

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
02 CRS 38883

2022 MAR 17 A 9 26

STATE OF NORTH CAROLINA

FORSYTH CO., C.S.C.

v.

PLEA FOR DECLARATION  
OF INNOCENCE

RAYSHAWN DENARD BANNER,

Defendant.

Through undersigned counsel,<sup>1</sup> Defendant Rayshawn Denard Banner respectfully moves the three-judge panel for a declaration that he has proven, by clear and convincing evidence, that he and his co-defendants are innocent of the robbery and murder of Nathaniel Jones. In support of his plea, Defendant presents the following:

#### INTRODUCTION

1. Rayshawn Banner (Rayshawn) and his co-defendants, Nathaniel Cauthen (Nathaniel), Christopher Bryant (Christopher), Jermal Tolliver (Jermal), and Dorrell Brayboy<sup>2</sup> (Dorrell) stand convicted for a crime they did not commit—the November 15, 2002 murder of Nathaniel Jones (Jones) at his home in Winston-Salem, North Carolina.
2. Rayshawn was 14 and his co-defendants were 15 when they were arrested after coerced and false confessions were obtained as part of an investigation that was riddled with tunnel vision. All of the confessions, including the confession by the State's key witness, 16-year-old Jessicah Black (Jessicah), have since been strenuously recanted.
3. The following evidence clearly supports a dismissal of all charges in this case and establishes that Rayshawn, Nathaniel, Christopher, Jermal, and Dorrell are innocent.
  - a. Jessicah Black, the only witness who testified at trial claiming to have direct knowledge of the crime, has fully recanted her testimony.
  - b. No physical evidence has ever conclusively linked Rayshawn, Nathaniel, Christopher, Jermal, or Dorrell to the crime, and the physical evidence that does exist contradicts the State's theory.

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<sup>1</sup> Rayshawn Banner's counsel drafted this Plea for Declaration of Innocence, consistent with their practice in four prior Innocence Inquiry Commission cases.

<sup>2</sup> Dorrell Brayboy died on August 29, 2019. The Commission had not moved his case into formal inquiry at the time of his death and N.C. Gen. Stat. § 15A-1467(a) prohibits advancement of innocence claims on behalf of deceased persons. However, before his death, Dorrell had already voluntarily participated in the Commission process by sitting for a recorded interview by Commission staff on March 1, 2018. Dorrell maintained his innocence in that interview, as he had since his arrest in 2002.

- c. Many details in the false confessions eventually given by Rayshawn, Nathaniel, Christopher, Jermal, Dorrell, and Jessica are inconsistent with the evidence at the crime scene. In fact, some of the details in the false confessions are consistent with how the crime scene is depicted in law enforcement photographs taken *after* Jones had been moved by paramedics, rather than the way it would have appeared at the time of the attack.
  - i. In 1987, N.C. Gen. Stat. § 14-17 was modified to state that “any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life.” The death penalty was no longer an option in North Carolina for anyone under the age of 17.
    - a. As confirmed by WSPD officer admissions, despite law to the contrary, the threat of the death penalty was used during interrogations to scare the teenage boys.
    - b. Detective David Rose (Det. Rose) testified during a pre-trial suppression hearing that before Jermal made any inculpatory statements, Detective Flynn “had discussed the possible penalties for the, for murder, and had made reference to the death penalty.” It was after Det. Flynn referenced the death penalty that Jermal agreed to write a statement.
    - c. Detective T.J. Taylor (Det. Taylor) testified during a suppression hearing that, while Christopher was denying any involvement in the crime, Detective Nieves told him to tell the truth or he could get the death penalty. Within ten minutes of the death penalty threat, Christopher began making inculpatory statements.
    - d. Dorrell, Jermal, Christopher, and Nathaniel all testified during their pre-trial suppression hearings that they were threatened with the death penalty during their interrogations. Rayshawn did not testify during his suppression hearing, but testified during the Commission hearing that he was threatened with the death penalty during his interrogation as well.
  - ii. Since this 2002 investigation, states across the country, including North Carolina, have adopted reforms that reflect the recognition that innocent people do give false confessions, with juveniles and people with

intellectual disabilities or mental health conditions at increased risk.<sup>3</sup>  
Reforms include:

1. In North Carolina, a juvenile in-custody admission or confession is inadmissible unless a parent, guardian, custodian, or attorney was present at the time of the admission or confession. N.C. Gen. Stat. § 7B-2101.
  - a. Confessions given by the vulnerable juveniles in this case would not be admissible under today's law.
2. In North Carolina, statutory law requires a visual and audio recording during the entirety of all juvenile interrogations in any place of detention. This change in law was made in part for the "protection of the innocent." N.C. Gen. Stat. § 15A-211.
  - a. There would be a presumption of inadmissibility of the interrogations of the vulnerable juveniles in this case under today's law.
- iii. In 2005, pursuant to *Roper v. Simmons*, 543 U.S. 551 (2005), the death penalty was held to be a violation of the 8th Amendment for anyone under the age of 18.
- d. Postconviction testing reveals unidentified DNA profiles from the black tape handled by the perpetrator(s) and found at the crime scene. A piece of black string entwined with the tape collected from Jones' left hand revealed a mixture of three or more individuals, including a major female profile and at least one male contributor. A piece of tape collected from under the porch in Jones' back yard revealed a mixture profile of at least two individuals including one male contributor. Rayshawn, Nathaniel, Christopher, Jermal, Dorrell, and Jessicah were all excluded as possible contributors to these mixtures.<sup>4</sup>

#### **PROCEDURAL HISTORY**

4. On November 15, 2002, Jones was attacked in the carport of his home in Winston-Salem, North Carolina. He died from cardiac arrhythmia brought on by the stress of the attack and blunt force trauma to his head.

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<sup>3</sup> Twelve percent, or 365 of the 3,003 exonerations tracked by the National Registry of Exonerations to date, are cases where there was a false confession at the time of conviction. 87% of those exonerations were after the time of these convictions. The National Registry of Exonerations (Mar. 15, 2022), <https://tinyurl.com/4u4zbmen>.

<sup>4</sup> It is noteworthy that while the defense has spent considerable funds since the Commission hearing on testing designed to identify the true perpetrator(s) of this terrible crime, the State has only conducted testing designed to eliminate the exculpatory nature of the unidentified DNA on the materials used to bind Jones during the assault. The State's unsuccessful efforts included obtaining and testing samples from a defense trial team member, an alternate juror who may have handled the evidence at trial in 2004, and a former WSPD employee who had to be tracked down on a mission in Africa. All were excluded as the source of the DNA, as were the defendants and Jessicah Black.

5. On November 19–20, 2002, Jermal, Christopher, Nathaniel, Dorrell, and Rayshawn were all interrogated and arrested for murder.
6. On November 3, 2003, they were indicted for first-degree murder and robbery with a dangerous weapon.
7. On November 5, 2003, Jermal, Christopher, Nathaniel, Dorrell, and Rayshawn were each offered a plea deal that would have reduced the first-degree murder charge to second-degree murder and consolidated it with the armed robbery charge. The first-degree kidnapping charge added after the original indictments would also have been reduced to second-degree kidnapping. All five rejected this offer.
8. In January and February 2004, all five defendants filed motions to suppress their statements to law enforcement. On March 22–24, 2004, hearings were held on the motions and all were denied.
9. On August 9, 2004, Rayshawn and Nathaniel’s joint trial began in Forsyth County Superior Court with the Honorable W. Douglas Albright presiding.
10. On August 19, 2004, the jury found Rayshawn and Nathaniel guilty of first-degree murder and robbery with a dangerous weapon, and they were sentenced to life in prison without the possibility of parole. The court arrested judgment on the counts of robbery with a dangerous weapon.
11. On May 9, 2005, Dorrell, Christopher, and Jermal’s joint trial began in Forsyth County Superior Court with the Honorable Michael Helms presiding.
12. On May 20, 2005, the jury found Dorrell, Christopher, and Jermal guilty of second-degree murder and common law robbery and they were sentenced to a minimum of 170 months and a maximum of 214 months in prison.
13. On July 18, 2006, in an unpublished decision, the North Carolina Court of Appeals upheld Rayshawn and Nathaniel’s convictions. *State v. Banner and Cauthen*, 178 N.C. App. 562, 31 S.E.2d 892 (2006).
14. On August 22, 2006, Nathaniel filed a Petition for Discretionary Review, which the Supreme Court of North Carolina denied in an order entered on December 14, 2006. *State v. Cauthen*, 361 N.C. 168, 640 S.E.2d 55 (2006).
15. On January 16, 2007, also in an unpublished decision, the North Carolina Court of Appeals upheld Christopher, Dorrell, and Jermal’s convictions. *State v. Tolliver et al.*, 181 N.C. App. 436, 639 S.E.2d 3 (2007).
16. On October 3, 2008, Christopher filed a *pro se* MAR claiming that his conviction was obtained in violation of due process. The MAR was denied on April 24, 2009.

17. On May 13, 2011, Nathaniel filed an MAR claiming that pursuant to *Graham v. Florida*, 560 U.S. 48 (2010), his sentence of life in prison without the possibility of parole was unconstitutional. The MAR was denied on March 8, 2012.
18. On May 16, 2011, Rayshawn filed an MAR. On November 8, 2012, the MAR was amended to include reference to *Miller v. Alabama*, 567 U.S. 460 (2012). On August 31, 2017, the court granted the MAR and ordered that Rayshawn be resentenced to life in prison with the possibility of parole.
19. On April 11, 2013, Nathaniel filed an MAR pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012). On April 5, 2016, the court granted the MAR and ordered that Nathaniel be resentenced to life in prison with the possibility of parole.
20. On January 21, 2015, Christopher applied to have his case reviewed by the North Carolina Innocence Inquiry Commission. Between 2018 and 2020, Nathaniel, Jermal, and Rayshawn joined the Commission's review.
21. On March 13, 2020, after a five-day hearing, the eight-member panel of the Commission held an evidentiary hearing and five Commissioners determined that there was sufficient evidence of factual innocence to merit judicial review.<sup>5</sup>
22. A hearing before the three-judge panel is scheduled to begin on April 18, 2022.

### **FACTUAL BACKGROUND**

#### **A. Robbery and Murder of Nathaniel Jones**

23. On November 15, 2002, Nathaniel Jones (Jones) spent the day working at the Chevron service station he owned on New Walkertown Road.<sup>6</sup> Jones' nephew, Terrence Jones (Terrence), also worked at the service station that day. (Ex.1 at 1, Ex. 2 at 2.)
24. That afternoon, Jones spoke to Claude Walker (Walker), a painter who had painted Jones' son-in-law's house, about Walker painting Jones' house. They agreed that Walker would come by Jones' house between 6:00 p.m. and 6:30 p.m. that evening to collect the down payment for the job. Jones told Walker to call when he got to Winston-Salem and Jones would give him directions to the house. (Ex. 2 at 3, Ex. 3 at 1–2, 5, Ex. 4 at 1–3.)
25. Jones and Terrence left the service station together at approximately 5:30 p.m. in Jones' car. On the way home, they stopped at a shopping center where Terrence bought a carton of Winston cigarettes for Jones from a tobacco store. Terrence gave the cigarettes to Jones, then went into the Five Star Grocery Store and bought a six-pack of Sprite and two half gallons of Five Alive juice for Jones, as well as hamburger meat for himself. (Ex.1 at 2, Ex. 2 at 2.)

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<sup>5</sup> Citations to the 2020 Commission hearing transcript are cited as "Comm. Hrg. Tr."

<sup>6</sup> All exhibits are included on the flash drive provided to the panel with this filing. The flash drive also includes the suppression hearing transcripts, the trial transcripts, and the Commission hearing transcript for the convenience of the panel. Hard copies of the trial and Commission hearing transcripts, as well as exhibits introduced into evidence, will be provided during the hearing.

26. Jones then drove to Terrence's home at the Salem Gardens apartments and dropped him off. As Terrence got out of the car, he looked at the clock and saw that it was 6:17 p.m. Terrence knew Jones had arranged to meet Walker at 6:30 p.m. (Ex. 1 at 2, Ex. 2 at 2–3.)
27. It takes approximately eight minutes to drive from the Salem Gardens apartments to Jones' house at 905 Moravia Street. (Ex. 5.) Thus, after dropping Terrence off at 6:17 p.m., Jones would have arrived home at about 6:25 p.m.
  - a. A close-up aerial view of Jones' home and the surrounding homes is included as Exhibit 92.
28. Jones was known to stick to a routine that got him home about 6:30 p.m. every day. Jones always called his daughter Rhonda when he got home from work, but he did not call her that night. (Ex. 2 at 3–4, Ex. 6 at 3.)
29. Walker called Jones' home at 6:33 p.m. and 6:46 p.m. Those calls were not answered. (Ex. 14 at 2.)
30. Ava Williams (Williams), a close family friend who called Jones "Dad," drove by Jones' house between 6:15 p.m. and 6:30 p.m. She saw a man sitting in Jones' car and could tell the man was too small to be Jones, but she assumed it was one of his grandsons and kept driving. The brake lights were on. (Ex. 40 at 6, Ex. 42 at 1–4.)
  - a. On November 15, 2002, nautical twilight was at 6:12 p.m. During nautical twilight, "under good atmospheric conditions and in the absence of other illumination, general outlines of ground objects may be distinguishable, but detailed outdoor operations are not possible, and the horizon is indistinct." Astronomical twilight, which is complete darkness, was at 6:42 p.m. (Ex. 91 at 1, 3.)
31. Photographs of the crime scene show that Jones had recently arrived home when he was attacked:
  - a. Jones' keys were still in the door leading from the carport into the house. (Ex. 7.)
  - b. Jones had carried the 6-pack of Sprite into the house but had not yet brought in the cigarettes and half gallons of Five Alive. (Exs. 8–10.)
  - c. Jones' mailbox was located on the right side of the carport. Several pieces of mail addressed to the home were found underneath Jones' car, indicating that Jones was attacked after getting the mail as he walked back into the house. (Exs. 11–13.)
32. By approximately 7:00 p.m., the first of at least four calls was made to the Willard Cab Company during a 15-20 minute window asking for a cab to be sent to the address of Jones' home. The caller was described as being agitated and sounding like a young black male. (Ex.



35 at 5–6, Ex. 100.) The only logical explanation is that the caller hoped someone would find and help Jones.<sup>7</sup>

33. Walker arrived at Jones' home at 7:45 p.m. and went to the front door, but no one answered. He went around to the carport door, knocked on the door, and as he came down the steps, he hit something. When the headlights of his van were turned on, he saw it was a body lying on the ground. He called to the man in front of the house across the street (916 Moravia Street), Calvin Scriven (Scriven), for help. Scriven had his girlfriend, Tarshia Coleman (Coleman), who pulled up right after, call 911. (Ex. 4 at 6–7, Ex. 34 at 1–2.)
34. The foregoing facts support that Jones got home at approximately 6:25 p.m. and was unloading his groceries and collecting the mail from the mailbox when he was attacked, causing him to be incapacitated by the time Walker called at 6:33 p.m. This was also the same time that Williams saw the attacker sitting in Jones' car as she drove by.
35. The only relevant period of time in this case is a very short window of approximately 6:25 p.m. until 6:46 p.m., although the attack likely began by 6:33 p.m. when Walker was first unable to reach Jones.

#### **B. The Crime Scene**

36. Jones, age 61, was found in the carport of his home at 905 Moravia Street in Winston Salem around 7:45 p.m.<sup>8</sup>
37. WSPD received a call about an unconscious male whose hands were tied behind his back and arrived on the scene at 7:56 p.m. Jones was face down between the carport steps and his Lincoln. His legs were pointed towards the street. The officer on the scene could not find a pulse. (Ex. 31 at 2–4, Ex. 95.)
38. Jones' dark blue Lincoln Town Car was parked in his carport. A black Chevy Blazer and a white van with blue stripes were in the driveway. (Ex. 17 at 2, Ex. 31 at 3, Ex. 94.)
39. Jones' hands were bound behind his back and his mouth was taped, both using black tape. A small piece of black tape was found on the upper set of steps off the rear deck of the carport. (Ex. 17 at 1–2, Ex. 31 at 3.)
40. There was what appeared to be blood on the back of his shirt, on the steps, and on the driver's side door of the Lincoln, in addition to the blood near Jones' head. (Ex. 31 at 3, Ex. 95.)
41. The light bulbs in the carport, which were motion-activated, were unscrewed just enough so the lights stopped working, but they were still connected to the light socket.

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<sup>7</sup> Although it is just a logical theory based on the facts, the caller likely was involved in the robbery that went bad when Mr. Jones had the heart attack. Unfortunately, once law enforcement settled in on the teenage boys as their suspects, law enforcement never investigated who made the calls to Willard.

<sup>8</sup> A map noting the residents and those who frequent the homes on Moravia Street is included as Exhibit 84.

42. Jones' broken watch, a doormat, and three pieces of mail were found under his car and part of a broken door handle was found in the carport. A footprint could be seen on the hood of the Lincoln. (Ex. 31 at 4, Ex. 32 at 1.)
43. Jones' keys were in the door leading to the house and the door was slightly ajar. (Ex. 7, Ex. 31 at 4, Ex. 32 at 1.)
44. There was no evidence of a struggle inside the home. Valuables, including jewelry and money, were on the bedroom dresser. (Ex. 17 at 3, Ex. 31 at 5, Ex. 32 at 2.)
45. When EMS arrived, they moved Jones to the corner of the driveway and house, just outside the carport, because they could not work on him in the position he was in under the carport. The tape that bound his hands was cut. (Ex. 31 at 4, Ex. 32 at 2, Ex. 94.)
46. At some point, Jones' body was covered with a blanket because of the rain. (Ex. 36 at 3, Ex. 94.)
47. By 8:00 p.m., a large crowd had gathered at the scene. The weather was cool with light rain and the area around the crime scene was dark, in part, because the streetlight in front of the crime scene was not working. (Ex. 33, Ex. 34 at 1, Ex. 40 at 1.)

### **C. Law Enforcement Tunnel Vision**

#### **i. Initial Evidence Collection**

48. The tape from Jones' face and wrists was collected and his hands were bagged. (Ex. 36 at 3.)
49. \$952.70 was found in his pockets and \$1,416 was found in his briefcase in the trunk of his car. His wallet was not located. (Ex. 36 at 3, 6–7, 2004 Trial Tr. V.6 183, 2004 Trial Tr. V.8 137.)
50. WSPD taped two boxes to the exterior front driver's side hood area in order to preserve two footwear impressions. (Ex. 16 at 2.)
51. Law enforcement reports stated that the "vehicle was not wet, indicating it was parked under the carport prior to the rain" and that "the hood of the vehicle was directly under the motion lights." They determined that someone may have "used the hood of the car to reach the lights and unscrew them." The lights were collected as evidence. (Ex. 36 at 4.)
52. A piece of tape, resembling the tape used to bind Jones, was collected from the step leading from the carport to the back deck. (Ex. 36 at 4, Ex. 95.)
53. Jones' car was transported to a secure sallyport and was processed for evidence three days later, on November 18, 2002. (Ex. 37 at 1.)
  - a. There was a significant amount of blood spattering and smearing on the front driver's side exterior door handle. (Ex. 16 at 2, Ex. 37 at 1.)



- b. There was a small piece of white string “wedged into the door trim alongside the rearview mirror.” (Ex. 37 at 1.)
- c. On November 19, 2002, the SBI photographed the shoeprints and used a gel lifter to preserve the impressions. (Ex. 37 at 2.)

**ii. Initial Investigation and Lack of Follow-Up on All Leads**

54. On **November 15, 2002**, Jones’ family members and neighbors were interviewed by law enforcement when the area was canvassed. Photos of the crime scene were taken.
- a. Although an initial canvass of the neighbors was done that evening, there is no indication WSPD followed up later at any home where no one answered the door that night. (Ex. 41 at 1.)
  - b. Thirty to forty people were “standing outside the crime scene” by 10:25 p.m. The names of those standing at the scene were not obtained by WSPD. (Ex. 40 at 1.)
55. Charles Paul, Jones’ son-in-law, told WSPD that Jones usually had a large sum of money with him in a briefcase or bank bag when he left the Chevron. (Ex. 17 at 1.)
56. Two females, whose names were oddly not obtained by law enforcement, told WSPD “someone should talk to” the 17-year-old at 901 Moravia Street. WSPD went to 901 Moravia Street and spoke to Stevie Lindsay who said he lived at the home with his sister Uelyne Lindsay and his nephew, Tony Lindsay. Stevie said Tony Lindsay was not home because he was playing in a high school football game that night. (Ex. 17 at 2–3.)<sup>9</sup> Tony Lindsay, the 17-year-old who lived at 901 Moravia Street, was never interviewed by law enforcement.
57. On **November 16, 2002**, around 6:00 p.m., the investigation was put on hold and no actions were taken by WSPD until November 18th. (Ex. 17 at 4.)
58. On **November 18, 2002**, a to-do list was compiled during the morning briefing. It included obtaining phone records for the home and cell phones of Jones’ ex-girlfriend, Shirley Bishop. It also said the officer was to “pull everything on Shirley Bishop” and “was Tony Lindsay at Parkland Football Game?” These to-dos are not checked off and there is no indication in the file there was ever any follow-up. Hazel Gilbert, Jones’ girlfriend at the time who lived in Mt. Airy, was also listed but there is no indication she was ever interviewed by law enforcement. (Ex. 15, Ex. 39 at 1.)
- a. There is an interview with Sherry Wigfall in the same set of notes that says “Red” “owed somebody a lot of money. Jones bailed him out. Paid the person off.” (Ex. 39 at 3, emphasis in original.) Red was never interviewed by law enforcement and there is no indication there was any follow-up on this information.

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<sup>9</sup> It appears Stevie Lindsay was only asked who lived at the home and not who was there on November 15th, so there is no mention of Brian Lindsay.

59. At 10:46 a.m., a follow-up interview with Ava Williams was conducted at the police station. She told WSPD that at the same time she saw someone in Jones' car in his carport she noticed the door at 916 Moravia St. shutting as someone had just gone into the house. There was never any follow-up into who that might have been, whether that person saw anything suspicious, or whether they had any information that would be helpful for the investigation. (Ex. 42 at 9–11.)
- a. This lack of follow-up is especially troubling given those that lived at or frequented 916 Moravia St., known to be a crack house at the time (Ex. 38 at 1), knew Jones brought store money home with him every night and were originally considered suspects as detailed below.
60. Ava Williams also told law enforcement that she saw Brian Lindsay, nicknamed "Horne," loitering on the corner of Moravia Street around 5:30 p.m. on the day of Jones' murder. Later, when Williams drove by Jones' house, she saw a small-framed man sitting in Jones' car. (Ex. 48.) Brian Lindsay is small-framed and thus matches the description given by Williams.
61. At 8:00 p.m., WSPD spoke with Monty Mitchell. He attended a party on November 15th at 821 Moravia St. A young boy, BJ Lowery (BJ), came in the back room and said he saw someone jump the fence at Jones' house. WSPD then spoke to BJ's mother, Lorie Douglas, who confirmed the story and put BJ on the phone to speak with law enforcement. (Ex. 36 at 7, Ex. 25 at 2–4.)
- a. BJ told them that around 6:00 p.m., "he and some other children were outside playing [at the park], and he looked over and saw what appeared to be an Hispanic male jumping over two fences." He said the man "jumped the fence next to a big rock there at Mr. Jones' house" and "then ran across the yard and jumped another fence in 'Little B's' yard." BJ said the man "then went to the park where he sat on a picnic table for just a few seconds." When BJ turned around again, the man wasn't there anymore. (Ex. 25 at 3.)
  - b. BJ described the man as being Hispanic, in his 20s or 30s, tall, skinny, with a little amount of hair under his toboggan. He was wearing all black and had on gloves. (Ex. 25 at 3.)
  - c. Despite learning there was a birthday party at 821 Moravia St. at the time of the attack, right down the street from the crime and adjacent to Belview Park, there are no indications WSPD obtained a list of who was present at the party or interviewed those present to determine if they saw anything that could be helpful to the investigation.
    - i. A defense investigator interviewed Lorie Douglas and BJ in 2004. Douglas said that she told BJ to leave the house shortly after guests were beginning to arrive for the party at 6:30 p.m. BJ believed he was outside for five to ten minutes when he saw the man jumping the fences and running. BJ said "the person frightened him" and his friend. (Ex. 85.) Importantly, like Ava Williams, BJ saw only one person—not five teenagers.

- d. WSPD discounted BJ's account once the five teenagers were arrested because the "suspect description was later eliminated as a suspect in this case." (Ex. 38 at 3.)
62. At 1:32 p.m., an internal WSPD email lists known black males who are linked to robberies on the Southside and Westside of town. (Ex. 28.) There is no indication in the file that any of these men were interviewed or investigated by law enforcement.
63. At 1:38 p.m., a WSPD detective supervised Police Trainee Pre-Hires with an open field search of Jones' yard, neighboring yards, and Belview Park. This belated search resulted in law enforcement collecting several items, including the following:
- a. A grayish black piece of tape found near the trash cans in the backyard of Jones' home.
  - b. Pieces of black tape found under the deck of Jones' home.
  - c. A clump of what appeared to be human hair in the backyard of 901 Moravia near the Burgandy Street curb line.
  - d. A blue knit cap in between the shelter and recreation center building at Belview Park.

(Ex. 17 at 4–6.)

64. At 4:45 p.m., a law enforcement briefing discussed potential suspects being at 916 Moravia Street, which was a known crack house, and an employee of Jones named Reginald. Jones' family suspected Reginald was involved in prior break-ins and theft from Jones' store and they suspected he was involved in this case. (Ex. 38 at 1–2.)
65. On **November 19, 2002**, the morning briefing directed officers to "interview everybody @ 916" Moravia. (Ex. 39 at 4.)
- a. Despite focusing on the occupants of 916 Moravia St. early on, there were no follow-up interviews with resident Tarshia Coleman, her boyfriend Calvin Scriven, or Brian Lindsay, who frequented 916 and was there on the evening of the murder. There was also no investigation to identify others who frequented the home.
66. At 10:24 a.m., after being instructed at the morning briefing to locate "a juvenile subject named Justin" who "might have information important to this case," two detectives went to his home and left a card on the door because no one was home. (Ex. 43 at 8.)
- a. Shirley Means lived at 915 Moravia St. in November 2002. She had a young son named Justin. Handwritten notes in the file imply that Justin may have been interviewed. The notes have family members of Justin, including his mother, and their contact information listed. Next to "Justin – 10" it says, "don't start out telling truth vol." (Ex. 44.)

