Q And where did he live with you at?
A In New York City.
Q And do you know at what time he stopped living with you and moved?
A He didn't move. I came on vacation. I went away on vacation; and, as a rule, I always take him with me; but I was angry with him and I didn't take him this time; and he came to Ohio.
Q Do you know when that was?
A It was somewhere around July.
Q Now, Lenny has lived with you for, according to your testimony, about 6 years?
A Yes.
Q Have you gotten a chance to know him?
A Of course.
Q He has lived with you every day during that time?
A Yes.
Q Do you know any medical problems that Lenny has had as a youngster?
A Lenny has a nervous condition. He also has, periodically, nosebleeds.
Q Had that been a problem earlier on?
A From a little boy.
Q Now, from the course of time that he has lived with you, has he exhibited tendencies to be violent?

A Never.
Q Have you observed instances in which he was or could have been violent?
A Yes.
Q What were some of those instances?
A When he would get in fights with kids in the block or with his sister and --
Q What would happen?
A At that time, his sister was the one that would always look out for him, protect him or fight him; and he would never hit her back.
Q Okay. Mrs. Huff, Lenny is your grandson, right?
A Yes.
Q And you love him?
A I love him very much.
Q And from what you've testified to today, would you have any reason to lie?
A I have no reason to lie; and Lenny knows that I wouldn't lie.
Q What you have testified, then, is the whole truth?
A The whole truth, as I know it, sir.
Q You were not in The State of Ohio around August 7th or August 8th?
A No, I was not.
Q You just knew that Lenny was in Ohio?

A I knew that Lenny was in Ohio.
Q Do you know what Lenny is charged with?
A Yes, I do.
Q From your knowledge of Lenny living with you, do you think that he is a person capable of murder?
A Lenny is not capable of killing anybody or beating anybody up or harming anybody. He's not violent.
Q Did he tell you why he was coming to Ohio?
A He told me that he was going to Ohio to seek employment.
Q From the time that he left, you said it was sometime in July?
A Yes.
Q That's of the year 1991, this year?
A Yes, because prior to that, he was trying to get into the Service during the time in Ohio.
Q When is the next time that you saw Lenny after July?
A I didn't see Lenny until he was arrested here; and I came down here to find out why they did not let him go after he served his 30 days. And they told me that he was going to be charged then with felonious assault.
Q Did there come a time, to your knowledge, that Lenny came back to New York sometime after July, if you know?
A I was told that he was back in New York.
Q You were not nome at the time?

A No, I was not.

MR. MOTSCH: I have no further questions at ahis time.

CROSS-EXAMINATION OF SANDRA HUFF

BY MR. ROSENBAUM:

Q Ma'am, were you told that he flew back to New York?

A I was only told that he was back in New York.

Q So, you don't know that he took an airplane?

A I don't know how he came or how he left.

Q So, there are some things about his life you don't know, correct?

A Yes.

Q I take it he was unemployed in New York as well?

A Yes.

Q Did you know he was a drug dealer?

A He has been accused of that.

Q Do you know from your personal knowledge that he was a drug dealer?

A No, sir, I do not.

Q So, if he was a drug dealer and there was testimony before this Jury that he was a drug dealer, you have no knowledge of that aspect of his life, do you?

A No, I do not.

Q So, it is possible there are many sides of your grandson that you don't know, isn't it?

A That's possible.
Q And drug dealers harm people, don't they?
A I do not know.
Q You don't know if drug dealers harm people?
A I do not know if all drug dealers harm people.
Q Doesn't selling drugs harm people?
A Yes, that does.
Q So, drug dealers do harm people, whether it be physically or just by selling their wares, do they not?
A If you put it that way, I guess so.
Q If you learned that your grandson was a drug dealer, would that change your opinion in your testimony today?
A No, it would not.

MR. ROSENBAUM: I have no other questions.

REDIRECT EXAMINATION OF SANDRA HUFF

BY MR. MOTSCH:

Q Mrs. Huff, do you consider drug dealing a crime of violence?
A No.
Q The Prosecutor said that if there was testimony or if you knew that your grandson was involved in drugs, would that change your testimony?
A No, it would not.
Q Why?
A Because my grandson is not violent; and I have known

him since he was born in the world; and I have never known him to be violent.

Q Are you saying, then, that it's possible that someone could be involved in drugs and not be violent?

A Yes.

MR. MOTSCH: I have no further questions.

RECROSS-EXAMINATION OF SANDRA HUFF

BY MR. ROSENBAUM:

Q You said that you don't know if he is a drug dealer, right?

A That's right.

Q But you heard that he was accused of doing such things?

A Yes, I have heard that.

Q Well, he's accused of being a murderer today.

A Yes.

MR. ROSENBAUM: I have no other questions.

THE COURT: You may step down.

MR. MOTSCH: May it please The Court, my next witness -- I do not know if that person is here. He was being transported.

THE COURT: You can check.

MR. MOTSCH: Yes, Your Honor.

THE COURT: Ladies and Gentlemen, we'll take a short recess. Our next witness is not here yet.

MR. ROSENBAUM: This might be a good time if we could have some argument while they're out, Your Honor.

THE COURT: Sure. You may retire to The Jury Room. Go ahead.

(Jury excused from Courtroom.)

MR. ROSENBAUM: If it please The Court, Your Honor, it's my belief that --

THE COURT: Quiet.

Deputy, make sure the people back there be quiet or they'll have to leave the Courtroom.

You may proceed.

MR. ROSENBAUM: It's my belief, from the little bit I have gathered from Mr. Motsch's discovery and the few remarks he has made in chambers, that he intends to call 2 witnesses to impeach the statements that Mr. Byrge made under oath.

It is my belief, Your Honor, that Evidence Rule 608 prohibits this. He is stuck with the answers that Mr. Byrge gave. If he wanted to confront him with extrinsic evidence, he had to do so on the stand. He cannot bring in these witnesses solely to impeach his testimony.

I also cite to The Court the case of State v. Leuin, 11 Ohio St. 3d 172, which more or less says, as a result of Rule 608, he is bound by the answers on these issues

that Mr. Byrge has given.

And, if it is his intent to call these people to specifically and to solely impeach Mr. Burge's testimony by extrinsic evidence, I'm making an oral motion in limine at this time to prohibit him from calling these witnesses and doing so in the presence of The Jury.

MR. MOTSCH: Your Honor, concerning that, The State had furnished me, pursuant to its discovery, that it planned on calling an inmate from Lorain County Jail whose identity they did not release based on his safety, and that name was made known to me today when that witness took the stand.

I did not know for certain that that person was going to be called to the stand; but now that he has concerning the statements that he has made, and if there is conflicting statements that could be offered into evidence that would go strictly to his credibility, I believe that should be allowed, Your Honor.

THE COURT: What is it? Statements to other people, other inmates or --

MR. MOTSCH: It's my understanding it's statements to other inmates.

THE COURT: -- regarding this matter?

MR. MOTSCH: Your Honor, I did go into it with Mr. --

THE COURT: I think first we better proffer what they're going to say; and then The Court will decide. I'm not sure what they're going to say, obviously.

MR. MOTSCH: Concerning the other part of the Prosecutor's motion, it was testified to on cross-examination whether or not he knew an inmate by the name of Gilliam and whether or not he had made a statement to Mr. Gilliam; and he denied that.

And, at that point, Mr. Gilliam is one of the people I have requested come to testify concerning that statement, Your Honor; and I think that is already in.

THE COURT: A statement about what?

MR. MOTSCH: Of the reason why --

THE COURT: You mean just did he talk to Mr. Gilliam?

MR. MOTSCH: I had asked Mr. Byrge whether or not he made the statement to Mr. Gilliam as far as the reason why he was testifying in this matter; and he said it was a question of his survival; and he denied saying that.

I think under those circumstances, Your Honor, with Mr. Gilliam being available and for the purpose of impeacning the credibility of that witness, that he should be allowed to testify.

THE COURT: We'll wait till they come; and

they can proffer their testimony; and then The Court will decide on the motion.

MR. MOTSCH: Yes, Your Honor.

(Short recess taken.)

(Out of the hearing of The Jury.)

THE COURT: Mr. Motsch.

MR. MOTSCH: May it please The Court, concerning the Prosecutor's motion in response to my motion to have 2 county prisoners brought over to testify, I have talked with both, Your Honor. The one prisoner is Ed Gilliam. He has informed me that he would testify concerning a conversation he had with one of The State's witnesses, a Gary Byrge, concerning the manner of his testimony and the reason for his testimony and that would be directly on point to the questions I asked of him on cross-examination concerning any statements he would have made to Mr. Gilliam.

Secondly, Your Honor, Mr. Fluker, in my talking with him, would testify concerning the actions of Gary Byrge within the County Jail. However, I don't believe it would be relevant to the issues here today; and I would not plan on calling him to the stand.

Third, Your Honor, I had talked to the witness, William Avery, Jr., who had refused to testify earlier today. He had wanted to talk to me; and I did after he

had talked with his attorney, Attorney Duff. The gist of what he had told me was that he had wanted to testify concerning a statement made by Gary Byrge, evidently that statement being made today, concerning the veracity of his testimony.

Because I just found that out, Your Honor, I don't believe that I can just call Mr. Avery to the stand, especially after what he had done this morning. Secondly, I don't think there would be any foundation for it unless I would be allowed to recall Gary Byrge to the stand; and I would so make that motion.

THE COURT: To recall Byrge?

MR. MOTSCH: That's correct.

MR. ROSENBAUM: Your Honor, he's talked about -- he said nothing. I thought we were going to have a proffer here to find out exactly what he is talking about.

THE COURT: We are.

MR. MOTSCH: Your Honor --

MR. ROSENBAUM: I had Mr. Camillo read back to me what Mr. Byrge said regarding Mr. Motsch's questions and so-called foundation; and, as I got them straight -- and Orie can correct me if I'm wrong -- Mr. Motsch asked:

"You did have a conversation with another prisoner recently, didn't you, a Mr. Gilliam?"

The answer is: "No.

"Didn't he ask you why you were saying things?"

Answer: "No.

"You didn't say, 'It's a question of survival'?

"No.

"But that's exactly what this is about? This is the reason why you're doing this, is because you want something off in your sentence."

And he says, "Right."

So, he's admitted it was a question of survival; and it's off his sentence and there are no inconsistencies.

Secondly, it's my understanding through Attorney Fritz, who represents Mr. Gilliam, that he cannot say whether Mr. Byrge's remarks are truthful or not. He may have made the decision to become State's evidence or a jailhouse snitch as a matter of survival to reduce his sentence but it does not reflect upon his veracity and whether or not the statements are true or not; and I think that's what Mr. Motsch is trying to imply here.

MR. MOTSCH: Your Honor, what I'm trying to imply is that he, on cross-examination, said he did not have a conversation with Mr. Gilliam. He did not mention anything about survival; and Mr. Gilliam's proffer of testimony would be limited strictly to that; and that goes right to the heart of credibility.

THE COURT: Well, let's bring Mr. Gilliam in and see what he says or he would say for the record.

* * *

Thereupon, the Defendant, in order to further maintain the issues on its part to be maintained, called EDWARD GILLIAM as a witness, upon being first duly sworn and/or affirmed, was examined and testified as follows:

DIRECT EXAMINATION OF EDWARD GILLIAM

BY MR. MOTSCH:

Q Please state your name.

A Edward Gilliam.

Q Spell your last name.

A Beg your pardon?

Q Spell your last name.

A G-i-l-l-i-a-m.

Q And do you presently reside at Lorain County Jail?

A Yes, I do.

Q And do you know a Gary Byrge?

A Personally.

Q Did you have a conversation with Gary Byrge?

A Yes, I did.
Q Concerning Lenworth Edwards?
A Yes, I did.
Q When was that?
A It was just yesterday. As a matter of fact, it was -- I believe it was yesterday. My attorney was out there visiting me.

Day before yesterday -- to make it exact, it was the day before yesterday.

Q And what was the substance of your conversation with Gary Byrge?
A The only conversation we had, I asked him, I said, "Why is you lying on this boy?"

He said, "It's about survival."

Q Lying about what boy?
A I asked him why was he lying on this guy right there.
Q Did you say his name?
A No, only thing I said to him was, why was he lying on New York. That's what we call him.
Q And what was the response to that?
A He said about survival.
Q And I take it you do not know anything that he meant by that?
A I don't know exactly what he meant by that. All he said was about survival.

MR. MOTSCH: Thank you. Nothing further. I have no further questions, Your Honor.

THE COURT: That would be the substance of his testimony?

MR. MOTSCH: That would be the substance of his testimony. Mr. Byrge had testified directly that he had not had a conversation nor did he ever say that.

THE COURT: Under Rule 608(B) the testimony will be excluded from The Jury. It's extrinsic evidence, not admissible.

Anything further?

MR. MOTSCH: Yes, Your Honor.

Concerning the testimony of William Avery, Jr., and Gary Byrge --

THE COURT: You may step down.

MR. MOTSCH: -- as I have drawn to The Court's attention, it had come to my attention that Mr. Avery, Jr., wished to speak to me; and I did speak with him in the presence of his attorney.

I cannot tell The Court at this point that he is willing to testify. He didn't tell me; and I want to call him to the stand based on representations he made to me; and those were that he had a --

THE COURT: Well, do you want to bring him in and ask if he wants to, at least, proffer his testimony

or whatever, so we do know what the heck he is going to talk about?

MR. MOTSCH: Yes, Your Honor.

THE COURT: Is he across the hall, too?

MR. MOTSCH: Yes, he is.

THE COURT: Just for the record, The Court has looked up many cases. One of the interesting cases is State v. Workman, which we are all familiar with, from Cuyahoga County. There's also State of Ohio v. Lundy and State of Ohio v. Leuin, L-e-u-i-n; and there's many other cases on 608(B) to examine.

You have to limit -- that's cross-examination. You can't do it by extrinsic evidence; and the one case I guess, the Leuin case, says if the answers received on cross-examination do not satisfy the examiner, it is said that the examiner is bound by or stuck with the responses.

So, you're stuck with cross-examination. You can have a broad right of cross-examination; but you can't bring otner witnesses in to attack specific conduct or statements.

Go ahead.

Thereupon, the Defendant, in order to further maintain the issues on his part to be maintained, called WILLIAM AVERY, JR. as a witness, upon being previously duly sworn and/or affirmed, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION OF WILLIAM AVERY, JR.

BY MR. MOTSCH:

Q For the record, would you please state your name again.

A William Avery, Jr.

Q You were present in Court this morning?

A Yes.

Q And you refused to testify?

A Yes.

Q Is it true that you had wanted to talk to me?

A Yes.

Q And for what reason did you want to talk to me?

A Because of what this dude said that's in the same room with me.

Q What person might that be?

A I don't know his name. He was in Court, though,

today.

Q He was in Court to testify against Lenworth Edwards?

A Yes.

Q If I tell you his name was Gary Byrge --

A Yes.

Q -- would that refresh your --

A Yes.

Q You know him?

A Yes.

Q What is it that you had wanted to say concerning him?

A He had told me --

THE COURT: Now, first, you realize that if you testify today, now, that Mr. Rosenbaum will have the full right to cross-examine you on anything and you might be subject to perjury if you have conflicting statements under oath?

So, you understand all that?

THE WITNESS: Yes.

THE COURT: And you still want to answer his questions now?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q You had wanted to testify concerning a statement made by Gary Byrge?

A Yes.

Q What was that statement, please?
A He told me that -- he came in. He asked me what happened with me when I went to Court; and I told him, "Everything didn't go too good for me."
So, he said, "Well, went all right for me."
He came and took me to McDonald's and took me out, bought me some pop and stuff.
"I had 10 years; but they knocked it down to 5 years Probation. I supposed to get out today; but, if they don't hold the deal up, I'm going to go down there and tell them I lied."
And I said, "But you took a lie detector test."
He said, "Oh, I could pass that again."
Q When was that conversation made?
A Right when he came from Court.
Q You're talking today?
A Yeah. It was me and Slaughter in there.
Q Are you willing now to take the stand and testify in this matter?
A Yes.

MR. MOTSCH: Nothing further.

THE COURT: Does The State have anything?

MR. ROSENBAUM: Your Honor, this is an absolute, total surprise.

THE COURT: We'll have the whole jail over

here pretty soon.

MR. ROSENBAUM: I don't know who took him to McDonald's. I don't know if he knows Gary Byrge. I don't know if we are talking about the same person.

THE COURT: Well, the evidence will not be permitted, I think, probably for many reasons. This witness, obviously, is quite perturbed with the Prosecutor's Office, lack of supplying an extra $10,000 or $12,000. He didn't want to testify this morning; but now he's willing to testify in, probably, a very limited way, plus, whatever he testifies as to comments made like that is, again, extrinsic evidence attacking the character of a witness and 608(B) prohibits that.

MR. MOTSCH: I'm not going to argue that point, Your Honor; however, is it The Court's decision that he will not be allowed to testify at all today?

THE COURT: Correct.

THE WITNESS: Your Honor, I like to say something.

THE COURT: Yes.

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.

THE COURT: All right. You may step down. Deputy.

I don't think he would have been very helpful anyway. Your next witness.

MR. MOTSCH: Your Honor, that is a surprise to me, also. I was not planning on him saying that he had perjured himself. However, since he has made that statement, I think that is extremely relevant and The Jury should be made aware of that since he was under oath when he made that statement.

THE COURT: The statement that he lied about everything?

MR. MOTSCH: Yes, Your Honor.

THE COURT: No, he refused to testify, and that will stand. This morning he didn't want to testify. That's his privilege. So, we are not going to change his mind and come into Court and say he lied about everything.

The Court doesn't really know what statement he's lying about. He made about 3 different statements.

MR. MOTSCH: Your Honor, the only thing that The Jury would know concerning this case is what he gave in deposition. He gave that deposition under oath; and since he is now stating that he lied about everything, Your Honor, I think --

MR. ROSENBAUM: Could we approach, Your Honor?

THE COURT: Yes.

MR. ROSENBAUM: Your Honor, I have to say at this point Barry is entitled to a mistrial; and if you want to move for it --

MR. MOTSCH: I agree.

MR. ROSENBAUM: I didn't think he was going to do this.

MR. MOTSCH: I don't know. I didn't --

MR. ROSENBAUM: He wants his money from me and I ain't giving it to him; so, now he's trying to prevent me from using his deposition, which I think he has successfully done; and at this point I think you have to move for a mistrial, and I can't oppose it.

MR. MOTSCH: I would so move for a mistrial, Your Honor.

THE COURT: Make that more formal.

MR. MOTSCH: Yes, Your Honor.

At this time, Your Honor, it is my understanding The Court will not allow Mr. Avery to testify, period; and since now what he has proffered in Court today concerning his statement is that he lied about everything, at this time, Your Honor, I would have to move for a mistrial.

MR. ROSENBAUM: Your Honor, I can't

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oppose that motion; and I think it's quite clear that Mr. Avery, Jr., is trying to prevent me from using the deposition because he hasn't been able to shake The State down for any more money; and I think he's successfully done that by his last statements.

THE COURT: All right. The Court will grant your motion for a mistrial; and this case will be reset, then, as soon as possible.

Jeffrey, will you bring The Jury in.

MR. MOTSCH: Your Honor, if I could be heard concerning bond?

THE COURT: Wait till we get The Jury out.

(Jury returned to Courtroom.)

THE COURT: Ladies and Gentlemen, The Court has declared a mistrial in this case, which means that the case is now concluded. The reason is Mr. Avery, you remember him that came in and refused to testify; and so on, well, he came in again out of your presence and stated, Judge, I lied about everything. So, that taints the exhibit, remember, the deposition that he took that I allowed into evidence.

So, because of all that conflict and Mr. Avery's now decision that he has perjured himself, The Court has declared what is a mistrial because you have heard all this evidence and we wish now that you had not heard all

oppose that motion; and I think it's quite clear that Mr. Avery, Jr., is trying to prevent me from using the deposition because he hasn't been able to shake The State down for any more money; and I think he's successfully done that by his last statements.

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(Jury returned to Courtroom.)

THE COURT: Ladies and Gentlemen, The Court has declared a mistrial in this case, which means that the case is now concluded. The reason is Mr. Avery, you remember him that came in and refused to testify, and so on, well, he came in again out of your presence and stated, Judge, I lied about everything. So, that taints the exhibit, remember, the deposition that he took that I allowed into evidence.

So, because of all that conflict and Mr. Avery's now decision that he has perjured himself, The Court has declared what is a mistrial because you have heard all this evidence and we wish now that you had not heard all

that evidence.

So, we'll have to bring in a new Jury and start all over again as soon as we can. But The State of Ohio and the Defense Attorney both agree on this. So, we will discharge you and you're discharged from furtner Jury service.

Thank you very much for serving. I wish tne case could have been concluded; but because of this problem, it cannot be.

So, Merry Caristmas and see you again.

(Jury excused from Courtroom.)

THE COURT: Everybody sit down, please.

Now, Mr. Motsch, I think you had a motion?

MR. MOTSCH: Your Honor, I would again renew my motion to dismiss; but, other than tnat, I would like to be heard concerning bond.

THE COURT: Go anead.

MR. MOTSCH: My client has been in custody since tne time of his arrest. Prior, he had spent well over 90 days in the County Jail at this time. He's under a relatively large bond; and I would ask The Court to modify it in view of what happened today.

MR. ROSENBAUM: Your Honor, The State is firmly against tnat. We firmly believe Mr. Avery's statement is truthful. As came out, unfortunately, in the

record, some of these witnesses have been polygraphed. They have passed them based upon statements consistent with what Mr. Avery said.

There is little doubt in my mind, since I didn't pay him the money he tried to squeeze out of me for his testimony, which I will not do -- I will not pay witnesses for their testimony -- he has tried to sabotage my case; and he has done so. I think that's pretty apparent. I think his attempt is very transparent.

This man is from New York. He has no job. The only family he lived with was his grandmother. She, apparently, had some problems with him. He came to Ohio allegedly looking for another job. I think everybody that comes to Lorain, Ohio, looking for a job ought to have his head examined with the status of our economy at this time.

We can't find the other 4 co-defendants, or 3 of them, anyways. We have the 1 in jail we are trying to extradite back. He is a risk for flight; and we oppose any reduction in bond.

THE COURT: The bond will remain the same; and your motion to dismiss is overruled; and The Court will prepare the proper entries.

Court is adjourned.

(Hearing concluded.)

C E R T I F I C A T E

The State of Ohio,)
County of Lorain.) SS:

I hereby certify that the foregoing is a true, correct and complete transcript of the proceedings in this matter taken by me from my stenographic notes, and that said complete transcript has been compared with my stenographic notes.

Orig Camillo, R.P.R.
Official Court Reporter
Court of Common Pleas
Lorain County Courthouse
Elyria, Ohio 44035
(216) 329-5520

Exhibit U

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	
v.	:	
ALFRED CLEVELAND,	:	Case No. 95-CR-046754
Defendant.	:	JUDGE ROTHGERY

ENTERED

DEFENDANT-APPELLANT ALFRED CLEVELAND'S MOTION TO SUPPLEMENT

NOW COMES Defendant-Appellant Alfred Cleveland ("Cleveland"), by and through counsel, and respectfully supplements the Defendant-Petitioner's Post-Hearing Motion for a New Trial and Memorandum in Support of Post-Conviction Relief ("Post-Hearing Motion"), which was filed in this matter on February 15, 2008. Specifically, Cleveland supplements the Post-Hearing Motion with a true and accurate copy of the Post-Hearing Motion's Exhibit D, which was submitted in incomplete form. The reasons in support are provided in the attached Memorandum in Support.

FILED
LORAIN COUNTY
2008 MAR -3 P 1:18
CLERK OF COMMON PLEAS
RON NABAKOWSKI

Respectfully submitted,

Paula Brown

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EXHIBIT
49

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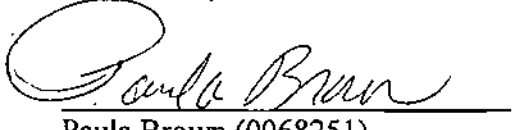
COUNSEL FOR ALFRED CLEVELAND

MEMORANDUM IN SUPPORT

On February 15, 2008, Cleveland timely filed his Post-Hearing Motion in the above-styled matter. Included with the Post-Hearing Motion was a number of exhibits for the Court's consideration and review. The Post-Hearing Motion's Exhibit D was a copy of the transcript of the January 31, 2008 hearing in this matter. The transcript of that hearing, however, was submitted in incomplete form.

WHEREFORE Cleveland respectfully provides this Court with a true and accurate copy of the previously submitted Exhibit D to the Post-Hearing Motion filed in this matter on February 15, 2008.

Respectfully submitted,



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Rapid City, S.D. 57709

COUNSEL FOR ALFRED CLEVELAND

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Motion was sent by United States mail to the Lorain County Prosecuting Attorney's Office, at 225 Court Street, 3rd Floor, Elyria, Ohio 44305, on this the 28th day of February 2008.

Paula Brown

State of Ohio,)
County of Lorain.) SS:

IN THE COURT OF COMMON PLEAS

* * *

STATE OF OHIO,)
Plaintiff,)
vs.) CASE NO: 95CR046754
ALFRED M. CLEVELAND,)
Defendant.)

* * *

TRANSCRIPT OF PROCEEDINGS

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Complete Transcript of Proceedings of the Motion Hearings held in the above-captioned case on Wednesday, January 31, 2008, before the Honorable Christopher R. Rothgery, Judge of the Court of Common Pleas, Lorain County, Ohio, commencing at or about 10:00 AM.

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APPEARANCES:

On behalf of the State of Ohio:

Dennis P. Will, Lorain County Prosecutor

By: Laura Ann E. Swansingger, Asst. Lorain County Prosecutor

and

Billie Jo Belcher, Asst. Lorain County Prosecutor

* * *

On behalf of the Defendant, Alfred M. Cleveland:

KRAVITZ, BROWN & DORTCH LLC

By: Paula Brown, Attorney at Law

and

Jacob Cairns, Attorney at Law

* * *

Bruce Ellison, Attorney at Law

Wednesday

January 31, 2008

10:08 AM

THE COURT: Your Honor, we have the State of Ohio vs. Alfred M. Cleveland, Case Number 95CR0 46754. Matter set for motion hearing.

THE COURT: At this point it is this Court's intention to proceed to hearing on the Defendant Petitioner's Motions, Petition for Post-Conviction Relief and Motion for New Trial.

As previously journalized, this Court, after consideration of the entire record, including the file with the Indictment, the Bill of Particulars, Discovery, any motions and rulings thereon, as well as the transcripts, the recorded transcripts not only of this case, Mr. Cleveland's case, but also the testimony of the witness in question, Mr. William M. Avery, Jr. in the other times he testified, including the time that resulted in a mistrial, the Court having considered all those, ruled that the vast majority of the claims here and grounds, making a distinction between the claims for Petition and the Petition for Post-Conviction Relief and grounds for a new trial, have either already been litigated and are therefore res judicata, or should have been litigated and therefore res judicata, or that the evidence was such that the

Defendant Petitioner was not unavoidably prevented from presenting that at trial.

Having considered the entire record and made that ruling, the Court has ruled prior to today that it will consider one sole ground for the one witness and one ground for the possibility of relief or a new trial in this case, and that is the testimony of William M. Avery, Jr.

For the record, this matter was set for hearing at 9:00 o'clock A.M. Normally, this Court's position is that half hour past a Defendant or witness is supposed to be here, at that point the Court is going to call the case and do what is necessary at that point. Given the serious nature of this case, I was inclined to go to one hour, which has now come and gone. I was informed at 20 until 10:00 that Petitioner's counsel had talked -- Could this be Mr. Avery walking in?

MS. SWANSINGER: Mr. Avery is sitting in the front.

THE COURT: Mr. Avery is here?

MS. SWANSINGER: Yes.

MS. BROWN: Yes, Your Honor, Mr. Avery is present.

THE COURT: So we have Mr. Avery here. At this point, it is the Court's

intention to hear Mr. Avery's testimony, but my bailiff has indicated to me that counsel for the Petitioner Defendant would like to make some brief oral argument to the Court, which I will consider. But keep in mind this: That if this is regarding the other claims and grounds, I have considered those and considered the record fully, and there is not going to be a change on any of those particular issues.

So I will consider at this time some brief argument to whatever issues you want to get to, even those, very briefly, because, to be honest with you, your argument is not going to be a part of the record. You can make that if you choose to appeal that particular ruling to the Court of Appeals, you can certainly make that, but it is not one where I'm going to change at this point.

For the record, let's do this. Would counsel for Mr. Cleveland identify themselves at this time?

MR. CAIRNS: Thank you, Your Honor. I'm Jacob Cairns on behalf of Alfred Cleveland.

MR. ELLISON: Bruce Ellison on behalf of Mr. Cleveland.

THE COURT: Thank you, Mr. Ellison.

MS. BROWN: Your Honor, I'm Paula Brown from Kravitz, Brown & Dortich on behalf of Alfred Cleveland.

If the Court would not mind, I, before Mr. Cairns addresses the Court, I just have a few preliminary matters.

The Court may or may not be aware that we issued subpoenas in this matter, and no one has, I don't know of any motions to quash, and no one has showed up with the documents that we requested. Some of those, a bulk of those were from the Lorain County Police Department Custodian of Records. We had requested diagrams that were used during the interviews with Mr. Avery, Jr.

THE COURT: One second.

Mr. Ortner. Mr. Ortner.

MR. ORTNER: Yes, sir?

THE COURT: Just have a seat, Mr. Ortner.

Go ahead, ma'am.

MS. BROWN: Thank you, Your Honor.

We had requested, as I said, there were numerous things. A lot of them dealing with lab reports that we haven't received and had no contact. Our number of course was on the subpoena.

But we did ask for diagrams used or created during the interviews of William Avery, Jr. Drawings Avery Jr. did of Epp's apt. Maps used during the interviews of Mr. Avery Jr. A photo line-up or photo

spread that was shown to Mr. Avery Jr. by Detective Taliano. And any photographs that were used during the interviews of Mr. Avery Jr. We have not had any contact or received any information.

THE COURT: Very well.

On behalf of the State of Ohio, who is handling this? Ms. Swansinger at this point or Ms. Belcher?

If you would identify yourselves for the record.

MS. SWANSINGER: Laura Swansinger on behalf of the State.

MS. BELCHER: Billy Jo Belcher appearing on behalf of the State of Ohio.

THE COURT: Who wants to handle this question?

MS. SWANSINGER: I'm not sure exactly who they -- I think to Mr. Piwinski at LPD, I believe? He is on stand-by should the Court want him to attend. He is on stand-by.

THE COURT: Well, with regards to, I assume there is a Duces Tecum with regards to these diagrams.

MS. BROWN: Yes, Your Honor.

THE COURT: Are the Prosecutors aware

of any of these physical items?

* * *

(Thereupon, Ms. Swansinger confers with Det. Taliano)

* * *

MS. SWANSINGER: Any diagrams which may or may not exist were done by law enforcement is what I'm being informed by Det. Taliano. He would not have created any documents on his own. Photographs were photographs that were taken by the Police Department at the scene, which would already be in evidence.

Beyond that, I don't know what else they would be looking for.

THE COURT: What else are you looking for, Ms. Brown?

MS. BROWN: I am looking for -- These were things that we had listened to on the tapes and in the transcript of the tapes, and there were diagrams that were used or created during the interviews of Mr. Avery Jr. There were also photographs that were shown to Mr. Avery Jr. during those interviews.

We don't have those photographs, and we don't have those diagrams.

There were also maps that were used, and we know there was a photo lineup or a photo spreadsheet

that was used with Mr. Avery Jr. that we don't have.

THE COURT: Ms. Swansinger?

MS. SWANSINGER: We're just trying to determine if any of these things even exist. Based on what Det. Taliano is informing me, any diagrams were created by law enforcement. Any photographs were taken by law enforcement.

THE COURT: And what does that mean for purposes of our record, Ms. Swansinger?

MS. SWANSINGER: He didn't create --

THE COURT: And?

MS. SWANSINGER: Mr. Avery didn't create any of these items, so I'm not sure what -- they don't exist. Well, if there are diagrams as they exist, they weren't created by Mr. Avery.

THE COURT: And what does that mean? That they weren't created by Mr. Avery?

MS. SWANSINGER: She is asking for things that were created by Mr. Avery.

THE COURT: Is that what you are asking for, Ms. Brown?

MS. BROWN: Yes. There was one item, Your Honor.

THE COURT: What was that?

MS. BROWN: Out of the five items that

I have listed here, one item was a drawing that Avery Jr. did of Epp's apartment during the interview. That is my understanding.

All of the other things, the other four things, would have been things that were used by the Lorain Police Department.

MS. SWANSINGER: I'm being advised that he did not create a drawing. That is what I'm being advised.

THE COURT: And therefore not in possession of any drawing with regards to that?

MS. SWANSINGER: We are not in any possession. I'm not sure what she is referring to.

THE COURT: Well, by we, do you mean the Prosecutor's Office or the Lorain Police Department?

* * *

(Thereupon, Ms. Swansinger confers with Det. Taliano)

* * *

MS. SWANSINGER: Judge, all I can tell you is we can call him and have him bring whatever he's got available. We're being told, I'm being told by the detective that Mr. Avery didn't create any drawings during his interview.

We can have him come over. He is on

stand-by. We can call him and have him bring -- I don't want to hold anything back.

THE COURT: Why don't we do that and find out what he has in his possession. Mr. Cillo or somebody else can make that call, a brief call, and have that done.

Thank you, Mr. Cillo.

Anything else, Ms. Brown?

MS. BROWN: Yes, Your Honor. I also have a concern if we have a complete record from Mr. Cleveland's trial, and that is in regard to exhibits.

I did have Jacob come up, and he met with Angie.

THE COURT: For the record, my court reporter, Mrs. Riley

MS. BROWN: Yes. Thank you, Your Honor.

And we have, there were things that were listed as possibly taken out of the record, exhibits, and it looks like, the Court Reporter believes this could be Mr. Rosenbaum's signature at the bottom. And it has just a list, such as 14 A through D, 8 A, B, D, E, F. So we don't know what that Exhibit was. We know that we can't find them now.

And to complicate it, some of these,

for instance, says Exhibit 21. But in our trial transcript there isn't and Exhibit 21.

So I just want to bring to the Court's attention my concern that I don't have some of these exhibits, and since they weren't described, I don't know what they are.

THE COURT: Ms. Swansinger, anything on that issue?

MS. SWANSINGER: Well, first of all, I am not clear as to how it is relevant to today's proceeding. That would be my first thing.

Second of all, I would remind the Court there was a subsequent trial. That evidence would have needed to have been retained for the next trial.

Unfortunately we're talking about something that happened 11, 12 years ago. I would suggest that either the exhibits are now in the John Austin Edwards and perhaps have been renumbered for purposes of that trial, and/or they are in the possession of the Court of Appeals, which is the other alternative.

So, again, two prongs as to that. I'm not sure of the relevance today.

THE COURT: I think there are a few issues. One is that certainly through the Court's review of the record of this proceeding I've come to similar

conclusion as Ms. Brown.

This Court, in its review of the record and in review of the exhibits that were able to be found, it is my best guess, for lack of a better term, that given the number of trials involving this particular set of circumstances, actually five trials including a mistrial?

MS. BROWN: Five, yes.

THE COURT: Five trials, that somewhere a long the lines between four defendants, five trials, steps up and down the ladder from the Court of Appeals, the Supreme Court, some motions for new trial prior to this, over the last 12 years that some things may be misplaced or missing.

I know Angela Riley, my court reporter, has done an extensive amount of work, hours and hours of work trying to assemble whatever she could in this case, but for the record, I wasn't the Judge in that case, Mrs. Riley wasn't the Court Reporter, and I would hope 12 years from now when one of my cases is looked at, a murder case, that everything would be available, but they are not.

So, the next question is: Those that are not available, I guess at some point there are two things to consider: A, those things aren't available and their relevance to what I'm going to consider today, and if they are relevant, their inability to present those or to

consider them somehow prejudice Mr. Cleveland.

So if you have specific concerns about a specific exhibit and its relevance and its likely prejudice, I am more than willing to hear from it now, Ms. Brown.

MS. BROWN: Your Honor, I think the difficulty here is that since the exhibits that were taken out were never identified as to specifically what the Exhibit was, it is difficult to make and argument that it is relevant or it is not relevant.

I think what I would like --

THE COURT: Wouldn't the trial transcript indicate what that particular exhibit was?

For example, Exhibit 21. Wouldn't the trial transcript say what that was, and if you can't find it, then you can say, this would be important for us to have here today because of X.

MS. BROWN: And I understand that. That was part of my confusion on this.

When this list has State V. Cleveland at the top of the page, and it has exhibits, like for instance, Exhibit 21, that is not listed in the trial transcript.

THE COURT: I can't specifically address Exhibit 21. It may be something that was not

admitted, even though offered.

MS. BROWN: And we don't know.

If we could, maybe some point, and I'm not sure when we can do that, with the Court's schedule, is possibly look at, we did look at the exhibits in the subsequent trial. We didn't see anything in there. I don't know if it would be helpful if we looked at the exhibits in any of the other trials proceeding this, thinking maybe all of the exhibits just followed along.

THE COURT: We can consider some way to possibly incorporate that into the record at some point if that is possible.

MS. BROWN: I appreciate that, Your Honor.

THE COURT: Other issues, Ms. Brown?

MS. BROWN: Yes. If the State intends to call any witnesses, we would ask that there be a separation of witnesses.

THE COURT: The Court will order a separation of witnesses at this time.

Though I don't think it will be an issue here, you folks haven't been in my courtroom, they have. I'm somewhat of a traditionalist with regards to separation of witnesses. And it may come into play here today. Not only do I expect counsel to enforce that, but

to also understand that at some point when we break, whether it is for a short break, lunch break, or overnight, and have witness is on stand, that witness's testimony cannot be discussed with counsel or anyone else while that witness is still presenting.

Just so you understand my position on that. I know they do. They have run into it before. They are not particularly happy with it, but that is the way it is.

Anything else besides separation of witnesses?

MS. BROWN: We are making a request that our client be unhandcuffed during the proceedings.

THE COURT: There is no Jury here. I don't see a particular prejudice to your client.

Obviously, if the Sheriff's Department has that security concern, I'm not going to override it except for the possibility of prejudice to a jury, which we don't have here, Ms. Brown.

MS. BROWN: It was to make it easier to write, but I wanted to make the request. Thank you, Your Honor.

THE COURT: All right.

MS. BROWN: Your Honor, Jacob does have something.

MR. CAIRNS: May I make a record, Your Honor?

THE COURT: Certainly.

MR. CAIRNS: Thank you, Your Honor.

THE COURT: Mr. Cairns?

MR. CAIRNS: Cairns.

As Your Honor previously stated, earlier this week the Court overruled several of our motions and dismissed several claims contained in our Petition for Post-Conviction Relief. In large part, that was based on R.C. 2953.23. Specifically, the Court held that Mr. Cleveland was not unavoidably prevented from the discovery of the facts underlying various claims.

While we continue to maintain the statute is unconstitutional and we object to the Court's overruling to that effect, we would like to place a specific objection on the record to the extent found that the claims were jurisdictionally barred by the statute.

We submit that the claims we have presented do meet the jurisdictional requirements of the statute. In support of that, I would offer three points.

First, it is our position that the statute represents a codification of the miscarriage of justice, the exception procedurally fall in claims utilized in the Federal System.

Second, it is our position that the language of the statute requiring a Petitioner to show that he was unavoidably prevented from discovering the facts in question must be between unavoidably prevented from presenting them prior to the expiration of statute of limitations, not unavoidably prevented from presenting them at some other point in time.

Third, to the extent that the Court's ruling would permit non-cumulative consideration of various Brady claims that we've raised, we would respectfully submit that is inconsistent with *Kyles vs. Whitley* cited by the United States Supreme Court which requires claims to be considered cumulatively.

If I can briefly touch on the miscarriage of justice claim?

Our position is that the facts which Mr. Cleveland must have been unavoidably prevented from demonstrating are the facts underlying the claim of actual innocence, not the facts underlying specific constitutional claims.

With regard to the claim or claim unavoidably prevented relates to the statute of limitations. We believe that the Court's construing of the statute would require Petitioners to file a new claim for relief every time they became aware of a potential claim.

We think that is inconsistent with the Ohio Supreme Court's precedence indicating that the statute must, should not be construed in a manner which encourages multiple petitions to be filed.

And our final claim regarding cumulative precedence. As previously stated, the Supreme Court precedent requires that when evidence has been suppressed, all of the suppressed evidence must be considered cumulatively. We think the statute must be construed to permit that in order to remain in accordance with binding United States Supreme Court precedence.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Cairns.

Anything from the State of Ohio?

MS. BELCHER: Yes, Your Honor. I guess, preliminarily, the State would note that Post-Conviction Relief is solely a creature of statutory creation by the Ohio Legislature, and a criminal defendant is only entitled to that relief which the legislature has deemed appropriate in certain instances.

The legislature also in creating a remedy of Post-Conviction Relief specifically chose to limit that remedy by instituting time limitations as well as certain requirements if a petition was filed outside of those time frames in order to obviously limit the extensive

piecemeal litigation that typically follows after individuals have been convicted of crimes. Certainly, many of those incarcerated believe they do not deserve to be there; however, other evidence suggestions otherwise.

The State would also like to place on the record that -- I guess actually our objection to today's proceedings.

It is the State's position, respectfully, Your Honor, that Mr. Cleveland did not meet the jurisdictional requisites in order to have his claim presented to this Court today in that he has not demonstrated that he was unavoidably prevented from discovering the evidence he was about to remit, and he also did not demonstrate but for that evidence no reasonable fact finder would have convicted him.

Your Honor, it is the State's position based on the documents previously submitted related to Mr. Avery that it is a variation of the same old song: I was threatened by a C.O. I was threatened by a co-defendant. Now it is: I was threatened by my father.

The fact that Mr. Avery seems to want to base his testimony based on being threatened by an outside party is certainly not anything new.

As such, we would just note our objection to today's proceedings on the record. We would

also again indicate for purposes of the Motion for Leave to File a New Trial, we do not believe he was unavoidably prevented from discovering this testimony. I believe in one of Mr. Avery's own statements there is reference that -- I'm not sure what Mrs. Cleveland's maiden name was, but that Roberta Cleveland, now known as Roberta Cleveland, had contacted him in the past, and it appeared there had really been no success there.

Accordingly, we would ask that you deny both the Post-Conviction Relief Petition as well as the Motion for Leave to File a New Trial.

One last thing, Your Honor. I believe the Court did note that the 2953.23, the time limitation statute regarding Post-Conviction Relief petitions, that the constitutionality of that statute has been examined by the Ninth District Court of Appeals, and they have held that that statute is constitutional, and the Court so noted that in its decisions of January 29th.

Thank you, Judge.

THE COURT: Thank you, Ms. Belcher.

The Court noting each side's objection to my prior rulings will maintain its prior rulings at this time. Certainly, each side has the opportunity to take up with the Court of Appeals my decision with regards to your other witnesses and evidence outside Mr. Avery's situation,

and certainly the State has the opportunity to object through the appeals process to my allowing Mr. Avery's testimony here today in consideration thereof.

Anything further procedurally from the Petitioner Defendant?

MS. BROWN: No, Your Honor.

THE COURT: Anything procedurally from the State of Ohio?

MS. SWANSINGER: I would just advise the Court Mr. Piwinski is on his way, and should be here -- Well, the Court knows how long it takes to get from Lorain.

THE COURT: Very well.

At this point the Court is intimately familiar with the issues and arguments that we're going to consider here, so I'm not really going to entertain opening statements. I will certainly consider some closing argument when we have completed the testimony and evidence phase of this hearing.

But at this point I'm going to ask the Petitioner Movant Defendant to call its first witness.

MR. ELLISON: Your Honor, we would like to call William Avery, Jr.

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T H E R E U P O N

the Defendant, in order to maintain the issues on its part to be maintained, called

WILLIAM M. AVERY, JR.

as a witness, upon being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF WILLIAM M. AVERY, JR.

THE COURT: A couple matters we will deal with preliminarily.

First, I think my bailiff has indicated to the press that under Ohio law Mr. Avery has indicated a desire not to be photographed, and he has that right, and it is enforceable by this Court. So there is a Court order that he not be photographed, and if any photograph is taken, that it not be published.

Mr. Avery, would you adjust your microphone? Your seat won't move, but your microphone will.

Will you adjust the microphone?

Sir, would you state your full name for the record?

THE WITNESS: William Mc Arthur Avery, Jr.

THE COURT: Would you spell your last

name for the record?

THE WITNESS: AVERY.

THE COURT: Mr. Avery, I have some concerns before Mr. Ellison asks you any questions here. There may be the possibility of what you testify to, and I've reviewed your deposition and affidavit in this matter, as well as all your order testimony in every other trial you've testified in, that your testimony today may tend to incriminate you with some criminal liability.

Have you had an opportunity to talk to a licensed Ohio attorney who represents you with regards to that issue?

THE WITNESS: No.

THE COURT: You have a right, if you can't afford an attorney, to have me appoint an attorney for you if you wish to talk to an Ohio attorney with regards to any liability and risk you are taking criminally in testifying today.

Would you like the Court to appoint an attorney to talk to you today with regards to any risk you are taking in testifying today?

THE WITNESS: No.

THE COURT: You understand you have that right?

THE WITNESS: Yes.

THE COURT: And you understand, you understand what you are facing with your testimony today? Do you have any idea?

THE WITNESS: Nothing but the truth coming out.

THE COURT: Okay.

Should I find that what you testify is the truth, do you understand that that means that what you stated in at least four other trials -- the mistrial, there is a question as to what you really testified to there, I guess -- but on four other occasions, at the very least, would be at the very least contradictory to what you are testifying to today, based on what I've seen in your deposition and affidavit.

Do you know that that being the case, that there is the possibility that this Prosecutor's Office could charge you with perjury, a felony of the Third Degree?

Do you realize that?

THE WITNESS: No.

THE COURT: Do you know what the penalties for perjury are in this state?

THE WITNESS: No.

THE COURT: In light of what I've just told you, would you like to have a brief discussion with an

attorney as to whether or not it is in your best interest, which you may determine it is or you may determine that you don't care based on that discussion, would you like the Court to appoint an attorney to speak with you at this point?

THE WITNESS: Yes.

THE COURT: What I'm going to do at this point, if you had chosen to do, I asked an experienced local attorney to be here today who does only criminal defense work, or primarily criminal defense work in this county.

What I'm going to do is take a short break and allow you to talk to Mr. Kenneth Ortner, who is present in this Court. I will have him take you into a conference room out there. It is not his job to persuade to you do one thing or the other, but to make sure you are aware of your rights and any risks you might face.

So for purposes of this hearing, I'm going to appoint Mr. Ortner to represent you.

I believe this happened once before, I think in the first trial, when you had an attorney appointed for you, when you attempted to take the Fifth, the Fifth Amendment at that point.

So that being the case, Mr. Ortner, Mr. Avery, if you would go out in the conference room just

outside the courtroom, have hopefully a brief discussion, and this Court will break for a few minutes.

Mr. Ortner, when your client has made a decision, at that point please advise the Court's bailiff.

MR. ORTNER: I will, Your Honor.

THE COURT: We will stand adjourned for a brief time.

(Thereupon, a recess was taken.)

* * *

11:40 AM

THE COURT: Back on the record in State of Ohio vs. Alfred Cleveland. It is now approximately 11:43. The witness, William M. Avery, Jr. has had an opportunity to have extensive discussions with his appointed attorney, Kenneth Ortner. The Court has been advised that he has not only discussed things with Mr. Ortner but with a representative of the State of Ohio and with the counsel for Mr. Cleveland, as well.

At this point, Mr. Avery, will you come forward and retake the stand?

* * *

(William M. Avery retakes the stand)

* * *

THE COURT: Please be seated. I remind you that you remain under oath.

Do you understand that?

THE WITNESS: (Nods head yes).

THE COURT: What was that, sir?

THE WITNESS: Yes.

THE COURT: Have you had an opportunity to talk with Mr. Ortner?

THE WITNESS: Yes.

THE COURT: During your discussions with Mr. Ortner, did he make you aware of the various

rights you have with regards to self-incrimination?

THE WITNESS: Yes.

THE COURT: And pursuant to those discussions, after that discussion, do you wish to continue with your testimony and present evidence on behalf of Mr. Cleveland?

THE WITNESS: (Pause) Yes.

THE COURT: Very well.

MS. SWANSINGER: Your Honor, before we begin, I would ask that you review with this witness his Miranda Warnings. I have a copy. I would ask that you read him his rights so that he understands.

MR. ORTNER: Judge, would it be possible for me to approach him for one second?

THE COURT: Well, let me do this on the record first.

Sir, while this isn't necessarily a Miranda situation, to make sure that we cover the record as much as possible, I'm going to advise you that you have the right to remain silent. Anything you say may be used against you in a Court of Law. You do have a right to talk to an attorney, you have invoked that right, I've allowed you to talk to him, and to have that attorney present with you when you are being questioned. He is present currently. If you can't afford to hire an attorney, one

would be appointed to represent you before any questioning, if you wish. We have appointed an attorney, Mr. Ortner. And you can decide at any time to exercise these rights and not answer any questions or make any statements.

Do you understand each of these rights as I've explained them to you?

THE WITNESS: Yes.

THE COURT: Having these rights in mind, do you still wish to talk at this point, or do you wish to consult one more time with Mr. Ortner at this point?

THE WITNESS: (Nods head)

THE COURT: Is that a yes, sir?

THE WITNESS: Yes.

* * *

(Thereupon, the Witness, William M. Avery, Jr. confers with Mr. Ortner)

* * *

THE COURT: At this point, Mr. Ortner, is there anything you wish to put on the record?

MR. ORTNER: Judge, at this time we would like to ask if we can get immunity from the Prosecutor's Office for his testimony?

MS. SWANSINGER: No.

MR. ORTNER: In that case, we would ask

if we can have judicial immunity?

MR. ELLISON: Your Honor, may I address one point on that?

THE COURT: One second. Everybody will have an opportunity.

With regards to judicial immunity, does the State of Ohio have a position on that for the record?

MS. SWANSINGER: It doesn't exist, Your Honor.

THE COURT: Very well.

Mr. Ellison?

MR. ELLISON: Thank you, Your Honor.

I just thought that I would mention for the record, Your Honor, just a couple of points.

One is that the State's position, it appears to be there is evidence other than Mr. Avery's testimony, which could be used to or suggest guilt of Mr. Cleveland, and we would submit that the record shows there is no physical evidence, there is no testimonial evidence other than Mr. Avery that suggests guilt.

In addition, with regard to any question as to when the State might be on notice as to Mr. Avery having lied to the police and having lied on the witness stand, the Court is referred to the 1991 testimony in Lenworth Edward's first trial in which Mr. Avery, Jr.

said to the Court that he had lied to the police, and he had lied about everything. So they were on notice from 1991 that his story was a lie.

What is also important for the record, and we will bring it out through this witness, was that at that time, shortly after this occurred, the Prosecutor in that case, Mr. Rosenbaum, went and spoke to Mr. Avery while he was being held in the jail and told him that either they, go down or you go down. This caused Mr. Avery in 1992, when he is interviewed by Det. Resendez, in a tape that actually I just saw for the first time two weeks ago, Mr. Avery asked for written immunity for everything. And he was told that Mr. Rosen -- by Det. Resendez on the tape that he was told by Mr. Rosenbaum that he would get written immunity for everything, but only after he testified to being an eye-witness.

And I thought that this was important to place on the record, because as the Court considers whether judicial immunity is appropriate, we would submit that for an exculpatory witness like this, this man, when he tried to tell the truth the last time in 1991, he was threatened with perjury, he was charged with perjury, and as soon as he testified to the State's liking, the perjury charge was dismissed. That immunity agreement, by the way, has never been provided, and is a clear Brady violation and

a Bagley violation and a Kyles violation.

I just wanted to make that part of the record, because this case is replete with misconduct and the threatening and intimidation of this man by State authorities. We would submit that the threat of perjury today is nothing more than an effort to try and keep this man from testifying.

Thank you, Your Honor.

THE COURT: Anything further from the State of Ohio on that issue?

MS. SWANSINGER: First of all, no immunity was granted. And he was polygraphed after his shenanigans, if you will, in the first Lenworth Edwards trial. He was polygraphed, and he passed. And the part that he didn't pass was that he was withholding information. And it turned out the information he was withholding was that he was present behind the bar when he observed a man taking slashing motions at Marsha before he ran away.

MR. ORTNER: Judge, we would --

MS. SWANSINGER: So he was polygraphed. Steps were taken to insure that he was telling the truth.

Those issues were all resolved. He was not granted immunity. He was charged with perjury at the time because of what had happened in the first Lenworth

Edwards trial. He proceeded through the course of four more trials over the span of 6, 7 years to tell a consistent statement of what he had observed happening to Marsha. That is the testimony that he gave on four separate occasions, consistently. And apparently now he is making some contradictory statements that never existed before. Never.

I would also point out it is very clear from the records that he concedes that Mr. Rosenbaum did not come and talk to him and did not threaten him. He concedes that in those transcripts. It is on the record. He concedes that Mr. Rosenbaum would not see him following his recantation. Mr. Rosenbaum would not come and talk to him. And he admits that on the record that that never happened.

THE COURT: Well, let's start with this.

Any consideration of whatever happened with a polygraph, any consideration of what happened with a polygraph I could care less about. It is not admissible. It is not something that I would consider in any way --

MS. SWANSINGER: Absolutely.

THE COURT: -- as evidence of what the truth in this case is.

With regards to anything else, Ms.

Swansinger, Mr. Ellison, anything further?

MR. ELLISON: I was just going to say that about the polygraph, Your Honor, which has never been disclosed, as well. The questions, the answers. And we would disagree with the characterization by the State in anyway about it.

THE COURT: Mr. Ortner, I thought you wanted to say something at some point.

MR. ORTNER: I was going to object when there was talk about the polygraph. Thank you, Your Honor.

THE COURT: With regards to judicial immunity, this Court is unaware of any Ohio law that allows for the granting of judicial immunity if a Prosecutor chooses not to agree to said immunity. If it is out there, I've got to say this: That I can't see a case where judicial immunity would be less indicated than this, because either way you look at it, what this man has done is reprehensible. Either he lied back in the '90s and put four men in prison for crimes they didn't commit, or he told the truth and he is trying to free at least one, and I assume if successful here, subsequently three other men, murderers from prison. In either instance, if he were charged with perjury in those counts, it is about as serious a perjury offense as you could get. Whether putting people in prison for murders they didn't commit or

trying to free murderers, either way, it certainly wouldn't be a situation where I would think judicial immunity is called for.

So, Mr. Ortner, your request for judicial immunity is denied at this point.

Anything further from you?

MR. ORTNER: No, Your Honor.

THE COURT: Mr. Avery, you heard me read your rights. You've talked to Mr. Ortner. You've heard the discussion.

Is it your intention now to go forward and testify and answer the questions of Mr. Cleveland's attorney?

THE WITNESS: I'm going to have to take the Fifth.

THE COURT: Are you certain that is what you want to do?

THE WITNESS: Yes.

THE COURT: Mr. Ellison, do you wish to be heard at this time with regards to this specific issue?

MR. ELLISON: I do, Your Honor. This has been a 12-year travesty here.

THE COURT: The thing is, Mr. Ellison, I will give you some opportunity for argument, but on this specific issue.

MR. ELLISON: What I would like to do, Your Honor, Mr. Avery has the right to make whatever decision he is going to make.

What I would like to request would be, it is 5 minutes to 12:00 I would like to respectfully request that we recess for noon. Mr. Avery has gone back and forth a couple of times on this particular issue, and I would like to request that he have an opportunity to perhaps reflect over the noon hour and see if that would change his testimony. If the Court wants, we won't talk to him. He can talk to his lawyer. He can talk to whatever his conscience dictates he would like the talk to.

This is such a serious matter, Your Honor, and the Court has limited us to just this one witness. At the very least I would like to make a proffer, but it would take longer than 5 minutes. I don't know when the Court usually recesses for lunch. But if he can have that time at least to reflect and think, because he has gone back and forth on the stand just the last few minutes. Being on the witness stand, as I know Your Honor knows, can be a very pressuring thing and not a place to necessarily make the best decisions.

Would the Court consider that, please?

THE COURT: Ms. Swansinger, does the State have a position?

MS. SWANSINGER: Your Honor, we would leave that to the discretion of the Court. However, depending on which way the Court goes, it would order that neither side have any contact with him. If Mr. Ortner wants to speak with him, obviously he is the attorney appointed to represent him. Otherwise, I would ask that there be no contact, and not just with the attorneys, but also with the supporters of either side.

THE COURT: Here is what I'm going to do. I'm going to break until 1:30. During that time period both sides are obviously aware that Mr. Ortner represents Mr. Avery. Any attempt to discuss anything with Mr. Avery has to go through Mr. Ortner at this point. He is represented.

I am not going to give a blanket order that nobody can talk to him, because he is free to talk to whoever he wants after consulting with his lawyer. And for purposes of this hearing, with Mr. Ortner being his lawyer, I want any contact through any counsel or anybody aligned with either side, whether it be a police officer, a Prosecutor aligned with this, a family member, supporter, investigator on the Petitioner Defendant's side, they need to go through Mr. Ortner. If Mr. Avery chooses to hang around and have those discussions, that is fine. If he wishes to after talking to Mr. Ortner, or if he wishes to

go back to wherever he came from, that is fine. That is up to Mr. Avery. At this point, he has taken the Fifth. If he should choose to talk to anybody about that decision, that's up to him. We will be back -- Yes?

MS. SWANSINGER: I'm sorry. But he has taken the witness stand. He has been sworn in. So nobody should be having contact with him about his testimony. He is a sworn witness already, Your Honor.

THE COURT: This is a good point, Ms. Swansinger.

All right. I guess since I made that rule clear today, too, I think I've got to stick with it.

I am going to order over this time period then, as he is a witness still on the stand, that he not consult with anybody other than his counsel at this point.

MR. ELLISON: Your Honor?

THE COURT: Mr. Ellison?

MR. ELLISON: Thank you, Your Honor. And I understand that to be the normal rule. And certainly the purpose usually is so that there is no discussion of testimony that has already happened or suggestions of other testimony.

This is a highly unusual situation where there has been no substantive testimony as of yet. I

would ask that the Court reconsider under those circumstances. I'm not suggesting that we would have contact, but if Mr. Avery would choose to have contact, to speak to the prosecution or to speak to the defense, under these highly unusual circumstances without substantive testimony, if the Court would reconsider it under the circumstances.

THE COURT: Here is what I'm going to do. I'll look at the next hour and a half more in the lines of the time for Mr. Avery, if he chooses to reflect. If at that point when we come back Mr. Ortner indicates that Mr. Avery wishes to discuss this with anyone, at that time I will take up that and consider it, although I can't guarantee I will let that happen at that point.

But be prepared if he chooses to simply leave or not be present when we come back here or be here present and not testify, be prepared for some brief argument as to where we stand at this point and what this Court is going to consider.

So we'll see everybody at 1:30. We stand adjourned.

(Thereupon, a lunch recess was taken.)

* * *

1:30 PM

THE COURT: Back on the record in State of Ohio vs. Alfred Cleveland, 95CR046754. It is now 1:32 PM.

At this point, Mr. Avery, would you come forward, please?

* * *

(William Avery, Jr. resumes the witness stand.)

MR. CAIRNS: May I be heard, Your Honor?

THE COURT: No.

MR. CAIRNS: Thank you, Your Honor.

THE COURT: Please be seated, sir.

Sir, you remain under oath. You understand that?

THE WITNESS: Yes.

THE COURT: During the recess we just had, did you have an opportunity to talk to your attorney?

THE WITNESS: Yes.

THE COURT: Did you talk to anybody else?

THE WITNESS: No.

THE COURT: Prior to the recess you indicated that it was your desire to invoke your rights

under the Fifth Amendment.

THE WITNESS: Right.

THE COURT: Take the Fifth. Have you changed your mind in any way?

THE WITNESS: No.

THE COURT: Very well.

At this point, counsel, I'm going to determine that Mr. Avery's testimony may be incriminating to him. He does have the right to take the Fifth Amendment. At this point, I'll have him step down.

MR. ELLISON: Your Honor, can I be heard?

THE COURT: Certainly.

MS. BROWN: I would ask that this Court grant a continuance at least overnight. This is, I understand, we all know that Mr. Avery was just granted counsel this morning, and I feel his counsel has done a fine job, but this is a complex matter that involved four trials, and I think to be able to fully apprise his client, that he needs some additional time to review some of the evidence in this case; that no one could expect an attorney who was just appointed to have a total record of all these matters.

As the Court knows, my late partner, when he passed away, I had to ask for a couple continuances

to get up to speed on this case. There is a vast record in this matter.

THE COURT: I'm keenly aware of that.

MS. BROWN: Right. And I don't think we can expect appointed counsel to be able to fully advise his client within a couple hours of being appointed.

So I would ask, especially since this matter was set for today and tomorrow, that his counsel at least have overnight to get up to speed, and we would come back in the morning.

THE COURT: Ms. Swansinger?

MS. SWANSINGER: Your Honor, the State will object at this point. The matter is: What are the elements of -- that he is potentially facing charges on? What are the potential penalties? That is not a very complex issue. He is testifying to something potentially contrary. It is not very tricky. Mr. Ortner is well-versed in the law. He is certainly is a well, very experienced attorney. It is not a very difficult issue. He has invoked his rights, and he should not be badgered or further put on the spot. He's made his decision. He's made his decision. His decision did not change over the recess that the Court did grant, and we certainly didn't oppose.

THE COURT: I will state this for the

record. Certainly Mr. Avery's decision is a complex decision from a moral point of view, but my review of the record as well as Mr. Avery's deposition and affidavit crystallizes the legal issues fairly clearly. I don't think the legal issues are all that complex and certainly seem to be grasped pretty adeptly by Mr. Ortner from what he said here today, so I don't find the motion for a continuance well-taken.

At this point, it is up to you, Mr. Avery. You can remain in the courtroom as you wish.

THE DEFENDANT: Please. Please, man. Please.

THE COURT: Mr. Cleveland, you are not to address the witness.

(Addressing Witness) Once again, you may remain as you wish or you may leave. Likewise with you, Mr. Ortner.

MR. ORTNER: Thank you.

* * *

(Thereupon, Mr. Avery leaves the witness stand.)

* * *

THE COURT: Now the question is, where do we go from here on?

Ms. Brown, let's hear what you have to

say.

MS. BROWN: Your Honor, we need to make our record, and we would like to incorporate into the record the transcripts and exhibits from Mr. Cleveland's trial and our exhibits that we have, Petitioner's Petition Volume 1 and Volume 2 of our exhibits that went with the Petition.

We would also ask for a complete record, since there are exhibits missing from Mr. Cleveland's trial, that we incorporate the transcript from Lenworth Edwards' trial, John Edwards' trial, Benson Davis' trial, along with those exhibits.

We also believe that we need to, in order to make a complete trial, or a complete record, that we need the lab reports that we subpoenaed to be here today; that we subpoenaed from BCI and from Lorain.

We would also -- and we'll leave to it the Court's discretion how the Court would like to handle this -- we want to proffer what we believe the testimony would have been of our witnesses had they been permitted to testify here today. We can do that in a written form if the Court would prefer that.

THE COURT: Which witnesses would that be, Ms. Brown?

MS. BROWN: We had Daymond John. We

had Ayasha Teagues.

THE COURT: I though that's where you were going. No, that is not going to occur. That is a matter of law based on their affidavits and argument based on the law that the Court of Appeals can then take up at that point. But with regards to this hearing today, based on the Court's prior ruling, the only thing this Court was prepared and is prepared to consider is those items involving William Avery, Jr.

MR. ELLISON: May I be permitted to add something?

THE COURT: Sure.

MR. ELLISON: What we would also like to do, because there were no affidavits that we could obtain, there were a number of witnesses from the Lorain area who we have wanted to subpoena. And what we would like to do in an Offer of Proof, since there is no affidavit, is that we have obtained former Det. Taliano's police report. We have heard over the morning that is something we probably weren't supposed to have, although I don't understand why.

THE COURT: Perhaps that might be a misunderstanding of Ohio law then.

MR. ELLISON: Perhaps it may be, Your Honor.

In this 71 page report, it contains a lot of exculpatory information. In addition, there are tapes which are referenced in that report which are not fully summarized or even summarized at all in this report. In those tapes, which were withheld from defense during Mr. Cleveland's trial because they do contain exculpatory evidence, as to other people. In other words, this is evidence that would have shown, if we were permitted, that what Mr. Avery testified to back in 1996 and in the other trials was, indeed, false, because within the police's own information, which was not disclosed, there was clear evidence.

For example, as the Court might remember from the record, Mr. Avery, Jr's story was that Al Cleveland and his friends showed up at Floyd Epp's apartment and took Marsha Blakely from that apartment after beating her unconscious. She was dragged into a car.

There was a tape by a gentleman by the name of Willie Mincy, it is referred to in Det. Taliano's report, but he doesn't describe what is in the tape. In the tape, Willie Mincy, who was Marsha Blakely's boyfriend, followed her over in the direction of Floyd Epp's apartment, saw her voluntarily getting into a vehicle that doesn't match the description of any vehicle that Mr. Avery, Jr. testified to immediately before she had to

have been murdered, as an example. And what we would like to be able to do is to be able to submit today the tapes, and as part of our written proffer be able to submit excerpts from the transcript -- I'm sorry, excerpts from Det. Taliano's report, and to show what was in the tapes that was not in the report, because our understanding is that Ms. Papcke, who was Mr. Cleveland's attorney at the trial, we don't think she had access to virtually anything. It wasn't given to her. And while certainly the Court is correct in my lack of familiarity with Ohio law --

THE COURT: I can pretty much guarantee you she was not given the police report.

MR. ELLISON: Even though it contained exculpatory evidence and the tapes, which contained exculpatory evidence. Had Ms. Papcke had those tapes and assuming she was in a position to act as a reasonable attorney under the circumstances she could have clearly shown that there were other people who were more likely involved. Again --

THE COURT: Let me just stopped you right here, Mr. Ellison.

