

# **SILK PLANT FOREST**

A comprehensive review of the case, investigation, conviction, and issues.

October, 2010

**Winston-Salem Police Department**

Scott A. Cunningham, Ph.D.  
Chief of Police

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Public Safety Attorney Lori Sykes

Captain David Clayton

Captain Alonzo Thompson

Lieutenant David Kiger

## **Introduction: Silk Plant Forest Internal Review**

**T**his comprehensive review of the Silk Plant Forest Case was begun as a follow up to the Silk Plant Forest Citizens Review Committee (SPFCRC) and its report. As part of its report, the SPFCRC offered recommendations to the Winston-Salem Police Department (WSPD) via the Winston-Salem City Council. The WSPD decided to do more than just respond to the SPFCRC's recommendations. It decided to completely review the crime, the investigation, and all matters related to what is now known as the Silk Plant Forest case. The depth and breadth of the review was approved by City Manager, Mr. Lee Garrity.

This document intends to provide an in-depth review of the case, the investigation, and the issues, as well as directly responding to the recommendations of the SPFCRC. It is intended to provide new and knowledgeable readers with sufficient and accurate information to understand the facts and issues of the case.

This document intends to provide information about a horrific crime, the investigation, and subsequent court proceedings. Readers are specifically cautioned against attempting to read into the report or read between the lines of the reports, or interpreting any part of the report beyond what it says. The report says and means what it says and nothing more.

The Silk Plant Forest case has, as its genesis, the actual crimes that were committed.

On December 9, 1995, Ms. Jill Marker was working in the Silk Plant Forest store at 3202 Silas Creek Parkway in Winston-Salem. The business, now closed, was located in the Silas Creek Crossing Shopping Center at Silas Creek Parkway and Hanes Mall Boulevard. The store was between the still-operating Toy-R-Us and the former Drug Emporium (now A.C. Moore).

Ms. Marker was working alone in the Silk Plant Forest store from approximately 6:30 p.m. until closing, scheduled for 9:00 p.m. At approximately 8:50 p.m., two customers entered the store, and after hearing someone moaning, located Ms. Marker lying in a pool of blood near the rear of the store. After 9-1-1 was called, police and emergency medical personnel responded to assist Ms. Marker and begin an investigation. Ms. Marker was rushed into surgery at nearby Forsyth Medical Center. Her injuries were devastating, and remain so to this day. She also was pregnant at the time of her attack.

The investigation was transferred from the Homicide Section to the recently-created Robbery Section on December 11, 1995 due to the fact that it appeared Ms. Marker would survive the attack. Six Homicide Section detectives were working 23 homicides in 1995 and finishing the investigations of 44 homicides

from 1994. Further, the preliminary investigation indicated that a robbery had occurred at the Silk Plant Forest. According to Uniform Crime Reporting Guidelines, the most serious offense is identified as the primary offense. Robbery is considered a more serious offense than an assault, so it was appropriate and consistent at that time for the Robbery Section to assume the investigation. Detective D.R. Williams was assigned as the lead investigator.

As will be detailed herein, an extensive investigation of the crime was conducted by the WSPD. Evidence was collected and analyzed; potential witnesses were identified and interviewed; possible suspects were revealed, investigated, and interviewed; an arrest was made; and a subject was convicted of the crimes. Subsequently, several legal challenges and actions were filed and heard, all of which were dismissed with the conviction sustained.

Questions and concerns arose in the public's mind and several reviews and/or inquiries have taken place. These concerns included questions regarding the guilt of the convicted, how the police investigation was conducted, and how the entire criminal justice system performed. Today, questions still linger with some, regarding the entire case and the overall question of justice.

This report, based on a year-long review of the entire case, attempts to document the facts, compile a comprehensive analysis of the case, and provide logic and fact-based findings and recommendations. To examine the case and create this report, the Silk Plant Forest Internal Review Committee (hereinafter, the "Committee") of the WSPD undertook many actions. These included thorough reviews of investigative files, external and internal case reviews, the various court filings, hearings, and findings, and additional and new investigative activities were conducted.

To provide the most comprehensive review of the Silk Plant Forest case and document the actions and findings of the Committee, this report covers the full spectrum of the Silk Plant Forest case. Chapter 1 details

the crime and the complete investigation. Much of the investigation is presented in chronological order which increases the reader's understanding of how the case actually progressed. Chapter 2 describes the many legal issues, including all court hearings (to date) regarding this matter. The various reviews of the case, conducted by different entities are detailed in Chapter 3. Chapter 4 considers and discusses the many issues and concerns that have been raised regarding the Silk Plant Forest case. Chapter 5 offers recommendations from the SPFCRC and Chapter 6 reviews the activities of the Committee which authored this report. Chapter 7 summarizes and concludes the analysis performed by the Committee.

This document is the product of a comprehensive high-level review of the Silk Plant Forest case by members of the Winston-Salem Police Department. The members of this Committee have no direct involvement in the Silk Plant Forest case. These personnel are:

**Chief Scott A. Cunningham**, Chief of Police

**Ms. Lori Sykes**, Public Safety Attorney

**Captain David Clayton**, Criminal Investigations Division Commander

**Captain Alonzo Thompson**, Professional Standards Division Commander

**Lieutenant David Kiger**, Criminal Investigations Division

## 1: Crime and Investigation

In December, 1995, the Silk Plant Forest store was located in the Silas Creek Crossing shopping center at 3200 Silas Creek Parkway, between Toys-R-Us and Drug Emporium. Toys-R-Us is still in operation; however, Drug Emporium has ceased operations.

On December 9, 1995, Ms. Jill Marker, and fellow business employee, Ms. Stacy Spainhour, were working together. The two worked together for the majority of the day, until 6:30 p.m. when Ms. Spainhour's shift ended, leaving Ms. Marker alone in the business.

The best that can be determined, two customers, Ms. Nancy Baxter and Ms. Sandra Peterson, entered the business at approximately 8:50 p.m. Upon entry, they found no one at the counter but heard someone moaning at the rear of the business.

As Ms. Baxter and Ms. Peterson walked to the rear of the business, they found Ms. Marker lying in a pool of blood. Ms. Baxter began administering first aid to Ms. Marker and Ms. Peterson ran to Drug Emporium to call 9-1-1. Prior to police and medical personnel arriving, other individuals had entered the store and assisted in rendering aid to Ms. Marker.

Senior Police Officer (SPO) M.S. Poe was working off-duty at the Toys-R-Us when the call for "Unknown Trouble" was dispatched at the Silk Plant Forest. SPO Poe responded to the Silk Plant Forest and found Ms. Marker, with a severe head injury, lying on the floor at the rear of the business. When SPO Poe asked Ms. Marker if she had been shot, she replied that she had not. When SPO Poe asked if she had been hit, she replied, "Yes." SPO Poe obtained no further investigative information from Ms. Marker.

SPO Poe spoke with Mr. Brian McKnight, Wackenhut Protective Services personnel, who indicated that he had been patrolling behind the shopping center and saw no one behind the stores. SPO Poe scanned the Silk Plant Forest for a weapon but found none. SPO Poe also discovered that the cash register drawer was standing open; the drawer contained only loose change.

As additional police personnel arrived, the scene was secured and efforts were made to identify witnesses. Statements were obtained from those who had entered the store prior to police arrival.

Officer A.M. Miles arrived on the scene and found Ms. Sandra Peterson, Ms. Ashley Weaver and Ms. Myra Dixon standing at the front of the store, which had been secured by SPO J.N. Grismer and Officer T.E. Cook. Officer Miles went to Ms. Marker's location, where she observed Mr. Julian Hattanag and Ms. Nancy Baxter rendering aid to Ms. Marker. According to Officer Miles' report, she heard Ms. Marker state that she had been alone in the store, she had not been shot, but she had been cut and it had happened very quickly. Ms. Marker also stated that she was pregnant. Ms. Marker sustained severe blunt force trauma to the head. The severity of the trauma was such that Ms. Marker was placed in a medically-induced coma to prevent further injury. Emergency medical personnel arrived on the scene and transported Ms. Marker to Forsyth Medical Center.

As the preliminary investigation continued at the store, Mr. Robert Miller approached officers about a possible suspect vehicle. Mr. Miller indicated that he overheard a white male tell another officer that, as a Mustang was driven to the front of the business, a white male exited the Silk Plant Forest, and after the white male got into the Mustang, it was driven away from the area.

Attempts were made to locate Ms. Marker's husband, Mr. Aaron Marker. Officer T.E. Cook found Mr. Marker at his place of employment, T.J.'s Deli on Robinhood Road, and transported him to Forsyth Medical Center where Ms. Marker was being treated.

Due to preliminary medical opinions that Ms. Marker might not survive the attack, Sergeant T.W. Rogers of the Winston-Salem Police Department's Criminal Investigations Division (CID) was contacted. As a result, detectives responded to the Silk Plant Forest to begin an on-scene investigation. The case was originally assigned to Detective M.N. Barker. During the early stages of the follow-up investigation by CID, witnesses were interviewed in an attempt to locate any other witnesses to the crime.

Detective Barker ensured that the crime scene was thoroughly processed and he documented his observations in a supplement report dated December 28, 1995. In an attempt to locate any physical evidence that the perpetrator may have left behind, three Crime Scene Technicians and one Crime Scene Technician Supervisor processed the scene using the most advanced processing techniques available at that time. The crime scene was photographed and videotaped and a detailed crime scene sketch was completed.

The Silk Plant Forest had two side-by-side entrance doors at the front of the business, one of which remained locked at all times, and customers used the other door for access. There was an interior door leading to the storage area and a restroom. There was an exterior door at the rear entrance for use by employees only, and Detective Barker documented that this door was "secured by a bolt going across from the inside." The fact that this door was secured indicated that the perpetrator entered and exited through the front door.

According to Detective Barker's report, there was a lot of blood on the floor in front of the rear interior door. The door, which had some blood on it, was shut. In this area, three ficus trees in baskets were overturned and covered in blood, most likely blood from Ms. Marker. A cardboard box was located to the left of the rear interior door and contained "bloody stains most of which appeared to be smears from blood-soaked fingers." Ms. Marker's wire-rimmed glasses were found atop one of the overturned baskets.

Citizens and numerous emergency workers tended to Ms. Marker's devastating, life-threatening injuries, and the pool of blood on the floor contained various shoeprints. Detective Barker requested that the Crime Scene Technicians photograph and measure each discernable shoeprint. For "elimination purposes" Detective Barker requested that photographs be taken of the bottoms of the shoes worn by the six emergency medical technicians and the two police officers who tended to Ms. Marker.

Blood was located on both of the two tiled aisles in the Silk Plant Forest. Ms. Marker was taken out of the store on a stretcher. Blood was located on the aisle where the stretcher traveled; these drops of blood mostly likely dripped from Ms. Marker's severe head injury. On this same aisle in a different area, numerous drops of blood were located. These either came from Ms. Marker while she was on the stretcher or when she was being assaulted. A drop of blood was also found on the other aisle, consistent with having fallen straight down. This drop of blood may have come from the weapon used to beat Ms. Marker or from the perpetrator. Clearly, this drop of blood was not consistent with other drops of blood in the crime scene.

There were two bloody fingerprint smears on the front metal door frame just left of the dead-bolt lock on the inside of the door. This area was processed and samples were taken.

In addition to processing the scene for blood evidence, hair was located in the pool of blood; this evidence also was photographed and seized.

The counter inside the Silk Plant Forest was horseshoe-shaped and the cash register was located in the middle of the counter. The cash register drawer was open. Loose change was still in the drawer; however, the paper currency was missing. There were four one-hundred dollar bills located at the bottom of the cash register under the cash drawer. This entire area was thoroughly processed for latent fingerprints; however, only smudges were located and no discernable fingerprints were obtained.

One of the very last steps taken by the Crime Scene Technicians was to darken the room and use Luminol in an attempt to locate drops of blood hidden from the naked eye. This attempt did not yield any further blood evidence.

Despite an extensive crime scene examination and processing, the Crime Scene Technicians were unable to link any physical evidence at the scene to any person other than Ms. Marker.

On December 10, 1995, Detective Barker went to Toys-R-Us and met with Ms. Meredith Ritchie, the front-end manager. Ms. Ritchie indicated that on the night of Ms. Marker's attack, there were approximately 50 to 70 employees working in the store and none of them left at or near the time of the incident. According to Ms. Ritchie, no one had come forward with information about the crime. Detective Barker obtained a videotape from Toys-R-Us for the time period of 4:00 p.m. to 10:00 p.m. on December 9, 1995. The videotape was reviewed by Detectives M.N. Barker and D.R. Williams. According to Detective Barker's report, the videotape was not found to have any evidentiary value. The disposition of the videotape is unknown as it was not recorded in Detective Barker's report.

Detective Barker followed up with Mr. Tim Boss, Drug Emporium manager, and found that the business had video surveillance, but no videotapes were produced from the cameras and no one monitored the video surveillance. Mr. Boss also indicated that six employees were working during the time-frame of the attack but none of them left the store and none observed any suspicious activity.

On December 10, 1995, Ms. Jeana Schopfer, Ms. Marker's former supervisor at Today's Child Care Center, contacted Lieutenant J.G. Hippert with information that she felt was important to the case. Ms. Schopfer stated that Mr. Kenneth Lamoureux, known to her as a client of Today's Child Care Center, had recently been diagnosed as mentally and terminally ill and he had assaulted his ex-wife in the past. Ms. Schopfer told Lieutenant Hippert that Mr. Lamoureux had been seen talking to Ms. Marker; however, it was not documented as to where these conversations occurred.

On December 11, 1995, because Ms. Marker survived the attack, and the primary offense was an armed robbery, this case was reassigned to Detective D.R. Williams of the Robbery Section. After being assigned the case, Detective Williams documented that he reviewed the reports of the officers and detectives who had assisted in the preliminary

investigation.

On December 11, 1995, Detective Williams received a call from Probation Officer Danny Mays. Mr. Mays told Detective Williams that he had a parolee as a possible suspect in the case. Mr. Mays stated the parolee was an employee of Toys-R-Us. Mr. Mays stated he was planning to violate (that is, ask the Court to revoke) the parolee's parole and would contact Detective Williams when the arrest was made.

On December 11, 1995, a CrimeStoppers Report was received stating that "The caller reported that they were at the Silk Plant, Silas Crk. Pkwy., Friday at 1230HRS., with a friend. Caller reports while they were in the store two black males came into the store and they were acting very strange. The subjects walked midway into the store, looked around, then left. Both subjects were in their late twenties, one was 6'2" with dreadlocks, wearing a corduroy hat, second subject was 5'11" with short hair, wearing a baseball hat and both were wearing dark coats and pants. Caller did not notice which way these subjects walked or if they got in a vehicle. No further details provided."

On December 11, 1995, Detectives Williams and Barker returned to the Silk Plant Forest and interviewed Ms. Stacy Spainhour, store employee. Detective Williams inquired about deliveries made to the store and if Ms. Marker had made any comments about customers or visitors to the store. According to Ms. Spainhour, Ms. Marker had not spoken of any problems with anyone.

On December 12, 1995, Detective Williams received a CrimeStoppers Report to contact Ms. Cynthia Cloud, who had information possibly relating to the case. The CrimeStoppers Report stated, "The caller reported the night of the robbery, they were in the Silk Plant Forest shopping. The caller left around 8:00PM. At the time they left, the only person in the store besides the clerk, was described as 5'9", 165 pounds, stocky build, wearing light clothes. Caller stated they would talk to detectives. Caller is Cynthia Cloud."

On December 12, 1995, Detective Williams spoke with Ms. Cloud by telephone. Ms. Cloud advised that she and a friend, Ms. Stella Goode, were customers at the Silk Plant Forest on December 9, 1995 at approximately 7:45 p.m. Ms. Cloud stated there was a white male in the store, described as approximately 48 to 55 years of age, 5'8" to 6' tall and of medium build, with short brown hair and a high forehead. She stated he was casually dressed, wearing a light-brown jacket. Ms. Cloud also stated the white male was acting strangely as he was very loud and mumbled to himself. Ms. Cloud indicated she could identify the subject if she saw him again.

On December 12, 1995, Detective Williams contacted Ms. Stella Goode and arranged for her to come to the Public Safety Center to be interviewed and view a photographic line-up on December 13, 1995.

On December 12, 1995, Detectives Williams and Barker met with Ms. Jeana Schopfer at the Today's Child Care Center. Ms. Schopfer advised Detective Williams that an employee of the child care facility, Ms. Melanie Beth McCollum, told her about a conversation she (McCollum) had with Ms. Marker regarding Mr. Kenneth Lamoureux. Ms. McCollum had previously indicated that Mr. Lamoureux had paid visits to Ms. Marker at the Silk Plant Forest. Ms. Schopfer also stated that she had observed Mr. Lamoureux strike his wife, Ms. Ellen Lamoureux, while they were at the child care facility.

On December 12, 1995, Detective Williams had a photographic line-up prepared to include Mr. Kenneth Lamoureux. On this same date, Detective Williams contacted Ms. Cynthia Cloud and requested that she come to the Public Safety Center to view the line-up. As to the line-up, Detective Williams documented that Ms. Cloud identified Mr. Kenneth Lamoureux as the white male she saw in the Silk Plant Forest between the hours of 7:20 p.m. and 7:45 p.m. on December 9, 1995. Detective Williams further documented that Ms. Cloud stated Mr. Lamoureux looked like the person she saw, but the eyeglasses worn by Mr. Lamoureux in the

line-up photograph distracted from her being positive on her identification.

On December 13, 1995, Detective Williams received information from Detective Barker that he and his wife, Ms. Teresa Barker, were at the Silas Creek Crossing Shopping Center on the evening of the crime. Detective Barker stated Ms. Barker observed a white male matching the description of Mr. Kenneth Lamoureux standing outside, smoking a cigarette, between Toys-R-Us and the Silk Plant Forest. According to Ms. Barker, this subject appeared to be looking in the window of the Silk Plant Forest. Detective Williams met with Ms. Barker and presented her the photographic line-up with Mr. Lamoureux. Ms. Barker was unable to identify anyone from the line-up. It was not documented in Detective Williams' report how Ms. Barker knew the white male that she had observed matched the description of Mr. Lamoureux.

On December 13, 1995, Detective Williams met with Ms. Stella Goode at the Public Safety Center to show her the photographic line-up containing Mr. Kenneth Lamoureux. Ms. Goode identified Mr. Lamoureux as the person she observed in the Silk Plant Forest but stated he looked older in the photograph.

On December 14, 1995, Detective Williams met with Ms. Melanie Beth McCollum at the Public Safety Center to interview her regarding the conversations she had with Ms. Schopfer about Ms. Marker and Mr. Lamoureux. Ms. McCollum stated Ms. Marker had told her about Mr. Lamoureux visiting her on various occasions at the Silk Plant Forest. Ms. McCollum could not advise as to the nature of the visits nor of their conversations, other than Mr. Lamoureux often spoke of his children. Ms. McCollum stated Ms. Marker never complained or made any statement of being afraid of Mr. Lamoureux. Ms. McCollum told Detective Williams that on December 8, 1995 around 1:30 p.m., she saw Mr. Lamoureux walking from the parking lot at Silas Creek Crossing toward Drug Emporium.

Detective Williams documented that, on or about December 15, 1995, he spoke with Mr. Lamoureux's wife, Ms. Ellen Lamoureux, by telephone, regarding her husband. Ms. Lamoureux stated she and her husband had been separated since October 16, 1995 and she had experienced numerous problems with him. Ms. Lamoureux stated she had been assaulted on several occasions by Mr. Lamoureux and he had been charged with Assault on a Female. Ms. Lamoureux stated she had Mr. Lamoureux involuntarily committed on November 30, 1995. On December 8, 1995, Ms. Lamoureux was awarded custody of her children during a court hearing and a 50-B Domestic Violence Order (issued on November 20, 1995) was continued by Judge Reingold. Ms. Lamoureux stated Mr. Lamoureux became visibly upset over the hearings and left the court proceedings.

Detectives Williams and Barker went to the Toys-R-Us to follow-up on the previously received information from Probation Officer Mays regarding an employee of the business.<sup>1</sup> Detectives Williams and Barker met with the store manager, Mr. Jerry McCormick. Mr. McCormick provided documentation that the employee clocked in for work on December 9, 1995 at 5:20 p.m. and clocked out on December 10, 1995 at 12:05 a.m. Mr. McCormick stated the employee was working in Section 5, the stockroom area, which had no door to the outside. Accordingly, this employee was discontinued as a suspect.

On December 18, 1995, Detectives Williams and Barker located Mr. Kenneth Lamoureux at his residence, 4940 Thales Road, Apartment A. He agreed to meet with Detectives Williams and Barker at the Public Safety Center between 5:00 and 5:30 p.m. on the same date.

On December 18, 1995, Mr. Lamoureux arrived at the Public Safety Center for his scheduled interview with Detectives Williams

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<sup>1</sup> The date of this follow-up was not given but it was documented directly following Detective Williams' conversation with Ms. Lamoureux.

and Barker. Mr. Lamoureux initially denied knowing the location of Silas Creek Crossing Shopping Center and the Silk Plant Forest. After being confronted, Mr. Lamoureux admitted to knowing the location of Silas Creek Crossing Shopping Center and stated he got his prescription drugs from Drug Emporium. When asked, he denied knowing Ms. Jill Marker. Mr. Lamoureux admitted to knowing the location of the Silk Plant Forest but denied ever being in the business. Later during the interview, Mr. Lamoureux admitted to being in the Silk Plant Forest on one occasion approximately one week before Thanksgiving.

Mr. Lamoureux stated that on December 8, 1995, he went to Drug Emporium to obtain prescription drugs after a court proceeding.<sup>2</sup> Mr. Lamoureux stated that after leaving Drug Emporium, he went by Wendy's Restaurant and then went to his home on Thales Road, where he stayed the entire night.

Mr. Lamoureux stated that on December 9, 1995, he went to work, delivering luggage for Piedmont Triad International Airport in Greensboro, NC. Mr. Lamoureux stated he got off work between 2:30 p.m. and 3:00 p.m. He stated he could not recall where he was on the evening/night of Saturday, December 9, 1995; however, he recalled going to church at Marshall Baptist Church and then to Charlotte, NC, to visit his stepfather, Mr. John Milin, on Sunday, December 10, 1995. When questioned further about Saturday night, Mr. Lamoureux explained that he had been to Best Products to purchase a stereo stand. He described his clothing that night as dark gray sweatpants and a long-sleeved gray sweatshirt with Daffy Duck on the front. Mr. Lamoureux stated he went home after purchasing the stereo stand; when questioned further, he stated he thought he was at home that evening.

When questioned further about being at the Silk Plant Forest, he stated he could not remember; however, he could have been

walking by. Mr. Lamoureux stated he was saying nothing else and left the Public Safety Center.

On December 19, 1995, Detectives Williams and Barker returned to Mr. Lamoureux's apartment. The detectives asked for and received consent from Mr. Lamoureux to search his apartment and vehicle, a 1992 black Nissan Stanza. The clothing Mr. Lamoureux indicated he was wearing on December 9, 1995 was located; however, the clothing had been recently washed. He also produced a receipt from Best Products, dated December 9, 1995 at 1:38 p.m., showing the purchase of a stereo stand; however, in his interview on December 18, 1995, Mr. Lamoureux indicated that, on December 9, 1995, he had worked until 2:30 or 3:00 p.m. The preliminary visual search of Mr. Lamoureux's vehicle did not reveal the presence of blood. To be certain there were no traces of blood in the vehicle, the chemical, Luminol, was used to further enhance the search. Luminol reacts to indicate the presence of blood, even if the vehicle has been cleaned. No traces of blood were found in the vehicle.

