Exhibit A

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2024 DEC -2 A 11:17
COURT OF COMMON PLEAS
TOM ORLANDO

State of Ohio,	:	
Plaintiff	:	
v.	:	Hon. Raymond Ewers
Alfred Cleveland	:	Case No. 95CR046754
Ian Davis a.k.a. Benson Davis	:	Case Nos. 91CR040924, 93CR043666
John Austin Edwards	:	Case Nos. 91CR040926, 95CR046753
Lenworth Edwards,	:	Case Nos. 91CR040892, 91CR041238
Defendants.	:	

JOINT MOTION FOR LEAVE TO FILE A MOTION FOR NEW TRIAL

Now come the parties in the above captioned matter, by and through Lorain County Prosecutor J.D. Tomlinson on behalf of the State of Ohio, and undersigned counsel on behalf of John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis, and hereby jointly request that the Court grant leave to file a Joint Motion for New Trial[1] pursuant to Crim.R. 33(B). The parties agree that the defendants could not have obtained the evidence forming the basis of

[1] The parties have also filed a Joint Motion for New Trial and Motion to Dismiss and Stipulations of Fact. The facts set forth in the Joint Motion for New Trial and Motion to Dismiss and Stipulations of Fact are fully incorporated herein.

their motions within 120 days of their convictions and that the standard for leave under Crim.R. 33(B) has therefore been satisfied.

Respectfully submitted,

J.D. Tomlinson (0081796)
Lorain County Prosecuting Attorney
225 Court Street, #3
Elyria, Ohio 44035
Ph: 440-329-5631
lcp@lcprosecutor.org

Counsel for the State of Ohio

Joshua Dubin
Executive Director, Perlmutter Center for Legal Justice at Cardozo Law
55 5th Avenue
New York, NY 10003
joshua.dubin@yu.edu

Counsel for Defendants

Shantya Goddard (103359)
Lauren Staley (0091335)
The Ohio Innocence Project
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, Ohio 45221
Ph: 513-556-0752
gibsons4@ucmail.uc.edu
staleyln@ucmail.uc.edu

Counsel for Defendants

Joanna Sanchez (0087717)
Nicholas Allen (0092979)
Wrongful Conviction Project
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Ph: 614-466-5394
joanna.sanchez@opd.ohio.gov
nicholas.allen@opd.ohio.gov

Counsel for Defendants

Kimberly Kendall Corral (0089866)
3311 Perkins Avenue
Suite 205
Cleveland, Ohio 44114
Ph: 216-401-3167
kkc@kimlawcrimlaw.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by email and/or regular U.S. mail to all parties to this matter on this 2nd day of December, 2024.

Shantya Goddard (103359)
Counsel for Defendants

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2024 DEC -2 A 11:17
COURT OF COMMON PLEAS
TOM ORLANDO

State of Ohio,	:	
Plaintiff	:	Hon. Raymond Ewers
v.	:	
Alfred Cleveland	:	Case No. 95CR046754
Ian Davis a.k.a. Benson Davis	:	Case Nos. 91CR040924, 93CR043666
John Austin Edwards	:	Case Nos. 91CR040926, 95CR046753
Lenworth Edwards,	:	Case Nos. 91CR040892, 91CR041238
Defendants.	:	

STIPULATIONS OF FACT

Now comes plaintiff, the State of Ohio, and defendants John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis, jointly and through counsel, and hereby stipulate to the following facts for purposes of the parties' Joint Motion for Leave to File a Motion for New Trial, Joint Motion for New Trial, and Joint Motion to Dismiss:

1. The parties stipulate and agree that defendants John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis were convicted of charges stemming from the 1991 murder of Marsha Blakely.

2. The evidence presented by the State of Ohio was not sufficient to convict John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis for the murder of Marsha Blakely.

3. The parties stipulate and agree that the testimony of William Avery Jr. at the defendants' trials was inconsistent in important areas and was, therefore, unreliable.

4. The parties stipulate and agree that William Avery Jr.'s statement to the FBI Agent and his 2006 post-conviction affidavit are credible, by reason of the circumstances under which the statements were made.

5. The parties stipulate and agree that alibi evidence presented by the defendants appears to be credible.

6. The parties stipulate and agree that critical pieces of exculpatory evidence, including the information regarding William Avery Jr.'s recantations to FBI agents and his 2006 affidavit, were not available to the defendants in the exercise of reasonable diligence during or within 120 days of their trials.

7. The parties stipulate and agree that the State's case against the defendants was based almost exclusively on the false narrative provided by William Avery Jr., and that there was no other physical or circumstantial evidence implicating the defendants in the murder of Marsha Blakely.

8. The parties stipulate and agree that without the information provided by William Avery Jr., there would have been no basis to prosecute the defendants for the murder of Marsha Blakely.

9. The parties stipulate and agree that without the testimony of William Avery Jr., which the State now believes has been rendered totally unreliable, the defendants would not have been convicted of the charges in the indictment.

10. The parties stipulate and agree that in light of the evidence as it is now known to the State, the defendants' convictions cannot withstand scrutiny.

11. The parties stipulate and agree that the State does not have sufficient evidence to retry the defendants for the murder of Marsha Blakely.

Respectfully submitted,

J.D. Tomlinson (0081796)
Lorain County Prosecuting Attorney
225 Court Street, #3
Elyria, Ohio 44035
Ph: 440-329-5631
lcp@lcprosecutor.org

Joshua Dubin
Executive Director, Perlmutter Center for
Legal Justice at Cardozo Law
55 5th Avenue
New York, NY 10003
joshua.dubin@yu.edu

Counsel for the State of Ohio

Shantya Goddard (103359)
Lauren Staley (0091335)
The Ohio Innocence Project
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, Ohio 45221
Ph: 513-556-0752
gibsons4@ucmail.uc.edu
staleyln@ucmail.uc.edu

Counsel for Defendants

Joanna Sanchez (0087717)
Nicholas Allen (0092979)
Wrongful Conviction Project
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Ph: 614-466-5394
joanna.sanchez@opd.ohio.gov
nicholas.allen@opd.ohio.gov

Counsel for Defendants

Counsel for Defendants

Kimberly Kendall Corral (0089866)
3311 Perkins Avenue
Suite 205
Cleveland, Ohio 44114
Ph: 216-401-3167
kkc@kimlawcrimlaw.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by email and/or regular U.S. mail to all parties to this matter on this 2nd day of December, 2024.

Kimberly Kendall Corral (0089866)
Counsel for Defendants

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2024 DEC -2 A 11: 17
COURT OF COMMON PLEAS
TOM ORLANDO

State of Ohio,	:	
Plaintiff	:	Hon. Raymond Ewers
v.	:	
Alfred Cleveland	:	Case No. 95CR046754
Ian Davis a.k.a. Benson Davis	:	Case Nos. 91CR040924, 93CR043666
John Austin Edwards	:	Case Nos. 91CR040926, 95CR046753
Lenworth Edwards,	:	Case Nos. 91CR040892, 91CR041238
Defendants.	:	

JOINT MOTION FOR NEW TRIAL AND MOTION TO DISMISS

Now come the parties in the above captioned matter, by and through Lorain County Prosecutor J.D. Tomlinson on behalf of the State of Ohio, and undersigned counsel on behalf of John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis, and jointly move this Court for an order vacating defendants' convictions pursuant to Crim.R. 33(D) and dismissing the indictments charged against them pursuant to Crim.R. 48. The reasons for this motion are set forth in the parties' Joint Memorandum in Support, attached hereto as if fully incorporated herein.

Respectfully submitted,

J.D. Tomlinson (0081796)
Lorain County Prosecuting Attorney
225 Court Street, #3
Elyria, Ohio 44035
Ph: 440-329-5631
lcp@lcprosecutor.org

Counsel for the State of Ohio

Joshua Dubin
Executive Director, Perlmutter Center for
Legal Justice at Cardozo Law
55 5th Avenue
New York, NY 10003
joshua.dubin@yu.edu

Counsel for Defendants

Shantya Goddard (103359)
Lauren Staley (0091335)
The Ohio Innocence Project
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, Ohio 45221
Ph: 513-556-0752
gibsons4@ucmail.uc.edu
staleyln@ucmail.uc.edu

Counsel for Defendants

Joanna Sanchez (0087717)
Nicholas Allen (0092979)
Wrongful Conviction Project
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Ph: 614-466-5394
joanna.sanchez@opd.ohio.gov
nicholas.allen@opd.ohio.gov

Counsel for Defendants

Kimberly Kendall Corral (0089866)
3311 Perkins Avenue
Suite 205
Cleveland, Ohio 44114
Ph: 216-401-3167
kkc@kimlawcrimlaw.com

Counsel for Defendants

JOINT MEMORANDUM IN SUPPORT

John Edwards, Lenworth Edwards, Alfred Cleveland, and Benson Davis were each convicted, in separate trials, of the murder of Marsha Blakely. Marsha Blakely's body was discovered at 9:18 AM on August 8, 1991, behind Westgate Plaza (2538 West 21st Street) in Lorain, Ohio. The estimated time of death was between 12:00 AM and 3:00 AM. The body of Floyd Epps was discovered at 1:25 AM that same morning, less than a quarter mile away. It seemed likely that Ms. Blakely and Mr. Epps were murdered by the same individual(s): Ms. Blakely and Mr. Epps were known acquaintances and had been living together at Epps' apartment (2307 Sunset Boulevard in Lorain), both had nearly identical lacerations around their neck, and both had apparently been run over by a vehicle.

The Blakely and Epps homicide investigation did not produce many investigative leads, prompting the Lorain County Prosecutor's Office to offer a $2,000 reward in exchange for information that could establish a lead in the Blakely murder. Upon learning of the offer of a reward, William Avery Jr. came forward with information indicating that he had witnessed the murder of Marsha Blakely and implicated John Edwards, Lenworth Edwards, Benson Davis, and Alfred Cleveland in the crime.

The Lorain County Prosecutor's Office prosecuted Edwards, Edwards, Davis, and Cleveland in reliance on Avery Jr.'s testimony, securing convictions in all four defendants' trials.[1] In 2004, Avery Jr., unbeknownst to any of the defendants, contacted an FBI Agent and informed him that he lied during the trials of each of the defendants. In 2006, Avery Jr. offered an affidavit[2] formally recanting his testimony, prompting a hearing during defendant Alfred Cleveland's state

[1] Epps' murder remains an unsolved "cold case."
[2] Attached as Exhibit A.

post-conviction litigation. However, after learning he could face 20 to 30 years in prison for perjury, Avery Jr. declined to testify. He told a reporter after the hearing: "Dude's innocent... but I don't feel I have to go to jail for 30 years." *Cleveland v. Bradshaw*, 693 F.3d 626, 630 (6th Cir.2012). Cleveland later raised the issue in a federal habeas petition, and the United States Court of Appeals for the Sixth Circuit ultimately found Avery Jr.'s recantation credible and reliable. *Id.* at 640. However, on remand, Cleveland was denied habeas relief.

Three of the four defendants presented alibi evidence at their trials, and additional evidence has been developed since that time further establishing these alibis. This includes credible evidence from a probation officer, other witnesses, and phone records that strongly indicated that two of the defendants—Alfred Cleveland and Benson Davis—were in New York at the time of Blakely's murder.

Undersigned counsel for the defendants have conducted a thorough assessment and investigation of Edwards, Edwards, Cleveland, and Davis's independent and collective claims of innocence. In 2024, the four defendants engaged the Lorain County Prosecutor's Office in that process. As a result, there is no longer any dispute among the parties as to the credibility of Avery Jr.'s recantation, the reliability of the defendant's alibis, and the absence of <u>*any*</u> physical, forensic, and/or scientific evidence implicating the defendants in this crime.[3] Accordingly, the Lorain County Prosecutor's Office believes that the original theory of this case as presented cannot be upheld and that Alfred Cleveland, Benson Davis, Lenworth Edwards, and John Edwards's convictions in the murder of Marsha Blakely cannot withstand scrutiny.

[3] The facts and procedural history are more fully set forth in the defendants' November 12, 2024 Memorandum in Support of Innocence, which was previously presented to representatives of the Lorain County Prosecutor's Office.

A new trial may be granted upon a showing that a witness for the State engaged in misconduct, Crim.R. 33(A)(2), and upon a showing that new evidence material to the defense has been discovered, Crim.R. 33(A)(6). After a review of the evidence now known and available, the parties agree that these standards have been satisfied and that a new trial should be granted. Crim. R. 33(D) further dictates that, "when a new trial is granted by the trial court... the accused shall stand trial upon the charge or charges of which he was convicted." In light of the recognition that the State does not have sufficient evidence to retry the defendants, the parties jointly move this Court to dismiss the indictments in this matter pursuant to Crim.R. 48 and order the defendants discharged from further prosecution.

CONCLUSION

Accordingly, the State of Ohio, by and through Lorain County Prosecuting Attorney J.D. Tomlinson, joins with undersigned counsel on behalf of Lenworth Edwards, Alfred Cleveland, John Edwards, and Benson Davis, and respectfully asks this Court to vacate the defendants' convictions, dismiss the indictments in the above captioned matter, and order that the defendants be released from State custody and supervision and discharged from further prosecution.

Respectfully submitted,

J.D. Tomlinson (0081796)
Lorain County Prosecuting Attorney
225 Court Street, #3
Elyria, Ohio 44035
Ph: 440-329-5631
lcp@lcprosecutor.org

Counsel for the State of Ohio

Joshua Dubin
Executive Director, Perlmutter Center for
Legal Justice at Cardozo Law
55 5th Avenue
New York, NY 10003
joshua.dubin@yu.edu

Counsel for Defendants

Shantya Goddard (103359)
Lauren Staley (0091335)
The Ohio Innocence Project
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, Ohio 45221
Ph: 513-556-0752
gibsons4@ucmail.uc.edu
staleyln@ucmail.uc.edu

Counsel for Defendants

Joanna Sanchez (0087717)
Nicholas Allen (0092979)
Wrongful Conviction Project
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Ph: 614-466-5394
joanna.sanchez@opd.ohio.gov
nicholas.allen@opd.ohio.gov

Counsel for Defendants

Kimberly Kendall Corral (0089866)
3311 Perkins Avenue
Suite 205
Cleveland, Ohio 44114
Ph: 216-401-3167
kkc@kimlawcrimlaw.com

Counsel for Defendants

Exhibit A.1

Outlook

Fw: John Edwards

From Joshua Dubin <joshua.dubin@yu.edu>
Date Fri 8/28/2026 3:36 PM
To Christine Bella <christine.bella@yu.edu>; Emily Luongo <emily.luongo@yu.edu>; Erica Herz <erica.herz@yu.edu>; Derrick Hamilton <derrick.hamilton@yu.edu>; Karena Rahall <karena.rahall@yu.edu>

From: Joshua Dubin <joshua.dubin@yu.edu>
Sent: Tuesday, May 20, 2025 12:02 PM
To: Tony Cillo <tony.cillo@lcprosecutor.org>
Cc: Derrick Hamilton <derrick.hamilton@yu.edu>; Emily Lane <emily.lane@yu.edu>
Subject: John Edwards

Mr. Cillo:

I am following up for an update on your re-investigation. Can you please tell us the status? Has the DNA testing been conducted yet? An update and timeline for completion would be appreciated.

Josh

Perlmutter
Center for Legal Justice
at Cardozo Law

SEEKING
JUSTICE FOR THE
UNJUSTLY
INCARCERATED

Perlmutter
Freedom Clinic
at Cardozo Law

Perlmutter
Forensic Science
Education Program
at Cardozo Law

Tony Cillo
Loraine County Prosecutor
225 Court Street #3
Elyria, Ohio 44035

August 12, 2025

Mr. Cillo:

I write to you in what is now the twenty-ninth year of the wrongful conviction of John Edwards, Alfred Cleveland, Lenworth Edwards, and Benson Davis. As you are well aware, I represent John Edwards. As you are likewise aware, Lenworth Edwards and Alfred Cleveland were released on parole in 2020. John Edwards and Benson Davis continue to languish in prison. They fear for their lives daily. They live in horrid conditions. Their access to healthcare is limited. They haven't had an edible meal in decades. They are caged and counted and dehumanized every second of their existence. Al Cleveland and Lenworth Edwards continue to carry on as best they can, the impossible weight of decades in prison for crimes they did not commit still ever-present. Every check-in with their parole officer, the restriction on their ability to travel, to vote, to live as free, unencumbered human beings a constant reminder of the unfathomable wrong they have endured.

Whenever John Edwards calls me, which is rather frequently, I find myself panicked and apprehensive. I am running out of ways to reassure him that justice always prevails, that truth crushed to earth shall rise again. Somehow, he manages to cheer me up and reinvigorate my fighting spirit. I cannot understand, especially given the events of the past eight months, where he summons the strength and resilience to remain hopeful. Having worked in post-conviction for the past two decades, I am reminded that it is this triumphant spirit that propels me forward. This is a common trait of the wrongfully incarcerated; they possess an enduring life-force, an unexplainable will to live, to overcome against the tallest of odds. I think John and I both know that facts are stubborn, that an injustice as monumental as this cannot continue forever. Eventually, something will give.

So today I write to you, not lawyer to lawyer, but as a fellow human that hopes to appeal to your humanity. I am powerless over your opinion of, or animus toward your predecessor. With respect to the attorney that prosecuted this case nearly thirty years ago, I understand your reluctance to disagree with a former colleague and mentor.

Yes, vacating these men's convictions will naturally be a proclamation that your mentor got it wrong. That would not make him a bad man, but rather, a fallible human like the rest of us.

As you are surely well acquainted with the facts by now, I will not restate them here. However, there are some points that are worth emphasizing. First, you are no doubt aware that the *only* evidence linking these men to the murder of Marsha Blakely is a man that has since admitted, over and over and over, that he made it up. William Avery, Jr. confessed that he lied about the involvement of all four men in order to collect reward money to feed his father's drug habit. He admitted under oath that he concocted a story prior to Lenworth Edwards' trial (the first of the four to go to trial). He admitted to this made up story again in 2004 in a voluntary statement to the FBI, and again in 2006 in an affidavit in which he stated "I never witnessed the murder of Marsha Blakely. That was a story my father told me to tell." His recantation is supported by the fact that his version of what happened when he implicated the men is completely belied by the physical evidence. For instance, he claimed that the small apartment in which Ms. Blakely was badly beaten was left a mess. According to Avery, Jr., tables were overturned, chairs were on their side, a mattress was flipped over, and the struggle was so violent that there was blood everywhere. However, when officers photographed the apartment the morning that Ms. Blakely's body was found and mere hours after this alleged beating, there was no sign of a struggle in that apartment whatsoever. No overturned tables, no blood, nothing that matched Mr. Avery's account. As another example, Mr. Avery pinpointed the time of the beating and the timeframe in which Ms. Blakely was murdered. Yet she was literally seen all over town, by several people, *after* the time that Avery claims she was beaten and eventually murdered. The discrepancies between Avery's false version of events and the actual physical evidence is a hallmark of a false accusation. When Mr. Avery appeared at Mr. Cleveland's post-conviction hearing in connection with his 2006 affidavit, he ultimately did not testify after being told he would likely face perjury charges if he told the truth now. As he left the courthouse, he again admitted that he made all of this up, stating to a reporter from the Chronicle Telegram "Dude's innocent," referring to Mr. Cleveland.

Further, regardless of how you feel about the former Lorain County Prosecutor, he did indeed conduct a thorough reinvestigation of the case. He listened to the same comprehensive presentation that I made to you in March. He arrived at his decision to join the motion to vacate the conviction of all four men after asking tough questions, reading the trial record, and speaking to law enforcement involved in the investigation. He "searched for evidence to corroborate the convictions, but instead [he] found serious flaws in the case that cast overwhelming doubt — doubt in the physical evidence , doubt in Avery's testimony, and doubt in the State's ability to meet it's burden of proof." Anyone that has ever examined this case objectively cannot help but come to that same conclusion. To remind you, the full submission we made to your predecessor, with all

55 Fifth Avenue | New York, NY 10003-439
cardozo.yu.edu/PCLJ

referenced exhibits can be downloaded at www.freetheohio4.com, as well as the presentation I made to you in March.
The joint motion of the Lorain County Prosecutor, John Edwards, Al Cleveland, Benson Davis, and Lenworth Edwards was filed on December 2, 2024. Just three days later, you were quote in the Chronicle-Telegram as follows:

> "Four juries said they did this and listened to the evidence independently and that's how our system works. I don't understand the rush. ... This has been reviewed by how many courts, four different juries, and in a matter of weeks, (Tomlinson says) 'Everyone else is wrong and we're right.'"

Your comment to the press appears to reveal a personal issue with Mr. Tomlinson rather than a pursuit of the truth. If I may respectfully remind you, none of the juries at the trials of any of these men could have been aware that Mr. Avery, Jr., of his own volition, again admitted in 2004 and 2006 that he falsely implicated all four men. As the sixth circuit court of appeals held in 2012, "*Had the jury also been able to consider Avery's unsolicited 2004 recantation, the 2006 recanting affidavit, evidence that Cleveland was in New York a couple of hours before Blakely's murder and could not have flown from New York to Ohio in time to commit the murder, along with the fact that there was no other evidence tying Cleveland to the crime, "it surely cannot be said that a juror, conscientiously following the judge's instructions requiring proof beyond a reasonable doubt, would vote to convict."*

On just your second day in office, seemingly without reviewing a shred of evidence, you withdrew the Lorain County Prosecutor from the joint motion to dismiss.

When I made my presentation to you in March, I remained hopeful. I sent you a follow up email at the beginning of May inquiring about the status of your reinvestigation of this case. You ignored that inquiry. I left you a message via phone last week. You have ignored that as well. I have asked for an update on the status of your reinvestigation. I am asking for that again.

I'm quite sure there would be outrage if it was a member of the local community who vanished off the streets one day and was wrongfully accused, convicted and incarcerated for three decades for a horrific crime they did not commit. But these were not men from the local community. No doubt, there was a drug problem in parts of Lorain County in the 1990s. No doubt these men were part of that problem. That is why, without any evidence whatsoever, they appeared in a police report as potential suspects – branded the "drug dealers from New York," prior to William Avery, Jr. ever walking into the police station seeking to collect reward money. They may have been part of the drug problem that plagued Lorain County in the 1990s, but they are not murderers. They are sons, brothers, friends, fathers, and uncles. They are human beings. Whatever debt they owed to society for their involvement in the drug trade has long since been repaid. It is time to

put personal grievances and allegiances aside, and let justice prevail. These men are needlessly suffering.

Sincerely,



Josh Dubin

55 Fifth Avenue | New York, NY 10003-439
cardozo.yu.edu/PCLJ

In Support of the Innocence of John Austin Edwards

TUESDAY, MARCH 18, 2025

Josh Dubin
Executive Director
Perlmutter Center for Legal Justice at Cardozo Law

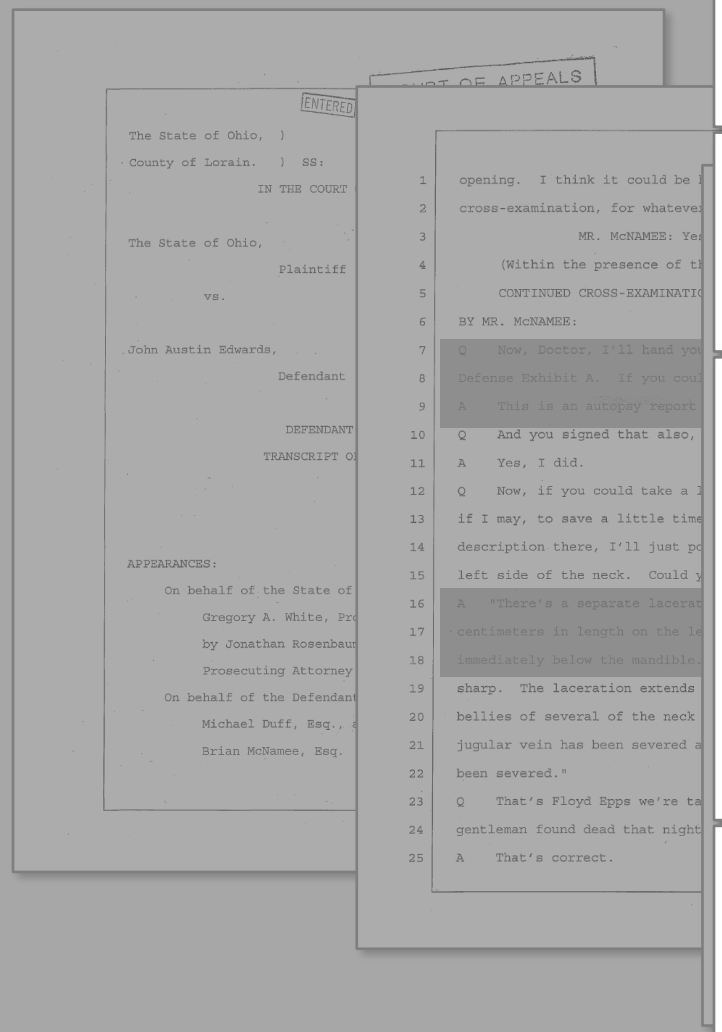
PRIVATE & CONFIDENTIAL

AUGUST 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8 Bodies of Floyd Epps and Marsha Blakely found	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Injuries and Cause of Death Were the Same

April 1, 1997
Cross-Examination of Dr. Robert Thomas


ENTERED

The State of Ohio,)
County of Lorain.) SS:
IN THE COURT

The State of Ohio,
Plaintiff
vs.
John Austin Edwards,
Defendant

DEFENDANT
TRANSCRIPT O

APPEARANCES:
On behalf of the State of
Gregory A. White, Pr
by Jonathan Rosenbaut
Prosecuting Attorney
On behalf of the Defendant
Michael Duff, Esq.,
Brian McNamee, Esq.

COURT OF APPEALS

opening. I think it could be
cross-examination, for whatev
MR. McNAMEE: Ye
(Within the presence of t
CONTINUED CROSS-EXAMINATI
BY MR. McNAMEE:
Q Now, Doctor, I'll hand yo
Defense Exhibit A. If you cou
A This is an autopsy report
Q And you signed that also,
A Yes, I did.
Q Now, if you could take a
if I may, to save a little time
description there, I'll just p
left side of the neck. Could y
A "There's a separate lacerat
centimeters in length on the le
immediately below the mandible,
sharp. The laceration extends
bellies of several of the neck
jugular vein has been severed a
been severed."
Q That's Floyd Epps we're ta
gentleman found dead that night
A That's correct.

Q Now, Doctor, I'll hand you what we have marked here as Defense Exhibit A. If you could identify that for the record?

A This is an autopsy report on Floyd Epps.

A "There's a separate laceration approximately 13 centimeters in length on the left side of the neck, located immediately below the mandible. The edges from this wound are

Q Please read this description of the laceration wound to Marsha Blakely.

A "The dominant feature is the presence of a 13 centimeter deep laceration in the midportion of the neck. This goes almost entirely through the trachea and lacerates the left internal jugular vein. The incision appears deeper on the

Q Now, in short, do those sound very much like exactly -- not exactly, very, very similar types of injuries to both of these people, is that correct?

A They do.

John Edwards Trial Tr. 58:7–60:12 (Ex. A12)

AUGUST 1991

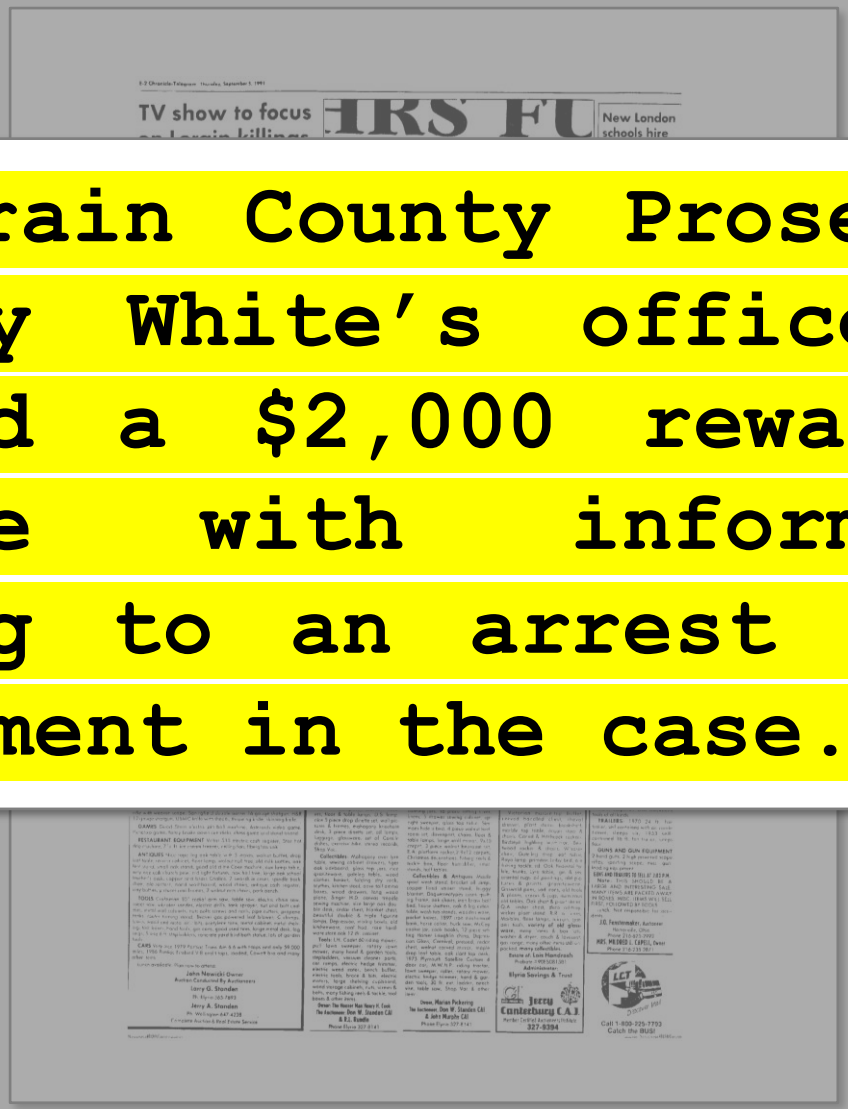
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8 Bodies of Floyd Epps and Marsha Blakely found	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Lorain County Prosecutor's Office Announces $2,000 Reward

September 5, 1991
Chronicle-Telegram


TV show to focus
New London schools hire

Lorain County Prosecutor Gregory White's office has offered a $2,000 reward to any-one with information leading to an arrest of an indictment in the case.

Chronicle-Telegram Articles (Ex. B)

SEPTEMBER 1991

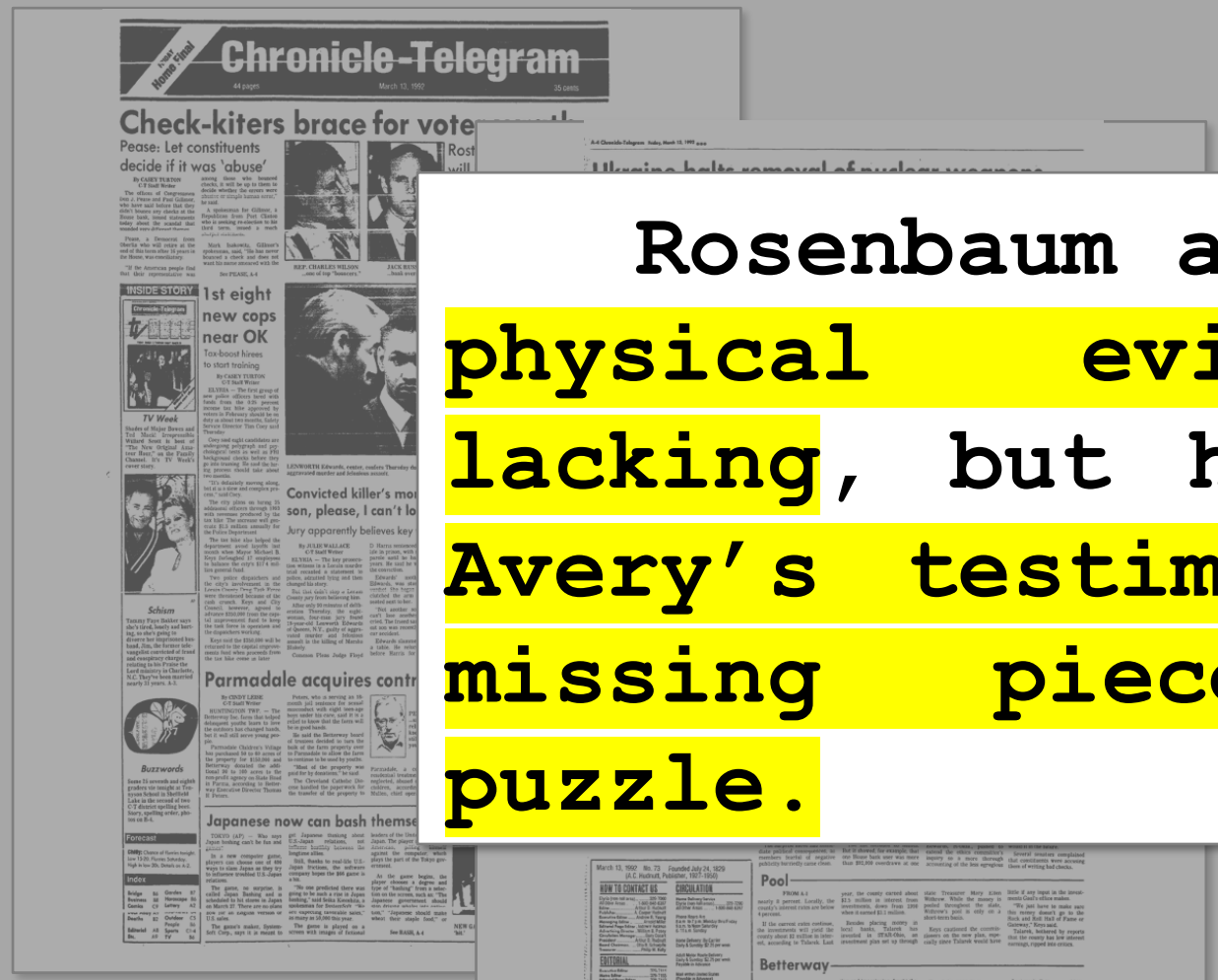
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10 Avery Sr. attempts to obtain reward	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

SEPTEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10 Avery Sr. attempts to obtain reward	11 Avery Jr. gives false statement to Lorain Police	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Prosecution's Case Depended on Avery Jr.'s Testimony

March 13, 1992
Chronicle-Telegram


Chronicle-Telegram

Check-kiters brace for vote

Pease: Let constituents decide if it was 'abuse'

1st eight new cops near OK

Tax-boost hirees to start training

Convicted killer's mo

son, please, I can't lo

Jury apparently believes key

Parmadale acquires contr

Japanese now can bash themse

Rosenbaum admitted that **physical evidence was lacking**, but he said that **Avery's testimony was the missing piece of the puzzle.**

Chronicle-Telegram Articles (Ex. B)

WILLIAM AVERY JR.

