

1 **Findings and Recommendations of the**
2 **Silk Plant Forest Citizens Review Committee**

3 **July 24, 2009**

4
5 **I**

6 **Background**

7 The Silk Plant Forest Citizens Review Committee (hereinafter, the
8 “Committee”) was created by the Winston-Salem City Council on October 22,
9 2007. The City Council charged the Committee with the duty to conduct “a
10 comprehensive fact finding review” of the “Silk Plant Forest Case,” a tragic
11 criminal case involving the brutal beating of a young white woman, Jill Marker, in
12 December, 1995. The City Council instructed the Committee not to make any
13 finding or determination of guilt or innocence in the case but to focus on the
14 question whether police procedures were properly followed.

15 Ms. Marker had been an employee of the “Silk Plant Forest,” a retail
16 establishment located in the Silas Creek Crossing Shopping Center. The beating
17 occurred while she was on duty at the store, and it left her with grave and
18 permanent injuries.

19 After a 14-month investigation by officers of the Winston-Salem Police
20 Department, a young black man, Calvin Michael Smith, was arrested and charged
21 with the crime. Smith was prosecuted and convicted in the Forsyth County
22 Superior Court in December, 1997. He was sentenced to a term of imprisonment
23 of not less than 274 months and not more than 347 months, and he is serving that
24 sentence today. His conviction was affirmed by the North Carolina Court of
25 Appeals. He filed two subsequent motions for post-conviction relief, both of
26 which were denied.

27 Smith protested his innocence throughout the proceedings against him, and
28 his conviction was controversial in the Winston-Salem community. In 2004 the
29 *Winston-Salem Journal* conducted a six-month probe of the crime, the police

1 investigation, and the prosecution itself. The *Journal's* findings, which were
2 published in a lengthy series of articles, were critical of the investigators and
3 prosecutors in the case. The Duke Innocence Project, which investigates cases
4 involving possible wrongful convictions, took up the Silk Plant Forest case and
5 participated in an effort to overturn Smith's conviction. Furthermore, the Winston-
6 Salem Police Department, at the direction of former Chief Patricia Norris,
7 undertook an internal administrative review of the case "to determine whether all
8 Departmental policies, procedures and practices in existence at the time of the
9 [original] investigation were followed." This internal administrative review
10 resulted in a written report which concluded that the principal investigator in the
11 case, Detective D.R. Williams, "did not deliberately ignore evidence or avenues of
12 investigation" as he attempted to solve the case during the months following the
13 crime. The report faulted Williams, however, for failing "to document several
14 aspects of the investigation according to departmental policy." Williams himself,
15 who had retired from the police department by the time of the internal
16 administrative review, refused to participate in that review.

17 The internal administrative review did not allay the concerns of many in the
18 Winston-Salem community, and in response to those concerns the City Council
19 created this Committee to conduct an independent review of the matter. The
20 Committee is composed entirely of private citizens who have had no previous
21 involvement in the case. As noted, the City Council charged the Committee with
22 the duty to conduct "a comprehensive fact finding review." Furthermore, the City
23 Council instructed the Committee to forward "any information uncovered that may
24 have a bearing on the guilt or innocence of Kalvin Smith" to the District Attorney
25 and Kalvin Smith's defense attorneys "in compliance with law." As noted, the
26 City Council insisted that the Committee should not make "a finding or
27 determination of the guilt or innocence of Kalvin Smith or any other possible
28 suspect," and the City Council requested the Committee "to focus on questions
29 regarding whether police procedures were properly followed." But the City
30 Council also requested the Committee to make "appropriate recommendations" to
31 the City Council concerning any necessary or desirable reforms suggested by the
32 Committee's findings.

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II

The Proceedings of the Committee

The Committee began its work by reviewing the existing records of the original police investigation, which are in some respects incomplete. The Committee also reviewed the transcript of the trial that resulted in Smith's conviction. The Committee held public hearings at which persons interested in the case were invited to testify, and the Committee collected information about the case from various other sources. The Committee benefitted greatly from the work of its staff. The Committee is especially indebted to the work of Lieutenant Joseph Ferrelli and Sergeant Chuck Byrom, who interviewed numerous witnesses and collected voluminous information about the crime itself and the police investigation that followed. The Committee is grateful for the diligence, intelligence, objectivity, and professionalism of Lieutenant Ferrelli and Sergeant Byrom.

Although the Committee invited the District Attorney's Office to participate fully in the Committee's investigation, the District Attorney's Office reported to the Committee that it was under an ethical obligation to avoid public comment about the case while the matter was pending in the courts, and for this reason the District Attorney's Office chose to participate very little in the Committee's work. The Committee also requested the *Winston Salem Journal* to make its former reporter, Phoebe Zerwick, available to the Committee. Ms. Zerwick's investigative reporting had been the basis of the series of articles in the *Journal* concerning the Silk Plant Forest case; however, the *Journal* declined to be of assistance to the Committee.

The Committee heard testimony from Professor James Coleman, the Director of the Duke Innocence Project. Professor Coleman was highly critical of various aspects of the police investigation, and he was critical as well of the District Attorney's Office, which, in his view, failed to cooperate fully in reviewing the case after Smith's conviction. The Committee also heard from former Chief Patricia Norris, present Chief Scott Cunningham, and other members of the Winston-Salem Police Department, who made presentations concerning general departmental policies and particular investigative techniques, such as

1 polygraph examinations. Finally, the Committee heard at various points from
2 members of the general public who had taken a special interest in the case and had
3 analyzed various aspects of the underlying crime and the ensuing police
4 investigation. The Committee is grateful to all of these people for their
5 contributions to the Committee's work.

6 The Committee requested former Detective D.R. Williams to participate in
7 the Committee's investigation, but he refused to do so, just as he had refused to
8 participate in the internal administrative review some months earlier. At the
9 Committee's request, the City Council issued a summons to require Mr. Williams
10 to answer questions concerning the original investigation. Mr. Williams declined
11 to respond to this summons. The City Council sought judicial enforcement of the
12 summons, which Mr. Williams, through counsel, resisted. Ultimately, Judge Edgar
13 B. Gregory, presiding in the Forsyth County Superior Court, ordered Mr. Williams
14 to testify, and under such compulsion Mr. Williams did testify before the City
15 Council and the Committee on June 11, 2009. A copy of the transcript of that
16 testimony is included in the multi-volume Appendix which accompanies this
17 Report and which contains voluminous information about the case.

18 Over the last several months, as Lieutenant Ferrelli and Sergeant Byrom
19 have gathered information about the case, the Committee has provided relevant
20 parts of the information, under court order, to the District Attorney's Office and to
21 the attorneys representing Calvin Michael Smith, as the City Council instructed the
22 Committee to do. The Committee believes that this aspect of its work has been
23 useful to the criminal justice system.

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III

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Overall Assessment

27 The ultimate purpose of any police investigation is to collect reliable and
28 complete information concerning the offense in question and the possible
29 perpetrators of the offense. Much depends on the success of this endeavor.
30 Prosecutors cannot make sound prosecutorial decisions unless they obtain reliable
31 and complete information from the police. Judges and juries cannot make sound

1 decisions about the guilt or innocence of criminal defendants unless prosecutors
2 present reliable and complete information to the court. This is obvious.

3 Wrongful convictions do occur. The Winston-Salem community has learned
4 this from unhappy experience. Wrongful convictions result in individual injustice,
5 and they directly threaten public safety. When unreliable or incomplete
6 information results in the conviction of the wrong person, the real criminal goes
7 free, and the community remains in danger. Moreover, given well-documented
8 disparities in conviction rates in racially charged cases, which the Supreme Court
9 of the United States itself has acknowledged, the risk of a wrongful conviction is
10 likely to be highest in a case such as the one presented here, where the victim was
11 white and the defendant was black.

12 Therefore, to guard against wrongful convictions and to protect public
13 safety, the policies and practices of any police department should be designed in
14 such a way as to ensure, to the greatest extent possible, that investigating officers
15 will collect and document reliable and complete information concerning the crimes
16 they investigate.

17 **After reviewing the Silk Plant Forest investigation at length, the**
18 **Committee has concluded that at critical stages in the investigation the**
19 **investigators failed to follow procedures which, if followed, would have**
20 **enhanced the reliability and completeness of the information that was**
21 **provided to the prosecutors and ultimately to the court. For this reason the**
22 **Committee does not have confidence in the investigation, the information in**
23 **question, or the result of the investigation. In some instances the investigators**
24 **violated expressly stated departmental policy. In other instances they failed to**
25 **take desirable steps that were authorized by departmental policy but were not**
26 **clearly required. In still other instances they engaged in conduct that**
27 **departmental policy simply did not address adequately.**

28 The specific findings that support this overall assessment, and the
29 recommendations that proceed from them, are set forth below.

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1 IV

2 **A. Findings and Recommendations Concerning Polygraph Examinations**

3 The state’s case against Kalvin Michael Smith depended on a number of
4 elements, including the following: (1) the evidence of Andra Laureen Wilson, who
5 testified at trial that she had heard Smith admit on numerous occasions that he had
6 beaten a woman at the Silk Plant Forest; (2) the evidence of Pamela Moore, who
7 testified that she had heard Smith say that he had beaten a lady “to get out of a
8 store”; and (3) the evidence of Eugene Littlejohn, who testified that he had
9 accompanied Smith to the Silk Plant Forest and watched as Smith grabbed Jill
10 Marker and demanded money. Littlejohn testified that he left the store thereafter
11 and did not see Smith strike Jill Marker; however, he also testified that he later
12 heard Smith admit that he (Smith) had “beat a bitch to get out of the store.”

13 Furthermore, at an important juncture in the investigation, Smith’s girlfriend,
14 Valerie Williams, gave a statement to the police indicating that Smith had admitted
15 to her that he had beaten a woman at the Silk Plant Forest. This statement led to a
16 lengthy, three-hour interrogation of both Smith and Valerie Williams at the police
17 station on January 24, 1997, after which Smith was arrested for the assault.
18 (Valerie Williams did not testify at Smith’s trial because she later changed her
19 story and denied having heard any admission from Smith.)

20 Thus, the case against Smith depended in part on the statements of three
21 witnesses—Andra Wilson, Pamela Moore, and Eugene Littlejohn—all of whom
22 claimed that they had heard Smith admit that he had beaten a store clerk. And the
23 investigation itself took an important turn when Smith’s girlfriend, Valerie
24 Williams, told a similar story to the police.

25 These four statements about Smith’s alleged admissions were neither verified
26 nor refuted by polygraph examinations. The investigators did not request Pamela
27 Moore and Valerie Williams to take any polygraph examinations at all. The
28 investigators requested Andra Wilson to take a polygraph examination, and she
29 agreed to do so, but during that examination, inexplicably, the examiner did not
30 ask her whether Smith had made any incriminating admissions to her. The
31 investigators also requested Eugene Littlejohn to take a polygraph examination,
32 and he eventually took, not one, but two examinations; yet at no point during those

1 examinations did the examiner ask him whether Smith had made any incriminating
2 admissions to him.

3 In other words, the reliability of this important body of evidence against
4 Smith was not tested by a commonly used, well-accepted investigatory procedure.
5 Most police departments use polygraphs routinely. The FBI and the CIA use them.
6 The results of polygraph examinations are not admissible as evidence in criminal
7 trials, but they help conscientious investigators and prosecutors assess the
8 reliability of witnesses and potential witnesses, and thus they provide an important
9 safeguard against the use or misuse of unreliable evidence.

10 The investigators failed to use the polygraph to verify or refute a second line
11 of evidence against Smith. As noted, Eugene Littlejohn testified that Smith had
12 made an incriminating admission to him, but Littlejohn also testified that he had
13 accompanied Smith to the Silk Plant Forest, that he had watched as Smith grabbed
14 Jill Marker and demanded money, and that he had then left the store. This
15 testimony played a central role in the trial. The jury foreman described it as
16 “critical” and requested that the jury be given a transcript of it. Littlejohn’s
17 testimony tended to show that Smith was at the scene of the crime and that Smith
18 was in physical contact with Jill Marker. Yet during the two polygraph
19 examinations that the investigators administered to Littlejohn, they did not ask him
20 whether he had accompanied Smith to the Silk Plant Forest and had seen Smith
21 grab Jill Marker and demand money. In other words, they did not ask him about
22 the crucial points in the state’s case against Smith.

23 A brief policy statement concerning the “Scheduling of Polygraph
24 Examinations” was adopted by the Winston-Salem Police Department in 1983
25 (General Order No. 4.8). A more detailed and comprehensive policy statement
26 was adopted on June 23, 1997 (General Order No. 4.08), in the midst of the Silk
27 Plant Forest investigation. Neither policy statement mandates the use of polygraph
28 examinations in criminal investigations, but the second statement (General Order
29 No. 4.08) describes the polygraph as a “valuable investigative aid,” which may be
30 used to “verify, corroborate, or refute statements.”

31 The Committee has not been able to determine why the investigators in the
32 Silk Plant Forest case did not use the polygraph to verify the statements that were

1 made about Smith’s alleged admissions or the statements made by Eugene
2 Littlejohn placing Smith at the scene of the crime, but the Committee believes that
3 the investigators should have made a diligent effort to verify those statements.
4 None of the four witnesses against Smith was disinterested. Smith had lived with
5 Andra Wilson after the assault at the Silk Plant Forest occurred, and she had
6 become angry at him because he had treated her badly. She wanted to get him in
7 trouble, and she called “CrimeStoppers” to report that Smith had made admissions
8 to her about the Silk Plant Forest assault. Pamela Moore was Eugene Littlejohn’s
9 girlfriend and was actually in custody on unrelated charges when she agreed to
10 give evidence against Smith. Eugene Littlejohn had given the police conflicting
11 statements about his own involvement in the case. Valerie Williams, Smith’s
12 girlfriend, gave her statement to the police after she had been arrested for
13 assaulting another woman who was apparently involved with Smith. Polygraph
14 examinations might have verified or refuted the claims that these witnesses made
15 about Smith’s admissions to them, yet for some reason the investigators did not use
16 the polygraph to verify or refute these claims.

17 There were other deficiencies in the use of the polygraph during this case.
18 Kenneth Earl Lamoureux was an early suspect in the case, and he submitted to a
19 polygraph examination. The report of the polygraph examiner, Detective L.M.
20 Maines, which is preserved in the police files, does not describe the questions that
21 were put to Mr. Lamoureux, as it should have done, but a report prepared
22 subsequently by Detective Maines indicates that Mr. Lamoureux was questioned
23 about the assault at the Silk Plant Forest with inconclusive results. Detective
24 Maines’ report indicates, however, that Lamoureux answered “no” to the question
25 “Did you strike, push or assault a woman inside the Silk Plant Forest?” and that
26 | Lamoureux’s answer to this question suggested “a great deal of deception.”
27 Detective Maines’ report also indicates that Mr. Lamoureux was taking four heart
28 medications that could have affected the polygraph results, but the report does not
29 list the individual medications.

30 Mr. Lamoureux contacted Detective Williams on February 14, 1996,
31 wanting to know whether he had shown any deceptive reaction to the question
32 cited above. Lamoureux told Detective Williams that he had been thinking of an
33 incident involving his wife when he was asked that question. (Lamoureux had

1 previously been accused of assaulting his wife.) Detective Williams told
2 Lamoureux that there had been no reaction.

3 The Committee notes that if the Lamoureux polygraph had been
4 administered according to proper standards, questions would have been asked of
5 Lamoureux that would have “cleared” the possibility that the incident involving
6 Lamoureux’s wife could have affected the result. But because of the incomplete
7 state of the record, there is no way to know whether such questions were asked in
8 this case.

9 The Committee requested that there be a blind reading of Mr. Lamoureux’s
10 polygraph charts, but the charts are no longer in the police file, and thus it is
11 impossible to review them now.

12 One of the principal controversies in the case surrounds the question whether
13 Calvin Smith took *and passed* a polygraph examination in July, 1996. In a judicial
14 hearing held prior to Smith’s trial in 1997, Detective Williams testified under oath
15 that Smith had indeed taken *and passed* a polygraph examination in July, 1996.
16 However, the officers who conducted the internal administrative review in 2007
17 concluded that Williams was mistaken and that the results of the July polygraph
18 exam were *inconclusive*.

19 The Committee has carefully reviewed this issue. The existing polygraph
20 records are incomplete and confusing, but on their face they suggest that there
21 were *two* polygraph examinations of Smith in July, 1996. One was administered
22 on July 22, 1996, and another was administered on July 26, 1996. The July 22,
23 1996, examination, which Smith reportedly passed, is described in three separate
24 documents now in the case file. The first is a CrimeStoppers Report signed by
25 Detective Williams on July 22, 1996. It says that on or before July 22, 1996,
26 Smith took and passed a polygraph examination. This document does not identify
27 the polygraph examiner. The second document in the file is a longer narrative
28 report prepared by Detective Williams, dated November 4, 1996. This document
29 indicates that Detective L.M. Maines was the examiner who administered the July
30 examination and that Detective Maines reported that Calvin Smith had been
31 “truthful in his answers to not being involved in the case.” The third document in
32 the file is simply a copy of the second document, but on this document the name of

1 Detective Maines has been scratched through, and the name of R.C. Patterson,
2 another polygraph examiner, has been written above Maines' name. Like the
3 second document, the third document states that Smith's answers on the July
4 examination had been *truthful*, and the third document, like the second document,
5 refers to only *one* polygraph examination of Smith in July.

6 But there are documents in the file that suggest that there was a second
7 examination of Smith in July. There is an examiner's report dated October 9,
8 1996, signed by R.C. Patterson, reporting the results of a polygraph examination
9 administered to Calvin Smith on July 26, 1996. This report indicates that the
10 results of the examination were inconclusive. Furthermore, the file contains copies
11 of the actual charts of this examination (the tracings of the polygraph machine),
12 and the computer-generated entries on these tracings indicate that the examination
13 was administered on July 26, 1996. (The file does not contain copies of the charts
14 of the July 22, 1996, examination.)

15 The officers who conducted the internal administrative review concluded
16 that there was only one polygraph examination of Calvin Smith in July, 1996—the
17 one administered on July 26, 1996, by R.C. Patterson. They based this conclusion
18 largely on statements made to them by Detective Lonnie Maines, who told them
19 that he had not administered a polygraph examination to Calvin Smith on July 22,
20 1996, as indicated in Detective Williams' report of November 4, 1996.

21 In the Committee's view, even if it is true that Lonnie Maines did not
22 administer a polygraph examination to Smith on July 22, 1996, another polygraph
23 examiner could have done it, and the records in the case file clearly indicate that a
24 polygraph examination *was* administered to Smith on that date. Detective
25 Williams testified to that effect at the judicial hearing before Smith's trial.
26 Furthermore, when Detective Williams prepared and signed the CrimeStoppers
27 Report on July 22, 1996, in which he reported that Smith had passed a polygraph
28 examination, there was no possibility that he could have confused that examination
29 with the "inconclusive" examination that occurred on July 26, 1996. (The
30 "inconclusive" examination had not yet occurred.) Thus, the Committee finds that
31 the greater weight of the evidence indicates that Smith took and passed a polygraph
32 examination on or before July 22, 1996.

1 Some members of the community have suggested that there was a deliberate
2 attempt by the investigators in this case to suppress information about the July 22,
3 1996, examination, which Smith passed, and to fabricate evidence of a fictional
4 examination administered on July 26, 1996, allegedly by R.C. Patterson, the results
5 of which were inconclusive. The Committee does not doubt the sincerity with
6 which these charges are asserted, and the Committee has carefully considered
7 them.

