  
3 included in the interview on November 17th that  
4 were not part of the deposition, and one of  
5 those was information about an individual named  
6 Richard Darity. According to Mr. Kagonyera,  
7 Mr. Darity was jail with him at the Buncombe  
8 County Detention Facility and told Mr. Kagonyera  
9 that Robert Rutherford had been stopped and  
10 questioned by the Buncombe County Sheriff's  
11 Office with regard to this case while  
12 Mr. Rutherford was traveling from his  
13 girlfriend's house back to the Asheville area.

14 I was able to speak with Mr. Darity in an  
15 attempt to confirm this information that was  
16 conveyed by Mr. Kagonyera, and Mr. Darity did  
17 not confirm that information. He said he didn't  
18 know or have that information. Additionally,  
19 Mr. Kagonyera during the course of this  
20 interview spoke of one Kevin Polk as a federal  
21 inmate in the Buncombe County detention facility  
22 with him while he was being held there on these  
23 charges. Mr. Kagonyera told us that when  
24 Mr. Polk saw him at the detention facility, he

1           expresses surprise to Mr. Kagonyera that they  
2           were still being held. And Mr. Polk told  
3           Kenneth Kagonyera that he knew that  
4           Robert Rutherford had committed this crime  
5           because Rutherford confessed to Kevin Polk while  
6           they were out at a club together prior to  
7           Mr. Polk being incarcerated.

8       Q.   That's what Mr. Kagonyera told you?

9       A.   That's what Mr. Kagonyera told me that  
10       Kevin Polk told Mr. Kagonyera that  
11       Robert Rutherford confessed to him at a club.

12      Q.   Now, were you able to locate Kevin Polk?

13      A.   I was able to locate Kevin Polk.

14      Q.   And what did Mr. Polk have to say?

15      A.   According to Mr. Polk, he confirmed the account  
16       of Mr. Kagonyera that Robert Rutherford had  
17       confessed to him of his involvement as well as  
18       the involvement of Lacy Pickens and  
19       Bradford Summey.

20      Q.   And we intend to cover this interview and play  
21       this interview more at a later part in the  
22       hearing, is that correct?

23      A.   That is correct. The final thing with regard to  
24       that deposition or the second interview on

1 November 17th that was not part of the  
2 deposition was I asked him specifically why he  
3 believed his codefendants confessed and  
4 implicated him. His response was that, "we were  
5 all young so no one really had a bone to pick,  
6 so to speak, and people were just scared. So  
7 they pretty much would just save yourself kind  
8 of, you know. You could say kind of, well, I'm  
9 going to say this just to tell them what they  
10 want to hear and/or maybe I won't get the death  
11 penalty or maybe I won't get a life sentence,  
12 you know, not really knowing that you're  
13 implicating yourself to felony murder, you know,  
14 and trying to -- I guess you can say, you know,  
15 they -- I can't remember exactly what was said  
16 but, you know, they say if you help us, we'll  
17 help you. Uh-huh (yes), kind of, you know, if  
18 you tell us what we want to know, we'll help  
19 you, and then, you know, it all started from  
20 there."

21 So Mr. Kagonyera said that to me in  
22 response to my question about why he believed  
23 his codefendants had confessed and implicated  
24 him. Other than that, everything else is

1           largely consistent with the deposition.

2       Q.    And you were present during that deposition?

3       A.    I was present during that deposition.

4       Q.    That was on April 8, 2011?

5       A.    Yes, that deposition was April 8, 2011.

6       Q.    Okay. I'm going to play a portion of the  
7           deposition and ask you, Mr. Lau, to confirm  
8           whether or not it is that deposition.

9                               (THEREUPON, A PORTION OF  
10                              MR. KAGONYERA'S DEPOSITION IS PLAYED.)

11      Q.    Mr. Lau, were you present when this video was  
12           made?

13      A.    I was.

14      Q.    And do you believe that this is a fair and  
15           accurate representation of what you saw that  
16           day?

17      A.    It was.

18      Q.    Now, you talked to Mr. Kagonyera's attorneys, is  
19           that right?

20      A.    I did.

21      Q.    And you talked to Mr. Devereux, who testified  
22           here today?

23      A.    Yes.

24      Q.    And did you talk to his other attorney,

1 Al Messer?

2 A. Yes, I did.

3 Q. And did Mr. Messer provide you with an  
4 affidavit?

5 A. Mr. Messer has provided an affidavit to me in  
6 lieu of testifying today.

7 Q. Okay.

8 MS. MONTGOMERY-BLINN: May I approach the  
9 witness, Your Honor?

10 JUDGE SUMNER: Yes.

11 Q. Mr. Lau, I'm handing you a copy of some  
12 documents. Is that the affidavit from  
13 Mr. Messer?

14 A. Yes, this is.

15 Q. Is there anything that Mr. Messer said in  
16 addition to this affidavit?

17 A. No. I believe the substance of what we spoke  
18 about is here.

19 Q. Okay. I'll give the commissioners some time to  
20 read that affidavit.

21 (THEREUPON, THERE IS A PAUSE IN  
22 TESTIMONY AS THE COMMISSIONERS REVIEW THE  
23 AFFIDAVIT.)

24 JUDGE SUMNER: Anyone need any additional

1 time?

2 (No audible response.)

3 A. To provide context to some of what you are  
4 reading I think it's important that at that  
5 November 17, 2010 interview of Mr. Kagonyera,  
6 before I spoke with Mr. Messer I asked  
7 Mr. Kagonyera if he didn't commit this crime,  
8 then where did his statement, where did the  
9 information contained in his statement to the  
10 district attorney come from, the statement that  
11 he gave the district attorney in the presence of  
12 his attorney implicating himself. Mr. Kagonyera  
13 told me that that statement was generated after  
14 he received his discovery, reviewed the  
15 discovery, and decided at that point in time it  
16 was in his best interest to accept a plea. So  
17 that's why in paragraph 17 Mr. Messer discusses  
18 Kagonyera's claims as to where his information  
19 came from.

20 Q. Did you also talk to Mr. Kagonyera's appellate  
21 attorney, John Wade Meyers?

22 A. Yes, I did.

23 Q. And Mr. Meyers simply was his attorney for  
24 appealing the plea?

1 A. Yes. He was appointed to represent him in his  
2 appeal of the plea.

3 Q. And did Mr. Meyers tell you whether or not he  
4 had ever met with Kagonyera?

5 A. He didn't specifically recall whether or not he  
6 had met directly with Mr. Kagonyera. They did  
7 have communication through the mail, and that  
8 was certainly reflected in the file he provided  
9 the Commission.

10 Q. So you were able to obtain a copy of that file?

11 A. Yes, I was.

12 Q. And you said there was mail communication, and  
13 were you able to see a copy of those letters?

14 A. Yes, I was.

15 Q. And can you tell us what those letters  
16 contained?

17 A. Well, first I think it's important Mr. Meyers  
18 told me that he reviewed the record for the plea  
19 hearing and the sentencing hearing, and he found  
20 that there was no error, and he submitted an  
21 Anders brief. He also had the appellate  
22 defender's office review the materials in his  
23 conclusion, and they agreed with him with regard  
24 to his conclusion.

1 Q. And an Anders brief is simply a brief where an  
2 attorney says they couldn't, they couldn't  
3 locate any errors?

4 A. An Anders brief is a brief indicating that they  
5 found no errors with the plea hearing and the  
6 sentencing hearing.

7 The review of the file shows that  
8 Mr. Kagonyera had wrote to him, and in four  
9 different letters, letters on October 2002,  
10 January 2003, May 2003, and June 2003 he told  
11 Meyers that DNA test results had been withheld.  
12 He asked Meyers to make a motion for a new trial  
13 based on the DNA as newly discovered evidence  
14 and ineffective assistance of counsel. Meyers  
15 responded to him and said that that issue could  
16 only be addressed in an MAR and couldn't be  
17 addressed in a direct appeal, which he was  
18 appointed to represent him on.

19 Q. So that was four different letters from  
20 Mr. Kagonyera that asked for --

21 A. Yes, there were four letters pointing to the DNA  
22 as potential evidence.

23 Q. And was Mr. Kagonyera indicating that he didn't  
24 know what the results of the DNA yet were, but

1           wanted them, or that he now knew?

2           A.    No, he did not know what the DNA results -- he  
3           was asking his appellate counsel to obtain those  
4           DNA results.

5           Q.    So he still did not know the results of the DNA  
6           testing?

7           A.    It doesn't appear that he knew the results --

8           Q.    According to those letters?

9           A.    -- of the DNA testing at that time.

10          Q.    Okay. Anything else with Mr. Meyers? Did  
11          Mr. Kagonyera take any action?

12          A.    Kagonyera filed a grievance with the state bar  
13          based on Mr. Meyer's representation, but that  
14          grievance was dismissed, it went nowhere.

15          Q.    Were you able to review any other agency files  
16          in relation to Mr. Kagonyera?

17          A.    Yes. I reviewed his file, the Prisoner's Legal  
18          Service file that they had for Mr. Kagonyera.

19          Q.    So did Mr. Kagonyera apply to Prisoner Legal  
20          Services after his conviction?

21          A.    Yes, he did.

22          Q.    And did he claim that he was innocent when  
23          applying to Prisoner Legal Services?

24          A.    Yes, he did.

1 Q. Is there anything inconsistent with the  
2 innocence claim that Mr. Kagonyera is making  
3 with the Commission to the claims that he made  
4 at Prisoner Legal Services?

5 A. No.

6 Q. Was he focusing more on procedural errors when  
7 he was writing to Prisoner Legal Services?

8 A. No, he was maintaining his innocence.

9 Q. Did he write to them -- well, when did he start  
10 writing to them, and when was the last  
11 correspondence that you're aware of?

12 A. He wrote to PLS between 2003 and 2009.

13 Q. And he wrote multiple times?

14 A. He wrote multiple times. He was --

15 Q. Go ahead.

16 A. He was asking for assistance in his -- with his  
17 case. He actually was trying to get them to  
18 obtain his DNA testing results or to have  
19 testing done because he knew that the items of  
20 evidence were collected. In 2009 he asked for  
21 assistance with the MAR. That is in the  
22 commissioners' brief saying that the MAR had not  
23 been responded to.

24 Q. Well, let's just clarify on that MAR.

1 Mr. Kagonyera filed a pro se Motion for  
2 Appropriate Relief?

3 A. Yes, that's correct.

4 Q. When did he file that?

5 A. He filed that Motion for Appropriate Relief in  
6 2008.

7 Q. And what did the judge do?

8 A. The judge ordered the district attorney's office  
9 to respond to Mr. Kagonyera's pro se MAR.

10 Q. And then what happened?

11 A. The district attorney's office in a response, I  
12 believe, dated July 29, 2008, the district  
13 attorney's office responded to that MAR and said  
14 that -- it said a couple of things.

15 Q. And this is in the commissioner brief?

16 A. And it's in the commissioners' brief, and maybe  
17 if they would read it, he said that Kagonyera's  
18 assertion of a federal inmate's confession as  
19 reason for his MAR, that the confession's inmate  
20 had problems because the federal inmate was  
21 seeking to curry favors on his -- or it appeared  
22 that the federal inmate was seeking to curry  
23 favors on federal charges when giving the  
24 confession. He said that it was further

1           undermined, the credibility of the inmate's  
2           confession was further undermined by the fact  
3           that Lacy Pickens, who the federal inmate -- who  
4           is Robert Rutherford from group A, who the  
5           federal inmate implicated was in prison on the  
6           day of the homicide. And he said that DNA test  
7           results were either inconclusive or negative,  
8           and he indicated a willingness to compare all  
9           the evidence items collected in this case to DNA  
10          standards from Robert Rutherford, Lacy Pickens,  
11          and Bradford Summey.

12        Q.    And was that done?

13        A.    That comparison never took place.

14        Q.    So in 2009 when Mr. Kagonyera was writing to  
15           Prisoner Legal Services and asking for help with  
16           the MAR that he filed and it not being answered,  
17           the MAR from the court file that you've reviewed  
18           had not yet been complied with --

19        A.    There had been --

20        Q.    -- had not been complied with?

21        A.    well, we're skipping over --

22        Q.    I'm sorry.

23        A.    There's a step missing here.

24        Q.    Please explain the judge's order.

1       A.    So the judge required the district attorney's  
2            office to respond to Mr. Kagonyera's pro se MAR.  
3            That response was done in July of 2008. The  
4            judge issued an order after receiving that  
5            response commanding the SBI to make the  
6            comparison of the DNA profiles of Bradford  
7            Summey, Robert Rutherford, and Lacy Pickens to  
8            the bandanas and gloves collected in this case.  
9            The judge further ordered that the district  
10           attorney provide him with such processes  
11           necessary to obtain DNA standards from  
12           Mr. Rutherford, Mr. Pickens, and Mr. Summey by  
13           August 15, 2008. When I began reviewing this  
14           case in January 2010 no DNA standards had been  
15           obtained and no comparison had been undertaken.

16       Q.    And what's the current status of that Motion for  
17            Appropriate Relief?

18       A.    The current status of that Motion for  
19            Appropriate Relief is it's currently being held  
20            in abeyance. The resident superior court judge  
21            down there held it in abeyance while the  
22            Innocence Commission reviewed the case when he  
23            learned that it was in our process.

24       Q.    And do you recall when it first, when the judge

1 first decided to hold it into abeyance or first  
2 made that decision?

3 A. The judge decided to hold it in abeyance -- I  
4 don't have the exact date in front of me, but it  
5 was sometime after January 2010.

6 Q. Okay. So when Mr. Kagonyera was writing to  
7 Prisoner Legal Services in 2009, that MAR was  
8 still pending and not complied with?

9 A. That MAR was pending, and the order -- there had  
10 not been any comparison made between the items  
11 collected and Bradford Summey, Lacy Pickens, and  
12 Robert Rutherford as ordered by the court in  
13 August of 2008.

14 Q. Okay. And did Prisoner Legal Services respond  
15 to Mr. Kagonyera?

16 A. In different responses they either denied his  
17 claim or did not respond to the letters he  
18 wrote.

19 MS. MONTGOMERY-BLINN: Commissioners,  
20 do you have any questions for Mr. Lau about  
21 his interviews with Mr. Kagonyera or his  
22 research about Mr. Kagonyera?

23 MR. BECTON: If I understand,  
24 Rutherford was in Buncombe County so that

1           the order could be complied with for almost  
2           a year?

3       A.    Yes, that's correct, and no DNA standard was  
4           obtained while Mr. Rutherford was in Buncombe  
5           County.

6                       MR. BECTON:  And then he was sent back  
7           to federal prison?

8       A.    Then he was sent back to federal custody.

9                       MR. BECTON:  And then during that year  
10           no stay was in, had been issued by any  
11           superior court judge in Buncombe County?

12       A.    No.  Maybe I should rephrase that.  There's  
13           nothing in the file indicating that to be the  
14           case.

15                      MS. ASHENDORF:  But a judge did order  
16           the district attorney to make that  
17           comparison of DNA?

18       A.    Yes.

19                      MS. ASHENDORF:  And he didn't, right?

20       A.    He had not done it by the time we began  
21           reviewing the case.

22                      MS. ASHENDORF:  Is that not contempt?

23                      MR. VICKORY:  Was there a lawyer?  Did  
24           he have a lawyer, Ken Kagonyera have a

1 lawyer at this point for the MAR?

2 A. He did not have a lawyer appointed for the MAR.

3 JUDGE SUMNER: Ms. Surgeon.

4 MS. SURGEON: I was just wondering,  
5 how did it finally get to the judge's  
6 attention that something needed to be done  
7 with the MAR if Prisoner Legal Services  
8 didn't respond?

9 A. I'm sorry. If I believe what you're asking is,  
10 how did the MAR come to be held in abeyance?

11 MS. SURGEON: No. How did the judge  
12 get to realize that it had been filed pro  
13 se and then issued an order for the DA to  
14 get the comparisons made?