Resident of Lorain County, Ohio

Informant for Lorain Police Department and U.S. Secret Service

Avery Jr.'s History of Providing False Statements in Exchange for Money

December 20, 1996
Letter from Special Agent Robert Weiss to

On 7/31/95, McArthur voluntarily submitted to a polygraph examination at the U.S. Secret Service Field Office. As a result of this examination, the information reported by McArthur was found to be deceptive. After further questioning regarding this incident, McArthur admitted he had fabricated the story believing that it would bring an end to the case. McArthur believed that once the case had ended, he would be able to collect reward money, which would enable him to leave town."

The Secret Service has initiated an investigation on McArthur at this time regarding the possibility of him compromising this investigation. It is possible that obstruction charges will be filed against McArthur in the future. Presently, McArthur has been terminated as a confidential informant and will no longer be used by this agency.

Letter from U.S. Secret Service to Lorain County Prosecutor's Office (Ex. G)

Avery Jr.'s History of Providing False Statements in Exchange for Money

April 4, 1997

Direct Examination of Special Agent Robert Weiss

Q Do you know his reputation in that community for truthfulness and honesty?

A He's not used any more by our agency because he was proven to be unreliable, untruthful.

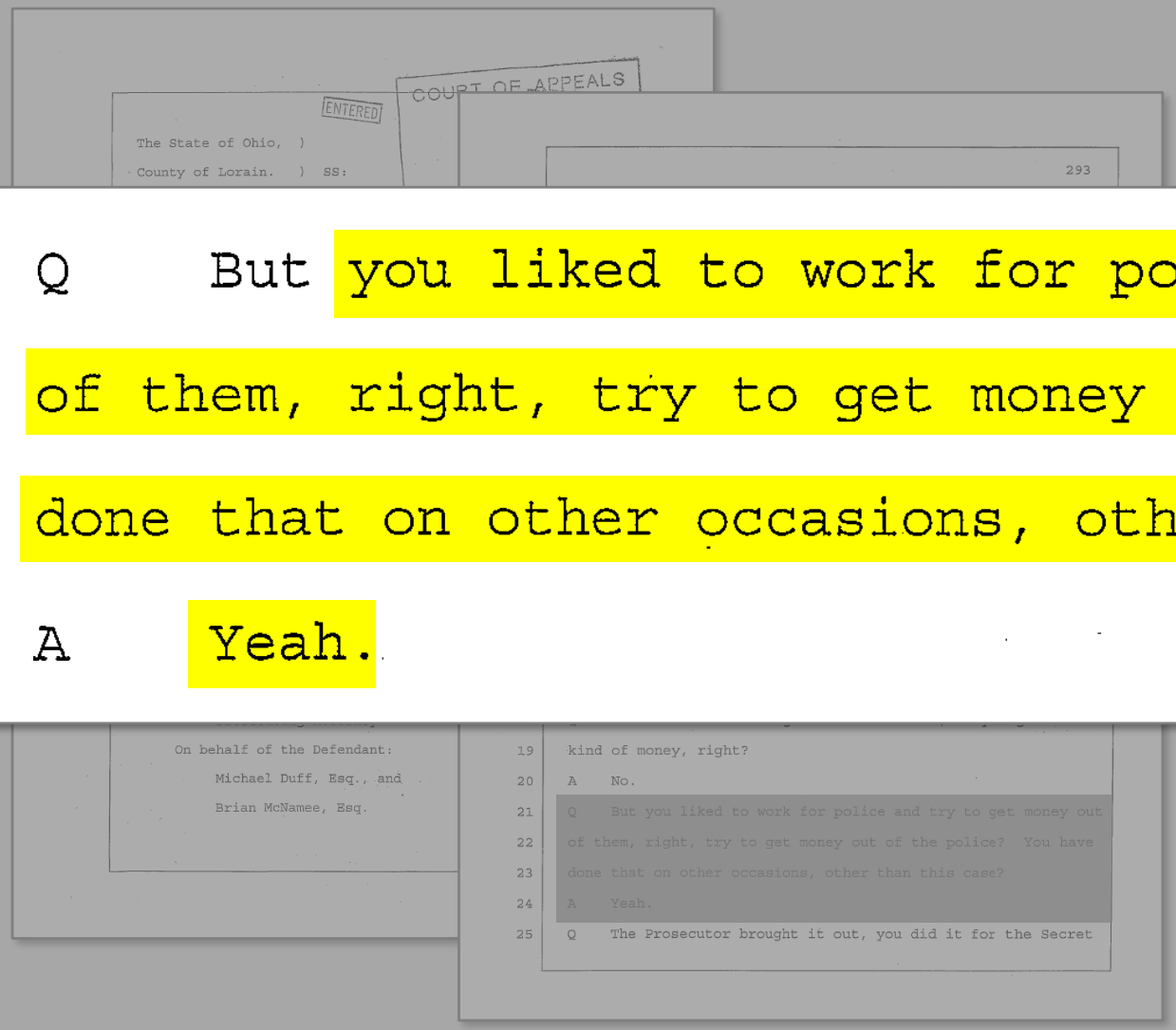
Q What do you mean unreliable?

A The particular case we were using him for, we had some problems with him. He jeopardized the safety of some agents and lied sometimes, and we discontinued him as an informant to our agency.

John Edwards Trial Tr. 537:14–22 (Ex. A3)

Avery Jr.'s History of Providing False Statements in Exchange for Money

April 3, 1997
Direct Examination of William Avery Jr.



Q But you liked to work for police and try to get money out of them, right, try to get money out of the police? You have done that on other occasions, other than this case?

A Yeah.

John Edwards Trial Tr. 293:21–24 (Ex. A2)

Avery Jr.'s History of Providing False Statements in Exchange for Money

April 3, 1997

Q All right. And when you said earlier that you got about $5,075, right, out of this case?

A Right.

Q That's one of the best jobs you had in say the last 10 years, isn't it?

A I don't consider this a job.

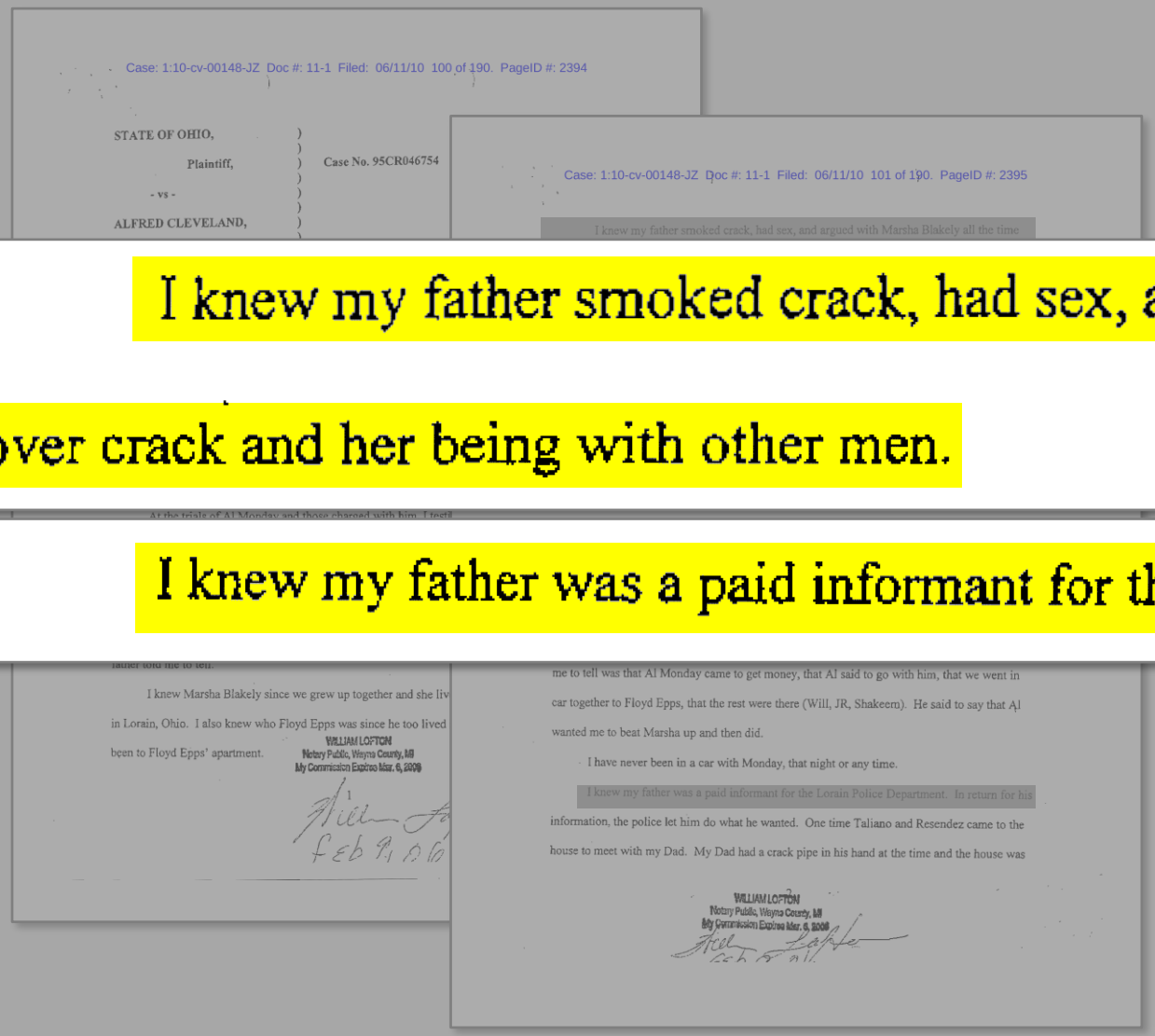
Q It's one of the best paying things you have done in the past 10 years?

A Yeah.

John Edwards Trial Tr. 339:9–17 (Ex. A2)

Being a Paid Informant Was a Family Enterprise

February 9, 2006
William Avery Jr. Recantation Affidavit



Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 100 of 190. PageID #: 2394

STATE OF OHIO,)
Plaintiff,) Case No. 95CR046754
- vs -)
ALFRED CLEVELAND,)

I knew Marsha Blakely since we grew up together and she liv
in Lorain, Ohio. I also knew who Floyd Epps was since he too lived
been to Floyd Epps' apartment.

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

feb 9, 06

Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 101 of 190. PageID #: 2395

I knew my father smoked crack, had sex, and argued with Marsha Blakely all the time

me to tell was that Al Monday came to get money, that Al said to go with him, that we went in
car together to Floyd Epps, that the rest were there (Will, JR, Shakeem). He said to say that Al
wanted me to beat Marsha up and then did.

I have never been in a car with Monday, that night or any time.

I knew my father was a paid informant for the Lorain Police Department. In return for his
information, the police let him do what he wanted. One time Taliano and Resendez came to the
house to meet with my Dad. My Dad had a crack pipe in his hand at the time and the house was

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

I knew my father smoked crack, had sex, and argued with Marsha Blakely all the time over crack and her being with other men.

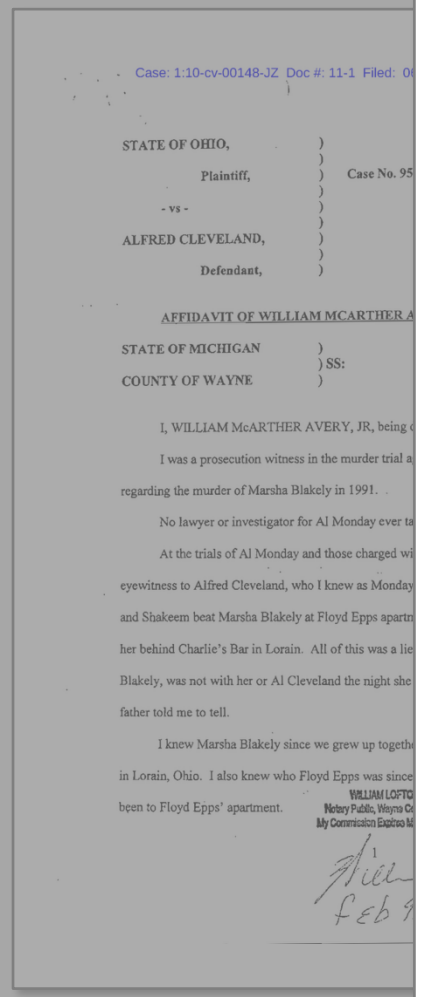
I knew my father was a paid informant for the Lorain Police Department.

William Avery Jr. Recantation Affidavit (Ex. K)

Avery Jr. Provides False Statement to Lorain Police

February 9, 2006

William Avery Jr. Rec



Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 0

STATE OF OHIO,)
Plaintiff,) Case No. 95
- vs -)
ALFRED CLEVELAND,)
Defendant,)

AFFIDAVIT OF WILLIAM MCARTHER A

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

I, WILLIAM McARTHER AVERY, JR, being

I was a prosecution witness in the murder trial a

regarding the murder of Marsha Blakely in 1991.

No lawyer or investigator for Al Monday ever ta

At the trials of Al Monday and those charged wi

eyewitness to Alfred Cleveland, who I knew as Monday

and Shakeem beat Marsha Blakely at Floyd Epps apartn

her behind Charlie's Bar in Lorain. All of this was a lie

Blakely, was not with her or Al Cleveland the night she

father told me to tell.

I knew Marsha Blakely since we grew up togeth

in Lorain, Ohio. I also knew who Floyd Epps was since

been to Floyd Epps' apartment.

WILLIAM LOFTO
Notary Public, Wayne Co
My Commission Expires M

1

feb 9

I first heard of the murder of Marsha Blakely while at my then girlfriend Patricia Gaddy' apartment in the Projects. A woman came to the house and said Marsha's body was found. I did not know who had done this, did not know anyone who was involved.

I then went to Charlotte Watkin's house who was also a girlfriend of mine in the early in the morning. My Dad came over to Charlotte's house and told me Marsha was dead and they were going to kill me too. He said he would tell me how you can get out of all this. He told me that I could say I was a witness. He pulled out some crack and we smoked. He then told me I had to memorize a story. This continued throughout the day and into the next. The story he told me to tell was that Al Monday came to get money, that Al said to go with him, that we went in car together to Floyd Epps, that the rest were there (Will, JR, Shakeem). He said to say that Al wanted me to beat Marsha up and then did.

I have never been in a car with Monday, that night or any time.

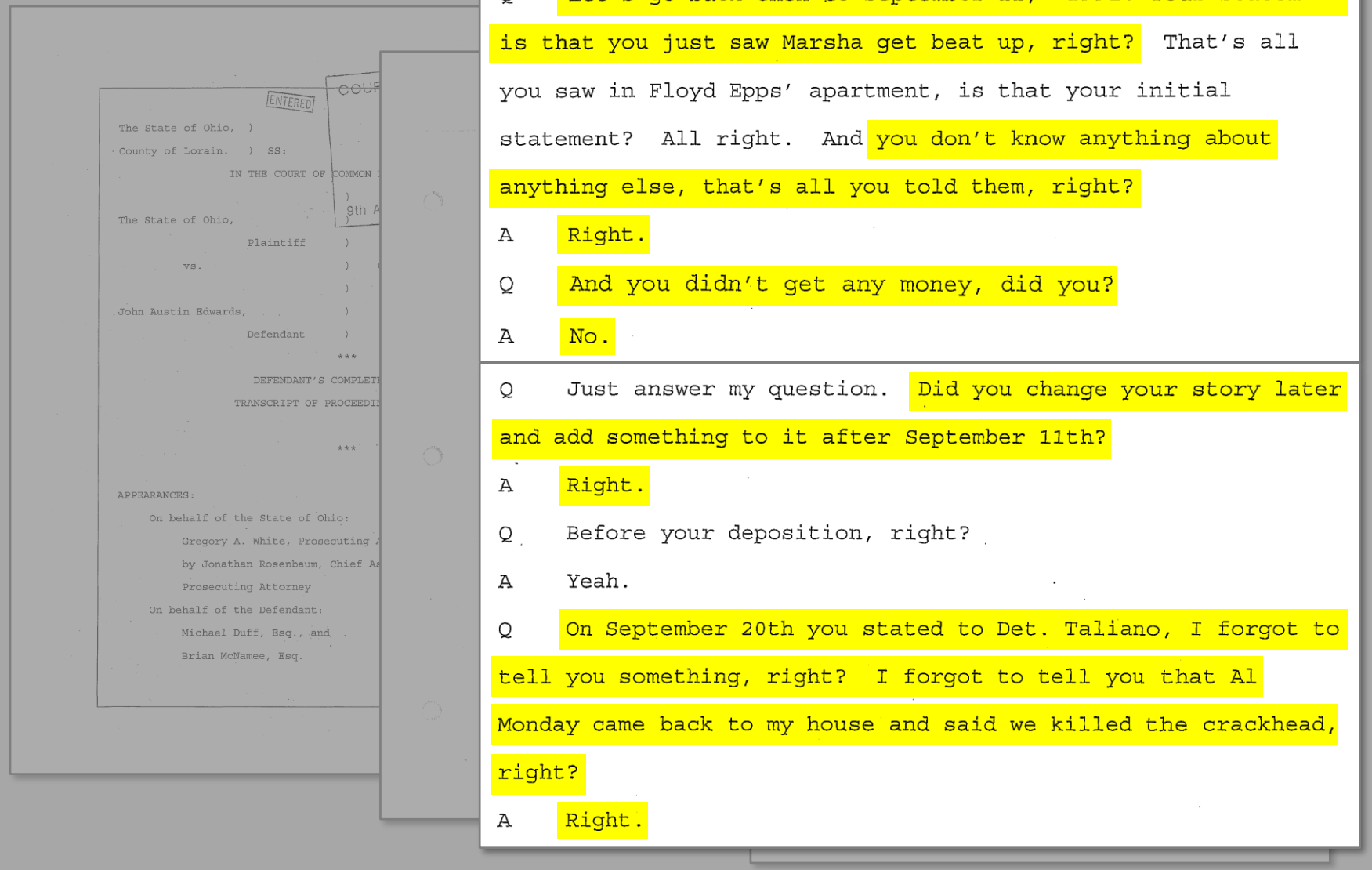
William Avery Jr. Recantation Affidavit (Ex. K)

SEPTEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10 NOT PAID obtain reward	11 NOT PAID statement to Lorain Police	12	13	14
15	16	17	18	19	20 Avery Jr. goes back to Lorain Police with “more information”	21
22	23	24	25	26	27	28
29	30					

Avery Jr. Changes Statement to Obtain Reward

April 3, 1997
Cross-Examination of William Ave



ENTERED

The State of Ohio,)
County of Lorain.) SS:
IN THE COURT OF COMMON
)
The State of Ohio,)
Plaintiff)
vs.)
)
John Austin Edwards,)
Defendant)
***
DEFENDANT'S COMPLETE
TRANSCRIPT OF PROCEEDI
***

APPEARANCES:
On behalf of the State of Ohio:
Gregory A. White, Prosecuting A
by Jonathan Rosenbaum, Chief As
Prosecuting Attorney
On behalf of the Defendant:
Michael Duff, Esq., and
Brian McNamee, Esq.

Q Let's go back then to September 11, 1991. Your statement is that you just saw Marsha get beat up, right? That's all you saw in Floyd Epps' apartment, is that your initial statement? All right. And you don't know anything about anything else, that's all you told them, right?

A Right.

Q And you didn't get any money, did you?

A No.

Q Just answer my question. Did you change your story later and add something to it after September 11th?

A Right.

Q Before your deposition, right?

A Yeah.

Q On September 20th you stated to Det. Taliano, I forgot to tell you something, right? I forgot to tell you that Al Monday came back to my house and said we killed the crackhead, right?

A Right.

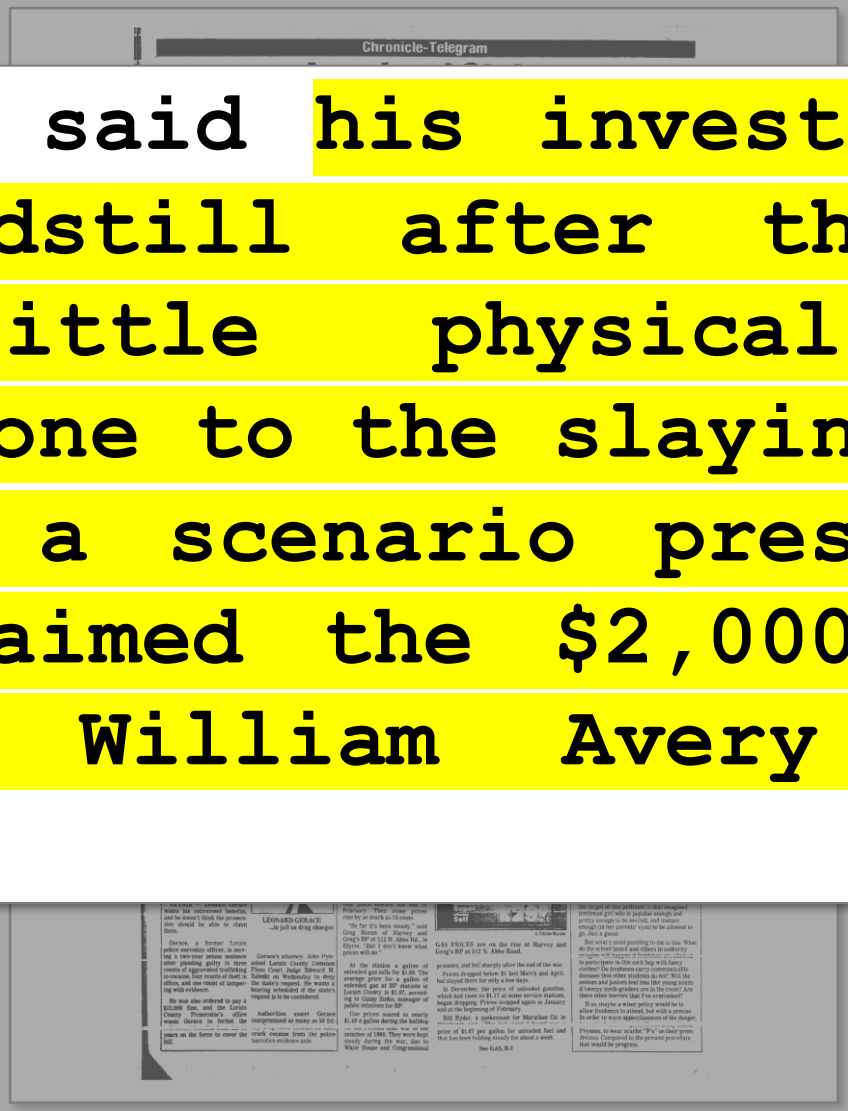
John Edwards Trial Tr. 299:20–300:22 (Ex. A2)

SEPTEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10 NOT PAID obtain reward	11 NOT PAID statement to Lorain Police	12	13	14
15	16	17	18	19	20 PAID “more information”	21
22	23	24	25	26 Avery Jr. gives oral deposition	27	28
29	30					

Lorain County Police Break Through in Case

March 12, 1992
Chronicle-Telegram


Chronicle-Telegram

Taliano said his investigation was at a standstill after the murders, because little physical evidence linking anyone to the slayings could be found. But a scenario presented by a man who claimed the $2,000 reward on the case, William Avery Jr., was convincing.

SEPTEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5 Announcement of reward for information	6	7
8	9	10 NOT PAID obtain reward	11 NOT PAID statement to Lorain Police	12	13	14
15	16	17	18	19	20 PAID “more information”	21
22	23	24	25	26 Avery Jr. gives oral deposition	27	28
29	30					

OCTOBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17 Avery Jr. refuses to testify at Lenworth Edwards trial	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Avery Jr. Attempts to Extort Prosecution for $10,000 at Trial

William Avery Jr.

April 10, 2006

Q. Was there an incident there where you wanted more money and they didn't want to give you more money, and you had a discussion with them about it?

A. Yes. My dad told me to ask Rosenbaum for $10,000.

Q. All right. What did Rosenbaum say when you asked him for $10,000.00?

A. $10,000.00? This ain't no bank.

Q. So he refused to give you the $10,000.00?

A. Right.

Q. What did you say?

A. Then I said it was all made up. I lied for the money.

Deposition of William Avery Jr. Tr. 15:12–16:5 (Ex. L)

DECEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17 Avery Jr. refuses to testify at Lenworth Edwards trial	18 Avery Jr. admits to perjury and begins serving time	19	20	21
22	23	24	25	26	27	28
29	30	31				

Avery Jr. Admits to Perjury

December 17, 1991
Direct Examination of William Avery Jr.

THE WITNESS: I'll perjure myself. I lied about everything. I lied cuz I needed the money. I wanted it.

THE COURT: When did you lie? Today?

THE WITNESS: Through everything. It was all a lie.

Lenworth Edwards Trial Tr. 246:18–247:1 (Ex. F)

DECEMBER 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17 Lenworth Edwards first trial begins and Avery Jr. refuses to testify	18 Avery Jr. admits to perjury and begins serving time	19	20	21
22	23	24	25	26	27	28
29	30	31				

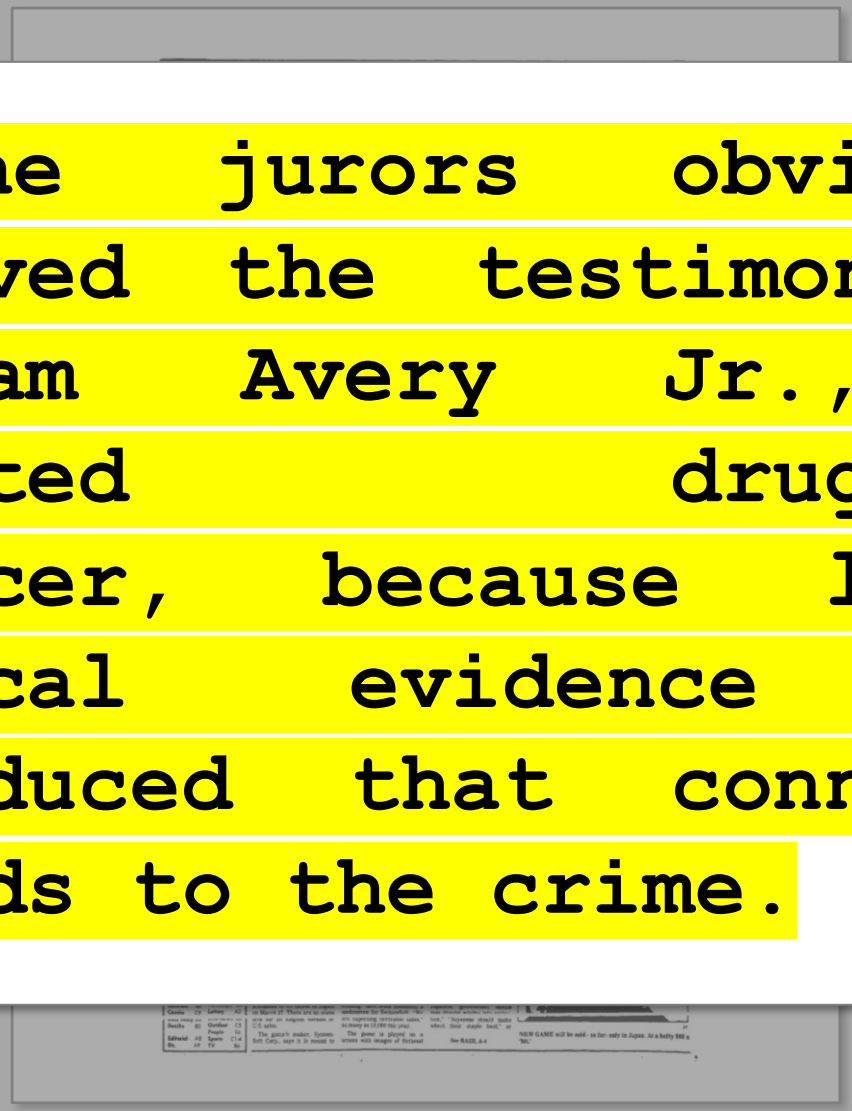
JANUARY 1992

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23 Avery Jr. tells Lorain Police he witnessed the murder	24	25
26	27	28	29	30	31	

Avery Jr. Testifies Against Lenworth Edwards

March 13, 1992
Chronicle-Telegram

The jurors obviously believed the testimony of William Avery Jr., an admitted drug-gang enforcer, because little physical evidence was introduced that connected Edwards to the crime.



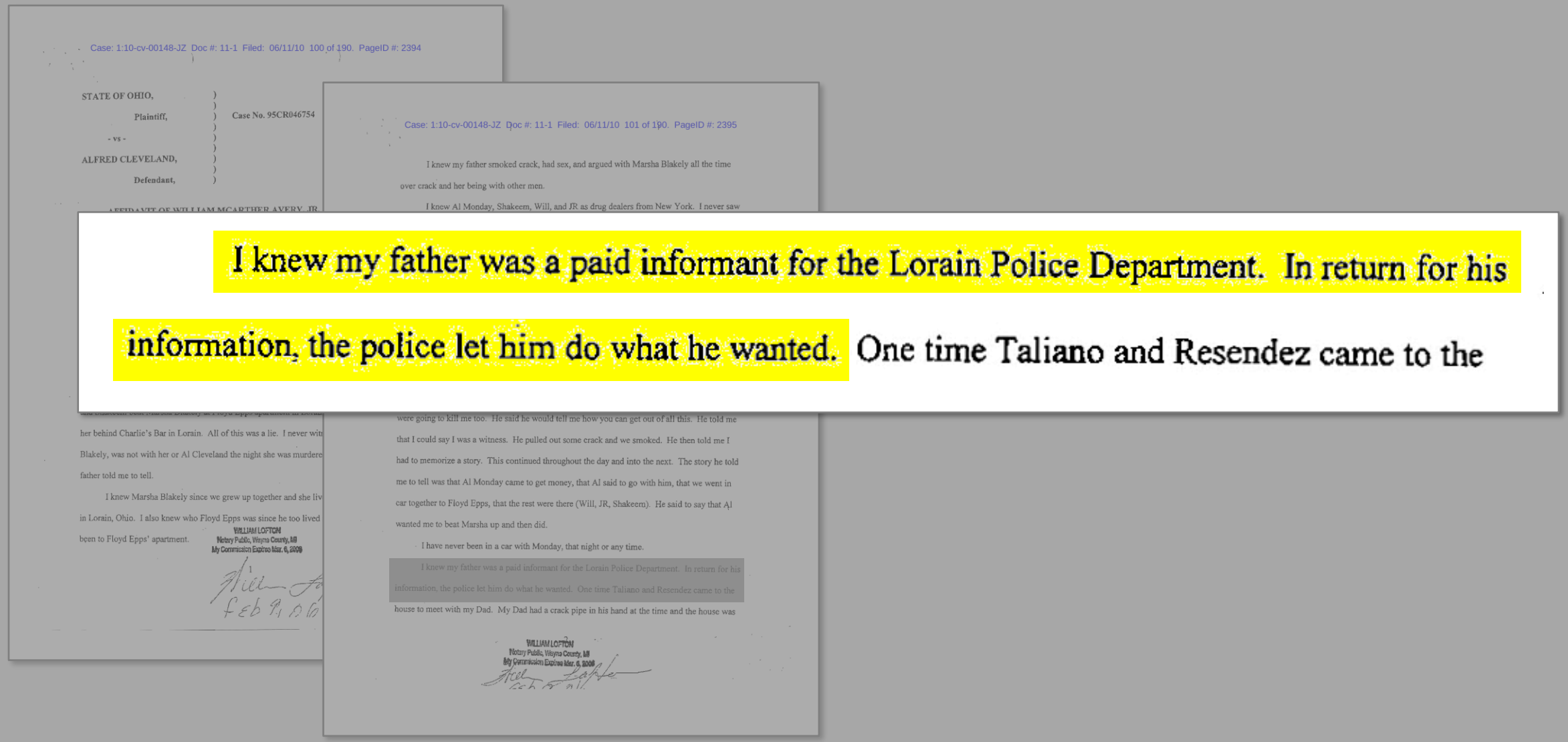
Chronicle-Telegram Articles (Ex. B)

CONTRIBUTING FACTORS TO AVERY JR.'S FALSE TESTIMONY



Avery Sr. Was a Paid Informant

February 9, 2006
William Avery Jr. Recantation Affidavit



Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 100 of 190. PageID #: 2394

STATE OF OHIO,)
Plaintiff,) Case No. 95CR046754
- vs -)
ALFRED CLEVELAND,)
Defendant,)

her behind Charlie's Bar in Lorain. All of this was a lie. I never wit
Blakely, was not with her or Al Cleveland the night she was murdere
father told me to tell.

I knew Marsha Blakely since we grew up together and she liv
in Lorain, Ohio. I also knew who Floyd Epps was since he too lived
been to Floyd Epps' apartment.

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

Feb 9, 06

Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 101 of 190. PageID #: 2395

I knew my father smoked crack, had sex, and argued with Marsha Blakely all the time over crack and her being with other men.

I knew Al Monday, Shakeem, Will, and JR as drug dealers from New York. I never saw

were going to kill me too. He said he would tell me how you can get out of all this. He told me that I could say I was a witness. He pulled out some crack and we smoked. He then told me I had to memorize a story. This continued throughout the day and into the next. The story he told me to tell was that Al Monday came to get money, that Al said to go with him, that we went in car together to Floyd Epps, that the rest were there (Will, JR, Shakeem). He said to say that Al wanted me to beat Marsha up and then did.

I have never been in a car with Monday, that night or any time.