Here is the thing. Usually I would ask for a response from Ms. Swansinger, but here is the thing.

First off, that you've gotten a report, however that happened, good for you. I rarely got reports

when I was practicing, and people rarely do now. Under Ohio law, you have no right to that report under the Rules of Discovery. And the fact that it may contain exculpatory evidence does not give you the right to that report. In Ohio, it gives you the right to exculpatory evidence, which prosecutors are under a continuing duty in all cases pending to provide. And we rely on that to a certain extent.

However, the fact that you have indicated that is something that you have recently gotten access to and have recent knowledge as possible exculpatory evidence as raised by that report is not something I would consider in your arguments today or consider for a proffer. Although I am probably buying myself procedural problems here, it sounds to me like at best, at best it is the basis for another Petition or Motion. At best. Not something I'm going to consider as part of these proceedings.

MR. ELLISON: Thank you, Your Honor. And I understand. It was really also part of our effort to just try and --

THE COURT: I expect this to demonstrate actual innocence over all. I'm not blind to that fact and your persuasive abilities in what you are attempting to do here, but I am constrained by Ohio statutory and case law here.

MR. ELLISON: May we make a proffer though, Your Honor, on the argument of actual innocence further than what we have been able to do so far?

THE COURT: At this point I'll give Ms. Swansinger a chance to respond to that.

MS. SWANSINGER: I would only want to respond to one point.

Whether or not Mr. Ellison just heard these things, that does not apply to Mr. Cleveland's other counsel, who attached the transcripts of this, Willie Mincy's and somebody else's transcripts, of this alleged statement in conjunction with this motion, and the Court has found that they were not timely.

THE COURT: Oh, we're talking about those? That is what we're talking about?

MS. SWANSINGER: Oh, yes. Yes, Your Honor. He is talking about Willie Mincy. That is Exhibit N attached to this motion, so that is not properly before this Court.

THE COURT: I thought you were referring to something different than that.

MR. ELLISON: My apologies, Your Honor.

MS. SWANSINGER: No, he specifically referenced something that has already been submitted and rejected.

THE COURT: It was considered and has been rejected as such. I'm sorry. I thought you were talking about something that was beyond what has already been considered, something that you just recently found.

MR. ELLISON: No.

THE COURT: I'm going to try and steer us back here, discussing William Avery, the consideration that I was hoping to get to at 9:00 o'clock this morning. Procedurally --

MR. CAIRNS: May I be heard, Your Honor?

THE COURT: Well, procedurally, I would like a brief thought of where you think we need to go now.

MR. CAIRNS: Your Honor, at this time we would ask that the State be estopped from continuing to rely on the reliability of Avery's testimony at trial as a basis for denying the Petition for Post-conviction Relief. The State threatened Mr. Avery with perjury based on his testimony at our client's trial. If the State believes in good faith that it has probable cause for an indictment against Mr. Avery based on his testimony at my client's trial, the State cannot simultaneously contend that his testimony was reliable. The two proportions directly contradict each other.

We would ask that the Court

judicially estop the State from relying on the evidence presented by Mr. Avery at trial. If they cannot rely on that, there is absolutely no evidence to support this man's conviction, and the Petition for Post Conviction Relief must be granted.

THE COURT: That is where you want to go?

MR. ELLISON: We have something else, Your Honor.

THE COURT: That sounds pretty all or nothing. So let's --

MR. CAIRNS: Well, I didn't intend it --

THE COURT: Well, that is why I wanted to hear a brief synopsis of where you think we need to go procedurally now. If that is it, that's fine. That is your call. But let's make this the last chance, folks.

MR. ELLISON: One part, because I believe Ms. Brown has some additional thoughts.

Since Mr. Avery is at this point unavailable, and although we attached his deposition that was taken on April 10th of 2006 as part of our pleadings, we would like to at this time file and read into the record the original transcript of that interview of Mr. Avery, and for that to be subject to the Court's consideration in the

decision of this case.

THE COURT: Thank you.

Ms. Swansinger?

MS. SWANSINGER: Well, I guess I would start off by asking for a citations of authority as to Mr. Cairns' arguments that we would be estopped in some form or fashion. I would ask for citations of authority for the Court's ability to even do that. I have never heard of anything along those lines.

We would certainly object to his transcript being read into the record. The transcript, first of all, was taken by an investigator, not even an attorney. It was taken without the participation of other parties. And it constitutes hearsay, inadmissible hearsay.

THE COURT: Response to that from the Petitioner's side?

MS. BROWN: First of all, I'm not sure under -- since this is a collateral proceeding, that we're held to the Rules of Evidence as a Post-Conviction proceedings. I would like to say that it is a sworn statement, it was done under oath, and it was certified by a court reporter. I do understand the State's argument that there wasn't anyone there that cross-examined. But Mr. Avery has made himself unavailable. It is a sworn statement, done under oath, certified copy, and I don't

believe that the Rules of Evidence -- and it is exculpatory, and that the Rules of Evidence are held to that strict of standard in this type of proceeding.

THE COURT: Last chance, Ms. Swansinger.

MS. SWANSINGER: I'm not aware of any authority which would provide that the Rules of Evidence do not apply. Rule 101. There is no exception for civil cases or certainly Post-Conviction Relief cases that the Rules of Evidence would not apply, so the Court is bound to apply the Rules of Evidence. They apply to everything else. They should apply here, as well.

THE COURT: Well --

MS. SWANSINGER: The other thing is, certainly, even as in any civil matter, we would have a right to participate in a deposition. And certainly if an attorney had been involved, perhaps we would have been afforded that right. But there was no attorney involved. This was a statement made by an investigator on behalf of the Defendant. It is not admissible, and certainly does not comply with any sort of exception to hearsay. Certainly, we would have a right to be there and confront this witness.

THE COURT: Granted, I think you're correct, Ms. Swansinger. You certainly have that right,

and I don't think there is an evidentiary exception that is applicable here.

However, the transcript and the deposition, Mr. Avery's deposition are already part of the record. Considering we don't have a jury to make a determination here, I'm going to grant the request on a limited basis to have the deposition and affidavit considered by this Court in making its ultimate decision with regards to this issue, keeping in mind that I will assign that weight to those two items what evidentiary weight I should choose to those items based on consideration of all the factors and circumstances surrounding, including the fact there was not opposing counsel present for those, and certainly taking into light all the facts and circumstances in the record and the prior testimonies of Mr. Avery, prior depositions, prior affidavits, prior testimonies Mr. Avery has done.

Here is what I'm going to determine here today.

I am going to give, in light of my rulings, I'm going to give each side -- This is Thursday. Tomorrow is the 1st. So, two weeks from tomorrow will be the 15th. Until February 15th to provide to this Court any arguments and law in memorandum form you wish me to consider with regards to the William Avery issue only.

William M. Avery, Jr. to be exact. You may also submit to me if you choose Proposed Findings of Fact and Conclusions of Law, and both those items are to be served by that day on opposing counsel, as well. I would intend then to provide an entry to the parties within one week of that time, by February 22nd, keeping in mind for the record, as well, the court's prior determination on these motions and petitions are not at this time in my opinion, since this is the only one that counts here, a final, appealable order until I have determined all the claims grounds in your motions and petitions. I think your clock starts running when I make my final determination, which should be by February 22nd, maybe sooner if you folks get your stuff to me sooner.

So, that being said, anything further from the Petitioner Defendant?

MS. BROWN: Your Honor, I would like to request again that Mr. Ellison be able to proffer for purposes of maybe additional review by a Court of Appeals actual innocence claim of my client.

THE COURT: I don't think there is a necessity to proffer in that that pretty much everything, I can't imagine what else there is beyond what is in the current petition and the current Motion for New Trial beyond that. As far as proffering, that is part of the

record, and he can use that reliance on that with the Court of Appeals, so I'm not going to accept any further proffer at this point.

MS. BROWN: Thank you, Your Honor.

THE COURT: With regards to the transcript, I'm not going to have it read into the record, but I certainly will consider it, as I have indicated.

Anything further from the State of Ohio?

MS. SWANSINGER: No, Your Honor. Thank you.

MR. ELLISON: Your Honor, just one question I have. I have the original of that deposition from April 10th. Would the Court like to have the original filed? I know we filed a copy. It is a housekeeping matter. I just wanted to know what the Court preferred.

THE COURT: Any objection from the State of Ohio for me relying on the copy that is attached to the motions?

MS. SWANSINGER: No objection.

THE COURT: Very well, we will rely on the copy if you have no objection.

MR. ELLISON: No, Your Honor, it's the same.

THE COURT: Very well.

MS. BROWN: Your Honor, one other housekeeping issue. If you did rule on this, I didn't hear it, about having the complete record include the transcripts from the other three co-defendants and those exhibits, as well.

THE COURT: Ms. Swansinger? I didn't address that, you're correct. Any thoughts on that?

MS. SWANSINGER: Your Honor, if the Court wants to have all those, that information, that is fine. It is already public record.

THE COURT: It is public record, but to be honest with you, I've read Mr. Avery's testimony in those other cases. I'm not particularly interested in making those other cases part of the record such as it is necessary for me to rely on those other cases for my determination here.

What I'm going to suggest is that anything that was in that record that was favorable to Mr. Cleveland should have been made part of this record and part of your motions and/or petition prior to this. So I am going to deny that particular motion indicating, however, that I have relied on a review of Mr. Avery's testimony in those other cases.

MS. BROWN: Your Honor, I would ask that then at least the exhibits be made from those other

cases since I feel --

THE COURT: I will say this. Only to such extent as those exhibits can be demonstrated to be exhibits that were used in this case.

MS. BROWN: I don't think Your Honor ruled on my request for the lab results that I had filed subpoenas in today and no one showed up from BCI.

THE COURT: Because I don't see how those relate to the testimony of William Avery, which was the only thing I was going to consider after the ruling prior made to this, there is no demonstration that that has occurred, so I'm not going to require that be made part of the record, as well.

MS. BROWN: Just for the record, we believe that those relate to actual innocence.

THE COURT: Very well.

MS. BROWN: Thank you.

THE COURT: We stand adjourned.

* * *

(Thereupon, this matter was concluded at 2:00 PM)

C E R T I F I C A T E

STATE OF OHIO
ss:
COUNTY OF LORAIN

I, Angela S. Riley, Official Court Reporter for the Court of Common Pleas, Lorain County, Ohio, do hereby certify that the foregoing is a true and correct Transcript of Proceedings of the Motion Hearing held in this case on the dates set forth, taken by me, reduced to writing by Computer-Aided Transcription, and that Transcript has been compared with my Stenographic notes iN WITNESS WHEREOF, I have subscribed my name this 1st day of February, 2008.

ANGELA S. RILEY, RMR
Official Court Reporter
Court of Common Pleas
225 Court Street - 6th Floor
Elyria, OH 44035
(440) 329-5566
Notary Public in and for the State of Ohio
My commission expires: 10-16-12

Exhibit V

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALFRED CLEVELAND,

Petitioner,

vs.

MARGARET BRADSHAW, Warden,

Respondent.

10CV148

December 17, 2013
10:35 a.m.

TRANSCRIPT OF EVIDENTIARY HEARING PROCEEDINGS
BEFORE THE HONORABLE JACK ZOUHARY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

TUESDAY, DECEMBER 17, 10:35 A.M.

THE COURT: Good morning, everyone. Apologies for the slight delay. It's been a busy morning.

We are ready to go. I took the opportunity to 10:35:55 have a conversation with counsel beforehand, which should help expedite matters.

We're here on Case Number 10CV148, captioned Alfred Cleveland versus Margaret Bradshaw. This matter is before the Court today having been sent to me from the Sixth 10:36:19 Circuit in its opinion filed in September of last year, and in that opinion this Court determined that equitable tolling applied to the defendant's habeas claim and, therefore, said as follows in its conclusion: "We find that Cleveland has presented a credible claim of actual innocence that entitles 10:36:51 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."

And I've spoken with counsel about that and 10:37:08 about the scope of this hearing. I've also reviewed with them their witnesses for today.

By way of further introductory matters, there is a motion pending. It's the State's motion in limine regarding authenticity and admissibility of exhibits and 10:37:36 testimony, it's document number 70. The Petitioner has

responded in document number 73. The State objects to almost all exhibits and testimony identified by Petitioner, and I am going to deny the State's motion.

I believe that under the Sixth Circuit opinion I am not just entitled but required to review the matter both old and new, and I know that on some of the objections, indeed many of the objections by the State, that they concede that a number of the exhibits were introduced in earlier matters in the history of this case.

10:38:24 In any event, to the extent the State wishes to object to a particular witness or exhibit when that witness or exhibit is presented, they of course may do so and give me their argument so that I can judge that here today at this hearing.

10:38:40 To the extent there are objections to witnesses for some reason or another, again I would encourage either side to make a brief statement on why they believe so, or a general statement, and we can handle that efficiently at that time as well.

10:38:58 For starters, I've indicated to counsel I'd like a brief statement from each side with respect to what they hope to show me at this hearing today, and let me turn the floor over, but before I do, for the benefit of the court reporter I'd like counsel to identify themselves for

10:39:17 the record.

And let's start with for Petitioner Alfred Cleveland.

MR. CALABRESE: For Petitioner, Your Honor, Phil Calabrese.

10:39:28 MS. BERGERON: Also for Petitioner Jennifer Bergeron.

MS. JOCHUM: Also for Petitioner Alana Jochum.

THE COURT: And for Respondent.

MS. FOSNAUGHT: For Respondent, Jerri

10:39:40 Fosnaught.

MS. WATSON: Stephanie Watson.

THE COURT: I'm going to remind you folks that if you speak during this hearing, make sure your microphone is on and make sure you speak into it so that I can hear

10:39:53 you, opposing counsel can hear you, and most importantly the court reporter can hear you to accurately take down your comments.

Let me turn the floor then to, I'm going to guess, Phil --

10:40:07 MR. CALABRESE: Yes.

THE COURT: -- to give me a brief opening statement.

MR. CALABRESE: Is the technology working?

THE CLERK: Do you need it on?

10:40:21 MR. CALABRESE: Yes. Thank you.

Good morning, Your Honor. May it please the Court.

I believe you've, in our discussion in chambers and again just now, kind of noted the scope of the hearing, so let me just be very brief.

At Petitioner's trial, the events at issue concerned the murder of Marsha Blakely, and it's really two days that are at issue: The events of Wednesday, August 7th, 1991, and the early morning hours of Thursday, August 8th, 1991.

At trial, there was really no dispute that --

THE COURT: Hold on, Phil, please.

(Pause).

THE COURT: Go ahead.

MR. CALABRESE: So at trial, Your Honor, the evidence was that Mr. Cleveland reported to his Probation Officer in New York in the early afternoon, around 12:00 o'clock noon or so on the afternoon of August 7th.

The testimony, as the Sixth Circuit noted in its ruling, also established that Mr. Cleveland was in New York the following morning, Thursday, August 8th. That's the morning that the body of Marsha Blakely was found at about 9:18 a.m. in Lorain, Ohio.

At trial, the coroner testified, and the coroner testified that the time of death of Marsha Blakely

was between midnight and 3:00 a.m.

There was no physical evidence connecting Mr. Cleveland to the death of Marsha Blakely. There was no physical evidence placing Mr. Cleveland in Lorain, Ohio on the night of August 7th or the morning of August 8th. The State's evidence at trial consisted in that regard entirely of the testimony of William Avery, Jr.

10:43:12

As you know, William Avery, Jr. has since recanted his testimony. He did so both by providing an affidavit admitting that he lied at trial when he testified, and by giving a sworn statement under oath that was transcribed to the same effect.

10:43:33

We previously noted in our briefing, Your Honor, in our traverse beginning at Page 59 the legal arguments about why Mr. Avery's invocation of the Fifth Amendment at the recantation hearing in 2008 give rise to the inference adverse to the State, so I'm not going to rehash that here now.

10:43:53

But in short, when the State's star witness, the person who provides the only evidence placing Petitioner at the scene of the crime, invokes his Fifth Amendment upon being threatened with charges of perjury, adverse inferences arise. That's elementary civil procedure, civil law.

10:44:13

The post-conviction proceeding is a civil case. Invocation of the Fifth Amendment gives rise to

10:44:37

adverse inferences. And he was threatened with perjury not because he had given an affidavit or a sworn statement, but because he said he had testified falsely against Mr. Cleveland.

10:44:59 All of this is to say, Your Honor, at trial there was a hole if you will, there was a window of opportunity where Mr. Cleveland's whereabouts were unaccounted for, unexplained at trial. And that's the key evidence that we'll fill in today.

10:45:15 Here's what the evidence you will hear today will show, Your Honor.

First, there will be testimony from David Donaphin. That testimony, as we discussed, that will be submitted by videotape. He was deposed. He's outside the

10:45:36 subpoena power of the Court, but he was deposed within the last couple of weeks.

Mr. Donaphin will testify to a conversation that he had in New York on the night of August 7th, 1991 with Mr. Cleveland between the hours of 10:00 p.m. and

10:45:51 midnight. That conversation lasted anywhere from 20 to 40 minutes.

There will also be testimony that Mr. Cleveland made a phone call at about 12:16 a.m. from New York, and that's 12:16 a.m. on the morning of August 8th.

10:46:14 Additionally, there will be evidence that the

last flight from New York to Ohio that night was at 10:40 p.m.

And all of this new evidence accounts for Mr. Cleveland's whereabouts on the night in question, established that he was in New York -- not Lorain, Ohio; that he could not have committed this crime for which he was convicted, for which he has been in prison since 1996; and that Mr. Cleveland is, in fact, actually innocent of the offense for which he is serving time.

10:46:49 THE COURT: And that was his defense at the trial, was it not, namely "I was in New York, I was not here and, therefore, could not have committed this crime"?

MR. CALABRESE: Correct, Your Honor.

Mr. Cleveland at trial took the stand in his 10:47:02 own defense and he testified that he did not commit the murder and that he was in New York at that time.

We've explained again in our papers, in our traverse some of the circumstances that give rise to why, in fact, there is a period of time on the 7th and the 8th where 10:47:25 his whereabouts are unaccounted for, but, yes, he has consistently maintained his innocence.

THE COURT: Thank you.

Let's hear from the State.

MS. FOSNAUGHT: Okay. As you noted, Alfred 10:47:55 Cleveland asserts his actual innocence. We're here today,

my understanding, for his first two grounds of his habeas petition, the actual innocence and the false testimony.

There is a presumption of correctness that attaches to his conviction. He's presumed guilty because he was convicted in the State Courts and he faces the burden in this hearing.

The Sixth Circuit has said in the -- well, the United States Supreme Court announced in *McQuiggin versus Perkins* that timing is still relevant and the timing of when he brings forth his alibi evidence is still relevant in any consideration of an actual innocence claim.

We continue to assert that *Herrera* bars this Court from hearing every standing claim of actual innocence, and we continue to argue that *Pinholster* also bars any testimony regarding any claim that the State Court ruled on the merits on. And in this case they ruled on the merits of Avery's constitutional claims related to Avery's recantations and Cleveland's constitutional claims related to Avery's recantations.

This case is very different from what the Sixth Circuit had before it. Now David Donaphin is no longer the impartial witness that had never seen Cleveland in awhile, et cetera, whatever -- according to the statement that the Sixth Circuit found.

He states that he is a friend of Cleveland's,

continues to think of him as a friend, has mutual respect for him, even though they were both engaged in drug trafficking and car thefts.

He doesn't remember his birthday. He only realized on seeing the car. However, as the record shows, Cleveland was not arrested until 1995. It could have been any number of his birthdays. He essentially is relying on other witnesses to tell him which birthday was the relevant date on which he saw Cleveland.

Ayasha Teague cannot serve as an alibi for the relevant time. She doesn't know where Cleveland was on the 8th, didn't write it down, doesn't remember to this day; just assumes he was there because she didn't write it down that he left.

Ian Davis is not a credible alibi witness as well. He was also engaged in criminal activity along with Cleveland. He says Cleveland made the phone call that they are alleging and discussing because Cleveland was the only one that knew someone in Cleveland, Ohio, which is unlikely given that all of these co-defendants were all in Lorain, Ohio. And even Benson Davis came to -- well, alleges in his trial testimony that he claim to Cleveland, Ohio to help with this Run-DMC concert that was cited to during Cleveland's trial.

Cleveland and Benson Davis both have an

interest in asserting their alibi claims. We would cite to *McCray versus Vasbinder*, the Sixth Circuit case, that these are all interested witnesses.

Avery's -- oh, and the phone bill, we have to rely on Ian Davis asserting that it's his phone bill because there's no front page even with an address or name on the phone bill.

10:51:03

And some of the notations and the statements that he makes with regard to the phone bill are not correct as well. He cites that, I think, one call on August 7th was made by his brother, that it was made right before a call he made, and the only difference in the two phone numbers are the -- it would be the seventh number and it was made two minutes after. So the first one was clearly a misdial and was probably made by the same person, but Ian Davis testified otherwise.

10:51:16

10:51:41

Avery's recantation is not reliable, his 2006 recantation is not reliable for the simple fact as well that the recantation is riddled with lies so -- and we will present testimony in that regard today.

10:51:58

And in addition, his trial testimony was consistent with the other evidence and his initial testimony was consistent with the other evidence.

He testified to the stabbings on Marsha Blakely's neck.

10:52:13

He testified that she was dragged, and they found debris in her pants.

He testified that Avery -- Blakely punched Lenworth Edwards on his nose and he bled on his jacket. There's evidence of that.

He testified that there was an altercation where the table was knocked over. There was evidence of that.

There were numerous things that were corroborated in Avery's first statement in his trial testimony in these cases, and the jury was told to only believe Avery if they were able to corroborate his statements with the other evidence.

And there was other circumstantial evidence that was presented at trial. The investigators testified to their lengthy investigation in this case, and there was also testimony from Delphenia Guice.

THE COURT: Jerri, am I correct that Avery was critical to the State obtaining a guilty finding in this case? Without Avery at the trial --

MS. FOSNAUGHT: Yes.

THE COURT: -- there would not have been a trial probably.

Fair?

MS. FOSNAUGHT: I believe that's true. I'm

sorry.

I believe that's true because they did not -- even the investigators said they really had nowhere to go once they had interviewed, like, 25 or 30 witnesses. So Avery helped them corroborate the portions of the evidence that they had already found, so they needed him as a link in the chain.

But they had already developed their suspects. They just needed a witness to testify and to link everything together.

Guice's affidavit was not credible. It was written for Edwards' case, not for Cleveland's. Our witnesses will refute several of the statements in her affidavit: For example, the statement that she was constantly threatened and harassed by Detective Taliano and the statement that Jonathan Rosenbaum told her that she would testify to what they wanted her to testify to.

And she testified in all four trials. Her testimony varied as to who she was scared of and why she was scared and how forthcoming she was, but we have two CDs of her interviews and we have four trials that she testified in.

THE COURT: Tell me, of the four trials, were the defendants in each of those four trials found guilty?

MS. FOSNAUGHT: Yes.

THE COURT: Is there any testimony -- this is for both of you -- from those other trials that sheds any light on the claim before me today?

MS. FOSNAUGHT: Do you want to go?

10:54:43 There -- I believe everyone except for Lenworth Edwards presented an alibi defense, and John Austin Edwards, his trial appears to be the most complete with all the impeachments and other witnesses.

He had Jeremiah Charlton testify, who is one

10:55:01 of the witnesses that they've presented his affidavit of, and they had -- and he had just the Wyche letter -- I'm not exactly how sure how to pronounce the prosecutor's name -- but the letter from the Department of Justice.

THE COURT: Let me stop you.

10:55:19 My question is is there anything in perhaps Edwards' trial that would help shed light on the issue before me?

MS. FOSNAUGHT: I would submit that most of the stuff that's relevant, we are submitting into evidence

10:55:38 today.

THE COURT: It's already --

MS. FOSNAUGHT: Right.

THE COURT: -- before me or will be before me.

MS. FOSNAUGHT: Right.

10:55:43 THE COURT: You agree?

MR. CALABRESE: I generally tend to agree.

I think I would specifically commend to the Court the first trial of Lenworth Edwards, and Avery's testimony in particular. On December 17th, 1991 William Avery, Jr. testified -- well, he took the stand and refused to testify.

10:56:00

The transcript of that hearing, I believe, is Exhibit 9. Then in the afternoon he returned. There were some further proceedings that are relevant to assessing Avery and his testimony. And I believe that we have submitted those as Exhibit 9-A.

10:56:18

THE COURT: Thank you.

MS. FOSNAUGHT: And I would submit that all of that was laid out before Cleveland's trial, during his trial. Everything was presented to the jury. The jury was aware of his numerous different statements and his initial refusal to testify but-for getting $10,000, and then his recantation, and then he eventually came around again and readopted his prior statements to the police officials.

10:56:28

Regarding the perjury warning that opposing counsel discussed, the prosecutor informed the Court as is required and in any perjury case, it's not which statement is valid, the jury is presented in a perjury case with two conflicting statements that were presented under oath and the jury decides.

10:56:50

10:57:12

It's not -- by him recanting or taking the Fifth, it doesn't mean that his trial testimony was necessarily the lie. And the State Court decided in this case that Avery could have just as easily concluded that he 10:57:31 didn't want to testify falsely at the 2008 hearing, and this was all before the State Court and the State Court ruled on it.

Our witnesses will refute Larry Dehus's statement that Blakely's blood was found at Epps' crime 10:57:45 scene. Resendez and Taliano will refute the claim that they --

THE COURT: You need to slow down.

You ended with "Our witnesses will refute Larry Dehus's" --

10:58:00 MS. FOSNAUGHT: -- statement that Blakely's blood was found at Epps's crime scene.

And Resendez and Taliano will refute the claim that they harassed and threatened Delphenia Guice.

And Rosenbaum, Prosecutor Rosenbaum will 10:58:15 refute the claim that he forced Delphenia Guice and William Avery to testify falsely.

And Resendez and Taliano will also refute Avery's claims regarding any sort of false testimony.

And with that, we will present our case to 10:58:37 rebut their claim of actual innocence and false testimony.

THE COURT: Thank you.

You may call your first witness.

MR. CALABRESE: Petitioner calls Paul Ciolino, Your Honor.

10:58:59 PAUL CIOLINO,

of lawful age, a witness called by the Petitioner, being first duly sworn, was examined and testified as follows:

MS. FOSNAUGHT: You asked us to object if we

10:59:09 have any objections, and I do object based on *Cullen versus Pinholster* that this witness is barred.

THE COURT: Your objection is noted and overruled.

Thank you.

10:59:18 MR. CALABRESE: Good morning, Mr. Ciolino.

THE COURT: Do you want to spell your name for the court reporter, please?

THE WITNESS: It's Paul J. Ciolino, C-I-O-L-I-N-O.

10:59:39 DIRECT EXAMINATION OF PAUL CIOLINO

BY MR. CALABRESE:

Q. Good morning, Mr. Ciolino.

A. Good morning, sir.

Q. What line of business are you in, sir?

10:59:47 A. I'm a licensed private investigator and I'm also a

consultant to national media outlets.
Q. And do you operate a business under a particular name?
A. I do.
Q. What name is that?
10:59:58 A. The name of my business is Paul J. Ciolino Associates, Incorporated.
Q. And where is your business based?
A. We're based out of Chicago.
Q. What kind of services does your firm provide?
11:00:12 A. We provide general investigations, primarily wrongful conviction investigations and media-type investigations, high profile investigations involving mostly murder or sex cases.
Q. Do you do work in any areas outside of the ones you
11:00:28 just mentioned?
A. I do.
Q. And do you do work in, you know, other kinds of civil matters, for example?
A. Yes.
11:00:35 Q. What are some of those kinds of cases?
A. Corporate fraud, corporate theft, government fraud, Welfare fraud, that sort of thing.
Q. And can you just give us one or two examples, please, of some of the cases that you've been involved with that
11:00:56 some of the people who are here in court today may be

familiar with?

A. Recently I was involved in a case in Italy involving a young lady by the name of Amanda Knox who was accused of murdering her roommate with her Italian boyfriend in, I believe about five years ago now, maybe six. She was eventually exonerated and, in fact, they are doing a retrial now in Italy.

She's not present. She's home in Seattle. She was released by the Italian Appellate Courts. But I think our investigation prompted her claim of innocence in that case.

Q. And how long have you been a private investigator, sir?

A. Since 1981.

Q. You're licensed?

A. I am.

Q. Who are you licensed by?

A. I'm licensed by the State of Illinois, the Illinois Department of Professional Regulation.

Q. And attaching to your license are there certain ethical rules that you're obligated to follow?

A. Well, there's certain ethical rules in my industry that I'm obligated to follow; not so much with the State. There's just licensing requirements, insurance requirements.

They don't get real involved in ethics and how

you do your -- conduct your business.

Q. Did you serve in the military, sir?

A. I did, for seven years.

Q. Did you receive an honorable discharge?

11:02:16 A. I received two honorable discharges.

Q. How did you receive two honorable discharges?

A. Well, when you're -- I was an enlisted man so unlike an officer it's for a period of years. At the end of my first enlistment of four years I was discharged and

11:02:31 immediately given an honorable.

Then you reenlist, and at the end of my second term of duty, another three years, I was given another honorable discharge.

Q. And what branch of service were you in?

11:02:41 A. I was in the United States Army. I was a military policeman and investigator.

Q. Do you do any teaching?

A. Yes.

Q. Could you just give us a couple examples of some of

11:02:53 the teaching?

A. I teach journalism in law schools. I guessing lecture would be more appropriate. I conduct seminars on rape and homicide investigations.

I give speeches all over the world actually in

11:03:07 some of the cases I've worked on. We'll talk about those

things, how you conduct them, how we review cases and what we do exactly.

Q. Have you spoken to the American Bar Association?

A. I have.

11:03:18 Q. Any particular sections?

A. Judges' section in Chicago a number of years ago, I talked about the death penalty to the Judges' section of the ABA. Actually I was on a panel discussion with a number of attorneys and other Judges.

11:03:31 Q. And do you give presentations or speak to police and prosecutor organizations?

A. I do. My latest was to the Western Conference of Armed Robbery and Homicide Investigators in Denver, which was all police investigators from western part of the United

11:03:48 States.

Q. Are you the author of any books or textbooks?

A. I am.

Q. What are they, please?

A. First book was Advanced Forensic Civil Investigations.

11:03:59 Second one was Advanced Forensic Defense, Criminal Defense Investigations.

And the third one was a book called In the Company of Giants, which is a textbook for journalists, attorneys, innocent projects on how to conduct wrongful

11:04:14 conviction investigations.

Q. Did you ever go to work for the State doing investigations?
A. Yes, I did.
Q. And can you tell us a little bit about that?
11:04:23 A. I was the lead homicide and mass molestation investigator for the State of Illinois, Illinois Department of Children and Family Services, for approximately three and a half years.
Q. Now, you told us that part of your business, part of
11:04:39 your work involves wrongful conviction cases.
How did you get into that line of work?
A. In the mid 1980s I became involved in a case known as the Ford Heights Four. Just outside of Chicago, the south Chicago Heights area these gentlemen were accused of raping
11:04:56 and murdering two individuals and abducting them.
We were able to prove that the Ford Heights Four, in fact, did not commit these murders but that there were four alternative suspects, one who had since died, but the other three eventually confessed to me and confessed in
11:05:14 open court.
And it was the first time DNA was utilized, one sample, and we were able to clear four people, and it definitely identified the three people who did it.
Q. How many wrongful conviction cases have you been
11:05:28 involved with where DNA evidence ultimately exonerates the

defendant?

A. Sometimes DNA plays a part, but generally my role is investigative, not scientific, so I don't get a lot of DNA stuff. Other people handle that.

11:05:45 Q. So what are some of the factors that you've seen in your wrongful conviction cases that have lead to a defendant being imprisoned if not, you know --

A. There's usually a formula, and the formula is bad defense lawyers, no investigation done on behalf of the

11:06:02 defendant, no fact-checking on behalf of the defendant, no fact-checking on the prosecution or government's case.

Generally defendants are poor, they're appointed attorneys who are working for them, but sometimes very competent professional attorneys who are being paid a

11:06:20 great deal of money make the same mistakes. So it's really -- I've seen equal number of mistakes made by paid attorneys and public defenders.

So you see these, there's always a lack of investigation, almost always no investigation. There's a

11:06:37 lack of experts. There's a lack of calling experts to look at the government's experts. So there's basically a general lack of "Really, do we care about this guy who's sitting next to us, do we do a proper investigation, or do we put on a brief show in court and off -- the jury or the Court found

11:06:59 him guilty and see you later"?

And we see this all the time in the wrongful conviction cases.

Q. Now, when did you get involved in Petitioner's case?

A. I believe it was around 1999.

11:07:07 Q. And how did that come about?

A. I believe that his wife Roberta contacted us.

Q. And if you could, just at a high level, give us a sense of the work that you did on Petitioner's case.

A. After we reviewed Al Cleveland's case -- and the

11:07:31 review consisted of reading everything we could get our hands on, transcripts, police reports, scientific reports, anything that's relevant to his conviction or was involved in his case, appellate opinions, what have you, and we try and read that and we evaluate the case to decide, A, if

11:07:47 we're going to take the case and, B, if we're going to commit ourselves to what almost always turns out to a seven, eight, nine, ten year project or even longer.

Q. And from what period of time did you work on Petitioner's case?

11:08:00 A. I been working on Al Cleveland's case since 1999, not so much lately, but early on I, you know, basically commuted to Lorain, Ohio.

Q. Now, in your investigation of Mr. Cleveland's case, you mentioned some documents that you reviewed.

11:08:18 Just if you could give us a sense of what some

of those were.

A. We reviewed all the police reports, any witness statements made. Trial transcripts are critical to us because we look at this, we have to either prove or disprove what's being said at trial.

11:08:33

We assume we're going to be in an appellate Court at some point in most of our cases so these are the things we concentrate on are witness statements, any physical evidence that would have tied Mr. Cleveland there, how it relates to him, is it really physical evidence that is no-doubt-about-it kind of stuff; i.e., DNA, fingerprints, hair, blood, semen, et cetera.

11:08:45

These are the sort of things we're looking for when we're reviewing the case.

11:09:00

THE COURT: I'm sorry to interrupt.

I have a question.

We seem to be going through some questions and answers that would suggest that you're attempting to qualify him as an expert witness on a topic.

11:09:14

Are you intending to offer opinion testimony?

MR. CALABRESE: I am not.

I'm going to stick with fact testimony from this witness, Your Honor. At least that's my anticipation at the moment.

11:09:24

THE COURT: Okay. Good. I just wanted to be

prepared.
BY MR. CALABRESE:
Q. Did you investigate, as part of your work on Mr. Cleveland's case, flight records?
11:09:43 A. Yes, we did.
MR. CALABRESE: Could you bring up the flight records, please, LaNesha?
THE COURT: And if they are exhibits, could you identify the exhibit number, please?
11:10:07 MR. CALABRESE: I believe the Exhibit Number, Your Honor, is Exhibit 24.
THE COURT: Thank you.
My screen is not working so you don't need to delay your questioning. I have the hard copy, hopefully, of
11:10:34 all exhibits in front of me.
And I can peer over this ledge and look at these screens, so --
MR. CALABRESE: Hopefully this will be one of the harder exhibits technologically.
11:10:45 THE COURT: In fact, the hard copy is probably for this better than the screen.
We'll see.
BY MR. CALABRESE:
Q. Okay. Do you have that in front of you?
11:10:56 A. No, there's nothing on my screen.

MR. CALABRESE: I'll bring the hard copy up, if I may approach.

THE COURT: Please do. You don't have to ask. Just do it.

11:11:03 BY MR. CALABRESE:

Q. Sir, are these the flight records that you obtained in connection with your investigation?

A. Yeah. Yeah. This is a flight pocket guide produced by the airlines.

11:11:12 Q. And where did you obtain them from?

A. From American Airlines or one of the other major airlines.

Q. If we could go --

A. I've got the screen now.

11:11:27 Q. Oh, you've got the screen now?

A. Yes.

MR. CALABRESE: Okay. If we could go into the document a couple pages, LaNesha.

Q. What are we looking at here?

11:11:46 A. We're looking at scheduled flights from various New York City area airports including Newark, New Jersey which as some of you may know is very close to New York City.

Q. And where are these flights going to?

A. These are flights coming from New York City area to

11:12:01 the Cleveland area.

MR. CALABRESE: And perhaps we could cull out the New York flights kind of in the middle of the page there, LaNesha, on that third column.

Q. And, Mr. Ciolino, perhaps you could walk us through this a little bit, maybe just those last few flights from the bottom up.

A. We -- you have to scroll it up a little bit because we're at 6:59 p.m. is the last one I'm looking at.

Q. If we could go down a little further. Okay.

A. Here we go.

Q. So as we look at this, when is the last flight scheduled from the New York area?

A. It looks like the last flight is scheduled at 10:40 p.m.

Q. Arriving when?

A. 12:14 a.m. in Cleveland.

Q. And on what airline?

A. X is --

Q. PA?

A. Pardon me? Which one is it?

Q. PA, you may not remember it, Pan Am?

A. Pan Am is no longer in business but, yes, Pan Am.

I'm sorry, I was looking at the wrong column.

Yes.

Q. And what airport did this flight originate out of in

the New York area?

A. It originated out of Newark.

Q. The J next to the --

A. Yes.

11:13:44 Q. -- 10:40, and is that, according to the key, what airport is that?

A. Newark. J is Newark, I believe.

Q. Would it be --

A. I'm sorry, it's JFK. LaGuardia is L and Newark is

11:13:58 perhaps E.

Q. If we look a couple lines up, was there a flight out of Newark?

A. There was a flight out of Newark.

Q. What time did that flight leave?

11:14:06 A. 10:33 p.m.

No, I'm sorry, no, that would arrive at 9:00 -- the last flight out of Newark looks like 9:08 p.m. arriving at 10:33.

Q. Other than obtaining these flight records from the

11:14:27 airlines, did you do any other investigation to try to determine whether Mr. Cleveland flew from New York to Ohio on the night of August 7th or 8th?

A. Yes, we did.

Q. What else did you do?

11:14:40 A. We contacted all the charter airlines, all the private

airlines at those locations to see if Mr. Cleveland had purchased a ticket, or any black male on that particular day that they could recall.

Q. Well, and that was going to be my question to you.

11:14:55 Did you just ask them if Mr. Cleveland purchased a ticket?

A. Well, we certainly asked for -- yeah, we gave them Mr. Cleveland's information.

Q. Did you use any aliases as well?

11:15:04 A. We also used Al Monday.

Q. Did you use pictures of Mr. Cleveland in that investigation?

A. We did use a picture of him.

Q. And --

11:15:17 THE COURT: Does Exhibit 24 reference a date or time?

And I don't know if this is being disputed by the State, and if it's not, that's fine. I want to know whether this document includes or is for the specific date

11:15:33 of August 7th or 8th, 1991, or is this just a general guide of general schedules? Because we all know that flights get canceled or moved.

What can you tell me about --

THE WITNESS: I can tell you, Judge, that

11:15:52 August 7th and 8th of that year, this was the schedule.

We did not determine or learn of any --

THE COURT: What's the date of this, for what period of time?

THE WITNESS: I don't know the period of time. It was during the period of time in question. I couldn't tell you from what month to what month or just that we obtained it from the airline directly for the period we were interested in.

MR. CALABRESE: Could you blow up, LaNesha, the bottom row across the entire page there, please?

BY MR. CALABRESE:

Q. Sir, does this help refresh your recollection of --

A. The bottom left says this is effective from August 1st of 1991.

Q. And does it include flights from multiple days of the weeks?

A. Yes.

Q. And would we cross-reference the day of the week, each of which has a number with the flights that are listed from New York there?

A. Yes, it's starting on Monday, number one, going through Sunday, number seven.

Q. So, for example, we looked a moment ago at the flight from Newark departing at 9:08 and arriving at 10:33. There's a Code 6 next to that.

What day of the week is Code 6?

A. Code 6 would be Saturday.

Q. So that would only be a flight that left on Saturday then?

11:17:21 A. Correct.

Q. Now, when you followed up with some of the -- when you followed up with some of the other airports in the area, did you learn that other people had already done the same investigation you did?

11:17:41 A. I eventually learned that there were other inquiries made in those -- at other airports.

Q. And who else had done that investigation?

A. The Lorain police detectives.

Q. Now, in your investigation of Mr. Cleveland's case,

11:18:00 did you interview any police officers from the Lorain Police Department?

A. I did.

Q. Did you interview Petitioner's trial counsel Mary Papcke?

11:18:13 A. I did interview her.

Q. Did you interview the prosecutor Mr. Rosenbaum?

A. I did not.

Q. Did you interview any of the four co-defendants who were convicted of this murder?

11:18:26 A. Perhaps one of them in jail once.

Q. Did you interview Ms. Delphenia Guice?
A. Numerous times.
Q. Did you interview David Donaphin, who you may also have known as David Green?
11:18:40 A. Spoke to him on the telephone.
Q. Did you speak with Ms. Ayasha Teague?
A. I don't recall the name.
Q. As part of your investigation, did you go to Charlie's Bar in Lorain, Ohio?
11:18:57 A. Oh, yes.
Q. Did you, as part of your investigation, speak with members of the FBI?
A. I did not. We made some inquiries at the FBI. I never spoke to anybody involved in this case.
11:19:10 Q. As part of your investigation were you able to speak with William Avery, Sr.?
A. Never.
Q. Did you try to speak with him?
A. Yes.
11:19:22 Q. And in your investigation of Petitioner's case, did you ever interview William Avery, Jr.?
A. I did.
Q. Now, why did you want to interview Mr. William Avery, Jr.?
11:19:37 A. Avery, Jr. is the only evidence against Al Cleveland

that we discovered. He's the only witness that testified against him as being involved in the homicide.

Q. Was he easy for you to find?

A. No, he was not easy at all to find.

11:19:53 Q. Why not?

A. He was not employed. He never had a permanent address. He wasn't receiving public aid or any other kind of public assistance that we could find.

He had no children that we could locate. We

11:20:08 did find ex-girlfriends and we interviewed them, but William was very difficult to locate. He's not like a traditional person who works, who moves, who has jobs, who has debts, you know, various -- we checked the jails, the Courts, et cetera, but he was very difficult to locate.

11:20:27 Q. How long did it take you to find him before you were able to speak with him?

A. It was a number of years. Probably close to seven years.

Q. And how would you compare your, you know, how easy it

11:20:42 was to find Mr. Avery, you know, to other cases you've worked on where you tried to find key witnesses?

A. We consider Mr. Avery a street person, and street people are always difficult to locate because they're just not like regular people. They don't function like the rest

11:20:58 of society.

So the rest of society, you know, you could find in five minutes generally.

People like Avery are months, I mean, in homeless shelters looking for them, and they often don't use their proper birth name. They use other identification.

So a guy like Avery doesn't want to be found, it's very difficult to find him unless you have unlimited resources and money.

Q. Now, when you found Avery and were able to speak with him, did you secure an affidavit from him?

A. I did.

MR. CALABRESE: Could we bring up Exhibit 12, please?

Q. Mr. Ciolino, is this a copy of the affidavit that you secured from Mr. Avery?

Is this a copy?

A. Oh, yes, sir, it is, Page 1.

Q. Yes. And if we could turn to Page 6, please.

Is this -- well, let me ask you, when you obtained the affidavit from Avery, did you witness him sign it?

A. Yes, along with two other people.

Q. And is this William Avery, Jr.'s signature on this affidavit?

A. Yeah, he signed it right in front of me.

Q. What is the date that he signed that?
A. It's dated February 9th, 2006.
THE COURT: Who are the two other people?
THE WITNESS: An attorney by the name of Bruce Ellison out of South Dakota who was representing Al at one time, and a local Notary that we ran up in Detroit.
11:22:46
THE COURT: That would be William Lofton?
THE WITNESS: That's correct, Your Honor.
THE COURT: And how did you get to William Lofton?
11:22:57
THE WITNESS: We just went to a currency exchange and hired someone who is a Notary.
THE COURT: Who prepared this document?
THE WITNESS: We prepared it, Mr. Ellison typed it on a portable computer and printer while we were interviewing him, and we had him go through it and he signed it on the spot.
11:23:09
THE COURT: Where did you have it typed up?
THE WITNESS: We did it in a hotel room.
THE COURT: And from the hotel room you went to Mr. Lofton's office or home?
11:23:19
THE WITNESS: Yes, we went to a local currency exchange probably a couple miles from the hotel.
THE COURT: And all of this took place over a period of how long?
11:23:31

THE WITNESS: Two hours, two and a half hours we were with him.

THE COURT: Sorry to interrupt. Go ahead.

MR. CALABRESE: Those were my next questions, Your Honor.

BY MR. CALABRESE:

Q. During those two, two and a half hours where you were talking with Mr. Avery and he eventually signed this affidavit, did you have a chance to observe his demeanor?

A. I did.

Q. And what was it?

A. He was serious. He was forthcoming. He answered all of our questions. If he didn't know an answer, he'd tell you "I don't know."

He was absolutely certain about what he signed. He believed every word of it at that time, as I did.

He was very practical about the whole thing and how it had happened and what had happened to him and what had occurred.

Q. Now, is it your normal practice to secure an affidavit in your investigation?

A. Normal practice is to document any way we can that would be acceptable in a Court of law, be it an affidavit, court reporter, videotaped statement, cassette recording,

whatever we can do at the time.

Q. And why do you do that?

A. Witnesses change their minds, they die, they get injured, they're unavailable when you go to hearing.

11:24:53 We try to always document what we're doing because, you know, it's 2006, here we are 2013, and this is the perfect reason why we try and document it as carefully as possible.

Q. Now, you mentioned earlier some of the ethical norms

11:25:10 that govern your business as a private investigator.

Do any of those relate to taking evidence or an affidavit from a witness?

A. Yes.

Q. Are there witnesses from whom you refused to take an

11:25:26 affidavit that would provide exculpatory information?

A. Many, many times throughout the years I've refused to take an affidavit.

Q. Sir, is it your practice to suborn perjury?

A. That's why I've refused to take an affidavit from

11:25:39 somebody. I have a bad feeling they were lying to me.

Q. Now, did you also at a later date have the opportunity to take a sworn statement from Mr. Avery?

A. I did.

MR. CALABRESE: LaNesha, if we could bring up

11:25:56 Exhibit 13.

THE COURT: Before you get to that exhibit, did you take an audio or video recording of your conversation with Mr. Avery as you were preparing this affidavit, Exhibit 12?

11:26:15 THE WITNESS: Not at that time, Judge, no. We did the affidavit the first time; court reporter statement the second time.

BY MR. CALABRESE:

Q. Is this a copy of the transcript of the sworn

11:26:28 statement you secured from Avery?

A. Yes, it is.

Q. And what date did you take this one statement?

A. It was April 10th of 2006.

Q. How much additional effort between the date of the

11:26:40 affidavit, which I believe was February, and taking this statement, did you make, you know, in terms of trying to keep after Avery?

A. How much more effort to get ahold of him again?

Q. Yes.

11:26:53 A. Not -- it wasn't easy. We were able to make contact with him through his mother.

Q. Now, when Avery gave the statement, you told us you had a court reporter?

A. Yes.

11:27:05 Q. And was Mr. Avery under oath at the time?

A. He was when he made this statement, yes.

THE COURT: Who swore him in?

THE WITNESS: The court reporter, Judge.

BY MR. CALABRESE:

11:27:18 Q. During the amount of time it took to take this statement from Mr. Avery, did you have a chance to observe his demeanor?

A. I did.

Q. And what was it?

11:27:27 A. He was sober. He was appropriately dressed. He was plugged in; mentally he was there. You know, he got it. He understood the reason for doing it. He understood the possible ramifications for making this statement really against his best interests.

11:27:45 So Avery is not a dumb person. I mean, he understands exactly what he was doing.

Q. Now, is it your normal practice to take sworn statements like this from witnesses?

A. Yes, it is.

11:28:07 THE COURT: Where -- before you move on, where was this statement?

THE WITNESS: Judge, I had a rental car. I went and picked up Mr. Avery at a corner. I got to -- the court reporter to meet me, a local court reporter from

11:28:19 Detroit.

I put her in the back seat and Mr. Avery in the front seat and we did question and answer with her typing it in the car.

THE COURT: Anyone else present in the car?

11:28:30 THE WITNESS: No, just myself and the court reporter and Mr. Avery.

THE COURT: So you were asking the questions and he was giving the answers?

THE WITNESS: That's correct, Judge.

11:28:42 THE COURT: How long did this go on?

THE WITNESS: I would -- no longer than 40 minutes or so.

THE COURT: I assume the car was stopped during this time?

11:28:49 THE WITNESS: Oh, yes, sir. We were stopped. We were parked.

And I guess --

THE COURT: Do you know if -- I'm sorry.

Do you know if he waived signature? A common

11:29:03 practice during a sworn statement.

You're familiar with that?

THE WITNESS: I believe he did waive signature because he didn't want to give me an exact address where we could send it to.

11:29:15 THE COURT: It doesn't indicate on here

whether he was offered that option or not.

THE WITNESS: I understand.

BY MR. CALABRESE:

Q. And, I'm sorry, I missed it, but where were you? You were in a car, but --

11:29:22

A. We were in a parking lot near a bus stop where he wanted me to drop him off at.

Q. What city were you in?

A. Oh, we were in Detroit.

Q. Now, did you attend the hearing in January of 2008 in Lorain County Common Pleas Court at which Avery invoked the Fifth Amendment?

11:29:30

A. I did.

Q. Were you prepared to testify at that hearing?

A. I was.

11:29:42

Q. Did you testify?

A. I did not.

Q. Why not?

A. Really wound up not having a hearing.

Q. When Mr. Avery invoked the Fifth Amendment, did he disavow his affidavit that he gave you?

11:29:56

A. Absolutely not.

Q. Did he disavow the sworn statement that he gave you?

A. No. He absolutely said he was willing to testify as to what was in his affidavit and the sworn statement I took

11:30:15

from him.

THE COURT: Are you talking about what took place in a courtroom with a court reporter or are you talking about statements that these two folks had with nobody else present?

BY MR. CALABRESE:

Q. Sir, on the date of that hearing did you have the opportunity to speak with Mr. Avery off the record?

A. Yes. Myself and Mr. Ellison spoke with him prior to the hearing and after the hearing.

Q. And at any point during those discussions did Mr. Avery disavow the sworn statement or the affidavit?

A. Never.

Q. To your knowledge at any point in time since that hearing has Avery disavowed his sworn statement or his affidavit?

A. Not to my knowledge, no.

MR. CALABRESE: Does that answer your question, Your Honor?

THE COURT: Thank you.

BY MR. CALABRESE:

Q. After the hearing, were you on the courthouse steps when Avery gave a statement to the media?

A. Standing right next to him, yes.

Q. Was the statement he gave to the media consistent with

what he told you in his affidavit?

A. Yes.

Q. And in his sworn statement?

A. Yes.

11:31:28 Q. Was the statement that Avery gave on the courthouse steps reported in the media?

A. Oh, yes, it was reported.

Q. And did you have an opportunity to review those media reports?

11:31:40 A. I believe I saw it the next day, yes.

Q. And were his comments to the media reported accurately?

A. Right on the money.

Q. Sir, at any point in time did you pay Avery for coming

11:31:53 forward and giving an affidavit or a sworn statement?

A. Never.

Q. At any point in time did you offer Avery any reward for coming forward or for giving an affidavit or sworn statement?

11:32:04 A. Never. Never. Not once.

Q. At any point in time did you offer Avery any benefit at all for talking with you?

A. I think we bought him lunch the first time we spoke with him.

11:32:18 Q. What kind of restaurant did you buy --

A. We were in room service so we got him a sandwich or burger.
Q. And what hotel were you at?
A. Maybe a Marriott in downtown Detroit.
11:32:32 Q. To your knowledge, has anyone from Mr. Cleveland's family made any payment or promised any benefit to Avery?
A. No, we very -- we discussed these issues with him. No, he denied that.
Q. And to your knowledge, has anyone at all made any
11:32:47 payment or offered any benefit to Mr. Avery?
A. No.
Q. When you took his sworn statement, did Avery testify to these facts as well?
A. Yes, he did.
11:32:59 Q. How much time and money have you put into investigating Petitioner's case?
A. Well, early on I had a substantial staff, 14, 15 employees, and there were times most of them would be working on it for weeks, months on end.
11:33:18 I made 25, 30 trips to Lorain, New York, New Jersey, Michigan a number of times. So, you know, from 1999 on, our fees are in the ballpark of three-quarters-of-a-million dollars.
Q. And with fees like that, how much money have you
11:33:42 actually been paid for your work on this investigation?

A. Well, we were early on paid for a lot of expenses. We were never really paid for fees. It was a pro bono case.

We did get paid some expense money early on from an attorney in New York, but that source of funding dried up probably within a year of starting this case, year and a half.

Q. And approximately how many -- how much of your expenses were covered?

A. Maybe in the area of $25,000 which came in increments.

Q. Now, in wrongful conviction cases is there a general practice or method that you use in your investigations?

A. There is.

Q. And is that described on your website?

A. It is.

MR. CALABRESE: LaNesha, can we bring up the website, please? I believe it's number PC 01.

And if we could blow up the --

THE COURT: Is this an exhibit?

MR. CALABRESE: It is not, but we can certainly make it one if you want.

THE COURT: No, I was just asking for the record.

MR. CALABRESE: I'll tell you what, sir, I will --

THE WITNESS: It was there a second ago, but

it went away. I got a black screen. It was up and then --

MR. CALABRESE: Hopefully we will get it up here in a moment.

BY MR. CALABRESE:

11:35:50 Q. Sir, is this a copy of your website?

A. That's a page off the website with regard to wrongful conviction investigations, yes.

Q. And is this the page that you referenced that discusses your practice and methods?

11:36:04 A. Yes, sir.

Q. And can you just describe generally for us?

A. What we do?

Q. Yes. I believe on your website -- hopefully we'll have it up momentarily.

11:36:15 A. Okay.

Q. You describe a three-step process.

What is the first step?

A. The first phase, we're contacted by a family member, innocence project, attorney, somebody who is interested in

11:36:25 the case.

We have a lot of discussion with that person, tell them what we can do, what we can't do, what it may cost them. And but the first part is we have to review the record, and this is often the most difficult thing to do

11:36:42 because we get cases that are 15, 20 years old and you got

transcripts spread out over 15 family members, other co-defendants, and you would think these things are easy to gather but they are not.

Police reports are missing, laboratory reports, evidence, stuff, you know, just evidence logs.

So we try to gather all these documents, and sometimes it takes a year to get these documents and we review those documents to see if there is anything that we may be able to help with.

Often after we review those documents we discover that the person who's seeking relief may be, in fact, guilty and that we could do more harm than good in trying to assist them. We write a report after we review it for the attorney or whoever hired us, and we tell them "Listen, here's the good news, here's the bad news. We can go forward" or "It's our recommendation that we not get involved in this."

Q. Was that something you did in Petitioner's case?

A. Oh, sure, yes.

Q. How many cases in your practice, in your business, kind of make it past this first stage?

A. I would say one out of five.

Q. And if you could, I think we finally have the document. Maybe if you could blow up the three steps.

And what is the second phase, briefly?

A. The second phase, we start doing background investigations on people, we start gathering intelligence on the police officers that were involved in the case, were they fired, have they ever been arrested, were they convicted of drunk driving or domestic violence, things along those lines. Were the experts used in the case good experts, were they disciplined by any Court, were they found not to be experts or did they fraudulently submit qualifications to any court or even in a deposition?

11:38:21 11:38:37 11:38:53 11:39:06 11:39:14

So it's a fairly long process where we try and dig out facts and figure out who the players are. This is where we establish timelines and we do people lists of critical witnesses, people who may not be critical witnesses because we are not operating with an unlimited budget so we are attempting to narrow our focus of what's important.

Q. And just briefly if you could describe your -- the third stage.

A. The third stage, actually we go out on the street and we start interviewing people and we start gathering evidence.

Q. And was that something you did in Petitioner's case?

A. Yes.

Q. And in Petitioner's case did that involve more than just talking with Mr. Avery?

A. More than what?

Q. More than simply trying to talk with Mr. Avery?
A. Oh, yes. Yes.
Q. You interviewed other people?
A. Yes.
11:39:25 Q. How long in Petitioner's case did the field investigation portion of your work take?
A. It went on for a couple years, on and off for two years or so.
Q. Now, sir, we talked earlier about the affidavit and
11:39:41 the sworn statement you secured from Mr. Avery.
Did you believe, when Avery provided his affidavit to you, that he was being truthful?
A. I absolutely did, yes.
Q. If you believed that he was --
11:39:55 THE COURT: I thought we weren't going to be offering opinion testimony.
MR. CALABRESE: Fair enough, Your Honor.
I have no further questions.
THE COURT: Before your cross, I have one
11:40:06 question.
You indicated that as part of your step two process you investigate the investigators, if you will.
Did you dig up any dirt on the investigating officers in this case?
11:40:17 THE WITNESS: Judge, nothing that was in

writing or that we would submit to a Court.

THE COURT: Thank you.

You may cross.

CROSS-EXAMINATION OF PAUL CIOLINO

BY MS. WATSON:

Q. Good morning, Mr. Ciolino.

A. Good morning, ma'am.

Ciolino.

Q. Ciolino?

A. Ciolino.

Q. Boy, I hope I don't mess that up.

A. You could use Paul, too.

Q. Okay, Paul? That would be good.

A. Yes.

Q. My name is Stephanie Watson. I would like to ask just a very few follow-up questions.

You stated -- you testified today that you reviewed everything relevant to Mr. Cleveland's case that you could get your hands on, correct?

A. Back in 1999, 2000, yes, ma'am.

Q. Have you reviewed anything since that time?

A. No, not -- last night I looked at, pardon me, Avery's affidavit and Avery's court reporter statement.

Q. Thank you. You mean the Exhibits --

A. Yes.

Q. -- 12 and 13 that you looked at here today?
A. Yes, ma'am.
Q. Okay. You -- did you -- you testified earlier that you had reviewed the police report with regard to this case back in 1999?
11:41:25
A. Correct.
Q. Is that correct?
A. Yes.
Q. Okay. When you took Mr. Avery's affidavit, was there anyone else present with you besides you and Mr. Avery?
11:41:38
A. Mr. Ellison.
Q. I'm sorry?
A. Ellison, Bruce Ellison was the attorney who was representing Al at one time.
Mr. Ellison was with -- he typed the affidavit up, and he was with me when we were interviewing Mr. Avery.
11:41:49
Q. And no one else was present --
A. No, just --
Q. -- that entire time?
A. Just the three of us.
11:41:58
Q. Mr. -- have you met Mr. Leon Cleveland?
A. Mr. -- who?
Q. Leon Cleveland?
A. I've never met Al's father, no.
Q. You have never met him?
11:42:09

A. Never seen him, spoke to him or was introduced to him.
Q. So Mr. Cleveland was not present with you during this time?
A. Oh, no, ma'am, not at all.
11:42:21 Q. Okay. Did you review any of the State's post-conviction record in this case?
A. I may have read the appellate record in the State's brief.
Q. From post-conviction?
11:42:32 A. It would have been post-conviction in response to his appeal.
Q. Okay. Are you aware that the State filed in post-conviction taped recorded statements that were made from a telephone in -- from Mr. Cleveland to his father Leon
11:42:49 Cleveland that were tape recorded?
A. I don't recall reviewing that. I may have, but I don't -- I don't remember it as I sit here right now.
Q. Okay. Would you like me to show these to you to attempt to refresh your recollection?
11:43:04 A. Yeah, sure.
Q. Okay.
A. Be glad to look at it.
THE COURT: Are these exhibits? If they are, just identify them for the record. If they are not, that's
11:43:19 fine.

MS. WATSON: Actually they are filed with the return of writ. They are Page ID 3801 through 3806.

THE COURT: Thank you.

MS. WATSON: You're welcome.

11:44:08 (Pause).

A. Okay.

Q. Thanks. Does that document refresh your recollection?

A. I've never seen that document.

Q. And contained within the document, Mr. Cleveland appears to be speaking with his father stating that Mr. Cleveland, Sr. was present with you during the interview?

A. That's what that document says, yes.

Q. But you're stating that that didn't happen?

11:45:20 A. I'm saying unequivocally it didn't happen. I didn't meet Mr. Cleveland. He didn't -- he wasn't present during that. As custom and practice I wouldn't have allowed him to be present, but I've never met Mr. Cleveland myself.

Q. Okay. Thanks.

11:45:39 You testified that you -- Mr. William Avery's demeanor was serious and he did not appear to be under the influence of any substances?

A. That's -- that's correct.

Q. He appeared to be sober, correct?

11:45:56 A. Yes, ma'am.

Q. And did you note in that statement Mr. Leon Cleveland who said that he appeared to be on crack during that time?

A. I just saw that but I -- that was not my impression at all.

11:46:09 Q. Okay. You stated a couple of times that Mr. William Avery appeared to be serious and that he believed what he was saying was true, correct?

A. Yes, ma'am.

Q. And that it was your testimony that you did not take

11:46:23 statements from individuals that you did not believe were telling the truth, correct?

A. If I catch them lying to me, if I believe they've been hooked up by the family member, prison friend or whatever --

Q. Okay.

11:46:36 A. -- we're not going to submit it, I'm not going to submit it.

Q. Sure.

A. Yeah.

Q. Did you believe that the William Avery affidavit that

11:46:45 you took on February 9th contained the same information that you took in the April sworn statement?

A. I think the April statement was a little bit more detailed.

Q. Do you believe that there were any inconsistencies?

11:46:59 A. I don't recall. There may have been.

Q. Do you believe that -- okay. All right. So you're not aware of any inconsistencies?

A. Not as I sit here right now, no.

Q. You believe he was telling essentially the same story in both the February and the April --

11:47:15

A. Essentially the same story, yes.

Q. Okay. And you did state that you had read the police report prior to meeting with Mr. Avery, right?

A. Years before meeting with Mr. Avery.

11:47:35

I don't recall what we reviewed. Mr. Ellison had some documents. We may have reviewed his Court testimony. As I recall, we definitely had his transcript from trial, but I don't know what else we had at the time we did the affidavit.

11:47:53

Q. Okay. I'm going to show you Mr. Cleveland's Exhibit Number 12 which I believe is the affidavit that you --

A. Okay.

Q. In particular, I'd like you to turn your attention to the third page and I have highlighted the second paragraph. Oops.

11:48:09

Can you tell the Court what does that say?

A. The highlighted part?

Q. Yes.

A. It says --

11:48:24

THE COURT: You don't need to read it. I can

read it.

THE WITNESS: Okay.

THE COURT: Are you talking about the paragraph that begins "After I gave"?

11:48:31 MS. WATSON: "My dad."

THE COURT: Oh, the paragraph above. Okay.

BY MS. WATSON:

Q. Do you see that?

A. "My dad set up a meeting with the police. He was

11:48:38 present during the interview. They showed me a picture of the apartment and they said" --

THE COURT: Whoa, whoa, whoa. Don't read it out loud. Read it to yourself. I can read it, too.

BY MS. WATSON:

11:48:52 Q. And the beginning of the next sentence where it states "After I gave this first statement," you can read that, too.

A. Yes.

Q. Okay. Is it your understanding that Mr. Avery was talking about the very first time that he met with the

11:49:10 police in this statement, "After I gave this first statement"?

A. I'm not sure if that was the very first time, but certainly one of the first times.

Q. So it's not true when he said "After I gave this first

11:49:24 statement," he didn't mean that; that's not true?

A. I don't know if it's factually true or not. I wasn't there. But that's what he said there. That's what he told us.

Q. And you believed that?

11:49:33 A. I -- yes. His demeanor to me was he was being truthful and honest to the best of his recollection.

Q. Um-hmm. That based upon the pictures he lied to the police and made up a story, that's --

A. That was part of his story, yes.

11:49:48 Q. Your understanding?

A. Yes.

Q. Okay. And then later on -- I'll turn your attention to Exhibit 13.

Oh, it's so small. Do you have reading

11:50:00 glasses?

A. I got glasses, yeah. If I didn't, we wouldn't be reading.

Q. Read Page 13 and 14.

A. Okay.

11:50:25 THE COURT: I'm sorry, where are you? On Exhibit 13?

MS. WATSON: Yes.

THE COURT: Thank you.

MS. WATSON: Page 13 and Page 14.

11:50:46 A. Okay.

Q. And also (indicating).

A. Okay.

Q. Okay. Was it your understanding that Mr. Blakely was again discussing the first time that he met with the police and was shown these pictures?

11:51:11

A. Avery?

Q. I'm sorry, yes.

Mr. Avery -- sorry -- was describing the first time he met with the police as he did in his affidavit?

11:51:22

A. Yes.

Q. Okay. And once again, he stated to you in his sworn testimony that he lied to the police in that first interview based upon the pictures that they showed him at that time?

A. That he lied to the police?

11:51:39

Q. Yes. That's what he said. "I then made up the story of what happened based on the pictures."

A. It's my understanding that they knew he was lying so, I don't know, you know, is he lying when he's talking about it in court, or when he's speaking to them, or what his father told him to say?

11:51:58

It's a little bit confusing, I'm somewhat confused as to --

Q. Based upon the pictures that the police were showing him at the time.

11:52:06

A. That's what his story came out of was those

photographs.

Q. Right.

A. That's what he's saying.

Q. Do you recall when Mr. Avery first spoke to the police, what the date was of this interview he's referring to?

A. It was within a couple days of the actual homicide.

Q. Okay. I have a copy of the police report that you stated that you reviewed. I'll let you take a look at it to see if that --

A. Okay.

Q. -- refreshes your recollection.

Pay no attention.

A. Which data?

Q. No, just pay no attention. You have it.

I can't find where it says -- oh, here it is. Right there.

