

ADMINISTRATIVE REVIEW (IR#580102)

ASSAULT OF JILL MARKER

The purpose of the Administrative Review of the Silk Plant Forest investigation (IR 580102) is to determine whether all Departmental policies, procedures and practices in existence at the time of the criminal investigation were followed. This encompasses the review of all known case material and is not intended as a criminal re-investigation of the case or a determination of the guilt or innocence of the involved parties. During the course of the investigation by Detective D.R. Williams and the Criminal Investigations Division (CID), three main possible suspects arose at various points, Kenneth Earl Lamoureux, Shane Eugene Fletcher and Kalvin Michael Smith, who was ultimately charged and convicted of this crime. In order to ensure that appropriate investigative procedures were followed Chief Patricia Norris directed that this review be conducted. Sergeant M.N. Baker, retired sergeant R.C. Patterson and retired Detective L.M. Maines were interviewed during the course of this review by the investigators, Lieutenant R.E. Best and Sergeant E.P. Reese. Retired Detective D.R. Williams, the case officer, declined to participate in this review.

SUMMARY OF INCIDENT

The Silk Plant Forest store was located at 3202 Silas Creek Parkway, in the Silas Creek Crossing Shopping Center, at the corner of Silas Creek Parkway and Hanes Mall Boulevard. The store was located on the south end of the shopping center, the Toys R Us store, which still stands today, was next door to the east; the former Drug Emporium store was next door to the west. The store sold artificial plants, arrangements and accessories. Upon entering the store, one would find the front third of the store to be a display area with a U-shaped service/checkout counter in the center. The rear two-thirds of the store was arranged with aisles headed front to back with various display/sale items. At the rear of the common area of the store was a door leading to a store room/office area closed to the public. From the store room was a rear door that opened to the outside rear of the building.

On December 9, 1995, Ms. Stacy Spainhour and Ms. Jill Marker were the two employees working in the business. Ms. Spainhour was a clerk/cashier and Ms. Marker was the store manager. Ms. Spainhour opened the business at 10:00 a.m. and worked until approximately 6:30 p.m. Ms. Marker came in at noon and was scheduled to work until closing at 9:00 p.m. It was the Christmas season, and by all accounts, the shopping center was busy with shoppers.

At approximately 8:50 p.m., customers Ms. Nancy Baxter and Ms. Sandra Petersen entered the store. As they entered they noted that no one was at the front counter and heard someone moaning. Both women walked toward the sound coming from the rear of the store and found the manager, Ms. Marker, lying in a pool of blood at the end of the aisle near the store room door. Ms. Baxter, a nurse at North Carolina Baptist Hospital immediately began rendering aid, and Ms. Petersen ran next door to Drug Emporium to call 911 because she could not find a phone in the Silk Plant Forest. Mr. Julian Hattanag, Ms. Ashley Weaver and Ms. Myra Dixon had also come in the store by this time, and Mr. Hattanag assisted Ms. Baxter in tending to Ms. Marker.

Just before 9:00 p.m., the Winston-Salem Police Department received a 911 “Unknown Trouble” call at the Silk Plant Forest store. Senior Police Officer (SPO) M.S. Poe was working off-duty at the Toys R Us store and responded on foot in less than a minute. SPO Poe entered the store to find the store manager, Ms. Marker, lying at the rear of the store with a severe head injury. Ms. Marker was being attended to by Ms. Baxter and Mr. Hattanag. Three other customers, Ms. Petersen (who had called 911), Ms. Weaver and Ms. Dixon were present in the store when SPO Poe arrived.

As Ms. Baxter, a cardiac nurse at North Carolina Baptist Hospital, and Mr. Hattanag were working to control the bleeding from a head wound, SPO Poe was able to ask Ms. Marker if she was shot, to which she replied “no.” He asked if she was hit, to which she said “yes.” Ms. Marker was unable to give any other useful investigative information to Officer Poe. Other police and emergency medical personnel arrived and began to handle their respective duties, rendering first aid to Ms. Marker and securing the area around the business as a crime scene. Ms. Marker was transported across the street to Forsyth Medical Center where she was rushed into surgery for her injuries. She was later transferred to Ohio for long-term care.

INITIAL INVESTIGATION

Responding supervisors and officers secured a perimeter around the business to prevent any further contamination of the scene and began to identify potential witnesses to the incident. Statements were obtained from the above five customers, all of whom arrived at the store after the attack and could only describe how they found Ms. Marker.

Due to Ms. Marker sustaining severe, life-threatening injuries, CID personnel were requested to respond to the scene on the chance the case would turn into a homicide investigation. The on-call squad, Sergeant T.W. Rodgers and Detectives M.N. Barker, A.D. Sims, M.L. Sharpe, T.L. Lowe and J.F. Rogers, responded to initiate their investigation of the incident. At that time, the investigation was assigned to Detective Barker, the Homicide Section Detective. Detective Barker focused on the crime scene and directed the processing of the scene and collection of evidence with assistance from the Crime Scene Technicians (CST) M.W. Murray, F. Mejan and S.D. Branson and Crime Scene Supervisor (CSS) T. Williams. The scene was processed for fingerprints using both conventional powder and alternate light source techniques. Blood evidence and footprint evidence was also collected and stored in evidence management. A surveillance video was seized from the Toys R Us store on the chance a suspect might have been in that store prior to or after the incident.

Detectives went to the T.J.’s Deli on Robinhood Road and located the victim’s husband, Mr. Aaron Marker, who was at work during the time of the incident. Mr. Marker was advised of the crime and that his wife was at the hospital.

Detective Sims interviewed Ms. Stacy Spainhour, who had been requested to return to the scene. Ms. Spainhour described the closing procedure to Detective Sims and noted the register condition was not normal, keys were out of place, the drawer was open and there was no money in the cash drawer. Four one hundred dollar bills were found under the cash drawer and an audit revealed \$295.00 was missing.

At the conclusion of the initial on-scene investigation, no witnesses provided any information regarding the identification of a possible suspect. One witness, later identified as Mr. Tommy Clewis, tried to provide officers with information regarding a vehicle, a Mustang, he had observed leave the area around the time of the incident. Mr. Clewis became frustrated with the officer he was speaking with and left without providing his name. This exchange was observed by another subject, Mr. Robert Miller, who provided the vehicle description to Officer J.N. Grismer. Mr. Miller advised he heard Mr. Clewis say he saw a Ford Mustang with a "Western Union" license plate on the front pull up in front of the store and a male subject got in the car and drove off. (This information related to suspect Fuller.)

On December 11, 1995, after it was determined Ms. Marker would likely survive her injuries, the case was transferred from Detective Barker in the Homicide Section to Detective D.R. Williams in the Robbery Section. Detective Williams, a 14-year-veteran of the Department, was assigned to the CID as a Property Crimes detective in 1990. Detective Williams was later transferred to the Robbery Section when that unit was created in the spring of 1995. The Robbery Section investigated all robberies (armed and common law) of persons and commercial establishments. Detective Williams commenced his investigation by reviewing the existing reports and going to the scene with Detective Barker to be briefed on Barker's actions that night.

PERSONS VIEWED AS POTENTIAL SUSPECTS

Several persons were viewed as potential suspects during the investigation of the assault on Mrs. Marker. Information from various sources implicated individuals as the investigation progressed. Although the investigation examined some of the suspects concurrently, the following summation lists the suspects in the order they came to the attention of investigators.

KENNETH LAMOUREUX: On December 10, 1995, Ms. Jeana Schopfer, an employee of Today's Child Daycare located at 1005 Bethesda Road, reported she had information on a possible suspect, Mr. Kenneth Earl Lamoureux, (white male, DOB 07-27-1949). Today's Child was a daycare center connected to Forsyth Medical Center, utilized by its employees. Ms. Schopfer reported she heard that Mr. Lamoureux frequently visited Ms. Marker at the Silk Plant Forest, he was mentally and terminally ill, and he had a prior history of spousal abuse.

