No. COAP25-576

NO. **TWENTY-FOURTH DISTRICT**

NORTH CAROLINA COURT OF APPEALS

****

STATE OF NORTH CAROLINA	**)**	
	)	
v.	**)**	**From Forsyth**
	)	**(02CRS038883**
RAYSHAWN DENARD BANNER,	**)**	**(Banner)**
NATHANIEL ARNOLD CAUTHEN		**(02CRS038884**
CHRISTOPHER BRYANT, &		**(Cauthen)**
JERMAL TOLLIVER		**02CRS038886**
		(Bryant)
		02CRS038882
		(Tolliver)

****

STATE'S PETITION FOR WRIT OF SUPERSEDEAS
AND
EMERGENCY APPLICATION FOR TEMPORARY STAY

****

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

The State of North Carolina, by and through the undersigned counsel, respectfully petitions this Court, pursuant to Rule 23(b) of the North Carolina Rules of Appellate Procedure, to issue its writ of supersedeas to stay enforcement of the order of the Superior Court, Forsyth County in *State v. Rayshawn Denard Banner, Nathaniel Arnold Cauthen, Christopher Bryant, & Jermal Tolliver*, File Nos. 02CRS038883 (Banner), 02CRS038884 (Cauthen),

02CRS038886 (Bryant), and 02CRS038882 (Tolliver), entered on 8 August 2025, which granted the Defendants' Motions for Appropriate Relief (MARs) and ordered that all four Defendants' "convictions shall be vacated and are hereby dismissed with prejudice." (Order, p. 33)

The State of North Carolina further moves, pursuant to Rule 23(e) of the North Carolina Rules of Appellate Procedure, that this Court enter an order temporarily staying the enforcement of the 8 August 2025 order of the Forsyth County Superior Court to permit this Court to consider the State's petition for writ of supersedeas. In support of this application and petition, the State shows the following:

PROCEDURAL HISTORY

1. On November 3, 2003, all four Defendants (collectively, "the Defendants"), alongside Dorrel Brayboy, were indicted for First-Degree Murder and Robbery with a Dangerous Weapon following the November 15, 2002, murder of Nathaniel Jones.

2. From March 22, 2004, to March 24, 2004, the Honorable Judge Michael E. Helms heard motions to suppress the Defendants' confessions (the "Suppression Hearings"), all of which were denied.

3. From August 9, 2004, to August 19, 2004, Mr. Cauthen and Mr. Banner were tried jointly before the Honorable Judge W. Douglas Albright. On

August 19, 2004, a jury found them both guilty of First-Degree Murder, a Class A Felony, pursuant to N.C. Gen. Stat. §14-17(a), and Robbery with a Dangerous Weapon, a Class D Felony, pursuant to N.C. Gen. Stat. §14-87. As a result, they were sentenced to life in prison without the possibility of parole. The trial court arrested judgment on the conviction for Robbery with a Dangerous Weapon.

4. At trial, Mr. Cauthen was represented by Attorney Teresa Hier and Mr. Banner was represented by Attorney Bob Leonard, who has since passed away.

5. From May 9, 2005, to May 20, 2005, Mr. Tolliver, Mr. Bryant, and Mr. Brayboy were tried jointly before Judge Helms. On May 20, 2005, a jury found each of them guilty of Second-Degree Murder, a Class B1 Felony, pursuant to N.C. Gen. Stat. §14-17(b), and Common Law Robbery, a Class G Felony, pursuant to N.C. Gen. Stat. § 14-87.1. For the Second-Degree Murder convictions, they were sentenced to active terms with a minimum of 157 months and a maximum of 198 months. For the Common Law Robbery convictions, they were sentenced to active terms with a minimum of 13 months and a maximum of 16 months, which was to run consecutively with the aforementioned sentence.

6. At trial, Mr. Tolliver was represented by Attorney John Clark Fischer, Mr. Bryant was represented by Attorney Nils Gerber, and Mr. Brayboy was represented by Attorney Tom Fagerli. All of the Defendants appealed their convictions, and the North Carolina Court of Appeals upheld each of the Defendants' convictions in unpublished opinions. *State v. Banner and Cauthen*, 178 N.C. App. 562, 631 S.E.2d 892 (N.C. Ct. App. July 18, 2006) (unpublished); *State v. Tolliver*, *Brayboy*, and *Bryant*, 181 N.C. App. 436, 639 S.E.2d 673 (N.C. Ct. App. Jan. 16, 2007) (unpublished).

8. In 2015, Mr. Bryant applied for review by the North Carolina Innocence Inquiry Commission ("NCIIC"). Mr. Cauthen applied to the Commission in 2018, and Mr. Banner and Mr. Tolliver subsequently joined the others.

9. Pursuant to public records from the North Carolina Department of Adult Correction ("NCDAC"), Mr. Bryant and Mr. Tolliver were released from NCDAC custody on February 3, 2017. Pursuant to public records from NCDAC, Mr. Brayboy was released from NCDAC custody on December 31, 2017.

10. In August 2019, Mr. Brayboy was killed.

11. On March 13, 2020, the NCIIC determined there was sufficient evidence of factual innocence to merit review. On April 28, 2022, the three-

judge panel heard the case and determined there was no clear and convincing evidence of factual innocence. The panel dismissed all four claims.

12. On April 27, 2023, Mr. Banner submitted his MAR based on N.C. Gen Stat § 154-1411 *et seq*., the Sixth and Fourteenth Amendments to the U.S. Constitution, and Article I, § 23 of the North Carolina Constitution.

13. On July 13, 2023, Mr. Cauthen filed his MAR based on N.C. Gen Stat § 15A-1411 et seq., the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 19, 23 of the North Carolina Constitution.

14. On September 28, 2023, Mr. Tolliver and Mr. Bryant submitted their own joint MAR ("Tolliver-Bryant 2023 MAR:), based on N.C. Gen. Stat. § 15A-1411 et seq., the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 18-24 of the North Carolina Constitution.

15. On December 1, 2023, the State filed Responses to the Defendants' Motions for Appropriate Relief (collectively, all Defendants' 2023 MARs are hereinafter "Defendants' MARs"). The State argued all claims were procedurally barred, except claims pertaining to Ms. Black's recantation and new testimony. The State further asserted that all claims were substantively insufficient. The Defendants filed Replies on January 19, 2024.

16. On August 13, 2024, the Court heard the parties' initial arguments on whether the Defendants were entitled to an evidentiary hearing.

17. On September 4, 2024, the Court ordered an evidentiary hearing.

18. The evidentiary hearing was scheduled for January 2025. The hearing was held from January 6, 2025, to January 24, 2025.

19. On 8 August 2025, the trial court entered an order granting Defendants' MARs, which granted the Defendants' Motions for Appropriate Relief (MARs) and ordered that all four Defendants' "convictions shall be vacated and are hereby dismissed with prejudice." (Order, p. 33)

20. On 8 August 2025, the State filed a motion for stay in the Superior Court, asking to stay the enforcement of the trial court's order while the State pursued an appeal of the trial court's order.

21. On 11 August 2025, the State filed a written Notice of Appeal from the trial court's 8 August 2025 order based on N.C.G.S. § 15A-1445(a).

22. The trial court has requested Defendants' counsel to prepare an order denying the State's motion for stay pending appeal.

REASONS WHY THIS COURT SHOULD ISSUE A TEMPORARY STAY AND WRIT OF SUPERSEDEAS

The State has entered a timely Notice of Appeal pursuant to N.C.G.S. § 15A-1445(a) and intends to timely to file a Petition for Writ of Certiorari pursuant to N.C.G.S. § 15A-1422(c). This Court should stay enforcement of the order of the Superior Court.

The trial court granted Defendants' motions for appropriate relief and ordered that the above-mentioned four defendants first-degree murder and second-degree murder convictions, respectively, be vacated and dismissed with prejudice. The North Carolina Department of Adult Corrections will release these Defendants back into the community imminently.

In order to permit this Court to adequately review this case under N.C. Gen. Stat. 15A-1445(a), N.C. Gen. Stat. 15A-1422(c)(3) and N.C R. App. P. 21, this Court should issue a temporary stay. Then, pending review, this Court should issue a writ of supersedeas. Without a stay and supersedeas, the two incarcerated Defendants will be released back into the community without this Court having an opportunity to hear and determine the State's issues on appeal.

WHEREFORE, the State of North Carolina respectfully requests that this Court issue a temporary stay and writ of supersedeas to stay enforcement of the 8 August 2025 order of the Superior Court pending review by this Court.

Electronically submitted this the 11th day of August 2025

JEFF JACKSON
ATTORNEY GENERAL

Electronically Submitted
Sherri H. Lawrence
Special Deputy Attorney General

North Carolina Department of Justice

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VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF WAKE

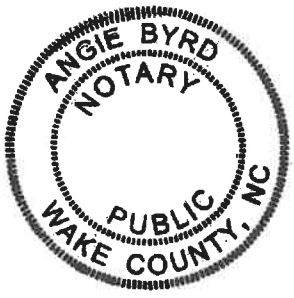
Sherri Horner Lawrence, Special Deputy Attorney General for the State of North Carolina, first being duly sworn, hereby deposes and says that she has read the foregoing STATE'S PETITION FOR WRIT OF SUPERSEDEAS AND APPLICATION FOR TEMPORARY STAY and knows the same to be true to the best of her knowledge except as to those matters and things therein alleged upon information and belief, and as to those she believes them to be true.

Sherri Horner Lawrence

Sherri Horner Lawrence
Special Deputy Attorney General

State of North Carolina
County of Wake

Sworn to and subscribed before me
This the 11th of August, 2025.



Angie Byrd

Angie Byrd, Notary Public

My commission Expires: 1/3/2030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing PETITION FOR WRIT OF SUPERSEDEAS AND APPLICATION FOR TEMPORARY STAY upon the DEFENDANTS by U.S. mail, addressed to their ATTORNEYS OF RECORD as follows:

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Durham, NC 27717

Electronically submitted this the 11th day of August 2025.

Electronically Submitted
Sherri H. Lawrence
Special Deputy Attorney General

STATE OF NORTH CAROLINA COUNTY OF FORSYTH	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NOS: 02CRS038883 (Banner) 02CRS038884 (Cauthen) 02CRS038886 (Bryant) 02CRS038882 (Tolliver)

FILED
DATE: August 8, 2025
TIME: 4:07:00 PM
FORSYTH COUNTY
CLERK OF SUPERIOR COURT
BY: R. Ijames

STATE OF NORTH CAROLINA

v.

RAYSHAWN DENARD BANNER,
NATHANIEL ARNOLD CAUTHEN,
CHRISTOPHER BRYANT, &
JERMAL TOLLIVER

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR APPROPRIATE RELIEF

THIS CAUSE coming on to be heard by the undersigned Superior Court Judge, upon Defendants' "Motions for Appropriate Relief" ("MARs"), pursuant to N.C. Gen. Stat. §15A, Article 89 (the "MAR Statutes"). After considering the MARs and the matters contained therein, the State's Written Responses, Defendants' Replies, the arguments of the parties during the evidentiary hearing, and having reviewed the record proper and Court file, the Court details the procedural history and makes the following findings of fact and conclusions of law set forth in this Order.

PROCEDURAL HISTORY

1. On November 3, 2003, all four Defendants (collectively, "the Defendants"), alongside Dorrel Brayboy, were indicted for First-Degree Murder and Robbery with a Dangerous Weapon following the November 15, 2002, murder of Nathaniel Jones.

2. From March 22, 2004, to March 24, 2004, the Honorable Judge Michael E. Helms heard motions to suppress the Defendants' confessions (the "Suppression Hearings"), all of which were denied.

3. From August 9, 2004, to August 19, 2004, Mr. Cauthen and Mr. Banner were tried jointly before the Honorable Judge W. Douglas Albright. On August 19, 2004, a jury found them both guilty of First-Degree Murder, a Class A Felony, pursuant to N.C. Gen. Stat. §14-17(a), and Robbery with a Dangerous Weapon, a Class D Felony, pursuant to N.C. Gen. Stat. §14-87. As a result, they were sentenced to life in prison without the possibility of parole. The trial court arrested judgment on the conviction for Robbery with a Dangerous Weapon.

4. At trial, Mr. Cauthen was represented by Attorney Teresa Hier and Mr. Banner was represented by Attorney Bob Leonard, who has since passed away.

5. From May 9, 2005, to May 20, 2005, Mr. Tolliver, Mr. Bryant, and Mr. Brayboy were tried jointly before Judge Helms. On May 20, 2005, a jury found each of them guilty of Second-Degree Murder, a Class B1 Felony, pursuant to N.C. Gen. Stat. §14-17(b), and Common Law Robbery, a Class G Felony, pursuant to N.C. Gen. Stat. §14-87.1. For the Second-Degree Murder convictions, they were sentenced to active terms with a minimum of 157 months and a maximum of 198 months. For the Common Law Robbery convictions, they were sentenced to active terms with a minimum of 13 months and a maximum of 16 months, which was to run consecutively with the aforementioned sentence.

6. At trial, Mr. Tolliver was represented by Attorney John Clark Fischer, Mr. Bryant was represented by Attorney Nils Gerber, and Mr. Brayboy was represented by Attorney Tom Fagerli.

7. All of the Defendants appealed their convictions, and the North Carolina Court of Appeals upheld each of the Defendants' convictions in unpublished opinions. *State v. Banner and Cauthen*, 178 N.C. App. 562, 631 S.E.2d 892 (N.C. Ct. App. July 18, 2006) (unpublished); *State v. Tolliver, Brayboy, and Bryant*, 181 N.C. App. 436, 639 S.E.2d 673 (N.C. Ct. App. Jan. 16, 2007) (unpublished).

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9. Pursuant to public records from the North Carolina Department of Adult Correction ("NCDAC"), Mr. Bryant and Mr. Tolliver were released from NCDAC custody on February 3, 2017. Pursuant to public records from NCDAC, Mr. Brayboy was released from NCDAC custody on December 31, 2017.

10. In August 2019, Mr. Brayboy was killed.

11. On March 13, 2020, the NCIIC determined there was sufficient evidence of factual innocence to merit review. On April 28, 2022, the three-judge panel heard the case and determined there was not clear and convincing evidence of factual innocence. The panel dismissed all four claims.

12. On April 27, 2023, Mr. Banner submitted his MAR based on N.C. Gen Stat § 15A-1411 et seq., the Sixth and Fourteenth Amendments to the U.S. Constitution, and Article I, § 23 of the North Carolina Constitution. He claimed the following:

    a. Newly discovered evidence based on:

        i. State witness Jessicah Black's recanted testimony;

        ii. New testimony now offered by Jessicah Black;

        iii. Unidentified DNA evidence from string from Mr. Jones's hand;

iv. Unidentified DNA evidence from tape under Mr. Jones's porch;

v. New psychological research on false confessions;

vi. New standards for evaluating footwear impressions; and

vii. Affidavits from Mr. Bryant and Mr. Tolliver;

b. Ineffective assistance of counsel based on:

i. *Harbison* error for admitting guilt to the jury without Mr. Banner's consent; and

ii. Failure to investigate intellectual disability.

13. On July 13, 2023, Mr. Cauthen filed his MAR based on N.C. Gen Stat § 15A-1411 et seq., the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 19, 23 of the North Carolina Constitution. He claimed the following:

a. Newly discovered evidence based on:

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iv. Unidentified DNA evidence from tape under Mr. Jones's porch;

v. New psychological research on false confessions;

vi. New standards for evaluating footwear impressions; and

vii. Affidavits from Mr. Bryant and Mr. Tolliver;

b. Ineffective assistance of counsel based on:

i. A related Due Process violation pertaining to Mr. Banner's *Harbison* claim; and

ii. Failure to investigate intellectual disability.

14. Both Mr. Banner and Mr. Cauthen sought the following relief:

a. Order for an evidentiary hearing;

b. Vacation of their convictions and dismissal of the charges with prejudice; and

c. Any other relief as the Court deems just and proper.

15. On September 28, 2023, Mr. Tolliver and Mr. Bryant submitted their own joint MAR ("Tolliver-Bryant 2023 MAR"), based on N.C. Gen. Stat. § 15A-1411 et seq., the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 18-24 of the North Carolina Constitution. They claimed the following:

a. Newly discovered evidence based on:

i. State witness Jessicah Black's recanted testimony;

ii. Science on adolescent development and confessions;

iii. Post-conviction DNA testing; and

iv. Science on footwear impression analysis.

b. Ineffective assistance of counsel based on:

i. Failure to investigate and present evidence on mental and cognitive impairment; and

ii. Failure to investigate and present evidence on false confessions.

16. Mr. Tolliver and Mr. Bryant sought the following relief:

a. Vacation of their judgments;

b. Dismissal of the charges or an order for new trial;

c. Order for a State Response;

d. Order for an evidentiary hearing; or

e. Permission to submit memoranda of law following an evidentiary hearing; and/or

f. Further relief as the Court deems just and proper.

17. On December 1, 2023, per this Court's order, the State filed Responses to the Defendants' Motions for Appropriate Relief (collectively, all Defendants' 2023 MARs are hereinafter "Defendants' MARs"). The State argued all claims were procedurally barred, except claims pertaining to Ms. Black's recantation and new testimony. The State further asserted that all claims were substantively insufficient. The Defendants filed Replies on January 19, 2024.

18. On August 13, 2024, the Court heard the parties' initial arguments on whether the Defendants were entitled to an evidentiary hearing.

19. On September 4, 2024, the Court ordered an evidentiary hearing.

20. The evidentiary hearing was scheduled for January 2025. The hearing was held from January 6, 2025, to January 24, 2025.

FINDINGS OF FACT

1. To minimize confusion around the Court's intention, the Court incorporates the Procedural History section above into this section by reference.

2. On November 15, 2002, Mr. Nathaniel Jones ("Mr. Jones") was attacked in the carport of his home after he arrived home from work. He died from cardiac arrhythmia brought on by the stress of the attack.

3. When Mr. Jones was found, his hands were bound behind his back with black tape, and his mouth was covered with black tape. Another piece of black tape was found on the steps on the carport's rear deck.

4. When EMS arrived, they had to cut the tape binding Mr. Jones' hands.

5. There were others who may have had physical contact with the tape binding Mr. Jones' hands, to wit: a neighbor of Mr. Jones reportedly checked for a pulse; a crime scene technician may have touched the tape; a male medical examiner reportedly bagged the evidence at the scene; and, at trial, the black tape was passed to the jury, and a female alternate juror handled it.

6. There appeared to be blood on the back of Mr. Jones' shirt, on the steps, on the driver's side of the Lincoln parked in the carport, and near his Mr. Jones' head.

7. Mr. Jones' wallet was not located. Money was found in his pockets and in the briefcase that was located in the trunk of his car. Valuables inside the home appeared undisturbed.

8. Mr. Jones' body was found on the ground between 7:30 PM and 8:00 PM on the same day he was attacked. His keys were in the door to the house. Part of the groceries were on the table inside the house, and part of the groceries were still in the car. The mail was on the ground. The storm door handle had been broken off. It was clear from the evidence that Mr. Jones had not been home very long before he was attacked.

9. Between the afternoon of November 19, 2002, and the early morning hours of November 20, 2022, the Defendants and Dorrell Brayboy ("Mr. Brayboy") were interrogated by law enforcement and subsequently arrested for the murder of Mr. Jones.

The Interrogations

10. Between the afternoon of November 19, 2002, and the early morning hours of November 20, 2022, the Defendants and Mr. Brayboy were interrogated for the murder of Mr. Jones.

11. Initially, the Defendants and Mr. Brayboy denied involvement in the crime.

12. All the Defendants were 14 or 15 years old at the time of their interrogations and arrests.

13. Ms. Jessicah Black was also interrogated, and she was around 16 years old at the time.

14. The totality of the Defendants' interrogations was not recorded; only their confessions at the end were recorded.

15. On November 3, 2003, the Defendants and Mr. Brayboy were indicted for First-Degree Murder and Robbery with a Dangerous Weapon.

Motions to Suppress

16. The Defendants all filed Motions to Suppress their statements given to law enforcement during their interrogations.

17. At their suppression hearings, Mr. Cauthen was represented by Attorney Teresa Hier; Mr. Banner was represented by the late Attorney Bob Leonard; Mr. Bryant was represented by Attorney Nils Gerber; and Mr. Tolliver was represented by Attorney John Clark Fischer.

18. From March 22, 2004, to March 24, 2004, Judge Helms presided over the suppression hearings.

19. At Mr. Tolliver's and Mr. Bryant's suppression hearing, Judge Helms made the following statements regarding false confessions:

> 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 thing happened, not that they were involved in it.
>
> [. . .]
>
> Now, do you contend that the truth or falsity of it, it's just my analysis of the situation, that if someone told me that I could get the death penalty if I – if I'm convicted of murder, it's not going to make me make a false statement that yeah I was involved in the murder, I'm going to make a false statement I was in Hong Kong or something.

Tolliver-Bryant Suppression Hr'g Tr. 166-67, 170.

20. After reviewing the evidence and hearing the arguments, Judge Helms denied the Defendants' Motions to Suppress.

Trial – Mr. Cauthen and Mr. Banner

21. From August 9, 2004, to August 19, 2004, Mr. Cauthen and Mr. Banner were tried jointly before the Honorable W. Douglas Albright, Superior Court Judge Presiding.

22. At trial, Mr. Cauthen was represented by Attorney Teresa Hier and Mr. Banner was represented by the late Attorney Bob Leonard.

23. The State introduced the statements of the Defendants at trial.

24. Ms. Black testified for the State. She was cross-examined by the defense.

25. The defense called Dr. Soloman Fulero to testify as an expert witness in the field of social and clinical psychology of false confessions. The court ultimately did not allow Dr. Fulero to testify partially because:

> Dr. Fulero has not conducted or undertaken any examination, evaluation, or study of the individual Defendants on trial here to determine such individual characteristics of said Defendants as mental

> retardation, mental illness or low intelligence . . . . Dr. Fulero's purported testimony does not relate to any psychological characteristics of the individual Defendant, or either of them, that could make them more prone to make a false confession in police interrogation or to any psychological factors effecting the Defendants' mental condition.

Cauthen-Banner Trial Tr. vol. 8, 74-77.

26. During Attorney Leonard's closing argument, he made the following statements about the involvement of Mr. Banner:

> So, I would just contend to you that any involvement of Mr. Banner is minimal. They didn't have the requisite intent, he did not have the knowledge, he did not join into a common scheme, he was not part of any plan. He – he may have been there, but he wasn't part of what was taking place. Stayed out in the road, he did not involve himself in this. I think when you get to the acting in concert charge, you're going to hear about that. They have to do something other than just be present.

Cauthen-Banner Trial Tr. vol. 9, 32.

27. During Attorney Hier's closing argument, she made the following statement regarding the confessions:

> I'm going to ask you to keep in mind your experience, keep in mind your knowledge of what has happened in life, keep in mind the fact that you know that people do confess to things they don't do, and you know that.

Cauthen-Banner Trial Tr. vol. 9, 48.

28. Attorney Hier continued throughout her closing argument to challenge the credibility of the confession statements of the Defendants, arguing inconsistencies between the statements and the actual evidence and giving examples of information being given to the Defendants, as well as other interrogation tactics.

Cauthen-Banner Trial Tr. vol. 9, 48-52.

29. At the end of the trial, the trial court read, along with the other jury instructions, the jury instruction for acting in concert. This portion of the jury instructions was stated as followed:

> Now, members of the jury, at this time the Court will instruct you very briefly with regard to the principle – the legal principle of acting in concert. For a person to be guilty of a crime, it is not necessary that he personally do all of the acts necessary to constitute the crime. If two or more persons join in a common purpose to commit the felony of robbery, each of them, if actually or constructively are present, is not only guilty of that crime if the other person commits the crime, but is also guilty of any other crime committed by the other in pursuance of the common

purpose to commit robbery or as a natural or probable consequence thereof.

Now, a person is constructively present when he is close enough to the scene to render assistance to the perpetrator or is standing by to help the perpetrator. I further instruct you that while it is true that it is not necessary for a Defendant to do any particular act constituting the part of the crime in order to be convicted of that crime under the principle of acting in concert so long as he is present at the scene. It is nevertheless necessary that there be sufficient evidence to show that he is acting together with another or others pursuant to a common plan or purpose to commit the crime.

Cauthen-Banner Trial Tr. vol. 9, 99-100.

30. On August 19, 2004, a jury found both Defendants guilty of First-Degree Murder and Robbery with a Dangerous Weapon. They were sentenced to life in prison without the possibility of parole.

Trial – Mr. Tolliver, Mr. Bryant and Mr. Brayboy

31. From May 9, 2005, to May 20, 2005, Mr. Tolliver, Mr. Bryant, and Mr. Brayboy were tried jointly before Judge Helms.

32. At trial, Mr. Tolliver was represented by Attorney John Clark Fischer, Mr. Bryant was represented by Attorney Nils Gerber, and Mr. Brayboy was represented by Attorney Tom Fagerli.

33. The State ultimately did not introduce the Mr. Tolliver and Mr. Bryant's confessions at trial.

34. Ms. Black testified for the State. She was cross-examined by the defense.

35. On May 20, 2005, a jury found each of the Defendants guilty of Common Law Robbery and Second-Degree Murder.

The MAR Evidentiary Hearing — Week 1 (January 6, 2025, to January 10, 2025)

36. The Defendants called Ms. Mitzi Teague to the stand.[1]

    a. Ms. Teague is a custodian and senior record keeper of former student records for Forsyth County Schools.

    b. Around 2019, she was asked to gather the school records of the Defendants. She was subpoenaed to bring those records to the MAR evidentiary hearing, and she did so.

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[1] Ms. Teague was actually called fourth by the Defendants at the MAR evidentiary hearing. Although the witnesses called at the MAR evidentiary hearing are mostly listed in sequential order, they are sometimes reordered for the sake of this Order's organization. Additionally, not all witnesses that were called are discussed in this Order.

c. Ms. Teague clarified that the term "EC" stands for "Exceptional Children."

d. Ms. Teague said special education records and school testing records are in the regular, cumulative folders, while psychological tests are found in the EC folder.

e. Ms. Teague stated if an attorney, during the years of 2002 to 2005, wanted to obtain their client's records, the attorney would have to go to the last school their client attended, provide sufficient documentation and identification, and indicate that they wanted everything (*i.e.*, both the regular records and the EC records).

37. The Defendants called Attorney Nils Gerber to the stand.

a. Attorney Gerber represented Mr. Bryant at trial.

b. At the MAR evidentiary hearing, Attorney Gerber testified he could not recall whether he obtained Mr. Bryant's school records. He also testified he could not recall whether he had Mr. Bryant tested for intellectual disabilities, but he does not think he did do so. He also testified he did not recall consulting any experts for juvenile psychology, false confessions, or the like during his representation.

c. Attorney Gerber stated, as a matter of trial strategy, he was argumentative about the coerced statement in opening arguments, chose not to admit the coerced confession during trial, did not bring it up in closing arguments, and did not get a confession expert because he had seen opposing counsel turn an expert around on the defense before.

d. Attorney Gerber testified Mr. Bryant seemed to understand everything Attorney Gerber told him and was able to relay information back. Attorney Gerber had no thoughts in talking to Mr. Bryant's family that Mr. Bryant had any cognitive difficulties.

e. Attorney Gerber stated he did not present any evidence about Mr. Bryant's ability to comprehend his own statements and confession because Attorney Gerber thought Mr. Bryant was more than capable. Attorney Gerber said he, himself, is not an expert on cognition.

f. Attorney Gerber testified he saw no need to have Mr. Bryant's academic records reviewed or to get an expert as he did not think they would help.

38. The Defendants called Attorney Teresa Hier to the stand.

a. Attorney Hier represented Mr. Cauthen at trial.

b. At the MAR evidentiary hearing, Attorney Hier stated Mr. Cauthen never admitted anything and always denied his involvement during her representation. She said he always seemed truthful, and he never did anything to make her doubt his credibility.

c. At the MAR evidentiary hearing, Attorney Hier testified Mr. Cauthen always maintained his innocence and never admitted to his or anyone else's involvement during her representation.

d. Attorney Hier testified she did most or all the preparation for Mr. Banner and Mr. Cauthen's joint trial. According to Attorney Hier, Attorney Leonard was not a prepared person.

e. Attorney Hier stated she does not recall asking about her client's mental health, academic records, cognitive functioning, and she does not recall introducing anything related to these issues at trial. She said that if she was aware of these issues, she could have investigated further. According to her, Mr. Cauthen's ability to communicate with her cogently did not signal to her that he had a learning disability.

f. Attorney Hier stated she knew at the time of trial that Mr. Cauthen had repeated the third grade.

g. Attorney Hier stated she tried to tender Dr. Fulero as an expert, but since Dr. Fulero did not examine Mr. Cauthen, Dr. Fulero was unable to testify as to an opinion on Mr. Cauthen. Attorney Hier stated, at the time of trial, she was unaware that was how it worked. Defense counsel asked Attorney Hier about a 1980 case called *State v. Horton*, 299 N.C. 690, 263 S.E.2d 745, in which the trial court was held to have properly excluded an expert in clinical psychology that was testifying as to the Defendant's low cognitive capabilities because the expert had not personally examined or tested the Defendant. Attorney Hier stated she was unfamiliar with the case, and when defense counsel asked if knowing about the case during the trial stage would have changed her approach, Attorney Hier said that it possibly could have done.

h. Attorney Hier stated she was surprised during Attorney Leonard's closing argument when he made the statements about his client's "minimal involvement." Attorney Hier said she was unaware Mr. Leonard was going to say Mr. Banner knew anything, and those statements by Mr. Leonard implicated her client, Mr. Cauthen, as well. Attorney Hier said such a decision by co-defendant's counsel is something she would expect to hear about in advance.

39. The Defendants called Attorney John Clark Fischer to the stand.

a. Attorney Fischer represented Mr. Tolliver at trial.

b. At the MAR evidentiary hearing, Attorney Fischer stated he did not obtain his client's school records or mental health records, and he did not seek any expert assistance.

c. Attorney Fischer gave testimony regarding a previous case, *State v. Baldwin*, in which his attempts to use a false confession expert were not successful.

Attorney Fischer outlined the procedural history of the case and distinguished *State v. Baldwin* and the issues in the instant case.

d. Attorney Fischer testified he did not obtain the school records, mental health records, or any expert assistance because he never thought there was any need for them to address what he considered to be such a minor issue.

e. Attorney Fischer testified he had two strong arguments in this case, and it was his tactic and strategy to focus on those arguments instead of what he considered, and still considers, a "trifling" issue.

f. Attorney Fischer testified he would not have thought further investigation into what he considered, and still considers, to be a trifling issue would have helped, and thought it might have hurt the case.

g. Attorney Fischer testified that any determination of diminished capacity would have had to be very strong to change his strategy in this case. His strategy in this case was to try to disassociate his client as far as he could from what he viewed as the other, more culpable, co-Defendants.

h. Attorney Fischer testified he does not get a capacity evaluation for every client, but he would have obtained one if he thought he needed one for Mr. Tolliver, as this was his normal practice.

i. Days after the suppression hearings, Judge Helms told Attorney Fischer that he probably should have granted the Motion to Suppress.

40. The Defendants called Attorney James Cooney to the stand.

a. Attorney James Cooney has been an attorney for several decades. Included with several activities and places of employment on his curriculum vitae, Attorney Cooney served as commissioner on the Commission on Indigent Defense Services of North Carolina from 2010 to 2018.

b. At the MAR evidentiary hearing, defense counsel tendered Attorney James Cooney as an expert witness in the prevailing professional norms of the defense of homicide cases in North Carolina between 2002 and 2005. Mr. Cooney's opinion was offered to speak to the first prong of the *Strickland* test, to wit: did counsels' performance fall below an objective standard of reasonableness.

c. In forming parts of his opinion, Attorney Cooney relied on the Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level ("the Guidelines"), adopted on November 12, 2004, and published by the N.C. Commission on Indigent Defense Services.

d. Attorney Cooney reviewed the Defendants' school records. According to the school records, the Defendants were classified as mentally disabled and had low IQs. Attorney Cooney opined that such records should have led an attorney to get an expert to review the records and determine how to use them to address the voluntariness of the Defendants' statements to the police.

e. Attorney Cooney stated there was no valid, strategic reason for the Defendants' trial attorneys not to obtain the Defendants' academic records, and there was no valid, strategic reason for Defendants' attorneys not to obtain an expert to examine the Defendants and their records.

f. None of the Motions to Suppress contained any reference to the Defendants' school records or to any mental health experts. Attorney Cooney opined that, the Defendants' ages being what they were at the time of their trials, Defendants' trial attorneys should have gathered their school records to assist with the Motions to Suppress.

g. Attorney Cooney concluded that the four trial attorneys breached the prevailing professional norms as they existed from 2003 to 2005 by failing to get the school records for the Defendants.

h. On cross-examination, Attorney Cooney stated the Guidelines were available online for a period of time for notice and comments purposes, but they were not yet published.

i. In the Preface of the Guidelines, it states that "[t]he guidelines are intended to identify issues that may arise at each stage of a criminal proceeding, and to recommend effective approaches to resolving those issues. Because all provisions will not be applicable in all cases, the guidelines direct counsel to use his or her best professional judgment in determining what steps to undertake in specific cases. The Commission hopes these guidelines will be useful as a training tool and resource for new and experienced defense attorneys, as well as a tool for potential systemic reform in some areas. The guidelines are not intended to serve as a benchmark for ineffective assistance of counsel claims or attorney disciplinary proceedings."

j. In Section 1 of the Guidelines, it states that "[t]hese are performance guidelines, not standards. The steps covered in these guidelines are not to be undertaken automatically in every case. Instead, the steps actually taken should be tailored to the requirements of a particular case. In deciding what steps are appropriate, counsel should use his or her best professional judgment."