A. Okay.

Q. Can you tell the Court what the date of that first interview was according to the police report that you reviewed?

A. It says "Cassette tape of 9/11/91."

Q. Okay. Can you tell us what the police report says that was the date that the photographs were taken of the apartment that --

A. You want me to read it?
Q. No, you can just tell me.
A. It says 9/18/91.
Q. And would that be before or after the 9/11 interview?
11:54:33 A. That would be after.
Q. Okay. Does that change your mind at all, your opinion about Mr. Avery telling you that the first time he saw the police was based upon pictures that they showed him of the scene?
11:54:59 A. It kind of makes it suspicious in my mind because I don't know of anyone that would take crime scene photos six days after the fact or seven days, they'd have them almost immediately upon discovering the body, so, no, I don't believe that makes Avery incredible.
11:55:15 It sort of casts doubt on the police saying they didn't take a crime scene photo until a week later.
Is that what I'm reading?
Q. I'm sorry, I didn't understand.
Are you saying that you're stating this police
11:55:28 report is incorrect, that you don't believe the veracity of this report?
A. I find it very difficult to believe that the police would wait a week to take a crime scene photo.
Q. September 18th wasn't -- okay. That's your testimony.
11:55:48 You said that you did not pay Mr. Avery any

money for providing statements in this case, is that correct?

A. That's correct.

Q. Did there come a time when you ever offered a monetary reward for information in this case?

A. We may have. I've done it in many other cases. I'm not sure I did it in this one.

Q. Do you recall offering $15,000?

A. That sounds like something I might do.

Q. Did you ever pay any money with regard to that?

A. I've never paid out a reward yet because we've never received information that would convict someone else and spring our client.

That's usually the ground rules for the reward.

Q. You testified you showed us -- or you testified about your web page with regard to wrongful convictions.

Are you aware that in the State of Ohio there's a wrongful conviction statute?

A. I'm sure I've read it at some point and heard about it. I try and keep up with it and I'm certainly on enough, you know, wrongful conviction lists to have received some type of information like that, but as I sit here today I can't give you any details about Ohio's.

Q. You testified that you have received some payment from

Mr. Cleveland's family with regard to expenses, correct?
A. Not -- not his family, no.
Q. From?
A. From a benefactor.
11:57:06 Q. From a benefactor?
A. Yes.
Q. For some of your expenses but not for any of your substantive investigative work?
A. No.
11:57:15 Q. And you're doing this case entirely pro bono?
A. I'm here on my nickel, yes, ma'am.
Q. Do you have any expectation or have you been promised any money in the future with regard to this case?
A. Many promises are made. None that have ever been
11:57:30 fulfilled.
But Al Cleveland is -- no, in this particular case no one's promised me anything.
THE COURT: Is the benefactor the New York lawyer?
11:57:37 THE WITNESS: Yes, sir, he was.
THE COURT: Who is it?
THE WITNESS: I can't recall his name as I'm sitting here. He wasn't involved with Mr. Cleveland. He was a friend of a friend of Mr. Cleveland's.
11:57:46 THE COURT: A friend of a friend.

THE WITNESS: A friend of one of Mr. Cleveland's childhood friends or an attorney representing -- he did not want to -- he was writing checks to me out of a personal account of his and he indicated to me that the money was coming from one of Al's friends or through -- you know, he was paying me on behalf of him at that time.

11:57:57

THE COURT: So he was receiving money from an unknown third party and forwarding it on to you?

11:58:11

THE WITNESS: Yes.

THE COURT: It wasn't out of his own pocket?

THE WITNESS: All I could tell you, he wrote personal checks.

THE COURT: And it was your understanding that --

11:58:18

THE WITNESS: It came from somewhere else.

THE COURT: Thank you.

THE WITNESS: Yes.

BY MS. WATSON:

11:58:22

Q. All right. You again stated that you had reviewed the police report when you took this case on back in the late nineties.

Are you aware that the police were unaware that any crime had occurred in Mr. Epps' apartment until after they spoke with Mr. Avery on September 11th?

11:58:38

A. Am I aware that -- well, I understand that's their theory, yes.

Q. And that their -- that's why they went to Mr. Epps' apartment to take the pictures, after they spoke with Mr. Avery on September 11th?

A. That's -- that's their claim.

Q. Okay.

A. Yes.

MS. WATSON: One moment.

THE COURT: Okay.

Q. When you spoke with Mr. William Avery, did he -- were you aware that he had his own criminal convictions?

A. Am I aware he had criminal convictions?

Q. Um-hmm.

A. I believe so, yes.

Q. Do you know what those were for?

A. Well, he self-disclosed some and we may have ran a background on him, but certainly nothing in recent history.

I believe they were drug-related.

Q. And you say you don't recall any of the assault -- any of the criminal convictions that Mr. Avery has?

A. I recall he had a criminal history. I don't recall specifically what it involved.

Q. Did you recall for felonious assault?

A. For what?

Q. Felonious assault.
A. I believe he self-disclosed that, yes.
Q. Okay. A couple different felonious assaults.
All right. Are you aware whether or not the
12:00:53 State had made a case of whether or not
Mr. William -- Mr. Cleveland could not have flown but could
have driven to Ohio?
A. I'm aware that was a theory at one time, yes.
Q. And that flight records would not have been relevant
12:01:09 at all if that were, indeed, the case, right?
A. If he drove, no, it wouldn't be relevant.
MS. WATSON: Okay. No further questions at
this time. Thank you.
MR. CALABRESE: Just one clarifying question,
12:01:32 sir.
REDIRECT EXAMINATION OF PAUL CIOLINO
BY MR. CALABRESE:
Q. Ms. Watson was asking you some questions referencing
the police report, the date certain things happened, when
12:01:44 certain photographs were taken and the like.
MR. CALABRESE: Can we bring up, LaNesha,
Page -- can we bring up the police report and turn to
Page 1160, please?
Q. And I think for the purposes of the record the police
12:02:24 report is Exhibit 35, and we're going to be looking at

Pages 70 and 71 of that exhibit, which are Page 1160 and 1161 of the appendix.

Do you have the report in front of you still, or did you take the copy back?

12:03:07 MS. WATSON: You can have it.

MR. CALABRESE: That's all right, I have a copy.

BY MR. CALABRESE:

Q. Sir, if you would, at the bottom of -- here we go.

12:03:23 A. I could read that better.

Q. We'll blow up --

A. Okay, great.

Q. If we could blow up the last paragraph, please.

Sir, this is a statement that Mr. Avery gave

12:03:46 to the police. It's noted in their report.

And in it he's describing, just to provide some context for you, describing how he learned about the murder of Marsha Blakely.

So if you look toward the bottom of this

12:04:04 paragraph, it says he was in the residence of his at that time girlfriend Patricia Gaddy?

A. Yes.

Q. He spent the night. Upon waking up in the morning that's when he found out that Blakely had been found dead.

12:04:22 And if we could go over to the top of the next

page, please. And if we could just bring up that whole first paragraph. First paragraph, please.

Avery then states that he went over to Charlotte Watkins' house?

12:05:07 A. Yes.

Q. He says this was about three or four days after the incident, he told Watkins what he saw, at which point she told him that he shouldn't tell anybody else and keep it to himself.

12:05:21 Then Watkins, according to this statement, takes Avery, Jr. over to see Avery, Sr., and Avery, Sr. didn't believe Avery, Jr. so he at that time came down to the police station and met with Detective Sergeant Taliano.

So this would be, can we agree, within a week, 12:05:43 say, of the murder of Marsha Blakely?

A. Within several days of it, yes.

MR. CALABRESE: I don't have any other questions, Your Honor.

THE COURT: I have a few brief follow-up 12:05:54 questions.

Back in Detroit, in the affidavit, the lawyer who was present and who I understand prepared this document was a lawyer from New York by the name of?

THE WITNESS: He's from Rapid City, South 12:06:15 Dakota, Judge.

THE COURT: Thank you.

THE WITNESS: Bruce Ellison.

THE COURT: And what is his connection to the case?

12:06:20 THE WITNESS: He was representing Al Cleveland at one time up until the last hearing in Lorain County, the county that Lorain sits in.

THE COURT: He's not identified anywhere on this affidavit or the attachment to the affidavit.

12:06:37 THE WITNESS: No, he's not.

THE COURT: Most lawyers are Notaries. Why did you go somewhere to have it notarized?

THE WITNESS: He's not a Notary in Michigan.

THE COURT: And tell me how this came about.

12:06:53 Are you asking Avery questions, or is the South Dakota lawyer asking him questions and then the South Dakota lawyer is typing something up?

How is this process with the three of you?

THE WITNESS: Generally we'll have a

12:07:06 conversation without anybody typing anything, kind of flush out what we're going to talk about and what he knows and doesn't know, and then we would start a question and answer. Generally that would be me.

And he was typing it as we were speaking at a

12:07:21 portable printer, and he printed it when we were done.

THE COURT: Given the difficulty you had finding Mr. Avery, would it not have been prudent to have a tape recording at least of your conversation with him?

THE WITNESS: Judge, I love videotape, but attorneys have their own way of doing things.

12:07:33

Mr. Ellison is an affidavit guy, and I work for him to this day on cases and he's still an affidavit guy.

I'm a video person because we grew up in TV and most people are video, visual, you know, but he's kind of an old school lawyer that wants it in affidavit form or on a court reporter's statement.

12:07:44

THE COURT: So it's his decision not to tape record or video?

THE WITNESS: Yes.

12:07:59

THE COURT: My final question, I think.

When you had your conversation with Mr. Avery and prepared the affidavit, Exhibit 12, and when you had the sworn statement with the court reporter, Exhibit 13, either time did you advise Mr. Avery that he was subjecting himself to perjury charges with those documents?

12:08:20

THE WITNESS: Yes, Judge, I did.

THE COURT: Is it -- it's not recorded anywhere that we can -- that I can see in either document.

THE WITNESS: I don't recall if I said it on

12:08:35

the record, but I certainly told him "You could be putting yourself in a really bad position here so knowing that you want to go forward?"

And we did it.

12:08:45 THE COURT: But you didn't document it either time, did you?

THE WITNESS: I probably did not, no.

THE COURT: It would have been a prudent thing to do, don't you agree?

12:08:54 THE WITNESS: First time I wouldn't have done it because the lawyer didn't, you know, do it.

The second time, I don't know why I wouldn't do it because I always try to explain to them in grand detail who I am, who I represent, so there's no mistake.

12:09:06 I generally don't warn them about what can happen, although I would tell them the police or the prosecutor is going to be very unhappy with this when they read it.

THE COURT: Last time you saw or met with or

12:09:17 talked with Mr. Avery.

THE WITNESS: Was at the Court hearing in Lorain.

THE COURT: Thank you. That's all I have.

Anyone else, based on my questions, wish to

12:09:23 follow up?

MR. CALABRESE: One -- one moment, Your Honor.

(Pause).

THE COURT: Can we let this witness go?

MR. CALABRESE: Just one moment.

12:10:31 I believe we're all set, Your Honor. No further questions.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, Judge.

THE COURT: Get out while you can.

12:10:38 (Witness excused).

THE COURT: Will the next witness be relatively short in length, or do you want to take a lunch break at this point?

MR. CALABRESE: I believe the next witness

12:10:57 should be relatively short, Your Honor.

THE COURT: You may call your next witness.

MR. CALABRESE: Our next witness, Petitioner calls Benson Davis.

THE COURT: Is Mr. Davis in the courtroom?

12:11:20 MS. JOCHUM: He's not, Your Honor.

BENSON DAVIS,

of lawful age, a witness called by the Petitioner, being first duly sworn, was examined and testified as follows:

12:12:52 THE COURT: Your full name and spell it for

the court reporter.

THE WITNESS: Benson Davis, B-E-N-S-O-N, middle name is Phillip, P-H-I-L-L-I-P, Davis, D-A-V-I-S.

THE COURT: Thank you.

12:13:16 You may inquire.

DIRECT EXAMINATION OF BENSON DAVIS

BY MS. JOCHUM:

Q. Good afternoon, Mr. Davis.

A. Good morning, sir -- good morning, Miss.

12:13:21 Q. Would you please introduce yourself to the Court?

A. Mr. Davis, Benson Davis.

Q. So your name is Benson Davis?

A. Yes.

Q. Is there any identification card from the prison

12:13:33 system that says the name Benson Davis?

A. It says Benson Davis, but they have it saying my AKA. They got it as Ian Davis.

Q. And is Ian Davis your name?

A. No, ma'am.

12:13:44 Q. Why does your ID card say Ian Davis?

A. Been trying to figure it out for the last 20 years why. I never got an explanation why.

Q. I will call you by your actual name which is Benson Davis.

12:13:56 Mr. Davis, do you know why we are here today?

A. Sort of.
Q. What's your understanding for why we're here today?
A. About a telephone bill and I gave Mr. Cleveland.
Q. So you're giving testimony?
12:14:08 A. Yes, ma'am.
Q. On behalf of Mr. Cleveland?
A. Yes, ma'am.
Q. Are you currently incarcerated?
A. Yes, ma'am.
12:14:15 Q. What for?
A. Aggravated murder and for assault.
Q. Mr. Davis, did you murder Marsha Blakely?
A. No, ma'am.
Q. Did you see Marsha Blakely's murder?
12:14:26 A. No, ma'am. Wasn't in the State of Ohio, first.
Q. Did you know Marsha Blakely?
A. No, ma'am.
Q. Did you ever punch, beat or drag Marsha Blakely?
A. No, ma'am.
12:14:37 Q. If you did not murder Marsha Blakely, then why are you currently incarcerated for that crime?
A. Been trying to figure that for the last 20 years. I been going losing my mind trying to --
Q. And do you currently have a proceeding challenging
12:14:51 your incarceration?

A. Yes, ma'am.
Q. Did you murder Floyd Epps?
A. No, ma'am.
Q. Did you see Floyd Epps' murder?
12:14:59 A. No, ma'am.
Q. And do you know who Floyd Epps is?
A. No, ma'am.
Q. Do you know the Petitioner Alfred Cleveland?
A. Yes, ma'am.
12:15:06 Q. And can you point to him in the room today?
A. (Indicating).
Q. How do you know Alfred Cleveland?
A. His house is right next to mine's.
Q. His house is next to yours?
12:15:17 A. Yes. I know -- I know his whole family.
Q. All right. And how long have you known Alfred Cleveland?
A. We moved from the Bronx to Queens since 1979. They been living there before us.
12:15:28 Q. Did Mr. Cleveland ever come over to your house?
A. He comes -- he plays at my other -- he play with Ian Davis, that's his buddy.
Q. And did Alfred Cleveland go by any other names?
A. They call him Freddie. I call him the boy Freddie.
12:15:44 Q. Any other names?

A. Some people call him Al Monday.
Q. So for the record, Al Monday is the same person as Alfred Cleveland who is sitting here today?
A. Yes, ma'am.
12:16:00 Q. Mr. Davis, were you aware that Al was involved with transporting drugs?
A. I was with him, me -- we was, both of us.
Q. And so you said you were personally involved?
A. Yeah, I was personally involved with him.
12:16:14 Q. With Al transporting drugs?
A. Yeah.
Q. Do you recall testifying in your own case for the murder of Marsha Blakely?
A. Yes, ma'am.
12:16:20 Q. At that time did you admit to transporting drugs?
A. Nobody ever asked me about transporting drugs. They asked me about selling drugs.
Q. And is there a distinction in your mind between transporting drugs and selling drugs?
12:16:34 A. Yes, ma'am.
Q. Mr. Davis, do you recall testifying about attending a Run-DMC concert around May or June, 1991?
A. Yes, ma'am.
Q. Did you know individuals in the music industry
12:16:49 generally?

A. I know Run and Jam Master Jay and the rest of them but not personally. They come around. LL Cool J.

Q. So you knew individuals in the music industry?

A. Yeah, I know them.

12:17:01 Q. Did you actually attend a Run-DMC concert in May, June 1991?

A. No.

Q. And why did you say that you did at that time?

A. I was being -- I was being sarcastic because the

12:17:12 police had asked to speak to me and I told them I didn't want to speak to them so we was having like a little verbal argument, and I was trying to make a statement like "I'll go anywhere I wanted to go."

Q. And were you nervous at your trial?

12:17:26 A. Very nervous. I was intimidated. That's the first time I ever been scared in my life like that.

Q. But you did come to Ohio in May, June, 1991, correct?

A. Yes.

Q. Did you know anyone in Cleveland, Ohio in 1991?

12:17:41 A. No, ma'am, I really don't know nobody in Ohio but the person in Lorain, people in Lorain.

Q. Now, I'd like to turn our attention to Lorain, Ohio for a moment.

A. Yes. Yes, ma'am.

12:17:54 Q. Have you ever been to Lorain, Ohio?

A. Yes, ma'am.
Q. How many times?
A. Say around four or five time.
Q. And what brought you to Lorain, Ohio?
12:18:00 A. I never left the State of Ohio and Cleveland was coming in, he was coming to Ohio and so he took, he brought me down here.
Q. Did you ever transport --
THE COURT: I'm sorry, I didn't understand
12:18:13 that answer.
Can you try it again, please? What brought you to Lorain, Ohio? Why did you come to Lorain?
THE WITNESS: I never left the State of New York. I never went nowhere.
12:18:23 Cleveland was coming to Ohio so I came with him.
MS. JOCHUM: May I clarify, Your Honor?
BY MS. JOCHUM:
Q. Are you saying you had never left the State of Ohio
12:18:31 before -- the State of New York prior?
A. Never. Since I came from Jamaica, I never left the State of New York. I wanted to see things.
Q. And you're indicating that Cleveland was -- Mr. Alfred Cleveland was coming to Ohio?
12:18:43 A. Yeah.

Q. Okay. Did you ever transport drugs to Lorain, Ohio with David Donaphin?

A. Yeah, one time.

Q. And when did you transport drugs with David?

12:18:55 A. The 10th of August.

Q. 10th of August. Now, I'd like to direct your focus to the relevant time period for this case which is 1991.

A. Yes, ma'am.

Q. Mr. Davis, where did you live in August, 1991?

12:19:08 A. Always live at my mother at 188-19, St. Albans, Queens.

Q. Mangin Avenue, St. Albans, Queens?

A. Yeah, 188-19, St. Albans, Queens.

Q. And that's in New York State?

12:19:26 A. New York City.

Q. Who lived in that house in August, 1991?

A. My mother, my father, my brother, my two brothers, because -- my little niece Simone and Patrick.

Q. Who was Patrick?

12:19:39 A. Patrick is our cousin that come from Jamaica to stay with us.

Q. And where was Alfred Cleveland's family home in relation to your home?

A. Right next door.

12:19:50 Q. And had you indicated earlier that he came over a lot?

A. His garage -- he got to walk in my, what's the name, my yard to get to his garage, his garage or his backyard.

Q. So his garage is located right next to your house?

A. Yeah, he come -- let me see. His garage, my yard; he could come to my yard and go to his yard if he wants to.

Q. And did he come over to your house a lot?

A. Yeah, he always come over my house.

Q. When you were staying at your family home on Mangin Avenue, where physically within the house did you stay?

A. Stayed in the basement.

Q. Did anyone else live in the basement?

A. Yeah, my brother.

Q. Your brother Ian?

A. Yes, ma'am.

Q. And how many phone lines were in the house in 1991?

A. Three.

Q. Did your brother Ian have a phone line that he paid for himself?

A. He had his own -- he got his personal line.

Q. Do you remember the phone number for Ian's line?

A. No, I don't know Ian phone number.

Q. Did Ian allow anyone to use the phone?

A. No, Ian is picky.

He didn't have the money to pay the bill so he ain't going to let anybody run the bill up.

Q. Who was allowed to use the phone?

A. Freddie because Freddie gives him money. I give him money, if I use it. I don't give -- if I use it, I'll give him money.

12:21:10 Q. And do you know a person named Victor from that time period?

A. Yeah, Victor, that's his friend, he always with Ian. He's always down there with Ian. He's a Jamaican. He's a Jamaican. He's always down there with Ian.

12:21:22 Q. And would Ian have allowed him to use the phone?

A. I can't really speak. He might, but I can't really say what Ian does.

Q. Did Ian charge you for the calls that he -- that you made to the phone?

12:21:33 A. Any call I make, Ian charge me. Anything I do, Ian charge me.

Q. And why?

A. That's the way he is.

Q. Was he cheap?

12:21:41 A. Very cheap. You call my parents and ask them; very cheap.

Q. How did he charge you for the calls you made from his phone?

A. He know. He know what calls I made. He gets his

12:21:54 bill. He know, he probably got records, clothes, since we

moved there, all type of stuff. He just keeps stuff.

And he go through. He ain't got nothing else to do, he sleep all day and just be up doing stuff.

You know, he got his own program how he does stuff.

Q. You're indicating with your hands.

Do you mean he marked up the bill?

A. Yeah, he do all -- I mean, he was always messing with stuff. When he was a baby, he always messing.

Q. And did he do this routinely with marking up the phone bills?

A. Always.

Q. How would you usually pay Ian for the calls he charged you for?

A. I would give him $20, probably $20, $10.

Q. Now, I'd like to show you what has been marked as Petitioner's Exhibit 10. It should come up to you on the screen.

Tell me if it doesn't.

A. I really don't have my glasses so.

Q. Are you able to see if you go closely to the screen, Mr. Davis?

THE COURT: Will these help you?

THE WITNESS: Thank you.

MS. JOCHUM: Thank you, Your Honor.

Q. Do you recognize this document?
A. Yes. The bill Ian gave me.
Q. Okay. So what is it?
A. The bill Ian gave me.
12:23:04 He gave me the whole bill from -- the whole bill, but I just kept this part because in my heart I just felt like I just needed this part.
Q. So you have seen this bill before then?
A. Huh?
12:23:14 Q. Have you seen this bill before?
A. Yeah, I seen this bill before.
Q. And in looking at it, whose handwriting is on the bill?
A. It's Ian's.
12:23:22 Q. About when do you first recall seeing this phone bill?
A. I got it -- I got it in December, '92 when they tried to extradited me, they didn't let me go, and my brother Ian, I don't know, he figure like you couldn't have never been in Ohio. He gave me the bill.
12:23:43 So I didn't know if something else was going to happen. I put the bill in my house. I was reporting, going to Court, going to Court. One day the Marshal came and said "I got a warrant in Ohio," and they arrested me. They let me back out. I went back to my house, looked around and got the bill. Brought the bill, gave it to my

attorney.

Q. So you were arrested as part of your extradition proceedings then?

A. As part of my extradition.

12:24:09 Q. And just to clarify, who gave you the bill at that time?

A. Ian.

He gave me -- he didn't give me the bill when I got indicted. He gave it to me in '92. I got arrested in

12:24:25 '93, but I had the bill in my house.

Q. And when he gave it to you, did the phone bill he gave you look like the copy that's in front of you now at that time?

A. Yes. The copy.

12:24:35 The only thing about it's original, the only thing, it's just a copy.

Q. So did you alter it in any way at that time?

A. I don't -- I can't understand when they say altered it.

12:24:45 Q. Did you write on it or --

A. No.

Q. -- change anything?

A. No, I didn't get a finger, I didn't get nothing on it; nothing. I ain't touched it.

12:24:53 Q. Did you ever alter or change the bill at any time?

A. No. No. You can get a finger -- you can get somebody to write it; never touched it.
Q. You explained earlier but I want to clarify.
Did you give the bill to your New York attorney to use at your extradition hearing?
A. Yes, use it. Yes.
Q. And who was that attorney?
A. Mr. Lynch, Donald Lynch.
Q. Did the bill become part of the record in the extradition proceedings?
A. Yes, ma'am. Yes. That's what he was trying to say that I was in the State of New York with the bill.
Q. Turning to your trial here in Ohio, did you give a copy of this bill to your attorney in your murder trial?
A. Yes, I gave it to the attorney and the investigator. They came and seen me and tell me to give them the bill to be my alibi, for my alibi witness -- I mean for my alibi evidence.
Q. Was the phone bill admitted at your trial?
A. No, ma'am.
Q. Why not?
A. They came back two weeks and told me that somebody broke into my attorney --
Q. I'm not interested in what your attorney told you, but what was your understanding about why it wasn't admitted in

your trial?

A. It was my understanding somebody broke into my attorney car and stole the bill.

Q. So your understanding, the bill was lost?

12:26:02 A. The bill was lost. The bill was lost.

Q. When did you obtain another copy of this phone bill?

A. 2011, October.

Q. And how did you obtain a copy of it?

A. Mr. Cleveland gave me some investigation FBI paper and

12:26:15 I was going through it. I wrote him before but I was writing him with the records number, not the case number because I was never arrested so I never figured they had a case number.

And he gave me an FBI report and I was looking

12:26:28 through it, and I seen the case number on it, in '93 that's on the extradition thing, and I wrote the Clerk of Court, I wrote them like four times, I was asking them for a copy when they told my I got to buy the whole motion, I got to pay for the whole motion.

12:26:45 I was asking just about the phone bill. They told me they didn't have the phone bill but I got to pay for the whole motion, so I wrote a check from the institution and sent it to them, and they sent me every motion that was filed with it, and this was on the back of it.

12:26:58 Q. So to clarify, you had made previous requests?

A. Previous, asking for the bill.

Q. And when you had the correct case number you were able to obtain it?

A. Obtain it from the Clerk of Court.

12:27:07 Q. When you received a copy of that phone bill, did you share it with Alfred Cleveland?

A. Yeah, he was the first person I shared it with.

Q. Now, I'd like to focus on the phone bill itself, and we will highlight some things on the screen for you, but you

12:27:18 may find it easier without your reading glasses to just look carefully at the paper.

Let me know if you can't see anything.

Mr. Davis, what is the date on this phone bill?

12:27:28 A. August 13th.

Q. I'd like to focus -- what year is this phone bill from?

A. 1991.

Q. I'd like to focus on the particular number that I'm

12:27:42 going to ask LaNesha to highlight which is 216-282-4382 under entry 15.

Do you --

THE COURT: Look on your screen. See if that's easier.

12:28:01 Q. Can you see that yellow?

THE COURT: Do you see the highlighting?

A. Yes, ma'am.

Q. Do you recognize that highlighting Mr. Davis?

A. Yes.

12:28:07 Q. Who did that phone number belong to?

A. Michelle.

Q. And who was Michelle?

A. The girl that I was staying with in Lorain.

Q. Was she also known as Florence Michelle Brooks?

12:28:16 A. Yes, ma'am.

Q. And what was the nature of your relationship with her?

A. She was my girlfriend.

Q. Where did Michelle live?

A. She lived on Leavitt.

12:28:25 Q. And where is that?

A. That's in Lorain.

Q. Lorain, Ohio?

A. Yeah.

Q. In looking again at the bill -- and we'll highlight

12:28:33 these for you -- does that number seem to appear three times as entry number 15, 17 and 18?

A. Yes.

Q. And if LaNesha could highlight those, please.

Did that number seem to appear those three

12:28:54 times?

A. Yes, ma'am.

Q. Mr. Davis, what are the dates and times of those calls?

A. It says August.

12:29:02 THE COURT: Instead of putting him through this, the document speaks for itself.

Is there any dispute about the calls on those dates and times as reflected on this statement, this exhibit? I mean, do we really need to go through this?

12:29:17 MS. FOSNAUGHT: Disputing that the typing is what it is?

THE COURT: Exactly.

MS. FOSNAUGHT: No.

THE COURT: The typing is what it is.

12:29:23 Thank you.

MS. JOCHUM: Thank you, Your Honor.

BY MS. JOCHUM:

Q. Did you make those calls to Michelle Florence Brooks?

A. Yes, ma'am.

12:29:29 Q. How do you know?

A. I was trying to get in touch with her letting her know I was coming back, that she got to be in the house. I don't have a key to her house and I needed her to be there.

Q. Did Ian show you marked-up bills like this every

12:29:42 month?

A. Yes.

Q. Looking at the phone bill, how did Ian mark that he made phone calls himself?

A. He got his name on it. He got a lot -- he got R, he got Vic, he got an L that look like --

Q. Did he mark E?

A. Huh?

THE COURT: I'm sorry, you said his name on there.

Where is his name?

THE WITNESS: They call him E.

MS. JOCHUM: I'm asking --

THE COURT: They call him E because?

THE WITNESS: That's his street name.

BY MS. JOCHUM:

Q. And for the phone calls that you testified about that we're looking at, number 15, 17 and 18, is there an E marked next to any of those calls?

A. You got an E at one, two, three, four, five.

Q. Just looking at calls 15, 17 and 18, Mr. Davis.

A. 15, 17 -- no, it got, like, a dot on it.

Q. And how did Ian indicate that you made phone calls on the bills or how do you believe he did?

A. He probably -- prior to that he probably look at a prior bill and seen the number. He probably look at a prior

bill that I paid him before and seen that's the number, seen that's my number.

Q. So to clarify, he didn't mark those numbers with an E to indicate he made those phone calls?

12:31:03 A. No.

Q. Did you make any of the other phone calls on this bill?

A. I could have made some, but he never would have knew the other numbers that I made because he knew that number

12:31:15 because I paid him a bill before with that number.

Q. Do you specifically remember making any other phone calls on the bill?

A. It's been so long I couldn't really say.

Q. Mr. Davis, did you know anyone in Cleveland, Ohio at

12:31:29 that time in August, 1991?

A. I don't know nobody in Cleveland, Ohio up to now, unless they're inmates.

Q. Well, you know me, but I'd like to turn your attention to call number 14 on the phone bill.

12:31:43 Do you see that call?

A. Yes, ma'am.

MS. JOCHUM: And, LaNesha, would you mind highlighting that call, please, all the way across?

Q. Mr. Davis -- so do you see that call on the screen,

12:32:00 Mr. Davis?

A. The --
Q. The highlighting?
A. It's not -- it's not -- right there.
THE COURT: Can you blow this up any more?
12:32:16 Q. Can you highlight 14?
A. It went down.
THE COURT: Wait one second. Just hold on.
No pressure, LaNesha.
Q. Okay. Do you see that call? The "1" is cut off --
12:32:44 A. Yes, ma'am.
Q. -- but it's 14?
THE COURT: The one to Cleveland on August 8th. There you go.
A. Yes, ma'am. Yes, ma'am.
12:32:52 Q. Did you make that call to Cleveland, Ohio at 12:16 a.m. on August 8th, 1991?
A. No, ma'am.
Q. How do you know?
A. Because I don't know nobody in Cleveland.
12:33:02 Q. Do you recognize that number?
A. No, ma'am.
Q. Do you know who did make that phone call?
A. He was over my house. I know he was over my house because --
12:33:11 Q. You're pointing to someone and saying "he."

Who is that "he"?

A. Mr. Cleveland, he was over my house because I was calling him letting him know that if he don't come, I'm going to leave him, I'm going to leave.

12:33:26 So he came over that night and was telling me that he was waiting on somebody.

Q. So you remember Alfred Cleveland making a phone call that night?

A. Yeah, I remember him making a call.

12:33:37 Q. And how do you remember that?

A. Because I called him over, he came over. He came over to see me, and he came downstairs in the basement.

Q. Do you know who he called?

A. No, I couldn't tell you who he called.

12:33:48 Q. Now, I'd like to turn your attention to the evening of August 7th and 8th, 1991.

A. Yes.

Q. Mr. Davis, where were you on the night of August 7th, 8th, 1991?

12:33:59 A. In my momma house.

Q. On Mangin Avenue?

A. Yes, ma'am.

Q. What do you remember from that night?

A. I had a couple friend -- I had a friend over, I had a

12:34:11 girl over there.

Q. Do you remember the girl's name?
A. Armanni.
Q. Do you know where she is today?
A. She passed away.
12:34:20 Q. What else can you tell us about that night that you remember?
A. It was basically a regular night. We just in the basement listening to music, you know. Just a regular night. It wasn't nothing special.
12:34:30 Some -- some people was outside in front of my yard. They had caught -- you know, I don't -- they was out there. I was not. I was staying in the house.
Q. Why were you staying in the house?
A. I was out -- I was really hiding from my parole
12:34:45 officer. When I went outside, he used the phone, I went outside.
Q. Do you remember seeing a car parked in front of the house?
A. He had his car out there.
12:34:52 Q. What was that car?
A. A BMW 7 Series.
Q. So to clarify, did you see Alfred Cleveland the night of August 7th and 8th, 1991?
A. 7th?
12:35:05 Q. August -- the evening of August 7th and 8th, 1991.

A. I seen him for two weeks in August all the time.
Q. How do you know you saw him the night of the 7th and 8th?
A. That night I told him he was taking too long, I was ready to go.
Q. What do you mean by you were ready to go?
A. I'm ready to come back to Ohio. I got what I wanted. I'm ready to go. I -- he's waiting on somebody.
Q. Are you referring to your transporting drug business with Al?
A. Yes.
Q. Mr. Davis, were you offered a plea deal when you were charged with Marsha Blakely's murder?
A. Many plea deals.
Q. What were you offered?
A. I was offered they would let me out and when the evidence -- they catch a suspect, I would come by and testify against him.
Q. Against Mr. Cleveland?
A. Any one of them.
Q. Any one of them?
A. Anyone that was kept during the time.
Q. The other co-defendants in this case?
A. Yeah. Yeah. When I say "co-defendants," I don't really -- you know, I don't see it that way.

Q. So you were offered a deal if you would testify against Alfred Cleveland and the other co-defendants?
A. Yes.
Q. Did you accept any of the plea offers?
12:36:17 A. I can't accept for -- why am I going to accept something when I didn't do nothing?
Q. So you did not accept those offers?
A. No.
Q. And why not?
12:36:25 A. I didn't do nothing. I don't know about nothing.
Q. Do you have litigation pending in this case right now?
A. Yes, ma'am.
Q. Before which Court?
A. The Sixth Circuit.
12:36:32 Q. And what are your claims, generally?
THE COURT: Is that really necessary?
MS. JOCHUM: No, Your Honor.
BY MS. JOCHUM:
Q. Mr. Davis, did you murder Marsha Blakely?
12:36:46 A. No, ma'am.
Q. Did Alfred Cleveland murder Marsha Blakely?
A. He couldn't have, no, ma'am, because he was with me.
Q. How do you know?
A. I know. I know. It just like I know.
12:36:56 You know, it would be hard for me -- I know

that he was with me because I'm the one that called him and telling him if he don't come, I'm leaving.

Q. And where was he with you?

A. In my momma house.

12:37:06 Q. On the night of August 7th, 1991?

A. All through that week. All that week for, like, two weeks, just me and him the only one there.

MS. JOCHUM: You've answered my question. Thank you.

12:37:18 I have no further questions at this time.

THE COURT: Cross-examine.

MS. WATSON: Yes, please.

CROSS-EXAMINATION OF BENSON DAVIS

BY MS. WATSON:

12:37:33 Q. Good morning, Mr. Davis. My name is Stephanie Watson.

A. Good morning, ma'am.

Q. You just testified --

THE COURT: Excuse me.

Q. You just testified that you and Mr. Cleveland were

12:37:52 together on August 7th in New York, is that correct?

A. Yes, ma'am. From June 29th to August 10th.

Q. From June 29th to August --

A. My bad. From June 28th because we came -- we left, we left Ohio late, late July. I keep saying June. I don't

12:38:14 know why I keep saying June.

From late July. That's the mistake I keep making that no one believe me. From July we left.

Q. Left where?

A. Ohio. We borrowed somebody -- we borrowed this guy named Madison car.

Q. And you left Ohio July?

A. July 28th.

Q. 28th?

A. Yes.

Q. And you came to New York City that day?

A. Yes.

Q. You drove?

A. Yes, ma'am.

Q. And you stayed there for how long?

A. Until August 10th.

Q. And then what happened on August 10th?

A. We -- that's when I transported -- that's when I showed David I had to get to Ohio. Me and David drove here.

Q. So you came back to Ohio August 10th?

A. Yes.

Q. And how long did you stay then?

A. I stayed until, like, around the 18th.

Q. Of August?

A. I stayed until the police, the police was harassing me so I left.

I can't give you a direct date, but it was not too long, I left.

Q. Do you recall being in the same car with a Lenworth Edwards --

12:39:27 A. Yes, ma'am.

Q. -- on August 14th?

A. Yes, ma'am.

Q. You recall that?

A. Yes, ma'am.

12:39:31 Q. And was Mr. Edwards arrested at that time?

A. Yes, ma'am.

Q. Were you?

A. No, ma'am.

Q. So you were here in Ohio on August 14th at least?

12:39:38 A. Yes, ma'am.

Q. Okay. Now, when did you -- how long did you stay in Ohio?

A. I stayed, like, two more days because I was scared of them because the way that the police intimidated me, I was

12:39:52 scared.

Q. Okay. So you were back and forth to New York several times?

A. Four times.

Q. Four times?

12:39:58 A. Yeah.

Q. During the time period of June -- July 28th and --
A. Not July 28th. Not July 28th.
I came down here May.
Q. Okay. Between May and sometime in August, four times?
12:40:11 A. Yes.
Q. And you were definitely in Ohio for several weeks in August of 1991, as you just stated?
A. I didn't say I was in Ohio several weeks in August.
Q. Okay. When were you in Ohio in August?
12:40:28 A. I tell you I came down here, like, the 10th.
I left around -- I didn't stay that long. After I had the confrontation with the police I left.
Q. Okay. Do you recall testifying at your extradition hearing in New York?
12:40:42 A. Yes.
Q. The State of New York?
A. Yes, ma'am.
Q. On December 20th, 1993?
A. Yes, ma'am.
12:40:47 Q. Did you testify truthfully in that hearing?
A. I had forgot stuff and I was -- I was frustrated.
I didn't intentionally made -- I made mistakes, but not intentionally.
Q. What mistakes unintentional did you make?
12:41:06 A. I kept saying June, through June because I was

nervous.
Q. Okay. What else?
A. Basically that's it.
Q. That's the only mistake you made?
12:41:13 A. Yes. Yes.
Q. Okay. Do you recall testifying in that hearing that you were in the State of New York, you left Lorain, Ohio to travel to New York where you stayed from, it says June 28th, which you're now saying you meant to say July?
12:41:28 A. That was a mistake.
Q. Through all of August?
A. No, I never -- I said -- I might -- that's what they said but I meant to say I came -- I came to Ohio August 10th.
12:41:41 When I had that confrontation with the police, I left.
Q. Okay. Do you recall stating at your extradition hearing --
A. I might.
12:41:48 Q. -- that you were not in Ohio in August at all. "That's for a fact. I was never in Ohio during all of those months"?
A. I might have. I was nervous.
Q. Would that have been true testimony?
12:42:00 A. To my knowledge, because that's what I -- that's what

I recall.

Q. Okay. Do you recall testifying at your own trial?

A. Yes.

Q. And did you testify truthfully in your trial?

12:42:11 A. I was terrified.

You want me to give you an explanation why I was terrified at the trial?

Q. Well, did you testify truthfully despite your being afraid?

12:42:20 A. I wasn't -- I wasn't in the right frame of mind testifying at my trial.

Q. So you didn't testify truthfully?

A. Yes, I testified truthfully to the best of my knowledge.

12:42:31 Q. Okay. Do you recall what you said at that time when you came to Ohio and to New York?

A. No. Refresh me.

Q. Can you read that all right?

A. Yes.

12:42:49 Q. Okay. Oh, Exhibit 7, Page ID 6404 and 6405 in the record.

MS. WATSON: Do you want me to read it?

THE COURT: Yes.

Q. Okay. You were asked: "When did you go back to New

12:43:13 York?

"I stayed down here for, like, a couple of months. Then I went back up there like July, the end of July."

You were asked: "You went back at the end of July?"

And you said "Yes.

"Question: How long then did you stay in New York?"

THE COURT: Page number, please. Sorry.

MS. WATSON: Page ID number 6404 in the record or of the transcript Page 411.

THE COURT: Thank you.

MS. WATSON: Sure.

BY MS. WATSON:

Q. "You went back at the end of July?

"Yes.

"And how long did you stay in New York then, or putting it the other way when did you come back to Lorain?"

And you said: "To Lorain, I came back, like, on August 11th, 12th, something like that.

"August 12th or 11th you came back?

"Yes."

And again you testified on Page 412, lines 16 and 17, "Then you came back here and got back to Elyria the

11th or 12th of August, is that right?

"Answer: Yes, sir."

Do you recall making those statements?

A. Yes, ma'am.

12:44:09 Q. Was that true and accurate?

A. Best to my knowledge. Best to my knowledge.

Q. And that's different than what you had testified to previously several years before, correct?

A. How you mean? How you mean? I don't understand what

12:44:21 you're saying.

Q. You said on the record in New York that you were never in Ohio at all in August at all?

A. I never said that.

If I just said that, you just said I came back

12:44:30 the 10th or 12th.

Didn't you just stated that?

Q. In your extradition hearing you stated "I was never in Ohio, that's a fact."

You were not in Ohio in August?

12:44:38 A. I never -- show me the extradition, where that's said.

Q. Page 39.

A. Yes. But as you can see I was wrong. The police, the police officer pulled me over so, you know.

Q. Okay.

12:45:08 A. It was just -- it was just a mistake.

Q. Okay.
A. It was just a mistake. I was nervous.
Q. And in your trial testimony, did you ever -- you had been given an opportunity to testify in your own defense, correct?
12:45:29
A. Yes.
Q. Did you ever state in your trial testimony that you were with Alfred Cleveland on the 7th and the 8th?
A. No one asked me.
12:45:38
Q. Did you ever state Mr. Cleveland --
A. No one asked.
They told me to answer the question. Mr. Rosenbaum, and I see the Court, you could see the Court, answer the question that I asked you. If I don't ask you, don't talk. And you see that in the transcript.
12:45:50
Q. Did you --
A. That was the main --
Q. I'm sorry, I didn't mean to interrupt you. Go ahead.
A. Yes. He stated it to me if I don't ask you nothing, don't answer nothing, don't talk nothing; Mr. Rosenbaum.
12:46:01
So I couldn't have never -- I didn't have nobody ask me that question on what went on.
Q. And you were on testimony -- you were on trial for murder, correct?
A. Yes.
12:46:15

Q. And you are stating that you had an alibi of being in New York City?

A. Yes.

Q. But you did not come forth during your trial to discuss that alibi?

A. My lawyer, my lawyer, he -- my lawyer never come forward. I came forward. My lawyer never presented.

Q. You told your lawyer you were with Alfred Cleveland on August 7th?

A. My lawyer never asked me no question.

Q. But your lawyer was aware that you had the phone bill? You had given the phone bill to your lawyer?

A. I gave him the phone bill. My lawyer knew. He never asked me what went on, what happened, nothing.

Q. Have you ever given any affidavits in any cases with regard to these murders --

A. No.

Q. -- of Marsha Blakely?

A. No.

Q. You did not give an affidavit?

A. No.

Q. Calling the Court's attention to Exhibit 11.

Do you recognize that document?

A. Yes. That's all Court paper where you write -- yes, I remember this. That's part of my brief.

Q. Is that an affidavit?

A. It's an affidavit of verification. I wrote that to verify the information that I put in there.

Q. So this is, in fact, an affidavit, is it not?

12:47:39 A. It's an affidavit to the Court.

Q. Okay. Thank you.

In this affidavit that you gave, you state that "We did not obtain the sworn statement of William Avery, Jr. until November 11th, 2011 where Al Cleveland gave

12:47:56 it to me," correct?

A. Yeah, he gave me -- he gave me the -- he gave me the affidavit, yes.

Q. How did you come to see Mr. Cleveland for him to give it to you?

12:48:07 A. We was up -- we all in the same institution.

Q. So you were actually incarcerated in the same institution --

A. Yes.

Q. -- together?

12:48:15 A. Yes, ma'am.

Q. Do you see Mr. Cleveland frequently?

A. We in the same -- it's only a small way, it's small.

I would be lying if I say I didn't. I do.

Q. Have you ever made any other statements in the past

12:48:29 with regard to seeing a BMW as you did today in front of

your house on the evening of August 7th, 1991?

A. No one asked me about a BMW.

Q. And you also state in this affidavit that you did not obtain the AT&T phone records until October 13th, 2011 in which you filed a request with the Clerk of Supreme Court in Newark County?

12:48:51

A. Yes.

Q. But isn't it true that you testified today that your brother gave you a copy of the phone records in December of 1992?

12:49:01

A. Yes, ma'am.

Q. So you actually had a copy at that time?

A. A copy? I had -- I had the original.

Q. You had, even better, the original in December?

12:49:12

A. And I gave it to the attorney and it was missing so I didn't have it. It was gone then.

Q. And you also testified earlier today, if I heard you correctly, that you were aware that this phone record was made a part of your extradition hearing?

12:49:23

A. Yes, ma'am. But I can't -- I couldn't produce something that I don't have.

Q. But you were aware that it was a part of your extradition hearing, correct?

A. He never -- he never ruled on it. You got the extradition paper. He never ruled on it.

12:49:35

And then he says he's going to leave it.

Q. Who is "he"?

A. The Judge. He says he's going to leave it for the State of Ohio to handle it.

12:49:46 He just denied it.

Q. So --

THE COURT: To be clear, I'm not that Judge.

THE WITNESS: Yes.

A. He made a ruling on it.

12:49:58 Q. The Judge in New York you're saying did not make a ruling on your extradition?

A. He denied it. He just denied it and he stated that you -- you got the paper for it.

Q. Were you extradited to Ohio for the trial of Marsha

12:50:11 Blakely?

A. Yes, ma'am.

Q. Okay. You stated that you were not -- earlier today you testified that you were not aware of why your prison number lists you as Benson Davis AKA Ian Davis?

12:50:32 A. Yes.

Q. Correct?

A. Yes, ma'am.

Q. Do you know what "AKA" stands for?

A. Nope.

12:50:37 Q. It stands for also known as.

A. Who know me as Ian Davis?
Q. I'm sorry?
A. Who know me as Ian Davis? My parents don't know me as Ian Davis. I --
12:50:48 Q. Is it your testimony --
A. I never signed one document stating my name is Ian Davis.
Q. Is it your testimony that you've never used the name Ian Davis at any time before --
12:50:58 A. Never.
Q. -- any public officials?
A. You show me a document. You show me a document with Ian Davis on there that I signed saying this is Ian Davis. Show me any document, arrest or --
12:51:08 Q. So is that a yes or a no?
Did you ever use the name Ian Davis?
A. No.
Q. You never have?
A. No.
12:51:13 Q. Did you ever tell your brother that you had used his name to commit criminal activities in the State of Ohio?
A. No.
Q. Did you ever tell your brother not to come to the State of Ohio because you had used his name in the pursuit
12:51:26 of criminal activities?

A. Nope.

You know why I would tell my brother not to come here? Because from what my parents used to tell me not to come to Ohio -- of course, I don't mean to be racist or nothing -- because you people down here don't play. And that's quoting straight out of my mother mouth.

I was told not to come here, my mother never wanted me to come down here.

I told him not to come down here. I told him not to come down here because I didn't want you all to lock him up.

Q. Okay. Because why would they lock him up?

A. Why they lock me up?

Q. Okay. During 1991 you've testified that you were close friends with Alfred Cleveland?

A. Yes.

Q. You were neighbors?

A. Yes.

Q. Were you childhood friends?

A. I'm like six years older than him.

Q. Yes. Have you known him for your entire life?

A. Not entire life.

Q. For a significant portion of your life?

A. Yes. Yes.

Q. Would you consider him to be a very good friend?

A. Yes.
Q. Did you steal cars in New York in 1991 with Al Cleveland?
A. I probably did.
12:52:31 Q. Did you transport drugs at any point in time involving Al Cleveland?
A. Yes.
MS. WATSON: One moment.
(Pause).
12:53:57 Q. Turning your attention back to the phone records and call number 14 -- no -- call number 13, do you see that?
A. Yes.
Q. 216. Did you state earlier that you made that call?
A. No.
12:54:15 Q. Have you ever stated that you made that call?
A. No. That's my brother Ian call.
Q. Do you recognize this document?
It's Exhibit 104 for the Court.
Here's the last page.
12:54:45 A. Yes.
Q. What is it?
A. It's a part of my brief.
Q. It's a part of your brief?
A. Yes.
12:54:49 Q. Did you write this?

A. What difference does it make?
Q. I'm sorry?
A. What difference does it make?
Q. Well, it makes a difference because it's important that you answer truthfully.
A. I am answering truthfully.
I did not print it.
Q. You did not write it?
A. No, somebody -- I might have Legal Aid print it for me.
Q. Did you sign it?
A. Yes.
Q. Is it your testimony that what you wrote in here was correct?
A. To the best of my knowledge.
Q. In this document you state that you made that call?
A. Made what call?
Q. That you just denied making.
A. I made a call to Michelle.
Q. Um-hmm.
A. Yes.
I didn't make a call to no seven.
Q. No. You testified, you stated in this document that you signed that you made the call that I just -- do you still have that?

So is that an accurate statement, or is the one you made today accurate?

THE COURT: Where is the statement?

A. Where is the statement?

12:55:56 THE COURT: One moment. One moment. Excuse me.

MS. WATSON: Exhibit 104.

THE COURT: Okay.

MS. WATSON: Pages -- it doesn't have -- 3 and

12:56:05 4 of this document, it's labeled at the bottom 3 and 4, Paragraphs 3 and 4.

The defendant testified during trial, stated that he was --

THE COURT: I'm sorry, I don't want you to

12:56:13 read it into the record.

MS. WATSON: Okay.

THE COURT: I'm having trouble. I'm looking at Exhibit 104.

MS. WATSON: Yes. And Paragraph 3.

12:56:22 THE COURT: Would you please come up here, please? I'm not sure I'm where you are.

(Pause).

THE COURT: So the record is clear, this is from Exhibit 104. It is on ECF as document number 72-1,

12:56:55 Page ID number 6782 at the bottom of the page denoted in

Paragraph 3 is what I was just pointed to.

There's no question yet. Hold on.

BY MS. WATSON:

Q. All right. This document states that you made a call to Florence Michelle Brooks from New York on August 7th, August 8th and August 9th?

THE COURT: And your question is?

BY MS. WATSON:

Q. Do you still have the phone bill? What did I do with it? Oh, here it is.

And it's your testimony that you made this call on August 7th, number 13?

A. When did I give testimony for somebody asking me if I made that call? It's in -- it's in -- that's not testimony.

Q. This was in your brief in your own personal case?

A. Yeah. Yeah. But I -- that's not testimony. That's just a brief.

Q. So it's not true?

A. It is true. Not the call ain't true, but it says I was in New York through August, as the phone call reflect.

You trying to misinterpret what the brief said. The brief said, if you look at it, through August 7th I mean through the 7th.

Q. If your brother Mr. Ian Davis stated that he made that call, would he be -- would that be a correct statement?

A. I couldn't say what Ian -- I can't say what Ian says.
Q. Okay.
A. I can't verify what Ian says. Ian is Ian.
Q. I think I'll just sit down at this point.
12:58:43 A. You misinterpreted that.

THE COURT: I want to make a comment for the record and then allow each side the opportunity to redirect and the State as well, if they wish.

Prior to this hearing the government posed an 12:59:03 objection to Exhibit 10. I could not rule prior to this hearing on that objection.

Keeping in mind that I do not know what is yet to come, based upon what I've heard, this document could not be admitted into evidence.

12:59:22 It is not prepared by this witness, number one.

Number two, it is a single page with no identification of name or connection to the phone number on here, or numbers.

12:59:34 Number three, this witness has testified he first saw this bill, as I heard his testimony, in December of 1992, which is a significant period of time after this bill was presented allegedly to his brother Ian, in whose name allegedly this bill belongs and in whose writing 12:59:56 allegedly, as I understand it, all the writing on this

single page is your brother Ian's.

Is that correct?

THE WITNESS: Yes. Yes.

13:00:07 THE COURT: The record should reflect that this writing contains dashes, parentheticals, asterisks, the letter E, checkmarks, checkmarks with an X through it.

This does not satisfy the Rules of Evidence. And again not knowing what is yet to come, I don't see how, unless you provide me with some solid legal authority, I can

13:00:30 admit this document into evidence.

And I'm telling you this now so that each side has an opportunity to either ask questions or not as they choose.

One moment.

13:00:48 So the floor is back to Petitioner.

MR. CALABRESE: Briefly, Your Honor, on the evidentiary issue, I would simply ask that you reserve ruling --

THE COURT: I am.

13:01:00 MR. CALABRESE: -- until you have the opportunity to review Mr. Ian Davis's testimony.

I believe that Mr. Ian Davis addresses many of the issues or concerns you just expressed in terms of what the various notations on the record mean.

13:01:16 From our perspective, and we tried to make

this clear. If we were not in our submission on the motion in limine, I apologize, but --

THE COURT: No, again to be clear I was going off of what I heard today and which is why I said I don't know what is yet to come.

MR. CALABRESE: I understand.

THE COURT: Keep in mind even authenticity is at issue at this juncture.

So again not knowing what is yet to come, I wanted to explain that because I wanted to give you the opportunity, if you chose, to attempt to cure, if one could with this witness, the points that I've made.

MR. CALABRESE: I believe those issues --

THE COURT: That's all.

MR. CALABRESE: -- will be addressed in Mr. Ian Davis's testimony and that admissibility will ultimately be satisfied as an ancient document, among others.

MS. FOSNAUGHT: I believe we addressed this as well in Ian Davis's -- well, in our motion in limine which the Court overruled, but to the extent you're allowing us to continue to make the objection I appreciate that, and we do.

And that's some of the same objections that we made that you noted. And they did argue that they want to admit it as an ancient document, but under Rule 901 there is

a specific description regarding evidence about ancient documents and how you have to authenticate that, and there's an A, B and C criteria. And I would submit that neither A or B are met her.

13:02:59 THE COURT: We'll save the legal discussion for later, once you both have put in everything you want to put in.

Again I made my comment now to allow you the opportunity, if you wished, to address some of my concerns

13:03:14 with this witness.

And it sounds like perhaps another witness will be called who will be testifying about this document, and that's fine, I can make my final conclusion obviously after I've heard everything.

13:03:28 And, yes, I do have some doubts that ancient document exception applies to this kind of document, but again I'll wait to hear from you.

Having said that, it's your turn, if you wish, to redirect.

13:03:40 REDIRECT EXAMINATION OF BENSON DAVIS

BY MS. JOCHUM:

Q. Mr. Davis?

A. Yes.

Q. Where were you on the evening of August 7th and 8th,

13:03:50 1991?

A. In my mother house in Saint Albans, Queens.
Q. And Ms. Watson asked you some questions about your testimony at your trial.
Do you actually speak quickly?
13:04:04 A. Sometime they can't -- the lady that do the steno couldn't understand me. Most of the time they had to ask me to repeat what I said. I got an accent.
Q. And are you conscious about that accent?
A. Very conscious. I try to speak as proper as I can, 13:04:20 but it just won't come out.
Q. In your trial was the prosecutor aggressive in asking questions?
A. He was very aggressive. And in my trial, they had half the Lorain police inside the courtroom. I was 13:04:38 intimidated and I wasn't -- I wasn't there.
Q. And were you given a chance to explain your answers at that time?
A. No.
Q. Just a few more questions for you, sir.
13:04:51 All right. Ms. Watson referenced the extradition file.
Did you make multiple efforts to obtain your extradition file?
A. Yes, I did.
13:04:59 Q. And how long did it take you to actually get it?

A. Took me a good six months, yes.
Q. Had you made prior attempts before?
A. No, I gave up. Once -- once the lawyer told me it was missing, I gave up.
13:05:12 Q. And Ms. Watson referenced that you and Alfred are in jail together.
Did you choose to be incarcerated in the same facility as Mr. Cleveland?
A. No, ma'am.
13:05:23 MS. JOCHUM: No more questions.
THE COURT: Anything further?
MS. WATSON: No. Thank you.
THE COURT: You may step down. Thank you.
(Witness excused)
13:05:32 THE COURT: By my clock it is five after 1:00. We will be in recess for 30 minutes.
Thank you.
(Recess taken).
THE COURT: You may be seated. Thank you.
13:39:50 Petitioner may call his next witness.
MS. BERGERON: Your Honor, we call Alfred Cleveland, the Petitioner.

ALFRED CLEVELAND,
of lawful age, the Petitioner,
being first duly sworn, was examined
and testified as follows:
13:40:23 THE COURT: Be seated.
DIRECT EXAMINATION OF ALFRED CLEVELAND
BY MS. BERGERON:
Q. Could you please state your name for the record?
A. Alfred Cleveland.
13:40:38 Q. Okay. Mr. Cleveland, I want to begin by asking the question that is the reason we are all here today.
Did you murder Marsha Blakely?
A. No.
Q. Did you see Marsha Blakely's murder?
13:40:50 A. No.
Q. Did you see anyone beat Marsha Blakely?
A. No.
Q. Did you ever ask anyone to beat Marsha Blakely for you?
13:40:57 A. No.
Q. Did you know Marsha Blakely?
A. No. Never met her before in my life. Never seen a picture of her or anything to this day.
Q. Did Marsha Blakely ever owe you any money?
13:41:10 A. No.

Q. Did you ever sell drugs to Marsha Blakely?
A. No.
Q. Did you murder Floyd Epps?
A. No.
13:41:18 Q. Did you see Floyd Epps' murder?
A. No.
Q. Did you know Floyd Epps?
A. No, ma'am.
Q. Where were you on the night of August 7th to 8th,
13:41:29 1991?
A. I was in Queens, New York.
Q. Were you in Lorain, Ohio at any time on August 7th or
8th?
A. Absolutely not.
13:41:37 Q. 1991?
A. No.
THE COURT: You need to let her finish the question before you answer.
THE WITNESS: Yes, sir.
13:41:42 THE COURT: Thank you.
BY MS. BERGERON:
Q. Okay. Let's back up for a bit and discuss some background information about your case.
Where did you grow up?
13:41:52 A. I grew up in Queens, New York.

Q. Queens, New York. What was your address?
A. 188-23 Mangin Avenue.
Q. Did you graduate from high school?
A. Yes.
13:42:02 Q. Did you go to college?
A. Temporarily.
Q. Can you explain that a little?
A. Just a few weeks and I -- I let it go.
Q. After high school, did you have the opportunity to go
13:42:15 to art school instead?
A. Yes.
Q. Did you have some offers to places?
A. I had several.
Q. Can you name them?
13:42:24 A. One was a college called Alfred University Art and
Design, and some others that I don't recall right now, but I
had several offers.
Q. Okay. Did you accept any of those offers?
A. No.
13:42:37 Q. Okay. Let me fast-forward a bit.
Do you continue to create artwork today?
A. Yes, I do.
Q. Have you ever had any of your artwork displayed in a
show?
13:42:47 MS. FOSNAUGHT: Objection. Relevance.

MS. BERGERON: Just trying to set the background here, Your Honor.

THE COURT: The background for?

MS. BERGERON: Just briefly, but I can move on if you'd like.

13:42:58

THE COURT: Please do.

BY MS. BERGERON:

Q. Let's go back to 1991 then.

A. Yes.

13:43:02 Q. How old were you in 1991?

A. I was 21.

Q. In the summer of 1991 where were you living?

A. In Queens, New York; in Bayside, New York.

Q. In Bayside, New York?

13:43:12 A. Yes.

Q. Who were you living with?

A. I was living with Tanya Hawkins.

Q. And who was Tanya Hawkins?

A. She was my girlfriend at the time.

13:43:20 Q. Okay. So you were not still living in your father's house in Mangin Avenue?

A. No.

Q. Did you visit your father during the summer of 1991?

A. Yeah, occasionally I did.

13:43:29 Q. Okay. How often?

A. Maybe once every other week, every three weeks maybe.
Q. In the summer of 1991 were you trying to get into the music business?
A. Yes. From 1990.
Q. How?
A. From 1990 I was.
I was trying to produce my own record. I was an artist myself, I was a rapper and, you know, I had -- I was locally known. I had a hit song and we knew that it
13:43:58 would take off so I was trying to do the independent route.
Q. So what types of things were you doing to promote that?
A. We would go to the studio practically every day.
We wanted to get our song mastered, we wanted
13:44:11 to try to get our single pressed up. We had made some inroads at the radio station where we had it played. Those types of things.
Q. At that point in time did you know anyone in the music business?
13:44:23 A. Yeah. I worked with LL Cool J.
Q. Direct with LL Cool J?
A. Yeah. Right around the corner he lived from me.
Q. Did you ever go to Lorain, Ohio during the summer of 1991?
13:44:35 A. Yes, I did.

Q. Why?

A. I went out, I received a call from my co-defendant Shakime. He was incarcerated, he was in the county jail, and he asked me for some bond money.

13:44:49 At that time I didn't have the money. I had my rent money, but I didn't have what he was asking for. He wanted a thousand dollars. I wound up telling him I can give him about 500, and he promised me that he would double the money for me. He promised that he would pay my way

13:45:12 there and back.

He said I could come out here, "Just come out here for a couple days; I'll flip your money for you." And, you know, I agreed to it, so I wired him the money and he picked me up.

13:45:26 Q. Did you do anything else while you were out here to see Shakime?

A. I can't hear you.

Q. Did you do anything else while you were in Lorain, Ohio that first trip in relation to your music?

13:45:40 A. I was trying to check out the music scene out here as well.

Q. Okay.

A. Yeah.

Q. And for the record, you mentioned Shakime.

13:45:48 What is his name?

A. His name is John Edwards.

Q. Okay. So when you made your first trip to Lorain in the summer of 1991 was your purpose to sell drugs?

A. No. Absolutely not.

13:45:58 Q. Did you ever transport drugs to Lorain, Ohio?

A. Thereafter.

Q. Did you ever sell drugs in Lorain, Ohio?

A. Yes.

Q. So if you didn't come out here to sell drugs

13:46:14 initially, why did you get involved with selling drugs?

A. I saw how fast the money was being made, and because we kept going broke trying to get this music thing off the ground, when I saw how much money was being made, you know, lightbulb went off and I saw that, I took that opportunity

13:46:39 and said this is -- this is how I'm going to get my music money.

Q. Did you intend to sell drugs long-term, or was that a short-term thing?

A. No. No.

13:46:49 Q. Were you ever charged with selling drugs in Lorain, Ohio?

A. No.

Q. Were you ever charged with selling drugs anywhere else?

13:46:56 A. Thereafter, years later.

Q. Was that part of the drug conspiracy charge in Virginia?

A. Yes.

Q. And what year was that?

13:47:04 A. That was in 1995.

Q. And what happened?

A. I was acquitted at trial.

Q. Have you ever been involved in stealing cars?

A. Yes.

13:47:17 Q. Were you on probation during the summer of 1991?

A. Yes.

Q. Do you know Ayasha Teague?

A. Yes.

Q. And how did you know Ayasha Teague?

13:47:29 A. She lived upstairs in the townhouse apartments that we lived in, her, her brother and her mom. And we moved downstairs, Tanya and I, to a ground level apartment.

Q. Okay. So for clarification, when you say "we," you mean Tanya Hawkins?

13:47:47 A. Tanya.

Q. Your girlfriend in New York?

A. Yes.

Q. Okay. Describe your relationship with Ayasha Teague.

A. She was like a little sister to me. I mean, she would

13:47:59 come clean our house. I would, you know, give her a few

bucks.

We were the only blacks in the neighborhood there. I mean, she was there already, so being as though we were a young couple, she kind of took to us, you know, looked at us as mentors or, you know, just --

Q. Do you know how old she was at the time?

A. She was probably around 15, 16.

Q. So she was a few years younger than you?

A. Yeah.

Q. Okay. During the summer of 1991 --

THE COURT: Just a second.

(Pause).

THE COURT: Cell phones out the door, please.

MS. BERGERON: May I continue now? Is it all right if I go ahead?

THE COURT: Please do. Go ahead.

I wasn't throwing you out.

MS. BERGERON: Good, because I wasn't planning to go.

BY MS. BERGERON:

Q. Are you aware that Ayasha Teague kept a calendar in 1991?

A. No, I wasn't.

Q. Do you know now that she did?

A. I do now.

Q. Did you ever write in Ayasha Teague's calendar?
A. No.
Q. Did you ever ask her to write anything in her calendar?
13:49:21 A. Absolutely not.
Q. Are you aware that there's three witnesses in this case today -- David Donaphin, Ian Davis, and Ayasha Teague -- who have already provided testimony via videotape for today's hearing?
13:49:36 A. Yes. From you and Alana.
Q. Have you had the opportunity to watch any of those videos?
A. No.
Q. Have you had the opportunity to read any of those
13:49:45 transcripts?
A. No.
Q. All right. Let's talk more about cars.
Did you own any cars during the summer of 1991?
13:49:56 A. Yes, I did.
Q. What kind?
A. A BMW.
Q. Can you describe the car, please?
A. It was black, it had chrome rims, it was -- it was
13:50:08 nice-looking. Nice-looking black BMW.

Q. Did you steal that BMW?

A. No, I didn't.

Q. Where did you buy it?

A. I bought it from a gentleman who had a body shop. He would buy salvaged cars, fix them up and sell them, and I seen him, you know, with that car at the shop. I had my eyes on it and I wanted it.

THE COURT: What year was it?

THE WITNESS: This was '91.

THE COURT: It was a new car?

THE WITNESS: No. It was probably two years old then.

BY MS. BERGERON:

Q. As far as you know when you purchased it from George at the body shop, was the BMW a stolen car?

A. No.

Q. Did you ever have a title to the car?

A. I never did. He did. He had the title. He kept the title.

Q. And why was that?

A. When I finally gave him the last payment for the car, I was just so eager to drive the car, I didn't care. He had it registered, insured, and I just figured, you know, I'll just drive it, just drive it around until I was ready to get the paperwork.

Q. Did you pay for it all at once?
A. No, I gave it to him in increments.
Q. Okay. Did you eventually pay it off?
A. Yes, I did.
13:51:35 Q. Why did you buy the BMW to begin with?
A. For one, it was something that I really liked. But also since I was trying to do my music thing, it was a great investment. I mean, I knew the price that I bought it for, that when I was ready to sell it, that I can make at least
13:52:01 twelve to $13,000 profit from it.
So and it was just an investment.
THE COURT: How much did you pay for it?
THE WITNESS: I paid $30,000 for the car.
Q. Did you eventually sell the car?
13:52:15 A. Yes. Back to him.
Q. Back to George?
A. Yeah.
Q. Okay. So were you proud of the BMW? Sounds like a nice car.
13:52:26 A. I was. I was. Yeah.
Q. Where did you keep the car parked when you weren't driving it around town?
A. I kept it in my driveway or in the garage.
Q. And when you say "driveway or garage," where was the
13:52:38 driveway or garage?

