

- d. Jeffrey Nelson, under oath, has completely recanted the testimony he gave as a child. He asserts that he was manipulated by his mother and that his testimony was coached by law enforcement.
 - e. DNA testing has confirmed that Hartley's blood was on Coffey's clothing collected by law enforcement the day after the murder.
 - f. No physical evidence collected at the crime scene has ever linked Bragg to the murder.
3. Bragg's conviction hinged on the false testimony of Coffey, Rene Nelson, and Jeffrey Nelson. The following Plea for Declaration of Innocence, including new evidence, discredits the evidence used to wrongly convict Bragg, undermines any confidence in his conviction, and establishes Bragg's innocence.¹

PROCEDURAL HISTORY

4. On December 8, 1994, Hartley was found murdered in his home in the Greenway Mobile Home Park in Boone, North Carolina.
5. On December 10, 1994, Bragg was arrested in Mountain City, TN. He waived extradition and was transported by the Boone Police Department (BPD) back to Watauga County, North Carolina.
6. On January 6, 1995, Coffey was arrested, nearly a month after he first confessed involvement in the murder to law enforcement.
7. On December 1, 1995, Coffey was tried non-capitally and convicted of first-degree murder. He was sentenced to life in prison without the possibility of parole.
8. Prior to his trial, Bragg rejected a plea of fifteen years in prison and maintained his innocence.
9. In February 1996, Bragg was tried capitally based upon a sole aggravating factor that the murder was committed during the course of an armed robbery.
10. On February 26, 1996, Bragg was convicted of first-degree murder under the felony murder rule. Based on the jury's verdict, all parties and the Court agreed that the case was non-capital as the aggravating factor was the basis of the finding of guilt and could therefore not be used to enhance punishment. Bragg was sentenced to life in prison without the possibility of parole.
11. On February 10, 1997, the North Carolina Supreme Court upheld Coffey's conviction. *State v. Coffey*, 345 N.C. 389, 480 S.E.2d 664 (1997).

¹ The trial transcript was previously provided by the parties to the Three Judge Panel. Citations to the transcript are cited as "Trial Tr." throughout this plea.

12. On February 17, 1998, the North Carolina Court of Appeals upheld Bragg's conviction. *State v. Bragg*, 128 N.C.App. 748, 496 S.E.2d 851 (1998) (unpublished).
13. On June 24, 1999, the North Carolina Supreme Court denied Bragg's Petition for Writ of Certiorari filed by North Carolina Prisoner Legal Services (NCPLS) on Bragg's behalf. *State v. Bragg*, 350 N.C. 596, 537 S.E.2d 484 (1999).
14. On September 15, 1999, NCPLS filed a petition for Writ of Habeas Corpus. On January 29, 2001, the District Court granted the State's Motion for Summary Judgment and dismissed Bragg's petition.
15. On August 31, 2016, the North Carolina Innocence Inquiry Commission held a hearing and determined by a 6-2 vote that Bragg's case had sufficient evidence of innocence to warrant judicial review.
16. A hearing before the three-judge panel in this case is scheduled for the week of July 24, 2017. Pursuant to N.C. Gen. Stat. § 15A-1469(d),

The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert any privilege or prevent a witness from testifying.

FACTUAL BACKGROUND

A. The Crime and Initial Investigation

17. At approximately 6:30 p.m., on December 8, 1994, Hartley, age 76, was found by a neighbor, Joe Grimes,² who was taking him leftovers for dinner. Hartley was face down on the floor in his trailer on Winter Drive in Boone. (Trial Tr. 507-509; Ex. 1.)
18. Blood was spattered on the curtains, wall, bed, and ceiling beam. (Trial Tr. 670-672, 696.)
19. Detectives Jim Harrison (Det. Harrison) and Mark Shook (Det. Shook) were assigned as the primary investigators for the BPD. (Trial Tr. 387, 712.)
20. An autopsy was performed the same night, around 10:30 p.m. (Trial Tr. 461.) Dr. Brent Hall (Dr. Hall) determined that Hartley died as a result of blunt trauma to the head. (Trial Tr. 475.)
21. Hartley also had multiple hematomas and lacerations on his face and neck. (Trial Tr. 464.)

² Joe Grimes's given name is Larry Joseph Grimes. He is commonly known as Joe. He often took Hartley leftovers after he and his wife had dinner.

22. Hartley's blood alcohol content was .19. (Trial Tr. 489.)
23. Hartley did not have any money on him when he was found and his wallet was missing. (Trial Tr. 694, 702.)

i. Greenway Trailer Park and Surrounding Area

24. The Greenway Trailer Park consists of three parallel streets, Summer Drive, Winter Drive, and Zeb Street, all connected by Leola Drive, which runs perpendicular to the others.³
25. Hartley's trailer was at the very end of Winter Drive. (Ex. 2.)
26. A map of the surrounding area, which identifies Boone landmarks associated with this case, is attached as Exhibit 3. The Greenway Trailer Park was within walking distance of the K-Mart, A&P, Longvue Motel, and ABC Store. Many of the individuals associated with this case frequented those locations.

ii. Marvin "Coy" Hartley

27. Hartley was fairly well known in the Boone area. He grew up in Boone and was often seen walking down the streets. (Trial Tr. 448-449, 506, 523-524, 657, 807, 876, 1100.)
28. Hartley was a known alcoholic and would walk to the ABC store twice a day to purchase a bottle of Popov Vodka. (Trial Tr. 657, 823, 829.)
29. He would often allow others, including Coffey and Bragg, to come to his trailer to drink and sometimes spend the night. (See Trial Tr. 301, 702.)
30. Hartley was known to keep money in his trailer and on his person. He received a social security check at the beginning of each month. (Trial Tr. 829.)
31. Hartley was last seen alive sometime between 5:10 p.m. and 5:30 p.m. by Nancy Horton and Cherie Gray.⁴ (See Exs. 5-7.)

iii. Neighborhood Canvas⁵

32. Law enforcement interviewed some of Hartley's neighbors the night he was found and early the next day.
33. The sun set at 5:12 p.m. on December 8, 1994 in Boone, North Carolina, according to the U.S. Naval Observatory Astronomical Applications Department. (Ex. 8.)

³ Attached as Exhibit 2 is a chart showing the trailers on Winter Drive and who lived in them at the time of the murder.

⁴ As there are numerous individuals mentioned in this Plea, attached as Exhibit 4 is a list of all names with a brief description of their relation to the case for quick reference.

⁵ Neighbors who were interviewed but did not have any relevant information have been left out for brevity. Neighbors who were interviewed more than once are only included if there is additional or conflicting relevant information.