41. The Defendants called Dr. Hayley Cleary to the stand.

a. Dr. Cleary has a master's degree in public policy and a PhD in developmental psychology, and she is an associate professor of criminal justice and public policy at Virginia Commonwealth University. She has written and co-authored several book chapters, reports, essays, and journal articles.

b. At the MAR evidentiary hearing, defense counsel tendered Dr. Cleary as an expert in adolescent developmental psychology and the psychology of police interrogations and confessions.

c. Dr. Cleary was asked to prepare a report during the NCIIC stage of the current matters, which is dated March 2, 2020 ("Cleary Initial Report"). A portion of the introduction to the Cleary Initial Report states, "I have been asked to examine case material in the matter of [the Defendants and Mr. Brayboy] in order to identify the potential presence of factors that could have contributed to false or unreliable confessions." (emphasis omitted). This report is referenced in the MAR hearing transcript as the "Cleary Report". The "Cleary Report" is incorporated herein by reference as if fully set forth and is attached hereto as Exhibit A.

d. The Cleary Initial Report details what are known as "risk factors." The report considers risk factors to be factors "that could have contributed to false, unreliable, or coerced statements from the five Defendants and Jessicah Black." The report divides risk factors into "dispositional risk factors" ("characteristics inherent to the suspect") and "situational risk factors" ("characteristics of the interrogation process or environment that are associated with false confessions").

e. The report enumerates the risk factors and details how Dr. Cleary opines they were present in the interrogation of the Defendants and Ms. Black.

f. The report highlights two primary dispositional risk factors "that increase the likelihood of a false confession": juvenile status and mental impairment.

g. Regarding juvenile status, the Cleary Initial Report states, "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."

h. The report lists and expounds upon several reasons why adolescents are more likely to falsely confess: adolescent neurological development, adolescent future orientation, adolescent interrogative suggestibility, and adolescent compliance.

i. Regarding mental impairment, the Cleary Initial Report states, "In addition to adolescence, a second well-established dispositional risk factor for false confession is mental impairment. This designation includes both intellectual disability (ID; formerly called mental retardation) as well as diagnosed psychiatric conditions. As with juvenile status, persons with ID are also overrepresented in documented cases of false confessions. The symptoms of ID involve cognitive and interpersonal problems that can increase vulnerability to false confessions. For example, persons with ID are more suggestible than persons without ID, and suggestibility is a known risk factor for false confessions." (citations omitted).

j. At the evidentiary hearing, Dr. Cleary testified she reviewed the Defendants' school records, which indicated that the Defendants were classified as mentally disabled and with low IQs.

k. In discussing the situational risk factors for false confessions, the Cleary Initial Report refers to "maximization techniques." The report defines "maximization" as "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." Maximization techniques include, but are not limited to, accusing the interrogated individual of lying; shutting down the accused's denials of involvement; exaggerating the seriousness of the consequences; confronting the accused with evidence of guilt whether real or fabricated; prolonged detention and isolation of the accused; yelling and cursing; the presence of multiple officers; and officers being visibly armed.

l. Dr. Cleary opined in the Cleary Initial Report that several of these dispositional and situational risk factors were present in the interrogations of not only the Defendants, but also Ms. Black.

m. At the MAR evidentiary hearing, Dr. Cleary's testimony was consistent with her findings and conclusions found in the Cleary Initial Report. She detailed the different risk factors and reviewed how they were illustrated in the present cases.

n. At the MAR evidentiary hearing, Dr. Cleary summarized the combination of different risk factors as "compound vulnerability," with the number of risk factors present in this case causing layers upon layers of vulnerability.

o. Dr. Cleary further expounded that although "compound vulnerability" is not a specific scientific term, it is "the best way I can convey the nature -- the serious nature and extent of the problems that I saw in the case."

p. Dr. Cleary was also asked by defense counsel to prepare a supplemental report for these MARs ("Cleary Supplemental Report"). She was chiefly asked to answer the question, "Has the social science literature on police interrogations and false confessions changed since 2004? If so, how has it changed?" (emphasis omitted). This report is referred to in the MAR transcript as the "Updated Cleary Report." This "Updated Cleary Report" is incorporated herein by reference as if fully set forth and is attached hereto as Exhibit B.

q. In the Cleary Supplemental Report, Dr. Cleary's brief answer to that question was "*yes*—the social scientific literature on police interrogations and false confessions has grown prolifically in the last several decades. Moreover, the developmental neuroscience literature has also developed exponentially, and scientists have learned much about adolescent brain development that relates to youths' behavior and decision-making during police interrogations." (emphasis in original).

r. At the MAR evidentiary hearing, Dr. Cleary's testimony was consistent with her findings and conclusions found in the Cleary Supplemental Report. She discussed the different developments in the various fields since 2004.

s. Dr. Cleary testified that after 2004-2005, literature in the field grew exponentially. There were different methods being explored and many more quantities of studies

t. Dr. Cleary testified regarding a bibliometric study which illustrated that more than half of the 3000 studies in the field were published after 2010.

u. Dr. Cleary testified there were further publications of metanalysis, scholarly books, and integrated works that drew upon the literature as a whole, along with scientific review of publications.

The MAR Evidentiary Hearing — Week 2 (January 13, 2025, to January 18, 2025)

42. The Defendants called Ms. Catherine Matoian to the stand.

a. Ms. Matoian is the Assistant Executive Director of the NC Innocence Inquiry Commission (NCIIC), an independent state agency tasked with investigating claims of innocence by people who have been convicted of certain crimes, in North Carolina.

b. Ms. Matoian testified regarding the policies and procedures of the NCIIC's investigation of this case, explaining how the General Assembly has given the NCIIC all powers of civil and criminal procedure in North Carolina, meaning that the NCIIC is able to issue search warrants and non-testimonial identification orders, take depositions, and conduct discovery.

c. Ms. Matoian testified the NCIIC collected evidence from the original investigating agencies, exhibits which had been entered at trial from the clerk's office, and testing standards from individuals whom the NCIIC wanted for comparison testing.

d. Ms. Matoian testified regarding a 100-page case summary timeline prepared by the NCIIC based on thousands of pages of documents and data it gathered in this case.

e. Ms. Matoian testified that various items of evidence were collected in the case. Narratives of the items collection were documented on the NCIIC's field summary reports (FSR) and the items collected were documented on the NCIIC's evidence control forms (ECR) to maintain a chain of custody for all items collected.

f. Ms. Matoian testified that the NCIIC maintains its own evidence room that complies with the NC statutes governing the handling of evidence.

g. Ms. Matoian testified that the NCIIC collected evidence and had the evidence tested pursuant to its statutory authority.

43. The Defendants called Ms. Meghan Clement to the stand.

a. Ms. Clement has a Master of Science in forensic science and a Bachelor of Science in biology. She has an extensive history in the field of forensics, and she currently owns her own consulting business that, among other duties, "[p]rovide[s] Forensic Serology and DNA consultation to military and civil attorneys, law enforcement and civilian clients."

b. At the MAR evidentiary hearing, defense counsel tendered Ms. Clement as an expert in forensic biology including DNA analysis.

c. In 2020, Ms. Clement's consulting business was asked to prepare a report for NCIIC. Specifically, she was asked to report her findings on the DNA testing performed at Bode Technology and its predecessor Bode Cellmark Forensics (collectively referred to as "Bode"). In her report, she discusses two items tested for DNA: "the non-adhesive side of black tape," and "black string electrical tape from left." Ms. Clement's 2020 Report to NCIIC is incorporated herein by reference as if fully set forth and is attached hereto as Exhibit C.

d. According to Ms. Clement, labs that test DNA test a certain number of areas in order to determine what characteristics are present in an evidentiary sample as opposed to a known standard. Those characteristics are known as "DNA Profiles."

e. In 2024, Ms. Clement's consulting business was asked to prepare a report for the Defendants. She was asked to answer the two following questions:

    i. "Could the DNA mixture profiles developed from the evidentiary items in 2018, including the major female profile in the mixture on the binding, have been developed using the equipment and testing methods generally available in 2002-2008?"

    ii. "Assuming the DNA on the binding is a mixture of one major female contributor and two minor male contributors, and assuming one of those male contributors was Mr. Jones, would [Ms. Clement] be able to draw any conclusions as to whether [the Defendants and Mr. Brayboy] would be excluded as contributors to the mixture?"

f. As to the first question, Ms. Clement opined in her report, "the DNA mixture profiles developed by Bode from Samples -E04a and -E09b, including the major female profile in the latter, could not have been as fully developed in 2002-2008 as they were in late 2018 . . . the advancement in DNA analysis kits and standards between 2002-2008 and 2018 added tremendous sensitivity and at least 50% more loci data points for the identification and comparison of human DNA profiles on items submitted for analysis." Ms. Clement's 2024 Report to Defendants is incorporated herein by reference as if fully set forth and is attached hereto as Exhibit D.

g. Ms. Clement further opined in her report, "Bode's development of the mixture profile from -E09b, including the major female profile, relied on some of those

additional loci data. Although the mixture profile from -Eo4a did not include any of the additional loci data, the quantity of DNA recovered from that item was so low that it likely wouldn't have yielded DNA results if tested with kits available in 2002-2008, while the kits in 2018 did indeed yield a profile."

h. As to the second question, Ms. Clement opined in her report, "assuming the DNA on the binding is a mixture of three individuals including one major female contributor and two minor male contributors, and assuming one of those male contributors was Mr. Jones, then [the Defendants and Mr. Brayboy] would all be excluded as contributors to the mixture."

i. According to Ms. Clement, she agreed with Bode's interpretation of their allele calls and the reading of the electropherograms. However, her review of the raw data or electropherograms led to additional conclusions.

j. Ms. Clement opined that looking at the raw data and subtracting the major female characteristics and subtracting the characteristics which would have come, or could have, come from Mr. Jones, there are three additional characteristics that could have come from either a female or Mr. Jones. She concluded, "[s]o those had to come from a third contributor. None of the Defendants possessed those three characteristics. So, they would all be excluded as a source of those."

44. The Defendants called Mr. Tolliver to the stand.

a. Mr. Tolliver was released from prison in 2017.

b. Mr. Tolliver stated when two officers arrived at his home around the time school let out, he admitted them into his home, and they talked to his mother in her room where he could not hear them. Mr. Tolliver said when the officers asked if he wanted to go to the police station for questioning, he agreed to go because he had nothing to hide. According to Mr. Tolliver, they did not say what the questioning was about.

c. Mr. Tolliver stated he had never had to go to the police station prior to his interrogation in this case.

d. Mr. Tolliver stated the first question the officers asked him during the interrogation was about Mr. Jones's missing wallet, which the officers told him Mr. Jones's daughter reported missing. Mr. Tolliver told them he did not know what they were talking about.

e. Mr. Tolliver stated the officers were wearing plain clothes instead of uniforms, and they had their guns on their waist.

f. Mr. Tolliver denied involvement in the crime when talking to the officers.

g. Mr. Tolliver stated the officers began to raise their voices and say they did not believe Mr. Tolliver was telling them the truth.

h. Mr. Tolliver said the interrogation seemed long.

i. Mr. Tolliver said he asked to go home at some point, but the officers said they were not done questioning him. He stated he asked to go home again when he began to get tired.

j. Mr. Tolliver said he believed things the police officers said.

k. Mr. Tolliver stated he eventually lied because the officers were not believing what he was saying, and he thought it would help him. He told the officers he and some of the other Defendants threw the wallet out the window of a city bus and into a field by the mall.

l. The officers took Mr. Tolliver to a McDonald's close to where it was believed the wallet should be. Mr. Tolliver said the officers kept him in the car and got him McDonald's while they searched. No wallet was found, and Mr. Tolliver said he began to think the officers would figure out he did not know anything because the Defendants did not commit the crime.

m. Mr. Tolliver said that the officers looked frustrated, asked him more questions about where to look for the wallet, and then they took him back to the station.

n. Mr. Tolliver stated he did not see Ms. Black or the other Defendants while he was there.

o. Mr. Tolliver said he used the bathroom at the police station once, and an officer was present while he was using the bathroom.

p. Mr. Tolliver stated that the officers told him if he said what he wanted them to say, he would go home.

q. Mr. Tolliver said, at some point, officers showed Mr. Tolliver photographs of the crime scene, including images of Mr. Jones.

r. Mr. Tolliver stated after several hours of questioning, Mr. Tolliver wrote his statement with one or more officers present. Mr. Tolliver said right before he was told to write his statement, one of the officers got aggressive and physically close while telling Mr. Tolliver he could get the death penalty for the crime. Mr. Tolliver stated he knew what the death penalty was, he did not want to die, and he did not know how soon they could make the death penalty happen.

s. Mr. Tolliver said the officers told him his mother called. Mr. Tolliver did not get to speak her, but the officers told him she said something to the effect of, "tell the truth."

t. Mr. Tolliver said by 11 PM that night, he was feeling tired and thought he was about to go home. He said he believed if he wrote the statement and then made the recorded statement, he would go home.

u. Mr. Tolliver said an officer asked him if he needed to go to the bathroom, but Mr. Toliver told the officer he would wait until he got home.

v. Mr. Tolliver stated the officers kept asking questions about the crime, and he did not know what they wanted him to say. When he was confessing to the crime, Mr. Tolliver said he was not telling them the truth because the Defendants did not commit the crime. Mr. Tolliver said he told the officers something just so he could go home.

w. Mr. Tolliver was repeating the eighth grade the year he was arrested.

x. Mr. Tolliver stated he did not like or care much for school.

y. Mr. Tolliver stated he took GED classes in prison, but he never passed the entire test given at the end of those classes.

z. Mr. Tolliver said Attorney Fischer never asked him about where he was in school, nor did Attorney Fischer ask him about his school records or obtaining his school records.

aa. At the MAR evidentiary hearing, Mr. Tolliver denied his involvement in the murder and robbery of Mr. Jones.

45. The Defendants called Mr. Bryant to the stand.

a. Mr. Bryant stated, prior to his interrogation for this case, he had never been to the police station.

b. Mr. Bryant stated when he was initially questioned by the police, he told them all the details he relayed at the MAR evidentiary hearing about who he was with and where everyone was on the date in question.

c. Mr. Bryant said the officers came to his house, and when he identified himself, the officers told him they had to take him to the Public Safety Center. He said the officers did not tell him what they were going to talk to him about. Officers told his mother she could not come with Mr. Bryant, but they would bring him right back.

d. Mr. Bryant said he did not feel he had a choice but to go with the officers because they are police officers.

e. Multiple officers came into the interview room where they held Mr. Bryant, and Mr. Bryant said he noticed they had guns.

f. Mr. Bryant said they told him he had killed someone, and they put down a photograph of Mr. Jones. Officers instructed Mr. Bryant to look at what he and his friends did, and they told him the others had already admitted Mr. Byrant was the lookout.

g. Mr. Bryant said he told them what he had actually done during the night in question, but they did not believe him. The officers called him a liar, hit the table, and raised their voices.

h. Mr. Bryant stated he was not aware a crime had been committed or that anyone died on Moravian Street until the officers began to ask him questions.

i. Mr. Bryant stated the officers would feed him information. He would then relay it back to them, and he and the officers would agree on it. Then, he would confess using the information the officers had given him.

j. Mr. Bryant said he was guarded while he went to the bathroom, and one of the officers attempted to talk to him about the crime on the way to the bathroom.

k. Mr. Bryant stated after he was led to another room with three officers in it, the officers threatened him with the death penalty. According to Mr. Bryant, they told him he was lying, and they had someone on the phone asking which arm Mr. Bryant wanted the lethal injection to go into. Mr. Bryant said the officers told him to hold out his arm, and they pointed out his veins, telling him that was the vein that would be used for the lethal injection. Mr. Bryant said he thought the officers could make that happen, and he thought he was about to die. Mr. Bryant said this made him think he needed to tell the officers what they wanted to hear in order to avoid dying, and so he began to agree to some of what they were saying and even added details if he had to do so. Mr. Bryant was still under the impression he would go home after this interaction.

l. Mr. Bryant stated he was repeating the ninth grade the year he was arrested.

m. While in prison, Mr. Bryant received his GED, which he said took him several years to obtain.

n. Mr. Bryant stated that Attorney Gerber never asked him to sign anything to assist Mr. Gerber to obtain Mr. Bryant's school records.

o. Mr. Bryant stated that Attorney Gerber never talked to him about having an expert examine him.

p. Mr. Bryant stated he told Attorney Gerber that his confession was false and coerced.

q. At the MAR evidentiary hearing, Mr. Bryant denied his involvement in the murder and robbery of Mr. Jones.

46. The Defendants called Mr. Banner to the stand.

a. Mr. Banner said one day his mother came into his room and told him detectives wanted to speak to him.

b. Mr. Banner stated he saw his brother, Mr. Cauthen, get into a police car. He said he called his mother who told him not to get in the car, but the police had already left by that point. Mr. Banner said he did not know why anyone was going to the police station at this point.

c. Later, the police came to Mr. Banner's house, arrested him, and took him in for questioning.

d. During the interrogation, the officers began to ask Mr. Banner about his involvement in the crime. Mr. Banner said he told them that he did not know anything about the crime.

e. Mr. Banner stated he asked the officers for his mother because he wanted her there since he felt alone. They let him call her, but she said she could not come. Mr. Banner stated he had never been interviewed by police without his mother present or in a police station without his mother present.

f. Mr. Banner stated an officer appeared and accused him of lying, stating that officers had proof on tape. When Mr. Banner asked to hear the tape, the officer played Mr. Cauthen's recorded confession, which implicated Mr. Banner. Mr. Banner stated he could tell from the voice that his brother was lying, but since the officers told Mr. Banner his brother was already on his way home, Mr. Banner decided to lie to go home, as well.

g. Mr. Banner stated he gave a confession, implicating himself and the others because he thought he would go home.

h. Mr. Banner stated he did okay in school, but he rarely did any work for school. He said he went to classes, but sometimes missed school. Mr. Banner stated he thinks he repeated first and second grade.

i. Mr. Banner stated he knows he has a learning disability. He said he did not ask to be enrolled in GED classes, but he was placed in an ESP program where he received help with one-on-one learning.

j. Mr. Banner stated he told Attorney Leonard his confession was false.

k. Mr. Banner stated Attorney Leonard never asked him about school, how he did in school, why he lied, or for details about what transpired at the police station.

l. Mr. Banner stated Attorney Leonard never got his permission to admit or imply that Mr. Banner had anything to do with, or had any knowledge of, Mr. Jones's murder.

m. At the MAR evidentiary hearing, Mr. Banner denied his involvement in the murder and robbery of Mr. Jones.

<u>The MAR Evidentiary Hearing — Week 3 (January 21, 2025, to January 24, 2025)</u>

47. The Defendants called Mr. Cauthen to the stand.

a. At the MAR evidentiary hearing, Mr. Cauthen stated he had never been to a police station prior to 2002. He said he went to the police station because he had nothing to hide. He said when he was in the police station, he felt as though he could not leave. He also stated he did not know what an attorney was, and his [Miranda] rights were not read to him.

b. Mr. Cauthen stated he asked to go to the bathroom, and he was escorted there by two officers. He said one of the officers held the door open the whole time he

was using the bathroom, and he was asked questions the entire time he was using the bathroom.

c. Mr. Cauthen stated the officers threatened him with the lethal injection, told him he would not make it home, and told him he was not leaving until he told them. He said these threats occurred before his mother came to the station.

d. Mr. Cauthen stated his mother showed up after he asked to go to the bathroom. He said his mother asked if he was sure he had not killed anyone, and then the two of them got into a back-and-forth. Eventually, an officer told Mr. Cauthen's mother she had to leave, but then she came back into the room to tell Mr. Cauthen the officers wanted to keep talking to him and she loved him.

e. Mr. Cauthen stated the officers showed no pictures to him.

f. Mr. Cauthen stated he changed what he was telling the officers after he talked to his mother and after they left him in the room for a long time, where he said he fell asleep on the floor. Mr. Cauthen stated at the MAR evidentiary hearing he thought he would go home if he admitted to the crime, and he thought the officers would do something to him if he continued to deny it.

g. He stated he initially told the officers he did not know anything while he was at the station. Then, towards the end of the interrogation two detectives he had not yet seen came into the room, and at that point, Mr. Cauthen said he "confessed".

h. Mr. Cauthen stated he did not like school, and people called him "stupid." He said he got held back in the third grade. He stated he could not read or write well in 2002, and he did not really start learning until some point during his teenage years when a friend of his mom began to help him.

i. Mr. Cauthen stated, during Attorney Hier's representation of him, she did not talk to him about school, grades, or attendance. He said he did not tell her he could not read well.

j. At the MAR evidentiary hearing, Mr. Cauthen denied his involvement in the murder and robbery of Mr. Jones.

48. The Defendants called Ms. Jessica Black to the stand.

a. Ms. Black stated she did not feel pressured to testify at the MAR evidentiary hearing, and she was not being compensated for being there or giving testimony.

b. Ms. Black stated she did not want to testify at the Defendants' trials. She said she felt she had to do so or else she would go to prison. She said the officers at the time told her she would go to prison for life as an accessory to murder if she did not testify for the State at the trials. She stated she was threatened with being charged several times in the interrogation room, and she was

reminded several times that if they wanted to charge her decades later, they could.

c. Ms. Black explicitly admitted during the MAR evidentiary hearing that she committed perjury when she testified as the State's key witness at the Defendants' trials in 2004 and 2005.

d. Ms. Black stated whenever she tried to tell the officers the truth, they called her a liar. So, she started lying by agreeing with whatever they said.

e. Ms. Black's testified at the MAR evidentiary hearing that Defendants could not have been involved in the crime because they were with her that day.

f. Ms. Black testified she does not remember Defendants walking to Mr. Jones' house. Likewise, she stated she did not recall hearing the Defendants talking about walking to Mr. Jones' house or carrying sticks. Ms. Black further stated she did not recall waiting in the park for Defendants to return. Ms. Black testified none of those things happened.

g. Ms. Black stated she did not know anything about the crime until the officers came to take her car, and her grandparent dropped her off at the police station.

h. Ms. Black stated she did not know she was supposed to have, or could have, someone with her at the station. She had never been interviewed by the police, she trusted law enforcement at the time, and she had never been in trouble. She said she did not feel she could leave once she was with the officers.

i. Ms. Black stated the officers told her they knew about the crime and knew she was an accessory. When she tried to tell them where she and the Defendants had been on the date in question, they accused her of lying. Ms. Black said she eventually started to think she was wrong after the officers kept telling her a different story. She said she kept changing her story until it got where the officers wanted it to be.

j. Ms. Black said the officers told her the Defendants confessed, and she believed the officers. Ms. Black said the officers told her they found Mr. Jones' skin DNA in every seat of her car except her driver's seat, and she believed the officers. Ms. Black also said the officers told her they had the Defendants on camera using the credit cards, and she believed the officers.

k. Ms. Black also gave a deposition for the NCIIC and subsequently testified before the NCIIC. She recanted her trial testimony during the NCIIC proceedings as well.

l. Ms. Black testified while she does not remember everything that happened on the date of the incident, she knew what did not happen.

m. Ms. Black testified, at the time, she had known the Defendants and others in the neighborhood for only two to three months. During this time, she would go to the neighborhood almost daily to hang out.

n. According to Ms. Black's testimony at the MAR evidentiary hearing, the day of November 15, 2002, proceeded as follows:

   i. She recalled going to Devonshire St. around 4:00-4:30 PM. She picked-up Defendants, and they wanted to go home to change clothes in order to go to a party, football game, or some other place.

   ii. She reiterated multiple times the Defendants were with her from the time she picked them up until she dropped them off later in the evening. She also stated if the Defendants had committed a crime, it would have had to happen prior to her picking them up.

   iii. She maintained Mr. Banner was not with her the evening of the incident. Additionally, she stated she previously testified Mr. Banner was with them and got them kicked out of a bowling alley because she was confused from the officer's testimony that Mr. Banner was present at the bowling alley.

o. Ms. Black stated it did not occur to her until she was older that there was a possibility the Defendants falsely confessed.

p. At some point in or around 2019, a reporter named Hunter Atkins contacted Ms. Black. She was unaware their first phone call was recorded.

q. Ms. Black testified she initially did not want to speak with Mr. Atkins.

r. Ms. Black stated during her conversations with Mr. Atkins, he began telling her certain details about the case of which she was unaware.

s. Ms. Black testified she began telling Mr. Atkins details how she falsely testified against the Defendants.

49. On January 22, 2025, defense counsel rested their MAR cases-in-chief.

50. The State subsequently informed the Court it would not be putting on evidence or calling witnesses.

51. From January 23, 2025, to January 24, 2025, the State and defense counsel delivered their closing arguments.

52. To the extent any of the following conclusions of law are findings of fact, they are incorporated herein by reference.

CONCLUSIONS OF LAW

1. One of the grounds upon which a Defendant may assert a motion for appropriate relief made more than 10 days after entry of judgment is if "[t]he conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina." N.C. Gen. Stat. § 15A-1415(b)(3).

2. Additionally, "[n]otwithstanding the time limitations herein, a Defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the Defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the Defendant's eligibility for the death penalty or the Defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery." *Id.* § 15A-1415(c).

3. "The following relief is available when the court grants a motion for appropriate relief:

    a. (1) New trial on all or any of the charges[;]

    b. (2) Dismissal of all or any of the charges[;]

    c. (3) The relief sought by the State pursuant to G.S. 15A-1416[;]

    d. (3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes[; and/or]

    e. (4) Any other appropriate relief."

Id. § 15A-1417(a)(1-4).

4. The State raised at the initial hearing, and again at the evidentiary hearing for Defendants' MARs, its argument that several of these claims are procedurally barred in light of previous filings of motions for appropriate relief. However, as discussed in a previous order of this Court and for the reasons set therein, the claims of the Defendants are not procedurally barred.

<u>Newly Discovered Evidence</u>

5. Attorney Mumma, the attorney representing Mr. Tolliver on this MAR, withdrew the portion of the newly discovered evidence claim as it relates to the footwear impression analysis, and, consequently, that issue is not discussed in this Order.

6. "To prevail on a motion for appropriate relief based on newly discovered evidence, a Defendant must establish the following: (1) that the witness or witnesses will give newly discovered evidence, (2) that such newly discovered evidence is probably true, (3) that it is competent, material and relevant, (4) that due diligence was used and proper means were employed to procure the testimony at the trial, (5) that the newly discovered evidence is not merely cumulative, (6) that it does not tend only to contradict a former witness or to impeach or discredit him, (7) that it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail." *State v. Peterson*, 228 N.C.App. 339, 344, 744 S.E.2d 153, 157-58 (2013) (quoting *State v. Hall*, 194 N.C.App. 42, 48–49, 669 S.E.2d 30, 35 (2008).

<u>Newly Discovered Evidence — Ms. Black's Recantation</u>

7. At the MAR evidentiary hearing, the State contended a recantation is not able to be considered newly discovered evidence. However, from a plain reading of N.C. Gen. Stat. § 15A-1415(c), such an assertion is not accurate. N.C. Gen. Stat. § 15A-1415(c) ("[A] Defendant . . . may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the Defendant at the time of trial . . . *including* recanted testimony. . . .") (emphasis added).

8. "A Defendant may be allowed a new trial on the basis of recanted testimony if: 1) the court is reasonably well satisfied that the testimony given by a material witness is false, and 2) there is a reasonable possibility that, had the false testimony not been admitted, a different result would have been reached at the trial." *State v. Britt*, 320 N.C. 705, 715, 360 S.E.2d 660, 665 (1987), *superseded in part on other grounds by statute as stated in State v. Defoe*, 364 N.C. 29, 33-38, 691 S.E.2d 1, 4-7 (2010).

9. At the MAR evidentiary hearing, Ms. Black explicitly recanted the testimony she gave at the Defendants' trials and said she committed perjury when testifying against the Defendants at their trials. Additionally, when testifying before the NCIIC in 2022, Ms. Black recanted the testimony she gave at the Defendants' trials.

10. The relevant parts of Ms. Black's testimony at the MAR evidentiary hearing which this Court finds credible includes, but is not limited to, the following facts: (a) when Ms. Black was interrogated by the officers prior to the Defendants' trials, she was around 16 years old, did not have an adult present, and had never previously been interviewed by the police; (b) there were several officers who interrogated her, they kept accusing her of lying, and they asked and re-asked questions in such a manner as to lead her to the answers they wanted; (c) eventually Ms. Black began to change her story to fit the answers the officers wanted; (d) the officers gave, or implied, facts to Ms. Black that indicated to her the Defendants committed the offense; and (e) since receiving information in the past several years, she now believes the factual basis provided to her conflicts with the fact that the Defendants were with her. The Court finds Ms. Black's testimony credible as she described the circumstances that lead to her giving the testimony she gave at the Defendants' trials.

11. The Court is reasonably well satisfied the testimony Ms. Black gave at the Defendants' trials was false.

12. Ms. Black was the key witness of the State at trial. Her trial testimony explicitly implicated the Defendants, included statements she said at the time were made by the Defendants about assaulting the victim, included details about Defendants securing the implements used in the assault, and contradicted the Defendants' alibis.

13. There is a reasonable probability that but for the admission of Ms. Black's false testimony, a different result would have been reached at the Defendants' trials.

14. At the MAR evidentiary hearing, the State argued certain parts of Ms. Black's new testimony were inconsistent with the facts of the case at trial. The Court believes, assuming *arguendo* that such inconsistencies exist, this comports with the nature of a recanted testimony. Ms. Black now says the testimony she gave at Defendants' trials

was coerced, and she is seeking to recant that testimony, an act which would call for her new testimony to conflict with her original trial testimony. The Court finds the State's argument on this point without merit.

Newly Discovered Evidence — DNA Profiles

15. The Defendants assert the DNA profiles constitute newly discovered evidence. To support their contention, they called Ms. Clements, a professional with decades of experience in forensic biology. The defense tendered her as an expert in forensic biology.

16. The DNA profiles that would be presented today would be newly discovered evidence because, even though there was no forensic evidence, it is new evidence of absence. Specifically, testing showing other DNA profiles present and excluding Defendants as contributors constitutes new evidence of absence. Additionally, better methods of testing are available today than were available during the Defendants' trials. For that same reason, the information derived from the DNA profiles is probably true.

17. The DNA profiles are material and relevant because they evidence the exclusion of the Defendants from being contributors to some of the collected DNA. Additionally, the Court found the experts who testified to the DNA profiles and DNA testing to be competent, well-credentialed, and credible.

18. Neither the DNA profiles, nor the conclusions drawn therefrom, could have been procured at trial. The DNA profiles were developed from kits which were not available until approximately 2015 to 2017.

19. The DNA profiles are not *merely* cumulative or corroborative because there was no DNA evidence introduced at Defendants' trials. Additionally, according to Ms. Clements, the profiles she analyzed exclude the Defendants as contributors. The DNA profiles are contradictory to the State's case at trial. The DNA profiles further serve to corroborate Defendants' assertions that their confessions were false, that Ms. Black's testimony at trial was also false, and the Defendants were not present at the scene of the crime.

20. Given that the juries in Defendants' trials were not shown any forensic evidence, the Court concludes the evidence is of such a compelling nature that a different result will likely be reached at a new trial where the new DNA profiles are admitted.

21. In light of the State's arguments about the competency of several of the Defendants' expert witnesses, the Court notes the State had the opportunity at the MAR evidentiary hearing to put on evidence and tender experts to contradict the testimony of the Defendants' expert witnesses, but the State did not do so.

Newly Discovered Evidence — Psychology, Adolescent Development, and False Confessions

22. The Defendants claim there is newly discovered evidence within the fields of adolescent developmental psychology and the psychology of police interrogations and confessions. To support this contention, the defense called Dr. Hayley Cleary, a doctor

of developmental psychology and a professor of criminal justice and public policy. Dr. Cleary was tendered as an expert in adolescent developmental psychology and the psychology of police interrogations and confessions. The defense also called Dr. Ginger Calloway, a doctor in forensic psychology. Dr. Calloway was tendered as an expert in forensic psychology, personality and intellectual assessment, intellectual disability, and child development.

23. The Court finds the developments in the fields of adolescent developmental psychology and the psychology of police interrogations and confessions to be newly discovered evidence because this information and data was not available to the Defendants at the time of their suppression hearings or their trials. Moreover, the developments in these fields, even if the fields or some of their fundamental principles themselves are not new, constitute significant advancements of the science and literature that would not have been available to the Defendants at the time of their suppression hearings or trials.

24. The newly discovered evidence is probably true because the developments are the result of rigorous peer-reviewed study. The evidence is material, competent, and relevant because it bears on the Defendants' allegations they were coerced into falsely confessing and is the result of rigorous peer-reviewed study.