A. In Bayside, at my apartment in Bayside.
Q. Okay. So is it fair to say you didn't usually park it on Mangin Avenue where your father lived?
A. No, I wouldn't. I wouldn't park it over -- I wouldn't park it in front of his house.
When I went around there I would park it up the street or next door or something like that. I didn't want to park it in front of his house, be that arrogant, you know, in front of my dad.
13:53:08 Q. What do you mean "be that arrogant"? What do you mean by that?
A. He had a sense of what I had gotten into, and I just -- I didn't want to put it in his face like that.
Q. And by what you had gotten into, do you mean the 13:53:31 stealing cars and the selling drugs?
A. Yeah.
Q. And you didn't want him to find out?
A. No.
Q. Okay.
13:53:37 A. But he had been hearing, though. He had heard.
Q. Did you testify about this BMW at your trial?
A. No.
Q. Why not?
A. Because I knew to say I had a car like that would be 13:53:52 to infer that I was selling drugs, and I knew what was

involved, the case was predicated on drug dealing, I think they said a drug deal gone bad or whatever, and I had just come from a federal trial.

So I just didn't want to do that.

13:54:18 Q. And the federal trial was the trial you mentioned earlier where you were acquitted?

A. Yes.

Q. Let's talk some more about your travels to Lorain, Ohio.

13:54:27 How many times during the summer of 1991 did you go to Lorain, Ohio?

A. Four or five times.

Q. While you were in Lorain, Ohio, did you ever meet William Avery, Jr.?

13:54:39 A. Yes, I did.

Q. And how did you come to meet William Avery, Jr.?

A. The first thing I came to Lorain, John Edwards who was Shakime, he took me out on the strip where they were, where everything was going on. And about five minutes after that, 13:54:58 some officers came, everybody left the scene. They apprehended John, John Edwards, and arrested him.

John gave me what he had had to hold while he was doing his thing in the street. So I left. I didn't know where I was. I put what I had in a bush.

13:55:18 I wound up meeting a guy, and he took me

driving around. I sensed he was from New York, this guy. He had a little goatee, just like a fashion statement from New York, and he was.

I struck up a conversation. He wound up driving me around. He knew Shakime. We were playing a little music, doing a little rapping, and his pager was going off, and he wound up saying he had some things to take care of, "I'm going to drop you off somewhere," and the place he dropped me off was right in the vicinity of where I just left, right there in the projects.

And the place he took me to was William Avery, Jr.'s house.

Q. Okay. Did William Avery, Jr. ever owe you any money?

A. Yes, he did.

Q. About how much?

A. About $1,300, from what I recall.

I hear these amounts being thrown around over the years, 3,000, 5,000. I remember $1,300.

Q. Okay. And what did he owe you the money for?

A. For -- for drugs I had.

Q. Did you ever try to collect that money from him?

A. Yeah. I would ask him. I would ask him, you know.

Q. You would ask him?

A. Yes.

THE COURT: I'm unclear. Why were you taken

to this house?

THE WITNESS: Because he said he was going to come back and pick me up, and that was just like a drop off. It was like "This is my friend; stay here and I'll be back."

13:56:50 Q. When you were trying to collect money from Avery, did you ever ask him to beat up Marsha Blakely?

A. No.

Q. Did you ever do anything to try to collect your money from Avery other than just ask him for the money?

13:57:03 A. No. I had heard he -- everybody in Lorain was telling me this guy was an informant. So --

THE COURT: What guy?

THE WITNESS: Avery, William Avery.

A. So I was just -- I was glad that he owed me the money

13:57:17 so that was a way I could keep him away from me, you know, keep things without being antagonistic, you know.

Q. What do you mean? You figured he wouldn't come looking for you because he knew he owed you money?

A. Right.

13:57:33 Q. At the time did you have a girlfriend in Lorain?

A. Yes.

Q. And what was her name?

A. Angela Horinek.

Q. And where did Angela work?

13:57:42 A. She worked at the Crazy Horse Saloon in Cleveland.

Q. When Angela wanted to speak to you, how did she typically get ahold of you?

A. She would page me.

Q. If I remember pagers from back then, how did you know the pages were coming from Angela as opposed to someone else?

13:58:00

A. The number she would call me from, she would use the code 777.

Q. Did she page you while she was in Cleveland?

13:58:12

A. Yes, I would pick her up from work.

Q. And you would know the page was from Angela due to the special code at the end of her page?

A. Yes.

Q. And then how would you know what number to call to reach her back?

13:58:23

A. From the code.

Q. Okay. Those were the days when the pagers sort of just put the number in and then you just called it back, right?

13:58:32

A. Yes.

Q. Okay. Do you recall any numbers that you called to reach her?

A. I do not.

Q. Did you ever stay with Angela when you were in Lorain?

13:58:42

A. I didn't live with her, but I may have stayed

overnight, but I didn't live with her at all.

Q. Did Angela ever come to New York with you?

A. No.

Q. Did you have any other girlfriends in Lorain during the summer of 1991?

13:58:55

A. I did.

Q. And who were they?

A. Fontella Mays and Yolanda Johnson.

Q. Other than Angela Horinek in Cleveland, did you know anyone else in Cleveland during the summer of 1991?

13:59:12

A. No.

Q. Did anyone in your group of friends from New York know anyone in Cleveland, to your knowledge?

MS. FOSNAUGHT: Objection. Calls for speculation.

13:59:22

THE COURT: I'm not sure where this is going.

You're asking whether he knew what his friends knew?

I'd rephrase the question.

BY MS. BERGERON:

13:59:45

Q. To your knowledge, did any of your friends from New York ever call anyone in Cleveland?

A. No.

Q. All right. Let's turn back to New York.

Growing up, did you know Ian Davis?

13:59:56

A. Yes.

Q. And how did you know him?

A. He lived next door. I could see right down to his side door where everybody would go into his house, into his basement. I could look right out my room.

Q. And this is the house where your father still lived?

A. Yes. I'm sorry.

Q. Did you also know Benson Davis?

A. Yes.

Q. How would you describe your relationship with the Davis family?

A. They were -- we were all like family, really.

I mean, I would just walk in their house, you know. They were Jamaican, so I would go get food from the pot sometimes and --

Q. Okay.

A. It was close.

Q. What did the Davises call you as far as a name?

A. Freddie.

Q. Freddie?

A. Yeah.

Q. Was Ian Davis living in the Davis house during August of 1991?

A. Yes, he was.

Q. Did he have a phone in his basement?

A. Yes, he did.
Q. Did you ever use Ian Davis's phone?
A. Yes, I did.
Q. Did you use Ian Davis's phone on August 8th, 1991?
14:01:06 A. Yes, I did.
Q. Okay. Can we pull up Petitioner's Exhibit 10, please?
Who did you call on August 8th, 1991?
A. I called Angela.
Q. Okay. Can I bring up an exhibit? I'm handing you
14:02:26 Petitioner's Exhibit 10.
MS. BERGERON: You have a copy?
MS. FOSNAUGHT: Um-hmm.
MS. BERGERON: It's the phone bill.
MS. FOSNAUGHT: Right.
14:02:37 Q. Do you recognize this document?
A. Yes, I do.
Q. What is it?
A. It's Ian Davis's phone bill.
Q. When was the first time you ever saw this bill?
14:02:44 A. In late 2011.
Q. Who showed it to you?
A. Benson did.
Q. All right. Would you please look down at number 14
which shows a call to Cleveland, Ohio?
14:03:01 A. Um-hmm.

Q. At 216-299-1490 at 12:16 a.m. for six minutes?

A. Yeah.

Q. Do you recognize that number?

A. I don't recognize the number, but I know I made this call here.

Q. If you don't recognize the number, how do you know you made that call?

A. Yeah. When I was outside, Angela had been paging me for maybe two hours that evening. I didn't return any of her calls because I never wanted anyone to know when I was coming or going.

But she started paging me 9-1-1, so and I looked at the number and it wasn't a normal Lorain number like the normal Lorain numbers was 216, 282, 960, 244, but when I seen this number here I knew she was somewhere else.

So I assumed she was at work. I said, well, okay, it's safe for me to call her. So I went inside the house and I made the call and I spoke to her and I was like "What's the emergency? You know, what's going on?"

And she was just "I just wanted to -- just wanted to speak with you." And I remember being upset with her about that like "Why did you put 9-1-1?"

And she was like, "I just wanted to speak with you, I want to know when you're coming back," and I told her I'd be back later on this week.

Q. Did you testify at your trial about making this call?
A. No, I didn't.
Q. At the time of your trial did you remember making this call?
14:04:39 A. No.
Q. So is it fair to say that seeing the phone bill refreshed your recollection about the phone call?
A. That's what happened. When Benson got that phone bill, okay, when Benson got the phone bill, he came to my
14:04:56 dorm. I was in there painting. He was like "Come on outside."

I was like "Man, I'm not coming out there. Come inside."

So he came inside and showed me this paperwork
14:05:05 and he showed me this phone bill. And for years Benson had been telling me "You made a call. Man, you made a call that night." But I blew it off.

In my mind I'm saying I never call Lorain because I had it as a rule not to call Lorain, but he never
14:05:21 told me about this call. So when I seen it and I looked at the bill and I looked at the number, it dawned on me I made a call that night.

That was the one time I made the call because I figured she was at work and it was safe to call her, so I
14:05:36 made -- I made that call.

THE COURT: So the first time you saw this bill was when Benson showed it to you sometime in 1991?

THE WITNESS: No, I didn't see this bill until 2011.

14:05:51 THE COURT: Sorry, 2011.

THE WITNESS: Yes.

THE COURT: Yes. And that's when Benson brought you a copy.

THE WITNESS: Yes.

14:05:57 THE COURT: Just like this.

THE WITNESS: Just like this.

THE COURT: Did he bring you the whole bill or just one page?

THE WITNESS: Just one page.

14:06:04 THE COURT: Just one page.

THE WITNESS: He had it attached -- it was attached to some type of motion, extradition hearing.

THE COURT: For his case?

THE WITNESS: For his case.

14:06:13 THE COURT: And given what you've told me then, the number that appears on line 14 would be the phone number of where your girlfriend worked in Lorain.

THE WITNESS: Yes.

THE COURT: And where did she work?

14:06:26 THE WITNESS: At the Crazy Horse Saloon in

Cleveland.

THE COURT: Thank you. Didn't mean to interrupt.

You may continue obviously.

14:06:34 BY MS. BERGERON:

Q. Let's talk some more about August 7th and 8th, 1991.

Were you in Lorain at any time on August 7th, 1991?

A. No.

14:06:45 Q. Were you in Lorain at any time on August 8th, 1991?

A. No.

Q. Where were you during the day of August 7th, 1991?

A. I had to see my Probation Officer that day.

Q. And where was your Probation Officer?

14:06:58 A. It was on Sutphin Boulevard in Jamaica, New York.

Q. Are you certain that it was August 7th?

A. Positive.

Q. And how do you know? How do you know?

A. More than we -- I remembered the feeling of that day.

14:07:17 It was my last probation visit and I remember, like, this is almost over. It's done.

And I just remember feeling so good, and I really remembered it concrete once I got my probation record.

14:07:34 We weren't able to get my probation record

until after my trial. My lawyer, for some reason she wouldn't get my probation record. And I told her, I told her I was at probation but I wasn't 100 percent sure when I went to trial, but when I saw my probation records I remembered the day for sure. It was August the 7th.

Q. What time did you meet with your Probation Officer that morning?

A. It was sometime in the afternoon.

Q. What did you do during the evening of August 7th, 1991?

A. I went to the Davis home. He had been calling me as well. Like I say, he had been wanting to come back to Ohio. He was trying to make it back to Ohio for the first, as he always says.

But I wasn't ready yet, but he was ready to go, so I came around and we was listening to some music in my car, playing some of my music from my tape. Bunch of guys sitting around my car, we was just sitting there kicking it.

Q. And when you say your car, which car?

A. BMW.

Q. What time in the evening were you there?

A. It was around 10:30, 11:00 o'clock.

Q. And how do you know it was that time?

A. I knew this, I knew it was late because I did a mural

on a store that you can see right from where we stand in my street. The man maybe five years prior to that, he paid me to do a mural on his gate that said "Thank you."

And when that gate goes down, the light goes 14:09:15 off, you know it's late.

So I mean, I always look at that mural. I mean, I'm standing around, nobody else is paying attention to it, but because I did it, I'm always looking at that store down the block. It was right on our street.

14:09:29 Q. So was the light off at that point?

A. Yes.

Q. So it was dark out?

A. It was dark.

Q. And this was at the Davis house?

14:09:38 A. Yes, where I parked my car, right at his house. I didn't want to park it right in front of my house. Walked it right down.

Q. Who did you see outside the Davis house on the evening of August 7th, 1991?

14:09:53 A. It was a few guys. It was a guy named -- who was -- he played football. He was older. He would come to my games, I would go to his games, his name was Darren.

This guy named Youssef.

It was several other guys, but that is a 14:10:11 little foggy who was around.

Q. Did you ever go inside the house?

A. Yes, I did.

Q. Who did you see inside the house?

A. I seen Benson. He opened the door for me, he let me in.

He had his girlfriend downstairs. And I remember his girlfriend being with somebody else and she knew I knew she was with somebody else, so I remember looking at her and she looking at me like (indicating), and I just kept going. I went where Ian keeps his phone and I went and made the call to Angela.

Q. Did you see Ian Davis?

A. I didn't see Ian Davis.

Q. At some point that evening did you see David Donaphin?

A. Yes, I did. When I came out the house he was already there. As a matter of fact, he was in the passenger seat of my car with my car door open playing with my radio, so as I'm walking up my driveway I'm looking like "Who's in my car."

Q. Did you see Mr. Donaphin before or after you made the phone call to Angela?

A. After.

Q. Was Mr. Donaphin with anyone else?

A. Yeah, he was with a guy named Mark Callahan. They grew up together. They lived a few blocks away.

Q. Did you see Mr. Donaphin leave?

A. Yes.

Q. Who did he leave with?

A. I believe he left with Mark.

14:11:40 Q. At the time of your trial did you tell your attorney about seeing David Donaphin?

A. Yes, I did.

Q. To your knowledge, did your trial attorney ever contact David Donaphin?

14:11:49 A. No, because I didn't have anything -- I knew I had just seen him that week. I didn't know this day that this happened that night. I just knew I seen him during that week that was back in New York, but I told her to get the investigator to investigate it, you know, go check with him

14:12:07 and several others, many of whom she never went and talked to, or my investigator.

Q. Did your investigator ever go to New York?

A. No. I don't think he ever left Lorain.

Q. Did you testify at your trial about seeing David

14:12:28 Donaphin on the night of August 7th --

A. No, I didn't.

Q. -- 1991?

And why not?

A. Because like I said, I didn't -- I didn't know I seen

14:12:36 him on that -- that particular night. It wasn't until years

later when I tracked him down, I was trying to get his number. I didn't even know his real name. I thought his name was David Green.

So I think I finally got in touch with Mark because I knew where his house was and I got his number, but he wouldn't give me David's number. That's how most people are when you search them down and they're incarcerated.

So he told me that he would let David know. And I told him why I was looking for David, you know, just to recall anything, maybe if we went to a store, if we were someplace shopping and we were on a videotape. I was just searching.

And when he finally gave me the number to David when I called him, he said he knew everything. And I was like, "Well, how do you -- what do you mean; how do you know -- how do you know I was in New York?"

And that's when he revealed to me, he said "It was my birthday," and he had just came from a birthday party that his girlfriend had given him.

I said "Why you never told me this, man. Why -- you know."

He said he didn't know what day it was or he didn't know the details about the case at that point.

And at that point I told him, "Man, my investigator, he's going to come see you, you know, and we

got some students on the case at the time and they will be to see you and talk to them."

And he tried to encourage me spiritually, you know, like, you know, "You got to get your life right" and things like that.

14:14:11

And I forwarded to Paul and Northwestern University students.

Q. So when you say your investigator talked to him, do you mean your investigator at trial or do you mean someone else?

14:14:27

A. Someone else.

Q. Someone you hired after the trial?

A. Yeah.

I don't think my investigator at trial investigated one person. This --

14:14:36

Q. I just have a few more questions for you.

You've been incarcerated for almost 20 years for a crime that you've maintained you did not commit.

Do you have a disciplinary history?

14:14:55

A. No. I had -- I had one fight.

Q. And when was that?

A. That was in 2002, I believe. I was just transferred from one institution where there were cells where I had been for six or seven years to a different setting, dormitory-type setting.

14:15:16

Q. There are some people here in the gallery today.
Do you recognize any of them?
MS. FOSNAUGHT: Objection. Relevance.
A. Yes. Everybody, pretty much.
14:15:27 Q. Have you been --
THE COURT: As long as you don't go any further.
MS. BERGERON: That was the only question on that.
14:15:32 BY MS. BERGERON:
Q. Have you been up for parole?
A. Yes, in 2009.
Q. Did you maintain your innocence at the parole hearing?
A. Absolutely.
14:15:50 Q. Would you be willing to admit guilt if it meant you could be paroled?
A. No.
Q. Why not?
A. Because I'm not guilty. I didn't do these crimes.
14:16:21 THE COURT: Cross-exam.
CROSS-EXAMINATION OF ALFRED CLEVELAND
BY MS. FOSNAUGHT:
Q. Mr. Cleveland, you mentioned you came to Lorain, Ohio because Shakime needed bond money.
14:16:32 When was this?

A. This was May; April, May of 1991.
Q. Did you testify to that during your trial?
A. No, I didn't.
Q. Okay. At your trial did you testify that the first
14:16:49 time you came to Ohio was because of a Run-DMC concert?
A. Yes, I did.
Q. You mentioned before that you didn't testify about
David Donaphin because you didn't know his name, is that
correct?
14:17:13 A. I didn't know the exact date that we met that night.
Q. All right. At your trial you testified you came to
Lorain because of Shakime?
A. Yes.
Q. Is that correct?
14:17:33 A. Yeah.
Q. And you stayed a couple days?
A. Maybe a week.
Q. Eventually you left. And at trial you state you came
back a couple weeks later, about July 4th, is that correct?
14:18:11 A. I don't know. I was back and forth.
Q. Okay. And you mentioned your girlfriends, and you
testified about Yolanda and Fontella at trial.
Did you ever mention Angela?
A. No, I didn't. No, I didn't.
14:18:40 Q. Okay. You discussed your BMW, and you never mentioned

that during your trial.

You mentioned a Jetta?

A. Yeah.

Q. And a Nissan?

14:18:55 A. Yeah.

Q. And Tanya's or Tanya's Mitsubishi Eclipse?

A. Yes.

Q. And you left out the BMW?

A. I did.

14:19:05 Q. And you state you purposely did not testify about the BMW, is that correct?

A. That is correct. I was trying to downplay my activities at that time. I wasn't trying to be --

Q. So when they asked you about your cars, you knowingly

14:19:18 omitted that information?

A. Yes.

Q. And your girlfriend testified at your trial, correct, Tanya, Tanya?

A. I believe so.

14:19:31 Q. And she never mentioned the BMW either?

A. I don't know if she was asked. I don't remember.

Q. You were present during your trial, right?

A. Yes.

Q. Okay. And she testified, and you were there in the

14:19:42 courtroom?

A. I was.

Q. And do you recall her testifying about a BMW?

A. I don't remember much of her testimony at all, but I don't believe that she did.

14:19:51 Q. Okay. And your mom testified at your trial?

A. Yes.

Q. And she referred to the cars you had as well.

Did she mention a BMW?

A. I don't recall, and I don't believe she did either.

14:20:09 Q. At your trial you testified you borrowed Fontella's brother's car to go to New York?

A. Yes, I did.

Q. At the end of July?

A. Yes, I absolutely did.

14:20:17 Q. Okay. And then you testified you wanted to get back for a talent show over the weekend in Lorain on July 26th through 28th, somewhere in there?

A. I don't know.

Q. You don't know.

14:20:30 Would looking at your trial testimony refresh your recollection?

A. That wasn't true. That wasn't true.

Q. It wasn't true?

A. No.

14:20:37 Q. Okay. And you testified about winning a talent show.

That wasn't true either?
A. No.
Q. In your trial testimony you testified you brought Tanya's car to Lorain, Ohio?
14:20:56 A. I did.
Q. And then you drove it back to New York on August 5th?
A. I'm not sure of the dates or times concerning when I drove that car.
Q. Would looking at your trial transcript refresh your
14:21:09 recollection, or is that also not true?
A. Explain the question to me again, please.
Q. If I showed you your transcript, would that help you remember?
A. I can just -- I can just tell you. I don't -- I can
14:21:23 just tell you about the car.
Q. Okay. Did you drive Tanya's car to New York on August 5th?
A. I'm not -- I don't believe it was August 5th.
Q. Okay. And if you testified to that during your trial,
14:21:32 it would be a lie; you misremembered?
A. It would be a lie.
Q. Okay. In your trial testimony you testified -- well, today you testified sometime in the afternoon you met with your Probation Officer, is that right?
14:21:48 A. I absolutely did.

Q. Okay. In your trial testimony, at one point you mentioned 10:00 a.m.; at another point you mentioned noon.

Would you agree that your testimony at trial would be more accurate than your testimony today, or do you have a different statement?

14:22:06

MR. CALABRESE: Your Honor, the State has presented documentary evidence on this fact at trial.

The record speaks for itself.

THE WITNESS: Judge, we tried to get those log records from the Probation Officer because I --

14:22:18

THE COURT: Hold on.

THE WITNESS: Okay.

THE COURT: Well, I'll allow him to answer the question that was posed which was: "In your trial testimony at one point you mentioned 10:00 a.m.; at another point you mentioned noon.

14:22:34

"Would you agree that your testimony at trial would be more accurate than your testimony today, or do you have a different explanation or statement?"

14:22:50

THE WITNESS: I said noon then. I'm saying noon now.

BY MS. FOSNAUGHT:

Q. I thought you said afternoon, now.

A. I mean, what's the difference?

14:22:59

Q. Okay. In your trial testimony you testified you went

back to Lorain, Ohio on the 10th and you brought Madison Banks' car home?

A. Yes, I did.

Q. And you came back with Lenworth Edwards and John Austin Edwards?

14:23:25

A. I came to Ohio with John Edwards and Lenworth Edwards, yes, I did.

Q. Are you aware that David Donaphin said that you asked him to go to Lorain, Ohio?

14:23:38

A. I did.

Q. On or about August 11th?

A. Yes, I absolutely did.

Q. Even though you were making the trip --

A. Yes.

14:23:46

Q. -- you asked him to go as well?

A. Yes.

Q. And you've used different names in the past; not just Alfred Cleveland or Al Monday or Freddie, is that correct?

A. Yes.

14:24:00

Q. You've used the names Edward Harris --

A. Yes.

Q. -- and Jeremiah Russell?

A. Yes.

Q. And you've used other Social Security numbers other than your own?

14:24:08

A. Yes.

Q. And other dates of birth?

A. Perhaps.

Q. Other addresses?

14:24:16 A. Perhaps.

Q. If you testified about that at your trial, would that be accurate?

A. Yes.

Q. In your trial testimony you testified you were

14:24:35 arrested with John Austin Edwards in Florida for a stolen car, is that correct?

A. Something to that effect, yeah.

The guy whose car we was in, it was his girlfriend's car and she reported it stolen.

14:24:49 Q. In your trial testimony, you testified that you were not a professional car thief.

Do you agree with that statement?

A. I used to steal cars. I mean, you could call it I probably was a professional car thief. I was. I was into

14:25:05 stealing cars, absolutely.

Q. And if Donaphin testified that you stole what the customer ordered, would that be truthful?

A. If he phrases it like that, it's true.

Q. In your trial testimony, you testified that you didn't

14:25:26 see Ian Davis the night of the murder, is that correct?

A. Yes.

Q. And you testified you did not see Lenworth Edwards the night of the murder?

A. No, I didn't.

14:25:35 Q. So you didn't see Ian Davis?

A. I didn't see either one of them.

Q. Or Lenworth Edwards?

A. No.

Q. And that you were not with them and they were not in

14:25:48 your sight on the night Marsha Blakely was murdered, is that correct?

A. That is correct.

Q. Do you have any evidence of buying the BMW?

A. No, I didn't. When this, when the police raided my

14:26:19 house, I knew I couldn't drive it around any longer so I brought it back to the guy and was just thankful that he would accept the car back and gave me my money back.

Q. You testified regarding your trip and getting dropped off by someone at around Avery's house.

14:26:41 Did you meet Avery at that event?

A. Yes, I did. Yes, I did.

Q. When was this?

A. This was my first time, my first day in Ohio.

Q. In April or May?

14:26:50 A. Sometime around there, yes.

Q. Of '91?
A. Yes.
Q. And you did not know the person that you got in the car with?
14:27:02 A. Yeah, it was Brian Daniels.
Q. How did you know it was Avery's house?
A. Him, his girlfriend, his son, they were in the house. His girlfriend was cooking. It was --
Q. And you went in the house?
14:27:20 A. I went in the house. I sat in the house. I took a nap in the house.
Q. Did you admit at trial to selling drugs?
A. No, I didn't.
Q. You testified you obtained the phone bill in October
14:27:40 or late 1990 -- late 2011, sorry.
Did you ever make that phone bill a part of your State or federal record?
A. No, I didn't. I just found out in 2011.
Q. And you never filed it?
14:27:56 A. No.
Q. The first time it was filed with this Court was in the witness list for this hearing, is that correct?
A. I believe so.
Q. So you've had it for over a year and a half?
14:28:11 A. I -- I got the phone bill, I know I had to find

Angela, I went through a whole process, I contacted the Lorain library trying to get her address. They referred me to the Cleveland Public Library to try to get an address.

I contacted my aunt, she went on peoplefinders.com to do a search for her. And I also contacted the library trying to find out what the number was to the Crazy Horse, and they did some type of search. And I sent it to my attorney.

14:28:29

And I knew I had to get some things confirmed before I presented it to her, and I did those things and it took me weeks, and I finally did contact her.

14:28:43

Q. And you've never testified before regarding this phone call to Angela?

A. I didn't know. I didn't remember. When I got the bill, I remembered.

14:29:02

Q. Eighteen years later you remembered?

A. I remembered. I mean, can I explain why? Would you like me to explain why?

Q. I believe they can go into that on redirect.

14:29:13

A. Yes, ma'am.

Q. All right. Your probation information was entered into the record at trial, is that correct?

A. No, it wasn't.

My wife and I, we watched a 60 Minute episode of a wrongful conviction case. My wife contacted the lawyer

14:29:25

that we saw on 60 Minutes. She took a liking to my wife and would like to share with her the story. We needed those probation records.

The lawyer, somehow in New York they still have subpoena power after a trial or at any point. She subpoenaed that stuff from the Judge. When it came back, it was on that very day.

We never had that at trial.

Q. The State never stipulated that you met with your Probation Officer in August?

A. In Rosenbaum's closing arguments he said -- somewhat stipulated to it, which made me believe they had the documents the whole time.

Q. And you never testified regarding the probation information at trial?

A. Yeah, I did.

Q. Okay.

A. But we didn't have the documents to prove it.

Q. You testified regarding having your car parked outside in front of your dad's house --

A. Yes, ma'am.

Q. -- or Ian Davis's house on August 7th of 1991?

A. Yes, ma'am. Yes, ma'am.

Q. I thought you said you didn't ever park your car out in the open because you didn't want to do that to your dad?

A. No, I wouldn't park it in front of his house.
Q. But the next door neighbor's house was okay?
A. Yeah, we would park it a couple houses down sometimes or I just wouldn't park it directly in front of his house.
14:30:53 Q. And you never testified to this during your trial?
A. No, I didn't, ma'am.
Q. You never testified regarding Darren and Youssef being outside of the house?
A. No. I didn't remember the incident until David
14:31:15 brought it back to my recollection.
Q. And you didn't testify regarding your interaction with Benson Davis's girlfriend at your trial?
A. No, I didn't know it was that night.
Q. And you never testified to seeing David Donaphin at
14:31:37 your trial?
A. No.
Q. Well, seeing David Donaphin on August 7th?
A. No.
Q. You never testified to it?
14:31:45 And you remembered all of these events because David Donaphin told you about seeing you that night?
A. When I read his affidavit, I remembered the incident that night, everything that happened that night.
MS. FOSNAUGHT: One moment.
14:32:07 No further questions.

THE COURT: Before you redirect, let me ask a few questions, and I will give both sides an opportunity to follow up on my questions, if they wish.

As I understand it from your testimony, Mr. Cleveland, you went back and forth between New York and Lorain several times during 1991?

THE WITNESS: Yes.

THE COURT: And would you drive each time?

THE WITNESS: The first time I came I flew, but thereafter I would drive.

THE COURT: Drive. Sometimes -- well, same car, different cars?

THE WITNESS: Different cars.

THE COURT: And when you flew, what airline did you fly?

THE WITNESS: It was one of the cheapest airlines, USAir. USAir.

THE COURT: USAir?

THE WITNESS: USAir.

THE COURT: Now, as I understand it, Exhibit 10, which is the telephone bill, came into your possession when it was brought to you by Benson Davis?

THE WITNESS: Yes, it did.

THE COURT: And Benson brought it to you because he received it and was using it as part of his case?

THE WITNESS: Yes.

THE COURT: And how did it come to your belief that one of the phone calls on here was made by you?

THE WITNESS: Okay. Good question.

14:33:51 THE COURT: Thank you. I try to ask good questions.

THE WITNESS: Yeah, I been wanting to explain this.

THE COURT: Yeah.

14:33:57 THE WITNESS: He had been telling me about this phone call I had made for years.

THE COURT: Who had been? Benson?

THE WITNESS: Yeah.

For years during our incarceration.

14:34:07 THE COURT: Because how did he know about the phone call?

THE WITNESS: He remembered the night. His memory is a lot better than mine. He can't speak well for anything, but he remembers a lot.

14:34:17 THE COURT: Was he with you in the basement when you made the phone call?

THE WITNESS: Yeah.

THE COURT: How did he know who you were calling?

14:34:24 THE WITNESS: He didn't know who I was

calling.

THE COURT: He did not know?

THE WITNESS: No.

THE COURT: Okay. All he knew was you made a phone call?

THE WITNESS: Yeah.

THE COURT: How does he know which one of these is the one you made?

THE WITNESS: He doesn't know anybody else outside of Lorain.

THE COURT: "He" being who?

THE WITNESS: Benson.

THE COURT: Okay. And so when he got this, he brought this to you because he believed it reflected a phone call you may have made from New York on the day of the murder?

THE WITNESS: That's right.

THE COURT: Did his brother Ian, the real Ian, did he ask you to -- well, let me ask you this: Did you ever use Ian's phone before?

THE WITNESS: Several times.

THE COURT: Did you get a bill from him for payment?

THE WITNESS: I would give him money from time to time.

THE COURT: You would give him money?

THE WITNESS: I never got a bill. I never got a bill, but he is a very petty individual. I mean, I was glad he wasn't even in the house to make the call because he might have told me no.

14:35:29

So when I just went in the house, I went straight to the phone, made the call.

THE COURT: So he wasn't present when you made that phone call?

14:35:37

THE WITNESS: No.

THE COURT: He wouldn't know it was you that made that phone call?

THE WITNESS: Well, he doesn't know anybody else in Cleveland either.

14:35:43

THE COURT: So the only person in New York among the people that you hang out with, you're the only one that knew anybody in Cleveland?

THE WITNESS: I didn't know anybody in Cleveland. I knew my girlfriend worked in Cleveland because she would give me a car, I would drop her off in Cleveland and pick her up.

14:35:56

THE COURT: I understand that, but I thought you were telling me none of the folks you hung out with in Cleveland -- I'm sorry -- in New York, none of the guys there knew anybody in Cleveland and, therefore, only you

14:36:09

could be making a phone call to Cleveland.

Is that what you're saying?

THE WITNESS: Is that what -- that's exactly what I'm saying, Judge.

14:36:19 This is, it's an act of God. It's an act of God.

THE COURT: Well, actually it's an act of AT&T.

THE WITNESS: But, Judge, may I expound?

14:36:30 THE COURT: I understand what you're saying.

Hold on a second. I don't want to lose my train of thought. You'll have an opportunity to say what you want.

THE WITNESS: Okay.

14:36:40 THE COURT: You testified that you asked David Donaphin to go with you to Lorain on August the 11th.

THE WITNESS: I did.

THE COURT: Why?

THE WITNESS: When Benson came out of the

14:36:54 house, we were all sitting outside in my car, Benson said "Why don't you ask him to drive back?"

THE COURT: And you were driving back to Lorain on August the 11th because?

THE WITNESS: I had -- I had some drugs, Your

14:37:08 Honor.

THE COURT: And what did David Donaphin say to you when you asked him to go back with you to Lorain to do drugs?

THE WITNESS: He agreed.

14:37:15 THE COURT: And did he go with you?

THE WITNESS: He went with Benson. Him and Benson drove back.

THE COURT: So I'm confused. Who went back to Lorain on August the 11th?

14:37:29 THE WITNESS: Benson Davis and David Donaphin.

And later on that night me, Lenworth and John Edwards, we left in another vehicle.

THE COURT: So there's two groups?

THE WITNESS: Two groups.

14:37:40 THE COURT: Driving two different cars?

THE WITNESS: Two different cars.

THE COURT: Thank you very much.

Now, you wanted to explain something and I forget what it was or where you were headed, but go ahead.

14:37:56 THE WITNESS: It was concerning the car.

THE COURT: Um-hmm.

THE WITNESS: As a rule, Judge, I wouldn't call anyone in Lorain from New York, particularly from a residence in New York.

14:38:13 THE COURT: Why not?

THE WITNESS: Because I didn't know anybody in Ohio and I heard they do these things called secret indictments, and I figured if somebody was going to try to set me up and try to build a case up on me, that nobody knew my name, by the time I got busted or whatever I would be gone.

14:38:28

I wasn't planning on staying in Ohio. I was just trying to make money to start my music company. I had a set goal, a set amount I was trying to make.

14:38:43

THE COURT: Yeah, but you had been back and forth a number of times that year and you had a girlfriend in Ohio.

THE WITNESS: But I never told them my name.

THE COURT: Your girlfriend didn't know your name?

14:38:54

THE WITNESS: She didn't know my name.

THE COURT: What did she call you?

THE WITNESS: Mike or, you know, I know I just told them various names. I told them various names, Your Honor.

14:39:17

THE COURT: Which car did you come back with on August 11th?

THE WITNESS: I came back with --

THE COURT: The BMW or another car?

14:39:24

THE WITNESS: No, I never drove the BMW out

here. I drove Fontella's brother's car.

Fontella was one of my girlfriends. She had a brother who had just gotten a green Marquise LTD. I drove it to Lorain and I drove it back.

14:39:41 THE COURT: Thank you.

THE WITNESS: What -- what -- I would make the call, I made the call -- well, when she paged me, I knew that she wasn't anybody from that Lorain area so I said --

THE COURT: Well, you knew from the page who

14:40:01 it was; it was your girlfriend?

THE WITNESS: Right.

THE COURT: Her name was?

THE WITNESS: Angela Horinek.

But I knew she was outside the circle of

14:40:11 friends, people that knew people around the project area. She was set apart. So I knew it was safe to call her.

In my mind I said it's safe to call her from this house instead of going to a pay phone or going somewhere else. I just went right in the house and made the

14:40:25 call. That's how I remembered vividly that I called her.

THE COURT: So you knew it was safe to call her?

THE WITNESS: I knew it was safe to call her.

THE COURT: Then why did you wait so long to

14:40:53 call her back? Why did she have to hit 9-1-1 to call her

back when you knew it was safe to call her?

THE WITNESS: Because I knew I was on my way back, and I didn't want to let anybody know when I was coming back and forth. I didn't want anybody to try to, like, set me up when I was coming back. I just -- that was just a long -- that was just the way I was.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

THE COURT: You may redirect.

14:41:19 MS. BERGERON: Thank you.

REDIRECT EXAMINATION OF ALFRED CLEVELAND

BY MS. BERGERON:

Q. I just have a few more questions.

You don't actually know what number Angela paged you from, is that correct?

A. Right. No, I don't.

Q. You just called the number back that she paged you from?

A. Yes.

Q. How many times have you spoken with David Donaphin since you've been in prison?

A. One time.

Q. When was that?

A. That was back in 2000, 2001 maybe. Whenever that one call was when I found him, that was the last time I spoke

with him.

Q. Have you answered all the questions truthfully today?

A. Yes.

MS. BERGERON: Thank you.

14:42:03 THE COURT: Anything further?

RECROSS-EXAMINATION OF ALFRED CLEVELAND

BY MS. FOSNAUGHT:

Q. Is it true that you were not arrested in Virginia until 1995?

14:42:24 A. Yes.

Q. Okay.

MS. FOSNAUGHT: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you.

14:42:31 THE COURT: Thank you.

(Witness excused).

THE COURT: Any more witnesses?

MR. CALABRESE: No more live witnesses.

As we discussed and indicated, we have the

14:42:47 videotaped testimony, the deposition designations. I will hand them to Your Honor.

THE COURT: Susan can't hand and type at the same time.

MR. CALABRESE: We will submit the Court

14:43:06 reports on Pacer for purposes of the record, and with that,

that concludes our direct evidence.

THE COURT: Thank you.

The State's turn.

MS. FOSNAUGHT: Sorry. We did have some unresolved objections. I didn't know if we needed to deal with them now or not.

14:43:18

MR. CALABRESE: Yes, Your Honor. Just so you're aware -- and we tried to present them in a way that made sense -- there are a handful of objections on the deposition designations.

14:43:31

Again since there's no jury, the remaining objections I believe are the ones for you to rule on, and I believe you have counterdesignations of counsel there as well.

14:43:46

THE COURT: So I will obviously take that up with you at a subsequent maybe even telephone hearing to hear those arguments and issue those rulings.

MS. FOSNAUGHT: Okay.

THE COURT: For today's purpose, we would like to complete any live testimony. And we are now with the State.

14:43:58

Why don't we take a ten minute break at this point? Okay? Just ten minutes, please.

We are in recess.

14:44:07

(Recess taken).

THE COURT: Getting the witness?

MS. WATSON: Yes.

THE COURT: Yes. Thank you.

LESLIE GEORGE,

of lawful age, a witness called by the Respondent, being first duly sworn, was examined and testified as follows:

THE COURT: Thank you. And your name, for the record? And spell it for the court reporter, please.

14:53:57 THE WITNESS: Leslie J. George, L-E-S-L-I-E, G-E-O-R-G-E.

THE COURT: Two first names.

DIRECT EXAMINATION OF LESLIE GEORGE

BY MS. WATSON:

14:54:07 Q. Good afternoon, Mr. George. My name is Stephanie Watson. I'd like to ask you very brief questions starting with where are you employed?

A. I retired from Lorain Police Department. I'm now employed with Amherst Police Department.

14:54:18 I was employed at the time of this action with the Lorain Police Department.

Q. Could you move the microphone closer to you?

A. Okay.

THE COURT: Closer to you; get comfortable.

14:54:35 THE WITNESS: I'm sorry.

MS. WATSON: That's all right.

A. I'm retired from the Lorain Police Department. Had 35 years there. I'm now employed with the City of Amherst, twelve years over there.

14:54:46 Q. And in the summer of 1991, what was your position at Lorain?

A. I was in the traffic division. I was assigned to the traffic division, Lorain Police Department.

Q. Do you recall a police investigation in August of 1991 14:54:59 involving the murder of a Marsha Blakely?

A. Yes, I do.

Q. Do you recall during that same time period another investigation involving an individual named Floyd Epps?

A. Yes.

14:55:12 Q. Can you tell me what was your involvement in investigating the Floyd Epps crime scene, if you recall?

A. Excuse me. August 8th of '91 I was called to the scene of Wallace Avenue, 1600 block, by Officer Rewak and Officer in Charge Reiber, Captain or Sergeant Reiber. They 14:55:35 said there was an auto/pedestrian accident.

Upon my arrival I seen Mr. Epps on the street on the 1600 block of Wallace Lane. A large amount of blood and skull matter and brain matter was all over the street.

Q. And did you come to memorialize that scene in any way?

14:55:55 A. Yes, it was an auto accident. You see the marks, tire

marks in his hair. On the street you could see blood that was down the street from a tire.

Q. And did anyone take crime scene photos of this seen?

A. Yes, every time there's an accident, there's an officer that goes and take photos. That was Officer Kurpely.

Q. Can you spell that?

A. Can I refer --

THE COURT: Of course.

A. K-U-R-P-L-E-Y, Andrew Kurpely.

Q. And what are you referring to there?

A. He's the photographer for the police department, Lorain Police Department.

Q. I'm sorry?

A. The police report that I made, report number 9130574, my accident investigation report, miscellaneous.

Q. Okay. And if you -- there's a book of exhibits there besides you.

Is there a Number 60?

A. Pardon me?

Q. Is there a Number 60, Exhibit Number 60?

A. Yes, there is.

Q. And can you tell me what that is?

A. The same report that I referred to Officer Kurpely. That's my report on the accident.

Q. Okay.
A. Same report.
Q. And that is the report that you created?
A. Yes.
14:57:15 Q. Okay. And can you turn to Exhibit Number 64 in that book, please?
A. Yes.
Q. Can you tell me what that is?
A. That's Mr. Epps on the street, his rather graphic
14:57:34 picture of him. The car ran over his head, his head, skull, crushed, blood all over. Also has brain matter around.
Q. And can you tell me what Exhibit 65 depicts?
A. That's also a picture of Mr. Epps again with a lot of blood, brain fragments, and next to him was a piece of brain
14:57:59 on the street.
Q. And Number 66, please.
A. That's one of the Lorain police officers. Mr. Epps is in the -- you can see Mr. Epps in the background. Also next to him is a large amount of blood, which when his head was
14:58:15 run over and smashed.
Q. I believe Exhibit 67 might be another version of that same photograph.
Is that correct?
A. Yes, it is. Mr. Epps on the ground with a large
14:58:26 amount of blood next to him.

Q. And Exhibit 68 appears to be a different view of the same scene, is that correct?
A. This would be from north-to-south looking from -- it's in the southbound lane, but looking from the north to the 14:58:41 south. Same picture.
Q. And Exhibit 69?
A. Again it's Mr. Epps with a beer can there, blood matter.
Q. Can you identify Exhibit Number 70, please?
14:58:56 A. Number 70, where that large amount of blood was next to Mr. Epps, we were looking for some type of debris which would be left from the car. We found a rubber looked like a sleeve, looked to indicate something like an inner tube sleeve.
14:59:13 Q. And where is this piece of rubber sleeve located again?
A. It's -- it was right to the right of where the massive blood was, about five feet to his right.
Q. And do you recall if there was blood on this piece of 14:59:28 sleeve?
A. Yes, there was blood all over.
Q. Okay. And did you have an occasion to memorialize your discovery of this in your report?
A. Yes. It was turned in. After our report was taken I 14:59:43 seen at the bottom of our report I secured it the best I can

at the scene in a paper bag, and I put it in my car and it was then taken to the Lorain Police Department.

Q. And I don't think you have this Exhibit Number 35. 35?

15:00:02 I'm going to hand you Exhibit 35. Do you recognize that document?

A. I never seen this before, no.

Q. Okay. Does it say on the front -- can you identify what it appears to be?

15:00:16 A. Appears to be the detective bureau homicide investigation which was done by Officer Taliano on the Epps case and Blakely case, and the coroner's -- documentation given to the coroner.

Q. And turning your -- I'm going to have to come up here.

15:00:39 Can you tell me if you're named as an officer, one of the investigating officers?

A. Yes. My name is in here.

Q. Okay. Can you turn your attention to Page 1099?

A. My name is again in this report.

15:00:58 Q. Does this accurately reflect your investigation into this matter memorialized in this report?

A. Yes.

MR. CALABRESE: Your Honor, I'd like the record to reflect that the witness answered in less than ten

15:01:13 seconds, having testified he never reviewed the document

before in his life.

A. It's all highlighted with my name all over it. I just looked at it. The first two lines indicated Officer George investigated the accident, which I did.

15:01:34 Q. And Page 1123, the highlighted portions, does that also accurately reflect your investigation memorialized in this report?

A. Yes.

Q. And on the front page, the Exhibit Number 70, the item

15:01:56 identified there as the rubber sleeve, is that the same piece of evidence as is memorialized on the evidence list on this police report?

A. Yes. One black rubber sleeve, yes.

Q. And what is the item number of that, if you can see?

15:02:13 A. Looks like 1-A or I honestly -- 1-A it looks like to me.

Q. Thank you.

A. Likes like B-1-A, it looks. I can't --

Q. On your exhibit?

15:02:24 A. B-1-A, it looks like to me.

Q. All right. And final question, sir, do the photographs that I've shown to you and you've identified as Exhibit 65 through 70, do they reflect a fair and accurate depiction of the scene that you identified on August 7th or

15:02:44 8th?

A. Yes, very accurate. Very accurate.

MS. WATSON: No further questions. Thank you.

CROSS-EXAMINATION OF LESLIE GEORGE

BY MR. CALABRESE:

15:03:04 Q. Good afternoon, sir.

A. Yes, sir.

Q. My name is Phil Calabrese, counsel for Petitioner Alfred Cleveland in this case.

Now, in the early morning hours of August 8th,

15:03:20 1991, you were not involved in the investigation of Marsha Blakely's murder, true?

A. I took the diagram of it.

Q. You took the diagram of Floyd Epps?

A. Also of hers.

15:03:30 Q. Of hers as well? And that was the extent of your investigation?

A. Correct.

Q. You were not involved in recovering any physical evidence from the Marsha Blakely crime scene?

15:03:43 A. Just from the Epps case.

MR. CALABRESE: LaNesha, could we bring up the report? I believe it's our 60.

Q. And, sir, if we could go to Page 2 of the report, please.

15:04:11 You can feel free to work off of either the

hard copy in front of you or the version on the screen, whichever is easier.

A. I believe that's the same report I have here, I assume.

15:04:21 THE COURT: Yes, you might find it easier to use the hard copy.

A. Yes, I have it, sir. I have it here.

Q. Thank you.

MR. CALABRESE: And if you could just blow up, 15:04:30 LaNesha, cull out the bottom part of that document, the very bottom.

Q. So on the version of this document, your report that I have, there's no signature?

A. Yes, there is.

15:04:47 Q. Well, not on my copy. I'm not saying that there's no signature on the document, and that's what I wanted to --

A. There is a signature on my document.

Q. There's a signature on your document?

A. Yes. It just apparently wasn't copied on the copy 15:04:59 machine, but I can see very clearly my signature on the bottom.

Q. Fair enough. And that's what I want to ask you, is it your practice to sign reports like this back in 1991?

A. That's how I signed my name, yes, on everything.

15:05:11 THE COURT: I want to indicate for the record

that my copy provided in the notebook from counsel has this witness's name at the bottom left, and what is cut off appears to be part of the signature right below the typed name.

MR. CALABRESE: Yeah. That's what I was trying to get at, Your Honor.

BY MR. CALABRESE:

Q. And what I'd like to do just for one moment, if I may, I have one other document with your signature. I don't have the report in front of you.

15:05:32

If we could go to that other document for a moment.

And if we could just blow up the signature from down blow here?

15:05:56

THE COURT: What exhibit is this?

MR. CALABRESE: This is just another report. I just want to --

Q. Sir, is this -- this is a different police report and it has your name on it, L. George?

15:06:09

That's you, right?

A. That's correct. That's not my signature.

Q. That's not your signature?

A. These reports, this report that you're referring to, 12/18/95, was typed by our secretary.

15:06:21

Q. I'm sorry?

A. These are field copies. They're not original. It's a field copy. It's dated 12/18/95.

Q. Now, where it says "Checked by" and there's a signature, that's --

15:06:35 A. That's the one that made it. I can't tell you who that is. I can't read it.

Q. You're testifying that's not your signature?

A. That's not my printing, no.

It's a field copy. It's not going to be my

15:06:46 printing. It's done by the secretaries and okayed by the officer in charge.

Q. Okay. Thank you, sir.

MR. CALABRESE: Take that down.

Can we go back to 60 for a moment?

15:07:02 Q. Now, sir, after you completed your work documenting the Epps crime scene, you turned the evidence from that case over to Detective Taliano, is that true?

A. Yes, sir. That's correct.

Q. And you understood that the rubber sleeve you

15:07:19 mentioned was to be taken to BCI for fingerprinting?

A. Per him, yes, Officer Taliano was going to do that.

Q. Or fingerprinting or other analysis?

A. He was going to work that.

Q. And since you completed that report and turned the

15:07:33 evidence over to Detective Taliano, you were not the

custodian of the rubber sleeve?
A. No, sir.
Q. Or any of the other evidence from the crime scene?
A. No, sir.
15:07:54 Q. And, sir, you were not involved in the investigation of Floyd Epps' apartment, were you?
A. No, sir.
Q. Or in the recovery of forensic evidence from Floyd Epps' apartment?
15:08:05 A. No, sir.
Q. Or in documenting the condition of Floyd Epps' apartment?
A. No, sir.
Q. And Petitioner, Mr. Cleveland, was never prosecuted
15:08:13 for the murder of Floyd Epps, was he?
A. I'm not familiar with the prosecution.
Q. As a matter of fact, he was never even charged with that murder, was he?
A. I don't think anybody was charged with Epps' murder.
15:08:25 MR. CALABRESE: Thank you, Your Honor. I have no further questions.
THE COURT: Thank you.
REDIRECT EXAMINATION OF LESLIE GEORGE
BY MS. WATSON:
15:08:32 Q. Mr. George, what is Exhibit 60, is that an accurate

reflection of your investigation of the hit and skip of Floyd Epps?

A. Sixty?

Q. Um-hmm.

15:08:56 A. That's my report, yes.

Q. And you completed that report; no one else completed it?

A. No one else completed this report, no.

Q. And though your signature may have been cut off by a

15:09:05 copier, you did sign the original of that, correct?

A. I have the copy with my name -- signature on it right here in front of me that I have from the police station.

Q. And that one has not been copied and it has an accurate signature of your signature?

15:09:19 A. Yes.

Q. And no one else's?

A. It's got my signature on the bottom of it.

MS. WATSON: Thank you.

MR. CALABRESE: Nothing further, Your Honor.

15:09:27 THE COURT: You may step down. Thank you.

(Witness excused)

THE COURT: Next witness.

MR. CALABRESE: Your Honor, before Respondent calls the next witness, I'd renew our objections at this

15:09:45 time. This -- well, I believe your next witness is --

MS. FOSNAUGHT: Elizabeth Benzinger.

MR. CALABRESE: We would renew our objection. We stated the bases on the record already.

We believe it's premature. We only received the file yesterday, and as I indicated in chambers, you know, depending on how this evidence plays out, we may well stick by it, so I'm not sure there's any --

THE COURT: Well, let's hear what the witness says, and we'll certainly take up your objection.

15:10:20 MR. CALABRESE: Your Honor, I would also ask to reserve the ability to cross-examine later. I would do a limited cross based on what I can today, but if there's additional evidence later, I'd reserve the right to cross later.

15:10:33 THE COURT: Well, seems to me instead of two crosses, if you want to defer your cross after the direct, you can let me know. I'd rather do one rather than piecemeal.

So I'll allow the State to direct, and if you 15:10:51 wish to defer cross, with everyone's approval, depending upon being able to get together again, we might do it live or we might do it by phone/video if agreeable to counsel to not inconvenience the witness twice.

MR. CALABRESE: Does Respondent intend to call 15:11:09 this witness a second time, depending on further tests? I

know there's further testing contemplated, Your Honor.

THE COURT: Is there further testing contemplated?

MS. FOSNAUGHT: There's no further testing contemplated. We had one test performed, one swab was taken on the DNA and then they did follow-up testing with four swabs, and I gave them the report Friday.

And the letter asked for discovery, and we gave that to them Monday.

So the two reports are in the record in our exhibits.

THE COURT: What are those exhibit numbers, please?

MS. FOSNAUGHT: One report is 99 and the other report is 105.

THE COURT: Okay. So it is not your intent to have a -- this witness return for additional testimony?

MS. FOSNAUGHT: No.

THE COURT: So you'll get your direct today, and I will allow Phil the opportunity to decide, after he hears the direct, whether he wishes to do his cross today or later.

Fair?

MR. CALABRESE: Thank you.

MS. FOSNAUGHT: Do you want to swear her in?

THE COURT: All right. I haven't done that yet.

ELIZABETH BENZINGER,

of lawful age, a witness called by the Respondent, being first duly sworn, was examined and testified as follows:

THE COURT: Thank you.

And your name for the record? And please spell.

15:12:22 THE WITNESS: Elizabeth Benzinger, B-E-N-Z-I-N-G-E-R.

THE COURT: Thank you.

You may inquire.

DIRECT EXAMINATION OF ELIZABETH BENZINGER

15:12:33 BY MS. FOSNAUGHT:

Q. And you are employed where?

A. At the Ohio Bureau of Criminal Investigation.

Q. And what is your current job title?

A. My title is director of research development and

15:12:45 training.

MS. FOSNAUGHT: We asked opposing counsel if they'd stipulate to qualifying her as an expert, and they told us they would.

MR. CALABRESE: Yes, Your Honor.

15:12:53 THE COURT: Thank you very much.

BY MS. FOSNAUGHT:

Q. In preparing for your testimony in this case, what did you review.

A. I reviewed the reports of Dale Laux from September 4th, 1991 and the report of Larry Dehus from 1995.

Q. Just to clarify, Larry Dehus's affidavit is 2005, is that the report you reviewed?

A. Yes.

Q. Okay. Did you also review the DNA reports that were done?

A. Yes, I did.

Q. Okay. I'd direct your attention to Exhibit 61 in the book before you.

A. Yes.

Q. Have you seen that document before?

A. Yes, I have.

Q. And did you review that before your testimony here today?

A. Yes, I did.

Q. In looking at that report, can you say that the blood on the rubber sleeve is a match to Marsha Blakely?

A. I cannot.

Q. Okay. Why not?

A. The testing that is done here, classical serology, is ABO typing, PGM, glyoxylates, these are not -- these are

ways to categorize biological evidence, but they are not as discriminating as the DNA we have now.

Q. Would you be able to say that the two -- well, that the blood from the rubber -- the piece of rubber could be consistent with Marsha Blakely's blood?

15:15:05

A. I would say looking at the numbers that are on the chart, that one could make that assumption.

However, I am not familiar with this body of work. You know, I am not -- I have not seen the original evidence, the original test results, but in looking at the chart, just if I match up numbers, I would say yes.

15:15:27

Q. Okay. And are you familiar with who did do the serology testing?

A. Dale Laux.

Q. Okay. And is he still employed with BCI today?

15:15:45

A. He has retired two years ago.

Q. Can you say based on this report which order the deaths occurred?

A. No, I cannot.

Q. What sort of testing would be able to give you a definitive result?

15:15:58

A. As to the order of the deaths?

Q. No, as to the whether Marsha Blakely's blood was found on the rubber piece.

A. DNA typing.

15:16:12

Q. And was DNA typing done in this case?

A. Yes, it was.

Q. Okay. And are you aware of the results?

A. Yes, I am.

15:16:20 Q. And I'll show you, direct you to Exhibit 99.

Did you see this report prior to your testimony here today?

A. Yes, I did.

Q. And was a DNA test done; is that what this reflects?

15:16:53 A. Yes.

Q. And can you tell from this report what the results of the DNA tests were?

A. The blood removed from the rubber sleeve was -- was found to belong to a male individual, and it did not match the standard of Marsha Blakely.

15:17:12 Q. Okay. And I'll direct your attention to Exhibit 105.

Are you familiar with that exhibit?

A. Yes, I am.

Q. Did you review that prior to your testimony here today?

15:17:44 A. Yes, I did.

Q. And was a DNA test done and memorialized in this report?

A. Yes.

15:17:49 Q. And what were the results of that DNA test?

A. Additional samplings of blood from various places on the rubber sleeve were subject to DNA typing, and again were found to be from a male individual and not similar to the standard of Marsha Blakely.

15:18:10 MS. FOSNAUGHT: Okay.

THE COURT: Same male, or you can't tell?

THE WITNESS: Same male. All of the blood stains taken from the sleeve were from the same male.

MS. FOSNAUGHT: I have no further questions.

15:18:26 THE COURT: Cross?

MR. CALABRESE: One moment, Your Honor.

Just a few questions, briefly.

THE COURT: So you are going to do your cross today?

15:19:35 MR. CALABRESE: Of this witness, yes.

THE COURT: Yes.

CROSS-EXAMINATION OF ELIZABETH BENZINGER

BY MR. CALABRESE:

Q. Good afternoon.

15:19:42 A. Good afternoon.

Q. Counsel for Respondent asked you about results of two DNA tests.

The first one was Exhibit 99 and the second one was Exhibit 105.

15:20:00 A. Yes.

Q. Now, the results from both of those tests indicate on their face that the results are not suitable for CODIS entry, correct?

A. Correct.

15:20:14 Q. And that's because -- well, let me back up.

CODIS is the Combined DNA Index System, right?

A. Correct.

Q. It's a collection of DNA profiles administered by the FBI?

15:20:25 A. That is correct.

Q. And the CODIS database includes data that is uploaded from the State's DNA database?

A. That is correct.

Q. And the State DNA database includes samples, DNA

15:20:38 samples, from individuals convicted of felonies?

A. That's correct.

Q. And in terms of uploading DNA profiles into CODIS or any database for that matter, the CODIS database, the national database has the strictest standards, true?

15:20:57 A. That is true.

Q. So the standards for the State DNA database are less strict?

A. The states have some discretion in what they can upload.

15:21:09 Q. Now, the DNA test results, Exhibit 99, Exhibit 105,

are not suitable for uploading to CODIS and that's because you expect the DNA profile that you found is from the victim, true?

A. Yes.

15:21:24 Q. And the victim being Floyd Epps?

A. Yeah, we can't say that. We don't have a standard for Mr. Epps.

But our knowledge of the case facts is that this car part was found at the scene of an injury, accident.

15:21:45 Q. And the CODIS database does not allow victim DNA profiles to be uploaded?

A. That's correct.

Q. Did you perform or did anyone in your office perform a keyboard search of the national database for a matching

15:22:03 profile?

A. We did not.

Q. Did you perform or did anyone in your office perform a keyboard search of the State database for a matching profile?

15:22:13 A. We did not.

Q. The keyboard search just means that you check the database for the profile you found, either Exhibit 99 or Exhibit 105, and I believe your testimony is they were the same, but you didn't upload the results permanently?

15:22:30 A. We did not upload the results. We did not perform a

keyboard search.

Q. You didn't search the CODIS database and compare the profile you found to the results you had?

A. That's correct.

15:22:43 Q. And you didn't do that with the State database either?

A. No.

MR. CALABRESE: I don't think I have anything further right now.

Thank you.

15:23:08 THE COURT: What would a keyword search have told you?

THE WITNESS: Keyboard search, this is a way to enter in a DNA profile and search it once against the database, but not to keep it -- not to store it in the

15:23:22 database.

And this is an option that the FBI permits for certain profiles that do not meet their requirements for storage at the database.

THE COURT: So did the protocol in this case

15:23:42 suggest or require a keyword search?

THE WITNESS: It -- we are not able to do a keyboard search or upload victim profiles. If we know that something's from the victim, that's not allowable in the database.

15:23:59 THE COURT: As I understand it, based on

Exhibit 99 and 105, you are certain you have blood samples, the various samples that you took are from the same unknown male?

THE WITNESS: That's correct.

15:24:14 THE COURT: And I take it you can differentiate between male and female?

THE WITNESS: Yes.

THE COURT: How certain are you that none of these blood samples were Marsha Blakely?

15:24:24 THE WITNESS: The ones we tested, 100%.

THE COURT: You may inquire.

REDIRECT EXAMINATION OF ELIZABETH BENZINGER

BY MS. FOSNAUGHT:

Q. When you were made aware that the rubber sleeve was to

15:24:48 be sent to BCI, what were you asked to do?

A. Perform DNA testing.

Q. Okay. Against what?

A. Against the Marsha Blakely standard.

Q. Okay. Were you asked to match it against any Floyd

15:25:05 Epps standard?

A. No, we do not have a Floyd Epps standard.

Q. Okay.

MS. FOSNAUGHT: No further questions.

RECROSS-EXAMINATION OF ELIZABETH BENZINGER

BY MR. CALABRESE:

Q. You didn't match it against a Floyd Epps standard, but you also didn't match it against a standard for Alfred Cleveland, did you?

15:25:19

A. We did not.

Q. Or Lenworth Edwards?

A. None of them.

Q. John Edwards?

15:25:26

A. No.

Q. Benson Davis?

A. No.

Q. And these are all individuals who are convicted of felonies in the State of Ohio, true?

15:25:33

A. I don't know.

Q. If they are convicted of -- you're an expert so I'll ask you to assume that.

Their DNA profiles reside in the State database, true?

15:25:46

A. They should, yes.

Q. Don't you think it would be an important fact to know whether there's DNA evidence that's a match within your database?

A. The prohibition of entering victim DNA into the

15:26:06

database is -- is something that we must abide by even, even

if a victim is also in the database for another reason.

The most straightforward way to answer this question would be to obtain a standard from Floyd Epps and make a comparison.

15:26:29 Q. And I guess my question's a little different. I'm sorry if I was unclear.

A. I'm sorry.

Q. Not your fault, ma'am.

My question's a little bit different. You

15:26:41 have the ability, assuming Mr. Cleveland's convicted of a felony in the State of Ohio, his DNA is in the State database, you could have run a keyboard search or compared the profile that you found on Exhibit 99 and Exhibit 105 against Mr. Cleveland's, true?

15:26:57 A. The technology would permit us.

The rules would not.

Q. Okay.

MR. CALABRESE: Thank you.

THE COURT: You may step down. Thank you.

15:27:06 THE WITNESS: Thank you.

(Witness excused)

THE COURT: Next witness.

MR. CALABRESE: Your Honor, I would make the same objection and request of this witness, possibly to

15:27:21 defer cross.

THE COURT: And that's because you haven't received until recently information?

MR. CALABRESE: Correct. Yes. This was the file we received yesterday.

15:27:31 THE COURT: I'll give you the same option I did with the last witness.

MR. CALABRESE: Thank you.

THE COURT: Raise your right hand, please.

STACY VIOLI,

of lawful age, a witness called by the Respondent, being first duly sworn, was examined and testified as follows:

THE COURT: State your name and spell for the court reporter, please.

15:28:19 THE WITNESS: My name is Stacy L. Violi, it's V as in Victor-I-O-L-I.

DIRECT EXAMINATION OF STACY VIOLI

BY MS. FOSNAUGHT:

Q. And where are you employed?

15:28:30 A. I'm employed at the Ohio Bureau of Criminal Identification & Investigation.

Q. And what is your current job title?

A. I'm a forensic scientist in the DNA section.

MS. FOSNAUGHT: And I believe we have the same

15:28:41 stipulation as to her expert qualifications as well.

MR. CALABRESE: Yes, Your Honor.

THE COURT: Thank you.

BY MS. FOSNAUGHT:

Q. What is DNA?

15:28:47 A. DNA stands for deoxyribonucleic acid. It's a long, string-like molecule found inside the nucleus of a cell. You can think of DNA as a blueprint for life.

It's what makes us human, have two eyes, two ears, a nose, et cetera.

15:29:31 The majority of our DNA is the same, but it's that less than one percent that's different that's what makes us unique individuals. And it's unique DNA is what we're interested in for forensic purposes.

Q. And what makes DNA useful for forensic comparisons?

15:29:50 A. DNA's useful for two reasons.

First of all, no two people have the same DNA profile except in the rarest instance of identical twins. And, secondly, the DNA found in a person's body is consistent, so the DNA that's found in a person's blood is

15:30:06 the same DNA profile that's found in their skin cells, in their saliva, et cetera.

So with this knowledge, we can make a comparison between evidence that's left at a crime scene to a known standard from an individual believed to be involved

15:30:22 in the case.

Q. Can you describe how you make a DNA comparison?
A. Well, DNA comparison is a multi-step process.

The first step in the process is called extraction, and we take a small cutting off the fabric or the swab and place it into a tube of some chemicals, and what we are left with is a liquid DNA extract for all the samples.

The next step in the process is that we measure how much DNA is present in the sample. This varies greatly. There could be a lot of DNA sample, there could be very little, or there could be none. So we measure how much DNA is present in the sample.

And the next step in the process is called amplification. You can think of an amplification of the chemical Xeroxing process. It copies certain areas of the DNA over and over and over again so it's readable on instrumentation.

We don't test all the DNA that a person has. That would take years. We only test certain regions that are highly different from person-to-person.

We put these copied pieces of DNA onto an instrument, and that's what gives us the DNA profile.

So after that, I analyze the data and make a comparison if there's a known standard involved.

Q. How do you know that the results of your testing are

reliable?

A. BCI is an accredited laboratory.

We're nationally accredited by the American Society of Crime Lab Directors, Laboratory Foundation Board. This means that we follow certain guidelines set forth on a nationwide level. This includes the use of controls throughout our testing procedure, and all of my work is technically reviewed by another qualified analyst and administratively reviewed by a supervisor.

15:31:56 15:32:15

I'm also proficiency tested twice a year.

Q. Did you conduct the DNA test on samples in this case?

A. Yes, I did.

Q. Did you actually conduct multiple DNA tests?

A. I'm sorry?

15:32:26

Q. Did you actually conduct multiple DNA tests?

A. Yes, there were five samples taken from a rubber sleeve and were compared to a known reference standard that was submitted.

Q. Now, direct your attention to Exhibit 99 in the book.

15:32:49

Did you create a report to memorialize your testing?

A. I did. I created two reports actually.

Q. And is Exhibit 99 one of your reports?

A. Yes. This is an accurate copy of the report with the sticker.

15:33:02

Q. Okay. And directing your attention to Exhibit 105, is this also an accurate copy of one of your reports?

A. Yes, it is.

Q. What results did you obtain from your testing?

15:33:26 A. All five of the swabs that were taken from a rubber sleeve, the samples from the rubber sleeve are from the same unknown male.

Q. Okay. And where did you test on the rubber sleeve?

A. There were five different areas tested. Both sides

15:33:42 were represented.

Q. Okay. And did the test reflect any result as to the known standard for Marsha Blakely?

A. Marsha Blakely is not the source of the DNA on the rubber sleeve.

15:33:55 Q. And is that true of both reports?