- b. There is no other documentation of such an interview—if it happened at all. However, a logical interpretation of the note is that he was interviewed and, as with the teenagers, WSPD assumed he was not initially being truthful “voluntarily”—likely because he was not implicating the teenagers.
67. Sometime before 2:30 p.m., Arlene Tolliver (Arlene) called WSPD<sup>10</sup> and told them her son, Jermal, “hasn’t been the same since that homicide on Moravia St.” and was “concerned that he might know who was responsible . . . .” She said that since the murder, he has stayed home and not been with his friends, Nathaniel and Rayshawn, as he usually would be. She thought he was “withdrawn and avoided virtually all social contact.” When asked if Jermal might have been present when the crime occurred, Arlene responded, “don’t know if he was there or not but I think he knows something about it.” Arlene followed up with WSPD shortly thereafter and let them know Jermal, who had been playing outside earlier, had come inside the house. (Ex. 1 at 5–6.)
68. At 4:30 p.m., a briefing was held for law enforcement where they were told Jermal, Dorrell, Nathaniel and Rayshawn were now the suspects in Jones’ murder and a white girl named Jessicah may have also been involved as the driver.
- a. Jermal Tolliver was already being questioned at this time and had innocently informed law enforcement that he was with Dorrell, Nathaniel, Rayshawn, and Jessicah the day of the murder. Christopher was not mentioned. (Ex. 37 at 3.)
  - b. After this point, one day into the investigation, it does not appear there was any follow up on leads that did not relate to the teenagers.
    - i. As an example, a CrimeStoppers tip was received on November 20, 2002, stating three men “are the subjects who killed Mr. Jones. They all live in Castle Heights.” It was also noted they all “carry guns and are very dangerous.” There is no indication there was follow-up on this tip, presumably because the tip sheet notes a detective said that five individuals were already arrested in the case. (Ex. 45.)
    - ii. As previously stated, there is no indication WSPD followed up on all of the phone numbers that called the Willard Cab Company. It is truly shocking that repeated calls made to a cab company, requesting a cab to the very home of the victim, around the time of the crime, were not investigated. Twenty years later, it is too late to obtain information regarding who made the calls.

### **iii. Statements of the Teenagers<sup>11</sup>**

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<sup>10</sup> WSPD previously left a card with Arlene Tolliver when they were canvassing the neighborhood for information regarding recent break-ins. (Ex. 101 at 2.)

<sup>11</sup> The teenagers are all discussed using their first names in this filing, however, the law enforcement reports and various testimonies often refer to them by their nicknames: Christopher “Bubba” Bryant, Jermal “Mel” Tolliver and Nathaniel “Stinky” Cauthen. After he was incarcerated, Rayshawn Banner was known as “Black,” but he did not have a nickname at the time of the original investigation. In 2002, his brother, Joseph Cauthen, was known as “Black.” Dorrell Brayboy did not have a nickname.

69. Rayshawn, Dorrell, Christopher, Jermal, Nathaniel, and Jessica were interviewed by law enforcement throughout the afternoon and evening of November 19th and into the early morning hours of November 20th. Initially, all of them adamantly denied any involvement in Jones' robbery and murder.<sup>12</sup>
70. Typed reports from handwritten investigative notes were not prepared until mid-2003. Those reports leave out important times and information included in the handwritten notes that are still available.

### **November 19, 2002**

71. Around **3:00 p.m.**, Jermal agreed to come to the police station to be questioned. (Ex. 1 at 6, Bryant and Tolliver Supp. Hrg. Tr. 44.).
72. Jermal was the first to be interrogated.
- a. Detectives considered this the "preliminary interview." He was told that his mother "believed, based on his recent actions, that he knew something about the murder." Jermal "insisted he knew nothing" and told WSPD where he had been on November 15th. He "waited at his house for his father to bring him some money," he received the money from his father and then Nathaniel, Rayshawn, Christopher, Dorrell, and Jessica came to his home. They got ready to go to the bowling alley. (Ex. 1 at 7, Ex. 38 at 6.)
  - b. After Jermal identifies who was with him the night of the murder, the entire focus of the investigation shifts to the teenagers.
  - c. At some point, Jermal changes his story to say that Nathaniel and Rayshawn told Jermal they "robbed an old man and taped him up." He didn't know anything else until they came home later that night and "saw several police cars in front of Mr. Jones' house." Jermal said a black and silver baseball bat was used in the attack and the bat was still at his home.<sup>13</sup> Jermal also said that his brother, Thayers Tolliver, was included in the original plan to commit the robbery. (Ex. 1 at 7, 9, Ex. 38 at 6-7.)
    - i. Jermal's mother gave consent for WSPD to search her home for the bat, but no bat was located. (Ex. 1 at 9.)

73. Sometime between **3:30 and 4:00 p.m.**, Dorrell was located by WSPD at the hospital where his mother had just had surgery. Dorrell and his mother were told they needed to speak with him about an on-going investigation. Dorrell's mother and Dorrell agreed he would go to the police station with the detectives. (Ex. 79 at 1, Brayboy Supp. Hrg. Tr. 4.)

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<sup>12</sup> An aerial view of where each teenager lived in comparison to Jones' home is included as Exhibit 93.

<sup>13</sup> Throughout their false statements, many of the teenagers describe using a bat to attack Jones. A forensic pathologist hired by one of the trial attorneys reviewed the relevant documents, including the autopsy, and found that "there are no injuries consistent w/a baseball bat." (Ex. 96 at 1, emphasis in original.)

74. At **4:30 p.m.**, detectives located Christopher on Devonshire and spoke to his mother. Christopher agreed to go to the station. His mother did not go. (Ex. 82, Bryant and Tolliver Supp. Hrg. Tr. 87.)
75. Detectives located Nathaniel and Rayshawn on Devonshire Street. Nathaniel agreed to go to the police station to be questioned. Rayshawn refused. (Ex. 1 at 8.)
76. At **4:56 p.m.**, WSPD began interviewing Dorrell.<sup>14</sup>
- a. He denied knowing anything about the murder. Dorrell told law enforcement that on Friday, November 15th, he returned home from court shortly after 1:00 p.m. He stayed home until 2:30 p.m. or 3:00 p.m. and then went to Christopher's home and played video games. Jessica and Nathaniel came to Christopher's home and Dorrell and Christopher got in the car with them. As Jessica, Nathaniel, Dorrell, and Christopher were about to leave, Jermal got in the car. They drove around until Jessica "said she was bored." They drove to Belview Park and sat on the bleachers. After that, Dorrell "went home and went to sleep." (Ex. 17 at 7–8, Ex 79 at 1.)
  - b. At some point, detectives left and re-entered the room with Dorrell. They told him he left out going to the bowling alley that night. He acknowledged he had. They told him others were being interviewed and "were telling their side of the story." Dorrell asked who was there and what they were saying. (Ex. 17 at 8, Ex. 79 at 2.)
    - i. Some of the teenagers were at the bowling alley later that night, but it was hours after Jones was attacked so it has never been relevant to the case.
77. At **5:01 p.m.**, officers transported Jermal to the wooded area near the mall to search for the wallet he said had been tossed out the bus window in that area. After searching for roughly thirty minutes, no wallet was located. (Ex. 34 at 5–6, Ex. 83 at 1.)
78. At **5:24 p.m.**, Jermal was brought back to the police station. On the way, he was given fries and a drink from McDonald's. (Ex. 34 at 6.)
79. At **5:29 p.m.**, a detective told Dorrell "he needed to get right with this thing quick because other people were down [there] telling their side of it. He continued to deny his involvement." (Ex. 17 at 8.)
80. At **6:10 p.m.**, Dorrell asked for his mother and said she "would straighten everything out." While law enforcement went to get her, Dorrell waited in the interrogation room alone. (Ex. 17 at 8.)
81. At **6:15 p.m.**, WSPD picked up Yolanda Tolliver, Jermal's sister, at her home and brought her to the police station to be interviewed. (Ex. 83 at 1.)

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<sup>14</sup> Dorrell's recorded interrogation began at 9:34 p.m., almost five hours after he arrived at the station, and lasted twenty minutes. (Ex. 66.)

82. Jermal was being interrogated further.

- a. He said he was 15 years old and “didn’t know ‘they were gonna kill him.’” He said the robbery was Nathaniel and Rayshawn’s idea. He said Jed was also there and Dorrell was “walking down the street.” Jermal said he was down the street and Rayshawn and Dorrell were the ones who “jumped on the ‘old man’ at his house.” When Jones pulled up there were no lights on in the carport “as someone had cut the power off.” Jermal said the bat that was used was his and it was in his kitchen. He was told that Nathaniel, Rayshawn, and Dorrell “threw the wallet out of a bus window as they were leaving the Mall.” (Ex. 38 at 7–8.)
- b. At this point WSPD told Jermal he wasn’t being “completely truthful,” so Jermal changed his story again and said that Christopher, Dorrell, Rayshawn, Nathaniel, and himself were involved but never went into Jones’ home. They went home and changed clothes. He doesn’t know what happened to the bat, but it “ended up in his yard.” No one used Jones’ phone, no one called a cab, no one called 911 and no one checked on Jones after “they left him in the driveway.” (Ex. 38 at 8.)

83. At the same time as Jermal’s interrogation, Nathaniel’s was continuing in a different room.<sup>15</sup>

- a. Nathaniel said that on November 15th, he was with his friends: Christopher, Jed, Dorrell, and Jessicah. They got together around 4:00 p.m., picked up Rayshawn, dropped Rayshawn off at the store, rode around the mall, and went to the bowling alley. Later, “when they returned to the neighborhood” near Belview Park, “he found out that a man was killed from conversation with the neighbors after seeing police in the neighborhood.” They all left, took Jed to check on money he was getting from his father, “ran around some more, and went back to the park.” Nathaniel got home around 11:00 p.m. He said he “has plenty of money, and he doesn’t have to commit any robberies to get money” because he gets money from his mother. (Ex. 38 at 9.)
- b. The report of Nathaniel’s interrogation states: “It should be noted during this portion of the interview, Nathaniel had an extremely bad attitude and stated, ‘I don’t care what everybody else says’ in response to questions surrounding the death of Mr. Jones, he ‘was not present’ when Mr. Jones got killed.” Nathaniel then said, “I wasn’t there. I ain’t got nothing to do with it. I was only there after the police came.” WSPD “encouraged him to tell the truth.” Nathaniel “adamantly denied any involvement.” He then said: “When I hear it come out their mouth, we will see. Then you will hear my story.” Nathaniel requested he be given a lie detector test. The interrogation was paused at 7:00 p.m. and he was left in the room alone. (Ex. 38 at 9.)
  - i. Nathaniel was never given a lie detector test.

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<sup>15</sup> This is the first substantive report regarding Nathaniel’s interrogation that evening, however, there is a note that he was “interviewed briefly” before this. (Ex. 38 at 8.)



84. WSPD contacted Jessica's grandmother, who put them in touch with Jessica. Jessica agreed to come to the station to be questioned. (Ex. 1 at 9.)
85. Around **6:50 p.m.**, Jessica arrived at the station. (Ex. 1 at 9.)
86. Around **7:00 p.m.**, Lisa Brayboy, Dorrell's mother, arrived at the police station. Law enforcement told her that they did not think Dorrell was being truthful. The officers and her re-entered the room with Dorrell. He gave the same version of events as he had earlier. His mother told him he needed to tell law enforcement the truth. "Dorrell insisted that he did tell [them] the truth." (Ex. 17 at 9, Ex. 79 at 2.)
87. At **7:05 p.m.**, law enforcement picked up Sherman Williams (Jed). They arrived at the police station at **7:11 p.m.** (Ex. 30 at 2.)
88. WSPD told Dorrell that the others were giving their statements and "nothing he said could change the past." (Ex. 17 at 9.)
89. At **7:07 p.m.**, WSPD began interrogating Jessica.
- a. She said she had driven by Jones' home on November 15th and saw police cars, "but denied having participated in the incident." She then said she started hanging out with Nathaniel, Rayshawn, and Dorrell around dark on Devonshire Street. "They talked until just after dark and she left" to see her friend in Lexington. She was there for an hour and then came back to Devonshire and then took Christopher, Nathaniel, and Rayshawn to the Amoco station. They went back to Devonshire and she left them all again to go back to see her friend in Lexington. She stayed with her friend for another thirty minutes and went back to Devonshire. On her way back to Devonshire, she saw all the police cars at Jones' home. She adamantly denied going to the bowling alley and "maintained she did not know anything about the murder." A detective told her "it was important that she be truthful and she immediately began crying." The report states, "Jessica[h] continued to cry but maintained that she was being truthful." She then asked to go to the bathroom. (Ex. 1 at 9-10.)
  - i. Handwritten notes of the same interview have additional information provided by Jessica, including:
    - It was still light when she saw Christopher, Nathaniel, Dorrell, Rob, Nelson, Rayshawn, and Jermal on Devonshire. She stayed there for one and a half to two hours.
    - When she went back to Devonshire ten minutes later, Christopher, Nathaniel, and Dorrell were outside. They went and got Rayshawn and Jermal. Rob was gone.
    - Jessica stayed thirty minutes and got paged by Lauren. She went to the Wilco to use the phone and then used the phone at the Mexican store across the street to call Lauren.

- Jessica went back to Elizabeth Fowler's house for thirty minutes. Michelle Hepler called Elizabeth and Jessica and Elizabeth went in Elizabeth's car to go see Michelle.
- They drove by the park (unclear who) and an old lady said someone was killed. Jessica went back to Michelle's.
- Michelle, Lauren and Elizabeth's names are not mentioned at all in the typed report. WSPD never interviewed Michelle or Lauren and Elizabeth was not interviewed until a year later.

(Ex. 76 at 1–2.)

- b. Jessica went to the bathroom at 8:42 p.m., as noted below, so the initial part of her interrogation appears to have lasted roughly an hour and a half. (Ex. 30 at 2.)

90. At **7:13 p.m.**, Jermal's sister, Yolanda Tolliver (Yolanda), gave a recorded statement to WSPD.

- a. She wasn't home all weekend. The night before her statement, November 18<sup>th</sup>, she came home and heard Jermal and Christopher "talking about what had happened." She heard them say they were at the park and Nathaniel, Rayshawn, Anwan, and Black were "sitting over there talking and watching him go down the street to the man's house and two of them splitted off on each side of the house, waited on the man – well, (inaudible) as the man was getting into his house, shutting his door" Jermal and Christopher said "they had waited until he got good in his house" and Rayshawn was "peeking in the window at the man." Jermal and Christopher and "one of the others" were sitting on the picnic table and watching Jones drive down the street as he arrived home. (Ex. 60 at 1–2.)
- b. She said Nathaniel, Black, Anwan, and Rayshawn were involved. When asked if someone else was with them, she said Dorrell was with them earlier but did not go down to the house with them. She said Dorrell knew what was happening because he was always with Rayshawn and Nathaniel. Jermal and Christopher told her they were supposed to go bowling that night but didn't. She has heard Rayshawn and Nathaniel talk about robbing the WIC store and the Amoco before, so she thought they were "just playing." She doesn't know if they ever did those robberies. She also said Rayshawn and Nathaniel "robbed a couple of Mexicans." (Ex. 60 at 2–6.)
- c. She said Black and Anwan threatened Jermal but Jermal won't tell her how they threatened him. She just saw them talking. At the end, she said Jessica was also there and she isn't sure where Dorrell was. She also seemed to get confused and started talking about a Black Jessica who is Black's girlfriend. Yolanda last saw Jessica on Saturday. Yolanda also said that Jermal "was just balled up in his bed" all weekend. She said, "[u]sually, he twist and turn, but he just stayed balled up in one spot, wouldn't move or do nothing. He was crying, too." Christopher was staying over and was "knocked out cold." When she asked what was wrong, Jermal told her it wasn't any of her business. Her statement concluded at 7:22 p.m. (Ex. 60 at 6–11.)

- i. Anjuan Terry is Nathaniel and Rayshawn's cousin and "Black" is their brother, Joseph Cauthen.
- ii. Despite Yolanda's statement, Anjuan Terry and Joseph Cauthen were never interviewed. When Anjuan contacted WSPD after hearing they were looking for him, he was told he was "not needed any longer." (Ex. 82).
- d. When questioned about seeing Jessica Saturday if she had been gone all weekend, Yolanda said she came home Friday night around midnight and left again Saturday night. (Ex. 60 at 8–9.)

91. At **7:25 p.m.**, Jed was interviewed for around thirty minutes.

- a. He was 18 years old. WSPD reports note that "[d]uring the course of this interview, it was apparent [Jed] was mentally slow as he indicated . . . he was . . . in the 11<sup>th</sup> grade." Jed said that he saw Christopher, Jermal, Nathaniel, Rayshawn, Dorrell, and Jessica on November 15th. Jessica dropped him off home. Sometime after he was dropped off, his mother told him that someone was killed up the street. Jed denied any knowledge of it. Jed said that Rayshawn, Christopher, Jermal, and Nathaniel were with Jessica at the park near Jones' home. The report notes, "During the interview, the writer concluded that Sherman was mentally slow and no one named him as being involved in this incident." (Ex. 38 at 10.)
  - i. Notably, Jed is mentioned as being involved repeatedly in the interrogations of the teenagers, including in other areas of this very same report. It appears it was determined he was an inconvenient suspect for some reason and was therefore removed from WSPD's storyline.

92. At **8:00 p.m.**, "arrangements were made" for Nathaniel and Rayshawn's mother to come to the police station to speak with Nathaniel. WSPD told her that Nathaniel, Rayshawn, and three others "were involved in this incident involving Mr. Jones." The report notes that she "agreed to speak with Nathaniel in attempts to get him to tell the truth concerning what occurred to Mr. Jones." She arrived and spoke to Nathaniel for fifteen to twenty minutes. She "was urging" him to tell the truth and was "pleading" with him. She told him "she believed he had something to do with Mr. Jones' death." (Ex. 38 at 10.)

- a. The report states that, "[a]t first, [Nathaniel] acted as if he was in disbelief that his own mother believed he was involved in Mr. Jones' death." Then he started to tell WSPD about his involvement.<sup>16</sup> (Ex. 38 at 11.)
- b. He first said that he, Jed, Dorrell, Christopher, and Rayshawn were involved with beating Jones. Notably, he did not mention Jermal. Nathaniel said they saw Jones "going into his house carrying some grocery store stuff when everyone approached him and began jumping on him." He first denied knowing who tied up Jones, but

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<sup>16</sup> Nathaniel's recorded interrogation began at 10:14 p.m., about five and a half hours after he arrived at the station, and ended at 10:30 p.m. (Ex. 69.)

then said it was either Dorrell or Christopher and this was “after doing something to the lights to keep them from operating properly.” Nathaniel says Christopher and Rayshawn were “the only ones likely to loosen the bulbs to keep the lights from turning on.” Nathaniel walked up to the van and watched Rayshawn “punch Mr. Jones in the face which knocked him to the ground,” then Christopher kicked Jones in the face, Dorrell hit him in the head with “a pole or something,” and then Nathaniel “punched [him] in the stomach four or five times.” Nathaniel then said someone “grabbed money from the man at which time he thought he heard sirens, so he ran.” They ran to the park and “regrouped.” Nathaniel said he did not receive any of the money. The others each got about \$20 and all of the others had money on Monday, November 18th. He never saw anyone enter Jones’ vehicles or mess with them. (Ex. 38 at 11–12.)

- c. Nathaniel said the black tape was the kind Christopher had used on his moped. He said Dorrell and Rayshawn got blood on them and that is why they went to change clothes. Rayshawn had blood on the sleeve of his red shirt. (Ex. 38 at 11–12.)
- d. He said “the plan was to go ‘make a lick.’” They had been discussing committing a robbery for weeks and originally Marcus, Christopher, Dorrell, Nathaniel, and Jermal were going to do it. (Ex. 38 at 11.)
  - i. Marcus is Marcus Shavers, a friend of the teenagers. Marcus told the Commission he was also brought to the police station and interrogated as a suspect but was released after he continued to deny involvement. The WSPD file does not include any documentation of his interrogation. (Ex. 102 at 20–21.)

93. At **8:30 p.m.**, Dorrell asked to speak to one detective alone. The other officer and his mother left the room. Dorrell began to cry and then confessed to being there when Jones was killed. (Ex. 17 at 9.)

- a. He said he was “just a lookout.” He said Jessica, Nathaniel, Rayshawn, Jermal, and Christopher were also there. He said Jessica stayed at the park while the others followed Rayshawn to Moravia Street. Rayshawn had said that he was “going to get some money.” Dorrell waited at the fence behind Jones’ home and didn’t know what the others were going to do. When asked why he would stop at the fence to be a lookout if he didn’t know what was going to happen, Dorrell said he didn’t know. (Ex. 17 at 9–10.)
- b. Dorrell said he heard “what sounded like someone being punched” and he heard someone yell, “Stop.” He heard Nathaniel yell, “Shut up.” Nathaniel, Rayshawn, Jermal, and Christopher “came running back.” Then all of them got into Jessica’s car and left. (Ex. 17 at 9–10.)
- c. Dorrell said he never went into the carport and never received any money from the robbery. (Ex. 17 at 10.)

94. Detectives brought Lisa Brayboy back into the room and told her about Dorrell's involvement. She agreed to remain present while Dorrell gave a taped statement. (Ex. 17 at 10.)
95. At **8:42 p.m.**, Jessicah was permitted to use the restroom. A detective stood at the door approximately twenty feet from the restroom. Jessicah returned to the interrogation room at **8:46 p.m.** (Ex. 30 at 2.)
96. WSPD picked up Thayers Tolliver at his home on Devonshire. Thayers came out of the house and said, "let's go." Detectives asked him to tell his mother first that he was leaving. He went back inside, came outside again and was now carrying a baseball bat. He gave it to them and said, "here's the bat you all have been looking for . . ." <sup>17</sup> (Ex. 80 at 1.)
97. At **8:57 p.m.**, Jermal's brother, Thayers Tolliver (Thayers), gave a recorded interview to WSPD. It is clear a prior unrecorded interview had occurred and, at times, Thayers is prompted by WSPD to give answers based on the prior conversation.
- a. Thayers came home around 10:00 p.m. on November 15th and his mother told him Jermal knew something about a murder. Thayers asked Jermal and "kept on bugging him," but Jermal said he didn't know anything. Jermal told their mother he had seen "a dead body laying on the sidewalk." Jermal was acting strange to him because he went to bed earlier than normal, around 11:00 p.m. Despite saying he didn't get home until around 10:00 p.m., Thayers said he saw Nathaniel, Rayshawn, Christopher, Dorrell, Jermal, and Nelson "in a big huddle." He then said all of them except Jermal went to the store. He said they were "watching out for the police" but did not explain clearly how he knew this. The next day he saw Nathaniel, Rayshawn, Christopher, Jermal, and Nelson working on Christopher's moped. They all had new clothing. He said this was in the morning, before Thayers went to work around 9:30 a.m. He then said Jermal and Christopher didn't wake up on Saturday until 2:30 p.m. Thayers did not appear to understand the contradiction. He then told them that only Jermal had remained asleep until 2:30 p.m. (Ex. 61 at 1-5, 7.)
  - b. Thayers said "they" robbed someone down the street from his home. They "jumped through the window . . . and grabbed the money, jump back out." He said they "usually brag about whatever they do." (Ex. 61 at 6.)
  - c. When asked if the teenagers were watching the news more than normal, Thayers said "[w]henver the news came on, they was in front of the TV." He said "they" had a lot of cash on them, \$60 or \$75. He said their mom (unclear whose mother, but possibly Nathaniel and Rayshawn's) would be concerned when they had new clothes. She would be trying to figure out how they got them because she didn't buy them. They aren't allowed over to the Tolliver home anymore since the WIC incident. He said Rayshawn had on new Pumas, tan and white. The recorded interview concluded at 9:07 p.m. (Ex. 61 at 7-9, 11-12.)

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<sup>17</sup> The report says this is November 20th but based on the context it must have been the evening of November 19th.

98. At **9:00 p.m.**, the interrogation of Jessica continued.<sup>18</sup>

- a. Jessica said she went to Christopher's home at 4:00 p.m. on November 15th and Christopher and Dorrell were already there. Jermal was at his home, across the street, with Nathaniel and Rayshawn. Jermal, Nathaniel, and Rayshawn came over to Christopher's. (Ex. 37 at 3–4.)
- b. Everyone except Jermal got into Jessica's car and they "drove around for about 30 minutes to an hour." The teenagers said, "Wouldn't it be funny to rob somebody?" They went back to Christopher's for five to ten minutes. Jermal then joined them and all five teenage boys and Jessica drove to Dollar General and then Maxway. Christopher and Dorrell went into Dollar General. Everyone except Jessica and Rayshawn went into Maxway. Each stop at a store was around ten minutes. At this point, someone had a roll of duct tape that everyone was passing around. From there, they went to Belview Park. Jessica went to the westernmost picnic table in the park and sat down. (Ex. 37 at 4.)
- c. Someone said they would be right back and Jessica turned around to see all of the teenagers walking toward Burgandy St. She then heard "a loud commotion coming from the area of Mr. Jones' home." She heard them saying, "Get the fuck down," "Give us that shit!" and "Fuck you!" She heard "the sound of beating and banging."<sup>19</sup> The teenagers then returned to the park. They had come from the "front yard areas of the houses on Moravia Street . . ." She heard them bragging, "Hell yeah, we got that shit, fuck him, fuck him, we fucked him up!" (Ex. 37 at 4.)
- d. Someone told her to take them home so they could change clothes. She took Christopher, Jermal, and Dorrell to Christopher's home and then took Nathaniel and Rayshawn back to their home. Jessica went inside Nathaniel and Rayshawn's home and waited. "After rounding the group back up," they went to the bowling alley. Nathaniel "got into an argument with an off-duty police officer and was thrown out." (Ex. 37 at 5–6.)
- e. They all then went back down Moravia and saw the scene had been taped off and police were there. They got out of the car and went near the scene. Jessica asked someone what happened and they responded that "an old man who lived at the home had been bound, beaten, and robbed." That is when Jessica knew that Christopher, Jermal, Dorrell, Nathaniel, and Rayshawn had "attacked the man." After they left the scene, the teenagers told Jessica "that in the event police questioned her she was to say that she took the group to Creekside Lanes and the mall." (Ex. 37 at 5.)