On December 20, 1995, Detective Williams received a CrimeStoppers Report in which the caller overheard three employees talking at Bob Neill Chrysler Plymouth on Miller Street.<sup>3</sup> The CrimeStoppers Report stated, "Caller advised they overheard the following information on 12-11-95 or 12-12-95, reference the incident at the Silk Plant Forest. One of the subjects said that an individual was in trouble and that he was responsible for the beating and robbing the woman at the Silk Plant Forest. One of the subjects said the individual was going back to California, but then someone said he wouldn't because his family is here. The individual is a black male, 20s, 5'11"-6' and he has a tattoo of tear drops under one of his eyes. The individual drives a red vehicle and quit his job on 12-08-95. He worked at Bob Neill Chrysler Plymouth, 75 Miller Street. He came to the business on Monday or Tuesday to turn in his property. Caller advised he was wearing a

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<sup>2</sup> This confirmed Ms. McCollum's statement that she saw Mr. Lamoureux at Silas Creek Crossing Shopping Center on December 8, 1995.

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<sup>3</sup> This business is no longer in operation.

toboggan and that it was pulled way down on his face. Caller advised they thought this was strange because the individual had never worn a hat or toboggan at any time he worked for the business. Caller could not provide an address for the individual. Caller advised they would contact Detective Williams.”

Detective Williams went to the individual’s residence, located him and took him to the Public Safety Center where he was interviewed and submitted to a polygraph. The individual denied responsibility in the crime; the results of the polygraph administered by Detective L.M. Maines were inconclusive.

Detectives R.G. Cozart and R.L. Barren interviewed Mr. Ronnie Edward Daye, Mr. James Lee Burgess and Mr. Gary Wayne O’Neal on December 20, 1995; the three persons who reportedly overheard the individual’s conversation about the Silk Plant Forest. The discussion involved the individual not coming to work on a Monday, Tuesday or Wednesday and was planning to move to California. It had been rumored that the individual may have gotten into trouble, possibly due to something with the Silk Plant Forest. It was also discovered that the individual owned a red or burgundy Pontiac Grand Am. A subsequent search of the individual’s vehicle using Luminol, a blood-detecting chemical, yielded nothing of evidentiary value.

On December 20, 1995, Detective Williams received another CrimeStoppers Report involving the Silk Plant Forest. Detective Williams’ report identified the caller as Ms. Paula Glover. The CrimeStoppers Report stated, “The caller reported they were at the Silk Plant Forest on 12-09-95 at 2030-2045 hrs. Caller advised a lady and her two children were in the store when they entered. Caller spoke with Ms. Marker for fifteen minutes then left the store. Caller did not see anything suspicious inside or outside of the business.”

In his supplement report dated January 2, 1996, Detective Williams indicated that he contacted Ms. Glover on the same date he

received the CrimeStoppers Report.<sup>4</sup>

Ms. Glover advised that she did not make a purchase while at the Silk Plant Forest, and the only people inside the business with her were a black female with two children and a clerk. Ms. Glover stated the black female with the two children left before she did. Ms. Glover stated that when she left a short time later, the clerk was alone inside the business. Ms. Glover indicated that she was certain she left the business at 8:45 p.m. because she looked at her watch to check the time so she could visit other businesses prior to their closing times. Ms. Glover stated she did not observe anyone else approaching or leaving the store.

On December 20, 1995, Detective Williams received an additional CrimeStoppers Report, with the caller identified as Ms. Kathlyn Reavis. The CrimeStoppers Report stated, “Caller advised they were at the Silas CK Crossing on 12-09-95 at 1900 hrs. Caller advised as they were parking a red vehicle came through the parking lot at a high rate of speed. Caller could not describe the driver or provide any further details.” In a follow-up conversation with Ms. Reavis on December 20, 1995, she advised Detective Williams that the time she spotted the red vehicle was actually at 8:00 p.m. and it was not near the Silk Plant Forest. Ms. Reavis could not identify or describe the driver.

On December 20, 1995, Mr. Kenneth Lamoureux contacted Detective Williams and consented to providing a blood sample for investigative purposes. Mr. Lamoureux arrived at the Public Safety Center and was taken to Forsyth Medical Center, and a sample of his blood was collected on a piece of cotton and two tubes of blood were obtained from him.

On January 4, 1996, Ms. Andrea Runion<sup>5</sup>, called Detective Williams and advised that a white male came to the WXII television station and requested the time that the attack on

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<sup>4</sup>Detective Williams noted the date as being December 29, 1995, not December 20, which was apparently a typographical error.

<sup>5</sup> Ms. Runion was a WXII employee at that time.

Ms. Marker had occurred. The white male explained that two people had picked him out of a line-up and he needed the time to prove his innocence. No information was provided to the white male, who refused to identify himself. Ms. Runion described the white male as approximately 6' tall, with salt and pepper hair, mustache, and wearing glasses. Ms. Runion told Detective Williams she could identify the white male if she saw him again.

On January 4, 1996, Ms. Runion met Detective Williams at the Public Safety Center for the purpose of viewing a line-up containing a photograph of Mr. Kenneth Lamoureux. Ms. Runion identified Mr. Lamoureux as the individual who came to the television station requesting information about the attack on Ms. Marker.

On January 4, 1996, Detective Williams met with Mr. Michael Mitchell at the Public Safety Center. Mr. Mitchell was a customer of the Silk Plant Forest on December 9, 1995 at approximately 8:07 p.m. Mr. Mitchell told Detective Williams he observed a white male in the store, described as approximately 6' tall, medium build and dressed in casual clothing, standing outside between the Silk Plant Forest and Toys-R-Us at approximately 8:20 p.m. Mr. Mitchell stated this individual was smoking and looking in the windows of Toys-R-Us. Mr. Mitchell was shown a line-up containing a photograph of Mr. Kenneth Lamoureux; however, he was unable to make a positive identification.

On January 4, 1996,<sup>6</sup> Mr. Kenneth Lamoureux arrived at the Public Safety Center to be administered a polygraph examination. Prior to coming to the Public Safety Center, Mr. Lamoureux called Detective Williams and inquired about the DNA results. Detective Williams refused to disclose that information, which seemed to irritate Mr. Lamoureux. While waiting in the lobby, Mr. Lamoureux observed Mr. Michael Mitchell leaving and followed him outside. Mr. Lamoureux appeared to have a

conversation with Mr. Mitchell, and upon returning to the lobby, demanded to know the time that the attack on Ms. Marker occurred, which Detective Williams refused to provide. Mr. Mitchell later called Detective Williams and advised that Mr. Lamoureux was very abusive toward him and demanded to know why he was speaking to Detective Williams. Mr. Mitchell indicated that he did not provide any information to Mr. Lamoureux.

Mr. Todd Peebles, Attorney for Mr. Lamoureux, arrived at the Public Safety Center and they discussed whether Mr. Lamoureux was medically cleared to take a polygraph examination. Mr. Lamoureux's physician was contacted by Detective Williams and clearance was given for the polygraph to be administered. During the time Detective Williams was speaking to Mr. Lamoureux's physician, Mr. Lamoureux decided not to submit to the polygraph examination. Mr. Peebles advised Detective Williams that he and his client would be in touch to reschedule the polygraph examination.

In a supplement report dated January 12, 1996, following Mr. Lamoureux's refusal to take a polygraph examination, Detective Williams documented that he received information from Mr. Tommy Clewis on December 21, 1995. Mr. Clewis stated he was at the Silas Creek Crossing Shopping Center on December 9, 1995, and he had attempted to give information concerning a burgundy vehicle to a uniform police officer. He told Detective Williams that he saw a 1988 or 1989 burgundy Mustang with tinted windows, some type of spoiler on the back, and an unusual defect to the left taillight, bearing West Virginia registration plates, drive through the parking lot of Toys-R-Us and exit the travel aisles, stopping with its lights shining into the Silk Plant Forest. Due to the tinted windows, Mr. Clewis could not see the occupants, and after about a minute and a half, the driver turned the vehicle right and traveled through the parking lot. The only additional information Mr. Clewis provided was that the West Virginia plates had "56" as part of the numbers.

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<sup>6</sup> Detective Williams incorrectly documented the year as 1995 in his report.

In reference to the information provided by Mr. Clewis, Detective Williams also received a CrimeStoppers Report which stated, "The caller reported that they know a subject who is a black male-20, who owns a purple Mustang with West Virginia tags. Caller reports this subject comes into their business (Pager Business) once a month. The subject has a pager number but caller didn't know the number. Caller advised they spoke with Det. Cozart and that they would contact Det. Williams."

Detective Williams discussed this information with Detective R.G. Cozart, who, while interviewing an individual regarding an unrelated case, was told that an employee of Apple Pawn Shop may have information about a robbery.

Detective Cozart contacted the employee of Apple Pawn Shop who reluctantly stated that he knew an individual who owned a purple Mustang with West Virginia registration that may have been involved in the Silk Plant Forest robbery.

Detective Williams followed-up with Apple Pawn Shop management and obtained pager numbers for the operator of the purple Mustang. Using the Winston-Salem Police Department's master name file, Detective Williams located an address for this individual. Upon arrival at the individual's home, Detective Williams located a 1988 purple Mustang in the driveway, bearing West Virginia registration plates. Detective Williams also documented that the Mustang's left taillight was broken and covered with red tape; Detective Williams took photographs of the vehicle.

Detective Williams later spoke with the registered owner of the Mustang, Mr. Roy Reid, by telephone. Detective Williams asked for consent to search the Mustang, and Mr. Reid stated he would be in Winston-Salem during the weekend of January 13, 1996, at which time he would allow the vehicle to be searched. Mr. Reid stated he knew the individual reported to be operating the Mustang, but he did not know him very well and he should not have been driving the Mustang. Detective Williams later

discovered that the Mustang had been moved to Willow Trace Apartments in Clemmons, NC, and called Mr. Reid to ask if he was aware that the Mustang was no longer located where it was originally found. Mr. Reid stated he had the Mustang moved because he felt there was less probability that the vehicle would be tampered with.

In a supplement dated January 26, 1996, due to Mr. Lamoureux being a suspect in this case, Detective Williams documented that on December 28, 1995, Judge William Woods signed a court order for Bell South Telephone Company to provide records for all calls originating from and terminating at Mr. Lamoureux's residence and the Silk Plant Forest for the period October 1, 1995 through December 10, 1995 at 11:59 hours. This order was signed and sent to Bell South on December 28, 1995. Detective Williams documented that, as of January 26, 1996, he had not received the records.

On January 16, 1996, Detective Williams submitted evidence to the North Carolina State Bureau of Investigation (SBI) Laboratory that included two vials of blood obtained from Mr. Kenneth Lamoureux and eight manila envelopes containing evidence seized from the crime scene at the Silk Plant Forest for examination. Detective Williams requested that the samples collected from the crime scene and Mr. Lamoureux be compared for matching profiles.

On January 17, 1996, in a supplement report dated February 14, 1996, Detective Williams documented that he received a CrimeStoppers Report identifying Ms. Rene Bales as the caller. The report stated, "The caller reported that on the date of the robbery and assault, they had been at Silas Creek Crossing around 4:30 PM and had observed two white males in their late teens run out of the Silk Plant Forest and get into a red, Pontiac Firebird. The vehicle had a pink Oakley sticker in the back window." Detective Williams contacted Ms. Bales, and the only additional information provided was that the two males appeared to have been playing around.

On January 19, 1996, in a supplement report dated February 14, 1996, Detective Williams, documented that he received a CrimeStoppers Report stating, "Caller advised that Darrell Turner told his girlfriend, name unknown, that a female, name unknown, at the jail told him that she assaulted the woman at the Silk Plant Forest. Caller advised that Darrell is in jail at this time and will go to court today. Caller could not provide any further details and would not speak with Det. Williams."

On February 6, 1996, Detectives Williams and R.W. Beasley met with Mr. Darrell Turner at the Davidson County Correctional Facility, where he was an inmate. Mr. Turner denied having any knowledge of the Silk Plant Forest and stated he had not spoken to anyone regarding the Silk Plant Forest.

On February 7, 1996, Detective Williams received the telephone records pursuant to the subpoena issued on December 28, 1995. The needed information was not included in the report. As a result, Detective Williams contacted Ms. Deborah Harrell, Bell South Subpoena Center personnel. Ms. Harrell stated there were no magnetic tapes available to retrieve the requested information for the period prior to October 19, 1995 or exceeding November 18, 1995, due to problems in their system. After reviewing the available records, for the dates October 19, 1995 through November 18, 1995, Detective Williams found no calls originating from Mr. Lamoureux's telephone and terminating at the number for the Silk Plant Forest. Additionally, there were no calls originating from the Silk Plant Forest and terminating at Mr. Lamoureux's number.

On February 13, 1996, Mr. Lamoureux submitted to a polygraph examination administered by Detective L.M. Maines. The results of the polygraph examination were inconclusive. Detective Maines documented, in his supplement report dated February 13, 1996, that Mr. Lamoureux showed a great deal of deception when asked the question, "Did you strike, push, or assault a woman inside the Silk Plant Forest?" Other questions asked during the polygraph examination were not recorded in

Detective Maines' polygraph examination report or in his supplement report.

In a supplement report dated February 14, 1996, Detective Williams wrote that he was contacted on January 24, 1996, by Ms. Ellen Lamoureux who advised that Mr. Lamoureux had violated a domestic violence 50-B order on four occasions. Detective Williams arrested Mr. Lamoureux for the violations.

On February 14, 1996, Detective Williams spoke with Mr. Lamoureux regarding his polygraph examination on February 13, 1996. Mr. Lamoureux specifically asked if he reacted to the question about him striking, pushing or assaulting a woman inside the Silk Plant Forest. Mr. Lamoureux stated that, when he was asked that question, he was thinking of his alleged assault on his wife in November, 1995. Detective Williams consulted with Detective Maines and later told Mr. Lamoureux that the answer to his question was "No."<sup>7</sup>

On February 27, 1996, Detective Williams received a report from the North Carolina SBI regarding the evidence seized from the crime scene and Mr. Lamoureux that was submitted on January 16, 1996. The SBI report stated, "Dried blood stains were prepared from the liquid blood samples in item 1. Examination and analysis of item 2 revealed the presence of blood which was insufficient in quantity for further conventional analysis."

On March 21, 1996, Detective Williams submitted the evidence returned from the North Carolina SBI to the Federal Bureau of Investigation (FBI) DNA Unit for further examination.

On April 17, 1996, Detective Williams contacted Mr. Lamoureux and asked if he would come to the Public Safety Center to further discuss the case. Detective Williams told Mr. Lamoureux that if the case was proven, he would be charged with Assault with a Deadly

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<sup>7</sup> It should be noted that Detective Maines documented in his supplement report dated February 13, 1996 that Mr. Lamoureux showed deception regarding that question.

Weapon with Intent to Kill Inflicting Serious Injury but not Murder, due to Ms. Marker surviving her injuries. Mr. Lamoureux told Detective Williams that he understood, but since he was sick, he would call in several days to schedule the interview.

On April 19, 1996, Ms. Ellen Lamoureux contacted Detective Williams and advised that Mr. Lamoureux had moved to Charlotte, NC.

On April 24, 1996, Detective R.G. Cozart interviewed Ms. Beth Nichols. Ms. Nichols stated that on December 9, 1995, she met her parents and fiancée at the Silas Creek Crossing Shopping Center at about 6:00 p.m. as they had plans to see the lights at Tanglewood Park. Ms. Nichols stated they returned to the shopping center at about 9:50 p.m.<sup>8</sup> and stopped in front of the Silk Plant Forest to use the pay telephone. Her fiancé waited in the vehicle, and after making her call, she returned to her vehicle and observed three black males approach the Silk Plant Forest.

Ms. Nichols described the black males as being 17 to 21 years of age, tall and of medium build. Ms. Nichols stated one of the black males had "big hair". Ms. Nichols stated she could not identify either of the individuals. Ms. Nichols stated two of the black males went to the pay telephone and each appeared to make a call; however, she did not see either one put coins into the phone or dial any numbers. Ms. Nichols stated the third black male was standing on the sidewalk leaning against one of the columns in front of the Silk Plant Forest. Ms. Nichols stated she and her fiancé then left the shopping center.

On April 29, 1996, Ms. Marker's father, Mr. Bud Hoisington, told Detective Williams that Ms. Marker would be moved to a skilled nursing facility in Akron, Ohio, on May 1, 1996.

On May 3, 1996, Detective Williams discussed the case with Detective Steve Girger of the Akron, Ohio Police Department. Detective Williams provided Detective Girger with a copy of the preliminary report and a photograph of Mr. Kenneth Lamoureux as a potential suspect.

On May 15, 1996, Detective Williams spoke with Dr. Cochran, Ms. Marker's physician. Dr. Cochran stated Ms. Marker had pneumonia and had been admitted to the Akron General Hospital under an assumed name for security reasons. Dr. Cochran stated Ms. Marker had improved in her mental and physical capabilities and was responding to some verbal commands.

On May 22, 1996, Detective Williams spoke with Granville County Deputy Floyd Jay regarding information obtained about the Silk Plant Forest. Deputy Jay stated he received a call from Mr. Shane Eugene Fletcher, a patient at John Umstead Hospital, stating he had murdered a white female at the Silk Plant Forest in Forsyth County. Deputy Jay told Detective Williams that Mr. Fletcher wanted to talk to someone about the case.

After Detective Williams' conversation with Deputy Jay, he confirmed outstanding warrants for the arrest of Mr. Fletcher in both Yadkinville and Forsyth Counties.

On May 22, 1996, Detective Williams spoke with Mr. Kim Minor, Forsyth Medical Center security personnel. According to Detective Williams, Mr. Minor stated that Mr. Fletcher was admitted to the hospital on December 1, 1995 and released on December 3, 1995. Mr. Fletcher was again admitted to the hospital on May 13, 1996 and released on May 16, 1996, but he was readmitted on May 16 and transferred to John Umstead Hospital. However, on June 12, 1996, Detective Williams and then-Assistant District Attorney Vince Rabil obtained Mr. Fletcher's medical records, pursuant to a court order. These records indicated that Mr. Fletcher was a patient in the Psychiatric Unit at Forsyth Hospital from December 3, 1995 until December 11, 1995.

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<sup>8</sup> Ms. Nichols apparently was incorrect about the actual time that she was at the shopping center. The crime occurred shortly before the Silk Plan Forest closed at 9:00 p.m. on December 9, 1995. If Ms. Nichols was correct about her arrival time (to use the pay phone in front of the Silk Plant Forest), she would have observed numerous police personnel on the scene.

On May 22, 1996, Detective Williams arranged to speak to Mr. Fletcher through his physician, Dr. Connie Hanes.

On May 23, 1996, Detectives Williams and M.C. Rowe traveled to John Umstead Hospital and met with Mr. Fletcher. During the interview, Mr. Fletcher stated he was responsible for the attack on the white female at the Silk Plant Forest. Mr. Fletcher described the location of the Silk Plant Forest, indicating that it was across from Hanes Mall and Forsyth Medical Center. Mr. Fletcher stated he was confessing as he had heard about Ms. Marker's child being born with brain damage and he could not handle the stress any further. When questioned about the details, Mr. Fletcher stated the attack occurred either between 7:00 p.m. or 7:30 p.m., and it was dark or getting dark outside when he entered the business and it was dark outside when he left. He stated he stalked Ms. Marker for several days prior to the attack. Mr. Fletcher stated he went into the store for money and considered raping Ms. Marker but realized he did not have the time. Mr. Fletcher stated he struck Ms. Marker with a stick, described as 20 to 24 inches long. Mr. Fletcher stated he took only paper money from the store.

On May 25, 1996, Detective Williams received information from John Umstead Hospital personnel that Mr. Fletcher wanted to speak with him again. Detective Williams contacted Mr. Fletcher by telephone, and Mr. Fletcher inquired about the status of the case. Detective Williams told Mr. Fletcher that the case was still being investigated. Mr. Fletcher told Detective Williams that he would show him (Williams) where the stick, which he had used to beat Ms. Marker, was located, but the stick had been cleaned.

On May 29, 1996, Detective Williams contacted Akron Manor Care personnel and provided his contact information. Detective Williams asked that he be made aware of any change in Ms. Marker's condition.

On May 30, 1996, Mr. Fletcher told Detective Williams that the stick he used to beat Ms. Marker was at the home of his mother, Ms.

Jerri Seivers.

On May 30, 1996, Detectives Williams and R.L. Taylor went to the home of Ms. Seivers to retrieve the weapon described by Mr. Fletcher. Ms. Seivers was confused as to why the detectives were at her home, and after being told of the reason, Ms. Seivers asked about the date of the crime, which Detective Williams refused to provide. Ms. Seivers then pointed out a wooden stick and told the detectives that, according to Mr. Fletcher, it was the stick that was involved with a woman and a baby. Ms. Seivers stated Mr. Fletcher did not provide her with any additional information. Ms. Seivers pointed out a second stick that was kept in the home; both were seized by Detective Williams.

On May 31, 1996, Detective Williams received a call from Ms. Seivers. Ms. Seivers stated that Mr. Fletcher had told her what he had done, but she refused to give Detective Williams any details. Detective Williams refused to provide Ms. Seivers with the date that the incident occurred.

Later on May 31, 1996, Detective Williams received another call from Ms. Seivers. Ms. Seivers told Detective Williams that she could save him a lot of time because Mr. Fletcher was a patient in the psychiatric ward at Forsyth Medical Center from December 3, 1995 until he was released on December 11, 1995.

On May 31, 1996, Detective Williams confirmed with hospital personnel that Mr. Fletcher had been a patient in the psychiatric ward at Forsyth Medical Center as stated by Ms. Seivers. Detective Williams also discovered this was a secured area of the hospital; however, there was some concern that Mr. Fletcher may have obtained a pass to leave the hospital on December 9, 1995. Mr. Fletcher's medical records were obtained and no such pass was found for December 9, 1995; however, a pass for December 8, 1995, valid for the time period of 6:00 p.m. to 9:00 p.m., was located. Detective Williams found documentation that Mr. Fletcher had left the hospital on December 8, 1995 at 5:30 p.m. and returned at 9:40 p.m.

On June 1, 1996, a CrimeStoppers Report was received stating, "Caller advised that Calvin Michael Smith is responsible for the beating of the lady at the Silk Plant Forest. Caller advised that the subject could be located at 1228 Shouse St. Information was left on the answering machine and no further details were given. Criminal history attached on Calvin Michael Smith, 1228 Shouse St. Records indicate several papers have been served. No previous C/S [CrimeStoppers] on subject. Detective Williams was advised of the information." Detective Williams documented that he received the above information in a supplement dated November 4, 1996.

On June 6, 1996, Detective Williams confronted Mr. Fletcher about how he could have committed the crime while he was in a secured medical facility. Mr. Fletcher stated he could have left unnoticed by staff. Detective Williams told Mr. Fletcher that the records in his chart indicated he was at the facility the entire day of December 9, 1995. Mr. Fletcher explained that he sometimes fantasized about doing things, and this could have been one of those times. Mr. Fletcher also stated he had seen coverage of the incident on the television.

On June 14, 1996, Detective Williams met with Mr. Kim Minor, Forsyth Medical Center security personnel. Detective Williams asked to see the secure area where Mr. Fletcher had been hospitalized. Mr. Minor escorted Detective Williams to the Psychiatric Unit, where the doors were secured by a deadbolt lock, keyed on both sides. The doors also required electronic activation by unit personnel. The other set of doors to the unit were operated in the same manner. There were no signs on either of the doors to indicate that any attempts had been made to pry open the doors.

On June 16, 1996, Detective Williams spoke with Nurse Barbara Tilley, Mr. Fletcher's nurse on December 9, 1995. She stated Mr. Fletcher did not leave the facility on that date.

On July 16, 1996, the wooden stick seized from Mr. Fletcher's residence was sent to the North Carolina SBI laboratory to be

examined for the presence of blood.