25. Regarding the due diligence element, the developments in these fields only emerged after the Defendants' suppression hearings and trials and, thus, could not have been discovered at the time of their trials. The newly discovered evidence is not merely cumulative or corroborative because similar evidence was not presented at the Defendants' suppression hearings or trials. The newly discovered evidence does not merely tend to contradict, impeach, or discredit the testimony of a former witness because it speaks to the voluntariness and alleged falsity of the Defendants' confessions. Given the credibility of the developments and that the developments address the Defendants' confessions, the Court finds the newly discovered evidence is of such a compelling nature that a different result will probably be reached at a new trial.

Newly Discovered Evidence — Affidavits of Mr. Bryant and Mr. Tolliver

26. The Court finds that the affidavits of Bryant and Tolliver do not constitute newly discovered evidence. The facts contained within their affidavits were available to Mr. Banner and Mr. Cauthen at the time of their trials; Mr. Bryant and Mr. Tolliver simply did not testify at those trials. Notwithstanding the fact that this may have been on the advice of their attorneys or in their own best interest, the underlying information was otherwise actually available to Mr. Banner and Mr. Cauthen.

Ineffective Assistance of Counsel (IAC)

27. "'When a Defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness.'" *State v. Campbell*, 359 N.C. 644, 690, 617 S.E.2d 1, 29 (2005) (quoting *State v. Braswell*, 312 N.C. 553, 561–62, 324 S.E.2d 241, 248 (1985)).

28. "In order to meet this burden, a Defendant must satisfy a two-part test: First, the Defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the Defendant by the Sixth Amendment. Second, the Defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the Defendant of a fair trial, a trial whose result is reliable." *Campbell*, 359 N.C. at 690, 617 S.E.2d at 29 (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674, 693 (1984) (internal quotation marks omitted).

29. "Prejudice is established by showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Both prongs of this test must be met to prevail on an ineffective assistance of counsel claim." *Campbell*, 359 N.C. at 690, 617 S.E.2d at 29-30 (internal citations and quotations omitted). Furthermore, "the 'reasonable probability' standard of the ineffective assistance of counsel test can be satisfied by something less than the 51% certainty associated with the preponderance of the evidence standard." *State v. Lane*, 271 N.C. App. 307, 314–15, 844 S.E.2d 32, 39 (2020).

IAC — Failure to Investigate Cognitive Impairments

30. Mr. Tolliver and Mr. Bryant claim their trial attorneys provided ineffective assistance of counsel by failing to investigate their mental or cognitive impairments. Mr. Banner and Mr. Cauthen claim their trial attorneys provided ineffective assistance of counsel by failing to investigate their intellectual disabilities. Due to the similarity of these claims, the Court considers them together.[2]

31. In support of this contention, the Defendants called Dr. Cleary and Dr. Calloway. The Defendants also called Ms. Mitzi Teague, who is the custodian for former student records for Forsyth County Schools. The Defendants also called Attorney James Cooney, III, who was tendered as an expert on the prevailing professional norms of the defense of homicide cases between 2002 and 2005.

32. The Court concludes that Defendants' trial counsel's performance was deficient because, according to the expert testimony of Attorney Cooney, trial counsel failed to follow the prevailing professional norms of the time when they did not investigate the Defendant's cognitive impairments. According to Attorney Cooney, one of the grounds of suppression for a confession is voluntariness, for which mental capacity is a factor, and so it was a prevailing professional norm of the time to talk to the family and look into a Defendant's school records to investigate any potential issue of mental capacity. Attorney Cooney noted that looking at school records is one of the best ways to ascertain a Defendant's mental capacity and doing so has been standard practice since at least the 1980s. Attorney Cooney also reviewed the Defendants' school records and

[2] Although the Court will be using the term "cognitive impairment," which is the term in Mr. Bryant and Mr. Tolliver's MAR, the Court uses it to refer to all of the Defendants' claims regarding cognitive impairments and intellectual disabilities.

noted that some of the Defendants were classified as mentally disabled, some were shown to have low IQ scores, and some of them had problems understanding cause and effect. This information, gleaned from Defendants' school records, led Attorney Cooney to opine that an attorney would ordinarily get an expert to review the school records to address the voluntariness of the Defendant's statements.

33. The Court also concludes Defendants' trial counsels' deficient performances prejudiced Defendants. By failing to follow the prevailing professional norms and investigate the Defendant's cognitive impairments, trial counsel was unable to use information reflecting upon Defendants' cognitive impairments at the suppression hearings or at trial to explain the voluntariness of Defendants' confessions to the triers of fact. Case law in existence at the time of trials also illustrates how the Defendants' cognitive impairments would have been more than useful in responding to the Defendants' confessions. *See State v. Dawson*, 278 N.C. 351, 362, 180 S.E.2d 140, 147 (1971) ("'This, then, is the general rule: a minor has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.'") (quoting *People v. Lara*, 67 Cal.2d 365, 62 Cal.Rptr. 586, 432 P.2d 202 (1967)).

34. Based upon the extent of the evidence showing Defendants' cognitive impairments, evident in their grade-school academic records, the testimony of Dr. Cleary, and the testimony of Dr. Calloway, Defendants' trial counsel failed to act as that legal counsel guaranteed by the Sixth Amendment when they declined to investigate the Defendants' cognitive impairments, and this deficient performance seriously prejudiced the Defendants so as to deprive them of a fair trial.

35. Therefore, this Court concludes Defendants' trial counsel provided ineffective assistance of counsel on this basis.

IAC — Failure to Put on Evidence of False Confessions

36. Mr. Bryant and Mr. Tolliver contend their trial counsel provided ineffective assistance of counsel by failing to put on evidence of false confessions. To support this contention, they called Dr. Cleary.

37. The Court concludes Mr. Bryant's and Mr. Tolliver's trial counsel failed to provide effective assistance of counsel by failing to put on evidence of false confessions. Dr. Cleary's expert testimony illustrates the high probability that the Defendant's confessions were false. For example, Dr. Cleary described how adolescents are more suggestible and thus more likely to acquiesce to changing responses when faced with interrogation and leading questions. Dr. Cleary stated that people who are factually innocent may be more likely to get themselves in situations of legal jeopardy, such as by waiving their Miranda rights; and highlighted the role of power dynamics in interrogations. She also discussed the effect of dispositional risk factors and situational risk factors in general and how they apply to the present cases. Given the

abundance of indications that Defendants and Ms. Black may have falsely confessed during their interrogations, their trial counsels' failure to obtain expert testimony on false confessions for the suppression hearings and trial in order to challenge the voluntariness or veracity of the confessions was a serious error such that Mr. Bryant's and Mr. Tolliver's trial counsel was not functioning as that counsel which is guaranteed to them by the Sixth Amendment.

38. The Court also concludes Mr. Bryant's and Mr. Tolliver's trial counsels' failure to investigate false confessions or obtain expert testimony on false confessions prejudiced Mr. Bryant's and Mr. Tolliver's defense. At their own suppression hearings, Judge Helms expressed a lack of understanding regarding why someone would falsely confess to being present at a crime just to end an interrogation. This indicates to the Court that expert testimony would have likely informed Judge Helms as to the reasons behind such false confessions, especially the false confessions of adolescents. Similarly, expert testimony on false confessions would have assisted the jury in understanding the same. Therefore, this Court concludes Mr. Bryant's and Mr. Tolliver's trial counsels' serious errors deprived them of a fair trial with a reliable result.

39. Although at the time of Defendants' suppression hearings and/or trials the study of false confessions was not as advanced as it is today, evidence of false confessions and/or expert testimony on false confessions—even as these existed at the time—may have been useful to the triers of fact.

40. Given the extent of the presence of risk factors in Defendants' cases and confessions, Mr. Bryant's and Mr. Tolliver's trial counsel failed to act as that counsel guaranteed by the Sixth Amendment when they declined to investigate and develop expert testimony on false confessions. This deficient performance seriously prejudiced Mr. Bryant and Mr. Tolliver so as to deprive them of a fair trial.

41. Therefore, Mr. Bryant's and Mr. Tolliver's trial counsel provided ineffective assistance of counsel on this basis.

IAC — *Harbison*

42. "[I]neffective assistance of counsel, per se in violation of the Sixth Amendment, has been established in every criminal case in which the Defendant's counsel admits the Defendant's guilt to the jury without the Defendant's consent." *State v. Harbison*, 315 N.C. 175, 180, 337 S.E.2d 504, 507-08 (1985).

43. "Although an overt admission of the Defendant's guilt by counsel is the clearest type of *Harbison* error, it is not the exclusive manner in which a per se violation of the Defendant's right to effective assistance of counsel can occur. In cases where . . . defense counsel's statements to the jury cannot logically be interpreted as anything other than an implied concession of guilt to a charged offense, *Harbison* error exists unless the Defendant has previously consented to such a trial strategy. In such cases, the Defendant is prejudiced in the same manner and to the same degree as if the

admission of guilt had been overtly made." *State v. McAllister*, 375 N.C. 455, 475, 847 S.E.2d 711, 723 (2020).

44. "[W]hen counsel to the surprise of his client admits his client's guilt, the harm is so likely and so apparent that the issue of prejudice need not be addressed." *Harbison*, 315 N.C. at 180, 337 S.E.2d at 507.

45. The Court concludes that a *Harbison* error was committed in Mr. Banner's case. Attorney Leonard mentioned the extent of Mr. Banner's "minimal involvement" during his closing argument shortly before the jury instructions regarding acting in concert, making it reasonable for the jury to imply involvement and thus construe it as an admission of guilt. The Court recognizes Attorney Leonard was in a difficult position; however, he should have discussed this language or statement with Mr. Banner beforehand to obtain his consent. Mr. Banner testified at the MAR evidentiary hearing Attorney Leonard did not obtain his permission to make such statements. Co-Defendant's trial counsel, Ms. Hier, testified she was also not informed about Mr. Leonard's intention to make admissions before the jury on Mr. Banner's behalf. This Court finds Mr. Leonard made the admissions before the jury at Mr. Banner's trial in violation of the *Harbison* decision. Therefore, considering the jury instruction and the closing argument statement which amounted to an admission of guilt, and taking these circumstances as a whole, the Court concludes there was a *Harbison* error in Mr. Banner's case.

46. The Court also concludes Attorney Leonard's statement regarding Mr. Banner's "minimal involvement" violated Mr. Cauthen's right to due process under the law. Mr. Cauthen and Mr. Banner were tried jointly, and any implied admission of guilt or involvement on Mr. Banner's part also affects Mr. Cauthen's case. Additionally, their joint trial strategy was to show the Defendants were led to falsely confess. When there is a joint defense, joinder is not a problem. However, the surprise abandonment of a joint trial strategy by one co-Defendant's attorney during closing arguments would surely also come as a surprise to the other co-Defendant—as evidenced by Attorney Hier's testimony at the MAR evidentiary hearing. Had Mr. Cauthen known the joint trial strategy was going to be abandoned by Mr. Banner's lawyer, he could have fought to be tried separately instead. Furthermore, Attorney Hier did not object when Attorney Leonard made these statements about "minimal involvement." Therefore, the *Harbison* error in Mr. Banner's case also violated the due process rights of Mr. Cauthen.

47. To the extent any of the foregoing findings of fact or following decretal provisions are legal conclusions, they are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Defendants' claims for relief as they pertain to Ms. Black's recantation are **GRANTED**.

2. Defendants' claims for relief as they pertain to the footwear analysis as newly discovered evidence are **DISMISSED**.

3. Defendants' claims for relief as they pertain to the DNA profiles as newly discovered evidence are **GRANTED**.

4. Defendants' claims for relief as they pertain to the developments in the fields of adolescent developmental psychology and the psychology of police interrogations and confessions as newly discovered evidence are **GRANTED**.

5. Mr. Banner's and Mr. Cauthen's claims for relief as they pertain to Mr. Bryant's and Mr. Tolliver's affidavits as newly discovered evidence are **DENIED**.

6. Defendants' claims for relief as they pertain to ineffective assistance of counsel for failure to investigate the Defendants' mental disabilities are **GRANTED**.

7. Defendants' claims for relief as they pertain to ineffective assistance of counsel for failure to put on evidence relating to the science of false confessions are **GRANTED**.

8. Mr. Banner's claim for relief as it pertains to the commission of a *Harbison* error is **GRANTED**.

9. Mr. Cauthen's claim for relief as it pertains to the commission of a *Harbison* error that caused the violation of his due process rights is **GRANTED**.

10. Mr. Banner's convictions shall be vacated and are hereby dismissed with prejudice.

11. Mr. Cauthen's convictions shall be vacated and are hereby dismissed with prejudice.

12. Mr. Bryant's convictions shall be vacated and are hereby dismissed with prejudice.

13. Mr. Tolliver's convictions shall be vacated and are hereby dismissed with prejudice.

14. A filed copy of this order shall be forwarded by the Clerk of Superior Court of Forsyth County to the District Attorney's Office for the Thirty-First Prosecutorial District; to Christine C. Mumma and Michael T. Roberson, counsel for Mr. Banner and Mr. Cauthen; to Bradley Joseph Bannon, counsel for Mr. Bryant; to S. Mark Rabil, counsel for Mr. Tolliver; and to the Defendants.

This the 7 day of August, 2025.

Robert A. Broadie

Honorable Robert A. Broadie
Superior Court Judge Presiding

2 March 2020

North Carolina Innocence Inquiry Commission
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Re: *State v. Christopher Bryant* (02 CRS 38886); *State v. Nathaniel Cauthen* (02 CRS 38884) *State v. Rayshawn Banner* (02 CRS 38883); *State v. Jermal Tolliver* (02 CRS 38882)

I. INTRODUCTION

I have been asked to examine case material in the matter of **Rayshawn Banner**, **Dorrell Brayboy (deceased)**, **Christopher Bryant**, **Nathaniel Cauthen**, and **Jermal Tolliver** in order to identify the potential presence of factors that could have contributed to false or unreliable confessions. In retaining me to examine this case, the North Carolina Innocence Inquiry Commission staff explained that NCIIC is a neutral state agency that seeks all relevant information pertaining to the case and that my report will be forwarded to the Commission regardless of its content or conclusions.

In the following report, I describe the general problem of false confessions in police interrogations, particularly among juvenile suspects. I discuss the scientific research on factors associated with false confessions that are relevant to this case. In doing so, I do not express an opinion about the veracity any specific confession involved in this case. Rather, the research findings I summarize—many of which are not only beyond common knowledge but are actually counterintuitive—can hopefully assist the Commission in its assessment of the interrogations and confessions that occurred in this case.

II. QUALIFICATIONS

I am an Associate Professor of Criminal Justice in the L. Douglas Wilder School of Government & Public Affairs at Virginia Commonwealth University in Richmond, Virginia. I hold a master's degree in Public Policy and a PhD in Developmental Psychology from Georgetown University. My areas of training and research expertise include adolescent development in legal contexts. I specialize in the study of police interrogation, particularly interrogation of juvenile suspects. My

research contributes to and draws upon the extensive scientific literature on police interrogation and its associated components, including confessions and false confessions, police interrogation tactics, developmentally based vulnerabilities during interrogation, and police use of coercion.

I have authored or co-authored more than twenty (20) peer-reviewed scientific publications, primarily in my field's leading academic journals. I have presented or co-presented over thirty (30) research papers at academic conferences. I have given invited lectures regarding police interrogation, adolescent development, and juvenile justice to police departments and attorney organizations at the local, state, and federal levels, including the Federal Bureau of Investigation, The Virginia state legislature, and statewide public defender conferences in Georgia, Mississippi, and Virginia. My research has been featured in national news outlets such as the *New York Times*, and I have won several awards for my interrogation-related scholarship. Detailed information about my qualifications is available in my curriculum vitae, included as an appendix to this report.

III. MATERIALS REVIEWED

During my preparation for this report, I reviewed the following case materials:

1) Case timeline prepared by NCIIC (100 pp.)
2) School records of Christopher Bryant (44 pp.)
3) School records of Nathaniel Cauthen (37 pp.)
4) School records of Jermal Tolliver (274 pp.)
5) School records of Rayshawn Banner (142 pp.)
6) Prison educational records of Dorrell Brayboy (13 pp.)
7) Prison educational records of Rayshawn Banner (15 pp.)
8) Prison educational records of Nathaniel Cauthen (18 pp.)
9) Prison educational records of Jermal Tolliver (15 pp.)
10) Prison educational records of Christopher Bryant (16 pp.)
11) Audio recording of Winston-Salem Police Department (WSPD) interview with Jessicah Black (11/19/2002; 33 mins)
12) Transcript of WSPD interview with Jessicah Black (35 pp.)
13) Audio recording of Jermal Tolliver's confession statement (11/19/2002; 29 mins)
14) Transcript of Jermal Tolliver's confession statement (28 pp.)
15) Audio recording of Jermal Tolliver's Bruton statement (11/20/2002; 29 mins)
16) Transcript of Jermal Tolliver's Bruton statement (8 pp.)
17) Audio recording of Rayshawn Banner's confession statement (11/20/2002; 25 mins)
18) Transcript of Rayshawn Banner's confession statement (25 pp.)
19) Audio recording of Rayshawn Banner's Bruton statement (11/20/2002; 7 mins)
20) Transcript of Rayshawn Banner's Bruton statement (8 pp.)
21) Audio recording of Nathaniel Cauthen's confession statement (11/19/2002; 20 mins)

22) Transcript of Nathaniel Cauthen's confession statement (33 pp.)
23) Audio recording of Nathaniel Cauthen's Bruton statement (11/19/2002; 6 mins)
24) Transcript of Nathaniel Cauthen's Bruton statement (6 pp.)
25) Audio recording of Christopher Bryant's confession statement (11/19/2002; 11 mins)
26) Transcript of Christopher Bryant's confession statement (14 pp.)
27) Audio recording of Christopher Bryant's Bruton statement (11/19/2002; 9 mins)
28) Transcript of Christopher Bryant's Bruton statement (11 pp.)
29) Audio recording of Dorrell Brayboy's first confession statement (11/19/2002; 20 mins)
30) Transcript of Dorrell Brayboy's first confession statement (25 pp.)
31) Audio recording of Dorrell Brayboy's second confession statement (11/19/2002; 9 mins)
32) Transcript of Dorrell Brayboy's second confession statement (9 pp.)
33) Audio recording of Dorrell Brayboy's Bruton statement (11/20/2002; 5 mins)
34) Transcript of Dorrell Brayboy's Bruton statement (7 pp.)
35) Transcript of Bryant and Tolliver suppression hearing (263 pp.)
36) FSR report of Bryant and Tolliver suppression hearing (10 pp.)
37) Transcript of Banner suppression hearing (46 pp.)
38) FSR report of Banner suppression hearing (4 pp.)
39) Transcript of Cauthen suppression hearing (292 pp.)
40) FSR report of Cauthen suppression hearing (16 pp.)
41) Transcript of Brayboy suppression hearing (131 pp.)
42) FSR report of Brayboy suppression hearing (7 pp.)
43) WSPD partial file (429 pp.)
44) FSR report of WSPD partial file (22 pp.)
45) WSPD full file (1,440 pp.)
46) FSR report of WSPD full file (43 pp.)
47) WSPD policies and procedures (44 pp.)
48) WSPD crime scene photos
49) Transcript of NCIIC interview with Dorrell Brayboy (59 pp.)
50) Audio recording of NCIIC interview with Dorrell Brayboy (3/1/18; 62 mins)
51) Transcript of NCIIC interview with Rayshawn Banner (45 pp.)
52) Audio recording of NCIIC interview with Rayshawn Banner (2/21/18; 52 mins)
53) Transcript of NCIIC interview with Jermal Tolliver (50 pp.)
54) Audio recording of NCIIC interview with Jermal Tolliver (2/19/18; 51 mins)
55) Transcript of NCIIC interview with Nathaniel Cauthen (64 pp.)
56) Audio recording of NCIIC interview with Nathaniel Cauthen (2/19/18; 113 mins)
57) Transcript of NCIIC interview with Christopher Bryant (84 pp.)
58) Audio recording of NCIIC interview with Christopher Bryant (2/23/18; 119 mins)
59) CrimeStoppers database entry from 11/16/02 (4 pp.)
60) CrimeStoppers database entry from 11/19/02 (4 pp.)
61) FSR report of the trial of Bryant, Tolliver, and Brayboy (66 pp.)
62) FSR report of the trial of Cauthen and Banner (74 pp.)
63) Transcript of Jessicah Black's deposition (volume 1, 172 pp.)

64) Transcript of Jessicah Black's deposition (volume 2, 123 pp.)
65) NCIIC case brief, Appendix J (6 pp.)

IV. SCIENTIFIC RESEARCH ON FALSE CONFESSIONS

A) The occurrence of false confessions

It is widely accepted in the scientific and law enforcement communities that false and unreliable confessions do occur. While calculating the precise prevalence of false confessions is not possible, researchers have learned a great deal about the extent of the false confession problem using numerous methods, including examination of documented false confession cases, studies with wrongful conviction databases, field studies, clinical studies of individual susceptibility to false confessions, and laboratory studies of the causes and consequences of false confessions. Archival studies of documented false confessions and wrongful conviction cases have also shed light on this phenomenon. For example, in one study of 340 exonerations between 1989-2003, fifteen percent (15%) of the exonerees had falsely confessed.[1] The Innocence Project now maintains a database of wrongful conviction cases, including individuals who were exonerated by DNA evidence. As of the time of this writing, 103 of the 362 DNA exonerees (28%) made false statements to police.[2] Finally, the National Registry of Exonerations is an inter-university collaboration that "collects, analyzes and disseminates information about all known exonerations of innocent criminal defendants in the United States, from 1989 to the present."[3] Among the 2,145 known exonerations through 2017, twelve percent (12%) involved a false confession.[4] While it is not possible to compute a "rate" of false confessions because police agencies do not maintain records of all interrogations or their eventual outcomes, it is likely—for numerous reasons—that these figures underestimate the actual frequency with which false confessions occur.

Some studies have specifically examined false confession cases to better understand the characteristics and consequences of false confessions. For example, we know that false confessions have occurred in both brief and long interrogations, for serious and relatively non-serious crimes, and in suspects young and old.[i] We also know that false confessors have experienced severe, long-term, and sometimes—in the case of wrongful executions—irreparable harm.[5] It is also important to note 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.[6] This typically results from confession contamination, which is discussed in more detail below.

[i] Scholars have articulated four ways of proving that a confession is false: 1) it is objectively established that the crime in question did not actually occur; 2) it is objectively established that the defendant could not have committed the crime; 3) the true perpetrator becomes known and his or her guilt confirmed; or 4) scientific evidence (e.g., DNA evidence) confirms the defendant's innocence.

B) False confessions among juvenile defendants

The archival studies described above have also yielded important information about false confessions among juveniles. It is clear that juveniles are overrepresented in cases of documented false confessions. In both of Gross et al.'s studies of exoneration cases in the National Registry of Exonerations (2005 and again in 2012), 42% of juvenile exonerees had falsely confessed, compared to 8% of adults with no known mental disabilities.[7] In Drizin and Leo's (2004) study of 125 proven, police-induced false confessions, a full third (33%) were juveniles, and 33/40 juvenile false confessors were between ages 14-17, indicating that older youth are also vulnerable. Interview studies with adolescents indicate that youth also self-report giving false statements to police.[8] Decades of research in developmental and social psychology, together with recent advancements in cognitive neuroscience, have illuminated the developmental underpinnings of youths' heightened vulnerability to police coercion and false confession. This research is summarized in Section V below.

C) Types of false confessions

Interrogation and confession researchers typically articulate three categories of false confessions: *voluntary*, *coerced-compliant*, and *coerced-internalized*.[9] Voluntary false confessions occur when an individual volunteers or willingly admits guilt to a crime they did not commit in the absence of pressure from police, often to gain notoriety or to protect someone else. Coerced-compliant false confessions are the product of psychologically coercive interrogations; in these cases, suspects ultimately provide an incriminating statement to escape mounting police pressure. These types of confessions are frequently recanted shortly after the interrogation. Coerced-internalized false confessions, sometimes called persuaded false confessions, also result from high pressure interrogations wherein the suspect eventually comes to believe they actually committed the crime.

D) Multiple false confessions for the same crime

Not all false confession cases involve a single suspect; false confessions can occur with multiple co-defendants for the same crime. We have seen this in several proven false confession cases. Perhaps most famously, five teenagers (ages 14-16) later known as the Central Park 5 falsely confessed and implicated one another in a series of attacks in New York's Central Park in 1989. Police isolated the youth and played them against one another, telling each adolescent that the others had implicated him in a rape and assault. The boys were led to believe they could "go home" if they provided incriminating information. All five boys were convicted in two separate trials and sentenced to prison. Not until 2002, when another person admitted to the crime, did investigators conduct DNA testing on evidence from the crime scene. Test results excluded the defendants and matched the more recent confessor.

False confession experts Steven Drizin and Richard Leo published an analysis of 125 proven

false confession cases.[10] In that 2004 study, several cases involved multiple co-defendants falsely confessing to the same crime. One such case involved a brutal rape and murder of a medical student in Chicago. Drizin and Leo (2004) observed that the savage nature of the crime reverberated throughout the community and created significant pressure on police to clear the case. Although there are no recordings of the interrogations, the defendants (one of whom had a learning disability) claimed that they were interrogated for hours, lied to, and threatened before they eventually falsely confessed. Nearly fifteen years later, DNA evidence excluded the defendants and linked two other individuals to the crime. Thus, there have been documented cases where "a single false confession can have a cascade-like effect, embroiling numerous other innocents in its net" (p. 981).

E) Public (mis)understanding of false confessions

It is important to note that neither the extent of false confessions, nor their correlates or consequences, is common knowledge. Research consistently demonstrates that people have difficulty accepting that someone would confess to a crime they did not commit. Although people to some extent recognize the general occurrence of false confessions, people nearly unilaterally believe that they, themselves, would never falsely confess to a crime.[11] Resistance to the idea of false confessions is an example of the *fundamental attribution error*—a psychological phenomenon supported by scores of scientific studies in which people attribute others' behaviors to internal characteristics and underestimate the power of situational influences. Numerous scholars have discussed the counterintuitive nature of false confessions and the psychological factors at play therein.

Potential jurors have also demonstrated an insufficient understanding of the police interrogation techniques associated with false confessions. While jurors may somewhat recognize the coercive nature of psychological interrogation techniques, most studies on this topic found they do not believe those techniques are likely to elicit false confessions.[12] One recent study reported that potential jurors did recognize that certain tactics (e.g., false evidence ploys, shutting down denials) were more likely to lead to false confessions than true confessions, which may signal a shift in public perceptions.[13] However, in the same study (which assessed knowledge of extensive array of interrogation factors), respondents' perspectives on the subject of juvenile interrogations were the most inconsistent with existing research of all the factors assessed. The authors concluded: "nearly one third of respondents indicated that it is appropriate to use adult suspect tactics on adolescents 17 or younger, and a little over 40% of respondents indicated that confessions elicited from adolescent suspects ages 17 or younger, despite such suspects' requests to have a parent or guardian present being denied, should be admissible in court. Overall, it seems that a considerable proportion of potential jurors do not recognize the full extent to which age is a risk factor for false confession."

Additionally, potential jurors harbor misunderstandings about police interrogators themselves. In one large-scale study using participants matched to actual jury pools, more than half (53%)

believed that police officers are better than laypeople at detecting lies and that this ability improves with experience,[14] yet research consistently demonstrates that police are no better than laypersons at detecting deceptive statements—even though police are more confident in their presumed abilities.[15] In essence, both police and the public believe that interrogators have special abilities to detect truth from lies when in fact they do not. Relatedly, research also shows that people's poor credibility assessment skills operate in the courtroom as well. For example, in one study pertaining specifically to juvenile false confessions, respondents were unable to differentiate false statements and true statements made by juvenile detainees.[16]

Understanding the public's mistaken beliefs about false confessions is important because research also demonstrates that confession evidence in general is especially influential on jurors' decision making. For example, one study compared three types of evidence—eyewitness, character, and confession—and found that confessions resulted in the highest conviction rates among mock jurors.[17] In another study experimentally examining the harmless error rule, mock jurors were unable to discount confession evidence, even when they understood that the interrogation was coerced and that the judge ruled the confession inadmissible.[18] This empirical evidence of the power of confession evidence is borne out in the archival studies described above; of the 37 false confessors in Drizin and Leo's (2004) study of proven false confessions, 30 of the defendants—81%—were convicted.

V. SCIENTIFIC RESEARCH ON RELEVANT FACTORS AND APPLICATION TO THE CASES OF RAYSHAWN BANNER, DORRELL BRAYBOY, CHRISTOPHER BRYANT, NATHANIEL CAUTHEN, AND JERMAL TOLLIVER

Based on my review of the case materials, I conclude that there are numerous factors present in this case that could have contributed to false, unreliable, or coerced statements from the five defendants and Jessicah Black. In the following subsections, I briefly outline the scientific research on each specific risk factor and then discuss relevant examples from case material. It should be noted that these examples are not necessarily an exhaustive list of instances where evidence of the risk factor was present. For some risk factors I was able to discuss all relevant instances; for other risk factors that were extensively present, I selected particular examples that are especially illustrative.

Last 25 yrs More Developed

A) Dispositional risk factors for false confessions: Adolescence

Scholars and courts have both recognized that research on adolescent development and decision making is directly relevant to the interrogation context.[ii][19] Psychological research has identified

[ii] Police officials and researchers both distinguish between *interviews*, which are non-accusatorial and factfinding in nature, and *interrogations*, which are accusatorial interactions designed to elicit confessions. The police interrogation research summarized in this report generally focuses on custodial interrogations, and the developmental science research summarized in the report speaks to psychological

two overarching categories of risk factors associated with false confessions: *dispositional risk factors*, meaning characteristics inherent to the suspect, and *situational risk factors*, meaning characteristics of the interrogation environment or process. The primary dispositional risk factors that increase the likelihood of a false confession are *juvenile status* (i.e., suspect is an adolescent) and *mental impairment* (which includes both mental illness and intellectual disability). This report section addresses the first dispositional risk factor: adolescence. 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.[20] All five defendants were middle-adolescents at the time of their interrogations: Rayshawn Banner was 14 years old and the other four were 15 years old. Thus, all five defendants were members of a class that researchers consider especially vulnerable to interrogative pressures.

Adolescent neurobiological development. There are numerous reasons why adolescents are more vulnerable to coerced and/or false confessions compared to adults. The first relates to adolescent brain development. The last few decades have witnessed a rapid proliferation of developmental neuroscientific research on the adolescent brain and its relation to and decision making—both decision making in general and decision making in legal contexts. This research comes from the fields of developmental, cognitive, and social psychology as well as cognitive neuroscience. Neuroscientists have documented structural and functional changes in the adolescent brain that directly impact adolescents' ability to process information, regulate their emotions and behavior, and make decisions under stress. It is now widely known among scientists—and increasingly among the general public—that the human brain is not fully developed until early adulthood. Importantly, the brain's different systems develop along different timetables; the brain structures that govern sensitivity to reward develop earlier than the structures that govern self-regulation.[21] In other words, adolescents are primed to act on impulses, seek rewards, and engage in risks before they have developed adult-like capacities for self-control. Executive function refers to higher-order cognitive functions such as impulse control, planning ahead, working memory abilities, and thinking before acting. As a group, adolescents show deficits in executive function skills compared to adults because the brain systems that control these abilities do not fully develop until, on average, one's early 20s.[22] Relatedly, it is important to note that based on the extensive body of scientific research on human development, scientists characterize the developmental period of "adolescence" much more broadly than the legal demarcation of age 18 (in most states). Leading developmental scientists generally portray the adolescent period as ages 10-25.[23]

Adolescent future orientation. In parallel to the cognitive neuroscience research on adolescent brain development, psychologists have studied developmental and psychosocial constructs stemming from those neurobiological deficient that are relevant to youths' decision making capacities, including capacities for legal decision making. One such psychosocial factor is called future orientation. Future orientation is the ability to think and reason about the future or connect

factors that shape individuals' perceptions of custody. For those reasons, I use the term *interrogation* throughout this report.

current behavior with future events. Research shows that youths' abilities to think about the future relative to the present begin to resemble adult-like levels around age 16, but the developmental capacity to plan ahead (i.e., make plans before acting) continues to increase throughout early adulthood.[24] Studies with delinquent samples have found that incarcerated youth are less future oriented than non-incarcerated youth and that growth in future orientation among serious juvenile offenders increases well into early adulthood.[25] In sum, capacities for future orientation are still developing during adolescence, and justice-involved youth show deficits relative to their peers.

Future orientation is highly relevant to false confessions from juveniles. Studies examining archival data and youth self-reports 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."[26] In fact, the desire to "go home" is a painfully common refrain in documented false confession cases. As Dr. Saul Kassin, the world's foremost expert in false confessions, recently stated in a podcast: "The most common comment you hear when a microphone is put into the face of an exoneree who had confessed is, 'So why did you confess?' The typical thing they say is because they wanted to go home."[27] This is exponentially the case for adolescent false confessors, who are literally less able, due to incomplete brain development, to think about the future consequences of confessing to a crime they did not commit. The immediate "reward" of relief from a stressful situation exerts a more powerful influence on youth than adults. Youths' limited future orientation renders them especially vulnerable to false confessions when it is combined with additional risk factors such as intellectual disability, lengthy and/or stressful interrogations, and psychologically manipulative interrogation techniques.