8 With regard to the question of suppression, the Committee notes simply that
9 Detective Williams admitted in sworn testimony prior to Smith’s trial that Smith
10 had taken *and passed* a polygraph examination in July, 1996. Accordingly, insofar
11 as Williams and the prosecutors in the case are concerned, there is no convincing
12 evidence of an effort to suppress information about the July 22, 1996, examination.
13 The Committee expresses no view on the question whether, eleven years later,
14 Lonnie Maines was attempting to suppress information about the July 22, 1996
15 polygraph when he spoke to the officers conducting the internal administrative
16 review in 2007.

17 With respect to the question of the fabrication of evidence of a second,
18 inconclusive polygraph examination on July 26, 1996, the existing record is
19 inconclusive.¹ To be sure, if a second polygraph examination did occur, as
20 indicated by R.C. Patterson’s report in the case file, and if the results of that
21 examination were inconclusive, it is strange that the subsequent reports prepared
22 by Detective Williams made no mention of the examination but mentioned instead
23 an examination that Smith had *passed*; and it is also strange that there was no
24 immediate follow-up examination. (The practice in the department was to request
25 a follow-up examination if the results of a previous examination proved to be
26 inconclusive.) But these considerations do not prove that the investigators
27 fabricated and inserted into the file evidence of a fictitious second polygraph
28 examination, purportedly given on July 26, 1996.

¹ Smith was incarcerated in the Forsyth County Jail on July 26, 1996. There is no evidence that he was “signed out” of that facility on July 26, 1996. Such evidence should exist if he was removed and taken elsewhere (the Public Safety Center) in order to be subjected to a polygraph examination.

1 On the basis of all of the foregoing findings, Committee recommends that
2 the Winston-Salem Police Department should adopt the following policies
3 concerning polygraph examinations and the documentation of polygraph
4 examinations:

- 5 • **In any serious criminal case the investigators should request all**
6 **material witnesses for the prosecution to submit to polygraph**
7 **examinations.**
- 8
9 • **All such examinations should be designed to test, insofar as**
10 **possible, the reliability of the main substance of the testimony that**
11 **the witness is likely to give at trial.**
- 12
13 • **A request for a polygraph examination should be omitted under**
14 **this policy only if (1) the witness in question is not a material**
15 **witness, (2) there is no plausible reason to doubt the witness’**
16 **reliability or impartiality, or (3) there is some extraordinary**
17 **circumstance that justifies the omission. Under this policy any**
18 **failure to request a polygraph examination of a material witness**
19 **should be approved in writing by the investigator’s supervisor.**
- 20
21 • **After administering a polygraph examination, the polygraph**
22 **examiner should promptly prepare a written report of the**
23 **examination indicating, among other things, (1) the questions that**
24 **were asked of the examinee, (2) the answers that were given by**
25 **the examinee, and (3) the degree of truthfulness or deception**
26 **found by the examiner. The written report should then be signed**
27 **by the examiner *and* his supervisor and preserved, along with the**
28 **charts of the examination, according to standard procedures for**
29 **the preservation of case records. The record of the polygraph**
30 **examination should be revealed to the District Attorney’s Office if**
31 **prosecution is contemplated.**
- 32
33 • **If a witness refuses to take a polygraph examination, this fact,**
34 **together with the questions that would have been asked of the**

1 witness during the examination, should be documented, and this
2 information should be revealed to the District Attorney's Office if
3 prosecution is contemplated.
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6 **B. Findings and Recommendations Concerning Investigatory Interviews**

7 As noted above, Andra Wilson, Valerie Williams, Pamela Moore, and Eugene
8 Littlejohn provided the police with information directly incriminating Calvin
9 Smith.² With the exception of Andra Wilson, all of these people have now
10 recanted. Accordingly, one of the principal issues in this case is whether the
11 information that these people provided the police was false. Williams, Moore, and
12 Littlejohn have all contended that it was, and all of them have attempted to explain
13 why they gave the police false information.

14 For example, Valerie Williams explains that when she was interviewed by the
15 police on January 24, 1997, she told them that she did not know anything about the
16 Jill Marker case but that they threatened to lock her up for withholding evidence.
17 She explains that the police told her (falsely) that Calvin Smith had failed a lie
18 detector test. She explains that the police told her (correctly) that Smith had
19 admitted to being present at the Silk Plant Forest store but that Smith had denied
20 beating Jill Marker. She then signed a statement asserting that Smith had made the
21 very same admission to her. She explains that she did this because she thought the
22 detectives would charge her with a crime if she did not sign the statement, even
23 though the statement was false. She explains that Smith had made no
24 incriminating admission to her.

25 Along a similar vein, Eugene Littlejohn explains that after the arrest of Calvin
26 Smith, the police began to come by his house almost daily, trying to get him to say
27 something about the Jill Marker case. He told them he knew nothing about the
28 case, but they continued to harass him. The police threatened to put him in prison
29 if he did not admit that he knew something about the attack. The police eventually

² One member of the Committee undertook the laborious and exacting task of reviewing the various utterances of Andra Wilson, Valerie Williams, Eugene Littlejohn, Jill Marker, Kenneth Lamoureux, Pamela Moore, and Calvin Smith, and compiling them in a single document. These compilations are attached to this Report as Attachment Two.

1 took him down to the police station and told him (falsely) that Smith had confessed
2 to the crime and had implicated him (Littlejohn) in the process. Littlejohn explains
3 that he gave in to the pressure. He made several statements to the police, and on
4 each occasion, according to Littlejohn, “the detectives told me some stuff to say.”
5 Eugene Littlejohn also alleges that Assistant District Attorney Eric Saunders
6 offered him \$500 in exchange for his cooperation. Mr. Saunders denies these
7 charges.

8 Pamela Moore explains that the investigators interviewed her while she was
9 being held in the Surry County Jail on unrelated charges. She claims that the
10 investigators recorded her interview and at one point stopped the recording so that
11 they could coach her about what to say. She explains that she then revised her
12 statement in accordance with the investigators’ suggestions and that the
13 investigators recorded her revised statement over her first statement. She explains
14 that she chose to give testimony against Calvin Smith because she was led to
15 believe that the criminal charges against her would be dropped in exchange for her
16 cooperation.

17 Professor James Coleman, the Director of the Duke Innocence Project, who is
18 intimately familiar with the record in this case, has advised the Committee, in a
19 public hearing, that in his view it is likely that some of the testimony given by
20 some of the witnesses in this case, particularly Eugene Littlejohn, was concocted
21 by the investigators themselves.

22 The investigators have denied essentially all of these charges, and the general
23 issue has been recently litigated, to the extent that such an issue can be litigated in
24 a post-conviction setting, pursuant to Smith’s recent Motion for Appropriate
25 Relief. In the Committee’s view, this is a difficult issue to sort out.

26 Over the course of the Silk Plant Forest investigation, the investigators used
27 various interviewing techniques, and followed various practices with respect to the
28 recordation of interviews and statements by witnesses. Some of the interviews
29 were field interviews; some were conducted at police headquarters. Some of the
30 interviews were tape recorded and transcribed; others were not. Some of the tape
31 recordings appear to encompass the entire interview; some appear to begin at a
32 point after the witness and the investigators had already begun to discuss the case.

1 Some of the witnesses and suspects were asked to sign written statements; others
2 were not.

3 The crucial, three-hour interviews of Calvin Smith and Valerie Williams at the
4 police station on January 24, 1997, which resulted in the arrest of Calvin Smith,
5 were not tape recorded. These interviews resulted in short, written statements
6 signed by Smith and Valerie Williams. What *the investigators* said to Smith and
7 Williams during these interviews does not appear in any contemporaneous record.
8 The same can be said, to one degree or another, of the contemporaneous records of
9 the various interviews of Littlejohn, Moore, and Wilson. The contemporaneous
10 records include written statements, tape-recorded statements, and written
11 summaries of interviews, but they do not provide a complete record of what *the*
12 *investigators* said to the witnesses in the course of these interviews.

13 At the time of the Silk Plant Forest investigation the Winston-Salem Police
14 Department had adopted a relatively brief and non-specific policy on the “Receipt,
15 Verification, and Preservation of Statements” (General Order 4.13). This policy
16 stated that “[a]ll interviews will be conducted in a manner consistent with the
17 constitutional rights of the individual,” and it stated that “it is usually desirable to
18 obtain recorded statements from victims, key witnesses, and suspects.” The policy
19 described procedures to be followed in obtaining written recorded statements,
20 taped recorded statements, and oral statements; it provided for the verification of
21 written and taped statements; and it provided for the preservation of all recorded
22 statements.

23 There were significant omissions in General Order 4.13. It appeared to cover
24 only statements made by victims, key witnesses, and suspects. It did not attempt to
25 provide generally for the recordation of statements made by the investigators
26 themselves in the course of investigatory interviews. Furthermore, on its face, it
27 did not actually require investigators to obtain any sort of recorded statement from
28 victims, witnesses, or suspects, although, as noted, it stated that recorded
29 statements were “usually desirable.” Finally, except for the general admonition
30 about the constitutional rights of the individual, the policy had nothing to say about
31 the kinds of interview techniques the investigators were entitled to use. Were they
32 entitled to use trickery or deception? Could they properly threaten imprisonment
33 or prosecution? Could they promise leniency in return for cooperation? Was it

1 proper for them to coach the witness or to suggest what the substance or content of
2 a witness' statement ought to be?

3 General Order 4.13, as it existed at the time of the Silk Plant Forest
4 investigation, was so non-specific, and the contemporaneous record of the various
5 interviews is so limited, that it is difficult to say whether the investigators in this
6 case violated departmental policy or not. What can be said is that the corrosive
7 dispute in this case over improper questioning and coerced testimony probably
8 could have been avoided or ameliorated if the investigators had simply taped or
9 electronically recorded the full extent of all of the relevant interviews. If that had
10 happened, we would now know whether Valerie Williams was threatened with
11 prosecution or whether Pamela Moore and Eugene Littlejohn were told what to say
12 when they gave statements to the investigators. "Sunshine is the best disinfectant,"
13 as Justice Brandeis once opined. A policy requiring investigators to record
14 electronically, when reasonably feasible, the full extent of all relevant interviews
15 would protect the investigators themselves against false claims of coercion, it
16 would protect witnesses and suspects from improper interviewing techniques, and
17 it would protect the integrity of the criminal justice system as a whole.

18 Fortunately, in recent years, the Winston-Salem Police Department has
19 adopted policies that move very far in this direction. For example, in 2007 the
20 Department adopted a policy concerning "Video Recorded Interviews" that
21 appears to *mandate* the use of video recording in a broad category of serious
22 criminal cases. (Standard Operating Procedure 1.27 of the Criminal Investigations
23 Division) This policy applies to interviews of "victims, witnesses, and suspects."
24 It contemplates that the video recording will occur in interview rooms at police
25 headquarters. It provides specifically that the recording equipment must be
26 activated at the beginning of an interview and that it must remain activated,
27 without interruption, throughout the interview process. The policy partially
28 addresses the question of proper interviewing technique. For example, it provides
29 that "detectives may engage in deceptive methods and/or make false statements,
30 however, such methods or statements shall not be employed to the extent that
31 based on the circumstances, they are likely to obtain an untrue confession or
32 otherwise elicit an involuntary statement." The video recording policy is not
33 intended to preclude field interviews or to prevent detectives from acting when
34 spontaneous utterances or statements are made, but it provides, or appears to

1 provide, that if a video recording cannot be made, “a digital audio recording shall
2 be conducted in accordance with SOP 1.28.” (“SOP 1.28” is a recently adopted
3 Standard Operating Procedure dealing with digital audio recordings.) In other
4 words, it now appears that it is departmental policy to require, when feasible, either
5 video or audio recording of investigatory interviews in serious criminal cases.

6 If this policy had been in effect, and had been followed, at the time of the Silk
7 Plant Forest investigation, much of the present controversy about interviews,
8 witness statements, and interviewing techniques would probably have been
9 avoided.

10 The Committee makes the following recommendations with respect to the
11 police department’s present policies:

- 12 • **SOP 1.27 (video recording) and SOP 1.28 (audio recording) should**
13 **be amended to make it clear that the purpose of these policies is to**
14 **create an electronic record of all statements made by the**
15 **interviewing detectives, as well as by the victims, witnesses, or**
16 **suspects who are being interviewed, in all cases defined in Section I**
17 **A of SOP 1.27, subject to the exception provided in Section II C of**
18 **SOP 1.27, which states that the recording policy “is not intended to**
19 **delay, interfere or prevent detectives from acting when spontaneous**
20 **utterances or statements are made.”**
- 21
22 • **SOP 1.28 (audio recording) should be amended to make it clear that**
23 **the audio recording equipment should be activated at the beginning**
24 **of the interview and should not be turned off until the interview**
25 **ends, as currently provided in the case of video recording under**
26 **SOP 1.27.**
- 27
28 • **SOP 1.27 (video recording) and SOP 1.28 (audio recording) should**
29 **be amended to clarify further the nature of the interviewing**
30 **techniques that are permissible and impermissible. The policies**
31 **should specifically address the following questions among others: Is**
32 **it permissible for a detective to promise, state, or lead an**
33 **interviewee to believe that the interviewee or some other person will**

1 receive some benefit from the police, the District Attorney’s Office,
 2 or the court if the interviewee provides information, or certain
 3 information, in the course of the interview or thereafter? Is it
 4 permissible for a detective to state or lead an interviewee to believe
 5 that the interviewee or some other person will be locked up or
 6 prosecuted or harmed in some other way if the interviewee fails to
 7 provide information, or certain information, in the course of the
 8 interview or thereafter? Is it permissible for a detective to suggest
 9 what the specific content of an interviewee’s statement should be?

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 12
 13 **C. Findings and Recommendations Concerning “Photographic Lineups”**
 14

15 The purpose of this section of the report is to present a detailed description of
 16 how the ten photographic line-ups requested or conducted by Detective D. R.
 17 Williams were constructed, presented, and documented and to review the Winston
 18 Salem Police Department’s policy on photographic line-up procedures extant in
 19 1995-97 and currently. This section is presented in four parts: (i) line-ups
 20 constructed; (ii) individuals who viewed line-ups and the results; (iii) Committee
 21 findings and conclusions; and (iv) Committee recommendations.

22
 23 **The following line-ups were constructed for this investigation:**
 24

<u>Line-Up</u>		<u>Race/Sex</u>		<u>Date Created</u>
Kenneth Lamoureux		White/Male		December 12, 1995
Eric Carraway		Black/Male		December 12, 1995
Shane Fletcher		White/Male		May 24, 1996
Larry Means		Black/Male		October 2, 1996

Sybrina Shepard		Black/Female		October 2, 1996
Kalvin Smith		Black/Male		October 2, 1996
Eugene Littlejohn		Black/Male		August 19, 1997
Kalvin Smith		Black/Male		August 19, 1997 (Second Line-Up)
Eugene Littlejohn		Black/Male		August 27, 1997 (Enlarged Line-Up)
Kalvin Smith		Black/Male		August 27, 1997 (Enlarged Line-Up)

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Individuals who viewed photographic line-ups and the results:

Cynthia Cloud – Customer in the store on December 9, 1995

Cynthia Cloud was shown a photographic line-up of Kenneth Lamoureux by Detective Williams on December 12, 1995. Detective Williams documented the following in a supplement report dated December 19, 1995:

“Upon presenting the photographic line-up to Ms. Cynthia Cloud, she identified the photograph of Kenneth Earl Lamoureux as the white male she observed in the Silk Plant Forest between the hours of 1920 and 1945 hours on 12-09-95. Ms. Cloud advised me that this photograph of Kenneth Earl Lamoureux looked like the person she observed, however, the glasses Mr. Lamoureux was wearing in the photo line-up was distracting Ms. Cloud

1 from being positive on her identification. Mr. [sic] Cloud informed me that
2 she could not remember glasses being worn by the suspect.”

3
4 Detective Williams documented the following in Crime Stoppers# 17094-01
5 which he dated as December 12, 1995:
6

7 “I interviewed Cynthia Cloud who later identified Kenneth Earl Lamoureux
8 as the white male she observed in the Silk Plant Forest on 12-09-95 between
9 the hours of 1920 and 1945 hours. Mr. Lamoureux was interviewed on 12-
10 18-95 and he denied any involvement. Ms Stella Goode BF DOB 12-19-51
11 who was with Ms Cloud on this date was also interviewed. Ms Stella Goode
12 later identified Kenneth Earl Lamoureux as the white male in the Silk Plant
13 Forest between the hours of 1920 and 1945 hours. According to both Ms
14 Cloud and Ms Goode, the white male walked from the rear of the store as
15 they entered. When Ms Cloud and Ms Goode left the Silk Plant Forest, the
16 white male walked back to the rear of the store. Ms Cloud stated the white
17 male spoke to her once while inside the store, asking Ms Cloud what the
18 words on the back of her jacket represented. When Ms. Cloud told the white
19 male, he walked off mumbling to himself.”

20
21 Cynthia Cloud signed a photographic line-up admonition form on May 28,
22 1996; Detective Williams' code number appeared by her signature. There is
23 no documentation which line-up this admonition form was completed for;
24 however, Detective Williams requested a photographic line-up be completed
25 for Shane Fletcher on May 23, 1996 and one was constructed on May 24,
26 1996. Detective Williams and Detective M.C. Rowe interviewed Shane
27 Fletcher on May 23, 1996 at John Umstead Hospital. Detective Williams
28 then spoke with Shane Fletcher by telephone on May 30, 1996. Given the
29 dates involved with the signing of the admonition form and the active
30 investigation which was focused on Mr. Fletcher, Ms. Cloud could have
31 been shown a line-up of Mr. Fletcher. The results of any line-up shown to
32 Ms. Cloud on May 28, 1996 are unknown because there is no documentation
33 of Ms. Cloud being shown a line-up.

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35 *Teresa Barker - At Silas Creek Crossing around time of crime*

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Teresa Barker was shown a photographic line-up of Kenneth Lamoureux by Detective Williams on December 13, 1995. Ms. Barker did not identify anyone in the line-up.

R. Key Wedill- Unknown role

R. Key Wedill is the signature on the photographic line-up admonition form for Kenneth Lamoureux after Teresa Barker's signature. The signature is not clearly legible and is interpreted as R. Key Wedill. The admonition form was signed by Wedill on December 13, 1995. Detective D.R. Williams' code number appeared next to this name. It is unknown what Wedill's role was or how he/she became involved in this matter because the name was not documented in the report. There was no documentation as to the results of the line-up being shown to Wedill.

Edna Hoisington – Victim's mother

Edna Hoisington, Jill Marker's mother, was shown a photographic line-up of Kenneth Lamoureux by Detective Williams on December 13, 1995. There is no documentation as to the results of the line-up being shown to Ms. Hoisington.

Stella Goode - Customer in the store on December 9, 1995

Stella Goode was shown a photographic line-up of Kenneth Lamoureux by Detective Williams on December 13, 1995. Detective Williams documented the following:

1 “Upon presenting the photographic line-up to Ms. Goode, she viewed the
2 line-up for approximately five seconds and then laid the photographic line-
3 up down on the table in the interview room and pointed directly to the
4 photograph of Kenneth Earl Lamoureux and stated, “This is the person I
5 observed in the Silk Plant Forest on 12-09-95, however, he looks a little
6 older here.” Ms. Stella Goode then circled the photograph of Kenneth Earl
7 Lamoureux on a copy made from the original line-up. Ms. Stella Goode was
8 also unable to advise if the suspect was wearing glasses when she and Ms.
9 Cynthia Cloud was [sic] confronted by the white male in the Silk Plant
10 Forest on 12-09-95. Ms. Stella Goode had no further information to offer.”