15 A. When it was filed pro se it came before the  
16 judge and he ordered the district attorney to  
17 respond, and then he gave an order following the  
18 district attorney's response, and that's the end  
19 of the record with regard to the court file.

20 MR. SMITH: Was an order issued  
21 requiring Rutherford to consent to swabs or  
22 testing or was anything like that ever done  
23 or was -- did you feel it was necessary as  
24 you looked at the documents?

1 A. I'm not sure I understand. Can you --

2 MR. SMITH: Let me rephrase it.

3 A. Please.

4 MR. SMITH: Rutherford, Rutherford  
5 comes back and is there for a year?

6 A. Yes.

7 MR. SMITH: For testing?

8 A. He was brought back on a writ of ad -- of habeas  
9 corpus to have tests and --

10 MR. SMITH: Yes.

11 A. And there was no NTO in the record requiring it  
12 providing a DNA sample. He was brought back on  
13 the writ in August of 2008, at the end of August  
14 of 2008. He was in the Buncombe County  
15 detention facility, I don't have the exact  
16 dates, for approximately a year. A detective  
17 from the Buncombe County Sheriff's Office went  
18 to speak with him, that's reflected in your  
19 guys's brief, Mr. Roney Hilliard. I spoke with  
20 Mr. Hilliard. I asked him, were you asked to  
21 obtain a DNA standard when you went to visit  
22 Mr. Rutherford, and he responded that he did not  
23 recall being asked.

24 MR. SMITH: But it wasn't done?

1 A. But it was not done.

2 MR. SMITH: Would Mr. Rutherford, so  
3 far as you know, would he have cooperated  
4 and provided a sample without an order from  
5 a court, or do you know?

6 A. I can speak to my experience with  
7 Mr. Rutherford. I sought a sample from him when  
8 we began this case. I went down to -- he was in  
9 custody in, I believe it was Georgia. I'm  
10 sorry, it must not have been Georgia. But he  
11 was in federal custody and I went to visit him  
12 while he was in federal custody.

13 MR. SMITH: Objection, leading.

14 A. I apologize.

15 Q. Mr. Lau, was he in Talladega, Alabama?

16 A. He was in Talladega, Alabama. And I went to  
17 visit Mr. Rutherford while he was in custody for  
18 the purpose of obtaining a DNA standard for  
19 comparison in this case. At that point in time  
20 he indicated first that he would. I said, I'm  
21 prepared to take that standard from you now.  
22 And when I began to open up the collection kit  
23 to obtain that DNA standard, he then refused and  
24 said he would not do it without an attorney or

1 without some sort of order requiring him to do  
2 it.

3 we then, as far as the time line goes, we  
4 then went back to visit him after he was moved  
5 to Texarkana, Texas, for the purpose of  
6 obtaining a DNA standard. Before we went to  
7 Texas to obtain that standard we had sought a  
8 writ on our own to move him back to North  
9 Carolina because at that point in time we could  
10 request a nontestimonial order requiring him to  
11 provide that sample. When he received notification  
12 of our intent to move him back to North Carolina,  
13 he actually called me and told me that I had his  
14 full cooperation with collecting the DNA  
15 standard as long as he was not brought back to  
16 North Carolina.

17 MR. JENKINS: Did you ever ask him if  
18 he just refused while he was in Buncombe  
19 County or if nobody ever attempted to  
20 obtain a sample, or do we know?

21 A. I don't believe I ever asked him the question.

22 MR. VICKORY: Switching back to  
23 Mr. Kagonyera, since all this came up with  
24 the Innocence Commission, have you offered

1           him another opportunity, so to speak, for a  
2           polygraph? Has that come up?

3       A.    No, we have not.

4           MR. VICKORY: I mean, the issue hasn't  
5           -- he hasn't offered, and you haven't asked  
6           him to have one?

7       A.    It has not come up.

8           MR. BECTON: Regarding item number 10  
9           in the affidavit from Mr. Messer, I recall  
10          the general advice that I provided to  
11          Mr. Kagonyera. The advice that I gave was  
12          based on the number of statement against  
13          him, particularly Mr. Mills' statement.  
14          The results of the polygraph exam was  
15          another factor.

16          Do we know what that general advice  
17          was? Was that -- it looks like it was the  
18          answer you should plead guilty. Do you  
19          know what his advice was?

20       A.    I can't necessarily speak for him.

21          MR. BECTON: This is an affidavit that  
22          he prepared, and so --

23       A.    we had -- this affidavit is based on our  
24          discussion with him. We do have a transcript of

1           our interview with him that may specifically  
2           answer that question, but I don't recall it off  
3           the top of my head what he's referring to with  
4           general advice there.

5                       MR. BECTON: Now turning to paragraph  
6                       17.

7    A.    Uh-huh (yes).

8                       MR. BECTON: Is it your understanding  
9                       that he received the discovery material  
10                      piecemeal? I guess people were making  
11                      confessions --

12   A.    That's what Mr. --

13                      MR. BECTON: -- over time?

14   A.    That's what Mr. Kagonyera alleges.

15                      MR. BECTON: Is that what  
16                      Mr. Kagonyera said or is that what  
17                      Mr. Messer said?

18   A.    That's what Mr. Kagonyera said to us --

19                      MR. BECTON: That he received it  
20                      piecemeal?

21   A.    -- that he received his discovery piecemeal.

22                      MR. BECTON: And it was almost a year  
23                      after the crime before he confessed?

24   A.    It was November 29th, I believe, when he met

1 with the district attorney, of 2001. The crime  
2 occurred in September of 2000.

3 MR. BECTON: And other people charged  
4 were confessing as early as three weeks  
5 afterwards, or actually a couple of weeks  
6 or so after the alleged crime, the crime?

7 A. I believe the earliest statement, and you guys  
8 can consult your brief on this --

9 MR. BECTON: On the 24th?

10 A. -- is September 25th or September 24th by  
11 Teddy Isbell.

12 MR. JENKINS: I have a follow-up  
13 question to that one after Ms. Surgeon.

14 MS. SURGEON: Did he ever say from  
15 whom he got his discovery by piecemeal?

16 A. He said that his attorneys were bringing him  
17 statements, and would bring him one statement,  
18 show him the statement, and tell him that this  
19 person is saying this, and he would -- his best  
20 interest would be to plea, and that they would  
21 bring him a statement one day, at a later date  
22 bring him another statement, and that's how he  
23 received those statements, and then at some  
24 point he received his full discovery, is what he

1           said.

2                       MR. JENKINS: That's what I was  
3           wanting some clarification on because  
4           somewhere I either read or heard testimony  
5           that he said he decided to plead guilty  
6           after reading his discovery, but there  
7           wasn't any discussion about piecemeal, it  
8           was just after reading the discovery. Was  
9           that something that was testified to or --

10    A.    I don't know if I -- I don't believe I've  
11           testified to that. From what Mr. Kagonyera told  
12           me, he received the statements in the fashion I  
13           described, and at some point before he gave his  
14           complete confession he had received or reviewed  
15           all of his discovery. But initially he was  
16           being brought statements of the others  
17           implicating him before the point in time at  
18           which he finally was able to review or received  
19           his complete discovery. But he did have his  
20           complete discovery, according to Mr. Kagonyera,  
21           prior to giving his statement to the district  
22           attorney, and he said his statement was largely  
23           based on what he had seen in discovery.

24                       MR. JENKINS: And wouldn't it be fair

1 to say that he received his piecemeal  
2 discovery because that's the way the  
3 information was coming in? It wasn't --  
4 people weren't all talking on the same date  
5 at the same time. They were giving  
6 statements at different times and different  
7 -- making different allegations. Would  
8 that be a fair statement, based on the  
9 brief that we've seen?

10 A. (Witness does not respond.)

11 MR. JENKINS: I guess that's an unfair  
12 question.

13 A. I was going to say I can't -- the person that  
14 could answer that question is probably here,  
15 but --

16 MR. JENKINS: Yeah. I would submit to  
17 the other commissioners that by him saying  
18 it was piecemeal, I don't know of any other  
19 way he could have received it. If the  
20 information was coming in --

21 JUDGE SUMNER: You might want to hold  
22 that.

23 MS. MONTGOMERY-BLINN: I'd be happy to  
24 recall Mr. Devereux, if that would be

1 helpful.

2 MR. JENKINS: I'm sorry?

3 MS. MONTGOMERY-BLINN: I said, I'd be  
4 happy to recall Mr. Devereux if that would  
5 help answer some of these questions as  
6 well. I believe he is still here.

7 Mr. Devereux: Nobody wants to hear  
8 any more from me today.

9 MR. BECTON: I have a question.

10 A. Sure.

11 MR. BECTON: At one point you  
12 mentioned that he said -- or I guess it was  
13 from the video that no defense was being  
14 developed, they were just bringing you  
15 statements. Did you ask him or have you  
16 uncovered any evidence that could have been  
17 in discovery? If all of our witnesses are  
18 not here and discovery does not appear, and  
19 if everybody who said they were there with  
20 him, said they were in the house with him,  
21 did he indicate what could have been  
22 brought forth on his behalf?

23 A. He indicated that the DNA evidence was something  
24 that --

1 MR. BECTON: Okay.

2 A. -- he wanted, knew of, and was trying to obtain.

3 MR. BECTON: He didn't get those  
4 results though?

5 A. No.

6 MS. MONTGOMERY-BLINN: Any more  
7 questions for Mr. Lau in relation to  
8 Kenneth Kagonyera?

9 (No audible response.)

10 MS. MONTGOMERY-BLINN: I'd ask that  
11 Mr. Lau come down for just a minute.

12 JUDGE SUMNER: Yes.

13 (THEREUPON, JAMIE LAU STEPS DOWN FROM  
14 THE WITNESS STAND.)

15 \* \* \* \* \*

16 MS. MONTGOMERY-BLINN: All right. Robert  
17 Wilcoxson is the other Commission Claimant and  
18 member of group B. All of Mr. Wilcoxson's  
19 sheriff interviews are included or summarized in  
20 the brief. He was interrogated two times by the  
21 sheriff's department. He always denied  
22 involvement in the crime including during the  
23 law enforcement interviews.

24 He pled guilty on August 15, 2002. As part

1 of his plea unrelated driving charges or  
2 unrelated charges were dismissed. They include  
3 driving without a license and reckless driving,  
4 speeding and no insurance, resisting arrest, two  
5 counts of that, possession of a schedule II,  
6 possession of stolen goods, fleeing to ellude,  
7 two counts of fleeing to ellude, at least one of  
8 those is from that van chase, and driving  
9 without a license. One of those is also from  
10 that van chase that was described during the  
11 police report.

12 He was sentenced to 150 to 189 months. At  
13 his sentencing on September 10, 2002 he  
14 apologized to the victim's family. That  
15 transcript is included in your brief. I'll show  
16 you his criminal record. well, actually his  
17 criminal record is right down here at the  
18 bottom.

19 (THEREUPON, MR. WILCOXSON'S RECORD IS  
20 DISPLAYED ON THE SCREEN.)

21 MS. MONTGOMERY-BLINN: The second degree  
22 murder is from this case. The only other  
23 conviction that he had was for no operator's  
24 license. But I will note we only put

1 convictions on here, but he did have a murder  
2 charge, a prior murder charge in Michigan when  
3 he was a teenager, and that charge was  
4 dismissed.

5 I'll also tell Mr. Becton that we did ask  
6 Mr. Kagonyera in the deposition what he thinks  
7 he would have presented if he had gone to trial,  
8 and that is in the deposition transcript that  
9 you'll be reviewing tonight.

10 The Commission calls Jamie Lau, recalls  
11 Jamie Lau.

12 (THEREUPON, JAMIE LAU RETURNS TO THE  
13 WITNESS STAND.)

14 EXAMINATION BY MS. MONTGOMERY-BLINN:

15 Q. Mr. Lau, did you have the opportunity to  
16 interview Robert Wilcoxson?

17 A. Yes, I did.

18 Q. How many times did you meet with Mr. Wilcoxson?

19 A. I met with Mr. Wilcoxson once with Mrs. Smith,  
20 and then I participated or I was at the  
21 deposition that you conducted with Mr. Wilcoxson  
22 on April 12th.

23 Q. Okay. And is it your understanding that that  
24 deposition has been transcribed and will be

1 provided to the commissioners to read tonight?

2 A. That is my understanding.

3 Q. Now, let's talk about that November 22nd -- was  
4 your first interview on November 22, 2010?

5 A. Yes, That was the date of my first interview.

6 Q. Okay. And tell me, at this time was  
7 Mr. Wilcoxson an applicant to the Commission?

8 A. Mr. Wilcoxson was not an applicant to the  
9 Commission at this time. We were interviewing  
10 him or attempting to speak with him with regards  
11 to our investigation of Mr. Kagonyera's claim.

12 Q. So it was just Mr. Kagonyera's claim you were  
13 investigating at that time?

14 A. Yes.

15 Q. And where was Mr. Wilcoxson when you interviewed  
16 him?

17 A. He was at Scotland Correctional Institute.

18 Q. Okay. Now, the commissioners I know they have  
19 not read the deposition yet, but tell us -- you  
20 have, and you were present. Was this interview  
21 consistent with the deposition?

22 A. Yes, it was.

23 Q. Okay. And please tell us what additional  
24 information is contained in this interview.

1     A.    The additional information that was contained  
2           was he mentioned that he was riding around in  
3           the van with Mr. Kagonyera, the van that was  
4           subsequently part of that police chase. He says  
5           a woman named Tangie Harper came up to the van  
6           and said Kenny had something to do with the  
7           shooting to himself and Mr. Kagonyera, and that  
8           Kenny was -- or Mr. Kagonyera acted surprised  
9           and denied knowing what was going on. And  
10          shortly thereafter was the chase that involved  
11          the van that Mr. Wilcoxson and Mr. Kagonyera  
12          were a part of.

13        Q.    This was after the homicide?

14        A.    This was after the homicide, yes. They were in  
15           a van. Mr. Wilcoxson and Mr. Kagonyera were in  
16           a van together, and Tangie Harper came up to them  
17           and told Mr. Kagonyera that the word was  
18           Mr. Kagonyera had been involved in the Bowman  
19           homicide, and Mr. Kagonyera was surprised and  
20           denied knowing anything about it.

21        Q.    Okay. What else was in addition or inconsistent  
22           with the deposition?

23        A.    He also said that he was approached by the  
24           district attorney and the district attorney

1           asked him to provide a statement, and that it  
2           was either going to be Aaron Brewton or  
3           Mr. Wilcoxson, implying that one or the other  
4           was going to end up ultimately -- what he was  
5           stating, that it was going to be either him or  
6           Aaron Brewton that was going to come out with  
7           the longest sentence, is what he was saying.

8       Q.   Now, did Mr. Wilcoxson during this interview ask  
9           you about the Commission process and what was  
10          going to happen?

11       A.   He did. He asked me to explain what the  
12          Commission process was, and I did. It's very  
13          standard when we initially approach someone to  
14          explain who we are, what we do, in our initial  
15          attempt to try and get the individual to speak  
16          with us, and that occurred here. So we did  
17          explain to him the Commission process.

18       Q.   And you always explain to him that the  
19          Commission doesn't represent the claimants?

20       A.   Yes, we do.

21       Q.   And did Mr. Wilcoxson have any questions for  
22          you?

23       A.   He did ask how he could be involved with regards  
24          to this claim. He said initially when he

1 started speaking with us that he was innocent  
2 for this claim, and at the conclusion he asked  
3 how he could be involved.

4 Q. And what did you tell Mr. Wilcoxson?

5 A. I told him that he would have to send a letter  
6 to the Commission indicating that he's innocent  
7 of this charge and then at that time we would  
8 consider including him in the claim.

