

Silk Plant Forest Legal Review Conducted For the Silk Plant Forest Truth Committee

Scope of Review

This report reflects the results of an independent legal review of the Investigation of the assault of Jill Marker at the Silk Plant Forest (SPF) store at Silas Creek Crossing Shopping Center on December 9, 1995. Writer was requested to address the following questions;

1. Do you agree or disagree with the unanimous conclusion of the SPF Citizens Review Committee that “the Committee does not have confidence in the investigation, the information in question, or the result of the investigation.” and what is the basis for your opinion?

Answer: Agree, see below.

2. A. Were all suspects in the Silk Plant Forest case fully investigated?

Answer: No

- B. Does any reason exist today to drop Kenneth Lamoureux as a suspect?

Answer: No

3. Did the Winston-Salem PD conduct an adequate, procedurally sound, objective investigation and was there effective oversight of the lead investigator(s) during this investigation?

Answer: No

The SPF case has been the subject of numerous reviews and investigations by several different entities attempting to determine whether justice was done when Calvin Michael Smith (Smith) was convicted of assaulting Jill Marker and robbing the SPF. The records of the original investigation and subsequent inquiries provided a rich source of information for this review. This writer examined these extensive public records, which include thousands of pages of documents, transcripts and exhibits from the original investigation, subsequent legal proceedings and various extrajudicial reviews.¹ Former WSPD Sergeant Chuck Byrom and former Lieutenant Joseph Ferrelli, who were assigned by the WSPD to assist the Silk Plant Forest Citizens’ Review Committee in their examination of the SPF case, were consulted as to the various aspects of their

¹ The writer was only granted access by the City of Winston-Salem to any documents that were public record.

Report of Chris Swecker, Attorney at Law

investigation which was authorized and sanctioned by City Council resolutions.² They did not volunteer for the Committee assignment but were nominated by the then-serving chief of police (Patricia Norris) and selected by the Committee because of Sgt. Byrom's and Lt. Ferrelli's previous experience assisting a similar City Council authorized citizens committee to review the highly publicized Deborah Sykes case in which Darryl Hunt had been wrongly convicted and later exonerated. Sgt. Byrom and Lt. Ferrelli displayed integrity, skill, attention to detail and considerable courage in discharging their assignment. Their thorough investigation provided a sound foundation for the findings and conclusions of the Committee.

Procedural History

The Silk Plant Forest Case has been the subject of at least two pretrial hearings; a jury trial, two Motions for Appropriate Relief (MAR); two appeals to the NC Court of Appeals; A NC State Supreme Court Appeal; a Winston-Salem Police Department (WSPD) Internal Review (that was later retracted); two SBI Investigations; a review by the Winston-Salem City Council through the use of the Silk Plant Forest Citizens' Review Committee (Committee); another WSPD review in response to the findings of the Citizen's Review Committee; an investigative report series conducted by the Winston-Salem Journal and an ongoing review by the Duke Law School Innocence Project. There is also a Federal Habeas Corpus Petition pending.

Executive Summary

The central question posed is whether the citizens of Winston-Salem can have confidence in the original Silk Plant Forest (SPF) investigation, which resulted in the prosecution, conviction and incarceration of Calvin Michael Smith. In order to answer this and the other questions posed by the SPF Truth Committee this review closely examined the conduct of the SPF investigation, and the methods utilized during the course of the investigation.

This review was not an effort to reinvestigate this case. Moreover, nothing in this report should be interpreted as critical of the original jury, their verdict or the court system. The jury discharged their duty faithfully and rendered a decision based on the evidence that was presented to them. Unfortunately, the very limited and flawed record created by that trial has provided the framework for subsequent legal proceedings. The record was further limited by the decision of Smith's court-appointed Counsel to forgo putting on a full defense of Calvin Michael Smith by waiving his opportunity to put forth evidence, thus limiting the trial record to the Prosecution's evidence and cross examination of Prosecution witnesses by the Defense.

² Over a 16-month period this writer expended over 240 hours on this review.

Report of Chris Swecker, Attorney at Law

There is a significant amount of information, however, that the trial jury and trial judge did not see and unfortunately some of the original record is based on inaccurate or incomplete information. The full record tells a more complete story of the Silk Plant Forest investigation. Some of this evidence/information was not developed by the original investigation and hence was not known during the original trial.³ For example the original investigation did not elicit from one witness, Jeana Schopfer, that shortly before Jill Marker was attacked she had called Schopfer from the SPF store phone to tell her that Kenneth Lamoureux had been in the store. Lamoureux was under a domestic violence restraining order for battering his wife on several occasions and had just been released from an involuntary commitment to the psychiatric wing of Forsyth Hospital. According to Schopfer, shortly before the attack occurred Marker informed her in a phone call that Lamoureux had appeared at the SPF store and had asked the married Jill Marker to go to dinner with him. Marker mentioned to Schopfer that Lamoureux was upset that she had refused him and had been hanging out in the store.

Other critical evidence disappeared without any satisfactory explanation, such as a security video recording from the adjacent Toys R Us store that would have, at minimum, depicted the movements of key witnesses, such as Paula Glover and her child, Eugene Littlejohn and even Calvin Michael Smith, if Littlejohn's trial testimony was accurate and truthful. This videotape would have established a clear timeline of the events of 12/9/95.⁴ In some instances important evidence was never documented like the multiple photo lineups displayed to Jill Marker on October 31, 1996.

Some evidence was misreported and testimony was provided under oath in several proceedings that was at the very least mistaken or careless with the facts, as when Detective Sergeant Randy Weavil swore in a pretrial hearing and again more than ten years later in an evidentiary hearing on Smith's Second MAR that he personally hand wrote Smith's interrogation statement dated January 24, 1997. A handwriting expert hired by the SPF Citizen's Review Committee proved during the SPF Citizens Review Committee investigation that Smith had penned the statement, not Weavil despite his detailed testimony to the contrary.

The trial jurors also did not hear that during the course of the SPF investigation there were violations of policies and procedures with respect to the conduct of criminal

³ Given the manner in which this case was originally investigated and the lead investigator's statements that he selectively documented his investigation it is difficult to determine in any instances whether information was not developed or simply not documented.

⁴ Glover was in the store shopping shortly before the attack and had a conversation with Marker in which Marker told her that the bathroom in the back of the store could not be used because it was "too dangerous" (in the back of the store). This tape could also have been utilized to either corroborate or discredit Eugene Littlejohn's trial testimony (later recanted) that both he and Smith entered the Toys R Us store after accosting Jill Marker at the SPF on the night she was attacked, December 9, 1995.

Report of Chris Swecker, Attorney at Law

investigations such as documentation of suspect photo lineups.⁵ These breeches were not inconsequential and had impact on the outcome of the trial of Smith as demonstrated below.

This review did not, however, find evidence that anyone currently employed by the WSPD or City of Winston-Salem deliberately withheld, fabricated or manipulated evidence. It should be noted that the SPF investigation took place under a different Police Chief and many department employees who played key roles in the case have left the department or retired. The City of Winston-Salem and the Police Department should be credited for many positive changes that have been implemented since the original investigation. Some of the changes were in response to the Silk Plant Forest Citizen's Review Committee investigation and others were implemented before the City's inquiry began. For example, the WSPD's current photo lineup policy was implemented prior to the City's review and is a law enforcement best practice. The procedures surrounding documentation of witness and subject statements have been addressed and current policies exceed those of the FBI and North Carolina State Bureau of Investigation. Policies regarding the handling of evidence have been strengthened.

In the final analysis however, the original SPF investigation was incomplete, under-documented and tainted by procedural irregularities. Some of the techniques utilized and actions taken in the original SPF investigation when combined with the loss of critical evidence and significant policy violations simply cannot be justified or minimized as inconsequential under the circumstances that existed at the time of the investigation. As a result, while the original investigation was cleared by an arrest and conviction, the manner in which it was conducted raises more questions than answers. Based on this review it is clear to this writer, as a former Assistant District Attorney, career FBI Special Agent/Assistant Director in Charge of Criminal Investigations and practicing Attorney, that the SPF Citizen's Review Committee's findings and conclusions are well founded and based on a more thorough and impartial investigation of the Silk Plant Forest case than the original investigation.

⁵ The WSPD October 2010 report in response to the SPF Citizen's Review Committee report concedes that "certain aspects of the Silk Plant Forest Investigation were not performed at the level of today's standards and some did not meet those in existence at the time." (See WSPD Report page 44).

Law Enforcement Standards

“The mandates of procedural due process for accused persons must remain paramount in the minds of law enforcement officers as they go about the task of protecting life and property. These legal protections and individual rights cannot be placed on hold as a matter of convenience to achieve agency or officer objectives. They must be recognized as an indispensable and non-negotiable part of law enforcement in a democratic state, and a recognized cornerstone of police agency policy. The fact that officers cannot disregard their own responsibility to the law or circumvent the rights of individuals as prescribed by law in the course of performing their duties is a matter that deserves repetition and reinforcement in a policy on police conduct as well as in the agency’s code of conduct and core values.”

International Association of Chiefs of Police Model Policy on Standards of Conduct

With its checks, balances, separation of powers and constitutional guarantees the United States Criminal Justice System is the best in the world. Even so, there is no guarantee of a perfect result. The effective operation of this complex ecosystem depends on each component: the police, the prosecutor, the defense bar and the courts, discharging their responsibilities to the utmost. If any component of the system breaks down a miscarriage of justice can result. The ultimate goal of the Justice system is to seek the truth. Under our legal system however tremendous discretion is invested in law enforcement agencies and the individual investigator in this search for the truth.