11
12 *Andrea Runion - Employee of WXII television*

13
14 Andrea Runion was shown a photographic line-up of Kenneth Lamoureux
15 by Detective Williams on January 4, 1996. Ms. Runion identified Mr.
16 Lamoureux as the person she spoke with in the lobby of WXII on January 4,
17 1996.

18
19 *Michael Mitchell- Customer in the store on December 9, 1995*

20
21 Michael Mitchell was shown a photographic line-up of Kenneth Lamoureux
22 by Detective Williams on January 4, 1996. Mr. Mitchell did not identify
23 anyone in the line-up.

24
25 *Jill Marker - Victim*

26
27 1. Ms. Marker was interviewed by Detective Williams and Detective M.N.
28 Barker in Ohio on October 31, 1996. This interview was audio/video
29 recorded. There is no written documentation regarding any line-ups
30 presented to her on this date by Detective Williams or Detective Mike
31 Barker. Detective Williams documented that the interview was audio/video
32 recorded on November 4 and December 2, 1996. The supplement reports

1 did not give any account of the October 31, 1996 interview with Ms.
2 Marker.

3
4 After viewing the video of the October 31, 1996 interview with Ms. Marker,
5 it can be determined that four photographic line-ups and six individual
6 photographs were presented to her. It is impossible to interpret with certainty
7 what Ms. Marker was communicating to Detective Williams during the
8 interview. What Ms. Marker's visual acuity was at the time of this interview
9 is unknown. During the interview, Ms. Marker was asked if she wanted her
10 eyeglasses and it appeared she did want her eyeglasses; however, the line-
11 ups were presented to her without her wearing eyeglasses.

12
13 The first line-up was of Calvin Smith. This determination can be made
14 because the camera was able to capture a glimpse of this line-up. Although
15 the faces of those in the line-up cannot be seen clearly, the silhouettes of the
16 black males, the shading of the background in each photograph, and the shirt
17 colors of the six males can be, and these are consistent with the Calvin
18 Smith line-up that was constructed October 2, 1996. Ms. Marker did not
19 make an identification in this line-up.

20
21 The second line-up was of Larry Means. This determination can be made
22 because Detective Williams presented a clear view of this line-up to the
23 camera. From this, the silhouettes of the black males and the color of their
24 clothing can be seen and these are consistent with the Means line-up. Ms.
25 Marker was not able to identify anybody in the line-up.

26
27 The third line-up was of black individuals; however, the angle was very
28 wide, making a determination as to which line-up was presented unknown.
29 Ms. Marker was not able to identify anybody in the line-up.

30
31 After the third line-up was presented to Ms. Marker, Detective Williams
32 asked for and was given a pair of scissors, at which point he cut out pictures
33 from one or more line-ups and presented them to her. The camera angle did
34 not afford an opportunity to view any of the photographs. Detective

1 Williams showed her six unknown photographs. During this period of time,
2 Ms. Marker was asked if she could identify the person that hurt her and her
3 apparent answer, as interpreted by both the detectives and the medical
4 personnel, was that she did not know.

5
6 The fourth line-up was almost certainly of Kenneth Lamoureux. This
7 determination was made because the camera captured a glimpse of the line-
8 up that showed the photographs of six white males; the shading of the
9 background in each photograph and general characteristics in each
10 photograph matched the actual line-up of Lamoureux that was constructed
11 on December 12, 1995. Ms. Marker did not appear to make an identification
12 of Lamoureux from this line-up. Ms. Marker was asked if she recognized
13 anybody in this line-up that had been in her store before, and she made an
14 indication with her fingers of the number three. Medical personnel asked if
15 she was indicating the number three position or three of the people in the
16 line-up. Ms. Marker appeared to be pointing to one of the photographs in the
17 line-up, but the camera did not give the observer a view of what she was
18 pointing to. In this line-up, Mr. Lamoureux was in the number three
19 position.

20
21 Ms. Marker did not sign the admonition forms for these line-ups, but as a
22 practical matter, that would not have been possible because Ms. Marker did
23 not have the physical control of her body to sign the form. There is no
24 documentation of any photographic line-up admonition form with a viewing
25 date of October 31, 1996.

26
27 **2.** Ms. Marker was interviewed a second time in Ohio on September 4, 1997
28 by Detective Williams and Detective L.M. Maines. This second interview
29 was not audio or video recorded. This interview was documented in
30 supplement reports by both Detective Williams and Detective Maines.
31 During this interview, Detective Williams documented that he asked Ms.
32 Marker if she would look at photographic line-ups and pick out the person
33 that beat her. Detective Williams presented to Ms. Marker enlarged
34 photographs (8x10 photographs) from the photographic line-up of Calvin
35 Smith and Eugene Littlejohn. Detective Williams documented the following
36 regarding the photographs of Calvin Smith in his supplement report:

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“Ms. Marker was then rolled up to the table in her wheelchair. Ms. Marker then started looking at the photographs right to left, moving her right hand over the photographs. After approximately 20 seconds, Ms. Marker's facial expressions changed to what I believe to be a terrified look and at the same time, Ms Marker hit the photograph of Calvin Michael Smith three times with her hand. Ms. Marker lowered her head and closed her eyes at that time. I then asked Ms. Jill Marker if she would take the felt magic marker and make a mark on the photograph of the person that beat her at the Silk Plant Forest. Ms. Marker took the felt marker and made three marks on the wooden table just below the photograph of Calvin Michael Smith. Ms. Marker again closed her eyes and lowered her head after this process.” Detective Williams documented he later placed this line-up into Evidence Management as evidence.

Detective Williams then showed Ms. Marker enlarged photographs of the photographic line-up of Eugene Littlejohn; however, Ms. Marker was unable to make any identification. Detective Williams documented he later placed this line-up into Evidence Management as evidence. Ms. Marker was then returned to her room.

Detective Williams then had a conversation with Bud Hoisington, Jill Marker’s father, at which point Mr. Hoisington suggested the enlarged line-up of Calvin Smith be placed on a blackboard in the vertical position which would give Ms. Marker a better view of the line-up. Detective Williams then set up the line-up in that configuration for Ms. Marker to view. Ms. Marker was then returned to the room to view the line-up in the vertical position, at which time she became upset, looked at the line-up briefly, looked away and continued to be upset; no identification was made. Ms. Marker was returned to her room.

3. Detective Maines also documented the September 4, 1997 interview with Ms. Marker and his supplement report corroborates Detective Williams’ supplement report.

1 *Ivadine Hester – Called CrimeStoppers*

2
3 Ivadine Hester called CrimeStoppers on December 11, 1995 and reported
4 she saw two black males in their 20s who “looked very strange” inside the
5 Silk Plant Forest on December 8, 1995. Ms. Hester described one black male
6 as 6’2” tall with dreadlocks and the other as 5’ 11” with short hair.

7
8 **1.** Ms. Hester was shown a photographic line-up of Calvin Smith on
9 January 31, 1997 and Detective Williams documented the following about
10 that event:

11
12 “On 01-31-97 Ms. Hester came to PSC requesting to speak with me
13 concerning the Crimestoppers information she reported on 12-11-95. Ms.
14 Hester stated she believed the photograph of Calvin Michael Smith she saw
15 in the newspaper was one of subjects [sic] she saw inside the Silk Plant
16 Forest on 12-08-95. After being advised of the Admonition Statement as it
17 pertains to photographic line-ups, Ms. Hester was shown a photographic
18 line-up which contained a photograph of Calvin Michael Smith. It should be
19 noted Ms. Hester picked out the photograph of Calvin Smith; however, she
20 was not certain this was the same subject she saw inside the Silk Plant Forest
21 on 12-08-95. Ms. Hester also advised she believed she saw the same two
22 subjects leaving the Silas Creek Crossing Shopping Center in the burgundy
23 Ford Mustang, however, she was not certain of this and did not obtain a
24 registration plate number. Ms. Hester stated she felt obligated to provide this
25 information. Ms. Hester had no further information to offer.”

26
27 Ms. Hester testified to her tentative identification at Calvin Smith’s trial.
28 Assistant District Attorney (ADA) Mary Jean Behan asked Ms. Hester at the
29 trial, “Why did you go on or about January 31st of 1997 down to the Public
30 Safety Center?” And Hester’s reply was, “That’s when I believe Detective
31 Williams called me to request that I come down.”

32
33 **2.** Ms. Hester was shown a photographic line-up of Eugene Littlejohn on
34 August 20, 1997 and Detective Williams documented the following:

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“On 08-20-97 at 1138 hours, Ms. Ivadine Spicer Hester, white female, DOB 12-08-51, met with me at the Public Safety Center concerning this investigation. Ms. Hester had given information earlier on 01-31-97 concerning her seeing two strange looking black males inside the Silk Plant Forest on 12-08-95 at approximately 1145 hours.”

“On 01-31-97, Ms. Hester was interviewed concerning this investigation and later shown a photographic line-up on this same date containing the photograph of Calvin Michael Smith. Mr. Smith's photograph date was 10-04-94 in this line-up. Ms. Hester identified Calvin Michael Smith’s photograph as one of the persons she believed to be inside the Silk Plant Forest on 12-08-95, however, she advised she was not absolutely sure. Ms. Hester circled the photograph of Calvin Michael Smith.”

“Due to Eugene Littlejohn, black male, DOB 06-15-64, admitting that he was with Calvin Michael Smith on 12-09-95 when the incident occurred at the Silk Plant Forest, a photographic line-up was shown to Ms. Hester containing the photograph of Eugene Littlejohn. Ms. Hester was read the Admonition Statement and then presented with the line-up. Ms. Hester took approximately one minute looking over the line-up and then identified the photograph of Eugene Littlejohn as the other black male being inside the Silk Plant Forest on 12-08-95. Ms. Hester said she was not absolutely positive, however, she believe [sic] that this was the other black male she saw. Ms. Hester circled the photograph of Eugene Littlejohn.”

In the above-mentioned quote from Detective Williams’ report, he wrote that the photograph used in the line-up of Calvin Smith was taken on October 4, 1994. If, Detective Williams documented his reports correctly, the only line-up that he had of Calvin Smith at that time was the one created on October 2, 1996. The photographic line-up report reflected the photograph used in Calvin Smith’s line-up was #96000111, which was taken on January 17, 1996. The number 96000111 was created by the Identification Section for arrestee photographs. The 96 indicated the year of 1996 and 000111 indicated it was the 111th arrestee photograph taken in 1996.

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Ms. Hester was asked by ADA Behan at Smith’s trial, “Did you respond back to the Public Safety Center on or about August 20th, 1997?” and Hester replied, “Yes, I did.” ADA Behan responding by saying, “And was that again at the request of Detective Williams?” with Hester responding, “That’s correct.”

Committee Findings and Conclusions Concerning Photographic Line-ups:

1. Construction of Line-ups

Detective Williams documented there were ten photographic line-ups constructed for this investigation. Eight were constructed by the Identification Personnel in compliance with General Order 4.14, Section III -
-----redacted-----

The two that Detective Williams constructed were the enlarged photographic line-ups (8x10 photographs) of Calvin Smith and Eugene Littlejohn on August 27, 1997.

The reason Detective Williams constructed the enlarged line-ups was to make the photographs large enough for Ms. Marker to view. These two line-ups were presented to Jill Marker on September 4, 1997. **[There is no policy prohibiting enlarging the line-up photographs, and the committee viewed Detective Williams’ efforts on this issue as an appropriate attempt to accommodate a victim and give that victim the best opportunity to identify her perpetrator. There is no evidence that Detective Williams’ construction of these line-ups adversely impacted the investigation.]**

2. *Persons Viewing Which Line-ups and What the Results Were*

It has been determined from the case file and the viewing of the October 31, 1996 video tape that a total of nine people were presented with photographic line-ups. Of those nine people, six people viewed line-ups on at least one occasion; two people, Jill Marker and Ivadine Hester, viewed line-ups on two occasions each, and Ms. Cloud may have viewed a second line-up; however, the admonition form she signed on May 28, 1996 has not been associated with any line-up. The following table provides a listing of those persons and the line-ups they viewed:

<u>Person View Line-Up</u>	<u>Date Line-Up Viewed</u>	<u>Line-Up/Line-Up Date</u>	<u>Was Positive Identification Made?</u>
Cynthia Cloud 1 st Occasion	Dec. 12, 1995	Lamoureux/Dec. 12, 1995	No/Yes
Cynthia Cloud 2 nd Occasion	May 28, 1996	Unknown	Unknown
Teresa Barker	Dec. 13, 1995	Lamoureux/Dec. 12, 1995	No
R. Key Wedill	Dec. 13, 1995	Lamoureux/Dec. 12, 1995	Unknown
Enda Hoisington	Dec. 13, 1995	Lamoureux/Dec. 12, 1995	Unknown
Stella Goode	Dec. 13, 1995	Lamoureux/Dec. 12, 1995	Yes
Andrea Runion	Jan. 4, 1996	Lamoureux/Dec. 12, 1995	Yes
Michael Mitchell	Jan. 4, 1996	Lamoureux/Dec. 12, 1995	No
Jill Marker 1 st Occasion	Oct. 31, 1996	Kalvin Smith/Oct. 2, 1996	No
Jill Marker 1 st Occasion	Oct. 31, 1996	Larry Means/Oct. 2, 1996	No
Jill Marker 1 st Occasion	Oct. 31, 1996	Unknown	No
Jill Marker 1 st Occasion	Oct. 31, 1996	Lamoureux/Dec. 1995	No
Jill Marker 2 nd Occasion	Sept. 4, 1997	Kalvin Smith/Aug. 27, 1995	No
Jill Marker 2 nd Occasion	Sept. 4, 1997	Eugene Littlejohn/Aug. 27, 95	No

Jill Marker 2 nd Occasion	Sept. 4, 1997	Kalvin Smith/Aug. 27, 1995 (vertical line-up)	No
Ivadine Hester 1 st Occasion	Jan. 31, 1997	Kalvin Smith/Oct. 2, 1996	No
Ivadine Hester 2 nd Occasion	Aug. 20, 1997	Eugene Littlejohn/Aug. 19, 95	No

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3. *Documentation of Line-ups*

The committee has not been able to locate any documentation as to the results of line-ups shown to R. Key Wedill, Edna Hoisington, or Cynthia Cloud on the second occasion. Furthermore, Detective Williams failed to document that he showed Jill Marker four photographic line-ups and six individuals' photographs on October 31, 1996. -----
-----*redacted*-----

Detective Williams initially declined to be interviewed by the committee investigators for this administrative review; however in 2004, he was interviewed by Phoebe Zerwick, a *Winston-Salem Journal* reporter, who was doing a special report on the Silk Plant Forest case. The *Winston-Salem Journal* ran a five-part special report titled, "The Attack at the Silk Plant Forest," in November of 2004. In part three, chapter five of the special report, it was reported that Detective Williams stated he did not include all of his investigative work in reports because he did not want to give that information to the defense. -----
-----*redacted*-----

Detective Williams did Testify in January of 2009 at Calvin Smith's Motion for Appropriate Relief (M.A.R) Hearing in reference to his visit to interview Jill Marker on October 31, 1996. At the M.A.R. Hearing, Detective Williams

1 indicated that he made a mistake by not documenting the showing of the
2 photographic line-ups to Jill Marker and went on to say that he is human. In
3 1996 there was a department policy that required the results of showing
4 photo line-ups to be documented. See General Order 4.14, Line-up
5 Procedures, Effective Date 4/28/93, Section III F. and G.

6
7 *4. Documentation of Identifications*

8
9 A fundamental role of an investigator is to interview witnesses and victims
10 and present line-ups. Once the line-ups have been presented to the
11 witness/victim, the investigator should establish a clear understanding of
12 what they stated and clear up any confusion or misunderstandings that may
13 result from the interview. The investigator must then accurately document
14 the results of the interview.

15
16 After reviewing Detective Williams' supplement reports documenting the
17 results of him showing line-ups, the reader is often left with conflicting,
18 confusing, or convoluted findings.

19
20 In reviewing what Detective Williams documented in his supplement report
21 about Cynthia Cloud viewing the Lamoureux line-up, Detective Williams
22 wrote Ms. Cloud identified Mr. Lamoureux as the person she saw in the Silk
23 Plant Forest, but in the same paragraph, he stated that she could not be
24 positive of her identification. Detective Williams then documented that Ms.
25 Cloud identified Lamoureux in the CrimeStoppers report that he completed
26 on December 12, 1995.

27
28 In reviewing what Detective Williams documented in his supplement report
29 about Stella Goode viewing the Lamoureux line-up, Detective Williams
30 wrote, "This is the person I observed in the Silk Plant Forest on 12-09-95,
31 however, he looks a little older here."

1 In reviewing the video tape of Ms. Marker from October 31, 1996, there is
2 no written documentation of this interview; however, the tape is available
3 for viewing. It is very difficult to draw any conclusions because of Ms.
4 Marker's limited ability to communicate and the very obvious question
5 about her ability to see the photographs well enough to make any
6 identification.

7
8 In reviewing what Detective Williams and Detective Maines documented in
9 their supplement reports as to the interview with Jill Marker on September 4,
10 1997 in Ohio, neither of them stated Ms. Marker made an identification of
11 Calvin Smith from the enlarged line-up. Unfortunately, this interview was
12 not audio/video recorded; therefore, only the detectives' supplement reports
13 are available for the committee to consider. Both detectives described Ms.
14 Marker viewing the line-ups, but neither documented whether Ms. Marker
15 did or did not make an identification of Calvin Smith during the first
16 viewing. Both detectives documented that Ms. Marker was shown the
17 enlarged photographic line-up of Eugene Littlejohn and both detectives
18 documented that Ms. Marker did not identify Mr. Littlejohn. Both
19 detectives then documented Ms. Marker returned to the room to view the
20 enlarged line-up of Calvin Smith for a second time, only this time it was in a
21 vertical position for her to view; they both indicated that Ms. Marker did not
22 make an identification of Smith.

23
24 In light of the fact that neither detective documented that Ms. Marker made
25 an identification after the first viewing of Smith on September 4, 1997 and
26 the fact that a second attempt was made on the same day, it is clear that no
27 identification of Smith was made. One of the reasons for the trip to Ohio was
28 to attempt to identify Calvin Smith, who had already been arrested for this
29 crime and his trial was only several months away; another reason was to
30 make an attempt to identify Eugene Littlejohn. Due to the fact there was no
31 audio/video tape and the trip was planned for the purpose of making an
32 identification of Calvin Smith and Eugene Littlejohn for an upcoming trial,
33 it was imperative for the detectives to document their findings in regard to
34 identification of the suspects. Detective Williams and Detective Maines
35 should have documented in their reports a clear interpretation of the first
36 line-up shown to Ms. Marker.

37

1 In reviewing what Detective Williams documented in his supplement report
2 about the line-ups he presented to Ms. Hester, no identification was made; at
3 best, it was a tentative identification made for both Kalvin Smith and Eugene
4 Littlejohn.

5
6 Detective Williams documented that on January 31, 1997, Ms. Hester came
7 to the PSC requesting to speak to him; however, in fact, he called her to
8 come to the PSC. Once Ms. Hester was at the PSC, Detective Williams
9 showed Ms. Hester a photographic line-up of Smith at which point he
10 documented that Ms. Hester picked out Kalvin Smith; however, she was not
11 certain this was the same person she saw in the Silk Plant Forest. This, at
12 best, is a tentative identification and this identification occurred after Ms.
13 Hester admittedly saw Kalvin Smith's photograph in the newspaper.

14
15 Detective Williams documented that on August 20, 1997, Ms. Hester viewed
16 a photographic line-up of Eugene Littlejohn and he documented that Ms.
17 Hester identified Mr. Littlejohn as the other black male in the store.
18 However, one sentence later he wrote that she was not absolutely positive,
19 but she believed he was the other black male in the store. This, at best, is a
20 tentative identification.