34. **On December 8, 1994**, at 9:05 p.m., law enforcement interviewed Joe Grimes. It was Joe who found Hartley's body when he took Hartley leftovers at approximately 6:30 p.m. After finding Hartley, Joe went to get his wife, Debra, who came over and checked for a pulse but could not find one. They called 911. (Ex. 1.)
35. At 9:14 p.m., law enforcement interviewed Nancy Horton at her home on Winter Drive. She stated she saw a "white male going to [Hartley's] trailer around [4:45 p.m.]. He was 6'1" or 6'2"; bushy hair, brown in color; he had a hat on; jean jacket (faded) and was carrying a brown bag, very small. No facial hair; ruddy looking skin." Horton had seen the man before. Horton saw Hartley headed toward his trailer alone around 5:25 p.m. or 5:30 p.m. Horton saw Cherie Gray arriving home when Horton saw Hartley going into his trailer. (Ex. 5.)
36. At 9:20 p.m., law enforcement interviewed Judy Wolber at her home on Winter Drive, which was across from Hartley's trailer. She got home at 9:00 p.m. and had last seen Hartley that morning at 10:00 a.m. on the bridge behind K-Mart. She was not home when the murder occurred. (Ex. 9.)
37. **On December 9, 1994**, at 8:11 a.m., David Doss was interviewed by law enforcement at his home on Winter Drive. He stated that he arrived home at dark the night before, between 5:45 p.m. and 6:00 p.m. He saw a "tall man walking up toward the end of the street toward Cherie's car and walk to the left toward [Hartley's] trailer." Doss described the man as wearing "a dark colored coat and blue jeans." (Ex. 10.)
38. At 8:42 a.m., Amos Johnson and Lisa Rivera, who lived on Summer Drive, were interviewed by law enforcement at their home. Both of them were home that evening from 5:00 p.m. on, but did not see anyone or hear anything. Amos had seen two men go from the A&P to Hartley's that morning of December 8 with some wine.⁶ (Ex. 11.)
39. At 8:50 a.m., Cherie Gray was interviewed by law enforcement at the nearby K-Mart where she worked. Gray arrived home the night before around 5:10 p.m. and saw Hartley going up the steps to his trailer.⁷ She does not mention seeing anyone with or near Hartley. When Gray left home between 6:20 p.m. and 6:30 p.m., she saw lights in Hartley's trailer and two men walking in and out of the trailer park, but they were not together. One had "dirty blond hair with a leather jacket with things hanging off of it."⁸ Gray knew both Bragg and Coffey, but did not say she saw either. (Ex. 7.)
40. Based on Nancy Horton's description of the person she saw the night of the crime (Ex. 5), Det. Shook immediately determined Bragg was BPD's prime suspect,⁹ despite several facts in Horton's statement that Bragg did not actually fit the description:

⁶ One of the men described by Amos sounds like Bragg. Bragg acknowledges bringing alcohol to Hartley's, but that was the morning of December 7, not December 8.

⁷ This makes Hartley's time of death sometime between 5:10 p.m. and 6:30 p.m. when his body was discovered by Joe Grimes.

⁸ This description matches Henryk Ossowski and a jacket he was known to wear. (Trial Tr. 300-301, 435.)

⁹ Bragg was well known to the BPD as he was often picked up for public drunkenness, including two days before the murder. (Trial Tr. 554.)

- a. Horton mentioned she had “seen this man before,” but did not provide a name. As Horton knew Bragg,¹⁰ if the man she saw were Bragg, she would have told law enforcement that she saw Bragg.
 - b. Horton described the individual she saw as having bushy hair, “brown in color.” Police reports, including the BOLO¹¹ BPD put out to try to locate and arrest Bragg, described Bragg’s hair as black and gray. (Ex. 12.)
 - c. Horton described the man specifically as having no facial hair. Bragg had a mustache, which was known by BPD and the BOLO indicated as much. (Ex. 12.) It is also visible in the booking photo of Bragg in the newspaper a few days after the crime. (Ex. 13.)
41. Additional interviews of Hartley’s neighbors were conducted the next week—after Bragg was arrested and his photo was in the paper.
42. **On December 16, 1994**, at 9:59 a.m., Nancy Horton was re-interviewed at the Boone Police Department.¹² On December 8, sometime around 4:15 p.m., she saw Hartley leaving the trailer park. Ten to fifteen minutes later, she saw a man walk up the street towards Hartley’s residence. She had seen the same man going to and from Hartley’s on prior occasions. During this interview her description changes to indicate the man had “black and gray hair” where her initial statement indicated he had brown hair. “Black and gray” was the exact language law enforcement used in the BOLO for Bragg. At 5:10 p.m., she saw Hartley walking by her trailer headed home. Shortly thereafter, she called her son to come eat. Horton acknowledges seeing Bragg in the paper and indicates she has known him for the past five years and even had a photograph of him from when he used to drink with her and others in her home. Despite having never previously indicated Bragg was the man she saw walking towards Hartley’s the day of the crime, by the end of this interview she stated she could swear in court that Bragg is who she saw walk by her trailer that day. (Ex. 6.)¹³
43. At 4:50 p.m., law enforcement interviewed Linda Wilcox at her home on Winter Drive.¹⁴ Wilcox told them that she had been home all day on December 8 and “didn’t notice anything out of the ordinary, with the exception of seeing Kenneth Coffey at about 3:30 p.m. . . .” Wilcox could not be certain he went to Hartley’s, but he was walking towards Hartley’s trailer when she saw him. Wilcox notes she had seen Bragg’s photo in the paper, but had not seen him in the trailer park since before Thanksgiving.¹⁵ (Ex. 14.)

¹⁰ Horton not only knew Bragg, she had a photo of him in her home that she provided to law enforcement the next week. (See Ex. 6 at 2.)

¹¹ BOLO stands for “be on the lookout”. The BOLO was sent to other law enforcement agencies telling them there was an arrest warrant for Bragg and to be on the lookout for him.

¹² Despite lasting over two hours, only three pages of notes document the 12/16 interview with Horton. (Ex. 6.)

¹³ Nancy Horton died in 2009.

¹⁴ Linda Wilcox was Rene Nelson’s mother.

¹⁵ The interview indicates Linda Wilcox was interviewed by the SBI on 12/9/94, but there is no record of that interview in the file.

44. **On December 20, 1994**, Joe Grimes was re-interviewed at the Boone Police Department. He arrived home around 5:00 p.m. the night Hartley died. He didn't recall seeing anyone walking on the street. (Ex. 15.)
45. **On December 21, 1994**, at 1:44 p.m., Debra Grimes was interviewed at the BPD. She stated she had not seen Hartley the day he died prior to her husband getting her to come to the trailer. Her husband came home at 5:30 p.m., they ate dinner, and her husband took Hartley leftovers for dinner. (Ex. 16.)

iv. Coffey's Initial Statements to Law Enforcement and Others

46. Coffey gave many contradictory statements prior to Bragg's trial. At times, Coffey said Bragg committed the crime alone. Other times, Coffey said he committed the crime with Bragg or that he committed the crime with someone other than Bragg.
47. Coffey's initial statement to law enforcement, the day after the murder, was given during a five-hour interview. He detailed his whereabouts the day of Hartley's murder. (Ex. 17.)
- a. At first, Coffey said he had last seen Hartley around 3:30 p.m. when Hartley gave Coffey money to go to the ABC store to pick up some vodka. (Ex. 17 at 3.)
 - b. Coffey said that as he was leaving, Bragg and Joe Cothren were walking up towards Hartley's trailer. (Ex. 17 at 3.)
 - c. He stated he called Shirley Faircloth from the A&P and she came to pick him up about 3:45 p.m. She took him to Woodlands in Blowing Rock for a couple of hours and then to Ichabod's for an hour or an hour and a half. (Ex. 17 at 3-4.)
 - d. Coffey said he had a couple hundred dollars from doing work for Jeff Greene. He had been paid about \$280 on Wednesday, December 7, 1994, had spent all of the money by the morning of Thursday, December 8, 1994, and was now broke. (Ex. 17 at 4.)
 - e. Several hours into the interview, Coffey changed his statement and told law enforcement he was with Bragg and Joe Cothren when Hartley was killed. Coffey stated this occurred on Wednesday, which obviously was not true.¹⁶ Coffey stated that Bragg and Cothren followed him down the street to Hartley's trailer.¹⁷ (Ex. 17 at 5-6.)

¹⁶ Cothren was in Ashe County with his sister when the crime occurred so he was cleared as a suspect. Nothing in the file indicates why Cothren being with his sister was considered credible enough to clear him as a suspect, but the numerous witnesses placing Bragg in Mountain City, Tennessee, including Bragg's brother, did not clear Bragg.