1. **Nathaniel Cauthen.** Cauthen testified that he changed his story from denial to admission expressly in order to go home. At his suppression hearing, he described Detectives as using aggressive, threatening tactics such as yelling at him, calling him names, cursing at him, and telling him he would never go home again. Cauthen still denied. When counsel asked him why he changed his story, he said the Detective told him "if you tell me anything concerning this man's case, I will let you go home" (Cauthen suppression hearing, p. 147).
2. **Jermal Tolliver.** Tolliver also testified that he asked to go home "about three times" (Tolliver suppression transcript, p. 183) and each time, detectives told him "they still got more questioning to do" (p. 184).
3. **Christopher Bryant.** Like Tolliver, Bryant asked detectives when he could go home was told "they've got to finish questioning [him]" (Bryant suppression transcript, p. 199). In fact, the judge at Bryant's hearing directly asked him "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?" and Bryant replied "Yeah, I just wanted to go home" (p. 201).

The power of a police detective telling an adolescent suspect that he can go home if he provides

information cannot be overstated. It can be difficult for a rational adult to understand how "going home" could ever outweigh falsely confessing to murder. But to a suspect who is 15 years old, intellectually disabled, frightened, confused, less able to think about events in the future, and (in Cauthen's case) upset because his own mother believes he was involved in a violent crime, the prospect of ending the stressful situation by making a statement can be extraordinarily compelling.

Adolescent interrogative suggestibility. Suggestibility refers to a general vulnerability to outside influence. In the interrogation context, researchers have defined interrogative suggestibility as the tendency to change one's narrative account of events in response to misleading information or perceived pressure during formal questioning.[28] An extensive body of work confirms that interrogative suggestibility increases among youth and is correlated with false confessions.[29] 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.[30]

One example concerns whether Jessicah Black drove the defendants to the mall on the night in question. At first Jessicah said the defendants took a bus to the mall on the night in question. She states she took them to the mall earlier in the week, but not that night. Det. Bishop then asks her again if she took them to the mall on Friday night. At this point her story shifts and she says she stopped by the mall to meet her friend Jordan. Specifically, she states: "I remember—yeah, I did have to make a pit stop at the mall cause I was going to go and meet one of my friends, Jordan and she wasn't there and then I had to *find them in the mall* and tell them to come on cause they wanted a ride" (Black interview transcript, p. 14, emphasis added). Det. Bishop then replies: "When did you have time to *take them to the mall* if y'all were out doing all this other stuff?" (emphasis added). While this may seem like a minor distinction, it could have communicated to Black that interrogators believed (and expected her to say) that she drove the defendants to the mall. At this point Black begins crying and says "y'all kept saying—you know—'Didn't you take them to the mall?' 'Did you take them to the mall?' and I didn't remember going to the mall."

Additionally, Black's language throughout her interview indicates the potential for guessing, speculating, or attempting to provide information investigators wanted to hear. For example, Det. Griffin asked Black several questions about wallets. Black never said she saw an actual wallet but she saw "an imprint in Stinky's pocket. I mean, it looked like a wallet, but none of them ever carry around wallets" (Black interview transcript, p. 28). Det. Griffin asked if it was thick or thin and whether it stuck out of his pocket. Black replies: "It…maybe an inch, two inches…I don't know." When Griffin asked which pocket, she replied "*I want to say* his left back pocket" (emphasis added). Griffin then reiterates that he "needs [her] to be honest" and offers positive

feedback by saying "we talked about this earlier and you've done very well so far" (p. 29). Such language could have communicated to Black that her statements so far were satisfactory and encouraged her to keep talking. Later Det. Griffin asked "Based on what you had heard and based on what they were saying and based on what was going on at the park, what were they going to do?" and Black replies "I'm gonna say they were going to rob somebody…because they were carrying sticks earlier that day they're talking about jacking somebody and then…you hear that yelling and the banging…what else am I supposed to think" (p. 29-30). Black appeared to exhibit confusion and distress throughout the recorded interview.

In Jessicah Black's 2019 deposition, she directly admits that police were feeding her details and making suggestive statements, which she tried to answer in the manner they wanted to hear. For example, she told NCIIC investigators "I changed the color of the tape [that the defendants allegedly bound the victim with] three damn times because I was trying to guess at what color [the tape was]" (Black deposition, vol 1., p. 126). She said police stated to her "you said it was grey and it wasn't grey, Ms. Black. Are you sure it was grey and it wasn't some other kind?" So then she began thinking maybe the tape was black. She said that she had no idea police could or would lie, and thought people were supposed to trust the law because they are there to serve and protect.

Although Black is not a defendant in this case, indications of her interrogative suggestibility are relevant because over the course of questioning, her story shifts to that of implicating the defendants, and later she plays a critical role in their trials. This example does not confirm the accuracy or inaccuracy of the statements themselves, but rather it illustrate the empirically supported notion of statement shifts during interrogations, which adolescents are more likely to exhibit than adults, and which call into question the veracity of the subject's statements. It is important to note 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. Rather, interrogative suggestibility is related to a complex array of psychological and situational factors.

Youth As A Group Are More Likely To Exhibit

Adolescent compliance. Compliance is the tendency to acquiesce to requests from others in order to avoid confrontation or conflict. Individuals of any age who have compliant personalities are more predisposed to false confessions, and youths' subordinate social status may put them at heightened risk. The social and legal power asymmetry between interrogator and youth suspects likely compels many youth to exhibit compliance-oriented behaviors during interrogations, such as waiving *Miranda* rights, following interrogators' instructions, or failing to advocate for themselves or express their true preferences (e.g., by requesting an attorney). Coupled with their poor impulse control, underdeveloped capacity for self-regulation, and limited ability to think about future consequences, youths' predisposition toward compliance with authority is one reason why they are less able to resist interrogative pressures than adults.

Compliance-related interrogation behaviors have been demonstrated empirically in both incarcerated and community youth samples under age 16.[31] In an experimental study of youth

and false admissions, compliance rates for signing a false statement of guilt decreased with age and were as high as 78% for 12- to 13-year-olds.[32] 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,[33] 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.

1. **Jermal Tolliver.** Jermal Tolliver's mother, Arlene Tolliver, had met Det. Rose several weeks prior to the murder when he was canvassing the neighborhood (Tolliver suppression hearing, p. 7). On 11/19/02, Arlene Tolliver spontaneously called Det. Rose and told him Jermal had been acting differently ever since the murder, and she was "convinced that he at least knew something about it" (p. 7). She told Det. Rose that Jermal was not home but that she would call him back when Jermal returned. When Det. Rose asked Arlene whether Jermal would talk with him, she replied "He doesn't have any choice" (p. 8). Det. Rose interpreted that comment to mean that Arlene would ensure that Jermal would talk to police (p. 8-9). Jermal Tolliver accompanied detectives to the police station and remained there until early the next day. During that time, he was questioned multiple times (duration unknown) and repeatedly denied his involvement. At one point while Det. Rose was at the police station interrogating Jermal Tolliver, Arlene Tolliver called Det. Rose and "wanted to know what Jermal had told us; even in that conversation she said if she needed to come down and have him tell the truth she would" (p. 23). Rose then told Tolliver "that his mother wanted him to tell the truth, and he, I guess that's – following that is when he started telling us the…his final act" (p. 24). At that point, Tolliver had been at the police station for approximately five hours or more. Given Tolliver's circumstances at the time, as well has his intellectual disability (discussed below), Tolliver's shift toward incriminating admission could have stemmed from a desire to provide the information he thought was being requested of him.
2. **Christopher Bryant.** Det. Taylor testified that Bryant "was not under arrest, but we *needed to speak with him* about an incident" (Bryant suppression hearing, p. 111, emphasis added). Bryant's testimony corroborated that language and indicated that police opened the patrol car door and instructed him to get in. He stated "I didn't open the door,

and they told me to get in, and I just got in" (Bryant suppression hearing, p.192). He further stated "Cause they just told me to get in, so I just got in. They said they *had to interview me* downtown. I didn't know that, you know what I'm saying, that you supposed to ask your parent or have rights, you know what I'm saying" (Bryant suppression hearing, p. 193, emphasis added). This indicates that Bryant did not recognize that he had a choice, and by getting in the patrol car he was following instructions. Moreover, when police first came to Bryant's house, they found Bryant down the street and asked him to come to the police station, Bryant's "mom yelled out at that time, you go on with them, and you better tell the truth" (Bryant suppression hearing p. 82). Adolescents are more likely than adults to exhibit compliance when given instructions from an adult, particularly an authority figure. In this situation, both police and Bryant's own mother instructed him to go to the police station and answer questions. Developmentally speaking, it is reasonable to expect that Bryant would have felt he had little choice in the matter.

Additionally, once Bryant began talking to police, there is evidence to suggest that Bryant's confession itself was a product of compliance, as he finally relented to mounting police pressure. This is very common in documented cases of false confessions. Bryant testified that he gave incriminating statements "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 suppression hearing, p. 201, emphasis added). At that point, Bryant has been at the PSC between 8-9 hours. The Court then asked Bryant, "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?" and Bryant replied "Yeah, I just wanted to go home." As discussed above, adolescents' (lack of) future orientation can render the prospect of escaping police pressure and extremely appealing. Of course, relenting to police pressure by providing incriminating statements occurs in true confessions as well. Although I cannot opine as to whether Bryant's incriminating statements were factually false, his scenario is consistent with numerous other documented cases of false confessions from juveniles. It is also consistent with developmental science evidence that youth are more likely than adults to comply with request from authority figures. Bryant's testimony seemingly indicates that he was telling police what he thought they wanted to hear. He testified that when he told detectives that he was a lookout for the crime, "they was happy with that, they was satisfied with that" (Bryant suppression hearing, p. 215).

3. **Dorrell Brayboy.** Brayboy's mother, Lisa Brayboy, gave consent for her son to accompany detectives to the police station. He repeatedly denied knowledge of the murder or involvement in it. At one point he asked detectives to get his mother so she could "straighten everything out." However, when Lisa Brayboy arrives at the police station, police sequester her and tell her that Dorrell has been lying to them about not being involved. Lisa Brayboy then "pleaded with him to tell the truth" (Brayboy suppression transcript, p. 35).

While all the defendants' Bruton statements reflect compliance in that the officers were guiding each youth through a recreation of his own personal involvement, Brayboy's Bruton statement was especially problematic. He appeared to have difficulty following Det. Smith's instructions to not use other defendants' names. Det. Smith says to Brayboy, "let's exclude what anybody else is saying, just tell me what—*say, "I did this, and I did this*" (Brayboy Bruton transcript, p. 1, emphasis added). Thus, the Detective is literally setting up Brayboy's narrative statements of guilt for him. While I understand the purpose of a Bruton statement is to obtain a record of each suspect's individual involvement, leading questions like these communicate to suspects what, and how, they are expected to say and leave little room for disagreement. Throughout the Bruton statement, Det. Smith asks controlled questions to elicit a narrative, many of which are yes/no questions. Brayboy usually responds with "yes, sir" or "no, sir." Moreover, at this point Brayboy had already given two recorded confession statements in which his mother was present. Lisa Brayboy said nothing while Detectives questioned her son until the very end of the statements. At the end of Brayboy's second statement, he indicated that the clothes he was wearing on 11/19/02 were at his house. Det. Smith asked Brayboy whether he would have a problem with his mother giving police the clothing and Brayboy replies "unh-unh" (no). Det. Smith, in attempt to secure a verbal yes or no for the record, asks Brayboy again "That's a 'yes'?" and Lisa Brayboy says "You better say 'yes'" (Brayboy 2nd confession transcript, p. 8-9). Thus Brayboy may have felt that he had little decision-making autonomy in his interactions with police.

4. **Nathaniel Cauthen**. Cauthen's mother, Theresa McCants, also facilitated Cauthen's interrogation. McCants was not with her son Nathaniel Cauthen when he was picked up by police. She first heard Nathaniel was with police when her other son, Rayshawn Banner, called her at work and told her that police were questioning people in the neighborhood (Cauthen suppression transcript, p. 95). McCants asked Banner "where was Nathaniel and he said that he was talking to the detectives, and I said, 'well, is he going with them?' And he stated, 'yes, he was going with them,' and I said, 'well, okay.' I said, 'you go home, because like I said, if he feels like he didn't do anything, then let him go on down.' I had no objections to it at all" (p. 95-96). When she returned home from work and Nathaniel still was not home, she called a detective and said she would come to the police station. At that point, Nathaniel had been adamantly denying his involvement. Det. Rowe testified that he overheard McCants, who was alone in the interrogation room with Cauthen, "pleading with him to tell the truth, telling him that she believed he was involved, and they were very verbally aggressive towards each other, with her telling him to tell the truth" (Cauthen suppression hearing, p. 30). McCants testified that when she saw Cauthen, she could tell he was upset and had been crying, and he looked tired. Cauthen told her "they are trying to say that I killed somebody. He said I haven't killed nobody. I say, well, you need to tell the truth." At that point McCants testified that she began lecturing Cauthen for hanging out with "people that I told you to stay away from" (p. 104). When Cauthen continued to deny, McCants told him the victim was "somebody's father, grandfather, and somebody's uncle, and if you would like for

nobody to come and do your mother like that, so I want you to tell the truth" (p. 105).

McCants's repeated invocations to "tell the truth" could have had the same effect as an interrogator using this tactic to elicit a confession (described below). They can wear down a suspect who is already tired, confused, or distressed. Such repeated invocations communicate to suspects that their statements to that point have not been "the truth" and that it is expected they will change their story. McCants herself even exhibited compliance with police against her own preferences. She testified that she wanted to stay with Cauthen, but Det. Byrum came in and said "what I need for you to do is go tell your son goodbye and turn around and walk out the room" (pp. 106-107), which she did. It can be difficult even for adults to resist a request from legal authority figures.

In sum, the scientific evidence for juveniles' developmentally-driven vulnerability to police pressure and false confessions is clear and widely agreed upon. The American Psychological Association, in its amicus brief in the matter of Brendan Dassey, explained "studies based on real-world and experimental data demonstrate conclusively that juveniles—because they lack mature judgment and are especially vulnerable to pressure—are far more likely than adults to make false confessions."[34] A recent study specifically surveying interrogation experts confirmed this scientific consensus. Kassin and his colleagues (2018) recently surveyed 87 interrogation experts from all over the world about their perceptions of the scientific reliability of various components of the interrogation and confession research literature. Ninety-four percent (94%) of these experts agreed that the scientific literature demonstrating that adolescents are at greater risk for false confession than adults is reliable enough for experts to present in trial testimony.[35]

B) Dispositional risk factors for false confessions: Mental impairment

In addition to adolescence, a second well-established dispositional risk factor for false confession is mental impairment. This designation includes both intellectual disability (ID; formerly called mental retardation) as well as diagnosed psychiatric conditions. As with juvenile status, persons with ID are also overrepresented in documented cases of false confessions.[36] The symptoms of ID involve cognitive and interpersonal problems that can increase vulnerability to false confessions. For example, persons with ID are more suggestible than persons without ID,[37] and suggestibility is a known risk factor for false confessions.[38]

1. **Rayshawn Banner.** Banner's school records indicate that he received a psychological evaluation at the age of 10 (4th grade). Evaluation results indicated a Full-Scale IQ of 71 (3rd percentile, p. 22) which is considered borderline mental deficiency. Stated differently, the WISC-III (the intelligence test that was administered) indicates that 97% of 10-year-olds would be expected to score higher than Banner. The evaluation specifically noted that Banner was "slow in processing verbal material" (p. 22). Although IQ is not "fixed" and measurement controversy exists, IQ is generally considered stable across time in the absence of significant changes in circumstances. Banner scored similarly (FSIQ 72) on related full-scale IQ test (WAIS-III) administered in a correctional

facility in 2005.

2. **Christopher Bryant.** Bryant's school records did not include IQ evaluations but did include several reading comprehension tests, which indicated very low reading ability (ranging from 5th-28th percentile depending on the year). His report cards indicate severe academic difficulties as well as conduct problems. Though his 8th grade IEP did not indicate Bryant was mentally disabled, educators noted "weaknesses in expressive and receptive language skills…[his]language delay has a negative impact socially and academically" (p. 33). Reports specifically note vocabulary comprehension problems and difficulty understanding cause and effect relationships. Bryant scored a 79 on an IQ test administered in a correctional facility in 2005, which is considered borderline mental disability.
3. **Nathaniel Cauthen.** A psychological evaluation from March 2002 (8th grade) indicated that Cauthen tested at FSIQ of 70 (2nd percentile), which is considered borderline mentally handicapped (p. 13). He was reported as experiencing "severe academic deficiencies" (p. 16) including poor reading comprehension, and his 9th grade IEP lists him as Educationally Mentally Disabled. Cauthen scored 76 on an IQ test administered in a correctional facility in 2004.
4. **Jermal Tolliver.** Tolliver also experienced numerous academic and conduct problems in school. In 9th grade he read at the 7th percentile. An IQ test administered in 1998 indicated a FSIQ of 66, which is considered extremely low mental ability. Tolliver scored a 62 on an IQ test administered in a correctional facility in 2005.

In sum, all four living defendants experienced consistent academic failures. Three of the four have documented intellectual disabilities, one of whom (Tolliver) is considered extremely low functioning. All 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 described below.

not considered
To young ppl

C) Situational risk factors for false confessions: Maximization techniques

Situational risk factors are characteristics of the interrogation process or environment that are associated with false confessions.[39] Some involve manipulation of the suspect's environment (e.g., prolonged custody and isolation) and others involve specific interrogation techniques used to manipulate the suspect's decision making. Researchers broadly group these psychologically coercive techniques into categories called maximization and minimization. The term maximization refers to 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. By contrast, minimization techniques involve downplaying the severity of the offense, expressing sympathy, or offering

moral justifications for the crime. Research indicates that both maximization and minimization techniques can change the suspect's view about what might happen if they confess. Maximization techniques carry an implicit threat of punishment for noncooperation—that is, the consequences will be worse if the suspect does not confess. Minimization techniques carry an implicit threat of leniency if the suspect cooperates (i.e., confesses). There is little if any evidence of minimization tactics in this case. It is unclear whether that is because minimization tactics were not used or because we do not have a record of the suspects' "real" interrogations, only their final confession statements. However, there is extensive evidence of numerous maximization techniques used with these defendants.

1.) *Accusations of lying/Shutting down denials.* 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.[40] Leading police interrogation training programs such as the Reid Technique explicitly teach these approaches,[41] and law enforcement personnel self-report using these tactics on both adolescent and adult suspects.[42] These strategies can co-occur, as interrogators will reject interviewees' claims of innocence and limit their opportunities to continue denying involvement in the crime. Importantly, accusing the suspect of lying need not be a direct, overt, or aggressive tactic or even necessarily involve the word "lying." Multiple invocations to "tell the truth," delivered repeatedly after a suspect denies involvement in or knowledge of a crime, communicate to the suspect that their statements heretofore have not been true.

There is extensive evidence that detectives accused the defendants of lying when they claimed ignorance or innocence, and Jessicah Black as well.

1. **Christopher Bryant.** Bryant testified at his suppression hearing that he told police he didn't know anything about a homicide on Moravia Street, and the officers said "quit bullshitting" because "Mr. Tolliver already told [the police]" (Bryant suppression hearing, p. 196)
2. **Nathaniel Cauthen.** Det. Rowe testified in Cauthen's hearing that when Cauthen was upset that his mother didn't believe him, Rowe told Cauthen he didn't believe him either. Det. Rowe then told Cauthen "we could start this interview again by drawing a line on my notes and start telling the truth" (Cauthen suppression hearing, p. 31).
3. **Jermal Tolliver.** Tolliver testified at his suppression hearing that he told detectives he had nothing to do with the crime, and they said that was "bullshit" (Tolliver suppression hearing, p. 152).
4. **Dorrell Brayboy.** Detectives communicated to both Brayboy and his mother that they thought he was lying. Det. Smith told her police "had spoken with her son and he wasn't being truthful with us" (Brayboy suppression transcript, p. 33). Lisa Brayboy testified that Det. Poe "was telling Dorrell, 'I know you're lying, I know you're lying'" (p. 107).
5. **Jessicah Black.** In Jessicah Black's first interrogation (7:03pm on 11/19/02), she told Detectives she had driven by the victim's house on 11/15/02 and saw police cars but denied participating in the incident. She told detectives that during the course of the

evening she met up with several of the defendants and then left them to visit a friend in Lexington, back and forth several times, before driving past the victim's house and seeing police cars. Det. Rose accuses her of lying as he writes "After hearing this account, I explained to her that Jermael [sic] had told us that she had driven them to the bowling alley. She adamantly denied this and maintained that she did not know anything about the murder. Det. Griffin then explained to her that it is important that she be truthful and she immediately began crying. As Det. Griffin continued, Jessica continued to cry but maintained that she was being truthful" (Det. Rose supplemental report on 6/13/03, WSPD partial file, pp. 231-232).

Similarly, Det. Griffin wrote that "after Jessicah returned from the restroom, Detective Flynn entered the interview room and confronted her with more information obtained from the interviews of the juveniles…I told Jessicah that she needed to be truthful about her involvement in this event. Jessicah started crying and admitted that she was involved" (WSPD partial file, pp. 242-245). At that point, Jessicah's story changed to a story of driving the defendants around; stopping at two stores and the park; and hearing the boys beating and banging in the park (Det. Bishop supplemental report on 3/31/03, WSPD partial file, pp. 153-155). Together, these police reports indicate that officers did not accept Jessicah's initial story that she was not involved. They implicitly accused her of lying by responding to her denial by saying it is important she be truthful.

In her later deposition in 2019, Jessicah Black provided a more detailed recollection of her questioning by police. She told the NCIIC attorney: "when I went for interrogation, there was a room full of officers or detectives or whatever. I mean, they were all around. And there was this one – I can't remember his name. I remember what his hair looked like and I remember how he come across and he was so aggressive and hollered at me. He was hollering so much that he was spitting and he was in my face. I mean, I could feel that spit hit my face. And I was crying. And he had me broke down. And I was like, 'This is what we did. I saw them walking down the road. You know, I picked them up.' And went on and -- to tell him what it was that was – 'No. You're lying. You're lying, you're lying'" (Black deposition, vol. 1). Black told NCIIC investigators that detectives kept telling her she was "leaving shit out" and to think about it some more. She admitted to listening to what the detectives said and incorporating it into her statements.

Exaggerate seriousness of consequences. Maximization techniques are intended to heighten the suspect's anxiety and make them feel as though denial is a futile effort.[43] It is especially common for interrogators to invoke the threat of harsher consequences as a response to suspects' denials.[44] This case involves multiple references to the death penalty across multiple suspects' interrogations. It is important to note here that, developmentally speaking, it is reasonable for an adolescent suspect to perceive references to the death penalty as threatening (and subsequently alter their decision making), even if a court determines that such references do not constitute a legally prohibited threat.

1. **Jermal Tolliver.** Tolliver testified at his suppression hearing that more than once a Detective "grabbed my arm and told me this is where the lethal injections would go" (p. 159). Det. Rose testified that Det. Flynn referenced Jermal's arm and said "this is where the lethal injection goes" but disputes that Flynn touched Tolliver. Regardless of whether anyone touched Tolliver's arm, it appears that the maximization tactic had the intended effect, as Tolliver testified this made him feel "scared" (p. 160). Tolliver testified that detectives were acting like they were mad at him (Tolliver suppression hearing, p. 153)
2. **Christopher Bryant.** Like Tolliver, Bryant reported that Detectives were aggressive and threatening toward him. Bryant testified that a Detective "came back in there and he sat down in the chair real fast and pulled it up and got in my face…and was telling me that the man – that I better tell them something, because the man on the phone was asking which arm I want the death penalty (Bryant suppression hearing, p. 199). Bryant said he "felt intimidated and scared" and started crying (p. 199). In the suppression hearing Bryant actually used the word "threat" to describe interrogators' actions ("they was over there threatening me, and I ain't never been through a situation like this, I never been involved in the law;" p. 215). Detectives admitted referencing the death penalty to Bryant; Det. Taylor testified that Det. Nieves said "something to the effect that he [Bryant] needed to tell the truth, because he didn't want to get the death penalty" (Bryant suppression hearing, p. 112). This is important because it marks a shift in Bryant's statements away from denial. After that threat, Bryant continued to deny his involvement "just a little bit, but not much" (p. 113). Bryant then began changing his story. Bryant's version of the encounter is that for about 30-45 minutes he told Detectives he didn't know anything, and then they told him to hold out his arm and said "I'm going to get a needle injection right there in my vein" (Bryant suppression hearing, p. 208).
3. **Nathaniel Cauthen.** Cauthen testified that Det. Weavil made several threatening remarks, including reference to life in prison and the death penalty. He stated: "[the Detective] started cussing at me saying that, yes, you know what I'm saying, we're going to put you in jail for the rest of your life. We going to give you a lethal injection. You will never see your family again" (Cauthen suppression hearing, p. 136).
4. **Dorrell Brayboy.** Brayboy was also told he could "get the needle injection or the death penalty" (Brayboy suppression transcript, p. 70). Brayboy testified that Lt. Weavil told him "that if I didn't say nothing, I'm gonna come down to the county jail" (p. 71). Lisa Brayboy testified that Lt. Weavil told Dorrell "I'm gonna make the judge give you the maximum" (p. 91).

Confrontation with evidence. Confronting suspects with evidence of their guilt (whether real or fabricated) is a mainstay of adversarial police interrogations. Researchers who study the psychology of interrogations and false confessions are particularly concerned about the false evidence ploy, in which police present suspects with supposedly incontrovertible evidence of their guilt (e.g., physical evidence such as blood or fingerprints; eyewitness evidence that someone identified them as the perpetrator, or "scientific" evidence such as a failed polygraph) as a means to induce confession. This tactic is legally permissible, and police do report using it.[45]

Research using a variety of methods 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.[46] Notably, the false evidence ploy was used in numerous cases of documented false confessions.

The term *false evidence ploy* usually refers to situations in which interrogators intentionally fabricate evidence to pressure suspects into confessing. In the present case, 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 (i.e., police believed the statements to be true).

1. **Jermal Tolliver.** After Detectives made references to the legal penalties for murder (including the death penalty), they presented Tolliver with "notes taken by another detective in another interview" (Tolliver suppression hearing, p. 42). Later in the interrogation, they told Tolliver "what Jessicah [had said] and what we knew the other defendants had said" (Tolliver suppression hearing, p. 23). Tolliver himself testified that police had "given [him] information about things other people were saying," "told [him] things they thought might have happened," and "told him somebody [was] saying [Tolliver was] a lookout" (Tolliver suppression transcript, p. 162). Eventually they leave Tolliver alone in the interrogation room, and he begins writing a confession statement. He told police that he was a lookout. Thus, Tolliver may have incorporated details provided by detectives into his eventual confession statement.
2. **Dorrell Brayboy.** Like all four other suspects, Brayboy initially denied involvement in the crime. According to Det. Griffin's report, "It was then explained to Dorrell and his mother that the other suspects were implicating him in the incident and he needed to tell the truth" (WSPD full file, p. 6). Det. Poe testified that Det. Weavil "told [Brayboy] that other people were being interviewed in reference to this case and that they were telling their side of the story" (Brayboy suppression transcript, p. 19). In my experience, this is a euphemism for police using an evidence ploy to persuade suspects that their co-defendants have "ratted them out." However, because there is no recording of the interrogation, I cannot say for certain how police presented the situation to Brayboy. Det. Poe denied that Det. Weavil provided any specific details, but again that is undetermined.
3. **Rayshawn Banner.** Det. Clark testified that police told Banner that Nathaniel Cauthen (notably, his brother) had "given a statement" and they played the recording for Banner.

Prolonged detention and isolation. Physical isolation is a particularly powerful interrogation strategy because it engenders feelings of hopelessness. Interrogation trainers recognize this and explicitly teach police to physically isolate suspects in a small room.[47] Surveys of experienced interrogators indicate that physical isolation is a very common interrogation tactic.[48] In citing the psychological research on humans' need for social interactions and support in times of stress, the

scientific white paper on police-induced interrogations and confessions notes that "prolonged isolation from significant others in this situation constitutes a form of deprivation that can heighten a suspect's distress and incentive to remove himself or herself from the situation" (p. 16).[49] Case records indicate that defendants experienced prolonged detention in which they were isolated from family members or supportive adults. They experienced intermittent accusatorial interrogations and isolation within these detention periods.

1. **Jermal Tolliver.** Tolliver's first contact with police was on his porch on 11/19/02 around 3:00pm, where he speaks with Det. Rose and Det. Flynn for about 15 minutes and then goes to the police station with them. His first taped statement occurred around 11:00pm on 11/19/02 and Bruton statement at 12:37am on 11/20/02. Tolliver was left alone in the interrogation room to write out a confession statement. At one point he was escorted to the mall area where he said someone threw a wallet out the window of a city bus, but then he was transported back to the police station. Tolliver's voice and responses are very slow on his first interrogation recording (11/19/02 at 11:05pm), and he can be heard yawning throughout the audio. By the time his Bruton statement begins, his statements are virtually unintelligible and he has difficulty understanding and responding to the interviewer's questions. After an exchange in which Tolliver denies jumping on the victim and Detectives reply that earlier he did say that he jumped on him, Tolliver replies "I know. I'm tired" (Tolliver Bruton statement, p. 8).
2. **Christopher Bryant.** Bryant was picked up by Det. James and Det. Sawyer on the street near his house sometime between 3:00-4:30pm 11/19/02. Bryant was on his own at the police station for about half an hour before he was questioned (Bryant suppression hearing, p. 195). Bryant's taped interrogation begins at 10:21pm and his taped Bruton statement at 12:18am on 11/20/02.
3. **Rayshawn Banner.** Detectives Taylor, Rose, Shelton, and Wilkinson find Rayshawn Banner and Nathaniel Cauthen on Devonshire Street between 4:00-4:30pm. Banner refuses to accompany police to the station. Detectives return to Banner's house around 10:30pm and there is some form of altercation between Banner and police. Banner is arrested, handcuffed, and transported to the police station. Banner's taped interrogation begins at 12:17am on 11/20/02 and his taped Bruton statement at 12:58am on 11/20/02.
4. **Nathaniel Cauthen.** Detectives Taylor, Rose, Shelton, and Wilkinson find Rayshawn Banner and Nathaniel Cauthen on Devonshire Street between 4:00-4:30pm. Cauthen accompanies Detectives to the police station. Cauthen's taped interrogation begins at 10:14pm and his taped Bruton statement at 11:52pm. Det. Rowe specifically used isolation as an interrogation strategy. He stated that he left Cauthen alone because he was denying involvement in the crime (Cauthen suppression hearing, p. 77). At one point Cauthen was left alone in the interrogation room for an hour and a half (Attorney Mauney's notes). In Cauthen's audiotaped confession statement his responses sound lethargic and slow.
5. **Dorrell Brayboy.** Brayboy is picked up at a hospital following his mother's surgery between 3:30-4:00pm on 11/19/02. His interrogation begins around 5:00pm. Around

6:10-7:00pm he is left alone in the interrogation room. His taped interrogation begins at 9:34pm. A second taped interrogation begins at 10:07pm. His taped Bruton statement begins at 12:09am on 11/20/02. Brayboy can be heard yawning throughout his second taped statement.

Overall, four of the five suspects (all but Banner) were physically inside the police station for 8-9 hours between their initial apprehension and their taped confession statements. During that period, they experienced intermittent, sometimes repeated interrogation sessions by multiple interrogators. It is difficult to pinpoint exactly how much of the detention period was spent in interrogations, since there are no recordings of the interrogations. However, at least in Dorrell Brayboy's case, it can be inferred from detectives' testimony at his suppression hearing that he was interrogated for 2.5 to 3.5 hours (p. 53). At 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.

Other strategies for intimidation. Maximization strategies are tactics designed to elevate the suspect's anxiety, and American interrogation styles are characterized by direct and often aggressive confrontation. Yelling and cursing at suspects can be anxiety producing, especially if the suspect is a juvenile. Suspects can perceive interrogation by multiple officers as police "ganging up" on them. There is a consistent pattern of aggressive confrontation among the interrogations in this case.

1. **Christopher Bryant.** Det. Rose testified that "As far as yelling we may have raised our voice a little bit to let him know that we were serious about this interview, and we wanted to know what his involvement was" (Bryant suppression hearing p. 136). Bryant said that at one point, when police were threatening him with the death penalty, he was being questioned by three officers simultaneously (p. 198).
2. **Nathaniel Cauthen.** Cauthen testified that Det. Weavil and Det. Rowe "came back in and then that's when they were started yelling at me again, calling me names, cussing me out, telling me that I will never get home again" (Cauthen suppression hearing, p. 146). He told his attorney that the officers called him "asshole" and "you little shit" (NCIIC timeline, p. 72).
3. **Jermal Tolliver.** Det. Rose admitted that he "raised his voice" at Tolliver "to show the seriousness of the incident" (Tolliver suppression hearing, p. 58), though he denied actually yelling (and this was corroborated by Tolliver, p. 153).