Ms. Schopfer reported she learned through a co-worker, Ms. Melanie McCollum, that Mr. Lamoureux would visit Ms. Marker at the Silk Plant Forest store. Mr. Lamoureux's children attended Today's Child and he would frequently drop off or pick up his children. Ms. Marker had been an employee at Today's Child until May 1995, when she began to work full-time at the Silk Plant Forest. Ms. McCollum gave a statement to police in which she reported having several conversations over the months leading up to the incident in which Ms. Marker told her Mr. Lamoureux would come by the store. Ms. McCollum said she was not aware of any type of friendship between Ms. Marker and Mr. Lamoureux, only that Ms. Marker reported he would visit or talk to her at the store. Ms. McCollum further reported that, on December 8, 1995 at approximately 1:00 p.m. while she was shopping, she saw Mr. Lamoureux on the property of Silas Creek Crossing Shopping Center walking from the parking lot toward the Drug Emporium/Silk Plant Forest area. She did not see him enter a store. No other witnesses were

located or came forward to offer any information of a similar nature about the visits by Mr. Lamoureux to the store.

On December 12, 1995, Ms. Cynthia Cloud contacted CrimeStoppers with information about a white male she and a friend observed in the Silk Plant Forest store on December 9, 1995. Ms. Cloud and her friend, Ms. Stella Goode, later spoke with Detective Williams about a white male they witnessed acting suspiciously in the store on December 9, 1995 between 7:20 and 7:45 p.m. Because the description given by both Ms. Goode and Ms. Cloud was consistent with Mr. Lamoureux, a photographic line-up (V.L. Myers ID supplement dated 12-12-1995) was constructed containing Mr. Lamoureux. Ms. Cloud viewed the line-up on December 12, 1995 and stated the photo of Mr. Lamoureux was most like the subject she witnessed in the store but she was not positive of her identification. Ms. Goode viewed the same line-up on December 13, 1995 and identified Mr. Lamoureux as the subject she saw in the store.

Detective Barker was off-duty with his wife, Mrs. Teresa Barker, at the Silas Creek Shopping Center around the time of the robbery on December 9, 1995. Mrs. Barker told Detective Barker that she witnessed a white male subject, who fit the description of Mr. Lamoureux, standing near the Toys R Us. Detective Williams showed the Lamoureux line-up (V.L. Myers ID supplement dated 12-12-1995) to Ms. Barker; however, she was unable to identify the subject from that line-up.

Another witness identified from the store register receipts was Ms. Pamela Chisholm, who was in the store at approximately 7:50 p.m. and reported seeing a white male, 45 to 55 years old and wearing glasses, attempting to park an older white van outside the store. Ms. Chisholm never saw the subject exit the van or go in the store, nor could she identify him.

Ms. Ellen Lamoureux, wife of Mr. Lamoureux, spoke to Detective Williams and reported that she had been separated from him since October 16, 1995. Ms. Lamoureux was employed as a nurse at Forsyth Medical Center. Ms. Lamoureux described her husband as mentally and terminally ill. She stated he was on disability due to heart disease for which he received a pacemaker and implanted defibrillator. She stated she had also had him involuntarily committed to the psychiatric ward at Forsyth Medical Center from November 30, 1995 until December 8, 1995. Ms. Lamoureux reported she had been assaulted by Mr. Lamoureux on numerous occasions, usually by being punched or hit about the head and face. This statement was corroborated by Ms. McCollum who reported seeing Ms. Lamoureux with bruises or blackened eyes on several occasions when she dropped off her children at daycare. Ms. Lamoureux had obtained a 50-B Domestic Violence Order against Kenneth Lamoureux on November 20, 1995 and they had a hearing on that order on December 8, 1995, at which time the order was extended and Mr. Lamoureux was stripped of visitation rights with his two children.

Mr. Lamoureux's criminal history revealed three contacts with the police prior to December 9, 1995: a domestic assault with Ms. Lamoureux, a disturbance with her and his involuntary commitment. There was no local history of Mr. Lamoureux being involved in any calls with other citizens.

Kenneth and Ellen Lamoureux's domestic situation had deteriorated significantly during 1995. Witnesses at Today's Child reported Ms. Lamoureux had been observed on several occasions with blackened eyes and injuries consistent with being struck in the head. (Investigator's Note: Considering Mr. Lamoureux's practice of assaulting Ms. Lamoureux in the head, it was logical for Detective Williams to compare those acts with the injuries Ms. Marker received.)

On December 12, 1995, Ms. Wanda Scofield, a nurse at Forsyth Medical Center, gave a statement to Detective R.G. Cozart, regarding cards, flowers and a phone call she received from an unknown male named "Ken." In September 1995, Ms. Scofield reported receiving a card in the mail from a subject who identified himself as a "secret admirer." In late October, she received a floral arrangement from someone believed to be the same person. Ms. Scofield learned through the florist that the subject who ordered the flowers was an older white male named "Ken" who paid in cash. Ms. Scofield received a call later that day at home from "Ken" who said their children attended the same daycare (Today's Child) and he was interested in meeting her. Ms. Scofield told "Ken" she was dating someone and they ended the call. She had no further contact with the subject afterward.

One evening, Ms. Scofield was working on the same floor with Ms. Lamoureux at the hospital when the subject of this secret admirer arose. Ms. Scofield did not know Ms. Lamoureux, Mr. Lamoureux or their situation prior to this conversation. As they talked, Ms. Lamoureux mentioned seeing a card, similar to the one Ms. Scofield received, in her house in September. They further connected the daycare link and her husband's name, "Ken," and Ms. Scofield and Ms. Lamoureux believed the caller was in fact Mr. Lamoureux.

Based on the statements concerning his visits to the Silk Plant Forest, statements concerning a white male near the store on the evening of the assault and his reported propensity for violence described by his estranged wife, Kenneth Lamoureux was a reasonable suspect in this case.

On December 18, 1995, Detectives Williams and Barker went to 4940 Thales Road, Apartment "A" to speak with Mr. Lamoureux. The detectives located Mr. Lamoureux and surreptitiously tape recorded this initial contact with him. Mr. Lamoureux invited the detectives into his apartment and they requested that he come to the Public Safety Center to be interviewed about a case in which his name had surfaced. The detectives repeatedly advised Mr. Lamoureux he was not under arrest for any crime. Mr. Lamoureux consulted with his attorney by phone and accepted the detectives' offer, responding to the Public Safety Center later that afternoon.

Mr. Lamoureux was interviewed by Detectives Williams and Barker at the Public Safety Center. According to Detective Williams' supplement, Mr. Lamoureux denied having any contact with Ms. Marker as indicated by Ms. McCollum. Mr. Lamoureux said he had been to the Silk Plant Forest store once, with his two children around Thanksgiving, only so his children could look at Christmas trees. Mr. Lamoureux acknowledged shopping for his prescriptions at Drug Emporium. Mr. Lamoureux denied any involvement in the crime and disputed the witnesses' identification of him. The detectives questioned Mr. Lamoureux about his whereabouts on Saturday evening, December 9, 1995, and Detective Williams' supplement quoted Mr. Lamoureux as saying he could not be 100% sure he was not at the Silas Creek Shopping Center and "could have been walking by" the store. This statement, according to the context of the

supplement, occurred near the end in the interview. Mr. Lamoureux then ended the interview and left the interview room.

On December 19, 1996, Detectives Williams and Barker returned to Mr. Lamoureux's residence where he consented to a search of his premises. The detectives found no evidence linking Mr. Lamoureux to Ms. Marker or the Silk Plant Forest store. He showed them the clothing he was wearing, which had been laundered, on December 9, 1995 and a receipt for a stereo stand he purchased on that date from the Best Store (formerly located in the 500 block of S. Stratford Road). Mr. Lamoureux allowed the photographing of various shoes and consented to the search of his 1992 Nissan, which he drove from his residence to the Public Safety Center. Mr. Lamoureux, through his attorney, Todd Peebles, also consented to a polygraph examination to be conducted at a later time. Mr. Lamoureux also voluntarily gave samples of blood on December 21, 1995.