¹⁷ This is in complete contradiction to the testimony of the State's other key witnesses, Rene and Jeffrey Nelson, who stated that two men were *following Hartley* home.

- f. Coffey stated that Bragg took Hartley's wallet and gave Coffey approximately \$260. Faircloth picked him up at the A&P and they went to Woodlands and Ichabods. (Ex. 17 at 7.)
 - g. Coffey spent the night at Faircloth's home. He showered, changed clothes, and gave her the clothes he was wearing. Faircloth told him she would wash them. (Ex. 17 at 7.)
 - h. When confronted about the blood on his clothing, Coffey states it could be from when he (Coffey) cut his finger. (Ex. 17 at 8.)
 - i. During this interview, investigators note in their memorandum that they are aware Coffey cannot read or write and that he only completed the ninth grade in special education classes. (Ex. 17 at 6, 8.) As they knew him from the community and his prior run-ins with the law, it is unquestionable law enforcement knew his mental illness and intellectual disabilities went beyond being illiterate and in special classes.
 - j. Coffey was permitted to call his father to pick him up and was not taken into custody after his interview. (Ex. 17 at 8.)
48. On January 6, 1995, nearly a month after Hartley was killed, Coffey was interviewed by law enforcement a second time. The interview lasted four hours. (Ex. 18.)
- a. In direct contradiction to his December 9, 1994 statement, Coffey stated that he had been working with his father, cutting wood, prior to the crime and specifically had not worked with Jeff Greene. (Ex. 18 at 1.)
 - b. Coffey again detailed his whereabouts the day Hartley was killed. He again, in contradiction to other witnesses, stated that Bragg and Joe Cothren followed him down Winter Drive to Hartley's trailer after Coffey got vodka for Hartley at the ABC store. (Ex. 18 at 2.)
 - c. Coffey stated that while Bragg hit Hartley, Coffey and Cothren were standing in front of the couch. Coffey got scared and left. He went to the A&P and called Shirley Faircloth to pick him up. (Ex. 18 at 2.) He again stated that Bragg and Cothren saw him at the A&P and gave him money. (Ex. 18 at 3.)
 - d. Coffey states Faircloth came five minutes later and they went to Blowing Rock. They drank and shot a game of pool. Coffey spent the night at Faircloth's. (Ex. 18 at 3.)
49. Forty minutes after signing his second statement, and after he was confronted with the fact that Joe Cothren had not been in the area when the crime occurred, Coffey told law enforcement Cothren was not involved. Coffey then implicated his (Coffey) ex-girlfriend, Rhonda Carson and said she was on Hartley's porch when the crime occurred. (Ex. 18 at 4.)

50. At this point, Coffey was finally arrested for Hartley's murder.
- a. At Bragg's trial, Coffey testified that Det. Harrison was pressuring him and that he gave his second statement on January 6, 1995 because he was more comfortable with Det. Shook as he and Det. Shook had gone to school together. (Trial Tr. 317–318.)
51. Shaun Delp, another inmate in the Watauga County Jail, testified that he heard Coffey say to someone on the phone that Bragg was not involved with the murder and that he had committed the crime with someone named Greg. (Trial Tr. 1234–1235, 1240.)
- a. Greg Richardson was known to Bragg, Coffey and several witnesses in this case. He was identified as an alternate suspect by the defense at Bragg's trial.
52. On March 21, 1995, without his counsel present, Det. Shook and Det. Harrison took Coffey to Hickory, North Carolina to be polygraphed. After Coffey failed the polygraph, SBI Agent Jonathan Jones and, subsequently, Det. Shook obtained another statement and confession from Coffey in which he implicated himself and Bragg in the murder. (Exs. 19, 20.)
- a. Coffey's revised statement was that on the way back from going to the ABC store for Hartley's vodka, Coffey ran into Bragg at the end of Winter Drive. This time, he claimed Bragg asked if Hartley had any money and that Bragg said he was going to rob him, to which Coffey reluctantly agreed. (Ex. 20 at 1.)
 - b. While still in Hartley's trailer, Coffey said Bragg picked up the wallet and gave him some of the money, contradicting his prior statement that this conversation took place at the A&P. (Ex. 20 at 1.)
 - c. Coffey then slightly changed his story again and stated that Rhonda Carson had walked into Hartley's trailer when Bragg was hitting Hartley. (Ex. 20 at 2.)
53. On February 7, 1996, after he had already been to trial and was convicted of first degree murder, Coffey again spoke to law enforcement. Despite his case being on appeal and having representation for that appeal, and law enforcement being acutely aware of his mental health issues and intellectual disabilities, Coffey was interviewed without an attorney present after he had requested to speak with the prosecutor. (Ex. 21.)
- a. During this interview, Coffey asked for assurances that his court disposition would be amended if he testified during Bragg's upcoming trial. Coffey had heard that Bragg may "walk" if Coffey didn't testify and Coffey wanted a deal in exchange. (Ex. 21 at 1–2.)
 - b. Although law enforcement indicates in the memorandum that no guarantees were given, Coffey's subsequent letters and statements make clear he believed he was promised a deal.

v. Rene Nelson

54. Rene Nelson¹⁸ was first interviewed by the SBI at 8:15 a.m. on December 9, 1994, the morning after the murder. In her initial statement, she only mentioned seeing Coffey the day of the murder. (Ex. 22.)
- a. Rene told law enforcement that the day of Hartley's murder, "sometime after 3:00pm but before she left to go to the day care at about 5:15pm, it was before dark, she saw Kenneth Coffey come out of Hartley's yard. He was walking fast toward Greenway Drive and looking wild." Rene said he was wearing a dark colored flannel shirt or jacket. (Ex. 22.)
55. On December 14, 1994, Bragg's picture was in the paper identifying him as the suspect in Hartley's murder. (Ex. 13.)
56. The next day, on December 15, 1994, after Bragg's photo was in the paper, Rene spoke to Det. Shook and Det. Harrison. Interestingly this time, contrary to her statement to the SBI, she stated that Bragg had been with Coffey the day of the murder. (Ex. 23.)
- a. Rene stated that she went to the daycare between 4:50 p.m. and 5:00 p.m. to pick up her children. She was gone about ten minutes and went inside her trailer when she got back. A few minutes later, her son, Jeffrey, called her outside and asked why Coffey and "Big Bob" (Bragg) were following Hartley down the road. (Ex. 23 at 1.)
 - b. Rene came outside and saw Coffey and Bragg and she could tell they were drunk. Hartley was almost to his trailer. Rene said that Jeffrey got on his bike and that he saw them go in the trailer. Rene said she saw Bragg swinging something in his right hand and that it had something round in it. The sock was dark in color. (Ex. 23 at 1.)
57. Rene's December 9, 1994 statement to the SBI and her December 15, 1994 statement to the BPD are completely at odds with one another.
- a. On December 9, she states she only saw Coffey. On December 15, she states she saw both Bragg and Coffey.
 - b. On December 9, she states Coffey was leaving Hartley's trailer sometime between 3:00 p.m. and 5:15 p.m. On December 15, she states Bragg and Coffey were headed towards Hartley trailer sometime after 5:15 p.m.
58. Rene admitted in her December 15, 1994 statement that she had seen Bragg's photo in the paper the day before. (Ex. 23 at 2.)

¹⁸ Rene Nelson's full name is Linda Rene Nelson, but she is commonly referred to as Rene.