It is a bedrock principle of modern policing that law enforcement investigators exercise sound judgment in employing investigative methods that are best suited under the circumstances to uncover truthful, factual information. Unfortunately in a police department that was overwhelmed and under resourced, the need to clear aging cases played a significant role in failing to enable or support the type of investigation that focused on methodical and careful fact finding. WSPD Detective Sergeant Weavil made the point several times in his interview by the SPF Citizen’s Review Committee investigators that during the time period that SPF investigation was actively under investigation the WSPD was overwhelmed with the volume of cases and were running from one case to the next due to a high violent crime rate and extensive gang activity⁶. An unfortunate byproduct of this environment was evident when Weavil, who had direct supervisory responsibility for the SPF investigation, could recall very few details of one

⁶ During Randy Weavil’s December 7, 2009 interview with Lt. Ferrelli and Sgt. Byrom, Weavil made numerous references to the pervasive gang problem, high caseload and that the robbery squad was “hammered” and he was “slamming.” Detectives with assignments (page 7 and 64) who were “working daylight to dark” (page 12). At the same time Former Detective Williams was using leave at a rate that drew Weavil’s attention stating, “you know, if he (Williams) built a sick day, he took a sick day” (page 8). Weavil apparently even called for a “mandatory assessment” of Williams. (See Weavil interview page 32).

Report of Chris Swecker, Attorney at Law

of the most tragic and high profile cases in the history of the City of Winston-Salem when he was interviewed by SPF Citizen's Review Committee investigators.

In this environment the opportunities for an unsupervised investigator who lacked objectivity to consciously or unconsciously influence the outcome of the investigation existed at every stage of the investigation. As a result many techniques that were permitted by law such as lying to the subject of an interrogation or providing a witness details of a crime that were not known to the public were not appropriate or conducive to the discovery of facts under those particular circumstance. The overwhelming majority of law enforcement officers discharge this significant responsibility with professionalism and care. Unfortunately in the SPF investigation there were instances when these tenets took a back seat to "clearing the case."

First and second line supervisors bear the responsibility to objectively oversee investigations to ensure that the case moves forward in full compliance with laws, procedures and policies. The supervisor must ensure the lead investigator thoroughly develops and considers all the available information, properly documents the investigation, uses appropriate techniques and does not develop "tunnel vision." Supervisors must allocate resources commensurate with the prioritization of the case and the needs of the investigation.

In the SPF case the supervisory role was compromised by active participation in the investigation at crucial junctures by a first line supervisor and by inadequate supervision of the investigation. It should have been readily apparent to the Supervisors that the lead Detective was disorganized, overwhelmed by the complexity of the case and unable to cope appropriately with the pressure to make an arrest. It should also have been noted that his close relationship with the victim's family was crossing boundaries that threatened his objectivity. The record suggests that sometime after the Smith trial, Detective Williams' supervisor, Randy Weavil, expressed his concerns about Williams' job performance in a memorandum. Ultimately Williams was given desk duty for a period of time and thereafter left the department.

Prosecutors, as officers of the court, are important parts of the checks and balances built into the system. In North Carolina the District Attorneys and their staffs play a unique role in an investigation as they are ultimately responsible for making prosecution decisions and presenting the evidence gathered by investigators. While the best practice is for law enforcement officers to consult prosecutors at crucial stages of the investigation such as the conduct of lineups, arrests, and the issuance of search warrants, this did not often occur in the SPF investigation. In the SPF case the District Attorney's Office was essentially presented with a completed investigation, with many key actions and omissions taking place *after* Smith's arrest. The District Attorney's Office was uninvolved with the decision to arrest Smith. This analysis concludes that in

Report of Chris Swecker, Attorney at Law

the SPF investigation there were many instances where techniques or practices were utilized that were procedurally unsound, not appropriate for the circumstances and/or served to effectively obscure the quest for credible evidence as to who actually committed the assault on Jill Marker. The Prosecutor(s) had few opportunities to serve as an objective third party to review these techniques and when the case was presented for prosecution missed those opportunities to do so despite certain “red flags” that were raised concerning the lead Detective’s reports and characterization of evidence.

Analysis

On December 9, 1995 sometime between 8:45 and 8:55 pm, Jill Marker was violently assaulted while working at the Silk Plant Forest store located at the Silas Creek Crossing Shopping Center in Winston-Salem, NC. The ensuing investigation was high profile and complex. Marker, a young, pregnant former school teacher working nights to make ends meet was brutally assaulted in a store located in a busy shopping center while scores of holiday shoppers, store employees and an off-duty policeman were as close as next door and a hired security guard was patrolling the premises. Despite the densely populated setting no independent eyewitness is known to have observed the attack or the escape of the perpetrator from the horrific and bloody crime scene. No weapon was found and although forensic evidence was gathered, neither the convicted defendant, Calvin Michael Smith, nor any other suspect was ever linked by physical evidence to the scene of the crime or the victim. As a result forensic evidence was not a factor in this case.

With a violent criminal on the loose and few promising leads in a highly publicized unsolved case, large monetary rewards were quickly announced. The Winston-Salem *Crime Stoppers* tip hotline urgently solicited calls and the WSPD appealed directly to the public on several occasions to come forward with information. It is common in such cases to generate a significant volume of leads. Sifting through and documenting the investigation of the various tips generated by such publicity is challenging. Some of the information generated in cases that are so public draws out misinformation from people attempting to settle scores. Other information originates from publicity seekers or tipsters motivated solely by the prospect of a monetary reward. It is not uncommon to receive false confessions from disturbed people for reasons known only to them.

The SPF investigation was further complicated because the extensive publicity in a relatively small community increased the potential for honest witnesses with good intentions to confuse details provided by the media with what they actually experienced and observed. Given the complexity of the case and the conditions described above, it was critical for investigators working on this case to examine the motivations of witnesses and tipsters, take every possible step to determine their reliability, and

Report of Chris Swecker, Attorney at Law

corroborate their information with independent evidence. It was also essential for the investigators to keep an open mind and avoid “tunnel vision.” In order to ensure their statements were entirely based on their observations and first-hand knowledge, it was especially important for the investigators to avoid revealing relevant details to potential witnesses and/or “coaching” witnesses. Diligent and skilled investigators are trained and know from experience that in order to preserve the credibility of the evidence important details must come from the witnesses’ independent recollection of events, not from information provided by the investigators.

For the first two days of the SPF investigation an experienced homicide investigator, Detective M.N. Barker⁷, was originally assigned. When it became apparent that Jill Marker would survive the attack, the case was inexplicably assigned to a robbery investigator despite the fact that the WSPD Procedures Manual at the time mandated the case classification be based on the most serious charge. The most serious charge under the circumstances would have been Assault with A Deadly Weapon with Intent to Kill Inflicting Serious Bodily Injury⁸. It should be noted that in most police departments the Homicide Investigators are often the most experienced and skilled Detectives in the Department. In this investigation, but for the excellent medical attention received by the victim, luck and Jill Marker’s will to survive, it would have indeed been a homicide case. In short, this case merited assignment to one of the Department’s most experienced and skilled Crimes Against Persons detectives.

Nevertheless, Detective, D. R. Williams, a Robbery Detective with little experience with complex investigations was assigned the case. He inherited numerous leads to follow up and faced an extensive compilation of initial reports to review. According to interviews conducted in 2008 and 2009 by Sergeant Byrom and Lt Ferrelli, the WSPD in 1995 was laboring under a heavy caseload of unsolved homicides and robberies and was plagued by violent gang activities.⁹ As a result there were apparently few resources to spare to assist then-Detective Williams full time and precious little time to supervise individual cases. The assignment of Williams proved to be a fateful decision.

There is general consensus from the various reviews that there were many deviations from policy and procedure in the SPF investigation. There is not agreement as to the materiality of those violations and whether they negatively impacted the outcome of the prosecution. Close review of the extensive record of this case reveals,

⁷ Barker started his law enforcement career as a police officer, became an FBI Special Agent and returned to WSPD. He was assigned to the Crimes Against Persons Unit within CID which was often referred to as the Homicide Unit.

⁸ At that time the WSPD had a *Crimes Against Persons Unit* which addressed homicides and violent assaults.

⁹ See Weavil interview dated December 7, 2009.

Report of Chris Swecker, Attorney at Law

however, that the mistakes, procedural violations, lost evidence, unsound practices and possibly untrue testimony in multiple legal proceeding cast doubt on crucial evidence that ultimately formed the basis for the trial jury's conviction of Smith and, at minimum, inhibited a vigorous defense and challenge to the prosecution's case. Detective Williams was not up to the complex assignment he was given as lead investigator and was not adequately supported or supervised, which had the effect of enabling the shoddy investigative techniques and errors described herein ¹⁰

The most compelling examples of this include two of the most important items of evidence presented in the trial of Smith: the testimony of Eugene Littlejohn and the in court identification by Jill Marker of Smith as her attacker. Unfortunately these are two areas that were significantly impacted by the procedural violations.

To this date Jill Marker is the only person, other than the attacker, who we can be absolutely certain was present when the attack occurred. As a severely handicapped and sympathetic victim her testimony carried great weight and was essentially unchallenged. Few defense attorneys would have undertaken the perilous task of cross examining such a witness for fear of alienating the jury. Such a cross examination would have been further complicated by her inability to speak and her writing proved to be undecipherable. The manner in which her pretrial interviews were handled when examined in their entirety raises serious doubts as to whether her unchallenged in court identification was the result of independent recollection or conscious or unconscious manipulation in two pretrial interview sessions, and multiple photo lineups displayed to her that were never documented, not to mention the media reports, undocumented contacts and "updates" Williams provided the family in which he provided details of the investigation and suspects.