On January 4, 1996, Mr. Michael Mitchell came to the Public Safety Center to give a statement regarding his observation of a white male near the Silk Plant Forest at approximately 8:00 p.m. on December 9, 1995. Mr. Mitchell reported seeing a middle-aged white male standing between the Silk Plant Forest and Toys R Us, smoking a cigarette. (It is unknown if Lamoureux was a smoker.) Mr. Mitchell was shown the photo line-up containing Mr. Lamoureux; however, he was unable to make an identification. As Mr. Mitchell was leaving the Public Safety Center, he met Mr. Lamoureux, who was coming in for his polygraph appointment. Mr. Lamoureux apparently saw Mr. Mitchell with Detective Williams in the lobby and proceeded to follow him to the front parking lot and questioned him as to his business with Detective Williams. Mr. Mitchell called Detective Williams and reported this encounter; however, Mr. Mitchell still did not identify Kenneth Lamoureux as the subject he saw on December 9, 1995.

Mr. Lamoureux also went to a local television station, WXII, on January 4, 1996 and asked questions of producer Andrea Runion about the Silk Plant Forest case, namely the date and time of occurrence. Ms. Runion identified Mr. Lamoureux from a line-up.

Mr. Lamoureux did not take a polygraph examination on January 4, 1996 but did submit to a polygraph on February 13, 1996, administered by Detective L.M. Maines, the results of which were inconclusive. According to Detective Maines' supplement, Mr. Lamoureux did display a degree of deception to the question "Did you strike, push or assault a woman inside the Silk Plant Forest?" Mr. Lamoureux later talked with Detective Williams and qualified his response to the question by stating he was thinking of an incident when he assaulted his wife in November 1995.

On January 24, 1996, Ms. Lamoureux reported that her estranged husband violated their 50-B Domestic Violence Order by calling her on several occasions, both at work and at home. On that date, Detective Williams responded to Mr. Lamoureux's residence and arrested him for the violation but did not question him.

By March 21, 1996, all evidence submitted to the State Bureau of Investigation (SBI) had been returned without yielding any suspect information. Detective Williams received no new information on Mr. Lamoureux and learned on April 19, 1996 that Mr. Lamoureux had moved to

Charlotte, North Carolina to live with his stepfather. Mr. Lamoureux remained a suspect but no additional evidence arose concerning his involvement.

ERIC CARRAWAY: In addition to pursuing investigative leads on Mr. Lamoureux during those months, information was also followed up on other potential suspects. On December 11, 1995, Probation Officer Danny Mays contacted Detective Williams regarding Mr. Eric Undesa Carraway (black male, DOB 09-18-1966), a probationer employed at Toys R Us. Officer Mays considered Mr. Carraway as a potential suspect as Mr. Carraway was having problem meeting certain demands of his probation and faced revocation. Detective Williams confirmed with store personnel that Mr. Carraway was at work on December 9, 1995, but he worked in an area of the store with no exterior access; therefore, it would have been difficult for him to leave the store without notice. Mr. Carraway was discounted as a potential suspect at that time, although a photo line-up (K.C. Appelt ID supplement dated 12-12-1995) was created of him.

LARRY FITZGERALD MEANS: Another subject questioned in the case during this time period was Mr. Larry Fitzgerald Means, (black male, DOB 04-08-1967). Mr. Means was the subject of a CrimeStoppers report 17187-01, in which the caller overheard several employees at Bob Neill Pontiac talking about Mr. Means' possible involvement in the case and his ownership of a car similar to the vehicle reportedly scene leaving the area of the incident (which was publicized in the media). The employees of Bob Neill Pontiac referred to in the CrimeStoppers report were identified, located, interviewed and found to have no substantive information regarding Mr. Means. Mr. Means was also interviewed and denied any involvement in the case. Mr. Means further submitted to a polygraph; the results of which were inconclusive. Mr. Means consented to the search and processing of his 1987 Burgundy Pontiac Grand Am, which resulted in no evidence being located. A line-up (S.D. Branson ID supplement dated 10-02-1996) was also constructed containing Mr. Means, but he was not pursued further.

MICHAEL LAVON FULLER: Another subject investigated regarding a red vehicle was Mr. Michael Lavon Fuller (black male, DOB 11-20-1972), who was associated with a Ford Mustang as described by witness Mr. Clewis. Mr. Fuller's name came to Detective Williams through CrimeStoppers Report 17178-01, dated December 14, 1995, which stated Michael Fuller owned a burgundy Ford Mustang with West Virginia plates similar to the one described in the media releases.

Detective Williams initially followed up on this information by locating the car at a residence on Cornell Boulevard. Detective Williams identified the owner as living out of state and Mr. Fuller was associated with the owner's daughter. Though this contact originally occurred in January 1996, Detective Williams did not access the car for evidence processing until December 1996. Mr. Fuller was uncooperative with the investigation, refusing to meet with Detective Williams or be interviewed.

In November 1996, Mr. Fuller left a phone message with Detective Williams, canceling an appointment and saying he did not know anything about the case. On December 9, 1996, Michael Fuller was arrested on outstanding warrants in another case, but when he was brought to the Public Safety Center for questioning, he refused to answer questions. On that date, the vehicle was brought to the Public Safety Center, photographed and processed by Identification

Technician V.L. Myers for blood evidence with Luminol and Phenolphthalein, with negative results.

SHANE EUGENE FLETCHER: On May 22, 1996, Detective Williams received information concerning Mr. Shane Eugene Fletcher (white male, DOB 08-17-1964). Deputy Floyd Jay of the Granville County Sheriff's Office received a call from Mr. Fletcher, a patient at John Umstead Hospital, in which Mr. Fletcher confessed to murdering a white female at the Silk Plant Forest store in Winston-Salem. Detective Williams and Detective M.C. Rowe traveled to John Umstead Hospital and interviewed Mr. Fletcher.

Mr. Fletcher said he had been stalking Ms. Marker for several days and gave a description that fit her general characteristics. Mr. Fletcher stated he intended to rob the store and rape Ms. Marker. He stated the attack took place in the area of the sales counter and he used both his fists and a stick he carried to hit her in the head. Mr. Fletcher also admitted having knowledge of an auto-breaking on April 27, 1996, involving one of the Markers' vehicles, in which a camcorder was stolen (IR 9625197).

Mr. Fletcher admitted watching and reading news accounts of the case. When pressed for details of the case that had not been publicized, Mr. Fletcher became vague in his responses. Mr. Fletcher seemed to have knowledge of the auto-breakings; however, the camera stolen actually belonged to the National Broadcasting Company (NBC) and was loaned to the Markers by the television program *Dateline NBC*. NBC's *The Today Show* broadcasted a five-minute segment of the birth of Barron Marker on April 23, 1996. Included in the story were still images of Ms. Marker, Aaron Marker and his newborn son, Barron Marker, as well as a live interview with Aaron Marker and Dr. Steven Coor.

Mr. Fletcher described the wooden stick he used, and detectives located two such sticks at his mother's residence; both were processed by the State Bureau of Investigation for blood evidence with negative results.

By June 14, 1996, it had been determined through the investigation that Mr. Fletcher was actually committed to Forsyth Medical Center in a secured ward on December 9, 1995. Review of hospital records indicated he was present on the ward at the time of the incident and had not been granted any pass off the property on that date. Mr. Fletcher initially countered this information saying he pried open a door on the ward, escaped and returned; however, when the door was examined it was found to be in working order with no evidence of tampering. Mr. Fletcher said he had watched media coverage about the incident and sometimes fantasized about doing things he did not do and stated he must have fantasized in this instance.

KALVIN MICHAEL SMITH: On June 1, 1996, CrimeStoppers report 17726-01 was received stating Mr. Calvin Michael Smith was responsible for the robbery at the Silk Plant Forest. Mr. Smith was arrested on July 22, 1996 on outstanding papers for an unrelated crime. He was interviewed on that date by Detective D.R. Williams and denied any knowledge of the incident. According to Detective Williams' supplement dated November 4, 1996, Mr. Smith submitted to a polygraph on that date (July 22, 1996) administered by Detective L.M. Maines, and the results were scored as being "truthful." However, there is no supplement or polygraph report submitted

by Detective Maines in regard to this examination. There is a polygraph report by Detective R.C. Patterson indicating he administered an exam to Mr. Smith on July 26, 1996, and the results were “inconclusive.”