59. Nancy Horton's statement also directly contradicts Rene's statement. Horton was with Rene when they returned from the daycare. Horton never saw anyone following Hartley as he went back to his trailer. (Ex. 6.)
60. Rene also had law enforcement interview her son, Jeffrey Nelson, on December 15, 1994. As described below, Jeffrey corroborated Rene's new version of events.

vi. Jeffrey Nelson

61. Rene Nelson's son, Jeffrey Nelson, was nine years old in December 1994.
62. On December 15, 1994, Jeffrey gave a statement to Det. Harrison and Det. Shook. He told them that he normally gets home from school around 3:15 p.m. He went into his home and did his homework, which did not take him too long. He went outside to play soccer with his friends: Eddie Jones, Nick Gray, Steve Jones, and Thomas Pope. Jeffrey stated he saw Hartley walking up the road towards his trailer and two men were walking by. He saw them go up Hartley's steps and open the screen door. Jeffrey never saw them leave Hartley's trailer. (Ex. 24.)
- a. Jeffrey stated the men were Kenneth Coffey and Bobby Bragg. He said everyone called Bobby "Big Bob." (Ex. 24.)
 - b. He said Bragg had "something hanging out of his pants in the front that kind of looked like a stick." (Ex. 24.)
63. Jeffrey's statement conflicts with the statement Linda Wilcox, Jeffrey's grandmother, gave to law enforcement on December 16, 1994. Wilcox indicated Jeffrey told her that "he had heard [Hartley] and [Coffey] arguing one time." (Ex. 14.)
64. Not only does Jeffrey's statement to his grandmother not mention that the argument between Hartley and Coffey was on the date of the crime, it also makes no mention of Bragg.
65. Jeffrey was ten years old when he testified at Coffey's 1995 trial.¹⁹
- a. When asked if Bragg had a nickname, Jeffrey replied "Big Bob or something like that." (Ex. 25 at 494.)
 - b. After Jeffrey came home from school and did his homework, he went outside to play. When asked if he had been outside a good while before seeing Hartley, he replied, "I guess. I don't know." (Ex. 25 at 496.)
 - c. He testified that he saw Bragg and Coffey following Hartley up the road. When asked how far behind, he replied, "I don't know." (Ex. 25 at 497.)

¹⁹ Jeffrey Nelson's trial testimony from Coffey's 1995 trial is attached as Exhibit 25. Rene Nelson's trial testimony from Coffey's 1995 trial is attached as Exhibit 26. Some pages are difficult to read, so the pages the Commission staff retyped are included for the panel's convenience.

- d. Jeffrey testified he rode up the road on his bike and then came back to his own trailer. At first, he says he saw Bragg, Coffey, and Hartley go in Hartley's trailer. (Ex. 25 at 497.) Then he says he did not see them go in the trailer. (Ex. 25 at 501.)
- e. Jeffrey said he went to get his mom because he "didn't know what happened." He was scared because he "thought something had happened to [Hartley]." He said he was concerned because Bragg and Coffey also went in the house. (Ex. 25 at 497–498.)
- f. When asked if he heard Coffey or Bragg say anything as they went up the road, he responded. "I don't know." (Ex. 25 at 499.)
- g. When asked where Coffey and Bragg went after Hartley went in his home, Jeffrey responded, "I don't know," contradicting his earlier testimony. When asked specifically if he knew whether they went in Hartley's house, Jeffrey responded, "No." (Ex. 25 at 500–501.)
- h. On cross, when the defense tries to pin down whether and how Jeffrey knows Bragg to be able to identify him, the following exchange occurs:

Q: Do you – how are you sure that it was – have you seen – tell me how you know Bobby Bragg?

A: He lives in – he used to go to Shady Valley where my uncle – he was in Shady Valley before because my uncle's mom lives there.

Q: Where is Shady Valley?

A: It's in Mountain City like, I think.

Q: Did you used to live in Mountain City?

A: Yes, my dad lives there.

Q: And that's how you knew Bobby Bragg?

A: Well, I've seen him before. I don't know him.

Q: You've never met him?

A: No.

Q: And how did – so, you knew him in Tennessee?

A: No, I didn't know him.

Q: Well, when did you first become acquainted with him?

A: What do you mean?

Q: I just want to know the first time you got to know who he was. Was this in Mountain City?

A: Yes, I don't know who he is.

Q: You don't know who he is?

A: But I've seen him.

Q: Well, who – who told you who he was and told you his name?

A: My uncle.

Q: And was this in Tennessee?

A: Shady Valley.

(Ex. 25 at 501–502.)

66. Jeffrey's responses at Coffey's trial never give a clear answer of how he knew Bragg.

B. Coffey's Whereabouts on December 8, 1994

67. At 7:00 a.m., Richard Rominger saw Coffey at Rominger's girlfriend's home sleeping in one of the bedrooms. Rominger's girlfriend, Jolene Latty, was on the couch. (Ex. 27.)

68. Around 9:05 a.m. or 9:10 a.m., Jim Earp picked Coffey up in front of the A&P and took him uptown. (Ex. 28.)

69. At 9:30 a.m., Marie Potter saw Coffey, *alone*, come across the field next to the Greenway Trailer Park, head up the street, and cut across Steve Sheppard's yard. (Ex. 29.) Sheppard lived at 172 Summer Drive.

70. Around 12:00 p.m., Nancy Horton saw Coffey, *alone*, beside K-Mart. (Ex. 6 at 2.)

71. Around 3:00 p.m., Linda Wilcox saw Coffey, *alone*, walking towards Hartley's trailer. (Ex. 14.)

72. Sometime after 3:30 p.m., Rhonda Carson saw Coffey by the A&P. Fifteen to twenty minutes later, she again saw Coffey come back to the A&P to use the payphone. Then he walked towards the field. *No one was with Coffey* when Carson saw him. Carson was in a car with Christy Osborne and Kanessa Hamby, who corroborated Carson's statement. (Exs. 30–33.)

73. Coffey then went to the ABC store and asked Steve Combs, an employee at the store, what kind of liquor Hartley drank. Combs took Coffey to the aisle where the product was and handed him a pint of Popov vodka. (Trial Tr. 822–823). Receipts from the store indicate that single pints of Popov vodka were purchased at 3:38 p.m. and 3:46 p.m. on December 8, 1994. (Ex. 34.)

74. Around 5:00 p.m., David Brown saw Coffey walking *alone* down Summer Drive, one street over from Hartley's home on Winter Drive.²⁰ (Trial Tr. 1002–1004.)

75. Shortly after he got home at 5:45 p.m. or 6:00 p.m., David Doss saw a tall man walking up toward Cherie Gray's car. Doss was dating Gray at the time. The man crossed over the street towards Hartley's trailer. Doss does not know what trailer the man went to, only the direction he was walking. The man was wearing a dark colored coat and blue jeans.²¹ (Ex. 10.)

²⁰ Brown had seen Coffey walking down the road 4–5 times that day. The first time was at 7:00 a.m. and the last time was around 5:00 p.m. Coffey was *alone* each time Brown saw him on December 8, 1994. (Trial Tr. 1002–1004.)

²¹ DNA testing conducted in this case will be addressed subsequently in this Plea. However, it is important to note that Coffey's *dark colored coat and blue jeans* that were collected when he was arrested had spots of Hartley's blood on them. Photos of Coffey's clothing are attached as Exhibit 35.

76. A little after 6:00 p.m., Betty Triplett saw Coffey sitting *alone* on the bench by the payphones at the A&P. (Trial Tr. 996–997.)
77. After dark, Shirley Faircloth, Coffey’s girlfriend, picked up Coffey at the A&P. He had money he did not have before and he took her to dinner at a nice restaurant in Blowing Rock. Coffey then spent the night with Faircloth at her home. (Exs. 36–37.)
78. Numerous individuals saw Coffey *alone* the day Hartley was murdered because Coffey was in Boone, North Carolina on December 8, 1994 and Bragg was in Mountain City, Tennessee.