9 Q. And did he send a letter?

10 A. Yes, he did.

11 Q. Okay. And when did you receive the letter?

12 A. We received the letter on November 24th. It was  
13 two days after we had met with him on November  
14 22nd.

15 Q. You received it two days afterwards?

16 A. Yes.

17 Q. Okay. And did you have any contact with anybody  
18 else in his family?

19 A. His mother also called me after we met with him,  
20 and she informed me that she had materials in  
21 the matter and that she would voluntarily send  
22 them to the Commission.

23 Q. Now, when you interviewed Mr. Wilcoxson, did you  
24 suggest that he apply to the Commission?

1 A. No. I did not suggest that he apply. I  
2 actually was very careful not to do that.

3 Q. Did you encourage him to apply to the  
4 Commission?

5 A. No, I did not.

6 Q. When he asked you you simply informed him of the  
7 ability to apply?

8 A. Yes, I did.

9 Q. And after that, did the case become the  
10 Kagonyera and Wilcoxson case?

11 A. Yes, it did.

12 Q. After Mr. Wilcoxson applied, did he have an  
13 attorney assigned to him?

14 A. In this matter, yes, he did.

15 Q. Okay. And was this the same procedure as you  
16 went through with Mr. Kagonyera?

17 A. Yes, it was. At that -- for Mr. Wilcoxson we  
18 didn't meet specifically with him. We sent him  
19 a letter informing him of his options with  
20 regards to if he would like to complete an  
21 Affidavit of Indigence, he had that option or he  
22 could waive counsel or he could hire his own  
23 attorney, and he returned that to us, and in the  
24 same process counsel was appointed.

1 Q. Okay. And who was his -- who is his assigned  
2 attorney?

3 A. He is currently represented by Chris Fialko.

4 Q. And did Mr. Fialko meet with Mr. Wilcoxson and  
5 return to you the Commission signed waiver of  
6 procedural safeguards and privileges?

7 A. Yes, he did.

8 Q. Okay. And once Mr. Wilcoxson waived his  
9 privileges, including the attorney-client  
10 privilege, were you able to interview his past  
11 attorneys?

12 A. Yes, I was.

13 Q. Okay. And who was that?

14 A. I interviewed Mr. Jack Stewart.

15 Q. Okay.

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

18 JUDGE SUMNER: Yes, ma'am.

19 Q. Mr. Lau, I'm handing you a document. Will you  
20 take a look at it and tell me what it is?

21 A. This is an affidavit that Jack Stewart provided  
22 to the Commission with regard to his  
23 representation of Mr. Wilcoxson in this case.

24 Q. And just to clarify, and I think we need to go

1 back a little bit with the affidavit from  
2 Al Messer because I think Mr. Becton asked about  
3 this, did Mr. Stewart write this affidavit  
4 himself?

5 A. The way these affidavits are generated is we  
6 conduct an interview. We have recordings of  
7 those interviews as well as the transcript of  
8 those interviews that are available, if the  
9 commissioners would like to review those  
10 transcripts. At the conclusion of the interview  
11 as a convenience to the attorneys just to save  
12 time we go ahead and consolidate that interview  
13 into an affidavit. It becomes an affidavit.  
14 They have it to review. They're asked to make  
15 any changes they want. We just provide the  
16 draft to them as a convenience to save them  
17 time. Then they make the -- review it, make  
18 whatever changes because it's their affidavit  
19 and their words, sign it, and have it returned,  
20 notarized and returned to us.

21 Q. All right.

22 MS. MONTGOMERY-BLINN: we'll give the  
23 Commission some time to read this  
24 affidavit.

1 (THEREUPON, THERE IS A PAUSE IN  
2 TESTIMONY AS THE COMMISSIONERS REVIEW THE  
3 AFFIDAVIT.)

4 JUDGE SUMNER: Anyone need additional  
5 time?

6 (No audible response.)

7 JUDGE SUMNER: You may continue.

8 Q. All right. Did Mr. Stewart still have a file in  
9 this case?

10 A. No, he did not.

11 Q. Okay. If you received any discovery materials  
12 in this case or did you -- were you able to  
13 obtain any of Mr. Wilcoxson's discovery?

14 A. I was able to receive materials from  
15 Mr. Wilcoxson's discovery that were provided to  
16 me by his mother in response to -- as I said,  
17 she called me in December after I met with  
18 Mr. Wilcoxson and she offered to provide me with  
19 the discovery materials that she had, and she  
20 did so.

21 Q. Did Mr. Stewart indicate to you when you met  
22 with him on March 31st and conducted the  
23 interview that turned into this affidavit, did  
24 he indicate to you whether he now represents

1           anybody who is related to this case or involved  
2           in this case?

3       A.    Yes.  He spoke with us about Mr. Matt Bacoate.

4           He --

5       Q.    Go ahead.

6       A.    He said that he was currently representing

7           Mr. Matt, Mr. Bacoate in a federal

8           investigation.

9       Q.    And Mr. Bacoate, just to clarify, is the  
10          director of Life on Life's Terms, now called New  
11          Life Options?

12      A.    Yes, Mr. Bacoate is the director of Life on  
13          Life's Terms, now called New Life Options.

14      Q.    Okay.  Did you obtain any other agency files  
15          during representation of Mr. Wilcoxson?

16      A.    I received a file from Prisoners Legal Services,  
17          yes.

18      Q.    Can you tell us about their file?

19      A.    He applied first for help following an MAR and  
20          seeking to rescind his plea.  He never admits  
21          guilt in his application to PLS.  There are  
22          letters in the PLS file that are so faded I was  
23          unable to read the letters and understand  
24          entirely what Mr. Wilcoxson was saying, but in a

1 response letter from PLS to Mr. Wilcoxson they  
2 indicate that he says that he is innocent of the  
3 offense, but claims of actual innocence are not  
4 legal grounds to invalidate his plea, and that  
5 is the response he received from Prisoners Legal  
6 Services. There is nothing inconsistent in his  
7 PLS file with the claim he has now filed to the  
8 Commission.

9 Q. You said that you were present during the  
10 deposition of Mr. Wilcoxson on April 12, 2011?

11 A. Yes, I was.

12 Q. And who else was present during that deposition?

13 A. Yourself, Mr. Wilcoxson's attorney,  
14 Chris Fialko, and Ms. Pretty from the  
15 Commission.

16 Q. All right, Mr. Lau, I'm going to play what I  
17 believe is a clip from that deposition.

18 MR. JENKINS: Just one question of  
19 clarification.

20 A. I'm sorry.

21 MR. JENKINS: I'll wait until after  
22 the video.

23 Q. No, no, go ahead, please.

24 MR. JENKINS: Did you say that there

1           was nothing in his previous statements  
2           consistent or inconsistent with what he is  
3           claiming now?

4       A.    Inconsistent, there was nothing inconsistent.

5                       MR. JENKINS:  There was nothing  
6           inconsistent, okay.

7       A.    He was claiming -- well, from what I could read  
8           because I couldn't make out the letters, the  
9           letter in response from Prisoners Legal Services  
10          told him that claims of actual innocence are not  
11          legal grounds to invalidate a plea.  So he  
12          seemed to have been claiming innocence to PLS  
13          based on that letter that they sent to him in  
14          response, and that wouldn't be inconsistent with  
15          what he's currently claiming to the Commission.

16                       MR. JENKINS:  Thank you.

17                       (THEREUPON, A PORTION OF  
18                       MR. WILCOXSON'S DEPOSITION IS PLAYED FOR  
19                       THE COMMISSION.)

20       Q.    Mr. Lau, were you present when this video was  
21           made?

22       A.    Yes, I was.

23       Q.    Is it a fair and accurate representation of the  
24           deposition or a portion of the deposition of

1 Mr. Wilcoxson?

2 A. Yes, of that portion.

3 Q. Okay.

4 MS. MONTGOMERY-BLINN: Commissioners,  
5 do you have questions for Mr. Lau about  
6 Robert Wilcoxson and the investigation  
7 surrounding Mr. Wilcoxson?

8 MR. JENKINS: Is there a copy of the  
9 letter, correspondence to Mr. Easley  
10 available?

11 A. We do not have a copy of that letter.

12 MR. JENKINS: That's all.

13 MR. VICKORY: Do you have a polygraph  
14 in this case with him?

15 A. Actually, yes, there was. Thank you. We  
16 received a polygraph from the SBI. They  
17 conducted that polygraph and it was  
18 inconclusive. We do have the records from that  
19 polygraph.

20 MR. VICKORY: And that was recently or  
21 was it back then?

22 A. No, that was back in 2000 during the course of  
23 the original investigation.

24 MS. JOHNSON: Did he take one

1 polygraph or two? Did he actually take  
2 two?

3 A. To our knowledge, one.

4 JUDGE SUMNER: Excuse me, say that  
5 again, please. I did not hear that.

6 MS. JOHNSON: Just trying to determine  
7 if he actually submitted to one polygraph  
8 or two. I wasn't sure.

9 JUDGE SUMNER: Thank you.

10 Q. Okay. We're going to talk about Teddy Isbell  
11 next.

12 MR. BECTON: Was there an answer to  
13 the question? One or two?

14 MS. JOHNSON: Just one.

15 A. To my knowledge, one.

16 Q. Would Mr. Lau just like to stay up there?

17 A. Please.

18 MS. MONTGOMERY-BLINN: If that's all  
19 right?

20 JUDGE SUMNER: That's fine.

21 Q. Okay. Next we're going to talk about  
22 Teddy Isbell.

23 JUDGE SUMNER: I'm sorry. Mr. Becton  
24 has a question.

1 MR. BECTON: In looking at the --  
2 we've got the transcript of the plea. It  
3 states this on this evidence of -- his  
4 lawyer gets up and says he's not that bad,  
5 he turned himself in voluntarily, he never  
6 confessed. He stands up and says, "I want  
7 to tell you I'm sorry for everything that  
8 happened. There's really nothing I can say  
9 but apologize and ask for mercy. I have a  
10 daughter, and I understand how you feel.  
11 Whatever happened, it happened the way it  
12 went down. Sometimes you've got to pay the  
13 cost. We were both dealt wrong hands.  
14 We've got to deal with that. I've got to  
15 serve time. You all got to take a loss."

16 So even in his plea he's not saying  
17 he's guilty or that he's done anything, but  
18 that he's sorry. Am I correct? Is that  
19 all --

20 A. That's the entirety of that portion of the plea.

21 MR. BECTON: Now, the form that is --  
22 form signed?

23 JUDGE SUMNER: Yes, sir; yes, sir.

24 MR. BECTON: Or is he -- or do you

1           have to --

2                   JUDGE SUMNER: Sworn to and signed.

3                   MR. BECTON: Okay. Is that part of  
4           the record?

5                   JUDGE SUMNER: That is part of the  
6           record.

7    Q.    You're asking for the plea transcript?

8                   MR. BECTON: Oh, I'm good. I thought  
9           I looked through it a minute ago.

10                  JUDGE SUMNER: You want to repeat it?  
11           Go ahead.

12                  MR. BECTON: For the record, I  
13           mentioned that the state put on this case  
14           that's sent to hearing. Mr. Stewart stood  
15           up and said things on Mr. Wilcoxson's  
16           behalf, and Mr. Wilcoxson stood up, and on  
17           page 70 of the transcript he says, "I want  
18           to tell you I'm sorry for everything that  
19           happened. There's really nothing I can  
20           say, but apologize and ask mercy from you  
21           and the judge. Like I say, I have a  
22           daughter, too. So I understand how you all  
23           feel. Whatever happened, it happened the  
24           way it went down. Sometimes you've got to

1           pay the cost. We both were dealt, we both  
2           were dealt the wrong hand. We've got to  
3           deal with what we've got to deal with.  
4           I've got to serve the time, and you all  
5           have got to take a loss. I'm sorry to my  
6           heart. I'm sorry Ms. Bowman."

7                     And my question was, did he ever admit  
8           guilt? We know he never confessed, and  
9           even at the sentencing hearing he does not  
10          seem to be saying that he was involved at  
11          all. He's simply saying whatever happened  
12          happened, and I'm sorry for what happened,  
13          am I correct?

14        A.    There is the plea transcript, which I think is  
15            what you're referring to as far as forms. On  
16            that plea transcript it's indicated that he  
17            answered yes to do you accept -- are you --

18                     MR. BECTON: In fact guilty?

19        A.    -- in fact guilty? Yes, and we can make you a  
20            copy of that plea transcript if you like. It's  
21            only the front and back and --

22                     MR. BECTON: I've seen it a long time  
23            ago so --

24        A.    Okay, yes, he did.

1 MS. ASHENDORF: It sounded like to me  
2 in what you read that he was admitting he  
3 was guilty. He was sorry.

4 MR. VICKORY: She said it sounds like  
5 he was guilty.

6 MS. ASHENDORF: Yeah. That's what it  
7 sounds like to me.

8 MS. MONTGOMERY-BLINN: Commissioners,  
9 I'll tell you that I did ask him about that  
10 in the deposition that you'll be reading  
11 tonight.

12 MS. ASHENDORF: It's ambiguous.

13 JUDGE SUMNER: And I think some of  
14 these comments and questions may be  
15 pertinent after we conclude with the formal  
16 presentation. Sheriff, go ahead.

17 MS. JOHNSON: I did find on Wilcoxson,  
18 I had made a notation on my suspect list  
19 that he had taken two polygraphs. And on  
20 page 46 it says that he took a polygraph  
21 examination at the SBI that was  
22 inconclusive, and then he took another one  
23 submitted by -- through his attorney that  
24 proved deceptive, is that correct? So

1           there were two. He did submit to two  
2           polygraphs.

3                   MR. JENKINS: It's on page 46.

4       A. I'm sorry, I'm not recalling whether or not that  
5       was the case.

6                   MR. JENKINS: You did say that you all  
7           were unable to find the report from the  
8           first one?

9       A. The two polygraphs that I know we have  
10       information on is the polygraph of  
11       Kenneth Kagonyera, Mr. Kagonyera's polygraph  
12       that showed deception, and we have the  
13       handwritten notes from Mr. Devereux's file.

14                   MR. JENKINS: Well, wait a minute.  
15       This says under Wilcoxson, polygraphs, but  
16       it reads October 4, Robert Wilcoxson, and  
17       then on October 9th Kagonyera.

18                   MS. JOHNSON: It does.

19                   MR. JENKINS: It's under the --

20       Q. May I --

21                   MR. JENKINS: -- under the label of  
22       Wilcoxson.

23                   MS. MONTGOMERY-BLINN: May I approach  
24       the witness?

1 JUDGE SUMNER: Yes.

2 A. I'm sorry if there's confusion in the brief.

3 MS. MONTGOMERY-BLINN: I take  
4 responsibility for all things in the brief.

5 A. Yes. So Mr. Kagonyera submitted to a  
6 polygraph -

7 MS. JOHNSON: I'm responsible for not  
8 reading the names.

9 Q. I apologize.

10 A. It's okay.

11 MR. SMITH: May I ask a quick  
12 question?

13 JUDGE SUMNER: Yes, sir, you may.

14 MR. SMITH: Why is Mr. Bacoate being  
15 investigated by the feds?

16 A. That's an excellent question. It pertains to  
17 the program that he's running, and it pertains  
18 to some things we'll get to with Mr. Aaron  
19 Brewton about potentially providing money to  
20 work out --

21 MR. SMITH: Okay.

22 Q. And just to clarify, Mr. Lau, you don't know  
23 why? You don't have -- you're not -

24 A. No, no, I'm sorry. Yes.

1 Q. -- federal report or anything, right? We just  
2 are aware that it is happening?

3 A. We are aware that there is a federal  
4 investigation, and -- we are aware that there's  
5 a federal investigation.

6 Q. Okay. Mr. Isbell.

7 MS. MONTGOMERY-BLINN: Any more  
8 questions, commissioners?

9 (No audible response.)