Police also manipulate the physical environment as a strategy to control the interrogation space and affect suspects' emotions and perceptions. My observational study of juvenile interrogations found that juvenile suspects in my sample were usually positioned in a corner of the interrogation room or against a wall.[50] In half of the interrogations, police positioned themselves either close enough to touch the suspect or just beyond arm's length. Interrogation training programs explicitly teach interrogators to physically encroach upon suspects' personal space as a

way to create tension and intimidation. In Christopher Bryant's suppression hearing, Det. Taylor testified that he moved physically closer to Bryant as a form of intimidation. Specifically, he admits "I may have sat up like this and got just a little bit closer to him, to let him know that I was serious and I wanted him to tell us the truth" (Bryant suppression transcript, p. 136).

Other situational factors could serve to intimidate suspects even if they are not explicitly designed to. For example, in my observational study I also found that more than half of interrogators were visibly armed during the questioning session. Wearing a firearm is often standard operating procedure for detectives and is not necessarily a planned tactic to intimidate a suspect. However, it can still have effect of intimidation, even if that effect is unintended. Visible firearms can create fear or apprehension in adolescent suspects and reinforce their subordinate positions relative to law enforcement authority figures.[51] Det. Taylor testified that both he and Det. Nieves were armed when they interrogated Christopher Bryant (Bryant suppression transcript, p. 109). Det. Smith was armed when he questioned Dorrell Brayboy (Brayboy suppression transcript, p. 25). Nathaniel Cauthen testified that he felt threatened and scared; he said "I was coerced to [confess] and pressured into saying something I did not want to say…they had guns on them…I just sat in the room until, they were going to let me go home" (Cauthen suppression transcript, p. 150).

Multiple, related types of psychologically coercive interrogation tactics can co-occur and have a cumulative effect on suspects, especially vulnerable suspects such as youth and persons with mental impairment. For example, Christopher Bryant testified at his suppression hearing that he confessed "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 suppression transcript, p. 201). At that point, Bryant had been at the PSC for 8-9 hours already. This statement illustrates maximization via implying Bryant would receive the most severe punishment, police use of deception in that juveniles are not eligible for the death penalty, prolonged custody and isolation in that Bryant had been at the PSC for 8 hours, the imbalance of power and knowledge about interrogations that disadvantages adolescents, and youths' compliance with authority.

D) Miranda rights comprehension and waiver

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. In particular, age and IQ are related to youths' Miranda comprehension. Some of the Miranda research has examined the linguistic components of the warnings themselves. Some police jurisdictions use juvenile-specific versions of Miranda warnings, while others use the same language when Mirandizing adult and juvenile suspects. Large-scale studies systematically comparing juvenile-specific warnings to general (i.e., non-age specific) Miranda warnings have found that youth versions are actually longer and more linguistically complex than general

warnings. For example, one large study of nearly 300 juvenile-specific Miranda warnings from across the United States reported that nearly two-thirds were very long (where length can impede comprehension) and more than half required at least an 8th grade reading level.[52] However, a few experimental studies presenting youth with simple versus complex Miranda versions found that youth did not perform differently, leading researchers to suspect that Miranda comprehension is a function of youths' conceptual capacities, not merely the Miranda language itself, and linguistic complexity adds an additional complicating layer.[53]

Additionally, justice system-involved youth have shown deficits in language processing and comprehension, reading levels, vocabulary and grammar, and listening comprehension abilities compared to non-offending youth.[54] Moreover, research drawn from content analyses of written Miranda forms or psychological assessments of Miranda comprehension conducted in a presumably safe, low-stakes clinical setting may underestimate the comprehension problems that juvenile suspects—even developmentally typical youth—experience in real interrogations, particularly if they are fatigued, stressed, or under the influence of drugs or alcohol.

1. **Rayshawn Banner.** As Rayshawn Banner was the only defendant to be Mirandized before some portion of his interrogation, the question of Miranda comprehension and waiver is directly relevant only to Banner. A few elements of linguistic complexity are present in the Miranda language used with Rayshawn Banner. For example, the WSPD juvenile Miranda form (WSPD full file, pp. 716-717) states "before asking you any questions we want to advise you of your rights." One study found that the legal sense of the term right requires at least an 8th grade reading level to adequately comprehend (where grade level is defined as the grade at which 67-84% of youth in that grade can identify the correct meaning).[55] The WSPD warning also states "You have the right to talk with a lawyer and to have a lawyer present while you're being questioned. If you do not have a lawyer and want one, a lawyer will be appointed for you. You have the right to have a parent, guardian, or custodian present during questioning." According to the same study, readability estimates for lawyer, parent, and present requires 4th grade reading level, guardian requires 6th grade level, and appointed requires 13th (beyond high school) reading level.[iii]

   As discussed above, Rayshawn Banner's school records indicate that he received a psychological evaluation in the 4th grade. The report noted he was referred for evaluation because "his basic academic skills are below grade level and he has difficulty following directions" (Banner school records, p. 21). Evaluation results indicated a Full-Scale IQ of 71 (3rd percentile, p. 22) and is considered borderline mental deficiency. The evaluation specifically noted that Banner was "slow in processing verbal material" (p. 22).

Also, it is important to underscore that merely asking a juvenile suspect whether he or she

[iii] The terms *custodian* and *questioning* were not graded in that study.

understands the Miranda warnings is not a reliable indicator of the youth's actual comprehension and should not be taken as such. Scholars have noted "the paradox of asking suspects with potentially compromised abilities to affirm their competencies and then using these affirmations (e.g., I understand my rights) as proof of competency to waive Miranda rights… if juvenile suspects are experiencing coercion to comply, then what value can be given to their coerced affirmations of no coercion?"[56] It is common practice for police to ask juvenile suspects "Do you understand?" or some variant during Miranda presentation.[57] Detectives testified to asking Rayshawn Banner if he understood his rights (Banner suppression hearing, pp. 17-18). While such requests may be sincere on the part of investigators, they have no bearing on youths' actual verbal, reading, or listening comprehension abilities.

E) Youths' perceptions of custody and appreciation of legal jeopardy

More important factor to consider

When considering police interactions with youth, it is important to consider the knowledge, experience, and desired goals or outcomes each party brings to that interaction. The two parties' knowledge and experience are not equal, nor their desired outcomes identical. Youth are members of a socially restricted class—required to attend school, subjected to community curfews, and prohibited from engaging in behaviors that adults deem dangerous such as driving, smoking, or drinking alcohol. Societal expectations for youth involve following rules and respecting adults' authority. Police officers, by contrast, are not only adults but also authority figures endowed with legal privileges (e.g., to carry a weapon). Police also have extensive knowledge about the legal parameters of interrogation that juveniles—and many adults[58]—do not have. Police officers—especially detectives—are trained in specific techniques to encourage suspects to confess to crimes. Thus, there are multiple facets to the power imbalance between interrogator and juvenile suspect that systematically and cumulatively disadvantage the juvenile.

One area of concern is when citizens do not understand what it means to be suspected of a crime or what it means to be in police custody. This is especially pertinent to adolescent suspects. Social and developmental psychologists, noting the inherent coercion and power differential involved in police interrogations, emphasize the importance of evaluating perceptions of custody, irrespective of courts' legal custody determinations. A recent experimental study with college students tested participants' perceptions of custody when questioned in a mock interrogation about a staged theft. Even in brief interviews conducted in a college campus building by a civilian authority figure (i.e., security guard instead of police detective), participants reported not feeling free to leave.[59] Notably, even participants who were explicitly told they were free to leave reported that, although they *knew* they were free to leave, did not *feel* that they could actually leave.

Psychologists who study legal decision making have conceptualized and studied the distinct constructs of understanding (i.e., the ability to comprehend basic information relevant to the legal decision) versus appreciation (i.e., the ability to apply that comprehension to one's own legal situation). Though these constructs are most often studied in matters of competence to

stand trial, they are also relevant to interrogation decision making. In one study, approximately half of 14-15 year olds (including both detained youth and community youth) showed mild to moderate impairment on a standardized measure of legal understanding and about 40% of the same sample showed mild to moderate impairment in appreciation.[60]

1. **Jermal Tolliver.** Case records indicate numerous reasons why Jermal Tolliver may not have felt free to leave or understood the nature of legal jeopardy. Police come to his house and ask, in the presence of his mother, if he will go to the police station and answer questions. His mother consents. Then Tolliver is transported by two detectives in an unmarked police car to a police station. Police escort him into the station. Tolliver testified that the detectives never told him he could go home (Tolliver suppression hearing, p. 154), and when he asked, they told him "they still had more questions for me" (p. 155). Tolliver testified that he asked three times to go home and each time they told him they still had more questioning to do (pp. 183-184). This suggests that Tolliver may not have understood that he did not have to answer questions. Moreover, in his taped confession statement that begin at 9:35pm on 11/19/02, he reiterates a previous statement that he planned to wait until he got home to use the restroom (Tolliver interrogation transcript, p. 2) and wait until he got home to talk to his mother (p. 4). Hours before this point, Tolliver had already implicated himself and the other four defendants in a murder and provided a written confession statement. This suggests Tolliver may not have understood the consequences of his incriminating statements.
2. **Christopher Bryant.** Bryant testified that police "told me they needed to question me downtown" (Bryant suppression transcript, p. 191). Police opened the door to the patrol car, and Bryant got in (pp. 94-95). These situational cues can communicate to adolescents that they are expected to comply. Further, there is evidence to suggest Bryant (and his mother) did not understand the seriousness of the situation or the potential consequences of submitting to police questioning; when Bryant's mother asked if she could come with him, Bryant said "they was like it's not necessary, we're going to bring him right back, we've got no reason not to" (Bryant suppression, p. 191). Notably, at that point Detectives already knew that Bryant had been implicated in the murder, but they did not tell Bryant or his mother.

   Once questioning had commenced, Bryant "asked them when they were going to let me go, and then they were hold on, and then they had left out and told me to stay right there and don't touch nothing" and they continued to question him. The phrase *let me go* suggests that Bryant felt he was at the mercy of the police and did not think he could decide to leave. Like Tolliver, Bryant asked when he could go home and was told that questioning wasn't finished (p. 199). During his suppression hearing, Bryant's attorney asked him "Did there ever come a time where you felt like you were free to just get up and walk out and leave?" and Bryant said no (p. 199). Possibly adding to Bryant's confusion was that even at his taped confession statement starting at 10:21pm—after he had been at the police station for approximately 7 hours—he was still being told he wasn't under arrest. Youth may equate "arrest" with "in trouble," particularly if

interrogators threaten arrest as a consequence for not providing what they feel is useful information.

3. **Dorrell Brayboy.** Brayboy was picked up outside the hospital, where he had been with his mother during surgery. Detectives "told him he was not under arrest and we would be driving him back home" (Brayboy suppression transcript, p. 5). Despite the fact that Det. Poe already knew that Brayboy was a suspect in a homicide investigation, he did not share this with Lisa Brayboy or Dorrell Brayboy at the time (Brayboy suppression transcript, p. 10). Notably, Lisa Brayboy was medicated at the time she consented for her son to accompany detectives to the police station. An exchange between Dorrell Brayboy and attorney Harding at Brayboy's suppression hearing illustrates how youth (and even adults) can misunderstand the nature of police custody. Brayboy responded to Harding that no one ever told him he wasn't under arrest. When Harding read to Brayboy a verbatim excerpt from the affidavit he signed—*the officers told me I was not under arrest and was free to leave*—Brayboy said "they ain't never told me I could go home" (p. 73).

It is important to underscore that adolescents may not respond to situational cues about custody in the manner that adults assume. There was considerable discussion in the suppression hearings about comparatively minor details such as whether police cars were marked or unmarked, whether PSC doors were locked, whether suspects knew doors were locked, whether the suspects went to the bathroom alone, etc. From a developmental or social psychological perspective, these distinctions are not particularly meaningful. Such distinctions may appear important to adults but, given youths' developmental vulnerabilities, likely have little effect on adolescents. Rather, the broader situational context is more relevant. From the juvenile suspect's perspective, each youth was an adolescent male; approached by a legal authority figure; physically transported to a police station in a police vehicle; instructed where to sit and what to do; interrogated by multiple, armed officers; asked a litany of questions about a serious matter; and repeatedly told they were lying. Based on what we know about adolescent development and decision making, it is simply inappropriate and inaccurate to assume that a 14- or 15-year-old adolescent would feel free to get up and leave a police facility simply because he was allowed to use the restroom or was given something to drink.

As another example, Det. Poe even described his transport of Brayboy to the police station as follows: "It was a warm day. We don't ride with the doors locked and he could have gotten out at any time, any place he wanted to" (p. 12). He said of Brayboy at the police station: "he wasn't behind any locked doors that he couldn't get out of" (p. 22). From a developmental and social psychological perspective, it is baseless to believe that a 15-year-old is going to get out of a police vehicle or walk away from multiple, armed adult police officers and exit a police station. Moreover, as demonstrated in one recent study with young adults in a relatively low-stress context, merely telling people they are not under arrest or are free to leave does not necessarily alter their perceptions of custody.[61] Detectives in this case repeatedly emphasized, in written reports and courtroom testimony, that Tolliver, Bryant, Cauthen, and Brayboy were told they were free to leave. However, given the defendants' developmental stage and the environmental

cues, they may not have had the knowledge or wherewithal to assert themselves and discontinue questioning.

F) Interrogators' presumption of suspects' guilt

Interrogation is, by its very nature, a guilt presumptive process. Police are trained to differentiate between an interview, the purpose of which is to gather information, and an interrogation, which is designed to elicit a confession. If the investigator decides during the interview phase that the interviewee is a suspect, the investigator proceeds to an accusatorial interrogation. Reid & Associates, creator of the copyrighted Reid Technique of interviewing and interrogation, arduously maintains that the purpose of an interrogation is to "learn the truth," not to elicit a confession.[62] However, the Reid Technique—in which hundreds of thousands of investigators worldwide have been trained—also argues that interrogators should only interrogate when they are "reasonably certain" of the suspect's guilt and should repeatedly assert their certainty of the suspect's guilt. According to this logic, police only interrogate guilty parties.

Even without an electronic recording of the defendants' earlier interrogation(s), it is abundantly clear that detectives in this case were convinced the five adolescents were guilty of the murder. All five suspects fervidly denied knowledge of or involvement in the crime, and all five were effectively (or explicitly) told they were lying. Once Jermal Tolliver implicated the other four suspects, the detectives convened to divide up assignments for tracking down the other four and questioning them. Given that the remaining four suspects were apprehended quickly and interrogated more or less simultaneously, the detectives' presumptions of all five suspects' guilt may have propagated rapidly, as several times detectives would take one boy's statement into another boy's interrogation and present that statement as certainty of the second boy's guilt.

There are numerous examples in all five defendants' case materials that detectives presumed they were guilty, and interrogated them under that presumption.

1. **Christopher Bryant.** Det. Taylor testified that Christopher Bryant had been denying his involvement for about 45 minutes. When Det. Nieves mentioned the death penalty, Bryant "acted as if he was a little bit nervous and he was realizing what he was facing as far as *what he had done*" (Bryant suppression hearing, p. 116, emphasis added). Here, the detective is assuming Bryant's demeanor is a manifestation of his guilty knowledge. The detective does not appear to recognize or acknowledge that Bryant's behavior could reflect something else entirely, such as fear, confusion, or intimidation. Taylor interpreted Bryant's shift toward self-incrimination as Bryant "realiz[ing] that he needed to tell us the truth about the homicide, his involvement in it" (Bryant suppression transcript, p. 126).
2. **Jermal Tolliver.** A Detective testified that during Tolliver's first interview he "pretended or acted as if he didn't know anything about what was going on" (Tolliver suppression transcript, p. 15). Here the Detective is assuming that Tolliver did have incriminating

information, and his denials were pretense.

3. **Nathaniel Cauthen.** Counsel in Cauthen's suppression hearing asked Det. Rowe a series of questions about when police began taping Cauthen's statements and why taping did not start sooner. Det. Rowe stated "the purpose of a recorded statement is to summarize what was said verbally, so we take the verbal statement…" and the Court interjected: "That you're looking for?" Det. Rowe replied: "Right. In other words, we don't get into extensive details about untrue parts. We talk about what their involvement is" (Cauthen suppression transcript, p. 59). This suggests the Detective assumed Cauthen was lying when Cauthen claimed he was not involved.
4. **Dorrell Brayboy.** Det. Poe testified that when he first questioned Brayboy at the PSC, Brayboy appeared happy and "unremorseful" (Brayboy suppression transcript, p. 9). This may suggest that Det. Poe assumed Brayboy was guilty and, thus, had something on his conscience that he should be remorseful for.

G) Confirmation bias

Once investigators are convinced a particular suspect(s) is guilty, they may overlook contradictory details or dismiss information that is inconsistent with their beliefs. This is called confirmation bias, and it is a widely accepted psychological phenomenon. In the specific context of police interrogation it is sometimes called interviewer bias—that is, interrogators' tendency to dismiss evidence or statements that are inconsistent with their beliefs about the suspect's guilt.[63] Interviewer bias shapes the kinds of questions interrogators ask and colors their perceptions of the veracity of suspects' statements. For example, in one laboratory study, interrogators who believed their suspect interviewee was guilty used more guilt-presumptive questioning strategies and applied more interrogative pressure than interrogators without guilty expectations.[64] This presumption of guilt also leads interrogators to use adversarial strategies intended to overcome suspects' denials.

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. In this case, WSPD had several other leads in their investigation. First, a CrimeStoppers call on 11/16/02 at 11:04pm stated that Monticello Mitchell's son had seen a Hispanic male running from the victim's house. Second, on the afternoon of 11/18/02, Det. Flynn sent a list of names of people suspected of other robberies in the area. The list contained seven names, none of which were the five defendants. Third, at a briefing on 11/18/02, Detectives discussed the victim's former employee Reginald. The victim's family suspected this individual of other crimes and told police Reginald and the victim had had disagreements. Fourth, the name Anjuan/Anwon Terry surfaced as someone who may have knowledge or involvement, and despite initial attempts to locate him, when police did get in touch with him, they told him he was no longer needed.

It wasn't until 11/19/02 that the five defendants' names surfaced. Sometime before 2:30pm that day, Arlene Tolliver (Jermal's mother) called police to say Jermal had been acting differently

since the crime occurred and that Jermal, Nathaniel Cauthen, and Rayshawn Banner were acting "panicked" and "paranoid" (WSPD partial file, p. 190). When Tolliver is first questioned he names the other four suspects, and Detectives divide up assignments for locating them. Finally, and perhaps most importantly, police received a CrimeStoppers tip at 7:57pm on 11/19/02 that that Dartonya Eaton, James Alexander Higgins, and Brian (last name unknown) killed the victim. The (anonymous) caller stated they are "pretty sure these are the subjects" and that they carry guns and are very dangerous (WSPD full file, p. 875). When this information was passed on to Griffin, he replied that five subjects were arrested in this case. Other than pulling the police records of Eaton and Higgins, I see no evidence of police attempts to locate these individuals or pursue this lead. Even a decade after the crime, as police prepared a case summary dated 9/2/12, police concluded that "All five of the suspect's homes were searched and various items of evidence were seized, including several pairs of athletic shoes. The SBI subsequently *matched the shoe impression found on the hood of Nathaniel Jones' car to a shoe belonging to Rayshawn Banner*" (WSPD partial file, p. 271, emphasis added). In fact, the SBI report stated that the shoe impression on the car "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" (WSPD full file, p. 844).

H) Confession contamination and inconsistencies in suspects' statements

Scholars and police officials universally agree that confession contamination is a negative investigative outcome that should be avoided. 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. To understand confession contamination, it is important to distinguish between an incriminating admission ("I did it" or "I was there") and a full confession generated via a post-admission narrative. From the police perspective, the interrogator uses the interrogation process to move the suspect from denial to incriminating admission, using whatever array of psychological interrogation techniques necessary to elicit an admission. Once the suspect admits his or her involvement, the interrogator endeavors to elicit a detailed narrative explaining how the crime occurred and the suspect's motives and mindset. Police are trained that a mere "I did it" admission has little evidentiary value unless it is accompanied by this post-admission narrative that provides detailed information about where, when, how, and why the suspect committed the crime. Police are also taught that confessions should be independently corroborated by other types of evidence gathered during a thorough investigation.

Contamination can occur in both the pre-admission and the post-admission phases. In the pre-admission phase, a common interrogation strategy is the "evidence ploy" in which interrogators express their certainty in the suspect's guilt and claim to have evidence of that guilt. They may present the suspect with information or evidence (either real or fabricated) in an effort to convince the suspect that their guilt is a foregone conclusion and that confession and cooperation is therefore in the suspect's best interest. Evidence ploys can contain anything from basic facts of

the incident to crime scene photos, murder weapons, surveillance footage, etc. This strategy is intended to convince the suspect that the interrogator already knows the suspect's involvement and pressure the suspect to confess. When the suspect is actually innocent, however, it has the unintended effect of feeding him or her crime-specific details, which may be later incorporated into a false narrative.

Even if contamination does not occur in the pre-admission phase, it can still occur in the post-admission phase. In their eagerness to document a thorough, detailed confession statement, interrogators may inadvertently communicate case information in their attempts to elicit missing details from the suspect's account (the suspect who, in the interrogator's view, has already "confessed").[65] Interrogators often adopt a question-and-answer format for the confession narrative, especially if they are turning on a recording device to document the confession. As in the pre-admission accusatory questioning phase, interrogators in the post-admission narrative may use leading or suggestive questions and/or negative feedback in their attempt to elicit a narrative that is consistent with their expectations of the suspect's guilt. Contaminated confessions can be difficult to detect when only the post-admission confession statement is recorded, and not the interrogation in its entirety. However, suspects' and officers' later accounts of the interrogation (via courtroom hearings or conversations with attorneys or family) can offer clues that contamination may have occurred.

1. **Jermal Tolliver.** Tolliver said during his confession statement someone had shown him a picture of some shoes (Tolliver confession statement, p. 25). Notably, I found no mention in the police files of detectives showing photographs to the suspects. Other indications emerged in Tolliver's suppression hearing; he testified that he started making the statements that appear on the taped conversation "after they told me the story first" (Tolliver suppression transcript, p. 183). Tolliver also testified that police told him someone said he was the lookout, and that's what he told back to police (p. 162). Additionally, he testified that police told him or asked him about a bat, so he told about a bat. They told him a wallet was "out there by the mall," and he told them that because "they kept asking me about a wallet" (165-166).
2. **Christopher Bryant.** Bryant testified that the detectives told him they already knew a lot of facts about the case, and they were telling him those facts (Bryant suppression transcript, p. 201). He said that police "came in there yelling at me, talking about Miss Jessica already said that you was there, and y'all beat him with some sticks" (p. 214). He testified that "basically, I was just agreeing to whatever they was telling me" (p. 214). He appears to have accepted the narrative interrogators provided to him: "When they…told me what happened, and I just agreeing with them" (pp. 208-209).
3. **Nathaniel Cauthen.** Detective Rowe testified that he provided Nathaniel Cauthen with "information" he had gleaned from Jermal Tolliver's interrogation, though he denied that the information he provided contained "details" (Cauthen suppression hearing, p. 49-50). He told Cauthen that others were implicating him in the crime.

Confession contamination is an inevitable byproduct of the presumption of guilt that typifies typical American police interrogations, discussed in a previous section. If investigators begin an interrogation under the assumption that the suspect is guilty—which occurs by definition in interrogations—then any suspect who is actually innocent of the crime is misclassified as guilty. This misclassification error causes interrogators to treat suspects' denials of involvement—even repeated, unequivocal, fervent denials—as further evidence of the suspect's guilt.

Misclassification of innocent suspects is the first step toward eliciting a false confession, and it is inherent in confession contamination.[66] It is important to note that contamination is not always malevolent or even deliberate; sometimes police officers disclose crime details (or provide them via evidence ploys) unintentionally during the course of questioning. This is increasingly likely to occur in longer interrogations.

Because we do not have documentation of the interrogations themselves, it is not possible to determine who first provided details about the crime: a suspect himself, the Detectives who questioned him, or a co-defendant (by virtue of police playing co-defendants' taped statements to elicit a confession). However, it is possible to identify 1) inconsistencies among the suspects' statements and 2) inconsistencies between confession statements and physical evidence. Numerous inconsistencies present just in the taped confession statements cast doubt on the veracity of all the suspects' statements. This relates to the maximization tactic called *evidence ploy* described above. If detectives told the defendants how they thought the crime occurred and/or played excerpts of co-defendants' narrative accounts—both of which case records suggest did occur—then each suspect's own confession statement could have been contaminated.

The inconsistencies among the defendants' statements are extensive. They gave different accounts regarding numerous aspects of the afternoon in question, the crime itself, and their activities after their alleged assault—and these are only in the relatively brief, taped confession statements. Below is a summary of inconsistent details across the various recorded statements:

Who was present the night in question.

- Christopher Bryant, Dorrell Brayboy, and Jessicah Black named the five defendants in this case.
- Nathaniel Cauthen said it was Banner, Bryant, Brayboy and himself and Jed was in the yard. Cauthen said Jermal Tolliver was not there.
- Jermal Tolliver said it was himself Banner, Cauthen, someone named Chris, and someone named Craig. Later he said Brayboy was there.
- Rayshawn Banner said it was the five defendants, plus Shelton, G, and Jed.

How they arrived at the victim's house.

- Jermal Tolliver, Christopher Bryant, and Dorrell Brayboy gave similar accounts that involved Jessicah Black driving the group to the park, parking her car at the rec center, and the defendants walking on the sidewalk to the victim's house.

- Rayshawn Banner said they went to the victim's house in Black's car. Black parked on the side of Belview on the curve.
- Jessicah Black said she drove the defendants to Maxway's and Dollar General, and they came out with duct tape. She then drove them to the park and she sat on a bench while they walked off.

How they approached the victim.

- Jermal Tolliver said that the group walked up to the house, and the victim came out the front door.
- Rayshawn Banner said everyone jumped out of the car, and Christopher Bryant ran to the house. The victim was taking in some groceries. Banner said he was standing in the middle of the street and Nathaniel Cauthen was there with him, then Nathaniel ran over to the group. By the time Nathaniel got over there, the victim was already on the ground.
- Nathaniel Cauthen said they were in the park and just saw the victim going into his house, so they all said "let's go get him" and ran up to the front of his house. The victim was by his van.
- Christopher Bryant said that Nathaniel Cauthen knocked on the door, and Rayshawn hit the victim.
- Dorrell Brayboy said he was standing by the fence and couldn't see anything, but could hear the others hitting the victim.

Who hit the victim/details of the assault.

- Jermal Tolliver said that the group saw the victim outside, and Rayshawn Banner, Nathaniel Cauthen, and Dorrell Brayboy "jumped" him. Banner and Cauthen held the victim down and Brayboy taped his hands in front of his body. Banner and Cauthen took his wallet. Jessicah Black was waiting in the car. Tolliver said he and Bryant were the lookouts and Banner, Cauthen, and Brayboy hit the victim.
- Dorrell Brayboy said that he was the designated lookout and he did not see the assault, but heard the sound of someone getting beaten up. He told Detectives that later on Nathaniel Cauthen and Rayshawn Banner were bragging about beating up someone. When Det. Smith told Brayboy that the others were suggesting he taped up the victim, Brayboy denied this and said he knew nothing about any tape. In his Bruton statement, Brayboy stated that Nathaniel Cauthen, Christopher Bryant, and Jermal Tolliver hit the victim, but Rayshawn Banner did not.
- Nathaniel Cauthen said that Bryant, Brayboy, Banner, and himself were hitting the victim. Bryant, Brayboy, and Banner tied up the victim. Jed stood in the yard. In his Bruton statement, Cauthen said he was standing on the street, then walked up the sidewalk, past the van, and into the carport where he hit the victim several times in the stomach.
- Rayshawn Banner said that Bryant and Tolliver were beating the victim and he "guessed" that Bryant tied him up. Banner said that he did not touch the man. He said Bryant took the victim's wallet, and Jed kicked him in the face.

- Christopher Bryant said that he was the lookout. He said Cauthen, Banner, and Brayboy were hitting the victim with a baseball bat and their fists. Brayboy tied him up with duct tape. Banner took his wallet.

Whether the defendants went onto the victim's carport.

- Jermal Tolliver said they did not go onto the carport.
- Nathaniel Cauthen said that he did go on the carport.
- Christopher Bryant first said he did not go on the carport, then he later said he did.

What (if anything) the victim said during the assault.

- Christopher Bryant said the victim was yelling "help, help, help."
- Jermal Tolliver said the victim screamed "Help, get off me" about 10 times.
- Dorrell Brayboy said the victim said "stop."
- Nathaniel Cauthen said the victim wasn't yelling when Cauthen hit him, but then victim said "stop, stop, stop."
- Banner said the victim did not "holler" or say anything or appear to be unconscious.

Whether weapons were involved.

- Jermal Tolliver, Dorrell Brayboy, and Nathaniel Cauthen said that no weapons were involved. (Police reports indicated that earlier Cauthen had said Brayboy hit the victim in the head with a pole.)
- Rayshawn Banner said that Tolliver had a small garden tool.
- Christopher Banner said that Cauthen had a baseball bat.
- Jessicah Black said that Cauthen and Bryant had sticks.

Where the victim was left.

- Dorrell Brayboy said the victim was left in the grass in his yard. Rayshawn Banner also said this and stated the victim was laying on his back.
- Christopher Bryant said the defendants left the victim between his car and the door of his house.

How they left victim's house.

- Jermal Tolliver said they ran away through Belview Park, past the basketball court then to Dacian street. Tolliver stated he then went to Chris's house.
- Nathaniel Cauthen said they ran to the park and got in Jessicah Black's car.
- Rayshawn Banner said they jumped in Black's car and she drove away, then dropped them off.
- Christopher Bryant said they all ran back across the street. Someone dropped the tape over by the bench and trees in the rec center. Then they got back into Jessicah's car and went back to Cauthen's house and changed clothes

- Dorrell Brayboy said that Bryant and Tolliver were at the front of the house, and Cauthen and Banner jumped the fence. They went back to the park and left in Jessicah's car

What the defendants were wearing.

- Jermal Tolliver reported that he was wearing a green pullover, army fatigue Reebok shoes, and blue jeans. Christopher Bryant gave the same description of Tolliver's clothing but added he was also wearing a shirt with gold teeth on the front. Dorrell Brayboy's description of Tolliver's shoes was the same, but said Tolliver was wearing green army fatigue pants (not blue jeans) and a white shirt with a Starter sign on it (not a green pullover).
- Nathaniel Cauthen said that he wearing blue jeans, a blue shirt, and white/red Air Force One shoes. Dorrell Brayboy said that Cauthen was wearing black jeans, a white shirt, and Timberland boots. Christopher Bryant said that Cauthen was wearing dirty black jeans and a light blue jacket.
- Dorrell Brayboy said he was wearing a blue Orlando Magic jersey, a light and dark blue Adidas jacket, blue jeans, and black Air Force One shoes. Cauthen said Brayboy was wearing a Falcons jersey. Bryant said Brayboy wore a 76ers hat, blue jeans, 76ers jersey, and light and dark blue Adidas jacket.
- Rayshawn Banner said he was wearing blue jeans, white Air Force Ones, and a Carolina blue t-shirt. Dorrell Brayboy said that Banner was wearing blue jeans, white/red Air Force One sneakers, a black shirt, and a dark blue coat. Jermal Tolliver said Banner was wearing jeans, white/red Air Force One sneakers, and a red long-sleeved shirt. Nathaniel Cauthen said Banner was wearing black jeans, a red shirt, and white Air Force One shoes with no jacket. Christopher Bryant said Banner wore black jeans and a green Falcons jersey.
- Christopher Bryant did not report on his own clothing. Dorrell Brayboy said Bryant was wearing a black/red G hat, black/red/white pullover, black sweatpants, and black Air Force One shoes.

Whether the assault was planned.

- Jessicah Black said when she was driving the defendants around in her car, they were joking about "wouldn't it be funny to jack somebody."
- Christopher Bryant said that Cauthen, Brayboy, and Banner came over to his house with a duct tape and bat. Someone was swinging the bat and saying he was gonna knock the man's head off. In his Bruton statement, Bryant said the others said they were going to rob the man, but he didn't know they were going to kill him.
- Jermal Tolliver said they intended to go to the victim's house to rob him because they heard the victim had a lot of money.
- Rayshawn Banner said that Christopher Bryant planned the assault and gave the rest of the group instructions about where to go and what to do.
- Nathaniel Cauthen said the group had no plan and was just driving around. They were in the park talking and they saw the victim, so they all said "let's go get him" and just ran

up to him.

Whether they returned to the crime scene after they left.

- Dorrell Brayboy and Rayshawn Banner said they themselves never went back to the crime scene.
- Jermal Tolliver said that he and Bryant stayed at his house and did not return to the crime scene. He stated that others said they went back.
- According to Det. Griffin's report, Nathaniel Cauthen said that after the group left the bowling alley, they returned to the neighborhood and watched police at the crime scene (WSPD full file, p. 44).
- Christopher Bryant said that after the group left the bowling alley, they went back and "looked at the scene." Police were there and the whole neighborhood was looking at the victim. Bryant said he saw the victim in a body bag.
- Jessicah Black said that after they left the bowling alley, they returned to Moravia street and went part of the way down the street. She stopped the car at Jed's house. She got out of the car and asked someone what was happening, and a lady told her some old man was beaten and robbed and his hands were tied together.