C. Bragg’s Whereabouts December 7–9, 1994

79. Bragg spent the evening of December 6, 1994 at Hartley’s trailer. Coffey came over in the early morning hours of December 7, 1994 and they stayed up drinking while Bragg tuned his guitar. Coffey and Bragg left Hartley’s around 6:30 a.m. on December 7, 1994. (Ex. 38 at 412.)
80. Bragg and Coffey walked to the A&P so they could purchase wine when it opened at 7:00 a.m. (Ex. 39; Ex. 38 at 412.)
81. Later that morning, Bragg and Coffey left the A&P and walked to Henryk Ossowski’s trailer in the Greenview Trailer Park.²² (Ex. 39; Ex. 38 at 412.)
82. Bragg left Henryk Ossowski’s and took the AppalCart²³ across town to King Street. (Ex. 39; Ex. 38 at 413; *See* Ex. 40.)
83. **On December 7, 1994**, at 1:14 p.m. Bragg called his sister, Phyllis Smith, from a payphone at the Pantry on Highway 421 in Boone to ask if he could borrow some money. (Trial Tr. 1256–1258.) This call was confirmed by Smith’s phone records. (Ex. 41.)
84. Around 3:00 p.m., Darlene Laney saw Bragg at the Harris Teeter in Boone where she worked. Bragg asked her for a ride to Mountain City. She explained that she did not have transportation and that Gary Edwards was giving her a ride home. She told Bragg that he could ask Edwards for a ride. (Trial Tr. 906–907.)
85. Around 3:40 p.m. the day before the murder, Gary Edwards gave Bragg a ride to Mountain City, Tennessee and dropped Bragg off at Jay Manuel’s trailer around 5:00 p.m. (Trial Tr. 894, 897, 1210–1211; Ex. 38 at 413.)
86. Mountain City, Tennessee is twenty-four miles from Boone. It takes between thirty and forty minutes to drive from Winter Drive to Mountain City. (*See* Trial Tr. 897.)

²² The Greenview Trailer Park is different than the Greenway Trailer Park where Hartley lived.

²³ The AppalCart is a free public transportation system in Boone.

87. Bragg spent the early evening of December 7, 1994 with Jay Manuel. John and Jackie Shoemake saw Bragg at Manuel's trailer. They were drinking and hanging out. (See Trial Tr. 1181; Ex. 38 at 414; Ex. 42.)
- a. Bonnie Crawley has stated that she saw Bragg and Coffey behind the old Pepper's restaurant in Boone around this time and that Bragg asked her for a haircut. (Ex. 43.) Bragg acknowledges asking Crawley for a haircut behind the old Pepper's, but states that this happened on Tuesday, December 6, 1994, just before Coffey and Bragg were taken to the Watauga County jail where they were held for public drunkenness.
 - b. Importantly, Crawley did not come forward until fourteen months after the murder (ten days before Bragg's trial) after she heard others were receiving subpoenas for Bragg's trial. (Ex. 43; Trial Tr. 562.)
88. Bragg and Jay Manuel walked to the store to get more alcohol. Manuel entered the store alone, while Bragg waited outside. Manuel dropped a beer inside the store and the police were called. Bragg hid nearby as Manuel was arrested and taken to jail at 7:00 p.m. (Ex. 38 at 414–415; Ex. 44.)
89. Sometime between 9:00 p.m. and 10:00 p.m., Bragg went to the Mountain City home of his brother, James Bragg, and spent the night in James's basement. When Bragg arrived, James was watching a Clint Eastwood movie.²⁴ (Ex. 39 at 3.)
90. **On December 8, 1994**, the day of the murder, around 6:00 a.m., on his way to work, James drove Bragg into town and dropped him off at Highway 421 and Main Street in Mountain City. (Trial Tr. 1047–1048.)
91. Bragg walked to Jay Manuel's trailer, but Manuel was not home. Bragg proceeded to where Judy Thomas was staying down the street.²⁵ Bragg and Judy talked on the porch for a while. (Trial Tr. 1161; Ex. 38 at 416.)
92. Bragg walked to the surplus store and the dollar store. (Ex. 38 at 416; See Trial Tr. 1164.)
93. Bragg walked back to Jay Manuel's trailer, but he still was not home so Bragg went to Geraldine Thomas's home down the street. (Ex. 38 at 416.)
94. Around noon, after being released from jail, Jay Manuel went to his trailer and then a few trailers down to Geraldine Thomas's. He found Bragg there playing the guitar. (Trial Tr. 1206.)
95. After lunch time, Edgar Osborne took Bragg, Jay Manuel and John Shoemake to the Big Chief beer store. (Ex. 42.)

²⁴ It has been confirmed that a Clint Eastwood movie was on television that evening. (Ex. 45.)

²⁵ Judy Thomas was staying with Joe and Debra Smith that week. Their home was just down the street from Jay Manuel's trailer.

96. Bragg, Jay Manuel and John Shoemake went to John's apartment. (Trial Tr. 1182, Ex. 42.) While they were there, Bragg and Manuel helped a man unload firewood. (Ex. 38 at 417.)
97. The man with the firewood drove Bragg to the pawn shop. (Ex. 39 at 5.) Bragg tried to pawn his guitar, but the pawn shop would not accept it. (See Trial Tr. 1152.)
98. The man drove Bragg back to Jay Manuel's trailer. (Ex. 38 at 418.)
99. There were some African-American men staying in a trailer nearby while they worked for the local warehouse. Around 5:00 p.m., Bragg, Jay Manuel and John Shoemake went to their trailer to play cards. (Ex. 42; Trial Tr. 1177, 1208.)
100. Jackie Shoemake and Judy Thomas went to the chicken place down the street to pick up dinner. (Ex. 46.) John Shoemake left the card game and went to Jay Manuel's trailer to wait for Jackie and Judy to get back with the chicken. (Ex. 42.)
101. Around 6:45 p.m., Jackie Shoemake and Judy Thomas arrived back at the street where Jay Manuel lived. (See Ex. 46.)²⁶ John Shoemake left the area just before they arrived. (Ex. 42.)
102. Jackie Shoemake went to the trailer where John Shoemake had been playing cards to look for him. The men told Jackie that "they" went to the Game Room. Jackie and Judy Thomas walked towards the Game Room. On their way, they ran into Bragg. Jackie and Judy walked back to Jay Manuel's trailer. Jackie left her son with Judy and Bragg at Manuel's trailer and went back to the Game Room to find John. Bragg, Manuel, Judy, and Jackie's son were still at Manuel's trailer when Jackie returned without John. (Trial Tr. 1175–1177)
103. Bragg and Judy walked to the Boone Trail Dairy Bar so that Bragg could call his sister from a payphone to let her know he is in Tennessee. (Trial Tr. 1261, 1177.) Phone records verify the call was made at 6:54 p.m. in Mountain City, Tennessee. (Ex. 41.)
104. Bragg and Judy returned to Jay Manuel's trailer. John and Jackie Shoemake came over to hang out. After John and Jackie left, Bragg and Judy spent the night together in a bedroom in Manuel's trailer. (Trial Tr. 1163–1164.)
105. **On December 9, 1994**, around 8:30 a.m., Bragg went into a social services office and received a TennCare application²⁷ from a staff person, Belinda Reece. He took the application with him so he could get someone to help him fill it out. Bragg asked Reece for money and she gave him a couple of dollars. (Ex. 47.)
106. Later that morning, between 8:30 a.m. and 9:00 a.m., Bragg stopped by the First Baptist Church in Mountain City looking for money and received a gas voucher from Violet Eller. (Trial Tr. 1222–1224.)