A. Yes.

MS. FOSNAUGHT: One moment.

No further questions.

THE COURT: Thank you.

15:34:09 MR. CALABRESE: Your Honor, I believe we'll defer the balance of our cross-examination of this witness per our prior discussions.

THE COURT: What that means is we may have you back to testify. It may be live; it may be by phone. I'll

15:34:26 try not to inconvenience you a second time.

THE WITNESS: Okay.

THE COURT: But you'll find out from counsel if and when that's going to happen.

THE WITNESS: Okay.

15:34:34 THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: You may step down.

(Witness excused).

THE COURT: Yep, it's a good time to stand and

15:35:08 stretch if you want.

(Pause).

RICHARD RESENDEZ,

of lawful age, a witness called by the Respondent, being first duly sworn, was examined

15:36:27 and testified as follows:

THE COURT: Thank you. Your name for the record, and spell it for the court reporter.

THE WITNESS: Richard Resendez, Resendez, R-E-S-E-N-D-E-Z.

15:36:48 DIRECT EXAMINATION OF RICHARD RESENDEZ

BY MS. WATSON:

Q. Good afternoon, Mr. Resendez. My name is Stephanie Watson, and I'd like to ask you a few questions. Thank you for attending today.

15:36:56 Can you tell me where you are employed?

A. Currently I'm employed at Grafton Correctional Institute, Ohio Department of Rehabilitation and Corrections, State of Ohio.

Q. For how long have you been employed?

15:37:06 A. For 13 months.

Q. And where were you employed prior to that?

A. I was at the Lorain County Sheriff's Office for nine years, and I was at the Lorain Police Department for 26 years.

15:37:17 Q. And in the summer of 1991, where were you employed?

A. Lorain Police Department.

Q. And what was your position there?

A. I was a detective, patrolman, sergeant and lieutenant during my career with the police department.

15:37:36 Q. And I'd like to direct your attention to August of 1991.

Do you recall investigations of the deaths of Marsha Blakely and a Floyd Epps?

A. Yes.

15:37:48 Q. Were you an investigating officer in those crimes?

A. Yes.

Q. Do you recognize document Exhibit 35?

A. Yes, I do.

Q. And can you tell me what it is?

15:38:01 A. That is the detective bureau report, the homicide

involving Marsha Blakely and the death of Floyd Epps, by the Lorain Police Department.

Q. And in the middle of the page it lists the officers who were involved in investigating these crimes, is that correct?

A. That's correct.

Q. Is your name there? Is that you, Detective Resendez?

A. Yes, it is, the third line down.

Q. As part of your investigation into these murders, did you visit the crime scenes?

A. Yes.

Q. Did you record the scenes?

A. Yes, I did.

Q. How did you do so?

A. Videotape and still pictures, photographs.

Q. And specifically speaking of the scenes where the bodies were discovered, did you take photographs of the Marsha Blakely crime scene?

A. Marsha Blakely's crime scene, I did, that's correct.

Q. And did you take photographs of the Floyd Epps crime scene?

A. Yes, I did.

Q. And did you take any video of the --

A. Yes. Yes, I did.

Q. Of both crime scenes?

A. I took video of the Marsha Blakely's crime scene. I cannot recall if I took a video of the Floyd Epps crime scene.

Q. Okay. Do you recall when you first visited the Floyd Epps apartment?

A. It would be September 9th would be the first time I was there, and then subsequently on September 18th of 2001 -- 1991, excuse me.

Q. And turning your attention to Exhibit 35, Page -- Bates stamped on the bottom Page 1126, which for the Court is page identification number 4270.

A. I have it.

Q. In that second full paragraph, is it reflected there the date that you just testified to of August 9th, 1991 when you visited the Epps apartment?

A. That's correct. August 9th, 1991 was the first time.

THE COURT: Earlier you said September 9th. You meant August 9th?

THE WITNESS: Okay, I'm sorry. The first time was August 9th, Your Honor, and then subsequently on September 18th.

BY MS. WATSON:

Q. When you visited the crime scene on August 9th, 1991 for the first time, do you recall if you took any photographs of the scene at that time?

A. No, I don't believe I took any photographs at that time.

Q. And turning your attention to the same exhibit, Bates stamped at the bottom Page 1132, for the Court's identification Page ID 4276, the last sentence of the first full paragraph, does -- it states -- when is it stated that you took the photographs of the Epps apartment?

A. That was 1132, ma'am?

Q. 1132, last sentence of the first full paragraph.

A. It indicates that I photographed the interior of the Epps residence on 9/18 of '91, September 18th of 1991.

Q. And what is the item number that these photographs were given in this report?

A. V as in Victor 1 with parentheses, 1 and another parentheses.

Q. Very good. During the course of your investigation into the Marsha Blakely murder, did you have an occasion to witness -- interview witnesses?

A. Yes, I did.

Q. Do you recall an individual named William Avery, Jr.?

A. Yes, I do.

Q. Can you tell me how did he come to your attention?

A. We were contacted by Mr. Avery along with his father William Avery, Sr. and advised that they had pertinent information in regards to the Marsha Blakely homicide.

Q. And did there come occasion, a time where you actually met with Mr. Avery --

A. Yes, there was.

Q. -- Junior? Was that Junior?

15:42:39 A. Yes. Yes, there was a time.

Q. Do you recall the date of that?

A. I believe that was September 11th, 1991.

Q. And turning your attention to the same exhibit, Page Number 1130, which --

15:43:08 THE COURT: Page ID 4274?

MS. WATSON: Yes. Thank you.

Q. And the third paragraph down.

Does this report accurately memorialize your testimony that you met with Mr. William Avery for the first

15:43:27 time, William Avery, Jr., on September 11th, 1991?

A. Yes, it does.

Q. Was September 11th of 1991 the first time that William Avery, Jr. gave you a statement, an eyewitness statement about the Marsha Blakely murder?

15:43:47 A. Yes, it was.

Q. And at the time that you spoke with Mr. William Avery, Jr. on September 11th, had you taken the pictures of the Epps apartment yet?

A. No, I had not.

15:44:00 Q. So did you show Mr. Epps any photographs during his

September 11th interview?

THE COURT: You mean Avery?

MS. WATSON: Yes. Excuse me.

Q. I meant Mr. Avery.

15:44:11 A. No, I did not.

Q. Mr. Avery, Jr.?

A. That's correct.

I did not show any photographs.

Q. Right. Was this September 11th, 1991 interview

15:44:21 recorded?

A. Yes, it was.

Q. In what way?

A. Cassette tape.

Q. And did you have an occasion to speak again with

15:44:38 Mr. William Avery, Jr.?

A. We had continuous dialogue throughout the next days, weeks and months with Mr. Avery.

THE COURT: Junior and Senior, or just Junior?

THE WITNESS: Both, Your Honor.

15:44:54 THE COURT: What was Senior's role?

THE WITNESS: Senior's role was, for lack of a better term, he was the person that would bring Mr. Avery to any locations that we needed to meet with him, whether that be the police station or any outside location.

15:45:11 And he would just sort of come with his son.

I don't know if it was for any type of instruction, but he was just there with his son.

THE COURT: Was Senior present during your discussions with Junior?

15:45:25 THE WITNESS: On sometimes he was.

THE COURT: Did he participate?

THE WITNESS: Not -- not after the initial time, to the best of my recollection.

He indicated that his son did possess

15:45:36 information in regards to the homicide, and after that our conversations strictly tried to be between his son, Junior, and the police department.

BY MS. WATSON:

Q. And did Mr. William Avery, Sr., had he operated as an

15:45:55 informant for the police department previously?

A. Yes, he did.

Q. So you were aware of Mr. William Avery, Sr. prior to September 11th because of his prior arrangement and experience as an informant?

15:46:10 A. Yes.

Q. Is that correct?

A. That's correct.

Q. And you -- I need to go back to the recorded statements.

15:46:17 You spoke several times with William, Jr.,

correct?
A. Correct.
Q. And each of those interviews were recorded?
A. To the best of my knowledge.
15:46:29 MS. WATSON: And just for the sake of the Court, those have been admitted as Petitioner's Exhibits 1, 2 and 3.
Q. Now, do you recall a witness by the name of Delphenia or Diane Guice?
15:46:51 A. I do.
Q. And do you recall how did she come to your attention?
A. She had contacted one of our uniform officers on the weekend, I believe it was a Sunday, and indicated that she wanted this uniformed officer to contact the investigating
15:47:10 detectives, that being Geno Taliano, Sergeant Taliano at that time, and myself.
Q. Was that the first time that you came, that you came -- that Ms. Guice came to your attention?
Let me direct your attention to Exhibit 35,
15:47:31 Bates stamp Page Number 1111, for the Court's identification Page ID number 4255, the final full paragraph going onto the next page.
A. Okay. I have Page 1111.
Q. And the final paragraph, does that refresh your -- and
15:48:00 going onto the next page, does that refresh your

recollection of how you first came to meet with Ms. Guice?
A. Yes, it does.
Q. And do you recall the date? I believe it's memorialized on the following page, 1112, in the center of
15:48:21 the next paragraph, or if the -- well, I'll let you testify.
A. The date, ma'am, was the question?
Q. Yes.
A. August 13th, 1991.
Q. Thank you. And was that interview recorded?
15:48:56 A. Yes, it was.
MS. WATSON: And that for the record of the Court is Exhibit 52.
THE COURT: Do I have the audio?
MS. WATSON: Yes.
15:49:13 THE COURT: Or the written transcript?
MS. WATSON: Both.
THE COURT: Thank you.
BY MS. WATSON:
Q. I believe that you also testified -- at this point in
15:49:26 time on August 13th did you approach Ms. Guice to speak with her, or did she approach you?
A. She approached us at the police department.
Q. On August 13th, or --
A. Initially she approached a uniformed officer to talk
15:49:42 to us.

Q. Okay. And turning your attention to Page 1115 which is for the Court's ID 4259, and this appears to be a memorialization of your interview with Ms. Guice on a particular date.

15:50:06 Can you tell me when that is?

A. Sunday, August 18th, 1991.

Q. And how did you come to interview Ms. Guice on this date?

A. As indicated, she had contacted a uniformed officer, 15:50:22 Officer D. Garcia of the Lorain Police Department, and we were contacted by radio dispatch that she wanted to talk to us.

Q. So you did not approach her in any way to obtain this statement, correct?

15:50:37 A. No, we did not.

Q. And what did she state; what information did Ms. Guice give you on this date, if you recall?

A. To the best of my knowledge, she was concerned that one of the -- due to the Marsha Blakely homicide, that one 15:50:58 of the suspects had used her vehicle and, in fact, had stayed at her house, and that she wanted to pass this information on to us about his activity and her participation in it and let us know what was going on.

Q. Did there come an occasion when she gave you 15:51:20 something?

A. Yes, there was.
Q. And what was that?
A. That was a jean jacket, a bluejean jacket that she had in her possession that she indicated belonged to one of the
15:51:33 participants, a suspected participant Lenworth Edwards. And she turned that over to us.
Q. And how did she come by that jacket?
A. She had it at her residence.
Q. And why did she give it to you?
15:51:46 A. Again after she found out and it was in that particular area of Lorain that this homicide had occurred, that she was concerned that Lenworth Edwards did, in fact, or had been involved in this homicide and that this jacket she felt contained blood on it, and she wanted to turn that
15:52:06 over to us.
Q. Did you in any way threaten her, intimidate her to force you to give you this jacket?
A. No, ma'am.
Q. Did you know that this jacket even existed when you
15:52:16 went to meet with her?
A. No, ma'am.
Q. Who brought this jacket to your attention?
A. Ms. Guice, Ms. Delphenia Guice.
Q. Turning your attention to the first paragraph of
15:52:24 Page 1117.

A. Yes, ma'am.
Q. Does this accurately memorialize Ms. Guice's statements to you of what she told you with regard to her first interview that she had with you?
15:52:43 A. Yes, it does.
Q. And what particularly did she tell you during this time period about that first interview?
Was she alone during that first interview?
A. With us?
15:52:59 Q. Yes, according to what the police report states and your recollection.
A. Yes, she was.
Q. Are you reading Page 1117, the first paragraph?
A. Yes, I am.
15:53:16 Q. Okay. And can you tell me what does that say?
A. We were contacted. Ms. Guice stated to myself and another Lorain Police Officer "When Sergeant Rohner initially contacted her on Friday, August 9th, 1991 at about 8:30 a.m., that Lenworth Edwards was in the upstairs bedroom
15:53:42 hiding from officers following the murder. Guice stated that Lenworth made comments regarding the murder of Blakely, to wit" --
THE COURT: Well, sorry, you don't need to read the document.
15:53:51 Let's ask a question and get an answer.

BY MS. WATSON:

Q. Does -- I may have misconstrued what this means.

What does this mean? Was Ms. Guice alone at the point in time where she spoke with you first in her home, or was Mr. Edwards hiding upstairs from the officers when she spoke with you?

A. I don't recall, ma'am.

I don't believe that I was over the Guice residence at this particular time.

15:54:28 THE COURT: Which time? Friday, August 9th?

THE WITNESS: Correct.

MS. WATSON: Okay.

BY MS. WATSON:

Q. Do you recall providing an affidavit in Mr. Cleveland's post-conviction matter which I have put in front of you as Exhibit 33?

A. Yes, I do have that.

Q. Can you tell me the date on this document?

A. What?

15:55:00 Q. On the back side?

A. The 4th day of August, 2006.

Q. Is that your signature?

A. Yes, it is.

Q. Does this document contain a true and accurate reflection of your sworn testimony?

A. Yes, it does.

Q. And it remains true, your statement today, the items that are in this affidavit?

A. Yes, it does.

15:55:24 Q. Do you ever recall threatening or intimidating Ms. Guice in any way to testify in Lenworth Edwards' case?

A. No, I never did.

Q. Do you recall threatening or intimidating Ms. Guice in any way at any time?

15:55:41 A. No, ma'am.

Q. Do you -- did you ever hear or see anyone else threaten or intimidate Ms. Guice in any way to make any statements in these cases?

A. No, I have not.

15:55:52 Q. Are you aware that she's executed an affidavit stating that Detectives Taliano and Prosecutor Rosenbaum constantly threatened and harassed her to testify at Edward -- Lenworth Edwards' trial?

A. I'm aware of the affidavit, ma'am.

15:56:08 Q. Did you ever see or hear Detective Taliano threaten her or ask her to testify in Lenworth Edwards' trial?

A. No.

Q. All right. I'm going to show you Exhibit 53, a portion of the Exhibit 53. It's Page 15 of Exhibit 53.

15:57:05 MS. WATSON: I'm sorry, I don't have the page

ID number on the file. Exhibit 53.

THE COURT: Is 53 a transcript of 52?

MS. FOSNAUGHT: Yes.

THE COURT: I only have the audios in 52 and 54. I don't have the transcripts. My book says "Draft in progress."

Just deal with it later, not now.

MS. WATSON: Right.

THE COURT: Just wanted to let you know.

BY MS. WATSON:

Q. Can you turn to Page 15 of that?

In the upper right-hand corner there's a -- you see that?

A. Yes, ma'am, I have it.

Q. And towards the bottom it says "Detective Two"?

A. Yes, ma'am.

Q. Do you remember this conversation with Ms. Guice? And you can go on to Page 16.

Do you recall after reading that transcript, do you recall -- and you may not, it's been a long time, the document speaks for itself -- do you recall that interview any more, with any more clarity?

A. No, ma'am, I really don't.

Q. That's fine.

MS. WATSON: I don't have any more questions

at this time.

CROSS-EXAMINATION OF RICHARD RESENDEZ

BY MS. BERGERON:

Q. Good afternoon, Mr. Resendez.

15:59:26 A. Good afternoon.

Q. We've not met before, I believe?

A. No, we have not.

Q. My name is Jennifer Bergeron. I'm counsel for Alfred Cleveland today.

15:59:37 Sir, you testified at the trial of the Petitioner, Mr. Cleveland, in 1996, correct?

A. Correct.

Q. And at the time you testified in 1996 you gave truthful answers?

15:59:46 A. Yes, ma'am.

Q. And you gave answers that were full and complete?

A. Yes.

Q. Since testifying at Mr. Cleveland's trial in 1996, you haven't conducted any additional investigation into the

15:59:56 murder of Marsha Blakely?

A. No, I have not.

Q. Or the murder of Floyd Epps?

A. No, I have not.

Q. When Marsha Blakely was found, you personally

16:00:08 responded to the crime scene where her body was found behind

Charlie's Bar, correct?
A. That's correct.
Q. And you took a video of the scene?
A. Yes, I did.
16:00:18 Q. So you documented the evidence where the body was found?
A. Yes, I did.
Q. Fair to say?
You found blood there?
16:00:26 A. Yes, I did.
Q. And a tooth?
A. A tooth?
Q. Yes.
A. I can't remember if we found a tooth or not. I'd have
16:00:36 to look at the evidence.
Q. Okay. Do you remember finding a slipper?
A. I remember finding a shoe, yes, I do.
Q. Okay. Any other physical evidence?
A. There was a button that was found; there was some
16:00:50 foilage from some weeds and some shrubs that were in the area; and the blood as indicated.
Q. Okay. Now, while investigating the murder of Marsha Blakely, you searched for physical evidence at Floyd Epps' apartment, correct?
16:01:08 A. Correct.

Q. Was that on at least two occasions?
A. That would be on -- we were there twice, the second time being the actual processing of that area, of the apartment.
16:01:25 Q. So when you processed it, you searched for blood?
A. Yes.
Q. You searched for fingerprints?
A. Well, if I can just clarify, we called in the crime scene, BCI, Bureau of Criminal Identification, to process
16:01:41 that scene.
They, in fact, did the processing. We did some photographs of the scene, but they actually did the processing of the crime scene for us.
Q. Okay. But they found no blood?
16:01:54 A. I don't believe they did.
Q. And they found no fingerprints?
A. I couldn't testify to that, ma'am. I don't believe they did.
Q. Is it fair to say that while you were investigating
16:02:07 the murders of Marsha Blakely and Floyd Epps, that one of the things you were looking for was physical evidence that might show who was at the scene?
A. Yes, ma'am.
Q. You agree that physical evidence is important to
16:02:21 develop leads?

A. Yes, ma'am.
Q. Especially in a murder case?
A. Yes, ma'am.
Q. So you completed an investigation for physical evidence in this case?
16:02:28
A. Yes, we did.
Q. But you did not find any evidence placing Mr. Cleveland in Floyd Epps' apartment?
A. No, we did not.
16:02:34
Q. No DNA evidence placing Mr. Cleveland in Floyd Epps' apartment?
A. No, we did not.
Q. No fingerprints placing Mr. Cleveland in Floyd Epps' apartment?
16:02:44
A. No.
Q. You did not find any physical evidence placing Mr. Cleveland behind Charlie's Bar where Marsha Blakely's body was found?
A. No physical evidence.
16:02:51
Q. No DNA evidence placing Mr. Cleveland where Marsha Blakely's body was found?
A. No, ma'am.
Q. And no -- okay. During your investigation, you personally searched for physical evidence in Delphenia
16:03:05
Guice's car on at least two occasions, true?

A. That's true.
Q. And you found no blood there?
A. That's correct.
Q. You found no fingerprints?
16:03:12 A. Correct.
Q. And then Delphenia Guice's car was searched a third time by criminalist Dan Bibby?
A. I believe it was.
Q. And he found no blood?
16:03:25 A. I believe he did not find any blood, that's correct.
Q. And no hair samples?
A. To the best of my recollection, no hair samples.
Q. Did he find some red carpet fibers?
A. I don't remember, ma'am.
16:03:41 Q. So at Petitioner's trial you did not testify about any physical evidence tying Mr. Cleveland to the murder of Marsha Blakely, correct?
A. That's correct.
Q. Okay. When you were looking for evidence, one place
16:03:55 you did not look was under the fingernails of Marsha Blakely, correct?
A. I'm not sure that is correct, ma'am.
Q. Did you take fingernail clippings?
A. I did not personally.
16:04:12 I believe the Coroner's Office, as part of

their processing, may have done that.

Q. But you didn't personally?

A. No, ma'am.

Q. Okay. And you also did not look for evidence in the video cameras of Charlie's Bar, correct?

A. No, ma'am.

Q. And you did not search for evidence in a car belonging to William Avery, Jr.?

A. No, we did not.

Q. You did not search for evidence in a car belonging to William Avery, Sr.?

A. I'm not sure he had one, but, no, we did not.

Q. Okay. And you never secured a confession from Alfred Cleveland where he admitted to involvement in the murder of Marsha Blakely?

A. No, ma'am, we did not.

Q. Or Floyd Epps?

A. That's correct.

Q. And you never secured a confession from Benson Davis with regard to his involvement?

A. That's correct, we did not.

Q. Lenworth Edwards?

A. We did not.

Q. John Edwards?

A. No, we did not.

Q. So in 1991 you were working as a detective for the Lorain Police Department, correct?
A. Correct.
Q. Is it fair to say that an important part of your job as a detective was to interview possible witnesses to crimes?
A. Yes.
Q. I believe you testified today that you interviewed William Avery, Jr. on at least three occasions?
A. Oh, at least three.
Q. And you recorded all of those interviews?
A. To the best of my knowledge, I believe we did.
Q. So was it your practice at the time to record your interviews with witnesses?
A. If we could.
Q. And you recorded interviews so you could focus on the interview without needing to take detailed notes?
A. That would be an objective.
Q. Okay. And you recorded those interviews so you could rely on what the witness told you instead of your recollection of what the witness said?
A. Yes, that would be the objective of the recording, that's correct.
Q. And at Mr. Cleveland's trial you testified about how long it takes to fly from New York to Lorain, Ohio, correct?

A. I believe I did, yes.
Q. So one thing you investigated was whether there were any airline records showing that Alfred Cleveland flew from New York to Ohio on August 7th or 8th, 1991, is that true?
16:06:28 A. That's true.
Q. You found no evidence that Alfred Cleveland flew from New York to Cleveland on August 7th, 1991, correct?
A. That's correct.
Q. Or August 8th, 1991?
16:06:44 A. That's correct.
Q. Did you search regular airlines, commercial airlines, different airports?
A. We searched Cleveland Hopkins Airport.
Q. Did you search any airports in New York?
16:06:58 A. No, we did not.
Q. But you went to Cleveland Hopkins to search to see if you could find any records?
A. I believe that was part of our investigative information at that time.
16:07:09 Q. So did you look under the name Alfred Cleveland?
A. I can't recall if we did or what name, whether it was Alfred Cleveland or Alfred Monday.
Q. Is it possible that you looked under Alfred Cleveland?
A. I couldn't answer that. I don't recall.
16:07:29 Q. Or Alfred Monday?

A. One or the other.
Q. When you went to investigate, did you take any photos of Mr. Cleveland with you?
A. To investigate?
16:07:41 Q. I'm sorry, when you went to Cleveland Hopkins Airport.
A. Oh, I don't recall, ma'am.
Q. Did you interview any security personnel at the Cleveland Hopkins Airport?
A. I don't believe we did.
16:08:06 Q. Now, has anyone ever been convicted for the murder of Floyd Epps?
A. No.
Q. So Floyd Epps' murder is still an unsolved case, correct?
16:08:14 A. Yes, it is.
Q. And in 1991 when you were investigating Marsha Blakely's murder, you recognized that Marsha Blakely and Floyd Epps' murders were related?
A. Yes, we did.
16:08:23 Q. So you're aware that Mr. Avery recanted his testimony in 2006 and stated that his testimony at Mr. Cleveland's trial was a lie, correct?
A. That's correct.
Q. So you know that Mr. Avery signed an affidavit on
16:08:41 February 9th, 2006?

A. I know he signed an affidavit. I'm not familiar with the date. I know he signed an affidavit.
Q. Were you present when he signed the affidavit?
A. I don't believe I was.
16:08:56 Q. So do you know that Mr. Avery also gave a sworn statement on April 10th, 2006 where he recanted his trial testimony?
A. I'm not aware of that, no.
Q. So you were not present?
16:09:06 A. No.
Q. And you were not present on January 31st, 2008 when Mr. Avery appeared in court, in State Court, to recant the testimony he gave at Mr. Cleveland's trial?
A. I believe I was present, but I didn't have any contact
16:09:24 with him. I might have been present in the courthouse.
Q. Did you testify?
A. I can't recall if I did or not.
Q. Sir, are you appearing today voluntarily?
A. Yes.
16:09:37 Q. You're not testifying pursuant to a subpoena?
A. To a subpoena, that's correct.
Q. So when you worked at the Lorain Police Department, you and Geno Taliano were partners, correct?
A. Yes.
16:09:50 Q. And, in fact, you were partners for a number of years?

A. Yes.
Q. You worked closely together?
A. Yes.
Q. Trusted each other?
16:09:56 A. Yes.
Q. Confided in each other?
A. Yes.
Q. And even though you don't work together now, the two of you stay in touch?
16:10:04 A. Yes, we do.
Q. Still friends?
A. Absolutely.
Q. Facebook friends with his wife?
A. Yes, I am.
16:10:10 Q. Incidentally, you're also Facebook friends with one of Mr. Rosenbaum's sons, is that correct?
A. I believe I am, yes.
Q. And you go out to dinner from time to time with the Talianos?
16:10:22 A. Yes.
Q. When you ran for County Commissioner, Mr. Taliano and his wife wrote a letter to the editor endorsing your candidacy?
MS. FOSNAUGHT: Objection. Relevance?
16:10:36 MS. BERGERON: Bias.

THE COURT: I'll let some of it come in.

It's marginal. Go ahead.

BY MS. BERGERON:

Q. Okay. While you were working for the Lorain Police --

16:10:43

THE COURT: Did you get an answer to your last question?

MS. BERGERON: Yes, I believe I did.

THE COURT: If you did, I didn't hear it and I don't see it.

16:10:53

MS. BERGERON: Oh.

THE COURT: When you ran for County Commissioner, Mr. Taliano and his wife wrote a letter endorsing your candidacy?

THE WITNESS: Correct.

BY MS. BERGERON:

Q. While working for the Lorain Police you received a Top Cops award sponsored by the National Association of Police Organizations, is that correct?

16:11:09

A. Yes.

Q. And Chief Rivera nominated you for that, correct?

A. Yes.

Q. One of the things the letter said was you "and a fellow detective relentlessly pursued Jamaicans from Queens, New York who had committed a double homicide here in 1991.

16:11:40

As of last month, four have been convicted and sentenced to long terms in prison."

That would be a reference to the murder of Marsha Blakely, correct?

16:11:51 A. It was jumping around here.

Q. Oh, sorry.

A. But --

Q. Do you see it?

A. Yeah, I can see it now. It was one of the paragraphs

16:11:59 being highlighted while you were reading it.

Q. It's the last paragraph?

A. That would be correct.

Q. So do you agree it would be awkward or uncomfortable for you if it turned out one of the people convicted for the

16:12:11 murder for which you received this award turned out not to have committed the crime?

A. Would it be uncomfortable for me?

Q. Yes.

A. I -- I can't answer that, ma'am. I don't know how I

16:12:22 would feel.

MS. BERGERON: No further questions. Thank you.

THE COURT: I'm going to have some questions so that you can then follow up on anything I say, both

16:12:38 sides.

My questions are focused to August of 1991 when you interviewed Mr. Avery.

First, prior to that time had you interviewed other individuals in other crimes either as suspects or as witnesses or just as part of your investigative duties?

THE WITNESS: Absolutely, yes.

THE COURT: You had some experience interviewing?

THE WITNESS: Yes.

THE COURT: Based on your experience interviewing, with respect to Mr. Avery's two interviews with you, how did you find him to be?

Was there anything in the way he presented himself or what he said that caused you to question the veracity of what he was telling you?

THE WITNESS: No, there was not.

THE COURT: Was he or did he appear to be sober; under the influence of something? Is that a judgment you were even able to make?

THE WITNESS: There was no odd signs of impairments. There was no hesitant -- hesitation in his conversation with us.

Based on my experience he was -- gave all the signals, the body language of -- of communicating with us in a manner that it was factual to the best of his ability.

He would look at us, he would answer the direct questions.

THE COURT: Make eye contact with you?

THE WITNESS: Yes, Your Honor.

16:14:23 THE COURT: I didn't mean to interrupt you. Go ahead.

Anything else about either his appearance or his delivery or what he was saying that raised a red flag, if you will?

16:14:33 THE WITNESS: No, Your Honor. None.

THE COURT: Did he or his father ever raise the issue of compensation in exchange for this information?

THE WITNESS: Yes, he did. His father did.

THE COURT: His father did. Tell me about

16:14:44 that.

THE WITNESS: A Crime Stoppers reward was offered, and when William Avery, Sr. initially approached us, that was one of his questions on how to obtain the reward money.

16:15:00 And we explained to him it was for any information that lead to the arrest and/or conviction of the persons responsible, but it had to be substantial, substantive evidence that would allow us to continue the investigation, and he did bring that, that question up about

16:15:28 compensation.

THE COURT: That was at the outset?

THE WITNESS: That was at the outset, correct, Your Honor.

THE COURT: Do you know if he later, either he, Senior, or he, Junior, were compensated from Crime Stoppers?

16:15:35

THE WITNESS: They were.

THE COURT: And how much?

THE WITNESS: I believe they received a thousand dollars from the Lorain Police Department and after that $2,000 from Lorain Prosecutor's Office.

16:15:45

THE COURT: So the two of them got a total of $3,000?

THE WITNESS: I believe that's correct.

THE COURT: And why would Senior get any money?

16:15:58

THE WITNESS: Well, the money was given to Junior, but as I earlier testified, Senior would, on different occasions, accompany his son in our conversations, not that he would participate, but he would just bring him down to the station or again transport him to his -- to wherever we were meeting him.

16:16:16

And he was just looking after his welfare. He was concerned that something was going to happen to him was the impression that we received.

16:16:32

THE COURT: That something would happen to his son?

THE WITNESS: That's correct, Your Honor.

THE COURT: Did you compensate Senior on other cases for bringing you information, if you know?

16:16:38

THE WITNESS: Prior to this homicide?

THE COURT: Yes.

THE WITNESS: Yes, we did. He was an informant. We did compensate him.

16:16:48

THE COURT: So between the two interviews, the one on August the 13th and the one on August the 18th --

MS. WATSON: I'm sorry, Your Honor, I don't think that Mr. Resendez spoke with Mr. Avery in August at all.

16:17:02

That was Delphenia Guice's interview on August 15th.

I think it was September 11th is the first time that Mr. Resendez spoke with Mr. Avery.

THE COURT: You're right. Thank you.

16:17:15

September the 11th, and what's the other date? I thought there were two.

MS. WATSON: September 18th is when Mr. Resendez took the photos of the apartment, I believe.

THE COURT: Okay.

16:17:39

MS. FOSNAUGHT: There's a September 11th

interview, a September 20th interview, and a January 23rd, 1992 interview.

THE COURT: Those are three interviews that this witness had with Avery, Jr., that's the question.

16:17:55 MS. FOSNAUGHT: I'm not sure he was present at all three, but Avery was interviewed in all three, and I'm not sure whether Resendez was present for all of them, but either Resendez or Taliano participated in all three.

THE COURT: And did you say here today you

16:18:10 recall one or more interviews with Mr. Avery, Jr.?

THE WITNESS: More.

THE COURT: More than one?

THE WITNESS: That's correct.

THE COURT: Whatever the dates in this time

16:18:19 frame of September to January apparently.

Okay. Compare/contrast how he presented himself, what he was telling you. Was it consistent? Was it inconsistent? Did he seem nervous? Was there a preoccupation on his part of maybe fabricating in order to

16:18:41 obtain money?

You know where I'm coming from? I want you to evaluate how he presented himself on these several occasions. It's important for me because I do not have an opportunity to talk to him. I have apparently an audio of

16:18:58 him but not a video of him, so I haven't even seen

Mr. Avery.

Mr. Avery is a critical person in these proceedings.

THE WITNESS: Yes.

16:19:08 THE COURT: Yet I cannot talk to him.

So I need through your eyes as we've heard from our witness earlier today to tell me how did he come across here?

THE WITNESS: All our conversations, all

16:19:25 right, I mean my personal conversations with Mr. Avery, Jr. were all of very straightforward, very, again, open dialogue. We never had any issues with Mr. Avery.

He had the ability to contact us at the drop of a dime. He had numbers to reach us. We, in fact, placed

16:20:03 Mr. Avery, Jr. several times in what we felt were secure locations for his own safety, and we never had any issues.

He was always forthcoming, again open. In my opinion he never had any problems conversing with us or answering any of our questions.

16:20:25 THE COURT: So when you learned he was recanting his story, what was your reaction?

THE WITNESS: Surprised.

When that occurred at the -- at one of the trials I was surprised because he had been so forthcoming

16:20:43 and so open, that now he was recanting and again it

was -- it was unexpected.

THE COURT: And I take it you never had an opportunity to confront him after he recanted?

THE WITNESS: That's correct, I have not had a conversation with him since.

THE COURT: I'm done, and obviously counsel for both sides may further inquire.

MS. WATSON: Thank you.

REDIRECT EXAMINATION OF RICHARD RESENDEZ

BY MS. WATSON:

Q. I just want to clear one thing up with regard to your subpoena.

You're currently employed, you stated earlier, by the Department of Rehabilitation and Corrections?

A. That's correct.

Q. Does your employer require you to produce a subpoena when you come to court to testify?

A. I believe he does.

Q. Okay.

MR. CALABRESE: May we have a copy of the subpoena, please?

MS. FOSNAUGHT: I'll have to get it to you a different day.

MR. CALABRESE: We've never received a copy, Your Honor. I believe we're entitled to a copy of the

process.

MS. FOSNAUGHT: Okay.

THE COURT: I'm sure they will provide it to you.

16:21:47 MR. CALABRESE: Thank you.

BY MS. WATSON:

Q. We stated -- we talked earlier about your very first interview with Mr. Avery was on September 11th of 1991. We talked about earlier -- correct?

16:21:58 A. That's correct.

Q. We talked about earlier that you did not take photographs of the Epps apartment until September 18th, 1991, is that correct?

A. That's correct.

16:22:08 Q. Why did you return to photograph the Epps apartment on September 18th, 1991?

A. We had received information from Mr. Avery of what had transpired in that apartment, and based on the information he provided us, again we run back and that's when that

16:22:33 apartment, Mr. Epps' apartment, was, in fact, photographed and we called in the Bureau of Criminal Identification to process it.

Q. And prior to that time that you spoke with Mr. Avery, Jr. on September 11th of 1999, did you have any

16:22:51 reason or occasion to know that the Epps apartment was a

crime scene?

A. No, we did not.

Q. And you had found Mr. Epps' body where?

A. He was found in the City of Lorain on Wallace Lane.

16:23:07 Q. He was not found in his apartment, correct?

A. No.

Q. Okay. There came a point in time, are you aware that Mr. William Avery, Jr. took a lie detector test with regard to his testimony?

16:23:23 A. Yes.

Q. Are you aware of that?

A. I'm aware of that.

Q. Are you aware what those results were?

A. No, I'm not. I'm sorry.

16:23:29 Q. Okay. Do you recall a time when Mr. William Avery, Jr. came to you and gave you information stating that he had not been forthcoming in one of his prior statements --

A. Yes.

16:23:50 Q. -- to you?

A. I do recall.

Q. Do you recall -- do you recall why he said he wasn't forthcoming?

A. There was some concern for his safety, for what he had

16:24:02 observed, and he felt because he had observed the, in fact,

homicide of Marsha Blakely, that he may be targeted.

And he originally said he was not at that location, but then subsequently told us, yes, he was, and then left the scene on foot.

16:24:25 Q. So -- sorry. Go ahead.

A. Yes.

Q. So you're stating then, if I understand you correctly, that Mr. Avery, Jr. gave you additional information in his subsequent statement that he witnessed the actual murder of

16:24:40 Marsha Blakely, is that correct?

A. Yes.

Q. And previously in his earlier statement he had only testified -- he had only given you information about what?

A. What had transpired over at Floyd Epps' apartment, the

16:24:54 beating of Ms. Blakely.

Q. But not the actual murder, correct?

A. That's correct.

Q. And he had not -- he told you he did not give you that information previously because why?

16:25:04 A. He was concerned about his safety, that maybe he had seen too much and that he may be a subsequent victim of any wrongdoing.

Q. Do you recall any steps that you took to corroborate this new piece of information?

16:25:33 A. No, I don't.

Q. Do you recall speaking with a former girlfriend of William Avery, Jr. named Ms. Watkins? Does that name --

A. I'd have to review the report, ma'am. I don't recall that.

16:26:20 MS. WATSON: I do not think I have any further questions. Thank you.

MS. BERGERON: We have no further questions.

THE COURT: You may step down. Thank you very much.

16:26:32 (Witness excused).

THE COURT: Call your next witness, please.

Jerri, do you know the exhibit numbers for the Avery interviews he referenced?

MS. FOSNAUGHT: One through three are the tape 16:27:11 recordings.

THE COURT: Right.

MS. FOSNAUGHT: And I believe 14, 15 and 16 are the interviews.

THE COURT: Thank you.

16:27:33 GENO TALIANO,

of lawful age, a witness called by the Respondent, being first duly sworn, was examined and testified as follows:

THE COURT: Your name and spell, please, for 16:27:36 the court reporter.

THE WITNESS: Geno Taliano, it's G-E-N-O, T-A-L-I-A-N-O.

DIRECT EXAMINATION OF GENO TALIANO

BY MS. FOSNAUGHT:

16:27:51 Q. And you are currently employed where?

A. I'm a task force officer for the Lorain County drug task force in Lorain County, and I'm a task force officer for the Drug Enforcement Administration, Cleveland, Ohio Detroit field division.

16:28:07 Q. In August of 1991 what was your position with the Lorain Police Department?

A. I was a detective sergeant in the Lorain Police Department detective bureau.

Q. And you investigated the homicide of Marsha Blakely?

16:28:20 A. Yes.

Q. In that investigation, did you also investigate the homicide of Floyd Epps?

A. Yes, I did.

Q. On August 13th, 1991, you interviewed Delphenia Guice,

16:28:37 is that true?

A. I believe Detective Resendez and I were partners, yes.

Q. That's correct. Did you review the tape?

A. I reviewed the tape and transcript of that interview.

Q. Do you recall how Detective Resendez came to interview

16:29:00 Delphenia Guice?

A. Yes. On or about that date, Officer Garcia was contacted by the communications of the police department who indicated that there was someone who wanted to meet with him in the area around 23rd and Levitt Road in the City of Lorain, and in fact it was Delphenia Guice.

Delphenia Guice had indicated to Officer Garcia that she was aware that there's an investigation of the Marsha Blakely and Floyd Epps murders; that she was, in fact, questioned on at least two prior occasions and she had evidence that she wanted to turn over to the Detective Bureau of the Lorain Police Department.

Q. I'll refer you to, in the exhibit book, to Exhibit 53.

A. Refer me to what?

Q. Exhibit 53 in the exhibit book.

MS. FOSNAUGHT: This is one of those that you said you don't have, Your Honor. I'm sorry. I thought we supplemented it.

A. I see 33 and 35.

Q. And this is the recorded conversation interview with Guice on August 13th of '91, is that correct?

A. Yes.

Q. Can you look down at the bottom toward the last Detective Two?

A. Yes.

Q. And read that to yourself and on the last page, the

top of that.

A. I'm sorry, what was the question?

Q. I just wanted you to read both of those Detective Twos on 15 and 16, the bottom of 15 and the top of 16.

16:30:59 A. Okay. I don't understand the question. You want me to read what Detective Two said?

Q. Just to yourself. Just to yourself.

I'm trying to --

THE COURT: Read it to yourself. Read it.

16:31:09 THE WITNESS: I did.

THE COURT: Then she's going to ask you if you read it.

MS. FOSNAUGHT: Okay. Sorry. I didn't realize.

16:31:15 BY MS. FOSNAUGHT:

Q. Does this clarify how you came or how Resendez came to interview Delphenia Guice on August 13th?

A. Okay. I'm sorry. What was your question?

Q. I wanted to see if -- how you came to -- well, Resendez, you indicated you reviewed this in the course of your investigation?

16:32:03

THE COURT: The question is does this clarify how you came or how Resendez came to interview Delphenia Guice on August 13th.

16:32:17 A. That's -- yes, it does.

Q. Okay. Was Detective Resendez given information that Delphenia Guice might have information regarding the Marsha Blakely or Floyd Epps homicide?
A. Yes.
16:32:29 Q. And then what you spoke of previously, does that relate to a second interview that you had with Delphenia Guice?
A. Yes. If I recall, there was a second interview.
Q. Okay.
16:32:44 A. At which I was present.
Q. That would be Exhibit 55, if you'd like to refer to that.
A. Yes. August 18th of 1991, I see that I'm present at that.
16:33:01 Q. Okay. How would you characterize that interview?
THE COURT: Which interview, the second one?
MS. FOSNAUGHT: The 18th, right.
A. Yes, on August 18th of '91 Detective Resendez and I at the Lorain Police Department interviewed Delphenia Guice
16:33:22 again about any knowledge she might have with regard to the murders of Marsha Blakely and Floyd Epps.
Q. Okay. Was she forthcoming during that interview?
A. I believe that she was, yes.
Q. Okay. Did you believe that she was afraid of you
16:33:34 during that interview?

A. I don't know that she was afraid.

I'm sure she was -- I felt that she was irritated by the fact that on numerous occasions she had been interviewed either by me or other detectives, and I also interpreted from the comments that she made that she was extremely concerned with people in the neighborhood or that people that may have been responsible for the two homicides would cause her physical harm.

And so that was my general impression. But eventually she was forthcoming because she understood that she might have some culpability if she withheld information.

Q. Did you threaten or harass Delphenia Guice during any of your interactions with her?

A. No.

Q. Okay. During your investigation of the Marsha Blakely and Floyd Epps homicides, did you get permission to offer a $2,000 reward?

A. I'm sorry, I can't hear you. I'm sorry.

Q. During your investigation of the Marsha Blakely and Floyd Epps homicides, did you get permission to offer a $2,000 reward?

A. Yes. We initially contacted Crime Stoppers in Cleveland, Ohio and asked for its assistance but they denied that saying that homicides related directly to narcotics investigations, they wouldn't be able to cooperate other

than publication.

So we contacted the Lorain County Prosecutor's Office, the prosecutor Greg White, and asked for his assistance in offering a monetary reward for people who would come forward.

In fact, Mr. White did obligate the office to a $2,000 reward.

Q. After you offered that reward, what happened next?

A. Well, if you're talking about August 18th, we continued -- we publicized the fact that there was a $2,000 reward and we continued the investigation by interviewing people in the neighborhood, gathering facts.

I think between August 8th and towards the end of the investigation we interviewed nearly 30 people. However, the most significant thing as far as people coming forward, then on September 10th of 1991. That's when I was contacted by William Avery, Sr. by phone, and he had indicated to me that he had information about the murder of Marsha Blakely and wanted to know if that $2,000 reward would be available to him.

And I asked him if he was the one who had that information firsthand, and he indicated, no, he did not. And I told him no, the only person who can receive that monetary reward would be the person who would give us firsthand information about the murder of Marsha Blakely and

Floyd Epps.

Q. And after informing him that, what happened next?

A. He indicated to me that he would recontact me and that he would talk with that person that he felt would be able to provide that information firsthand.

16:36:32

That on August -- excuse me -- on September 11th, the next day, I was contacted again by William Avery, Sr. and he said that that person who could provide that information would make themselves available. He did not indicate to me at that time who that person was.

16:36:48

I contacted Detective Captain Rivera who was the head of the detective bureau, and he advised to have William Avery, Sr. bring that person to the Detective Bureau. In fact, on September 11th of 1991 William Avery, Sr. came to the police station and he presented that person. He identified that person as his son William Avery, Jr.

16:37:08

Q. During that conversation, did you learn about an assault on Marsha Blakely that occurred at Floyd Epps' house?

A. Yes.

16:37:29

Q. Was that your first indication that any part of the events leading up to the homicide happened at Floyd Epps' house?

A. That would be the first time we found the significance of the apartment that was rented by Floyd Epps, yes.

16:37:40

Q. And --
A. Beyond the fact that on August 8th of 1991 there were two homicides relatively close to one another. And our initial investigation immediately identified the
16:37:57 relationship between Marsha Blakely and Floyd Epps, not a romantic one, but that she had spent a considerable amount of time in the apartment on Sunset Boulevard, which is the apartment of Floyd Epps.

So that actually was the first significance.

16:38:11 And so on August 9th, the very next day, we contacted the Metropolitan Housing, had the doors, the locks changed, and Detective Resendez and I were the only ones who had access to that, and that was in August of 1991.
Q. Okay. Now, directing your attention to Exhibits 64
16:38:33 through 89, if you could review those?
A. Sixty-four?
Q. Right. I'm just going to ask if you're familiar with these pictures.
A. Yes. Exhibit 64 is a photograph that I've seen
16:38:48 previously of Floyd Epps who was killed on or about August 8th, 1991 in the City of Lorain in front of 1626 Wallace Avenue or Drive in Lorain, Ohio.
Q. Okay. And to follow up, are 64 through 70 pictures related to Floyd Epps' homicide?

16:39:13 THE COURT: I think we've already established

that through other witnesses.

MS. FOSNAUGHT: Yes, so we can move on to the next ones 71 through 89 now.

A. Exhibit 71, ma'am?

16:39:29 Q. Seventy-one through 89.

A. Okay. These are photographs that were taken behind, I believe, 2538 West 21st Street, Lorain, Ohio the morning of August 8th, 1991.

It's the location where the body of Marsha

16:39:55 Blakely was located on that date. And these are at least a portion of the crime scene photographs that were taken there on that day.

Q. And do Exhibits 71 through 88 accurately reflect the scene of the Marsha Blakely homicide?

16:40:14 A. As I recall, yes, they do.

Q. Have you seen Exhibit 89 --

A. Eighty-nine?

Q. -- eighty-nine, during your investigation?

A. Yes, I do.

16:40:31 Q. Does that truly and accurately reflect the injuries to Marsha Blakely?

A. Yes, while at the Lorain County Coroner's Office, correct.

Q. In Avery's 2006 affidavit and statement, Avery says

16:40:52 his dad had a crack pipe in his hand when you came to his

house.

Would that be an accurate statement?

A. I don't recall the incident. I did read that statement and, no, I would say that's not correct.

16:41:07 William Avery, Sr. had become a thorn in our side as far as investigation, actually an obstructionist, and had I had the opportunity to arrest him for having drug paraphernalia or a crack pipe in his hands, I would have taken that opportunity to remove him from the situation.

16:41:25 I don't remember that ever happening, but that's the best answer I can give what I would have done had I seen it.

Q. Okay. In Avery's 2006 affidavit and statements he says the police showed him pictures at his first interview.

16:41:39 Would that be an accurate statement?

A. That's incorrect. The first time we talked to William Avery, Jr. was on the 11th of August, 1991, and we didn't photograph --

Q. September?

16:41:48 A. -- the Floyd Epps --

THE COURT: Time out.

THE WITNESS: I'm sorry.

MS. FOSNAUGHT: Sorry.

BY MS. FOSNAUGHT:

16:41:53 Q. I just wanted to correct you. You said the 11th of

August you talked to Avery?

A. September 11th, I apologize.

September 11th was the first time we talked to William Avery, Jr. and it was not until the 18th of September that we photographed the interior of Floyd Epps' apartment on Sunset Boulevard.

Q. Okay. In the 2006 statement, Avery says he came down with his dad two to three days after the murder.

Is that correct?

A. That is not correct.

Q. In his 2006 affidavit and statement, Avery says he told you he did not want his dad around.

Is that correct?

A. That may be correct. His father was, in fact, harassing him and us about the amount of money that Mr. -- Senior thought that he would be entitled to.

Q. Did you ignore those statements?

A. No. We, as quickly as possible, we tried to remove Senior from our investigation.

I reminded him that any money that was propagated by the County Prosecutor's Office would be paid to him and not his father. After he was given the money if he wanted to share that, that was his option.

Q. In Avery's 2006 statement he says he told you all of his prior statements had been a lie and that he never saw

anything.

Is that correct?

A. No.

Q. Okay. And he also indicates that you told that to Rosenbaum.

Is that correct?

A. No.

Q. I believe you have before you Exhibit 35 with one of the stickers?

A. Yes.

Q. Could you go to the last page, 1162?

A. 1162?

Q. Right. At the bottom.

After speaking with Avery at his final interview, taped interview, January 23rd of 1992, did you attempt to corroborate any of this information?

A. I'm going to apologize.

THE WITNESS: I have tinnitus, Judge. Are you familiar with that? So I have difficulty hearing.

Q. I'm sorry, I'll speak up.

A. And I'll apologize in this case.

Q. Sure. After Avery's transcribed third interview on January 23rd, 1992, did you attempt to corroborate any of the information he told you during that interview?

A. Yes, as is reported in my report.

Q. And does Page 1162 of Exhibit 35 accurately record your attempt to corroborate Avery's story?

A. Yes, it does.

Q. At the trial, during your trial testimony, you testified that you went to New York as part of the investigation?

A. That's correct.

Q. And did you interview Benson Davis while you were in New York?

A. Yes.

Q. Did he deny knowing any of the people, John Austin Edwards, Lenworth Edwards, or Alfred Cleveland?

A. I -- that's my recollection, yes.

Q. And did you confront him with detectives who had seen him in the presence of Lenworth Edwards?

A. Detective Rohner I believe had, after we initially asked Benson Davis, also Ian Davis if he had been in the company of these other people in the City of Lorain who were reportedly from Jamaica, Queens, New York. He denied that, also.

THE COURT: Slow down a little bit.

A. Detective Lieutenant Rohner entered the room when we were speaking with Benson Davis and indicated to him that he was there the day that Lenworth Edwards was arrested on or about the area of Lorain Drive in the City of Lorain, that

he was in fact in the company of Lenworth Edwards, also.

At that point he made some admission to the fact that he was familiar with some of these people.

Q. During your interview with Lenworth Edwards in the course of this investigation, did he refuse to testify or talk about any portion of the events of August 7th, 1991 to August 8th of 1991?

A. Yes.

Q. What is your recollection as to his reluctance to tell you any --

A. During that interview we asked him if he could describe his activities, where he was at and who he was with between approximately 11:00 o'clock in the evening on Wednesday, August 7th through the early morning hours of Thursday, August 8th, 1991, and he refused, in the presence of his attorney, refused to answer any questions that would deal with that specific period of time.

Q. At any point during the investigation did you become concerned for the safety of William Avery?

A. Yes.

Q. And what did you do?

A. Put him in protective custody at some point at the Lorain Police jail and paid him, I believe, $25 a day while he was in protective custody as a witness fee.

Q. Okay. Was he ever placed in protective housing

outside of the jail?

A. No.

The only other action that I was involved with along with Detective Resendez is after, I believe it was September 20th, 1991, he gave a deposition in Lorain County Court and then he -- Avery, Jr. was transported to Detroit, Michigan.

The County Prosecutor's Office provided him with a check for $2,000 for his cooperation as promised, and I think there was a -- I know there was an additional thousand dollars for travel expenses.

Detective Resendez and I personally transferred him to the location in Detroit, Michigan.

THE COURT: This was in 1991?

THE WITNESS: Yes, sir. Yes, sir.

BY MS. FOSNAUGHT:

Q. I'll direct your attention to Exhibit 35 again and this time it is Page 1136.

In the third full paragraph, could you read the last sentence to yourself?

A. "Earlier this" --

THE COURT: Read it to yourself, please.

THE WITNESS: Okay.

THE COURT: She's going to ask you, I assume, a question.

A. Okay. Yes, sir. I read it.
Q. Does that refresh your recollection as to whether Avery was placed in protective housing?
A. Yes.
16:50:27 MS. FOSNAUGHT: No further questions.
THE COURT: Was he placed?
THE WITNESS: Yes.
THE COURT: Thank you.
CROSS-EXAMINATION OF GENO TALIANO
16:50:36 BY MR. CALABRESE:
Q. Good evening, sir. My name is Phil Calabrese and I represent Mr. Cleveland in this matter.
If you can't hear me, please let me know and I'll try to do a little bit better.
16:50:59 A. I will.
Q. You previously provided an affidavit in this case, true?
A. An affidavit?
Q. An affidavit.
16:51:15 A. I'm not sure.
Q. Would you bring up Exhibit 32 briefly?
Maybe scroll back a page.
A. Yes. Yes, I see it. Yes, sir.
Q. Okay. And all I wanted to ask you, sir, you
16:51:39 previously gave an affidavit?

A. Yes.
Q. And you previously testified at the trial of Mr. Cleveland in 1996?
A. Yes.
16:51:51 Q. And as far as you remember right now, all the testimony you gave at trial was truthful?
A. Yes.
Q. You gave truthful, complete answers?
A. Yes. Yes.
16:52:05 Q. You haven't conducted any additional investigation since the trial?
A. Not that I can recall, no.
Q. Not into the murder of Marsha Blakely, no further investigation into her murder?
16:52:16 A. No, sir.
Q. And no further investigation into the murder of Floyd Epps?
A. No.
I want to amend that answer, if I can.
16:52:34 Q. Sure.
A. If I recall that possibly after the trial of Cleveland, that I traveled to Detroit or South Carolina, I believe, to interview John Austin Edwards, also known as Shakime.
16:52:52 So during the course of that activity, that

would be a continuation of the investigation.

But as it pertains to Mr. Cleveland, unless Mr. Edwards mentioned him specifically, but that wasn't our intent at that point. It was basically dealing with John Austin Edwards.

Q. Okay. Thank you.

A. Okay.

Q. Now, back in 1991, Mr. Rosenbaum, the assistant prosecutor in Lorain County, had a practice of interviewing witnesses before trial, true?

A. Yes.

Q. And he did that in the Prosecutor's Office itself?

A. On occasion.

Q. And you don't dispute that he did that with various witnesses in this case, do you?

A. I don't recall him interviewing any witnesses at the Prosecutor's Office at all.

Q. Do you --

A. I remember --

Q. I'm sorry. If your notes that were made at the time during the investigation reflect that that occurred, you wouldn't dispute that, would you?

A. No, I wouldn't, sir.

Q. Now, at the time of Mr. Cleveland's trial in 1996, you were a lieutenant in the Lorain Police Department?

A. Yes, sir. Right.
Q. You had worked there since 1983?
A. I'm sorry?
Q. You had worked there since 1983?
16:54:20 A. I was hired in 1977.
Q. Okay. So even earlier.
And you moved up through the ranks?
A. Yes.
Q. Held various positions over time?
16:54:30 A. Yes.
Q. Whatever position you held, you were always working for the Lorain Police Department through that period of time?
A. Yes. Um-hmm.
16:54:41 Q. And at the time of Petitioner's trial, Mr. Cleveland's trial, and during the investigation of the Blakely murder, Cel Rivera was a captain in the Lorain Police Department, true?
A. Captain of the Detective Bureau, yes.
16:55:01 Q. And in that capacity in the Detective Bureau he had the ultimate responsibility for the investigation?
A. Yes.
Q. And, in fact, he actually participated in the investigation himself?
16:55:11 A. Yes, he did.

Q. He's now the police chief in Lorain?
A. That's correct.
Q. And he has been since about 1995?
A. Yes.
16:55:20 Q. Now, earlier in your -- early in your investigation of the Blakely murder, Avery was administered a polygraph, true?
A. Yes.
Q. And the results came back and showed that he wasn't
16:55:37 being completely honest with you, didn't they?
A. Yes.
Q. And in fact, when you confronted Avery with those results, he admitted that he wasn't being completely honest with you?
16:55:48 A. That's correct.
Q. And that discussion you had with him, that encounter, lead Avery to add a claim that Mr. Cleveland went to his house, to Avery's house, the night of the murder after Marsha Blakely had been killed?
16:56:06 A. Yes.
Q. But that wasn't true, either, was it?
A. No.
Q. And in fact, Avery testified at Mr. Cleveland's trial that that wasn't true?
16:56:17 A. That's what he testified to, yes.

Q. Sir, you believe that William Avery, Jr. would do anything for money, don't you?
A. Yes.
Q. There's been a lot of talk over the course of the day, the afternoon at least, about photographs.
16:56:43
You don't dispute, do you, that Avery was shown photographs from the crime scenes at some point during the investigation, do you?
A. I don't recall showing him photographs, no. I can
16:57:01
speak to that.
Q. It's your testimony that at no point did he see crime scene photos, whether you or any other member of the Lorain Police Department showed?
A. Are we including the trial?
16:57:11
Q. Including trial.
A. I'm sure that at the time of the trial he would have been shown photographs, yes.
Q. Now, you know that Avery came forward and voluntarily made a statement to the FBI, true?
16:57:44
A. Yes.
Q. And in that statement, Avery said he lied about witnessing the Blakely murder, didn't he?
A. Yes.
Q. And Avery identified his father William Avery, Sr. as
16:57:57
the person who murdered Marsha Blakely and Floyd Epps?

A. I recall reading that, yes, sir.
Q. He also stated that he learned details about the crime scene from his father?
A. Yes.
16:58:13 Q. And, sir, when you testified that you saw that information, that was in an affidavit provided by an FBI agent?
A. I know that Mr. Avery went to, I believe, the Detroit field division of the FBI.
16:58:27 I don't recall meeting with them. I believe it may have come from the Lorain County Prosecutor's Office, a copy of that affidavit.
Q. Fair enough. Did you know that that was an affidavit that was obtained by the State or by Respondent?
16:58:43 A. Yes.
Q. That was not an affidavit, in other words, that Petitioner obtained?
A. Yes.
Q. After Avery gave that statement to the FBI, you were
16:58:57 contacted by the FBI, true?
A. No, I was not.
I don't recall being contacted by them. I recall the letter. I recall responding by, I think, the affidavits that I forwarded to the Prosecutor's Office.
16:59:12 That's my recollection.

Q. Did you recall filing a report with the FBI?
A. No.
Q. Can we bring up GT 43, please?
Sir, this is a newspaper article published in
16:59:37 "The Plain Dealer" on July 2nd, 2006.
And if we scroll down I believe to the second page of the article, third page of the exhibit, if we could blow up the box at the bottom of that second column, sir, "The Plain Dealer" here reported that former Lorain Police
17:00:09 Detective Richard Resendez and Geno Taliano -- and that would be you, correct?
A. Yes.
Q. Said that the FBI contacted them last year; said they filed reports with the FBI but have since heard nothing.
17:00:21 Do you deny that you filed a report with the FBI?
A. That would be the affidavit you showed me earlier, that's the only thing I filed was the response.
And I wasn't contacted directly by the FBI,
17:00:33 but rather the affidavit or statement offered by Avery, Jr. to the FBI, a copy was forwarded to me, and I responded.
So I never spoke with anybody from the Detroit or any other Cleveland division of the FBI directly.
Q. Okay. Now, while we're talking about other statements
17:00:58 about responsibility for the murder, it's true, isn't it,

that in 1992 the Lorain Police received a report that Avery, Sr. thought that people were after him because he had killed Marsha Blakely?

A. I've never heard that, no.

17:01:15 Q. Can we bring up GT Number 40, please?

Sir, this is a police report?

MR. CALABRESE: And maybe if you could just show us the date, LaNesha.

BY MR. CALABRESE:

17:01:29 Q. This is a police report from the Lorain Police Department dated April 9th, 1992.

And if you could blow up parts in the report.

This report documents that you -- I guess if you look at the age up top near the date, the age of the

17:02:01 William Avery here is 49, so we agree that we are talking about William Avery, Sr. here at this time?

A. That would be correct.

Q. And this is a report that Avery, Sr. at this time had a possible overdose, do you see that?

17:02:17 A. Yes.

THE COURT: This is in April of '92?

MR. CALABRESE: Yes, sir.

BY MR. CALABRESE:

Q. Then the report notes that Avery was in a lethargic

17:02:37 state?

MS. FOSNAUGHT: Objection. Relevance.

THE COURT: Well --

MR. CALABRESE: It's a statement about the responsibility for the murder of why we are here, Judge.

17:02:47 THE COURT: Go ahead.

MR. CALABRESE: Thank you.

BY MR. CALABRESE:

Q. "Avery was in a lethargic state and would not say too much other than persons were after him for the Marsha

17:02:56 Blakely murder."

Do you see that?

A. Yes, sir.

Q. Was this information that was ever disclosed to Mr. Cleveland or his counsel?

17:03:03 A. I don't know.

Q. Now, in 1995, William Avery, Jr. was working with the Secret Service, true?

A. I don't know that, sir.

Q. You don't know?

17:03:22 A. No, sir.

Q. Well, in 1995 he was working with Secret Service providing information relating to food stamp fraud.

You don't know anything about that?

A. No, sir, I do not.

17:03:34 Q. In July of 1995, which is, you know, a few months

before Mr. Cleveland was tried in January of 1996, Avery was interviewed at the Lorain Police Department in connection with that investigation.

Is that something you were aware of?

17:03:52 A. No. I was no longer in the Detective Bureau.

I was on road patrol, probably nights at that time. I wasn't part of the detective bureau so I would not have had that information.

Q. That's not information that would have been provided

17:04:07 to you where you had been involved in an investigation where Avery was the key witness?

A. I was not made aware of that, no.

Q. Can we bring up GT 37, please?

Sir, this is a copy of a letter from the

17:04:35 Secret Service, I believe, dated in December of 1996, but it concerns events in July of 1995.

If we could go to Page 2, please, and blow up the bottom two paragraphs.

THE COURT: For the record, the recent numbers

17:05:00 you've recited are not exhibits in this hearing, correct?

MR. CALABRESE: That is correct.

We're happy to make them exhibits, if you'd like to see them.

THE COURT: I just didn't want the transcript

17:05:10 to be confusing. I began to look for these in our books and

didn't see them.

You're using different letters in front of these numbers.

MR. CALABRESE: Correct.

17:05:18 THE COURT: That's fine. I just want you to be aware they are not in the record.

MR. CALABRESE: Yes, understood. Thank you, Your Honor.

BY MR. CALABRESE:

17:05:25 Q. Now, in July of 1995, this letter reflects that William Avery was interviewed at the Lorain Police Department, which is where you worked, true?

A. At the police department, yes, sir.

Q. And Secret Service had some concerns that he had

17:05:54 compromised their investigation.

Have you had a chance to read the --

A. According to what I'm seeing there, yes.

Q. So the Secret Service took him, if you look at the second paragraph, took him and submitted him to a polygraph

17:06:08 examination, and Secret Service found him to be deceptive.

Do you see that?

A. Yes.

Q. Was this information that was disclosed to Mr. Cleveland or his counsel?

17:06:25 A. I don't know.

Q. And if you would go to the third page of that document, call up the second-to-last paragraph, please.

The Secret Service in this letter, which I believe they sent to the Lorain Police, indicated that they were initiating an investigation into whether Avery had compromised their investigation.

17:06:53

Was that something you were aware of?

A. No.

Q. And the Secret Service reported that they were considering bringing charges against Avery at that time?

17:07:03

A. I wasn't aware of that.

Q. You don't know whether that was disclosed to Mr. Cleveland or his counsel, do you?

A. First time I've seen it.

No, I don't know that.

17:07:13

Q. Now, at Mr. Cleveland's trial, Avery admitted that he lied to the police on two occasions about what he had witnessed on the night of Marsha Blakely's murder.

Would you agree with me on that?

A. Yeah, that would have been his testimony. Sorry.

17:07:30

Q. And just so the record is clear, when Mr. Cleveland was tried in 1996 -- I'll try to make myself heard, I apologize.

Just so the record is clear, when Mr. Cleveland is tried, he only faced charges relating to

17:07:52

the death of Marsha Blakely, true?
A. That is correct.
Q. No drug charges?
A. No, sir.
17:08:02 Q. No charges relating to the death of Floyd Epps?
A. No, sir.
Q. Before Petitioner's trial, one thing you investigated was whether he flew from New York to Ohio, true?
A. I didn't personally, but it was investigated, that is
17:08:32 correct.
Q. And investigated under your direction and supervision?
A. I believe my recollection is Detective Captain Rivera had discussed that with maybe another detective who was assisting.
17:08:51 I don't recall exactly what the results of that was other than that we didn't have any information that would indicate that he flew from the Greater Cleveland area to New York at that time; nothing specific, sir.
Q. I want to talk a little bit about Avery, Sr. and his
17:09:12 role.
Now, back at the time of Marsha Blakely's murder, back in 1991, Avery, Sr. had charges for attempted arson pending against him in Lorain County, is that true?
A. I don't know that personally, no.
17:09:28 Q. You don't recall they threw a Molotov cocktail through

someone's front door?

A. No, sir, I don't recall that.

Q. Can you bring up JR 37, please?

I'm sorry, could we go to 36?

17:10:08 So if you searched over at the Lorain County Court records for Avery, Sr., this is what will come up.

And if we can look at the docket, please. You could see that these charges for arson were brought against Avery, Sr. back in 1986.

17:10:34 And you weren't aware of those?

MS. FOSNAUGHT: Objection, relevance.

A. I see it as highlighted. I don't know what I'm looking at, though.

THE COURT: I take it I'll agree with you, but

17:10:48 I'm not sure where this is going. I'm not sure of the relevance, either.

Maybe there will be a tie-in, but let's see where it goes. I don't see where it says --

MR. CALABRESE: Why don't we go back to Page 1

17:10:59 for a moment? I got ahead of myself, I apologize.

If we could maybe bring that up.

THE COURT: Now, this is Senior, not Junior; correct?

MR. CALABRESE: Correct.

17:11:12 If we just cull out that, yes, thank you.

BY MR. CALABRESE:

Q. So this is a criminal case number dating to 1986 with a charge for attempted arson.

Do you see that, sir?

17:11:26 A. Yes.

Q. And it's your testimony you were unaware of this information?

A. That's correct, sir.

Q. All right. Now, let's go back to the docket, please.

17:11:41 If we could blow that up.

So we see that the charges on the docket were filed in 1986 and they remained pending in 1991, true?

A. Warrant issued for outstanding case, I can read that, yes, sir.

17:12:05 Q. And, in fact, they were pending through 1996 when Mr. Cleveland was tried?