On July 22, 1996, Mr. Calvin Michael Smith was arrested due to four outstanding orders for arrest. Mr. Smith was brought to the Public Safety Center and interviewed regarding the investigation. Mr. Smith was advised of his Miranda Rights, orally and in writing, and he waived those rights in writing. According to a supplement dated November 4, 1996, Detective Williams stated that Mr. Smith denied any involvement in the crime and that a polygraph was administered by Detective L.M. Maines and Mr. Smith's responses were truthful. However, a polygraph examination report dated October 9, 1996 indicated the exam was given by Detective R.C. Patterson on July 26, 1996, and the results were inconclusive. According to the polygraph examination report signed by Detective Patterson, the questions asked of Mr. Smith during the polygraph examination were: 1.) Did you rob the Silk Plant Forest?; 2.) Were you present when the Silk Plant Forest was robbed?; and 3.) Did you participate in any way in the robbery of the Silk Plant Forest?

On September 3, 1996, Detective Williams spoke with Ms. Marker's husband, Mr. Aaron Marker. Mr. Marker stated Ms. Marker was improving and beginning to answer questions by shaking her head. Mr. Marker told Detective Williams that Ms. Marker had responded affirmatively when asked if she knew who hurt her. She also responded that the person was a male.

Detective Williams then spoke with Ms. Marker's father, Mr. Hoisington, who confirmed Mr. Marker's description of Ms. Marker. Detective Williams requested that Mr. Hoisington ask Ms. Marker if her attacker was Caucasian or African-American. Mr. Hoisington stated he would comply with the request and contact Detective Williams on a later date. Detective Williams advised Mr. Hoisington not to provide any names of individuals or any information associated with the investigation.

On September 6, 1996, Mr. Hoisington contacted Detective Williams and stated that Ms. Marker had a slight setback in her condition and he was unable to ask her any questions.

On October 28, 1996, Detective Williams was contacted by Ms. Marker's physician, Dr. Rehasia, who advised it would be a good time to interview Ms. Marker.

On October 31, 1996, Detectives Williams and M.N. Barker traveled to Cleveland, Ohio, to interview Ms. Jill Marker who was a patient at Grace Memorial Hospital. Detective Williams noted that upon meeting with Ms. Marker, she was sitting erect in a wheelchair and was very responsive to questions being asked. During the course of the interview, Detective Williams indicated that he was able to ascertain that the suspect in the investigation was a black male, approximately 30 years old, medium to heavy build, under 6' tall, and with some facial hair. Due to Ms. Marker's responses, Detective Williams believed the suspect was a delivery person. Ms. Marker did not know the suspect's name, and from her responses, it was not certain if she could identify the suspect from a photograph. The interview began at 11:58 a.m. and concluded at 12:27 p.m.

In a supplement dated November 4, 1996, Detective Williams documented that the stick seized from Mr. Fletcher's residence had been returned from the North Carolina SBI laboratory. The analysis failed to detect the presence of blood.

On November 5, 1996, Detective Williams spoke with Ms. Mary Gray, Tree Factory personnel.<sup>9</sup> Ms. Gray provided Detective Williams with the names and addresses of the persons who made deliveries to the Silk Plant Forest in Winston-Salem. One lived in Charlotte, NC and the other lived in Concord, NC. Both were black males; one was still employed with the company, the second left the company on January 12, 1996.

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<sup>9</sup> Detective Williams did not document the association between the Tree Factory and the Silk Plant Forest. It is unknown if the Tree Factory was a supplier or owner of the Silk Plant Forest.

On November 12, 1996, Detective Williams contacted the individual associated with the purple, 1988 Ford Mustang with West Virginia registration plates. The individual agreed to meet with Detective Williams on November 14, 1996 to be interviewed.

On November 13, 1996, Detective Williams spoke with Mr. Marker and asked that he submit to a polygraph examination to eliminate the suspicion of him being involved in this crime. Mr. Marker agreed to the examination and stated he would contact Detective Williams at a later date to schedule the examination.

On November 14, 1996, the individual associated with the purple Mustang failed to keep his appointment with Detective Williams.

On November 19, 1996, Detective Williams spoke with Mr. Ronnie Dean, Senior Agent with the National Insurance Claims Bureau, to ascertain if Mr. Marker had applied for an insurance policy. Mr. Dean advised he would check and respond to Detective Williams at a later date.

On November 20, 1996, Detectives Williams and R.W. Beasley went to the home of operator of the purple Mustang and were advised that he was not home.

After leaving the individual's home, Detective Williams received a voice mail from the individual indicating that he had no information and saw no need to meet with Detective Williams.

On November 20, 1996, Detective Williams received a call from Mr. Marker stating he would be in Winston-Salem from November 26 through November 27, 1996, and he could take the polygraph examination during that time.

On November 21, 1996, Detective Williams contacted Mr. Marker to discuss the polygraph examination, which was scheduled for November 27, 1996 at 1:00 p.m. Mr. Marker stated he would be accompanied by an attorney.

On November 21, 1996, Detective Williams spoke with Ms. Robin Levine, president of Tree Factory. Ms. Levine confirmed that the only delivery personnel to the Silk Plant Forest in December, 1995 were the two individuals identified by Ms. Gray on November 5, 1996.

On November 26, 1996, Detective Williams spoke with a delivery person to the Silk Plant Forest and scheduled an appointment for him to be interviewed at the Public Safety Center on December 6, 1996 at 1:00 p.m.

On November 26, 1996, Detective Williams spoke with the second delivery person to the Silk Plant Forest. He agreed to meet with Detective Williams at the Public Safety Center to be interviewed and submit to a polygraph examination if necessary. Due to this individual's occupation as a truck driver, his schedule was unknown and an appointment was not made, but he agreed to later contact Detective Williams.

There was no documentation indicating that either of the Silk Plant Forest delivery drivers was interviewed beyond the telephone interview.

On December 9, 1996, Detective Williams located an order for the arrest of the identified operator of the purple Mustang. Detectives Williams and Beasley went to his home in an attempt to locate him; the Mustang was in the driveway. Detective Williams made contact with Ms. Beverly Corpening who became irritated and stated that although the individual was present, he did not want to speak with them. When the individual later exited the house, he was taken into custody pursuant to the outstanding order of arrest.

Ms. Corpening stated she was in control of the Mustang and gave consent for it to be searched. The vehicle was driven to the Public Safety Center by Mr. Lewis Corpening.

The individual was taken to the Public Safety Center to be interviewed. He was advised of his Miranda Rights, orally and in

writing, and raised his right to an attorney, at which time the interview ended. Detective Williams documented the time of the interview to be from 5:00 p.m. to 5:10 p.m.

On December 9, 1996, Mr. Lewis Corpening was also interviewed. Mr. Corpening stated the individual was operating the Mustang in the parking lot during the time of the incident. Mr. Corpening also stated that the individual advised there was another person with him at the time, but he could not recall that person's name. Detective Williams documented that the interview began at 6:00 p.m. and concluded at 6:30 p.m.

During the interview, the Mustang was searched at the Public Safety Center by Detective R.G. Cozart and Crime Scene Technician V. L. Myers. The chemicals Luminol and Phenolphthalein were used to detect the presence of blood, but no evidence was located as a result of the search.

On January 21, 1997, Sergeant T.D. Ireland met with Ms. Valarie Williams. The meeting was held after Ms. Williams called the Police Communications Center and asked to speak with someone about the investigation. Ms. Williams told Sergeant Ireland that her boyfriend, Mr. Calvin<sup>10</sup> Michael Smith was involved in the incident. Ms. Williams stated that she noticed he appeared worried, and when she asked what was wrong, Mr. Smith confided in her.

According to Ms. Williams, Mr. Smith advised that he and a subject named Kevin had been smoking "woolies"<sup>11</sup> and needed money for more, so they decided to rob the Silk Plant Forest. Ms. Williams stated Mr. Smith told her that as he and Kevin entered the business, the lady (Marker) ran to the back of the store. She stated Mr. Smith told her that Kevin had a brick and chased the lady to the back of the store, where he hit her on the head. Ms. Williams stated Mr. Smith advised that he tried to get the

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<sup>10</sup> Calvin is misspelled as Calvin in Sergeant Ireland's report.

<sup>11</sup> A marijuana- and cocaine-blended cigarette.

cash drawer open but he was so scared, he kept telling Kevin, "Let's go." Ms. Williams stated Mr. Smith advised that he ran out of the store, leaving Kevin inside. Ms. Williams stated she came forward with the information because Mr. Smith had assaulted her and was seeing another woman.

On January 21, 1997, after reviewing Sergeant Ireland's supplement report regarding his meeting with Ms. Williams, Detective Williams attempted to locate Ms. Williams at 3800 Old Greensboro Road. He found the residence to be vacant.

On January 22, 1997, Detective Williams later received information that Ms. Williams was possibly living on Denver Street.

On January 23, 1997, Detective Williams conducted a canvass of Denver Street and located Ms. Williams at 3638 Denver Street. Ms. Williams refused to go to the Public Safety Center to be interviewed but consented to an interview at her current location. Ms. Williams stated she had previously spoken with Sergeant Ireland, advising that Mr. Calvin Michael Smith was involved in the Silk Plant Forest robbery. She related the same information to Detective Williams as she had to Sergeant Ireland on January 21, 1997. Ms. Williams stated Mr. Smith advised her that he did not beat Ms. Marker as Kevin committed the assault on Ms. Marker. Ms. Williams told Detective Williams that she would attempt to locate Mr. Smith and meet with him at the Public Safety Center on January 24, 1997. Detective Williams documented the interview with Ms. Williams as beginning at 5:30 p.m. and ending at 5:59 p.m.

On January 24, 1997, at approximately 1:20 p.m., Mr. Calvin Smith called Detective Williams. Mr. Smith told Detective Williams that Ms. Williams had advised him to call concerning an investigation. Mr. Smith agreed to come to the Public Safety Center for an interview.

On January 24, 1997, at 2:56 p.m., Mr. Calvin Smith arrived at the Public Safety Center with Ms. Williams. Detective Williams told Mr.

Smith that he was not under arrest and there were no outstanding warrants for his arrest. Mr. Smith and Ms. Williams were placed in separate interview rooms.

Sergeant R.N. Weavil and Detective Williams first spoke with Ms. Williams. Ms. Williams provided a written statement regarding the information she previously had provided to Sergeant Ireland and Detective Williams.

Sergeant Weavil and Detective Williams then met with Mr. Smith. Detective Williams reminded Mr. Smith that he was not under arrest, and when asked if he understood, he replied, "Yes." At this point, Detective Williams advised that he had reason to believe he (Smith) was involved in the robbery at the Silk Plant Forest. For the next 35 to 40 minutes, Mr. Smith denied any involvement in the crime. During the interview, Mr. Smith asked to use the restroom and was allowed to do so. Detective Williams documented that he again told Mr. Smith that he was not under arrest and showed Mr. Smith the way to the restroom.

After the interview was paused for Mr. Smith to use the restroom, he voluntarily returned to the interview room. At this point, Sergeant Weavil and Detective Williams resumed their interview of Mr. Smith. During the interview, Mr. Smith admitted to being outside the Silk Plant Forest when the clerk was beaten and the business was robbed.

Mr. Smith stated that approximately one year ago, he walked to the Toys-R-Us from Woughtown Street. Mr. Smith stated he met with a black male identified as James Burrows, aka "JB", when he came out of Toys-R-Us. Mr. Smith stated Mr. Burrows asked if he wanted to smoke a "woolie". Mr. Smith stated he and Mr. Burrows went behind the shopping center to smoke the drugs, and Mr. Burrows stated he was going into the Silk Plant Forest to ask the clerk for change, but when she opened the cash register, he was going to snatch the money. Mr. Smith stated he and Mr. Burrows went into the store and he (Smith) waited at the door. Mr. Smith later stated that he stood near the cash register where he saw the clerk open the cash

drawer with a key and then slam it shut as Mr. Burrows tried to snatch the money. Mr. Smith stated he saw Mr. Burrows swing at and strike the clerk with his fist.

Initially, Mr. Smith stated he did not see anything in Mr. Burrows' hand, but he later stated that Mr. Burrows had picked up a brick prior to going into the store. Mr. Smith later stated he saw a metal object in Mr. Burrows' hand.

Mr. Smith denied striking the clerk and removing money from the cash register. Mr. Smith stated he left the store after Mr. Burrows struck the clerk. Mr. Smith stated he went inside a nearby store to call a friend but decided not to make the call. Mr. Smith stated he then walked from the shopping center to 3-F Skyline Village.

Upon being asked follow-up questions, Mr. Smith stated the incident occurred not long after it became dark outside. Mr. Smith described the clerk as a female with light-colored hair.

Mr. Smith stated he had known Mr. Burrows for about a year and Mr. Burrows was 33 to 34 years old. Mr. Smith also indicated that Mr. Burrows' last name could be Burnham, but he did not know where he lived or worked. Mr. Smith stated Mr. Burrows was known to hang out at the Citgo Store, 901 Waughtown Street.<sup>12</sup>

While trying to ascertain additional information about Mr. James Burrows, Mr. Smith was left alone in the interview room with the door open. No information was found on a James Burrows; however, five black males with aliases of "JB" were found. Photographs were obtained on each of the individuals, but Mr. Smith did not identify any of them as the subject he was with the night Ms. Marker was beaten and the Silk Plant Forest was robbed.

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<sup>12</sup> Detective Williams followed-up with Citgo personnel and discovered no one knew a "JB".

Mr. Smith also told Detective Williams that he had told Ms. Williams that he and Kevin were involved in a robbery, but actually, he had made up the name "Kevin".

Mr. Smith provided a written statement regarding his involvement of this crime. After Mr. Smith completed his statement, he was advised by Detective Williams, at 5:30 p.m. that he was under arrest for Armed Robbery. Mr. Smith was advised of his Miranda Rights, which he waived and he agreed to continue the interview. Sergeant Weavil interviewed Mr. Smith and received the same account of the incident. Mr. Smith provided a second written statement in which additional details were provided that were not written in the first. Mr. Smith wrote that he was in the store and saw "JB" run after the girl (Marker) to the back of the store. Mr. Smith wrote that he heard the girl holler, at which time he left the store. Mr. Smith denied striking the clerk.

Detective Williams had a conversation with Detective Maines about giving a polygraph examination to Mr. Smith in an attempt to determine if he was being truthful about not striking the clerk. According to Detective Williams, Detective Maines spoke with Mr. Smith about the polygraph examination, at which time Mr. Smith invoked his rights and requested an attorney.

In a supplement report dated January 24, 1997, Detective L.M. Maines wrote that, on that same day, he spoke with Mr. Smith regarding his submitting to a polygraph examination. Detective Maines was asked by Mr. Smith what would be asked during the examination, and Detective Maines stated the two main questions would be: 1.) Did you strike the white female in the head with a metal object?; and 2.) Did you observe James Burrows strike the white female clerk in the head with a metal object? According to Detective Maines, when Mr. Smith was informed of the questions that were going to be asked, he stated, "I don't believe I want to take that test; I want a lawyer." The interview with Mr. Smith was then concluded.

Prior to Mr. Smith being transported to the Forsyth County Law Enforcement Detention Center, he requested to see Ms. Williams. Detective Williams allowed Ms. Williams and Mr. Smith to meet in the interview room where they had a brief conversation. Mr. Smith was then taken to the jail, where he appeared before Magistrate T.J. Smith. Probable cause was found by Magistrate Smith to issue warrants against Mr. Smith for Armed Robbery and Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury.

On January 27, 1997, Detective T.E. Craven met with Ms. Riffat Chaudhry, Citgo Service Station personnel at 901 Waughtown Street. Ms. Chaudhry was shown a photograph of Mr. Calvin Smith and she stated he looked familiar. Ms. Chaudhry stated Mr. Smith could be one of the subjects who regularly frequented the area. Ms. Chaudhry stated she did not know anyone by the name of "JB" or James.

On January 27, 1997, Detective T.E. Craven met with Ms. Linda Parker, Amoco personnel at 900 Waughtown Street. Ms. Parker stated she was not familiar with "JB" or James. When shown a photograph of Mr. Calvin Smith, Ms. Parker stated he resembled a person that used to come to the store to speak with a former clerk identified as Ms. Shakosher Moore.

In Detective Craven's supplement report dated February 4, 1997, he indicated that Ms. Shakosher Moore was located at her home on October 28, 1997.<sup>13</sup> Upon looking at the photograph of Mr. Calvin Smith, Ms. Moore stated he looked like someone who used to come into the Amoco, but she never had a lengthy conversation with him. Ms. Moore stated she may have heard of an individual, known as "JB" who used to frequent Skyline Village, but she was not sure.

On January 30, 1997, Detective Williams received a call from Mr. Smith's attorney, Mr. Bill Speaks. Mr. Speaks inquired

as to the identification of an independent polygraph examiner. Detective Williams told Mr. Speaks that he was not aware of anyone and asked about Mr. Smith's further cooperation in this investigation. Mr. Speaks stated Mr. Smith had provided a false name to throw off the police and he was going to recant his entire statement.

On February 3, 1997, Detective Williams unsuccessfully attempted to locate Ms. Valarie Williams at 3638 Denver Street.

Due to Mr. Smith indicating that he went to 3-F Skyline Village after he left the Silk Plant Forest, Detective Williams met with Ms. Sharon Suitt, Skyline Village personnel. Detective Williams was told that Ms. Andra Lauren Wilson was the resident of 3-F Skyline Village from December 11, 1990 until January 27, 1997. Detective Williams was provided with a telephone number for Ms. Wilson.

On February 3, 1997, Detective Williams tried to call Ms. Wilson but received an answering machine. He left a message requesting that Ms. Wilson call him on February 4, 1997.

On February 3, 1997 at 4:42 p.m., Ms. Wilson left a voice mail for Detective Williams indicating that she could meet him at 319 Brent View Court.

On February 4, 1997 at 10:15 a.m., Detective Williams met with Ms. Wilson. Ms. Wilson stated she had spoken with Mr. Smith about the Silk Plant Forest and he (Smith) did not beat the woman (Marker). Ms. Wilson stated this conversation with Mr. Smith occurred at her apartment, 3-F Skyline Village, in June, 1996. Ms. Wilson stated Mr. Smith did not come to her apartment on December 9, 1995, as he had previously indicated. Ms. Wilson stated she could not remember who Mr. Smith stated was with him at the Silk Plant Forest. Ms. Wilson indicated that during the conversation with Mr. Smith, she was with Mr. Eugene Littlejohn<sup>14</sup>, Ms. Pamela Moore and a black

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<sup>13</sup> The date written in the supplement as 10-28-1997 was a typographical error with the digits of the month being transposed.

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<sup>14</sup> Mr. Burgess Eugene Littlejohn.

male, whose hair she was fixing. Ms. Wilson declined to provide a taped or written statement but stated she would come to the Public Safety Center later to provide the statement.

On February 4, 1997, Ms. Wilson arrived at the Public Safety Center and was interviewed by Sergeant Weavil and Detective Williams. Ms. Wilson stated she had "maybe 20 conversations" with Mr. Smith regarding the Silk Plant Forest. Ms. Wilson stated that, at times, Mr. Smith would be drinking when they had the conversations. Ms. Wilson stated her first statement was not at all factual because she did not want to involve herself or her family.

Ms. Wilson stated she first met Mr. Smith on December 26, 1995, and sometime in January or February of 1996, Mr. Smith first discussed that he had beaten a woman at the Silk Plant Forest. Ms. Wilson stated she called CrimeStoppers in June, 1996 and left a message stating that Mr. Smith was responsible for the beating of the lady at the Silk Plant Forest.

Ms. Wilson stated Mr. Smith tried to break into her apartment but she did not report it to the police because Mr. Smith went into rages when he used crack cocaine. Ms. Wilson also stated that she had seen Mr. Smith assault Ms. Valarie Williams on numerous occasions.<sup>15</sup> Ms. Wilson stated that, on one occasion, she was with Mr. Littlejohn, Ms. Moore and another black male when Mr. Smith discussed the Silk Plant Forest. Ms. Wilson stated Mr. Smith also discussed it when they were alone. Ms. Wilson provided a written and taped statement.

In a supplement dated February 11, 1997, Detective Williams stated that on December 11, 1995, Ms. Ivadine Hester called CrimeStoppers stating, "The caller reported that they were at the Silk Plant Forest, Silas Ck. Pkwy., Friday at 1230 hrs. with a friend. Caller reports while they were in the store two black males came in the store and they were acting very strange. The subjects walked midway into

the store, looked around, then left. Both subjects were in their late twenties, one was 6'2" with dreadlocks, wearing a corduroy hat, second subject was 5'11" with short hair, wearing a baseball hat and both were wearing dark coats and pants. Caller did not notice which way these subjects walked or if they got into a vehicle. No further details provided." The disposition noted on this CrimeStoppers was for information only.

On January 31, 1997, Ms. Ivadine Hester came to the Public Safety Center and requested to speak with Detective Williams concerning the CrimeStoppers Report she had made on December 11, 1995. Ms. Hester stated she believed the photograph she saw of Mr. Calvin Smith in the newspaper was the same as one of the subjects she saw in the Silk Plant Forest on December 8, 1995. Ms. Hester was shown a photographic line-up containing a photograph of Mr. Smith. Ms. Hester picked the photograph of Mr. Smith, but stated she was not certain if this was the same person she saw inside the Silk Plant Forest. Ms. Hester also stated she believed she saw the same two subjects in a burgundy Ford Mustang at Silas Creek Crossing Shopping Center, but she did not have the registration plate numbers.

On February 5, 1997, Detective M.L. Sharpe located Mr. Brian McKnight, the security officer who worked the night of December 9, 1995 at Silas Creek Crossing Shopping Center. Mr. McKnight stated that on the night the crime occurred, he was making rounds of the shopping center parking lot in his vehicle. Mr. McKnight stated that at about 9:00 p.m., while driving by Toys-R-U's, he heard, over his portable scanner, an unknown trouble call dispatched to the Silk Plant Forest. Mr. McKnight drove to the rear of the Toys-R-U's and to the back door of the Silk Plant Forest. Mr. McKnight made a quick check of the back door and continued driving behind the shopping center complex. Mr. McKnight stated he did not see anyone behind the stores.

On February 10, 1997 at 11:30 a.m., Detectives Williams and R.G. Cozart located Mr. Eugene Littlejohn at 1104 Baltimore Street. Mr. Littlejohn agreed to be transported to the

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<sup>15</sup> Police Department records indicated that Ms. Valarie Williams reported two assaults, one communicating threats and one disturbance involving Mr. Calvin Michael Smith. Police Incident Report #: 9422898, 9424950, 9511142, 9544708.

Public Safety Center by the detectives for an interview.

During the interview with Mr. Littlejohn, he spoke about being at Ms. Andra Wilson's apartment in Skyline Village along with Mr. Smith, Ms. Wilson, Ms. Moore and another black male. Mr. Littlejohn stated he overheard Mr. Smith state, "I was in the store stealing and I had to beat the bitch down. She wouldn't let me out of the store, so I had to beat the bitch down." Mr. Littlejohn stated that was all he heard Mr. Smith say about the Silk Plant Forest. Mr. Littlejohn provided a taped statement.

On March 3, 1997, Detectives Williams and Cozart went to 1104 Baltimore Street and located Mr. Littlejohn. Mr. Littlejohn was asked to come to the Public Safety Center to be interviewed again about the Silk Plant Forest and his possible involvement in the crime. Mr. Littlejohn was told he was not under arrest. Upon arrival at the Public Safety Center, Mr. Littlejohn was again told that he was not under arrest, and regardless of the outcome of the interview, he would not be arrested on that date.

During the interview, Mr. Littlejohn confessed to his involvement in the crime. Mr. Littlejohn stated that sometime near the middle of December, 1995, he, Mr. Smith, Ms. Moore and Ms. Wilson were at Ms. Wilson's home at 3-F Skyline Village. According to Mr. Littlejohn, Mr. Smith was talking about going to a store to collect money owed to him; however, there was no mention of who owed the money or why the money was owed. Mr. Littlejohn stated the entire group left in Ms. Wilson's light blue Buick; they first went to East Winston to purchase beer and then drove to the Silas Creek Crossing Shopping Center. Mr. Littlejohn stated they parked in front of the Toys-R-Us at about 7:00 p.m. Mr. Littlejohn stated he and Mr. Smith exited the car, leaving Ms. Moore and Ms. Wilson inside.