On May 10, 2007, Lieutenant Best conducted a telephone interview with retired Sergeant R.C. Patterson. Discussed was the polygraph examination administered to Calvin Smith documented in Polygraph Report # 072696ST0800. Mr. Patterson stated Detective Williams’ supplement (indicating that Maines conducted the polygraph and that the result was scored as being “untruthful”) was incorrect, and Mr. Patterson recalled administering the polygraph and that the result was inconclusive on the truthfulness issue.

On May 14, 2007, Lieutenant Best and Sergeant Reese interviewed retired Detective L.M. Maines regarding his involvement in this investigation. Mr. Maines confirmed he did not administer a polygraph to Calvin Smith as stated by Detective Williams’ report. Mr. Maines was on vacation at the time Calvin Smith was first questioned in July 1996 and Sergeant Patterson administered that polygraph.

On May 15, 2007, Sergeant M.N. Barker was interviewed by Lieutenant Best and Sergeant Reese, and was also able to provide information regarding the July 1996 polygraph of Calvin Smith. Sergeant Barker is also a certified polygraphist and he reviewed Sergeant Patterson’s polygraph report. Sergeant Barker advised each polygraph test is given a unique identifying number at the time it is administered. The number is derived from the date and time of the polygraph, and this number is used to log the test in the polygraph computer. The number on Detective Patterson’s report was 072696ST0800, which indicates it was administered on July 26, 1996 at 0800 hours.

In summary, despite what Detective Williams wrote in his November 4, 1996 supplement, the polygraph documents, along with Maines’, Patterson’s, and Barker’s statements, show that: (1) Calvin Smith took a polygraph on June 26, 1996 at 0800 hours; (2) then-detective R.C. Patterson administered the polygraph exam to Mr. Smith; and (3) the results of that polygraph were inconclusive. Detective Williams’ November 4, 1996 report is not correct.

After this initial contact with Mr. Smith, he was not pursued as a suspect until later that year when new information (provided by girlfriend Valerie Williams to Sergeant T.D. Ireland on November 20, 1996) surfaced. During the October 31, 1996 interview with Ms. Marker, it was possible a line-up was shown containing Mr. Smith; however, there is no documentation by Detective Williams as to the line-ups shown at that time.

On January 20, 1997, Ms. Valerie Michelle Williams (black female DOB, 03-08-1964) voluntarily contacted the Winston-Salem Police Department and reported to Sergeant T.D. Ireland that her boyfriend, Mr. Smith, had admitted to her that he was present at the Silk Plant Forest store and witnessed another subject beat Ms. Marker. Ms. Williams reported Mr. Smith and another male subject named “Kevin,” had been smoking drugs and went to rob the store to get more drug money. Ms. Williams gave details that the female clerk ran to the back of the store where “Kevin”, armed with a brick, followed and hit her in the head.

Ms. Williams stated Mr. Smith attempted to open the register but got scared and fled the store. She stated Smith told her that “Kevin” did not seem to want to leave. Though Ms. Williams could not identify “Kevin” she believed he was currently in jail.

On January 21, 1997, Detective Williams received Sergeant Ireland’s supplement implicating Mr. Smith in this case. On January 23, 1997, Detective Williams located Ms. Williams at 3638 Denver Street and spoke with her at her residence, where she gave a second verbal account of Mr. Smith’s information, consistent to that given to Sergeant Ireland. Detective Williams asked Ms. Williams to locate Mr. Smith and convince him to come to the Public Safety Center on January 24, 1997.

On January 24, 1997 at 1:20 p.m., Mr. Smith called Detective Williams. Detective Williams requested that he come to the Public Safety Center to be interviewed regarding an investigation; however, the nature of the case was not discussed. Mr. Smith agreed and arrived at 2:56 p.m. with Ms. Williams. Mr. Smith was advised that he was not in custody and was not under arrest nor were there any warrants outstanding on him. Mr. Smith and Ms. Williams were escorted into Criminal Investigations Division and placed in separate interview rooms. Before entering the interview room, Mr. Smith was again advised that he was not under arrest.

Detective Williams and Sergeant R.N. Weavil first spoke with Ms. Williams. Ms. Williams advised she was concerned for her safety and did not want Mr. Smith to know that she had talked about him in this case. Ms. Williams gave a written statement to Sergeant Weavil that was consistent with her prior verbal statements.

Detective Williams and Sergeant Weavil then went to Mr. Smith’s interview room where he was advised a third time of his status of not being in custody. The interview then commenced with Detective Williams advising Mr. Smith of his alleged involvement in the Silk Plant Forest case. According to Detective Williams, Mr. Smith denied his involvement for the first 35 to 40 minutes of the interview. During this time Mr. Smith requested to use the restroom and was shown the way from the interview room in Criminal Investigations Division to the restroom by Detective Williams. Detective Williams noted that at any time Mr. Smith could have left the Public Safety Center as there are no locked doors prohibiting exit out of the building; however, a key was required to return from the restroom in the public lobby to the office area of the Criminal Investigations Division.

The interview resumed and at that time Mr. Smith placed himself outside the Silk Plant Forest store. Mr. Smith stated he encountered a black male subject he knew as “James Burrows” or “JB.” Smith said they went behind the shopping center and smoked drugs. Mr. Burrows proposed they go into the Silk Plant Forest store and snatch money from the register. Mr. Smith’s statement implicated Mr. Burrows as the subject who beat Ms. Marker, while he (Kalvin) stood inside the front door. Mr. Smith gave details in his statement as to Mr. Burrows’ actions of hitting the clerk in the head and chasing her to the rear of the store.

Detectives attempted to identify “James Burrows” through records checks without success. Mr. Smith was shown several photos of subjects with the alias “JB” but this too had no success. Mr.

Smith admitted telling Ms. Williams about the incident but used the name “Kevin” instead of James Burrows.

Mr. Smith gave a written statement about his involvement to Detective Williams and Sergeant Weavil, which started at 3:48 p.m. After receiving the written statement, Mr. Smith was arrested at 5:30 p.m. for Armed Robbery. At that time, Mr. Smith was advised of his Miranda Rights which he stated he understood and waived. Mr. Smith further discussed the case with Detective Williams and Sergeant Weavil and gave an additional written statement.

At 6:30 p.m., Mr. Smith was requested to take a polygraph examination. Detective L.M. Maines, the polygraph examiner, asked Mr. Smith two questions which were:

1. Did you strike the white female clerk in the head with a metal object?
2. Did you observe James Burrows strike the white female clerk in the head with a metal object?

At that time Mr. Smith advised he did not wish to submit to the polygraph and invoked his right to counsel. Mr. Smith was taken to the Magistrate’s Office and formally charged in this incident with Armed Robbery and Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury.

EUGENE LITTLEJOHN: Based on Ms. Audrea Wilson’s statement detectives located and interviewed Mr. Eugene Littlejohn, who gave several varying accounts of Mr. Smith and his own involvement in the case. In his first statement dated February 10, 1997, Mr. Littlejohn recalled the conversation in Ms. Wilson’s apartment which he believed occurred in January or February of 1996. Mr. Littlejohn recalled Mr. Smith saying he had to beat the clerk to get out of the store and that he had to get some money.

Detectives Williams re-interviewed Mr. Littlejohn on March 3, 1997, after he determined it was possible that Mr. Littlejohn may have been with Mr. Smith. (Detective Williams had information from witness Ivadene Hester, who identified Calvin Smith and CrimeStoppers Report 18554-01, which also implicated Smith, that he was not alone.) This interview was conducted voluntarily at the Public Safety Center. Mr. Littlejohn stated in this interview that he and Mr. Smith went to the Silk Plant Forest to collect money that Mr. Smith said was owed him. Mr. Littlejohn also implicated Ms. Wilson and Ms. Moore as being present in the car with them. Again, Mr. Littlejohn implicated Mr. Smith as assaulting the clerk and said that Ms. Wilson and Ms. Moore remained in the car unaware of anything that took place.