²⁶ Jackie Shoemake says they arrived back between 6:45 to 7:00 p.m., but that time is off because Bragg called Phyllis Smith at 6:54.

²⁷ TennCare was Tennessee's form of Medicaid.

107. Alf Henley drives drove to an Exxon in Mountain City to cash the voucher. Henley then took him to the beer store. (Ex. 48.)
108. Numerous individuals saw Bragg in Mountain City the evening of December 7 through the morning of the December 9, 1994. By all accounts, Hartley was murdered sometime between 5:10 p.m. and 6:30 p.m. on December 8, 1994, when Bragg was twenty-four miles away in Mountain City, Tennessee without transportation. Additionally, having no transportation, Bragg could not have called his sister from a pay phone in Mountain City, Tennessee at 6:54 p.m. if he had been present in Boone, North Carolina when Hartley was killed.

D. Bragg was Known to Carry a Guitar Case

109. It was well known that Bragg carried a guitar in a guitar case with him wherever he went.
110. Officer Gerald Hayes of the BPD testified that on December 6, 1994, when Bragg was picked up for public intoxication, he was carrying a guitar case. (Trial Tr. 553.) This was verified by the Prisoner Property Report documenting what items Bragg had when he was brought to the jail. (Ex. 49.)
111. Gary Edwards testified that when he drove Bragg to Mountain City, TN on December 7, 1994 around 3:00 p.m., Bragg had his guitar case with him. (Trial Tr. 893–896.)
112. James Bragg testified that when Bragg came to his home on December 7, 1994 around 9:00 p.m., he had a guitar case with him and stayed in the basement so he could play the guitar. When James dropped Bragg off the next morning, Bragg still had the guitar case with him. (Trial Tr. 1045–1053.)
113. In Jay Manuel’s statement to police two days after the murder, Manuel indicated that Bragg had his black guitar case and a guitar with him when he arrived at Manuel’s home. (Ex. 50.) Manuel testified that Bragg had been playing guitar at Manuel’s neighbor’s home on December 8, 1994. (Trial Tr. 1206.)
114. John Shoemake testified that he played guitar with Bragg in the early afternoon on December 8, 1994. (Trial Tr. 1182.)
115. Judy Thomas testified that Bragg played guitar for her and some of her neighbors the evening of December 8, 1994. (Trial Tr. 1163.)
116. In her initial interview with law enforcement on December 12, 1994, Belinda Reece said she saw Bragg at the social services office in Mountain City on December 9, 1994 around 8:30 a.m. and he was carrying a guitar in a black case. (Ex. 47.) When she testified in 1996, she could not recall if Bragg was carrying the guitar case that day, but acknowledged he always carried a guitar. (Trial Tr. 1192.)

117. None of the witnesses who described seeing a man or men in or near the Greenway Trailer Park the day of the murder described a man with a guitar or a guitar case. As Bragg was homeless, he always traveled with his guitar. Had he been to Hartley's trailer the afternoon of December 8, 1994, witnesses would have seen his guitar case.

E. Coffey Had an Unusual Amount of Money After the Murder; Bragg Had None.

118. On December 8, 1994, shortly after the murder, Shirley Faircloth saw Coffey with several \$100 dollar bills. He took her out to a nice dinner and even gave the guitar player at the restaurant some money. Faircloth told law enforcement this the next day. (Exs. 36, 37.)
119. On December 9, 1994, at 9:00 a.m., Coffey called Jim Earp. Coffey had sold a ring to Earp the day before. Coffey said he had come into some money and wanted the ring back. (Ex. 28.)
120. On December 13, 1994, Bonnie Brumfield, Coffey's cousin, witnessed Coffey tell Bryan Auton that he woke up with over \$600 the morning after the murder. Brumfield saw a lot of money in Coffey's wallet, including many \$20 dollar bills and at least one \$50. (Ex. 51.)
121. On December 15, 1994, TJ Carson was in the courthouse breakroom (for an unrelated matter) and Coffey pulled out his wallet. TJ saw a lot of money in the wallet and told law enforcement the next day. He also mentioned that another individual saw Coffey with money while Coffey was partying at their house. (Ex. 52.)
122. In contrast, the evening of the murder, Bragg had to borrow money from John Shoemake in order to take part in a low stakes card game in Manuel's trailer. (Trial Tr. 1183.)
123. The next morning, Belinda Reece gave Bragg a couple of dollars when he went into her office to apply for TennCare. (Trial Tr. 1196.)
124. Bragg then went to the First Baptist Church in Mountain City looking for money and received a gas voucher from Violet Eller. (Trial Tr. 1223-1224.)
125. Importantly, witnesses who saw Bragg after the crime was committed did not describe Bragg as having any money. In addition, law enforcement did not find any money on Bragg when he was arrested two days after the murder. (Trial Tr. 805.)
126. If Bragg murdered and robbed Hartley, as the State claims, it is not logical that he would not have *any* money afterwards, while Coffey had several hundred dollars.

F. Bragg's Arrest and Extradition from Tennessee

127. On December 10, 1994, Bragg was located and arrested by Johnson County Sheriff's Department officers in Jay Manuel's trailer. (Trial Tr. 1108.)
128. Bragg was homeless and it was evident from his clothes, which were the same ones he wore every day, that they had not been cleaned prior to his arrest. (Ex. 39 at 4; Ex. 53.)

129. The trailer hitch ball that Bragg had been carrying that week was still with him when he was arrested. It was recovered with his tan raincoat at the home where Judy Thomas was staying. (Trial Tr. 1119–1120.) If he had murdered someone with the ball, it is not logical that he would have held on to it two days after the crime.
130. After his arrest, while in jail in Tennessee, Bragg gave a statement to Det. Shook and SBI Agent Steve Wilson detailing his whereabouts over the prior few days. He took them through the alibi laid out above.²⁸ Bragg also stated, “I ain’t killed nobody. I was here since Wednesday. I’m innocent.” (Ex. 39.)
131. On December 12, 1994, after waiving extradition, Bragg was brought back to Boone by Det. Harrison and Det. Shook. (Trial Tr. 788–789.)

G. Bragg’s 1996 Trial

132. Bragg was tried in February 1996. The totality of the evidence against him was the testimony of Coffey, Rene Nelson and ten-year-old Jeffrey Nelson.
133. The State’s theory at trial was that the trailer hitch ball that Bragg kept in a sock was the murder weapon. Despite this, the trailer hitch ball was never tested as no blood was visible on either the ball or the socks in Bragg’s possession when he was arrested. (Trial Tr. 781–782, 778.)

a. Kenneth Coffey

134. Coffey was given use immunity for his testimony at Bragg’s trial. Dr. William Knight, who had evaluated Coffey for his own trial, testified on voir dire that Coffey can understand “only very simple questions” and that a person functioning at his level of intelligence “tends to respond in a way that they think a person wants them to.” (Trial Tr. 215.)
135. Coffey testified that he (Coffey) slapped Hartley with his hand and then Bragg beat Hartley with something he had in a white sock. Hartley’s wallet fell out. Coffey said Bragg gave him \$260 and told him not to say anything. Coffey then went to the A&P to call Shirley Faircloth to pick him up. (Trial Tr. 229–230, 290.)
136. Coffey acknowledged giving several statements and that he was scared to tell the truth. (Trial Tr. 234.)²⁹
137. Coffey testified that the murder occurred around 3:30 p.m. (Trial Tr. 225.)

²⁸ Although some details and timing are different, given Bragg’s constant state of intoxication that is not surprising. When and how he left Boone and who he saw in Mountain City between December 7 and December 9, 1994 has remained consistent.

²⁹ Det. Harrison, Det. Shook, and SBI Agent Jonathan Jones also testified as to Coffey’s prior statements to law enforcement.