21
22 *5. Winston-Salem Police Department Policy, Then and Now*

23
24 *Department Policies, 1995 through 1997, the timeframe of the original*
25 *investigation.* The Department had policies in place to address the key issues
26 that have been identified in this review: the construction of line-ups and
27 accurately documenting the investigation. General Order 4.14, Line-up
28 Procedures, addressed that the line-ups were to be constructed by
29 Identification Personnel. General Order 4.1, Preliminary and Follow-up
30 Investigations, and Rule of Conduct #31, Departmental Reports, addressed
31 that cases will be thoroughly investigated regardless of assignment and the
32 results of the investigation will be recorded reflecting everything
33 accomplished during the investigation.

1 *Department Policies Now.* The policies in place in the mid 1990s are still in
2 place today, only they have been updated. The most significant change has
3 occurred with General Order 4.14, Line-up Procedures, Revision
4 Number/Date 3/04-30-07. This policy has had major revisions to include that
5 line-ups are shown to witnesses/victims on a laptop computer by an
6 administrator who has no knowledge of the suspect's identity or where the
7 suspect may appear in the line-up process (a "blind" administrator) and to
8 document those results with more clarity.

9
10
11 **Committee Recommendations Concerning Photographic Line-ups:**

12
13 **It is the recommendation of the Silk Plant Forest Citizen Review**
14 **Committee that all employees of the Winston-Salem Police Department**
15 **comply with all current polices, orders, and procedures that include,**
16 **but is not limited to Photographic Line-ups.**

17
18
19
20 **D. Findings and Recommendations Concerning the Supervision of**
21 **Detectives, the Creation and Preservation of Investigatory Records, and**
22 **the Preparation of Prosecution Booklets**

23
24 In the series of articles published in the *Winston-Salem Journal* in 2004, the
25 principal reporter, Phoebe Zerwick, reported that Detective Williams had told her
26 that he intentionally did not document some portions of his investigation.
27 Williams was quoted as saying the following: "There's a lot of investigative work
28 that you do that you don't put on paper because you open yourself up to the
29 defense bringing it up in court to take it off Calvin." According to Zerwick,
30 Williams said that he had reams of information that he never included in his
31 reports and that he told the District Attorney's Office about this. As noted above,
32 the Committee was unable to confer with Phoebe Zerwick, and Williams has either

1 denied making such statements or has asserted that Zerwick took them out of
2 context.

3 The Committee has, however, been able to gather some relevant information
4 from other sources. For example, Sergeant Byrom and Lieutenant Ferrelli
5 interviewed Mr. Vince Rabil, an attorney who for many years was an assistant
6 district attorney in the District Attorney's Office. Mr. Rabil said that during his
7 career at the District Attorney's office he had many opportunities to interact
8 professionally with Detective Williams. He said that he believed that Detective
9 Williams was dedicated, very serious about his work, and had only good intentions
10 about solving crimes and seeing that the right person was prosecuted. He went on
11 to say, however, that Detective Williams followed certain practices that were a
12 cause of concern for him (Rabil) as a prosecutor. Detectives working in the
13 Criminal Investigation Division customarily prepare "prosecution booklets" for the
14 prosecutors in the District Attorney's Office. The purpose of these booklets is to
15 acquaint the prosecutor with the detective's findings and the evidence in the case,
16 so that the prosecutor will be able to make a sound decision about whether and
17 how to proceed. Mr. Rabil stated that when Detective Williams prepared a
18 prosecution booklet, he (Williams) would often omit to include the defendant's
19 written statement; instead, he would include his own characterization of the
20 defendant's statement, and he would sometimes call the statement a "confession,"
21 when, in Rabil's view, it was not. In other words, when Rabil actually reviewed
22 the statement itself, Rabil would often discover that the defendant had simply
23 admitted to certain facts and had not admitted to committing a crime. Rabil said
24 that he questioned Detective Williams about this practice on more than one
25 occasion. Williams responded by saying that his summary of the defendant's
26 statement was based on his familiarity with the investigation, as well as his
27 familiarity with the suspect, the look on the suspect's face, and other intangible
28 considerations.

29 In the Committee's view, the following picture emerges from Mr. Rabil's
30 description of Detective William's work: Detective Williams was a tough,
31 dedicated investigator who tended to form strong opinions about the guilt or
32 innocence of criminal suspects, and he took care to prepare written records that
33 were consistent with his views.

1 It should be noted that in the Silk Plant Forest case, Detective Williams
2 prepared a number of records that were *exculpatory* of Calvin Smith. For example,
3 he prepared the records that indicated that Smith had passed a polygraph
4 examination in July, 1996. It should also be noted, however, that he sometimes
5 prepared records that conspicuously omitted certain exculpatory facts. For
6 example, in the account that he prepared of the photographic lineup conducted on
7 October 31, 1996, at which Jill Marker failed to identify Calvin Smith, there was
8 no mention of her failure to identify Smith. Similarly, when Williams and his
9 supervisor, Randy Weavil, interviewed Smith and Valerie Williams at police
10 headquarters on January 24, 1997, they were content to obtain short, handwritten,
11 incriminatory statements from Smith and Valerie Williams, and they chose not to
12 tape record and transcribe the interviews in their entirety. There is no way to know
13 whether this approach reflected a deliberate attempt to protect the record in a way
14 that would be favorable to the prosecution, but unrecorded, stationhouse
15 interviews were not the best practice and would not be consistent with present
16 policy. (See the discussion of interview techniques, above.) Finally, if it is true, as
17 Williams allegedly asserted to Phoebe Zerwick, that he kept “reams” of
18 information out of his reports, then it is evident that a flagrant breach of policy
19 must have occurred in this case. At the time of the investigation it was the stated
20 policy of the Winston-Salem Police Department to create and preserve complete
21 and accurate reports of criminal investigations: “The results of investigations will
22 be recorded reflecting *everything* accomplished during the investigation” (General
23 Order Number 4.1) (emphasis supplied).

24 The officers who conducted the internal administrative review of this case in
25 2007 concluded that Detective Williams and other investigators had failed to
26 prepare complete and accurate records of their investigation in certain specific
27 instances, but Detective Williams’ alleged admissions to Zerwick suggest a much
28 wider breach. Because of the lack of specific evidence and the lack of cooperation
29 by Williams and the *Winston-Salem Journal*, it is difficult for the Committee to
30 assess the extent of that breach at this point.

31 The findings set forth above have several policy implications. Obviously, it is
32 necessary and desirable for criminal investigators to develop opinions about the
33 likely guilt or innocence of criminal suspects as they pursue their investigations,
34 but investigators must not usurp the function of prosecutors, judges, and juries. It

1 is not their job to prosecute, judge, or convict. Their job is to collect complete and
2 reliable information concerning the offense in question, to record and preserve that
3 information, and to make that information available to prosecutors, so that the
4 information can then be presented to the court and tested according to law. It is not
5 the investigators' job to filter the evidence and create a record that supports their
6 view of the case. Accordingly, the Committee makes the following
7 recommendations:

- 8
- 9 • **The written policies of the police department should expressly**
10 **define the investigator's role in accordance with the principles**
11 **set forth above.**
 - 12
 - 13
 - 14 • **The consistent failure of an investigator to prepare and preserve**
15 **complete and accurate investigatory records and evidence, in**
16 **accordance with departmental policy, should be a matter**
17 **requiring dismissal or administrative discipline.**
 - 18
 - 19
 - 20 • **Supervisors should be charged with the duty of monitoring**
21 **investigators to ensure compliance with this policy.**
 - 22
 - 23
 - 24 • **The police department and the District Attorney's Office should**
25 **agree on standard procedures for the preparation of prosecution**
26 **booklets and the transmission of investigatory information from**
27 **investigators to prosecutors. These procedures should include**
28 **checklists that describe the categories of information that must**
29 **be disclosed or included in prosecution booklets (e.g., statements**
30 **by defendants, information concerning lineups, polygraphs,**
31 **witness interviews, *Brady* information, and so forth). The**
32 **procedures should be based on the principle of full and candid**
33 **disclosure.**

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- 9
- **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 was involved while employed in the department.**

10

11

12

13

14 **E. General Recommendations Concerning Adherence to Departmental**

15 **Policy**

16

17 Policy and procedure are only as good as adherence and enforcement. Many of

18 the questions surrounding the Silk Plant Forest investigation would not have arisen

19 if the policies and procedures existing at the time of the investigation had been

20 observed.

21 Education concerning the policies and procedures of the police department

22 should be comprehensive. Every possible effort should be made to insure that

23 officers and investigators have complete understanding of the policies and

24 procedures. Individuals in supervisory roles should be held accountable in

25 determining if policy and procedure have been observed in case reviews.

26 Understanding the unpredictable nature of police investigative work, it is

27 acknowledged that occasions may arise when the procedures cannot be observed to

28 the letter. These reasons and the mitigating circumstances should be well

29 documented and signed off by the supervisor.

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Respectfully submitted as of this 24th day of July, 2009.

Guy M. Blynn, Chair
James Taylor, Vice Chair
Sharon W. Cook
William K. Davis
Rev. James W. Ferree
Miles Foy
Barry A. Lyons
Lois Mendezoff
Cheryl P. Mouzon

1 **RESOLUTION**

2 WHEREAS, Calvin Michael Smith was tried before a jury during the period December 1 to
3 December 4, 1997, upon charges of assault with a deadly weapon with the intent to kill inflicting serious
4 injury and of robbery with a dangerous weapon; and,

5 WHEREAS, twelve citizens of Forsyth County, good and true, unanimously found Calvin Michael
6 Smith guilty of the aforementioned charges, necessarily adjudging the credibility of all of the witnesses
7 and all of the other evidence and necessarily concluding that Calvin Michael Smith was present at the
8 Silk Plant Forest Store at the time of the commission of the crimes with which he was charged; and,

9 WHEREAS, this Committee reviewed such evidence which existed at the time of the trial as was
10 made available to us and conducted its own independent investigation of the facts, including, but not
11 limited to, conducting interviews with many of those who testified at the trial and reviewing almost all
12 of the evidence and other things which existed at the trial, whether or not they were introduced at trial
13 or considered by the jury.

14 NOW, THEREFORE, BE IT RESOLVED we, the Silk Plant Forest Citizens Review Committee find,
15 without expressing any approval, disapproval or other opinion of or about the trial, the conduct of the
16 prosecution, the conduct of the defense, the conduct of the jury or the result of the jury deliberations
17 which took place in 1997, and, without determining whether or not Calvin Michael Smith in fact was at
18 the location, and further without expressing any opinion regarding the guilt or innocence of Calvin
19 Michael Smith, at present, we are aware of no credible evidence that Calvin Michael Smith was at the
20 location of the Silk Plant Forest Store in Winston-Salem, North Carolina, on December 9, 1995, at or
21 about the time that the crime for which he was charged was committed.

22 ADOPTED this 17th day of March, 2009.

- 23 Voting in favor of the resolution: Guy M. Blynn
- 24 Sharon W. Cook
- 25 James W. Ferree
- 26 Miles Foy
- 27 Lois Mendezoff
- 28 Cheryl P. Mouzon
- 29 James Taylor

- 30
- 31 Voting against the resolution: William K. Davis
- 32 Barry A. Lyons

1 **ATTACHMENT ONE**

2
3 **MEMO TO THE FILE**

4
5
6 This records my notes and impressions from the examination of D. R. Williams. I originally wrote and
7 circulated so that the other members of the Committee who were in attendance could formulate their
8 reactions to what I said and that all could consider what, if any, impact the examination would have on
9 our report and, in any event, what we should do with the examination. The memo has been updated
10 with the availability of the transcript of the Williams testimony before the City Council.

11
12 Williams, as I expected, answered the preponderance of the questions with something like “I don’t
13 know” or “I don’t remember; its been a long time.” Since he was well prepared to answer in this
14 manner, I take very seriously those responses of his which actually provided substantive information.

15
16 In response to a question by Det. Ferrelli as to whether Williams took notes as he interviewed people
17 and performed other investigative tasks and, if so, where those notes were today, Williams revealed
18 that, instead of taking notes by hand, he dictated his supplemental reports into a dictation machine
19 immediately after an event and that he promptly would have sent the tapes from his dictation to a
20 secretary for transcription. After they were transcribed, the tape would be reused by Williams or
21 someone else in the Department. He was very specific about this practice. (See, Transcript of Special
22 Meeting, June 11, 2009, page 13, line 17 to p. 17, line 8)

23
24 Clearly, Williams did not follow this procedure. The infamous 11-04-96 Supplement Report details
25 events which took place, at the latest from prior to 7-22-96 through 10-31-96. With the report covering
26 events during this period of time, one can reach only one of two conclusions: either Williams kept the
27 tape in his machine and added to it over a period of time -----*redacted*-----
28 ---- and/or he lied about making no handwritten notes and compiled this report from handwritten notes
29 sometime after 10-31-96. The crimestoppers report signed by Williams and dated in his hand on 7-22-
30 96 does not help resolve this inconsistency. (See, generally, Transcript p. 125, line 10 to p. 131, line 21;
31 p. 133, line 1 to p. 138, line 16; p. 139, lines 13-16)

1 With regard to the changes made by hand to the portion of the typewritten supplement report,
2 Williams excused himself simply by saying he made a mistake and then volunteered something to the
3 effect that he probably would have caught that mistake if he had handwritten the report instead of
4 dictated it to a machine. (Transcript, p. 138, lines 13-16)

5

6 In my judgment, this critical piece of testimony by Williams is incredible and, given the crimestoppers
7 report, -----redacted-----, I tend to believe that the changes to the
8 supplement report were a fictionalization of what really happened.

9

10 Other aspects of Williams' testimony tend to make me believe that Williams is prone to invent self-
11 serving stories and unwilling to budge from these stories even when he is made to look foolish. For
12 example, Williams insisted that Lamoureux no longer was a suspect when he moved to Charlotte (in
13 April 1996) because Jill had told Williams already that her assailant was a black man. When it was
14 pointed out to Williams that his interview with Jill did not take place until approximately 6 months after
15 Lamoureux moved and, therefore, his reason for dropping Lamoureux could not have been because of
16 what Jill told him, he refused to budge in his story. Either I am correct in my judgment or Williams had
17 some other reason (e.g. laziness or sloth) for dropping Lamoureux. (See, generally, Transcript p 70, line 4
18 to p. 76, line 19; p. 88, lines 3-8; p. 167, lines 7-11)

19

20 Then, there is the matter of the Toys-R-Us tape. Williams insists that Barker obtained the tape from
21 TRU, they watched it, and then, Barker gave the tape back to the store. It wasn't useful because you
22 couldn't make out faces and, in any event, it focused on the cash registers. (to be fair -- if the cameras
23 focused on the cash registers and were being used to monitor check-out personnel, it is likely that you
24 couldn't identify shoppers; but, why would they have reviewed a tape to see whether the perpetrator
25 of the crime subsequently went shopping at TRU; indeed, it makes little sense that they would have
26 looked at the tape until they had some idea what they were looking for). Then, Williams says that the
27 tape went back to the store and never entered the case file. Williams never indicated that, in looking at
28 the tape he was looking for Glover and her son; but, if my recollection is correct, he does say he was
29 looking for Littlejohn and/or Smith. How could he have known to look for these people until the case
30 had been open for months? And, it makes no sense to me that TRU would have been able to produce a
31 tape for the night of the crime several months later. So, it seems to me that the tape must have been
32 obtained relatively shortly after the crime occurred and kept in the file for some time. This would be
33 consistent with Barker's testimony. Or, it was seized and kept outside the file for some time. Or, it was
34 seized and, when it did not prove useful in corroborating what Williams wanted it to corroborate --
35 Littlejohn's story about he and Kalvin robbing Silk Plant Forest that night, he pitched the tape. -----
36 (See, generally, Transcript p. 34, line 23 to p. 52, line 8)

37

1 A final highlight for me appears on Transcript page 143, lines 15-17. It tends to confirm, after denials
2 elsewhere, that Williams did not put some things in the case file because he could testify to them.
3 However, if the things not put in the file potentially were exculpatory, the defense in this case never
4 would know about them, unless it had called Williams at trial and was extremely lucky to stumble across
5 the matter.

6

7 These were the highlights for me. Others may have a different view. Please remember, you cannot
8 respond to this prior to our meeting lest we violate the open meetings law.

9

10 Guy M. Blynn

11 June 14, 2009

12 Updated – July 11, 2009.

13

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1 ATTACHMENT TWO

2
3 STATEMENTS OF: KENNETH LAMOUREUX

4
5
6 12-18-95

1431—xxxxhrs

7 First Contact (Lamoureux's Residence)

(Detectives Williams/Barker)

8
9 On this date, Detectives D.R. Williams and M.N. Barker responded to the
10 residence of Kenneth Earl Lamoureux to request his presence at the Public Safety
11 Center (PSC) for an interview. The detectives did not inform Mr. Lamoureux about
12 the nature of the interview during this first contact. As a result, Mr. Lamoureux
13 called and spoke with his lawyer, Todd Pebbles, because he suspected it had
14 something to do with his estranged wife, Ellen. Mr. Lamoureux advised detectives
15 he was in the process of divorce proceedings with his estranged wife. He told
16 detectives he would meet with them later in the day at the Public Safety Center³.
17 ***(There was no recorded ending time for this interview.)***

18
19
20 12-18-95

xxxx-0941hrs

21 Second Contact (Public Safety Center)

(Detectives Williams/Barker)

22
23 Mr. Lamoureux responded to the PSC as he had advised Detectives Barker and
24 Williams he would, and voluntarily submitted to an interview. During this
25 interview and what appears to be prior to the recording, Detective Williams
26 documented that Mr. Lamoureux initially denied knowing where the Silk Plant
27 Forest (SPF) store was, where Silas Creek Crossing was, and who Jill Marker was.
28 Moments into the interview, Mr. Lamoureux then admitted knowing where the
29 shopping center and the Silk Plant Forest were. Mr. Lamoureux first denied, then

³See Silk Plant Forest case file, Transcript: Lamoureux Residence Visit 12-18-95, dated 3-29-06, p.1-8 (Detectives Williams/Barker)

1 later admitted, entering the SPF store on at least one occasion, two weeks before
2 Thanksgiving, 1995.

3

4 In the *transcribed interview*, Detective Williams told Kenneth Lamoureux that
5 witnesses picked out his photograph and identified him as being in the SPF store
6 on the date of Jill Marker’s attack. Mr. Lamoureux adamantly denied being in the
7 store on that date and attempted to learn from detectives the other dates on
8 which witnesses had said he was in the SPF store. Responding to Detective Barker,
9 Mr. Lamoureux declared that he was not there (at SPF), and then stated, “Let me
10 re-state that...if I was in the store, I never touched the woman.”

11

12 Also in the transcription, Detective Williams told Mr. Lamoureux that witnesses
13 reported that there were problems in Mr. Lamoureux’s marriage. Mr. Lamoureux
14 responded that his estranged wife was spreading those stories, and then
15 admitted to assaulting his estranged wife in self defense. He ultimately told
16 Detectives Barker and Williams he no longer wanted to talk with them and walked
17 out of the interview. *(No recorded starting time.)*

18

19 In Detective Williams’ *supplement report* dated 01-02-96, he documented the
20 whereabouts as claimed by Mr. Lamoureux, from 12-08-95 through 12-10-95. Mr.
21 Lamoureux stated he was in court on 12-08-95 about a Domestic Violence Order
22 and child custody issue⁴. Mr. Lamoureux stated he then went to Silas Creek
23 Crossing and had a prescription filled at the Drug Emporium, next door to the SPF
24 store. Detective Williams corroborated this through an independent witness.