99. At **9:25 p.m.**, an hour and a half after his interview was concluded, WPSD brought Jed back home. (Ex. 30 at 2.)

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<sup>18</sup> Jessica's recorded interrogation started at 9:30 p.m., two and a half hours after she arrived at the station, and ended at 10:00 p.m. (Ex. 77)

<sup>19</sup> No one in the neighborhood of close houses reported hearing a struggle at the victim's house. (See Ex. 92.)

100. At **9:30 p.m.**, the recording of Jessica's statement began.

- a. She went to Christopher's around 4:00 p.m. Christopher and Dorrell were outside. Jermal, Rayshawn, and Nathaniel came over later. Everyone except Jermal left in her car to buy some weed. The teenagers were joking about robbing someone so they'd have money to spend. Christopher brought it up. Jessica didn't pay much attention to the conversation. They just drove around for an hour. They went back to Christopher's for about ten minutes and Jermal got in the car. They rode around some more. They went to Dollar General. Rayshawn, Nathaniel and Jermal stayed in the car. They came back with "doo rags." They went to Maxway's. The teenage boys all went inside except Rayshawn, who stayed in the car. When they got back in the car, "they pulled out some duct tape or masking tape – whatever you want to call it." The tape was either silver or gray. They were playing with it in the backseat. (Ex. 77 at 1–8, 23.)
- b. They went to the park and she sat at the farthest spot on the picnic table to try to get some "peace." She was tired of the teenage boys being rowdy. One of them said, "[w]e'll be right back." Jermal stayed a second longer than the others and then also left. Christopher and Nathaniel had sticks from trees and Dorrell said he had protection which she thought meant he had a gun. She "turned around and just minded my own business." Then she heard yelling, screaming and a banging. The boys were yelling, "Get the fuck down! Get the fuck down! Give us that shit! Give us that shit!" She recognized the words as being the teenagers' voices but could not tell WSPD who was saying what. They came back to the picnic table and were "acting their normal selves." They came back from "the front of the houses." They were saying, "Hell, yeah. We got that shit. Fuck him. Fuck him. We fucked him up." Jessica didn't ask any questions. They no longer had the sticks with them. She didn't know if they still had the tape. She didn't see a wallet, but saw an imprint in Nathaniel's pocket. (Ex. 77 at 8–9, 26–28.)
- c. The teenagers asked her to take them home to change clothes because they were going to go to a party that night. She dropped Christopher, Dorrell, and Jermal at Christopher's and then took Nathaniel and Rayshawn to their home. Nathaniel wanted to go inside to shower and change. She went in for one minute and then went back to her car. She thinks everyone except Jermal changed. From there, they went to the bowling alley where Nathaniel got into an argument with a police officer. They left and stopped by some guy's house. Nathaniel went in and came back out five minutes later. (Ex. 77 at 9–10, 22, 25.)
- d. They went back by the park. She was at Jed's house when they told her to stop and turn around. She did and parked. The teenage boys got out first. She also got out and asked a woman what happened, and the woman said, "Some man (inaudible) here, who has just been beat and his hands were tied together and – he was robbed." She knew "it was him." She dropped them off and got a page from her grandmother who wanted her to come home. Jessica got home around 12:00 a.m. (Ex. 77 at 10–12.)



- e. Jessica said they told her to say they went to the bowling alley and mall if police questioned her. In the car, she turned up her radio so she wouldn't hear their discussion. Jessica never took them to the mall, but the teenage boys went to the mall on Friday with bus passes they had. When asked again, she said she did make a stop at the mall that night to see her friend, Jordan. Jordan wasn't there and she found the teenagers in the mall and told them "to come on cause they wanted a ride." When asked when this happened, Jessica responded, ". . . (Crying) I can't believe this. Cause y'all kept telling me – you know – we went to the mall and everything. I didn't remember going . . . ." She really didn't think they went to the mall on Friday; it was earlier in the week. (Ex. 77 at 12–15.)
  - f. They went to the bowling alley and then went back to Moravia St. They saw police had the second house down from Burgandy Street roped off. When they had been there earlier, this was the general direction the teenage boys had gone. All of them got out of the car and went to the corner of Moravia and Burgandy. They saw the man and they said, "Somebody else fucked him up." When Jessica dropped them off, Dorrell was joking about a killer being on the loose. (Ex. 77 at 19–22.)
  - g. Jessica said she has not spoken to them about the crime since Friday night. She never told anyone about the crime. She said: "I was scared. I didn't know what they were gonna do if they found out that I told." They had never threatened to hurt her; they've only ever joked around. She's never previously known them to rob anyone. (Ex. 77 at 23, 30–31.)
  - h. That night, she told her grandmother she had been with a girlfriend when she saw that a man had been murdered. She never called police. She said she was terrified that night but admitted going back to see the teenagers the next day. She said the teenagers told her to come back and said they needed to speak with her but when she got there they just wanted to hang out. She said she has not seen any of them since Saturday. Her grandmother took her car away on Sunday because she had come home late the night before. (Ex. 77 at 32–34.)
101. At **9:34 p.m.**, close to five hours after Dorrell's interrogation began, the recorder was turned on to capture his statement.
- a. Dorrell went to Christopher's around 2:30 p.m. that day to play video games. Christopher, Jed, Shelton, Jermal, Nathaniel, Rayshawn, Nicky, Big Man, and Christopher's mother were at Christopher's house. Christopher, Jermal, Nathaniel, Rayshawn, and Dorrell all left in Jessica's car. They went to Belview Park and parked on the street. He thought it was earlier in the night, around 6:30 p.m. They sat at the park for five or ten minutes and then Rayshawn said to "come on" so they followed him up the street. He said Rayshawn said he needed some money so they walked down the street to a house. Dorrell saw Rayshawn, Nathaniel, and Jermal "run in the backyard of the house, and I stood near the fence, and then all of a sudden I heard this, this man screaming 'stop'" and Nathaniel told the man to "shut up." He did not see anyone hitting the man, he just saw them run back "to the back." He heard them hitting him for five or ten minutes while he waited by the fence

between 901 and 905 Moravia St. Dorrell didn't think anyone was home at 901. He couldn't tell if there were any lights. (Ex. 66 at 1–8.)

- b. They others ran “up the backyard up to, toward the front.” Christopher and Jermal were at the front and Rayshawn and Nathaniel jumped the fence. Dorrell just ran off with them. He didn't know why they were running or where they had been. He asked and they said, “[w]e just got through beating up somebody.” When they got back to the car, Rayshawn and Nathaniel were bragging about beating up someone. They said: “Just don't worry about who. We just beat him up, and he was screaming and stuff.” (Ex. 66 at 10–11.)
- c. Dorrell never told anyone or went for help. They all went back to Christopher's home to “chill.” No one changed clothes, but Rayshawn changed his jacket. Then they went to the bowling alley where police told them to leave after Nathaniel got into an argument with another guy. They left the bowling alley around 10 p.m. and went back to Christopher's. At one point he said he and Christopher stayed at the house but the others went back to the crime scene later. (Ex. 66 at 12–18.)
  - i. It is unclear where Rayshawn would have changed his jacket if they were only at Christopher's home in between the murder and the bowling alley. Later in the interview Dorrell says Rayshawn went into Christopher's to get a jacket and came back out three or four minutes later before they went to the bowling alley. In this scenario, it sounds like only Rayshawn entered the home and not the others.
- d. He said he heard about the murder “on the News, and the police standing there that night said, they found a man in the ditch.” He didn't know who they were talking about. They didn't drive up to the scene because Jessicah didn't have her license on her. (Ex. 66 at 14–15, 18.)
- e. When Dorrell was told “some other things might suggest[.]” that he put the tape on Jones, Dorrell responded, “Un un, no sir. I ain't know nothing about no tape.” They continued to ask him about the tape and he continued to deny putting tape on Jones. The detective said, “You promised before you didn't have anything to do with that man's death. You didn't have anything to do, didn't know anything about it, ‘My hand to God,’ do you remember that? That's what I'm saying, this is your chance to get a 100% right on this. Did you put the tape on the man's hands?” Dorrell continued to deny he bound Jones or that he brought tape that day. Dorrell said he was wearing gloves. (Ex. 66 at 20–21.)
- f. When asked, “Did y'all talk about a plan that if the police spoke to you about it, that y'all had this story that you were with Jessica[h] the whole time . . . .?”, Dorrell responded, “Um hum (Yes).” (Ex. 66 at 23.)
- g. Dorrell said he saw Jones' face on television. (Ex. 66 at 22.)

- h. He said he and Christopher took the bus to and from the mall on Saturday using fare Shelton had given them. After the mall, they went back to Christopher's. (Ex. 66 at 19–20.)
  - i. Dorrell's mother was asked if she wanted to add anything and she responded, "The only thing that I want to say I wouldn't never thought maybe Dorrell would hit a older person or either stand there and let somebody get beat without tell them." A detective asked her, "Were you even shocked that he lied to you about all this, right?" and she responded, "Yes. But he wouldn't even had told me, I woulda called in myself and report it." (Ex. 66 at 24.)
102. At **9:35 p.m.**, a detective asked Jermal if he "wanted something to eat or drink" or "if he needed to use the restroom." He declined and said, "I'll just wait until I get home." (Ex. 1 at 10–11.)
- a. Jermal was told Jessica denied going to the bowling alley. Jermal said he "was riding with Jessica[h] until a good" 9:00 or 9:35 p.m. with Nathaniel, Christopher, and Dorrell. He was at Christopher's home after that time and Jermal said Christopher's mother could vouch for that. (Ex. 1 at 11.)
  - b. Jermal was shown a written statement from "one of [h]is accomplices" that implicated him in the crime. After that, Jermal said, "I wanna write it down." (Ex. 1 at 11.)
    - i. Jermal's written statement said: "Thay jumped on the man Stinkny Rayshawn Derrell Rashawn Stiny held him down Derrel taped the man up the man was fighting for his life thay did not mean for it to happen that way but Stiny and Rayshawn got to happy and left him tide up. I sorry it happend like that[.]" (Ex. 58.)
  - c. A detective called Jermal's mother, in response to her paging him, and told her that "it appeared that [Jermal] had been present when the robbery occurred but he was denying any involvement." Jermal's mother told the detective to tell Jermal to tell the truth and asked if the *detective* wanted her to come to the station and speak with Jermal. The detective "did not believe that was necessary but would accommodate her if that were her desire." Jermal's mother also offered to bring Jermal's sister to the station if the detective "needed someone to verify that he was not home during the time the homicide occurred." Jermal's mother asked that she be called if Jermal continued to deny he was involved. (Ex. 1 at 11.)
103. Around **9:45 p.m.**, according to a WSPD report, Christopher "totally confessed to this homicide" and gave "detailed information about what all of the suspects did including him." (Ex. 81 at 2.)
- a. Christopher said he was home around 6:00 p.m. with Jermal when Rayshawn, Nathaniel, and Dorrell came over. Nathaniel and Rayshawn asked them to come commit a robbery. Nathaniel had a baseball bat and Dorrell had a roll of duct tape. Nathaniel was "swinging the baseball bat saying that he was going to take that mans

head off.” All five walked towards the rec center where they met up with Jessicah. They got in her car and had her drive to the rec center. She parked on Burgandy Street. The five teenage boys walked towards Jones’ house, but Christopher stayed at the stop sign as the lookout. He “was supposed to yell to them if someone was coming.” Jermal was also a lookout and “stood in the driveway behind the white van.” Nathaniel knocked on Jones’ side door. Jones opened the door and Rayshawn hit him in the head with his right fist. When asked how he could see this from the stop sign, Christopher said he “walked up closer to the house by the time the other four got to the door.” Jones “fell back into the doorway” and Nathaniel, Rayshawn, and Dorrell pulled him out onto the carport. Nathaniel struck Jones several times with the baseball bat. Rayshawn was hitting and kicking him. Dorrell taped Jones while Nathaniel and Rayshawn held him down. They continued to hit him with the baseball bat and kick him until he stopped fighting back. (Ex. 81 at 2.–3)

- b. When asked what happened to the black door handle on the screen door, Christopher says Nathaniel hit it with the baseball bat by accident when trying to hit Jones. Rayshawn took Jones’ wallet from his back pocket. Christopher rolled Jones over with his foot to see if he was alive. He was alive. The teenagers ran back to the rec center and got into Jessicah’s car. Dorrell dropped the tape in the park. Nathaniel and Rayshawn had blood on their clothing, so Jessicah took them home to change. The others waited outside in Jessicah’s car for twenty minutes or so. (Ex. 81 at 3.)
- c. Nathaniel and Rayshawn got back in the car and everyone went to the bowling alley. They all got kicked out because Nathaniel and Rayshawn were being “loud and cursing.” Rayshawn and Nathaniel then said they should go back to the scene to see what was happening. Christopher saw “the medical people putting the victim into a body bag.” Everyone, including Jessicah, then went back to Christopher’s house and hung out for a while. (Ex. 81 at 3–4.)
  - i. Jones was not placed in a body bag until after midnight, so Christopher could not have seen this. (Ex. 36 at 3–4.)

104. At **10:04 p.m.**, Jermal gave detectives the statement he had written down. (Ex. 1 at 11–12.)

105. Detectives continued to interview Jermal “after his co-defendants provided a more accurate version of the events on Moravia St.” One detective told Jermal he had just spoken with Jermal’s mother who wanted him to be truthful. (Ex. 1 at 12, Ex. 59 at 2.)

- a. Jermal then said that he, Christopher, Rayshawn, Nathaniel, and Dorrell “had been driven, by Jessica[h], to Bellview Park earlier that evening.” Nathaniel and Rayshawn “suggested that they rob Mr. Jones” because Jed had “told them that he usually carried a ‘lot of money.’” It was decided that “Nathaniel and Rayshawn would assault him, Dorrell would tape his hands, Chris[topher] would act as a look-out on the east side of the house, [Jermal] would be a look-out on the west side of the house and Jessica[h] was supposed to watch from the park.” Nathaniel, Rayshawn, and Dorrell “ran up to Mr. Jones, grabbed him and threw him to the

ground.” Jones was yelling, “Help, get off me, get off.” They continued attacking him while he called for help. Dorrell taped his hands behind his back, while Nathaniel and Rayshawn hit and kicked him. Rayshawn took Jones’ wallet from his right rear pants pocket while Nathaniel “checked his other pockets.” Rayshawn tried to get into the van, but it was locked. They left and ran through the park. Jermal and Christopher ran to Christopher’s house. Nathaniel, Rayshawn, and Dorrell went there also. They talked until Jessicah showed up. Then all six of them went to the bowling alley. They did not speak about what happened until they came back to the neighborhood and saw all of the police cars and realized Jones was dead. They went back to Christopher’s home and Nathaniel showed everyone the wallet. Nathaniel and Rayshawn got \$20-\$30 each from the wallet. Jermal did not get any of the money. It was a black bi-fold wallet with “a lot of papers inside.” Jermal went home. Jermal said the motive was that Nathaniel and Rayshawn wanted money for new clothes and shoes. (Ex. 1 at 12–13.)

- b. Jermal said the next day, November 16th, the five teenagers went to the mall. They “divided up and then regrouped later that day.” When they got back together, Nathaniel and Rayshawn said they had tried to use Jones’ ATM card to get \$60 fast cash. The machine declined the card but printed a receipt. Nathaniel and Rayshawn left the mall before Jermal. They later told him they had thrown the wallet out of the bus window near the McDonald’s. (Ex. 1 at 13.)

106. At **10:07 p.m.**, WSPD recorded additional questioning of Dorrell. Dorrell did not see blood on anyone, but “Rayshawn probably the only person that had blood on him” because he was the one that changed his jacket. Dorrell said Rayshawn was wearing white and red Air Force Ones. When asked who had a hat on that night, he says it was Jed. They picked up Jed at Christopher’s house and dropped him at home before going to the park. He did not see anyone with a weapon that night. The second taped interview ended at 10:16 p.m. (Ex. 67 at 1, 4–5, 9.)

107. At **10:14 p.m.**, the recording of Nathaniel’s interrogation began after a detective said, “a tape[d] statement needed to be completed.” (Ex. 30 at 3.)

- a. They met up with Jessicah on Devonshire and Dorrell, Christopher, Rayshawn, and Nathaniel got in her car. They drove around and ended up at the park. They weren’t planning to rob anyone but then they “just seen the man and everybody just ran up.” Everyone said, “lets go get him.” He said no one had any weapons, but when asked if anyone had “any poles or sticks or bats or anything like that,” he said, “[p]robably so.” The detective responded, “Well, did they or didn’t they?” and Nathaniel said he didn’t know. Nathaniel said they just went over to “mess with him.” (Ex. 69 at 11–14, 16.)
- b. They came up the front of the house, but Nathaniel had his back turned from the van. They first saw Jones at his van. Nathaniel said Jones “was taking his bags in the house” but he didn’t see what door he was going in and out of. Nathaniel said, “I’m saying that he had his bags, he was getting the bags out of the van.” Nathaniel

didn't know what Jones was wearing but did say he was wearing glasses. (Ex. 69 at 17–18.)

- i. Jones came home in his Lincoln Town Car and was taking items in from that car, not his van.
  - ii. Nathaniel also incorrectly stated that there was no car in the carport. (Ex. 69 at 28, Ex. 94.)
  - iii. Jones was not wearing glasses that day but was wearing glasses in the photo shown to him by WSPD during his interrogation. (Ex. 70.)
- c. Nathaniel heard Jones fall. Nathaniel turned around and “just started punching him in the stomach.” Jones was on the ground in front of his van when Nathaniel punched him. Nathaniel thought Rayshawn hit him first. Nathaniel said Christopher, Dorrell, Rayshawn, and him were beating Jones. Rayshawn punched him in the face. Christopher kicked him in the face. He thought Dorrell hit Jones, but he wasn't sure. The detective wanted him to say Dorrell hit Jones with something, but Nathaniel didn't know if he did. Jed stood out in the yard. Nathaniel didn't know if Jed hurt Jones, but he didn't think so. Jed wasn't in on the plan to rob Jones. When asked if Jed is “mentally slow,” Nathaniel said he is and he goes to a special school. Later in the statement, Nathaniel said Jed wasn't involved. (Ex. 69 at 7–8, 19–21, 27–28, 31.)
  - i. Jones was not attacked by his van but crime scene photos show that is where his body was moved by EMS. (Ex. 94.)
- d. When asked if specific teenagers harmed Jones, he repeatedly said, “Guess so.” (Ex. 69 at 32.)
- e. Rayshawn said he got blood on himself from the punch. Nathaniel did not get any blood on him. (Ex. 69 at 28–29.)
- f. Someone grabbed the money, but he didn't know from where. He also didn't know who tied up Jones. He thought it was Christopher, Dorrell and Rayshawn. He didn't know what happened to the lights at the house. He thought someone turned them off. When asked why the sensor lights weren't coming on, Nathaniel responded, “[s]omebody probably unscrewed – unscrewed the bulb – the bulb.” He said only Christopher was tall enough to do that. He said Rayshawn couldn't because he is shorter than Nathaniel. Nathaniel got scared because he thought he heard sirens, turned and ran back to the park. They got in Jessicah's car but Nathaniel never told her what happened. Some of the others talked about it. Nothing was said about the money. Nathaniel didn't get any money and doesn't know how it was split. He said the others each had \$20 the next day. (Ex. 69 at 21–24, 29.)
- g. Nathaniel said Jermal was not involved. (Ex. 69 at 14.)

- h. Nathaniel said the plan was to get some money. Nathaniel seemed confused and said prior to that day, no one was planning it but then agreed with detectives that they had discussed it days ago. It was a general conversation and not referring to robbing Jones specifically. He said Marcus, Dorrell, Jermal, Derrick, Christopher, Rayshawn, and him were part of the earlier discussions. (Ex. 69 at 8–10, 14.)
  - i. A detective asked, “Now, this particular tape that was used, you said you seen that tube of tape before?” Nathaniel responded, “What tape? Yeah.” He saw it on Christopher’s moped. (Ex. 69 at 25.)
  - j. Nathaniel said he was wearing red and white Air Force Ones that night. Rayshawn was wearing white Air Force Ones. The recorded interrogation concluded at 10:30 p.m. (Ex. 69 at 27, 30.)
108. At **10:21 p.m.**, almost six hours after arriving at the station, the recording of Christopher’s interrogation began. (Ex. 72.)
- a. On November 15th, around 6:00 or 7:00 p.m., Christopher, Rayshawn, Nathaniel, Dorrell, and Jermal were at Christopher’s home. Someone said they “were gonna knock that man’s head off.” He was reminded by the detective that Nathaniel said he knew where they could rob someone. They walked out of the house and met Jessicah around the corner. They got in Jessicah’s car and went to the rec center at the park. They all got out of the car. Christopher was the lookout by the stop sign. Jermal was over by the driveway, by the van. Nathaniel, Rayshawn, and Dorrell went to the house. Nathaniel “knocked on the door and Rayshawn hit him with his right.” Then they “drug him back out the house” and were beating him and Dorrell tied him up. Jones was near the van. After some prompting, Christopher said Nathaniel had a baseball bat and Dorrell had duct tape. (Ex. 72 at 1–4, 9, 11.)
    - i. As stated previously, Jones was not assaulted near the van.
    - ii. Additionally, Jones was attacked as he was returning from getting the mail, not while coming out his door. (*See* Exs. 11–13, Ex. 95.)
  - b. Christopher said he knew Jones’ name because Jed’s dad or Jed’s aunt’s boyfriend used to cut his grass. Christopher never hit Jones but touched him with his feet “to see was he living.” He was alive when they left but Christopher knew it wouldn’t be long before he died. Christopher did not get him help. (Ex. 72 at 2, 4, 9–10.)
  - c. When asked if they got anything from Jones, Christopher said, “[t]hey got a little money, maybe.” Rayshawn had the wallet and “tried to keep everything for his self.” (Ex. 72 at 4–5.)
  - d. After the beating, they “dropped the tape and ran back across the street or whatever, with the bat. They hopped and we hopped in the car.” The tape was dropped over by the trees by the bench at the rec center. They went to Nathaniel’s house and Nathaniel, Rayshawn, and Dorrell changed clothes. He then said he was at his home and they came back to pick “us” up and go to the bowling alley. Nathaniel got



kicked out of the bowling alley. They left, Christopher was dropped off at home and then “we went back around there.” They were “by the pole looking” at the scene. (Ex. 72 at 5–6.)

- e. WSPD reminded him that at one point, after leaving the bowling alley, Nathaniel and Rayshawn bought some marijuana over by Longview. Christopher stayed in the car. (Ex. 72 at 6–7.)
- f. Christopher denied that they planned to lie to police if questioned. (Ex. 72 at 11.)
- g. Christopher was asked if he was allowed to go to the bathroom unaccompanied and he said he went a few times, but one time an officer went with him and “tried to . . . get me to tell a bunch of stuff and stuff . . . [a]bout this.” When asked if he had anything to add to his statement he said, “When I went in the bathroom, they was talking about something.” That comment was ignored and police again asked if he wanted to add anything. He responded, “Ah, I hope ya’ll ah get ‘em, take ‘em down.” The recorded interrogation concluded at 10:33 p.m. (Ex. 72 at 12–14.)

109. At **10:30 p.m.**, Jessica’s car was collected as evidence. (Ex. 83 at 1.)

110. Detectives arrived at Rayshawn’s home and his mother allowed them to come inside. Rayshawn was on the sofa, “wearing a black winter coat with his hands in his coat pockets.” He “became very belligerent and stated that [detectives] better bring his brother back home.” Rayshawn started walking towards the door and detectives told him to take his hands out of his pockets. Rayshawn ignored the order and kept walking. Detectives then “grabbed [him] by both arms and [again] told him to remove his hands from his pockets.” Rayshawn “resisted and tried to pull away.” He was placed under arrest, handcuffed, and brought to the station. His mother “became extremely upset and was crying.” His mother consented to them searching the home. (Ex. 79 at 2–3, Ex. 80.)

111. At **10:57 p.m.**, Jessica was dropped off at her home by WSPD. (Ex. 78.)

112. At **11:05 p.m.**, the recording of Jermal’s interrogation began, nearly eight hours after he arrived at the station. (Ex. 64.)

- a. Jermal said Rayshawn, Nathaniel, Christopher, Dorrell, and him went to Jones’ home. Rayshawn, Nathaniel, and Dorrell jumped on Jones. Jermal and Christopher were lookouts. Jermal was six feet from Jones, but also said he was on the side of the house by the park. Christopher was on the other side of the house. Jermal said “[t]hey, uh, tied, taped him up. They held him down and taped him up.” Later in his statement, he said they were “slamming him on the ground” and hitting and kicking Jones. Jones said “Help. Get off me” about ten times. He wasn’t screaming, “[h]e was just sayin’ it.” Dorrell put the tape on his hands, tied in front of his body. Rayshawn and Nathaniel checked his pocket and got his wallet from his right back pocket. (Ex. 64 at 4–10.)

- i. Jones’ hands were tied behind his back, not in the front of his body.