10 MS. MONTGOMERY-BLINN: No? Okay.

11 All of Mr. Isbell's sheriff interviews  
12 are included or summarized in the brief.  
13 He was interviewed four times and made  
14 inconsistent statements implicating himself  
15 and others. His plea and his sentencing  
16 history are also in the brief. Mr. Isbell  
17 is no longer in custody and was interviewed  
18 three times by Jamie Lau and Lindsay Guice  
19 Smith, and I'm going to show you his  
20 criminal record.

21 (THEREUPON, MR. ISBELL'S RECORD IS  
22 DISPLAYED ON THE SCREEN.)

23 MS. MONTGOMERY-BLINN: This is just  
24 the convictions, part one, part two, part

1 three. Did you guys look through this?

2 (No audible response.)

3 MS. MONTGOMERY-BLINN: All right. I  
4 asked Mr. Lau to remain in the witness  
5 chair. I remind him that he's still under  
6 oath.

7 A. Let me just clarify on that last point. We  
8 don't know why Mr. Bacoate is under federal  
9 investigation. It has been confirmed to us by  
10 his attorney. What we know about Mr. Bacoate  
11 and allegations made towards Mr. Bacoate that  
12 were made through the course of our  
13 investigation will come out as we move through  
14 some of these codefendants.

15 MR. SMITH: Thank you.

16 Q. All right. Mr. Lau, were you able to locate  
17 Mr. Isbell?

18 A. Yes, I was.

19 Q. And can you please tell us how you managed to  
20 locate Mr. Isbell?

21 A. Mr. Isbell's Facebook page indicated that he was  
22 employed at New Life Options. New Life Options  
23 is the program that Mr. Bacoate is an executive  
24 director of. The program is located at 60 Flint

1 Street in Asheville. We went to 60 Flint Street  
2 in an effort to engage Mr. Bacoate to ask him if  
3 Mr. Isbell worked there or if he had information  
4 on where we could locate him, and we were able  
5 to locate Mr. Isbell at that time.

6 Q. All right. Tell me about that.

7 A. We located Mr. Isbell at New Life Options, which  
8 is the program that I've discussed, and we  
9 located him there on December 7, 2010. We went  
10 into New Life Options, we asked for Mr. Bacoate.  
11 As Mr. Bacoate was bringing us into his office  
12 we saw Mr. Isbell slipping through a door into  
13 another room. We asked Mr. Bacoate if  
14 Mr. Isbell was there. He asked us the purpose.  
15 We explained a bit about why we were there, and  
16 he said he would check. He went and then  
17 Mr. Isbell entered the room and we were able to  
18 speak with him, and Mr. Bacoate returned as  
19 well.

20 Q. Okay. And Mr. Isbell was willing to speak with  
21 you?

22 A. Mr. Isbell was willing to speak with us. He  
23 asked that Mr. Bacoate remain during the  
24 interview.

1 Q. And did Mr. Bacoate remain during the interview?

2 A. Yes, he did.

3 Q. Was Mr. Isbell cooperative during your  
4 interview?

5 A. Yes, he was cooperative and willing to answer  
6 our questions.

7 Q. What did Mr. Isbell tell you?

8 A. Mr. Isbell said that during his statement on  
9 September 25th, which is what we initially asked  
10 him about because Mr. Isbell had given that  
11 statement where he implicated himself as well as  
12 some of these other individuals. Mr. Isbell  
13 said he was high on crack cocaine during that  
14 statement, it was inaccurate, and that he knew  
15 Mr. Kagonyera and Mr. Wilcoxson did not commit  
16 this crime. He did however say he provided a  
17 shotgun to Mr. Kagonyera following the break-in  
18 at Mr. Lewis Bethea's residence or apartment  
19 because Mr. Bethea was looking for  
20 Mr. Kagonyera, and Isbell said because of that  
21 fact he had retrieved the shotgun for  
22 Mr. Kagonyera.

23 He said that his statement with regards to  
24 his statement on September 25th was not

1 voluntary. They took him from his hotel room to  
2 the sheriff's station. They took Annette, his  
3 girlfriend, Ms. Hines, in a different car. He  
4 asked to leave. They told him he needed to stay  
5 because somebody was on his way. That someone  
6 else was the district attorney, Ron Moore. He  
7 said he did not ask for the district attorney to  
8 be present as conveyed in the summary report for  
9 that statement. He told us that he knew  
10 Aaron Brewton and Leon Bowman did it. He knew  
11 for a fact, but didn't have any direct evidence  
12 of this, but he told us that he knew that for a  
13 fact.

14 Q. So he knew it for a fact, but he couldn't  
15 provide you any facts?

16 A. Exactly. I would say fair. He couldn't provide  
17 us any other information except he knew for a  
18 fact that it was those two individuals.

19 Q. Okay.

20 A. He said he took a conspiracy plea because he  
21 would have gotten more jail time for a felon in  
22 possession of a firearm. He said Mr. Bacoate  
23 gave him money to get a hotel and was the only  
24 one who knew he was at that hotel. He denied

1           having ever told his mother that he was involved  
2           in the Bowman homicide. He denied any  
3           involvement with the murder or any direct  
4           knowledge of who, other than -- any direct  
5           knowledge of anything about the murder, other  
6           than he knew that it was Aaron Brewton and  
7           Leon Bowman who did it.

8           Mr. Bacoate, who was also present during  
9           that interview, said that Isbell during that  
10          period of time had been in his program but was  
11          relapsing. He said Isbell came to him worried  
12          that his fingerprints would be on the gun.  
13          Mr. Bacoate convinced, Mr. Bacoate convinced  
14          Mr. Isbell to speak with law enforcement.  
15          Mr. Bacoate called Lieutenant Sam Constance from  
16          the Buncombe County Sheriff's Office, had  
17          Mr. Constance come to the Life on Life's Terms  
18          location to conduct an interview with  
19          Mr. Isbell. Mr. Bacoate told us that Lieutenant  
20          Constance then gave Teddy, or Mr. Isbell, money  
21          for a hotel room.

22        Q. Is that in conflict with what Mr. Isbell said?

23        A. Mr. Isbell said that Mr. Bacoate gave him money  
24          to get a hotel room. Mr. Bacoate said that it

1 was Lieutenant Constance who gave Mr. Isbell  
2 money for the hotel room. Lieutenant Constance  
3 called Bacoate, Mr. Bacoate, because he wanted  
4 to speak with Mr. Isbell again, and Mr. Bacoate  
5 told Lieutenant Constance where Mr. Isbell was  
6 staying, and Lieutenant Constance then went and  
7 picked up Mr. Isbell from the hotel and brought  
8 him to the sheriff's station.

9 Mr. Bacoate remembered being present in the  
10 interrogation room with Isbell, with  
11 Lieutenant Constance and with Mr. Moore.  
12 Mr. Bacoate said Isbell was rattling and  
13 contradicting. He said he knew that Mr. Isbell  
14 was high and not coherent, and Mr. Isbell also  
15 had not had sleep. Mr. Bacoate said he left at  
16 approximately 10:30 because the interrogation  
17 was making him sick to his stomach.

18 Mr. Bacoate said he didn't provide an  
19 affidavit on behalf of Mr. Isbell about the fact  
20 that he was under the influence of drugs and did  
21 not have sleep because he did not have direct  
22 knowledge of him being under the use of drugs or  
23 not having any sleep, he appeared to be in that  
24 condition.

1 Q. Can you just back up for a second and say, and  
2 explain what affidavit he -- when you say he  
3 didn't provide an affidavit --

4 A. I'm sorry.

5 Q. -- who asked him to provide an affidavit?

6 A. Mr. Isbell's attorneys asked Mr. Bacoate to  
7 provide an affidavit based on his perspective of  
8 what he witnessed during the course of that  
9 interrogation or interview at the sheriff's  
10 station on September 25th, and Mr. Bacoate said  
11 he did not provide that because he didn't  
12 believe he could since he didn't personally see  
13 Mr. Isbell using drugs or have personal  
14 knowledge of his lack of sleep, he just  
15 understood that to be the case.

16 Q. You said that Mr. Isbell said that he had to  
17 leave the interrogation because it was making  
18 him sick?

19 A. He said it was making himself physically sick,  
20 Mr. Bacoate said that.

21 Q. Mr. Bacoate was sick?

22 A. Mr. Bacoate said he had to leave the  
23 interrogation because the interrogation was  
24 making him physically ill.

1                   MR. JENKINS: Now, who was actually  
2                   being -- said they were sick from the  
3                   interrogation, Mr. Bacoate?

4       A.     Mr. Bacoate, yes.

5                   MR. JENKINS: Did he say why he was  
6                   sick from the interrogation?

7       A.     I have it marked here. He said, "it disturbed  
8                   me. What made me sick was the fact that when  
9                   Teddy came to me and I called the police on him  
10                  basically because I couldn't let him sit there  
11                  involved and not notify the police, I was the  
12                  one calling them. Now they've got him in  
13                  interrogation and it's gone from my fingerprints  
14                  may be on the gun to interrogation about  
15                  involvement in the murder. So I'm getting kind  
16                  of sick now because he's a friend of mine as  
17                  well as I've been with him a long time. So I'm  
18                  getting kind of sick thinking he's going down  
19                  for murder.

20                 So when they was talking to him, what was  
21                 making me sick was they were talking to somebody  
22                 -- this is like talking to a drunk. It's a  
23                 different drug, but if you talk to somebody  
24                 that's dead drunk, and they're just sitting

1           there talking and rattling and rattling and  
2           rattling, and you're still asking questions,  
3           asking questions. So I believe that the  
4           statement was derived off of him just ranting  
5           and saying stuff."

6           He said while he was in the interrogation  
7           he was physically getting ill as he was watching  
8           it, and those were his statements regarding --

9           MR. JENKINS: And he indicates that he  
10          left at 11:00-something?

11         A.    Approximately 10:30.

12          MR. JENKINS: And the interrogation,  
13          do we know what time the interrogation  
14          ended?

15         A.    I do not.

16          MR. JENKINS: Okay. I just was  
17          curious.

18         Q.    Isbell conveyed to us during that interview that  
19          he had been doing drugs for three weeks straight  
20          and had not had sleep. Isbell's --

21         Q.    I'm sorry. Can I just ask, during the time you  
22          interviewed him or during the time that the  
23          sheriff's department first interrogated him?

24         A.    I'm sorry. That's prior to the statement on

1           September 25th he indicated to us that he had  
2           been doing drugs for three weeks straight and  
3           had not had sleep.

4           Mr. Isbell said that his attorney -- I'm  
5           sorry, Mr. Isbell said that his attorney tried  
6           to have Mr. Moore disqualified because he had  
7           made himself a witness in the case.  
8           Specifically he said to us -- this is Reed.  
9           "Okay, we were supposed to go for a motion  
10          hearing. He said, he being Reed," and Reed is  
11          Mr. Reed Brown, who was his attorney at that  
12          time. "He said, well, he said, man, we might can  
13          get Ron Moore and them off the case, and they  
14          got a special prosecutor down in Raleigh they  
15          are sending to come up here and try this case,  
16          he said, but I spoke with Ron this morning. Ron  
17          said if you do this, if you go through with this  
18          right here, he's going to bring all of your  
19          codefendants back. What he was going to do was  
20          set aside their plea, offer them lesser time, or  
21          let them out period to testify against me, and  
22          he was going to get me a life sentence. He said  
23          that the thing that I can't do, he said -- I  
24          remember him saying one of the conventional

1 rules is you got a criminal record, and we don't  
2 believe in putting -- I ain't going to put you  
3 on the stand because Ron Moore can bring your  
4 criminal background out, and the jury is going  
5 to hear, and the jury, they don't believe police  
6 lie."

7 He made those statements with regard to the  
8 reaction to Mr. Brown's motion to disqualify the  
9 district attorney. Following this interview --

10 Q. Is there indeed a motion from Mr. Brown in the  
11 court file to disqualify the district attorney?

12 A. Yes, there was that motion in the court file.

13 Q. Was that motion ever calendared and heard?

14 A. There is no indication that motion was ever  
15 calendared or heard.

16 Q. Okay. Please go ahead.

17 A. Following our interview with Mr. Isbell I  
18 contacted Mr. Brown to speak to him with regards  
19 to this matter, and Mr. Isbell had given us  
20 permission to speak with Mr. Brown. The  
21 interview took place on December 14, 2010. It  
22 was a phone interview with Mr. Brown. And I  
23 asked first whether Mr. Brown recalled filing  
24 the motion to disqualify Mr. Moore. Mr. Brown

1 at the time I spoke with him was currently a  
2 prosecutor himself, and my understanding is now  
3 he has gone back into private practice. I asked  
4 Mr. Brown first whether he recalled filing the  
5 motion, and he indicated, he indicated that he  
6 recalled filing the motion. Afterwards I asked  
7 Mr. Brown if he could remember Mr. Moore saying  
8 to him -- and I phrased it this way, that he  
9 would go after Isbell with all that Moore could  
10 if Mr. Brown went through with the motion. He  
11 said he remembered Moore telling him something  
12 to that extent. Mr. Brown further said, "it  
13 would not surprise me with regard to anything  
14 Mr. Moore did", and "this whole case smelled."

15 He told me he did not have any personal  
16 knowledge of any wrongdoing, but had heard  
17 stories from his clients. He remembers  
18 Mr. Isbell telling him he was high when he gave  
19 the statement. Mr. Bacoate confirmed that to  
20 Mr. Brown. He recalls Mr. Isbell saying that he  
21 brought a gun to the codefendant, Mr. Kagonyera,  
22 but did not remember Mr. Isbell telling him  
23 more. He said his policy would not have been to  
24 ask Mr. Isbell specifically or directly if he

1 was involved.

2 JUDGE SUMNER: You indicated that Mr.  
3 Brown had gone to work for the district  
4 attorney's Office?

5 A. He was not employed with the Buncombe County  
6 District Attorney's Office.

7 JUDGE SUMNER: Not employed?

8 A. He was employed at another district attorney's  
9 office when I spoke with him.

10 Q. All right. Were you able to interview  
11 Mr. Isbell again or did you attempt to interview  
12 him again?

13 A. I did make an attempt to interview him again. I  
14 was unsuccessful contacting him at the phone  
15 number he had given me previously in our prior  
16 interview, so I went to New Life Options and  
17 found him in his apartment at the New Life  
18 Options location on 60 Flint Street in  
19 Asheville.

20 Q. And did he consent to another interview?

21 A. Yes, this time Mr. Isbell did consent to a  
22 second interview.

23 Q. Who was present during this interview?

24 A. Ms. Smith from the Commission was also present

1           during this interview.

2           Q.   Was Matt Bacoate present during this one?

3           A.   Matt Bacoate was not present during this  
4           interview. I should say that in the first  
5           interview as well as this interview Mr. Isbell,  
6           as far as the statements from Mr. Bacoate of him  
7           rambling on and on, Mr. Isbell, his demeanor is  
8           very scattered. He begins with one subject  
9           matter, and it quickly goes into another topic,  
10          into another topic, and sometimes he becomes  
11          difficult to follow. During this interview he  
12          was slightly more focused, but he remained  
13          difficult to follow while we interviewed him.

14                 At this interview Mr. Isbell told me that  
15          Mr. Bacoate knew that Mr. Moore was looking for  
16          him and that Mr. Bacoate had asked him what  
17          happened when he came to his office on  
18          September 25, 2000 when he gave his first  
19          statement to the police. I believe that's the  
20          day, the date of that. He said that Mr. Bacoate  
21          called Mr. Moore, and Mr. Bacoate then called  
22          Lieutenant Constance.

23                 He said he tried to leave the interview  
24          room during the statement at the Buncombe County

1           sheriff's Office, but was told that he had to  
2           wait. He learned that he was waiting for  
3           Mr. Moore. At this time he said he did not ask  
4           for Mr. Moore or Mr. Bacoate to be present  
5           during that interview.

6           Q. And that's in contradiction to not only the  
7           sheriff's department report, but the statement  
8           that he gave you the last time you interviewed  
9           him?