This writer does not agree with former Detective Williams' November 4, 1996, supplemental report that Jill Marker was "very responsive to questions asked" during the October 31, 1996, videotaped interview. To the contrary Jill Marker could not speak, appeared to have poor vision and her responses, in the form of head movements were usually ambiguous because her head was in constant motion up and down and side to side. Secondly, Detective Williams repeated questions until he perceived the head movement he was seeking and recorded the answer accordingly. The video of this interview illustrates this dynamic and provides a keen glimpse of Detective Williams'

¹⁰ In a letter to the Chairman of the SPFCRC from District Attorney Tom Keith dated December 12, 2008 Keith pointed out that the Silk Plant Forest was former Detective Williams' first robbery case and that he "made documentation errors that a more experienced Detective would not have made." Apparently a memorandum was written by Williams' Supervisor Randy Weavil about Williams' performance issues as well. (Weavil interview by Byrom and Ferrelli dated December 7, 2009 page 28 and 29.)

Report of Chris Swecker, Attorney at Law

dogged adherence to a theme he had already developed and his conscious (or unconscious) efforts to make the results reflect this theme.¹¹

Because of Jill Marker's inability to talk and express herself except by head movements the first interview was videotaped to record her responses¹². In violation of WSPD policy several photo lineups were presented to her during this interview which were never documented and thus could not be recreated or subjected to scrutiny by the defense. It was determined from an analysis of the video tape by the Silk Plant Forest Citizen's Review Committee, however, that photos of Calvin Michael Smith were displayed and Jill Marker did not identify him as her attacker, a crucial fact that was not documented. A close review of the interview videotape also revealed that Jill Marker may have identified Kenneth Lamoureux as a person who was present in the store the night Marker was attacked, another important piece of evidence that was not documented.

According to the 2009 M.A.R. testimony of Detective Williams and Detective Lonnie Maines who was also present, the second interview (September 4, 1997) was not video recorded, despite the fact that Jill Marker still could not talk and reportedly still communicated primarily by head movements and hand gestures. According to the September 1997 supplemental report prepared by former Detective Williams, Jill Marker reacted strongly to a photo of Smith when presented with a lineup containing an enlarged version of Smith's photo, but unlike the first interview of Marker there is no videotape to evaluate, refute or corroborate this statement. The failure to video record this interview (if indeed it was never video recorded) is inconsistent with the rationale used for the first interview to be videotaped i.e. that Marker could not speak and could only provide nonverbal responses.

By the date of the trial, Jill Marker had been exposed to no less than three photos of Smith, including Williams' attempt in the second interview to present the photo lineup containing Smith a second time. Repeated photo lineups containing the same photos sends a clear non-verbal signal to a witness that the suspect's photo is indeed contained in that lineup and that the witness is *expected* to make an identification of someone in that particular lineup. It further shows that Williams considered the results of the first lineup to be ambiguous. It is unknown whether Marker viewed newspaper photos of Smith before the second photo lineup session and after he was arrested because this question was either never asked or it was asked but not documented.

¹¹ In his interviews with WSJ reporter Phoebe Zerwick Williams often referred to his "sixth sense" to explain when he knew a suspect was lying. He cited similar extrasensory skills to Assistant District Attorney Rabil to explain why he classified certain statements as confessions without documentary support for such a characterization.

¹² The reason that the interview was videotaped is clearly set forth in the written questionnaire Williams utilized during the interview. The preamble to the list of questions states that the interview was being videotaped because Marker could not speak.

Report of Chris Swecker, Attorney at Law

Williams would later brag to a reporter that there were many aspects of the SPF investigation that he did not document in order to deny the defense an opportunity to “take it off Calvin.”

Eugene Littlejohn’s critical trial testimony placed himself at the SPF store entrance at a time when Smith purportedly “grabbed” Jill Marker and demanded money, but there is scant evidence to corroborate his testimony and there is ample evidence from taped portions of his interviews that he was coached by the lead investigator as to important details. Littlejohn, as an admitted high frequency drug and alcohol user and petty criminal with a poor memory, was a questionable witness at the outset.¹³ Only portions of his numerous interviews were recorded but when one examines just the recorded portions of his various interviews several conclusions can be drawn.

One conclusion is that Littlejohn did not independently reveal accurate details regarding the Silk Plant Forest Store such as the date of the events, the details of the attack, the approximate time of the assault, or even a description of the person attacked. In fact Littlejohn was unable to supply any of the essential details of the SPF crime during his recorded interviews. Conversely this writer counted over 20 pertinent details that were provided to Littlejohn by Detective Williams over the course of these interviews. These details were either imbedded in his questions or verbally provided outright to Littlejohn by Williams.

Second, a vital piece of evidence was lost or destroyed. This evidence is the surveillance tape from the adjacent Toys R Us store, which Detective Williams insisted he reviewed after interviewing Littlejohn in an effort to corroborate his story.¹⁴ This vital piece of evidence which could prove or disprove the version of events that Littlejohn presented in court was never logged into evidence custody nor preserved. In the early stages of the investigation someone apparently determined that this tape, the only physical evidence collected at the scene that visually recorded any portion of the SPF events on December 9, 1995, was irrelevant.¹⁵ The evidence was relevant indeed and without question should have been preserved. At minimum the tape could have helped construct a timeline of the movements of witnesses on the night Marker was attacked

¹³ Littlejohn showed up intoxicated for a pretrial interview with an Assistant District Attorney and was in similar condition when interviewed by WSJ Reporter Phoebe Zerwick.

¹⁴ Although Williams swore under oath that he had reviewed the tape after Smith became a suspect there is no documentation that any reviews were conducted after the one documented review in December 1995.

¹⁵ By this writer’s count Littlejohn has provided at least 8 statements. This was the seventh different version of the events he provided. Each of his eight statements differed from the other in some meaningful respect. These versions include police interviews of Littlejohn on February 10, 1997, two on March 3, 1997, one on March 4, 1997; two polygraph interviews; his trial testimony; and a statement provided to Sergeant Byrom and Lieutenant Ferrelli. He was also interviewed by Winston-Salem Journal reporter Phoebe Zerwick in connection with her series about the case as well as SBI agents during one of their inquiries.

Report of Chris Swecker, Attorney at Law

such as Glover and her child entering the Toys R Us store, not to mention Littlejohn's and Smith's entry to shoplift. When Littlejohn provided surprise testimony that both he and Smith entered the Toys R Us store at different times after Jill Marker was attacked this evidence became highly relevant and rich material for a vigorous cross examination as to Littlejohn's seventh version of his description of the events that occurred on the night of the SPF attack.¹⁶ The whereabouts of that evidence remains unknown today.

Thirdly, during the original investigation Littlejohn admitted to lying multiple times in his various statements. One of these admitted lies, that he was present in the SPF when Jill Marker was robbed, was the subject of a polygraph test. He scored a truthful answer when he responded that he was not present when Jill Marker was robbed. This was in direct contradiction to his trial testimony in which he placed himself inside the store when Smith purportedly grabbed Jill Marker and demanded money.¹⁷ Another witness, who Littlejohn stated was present when Smith described his involvement of the SPF attack in front of several other trial witnesses, directly contradicted Littlejohn, stating that Smith actually denied any involvement.¹⁸ This witness, Freddie Reyes, was either not interviewed by the WSPD until the week of trial or he was interviewed by the WSPD earlier but his interview(s) was/were not documented. The failure to interview Reyes is notable. If this exculpatory witness, Reyes, was not interviewed during the same time period as other trial witnesses Littlejohn, Pamela Moore and Valerie Williams who were supposedly present for the same incriminating conversation, it would have to have been either a grossly negligent oversight or concealment of potentially exculpatory evidence that directly contradicted the State's key witnesses. Unfortunately Reyes is now deceased. It is noteworthy that if Littlejohn indeed was present when Jill Marker was accosted, as he testified, that his admitted role was not materially different from Smith's statement, yet Littlejohn as never charged with even being an accessory to the crime.

More importantly, there were critical leads involving suspects that were never thoroughly investigated, especially leads associated with Kenneth Earl Lamoureux and Michael Fuller. For very good reasons Lamoureux was the prime suspect almost from the outset of the SPF investigation. Another early suspect, Michael Fuller, was inexplicably ignored for almost a year and then given only perfunctory attention despite his presence near the crime scene on the night Jill Marker as attacked, his evasiveness

¹⁶ Littlejohn's testimony was so crucial that after a long period of deliberation the jury asked for a transcript of that testimony. After they received the transcript the jury quickly returned a guilty verdict.

¹⁷ In January, 2009, at Smith's second MAR hearing, Littlejohn recanted this testimony under oath and cross-examination.

¹⁸ Pamela Moore and Andra Wilson made statements that Smith said "I had to beat the bitch to get out of the store." This statement does not square with the facts as Marker was attacked in the back of the store making it highly unlikely that she was trying to prevent her attacker from leaving the store. Moreover it makes no sense that Marker would attempt to prevent an aggressive male attacker/robber with a weapon from leaving the store.

Report of Chris Swecker, Attorney at Law

when Detective Williams tried to interview him and a recent arrest for assault with a deadly weapon inflicting serious bodily injury.

Two unbiased witnesses who were shopping in the store the night Marker was attacked placed Lamoureux inside the store a short time before the attack acting strangely towards the two shoppers.¹⁹ They independently stated that he followed them around the store, in a loud voice asked a question about their clothing and muttering something they could not understand retired to the general location in the back of the SPF store where Marker was later attacked. Another witness, Paula Glover, was shopping with her child in the store shortly before the attack and was advised by Marker that the back of the store was “too dangerous” when she requested permission from Marker for her child to use the bathroom in the back of the store. One witness, Jeana Schopfer, received a phone call from Marker alerting her that Lamoureux had appeared unannounced at the store, had asked her to dinner and was irate at her rejection of the overture. Shortly before the attack Glover observed Marker on the phone talking in a low serious tone about the store customers as she exited the store, corroborating Schopfer.