Mr. Littlejohn stated he and Mr. Smith went directly to the store next to Toys-R-Us, and although he did not know the name of the store, it contained plastic trees and ceramic items.

Mr. Littlejohn stated Mr. Smith entered the store first. Mr. Littlejohn stated he waited inside the store near the door, while Mr. Smith approached the white female clerk (Marker). Mr. Littlejohn stated he heard Mr. Smith ask the clerk for money and was told that she had none. According to Mr. Littlejohn, Mr. Smith grabbed the clerk and a struggle began as Mr. Smith started to the back of the store. Mr. Littlejohn stated he left the store after the struggle began and returned to the car. Mr. Littlejohn stated Mr. Smith returned 10 to 15 minutes later and told the group, "Let's go."

Mr. Littlejohn stated he never saw Mr. Smith with a weapon nor did he see Mr. Smith strike the clerk. Mr. Littlejohn denied striking the clerk and denied taking anything from the store. Mr. Littlejohn stated the matter was not discussed until February, 1996, when they were in Ms. Wilson's apartment, and Mr. Smith stated he had to "beat a bitch" to get out of the store. After the interview, Mr. Littlejohn was taken back to 1104 Baltimore Street.

On March 4, 1997 at 9:30 a.m., Ms. Andra Wilson arrived at the Public Safety Center to be interviewed again. Ms. Wilson denied being at the Silas Creek Crossing Shopping Center with Mr. Littlejohn, Ms. Moore and Mr. Smith. She also denied driving them to the shopping center. Ms. Wilson agreed to submit to a polygraph examination administered by Detective Maines. Per Detective Maines, Ms. Wilson provided truthful responses that she had not driven Mr. Littlejohn, Ms. Moore or Mr. Smith to the shopping center.

On March 4, 1997 at 1:45 hours, Sergeant Weavil and Detective Williams located Mr. Littlejohn for the purpose of a follow-up interview to clarify statements made by Mr. Littlejohn that Ms. Wilson had driven the group to Silas Creek Crossing Shopping Center, which was denied by Ms. Wilson. Mr. Littlejohn then stated that Ms. Wilson and Ms. Moore were not with him and Mr. Smith when they (Smith and Littlejohn) entered the Silk Plant Forest. Mr. Littlejohn provided the same account regarding him going with Mr. Smith to collect money. Mr. Littlejohn stated Mr. Smith drove them to the

shopping center in an unknown vehicle. Mr. Littlejohn was offered the opportunity to submit to a polygraph examination but declined, stating he was too tired. Mr. Littlejohn stated he would take the exam on March 5, 1997 at 8:30 a.m.

On March 5, 1997, Mr. Littlejohn was picked up by Sergeant Weavil and Detective Williams at 1104 Baltimore Street to be transported to the Public Safety Center for his polygraph examination. The examination was administered by Detective Maines. In a polygraph report dated March 5, 1997, the following questions were asked of Mr. Littlejohn during the examination: 1.) Did you hit a white female clerk while you were inside the Silk Plant Forest?; 2.) Were you present inside the Silk Plant Forest when the white female clerk was hit in the head?; and 3.) Did you see Calvin Smith hit the white female clerk in the head while you were inside the Silk Plant Forest?

At the conclusion of the polygraph examination, Detective Williams spoke with Detective Maines about the results. According to Detective Williams, per Detective Maines, Mr. Littlejohn provided truthful responses in that he had not been present when the white female clerk was struck at the Silk Plant Forest and he had not seen Mr. Smith strike the white female clerk at the Silk Plant Forest.

Detective Williams had made numerous attempts to locate Ms. Pamela Moore at 937 Mock Street and 1104 Baltimore Street. Finally, on March 5, 1997, Detective Williams received a voice mail from Ms. Pamela Moore stating she was going to surrender to the police for service of outstanding warrants.

On March 10, 1997, Detectives Williams and Cozart met with Ms. Moore at the Surry County Jail for the purpose of interviewing her about the crime. Ms. Moore was an inmate at the jail due to being arrested for unrelated crimes. Ms. Moore was advised of and waived her Miranda Rights. Initially, Ms. Moore denied having any knowledge of Mr. Calvin Smith's involvement with the robbery and assault at the Silk Plant Forest. Ms. Moore stated she was present at Ms. Wilson's

apartment when Mr. Smith stated he had to "beat a bitch" to get out of the store. Ms. Moore stated Ms. Wilson, Mr. Littlejohn and an unknown black male were present when Mr. Smith made the statement. Ms. Moore stated she also heard Mr. Smith say that he had to get money. Ms. Moore stated this conversation occurred in February, 1996.

On March 10, 1997, Detective Williams spoke with Mr. Marker concerning him coming to Winston-Salem for an interview and polygraph examination. Mr. Marker stated he would call Detective Williams on March 11, 1997 and discuss a possible date for the interview.

On March 11, 1997, Mr. Marker called Detective Williams and stated he would be in town from April 7 to April 9, 1997, and he would contact Detective Williams upon arrival.

During the period of April 7 to April 9, 1997, Detective Williams did not hear from Mr. Marker. Detective Williams made unsuccessful attempts to contact Mr. Marker.

On April 18, 1997, Detective Williams spoke with FBI Agent Thomas E. Callaghan concerning the blood evidence submitted on March 21, 1997. This evidence was blood samples obtained from Ms. Marker and Mr. Lamoureux, which had been previously tested by the North Carolina SBI. Agent Callaghan indicated there were no traces of blood, other than Ms. Marker's, found on the evidence submitted.

This investigation was Closed, Cleared by Arrest on April 23, 1997.

On May 12, 1997, Mr. George Estrada, an inmate at the Forsyth County Law Enforcement Detention Center was interviewed regarding his statement that he had knowledge of the crime and of Mr. Smith's involvement. Mr. Estrada told Detectives Williams and M.N. Barker that he and Mr. Smith became close friends while they were incarcerated together. Mr. Estrada stated Mr. Smith confided that his girlfriend had become angry with him and told

the police that he (Smith) had committed the crime. According to Mr. Estrada, Mr. Smith was high on drugs at the time of the crime, and he had not intended for things to go the way they did as he only wanted to take the money. Mr. Estrada stated Mr. Smith indicated that he took about \$200.00 and the clerk was a more mature, white lady. Mr. Estrada stated he came forward with this information because Mr. Smith was boasting about the crime and that the police did not have the evidence to indict him.

On May 29, 1997, Detective Williams obtained custody of Mr. Estrada from the Forsyth County Law Enforcement Detention Center for the purpose of transporting him to the Public Safety Center for a polygraph examination concerning the information he had provided on May 12, 1997. At the conclusion of the polygraph examination administered by Detective Maines, it was determined Mr. Estrada failed the examination. When advised of the results, Mr. Estrada stated, "I thought I could come here and beat the polygraph." Mr. Estrada provided no additional explanation for being deceptive.

On August 8, 1997, Detective Williams met with Ms. Ivadine Hester at the Public Safety Center to show her a photographic line-up including Mr. Littlejohn. Ms. Hester earlier had provided information that she had seen two strange-acting black males inside the Silk Plant Forest on December 8, 1995. Ms. Hester already had identified Mr. Smith, from a previous line-up, as one of the individuals she saw inside the Silk Plant Forest on December 8, 1995. After viewing the line-up for approximately one minute, Ms. Hester identified Mr. Littlejohn as the other black male she saw inside the Silk Plant Forest on December 8, 1995, but she was not absolutely positive he was the person she saw that night.

On August 27, 1997, Mr. Littlejohn submitted to a second polygraph examination with questions asked to determine his level of involvement with this crime. Detective Maines administered the polygraph examination asking the following questions of Mr. Littlejohn: 1.) Did you plan with Calvin Smith to rob the clerk

at the Silk Plant Forest?; 2.) Were you present in the Silk Plant Forest when the clerk was robbed?; and 3.) Did you participate in the robbery of the Silk Plant Forest in any way? Detective Maines came to the conclusion that Mr. Littlejohn answered truthfully to not planning, being present or participating in the robbery.

On August 27, 1997, Detective Williams learned from Ms. Marker's father, Mr. Hoisington, that her physical condition was improving. Mr. Hoisington indicated that Ms. Marker could see well with her glasses. When asked if Ms. Marker knew who attacked her, Mr. Hoisington stated she answered in the affirmative by shaking her head.

Detective Williams had two enlarged photographic line-ups prepared, one to include Mr. Calvin Smith and the other to include Mr. Eugene Littlejohn, for Ms. Marker to view.

On September 4, 1997, Detectives Williams and Maines met with Ms. Marker at her nursing home in Akron, Ohio.

Prior to meeting with Ms. Marker, Detectives Williams and Maines met with her parents. They were told of a call that Mr. Hoisington had received from Attorney Clifford Britt indicating that he and Mr. Marker's attorney, Mr. William Bartel, were communicating in reference to a civil lawsuit. Mr. Britt indicated to Mr. Hoisington that he had spoken to Mr. William Speaks, Mr. Smith's attorney, and was told that Mr. Smith had seen a "white male stalker" inside the Silk Plant Forest. Detective Williams wrote that he obtained a copy of the letter, which was dated August 20, 1997, and a written statement from Mr. Hoisington regarding this conversation. It was not documented when Mr. Britt, Mr. Bartel or Mr. Speaks had these conversations. It was not documented when this observation by Mr. Smith occurred or how he knew the white male was a stalker. The letter was never located, but the statement written by Mr. Hoisington was located.

Detectives Williams and Maines interviewed Ms. Marker with a nursing assistant present in the room. Detective Williams noted that Ms. Marker was confined to a wheelchair, she could not talk and she had very little motor skills. When asked if Ms. Marker remembered Detective Williams, she shook her head from side to side to indicate no. When asked if she remembered what happened to her, she indicated yes by nodding her head. When asked if her attacker was white, Ms. Marker indicated no, but when asked if her attacker was black, she indicated yes. When asked if the attacker was with someone else, Ms. Marker indicated yes. When asked if the second person was white, she indicated no but indicated yes when asked if the second person was black. When asked if there was one person in the store, she responded no, but responded yes when asked if there were two persons in the store. When asked if her husband, Mr. Marker, knew who attacked her, she wrote on a tablet that she did not know. She also wrote that she did not know and was not sure if Mr. Marker owed her attacker any money. Ms. Marker was asked if she would look at a photographic line-up, and she indicated yes.

With the exception of Ms. Marker's answers written on the tablet, all of her answers were provided by her shaking her head in a yes or no fashion.

Prior to showing Ms. Marker the photographic line-ups, Detective Williams showed her a family photograph and asked her to point out family members as he called out their names. Ms. Marker was able to point out family members Mark Hoisington and Diantha Hoisington by putting her finger above their heads in the portrait. Ms. Marker was unable to point out family members identified as Taylor, Drew and Spencer.

Next, Detective Williams arranged the line-up containing Mr. Kalvin Smith's photograph on a round table and asked Ms. Marker if she would look at the photographs. Ms. Marker's wheelchair was rolled up to the table to view the photographs. According to Detective Williams, after about 20 seconds, Ms. Marker's expression turned to a terrified look

and she hit the photograph of Mr. Smith three times with her hand. Ms. Marker was given a marker and asked to make a mark on the photograph of the person that beat her at the Silk Plant Forest. Ms. Marker made three marks on the table below Mr. Smith's photograph.

Detective Williams then arranged the line-up containing a photograph of Mr. Eugene Littlejohn. After Ms. Marker viewed this line-up, she indicated, by shaking her head "no", that the second person in the store was not represented in that photo array.

Detective Williams then conferred with Mr. Hoisington and was told that Ms. Marker could better view the photographs if they were displayed in a vertical position. Detective Williams then arranged the line-up containing Mr. Smith in a vertical position. When brought back to view the line-up, Ms. Marker became irritated and threw a writing tablet at the nurse. Ms. Marker glanced at the photographs and then began hitting her arms on the wheelchair. When Ms. Marker closed her eyes and turned her head away, the interview was concluded.

Detectives Williams and Maines next met with Mr. Marker's attorney, Mr. William Bartel. Mr. Bartel stated he would not allow his client to submit to a polygraph examination. Detectives Williams and Maines, along with Mr. Bartel, then met with Mr. Marker. When shown a photograph of Mr. Kalvin Smith, Mr. Marker stated, "I don't think I know him," although he thought Mr. Smith looked like someone who used to work at TJ's Deli. Mr. Marker admitted that he owed a lot of people a lot of money.

On August 9, 1997, Detective Williams spoke with Mr. Clifford Britt, an attorney. Detective Williams asked Mr. Britt to come to the Public Safety Center for an interview but he declined and told Detective Williams to come to his office. Mr. Britt apparently was never interviewed.

On September 29, 1997, Detective Williams received information that Mr. Littlejohn had two letters from Mr. Smith, sent

from the Forsyth County Detentions Center.<sup>16</sup> Detective Williams met with Mr. Littlejohn and took possession of the letters. Detective Williams indicated that he read the letters, provided copies to the District Attorney's Office, and placed the originals in Evidence Management. The contents of the letters were not documented.

The supplement report regarding the letters, which was written by Detective Williams and dated October 1, 1997, was the last documented investigative effort by him. The case remained closed, cleared by arrest.

### **Additional CrimeStoppers Reports**

During the course of this investigation, five additional CrimeStoppers Reports were received and not documented in the investigative report. With the exception of one, each was marked with a disposition of "Info Only"; however, follow-up was completed on each one. This section will provide the details of those CrimeStoppers Reports.

On December 11, 1995, the following report was made to CrimeStoppers: "Caller reports just before 2100 hrs., they noticed a few police cars in the parking lot, but they were not aware of this incident until the next day or so. On the night of the assault they observed three black males, late teens or early twenties, in the parking lot. One subject was wearing a leather aqua-colored jacket and hat that matched. This subject was shaking the door at the Shoe Show business and he was screaming for someone inside Shoe Show. This subject observed caller looking at him and he made an obscene gesture at them. The other two subjects walked toward Silas Ck. Pkwy. They were both wearing dark coats and baseball hats. Caller could not provide any further details and wanted someone to be aware of the above details."

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<sup>16</sup> Detective Williams documented the same date as September 29, 1996, apparently incorrectly listing the year.

Detective Williams contacted the caller from the CrimeStoppers Report dated December 11, 1995. In a reply, documented on the CrimeStoppers Report and dated December 29, 1995, Detective Williams noted that he spoke with the caller, the same information was provided, and the caller added that the Shoe Show appeared to be closing when the black male was shaking the door. The caller advised that no identification of the black male could be made.

On December 13, 1995, the following report was made to CrimeStoppers: "The caller reported that they saw a burgundy Mustang late 80's early 90's at Old Town Shopping Center. The driver was a black male. Caller did not provide any further details. Caller advised they would speak with a detective. Caller is<sup>17</sup>. C/S [CrimeStoppers] attempted to contact the caller but met with negative results. Caller left this information on the answering machine."

In a reply dated January 8, 1996, Detective Williams noted that the caller had no additional information to this CrimeStoppers Report.

On December 19, 1995, the following report was made to CrimeStoppers: "The caller reported this information was in reference to the woman that was beaten at the Silk Plant Forest. He advised that someone should check out a burgundy Mustang ETJ-6817. Caller left this information in the answering machine and did not provide any details." The disposition for this CrimeStoppers was "pending" with a due date of January 18, 1996.

In a reply dated December 28, 1995, Detective Williams noted that the registration number provided by the caller indicated that the license plate was turned in on June 8, 1993. Detective Williams contacted North Carolina License Plate Agency personnel and confirmed that the license plate was turned in at a Mount Airy, NC office on June 8, 1993; the plate number had not been reissued.

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<sup>17</sup> Name/telephone number provided in this CrimeStoppers was omitted to protect the integrity of CrimeStoppers.

On December 20, 1995, the following report was made to CrimeStoppers: "Caller reports they were at the Silk Plant Forest at 2058 hrs. Caller did not see anything suspicious. They observed the police go into the store. Caller could not provide any further information."

In a reply dated December 26, 1995, Detective Williams noted he spoke with the caller and no additional information was provided.

On January 30, 1997, the following report was made to CrimeStoppers: "The caller reported that Aaron Marker knew Calvin Smith. Caller personally saw them together behind Chicks Drive-In in October of 1995. Aaron was wearing a redshirt/jacket. Caller has heard that Aaron owed Calvin money for drugs and he used to sell drugs at Chicks. Caller advised that they heard Calvin and another guy, name unknown, went to the store that night to get their money from Aaron. Caller also heard that Aarons wife had a one million dollar life insurance policy on her. Caller advised they would contact Detective Williams."

No reply to this specific CrimeStoppers was located; however, Detective Williams interviewed Mr. Marker who denied any involvement in this crime. On September 4, 1997, Detective Williams showed Mr. Marker a photograph of Mr. Calvin Smith. Mr. Marker indicated he did not think he knew Mr. Smith but Mr. Smith looked like someone that used to work at TJ's Deli. This was documented in Detective Williams' supplement report, dated September 8, 1997.

## 2: Legal Proceedings

In this case, Mr. Kalvin Michael Smith received a trial by jury and has exercised his right to appeal on multiple occasions. Repeatedly, those individuals within the criminal justice system reviewing his case have found that there were not significant flaws in the process that convicted Mr. Smith. Those individuals also have found that even if there were flaws in the process, those flaws did not result in a miscarriage of justice, and that the results of Mr. Smith's criminal trial would not have been different even absent those flaws.

### 1997 Trial

Mr. Kalvin Michael Smith received a trial by jury in the Forsyth County Superior Court before Judge Peter McHugh on charges of Robbery with a Dangerous Weapon and Assault with a Deadly Weapon with the Intent to Kill inflicting serious injury. The trial began on December 1, 1997 and lasted until jury verdicts were announced on December 5, 1997.

As was his right during the trial, Mr. Smith, through his attorney, Mr. William Speaks, challenged the two statements he had provided to police detectives on January 24, 1997. He filed a motion to suppress those statements, arguing that they had been obtained in violation of his constitutional right against self-incrimination.

After reviewing the evidence and hearing testimony, Judge Peter McHugh denied Mr. Smith's motion. The Court noted specifically that: "Up to the time the defendant gave [his first statement to police identified as] State's Exhibit Number one, he was free to leave at any time and had been advised on at least five occasions that he was not in custody and was not under arrest." The Court further found that Mr. Smith "appeared to be calm, ... did not appear to be excited or agitated ... [and] never expressed to either [detective] or to any other police officer that he wished to leave the premises. He never refused the answers and he never indicated that he wished to terminate the interview."

As to the second statement, given after Mr. Smith was arrested at approximately 5:30 p.m., the Court found that Mr. Smith "never requested any nourishment or refreshment; ... never asked to leave or indicated that he would terminate the interview until that point that the defendant, following the provision of [the second statement], stated that he wanted the [sic] speak to a lawyer, at which time the interview was concluded immediately."

Finally, the Court concluded that: "... No threats or promises of any nature were made against the defendant in attempt [sic] to induce him to make the statement[s] which have been received into evidence as State's Exhibit One and State's Exhibit two. That neither Detective Weavil nor Detective Williams nor any other member of the Winston-Salem Police Department communicated to the defendant the

threat that Valarie Williams would be charged as principal or as accomplice in this action if he failed to make may [sic] statements; that no show of threat or violence or force were [sic] exhibited to the defendant by Weavil or Williams or any member of the Winston-Salem Police Department in an attempt to coerce the defendant to make a statement which has been received in evidence in this action.” Accordingly, both statements were included in the evidence to be presented to the jury.

In his argument to the jury on Mr. Smith’s behalf, Mr. William Speaks stated that Ms. Marker’s in-court identification of Mr. Smith as the person who attacked her was flawed: “Whatever black man is sitting there, she’s going to say that’s him.” Mr. Speaks further stated that: “[t]hey told her she is going to identify whoever is sitting here in this courtroom,” reiterating Mr. Smith’s position that the police had manipulated the investigation and improperly influenced Ms. Marker’s testimony.

The jury received the Court’s standard instructions for deciding the case, including that they should decide for themselves whether the witnesses were reliable. After approximately two days of deliberation, on December 5, 1997, the jury voted unanimously that Mr. Smith was guilty of robbery with a dangerous weapon and assault with a deadly weapon with intent to kill inflicting serious injury. He was sentenced to a maximum term of 28 years and 11 months in prison.

## **Appeal of Verdict**

Mr. Smith appealed his conviction, arguing in part, again through his attorney, Mr. Speaks, that his trial was tainted by Ms. Jill Marker’s testimony and identification of him. In an opinion issued December 15, 1998,<sup>18</sup> the North Carolina Court of Appeals<sup>19</sup> found no

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<sup>18</sup> This opinion was not published.

<sup>19</sup> The 15 judges of the North Carolina Court of Appeals sit in rotating panels of three and decide only questions of law arising out of Superior and District court cases.

error in the trial and upheld the conviction.

## **First Motion for Appropriate Relief**

Mr. Smith did not further pursue his case to the North Carolina Supreme Court. Rather, on a pro se basis (without the representation of an attorney), Mr. Smith filed a Motion for Appropriate Relief (MAR). A MAR is a form of appeal in which a defendant seeks to set aside a verdict on different grounds than were used in an appeal. In this case, Smith claimed the following deficiencies as to his trial:

- I. CONVICTION OBTAINED BY THE STATUS [SIC] KNOWINGLY USE OF PERJURED TESTIMONY, FALSE AND MANUFACTURED EVIDENCE;
- II. CONVICTION FURTHER WAS OBTAINED BY THE USE AND MEANS OF TAINTED IDENTIFICATION PROCEDURES;
- III. THE DEFENDANT WAS DENIED AND DEPRIVED OF THE CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OWN BEHALF;
- IV. CONVICTION OBTAINED DUE TO AN ELABORATE MASTER CONSPIRACY BETWEEN THE POLICE AND DISTRICT ATTORNEY, AS WELL AS STATE’S WITNESS;
- V. THE STATE FAILED TO MEET BURDEN OF PROOF, TO PROVE INJURIES CLAIMED;
- VI. THE DEFENSE COUNSEL FAILED TO OBTAIN COURT ORDER TO HAVE TRUTH SERUM TEST DONE FOR THE DEFENDANT TO SUPPORT HIS INNOCENCE;
- VII. LACK OF EVIDENCE TO SUPPORT CONVICTION;

- VIII. THE DEFENDANT HAS BEEN THE VICTIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, BEFORE, DURING AND AFTER TRIAL;
- IX. DEFENDANT’S SENTENCE WAS INVALID.”

Both the State, through the District Attorney’s Office, and Mr. Smith’s previous attorney, Mr. Speaks, filed responses to this Motion. In his response, Mr. Speaks stated that he had provided effective assistance of counsel to Mr. Smith, and stated that he had no knowledge of any conspiracy on the part of the District Attorney’s Office in its handling of the prosecution of Mr. Smith’s case. After considering all materials presented, on January 14, 2000, Forsyth County Superior Court Judge William Freeman denied Smith’s MAR and corresponding request for a new trial.

### Second Motion for Appropriate Relief

A little more than eight years later, Mr. Smith filed a second MAR through new attorneys. This Motion had 11 separate bases for relief:

**Claim 1:** False evidence tainted Mr. Smith’s conviction, in violation of Mr. Smith’s constitutional rights....<sup>20</sup>

**Claim 2:** The State did not disclose to Mr. Smith that Ms. Jill Marker was shown photographic line-ups on October 31, 1996, which contained Mr. Smith’s photograph, or that Ms. Marker did not identify Mr. Smith as her attacker....

**Claim 3:** The State suppressed evidence that the person who attacked Ms. Marker may already have been in the Silk Plant Forest when the last customer left just before Ms. Marker was assaulted and that he likely escaped through the

back storage room....