A. Yes.

Q. These were charges that were pending against Avery, Sr. at the time that he came to the police station with his

17:12:31 son back in 1991 with information about the --

A. I wasn't aware of that, but if that's what the docket would indicate, that would be the case.

Q. You didn't do a search at that time to check the background of Mr. Avery, Sr.?

17:12:48 A. Not to the extent that there were outstanding

warrants, no, sir.

THE COURT: Do you have anything further on --

MR. CALABRESE: On this?

17:13:14 THE COURT: -- 2008 and what happened in 2008?

MR. CALABRESE: Yes. We will get to that in a moment, Your Honor.

BY MR. CALABRESE:

Q. Before we get to 2008, I wanted to ask you, sir, in

17:13:23 2006 -- and if LaNesha could pull that up -- you know that Avery, Jr. signed an affidavit recanting his testimony at Mr. Cleveland's trial in 2006?

A. Yes.

Q. And you weren't present when the affidavit was signed?

17:13:41 A. No, sir.

Q. You know that Avery, Jr. gave a sworn statement later in 2006?

A. Yes.

Q. And he also recanted his trial testimony in that

17:13:51 statement?

A. Yes.

Q. And you attended the hearing in State Court in Lorain County in 2008 where Avery came in prepared to recant and invoke the Fifth Amendment?

17:14:09 A. Yes.

Q. You did not testify at that hearing?
A. No, sir, I did not.
Q. You didn't make a proffer of any evidence at that hearing?
17:14:18 A. No, sir.
Q. And if we look at the docket for the criminal charges against Avery, Sr. here, they remained pending through this period all the way up until October of 2008, true?
A. It shows that the prosecutor called the case as of
17:14:41 about 10/13/2008.
Q. And on 10/13 --
A. Prior to that, 11/27/2006, warrant still appears to be in effect.
Q. And on 10/13/2008, the charges against Avery, Sr. were
17:14:55 dismissed with special conditions, right?
A. Yes, sir. According to this docket, that's correct, sir.
Q. You're aware that Avery, Jr. has testified under oath that his father was abusive?
17:15:10 A. No, I'm not.
Q. Do you deny that his father was abusive toward him?
A. I personally never witnessed that other than verbal intensity about the money that he felt he and/or his son would get from the information provided in the Marsha
17:15:29 Blakely and Floyd Epps investigation.

Q. This is different than harassing to you?
A. He showed a great deal of interest because he wanted -- Senior I'm talking about -- wanted to share in whatever Junior was able to obtain in the way of financial
17:15:48 assistance from the money from the Prosecutor's Office or any other source.
As a matter of fact, he mentioned to me on one occasion or at least on one occasion that he thought they were going to make a movie and he thought his son was
17:16:05 entitled by extension to $10,000.
Q. Do you deny that Senior was threatening toward Avery, Jr.?
A. I hadn't personally witnessed it, no.
Q. Do you know if Avery, Sr. got Avery, Jr. addicted to
17:16:21 crack?
A. I don't know if Senior was responsible for his addiction, no, I do not.
Q. Do you know that Avery, Jr. was, in fact, addicted to crack?
17:16:30 A. I believe that he was.
Q. And that was at the time in 1991?
A. '91?
Q. 1991.
A. Yes.
17:16:41 Q. And you're not able to tell us why criminal charges

against Avery, Sr. were dropped in 2008 after the recantation hearing when it had been pending for 22 years?

A. No, sir. I wasn't even aware.

Q. Now, just one last issue on that hearing for January, 2008.

Although you didn't testify, you did confer with counsel for the State at that hearing, didn't you?

A. I'm sure we discussed the hearing, but I don't recall any specifics, no, sir.

Q. If they are reflected -- if your conferences with the State are reflected on the record, you have no reason to doubt that they took place?

A. No.

Q. And based on conferring with you, counsel for the State at that hearing represented that Avery made no drawings during his interviews with you and other members of the Lorain Police.

Do you remember that?

A. Would you repeat that, please? I'm sorry.

Q. Yeah. Yeah. I apologize.

Based on her -- based on conferring with you, the lawyer for the State at that hearing represented that Avery made no drawings in his interviews with the Lorain Police.

Do you remember that?

A. I don't recall discussion of that, no.
Q. And based on conferring with you, the lawyer for the State also represented that Avery -- well, that -- her representation was that any photographs of the Epps apartment were taken by law enforcement before they were shown to Avery.
Do you remember that?
A. If you'll repeat that, please.
I'm confused by your question a little bit.
17:18:40 Q. Yeah, so counsel for the State conferred with you at the hearing in January of 2008 and made representations about photographs of the Epps crime scene.
Do you remember that?
A. No.
17:18:51 Q. And when Mr. Avery saw them.
Do you remember that?
A. No.
Q. You don't have any reason to doubt the accuracy of the record on that point?
17:18:59 A. If it's on the record, no.
Q. You didn't offer any clarification on that point? In other words, you didn't come forward at that hearing to clarify the record to be consistent with your testimony today that you did not, in fact, show photographs to William
17:19:20 Avery, Jr. even though that was a subject of discussion?

A. Sir, I didn't testify in 2008.
Q. No, but you conferred with counsel for the State?
A. I don't recall any conference at all.
We went to the hearing and waited to see what
17:19:32 Avery, Jr. was going to say.
He didn't testify, and it was over.
Q. And my only question here, sir, is that you didn't correct -- there was some discussion among counsel with the Court, the sitting Judge in Lorain County, about the
17:19:49 photographs from the Epps crime scene, and even though you were conferring with the State on various points, you never --
MS. FOSNAUGHT: Objection. Asked and answered. He said he doesn't remember.
17:20:00 THE COURT: He, I think, has indicated he doesn't remember.
You may have information or documents or testimony otherwise, but I'm not sure you're going to get anywhere flogging this horse.
17:20:10 MR. CALABRESE: That's fine. If I could just complete the question for the record.
THE COURT: Go ahead.
BY MR. CALABRESE:
Q. And, sir, you never came forward and corrected the
17:20:21 record to make clear what your testimony is here today that

you never showed crime scene photos on September 11th, 1991.
A. No, I didn't correct anything, nor did I testify or put anything on the record.
Q. Counsel for Respondent asked you some questions about when, relative to the murder of Marsha Blakely, Avery came forward.
If your police report contains, you know, the same information that he came forward a few days after the crime, that would be inaccurate, wouldn't it?
A. Yes.
Q. You talked with counsel for Respondent about a jacket that Delphenia Guice provided to you, to the Lorain Police?
A. Yes.
Q. She also told you, did she not, that there was blood on jogging pants?
A. I don't recall blood being on jogging pants; just the jacket.
Q. And you found no blood at the Epps apartment?
A. No.
Q. And Delphenia Guice was not a witness to the murder of Marsha Blakely?
A. She testified, I believe, in the trial of Lenworth Edwards with regards to the murder of William Avery -- excuse me, I'm sorry -- of Marsha Blakely.
Q. But she was not an eyewitness to the murder itself?

A. Oh, I'm sorry, no, she was not an eyewitness, no.
Q. And she was not an eyewitness to the murder of Floyd Epps?
A. No.
17:22:09 Q. Would you agree with me, sir, that by the time of Marsha Blakely's murder, that Avery had a reputation in the community of being violent toward women?
A. Are you talking Junior or Senior?
Q. Junior.
17:22:22 A. Not with me. I didn't know William Avery, Jr. or ever talk to him until the 11th of September of 1991, so what his reputation might have been prior to that murder date of August 8th, I would not have the information.
Q. Sir, you did not search the Lorain Police reports
17:22:44 about William Avery, Jr. around the time he came in, came forward with information?
A. I may have, and I don't recall what the results of that was.
Q. Well, let's look briefly at GT 39.
17:23:13 THE COURT: With respect to JR 37, the exhibit that was just up on the screen with respect to William Avery, Sr., did you also obtain the underlying documents, or do you just have the summary from the docket sheet?
MR. CALABRESE: I have at least some of the
17:23:30 underlying documents.

I'm not sure I have them with me. I might. I can check.

THE COURT: I would like, with respect to any exhibit that contains the summary docket sheet, I would like you to also provide the underlying documents that might help explain the summary docket sheet.

MR. CALABRESE: We can certainly make efforts to obtain those, Judge.

THE COURT: Thank you.

MR. CALABRESE: To the extent we haven't already.

BY MR. CALABRESE:

Q. Okay. So, sir, if you would look at the screen, we have a report to the Lorain Police Department. If you would highlight the date, please, or call -- blow it up. This is from May 13th, 1989.

And we have a report from Charlotte Watkins, who I believe counsel for Respondent asked you some questions about.

The report here contains information that Charlotte Watkins, who was Avery's girlfriend at the time, reported to the police, the Lorain police, that Avery beat her in her driveway?

Do you see that?

A. I see that.

Q. And that he then followed her into her house and beat her in front of her two young daughters.

Do you see that as well?

A. Yes, sir.

17:24:56 Q. And when they tried to intervene, he beat them as well.

Do you see that?

A. Yes, sir.

Q. And Avery was arrested on this occasion?

17:25:09 A. Yes.

Q. If we go to GT 41, please, another police report, and if you could show us the date on this one, please.

I believe this one, sir, is January 9th, 1991. And if we could bring up the text, on this occasion the

17:25:50 Lorain Police responded to another incident involving Avery, Jr. This particular one involving a custody dispute, if you will, between him and Patricia Gaddy, the mother of his child who were breaking up and got into a fight.

Do you see that in the report?

17:26:08 A. I was reading. I'm sorry, the question?

Q. Yeah, I just wanted to make sure you were getting information from the report?

A. Yes.

MS. FOSNAUGHT: I'd object on relevance as to

17:26:18 these last two exhibits.

They certainly wouldn't be admitted to impeach Avery, and I don't know why they are being admitted or referred to in a cross-examination of a detective.

THE COURT: Well, the point is you're unaware of either of these two points, is that correct?

THE WITNESS: Yes, sir.

BY MR. CALABRESE:

Q. We can agree this is a report of domestic violence or violence against women that was made to the Lorain Police Department in 1991 involving William Avery, Jr.?

A. Yes.

Q. You have no reason to doubt that there were -- well, I'll move off that issue.

Now, we've talked about your interviews with Avery, Jr. and Delphenia Guice.

Would you agree with me that it's unusual to allow a member of the public to sit in on witness interviews when you're investigating a crime?

A. Yes.

Q. That was not your normal practice at the time?

A. No, it was not.

Q. And it would be a breach of protocol, wouldn't it, for that third party to put words in the mouth of a witness?

A. Yes.

Q. Sir, you're appearing voluntarily today?

A. Yes.
Q. Are you testifying pursuant to a subpoena?
A. Yes.
MR. CALABRESE: I would also just request a copy of the subpoena for the record, which we have not received.
Q. Are you receiving any compensation other than your required witness fee or mileage?
A. I'm not even receiving that. I'm turning that back in. I'm working so I can't accept that.
Q. Okay.
A. I think it was $74. That will go back to the Ohio Attorney General's Office.
Q. And finally, just one -- couple last questions about William Avery, Jr. and I just want to focus on the time period of 1991 and 1996 when Petitioner stood trial.
Focusing on that time period, sir, we can agree, can't we, that Avery committed perjury at some point?
MS. FOSNAUGHT: Objection. Argumentative.
THE COURT: Well, yes, obviously, right? Everything you both have done in this case is present this Court with conflicting statements by Mr. Avery, so it's a matter of which one is the truth or not.
I'm not sure questioning this witness on that point is, frankly, fair or appropriate, but if you wish to

pursue it, I'll allow it.

It's stating the obvious, and I'm not sure where it leads you.

BY MR. CALABRESE:

17:29:33 Q. We can agree on that, sir?

A. We can agree that he's changed his story on numerous occasions under oath either by deposition or -- well, actually by deposition and in his testimony, yes.

MR. CALABRESE: I don't have any further

17:29:47 questions.

THE COURT: Thank you.

I'm going to follow up because the crux of the issue here is not whether Mr. Avery changed his story. That is the obvious. Over time he has.

17:30:00 And here's the question I have for you.

With your investigation of this case, your role in this case, your observations of Mr. Avery over time, you've also indicated you had some concern regarding his crack addiction around the time of these murders and his

17:30:20 initial statements to your department.

You've indicated you had some concern about his father and his father's relationship with Junior and the father's interest in the reward money.

Tell me how you believe these factors play

17:30:48 into whether the statements that Mr. Avery gave you in 1991

were truthful or not.

THE WITNESS: Yes, sir. I'll attempt to be brief.

When the murders occurred on August 8th of 17:31:04 1991, we had collected some physical evidence and we were relegated with the responsibility of finding evidence and to make some sense out of how it was related to the two homicides.

We have three different crime scenes. We have 17:31:29 an initial crime scene that was reported at 1:25 a.m. of Floyd Epps. We never really were able to develop any solid evidence that would lead us to charging anybody.

That being said, the other two crime scenes were one behind 2538 West 21st Street, Westgate Plaza. That 17:32:00 was where Marsha's body was found. At the crime scene we noticed there were numerous stabs but not lethal marks on, I believe, the right side of her neck numbering nearly 30.

Her neck had been sliced through the thorax and the muscle tissues were actually pouring out and she had 17:32:20 been run over twice similarly to the fact of Floyd Epps killed twice -- run over twice.

Within about ten minutes, with witnesses coming forward, we were able to establish a relationship between Floyd Epps and Marsha Blakely, not a romantic one 17:32:37 but a friendship one where she would spend a considerable

amount of time at his apartment on Sunset Boulevard.

So Floyd's dead, she's dead. We went to Sunset Boulevard and we made sure we closed and secured that. We looked inside initially, didn't take any photographs, but we looked inside to see if anything else was of any interest to us.

17:32:55

We noticed that there was a kitchen table knocked over and a leg broken. That in and of itself didn't tell us much, but it appears to have been some type of struggle. That's why we had to secure the place.

17:33:09

It was during that same period of time that we started looking at a vehicle that had been reported to us as possibly involved in one or both of those homicides because a vehicle had, in fact, been used. That vehicle belonged to Delphenia Guice.

17:33:30

We also related to Delphenia Guice through the course of our investigation that she was friends with the group of people who were from Jamaica, Queens, New York who had been under surveillance and in some cases arrested for drug trafficking or other related offenses in the City of Lorain.

17:33:45

We went to Delphenia Guice's apartment, either me or someone from our detective bureau, and on two separate occasions got a consent search for her vehicle. In both instances we didn't find any usable evidence that would be

17:34:00

traceable evidence that we could use.

During that same period of time, I believe it was on either the 13th or 14th of now August, within a week, Delphenia Guice contacted the police department. Detective Resendez and I responded. We spoke with her. She was -- I'm sure she was concerned about the fact that the police department was looking at her as a possible relationship to these people. They were now under suspicion.

17:34:19 17:34:30 And she produced a bluejean jacket. On this bluejean jacket were blood spatters. I was excited. I says now we have -- we have something that may tie us back into who would be responsible for these murders.

Got a search warrant for Lenworth Edwards who 17:34:51 was already incarcerated on a non-related offense in the Lorain City Jail, and contacted the Lorain County Coroner's Office and got samples of both Floyd Epps' and Marsha Blakely's blood samples.

Sent them to BCI. And when the results came 17:35:07 back, we were disappointed again because the blood belonged to Lenworth Edwards; to neither victim. We filed it away and we continued to investigate.

We also interviewed Delphenia Guice -- when I say "we," Detective Resendez and I -- and during the 17:35:25 subsequent interview she talked about Lenworth Edwards in

two specific areas.

One is that on August 7th, Wednesday and Thursday, August 8th, the early morning hours, sometime between 11:00 p.m. and 5:10 p.m. -- a.m., excuse me, she was operating her vehicle and that he was in the company of other New York-based Jamaica, Queens people that she had met on prior occasions.

When he returned --

THE COURT: I'm sorry, she was operating her vehicle with --

THE WITNESS: He was.

THE COURT: He was?

THE WITNESS: Yes, he was operating her vehicle.

She gave him the car sometime between 11:00 o'clock and 5:00 o'clock the next morning; during the period of time that both Marsha and Floyd had been murdered, had the vehicle.

In that interview, even Delphenia Guice said "I walked out to my car when I learned of the murders to check my own car to make sure there wasn't any evidence there or if they were involved."

She also talked about the fact that --

THE COURT: And she didn't find anything.

THE WITNESS: Didn't find anything. She did

not find anything, nor did we ever find anything.

She also discussed the fact that she had gotten the information from John Austin Edwards, also known as Shakime, one of the potential suspects at that time, that Marsha Blakely possibly had found some drugs thrown through a window when these guys were going to be stopped or at least appeared to be stopped by the police. They thought she may have had it.

17:36:44

She also believed that maybe one of the other people with Lenworth Edwards may have picked it up. She talked about these things. Didn't mean a thing to us again.

17:36:57

Now, we had blood on the jacket but could have been nosebleeds. As a matter of fact, BCI suggested that's in fact what it probably resulted from.

On September 11th, a month later, more than a month later after the murders, William Avery, Sr. presented his son Junior to the police department and he talked about and gave us written -- excuse me -- a typed statement and subsequently other statements, including a deposition, talking about what he professed to know firsthand about those murders -- the murder of Marsha Blakely.

17:37:12

17:37:29

And he said that in Floyd Epps' apartment with Alfred Cleveland, Shakime, JR, Lenworth Edwards, and something either Supreme or Justice, street names -- Supreme or Justice, two different people, I'm sorry -- assaulted

17:37:53

Marsha Blakely, and in the course of that assault Lenworth Edwards was struck in the face by Marsha Blakely, held his face, backed out from the assault of Marsha Blakely and just continued.

17:38:10 That made more sense. The fact that BCI now said the blood on that jacket belonged to Lenworth Edwards, probably by the direction and flow of a nosebleed, and now we got that information that seemed to be consistent.

Also, during the struggle the kitchen table
17:38:29 was knocked over and a leg was broken. I'll back up. He didn't say the leg was broken, but the kitchen table was knocked over. That was consistent with what we found to be the case inside Floyd Epps' apartment.

And I say eventually it was -- and I apologize
17:38:47 to the Court, but eventually Junior relayed that, in fact, he was dishonest during the polygraph that was submitted by the Lorain Police Department or conducted by the Lorain Police Department where he was being deceptive at a point and that point was this: He initially said that he ran from
17:39:06 Floyd Epps' apartment after the assaults of Marsha Blakely to a girlfriend's house on Lorain Drive, 2140.

He later amended that and said, no, in fact, he had driven with Alfred Cleveland to the back of a shopping center, saw what he believed possibly to be
17:39:21 Justice, he wasn't real sure, somebody stabbing at Marsha

Blakely repeatedly. He said it was at that point that he ran.

So we now have the multiple stab wounds. We have the fact that he mentioned something consistent with the broken table, the blood spatter on Lenworth Edwards' jacket.

None of those things could have been the result of him making up a fabricated story because the story or even the event, even up to what happened at Floyd Epps' apartment, take away whether he -- at what point he left the group, there was no way that he could have known those things and tied those things into our physical evidence which we had more than a month earlier. That's what gave him credibility.

Trust me, Your Honor, if it was simply his statement to me, I would have walked away from him. I didn't like him. I didn't like his father.

You know, he was a thug. By his own definition he was a muscleman for the guys from New York who went out and collected debts.

He later makes a statement to the Detroit FBI that the reason he made that up was because he owed them money, and he for some reason in his mind he thought that it would be easier to walk away from these guys owing them three or $4,000 than putting them in jail for the better

part of their life. Made no sense.

The information he gave us was consistent.

Yes, you're right, he would say anything for money, including changing his story and recanting.

17:40:55 THE COURT: Thank you.

Back to you.

REDIRECT EXAMINATION OF GENO TALIANO

BY MS. FOSNAUGHT:

Q. Based on your interaction with William Avery, Sr., if
17:41:40 Avery, Sr. had had firsthand knowledge of these murders, would he have brought his son to you?

A. I don't believe so, no.

Q. Why not?

A. Because then the money would have been his. He wouldn't have had to share it.

He would have had to share the money and he would not have had to rely on his son's willingness to do so.

Would not -- I've said it wrong, too.

17:42:20 Q. Go ahead, repeat it.

A. Had he had firsthand knowledge, he wouldn't have needed his son or involved him. He could have simply collected the money himself and not had to share with William Avery, Jr., his son.

17:42:35 Q. You were shown a report where Avery, Sr. is purported

to have made some statements to a police detective and they memorialized supposedly what he said.

Was that report handwritten, do you recall when they showed it to you, the report that William Avery, Sr. had said that he felt fear because of his involvement in the Marsha Blakely murder?

A. I'd have to see it now again, please.

MS. FOSNAUGHT: Can you put it back up?

You guys have that. I don't have a copy of it.

MR. CALABRESE: I'll get the number for you.

THE COURT: Can't we just stipulate that the document says what it says? Identify it for the record and, I mean, this is not a document he was familiar with, as I recall.

MS. FOSNAUGHT: Yeah. I don't believe he had ever seen it, right, but he was examined about it.

THE COURT: Right.

MS. FOSNAUGHT: And --

THE COURT: Let's just put the document into evidence and that way you'll have whatever it says it says.

MS. FOSNAUGHT: Okay. I would like to ask him about -- I mean, it says what the person writing it says; it doesn't say what William Avery, Sr. says so, I mean, I don't know that William Avery, Sr. actually made that statement,

so that's what I'm getting at.

THE COURT: Well, let's get the document up on the screen.

MR. CALABRESE: Yeah, if you bear with me a moment, I'll get you the document.

MS. FOSNAUGHT: Okay.

BY MS. FOSNAUGHT:

Q. Are you aware of whether William Avery, Sr. was asked -- I mean William Avery, Jr. was asked about any convictions he might have had at trial?

A. If what?

Q. William Avery, Jr. was asked about his convictions during the trial?

A. I don't recall.

THE COURT: The one you're looking for is number 40.

MR. CALABRESE: Yes, we just found it, Your Honor. Thank you.

THE COURT: Instead of asking him what he recalls, can we not stipulate that either William Avery was or was not asked about his convictions during trial?

We have the trial transcript, don't we?

MS. FOSNAUGHT: Right.

THE COURT: It says what it says.

MS. FOSNAUGHT: Right.

I know Taliano was there so I wasn't sure whether he recalled, but they went into some convictions I believe with Avery, but no arrests, but in any event I wanted to correct that.

17:45:31 But, yes, the transcript speaks for itself.

THE COURT: You have number 40? There it is. And your question is?

BY MS. FOSNAUGHT:

Q. That is not a handwritten statement by Avery, Sr., is

17:45:47 that correct?

THE COURT: Can we not all stipulate to that?

MS. FOSNAUGHT: Okay, fine.

THE COURT: Thank you.

BY MS. FOSNAUGHT:

17:45:53 Q. Would William Avery, Sr., based on your investigation, have any reason to fear for his safety given that he brought Avery, Jr. forward?

A. What I'm reading is a statement offered by Officer Kurpely who may be paraphrasing the statement by William

17:46:25 Avery, Sr.

But I wasn't there and I don't know if he said that.

Q. Right, and based on your investigation here and based on your knowledge of the co-defendants and what your

17:46:33 investigation showed, would William Avery, Sr. have a reason

to be afraid for his safety because he brought his son forward as a witness?

A. I'm not aware of any.

Q. Opposing counsel asked you about subpoenas.

17:46:50 Did you need a subpoena for your work?

A. No.

Q. Okay. I showed you Exhibit 14, I believe.

A. Yes.

Q. The 9/11 interview. I direct your attention to

17:47:11 Page 804.

A. You're directing me to what?

Q. Page 804.

A. 804. Yes.

Q. And the first JR that we come to, is it correct during

17:47:29 that interview that he stated he doesn't know what his dad's talking about?

A. Yes.

Q. Page 808.

A. Okay.

17:47:46 Q. Toward the middle of the page there's a JR and it states "They ain't been here since they been out there walking with him"?

THE COURT: "With them."

MS. FOSNAUGHT: Right.

17:48:25 THE COURT: You're merely asking if that's

what it reads?

MS. FOSNAUGHT: Yes. And then I was going to do a follow-up.

I just want to make sure he can see what I'm referring to.

A. Well, I'm on the line that says "They ain't been here since they been out there walking with them."

Is that the line --

Q. Yes.

A. -- you're referencing?

Q. Yes. So in this context, Avery, Jr. is correcting his father, is that correct?

A. Yes.

Q. Page 809, the next page, the second Senior?

A. It says "Ah, I forgot."

Q. Right. And below that, Junior is stating that he doesn't remember the name either, and then the next Junior, he comes up with the name.

So William Avery is remembering things that his father doesn't remember, is that correct?

A. Yes.

Q. Page 811?

A. I'm sorry?

Q. Page 811, the Junior above the line pointing to something on table it sounds like, prior to that Avery, Sr.

had been talking about going to find the drugs or the money, and is that statement an indication that Avery went back on point and stops the interview from going off track?

A. I need to know what this is an interview of, this transcript.

Q. Okay. Go to the first page of Exhibit 14.

A. 6714?

Q. Fourteen.

A. Okay. I understand.

Q. Okay. So in this statement, Avery's bringing the interview back on track and bringing the discussion back to the beating that occurred at Epps' place on Page 11 -- 811?

A. Yes, he's making reference again to the beating of Marsha Blakely that took place in his apartment.

Q. And that, prior to that, the interview had gotten off on a tangent, is that correct?

A. There was a prior statement by Avery, Sr. talking about somebody called Brandon's wife.

I don't even know what that means.

MS. FOSNAUGHT: Okay. Thank you.

One moment.

Q. You were discussing some of the information that you used to corroborate Avery's story, some indications that Avery's story was credible because you were able to track it with some of the physical evidence that you knew from the

case, is that correct?

A. Yes.

Q. Did you also discover that Delphenia Guice had -- I mean Marsha Blakely had debris or grass or a leaf in her pants?

A. Yes. I noticed that the first time I believe at the crime scene and later at the Lorain County Coroner's Office where attached to her buttocks, and her pants were pulled slightly down, there was a piece of foilage.

That was one of the reasons, but not the only, that we asked for a rape kit to be done because of the nature of her pants. In fact, there was -- the rape kit was negative for oral and vaginal semen.

But during the September 11th and subsequent interviews of Avery, Jr. he talked about JR dragging Marsha Blakely from the back door, which faces the east side of the structure, to one of the waiting vehicles on 23rd Street.

And to do that, he would have had to drag her through a grassy area. But he did not identify the -- positively identify the grassy area to the rear of the house, to the leaf foilage on the house. It was just something that was consistent because where her body was found was asphalt. There wasn't any grass or leafy substance there.

So it would appear as though she obtained that

prior to getting -- prior to being on the asphalt driveway to the rear of Westgate Plaza.

MS. FOSNAUGHT: No further questions.

THE COURT: Anything further?

17:54:04 MR. CALABRESE: Just one, one issue very briefly, sir.

And if we could bring up that document, LaNesha.

RECROSS-EXAMINATION OF GENO TALIANO

BY MR. CALABRESE:

Q. Earlier today, sir, before you were here, we looked at a document, if you could highlight the signature at the bottom, please.

Officer George was here. You remember Les

17:54:29 George?

A. Yes.

Q. Les George testified today that this was not his signature on this police report. All right?

If you could highlight the information higher

17:54:42 in the document, please.

A. Yes.

Q. This is a police report involving an accident your son was involved in?

A. That's correct.

17:54:52 Q. Involving a car that you owned?

A. Yes.

Q. And this is dated December 8th, 1995. Down and next to Les George's signature there is the date.

Sir, did you sign Les George's name to this report?

MS. FOSNAUGHT: Objection.

A. I don't believe I signed his name.

I checked it. I took this report. I did this report.

17:55:21 Q. This is your handwriting?

A. Yes. That's correct.

Q. And you put somebody else's name on it?

A. Yes. And I'll explain.

Q. I'm not asking you to explain, sir.

17:55:30 A. Then I won't.

MR. CALABRESE: Thank you. I don't have any other questions for you.

THE WITNESS: Okay.

THE COURT: I'll ask you to explain it.

17:55:37 Go ahead.

THE WITNESS: My son was at his girlfriend's house and when he backed out of the driveway he hit his girlfriend's car; minor damage, no injury.

His girlfriend -- he came home, he told me

17:55:54 about it. I had a choice. I could have just had -- just

paid for it, which in fact I did, the damage to Brandy's car.

I could have -- typically what we would have done in that case when there is minor damage, you exchange names and settle it yourself.

17:56:07

I took the next -- I filled out a report, I asked Les George, who was the traffic commissioner, to review the information and then sign his name to it based upon the fact that the facts in the case, in the report were factual and honest.

17:56:20

And Brandy got her car fixed and that was the end of it.

THE COURT: Whose initials are to the lower right-hand side where it says "Badge number and checked by"?

17:56:34

THE WITNESS: Yeah, I'd have to see it again. I don't have it.

THE COURT: So did you print "L. George" at the bottom?

THE WITNESS: I'm sorry?

17:56:48

THE COURT: You printed the name L. George under "Officer's name"?

THE WITNESS: That's correct.

THE COURT: But he really wasn't involved on this report.

17:56:56

THE WITNESS: No. He reviewed the report and

then he signed his badge and then I checked it.

THE COURT: Whose badge number is that? What badge number is that?

THE WITNESS: That would have to be Les George's badge number. I didn't have a badge number.

17:57:11

THE COURT: Who filled in the box "Checked by"?

THE WITNESS: Looks like my initials GRT.

THE COURT: Looks like 468. Is that your badge number?

17:57:24

THE WITNESS: No, I'm not sure what that says.

But, no, I didn't have a badge number. I was a lieutenant with the police.

THE COURT: Okay. Anybody else? Last chance.

17:57:34

You may step down. Thank you.

(Witness excused).

THE COURT: We have one more witness to go? Do you expect this witness to be very long?

MS. FOSNAUGHT: I don't.

17:57:47

THE COURT: You don't?

Standing recess.

MR. CALABRESE: I've objected to the witness, Your Honor. We could be done if you sustain my objection.

JONATHAN ROSENBAUM,

of lawful age, a witness called by the Respondent,

being first duly sworn, was examined
and testified as follows:
THE COURT: Also while we are waiting, do you want to give the court reporter your name and spelling, please?
THE WITNESS: Jonathan Rosenbaum, R-O-S-E-N-B-A-U-M.
THE COURT: The witness is on the stand and has been sworn, and you may inquire.
18:02:43 DIRECT EXAMINATION OF JONATHAN ROSENBAUM
BY MS. FOSNAUGHT:
Q. You were formerly the prosecutor, an assistant prosecuting attorney with Lorain County, is that correct?
A. Yes.
18:02:49 THE COURT: Whoa. Slow down. I know it's late and you want to hurry through but --
MS. FOSNAUGHT: Okay.
Q. And you prosecuted Lenworth Edwards?
A. Correct.
18:03:00 Q. You prosecuted Benson Davis?
A. Correct.
Q. You prosecuted Alfred Cleveland?
A. Correct.
Q. And you prosecuted John Austin Edwards?
18:03:09 A. Correct.

Q. Was Alfred Cleveland's alibi evidence explored at trial?

A. Absolutely.

Q. I'm going to show you Benson Davis's testimony during his case.

18:03:39

It's Exhibit 7 and it's transcript Page 426, and towards the middle of the page you're referencing Benson Davis's testimony during his extradition proceeding, is that correct?

18:04:30

A. I am?

Q. Yes.

A. Appears to be so.

Q. Okay. And you are familiar with the witness by the name of Delphenia Guice?

18:04:52

A. I am.

Q. Did she testify during Lenworth Edwards' trial?

A. Yes.

Q. Okay. Can you tell us who she was as a witness during the trial?

18:05:04

A. She, I believe, was a girlfriend of one of these four defendants who supplied the Lorain Police Department with a bloody coat, and gave several statements to the Lorain Police Department of her own accord.

And I believe her tapes are in evidence at

18:05:26

Mr. Cleveland's trial because at that time she tried to

create the impression that she was somehow forced or intimidated into testifying, and the tapes betrayed that and were placed into evidence.

Q. And did Delphenia Guice testify at Ian Davis's trial?

18:05:45 A. I believe she testified in all four of them.

Q. Did you ever meet with Delphenia Guice in person?

A. I'm sure I did.

Q. Okay. Do you have any recollection of those meetings?

A. Not really.

18:06:08 Q. When Guice testified during the trials, any of them, that she did not remember or she was inconsistent with her interviews, were you surprised?

A. Yes. The first time.

Q. And why were you surprised?

18:06:29 A. Well, the first time she cooperated, and then when she hit the stand she basically clammed up and, I believe, wanted to give the impression in front of the defendants and their families that she was not a cooperative witness.

Hence, the admission of her prior tapes.

18:06:48 Q. In her affidavit that's in the record, Delphenia Guice alleges that upon arriving to testify at Lenworth Edwards' trial, she had a meeting with you, is that correct?

A. It could be.

Q. In her affidavit she testifies that --

18:07:08 A. What -- if I can ask, would the meeting be at the day

she came to the courthouse to testify, or prior to testifying? If I, you know --

THE COURT: Have you given him an exhibit number now?

18:07:34 MS. FOSNAUGHT: Trying to get it. 26.

A. And Edwards would be the -- that would be Lenworth Edwards' trial?

Q. Right.

A. That could be.

18:08:00 Q. Okay. In her affidavit, she also alleges that you told her "You are going in there and you are going to testify to what we tell you."

Is that correct?

A. Absolutely not.

18:08:12 Q. Are you familiar with William Avery, Jr.?

A. Yes.

Q. And who was he?

A. He was the informant in this case.

Q. And did he testify during Lenworth Edwards' first

18:08:30 trial?

A. You mean the mistrial --

Q. Yes.

A. -- or the first trial?

Q. The first -- the first trial that ended in a mistrial.

18:08:37 A. Yes, he did.

Q. And you are aware of him having three interviews?
A. Well, when you say "testify at the mistrial," I guess he refused to testify at the mistrial.
Q. Well, did he testify for you and then refused to be cross-examined?
18:08:53
A. No.
Q. Or did he refuse to testify altogether?
A. He refused -- Lenworth -- he came to the courthouse and demanded that we pay him $10,000, which I told him
18:09:05
wasn't happening.
He said he wasn't going to testify.
I went in and told Judge Harris this, and that I thought the Judge needed to bring him into court. The Judge did so. He refused to testify.
18:09:19
The Judge found him in contempt and the deputies hauled him off.
Q. And initially the Judge was going to allow you to enter his deposition into evidence?
A. The Judge did allow us to enter the deposition. And
18:09:32
we, to be honest with you, were afraid that William Avery would be assassinated so we took his deposition and got the opposing interest counsel so that it would be admissible if Mr. Avery met his demise.
So we had the deposition ready to go. We put
18:09:51
it in evidence and, quite frankly, I would have preferred to

have the deposition in without Mr. Avery's input ever again.
Q. Okay. And then after the deposition was entered into evidence, what happened?
A. Well, Mr. Avery went to the jail and I subsequently learned that he became afraid because he was now incarcerated with the suspects or people that knew the defendants in these cases, and he tried to call us.
18:10:12
And I knew right then and there that if I had any contact with him after what he did, that this very
18:10:33
allegation that is the subject of this proceeding would be improperly and falsely leveled.
So we did not go near him and I forbid anybody to go near him. As a result of that, he then called the defense counsel for Mr. Edwards who brought him to court.
18:10:52
Q. And what did he do when he arrived at court?
A. Well, he came to court then when he found out that we were not going to speak to him or give him the money or give him any more help, and he decided to tell the Judge then that he recanted.
18:11:07
The Judge at that time was not happy and said the deposition was in and that the defense was not going to be able to even mention that Mr. Avery had subsequently recanted.
And I knew that that was not going to be
18:11:26
upheld, that it was not right, that it was not fair. So I

sought out the defense lawyer and said "If you move for a mistrial, I won't oppose it. And then we can sort out whatever's going on here."

And I thought that was in fairness to the defendant and to the State. And that's what we did, and the Judge gave us the mistrial.

Q. And did you eventually send anyone to talk with Mr. Avery?

A. Well, Mr. Avery kept calling because he did not want to remain in jail, and I knew that if any of us came near him it would be fodder to this, what's going on here today, so we sent the FBI and the FBI interviewed him.

And at that time Mr. Avery told us, reaffirmed his initial story or his subsequent story and I believe gave us some even additional information through the FBI, but I took that precaution so no one could accuse us of apparently what they are accusing us of doing here today.

Q. When Avery testified at trial, what did you argue to the jury regarding his testimony?

A. Well, we -- when we subsequently came back to try Mr. Edwards, we portrayed Mr. Avery as the thug he was and made full disclosure to the jury of all of his versions and recantations four times, and the fact that the FBI was involved, and that we argued to him that you could not -- the jury could not believe a word he said unless

they -- or should not believe a word he said unless they found that the physical evidence so corroborated someone of his ilk's testimony that they were comfortable on convicting someone.

18:13:13 And apparently four juries had no trouble doing so even after full disclosure of this, I guess you could call it, debacle almost.

Q. Was there testimony at Cleveland's trial as to whether it was possible to fly or drive to Lorain County?

18:13:28 A. Yes. Yes.

Q. So both were explored?

A. Yes.

Q. In Avery's 2006 affidavit, he alleges that he told you he was lying for money; that you got upset with him and told

18:13:44 him if these dudes don't go down for this, he would.

Is that correct?

A. Well, there's a grain of truth to that.

He did at one time say that he lied. Other than that, there's no truth to that.

18:14:03 MS. FOSNAUGHT: I have no further questions.

CROSS-EXAMINATION OF JONATHAN ROSENBAUM

BY MR. CALABRESE:

Q. Good evening, sir. My name is Phil Calabrese, counsel for Mr. Cleveland.

18:14:35 At the time of Cleveland's prosecution and

trial, you were the chief counsel for the criminal division in the Lorain County Prosecutor's Office, true?

A. I don't know if that's true or not.

At some time in my career there I became the chief counsel. I really can't tell you when.

I might well have been.

Q. In fact, if I represented to you that that was prior to the murder of Marsha Blakely, you wouldn't disagree with me on that?

18:15:04 A. Well, if you know the answer to the question --

Q. I wouldn't represent it to you, sir?

A. Well, I'm not going to accept your representation.

My memory is I don't know when.

Q. Okay.

18:15:13 A. And you can't change that one way or the other, I'm sorry.

Q. All right.

A. I did become the chief counsel at some point in 21 years there.

18:15:21 I was the chief counsel, I think, for the bulk of those 21 years. I was trying to remember the other day when that happened, and I can't.

Q. Now, in that role as chief counsel for the criminal division, you reported directly to the elected county

18:15:35 prosecutor?

A. That's correct.
Q. But you had a considerable amount of autonomy to run that division?
A. I guess that would be from whose viewpoint?
18:15:50 Q. Well, I think, you know, to prosecute cases or to investigate cases, the elected prosecutor wasn't micromanaging your decisions day-to-day, was he?
A. There would be some debate on that, too, especially towards the end of my career.
18:16:06 Q. The end of your career there was not in 1996, true?
A. That's correct.
Q. And when you were bringing a case to trial against Mr. Cleveland or any of the four defendants counsel for Respondent was asking you about, you weren't clearing every
18:16:25 tactic or strategy decision with the elected prosecutor, were you?
A. Well, I -- no.
Q. Now, at Petitioner's trial, Mr. Cleveland's trial in 1996, there was no DNA evidence placing him at the scene of
18:16:59 Marsha Blakely's murder, true?
A. Correct.
Q. Or at the scene of Floyd Epps' murder?
A. Correct.
Q. Or behind Charlie's Bar where Marsha Blakely's body
18:17:09 was found?

A. I guess I can go you one better. At this time we didn't have DNA evidence, as I recall.
Q. Well, and you didn't have any fingerprint evidence either --
18:17:20 A. That's correct.
Q. -- placing Mr. Cleveland at any of those places?
A. Correct.
Q. Or in Floyd Epps' apartment?
A. Correct.
18:17:27 Q. You didn't have any scientific or forensic evidence of that kind placing him at Marsha Blakely's crime scene, at Floyd Epps' crime scene, at the Floyd Epps apartment?
A. I guess that's correct.
Q. You didn't have any video evidence, surveillance tapes
18:17:48 and the like, from Charlie's Bar or any other place putting Mr. Cleveland in Lorain, Ohio that night?
A. That's correct.
Q. You didn't have any confession from Mr. Cleveland?
A. Not from Mr. Cleveland.
18:18:01 Q. Not from any of the other four defendants?
A. Well, I would dispute that.
Mr. Lenworth Edwards agreed to -- he took the Fifth -- he agreed to waive his Fifth Amendment rights on every time period except the murder, and that to me is
18:18:20 tantamount to a confession.

There's no -- there's no other explanation for that. It's like the guy who covers his face in a lineup.

Q. You only had at trial one eyewitness placing Mr. Cleveland?

18:18:42 A. One eyewitness and a ton of circumstantial evidence that supported it.

Q. That eyewitness evidence, that eyewitness testimony came from William Avery, Jr., true?

A. That's correct.

18:18:52 Q. Do you agree with me that he was a thug?

A. Absolutely.

Q. He was a drug pusher?

A. Absolutely.

Q. He was addicted to crack?

18:18:58 A. I don't believe that's true.

Q. You disagree with that?

A. Well, his testimony was he didn't use it and I didn't see any evidence of him using it.

Q. If you told other people that he was addicted to

18:19:09 crack, that would be false?

A. I don't believe I did that.

MR. CALABRESE: LaNesha, can we bring up JR 21, please?

Q. Sir, this is a letter on the letterhead of your

18:19:37 private law practice, true?

A. Yes.
Q. Dated, I think, July 6th, 2006?
A. That's the date on it.
THE COURT: Can you blow it up a little bit?
18:19:51 A FEMALE SPEAKER: Yes.
THE COURT: Thank you.
THE WITNESS: That's a little too much.
MR. CALABRESE: We can make it as big as you want, Judge.
18:19:59 THE COURT: That's right.
Q. This was a letter that you sent to --
A. Well, I'd like to read it. I have no idea what it is.
Can I?
Q. Yeah, absolutely.
18:20:06 A. Can someone make it a little bigger?
Q. Sure. If you could just highlight -- I'm interested in the statement on Page 2, but take your time, read as much of it as you want.
A. Thank you.
18:20:45 Q. You can get there when you get there, but I'm interested in Paragraph 6 on Page 2.
A. Okay. Could you turn this to the next page, please? All right. Can you make it bigger again? Thank you.
Well, I guess I said it there, and I presume
18:21:50 that that is accurate and my memory was better then than it

is now.

I certainly agree with those other statements about Mr. Avery.

Q. So you would agree then that he was addicted to crack?

18:22:01 A. I said so. I have no recollection of that. If I said it then, he probably was.

Q. All right. Thank you, sir.

You're aware that Avery retracted his statement that he was intimidated by Lenworth Edwards and

18:22:23 when he made that statement Avery said that was a false allegation he made?

A. Would you ask me that again, please?

Q. Let me ask that question again. It's late. I apologize.

18:22:34 I believe there was some evidence or testimony that Avery felt intimidated by Lenworth Edwards.

You're aware that he retracted that statement, that he said that that claim he made was false?

A. When?

18:22:49 Q. Back at the time when these prosecutions were going on.

A. I don't remember him telling us at the time that he was not afraid of Lenworth when he was in jail and calling for us.

18:23:00 Q. Okay. Do you -- do you dispute that he stated he was

not --

A. I don't know what he stated. I don't have any recollection of that as I sit here today.

Q. Now, sir, as you sit here today, do you recall that in the mistrial of Lenworth Edwards, Avery came back into court in the afternoon?

A. Yes, as I said so.

Q. And he testified under oath in the afternoon that he had lied about everything, about witnessing the Blakely murder?

A. Yes.

Q. That it was all a lie?

A. Yes. And Judge Harris would not allow the jury to hear that.

That's why I asked the defense lawyer to move for a mistrial and told him I wouldn't oppose it until we could get to the bottom of this.

Q. You talked a little bit about the reward money. I just have a couple quick follow-up questions on that.

When he came forward and asked for an additional $10,000, Avery, Jr. --

A. Are we talking about Avery, Jr. at the courthouse?

Q. Avery, Jr. at the mistrial.

A. Okay.

Q. Of Lenworth Edwards.

A. Right.
Q. When he came forward and asked for that additional $10,000, fair to say you viewed that as preposterous?
A. That he asked me that?
18:24:34 Q. That you viewed his request as preposterous?
A. Well, he wasn't going to get another nickel.
Q. And as a shakedown?
A. Well, his father all along wanted more money. I'd had that conversation with his father as well and told him it
18:24:53 wasn't happening.
Q. And at the time when he made that request for additional money, can we agree that that happened at the Prosecutor's Office?
A. No. It happened in the hallway of the courthouse.
18:25:08 Q. Okay.
A. Right when he was going to testify.
And I went right into the Judge and said "Hey, this guy is refusing to testify. I think you need to bring him into the courtroom and speak to him." And that's what
18:25:28 happened.
Q. Counsel for Respondent asked you about interviewing witnesses.
I don't want to rehash that, but I do have one follow-up question for you.
18:25:37 When you interview witnesses before trial,

your practice was not to record those interviews, is that true?

A. Correct.

Q. Would you agree with me, sir, that two honest people who witness the same event may not describe it exactly the same way?

18:25:52

A. Absolutely.

Q. And that people sometimes forget things?

A. Yes, they do.

18:26:02

Q. And we can agree that sometimes people who witness the same events perceive them differently?

A. Yes.

Q. You mentioned on direct the deposition that Avery gave before the mistrial of Lenworth Edwards.

18:26:25

You prepared Avery for that deposition, is that true?

A. I would assume it's true. I have no recollection of that, but I am sure that I met with him and went over the statement he gave the police.

18:26:42

MR. CALABRESE: And, LaNesha, if we could bring up Exhibit 18, please. Exhibit 18.

Q. Sir, this is a copy of the deposition of William Avery that you referenced.

The caption for this case is a caption with

18:27:12

Lenworth Edwards, is that true?

A. That's what it says there.
Q. It's not a caption for Alfred Cleveland?
A. That's what it says.
Q. And if you were to turn to Page 2, please. If you could highlight or blow up the middle of the page there with appearances.
It's hard to read, I know, I apologize. Some of these documents are old, it's the best we have.
But also present at this deposition were Lenworth Edwards himself, Mr. Taliano, Detective Resendez, and Lemmie Davis.
Alfred Cleveland was not present?
A. That's what it says.
Q. And no counsel representing Mr. Cleveland was present?
A. I -- my recollection of this was that we had a counsel appointed by the Court generally to represent the interests of no specific person at that time. I could be wrong on that.
I believe it was Joe Grunda, Jr., who appeared on behalf of the defense.
Q. Could you just click out of this and highlight the whole first page to show the attorneys who were present?
My understanding from the appearances, sir, is that Lenworth Edwards was represented by --
A. Barry Hotsch.

Q. If you could just bring up, go up from where you were to the top of the page?

A. It says Barry Hotsch, doesn't it?

I know Barry was at the first trial and he was the counsel that I said "Look, I think you need to move for a mistrial to protect your client and I won't oppose it."

18:28:48

Q. And he was the counsel for Mr. Edwards?

A. That is correct.

Q. Not Mr. Cleveland?

18:29:01

A. Okay. That could be.

Q. Now, Respondent asked you whether --

A. But I guess we should -- I guess we should make it clear that the mistrial occurred in Lenworth Edwards' trial.

Q. Yes.

18:29:16

A. Did not occur in Mr. Cleveland's trial.

Q. We agree.

A. And Mr. Avery testified at Mr. Cleveland's trial.

Q. I think we agree on all of that, sir.

A. Okay.

18:29:27

Q. Now, counsel for Respondent was asking you about the alibi defense at Mr. Cleveland's trial.

A. Yes.

Q. David Donaphin did not testify at Mr. Cleveland's trial, did he?

18:29:38

A. I don't believe so.

Q. Ian Davis did not testify at that trial?
A. I -- I don't believe he did, but Mr. -- I do remember that Damon John testifying, and his attempt to provide an alibi imploded and, in my opinion, as much contributed to the conviction as anything we had to offer on our case in chief.
18:29:59
Q. And I believe my question, sir, was that Ian Davis did not testify?
A. I think that's correct.
Q. And if we could just pull up Exhibit 10 for a moment.
18:30:08
This is an AT&T phone bill from 1991. This document was not introduced at Mr. Cleveland's trial, true?
A. Not that I recall, although I don't know what that is. But, I mean, if that phone record existed at that time, it certainly could have been introduced and should have been.
18:30:37
Q. Have you seen this phone bill before today, sir?
A. I don't believe so.
Q. Did you --
THE COURT: How do you know it should have been introduced?
18:30:54
THE WITNESS: Well, if this is a purported alibi document, there's no reason that they couldn't have used it.
And it's similar to some of the other things they -- I assume it's similar to some of the other things
18:31:07

they tried to introduce that tried to place Mr. Cleveland in New York, which none of them conclusively proved anything.

And as I said before, Damon John tried to bring in a receipt that I assume was the same kind of thing as this, and I subpoenaed the rest of the documents that pertained to that receipt in the middle of the trial to make sure we weren't making a huge mistake because it seemed they might be onto something.

18:31:24

And upon -- at first I was very, very concerned with maybe he wasn't here, but upon closer examination of that it came out at trial and I argued in the closing that Damon John was an employee of Mr. Cleveland's father, a fact that he attempted to conceal, which I think that definitely backfired.

18:31:37

Q. Were you aware that this document was used at the extradition hearing of Benson Davis --

18:31:58

A. No.

Q. -- from New York to Ohio?

A. I -- no.

Q. We've had some testimony today about flight records and counsel for Respondent asked you about that on direct.

18:32:13

I think in the interests of time we don't need to rehash all that, but you did mention on direct driving records.

Did you ever identify a car that Mr. Cleveland

18:32:26

drove from New York to Lorain on August 7th, 1991?
A. No.
Q. Did you investigate rental car agencies to determine whether he had rented a car to drive from New York to Ohio on August 7th, 1991?
18:32:43
A. Not that I recall.
Q. Sir, you never prosecuted Avery for any crime, Avery, Jr., just so we're clear?
A. I don't believe so.
18:33:05
Q. You never prosecuted him for any drug offense?
A. No.
Q. And you never prosecuted anyone for the murder of Floyd Epps?
A. It wasn't for the want of trying.
18:33:22
Q. Is it fair to say that your philosophy in a criminal case is that if you are right and your cause is just, that the more you dig, you'll find little things that are consistent with your position?
A. Yes.
18:33:32
Q. In January of 2008 when Avery appeared in Lorain County Common Pleas Court prepared to recant his testimony, you did not testify that day, did you?
A. January of 2008?
Q. Yes.
18:33:53
A. No. I -- I don't know anything about that.

Q. You didn't make any proffer of evidence or testimony on that date?
A. No. I was long gone from the Prosecutor's Office then.
18:34:05 Q. And no one contacted you and asked you --
A. I believe I was contacted and asked for an affidavit of some sort at some point in time after I left, which I provided.
Q. But in terms of actually coming to the hearing, you
18:34:17 didn't --
A. Oh, no, I -- no. No.
Q. You didn't come to the hearing; you didn't proffer any evidence or testimony?
A. No one -- no one even informed me that it was going
18:34:26 on.
Q. Now, at one point in time you did prosecute Mary Papcke, true?
A. Yes.
Q. She was Petitioner's counsel at trial?
18:34:52 A. Yes.
MS. FOSNAUGHT: Objection. Relevance.
THE COURT: Tell me where you're going with this.
MR. CALABRESE: I believe that this goes to
18:35:02 various claims for relief that Mr. Cleveland has pending

before this Court, Your Honor.

MS. FOSNAUGHT: We have been -- I have been told that I was not allowed to present Rosenbaum, Taliano and Resendez and the basis of the objection was that it would go to ineffective assistance of trial counsel or prosecutorial misconduct, and this appears to be going to ineffective assistance of trial counsel.

MR. CALABRESE: You've presented them.

MS. FOSNAUGHT: But the hearing is limited to alibi and false testimony, as far as I'm aware.

MR. CALABRESE: I believe some of this may go to motive, Your Honor.

THE COURT: I'll let you go and see how far I'll let you go.

MR. CALABRESE: It's not going to go very far, Your Honor.

THE COURT: Okay.

BY MR. CALABRESE:

Q. When you prosecuted Ms. Papcke, that was for forgery?

A. I think so.

Q. The forgery related to signatures on affidavits and other documents that Ms. Papcke had filed with divorce Court?

A. Yeah, and I also think she was accused of stealing a document from a Court file, and I think Judge Basinski

testified against her.

I'm not a hundred percent certain on that.

Q. It was a multi-count indictment, though?

A. Yes.

18:36:16 Q. The counts involved conduct that occurred in 1994 and 1995?

A. I have no recollection of that at this time.

Q. And you have no reason to dispute the information that's in the indictment?

18:36:27 A. No reason to confirm or dispute it.

Q. Now, sir, is it true that you began investigating Ms. Papcke because of her defense of various prosecutions you brought?

A. I don't think so.

18:36:48 I think it -- we investigated Ms. Papcke because people brought to light that she had notarized documents when the signator was not before her.

And as I recall Judge Basinski was convinced that she stole a document from a Court file from his divorce

18:37:09 Court.

Q. You've never brought charges against another lawyer for that kind of conduct, have you?

A. I believe I have.

Q. In public corruption cases, right?

18:37:20 A. No, I used to travel from county-to-county prosecuting

lawyers for just about anything that the local prosecutor didn't want to prosecute. And I did that for quite awhile.

And there were thefts, there were forgeries, there were all kinds of things. Public corruption, too.

18:37:43 Q. Sir, it's true you threatened Ms. Papcke, threatened her to go after her law license at one point?

A. No. I don't have to threaten her. When you convict her, her license is gone, and that's what happened.

Q. Did you threaten the attorney for John Edwards?

18:38:00 A. Who was the --

Q. Did you threaten to go after his law license?

A. Who was the attorney for John Edwards?

Well, I could answer that. No, I didn't threaten any lawyer for no reason, but I would like to know,

18:38:11 I don't really recall who Mr. Edwards' lawyer was.

Q. Why don't we bring up document I think it's 30? I have the wrong number.

I believe John Edwards' lawyer, that was Edward Zaleski. I'm sorry, that was the Judge. I

18:39:03 apologize.

THE COURT: I was going to say.

MR. CALABRESE: I apologize. I'm reading the wrong list. It's been a long day.

Well, I'll move on from this and I'll see if

18:39:17 we need to come back to it.

THE COURT: Be kind to Judges whose last name begin with Z.

BY MR. CALABRESE:

Q. At any point during your prosecution of Petitioner while his case was pending, did you advise him that his counsel was suspected of criminal conduct?

A. She wasn't at that time, as I recall.

Q. I believe you told us you had some doubts about your case against Mr. Cleveland, is that true?

A. No. I didn't have any doubts about my case against Mr. Cleveland.

When they raised this New York stuff when they thought they had some documents, I wanted to make double sure that we weren't making a mistake, and I believe that in delving into it he pretty much confirmed that we were on the right track.

Q. You expressed doubts about the case against Mr. Cleveland to law enforcement, did you not?

A. What do you mean "doubts"? About the strength of the case or the evidence against him or whether he did it? No.

Was I concerned that with what Mr. Avery had done, that upon disclosing that to a jury that they may not convict, I was concerned about that. But --

Q. In 1995 you felt that the case against Mr. Cleveland lacked merit, is that true?

A. No, that's not true.
Q. Did you think it was a waste of your office's time?
A. No, we wouldn't have done it. We had more cases than we know what to do with, and not every murder is solved.
18:41:14 And you just wait until the next time, that's all.
MR. CALABRESE: If you would bring up JR 38, please.
Q. Now, you know, sir, while that's coming up, that before Mr. Cleveland was tried in Lorain County, that he
18:41:36 faced some drug charges in Virginia?
A. I think so. I don't really recall that now.
I think we got him from there, didn't we? I'm not sure.
Q. You do recall working with the U.S. Attorney's Office
18:41:53 to try to facilitate extradition, if you will?
A. No.
Q. Okay.
A. The extradition would be through -- I mean, I don't recall that, but extradition normally is state-to-state.
18:42:05 We did ask the FBI to go to the U.S. Attorney's Office to get a federal fugitive warrant, which is what this is, or was.
THE COURT: The witness was referring to what I think was Exhibit 9-A as in apple.
18:42:29 Q. Sir, while we look for the electronic document, let me

just show you -- I'll show you this and give you a copy as well.

MR. CALABRESE: May I approach, Your Honor?

THE COURT: Sure.

18:43:01 Q. Sir, I'll represent to you that this is a document that we obtained from the FBI through a Freedom of Information request, public records request.

It's undated, but in the second paragraph you see that there's a reference to actions taken on 3/15/95 so

18:43:25 it's in that general time frame.

And up in the first paragraph --

THE COURT: Can I see the document?

MR. CALABRESE: Yeah.

THE WITNESS: (Handing).

18:43:37 THE COURT: It's not an exhibit, I take it?

MR. CALABRESE: It's not an exhibit, Your Honor.

You can have my copy. I'll have to read over his shoulder.

18:43:46 THE COURT: I'll get it later. Go ahead.

MR. CALABRESE: Okay. Thank you.

BY MR. CALABRESE:

Q. The document says, "Rosenbaum stated that he has wasted valuable hours attempting to get these individuals

18:43:57 back," referencing Al Cleveland and John Edwards, "and that

the United States Attorney's Office in Virginia has been successful in keeping both prisoners that are wanted for a double homicide in Lorain to stand trial for drug cases in Virginia.

18:44:10 "At this time Rosenbaum stated that due to the length of time the warrant has been outstanding, he now feels that the Lorain case lacks merit and he does not want to pay for extradition and/or waste his office's time."

A. No, that's not true.

18:44:26 Q. You deny that conversation ever happened?

A. I don't -- it doesn't -- I did not tell that to this person and we did nothing, as I recall, but try to get this guy back, and we finally did.

And I certainly did not say the case lacks

18:44:42 merit. This is not my statement, and I don't know what it is.

MR. CALABRESE: I don't have anything further at this time. Thank you.

THE COURT: In the interests of time, I don't

18:45:15 have any questions of this witness except for one, and that is when your letter to the "Plain Dealer" was displayed -- I think it was JR 21 -- do you still stand by that utter?

THE WITNESS: Could I finish reading it?

THE COURT: Yes.

18:45:32 THE WITNESS: My guess is yes, but I sure

would like to see it.

THE COURT: Please provide him with a copy, either hard copy or on the screen, and allow him to finish reading it. And if his answer is yes to my question, then I'd like that document made an exhibit for this hearing, please.

18:45:46

MR. CALABRESE: Yeah, we can certainly submit the document for the record, Your Honor.

THE COURT: Thank you. That will save some time.

18:45:56

I think they are trying to bring it up.

THE WITNESS: Okay.

THE COURT: Do you have a hard copy?

A FEMALE SPEAKER: Yes.

18:46:11

THE COURT: Why don't you just give him a hard copy?

A FEMALE SPEAKER: Okay. I'll bring it up in one second.

THE COURT: While you're looking, let's give you a chance, any questions you wish to ask in follow-up?

18:46:30

MS. FOSNAUGHT: I just have one.

THE COURT: Go for it.

REDIRECT EXAMINATION OF JONATHAN ROSENBAUM

BY MS. FOSNAUGHT:

Q. You were asked about prosecuting Avery for a drug

18:46:41

offense, and we've had testimony today that Alfred Cleveland acknowledges drug trafficking in Lorain, Ohio.

Did you ever prosecute Alfred Cleveland for any drug offenses?

18:46:57 A. I don't believe so.

MS. FOSNAUGHT: Okay.

THE COURT: That's your one question?

MS. FOSNAUGHT: That's my one question.

THE COURT: Thank you.

18:47:05 MR. CALABRESE: Here was the document you referenced.

MS. FOSNAUGHT: Well, the one pulled up is not what he was asked about.

THE COURT: No, we have the hard copy here,

18:47:24 and I'd like someone to mark this Exhibit 106 I think is the next one in sequence.

MR. CALABRESE: What I'll do, Your Honor, is submit these electronically so everybody has them and they're in the record.

18:47:34 THE COURT: Perfect. Thank you very much.

(Pause).

MR. CALABRESE: I'm sorry, are we --

THE COURT: He's reading.

MR. CALABRESE: Oh, I understand. Sorry.

18:50:40 THE WITNESS: I believe the letter's correct,

Your Honor.

THE COURT: You stand by the letter?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

18:50:47 Any questions, Phil, further?

MR. CALABRESE: I think I have one clarifying question.

RECROSS-EXAMINATION OF JONATHAN ROSENBAUM

BY MR. CALABRESE:

18:50:59 Q. I may have asked a question poorly earlier, so I apologize.

When -- at the first mistrial, the only mistrial but at the mistrial of Lenworth Edwards when Avery came back in the afternoon, is it your testimony that Avery

18:51:21 reported being threatened or intimidated by a corrections officer?

A. I don't think he said that at that time. I think that was told to the FBI.

Q. And was part of Avery's story at that time that he was

18:51:38 threatened or intimidated by Lenworth Edwards?

A. Again as I said, I don't think he got into specifics of that at that time.

I think my recollection is that he told those things to the FBI.

18:51:58 Q. And you're aware, sir, that there's an investigation

into those allegations that Avery made?
A. About a corrections officer?
Q. And Mr. Edwards.
A. Yeah. And one thing I thought was really odd, even
18:52:11 though no one was ever identified and supposedly this didn't
happen, one specific corrections officer felt the need to
come forward at a subsequent trial and deny that he was the
person.
Q. The investigation that was done concluded that there
18:52:26 was no evidence to substantiate the claims that Avery was
making about being threatened by a corrections officer or
Mr. Edwards?
A. I have no recollection of that at this time, that
anything cleared anybody of that.
18:52:40 MR. CALABRESE: I think that's all I have,
Your Honor.
THE COURT: Thank you.
That concludes your testimony.
THE WITNESS: Thank you.
18:52:47 THE COURT: Thank you very much.
(Witness excused).
THE COURT: And I believe that concludes the
testimony from Respondent, am I correct?
Let me first thank the courthouse staff,
18:53:02 everyone, the Marshals, the CSOs, our court reporter, our

courtroom deputy for staying late tonight.

We don't get paid overtime, and I very much appreciate -- it's a long day -- very much appreciate them and their hard work today.

18:53:17 I want to thank counsel for their efforts, too, and the next step is we have some what I'll call cleanup matters to discuss with counsel.

I'm going to take some time to obviously dig further into the record.

18:53:34 I'm going to suggest that we have a telephone conference maybe even after the first of the year. There are some things I requested today, and you give some thought to what else may need to be supplemented before there's a final decision.

18:53:48 I may have further questions for you. We may have another hearing; not evidence, but a hearing. I don't know yet. Obviously I'll know more as time goes on.

I want to let Mr. Cleveland know and any family or friends who are here today that one of the most

18:54:04 difficult parts of my job is to -- is the criminal docket where we are placed with the authority to sentence people and to take away someone's freedom. That's a very heavy burden that weighs on all Judges who are involved in that task.

18:54:22 And certainly if there is someone who has been

innocently convicted -- who was innocent and has been wrongly convicted, let me say it that way that's at the very extreme of a heavy burden. So I take this matter very seriously. I take the responsibility very seriously. I'm
18:54:42 going to be as thorough as I can, both with the facts and the law, to come up with a just and right decision.

And again appreciate the efforts of everyone here today to help in that process.

We're adjourned.

18:55:01 (Proceedings concluded).

- - - - -

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

7-189 U.S. Court House

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Cleveland, Ohio 44113

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* * * * *

Exhibit W

AFFIDAVIT OF DERRICK HAMILTON

1. I am DERRICK HAMILTON, Deputy Director of the Perlmutter Center for Legal Justice at Cardozo School of Law. In 2025-26, this office hired Viriginia Braden a private investigator in the John Edwards case.

2. During our conversations, I was informed by Ms. Braden that there were other suspects in the Marsha Blakely murder case. These suspects confessed to other people and committed similar acts as those described in the Marsha Blakely murder investigation.

3. Kenneth Rivers is one of the killers who confessed to the murder. He told Dawn Jewell that he participated in Marsha Blakely's murder. Ms. Jewell went on the record to advise Ms. Braden of these facts on July 30, 2018. According to Ms. Jewell on the night Marsha Blakely was killed Kenneth Rivers returned home with blood on his clothing and confessed to Dawn Jewell that he and Michael Rutherford had killed Marsha Blakely.

4. Ms. Braden also advised me that Michael Rutherford, the other alleged killer, confessed to Raquel Rutherford. On March 21, 2022, in an interview between the two, Ms. Rutherford admitted that Michael Rutherford had previously confessed to the Marsha Blakely murder.

5. In further communications, Ms. Braden informed me that Kenneth Rivers's sister Sonnytta Moye, on March 21, 2022, admitted that both Michael Rutherford and Kenneth Rivers admitted to killing Marsha Blakely.

6. Ms. Braden indicated she had done an extensive investigation and gathered evidence proving the above two suspects committed the crime for which John Edwards is convicted. However, she did not want to jeopardize the above witnesses by disclosing their identity. Therefore, she sat on the evidence while continuing her investigation. She was concerned because all the witnesses were petrified about coming forward, fearing they would be killed.

7. Ms. Braden was employed by this office and paid to uncover evidence to submit before the court but has refused to cooperate in signing an affidavit. Therefore, I make this affidavit based on facts provided to me by Ms. Braden and ask the court to subpoena Ms. Braden and any evidence she has that supports the facts outlined in this affidavit. Justice demands no less.

CHRISTINE L BELLA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02BE6268028
Qualified in Queens County
My Commission Expires 8/23/2028

Derrick Hamilton

Date: 09-08-2026

Exhibit X



Braden Investigations & Consulting

Dr. Virginia Braden

Licensed Private Investigator & Behavioral Analyst

CONFIDENTIAL REPORT

Al Cleveland Investigation Major Points
2018 - Current Day

My name is Dr. Virginia Braden. I am a criminologist, a criminal behavioral analyst, and a licensed private investigator specializing in violent crime investigations. I have been working in the field of violent crimes for over twenty years. I have assisted law enforcement both here in the U.S. and abroad, as well as various innocence organizations, professional exonerators, private clients, and defense attorneys. In addition, I teach Cold Case Investigations and Wrongful Convictions courses for the University of Louisville.