Lamoureux had recently lost custody of his children due to his repeated acts of domestic violence and was subject to a restraining order to prevent further violence against his wife. This violence reportedly involved repeated blows to his wife’s head. He had been involuntarily committed for this violent and bizarre behavior and was released the day before the attack on Marker. He was taking medication as part of his treatment and had filled a prescription at the Drug Emporium adjacent to the SPF store the day before the attack.

Lamoureux initially lied to investigators about knowing Marker, knowing the location of the SPF store and whether he had ever been in or near the store. He later admitted he may have been in the store but didn’t attack Marker. He also advised Detectives that he attended church for the first time in his life the day after the attack, possibly an indication of remorse, and drove to Charlotte. Detective Williams documented that Lamoureux repeatedly contacted him to inquire about the results of DNA tests on evidence lifted from the crime scene (even though he said he never had physical contact with Marker) and he showed significant deception to a polygraph question as to whether he attacked a woman at the SPF. Finally, he left the Winston-Salem area for good after being asked by Detective Williams to submit to further questions.

Inexplicably, numerous leads regarding Lamoureux were never pursued, such as obtaining his work records, his credit card records, full phone records and especially

¹⁹ These witnesses identified Lamoureux out of photo lineups but qualified their identifications in small ways which made them less than 100% positive identifications.

Report of Chris Swecker, Attorney at Law

examining his work vehicle, a white van he may have driven on the day of the attack. This van generally matched the description of a white van seen outside the SPF near the time of the attack driven by a man who matched the general age and physical description of Lamoureux. It is unexplained why the work vehicle was never located or processed for evidence. Additionally, although Detectives searched his residence, they failed to seize or test the clothing Lamoureux told them he was wearing the day and evening Jill Marker was attacked or a heavy flashlight he later told a reporter he had used to club people when he was a paramedic. No effort was documented to retrieve video tape from the Best Buy store where he made purchases on the afternoon of December 9, 1995, to see what clothing he may have been wearing on that day and to document his movements and timeline his activities. There is no rational explanation for not pursuing him further as a suspect other than that it became more difficult after Lamoureux “lawyered up” and departed the area.

The abandonment of viable suspects in the face of resistance and difficulty became a familiar and disturbing pattern. Michael Fuller became a person of interest because he was the driver of a maroon Mustang that was seen idling for over a minute directly in front of the SPF and driving away from the store location near the time of the attack. As in the case of Lamoureux, Williams was able to detain Fuller on an unrelated criminal warrant but never contacted him again after he refused to cooperate and was released. Fuller consistently refused to answer any questions as to his activities the night Jill Marker was attacked. During the abbreviated interview while he was in custody Fuller “lawyered up” and after he was released Williams apparently never contacted him again nor conducted any further follow up regarding him or his associates. Public records show that Fuller has an arrest record that includes drug distribution, carrying a concealed weapon, assault with a deadly weapon inflicting serious bodily injury, fleeing to resist arrest, breaking and entering, probation violation and that he has served jail time. Williams waited almost a year before searching the Mustang Fuller was driving on the night Jill Marker was attacked, despite having the opportunity to do so early in the investigation. Fuller rented two pagers from a pawn shop where he was known to pay personally pay his bills in cash. Williams publicly expressed suspicions that Marker’s husband owed money to Marker’s attacker for drugs and this was the subject of at least one *Crime Stoppers* report.²⁰

After Lamoureux took his leave from Winston-Salem in April 1996, the investigation languished for nine months until January, 1997.²¹ In January 1997 a

²⁰ There were at least three reports in the case file where a witness stated that Aaron Marker was a drug user or owed money for drugs.

²¹ In May 1996, Shane Fletcher contacted law enforcement officials to confess that he had assaulted Jill Marker. He gave WSPD detectives, including D.R. Williams, a detailed confession on May 23, 1996. However, after an investigation by Williams and an assistant district attorney, Williams concluded that

Report of Chris Swecker, Attorney at Law

Crime Stoppers call from an angry girlfriend (Valerie Williams) focused attention on a local petty criminal and drug user named Calvin Michael Smith. This was the second time that an angry girlfriend called police to implicate Smith after feeling “cheated on” by Smith. In the earlier incident (June, 1996) another girlfriend (Andra Wilson) responded to a *Crime Stoppers* solicitation to allege Smith’s involvement in the Silk Plant Forest crime after Smith borrowed \$50 from Miss Wilson and then left her to be with Miss Williams.

Detective Williams apparently eliminated Smith as a suspect earlier in the investigation after Smith passed a polygraph test (on July 22, 1996). There was no further investigation of Smith except for Smith’s inclusion in four photo-lineups shown to victim Jill Marker on October 31, 1996. Although Jill Marker did not identify Smith at that time, nothing about any attempt to make identification or the construction of photo-lineups was documented in any supplemental report and the issue was never raised at trial, if in fact it had been known to defense counsel.

When Smith learned that Detective Williams was looking for him in January, 1997 he immediately and voluntarily presented himself at the police station, along with his disgruntled girlfriend, Valerie Williams, to ascertain why he was being sought again in a case in which he thought he had been cleared. Valerie Williams would later state that she was upset that Smith had cheated on her with an employee of the Sheriff’s department whom he had met in the County jail. Valerie Williams, suspecting a relationship between Smith and the other woman went to the other woman’s home where she found Smith, confronted the two of them, became violent, and was arrested. By her own admission at the time, Valerie Williams contacted the WSPD in order to get even with Smith, an idea she said she got from Smith who told her that another girlfriend (Andra Wilson) had successfully employed the same tactic against him months earlier.

Unlike Lamoureux and Fuller, Smith did not “lawyer up” and submitted to a stationhouse interrogation by Williams and his supervisor Randy Weavil that ultimately culminated in his arrest. Smith, who dropped out of high school, lacked the education to defend himself and the means to hire a lawyer, has maintained to this day that Williams informed him that if he would just admit he was *present* at the SPF store when Marker was attacked that he would be released. He also maintains he had been intoxicated, which would not have been unusual for him. He has been incarcerated since that day (January 24, 1997).

The events that transpired in the police station interrogation room that day are the subject of much controversy. Questions were raised as to whether Smith was “in

Fletcher was locked up on the psychiatric ward of the Forsyth County hospital, located across the street from the Silk Plant Forest, and thus was not free to attack Marker.

Report of Chris Swecker, Attorney at Law

custody” and should have been provided Miranda warnings and whether his statement was coerced. Manipulation and deception are interrogation techniques that have been upheld by the courts up to the point where they become coercive and override the will of the interrogation subject. This was a factual determination that was within the purview of the trial judge. Smith’s interrogation statement was upheld by the trial court but, curiously, was never used by the prosecution at his trial. Similarly, neither Detective Williams nor Sgt. Weavil was called to testify at the trial for reasons known only to the prosecution. The circumstances of that interrogation remain the accounts of Smith and Valerie Williams against the accounts of Detectives Williams and Weavil. Importantly, accounts of Weavil and Williams do not match up in several respects.

Even if the manipulative and deceptive techniques Smith described did take place, his statement that he was present during the attack remains an aspect of this case that is difficult for the lay person to understand, i.e. why anyone would lie to place themselves at a crime scene. The answer to that is a factual determination beyond the scope of this review but it is significant that other less significant interviews were recorded, yet the interrogations of Smith and Valerie Williams which were arguably the most important interviews of the SPF investigation, were not recorded. It should be also be noted that the WSPD now has a clear policy that mandates recording of interrogations of this nature, a practice that will provide juries and judges an opportunity to assess whether coercion or deception produced a statement.

Conclusion

The adversarial system of justice system is set up to find the truth. Unfortunately in some cases this concept gets lost and “clearing” an investigation or winning a case becomes the ultimate goal. It’s likely that no one will know what actually happened at the Silk Plant Forest on December 9, 1995. There were no known independent eye witnesses to the attack or forensic evidence that can tell the story. Unfortunately the trial jury only heard a small portion of the Silk Plant Forest story.

This report does not presume to exonerate Calvin Michael Smith. This review represents an opinion based on the facts, circumstances and evidence available in the public record in 2012. While each of the actions or inactions described in this review when examined as isolated incidents may be passed off as oversights or simple errors, the sum total of the record paints a very disturbing picture. This review found that relevant and material facts were not known at the time of the original investigation and trial conducted over 15 years ago while other important information was undocumented

Report of Chris Swecker, Attorney at Law

or inaccurately reported. It is clear that the Silk Plant Forest investigation was seriously flawed and woefully incomplete, thus calling into question whether the original trial jury rendered their verdict based on all the relevant and accurate facts of the case. For the reasons set forth above this report and further detailed in the attached appendix this review fully agrees with the Resolutions of the Silk Plant Forest Citizens' Committee and its recommendations. Finally, this review does not advocate yet another full reinvestigation of the case.²² It is the opinion of this reviewer that due to the flawed nature of the original investigation only a new trial that considers the full record and evidence not available, misrepresented or omitted in the original trial will provide the full measure of justice the Community of Winston-Salem and every accused defendant deserves.

APPENDIX

Set forth below are a compilation of actions and inactions that serve to undermine the credibility of the SPF investigation:

- Selective documentation, lack of documentation or mischaracterization of investigation:
 - A Winston-Salem Journal interview in 2004 documented former Detective Williams' statements regarding his deliberate efforts to refrain from documenting investigative results that were not favorable to the prosecution so a defendant would not have access to possibly exculpatory information. This is an egregious statement which, if true, provides a keen insight into the mindset of the lead investigator.²³ In fact there is anecdotal evidence that Williams indeed did not document relevant portions of his investigation such as the October 31, 1996 photo identification session with Jill Marker. The reporter, Phoebe Zerwick, kept good notes of her interviews of Williams which were reviewed by her editors.²⁴

²² WSPD, under Chief Cunningham, had made additional efforts to test old SPF physical evidence for DNA or trace evidence. These efforts are admirable and should continue.