25

26 Detective Williams also documented that Mr. Lamoureux stated he went to work
27 on 12-09-95, delivering lost luggage from Piedmont Triad International Airport,
28 from 0730 until about 1430-1500hours.

⁴ This is corroborated by Court Records.

1

2 In this same supplement report, Mr. Lamoureux described the clothing he wore
3 on 12-09-95 as gray sweat pants, gray long sleeve sweat shirt with Daffy Duck on
4 same. He told detectives he went home after making a purchase from Best Buy
5 and didn't remember what he did after that. Detective Williams also documented
6 Mr. Lamoureux saying he went to church for the first time on 12-10-95, the
7 Sunday after Jill Marker's attack. (Mrs. Lamoureux would later tell SPF
8 Investigators that Kenneth Lamoureux had attended church before 12-09-95.)

9

10 Mr. Lamoureux then became irate, and walked out of the interview. Detective
11 Barker documented the approximate time as 1941hours.

12

13 The transcription of this interview did not document any mention of the Best Buy
14 purchase, the time of the purchase, Lamoureux's prescription filled at the Drug
15 Emporium or that receipt; nor did it refer to the time he reportedly got off work
16 compared to the time he actually made the purchase at Best Buy. There was no
17 mention of the clothing Mr. Lamoureux wore on 12-09-95. However, these issues
18 *were* documented in Detective Williams' supplement report, indicating he likely
19 obtained this information from Mr. Lamoureux before or after the tape recorded
20 portion of this 12-18-95 interview.

21

22

23 12-19-95 1235-1315hrs

24 Third Contact (Lamoureux Residence) (Detectives Williams/Barker)

25

26 This contact with Mr. Lamoureux was not recorded; no reason was documented.
27 Detectives Williams and Barker searched Mr. Lamoureux's apartment on this date
28 after Mr. Lamoureux contacted his attorney. Detective Williams documented that
29 no evidence was found linking Mr. Lamoureux to the SPF crime. Mr. Lamoureux
30 did reportedly present (laundered) clothing he said he wore on 12-09-95 to the

1 detectives, but they weren't seized⁵. During this visit by detectives, Mr.
2 Lamoureux produced a Best Buy receipt for \$314, dated 12-09-95, 1338hours.

3

4

5 01-04-96 1700—xxxxhrs

6 Fourth Contact (Scheduled Polygraph) (Detective Williams)

7

8 Detective Williams documented that just prior to Kenneth Lamoureux's arrival at
9 the PSC for a scheduled polygraph, Mr. Michael Mitchell reported to Detective
10 Williams of a white male, six feet tall, medium build, wearing glasses, whom Mr.
11 Mitchell saw standing between Toys-R-U's and the SPF store, smoking a cigarette.
12 Mr. Mitchell stated he saw this white male on 12-09-95 at about 2020hours.

13

14 Detective Williams documented he observed Mr. Lamoureux follow Mr. Mitchell
15 out of the PSC and engage in conversation. Mr. Lamoureux reportedly returned to
16 the PSC, pointed his finger in Detective Williams' face, and demanded to know the
17 exact time of Jill Marker's attack⁶. Mr. Lamoureux postponed the polygraph. Mr.
18 Mitchell reported the encounter to Detective Williams.

19

20

21 01-24-96 1640hrs

22 Fifth Contact (Arrested) (Detective Williams)

23

24 Detective Williams documented that he arrested Kenneth Lamoureux for violating
25 a domestic violence order. Detective Williams transported Mr. Lamoureux to the

⁵ See Silk Plant Forest case file, D.R. Williams' Supplement Report dated 01-12-96, Pg 7 (Detectives Williams/Barker)

⁶ See Silk Plant Forest case file, D.R. Williams' Supplement Report, dated 01-02-96, Pg 2-4

1 Forsyth County Detention Center with no bond allowed. During the transport, Mr.
2 Lamoureux asked if the DNA results for him in the SPF case had been received, to
3 which Detective Williams gave no reply.

4
5

6 02-13-96 0900–xxxxhrs

7 Sixth Contact (Polygraph/Interview) (Detectives Williams/Barker/Maines)

8

9 Detective L. M. Maines administered a polygraph examination to Mr. Lamoureux
10 on this date. The results of the polygraph examination were “Inconclusive.” The
11 question, “Did you strike, push, or assault a woman inside the Silk Plant Forest?”
12 was rated with a great amount of *deception*. An interview with Mr. Lamoureux was
13 also conducted on this date, but that portion of this contact was not recorded.

14
15

16 02-14-96

17 Seventh Contact (Phone Calls) (Detectives Williams/Maines)

18

19 Detective Williams documented receiving two phone calls regarding Kenneth
20 Lamoureux on this date. 1) Mr. Lamoureux asked Detective Maines, “Did I react to
21 the question, ‘Did you strike, push or assault a woman inside the Silk Plant
22 Forest?’, because I was thinking of the November alleged assault on my wife.”
23 Detective Maines answered, “No.” 2) Later that day, Detective Williams learned
24 that Mr. Lamoureux had called the Forsyth County Sheriff’s Department to
25 request a polygraph about the Silk Plant Forest case.

26

1 -----
2 -----redacted-----
3 -----⁷.
4
5

6 04-17-96

7 Eighth Contact (Phone Call) (Detective Williams)
8

9 Detective Williams documented that he called Kenneth Lamoureux, requesting he
10 come to the Public Safety Center to discuss the Silk Plant Forest case with him.
11 Detective Williams informed Mr. Lamoureux that since Jill Marker had survived,
12 the charges would be ADWIKISI (Assault with a Deadly Weapon Intending to
13 Kill/Inflict Serious Injury) - not murder. Mr. Lamoureux replied "I know, I know, I
14 know." Mr. Lamoureux stated that he was ill, but would call in a few days to make
15 an appointment with Detective Williams.

16
17
18 04-19-96

19 On this date, Detective Williams was informed by Mrs. Ellen Lamoureux that
20 Kenneth Lamoureux had moved to Charlotte, N.C., to live with his stepfather.
21

22
23 05-03-96

⁷ There was no "Quality Control" documented in reference to Calvin Smith's 07-26-96 polygraph examination. See Detective Maines' supplement report, dated 02-13-96, pg. 2. Also see Randy Patterson's 03-24-09 Summary by SPF Investigators, Pg 3-4.

1 Detective Williams documented that on this date he notified the Akron, Ohio
2 Police Department of the Silk Plant Forest investigation and of Jill Marker's return
3 to Akron. He sent a copy of the investigative report and a mug shot of Kenneth
4 Lamoureux, as a potential suspect, to Akron PD.

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1 Littlejohn replied he was not at the crime, and didn't know if anyone else was
2 there.

3

4 Detective Williams documented in his 02-11-97 supplement report⁹ that Eugene
5 Littlejohn broke into tears during this interview; there is no indication of this on
6 the tape recording or in the typed transcript.

7

8

⁹ See Silk Plant Forest case file, D.R.Williams' supplement report , 02-11-97 pp. 4-6

1 03-03-97 0915–0947hrs

2 Second Contact (Detectives Williams/Maines)

3

4 Detective Williams documented in a 03-05-97 supplement report that, on this
5 date, he and Detective L. M. Maines responded to Eugene Littlejohn’s residence
6 to speak with him again about the possibility that Mr. Littlejohn was with Calvin
7 Smith at Silk Plant Forest on 12-09-95. Detective Williams further added that Mr.
8 Littlejohn *confessed*, and provided a tape recorded statement on this same date.

9

10 It is to be noted that Detective Williams documented on his supplement report
11 dated 03-05-97, that he picked up Mr. Littlejohn at 0900 hours. The beginning
12 time (noted on the end page¹⁰, rather than the first page) of the 03-03-97
13 transcribed interview is listed at 0915hours; the ending time is listed as
14 0947hours. Detective Williams did not address the time disparity of taping this
15 interview in his 03-05-97 supplement report and in the transcription of Mr.
16 Littlejohn’s taped interview, he did not document the time until the last page.

17

18 The supplement report of this interview states that Mr. Littlejohn told Detective
19 Williams that he, Calvin Smith, Pamela Moore, and Andra Wilson were at Ms.
20 Wilson’s apartment in mid-December of 1995, when Mr. Smith said he was going
21 to pick up some money from someone at a store. Mr. Littlejohn also stated that
22 Ms. Wilson drove them in her older model, light-blue Buick, to buy wine and beer,
23 and then to Silas Creek Crossing Shopping Center parking lot, in front of Toys-R-
24 Us¹¹.

25

¹⁰ See Silk Plant Forest case file, Transcript: D.R. Williams’ *Conversation with Eugene Littlejohn*; 03-03-97, p.17

¹¹ See Silk Plant Forest case file, Transcript: D.R. Williams with Littlejohn, 03-03-97, p 5-7,10,14-17

(Note: after page1, the date 03-04-97 is reflected on pages 2-17; actual interview date is 03-03-97

1 The documented transcription of the “Conversation” of 0915-0947hours reflects
2 that Mr. Littlejohn said only that Calvin Smith got out of the car, that Mr.
3 Littlejohn denied he went into the SPF with Mr. Smith, and that Mr. Smith didn’t
4 meet anyone in the parking lot. The transcript indicates Detective Williams
5 showed Mr. Littlejohn photographs of Jill Marker and a diagram of Toys-R-Us and
6 the SPF store,¹² neither of which is documented by Detective Williams, -----
7 -----redacted-----. The transcript further indicates Mr. Littlejohn
8 never stated he saw Mr. Smith enter a store, nor that he himself looked into the
9 door.

10 It is noted that after the transcribed conversation (0915 – 0947hours), there was
11 approximately a 43-minute break before Detectives Williams and Maines took an
12 official statement from Mr. Littlejohn -----
13 -----redacted-----.

14
15

16 03-03-97 1030–1037hrs

17 Second Contact (Continued) (Detectives Williams/Maines)

18
19 This transcription of 1030-1037hours, documented by Detective Williams, reflects
20 that Mr. Littlejohn then said he and Mr. Smith exited the car and went in the store
21 next to Toys-R-Us because Mr. Smith had to pick up some money. Mr. Littlejohn
22 also said he saw Mr. Smith and the lady argue and then saw Mr. Smith grab the
23 lady. Mr. Littlejohn reiterated that Ms. Wilson and Ms. Moore traveled to the
24 area with him and Mr. Smith on this occasion, in Ms. Wilson’s vehicle.

25
26 When asked the name of the store, Mr. Littlejohn didn’t know; he thought the
27 store had clothes. Asked specifically by Detective Williams about artificial trees,

¹² See Silk Plant Forest case file Transcript: D.R. Williams’ *Conversation with Eugene Littlejohn* 03-03-97 P. 9-11,16

1 Mr. Littlejohn then responded that the store had artificial trees¹³. He told
2 Detective Williams that Mr. Smith went in the store first and he followed. He
3 could not remember the lady's name, what she wore or if she wore eyeglasses.
4 He stated Mr. Smith told the lady he wanted his money, that the lady said she
5 didn't have it, and that Mr. Smith grabbed her by the arm. Mr. Littlejohn claimed
6 he walked out of the store, to the car where Ms. Moore and Ms. Wilson were. He
7 said about 10-15 minutes later, Mr. Smith returned to the car and they all left the
8 shopping center.

9

10 At the close of this interview, Mr. Littlejohn again acknowledged to Detective
11 Williams that Calvin Smith said he *had to beat a bitch to get out the store*. Mr.
12 Littlejohn did deny putting his hands on the woman or ever assisting Mr. Smith in
13 placing hands on the woman.

14

15

16

¹³ See Silk Plant Forest case file, Transcript, *Littlejohn Interview*, dated 03-03-97, 1030-1037hrs, p. 7-8

1 03-04-97 1603–1607hrs

2 Third Contact (Detective Williams/Sergeant Weavil)

3

4 On this date, Detective Williams and Sergeant Weavil returned to Mr. Littlejohn’s
5 residence to speak with him yet again about Calvin Smith. Earlier that day¹⁴, they
6 had spoken to Andra Wilson, who advised Detective Williams she didn’t drive Mr.
7 Littlejohn and Mr. Smith to Silas Creek Crossing on 12-09-95.

8

9 Mr. Littlejohn was then taken to and interviewed at the Public Safety Center by
10 Detective Williams and Sergeant Weavil. Detective Williams documented in a
11 supplement report dated 03-05-97 that he and Sergeant Weavil picked up Mr.
12 Littlejohn at 1345hours, yet the taped transcription of the interview did not begin
13 until 1603hours and ended at 1607hours. -----redacted-----

14

15 Mr. Littlejohn acknowledged he gave incorrect information to Detective Williams
16 previously, in their 03-03-97 interview, so he recanted his previous statement. He
17 stated that Andra Williams and Pamela Moore were not with him and Calvin
18 Smith when they drove to Silas Creek Crossing Shopping Center on 12-09-95.

19

20 Mr. Littlejohn told Detective Williams he didn’t know what kind of car¹⁵ he and
21 Mr. Smith drove to Silas Creek Crossing Shopping Center. He further stated that
22 he and Mr. Smith went straight to Toys-R-Us parking lot for Mr. Smith to pick up
23 some money. Detective Williams didn’t pursue questioning where they got the
24 car.

25

¹⁴ See Silk Plant Forest case file, D.R. Williams’ supplement report dated 03-05-97, p. 8

¹⁵ See Silk Plant Forest case file, Transcript: Littlejohn Interview, dated 03-04-97, p. 2

1 Mr. Littlejohn told Detective Williams the actual words Mr. Smith used as he
2 approached the counter was, "Where's my money at?", and then grabbed her
3 (the clerk) by both her arms. Mr. Littlejohn stated he then walked out the door.
4 He did acknowledge knowing that Mr. Smith grabbing the woman was a robbery.

5

6 At the end of this interview, Detective Williams asked Mr. Littlejohn the three
7 questions to be asked during his polygraph examination by Detective Maines on
8 03-05-97: (1) Did you beat that girl at the SPF? (2) Did you see Calvin beat the girl
9 at the SPF? (3) Were you present when that girl was getting beat at the SPF?

10

11 03-04-97 1608–1610hrs

12 Third Contact (Continued) (Detectives Williams/Sergeant Weavil)

13

14 The reason for the continuation of this interview was not noted in the interview
15 transcript, but appeared to center on the activities of Mr. Littlejohn and Mr. Smith
16 after they left the SPF store. Detective Williams still didn't pursue questioning
17 who the car they were in belonged to, or where they got it. Mr. Littlejohn stated
18 Mr. Smith came back to the car in 12–15 minutes, that Mr. Smith didn't say
19 anything and Mr. Littlejohn did not ask. He stated he did not receive any money
20 from Mr. Smith, but Mr. Smith did buy some marijuana and beer later that same
21 night.

22

23 The combined total of both interviews of this date (03-04-97) was approximately
24 six minutes, compared to more than two hours that Detective Williams spent with
25 Mr. Littlejohn before actual taping of the interview began.

26

27

28 03-05-97 0900–xxxxhrs

1 Fourth Contact 1st Polygraph (Detectives Williams/Maines)

2

3 Mr. Littlejohn was asked the same questions of the previous day pertaining to his
4 possible involvement in the SPF case during this polygraph examination, (1) Did
5 you hit a W-F clerk in the head while you were inside the SPF? (2) Were you
6 present inside the SPF when the W-F clerk was hit in the head? (3) Did you see
7 Calvin Smith hit the W-F clerk in the head while you were inside the SPF?

8

9 Detective Maines determined that Mr. Littlejohn was *Truthful* in his answers
10 about not being present when this crime occurred, not being involved in the
11 attack of the W-F clerk, and not seeing Calvin Smith hit the W-F clerk.

12

13

14 08-27-97 xxxx—xxxxhrs

15 Fifth Contact (Detective Williams)

16

17 The exact hours of this interview are not known, as 0900hours was documented
18 by Detective Williams in his supplement report, dated 09-08-97, for the initial
19 contact with Mr. Littlejohn. Detective Maines also documented 0900hours to
20 administer the polygraph examination. Detective Williams’ documentation
21 indicated that he interviewed Mr. Littlejohn alone, but did not record it.
22 Afterwards, Mr. Littlejohn submitted to a polygraph examination.

23

24 During what Detective Williams described as the 08-27-97 “Interview” with Mr.
25 Littlejohn, the detective -----redacted-----into the origins of the car
26 that Messrs. Smith and Littlejohn drove to Toys-R-Us. The detective added that
27 Mr. Littlejohn identified “The white female clerk”, “The front view of the SPF”,

1 and “The sales counter inside.” Yet, Detective Williams ---redacted--- in any
2 supplement report that he showed photos of these items to Mr. Littlejohn.

3

4 Also, the detective first noted¹⁶ in this interview that before Mr. Smith reportedly
5 grabbed the clerk, Mr. Littlejohn lit a cigarette as he entered the SPF store and
6 the clerk told him he couldn’t smoke in the store. Detective Williams documented
7 Mr. Littlejohn stated, “I knew this was wrong and that a robbery may have
8 occurred.¹⁷” However, Detective Williams didn’t document in this report that Mr.
9 Littlejohn said, “Mr. Smith started to the back of the store after grabbing the
10 clerk.”

11

12

13 08-27-97 xxxx – xxxxhours

14 Sixth Contact 2nd polygraph (Detectives Williams/Maines)

15

16 Detective Williams documented in his supplement report, dated 09-08-97, that he
17 met Mr. Littlejohn at his residence *at 0900hours on 08-27-97*, and transported
18 him to the PSC for a polygraph examination.

19

20 Detective Maines administered the polygraph to Mr. Littlejohn, asking three new
21 questions about his possible involvement in this case: (1) Did you plan with Calvin
22 Smith to rob the clerk at the SPF? (2) Were you present in the SPF when the clerk
23 was robbed? (3) Did you participate in the robbery of the SPF in any way?

24

¹⁶ See Silk Plant Forest case file, D. R. Williams’ supplement report dated 09-08-97, pg 4

¹⁷ See Silk Plant Forest case file, D.R. Williams’ supplement report dated 09-08-97, p. 2-5

- 1 Again Detective Maines determined that Mr. Littlejohn was *truthful* in his answers
- 2 to the above questions, and also documented that Mr. Littlejohn's polygraph
- 3 began at *0900hours on 08-27-97* in his polygraph report.

TRIAL TESTIMONY OF EUGENE LITTLEJOHN

December, 1997

On direct examination, Eugene Littlejohn stated he met Calvin Smith in November of 1995 before Thanksgiving. He testified he went to the Silas Creek Crossing Shopping Center once with Calvin Smith and the first place they went was the SPF store because Mr. Smith had to pick up some money. Mr. Littlejohn stated it was night, he saw only one female in the store, behind a counter. He later identified a photograph of Jill Marker as that woman inside the SPF.

Mr. Littlejohn testified he observed Calvin Smith approach the counter and ask the woman for his money; the woman said she didn't have it. Mr. Littlejohn stated Mr. Smith reached across the counter and grabbed the woman by her arm with both his hands, but he didn't observe Mr. Smith say or do anything else at that point. He explained that he left the store because he had a cigarette. He testified that he went to Toys-R-Us, and about four to five minutes later, as Mr. Littlejohn was leaving Toys-R-Us (with a stolen Game Boy), he observed Mr. Smith going in.

Assistant District Attorney, (ADA) Eric Saunders challenged Mr. Littlejohn's testimony about it only being four to five minutes when the week before, Mr. Littlejohn had said it was 15 to 20 minutes before he next saw Mr. Smith walking into Toys-R-Us. Mr. Littlejohn appeared to relent and stated, "I'm not sure".

The exchange between ADA Saunders and Mr. Littlejohn at this point emerged as a conflict over what Mr. Littlejohn previously stated to police detectives and prosecutors and what he was then testifying in court. When asked by Mr. Saunders if he remembered what he first told police, Mr. Littlejohn said, "No".