**Claim 4:** The State did not disclose to Mr. Smith that the Toys-R-Us surveillance video showed that Mr. Littlejohn and Mr. Smith did not enter Toys-R-Us on the night Ms. Marker was attacked, as Mr. Littlejohn testified at trial....

**Claim 5:** The State did not disclose to Mr. Smith that Ms. Pamela Moore told prosecutors that she thought Mr. Smith had admitted robbing a liquor store and beating the woman to get out....

**Claim 6:** The State failed to preserve the Toys-R-Us surveillance video, which it knew contradicted the false testimony of Mr. Eugene Littlejohn that he and Mr. Smith entered Toys-R-Us shortly before and shortly after Ms. Marker was assaulted.

**Claim 7:** The State allowed the jury to hear Ms. Marker’s highly prejudicial and unreliable testimony....

**Claim 8:** Mr. Smith received ineffective assistance of counsel with respect to the failure of his counsel to impeach Ms. Andra Wilson, Ms. Pamela Moore, and Mr. Eugene Littlejohn with the statement of Mr. Frederick Reyes....

**Claim 9:** Mr. Smith received ineffective assistance of counsel because of the failure of his counsel to challenge Ms. Marker’s constitutionally unreliable identification of Mr. Smith....

**Claim 10:** Mr. Smith received ineffective assistance of counsel because of the failure of his counsel to request copies of the photographs shown to Ms. Marker on October 31, 1996, and to determine that Ms. Marker had not identified him as her attacker....

**Claim 11:** Mr. Smith received ineffective assistance of counsel because of the failure of his counsel to request a copy of the Toys-R-Us surveillance video to show that Mr. Littlejohn and Mr. Smith did not go into that store on the night of December 8, 1995....

<sup>20</sup> Citations to specific provisions of the U.S. Constitution and case law are omitted.

Again, written responses to this second MAR were filed by the State through the District Attorney's Office.

On September 29, 2008, Forsyth Superior Court Judge Richard Doughton held a preliminary hearing on Mr. Smith's Motion. The purpose of the preliminary hearing was to determine whether a full evidentiary hearing would be held on one or more of Mr. Smith's claims. Both Mr. Smith, through his attorneys, and the State argued their positions on the claims, and the Court also considered the record in the case to that point, exhibits, evidence and other documentation. Judge Doughton determined that only the following claims would be the subject of a full evidentiary hearing: Claims 1, 2, 5, 10 and 11 listed above. Claims 3, 4, 6, 7, 8 and 9 were summarily denied on the grounds that they were procedurally barred or because they did not have merit.

The evidentiary hearing on Mr. Smith's second MAR lasted approximately four days. At least 14 witnesses testified and a number of exhibits were introduced by both sides.

After considering all of the testimony and material described above, Judge Doughton denied Claims 1, 2, 5, 10 and 11 of Mr. Smith's second MAR. Judge Doughton's decisions, and the analysis behind them, were presented in a written order filed on May 21, 2009.

As to each claim, Judge Doughton outlined specific findings of fact, analyzed those facts under the applicable law and reached legal conclusions. The order cites testimony and exhibits presented by both Mr. Smith and the State and analyzes the legal arguments made by both Mr. Smith and the State.

The order is exhaustive. For example, as to Claim 1 that the State presented false evidence against Mr. Smith, Judge Doughton issued 75 separate findings of fact in over 17 pages of explanation. As to Claim 2, there were 65 separate findings of fact in over 15 pages of explanation.

## **Court's Analysis of Claims**

The Court set out in its ruling the legal standards applicable to its review of Mr. Smith's claims. As to Claim 1, Mr. Smith was required to prove that the State "knowingly presented false and misleading evidence against him" such that he would be entitled to a new trial.

As to Claim 2, Mr. Smith was required to prove that the State withheld evidence from him which was material to either his guilt or innocence or was exculpatory (favorable to him).

As to Claim 5, Mr. Smith was required to prove that an alleged inconsistent statement of a trial witness should have been provided to him and would have "made a difference" in his case.

As to Claims 10 and 11, Mr. Smith was required to prove that: (i) his trial counsel's performance was deficient; and (ii) that such deficiency so prejudiced him as to deprive him of a fair trial with a reliable result.

### **Analysis of Claim 1**

In Claim 1, Mr. Smith argued that the State knowingly presented false testimony and evidence in his trial. As support for this argument, Mr. Smith stated that trial witnesses Ms. Moore and Mr. Littlejohn later recanted their sworn testimony at trial.

As to Mr. Littlejohn, the Court spent five pages of discussion of the various inconsistent statements and testimony of Mr. Littlejohn, given to police detectives, private investigators and in court – both during trial and at a post-conviction evidentiary hearing. The Court concluded that Mr. Littlejohn "has not testified truthfully before this Court." The Court also concluded, however, that "Defendant [Mr. Smith] has not shown that Eugene Littlejohn's post-conviction testimony is probably true and that his trial testimony was false."

As to Ms. Moore, the Court likewise found that she had provided inconsistent statements and testimony both prior to, during and after Mr. Smith's trial. The Court determined, as with Mr. Littlejohn, that Mr. Smith had not proven that Ms. Moore's alleged recantation of her trial testimony was actually the truth. Also as to Mr. Moore, the Court noted that there was other evidence which supported Ms. Moore's testimony at trial – rather than her recantation. First, Ms. Wilson testified to some of the same information that Ms. Moore testified to at trial, and Ms. Wilson never recanted her testimony.

As to the effect of the conflicting testimony on Mr. Smith's trial, the Court noted first that Mr. Smith had not proven what testimony of Mr. Littlejohn and Ms. Moore was false and what was true – so that he could not prove that the State knowingly presented false evidence.

In conclusion, as to Claim 1, the Court held as follows: "The record shows that the jury had plenty before them to question the credibility of these witnesses, including admissions by each witness that they had given previously inconsistent and untruthful statements. At trial it was the jury's responsibility to sift this evidence, to find the truth of the matter, including assessing the credibility of these witnesses. Defendant [Mr. Smith] fails to show new evidence in post conviction is probably true and if so it would have made a difference at trial...."

The Court fully outlines the basis for this ruling in pages 26-31 of its Order.

## **Analysis of Claim 2**

In Claim 2, Mr. Smith argued that the State withheld evidence regarding Ms. Marker's viewing of a photographic line-up. Mr. Smith argued that the State had not provided his trial attorney with a complete copy of a videotaped interview with Ms. Marker which occurred on October 31, 1996.

In analyzing this Claim, the Court noted that Mr. Smith's trial attorney, Mr. William Speaks, could not specifically recall whether he watched the entire videotaped interview or whether he watched a portion depicting a photograph line-up. However, Mr. Speaks testified that he had no reason to believe that he would not have been provided the entire tape, and that he did not believe anything on the tape would have been helpful to Mr. Smith's defense. This belief was strengthened after Mr. Speaks viewed a September, 2007 interview with Ms. Marker in which she identified Ms. Smith as her attacker.

The Court's conclusion as to Claim 2 was that Mr. Speaks was shown the entire videotape of the October 31, 1996 interview, that the State did not withhold or alter the videotape and that the videotape would not have been of any value to Mr. Smith's defense – especially given Ms. Marker's positive identification of Mr. Smith during a September 2007 photographic line-up. The Court's conclusions as to this Claim are found in pages 47-49 of the Order.

## **Analysis of Claim 5**

Claim 5 is that the State withheld evidence regarding a statement made by Ms. Pamela Moore. Mr. Smith argued that this statement was made to prosecutors and indicated that Mr. Smith had admitted to Ms. Moore that he had robbed a liquor store rather than the Silk Plant Forest store.

The Court found, as discussed in connection with Claim 1, above, that Ms. Moore gave inconsistent and contradictory statements and testimony on a number of occasions. Again, therefore, the Court found that Mr. Smith could not show that the admission of this statement would have made a difference in his defense. Specifically, the Court found that hearing evidence that Mr. Smith had assaulted a clerk at a liquor store "would not have persuaded the jury to find him not guilty of the assault and robbery of Ms. Marker."

## **Analysis of Claim 10**

In Claim 10, Mr. Smith argued that his trial counsel was ineffective because that counsel did not request copies of photographs used in an October 31, 1996 photographic line-up presented to Ms. Marker. Mr. Smith argued that if his trial counsel had gotten copies of these photographs, he could have used them to impeach Ms. Marker's in-court identification of Mr. Smith as her attacker.

The Court reiterated, as discussed in connection with Claim 2, above, that a videotape of the October 31, 1996 interview and photographic line-up with Ms. Marker was provided to Mr. Smith's counsel, Mr. Speaks, and that Mr. Speaks determined that it would not be favorable to Mr. Smith. Further, the Court concluded, even if Mr. Speaks had argued to the jury that Ms. Marker had not identified anyone during the October 31, 1996 photographic line-up, any value in that argument "would have been eviscerated by [the State] also pointing out to the jury that she [Ms. Marker] subsequently identified Defendant [Mr. Smith] in a photographic line-up presented to her in September 1997."

Finally, the Court noted that if the October 31, 1996 videotape had been presented to the jury by Mr. Speaks, the State "probably would have introduced, or given serious thought to introducing, Defendant's statement... [which] placed him squarely at the scene of Ms. Marker's attack and would have been most damaging to Defendant's [Mr. Smith's] case. Accordingly, Mr. Speaks' strategy not to put on evidence to avoid having the State offer [Mr. Smith's] statement in rebuttal was reasonable."

## **Analysis of Claim 11**

Mr. Smith also claimed that his trial counsel was ineffective by failing to request a copy of the Toys-R-Us surveillance videotape. Mr. Smith argued that this tape was significant in that it would have contradicted Mr. Littlejohn's trial testimony that he had seen Mr.

Smith enter the Toys-R-Us on the night of the attack.

WSPD Sergeant M.N. Barker testified at the evidentiary hearing that, while he and Detective Williams seized a videotape from Toys-R-Us, which was next door to the Silk Plant Forest, the tape had no evidentiary value. Specifically, Sergeant Barker stated that the tape was "foggy," that it was not possible to "make out anything" from the tape beyond the images of "figures" entering and exiting the Toys-R-Us store – it was not possible to discern faces or identities from the videotape.

Mr. Smith's trial counsel, Mr. Speaks, confirmed that he did not request a copy of the videotape, despite having received a WSPD supplement report indicating that the videotape had been seized from the store.

The Court held, however, that it was clear from the record in the case that nothing in the videotape could have been used to impeach Mr. Littlejohn. Specifically, the Court ruled that: "Because the quality of the video was insufficient to identify anyone in particular, and therefore could not have been used to discredit Mr. Littlejohn's testimony that Defendant [Mr. Smith] went to the Toys-R-Us, counsel [Mr. Speaks] was not in any way deficient for failing to obtain a copy of the video."

## **Summary of Ruling**

In conclusion, as to Claim 1, the Court found that even if certain witnesses had testified falsely against Mr. Smith, he had not shown that the State (District Attorney's Office) knew that the testimony was false, which is the legal standard that must be met. The Court further noted that Mr. Smith had not proved that removing the alleged false testimony from his trial "would have affected the outcome of the trial."

As to Claim 2 – that the State withheld potentially helpful evidence regarding photographic lineups – the Court found that Mr.

Smith had not proven that the State did so. The Court further found that even if this withholding of evidence had occurred, Mr. Smith had not shown how the evidence could have helped him with his defense. Specifically, there was no showing at the hearing that if Mr. Smith had known about the lineup and its results, that introducing that information at trial would have caused “the result of the proceeding [to] have been different” – which is the legal standard required to be met.

Claim 5 was that the State did not disclose a witness’s inconsistent statement to Mr. Smith prior to trial. Again, to prevail on this claim, Mr. Smith would have had to show that if he knew of the statement and had, therefore, been able to introduce it at his trial, the result of the trial would likely have been different. The Court found that Mr. Smith did not make this showing. The alleged inconsistent statement – even if introduced in Mr. Smith’s defense at trial – would not have been evidence favorable to Mr. Smith and would not have been material in proving his guilt or innocence.

As to Claims 10 and 11 regarding ineffective assistance of counsel, the Court similarly found that Mr. Smith did not show that Mr. Speaks’ performance as his trial counsel was deficient and was so deficient that he was prejudiced.

In sum, Mr. Smith was provided with consideration by the Court of five of Mr. Smith’s claims and all argument, testimony and documentary evidence offered to support them. The Court then analyzed the facts under the applicable law and explained in a detailed manner its conclusions as to those claims.

## **Conclusion**

As of the writing of this report, Mr. Smith’s claims of innocence and the specific grounds for those claims have been considered by no less than six Judges and Justices of either North Carolina Superior or Appellate courts. Mr. Smith has been provided the legal

representation of three separate attorneys, including one who specializes in post-conviction relief.

While Mr. Smith maintains his position as to his conviction and his claims of innocence, he has been afforded the legal avenues to pursue his position and his requested remedy and has availed himself of those avenues.

### **3: Previous Reviews of the Silk Plant Forest Case**

Since a jury returned guilty verdicts against Mr. Calvin Michael Smith on December 5, 1997 for the attack and robbery of Ms. Jill Marker, and prior to this report, eight separate reviews of this case, or of significant issues in this case, have been conducted.

Four of those reviews were court proceedings in which different judges either upheld Mr. Smith's convictions or refused to hear his appeal. One review concerned alleged improprieties by the District Attorney's Office and was administered by the North Carolina SBI. Another review was by the District Attorney's Office after Mr. Smith's second MAR was heard. One review was performed internally by the WSPD, and the final review, to date, was by the Silk Plant Forest Citizens Review Committee established by the Winston-Salem City Council.

#### **Reviews through Court Proceedings**

Chapter 2 of this report contains a more-detailed description of the legal proceedings in this case, including the reviews outlined briefly below.

The first judicial review of the case occurred when Mr. Smith appealed his conviction. On December 15, 1998, the Court of Appeals denied his appeal, effectively upholding and validating his conviction.

On August 9, 1999, Mr. Smith filed a MAR on his own behalf. The motion was considered and was denied by the Courts in January, 2000.

The second MAR was filed by counsel, Ms. Theresa Newman and Mr. David Pishko, on behalf of Mr. Smith on April 29, 2008. As to this motion, a preliminary hearing was held on September 29, 2008 and five issues were identified as requiring an evidentiary hearing. This hearing started on January 5, 2009 and continued through January 8, 2009. The claims in this second MAR were denied in an order issued by the Court on May 21, 2009.

Mr. Smith's attorneys then petitioned the North Carolina Court of Appeals to consider Mr. Smith's case, but the Court of Appeals declined to do so on September 14, 2009. The Court of Appeals action effectively allowed Judge Doughton's ruling issued May 21, 2009 to stand.

The North Carolina Supreme Court similarly declined to hear Mr. Smith's appeal.

Currently, Mr. Smith has an appeal pending in the United States District Court for the Middle District of North Carolina. This appeal is in the form of a "writ of habeas corpus." This legal proceeding is generally employed where an individual seeks to challenge his or her custody, including custody based on a state court conviction which is alleged to have been unconstitutional. Mr. Smith's writ of habeas corpus was filed with the Federal Court in January 2010 and has not yet been ruled upon. Once the writ is addressed, and regardless of the outcome, Mr. Smith's case will have been subject to nine separate legal and/or administrative reviews.

### **SBI Review of Alleged Discrepancies in Evidence Production**

In November, 2003, in response to allegations by Mr. Smith that certain evidence had been withheld from his attorney in his original trial, Chief of Police Patricia Norris<sup>21</sup> and District Attorney Tom Keith<sup>22</sup> jointly requested that the North Carolina SBI review those allegations. The SBI performed that review, interviewing personnel from the District Attorney's Office and the lead detective in the case. The SBI determined that the case files of the District Attorney's Office (provided by Detective Williams) matched the case files of Mr. Smith's attorney. Accordingly, in a press conference, District Attorney Keith noted that his office had followed criminal procedure discovery requirements.

### **WSPD Administrative Review**

On August 14, 2007, the WSPD released an administrative review of the Silk Plant Forest case. The purpose of that

investigation was to determine whether WSPD policies, procedures and practices in existence at the time of the criminal investigation were followed. In the course of this review, case files and material were reviewed, and certain individuals were interviewed.

The administrative review cited some areas of concern regarding documentation of investigative actions in the case. Some of the issues were related to individual officers not fully documenting all actions, while others were related to delayed documentation of actions, which was allowed at that time by WSPD policy.

The conclusion of the review was that there was "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."

However, on August 31, 2007, this report was withdrawn by City Manager Lee Garrity after Mr. Garrity determined that one of the authors of the review had once supervised Detective Williams. Mr. Garrity was quoted at the time as stating that the administrative review had not been as comprehensive as he and the Winston-Salem City Council desired.

### **District Attorney Limited Reinvestigation with Assistance of SBI**

In October, 2007, as a result of issues and concerns raised in the case, the Forsyth County District Attorney's Office requested the assistance of investigators with the North Carolina SBI in a limited reinvestigation of the Silk Plant Forest case. Specifically, SBI investigators interviewed again or attempted to interview numerous individuals who had been involved in the original investigation of the case, and particularly those witnesses from the original trial who were later reported to have recanted their testimony. SBI investigators also interviewed a federal inmate who came forward stating that he was in jail with Mr. Calvin

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<sup>21</sup> Retired in June, 2008.

<sup>22</sup> Retired in December, 2009.

Michael Smith and Mr. Smith had admitted to robbing the Silk Plant Forest. This reinvestigation was still ongoing when Mr. Smith's second MAR was heard by the Court (as referenced above). As the Court's ruling rendered the SBI's efforts moot, the limited reinvestigation ceased as of the issuance of that ruling.

### **Silk Plant Forest Citizen Review Committee**

On October 22, 2007, the Winston-Salem City Council adopted a Resolution establishing a citizen review committee in the Silk Plant Forest case. In March, 2008, the City Council amended this Resolution to clarify the role and purpose of this committee. The Silk Plant Forest Citizen Review Committee held meetings, conducted interviews, reviewed documents and otherwise analyzed the WSPD's handling of the Silk Plant Forest case, beginning March 25, 2008 and ending with its presentation to City Council of a report titled "Findings and Recommendations of the Silk Plant Forest Citizens Review Committee" dated July 24, 2009. This review is discussed in more detail in Chapter 5.

As outlined in Chapter 5 of this report, the WSPD had already adopted several of the Committee's recommendations prior to the issuance of its report, and has subsequently adopted other recommendations after review and discussion of the report.

## 4: Noted Issues & Concerns

As noted in the previous chapter, several reviews of the Silk Plant Forest case have been conducted. Some involved legal proceedings while others were independent analysis initiated by various agencies, groups and organizations. The legal reviews associated with court proceedings were addressed in Chapter 2 but several will be discussed again briefly in this chapter when appropriate. Aside from the four legal proceedings, there were four independent reviews conducted by the North Carolina SBI, the Winston-Salem Police Department Administrative Review Committee, the Forsyth County District Attorney's Office in conjunction with the North Carolina SBI, and the Silk Plant Forest Citizen Review Committee (SPFCRC). The following is a brief overview of noted issues and concerns primarily arising from the analysis and findings of the SPFCRC and Mr. Smith's allegations; included are the Committee's responses to them.

As indicated in the SPFCRC, "wrongful convictions do occur" and "the Winston-Salem community has learned this from unhappy experience." After its review of the Silk Plant Forest case, the SPFCRC expressed a lack of confidence in the investigation and subsequent results. Several questions and/or issues pertaining to the policies, procedures and investigative practices were raised and presented to support their position.

Issues and/or concerns raised by the SPFCRC and advocates for Mr. Calvin Michael Smith pertained to the following: 1.) The collection, storage, viewing(s) and disposition of

the Toys-R-Us videotape; 2.) The elimination of Mr. Kenneth Lamoureux as a suspect; 3.) The deviation from the photographic line-up protocol; 4.) The discrepancies in the administering and documenting of polygraph examinations that were conducted; 5.) The penning of Mr. Calvin Michael Smith's written statement; 6.) The credibility and recantation of several of the State's witnesses (primarily Mr. Littlejohn, Ms. Moore and Ms. Williams); 7.) The allegation of coercion on the part of investigators directed toward Mr. Smith during his interview and/or interrogation; and 8.) The claims of corruption in the District Attorney's Office, which reportedly involved the payment and legal assistance to key state witnesses in exchange for their testimony (Mr. Littlejohn and Ms. Moore).

### **Toys-R-Us Videotape**

In reference to the Toys-R-Us videotape, there are conflicting statements and concerns pertaining to the time frames and numbers of viewing, and who ultimately possessed and disposed of the videotape. However, one thing remains consistent; the videotape was deemed to have no "evidentiary value" in December, 1995. The detective initially assigned to the case, M.N. Barker, indicated in his supplement dated December 28, 1995 that he obtained the videotape from the business on December 10, 1995. He further noted that he and Detective D.R. Williams viewed the tape and determined "it has not been

found to have any evidentiary value”. In an interview conducted on May 15, 2007 during a prior Silk Plant Forest review, Detective Barker reiterated these facts and indicated that the tape was not stored as evidence.

The fact that a working copy of this videotape was not made and the original was not stored as evidence in Property Control (Evidence Management) clearly signals that it offered little to advance or impact the case. Detective Williams stated during an interview before a special meeting of the Winston-Salem City Council on June 11, 2009 that he and Detective Barker viewed the videotape and discovered that no facial recognition and/or positive identification could be obtained due to the “poor quality” and that “the camera was mounted as such a degree that you could not see their faces.”

Detective Barker indicated that he would have given the videotape to Detective Williams after the case was reassigned from him to Detective Williams. Based upon Detective Barker’s documentation in his supplement, the videotape was reviewed once by him and Detective Williams some time before December 28, 1995, the date he submitted the supplement containing this information. Like Detective Barker, Detective Williams could not recall the exact date of the viewing, but he remembered viewing the videotape once while Detective Barker was present. His assertion made during the aforementioned interview before City Council that he watched it after Mr. Smith became a suspect obviously puts the viewing of the videotape several months after December, 1995.

Detective Williams stated that, to the best of his recollection, the videotape was returned to Toys-R-Us by Detective Barker. The confusion with regard to who ultimately possessed and disposed of the videotape remains unresolved. However, no evidence of a sinister motive to misuse and/or destroy the videotape exists to corroborate and/or advance the theory implied in Attachment One of Silk Plant Forest Citizen Review Committee – Memo to the File, page 41. Additionally, as outlined in Chapter 2,

Mr. Smith’s claims as to the Toys-R-Us videotape were presented to and reviewed by the Court as part of his second MAR. The Court found nothing in the videotape that could have been used to impeach Mr. Littlejohn. Specifically, the Court ruled that: “Because the quality of the video was insufficient to identify anyone in particular, and therefore, could not have been used to discredit Mr. Littlejohn’s testimony that Defendant [Mr. Smith] went to the Toys-R-Us, counsel [Mr. Speaks] was not in any way deficient for failing to obtain a copy of the video.”

### **Mr. Kenneth Lamoureux**

To address the issue of how and when Mr. Kenneth Lamoureux was eliminated as a suspect is well-documented in the Administrative Review (IR# 580102) on pages 18 and 19. In short, Mr. Lamoureux was ruled out as a suspect once Ms. Marker identified her attacker as a black male during a videotaped interview conducted on October 31, 1996 by Detectives Williams and Barker.

Detective Williams stated during his interview before the City Council that Mr. Lamoureux was no longer a suspect after he moved to Charlotte, NC in April of 1996; however, he showed Ms. Marker a photographic line-up containing Mr. Lamoureux’s photograph during the October, 1996 interview. Detective Williams had been contacted and advised by Dr. Rehasia, Ms. Marker’s attending physician, that her condition had improved to the point that she could be interviewed. Ms. Marker reportedly could answer questions accurately by nodding her head up and down for “yes” and side to side for “no”. Dr. Rehasia also indicated that Ms. Marker could see and write. Detectives Williams and Barker interviewed Ms. Marker and presented several photographic line-ups; three containing black male subjects and one containing white male subjects. The latter contained a photograph of Mr. Lamoureux who was still considered a suspect.