Additional details not appearing in other suspects' statements.

- Rayshawn Banner said that Christopher Bryant went into the house, but no one else did. He said Bryant brought out a chair from the kitchen and stood on it to unscrew a lightbulb on the carport.
- Christopher Bryant said there was blood on the floor and on the victim's chest. He said the victim was wearing a white t-shirt.
- When police asked Christopher Bryant if the victim was gagged, Christopher Bryant said yes, but no other suspects mentioned this in their accounts.
- Nathaniel Cauthen said the victim was wearing glasses.
- Jermal Tolliver said there were no lights on inside or outside the victim's house.
- Rayshawn Banner mentioned a doorknob being pulled off.

In addition to potential contamination via other suspects' statements, the five defendants' statements could have been contaminated by local news consumption or neighborhood gossip. It was clear that information about the crime was circulating quickly, as several defendants and detectives stated that a large crowd had gathered at the crime scene. There was also local news coverage, as Reginald Thomas told police that he had heard through the media and the family that the victim had been tied up and beaten as he was putting groceries in the house" (Det. Rowe supplemental report, WSPD partial file, p. 189). Thayers Tolliver also said that they had watched the news. In his taped confession statement, Dorrell Brayboy said he heard about the murder on the news. He told detectives that he learned the victim had died when "I just hear them talking about it on the news, and the police standing there that night said they found a man in the ditch" (Brayboy confession statement, p. 14). He said he had seen the victim's face on TV.

I) Confession statements not corroborated by physical evidence

Confession statements—even colorful, detailed ones—should not stand alone. Researchers and police trainers agree that suspects' confessions should be independently corroborated by independent evidence,[67] ideally scientific evidence. The Reid Technique training manual instructs interrogators that "proper corroboration of a confession…represents the best measure of the trustworthiness of a confession….every investigator should strive to not only develop independent corroboration within a confession, but to actually go out and verify it as well" (pp. 354-355). In the present case, there were numerous inconsistencies among the suspects' statements and the physical evidence.

- Jermal Tolliver told detectives in an earlier interrogation that Dorrell Brayboy tied the victim's hands behind his back (WSPD partial file, p. 234). Tolliver later told detectives that Brayboy tied the victim's hands in front of his body (Tolliver interrogation transcript, p. 6-7). However, witnesses and first responders reported that the victim was found with his hands bound behind his body (WSPD partial file, p. 103).
- Claude Walker, the painter who first discovered the victim's body, found the body lying on the carport between the victim's Lincoln and the door of the house. This is the location Christopher Bryant said the defendants left the victim, but Dorrell Brayboy and Rayshawn Banner said the defendants left the victim in the grass in his yard.
- Cauthen stated that he saw blood on Brayboy and Banner's clothing. The North Carolina State Bureau of Investigation laboratory tested clothing from all five defendants and failed to find blood on any of the clothing tested.
- Jessicah Black stated that the defendants came out of Maxway's or Dollar General with duct tape, but those stores did not sell duct tape (WSPD partial file, p. 156).
- Multiple defendants stated that they left the scene of the crime in Jessicah Black's car. Although police found "visible blood present at the crime scene," (WSPD full file, p. 695), no blood was found in Black's car.
- The crime lab compared the defendants' shoes with shoe impressions found on the hood of the victim's Lincoln. They reported that "could have been made by that shoe [Rayshawn Banner's] 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" (WSPD full file, p. 844). The other suspects' shoes were ruled out as matches.
- The medical examiner report noted that the victim sustained defensive wounds on his hand, yet Det. Poe's written request for examination of physical evidence noted that "All suspects were arrested within four days of the murder and there was no indication that any of them had any type of injury from which they would have bled at the crime scene" (WSPD full file, p. 682).
- At least 10 fingerprints were lifted from the crime scene, and none of the prints matched the defendants.

In addition to direct confession contamination in which interrogators (knowingly or unknowingly) feed crime details to the suspect, it is important to note that false confessors sometimes get some details about the crime right purely by guessing, especially among a limited number of options presented in leading fashion. For example, questions such as "Did you go in the front door or the back door?" yield a 50% chance of being answered accurately purely by chance. There is evidence that the suspects may have been simply guessing or complying with interrogators' suggestions. For example, Nathaniel Cauthen's recorded confession statement contained utterances such as "I guess so" and "probably" responses. This is one of many reasons why independent corroboration of details in the confession narrative is essential.

J) False confessions and the phenomenology of innocence

A subset of the interrogation research literature explores the "phenomenology of innocence," meaning 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. That is, they cooperate because they believe they have nothing to hide. Paradoxically, their innocence leads them into situations of legal jeopardy, as experimental studies show that innocent suspects are more likely than guilty suspects or control-condition suspects to waive their Miranda rights, agree to speak with investigators, and sign confession statements.[68] One potential underlying factor is that innocent suspects may fail to appreciate the gravity of the situation or even recognize that they are considered suspects.[69]

There is reason to believe the judge presiding over the Bryant/Tolliver suppression hearing was not familiar with the phenomenology of innocence or how innocence can relate to suspects' responses to police coercion. 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" (Suppression hearing, pp. 166-167). He later stated "If you're going to tell a story the story ought to put you away from the scene of the crime, in my opinion" (Suppression hearing, p. 223). While that argument has logical appeal, it has no foundation in developmental science or psychological research on interrogations and confessions.

K) Role of parents in juvenile interrogations

Parents can potentially play an important role in juvenile interrogations, and this can add a layer of complexity to disputed juvenile confession cases that is not relevant to disputed adult confession cases. Laws and policies requiring or encouraging a parent's consent or presence in juvenile interrogations are based on the assumption that parents can and will serve a protective function,[70] but recent research suggests that may not be the case. Regarding knowing, intelligent, and voluntary Miranda waivers, parents themselves often lack a functional understanding of rights as well as the legal protections that Miranda warnings convey. In one study, half of adults

could not provide a sufficient definition of the term *right* and nearly one-quarter displayed inadequate Miranda comprehension.[71]

In addition to conceptual understanding of the Miranda warnings, recent work has also explored parents' understanding of the implications of waiving Miranda and the parameters of police interrogation practices. In other words, whether parents understand the legal rights to silence and counsel is an important first step, but if they do not understand, for example, that police can lie to suspects during interrogations, then a basic conceptual understanding of the rights to silence and counsel is not particularly useful. New research demonstrates numerous, sometimes severe, inaccuracies in parents' knowledge about juvenile interrogations. For example, parents in several studies (incorrectly) believed that police cannot lie during interrogations and that police must notify them if their child is considered a suspect.[72]

As described above, several of the defendants' mothers either consented to, or actively facilitated, their sons' interrogations. Arlene Tolliver actually voluntarily contacted detectives and told them she thought her son might be involved or have knowledge of the crime. Lisa Brayboy, a high school dropout who was on pain medication from a recent surgery, said she permitted Dorrell to accompany detectives to the police station because they said they needed to talk with him but would bring him right back. When she later called to inquire about Dorrell's status, police transported her to the station (because she was still medicated) and then controlled her presence and participation in the interrogations. Dorrell Brayboy said "they kept telling her to leave out the room" (Brayboy suppression hearing, p. 81). However, they let her remain in the room during the final taped confession statement, which can lend credibility to a confession statement's voluntariness if it is later challenged. Lisa Brayboy, who by her own admission did not understand police procedures, testified that "they sent me out the room," and "every five minutes they was sending me out" (p. 92). Each time she did as she was told. Lisa testified that "I was sent out the room so many times and it as hard for me to keep up with the times" (p. 106). Some youth will request a parent's assistance during interrogation. Dorrell Brayboy said he wanted his mother present so that she's "gonna straighten everything out" (Brayboy suppression transcript, p. 32). But as evidenced by Lisa Brayboy's experience with police, some parents are not able to play a protective role in their children's interrogations.

Moreover, as described in a previous section, four of the five defendants were told or "pleaded with" to "tell the truth" by their mothers, sometimes as police drove the youth away in police cars and at other times sitting in the interrogation room with detectives looking on. Not only does this behavior communicate to adolescents that they are expected to cooperate with police, it can effectively serve to accuse youth of lying, just as interrogators are trained to do as they reject suspects' denials.

L) Law enforcement policy and practice regarding electronic recording of interrogations and/or confession statements

Interrogation researchers and experts have long claimed that, due to the potential for manipulation and coercion discussed above, all custodial interrogations should be electronically recorded (preferably videorecorded) in their entirety.[73] This case exemplifies the importance of recording in full because it illustrates law enforcement's advantage in controlling the narrative in the absence of an electronic record. All five defendants in this case, along with Jessicah 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. The recurring theme throughout the defendants' accounts (via their suppression hearing testimonies) is that of verbal aggression, threats, and repeated accusations of lying. By contrast, the detectives consistently characterize their actions as considerate and appropriate (i.e., bathroom breaks, food, frequent reminders that the suspects are not under arrest). It is very important to consider that police and suspects—particularly adolescent suspects—are very differently situated in legal settings.[74] Not only are police (generally) trained and experienced in conducting interrogations and obtaining confessions, they are also positioned to understand the procedural elements necessary to uphold confessions in court (e.g., obtaining Bruton statements) and to know what to emphasize in police reports and suppression and trial testimony (e.g., suspects were told they were free to leave). In contrast, youth (generally) have limited understanding of standard police interrogation practices[iv].[75] They have difficulty understanding legal terminology and applying legal knowledge to their own situations. Moreover, youths' prior justice system contacts does not necessarily translate to "savviness" in interrogations, as often presumed; one study found that previous justice system experience was not associated with, for example, knowledge that police are allowed to lie during interrogations.[76] The Supreme Court's opinion in *Gallegos v. Colorado* (1962) summarizes the problem well:

> *But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded, and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.*

More than fifty years later, we now have ample scientific evidence to support this assertion. In the present case, it seems clear that the defendants (and likely their mothers as well) did not understand the nature of police custody, the implications of their actions or inactions, or the long term consequences of their statements. As one example from case records, Det. Smith asks Brayboy in his taped confession statement about whether Brayboy taped up the victim. When

[iv] Though studies are few, this appears to be true of adults as well (specifically parents of adolescents); see Woolard et al. (2008); Cleary & Warner (2017)

Brayboy denied knowledge of any tape, Det. Smith says "be 100% with this…I mean this is the story we're allowing you. I mean, you wanted to give us a statement, right?" (Brayboy confession transcript, p. 21). A few moments later he says "This is your statement…you wanted to give it. I'm giving you this opportunity, you're not in custody, this is your time to give it" (p. 25). The Detective is characterizing police interrogation and Brayboy's taped confession statement as a courtesy to Brayboy, and Brayboy gives no indication during this statement that he conceptualizes it differently. Neither does his mother, who is present during the recorded confession.

Another key consideration is when, specifically, WSPD detectives decided to begin recording. There is indication that detectives turned on the audio recording only after the interviewees made incriminating statements. For example, in Rayshawn Banner's suppression hearing, the Court raised the question of which portion of Banner's story was recorded, and the judge asked Det. Clark whether the recording is "just the good stuff from your perspective and not all the denials?" and Det. Clark responded "Right. This would have been actual statement." Collectively, case documents indicate that detectives would intentionally question suspects "off the record" to extract the information they desired, and then they would turn on the recording when they were satisfied with what they had heard. As the judge in Nathaniel Cauthen's suppression hearing put it, "A pattern has developed that the interviewers basically talk until they hear the story they want to record, and then they bring the recorder out" (Cauthen suppression hearing, p. 59). For example, when Det. Clark was asked when he decided to start recording, he replied "Once we felt like we had the truth" (Rayshawn Banner suppression transcript, p. 30). This is important for several reasons: first, it implies that interrogators' decisions about when to record are made strategically; and second, it suggests that detectives did not believe the information provided by defendants earlier in the interrogation (namely, their denials). As described previously, detectives' "certainty" in a suspect's guilt can lead to confirmation bias, aggressive questioning, and confession contamination.

Although states are moving toward requiring electronic recordings of custodial interrogations,[77] the practice is far from universal. It is common practice (and was likely even more common in 2002) for police to record only the final confession statement. Interrogators often adopt a rote question-and-answer format to reconstruct the information generated previously into a coherent, documented narrative. WSPD did not require electronic recording in 2002, though they implemented this requirement in 2007. WSPD did have written policies and procedures in place governing the conduct of field interviews, custodial interrogations and Miranda warnings. If the interrogations of Jermal Tolliver, Christopher Bryant, Dorrell Brayboy, and Nathaniel Cauthen were indeed non-custodial as Detectives claimed in this case, then their actions were compliant with existing department policy. However, this report highlights scientific research on adolescent development and youths' decision making that raises questions about whether the defendants felt free to leave.

In the absence of an electronic recording, we are left to rely on officers' and suspects' verbal accounts of the interrogation and police officers' written reports. It is underscored here that police notes about an interrogation—particularly long after that interaction occurred—should be viewed with extreme caution. There are numerous psychological and operational reasons why police notes summarizing an interrogation are unlikely to be complete and accurate accounts of that interaction. Long delays can degrade memory recall. Written reports cannot capture participants' nonverbal behaviors. Commonsense dictates that if police (intentionally or unintentionally) dismissed a suspect's denials, ignored information that ran counter to their hypotheses about the crime, or psychologically manipulated a suspect, they are unlikely to relay that information in a report. Without an electronic recording of the full interrogation session (not just the confession statement), we are forced to rely (in part) on the officers' accounts of the interaction. This is not to say that detectives in this case were intentionally deceptive, but it does mean that one should consider the veracity of suspects' taped statements within the context that the interrogations preceding those taped statements (and any problematic techniques used therein) are unknown.

In fact, there are indicators that police selectively represented events and statements from the unrecorded interrogations. Multiple detectives in multiple police reports note that they emphasized that the defendants were not under arrest and were free to leave. However, it is noteworthy that all four defendants who testified in their suppression hearings told the court that detectives threatened them with the death penalty. (Rayshawn Banner did not testify at his suppression hearing.) These interrogations involved multiple officers over multiple occasions, yet references to the death penalty do not appear in any detective's written report. This is despite the fact that several detectives conceded in court that references to the death penalty were made.

Moreover, even if a video- or audio-recording of the interrogation exists, it is important to remember that coercive interrogation techniques are not always readily apparent to a layperson. While glaring instances of coercion certainly do sometimes "jump out" at the observer (e.g., shouting, threats), the absence of overt coercion does not mean that the suspect does not perceive the experience as psychologically coercive. Using psychologically coercive interrogation strategies repeatedly and/or in multiple forms, combined with a suspect's individual vulnerabilities, can result in a false confession.

VI. SUMMARY AND CONCLUSIONS

This report summarizes the scientific research on factors associated with false confessions that are relevant to the matter involving four living defendants Rayshawn Banner, Christopher Bryant, Nathaniel Cauthen, and Jermal Tolliver as well as Dorrell Brayboy (deceased). This case involves five mid-adolescent boys who were transported to a police station, four of whom remained there for 8-9 hours. Detectives interrogated the suspects both serially and simultaneously between the hours of approximately 3:00pm on 11/19/02 and early in the

morning of 11/20/02, alternating periods of isolation with aggressive, threatening interrogation tactics. Though Detectives claimed that four of the five suspects (all but Banner) were not under arrest and thus the interviews were non-custodial, all four of those suspects testified that they did not feel free to leave. The suspects, all five of whom had documented cognitive or intellectual impairments, reported feeling scared, threatened, coerced, or confused. While I cannot opine whether the five defendants' or Jessicah Black's confessions were factually false, I conclude that this case involves many factors associated with known false confessions, namely:

- *Adolescence*: All five defendants were middle adolescents (ages 14-15 years), a known dispositional risk factor for false confession.
- *Intellectual disability*: All five defendants had documented intellectual disabilities, a second known risk factor for false confession. All five had cognitive and verbal difficulties.
- *Prolonged custody and isolation*: Four of the five defendants were physically in police custody (or perceived themselves to be) for 8-9 hours. Lengthy detentions and interrogations increase feelings of isolation and degrade suspects' abilities to withstand police pressure—especially adolescent suspects and people with intellectual disabilities.
- *Confirmation bias*: Police exhibited confirmation bias in the interrogations when they assumed the defendants were guilty and rejected defendants' claims that they were innocent. They also exhibited confirmation bias in their failure to pursue other leads.
- *Coercive interrogation techniques*: Police used aggressive "maximization" techniques to obtain confessions from the defendants, including accusing the defendants of lying, isolating them from others, and threatening with the death penalty. Maximization manipulates suspects' perceptions of their situation by threatening harsher punishments if they continue to deny. It creates feelings of hopelessness and despair, and makes suspects feel as though confession is the best means of escaping a stressful situation.
- *Inconsistencies in suspects' statements*: The five defendants' confession statements were more different than alike. This is consistent with documented false confession cases in which co-defendants succumbed to police pressure by creating a false narrative of their involvement in a crime.
- *Confession contamination*: Defendants' statements could have been contaminated when detectives played them recordings of their co-defendants' incriminating narratives, when detectives told suspects how they thought the crime occurred (including showing photographs), when the defendants viewed the crime scene after the crime occurred, and/or when defendants heard about the crime via local news or neighborhood gossip.
- *Lack of confession corroboration by physical evidence*: No physical evidence reliably linked the defendants to the crime. No blood was found on the suspects' clothing or Jessicah Black's car. Fingerprints found at the crime scene did not match the defendants.

The opinions expressed in this report are based upon my own scientific training, research, and publications; my knowledge of the scientific literature; and my review of the case-specific information noted above. I reserve the right to modify any opinions expressed in this report in

the event that new or additional information comes to my attention. Thank you for the opportunity to assist the North Carolina Innocence Inquiry Commission on this matter. I truly hope the information I have provided in this report is helpful for your investigation.

Sincerely,

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1 Gross, S. R., Jacoby, K., Matheson, D. J., Montgomery, N., & Patil, S. (2005). Exonerations in the United States: 1989-2003. *Journal of Criminal Law and Criminology, 95*(2), 523-560.

2 https://www.innocenceproject.org/all-cases/#exonerated-by-dna

3 http://www.law.umich.edu/special/exoneration/Pages/mission.aspx

4 http://www.law.umich.edu/special/exoneration/Pages/False-Confessions.aspx

5 Leo, R. A., & Ofshe, R. J. (1998). The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *Journal of Criminal Law and Criminology, 88*, 429-496.

6 Garrett, B. L. (2010). The substance of false confessions. *Stanford Law Review, 62*(4), 1051-1119.

7 Gross, S. R., Jacoby, K., Matheson, D. J., Montgomery, N., & Patil, S. (2005). Exonerations in the United States: 1989-2003. *Journal of Criminal Law and Criminology, 95*(2), 523-560; Gross, S. R., & Shaffer, M. (2012) Exonerations in the United States, 1989–2012. Available at: https://www.law.umich.edu/special/exoneration/documents/exonerations_us_1989_2012_full_report.pdf

8 Gudjonsson, G. H., Sigurdsson, J. F., Asgeirsdottir, B. B., & Sigfusdottir, I. D. (2006). Custodial interrogation, false confession and individual differences: a national study among Icelandic youth. *Personality and Individual Differences, 41*, 49-59; Malloy, L. C.,

Shulman, E. P., & Cauffman, E. (2014). Interrogations, confessions, and guilty pleas among serious adolescent offenders. *Law and Human Behavior, 38*(2), 181-193. doi:10.1037/lhb0000065

9 Leo, R. A. (2009). False confessions: Causes, consequences, and implications. *Journal of the American Academy of Psychiatry and the Law, 37*(3), 332-343; Kassin, S. M., & Wrightsman, L. S. (1985). Confession evidence. In S. Kassin & L. Wrightsman (Eds.), *The psychology of evidence and trial procedure (*pp. 67–94). Beverly Hills: Sage.

10 Drizin, S., & Leo, R. (2004). The problem of false confessions in the post-DNA world. *North Carolina Law Review, 82*, 891-1008.

11 Costanzo, M., Shaked-Schroer, N., & Vinson, K. (2010). Juror beliefs about police interrogations, false confessions, and expert testimony. *Journal of Empirical Legal Studies, 7*, 231–247.

12 Leo, R. A., & Liu, B. (2009). What do potential jurors know about police interrogation techniques and false confessions? *Behavioral Sciences & the Law, 27*, 381-399. doi:10.1002/bsl.872; Blandon-Gitlin, I., Sperry, K., & Leo, R. (2011). Jurors believe interrogation tactics are not likely to elicit false confessions: Will expert witness testimony inform them otherwise? *Psychology, Crime, and Law, 17*, 239-260. Doi: 10.1080/10683160903113699

13 Mindthoff, A. et al. (2018). A survey of potential jurors' perceptions of interrogations and confessions. *Psychology, Public Policy, & Law, 24*, 430–448. Doi: 10.1037/law0000182

14 Costanzo, M., Shaked-Schroer, N., & Vinson, K. (2010). Juror beliefs about police interrogations, false confessions, and expert testimony. *Journal of Empirical Legal Studies, 7*, 231–247.

15 Kassin, S. M., Meissner, C. A., & Norwick, R. J. (2005). "I'd know a false confession if I saw one": A comparative study of college students and police investigators. *Law and Human Behavior, 29*(2), 211-227.

16 Honts, C. R., Kassin, S. M. & Craig, R. A. (2014). 'I'd know a false confession if I saw one': A constructive replication with juveniles. *Psychology, Crime & Law*, 20, 695-704. DOI: 10.1080/1068316X.2013.854792

17 Kassin, S. M., & Neumann, K. (1997). On the power of confession evidence: An experimental test of the "fundamental difference" hypothesis. *Law and Human Behavior, 21*, 469-484. doi:10.1023/A:1024871622490

[18] Kassin, S. M., & Sukel, H. (1997). Coerced confessions and the jury: An experimental test of the "harmless error" rule. *Law and Human Behavior, 21*, 27-46. doi: 10.1023/A:1024814009769

[19] Cleary, H. M. D. (2017). Applying the lessons of developmental psychology to the study of juvenile interrogations: New directions for research, policy, and practice. *Psychology, Public Policy, and Law, 23,* 118-130. doi: 10.1037/law0000120; Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

[20] Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

[21] see, e.g., Casey, B., Galvan, A., & Somerville, L. H. (2016). Beyond simple models of adolescence to an integrated circuit-based account: A commentary. *Developmental Cognitive Neuroscience, 17*, 128-130. doi:10.1016/j.dcn.2015.12.006

[22] Cohen, A. O., Breiner, K., Steinberg, L., Bonnie, R. J., Scott, E. S., Taylor-Thompson, K. A., . . . Casey, B. J. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and nonemotional contexts. *Psychological Science, 27,* 549–562.

[23]Steinberg, L. (2014). *Age of opportunity: Lessons from the new science of adolescence*. Boston: Eamon Dolan/Houghton Mifflin Harcourt.

[24] Steinberg, L., Graham, S., O'Brien, L., Woolard, J., Cauffman, E., & Banich, M. (2009). Age differences in future orientation and delay discounting. *Child Development, 80*(1), 28-44. doi:10.1111/j.1467-8624.2008.01244.x

[25] Cauffman, E., Steinberg, L., & Piquero, A. R. (2005). Psychological, neuropsychological and physiological correlates of serious antisocial behavior in adolescence: The role of self-control. *Criminology, 43*(1), 133-175; Monahan, K. C., Steinberg, L., Cauffman, E., & Mulvey, E. P. (2013). Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persisting antisocial behavior. *Development and Psychopathology, 25*(4), 1093-1105. doi:10.1017/S0954579413000394

[26] E.g., Redlich, A. D., Silverman, M., Chen, J., & Steiner, H. (2004). The police interrogation of children and adolescents. In G. D. Lassiter (Ed.), *Interrogations, Confessions, and Entrapment* (pp. 107-125). New York: Kluwer Academic; Malloy, L. C., Shulman, E. P., & Cauffman, E. (2014). Interrogations, confessions, and guilty pleas among serious adolescent offenders. *Law and Human Behavior, 38*(2), 181-193. doi:10.1037/lhb0000065

[27] https://www.apa.org/research/action/speaking-of-psychology/false-confessions

[28] see, e.g., Gudjonsson, G. H. (2010). Interrogative suggestibility and false confessions. In J. M. Brown & E. A. Campbell (Eds.), *The Cambridge handbook of forensic psychology* (pp. 202-207). New York, NY, US: Cambridge University Press.

[29] see, generally, Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook.* West Sussex, England: Wiley.

[30] Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook.* West Sussex, England: Wiley; Richardson, G., Gudjonsson, G. H., & Kelly, T. P. (1995). Interrogative suggestibility in an adolescent forensic population. *Journal of Adolescence, 18*, 211-216.

[31] Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E. S., Graham, S., . . . Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior, 27*, 333-363. doi:10.1023/A:1024065015717

[32] Redlich, A. D., & Goodman, G. S. (2003). Taking responsibility for an act not committed: The influence of age and suggestibility. *Law and Human Behavior, 27*, 141-156. doi:10.1023/A:1022543012851

[33] Feld, B. C. (2013). *Kids, cops, and confessions: Inside the interrogation room*. New York, NY: The New York University Press; Cleary, H. M. D., & Vidal, S. (2016). Miranda in actual juvenile interrogations: Delivery, waiver, and readability. *Criminal Justice Review, 41,* 98-115. doi: 10.1177/0734016814538650

[34] Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and American Academy of Psychiatry and Law, Dassey v. Dittman, retrieved from: http://www.apa.org/about/offices/ogc/amicus/dassey.pdf

[35] Kassin, S. M., Redlich, A. D., Alceste, F., & Luke, T. J. (2018). On the general acceptance of confessions research: Opinions of the scientific community. *American Psychologist, 73*(1), 63-80. http://dx.doi.org/10.1037/ amp0000141

[36] Schatz, S. (2018). Interrogated with intellectual disabilities: The risks of false confession. *Stanford Law Review, 70*, 643-690.

37 O'Connell, M. J., Garmoe, W., & Goldstein, N. E. S. (2005). Miranda comprehension in adults with mental retardation and the effects of feedback style on suggestibility. *Law and Human Behavior, 29*, 359-369

38 Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook.* West Sussex, England: Wiley.

39 Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

40 Cleary, H. M. D., & Warner, T. C. (2016). Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects. *Law and Human Behavior, 40,* 270-284. doi: 10.1037/lhb0000175; Kassin, S. M., Leo, R. A., Meissner, C. A., Richman, K. D., Colwell, L. H., Leach, A. M., & La Fon, D. (2007). Police interviewing and interrogation: A self-report survey of police practices and beliefs. *Law and Human Behavior, 31,* 381–400. http://dx.doi.org/10.1007/s10979-006- 9073-5

41 Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2013). *Criminal interrogation and confessions* (5th ed.). Burlington, MA: Jones & Bartlett Learning.

42 Cleary, H. M. D., & Warner, T. C. (2016). Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects. *Law and Human Behavior, 40,* 270-284. doi: 10.1037/lhb0000175; Meyer, J. R., & Reppucci, N. D. (2007). Police practices and perceptions regarding juvenile interrogation and interrogative suggestibility. *Behavioral Sciences & the Law, 25,* 757–780. http://dx.doi.org/10.1002/bsl .774

43 Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

44 Leo, R. A., & Ofshe, R. J. (2001). The truth about false confessions and advocacy scholarship. *The Criminal Law Bulletin, 37*, 293– 370.

45 Kassin, S. M., Leo, R. A., Meissner, C. A., Richman, K. D., Colwell, L. H., Leach, A. M., & La Fon, D. (2007). Police interviewing and interrogation: A self-report survey of police practices and beliefs. *Law and Human Behavior, 31,* 381–400. http://dx.doi.org/10.1007/s10979-006- 9073-5

46 Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family

dyad approach. *Journal of Youth and Adolescence, 37*(6), 685-698. doi:10.1007/S10964-008-9288-5; Cleary, H. M. D., & Warner, T. C. (2017). Parents' knowledge and attitudes about youths' interrogation rights. *Psychology, Crime, & Law, 23,* 777-793. doi: 10.1080/ 1068316X.2017.1324030

47 Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2013). *Criminal interrogation and confessions* (5th ed.). Burlington, MA: Jones & Bartlett Learning

48 Kassin, S. M., Leo, R. A., Meissner, C. A., Richman, K. D., Colwell, L. H., Leach, A. M., & La Fon, D. (2007). Police interviewing and interrogation: A self-report survey of police practices and beliefs. *Law and Human Behavior, 31,* 381–400. http://dx.doi.org/10.1007/s10979-006- 9073-5

49 Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

50 Cleary, H. M. D. (2014). Police interviewing and interrogation of juvenile suspects: A descriptive examination of actual cases. *Law and Human Behavior, 38*, 271-282. doi:10.1037/lhb0000070

51 Lowenstein, J. A., Blank, H., & Sauer, J. D. (2010). Uniforms affect the accuracy of children's eyewitness identification decisions. *Journal of Investigative Psychology and Offender Profiling, 7,* 59 –73. doi:10.1002/jip.104

52 Rogers, R., Blackwood, H. L., Fiduccia, C. E., Steadham, J. A., Drogin, E. Y., & Rogstad, J. E. (2012). Juvenile Miranda warnings: Perfunctory rituals or procedural safeguards? *Criminal Justice and Behavior, 39*(3), 229-249. doi:10.1177/0093854811431934

53 Goldstein, N. E. S., Condie, L. O., Kalbeitzer, R., Osman, D., & Geier, J. L. (2003). Juvenile offenders' Miranda rights comprehension and self-reported likelihood of offering false confessions. *Assessment, 10*(4), 359-369; Goldstein, N. E. S., Kelly, S. M., Peterson, L., Brogan, L., Zelle, H., & Romaine, C. R. (2015). Evaluation of Miranda waiver capacity. In K. Heilbrun, D. DeMatteo, & N. E. S. Goldstein (Eds.), *APA handbook of psychology and juvenile justice* (pp. 467-488). Washington, DC: American Psychological Association; Goldstein, N. E. S., Messenheimer, S., Riggs Romaine, C., & Zelle, H. (2012). Impact of juvenile suspects' linguistic abilities on *Miranda* understanding and appreciation. In P. Tiersma & L. Solan (Eds.), *Oxford handbook on language and law* (pp. 299–311). New York, NY: Oxford University Press.

54 Goldstein, N. E. S., Messenheimer, S., Riggs Romaine, C., & Zelle, H. (2012). Impact of juvenile suspects' linguistic abilities on *Miranda* understanding and appreciation. In P.

Tiersma & L. Solan (Eds.), *Oxford handbook on language and law* (pp. 299–311). New York, NY: Oxford University Press.

55 Rogers, R., Hazelwood, L. L., Sewell, K. W., Shuman, D. W., & Blackwood, H. L. (2008). The comprehensibility and content of juvenile Miranda warnings. *Psychology, Public Policy, and Law, 14*(1), 63-87. doi:10.1037/a0013102

56 Rogers, R. (2008). A little knowledge is a dangerous thing . . . Emerging Miranda research and professional roles for psychologists. *American Psychologist, 63*, 776-787. doi:10.1037/0003-066X.63.8.776; Rogers, R., Blackwood, H. L., Fiduccia, C. E., Steadham, J. A., Drogin, E. Y., & Rogstad, J. E. (2012). Juvenile Miranda warnings: Perfunctory rituals or procedural safeguards? *Criminal Justice and Behavior, 39*(3), 229-249. doi:10.1177/0093854811431934

57 Cleary, H. M. D., & Vidal, S. (2016). Miranda in actual juvenile interrogations: Delivery, waiver, and readability. *Criminal Justice Review, 41,* 98-115. doi: 10.1177/0734016814538650

58 Cleary, H. M. D., & Warner, T. C. (2017). Parents' knowledge and attitudes about youths' interrogation rights. *Psychology, Crime, & Law, 23,* 777-793. doi: 10.1080/1068316X.2017.1324030; Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence, 37*(6), 685-698. doi:10.1007/S10964-008-9288-5

59 Alceste, F. Luke, T. L., & Kassin, S. (2018). Holding yourself captive: Perceptions of custody during interviews and interrogations. *Journal of Applied Research in Memory and Cognition, 7*, 387-397. Doi: https://doi.org/10.1016/j.jarmac.2018.03.001

60 Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E. S., Graham, S., . . . Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior, 27*, 333-363. doi:10.1023/A:1024065015717

61 Alceste, F. Luke, T. L., & Kassin, S. (2018). Holding yourself captive: Perceptions of custody during interviews and interrogations. *Journal of Applied Research in Memory and Cognition, 7*, 387-397. Doi: https://doi.org/10.1016/j.jarmac.2018.03.001

62 Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2013). *Criminal interrogation and confessions* (5th ed.). Burlington, MA: Jones & Bartlett Learning.

63 Owen-Kostelnik, J., Reppucci, N. D., & Meyer, J. R. (2006). Testimony and interrogation of

minors: Assumptions about maturity and morality. *American Psychologist, 61*(4), 286-304. doi:10.1037/0003-066x.61.4.286

64 Kassin, S., M., Goldstein, C. C., & Savitsky, K. (2003). Behavioral confirmation in the interrogation room: On the dangers of presuming guilt. *Law and Human Behavior, 27*, 187-203.