I knew my father was a paid informant for the Lorain Police Department. In return for his information, the police let him do what he wanted. One time Taliano and Resendez came to the house to meet with my Dad. My Dad had a crack pipe in his hand at the time and the house was

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

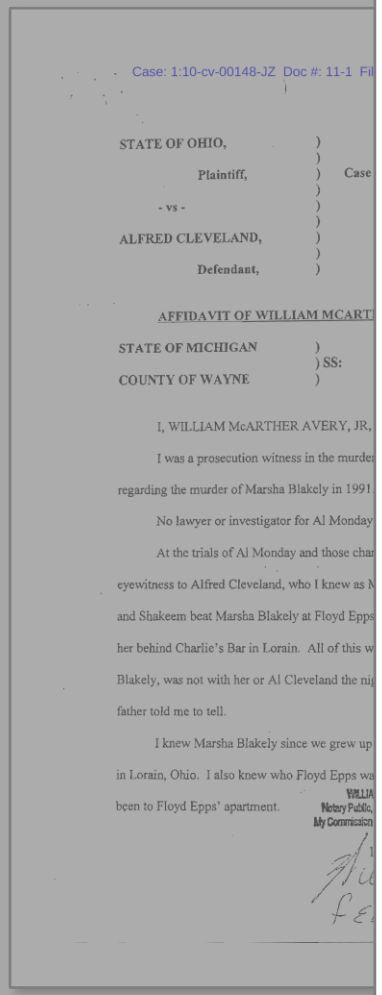
I knew my father was a paid informant for the Lorain Police Department. In return for his information, the police let him do what he wanted. One time Taliano and Resendez came to the

William Avery Jr. Recantation Affidavit (Ex. K)

Avery Sr. Threatened Avery Jr. Into Giving False Testimony

February 9, 2006

William Avery Jr. R



Case: 1:10-cv-00148-JZ Doc #: 11-1 Fil

STATE OF OHIO,)
Plaintiff,) Case
- vs -)
ALFRED CLEVELAND,)
Defendant,)

AFFIDAVIT OF WILLIAM MCART

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

I, WILLIAM McARTHER AVERY, JR.,

I was a prosecution witness in the murde

regarding the murder of Marsha Blakely in 1991

No lawyer or investigator for Al Monday

At the trials of Al Monday and those char

eyewitness to Alfred Cleveland, who I knew as N

and Shakeem beat Marsha Blakely at Floyd Epps

her behind Charlie's Bar in Lorain. All of this w

Blakely, was not with her or Al Cleveland the ni

father told me to tell.

I knew Marsha Blakely since we grew up

in Lorain, Ohio. I also knew who Floyd Epps wa

been to Floyd Epps' apartment.

WILLIA
Notary Public,
My Commission

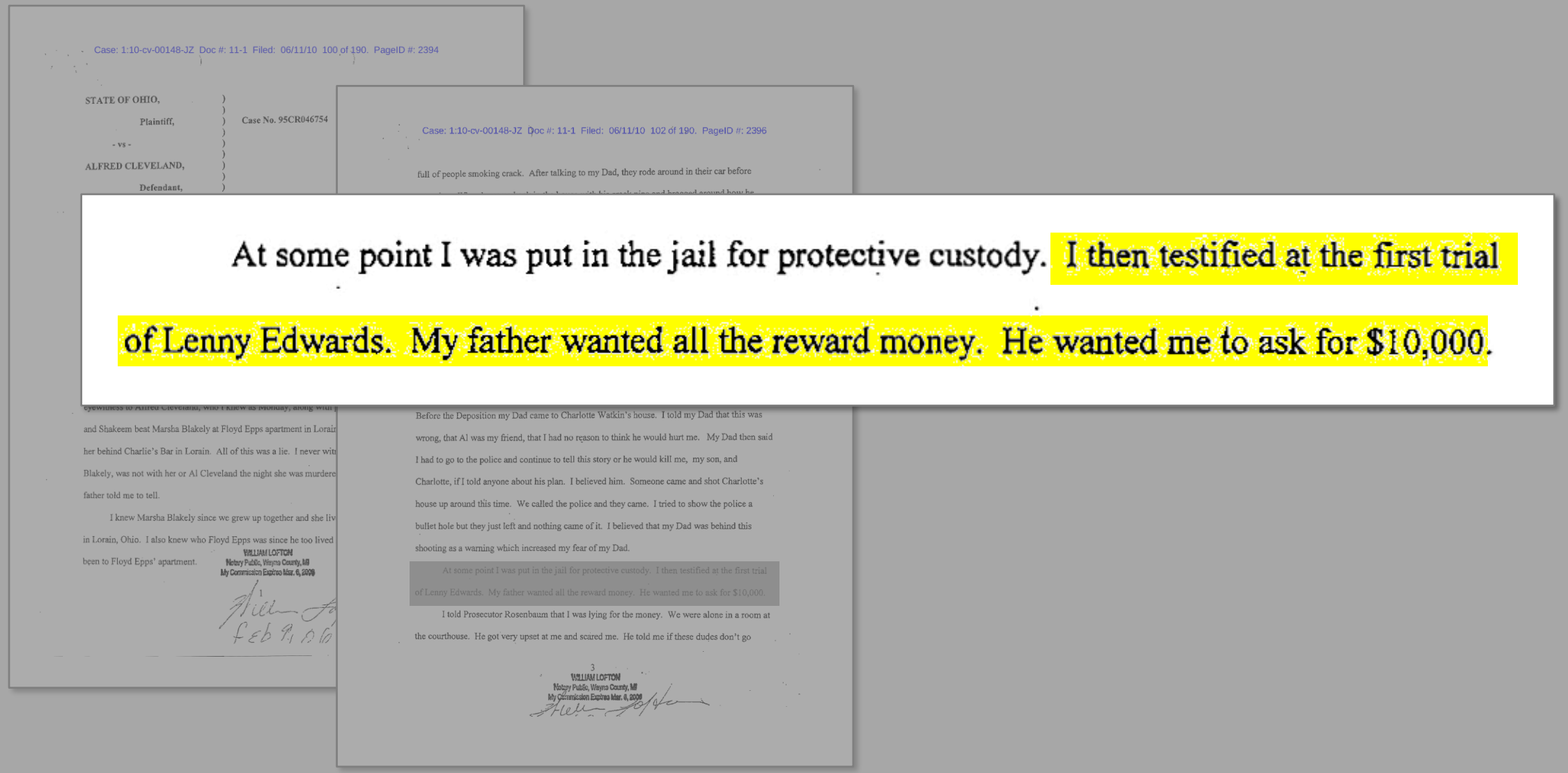
After I gave this first statement I was taken by the police to various motels. They gave my Dad money each day for food. I never saw any. One of the places was near Oberlain College. I tried to tell Taliano that I did not want my father around but the police ignored me.

I made a couple of statements and a Deposition about what my Dad told me to say. Before the Deposition my Dad came to Charlotte Watkin's house. I told my Dad that this was wrong, that Al was my friend, that I had no reason to think he would hurt me. My Dad then said I had to go to the police and continue to tell this story or he would kill me, my son, and Charlotte, if I told anyone about his plan. I believed him. Someone came and shot Charlotte's house up around this time. We called the police and they came. I tried to show the police a bullet hole but they just left and nothing came of it. I believed that my Dad was behind this shooting as a warning which increased my fear of my Dad.

William Avery Jr. Recantation Affidavit (Ex. K)

Avery Sr. Threatened Avery Jr. Into Giving False Testimony

February 9, 2006
William Avery Jr. Recantation Affidavit



Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 100 of 190. PageID #: 2394

STATE OF OHIO,)
Plaintiff,) Case No. 95CR046754
- vs -)
ALFRED CLEVELAND,)
Defendant,)

and Shakeem beat Marsha Blakely at Floyd Epps apartment in Lorain
her behind Charlie's Bar in Lorain. All of this was a lie. I never wit
Blakely, was not with her or Al Cleveland the night she was murdere
father told me to tell.

I knew Marsha Blakely since we grew up together and she liv
in Lorain, Ohio. I also knew who Floyd Epps was since he too lived
been to Floyd Epps' apartment.

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

1

feb 9, 06

Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 102 of 190. PageID #: 2396

full of people smoking crack. After talking to my Dad, they rode around in their car before

Before the Deposition my Dad came to Charlotte Watkin's house. I told my Dad that this was wrong, that Al was my friend, that I had no reason to think he would hurt me. My Dad then said I had to go to the police and continue to tell this story or he would kill me, my son, and Charlotte, if I told anyone about his plan. I believed him. Someone came and shot Charlotte's house up around this time. We called the police and they came. I tried to show the police a bullet hole but they just left and nothing came of it. I believed that my Dad was behind this shooting as a warning which increased my fear of my Dad.

At some point I was put in the jail for protective custody. I then testified at the first trial of Lenny Edwards. My father wanted all the reward money. He wanted me to ask for $10,000.

I told Prosecutor Rosenbaum that I was lying for the money. We were alone in a room at the courthouse. He got very upset at me and scared me. He told me if these dudes don't go

3

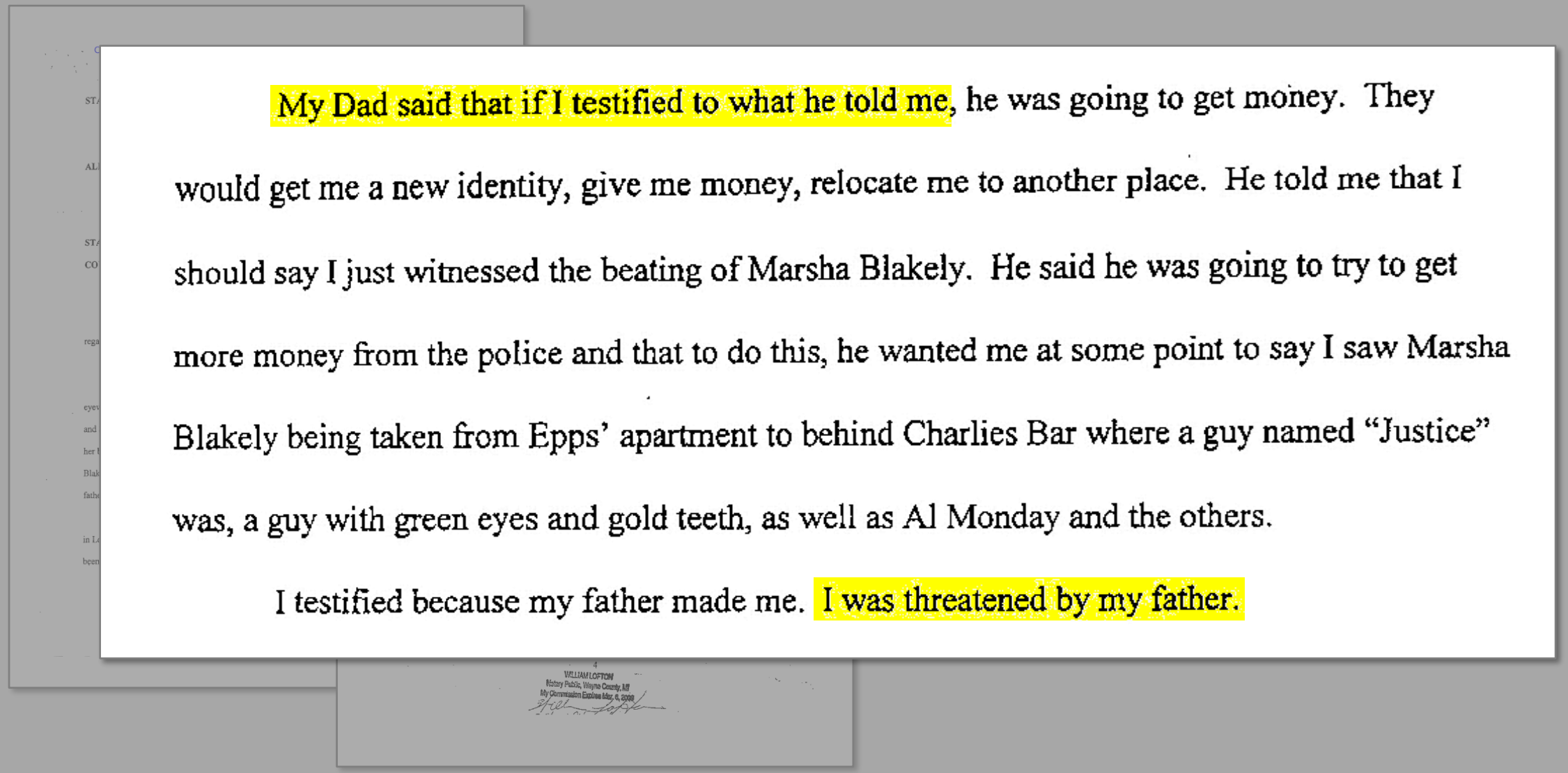
WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

At some point I was put in the jail for protective custody. I then testified at the first trial of Lenny Edwards. My father wanted all the reward money. He wanted me to ask for $10,000.

William Avery Jr. Recantation Affidavit (Ex. K)

Avery Sr. Threatened Avery Jr. Into Giving False Testimony

February 9, 2006
William Avery Jr. Recantation Affidavit



My Dad said that if I testified to what he told me, he was going to get money. They would get me a new identity, give me money, relocate me to another place. He told me that I should say I just witnessed the beating of Marsha Blakely. He said he was going to try to get more money from the police and that to do this, he wanted me at some point to say I saw Marsha Blakely being taken from Epps' apartment to behind Charlies Bar where a guy named "Justice" was, a guy with green eyes and gold teeth, as well as Al Monday and the others.

I testified because my father made me. I was threatened by my father.

4

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2008

William Avery Jr. Recantation Affidavit (Ex. K)

CONTRIBUTING FACTORS TO AVERY JR.'S FALSE TESTIMONY



CONTRIBUTING FACTORS TO AVERY JR.'S FALSE TESTIMONY



Police Influenced Avery Jr.'s Statements

William Avery Jr.

April 10, 2006

Q. All right. So your father went to the police, the local police in Lorain, and he laid the groundwork for you to go and see them, right?

A. Right.

Q. And you tell them the story about Cleveland and them committed the murder?

A. Right. And they had the pictures and everything on the desk, you know, asking me about the apartment.

Q. From the murder scene and everything?

A. Right. With the pictures right in my face.

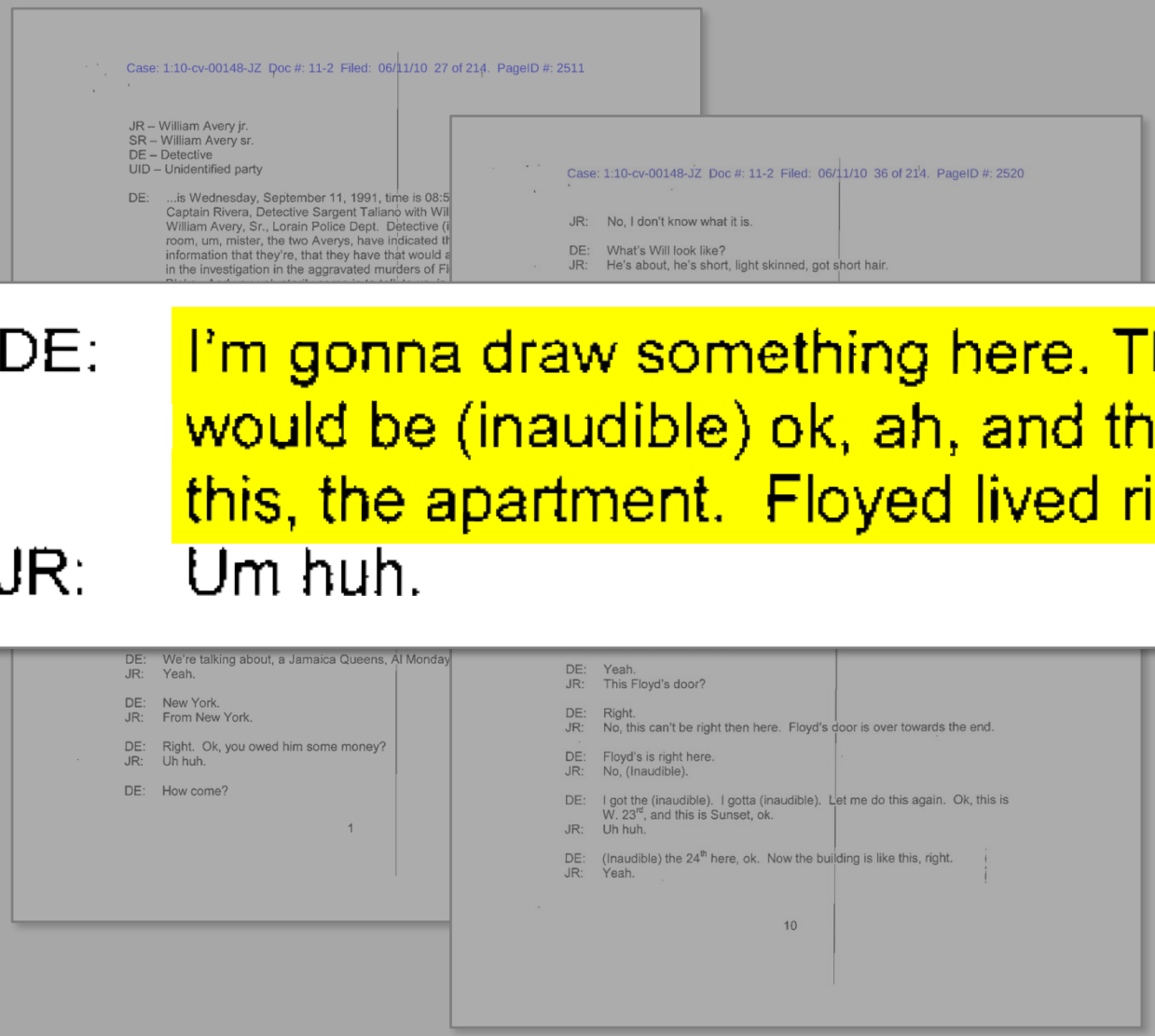
Q. Prior to seeing those pictures, did you ever see that murder scene in person?

A. I ain't never been in there.

Deposition of William Avery Jr. Tr. 13:2–24 (Ex. L)

Police Influenced Avery Jr.'s Statements

September 11, 1991
Interview of William Avery Jr.



Case: 1:10-cv-00148-JZ Doc #: 11-2 Filed: 06/11/10 27 of 214. PageID #: 2511

JR – William Avery jr.
SR – William Avery sr.
DE – Detective
UID – Unidentified party

DE: ...is Wednesday, September 11, 1991, time is 08:5
Captain Rivera, Detective Sargent Taliano with Wil
William Avery, Sr., Lorain Police Dept. Detective (i
room, um, mister, the two Averys, have indicated th
information that they're, that they have that would a
in the investigation in the aggravated murders of Fl

Case: 1:10-cv-00148-JZ Doc #: 11-2 Filed: 06/11/10 36 of 214. PageID #: 2520

JR: No, I don't know what it is.

DE: What's Will look like?
JR: He's about, he's short, light skinned, got short hair.

DE: We're talking about, a Jamaica Queens, Al Monday
JR: Yeah.

DE: New York.
JR: From New York.

DE: Right. Ok, you owed him some money?
JR: Uh huh.

DE: How come?

1

DE: Yeah.
JR: This Floyd's door?

DE: Right.
JR: No, this can't be right then here. Floyd's door is over towards the end.

DE: Floyd's is right here.
JR: No, (Inaudible).

DE: I got the (inaudible). I gotta (inaudible). Let me do this again. Ok, this is W. 23rd, and this is Sunset, ok.
JR: Uh huh.

DE: (Inaudible) the 24th here, ok. Now the building is like this, right.
JR: Yeah.

10

DE: I'm gonna draw something here. This is 23rd, ok, this is 23rd street, this would be (inaudible) ok, ah, and this is Sunset, ok. The place looks like this, the apartment. Floyed lived right in this corner here.

JR: Um huh.

Lorain County Police First Interview of William Avery Jr. (Ex. C)

HOW AVERY JR. BUILT HIS STORY



DATE	STORIES		AWARD
SEP 11, 1991	VERSION 1 Ex. C at 3–4, 12	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but went home and **did not know whether she was dead**	

Version 1

September 11, 1991
Interview of William Avery Jr.

DE: Ok. So, when you got in there, what happened?
JR: He said this is the one I want you to mess up. I want you to mess her up bad. And I told him that I'm not messing with her, because I know her and I grew up with her, I did in the projects. And then Shakim said "Well she knows, she knows, and they started beating on her.

DE: Ok, so they knocked her out and they carried her off. Um, what were they asking? While they were hitting her, were they asking her anything?
JR: They, uh, wasn't nobody saying nothing but Shakim. "Where's my shit at? What'd you do with it?", and um, she wasn't saying nothing, just fighting. And they knocked her out and they drug her up out of there, and they went their way and I went to the house. And I...

DE: Uh huh.
JR: We came out, me and Al, and um, the one dude got in this car. They took me home.

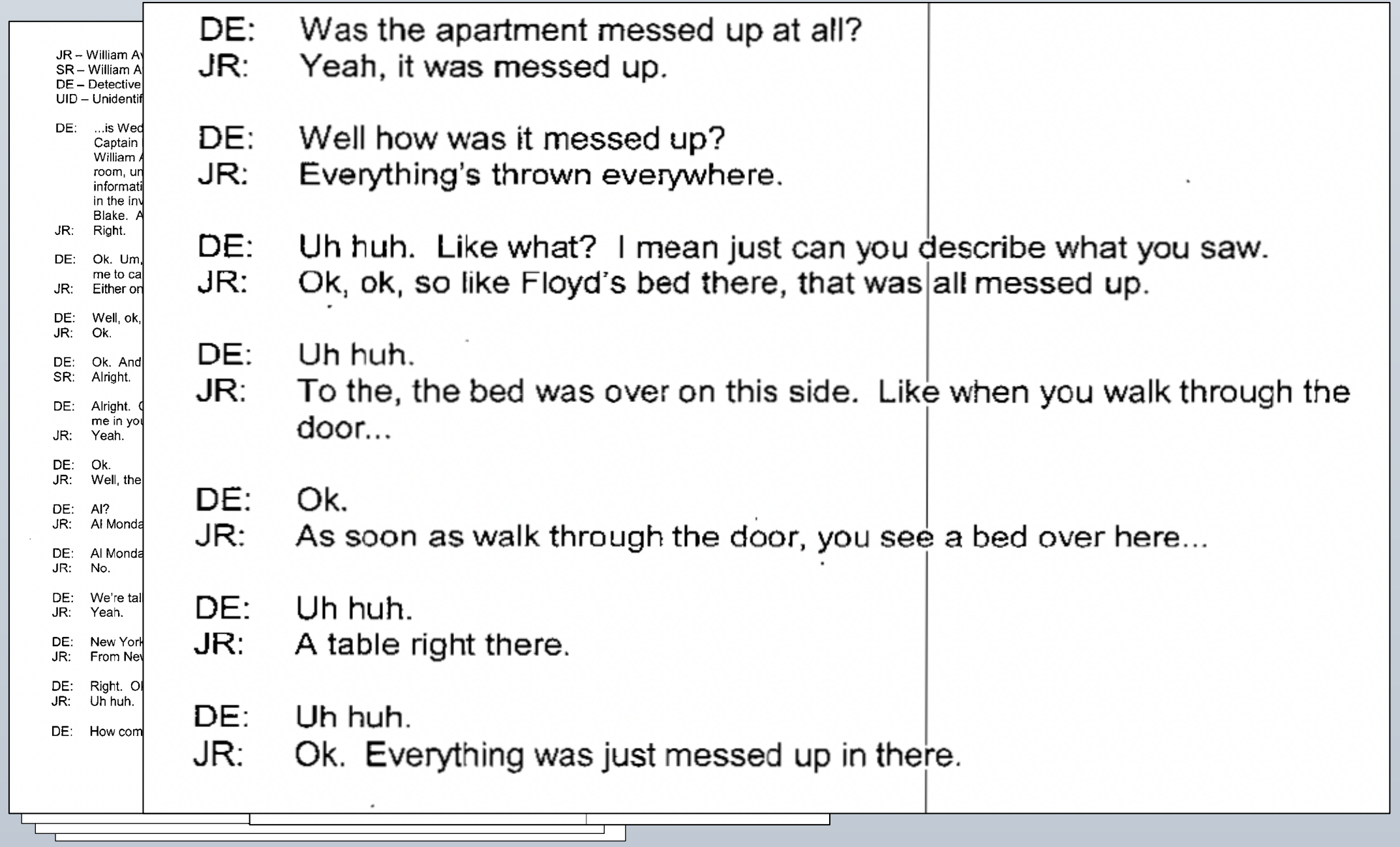
Lorain County Police First Interview of William Avery Jr. (Ex. C)

DATE	STORIES		AWARD
SEP 11, 1991	VERSION 1 Ex. C at 3–4, 12	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but went home and did not know whether she was dead	$0 Exhibit A2 at 299–300
SEP 20, 1991	VERSION 2 Ex. E at 1–2	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but **Avery Jr. went home and Al Monday told him they killed Blakely**	

DATE	STORIES		AWARD
SEP 11, 1991	VERSION 1 Ex. C at 3–4, 12	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but went home and did not know whether she was dead	$0 Exhibit A2 at 299–300
SEP 20, 1991	VERSION 2 Exhibit E at 2–3	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but Avery Jr. went home and Al Monday told him they killed Blakely	$2,000 + $1000 (relocation) Exhibit A2 at 271–272
JAN 23, 1992	**VERSION 3** Ex. D at 8–9	Avery Jr. witnessed Blakely get beaten and dragged out of the house and then **drove with Al Monday to Westgate Plaza and watched Blakely get stabbed multiple times**	

DATE	STORIES	AWARD
SEP 11, 1991	VERSION 1 Ex. C at 3–4, 12	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but went home and did not know whether she was dead	$0 Exhibit A2 at 299–300
SEP 20, 1991	VERSION 2 Exhibit E at 1–2	Avery Jr. witnessed Blakely get beaten and dragged out of the house, but Avery Jr. went home and Al Monday told him they killed Blakely	$2,000 + $1000 (relocation) Exhibit A2 at 271–272
JAN 23, 1992	VERSION 3 Ex. D at 8–9	Avery Jr. witnessed Blakely get beaten and dragged out of the house and then drove with Al Monday to Westgate Plaza and watched Blakely get stabbed multiple times	$25/day as material witness at trials Exhibit A2 at 291
OVER 1.5 MONTHS	3 DIFFERENT STORIES	TOTAL: $5,075 Exhibit A2 at 291

AVERY'S DESCRIPTION DID NOT MATCH PHYSCIAL EVIDENCE



JR – William Av
SR – William A
DE – Detective
UID – Unidentif

DE: ...is Wed
Captain
William A
room, un
informati
in the inv
Blake. A
JR: Right.

DE: Ok. Um,
me to ca
JR: Either on

DE: Well, ok,
JR: Ok.

DE: Ok. And
SR: Alright.

DE: Alright. C
me in you
JR: Yeah.

DE: Ok.
JR: Well, the

DE: Al?
JR: Al Monda

DE: Al Monda
JR: No.

DE: We're tal
JR: Yeah.

DE: New York
JR: From Nev

DE: Right. Ol
JR: Uh huh.

DE: How com

DE: Was the apartment messed up at all?
JR: Yeah, it was messed up.

DE: Well how was it messed up?
JR: Everything's thrown everywhere.

DE: Uh huh. Like what? I mean just can you describe what you saw.
JR: Ok, ok, so like Floyd's bed there, that was all messed up.

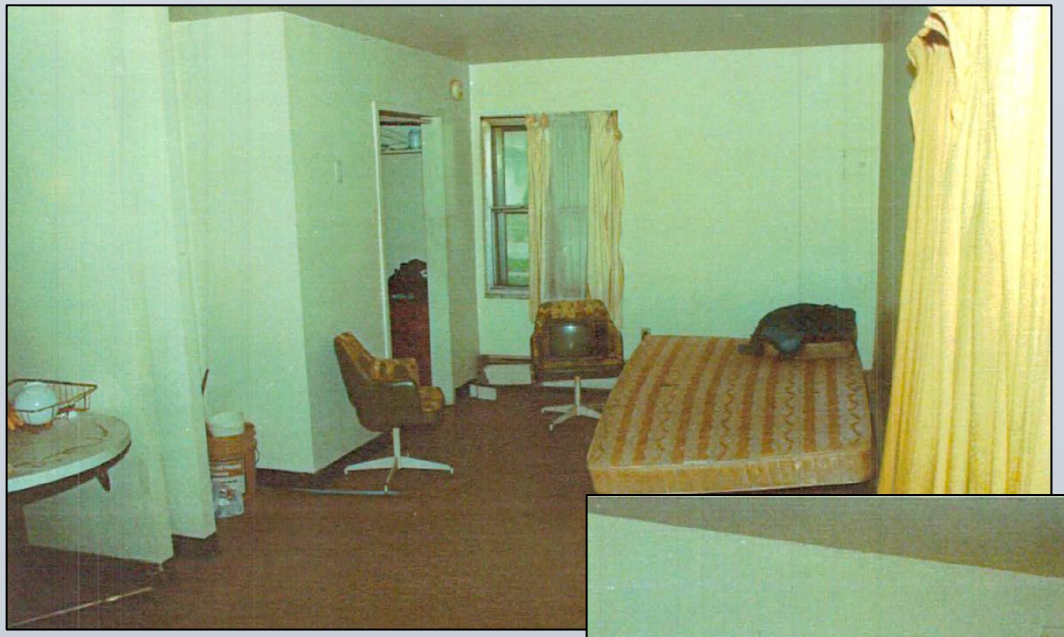
DE: Uh huh.
JR: To the, the bed was over on this side. Like when you walk through the door...

DE: Ok.
JR: As soon as walk through the door, you see a bed over here...

DE: Uh huh.
JR: A table right there.

DE: Uh huh.
JR: Ok. Everything was just messed up in there.

AVERY'S DESCRIPTION DID NOT MATCH PHYSCIAL EVIDENCE







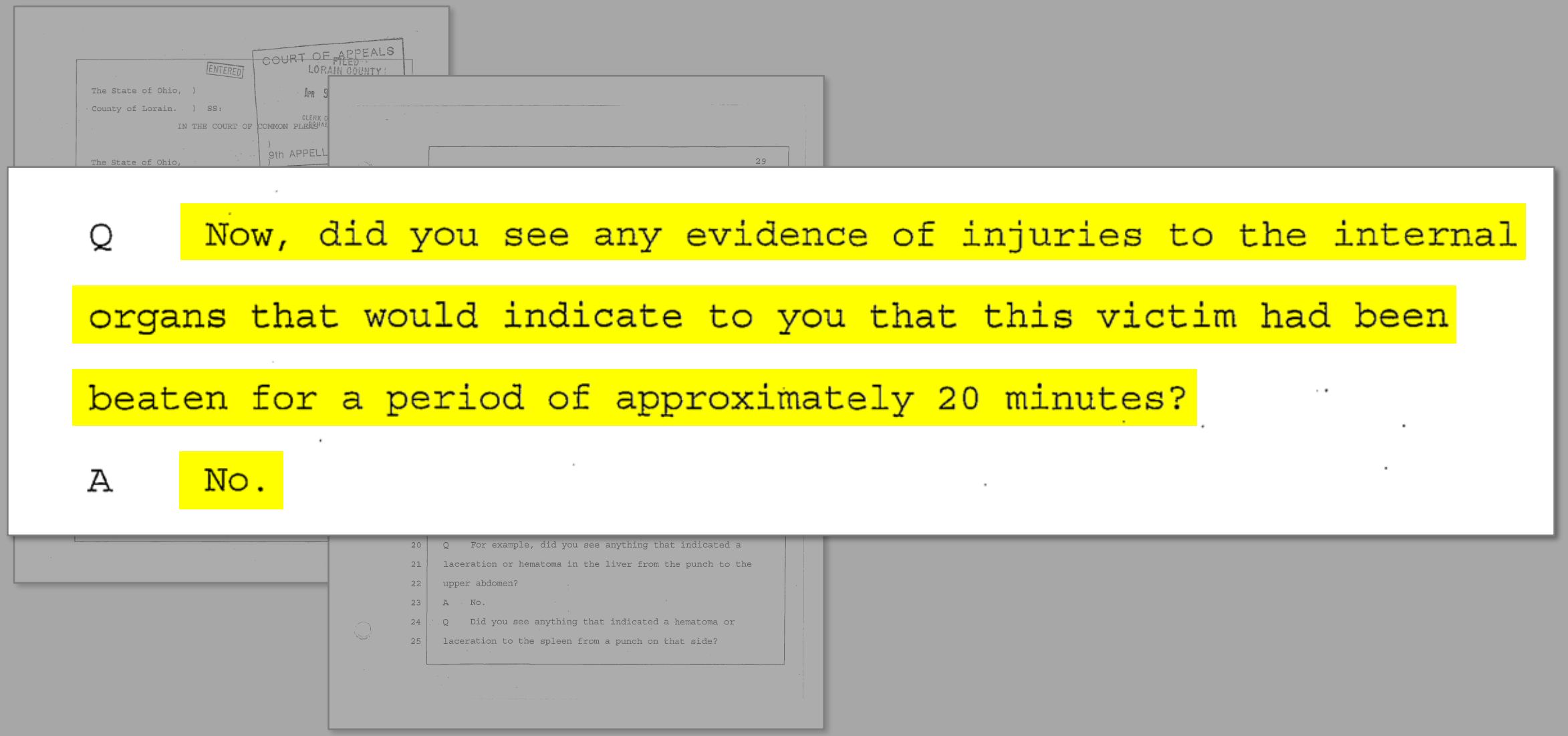
AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

PHYSICAL EVIDENCE

No Indication of Being Beat

April 1, 1997
Cross-Examination of Dr. Robert Thomas



Q Now, did you see any evidence of injuries to the internal organs that would indicate to you that this victim had been beaten for a period of approximately 20 minutes?

A No.

John Edwards Trial Tr. 29:16–19 (Ex. A12)

AVERY JR.'S STORY	PHYSICAL EVIDENCE
Blakely Beaten for 15–20 Mins	No Evidence of Internal Bleeding

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

Long: 11:00pm

Witness Sightings of Marsha Blakely

Marsha Blakely Homicide Report

Long stated that she spent a portion of Wenesday August 7, 1991 with Victim redacted Victim redacted Victim redacted Long had provided Victim redacted Victim redacted transportation to her childrens residence on the east side of the city. Further, she indicated that she transported Blakeky from the Lorain Drive area to Victim redacted Victim redacted Victim redacted Victim redacted residence on Sunset Blvd. Long indicated that she believed the period of time was between 2300 and 2300 hours on Wednesday August 7, 1991. The witness stated that Victim redacted Victim redacted changed from her British Knights gym shoes to a pair of blue house -style-slippers while being transported to the Victim redacted Victim redacted residence. She further indicated that the gym shoes were retained her her vehicle as of that date. Victim redacted reportedly, indiacted that she intended to remain in the Victim redacted Victim redacted residence for the evening. Long indicated that she felt that Victim redacted Victim redacted had used drugs on that date but did not relate that she felt Victim redacted Victim redacted was under the influence of narcotics at the noted time period. They spoke for five to ten minutes and Long drove from the area with a promise to transport Victim redacted Victim redacted to her children's location on Thursday August 8th. Long stated that she and her daughter spent the early morning hours on August 8, 1991 in the Leavitt Road car wash. For a complete account of the interview, refer to evidence Item # V2(x) as listed on Page# 3 of this report.