I am also a Certified Hostage Negotiator trained to interact with and establish rapport with people who are in crisis and to recognize when people are experiencing states of mental distress or emotional difficulties. In addition, I am an expert in non-verbal communication and teach body language interpretation and analysis for law enforcement, as well as for various for profit and nonprofit organizations. For your convenience, I have attached my CV to the email containing this report.

I have been a contract investigator for the Ohio Innocence Project since 2014. In 2018, I was asked to take on the wrongful conviction investigation of Alfred Cleveland. Everything included in this report, along with any supporting items, is being shared with the permission of the Ohio Innocence Project.

There is much more to this investigation and to this case than what is included here. In the last seven years, I have interviewed nearly 300 individuals for this case, including the two primary suspects, and secured thousands of pages of historical reports and records and photographs to aid in the investigation. This includes well over 2,000 pages of documents from the original investigation in 1991 and spans several years. These documents were in no particular order, the majority lacked context, and were an assortment of many different types of information including but not limited to handwritten detective's notes, forensic reports, narcotics bureau reports, investigative reports, intelligence on a great number of persons, interview summaries, etc. These were provided to me for copying by an LPD detective after an audit of the LPD evidence room revealed their existence in May of 2019. Because they were a random assortment of types and formats of documents lacking context, these continue current day to be source of information and illumination as I make discoveries in the course of my investigation which then connect to something in the documents which previously had no meaning.

In addition to the above, I located and copied the crime scene video from Marsha Blakely's homicide, which had been missing for years, as well as the original crime scene sketch from her recovery site which led to proof of a straight edge razor that was located at the scene, but which was never taken into evidence. (See Items A and B in Appendix). I was able to photograph all items of evidence in the possession of the Lorain County Police Department and tracked down further evidence which had been stored in the clerk's office for the judge who replaced the judge who presided over the last defendant to be tried, John Edwards. Some of these items were not listed on the main list of evidence for the case that had been provided for OIP from the Lorain Police Department and pertained to Lorain County crime lab and BCI activity. I have retained those photographs and the notes on the evidence numbering system which identifies which agency collected, handled, or processed the items.

I have listened to and copied audio taped police interviews of potential suspects and witnesses from the original investigation in 1991, though I am confident there are others which have not yet been located. Using journalism credentials which I secured years ago, under Ohio law, I was allowed to view the contents of the coroner's files on these two homicides which yielded critical pieces of information not previously known. I obtained archived FAA flight data which verified there were no flights from JFK to the Cleveland/Lorain area which could have resulted in Al Cleveland making it from New York to Lorain in time to commit the murders, as had been previously suggested by authorities. Additionally, I have identified and corrected errors in prior investigator's findings which helped eliminate confusion and created a more focused investigation.

In this report I have tried to lay the appropriate background and provide the most significant findings, along with potential leads that are currently being explored. I am available to answer any and all questions you might have, to elaborate on any aspect of the investigation mentioned here, as well as to provide access to and copies of any of the items located and/or produced in the course of my investigation.

Sincerely,

Dr. Virginia Braden

Background

Historical Context

These murders and the subsequent "investigation" were set within the context of known issues with police corruption within the Lorain Police Department. Some of those issues would eventually make their way into court and a DOJ investigation into allegations of excessive force and sexual abuse of women was conducted which lasted four years. Though this was after the time of the murders, this investigation found that these issues and others had existed in the past. [1] Current day corruption still persists and remains a significant issue within the Lorain Police Department.

On a national level, this was a time in U.S. History where narcotics units across the country were operating with little to no oversight and with virtually no transparency. The war on drugs was in full swing, and billions of dollars had been allotted to federal and state resources to fight the war. Further, laws on asset forfeiture allowed agencies to self-fund units, task forces, and equipment with no legislative oversight. State and departmental budget deficits could be wiped out by asset seizure alone. In this sense, drug crime truly did pay---for law enforcement. In Ohio even present day this continues to result in enormous financial gains as asset forfeiture proceeds are divvied up among various agencies and offices.[2]

Many narcotics units were declared exempt from the normal investigative processes, protocols, and procedures of their agency under the premise that secrecy was needed in order to properly infiltrate the drug scene and get the information needed to make arrests to bring down dealers and networks. The end result was renegade type enforcement units and off the grid activities that not only skirted the laws but often broke them. Corruption scandals involving large numbers of police and narcotics agents surfaced in major cities all over the United States. The "River Gang" in Miami, Fl., the Rampart Division in Los Angeles, as well as other major corruption scandals in New York city, Cleveland, Detroit, Atlanta and many other large cities surfaced and made it clear the only difference between these agents and officers, and the criminals was a badge.[3]

Financial gain from forfeiture of drug assets became a primary motivator in fighting the war on drugs. In Ohio, historically, drug task forces received enormous budgets and often operated as clandestine units. Medway Drug Enforcement, formed in 1984 listed on the master case report as an agency involved in the investigation though there is no mention whatsoever of what part they played, has received millions of dollars in funding annually from grants and asset forfeiture funds going back for many years now[4]. Media articles report they are secretive and refuse to even report how many agents are employed with them.[5] The importance of the historical context of these murders and the focus on a multi-state drug trafficking connection cannot be understated. The lack of transparency and obfuscation of the exact timing and nature of both

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[1] *See https://clearinghouse.net/case/15245/*

[2] *See https://www.justice.gov/afp/media/1387196/dl?inline*

[3] *See https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1009&context=crim_just_pub*

[4] *https://ohioauditor.gov/local/cog/COGDetail.aspx?id=22*

[5] *https://www.the-daily-record.com/story/news/2001/01/15/medway-working-to-stamp-out/19539108007/*

Avery, Sr.'s and Avery Jr's contact with Lorain Police regarding the murders is not surprising given the lack of oversight and accountability of that time period.[6] Also not surprising is that multiple narcotics officers during this time period were discovered to be engaged in corruption, including stealing narcotics from evidence.

In Pursuit of Innocence

A Bombshell Text

In 2018, the Ohio Innocence Project received the fulfillment of a public records request which provided a case report for the murders of Floyd Epps (still marked unsolved current day) and Marsha Blakely. A careful review of case report yielded multiple markers indicative of efforts to withhold or conceal information. For example, pages of the report had clearly been renumbered and there are indications of missing pages that result from the renumbering. (See item D1 in appendix.) There are reports which lack a specific date and are labelled only August 1991. (See item D2). Medway Drug Enforcement was named as one of the involved agencies but there was no accounting of their activities nor a single report detailing their specific involvement. In fact, their name is not mentioned again. (See item E in appendix.) This drug task force did not cover the Lorain area but was responsible for the Wayne County Ohio area, nearly 70 miles away, prompting one to wonder why they would have had any involvement in a double homicide of two relatively unknown and marginalized individuals in Lorain County.

Additionally, there are multiple mentions of supplemental reports being attached to the report, but which were not found. Finally, there are several individuals listed as witnesses which never again appear anywhere in the case report, yet my future findings would show police involvement with at least one of these individuals in which they were detained and treated as suspects in the murders. (See item F in appendix.)

In addition to the above-mentioned case report, the public records fulfillment contained a bombshell. Namely, a copy of a text tip that had come into the Lorain Police Department on April 13, 2010. (See item G in appendix.) This was information that had not previously been provided to the Ohio Innocence Project nor to Alfred Clevleand. The text had been sent via an anonymous text tip service that LPD had launched approximately three months earlier. This is significant since the murders occurred in 1991 and speaks of someone burdened by what they knew and willing to communicate via the anonymous service nineteen years after the murders took place. The text tip read simply: "Lorain- marsha blakely murder, killers ken rivers & mike rutherford."

[6] *William Avery Sr's handwritten "diary" gives a hint of some of the irregular and unconventional methods and activities the Lorain detectives employed in their investigation. Avery Sr.'s diary is attached in the appendix as item* ***C***

The Investigation Begins

Analysis of the Crimes

While law fellows began researching the court history of Michael Rutherford and Kenneth Rivers, I began my investigation with an analysis of the murder events. To have two individuals targeted and killed as part of one event is not common. To have the homicides occur at separate locations is rare. Notably, there were no efforts made to hide the bodies, rather they were left out in full view.

A quick review of the area surrounding the locations where Marsha's and Floyd Epp's bodies were found reveals that they were left less than .5 mile away from public access to Lake Erie. (See Fig 1 below. The location of Floyd Epps' and Marsha Blakely's bodies are marked with a blue star.) The perpetrator(s) could have traveled just a short distance and disposed of the bodies in Lake Erie and quite effectively concealed the evidence of their crime. Marsha Blakely and Floyd Epps would simply have disappeared, leaving friends and loved ones to wonder what happened to them.



Fig.1

The fact that both bodies were left out in plain sight and located at different addresses, along with the reports of witnesses stating that the vehicle that hit Floyd made a great deal of noise, shows no attempt to conceal the actions taken that night. Further it points to spontaneous impulsive actions on the part of the killer(s) who showed no signs of advance planning, no forethought to the consequences of their actions, and no ability to in the moment course correct to cover their actions and prevent apprehension and discovery. These crimes were violent, sloppy, unplanned, and chaotic.

What the Victim's Injuries Tell Us

An analysis of the injuries to Marsha and Floyd also provides insight into the state of mind of the killer(s) and make it clear Marsha was the primary target. The wounds and injuries to her body speak of an uncontrollable rage and primal violence. This is someone who in the moments immediately prior to and during her murder was completely out of control, propelled by rage and sadistic motivations.

Marsha Blakely's Injuries

Marsha's cause of death was noted as a 13 cm. deep laceration in the midportion of the neck with partial transection of trachea and left internal jugular vein. This went almost entirely through her trachea.

The injuries which Marsha suffered *while still alive* included but were not limited to

- The laceration of her left internal jugular vein; slicing through the muscle bundles
- Pulmonary hemorrhage- secondary to inhalation of blood.
- Pulmonary contusion (results from blunt force trauma to the chest)
- Hemothorax
- Multiple fractures of ribs 1-8 on her left side.
- Fracture dislocation upper cervical vertebrae, and Atlantooccipital joint.
- Extensive deep contusions of scalp.
- Multiple stab wounds, predominantly right posterior neck.
- Incised wound of neck.
- Fracture dislocation between the cervical spinal column and the occipital area of the skull.
- Abrasion, left side of face.
- Abrasion of the forehead.
- Substantial laceration of the lateral aspect of the left lip—through entire thickness of the lip.
- Superficial lacerations and contusions subjacent over the substantial fracture of the ramus of the right mandible (broken jaw).
- Small superficial laceration of the left ear.
- Abrasion and contusion right shoulder.
- Contusion left shoulder.
- Laceration, abrasion left elbow.
- Laceration left great toe.
- Minor abrasions right foot.
- Additional multiple superficial stab wounds
- Additional multiple superficial cuts ranging from 0.5 cm. To 3 cm. in length; approximately **15** are located in the right posterior aspect of the neck and posterior lateral aspect.

Marsha Blakely was clearly the victim of a brutal frenzied attack which left virtually no part of her body unscathed. This murder was sadistic with many of the wounds amounting to torture wounds. This speaks of an extraordinary amount of rage directed at Marsha who, at the time her death, stood just 5'3" high weighed 110 lbs.

Floyd Epps' Injuries

Floyd's death was mistakenly assessed to be a pedestrian hit and run with injuries consistent with those from the impact of a vehicle. Only after the discovery of Marsha Blakely's brutalized body hours later and the finding that she was staying with Floyd Epps did the police connect the deaths and rule them both homicides. This also prompted the coroner to re-visit Floyd's injuries, and he discovered Floyd's throat had also been cut. The autopsy showed that the laceration extended deep into the neck. Bellies of several of the neck muscles had been cut. Additionally, his jugular vein and carotid artery had been severed.

Floyd's cause of death was determined to be multiple traumatic injuries to head, chest, abdomen, and extremities.

In addition, the above, injuries found at autopsy included but are not limited to:

- Multiple lacerations of lungs by fractured rib ends.
- Traumatic laceration of left lobe of liver.
- Compound comminuted fractures of skull. Autopsy notes his head was largely destroyed.
- Fracture of left mandible.
- Multiple fractures of ribs.
- Fracture right humerus.
- Fracture left radius.
- Fracture right femur.
- Destruction of posterior and left lateral skull with compound comminuted fractures and extravasation of brain.
- Deep laceration left side of neck below mandible (13 cm.) appears to have been produced by sharp instrument.
- Laceration of left chest.

In sum, though both Floyd Epps and Marsha Blakely suffered horrific injuries in what were excruciating deaths, the analysis of the wounds indicate that Marsha was the primary target. The manner, number, and severity of Marsha Blakely's injuries indicate the killer(s) were in the throes of an out-of-control rage and brutalized her in ways that were markedly savage. The repetitive wounds to her lower neck and upper shoulder in particular are consistent with torture wounds and speaks to a proclivity for sadism.

A Picture of the Offenders

The above information gleaned from aspects of the scenes and the available choices to the killer(s) as compared to their actual decisions, points to subjects capable of savagery who lacked the ability to control their impulses and emotions. These murders were spontaneous and unplanned, and the killer(s) showed no ability to act with forethought even after the murders. The type of individual(s) capable of these acts would have a long history of extreme violence with sadistic leanings and would show significant disorganization in their prior criminal activities. Given the totality of the complexity of murdering two individuals in a short period of time and the separate crime scenes, the possibility of multiple offenders exists.

Investigation into the Histories of Michael Rutherford and Ken Rivers

Research conducted into the criminal history via review of police reports, court documents, and interviews with family members and others who knew Michael Rutherford and Kenneth Rivers revealed that not only did both men had extensive criminal histories, but the majority of the crimes were violent and particularly brutal. Further both men showcased decades long history of violence against women including rapes and assaults as well as sexual activities with adolescent girls. Further, consistent characteristics of their violent rapes and other physical attacks on both men and women were impulsivity, hair trigger rage, and extreme brutality. Lastly, repetitive and somewhat unique behaviors of both men while enacting violence on others are present in the murders of both Marsha Blakely and Floyd Epps.

After deducting traffic cases, my research found that the two men together have amassed over 120 court cases including but not limited to drug trafficking, burglaries, rapes and other sexual assaults, and physical assaults. The majority of their criminal activities are oriented towards violence against other persons. Lastly, research into calls for service at residences revealed other violent events, including assaults, threats, and brandishing of a knife, which did not result in arrests.

Kenneth Rivers

In the course of my investigation, I learned that as a child and adolescent Ken Rivers killed small animals and hung them from trees. One individual I interviewed witnessed him kick a puppy to death. He repeatedly brutalized his sisters and had a history of choking people out, a move he learned as a wrestler in high school. This particular move is something that he used repeatedly over the years and became a hallmark of his modus operandi when assaulting both men and women.

After high school Ken joined the army where he was stationed in Germany as a tank driver. While in Germany Ken once slapped his wife in the presence of a Captain's wife, unable to control his anger even when in the clear view of someone who would most assuredly report his conduct to his superior. Ken also fathered a child with a fourteen-year-old girl while stationed in Germany.

In 1990 Ken Rivers was dishonorably discharged from the military and sentenced to six months in Fort Knox, after he plead guilty to maiming a German civilian in a nightclub by punching him in the face five times. Ken's assault caused severe contusions to the facial part of the victim's skull, severe trauma to his brain, a small intracerebral hemorrhage, and resulted in partial paralysis of the victim's left leg.

After being released from federal prison and shortly before the murders of Floyd Epps and Marsha Blakely in 1991, Ken Rivers violently assaulted his wife. His wife reported she believed he would kill her. A few weeks after the murders, police responded to a fight at the residence of Ken River's sister. They found a male on the ground who had been assaulted. Ken Rivers fled the scene but was apprehended in a few minutes time. Police recovered a baseball bat wrapped in duct tape which was believed to have been used in the assault.[7] Additionally, in 1992, Ken Rivers sexually assaulted the niece of Floyd Epps.[8] These are just a few examples Kenneth's violent history. A review of police records from Lorain, Ohio show that his offenses were labelled by authorities as primarily "sexual and assault".

Michael Rutherford

Michael Rutherford was reportedly a member of the Latin Kings gang beginning in his teen years. His current tattoos are consistent with membership in the Latin Kings. As with Ken, Michael has a long history of brutal assaults, the majority of which were of women. In one assault against his wife, police arrived to find Michael Rutherford had torn off parts of her scalp. In another assault, he beat her with the metal pole from a fence and began to assault officers as they tried to keep him from further injuring his wife. Later in the same incident he threatened to find and kill the officers at a later time. During a different domestic assault, he beat his wife with a table leg and threated to slit her throat if she called police.

On at least three different occasions documented by police, Michael Rutherford stomped his victims. Further, during one altercation with the father of an underage girl Michael Rutherford had come to visit, Rutherford tried to run the father over with his vehicle. The man was pulled to safety by family members before impact occurred. Michael Rutherford's most recent conviction was in 2011 for rape of a child. He was released on parole in 2022 and is currently a Tier III registered sex offender in Ohio, the most severe designation.

Of note is the finding that Michael Rutherford was a confidential informant for Lorain Police. I discovered paperwork in the random assortment of documents provided to me by Detective Buddy Sivert that documented he worked as an informant for them over a period of time. The entries are not complete, and it is evident there are missing entries and pages, but it is clear he was functioning in that capacity for them, for how long is not known.

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[7] *The police report indicates the baseball bat was taken into evidence. Currently attempts are being made to establish what became of it.*

[8] *Ken Rivers used the name Kenny Moye in an attempt to avoid identification. Taliano was on scene but unexpectedly left soon after arriving. Later, Detective Shuster, father of one of the mothers of Ken River's children, pursued this case collecting information from the victim and pushing for felony charges. Felony charges were filed, then the case was moved to a different court where it disappeared. The case involves mention of a CI who had pertinent information regarding Ken Rivers and his history. Patrolman Thomas Mize accessed the CI. Currently efforts are in progress to locate Thomas Mize to find out more information regarding the identity of the CI.*

History with Victims

Prior Personal Relationship with Marsha Blakely

In the course of my investigation, I spoke with multiple people who confirmed that Michael Rutherford and Kenneth Rivers knew Marsha Blakely and had interacted with her on a regular and consistent basis since childhood. She grew up in the same circle of friends and in the same neighborhoods and went to the same high school. The individuals I spoke with were part of the group that socialized with Marsha as well as her siblings could attest to firsthand knowledge of Michael Rutherford and Kenneth Rivers knowing Marsha Blakely for many years. Many individuals recounted stories of hanging out at each other's homes and relationships that spanned from childhood into adulthood. Further, Mike Rutherford and Kenneth Rivers both acknowledged in interviews with police in 2010 that they knew Marsha Blakely. Bottomline, Michael Rutherford and Kenneth Rivers had a long history of interacting with Marsha Blakely and she was no stranger to them.

Prior History with Floyd Epps

Though there is no indication that Mike Rutherford and Ken Rivers had the same kind of relationship with Floyd Epps as they had with Marsha Blakely, he was a regular fixture around Lorain as a panhandler. Further, he was often out and about while intoxicated and routinely found passed out in various places around town. It is likely that his involvement was due to a chance encounter or by virtue of sharing a residence with Marsha Blakely at the time she was targeted by Ken Rivers and Mike Rutherford. The differing intensity in his wounds and Marsha's support that he was not the primary target.

In conclusion, it was and still is my considered opinion after careful analysis of the crime scenes coupled with information gleaned from my investigation into the history and prior activities of both Michael Rutherford and Kenneth Rivers that they are precisely the type of offenders capable of these perpetrating the brutal murders of Marsha Blakely and Floyd Epps. Further, it was clear that they knew who Marsha Blakely was and had relationship history that spanned many years and had at least a peripheral awareness of Floyd Epps.

Interviews of Relatives of Primary Suspects

Confessions

On the dates listed below I interviewed multiple individuals regarding the murders of Marsha Blakely and Floyd Epps. It is my considered opinion that they were being truthful in the information they provided. Further, I believe that each of the individuals who expressed fear for their safety and of violent retribution if it became public that they had provided the information, were genuinely experiencing significant fear of bodily harm and a great amount of emotional

distress and mental anguish. I further believe their fears are well founded and urge that every precaution be taken to shield the identity of these individuals to protect them from coming to harm. None of the individuals listed below who have heard Michael Rutherford and/or Kenneth Rivers are willing to make formal statements due to fear for their safety and that of their loved ones.

Dawn Jewell

On July 30, 2018, I interviewed Dawn Jewell, who was married to Kenneth Rivers at the time Marsha and Floyd were murdered. Present with her was her current husband, William Jewell. William was very supportive of Dawn speaking with me and had urged her to tell what she knew. William Jewell stated Dawn had been deeply traumatized by years of abuse by Ken and by the knowledge she had about the murders. William felt it would be a positive thing for her unburden herself. Dawn communicated she was terrified due to concerns Ken Rivers would find out she was giving information to the Ohio Innocence Project about the murders and that he would hurt her or one of her family members. She was visibly shaking and trembling during the interview.

Dawn Jewell related a long history of violence enacted upon her and her daughter at the hands of Ken Rivers. As an example, she told of Ken placing their daughter's hands on a hot radiator when she was around a year old because he was angry that she wouldn't quit crying. Dawn expressed repeatedly that during his years of abuse she was afraid for her life continuously because absolutely anything could set him off. She stated that when he was enraged, he was completely out of control.

She related that one of his preferred modes of assaulting her was to choke her out. She remarked he had done this so frequently over the years they were together that she had suffered permanent injuries to her throat and neck. She also stated that her daughter's first memory of her with Ken's hands around her throat, choking her.

On several occasions Dawn spoke of Ken's obsession with controlling her every action. She was not allowed to go to check the mail without having her hair and makeup done. She stated he was incredibly possessive and would often have fits of jealousy and suspicion that bordered on paranoia asking why random strangers out in public were looking at her.

On one occasion, Dawn tried to leave Ken and seeking refuge in a domestic violence shelter. She reported and that Ken was able to find out where she was. Ken and one of his friends, Will Washington (husband of Ken's sister Karletta) showed up and sat outside the shelter for hours threatening to come in and cause people harm if she did not come out. This was an obvious blatant attempt to frighten and intimidate her, and she reported she felt terrorized by him.

Dawn knew Mike Rutherford by his association with Ken River. She stated Mike Rutherford and Ken often hung out together and would ride around together. She reported they sold drugs together, often competing with each other to see how much they could get for what they were selling or could trade for.

Dawn Jewell stated that on the night Marsha and Floyd were murdered, Ken came home with blood on his clothing and confessed to her that he and Mike Rutherford had killed Marsha Blakely and a homeless guy. She stated that "he told me that he did this <the murders>... and that he was with Mike Rutherford." She went on to say, "He told me that they ran her over, they stabbed her, they stomped her, and they sliced her throat." She stated he told her, "If you tell anybody, I'll kill you." She went on to say, "I still believe this to this day...if this comes out that I spoke of it, he'll kill me."

At the time of the murders, Dawn and Ken lived in a duplex that had a laundry room attached to the kitchen. It was just big enough to fit a washer and dryer and had a door that opened into the kitchen. Dawn Jewell stated that night Ken Rivers began to take off his bloody clothing to deposit them in the washer. As he disrobed, at one point, he placed a hand on the wall to steady himself. Dawn stated that he left bloody marks where his hand had come into contact with the surface of the wall.

Dawn relayed she was in shock and hoped perhaps Ken was somehow lying to her or making it up to scare her. He threatened her that she was not to say anything to anyone about what he had said. Dawn stated when she saw the paper the next morning, she realized he had not been lying and she was distraught.

Dawn related that after she and Ken divorced, she continued to be haunted by Ken's confession and scared for her own well-being. She had met and married William Jewell and had shared with him both Ken's history of violence towards her and her daughter and his confession of killing Marsha Blakely and Floyd Epps. He was also very concerned for her safety and convinced her to speak to a good friend of his, Henry Marsico, who was an investigator in the prosecutor's office. He believed that if she shared what she knew with authorities, they would act on the information, and she and her daughter would be safe. At the time he reached out to Henry Marsico he had temporarily stepped down from his investigator role at the prosecutor's office and was working as a court bailiff. This was due to having had surgery to remove a brain tumor. Marsico responded to William Jewell and said that Dawn needed to make contact with Detective Rich Resendez who was the detective in charge of the case.

According to Dawn Jewell she met with Detective Resendez at the Detective's Bureau. She believes Henry Marsico may have been present but is not certain. She is certain that she was sat a table with Resendez who had a legal pad. At no time was she asked to write a statement, nor did she sign any paperwork while there. After she relayed to Resendez what had occurred the night of the murders and Ken's confession, he responded that her husband was pulling her leg because they caught the guys that did the murders. She was then dismissed.

At the time Dawn recounted this to me, she could not remember the exact time frame for her visit to Resendez. Since then, by framing that event in the larger context of big life events happening around that time, we have narrowed the time frame down to between March of 1995 and July 1995, prior to the convictions of Alfred Clevleand and John Edwards.

I have contacted Henry Marsico on several occasions after this information was provided to me by Dawn. Unfortunately, due to the brain tumor and subsequent surgery, he has major gaps in memory as well as current day cognitive issues. In a nutshell he does not recall ever having had a conversation with William or Dawn Jewell regarding Ken Rivers' confession and involvement in the murders. He did affirm that if that did occur, he absolutely would have directed her to speak to Resendez.

In an effort to find some type of documentation that Dawn visited the Detective's bureau and spoke with Resendez I have requested copies of any documents or reports that bear her name. I have been told the only record that bears her name is a copy of a domestic assault report stemming from Ken assaulting her shortly before the murders. I am continuing to brainstorm other possible ways to document her visit to Resendez.

I have spoken with Dawn Jewell frequently over the years since our initial contact. She suffers from PTSD and been in therapy for many years due Ken's violent abuse and the knowledge of what he had done to Marsha and Floyd. During one interview she stated she had been raped by Ken Rivers but had never reported it because they were married and she did not believe she would be taken seriously. She has suffered several lifetimes of trauma at his hands. However, she has remained open to providing what information she can regarding historical facts as well as providing insights into associates, family members, and activities of Ken Rivers.

On one occasion in early 2020 Dawn contacted me to let me know the duplex where she and Ken lived at the time of the murders was scheduled for renovation. I immediately reached out to the owner of the complex and was able to verify that other than painting, no major renovations had been made the unit where Ken and Dawn lived in August of 1991. I obtained permission from the owner to access the unit in an attempt to collect potential DNA evidence relevant to Dawn's account of Ken leaving behind blood on the wall next to the laundry room. It was a long shot given the time that had passed, but we knew it was now or never as the duplexes were scheduled for renovation.

On March 5, 2020, several associates and I traveled to Lorain. All activities were videotaped. Using BlueStar I was able to identify areas that could potentially be blood. Maintenance workers for the complex cut out those sections of the wall. We immediately bagged and tagged them and secured them with tamper-evident tape. The items were taken to a forensic lab in Fairfield, Ohio where they were tested. The chain of custody receipt was obtained upon drop off.

In July of 2020, we were notified by the forensic lab that they found one spot where there was a small amount of a DNA mixture, but it was too small to be able to draw any conclusions from it. It is my understanding that due to developments in DNA testing capabilities in the interim that it may be possible to resubmit the samples and get a different result.

Current day, while Dawn Jewell remains receptive to additional inquiries, her husband William Jewel is terminally ill and in need of a lung transplant to live. Additionally, her mother has been diagnosed with dementia. Dawn is not willing to divert her attention from the care of her husband and mother, nor to risk her safety or that of her loved ones by completing an affidavit.

Sonnytta Moye

On June 9, 2019, I interviewed Sonnytta Moye, Ken Rivers' sister. Sonnytta also knew Mike Rutherford very well due to the fact they all grew up together.

I had reached out several times to Sonnytta via text message and through notes left at her residence. Early on she conveyed to me that she was burdened by what had occurred as she was a longtime friend of Marsha, but she was terrified of repercussions if she told what she knew.

She reached out to me on June 6, 2019, and stated, "I need to get this baggage off of me." She stated she knew what had occurred and that her mother, Nadine Davis, knew as well. Sonnyetta had held out hope that her mother would "talk him (Ken) into doing the right thing". She had expressed to me several times that any hope of a relationship with her mother would vanish if she came forward but she was burdened for what "the people that was wrongfully convicted have been going through and their families...and her (Marsha's) family---and he's (Ken) walking around free." She stated, "it's just not fair to take somebody's life like that for no reason—for no reason—and that's just not fair."

Sonnyetta did not want to meet to talk at her home as she didn't want her neighbors asking questions. She preferred to meet up somewhere public but was concerned that we might be seen together or overheard. She chose a public location but insisted we talk in her car where we could not be overheard. She stated she did not want me recording and was going "to check me" to make sure I was not taping her. She stated, "I want no involvement in this...but I'm going to tell you to get this off of my chest."

Subsequently we met on June 9, 2019. Sonnytta stated that Mike Rutherford confessed to her in shortly after the murders that he and Ken Rivers had killed Marsha over some drugs that she had stolen from them. Further, she stated that near to the time of Mike Rutherford's confession, Ken Rivers also confessed to her as well that he had killed Marsha and Floyd.

Sonnytta stated she was good friends with Marsha Blakely and was horrified at what they had done but was too terrified to tell anyone. She relayed that Ken Rivers had been frequently physically violent with her when they were growing up and that her mother did not protect her from Ken's abuse.

She stated that Ken Rivers moved to Tennessee shortly after the murders to get distance between himself and the murders at the insistence of their mother Nadine Rivers. Sonnytta stated that Ken Rivers had told his mother Nadine what he had done and had then taken a large quantity of an over-the-counter pain reliever in an attempt to commit suicide and that this scared their mother. Sonnytta did not believe it was a genuine suicide attempt but a ploy for sympathy so that Nadine would not turn him in. It was shortly after this that Nadine announced the family was moving to Tennessee, using her grandmother's health as the reason the family needed to move.

Sonnytta Moye refused to move with the family but said during a family re-union in Tennessee, Ken Rivers bragged in front of others that Sonnytta was very good at keeping secrets and that

she knew what would happen if she didn't. Sonnytta stated she was already terrified of Ken due to significant physical abuse she suffered from him growing up and being assaulted by him as an adult as well and she did not take this thinly veiled threat lightly. She stated that when Ken was a child and young adolescent, he would kill small animals and "hang them from trees".

Sonnytta also repeatedly expressed that her mother, Nadine, would cut her off completely if she ever found out she had provided this information. She stated she would lose all hope of ever having a relationship with her mother if it were to be known that she talked about the murders and Ken Rivers' involvement.

Raquel Rutherford

On March 21, 2022, I interviewed Raquel Rutherford, Michael Rutherford's sister. Raquel Rutherford stated that Mike had knocked on her front door in the early morning hours of August 8, 1991. She stated, "I remember it like it was yesterday." She stated, "I'll never forget him saying something bad happened." Mike Rutherford then confessed to her that he and Ken Rivers had killed Marsha Blakely. Raquel stated, "I remember my brother shaking."

According to Raquel Rutherford, Ken was selling drugs in an apartment that night and Mike was there as "the muscle". Raquel stated she did not know the exact location of the apartment but that it was in the projects. Mike Rutherford told her that Marsha had "grabbed drugs off the table" and had run out the back door of the apartment. Raquel stated that according to Mike "that's when it all transpired. And you can't run from Ken." Mike and Ken Rivers had "hunted her down", chased her down a back alley, and had run her over. She stated that Ken Rivers was driving.

Mike Rutherford stated to her that they cut Marsha's throat with a steak knife and then threw it down the drain behind the bar at Westgate Plaza. She referred to the bar as "Confetti's" which was a former name of the bar prior to it becoming Charlie's. The mention of a steak knife is a key piece of information as a handwritten drawing I saw in the coroner's files depicted the throat wound of Marsha Blakely with ragged, jagged edges and tearing. This type of wound is consistent with a serrated edged weapon like a steak knife.

She stated that Mike Rutherford and Ken Rivers together were a bad combination. She stated Mike Rutherford was a member of the Latin Kings (photos of his tattoos support this). She stated Mike was "freaking out that night" and she believed Mike was wanting to get it off of his chest when he came to her.

When talking about Mike Rutherford's activities during this time period, Raquel stated that Mike Rutherford owned a New Yorker burgundy with burgundy interior that he was very proud of and had dubbed "The Red Room". She stated Mike had a habit of riding around in "The Red Room" with a black and mild in his mouth, a ".40 or whatever beer between his legs" and wearing a "wife beater". This is a significant point as there was an empty tallboy found at the scene of Floyd's death. My interviews with the residents of Wallace Lane revealed that trash or litter of

any kind was not something commonly found on their street. This lends support to the beer can being left behind by the killer(s).

Raquel was not sure if the burgundy New Yorker was the car used in the murders but recalled Mike Rutherford had set it on fire at some point. Raquel could not provide a timeframe for the arson. However, Dawn Rivers had previously provided information that Mike had set a car on fire, she believed in the Cleveland area, and then reported it stolen to collect the insurance money. She recalled that it was around the time of the birth of his son Michael Rutherford, Jr. His date of birth is October 5, 1991, so this puts the timeframe for the arson a few weeks after the murders. Over the years, I have made multiple attempts to substantiate this claim. To date, I have not been able to verify any stolen car reports were ever filed by Mike Rutherford. However, I currently have several requests in process.

Raquel knew Ken Rivers very well also as they all grew up together and spent a lot of time together at her mother's home. She stated they all hung out in the neighborhood together as kids and teenagers. She stated Ken Rivers was aggressive and that when he would get angry with people, he would often put them in a headlock and "put them to sleep". She stated at one time Ken had even done that to her brother. She stated when they were growing up, he used to "grab people up so hard" ... "put his hand on their head like 'I could snap your neck'".

She reported that Ken was a wrestler and used his physical prowess "to an advantage to hurt people." She stated that "if you didn't go with what Kenny said, he hurt you." She reported he didn't need a real reason to fight, that anything would set him off. She stated "..."if you don't do what Ken says, then then you're, you know, you're putting yourself in peril." She further stated, "Kenny Rivers is the type of person you don't cross."

Interviews of Primary Suspects

Michael Rutherford

In January of 2020, I visited Michael Rutherford while he was incarcerated at Grafton Correctional Institute. I had requested, and been granted, a private room. The room contained a small rectangular table just inside the door to the room and multiple chairs. Prior to the guard bringing Michael Rutherford to the room, I took steps to arrange the room in a manner that provided me a psychological edge, and which limited Michael Rutherford's choices as he entered.

First, I removed all but two chairs and stacked the extra chairs in the right-hand back corner of the room. Next, I positioned one chair along the long side of the table that was right inside the door to the room for Rutherford to sit in. This would mean his back would be to the door of the interview room. I then placed my chair at the short side of the table with it protruding enough to block access to the stack of extra chairs so that Rutherford would have no option but sit in the chair directly inside the door to the room. This also placed me at an angle to Rutherford,

removing the barrier of the table, allowing me to display open body language, which is more conducive to connection.

When he was shown in by the guard, I immediately stood up and leaned into his personal space, confidently but not aggressively. I shook his hand and introduced myself by name and I called him Mr. Rutherford. I needed him to know that a. I was not afraid of him, and b. I was going to treat him with respect.

I had a folder of various photographs and documents with me which I had strategically placed in a very specific order for maximum impact. It should be noted that when Michael Rutherford entered the room, he was wearing a pair of metal framed sunglasses, which in my experience is highly unusual. I was not allowed to have any metal anywhere on my body and often have to get special permission to have writing utensils with me. The dark sunglasses made it impossible for me to see his eyes during the interview. This was unfortunate as pupil dilation and retraction is a critical component of reading body language and cannot be faked because it is biologically based. It is possible to gauge someone's pleasure or displeasure as they are hearing or seeing things based on the dilatation and retraction of their pupils, which is useful in gauging responses to names, statements, questions, photographs, documents, etc.

I opened the folder of pre-arranged documents and immediately on top and in direct line of sight of Michael Rutherford, was a full color 8x10 photograph of Marsha Blakely lying dead behind Westgate Plaza. I lifted that photograph and placed it aside, not saying anything about it. Underneath that photograph was a full color 8x10 photograph of Floyd Epps lying in the street with his skull crushed on Wallace Lane. I also placed that aside without saying anything about the photo.

The next item on top of the pile were high school pictures of him and of Ken Rivers. I asked him to tell me about Ken Rivers and his relationship with him. He pretended not to know who Ken was. I then let him know that I knew he had a long-standing relationship with him, that they had attended the same high school and had graduated at the same time. As I showed him additional photos of Ken Rivers, he continued to deny he knew Ken Rivers and stated he did not know who the person in the photographs. I showed him other pictures of persons from some of the records obtained by police who were possibly related to his drug dealings. Without exception, he denied knowing them.

At one point, it was as if it finally dawned on him who I was. He stated, “You're that investigator who's been talking to my family, bothering my family. I replied that I had been investigating the murders and that I had been talking to many people, including members of his family and his friends and associates. At that point, he became agitated and began to raise his voice and said that he demanded I demanded I “cease and desist immediately”, that I was to not have any more contact with any of his family or friends and that I was to immediately stop the investigation. At this point we were still seated and I leaned in closer to him and told him I was not going to stop investigating these murders that I was not going to go away and would continue investigating for as long as it took. I told him I knew he and Ken had done what four men were serving time for and I would continue doing everything in my power to see to it that the four men were exonerated and that he and Ken were brought to justice for these murders. Additionally, I told

him that he had a big problem because he had told a lot of people over the years what he and Ken had done.

He responded again, clearly agitated and in a louder voice, “you will cease and desist and stop this investigation immediately”. I responded, “No, sir I will not, that is never going to happen.” At that point, he literally began to visibly tremble and to shake and he got up and called for the guard. The guard was clearly surprised by this, possibly by the tone of Michael Rutherford’s voice as he called for him and looked at me questioningly. I shrugged my shoulders and remarked to the guard, “I don't know what’s going on-- I thought we were getting along great. I'm heartbroken.” The guard chuckled and led Michael Rutherford away.

Following my visit, Michael Rutherford posted the following threat on social media which appears to be a warning to anyone speaking to me about the murders. (See image below)



Kenneth Rivers

I first attempted to interview Ken Rivers in 2019 but was not able to connect with him at that time. Subsequently, in October of 2022 I traveled back to Tennessee in hopes of interviewing him. I had been made aware he was now living back on his mother’s property and could be easily located.

As background, Ken River’s mother, Nadine Davis, owns land in Covington, Tennessee. On her property there is a street with homes. Nadine owns every home on that street. The street is T-shaped. Houses are present on both the left and right side of the stem of the “T”. The street dead ends in a choice to go left or right. To the left is a home that is larger than any other home on the property. This is where Nadine Rivers lives. The home to the right is smaller than her residence but still quite a bit larger than the other homes on the street. I had been told Ken Rivers was currently residing there.

I had also been informed that every person living on that street was related to Nadine Rivers and that they were reliant on Nadine for housing. Every individual living on that street being a family member of Ken Rivers meant I potentially had a pool of individuals in close proximity to each other who, over the years, may have heard information regarding the murders. Ken and other family members had moved back to Tennessee quite unexpectedly and I was hopeful Ken's connection to the murders might have surfaced at some point.

With all of the above in mind, I had taken the steps beforehand to draft a letter which explained who I was and why I was in Tennessee. Namely, that I was investigating a text tip that had come in to authorities stating that Ken Rivers and a friend were responsible for the murders of two individuals in Ohio. I stated I was interested in any information about the murders and/or Ken Rivers involvement and the letter included instructions on how to leave an anonymous tip through my website. I attached a copy of the text tip to the letter and brought copies with me to disseminate at the homes of each relative.

In deciding to interview Ken Rivers, I had no expectations that Ken Rivers would confess. Instead, I was looking to confront him head on with the text tip, proof someone knew what had happened and had reached out. Further, I was hoping that with Mike Rutherford incarcerated and knowing that Mike Rutherford had previously pointed detectives in the direction of Ken Rivers, that he might take the opportunity to place blame on Michael Rutherford in retaliation for him sending investigators to him all those years prior. Additionally, I planned to mention there were items that could now be tested for DNA that had not previously been tested, hoping he might see the wisdom of getting ahead of the situation. It was a long shot, but worth trying.

As I pulled up the street I went directly to the front of Ken's residence. As I parked, he came out onto the porch, sending a couple of dogs to meet me. I quickly exited my vehicle, greeted him by name, and made my way up the stairs to the porch as quickly as possible, pulling a copy of the text tip from my file as I did so. I walked up to him, introduced myself to him, and told him I was there because I believed he was responsible for the murders of Marsha Blakely and Floyd Epps and I wanted to talk to him about his activities the night they were murdered. I handed him the text tip as I was speaking, and he took it from me. He read the text tip and threw it into the air. He then said, "If you had anything, there would be police standing here, not you." It is important to note this was not a denial of my allegations nor of his involvement in the murders, but him boasting there was no proof or police investigators would be there to arrest him. He then told me to get off of his porch.

I had already planned out what I would do at the conclusion of any interactions with Ken and so with him standing on the porch watching me, I began to walk door to door to each home on the T shaped street. The first home was within earshot of Ken. I knocked on the door and I introduced myself. I told the resident who I was, why I was there, and handed him a copy of my letter and the text tip. He invited me inside to talk, and I was able to convey additional information about the case. He was receptive but stated he had never heard anything about the murders. He said he would reach out if he ever heard anything and he kept the letter and the copy of the text tip.

I proceeded with that same process for every home on the street. Some people invited me in, others did not. There were a couple of homes where no one was present, so I left the letter and copy of text tip tucked in their door. I made certain that each person I spoke with knew they could leave me a tip anonymously through my website.

I worked my way first down the left side of the street and then up the right side, which means I was again facing the dead end. I ended my visit there by going to Nadine Davis's home and as I headed to her residence, I could see Ken was no longer on the porch.

To my surprise, as I was sure Ken would have called her to let her know I was there and why I was there, she answered the door and we engaged in conversation. She denied knowing anything about Ken's involvement in the murders stating that she didn't concern herself in her adult children's affairs and they didn't always disclose the events of their lives to her.

I remarked that Ken had been in serious trouble before but never anything like this. I shared with her that advancements in DNA testing meant the possibility of items from this crime being tested in the near future. I stated that if Ken got roped into something Michael Rutherford had done, it would be very smart for him to come forward and explain the situation and get in front of it. We talked a little bit more, mostly going over the same questions and urging her to do the right thing, but I was not successful in budging her from her denial. I concluded the interview and left the property.

While conducting my investigation on this trip, I encountered two individuals, longtime residents of the county where Ken resided, who informed me that the judge who was assigned to Ken's cases in that area had legal troubles of his own. Further that he was a known cocaine addict and had been for years.

This was an interesting fact, as when I first began investigating Ken Rivers in 2018, there were virtually no court records or police records for him whatsoever. However, through a simple Google search, I found a mugshot relating to drug charges for him. I was confused as to why I could find no court cases for him. Requests for records to police found just two offenses. I then contacted the Tennessee Bureau of Investigation for a background check and was notified that Kenneth Rivers had no criminal history at all. I sent the TBI representative the mugshot of Ken Rivers, and he insisted that it wasn't possible for him have a criminal record. He stated that any arrests would have automatically generated a file in the Tennessee Bureau of Investigations. It wasn't until just two years ago that his criminal history began to populate in the court system, including a 1993 rape, just a few years after the Ohio murders. Now records of multiple offenses can be found for him. It is my opinion that Nadine used her wealth, influence, and resources to bribe clerks or other persons to keep Ken's criminal history from being entered into the various systems.

Other Significant Findings

Ohio Detectives Interview of Ken Rivers in TN in Spring of 1996

In February of 2019 I traveled to Tennessee with the purpose of conducting multiple interviews with relatives of Ken Rivers and Ken Rivers himself. One of the individuals I attempted to interview in person was Tabitha Foster who had a child with Ken Rivers after he moved to Tennessee following the murders of Marsha Blakely and Floyd Epps. My research showed that Tabitha Foster had split up with Ken Rivers years ago and had been married a pastor for years. They were a very close-knit family which includes the daughter she had with Ken Rivers and were strong pillars in the community. I was not successful in meeting with her in person but left a note and my business card. After returning home, Tabitha Foster contacted me by phone.

Tabitha relayed to me that while living with Ken in a home on his mother's property, she had come home one day from work and soon after received a phone call from Ken's mother Nadine Rivers, that detectives from Ohio were there to speak to Ken. Tabitha remained inside and Ken went outside to speak to the detectives from Ohio. He was questioned regarding the murders of Marsha Blakely and Floyd Epps. Tabitha could not recall what agency the plain clothes detectives were from, only that they were from Ohio and driving an unmarked car. She recalled that Tennessee authorities were with them as well. According to Tabitha, they stated that Michael Rutherford had pointed them in Ken's direction. This was the first time Tabitha had ever heard the name Michael Rutherford.

Tabitha stated that, in addition to speaking to Ken's mother, the detectives indicated they would be speaking to other members of his family, including his sister Wynessa, who also lived in Tennessee. Tabitha didn't know what to make of it all. Ken had never mentioned Mike Rutherford, and she had never heard the names Marsha Blakely or Floyd Epps. She stated that Ken blew it off, but it left her very unsettled.

At the time of my phone interview with Tabitha, she could not recall the time frame of the detective's visit. I began asking questions to help narrow down the time frame. She had stated she had just arrived home from work when this occurred, so I asked her, where it was that she had come home from. She recalled that at the time she was working for Turner Dairy through a temp agency. She then recalled that Ken was working for the same company at that time. Further, she recalled that very soon after that, he lost his job there when it got around town that he was a suspect in a double murder in Ohio. I asked her what the name of the temp agency was and she provided the name.

I did a quick Google search and ascertained the company was still in business. I then contacted the employment agency and requested employment dates for both Tabitha Foster and Kenneth Rivers. Their records showed that Ken Rivers was employed at Turner Diary from 5/29/95-5/29/96. Since Tabitha knew Ken had lost his job shortly after the visit from detectives this helped narrow down the time frame considerably.

During our conversation Tabitha also recalled the visit happened shortly before she found out she was pregnant with her daughter. I requested she check her medical records to ascertain the date

she visited the doctor to take the pregnancy test. Tabitha was able to verify that, after missing a period in March of 1996, she saw her doctor in early April of 1996 and took a pregnancy test which confirmed she was indeed pregnant. This puts the time frame of the detective's visit in April of 1996.

At this time Tabitha was worried about making a statement due to safety concerns for her now adult daughter, herself, and other members of her family. Ken had been brutally violent and abusive with her as well and she remarked that he was then and now a dangerous person. However, she stated that it wasn't right that Ken had killed two people and other men were being punished for it. Further, she was angry that Ken's mother Nadine was not holding him accountable and was shielding him from law enforcement. She requested time to think about it, and we were in touch regarding her thoughts and concerns about it off and on throughout the next several years. Her primary concerns were always for the physical safety and wellbeing of herself and her family. She knew Ken was capable of devastating violence and that she

On June 1, 2024, I again traveled to Tennessee to conduct interviews and visited Tabitha Foster to discuss writing out an affidavit. She was ready and willing to do so and stated it had been a very difficult decision to make because she was frightened of Ken and what he might do if he ever found out. She further stated that Ken had broken up with his longtime girlfriend and was now living back on the property that his mother owned. Nadine owns all of the homes on a street in Covington, Tennessee. She rents out the various homes to family members and Jasmine, the daughter she shared with Ken, was living on that same street in close proximity to Ken. Tabitha was very concerned for Jasmine's safety. She had decided however, that it was the right thing to do and, on that day, I obtained a sworn affidavit from her. In addition to the information regarding the visit of the detectives, Tabitha supplied other information relevant to this case. (See item H in the appendix for her full affidavit.)

I have spent countless hours trying to track down any record of detectives from Ohio visiting Tennessee. I do not believe they would have been federal agencies due to the escort provided by local authorities. In my experience, federal agents don't usually request an escort from local authorities, though it is within the realm of possibility.

I have researched this from the Lorain Police department angle, as well as the Lorain County Sheriff's department angle. I have researched it from the Covington, Tennessee authorities angle as well as the Tipton County Sheriff angle. I have spoken to many different officials in the Tennessee agencies who were employed and/or in command positions during the time frame and no one recalls an event where Ohio detectives came into town to conduct interviews of Ken Rivers and family members. Given the length of time that has passed, this is not unexpected.

I have searched for Tennessee call logs, rosters, and daily activity logs from that time period and have been told, even if the escort provided was documented that way, the records would have been destroyed long ago. I have requested records from the city and the state of Ohio related to auditing and expenses, hoping to find receipts or payouts for travel expenses to Tennessee. While there are some receipts and evidence of travel to New York and to South Carolina, I have not been able to find any connection to law enforcement being in Tennessee in regard to these murders.

I do have an extremely positive relationship with the current Sheriff of Tipton County and on my behalf, he has reached out to several "old timers", retired officers and command personnel to see if they recall any visit from Ohio detectives. To date, he has not found anyone who can confirm the visit.

On a side note, after hearing from me about Ken River's incredibly violent history, he has placed Ken on a list of persons who are to be considered dangerous, so his deputies are aware of the threat he poses in any interactions. Not long ago, the sheriff called to let me know there was a domestic call out at Ken's residence. The woman had clearly been assaulted but refused to press charges. She stated to deputies that "Ken is not right in the head."

I continue to brainstorm and pursue various avenues in an effort to prove a visit from Ohio law enforcement occurred. This particular aspect, if able to be documented, would be a substantial and significant step in exoneration efforts given the timing of the visit.

Interview with Wynessa Mincy

In other efforts to establish the identity of the visiting officers, I interviewed Wynessa Mincy, Ken's sister, as I was told detectives spoke with her when they visited. She pretended not to know who Ken was and I quickly let her know that I was aware he was her brother and she admitted this was the case. She also stated she did not know Marsha was deceased, which I knew was not true.

Present at the interview was her adult son who has a documented history of severe mental health issues. I was not aware prior to entering the residence that he lived with her. He is highly unstable and aggressive, and, as a child, killed his sister during an altercation over doing the dishes.

As my interview with Wynessa progressed, her son became more and more agitated, using his hands to strike at his own head. At one point he moved across the room and positioned himself directly in front of the door, blocking my way out. Much of his anger was directed at me for being there. He mistakenly believed I was accusing his father of murder. Wynessa Mincy began to yell at him, further escalating his behavior. I worked verbally and non-verbally to calm him down and was able to get him to move away from his position at the front door. I terminated the interview early and exited the residence.

During later conversations via phone with Wynessa, she vacillated back and forth from acknowledging she was afraid of retaliation from her mother Nadine, if she were to tell what she knows, to saying she does not recall anything. Her son is now deceased and there are some indications that Wynessa is still in Tennessee but may have moved further away from her mother. I believe it would be worthwhile to interview her again in hopes she will be able and willing to provide information about the visit from Ohio detectives.

Possible Eyewitness to the Murders

On April 4, 2022, I received a text message from Haungel Bonds, the mother of one of Michael Rutherford's children. She informed me that several of Michael Rutherford's daughters had recently been gathered at her house. From another room she overheard one of Michael Rutherford's daughters, Aneetra Smith, talking to Michael's other daughters. Aneetra informed them that she had been spending time with someone who had been present during the murders and who told her Michael Rutherford was a participant in the murders. She stated this individual was heavily burdened by what he saw and what he knew and had been getting his life right with God. She indicated he was ready to talk. Due to being in another room, Haungel was not able to clearly distinguish the name. She stated it sounded like Marvin or Melvin and that the first and last names sounded very similar. Subsequent conversations with her did not result in any further information as she was afraid to talk to her daughter about what she overheard, worried it would get back to Mike Rutheford.

On April 22, 2022, I traveled to Lorain, Ohio in an attempt to locate and interview Aneetra Smith to ascertain the identity of the person who had witnessed the murders. I had been informed that Aneetra was involved in drug trafficking and drug use and was intentionally making herself difficult to find. After trying several different locations for her to no avail, I decided to reach out via Face Book Messenger. Aneetra has several accounts and posts multiple times throughout the day. I was able to engage her in a conversation via Messenger that spanned hours and went into the early morning hours of the next day.

Aneetra initially feigned ignorance but kept responding to my questions. Throughout our conversation she randomly deleted messages before I could read them. Through Messenger, I sent her a copy of the text tip. She said she did not believe her father was responsible. I responded that I was an investigator interested in the truth and if her father was not guilty, I would report my findings of his innocence. I mentioned the possible name of Martin or Melvin, and she responded that she did not know a Martin or a Melvin and asked if I meant Marcel. I responded that could be the name and inquired for further information, but she did not elaborate any further. Eventually she acknowledged she did know what I was talking about and who I was looking for. She stated that if I would send a payment to her Cash app account, she would then provide the name to me. I explained to her that I was not permitted to pay for information and she subsequently terminated the conversation. With no last name provided for Marcel I was not able to identify any individuals who might be the person Aneetra had been speaking to.

However, in January of this year, the mother of Aneetra Smith, Anita Smith, provided the name Marcel Tolliver to Al Cleveland. She indicated this was an individual that Aneetra had been in contact with and who had witnessed the murders. I immediately ran Marcel Tolliver and found that he is currently a fugitive after absconding from supervision. There are some indications that he may be staying in the projects in Lorain, Ohio. I am in the process of trying to determine if this the case and if so, where specifically he is residing. He would have been just fourteen at the time of the murders but has a significant criminal record which began as a juvenile. It is not out of the range of possibility that he was interacting with Mike Rutherford and Ken Rivers in 1991

and, in my opinion, well worth the effort to find and interview to see what he might know or have seen in regard to the murders.

Tracking Down Residents of Westgate Plaza

Scattered throughout police interviews from the early weeks and months of the investigation and into current day, the theme of the involvement of someone who sold drugs in Floyd's complex appears time and time again. The drug dealers are often referred to as being Puerto Rican and it is sometimes said they were from New York. Floyd Epps lived in Westgate Plaza which was project housing and it is likely there were multiple persons selling drugs in that complex. The various versions of the story are too numerous to recount here but the basic theme remained the same.

Several years ago, I began tracking down historical records to ascertain the names of every person who resided in Westgate Plaza in 1991. I was not just interested in the identity of the above-mentioned Puerto Rican drug dealers but was primarily interested in finding people who may have heard or seen something relevant to the case. I was additionally interested in finding people who police had talked to the day of or soon after the murders, since that would be standard procedure given that William Avery proposed a violent fight had occurred in Epps apartment which eventually resulted in the homicides of both Marsha and Floyd.

I was able to ascertain the names of every person living in Westgate Plaza in 1991 and began the process of tracking them all current day. I have interviewed a number of those who are still living and have yet to find a single resident who states that police canvassed the apartment complex or attempted to talk with any of Floyd's neighbors.

There were multiple persons residing at Westgate Plaza that were of note. Some of the most significant are: (See item J in appendix for site map and marked units.)

Michael Harrison- (see Ghost Witnesses below)

Ernestine Evans – Girlfriend of Shawn Cawthon (See Ghost Witnesses below)

Martin Cruz- During one of my visits to Westgate Plaza, I encountered a woman, now an adult, who had lived at Westgate as a child. She stated there was an apartment either in the long stem of the "L" shaped building that Floyd's apartment was in, or in the building directly behind it, that residents termed "The Drug Hut". She said any and every kind of drug could be found for sale there. I recalled the man's name was Martin but could not recall a last name.

Early in the investigation, I had reviewed the interview of the woman, Barabara Long, who had dropped Marsha Blakely off at Floyd's the night she was killed. She remarked that Marsha had taken off her sneakers in the car and put on her house shoes i.e. slippers (Marsha's body was recovered with just one slipper.). I felt it was unlikely that Marsha would have walked very far, if she walked anywhere at all, after being dropped off due to wearing only slippers. The "Drug Hut" was of interest to me given the proximity to Floyd's apartment and especially given the

scenario presented by Raquel's account of Mike Rutherford's confession. Namely that Marsha had stolen drugs from a kitchen table where various drugs were set up in an apartment in the projects and had then run out the back door.

The name Martin was also very interesting due to Haungel Bonds communications with me regarding overhearing Aneetra Smith say the name Martin in conjunction with someone who had possibly witnessed the murders. Though it appears the person who witnessed the murders is named Marcel, it could be that Haungel Bond did hear Aneetra talk about a "Martin" if it was his apartment the drugs were being sold from. Haungel Bonds had been listening from another room and was not able to pick up on all of the conversation.

Historical records indicate a Martin Ruiz lived in the building directly behind Floyd's building in 1991. He is Puerto Rican. Further, I have recent new information that a relative of his, a Jose Ruiz who was from New York, frequently stayed with Martin. There is a handwritten note in the "found box" from LPD which references someone owing money to a Puerto Rican from NY who is a relative of one of Floyd's neighbors. I am in the process of verifying this new information and locating both Martin and Jose in order to interview them. Locating other 1991 residents of Westgate is an ongoing venture.

Severiano Roble- Severiano Roble lived in Westgate Plaza in pre-1991 and still lives there current day. Several years ago, I attempted to interview him as I expected he could be a provider of substantial historical information on persons and happenings around the time of the murders. Severiano pretended not to understand English. I say pretended because after terminating the interview that day due to the language barrier, I subsequently hired a Spanish interpreter and re-visited Severiano Roble's residence in Westgate Plaza. The interpreter translated my questions into Spanish, relaying them to Severiano. Severiano, then, without exception, answered every single question in clear English while looking directly at me. Unfortunately, he was not willing to talk about any of the former residents, nor did he wish to discuss the murders, claiming he vaguely remembered them but had nothing to offer that would be of help. I am currently in the process of trying to connect with someone who knows him who might be able to vouch for me to him so we can speak again.

Karletta Moye- Sister of Ken Rivers who lived there in 1990 prior to the murders. Exact date she moved has not yet been established but it is not likely she was still there in 1991.

Interview with Nettie Mae Rollison and Tamara Rollison-Newton

On May 14, 2021, I interviewed Floyd Epps's mother, Nettie Mae Rollison, and his niece Tamara Rollison-Newton. I specifically asked them about the beer can found at the scene where Floyd's body was recovered and inquired as to whether it could have belonged to Floyd. They were both adamant that Floyd never drank beer and that he was strictly a wino. Specifically, that he drank only "Mad Dog 20/20" which is a common name for MD 2020 (Mogen David 20/20 Red Grape wine). This is significant given the type of beer can that was found at the Wallace Lane scene.

Further, prior interviews with the residents of Wallace Lane indicated that residents kept Wallace Lane immaculate and that litter of any kind, let alone a beer can, would not be something anyone would have tolerated. This supports the beer can having fallen from the vehicle which hit and ran over Floyd.

During my interview with Floyd's mother, I asked if she would be open to requesting DNA testing of the beer can and other evidence in Floyd's unsolved murder. I let her know since it is unsolved, she has the right to do so. She stated that she had worked very hard to come to a place of peace about Floyd's death and did want to re-open that door. However, since the time of this interview, the Federal Homicide Victim's Families' Rights Act has been enacted. I believe it would be appropriate for me follow up with Nettie Rollison and see if she would feel differently now. I am hopeful that perhaps with the media coverage in Lorain in the past year or so that she may be more receptive to the idea of his murder being solvable.

Ghost Witnesses & Undocumented Investigation

Shawn Cawthon and Michael Harrison

The names of Shawn Cawthon and Michael Harrison are both listed in the master case report as a witness, but there is no additional mention of him nor Michael Harrison whatsoever. His girlfriend, Ernestine Evans, is listed in the report as living in Floyd's apartment complex at the time. Though both Shawn Cawthon and Michael Harrison had a significant interaction with LPD police and detectives in regard to the murder, there is not one sentence anywhere in any of the reports on the investigation which mention the interaction.

Interview of Shawn Cawthon

In October of 2020 was able to reach him by phone an interviewed him. This conversation did not last very long as Shawn was at an appointment and needed to attend to that. He stated I could call back at another time, and we would continue the conversation. I was able to reach him a second time in November of 2020. The information below is a combination of the details from both phone interviews.

I explained to Shawn Cawthon why I was calling, letting him know he was listed as witness to the Blakely and Epps murders, and asked what he knew about Floyd Epps and/or Marsha Blakely murders. He was upset that he was listed as a witness and said he was not a witness and had not witnessed anything but knew about the murders. He stated that police had pulled him and his friend, "Money Mike", over for about an hour or two on 23rd street either later in the day that the murders were discovered or the day after. He was in a blue pickup truck at the time. Shawn stated he did not know Money Mike's last name. When asked what race or ethnicity he was, he stated he was black.

I asked if police used any pretense like a busted taillight, etc., to justify pulling them over and he said they used no pretense at all. They simply pulled them over and told them they were checking for vehicles that could have been involved in running someone over. He doesn't think

they used the names of Floyd and Marsha. He said he knew what it was about because the news was all over town.

He said he was told police were interested in the truck because of the tires on the truck. The police stated they were looking for a specific pattern that had been found at the scene. He said both detectives and patrol officers were present when they were going through his truck, but he could not recall who any of the detectives were.

Shawn stated they were checking his tires and tearing everything apart in the truck for several hours. He and Money Mike sat on the side of the road while police and detectives went through his vehicle. He was extremely upset because he realized what it was in connection to and was freaked out at being pulled over in connections with two murders.

I asked if police had ever canvassed the apartments after Floyd's murder. He responded that to his knowledge, police had never canvassed Floyd's apartment complex.

It was unclear due to the hurried nature my first conversation with Shawn, who exactly was driving when they were pulled over. In the second interview he stated Money Mike was driving and he was a passenger.

In January of 2026, I attempted to interview Shawn Cawthon again due to other pieces of information that have come to light that indicate Shawn may have information about the night of the murders. I was not able to reach him at his home and left a note and my business card. I have not had any contact from him as of the date of this report. I will continue to try to make contact with him.

Michael Harrison

There are no indications in the master case report that police ever contacted Michael Harrison regarding the murders and no rationale for listing him as a witness. There is no other mention of his name whatsoever in the master case report. However, in the large volume of files I received from Detective Buddy Sivert, I found a run sheet on Michael Harrison which listed his address, vehicle info, alias info, and criminal and traffic history. This indicates he somehow had come to their attention in regard to the investigation but there is no further information.

Connection between Dyersburg, TN and Patricia Brown AKA Nan Brown

Present in the files I obtained from the LPD "found box" were multiple sets of phone bills. Present in the phone bills were several months of bills for a telephone listed at the address of Lois Brown and Patricia Brown AKA Nan Brown. In a billing cycle for September of 1991 there were multiple calls to and from Dyersburg, Tennessee, just a few short weeks after the murders. (See item I in the appendix.) Kenneth Rivers and several of his family members and associates have address history in Dyersburg, Tennessee. As previously mentioned, Nadine Rivers moved Kenneth and several other family relatives back to the Tennessee after the murders to distance themselves from the investigation.

Though Lois Brown initially stated the calls to and from Dyersburg must have been a billing mistake, I learned from Delphinia Guice, Nan Brown's cousin, that Nan had a huge crush on Michael Rutherford and that they often spent time together at her house. I speculated that this could have been a way that Kenneth Rivers was keeping in touch with Michael Rutherford and getting updates on the investigation.

When Nan was presented with the information given to me by Delphinia Guice, she eventually acknowledged that Nan was romantically interested in Michael Rutherford and he did spend time at their home. She felt it was entirely possible and likely that it was Michael Rutherford receiving and placing the Dyersburg, TN calls from their home.

I was able to trace the Dyersburg phone number back to an address and obtain the name of the account holder. However, I found the woman was deceased. To date, I have not been able to establish a connection between her and Ken River's family though this is an item currently still being researched.

Note: It is my understanding that these phone records had been requested by Alfred Cleveland's counsel years ago but never provided.

Possible Involvement of Brian Daniels in the Murders

Brian Daniels AKA "BI" was a suspect from the earliest days of the investigation, though we do not have a clear picture of why that was the case. Police secured the vehicle he was known to be driving at the time and searched it. They also searched the trash at his residence. There were no findings from either search. There is scant in the way of documentation of the investigation into BI regarding these murders. Public records requests to LPD have not yielded any further information. However, there is a handwritten note in the files I obtained from the LPD "found box" that simply says, "BI $3,000 Lake Terrace '75 Pontiac" Directly above this note is the name Henry Walker and a phone #. Henry Walker is someone who I strongly believe has functioned as a Lorain PD informant for a very long time. I have had recent dealings with him and have found him to be very connected to the various goings on, criminal and otherwise, both historically and currently.

Documents shared by Northwestern indicate BI told Northwestern students a fairly wild tale about the murders. However, Brian Daniels stated to me in 2020 that most of that information was not accurate and that he had made it up to try to help Al Cleveland, knowing Al was in New York at the time of the murders. BI has been a fixture in Lorain for a very long time and has a long and lengthy criminal history that spans decades. He has been connected to multiple criminal enterprises, and his name comes up again and again during the time frame of the murders in all sorts of criminal activities.

I've interviewed BI several times over the years. He plays games and divulges only bits of information which are easily obtainable elsewhere while purporting to want to help the investigation. He is often more interested in hearing how my investigation is going than he is in responding to my inquiries. He has lied to me multiple times claiming he did not know Michael

Rutherford. In truth, BI has known Michael Rutherford for years, and has a close relationship with Rutherford's daughter, Anna Nicole, referring to her as his "daughter" in social media posts. When confronted with this, he tried to ease his way back out of his prior statements.

On September 6, 2024, I received an email from Damichia Owens, the daughter of Marsha Blakely. She was just one year old when Marsha was murdered. She and I have had many conversations over the years and have developed a strong relationship. She has never believed the men convicted of killing her mother were responsible for her mother's death.

In 2020, I asked her to consider testifying at the parole hearing for Al Cleveland and Lenny Edwards in support of their release and she agreed. Her decision to testify on their behalf came at great cost to her as she was immediately ostracized and shunned by her family members.