65 Leo, R. L. (2013). Why interrogation contamination occurs. University of San Francisco Law Research Paper No. 2013-25. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2235152

66 Leo, R. L. (2013). Why interrogation contamination occurs. University of San Francisco Law Research Paper No. 2013-25. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2235152

67 Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2013). *Criminal interrogation and confessions* (5th ed.). Burlington, MA: Jones & Bartlett Learning.

68 Perillo, J. T., & Kassin, S. M. (2011). Inside interrogation: The lie, the bluff, and false confessions. *Law and Human Behavior, 35*(4), 327-337. doi: 10.1007/s10979-010-9244-2; Kassin, S. M., & Norwick, R. J. (2004). Why people waive their Miranda rights: The power of innocence. *Law and Human Behavior, 28*(2), 211-221. doi:10.1023/B:LAHU.0000022323.74584.f5

69 Guyll, M., Madon, S., Yang, Y., Lannin, D. G., Scherr, K., & Greathouse, S. (2013). Innocence and resisting confession during interrogation: Effects on physiologic activity. *Law and Human Behavior, 37*(5), 366-375. doi:10.1037/lhb0000044

70 Cleary, H. M. D. (2017). Applying the lessons of developmental psychology to the study of juvenile interrogations: New directions for research, policy, and practice. *Psychology, Public Policy, and Law, 23,* 118-130. doi: 10.1037/law0000120

71 Grisso, T. (1981). *Juveniles' waiver of rights: Legal and psychological competence*. New York: Plenum.

72 Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence, 37*(6), 685-698. doi:10.1007/S10964-008-9288-5; Cleary, H. M. D., & Warner, T. C. (2017). Parents' knowledge and attitudes about youths' interrogation rights. *Psychology, Crime, & Law, 23,* 777-793. doi: 10.1080/ 1068316X.2017.1324030

[73] Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3-38. doi:10.1007/s10979-009-9188-6

[74] Cleary, H. M. D. (2017). Applying the lessons of developmental psychology to the study of juvenile interrogations: New directions for research, policy, and practice. *Psychology, Public Policy, and Law, 23,* 118-130. doi: 10.1037/law0000120

[75] Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence, 37,* 685-698. doi: 10.1007/s10964-008-9288-5

[76] Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence, 37,* 685-698. doi: 10.1007/s10964-008-9288-5

[77] Bang, B. L., Stanton, D., Hemmens, C., & Stohr, M. K. (2018). Police recording of custodial interrogations: A state-by-state legal inquiry. *International Journal of Police Science & Management, 20*, 3–18. https://doi.org/10.1177/1461355717750172

20 September 2023

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Dear Mr. Bannon:

This declaration is in response to your inquiry: *Has the social science literature on police interrogations and false confessions changed since 2004? If so, how has it changed?* The short answer is *yes*—the social scientific literature on police interrogations and false confessions has grown prolifically in the last several decades. Moreover, the developmental neuroscience literature has also developed exponentially, and scientists have learned much about adolescent brain development that relates to youths' behavior and decision-making during police interrogations. The basic developmental science literature is too vast to comprehensively summarize in a short time frame, but I note below how and when developmental psychological research has advanced the interrogations and confessions literature.

Per your request, the following document briefly summarizes and contextualizes the evolution of scientific research on police interrogations, and coerced and false confessions since 2004.

I. Qualifications of Expert

I am an Associate Professor of Criminal Justice in the L. Douglas Wilder School of Government & Public Affairs at Virginia Commonwealth University in Richmond, Virginia. I hold a master's degree in Public Policy and a PhD in Developmental Psychology from Georgetown University. My areas of training and research expertise include adolescent development in legal contexts. I specialize in the study of police interrogation, particularly interrogation of youthful suspects. My research contributes to and draws upon the extensive scientific literature on police interrogation and its associated components, including confessions and false confessions, police interrogation tactics, individual vulnerabilities during interrogation, and police use of coercion.

I have authored or co-authored more than thirty (30) peer-reviewed scientific publications, primarily in my field's leading academic journals. I have presented or co-presented over thirty-five (35) research papers at academic conferences. I have given invited lectures regarding police interrogation, adolescent development, and juvenile justice to police departments and attorney organizations at the local, state, and federal levels, including the Federal Bureau of Investigation, the National Association of Public Defenders, the International Association of Interviewers, the

Virginia state legislature, and statewide public defender associations in four states. My research has been featured in national news outlets such as the *New York Times*, and I have won several awards for my interrogation-related scholarship. Detailed information about my qualifications is available in my curriculum vitae, appended to this declaration.

II. Growth and refinement of the interrogations and confessions literature

Police interrogation has been defined as "a guilt-presumptive process of social influence during which trained police use strong, psychologically oriented techniques involving isolation, confrontation, and minimization of blame to elicit confessions."[1] The psychology of police interrogation involves core psychological principles that are cognitive (e.g., information processing, memory encoding and retrieval, bias), social (e.g., persuasion, power, authority), or a complex combination of the two (e.g., suggestibility, choice architecture). Psychologists have studied these core principles in numerous contexts for decades or even centuries. Additionally, police interrogation of adolescents necessarily involves consideration of basic principles in developmental psychology—for example, youths' capacities for risk assessment, reward discounting, self-regulation, and compliance with authority figures. Developmental psychologists have studied these concepts using behavioral and observational methods for decades, and recent advancements in technology propelled a new field of developmental neuroscience in which scientists track structural and functional changes in the adolescent brain.

A. Scientific articles on interrogations and confessions published before and after 2004

Researchers began applying psychological principles to the interrogation context in earnest in the 1980s. Dr. Saul Kassin and Dr. Lawrence Wrightsman published a seminal work outlining a typology of false confessions[2] that it still used today. Dr. Thomas Grisso published a book-length examination of adolescents' Miranda rights comprehension and waiver abilities.[3] In Europe in the 1990s, clinical psychologist and former police investigator Dr. Gisli Gudjonsson published numerous studies investigating the correlates of false confessions, including those among youth.[4]

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[1] Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions: A review of the literature and issues. *Psychological science in the public interest*, *5*(2), 33–67. https://doi.org/10.1111/j.1529-1006.2004.00016.x

[2] Kassin, S. M., & Wrightsman, L. S. (1985). Confession evidence. In S. Kassin & L. Wrightsman (Eds.), *The psychology of evidence and trial procedure* (pp. 67–94). Beverly Hills, CA: Sage.

[3] Grisso, T. (1981). *Juveniles' waiver of rights: Legal and psychological competence*. New York: Plenum.

[4] E.g., Singh, K., & Gudjonsson, G. (1992). The vulnerability of adolescent boys to interrogative pressure: An experimental study. *The Journal of Forensic Psychiatry*, *3*(1), 167–170. https://doi.org/10.1080/09585189208407634; Richardson, G., Gudjonsson, G. H., & Kelly, T. P. (1995). Interrogative suggestibility in an adolescent forensic population. *Journal of Adolescence, 18*, 211–216; Sigurdsson, J. F., & Gudjonsson, G. H. (1996). The psychological characteristics of "false confessors": A study among Icelandic prison inmates and juvenile offenders. *Personality and Individual Differences*, *20*(3), 321–329.

Since the 1990s, the field has exploded. Several thousand scientific articles related to interrogation have been published just since the turn of the century.

A recent (2023) bibliometric study provides some useful tables and figures to address your question. Bibliometric studies enable researchers to "better understand the structure of a research field, including collaboration patterns, thematic groups, research constituents, and emerging trends."[5] Researchers Vincent Denault and Victoria Talwar published a bibliometric study of scientific research on criminal interrogations and investigative interviews. Table 1 shows the authors' counts of scientific publications by decade:

Table 1. *Scientific articles about criminal interrogations and investigative interviews, as reported in Denault and Talwar (2023).*

Decades	Number of articles	Percentage of all articles
1900–1909	0	0.00
1910–1919	1	0.03
1920–1929	0	0.00
1930–1939	2	0.06
1940–1949	1	0.03
1950–1959	4	0.12
1960–1969	36	1.10
1970–1979	25	0.77
1980–1989	52	1.60
1990–1999	321	9.85
2000–2009	720	22.09
2010–2019	1,507	46.24
2020-present	590	18.10

This table is an approximation because any bibliometric study is limited by its parameters. For example, this bibliometric analysis included studies on eyewitness (mis)identification, which could arguably inflate the article count, yet it excluded studies on deception detection as well as non-article formats such as books and book chapters, which underestimates the publication

[5] Denault, V., & Talwar, V. (2023). From criminal interrogations to investigative interviews: A bibliometric study. *Frontiers in Psychology*, *14*, 1175856. https://doi.org/10.3389/fpsyg.2023.1175856

count. On the whole, though, it helpfully demonstrates just how rapidly the scientific literature grew over the last few decades.

In particular, the application of developmental psychology to juvenile interrogations is relatively recent. Notwithstanding some important exceptions,[6] most of the works that examine juvenile suspects as a special population—or even more specifically, *why* juvenile suspects are different—emerged after 2004. For example, in 2006, Owen-Kostelnik and colleagues published an important piece in *American Psychologist*, the American Psychological Association's flagship journal, discussing how youths' suggestibility and immature judgment relate to their Miranda rights comprehension, ability to withstand interrogative pressure, and ability to differentiate truth from deception.[7] My own theoretical article in 2017 extended the application of newly emerging developmental neuroscience to juvenile suspects' interrogation behaviors and decision making.[8] These works began to apply the extensive scientific literature on adolescent development to the specific context of police interrogation.

B. Meta-analyses, books, and other integrative works

The publication of meta-analyses, systematic reviews, scholarly book chapters, and books are another indication that a scientific literature has matured. Such works summarize, replicate, and expand upon individual research studies to give us a more comprehensive picture of the state of a research literature. Systematic reviews collect all studies on a particular topic (within certain parameters) and systematically analyze the scientific findings as a whole. Meta-analyses are statistical analyses that combine the findings of multiple studies and quantitatively analyze the "pooled" sample. Both approaches require an existing corpus of individual studies to analyze collectively.

As one scholar recently noted in his introduction to a 2019 special issue of *Applied Cognitive Psychology* focused systematic reviews and meta-analyses on investigative interviewing, "the maturity of a science is likely best evidenced in the conduct of systematic reviews and meta-analyses. The investigative interviewing research literature has reached just such a period in its development."[9] The introduction to that *Applied Cognitive Psychology* (ACP) special issue referenced 34 noteworthy integrative works in the investigative interviewing literature, and the special issue added nine more.

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[6] E.g., Dr. Thomas Grisso's work in the 1980s; Dr. Allison Redlich and Dr. Gail Goodman's laboratory study of juvenile false confessions in 2003; Dr. Gisli Gudjonsson's studies of adolescent false confessions in Iceland

[7] Owen-Kostelnik, J., Reppucci, N. D., & Meyer, J. R. (2006). Testimony and interrogation of minors: Assumptions about maturity and morality. *American Psychologist*, *61*(4), 286–304. https://doi.org/10.1037/0003-066X.61.4.286

[8] Cleary, H. M. D. (2017). Applying the lessons of developmental psychology to the study of juvenile interrogations: New directions for research, policy, and practice. *Psychology, Public Policy, and Law*, *23*(1), 118–130. https://doi.org/10.1037/law0000120

[9] Meissner, C. A. (2021). "What works?" Systematic reviews and meta-analyses of the investigative interviewing research literature. *Applied Cognitive Psychology*, *35*(2), 322–328. https://doi.org/10.1002/acp.3808

In fact, the interviewing and interrogation literature has matured such that even meta-analyses are being updated. For example, Meissner et al. (2012) published a Campbell[10] meta-analysis of field studies and laboratory studies that investigated the role of various interrogation techniques in generating true and false confessions.[11] This year, Catlin and colleagues (2023) published an updated version focusing just on experimental studies, which have proliferated since 2012.[12]

In my experience and opinion, the vast majority of systematic reviews, meta-analyses, and scholarly books about police interrogations and (false) confessions were published after 2004. Because the field is so vast, I would essentially have to do a form of bibliometric study myself to be more precise. However, as one example, in that abbreviated list noted in the ACP special issue, only 2 of the 34 integrative works were published prior to 2004.

C. Scientific Review Paper 1.0 on police interrogations and confessions

Perhaps the most illustrative evidence of the field's maturity is the publication of the American Psychology-Law Society's (AP-LS) Scientific Review Paper (SRP) on police interrogations and confessions. AP-LS is a division of the American Psychological Association dedicated to the study of psychology in legal contexts. In 1995, the AP-LS Executive Committee approved a divisional initiative to publish Scientific Review Papers that comprehensively summarize psychological research in specific policy areas.[13] In 2010, AP-LS published an article entitled "Police-induced confessions: Risk factors and recommendations" in its flagship journal, *Law and Human Behavior*.[14] This article, authored by six of the world's leading interrogation scholars, was AP-LS's second Scientific Review Paper.[15] The division only authorizes Scientific Review papers when the body of research has sufficiently matured to warrant a comprehensive review and sufficient scientific basis for policy and practice recommendations. As Thompson (2010) noted in the introduction to that *Law and Behavior* issue:

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[10] Per its website, "*Campbell Systematic Reviews* is an open access journal prepared under the editorial control of the Campbell Collaboration. The journal publishes systematic reviews, evidence and gap maps, and methods research papers."

[11] Meissner, C. A., Redlich, A. D., Bhatt, S., & Brandon, S. (2012). Interview and interrogation methods and their effects on true and false confessions. *Campbell Systematic Reviews*. doi:10.4073/csr.2012.13

[12] Catlin, M., Wilson, D. B., Redlich, A. D., Bettens, T., Meissner, C. A., Bhatt, S., & Brandon, S. (2023). PROTOCOL: Interview and interrogation methods and their effects on true and false confessions: An update and extension. *Campbell Systematic Reviews*, 19, e1314. https://doi.org/10.1002/cl2.1314

[13] Wiener, R. L. (1998). The first American Psychology and Law Society Scientific Review Paper. *Law and Human Behavior, 22*, 601–602.

[14] Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*(1), 3–38. https://doi.org/10.1007/s10979-009-9188-6

[15] The first AP-LS Scientific Review Paper pertained to eyewitness identification procedures: Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior, 22,* 603–647.

> By authorizing and endorsing Scientific Review Papers, the Society makes known the consensus views of its members and lends its authority to the conclusions reached. Scientific Review Papers are not merely the opinions of their authors, they are vetted and reviewed to assure they reflect the best research and analysis the Society has to offer.[16]

The SRP's genesis is worth explaining because it demonstrates (1) how much the literature has grown since 2004 and (2) how authoritative these works are regarded in the scientific community. World-renowned scholar Dr. Saul Kassin first proposed an SRP on police interrogations in 2005. Both the AP-LS Scientific Review Paper Committee and the AP-LS Executive Committee approved the proposal. The AP-LS Scientific Review Paper Committee reviewed and approved a first draft of the SRP in May 2008.[17] The paper was posted for public review and comment, and the committee held open hearings with the AP-LS membership at two different conferences (August 2008 and March 2009). A scientific advisory board provided additional comments. The authors revised the draft based on these different sources of feedback. The article was then subjected to standard peer review from four anonymous reviewers, an Associate Editor, and *Law and Human Behavior*'s Editor. The authors made additional revisions and submitted them to the AP-LS Executive Committee. The Executive Committee voted to approve the final draft as an official Scientific Review Paper in June 2009, and the article was published in *Law and Human Behavior* in 2010. Since then, it is regarded as the authoritative summary of the psychological science on police interrogations and false confessions and has been cited over one thousand times.

D. Scientific Review Paper 2.0 on police interrogations and confessions

Thus, the social scientific literature on police interrogations and confessions was already sufficiently established in 2005 (when Dr. Kassin proposed the SRP) to warrant a scientific consensus paper, authored on behalf of the authoritative organization on psychology and law. At that time, AP-LS considered the body of literature mature enough to make empirically-informed recommendations for advancing policy and police practices.

Since that time, the literature on police interrogations and confessions has continued to evolve and mature such that leading interrogation scholars proposed—and AP-LS approved—an update to the original SRP in 2010. I am intimately familiar with this SRP—which we have termed SRP 2.0—because I am an author on it. SRP 2.0 is undergoing the same extensive vetting process as its predecessor. At the time of this writing, it is fully drafted, available for public comment, and has been presented at one of the two required academic fora. Revisions will follow the remaining presentation and peer review process; if approved, its anticipated publication date is early 2025.

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[16] Thompson, W. C. (2010). An American Psychology-Law Society scientific review paper on police interrogation and confession [Editorial]. *Law and Human Behavior, 34*(1), 1–2. https://doi.org/10.1007/s10979-009-9213-9

[17] Ibid.

Importantly, SRP 2.0 is not merely an updated summary of the same content as SRP 1.0; the content itself has evolved. For example, SRP 2.0 now includes a section on trauma and life adversity as a risk factor for false confession because research on those topics—limited in 2004 and even 2010—has since grown considerably. In addition, SRP 2.0 includes a summary of developmental neuroscience research relevant to adolescents' behavior and decision making during police interrogations. Developmental neuroscience has transformed our understanding of the adolescent brain. We have learned a great deal about, for example, how young people process information under stress, how young people make decisions in uncertain or emotionally activated situations, and how endogenous (e.g., sleep deprivation) and exogenous (e.g., presence of peers or adults) factors affect youths' decision making.

III. Summary and conclusions

In summary, the general scientific literature on police interrogations and confessions was already well established in 2004 ***and*** that literature has further grown exponentially since that time, offering new insights that were not available in 2004. In particular, our understanding of how adolescent brain development drives youths' behavior and decision making during police question has substantially advanced since 2004.

Sincerely,

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Virginia Commonwealth University

EXHIBIT 2

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ACADEMIC POSITIONS

2019 – present	Associate Professor of Criminal Justice and Public Policy Virginia Commonwealth University, Richmond, VA
	Affiliate faculty, Center for Cultural Experiences in Prevention Virginia Commonwealth University, Richmond, VA
2012–19	Assistant Professor of Criminal Justice and Public Policy Virginia Commonwealth University, Richmond, VA
2011–12	Assistant Professor of Psychology (teaching), Virginia Commonwealth University

EDUCATION

2010	PhD in Developmental Psychology, Georgetown University
2007	MPP in Public Policy, Georgetown University
2004	BA with Distinction in Psychology & Russian Studies, University of Virginia

BOOKS

Cleary, H. M. D., & Thompson, D. (under contract). *Interviewing youth: How young people are different and why it matters in investigative interviewing* (tentative title). Oxford University Press.

Refereed Journal Articles

**denotes student collaborator*

* Lee, K. E., & **Cleary, H. M. D.** (online first). Are the tickets for everyone? Heterogeneity of economic rewards for associate's degree completion. *Review of Black Political Economy.* https://doi.org/10.1177/00346446231190657

Davis, D., Blandón-Gitlin, I., **Cleary, H. M. D.**, Costanzo, M., Leo, R. A., & Margolis, S. (2023). Interrogation by proxy: The growing role of lay and undercover interrogators in eliciting criminal confessions. *Criminal Law Bulletin, 59*(4), 395-479.

Najdowski, C. J., & **Cleary, H. M. D., *** Oja, P. M. (2023). Relations between peer influence, perceived costs versus benefits, and sexual offending among adolescents aware of sex offender registration risk. *Behavioral Sciences & the Law, 41*(2-3), 109-123. https://doi.org/10.1002/bsl.2625

Brubaker, S. J., & **Cleary, H. M. D.** (2023). Connection and caring through a therapeutic juvenile corrections model: staff and youth resident perceptions of structural and interpersonal dimensions. *International Journal of Offender Therapy and Comparative Criminology, 67*(4), 373-397. https://doi.org/10.1177/0306624X211065586

Warner, T. C., & **Cleary, H. M. D.** (2022). Parents' interrogation knowledge and situational decision-making in hypothetical juvenile interrogations. *Psychology, Public Policy, and Law, 28*(1), 78–91. https://doi.org/10.1037/law0000241

Brubaker, S. J., & **Cleary, H. M. D.** (2022). Conceptualizing and contextualizing treatment orientation: A mixed-method analysis of juvenile correctional staff under a therapeutic model. *American Journal of Criminal Justice, 47*(5), 960-979. https://doi.org/10.1007/s12103-021-09612-1

Cleary, H. M. D., Guarnera, L. A., Aaron, J., & Crane, M. (2021). How trauma may magnify risk of involuntary and false confessions among adolescents. *Wrongful Conviction Law Review, 21*(3), 173-204. https://doi.org/10.29173/wclawr53

Cleary, H. M. D., & Bull, R. (2021). Contextual factors predict self-reported confession decision-making: A field study of suspects' actual police interrogation experiences. *Law and Human Behavior, 45*(4), 310–323. https://doi.org/10.1037/lhb0000459

* Shelley, W. W., Pickett, J. T., Mancini, C., McDougle, R. D., Rissler, G., & **Cleary, H.** (2021). Race, bullying, and public perceptions of school and university safety. *Journal of Interpersonal Violence, 36*(1-2), NP824–NP849. https://doi.org/10.1177/0886260517736272

* Naoroz, C. J., & **Cleary, H. M. D.** (2021). News media framing of police body-worn cameras: A content analysis. *Policing: A Journal of Policy and Practice, 15*(1), 540-555. https://doi.org/10.1093/police/paz018

Cleary, H. M. D., & Najdowski, C. J. (2020). Awareness of sex offender registration policies and self-reported sexual offending in a community sample of adolescents. *Sexuality Research and Social Policy, 17*(3), 486-499. https://doi.org/10.1007/s13178-019-00410-3

Cleary, H. M. D., & Brubaker, S. J. (2019). Therapeutic transformation of juvenile corrections in Virginia: A mixed method analysis of benefits and challenges. *Children and Youth Services Review, 105*. https://doi.org/10.1016/j.childyouth.2019.104444

Cleary, H. M. D., & Bull, R. (2019). Jail inmates' perspectives on police interrogation. *Psychology, Crime & Law, 25*(2), 157-170. https://doi.org/10.1080/1068316X.2018.1503667

Vidal, S., **Cleary, H. M. D.**, Woolard, J. L., & Michel, J. (2017). Adolescents' legal socialization: Effects of interrogation and Miranda knowledge on legitimacy, cynicism, and procedural justice. *Youth Violence and Juvenile Justice, 15*(4), 419-440. https://doi.org/10.1177/1541204016651479

Cleary, H. M. D., & Warner, T. C. (2017). Parents' knowledge and attitudes about youths' interrogation rights. *Psychology, Crime & Law, 23*(8), 777-793. https://doi.org/10.1080/1068316X.2017.1324030

Cleary, H. M. D. (2017). Applying the lessons of developmental psychology to the study of juvenile interrogations: New directions for research, policy, and practice. *Psychology, Public Policy, and Law, 23*(1), 118-130. https://doi.org/10.1037/law0000120

One of the most downloaded articles in 2017 from Psychology, Public Policy, and Law*

Sah, S., Tannenbaum, D., **Cleary, H.**, Feldman, Y., Glaser, J., Lerman, A., MacCoun, R., Maguire, E., Slovic, P., Spellman, B., Spohn, C., Winship, C. (2016). Combating biased decision making and promoting justice and equal treatment. *Behavioral Science & Policy, 2*(2), 79-85. 10.1353/bsp.2016.0017

* Mikytuck, A. M., & **Cleary, H. M. D.** (2016). Factors associated with turnover decision making among juvenile justice employees: Comparing correctional and non-correctional staff. *Journal of Juvenile Justice, 5*(2), 50-67. https://www.ncjrs.gov/pdffiles/251065.pdf

Cleary, H. M. D., & Warner, T. C. (2016). Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects. *Law and Human Behavior, 40*(3), 270-284. https://doi.org/10.1037/lhb0000175

Baker, T., **Cleary, H. M. D.**, Pickett, J. T., & Gertz, M. (2016). Crime salience and public willingness to pay for child saving and juvenile punishment. *Crime & Delinquency, 62*(5), 645-668. https://doi.org/10.1177/0011128713505487

Najdowski, C. J., **Cleary, H. M. D.**, & Stevenson, M. C. (2016). Adolescent sex offender registration policy: Perspectives on general deterrence potential from criminology and developmental psychology. *Psychology, Public Policy, and Law, 22*(1), 114-125. https://doi.org/10.1037/law0000059

Cleary, H. M. D., & Vidal, S. (2016). Miranda in actual juvenile interrogations: Delivery, waiver, and readability. *Criminal Justice Review, 41*(1), 98-115. https://doi.org/10.1177/0734016814538650

Open Science Collaboration† (2015). Estimating the reproducibility of psychological science. *Science, 349*, aac4716. 10.1126/science.aac4716

Cleary, H. M. D. (2014). Police interviewing and interrogation of juvenile suspects: A descriptive examination of actual cases. *Law and Human Behavior, 38*(3), 271-282. https://doi.org/10.1037/lhb0000070

Open Science Collaboration† (2012). An open, large-scale, collaborative effort to estimate the reproducibility of psychological science. *Perspectives on Psychological Science, 7*(6), 657-660. https://doi.org/10.1177/1745691612462588

Tenney, E. R., **Cleary, H. M. D.**, & Spellman, B. A. (2009). Unpacking the doubt in "beyond a reasonable doubt": Plausible alternative stories increase Not Guilty verdicts. *Basic and Applied Social Psychology, 31*(1), 1-8. https://doi.org/10.1080/01973530802659687

Woolard, J. L., **Cleary, H. M. D.**, Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence, 37*, 685-698. https://doi.org/10.1007/s10964-008-9288-5

Woolard, J. L., Odgers, C., Lanza-Kaduce, L., & **Daglis, H.** (2005). Juveniles within adult correctional settings: Legal pathways and developmental considerations. *International Journal of Forensic Mental Health, 4*(1), 1-18. https://doi.org/10.1080/14999013.2005.10471209

† Open Science Collaboration was a crowdsourced empirical effort to estimate the reproducibility of a sample of studies from the psychological literature. 270 researchers from around the world completed 100 replication studies.

Book Chapters, Reports, and Essays

Cleary, H. M. D. (in press). State of the science on interviewing and interrogation of youthful suspects. Subject matter expert brief for Project Aletheia: A collaborative center for improving the science and practice of interrogation.

Cleary, H. M. D., & Crane, M. G. (in press). Police interviewing and interrogation of adolescent suspects. *Oxford Handbook of Developmental Psychology and the Law.*

Cleary, H. M. D. (2022). Ten reasons why parents aren't adequate protectors of youth in police interrogations. *The Champion, 46*(10), 20-32.

Cleary, H. M. D., & Thompson, D. (2022, November 11). Moving away from deception when interrogating young suspects: Psychologists and interviewing experts agree on better ways to question youth. *Psychology Today: Sound Science, Sound Policy.*

Blandon-Gitlin, I., **Cleary, H. M. D.**, & Blair, A. (2020). Race and ethnicity as a compound risk factor in police interrogation of youth. In M. Stevenson, B. Bottoms, & K. Burke (eds.), *The legacy of race for children: Psychology, public policy, and law* (pp. 169-187). Oxford: Oxford University Press.

Cleary, H. M. D., & Brubaker, S. J. (2018, June). Resident and staff perceptions of safety and engagement with the Community Treatment Model. Report submitted to Annie E. Casey Foundation, Grant #GA-2016-X3828/

Cleary, H. M. D., & Vidal, S. (2014). Police interviewing and interrogation of adolescent suspects: Process and outcomes. In M. Miller, J. Chamberlain, & T. Wingrove (Eds.), *Psychology, law, and the wellbeing of children* (pp. 50-65). New York: Oxford University Press.

Open Science Collaboration.[†] (2014). The Reproducibility Project: A model of large-scale collaboration for empirical research on reproducibility. In V. Stodden, F. Leisch, & R. Peng (Eds.), *Implementing reproducible computational research (A Volume in The R Series).* New York, NY: Taylor & Francis.

Baker, T., **& Cleary, H. M. D.** (2014, August). An examination of risk classification systems in Virginia. Pro bono data analysis and report submitted to the Virginia Department of Juvenile Justice.

Youngs, A., & **Cleary, H.** (2011, September). Issues facing law enforcement considering the elderly. In J. Jarvis and A. Scherer (Eds.), The future of law enforcement: A consideration of potential allies and adversaries. Volume 7: Proceedings of the Futures Working Group.

Works in Progress

**denotes student collaborator*

* Bettens, T., & **Cleary, H. M. D.** (under review). Defense attorney perspectives about juvenile interrogations: SROs, parents, and the adolescent defendant.

Guarnera, L. A., & **Cleary, H. M. D.** (under revision). *Trauma and adolescents' false and coerced confessions.* In L. Malloy, R. Helm, & T. Zottoli (Eds.), *Confessions and guilty pleas of youth: Developmental science and practical implications.*

* Bettens, T., & **Cleary, H. M. D.**, & Bull, R. (under review). Humane interrogation strategies are associated with confessions, cooperation, and disclosure: Evidence from a field study of U.S. suspects.

Kassin, S. M., **Cleary, H. M. D.**, Gudjonsson, G. H., Leo, R. A., Meissner, C. A., Redlich, A. D., & Scherr, K. C. (under review). Police-induced confessions, 2.0: Risk factors and recommendations.

Cleary, H. M. D., Warner, T. C., ***** Clifton-Mills, A. E., Belgrave, F. Z. (in preparation). A dyadic examination of youths' and parents' interrogation knowledge and decision making.

Drizin, S. A., Leo, R. A., & **Cleary, H. M. D.** (in preparation). Grief and trauma in the interrogation room: Documented cases of false confessions to murder of a family member.

Awards and Honors

- 2022 VCU Wilder School Excellence in Public Policy and Practice Award
- 2022 Wicklander-Zulawski's Remarkable Women in Interviewing
- 2018 Louise Kidder Early Career Award, Society for the Psychological Study of Social Issues (SPSSI; APA Div. 9)
- 2018 VCU Wilder School Excellence in Mentoring Award
- 2017 VCU Wilder School Excellence in Scholarship Award
- 2017 Translational Research Fellow, VCU Office of Public Policy Outreach
    - One of 10 faculty selected from all of VCU to partner with the Virginia legislature to translate faculty research and expertise into legislation. Participants met with key legislators and informed public policy on issues relevant to their scholarship.
- Co-author of Reproducibility Project: Psychology that was named #8 of Top 100 Stories of 2015 by Discover Magazine, #6 by Science News, #5 in Altmetric100, Nature Magazine's Top Science Stories of 2015, and a runner-up for Breakthrough of the Year by Science Magazine

GRANTS

2022 – 2024 **Virginia Commonwealth University Breakthroughs Fund ($75,000).** *Inconspicuous extremism: Using deep learning, distant supervision and panel surveys to uncover the microfoundations of far-right social media influence.* Research methods and public policy consultant. PIs: David Webber, Christopher Whyte, and Ugochukwu Etudo (VCU).

2021 – 2023 **Virginia Commonwealth University Presidential Research Quest Fund ($45,440).** *Through their eyes: Leveraging virtual reality technology to understand adolescents' perceptions of custodial police interrogations.* Principal Investigator.

2020 – 2023 **National Science Foundation, Law and Science Program ($235,253).** *Collaborative research: Does registration and notification policy deter adolescent sexual offending? A prospective study of integrated criminology and psychology theories.* Co-Principal Investigator in collaboration with Cynthia Najdowski (SUNY-Albany).

2019 – 2020 **Society for the Psychological Study of Social Issues ($2,000).** *Assessing school safety in the age of threat assessment: A Virginia policy study.* Co-Principal Investigator in collaboration with Sarah Raskin and Jessica Smith (VCU).

2016 – 2017 **Annie E. Casey Foundation ($27,689).** *Resident and staff perceptions of safety and engagement with the Community Treatment Model.* Co-Principal Investigator in collaboration with Sarah Jane Brubaker (Virginia Commonwealth University).

2016 – 2017 **U.S. Department of Justice, Office of Community Oriented Policing Services ($74,852).** *Richmond Law Enforcement Intervention Focusing on Education (LIFE) program.* PI: Richmond Police Department. (VCU Evaluation team: $32,000).

2016 – 2017 **Virginia Commonwealth University Presidential Research Quest Fund ($38,248).** *Testing the general deterrent impact of adolescent sex offender registration policies.* Principal Investigator.

2015 – 2016 **Wilder School Small Grants Program ($5,000).** *Parent perspectives on youths' legal rights: Predicting parents' support for adolescent self-determination.* Principal Investigator.

Conference Presentations

Paper Presentations (selected)

**denotes student collaborator*

Cleary, H. M. D., Warner, T. C., Clifton-Mills, A. E., & Belgrave, F. (2023, November). A dyadic approach to understanding youths' and parents' interrogation decision making [Paper presentation]. American Society of Criminology Annual Meeting, Philadelphia, PA.

Kassin, S. M., **Cleary, H. M. D.**, Gudjonsson, G. H., Leo, R. A., Meissner, C. A., Redlich, A., & Scherr, K. C. (2023, August). AP-LS Scientific Review Paper 2.0: Police-induced confessions - risk factors and recommendations [Paper presentation]. American Psychological Association Annual Meeting, Washington, DC.

Gottesman, L., & **Cleary, H. M. D.** (2023, August). Navigating judicial skepticism and legal barriers to the admission of expert psychological testimony regarding confession evidence [Paper presentation]. American Psychological Association Annual Meeting, Washington, DC.