- b. Jermal said they planned the robbery earlier and the plan was for him and Christopher to be the lookouts. He did not remember what Rayshawn and Nathaniel's roles were supposed to be. Jed had told them that Jones had a lot of money. None of them had weapons. Jermal assumed Jones had a gun and someone would have gotten hurt if they went inside the home. No one got in Jones' car or van, but Rayshawn tried to get inside the van. (Ex. 64 at 9–13.)
- c. Jermal said it was dark and none of the lights were on inside or outside of Jones' home. When Jermal said no one explained why it was so dark, the detective said, "Uh, you indicated earlier that you thought that, uh, someone may have stepped up on to, uh, the victim's car, do you remember that?" Jermal then said, "Lil' Rayshawn" but he didn't know if he stepped onto the van or the car. He added "but I know that the kind of shoe he had on was the shoeprints that, that I had seen on the picture" shown to him by WSPD. (Ex. 64 at 24–25.)
  - i. At a minimum, the motion sensor lights in the carport would have been on as the perpetrator(s) approached, before the bulbs were unscrewed, so this statement from Jermal cannot be accurate.
- d. They all ran through Belview Park, past the basketball court and onto Dacian Street. Jermal said Nathaniel and Rayshawn went home. Jermal and Christopher went back to Christopher's. Jermal and Christopher did not change clothes. Originally, there was no mention of Dorrell at this point, but Jermal later said Dorrell came over to Christopher's. (Ex. 64 at 13–15.)
- e. Then Jessica arrived at Christopher's. He said Jessica had been parked in front of Jed's house and waiting in her car when the attack happened. They all got in Jessica's car and went to the bowling alley for about thirty minutes. On the way back home, they saw the police and heard people talking about how Jones died. Jermal said Rayshawn was wearing a red long-sleeved shirt, jeans, and red and white Air Force Ones that night. Curiously, Jermal did not recall what any of his other friends were wearing. (Ex. 64 at 8, 15–16, 22–23.)
  - i. Jermal said that Rayshawn changed clothes after the attack. The next day, Rayshawn told him he had washed his clothes because his pants had blood on them. He didn't remember if anyone else changed clothes. (Ex. 64 at 23–24.)
- f. Jermal said he did not see the wallet until the next day, Saturday. Rayshawn and Nathaniel showed him some money. They each had \$20 or \$30 but did not say where the money came from. Later that night, after the money was spent, they told Jermal it came from Jones' wallet. They took the bus to the mall on Saturday morning. They said they tried to use the credit cards at the ATM in the mall but didn't get any money from them. Rayshawn and Nathaniel left the mall first, then Jermal, Christopher, and Dorrell left later. He then said they were all leaving on the bus together and that's when the wallet was thrown out the bus window. He later

said he wasn't on the bus with them and they told him they had thrown it out the bus window. (Ex. 64 at 17–22, 26–27.)

- g. When asked who needed money that night, Jermal said Rayshawn, Nathaniel, and Dorrell. When asked what the money was for, Jermal responded, “We were suppose to go to the movies, they didn’t have any money, so, they, so we didn’t go.” The interview concluded at 11:34 p.m. (Ex. 64 at 26.)

113. At **11:10 p.m.**, Rayshawn signed a juvenile warning and waiver of rights with just his first name. He was the only one who was given his rights. Rayshawn agreed to speak with detectives and denied any involvement in the crime. Detectives told Rayshawn that Nathaniel had “given a statement” and then played the recorded interrogation for Rayshawn to hear. (Ex. 57, Ex. 80 at 2, Banner Supp. Hrg. Tr. 30.)

114. At **11:45 p.m.**, Jermal and his mother signed waivers allowing WSPD to search their home. (Ex. 1 at 14, Ex. 30 at 3.)

115. At **11:55 p.m.**, Christopher’s home was searched. Some items of clothing from his bedrooms were collected. The search took a little more than hour. (Ex. 83.)

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116. At **12:02 a.m.**, the search of the Tolliver residence began. WSPD collected two pairs of Nikes and a green Bugle Boy shirt. (Ex. 30 at 3.)

117. At **12:04 a.m.**, after Dorrell and his mother signed consent to search forms, Dorrell’s home was searched by WSPD. (Ex. 34 at 6.)

118. Nathaniel, Rayshawn, and their mother also consented to having their home searched. WSPD collected four pairs of Nikes, a pair of Timberland boots, a green athletic jersey, and a pair of black jeans from Nathaniel and Rayshawn’s bedroom. (Ex. 79 at 3.)

119. At **12:17 a.m.**, over an hour after Rayshawn arrived at the station, the recording was started. (Ex. 74.)

- a. Rayshawn said that Nathaniel, Jermal, Christopher, Dorrell, Shelton, Jed, and him went to Moravia Street in Jessica’s car. Christopher told them, “when I have him, if he just drops, everybody just run out of the car and do whatever they gonna do . . .” Christopher got out of the car and ran towards the house. Rayshawn and Nathaniel were standing in the middle of the street. Then Nathaniel ran over to the house. Christopher planned it so he hit Jones first. By the time Nathaniel got there, Jermal and Christopher were already beating Jones. Jed also hit and kicked Jones in the face. Christopher tied him up. Jones never moaned, hollered, or said it hurt. When they left Jones appeared to be trying to get up. (Ex. 74 at 1–5, 15–17, 22–23.)

- i. Rayshawn thought two of them “ran from the backyard” and the rest of them jumped out of the car and went to the front because Christopher told them to. (Ex. 74 at 14.)
  - ii. He later said he hadn’t seen Jed or Shelton in a week or two. (Ex. 74 at 24.)
- b. When asked what Jermal and Christopher were hitting Jones with and whether they had a weapon, Rayshawn first said they were using their fists and then added that they “had some kind of little tool or whatever. It was like some kind of little tool, but it wouldn’t that long.” A detective said Rayshawn earlier said it was an ignition tool. Rayshawn said no, it was a gardening tool, “something like one of them big long, well, like one of them little short poles that you dig out the dirt with.” It had curved ends like a rake. (Ex. 74 at 11–12.)
- c. Rayshawn said he didn’t go up to the house because he “thought them was stupid from the get go.” Rayshawn stayed in the middle of the street. When the others told him to join in, he chose not to. He denied ever hitting Jones. He said Nathaniel hit Jones once. Towards the end of his statement, Rayshawn said he touched Jones but did not hit him. (Ex. 74 at 8–10, 21–22.)
- d. Jones had been taking in groceries. He went inside and back out. When he went inside they were parked on the side of the park, on the curve. Jessicah pulled up around the corner. When he came back out is when Christopher ran over. (Ex. 74 at 5.)
- e. Christopher said he got Jones’ wallet but he didn’t show anyone. The wallet was brownish. Rayshawn didn’t see anyone get any money and thought Christopher kept it for himself. (Ex. 74 at 13.)
- f. Rayshawn didn’t know what kind of vehicle was in the driveway. A detective reminded him he said earlier there was a van and he agreed and said the van wasn’t in the driveway, it was “on the side.” Rayshawn said Jones was driving the van that evening or taking the groceries from there. (Ex. 74 at 6.)
  - i. Jones drove the Lincoln Town Car into the carport and was getting groceries from there, not the van in the driveway. (See Exs. 10, 94.)
- g. Rayshawn said he was wearing his white Air Force Ones on November 15th. Jed was also wearing either white or gray Air Force Ones. (Ex. 74 at 6, 17.)
- h. He didn’t know why they did it. They didn’t need money. Christopher just said, “let’s do it” and so they did. (Ex. 74 at 19.)
- i. When asked who unscrewed the light bulb, Rayshawn said it was Christopher. Rayshawn first thought he was able to do it because he was so tall but then thought that Christopher got a chair from the kitchen to stand on. A detective helpfully asked, “[c]ould he have stood on the hood of the car that’s in the driveway there?

It was right in the driveway. You know what I'm talking about?" Rayshawn said he didn't know but he "know he was unscrewing something though, cause [he] wasn't watching him like that." (Ex. 74 at 7–8.)

- j. He didn't know how the doorknob was pulled off the door, but Christopher did go in the house for about ten seconds. No one else went in the house. (Ex. 74 at 23.)
  - k. Rayshawn told everyone "to come on" and so they ran back to Jessica's car and drove away. Jones was lying in the grass in his yard. (Ex. 74 at 8–9.)
  - l. Rayshawn said the last time he saw the man he was lying on his back. (Ex. 74 at 25)
    - i. Mr. Jones was lying on his stomach in the carport after the assault. (Ex. 4 at 7–8.)
  - m. Rayshawn did not bring tape with him. When asked if he saw tape in Jessica's car, he asked the officers: "What kind of tape are you talking about, like . . . CD player or whatever?" A detective explained he meant the type of tape you tape a package with. Rayshawn said he did not see any tape like that. Still seeming confused as to the point of the tape, he assumed Jessica must have had tape in her pocket or someone had it behind their back. He volunteered that he hadn't seen "no tape, no rope, or nothing." (Ex. 74 at 9–10.)
  - n. After, he had Jessica drop him off at Christopher's home and he walked to his house and fell asleep. He never went back to Moravia that night. His recorded interrogation concluded at 12:42 a.m. (Ex. 74 at 13–14, 25.)
120. At **1:07 a.m.**, the search of Dorrell's home concluded. A pair of jeans and a blue Adidas jacket were collected. (Ex. 34 at 6.)
121. At **2:15 a.m.**, Rayshawn's arrest paperwork was completed. (Ex. 56.)
122. At **3:30 a.m.**, Jermal, Dorrell, and Christopher were arrested for murder. Nathaniel was also arrested for murder on November 20th, but there is no time on his arrest report. (Exs. 52–55.) Jessica was never arrested.
123. Sometime on November 20th, detectives collected red and white Air Force Ones that were being worn by Nathaniel and Rayshawn's brother, Joseph Cauthen, who was in the county jail. Rayshawn had told them Joseph was wearing the shoes Rayshawn had worn the night of the crime. Detectives noted the shoes "were the same model of shoe as the ones seized at [Nathaniel and Rayshawn's home] and had the exact same tread." (Ex. 79 at 3.)

#### **iv. *Bruton* statements**

124. *Bruton* statements were obtained from all five teenagers. All of them minimized their own involvement and none of the statements are consistent. Interestingly, a *Bruton* statement was not obtained from Jessica Black. Clearly, the plan from the beginning was to not try her for her involvement, but to use her to convict the defendants instead.

- a. Nathaniel's **11:52 p.m.** *Bruton* statement: When asked to state what he did on November 15th on Moravia Street, Nathaniel simply said, "Just standing there really and stuff." He was at the park and then walked along the sidewalk to the house. He walked past the van and went up to the carport where they were hitting him. Nathaniel hit him in the stomach three or four times using both hands. It was dark, but he doesn't know what time it was but then says it was 8:00 or 9:00 p.m. He heard sirens and took off running. He never got any money from the robbery. He never called for help. He didn't think Jones was hurt that badly. Jones wasn't "hollering" when they hit him, but he did say "stop, stop, stop." Nathaniel denied tying Jones up with tape. He also denied planning the robbery or having anything in his hands when he went to the home. (Ex. 71.)
- b. Dorrell's **12:09 a.m.** *Bruton* statement: They went to the park that night because Jessicah was bored. He went and "watched out" at the fence for about five minutes. He didn't know what he was looking out for; he just did it because he was told to. He heard a man screaming and Nathaniel told the man to shut up. He heard "like pounding and stuff" for five to ten minutes. They left and went to Christopher's house and then the bowling alley. After being at the bowling alley for twenty to thirty minutes, he spent the night at Christopher's. He denied that they went back to the crime scene that evening, despite repeated direct questioning. (Ex. 68.)
- c. Christopher's **12:18 a.m.** *Bruton* statement: He was at his house. He then went down to Jones' house with a friend. They walked partway and then met Jessicah in her car. From the park, they walked to Jones' home. Christopher didn't bring any tape or weapons. Christopher was the lookout by the stop sign. He walked closer to Jones, behind the van, when the others were beating him. He never went into the carport. He was "just looking . . . at him getting beat." The victim hollered, "help, help, help." Christopher did not help him. He touched Jones' left hip with his foot and determined he was still alive. Jones looked like he was in pain. Christopher saw blood on the chest of the white t-shirt Jones was wearing. It looked like Jones was tied up with tape. Christopher didn't untie him because he didn't want to get his fingerprints on it. Christopher again said Jones was by the van, but when questioned he said he was "by his porch step." When asked if that is between his car and the door of his house, Christopher said "Yeah." A detective responded, "Cause see you had to go up into the carport to be able to touch him with your foot?" Bryant responded, "Oh yeah, I did, after everything was over." When asked what he did next, Christopher seemed unable to recall what he is supposed to say and said, "We got back to the car, went to Creek Side Lanes, came they, I mean, we, uh, they changed they clothes." Christopher did not change his clothes, but Nathaniel and Rayshawn did. After the bowling alley, they went back to the scene and the whole neighborhood was looking. Christopher saw Jones "in a body bag."<sup>20</sup> Christopher said he told his mother that someone was killed up by Moravia immediately, before they went to the bowling alley. Christopher denied having an agreement to split the money. He said he went to the house because they wanted him to go with them. "I

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<sup>20</sup> As stated previously, it is not possible Christopher saw this because Jones was not placed in the body bag until after midnight.

just followed, cause I was already walking in the group.” He didn’t know they were going to hurt or kill him. They just said they were going to rob him. (Ex. 73.)

- d. Jermal’s **12:37 a.m. Bruton** statement: They got to the park in Jessica’s car and sat there. They walked to Jones’ home and waited for him to come out of his front door.<sup>21</sup> The others jumped on him. Jermal was the lookout and was standing on the sidewalk on the curb, in front of the house. Jermal never went to the carport. He saw Jones being assaulted and go down on the ground. Jermal did not try to help him. While Jones was being assaulted, Jermal ran home. Then he said he ran to Christopher’s home. Everyone else came to Christopher’s “after they changed clothes.” Jermal did not change clothes. Then they all went to the bowling alley.

- i. Jermal’s *Bruton* statement ended with the following exchange:

SMITH: OK. Just one thing of clarification, you said when you got up there, he asked you what you did, in your first statement was "I jumped on him". Did you jump on him?

TOLLIVER: No, I didn't.

SMITH: Why do you think you said you did?

TOLLIVER: I didn't jump on him, my uh...

SMITH: But I'm saying you said, "I jumped on him", why did, why, why would you say...

TOLLIVER: Because I was answering you just like," when you first got up there, what did you d", I was like, "I didn't do it."

SMITH: No, your first statement was "I jumped on him".

TOLLIVER: You asked me, uh, when I first got up to it, what did I do.

SMITH: Well, some point in time during this thing, you said "I jumped on him", what did that mean?

TOLLIVER: That's what you uh, asked me. You asked me did I uh, what did I do when I seen him.

BISHOP: OK. And your answer was, "I jumped on him". Now, how did you jump on him?

TOLLIVER: I didn't jump on him. Rayshawn and Stinky did.

SMITH: Why did you say, "I jumped on him"? That's what, that's what came out your mouth.

TOLLIVER: I know, I'm tired.

(Ex. 65.)

- e. Rayshawn’s **12:58 a.m. Bruton** statement: He was at Christopher’s playing a video game. He didn’t know what time they got in the car to go to Moravia Street. When asked if it was “still daylight or dark,” he responded, “It was both, half . . .” There were four or five other people in the car. He first said he was in the passenger seat

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<sup>21</sup> Jones did not use his front door. He was coming and going from his carport door on the side of the house. WSPD noted this discrepancy twice and asked Jermal, “Did he come out of the front or did he come out a door that is in the carport?” Jermal continued to say it’s the front door, not recognizing they are directing him to another answer. (Ex. 65.)



and then said he was behind the passenger's seat. There was no talk of committing a robbery. Three others got out of the car before him. He stood in the street while three to four others beat Jones. He told them to leave. Before they left, someone searched Jones' pockets. By "touching" Jones, he was hitting or patting him on his leg. Jones' arms were free at this point. He did not know Jones was being robbed. He went back to the car and was in the front passenger seat this time. He was dropped off at Christopher's home, walked home, and went to sleep. (Ex. 75.)

**v. Failure to Corroborate the Teenagers' Statements**

125. On **November 19, 2002**, while the teenagers were being interrogated, detectives contacted mall security to determine if any of them had tried to use Jones' ATM card. The report indicates they "met with negative results in this search." (Ex. 59 at 2.)
126. At 11:15 p.m., WSPD went to the rec center at the park to try to find the roll of duct tape Christopher said Dorrell had thrown it. No tape was recovered at the park. (Ex. 81 at 4.)
127. On **November 20, 2002**, Jessicah's car was processed for evidence. According to law enforcement reports, "a visual search of the interior and exterior of the vehicle failed to reveal anything we could clearly identify as evidence." (Ex. 37 at 5–6.)
128. A second search, using luminol and phenolphthalein, "resulted in the discovery of possible blood evidence in the seat portion of the driver's seat and the back portion . . . of the driver's seat back." The relevant sections of fabric were cut and collected. (Ex. 37 at 6.)
129. WSPD went to Maxway and Dollar General but did not find a product similar to the black tape used to bind Jones. Maxway did not have surveillance video. (Ex. 37 at 6.)
130. On **November 22, 2002**, WSPD cloned the Dollar General surveillance tape. (Ex. 37 at 6.)
  - a. By the time of trial, law enforcement determined that no one entered the store during the relevant time period that matched the teenagers' descriptions. (2004 Trial Tr. Vol.8 133–34.)
131. It is inconceivable that five teenage boys could commit this crime without leaving any fingerprints or DNA evidence connecting any of them to the scene.
132. Inexplicably, Shelton, who is named repeatedly in the teenagers' statements, was never interviewed and there was no serious attempt to even ascertain his last name.
133. November 15, 2002, was not a notable day for any of the teenagers until their arrest on November 19, 2002. It was a day just like any other. As a result, understandably, their memories of their whereabouts between 6:25 and 6:46 p.m. on the 15th are at times inconsistent with one another. However, the evidence shows they were not all together during that time and they are all consistent that they were not involved in the robbery and murder of Nathaniel Jones.

- a. WSPD spent eight hours scaring, manipulating, and feeding teenagers information, resulting in false confessions that not only contradicted each other, but contradicted the crime scene evidence.
- b. Had WSPD ever objectively investigated the case and attempted to corroborate the teenagers' original statements, evidence could have been collected to verify their alibis. Twenty years later, that information cannot be obtained.

#### **vi. Forensic Testing**

- 134. On November 19, 2002, the SBI "successfully preserved and lifted the two patent footwear impressions from the exterior front driver's side hood area of the crime scene using a . . . gel lifter." (Ex. 16 at 2.)
- 135. Of the multiple shoes obtained from the teenagers, the SBI Crime Lab determined one right shoe collected from Rayshawn and Nathaniel's home "could have been made by that shoe or another shoe of the same physical size, design and general condition. Due to the limited detail in the impression, a more positive association could not be made." (Ex. 18 at 2.)
- 136. Twelve latent fingerprints were lifted from Jones' vehicle, but none matched any of the teenagers. (Ex. 62.) One fingerprint was a match to Scriven who was present when 911 was called. (Ex. 15.)
- 137. Many items were sent to the SBI Crime Lab to be examined for blood. Those items included the seat cover and cuttings from Jessicah's car, the toboggan collected near the crime scene, the baseball bat, and numerous shoes and articles of clothing belonging to the teenagers. All of those items failed to reveal the presence of blood. (Ex. 97.)

#### **D. Suppression Hearings**

- 138. All five teenagers filed motions to suppress their coerced, false confessions. Ultimately, all five motions were denied.

##### **i. Rayshawn's Suppression Hearing**

- 139. Rayshawn's motion to suppress was heard on March 22, 2004. Rayshawn did not testify at the hearing. (*See* Banner Supp. Hrg. Tr.)
- 140. During the hearing, the court asked Detective Lyman Clark (Det. Clark) if the transcript being introduced was "the entire recorded statement both while he was in denial and later when he may have said something" or "just the good stuff from your perspective and not all the denials?" Det. Clark testified that it was "the actual statement." The court clarified, "Well, when you chose to start taping it." Det. Clark then conceded that the transcript was not of the entire interview. (Banner Supp. Hrg. Tr. 23-24.)

##### **ii. Dorrell's Suppression Hearing**

- 141. Dorrell's motion to suppress was also heard on March 22, 2004.

142. Detective Mark Smith (Det. Smith) testified that no one told Dorrell if he admitted to being a lookout, he would get to go home. Det. Smith also denied that anyone threatened Dorrell with the death penalty. (Brayboy Supp. Hrg. Tr. 53.)
143. However, Dorrell testified that Detectives Poe and Smith both repeatedly threatened him with the death penalty. (Brayboy Supp. Hrg. Tr. 70–71, 95–96.)
144. Dorrell’s mother, Lisa Brayboy, also testified that she heard Lieutenant Weavil tell Dorrell, “I’m gonna make the judge give you the maximum.” (Brayboy Supp. Hrg. Tr. 91.)

### **iii. Christopher and Jermal’s Suppression Hearing**

145. Jermal and Christopher’s motions to suppress were heard jointly on March 23, 2004.
146. In his testimony, Detective David Rose (Det. Rose) admitted that, before Jermal made any inculpatory statements, Detective Flynn “had discussed the possible penalties for the, for murder, and had made reference to the death penalty.” It was after Det. Flynn referenced the death penalty that Jermal agreed to write a statement. (Bryant and Tolliver Supp. Hrg. Tr. 37, 41–42.)
147. Det. Rose conceded that he knew Jermal was not eligible for the death penalty due to his age. He also admitted that the mention of the death penalty was not documented anywhere in his report of the interview. (Bryant and Tolliver Supp. Hrg. Tr. 51–52.)
148. Det. Rose told the court that *after* Jermal had already given inculpatory statements, he asked Jermal if he needed to use the restroom and Jermal replied, “I’ll wait until I get home.” (Bryant and Tolliver Supp. Hrg. Tr. 23.)
149. Detective T.J. Taylor (Det. Taylor) testified that, while Christopher was denying any involvement in the crime, Detective Nieves told him to tell the truth or he could get the death penalty. Within ten minutes of the death penalty threat, Christopher began making inculpatory statements. (Bryant and Tolliver Supp. Hrg. Tr. 112, 126–28.)<sup>22</sup>
150. Det. Taylor, like Det. Rose, conceded that he knew Christopher was not eligible for the death penalty due to his age. (Bryant and Tolliver Supp. Tr. Hrg. 126.)
151. Jermal testified that he was not told that he could leave at any time, but when he asked to go home, he was told that they still had more questions to ask him. (Bryant and Tolliver Supp. Hrg. Tr. 153–55.)

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<sup>22</sup> The judge later expressed skepticism that being threatened with the death penalty could cause someone to give an inculpatory statement. He reasoned that the threat of death should make someone give an exculpatory lie, not an inculpatory lie. (Bryant and Tolliver Supp. Hrg. Tr. 166–67.) It should also be noted that the next morning, after a news report about the death penalty threats, the judge explained that he thought the news report was erroneous because it “makes the police look like they did something wrong to get a confession when they really didn’t do anything illegal at all,” and he opined that “[t]he police so far have not gone beyond the bounds of impropriety.” (Cauthen Supp. Hrg. Tr. 16–19.)

152. Jermal said when he was brought back to the Public Safety Center after the wallet search, one of the detectives grabbed his arm and said, “This is where the lethal injection would go.” (Bryant and Tolliver Supp. Hrg. Tr. 159–60.)
153. Jermal also said the detectives had given him information about things other people were saying, and things the detectives thought might have happened. For example, they told Jermal that someone said he was a lookout, so he agreed to that; they asked him about a baseball bat, so he told them where it was; and they kept asking if he knew where the wallet was, so he told them it was out by the mall. (Bryant and Tolliver Supp. Tr. Hrg. 162, 164–66.)
154. Christopher testified that a detective came into the room where he was being kept and said, “The man on the phone was asking which arm [you] want[] the death penalty in.” Christopher said he felt intimidated and scared and started crying. He said he gave a statement

Because they was telling me if I don’t tell them something I was going to get the death penalty cause the man was on the phone right now asking which arm I wanted it in, and they was pointing out the vein and all this stuff, and I ain’t never been through nothing like this, so I just thought if whatever I said would satisfy them.

(Bryant and Tolliver Supp. Hrg. Tr. 198–99, 201.)

155. The judge asked, “So you’re telling this Court that the reason you said you were there and knew anything at all about it because you just wanted to go home?” Christopher responded, “Yeah, I just wanted to go home.” (Bryant and Tolliver Supp. Hrg. Tr. 201.)

#### **iv. Nathaniel’s Suppression Hearing**

156. Nathaniel’s motion to suppress was heard on March 23–24, 2004.
157. Detective Mike Rowe (Det. Rowe) testified that when he would get information during the interview, he would leave and “inform[] the other supervisors and detectives as to what had transpired during this interview so they could incorporate that in the other interviews that were going on.” Det. Rowe confirmed that they were sharing information between interviewees and interviewers. However, Det. Rowe then denied giving any details to Nathaniel, and said, “The purpose of an interview is for us to learn information, so if I were to tell him the information, then I wouldn’t be learning anything.” (Cauthen Supp. Hrg. Tr. 34, 45.)
158. Det. Rowe admitted that when he was taking Nathaniel’s recorded statement, Nathaniel mentioned that Sherman Williams was present, but since Det. Rowe did not think Sherman was involved, he tried to elicit from Nathaniel that Sherman was not actually there. (Cauthen Supp. Hrg. Tr. 62.)
159. Nathaniel testified that Lieutenant Weavil threatened him with lethal injection. Nathaniel also said that they were telling him details provided by the other teenagers, such as the claim that Nathaniel hit Jones with the bat and that Nathaniel and Rayshawn were the ones that took his wallet. (Cauthen Supp. Hrg. Tr. 136, 140.)

160. Nathaniel said when he talked to his mom, it upset him that it seemed like she did not believe him just like the police did not believe him. (Cauthen Supp. Hrg. Tr. 144.)

161. When asked why somebody would admit to doing something if they did not do it, Nathaniel explained:

I was threatened. I was coerced to say it, and pressured into saying something I did not want to say. I asked them to call my mother, they did not. They had guns on them. I did not know what to do. I didn't know if I could leave or stay. They never informed me that I could leave so I just sat in the room until they – until they were going to let me go home.

(Cauthen Supp. Hrg. Tr. 150.)

162. Lieutenant Weavil denied that he threatened Nathaniel with the death penalty. He admitted, however, that he was aware other detectives were threatening some of the teenagers with the death penalty. Lieutenant Weavil said that was not a tactic frequently employed by the detectives in his division. (Cauthen Supp. Hrg. Tr. 213, 215, 217–18.)

## **E. The Trials**

### **i. Rayshawn and Nathaniel's 2004 Trial<sup>23</sup>**

#### **State's Presentation of Evidence**

163. **Robin Paul** (Paul) is the daughter of the victim, Nathaniel Jones. She testified that when Jones would leave the gas station, he would put the earnings for the day in a briefcase and take it with him. Jones would keep the briefcase in the trunk of his car while transporting it. (2004 Trial Tr. Vol.3 523–25, 531.)