Reported by ..... CONTINUED ON PAGE# 39.....
Signature Signature

Marsha Blakely Homicide Report 91-30603 (Ex. I)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

No Evidence of Internal Bleeding

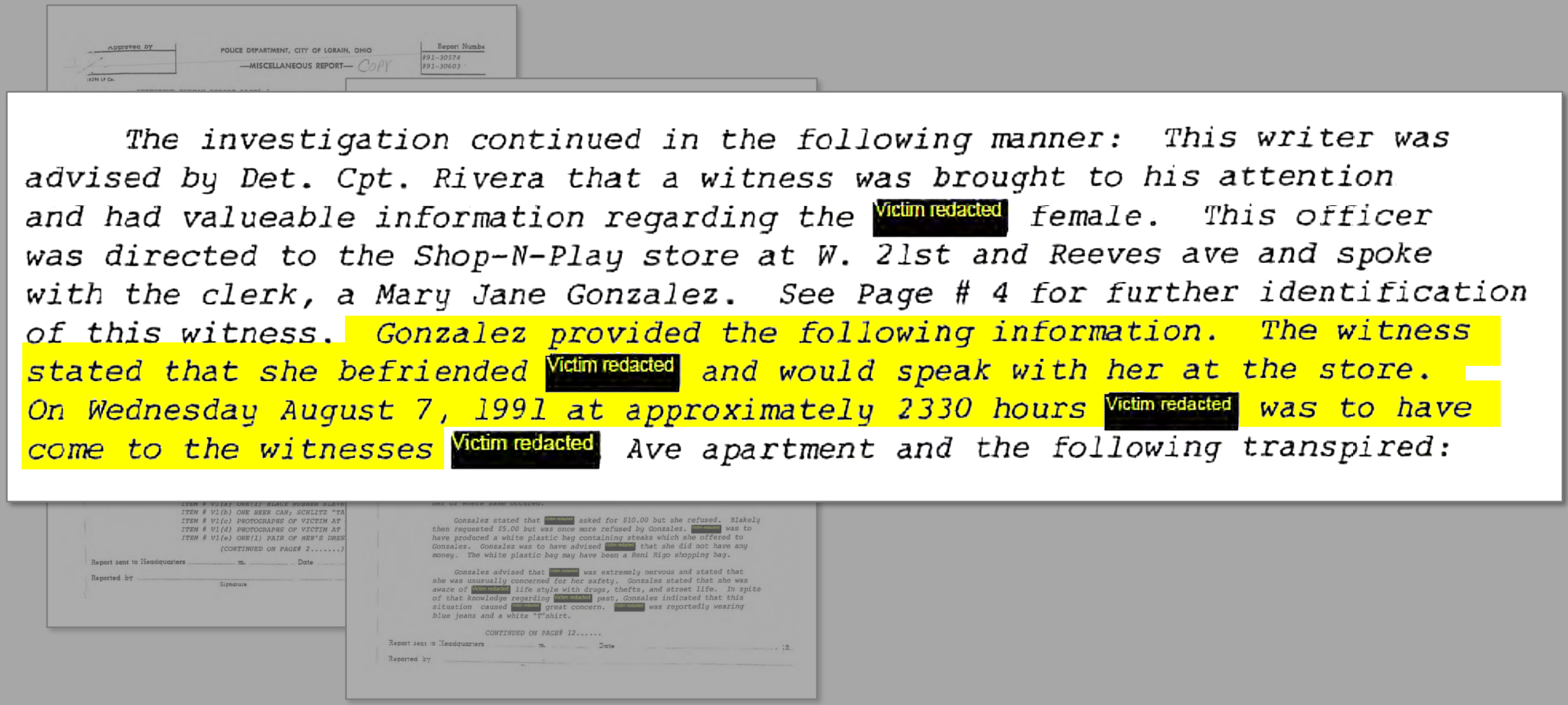
6 Sightings

Long: 11:00pm

Gonzalez: 11:30pm

Witness Sightings of Marsha Blakely

Marsha Blakely Homicide Report



POLICE DEPARTMENT, CITY OF LORAIN, OHIO
—MISCELLANEOUS REPORT— COPY
Report Numbe
#91-30574
#91-30603

The investigation continued in the following manner: This writer was advised by Det. Cpt. Rivera that a witness was brought to his attention and had valueable information regarding the Victim redacted female. This officer was directed to the Shop-N-Play store at W. 21st and Reeves ave and spoke with the clerk, a Mary Jane Gonzalez. See Page # 4 for further identification of this witness. Gonzalez provided the following information. The witness stated that she befriended Victim redacted and would speak with her at the store. On Wednesday August 7, 1991 at approximately 2330 hours Victim redacted was to have come to the witnesses Victim redacted Ave apartment and the following transpired:

ITEM # V1(a) ONE(1) BLACK RUBBER SLEVE
ITEM # V1(b) ONE BEER CAN; SCHLITZ "TA
ITEM # V1(c) PHOTOGRAPHS OF VICTIM AT
ITEM # V1(d) PHOTOGRAPHS OF VICTIM AT
ITEM # V1(e) ONE(1) PAIR OF MEN'S DRES
(CONTINUED ON PAGE# 2.....)
Report sent to Headquarters ..... m. ..... Date .....
Reported by .....
Signature

Gonzalez stated that Victim redacted asked for $10.00 but she refused. Blakely then requested $5.00 but was once more refused by Gonzalez. Victim redacted was to have produced a white plastic bag containing steaks which she offered to Gonzalez. Gonzalez was to have advised Victim redacted that she did not have any money. The white plastic bag may have been a Reni Rigo shopping bag.

Gonzalez advised that Victim redacted was extremely nervous and stated that she was unusually concerned for her safety. Gonzalez stated that she was aware of Victim redacted life style with drugs, thefts, and street life. In spite of that knowledge regarding Victim redacted past, Gonzalez indicated that this situation caused Victim redacted great concern. Victim redacted was reportedly wearing blue jeans and a white "T"shirt.

CONTINUED ON PAGE# 12.....
Report sent to Headquarters ..... m. ..... Date .....
Reported by .....

Marsha Blakely Homicide Report 91-30603 (Ex. I)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

Long: 11:00pm

Gonzalez: 11:30pm

Charlton: 11:45pm

Witness Sightings of Marsha Blakely

April 8, 1997
Direct Examination of Jerimiah Charlton

Q On the night before Marsha died, that August 7th, do you follow me?

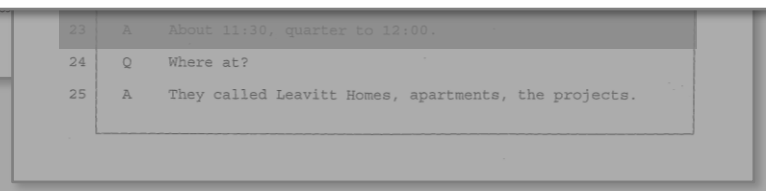
A Yes.

Q Did you see Marsha?

A Yes, I did.

Q What time?

A About 11:30, quarter to 12:00.



John Edwards Trial Tr. 601:17–23 (Ex. A6)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

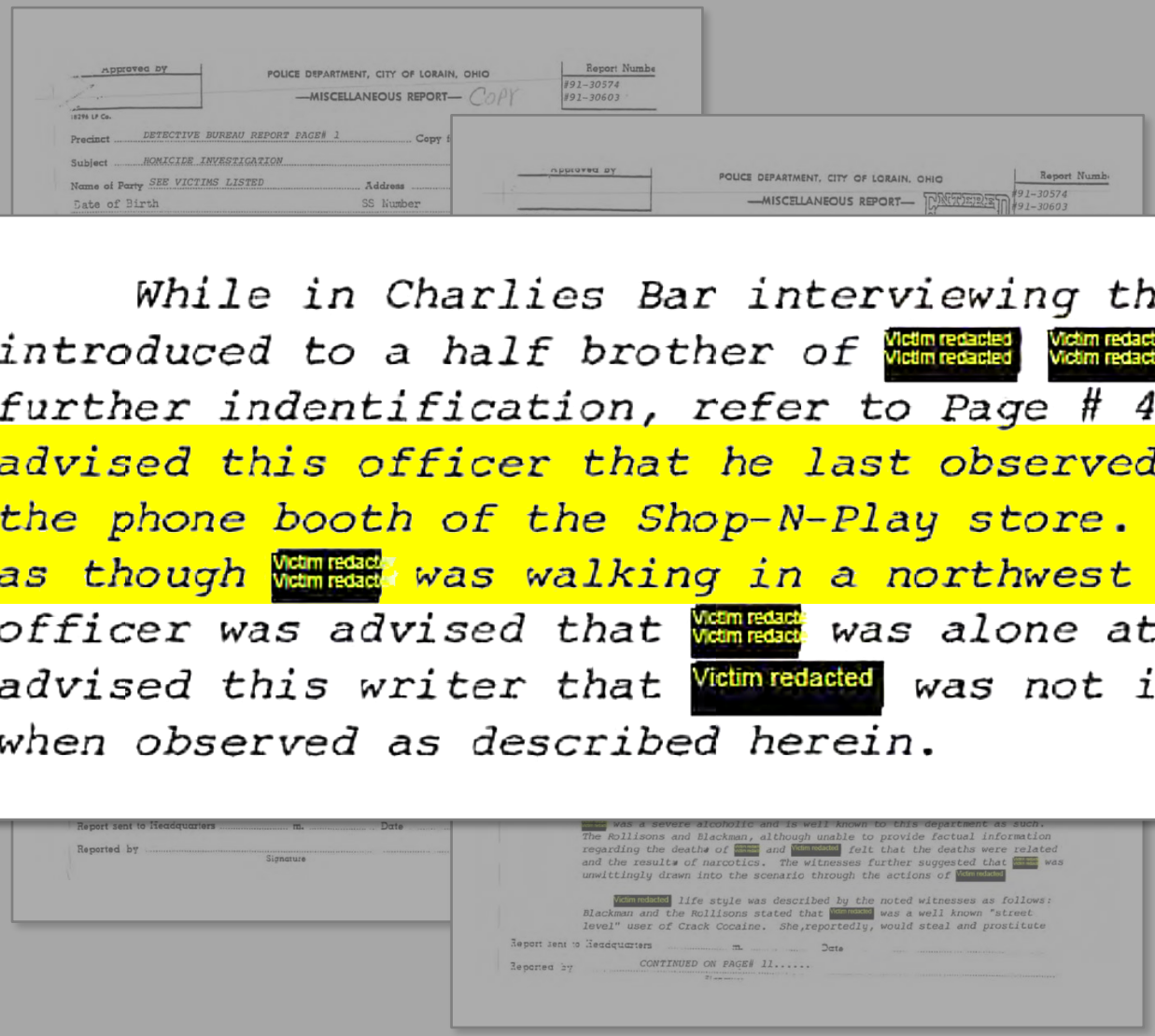
No Evidence of Internal Bleeding

6 Sightings

- **Long:** 11:00pm
- **Gonzalez:** 11:30pm
- **Charlton:** 11:45pm
- **Blackman:** 12:00am

Witness Sightings of Marsha Blakely

Marsha Blakely Homicide Report



While in Charlies Bar interviewing the Rollisons, this officer was introduced to a half brother of Victim redacted Victim redacted Victim redacted Victim redacted to wit: Julius Blackman. For further indentification, refer to Page # 4 of this bureau report. Blackman advised this officer that he last observed Victim redacted Victim redacted at Midnight (8-7-91) near the phone booth of the Shop-N-Play store. Blackman indicated that it appeared as though Victim redacted Victim redacted was walking in a northwest direction from that location. This officer was advised that Victim redacted Victim redacted was alone at the noted time. Rollison also advised this writer that Victim redacted was not in the company of another person when observed as described herein.

Marsha Blakely Homicide Report 91-30603 (Ex. I)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

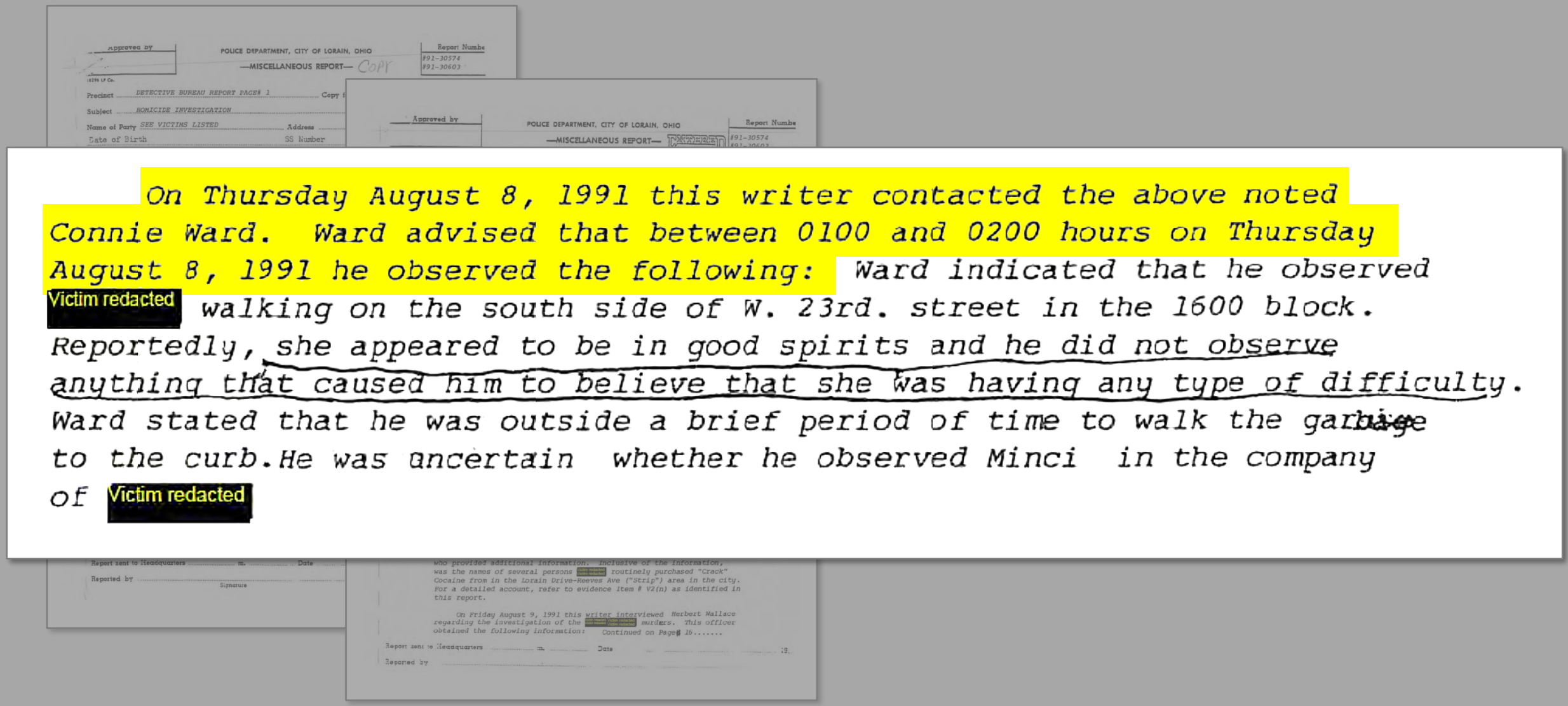
No Evidence of Internal Bleeding

6 Sightings

- **Long:** 11:00pm
- **Gonzalez:** 11:30pm
- **Charlton:** 11:45pm
- **Blackman:** 12:00am
- **Ward:** 1:00am-2:00am

Witness Sightings of Marsha Blakely

Marsha Blakely Homicide Report



On Thursday August 8, 1991 this writer contacted the above noted Connie Ward. Ward advised that between 0100 and 0200 hours on Thursday August 8, 1991 he observed the following: Ward indicated that he observed Victim redacted walking on the south side of W. 23rd. street in the 1600 block. Reportedly, she appeared to be in good spirits and he did not observe anything that caused him to believe that she was having any type of difficulty. Ward stated that he was outside a brief period of time to walk the garbage to the curb. He was uncertain whether he observed Minci in the company of Victim redacted

Marsha Blakely Homicide Report 91-30603 (Ex. I)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

FACTS FOUND

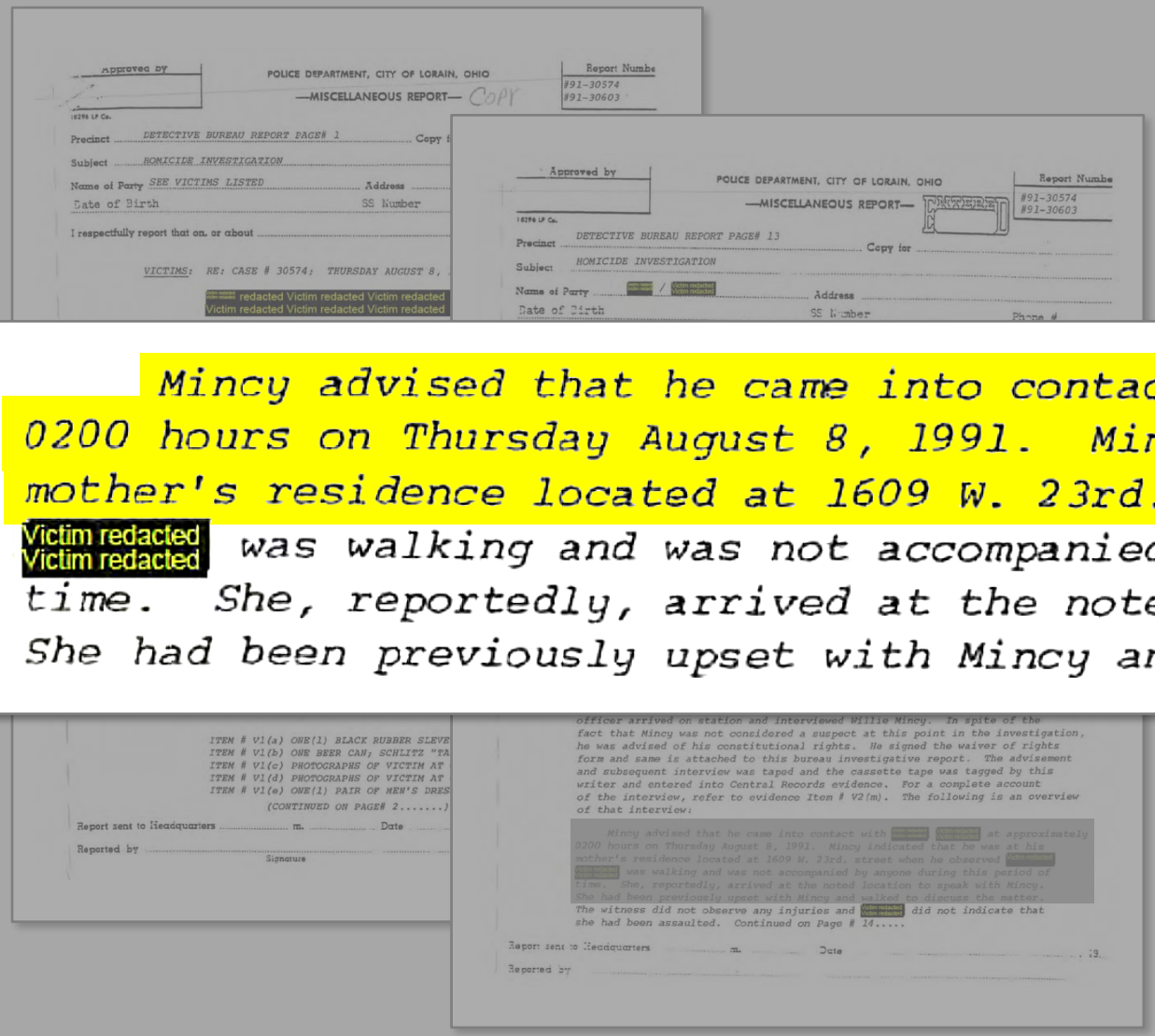
No Evidence of Internal Bleeding

6 Sightings

- **Long:** 11:00pm
- **Gonzalez:** 11:30pm
- **Charlton:** 11:45pm
- **Blackman:** 12:00am
- **Ward:** 1:00am-2:00am
- **Mincy:** 2:00am

Witness Sightings of Marsha Blakely

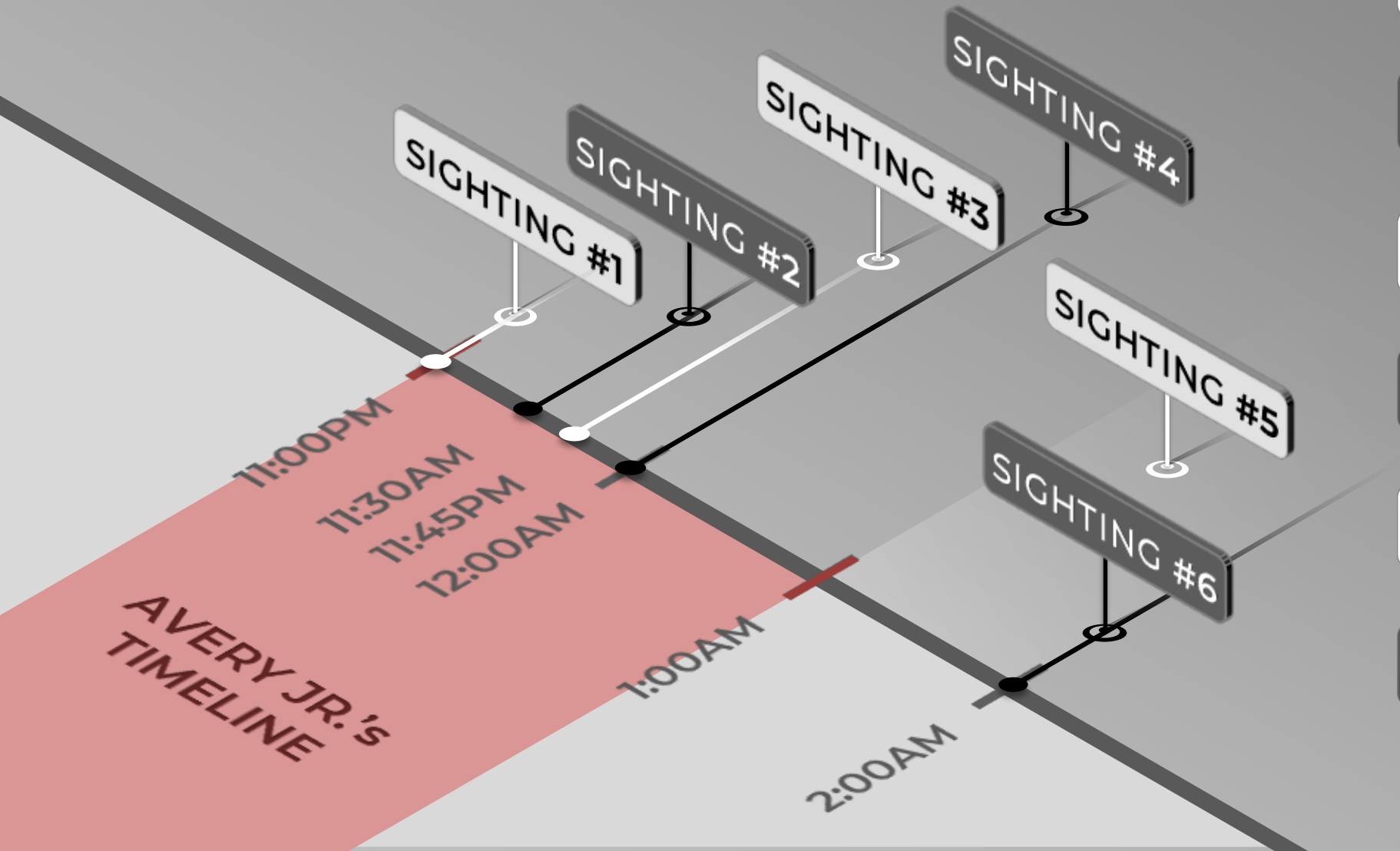
Marsha Blakely Homicide Report



Mincy advised that he came into contact with Victim redacted Victim redacted Victim redacted Victim redacted at approximately 0200 hours on Thursday August 8, 1991. Mincy indicated that he was at his mother's residence located at 1609 W. 23rd. street when he observed Victim redacted Victim redacted Victim redacted was walking and was not accompanied by anyone during this period of time. She, reportedly, arrived at the noted location to speak with Mincy. She had been previously upset with Mincy and walked to discuss the matter.

Marsha Blakely Homicide Report 91-30603 (Ex. I)

SEPTEMBER 7–8, 1991



#1 Barbara Long

#2 Mary Jane Gonzalez

#3 Jerimiah Charlton

#4 Julius Blackman

#5 Connie Ward

#6 William Mincy

AVERY JR.'S STORY

Blakely Beaten for 15-20 Mins

Blakely Was Killed Between
11:00pm–1:00am

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

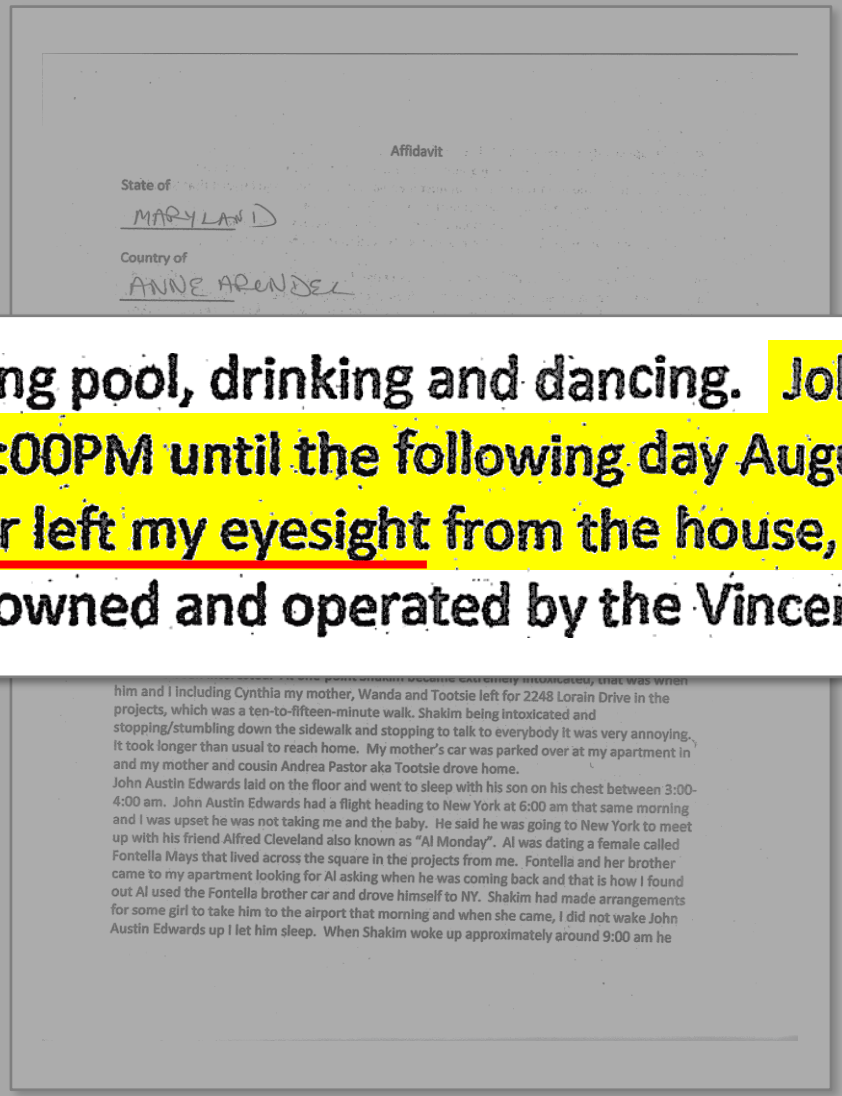
Alibis

EDWARDS:

With family from
12:00pm on 8/7 – 9:00am on 8/8

John Edwards Was Not at Floyd Epps' Apartment on August 7, 1991

September 11, 2021
Affidavit of Patricia Michele Obunse



Affidavit

State of
MARYLAND

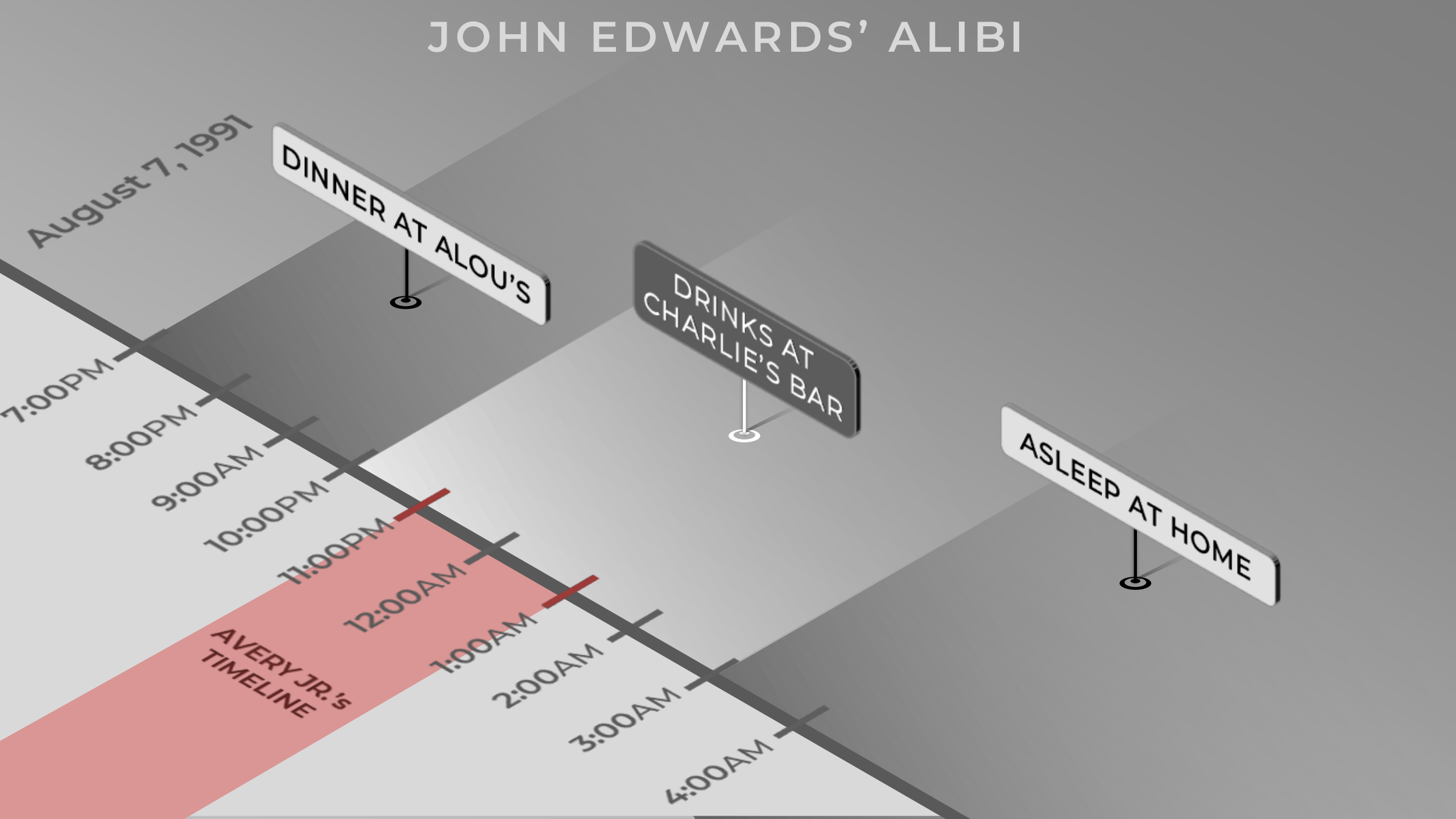
Country of
ANNE ARUNDEL

him and I including Cynthia my mother, Wanda and Tootsie left for 2248 Lorain Drive in the projects, which was a ten-to-fifteen-minute walk. Shakim being intoxicated and stopping/stumbling down the sidewalk and stopping to talk to everybody it was very annoying. It took longer than usual to reach home. My mother's car was parked over at my apartment in and my mother and cousin Andrea Pastor aka Tootsie drove home.
John Austin Edwards laid on the floor and went to sleep with his son on his chest between 3:00-4:00 am. John Austin Edwards had a flight heading to New York at 6:00 am that same morning and I was upset he was not taking me and the baby. He said he was going to New York to meet up with his friend Alfred Cleveland also known as "Al Monday". Al was dating a female called Fontella Mays that lived across the square in the projects from me. Fontella and her brother came to my apartment looking for Al asking when he was coming back and that is how I found out Al used the Fontella brother car and drove himself to NY. Shakim had made arrangements for some girl to take him to the airport that morning and when she came, I did not wake John Austin Edwards up I let him sleep. When Shakim woke up approximately around 9:00 am he

club for drinks. We were playing pool, drinking and dancing. John Austin Edward was with me from August 7th, 1991 from 12:00PM until the following day August 8th, 1991 within clear vision of me the entire time, he never left my eyesight from the house, restaurant and or while we were at the Charlies sport bar owned and operated by the Vincent and Eric. Actually, my cousin

Affidavit of Patricia Michele Obunse ISO of John Edwards Alibi (Ex. O)

JOHN EDWARDS' ALIBI



AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

Blakely Was in Guice's Car

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

Alibis

No Evidence in Car

No Evidence of Marsha Blakely Found in the Vehicle

August 8, 1991

SYNOPSIS

On August 8, 1991, local authorities investigated the deaths of **MARSHA BLAKELY**, B/F, DOB 1/25/69, SSN [redacted] and **FLOYD EPPS**, B/M, DOB 12/25/43, SSN [redacted] **EPPS** lived at 2307 Sunset Blvd., Lorain, Ohio. Both victims were found outside away from their residences. Local authorities investigated the incident and went to the **EPPS** residence on various occasions in search of items of potential evidence. On September 18, 1991, Det. **TALIANO** and the reporting agent went to the **EPPS** residence located at 2307 Sunset Blvd., Lorain, Ohio. Nothing of apparent evidentiary value was noted. They also went to a local towing service where they examined an impounded vehicle. Local authorities had previously examined the vehicle on several occasions. Nothing of apparent evidentiary value was noted in the vehicle. Reports are to be forwarded to the requesting authority: Lorain Police Department, 100 West Erie Avenue, Lorain, Ohio 44052, ATTN: Det. **GINO TALIANO**.