Detectives followed up on this statement by re-interviewing Ms. Wilson who denied this account and said she was not at the shopping center nor was she with Mr. Littlejohn or Mr. Smith. Ms. Wilson was polygraphed about being involved and was found to be truthful in her statement that she was not at the Silk Plant Forest on that date. (The polygraph questions were examined during this administrative review.)

On March 4, 1997, Detective Williams again interviewed Mr. Littlejohn about his assertion that Ms. Moore and Ms. Wilson drove him and Mr. Smith to the Silk Plant Forest. During this interview, Mr. Littlejohn admitted being untruthful, and that only he and Mr. Smith went to the

Silk Plant Forest on December 9, 1995. Mr. Littlejohn maintained that the reason was for Mr. Smith to collect some money. Mr. Littlejohn stated he stood in the doorway while Mr. Smith approached the clerk. Mr. Littlejohn stated he realized Mr. Smith was going to rob the clerk and left the store. Mr. Littlejohn reported in his statement that he did not see Mr. Smith hit the clerk; Mr. Littlejohn was polygraphed on this statement and found to be truthful. The administrative investigators reviewed these questions.

POPO and GRIFFITH: On November 26, 1996, Detective Williams identified Mr. Felix Popo (black male, DOB 03-08-1976) of Charlotte and Mr. Charles Bernard Griffith (black male, 0-04-1968) of Concord as the two delivery personnel for the Silk Plant Forest store. Detective Williams made telephone contact with both men and they agreed to cooperate in the investigation; however, neither was apparently formally interviewed regarding the case or pursued further. (Investigator's Note: Shortly after this contact, Calvin Smith's name surfaced again, and his involvement was subsequently confirmed by several witnesses as well as his own admission, thereby making Smith the most likely suspect.)

PERSONS VIEWED AS WITNESSES

IVADENE HESTER: On January 31, 1997, Ms. Ivadine Hester met with Detective Williams regarding a photograph of Mr. Smith that she saw in the newspaper after his arrest. Ms. Hester had previously contacted CrimeStoppers on December 11, 1995 two days after the incident and reported being in the Silk Plant Forest store on December 8, 1995, the day before the crime. Ms. Hester reported observing 2 black males in the store acting suspiciously. She stated one subject was taller; approximately 6'2" and other approximately 5'11" and both appeared to be in their 20s. Ms. Hester believed Mr. Smith was one of the subjects she saw in the store on that date. Detective Williams showed Ms. Hester a photo line-up containing Mr. Smith and she pointed to his picture but said she was not positive in her identification.

Detective Williams contacted Ms. Hester again on August 20, 1997 and requested she view a photo line-up containing Eugene Littlejohn. This was done in response to Eugene Littlejohn's admission of accompanying Calvin Smith to the Silk Plant Forest. Ms. Hester viewed the line-up and identified Eugene Littlejohn as the second subject she saw in the store, although again she said she was not positive.

AUDREA WILSON: During the interview with Mr. Smith on January 24, 1997, he advised he went to the area of 3-F Timlic Avenue after the incident. Ms. Audrea Lauren Wilson resided at that address on December 9, 1995. Detective Williams located Ms. Wilson on February 4, 1997 at her then current residence, 337 Brent View Court, and spoke with her about Mr. Smith and the Silk Plant Forest. Ms. Wilson told Detective Williams that in June 1996, in front of several persons, whom she identified as Ms. Pamela Moore, Mr. Eugene Littlejohn and another male (later identified as Mr. Frederick Reyes), Mr. Smith said he was present during the crime but that he did not beat the woman.

Ms. Wilson gave a formal statement to Detective Williams and Sergeant Weavil the following day (February 5, 1997) at the Public Safety Center, during which she stated she had not been entirely truthful, and that Mr. Smith had admitted on at least twenty occasions to beating the

clerk. Ms. Wilson said she had not been truthful as she did not want to involve herself in the case. Ms. Wilson also admitted to being the CrimeStoppers caller (17726-01) in July 1996 and had witnessed Mr. Smith assault Ms. Williams by hitting her in the face or chest with a closed fist on at least four occasions. Two written statements and a taped statement were obtained from Ms. Wilson.

PAMELA MOORE: Based on Ms. Wilson's statement detectives located Ms. Pamela Moore and obtained a statement from her on March 10, 1997 while she was in custody in the Surry County Jail. Ms. Moore gave a statement consistent with Ms. Wilson in that she was present with Ms. Wilson, Mr. Littlejohn and Mr. Reyes when Mr. Smith confessed to beating a female store clerk; however, Ms. Moore did not know which store he was talking about until Mr. Smith's arrest.

GEORGE ESTRADA: On May 12, 1997, Detective Williams interviewed Mr. George Franklin Estrada (black male, DOB 07-18-1968). Mr. Estrada was in federal custody at the Forsyth County Jail and had contacted police stating he had information about the case. Mr. Estrada told Detective Williams about conversations he had had with Mr. Calvin Smith while in custody at the jail. Mr. Estrada said Mr. Smith was bragging about beating the charge against him while also admitting responsibility for the crime. Mr. Estrada's cooperation was unsolicited and he asked for no special treatment for the information. Mr. Estrada submitted to a polygraph examination but was found to be untruthful in his statements about Mr. Smith's alleged admission to the crime; Mr. Estrada then stated he thought he could beat the polygraph. Administrative investigators reviewed the polygraph questions.

AARON MARKER: Detectives determined that Mr. Aaron Marker, the victim's husband, was at work at T.J.'s Deli on Robinhood Road at the time the incident took place. Detective Williams spoke with Mr. Marker on several occasions, and he had no information about a possible suspect or motive for the assault. After the birth of his son, Barron, Mr. Marker moved his wife and child back to Ohio, although Ms. Marker's care was coordinated primarily by her parents, Bud and Edna Hoisington.

During the September 1997 trip to Akron, Ohio, Detectives Williams and Maines met with Mr. Marker and his attorney, William Bartel. Mr. Marker had previously never been formally interviewed and had never submitted to a polygraph test regarding any possible involvement in the case. Mr. Marker was questioned as to the information on CrimeStoppers Report 18554-01 and his alleged association with the suspect, Mr. Smith. Mr. Marker denied knowing Mr. Smith by name although he did say Mr. Smith looked like someone he once worked with at T.J.'s Deli. Mr. Marker denied owing Mr. Smith or anyone else money, although he later acknowledged that he might owe money to people. Mr. Marker was asked to submit to a polygraph regarding his alleged association with Mr. Smith, but he refused on the advice of counsel.

INTERVIEWS WITH JILL MARKER

On April 29, 1996, Ms. Marker delivered a baby boy, Barron Marker, and on May 1, 1996, she was transferred from Forsyth Medical Center to Akron Manor Care, a skilled nursing facility in Akron, Ohio. Detective Williams contacted the staff at Akron Manor Care, advised them of the

assault case and provided contact information. Detective Williams also contacted the Akron Police Department and briefed Detective Steve Griger on Ms. Marker's location and the case. Detective Griger was sent a copy of the preliminary report as well as a photograph of Mr. Lamoureux, since he was still considered a suspect.

OCTOBER 31, 1996: On October 31, 1996, Detectives Williams and Barker traveled to Grace Memorial Hospital in Cleveland, Ohio to interview the victim, Ms. Marker. Detective Williams had been advised by Dr. Rehasia, her attending physician, that her condition had improved enough that she could answer questions with accuracy, she could see and she could write responses. Dr. Rehasia advised she was still unable to speak and her answers consisted of nodding her head in the affirmative or negative.