164. Paul testified that sometime before 7:00 p.m. she expected to receive a call from Jones once he had returned home. When that call never came, she called her sister Rhonda and asked if she had heard from Jones. Rhonda told her that she had tried calling Jones, but he did not pick up. Paul then sent her husband to go check on Jones. When Paul's husband arrived at Jones' house, he told her that Jones was dead. (2004 Trial Tr. Vol.3 526, 537–38.)

165. **Claude Walker** (Walker) found the body of Jones on the ground of the carport. Jones' hands were taped behind his back and his head and neck were also taped. After locating the body, Walker told the young man and woman across the street to call 911. (2004 Trial Tr. Vol.3 550–553.)

166. **Terrance Jones** (Terrance) was dropped off at his home by Jones around 6:30 p.m. (2004 Trial Tr. Vol.4 572–76, 579.)

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<sup>23</sup> Only testimony that is additional to what has already been outlined in this brief is included in the trial summary.

167. **Corporal K. A. Aldridge** (Cpl. Aldridge) with the WSPD testified that at 7:53 p.m. police dispatch received a call about the crime. He and other officers arrived at Jones' house at 7:56.
168. The door leading from the carport to inside the house was cracked open and the keys were still in the lock. An unlit motion-activated light was in the carport. There were shoeprints on the hood of the Lincoln and blood on the door handle. (2004 Trial Tr. Vol.4 588–89, 597, 599.)
169. Cpl. Aldridge saw a six-pack of Sprite on the kitchen table just inside the carport door to the house. Aldridge did not see any signs of a struggle inside of the house. (2004 Trial Tr. Vol.4 578, 608.)
170. **Brian Frady** (Frady), a crime scene technician with the WSPD, helped process the crime scene. Frady collected three pieces of tape. Two pieces were cut off Jones and one was found on nearby steps. He took samples of the red substance found in the carport. He also collected Jones' watch and the mail addressed to Jones found under the Lincoln. (2004 Trial Tr. Vol.4 624–26, 633–44.)
171. Frady dusted the Lincoln for prints and photographed the shoeprints found on the hood of the Lincoln. He lifted eleven latent prints from the Lincoln but was not assigned to examine them. He also located a storm door handle underneath the Lincoln that had been broken off the storm door in the carport. (2004 Trial Tr. Vol.4 645–56.)
172. The carport did not have enough room to properly process the shoeprints on the Lincoln, so Frady taped a cardboard box over the prints to preserve them for later processing at the police station. (2004 Trial Tr. Vol.4 646–48.)
173. He found a briefcase in the trunk of the Lincoln. A photo of the briefcase showed it open with stacks of cash inside. (2004 Trial Tr. Vol.4 657–58, 683.)
174. The two bulbs in the motion sensor light in the carport would not turn on because they were loose. After giving the light bulbs a quarter turn, they started working. Frady never processed the lightbulbs for prints. (2004 Trial Tr. Vol.4 659–60, 688.)
175. **Lisa Thomas** (Thomas), an identification crime scene technician with the WSPD, processed Jones' Lincoln Town Car. She photographed the interior and exterior of the car as well as the shoeprints on the hood. The photos of the shoeprints were taken top-down and include a standard of measurement. She also assisted in using powder to lift the shoe prints from the car. (2004 Trial Tr. Vol.4 697–99, 711–12, 716.)
176. Thomas photographed two Five Alive drink cartons, a jacket, and three bibles from the car. She found two additional fingerprints on the exterior of the car, but said these prints could have been the same as ones previously lifted by Frady. Thomas also collected a white fiber from the driver's side door. (2004 Trial Tr. Vol.4 715, 717–19, 740.)
177. Thomas processed Jessica Black's black Mercury Cougar. Three areas on the driver's seat of the car tested positive for the possible indication of blood. Thomas cut and removed the fabric for two of the blood locations and removed the back seat cover of the driver's seat that contained the third location. (2004 Trial Tr. Vol.4 720–22, 732.)

178. **Corporal Mark Griffin** (Cpl. Griffin), was the lead investigator for the WSPD. He arrived at Jones' house at 8:45 p.m. and was present when Dr. Jason began examining the body. (2004 Trial Tr. Vol.4 743–44, 748–49.)
179. On November 19, 2002, Cpl. Griffin spoke with Jessica Black and obtained consent to search the homes of Dorrell Brayboy, Jermal Tolliver, Christopher Bryant, Nathaniel Cauthen, and Rayshawn Banner for evidence relating Jones' murder. Police collected blood and fingerprints of all five defendants and sent them to the SBI Lab. Cpl. Griffin never instructed anyone to lift fingerprints from inside the Lincoln. (2004 Trial Tr. Vol.4 750–754, 798–99, 806.)
180. Numerous items of clothes and shoes were collected from the defendant's houses and sent to the SBI. Among these items were a pair of Nike Air Force Ones found at Jermal's house and a pair of Nike Air Force Ones found at Rayshawn and Nathaniel's house. (2004 Trial Tr. Vol.5 783–797.)
181. Cpl. Griffin sent an aluminum baseball bat, turned over by Thayers Tolliver, to the SBI Lab. (2004 Trial Tr. Vol.5 812.)
182. The three pieces of mail, the white fiber, the tape, the shoeprints and fingerprints from the car, a piece of the handle from the storm door, and the fabric from the Mercury Cougar were sent to the SBI Lab. None of the fingerprints lifted from the Lincoln matched the defendants. (2004 Trial Tr. Vol.5 799–802.)
183. Jones' wallet was never found. (2004 Trial Tr. Vol.5 803–04.)
184. **Donald Jason** (Dr. Jason) was the forensic pathologist who performed Jones' autopsy. He located several lacerations and abrasions on Jones' head and face. Jones' right hand also had several scrapes and abrasions which Dr. Jason characterized as defensive wounds. Jones had abrasions on his knees that were consistent with him falling onto them. Jones also had some abrasions on his left shoulder. Dr. Jason testified that the lacerations on Jones' head were likely caused by some type of lengthy instrument with a sharp edge (2004 Trial Tr. Vol.5 816–17, 856–58, 861, 876.)
185. Dr. James determined that Jones suffered from second-grade heart failure. His cause of death was cardiac arrhythmia which was brought on by stress caused by the blunt force trauma to Jones' head. (2004 Trial Tr. Vol.5 892, 895.)
186. **Jessica Black** testified that on November 15, 2002, she was driving all five defendants around in her Mercury Cougar. At one point, she heard the defendants talking about a man, when he might be home, and how much money he might have on him. (2004 Trial Tr. Vol.6 6, 21–22.)
187. After dropping Jed off at his home, the defendants had Jessica drive them to Maxways. All the defendants except for Rayshawn entered Maxways and shortly after they returned to the car they revealed that they had obtained dark-colored tape (2004 Trial Tr. Vol.6 22–24.)

- a. On cross-examination, Jessica admitted that when she talked to police she described the tape as silver. (2004 Trial Tr. Vol.6 95.)
188. Before going to Maxways, Jessica took all of the defendants except for Jermal to the Dollar General. Christopher and Dorrell entered the Dollar General and returned to the car with durags. Jessica then drove back to Jermal's house to pick him up before going to Maxways. (2004 Trial Tr. Vol.6 26–28.)
189. Jessica and the defendants left Maxways and drove to Jermal's house for a few minutes before driving to Belview Park. Jessica parked in the parking lot of Belview Park and then she and the defendants walked to the picnic tables. While at the picnic tables the defendants saw a car driving towards Jones' house. The defendants said, "There's the car. Come on." and then proceeded towards where the car had parked. Nathaniel and Christopher were carrying sticks. Jermal stayed back for a minute before following the other defendants. (2004 Trial Tr. Vol.6 28–29, 33, 35–37.)
- a. On cross-examination, Jessica acknowledged that in her last interview with police she told them that she could not park at the Belview parking lot because it was closed. (2004 Trial Tr. Vol.6 98.)
190. Five minutes after the defendants left the picnic tables, Jessica could hear them yelling, "Get the fuck down, give us that shit." She heard an unfamiliar voice say, "Leave me alone." She also heard the sounds of hitting. The sounds lasted for ten minutes and then the defendants returned to the picnic table. Jessica heard them say, "Yeah, we got that shit" and "We fucked him up." Jessica noticed a square imprint in Nathaniel's pocket that wasn't there before. (2004 Trial Tr. Vol.6 38–41.)
- a. On cross-examination, Jessica said she was probably about 100 yards away from the yelling. (2004 Trial Tr. Vol.6 154.)
  - b. She testified that despite Nathaniel wearing a long shirt, a jacket, and baggy pants, she was able to see a rectangular imprint in his pocket. (2004 Trial Tr. Vol.6 107–08.)
  - c. When Nathaniel and Christopher returned the picnic table, Jessica said they were no longer carrying sticks. (2004 Trial Tr. Vol.6 113.)
191. After returning to the picnic tables, the defendants said they wanted to change clothes. Jessica dropped Dorrell off at his house, dropped Jermal and Christopher off at Christopher's house, and then drove to Nathaniel and Rayshawn's house where she went inside with them. On the drive back from Belview Park all the defendants, except for Jermal, discussed how to split up the money. While inside Rayshawn and Nathaniel's house, Jessica saw them messing with papers on the bed. (2004 Trial Tr. Vol.6 41–44.)
- a. On cross-examination, Jessica admitted that she never said anything to the police about Nathaniel and Rayshawn messing around with papers. (2004 Trial Tr. Vol.6 109.)



192. After Rayshawn and Nathaniel changed clothes, Jessica drove them to Christopher's house where all five defendants met back up. There was more discussion among the defendants about how to spend the money. Then all the defendants got into Jessica's car and went to the mall. After the mall, they went to Creekside Bowling Lanes. (2004 Trial Tr. Vol.6 45–47.)
- a. On cross-examination, Jessica acknowledged that in her final statement to police she told them that she was not at the mall that night. (2004 Trial Tr. Vol.6 119–21.)
  - b. She testified that she went to the mall to meet her friend Jordan Sellers, but she was not able to locate her. (2004 Trial Tr. Vol.6 148.)
193. At the bowling alley, Jessica and the defendants played billiards until they were kicked out due to an age restriction that gets imposed on the billiards room at a certain time. Nathaniel also got into an argument with a police officer and the officer made them all leave. (2004 Trial Tr. Vol.6 47–48.)
194. After briefly stopping by the home of one of Nathaniel's friends and visiting a convenience store, Jessica drove the defendants back to Belview Park. When they arrived, police were in the area and some of the roads had been blocked off. Jessica parked her car on the street next to the park. The defendants and Jessica got out of the car and proceeded to the house where the police were. Once she reached the house, Jessica saw a body on the ground outside. (2004 Trial Tr. Vol.6 48–50, 52–53.)
195. She testified that when she was at the park the first time, the yelling she heard was coming from the direction of what she now knows to be Jones' house. (2004 Trial Tr. Vol.6 54.)
196. After seeing the body, Jessica and the defendants returned to her car and she dropped all of the defendants off at their homes before heading home herself. (2004 Trial Tr. Vol.6 56–57.)
197. The next day, Rayshawn and Nathaniel told her to lie to police if she was questioned. (2004 Trial Tr. Vol.6 60–62.)
198. A few days later, police contacted Jessica and said they wanted to talk with her because of her connection to the five defendants. She initially told police she had nothing to do with Jones' murder, but she eventually told them about her involvement. (2004 Trial Tr. Vol.6 57–59.)
199. WSPD **Detective David Rose** (Det. Rose) received a phone call from Jermal's mother on November 19, 2002. As a result of that phone call, he interviewed Jermal, Rayshawn, and Nathaniel (2004 Trial Tr. Vol.6 184–88.)
200. WSPD **Detective Michael Rowe** (Det. Rowe) testified that on November 19, 2002, he interviewed Nathaniel about his whereabouts the night of the murder. Nathaniel said that he went to a store, the mall, a bowling alley, and then Belview Park where he learned that a man had been killed. A few hours later, Det. Rowe interviewed Nathaniel again. During that interview, Nathaniel admitted to being involved in the robbery and murder of Jones. (2004 Trial Tr. Vol.6 194–197, 199–202.)

201. Nathaniel arrived at the police station at 4:30 p.m. and the taped interview was conducted at 10:14 p.m. Det. Rowe read the transcript of his taped interview with Nathaniel for the jury. (2004 Trial Tr. Vol.7 13, 21, 23–24, 29, 31.)
202. On cross-examination, Det. Rowe testified that he did not advise Nathaniel of his rights because when Nathaniel was being interviewed he was not in custody. Det. Rowe testified that Nathaniel could have gotten up and left the interview room if he wanted to. Det. Rowe never told Nathaniel that he could have his parents present and he never told Nathaniel's mother, who was at the police station, that she could remain in the interview room with her son. (2004 Trial Tr. Vol.7 51–55.)
203. Det. Rowe admitted that many of the questions he asked Nathaniel during the interview were leading. (Trial Tr. Vol.7 68–69.)
204. WSPD **Detective Michael Poe** (Det. Poe) testified that he searched Nathaniel and Rayshawn's home and seized various shoes, a pair of black jeans from inside the dryer, and a green jersey from the home. (2004 Trial Tr. Vol.7 77–94.) He later located Joseph Cauthen, who was in jail at the time, and seized his Nike Air Force One shoes (2004 Trial Tr. Vol.7 94–95.)
205. WSPD **Detective Lyman Clark** (Det. Clark) read to the jury a transcript of the Rayshawn's taped interview, as well as his *Bruton* statement. (2004 Trial Tr. Vol.7 116–36.)
206. On cross-examination, Det. Clark admitted that Banner had been questioned for about an hour before he recorded his statement and that he frequently asked Banner leading questions during the taped interview. (2004 Trial Tr. Vol.7 151, 163–64.)
207. Special Agent **Russell Holley** (SA Holley) was a forensic serologist with the SBI. SA Holley tested the baseball bat, the cuttings from the Mercury Cougar, and the various clothes and shoes collected in this case for blood. He did not detect blood on any of the items. (2004 Trial Tr. Vol.7 170, 173–77.)
208. Special Agent **Joyce Petzka** (SA Petzka) worked in the latent evidence section of the SBI crime lab and was an expert in latent prints and footwear impressions. She testified that she was unable to find prints on the mail collected from the crime scene, the lightbulbs from the carport, the storm door handle from the carport, the tape used to restrain Jones, or the baseball bat turned over by Thayers Tolliver. (2004 Trial Tr. Vol.7 180, 185–88.)
209. SA Petzka compared the shoe prints of four different pairs of shoes to the shoe prints found on top of Jones' Lincoln Town Car. She testified that one of the pairs of Nikes recovered from Rayshawn and Nathaniel's house matched the footprints found on the Lincoln in size, pattern, and wear. (2004 Trial Tr. Vol.7 194–200.)

### **Defense Presentation of Evidence**

210. The defense attempted to have **Soloman Fulero** (Fulero) testify as an expert witness in the field of social and clinical psychology of false confessions. However, the court did not allow the testimony reasoning that Fulero was in no better position than the jury to draw inferences

about the nature of the defendants' confessions because he had no specific knowledge of the defendants or their mental condition. (2004 Trial Tr. Vol.8 74–77.)

211. On voir dire, Fulero testified about different techniques that some officers use to get confessions. These techniques include lying, role minimization, and maximization and minimization. He described maximization and minimization as threatening a suspect if they don't give the desired answer but offering leniency if they give the desired answer. Fulero said that officers will build a rapport with the suspect so that the suspect feels more comfortable talking. Fulero states that juveniles are particularly susceptible to rapport building and that it may cause them to give a false confession. (Trial Tr. Vol.8 32–36.)
212. Fulero states that juveniles are very susceptible to promises to let them go home, are more suggestible than adults, and there is research that suggests that juveniles are more likely to give false confessions than adults. (Trial Tr. Vol.8 36, 38, 43.)
213. On cross-examination, Fulero testified that only five to ten of his published articles are relevant to false confessions and interrogations and that those articles are primarily concerned with the mentally retarded. His focus has never been juveniles and he could only testify to aspects of juvenile confessions that he has learned from others. (Trial Tr. Vol.8 45–46, 48–49.)
214. Fulero had not personally evaluated the defendants or looked at their school records or their IQ record. He only reviewed information concerning Banner and Cauthen. He did not read statements from the other defendants. (Trial Tr. Vol.8 51–52.)
215. Fulero testified he was unaware of what techniques were used by police because recordings do not exist for all of the interviews. He acknowledged that he could not speak to the specific suggestibility of the defendants. He could only say that because of their age they were more susceptible to interrogation. (Trial Tr. Vol.8 63, 67–68.)
216. **Ava Williams** (Williams) testified that she knew Jones and sees him most days. On November 15, 2002, around 6:00 p.m., she drove by Jones' house and saw a man that was not Jones inside of Jones' Lincoln in the carport. Williams said the man in the car had a smaller build than Jones and it looked like he had a short afro or was possibly wearing a durag. (2004 Trial Tr. Vol.8 83–89.)
217. Williams also noticed two women and their children in Belview Park when she drove by. She did not see anyone else in the park. Williams did not see any teenagers running around near Jones' house when she was there. (2004 Trial Tr. Vol.8 90–91.)
218. **Calvin Scriven** (Scriven) testified that around 7:00 to 7:30 p.m. on November 15, 2002, he arrived at Coleman's home, across the street from Jones' home. After Walker found the body, Scriven checked Jones' neck for a pulse and felt "a little something." Jones was face down, but Scriven turned his face to the side to see if he was breathing. (2004 Trial Tr. Vol.8 102.)
219. **Kenneth Gary** (Gary) was a dispatcher for Willard Cab Company. He testified that the same caller, who sounded like a young black male, called Gary multiple times for a cab and to

find out how far away the cab was. When the cab reached Jones' house, the cab driver called Gary to tell him that no one was there. (2004 Trial Tr. Vol.8 108–11.)

220. **Arnaldi “BJ” Lowery**<sup>24</sup> (BJ) testified about seeing a male run through Belview Park on November 15, 2002. (2004 Trial Tr. Vol.8 124–27.)
221. **Cpl. Mark Griffin** was recalled to the stand and testified that police never found any durags at any of the defendants' homes. Police were unable to find similar tape to that used on Jones at the Dollar General or the Maxways. (2004 Trial Tr. Vol.8 129, 131, 134.)
222. He viewed the surveillance tape from the Dollar General for the relevant time period but did not see anyone matching the defendant's description enter the store. There was no surveillance footage from the Maxways for the relevant time period. (2004 Trial Tr. Vol.8 133–34.)
223. Cpl. Griffin testified that \$952.70 was found on Jones' body in his pocket. (2004 Trial Tr. Vol.8 137.)
224. Police located a blue toboggan in the park on November 18, 2002. No sticks were ever collected as evidence. (2004 Trial Tr. Vol.8 138.)

#### **Statement Before Sentencing**

225. After the guilty verdicts were rendered but prior to sentencing, Nathaniel made the following statement to the court:

I spent two years of my life in jail for something I didn't do. I can't say, you know what I'm saying, who done it or who did it – (unintelligible) – live my life – (unintelligible) – these people right here – (unintelligible) – my life for stuff I didn't do. (Unintelligible) My momma, Theresa McCants, who – (unintelligible) – who stopped these people right here for blaming me for taking stuff I never took, for doing things I never done. I had to come in here, had to pray to this man every day for two years of my life, for Mr. Jones, this man. I never knew this man, never hurt this man a day in my life. I'm sorry. All I got – (unintelligible) – I really am. I can't tell you who killed this man. It's not my fault that these people put me in a room and make me say stuff I didn't want to say. It's not my fault. Like I said – (unintelligible) – everybody loved him because they knew him. Oh, Mr. Jones. Don't nobody know me. How can y'all judge me of something I didn't do?

I had to sit in front of twelve people. I couldn't even pick my own color – (unintelligible) – people color. They thought I murdered somebody I didn't murder. It got to be a – by people that put handcuffs on me for something I didn't do. I know y'all look at me wrong, because y'all read in the paper, yeah, fifteen-years-old kids

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<sup>24</sup> BJ was 12 years old when he testified. (2004 Trial Tr. Vol.8 115.)

done done this or fourteen-year-old kids done done this, but how do y'all know? Y'all sit right here and look at all these shoes and look at everything on the table, but nothing – (unintelligible) – to this man or what they done to me. I'm sorry that the man lost his life, I really am, and I hope I can tell you nothing, but I can't.

And I look at y'all and I see this lady right here and cry for his daughter. I had to look at her – she don't even know who killed her granddaddy. She don't even know who killed her father. And I got to come in here and look at these people tell me I'm guilty and I know I'm not guilty. I got to pray to God to ask y'all to please show mercy and faith upon me for something I didn't even do. I got to spend the rest of my life in prison. That's not right. And y'all say – (unintelligible) – justice. What is justice? This is not justice. That's not justice. You got people – (unintelligible) – twelve people all judging my life. That's not right. But this is the law, right? But this is the law.

Ma'am, all of y'all, Mr. Jones' family, I'm sorry that y'all lost whoever he was. What I know, he was a good man. That man never heard of me. He never done anything to me. I never knew him. I ask y'all to please forgive whoever done it. I can't even tell you who done it. Ask you to please forgive that person, pray to God for that person.

That's all I have to say. Thank you.

(2004 Trial Tr. Vol.9 146–48.)

## **ii. Christopher, Jermal, and Dorrell's 2005 Trial**

226. As there was a great deal of overlap in the evidence presented at the two trials, the only portions summarized for the 2005 trial are those that are new or different from the 2004 trial.

### **State's Presentation of Evidence**

227. **Robin Paul** testified Jones usually kept a wad of cash in his front pocket. He used this cash to make change for customers at the gas station. He would carry his wallet with his personal money in his back pocket. (2005 Trial Tr. Vol.3 197.)
228. When Paul was a kid she would play at Belview Park. When it got dark, her mother would call to her from the carport of Jones' house. Paul had no problem hearing her mother call from the rec center at Belview Park. The rec center is only slightly closer to Jones' house than the Belview Park picnic tables. (2005 Trial Tr. Vol.3 215–17.)
- a. On cross-examination, Paul testified that you could see the picnic tables at Belview Park from the driveway of Jones' house. Paul says a person would have to “sort of yell” from Jones' carport for a person sitting at the picnic tables to hear them. (2005 Trial Tr. Vol.3 222–23.)

229. **Brian Frady** testified that even though he used gloves while screwing in the motion lights in the carport, he could have smudged prints that had been previously left on the bulbs (2005 Trial Tr. Vol.4 39–40.)
230. He said that a person standing on the street outside Jones' house behind the police tape would have been able to see Jones' body once it had been moved out of the carport by EMS. (2005 Trial Tr. Vol.4 41–43.)
231. **Corporal Mark Griffin** testified that the neighborhood around Jones' house was canvassed, but no leads were developed from the canvass. (2005 Trial Tr. Vol.4 144.)
232. On cross-examination Cpl. Griffin stated that he did not want to record an interview until it coincided with what he considered to be a consistent view of the case. (2005 Trial Tr. Vol.4 173.)
233. **Jessicah Black** testified that she, Dorrell, Christopher, Rayshawn, and Dorrell went to the Dollar General. On their way back they drove past Jed. Jed got into Jessicah's car and she dropped him off at his home which was near Jones' house. Before Jed got out of the car, the defendants who were in the car and Jed started talking about a guy they were going to rob that night. Later when all five defendants were in her car they had another discussion about robbing someone. (2005 Trial Tr. Vol.4 209–19.)
234. Jessicah testified that the recorded statement she made for police was not a full account of everything that happened. (2005 Trial Tr. Vol.5 20.)
235. She said she did not believe she is going to be charged for her role in the murder. (2005 Trial Tr. Vol.5 38.)
236. On cross-examination, Jessicah testified that when the defendants started to approach Jones' house she turned and faced the other direction. Because Jermal stayed back for five minutes, she does not know if he ever walked over to Jones' house. (2005 Trial Tr. Vol.5 54.)
237. Jessicah also said that in the car after the murder, Tolliver said that the money should be split evenly. However, she admitted that during her previous testimony she did not testify that he said anything during that time. (2005 Trial Tr. Vol.5 58.)
238. **Det. Michael Poe** testified that on November 19, 2002, he requested Dorrell come to the police station for an interview and Dorrell voluntarily accompanied Det. Poe to the police station where he was interviewed. (2005 Trial Tr. Vol.6 86–91.)
239. During the interview, Dorrell said that Jessicah picked him and the other defendants up at 6:00 p.m. Jessicah drove them to Belview Park where they hung out for thirty minutes to an hour. When they came back to the park later, police were nearby. Dorrell said that a man had been murdered with his hands behind his back. (2005 Trial Tr. Vol.6 91–93.)
240. Dorrell requested the presence of his mother and the interview stopped. When his mother arrived, she encouraged Dorrell to be truthful. Dorrell asked to speak with Det. Smith alone.

After he talked with Det. Smith, Dorrell's mother re-entered the interview room and Det. Smith recorded Dorrell's statement. (2005 Trial Tr. Vol.6 99–103.)

241. Special Agent **Mackenzie DeHaan** (SA DeHaan) worked in the forensic biology section of the SBI Lab. SA DeHaan testified that no blood was found on the baseball bat, the cuttings from the Mercury Cougar, and the various clothes and shoes collected from the defendants in this case. (2005 Trial Tr. Vol.6 125–27.)
242. Special Agent **Donald Faggart** (SA Faggart), with the SBI Lab, conducted a review of the fingerprint and shoeprint comparisons that SA Petzka performed. SA Faggart concurred with SA Petzka's conclusion that the footprints found on the hood of Jones' Lincoln corresponded with one of the pairs of shoes taken from Rayshawn and Nathaniel's house in size, pattern, and wear. (2005 Trial Tr. Vol.6 134, 142–43.)
243. WSPD **Detective Mark Smith** (Det. Smith) testified that on November 19, 2002, he interviewed Dorrell and told him he was free to leave the interview room at any time and police would drive him home if he wanted. (2005 Trial Tr. Vol.6 157.)
244. Dorrell initially told Det. Smith that he, Jessicah, and four others went to Belview Park around 6:00 p.m. and stayed for a short time. He initially denied knowing anything about Jones' death, but later admitted to hearing about Jones' death on the news. (2005 Trial Tr. Vol.6 161–64.)
245. Dorrell requested his mother and police stopped interviewing him until she arrived. When his mother arrived, she encouraged Dorrell to be truthful. Dorrell requested to talk with Det. Smith alone. At that time Dorrell started crying and confessed to Det. Smith that he was the lookout while others were robbing Jones. (2005 Trial Tr. Vol.6 165–69.)
246. Det. Smith read a transcript of Dorrell's taped statement aloud for the jury. In the statement Dorrell said that when he, Jessicah, and several others were at Belview Park, one of the others said, "Come on" and they proceeded to a house where they beat a man up. The attack lasted about ten minutes. Dorrell said that he stayed at a distance from the man and served as a lookout. He denied taping Jones' hands. (2005 Trial Tr. Vol.6 173-80, 192–93.)