²³ Williams' testimony before the City Council is illustrative when he states that information provided by Shane Fletcher would have been worth preserving "if it was true". (See Williams testimony page 56) This statement is evidence that Williams' documentation was based on his subjective judgment as to whether the evidence was relevant. A confession by anyone is potentially relevant material and every aspect should be preserved. The mere fact that a confession was rendered is relevant and an investigator's judgment as to whether it is "true" has no bearing on whether every aspect of the statement should be documented. This is the same rationale for not preserving the Toys R Us video: because it did not have any "evidentiary value" at the time, another inappropriate value judgment.

²⁴ The mindset of Detective Williams is the subject of a tape recorded conversation between Sgt. Byrom and Detective Williams' brother who stated that Detective Williams told him that if Smith was not guilty of the SPF assault, he was probably guilty of "something else". He allegedly used a racial slur when

Report of Chris Swecker, Attorney at Law

- In testimony before the City Council in June, 2009, former Detective Williams seems to corroborate the above statement when he responds to a question from Lt. Ferrelli that “I don’t document everything, Joe” (Williams City Council Testimony page 143).
- There was no documentation of evidence storage, preservation or disposition of a Toys R Us Video which could have corroborated or disproved Littlejohn’s final story in his trial testimony that he shoplifted a video game at the Toys R Us store next door and passed Smith as he entered the Toys R US after the attack on Jill Marker. The City Council investigation and testimony of Detectives Williams and Barker revealed that the video had sufficient resolution to reveal the sex of the people depicted and whether the subjects captured were black or white. In addition analog video tapes can be forensically examined and enhanced. This technology was available in 1995, a fact that was documented in the WSPD Procedures Manual. Enhancement was certainly worth pursuing under the circumstances, yet there was no documentation of any effort to do so. The apparent reason for not preserving the tape was it had no evidentiary value “*as of this time*”, a logical statement that seemed to acknowledge that there may be relevance as the investigation progressed.²⁵ Nevertheless the tape was not retained and preserved.
- Many key interviews were only partially recorded; a practice which was not prohibited but served to raise serious questions as what occurred prior to the actual recording. In addition the start and finish times reported did not match the length of the tape in several instances and one tape was not fully transcribed. (See Williams Testimony before SPF Citizen’s Review Committee).
- Relevant cash register tape from the SPF was never logged into evidence and apparently lost.
- Several photo lineups were never documented or logged into evidence and are apparently missing.

referring to Smith. The brother was at one time also a WSPD Officer and his relationship with Detective Williams is reportedly strained therefore this statement must be viewed in that context.

²⁵ Detective Barker’s supplemental report dated 12/28/96 states that “both writer and Det. Williams have reviewed this tape and, as of this time, it has not been found to have any evidentiary value.”

Report of Chris Swecker, Attorney at Law

- Relevant drawing and photos shown to a possible suspect, Shane Fletcher were never logged into evidence and are apparently missing.²⁶
- According to Assistant District Attorney Vince Rabil, Detective Williams had a reputation of being prone to overstating the results of interrogations. Rabil stated that Williams was known to create supplemental reports that characterized statements as “confessions” when in fact such a characterization was not supported by the actual transcripts. According to Rabil among the Assistant District Attorneys such circumstances were known as “D.R. Williams confessions”.²⁷
- It is likely that Andra Wilson was an undocumented source of information after she called in the *Crime Stoppers* tip on June 1, 1996. The evidence of this is that after the report was filed Detective Williams clearly received a tip from a source knowledgeable as to Smith’s movements and whereabouts which ultimately resulted in his arrest on July 22, 1996, apparently by a US Marshall’s Fugitive Task force. The fact that Williams himself did not have time to make the arrest, that it was delegated to a Fugitive Task Force and that Smith was at a location other than his known residence six weeks after the original *Crime Stoppers* tip lends further credibility to the existence of an informant. It’s notable that neither the time, location or circumstances of the arrest of Smith was documented. Nor was it documented whether he made any statements contemporaneous with or after the arrest.

Regardless of the source of the information, the circumstances of the tip and the arrest should have been documented. Williams apparently had the means to locate *Crime Stoppers* callers as many of the *Crime Stoppers* reports in the case file had no call back numbers yet Williams was able to contact the caller and document the follow up. Curiously, in the last statement of a recorded interview of Wilson by Williams dated 2/4/97, Wilson states that she found Williams from “the card you gave me last year”. Williams immediately cuts off the interview. The logical conclusion is that there was undocumented investigation conducted by Williams to

²⁶ Fletcher confessed to the crime and the drawings would have been relevant as to his knowledge of crime scene details that were not public. Fletcher was committed to the same psychiatric wing of Forsyth Medical Hospital as Kenneth Lamoureux.

²⁷ An example of this tendency is contained in a supplemental report prepared by Williams dated 3/5/97 in which a statement by Eugene Littlejohn is reported in the following manner: “During the interview with Mr. Littlejohn he confessed and provided a tape recorded statement”. In this statement Littlejohn states he was with Smith at the SPF store when Smith asked for money but left the store before anything happened. This is almost identical to Smith’s statement that led to his arrest.

Report of Chris Swecker, Attorney at Law

locate Wilson and undocumented contacts between Wilson and Williams after she called *Crime Stoppers* on June 1, 1996.

Wilson's reliability as a witness had to be dubious to Detective Williams after Smith passed a polygraph following Detective Williams' arrest of Smith (June 22, 1996), and after Jill Marker failed to pick Smith out of a line-up (October 31, 1996.) Nevertheless, Detective Williams apparently resumed using Andra Wilson, a woman he knew or should have known was a woman whom Smith had had a broken romantic relationship, as an undocumented informant, writing his documentation to make it appear he first found her the next year in February, 1997. In his testimony to the City Council in June 2009, Detective Williams attributed his initial location of Andra Wilson in February, 1997 to good police work, further concealing the likely fact that he had been working with her, and had investigated and discarded her claims, the previous year.

- Questionable Witness Interview Techniques:

In dealing with witnesses it is generally considered best practice not to contaminate or influence them with leading questions or imparting details to the witness. This technique was used in taking the confession from Shane Fletcher. Notably, in that instance, Detective M.C. Rowe, a veteran detective, assisted Williams to conduct that interview. Expert sources acknowledge that "using open ended questions is the most effective manner to retrieve the maximum amount of information without tainting or influencing the response"²⁸

- Eugene Littlejohn was a key prosecution witness whose testimony helped convict Smith. Analysis of the various investigative interviews of Littlejohn reveals that over the course of at least five interviews, he was essentially fed a detailed script by Detective Williams. See interview transcripts dated February 10th 1997; March 3, 1997 at 9:15 am; March 3, 1997 at 10:30 am; and March 4, 1997. Former Detective Williams habitually imbedded relevant details in questions that suggested the "correct" answer. In one interview dated March 3, 1997, at 10:30 am Williams coaches Littlejohn to change his response that the store next to the Toys R Us where Smith supposedly grabbed a salesperson and attempted to rob her was a clothing store. Williams quickly posed a series of "leading" questions that twice asked Littlejohn if the store contained "artificial trees" eventually inducing Littlejohn to amend his answer. In Williams' supplemental report he characterized this statement as a "confession." If indeed this statement is a true characterization then it follows that Littlejohn planned, aided, abetted and concealed the commission of one of the most notorious

²⁸ FBI Law Enforcement Bulletin: "The Structure Investigative Interview", June 2007, Volume 76.

Report of Chris Swecker, Attorney at Law

crimes in the history of Winston-Salem, yet was never arrested or prosecuted, leaving one to ponder why only Smith was prosecuted.

In another example in this same interview Littlejohn tells Williams that he first learned about the attack at SPF and connected it to Smith when he read it in the newspaper “a month ago”, which was over a year and two months *after the actual attack*. Williams, realizing the damaging nature of the statement, quickly feeds Littlejohn the correct time frame by saying “longer ago than that because it came out in the paper in January or February.” It was clear that Littlejohn had no idea when, where or how the attack occurred but for the details provided by Detective Williams. Yet Detective Williams was undaunted and each time he received new information that contradicted Littlejohn’s last statement, Williams would conduct a fresh interview that amended the last statement. True to form Littlejohn’s trial testimony was materially different from his pre-trial statements and as a result the prosecution was given the latitude by the trial judge to treat him as a hostile witness and ask leading questions during direct testimony to try to rehabilitate him.

In total, Littlejohn was interviewed at least five times by Williams and others; polygraphed twice; testified at the original trial; testified at the second MAR and provided a statement to Investigators Byrom and Ferrelli. In each statement Littlejohn changed material facts. For example, in Littlejohn’s first two statements he was not present and did not see Smith enter the SPF store. In his statement on 8/27/97 and in his trial testimony, Littlejohn stated he was present inside the store and witnessed Smith demand money and grab a clerk by both arms. Incredibly, immediately after he made his statement he passed a polygraph test which included a question as to whether he was present in the store when it was robbed. He answered “no” to this question, an answer that was scored as truthful. In trial testimony he was back to being present in the store witnessing Smith demand money as he grabbed the sales clerk. In his MAR testimony and in a statement to Investigators Byrom and Ferrelli his story changed yet again that neither he nor Smith ever went to the SPF store on 12/9/95 and that he was threatened by the Detectives to induce him to say Smith committed the crime at the SPF.