The interview was video-taped, a procedure not commonly used by detectives at the time, because Ms. Marker's physical condition would not allow her to verbally respond. Present for the interview were Detectives Williams and Barker and medical personnel Ms. Kimberly Diemert and Ms. Tammy Pipoly, who attended to Ms. Marker. The first portion of the interview consisted of Detective Williams asking Ms. Marker a set of prepared "yes-no" questions (five pages) Ms. Marker could answer with head movement. Detective Williams noted Ms. Marker's responses to these questions on the questionnaire. These questions and responses were included in a supplement report dated November 4, 1996. This portion of the interview started at 11:53 (on the videotape counter). At 11:57 (on the videotape counter) the interview was halted by Detective Williams to handle a call from Ms. Marker's attorney, and it resumed at 12:02 (on the videotape counter) and finished at 12:13.

During the first portion of the interview, Detective Williams determined through Ms. Marker's responses that the suspect was a black male, approximately 30 years old, medium to heavy build, less than 6 feet tall with some facial hair. Ms. Marker also indicated the suspect may have been a delivery person. Her response to the question was vague and the answer recorded may have been based on the interpretations of the detectives or medical assistants.

At the conclusion of that portion of the questioning (12:13 on the videotape counter) the tape continued to record while Detective Williams asked questions that were not on the questionnaire and presented to Ms. Marker several photo line-ups. There is no documentation of the line-ups shown to Ms. Marker during this portion of the interview. This administrative review identified five known line-ups created at this point in the investigation:

<u>Suspect</u>	<u>Date Created</u>
Eric Carraway, B/M	December 12, 1995
Kenneth Lamoureux, W/M	December 12, 1995
Shane Fletcher, W/M	May 23, 1996
Larry Means, B/M	October 2, 1996
Kalvin Smith, B/M	October 2, 1996

Prior to presenting the line-ups, Detective Williams read the standard statements regarding line-ups to Ms. Marker. The medical assistants present advised Detective Williams that pictures

needed to be shown to her right side and close up. Detective Williams instead displayed the lineups to Ms. Marker's left. Three of the line-ups were of black males. Ms. Marker was also shown several individual photos after detectives separated the six images on one page by cutting them apart. When showing these line-ups, Detective Williams asked Ms. Marker if she saw the person who hurt her. Ms. Marker did not identify a suspect from those photos.

Detective Williams also showed Ms. Marker a line-up of white males which appeared to be the Lamoureux line-up. While doing so, Detective Williams asked Ms. Marker if she saw anyone who had been in her store before. At one point she appeared to point or indicate (through the medical assistants' translation) "3." Kenneth Lamoureux's photo was in the three position; however, upon further showing, Ms. Marker then appeared to point somewhere to the middle of the line-up and not the three corner. Ms. Marker's attention to the photos and her responses are open to interpretation. This portion of the interview ended at 12:32 (on the videotape counter).

Detective Williams submitted a supplement report dated November 4, 1996 about his trip to Ohio. Detective Williams' report contained the prepared questions he asked Ms. Marker during the questionnaire interview, but Detective Williams did not document the line-ups shown to Ms. Marker, the suspects contained in those line-ups, or identification of any photographs.

On May 15, 2007, Sergeant Barker reviewed the October 31, 1996 videotaped interview. Sergeant Barker stated the video was consistent with his recollection of the interview and did not appear edited or abbreviated. Sergeant Barker confirmed the break in the video was due to an interruption by Ms. Marker's attorney and their discussion with him, which lasted only a few minutes. Sergeant Barker stated Ms. Marker was able to understand their questions.

Sergeant Barker could not advise who the subjects were in the line-ups presented by Detective Williams, and he thought it was unusual for Detective Williams to not document his actions, as Detective Williams was normally very thorough. Sergeant Barker said he did not believe Ms. Marker conclusively identified anyone from the line-ups.

Detective Williams' five pages of questions and Ms. Marker's responses were placed in the case file. (As noted above, in several instances medical personnel assisted in interpreting Ms. Marker's responses.) The videotape was not transcribed. The original videotape and a copy were stored in Evidence Management, with a notation on the property report that only the copy be released for viewing. Both the original and copy in possession of the Winston-Salem Police Department are consistent in content and appear intact, unaltered or otherwise edited. Detective Williams requested destruction of the video tape to be set for February 1, 2026, at the conclusion of Mr. Calvin Smith's sentence, in compliance with policy.

SEPTEMBER 4, 1997: On September 4, 1997, Detectives Williams and Maines met with Ms. Marker at the Pebble Creek Nursing Home in Akron, Ohio. Ms. Marker's condition had improved since the last meeting; however, she still could only communicate by nodding in the affirmative or negative and could write some words on a tablet. Detective Williams questioned her about the attack, which she indicated she remembered. She indicated the suspect was black and there was a second black subject present as well. This interview was not recorded.

By the time of this interview, a CrimeStoppers report had been received alleging that Mr. Smith knew Ms. Marker's husband, Aaron Marker, and that Mr. Marker owed Mr. Smith money for drugs. Ms. Marker was asked if her husband knew her attacker, to which she wrote "I don't know," and if her husband owed her attacker any money, to which she wrote "I don't know; I'm not sure."

Ms. Marker was then shown two photo line-ups, one containing Mr. Smith, the other containing Mr. Littlejohn, each made up of six single 8"x10" photos, created on August 29, 1997. Ms. Marker had not previously viewed this version of the Smith line-up. The Smith line-up used a more recent photograph of Calvin Smith and different filler photographs. The Littlejohn line-up used the same photograph as shown to Ibadene Hester on August 20, 1997, but contained several new filler photographs as well. The first line-up of six photos with Mr. Smith in the number five position (bottom row center) was placed on a table. Ms. Marker viewed the line-up for about 20 seconds and then pointed at Mr. Smith. Detective Williams wrote that Ms. Marker had a terrified look on her face when she saw his (Smith's) picture. Ms. Marker was given a pen and was asked to mark the photo of Mr. Smith; however, she instead marked the table top below the photo. This line-up was then photographed in position. This administrative review's investigators were unable to locate the photograph showing the mark on the table by Mr. Smith's photograph.

A line-up containing Mr. Littlejohn was then placed on the table with Mr. Littlejohn in the number two (top row center) position. Ms. Marker viewed this line-up as well but did not identify anyone from it.

During his May 14, 2007, interview, Mr. Maines' recollection of this trip was consistent with his September 16, 1997, supplement report documenting the trip. He recalled that Ms. Marker identified Calvin Smith from a line-up of 8x10 photographs, and she marked on the photo of Calvin Smith with a marker signifying her identification. Mr. Maines further recalled a picture was taken of the photos by Detective Williams as they lay on a table, but he could not advise what was done with that photo.¹

CRIMINAL PROCEEDINGS

On November 18, 1997, according to a discovery notice signed by Assistant District Attorney M.J. Behan, the video of the October 31, 1996 interview was shown to Mr. William Speaks, Mr. Smith's attorney, and Dr. Eugene Benjamin. According to the notice, the tape was played and a portion replayed at the request of Dr. Benjamin. The copy of the tape was maintained at the District Attorney's Office for further review if needed. Assistant District Attorney (ADA) Behan told administrative review investigators that Mr. Speaks and Dr. Benjamin saw the entire videotape.

A suppression hearing regarding Mr. Smith's written statement to Detective Williams and Sergeant Weavil was held on November 27, 1997. At issue was whether Mr. Smith's first

¹ It was later determined that these photos were turned over to the District Attorney's Office in 1997 in preparation for trial. They were discovered in a heat-sealed envelope in the District Attorney's files in July 2007 after the administrative review had been completed.

statement on January 24, 1997 was obtained while in “custody,” thereby requiring administration of his Miranda Rights.

Both Detective Williams and Sergeant Weavil testified that Mr. Smith was advised multiple times prior to giving his first statement that he was not under arrest, he was free to leave, he was not subject to a custodial interrogation and there were multiple opportunities for him to leave had he so desired. After implicating himself in that first statement, Mr. Smith was arrested by Detective Williams in the interview room, and he was advised of his Miranda Rights. Mr. Smith continued to be cooperative and ultimately gave a second statement (or an addition to his first statement after waiving Miranda Rights). Mr. Smith later invoked his rights at the time of the polygraph examination.