10          A. Yes. That's in contradiction to the sheriff's  
11          report and his first interview statement that he  
12          had asked Mr. Bacoate to be present, but not the  
13          district attorney.

14                         MR. JENKINS: And this was a  
15                         noncustodial interview?

16          A. This was --

17                         MR. JENKINS: He was not in custody  
18                         during this interview?

19          A. He was during the -- I believe the police report  
20          says it's a noncustodial interview. He said he  
21          was asked to leave, asked to leave, that they  
22          told him to wait. He said he never told  
23          Mr. Bacoate, his girlfriend, Ms. Hines, or his  
24          mother that he was present. He said Mr. Bacoate

1 got the reward money.

2 Q. Mr. Lau, present during what?

3 A. I'm sorry, that he was present during the Bowman  
4 homicide. He said that Mr. Bacoate got the  
5 reward money. He later indicated or said to us  
6 that Mr. Bacoate was not going to play ball with  
7 us.

8 Q. What did he say that Mr. Bacoate got reward  
9 money for doing?

10 A. For bringing Mr. Isbell to law enforcement when  
11 Mr. Isbell gave his statement.

12 Q. Did you later have the opportunity to ask  
13 Mr. Bacoate about this?

14 A. I did ask Mr. Bacoate about this in a deposition  
15 that week. Mr. Bacoate confirmed that he did,  
16 indeed, receive the reward money in this case  
17 for bringing Mr. Isbell forward.

18 Q. Go ahead.

19 A. According to Mr. Isbell, Mr. Bacoate negotiated  
20 his first plea with the district attorney.

21 Q. Negotiated Mr. Isbell's first plea?

22 A. That's correct. Mr. Isbell said that one of his  
23 lawyers had threatened Mr. Bacoate to have him  
24 charged with practicing law without a license

1 based on the fact that Mr. Bacoate was working  
2 out Mr. Isbell's plea with the district  
3 attorney.

4 He now said in contradiction to his earlier  
5 statement that Leon Bowman was involved. He now  
6 told me that he was with Leon Bowman the night  
7 of the homicide. He told me that  
8 Mr. Shawn Bowman was not present in the home  
9 during the shooting, but he did not have any  
10 specific direct knowledge of where Shawn Bowman  
11 was or why Shawn Bowman wasn't -- he told me  
12 that Mr. Shawn Bowman was not in the home.

13 while we were interviewing him there was a  
14 knock at the door. Police officers at that  
15 point in time picked up Mr. Isbell for an  
16 outstanding child support warrant, and said that  
17 they had just -- they had received a call that  
18 Mr. Isbell was at the location we were  
19 interviewing him at.

20 Q. And that location was?

21 A. And that location was the 60 Flint Street  
22 location, his apartment at the Life on Life's  
23 Terms program.

24 Q. And did that conclude that interview?

1 A. That concluded that interview, yes.

2 Q. Did you have a chance to talk to Mr. Isbell  
3 again after that?

4 A. I did speak with Mr. Isbell on one final  
5 occasion. It was on April 14th. I contacted  
6 Mr. Isbell to speak with him about whether or  
7 not he would be willing to sign a waiver to  
8 allow us to review his Prisoner Legal Services  
9 file. He consented to signing the waiver and  
10 spoke with myself for about five minutes.  
11 Mr. Isbell volunteered that he knew that Robert  
12 Rutherford, Lacy Pickens, and Brad Summey were  
13 the real perpetrators of the crime. When  
14 pressed for how he knew this information, he  
15 avoided the question and changed the subject.

16 Mr. Isbell said that the district attorney  
17 had been trying to get a hold of Mr. Isbell for  
18 the past few weeks, the past few weeks meaning  
19 the few weeks prior to April 14, 2011.

20 Mr. Isbell also said that he spoke with  
21 Mr. Shawn Bowman, but did not say more about the  
22 conversation that they had.

23 Q. Okay. So you said that Mr. Isbell, you were  
24 asking him for a waiver so that you could review

1 his Prisoner Legal Services file, and am I  
2 correct that you needed a waiver from him  
3 because he had not --

4 A. Because he was --

5 Q. -- applied to the Commission and waived  
6 procedural safeguards and privileges?

7 A. That is correct.

8 Q. And did he provide you with a waiver or did he  
9 sign a waiver?

10 A. He did provide the waiver.

11 Q. For the Prisoner Legal Services?

12 A. For the Prisoners Legal Service file.

13 Q. And were you able to obtain a copy of the  
14 Prisoners Legal Services file on Mr. Isbell?

15 A. I was able to receive that file, and when I  
16 reviewed that file Mr. Isbell had wrote  
17 Prisoners Legal Service asking for help on an  
18 MAR because he had the confession of  
19 Mr. Rutherford. Well, I'm sorry, because he  
20 said the confession of Mr. Rutherford had been  
21 suppressed. So at that point in time he knew  
22 about the confession and wanted to proceed with  
23 the MAR based on that.

24 Q. And in the Prisoner Legal Services file did

1 Mr. Isbell admit his guilt?

2 A. No, he did not.

3 Q. Did he say anything that contradicts his claims  
4 today? I mean, I understand it's difficult  
5 since his claims are --

6 A. I was going to say I can't really answer that  
7 question because his claims today are all over  
8 the place.

9 Q. Okay. But he denied guilt?

10 A. He denied guilt.

11 Q. Okay. Did you speak to Mr. Isbell's mother,  
12 Edith Isbell?

13 A. I did speak with Mr. Isbell's mother.

14 Q. And why did you want to talk with her?

15 A. Because according to the report of the interview  
16 on September 25, 2000 with Mr. Isbell, Detective  
17 Forest Weaver from the Asheville Police  
18 Department contacted Mr. Isbell's mother, and  
19 then Mr. Isbell's mother confirmed to Forest  
20 Weaver, Detective Weaver, that Mr. Isbell had  
21 confided in his mother that he was present  
22 during the Bowman homicide.

23 I contacted Mr. Isbell's mother to ask her  
24 whether she recalls Mr. Isbell having indeed

1           confided this information to her. She told me  
2           -- and I should state first, she wasn't in good  
3           health. When I called her and spoke with her,  
4           it was clear that she was on a breathing  
5           machine, and I asked her if I could call her  
6           back at a better time or if there was a better  
7           time to speak, and she said she would like to  
8           speak now, go ahead. I asked her if Mr. Isbell  
9           had ever confided in her that he was a part of  
10          this crime. She said that -- I asked her if she  
11          remembered Mr. Isbell telling her he was present  
12          during this crime. She said, "Teddy has not  
13          confessed to me about anything because if he  
14          had, I wouldn't have anything to do with Teddy,  
15          because there's one thing about it, God giveth  
16          and God taketh away."

17                 "Now, let me just ask you another question.  
18                 I don't think I'll have any more questions for  
19                 you. Forest Weaver from the Asheville Police  
20                 Department said he spoke with you and you told  
21                 him that Teddy was, Teddy told you he was  
22                 involved."

23                 "I did not tell Forest Weaver nothing.

24                 Okay. So did you speak with Forest Weaver?

1 Yes, I did.

2 And what do you recall telling him?

3 Forest and me, I do not remember at the  
4 time. And like I told you, I'd had a seizure.  
5 When you, and when you have epilepsy, I can't,  
6 sometimes I can't even remember what happened  
7 yesterday, but -- and you talk about something  
8 that happened in 2000."

9 So that's what Ms. Isbell said to me  
10 regarding the statement by Mr. Isbell, Teddy  
11 Isbell, and his involvement in the Bowman  
12 homicide.

13 MS. MONTGOMERY-BLINN: Commissioner  
14 questions in relation to this portion of  
15 the investigation?

16 MR. JENKINS: Do we know why a  
17 detective from the Asheville PD interviewed  
18 the mother instead of the Buncombe County  
19 Sheriff's Department? What was his  
20 involvement, do you know?

21 A. I've asked that question to individuals from the  
22 Buncombe County Sheriff's Department that have  
23 indicated that they don't specifically remember  
24 why he was involved.

1 MR. JENKINS: Okay.

2 MS. MONTGOMERY-BLINN: Any other  
3 questions?

4 MR. SMITH: The bottom line is we have  
5 no idea what this man is saying now or are  
6 we pretty strongly of the view that he  
7 would deny that he had anything to do with  
8 it?

9 A. I think the one thing that he's been consistent  
10 with is his denials that he's had nothing to do  
11 with this. With regards to what other  
12 information he has about this specific incident,  
13 he's not been consistent.

14 Q. And just to clarify, that's during our  
15 investigation. He did admit guilt in different  
16 ways during the sheriff investigation, is that  
17 correct?

18 A. He did in that statement that you guys have from  
19 the Buncombe County Sheriff's Office. I'm  
20 sorry, not of the statement, the summary report  
21 from the Buncombe County Sheriff's Office  
22 interview of him on September 25, 2000.

23 MR. SMITH: So he has sometimes said  
24 he did, and sometimes said he didn't, but

1                   most recently he said he didn't?

2       A.     In all interviews we've conducted with him he  
3            said that he did not.

4                   MR. JENKINS:  And he also said, just  
5            for clarification, that he did not in his  
6            PSL or PLS file that you subpoenaed?

7       A.     In his PLS file he asked for help on an MAR  
8            because the confession of Robert Rutherford had  
9            been suppressed, was what he was asking for.  He  
10           did not admit guilt.  I do not believe he  
11           specifically -- I don't believe, and we can look  
12           at the file, that he specifically said, I'm  
13           innocent of this crime.  That may be the case,  
14           but I'd have to look at the file.

15      Q.     And just to clarify with that, Prisoner Legal  
16            Services, the questionnaire that they sent  
17            Mr. Isbell is about -- or could you just tell us  
18            about that?  Do they ask him, are you innocent?  
19            Do they ask claimants whether they are innocent  
20            or not?

21      A.     I would have to review the file, I don't  
22            specifically remember.  And I'd be happy to if  
23            you want to hand it to me.

24                   MR. SMITH:  You indicated that

1 Mr. Bacoate got the reward for bringing him  
2 forward, meaning what when you say bringing  
3 him forward, bringing him forward to give  
4 information or bringing him forward to  
5 admit responsibility? I wonder what  
6 bringing him forward meant.

7 A. I asked him if he -- I asked Mr. Bacoate  
8 specifically if he received money for bringing  
9 Teddy Isbell forward to provide the statement  
10 that he gave on September 25, 2000 in this case,  
11 and he said that he did.

12 MR. JENKINS: So he felt sick to his  
13 stomach because he was being interrogated,  
14 but on the same side he's collecting reward  
15 money for bringing him in there, is that  
16 correct?

17 A. That's accurate.

18 MR. VICKORY: Was this money Crime  
19 Stoppers money or was it -- do you know?

20 A. I don't know. He said he received, I want to  
21 say he said he received \$200 to \$300 in reward  
22 money.

23 MS. MONTGOMERY-BLINN: May I approach  
24 the witness, Your Honor?

1 JUDGE SUMNER: Yes, ma'am.

2 Q. Mr. Lau, I'm handing you what I believe is a  
3 Prisoner Legal Services file on Mr. Isbell. If  
4 you will just take a look at that.

5 A. Sure, thank you. (Witness reviews document.)  
6 Mr. Isbell does specifically maintain in a  
7 letter to Prisoner's Legal Services that he was  
8 innocent for the crime, and he asked them to  
9 assist him with the MAR after receiving the  
10 statement from Robert Rutherford, the confession  
11 or learning of the confession from  
12 Robert Rutherford.

13 MR. JENKINS: Do we know how far back  
14 that goes, what date that was that he said  
15 that?

16 A. This letter was received by Prisoners Legal  
17 Service on October 1, 2004. It's dated what  
18 looks to be September 2, 2004. He says  
19 specifically that he has been maintaining his  
20 innocence for 47 months to no avail.

21 MR. BECTON: Am I correct that the  
22 only time he's admitted any involvement was  
23 three days afterwards on September 25th  
24 when he said, yes, I helped plan, and

1           implicated Kenny, Wilcoxson, Williams, and  
2           somebody named Dea Johnson?

3       A.     That's the only record we have of him admitting  
4           involvement.

5                     MR. BECTON:   And three days later he  
6           said he was not involved at all?

7       A.     Although, I'm sorry, I would say that the plea  
8           transcript, as you pointed out earlier, would  
9           also have an admission.

10                    MR. JENKINS:   I'm not sure of the  
11           connection with this.   The plea that he  
12           took, he received --

13                    MR. BECTON:   -- plea, yes.

14                    MR. JENKINS:   So the amount of time he  
15           received included other crimes as a  
16           consolidation.   If I read the plea - my  
17           question is, when he pled guilty, did he  
18           plead guilty to other crimes and what was  
19           his sentence?   was it a lesser sentence?

20                    MR. BECTON:   It looks like in the file  
21           he pled guilty to accessory after the fact  
22           to murder and was released on September 10,  
23           2006.

24                    JUDGE SUMNER:   Judge, you need to keep

1           your voice up.

2           MR. BECTON: The summary states that  
3           he pled guilty to accessory after the fact  
4           to murder and was released from prison on  
5           September 10, 2006.

6           JUDGE SUMNER: Any other questions?

7           Q. Mr. Lau, since we're on that, did Mr. Isbell  
8           plead -- how many times did Mr. Isbell enter a  
9           plea to this crime?

10          A. Twice.

11          Q. Can you explain?

12          A. He -- well --

13                 MS. MONTGOMERY-BLINN: May I approach  
14                 the witness, Your Honor?

15                 JUDGE SUMNER: Yes, ma'am.

16                 MS. MONTGOMERY-BLINN: I'm handing the  
17                 witness a portion of the brief just to  
18                 refresh his recollection.

19          A. Mr. Isbell initially entered an Alford plea on  
20          March 28, 2002, to accessory after the fact to  
21          commit, to accessory after the fact for first  
22          degree murder. He subsequently asked that his  
23          plea be withdrawn. There's a hearing from  
24          September 9th where his motion to withdraw his

1 plea was heard. At that hearing he said that  
2 Mr. Bacoate and not his attorneys had negotiated  
3 his plea. Mr. Isbell was ultimately allowed to  
4 withdraw his plea.

5 There's a bit of, there's a bit of  
6 procedural gap here that we were unable to fill.  
7 Mr. Isbell had that hearing, and at the  
8 conclusion of the hearing they continued it so  
9 Mr. Bacoate could testify at a later date with  
10 regards to Mr. Isbell's motion to withdraw his  
11 plea. We don't or we have been unable to find  
12 anything regarding when it was re-calendared and  
13 heard, and Mr. Bacoate has told me that he does  
14 not recall or did not testify in this matter for  
15 Mr. Isbell. I asked him if he had testified  
16 with regards to Mr. Isbell's motion to withdraw  
17 his plea, and he said no.

18 The next thing we have or we were able to  
19 find was on December 11, 2003, Mr. Isbell  
20 appeared and was allowed to enter another plea.  
21 And on December 11 Mr. Isbell pled to conspiracy  
22 to commit armed robbery.

23 Q. Is there any documentation in the file, an  
24 order, or some kind of documentation about the

1 withdrawal of the plea or, I mean, about -- yes,  
2 the withdrawal of the plea?

3 A. We had sought the transcript from the  
4 continuation hearing, and this particular file,  
5 the court reporter went to look for when a  
6 hearing took place on that so she could do the  
7 transcript, and looked at this file and could  
8 not find when that took place. The only thing  
9 she found was the December 3 -- the December 11,  
10 2003 hearing when Isbell was allowed to enter  
11 another plea. So my answer is we reviewed --  
12 Mr. Isbell's case had different court files, and  
13 we reviewed files from the homicide, files from  
14 the 2003 plea, but we didn't specifically review  
15 the file for this case number, and our review  
16 did not turn up anything, and the court reporter  
17 was unable to find anything about a hearing  
18 where this plea was ruled on or where the motion  
19 to withdraw plea was ruled on.