### **Defense Presentation of Evidence**

247. **Officer C. M. Crater** (Ofc. Crater) worked in the identification division of the WSPD. He compared the latent prints collected from the crime scene to the prints of the defendants and none of the latent prints found at the crime scene matched Jermal, Christopher, or Dorrell. However, when he ran the prints through AFIS he learned that one of the prints matched Mr. Jones' neighbor, Calvin Scriven. (2005 Trial Tr. Vol.7 14, 17–21.)
248. **Shameka Bryant** (Shameka) is Christopher's sister. At the time of the murder, she was 17 years old. On November 15, 2002, around 3:00 p.m., Jessicah showed up at Shameka's house with Nathaniel in her car. At that time, Christopher was hanging out with Jermal, Rayshawn, Dorrell, Jed, Shelton, and Donovan Wesley. Dorrell, Shelton, and Jed got in Jessicah's car and they left shortly after 3:00 p.m. (2005 Trial Tr. Vol.7 42–45.)

249. At 4:00 p.m., Christopher, Jermal, Marcus, and Donovan were all playing outside along with Shameka and some of her friends. Around 7:00 p.m. Shameka started to get very sick due to gallstones. Around that time, she looked outside and saw that Christopher was still there. From 4:00 p.m. to 7:00 p.m., Shameka never saw Christopher leave the house. She also does not remember Jermal leaving. (2005 Trial Tr. Vol.7 46–49, 51–52.)
- a. Shameka is sure of the timing because she looked at her watch. Her friend, Tisha, was there and had to be home by 8:00 p.m. because she was on probation. (2005 Trial Tr. Vol.7 47–48.)
250. On cross-examination, Shameka testified that Jessica showed back up to her house at 8:00 p.m. and Jermal and Christopher left in her car. Nathaniel, Dorrell, and Jed were already in the car at that time. Rayshawn had left Shameka's house prior to Jessica arriving. (2005 Trial Tr. Vol.7 55–56.)
- a. Shameka said that she first recalled the events of that night about a year later while at Christopher's lawyer's office, but on redirect she said that in November 2002, police had come to her house and she told them her account of that day. (2005 Trial Tr. Vol.7 59–60, 70–71.)
- b. Cpl. Griffin testified that there is no police record of any officer ever talking to Shameka Bryant. (2005 Trial Tr. Vol.7 100–01.)
251. **Tisha Adams** (Tisha) is friends with Shameka. Tisha testified that on November 15, 2002, she was at Shameka's house from 4:00 p.m. till 7:00 p.m. and Christopher was there the whole time. (2005 Trial Tr. Vol.7 90–91.)
252. **Dorrell Brayboy** testified that around 3:00 p.m. on November 15, 2002, he was at Christopher's house with Jed, Shelton, Jermal, Marcus, Niki, and Christopher's brothers. Jessica showed up in her car with Nathaniel and Rayshawn showed up at 4:00 p.m. on foot. At 5:30 p.m. Dorrell, Jed, Shelton, and Nathaniel all got in Jessica's car and she drove them to Belview Park. After about ten minutes they left Belview Park and went to a gas station. They then went to Jed's grandmother's house but left when they found out Jed's dad wasn't there. They then returned to Bryant's house and everyone else was still there. (2005 Trial Tr. Vol.7 106–09.)
253. At 7:30, Dorrell, Nathaniel, Jermal, Christopher, and Jessica left in Jessica's car and went to Creekside Bowling Alley. (2005 Trial Tr. Vol.7 109.)
254. Dorrell testified that on November 19, 2002, he was being interviewed at the police station. After his mother arrived, Det. Smith asked her to leave the interview room. At that point, Det. Smith and Det. Poe told Dorrell that he could go to county jail or even get the lethal injection. Det. Poe told Dorrell that if he told police he was the lookout he could go home that night and that is why Dorrell lied and said he was the lookout. (2005 Trial Tr. Vol.7 116–17.)
- a. On cross-examination, Dorrell testified that the officers did not stop talking to him after he requested his mother's presence. (Trial Tr. Vol.7 141.)



255. Dorrell said that Det. Poe told him that Christopher told police Dorrell was the lookout. (2005 Trial Tr. Vol.7 147.)
256. Dorrell testified that he was not present when Jones was murdered and that he never went to the Dollar General or the Maxways on the night of the murder. (2005 Trial Tr. Vol.7 119.)
257. Dorrell denied telling police that he heard about a man who got murdered with his hands behind his back. He said he told them he heard on the news that a man was murdered and was found in a ditch. (2005 Trial Tr. Vol.7 146.)

## **F. Postconviction Investigation**

### **i. Forensic Evidence**

#### **Footwear Examination**

258. On July 26, 2019, latent fingerprint and footwear examiner Marty Ludas<sup>25</sup> (Ludas) prepared a report for the Commission after comparing the Air Force One shoes used as evidence against the teenagers at trial to photographs of the footwear patterns on the hood of Jones' car. (Ex. 19 at 1–2.)
259. Ludas concluded that the left and right shoes collected from Rayshawn and Nathaniel's home, which Rayshawn said he was wearing on November 15, 2002, displayed "the same size, shape and sole design that exists on the left and right footwear impression [from Jones' car]. Additionally, the wear patterns on both shoes corresponded to the wear pattern displayed on the photographs. The left and right shoes could have been the source of the footwear impressions. It is possible another pair of shoes could have been the source of the footwear impressions, but they would have to display the exact wear pattern characteristics . . ." (Ex. 19 at 1.)
260. Ludas eliminated the other shoes collected by law enforcement as being the source of the footwear impressions on the hood of Jones' car. (Ex. 19 at 1.)
261. At the March 2020 Commission hearing, Ludas discussed his report and testified that he could not say for certain that the shoes obtained from Rayshawn and Nathaniel's home made the impressions on the hood of Jones' car because there "wasn't sufficient . . . uniqueness . . ." (Comm. Hrg. Tr. 414.)
262. He stated, "[w]hat's important in this case is, of course, the size, the type of shoe, how popular the shoe is, and how many shoes are out there and how many shoes have access at that point to the hood of the car." He also said that these were common shoes. (Comm. Hrg. Tr. 417, 436.)

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<sup>25</sup> Ludas's CV is included as Exhibit 20.

263. He further testified that an attorney could not say the print was “an identification,” but rather reflected “limited compliance” based on “class characteristics as opposed to individual characteristics.” (Comm. Hrg. Tr. 430.)

264. In November 2020, footwear examiner Bill Bodziak<sup>26</sup> (Bodziak) was hired by Rayshawn to compare the prints from the photograph of the hood of Jones’ car to the shoes in question. He determined that “there is an association of the class characteristics of design, physical dimension and general wear.” (Ex. 21 at 3.)

265. As to the right shoe, he determined that

some features that appear in known impressions made from the . . . right shoe are not present in the crime scene impression; however, the limited degree of detail retained in that impression may account for these discrepancies and therefore the . . . right shoe is still considered a possible source of that impression. Other right shoes of the same design, dimension, and general wear are also a possible source of this impression.

(Ex. 21 at 3.)

266. As to the left shoe, he determined that

there is an association of the class characteristics of design and physical dimension; however, this impression includes multiple contacts of a shoe and also has limited detail. No shared characteristics of specific wear or randomly acquired characteristics were present in that impression. The left . . . shoe is a possible source of this impression; however, other left shoes of the same design and dimension are also possible sources of this impression.

(Ex. 21 at 3.)

267. The other shoes he compared were excluded. (Ex. 21 at 3.)

268. Bodziak noted that “the Nike Air Force 1 design, first sold in 1982 and is still in production, is the most highly produced outsole design sold by Nike. The Nike Air Force 1 design is also one of the most counterfeited athletic shoe designs.” (Ex. 21 at 3.)

269. The footwear examination reports are far from positive identifications and no other forensic evidence has ever even been alleged to connect any of the teenagers to the crime scene.

### **Fingerprint Examination**

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<sup>26</sup> Bodziak’s CV is included as Exhibit 22.

270. During the Commission investigation, the latent prints were run through SAFIS and reexamined. One fingerprint matched Scriven, and a fingerprint and a palm print were each matched to Coleman. The rest of the prints remain unidentified. (Ex. 63.)

### **DNA Analysis of Tape and Jones' Pants**

271. During the Commission investigation, Bode Technology performed STR DNA testing on several pieces of black tape collected from the crime scene and Jones' body. For some of the samples, the mixture profile was too limited to draw any conclusions. However, for the profiles where conclusions could be drawn, all five teenagers were excluded. Additionally, Jessicah Black, Tarshia Coleman, and trial attorney Teresa Hier were excluded from every profile where a conclusion could be drawn. (Exs. 86, 88–89.)

272. Of particular note is the testing of a black string entwined with the tape collected from Jones' left hand. Bode Technology found a mixture of three or more individuals, including a major female profile and at least one male contributor. Jessicah Black, Tarshia Coleman, Teresa Hier, alternate juror Catherine Hendren, and crime scene investigators Wendy Frady and Bryan Frady were all excluded from the major female profile, as were the five teenagers. Jones could not be excluded as a possible minor contributor, but no other conclusions could be drawn regarding the minor alleles. The major profile has been uploaded to CODIS but has not resulted in any hits. (Ex. 86–90, 98.)

273. Additionally, a piece of tape collected from under the porch in Jones' back yard revealed a mixture profile of at least two individuals including one male contributor. (Ex. 86.) Jones, all five teenagers, Jessicah Black, Tarshia Coleman, and Teresa Hier were excluded as contributors to the mixture. (Ex. 89.)

### **ii. Intellectual Disabilities and Cognitive Limitations**

274. In July 2021, Dr. Ginger C. Calloway<sup>27</sup> (Dr. Calloway), a licensed psychologist, reviewed numerous materials, including school records, juvenile records, DPS records, interviews and testimony of the co-defendants. She also reviewed Dr. Hayley Cleary's report<sup>28</sup> relating to all five of the teenagers. Dr. Calloway concluded that the boys were all "severely cognitively impaired, or exhibited low cognitive functioning, at the time of their interrogations in 2002." She further found that the materials supported the conclusion that Jermal, Rayshawn and Nathaniel had "a diagnosis of Intellectual Disability at the time of their interrogations in 2002." She found that records supported "a diagnosis of learning disabled or intellectually disabled" for Christopher at the time of his 2002 interrogation. She found that the records for Dorrell were "less comprehensive," but there were "indicators of his low cognitive functioning . . . that could support a diagnosis of intellectual disability." (Ex. 23 at 1–3.)

275. Dr. Calloway notes that intellectual disability is defined as:

characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual,

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<sup>27</sup> Dr. Calloway's CV is included as Exhibit 24.

<sup>28</sup> Dr. Cleary's report is discussed in detail below.

social and practical adaptive skills. This disability originates during the developmental period, which is defined operationally as before the individual attains age 22.

In determining where a diagnosis of intellectual disability is appropriate, adaptive behavior and intellectual functioning are given equal weight. (Ex. 23 at 3–5.)

276. Dr. Calloway asserted that “[i]n reviewing the records of these young men, the deficits found in intellectual functioning and in adaptive behavior were striking.” The records reviewed “contain much information prior to the age of 22 years” because they were interrogated and incarcerated at such young ages. (Ex. 23 at 4, 6.)

- a. The age of onset “is key to a diagnosis of ID because it establishes that low intellectual functioning and ID are *developmental* in nature.” (Ex. 23 at 6, emphasis in original.)

277. Dr. Calloway explained:

With the exception of some few disorders . . . individuals with mild ID cannot be recognized and are not diagnosed by visual inspection, conversation or interview. They usually have no visible stigmata. They are capable of having conversations about topics with which they are familiar or with which they have personal experience . . . . They often exaggerate their own abilities or experiences, due to a phenomenon known as the “cloak of competence.” Their cognitive limitations become apparent when they are asked to solve abstract problems as occur in individually administered, standardized tests of intelligence.

(Ex. 23 at 6.)

278. Dr. Calloway notes that

The intellectual limitations of those with [intellectual disability] who are involved in the legal system are an essential impediment to their understanding of their rights to remain silent, to request an attorney before agreeing to interview by law enforcement, to understand what “self-incriminating” means, to understand the difference between custody and arrest, [and] to work effectively with their attorney . . . .

(Ex. 23 at 32.)

279. Moreover, the “intellectual and adaptive limitations that characterize those with [intellectual disability] create risk for these social judgment challenges that involve limited competence in interpersonal skills, social judgment and problem-solving, and lead to difficulty recognizing danger.” They lack the social insight and problem-solving skills “that would protect them from being easily led, tricked or fooled.” (Ex. 23 at 32–33.)

280. This can manifest in the legal system because individuals with intellectual disability “may misinterpret social cues, including who to trust in legal situations because they are unable to discern well when they are in adversarial situations.” That “misinterpretation is especially likely to occur with persons in authority or power, such as . . . law enforcement.” (Ex. 23 at 33–34.)
281. Dr. Calloway points out that while the defendants “were all young adolescents in age at the time of their interrogations, they were functioning more like late elementary age children as regards their intellectual and adaptive functioning.” (Ex. 23 at 34.)
282. Individuals with intellectual disability “engage in [acquiescence] when asked repeated questions during interviews.” They “are dependent on adults and other authority figures and hence, when asked repeated questions, they will *acquiesce* or agree with the authority figure, assuming the authority figure knows best and is accurate.” (Ex. 23 at 35, emphasis in original.)
- a. Dr. Calloway’s report goes into more detail about interviewing techniques that should be employed when questioning those with an intellectual disability. (Ex. 23 at 35.)
283. In turn, those who interview individuals with an intellectual disability “without knowledge of their functional level may misjudge the various behaviors . . . assuming the individual to be average and therefore capable of understanding their questions like individuals without” an intellectual disability. Further, “[w]hen the individual being questioned behaves in ways that diverge from the norm or average, an uninformed interviewer may erroneously conclude the origin of these behaviors and may question credibility.” (Ex. 23 at 36.)

#### **Rayshawn Banner – 14 years old in 2002**

284. Rayshawn was “identified by classroom teachers as ‘already struggling’ in kindergarten . . .” When he was 7 years old, he “attended summer school to be promoted to 2<sup>nd</sup> grade” and repeated 2<sup>nd</sup> grade “even with classroom and homework modified for his functional level.” At 10 years old, in 4<sup>th</sup> grade, Rayshawn was identified as Educable Mentally Disabled. Despite the modifications provided, “he continued to make near failing and failing grades as he moved upward in grade levels.” (Ex. 23 at 7, 9.)
285. Various IQ tests Rayshawn took in school and while in DPS all placed his IQ somewhere between 68 and 82. Dr. Calloway found that “[c]linically, his difficulties in learning and retaining information occurred early in his educational history and continued throughout the entirety of his school years.” (Ex. 23 at 8–9.)
286. School records show his adaptive behavior was assessed as below grade level or borderline between ages 9 and 14. Achievement test scores between ages 8 and 16 were all scored as deficient, borderline, or low average. Rayshawn was in the 5<sup>th</sup> grade when he was 12 years old. At 16 years old, DPS placed him in a “program of studies for inmates scoring below 6<sup>th</sup> grade level.” (Ex. 23 at 10–12.)
287. Overall, Dr. Calloway found that Rayshawn’s “scores on various standardized tests represent a consistent pattern of impairment in academic achievement and intellectual

functioning from age 8 until his entrance into the penal system.” She noted that “his grade equivalencies at age 12 are similar to his grade equivalencies at age 16, which is to say roughly a 3<sup>rd</sup> to 4<sup>th</sup> grade level of functioning . . . .” (Ex. 23 at 12.)

288. After his incarceration, Rayshawn spent seven years, with a total of 6,756 documented hours, studying for the GED but was unable to obtain the degree. (Ex. 23 at 12.)

**Nathaniel Cauthen – 15 years old in 2002**

289. Nathaniel “attended school until the 8<sup>th</sup> grade, failed the 3<sup>rd</sup> grade . . . attended an alternative school at some point, received services for exceptional children during school, and had no marketable job skills and no prior employment” according to DPS records. DPS referred him for special education services. A note in the DPS file states that he “does not possess skills to live independently [and] does not possess problem-solving skills to make sound decisions.” (Ex. 23 at 13.)
290. The DPS records further indicate that Nathaniel has “an extensive history of mental health diagnoses” as well as being the victim of physical and sexual abuse as a child and a history of self-injurious behaviors. (Ex. 23 at 13.)
291. His schools records state that in first grade his “work habits and social growth are below grade level.” He continued to fall behind and repeated third grade. Despite the curriculum being modified for him in 4<sup>th</sup> grade, his grades were still mostly D’s. Like his brother, Rayshawn, Nathaniel was 12 years old in 5<sup>th</sup> grade. Records show in the 5<sup>th</sup> grade he “experienced greatest difficulty with reading, writing, and communication skills . . . .” After a comprehensive evaluation, he was diagnosed with “‘borderline’ level intelligence with severe academic deficiencies” and “classified as Behaviorally Emotionally Handicapped (BEH).” (Ex. 23 at 13.)
292. When Nathaniel was 15 years old and in the 8<sup>th</sup> grade, he was examined again. The examiner noted that Nathaniel “‘struggled on both vocabulary and social reasoning questions’ and the examiner was ‘surprised by some of his level of spoken vocabulary’ that sounded more abstract and knowledgeable than his functional level . . . .” (Ex. 23 at 15.)
293. Various IQ tests Nathaniel took in school and while in DPS all placed his IQ somewhere between 66 and 77. (Ex. 23 at 15.)
294. Dr. Calloway found that Nathaniel suffers from both “intellectual disability and from mental illness that requires treatment through routine administration of psychotropic medications and/or psychotherapeutic interventions.” (Ex. 23 at 16.)
295. School records show his adaptive behavior was assessed as well below grade level or “academic difficulties described as ‘severe’” between ages 7 and 16. His modified curriculum began in 3<sup>rd</sup> grade. Dr. Calloway found his “areas of greatest deficit” included communication deficits and that he “also exhibited deficits in interpersonal relations . . . .” She noted that “[b]y fifth grade, his teachers noted his need for constant supervision or lack of independence.” (Ex. 23 at 16–18.)

296. After being admitted to DPS, Nathaniel was “[p]laced in a program for inmates scoring at a 6<sup>th</sup> grade or below.” Nathaniel was 17 years old. (Ex. 23 at 18.)
297. Dr. Calloway found that Nathaniel’s “functional level at age 15 and 17 was roughly a second to fourth grade level or that of a child age 8-10 years.” (Ex. 23 at 19.)
298. In 1999, he “was described as having an inability to cope socially and a limited ability to understand social interactions.” (Ex. 23 at 19.)
299. Like his brother, Nathaniel spent numerous hours, 4,777 in total, preparing for the GED. He never sat for the exam. According to Dr. Calloway, “[i]t appears his difficulties with mental illness and frequent moves while in prison, in addition to his significant cognitive limitations, interfered with continued participation in GED preparation courses. (Ex. 23 at 19.)

**Jermal Tolliver – 15 years old in 2002**

300. Jermal was “born premature at 7 months, weighted 4 pounds at birth, had respiratory problems, and was hospitalized in a newborn intensive care unit for two weeks.” (Ex. 23 at 19.)
301. Beginning in kindergarten and throughout his years in school, Jermal was described as “struggling” and “needing one on one attention.” He was required to repeat the first grade. By fifth grade, his teacher said he was “essentially tuning out for the entire time he has been in school.” Dr. Calloway noted that “children with extreme learning difficulties like intellectual disability grow hopeless, weary, and dispirited by continual failures in school . . . .” He “appeared resigned to failing.” (Ex. 23 at 20–21.)
302. Various IQ tests Jermal took in school and while in DPS all placed his IQ somewhere between 62 and 75. (Ex. 23 at 20–21.)
303. When he was 11 years old, Jermal was “identified as Educable Mentally Handicapped/ Disabled and placed in exceptional children’s classes.” While in school, “he consistently earned low grades” despite his curriculum being “modified in an effort to help him succeed.” (Ex. 23 at 21.)
304. School records show his adaptive behavior was assessed as below grade level, with significant deficits and consistent with a low level of intellectual disability. When he was 13 years old, his reading recognition and understanding was at a 4<sup>th</sup> grade level. When he was 14-15 years old, his math comprehension was at a 3<sup>rd</sup> grade level. (Ex. 23 at 21–23.)
305. While incarcerated, between the ages of 17 and 21, Jermal spent 4,253 hours preparing for the GED, but did not pass the exam after four tries. (Ex. 23 at 22–23.)
306. When he was interrogated by WSPD, Jermal was functioning in the areas of reading, writing, and math “like a child between the ages of 8 and 10 years” old. (Ex. 23 at 23.)
307. Achievement tests taken between ages 10 and 17 were all scored as either significantly deficient, intellectually disabled, or consistent with a low IQ score. (Ex. 23 at 23–24.)

308. According to Dr. Calloway, Jermal's "combined scores indicate his conceptual functioning is somewhere between 3<sup>rd</sup> and 6<sup>th</sup> grade or like that of a 9-11-year-old child." (Ex. 23 at 24.)

**Christopher Bryant – 15 years old in 2002**

309. Dr. Calloway notes that when Christopher was admitted to DPS, "he weighed 214 pounds and was 6 feet 2 inches. Due to his height and weight, he may well have appeared older than his chronological age at the time of interrogation, thus creating an assumption or impression he understood more than he did." (Ex. 23 at 24.)

310. She found that Christopher was successful in "passing" or having a "cloak of competence" allowing him to appear like those without intellectual disability due to him being "agreeable, pleasant, polite, and deferential." (Ex. 23 at 25.)

311. She noted that during interviews with Commission staff, Christopher "deferred to his mother's greater knowledge about various matters" despite being in his 30's when those interviews occurred. (Ex. 23 at 25.)

312. During elementary school, Christopher was described as "slow" as early as 1<sup>st</sup> grade and his grades continued to decrease throughout his schooling. Dr. Calloway points out that "[t]his pattern, where school subject matter becomes increasingly abstract in the higher grade levels and results in greater failure for those with severe cognitive limitations, continued for [Christopher] as regards his performance on core academic courses." (Ex. 23 at 25.)

313. Christopher was "classified speech and language impaired and was provided with an" individualized education program. He repeated the 9<sup>th</sup> grade. A note from the 2000-2001 school years states that "Christopher needs a small group setting with minimal distractions in order to focus on skills to be learned." (Ex. 23 at 25.)

314. Between ages 8 and 18 years old, school and prison records show Christopher with an IQ between 69 and 79. His functional level is listed as intellectual disability, borderline intellectual disability, low average and likely intellectual disability. (Ex. 23 at 25-26.)

315. School records show his adaptive behavior was assessed as below grade level, below average and well below average. DPS found that he had "no work history or marketable job skills . . . ." His "adaptive deficits while in school included those in communication, conceptual, and social areas." (Ex. 23 at 27.)

316. School and prison records of various achievement tests administered between age 8 and 18 determined his functional level was borderline to low average or borderline to intellectual disability. In DPS, he was "[p]laced in special program for inmates scoring under 6<sup>th</sup> grade." (Ex. 23 at 28-29.)

317. Christopher was able to obtain his GED, but only following 3,576 hours of preparation and four attempts at the test. Dr. Calloway states that the "fact that he spent vast numbers of hours in preparation to take the GED test and took the test four times prior to passing and receiving the GED indicates significant mental impairment and disability." (Ex. 23 at 26, 29.)



318. Christopher's last end-of-grade testing for reading prior to his interrogation was administered in Spring 2002. His score was lower than 95% of all students taking the test that year. The prior year, he failed both the reading and math tests. (Ex. 23 at 29.)

### **Dorrell Brayboy – 15 years old in 2002**

319. Dr. Calloway had access to fewer records for Dorrell because of his death, his lack of attorney, and because the Commission staff stopped collecting his records after his death. She noted that Dorrell "lived with various relatives and friends until his death in 2019 and thus was not living independently." (Ex. 23 at 30.)

320. The main records she was able to review relating to Dorrell were those from DPS. He entered DPS at age 18 and was determined to have a BETA IQ of 83. His reading recognition was close to a 7<sup>th</sup> grade level, his spelling was at a 5<sup>th</sup> grade level, and his math was at a 6<sup>th</sup> grade level. He was functioning "at the level of an 11–12-year-old child at age 18 when these scores were obtained." (Ex. 23 at 30.)

321. Dorrell spent 1,190 hours preparing for the GED and was able to obtain the degree after five attempts.

### **iii. False Confessions**

322. Dr. Hayley Cleary (Dr. Cleary) was retained by the Commission to "identify the potential presence of factors that could have contributed to false or unreliable confessions" in this case. Dr. Cleary does not opine on whether a confession is true or false but aims to assist the factfinder in assessing the interrogations and confessions in this case. (Ex. 29 at 1.)<sup>29</sup> This filing briefly touches on some of the main points of her report. She also testified before the Commissioners at the eight-member panel hearing in March 2020 as an expert in juvenile interrogations, confessions, and psychology. (Comm. Hrg. Tr. 734.)

323. At the time of her report, she noted that 28% of those exonerated nationwide based on DNA evidence had made false statements to police. (Ex. 29 at 4.)

324. She noted that studies have shown "false confessions have occurred in both brief and long interrogations, for serious and relatively non-serious crimes, and in suspects young and old." She further explained that "false confessions are often more than just a basic affirmation or acquiescence ('I did it'); many false confessions contain specific details or even lengthy, vivid accounts of the incident which are later confirmed to be untrue." (Ex. 29 at 4.)