Judge Peter McHugh ruled in favor of the State, finding that Mr. Smith’s first statement was obtained during a non-custodial interview and was therefore not subject to Miranda and was admissible at trial.

Mr. Smith’s jury trial began on December 1, 1997. Ms. Marker testified and identified Mr. Smith as her assailant. Mr. Smith was convicted of Armed Robbery and Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury.

REVIEW FINDINGS

Each investigation poses its own challenges. Here, the lack of physical evidence linking the suspect to the victim and crime scene, the inability of the victim to fully assist or provide any investigation information for almost a year, and the lack of witnesses posed challenges to detectives. This section reviews criminal investigative actions for compliance with policy and reasonableness.

- 1. Initial Investigation:** The crime scene processing was methodical and complied with procedures in place at the time. One aspect of the case evidence in question however was the surveillance video seized from the Toys R Us. This video was mentioned in the case report as being viewed but having “no evidentiary value” and it is not stored among the property in evidence management

Sergeant Barker, during his May 15, 2007 interview advised he remembered viewing the tape, but it was of such poor quality that facial recognition of individuals was not possible. Sergeant Barker said he did not know what was done with the tape and presumed it was passed on to Detective Williams and kept in the case file.

The case assignment, first to Detective Barker at the scene and subsequently to Detective Williams, was done in accordance with the case assignment practices of the Criminal Investigations Division (CID). This was reasonable due to the potential for a robbery suspect to be involved in multiple other robbery crimes which may be under investigation by the Robbery Section or which could occur in the future.

2. **Suspect Investigation Issues:** Detective Williams began pursuing leads he received regarding Lamoureux, Fuller and Smith.

A. **Fuller and the Burgundy Mustang:** Detective Williams received information from witness Tommy Clewis about a Ford Mustang leaving the crime scene and Crimestoppers #17178-01, dated December 14, 1995, which stated Michael Fuller owning a burgundy Ford Mustang with West Virginia plates similar to that described by Mr. Clewis. Detective Williams first contacted the owner (who was not Fuller) of the Mustang in January of 1996. The vehicle owner said he would consent to processing the car for evidence, but Detective Williams did not process the car until December 1996. Mr. Fuller was not located or arrested (on outstanding warrants) until December 1996, at which time he refused to be interviewed about the case.

This significant delay in processing the Mustang for evidence did not comply with routine practice at the time. Were any evidence in the vehicle, the delay in processing would likely have made the evidence inadmissible.

B. **Lamoureux:** Early in the investigation, Detective Williams apparently considered Lamoureux, a white male, a strong suspect. Kenneth and Ellen Lamoureux's domestic situation had deteriorated significantly during 1995. Witnesses at Today's Child reported Ms. Lamoureux had been observed on several occasions with blackened eyes and injuries consistent with being struck in the head. Considering Mr. Lamoureux's practice of assaulting Ms. Lamoureux in the head, it was logical for Detective Williams to compare those acts with the injuries Ms. Marker received.

Ms. McCollum's report of her conversations with Ms. Marker and Mr. Lamoureux when he picked up his children also established a connection between Mr. Lamoureux and Ms. Marker. It is likely they knew each other at least casually; Ms. Marker worked at Today's Child daycare during early 1995 and would have probably come in contact with Mr. Lamoureux when he picked up his children. Mr. Lamoureux admitted going to the Silk Plant Forest on one occasion with his daughter, and the female clerk (presumably Ms. Marker, though he never identified her specifically) recognized and addressed his daughter by name.

Mr. Lamoureux's alibi for December 9 was that he was at home assembling a stereo stand. A sales receipt confirmed his purchase on that day. However, Ms. Goode identified Mr. Lamoureux in a photo line-up as the man she saw in the store at 7:30 p.m.

Three other witnesses – Ms. Chisholm, Ms. Barker and Mr. Mitchell – told police they saw a white male in the area but could not identify Mr. Lamoureux in a line-up. Mr. Mitchell encountered Mr. Lamoureux face to face after the line-up but did not identify him at that point, either. Although Ms. Chisholm reported seeing an older white male trying to park a white van, she could not identify the driver or the store, if any, the driver entered. Detective Williams did not document any attempt to investigate whether Mr. Lamoureux operated or had access to a white van through his work.

During the tape-recorded portion of the December 18, 1995 interview with detectives,² Mr. Lamoureux repeatedly denied that he was at the store on December 9.

Mr. Lamoureux agreed to interviews and searches of his car and residence, provided blood samples, and submitted to a polygraph examination. No physical evidence was ever located to connect Mr. Lamoureux to this case. He repeatedly denied involvement; his polygraph was inconclusive. By April of 1996, when Mr. Lamoureux moved out of the area, no other evidence emerged to prove his involvement.

On October 31, 1996 during a video-taped interview, Ms. Marker identified her attacker as a black male, thereby ruling out Mr. Lamoureux.

C. Popo and Griffin: During the October 13, 1996 interview, Ms. Marker indicated that her attacker may have been a delivery person. Detective Williams identified the two subjects, Felix Popo and Charles Griffin, who made deliveries to the Silk Plant Forest. Although both men indicated they would cooperate with the investigation, Detective Williams documented no further interviews, polygraphs, or in-depth investigation of these individuals. This treatment differed from that of other subjects named in this case.

D. Shane Eugene Fletcher: Although Mr. Fletcher confessed to the crime and appeared to have some details about the case, the majority of the information he provided had been reported in the media. Also, Mr. Fletcher acknowledged following media accounts of the case. Mr. Fletcher described the shopping center and store location, and he claimed he followed Ms. Marker to her apartment. The location he described was nowhere near the Markers' residence. Mr. Fletcher stated he committed the assault at the counter and gave detectives the weapon he said he used. Physical evidence ruled out an attack at the counter, and no trace blood evidence was detected on the weapon he said he used.

No reports mention that Mr. Fletcher and Mr. Lamoureux were both confined to the Forsyth Medical Center Psychiatric Unit from December 3 through December 8, 1995. Whether the two spoke about Ms. Marker – or spoke at all – is unknown. However, Mr. Fletcher remained on the locked psychiatric ward when Ms. Marker was attacked, according to medical records. Although he claimed he escaped by prying open a rear door to the unit, Detective Williams found no damage or signs of tampering with the door Mr. Fletcher claimed he used.

When confronted with these facts and the physical evidence, Mr. Fletcher recanted his statement and denied involvement in the crime. Shane Fletcher was further eliminated from consideration when Ms. Marker identified her attacker as a black male on October 31, 1996.

E. Kalvin Smith: Ms. Wilson's CrimeStoppers call in June 1996 (six months after the crime) was the first mention of Mr. Smith's name in connection with this crime. Ms.

² The first portion of that interview was, for some reason, not recorded. It is not known if there was an equipment malfunction or a deliberate decision on the part of the interviewer. Practice at the time often involved detectives engaging in un-recorded interviews with a suspect or witness, followed by the formal statement, which would either be audio-taped or handwritten.

Wilson said Mr. Smith told her numerous times that he was present during the crime. Mr. Smith was questioned by Detective Williams in July 1996 and he denied involvement in the attack.

Ms. Williams contacted police in January 1997 to report that Mr. Smith had admitted his involvement in the crime to her. Both Ms. Williams and Ms. Wilson contacted police independently, with the same information, months apart, and they apparently did not know each other.

Mr. Smith submitted to a polygraph after his July 22, 1996 arrest. Detective Williams incorrectly documented that Detective L.M. Maines gave the polygraph and that Mr. Smith passed with truthful results. During the course of this review, investigators located a polygraph report dated October 9, 1996. That report indicated (and Mr. Maines and Mr. Patterson confirmed) that Detective R.C. Patterson administered the polygraph to Mr. Smith on July 26, 1996, though the exact date could not be confirmed. The polygraph results were inconclusive to the questions of him robbing, being present or participating in the robbery of the Silk Plant Forest. Sergeant M.N. Barker, also a polygraph operator, said that based upon the polygraph number, 072696ST0800, that this examination would have been administered on July 26, 1996 at 0800 hours. Sergeant Barker said the polygraph number is generated on the date of the examination and would not be generated at any other time.