1 Mr. Saunders went on to another line of questioning and asked Mr. Littlejohn if
2 he remembered Mr. Smith making a statement while at Andra Wilson's
3 apartment sometime later. Mr. Littlejohn replied, "Yes", and testified that
4 sometime after Christmas he heard Mr. Smith say he had to *beat a bitch to get*
5 *out the store*. Under further questioning by ADA Saunders, Mr. Littlejohn
6 admitted telling police about this incident in the first interview about the SPF
7 case, but denied that the SPF was mentioned during the conversation at Ms.
8 Wilson's apartment.

9 ADA Saunders asked Mr. Littlejohn a series of questions about his statements to
10 police during follow up contacts and interviews. Most of Mr. Littlejohn's
11 responses to ADA Saunders' questions were one word replies, "Yes" or "No", or "I
12 don't remember." During the direct examination, Mr. Littlejohn testified that he
13 had added details to each subsequent interview he had with detectives. He did
14 acknowledge, under questioning, that he changed his statement about Ms.
15 Wilson and Ms. Moore going to Silas Creek Crossing Shopping Center because
16 Andra Wilson reportedly didn't know Mr. Smith at that time.

17

18 Lastly Mr. Littlejohn was shown a photographic line up that included his picture
19 and asked by ADA Saunders if he recognized anybody in the photographic line up.
20 Mr. Littlejohn responded that he recognized himself. Mr. Saunders then described
21 how Calvin Smith grabbed Jill Marker and asked Mr. Littlejohn, "Didn't you hear
22 him say again, '*Where is the money?*'?" Mr. Littlejohn said, "Yes," acknowledging
23 that is what he told the prosecutor's office the week before.

24

25 On cross examination by Mr. William Speaks, Mr. Littlejohn acknowledged when
26 he went with Mr. Smith to the SPF store, Mr. Smith didn't have any weapons with
27 him. Mr. Littlejohn further testified he stood at the SPF door and saw Mr. Smith
28 grab the clerk, at which point Mr. Littlejohn left the store, went to Toys-R-Us, and
29 shoplifted a Game Boy. He testified that when he saw Mr. Smith minutes later, he
30 didn't see any blood on Mr. Smith. He also confirmed he didn't know the exact
31 date of the incident and admitted he gave police four or five different statements
32 of what occurred. Mr. Littlejohn testified all of his statements could not be true,
33 but indicated there was some truth in his statements.

1 when he and Mr. Smith *boosted* from Toys-R-Us while it was raining heavily. Mr.
2 Littlejohn stated they never got arrested or came close to being arrested when he
3 and Mr. Smith *boosted*.

4

5 Mr. Littlejohn stated when Detective Williams first contacted him about knowing
6 Calvin Smith, the detective showed him pictures and asked if he saw Mr. Smith
7 assault the lady in the pictures and he told them “No.” He stated that Detective
8 Williams contacted him a number of times after that and accused him of being
9 involved with Mr. Smith in the attack of Jill Marker. He said the detective also told
10 him that Mr. Smith had claimed Mr. Littlejohn was with him when the SPF
11 incident took place, which Mr. Littlejohn denied. During these series of interviews
12 with Detective Williams, according to Mr. Littlejohn, the detective told him he
13 could also be charged with the SPF crime.

14

15 Mr. Littlejohn stated the subject of the Silk Plant Forest never came up between
16 him and Mr. Smith and Mr. Smith never mentioned being questioned by the
17 police about the SPF crime. Mr. Littlejohn stated he was repeatedly questioned by
18 Detective Williams and maybe twice by the District Attorney’s office. He didn’t
19 know why he wasn’t charged in the case, but had thought that he might be, after
20 being told he could get the same time as Mr. Smith. Mr. Littlejohn’s ability to
21 remember certain contacts with police and the statements he made to them was
22 very vague. He often seemed to be hampered by his malleable nature.

23

24 During this interview, Mr. Littlejohn described an incident in which Mr. Smith
25 reportedly stated he was going to the Mall to pick up some money from a guy
26 who owed him for crack cocaine. Mr. Littlejohn said he didn’t know where the SPF
27 store was until Detective Williams had shown him pictures of where it was. Mr.
28 Littlejohn stated the reason he finally admitted to Detectives he was with Mr.
29 Smith was because Detective Williams kept asking the same questions and told
30 Mr. Littlejohn that he knew he was with Mr. Smith, so he said he was with Mr.
31 Smith. Mr. Littlejohn added that he did not see Mr. Smith put his hands on
32 anyone, and when he told Detective Williams he was with Mr. Smith, it was about

1 being with him at Toys-R-Us, when they were *boosting*. He didn't know if that was
2 the same day Ms. Marker was attacked.

3

4 Mr. Littlejohn admitted telling Detective Williams he stood at the door (of the
5 SPF) and observed Mr. Smith grab the clerk, but he said that wasn't true. He
6 didn't know why he told that to Detective Williams. He also admitted that when
7 he made this statement to Detective Williams, he was scared and the detective
8 had already told him he was going to get locked up with Mr. Smith. He said for a
9 few days it got them off his back. Mr. Littlejohn remembered Detective Williams
10 telling him Mr. Smith said Mr. Littlejohn was with him and that was another
11 reason he thought he was going to jail.

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STATEMENTS OF: JILL MARKER

10-31-96 1158 – 1227 hours
Interview 1 (Detectives Williams/Barker)

Videotaped

Prior to the 10-31-96 visit to Jill Marker in Cleveland, Ohio, Detective Williams documented the following information about Jill from the Marker family and Jill Marker’s doctor.

- Jill was unable to recall the attack and had surgery to insert a shunt.
- She could not speak, but could move her head yes or no.
- She could write a little and use her hands.

Present at the interview were Detectives Williams and Barker, and two medical personnel, a Speech Therapist and a Recreational Therapist. Ms. Marker sat erect in a wheelchair, and Detective Williams noted she appeared very responsive to questions.¹⁸

Ms. Marker responded to Detective Williams’ questions by use of gestures and shaking her head. At best during this interview, Ms. Marker seemed to respond to Detective Williams’ questions; other times, she seemed to exhibit continuous involuntary muscle reactions.

Video taping of this interview was interrupted by a reported call from the attorney of Ms. Marker, and was resumed in about five minutes. Detective Williams requested Ms. Marker’s glasses after she appeared to have trouble viewing the photographic line-ups he was showing to her. While presenting these

¹⁸ See D.R. Williams’ supplement report, dated 11-04-96, pp 3-4 [Plus 5 pg attachment (43 questions) presented to J.Marker]

1 line ups, Detective Williams continually placed photos up to Ms. Marker's *left eye*,
2 although the staff repeatedly directed him to place each up to her *right eye*.

3

4 Ms. Marker did appear to answer some questions, though her head movements
5 were nearly continuous and often uncontrolled. This made it difficult to
6 distinguish between intended answers and inadvertent head movements.

7 Detective Williams showed three photographic line-ups of black males to Jill
8 Marker. One of these line-ups was later determined to be that of Calvin Smith. A
9 line-up of white males, which included a photograph of Kenneth Lamoureux, was
10 also shown to Ms. Marker. It is conjecture whether or not Ms. Marker identified
11 anyone from these line ups.

12

13

14 9-04-97 1030hrs -unknown

15 Interview 2 (Detectives Williams/Maines)

16

17 No Video or Audio tape of this Interview

18 During this interview, Detectives Williams and Maines, Ms. Marker and a nurse
19 were present. Ms. Marker's parents, the Hoisington's, were outside the room.

20

21 Detective Williams documented that Ms. Marker was confined to a wheelchair;
22 she couldn't talk, had few motor skills, and was still being fed intravenously. He
23 also noted that she could now see at arm's length, with her glasses.

24

1 Based on Detective Williams' documentation, by nodding her head "yes" and
2 "no", Ms. Marker conveyed she did not remember Detective Williams,¹⁹ but did
3 remember the SPF attack. Detective Williams documented Ms. Marker indicated
4 that a black person beat her, and two persons were in the store. She wrote on a
5 tablet, "Two, three."; "I'm not sure."

6

7 With Ms. Marker wearing her glasses, Detective Williams showed her a portrait of
8 her brother and his family. She pointed out her brother and sister-in-law, placing
9 a finger above their heads, but could not identify the nephews. She could not
10 advise Detective Williams if her husband, Aaron Marker, owed anyone money or
11 knew her attacker.

12

13 Documentation shows that the photographic line-up for this interview included
14 8" x 10" photos, shown individually, laid on a table in two rows - three across.
15 First, the line-up of Calvin Smith was placed on a round wooden table, his
16 photograph in the number "5" position. Ms. Marker was rolled up to the table in
17 her wheelchair. Detectives Williams and Maines²⁰ both document in supplement
18 reports dated 09-08-97 and 09-16-97 respectively, that after 20 seconds, her
19 expression changed to a "terrified" look. She then hit the photo of Smith three
20 times with her hand. Asked to mark on the photo of the person who beat her, Ms.
21 Marker made three marks on the table below Smith's photo with the magic
22 marker. This line-up was photographed in its original position on the wooden
23 table with three marks below Smith's photograph, and was then removed from
24 the table.

25

26 Detective Williams documented that he set up the next line-up, with Eugene
27 Littlejohn's photograph in the number "2" position. Detective Williams asked Ms.

¹⁹ See Silk Plant Forest case file, D.R. Williams' supplement report, dated 09-08-97, pp 9-14

²⁰ See Silk Plant Forest case file, L.M. Maines' supplement report, dated 09-16-97, pp 1-7

1 Marker if she saw who beat her; she looked and shook her head, “No.” He then
2 asked if she saw the other person who was there. She shook her head, “No” and
3 lowered her head. The line-up was removed from the table and Ms. Marker was
4 returned to her room.

5

6 Ms. Marker’s father, Bud Hoisington, suggested they attach the photographs to a
7 vertical surface so she might see them better. Detective Williams placed them on
8 a blackboard, in the same positions. As Ms. Marker was rolled back into the room
9 by Mr. Hoisington, a nurse attempted to hand Ms. Marker a writing board and felt
10 marker. The marker fell into Ms. Marker’s lap; she then turned and threw the
11 writing board at the nurse. Rolled by her father to the photographs on the
12 blackboard, Ms. Marker looked once and began hitting her hands on the arms of
13 the wheelchair. She closed her eyes and turned her head away. Her father urged
14 her to look at the photographs, but she bit his hand and made a rude finger
15 gesture with her right middle finger. The interview was ended, and she was taken
16 to her room.

17

18

19

TRIAL TESTIMONY of JILL MARKER

20

December, 1997

21

December 2, 1997 (a.m.)

22

23 Jill Marker entered the courtroom in a wheelchair at a Voir Dire hearing to
24 determine whether she could comprehend and testify. She was placed so the
25 Judge could view her, and her father, Bud Hoisington, was allowed to sit by her.
26 The jury was not present. By nodding her head up and down, or shaking it side to
27 side, Jill Marker indicated she could tell the judge about her assault at the Silk
28 Plant Forest, and what she remembered that happened to her.

29

1 Ms. Marker gestured that she could hear and see, but could not tell the features
2 of Assistant District Attorney, (ADA) Eric Saunders. She indicated she knew she
3 was in a courtroom in Winston-Salem, N.C. She also answered several questions
4 from ADA Saunders and Defense Attorney William Speaks, indicating she could
5 communicate by nodding her head up and down to signify “Yes,” and from side to
6 side to signify “No.”

7

8 During the trial on this same date, Jill Marker responded, by nodding her head up
9 and down, to questions asked by ADA Saunders about getting hurt at the SPF: if
10 the man who hurt her was black, and if he was alone. Asked by Defense Attorney
11 William Speaks if she remembered the man that hurt her, what he was wearing,
12 and if he hit her from behind, she responded by nodding her head up and down.

13

14 Jill Marker also indicated by nodding her head up and down that she was shown
15 photographs of someone, that people had talked to her about the case, and that
16 she was in court to identify the man that hurt her.

17

18 **December 3, 1997**

19

20 The Court determined Ms. Marker was competent by the Court to testify, and
21 that her testimony would be videotaped, as she could not reply verbally.

22

23 Ms. Marker conveyed that she didn’t feel well, but wanted to continue with the
24 questioning. ADA Saunders, Defense Attorney Speaks and Ms. Marker’s father,
25 Bud Hoisington conferred with the judge, and ADA Saunders again asked Ms.
26 Marker if she wanted to testify. She indicated she did, but because of concerns
27 for her health she was wheeled out of the courtroom.

28

29 **December 3, 1997 (Later)**

1

2 Jill Marker was returned to the courtroom. ADA Saunders spoke with her to
3 ensure that she was ready and wanted to continue. Asked if she was okay, she
4 shook her head from side to side. After being moved closer to the jury, she
5 indicated she was okay and ready to proceed.

6

7 Ms. Marker's replies signified that she was not shot, but was hit with something—
8 at the Silk Plant Forest. She further indicated the attacker was black, and she
9 could recognize him.

10

11 ADA Saunders asked to have Calvin Smith moved to a place at the table closer to
12 Jill Marker, and she was moved closer to him. She responded that she could see
13 the person seated in front of her. ADA Saunders said that he (Smith) was six feet
14 away from her; and she nodded that she could see him. Ms. Marker was then
15 wheeled back in front of the jury.

16

17 ADA Saunders asked if Ms. Marker recognized the person she just looked at, and
18 she nodded her head up and down. ADA Saunders asked her, "Was that the
19 man?" She motioned with her hand. Saunders asked, "You're not sure?" She
20 shook her head from side to side, and motioned with her hand and index finger;
21 ADA Saunders could not determine what she wanted. He asked Ms. Marker, "Can
22 you tell members of the jury whether or not that man that you just looked at was
23 the man that hurt you at Silk Plant Forest?" Ms. Marker nodded up and down,
24 and attempted to write something that looked like, "I was."

25

26 ADA Saunders asked again, "Let me ask you one more time, is the man that you
27 just looked at over there, can you tell the members of the jury that that was the
28 man that hurt you at Silk Plant Forest?" Ms. Marker nodded her head up and
29 down.

30

1 While being questioned by Defense Attorney William Speaks, Ms. Marker
2 indicated that it was dark outside, and that the attacker was not a delivery man.
3 During this same questioning, she acknowledged being shown big, blown-up
4 pictures of this man in court (Kalvin Smith). When asked if they told her that's the
5 man that did this to her, she shook her head from side to side, pointed with her
6 finger, and then nodded her head up and down.

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1 out of the store.” That’s all she heard him say; it was maybe the end of
2 February.²¹

3

4 Ms. Moore said she didn’t talk to Detective Williams because she had outstanding
5 charges on her. It was close to her birthday, so she wasn’t ready to go to jail. Then
6 she got caught in Surry County for something.

7

8

9 03-10-97 1500hrs–1505hrs
10 Surry County Jail Detective Williams’ supplement report
11 (Detectives Williams/Cozart)

12

13 Detectives Williams and Cozart met with Ms. Pamela Moore concerning Calvin
14 Smith and the Silk Plant Forest (SPF), which she called the *flower shop*. Ms. Moore
15 at first denied knowing or hearing anything concerning Mr. Smith’s involvement in
16 the SPF robbery and assault. She denied being with Mr. Smith and Mr. Littlejohn
17 at the robbery or in the parking lot during the robbery.

18

19 Ms. Moore admitted being present though, at Skyline Village with Mr. Smith, Mr.
20 Littlejohn, Andra Wilson and another unknown black male (Freddie Reyes) getting
21 his hair fixed by Ms. Wilson. Ms. Moore claimed this occurred sometime in
22 February, 1996, and Mr. Smith made the statement, “I had to beat the bitch to
23 get out of the store.” She also heard him say he had to get some money. She
24 didn’t know anything else about SPF, but when she learned of Mr. Smith’s arrest,
25 she knew then the store he talked about was the *flower shop* (the Silk Plant
26 Forest). She agreed to testify in court to what she heard Calvin Smith say.

²¹ See Silk Plant Forest Case File, D.R. Williams Supplement Report, 03/11/97. See Pamela Moore Transcript, pp. 1-11.

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TRIAL TESTIMONY of PAMELA MOORE

DECEMBER, 1997

Pamela Moore testified that in December, 1995, she had been dating Eugene Littlejohn, whom she had met while working at Bojangles, for about two years. She had known Calvin Smith about four years, and Andra Wilson since 1995. She admitted she socialized with Mr. Smith, Mr. Littlejohn, and Ms. Wilson from December, 1995– February, 1996, drinking, sitting around, and talking at her house, Ms. Wilson’s house, or at the park.

Ms. Moore remembered they were all at Ms. Wilson’s home while Ms. Wilson fixed the hair of a man named Freddie. Ms. Moore responded that Mr. Smith had made a statement she remembered to that day, and stated, “One day he had come in the house and he said he *had to beat a lady up to get out the store.*” She didn’t remember how he acted, but claimed *he was probably drunk.*

Ms. Moore claimed she didn’t remember if Calvin Smith said anything else, and she did not react to what he said, because he was *always saying stuff like that.* She didn’t ask any questions about it, and he didn’t mention the SPF store.

Ms. Moore verified that Mr. Smith stayed at Ms. Wilson’s house off and on during that winter. She replied that she knew Valerie Williams and had seen her with Mr. Smith; *they acted like they were in love.* Ms. Moore further testified that though Mr. Smith and Ms. Wilson were friends, she thought they had a *thing*–that he was going with both women for a while. Ms. Moore claimed that she was very sure it made Ms. Wilson mad when Mr. Smith left her to live with Ms. Williams.

1

2 Ms. Moore responded that after Mr. Smith made the comment (...*beating a lady*),
3 she continued to hang around with them. The only time she heard him say that
4 was in winter, 1996, while she was staying at Ms. Wilson's. She testified she first
5 connected Mr. Smith's statement about *beating the woman* to the SPF crime
6 when she saw his face on the news - saying that he did it. Mr. Littlejohn had also
7 told her that *detectives kept on coming to his house, to talk to him*. She repeated,
8 "He (Mr. Smith) said he had to beat a lady up to get out the store."

9

10 Ms. Moore replied to Defense Attorney Speaks that Smith was always saying crazy
11 stuff like that, but they didn't pay any attention. She also testified that Mr. Smith
12 was drinking when he said *crazy stuff*; they were always drinking, except Ms.
13 Wilson, who didn't drink. Asked if she believed him, she replied that it didn't
14 matter, they were just talking. Ms. Moore again claimed that the conversation
15 took place in winter, in Ms. Wilson's living room.

16

17 Ms. Moore stated that she later left Andra Wilson's to return to her own
18 apartment, and claimed that Mr. Smith didn't stay at Ms. Wilson's at all by
19 summer, 1996.

20

21 Ms. Moore replied that detectives interviewed her when she was in jail, but didn't
22 tell her to say that Mr. Smith said this *about beating the lady at Silk Plant Forest*.
23 She was testifying to this because she heard it. Ms. Moore admitted that after the
24 jail interview, she wrote Calvin Smith a letter.

25

26

27 07-16-08

1329hrs-1416hrs

28 Second Contact

(Detectives Byrom/Ferrelli)

1

2 Ms. Pamela Moore confirmed to Silk Plant Forest Investigators Lieutenant Ferrelli
3 and Sergeant Byrom that she had been contacted about the SPF case in March,
4 2008 by two investigators, whose names or agency she could not recall. She
5 stated they told her they were investigating this (SPF) matter and wanted to tape
6 an interview with her. She told them she had given a tape-recorded statement in
7 1997, but those investigators made her change her statement and record it over
8 her first statement. (See her account of that incident documented later in Findings and
9 Conclusions.)