- a. This cannot be true, as Hartley was seen alive by multiple people after that time and Hartley was seen walking into his trailer by Nancy Horton and Cherie Gray after 5:00 p.m.
 - b. Coffey then contradicted himself and testified that he went to the ABC store for Hartley around 3:30 p.m. or 4:00 p.m. (Trial Tr. 224–225.)
138. Coffey further testified that “blood flew” when Hartley was hit. (Trial Tr. 230.)
 - a. If this testimony were true, Bragg’s clothing would have had Hartley’s blood on them. DNA testing in this case has confirmed there was no blood on Bragg’s clothing, but Hartley’s blood was on Coffey’s clothing.
139. Notably, Coffey testified that when Bragg hit Hartley, Hartley and Bragg were standing face to face.³⁰ Coffey states there was blood on the sock holding the trailer hitch. (Trial Tr. 283, 291.)
140. Coffey testified that Rhonda Carson was present with him and Bragg. He also testified that when they walked down the road to Hartley’s residence, Hartley was not with them. (Trial Tr. 227–228, 266–270.)
 - a. This wholly conflicts with the testimonies of Rene and Jeffrey Nelson as detailed below. Neither Rene nor Jeffrey claim a woman was with Bragg and Coffey and both claim Hartley was walking either with Bragg and Coffey or ahead of them.
141. Coffey acknowledged that due to prior head injuries and his alcohol use, he has problems with memory. (Trial Tr. 244–246.) He also testified that when he gave his pre-trial statements to law enforcement he was not able to pay attention to what they were asking him and that there was a time when he was not on his medication. (Trial Tr. 319–320.)
142. Coffey acknowledged, at the time of trial, that he was taking medication for seizures, depression, and hearing voices. (Trial Tr. 320–321.) While he was in jail, he was not medicated for awhile because the jail could not get the medication. (Trial Tr. 322.)
143. In December 1994, Coffey was not on any medication. He had last been on medication a couple of years prior to the murder, but he stopped taking it because he couldn’t afford to pay for it. That medicine was prescribed by doctors at the psychiatric ward in Cannon Hospital where Coffey had voluntarily admitted himself. (Trial Tr. 323–330.) He had also been to other psychiatric hospitals starting when he was a teenager. (Trial Tr. 332–333.)
144. On cross examination, it was revealed that Coffey’s attorney had spoken with the District Attorney who stated that if Coffey testified at Bragg’s trial, the District Attorney would not be opposed to the Governor reducing Coffey’s sentence. The District Attorney also told Coffey’s attorney that he would be open to reinstating Coffey’s original plea offer for second-degree murder if his conviction were overturned on appeal. (Trial Tr. 252–254.)

³⁰ This is also contrary to the physical evidence, which shows there was no blood on Bragg’s clothing.

- a. Although it is claimed there was no explicit promise of a deal, at a minimum, the above establishes that Coffey was motivated to testify against Bragg in order to help his own situation.

b. Rene Nelson

145. Rene Nelson testified that she had only seen Bragg about five other times in the neighborhood. She stated that she saw him on December 8, 1994 walking up Winter Drive around 4:45 p.m. before she went to the daycare to pick up her younger children. She testified that she saw Bragg and Coffey following and taunting Hartley as he staggered up the road and that Bragg had something heavy in a dark sock.³¹ (Trial Tr. 575–580, 597.)

- a. Coffey testified Bragg used something in a white sock, not a dark-colored sock as Rene described. (Trial Tr. 229, 274, 281.)

c. Jeffrey Nelson

146. Jeffrey Nelson testified that he had seen Bragg and Coffey walking up the road behind Hartley while he (Jeffrey) had been playing soccer with his friends that afternoon and that he saw them follow Hartley into his trailer.³² (Trial Tr. 611–613.)

- a. At Coffey’s trial, Jeffrey testified that Bragg was called “Big Bob”. At Bragg’s trial, he testified that he wasn’t sure what people called Bragg. (Trial Tr. 610.)
- b. When asked if he knew “Robert Charles Bragg,” as the prosecutor pointed to Bragg, Jeffrey responded, “He used to go to – he used to live – my dad lives in Tennessee and my uncle’s mom lives there and he used to go there and his name was Robert Greg Bragg or something like that and my uncle’s arrested him before.” (Trial Tr. 610.)
- c. When asked how he knows Bragg on cross, the following exchange occurs:

Q: You say that you know [Bragg] from Shady Valley?

A: Yeah, my uncle’s arrested him before.

Q: Did you see that happen?

A: No.

Q: Okay. But did you see [Bragg] up in Shady Valley?

A: Before?

Q: Uh-huh.

A: I think so, yeah.

Q: Do you know where it was?

A: No, but my uncle’s arrested him before and I wasn’t there, but he told me.

³¹ Rene Nelson’s entire testimony can be found on pages 571–604 of Bragg’s trial transcript.

³² Jeffrey Nelson’s entire testimony can be found on pages 605–650 of Bragg’s trial transcript.

...

- Q: And when you saw [Bragg] up in Shady Valley, what was he doing up there?
A: I don't know.
Q: I'm sorry?
A: I don't know.
Q: You don't know?
A: No.
Q: Was he at somebody's house or at a store or where did you see him?
A: I'm not for sure where I saw him at.
Q: Do you remember how old you were when you saw him up there?
A: No.

(Trial Tr. 645–646.)

- d. When asked where on the street Hartley was when Jeffrey saw him, Jeffrey responded, "I'm not for sure." (Trial Tr. 611.)
- e. When asked how far behind Hartley were Bragg and Coffey, Jeffrey responded, "I don't really know." (Trial Tr. 611.)
- f. When asked if he could hear them say anything, he responded, "No." He also said "No" when asked if he saw them doing anything. (Trial Tr. 612.)
- g. When asked why he went to get his mother, he responded, "Because I was confused." When pressed about what he was confused about, he responded, "That they might do something to [Hartley]." (Trial Tr. 612–613.)
- h. He testified that after his mother came outside, he rode his bike up the road and saw Hartley, Bragg, and Coffey go in the house. (Trial Tr. 613, 636.)
 - i. This completely contradicts Jeffrey's testimony at Coffey's trial where he stated he rode up the street and saw Hartley go in the trailer and then went to get his mother. He also testified at Coffey's trial that he did not see Bragg and Coffey enter the trailer. (Ex. 25 at 500–501.)
- i. When asked if he had spoken with his mother about whether to talk to the police, Jeffrey responded, "I don't know." When asked if he remembered, he said "No." (Trial Tr. 615.)
- j. In contradiction to his mother's testimony, Jeffrey testified that his mother had not yet gone to the daycare when Jeffrey saw Hartley walking down the road. (Trial Tr. 626.)

- k. On cross when asked if he saw anyone else besides his friends and Hartley on the street before he got his mother, the following exchange occurs:

A: I think so.
Q: What do you think?
A: I think I saw [Bragg] and [Coffey].
Q: You think you did?
A: Yeah, I think so.
Q: Are you sure?
A: I'm pretty sure, yes.
Q: Okay. And you didn't see them at first, though, did you?
A: No.
Q: How long was it till you saw them?
A: Like right when I saw them? Do you mean like when I saw them?
Q: Yeah. How long – you said that you didn't – you saw [Hartley] but you didn't see [Coffey] and [Bragg] at first?
A: Not at first.
Q: But you saw them later?
A: Yeah.
Q: How much longer was it?
A: No, it wasn't – it was – they were going up the road but they were right there when he was right there.

(Trial Tr. 629–630.)