Despite his words to the contrary, Mr. Lamoureux remained a suspect as evidenced by Detective Williams' actions on that date. It is important to note that Mr. Lamoureux had been interviewed, subjected to searches of his vehicle and residences, had blood drawn for testing, and submitted to a polygraph examination. With no eyewitness, physical evidence or confession, investigative leads pertaining to Mr. Lamoureux had been exhausted until such time Ms. Marker's medical and mental health improved sufficiently enough so that she could aid in the investigation and/or other evidence or leads surfaced or developed regarding Mr. Lamoureux.

Lastly, after Ms. Marker was relocated to Akron, Ohio, Detective Williams contacted Detective Steve Girger of the Akron, Ohio Police Department on May 3, 1996 to apprise him of the investigation. He provided Detective Girger with Ms. Marker's location, a copy of the preliminary report, and a mug shot of Mr. Lamoureux, whom he indicated was a potential suspect. From early on, until Ms. Marker indicated that her attacker was a black male, Mr. Lamoureux was considered a suspect.

### **Photographic Line-up**

Due to diminished vision as a result of her attack, Ms. Marker was shown 8" x 10" photographs on September 4, 1997 by Detective Williams. Although it was a deviation from the photographic line-up to enlarge photographs for Ms. Marker's viewing, this reasonable accommodation did not violate existing departmental policy or any law. This action demonstrated the sound judgment, flexibility, effort and desire to obtain the truth on the part of the investigators.

In a case built primarily on circumstantial evidence and witness (hearsay) testimony, the victim identifying her assailant was critical to the case and eventual outcome. The SPFCRC concurred that "Detective Williams' efforts on this issue as an appropriate attempt to accommodate a victim and give the

victim the best opportunity to identify her perpetrator." The Committee also concurred with their assessment that "there is no evidence that the construction of these line-ups adversely impacted the investigation."

### **Polygraph Examination**

The discrepancies regarding the number of polygraph examinations administered to Mr. Calvin Michael Smith in July, 1996 and who administered the polygraphs present the groundwork for speculation and confusion.

By all accounts, the arrest of Mr. Smith on outstanding orders for arrests occurred on July 22, 1996. Arrest sheets completed at the time of his apprehension and the data entered into the police computer storage files confirmed that fact. He was reportedly brought to the Public Safety Center, interviewed, administered a polygraph and then transported to the Magistrate's Office, where the outstanding legal papers were served. If this series of events is true, a discrepancy arises regarding the date the polygraph was given. The polygraphist would have administered the polygraph examination on July 22, 1996 instead of July 26, 1996 as indicated in the documents contained in the case file.

By his own admission, Mr. Smith submitted to only one polygraph examination. Documents with conflicting information indicate or suggest that there were two polygraph examinations administered in July, 1996, but the weight of available information indicate that only one polygraph was given to Mr. Smith.

The July 22, 1996 or "first" polygraph administered to Mr. Smith, which resulted in a truthful response, cannot be confirmed despite Detective Williams' testimony during a 1997 judicial hearing held prior to Mr. Smith's trial. In addition, the three documents alluded to by the SPFCRC to prove that the first polygraph examination actually took place are CrimeStoppers Report #17726-01, the November 4, 1996 supplement, and a draft copy

of the latter; all of which were prepared and submitted by Detective Williams.

The supplement dated November 4, 1996, prepared and submitted by Detective Williams, noted that Detective L.M. Maines conducted the polygraph examination on July 22, 1996. However, it was determined that during that time frame, Detective Maines was on vacation. While critics suggest that some other polygraphist could have administered the examination on that date, no records to that exist. At that time, the Department had three certified polygraphists: L.M. Maines, M.N. Barker and R.C. Patterson. According to their reports and recollection, Detective Patterson administered the polygraph examination of Mr. Smith. Further, there is no evidence to suggest that an outside polygraphist was utilized and paid for services.

A review of the investigative reports and follow-up interviews of Detectives Barker, Maines and Patterson, which were conducted by the first internal review committee, revealed that Detective Patterson administered the polygraph examination in July, 1996, and the result was "inconclusive".

It was also standard protocol at that time for the polygraphist to give each polygraph test a unique identifying number at the time it was administered. This number was derived from a combination of the date and time of the polygraph. The number on the polygraph report prepared by Detective Patterson and logged into the polygraph computer was 072696T0800, indicating that the test was administered on July 26, 1996 at 0800 hours (8:00 a.m.).

As mentioned previously, Mr. Smith was administered one polygraph. This is consistent with the documentation in the case files prepared and submitted by Detective Patterson. The only documents in the case file containing information consistent with the type of paperwork compiled by a Departmental polygraphist at that time are Detective Patterson's. His documents, comprised of a supplement report dated October 9, 1996 with his signature, noted the name of the person

examined, the date of the examination, the results of the examination, and a polygraph chart or printout. As he indicated in this report and subsequent interview, he administered the lone polygraph on Mr. Smith. It can be suggested that, unless Detective Patterson met with Mr. Smith on July 22, 1996 and scheduled and administered the exam four days later, he recorded the wrong date on his supplement report. However, this would not explain the polygraph computer-generated date on the polygraph printout. It is more likely that the test was administered on July 22, 1996 by Detective Patterson, and he printed and scored the test on July 26, 1996, resulting in the printout with that date indicated. An additional note: There is no record or documentation of Mr. Smith being removed from the Forsyth County Law Enforcement Detention Center after being placed there subsequent to his July 22, 1996 arrest. Once Mr. Smith raised his right to counsel, there was no further contact with him by any WSPD personnel. This adds further credence that there was only one polygraph test was administered on July 22, 1996.

Whether the error is in either Detective Williams' or Detective Patterson's reports, the Committee concluded that the investigators had not fabricated and inserted into the file evidence of a fictitious second polygraph examination. The Committee concurred with the conclusion reached by the initial administrative review committee that the inaccuracies and inconsistencies in the reports do not appear deliberate and are attributable to the acceptable practice at that time of delayed completion of reports. Actions and accommodations of this type would be reasonable and acceptable today, providing the circumstances are fully documented.

In May, 2007, during the first internal administrative review of this case, three polygraphists individually scored the polygraph printout from the test administered on Mr. Smith by Detective Patterson. Each polygraphist independently scored the responses as "Untruthful".

Admittedly, questions remain concerning the polygraph of July, 2006. Mr. Smith was offered the opportunity to submit to additional testing by an outside, independent and renowned polygraphist; however, he declined at the advice of counsel.<sup>23</sup>

### **Smith's Written Statement**

With regard to the question of who penned the statement of Mr. Calvin Michael Smith, there is no doubt that the defendant wrote the statement in his own hand. Sergeant R.N. Weavil, who assisted in interviewing and interrogating Mr. Smith, testified during a court hearing that he had written the statement for the defendant; however, during this testimony, Sergeant Weavil relied solely on memory recall. He did not take notes nor complete a supplement report documenting his involvement/actions; however, this was not a policy or procedural breach at that time. It was not uncommon for the case detective to document the participation and investigative action of another detective/officer in his/her report as was done in this case. Although this was not a violation of policy, it unnecessarily added to the confusion. The fact that it was totally written by Mr. Smith adds strength to the statement. Today, the confusion surrounding the statement would be avoided by timely and accurate documentations via supplements, as current policies mandate.

However, without detailed notes pertaining to specific actions taken and/or roles played, fading memory and faulty recollection can lead to misstatements. Although this situation did not adversely affect the case, it did represent another incident of inadequate documentation that negatively impacted the perception and confidence of those reviewing the investigation.

### **Credibility Issues and Recantation of State Witnesses**

Mr. Eugene Littlejohn, Ms. Pamela Moore, Ms. Valarie Williams and Ms. Andra Wilson provided information linking Mr. Calvin Michael Smith to the Silk Plant Forest robbery and Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury. Each of these witness's statements was given voluntarily during non-custodial interviews. The witnesses' statements were corroborated to the best extent possible by the investigators and assistant district attorneys who also vetted them via extensive questioning for clarity and truth. With the exception of Ms. Williams, each testified under oath that Mr. Smith had indicated his involvement in the crimes. These witnesses also were subject to cross-examination during the trial and subsequent court hearings. During the trial, no claims of coercion were raised by the witnesses or defense. As in any trial, the jury in this case assessed the credibility of the witnesses and evaluated the evidence to determine the truth and reach a verdict.

The first MAR, filed on August 9, 1999 by Mr. Smith, raised several issues, two of which pertained to the State "knowingly use of perjured testimony, false manufactured evidence" and "an elaborate master conspiracy between the police and district attorney's office, as well as the state's witness" to obtain a conviction (first MAR, Issues I. and IV.). The Superior Court Judge presiding over this matter, the Honorable William H. Freeman, denied the first MAR. (A more detailed discussion of the findings and rulings was covered in Chapter 2.)

On April 29, 2008, Mr. Smith filed a second MAR through his counsel, Ms. Theresa A. Newman and Mr. David C. Pishko. In the second MAR, 11 claims were raised by counsel on their client's behalf. The Court summarily denied six of the claims and held an evidentiary hearing on the remaining five claims. All were denied as either procedurally barred and/or as without merit, by the Honorable Richard L. Doughton, Superior Court Judge Presiding.

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<sup>23</sup> SPFCRC Interview of Mr. Calvin Michael Smith.

## **Allegations of Coercion by Case Investigators**

During a suppression hearing held November 24, 1997, Mr. Smith, through counsel, alleged that his statement had been improperly obtained during an unlawful detention at the Public Safety Center which constituted a violation of his civil rights. The court concluded that the non-custodial interview of Mr. Smith conducted on January 24, 1997 was legal and the defendant's motion to suppress was denied by the Honorable Judge Peter M. McHugh. Judge McHugh noted in his ruling that Mr. Smith voluntarily responded to the Public Safety Center, never expressed a desire to leave the premises, never refused to answer questions, and never indicated that he wished to terminate the interview. He also noted that no show or threat of violence or force was exhibited to the defendant by any member of the WSPD to coerce a statement from Mr. Smith. During the second MAR, Mr. Smith alleged that his statement had been coerced by case investigators, namely Sergeant Weavil and Detective Williams. Mr. Smith alleged that threats and physical force was used to obtain his statement; however, he presented no credible evidence to prove that this actually happened. The presiding Superior Court Judge, the Honorable Richard L. Doughton, ruled in favor of the State by denying the defendant's motion to suppress. After an extensive review of the case file and associated documented materials, the Committee found no evidence that statements were improperly obtained from Mr. Smith or any other person interviewed during the course of the investigation.

## **Claim of Corruption in the District Attorney's Office**

In reference to the claim that District Attorney's Office personnel engaged in corruption was deemed without merit by the Court during legal proceedings and by the Committee after its review of the facts. The assertion that assistant district attorneys assigned

to the case offered money and/or reduced sentences for unrelated charges in exchange for witness testimony against Mr. Smith was baseless and unfounded. During the second MAR, Mr. Eugene Littlejohn testified that he was bribed with \$500.00 and Ms. Pamela Moore was promised a dismissal of charges pending in a neighboring county. Aside from their statements to these alleged events, no additional evidence or proof was presented. Judge Doughton, the Superior Court Judge presiding over the second MAR, denied these claims as well as the others put forth that the District Attorney's Office knowingly withheld evidence from and/or presented false evidence against the defendant.

The findings of the Committee concur with and support the Court's decision. No evidence was found to support the assertion of coercion by the defense. Although these issues were raised and continue to be discussed in the court of public opinion, the criminal court of the justice system was and remains the proper venue in which they should be presented, argued and resolved.

## **Closing Statement**

The Committee readily acknowledged that certain aspects of the Silk Plant Forest investigation were not performed at the level of today's standards and some did not meet those in existence at that time. The Committee agreed that the investigators could have taken additional or different steps during the course of the investigation that would have "enhanced the reliability and completeness of the information provided to the prosecutors and ultimately the courts." However, the discrepancies and deficiencies noted in the multiple reviews did not adversely nor significantly detract from the overall investigation and judicial outcome of the case then or now.

At the conclusion of this Committee's review, there is still the possibility that other reviews will be conducted, sanctioned or not. It is imperative that any critique of the Silk Plant

Forest investigation be viewed through the lenses of that time period. Analyzing the investigation within the proper context and era-appropriate perspective will yield a more objective analysis. When applying today's investigative techniques, technology, standards and expectations to an investigation conducted nearly 15 years ago, one would reasonably expect to identify police practices that were acceptable at that time, but since then, have been enhanced. Law enforcement techniques have evolved and will continue to do so.

Since December, 1995, advancements have been made regarding criminal investigations and prosecutorial procedures, but the work of past law enforcement and criminal justice professionals, who succeeded in bringing offenders to justice through established legal and conventional investigative means, cannot be dismissed. Prior to the recent "DNA" and "CSI" era, investigators built cases by developing and following leads, gathering physical evidence, identifying, locating and interviewing witnesses, interrogating and obtaining lawful confessions from perpetrators and/or compiling circumstantial evidence to identify, apprehend and prosecute criminal offenders.

## 5: Silk Plant Forest Citizen Review Committee

The SPFCRC was created by the Winston-Salem City Council on October 22, 2007 to conduct “a comprehensive fact-finding review” of the “Silk Plant Forest Case.” The City Council instructed the SPFCRC not to make any finding or determination of guilt or innocence in the case but to “focus on the question whether police procedures were properly followed.”

The SPFCRC was assembled after a WSPD internal review failed to allay the concerns of many in the Winston-Salem community. The SPFCRC was comprised of private citizens and was charged to conduct an independent review of all matters related to the case. Additionally, the SPFCRC was requested to make appropriate recommendations to the City Council concerning any enhancement to WSPD policies and procedures.

Regarding the overall assessment of the case, The SPFCRC made the following statement:

“After reviewing the Silk Plant Forest Investigation at length, the Committee [SPFCRC] has concluded that at critical stages in the investigation the investigators failed to follow procedures which, if followed, would have enhanced the reliability and completeness of the information that was provided to the prosecutors and ultimately to the court. For this reason

the Committee [SPFCRC] does not have confidence in the investigation, the information in question, or the result of the investigation. In some instances the investigators violated expressly stated Departmental policy. In other instances, they failed to take desirable steps that were not authorized by Departmental policy but were not clearly required. In still other instances they engaged in conduct that departmental policy simply did not address adequately.”

The SPFCRC also defined specific findings and recommendations to support the overall assessment of their review. The findings and recommendations are related to the following:

1. Polygraph Examinations
2. Investigatory Interviews
3. Photographic Line-ups
4. Supervision of Detectives, the Creation and Preservation of Investigatory Records, and the Preparation of Prosecution Booklets.

The purpose of the WSPD Committee was not to refute or discredit any of the SPFCRC findings, but to carefully study each recommendation and make appropriate adjustments to Departmental policies and procedures when applicable.

The WSPD has been nationally accredited since 1997, and all current policies and procedures comply with standards recognized as best practices and are consistent with the professional law enforcement community. Additionally, all officers are trained on the legal rules that govern an officer's authority to investigate criminal offenses, and officers must adhere not only to investigatory policies but all personal conduct policies.

The Professional Standards Division, Internal Affairs Section, ensures officers comply with all current standards by conducting administrative investigations of alleged misconduct and reporting the findings directly to the Chief of Police. It is the objective of this component to ensure public confidence in the Department through objective and thorough investigations of all allegations of employee misconduct.

In addition to adhering to Departmental directives, officers also must respect the constitutional rights of everyone, including those accused of violating the law. Therefore, officers receive extensive training on constitutional provisions and statutes that affect an officer's authority to investigate crime; specifically, training related to interrogation and confessions, photographic line-ups and other identification procedures, and the use of undercover officers and informants.

In many major cases, defendants file a motion to suppress statements, and the court has to decide if officers lawfully obtained the statements. Officers are trained to be aware of constitutional and statutory issues that may affect the statement's admissibility in court.

The remainder of this chapter discusses the specific recommendations of the SPFCRC and the Committee's response. The Committee carefully considered each recommendation and, when appropriate, made changes to Departmental policies and procedures. Some of the recommendations are related to constitutional issues, such as interrogations and confessions, and the Court is the deciding factor on whether or not a statement was lawfully

obtained.

The SPFCRC recommended that the WSPD adopt the following policies concerning polygraph examinations and the documentation of polygraph examinations:

- In any serious criminal case, the investigators should request material witnesses for the prosecution to submit to polygraph examinations.
- All such examinations should be designed to test, insofar as possible, the reliability of the main substance of the testimony that the witness is likely to give at trial.
- A request for a polygraph examination should be omitted under this policy only if 1.) The witness in question is not a material witness; 2.) There is no plausible reason to doubt the witness' reliability or impartiality; or 3.) There is some extraordinary circumstance that justifies the omission. Under this policy, any failure to request a polygraph examination of a material witness should be approved, in writing, by the investigator's supervisor.
- After administering a polygraph examination, the polygraph examiner should promptly prepare a written report of the examination indicating, among other things, 1.) The questions that were asked of the examinee; 2.) The answers that were given by the examinee; and 3.) The degree of truthfulness or deception found by the examiner. The written report should be signed by the examiner *and* his supervisor, and preserved, along with the charts of the examination, according to standard procedures for the preservation of case records. The record of the polygraph examination should be revealed to the District Attorney's Office if prosecution is contemplated.

- If a witness refuses to take a polygraph examination, this fact, together with the questions that would have been asked of the witness during the examination, should be documented, and this information should be revealed to the District Attorney's Office if prosecution is contemplated.

After carefully considering each recommendation, the Committee developed the following responses; however, it must be remembered that, currently, polygraph results generally are not admissible in court and the WSPD cannot force someone to take a polygraph.

- Every criminal polygraph is now audio- and video-recorded and stored electronically.
- Polygraphs are administered when there is a plausible reason to doubt the reliability of a witness, victim or suspect.
- The polygraph examiner prepares a supplement report that includes the questions asked of the examinee, the answers provided by the examinee and the degree of truthfulness to each question.
- These procedures are documented in WSPD General Order (G.O.) 4.08, Polygraph Operations, which was revised on May 24, 2010.

The SPFCRC made the following recommendations with respect to the WSPD's policies on audio- and video-recorded interviews:

- Standard Operating Procedure (SOP) 1.27 (video-recording) and SOP 1.28 (audio-recording) should be amended to make it clear that the purpose of these policies is to create an electronic record of all statements made by the interviewing detectives, as well as by

the victims, witnesses, or suspects who are being interviewed, in all cases defined in Section I A of SOP 1.27, subject to the exception provided in Section II C of SOP 1.27, which states that the recording policy "is not intended to delay, interfere or prevent detectives from acting when spontaneous utterances or statements are made."

- SOP 1.28 (audio-recording) should be amended to make it clear that the audio-recording equipment should be activated at the beginning of the interview and should not be turned off until the interview ends, as currently provided in the case of video-recording under SOP 1.27.
- SOP 1.27 (video-recording) and SOP 1.28 (audio-recording) should be amended to clarify further the nature of the interviewing techniques that are permissible and impermissible. The policies should specifically address the following questions among others: Is it permissible for a detective to promise, state, or lead an interviewee to believe that the interviewee or some other person will receive some benefit from the police, the District Attorney's Office, or the court if the interviewee provides information, or certain information, in the course of the interview or thereafter? Is it permissible for a detective to state or lead an interviewee to believe that the interviewee or some other person will be locked up or prosecuted or harmed in some other way if the interviewee fails to provide information or certain information, in the course of the interview or thereafter? Is it permissible for a detective to suggest what the specific content of an interviewee's statement should be?

After carefully considering each recommendation, the Committee developed the following responses:

- Detectives activate audio-recorders at the beginning of field interviews with witnesses, victims and suspects and continue to record until interviews are complete.
- All audio and video will record the actions or behaviors of the interviewer and interviewee.
- Interview techniques were further defined to clarify acceptable interview practices to protect the constitutional rights of all interviewees.
- These procedures are documented in multiple Departmental directives. Specifically, WSPD G.O. 4.13, Receipt, Verification, and Preservation of Statements, which was revised on February 10, 2010, and CID SOP, 1.27, Video-Recorded Interviews and 1.28, Audio Digital Recordings, which were revised on February 10, 2010.

It should be noted that the SCFCRC made the following statement in their report with regard to the new policy on audio- and video-recorded interviews, "If this policy had been in effect, and had been followed, at the time of the Silk Plant Forest investigation, much of the present controversy about interviews, witness statements, and interviewing techniques would probably have been avoided."

The SPFCRC recommends that all WSPD employees comply with all current policies, orders, and procedures that include, but is not limited to, Photographic Line-ups.

After carefully considering this recommendation, the Committee developed the following responses:

- No specific action was required because the policy on photographic line-ups was

revised in April, 2007, and the SPFCRC was in complete agreement with the policy.

- All personnel are trained on policies, and any violations or concerns are reviewed and investigated with appropriate actions taken.

The findings of the SPFCRC related to Supervision of Detectives, the Creation and Preservation of Investigatory Records, and the Preparation of Prosecution Booklets, have several policy implications.

"Obviously, it is necessary and desirable for criminal investigators to develop opinions about the likely guilt or innocence of criminal suspects as they pursue their investigations, but investigators must not usurp the function of prosecutors, judges, and juries. It is not their job to prosecute, judge, or convict. Their job is to collect complete and reliable information concerning the offense in question, to record and preserve that information and to make that information available to prosecutors, so that the information can then be presented to the court and tested according to law. It is not the investigators' job to filter the evidence and create a record that supports their view of the case."

Accordingly, the SPFCRC made the following recommendations:

- The written policies of the WSPD should expressly define the investigator's role in accordance with the principles set forth above.
- The consistent failure of an investigator to prepare and preserve complete and accurate investigatory records and evidence, in accordance with Departmental policy, should be a matter requiring dismissal or administrative discipline.

- Supervisors should be charged with the duty of monitoring investigators to ensure compliance with this policy.
- The WSPD and the District Attorney's Office should agree on standard procedures for the preparation of prosecution booklets and the transmission of investigatory information from investigators to prosecutors. These procedures should include checklists that describe the categories of information that must be disclosed or included in the prosecution booklets (e.g., statements by defendants, information concerning lineups, polygraphs, witness interviews, *Brady* information, and so forth). The procedures should be based on the principle of full and candid disclosure.
- When a police officer joins the Department, he or she should agree in writing that, upon the termination of his or her employment for any reason, he or she will have a continuing duty to provide the Department, on request, with any information within his knowledge or control concerning any matter with which he or she was involved while employed in the Department.

After carefully considering each recommendation, the Committee developed the following responses:

- Detectives are required to take meticulous notes in all stages of a major investigation and must submit them to the Records Division for a permanent record on a timely basis.
- Detectives retain a copy of their notes in order to write their investigatory report without delay.
- The detective's entire case file, which may include notes, emails, internal reports and external reports, such as

autopsy, medical, laboratory, telephone records, etc. are scanned and maintained in the Records Division.

- The photographic line-up procedures create an electronic permanent record and the written report is maintained in the Records Division.
- Detectives submit a prosecution booklet to the District Attorney's Office within 90 days of a major crime. Included in the booklet are: Scanned copy of entire case file; discs of crime-scene photographs; video-recording of crime scenes; all audio- and video-recorded interviews of witnesses, victim and suspects; photographic line-ups and reports.
- In major investigations involving numerous officers and detectives, one CID sergeant is designated as the repository of all reports. This ensures that reports are accurate and submitted in a timely manner.
- All personnel have an obligation to assist the Department, the City, and the community in having the lowest crime rates, highest quality of life, and overall justice. This obligation is mandatory upon employment with the Department and it is also expected upon separation from the Department.
- In many instances, investigations continue beyond the time a specific involved employee is employed with the Department. Personnel who have separated from the Department are expected to participate in and cooperate with investigations and inquiries regarding their actions during their employment. This is necessary to ensure that pending court cases are appropriately handled, that full information is available in various processes, and to help ensure justice is served.