325. According to Dr. Cleary, juveniles are "overrepresented" in documented false confession cases. Her report details the three categories of false confessions, including coerced-compliant confessions which "are the product of psychologically coercive interrogations" and where "suspects ultimately provide an incriminating statement to escape mounting police pressure." Coerced-compliant confessions are "frequently recanted shortly after the interrogation." Her report also explains that "false confessions can occur with multiple co-defendants for the same crime" and she briefly recounts the Central Park Five case that is eerily similar to this one. She

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<sup>29</sup> Dr. Cleary's report lists the numerous materials that she reviewed in order to prepare her report. (Ex. 29 at 2–4.)

goes on to explain that “there have been documented cases where ‘a single false confession can have a cascade-like effect, embroiling numerous other innocents in its net.’” (Ex. 29 at 5–6.)

326. Her report noted that the “primary dispositional risk factors that increase the likelihood of a false confession are juvenile status . . . and mental impairment (which includes both mental illness and intellectual disability).” (Ex. 29 at 8.)

327. Dr. Hayley concluded in her report that “there are numerous factors present in this case that could have contributed to false, unreliable, or coerced statements from the five defendants and Jessica Black” including:

- Adolescence
- Intellectual Disability
- Prolonged Custody and Isolation
- Confirmation Bias
- Coercive Interrogation Techniques
- Inconsistencies in the Teenagers’ Statements
- Confession Contamination
- Lack of Confession Corroboration by Physical Evidence

(Ex. 29 at 7, 43.)

328. “There is abundant scientific evidence that, compared to adults, adolescents are more susceptible to psychologically coercive interrogation techniques and more likely to give false statements.” She further notes, “[a]ll five defendants were middle-adolescents at the time of their interrogations . . . Thus, all five defendants were members of a class that researchers consider especially vulnerable to interrogative pressures.” (Ex. 29 at 8.)

329. Her report states that studies “frequently report that juvenile false confessors gave statements to police as a way to extricate themselves from a stressful situation; that is, they felt that if they gave police a statement they would be allowed to ‘go home.’” In her opinion, the “power of a police detective telling an adolescent suspect that he can go home if he provides information cannot be overstated.” (Ex. 29 at 9–10.)

330. Another known correlation to false confessions interrogative suggestibility.

Researchers have devised ways to measure interrogative suggestibility in the context of interrogation statements, including the tendency to yield to leading questions or to change one’s statements in response to negative feedback (i.e., statements that explicitly or implicitly communicate the interrogators’ dissatisfaction with an answer). Negative feedback can be severe and overt (e.g., “you are a liar”) or gentle and implied (e.g., “are you sure it wasn’t daylight yet?”). Research demonstrates that adolescents are more susceptible than adults to negative feedback and more likely to change their statements in response to it.

(Ex. 29 at 10.)

331. Importantly, Dr. Clearly points out that “interrogative suggestibility can be at play without conscious realization on the suspect’s part or deliberate intent to mislead on the interrogator’s part.” (Ex. 29 at 11.)
332. The report notes that “[i]ndividuals of any age who have compliant personalities are more predisposed to false confessions, and youths’ subordinate social status may put them at heightened risk.” She explains:

It is important to note that youth are socially and developmentally predisposed toward compliance in interrogations even in the absence of psychologically coercive interrogation techniques. That is, the interrogation interaction itself— by virtue of the process and the social and legal roles of those involved—likely fosters perceived compulsory compliance with authority. These developmentally driven vulnerabilities can still be operating even if an interviewer asks the suspect to confirm they are present voluntarily, waiving Miranda voluntarily, and/or giving a statement of their own free will. Youth routinely provide such confirmations, but a youth answering “yes” to rote questions such as “Do you understand these rights?” or “Do you agree to talk with me today?” may be exhibiting compliance with authority instead of actual comprehension or volition.

Case records indicate numerous instances where the four defendants’ behaviors may have been driven by an adolescent proclivity toward compliance. In addition to indicators of compliance with Detectives, several defendants were pressured by their own mothers to cooperate with police. The mothers may have unknowingly colluded with police to facilitate the defendants’ interrogations and confessions.

(Ex. 29 at 11–12, footnote omitted.)

333. According to Dr. Clearly, “persons with ID are also overrepresented in documented cases of false confessions.” (Ex. 29 at 15.)
334. Dr. Calloway’s review of the defendants’ records concluded that “[a]ll four defendants had particular weaknesses in verbal comprehension and expression. These capacities directly relate to individuals’ abilities to process information, understand contextual cues, and navigate complex and stressful social interactions. Collectively, intellectual disabilities diminish suspects’ ability to withstand interrogative pressures and make them more vulnerable to coercive interrogation techniques and oppressive interrogation circumstances . . . .” (Ex. 29 at 16.)

335. Another risk factor for false confessions is the use of maximization techniques in the interrogation room, “a collection of confrontational interrogation techniques designed to emphasize the seriousness of the situation, overcome the suspect’s denials, and eventually make the suspect feel as though they have no choice but to confess.” This technique includes “an implicit threat of punishment for noncooperation—that is, the consequences will be worse if the suspect does not confess.” Dr. Calloway determined “there is extensive evidence of numerous maximization techniques used with these defendants.” (Ex. 29 at 16–17.)
336. “Two commonly used techniques that experts consider to be psychologically coercive are to accuse the suspect of lying and shut down the suspect’s denials.” (Ex. 29 at 17.) These tactics were unquestionably used when all five defendants and Jessicah Black were interrogated.
337. Another such tactic is exaggerating the consequences one may face. In the present case, many defendants were told by law enforcement they would receive the death penalty prior to their confessions. (Ex. 29 at 18.)
338. Telling a suspect law enforcement had evidence that does not, in fact, exist is another tactic that is known to occur in false confession cases. Dr. Calloway’s report states that research “confirms that manipulating suspects’ perceptions of the weight of evidence against them is an exceptionally powerful method of altering their decision making and behavior. This is compounded by the fact that youth (and many adults) do not know that police are allowed to lie during interrogations.” (Ex. 29 at 20.)
- a. In the present case, Dr. Calloway found that “police confronted several of the suspects with ‘evidence’ of their guilt by showing them police notes or playing them excerpts of their friends’ taped statements that implicated them in the murder. It is entirely possible that this strategy had the effect of a false evidence ploy even if it was not intended as such . . . .” (Ex. 29 at 20.)
  - b. Although not included in Dr. Calloway’s report, Jessicah has said that she was told Jones’ DNA was found in her vehicle and that law enforcement had footage showing the teenagers using his credit card after the murder. None of that was true and unquestionably impacted Jessicah’s final statement to police.
339. “Case records indicate that defendants experienced prolonged detention in which they were isolated from family members or supportive adults” and that they “experienced intermittent accusatorial interrogations and isolation within these detention periods.” Dr. Calloway explains that prolonged isolation is another tactic found to be used in false confession cases. (Ex. 29 at 21.)
340. Notably, Christopher, Jermal, Dorrell and Nathaniel were all in the police station for 8-9 hours prior to their taped confessions. Additionally, “[a]t least four defendants were isolated in the interrogation room for various lengths of time, and one Detective testified as to using isolation specifically as an interrogation tactic.” (Ex. 29 at 22.)
341. Other situational factors in the interrogations that can contribute to a false confession used in this case include:

- Aggressive confrontations by law enforcement;
- Positioning defendants by the wall or in a corner;
- Encroaching on defendants' personal space; and
- Law enforcement that is visibly armed.

(Ex. 29 at 22–23.)

342. Rayshawn was the only defendant who was told his *Miranda* rights “before some portion of his interrogation.” Dr. Cleary noted that “[a] mature body of research consistently demonstrates that youth fail to understand the words and content comprising Miranda warnings and do not grasp the inherent rights the warnings convey.” (Ex. 29 at 23–24.)

- a. The details in Dr. Cleary’s report, along with the additional intellectual disability analysis provided by Dr. Calloway, show Rayshawn likely could not and did not comprehend what his rights were at that time. (Ex. 29 at 23–24.)

343. Other important factors include that there is evidence, and research to support, that the teenagers did not understand they were free to leave and law enforcement had formed a presumption of their guilt that colored the interrogations and their willingness to believe the teenagers initial statements denying all involvement. (Ex. 29 at 25–29.)

344. Confirmation bias occurs when investigators are convinced a particular suspect is guilty, which may cause them to then “overlook contradictory details or dismiss information that is inconsistent with their beliefs.” According to Dr. Cleary, in an interrogation this can manifest as a “tendency to dismiss evidence or statements that are inconsistent with their beliefs about the suspect’s guilt.” It will then “shape[] the kinds of questions interrogators ask and color[] their perceptions of the veracity of suspects’ statements.” (Ex. 29 at 29.)

345. “Confirmation bias in police interrogations can lead to ‘tunnel vision’ in which police pursue leads that are consistent with their theory of the crime and disregard others,” which is consistent with the numerous early leads detailed previously that were never followed up on once the teenagers became law enforcement’s focus. (Ex. 29 at 29.)

346. “Confession contamination occurs when non-public information about the crime—details known only to police and the true perpetrator—are provided to the suspect and become incorporated into the suspect’s eventual (false) confession.” (Ex. 29 at 30.)

347. Dr. Cleary notes that the defendants’ and Jessicah’s statements are inconsistent regarding:

- Who was present on November 15, 2002;
- How they arrived at Jones’ home;
- How they approached Jones;
- The details of the actual attack;
- Whether and who went into the carport;
- Whether and what Jones said;
- Whether weapons were involved;
- Where Jones was left;

- How the teenagers left;
- What the teenagers were wearing;
- Whether the attack was planned; and
- Whether they returned to the crime scene later.

(Ex. 29 at 32–36.)

348. Dr. Cleary details instances in the confessions that were wholly inconsistent with the evidence in this case including, but not limited to:

- The location of Jones’ body after the attack;
- Saying the tape was purchased at stores that didn’t sell the tape;
- No blood was found in Jessica’s car;
- No wounds on any of the teenagers despite Jones having defensive wounds; and
- None of the latent prints matching any of the teenagers.

(Ex. 29 at 37.)

349. Dr. Cleary explains that “innocent individuals who are falsely implicated are sometimes surprisingly cooperative with police because they believe their innocence will prevail and the situation will be justly resolved.” (Ex. 29 at 38.)

350. She also points out that the judge presiding over one of the suppression hearings clearly did not understand such a false confession could come about. The judge stated: “Now my problem with that would be why would anyone make a false statement implicating themselves after being told that the punishment of what they are accused of doing is death? That would make somebody make up a lie about they were in China at the time this they were involved in it.” The judge went on to say: “If you’re going to tell a story the story ought to put you away from the scene of the crime, in my opinion.” (Ex. 29 at 38.)

351. Dr. Cleary understands the court’s logic but asserted “it has no foundation in developmental science or psychological research on interrogations and confessions.” (Ex. 29 at 38.)

352. One concern is that “[a]ll five defendants in this case, along with Jessica Black, were interrogated for some time prior to their recorded statements. There is no way to verify what actually transpired during those interrogations, and the detectives and defendants in this case give very different accounts.” However, at both Rayshawn and Nathaniel’s suppression hearings, WSPD acknowledged that the recorder was only turned on after they believed they had been told the truth by the teenagers. They did not record all the initial denials of involvement. (Ex. 29 at 40–41.)

353. In response to a Commissioner’s question during the eight-member panel hearing, Dr. Cleary testified: “This is the most extensive -- this case has the most numerous and extensive indicators of known indicators of false confessions that I have seen so far. That might be a product of the fact that there are five defendants and thus five times the number of

interrogations and, you know, intellectual ability information, but any one of these alone is certainly a red flag.” (Comm. Hrg. Tr. 792–93.)

354. Dr. Cleary also stated in her testimony that today “the general public is more aware that false confessions can occur, which, whereas 20 years ago, psychologists were fighting hard to raise that awareness because it is so counterintuitive.” (Comm. Hrg. Tr. 794.)

#### **iv. Commission Hearing Testimony of Defendants<sup>30</sup>**

355. During the Commission staff’s investigation, all five of the defendants were interviewed. All claimed innocence and maintained the incriminating statements they made to law enforcement before trial were false and coerced.<sup>31</sup>

356. On March 13, 2020, Rayshawn, Nathaniel, Christopher, and Jermal each testified before the Commission and asserted their confessions were false.<sup>32</sup>

#### **Dorrell Brayboy**

357. On March 1, 2018, the Commission staff audio recorded an interview with Dorrell. He said on November 15, 2002, he had been to court that morning with his mother and sister. After court, he went to Christopher’s home and played video games. (Ex. 27 at 5.)

358. He recalled walking to the Amoco. He thought it was with Donovan, Christopher and Jermal. (Ex. 27 at 6.)

359. Jessica and Nathaniel arrived in Jessica’s car around 6:00 p.m. They all hung out in her car and went to Belview Park around 6:30 p.m. Dorrell remembered it still being “kind of light” out when they were at the park. He didn’t think Rayshawn was with them at the park. They walked around there for about 15 minutes and went back to Christopher’s home. (Ex. 27 at 6–7, 10.)

360. Around 6:30 p.m., Dorrell left and walked home. He didn’t stay home long, and then headed back to Christopher’s around 7:00 p.m. or 7:30 p.m. He saw Jed and got in the car Jed was driving. They stopped by a gas station and then went to Jed’s grandmother’s home. Around 8:45 p.m., they came back to Christopher’s and he saw Jessica, Nathaniel, Rayshawn and Jermal there. Jed left and walked home. (Ex. 27 at 7–9, 10.)

361. They went to the bowling alley after that. Nathaniel got into an altercation with someone and a black officer told them to leave. He remembered Nathaniel, Jermal, and Rayshawn being

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<sup>30</sup> When given the chance to speak at the Commission hearing, Jones’ family did not take a position on the innocence or guilt of the defendants. They gave a brief statement and spoke of the love they had for Jones and how much he was missed. (Comm. Hrg. Tr. 1171–72.)

<sup>31</sup> Rayshawn, Jermal, Christopher, and Nathaniel’s Commission interviews will not be discussed in detail here to avoid repetition with their Commission Hearing testimony detailed below. Transcripts and/or audio of their interviews is available upon request of the panel.

<sup>32</sup> As mentioned previously, Dorrell passed away prior to the Commission investigation.

at the bowling alley. Jessica took them all home and Dorrell spent the night at Christopher's home. (Ex. 27 at 9.)

- a. Dorrell moved to the area in February 2002. He didn't know any of the teenagers before then. All of them met Jessica within a month of their arrest. Dorrell was closest to Christopher and Jermal. (Ex. 27 at 19–21.)
- b. Dorrell said Nathaniel had been "going with" Jessica for two or three days. (Ex. 27 at 18–19.)

362. On the way home from the bowling alley, they saw the police lights, ambulance, and crime scene tape. They did not get out of the car and didn't know what happened. (Ex. 27 at 44–45.)

363. They did not go to Dollar General or Maxways that day. They didn't go to the mall anytime that weekend. He never saw any of the teenagers with any money that weekend. At that time, \$4 or \$5 would have seemed like a significant amount of money for any of them to have. They never had money. He never saw any of them with tape and no one discussed robbing anyone. (Ex. 27 at 11, 13–17.)

364. Dorrell said back then he was wearing black low top Air Force Ones. He didn't remember what anyone else wore. He said in 2002 everyone either wore Air Force Ones or Chuck Taylors. (Ex. 27 at 15–16.)

365. The day after Jones was murdered, Dorrell heard about it from talk in the neighborhood. People said Jones was found in the ditch across from his house. Dorrell never knew Jones' name until he was arrested. (Ex. 27 at 11–12.)

366. The day after the crime was just like any other ordinary day. He said the teenagers never hurt anyone; they were just kids. (Ex. 27 at 12–13.)

367. Dorrell met a girl named Amber and spent Sunday and Monday with her. After spending the night, she left his home around 7:00 a.m. on Tuesday morning. On Tuesday, Dorrell went to the hospital with his mother who surgery on her breast. Two detectives came and got him at the hospital. (Ex. 27 at 13, 23–24.)

368. In the car, the detectives showed him photos of some men and asked if he knew about different robberies on the Southside they may have committed. Dorrell didn't know about any of the robberies.<sup>33</sup> (Ex. 27 at 24–26.)

369. When he was brought into the interrogation room, Dorrell was initially not asked about the murder. Eventually the detectives asked about it. Dorrell said he did not know Jones but had heard a man was duct taped and thrown in the ditch. He said the detective was "kind of getting aggressive" and was saying he knew Dorrell knew what happened. Dorrell said law enforcement would give them insight into what happened and then the teenagers took bits and

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<sup>33</sup> Interestingly, the one man whose name Dorrell recalled was on the list in the November 18, 2002 WSPD email listing black males known to have committed robberies in the area. (See Ex. 28.)



pieces of the truth and twisted them into lies to fit. Dorrell said that's why their stories didn't line up. (Ex. 27 at 27–29.)

370. Dorrell's mother came in at one point, having just had surgery earlier in the day, and told Dorrell to tell the truth and tell the police if he knew anything. He told her he didn't know anything; he promised her didn't know anything about it. (Ex. 27 at 29.)
371. Detectives told him he could go home if he told them the truth and if he continued to say he didn't know anything—he wasn't going home. So, Dorrell took pieces of what he had learned from them and put it together so he could go home. (Ex. 27 at 29–32.)
372. He didn't know why Jessica testified they committed the crime, but he assumed law enforcement played her against them and said she would be in the clear. (Ex. 27 at 32.)
373. He said his trial attorney encouraged him to take a plea for 16 years in prison. The attorney told him that it was a high-profile case and he'd probably "end up getting a lot of time." Dorrell refused; he knew he wouldn't be convicted because he was innocent. (Ex. 27 at 33–34.)
374. Dorrell said he was innocent and denied having any involvement in Jones' robbery and murder or knowing anything about it. (Ex. 27 at 31, 47.)
375. He said that all of the others had always told him they weren't involved either. He was with Nathaniel, Jermal, and Christopher the entire time so he knows they weren't involved. He couldn't vouch for Rayshawn because he wasn't with him, but he didn't believe he was involved either. (Ex. 27 at 35–36.)
376. After their release, Dorrell, Christopher, and Jermal remained close but did not discuss the case. Dorrell explained it this way:

All of us – like we close. All of us – we went through this together.

...

Like me and Christopher Bryant were saying the other day, like we was together, he was just like – it's like it's a dream because like – after you done did all that time, you get to thinking it's like did I do some drug and I'm forgetting something in my life or something like we done did – we done did so much time for this crime, we're like it's – it's scary because it's like we know in our heart we ain't had nothing to do with it, but the time – I guess it's just done messed with us to a certain extent, like we don't did all this time for what, for nothing.

(Ex. 27 at 37–38.)

377. After years of thinking about his case, Dorrell understood the alleged "evidence" against them didn't make any sense.

It's -- it's a lot of things in our case, but kids at our age don't do like -- it's hard for a child that age just to go out and do a crime like that and not have no evidence there.

...

It's just -- it's hard. It's -- it was a lot of common sense in our case that they could have seen theirself that just didn't add up, like y'all going off word for word what I'm saying and -- but y'all (inaudible) the evidence, but ain't none of it matching none of it. Only thing y'all trying to say is an Air Force footprint was the way Rayshawn Banner walked it could have matched his shoe or something or the imprint of his shoe. But they saying this -- the way a person walk in his shoe could go for other people, too.

(Ex. 27 at 42.)

**Jermal Tolliver**

378. Jermal testified that he was not involved in the robbery and murder of Jones in any way, had no knowledge of it, and that none of the other teenagers had ever told him they were involved. (Comm. Hrg. Tr. 869.)

379. Jermal was 15 years old and in middle school in November 2002. (Comm. Hrg. Tr. 876.)

380. On November 15, 2002, Jermal remembered going to Christopher's home because they were going to go to the mall. He remembered Christopher's mother and sister being home. It started raining so they changed their minds and Jermal went home. Later, he was outside Christopher's when Jessicah arrived. It was getting dark. They got in her car and went to drop Jed off home. That's when they saw the police lights. (Comm. Hrg. Tr. 870-71, 873-74, 878.)

381. Everyone got out of the car and Jermal went up to a girl he knew from school, Latoya Mashack, and asked her what happened. Latoya told him that someone had killed Jones. Jermal asked her who that was. He saw the yard and carport. He saw where the body was, but it was covered up. (Comm. Hrg. Tr. 871, 882.)

382. From there, they went to Davidson County to do something for Jessicah's grandmother and then went to the bowling alley. Jermal said Jessicah, Christopher, Nathaniel and Dorrell were at the bowling alley. (Comm. Hrg. Tr. 871-72.)

383. Jermal said they were smoking marijuana that day. He thought he probably smoked a blunt or two. None of them ever drank alcohol or did any drugs other than marijuana. (Comm. Hrg. Tr. 874, 943.)

384. Jermal testified that he was brought in for questioning after his mother called police. When asked why she would have done that, he responded, "I still ask myself that to this day but she told me that, she -- like, she knows we run around the neighborhood so she figured we may have heard something or anything." (Comm. Hrg. Tr. 878-79.)

385. He left with police after they told him they would bring him back home in an hour or so. His mother did not go with him. Detectives began questioning him on the ride to the station. (Comm. Hrg. Tr. 879, 891–92.)
386. Jermal testified the detectives were calm at first during their questioning, but then got aggressive—slamming their hands on the table and yelling at him, “spittle flying.” (Comm. Hrg. Tr. 893, 919.)
387. Jermal said he told police he committed the crime “[b]ecause they wouldn’t accept that [he] didn’t.” When he was first being questioned, he denied any involvement. He completely made up they had thrown a wallet out from a bus window near the mall after WSPD kept asking where the wallet was. Jermal testified he doesn’t remember all of the specifics because “it was a bunch of lies.” (Comm. Hrg. Tr. 874–75, 894–96.)
388. Jermal testified law enforcement took him out by the McDonald’s near the mall to look for the wallet, but no wallet was ever found. After they got back to the police station, he told them again that he didn’t know anything and the information about the wallet was a lie. Jermal said the detectives continued to “badger” him. (Comm. Hrg. Tr. 896–97.)
389. Detectives asked him what Jones was hit with and said it was a blunt object. Jermal lied and said it was a bat. (Comm. Hrg. Tr. 931–32.)
390. Jermal also testified he lied when he told police someone had used Jones’ credit card at an ATM at the mall. (Comm. Hrg. Tr. 937–38.)
391. Detectives would tell him the other teenagers were at the station saying Jermal had done this or that. Eventually, Jermal “kind of stopped fighting. I was like, man, I didn’t – ‘I don’t know what you want me to say, but okay.’” (Comm. Hrg. Tr. 897–98.)
392. Jermal was never told he could leave the police station and didn’t think he could. He was brought in around 3:30 or 4:00 p.m. and didn’t leave until after midnight—in handcuffs and without shoes. He was taken to the youth detention center. (Comm. Hrg. Tr. 876, 879–80.)
393. A Commissioner asked him why his sister, who was not a suspect, would have incriminated him and Jermal responded that his sister told him that “the reason she said that, she said she was under the same type of attack that [the teenagers] were.” They made her feel like a suspect. (Comm. Hrg. Tr. 912.)
394. Jermal testified, “the worst trouble, we may break a window or steal a candy bar or something like that, not kill nobody.” (Comm. Hrg. Tr. 884.)
395. When asked why he would incriminate himself and his friends, Jermal testified: “Because I thought I was going home. I did exactly what they asked me to do . . . I was a kid. I don’t know. I just thought if I did what they said, they were going to return me to my mom . . . Today as a man now, I know I was a fool.” (Comm. Hrg. Tr. 898–99.)

396. Jermal was offered a plea of 14 to 16 years. Despite knowing Rayshawn and Nathaniel had already been convicted and received life sentences, he refused to take the plea because he knew he was innocent. (Comm. Hrg. Tr. 954–55.)

**Rayshawn Banner**

397. Rayshawn testified that he was not involved in the robbery and murder of Jones in any way and none of his co-defendants ever told him they were involved. (Comm. Hrg. Tr. 966–68.)

398. Rayshawn was at Christopher’s house and they had all planned to go out to the football game and then a teenage club, but that never happened. It was still daylight. Because the plans had changed, Marcus and Rayshawn went home in different directions and Rayshawn fell asleep on his couch while watching television. It was getting dark when he fell asleep. He never left the house again that night. He woke up when his brother, Joseph, came home later that night. (Comm. Hrg. Tr. 968–69, 1034–35.)

a. The last time he saw Christopher, Nathaniel, Jermal and Dorrell that day was when he left Christopher’s. (Comm. Hrg. Tr. 969.)

399. Although he had smoked pot in the past, he said he wasn’t smoking pot that day with everyone else, because he wasn’t with everyone else. (Comm. Hrg. Tr. 985.)

400. Rayshawn testified that Jessicah ran over his foot with her car one day. He thought it was the same day as the murder but isn’t certain. He remembered it happening around the time he got out of school that day. It didn’t hurt, but he was mad about it. He didn’t remember what shoes he was wearing that day, but testified it was probably a pair of hightop white Air Force Ones. (Comm. Hrg. Tr. 966, 973, 1009.)

401. Rayshawn testified that the pairs of shoes collected from his home belonged to him and his brothers, Nathaniel and Joseph. Rayshawn wore a size 8.5 shoe in 2002. He thought Nathaniel wore shoes a little smaller than him and Joseph wore a 9. They would all share shoes. Rayshawn said Nathaniel did not have a pair of all-white Air Force Ones, only Rayshawn did. Rayshawn didn’t recall Nathaniel ever wearing Rayshawn’s white Air Force Ones. (Comm. Hrg. Tr. 971–72, 1010.)

402. After being shown pictures of the shoes that were confiscated, he picked out red and white Air Force Ones as those he was wearing when he was arrested. He picked out the white hightop Air Force Ones as the ones he was wearing on November 15, 2002. (Comm. Hrg. Tr. 1031–32.)

403. Rayshawn did not recall any testimony at his trial connecting a shoeprint to his shoes. Rayshawn thought he was wearing his own shoes, size 8.5, on November 15, 2002. (Comm. Hrg. Tr. 974, 978.)