- The 10/31/96 interview of Jill Marker was replete with instances of Detective Williams doggedly repeating questions until he received the answer he was seeking. One need only watch the videotape of the interview to observe this technique in action. This “interview” should have been discontinued because it was clear that Marker could not comprehend the situation or questions posed to her.²⁹ To complicate matters there was

²⁹ By this time Marker had been declared incompetent to handle her own affairs. Civil incompetence is a different legal standard than criminal competence to testify.

Report of Chris Swecker, Attorney at Law

no clearly defined method for Ms. Marker to indicate a simple yes or no answer to questions other than ambiguous movements of her head and hands and her vision and depth perception were clearly restricted.³⁰ Finally, she was clearly being “coached” by medical attendants who participated in the interview. Detective Williams can often be observed in the videotape of the interview glancing at the medical attendants after receiving a response from Marker for their interpretation of the answer calling into question whether the responses are Marker’s or those of the attendants. Williams can be seen repeating key questions until a satisfactory answer is obtained. For example at least four times Williams asked Marker if she was cut and received various head movements which seemed to indicate “yes”. He persisted with the question and enlisted the assistance of the two women in attendance to finally speak for Jill Marker. After some interchange between Williams and the attendants a “no” answer was recorded. This writer also compared the questions asked of Marker on the videotape to the answers recorded by Williams on his question and answer sheet and several questions were posed and responses provided by Marker that did not appear on the interview sheet and were never recorded.

- Witness Paula Glover stated that during her interview Former Detective Williams was not interested in hearing critical details. It seemed to her that Williams wanted to talk and ask her set questions rather than listen to her answers. In addition, this critical interview was held *over the phone* eight days after the information was provided to *Crime Stoppers*. Apparently the critical information that Jill Marker told Glover that the back of the store was “dangerous” was not developed by Williams (or at least not documented) nor was the fact that Glover was accompanied by a child, a fact that could establish a timeline via the Toys R Us video. Williams also did not glean from Glover that Marker was having a serious conversation on the phone about customers in the store when Glover was leaving the store. These are important details that a skilled interviewer would be expected to elicit and in fact were elicited by a third year Duke Law student working for the Duke University Law School Innocence Project.

Despite the fact that Kenneth Lamoureux’ s inappropriate interest in and contact with Jill Marker was well documented Williams never simply asked

³⁰ At that time Marker wore glasses and when a photo lineup was placed in front of her face she reached past the paper with her hand to grab it. Former Detective Williams was instructed by a nurse to place the lineup next to her “good” right eye but the lineup was instead placed in front of her left eye.

Report of Chris Swecker, Attorney at Law

Marker whether Lamoureux attacked her. Williams apparently did show a photo of Lamoureux to Marker as part of a photo lineup on October 31, 1996 and asked her whether any of the people depicted were “in the store” the evening she was attacked. Marker may have identified Lamoureux, however no such identification was documented. At one point in the videotape of the interview Marker is seen holding up three fingers and tapping the photo in a lineup in which Lamoureux’ s photo is apparently in the third position. In his write-up of the second identification event held on September 4, 1997, Det. Williams writes that Marker displayed similar hand gestures during a photo lineup. In contrast to the first photo lineup which was never documented, in a supplemental report, Williams carefully documented what he said were Marker’s hand gestures in the September 4, 1997 event which he wrote involved a lineup containing a photo of Smith.

- Violations of Brady Rule
 - The October 31 Photo Lineup and failure of Marker to identify Smith was important information that was not documented. Besides being exculpatory evidence on its own, the event had the potential to taint any future identification, inducing Marker’s alleged identification of Smith on September 4, 1997 and Marker’s in-court identification of Smith at trial, an identification the trial judge (Hon. Peter McHugh) later called “equivocal.” The violation was conceded by the District Attorney in a letter to the Duke Innocence Project.
 - The showing of a photo of Lamoureux to Marker and her possible identification of him as present in the SPF store the night of the attack was extremely relevant information that was never documented nor disclosed to the defense.
 - At no time did Williams fully document his extensive contacts with the friends and family of Marker as to the substance of any communications they had with her about who may have attacked her. In addition there is no documentation as to what information about possible suspects was passed between Williams and the family. Williams had extensive contact with Marker’s family and presented them with regular updates on the progress of the investigation. Any communication regarding suspects and or arrests or any news articles read to Marker or pictures viewed by her

Report of Chris Swecker, Attorney at Law

would be relevant to whether Jill Marker was influenced by that information to identify Smith her attacker.

- Failure to preserve the Toys R Us security video. This video was a crucial piece of evidence that could have been used to vigorously cross-examine Eugene Littlejohn whose testimony was critical to convicting Smith. Littlejohn was purportedly present with Smith at the SPF. He testified that he left Smith at the SPF after Smith grabbed Marker near the cash register demanding money and went next door and to the Toys R Us store to shoplift. He testified that after he shoplifted at the Toys R Us he passed Smith five to twenty minutes later as Smith entered the Toy R Us. He further testified that Smith also shoplifted at the Toys R Us. Smith supposedly then exited the Toys R Us, entered a car (that Littlejohn could neither describe nor fix ownership) and departed the area. Both Detective Williams and Barker testified that the video was sufficiently clear that a subject's race and sex could be identified. It would have been possible therefore at least to establish a timeline from the video, track Littlejohn's and Smith's movements and match it with the testimony of other witnesses such as Paula Glover who left the SPF with her child several minutes before the attack, to prove or disprove Littlejohn's testimony. The critical nature of the video was compounded by the fact that Littlejohn provided at least five different inconsistent statements about the events to investigators, several of which were admitted lies.
- Inadequate Investigation of Lamoureux
 - Despite Williams' testimony to the contrary Kenneth Earl Lamoureux (KEL) was essentially dropped as suspect when he moved to Charlotte.
 - None of his family, friends and associates were interviewed with the exception of his estranged wife (Ellen). Logical interview should have been conducted of Lamoureux's entire social network including his ex-wife (Gloria), his stepfather, coworkers, employers, relatives, etc. Moreover a photo lineup should have been displayed to every customer in the SPF store on the night of the attack as well as Marker's coworkers at the Daycare Center and SPF. Lamoureux' s every move should have been time-lined and his full profile developed.
 - Lamoureux' s past history including military record, complete history of domestic assaults, his past stalking of a nurse at Forsyth Hospital and his

Report of Chris Swecker, Attorney at Law

prior contacts with Jill Marker were not fully investigated, or if such investigation took place, it was not documented.

- There was credible evidence from independent witnesses that Lamoureux was in the SPF store on the evening close to the time when Marker was assaulted. Stella Goode and Cynthia Cloud picked him out of a lineup (with a comment that Lamoureux' s glasses were different) and described him approaching them from the area where Marker was later assaulted, acting strangely and returning to the back of the store.
- Lamoureux was known to make uninvited visits to Marker at the SPF and frequently spoke to her when he saw her at Today's Child daycare center yet denied even knowing her in his first interview with Detective Williams.
- Beth McCollum volunteered information that Marker made statements to coworkers that Lamoureux frequently visited her at the SPF store uninvited and had even struck his wife in front workers at the preschool.
- KEL's estranged wife Ellen, provided detailed information about his violent behavior and past beatings he had administered that were similar to the assault on Marker i.e. violent outbursts accompanied by repeated dealt blows to her face and head. She also described his admission that Lamoureux "stalked" her for over a year before she married him.
- Consistent with prior "stalking" behavior Jeana Schopfer provided information that Marker called her on the evening she was attacked to tell her that Lamoureux had been in the store, had asked her to dinner and that he was angry that she turned him down.
- Two witnesses, Teresa Barker and Michael Mitchell observed a person fitting Lamoureux' s general description outside the store shortly before the attack. Both described this this person as standing on the sidewalk smoking a cigarette in front of Toys R Us.³¹

³¹ These witnesses were unable to pick him from a photo lineup. D.R. Williams knew that Lamoureux was a smoker because he seized a cigarette butt that Lamoureux had discarded at the WSPD Headquarters in order to obtain a DNA sample, although even that was not adequately documented.

Report of Chris Swecker, Attorney at Law

- Pamela Chilsom provided information that she observed an individual fitting Lamoureux' s general description trying to park an older model white van in a parking spot near the SPF store.³²
- Paula Glover stated that Marker told her the bathroom in the back area could not be used because it was “not safe” and that Marker was on the phone as Glover left the store telling someone in a low serious tone that there were customers still in the store. A fact that matches perfectly with Jeana Schopfer' s statement that she was on the phone with Marker discussing Lamoureux' s presence at the store and that other customers were still present. According to Glover, however, after she departed there were no other customers present.³³
- KEL lied to Williams when he was interviewed stating that:
 - He did not know Marker.
 - He did not know where the SPF was located and had never been there.
 - He was never in or near the SPF or at Silas Creek Crossing Shopping Center.
- KEL changed his story when confronted information that contradicted his denials.
- KEL had a history of domestic violence.
- KEL could not fully or accurately account for his whereabouts on the evening of the attack on Marker.
- KEL left the Winston-Salem area in April 1996 after he was closely questioned on several occasions by former Detective Williams, polygraphed and subjected to a search of his house and car. He never returned to Winston-Salem and Former Detective Williams conducted no further investigation of him other than possibly showing a photo of him to Jill Marker on October 31, 1996.

³²Lamoureux was known to drive a white van for work but no follow up investigation regarding white van, its full description or whereabouts on the night of the attack.

³³ This was information that former Detective Williams never gleaned from Glover, who described Williams as “disheveled” and uninterested in the information that she volunteered. .