10

11 Ms. Moore told SPF Investigators that one of the March, 2008 investigators said
12 he was present during the 1997 interview and if she changed her story, it would
13 be perjury. She told them to leave, and they did.

14

15 Ms. Moore stated she has not been contacted by anyone from Duke Law School.

16

17 Ms. Moore explained in the summer or winter of 1994 or 1995, she met Eugene
18 Littlejohn, who later became her live-in boyfriend; they're no longer together.
19 She informed SPF Investigators that a month or two after she met Mr. Littlejohn,
20 he introduced Calvin Smith and Andra Wilson to her. Ms. Moore met Valarie
21 Williams when Ms. Williams picked up Calvin Smith at Ms. Moore's house.

22

23 Ms. Moore recalled only one occasion when she rode to the "Mall" area with Mr.
24 Littlejohn and Mr. Smith; she thought Andra was driving. She remembered only
25 that Mr. Littlejohn came out of Toys-R-Us and returned to the car, and they
26 became impatient because Mr. Smith took so long to come out.

27

28 Ms. Moore did not recall when she first heard about the SPF case. She
29 remembered Mr. Littlejohn telling her about Mr. Smith assaulting somebody, but

1 did not recall when. She didn't know any details and didn't associate that with the
2 SPF case until detectives interviewed her in jail.

3

4 Ms. Moore stated her first contact with police regarding the SPF case was when
5 two WSPD detectives spoke with her in the Surry County jail, in 1997. (Note:
6 WSPD detectives interviewed Ms. Moore in jail on March 10, 1997.) Ms. Moore
7 claimed that during that recorded interview, she had first said *Mr. Littlejohn told*
8 *her Calvin had said something like, "I had to beat the bitch down to get out of the*
9 *store."* She went on to explain that *detectives* stopped the tape and *told her she*
10 *had to say she heard Calvin Smith say those words, not that she heard it from Mr.*
11 *Littlejohn.* Ms. Moore said she *did change her statement* to claim she heard Mr.
12 Smith say that, and the detectives recorded her revised statement over her first
13 statement. She *thought* the detectives showed her photos of Jill Marker in a
14 *coma.*

15

16 Ms. Moore stated that in the 1997 interview, the detectives talked about criminal
17 charges pending against her, which included: concealing merchandise (involving a
18 Food Lion store), and communicating threats and trespassing (involving Kimberly
19 Robertson, Eugene Littlejohn's wife). She was not sure how the conversation
20 progressed, but believed the detectives stated "You help us, and we will help
21 you." Ms. Moore stated she accepted their offer to testify against Smith; in
22 exchange, criminal charges against her would be dismissed.

23

24 Ms. Moore told SPF Investigators she changed her (1997) statement because the
25 detectives told her she was in "big trouble," and implied she was involved as an
26 accessory and going to jail because she associated with people involved in the SPF
27 crime—Kalvin Smith and his associates. Ms. Moore was adamant she had believed
28 those detectives and had felt threatened; she was also angry.

29

1 Ms. Moore claimed that after the detectives left, she wrote a letter to Mr. Smith
2 (Confirmed as Exhibit #47 in Calvin Smith’s 2009 M.A.R.). Ms. Moore stated she
3 and Mr. Smith were friends, and did not have an intimate relationship.

4
5 Ms. Moore claimed that, at some point, ADA Behan or her assistant offered
6 assistance to her in a N.Y. State child custody matter. But, after the trial, that did
7 not happen, and her mother gained custody of Ms. Moore’s son.

8
9 Ms. Moore stated her 1997 testimony was false at Calvin Smith’s trial: she did not
10 hear Calvin Smith say he *had to beat a woman to get out of the store*.

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1 **STATEMENTS OF: KALVIN SMITH**

2

3

4 07-22-96 1900hrs – 1940hrs

5 Interview, 1st Polygraph (Detectives Williams/Maines)

6

7 Calvin Michael Smith’s first encounter with Detective D.R. Williams occurred on
8 this date as a result of Mr. Smith’s arrest for outstanding orders for arrest.
9 Detective Williams documented this contact took place at the Public Safety
10 Center (PSC) when Mr. Smith was being questioned because of a June, 1996
11 Crime Stoppers tip that he was involved in the SPF assault.

12

13 ----- Detective Williams didn’t document this interview until 11-04-96.
14 Detective Williams documented that Mr. Smith was read his Miranda rights
15 before the interview (required because Mr. Smith was under arrest and in
16 custody). Mr. Smith signed a rights waiver, and agreed to be questioned²². During
17 the interview, Mr. Smith frequently denied being involved in the SPF case; he then
18 submitted to a polygraph examination. Detective Williams further documented
19 that a polygraph examination was administered by Detective L.M. Maines, who
20 then informed Detective Williams that Mr. Smith was *Truthful* about not being
21 involved in the SPF case. Mr. Smith was then placed in the Forsyth County
22 Detention Center in reference to the outstanding orders for arrest.

23

24 Detective Williams also documented this same information in a CrimeStoppers
25 report dated 07-22-96, the same day of the interview. Also, in the 11-24-97
26 Suppression Hearing, he testified that Mr. Smith was *Truthful* in his polygraph on
27 07-22-96 about not being involved in the SPF case. During the *same Suppression*

²² See Silk Plant Forest case file, D.R. Williams’ supplement report dated Nov. 4, 1996, p. 1 and Rights Waiver for documentation that Calvin Smith signed a Rights Waiver before being questioned on 07-22-96.

1 Documentation shows Mr. Smith stated he walked from Waughtown Street to
2 Silas Creek Crossing, over five miles away, and met a *James Burrows*. Mr. Smith
3 and Mr. Burrows went to the SPF store, where Mr. Smith stood outside and *Mr.*
4 *Burrows* went in. Mr. Smith later restated that he was standing just inside the
5 business. Sergeant Weavil noted that Calvin Smith also stated he was standing
6 near the cash register as he observed *J.B.* hit the woman with the object, then she
7 ran to the back of the store with *J.B.* following her.

8
9 During Mr. Smith’s questioning, Detective Williams and other detectives tried to
10 identify who *J.B.* or *James Burrows* was from police records, with negative results.

11
12 The supplement report of Sergeant Weavil and the 01-24-97 written statement of
13 Mr. Smith both reflect that *Mr. Burrows* swung at the lady and Mr. Smith
14 observed her being struck in the head. Both documents also indicate Mr. Smith
15 then ran from the SPF store to Maxway’s department store²⁴, and then walked
16 from Maxway to 3-F Skyline Village, which is another four miles away.

17
18 Sergeant Weavil documented that Calvin Smith then gave a written statement
19 that he planned the robbery, went into the store with *James Burrows*, and
20 described how he ran from the store when *Mr. Burrows* hit Ms. Marker in the
21 head. Detective Williams then advised Mr. Smith that he was under arrest for the
22 SPF robbery and attempted murder, and advised him orally of his rights, which he
23 waived²⁵. Mr. Smith repeatedly denied striking the clerk.

24
25 Sergeant Weavil’s report indicated Mr. Smith agreed to take a polygraph
26 examination and that Detective Williams requested Detective L.M. Maines talk
27 with Mr. Smith about it. Detective Maines informed Detective Williams that Mr.

²⁴ Maxway’s was a department store in the Northside Shopping center, eight miles away from the SPF store.

²⁵ Winston-Salem Police Department policy at the time was to have the suspect sign a Rights Waiver form

1 Smith reportedly refused the polygraph examination with him and asked for an
2 attorney. Detectives then ended the interview with Calvin Smith, with no further
3 questions. Mr. Smith was allowed to see and speak with Valarie Williams briefly
4 and was then transported to the Magistrate's office.

5

6

7

1456–1810 hrs

8

Interview/Arrest (Detective Williams' Supplement Report)

9

(Detectives Weavil/Williams/Maines)

10

11 Detective Williams documented in his supplement report of 01-27-97 that Calvin
12 Smith and Valarie Williams arrived at the PSC at 1456 hours. He told them they
13 were not under arrest, and escorted them to separate interview rooms.
14 Detectives Williams and Weavil spoke with Ms. Williams first, receiving a written
15 statement of her 01-20-97 verbal statement to Sergeant Ireland. Detective
16 Williams reported Ms. Williams was concerned for her safety and didn't want
17 Calvin Smith to know she had reported his involvement in the case. She later
18 agreed and gave her written statement about Mr. Smith and the SPF assault to
19 Sergeant Weavil.

20

21 During questioning, Mr. Smith denied being involved in the SPF case at length,
22 then asked to use the restroom. (Detective Williams noted, but didn't document
23 telling Mr. Smith he was able to leave the interview and PSC at any time.²⁶) When
24 Mr. Smith returned to the interview room, he agreed to resume the interview and
25 soon admitted he was outside the SPF when it was robbed and the clerk attacked.

²⁶See Silk Plant Forest case file, D.R. Williams' supplement report dated 01-27-97, p. 8. Also,
Mr. Smith told SPF Investigators if he'd known he could have left the interview and the PSC, he would have.

1 Description of the contact between Mr. Smith and *James Burrows*, aka *J.B.*, was
2 similar in report documentation of both Detective Williams and Sergeant Weavil.

3

4 Detective Williams documented changes Mr. Smith reportedly gave about his
5 involvement in the SPF case. First, Mr. Smith claimed he stood at the door while
6 *James Burrows* went inside, then later, Mr. Smith said he stood inside the
7 business, near the door, and finally, Mr. Smith admitted he stood near the
8 register.

9

10 Other statement changes reportedly made by Mr. Smith were: the female clerk
11 ran to the back, crying, "Oh, oh, oh," and *J.B.* followed her. Mr. Smith stated he
12 got scared and fled to Maxway's in the same shopping center, to call a friend, but
13 didn't. He claimed he then left the area on foot to Skyline Village, over five miles
14 away. Detective Williams noted that Mr. Smith most likely meant he ran to
15 Marshall's department store, in the same shopping center as the SPF store.

16

17 Detective Williams also noted that he and Sergeant Weavil left the interview
18 room several times, and left the interview room door open. Mr. Smith walked
19 around inside and could have left at anytime²⁷.

20

21 Detective Williams documented that Mr. Smith gave a brief written statement
22 then was placed under arrest and advised orally of his rights. Mr. Smith agreed to
23 continue the interview, advising detectives he did not want a lawyer. During
24 continued questioning, Mr. Smith gave detectives an additional written statement
25 indicating "he was in the store and saw *J.B.* run to the back, after the clerk. Then
26 he heard the clerk holler and that's when he left the store²⁸."

²⁷See Silk Plant Forest case file, D.R. Williams' supplement report dated 01-27-97, p. 12-13. Detective Williams and Sergeant Weavil documented they informed Mr. Smith he wasn't under arrest, but did not document that they advised him that he was free to leave the interview room or the Police Department.

²⁸See Silk Plant Forest case file, D.R. Williams' supplement report dated 01-27-97, p. 15-16

1

2 Detective Williams documented he left the interview room with Sergeant Weavil
3 and requested polygraph Detective L.M. Maines to talk with Calvin Smith about
4 taking a polygraph regarding the clerk at Silk Plant Forest and the existence of
5 *James Burrows (J.B.)*. Detective Maines advised Detective Williams that Mr. Smith
6 allegedly invoked his right to counsel and requested an attorney. Mr. Smith asked
7 to see Valarie Williams, who was escorted to his room. They spoke briefly, then
8 Mr. Smith was transported to the Magistrate’s office.

9

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KALVIN SMITH – TESTIMONY

14

MOTION for APPROPRIATE RELIEF HEARING

15

January 6, 2009

16

17 On 01-06-09, Calvin Smith testified for the first time regarding the Silk Plant
18 Forest case. Mr. Smith’s testimony was in reference to a Motion for Appropriate
19 Relief. During the course of his testimony, he provided the background of how he
20 became acquainted with Eugene Littlejohn, Andra Wilson, and Pamela Moore.
21 Also during his testimony, Mr. Smith denied any knowledge of, or involvement in,
22 the robbery of the SPF store or the attack of Jill Marker.

23

24 Mr. Smith stated he was first contacted by police in reference to the case when
25 he was arrested for outstanding warrants on 07-22-96. He testified that earlier
26 the same day, he stopped by the apartment of Andra Wilson to pick up his check
27 and she informed him the police were looking for him about what was locally
28 known as the “Flower Shop.” He denied any involvement, and left. Mr. Smith

1 continued that, a short time later he was picked up and arrested at the apartment
2 of Eugene Littlejohn and taken by U.S. Marshals to the PSC, to meet Detective
3 Williams for the first time. Detective Williams asked if he knew anything about the
4 SPF and if he beat Jill Marker; he stated he told Detective Williams “No” to both
5 questions.

6

7 Mr. Smith testified Detective Williams asked that he take a polygraph
8 examination and he agreed. He was introduced to Detective Lonnie Maines, took
9 the polygraph test and was told by Detective Williams he was *Truthful* about not
10 being involved in the SPF crime. Mr. Smith was then sent to jail for a probation
11 violation charge and remained there until around Thanksgiving, 1996. He testified
12 while he was in jail, Andra Wilson visited him, telling him she had called
13 CrimeStoppers on him.

14 Mr. Smith explained that he developed a romantic relationship with a female jail
15 employee and how his girlfriend Valarie Williams later found out about it. He
16 indicated there was an altercation between Ms. Williams and the jail employee.
17 He stated that a short time later, he retrieved Detective Williams’ business card
18 left on the door of Ms. Williams’ residence. He called the detective, who asked
19 him to come to the PSC and to bring Ms. Williams with him. Mr. Smith further
20 stated that he and Ms. Williams went to the PSC, where they met Detective
21 Williams, and were separated. While Detective Williams questioned him about
22 the attack of Jill Marker, Mr. Smith claimed he denied any involvement at length,
23 and Detective Williams then left the room. Mr. Smith testified he attempted to
24 leave to use the bathroom, but Detective Williams first prevented him from
25 leaving, then shortly, allowed him to leave under the escort of two detectives.
26 When Mr. Smith returned from the bathroom to the interview room, again under
27 escort, he found Sergeant Weavil in the room, with pictures of Jill Marker with her
28 injuries and asked “Why did you have to do this to her?” Mr. Smith denied being
29 involved in Ms. Marker’s attack and the sergeant then left the room.

30

31 Mr. Smith claimed Detective Williams and Sergeant Weavil tried to elicit a
32 statement from him and implied that Ms. Williams was providing information to
33 them about Mr. Smith’s involvement. Mr. Smith testified that Detective Williams

1 declared *he had just gotten off the phone with the District Attorney*, and
2 proceeded to tell Mr. Smith *if Ms. Williams was lying he was going to arrest her*
3 *and Mr. Smith. And if Jill Marker died, Mr. Smith was going to get the death*
4 *penalty*. Mr. Smith further testified that Detective Williams left, then came back
5 asking if he wanted to go home, and if he did want to go home, he better start
6 cooperating. Mr. Smith claimed that Detective Williams was telling him that Ms.
7 Williams was writing a statement, and if he (Smith) wanted to go home with her
8 and not be charged with the attack of Jill Marker, he better write a statement,
9 too.

10

11 Mr. Smith testified he asked Detective Williams to give his word that he could go
12 home if he gave a statement. The detective gave his word, so Mr. Smith began
13 writing what Detective Williams told him that Ms. Williams' statement reflected.
14 As he wrote, the detective snatched up that statement, tore it up and left the
15 room. He stated Detective Williams soon returned, and told Mr. Smith what to
16 write verbatim. As Mr. Smith wrote, Detective Williams asked who was with him,
17 and

18 Mr. Smith replied, "No one, I wasn't there", but eventually gave the name *J.B.* and
19 later, *James Burroughs*. Mr. Smith also claimed that he wrote that he went to
20 *Maxway's* because *he knew it was on the other side of town*. He testified he
21 initialed the statement; Detective Williams left the room with it, then returned to
22 have Mr. Smith write an additional statement of observing *a guy chasing her to*
23 *the back*. Mr. Smith initialed and signed what he wrote, but had no chance to read
24 it. Calvin Smith testified that then Detective Williams placed him under arrest for
25 assault and attempted murder at the SPF crime.

26

27 Mr. Smith said he never told friends he *had to beat a bitch to get out of a store*.
28 He also testified that William Speaks, his previous attorney, never spoke with him
29 about a Jill Marker video tape or a Toys-R-Us video tape. He claimed Mr. Speaks
30 first told him Jill Marker identified him in a line-up about a week before the trial.

31

1 On cross-examination, the prosecution indicated Sergeant Weavil wrote Mr.
2 Smith's 1997 statement, which Mr. Smith countered, testifying that he wrote the
3 statement, not Sergeant Weavil²⁹. Mr. Smith explained he didn't write the
4 statement so detectives wouldn't charge Ms. Williams. He wrote it because
5 Detective Williams told him that if he didn't, he (Smith) would be charged, and if
6 he did write it, he could go home. Mr. Smith replied he was *never shown any*
7 *photographs* of who might have been *James Burrows*, because it was *a made up*
8 *name*.

9

10

11 03-13-09

12 Interview (Albemarle Correctional Center)

13 SPF Investigators, Lt. Joe Ferrelli and Sgt. Chuck Byrom and

14 Silk Plant Forest Citizens' Review Committee Representatives

15

16 On this date, Investigators for the Silk Plant Forest Citizens Review Committee
17 (SPFCRC), Lieutenant Joseph Ferrelli and Sergeant Chuck Byrom, together with
18 SPFCRC members, Guy Blynn, Lois Mendezoff and Miles Foy, traveled to the
19 Albemarle Correctional Center to interview Calvin Michael Smith. The meeting
20 was also attended by David Pishko, attorney for Mr. Smith. The interview was
21 mutually requested and agreed upon by Mr. Smith and SPFCRC members. It was
22 to give Mr. Smith his first opportunity to tell *his recollection of events* surrounding
23 the SPF investigation, and to have him answer questions of SPFCRC members
24 about his role in the SPF investigation. It was also intended to clarify some of the
25 questions answered at Mr. Smith's M.A.R. hearing in January, 2009, and to probe
26 further into still unanswered questions.

27

²⁹ Sergeant Weavil testified in the 11-24-97 Suppression Hearing, and again in the M.A.R. hearing of Jan. 2009, that he wrote Calvin Smith's statement, and further testified how Mr. Smith asked him to write it.

1 Mr. Smith stated he spoke only with Andra Wilson about the SPF, or *Flower Shop*,
2 as everyone in the neighborhood called it. He stated this conversation occurred
3 on 07-22-96, in Ms. Wilson’s apartment while she braided the hair of a man
4 named Freddie. Mr. Smith had gone to the apartment to pick up a check mailed to
5 him there. (He was last at Ms. Wilson’s apartment on 05-31-96, when he took \$50
6 from her³⁰.) A short time after he left her apartment, Mr. Smith was arrested by
7 U.S. Marshals, taken to the PSC, and questioned by Detective Williams.

8

9 Mr. Smith stated this was the only date (07-22-96) he was given a polygraph
10 examination and it was administered by Detective L. M. Maines. He remembered
11 signing a Miranda rights waiver and some other type document presented by
12 Detective Maines. Mr. Smith said *this is also when* he learned from Detective
13 Williams that he (Smith) was credited with saying *he had to beat a bitch down to*
14 *get out of a store*—that did *not originate in 1997*, as documented by Detective
15 Williams. Mr. Smith claimed he was never taken from jail for another interview or
16 polygraph examination and had no further contact with police about the SPF case
17 until he and Valarie Williams responded to the Public Safety Center, on 01-24-97.