Bureau of Criminal Identification and Investigation Report (Ex. Q)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

Blakely Was in Guice's Car

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

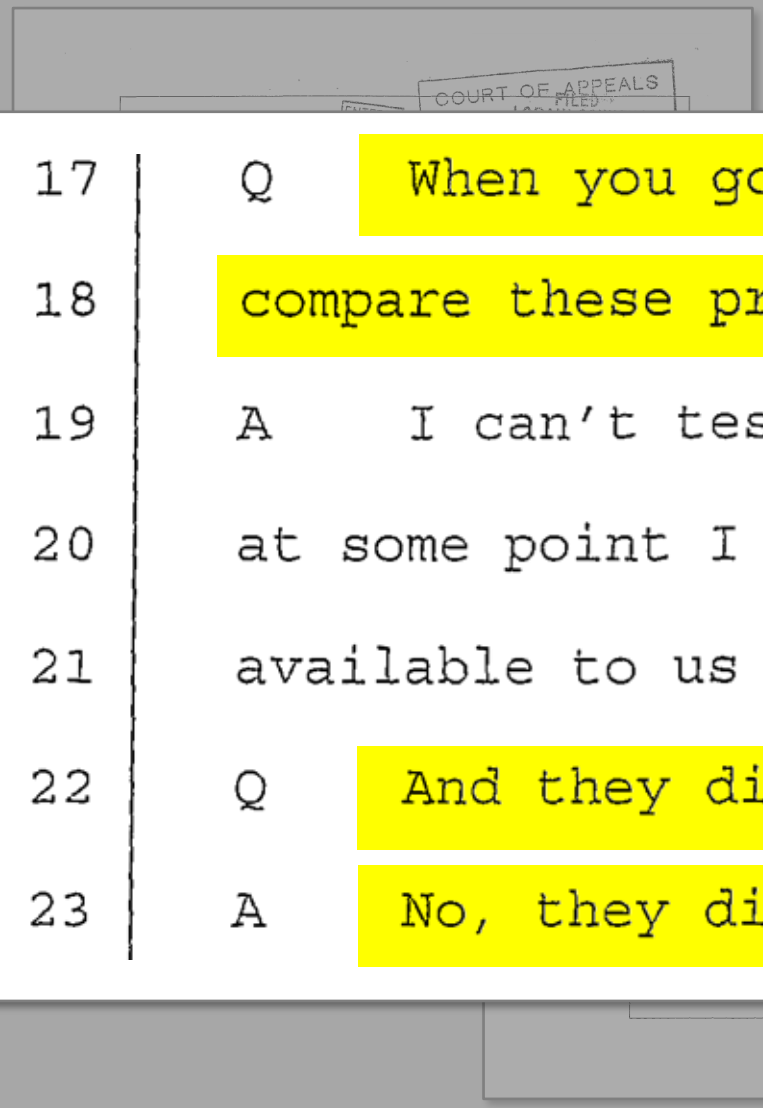
Alibis

No Evidence in Car

No Tire Print Match

No Match to Delphenia Guice's Tire Prints

April 3, 1997
Cross-Examination of Detective Geno Taliano



Q When you got the Guice vehicle on 8/13/91, did you compare these prints with the tires on her car?

A I can't testify on the 13th that happened, but, in fact, at some point I recall checking the tire prints that we had available to us by photograph with the Guice vehicle.

Q And they did not match?

A No, they did not.

John Edwards Trial Tr. 502:17–23 (Ex. A1)

AVERY JR.'S STORY

Blakely Beaten for 15–20 Mins

Blakely Was Killed Between 11:00pm–1:00am

Blakely Was in Guice's Car

Blakely's Body Dragged

FACTS FOUND

No Evidence of Internal Bleeding

6 Sightings

Alibis

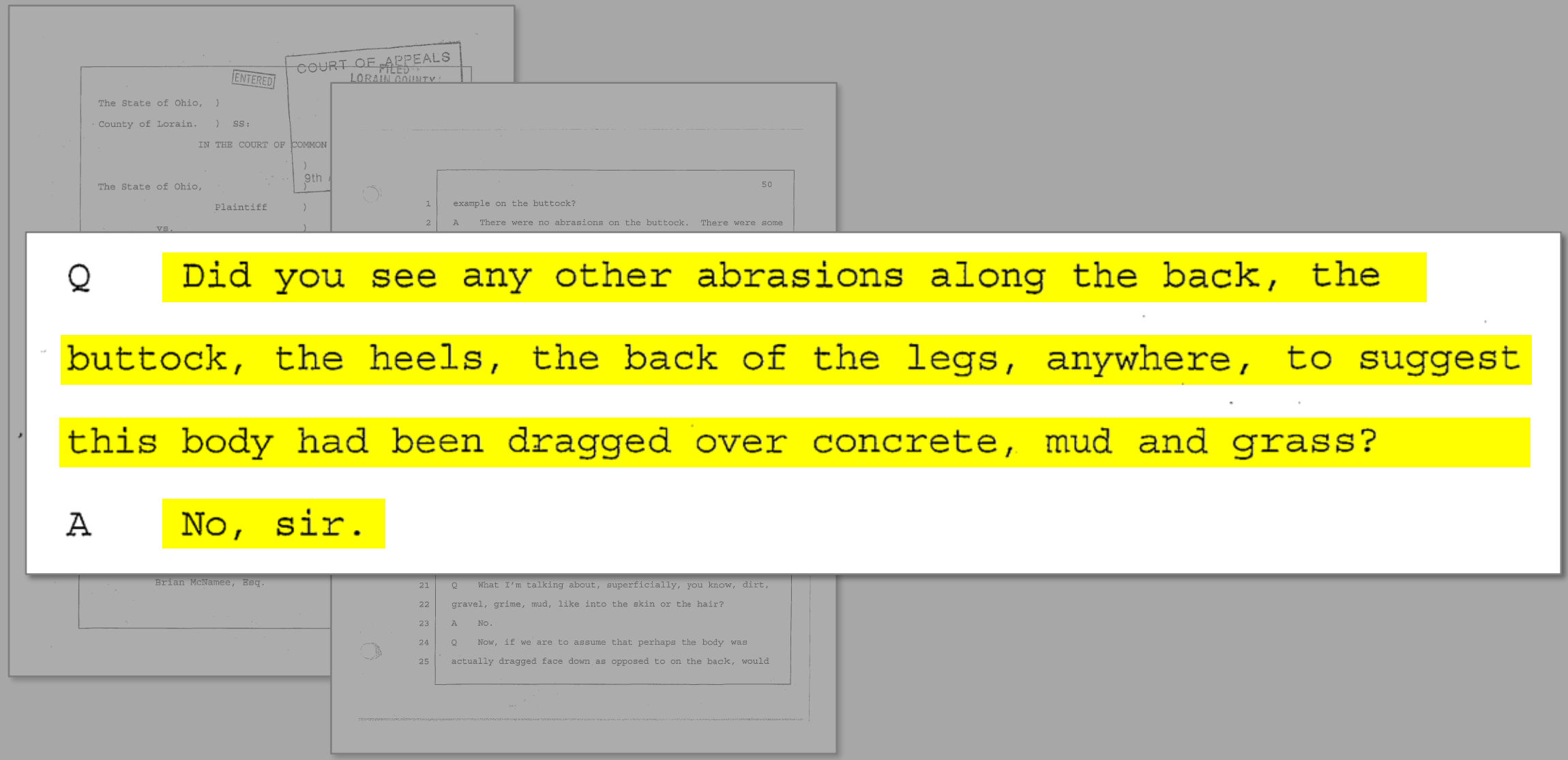
No Evidence in Car

No Tire Print Match

No Dirt or Abrasions on Her Body

Nothing to Indicate Marsha Blakely Was Dragged

April 1, 1997
Cross-Examination of Dr. Robert Thomas



Q Did you see any other abrasions along the back, the buttock, the heels, the back of the legs, anywhere, to suggest this body had been dragged over concrete, mud and grass?

A No, sir.

John Edwards Trial Tr. 50:13–16 (Ex. A12)

AVERY JR.'S STORY	FACTS FOUND
Blakely Beaten for 15–20 Minutes	NO MATCH — No Evidence of Internal Bleeding
Blakely Was Killed Between 11:00pm–1:00am	NO MATCH — 6 Sightings; Alibis
Blakely Was in Guice's Car	NO MATCH — No Evidence in Car; No Tire Print Match
Blakely's Body Dragged	NO MATCH — No Dirt or Abrasions on Her Body

Avery Jr. Recanted His False Testimony

February 9, 2006
Recantation Affidavit of William Avery Jr.

AFFIDAVIT OF WILLIAM MCARTHER AVERY, JR.

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

I, WILLIAM McARTHER AVERY, JR, being duly sworn deposes and says:

I was a prosecution witness in the murder trial against Alfred Cleveland in January, 1996 regarding the murder of Marsha Blakely in 1991.

No lawyer or investigator for Al Monday ever talked to me prior to Monday's trial.

At the trials of Al Monday and those charged with him, I testified under oath that I was an eyewitness to Alfred Cleveland, who I knew as Monday, along with people I knew as JR, Will, and Shakeem beat Marsha Blakely at Floyd Epps apartment in Lorain, Ohio and then murdered her behind Charlie's Bar in Lorain. All of this was a lie. I never witnessed the murder of Marsha Blakely, was not with her or Al Cleveland the night she was murdered. This was a story my father told me to tell.

William Avery Jr. Recantation Affidavit (Ex. K)

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992

2004

2006

2008

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992 | LENWORTH EDWARDS' FIRST TRIAL

2004

2006

2008

Avery Jr. Recanted His False Testimony

December 17, 1991
Direct Examination of William Avery Jr.

THE WITNESS: I'll perjure myself. I lied about everything. I lied cuz I needed the money. I wanted it.

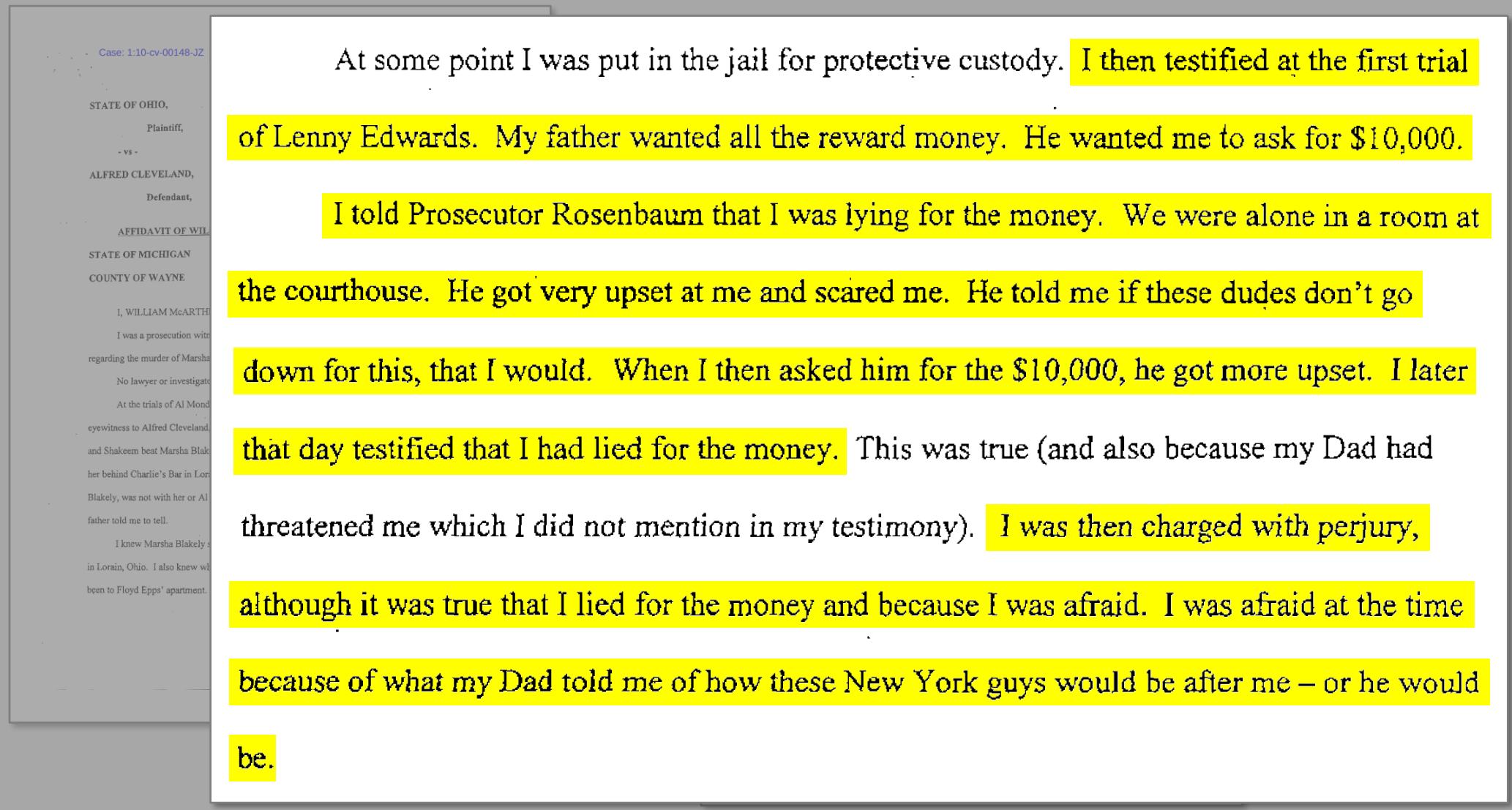
THE COURT: When did you lie? Today?

THE WITNESS: Through everything. It was all a lie.

Lenworth Edwards Trial Tr. 246:18–247:1 (Ex. F)

Avery Jr. Recanted His False Testimony

February 9, 2006
Recantation Affidavit of William Avery Jr.



Case: 1:10-cv-00148-JZ

STATE OF OHIO,
Plaintiff,
- vs -
ALFRED CLEVELAND,
Defendant,

AFFIDAVIT OF WIL

STATE OF MICHIGAN
COUNTY OF WAYNE

I, WILLIAM McARTH
I was a prosecution witn
regarding the murder of Marsha
No lawyer or investigato
At the trials of Al Mond
eyewitness to Alfred Cleveland
and Shakeem beat Marsha Blak
her behind Charlie's Bar in Lor
Blakely, was not with her or Al
father told me to tell.
I knew Marsha Blakely
in Lorain, Ohio. I also knew wh
been to Floyd Epps' apartment.

At some point I was put in the jail for protective custody. I then testified at the first trial of Lenny Edwards. My father wanted all the reward money. He wanted me to ask for $10,000.

I told Prosecutor Rosenbaum that I was lying for the money. We were alone in a room at the courthouse. He got very upset at me and scared me. He told me if these dudes don't go down for this, that I would. When I then asked him for the $10,000, he got more upset. I later that day testified that I had lied for the money. This was true (and also because my Dad had threatened me which I did not mention in my testimony). I was then charged with perjury, although it was true that I lied for the money and because I was afraid. I was afraid at the time because of what my Dad told me of how these New York guys would be after me – or he would be.

William Avery Jr. Recantation Affidavit (Ex. K)

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992 LENWORTH EDWARDS' FIRST TRIAL

2004 MEETING WITH THE FBI

2006

2008

Avery Jr. Recanted His False Testimony

February 9, 2006
Recantation Affidavit of William Avery Jr.

Last year in the Summer, 2005, my father approached me to go to a doctor to sell my medical card and in the process help my father's efforts as an informant with the FBI in Detroit. I thought this might be my way out from under all this. I went to the FBI and told them about the murder and my false testimony against Monday in Lorain. The agents said they would check it out and get back to me. I never heard from them again. I told my mother I had told the FBI as it has been bothering me since I testified and I wanted to tell the truth because of the threats.

4
WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 4, 2008

William Avery Jr. Recantation Affidavit (Ex. K)

Affidavit Of FBI Agent

COUNTY OF WAYNE)

2. That on November 24, 2004, myself and Special Agent Emmons met with Avery Jr at his behest. Avery Jr stated he wanted to discuss the murder of a Marsha Blakely.

3. That Avery Jr claimed that he had lied about witnessing Blakely's murder. Avery Jr claimed that his father, Avery Sr had committed the crime. Avery Jr further claimed that Avery Sr related some details of the homicide; i.e. that Blakely's feet were scraped, which shoe was missing from the body, and the position of a table.

and Junior in Blakely's murder.

6. That Avery Jr claimed that he lied about being present during the abduction and murder. Avery Jr stated he had no first hand knowledge of the murder. Avery Jr said he lied when he implicated Shakim Edwards, Lenworth Edwards, Monday, and Junior in Blakely's murder.

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992 LENWORTH EDWARDS' FIRST TRIAL

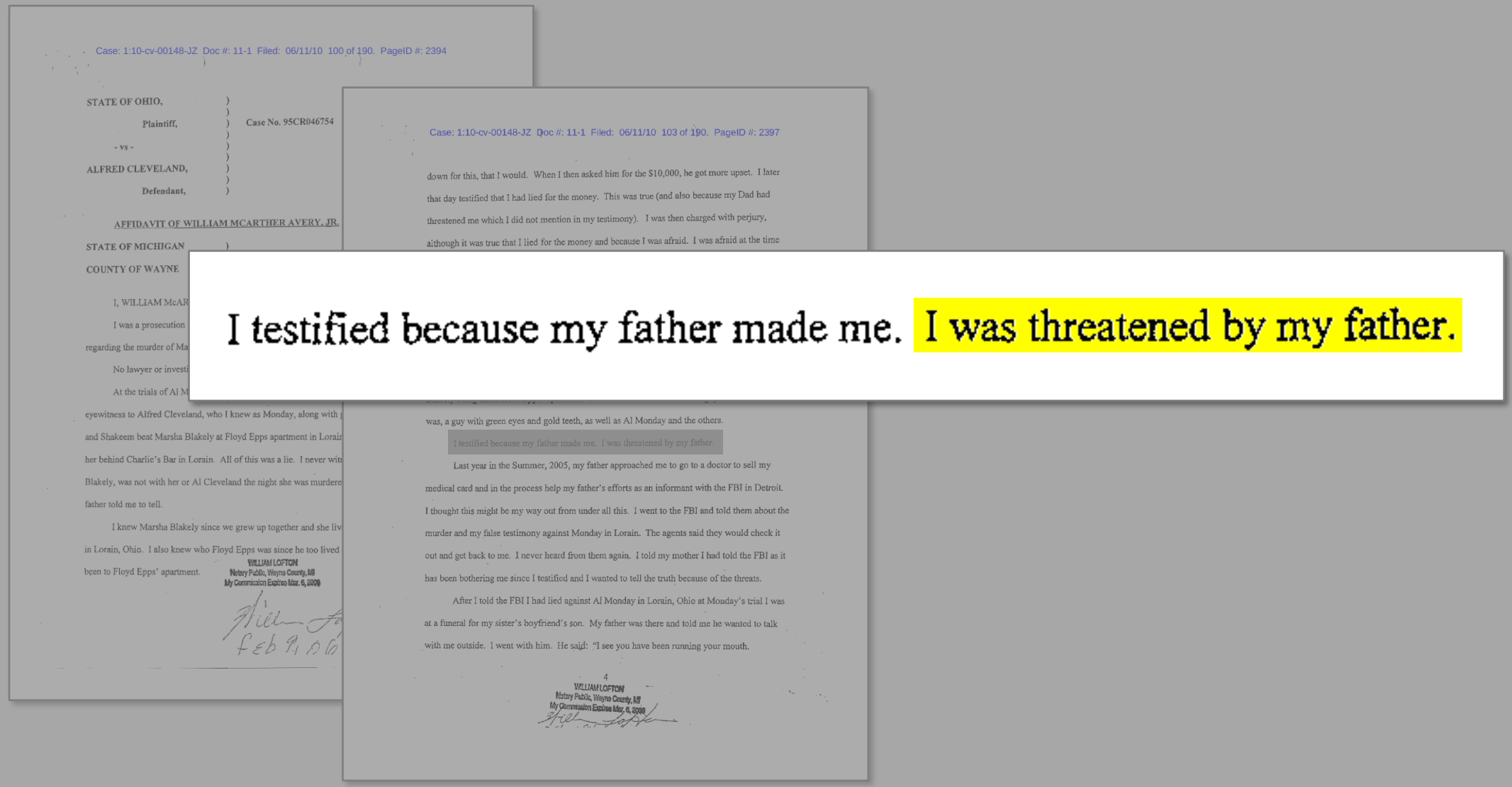
2004 MEETING WITH THE FBI

2006 RECANTATION AFFIDAVIT

2008

Avery Jr. Recanted His False Testimony

February 9, 2006
William Avery Jr. Recantation Affidavit



Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 100 of 190. PageID #: 2394

STATE OF OHIO,)
Plaintiff,) Case No. 95CR046754
- vs -)
ALFRED CLEVELAND,)
Defendant,)

AFFIDAVIT OF WILLIAM MCARTHER AVERY, JR.

STATE OF MICHIGAN)
COUNTY OF WAYNE

I, WILLIAM McAR
I was a prosecution
regarding the murder of Ma
No lawyer or investi
At the trials of Al M
eyewitness to Alfred Cleveland, who I knew as Monday, along with
and Shakeem beat Marsha Blakely at Floyd Epps apartment in Lorai
her behind Charlie's Bar in Lorain. All of this was a lie. I never wit
Blakely, was not with her or Al Cleveland the night she was murdere
father told me to tell.

I knew Marsha Blakely since we grew up together and she liv
in Lorain, Ohio. I also knew who Floyd Epps was since he too lived
been to Floyd Epps' apartment.

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

1

feb 9, 06

Case: 1:10-cv-00148-JZ Doc #: 11-1 Filed: 06/11/10 103 of 190. PageID #: 2397

down for this, that I would. When I then asked him for the $10,000, he got more upset. I later that day testified that I had lied for the money. This was true (and also because my Dad had threatened me which I did not mention in my testimony). I was then charged with perjury, although it was true that I lied for the money and because I was afraid. I was afraid at the time

was, a guy with green eyes and gold teeth, as well as Al Monday and the others.

I testified because my father made me. I was threatened by my father.

Last year in the Summer, 2005, my father approached me to go to a doctor to sell my medical card and in the process help my father's efforts as an informant with the FBI in Detroit. I thought this might be my way out from under all this. I went to the FBI and told them about the murder and my false testimony against Monday in Lorain. The agents said they would check it out and get back to me. I never heard from them again. I told my mother I had told the FBI as it has been bothering me since I testified and I wanted to tell the truth because of the threats.

After I told the FBI I had lied against Al Monday in Lorain, Ohio at Monday's trial I was at a funeral for my sister's boyfriend's son. My father was there and told me he wanted to talk with me outside. I went with him. He said: "I see you have been running your mouth.

4

WILLIAM LOFTON
Notary Public, Wayne County, MI
My Commission Expires Mar. 6, 2009

I testified because my father made me. I was threatened by my father.

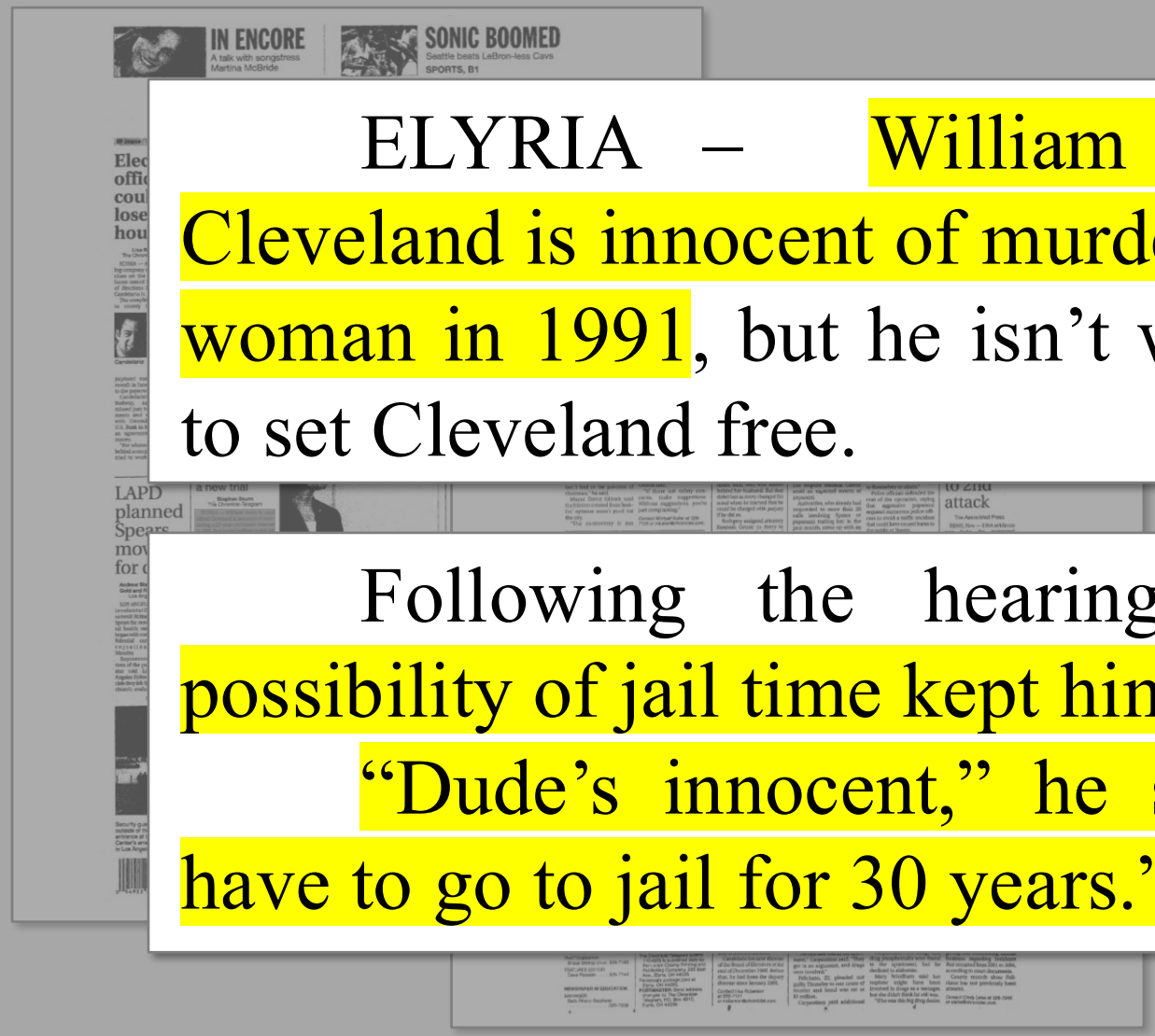
William Avery Jr. Recantation Affidavit (Ex. K)

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992	LENWORTH EDWARDS' FIRST TRIAL
2004	MEETING WITH THE FBI
2006	RECANTATION AFFIDAVIT
2008	AL CLEVELAND'S POST-CONVICTION HEARING

Avery Jr. Recanted His False Testimony

February 1, 2008
Chronicle-Telegram



ELYRIA – William Avery Jr. says Alfred Cleveland is innocent of murdering a 22-year-old Lorain woman in 1991, but he isn't willing to risk jail himself to set Cleveland free.

Following the hearing, Avery, 39, said the possibility of jail time kept him from telling the truth.

"Dude's innocent," he said. "But I don't feel I have to go to jail for 30 years."

Chronicle-Telegram Articles (Ex. B)

AVERY JR. RECANTED HIS FALSE TESTIMONY

1992 — LENWORTH EDWARDS' FIRST TRIAL

"I'll perjure myself. I lied about everything. I lied cuz I needed the money."

2004 — MEETING WITH THE FBI

"I went to the FBI and told them about the murder and my false testimony . . . ."

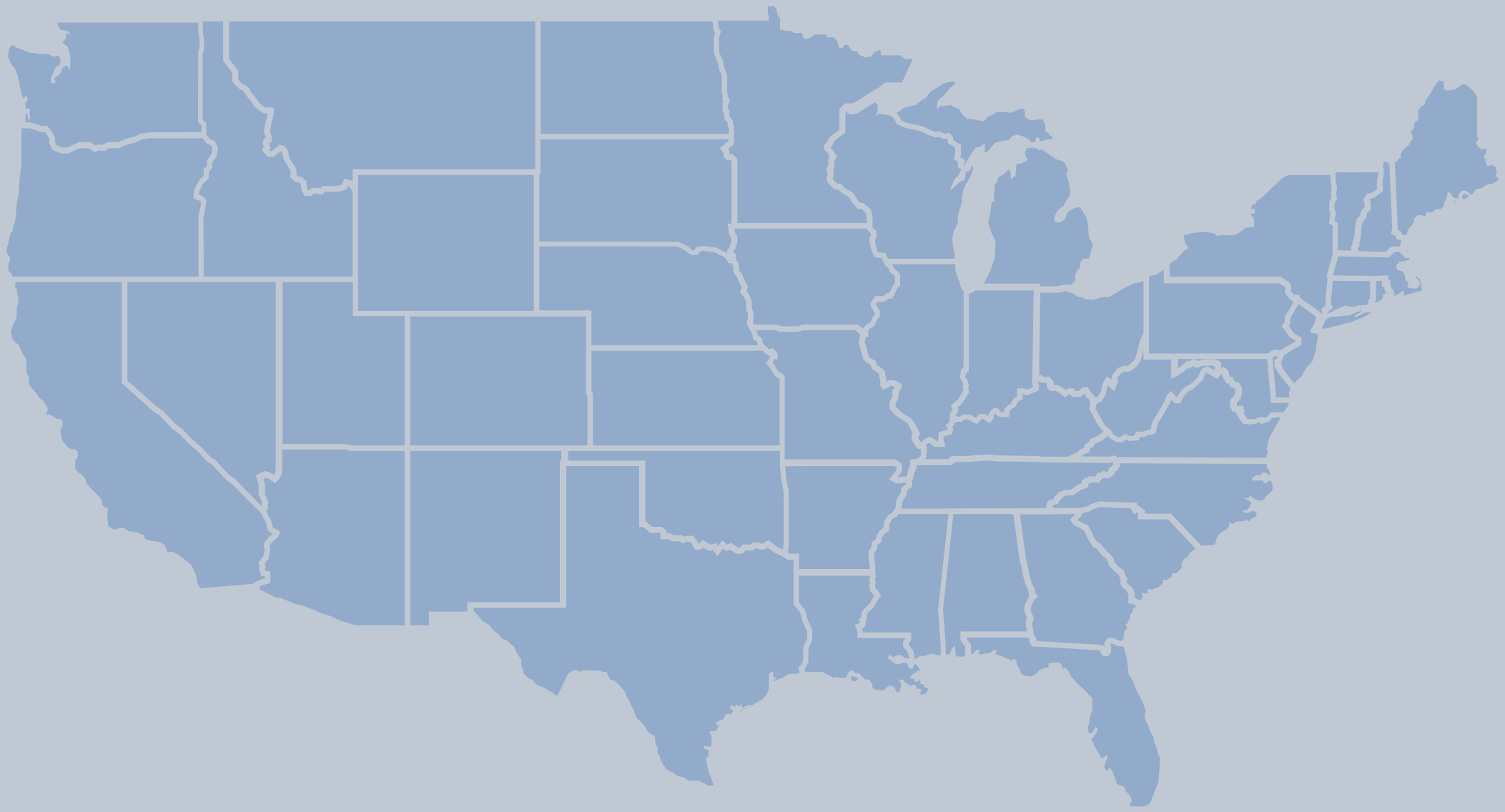
2006 — RECANTATION AFFIDAVIT

"All of this was a lie. I never witnessed the murder of Marsha Blakely . . . ."

2008 — AL CLEVELAND'S POST-CONVICTION HEARING

"Dude's innocent."

CLEVELAND WAS IN NEW YORK CITY ON AUGUST 7-8, 1991



CLEVELAND WAS IN NEW YORK CITY ON AUGUST 7-8, 1991



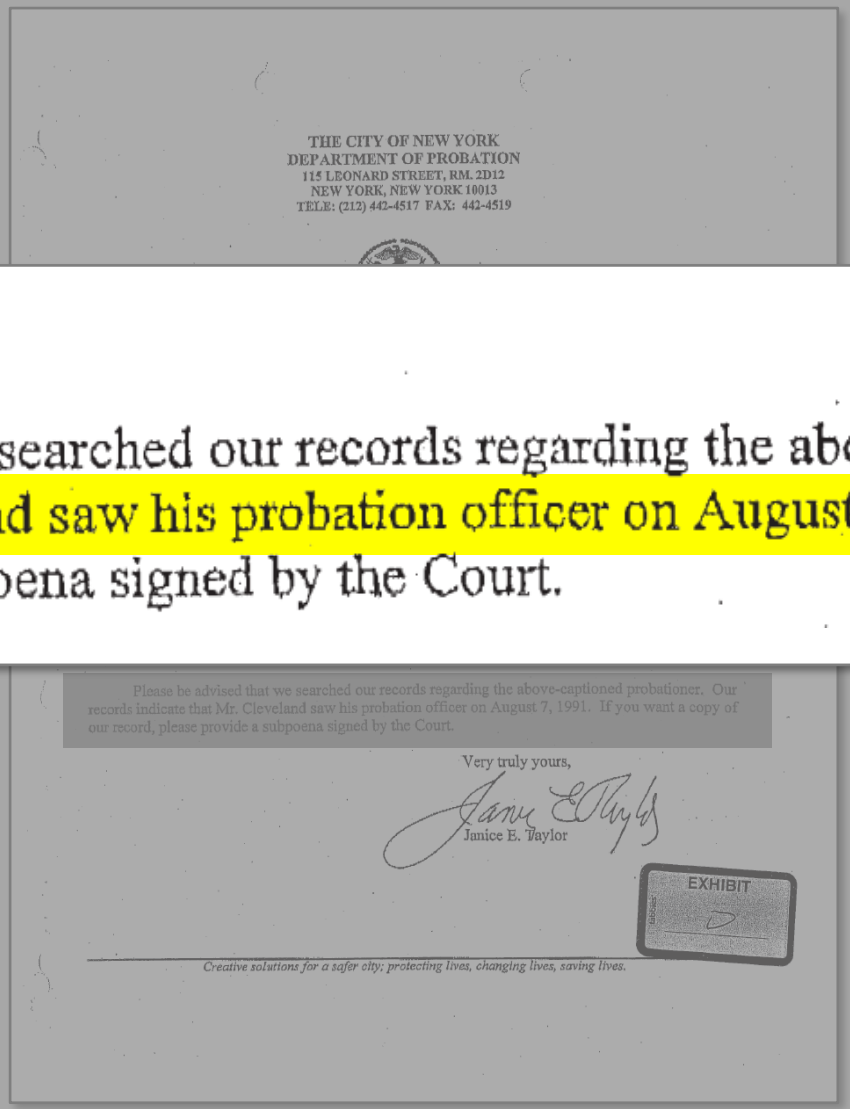

CLEVELAND WAS IN NEW YORK CITY ON AUGUST 7-8, 1991
NEW YORK CITY
NY

CLEVELAND WAS IN NEW YORK CITY ON AUGUST 7-8, 1991



Al Cleveland Was in New York City Between August 5 and 8, 1991

June 6, 2000
Letter from New York City Department of Probation



THE CITY OF NEW YORK
DEPARTMENT OF PROBATION
115 LEONARD STREET, RM. 2D12
NEW YORK, NEW YORK 10013
TELE: (212) 442-4517 FAX: 442-4519

Dear Ms. Fox:

Please be advised that we searched our records regarding the above-captioned probationer. Our records indicate that Mr. Cleveland saw his probation officer on August 7, 1991. If you want a copy of our record, please provide a subpoena signed by the Court.