Report of Chris Swecker, Attorney at Law

- KEL first refused a polygraph then submitted to a test where he showed *significant deception* to the question as to whether he attacked a woman in the SPF.
- In a bizarre incident KEL followed potential witness Michael Mitchell from the police station after he had just provided information to Detective Williams and viewed a photo lineup. Lamoureux demanded to know what he had talked to Williams about. Mitchell described him as “abusive and irate.” Similarly he contacted a television reporter demanding to know the time the attack took place.
- Lamoureux was sending flowers and cards and frequently calling a nurse, Wanda Schofield, who worked with his wife at the Forsyth Hospital. The inappropriate phone calls and cards were neither solicited nor wanted by Schofield and could be described as stalking behavior.
- Williams obtained some phone records for Lamoureux’ s home phone but never documented any analysis of the records produced such as subscribers of phone numbers he called or whether he was responsible for the hang up phone calls to Schofield. In addition, Williams’ written report about the phone records state that the records for the period that included December 9, 1995, the day Marker was attacked, were unavailable due to a transitory technical problem, but he failed to follow up to obtain the records, or did obtain them and failed to document it. On at least three occasions Lamoureux contacted Detective Williams asking if the DNA tests had come back and demanded to know the results of the tests. Someone who had not come in physical contact with Jill Marker would not need to ask about the results.
- Inadequate Investigation of Fuller
 - Immediately after the attack a lookout was placed for a burgundy Mustang and a *Crime Stoppers* request for tips on the Mustang were issued.
 - Bystanders at the crime scene told officers that a witness had tried to pass information to an officer about a burgundy mustang that had left at a high rate of speed from the area in front of the SPF after a black male ran out of the store and jumped in the car.
 - Williams eventually identified Fuller as the driver of that Mustang.

Report of Chris Swecker, Attorney at Law

- Fuller has an extensive arrest record for drug dealing, assault with a deadly weapon, carrying a concealed weapon, burglary, probation violation, fleeing to elude arrest, drug paraphernalia, maintaining a drug house, drug possession and over a dozen serious traffic citations.
- Williams never explored whether Marker's husband knew Fuller or could identify his photo. This would have been a logical line of inquiry given Williams' public statements that Marker was a drug user and may have owed money to Marker's attacker.³⁴
- According to the car's owner his daughter was supposed to be in possession of the car and Fuller was not supposed to be driving the car.
- In a 1/3/97 supplemental report Former Detective Williams summarizes an interview with the owner's grandson, Lewis Corpening, in which he stated that Fuller admitted to him that he was at the Silas Creek Shopping Center on 12/9/95 with an "associate" but due to the lapse of time he could not recall the name of the associate. The "associate" was never identified.
- Fuller's presence at the SPF near the time of the attack with "an associate" was never fully explained.
- Three black males encountered at the residence where the Mustang was located refused to identify themselves or answer questions and lied about knowing Fuller who was inside the residence. Williams made no further efforts to identify these individuals.
- The owner of the Mustang was contacted by phone but never interviewed in detail, nor was his daughter who he stated was "in control" of the car.
- After the owner was contacted the car was moved to Clemmons, NC without the knowledge of Williams. The car was located by an alert patrol officer who informed Williams. When Williams contacted the owner, a lawyer in West Virginia, he stated it was moved to make it "less likely to be tampered with". There was no explanation as to why he thought the car would be "tampered with."

³⁴ A 2/28/97 anonymous Crime Stoppers report states that Aaron Maker owed a drug debt to Smith. A friend of Jill Marker also advised that Marker had shared with her that her husband had a drug problem.

Report of Chris Swecker, Attorney at Law

- After identifying the Mustang, locating it, and speaking with the owner who stated that Fuller did not have permission to be operating the car, it took Williams over 11 months from 1/12/96 to 12/6/96) to conduct a search of the vehicle despite all the suspicious circumstances surrounding the car and efforts to move it after Williams expressed interest in the car to the owner.
 - In all of Williams' contact with Fuller he was evasive, uncooperative and refused to answer questions.
 - Two witnesses, (one male and one female) apparently told an officer on the scene that they had seen a black male run from the SPF and jump into a dark colored, possibly burgundy, Mustang that left at a high rate of speed. This statement was overheard by other witnesses however the Officer, who was identified as L. P. Snyder, did not ensure that the two witnesses were interviewed and they apparently left the scene in frustration. A *Crime Stoppers* public bulletin, however, was issued on this Mustang and the unidentified black male. There is no documentation that these two witnesses were ever identified. (see supplemental report of L.P. Snyder dated 12/9/95)
 - Tommy Clewis who may be the male witness described above called *Crime Stoppers* on 12/21/95 and described observing a dark colored Mustang with West Virginia tags and with a license tag displaying the partial number "56" stopped directly in front of the SPF for an unusual length of time and caught his attention because of its unusual behavior. It is not documented as to whether Clewis could identify the female witness who spoke to Officer Snyder at the scene. Further, it was not documented who provided the original information about a black male exiting the SPF and entering the Mustang nor who provided the information that the mustang left "at a high rate of speed." None of this information appeared in Clewis' statement but was either part of the original *Crime Stoppers* bulletin or was secondhand information gleaned from officers or bystanders at the scene and documented in various supplemental reports.
 - Fuller's photo was never displayed in a lineup to any witnesses, including Marker.
- Incomplete Investigation of Fletcher and his relationship with Lamoureux.

Report of Chris Swecker, Attorney at Law

- The case file is incomplete with respect to Fletcher. He confessed to attacking Marker in graphic detail; a detailed interview was conducted on May 23, 1996. However, the WSPD never determined how Fletcher learned those details if he was not involved. Nor does the record indicate what contact he may have had with Lamoureux, although Lamoureux and Fletcher were patients on the psychiatric ward of the Forsyth Memorial Hospital for a period of time through December 8, 1995, Williams ruled out Fletcher because hospital records showed he was committed to the psychiatric ward on the evening of the attack at the SPF however the record keeping system at the ward was not so ironclad that it could be ruled out that he could have slipped out undetected and the SPF was located literally across the street.
- Former Detective Williams did not pursue whether or what contact Lamoureux may have had with Fletcher when he was committed to the Forsyth Memorial Hospital psychiatric ward at the same time and assigned to a room across the hall from Fletcher. Williams reported in affidavit to support a review of Lamoureux' s medical records that Fletcher's "confession" included many details that were not published, therefore it was logical to explore whether Fletcher's confession might have been based on information provided by Lamoureux.
- Missing Evidence
 - Toys R US Video
 - Cash Register tape
 - 7/22/96 polygraph results showing a truthful result
 - Fletcher drawing of SPF which he marked on to designate the layout and location of his "attack" of Jill Marker during interrogation.
 - Photo "show-up" photos shown to Fletcher, possibly including photos of Detective William's wife was not documented.
- Significantly Delayed Reports

Report of Chris Swecker, Attorney at Law

- Reports were routinely prepared several months after the events they documented, a practice that was not prohibited but at the same time was not conducive to accurate reporting.³⁵
- Lack of Candor in an Affidavit, Testimony, and Reports
 - Former Detective Williams testified before the WS City Council that he never took notes during the conduct of the SPF investigation. He stated that he dictated into a recorder contemporaneous with his investigative actions. If this statement was true it would be highly unusual. (See SPF Committee Interview Transcript page). In fact he contradicted this testimony during an evidence suppression hearing under oath when he refers to “notes” taken during the interrogation of Calvin Michael Smith immediately before he was arrested (see the Smith trial transcript page 63) and in an interview under court order by the WS City Council Investigators when he said “my notes will speak for itself” (Williams interview transcript page 68).³⁶

It would be nearly impossible for an investigator to dictate into a handheld tape recorder in the midst of questioning a witness or interrogating a subject and equally unlikely that a stenographer could take this raw dictation and turn it into a finished supplemental police report. Moreover if this was indeed the manner in which he memorialized interviews i.e. by contemporaneous dictation into a tape recorder, the recordings themselves would be relevant evidence. This writer believes that there were some notes taken during the course of the investigation consistent with quotes attributed to Former Detective Williams.³⁷ This is one of several instances when Former Detective Williams provides testimony under oath that is contradicted by evidence, logic or other testimony.

It is possible Williams took no notes during his investigation and prepared his supplemental reports from memory. Given his consistent habit of preparing supplemental reports months after the fact, this would make his supplemental reports inherently unreliable.

³⁵The reporting delays again call into question Williams’ statement that he never took notes

³⁶ Preservation of Officer’s notes were not required during the relevant time period however if notes were taken during the investigation they would be considered reliable written records because they are taken at or near the time the information is gleaned from the source.

³⁷ Contemporaneous notes are taken to accurately reflect the information given. An investigator would have to have a photographic memory to dictate his recollections into a recorder after an extensive interview without written notes to reference. Based on Williams’ testimony and the observations of his colleagues it is clear he has no such capacity.

Report of Chris Swecker, Attorney at Law

- Phone record affidavit: Former Detective Williams certified that Ellen Lamoureux was “friends” with Marker and Marker’s “relationship” with Kenneth Lamoureux was the center of a dispute between Marker and her when in fact Ellen Lamoureux clearly denied knowing Marker according to a supplemental report prepared by Williams and a statement she provided to Lt. Ferrelli and Sgt. Byrom.
- Review and disposition of Toys R US video: Former Detective Williams could not have reviewed the video *only one time*, as he testified to the SPF Citizen’s Review Committee under oath and still reviewed the video *after Smith became a suspect* as Williams testified in the second MAR Court under oath. Either Detective Barker’s supplemental report that documented the review of the tape as taking place before December 28, 1996, was mistaken or false or Williams’ testimony in the second MAR hearing or before the City Council was mistaken, or false. It’s logical that the video was secured from Toys R Us and viewed immediately after the SPF attack and thus Barker’s supplemental report that documented the review of the video as taking place before December 28, 1996 is accurate.