18

19 Mr. Smith stated on 01-24-97 he and Ms. Williams went to the PSC and were
20 placed in separate interview rooms. It was during this interview he first heard
21 from Sergeant Weavil about him and a *guy named Kevin* being involved in the SPF
22 case. He added that Detective Williams and Sergeant Weavil both went in and out
23 of the interview room, and were never in the interview room together with him at
24 the same time. He could hear Ms. Williams yelling in another room, but couldn’t
25 tell what she was saying. Mr. Smith said Detective Williams stopped him when he
26 wanted to leave the interview room to use the bathroom, then had him escorted
27 from, and back to, the interview room by two other detectives. Mr. Smith
28 indicated he did not feel he was free to leave this interview; had he known he was
29 free to leave, he would have. In his supplement report of 01-27-97, Detective
30 Williams documented he told Mr. Smith he was not under arrest and noted that

³⁰On 06-01-96, Ms. Wilson reportedly made a CrimeStoppers report that Calvin Smith was involved in the SPF case.

1 Mr. Smith had an opportunity to leave the interview room and the PSC at any
2 time.³¹

3

4 Mr. Smith replied there was no relationship between him and Aaron Marker, nor
5 did he tell detectives that he didn't want to be tape recorded during his 01-24-97
6 interview. He informed SPF investigators that Ms. Wilson told him in February or
7 March, 1997 that Detective Williams accused her of helping Mr. Smith by burying
8 the weapon used at the SPF assault behind her house in the woods.

9

10 Calvin Smith advised SPF Investigators after going over case documents, witness
11 and suspect statements, and courtroom transcripts, he determined the following:

12 — Detective Williams used Mr. Smith's 01-24-97 interview information
13 and written statement to place Eugene Littlejohn in the role detectives
14 previously thought Mr. Smith had—*standing outside, or just inside, the door*
15 *of the SPF store.*

16 — Detective Williams then placed him (Calvin Smith) in the role
17 previously thought to be *J.B, or James Burrows, running after the woman to*
18 *the back of the store.*

19

20 Mr. Smith said in reference to a trip to Toys-R-Us by him, Andra Wilson, Pamela
21 Moore and Eugene Littlejohn: it wasn't December, 1995; it was January, 1996. Mr.
22 Smith stated Ms. Wilson transported all of them to shoplift from stores, but she
23 didn't take part in the shoplifting

24

25 Calvin Smith also stated he was visited and interviewed twice by attorney Clifford
26 Britt while he was in the Forsyth County Jail. He said his then-attorney, William
27 Speaks, told him that attorney Britt would be visiting him. Lastly, Mr. Smith said

³¹ Detective Williams didn't document that he told Mr. Smith he was free to leave.

1 he would like to take a polygraph examination, but Mr. James Coleman advised
2 him against it at this time.

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1 1-23-97 1730hrs – 1759hrs

2 Second Interview (Detective D. R. Williams)

3

4 Detective Williams made his first contact³³ with Valarie Williams at her home. Ms.
5 Williams admitted to speaking with Sergeant Ireland, saying Calvin Smith told her
6 he was involved in the Silk Plant Forest robbery.

7

8 Detective Williams documented that Ms. Williams told him Mr. Smith said he and
9 another man named “Kevin” were doing drugs then went to the SPF store. Ms.
10 Williams stated Mr. Smith put a stocking on his face, and as he entered the store,
11 the clerk ran to the back of the store, and “Kevin” chased her and beat her with a
12 brick. Ms. Williams stated Mr. Smith said he tried to open the cash register, but
13 got scared and left, removing his stocking and burying it. Ms. Williams stated that
14 Mr. Smith said he did not beat the girl; “Kevin” was the one who beat her.

15

16 Detective Williams requested that Ms. Williams locate Mr. Smith and bring him to
17 the Public Safety Center the next day. She agreed to find him and to meet
18 Detective Williams at the Public Safety Center on 1-24-97.

19

20

21 01-24-97 1456hrs – 1810hrs

22 Third Interview (Detectives Williams/Weavil)

23

³³ See Silk Plant Forest case file, D.R. Williams Supplement Report: dated 1-27-97, pp. 1-6

1 Valerie Williams and Calvin Smith responded to the Public Safety Center³⁴ and
2 were escorted to separate interview rooms. Sergeant Randy Weavil and Detective
3 Williams spoke briefly with Ms. Williams to get a statement about her previous
4 comments to Detective Williams and Sergeant Ireland. Detective Williams
5 documented that Ms. Williams was concerned for her safety and did not want Mr.
6 Smith to know she talked to the police. She waited in a separate interview room
7 while Williams and Weavil questioned Mr. Smith. Ms. Williams later wrote in her
8 statement that Calvin Smith said he was at the scene of the SPF crime but did not
9 beat the woman; someone else did. She wrote that the other guy put on a
10 stocking cap and the clerk ran to the back of the store, and Mr. Smith just stood at
11 the door.

12

13 ³⁵After written statements were obtained from both Ms. Williams and Calvin
14 Smith, she was allowed to speak to Mr. Smith very briefly, and then escorted to
15 the PSC lobby. Detective Williams documented he told Ms. Williams that Mr.
16 Smith was under arrest and he did not tell Mr. Smith that Ms. Williams originally
17 informed the police about this case. Detective Williams also told Ms. Williams
18 that Calvin Smith admitted talking to her about the robbery.

19

20 Sergeant Randy Weavil³⁶ also had a major role in the interviews of Valarie
21 Williams and Calvin Smith on 01-24-97. Sergeant Weavil was Detective Williams'
22 immediate supervisor since approximately October, 1996 and had been advised
23 of Calvin Smith's earlier 1996 interview with Detective Williams in this case.

24

25 Sergeant Weavil documented in a police supplement report that Ms. Williams
26 agreed to give a written statement about what Calvin Smith told her of his

³⁴ See Silk Plant Forest case file, D.R. Williams Supplement Report: dated 1-27-97, pp. 6-7

³⁵ See Silk Plant Forest case file, D.R. Williams Supplement Report: dated 1-27-97, pp. 17

³⁶ See Silk Plant Forest case file, R.N. Weavil's Supplement Report: dated 1-28-97, pp. 1-9

1 involvement in the SPF case, but only after detectives talked with Mr. Smith.
2 During the course of Ms. Williams' and Mr. Smith's interrogations by Detective
3 Williams and Sergeant Weavil, a written statement was obtained from both,
4 placing Calvin Smith at the SPF as "Kevin" or "James Burrows" chased someone.
5 Ms. Williams' statement says, "She ran to the back of the store".

6
7 After these statements were obtained, Ms Williams was briefly allowed to see Mr.
8 Smith in the interview room before he was taken to the magistrate's office where
9 he was formally charged.

10
11

12 12-05-06

13 Interview (Darrell Taylor, Notary)

14
15 It is believed that Valarie Williams' interview on this date was arranged and
16 conducted by Duke Innocence Project personnel in the form of an affidavit. In the
17 interview, Ms. Williams gave details of her motive for telling the police Calvin
18 Smith was involved in the Silk Plant Forest case. In the affidavit, Ms. Williams also
19 acknowledged knowing that Andra Wilson, another female associate of Calvin
20 Smith, also reported to the police in June 1996, that Calvin was involved in the
21 SPF case. Ms. Williams further acknowledged she had reported Calvin to the
22 police to get back at him. Also, when she was contacted by Detective Williams,
23 she told him why she reported Mr. Smith; that she didn't know anything. The
24 affidavit notes that Detective Williams told Ms. Williams she could collect a
25 \$12,000 reward or possibly be charged as an accessory if she knew anything.

26

1 Ms. Williams related in the affidavit that a day after she talked to Detective
2 Williams, she and Mr. Smith went to Police Headquarters and were questioned by
3 police detectives. Ms. Williams was documented as saying she was questioned on
4 and off by detectives for several hours, and that a detective threatened to lock
5 her up for withholding evidence, saying Calvin Smith failed a polygraph test, and
6 had admitted to being at the Silk Plant Forest.

7

8 According to this affidavit, Ms. Williams wrote her statement to reflect what the
9 detectives told her Calvin Smith had said. The affidavit documents that Ms.
10 Williams wrote her statement because she thought the detective would charge
11 her. Again, according to the affidavit, after she left the Public Safety Center, Ms.
12 Williams wrote notes of what happened during her interview with police. Ms.
13 Williams detailed in the affidavit about a September, 1997 meeting with Assistant
14 District Attorney Eric Saunders, when he threatened to contact Social Services and
15 have her children taken away from her.

16

17

18 07-11-08

19 Interview (Detectives Byrom/Ferrelli)

20

21 During the interview, Ms. Williams stated essentially the same information as in
22 her previous interviews about how she came to involve Mr. Smith in the Silk Plant
23 Forest case. Ms. Williams said she was recently contacted by the State Bureau of
24 Investigation but declined to speak with them without an attorney present. She
25 didn't testify at Mr. Smith's 1997 trial, at attorney William Speaks' request.

26

1 Ms. Williams acknowledged that Mr. Smith told her about Detective Williams
2 questioning him about the SPF case earlier (in 1996) and she decided to tell the
3 police again after finding out about Calvin seeing another woman. Ms. Williams
4 stated she was aware of a relationship between Andra Wilson and Calvin Smith.
5 She also said Mr. Smith told her that Ms. Wilson implicated him in the SPF case
6 earlier because Ms. Wilson knew about Valarie and Calvin's relationship.

7

8 Ms. Williams recently advised Silk Plant Forest Investigators that the statement
9 she gave to Detective Williams and Sergeant Weavil on 01-24-97, was false. She
10 further stated that while at the police department, the detectives went back and
11 forth between her interview room and Calvin's interview room, about six or seven
12 times³⁷. She advised Silk Plant Forest Investigators that detectives led her to
13 believe Calvin was telling the truth about being at the Silk Plant Forest and that he
14 had beaten somebody. Ms. Williams stated she only spoke with two detectives
15 while at the police department, one was Detective Williams and she could not
16 remember the other. Ms. Williams said she was never told she was free to leave;
17 had she been told she could leave, she would have left. Ms. Williams advised she
18 was never given a polygraph test and didn't remember if her interview was
19 recorded.

20

21

22

23

24

25

³⁷ In his 1997 Suppression Hearing testimony, Detective Williams denied going to Valarie Williams's interview room to interrogate her. Detectives Williams' and Maines' signatures also appear on Ms. Williams' 01-24-97 written statement.

1 Safety Center to give a written and taped statement to Detective Williams and
2 Sergeant Weavil.

3

4

5 02-04-97 1600–1610hrs

6 Second Contact (PSC) (Detectives Williams/Weavil)

7 After arriving at the Pubic Safety Center, Ms. Wilson agreed to be interviewed and
8 provided two written statements to detectives. One statement was written by
9 Ms. Wilson between 1600-1610hrs and the other was written by Detective
10 Williams or Sergeant Weavil between 1750-1800hrs.

11

12 Ms. Wilson reiterated to Detective Williams and Sergeant Weavil that Calvin
13 Smith told her several times he was at the Silk Plant Forest with someone else but
14 could not remember the name and that he, Calvin, did not beat the woman.
15 During the interview Ms. Wilson repeated several times she did not want to be
16 involved.

17

18 A review of available documentation provided by Detective Williams and Sergeant
19 Weavil reveals that after their first interview with Ms. Wilson ended at
20 1610hours, Sergeant Weavil documented³⁹ in a supplement report that, as she
21 waited for a ride home, Ms. Wilson was advised she might have to testify in court,
22 and was urged to remember the name of the person that was involved with Calvin
23 Smith.

24

³⁹See Silk Plant Forest case file R.N. Weavil's supplement report: 02-10-97, pp. 1-3

1 Later during this same encounter with Detective Williams and Sergeant Weavil,
2 Ms. Wilson completely changed her story. Sergeant Weavil documented in a
3 supplement report that Ms. Wilson stated Calvin Smith never said another person
4 was involved, and that Mr. Smith told her that he did beat the woman. Ms. Wilson
5 further admitted she made the CrimeStoppers call in June, 1996 implicating Calvin
6 Smith in the Silk Plant Forest case.

7

8

9 1750–1800hrs

10 Second Contact (Continued) (Detectives Williams/Weavil)

11 Ms. Wilson’s second written statement on this same date was documented as
12 beginning at 1750hrs-1800hrs. The transcription of this second interview was
13 documented as beginning at 1800hrs-1804hrs. The main differences between her
14 first and second interview statements were: in her first interview⁴⁰ with
15 detectives, Ms. Wilson was documented as saying there was someone else with
16 Calvin at the Silk Plant Forest. Her second interview⁴¹ stated Calvin said “He beat
17 the woman,” but never said what he beat her with. Ms. Wilson was documented
18 as telling detectives the reason she gave a false first statement was because, (1)
19 she didn’t want to be involved, and (2) “Because this look like I’m involved.”⁴²

20

21 Ms. Wilson was documented in both Detective Williams’ and Sergeant Weavil’s
22 supplement reports as saying Eugene Littlejohn, Pamela Moore, and a black male
23 were present when Calvin talked about beating the girl at the Silk Plant Forest.⁴³

⁴⁰ See Silk Plant Forest case file, 02-04-97, 1600-1610hrs written statement of Andra Wilson

⁴¹ See Silk Plant Forest case file, 02-04-97, 1750-1800hrs written statement of Andra Wilson

⁴² See Page 7 of Andra Wilson’s transcribed interview with Detective Williams and Sergeant Weavil

⁴³ Neither of Ms. Wilson’s 02-04-09 written statements or her transcribed statement mentions Littlejohn or Moore being present when Calvin talked with her about the Silk Plant Forest.

1

2

3 03-04-97

xxxx-xxxxhrs

4 Third Contact (Polygraph Test) (Detectives Williams/Maines)

5

6 Ms. Wilson was interviewed again on 03-04-97 by Detective Williams and
7 Detective Maines. She was administered a polygraph test on this same date and
8 her results were that she was *truthful* with investigators.

9

10 Ms. Wilson was asked the following three questions:

- 11 • Did you drive Littlejohn, Moore & Smith to the Silk Plant Forest on
12 12-09-95?
- 13 • Were you present with Littlejohn, Moore, & Smith in the parking lot of the
14 Silk Plant Forest on 12-09-95?
- 15 • Were you present in the parking lot of the Silk Plant Forest on 12-09-95?
16

17 Ms. Wilson answered “no” to all three questions.

18

19

20

TRIAL TESTIMONY OF ANDRA WILSON

21

December, 1997

22

23 On direct examination, Andra Wilson stated she was introduced to Calvin Smith
24 by Eugene Littlejohn at her home on 12-26-95. She testified Calvin Smith stayed

1 with her at times, although he was going with Valarie Williams at the same time.
2 Ms. Wilson testified she and Mr. Smith were friends and Ms. Williams even came
3 to Ms. Wilson's house to visit or pick up Mr. Smith sometimes.

4 Ms. Wilson described Mr. Smith as having a violent streak, especially when high
5 on alcohol or drugs (crack). She also described an incident when he confided to
6 her that he'd beaten the lady at the Silk Plant Forest. She testified he was drunk
7 at the time, and told her the name of the store, but didn't say anything else about
8 it.

9

10 She stated that a few weeks later, Eugene Littlejohn, Pamela Moore, Calvin Smith
11 and a guy named Freddie were at her house, sitting around drinking, when Mr.
12 Smith talked about "he had beat the woman." Ms. Wilson testified they all
13 laughed and joked about it, but no one asked him any questions about it. Ms.
14 Wilson further testified Mr. Smith said it on and off, about 20 times, and she
15 asked him about it because she wanted to know if it was true. She acknowledged
16 on the witness stand that Mr. Smith said he was the one who beat the lady, but
17 he didn't say what he beat her with or how many times he beat her. She testified
18 Mr. Smith usually joked about it, but didn't seem like he cared or was remorseful
19 about it, and sometimes bragged about it to her. She decided to report it to
20 CrimeStoppers, on June 1, 1996. Ms. Wilson identified Calvin Smith in the court
21 room.

22

23 Ms. Wilson testified that her first statement to detectives on 02-04-97 wasn't true
24 and she lied, because she did not want to get involved. She added that her second
25 statement to detectives, *that Calvin Smith said he did it*, was true. Ms. Wilson did
26 acknowledge speaking with a private investigator (Darrell Wilson) about the case,
27 but stated she didn't know he was recording her.

28

29 On cross examination by Mr. William Speaks, Ms. Wilson confirmed Mr. Smith
30 told her about the SPF incident about 20 times, sometimes jokingly, sometimes
31 that he didn't do it. She acknowledged Mr. Smith stated he beat the woman in

1 the presence of Littlejohn, Moore, and a man getting his hair done (Frederick
2 Reyes).

3

4 Ms. Wilson testified she called CrimeStoppers in June, 1996, the day Mr. Smith
5 left to go live with Valarie Williams. She denied that was the reason why she
6 called CrimeStoppers, and denied being in love with Calvin Smith.

7

8 During her testimony, Ms. Wilson was referred to comments she made to Private
9 Investigator Darrell Wilson about her knowing the truth and how the truth could
10 set Michael free. When asked about that statement, Ms. Wilson stated she just
11 wanted the Private Investigator to leave.

12

13 Ms. Wilson testified she wrote Calvin Smith a letter while he was in jail because
14 Detective Williams told her that Mr. Smith named her and another girl and he
15 shouldn't have. Detective Williams told her that Smith had used her address. She
16 couldn't remember if she wrote the letter before or after she gave her second
17 statement to detectives or her oral and written statements.

18

19 During Ms. Wilson's cross examination by Attorney William Speaks, and her
20 redirect examination by Assistant District Attorney Behan, Ms. Wilson
21 remembered giving Detective Williams a statement the first day he came to talk
22 to her, and that he came back the same day or the next, to talk to her again.
23 During the second contact she changed her story, saying that statement was the
24 truth.

25

26

27 07-10-08

28 Fourth Contact (Detectives Byrom/Ferrelli)

1

2 During this interview Ms. Wilson, whose last name is now Moore, will be referred
3 to as Wilson for the purposes of this summary. Ms. Wilson stated she has been
4 afflicted with a number of health problems over the years, including cancer,
5 bipolar disorder, and a mini stroke which affected her memory. She said she was
6 contacted and interviewed earlier, in 2008, by detectives from an unknown
7 agency. She said she never interviewed with anyone from the Duke Innocence
8 Project.

9

10 Ms. Wilson confirmed she met Calvin Smith through Eugene Littlejohn in
11 December of 1995. Ms. Wilson stated Mr. Smith was a nice person unless he had
12 been drinking. She said he had gotten violent with her once by pulling her out of
13 the bed by her feet.

14

15 Ms. Wilson stated on several occasions she drove Mr. Smith and Mr. Littlejohn to
16 the Mall where they would both shoplift. She stated she had no knowledge of the
17 shoplifting until after it already occurred. Ms. Wilson said she didn't remember
18 taking them to Toys-R-Us, but did remember taking them to the Big Mall.

19

20 Ms. Wilson admitted calling CrimeStoppers to report Calvin Smith's involvement
21 in the SPF and a conversation where Mr. Littlejohn and Mr. Smith talked about
22 beating a pregnant woman. Ms. Wilson remembered Detective D.R. Williams
23 coming to her home on many occasions and seeing him each time, but couldn't
24 remember any of the conversations. Ms. Wilson denied having an intimate
25 relationship with Mr. Smith. She said Detective Williams treated her fine and she
26 never felt the need for an attorney to be present when talking to him because she
27 had done nothing wrong. Ms. Wilson stated she had had no contact with Calvin
28 Smith until sometime in 2008, when the Duke Innocence Project people
29 contacted her by letter and there was a letter from Mr. Smith enclosed. In the
30 letter, Mr. Smith told Ms. Wilson she could help him get out of jail.