20 MR. BECTON: Point of clarification, I  
21 have assumed, and perhaps I was wrong, that  
22 the summary of the plea of guilty to  
23 conspiracy to commit armed robbery involved  
24 the Bowman incident. Are you telling me

1                   now that was a different case altogether?

2     A.    No, it involved the Bowman homicide.

3                   MR. BECTON:  Okay.

4     A.    But it was given a different case number in  
5            2003.  It's got an '03 case number.

6                   MR. BECTON:  Okay.

7                   JUDGE SUMNER:  And no order appears in  
8            the files wherein a judge struck the  
9            results or made any findings of fact  
10           supporting the withdrawal to get to the  
11           next plea?

12    A.    This is where I said the court reporter was  
13           unable in that file -- because that plea that he  
14           entered in 2002 had a '02 case file, and there's  
15           -- they were unable to find anything, any record  
16           regarding a hearing because they were looking to  
17           transcribe that hearing because it had been  
18           continued on September 10, 2000 -- I'm sorry,  
19           2002.  There's a transcript from this matter  
20           where Teddy's seeking a ruling on his motion to  
21           withdraw the plea.  At that time Matt Bacoate  
22           was not present, and they continued it so  
23           Mr. Bacoate could testify.  After that the court  
24           reporter was unable to locate anything in the

1 file indicating that another hearing took place  
2 until the December 11, 2003, hearing.

3 JUDGE SUMNER: I don't want to belabor  
4 the point, particularly in view of the  
5 hour, but was an inquiry made of the  
6 Clerk's Office as to what might have  
7 happened to the court reporter's notes from  
8 that hearing? I ask this because most  
9 clerks are very, very particular about  
10 those type matters.

11 A. Uh-huh (yes), and what -- the court reporter  
12 herself obtained the '02 file number. The court  
13 reporter went through the court file, not her  
14 own records, seeking records indicating when  
15 that hearing took place, and was unable to find  
16 any other hearing in that file other than the  
17 December 11, 2003.

18 JUDGE SUMNER: I apologize for asking  
19 the question. Thank you.

20 A. That's --

21 JUDGE SUMNER: Yes, sir.

22 A. -- how that file number was reviewed.

23 JUDGE SUMNER: Thank you.

24 MR. JENKINS: One point, just, I have

1 to ask this. You said he was -- entered  
2 the first time an Alford plea then?

3 A. Yes.

4 MR. JENKINS: I'm pleading guilty for  
5 my best interest, not saying I'm guilty to  
6 the charges?

7 A. Uh-huh (yes).

8 MR. JENKINS: Okay.

9 MS. ASHENDORF: Did you ask Matthew  
10 Bacoate if he was called back? Since there  
11 wasn't any record, did you happen to ask  
12 him whether he was called back in a  
13 continuation so he could testify?

14 A. I asked Mr. Bacoate if he testified in this  
15 matter, and he said no.

16 MS. MONTGOMERY-BLINN: All right.  
17 We're ready to move on to Damian Mills.  
18 Can you take any more?

19 JUDGE SUMNER: It's about 6:55. I  
20 just got a message from my wife, and if I  
21 want to stay married I need to take two  
22 minutes to call her or I may be staying in  
23 Raleigh forever.

24 MS. MONTGOMERY-BLINN: Would you like

1 a recess for everybody to grab a snack and  
2 try to continue?

3 JUDGE SUMNER: No, no, no, not that  
4 long. I just want to make a quick phone  
5 call and I'll be right back, if you don't  
6 mind. If you will indulge me for three  
7 minutes.

8 MS. MONTGOMERY-BLINN: Three minutes,  
9 Your Honor.

10 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

11 MS. MONTGOMERY-BLINN: All right. So we're  
12 going to talk next about -- and Mr. Lau may just  
13 remain in his seat. We're going to talk next  
14 about Damian Mills. He's another of the people  
15 that was originally a suspect and ultimately  
16 convicted in the murder. He was interviewed by  
17 law enforcement three times, and he confessed in  
18 the third interview. He implicated himself and  
19 all of the others except for Isbell.

20 All of his interviews are in your brief.  
21 His plea and sentencing history are also in the  
22 brief.

23 (THEREUPON, MR. MILLS' RECORD IS  
24 DISPLAYED ON THE SCREEN.)

1 MS. MONTGOMERY-BLINN: This is Mr. Mills'  
2 record, and it includes this conviction as well.  
3 Mr. Mills has served his sentence, is no longer  
4 in custody, and he was interviewed twice by  
5 Commission staff attorneys Jamie Lau and Lindsay  
6 Guice Smith. And I'll ask Mr. Lau to testify  
7 about those interviews.

8

9 EXAMINATION BY MS. MONTGOMERY-BLINN:

10 Q. Mr. Lau you are still under oath.

11 Okay, tell me how you located Mr. Mills.

12 A. I contacted his probation officer who arranged  
13 an interview at the probation and parole office  
14 in Buncombe County, and at that interview was  
15 Ms. Smith and I, and it was ten days following  
16 his release on this charge.

17 Q. And what date was it that you met with him?

18 A. That was November 10, 2010.

19 Q. And what did Mr. Mills tell you?

20 A. Mr. Mills said that he rode along while  
21 Mr. Kagonyera, Mr. Williams, Mr. Wilcoxson, and  
22 Mr. Isbell had done some breaking and enterings.  
23 He said he doesn't remember the specific dates,  
24 locations of those break and entry, those B&Es

1 or break and enterings, but that he or they were  
2 in Mr. Kagonyera's box blue Chevy Impala. He  
3 said that the group, this group of individuals  
4 had done two or three breaking and enterings.  
5 He said he always stayed in the car. He said  
6 that he had just begun hanging out with  
7 Mr. Kagonyera, Mr. Wilcoxson, Mr. Isbell, and  
8 Mr. Williams, and that he had been hanging out  
9 with the group for about a week, and that they  
10 had did these breaking and enterings and took  
11 some merchandise.

12 He said that the ones that they were  
13 involved in were when no one was home, and he  
14 never saw guns. I asked him if they were  
15 wearing bandanas or gloves while they were  
16 breaking into homes. He said, no. He said he  
17 pled guilty to the Bowman homicide because it  
18 was in his best interest and he didn't want to  
19 be made the triggerman. And he said that he  
20 felt that law enforcement was trying to make him  
21 the triggerman with regard to this matter.

22 I asked --

23 Q. Go ahead.

24 A. I asked Mr. Mills if they had done two or three

1 of these breaking and enterings, were any of  
2 them committed in the Fairview, North Carolina  
3 area? He said that he could not say if they  
4 ever went to Fairview because he just rode  
5 along. He did recall one time when they did a  
6 breaking and entering and everyone ran back to  
7 the car, and someone said, what did you do that  
8 for? And another responded, he just had to do  
9 what he had to do. He said that he doesn't  
10 recall during this breaking and entering that  
11 they were wearing gloves or bandanas at the  
12 time.

13 I asked him if he remembered anything about  
14 the location where that had occurred. He said  
15 he remembers that it was dark. He could see  
16 some trees, but no homes. He said he never was  
17 promised money for being the lookout for this  
18 group of individuals as they pulled these  
19 breaking and enterings.

20 Q. Did you ask him about the statements that he  
21 gave during the sheriff's department  
22 investigation?

23 A. I did ask him about the statements that he gave  
24 to sheriff deputies. He said that he only ever

1 told them about the breaking and enterings. He  
2 said that the statement wasn't made in his  
3 handwriting, he never wrote anything down.

4 Q. Did you show him his handwritten statement?

5 A. (Witness does not respond.)

6 Q. I'm sorry, did you show him his statement to --

7 A. I showed him the summary report of the statement  
8 that he had made to law enforcement. He denied  
9 things in that statement and said all he ever  
10 told them about was the B&Es or the breaking and  
11 enterings. I asked him whether or not it was  
12 possible that one of those breaking and  
13 enterings was the Bowman residence. He said,  
14 no, and his reasoning was that they only used  
15 one vehicle, and the discovery he saw said that  
16 whoever did the Bowman homicide was in two  
17 vehicles. He said that.- he also said that  
18 something like that would have been traumatic,  
19 and he would remember had he been involved in  
20 the Bowman homicide or if the Bowman homicide  
21 was one of the breaking and enterings that he  
22 says that this group had been doing.

23 Q. Did you speak to him again after that time?

24 A. I did. I spoke with him on my phone, and I

1           should note that our general policy is we  
2           generally would record a conversation on the  
3           phone such as this, but I had spoken with his  
4           sister, and Mr. Mills' sister said he wouldn't  
5           be home from work until after 5:30. So I had  
6           given him my cell phone number, which I can't  
7           record from. So he returned my call on my cell  
8           phone. So we do not have a recording of the  
9           second conversation.

10                   But during that second conversation I asked  
11           him about the pretrial meeting, which you have  
12           heard about with regards to him, his attorney,  
13           Mr. Kagonyera, and Mr. Kagonyera's attorneys.  
14           Mills said that what he said at that meeting was  
15           that he wasn't going down for whatever  
16           Mr. Kagonyera may have done. He said that he  
17           told the individuals involved in that meeting  
18           that he had been doing the breaking and  
19           enterings, but denied saying that he would  
20           testify in the murder case. He said he kept  
21           being pulled out of his cell and asked to  
22           implicate his cousin.

23    Q.    Did he say who was pulling him out of his cell?

24    A.    He did not. Mr. Mills, I asked Mr. Mills

1           whether or not he recalled his attorney stating  
2           in court, which is in the transcript, that  
3           Mr. Mills was the lookout for this group. He  
4           said that because -- and I asked him that  
5           question because he had indicated to us that he  
6           rode along and never agreed to be their lookout.  
7           So I said, do you recall your attorney saying  
8           you were the lookout in court, and he said he  
9           just went with what was said in court because it  
10          was already agreed to, and it was -- he was just  
11          going along with what was being said.

12                 He said he never signed any statement. He  
13          said he was being railroad, he had been  
14          railroaded. He said he tried to withdraw his  
15          plea. He said that they tried to get a  
16          Mr. Roy Gilliland to get him to confess and that  
17          they set up a phone call between him and  
18          Mr. Gilliland. And when he received that phone  
19          call he wasn't in custody. And he says he knew  
20          that they set up that phone call because when he  
21          received the call the number came back to a  
22          Buncombe County Sheriff's Office phone number.  
23          So he knew it was a call from a law enforcement  
24          agency, and he said they were trying to get him

1 to confess.

2 Q. And just to clarify, Roy Gilliland is a  
3 civilian?

4 A. Yes, he is a civilian. He was someone else who  
5 was, at the time, Mr. Mills said at the time  
6 Mr. Gilliland was currently in custody at the  
7 Buncombe County detention facility.

8 Mr. Gilliland had a relationship with Mr. Mills  
9 so they had Mr. Gilliland call Mr. Mills and try  
10 to get Mr. Mills to implicate himself during the  
11 course of that phone call.

12 Q. According to Mr. Mills?

13 A. According to Mr. Mills. We did ask law  
14 enforcement about that phone call, and there was  
15 -- it was conveyed to us that it was possible  
16 that somebody remembered -- I believe it was  
17 Lieutenant Elkins said that he remembered  
18 something like that occurring, but he couldn't  
19 specifically recall.

20 Mr. Mills, during this phone conversation,  
21 said the group never went to Fairview when they  
22 were pulling the breaking and enterings, which  
23 was inconsistent with his prior statement. He  
24 said that the evidence in the Bowman homicide

1           didn't match the breaking and enterings that he  
2           was participating in. Mr. Mills said he did get  
3           DNA evidence, and it didn't match. It was  
4           unclear when he received this, but he said he  
5           did get DNA evidence and knew that it didn't  
6           match.

7           He said that the district attorney tried to  
8           get him to confess, and he was put in  
9           segregation for ten months to break him, which  
10          is inconsistent with him having given the  
11          statement a month following the crime or just  
12          over a month following the crime he had given  
13          the statement. So being in segregation for ten  
14          months to break him -- he also said that during  
15          this conversation that he believed Lacy, J.J.,  
16          and Rob committed this crime. It was unclear  
17          where he got the information, and I guess I  
18          would note that Lacy and J.J. -- J.J. is what  
19          Lacy Pickens or Jay, Jay or J.J. is what  
20          Lacy Pickens went by.

21        Q.    So during his interview he told you Lacy and  
22                J.J. --

23        A.    Yes.

24        Q.    -- as though they were two different people, and

1 Rob?

2 A. As though they were two different people, and  
3 Rob did the crime.

4 MR. JENKINS: So he denied anything --  
5 all the detail that he went into in his  
6 first statement with law enforcement where  
7 he talks about exactly where they pulled  
8 off in the grassy area, about the detail  
9 about the guns and what they looked like?

10 A. He denied it all. He said he had not seen that  
11 statement in that form, and he denied -- he  
12 admitted to providing information on the  
13 breaking and enterings that this group had  
14 pulled, but denied the details that are in that  
15 statement.

16 MR. VICKORY: And he denies what Sean  
17 told us happened in their meeting, the  
18 meeting with the DA?

19 A. He did give a different account of the meeting  
20 with Mr. Kagonyera and Mr. Devereux.

21 JUDGE SUMNER: Did he indicate if he  
22 was Engine or he knew who Engine was?

23 A. He did not. I don't know if he was asked. I  
24 don't believe he was asked who Engine was.

1 Q. Did he tell you how long he had been interviewed  
2 or how long his interview lasted?

3 A. He said that he was never interviewed during the  
4 morning hours. He said that he doesn't recall  
5 ever being interviewed where they took a break  
6 during the middle period of the interview. He  
7 said all his interviews took place in the  
8 evening.

9 Q. And is that consistent or inconsistent with the  
10 reports from the Buncombe County Sheriff's  
11 Department?

12 A. It's inconsistent with the report from the  
13 Buncombe County Sheriff's Office from, I  
14 believe, it's October 25th.

15 MR. JENKINS: 26th.

16 A. 26th, October 26th.

17 MR. JENKINS: And it's indicated it  
18 started at 8:45 a.m. and ended at 1:35 p.m.  
19 That's a long interview. You'd think he  
20 would remember that.

21 MR. VICKORY: Did he ever indicate  
22 whether or not he knew these, what we're  
23 calling group A, any of those guys? I  
24 mean, he referred to them by first name.

1           Did he ever say he knew those people or  
2           give you the impression that he knew who  
3           they were?

4       A.    I don't believe he did.

5                       MR. VICKORY:  So when he used those  
6           names --

7       A.    I'm trying, I'm trying to review my notes to see  
8           if he --

9                       MR. VICKORY:  Oh, okay.

10      A.    -- he knew, if he indicated to me that he knew  
11           those individuals.  (witness reviews document.)  
12           My notes do not indicate that he expressed any  
13           relationship, and they also do not indicate that  
14           I asked him about those individuals  
15           specifically, that I can see.

16                      MS. MONTGOMERY-BLINN:  Any more  
17           questions about the Commission's  
18           investigation directly relating to Damian  
19           Mills?

20                      (No audible response.)

21                      MS. MONTGOMERY-BLINN:  All right,  
22           Aaron Brewton.  Aaron Brewton was  
23           interviewed three times by the sheriff's  
24           department, and you hear him referred to as

1 Man. That was his street name, was Man.  
2 He never confessed during any of those  
3 sheriff's department interviews, and his  
4 charges were ultimately dismissed. It is a  
5 little bit unclear to the Commission based  
6 on the court file why the charges were  
7 dismissed. There was no reason given on  
8 the dismissal form, and we've got a handout  
9 of that that we'll send around. It's got a  
10 check for other, but there's nothing  
11 written in underneath other. And also  
12 there's a transcript of the dismissal, the  
13 actual dismissal and when he pleads to  
14 other charges in the brief. It's on page  
15 108 of your brief, and I'll just read you  
16 the quick quote from there. From the  
17 district attorney, Mr. Moore, he says, "I'm  
18 not taking these pleas I'm about to take in  
19 exchange for the dismissing the murder. I  
20 do have the son of the victim who says this  
21 defendant was there. The reason the guys  
22 went over to rob him is because he was an  
23 alleged drug dealer, and they went to rob  
24 him. I have other codefendants who have

1           incriminated this defendant. At this point  
2           I don't think I have evidence to proceed in  
3           a first degree murder case, that's why I'm  
4           filing a dismissal."