Cleary, H. M. D., & Thompson, D. (2023, May). We're on the same team: Advancing collaboration between researchers and investigators toward better youth interviewing [Paper presentation]. American Society of Evidence-Based Policing Annual Meeting, Las Vegas, NV.

Kassin, S. M., **Cleary, H. M. D.**, Redlich, A. D., & Scherr, K. C. (2023, May). Police-induced confessions: Risk factors and recommendations [Paper presentation]. Innovations in criminal justice: The 2023 Quattrone Center Spring Symposium. Quattrone Center for the Fair Administration of Justice, Philadelphia, PA.

Cleary, H. M. D., Crane, M. G., & Gottesman, L. (2023, April). Trauma as a potential risk factor for involuntary and false confessions. Innocence Network Annual Conference, Phoenix, AZ.

Cleary, H. M. D., & * Bettens, T. (2023, March). Defense attorney perspectives about juvenile interrogations: SROs, parents, and the adolescent defendant [Paper presentation]. American Psychology-Law Society Annual Meeting, Philadelphia, PA.

Cleary, H. M. D., & Thompson, D. (2023, March). The odd couple: How an interviewer and researcher collaborate to reform police interrogations [Paper presentation]. Academy of Criminal Justice Sciences Annual Meeting, National Harbor, MD.

Cleary, H. M. D. (2022, March). Schoolhouse questioning: School administrators as proxy interrogators [Paper presentation]. American Psychology-Law Society Annual Meeting, Denver, CO.

Cleary, H. M. D., & Thompson, D. (2022, March). Lying to get to the truth: The evolution of juvenile interrogations [Paper presentation]. Academy of Criminal Justice Sciences Annual Meeting, Las Vegas, NV.

Cleary, H.M. D., & Bull, R. (2021, November). Context matters: Individual and situational factors in suspects' interrogation and confession decision making [Paper presentation]. American Society of Criminology Annual Meeting, Chicago, IL.

Najdowski, C. J., & **Cleary, H. M. D.** (2020, March). Does perceived net cost reduce sexual offending in adolescents who are aware of registration laws? [Paper presentation]. American Psychology-Law Society Annual Meeting, New Orleans, LA.

* Smith, J. S., & **Cleary, H. M. D.** (2020, March, accepted). Analyzing legislative proposals for threat assessment teams in K-12 schools: Patterns, best practices, and future directions [Paper presentation]. Academy of Criminal Justice Sciences Annual Meeting, San Antonio, TX.

Bull, R., **& Cleary, H. M. D.** (2019, July). Jail inmates' perspectives on police interrogation [Paper presentation]. International Congress on Law and Mental Health Biennial Meeting, Rome, Italy.

Cleary, H. M. D. & Brubaker, S. J. (2019, June). Agents of change: Virginia's new therapeutic model for juvenile corrections [Paper presentation]. Society for the Psychological Study of Social Issues Annual Meeting, San Diego, CA.

Cleary, H. M. D., & Najdowski, C. J. (2019, March). Adolescents' awareness of sex offender registration policies and self-reported sexual offending [Paper presentation]. American Psychology-Law Society Annual Meeting, Portland, OR.

Warner, T. W., & **Cleary, H. M. D.** (2019, March). Parents' interrogation knowledge and situational decision-making in juvenile interrogations [Paper presentation]. American Psychology-Law Society Annual Meeting, Portland, OR.

Brubaker, S. J., & **Cleary, H. M. D.** (2018, August). Promises and challenges of a therapeutic model for juvenile justice facilities: Resident and staff perceptions [Paper presentation]. Society for the Study of Social Problems Annual Meeting, Philadelphia, PA.

Cleary, H. M. D., & Bull, R. (2017, November). Factors influencing jail inmates' interrogation and confession decision making: Results from an American study [Paper presentation]. American Society of Criminology Annual Meeting, Philadelphia, PA.

* Naoroz, C. J., & **Cleary, H. M. D.** (2017, November). News media framing of police body-worn cameras: A content analysis [Paper presentation]. American Society of Criminology Annual Meeting, Philadelphia, PA.

Cleary, H. M. D., & Bull, R. (2017, March). Factors influencing jail inmates' interrogation and confession decision making: Results from an American study [Paper presentation]. American Psychology-Law Society Annual Meeting, Seattle, WA.

Cleary, H. M. D., & Bull, R. (2017, March). Jail inmates' perspectives on police interrogation [Paper presentation]. American Psychology-Law Society Annual Meeting, Seattle, WA.

Vidal, S., **Cleary, H. M. D.**, & Woolard, J. (2016, March). Experiences with the police and knowledge about interrogation practices as correlates of legal socialization [Paper presentation]. Society for Research on Adolescence Annual Meeting, Baltimore, MD.

Cleary, H. M. D., & Warner, T. C. (2015, November). Police training and practice in juvenile interrogation: Techniques used with juvenile suspects [Paper presentation]. American Society of Criminology Annual Meeting, Washington, DC.

Cleary, H. M. D. (2014, August). What happens when police question youth? An observational study of actual juvenile interrogations [Paper presentation]. American Psychological Association Annual Meeting, Washington, DC.

Cleary, H. M. D., Warner, T. C., & Guarnera, L. A. (2014, March). The role of suspect and juror attributes in public perceptions of juvenile confession evidence [Paper presentation]. American Psychology-Law Society Annual Meeting, New Orleans, LA.

Cleary, H. M. D., Warner, T. C., Guarnera, L. A., & Nagel, A. (2013, November). The role of support for gang enhancement laws in public perceptions of juvenile interrogation and confession evidence [Paper presentation]. American Society of Criminology Annual Meeting, Atlanta, GA.

Guarnera, L. A., Warner, T. C., Nagel, A., & **Cleary, H. M. D.** (2013, November). Attitudes toward youth gangs predict jurors' evaluations of juvenile interrogation and confession evidence [Paper presentation]. American Society of Criminology Annual Meeting, Atlanta, GA.

Cleary, H. M. D., Woolard, J. L., Jarvis, J., Vidal, S. (2012, March). Observing custodial juvenile interrogations [Paper presentation]. American Psychology-Law Society Annual Meeting, San Juan, Puerto Rico.

Cleary, H. M. D., Woolard, J. L., Jarvis, J., Vidal, S. (2011, March). An observational study of interview characteristics and Miranda in juvenile interrogations [Paper presentation]. American Psychology-Law Society Annual Meeting, Miami, FL.

[11 additional paper presentations prior to 2010 available upon request]

Poster Presentations (selected)

**denotes student collaborator*

*Clifton-Mills, A. E., **Cleary, H. M. D.**, & Najdowski, C. J. (2023, November). Peer influence, perceived costs versus benefits and sexual offending among adolescents: A replication study [Poster presentation]. American Society of Criminology Annual Meeting, Philadelphia, PA.

*Clifton-Mills, A. E., **Cleary, H. M. D.**, & Najdowski, C. J. (2023, August). Youths' awareness of sex offender registration policy and associated registerable sexual behaviors [Poster presentation]. American Psychological Association Annual Meeting, Washington, DC.

*Mikytuck, A. M., & **Cleary, H. M. D.** (2016, March). Factors that impact turnover decision making among juvenile justice employees: Comparing correctional versus non-correctional staff [Poster presentation]. American Psychology-Law Society Annual Meeting, Atlanta, GA.

****Awarded the Outstanding Student Presentation in Corrections Research*****

Invited Lectures (Selected)

Cleary, H. (2022, November). *Litigating adolescence: What attorneys need to know about adolescent interrogations and false confessions.* New York Legal Aid Society.

Cleary, H. (2022, October). *Redefining adolescence: What investigators need to know about interviewing youth.* International Association of Interviewers (IAI) Elite Training Days annual conference.

Cleary, H. (2022, February). *Police, courts, and the adolescent brain: Developmental science in the American legal system.* University of Virginia School of Law.

Cleary, H. (2021, December). *What attorneys need to know about false confessions.* National Association of Public Defenders (virtual).

Cleary, H. (2021, June). *Youth interrogations: Beyond the tape.* Ohio Public Defender Juvenile Summit (virtual).

Cleary, H. (2021, June). *How trauma magnifies risk of involuntary and false confessions among adolescents.* Innocence Network Scholarship Forum (virtual).

Cleary, H. (2019, July). *What attorneys need to know about false confessions.* Georgia Public Defender Council annual conference, Savannah, GA.

Cleary, H. (2019, April). *Inside the interrogation (class)room: When students are questioned at school.* School Safety Panel, VCU Center for Public Policy, Richmond, VA.

Cleary, H. (2018, July). *Incarcerated youth and sexual health.* Virginia League for Planned Parenthood, Richmond, VA.

Cleary, H. (2018, February). *Community-engaged research in action: Challenges, rewards, and lessons learned from a juvenile justice agency-researcher partnership.* University of Virginia, Department of Community Psychology roundtable, Charlottesville, VA.

Cleary, H. (2017, May). *Trauma among youth in juvenile corrections.* Family Impact Seminar on Adverse Effects of Childhood Trauma, Virginia General Assembly's Commission on Youth. Richmond, VA.

Cleary, H. (2017, April). *Police interrogation of adolescents: From research to practice.* Annual Public Defender Conference, Office of the State Public Defender of Mississippi, Biloxi, MS.

Cleary, H. (2016, August). *Adolescent development, procedural justice, and the power of police to shape youths' beliefs.* Richmond Police Department and Art180-Performing Statistics project, Richmond, VA.

Cleary, H. (2015, May). *Juvenile interrogations: From research to practice.* Annual Indigent Defense Seminar, Virginia State Bar Association, Richmond, VA.

Cleary, H. (2012, March). *What happens when police question adolescents?* VCU Honors College: Berglund Seminar Series.

Cleary, H. (2008, August). *Interviewing and interrogation of juveniles: how kids are different and why it matters.* FBI National Academy, 234th session, Applied Criminology.

Daglis, H. (2007, August). *Interviewing and interrogation of juveniles: how adolescent development can inform police interactions with youth.* FBI National Academy, 230th Session, joint presentation to Gangs, Developmental Issues, and Criminal Behavior and Applied Criminology.

Woolard, J., & Daglis, H. (2007, June). *Police interrogation and Miranda: perspectives from parents, youth, and law enforcement.* FBI National Academy, 230th Session, Applied Criminology.

TEACHING

Courses

- Applied Research Methods in Public Policy (doctoral)
- Forensic Psychology (masters)
- Criminal Justice Policy Analysis (masters capstone)
- Special Issues in Juvenile Detention
- Research Methods in Criminal Justice
- Senior Seminar in Criminal Justice (undergraduate capstone)
- Directed Independent Study (doctoral and undergraduate)
- Contemporary Issues in Juvenile Justice
- Applications of Statistics
- Community Solutions (service-learning)
- Human Services Fieldwork (service-learning)
- Lifespan Developmental Psychology

Dissertation Committees

Dissertation Chair

- **Hollie MacDonald**, VCU Public Policy & Administration. *A qualitative analysis of Section 1983 filings by incarcerated plaintiffs.*
- **Amy Clifton-Mills**, VCU Public Policy & Administration. *Police officers' perceived risk of victimization and implementation of self-protective behaviors.*
- **Devin Bowers**, VCU Public Policy & Administration. *Exploring agreement with and participation in physician assisted death among healthcare providers using the theory of social constructions and RE-AIM framework.*
- **Jessica Smith**, VCU Public Policy & Administration. *Threat assessment team activity and outcomes in K-12 public schools: Integrating methods to better understand school safety.* December 2021.
- **Kathleen Lee**, VCU Public Policy & Administration. *Are the tickets for everyone?* Heterogeneity of economic rewards for associate's degree completion. July 2021.
- **Carolyn Naoroz**, VCU Public Policy & Administration. *The association between officer perceptions of organizational justice and perceptions of body-worn cameras: A civilizing effect?* November 2018.
- **Jessica Schneider**, VCU Public Policy & Administration. *Validation of Virginia's juvenile risk assessment instrument.* November 2018.

Committee Member

- **Sydney Baker**, John Jay College of Criminal Justice. *Original vs. simplified Miranda rights: The impact on Miranda rights comprehension and subsequent waiver decisions.*

- **Wies Rafi**, VCU Public Policy & Administration. *Academic health science centers and health disparities: A qualitative review of the intervening role of the electronic health record and social determinants of health.* July 2022.
- **Zoey Lu**, VCU School of Education. *The relationships between adolescents' future aspirations and postsecondary enrollment: Finite mixture models.* March 2021.
- **Kristina McGuire**, VCU Department of Psychology. *Community reentry and juvenile justice: The role of developmental science in legislative decision making.* December 2020.
- **Alyssa Mikytuck**, Georgetown University Department of Psychology. *More than risk? Examining support in serious adolescent offenders' friendships.* May 2020.
- **Lena Jaggi**, VCU Department of Psychology. *Catching up and staying out of trouble: Serious juvenile offenders' educational experiences while incarcerated and their transition back to the community.* August 2016.
- **Anna Young**, VCU Public Policy & Administration. *Variations in specialized policing response models as a function of community characteristics: A survey of crisis intervention team coordinators.* December 2015.

Professional Affiliations

- American Psychological Association (2005-present)
- American Psychology-Law Society, APA Division 41 (2005-present)
- Society for the Psychological Study of Social Issues, APA Division 9 (2015-present)
- American Society of Criminology (2012-present)
- Academy of Criminal Justice Sciences (2012-present)
- International Investigative Interviewing Research Group (2021-present)
- Society for the Study of Social Problems (2021-present)
- Level I Certification in Service-Learning Pedagogy (2012)
- Society for Research on Adolescence (2005-2010)

Service

Service to the University

- Chair, Wilder School GTA Committee (2021-22)
- Virginia Commonwealth University Faculty Mentor (2019-20)
- Virginia Commonwealth University Grievance Panel (2019-present)
- Virginia Commonwealth University Promotion & Tenure Policy Committee (2019-present)
- Wilder School Criminal Justice Faculty Search Committee (2019-20)
- Wilder School PhD Committee (2016-2019)
- Wilder School Curriculum Committee (2013-16)
- Wilder School Scholarship and Awards Committee (2015-16)
- Chair, Criminal Justice Program Awards Committee (2015-16)

- Chair, Criminal Justice MS Curriculum Committee (2015-present)
- Wilder School Diversity and Equity Committee (2014-2015)
- Wilder School Criminal Justice PhD Curriculum Committee (2012-2013)
- Psychology Department Committee on Undergraduate Student Engagement (2012)
- Invited lecturer, Berglund Seminar Series, VCU Honors College (2012, 2013)

Service to the Community

- Subject matter expert, International Association of Interviewers (IAI) Certified Forensic Interviewer Modernization Project (2022)
- Chair, Board of Directors, Virginia League for Planned Parenthood (2020-present)
- Member, Board of Directors, Virginia League for Planned Parenthood (2016-present)
- Member, Board of Directors, Patrick Henry School for Science and Arts, Richmond, VA (2020-22)
- Member, Institutional Review Board, Virginia Department of Social Services (2016-22)
- *An Examination of Factors Associated with Juvenile Correctional Officer Retention.* Pro bono research project for the Virginia Department of Juvenile Justice to assess correlates of employee job satisfaction among security staff in attempt to reduce turnover. (2014-15)
- *An Examination of Risk Classification Systems in Virginia.* Pro bono research project for the Virginia Department of Juvenile Justice to assess predictive utility of internal risk assessment tool used to classify offenders' security threat levels. (2013-14)
- VCU-DJJ Summer Basic Skills Student Academy (2013-2014)

Service to the Discipline

- Co-chair, American Psychology-Law Society (APA Div. 41) Research Committee (2019-20)
- Member, American Psychology-Law Society (APA Div. 41) Research Committee (2016-19)
- Member, Society for the Psychological Study of Social Issues (APA Div. 9) Early Career Award Committee (2018-present)
- Visiting Scholar, Behavioral Science Unit, Federal Bureau of Investigation (2005-2014)
- Ad hoc reviewer for the following academic journals and academic presses: *Applied Cognitive Psychology*; *Behavioral Sciences and the Law*; *Child Maltreatment*; *Criminal Justice and Behavior*; *Criminal Justice Review*; *Homicide Studies; International Journal of Forensic Mental Health*; *International Journal of Offender Therapy and Comparative Criminology; Journal of Adolescent Research; Journal of Community Psychology; Journal of Crime and Justice*; *Journal of Experimental Criminology*; *Journal of Penal Law and Criminology*; *Journal of Policing, Intelligence and Counter Terrorism; Justice Quarterly; Law and Human Behavior; Oxford University Press; Police Quarterly; Psychiatry, Psychology, and Law; Psychology, Crime, and Law; Psychology, Public Policy, and Law; SAGE Publishing; Translational Issues in Psychological Science*; *Youth & Society*
- Grant reviews
    - National Science Foundation, Law and Science Panel (2020 and 2022)
    - National Science Foundation, Doctoral Dissertation Research Improvement Grant Program (2022)

- Social Sciences & Humanities Research Council, Government of Canada (2017)
- American Psychology Law-Society Early Career Professionals Grants-in-Aid (2013)
- American Psychology Law Society Research to Enhance the Impact and Diversification of Psychology and Law Research (REID) Grants (2017-20)

Law and Policy Work

Provided consultation, live testimony, or written support for the following pieces of legislation or court proceedings:

- 2023—Brief for Neuroscience, Psychology, and Juvenile Justice Scholars and Nonprofits as *Amicus Curiae, People v. Tony Hardin*, California Supreme Court
- 2023—New York S.1099/A.1963 (Protections for juveniles in custodial interrogations)
- 2023—Vermont S.6 (Prohibiting police use of threats and deception in juvenile interrogations)
- 2023—Connecticut SB 1071 (Prohibiting police use of threats and deception in adult and juvenile interrogations)
- 2023—Nevada AB193 (Prohibiting police use of false evidence and promises of leniency in juvenile interrogations)
- 2023—Indiana SB 415 (Prohibiting police use of deception in juvenile interrogations)
- 2022—Brief for Neuroscientists, Psychologists, and Criminal Justice Scholars as *Amicus Curiae, Commonwealth v. Mattis* and *Commonwealth v. Robinson*, Massachusetts Supreme Court
- 2022—Brief for Neuroscientists, Psychologists, and Criminal Justice Scholars as *Amicus Curiae, State v. Poole* and *State v. Parks*, Michigan Supreme Court
- 2022—Indiana SB 340 (Inadmissibility of statements from juveniles subjected to police deception)
- 2021—New York S.2800/A.5891 (Protections for juveniles in custodial interrogations)
- 2021—Oregon SB 418 (Prohibiting police use of deception when questioning juveniles)
- 2020—New York A6982-A (Protections for juveniles in custodial interrogations)
- 2020—Virginia HB 1023 / SB 730 (Electronic recording of custodial interrogations)
- 2019—Virginia SB 734 (Electronic recording of custodial interrogations)
- 2017—Virginia SB 67 (Inadmissibility of statements made by a child during intake)

MEDIA

Featuring Cleary's Work

- Arnold, E. (2023, June 6). Terrell Jones found not guilty of 2009 murder of Centennial man, Andrew Graham. *Centennial Citizen.*
- Slipher, D. (2023, March 8). Professor's virtual reality research looks to pave way for more equitable police interrogations of young adults. *VCU News.*
- Opinion. (2023, February 22) Police should stop treating kids like adults. *El Dorado News-Times.*
- Hewlett, M (2022, April 22). 'Everything I told them was a lie.' Man tells innocence hearing that police coerced his confession in Nathaniel Jones killing. *Winston-Salem Journal.*
- Allman, M. (2022, April 21). Day 4: 'Winston-Salem 5' innocence hearing continues as false confession expert takes stand. *Wfmynews2.com.*
- Denyer, L. A. (2022, April 21). 'I still didn't do it': Jermal Tolliver testifies, tells 3-judge panel Thursday he lied to investigators in 2002 about his involvement in Nathaniel Jones murder. *Wxii12.com.*
- Hewlett, M. (2022, April 2). Attorney: Four men convicted as teens of murdering Chris Paul's grandfather should be declared innocent. *Winston-Salem Journal.*
- Zerwick, P. (2022, March 31). Opinion: Five teenagers. Recanted confessions. Convicted. Sound familiar? *Washington Post.*
- Chammah, M. (2022, February 24). How Melissa Lucio went from abuse survivor to death row. *The Marshall Project.*
- Carlson, E. (2021, August 25). VCU gives half a million for faculty research. *The Commonwealth Times.*
- Komornick, E. (2021, July 2). 18 VCU researchers receive project funding from the university's Presidential Research Quest Fund. *VCU News.*
- Keegan, B. (2020, May 6). A police interrogation measure backed by a VCU professor's research becomes law in Virginia. *VCU News.*
- Editorial staff. (2020, March 16). Our view: Reaching for justice. *Winston-Salem Journal.*
- Green, J. (2020, March 15). Commission finds 'evidence of factual innocence' in cases of 4 men convicted in murder of Chris Paul's grandfather. *Triad City Beat.*
- Brown, T. (2020, March 13). They confessed to murder 18 years ago. The NC Innocence Commission wants another look. *The Raleigh News & Observer.*
- Brown, T. (2020, March 13). Men convicted as boys of killing NBA star's grandfather say they confessed after threats. *The Raleigh News & Observer.*
- O'Neil, B. (2020, March 13). Confession expert says kids high risk for making false confessions. *North Carolina WXII NBC 12.*
- Bonner L. (2020, March 12). Expert compares NC teens charged in NBA star's grandfather's death to Central Park Five. *The Raleigh News & Observer.*
- Hewlett, M. (2020, March 12). Expert: Teens in Jones' case apt to falsely confess. *Winston-Salem Journal.*

- Scobey-Thal, J. (2018, September 21). We need to stop using teens as eyewitnesses. *Medium.com.*
- Starr, D. (2018, June 6). In the "Making a Murderer" case, the Supreme Court could help address the problem of false confessions. *The New Yorker.*
- Hoffman, J. (2014, October 14). In interrogations, teenagers are too young to know better. *The New York Times*, p. A20.
- Study: Few juvenile suspects exercise constitutional rights during interrogations. APA press release highlighting presentation at APA convention (8 August 2014). *APA selected this presentation as one of 10 from the entire convention (approx. 1,200) to highlight with press release.*

Press Communication

- Gentry, D. (2023, March 1). Police, DAs oppose bill to prohibit lying to juveniles during interrogations. *Nevada Current.*
- Kebede, L. F. (Host). (2022, October 13). Season 1, Episode 3 – False Confessions Today. *Civil Wrongs* [Audio podcast].
- Lauzon, K., & Fanson, K. (Hosts). (2022, September 9). Episode 4 – Why in the World. *Real Life Wrongs* [Audio podcast].
- Pauly, M. (2022, January 19). Republicans look to increase police presence in Virginia's schools. *VPM/NPR News.*
- Chaudry, R. (Host). (2021, November 15). State v. Jason Carroll: Episode 7 – Red Flags. *Undisclosed: The State v. Jason Carroll.* [Audio podcast].
- Weill-Greenberg, E. (2021, March 25). Children can be on their own when grilled by police. The push for protection is growing. *The Appeal.*
- Green, G. (2019, December 3). Man who encountered beltway snipers recounts experience. *Capital News Service/US. News & World Report.*
- Levin, S. (2019, October 16). 'It breaks down innocent people': the interrogation method at center of Ava DuVernay lawsuit. *The Guardian.*
- Scobey-Thal, J. (2018, September 21). We need to stop using teens as eyewitnesses. *Medium.com.*
- Starr, D. (2018, June 6). In the "Making a Murderer" case, the Supreme Court could help address the problem of false confessions. *The New Yorker.*
- Trihias, A. (2015, October 11). Experts say sheriff's use of racial slurs not accepted practice in interrogations. *Petersburg Progress-Index.*
- Hoffman, J. (2014, October 14). In interrogations, teenagers are too young to know better. *The New York Times*, p. A20.
- Guest expert on interrogations, Virginia Insight public radio program. 30 June 2014. Audio available at: http://wmra.org/post/teen-confessions

Clement Consulting, LLC

February 29, 2020

Director Lindsey Guice Smith
North Carolina Innocence Inquiry Commission
P.O. Box 2448
Raleigh, NC 27602

Ref: 02 CRS 38884 (Cauthen); 02 CRS 38886 (Bryant)

Dear Ms. Smith,

Pursuant to your request I have reviewed the data from the DNA testing performed at Bode Technology and its predicessor Bode Cellmark Forensics, both henceforth refered to as Bode. The materials included all analyst notes, extraction, quantitation, amplification forms, electropherograms as well as communications during the process of testing the samples submitted.

The testing resulted in three reports dated November 9, 2018, September 26, 2019 and January 9, 2020. After reviewing data for each group of tests I agree with the reported results for the samples included in these reports, however I feel there is additional information that can be determined from two of the samples.

Bode Item E04a/NCIIC Item 140 (Non-adhesive side of black tape) revealed a partial profile that only had reportable results at six out of twenty six loci plus amelogenin. Bode reported this as a mixture of at least two individuals including at least one male contributor, which I agree with. They also indicated that, 'Due to the possibiltiy of allelic drop out, no conslusions can be made on this mixture profile.' Although this reported conslusion complies with the protocols at Bode, there are three loci where there are two alleles and when compared to all the reference profiles that were developed, there are none that match these three loci. Therefore, I would exclude Nathaniel Jones, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen, Jamel Tolliver, Rayshawn Banner, Jessicah Black, Tarshia Coleman and Teresa Hier as being contributors to this sample.

Bode Item 09b/NCIIC Item 23 (Black string-electrical tape from left) was reported as a partial mixture of three or more including a major female and at least one male contributor. I agree with this conclusion but would add that there is evidence there are likely two males present in this sample. This is idicated at the DYS391 loci where a '10' and '11' are detected. This loci is found only on the male Y chromosome so the presence of two alleles indicates there are two males in the mixture. Bode also reported that, 'Due to the possibiltiy of allelic drop out, no conslusions can be made on the minor alleles present in the sample.' There are minor alleles that are foreign to the major unkown female at eleven loci and when compared to the male reference

profiles submitted, it is apparent that Nathaniel Jones possesses alleles consistent with the majority of these minor alleles at all eleven loci. Therefore, I would conclude that Nathaniel Jones cannot be excluded as a possible minor contributor to the DNA in this item.

As always, I am available to discuss these observations with you should you have questions.

Respectfully submitted,

Meghan E. Clement, M.S., D-ABC

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PO Box 18014
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6 November 24

Mr. Brad Bannon
Patterson Harkavy
100 Europa Drive, Suite 420
Chapel Hill, NC 27517

Ref: NC v Rayshawn Banner, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen and Jermal Tolliver

Dear Mr. Bannon,

Pursuant to your request, I am outlining the opinions I have developed in this case based on my knowledge, training, and experience in the field of DNA analysis, and my review of the underlying DNA data.

As a background, I have a Bachelor of Science degree in Biology from Westfield State College in Massachusetts and a Master of Science degree in Forensic Science from the University of New Haven in Connecticut. My C.V. is attached for your convenience.

For almost 40 years, I have worked in the field of forensic biology, including DNA analysis and interpretation. I have been qualified and testified hundreds of times in court as an expert in that field.

As I started in the Forensic field before DNA was being used and am still active to this day, I am familiar with the evolution and progress of DNA analysis and interpretation over the last approximate 38 years, including the time periods of 2002-2008 and late 2018.

Between the first decade of 2000 and late 2018, the field of forensic DNA analysis experienced significant advancements in the equipment, kits and standards used to conduct the analysis and interpret the results.

These advancements, in turn, led to more sensitive testing that yielded significantly more informative and accurate results about human DNA on items submitted for testing, even with smaller quantities of DNA.

For example, in the 2002-2008 time period, the kits and standards used by labs to analyze human DNA focused on DNA characteristics at only 13 loci on the human chromosomes. These kits typically required approximately 1 nanogram (ng) of DNA to develop a full profile. By late 2018, the newer kits detected 7 to 10 more loci on the human chromosomes, nearly doubling the available data for identification and comparison and the sensitivy increased as well. The 2018 kits typically require ~0.25ng -0.5ng of DNA for full profiles and partial profiles can be developed with as little as 0.01ng. The expanded loci and increased sensitivity allowed for development of fuller and more discriminating human DNA profiles on items submitted for analysis in late 2018 than that which was available in 2002-2008.

In late 2018, after the advancements described above, I was retained by the North Carolina Innocence Inquiry Commission staff to provide DNA consultation services related to their review of the innocence claims filed in this case.

My services included a review of the underlying data and results of DNA analysis conducted for the Commission, from 2018 to 2020, by Bode Technology (formerly Bode Cellmark Forensics, both henceforth referred to as "Bode"). Bode's analysis included the development of DNA profiles from multiple items of evidence collected in the original investigation of this case and multiple reference samples collected from known contributors.

The evidence items included material reportedly found binding the victim's hands at the scene of the crime, which was assigned Commission Item #23 and Bode Cellmark Sample Name CCC1820-0265-E09b ("the binding").

Bode produced reports of its analyses dated November 9, 2018; September 26, 2019; January 9, 2020; and March 10, 2020. I reviewed the reports, results, and underlying data of those analyses. In my opinion, based upon that review, Bode's analysis was performed using standard protocols and appropriate controls acceptable in the forensic DNA community and their results were reliable.

At the request of the Commission, I provided a report on February 29, 2020, and expert testimony before the Commissioners on March 11, 2020, about Bode's DNA analyses in the case. In my report and testimony, I noted two additional opinions based on my review of the underlying data: (1) regarding the DNA mixture on the binding, it likely includes DNA from two male contributors, and Nathaniel Jones could not be excluded as one of those contributors; and (2) regarding the DNA mixture on the non-adhesive side of black tape located under the back porch (Commission Item #140, Bode Sample Name CCC1820-0265-E04a), the following people could be excluded as contributors: Nathaniel Jones, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen, Jermal Tolliver, Rayshawn Banner, Jessicah Black, Tarshia Coleman, and Teresa Hier.

Following my work for the Commission, counsel for Defendants asked me to review the data underlying Bode's analysis and further opine on the following questions:

1. Could the DNA mixture profiles developed from the evidentiary items in 2018, including the major female profile in the mixture on the binding, have been developed using the equipment and testing methods generally available in 2002-2008?
2. Assuming the DNA on the binding is a mixture of one major female contributor and two minor male contributors, and assuming one of those male contributors was Mr. Jones, would I be able to draw any conclusions as to whether Rayshawn Banner, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen, and Jermal Tolliver would be excluded as contributors to the mixture?

Regarding Question 1, in my opinion, the DNA mixture profiles developed by Bode from Samples -E04a and -E09b, including the major female profile in the latter, could not have been as fully developed in 2002-2008 as they were in late 2018.

As mentioned above, the advancement in DNA analysis kits and standards between 2002-2008 and 2018 added tremendous sensitivity and at least 50% more loci data points for the identification and comparison of human DNA profiles on items submitted for analysis.

Bode's development of the mixture profile from -E09b, including the major female profile, relied on some of those additional loci data. Although the mixture profile from –E04a did not include any of

the additional loci data, the quantity of DNA recovered from that item was so low that it likely wouldn't have yielded DNA results if tested with the kits available in 2002-2008, while the sensitivity of the kits in 2018 did indeed yield a profile. As a result, the mixture profiles developed in 2018, including the major female profile on the binding, include more discriminating genetic data that can now be compared to DNA from known reference sources to yield more discriminating results of inclusion or exclusion of possible contributors of the DNA on the evidence items.

Regarding Question 2, in my opinion, assuming the DNA on the binding is a mixture of three individuals including one major female contributor and two minor male contributors, and assuming one of those male contributors was Mr. Jones, then Rayshawn Banner, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen, and Jermal Tolliver would all be excluded as contributors to the mixture. This opinion is based on the following facts: A) The most alleles observed at any loci is 5. As each person will generally contribute 1 or 2 alleles at any given loci, seeing only 5 alleles indicates there are at least 3 contributors. There is no indication there are more than 3 contributors, or in other words, there are no loci where there are 7 or more alleles. B) There is a clear major female profile that was deduced by Bode. When you subtract the major alleles from the mixture, there are 11 loci with minor alleles that came from the other two contributors. C) Those two contributors are males based on the fact that at the DYS391 locus there are 2 alleles. DYS391 is a male specific locus at which each male will only possess one allele. D) When I compared those remaining minor alleles, including the alleles at the DYS391 locus, to the reference profile from Mr. Jones, he possesses alleles found at all 11 loci. As the bindings were removed from his person, it is not surprising that DNA consistent with him would be observed. E) When I subtract the major female DNA profile and the minor alleles consistent with Mr. Jones, there are 3 alleles remaining, including one allele at the DYS391 locus, which would have to originate from a male third contributor. F) Rayshawn Banner, Dorrell Brayboy, Christopher Bryant, Nathaniel Cauthen and Jermal Tolliver do not possess all 3 alleles that are foreign to the major female profile and the alleles consistent with Mr. Jones and therefore, would be excluded as the source of this DNA.

Please feel free to contact me if you have any questions.

Respectfully submitted,

Meghan E. Clement

Meghan E. Clement, M.S., ABC-MB