The email she sent on Sept 6th was to inform me that her brother, Delorean, had committed suicide. She stated that during the last conversation he spoke about their mother's murder. He told her that BI was involved. He did not provide any specifics but said that other family members over the years had talked to him about the murders and BI's involvement. (As a side note, Damichia was forbidden from attending her brother's funeral due to her advocating for the parole of Al Cleveland and Lenny Edwards.) Damichia continues to check in with me on a fairly regular basis offering to do whatever she can to help to bring her mother's killers to justice.
I believe it would be prudent to focus on Brian Daniels' activities at the time, including his ventures with Tony Horne (Detroit Drug connection and bail bondsman). Tony Horne and Brian Daniels are very close. Tony Horne is connected to Charlie's bar as his name appears on the liquor license for the establishment. There is more here to unravel.

I have spoken to one of the former owners of Charlie's bar. He sold the bar shortly before the murders. I am currently in the process of locating that individual who owned it at that time so I can interview him. I have been told he had information for LPD regarding the murders, but the police refused to return his calls.

Bungling of Post Conviction Leads Pointing to Rutherford & Rivers

Post conviction of all four men, the Lorain Police Department was provided information regarding both Rutherford and Rivers and their connection the murders on at least two occasions. The first was the aforementioned April 2010 anonymous text tip. The second was in December of 2010 and was provided by Danny Smith, who had been incarcerated with Michael Rutherford and to whom Rutherford had confessed. In both cases, detectives failed to investigate the information fully and their words and actions show they were either woefully deficient in their knowledge of both the case and the history of Michael Rutherford and Ken Rives or simply did not care to pursue the information needed to appropriately evaluate the tips.

Interviews following the Text Tip

In response to the text tip, Detective Carpentiere interviewed both Michael Rutherford and Kenneth Rivers. The interviews were extraordinarily brief. Rutherford's interview lasted just 10

minutes and 50 seconds long and Kenneth Rivers' interview was 8 minutes and 21 seconds long. It was very apparent by the lies and misinformation both Rivers and Rutherford provided that that Detective Carpentiere had failed to do even the most basic of research and background intelligence gathering prior to interviewing both subjects.

For example, Michael Rutherford claimed to have just been discharged from the Marine Corps at the time of the murders. However, Michael Rutherford was never a member of any of the armed services, though he tried to enlist in the Army at the same time Ken Rivers did but was rejected due to failing a drug test. Additionally, he stated he was working at U.S. Steel at that time. However, inquiries to U.S. Steel human resources found that Michael Rutherford had never been employed by them. Rutherford's sister Raquel Rutherford also stated Michael never worked for U.S. Steel.

During Kenneth River's interview he discussed having been discharged from the military in close proximity to the time of the murders. However, he fails to mention he was dishonorably discharged, court-martialed, and had actually just been released from federal custody after serving time for a brutal assault on a German citizen.

Both men had incredibly lengthy violent criminal histories of assault going back into their juvenile years. Had Detective Carpentiere done any background research at all, he would have had the tools to conduct a more extensive interview, confront their dishonesty and omissions, and press for details which might have led to the disclosure of information which would have been helpful in uncovering the many instances that they had actually confessed to committing the murders.

Danny Smith LPD Interview

In Danny Smith's December 2010 statement to detectives, he recounted an interaction with Michael Rutherford in 1996 while they were incarcerated together in Belmont Correction in which Rutherford confessed to him that he and "Kenny Davis" were responsible for killing Marsha Blakely and Floyd Epps. Rutherford provided gave graphic details, which included the detail of "Kenny Davis" placing Marsha Blakely in a chokehold until she passed out. The use of a chokehold to render victims unconscious is a hallmark of Kenneth Rivers assaults over decades of time. It is his known MO in perpetrating his assaults and he has used this so frequently and so consistently that it can be considered a signature move. It is indicative of someone with a great need for control and domination who relishes the power he has to render his victims completely helpless.

Additionally, the narrative provided by Danny Smith accounts for how Floyd Epps came to be murdered, something that Avery, Jr's narrative never did address. Danny Smith recounts that the information provided by Michael Rutherford was that "the other guy" came around the back of the shopping plaza and observed the murder in progress. It is important to note that the last sighting of Floyd alive places him walking in the general direction of Westgate Plaza.

Despite the above narrative given by Danny Smith which contained elements consistent with the known behavior of Ken Rivers as well as elements consistent with the crimes, detectives discounted Danny Smith's information in part due to the text tip naming Ken Rivers while Danny Smith referred to a Kenny Davis. Had detectives familiarized themselves with Kenneth Rivers family history, they would have realized his mother, Nadine, has been married multiple times and has had several different last names, including Brown, Davis, Moye, and Rivers. Police records show that at times Ken used alternate last names pulling from his family history in an attempt to thwart and/or delay identification in his criminal activities. Making the connection between Kenny Davis and Ken Rivers and identifying them as one and the same was not by any means a difficult connection to make, particularly for seasoned investigators. The same can be said for the information provided regarding Ken having choked out Marsha Blakely. This was a behavior often displayed by Ken Rivers and added legitimacy to Danny Smith's claims.

Another apparent reason for the skepticism of Lorain detectives in regard to Smith's statement is shown in the write up of the interview with Danny Smith. The write up indicates that detectives checked prison location assignments for both Danny Smith and Michael Rutherford and notes that while records show they were incarcerated together in Belmont Correctional in 1999, they were not cellmates specifically on the date of 09/28/1999. Why they chose this precise day as the date to verify whether or not they were cell mates is not clear, as Danny Smith provided a time frame for this conversation as an "unspecified time in 1999". Further, whether or not they were cellmates has no real bearing in terms of testing the legitimacy of Danny Smith's claims since simply being incarcerated together at Belmont Correctional would have provided opportunities for interactions and conversations.

Further, Northwestern students who interviewed Danny Smith in 2001 report that Danny Smith stated the conversation occurred in 1999 while they were lifting weights together and recognized each other but were not sure from where. It was discovered they both knew Ken Rivers AKA Kenny Smith. It should be noted that my interview with Danny Smith in 2021 revealed Danny Smith at one point lived above Ken Rivers and Dawn Jewell and that Danny Smith came to be familiar with Mike Rutherford due to him frequently visiting Ken's residence. According to the statement provided by Danny Smith to the students, Michael Rutherford stated Ken had killed Marsha and Floyd and then later killed himself by stepping in front of a train. While the statement provided to Lorain Police does not specifically state where the conversation occurred, simply being incarcerated together would have been sufficient to determine there was a possibility for the conversation Danny reported to have occurred. It is important to note that in my interview with Danny Smith, he stated the timeline as given by Lorain police in the report of his statement was not accurate.

In the investigation of both of these instances (the text tip and Danny Smith's report) detectives either couldn't be bothered to do their due diligence and research or chose to ignore it as it did not fit the narrative they had worked hard to establish over the years. A narrative that had resulted in the wrongful conviction of Alfred Cleveland, Benson Davis, Lenworth Edwards, and John Edwards.

Sloppiness, Irregularities, and Possible Misconduct[9]

Failure to Collect and /or Test Critical Evidence

Razor/Knife found at Blakely Scene

As previously mentioned, I was able to track down the video taken of the Marsha Blakely crime scene was well as the crime scene sketch. Both clearly show a knife was found at the scene. In the video of the scene, the camera zooms in on what appears to be a barber's type razor lying the grass, gleaming in the sun. (See item A in the appendix). The crime scene sketch labels the knife and depicts its placement at the scene. (See item B in the appendix). However, this knife appears nowhere on any evidence log at all. Nor is there any mention of it in the narrative of the items noted at the scene or the evidence collected at the scene.

A knife at any crime scene is quite obviously a potentially critical piece of evidence, even in the absence of any visible blood. Under any protocols of crime scene processing, the knife should have been collected, bagged, tagged, and submitted for processing.

Through Detective Sivert I was able to inquire of Detective Resendez and Taliano why the knife was not collected. Their response was that at the scene the coroner did not believe the knife was related based on the wounds, so it was not taken as evidence. According to them, the coroner looked at the wounds and determined the knife could not have been involved. This is telling, particularly since Raquel Rutherford states Michael Rutherford said a steak knife was used to cut Marsha's throat and the drawing of her throat wound that was made by the coroner at the scene depicts jagged edges and tearing. While comparing that type of wound to the straight edge barber's knife would most certainly be a reason for the coroner to reject it as being the murder weapon, it would not in any way preclude it from being a potentially valuable piece of evidence. It may have been dropped by someone present at the scene at the time of the murder and have fingerprints or other trace evidence that could point to the identify the murderer or a witness to the murder.

Jumpsuit worn by William Avery, Jr.

While reviewing evidence in storage at the Lorain Police Department, I photographed a pair of green coveralls. (See item L in the appendix.) I believe these are the coveralls William Avery, Jr states he was wearing the night Marsha Blakely was murdered. To date I have not been able to locate a record of them being tested forensically, nor a stated reason for why they were collected. If they were tested, the results are not among the other forensic reports.

[9] *I have a long list of items that I continue to add to as I continue the investigation. What is included here are some of the most striking.*

Coroner File Findings

When I reviewed the full file from the Lorain County coroner's office, I found there was a tooth that had been collected from Marsha's scene which has not been tested for DNA. Additionally, there was a record of vitreous fluid having been collected from Floyd's eyes and which should have been tested. Vitreous fluid is useful in establishing the time of death would have been a tremendous help in establishing the timeline of events. However, there was no record of the fluid ever being tested. The new coroner checked the lab archives and did not find any record of the testing there either. Lastly, nail scrapings were not collected from Marsha Blakely, despite the fact this was at that time an established procedure in assaults and homicides.

Conflicting information

Avery Sr's handwritten diary (Item C in the appendix) contains pertinent information such as records of dates of interactions with LPD detectives which conflict with the dates of the recordings obtained from the interviews of William Avery, Sr. and William Avery, Jr. The handwritten notes also indicate Elyria police were involved in the investigation. The diary indicates that the Avery's rode along with the police while they looked for various persons from New York and that Avery, Sr. at one point drove the vehicle. Additionally, the handwritten notes also indicate William Avery, Jr. needed psychiatric care during the time frame he was interacting with police as an eyewitness. I believe there may be more handwritten notes from Avery, Sr. in the various case files and I am working now to locate them.

Irregularities in Photographing of Floyd's Apartment & Failure to Canvas/Speak to Residents

On September 8th, 1991, Barbara Long and Keeva Long drove to Floyd's apartment to pick up Marsha. Keeva went to the apartment and found it to be in disarray. She reports there was broken glass by the window, the mattress was off of the bed, and the television was turned over. She saw Marsha's purse and a single slipper/bed shoe on the floor. Keeva knew Marsha would never go anywhere without her purse and knew immediately something was wrong. She and her mother left to drive around and look for Marsha. Keeva reports that when she and her mother Barbar returned around 1 pm, the apartment had been cleaned up, and Marsha's purse and bedroom shoe were gone. Keeva stated she notified an officer, but he informed her it was said was clean when they arrived. She did not report any damage to the table or a broken table leg.

LPD reports state that Lorain Municipal housing changed the locks on September 9, 1991, at the request of LPD. However, on September 18, 1991, when photographs were taken it is clear the table leg is now broken. Why there was a ten-day delay in photographing Floyd's apartment is not clear.

I spoke to Lorain Municipal Housing Authority officials attempting to verify the date the locks were changed through old maintenance records but was not successful. However, I did speak with the woman who was the manager of the complex at the time of the murders. She relayed to me that she would never have allowed the unit to be inaccessible for that long due to needing to

rent out any empty units as quickly as possible. Their funding depended on the percentage of units they kept occupied. She stated she would have been daily in conversations with LPD if they attempted to leave the apartment secured and inaccessible for ten days.

As previously mentioned, no one I have spoken to who was a resident at Westgate Plaza has reported police attempting to canvas or question residents regarding a possible assault at Floyd's apartment. This is highly unusual, particularly since the alleged assault resulted in the deaths of two individuals.

Pressuring of a Witness and Falsification of Report of Statement

Mary Jane Gonzalez who interacted with Marsha the evening her murder and was interviewed by police early on states that many of the details in the report of her interview were not accurate. For example, she said Marsha never said she owed anyone money and she never said she had been beat up. Info regarding details of the vehicle Mary Jane saw are also incorrect according to her. For example, she never said it was a brown car but stated she was sure it was black or dark blue. Additionally, she said she felt pressured to give certain details and those taking the report had specific things in mind they wanted said. From records it appears that Taliano was the person who interviewed Mary Jane Gonzalez. Mary Jane Gonzalez testified for the state in Al Cleveland's and stated she felt pressured in her testimony.

Intent/Instructions to Delete Info

A handwritten note in the files obtained from LPD appears to say "Delete info from" --next word is not readable. This same note lists Shakim's name as well as others associated with New York. (See item M in appendix.)

Failure to Investigate a Significant Lead

On August 15, 1991, the Morning Journal published a story on the front page of a woman named Jeanna Geiger who was dangled off of a bridge the day before by her boyfriend, John Armstrong. (See item K in the appendix.) The story notes the event was sparked by Armstrong's rage which exploded during an argument with Jeanna Geiger about the murder of her friend Marsha Blakely. Despite the fact this ran on the front page of the Morning Journal, I can find no record of LPD investigating this event to see what specifically about the murders was the point of contention between the two. Common sense would say if it was serious enough for Armstrong to threaten the life of Geiger, there was a significant possibility it might be relevant to the investigation.

I did locate and interview Jeanna Geiger. At the time of the interview, she was undergoing chemotherapy for cancer. She invited me in and was more than willing to talk but stated the argument was really just a minor thing. I probed, but carefully, giving her condition and obvious frailty. Later, her family would complain about my visit to parole authorities, stating Al Cleveland was harassing Marsha's family and claiming Jeanna Geiger was a relative of Marsha

Blakely. My contact with Jeanna Geiger had been entirely pleasant and cordial but the decision was made to not attempt to interview her again for fear of causing an issue for Al Cleveland during his parole supervision.

A year or so later, I ran into her while visiting a contact at Westgate Plaza. She was in much better health but did not recognize me. She has now passed away. I am currently working on developing an interview strategy for speaking with John Armstrong and his ex-wife Patricia Wannamaker about the argument on the bridge.

Conclusion

As previously mentioned, the scope of this more than seven-year investigation is far greater than what is reported on here. I have tried to relay the most essential and relevant items, consolidating them into to their most critical parts, in hopes this will further exoneration efforts for the Ohio Four. I am ready and willing to provide additional details, including supporting documentation, any on item in this report and to expand on any of the information provided. I am also ready and willing to discuss further aspects of the investigation, items of focus, and avenues explored, which are outside of what has been reported here.

You will note in several places I include that an item is currently being explored or is in progress. I am happy to discuss specifics with you. Additionally, I am open to having a conversation with you regarding my plans for next steps for the items that I deem to be critical to the investigation, but which may not be mentioned in this report, some of which are already in progress.

APPENDIX

ITEM A

Video Screenshot

A



ITEM B

Crime Scene Sketch Marsha Blakely

B

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 YR 91

☐ 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 FR ST

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

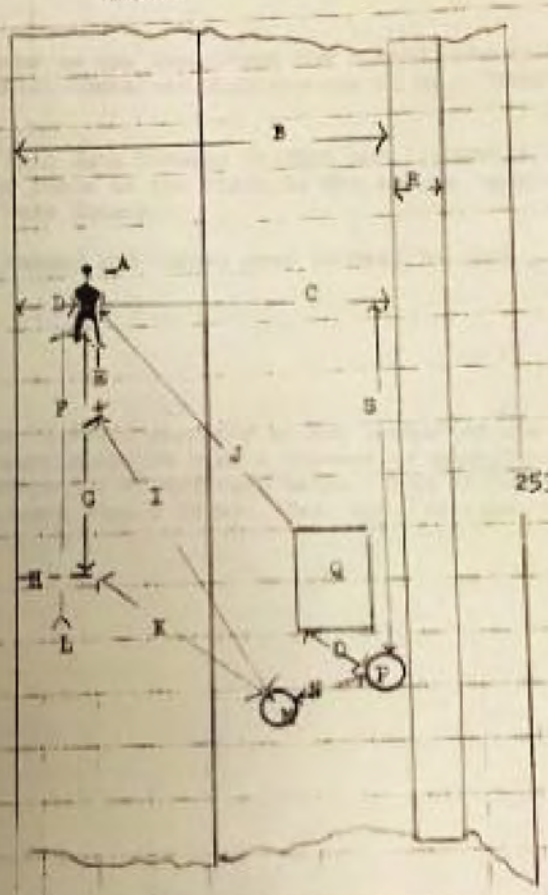
A. MARSHA, BLAKELY
B. Alley 26'
C. Body to Curb 21'
D. Body to edge of road 5'10"
E. Body to shoe 1'
F. Knife to Body 33'
G. Button to body 27'7"
H. Button to edge of road 7'10"
I. Shoe to Sanitary Sewer 21'
J. Body to Dumpster 18'4"
K. Button to Sanitary Sewer 9'
L. Knife
M. Sanitary Sewer
N. Pole to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

R. Tire tracks with blood spot total distance 5'

Q-Dumpster 5' by 5'

Tire Tracks located at scene 5'

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



OFFICER'S SIGNATURE

ID NUMBER

OH-2 (REV. 8/75)

ITEM C

William Avery, Sr. Diary

C

(1)

Wm Avery Sr. Statement

9/18/91

I went down to the police station to talk to Det. T. about the double killing. I asked that the Capt. R. be there and he was. After telling all I found out T. said that just [redacted] what he needed and that it would be worth $2000 if

This is some sort of diary by Avery Sr. Most of these things came from Mr. Carson, Len's 2nd trial attorney, after he filed lawsuit against city of Lorain he never got anything until after Len was convicted.

D. William Avery wrote the Marsha Blakely & [redacted] - these notes produced by Wm Avery Sr. in lawsuit - Carson v. Lorain

According to Papcke

C

(2)

a eye wesitness, I told hem I did. I was told to bring hem and I could get $2000. I went to 25th & East Ave. and talk to my son and ask hem to go to the police with me and tell whate he know about the killing. He said ok dad, I cant live with this~~o~~

William M. Avery Sr. 11/7/91

C

(3)

9/19/91

My son told all he knew about the killing on tape and went back home. on the way back we seen his X girl friend ~~and her~~ mother one block from the police station at sister chicken + She told people on the Street B.B. was working for the mega.

William m. Avery 11/7/91

C

(4)

9/20/91

1 PM we went down to the police station to talk to T. and capt. R. They had some pictures of Al monday, shootin J.R. Lupin and Wil. B. B. told them who they were. The we road around Lorain + Elyria looking for them until about 1130 PM They feed B.B. at McDonalds went to an appointment at Bmorth center and had no food.

McClain MI Army 11/7/91

(5)

C

9/4/91

T + R came at 9 AM and picked us up and took us back to the police station. There we were asked more queston about what we knew about the case + knocked around ideas on how to get J & R. who they through was at Walk Hills They took us to Elyria where they met Elyria police who we to give back up. T left us in a room for about 3 hr where we made paper air plans +

William M. Avery 11/7/91

(4)

C

drinked coffee, we had nother to eat all this time, Shan T. come into the rooms and said lets go, That when he told me to drive the van, me and B.B. was in the fount and all the police in the back. ~~we~~ I was to drive in Elyria to Wilk Villa and see if we could spot any of the people envovled in

William M Berry Sr. 11/7/91

C

(9)

[redacted] the case we stoped
[redacted] and talk to drudge
dealer on the streets
[redacted] of wolk Villa. T.
[redacted] said dont let any
[redacted] of them in the
van. we couldn't
[redacted] fine them so we
[redacted] went back to the
[redacted] meeting place
the police said they
[redacted] were makeing $30
[redacted] an hr. overy time.
[redacted] we started back to
[redacted] lorain when they
[redacted] stoped at mc Donals
[redacted] and bought me a fish
[redacted] and small coke + BB
[redacted] two chicken Sam.
[redacted] and a large coke

William M Lavery Sr. 11/1/91

C

(8)

T. gave B.B. $30. at saddle inn motel where we spent the night.

William M Berry 11/7/91

C

(9)

P.S. When in Elyria at the meeting place I was wired and given a plan car to go back into work Nella. I went into a smoke house looking and asking questions about J.R. also on the streets one seller name Robert with one eye tryed to sell me a quarter (25) of an oz. There was no pay for my work or for the

Is this the tape we have re BB?

William M. Arney Sr - 11/7/91

C

(10)

[redacted] drugs ~~xxx~~ info.
T. paid $38 for a
[redacted] room at saddle
[redacted] inn and gave
[redacted] B.B. $32 ~~00~~ for food
[redacted] for a day for us.
[redacted] It's late.
[redacted] B.B. is real scared
[redacted] now I never seen
[redacted] him like this.
[redacted] He don't go anywhere
[redacted] or do anything with-
[redacted] out me or the police
[redacted] with him. He beat
[redacted] up his girl friend
[redacted] and was talking

William M Avery Sr. 11/7/91

(11)

C

about kidding herself and her. I dont know what to do. North center want me to sign pappers to have her picked up.

William M. Avery Jr. 11/7/91

C

(12)

[redacted]

9/22/91

T+R came at 12:57PM and picked us up and went to the police station. We ~~was~~ sat there for about two hr. until the warrants were ready. Then we got into the white van and went riding around Lorain looking for them. Couldn't fine them, ~~so~~ T. picked

William M Avery Sr. 11/7/91

(13)

C

up a pizzer and went back to the station where we drink pop and ate pizzer. T. said he had a free ~~apps~~ apt. for us in oblin, T. gave BB ten mi. to pick up his things on 25th & east ave. He would not take me to get anything on the way there. I asked why don't they pay us working. T. ~~said~~ stoped the car and said I am tired

William m Berry 11/2/91

(14)

C

[redacted] of hearing this shit about money BB is my witness and I dont need [redacted] you. you can get out now or I will take you to 15th. you did me a favor and I thank you. BB said if dad dont go I dont go. so we went on to oblin. ~~we're~~ when we got there T+R got out of the van and went to an apt across the street and knock on the door and

William [redacted] Avery Sr. 11-7-91

C

(15)

asked where was the office.

William M Avery Sr. 11/9/91

C

(14)

Monday

Police called
AT 10:00 oclock
AM. Asked how
was we doing
And Told me
there was a
Shooting Sun-
day Night on
19th. St. Called
again 330 PM.
said he called
my Job And told
them what was

William M Avery Sr. 11/1/91

C

(17)

happend and
that it was
up to me if I
was going Tomorrow
And there was
Nothing he could
do to help me
get there.
We told him
that we only
had $30.00 left.
he siad buy some
Meat And bread
and Make sandwhich

William M Avery Sr. 11/7/91

C

(18)

Tuesday 7/24/9

T. called at 1:15 PM
ask how ~~was~~ we
doing and if I call
ed my job. I told
them we only had
$ 10.00 left, and we
needed some money.
T called 3:35 PM
He said the Capt. R-
was out of town
& some one called and
and he would see
what he could do.
R - Brought me $50

William M. Berry Sr. 11/7/91

C

Shary
332 1414

~~A~~ He said that J.R. was seen in Elyria. That where I work. Told me I should go back on 15th. St. And Live. ~~A~~ co. care. Nothing About my safty

William m Avery Sr. 11/7/91

ITEM D1

Renumbered Pages from Main Report

D1

ITEM # V2(cc) ONE (1) POLOROID PHOTOGRAPH OF ALFRED CLEVELAND(AKA"AL MONDAY")

ITEM # V2(dd) ONE (1) POLOROID PHOTOGRAPH OF "SUPREME", "JUSTICE", "PATCH"

ITEM # V2 (EE) ONE(1) CASSETTE TAPE OF 11-1-91 INTERVIEW OF GARY BYRGE AT LCSO

ITEM # V2 (FF) ONE(1) CASSETTE TAPE OF 11-4-91 INTERVIEW OF GARY BYRGE AT LCSO

CONTINUED ON PAGE # 3 (A).....

Report sent to Headquarters ..... m. ..... Date ..... , 19..

Reported by ....

Signature Signature

Approved by

POLICE DEPARTMENT, CITY OF LORAIN, OHIO

—MISCELLANEOUS REPORT—

Report Number

#91-30574
#91-30603

16296 LP Co.

Precinct DETECTIVE BUREAU REPORT PAGE# 4 Copy for .....

Subject HOMICIDE INVESTIGATION

Name of Party EPPS / BLAKELY Address .....

Date of Birth SS Number Phone #

I respectfully report that on, or about CONTINUED FROM PAGE# 3 (A) 19..., at .....

WITNESSES: RE: CASE # 91-30574 AND # [illegible] witnesses listed in Office[illegible]

Page 5 / 74

ITEM D2

Undated Narcotics Bureau Report

D2

Approved by

POLICE DEPARTMENT, CITY OF LORAIN, OHIO

—MISCELLANEOUS REPORT—

Report Number

CONFIDENTIAL

18296 LP Co.

Precinct NARCOTICS BUREAU Copy for

Subject INFORMATION ON NEW YORK BOYS IN TOWN

Name of Party SEE BELOW Address

Date of Birth SS Number Phone #

I respectfully report that on or about August 1991 19..... at .....n

This bureau has been receiving a lot of information that there are a number of yound black males in town from New York city (Jamacain Queens) who are dealing. They are selling large pieces of crack cocaine for lower prices in an effort to take over the business. They are also said to be buying up a lot of guns some of which we believe are being taken back to New York to be sold. They have been hanging out mostly in the projects and frequent Charlie's bar in Westgate. Some of them are said to be staying with Delphinia Guice at 2333 Leavitt Road and Lashone Ralston at 3005 Leavitt #A10. Most of them have hooked up with girlfriends which is angering the local dealers. This bureau has checked with a New York city detective and after giving her the name of some of these individuals we have identified she advised that they all come from the same small neighborhood in Queens. The same neighborhood that Ivan Gibson comes from. (BI shooter) The NYPD detective also advised that Ian Davis, Lenny Edwards and Al Cleveland all have drug records with Al Cleveland still being on probation.

PLAYERS:

ALFRED M. CLEVELAND BM/21 AKA- AL MONDAY 1054 Kane St. Norfolk, Va.23513
DOB-9-10-69 SS#101-68-4822

JOHN EDWARDS BM/21 AKA- SHAKEEM DOB-6-7-70 SS#

LENNY EDWARDS BM/18 AKA-TERRENCE JONES AKA-WILL AKA-WILL 189-25 Mangin Ave. Queens _.Y.
DOB-10-15-72 SS#-110-74-6053

IAN R. DAVIS BM/26 AKA-"J.R" AKA "E" 188-19 Mangin Ave. Queens N.Y.
DOB-5-10-65 SS#UNK. (5-9 thin, short hair, dark complexion, scars around left eye and cheek and V shaped scar on top of his head.

TOMMY BROWN BM/?? AKA- TOMMY KRENSHAW AKA-TOMMY WILLIAMS AKA- PATCH AKA-HAROLD
No other information on him. Its unknown what his real name is. Car phone 299-1490 (supposed to have bought a .45 caliber machine gun)

JUSTICE BM/?? AKA-JIMMY Looks like Shakeem. All gold front teeth.

OTHERS MENTIONED

QUINN SUPREME TOMO CAT (GERALD)

VEHICLES

1980 Mercury Grand Marquis Green Vinyl over Dark Green, 4 door, TEMP-A194076

A white Buick Regal.

Report sent to Headquarters ..... m. ..... Date ....., 19....

Reported by ROHNER CAMBARARE RIVERA

Signature Signature

ITEM E

Medway named as agency

E

18296 LF Co.

Precinct DETECTIVE BUREAU REPORT PAGE# 1 Copy for

Subject HOMICIDE INVESTIGATION

Name of Party SEE VICTIMS LISTED Address

Date of Birth SS Number Phone #

I respectfully report that on, or about 19, at

VICTIMS: RE: CASE # 30574; THURSDAY AUGUST 8, 1991 @ 0125 HOURS

EPPS, FLOYD LEE BM/47(12-25-43/278-36-6827)
2307 SUNSET BLVD. LORAIN, OHIO NO PHONE

RE: CASE # 91-30603; THURSDAY AUGUST 8, 1991@0918 HOURS

BLAKELY, MARSHA ANNETTA BF/22(01-25-69/282-70-1779)
219 E. 32 ND. LORAIN, OHIO PH# 246-0048
2307 SUNSET BLVD. LORAIN, OHIO NO PHONE

AGENCIES: LORAIN COUNTY CORONER'S OFFICE

LORAIN COUNTY CRIME LAB

MEDWAY DRUG ENFORCEMENT / FIRELANDS KENNEL

OFFICERS: CHIEF J. MALINOVSKY, DET. CPT. RIVERA, CPT. C. CASTEEL, DET. LT. MOREHART,

E

ITEM F

Witness List - Cawthon & Harrison

F

Approved by

POLICE DEPARTMENT, CITY OF LORAIN, OHIO

—MISCELLANEOUS REPORT—

Report Number
#91-30574
#91-30603

18296 LP Co.

Precinct DETECTIVE BUREAU REPORT PAGE# 5 Copy for

Subject HOMICIDE INVESTIGATION

Name of Party EPPS / BLAKELY Address

Date of Birth SS Number Phone #

CONTINUED FROM PAGE# 4

I respectfully report that on, or about 19..... , at

WITNESSES; CONTINUED FROM PAGE# 4:

WALLACE, HERBERT LEON BM/43(11-24-47/232-74-7663)
2131 GRENOBLE DR. LORAIN, OHIO NO PHONE

WALKER, LEONARD JAMES BM/34(04-24-57/287-62-8025)
2315 W. 20TH LORAIN, OHIO PH# 244-5417

FRANKLIN, SHARON A. BF/21(06-25-70/296-68-1638)
2126 LORAIN DR. LORAIN, OHIO NO PHONE
2329 WESTVIEW COURT LORAIN, OHIO

HARRISON, MICHAEL CURTIS BM/25(05-17-66/298-70-0318)
2201 W. 24TH. ST. LORAIN, OHIO NO PHONE

DALTON, GINA FAY BF/23(10-17-67/296-80-7311)
5003 WEST ERIE APT# 204 LORAIN, OHIO PH# 960-0058(HOME);244-6000(WORK)

CAWTHON, SHAWN MARQUIS BM/21(05-04-70/299-64-8918)
2206 HANCOCK ST. LORAIN, OHIO NO PHONE
2332 SUNSET BLVD. LORAIN, OHIO NO PHONE (GIRLFRIEND; ERNASTINE EVANS)

BROWN, PATRICIA MICHELLE BF/25(08-14-66/279-68-6790)
2248 LORAIN DRIVE LORAIN, OHIO PH# 246-2994

GUICE, DELPHINA DIANE BF/26(08-01-65/291-68-0336)
2333 LEAVITT RD. LORAIN, OHIO PH# 282-2715

PHILLIPS, PATRICIA DIANNE BF/36(08-01-55/289-54-5531)
1309 MADISON AVE LORAIN, OHIO PH# 244-5745

GRANT, MARGARET ANN BF/25(01-31-66/298-70-1799)
2911 LEAVITT RD LORAIN, OHIO
148 PORTIA COURT ELYRIA, OHIO PH# 322-4104

RALSTON, LASHAR CAMILA BF/18(06-08-73/293-74-8614) AKA "PEACHES"
3005 LEAVITT RD. # A-10 LORAIN, OHIO NO PHONE

Report sent to Headquarters m. Date , 19.....

Reported by (CONTINUED ON PAGE#5(A)...)

Signature Signature

ITEM G

Text Tip

G

Text Tip

LORAIN POLICE DEPARTMENT
SMS CRIME TIP D4R7
TipSoft Secure Tip Submission
CONFIDENTIAL
See the bottom of this document for the most recent additions.

Tipster - 4/13/2010 12:46 PM
Lorain - marsha blakely murder, killers ken rivers & mike rutherford

ITEM H

Tabitha Foster Affidavit

H

"My name is Tabitha Foster. My date of birth is September 8, 1970. I reside at 68 Chloe CV Atoka, TN 38004. In April of 1996, detectives came to my residence in Covington, Tennessee on Austin Store Road. I shared this residence with Ken Rivers. I do not recall the exact date, however, I remember I was coming home from work at Turner's Dairy. I worked this job through a temp agency called Express Personnel. Ken Rivers did as well. Not long after this visit from detectives, Ken lost his job with them because of rumors that he had been involved in a double homicide in Ohio. His dates of employment were verified by the employment agency to be 5/29/95- 5/29/96.

Additionally, I also recall that shortly before they came to visit, I had found out I was pregnant with my daughter Jasmine. I found out I was pregnant in early April of 1996, because I went to my doctor in Covington, TN and took a pregnancy test after I had missed a period in March of 1996. Jasmine was born on 11/10/96 and was conceived in February of 1996. This is how I know the detective's visit was in April of 1996.

That day in April, when I got home from work Nadine Davis, Ken's mother who lived next door, called and told me Ohio police were here to talk to Ken about an incident in Ohio. I stayed inside and Ken went out to the yard to meet the police.

There were three total police detectives, and all were males. One was from Tipton County, and the other two were from Ohio. I do not know what agency the Ohio police were from. One Ohio detective was a heavyset white male. To the best of my recollection the other Ohio detective was white as well. I know he were not black. The Ohio detectives were driving an unmarked vehicle and wearing regular clothes with a tie.

I was not able to hear the conversation from inside the house. However, when Ken came back inside he told me that "Mike was up there talking, he's just mad because he is in jail." Ken said it had to do with an incident involving a girl and a homeless person. Ken told me that they were trying to pin it on them.

Ken then called Will Washington, who was with his sister Kay at the time living in Memphis, to tell him that police had just come from Ohio to talk to him about the incident that happened in Ohio. He told Will that Mike was trying to pin stuff on him. Will confirmed that Mike was in jail.

I had heard years earlier that Ken had come to Tennessee because he had killed two people in Ohio. I asked him about it at that time he said it was just a rumor. He said his family didn't like him and the rumor had been going around because his sister Wynessa was running around telling people that. However, I never heard the name Mike or Mike Rutherford mentioned until the Ohio detectives came to my house and Ken was telling me what the detectives had wanted. He told me that he and Mike used to run around together and get in trouble together.

H

After the detectives' visit, Ken would occasionally talk about Mike. He would talk about them being friends and getting in trouble together. Will Washington talked about Mike also. Will said Mike was crazy.

In my time with Ken Rivers, I knew him to be a very violent person, not just towards me but others as well that angered him. Before we even began dating Ken was at my house one night at Broad Meadows apart H 64 in Covington, Tennessee. We were watching a movie. A friend of mine named Travis Harbor came busting in the door. He was angry that I had Ken in the house with the rumors that were all over town about him having killed people in Ohio.

Ken and Travis began to argue face to face. Travis was about to leave when Ken got up and locked the door behind Travis and jumped on him. Ken choked him out to put him to sleep. He would then hit Travis in the face to wake him up and then choke him out again. This happened about five times. Ken then pointed towards the kitchen and told me to "go get that knife, I'm going to cut his throat". I grabbed my baby and ran out the door. I went downstairs and asked them to call 911.

I am making this statement of my own free will. I have not been promised anything in exchange for this statement nor have I been coerced or threatened in any way. I hereby swear under penalty of perjury that the following/above statement is true and accurate to the best of my knowledge.

Jabriya Foster
Signature

1 June 24
Date

Jillian Sandifer
Signature

1 June 2024
Date

Commission Expires
July 22, 2026

JILLIAN S SANDIFER
STATE OF TENNESSEE NOTARY PUBLIC
TIPTON COUNTY

ITEM I

Phone Bills

ACCOUNT NUMBER 080 0015346 3

2	SEP 24	810P	5	COD	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			3.00
3	SEP 24	642P	1	COE	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			2.02
4	SEP 24	725P	4	COE	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			2.47
5	SEP 25	940A	1	COD	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			2.10
6	SEP 25	957A	1	COD	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			2.10
7	SEP 25	813P	8	COD	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			3.67
8	SEP 25	717P	29	COE	LORAIN	OH	216	277-0462	J	2	01
				FROM	DYERSBURG	TN	901	287-9501			6.20
9	SEP 25	954P	18	AE	DYERSBURG	TN	901	287-9501	J	2	01 2.69
10	SEP 26	820P	3	AD	LEBANON	OH	513	932-9741	9	2	01 .79
11	SEP 27	1130A	1	AD	DYERSBURG	TN	901	287-9501	J	2	01 .23
12	SEP 27	1155A	7	AD	GALVESTON	TX	409	766-6610	J	2	01 1.70
13	SEP 27	1251P	4	AD	GALVESTON	TX	409	766-6610	J	2	01 .97
14	SEP 27	1155P	1	AN	DYERSBURG	TN	901	287-9501	J	2	01 .13
15	SEP 29	1230P	35	AN	DYERSBURG	TN	901	287-9501	J	2	01 4.57
16	OCT 01	813P	21	AE	DYERSBURG	TN	901	287-9501	J	2	01 3.13
17	OCT 02	1055P	13	AM	DYERSBURG	TN	901	287-9501	J	2	01 1.79

TOTAL ITEMIZED CALLS FOR AT&T 38.04

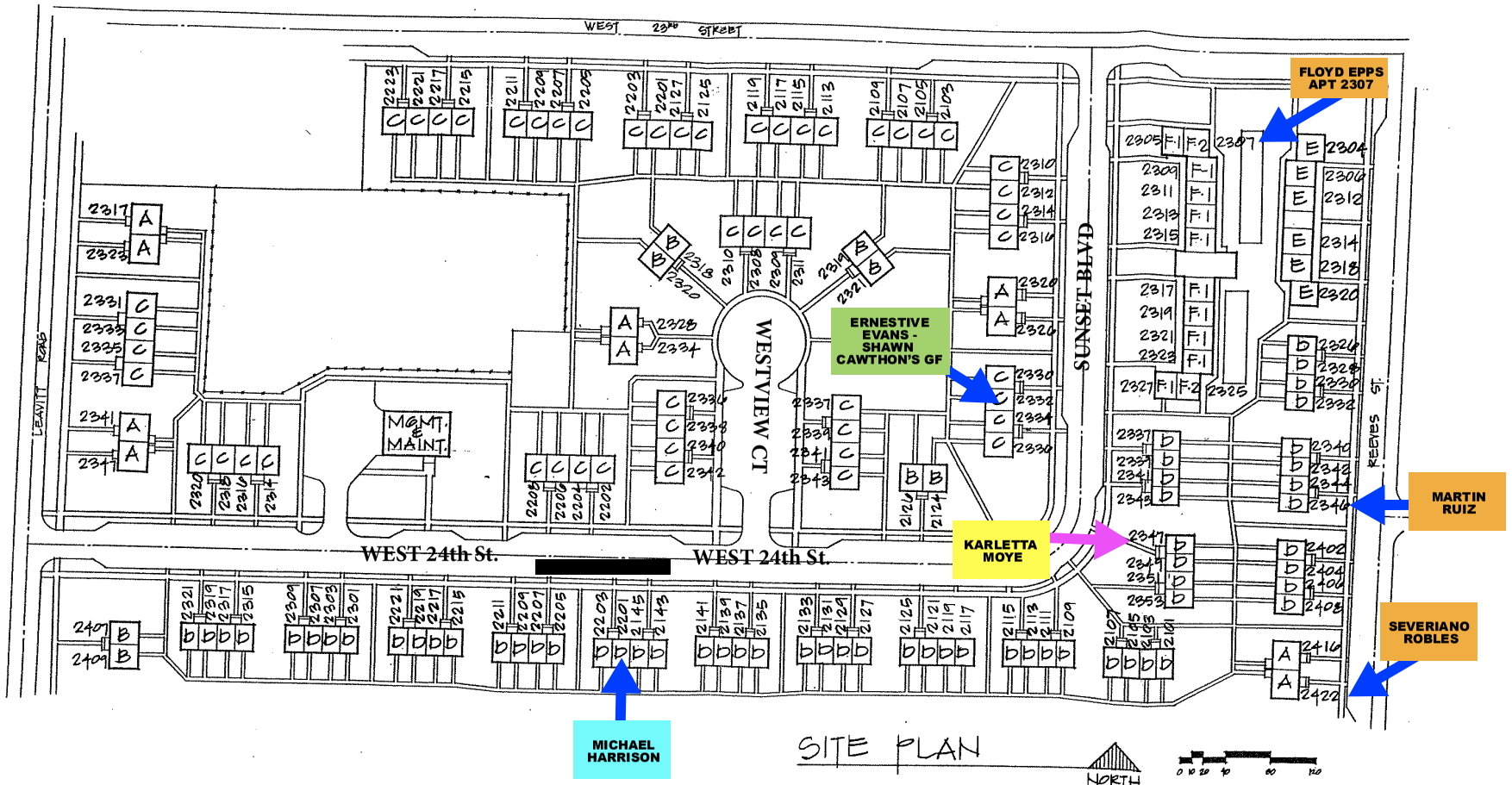
TYPE:
B-CALLING CARD A-DIRECT DIAL D-DAY
C-COLLECT O-OPERATOR E-EVENING
T-THIRD NUMBER P-PERSON TO PERSON N-NIGHT/WEEKEND
S-SPECIAL COLLECT I-OPERATOR IDENTIFY M-MULTIPLE

SUMMARY OF SERVICE FOR MCI

AMOUNT

ITEM J

Westview Site Map POI labels



Westview Terrace, Lorain
Carbon Monoxide Detectors Installation
Storm Door Replacement

BRANDSTETTER CARROLL ZOFCIN INC.
ARCHITECTS ENGINEERS PLANNERS
820 W. Superior Ave., Suite 800, Cleveland, Ohio 44113 (216) 241-4480

A-1.01

ITEM K

News Article Jeanna Geiger

NewsBank inc.

Morning Journal (published as THE MORNING JOURNAL) - August 15, 1991 - page 1

Struggle on bridge terrifying

By PAM MONASTRA
and TERESA HOSHELL
Morning Journal Writers

LORAIN — Stunned and terrified at what could have happened 97 feet over the Black River early yesterday morning, a 21-year-old Lorain woman is convinced a man she has known for five years intended to throw her over the Henderson Drive Bridge.



GEIGER

Jeanna Geiger of Garden Avenue said what started out as an argument over the murder of a friend, Marsha Blakely, turned into a nightmare.

"When he said he was going to throw me

Please see **BRIDGE**, page 5

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ITEM L

Green Coveralls Worn by
William Avery Jr. AKA BB

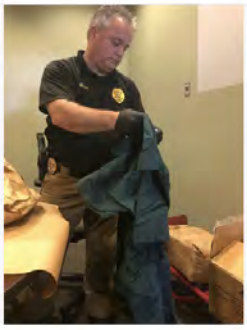
Attach file



thumb_IMG_0936_1024.jpg



thumb_IMG_0935_1024.jpg



thumb_IMG_0937_1024.jpg

What document is item listed in?	NONE
Item	Green coveralls (Short Sleeve)
Notes	The case # is Marsha Blakely's case #. : Pg. 103 in Edwards trial transcript Avery, Jr says he was wearing a green overall suit with a black jogging outfit and some white and green tennis shoes. It doesn't appear these were ever tested for anything. At least, I don't recall coming across any reports regarding them.

Hide 4 hidden fields

ITEM M

Detective's Handwritten Note
to "Delete Info"

★ Delete Info From Pt 2 •

G-thr:

(11 PM) 12AM Come to the

→ Charlies ↓ ↑ in + out

(M4)

"Justice" } In Bar @ 12-Close

"Supreme"

"Patch" Tommy Brown "(AKA)

BRO (Harold)

"CAT"

(Gerald)

"SACK CHASER"

(Shotgun) CAR w/ Leonard McCall

(1230)

Exhibit Y

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

DIRECT EXAMINATION OF GINA DALTON

BY MR. ROSENBAUM:

Q Will you state your name, please, ma'am?

A Gina Dalton.

Q Spell your first and last name.

A G-i-n-a D-a-l-t-o-n.

Q Do you work anywhere, ma'am?

A Yes.

Q Tell the Jury what you do for a living.

A I'm a teller supervisor.

Q Think you could talk a little louder?

Where at?

A Lorain National Bank.

Q How long have you worked for the bank, ma'am?

A 7 and a half years.

Q Do you know the gentleman who is seated below my left hand in the white shirt?

A Yes.
Q What is his name?
A Shakim.
Q Do you know him by any other name?
A No.
Q How is it you met him?
A I met him in a bar.
Q What bar would that be?
A Charlie's.
Q What city is that in?
A Lorain.
Q Do you know where he came from?
A New York.
Q Did he tell you that?
A Yeah.
Q Did he tell you what he did for a living?
MR. DUFF: Objection.
THE COURT: Overruled.
MR. DUFF: I'll withdraw.
A He said he sold drugs.
Q Now, did you know Marsha Blakely?
A No.
Q Do you remember when she died?
A Vaguely, yes.
Q You are familiar with that time period?

A Right.
Q And do you recall the evening before her body was discovered?
A Yes.
Q Did you have any contact with the defendant Shakim on that evening?
A Yes.
Q Tell the Court and Jury about it, please.
A I left the bar because I seen him at the bar, I left the bar and he called me.
Q What time did you leave the bar?
A It had to be about 2 o'clock in the morning.
Q And he was at the bar when you left?
A Yes.
Q Or was he there prior? Was he there the whole time? Was he there when you left? What do you recall?
A He was there when I got there and he was there when I left.
Q What time did you get there?
A It had to be about 11 -- no, it was probably around midnight, somewhere around there.
Q And he was already there?
A Yes.
Q And you left about what time?
A About 2.

Q In the morning?
A Yes.
Q And that would be the day her body was discovered?
A Right.
Q Then what happened?
A I left and went home and he called me and he asked me to give him a ride to the airport.
Q How did he sound when he asked you?
A Well, he was just begging me to give him a ride to the airport.
Q He was begging?
A Uh huh.
Q Did he offer anything if you would take him?
A He said he'd pay me.
Q What did you say?
A I just told him no.
Q Did you have any other contact with him then, after that?
A Yeah, he called me from New York.
Q When would that be?
A During that whole weekend afterwards.
Q So did he call you the same day or was it later?
A It was later that afternoon.
Q So that same day, the first call came that afternoon?
A The first call came in the morning but I wasn't home.
Q Did he leave a message?

A Right.
Q What did the message say, if you recall?
A He just said he wanted me to know he made it to his destination and that was it and he'd call me later.
Q And did he?
A Yes, he did.
Q What did he say that next day?
A It was just casual talk. He didn't talk about anything in particular.
Q Did he ask you out?
A Yeah, he just said he wanted to get to know me better, take me out to dinner.
Q Did he say anything else?
A No, nothing else other than that.
Q Did he contact you again?
A Yes.
Q And when was that?
A Well, he contacted me that whole weekend from New York, every day he called me.
Q What did he want?
A It was just to say casual conversation, nothing, you know.
Q Did he tell you anything in particular he wanted you to do or suggest anything?
MR. DUFF: Objection.

THE COURT: Overruled.

A When he came back to Lorain I guess he was stopped for a traffic violation.

MR. DUFF: Objection.

THE COURT: Overruled.

MR. DUFF: Withdraw.

A And he said the police questioned him about the murders and he said you can tell him where he was at, you know, I wasn't even here.

Q And was that true?

MR. DUFF: Objection.

THE COURT: Overruled.

A Whether or not it was true, all I know he was here, I seen him at the bar. That's all I can say.

Q And he left, according to him?

A Right.

Q And he wanted you to say he wasn't here.

MR. DUFF: Objection.

THE COURT: Overruled.

A He just wanted me to-- he didn't really -- I can't say that he wanted me to say he wasn't here. He wanted me to say he was in New York, period.

Q At what time?

A That whole weekend he talked to me.

Q And at the time the murder occurred?

MR. DUFF: Objection, he's leading.

THE COURT: Objection overruled.

A I would assume, I guess.

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

THE COURT: Mr. Duff?

CROSS-EXAMINATION OF GINA DALTON

BY MR. DUFF:

Q Is it Miss?

A Miss.

Q Did you give some statements to the police?

A Yes.

Q Did they tape record those at any time?

A I don't remember.

MR. DUFF: Could we approach, Your Honor?

(Out of the hearing of the Jury.)

MR. DUFF: In camera inspection, Your Honor.

MR. ROSENBAUM: Yes, we do.

THE COURT: Can we see?

MR. DUFF: Is it taped?

MR. ROSENBAUM: Yes.

(Within the hearing of the Jury.)

THE COURT: All right. Pursuant to the Criminal Rules the defendant is permitted to examine any statements given by this witness after her examination by the

Prosecutor. So at this time I'll have an opportunity and defense counsel will have an opportunity to view that and listen to the tapes. We'll take a short recess. Remember the admonishments the Court had given you not to discuss this case among yourselves. That's the rule, that's the way it goes, after every witness this may come into effect.

With that, we will take a short recess.

(Thereupon, a short recess was held.)

(Hearing resumed.)

(Within the hearing of the Jury.)

CONTINUED CROSS-EXAMINATION OF GINA DALTON

BY MR. DUFF:

Q I'm sorry, we have to start again. I guess I'll start over by asking you, who gave the police your name, if you know?

A Shakim.

Q So it would be a fair statement to say that you didn't contact the Lorain Police and say you had some information about this case?

A No.

Q John Edwards gave them your name?

A Right.

Q Now the next question was, let's assume August 8th, 1991 was a Thursday. The 7th was a Wednesday, okay?

A Uh huh.

Q And what we're talking about, you were at Charlie's Bar on August 7th at night, into the early morning hours of the 8th; is that correct?

A Right.

Q And how soon after that Wednesday night, Thursday morning did the police contact you?

A Like I say, I think it was that following Monday or Tuesday.

Q And how did they contact you?

A They came to my job.

Q All right.

Do you know how they know-- how they knew where you were?

A No.

Q Do you know if John Edwards told them that?

A I don't think he could.

Q Now, can you tell the Jury where Charlie's Bar is at?

A It's on West 21st Street.

Q And is it in a plaza?

A Yeah.

THE COURT: Why don't you move that.

MR. DUFF: Are you sure, Judge? I don't want to block you.

Q Charlie's Bar; is that correct?

A Right.

Q Did I ask you if that was a plaza?

A Yes.
Q What is the name of that plaza?
A Westgate.
Q And that's not the first night you have been there, is it?
A No.
Q You go there to socialize?
A Right.
Q Meet friends, is that right?
A Uh huh.
Q And you say you arrived, I think on your direct examination you arrived somewhere between 11 and 12; is that correct?
A Right.
Q Now, that would be 11 P.M. and 12 A.M. on the 8th, right? 11 P.M. on the 7th; is that correct? Do you understand what I'm saying, 11 P.M. on the 7th?
A Right, yeah.
Q And you say on your direct examination you left about 2 o'clock, is that right?
A Right.
Q That would be 2 A.M. on the 8th, correct?
A Correct.
Q And you also testified that when you got there John Edwards was there, is that correct?

A Correct.
Q And when you left he was still there, is that correct?
A Correct.
Q And it would be a fair statement that he talked to you?
A No.
Q He talked to you at the bar?
A No, most he said was hi, that was it.
Q Do you recall talking to Det. Taliano?
A Yes.
Q Did you go to Charlie's Bar with a friend?
A Yes.
Q Who is that?
A Pat.
Q Mitchell?
A Yeah.
Q Did you tell Det. Taliano that Mr. Edwards approached you while you were at the bar and started talking to you in general conversation?
A I really don't recall that.
Q You might have said that?
A I might have.
Q And did John Edwards talk to you during this period of time and tell you that he was planning on going to New York to get some more gold put on his teeth and see the dentist?
A Right, that was, I believe that was during our

conversation when he called me for a ride.

Q Did you tell Det. Taliano that while at the bar that night during those hours that John told you he planned to return to New York that weekend to meet with his dentist, did you tell Det. Taliano that?

A Yes, I could have.

Q So he could -- so you could have told Det. Taliano that?

MR. ROSENBAUM: Objection.

THE COURT: Overruled.

MR. ROSENBAUM: That's not her testimony. Her testimony is he told her that on the phone.

MR. DUFF: No, it's not. I'll do it again.

THE COURT: Ask again.

Q I think you testified that you could have told Det. Taliano at the bar John told you that he intended-- he planned to return to New York that weekend to meet with his dentist. You could have told him that, is that correct?

A Now that's -- I don't know if he said it at the bar. I know he said it at the bar -- at the bar I really can't remember.

Q Do you recall telling Det. Taliano that conversation occurred at the bar?

A I could have told him that, yeah.

MR. ROSENBAUM: Did you forget the company --

MR. DUFF: It's my examination, Mr. Prosecutor.

THE COURT: You're not going to continue talking, I want an objection made and no conversation between the two counsel.

MR. DUFF: Thank you, Your Honor.

Q So it's clear, you could have told Det. Taliano that Mr. Edwards told you that?

A He had a dentist appointment.

Q And he was going to New York that weekend to meet with his dentist?

A Right.

Q Now, you know he went to New York that weekend, right?

A Right.

Q And now then shortly thereafter, at about what was it, 45 minutes to an hour later, after you left the bar you got a call at home; is that correct?

A Right.

Q And that was from Mr. Edwards?

A Right.

Q And he asked you for a ride to the bar, is that right?

A No.

Q A ride to the airport, I'm sorry. Is that correct?

A Correct.

Q That would be 45 minutes to an hour after you left the bar correct?

A Right.

Q So that would be somewhere between 2:45 and 3 o'clock?
A Right.
Q All right. Now, you refused to do this, right?
A Right.
Q And it's a fair statement that Mr. Edwards was trying to get a date with you during this time, is that correct?
A Not during that time, no.
Q Not at the bar?
A No.
Q You didn't tell Det. Taliano that, that he was hitting on you? You might have?
A I could have said -- I don't think he was, though.
Q Now, I've had two telephone conversations with you, is that correct?
A Uh huh.
Q Well, actually 3. I called you one time and you said you were too busy, is that correct?
A Right.
Q And did you tell me the Prosecutor's Office told you not to talk to me?
A Yes.
Q So that's a fair statement, that someone from the Prosecutor's Office told you it would not be a good idea to talk to me, right?
A Actually I just made that up. I didn't want to talk to

you.

Q Well, you told me-- when I asked you who told you not to talk to me and your answer, Page 3, was the people at the Prosecutor's Office. That was not true?

A No.

Q Now, that afternoon you get a telephone call left on your machine, is that correct?

A Right.

Q You're at work?

A Right.

Q It would be a Thursday afternoon?

A Right.

Q And John is in New York?

A Correct.

Q Do you know what time that message was left on your recorder?

A I really can't say. It was in the morning time. I really can't say what time.

Q It wasn't Thursday afternoon?

A It was probably 10:30, 11 o'clock.

Q Are you sure about that?

A No, I'm not sure because it's been years ago.

Q Yes, I understand.

A All I can say it was when I was at work, so --

Q Do you recall that whole weekend he was calling you,

right?
A Right.
Q From New York?
A Right.
Q Now, you don't know what time the message was left, right, that Thursday?
A No, not exactly.
Q Okay, and then that weekend you got several calls from him?
A Yes.
Q That would be Friday and Saturday; is that correct?
A Uh huh.
Q And Sunday he called you from Lorain City Jail?
A Right.
Q Sunday would have been what date then? Thursday is the 8th. The 9th is Friday, 10th is Saturday. The 11th, is that right?
A Right.
Q And he's returned from New York City?
A Right.
Q And he wanted you to come get him at the City jail, that's right?
A Right.
Q And you refused to do that, right?
A Right.

Q He told you he'd been arrested for some traffic charges, right?
A Right.
Q Then at this time he made the statement to you that the police asked him about the murders, right?
A Right.
Q And he asked -- he told you that, well, you know I was in New York this weekend, right?
A Right.
Q It's true he was in New York that weekend, right?
A Correct.
Q You don't know what night John Edwards believed the murders happened, do you, what he believed?
A I don't know what he thought, no.
Q Right. So if the murders had happened during that weekend, Friday and Saturday, you would be his alibi, right, if they had happened?
A Right.
Q Now, let's assume the murders happened on the 7th and 8th, after midnight. Can you do this?
A Yes.
Q During that time period you know he was at the bar until at least 2 o'clock, isn't that correct?
A Right.
Q So from around 11 until 2 A.M. you can account for John

Edwards' whereabouts, right?

A Right.

Q Did you turn over your phone bill to the police --

A I don't think. I don't know; I can't remember.

Q -- to establish that these calls were made? Were any of these calls collect?

A They weren't exactly collect. He also called me from a pay phone. He didn't have any change and the operator cut in at the pay phone, and he didn't have any change to accept the rest of the bill.

Q That would have been on your bill then?

A Right.

Q Did you give that bill to the detective?

A I could have.

Q And you talked to my investigator, did you not?

A Yes.

Q Then you and I went over his report, did we not?

A Say that again.

Q Then you and I went over my investigator's report, did we not, on the phone?

A Right.

Q And it's a true statement that -- well, withdraw that, Your Honor.

MR. DUFF: Could I have a minute, Your Honor?

THE COURT: Uh huh.

MR. DUFF: Nothing else, Your Honor.

REDIRECT EXAMINATION OF GINA DALTON

BY MR. ROSENBAUM:

Q Miss Dalton, you really don't know who gave your name to the police, do you?

A All I know, when the detective came and talked to me he just told me that Shakim told him I was his girlfriend, so I just assumed that he gave them my name.

Q So your answer to the question is, and, the question is, you really don't know who gave the police your name, do you?

MR. DUFF: Object.

THE COURT: Overruled.

A No.

Q You don't know if Shakim was in New York when he called you?

A Not at that time, until I got my phone bill.

Q And did the phone bill say New York?

A Yes.

Q So he was in New York?

A Right.

Q You don't know when he arrived there exactly?

A No.

Q Is it possible that you told Det. Taliano when he first interviewed you that you left the bar at 1:35 that morning?

A It's a possibility.

Q And also did you have -- did you know that John, John Austin Edwards was in the bar, Shakim was in the bar, did you have him under constant view from 11:00 to 2:00 when you left?

MR. DUFF: Object.

THE COURT: Overruled.

A I'm not saying I sat there and looked at him the whole time, but I did see him.

Q Periodically throughout the time period?

A Yes.

Q Could he have ever left for ten minutes and you wouldn't know?

MR. DUFF: Objection.

THE COURT: Overruled.

Q Could he have left for 20 minutes?

MR. DUFF: Objection.

THE COURT: Overruled.

A I really can't say that. I seen him most of the time.

Q Could there have been a 20 minute gap where your attention was focused on someone else and he slipped out the door and came right back?

MR. DUFF: Object.

THE COURT: Overruled.

A It could have been.

Q How about an hour?

A I can't say that. Where I was sitting at was near the door.
Q Was your attention focused on everyone that went out?
A No.
Q And Marsha's body was found how far from the bar, do you know?
A I really don't know. All I know is behind the bar.
Q Do you know where Floyd Epps lived?
A No.
Q Do you know where the projects are, Sunset Blvd.?
A Right.
Q How long would it take to walk from Sunset, to Sunset Blvd. and walk back?
A Probably 15, 20 minutes.
Q It's a block, isn't it?
A Yeah.
Q You could walk to Sunset --
MR. DUFF: Objection, he's leading.
THE COURT: Overruled.
Q Could you walk to Sunset and back in 5 minutes, across the street and parking lot and you're there?
A If you ran, possibly.
Q If you ran you could do it a minute?
A I guess.
Q But it's fair to say this man wanted you to say he was in

New York and not here on that night?

MR. DUFF: Objection.

THE COURT: Overruled.

A Right.

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

THE COURT: Mr. Duff.

RECROSS-EXAMINATION OF GINA DALTON

BY MR. DUFF:

Q That is not exactly fair, is it, given that what the Prosecutor just said, that's not exactly the truth, is it? He told you that he wanted you to say he was in New York that weekend, right?

A Right.

Q And in fact you know because you got your bill he was in New York that weekend?

A Right.

Q You don't know when John Edwards thought the murders occurred, is that correct?

A No, I don't.

Q And you sat near the door at the bar, right?

A Right.

Q And John, what was he doing in the bar, socializing?

A Yeah.

Q He was with his girlfriend, wasn't he?

A Yes, he was with his girlfriend.
Q Do you know who she is?
A Yes.
Q Who is it?
A Nan Brown.
Q Does she have another name?
A I think she does.
Q Patricia Brown?
A Okay.
Q Is that the right person?
A I think so, yes.
Q If John would have left you would have seen him because you were by the door, right?
A If I was paying attention, yeah, but I really wasn't paying attention to him.
Q I know you didn't have him under constant surveillance.
A Right.
Q But your prior testimony was that he got there when you -- he was there when you got there and he was there when you left and you never saw him leave?
A Right.
Q That's a fair statement, right?
A Right.
Q Now, who told you, what police officer told you that Mr. Edwards gave them your name?

A I think it was Taliano.

MR. DUFF: Nothing else, Your Honor.

THE COURT: Mr. Rosenbaum.

FURTHER RECROSS EXAMINATION OF GINA DALTON

BY MR. ROSENBAUM:

Q Do you understand what I asked you, ma'am, I asked you just a little while ago if you knew who gave the police your name, and I thought your response was I assumed that since Det. Taliano said that he was your boyfriend that it had to be him?

A Right.

Q Now, that's very different from Det. Taliano said that he gave the name?

A Right.

Q Which is it?

A He said it, he said --

Q You're saying Det. Taliano said that?

A Told me I was his girlfriend.

Q You're saying Det. Taliano said this defendant gave him your name?

A Uh huh.

Q You're saying Det. Taliano told you that?

Who is Jim Law?

A He's the security officer at my bank.

Q Did you ever discuss this with him?

MR. DUFF: Object.

THE COURT: Sustained.

Q Prior to speaking to the police or anyone, did you discuss your knowledge about Shakim with anyone at the bank?

MR. DUFF: Object.

THE COURT: Sustained.

Q Now, isn't it true that you previously testified that Shakim wanted you to say that he was in New York the whole time that weekend, including the time that Marsha was killed?

MR. DUFF: Object.

THE COURT: Overruled.

A He just said that -- he just told me --

Q Let me ask, I asked you a question at a prior trial, "So he wanted you to say" --

MR. DUFF: Page, please.

MR. ROSENBAUM: 248.

Q Ian Davis. "So he wanted you to say he was with you at the time Marsha Blakely met her death?"

"No, he wanted me to say he was in New York the whole time, he was not here at time of her death."

"And you know that is not true?"

"Yes."

Is that accurate?

MR. DUFF: Objection.

THE COURT: Overruled.

A Yes.
Q So it's fair to say that he wanted you to cover him or put him in New York at the time of Marsha's death, right?
A Right.
MR. ROSENBAUM I have no other questions.
FURTHER RECROSS-EXAMINATION OF GINA DALTON
BY MR. DUFF:
Q We have been through this before, have we not?
A Yes.
Q And your testimony today is truthful, correct?
A Right.
Q To the best of your knowledge?
A Right.
Q And he asked you to tell the police, well, no, he didn't ask you that, he told you that you knew he was in New York that weekend, correct?
A Right.
Q All right. He never asked you to say that he was in New York Wednesday night, early Thursday morning? Did he ever ask you that?
A No.
Q So if the murders happened late Wednesday night, early Thursday morning, he never asked you to say he was in New York during that time period, did he?
A No.

Q And then you know he came back to Lorain that weekend, right?

A Right.

THE COURT: Any questions from the members of the Jury?

You're free to step down. Thank you.

Next witness, please.

Exhibit Z

From Daphne Richardson
3710 Wilderness Trail
Kissimmee FL 34746

ORLANDO FL 328
29 SEP 2021 PM 2 L



SEP 21 20

38150

John Edwards A674225
Warren Correction Institute
PO Box 120
Lebanon Ohio 45036

45036-012020

Affidavit

State of

MARYLAND

Country of

ANNE ARUNDEL

My name is Patricia Michele Obunse, but my maiden name is Patricia Michele Brown. Date of birth 8-14-1966. I was born in Lorain, Ohio and lived there until 1999. I knew John Austin Edwards, also known as "Shakim". When he came to Lorain, Ohio around November of 1988. He came from Queens, New York to Ohio. I had a relationship with Shakim from November 1988 until December of 1991. We lived together in a serious relationship from November 1988 until December of 1991 and had plan of getting married. He is also the father of my son Daquan Edwards. I was with Shakim on the night of August 7th, 1991. Until the morning of August 8th, 1991. He took me, my mother Cynthia Brown divorced and now Cynthia Guice and my two cousins who are sisters, Wanda Guice and Andrea Pastor, out to eat and then to the 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 Wanda Guice and I noticed that John Austin Edwards was buying Gina Dalton drinks and was flirting with her. Wanda Guice confronted John Austin Edwards about his actions and informed him that he was being disrespectful to his baby's mother. He continued to either play pool or socializing with the people in the bar. Vincent and Eric who were the bartenders that night saw him socializing with the people in the bar. Shakim was very well known in Lorain as a new young male from New York. He was buying drinks for patrons as well as women he may or may not have been interested. At one-point Shakim became extremely intoxicated, that was when 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

was very upset with me because I did not wake him up and he missed his ride and flight to the Cleveland Hopkins airport. My Uncle Sonny that lived next door to me drove Shakim to the airport and that is the last time I saw John Austin Edwards that day. Then I heard that Shakim was back in town living with another female in the projects several days later. I went to the girls' house and told him to give me money for pampers for his child. Then I heard from people that he had gotten pulled over on an old warrant. He called me to post his bail.

on August 7th 1991 from 12:00PM until the following day August 8th 1991, John Austin Edwards was with me Patricia Obunse. No one has interviewed and or questioned me about John Austin Edwards whereabouts on August 7th and or August 8th, 1991 in regard to Marsha Blakley death. I am willing to testify to the following.

This affidavit has not been produced by promises, threats or coercion. I declare that the foregoing is true and correct to the best of my knowledge.

Affiant: Patricia M. Obunse

Sworn to and subscribed in my presence on notary public on this 11 day of Sep 2021

Paresh K Rath

Notary Public

PARESH K RATH
NOTARY PUBLIC
HOWARD COUNTY
MARYLAND
MY COMMISSION EXPIRES JAN 08, 2024