During an interview on January 24, 1997 with Detective Williams and Sergeant Weavil, Mr. Smith said he was present when an unknown assailant he knew as "JB" or "James Burrows" assaulted Ms. Marker. Mr. Smith was arrested. While Mr. Smith was in custody, he received Miranda warnings and gave a statement. Defense attorneys later moved unsuccessfully to suppress his statements. Mr. Smith was offered a second polygraph examination with Detective Maines, which he refused.

- 3. First Interview with Ms. Marker:** Detective Williams violated policy when he incompletely documented the October 31, 1996 Marker interview. Detective Williams showed Ms. Marker three line-ups containing black males (one believed to be the Smith line-up) and asked if she could identify her assailant; she did not identify anyone. Detective Williams also presented a line-up of white males (believed to be the Lamoureux line-up). This time she was asked if she saw anyone who had been in her store before. It appeared that she pointed to a photograph on the page, but because of the camera's position, only the backs of the line-ups are filmed; the film does not record Ms. Marker's identification in a useful fashion. Some in the room concluded Ms. Marker pointed to photo #3, which was Lamoureux. Detective Williams documented none of this.

This videotape was made available to the defense during discovery. ADA Mary Jean Behan confirmed during this review that the entire video was shown to the defendant's attorney, William M. Speaks, Jr.

Ms. Marker did not sign the selected photograph, and Detective Williams did not note her selection (if any) on the line-up form as required by Department policy. Detective Barker did not submit a supplement recording his observations during this interview, either. It was common practice for one detective to submit a supplement report documenting the actions/observations of both himself and the assisting detective. This was done to reduce duplication of paperwork, particularly if they were party to the same observations or information. Hence, the only record of Ms. Marker's review of line-ups is the video tape showing the backs of the pages of photographs, and this record is useless from an evidentiary standpoint. Additionally, although medical personnel instructed Detective Williams to position the photographs to Ms. Marker's right, so that she could see the pictures, he repeatedly positioned the photographs to her left.

During this review, Lieutenant R.E. Best and Sergeant E.P. Reese viewed the two tapes filed in the District Attorney's Office and the original and one copy, currently stored in the Evidence Management Section of the Winston-Salem Police Department. All four tapes contain the same information. The reviewers did not locate any "abbreviated," altered or edited copies of the tape. Sergeant M.N. Barker reviewed the videotape on May 15, 2007 and stated the video was accurate as to his recollection of the interview.

Detective Williams marked the WSPD tapes (the original and the copy) for destruction in compliance with Department policy for February 1, 2026, at the end of Mr. Smith's sentence.

4. **Witnesses:** During the custodial interview, Mr. Smith told investigators that after the crime he went back to the area of 3-F Skyline Village. Subsequently, Detective Williams located witnesses Ms. Wilson, Mr. Littlejohn and Ms. Moore, who all said that Mr. Smith admitted to them that he assaulted the victim at the store. Detective Williams conducted multiple interviews of Ms. Wilson and Mr. Littlejohn to determine their knowledge and level of involvement in the case. Also, Detective Williams obtained the statement of Mr. Reyes, the fourth person present in Ms. Wilson's apartment on one occasion when the crime was discussed. In this statement, obtained on November 26, 1997, the day before the trial commenced, Mr. Reyes said Mr. Smith denied involvement, but Ms. Wilson and others insisted that he (Smith) said he committed the attack.

During these interviews, Mr. Littlejohn admitted being at the store with Mr. Smith. Mr. Smith's July 1996 statement and Mr. Littlejohn's March 4, 1997 statement are very similar. Both men claimed to be present inside of the store's front door. Both men also described how another person ("JB" in Mr. Smith's statement; Mr. Smith in Littlejohn's statement) was the attacker. Each man stated that he left before the attacker finished assaulting Ms. Marker.

An anonymous CrimeStoppers tip received on January 30, 1997 reported that Mr. Smith knew Ms. Marker's husband and that Mr. Marker owed Mr. Smith money for drugs. Mr. Smith also had two prior arrests involving the sale of marijuana to white males. Mr. Marker denied knowing Mr. Smith (although he said Mr. Smith resembled someone he may have worked with at T.J's Deli). Mr. Smith's arrest record indicated he had worked

in the food service business over several years at several restaurants, but Detective Williams found no evidence that Mr. Smith had worked at T.J.'s Deli.

5. **Second Interview with Marker:** On September 4, 1997, Detectives Williams and Maines conducted a second interview with Ms. Marker; this interview was not video or audio-taped. Ms. Marker viewed two specially-constructed line-ups of six 8x10 photos, one containing Mr. Smith, the other Mr. Littlejohn. Ms. Marker identified Mr. Smith from his photo line-up as the subject who assaulted her but she failed to identify Mr. Littlejohn in the second line-up. The Smith line-up contained different filler photos than the previous line-up she viewed on October 31, 1996. This interview was documented in supplements by both Detective Williams and Detective Maines.

CONCLUSION

Based upon the review of this case, we conclude that Detective Williams did not deliberately ignore evidence or avenues of investigation. However, he failed to document several aspects of this case according to department policy.

Of concern is who administered the polygraph given to Mr. Smith in July 1996 and the results of that test. Detective Williams attributed the test with a truthful result to Detective Maines, but the polygraph report showed Detective Patterson administered the test with inconclusive results. Further, the date of the polygraph according to Detective Patterson's polygraph report was July 26, 1996, although Calvin Smith was interviewed on July 22, 1996 according to Detective Williams. In May 2007, Sergeant Patterson (retired) acknowledged (and Detective Maines confirmed) administering the July 1996 polygraph although he admitted he could not account for the date discrepancy.

The inaccuracy of the detectives' reports in these instances does not appear deliberate but may be a reflection of the practice of delayed completion of departmental reports. Detective Williams wrote of his July 22, 1996 contact with Mr. Smith in a November 4, 1996 supplement. Detective Patterson's report of the July 26, 1996 polygraph was dated October 9, 1996.

Detective Williams also failed to document in his written supplement all of his actions during the October 31, 1996 interview with Ms. Marker. This prohibits identification of persons included in the line-ups Ms. Marker was shown on that date. Detective Williams' only report of that interview was his November 4, 1996 supplement.

Detective Williams' actions and the complete interview were recorded on videotape and provided to the District Attorney's Office pursuant to discovery. The videotape does not include who is in the line-up, either. This tape was made available to the defense during discovery and was apparently not questioned by the defense.

The challenge of an improperly obtained defendant statement was settled in favor of the State at suppression. There is no evidence that any statement was obtained through coercive means. All statements in this case were obtained during voluntary, non-custodial interviews, with the exception of Mr. Smith's second July 22, 1996 statement, and those of Mr. Fletcher, Ms. Moore

and Mr. Estrada, which were obtained while in custody on charges unrelated to this investigation.

Professor James Coleman of the Duke Actual Innocence Project has said in phone and email communications with City officials and to the press that he had affidavits from witnesses who testified against Mr. Smith at trial. According to Mr. Coleman, in these affidavits the witnesses recant their testimony and assert that their testimony and/or statements were coerced. After numerous requests from both police officials and District Attorney Tom Keith, Mr. Coleman finally gave the affidavits to Mr. Keith on July 3, 2007. Mr. Keith has indicated that he will not share copies of the affidavits with the Police Department until he develops a protocol for interviewing these witnesses. Consequently, this review was not able to evaluate information in the witnesses' affidavits, and the review's conclusions are formed without benefit of the contents of those affidavits.

The investigation has found no evidence that Detective Williams or any other member of the Winston-Salem Police Department engaged in any willful or deliberate attempt to convict Calvin Smith while ignoring other potential suspects.