Very truly yours,

Janice E. Taylor

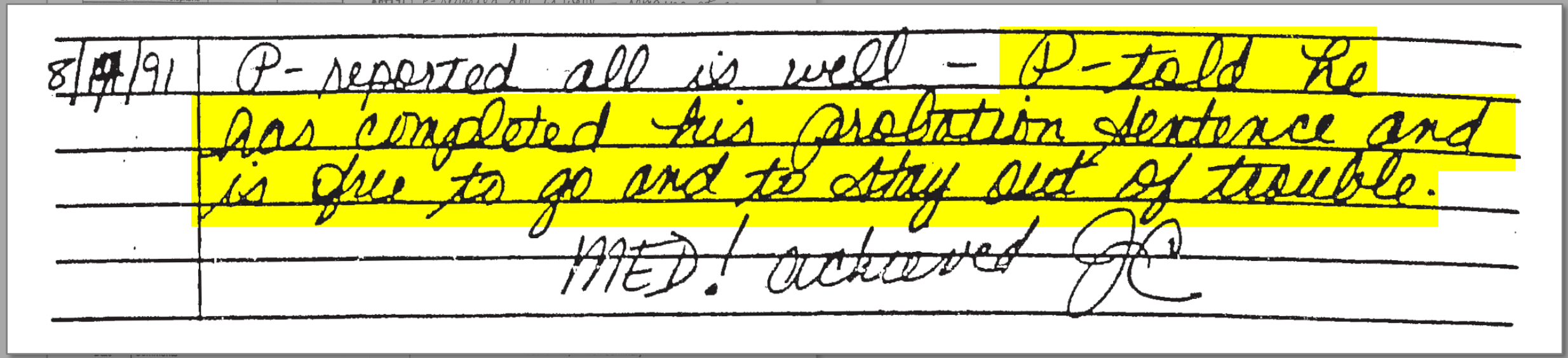
EXHIBIT

Creative solutions for a safer city; protecting lives, changing lives, saving lives.

Al Cleveland Alibi Exhibits, Certified Probation Records (Ex. 1)

Al Cleveland Was in New York City Between August 5 and 8, 1991

New York City Department of Probation
Chronological Case Record for Al Cleveland

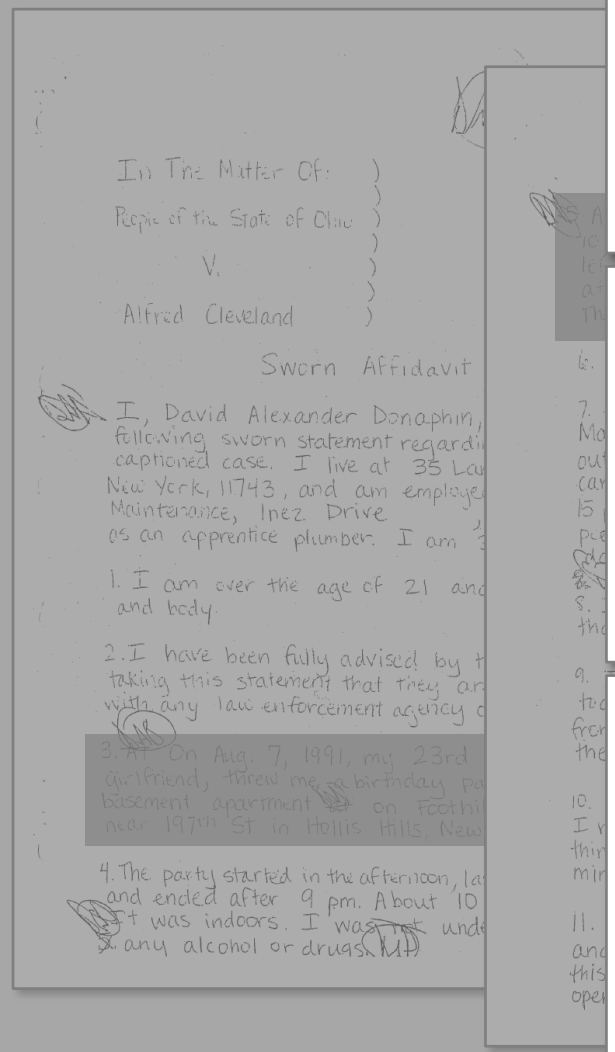


8/7/91 | P- reported all is well – P-told he has completed his probation sentence and is free to go and to stay out of trouble.
MED! reviewed JC

Al Cleveland Alibi Exhibits, Certified Probation Records (Ex. 1)

Al Cleveland Was in New York City Between August 5 and 8, 1991

May 13, 2001
Affidavit of David Donaphin



In The Matter Of:)
People of the State of Cli)
V.)
Alfred Cleveland)

Sworn Affidavit

I, David Alexander Donaphin, following sworn statement regardi captioned case. I live at 35 La New York, 11743, and am employe Maintenance, Inez Drive as an apprentice plumber. I am

1. I am over the age of 21 and and body.

2. I have been fully advised by t taking this statement that they ar with any law enforcement agency

3. At On Aug. 7, 1991, my 23rd girlfriend, threw me a birthday pa basement apartment on Foothi near 197th St in Hollis Hills, New

4. The party started in the afternoon, la and ended after 9 pm. About 10 It was indoors. I was not unde any alcohol or drugs.

3. At On Aug. 7, 1991, my 23rd birthday, my Stephanie compli- girlfriend, threw me a birthday party at our basement apartment on Foothill Street Place near 197th St. in Hollis Hills, New York.

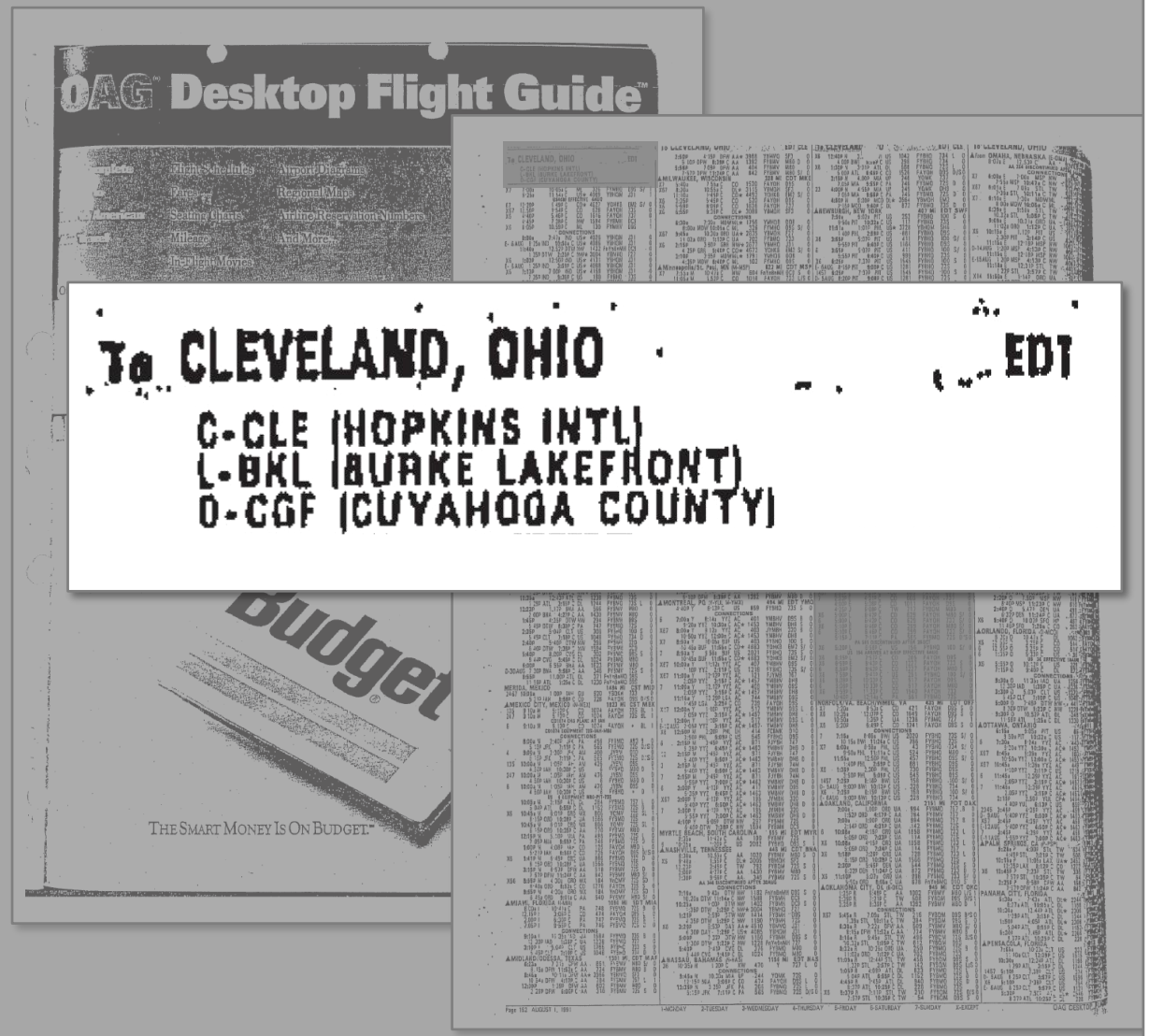
5. After the party ended and everyone left, between 10 p.m. August 7 and 12 a.m August 8, 1991, I left my home to drive my friend Marc to his home at Hilburn Ave. in St. Albans, Queens, New York. The drive took from 10 to 15 minutes.

14. Marc and I stayed around 15 or 20 minutes, then we left so I could drop him off. Alfred Cleveland was there the entire time we were there the night of Aug. 7, 1991, and he was still there when I left. This exchange happened between 10 pm. Aug 7, 1991, and 12 a.m Aug. 8, 1991.

Al Cleveland Alibi Exhibits, Affidavit of David Donaphin (Ex. 4)

Al Cleveland Was in New York City Between August 5 and 8, 1991

Flight Records from New York City to Cleveland, Ohio



To CLEVELAND, OHIO EDT

C-CLE (HOPKINS INTL)
L-BKL (BURKE LAKEFRONT)
O-CGF (CUYAHOGA COUNTY)

NEW YORK NY/NEWARK, NJ 413 MI EDT NYC
(J-JFK L-LGA E-EWR)

X7	6.50a	L	8.31a	C	CO	617	FAYOH	733	S 0
7	6:50a	L	8 31a	C	CO	617	FAYOH	M80	S 0
X7	7 10a	E	8:35a	C	CO	445	FAYOH	A83	B/S 0
7	7 10a	E	8 35a	C	CO	445	FAYOH	73S	9/S 0
X7	7:30a	J	10:32a	C	US	117	FYBHQ	73S	S 1
			US 117 EFFECTIVE 6AUG						
X7	7:55a	L	9:30a	C	US	1521	FYBHQ	73S	S 0
X7	9:00a	L	10:45a	C	CO	451	FAYOH	M80	S 0
X7	10:37a	E	12.04P	C	CO	1063	FAYOH	M80	0
7	10:37a	E	12:04P	C	CO	1063	FAYOH	73S	0
	10.40a		12:10P	C	CO	1069	FAYOH	M80	S 0
X6	1:41P	E	3:15P	C	CO	825	FAYOH	73S	S/ 0
6	1:41P	E	3:15P	C	CO	825	FAYOH	D9S	S/ 0
	1:45P	L	3:25P	C	CO	739	FAYOH	D9S	0
	2:15P	L	3:46P	C	US	29	FYBHQ	733	S/ 0
X67	2:53P	E	4:31P	C	CO	669	FAYOH	D9S	0
7	2:53P	E	4:31P	C	CO	669	FAYOH	737	0
	4:00P	E	5:38P	C	CO	1011	FAYOH	D9S	0
	4:25P	J	6:08P	C	TW	717	FYBQM	M80	0
X6	5:00P	L	6:42P	C	CO	629	FAYOH	M80	S/ 0
6	5:00P	L	6:42P	C	CO	629	FAYOH	733	S/ 0
X6	5:10P	E	6:46P	C	CO	299	FAYOH	M80	S/ 0
6	5:10P	E	6 46P	C	CO	299	FAYOH	733	S/ 0
	5:15P	J	7:11P	C	PA	565	FYBMQ	72S	D/S 0
			PA 565 DISCONTINUED AFTER 28OCT						
X6	5:20P	L	6:58P	C	US	156	FYBHQ	100	S/ 0
			US 156 ARRIVES AT 6:55P EFFECTIVE 6AUG						
X6	6:15P	L	7:57P	C	CO	205	FAYOH	D9S	0
X6	6:59P	E	8:43P	C	CO	1227	FAYOH	733	S 0
6	6.59P	E	8:43P	C	CO	1227	FAYOH	M80	S 0
X6	7 59P	L	9:41P	C	US	251	FYBHQ	100	S/ 0
X6	9.08P	E	10:33P	C	CO	517	FAYOH	D9S	0
6	9:08P	E	10 33P	C	CO	517	FAYOH	M80	0
X6	9:59P	L	11.22P	C	CO	1540	FAYOH	733	0
	10:40P	J	12:14a	C	PA	561	FYBMQ	72S	0

POLICE FAILED TO:



Conduct DNA Test



Conduct Blood Test



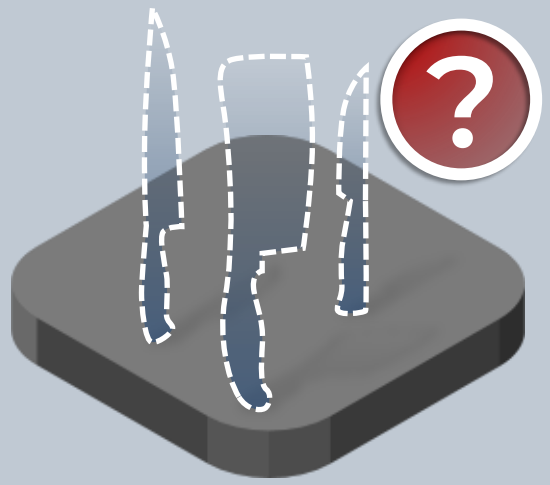
Conduct DNA Tests on Blakely's Body



Read 71-page Police Report



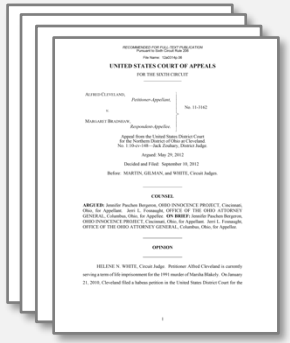
Dust Blakely's Purse for Prints



Thoroughly Search for Murder Weapon

No Reasonable Jury Would Have Found the Defendants Guilty

Cleveland v. Bradshaw,
693 F.3d 626
(6th Cir. 2012)



UNITED STATES COURT OF APPEALS

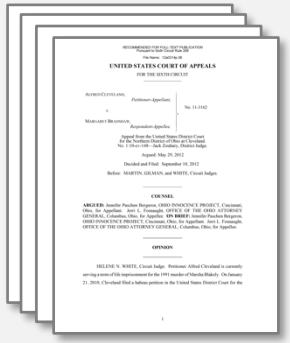
FOR THE SIXTH CIRCUIT

To proceed through the *Schlup* gateway a petitioner must present a "credible" claim of actual innocence.

"Instead, the emphasis on 'actual innocence' allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial . . . ."

No Reasonable Jury Would Have Found the Defendants Guilty

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



UNITED STATES COURT OF APPEALS

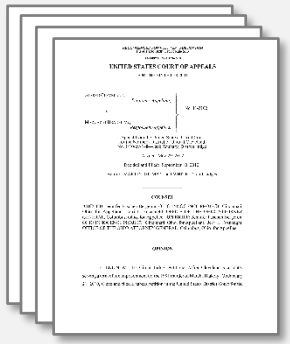
FOR THE SIXTH CIRCUIT

In this circumstance, actual innocence "does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather that no reasonable juror would have found the defendant guilty." *Id.* at 329.

This standard, however, is less strict than the insufficient evidence standard outlined in *Jackson v. Virginia*, 443 U.S. 307 (1979), which "looks to whether there is sufficient evidence which, if credited, ***could*** support the conviction," because it focuses on what a reasonable juror ***would*** do.

No Reasonable Jury Would Have Found the Defendants Guilty

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)

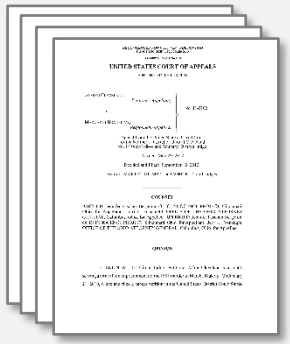


Rather, the standard is a probabilistic one that requires a petitioner to show that upon consideration of the new evidence "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 327.

In undertaking this probabilistic inquiry, "[i]t must be presumed that a reasonable juror would consider fairly all of the evidence presented . . . [and] would conscientiously obey the instructions of the trial court requiring proof beyond a reasonable doubt." *Id.* at 329.

Evidence Proves Al Cleveland's Innocence

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)

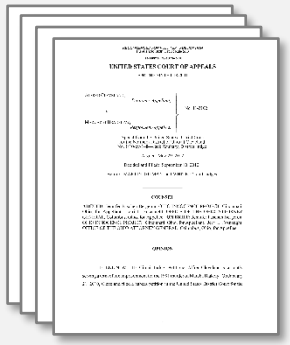


B. Cleveland's Additional Evidence of Actual Innocence

In the district court, Cleveland submitted four "particularly relevant" items of additional evidence that, when considered together with the record as a whole, present a compelling case for Cleveland's innocence: (1) the recantation of the only eye-witness to Blakely's murder, William Avery Jr.; (2) an affidavit from forensic scientist Larry Dehus stating that Blakely's blood was found at the Epps murder scene, which suggests that Blakely was murdered first and shortens the window of time for her death from between 12:00 a.m. and 3:00 a.m. on August 8, 1991, as previously thought, to between 12:00 a.m. and 1:25 a.m. on August 8, 1991; (3) an affidavit from David Alexander Donaphin declaring that he met with Cleveland in New York between 10:00 p.m. on August 7, 1991, and 12:00 a.m. on August 8, 1991; and (4) flight records demonstrating that the last flight from New York City to Cleveland on August 7, 1991, departed at 10:40 p.m.

The Court Ignored Substantial Differences Between William Avery Jr.'s 1991 and 2006 Recantations

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



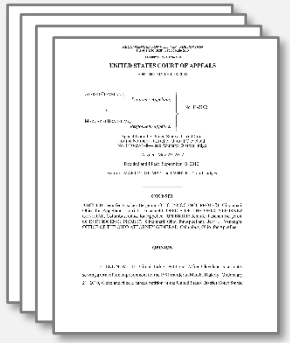
1. New Evidence

i. Avery's Recanting Affidavit

However, the district court's analysis ignores the substantial differences between Avery's 1991 recantation and his 2006 recanting affidavit. First, the 2006 affidavit explains the reason behind Avery's withdrawal of his 1991 recantation—fear that the prosecutor would charge him with Blakely's murder. This information was not known to Cleveland at the time of his trial. Additionally, the 1991 recantation preceded Avery's claim that he witnessed the second assault that caused Blakely's death. At the time of his 1991 recantation, Avery's statements to the local police and Lorain County prosecutor only included information about the assault on Blakely in Floyd Epps's apartment; Avery had not yet changed his story to include witnessing the second assault behind the shopping plaza. Contrary to the district court's determination, Avery's 2006 recanting affidavit thus contains information that was not available to Cleveland as the time of his trial.

Marsha Blakely's Blood Found at Floyd Epps Murder Scene

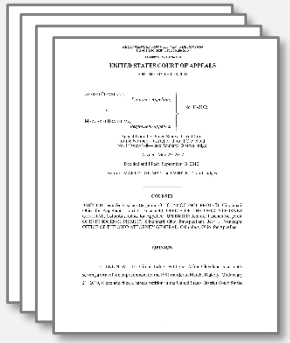
Cleveland v. Bradshaw,
693 F.3d 626
(6th Cir. 2012)



Forensic scientist Larry Dehus's affidavit dated October 24, 2005, states that Blakely's blood was found on a piece of rubber collected from the Epps murder scene.

Al Cleveland Was in New York on August 7–8, 1991

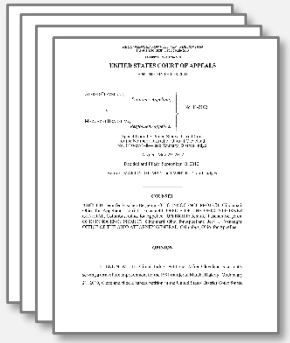
Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



In his July 22, 2006[3] affidavit, David Alexander Donaphin ("Donaphin") declares that on August 7, 1991 he celebrated his twenty-third birthday at a party thrown by his girlfriend in Hollis Hills, New York. The affidavit further states that the party ended after 9:00 p.m. and that between 10:00 p.m. on August 7, 1991, and 12:00 a.m. on August 8, 1991, Donaphin drove a friend to his home in Queens, New York. During the drive, Donaphin stopped in St. Albans, New York, where he ran into Cleveland, whom he had known since childhood. Donaphin then spent 15-20 minutes with Cleveland before leaving to drop off his friend.

Al Cleveland Was Not on the August 7th Flight from New York to Ohio

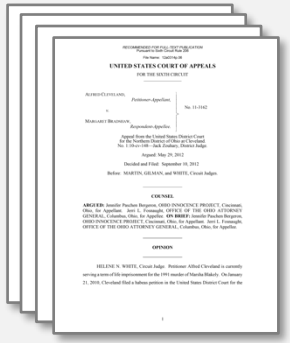
Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



The last particularly relevant evidence submitted by Cleveland are flight records that show that the last flight from New York City to Cleveland on August 7, 1991 departed at 10:40 p.m. Given the information contained in Donaphin's affidavit about meeting with Cleveland for 15-20 minutes between 10:00 p.m. on August 7, 1991, and 12:00 a.m. on August 8, 1991, Cleveland contends it would have been impossible for him to be at the airport in time for that flight.

Al Cleveland's Flight Records Are Reliable

Cleveland v. Bradshaw,
693 F.3d 626
(6th Cir. 2012)

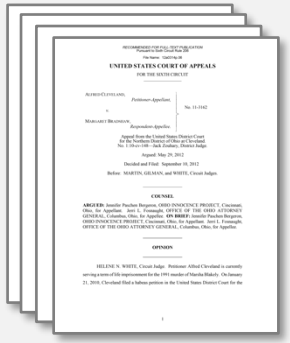


2. Reliability

The next part of the *Schlup* test is to determine whether the new evidence submitted by Cleveland is reliable. The State does not attack the reliability of the flight records or the Dehus affidavit, and the district court did not find this evidence unreliable. Because we have no reason to question the reliability of this evidence, we conclude that this evidence is sufficiently reliable under *Schlup*.[5]

William Avery Jr.'s Story Was Fed to Him by His Father and the Police

Cleveland v. Bradshaw,
693 F.3d 626
(6th Cir. 2012)



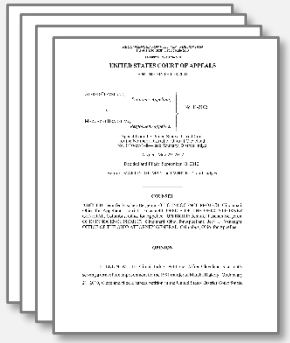
UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

The affidavit also states both that Sr. fed Avery the story for the police and that Avery made up the story himself from the crime scene photographs. Further, the affidavit does not repeat the statement that Avery made in . . .

Avery Sr. Concocted Avery Jr.'s Story

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



"I first heard of the murder of Marsha Blakely while at my then girlfriend Patricia Gaddy' apartment in the Projects. A woman came to the house and said Marsha's body was found. I did not know who had done this, did not know anyone who was involved.

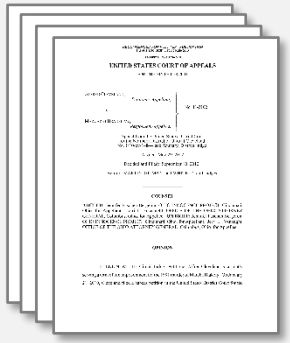
I then went to Charlotte Watkin's house who was also a girlfriend of mine in the early in the morning. My Dad came over to Charlotte's house and told me Marsha was dead and they were going to kill me too. He said he would tell me how you can get out of all this. He told me that I could say I was a witness. He pulled out some crack and we smoked. ***He then told me I had to memorize a story.*** **This continued throughout the day and into the next. The story he told me to tell was that Al Monday came to get money, that Al said to go with him that we went in car together to Floyd Epps, that the rest were there (Will, JR, Shakeem). He said to say that Al wanted me to beat Marsha up and then did.**"

Avery further explains:

"My Dad set up a meeting with the police. He as [sic] present during the interview. They showed me pictures of an apartment which they said was Floyd Epps' and asked me to describe what happened in the apartment. **I then made up the story of what happened in the apartment, based upon the pictures.**"

William Avery Jr.'s 2004 Recantation Statement Is Credible

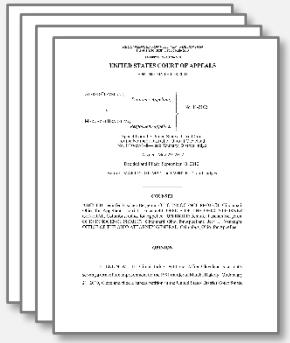
Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



Cleveland also convincingly claims that the circumstances surrounding Avery's recantation render it more credible than his trial testimony or pre-trial statements. In contrast to those statements that were made while Avery received money from the police,[8] Cleveland's 2004 statement to the FBI was unsolicited and not given in exchange for a monetary or other reward. We recognize that if Avery had recanted only upon interrogation or pressure by Cleveland's family, his affidavit would be less credible. However, in November 2004, Avery, then living in a new city and unable to be located by Cleveland's family or private investigators, chose to voluntarily contact a law enforcement official unrelated to the Blakely murder and recant his testimony.

William Avery Jr. Had No Motive to Recant

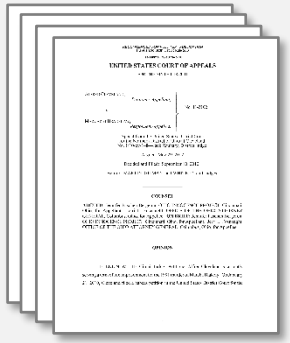
Cleveland v. Bradshaw,
693 F.3d 626
(6th Cir. 2012)



In sum, the fact that Avery had no motive to recant his testimony but instead sought to do so on his own free will, and has not subsequently withdrawn that testimony, lends it credibility.

Al Cleveland's Claim of Innocence Is Credible

Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)

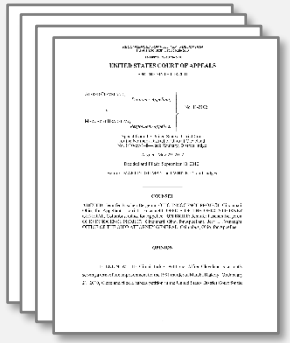


C. Likelihood of Not Guilty Finding

Because Cleveland has submitted new and reliable evidence to support his claim of actual innocence, the next question is whether, based on the record as a whole, "it is more likely than not that no reasonable juror would have found [Cleveland] guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 327. In this case, the only evidence linking Cleveland to Blakely's murder was Avery's testimony. The only physical evidence presented at Cleveland's trial involved Cleveland's co-defendant Edwards and consisted of the existence of Edwards's own blood on his jacket, which the State argued was consistent with Avery's statement that Blakely hit Edwards during the first assault. During trial, Cleveland presented evidence that he was in New York between August 5 and August 8, 1991. The State asked cross-examination questions indicating that it was possible to drive between Lorain, Ohio, and New York, New York in six hours and fly between the two cities in under an hour-and-a-half. The new evidence that Cleveland presents – Dehus and Donaphin affidavits and flight records – provides strong support for Cleveland's claim that he was in New York at the time of Blakely's murder and undercuts the State's contention that Cleveland would have been able to travel from New York to Ohio in time to commit the murder.

Al Cleveland's Claim of Innocence Is Credible

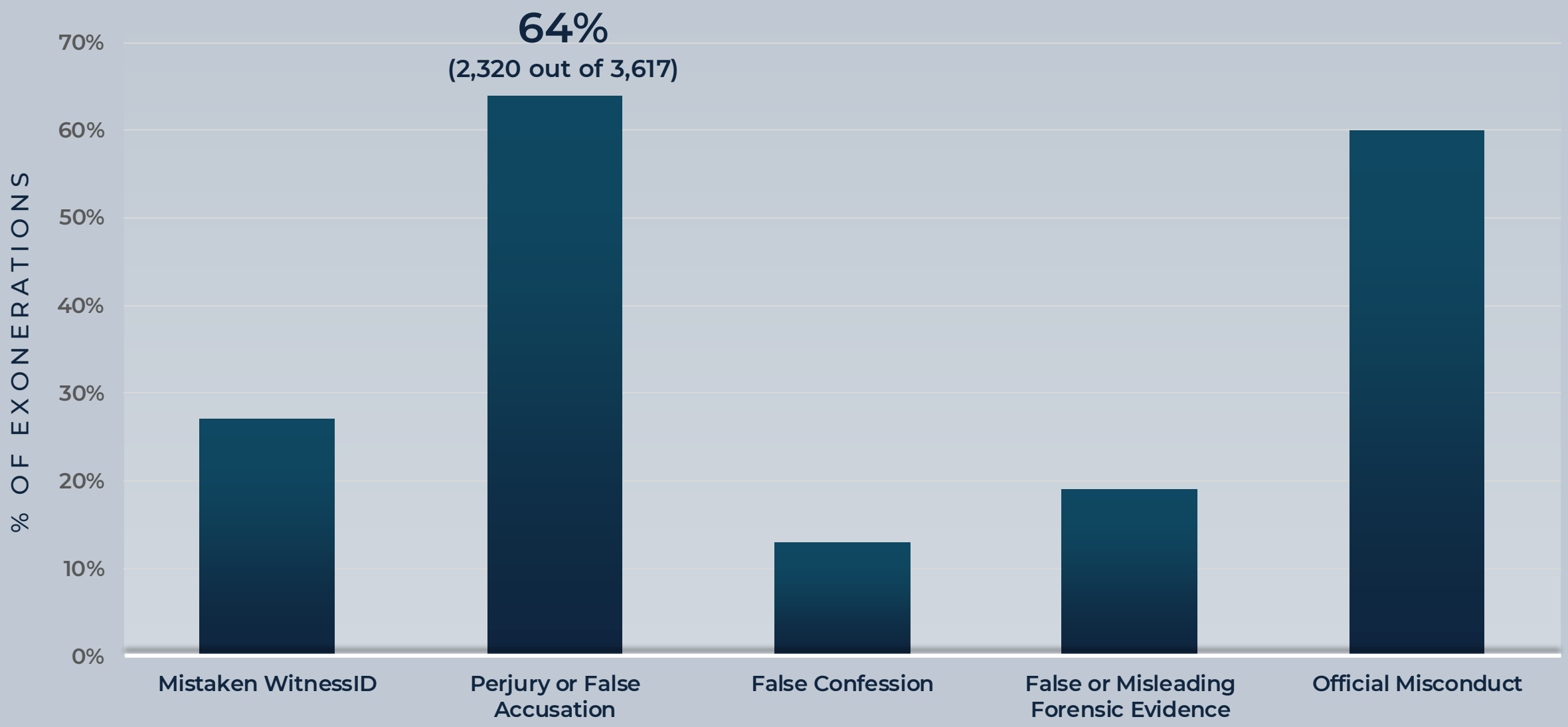
Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012)



In addition, during trial, the jury heard plenty of evidence that called Avery's credibility into question. The jury heard that Avery came forward with information about the murder only after the reward was offered, took the reward, refused to testify unless the prosecution gave him more reward money, and then, when the prosecution refused to do so, Avery testified that he had lied about witnessing any acts involving Blakely and withdrew that recantation only after being placed in jail for perjury. The jury also heard that Avery thereafter testified at four trials about the involvement of Cleveland and his co-defendants in the murder. Had the jury also been able to consider Avery's unsolicited 2004 recantation, the 2006 recanting affidavit, evidence that Cleveland was in New York a couple of hours before Blakely's murder and could not have flown from New York to Ohio in time to commit the murder, along with the fact that there was no other evidence tying Cleveland to the crime, "it surely cannot be said that a juror, conscientiously following the judge's instructions requiring proof beyond a reasonable doubt, would vote to convict." *Schlup*, 513 U.S. at 331.

For the foregoing reasons, we find that Cleveland has presented a credible claim of actual innocence that entitles him to equitable tolling of AEDPA's one-year limitations period and review of his habeas petition on the merits. We reverse and remand for further proceedings consistent with this opinion.[9]

% EXONERATIONS BY CONTRIBUTING FACTOR



National Registry of Exonerations (current as of November 25, 2024)

Exhibit A.2





PETITIONER'S EXHIBIT 121









Exhibit A.3





Exhibit A.4

STATE OF OHIO)
) SS:
COUNTY OF Lorain)

AFFIDAVIT OF WAYNE C. LONG

WAYNE C. LONG, being duly sworn, deposes and says:

1. I am currently a patrolman with the Lorain Police Department.

2. I have known a man named William Avery, Jr. or "B.B." since he was approximately twelve (12) years old.

3. I knew him because Avery was a friend.

4. I was a Juvenile Detective with the Lorain Police Department for over fifteen (15) years. I had regular contact with Avery, who was an unpaid informant.

5. I was also familiar with Avery's father, William Avery, Sr. The best I could describe him would be a "Detroit gangster, and old-time hustler".

6. On August 8, 1991, at approximately 1 a.m. to 2 a.m. the early morning of the murders of Marsha Blakely and Floyd Epps, Avery came to my residence and was pounding on the front door like a maniac.