404. He was asleep when WSPD arrived. He had his hands in his hoodie pocket. WSPD told him to take his hands out of his hoodie. When he questioned why he had to do that, they pointed two guns at him so he threw his hands up. They placed him under arrest and brought him to

the station to interrogate him. When he was first questioned by WSPD, he denied being involved or hitting Jones. (Comm. Hrg. Tr. 993, 1012.)

405. When asked why he confessed to being involved, Rayshawn testified: “Because that was – I heard the recording that detectives played for me that stated that [Nathaniel] seen me hit the man first, and so I figured he lied, I lied, and I just wanted to go home.” He said law enforcement told him if he just told the truth they would send him home. (Comm. Hrg. Tr. 969–70.)
406. After playing the portion of the tape with his brother incriminating Rayshawn, WSPD stopped the tape and told him he could get the death penalty. After that, he lied and confessed. He thought he would be able to go home after that. He had seen Dorrell and his mother leaving. He didn’t understand at the time that he would end up in prison. (Comm. Hrg. Tr. 979–80, 1019, 1035–36.)
407. Law enforcement never yelled or slammed on the table while he was being questioned. (Comm. Hrg. Tr. 1004.)
408. Rayshawn wanted to testify at his suppression hearing and his trial, but his attorney told him he shouldn’t because then his co-defendants’ statements would be held against him. (Comm. Hrg. Tr. 983–84.)
409. Prior to this case, Rayshawn’s interaction with the legal system had resulted in juvenile probation. The most serious crimes he had been charged with previously were breaking and entering or damage to property. (Comm. Hrg. Tr. 995, 998.)
410. When he was in trouble previously, his mother would be with him but she wasn’t there this time. He was told she couldn’t come. He was 14 years old and scared. (Comm. Hrg. Tr. 1021.)

### **Nathaniel Cauthen**

411. Nathaniel testified that he did not rob or murder Jones and was not involved in his death in any way. None of his co-defendants have ever told him they were involved. (Comm. Hrg. Tr. 1042–44.)
412. Nathaniel wasn’t sure when Jones was attacked, but he was with Jessica that entire late afternoon and evening. (Comm. Hrg. Tr. 1044.)
413. On November, 15, 2002, Nathaniel got off the school bus and went to Christopher’s home. He was supposed to be fighting Jermal’s older brother, but that never happened. Instead, he stayed at Christopher’s until around 5:00 p.m. Christopher, Rayshawn, Jermal, Dorrell, Shelton, and Jed were there. The others left and walked to the store. (Comm. Hrg. Tr. 1044–45.)
414. Jessica drove up and Nathaniel got in her car and they went to the Longview neighborhood to a house where his cousins, Anjuan Terry and Laymond Hairston were. Jessica and Nathaniel picked up “Papa” from there and they went to the Fairchild neighborhood so Papa could see his baby’s mother. Then they went to an apartment complex and dropped Papa off.

It was already dark, so they went to a Circle K behind the hospital. They went to another neighborhood and Jessica performed oral sex on Nathaniel. They proceeded to her grandmother's home and then went back to Christopher's. (Comm. Hrg. Tr. 1045-47.)

415. At Christopher's, Jessica accidentally ran over Rayshawn's foot with her car. Rayshawn was still able to walk but was limping. Nathaniel calmed Rayshawn down. Then Christopher, Dorrell, Shelton, Jed, and Nathaniel all got into Jessica's car. Rayshawn did not go with them. Jessica took Shelton and Jed to Moravia Street. It was completely dark. Shelton went home, then the rest went to Jed's father's home (not on Moravia) and then back to Moravia to give the money Jed got from his father to his aunt. (Comm. Hrg. Tr. 1048-49.)

a. Nathaniel said Rayshawn was wearing red and white shoes on November 15, 2002. He remembered because those are the ones Jessica ran over. (Comm. Hrg. Tr. 1061.)

416. They all then went to the bowling alley. They were only there 5-10 minutes when Nathaniel got kicked out. They headed back to Jed's and that is when they saw the police cars. (Comm. Hrg. Tr. 1050.)

417. Jessica was trying to turn the car around. Nathaniel and Jed jumped out of the car and ran to the far corner of Belview Park to look. Dorrell, Jermal and Christopher followed after. A homeless man on the corner pointed out a dead body. Nathaniel said the body was not covered by a sheet. (Comm. Hrg. Tr. 1051, 1085.)

418. Nathaniel admitting smoking one joint that day. He wasn't high but was mellowed out. He said no one else was smoking that day. (Comm. Hrg. Tr. 1052, 1074.)

419. Nathaniel wore a size 7.5 shoe in 2002 and still does. He was wearing a pair of size 8 Jordans when he was arrested. He did not see them in the photos presented to him by the Commission. Nathaniel said he was wearing a pair of Jordans, number 11, that were blue and white. They are the same shoes he was wearing on November 15, 2002. Nathaniel would share shoes with his brothers, Rayshawn and Joseph, and his cousins, Anjuan and Laymond. (Comm. Hrg. Tr. 1055-58.)

a. The shoes Nathaniel was wearing on November 15, 2002, were never presented at trial. (Comm. Hrg. Tr. 1062.)

420. He initially denied having any involvement when he was first questioned. They played a recording of Jermal's statement and he was shown a statement from Christopher. He continued to deny involvement over and over. (Comm. Hrg. Tr. 1052-53, 1086-88.)

421. Then his mother showed up and he and his mother were put into an interrogation room together, with officers also in the room. He got into a dispute with his mother. He thinks he took what she was saying the wrong way. He thought she was saying he had something to do with it, but now he thinks she was just asking him. He started crying because he didn't think his mother believed him. The detectives came back in and said to tell them whatever he could provide so he could go home. (Comm. Hrg. Tr. 1089-90, 1115.)

422. When he told the first lie, “the police got mad and threw the recorder across the table and stormed out of the room.” (Comm. Hrg. Tr. 1101.)

423. When asked why he told police he committed the crime when he hadn’t, Nathaniel responded,

Because I was scared for my life.

...

Because I thought the police was going to do something to me.

...

Harm me in any type of what that if I didn’t – if I didn’t admit to this crime, that I felt that my life was in danger to the point where Lieutenant Weavil was going to do something to me . . . .

...

He threatened that I would do the rest of my life in prison. He threatened me with lethal injection. He threatened me to shoot me. I mean, acted – I mean, what else would he want me to say?

(Comm. Hrg. Tr. 1052–53.)

424. Later in his testimony, he was asked a similar question and responded: “Because I didn’t know no better. I was a child. I was 15 years old. I was forced to say something that I didn’t want to say. And the only way I knew to get out of the situation that I was in was to comply with what they was asking me for.” He was told he would be able to go home. (Comm. Hrg. Tr. 1062–63.)

425. In response to a Commissioner’s questions and describing the moment he falsely confessed, Nathaniel said:

This was hours after. This was after I done been crying. This is after I been ask to go home. This is after the police had already threatened me several times.

What you want me to do? I’m 15 years old. I can’t read or write. I know no better. The only thing I know is my mama’s at home. I don’t know where I’m at.

What you want me to say? Any kid would do that. Any kid would actually sit right here and lie to make a situation better so they can go home.

If you threaten me with lethal injection, I don’t even like needles, yeah, you giving me [sic]. If you’ve got a gun on your side, yes, you scaring me. If I ask you several times after time after time, ‘I’m

ready to go home. I had nothing to do with this,' what do you – what else you want from me?

As you asking me right now, but see, now I'm a little older, my mind has developed, so now I can take the lashes that you're giving me right now because I have knowledge of the situation. I know who I am. I understand the situation.

So if you ask me again did I harm Mr. Jones? No, ma'am, I didn't.

(Comm. Hrg. Tr. 1067.)

426. His lawyer told him it wasn't in his best interest to testify at trial. (Comm. Hrg. Tr. 1069.)

427. Prior to this, Nathaniel was only arrested once—for driving his mother's car without a license. Otherwise, he has never been in trouble with the law. He has gotten into neighborhood fights but never with someone he didn't know. (Comm. Hrg. Tr. 1090–91.)

### **Christopher Bryant**

428. Christopher denied being involved in Jones' robbery and death. None of his co-defendants have ever told him they were involved either. (Comm. Hrg. Tr. 1120–22.)

429. On November 15, 2002, Christopher came home from school and was on his front porch. After a little while, they went to the bus stop to go to the mail but it started drizzling so they went back to his house. They stayed at his house for a while and then Jessicah and a few other people pulled up in her car. Then a few people got in the car with her and left. (Comm. Hrg. Tr. 1122.)

430. Around nighttime, Jessicah came back. At that point, Christopher got in the car. He thinks it was around 7:30 p.m. or 8:00 p.m. Jessicah, Nathaniel, Jermal, Dorrell, and Christopher went to drop Jed off on Moravia Street and they saw the police cars. They got out of the car and went to the stop sign. Someone in the crowd said that someone had gotten hurt. He never saw a body. Everyone except Jed got back in the car and went back to Christopher's. (Comm. Hrg. Tr. 1122–23, 1125, 1168.)

431. After that, they went to the bowling alley, then Midway, and then came back to Christopher's house. Dorrell spent the night at Christopher's. Jermal went home. Nathaniel and Jessicah left together. Rayshawn was never with them when they went places in the car that day. (Comm. Hrg. Tr. 1123.)

432. Rayshawn left earlier with Marcus Shavers. (Comm. Hrg. Tr. 1124.)

433. Christopher assumes he was smoking marijuana that day. He didn't remember if anyone else was. (Comm. Hrg. Tr. 1126–27.)

434. When asked why he told police he was involved in the crime, Christopher testified,



If y'all was in that room with me – I was threatened with the death penalty. Like, every time I told them I wasn't involved or I never – the same telling I'm telling you now. I never met Mr. Jones. I never even shook his hand. I never nothing. I don't even know him. They told me I was lying. I'm lying, I'm lying.

So my thing, I – if I tell the truth, if I'm trying to tell you the truth and you're telling me I'm lying – like, every time I tell you I don't know this man or whatever, like, I'm lying, I'm a 'ing liar, and that's all it was, like, and they threatened me with the death penalty. Somebody on the phone right now asked me which arm you want the death penalty, hold out your arm, that's the vein, that's the vein.

I was scared. I was 15. I was still into remote-controlled cars and stuff like. I ain't – I didn't – I ain't never been in no trouble, like, as far as dealing with no murder or robberies or nothing like that. I ain't never been in no trouble like that.

So I was scared. I mean, I was scared. And I regret every day that I, you know, said what I said.

(Comm. Hrg. Tr. 1127–28.)

435. In explaining how law enforcement got him to provide the “facts” in his statement, Christopher testified as follows:

They told me – they told me some of the things, and then I just, like, helped them out . . . if they tell me, like, ‘Oh, well, this was, like, this,’ so then I just give some imaginary stuff. And if it weren't right, then they'll let me know it ain't right, and ‘Oh, this not right.’

And then, you know, I'll just say some stuff to fit into what they've got going on.

...

I was telling them what they want to hear so they can let me go home.

(Comm. Hrg. Tr. 1132–33.)

436. Law enforcement told him he would go home if he did that. (Comm. Hrg. Tr. 1133.)
437. The next day he immediately told his mother, brother, and some other people that what he told police was a lie. (Comm. Hrg. Tr. 1132.)
438. Christopher wanted to testify at trial, but his lawyer told him it wasn't in his best interest. (Comm. Hrg. Tr. 1129–30.)

439. When given the opportunity to speak freely, Christopher testified,

We didn't -- I didn't have nothing to do with Mr. Jones' murder. I never was involved. I never participated in it. I would never do nothing like that to nobody . . . And I'm sorry for what happened to Mr. Jones but I didn't have no part in it. And I will go to my grave until the day I'm dead knowing that I didn't do this. I didn't have no part in it.

(Comm. Hrg. Tr. 1146.)

#### **v. Jessica Black's Recantation**

440. In the summer of 2019, Jessica Black recanted her trial testimony to Hunter Atkins, a sports reporter in Texas who was planning to write an article on the case.<sup>34</sup> Her recantation came only after Atkins spent months trying to earn her trust. She did not trust him at first and it took her a long time to open up and tell him the truth. Their conversations were all recorded by Atkins and totaled roughly 15 hours.<sup>35</sup> (Comm. Hrg. Tr. 124–25.)

441. During one of their conversations, Jessica tells Atkins that WSPD told her the victim's DNA from his "skin" was found in her car and that they had footage of the teenagers using Jones' credit cards at the ATM. (Ex. 99 at 41, 74–75.)

442. In October 2019, Jessica was interviewed under oath by Commission staff over two days. The interview was recorded and transcribed. As she had a few months before with Hunter Atkins, she again completely recanted her trial testimony.<sup>36</sup>

443. On February 26, 2020, WSPD officers recorded an interview with Jessica where she, again, recanted her testimony.<sup>37</sup>

- a. WSPD told her that because they were interviewing her at her home, not in Winston Salem, they couldn't arrest her. They claimed they didn't want her to feel pressured and only wanted the truth. Then they told her she had started "bringing things back up, and people start getting revictimized and all this." (Ex. 26 at 13–15.)
- b. Jessica told WSPD that during her interrogation in 2002 after she told the truth law enforcement told her she was lying. She was terrified and crying the entire time. She just wanted to go home.

Oh, I told them a whole bunch of shit, to the point of seeing these boys – or hearing the boys make comments about fucking

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<sup>34</sup> The day before she spoke to Atkins, she told her then-boyfriend, Zach, that she had lied at the trials, although she did not give him any details. (Comm. Hrg. Tr. 220–21.)

<sup>35</sup> The conversations between Atkins and Jessica have been transcribed. All of these transcripts are available upon request of the Panel. Hunter Atkins also testified at the Commission hearing in March 2020.

<sup>36</sup> The transcript and/or video of Jessica's interview with the Commission is available upon request of the panel.

<sup>37</sup> Notably, WSPD has put Det. Rose in charge of the current reinvestigation of this case. Det. Rose was part of the original WSPD team that pursued the convictions against the five teenagers.

robbing somebody, to taking somebody out, to picking up sticks, or seeing them with duct tape, and then seeing them with electric tape, and then, seeing them with clear tape, seeing them with all kind – man, I changed my shit so much, because it seemed like everything I threw out there was not satisfying them.

So – and, and then once they quit asking me about it, I knew that’s what they wanted to hear, that I, I had hit that spot.

...

There was little shit thrown out here to help lead me in that way. And like – or just to give me a hint, you know what I’m saying, like a slight hint, like, are you sure you all didn’t go to, go to Big Lots? Are you all sure?

(Ex. 26 at 50–52.)

444. On March 9, 2020, Jessicah tearfully testified under oath before the eight-member panel of the Commission. She denied being present when Jones was robbed and murdered and said she had no knowledge of the crime. (Comm. Hrg. Tr. 91–92.)<sup>38</sup>
445. She denied Hunter Atkins promised her anything in order to induce her recantation and said she has not received anything in exchange for recanting her testimony. (Comm. Hrg. Tr. 92.)<sup>39</sup>
446. When asked what she expects to happen now that she has come forward and changed her story, she responded, “That everything be set right, the way it should be. And – and what happened in those rooms and stuff be known.” (Comm. Hrg. Tr. 94, 142–43.)
447. She recounted that in November 2002 on most days she would go home after school, make sure her grandmother didn’t need anything, and then leave to see the defendants. She normally got to their side of town around 4:00 p.m. The defendants and her would ride around and get high smoking weed. She would then drop them back off and head home. (Comm. Hrg. Tr. 94–95, 166–68.)
448. Because they were high and it has been so many years, she didn’t remember all of the details of the evening Jones was murdered. She did not remember if four of the defendants or all five were in her car that day. (Comm. Hrg. Tr. 100–101, 154.)
449. She testified they went to the bowling alley and mall. The defendants had originally told her they needed to go home and change clothes to go to a party, but they later decided they weren’t going to the party and never changed. She was not completely positive whether they

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<sup>38</sup> Video of Jessicah’s compelling Commission testimony is included as Exhibit 103 on the flash drive.

<sup>39</sup> She acknowledged Hunter Atkins had given her money for one car payment, but it was after she had already recanted her trial testimony to him. (Comm. Hrg. Tr. 92–93.)

changed clothes, but she did not believe so because they were not inside their homes long enough to do that. (Comm. Hrg. Tr. 95–96.)

450. She did drop them back off home. Dorrell, Nathaniel and two others got out of the car. She could not recall which of the other two were with her that evening. (Comm. Hrg. Tr. 96.)

451. She was unclear after so many years exactly the order of things they did that day. She did recall it was dark when they went to the bowling alley and the mall. (Comm. Hrg. Tr. 97.)

452. She also recalled driving through Midway, but no one was outside to hang out with. They came back to Winston Salem and rode around for a while. It was almost time for her to go home,<sup>40</sup> so she went to drop four of the defendants off. They noticed the police cars and crime scene tape. She was uncertain of the time, but possibly 8:30 or 9:00 p.m. (Comm. Hrg. Tr. 97–99.)

453. When they saw the police cars and blue lights, “[i]t was like, ‘Oh my God. What happened? What Happened?’” All of them wanted to know what was going on. Someone in the car said, “[s]omebody must’ve got killed” because there were so many police cars. They got out of the car to see what happened but couldn’t get close enough to really see anything. Others were also gathered at the intersection near the home looking at the scene. Some of the teenagers ran up and asked what was going on, then they came back to the car. She didn’t remember if they found out someone had been killed. (Comm. Hrg. Tr. 100–101, 145–46, 173–75, 240.)

454. Jessicah testified that the defendants “never acted out of the – what a typical person would if they had seen the same thing.” (Comm. Hrg. Tr. 101.)

455. After she dropped the defendants off, Jessicah went to Elizabeth Fowler’s home. (Comm. Hrg. Tr. 238.)

456. When she was interrogated by WSPD, her grandfather dropped her off at the police station. Law enforcement had just seized her car. She thought she was at the police station for more than four hours, maybe more than six; “it seemed forever.” She testified that law enforcement coerced her statements, slammed on the table, yelled at her and spit in her face. (Comm. Hrg. Tr. 102–103, 126, 132.)

457. She testified it was “a room full of men in there” and that she didn’t realize she could get up and walk out anytime she wanted. She thinks if her mother had known, “she would not have even allowed [Jessicah] to go in that room without her being there.” (Comm. Hrg. Tr. 178, 180, 182–83.)

458. Jessicah testified that prior to trial, Assistant District Attorney Eric Saunders picked Jessicah up in a minivan. Someone else was driving. ADA Saunders and a Black woman were in the back of the van with Jessicah. Jessicah was told the woman in the van was one of Jones’

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<sup>40</sup> Her home, where she lived with grandparents, was 10–12 minutes from where the defendants lived. (Comm. Hrg. Tr. 99.)

daughters. They drove around tracing the places Jessica and the defendants allegedly went that night. (Comm. Hrg. Tr. 104.)

- a. It was only after speaking with Hunter Atkins seventeen years later that she learned the woman was not one of Jones' daughters. Atkins told Jessica that Jones' daughters said that "they would have been appalled had they been asked to participate in a ride like that." (Comm. Hrg. Tr. 104–05.)
- b. There is no record of this ride taking place or who participated. To date, it is unknown who the woman pretending to be Jones' daughter was.

459. Jessica repeatedly met with the prosecutors to prepare for her testimony at both trials. At one point ADA Saunders gave her a "transcript" to prepare for her testimony. She was "told just to go over it, read through it . . . ." Jessica testified this was "[s]o I didn't trip up . . . [s]o I would not sit [there] and stumble around . . . ." The transcript "had stuff highlighted in there, there's stuff circled in there . . . ." She does not recall seeing her WSPD statement. (Comm. Hrg. Tr. 183–87.)

460. Jessica acknowledged she was never directly told she would not be charged if she testified. She believed she was never charged because "they got what they wanted." (Comm. Hrg. Tr. 105, 111.)

- a. She elaborated and said when she first sat down at the police station, she told them the truth and law enforcement responded by telling her over and over that she was lying. As she began changing her story, law enforcement would "quit asking specific questions." They repeatedly told her she "was facing just as much time and that [she] could go down for accessory." They were aggressive in their questioning and told that "regardless, they [could] always come back and charge" her. (Comm. Hrg. Tr. 111–12.)

461. Jessica believed

they already had a scenario in their mind as to what happened and then you got these five young men that had constantly – that roamed the neighborhood and just hang out and do their thing. Then you have – you have one or two that have already previously done been in trouble, and I – you – I feel like they went ahead and come up with their own scenario, their own story, and that they wanted something to fit that and that anything that [she] said didn't fit it, so they just kept on until they got what they felt fit."

(Comm. Hrg. Tr. 112.)

462. She just "wanted to go home." (Comm. Hrg. Tr. 115.)

463. Jessica said testifying at the two trials was "the scariest thing [she's] ever been through in [her] whole life." She was "terrified" and "just want[ed] it to be over." (Comm. Hrg. Tr. 115.)

464. Jessica testified she has not spoken about this case with anyone since she testified at the trial – not her family and the Jones family. She thought that is because she’s “ashamed” and “feel[s] so bad.” She said she feels bad “that their families lost that time with them.” (Comm. Hrg. Tr. 105–06, 118, 137–39.)
465. When asked what she would say to Jones’ family if given the chance, she said, “That I am so sorry that that happened. I am so sorry for their loss. And I am sorry that the things went like they did as far as pertaining to these younguns. And I’m sorry that I gave false testimony. And I’m sorry that I just – I don’t – I’m just sorry.” (Comm. Hrg. Tr. 114.)
466. She said she hasn’t reached out to the defendants or their families to apologize because she doesn’t think they would want to hear from her. She testified, she doesn’t “feel like it would make a difference because . . . that apology is not going to make up for that time.” (Comm. Hrg. Tr. 139.)
467. She didn’t process what had happened to her until she was “able to look at it from an adult point of view.” She said as an adult, she felt horrible. Her “conscience has ate [her] so bad, so bad.” She “could only imagine if [her 14 year-old] son<sup>41</sup> was in that predicament and how I would feel pertaining to who it was testifying against them . . . .” She always knew she had lied at the trials, but it didn’t hit her conscience until she was an adult and had become a mother herself. (Comm. Hrg. Tr. 115–16.)
468. She testified that she now knows the teenagers were also interrogated and gave statements. Jessica testified, “if they went through anything what [she] went through over there, then [she] can see why they come to [give statements admitting involvement] because they were probably tired and scared. I know they were scared.” (Comm. Hrg. Tr. 130.)
469. When she was 19 or 20 years old, Jessica sought mental health treatment and was diagnosed with PTSD. She testified the diagnosis was “driven partially by this case and partially by the physical abuse [she] was going through from [her] son’s father.” She did not tell her therapist about the murder or having testified at two trials, but she did tell her about the photos that had been shown to her. She has not had any therapy since then. (Comm. Hrg. Tr. 196, 207, 247–48.)
470. Jessica was adamant that she never heard the defendants talk about committing the murder and did not hear Jones being attacked. She was not on the picnic table when Jones was attacked. She testified she can’t say one way or another whether the defendants committed the crime, but it did not happen how her testimony described because she was not there. (Comm. Hrg. Tr. 133–34, 143–44, 208.)
471. When asked if she knows of anything “which would reveal innocence on the part of any of the” defendants, Jessica responded: “That whole evening, they were with me. Okay? So what. – anything that went out before then, no, I can’t, because I wasn’t there. But the whole evening,

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<sup>41</sup> Jessica also testified she did not realize how young the defendants were in 2002. She thought they were closer to 18. (Comm. Hrg. Tr. 130.)

they were with me . . . So from sometime between 4:00 and 4:30 up until about 8:00, 8:30 p.m.” (Comm. Hrg. Tr. 208.)

- a. Critically, Jessica *never* had any idea when the murder happened and, therefore, did not realize she was actually an alibi witness for several of the defendants during a time period that includes when Jones was attacked. (*See* Comm. Hrg. Tr. 230.)
- b. She assumed if the defendants committed this crime, it happened before she picked them up between 4:00 and 4:30 p.m. that day. (Comm. Hrg. Tr. 211.)

472. Jessica stood firm in her testimony before the Commission that her trial testimony had been false—despite being aware she could be incarcerated for perjury. (Comm. Hrg. Tr. 199.)

### CONCLUSION

473. Rayshawn Banner and Nathaniel Cauthen have spent eighteen years in prison for a crime they did not commit and are continuing to serve life sentences in this case.

474. Although no longer incarcerated, Christopher and Jermal lost years of their life and continue to live with a murder conviction on their records. Dorrell lost most of his teenage and adult life to incarceration.

475. Their wrongful convictions were predicated on their false confessions, which were all immediately recanted, the now-recanted false testimony of Jessica Black, and the extremely weak link of the shoeprint on Jones’ car.

476. The physical evidence at the crime scene is inconsistent with the defendants’ guilt.

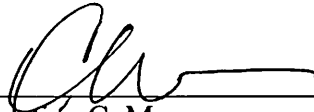
477. The facts pled herein establish by clear and convincing evidence that Rayshawn Banner and his co-defendants are factually innocent of the murder of Nathaniel Jones on November 15, 2002, and that they are entitled to a declaration of innocence pursuant to N.C. Gen. Stat. § 15A-1469(h).

478. In the event the District Attorney will not consent to a finding of innocence prior to the evidentiary hearing, Rayshawn Banner respectfully requests the three-judge panel, after considering the evidence presented during the forthcoming evidentiary hearing, enter an Order declaring that he and his co-defendants have established their innocence by clear and convincing evidence and dismissing, with prejudice, the charges against them.

Respectfully submitted, this the 16<sup>th</sup> day of March, 2021.

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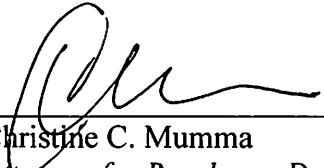


**Certificate of Service**

I hereby certify that, via hand delivery, I caused to be served a copy of the above **Plea for Declaration of Innocence** upon the following:

The Honorable Jim O'Neill  
Mr. James Dornfried  
Ms. Jennifer Martin  
Mr. Kevin Edwards  
Mr. Benjamin White  
District Attorney's Office  
P.O. Box 20083  
Winston-Salem, NC 27120

This the 16<sup>th</sup> day of March, 2022.

  
\_\_\_\_\_  
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