The Toys R Us video is significant evidence because Littlejohn’s trial testimony placed himself entering the Toys R Us store to shoplift after leaving Smith at the SPF. According to Littlejohn’s testimony between five and twenty minutes later he passed Smith going into the Toys R US as Littlejohn was exiting the toy store. According to Littlejohn’s sworn testimony Smith entered the Toys R Us store and later exited with a shoplifted video game. This supposedly occurred after Smith struggled with and brutally assaulted Jill Marker with a brick (which was never found), walked through a bloody crime scene, robbed the SPF cash register and without disposing of the weapon used on Marker walked over to the Toys R Us unnoticed by the Off Duty Police Officer working in the front of the store, the mall security guard posted in the parking lot, workers and dozens of shoppers. This testimony also would have Smith inside the Toys R Us and Littlejohn waiting in a car at the time that Marker was discovered beaten in the back of the SPF.

Far from having “no evidentiary value”, the Toys R Us video was a critical piece of evidence that could have corroborated or disproved Littlejohn’s testimony and established timelines to corroborate other witnesses. Williams’ failure to preserve and log in to evidence or even document the

Report of Chris Swecker, Attorney at Law

disposition of crucial, potentially exculpatory evidence by itself is inexcusable. His testimony under oath about conducting a review of the tape *only once, at a date after Smith became a suspect* is either mistaken or worse, a fabrication. His stubborn refusal to change his testimony when confronted with the impossibility of his time sequence being correct reflects a mindset that is not conducive to objective fact finding, at best.

- Williams testified before the City Council that his supplemental report and *Crime Stoppers* report documenting a 7/22/96 polygraph of Smith identifying Maines as the polygrapher and the result as truthful result were “mistakes”, despite his previous testimony under oath, supplemental reports, *Crime Stoppers* report, advice and waiver of rights form and other compelling evidence to the contrary.
- Sergeant Weavil testified under oath at a pretrial suppression hearing that he wrote Smith’s statement at the Public Safety Center before Smith was arrested when in fact Smith himself wrote the statement. This fact was not known until a handwriting expert commissioned by the SPF Citizen’s Review Committee in 2009 provided her expert opinion that the handwriting belonged to Smith, as Smith claimed at the evidentiary hearing on his Second MAR.
- Former Detective Williams prepared two documents referencing a polygraph of Smith that was conducted by Detective Maines on 7/22/96 which produced a truthful result. Sometime later, Williams made a handwritten change to his supplemental report documenting the 7/22/96 polygraph examination by crossing through Maines’s name as the polygrapher and writing the name of Det. Randy Patterson on a Prosecutor’s copy. Still later in his testimony before the City Council, Williams repudiated his two reports despite the fact that he had testified under oath at the pretrial suppression hearing that a polygraph was conducted by Maines on 7/22/96 and the result was truthful. This confusion reflects at best serious inattention to important details and inaccurate documentation and at worst an attempt to rewrite the results to comport with the later theory that Smith committed the crime. (See pages 125 to 139). It should be noted that at the time Williams had abandoned Lamoureux and eliminated Fletcher as suspects, and had no viable suspect under active investigation.

Report of Chris Swecker, Attorney at Law

- Former Detective Williams testified before the City Council that Kenneth Lamoureux “admitted sending some cards to Jill Marker.” (Williams testimony page 62). Writer could find no documentation of this significant piece of information.
- Former Detective Williams testified under oath before the City Council that he dropped Lamoureux as a suspect in the SPF investigation in April, 1996 because he learned from Jill Marker that her attacker was a black male. (Williams testimony pages 70-76). The first interview of Marker, however, did not take place until October 31, 1996 so this testimony is inaccurate and misleading. In addition, in May 1996, Williams and other WSPD officers and an assistant district attorney actively pursued Shane Fletcher as a suspect; Fletcher is white.
- Failure to Follow Leads and Develop Relevant Evidence:
 - Former Detective Williams did not develop the crucial piece of information that Marker advised Jeana Schopfer that Lamoureux was in the SPF uninvited, had asked Marker to dinner and that Marker was probably on the phone with her when Glover was exiting the store.
 - Williams failed to locate and process the white van Lamoureux drove as a work vehicle.
 - Williams neglected to interview Lamoureux’ s employer in detail and obtain his work records.
 - Williams interviewed a witness (Glover) who was shopping at the SPF and spoke to Jill Marker for 15 minutes approximately 10 minutes before she was attacked. He failed to elicit the crucial information that Marker was on the phone as Glover and her son exited the store, and appeared to be concerned about something or that she mentioned to the person to whom she was talking that there were still shoppers in the store.
 - No effort was made to analyze records of Lamoureux’ s home phone to ascertain who he contacted and whether he was responsible for the hang up calls to Wanda Schofield or Jill Marker.
- Inadequate Supervision of the SPF Investigation:

Report of Chris Swecker, Attorney at Law

- It is the role of the first line supervisor to oversee investigations for compliance with laws, rules, regulations and policies. A supervisor who participates in the investigation loses his/her objectivity and ceases to be a supervisor, yet this is what the WSPD Sergeant Randy Weavil did when he joined in the interrogation of Valerie Williams and Smith. In addition Weavil assisted in the interview of Andra Wilson.
- The questionable actions of Former Detective Williams should have been noted and remedied early in the investigation by his Supervisor. It is clear from the record that Detective Williams was not capable of handling a complex investigation. Close and frequent supervision was in order. It appears that the WSPD policies regarding periodic case reviews were not conducted or were perfunctory in nature.
- The “enhanced memory” of Ivadine Hester
 - Hester shopped in the SPF on 12/8/95, the day before the attack on Jill Marker.
 - On December 11 Hester contacted *Crime Stoppers* to report she shopped in the SPF on 12/8/95 and had observed two black males who “acted very strange”. Detective Williams’ supplemental report dated 2-11-97 summarizes the Crime Stopper’s report which basically stated that the two black males entered the store walked midway into the store and left the store without making any purchases. She described one as one as 6’2 with dreadlocks and the other as 5’11 with short hair. No mention is made by Hester that she was shopping with a friend nor observing the black males in a car.³⁸
 - On 12/12/95 the WSPD sent out a *Crime Stoppers* public release that the police were looking for a burgundy Mustang in connection with the SPF incident.
 - On 1/24/97 Calvin Michael Smith was arrested and his photo published in the paper. Detective Williams’ 2/11/97 supplemental report states that Hester was re-contacted and interviewed on 1/31/97 at which time she stated the photo of Smith resembled one of the black males she saw in the SPF on 12/8/95.

³⁸ Apparently the only thing suspicious about the black males appears to be that they “looked mean” and didn’t buy anything in the store.

Report of Chris Swecker, Attorney at Law

- Detective Williams documented a photo lineup Hester was shown in which she said Smith resembled one of the black males in the store but she “was not certain this was the same subject she saw inside the SPF on 12/8/95.” In violation of policy he had Hester circle Smith’s photo indicating a positive identification.
- Hester added at this interview the new information that the two black males got into a burgundy Ford mustang “however she was not certain of this and *did not obtain a registration plate number.*”
- The report also notes that Hester was contacted in *January 1996* about her 12/11/95 telephonic information and she had “no additional information to offer” There is no documentation of this interview.
- Hester’s actual handwritten statement on 1/31/97 adds new information that she was with a friend at the SPF on 12/8/95 and that the friend observed the two black males in the store and shortly thereafter in a burgundy Mustang and that Hester observed a “NC tag.” The statement also says the picture of Smith published on television “did not look like the picture in Sunday’s paper.” Hester further stated her friend, who is never identified in any police report and is apparently never interviewed, “cannot remember the men’s faces.”
- Over 20 months after her original report Hester told a private investigator on 7/14/97 that she was shown a picture of the burgundy Mustang by Detective Williams during an interview earlier in the year and that she noted the license tag as being out of state and containing the numbers 70 and 53. This information was never documented in the investigative case file. Hester then advised the private investigator that she re-contacted Detective Williams “several months later” to tell him that she had remembered the tag numbers because of the number 70 is the year she graduated from high school and the number 53 was her cousin’s (deceased) date of birth. This information was also never documented in Williams’ case file.
- On August 20, 1997 apparently Hester picks Littlejohn out of a photo lineup and circled his photo even though she is not sure of the identification.

Report of Chris Swecker, Attorney at Law

- The prosecutor's notes of her pretrial interview of Hester states "never saw a tag". The phrase was underlined.
- Hester testified at the trial of Calvin Michael Smith that her "identification" of Smith out of a photo lineup stating "not that it was a positive ID, but there something about that person." She further stated that the photo she picked out was the "taller man." In a subsequent photo lineup she testified that she circled the photo of Littlejohn as the "smaller man". It should be noted that Smith is considerably smaller than Littlejohn.
- Conclusion: Clearly Hester's recollection was "enhanced" by someone showing her a photo of the mustang as connected to the SPF assault which caused her to "remember", over 20 months after the incident, not only seeing the black males in the burgundy mustang but also the digits on the license tag. Her memory was also "enhanced" through the Williams interviews to "remember" that the mustang had an out of state tag even though she stated shortly after the attack that she did not see a license tag. Apparently the Prosecutor concluded that this memory enhancement was lacking in credibility and made notes to omit such testimony. Finally, the person who accompanied Hester on 12/8/95 has either never been identified or interviewed or that person was indeed interviewed but the contact was not documented. The above actions (or inactions) simply add to the list of relevant investigative steps that either were never followed up on or never documented.