5           So he indicates that it's not -- it's  
6           because he doesn't have significant  
7           evidence, but there's not any more detail  
8           provided that we could find.

9           I will tell you that Mr. Brewton is  
10          now in prison for a murder, a different  
11          murder and an unrelated murder, and the  
12          Commission staff was able to interview  
13          Mr. Brewton twice. And I think, is that  
14          going around now, the dismissal? Okay.

15        A.    Can I just --

16                        MS. MONTGOMERY-BLINN: I'm sorry.  
17                        Here's Mr. Brewton's record.

18                        (THEREUPON, MR. BREWTON'S RECORD IS  
19                        DISPLAYED ON THE SCREEN.)

20        A.    Can I just add one more thing about Mr. Mills  
21            that I think is relevant?

22                        (No audible response.)

23        A.    Mr. Mills told me that he believed he became a  
24            suspect in the Bowman homicide. He said that

1 ATF had raided his apartment looking for a  
2 shotgun about a month prior to the Bowman  
3 homicide. He said that ATF thought he had a  
4 shotgun because someone who robbed one from a  
5 pawnshop had indicated that they sold it to  
6 Mills. Mr. Mills believed he became a suspect  
7 in the Bowman homicide because the ATF had said  
8 that he had a shotgun matching the description.

9 MS. MONTGOMERY-BLINN: Okay. And the  
10 document that's coming around right now is  
11 the dismissal from the court file for the  
12 murder and also the release order, and  
13 you'll see in the release order it says to  
14 participate in Life on Life's Terms for  
15 both of them.

16 MR. JENKINS: So there's no record  
17 anywhere in the court system explaining why  
18 his murder charges were dismissed?

19 MS. MONTGOMERY-BLINN: Well, just what  
20 I read to you from the transcript that the  
21 district attorney put on the record when he  
22 made the dismissal about stating that he  
23 does have the victim's son, and he does  
24 have the codefendants, but does not believe

1 he has enough evidence to continue.

2 MR. JENKINS: I'm reading it now,  
3 thank you.

4 MS. MONTGOMERY-BLINN: And that's what  
5 I just read out loud, but that is all that  
6 we've been able to locate.

7 MR. VICKORY: Well, Mr. Moore leaves  
8 open the possibility of pursuing murder  
9 charges on him. He makes it clear -- he  
10 makes his client, he makes Brewton  
11 acknowledge and his lawyer acknowledge on  
12 the record that this is not a deal that I'm  
13 dismissing the murder charges in return for  
14 these pleas, I can come back later and  
15 pursue these charges if I get any more  
16 evidence.

17 MS. MONTGOMERY-BLINN: Yes. That is  
18 also my understanding. Thank you. Okay,  
19 I'm sorry. I think I skipped over his  
20 record. So, and as I said, he is currently  
21 in custody for murder, but it's an  
22 unrelated different murder.

23 Okay. Mr. Lau, the Commission calls  
24 Mr. Lau who is still under oath.

1

2

EXAMINATION BY MS. MONTGOMERY-BLINN:

3

Q. Were you able to interview Mr. Brewton?

4

A. I was able to interview Mr. Brewton.

5

Q. And where was he during your interview?

6

A. He was at Maury Correctional. I interviewed him

7

on November 23, 2010.

8

Q. And who was present during your interview?

9

A. Ms. Smith from the Commission was also present.

10

Q. And was Mr. Brewton willing to speak with you?

11

A. He initially said he did not want to speak with

12

the Commission because he had previously applied

13

to the Commission for the murder case he was

14

currently serving time on, and he was upset that

15

the Commission had not investigated the case.

16

Q. Okay. And did you fact check that?

17

A. Yes. I later determined that he had not applied

18

to the North Carolina Innocence Inquiry

19

Commission, but that was after I had met with

20

him. Although he initially said that, I asked

21

him if he would, if he would be willing to

22

answer a few questions, and he did end up

23

answering a few questions of mine while I was

24

with him at the November, on the

1 November 23, 2010 date.

2 Q. What questions did he answer?

3 A. I initially asked him about the Bowman homicide,  
4 and he said that he had not been involved in the  
5 Bowman homicide. And I asked him about while he  
6 was in custody, what happened while he was in  
7 custody charged with the Bowman homicide? He  
8 said that he was made plea offers, that he had  
9 been threatened by the district attorney. He  
10 said that he had been brought to the district  
11 attorney's Office with his attorney, Mr. Belzer,  
12 Mr. David Belzer, and with Mr. Bacoate present.  
13 He said he didn't know why Mr. Bacoate was  
14 there. He said that Mr. Moore was sitting at  
15 his desk and that he had a gun on each hip, and  
16 he initially said, why does this man have guns?  
17 And he was told by his lawyer that it was okay  
18 for him to have guns, he had permits for them.  
19 He said that Mr. Moore sat at his desk and told  
20 him that he could put 12 jurors in a box at any  
21 time and take his life, and then was told that  
22 he needed to accept a plea and not go to trial.

23 He said that he didn't commit the crime,  
24 and that could be substantiated if the Bojangles

1 video had been reviewed. He said on the night  
2 in question that he was at Bojangles with his  
3 stepson. He said -- we asked him about the  
4 dismissal, and he said that he was dismissed  
5 because his cousin gave Mr. Bacoate \$2,000. He  
6 said Mr. Bacoate had approached his cousin and  
7 told him that he could, that he could prove his  
8 innocence if he received these fund, and that  
9 his cousin, Neko Hyatt, gave Mr. Bacoate \$2,000  
10 after he was approached by him.

11 He said he was released on the condition  
12 that he participate in the Life on Life's Terms  
13 program, and the release order shows that to be  
14 the case, although the statement is inconsistent  
15 with regards -- well, I'm sorry. Although the  
16 release order on the breaking and entering  
17 charge that was the subject of the transcript  
18 that was read to you indicates that it was for  
19 the breaking and entering on Lewis' apartment.

20 He said after he was released he had to pay  
21 Bacoate another \$8,000. He told us that he  
22 believed that Bacoate and Ron Moore were  
23 splitting the money, but he had no direct  
24 evidence of this. He said he had to sign a form

1           that he would not sue based on his  
2           incarceration.

3       Q.    Were you able to locate that form anywhere in  
4           the file?

5       A.    No, I was not.

6                    He told me that Mr. Isbell was an informant  
7           that had been working for Mr. Bacoate. I would  
8           also point out on that transcript that  
9           Ms. Montgomery-Blinn had read, that in addition  
10          to that transcript it states that Mr. Brewton is  
11          going to be a resident at the Life on Life's  
12          Terms program when he's released in August.

13       Q.    Were you able to speak to Mr. Brewton another  
14           time?

15       A.    Well, after this interview I came back to the  
16           office and I confirmed that we had never  
17           received a claim from him on the first degree  
18           murder charge. And I had told him that I would  
19           write him a letter to confirm whether or not we  
20           had received a claim from him, and I wrote him a  
21           letter saying we had never received a claim. At  
22           that point in time he applied with regards to  
23           his unrelated first degree murder charge.

24       Q.    Okay. And just to confirm, Mr. Lau, you have

1 not reviewed his application for the unrelated  
2 first degree murder charge?

3 A. We have not reviewed his first degree murder  
4 charge that he's currently incarcerated for, no.  
5 But I did go back to interview him on March 23,  
6 2011, after we received his application on that  
7 unrelated murder charge.

8 Q. And did you talk to him at all about the  
9 unrelated murder charge in his application or  
10 just the Bowman homicide?

11 A. We spoke about the Bowman homicide only, and  
12 then at the end I told him that we hadn't looked  
13 at or I hadn't looked at and I didn't know the  
14 status of his first degree murder charge.

15 Q. Okay. Was he more cooperative or cooperative or  
16 agreeing to be interviewed the second time?

17 A. Yes. This time he agreed to talk to me as long  
18 as -- the first time he agreed to answer a few  
19 questions, and then wanted to get out of there.  
20 The second time he agreed to speak with me, and  
21 we actually sat down and were able to speak. It  
22 should also be noted, the first time he was  
23 behind glass, and it was a circumstance where we  
24 weren't able to record his first conversation

1           either. So this one we were able to record, and  
2           he consented to that.

3       Q. All right. And what did he tell you during the  
4           second interview?

5       A. He said he never hung out with the codefendants.  
6           He said that he did gamble with them from time  
7           to time in Pisgah View. He denied being  
8           involved in the Lewis Bethea breaking and  
9           entering that occurred earlier in the day that  
10          Mr. Kagonyera and Mr. Mills were also involved  
11          with. Mr. Kagonyera has told the Commission  
12          that he was involved in that breaking and  
13          entering and that he was involved with that with  
14          Mr. Brewton and Mr. Mills.

15                He once again said he was at Bojangles the  
16                night of the murder and was home with his  
17                stepson the rest of the time. He said that he  
18                believed the police had reviewed the videotape  
19                from Bojangles. He said he had a friend who  
20                worked at Bojangles who said the police came and  
21                viewed the tape.

22       Q. And is there any record in the sheriff's  
23           department file of them reviewing a Bojangles  
24           tape?

1 A. No, there is not. He said he was not present at  
2 the Bowman homicide and does not know whether  
3 the codefendants were. He said he did not know  
4 whether he knew of their involvement or he did  
5 not know whether they were involved. He said he  
6 was friends with Mr. Bowman, Mr. Shawn Bowman,  
7 and he said he spoke with him on the phone that  
8 night. He said Leon Bowman, another brother,  
9 son of the deceased, had come by his apartment  
10 earlier in the evening.

11 He said he had been out to the Bowman  
12 residence years earlier to do drugs. He said he  
13 remembers submitting to a polygraph while in  
14 jail and passing that polygraph.

15 Q. Were you able to locate this polygraph?

16 A. We have not seen the polygraph that he has  
17 indicated that he passed. He said that he  
18 remembered giving DNA, and he thinks he knew the  
19 results after taking the polygraph.

20 I asked him once again about his  
21 participation in Mr. Bacoate's program, and he  
22 said to me -- (Witness reviews document.) He  
23 said to me, "when I went in there he had two guns  
24 on him, two guns, one right here, one right

1           there. I stopped when I went in the door. I  
2           say, why he got guns? I asked David Belzer  
3           that. It's me, my lawyer, Ron Moore, and  
4           Matt Bacoate.

5           Okay. All right.

6           I say, why he got guns? He say, he  
7           licensed to have them. So I'm thinking I didn't  
8           know you can do that, you know, in the  
9           courthouse anyway. So I sit down at the table.  
10          He say something in reference to it's your lucky  
11          day. If I really wanted to convict you, I could  
12          put 12 of my jurors in there and convict you,  
13          but the reason I'm not is because we got new  
14          evidence that says you was not involved. But  
15          really, the truth was they never had new  
16          evidence. It was the same evidence, and I had  
17          prior knowledge to them coming to see me because  
18          Matt Bacoate had went to my cousin because  
19          everybody know we are very close, Neko Hyatt,  
20          he's dead now, and told Neko, look, I got  
21          evidence to get Man out, but when -- in order  
22          for me to do this we going to have to set it up  
23          to where he enters the program and pays a  
24          restitution fee.

1                   what was your cousin's name?

2                   Neko Hyatt.

3                   N-I-k-o?

4                   N-e-k-o, N-e-k-o, and his last name, Hyatt.

5                   So Bacoate went to your cousin, Neko Hyatt,  
6                   and he says that he has evidence of your  
7                   innocence, but he would only show that evidence  
8                   -- was he basically saying like I have this  
9                   evidence of your cousin's innocence, but I'm not  
10                  going to --

11                  It was basically -- that's exactly right.  
12                  I got something to help him out, and you want to  
13                  get him out, Man, it's going to cost him  
14                  basically.

15                  Okay.

16                  There's no way around it, and he charged us  
17                  \$10,000. He gave him \$2,000 there, and I gave  
18                  him \$8,000 when I got out.

19                  So you were talking, talking -- go back to  
20                  Ron Moore meeting. Go back to the Ron Moore  
21                  meeting because you were talking about they  
22                  wanted you to plead guilty to breaking and  
23                  entering. What happened?

24                  Yeah. Because I was charged with breaking

1 and entering, too, because it happened so close  
2 together.

3 So what happened at that, the rest of that  
4 meeting? So we sort of got sidetracked on  
5 Bacoate going to your cousin. What happened at  
6 the rest of the meeting? So where we're at is  
7 he said that, he says you have -- we have new  
8 evidence, it's your lucky day. Go from there.

9 If I wanted to convict you, if I want to  
10 convict you, I would put 12 of my jurors in  
11 there and I can convict, but I'm not in the mood  
12 for it. He got new evidence. Now, this is how  
13 it's going to work. You will plead to this  
14 breaking and entering, and we will release you  
15 to the Life on Life's Terms program. And we  
16 will drop the murder charge, and you have to  
17 sign this paper saying that you will not sue for  
18 being incarcerated for the time that I was  
19 incarcerated for the murder. So me weighing out  
20 my options like, what am I losing, you know?  
21 I'm paying \$2,000 -- \$10,000 for my innocence,  
22 and S mean, I've been sitting here two years for  
23 nothing wasting away. So I, you know, I knew it  
24 was to the point like where they had me coming

1           so much I had actually talked to somebody from  
2           Raleigh with my mother on the phone, and they  
3           was like, well, we can probably discuss a plea  
4           of five years if you would plead guilty. So I'm  
5           like five years for a murder charge? You got to  
6           know that I'm innocent. So it's like my mom is  
7           like, it ain't nothing but five years, just put  
8           it behind you, five years. Just do five years  
9           even if you had nothing to do with it. Just do  
10          five years. So I'm like, mama, I didn't do it.  
11          I didn't do it. That's admitting I killed  
12          somebody or had something to do with killing  
13          somebody, and I didn't. So if I take this plea,  
14          you know, just to say put it behind me, guess  
15          what, everybody around me, my kids, everybody is  
16          going to think who would plead guilty to  
17          something they didn't do. So they're going to  
18          look at me as a murderer, and I can't live with  
19          nothing like that, and I can't live with nothing  
20          like that. I don't want to. I shouldn't have  
21          to if I didn't do it. So I wouldn't do it, and  
22          so as time went on that's when everything came  
23          together and we got to the meeting, and that's  
24          when they said, you know, they ran down the

1 program to me and the restitution, which I had  
2 already knew because Neko told me over the  
3 phone. So I agreed."

4 Q. Did Mr. Brewton tell you he knew who did the  
5 Bowman homicide?

6 A. No, he did not know who committed the Bowman  
7 homicide. I did speak with Mr. Bacoate with  
8 regard to that meeting and his account of that  
9 meeting. Mr. Bacoate confirmed to the  
10 Commission that he was at that meeting.  
11 Mr. Bacoate said Ron Moore and David Belzer  
12 seemed to be in accord that Brewton may have not  
13 committed whatever crime was being discussed,  
14 and you'll -- I'll testify more with regards to  
15 this, and then that was the crime that was being  
16 discussed that was dismissed is what he was  
17 talking about, and that was the murder charge.

18 Q. And you're going to testify more about your  
19 deposition of Matt Bacoate tomorrow?

20 A. That's correct.

21 Q. And you said that Mr. Brewton --

22 MS. MONTGOMERY-BLINN: I'm sorry?

23 MR. JENKINS: No, you go ahead. I had  
24 a question.

1 MS. MONTGOMERY-BLINN: This is my last  
2 one.

3 Q. You said that Mr. Brewton said he didn't know  
4 who committed the Bowman homicide. Did he tell  
5 you what he would do if he had known?