- These procedures are documented in CID SOP, 1.02, Reports, which was revised on November 4, 2008, and WSPD Report Writing Manual Section 8.32, Preliminary Hearing Prosecution Report Booklet, State Witness List, Grand Jury Summary, which was revised on July 21, 2009. Additionally, WSPD G.O. 7.13, Professional Responsibility and Philosophy of Enforcement, was implemented on February 16, 2010. Specifically, Section X, Continuing Responsibility, was created to accommodate one of the recommendations.

## 6: Silk Plant Forest Internal Review Committee

The Committee was convened during the Fall of 2009 to study the final report of the SPFCRC and to answer the concerns and issues raised by the SPCRC. The report, over 104 pages, included recommendations and attachments. Another several thousand pages of materials, including exhibits, letters, transcripts, and other items had to be reviewed, as well as tapes and electronic files.

The Committee was established to consider the following:

- The recommendations of the SPFCRC and develop appropriate responses;
- Address specific concerns and issues raised by the report;
- Review the actions of WSPD personnel during the Silk Plant Forest investigation;
- Make recommendations regarding enhancements to procedures, policies and/or practices of the WSPD;
- Determine the position of the WSPD relative to case status, specifically, should the investigation be reopened or not;

- Prepare and disseminate a report outlining all relevant issues and concerns involving the case.

The Committee began its work by defining the scope of the review. During the very first meeting, it was determined that the Committee would not only review administrative findings but would follow-up on any potential leads in the criminal investigation. The Committee studied and analyzed the entire case file, including the initial investigation and the transcripts from the trial that resulted in Mr. Smith's conviction. Additionally, all legal proceedings, including Mr. Smith's MARs, were reviewed.

The Committee read all previous administrative reviews of the case and reviewed critical interviews that were conducted by the investigators assigned to the SPFCRC. The North Carolina SBI conducted two separate investigations and those reports were made available for assessment.

The Duke Innocence Project, which investigates possible wrongful convictions, embraced the Silk Plant Forest case, and on February 17, 2010, Committee members met with them to discuss possible leads.

## Meeting with Mr. James Coleman

In February 2010, Committee members met with Mr. James Coleman and Ms. Kim Kisabeth from the Duke University Law School to discuss some of their recent findings. Mr. Coleman provided the Committee with the following documents:

- Memorandum from Ms. Kim Kisabeth to Mr. Jim Coleman (February 16, 2010), reference Mr. Calvin Michael Smith Toys-R-Us videotape;
- Memorandum to Mr. Smith file (February 17, 2010) reference statement of Ms. Jeana Schopfer;
- Memorandum to Mr. Coleman and Ms. Theresa Newman from Ms. Kisabeth (February 12, 2010) reference interview with Ms. Schopfer;
- Copies of supplement Police Report # 9580102, dated December 19, 1995, written by Detective D.R. Williams, pages 1-11.
- Copy of Supplement Police Report # 9580102, dated December 10, 1995, written by Lieutenant L.G. Hippert, page 1.
- Copy of Supplement Police Report # 9580102, dated December 11, 1995, written by Officer A.D. Simms, pages 1-3.
- Affidavit of Ms. Paula Glover, dated August 19, 2009, pages 1-3.
- E-mail correspondence dated July 20, 2007, 1:20 p.m., between Ms. Newman ([Newman@law.duke.edu](mailto:Newman@law.duke.edu)) and Ms. Glover ([pglover@wfu.edu](mailto:pglover@wfu.edu)), 2 pages.

The Committee and Mr. Coleman briefly discussed the above-listed documents and all agreed that Committee members would interview Ms. Jeana Schopfer again. Ms. Kisabeth agreed to contact Ms. Schopfer to

advise her that someone from the Police Department would be calling to schedule an interview.

Mr. Coleman also had developed information regarding the missing Toys-R-Us videotape and the group concurred that the Committee would follow-up on this information.

## Summary of Interview: Ms. Jeana Schopfer

On March 2, 2010, two members of the Committee traveled to the Hillsborough, NC Police Department to interview Ms. Schopfer. Below is a brief summary of the interview:

Ms. Schopfer knew Ms. Marker because she was Ms. Marker's supervisor at Today's Child Care Center in 1995. Ms. Schopfer did not socialize with Ms. Marker outside of work, but Ms. Marker talked with Ms. Schopfer about her personal problems. Ms. Marker talked about her marriage and discussed Mr. Marker's drug abuse. Ms. Marker never told Ms. Schopfer that she was physically abused, but Mr. Marker's drug abuse was ruining their marriage.

In December 1995, approximately two days before the attack, Ms. Schopfer was shopping at Hanes Mall and saw Mr. and Ms. Marker. Ms. Marker and Ms. Schopfer were pregnant at the same time and they had a good conversation. Ms. Schopfer did not notice any problems between Mr. and Ms. Marker.

Ms. Schopfer knew Mr. and Ms. Ellen and Kenneth Lamoureux because their children attended the Today's Child Care Center. Ms. Schopfer stated that, while they were working together at Today's Child Care Center, Ms. Marker made statements to her indicating that Mr. Lamoureux made her feel "uncomfortable." Ms. Schopfer stated that one day while at work, she observed a verbal and physical altercation between Mr. and Ms. Lamoureux and security officers were called and made the couple leave the center.

Ms. Schopfer disclosed that she had a conversation with Ms. Marker on the night Ms. Marker was attacked at the Silk Plant Forest. Ms. Marker, who was working at the Silk Plant Forest, had called Ms. Schopfer while she was on-duty at Today's Child Care Center and advised that Mr. Lamoureux had visited her that evening at the Silk Plant Forest. Ms. Marker told Ms. Schopfer that Mr. Lamoureux asked her out for dinner, but got angry when she declined and left the store. Ms. Marker told Ms. Schopfer there were other customers in the store and she was certain that Mr. Lamoureux left the store. Ms. Schopfer did not deem it necessary to call the police at that time because Ms. Marker did not appear to be in danger.

Ms. Schopfer remembered going to work at Today's Child Care Center on Sunday, December 10, 1995, and while on the way to work, she believed that she heard about Ms. Marker's attack. Ms. Schopfer called 9-1-1 and began to tell the 9-1-1 operator what she knew. Ms. Schopfer told either a police dispatcher or a police officer about the conversation she had with Ms. Marker on the night she was assaulted. Ms. Schopfer could not remember if she ever talked in-person with a police officer or a detective; however, police reports indicated that Ms. Schopfer spoke with Lieutenant Hippert on December 10, 1995 and Detective Williams on December 12, 1995. Ms. Schopfer did not remember speaking with either one.

Ms. Schopfer did not have any further contact with the police about the attack, and as the investigation continued, she stayed informed by reading the newspaper and watching the news on television. Ms. Schopfer was not contacted by anyone with the District Attorney's Office or by any defense attorney.

Ms. Schopfer did not have any conversations with anyone after the trial until an attorney contacted her approximately two or three years ago. The attorney was "Theresa" from Duke University Law School; "Theresa" interviewed her at her residence in Hillsborough, accompanied by an unidentified "African-American gentleman." Ms. Schopfer remembered discussing the Silk Plant Forest

case but specifically said she did not tell them about her conversation with Ms. Marker on the night of the attack.

At the time she talked with the attorneys at her residence, she did not remember many details of the incident.

Ms. Schopfer stated the attorneys left the residence and she later prayed for divine guidance and began to remember very important details. Ms. Schopfer called "Theresa" at Duke Law School and left a message for "Theresa" to call her back because she had remembered some very important details. Ms. Schopfer did not receive a return telephone call.

Ms. Schopfer stated that in 2010, Ms. Kim Kisabeth from Duke University Law School found her on Facebook and they began to e-mail each other. On February 11, 2010, Ms. Schopfer met with Ms. Kisabeth in Hillsborough and Ms. Schopfer told her about the conversation she had with Ms. Marker on the night of the attack.

Ms. Schopfer later met with Ms. Kisabeth to sign an affidavit stating that the statement she had provided was the truth. Ms. Schopfer also received a telephone call from Ms. Kisabeth telling her that Winston-Salem Police Department detectives would be in touch with her to schedule an interview.

## **Physical Evidence Review**

In the early stages of the review of this case, it was decided that evidence needed to be reviewed in order to determine what still remained in the WSPD Evidence Management Section and if any was amenable for analysis using current technologies and practices. As a result of that review, it was discovered that the clothing worn by Ms. Marker on the night of the attack and samples of blood obtained from Mr. Lamoureux during the initial investigation were still maintained in Evidence Management. It also was determined that Ms. Marker's clothing had never been forensically examined for DNA.

Additionally, a piece of cardboard box with a red stain and a hair sample was being held.

No blood or oral swabbings from Ms. Marker or Mr. Smith were being held in Evidence Management. As a result, oral swabbings were obtained from Ms. Marker and Mr. Smith for the purpose of DNA analysis. Those swabbings, along with Mr. Lamoureux's blood and the piece of the cardboard box and clothes, were submitted to the North Carolina SBI Crime Laboratory for DNA analysis.

A laboratory report prepared by the North Carolina SBI Crime Laboratory, dated March 17, 2010, stated there were no latent fingerprints noted or developed on the cardboard box.

A laboratory report prepared by the North Carolina SBI Crime Laboratory, dated April 6, 2010, stated Ms. Marker's clothing did not reveal the presence of any hairs with Negroid characteristics; however, hairs with Caucasian characteristics were discovered. The roots of those hairs were removed and maintained for nuclear DNA analysis.

A laboratory report prepared by the North Carolina SBI Crime Laboratory, dated April 21, 2010, stated the swabbing from the piece of the cardboard box matched the DNA profile of Ms. Marker but did not match the profiles of Mr. Smith or Mr. Lamoureux. The DNA profile obtained from Ms. Marker's clothing only matched that of Ms. Marker and not Mr. Smith nor Mr. Lamoureux. The partial DNA profiles obtained from the roots removed from the hairs did not match the DNA profiles obtained from Mr. Smith, Mr. Lamoureux or Ms. Marker.

Despite these tests, questions still remained regarding the possibility of Ms. Marker's attacker's DNA remaining on her clothing. Mr. Shawn Weiss, Associate Technical Director, Forensic Identity Testing for Laboratory Corporation of America (LabCorp), was consulted. Mr. Weiss explained that consideration must be given regarding the number of individuals that had touched Ms.

Marker, where she actually was touched, and the deterioration of the samples over the years. Mr. Weiss was provided with the information regarding the crime and he agreed to accept the evidence for analysis. The property, which included Ms. Marker's clothing, saliva swabs from Ms. Marker and Mr. Smith, and a sample of Mr. Lamoureux's blood, were transferred to LabCorp on May 21, 2010.

On July 2, 2010, the property submitted to LabCorp, via Mr. Weiss, was transferred back to the custody of the WSPD. Also provided was a Certificate of Analysis, dated June 17, 2010, regarding the analysis of the evidence. This certificate stated, "An attempt to isolate Y chromosome DNA from the swabs from the sleeves of the green shirt (Item 77) failed to yield a sufficient quantity and/or quality of male DNA to develop a profile for comparison through PCR analysis. The Y chromosome profiles from Calvin Smith (Item 79) and Kenneth Lamoureux (Item 80) can be compared to any additional sample submitted." In laymen's terms, the analysis indicated there was insufficient quality or quantity of male DNA to develop a profile suitable for comparison.

## **Toys-R-Us Videotape**

During the Committee's review, it was thought that the Toys-R-Us surveillance videotape from the night of December 9, 1995 may continue to exist in the possession of the Toys-R-Us corporate office. During previous reviews of the case, confusion had arisen regarding the disposition of the videotape during the initial investigation.

Mr. Mike Violet, Toys-R-Us Loss Prevention Manager, was contacted to determine if the videotape still existed. Mr. Violet referred all questions regarding the videotape to the Toys-R-Us legal department. Toys-R-Us Senior Paralegal Peter Heimbach was contacted regarding the videotape. Mr. Heimbach stated the videotape for the Toys-R-Us at 3200 Silas Creek Parkway for December 9, 1995 does not exist.

Additionally, the WSPD's Evidence Management Section was checked to determine if the tape, or copies of the tape, existed; however, no tape existed.

## **Telephone Records**

Attempts were made to retrieve the telephone records requested by Detective Williams regarding telephone calls originating and terminating from the Silk Plant Forest and Mr. Kenneth Lamoureux's residence. Detective Williams was advised during the initial investigation that no records were kept for the time period prior to October 19, 1995 or exceeding November 18, 1995 due to the lack of magnetic tapes available to capture the information. Records were obtained for the period through November 18, 1995; these available records revealed no calls originating or terminating from Mr. Lamoureux's residence or the Silk Plant Forest. On February 23, 2010, AT&T Subpoena Compliance Center personnel confirmed that these particular records were no longer available.

## **Letters from Mr. Kalvin Smith to Mr. Eugene Littlejohn**

On September 29, 1997, Detective Williams received two letters from Mr. Eugene Littlejohn that were written by Mr. Kalvin Smith and mailed from the Forsyth County Law Enforcement Detention Center. The first letter received from Mr. Smith was postmarked August 30, 1997. In this letter, Mr. Smith accused Detective Williams of lying and attempting to blackmail Mr. Littlejohn into testifying against him. Mr. Smith asked Mr. Littlejohn to tell the truth and he denied telling him (Littlejohn) that he (Smith) had beaten anyone.

A second letter to Mr. Littlejohn from Mr. Smith was postmarked September 24, 1997. Mr. Smith started the letter by stating he had something to tell Mr. Littlejohn but then directed

him (Littlejohn) not to tell Detective Williams that he (Smith) had written him (Littlejohn). Mr. Smith told Mr. Littlejohn that Detective Williams would try to say he (Smith) was attempting to influence him (Littlejohn). In this letter, Mr. Smith advised he was aware that Mr. Littlejohn had a meeting scheduled with the District Attorney on September 29, 1997. Mr. Smith pleaded with Mr. Littlejohn to tell the truth about the crime so he (Smith) could be set free.

## **Attorney Clifford Britt Letter**

In a supplement report dated September 8, 1997, Detective Williams documented that he met with Mr. Walter Hoisington on September 4, 1997 and was told that Attorney Clifford Britt had called him (Hoisington) stating that he had recently spoken with Mr. Smith's attorney, Mr. William Speaks, about the case.

Specifically, Mr. Speaks told Mr. Britt that Mr. Smith had mentioned seeing a white male stalker inside the Silk Plant Forest. Detective Williams documented that he received a letter from Mr. Hoisington, dated August 20, 1997, which was written by Attorney Clifford Britt, stating in part, "I have recently talked at length with the attorney representing Kalvin Smith in the criminal case and would be happy to discuss with you what he discussed with me." Detective Williams also documented that he obtained a copy of the letter and Mr. Hoisington's written statement. It was not noted in Detective Williams' supplement report how Mr. Smith knew that a white male at the Silk Plant Forest was actually a stalker.

Detective L.M. Maines was with Detective Williams when the telephone call and letter from Mr. Britt were discussed. In a supplement report dated September 16, 1997, Detective Maines documented that Mr. Hoisington provided a written statement regarding his (Hoisington's) telephone call with Mr. Britt.

In an attempt to determine the content of Mr. Britt's letter and Mr. Hoisington's written statement, evidence was reviewed to determine if the items were still being held. A query of the evidence did not reveal the existence of the letter; however, Mr. Hoisington's written statement was found.

On August 30, 2010, Attorney Clifford Britt was contacted and asked if he had maintained a copy of the letter Mr. Hoisington stated he had received from him. Mr. Britt stated he recalled speaking to Mr. Hoisington regarding a conversation with Mr. Speaks indicating that Mr. Smith had seen someone inside the Silk Plant Forest who might be responsible for the crime. Initially, Mr. Britt stated he did not send a letter to Mr. Hoisington but advised he would search his files to be certain.

In a later conversation on August 30, 2010, Mr. Britt stated he had checked his files and found no letter that he had sent to Mr. Hoisington.

On August 30, 2010, Mr. Hoisington was contacted and asked if he recalled speaking to Mr. Britt and if he had received a letter from him. Mr. Hoisington stated he recalled speaking to someone about a white male being involved in this crime, but he could not recall with whom he had had this conversation. Mr. Hoisington stated he did not recall receiving a letter from anyone regarding this information, but he would check his records to be certain.

On September 7, 2010, Mr. Hoisington stated he had no letter from Attorney Clifford Britt.

Although a written statement was located, the letter has not been located. Further, conversations with those who reportedly wrote and received the letter cannot confirm the existence of the letter.

## **Photographic Line-ups**

The WSPD, like all other law enforcement agencies, utilizes photographic line-ups in criminal investigations. Photographic line-ups serve as an investigative tool and are used to aid in the identification and prosecution of suspects. Victim or eyewitness accounts of a violent crime, supported by identification through a police photographic line-up, are often some of the most powerful and compelling evidence submitted in a criminal trial. However, the construction and presentation of the photographic line-up to the victim or witness was one of the most controversial issues debated.

In 2004, this issue came to the forefront in both the media and the courtroom when DNA evidence led to the release of two men who had been convicted in cases that relied heavily on eyewitness evidence from photographic line-ups. In 1984, Mr. Ronald Cotton was arrested and later convicted for a rape that occurred in Burlington, NC. Mr. Cotton was identified in a police photographic line-up and again in open court. During the same year, Ms. Deborah Sykes, an employee of a local newspaper in Winston-Salem, was found murdered in a vacant field in the downtown area. She also had been sexually assaulted. Mr. Darryl Hunt was identified in both a photographic line-up and an in-person line-up by witnesses who placed him in the downtown area at the time of the murder. Mr. Hunt was arrested and later convicted of this murder.

Modern DNA testing, unavailable at the time that Mr. Cotton and Mr. Hunt were convicted, was later used to exonerate both men. They were cleared of all charges and their convictions were overturned. Although they maintained their innocence, both Mr. Cotton and Mr. Hunt spent 11 and 18 years respectively in prison for crimes that they did not commit. Mr. Hunt was released in February, 2004 and Mr. Cotton was released in June, 1995. The Hunt/Sykes case fueled racial tension and divided the community for more than 20 years; the topic of this case still generates strong feelings on both sides today.

As more similar cases were discovered throughout North Carolina and the rest of the country, many legal experts and other supporters called for the reform of procedures used in obtaining identifications through photographic line-ups. Most other police procedures and training have evolved through the years, but photographic line-up procedures lagged behind. Simultaneous line-ups have been used by law enforcement agencies the past 20 years or more. The photographs are arranged in two rows on a single sheet of paper and presented to the witness after being given a standard admonition, which is usually read by the investigating officer or detective.

In 2000, the North Carolina Actual Innocence Commission was formed, consisting of judges, prosecutors, defense attorneys, police and concerned citizens. The commission researched the issue of photographic line-ups and prepared a list of recommendations and guidelines for police to follow when conducting photographic line-ups. These recommendations were based on the best known practices as well as the research of Professor Gary Wells, a qualified expert in eyewitness identification, and other experts in the field. There were two main issues identified by the commission: 1.) The research found that in a simultaneous presentation, most witnesses used the process of elimination when viewing the line-up. They simply picked the photograph which most resembled the suspect rather than using their own independent recollection of the suspect's facial features to make identification. The group recommended a sequential presentation using eight photos; and 2.) It also found that investigators, whether consciously or unconsciously, could possibly influence the witness's decision when the officer or detective presenting the line-up was aware of the identity of the subject in the photographs who was considered to be a suspect in the case.

WSPD Chief of Police Norris saw an opportunity to take the lead in this issue and implemented the recommendations made by the North Carolina Actual Innocence Commission. In May of 2004, CID detectives began researching these recommendations, and in turn,

developing a system to put them in place.

CID detectives, as well as Forensic Services Division personnel who construct the Department's line-ups, partnered with OSSI/HTE, a local company providing computer programs and software to many area law enforcement agencies for their records management systems. The WSPD was already using software provided by OSSI/HTE to manage their police records, including all arrest photos. The Department first met with software developers in early 2005 to lay the groundwork for what would eventually turn into the computer-based photographic line-up system that is in use today.

This collaboration resulted in a system that was the first of its kind in the country. By working with OSSI/HTE, the Department was able to use its existing photographic database to create the line-ups.

The system was developed so that laptop computers are used to present eight photographs in a sequential manner to the witness. The witness is allowed to control the program during the presentation and can proceed at his/her own pace through the photographs. A question is entered by the investigator, which can be tailored to specifically ask each witness to identify the person they saw commit a particular act or crime; this is referred to as the "statement of crime." The witness is asked this question each time he/she views a photograph. For example: "Is this the person who robbed you?" The witness clicks on the available responses, including "Yes" to indicate a positive identification or "Continue" to go to the next photograph.

The photographs are shown in random order and each witness is allowed to view the series of photographs twice. The software ensures that the order of the photographs is different for each witness by randomizing the photographs for each viewing. The software in the program records the witness's responses when he/she views each photograph, as well as recording the length of time the witness views each photo. The witness is also asked to provide

a “statement of certainty” each time a positive identification is made. The software prompts the witness to provide the statement each time by asking, “How certain are you of this identification?” The investigator then records the witness’s exact statement and the witness is asked to sign and date the statement.

The software also generates a report containing all of the information obtained during the presentation; this information is saved as a PDF file that cannot be altered. The report includes the witness’s responses as well as automatically recording the dates and times and information entered by the officer at the time it is presented. This information includes the witness’s name, location shown, and all persons present during the presentation. Once the report has been generated, it is uploaded into the records management system database and becomes a permanent part of the police record for that case. This report allows that only the most accurate information be used in court. By using laptop computers, the system is mobile and can be used anywhere in the field or the office.

The WSPD enacted a policy referred to as the “double-blind administration”. This policy simply requires that the person presenting the line-up, as well as the witness viewing the line-up, is not allowed to know which person pictured in the line-up is the subject of the investigation. This prevents anyone directly involved in the case from presenting the line-up or even being present during the line-up. Further, it prevents them from being able to influence the witness’s decisions or identification of any particular individual.

CID detectives began using the new system in November, 2006 and the procedures were implemented department-wide in May, 2007. To date, the WSPD has prepared nearly 2,000 computer line-ups.

The WSPD is considered the pioneer of the technology-driven method of creating and showing photographic line-ups, and the remote line-up application was a featured article in Police Chief Magazine in August, 2008. In

September, 2008, the CID Commander presented this highly-innovative approach for police line-ups to the Washington, DC City Council. The Dallas, Texas Police Department also consulted with the WSPD and implemented similar line-up procedures.

## **Video-Recorded Interviews**

Before the 1990s, most law enforcement agencies obtained confessions that were written down or audio-taped. These methods, especially a written confession, made it difficult for juries and judges to determine if the statement was voluntary because they could not see how the confession was obtained. Gradually, law enforcement agencies across the country began videotaping confessions and, subsequently, have had remarkable results in court.

The WSPD started researching the videotaping of interviews in late 2006, and two new interview rooms were built and four existing rooms were renovated. Each of the rooms was outfitted with covert video cameras and hidden microphones.

Detectives received specialized training in interviewing and interrogation from John Reid and Associates, a firm of experts in videotaped interviews. This training was invaluable and helped provide detectives with the necessary training to be comfortable and proficient with videotaping interviews.

In April, 2007, all video equipment had been installed in the six interview rooms and training was completed. Standard operating procedures were implemented to establish guidelines for video-recorded interviews conducted by detectives. Video-recorded interviews are conducted with victims, witnesses and suspects in the following cases:

- Homicide and other Death Investigations
- Aggravated Assaults

- Sexual Assaults
- Robberies
- Kidnapping
- Felony Child Abuse
- Burglary

Detectives are only required to videotape interviews for the above offenses; however, detectives investigating financial and property crimes often videotape their witnesses and suspects.