7. I observed him to be sweating, extremely nervous, frightened and out of breath.

8. For several minutes, Avery was too nervous to say more than: "Mr. Long, I gotta tell you something. These guys wanted me to kill someone!" Avery had to use the bathroom several times before explaining further.

Exhibit G

9. Avery eventually told me the "Jamaican Guys" asked him to kill some girl who owed then $5,000.00.

10. Avery said he had agreed to do so because he was employed on a part-time basis by the "Jamaican Guys" as an "enforcer".

11. Avery told me he was in a vehicle driven by Ivan Gibson, aka, "New York". The car was a big "Buick". It was driven to the Westgate shopping center. When they exited the vehicle, another car drove up with two more "Jamaican Guys" and Marsha Blakely. The others started beating Blakely.

12. Avery said that when he realized that it was Blakely they guys wanted him to kill, and Avery heard someone say "get a knife", Avery ran away.

13. Aside from the names "New York" and "Blakely", Avery did not state who else was present.

14. Al Monday or Al Cleveland's name was not mentioned by Avery during the conversation.

15. Avery sat on my living room couch for approximately three hours before leaving. Before he left, I told him to call me later in the morning.

16. I called Det. Rivera that morning and related Avery's statement to me. Later in the day, I brought Avery to the Lorain Police Department and delivered him to Detectives Taliano and Rivera.

Wayne C. Long

WAYNE C. LONG

Sworn and subscribed to this 10th day of Oct, 2002.

Notary Public

Official Seal
PAUL J. CIOLINO
Notary Public, State of Illinois
My Commission Expires Jan. 10, 2004

My Commission Expires
(SEAL)

3

Exhibit A.5

8/17/91

Info on Blakely/Epps Case.

Smith, Alan C BM/33 DOB/09 18 57 SOC/294 62 3297
321 W. 12th St. (LKA) AKA/Bumpy

The above is incarcerated in County jail and will be there a couple days. He is being held on a PV. He has information and wants assistance with his parole officer.

Alan related to Sgt. Hammond from the S.O., that there are three jamacians living in the Campito area. One of them is known as"Squali ". Squali is supposed to be the leader of the group. They are also supposed to be renting an apartment on Lorain Dr. for the purpose of using it as a crack house.

Smith related that the night Blakely was killed she was in the company of a white male and went to Squali's apartment to score coke. He related that the deal went bad and Squali was looking for her. Squali believed the white male was a "Narc". He threatoned to kill Blakely by cutting her throat. Smith related he heard this statement and knows he carries a knife. Alan saw Blakely enter the crack house the night she was killed.

Smith related that Blakely was pulled out of the Epps house thru a window. He further related that she was dead ~~wi~~ before she was dropped behind Westgate Plaza. He further related that there is still blood in the car that she was transported in.

Sgt. Cambrare related tyhat he received the same information from a different source yesterday.

Shuster

Exhibit A.6

State of Ohio

TRAFFIC CRASH REPORT ADDENDUM

STATE USE ONLY

LOCAL REPORT NO. 91- 30603

REPORTING AGENCY: Lorain Police OH 04705

TIME OF CRASH:

DATE OF CRASH: MO. 8 DAY 8 91 YR.

☐ FATALITY ☐ INJURY

CRASH OCCURRED IN (CITY, VILLAGE, TOWNSHIP): Lorain

IN COUNTY OF: Lorain

STATE ROUTE, CO. OR TWP. ROAD, STREET ADDRESS: PRIVATE PROPERTY

TP ☐ IS ☐ US ☐ SR ☐ CR ☐ TR ☐ CS ☐ PR ☐ OT ☐

AT JUNCTION OR INTERSECTION WITH: Rear of 2538 West 21st street

UNIT #1 DRIVER—LAST: BLAKELY FIRST: MARSHA MIDDLE:

UNIT #2 DRIVER—LAST: FIRST: MIDDLE:

BlueJean Shirt
Blue Jean Pants

NORTH

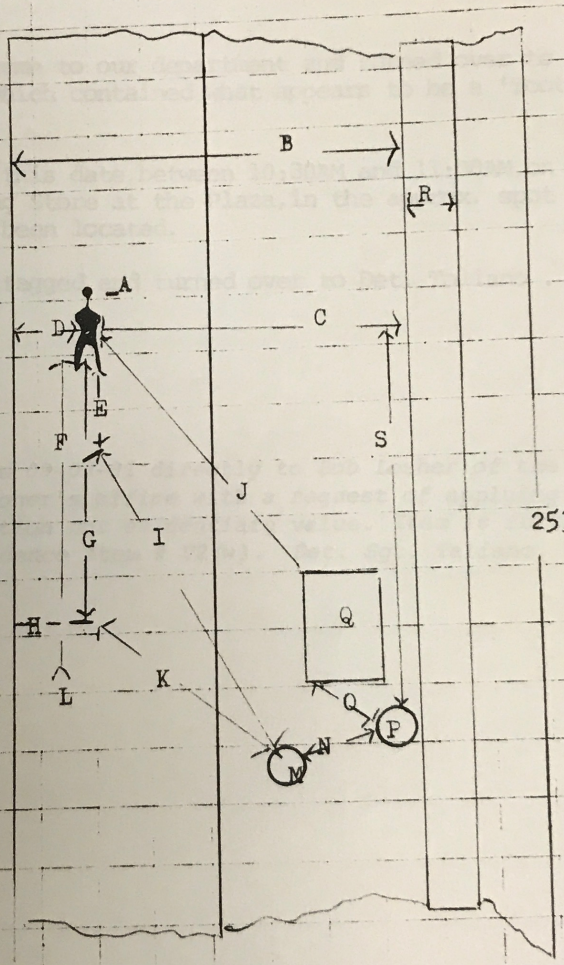
A. MARSHA, BLAKELY
B. Alley 26'
C. Body to Curb 21'
D. Body to edge of road 5'10"
E. Body to shoe 1'
F. Knife to Body 33'
G. Button to body 27'7"
H. Button to edge of road 7'10"
I. Shoe to Sanitary Sewer 21'
J. Body to Dumpster 18'4"
K. Button to Sanitary Sewer 9'
L. Knife
M. Sanitary Sewer
N. Pole to Sanitary Sewer 7'
O. Pole to Dumpster 8 '
R. Sidewalk 2'10"
S. Pole to Curb 26 feet

P. Tire tracks with blood spot total distance 51"

Q-Dumpster 5' by 5'

Tire Tracks located at scene 5½'

Alley goes East to West
Railroad tracks and weeds north of alley



OFFICER'S SIGNATURE

ID NUMBER

OH-2 (REV. 5/73)

Exhibit A.7

CITY OF NEW YORK
DEPARTMENT OF PROBATION
115 LEONARD STREET, RM. 2D12
NEW YORK, NEW YORK 10013
TELE: (212) 442-4517 FAX: 442-4519

Raul Russi
Commissioner

Janice E. Taylor
General Counsel

August 10, 2000

Michelle Fox
Associate Appellate Counsel
The Legal Aid Society
90 Church Street
New York, New York 10007

Re: People v. Alfred Cleveland

Dear Ms. Fox:

Pursuant to the subpoena signed by the Honorable Laura Drager, please find the probation records of Alfred Cleveland. The supervision folder indicates that he reported on June 19, 1991 to P.O. Owens, and on July 17, 1991 and August 7, 1991 to P.O. Castaldo. I have certified these records.

Please let me know if you require any further information.

Very truly yours,

Janice E. Taylor

Enc.

Exhibit P

NEW . JRK CITY DEPARTMENT OF PROBA ON

Chronological Case Record Period from_____ to_____

Explain and/or update details of case activity in Comments section as appropriate

Case Name	Case Number	P.O. Assigned	P.O. ID. #
Alfred Cleveland	BC9010444	Owens	2019

Date of Contact	6-19-91	7/17/91	8/7/91	
DSP Level/Rpt. Freq. Reduced ☐	☐	☐	☐	☐
Probationer Contact– Office	✓	✓	✓	
Level III/IV– Telephone				
Level III/IV– Mail				
Field/Home				
Collateral Contact– Office				
Field				
Telephone				
Address Review– Same	✓	✓	✓	
New				
Verified				
Maintenance– Employed	✓	✓	✓	
Public Assistance				
Other				
Verified				
School or Training Program	NO	NO	NO	
Verified				
Suspected Alcohol/Drug Abuse	NO	NO	NO	
Verified /Acknowledged				
Counseling Program–Drug/Alcohol	NO	NO	NO	
Other				
Attendance Verified				
Fine/Rest./Comm.Service Required	NO	NO	NO	
Arrested Since Last Contact	NO	NO	NO	
Next Scheduled Contact/Type	7-17-91	8/7/91	MED	
Name of P.O. Taking Report	OWENS	Cristaldo	Cristaldo	
FTR Dates				

Date	Comments
6-19-91	I reported. No problems indicated. I still unemployed. and residing at c/o abv add 7/17

Probation Supervision Summary–as required (see other side)

2906-1068T

Date	COMMENTS (Each entry must be signed by P.O.)
8/7/91	P- reported all is well - remains at case address - no apparent problems and P- is anxious to reach MED. S/R/D 8/7/91 JC
8/7/91	P- reported all is well - P- told he has completed his probation sentence and is free to go and to stay out of trouble. MED! acknowd JC

Probation Supervison Summary

(as required)

Summary Reviewed: SPO _____ Date _____

Exhibit A.8

Lorain Police Department
Supplement Report # 199100030603
Submitted by: Lorain County Drug Task Force Detective Taliano.
Date: 12-15-2010.

Title: Blakely-Epps Homicide investigation.
Date of investigation: 08-08-1991

Documents attached:

1. Lorain Police Department Narcotics Drug-Track: re: Michael James Rutherford.

2. Lorain Police Department Records Department data report re: Michael James Rutherford and Kenneth Dondra Rivers.

3. Supplement report submitted by Lorain Police Department Detective Sergeant Carpentiere re: 04-13-2010 "text Tip" regarding the murders of Marsha Blakely and Floyd Epps on or about 08-08-1991.

4. Ohio Law Enforcement Gateway (OHLEG) reports re: Michael James Rutherford and Kenneth Dondra Rivers (12-15-2010).

5. Computerize Criminal History (CCH) re: Michael James Rutherford and Kenneth Dondra Rivers (12-15-2010).

6. Ohio Department of Correction data information re: Daniel Smith, Michael James Rutherford, and Kenneth Dondra Rivers. (12-15-2010).

SYNOPSIS

On December 14, 2010, at approximately 2:30 p.m., Lorain Police Detective Lieutenant Super and Lorain County Drug Task Force Detective Taliano interviewed Daniel SMITH in the office of Attorney Michael Duff regarding the August 8, 1991 murders of Marsha Blakely and Floyd Epps. The investigators were contacted by Attorney Duff on 12-13-2010 and advised that Smith possessed and was willing to provide pertinent historical information regarding the murders of Blakely and Epps.

DETAILS

1. On December 13, 2010, Lorain County Drug Task Force Detective Taliano was contacted by Attorney Michael Duff and provided the following preliminary information. Attorney Duff advised that he represented Daniel SMITH regarding his recent drug trafficking arrest by the Lorain Police Department Narcotics Bureau. (Reference is made to the 12-04-2010 arrest report # 2010-45364). Attorney Duff stated that SMITH possessed pertinent historical information regarding the 08-08-1991 murders of Marsha

Blakely and Floyd Epps. (Reference is made to Lorain Police Department report # 199100030603). Attorney Duff further indicated that SMITH was willing to provide information regarding the murders of Blakely and Epps in exchange for consideration in his drug trafficking arrest.

2. On 12-13-2010, Detective Taliano contacted Lorain Police Department Narcotics Bureau Lieutenant Super and advised him of the aforementioned offer by Attorney Duff on behalf of his client Daniel SMITH. Lieutenant Super advised that he would confer with the Lorain County Prosecutor's Office and his department regarding the anticipated interview of SMITH.

3. On 12-14-2010, Attorney Duff contacted Detective Taliano and requested that the investigators meet with SMITH in his office at 2:30 p.m. (12-14-2010). Detective Taliano contacted Lieutenant Super regarding the offer and all parties agreed to meet for an interview on that date.

4. On 12-14-2010, Lieutenant Super and Detective Taliano met with Attorney Duff and Daniel SMITH and the following transpired. Attorney Duff requested that the interview not be taped. All parties complied. Lieutenant Super advised Attorney Duff and SMITH of the following: Lieutenant Super advised that the Lorain Police Department lacked the authority to offer any reduction in penalty regarding Daniel SMITH's arrest on 12-04-2010. Further, Lieutenant Super indicated that the Lorain Police Department would not delay presenting the case to the Lorain County Grand Jury regarding its consideration in the investigation and arrest of SMITH.

5. Daniel SMITH, with the advise and in the presence of Attorney Michael Duff, offered the following scenario regarding alleged communications with a third party regarding the 1991 murders of Marsha Blakely and Floyd Epps in Lorain, Ohio.

6. SMITH stated that he was incarcerated in Belmont Correctional Institute (BCI) in 1996 as a result of a drug-related conviction. SMITH stated, during an unspecified period of time in 1999, he was befriended by a prisoner he identified as Michael RUTHERFORD. SMITH stated that RUTHERFORD confided in him regarding his participation in the murders of Marsha Blakely and Floyd Epps. RUTHERFORD allegedly provided SMITH with the name of a fellow conspirator in the murders; to wit: Kenny DAVIS. SMITH stated that he was familiar with "KENNY DAVIS" and met him in Lorain, Ohio. SMITH claimed he last saw DAVIS sometime in 1994.

7. SMITH stated, during his conversations with RUTHERFORD, he was advised of the following. RUTHERFORD reportedly indicated that he, DAVIS, and Blakely were smoking "crack" cocaine throughout the day of Marsha Blakely's murder. RUTHERFORD advised SMITH that he was driving a vehicle while DAVIS and Blakely were in the rear seat of the vehicle. SMITH stated that he could not provide a description or offer ownership information regarding the vehicle operated by RUTHERFORD on that date.

8. SMITH advised RUTHERFORD claimed DAVIS and Blakely became involved in a verbal confrontation. SMITH did not provide the specific cause of the altercation. SMITH stated he was advised by RUTHERFORD that DAVIS placed Blakely in a "choke hold" and it appeared as though Blakely "passed out". SMITH was advised by RUTHERFORD that DAVIS began to stab Blakely with what he felt was a "screwdriver-type" instrument. SMITH indicated RUTHERFORD did not provide the specific area of Blakely's body DAVIS was attacking during the assault.

9. SMITH stated that RUTHERFORD advised him that he drove the vehicle to the "rear of a business" and near a dumpster. DAVIS was to have indicated that he was threatened by DAVIS. SMITH stated that RUTHERFORD told him that DAVIS directed him to "cut the throat" of Blakely and failure to comply would result in DAVIS "killing both of them" (RUTHERFORD and Blakely).

10. SMITH stated he was advised by RUTHERFORD, as a result of the threat by DAVIS, that he (RUTHEFORD) "sliced her throat". SMITH did not provide a description of the knife used by RUTHERFORD during the interview.

11. SMITH stated RUTHERFORD provided the following additional information. SMITH stated RUTHERFORD told him that the "other guy" approached the area previously described as the "rear of a business" and observed the murder of Blakely. SMITH was advised by RUTHERFORD that DAVIS attacked and "cut the throat" of the "other guy". SMITH stated that RUTHERFORD indicated he drove the vehicle over the body of this male when leaving the area. SMITH did not indicate RUTHERFORD advised that he drove the vehicle over the body of Blakely. During the interview, the investigators were advised by SMITH the identification of the "other guy" by RUTHERFORD was in direct reference to Floyd Epps who was also murdered on or about 08-08-1991 in Lorain, Ohio.

12. SMITH stated he was advised by RUTHERFORD that he and DAVIS left the area of the business immediately after killing Blakely and Epps. SMITH stated that RUTHERFORD made statements that indicated that he was afraid of DAVIS and that DAVIS was "crazy". RUTHERFORD was to have indicated to SMITH that, if he did not participate in the homicides of Blakely and Epps, DAVIS would have killed him.

13. SMITH stated, following RUTHERFORD's confession to the murders of Blakely and Epps, he wrote a letter to one of the New York based subjects convicted for the murder of Marsha Blakely. SMITH stated that he wrote a letter to Alfred CLEVELAND and advised him that a prisoner incarcerated at the Belmont Correctional Institute admitted to participating and being responsible for the murders of Blakely and Epps in 1991. SMITH stated that he did not provide the identification of either RUTHERFORD or DAVIS in this letter.

14. SMITH stated he was contacted in 1999 or 2000 at the Belmont Correctional Institute by an organization he believed to be associated with a Project Innocence group and questioned regarding the letter he wrote to Alfred CLEVELAND. SMITH stated that

he recounted the story told to him by RUTHERFORD but did not identify either RUTHERFORD or DAVIS during the interview.

15. SMITH stated, approximately four weeks before this interview (12-14-2010), he discovered RUTHERFORD's daughter is employed at the McDonald's Restaurant located on Oberlin Ave in Lorain, Oho. SMITH stated he requested and received the telephone number of RUTHERFORD from the daughter and contacted RUTHERFORD. SMITH stated RUTHERFORD asked SMITH to visit him at his Elyria, Ohio residence. SMITH stated he complied and met with RUTHERFORD at a duplex on East Ave in Elyria, Ohio. SMITH did not provide the investigators provide with the exact numerical address of the RUTHERFORD residence. Investigators, through Lorain Police Records Bureau, located an address associated with RUTHERFORD (630 East Ave Elyria, Ohio). SMITH stated he was unable to provide investigators with the telephone number provided to him by RUTHERFORD's daughter. SMITH claimed he failed to save the telephone number with his cellular telephone memory feature.

16. SMITH advised, after arriving at RUTHERFORD's residence, RUTHERFORD questioned him regarding their alleged conversation regarding the Blakely-Epps homicides while they were incarcerated Belmont Correctional Institute in 1999. SMITH advised he denied any involvement in providing information as a result of their conversations in 1999. SMITH stated RUTHERFORD indicated that he was contacted by someone and questioned regarding his involvement in the murders of Blakely and Epps. Attorney Duff suggested RUTHERFORD was contacted by the Federal Bureau of Investigation (FBI) as a result of the agency's continued interest in the Lorain Police department. SMITH stated RUTHERFORD did not identify the agency and did not the (FBI) as the agency that questioned him regarding the homicides.

17. Investigators determined RUTHERFORD may have been referring to Lorain Police Department Detective Sergeant Carpentiere contacting him on 05-13-2010 as a result of the Lorain Police Department receiving an anonymous "text tip" on or about 04-13-10. The names provided in the "text tip" were KEN "RIVERS" and MIKE RUTHERFORD. Reference is made to Lorain Police Department Supplemental Report (# 199100030603) filed by Detective sergeant Carpentiere on 05-27-10. It should be noted, in the account provided to the investigators by SMITH on 12-14-2010 in Attorney Duff's office, SMITH referred to the co-conspirator as Kenny "**DAVIS**. The "text tip" and Detective Carpentiere's report identify the second suspect is identified as Ken "**RIVERS**".

18. Included with the report filed by Detective Carpentiere on 05-27-2010 are the recorded interviews of RUTHERFORD and RIVERS. Detective Sergeant Carpentiere submitted the recorded conversations to the Lorain Police Department evidence officer under this report number. It should be noted that, inclusive of the taped interviews of RUTHERFORD and RIVERS, are their assertions that they were familiar with Marsha Blakely and each other but denied any involvement in the murders of Blakely or Epps.

19. Detective Taliano reviewed Belmont Correctional Institute inmate records regarding Daniel SMITH and Michael RUTHERFORD in 1999. The Ohio Department of Rehabilitation and Correction data indicates the following: RUTHERFORD is listed as an inmate at the Belmont Correctional Institute (BCI) from 04-08-1999 through 09-28-1999. The (BCI) records indicate SMITH entered the correction facility 05-21-1996. Daniel SMITH continued to be listed at that facility during the time period RUTHERFORD was incarcerated at (BCI). During the 12-14-2010 interview of SMITH in Attorney Duff's office, SMITH indicated he and RUTHERFORD were cell mates. On or about 09-28-1999, the housing section assignment for SMITH is listed as (SEG 171 B/C). RUTHERFORD, on 09-28-1999, housing section assignment is listed as (SEG 171/ T/C). Based upon the information obtained from the prison records, the balance of the housing section assignments for RUTHERFORD do not appear to match those of SMITH during the period of time RUTHERFORD was incarcerated at Belmont Correctional Institute.

20. On 12-15-2010, Detective Taliano conferred with Chief Assistant Lorain County Prosecutor Cillo regarding the interview of Daniel SMITH and subsequent supplemental investigation. Detective Taliano was directed to provide the Lorain County Prosecutor's Office with this report and identified attached documents. The investigation will continue upon review of the facts by the Lorain County Prosecutor Office.

21. On 12-15-2010, Detective Taliano conferred with Lorain Police Department Lieutenant Rohner regarding the interview and related documents. Lieutenant Rohner advised the Lorain Police Department would continue the investigation regarding the recent information provided by Daniel SMITH.

Jacket# Name Driver Lic State Social Security

33407A RUTHERFORD,MICHAEL,JAMES,SR PR212678 OH 291-72-7402 Age: 41

CHARGE: 525.09 RESISTING ARREST CRIME CODE: 0090Z DISP/DATE:
ARRAIGN. JUDGE: RETURN JUDGE :
DISPOSITION . : DISPO DATE . :
MISC 1 . . . . :
MISC 2 . . . . :
SENTENCE . . : SENT DATE . :
COURT COSTS . : .00 FINE . . . . : .00 RESTITUTION. : .00
CONFINEMENT . : FACILITY . . : PROBATION. . :

13753 1995-00008564 03/02/95 15:02 1077 KOVACH,JOHN,ROBERT,
CHARGE: 537.14 CRIME CODE: 0090Z DISP/DATE:
ARRAIGN. JUDGE: RETURN JUDGE :
DISPOSITION . : DISPO DATE . :
MISC 1 . . . . :
MISC 2 . . . . :
SENTENCE . . : SENT DATE . :
COURT COSTS . : .00 FINE . . . . : .00 RESTITUTION. : .00
CONFINEMENT . : FACILITY . . : PROBATION. . :

13752 1995-00008564 03/02/95 15:02 1077 KOVACH,JOHN,ROBERT,
CHARGE: 2903.11 FELONIOUS ASSAULT CRIME CODE: 0013A DISP/DATE:
ARRAIGN. JUDGE: RETURN JUDGE :
DISPOSITION . : DISPO DATE . :
MISC 1 . . . . :
MISC 2 . . . . :
SENTENCE . . : SENT DATE . :
COURT COSTS . : .00 FINE . . . . : .00 RESTITUTION. : .00
CONFINEMENT . : FACILITY . . : PROBATION. . :

13751 1995-00008564 03/02/95 15:02 1077 KOVACH,JOHN,ROBERT,
CHARGE: 2903.13 ASSAULT CRIME CODE: 0013B DISP/DATE:
ARRAIGN. JUDGE: RETURN JUDGE :
DISPOSITION . : DISPO DATE . :
MISC 1 . . . . :
MISC 2 . . . . :
SENTENCE . . : SENT DATE . :
COURT COSTS . : .00 FINE . . . . : .00 RESTITUTION. : .00
CONFINEMENT . : FACILITY . . : PROBATION. . :

SUBJECT CASE#	CASE DATE	CASE TYPE	SUBJECT TYPE	PRIMARY	CASE STATUS	CASE LOCATION
1991-00030603	08/08/1991	Homicide	Informat	NO	Closed	2550 W 21ST ST

PROPERTY: TYPE : Recordings CODE. : Evidence DATE RECEIVED: 08/08/1991
MAKE . : MODEL: COLOR : COND. 2 CD'S/MIRANDA FORM/TEXTIP
REG #. : STATE: YEAR. : EXP DT:

1995-00008564	03/02/1995		Suspect	YES	OPN/Active	1904 W 27TH ST
1996-00042451	10/28/1996	Theft	Suspect	YES	Closed	5001 W ERIE AV #203
1997-00025352	07/19/1997	Auto Theft	Suspect	YES	Closed	5001 W ERIE AV #203
1998-00001609	01/16/1998	Dom Dis	Suspect	YES	Closed	5001 W ERIE AV #203

Exhibit B

Thereupon, the State, in order to further maintain the issues on its part to be maintained, called Robert Thomas, M.D., as a witness, upon being first duly sworn and/or affirmed, was examined and testified as follows:

DIRECT EXAMINATION OF ROBERT THOMAS, M.D.

BY MR. ROSENBAUM:

Q State your name, please, sir.

A Robert Thomas.

Q Spell your last name for the Reporter.

A T-h-o-m-a-s.

Q Have you practiced or enjoyed a profession?

A I have.

Q And what would that be, sir?

A I'm a Doctor of Medicine.

Q How long have you been licensed to practice medicine in the State of Ohio?

A A little over 50 years.

Q Did you practice a specialty?

A I was a pathologist.

Q Tell the Court and Jury what that means, please?

A Pathologists basically run the laboratories in the

hospital and are in charge of the laboratory diagnosis, and this would include performance of autopsies.

Q Have you served Lorain County in any other capacity other than a private position?

A I was the Coroner of Lorain County for some gotime.

Q How long would that be, sir?

A I was a Deputy Coroner for approximately 40 years, and was the Coroner for approximately 5 years.

Q Have you recently retired?

A Yes, I have.

Q When was that, Doctor?

A 1995.

Q Were you the duly elected Coroner of this County in 1993?

A Yes, I believe so.

Q And as a result of that were you summoned to the scene where Marsha Blakely's body --

MR. DUFF: Object, he said '93.

Q I'm sorry, I mean 1991.

A Yes, I was.

Q And we'll go back. When did you stop being Coroner?

A As near as I can remember it was 1992.

Q So you were summoned to the scene on August 8, 1991, where Marsha Blakely's body was?

A Yes, that's right.

Q Do you recall where that was, sir?

A It was in Lorain, I don't recall the exact address.
Q Was it behind anything or any structure, if you can recall?
A It was located behind a bar.
Q Do you know where this bar was?
A I don't remember the street address.
Q Can you describe where the bar was, other than its address, if you recall?
A It was in the south side of Lorain.
Q Well, let me ask you this, sir, as a result of being summoned to the scene and being the Coroner for this county, did you order photographs to be taken of Marsha's body?
A Yes, I did.
Q Both at the scene and at her autopsy?

MR. DUFF: I would stipulate to speed it up a little.

(Out of the hearing of the Jury.)

MR. ROSENBAUM: Okay.

MR. DUFF: Can we see the pictures? I would stipulate to the location. Is that what you're trying to get at, Westgate Plaza?

MR. ROSENBAUM: That's not a problem here. If he wants to, that's fine.

MR. DUFF: I don't have a problem with that, the body was found at Westgate Plaza.

THE COURT: What exhibits?

MR. ROSENBAUM: 2-A through 2-J.

THE COURT: Did you get any of those pictures during discovery?

MR. DUFF: I did.

THE COURT: Then let Duff look at them. Move it along, we want to get done with this trial this week.

(Within the hearing of the Jury.)

Q Doctor, I would like to hand you some photographs marked as State's Exhibits 2 and 2-A through 2-J and ask you to look at them, please. Do you recognize those photographs, Doctor?

A Yes, I do.

Q Were they taken at your direction, under your control?

A Yes, they were.

Q Do they truly and accurately depict the scene they represent?

A Yes, they do.

Q Are they photographs of Marsha Blakely's body both at the scene and autopsy?

A Yes, they are.

MR. ROSENBAUM: I would like to move their admission so the Doctor can hold them up and explain them.

THE COURT: Any objection?

(Out of the hearing of the Jury.)

MR. DUFF: Object. Some of them are quite

gruesome.

THE COURT: Which ones?

MR. DUFF: This one, Your Honor, 2-I. It's pretty well set forth in this, Judge.

THE COURT: We'll leave 2-I out then.

MR. ROSENBAUM: Can I be heard? That's the one that shows the depth, you know. Okay.

(Within the hearing of the Jury.)

THE COURT: They will be admitted with the exception of I. Mr. Rosenbaum.

THEREUPON STATE'S EXHIBITS 2, 2-A, B, C, D, E, F, G, H, AND J, PHOTOGRAPHS, WERE OFFERED AND ADMITTED INTO EVIDENCE.

MR. ROSENBAUM: Thank you, Your Honor.

Q Now, Doctor, I would again like to hand you 2-A through H and 2-J and ask you to look at them, please.

Take the first photograph, State's Exhibit 2, please, could you hold that up to the Jury and describe what it depicts?

A This is a picture of Marsha Blakely's body as I first saw it. It's lying on a concrete area behind the bar with some shrubbery on one side. Of particular interest is the tire tracks that you can see between the alley and the body. These tire tracks are made from blood, the wheels of the car went through a pool of blood lying next to the body and you can

also see the pool of blood and one of her shoes has come off and is lying on the concrete.

Q Did Marsha's body have injuries consistent with being run over by an automobile?

A It did.

Q Would you go to the next photograph, please, Doctor, 2-A?

A This is a picture of the body taken a little bit closer up, and it shows several pools of blood which are -- there was a considerable quantity of blood, the pools were quite large.

Q 2-B, please?

A This is a picture of the body even closer up showing the large pool of blood behind it. You can also begin to see a large laceration on her neck, and there is a large abrasion on her -- on the left side of her head, which would be consistent with being struck by an automobile.

Q 2-C, please, or was that 2-C?

A That was 2-B.

Q Okay, 2-C then?

A 2-C is again a picture of the upper portion of her body. You can see the pool of blood behind it. You can see the large laceration on her neck, and you can see the abrasion on the side of her face. There's also an abrasion on her forehead, which shows to some extent.

Q And State's Exhibit 2-D?

A This is a picture of Marsha Blakely's body taken in the

morgue at the hospital. It's a picture of the head and neck. It shows a large laceration in the neck. It also shows the abrasion on the left side of her face, and there was a laceration of her lip, which you can see in this picture.

Q 2-E, please, Doctor?

A This is a close-up of Marsha Blakely's neck. This picture was taken in the morgue at the hospital. It shows the lacerations, which I have been mentioning in the previous pictures, you see it much closer, and in particular I would like to point out her windpipe and trachea, which can be seen in the center of this picture, is completely cut across, completely severed.

Q Are there any other wounds visible in that picture, in 2-E?

A Yes, there are. There are several small stab wounds seen both above and below the main lacerations. There were many of these scattered around over her neck and shoulder.

Q State's Exhibit 2-F, Doctor?

A This is a close-up picture taken of Marsha Blakely's back. It was taken because it shows a leaf, which when we removed her clothes found the leaf stuck to her skin, the lower part of the back, just above the buttock.

Q 2-G please?

A This is a picture of Marsha Blakely's right shoulder and neck, posing her side, and it shows numerous small stab

wounds. These ranged, we counted about 25 of them, they couldn't all be included in one picture, some were on the front and some on the back. They ranged from a quarter of an inch to an inch in length, and in some instances were as much as an inch deep.

Q Were they injuries that would cause death?

A No, sir.

Q Would they cause any incapacitation whatsoever to Marsha Blakely?

A No.

Q Would they cause extreme pain?

A Yes.

Q Are they consistent with a torture type wound?

MR. DUFF: Objection.

THE COURT: Sustained.

Q Let me put it to you this way, would the person inflicting those wounds feel they could cause death in any way?

MR. DUFF: Object.

THE COURT: Sustained.

Q Do you have an opinion about those wounds and this position that you could share with the Jury?

MR. DUFF: Objection.

THE COURT: Overruled.

A I don't quite understand the question.

Q Would you move on to 2-H, please, Doctor, and explain the significance of that to the Jury?

A This is another picture of her neck, and it shows more of these small stab wounds. There were a large number of them, they were made more or less at random.

Q And 2-J, Doctor?

A This is a picture of her left shoulder showing an abrasion and laceration.

Q Could you tell the Court and Jury what you found to be Marsha's cause of death?

A There were several. There were at least 2 things which could have been the cause of death, I mean both of which could have been the cause of death, one was the laceration, large laceration of the neck, which cut across her internal jugular vein, her left internal jugular vein. She would have bled to death quite rapidly from that. The other thing which could have caused her death was a fractured dislocation of the upper vertebra of her neck where it joins the skull.

Q Then she had a broken neck?

A Yes, sir.

Q As well as her throat was cut to a depth and in a manner that would have been fatal by itself?

A Yes, sir, that's right.

Q Did she have any injuries to her ribs, Doctor?

A Yes, she had 8 ribs which were broken on the left side,

and in the posterior area, and one rib that was broken in the front, and these resulted in bleeding into her chest, which would have caused some serious complications if time had gone on.

Q Does that mean she was alive when her ribs were broken?

A Yes, it does.

Q Are these injuries consistent with being struck by a motor vehicle?

A Yes, sir, they are.

Q And you have testified that the stab wounds in her neck were lethal or not lethal?

A The small wounds were not lethal.

Q But they would have been very painful, is that correct?

MR. DUFF: Objection, asked and answered.

THE COURT: Overruled.

A Yes, sir, they were.

Q Did you notice anything that would be consistent with her body being dragged at any time?

A The presence of the leaf on the skin of her back under her clothes would be consistent with that.

Q Any abrasions consistent with being dragged?

A There were numerous small abrasions, I wouldn't be able to say the exact cause of them.

Q Doctor, did you prepare a report that details your findings today?

A Yes, sir, I did.

Q I would like to hand you what's been marked as State's Exhibit 1, Doctor, and ask you to look at it, please.

Do you recognize that document, sir?

A I do.

Q What is that?

A This is the autopsy report on Marsha Blakely.

Q Is that a true and accurate copy of a record you prepared in your ordinary course of business as Lorain County Coroner?

A Yes, sir.

Q Does it bear the official seal of your office, sir?

A It does.

Q Could you tell the Court and Jury how long it would take for Marsha to die after she received the broken neck or slitting of her throat?

A It would be my opinion it would be a matter of minutes.

Q And can you postulate within reasonable medical certainty what time she met her demise?

A I believe she died early in the morning of the 8th, no later than 3:00 or 4:00 A.M., and probably between midnight and 3:00 or 4:00 A.M.

MR. ROSENBAUM: I have no other questions, Your Honor.

THE COURT: Mr. McNamee.

MR. McNAMEE: May I introduce myself to the

Jury?

THE COURT: Sure.

MR. McNAMEE: Brian McNamee. I'll be asking some questions. Thank you.

CROSS-EXAMINATION OF ROBERT THOMAS, M.D.

BY MR. McNAMEE:

Q Now, Doctor, you testified that the only thing that you found that was consistent with being dragged was a leaf that was stuck to the back of the deceased, is that correct, on the skin?