6 A. Mr. Brewton said to me if he knew who committed  
7 the Bowman homicide, he would be using it as  
8 leverage to get himself out of prison.

9 Q. That is my last question.

10 MR. JENKINS: You said that  
11 Mr. Bacoate said that he acknowledged or  
12 remembered a meeting with Ron Moore and,  
13 who was the other person?

14 A. Mr. David Belzer.

15 MR. JENKINS: The attorney for him?

16 A. Yes.

17 MR. JENKINS: And he acknowledged that  
18 meeting. Did he acknowledge that there was  
19 an agreement to pay \$10,000 for --

20 A. He did not acknowledge an agreement to pay  
21 \$10,000.

22 MR. JENKINS: Did you ask him that  
23 question?

24 A. I asked him what fees he received from

1 Mr. Brewton. I asked him if that -- I asked him  
2 if he ever implied to Mr. Brewton that if he  
3 received a sum of money, that he would be able  
4 to help him with regard to his murder charge,  
5 and he said no. He said that the only fees he  
6 received from Mr. Brewton were the regular fees  
7 associated with the program. He said that  
8 Mr. Brewton was never a resident in his program,  
9 where at the hearing Mr. Brewton was supposed to  
10 be a resident in his program upon his release,  
11 according to that transcript.

12 MR. BECTON: Did he get fees for him  
13 being a resident even though he wasn't a  
14 resident?

15 A. Mr. Bacoate was unable to provide any  
16 documentation of Mr. Brewton's participation in  
17 the Life on Life program. We subpoenaed records  
18 from Mr. Bacoate asking for any record related  
19 to Mr. Brewton's participation, and he said he  
20 did not have any of those records available.

21 Q. What did Mr. Brewton tell you about his  
22 participation?

23 A. Mr. Brewton said that he went to one meeting,  
24 gave Mr. Bacoate \$8,000, and never participated

1 in the Life on Life's Terms program again.

2 MS. SURGEON: Was that given in cash?

3 A. He said it was cash.

4 MR. SMITH: Did he say why he called  
5 the Bowman residence over and over on the  
6 night of the murder?

7 A. He said that he was meeting Mr. Bowman in town,  
8 I believe, and he was -- I don't specifically  
9 recall exactly what he said, but it was  
10 something to the extent that they were meeting,  
11 that they knew each other.

12 MR. BECTON: Is that in the notes? I  
13 thought you said he only is acknowledging  
14 one phone call there.

15 A. He said he made a phone call. He spoke with  
16 Mr. Shawn Bowman on the phone that night.

17 MR. JENKINS: Were there any phone  
18 records available showing -- verifying  
19 those telephone calls to the sheriff's  
20 department? Do we know that? During the  
21 murder investigation, was there -- did they  
22 obtain any cell phone records to verify his  
23 story that he was calling over and over  
24 again?

1 A. They did not obtain cell phone records from  
2 Mr. Shawn Bowman or Mr. Aaron Brewton that we  
3 saw or that were provided.

4 MR. SMITH: But he denies making more  
5 than one call, I take it?

6 A. I didn't ask him specifically whether he made  
7 more than one call. He acknowledged making  
8 calls, a call to Mr. Bowman that night.

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

11 JUDGE SUMNER: Yes, ma'am.

12 Q. Mr. Lau, I'm handing you your summary report --

13 A. Sure.

14 Q. -- to refresh your recollection.

15 A. (Witness reviews document.) According to my  
16 notes from my discussion with Mr. Brewton,  
17 Mr. Brewton stated that he was friends with  
18 Shawn Bowman. He further stated that he spoke  
19 on the phone with Mr. Bowman on the night of  
20 9/18/2000. He said that it was sometime before  
21 Brewton went to Bojangles. Brewton stated that  
22 he beeped Bowman and that Bowman called him  
23 back. He stated that it was a quick  
24 conversation about stuff that they had coming up

1           that weekend. Brewton stated that he was unsure  
2           whether there was more than one call or beep to  
3           Bowman.

4                       MR. VICKORY: Did he say where he got  
5           that \$10,000 or \$8,000?

6           A.    No.

7                       MS. MONTGOMERY-BLINN: Any more  
8           questions about the Aaron Brewton  
9           investigation? Last one.

10                      MR. BECTON: It will take me two  
11           minutes.

12                      MS. MONTGOMERY-BLINN: Okay.

13                      MR. BECTON: Why don't you pass around  
14           whatever you need to pass around?

15                      (THEREUPON, A DISCUSSION WAS HAD OFF  
16           THE RECORD WHICH WAS NOT REPORTED BY THE  
17           COURT REPORTER.)

18                      MS. MONTGOMERY-BLINN: Okay, Larry Williams  
19           is the last of group B. He made -- he was  
20           interviewed, Mr. Williams was interviewed by law  
21           enforcement eight times. He made inconsistent  
22           confessions implicating himself and others and  
23           then recanted them. His confessions and  
24           statements are in the briefs. Mr. Williams

1 ultimately pled. His plea information -- to  
2 second degree murder.

3 (THEREUPON, MR. WILLIAMS' RECORD IS  
4 DISPLAYED ON THE SCREEN.)

5 MS. MONTGOMERY-BLINN: His plea information  
6 and sentence are also in the brief. He has now  
7 been released and he was interviewed by -- he  
8 was interviewed one time by the Commission after  
9 multiple attempts to locate him. And this is  
10 Mr. Williams only conviction since he's been  
11 released, and since -- he was 16 at the time.  
12 So this is an only conviction before the  
13 homicide incident. He has no other record.

14

15 EXAMINATION BY MS. MONTGOMERY-BLINN:

16 Q. All right, Mr. Lau, I'll remind you that you're  
17 still under oath.

18 A. Sure.

19 Q. Were you able to locate Larry Williams?

20 A. Yes, I was.

21 Q. Okay. I'm sorry, he was interviewed more than  
22 one time. I apologize. That was incorrect.

23 All right. Tell me about trying to locate  
24 Mr. Williams.

1       A.    I attempted to locate Mr. Williams and had very  
2            little success, and it was actually a bit of  
3            luck when I finally was able to get information  
4            and get in contact with Mr. Williams. We had  
5            been going to some apartment complexes in  
6            Asheville seeking to find Mr. Williams, and I  
7            went into an apartment complex, a low income  
8            housing facility, and I asked the individual in  
9            the office if they happened to know who this  
10           individual was and where he may be living. It  
11           happened to be -- he happened to be the  
12           boyfriend of this individual's daughter. So she  
13           was able to put us in touch with her daughter,  
14           who then put us in touch with Mr. Williams.

15       Q.    Okay. And what day was that that you spoke with  
16            Mr. Williams first?

17       A.    That was on November 11, 2010. I spoke with  
18            Mr. Williams' girlfriend first, and she then  
19            conveyed to Mr. Williams I would like to speak  
20            with him, and then he called me back. When he  
21            called me back he indicated to me he didn't want  
22            to talk about it. He said he was not interested  
23            in speaking about the past. He said if we  
24            looked at everything, we would see it right

1           there. I explained to him the Commission, and  
2           asked if he would willing to look at his  
3           statements and just tell me whether or not those  
4           statements, which were attributed to him --  
5           because again, we only had the law enforcement  
6           summary reports -- to tell me if those  
7           statements were accurate reflections of what he  
8           had said during the course of this  
9           investigation.

10                   He indicated to me that he would be willing  
11           and that he would call me back.

12   Q.   And did he?

13   A.   He never called me back. I tried to contact him  
14           on other occasions. One thing I did have was  
15           his girlfriend's phone number and the location  
16           where he was living. So I tried to call him and  
17           we didn't have success speaking with him. He  
18           indicated that he did not want to talk.

19   Q.   So what did you do?

20   A.   I ended up having to subpoena him to appear at a  
21           deposition, and I subpoenaed him and then we  
22           deposed him on March 10, 2011.

23   Q.   Okay. And tell us about, was he cooperative  
24           during that deposition?

1       A.    When he came into the deposition he was  
2            uncooperative.  He was -- I'm sorry,  
3            uncooperative is not the term.  He was  
4            cooperative to the extent that he felt he had to  
5            comply with the subpoena.  He came in, sat in  
6            the chair, answered questions, and indicated by  
7            refusing to acknowledge or shake my hand when he  
8            walked in that he wanted nothing to do with me.

9            I proceeded with the deposition and began  
10           asking him questions.  While I was asking him  
11           questions he indicated to me that he was upset  
12           because he had applied to our agency while he  
13           was in jail and nobody ever responded to him.  
14           At that point in time I told him that we had not  
15           been established during the period of time he  
16           was describing having applied to the agency.  He  
17           told me he couldn't believe he had a grudge  
18           against an agency that didn't exist and then  
19           became cooperative and began speaking with me.  
20           I would say at that point in time sort of the  
21           hostility that was being exhibited ceased, and  
22           he started answering questions very fully.

23       Q.    And what did he tell you?

24       A.    He told me that he felt that he was being

1 sabotaged through the course of the sheriff's  
2 department's investigation. We went through his  
3 statement. I asked him about what happened  
4 while he was left alone with Sheriff Medford in  
5 that first statement that he gave. He said that  
6 it wasn't just Sheriff Medford. He said  
7 DA Moore was also there while he was left alone  
8 with the sheriff. He said that during that  
9 period of time he believed that Mr. Moore was  
10 recording portions of the interview because he  
11 said he kept hitting something in his pocket.

12 He said that -- I asked him whether or not  
13 the sheriff had made any threats or what the  
14 sheriff had told him during the course of that  
15 period, and he said that the sheriff was just  
16 telling him details in his questions. I believe  
17 an example he gave was, you were with so and so  
18 when you drove out to Fairview to kill that guy.

19 So he said that based on what the sheriff  
20 was telling him during that period of time,  
21 having been scared, that when the detectives re-  
22 entered the interrogation, that he had told them  
23 what the sheriff had told him during his  
24 questioning.

1           He told me that his lawyer wanted him to  
2           plea and didn't try to prepare a defense. He  
3           said that after two years in jail he finally  
4           gave up and pled. He said he was young, just a  
5           teenager, and didn't understand the way the  
6           system worked. He said that his mother was used  
7           to try and induce him to take a plea. He said he  
8           -- in response to my question, why do you think  
9           your codefendants made these statements, he said  
10          he believed his codefendants were implicating  
11          each other to seek favors.

12          He said that he believed Matt Bacoate was  
13          helping people to become informants. He said  
14          that during the night in question him and  
15          Mr. Wilcoxson had watched a movie in the van,  
16          and at some point he fell asleep in that van and  
17          slept in the van during the night of the Bowman  
18          homicide.

19          He explained his confession, and I believe  
20          that portion of the deposition --

21                            (THEREUPON, A PORTION OF MR. WILLIAMS'

22                            DEPOSITION WAS PLAYED FOR THE COMMISSION.)

23          Q.   Now, Mr. Lau, were you present when this video  
24          was made?

1 A. I was.

2 Q. And is it a fair and accurate representation of  
3 a --

4 A. It is.

5 Q. -- portion of your deposition of Mr. Williams?

6 A. It is.

7 Q. Okay. So you went through all of the statements  
8 that Mr. Williams made with him?

9 A. We went through all the statements, yes.

10 Q. Okay. And what did he tell you?

11 A. He said that he was telling them what they  
12 wanted to hear because he was hoping that he  
13 could get out.

14 Q. Okay. And where did he get the information that  
15 was in these statements?

16 A. Well, with regards to that initial statement, he  
17 said he got the information from Sheriff  
18 Medford. With regards to the later statements  
19 he gave in October, he was not held in custody  
20 from the time he gave his initial statement on  
21 September 26th until the period when he gave his  
22 statement in October, he was not in custody for  
23 that whole period of time. He said he had  
24 information that he learned that was on the

1 street. He said that he had heard stuff from  
2 jail talk once he finally was incarcerated and  
3 he said he had all that information and that's  
4 where his statements came from.

5 I also showed him a photo from the security  
6 video. I showed him the pictures from the  
7 security video of the --

8 Q. The gas station security --

9 A. At the gas station, that's correct, of the  
10 vehicle, and he said that it was not  
11 Mr. Kagonyera's vehicle, and he explained that  
12 Mr. Kagonyera's was a box shape, the wheels were  
13 different, and he said that Mr. Kagonyera's car  
14 was a single color whereas the vehicle in the  
15 security video was, appeared to have a different  
16 colored top.

17 Q. When you showed that to him, did you tell him  
18 what that photo was from?

19 A. I did not tell him what that photo was from when  
20 I showed it to him, I just asked him if it was  
21 Mr. Kagonyera's vehicle.

22 Q. Now, he read a statement at sentencing. Did you  
23 ask him about that?

24 A. I did ask him about that.

1 Q. Or he gave a statement at sentencing.

2 A. He gave a statement at sentencing, and I asked  
3 him about that. (Witness reviews document.) He  
4 told me -- I said, "at the sentencing hearing you  
5 stood up and you read a statement.

6 Uh-huh (yes), somebody helped me write it.  
7 It sounded good, didn't it?

8 well, tell me about that.

9 well, I was told to believe that if you  
10 represented yourself like in an appropriate way,  
11 like a decent haircut, write a letter for the  
12 judge and stuff, it all looked good for you in  
13 court, uh-huh (yes), you know, what I'm saying?  
14 well, that's what that was, uh-huh (yes), you  
15 know what I'm saying? And it was kind of hard  
16 reading that letter, you know, what I'm saying?

17 Yeah.

18 Because it never existed to me. So you  
19 know, I was kind of choking up reading the  
20 letter a little bit because I didn't feel  
21 comfortable. You know what I'm saying? But I  
22 couldn't tell them that at -- you know what I'm  
23 saying? It was already done. I was already  
24 going to prison, and what was said was said."

1 Q. All right. Were you able to review any other  
2 agency files for Mr. Williams?

3 A. I reviewed his Prisoners Legal Service, his  
4 file.

5 Q. And did he sign a waiver so that you could  
6 review that file?

7 A. He did sign a waiver allowing us to review that  
8 file.

9 Q. Was there anything inconsistent with the  
10 statements that he's making to you today in his  
11 file?

12 A. No, there was not.

13 Q. And what was his asking Prisoner Legal Services  
14 to do?

15 A. He wanted them to review his case.

16 MS. MONTGOMERY-BLINN: Commissioner  
17 questions?

18 (No audible response.)

19 MS. MONTGOMERY-BLINN: All right, I'll  
20 ask that Mr. Lau step down.

21 JUDGE SUMNER: Thank you, sir.

22 (THEREUPON, MR. LAU STEPS DOWN FROM  
23 THE WITNESS STAND.)

24 MS. MONTGOMERY-BLINN: And I'll ask that we

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recess for the evening.

JUDGE SUMNER: All right. We'll conclude today's session. We will resume tomorrow morning at 9:00 a.m.

(THEREUPON, THE HEARING WAS ADJOURNED AT 7:48 P.M.)

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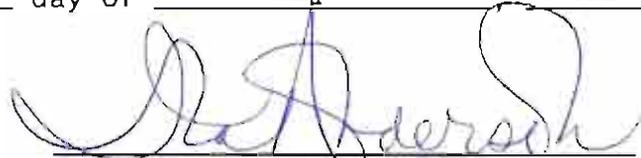
NORTH CAROLINA  
CABARRUS COUNTY

C E R T I F I C A T E

I, Ira Anderson, Court Reporter and Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the proceeding was taken by me to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of the proceeding.

I do further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in which this proceeding was conducted, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereof, nor financially or otherwise interested in the outcome of the action.

This the 12th day of May 2011.



Ira Anderson, Notary Public  
Notary Public No. 20022840073

**CERTIFICATION  
NULL AND VOID IF  
ENVELOPE SEAL IS BROKEN**