Law enforcement agencies videotape different segments of interrogations. Some videotape only the confession or final statement while others videotape the interrogation but not the pre-interview.

The policy of the WSPD is to videotape interviews from the time the interviewee arrives at the Police Department until the interviewee leaves the interview room. This ensures that the entire interrogation, from reading the Miranda Rights to the end of the interview, is captured on videotape.

In early 2008, North Carolina General Statute 15A-211 was enacted to require the electronic recording of interrogations. Law enforcement officers conducting a custodial interrogation in a homicide investigation shall make an electronic recording of the interrogation in its entirety.

The policy of the WSPD regarding videotaping interviews began before the State statute was enacted and far exceeds the requirements defined by law. The statute only requires videotaping of custodial interrogations of homicide suspects, while the WSPD policy directs detectives to videotape victims, witnesses and suspects in a multitude of crimes. WSPD policy and practice greatly exceeds the common practices in North Carolina.

The WSPD has benefited substantially from videotaped interviews, and prosecutors applaud

the strengths of the videotaped recordings, which include:

- Transparency to the entire interview process.
- Allows detectives greater focus on suspect or witness.
- Decreases cross-examination of detectives in court, and arguments of a coerced statement.
- Allows for direct observation of suspect intent and statements.
- Allows for a lifetime review of the exact testimony.

In summary, videotaped interviews help promote trust and stability in relationships between the community and the Police Department. The WSPD is able to show the community how interrogations are conducted and the fair treatment of suspects. By demystifying the interview process, the agency can demonstrate that there is nothing to hide, which fosters greater community trust.

## Digital Audio Recordings

Traditionally, detectives used handheld analogue tape recorders to record notes and witness/suspect interviews. Additionally, each of the four interview rooms at the Police Department was equipped with an analogue Dictaphone. Some interviews were several hours long and multiple tapes were used. An accepted practice was for detectives to only record certain segments of the interview, usually only the confession.

After interviews, detectives placed tapes in a locked box and a Senior Office Assistant eventually retrieved and transcribed the tapes. Once the tapes were deposited by detectives, the tapes were unavailable, causing major delays in report-writing and preparing prosecution reports. Senior Office Assistants would return the tapes,

along with the typed document, to the detective who then had to place the tape in the evidence room. This antiquated system was extremely problematic and inefficient.

In the beginning of 2007, detectives researched the best practices for recording and transcribing interviews, and the Department began purchasing digital hand-held recorders. In April, 2007, CID implemented standard operating procedures to establish guidelines for digital recorders and transcriptions. These contemporary procedures maximize the effectiveness of advanced technology and create an electronic file that is stored on the Department's server. Some highlights of the new procedures are:

- Digital recorders are used for recording notes, suspect/witness statements, telephone calls, etc.
- Detectives are able to record field interviews more efficiently.
- Field interviews of key witnesses and suspects are recorded in their entirety.
- Digital audio recordings are downloaded on the Department's record management system.
- Detectives make a copy of the audio recordings and can write their reports immediately.
- Recorded interviews are placed in an electronic folder and a Senior Office Assistant types the statement and makes it available to the detective.
- The electronic storage of the interview creates a permanent record.

Digital audio recordings have been a tremendous asset for the Department, and prosecutors have found the recordings incredibly powerful. In a recent homicide case, one suspect was critically wounded in a gun battle with the man he killed, and while at the hospital, detectives obtained a powerful confession using

a digital audio recorder. At trial, the suspect attempted to recant his statement and the recorded statement was played for the jury; the suspect was found guilty of First Degree Murder.

## **Polygraph Procedures**

Most law enforcement agencies in the country use polygraph examinations in criminal investigations. The validity of polygraph results continues to be debated and the outcome of testing cannot be admitted in criminal proceedings. In a typical criminal investigation, the polygraph is used only after prior investigation has been conducted which indicates possible deception of a suspect or key witness. Recent research suggests that when used in a criminal investigation, the polygraph test detects deception better than chance, but with error rates that could be significant.

The policy of the WSPD regarding polygraph examinations was effective June 23, 1997 and was most recently revised in April, 2010. The policy states: "The polygraph examination is a valuable investigative aid, in conjunction with, but not as a substitute for, a thorough investigation. The polygraph may be used, consistent with this policy, to verify, corroborate or refute statements; obtain additional investigative leads; narrow or focus criminal investigations, serve to screen candidates for positions with this department and assist in administrative investigations."

Polygraph examinations may be requested in the following situations:

- Attempts to verify or reconcile statements of suspect/witnesses when alternative investigative means have been exhausted.
- Information obtained during the course of an investigation imparts plausible reason to doubt the reliability and impartiality of a witness, victim, or suspect.

- A request from the District Attorney's Office or other criminal justice agency.

The policy also states that submission to a polygraph examination in a criminal investigation must be voluntary and requires the subject's written approval.

Historically, polygraph examinations were neither video- nor audio-recorded and no electronic record existed. In early 2010, the WSPD made significant changes on how polygraph examinations are administered. After researching the best practices and studying the technological advancements in polygraph examinations, new equipment was purchased. The implementation of a new polygraph system allows for the following:

- Every criminal polygraph is audio- and video-recorded and stored electronically.
- Each recorded polygraph can be replayed with the video of the examinee being synchronized with the questions being asked.
- Every criminal polygraph is attached to the case file through the Department's records management system and is accessible as discovery evidence.
- Criminal polygraphs have the capability to be hand-scored and scored by a computer algorithm (built-in scoring system).
- All polygraphs are backed-up on a flash drive and a paper file is kept for approximately three years.

In addition to the new equipment, the polygraph suite was remodeled to create a larger, more comfortable atmosphere for both the examiner and the examinee.

## **Electronic Prosecution Reports**

The analogue tapes that detectives used to dictate their reports and record interviews contributed to the delinquency of submitting prosecution reports. In addition, detectives were spending an inordinate amount of time making copies of the entire case file. Major investigations, including homicides, create hundreds of pages of documents including all police reports, officer notes, and transcriptions. All of these documents were provided to the District Attorney, who would make them available to defense attorneys.

The goal is to provide a paperless prosecution booklet to the District Attorney. Prosecution reports are now organized by detectives and provided to Senior Office Assistants who scan all documents with a commercial document scanner. The case file is saved to a disc, and detectives provide the scanned disc and all electronic audio and video recordings to the District Attorney's Office. This system maximizes modern technology and has proven to be much more efficient and effective. Prosecutors and defense attorneys have applauded the new system because they have the case file and all audio and video statements in a timely manner.

## 7: Analysis & Conclusion

**T**he WSPD has a long history of professionalism and a strong commitment to the citizens of Winston-Salem to provide exceptional law enforcement services. The Department is a professional organization, staffed by committed and dedicated public servants who take pride in their work and constantly seek to improve agency effectiveness.

The WSPD has been nationally accredited since 1997, with the latest reaccreditation occurring in 2009. Accreditation signifies that the Department complies with standards recognized as best practices and are consistent with the professional law enforcement community.

The new photographic line-up procedures, videotaped interviews, digital audio recordings, polygraph examinations and electronic prosecution reports are major investigative advancements that demonstrate the Department's willingness to enhance police services to our citizens. These also indicate the desire of the Agency and its personnel to be leaders in policing. Many of these innovations and enhancements exceed any applicable laws or guidelines.

The WSPD takes its mission very seriously. The Department exists to serve the citizens and provide world-class police services. Every member of the Department understands and embraces this service orientation.

The prevention and investigation of crime and disorder are fundamental tasks of the WSPD. These tasks require a skilled and competent workforce. WSPD officers receive over 1,000 hours of academy-based training and then 14 weeks of field training. This far exceeds the state-mandated training of approximately 600 academy hours. State requirements also mandate 24 hours of annual in-service training while the WSPD requires all sworn personnel to attend an average of 35 hours annually. Specialized positions, including detectives, involve and receive additional training consistent with the tasks of the specific position.

The Committee determined that the WSPD diligently followed-up viable investigative leads for the Silk Plant Forest case in a timely manner and followed each lead to a logical conclusion. A total of 14 CrimeStoppers Reports were received; 10 of which provided investigative leads and the other four provided only vague information with no leads to follow. The investigation identified a total of nine potential suspects including three prime suspects: Mr. Kenneth Lamoureux, Mr. Shane Fletcher and Mr. Kalvin Michael Smith.

On December 10, 1995, Ms. Jeana Schopfer called the WSPD and stated that Mr. Lamoureux may be a suspect because he frequently visited Ms. Marker at the Silk Plant Forest store. Investigators eventually located Mr. Lamoureux at his residence and he consented to a search of his residence and

vehicle.

Mr. Lamoureux voluntarily responded to the WSPD where he was interviewed. Mr. Lamoureux admitted to visiting Ms. Marker at the Silk Plant Forest store only once “around Thanksgiving.” Mr. Lamoureux denied any involvement in the assault of Ms. Marker and later consented to a polygraph examination. Mr. Lamoureux also voluntarily provided blood samples to investigators.

In March, 1996, all evidence submitted to the SBI, including blood samples from Mr. Lamoureux, was returned to the WSPD; the evidence did not yield any suspect information. Investigators exhausted all leads on Mr. Lamoureux and did not receive any new information to implicate Mr. Lamoureux as the perpetrator.

In April 1996, investigators learned that Mr. Lamoureux had moved to Charlotte, NC to live with his stepfather; investigators had no further contact with Mr. Lamoureux.

In May, 1996, investigators received information that Mr. Shane Fletcher had spoken with a Granville County Sheriff’s Deputy and confessed to murdering a white female at the Silk Plant Forest store. At that time, Mr. Fletcher was a patient at John Umstead Hospital.

Investigators went to John Umstead Hospital and interviewed Mr. Fletcher, who confessed to attacking Ms. Marker. Investigators searched Mr. Fletcher’s residence and seized two sticks, one of which Mr. Fletcher said was used to assault Ms Marker. The sticks were sent to the North Carolina SBI for blood evidence analysis with negative results.

Investigators conducted a detailed background investigation on Mr. Fletcher and eliminated him as a suspect when it was discovered that, on the night of the attack, Mr. Fletcher was a patient in a secured psychiatric ward at Forsyth Medical Center. Medical personnel and administrative records confirmed that Mr. Fletcher did not leave the facility on the night of the attack.

In June, 1996, the focus of the investigation turned to Mr. Calvin Michael Smith when investigators received a CrimeStoppers Report that stated, “Kalvin Michael Smith is responsible for the beating of the lady at the Silk Plant Forest” and “the subject could be located at 1228 Shouse St.”

In July, 1996, investigators interviewed Mr. Smith after he was arrested on unrelated charges. Mr. Smith denied any involvement in the Silk Plant Forest robbery. Mr. Smith submitted to a polygraph examination on the day of arrest; however, the documentation of the results of examination were contradictory and it is unknown if Mr. Smith was deceptive or truthful.

Although Mr. Smith was considered a suspect, investigators continued to follow-up on other suspects and possible suspect vehicles. Investigators traveled to Akron, Ohio in October, 1996 and interviewed Ms. Marker. This interview was videotaped and Ms. Marker indicated her attacker was an African-American male. The lead investigator “believed” the attacker may have been a delivery person and the investigator followed those leads to a logical conclusion.

The investigation took a dramatic turn on January 20, 1997, when Ms. Valarie Williams provided a detailed statement to Sergeant T.D. Ireland that implicated Mr. Smith as a participant in the Silk Plant Robbery. Ms. Williams told Sergeant Ireland that Mr. Smith had been her boyfriend for three years. Ms. Williams said that shortly after the Silk Plant Forest robbery, Mr. Smith confessed to her that he had been involved in the robbery. Ms. Williams described all of the details that Mr. Smith told her, which were documented in Sergeant Ireland’s report.

Investigators later interviewed Ms. Williams at her residence and at the WSPD. In all three statements, Ms. Williams consistently implicated Mr. Smith in the Silk Plant Forest robbery. Ms. Williams also provided investigators with a written statement.

Mr. Smith was interviewed at the WSPD and admitted that he participated in the robbery at Silk Plant Forest. Mr. Smith said that he and another man, named "JB", smoked marijuana and then robbed the Silk Plant Forest to obtain money for drugs. As stated previously in this report, Mr. Smith gave specific details on how the robbery occurred, including that he saw "JB" assault the clerk by hitting her in the head. Additionally, Mr. Smith corroborated Ms. Williams' statement by telling investigators that he told Ms. Williams that he was involved in the Silk Plant Forest robbery. Mr. Smith even admitted to investigators that he told Ms. Williams that a man named "Kevin" was involved and that he had made up the name "Kevin."

Investigators documented that Mr. Smith arrived at the WSPD at 2:56 p.m., at which time he was placed in an interview room while Ms. Williams was interviewed. Investigators documented that they interrogated Mr. Smith "for approximately 35-40 minutes" until Mr. Smith needed to use the restroom. After Mr. Smith voluntarily returned from the restroom, he began to admit his involvement in the robbery and he provided a written statement. The written statement documented the time of the statement beginning at 3:48 p.m. and ending at 5:45 p.m. After Mr. Smith finished the written statement, investigators placed him under arrest. Mr. Smith was advised his Miranda Rights, which he waived, and he continued to answer questions.

Investigators left Mr. Smith in the interview room unattended while they conducted research on the name he had provided as his accomplice (JB or James Burrows). Investigators checked the WSPD's database and made a telephone call to a business where Mr. Smith stated that Mr. Burrows worked; this met with negative results.

Investigators also requested Mr. Smith to take a polygraph examination and Mr. Smith wanted to know what questions would be asked; the questions were: 1.) Did you strike the white female clerk in the head with a metal object?; and 2.) Did you observe James Burrows strike

the white female clerk in the head with a metal object? Once Mr. Smith learned the two questions, he stated, "I don't believe I want to take that test. I want a lawyer." No further questions were asked and the interview ended.

The interview of Mr. Smith is an integral piece of the entire investigation, and before Mr. Smith's trial, there was a hearing before Judge Peter M. McHugh to determine if Mr. Smith's statement was lawfully obtained. Detective D.R. Williams and Sergeant R.N. Weavil testified for the State and the defense aggressively cross-examined both. The defense did not call any witnesses to refute the testimony. Judge McHugh ruled that Mr. Smith's statement was lawfully obtained and ***"That no show of threat or violence or force was exhibited to the defendant by Weavil or Williams or any member of the Winston-Salem Police Department in an attempt to coerce the defendant to make a statement which has been received in evidence in this action."***

Judge McHugh further ruled, ***"The Court concludes as a matter of law that none of the rights reserved to the defendant by the United States Constitution or by the North Carolina Constitution were violated by the conduct of law enforcement officers on January 24, 1997."***

Although Mr. Smith's oral and/or written statements were never presented at trial, the Committee finds significant value in Judge McHugh's rulings. The statements were made voluntarily by Mr. Smith, and Mr. Smith admitted to being involved in the robbery. The Court, after full consideration of the issue, determined the statements were lawfully obtained and could be used in the court proceedings.

After Mr. Smith was charged, investigators continued their investigation into the Silk Plant Forest robbery and located key witnesses who also implicated Mr. Smith. During Mr. Smith's interview, he admitted going to 3-F Skyline Village after the Silk Plant Forest robbery.

Investigators determined that Ms. Andra Wilson lived at 3-F Skyline Village, and during an interview, Ms. Wilson admitted that she was the CrimeStoppers caller on June 1, 1996. Ms. Wilson told investigators that Mr. Smith had admitted his involvement in the Silk Plant Forest robbery to her approximately 20 times. Mr. Smith told Ms. Wilson that he had an accomplice but she could not remember the name. Mr. Smith told Ms. Wilson that "he beat the lady at the Silk Plant Forest." Ms. Wilson told investigators that on one occasion when Mr. Smith was talking about his involvement in the Silk Plant Forest robbery, Mr. Eugene Littlejohn and Ms. Pamela Moore were present and heard Mr. Smith's statements. Ms. Wilson stated Mr. Smith was a violent person when he used alcohol and drugs, and she saw Mr. Smith beat his girlfriend, Ms. Williams on several occasions.

Ms. Wilson gave two oral statements and one written statement. One of the oral statements was recorded; a transcription of the interview is available.

Investigators interviewed Mr. Eugene Littlejohn three times at the WSPD.

During the first interview, Mr. Littlejohn corroborated Ms. Wilson's statement that Mr. Littlejohn was present at Ms. Wilson's apartment with Ms. Wilson, Ms. Pamela Moore, and another man when Mr. Smith said, "I was in the store stealing, and I had to beat the bitch down. She wouldn't let me out of the store so I had to beat the bitch."

During the second interview, Mr. Littlejohn admitted his own involvement in the Silk Plant Forest robbery. Mr. Littlejohn said he stood inside the store near the front door and heard Mr. Smith tell the clerk "Where's the money?" Mr. Littlejohn said he then observed Mr. Smith grab the clerk by the arm and force her to the rear of the store. Mr. Littlejohn said he left the store and got into a vehicle occupied by Ms. Moore and Ms. Wilson. Mr. Littlejohn stated that Mr. Smith returned to the vehicle 10 to 15 minutes later. Mr. Littlejohn stated the vehicle was driven by Ms. Wilson.

Based on Mr. Littlejohn's statement, detectives interviewed Ms. Wilson again. Ms. Wilson denied assisting in the Silk Plant Forest robbery and said that she did not drive the getaway vehicle. Ms. Wilson submitted to a polygraph examination and her responses were scored as truthful.

During the third interview at the WSPD, Mr. Littlejohn admitted that Ms. Wilson did not drive the suspect vehicle on the night of the robbery. Mr. Littlejohn stated that Mr. Smith drove them to the Silk Plant Forest, and after the robbery, Mr. Smith drove them to 3-F Skyline Village.

The Committee acknowledges the inconsistencies in Mr. Littlejohn's statements; however, in all three statements, he consistently stated that Mr. Smith grabbed the clerk by the arm and forced her to the back of the store.

Investigators searched for Ms. Pamela Moore for over a month. She was arrested in Surry County in March, 1997 for Drunk and Disruptive and Filing a False Report.

Investigators interviewed Ms. Moore at the Surry County Jail and obtained a taped statement. Ms. Moore denied any involvement in the Silk Plant Robbery. Ms. Moore corroborated Ms. Wilson's and Mr. Littlejohn's statements by stating that she was present at 3-F Skyline Village when Mr. Smith made the following statement, "I had to beat a bitch to get out of the store." Ms. Moore told investigators that she also heard Mr. Smith say he had to get some money.

An inmate at the Forsyth County Law Enforcement Detention Center contacted investigators and said he had information about Mr. Smith. Investigators interviewed the inmate who implicated Mr. Smith in the Silk Plant Forest robbery; the interview was recorded. The inmate later submitted to a polygraph and his responses were scored untruthful.

Investigators spoke with Ms. Ivadine Hester who had called CrimeStoppers in January, 1997 to report that she had observed

two “strange-looking” black males in the Silk Plant Forest store the day before the robbery. Ms. Hester was shown two photographic line-ups; one that included Mr. Smith and one that included Mr. Littlejohn. Ms. Hester identified Mr. Smith and Mr. Littlejohn as the two black males who were inside the Silk Plant Forest the day before it was robbed.

## Summary of Investigative Findings

- Mr. Smith admitted conspiring with another man to rob the Silk Plant Forest store to obtain money for drugs.
- Mr. Smith admitted that he told Ms. Valarie Williams that he and a man named Kevin were involved in the robbery. Mr. Smith also admitted that Kevin was a made-up name.
- Mr. Smith admitted to being present inside the store when the robbery occurred; however, he denied assaulting the clerk.
- Ms. Valarie Williams made three consistent statements to investigators that Mr. Smith told her he was involved in the Silk Plant Forest robbery.
- Mr. Smith admitted to going to 3-F Skyline Village after the robbery. It was later determined that this was the address of Ms. Andra Wilson, a friend of Mr. Smith’s.
- Mr. Smith’s statement was challenged in court and Judge Peter McHugh ruled that investigators did not coerce the statement and Mr. Smith’s constitutional rights were not violated.
- Ms. Andra Wilson stated that Mr. Smith confessed to robbing the Silk Plant Forest and assaulting the clerk. Ms. Wilson stated Mr. Smith made these statements approximately 20 times.
- Ms. Wilson stated that on one occasion she was at her residence at 3-F Skyline Village with Mr. Eugene Littlejohn, Ms. Pamela Moore and another man and Mr. Smith when he admitted to assaulting the lady at the Silk Plant Forest.
- Ms. Wilson submitted to a polygraph examination and her responses were scored truthful.
- Ms. Wilson stated that Mr. Smith assaulted Ms. Valarie Williams in the past and four police reports were located to corroborate this information.
- Ms. Wilson has never recanted her statements.
- Mr. Littlejohn was interviewed and corroborated Ms. Wilson’s statement by saying that he was present at Ms. Wilson’s residence with her, Ms. Moore and another black male when Mr. Smith admitted to assaulting the clerk at the Silk Plant Forest.
- Mr. Littlejohn admitted to going to the Silk Plant Forest with Mr. Smith and standing inside the store during the robbery. Mr. Littlejohn stated he saw Mr. Smith grab the clerk and force her to the rear of the store.
- Investigators interviewed Ms. Pamela Moore and she corroborated Ms. Wilson’s and Mr. Littlejohn’s statements. Ms. Moore admitted to being at Ms. Wilson’s residence with Ms. Wilson, Mr. Littlejohn and another man when Mr. Smith admitted to assaulting a store clerk to get money.
- Ms. Marker indicated that her attacker was a black male and Ms. Marker picked Mr. Smith’s photograph from a photographic line-up.
- Investigators from multiple agencies have not identified any new suspects in the Silk Plant Forest case.

- Mr. Smith was convicted by a lawfully seated jury in 1998.
- On January 14, 2000, Mr. Smith's first MAR was denied by Forsyth County Superior Court Judge William Freeman.
- On September 29, 2008, a preliminary hearing was held for Mr. Smith's second MAR. The hearing, heard by Forsyth County Superior Judge Richard Doughton, lasted four days. On May 21, 2009, Judge Doughton's decisions and analysis behind those decisions were presented in a written order.

The Committee does find that, had better documentation of investigative activities occurred, many of the questions existing today would not be an issue and would have been answered. The Committee also finds that the Toys-R-Us videotape should have been kept as evidence, even if it had no value at that time. The WSPD has made several policy, procedure, training, supervision and equipment changes and enhancements over the years to deal with these concerns and issues. The WSPD continues to make enhancements and remains a leader in many of these relevant areas.

The Silk Plant Forest case has generated a great deal of interest and discussion within Winston-Salem. The question of "justice" is at the heart of the discussion. Justice is a fundamental aspect of the American legal and criminal justice system. This system must not only be fair and deliver actual justice, but it must be perceived as such. This does not, however, mean that there will be or must be unanimous agreement with any decision or outcome. But the facts must support a fair process, and an outcome that is reasonably based on the facts as they are known. The fact that there are lingering questions and that several reviews and inquiries have examined the Silk Plant Forest case indicate that concerns still exist. Reviews and inquiries are beneficial to a point. If new information that could impact the decision and outcome are learned, then everyone in society benefits. The legal system, its procedures, processes and decisions must be

supported unless definitive evidence indicates otherwise. Most importantly, to the Committee, a jury heard the evidence that was available at the time and made a lawfully, reasonable decision. Courts have considered additional views, arguments, and information, and all have supported the conviction of Mr. Smith.

Some may still question the conviction and give different weights to different items or information. This report is not intended to change minds or viewpoints. It is intended to present a detailed overview of the investigation and provide a comprehensive review and analysis of the facts, evidence, issues and investigation while responding to the recommendations of the SPFCRC.

After reviewing, at length, the Silk Plant Forest investigation and all administrative reviews and legal proceedings, including Judge Richard Doughton's "Conclusion of Law", the Committee unanimously concludes that there are no further viable avenues of investigation and the Silk Plant Forest case should remain closed.