A There was a leaf. There were also a number of abrasions, which would be consistent with that, but I don't --

Q Which abrasions would be consistent with that?

A Abrasions on the shoulders and arms.

Q Do you have pictures of those?

A Not of all of them.

Q Is it -- who was it that directed these pictures be taken?

A I did.

Q And in your general practice is it your practice to indicate to whoever is taking the pictures that they should take pictures of what is relevant and important in determining the circumstances and cause of death?

A Yes.

Q Now, can you tell me why, if these abrasions and other

scrapes you are talking about were important, why you wouldn't have somebody take pictures of those?

A The only thing we took pictures of were the major ones that I did consider to be important, the others were of a much less nature.

Q Is it fair to say at the time you took these and examined the body you weren't aware that the Prosecutor was going to later on develop a theory based on someone's testimony that this body was dragged, is that why you don't have pictures of those?

A No, sir.

Q Well, if you did think these abrasions -- that the body was dragged, that would be important, wouldn't it?

A It might under some circumstances.

Q And, therefore, you would, if you thought that had happened, you would have had them take pictures of them, correct?

A If I thought it had anything to do with the death.

Q So really you don't have any idea in terms of them if they had anything to do with being dragged and certainly you didn't at the time you observed the body, did you, Doctor?

A No.

Q Now, I would like you to assume the following facts for a question, that there is a witness that will testify that this -- that he saw this victim being beaten over a period of

approximately 20 minutes consistently during that time period by 3 to 4 men, all right? Assume that fact.

Now, I would like you to tell me if the injuries that you observed on this victim at the time you examined her are consistent with such a history?

A Not all of them.

Q Which ones are consistent with that history?

A Possibly the minor abrasions that we talked about.

Q Anything else?

A No.

Q Now, let me ask you the question in a little different way. Is it -- does it seem medically feasible to you that there wouldn't be other additional injuries that would have occurred if a 5 foot 3 inch woman was being held helpless on a bed and being beaten for 20 minutes by 3 or 4 healthy males?

A I couldn't answer that.

Q If one of these males, for example, had hit her around the orbit, would you expect to see a bloody eye and swelling from that?

A She might develop a black eye over a period of time.

Q Is it not unusual when someone is punched in the eye they develop a fracture of the orbit? It happens all the time, doesn't it?

A I --

Q In the emergency room, it's not an uncommon --

MR. ROSENBAUM: I object, it calls for speculation.

THE COURT: Overruled.

Q I'm asking to a reasonable medical certainty.

A I can't answer that.

Q In your experience is it not uncommon a hard blow to the region of the orbit by a healthy male could result in a fracture of the orbit?

A It could.

Q It would not be a surprising eventuality, would it?

A No.

Q How about a punch to the nose? Would that tend to result in a fracture of the nose?

A It could.

Q It wouldn't be unusual, would it?

A No.

Q Did you see any fractures of either the right, excuse me, the right or left orbit on this person?

A No.

Q Did you see any fractures of the nose?

A No.

Q Did you see any fractures of the maxilla?

A No, sir.

Q And you did notice that there were rib fractures, you pointed those out?

A Yes.
Q Is there anything that you would think that is unusual about those rib fractures if they occurred during a beating?
A I have never seen rib fractures of this extent resulting from a beating.
Q So you don't think those did result from a beating?
A No.
Q Rib fractures can result certainly from being punched in the ribs, can they not, or kicked?
A They could.
Q Did you find any evidence that this person had fractures of the entire right ribs, were any of those injured?
A None.
Q It was only the left side?
A Yes, sir.
Q Now, did you see any evidence of injuries to the internal organs that would indicate to you that this victim had been beaten for a period of approximately 20 minutes?
A No.
Q For example, did you see anything that indicated a laceration or hematoma in the liver from the punch to the upper abdomen?
A No.
Q Did you see anything that indicated a hematoma or laceration to the spleen from a punch on that side?

A No.
Q Is the spleen, as organs go, a relatively easy organ to fracture?
A Only under special circumstances.
Q I guess what I'm getting at, when people come into an emergency room with history of abdominal pain, it's not unusual to look for a spleen tissue laceration or hematoma because it's a relatively fragile organ?
A It's fragile when it's undergoing a disease process, otherwise it's uncommon to have a spleen tissue injury.
Q From trauma?
A Yes.
Q Did you ever work in emergency?
A Certainly.
Q Did you see any evidence of contusion or lacerations to the kidneys?
A No. No, sir.
Q No evidence of that.
Now, with respect to the head, did you see any subdural hematomas on either side from this person being pushed or kicked?
A No, sir.
Q Did you see anything that would indicate epidural hemorrhage around the brain from the head being kicked or bashed?

A No, sir.

Q Did you see any constriction or bleeding into the brain itself indicating this person was pushed or kicked?

A No, sir.

Q Now, you testified that it was consistent in your opinion that -- I want to go back. Strike that for a moment.

In view of the fact there are none of these injuries present, do you find it unlikely this person, this victim was actually beaten unconscious for a period of 20 minutes?

A I'm unable to answer that.

Q Certainly you would agree with me, would you not, the lack of injuries do not seem to be medically consistent with such a history, do they?

A The injuries were fatal.

Q The injuries, the ones we just discussed were not present, would they be inconsistent with the history of beating to unconsciousness?

A I don't think I can answer that without observing the beating.

Q Now, assuming these facts for the next question, that there will be testimony that the dragging of the body that is being discussed would have occurred by dragging a person by one arm or wrist over a threshold of an apartment, over a concrete step about 3, 4 inches high, onto a concrete sidewalk and then either for a distance of about 100 feet down a

concrete sidewalk or part of a concrete sidewalk and over a muddy, grassy area into a car, that is what occurred, right? We'll assume those facts.

Now, can you tell me if you saw -- did you examine the clothes that this victim was wearing?

A Not in detail.

Q Can you tell me whether or not there was evidence of grass stains on the clothes?

A No, sir.

Q Was there any evidence of mud on the clothes?

A I can't answer that.

Q Would that be important, once again if you really thought at the time you did this examination that this person had been dragged?

A It might have been indicative.

Q Do you think if you had seen, or if there had been mud present on the back of the clothes of this victim that you would probably have noticed it inasmuch as you do a careful examination?

A Probably.

Q So it's fair to say there probably was not any mud or grass stains present, isn't that correct?

MR. ROSENBAUM: Object.

THE COURT: Overruled.

A I don't know the answer to that.

Q Now, did you find any evidence of mud or gravel on the skin of the victim, like on the back or the shoulders?
A No.
Q So there would be no indication, at least from your examination, that this person was dragged over gravel or dirt type of ground, is that correct?
A We took the picture of the leaf, which I mentioned earlier, because we thought that might be important.
Q Right, but you saw nothing else that would confirm that that came from someone being dragged, did you?
A No.
Q If this were over an area muddy and grassy and concrete, do you think you would see something more?
A I would think so.
Q As to the abrasion on the side of the head, what in your opinion caused that?
A I thought it was consistent with being struck a grazing blow by a car.
Q And how would that be, where would the grazing blow occur; what would have happened?
A It would cause the abrasion on the side of the head.
Q Well, what part of the car, or how are you picturing this to have happened?
A It could be any part of the car, the wheel.
Q Are you saying that the car would have driven over that

part of the head, because the head is substantially above the wheel if this person were standing? It wouldn't happen that way?

A If she were standing --

Q It wouldn't happen that way?

A That's right.

Q It wouldn't happen by the fender or bumper or anything, if they were standing, correct?

A If she were standing, it's very difficult to say exactly what will happen in an auto accident, but, obviously, it would have to be at the level of whatever part of the car that did it.

Q Is it your opinion that the same injury that caused the abrasion on the side of the face and forehead also was responsible for the fractured neck?

A Yes.

Q And is that, would that have occurred then by this car like driving over this part of the anatomy, is that how that happened?

A Yes, and that would be consistent with her position as we found her lying on the ground.

Q All right. So she was -- the car would have driven over this part of her head, and she would have ended up with a fracture back here?

A That's correct.

Q What type of fracture was this in the neck?
A I don't understand the question.
Q Was it a compression fracture? Was it a voluntary fracture? What did it look like?
A It was a dislocation of the first cervical vertebra from the base of the skull.
Q What was fractured?
A The odontoid process.
Q Was C-1 fractured?
A Yes.
Q Was C-2 fractured?
A No.
Q So the only thing that was fractured, C-1 and C-2 --
THE COURT: You could move that down, Mr. McNamee, if you wish.
MR. McNAMEE: What do you mean, Judge?
THE COURT: Move it down there so the doctor can see it and the Jury, I don't need to see it.
Q Can you see that, Doctor?
A Yes, I can see it.
MR. DUFF: Can I move?
THE COURT: Yeah, go ahead.
Q We'll say this is the second cervical vertebra and here's the odontoid, it should be a little rounder. There's the odontoid. And then we'll put the ring of C-1 coming around

like this, okay?

What you're telling me, the only thing you saw fractured was the adontaid process?

A Yes.

Q And part of this ring somewhere?

A No, I don't recall.

Q C-1 was not fractured then, it was just the odontoid?

A C-1 was dislocated from the base of the skull.

Q Was it actually fractured?

A I don't believe so.

Q So really there was no fracture of the neck?

A Odontoid process is part of the neck.

Q You're saying it was dislocated, not fractured. What holds the adontaid process to C-1 is not bone, it's a ligament. What you're saying is that ligament was disturbed?

A That's right, and C-1 was dislocated from the base of the skull.

Q There was no fracture from the odontoid?

A No.

Q What we are really talking is not a fracture, we have a dislocation, correct?

A There was a fracture of the odontoid process.

Q Okay, I'm not really trying to confuse you, I'm really trying to get it straight. The odontoid process was fractured and dislocated?

A It was fractured and the first cervical vertebra was dislocated.
Q Where was the fracture of the odontoid process?
A I don't know how to answer that.
Q Well, how would you describe it?
A Just broken across.
Q Where, at what point?
A Near the base.
Q Are you sure of that?
A Yes.
Q Is there any description in your autopsy report of a fracture of the odontoid process?
A Not in a detailed sense.
Q Is there anyplace in there the odontoid process is mentioned, in your autopsy report?
A Not the specific mention of the odontoid process.
Q Is there any place in your autopsy that a fracture of the body or any portion of the second cervical vertebra is mentioned?
A It's mentioned as a fractured dislocation.
Q I understand that, but you never did in your report ever say the odontoid was actually fractured, did you?
A No, sir.
Q Did you ever in your report say that the ring of C-1, that cervical body was fractured?

A No.
Q Now, if there occurred at the same time and as a result of the same impact from someone driving a car, like about a 3,000 pound car over their head, that's what we are saying, correct?
A I didn't feel it was driven over the head, I felt it caused a force of the head to the side. That would be the thing that would cause the fracture, very much like happens in a hanging.
Q Right. Well, the problem here is being hit by a car is substantially different than a hanging, is it not?
A In this case with the sudden movement of the head to the side I think it's very similar.
Q Here's my problem, in the scenario you just told me you believed occurred you didn't describe some sudden impact where the head was moved and jerked. You said where her head was -- you found her and the car driven over her head. That's the way I hypothesized it?
A The car came down the left side of her head, forced the head to the right, caused abrasion of the cheek, went over the left side of the chest fracturing the ribs.
Q Were there any tire marks over the ribs?
A Tire marks over the ribs?
Q Bloody tire marks over that side of the body?
A No.

Q Yet there was a large pool of blood over here at the neck level, a big pool of blood?
A Yes.
Q There was no tires marks on this side of the body, was there?
A No.
Q So that wouldn't seem to fit, would it?
A Depending on the location of the pool of blood. It was actually a little bit further down.
Q I believe if I'm not mistaken there were 2 locations of the pool of blood?
A Yes.
Q And one was right near the head and neck. Do we have those photographs?
A Yes.
Q Now, I'll ask you to take a look at what is marked 2-A here or 2-B, either one, where is all of that blood, is that up above the shoulder, isn't it?
A Yes, it is.
Q So it's up by the head and neck level?
A (Nods head yes.)
Q You're saying it drove there, through there, but there's no tire imprints of any kind on the body?
A No, but there are tire imprints made from blood there. This particular picture --

Q Down here?
A Yes.
Q Some ways away from the body?
A Yes, that's right. You have to determine where it got into the blood.
Q The point is, it's not right next to the body, it's a substantial distance away from the body where you see bloody tire marks?
A That's correct.
Q You don't have really any evidence you can point to that tire with the car attached actually drove over this body?
A You have to look to see where any source of blood would be to get on the tire.
Q How about if somebody drove it here, they would not have to drive over the body?
A That is not lined up with the prints.
Q The point is, the left side of her body, which is what you're saying is driven over, is not lined up with that print, is it?
A It comes a lot closer to it.
Q There's -- that's about 4 feet laterally away from there?
A I believe if you project this back to the body it could very easily go over the left side.
Q As it sits right here it looks like it's pointed directly at the right knee, isn't it?

A It could be.

Q If this car drove over the left side of this person's head, could you tell me why we don't have some evidence of fracture of the skull?

A I mean, all I can do is report what I found, I can't explain why other things didn't happen.

Q The point is, if you were going to come to a conclusion, though, it really should fit. You can't say this happened because one thing fit and 5 things don't. That doesn't make any sense medically or legally, does it?

A What I reported is my best opinion. Certainly the fracture of the neck and so on did not result from a knife wound that she received, and the fractures of the skull probably didn't result from the knife wound.

Q I understand that, that's not what we're getting at right now. If that car had driven over her head like that we don't see any skull fracture --

MR. ROSENBAUM: I object. His testimony was not the car drove over her head. If he wants the doctor to assume that hypothetical, he knows how to ask that question, he should not be asking these types of questions.

THE COURT: Sustained.

Q Doctor, earlier you had suggested when we first began talking here that the tire went over the head as you found her lying back there on the ground, is that correct?

A No, sir.
Q You didn't say that?
A No.
Q So in any case then it's your opinion that the tire, the car did not actually drive over either the left side of the face or the head, is that what you're telling the Jury now?
A I think the car struck the left side of the head. I didn't say it went over it.
Q So okay, so it just like cut some skin or abraded the skin?
A Exactly.
Q Now, can you tell me whether or not it takes a lot of force to fracture and dislocate someone's neck?
A Yes, sir, it does.
Q And are you telling me that as a result of this blow which you're describing as a mere abrasion, no broken bones, nothing else, not even any blood under the skin, that that was enough at the same time to cause a fracture of the neck?
A Yes, sir.
Q Why didn't it cause a fracture of the facial mandible then if it was that bad? That is where the greatest point of impact was, correct?
A Yes, sir, there was a fracture of the mandible.
Q Which side of the face was the abrasion on?
A The left.

Q Which side of the face was the mandible fracture?
A To my best recollection it was on the right.
Q So it wasn't from that, was it? It wasn't from that blow from a car, was it, not in your hypothesis?
A It may not have been.
Q So what you're telling me then is that this blow to the facial bones here, or the area of the facial bones was just strong enough to abrade the skin yet cause a fracture dislocation of the head and neck? Does that make any medical sense to you at all?
A I think you are describing it in a different way. It would be a tremendous blow to the side which would be a tearing of the skin and forcing it to the side, which would cause an injury to the neck.
Q I hear what you say, the tremendous blow and tearing of the skin. Where does the autopsy indicate it deserves that kind of description? Was there a lot of bleeding under the skin here to suggest there was a contusion of some kind?
A Yes, sir.
Q Was there a hematoma there?
A Yes, sir.
Q Is there a reason you didn't describe it?
A We described what was there, and we took pictures.
Q You didn't describe a hematoma?
A That's part of a bruise and --

Q Abrasion. Describe what goes on in that process.
A It's a destruction in the components of epithelia, with whatever goes with it.
Q That's the skin, the epithelia is the skin?
A Yeah.
Q That doesn't deal with the hemorrhaging underneath the skin, into the muscles or around the bones?
A It certainly may, if it's severe enough.
Q That's not what it describes, what you say abrasions, you're -- when you're talking about a subcutaneous or subdural hematoma?
A You're talking about two different things.
Q Did you describe in your autopsy any hemorrhaging into the tissues, like to the muscles or in the bones of the face?
A In the autopsy it indicates the hemorrhage was quite recent in all of these.
Q Did you describe that?
A Yes, sir.
Q Could you describe that for me?
A It will take some time.
Q Go ahead.
A Here at the end of Micro, it says, "Sections from the wound of the neck show fresh hemorrhage without inflammation of the dermal and subcutaneous tissues."
Q You have to give me a chance to catch up so I can see

where you are?

A Last page.

Q And that's what you're saying describes the abrasions on the side of the face?

A Yes, sir.

Q Can you find in that sentence you just read, I'm going to ask you to stop me when I get to face, "Sections from the wound of the neck show fresh hemorrhage without inflammatory reaction in the dermal and subcutaneous tissues." You didn't stop me. Did I ever mention face there?

A No.

Q So that doesn't describe an abrasion of the face, does it?

A These changes were contiguous to one another, that is the face and neck so --

Q We all know the neck is connected to the face, but this description that you just gave us talks about the wound that occurred from cutting the jugular vein down here, isn't that what this description is that you just read?

A In that general area, yes.

Q So that wasn't even a description at all of what we're talking about here, which is an abrasion by the cheek and forehead, is it?

Q Of course, it's impossible to take sections from every place in the human body.

Q My point is, if you are saying that a fracture dislocation of that effect, which we all agree requires a tremendous amount of force, which occurred from some kind of blow from the car, wasn't it incumbent on you to show there would be other injuries from the impact which would tend to corroborate that?

A I don't feel that way.

Q In any event, Doctor, I think you would agree with me there's nothing in your autopsy findings as you describe them that would suggest a blow strong enough to the cheek or forehead area that would cause a dislocation to the neck, is that correct?

A It's my opinion from reviewing the body that is what happened.

Q You never put that in any of your autopsy findings, correct?

A I suppose there's a number of ways to word it.

Q The reason it wasn't in any of the autopsy findings, that was a theory developed later to fit with the Prosecutor's theory of this case, is that possible?

A I never discussed the Prosecutor's findings with -- theories with them.

Q You had a number of discussions with the Prosecutor over the time of these cases, did you not?

A Only concerning the findings.

Q So you could have many discussions with them over the findings and the murder, correct?

A There were many things about the murder that I did not discuss.

Q Now, I would like you to assume for the next question the following facts, once again that this, a person is going to testify that there was a beating that occurred over a period of 20 minutes in a small apartment, okay? Now, would such a beating, do you think, be likely to cause any bleeding at all about the face or neck or head, if someone beat on this victim for 20 minutes, 3 or 4 young adult males?

MR. ROSENBAUM: Objection.

THE COURT: Sustained.

Q Assuming for purpose of this the fact that a person will testify that 3 to 4 adult males beat on the victim for 20 minutes. In your opinion would that be consistent with lacerations of some type to areas of the skin?

MR. ROSENBAUM: Objection.

THE COURT: Sustained.

Q Can you tell me what you might expect to see under those circumstances?

MR. ROSENBAUM: Object.

THE COURT: Sustained.

Q If a laceration of the skin had occurred during a beating would you expect in your medical opinion, would you look for

blood surrounding the area of the beating, is that something you would look for?

A As Coroner I don't have an opportunity to examine the scene in that fashion.

Q But that's not what I asked you. I asked if given those facts would you look for blood in the surrounding area, if that's the history?

A Would I look for blood?

Q Would someone investigating that scene look for blood?

MR. ROSENBAUM: Object.

THE COURT: Sustained.

Q Would you look for blood under those circumstances?

A Well, as I say, that is not my function, I examine the body, I don't examine the scene.

Q You were called to the scene of this murder we're talking about, correct?

A Yes.

MR. ROSENBAUM: Object, define the scene because now he's got two different scenes. The beating did not take place --

THE COURT: Rephrase, Mr. McNamee, ask him the question, not me.

Q You were called to the scene of the murder where the body was found, correct?

A Yes.

Q So you did investigate that scene?
A Yes.
Q So you do go to scenes, murder scenes to investigate the facts there, is that correct?
A Yes.
Q Now, if you would be called to a murder scene where the testimony is there was a beating that went on for 20 minutes, would you look for some blood in the area as a result of that beating?
A I suppose that would be obvious.
Q Now, this, meaning obviously, yes?
A No, obviously blood.
Q Now, there was a cut, a through and through cut to the left lip on this victim, was there not?
A Yes.
Q And now, you don't know where that happened, do you?
A No.
Q If that had happened, assuming the fact that had happened at the apartment, would that have blood?
A Yes, sir.
Q So you would look for blood there and expect to see blood, correct?
A I would expect there would be blood there.
Q Now, did you see any abrasions on the back of this victim that would indicate she was dragged over a sidewalk, for

example on the buttock?

A There were no abrasions on the buttock. There were some on the back of her shoulders.

Q If someone is being dragged along their back by one arm it will be more than just their shoulders dragging along the ground, is that correct?

A I would assume so.

Q So that you would be looking for, if I'm not mistaken, then, abrasions, maybe dirt or gravel in other areas of the back, if someone were actually dragged over a surface like that, would you not?

A Yes, sir.

Q Did you see any other abrasions along the back, the buttock, the heels, the back of the legs, anywhere, to suggest this body had been dragged over concrete, mud and grass?

A No, sir.

Q Did you find anything in the back of the skull that would indicate that the head had been dragged through any of that type of territory?

A There were hemorrhages into the scalp.

Q What I'm talking about, superficially, you know, dirt, gravel, grime, mud, like into the skin or the hair?

A No.

Q Now, if we are to assume that perhaps the body was actually dragged face down as opposed to on the back, would

you as an examiner expect to see some contusions, abrasions, whatever on the face?

A Yes.

Q And the only thing that you saw was an abrasion on the cheek and forehead, correct?

A And the cut lip.

Q Right? That was all?

A Yes, sir.

Q So you didn't see any abrasions to the shoulders or breast, correct?

A No. There were multiple stab wounds.

Q I didn't ask about those, we're talking about dragging. Now, you didn't see any abrasions there, did you?

A No.

Q And you didn't see any abrasions on the abdomen?

A No.

Q You didn't see any abrasions on the thighs?

A No.

Q Or on the knees?

A No.

Q So it doesn't seem likely it could have been dragged on the front either, does it?

A I don't know.

Q Now, do you remember testifying in the case State versus Cleveland, which is a companion case?

A I did testify in that case.
Q And do you remember testifying at that time that you had, that you found at your autopsy no indication of abrasions, suggesting that the body had been dragged?
A I don't remember making that statement.
Q On Page 79 of your testimony at one time you were asked, "Now, did you notice any indication or marks on her body that would be consistent with her being dragged?"

And your answer was, "The presence of the leaf on the skin under her clothes."

Then you were asked again, "Any abrasions scattered over her body that might also be consistent with being dragged."

And then it was repeated, "Were there other abrasions that might be consistent with her being dragged, other than the leaf under her clothing?"

Answer, "I don't think so."

You haven't changed your opinion on that, have you?
A No, sir.
Q Now, you did go to the crime scene and you noticed that immediately adjacent to where the body was lying were a bunch of leafy bushes, did you not?
A Yes, sir.
Q Did you examine what type of leaves those were?
A No, sir.
Q So as far as you know the leaf that was on her back may

have come from one of those leafy bushes immediately next to her, is that correct?

A I don't know where the leaf came from.

Q And this, does it not, I don't know if we have this marked, on the back it says State's Exhibit 2, these are all -- this was all a leafy area along here, wasn't it?

A Yes.

Q In fact, her leg is lying on top of some leafy area, too, that's how close it is?

A I'm not sure about that.

Q In any event, the leaves are all right here next to her, isn't that right?

A Yes.

Q The leaf may have come from that area where she died, is that correct?

A It could have.

Q Now, it's not -- is it your testimony that the rib fractures occurred from this car driving over her?

A That was my belief.

Q And can you tell me if that were the reason for the rib fractures, why all of the bones in the shoulder were intact without fracture?

A No, only in the sense the ribs are more fragile than some of the other bones.

Q How about the clavicle, the bone here?

A I can't say why in particular any bone fractures and another doesn't.
Q You can't tell me they were more venerable, when they stretch across to here, across the neck, there's a broad area, they are not supported?
A The clavicle does lie in that location.
Q And there's no bone here supporting it?
A More or less.
Q You're telling me a car could drive over the ribs and go over the clavicle and not fracture it, a 3,000 pound car?
A Apparently it did in this case.
Q You're sure that is how it happened, or if it did?
A I don't understand your question.
Q What I'm saying is you can't claim why a 3,000 pound car driving over this collarbone wouldn't fracture this collarbone, can you?
A All I can report is what happened.
Q You cannot explain that, can you?
A I wouldn't try.
Q Okay. Now, how about the head of the humerus up here, the top of the arm, that wasn't fractured either, was it?
A No.
Q And do you have any explanation as to why that wouldn't be fractured if a car drove over it?
A I only report what I find.

Q And how about the scapula here, that sort of connection to the shoulder, you know that scapula here that comes up towards the shoulder, can you tell me why that wouldn't be crushed?

A I'll give the same answer.

Q And there were also no tire marks over that area, were there, over the shoulder, the clothes on top of the ribs, there were no tire marks on those, correct?

A Correct.

Q Now, you were aware there was another death that night, a person by the name of Floyd Epps, correct?

A Yes.

Q You participated in that autopsy, did you not?

A Yes.

Q Now, can you tell me if you found in that autopsy from Floyd Epps a laceration deep into the tissues of the left side of the neck again going from approximately here up to here, which sliced through the jugular vein, cut deep through the muscles of the neck to either injure or kill him, depending on what he died from? Did you see that injury?

A I did not prepare anything, did not review Floyd Epps' autopsy.

Q You did sign it, correct, so you are familiar with it?

A I believe I did.

Q All right. Now, the laceration that is described in your

autopsy from Marsha Blakely, just to back up without confusing anything, the lacerations of Marsha Blakely you describe as a 13 centimeter long cut, approximately like this, going from here up this way, is that correct, it's 13 centimeters long, is that correct?

A Yes.

Q I'm going to hand you --

MR. McNAMEE: If we can mark this as an exhibit, okay?

(Out of the hearing of the Jury.)

THE COURT: How long are we going into the death of Epps?

MR. McNAMEE: It was the same person that killed Marsha as Epps, and our guy has an alibi.

MR. ROSENBAUM: That's a pretty bold statement they can't prove, but the fact that he was not, assuming he wasn't present when Floyd Epps was killed doesn't mean he didn't cause it or wasn't responsible for it.

THE COURT: I don't think there's any legal advantage --

MR. McNAMEE: In terms of our theory of defense, it does. If I might explain my contention I'll be able to prove that the wound to Floyd Epps was identical to the wound of Marsha Blakely.

Furthermore, the other injuries that are described on

Floyd Epps' autopsy match perfectly, after the description of the murder, they match Epps, not Marsha.

MR. ROSENBAUM: That is malarkey and he can't prove it.

MR. McNAMEE: I'll proffer it.

MR. ROSENBAUM: I'll ask him to do it out of the hearing of the jury because Epps' injuries are very, very different. Although they were both hit by cars, that's about it. Epps' brain, somebody ran over his head and squashed his brains over the top of his head. For him to say this is absolutely identical cannot be said with any medical certainty.

MR. McNAMEE: Floyd Epps' time of death is established at 12:15 A.M.. If he was part of that one he had to be part of the other one, if he's the guy that actually killed him, and we have an alibi for him at 12:15.

MR. ROSENBAUM: That's swell, it doesn't mean he wasn't responsible for it, and able to do this.

THE COURT: We'll take a recess.

(Within the hearing of the Jury.)

THE COURT: At this time we'll take a recess. Remember the admonition not to discuss this case among yourselves.

(Out of the presence of the Jury.)

THE COURT: Some of the inquiry got in on

opening. I think it could be handled, some of that on cross-examination, for whatever it's worth.

MR. McNAMEE: Yes, Your Honor.

(Within the presence of the Jury.)

CONTINUED CROSS-EXAMINATION OF ROBERT THOMAS, M.D.

BY MR. McNAMEE:

Q Now, Doctor, I'll hand you what we have marked here as Defense Exhibit A. If you could identify that for the record?

A This is an autopsy report on Floyd Epps.

Q And you signed that also, did you not?

A Yes, I did.

Q Now, if you could take a look here, I'll find it for you if I may, to save a little time. This part here, there's a description there, I'll just point to a laceration made in the left side of the neck. Could you read that to the Jury?

A "There's a separate laceration approximately 13 centimeters in length on the left side of the neck, located immediately below the mandible. The edges from this wound are sharp. The laceration extends deeply into the neck. The bellies of several of the neck muscles are cut across. The jugular vein has been severed and the carotid artery also has been severed."

Q That's Floyd Epps we're talking about, the other gentleman found dead that night?

A That's correct.

Q Please read this description of the laceration wound to Marsha Blakely.

A "The dominant feature is the presence of a 13 centimeter deep laceration in the midportion of the neck. This goes almost entirely through the trachea and lacerates the left internal jugular vein. The incision appears deeper on the left side than right. The edges are clean except for the presence of slightly irregular tags near the more superficial right portion of the incision as well as a few superficial tags in the upper lateral left lip of the neck lesion."

Q At the time of death established for Floyd Epps, if you read from the autopsy up here, what time is that?

A We estimate 12:15 A.M.

Q 12:15 A.M. for Floyd Epps' death?

A Yes.

Q Would you agree that the description and appearance of these, of the laceration wounds we have just discussed, both of them occurred to the left side of the neck about here, is that correct?

A Roughly speaking, yes, I can't say exactly.

Q And both of them are described as being identical in length, which is 13 centimeters, isn't that correct?

A Yes, that's correct.

Q And both of them are described as going deep into the tissues of the neck, separating the muscle and cutting through

them, is that correct?
A Yes.
Q And both of them are described as cutting through their internal jugular vein, this big vein deep in the neck, correct?
A That's correct.
Q Lacerating it completely so it would bleed freely?
A That's correct.
Q Now, in short, do those sound very much like exactly -- not exactly, very, very similar types of injuries to both of these people, is that correct?
A They do.
Q Furthermore, Doctor, in Floyd Epps was it noted that there were multiple traumatic injuries to the head, chest, abdomen and extremities?
A I don't know.
Q I'll refresh your memory. Is that what that says there, Page 2 of Floyd Epps' autopsy?
A Yes, that's correct.
Q Okay. Now, furthermore, with Floyd Epps, did you find that there was a laceration of the left lobe of the liver?
A Yes.
Q That's a serious injury to the liver, isn't it?
A Yes.
Q And, furthermore, it was found that there were compound

comminuted fractures of the skull, correct?
A Yes.
Q Of the left mandible, correct?
A Yes.
Q Fractures of the ribs, both anterior, posterior and both sides, correct?
A Correct.
Q Fractures of the right humerus, correct?
A Correct.
Q Fracture of the left radius, meaning the left arm?
A Correct.
Q Fracture of the right femur, meaning the right leg?
A Correct.
Q And also lacerations, just a superficial one wouldn't be life threatening, to the left chest, above and medial to the left aureola, correct?
A Correct.
Q And some superficial abrasions, as well, correct?
A Correct.
Q And in addition is it not true that there were portions of Mr. Epps' brain that were found away from his head near the site of the injury?
A I don't know.
Q My point is, Doctor, that the injuries here that are described as occurring to Floyd Epps do sound like someone was

hit by a car and dragged by it, doesn't it?
A That would be consistent with it.
Q And it sounds like this is the person who also then had their throat slashed and bled to death, correct?
A I don't know that.
Q Well, that was one of the causes of death here, was it not?
A I have no idea whether the throat was cut or not.
Q I just -- I'm sorry, Doctor, I just had you read it, that was the 13 centimeter laceration to the neck cutting through the jugular vein, so this person's throat was cut also, correct?
A I don't know the circumstances, I don't remember it's been so long ago.
Q Yeah, right. Maybe you would want to take a quick look at this and refresh your memory.

I have 2 more questions and I'm going to finish.

So you would agree with me that Floyd Epps' neck was slashed and the jugular vein was cut through, is that correct?
A Yes, that's correct.
Q That would be a lethal injury, would it not?
A Yes.
Q Meaning it would kill him, all of the things being equal?
A If it wasn't treated in time.
Q Yes. Now, were there fingernail scrapings done under the

fingernails of the victim Marsha Blakely?
A I can't answer that, I don't know.
Q Would that have been important to do?
A It would be a good thing to do.
Q Because there may have been, it sounds like there was a struggle and fight. She died over some period of time, correct?
A I don't know that.
Q Well, assuming there would be testimony that there was a struggle and she may have even struck one of her attackers, it would be important to know whether she wound up with any skin that would be identified as being one of the attacker's, is that correct?
A I believe so.
Q You never did determine that?
A I don't recall.
Q Now, there were vaginal swabs taken of Marsha Blakely?
A Yes, that's right.
Q What were the results of that?
A They were negative.
Q Negative in what sense?
A No sperm were found.
Q Was that looked at microscopically?
A Certainly.
Q Did you do that yourself?

A No.
Q Where was that done?
A In the lab of North Central Laboratories.
Q Were there any fingernail scrapings done on Floyd Epps?
A I have no idea.
Q Are the clothes here -- have you examined the clothes in preparation?
A We gave the clothes to the Lorain Police.
Q Okay.

MR. McNAMEE: I have nothing further.

THE COURT: Mr. Rosenbaum.

MR. ROSENBAUM: Thank you.

REDIRECT EXAMINATION OF ROBERT THOMAS, M.D.

BY MR. ROSENBAUM:

Q Was Marsha Blakely missing a tooth?
A I can't answer that.
Q You were asked questions about whether she had injuries consistent with a beating, is that correct?

Is a broken jaw consistent with a beating?

A Yes.
Q Was her jaw broken?
A Yes.
Q You describe it as a mandible?
A That's correct.
Q She had a cut to her lip?

A That's correct.
Q Those things are consistent with a beating?
A Yes.
Q Now, Attorney McNamee asked you many questions about males, healthy males beating a female for a period of 20 minutes, and we would expect to see lacerations of the spleen, damage to the liver, contusions to the kidney, subdural hematoma, even endermal hematomas, is that true?
A It could be.
Q But it could not be just as well, right?
A That's correct.
Q Is there a standard in medicine or in forensic pathology or pathology, is there a description of what the reasonable beating entails?
A I don't believe I understand your question.
Q Well, Doctor, Attorney McNamee is postulating, is he not, that if a beating took place over a period of 20 minutes as he described it, there must be damage to the kidney, is that true?
MR. McNAMEE: Objection, that's not what I asked.
THE COURT: Overruled.
A No, that's not true.
Q Must there be a subdural hematoma?
A No.