Curiously, Nancy Horton, the very person who initially gave the description, which caused Det. Shook to suspect Bragg in the case, was never called to testify.

d. Bragg's Defense at Trial

147. Bragg's defense included a strong alibi that detailed his whereabouts from the time he left Boone on December 7, 1994 through his arrest on December 10, 1994. Other witnesses confirmed seeing Coffey—*alone*—in or near the trailer park in Boone during that time.
148. Gary Edwards testified that he drove Bragg to Mountain City, TN on December 7, 1994. (Trial Tr. 901–903.) Darlene Laney's testimony corroborated Edwards's testimony as he told her, when he dropped her off, that he was returning to the Harris Teeter to give Bragg a ride. (Trial Tr. 904–908.)
149. The following individuals testified to seeing Bragg in Mountain City, Tennessee and account for his whereabouts between the time he was dropped off by Gary Edwards on December 7, 1994 and his arrest on December 10.³³

³³ Defense Private Investigator Jerry Vaughn also testified to locating the witnesses and the statements they gave corroborating Bragg's alibi.

- a. Jim Bragg
- b. Tom Horne
- c. Judy Thomas
- d. Jackie Shoemake
- e. John Shoemake
- f. Belinda Reece
- g. James Manuel
- h. Violet Eller

150. Additionally, Jonathan Harmon testified that while in jail, Coffey told him that he (Coffey), not Bragg, killed Hartley. Harmon was in a cell across from Coffey in August 1995. Harmon gave the information to Det. Harrison and offered to take a polygraph. (Trial Tr. 969–977.) Coffey did not mention to Harmon that anyone was with him. (Trial Tr. 980.)
151. Shaun Delp, another inmate in the jail testified to hearing Coffey on the phone saying “[Bragg] didn’t do this and he didn’t deserve what was going on and whatever he (Coffey) got, he deserved.” (Trial Tr. 1235.) Delp also knew Rene and Jeffrey Nelson and testified that Jeffrey told him they were receiving \$1,000 in Crime Stoppers money for their testimony. (Trial Tr. 1232–1233.)
152. Linda Wilcox testified that she saw Coffey, *alone*, on Winter Drive headed to Hartley’s trailer around 3:00 p.m. the day Hartley was killed. (Trial Tr. 988.) She did not see Bragg and Coffey between 4:30 p.m. and 5:00 p.m. (*see* Trial Tr. 991–992) as her daughter, Rene, testified.³⁴
153. Betty Triplett, David Brown, and Rhonda Carson testified to seeing Coffey *alone* at different times throughout the day, in the trailer park or nearby. (Trial Tr. 994–1009, 1072–1088.)
154. Phyllis Smith, Bragg’s sister, testified to receiving phone calls Bragg placed from a payphone in Boone on December 7, 1994 and from a payphone in Mountain City on December 8, 1994. The calls were verified by her phone records. (Trial Tr. 1255–1258.)

H. Postconviction Investigation

155. After his conviction, Bragg wrote numerous organizations requesting assistance in his pursuit to prove his innocence. NCPLS and the North Carolina Center on Actual Innocence (Center) worked on his case for many years.
156. In 2005, an attorney who previously worked on Bragg’s case at NCPLS requested that the Center review Bragg’s innocence claim. The Center investigated the case from 2005 to 2010.
157. Hopeful that the North Carolina Innocence Inquiry Commission (Commission) would grant immunity from perjury charges to Rene and Jeffrey Nelson, the Center referred Bragg’s

³⁴ Other defense witnesses also testified to Rene’s reputation in the community as being untruthful.

case to the Commission in 2010. In order for the Commission to review his case, Bragg waived all rights and privileges, including his attorney-client privilege with all prior counsel.

i. Quinton Sherrill

158. In the mid-1990s, Quinton Sherrill was incarcerated with Coffey at Marion Correctional. At that time, Coffey talked to Sherrill about his case and said he “had beaten a man to death about money that was owed to him.” (Ex. 54.)
159. On August 1, 1996, after meeting Bragg in another prison and realizing Bragg had been convicted of the same murder as Coffey, Sherrill wrote a letter for Bragg explaining that Coffey had confessed to being the one to commit the murder. (Ex. 54.)
160. During a June 6, 2012 interview, Sherrill acknowledged that he wrote the 1996 letter. (Ex. 55 at 1.)
161. Sherrill stated that “what happened was like this guy [Hartley] owed him [Coffey] some money for a job, and he went over there to get it. And um, when he got over there the dude didn’t want to pay him. So they, uh, they got into it. And, uh, he told me they got to fighting. And uh, he took the hammer, beat dude in the head and killed him.” (Ex. 55 at 1.)
162. Then Sherrill discussed how he met Bragg and realized he had been convicted of the crime:

[Bragg] cried. You know I reached out to him, you know I been here for 18 years. So I can imagine how he feels when he ain’t did nothing. I did my crime and I know how I feel. You know, but this man ain’t did nothing. He ain’t did nothing and got a life sentence. You know. And uh, I feel for him (inaudible). I mean they ain’t did nothing (inaudible). Or none of that. And Dude I know he ain’t do nothin. You know cause I know the dude that did it. Because I heard the story. I sit right there and listened to the man tell how he killed the man with the hammer and everything when he went to get his money. Dude wouldn’t give him his money. They got to fighting. He done killed him with a hammer. Ex. 55 at 3–4.)

163. Sherrill stated he was willing to help Bragg because he was innocent. (Ex. 55 at 5.)

ii. Postconviction DNA Testing³⁵

164. DNA testing conducted in 2016 confirmed that Hartley’s blood was on Coffey’s clothes.³⁶
165. Cellmark Forensics reported that the stain on the sleeve of Coffey’s jacket was a DNA mixture which was consistent with a mixture of Coffey’s and Hartley’s DNA. (Ex. 59 at 249.)

³⁵ The DNA reports detailing the testing conducted in 1995 and 2014 are attached as Exs. 56–58.

³⁶ Photos of Coffey’s clothing are attached as Ex. 35.

166. It was also determined that the major component of the DNA profile obtained from a stain at the bottom of the back left pocket of Coffey's jeans was consistent with Hartley's DNA profile. (Ex. 59 at 251.)

167. In contrast, no physical evidence has ever connected Bragg to the murder.

iii. Kenneth Coffey

168. On November 4, 1996, after he testified at Bragg's trial that he had not received the help from the State that he was expecting, Coffey sent a notarized letter to the Court with yet another version of events of December 8, 1994. (Ex. 60.)

- a. The letter said that he wanted to tell the truth and explained why he lied about his and Bragg's involvement in Hartley's murder. (Ex. 60 at 1.)
- b. He acknowledged being in and out of mental health facilities his entire life, having plates in his head, and taking large amounts of medicine for as long as he could remember. (Ex. 60 at 1.)
- c. "The day the law came and questioned me they had me so scared to death, I would have said my mother did it just so they would leave me alone. The law kept on threatening me telling me I would go to death row are (sic) spend the rest of my life in prison if I didn't say Bobby Bragg killed Coy. So that's what I done. I lied and said I seen Bobby Bragg kill Coy." (Ex. 60 at 1.)
- d. "I feald (sic) I had no other choose (sic) but to say what the law wanted to hear from me. . .I was scared for my life so I lied." (Ex. 60 at 1.)
- e. "They promised me help if I would lie on Bobby Bragg, so I did and said what they wanted me to. Even though it was wrong I didn't want to spend the rest of my life in prison." (Ex. 60 at 1.)
- f. "The truth of the matter is me and Bobby Bragg never killed Coy." (Ex. 60 at 1.)
- g. "I can't remember everything that I told the Law, but I told them what they wanted me to say. That's why I made so many different statements. I was scared to death. I asked for a (sic) Attorney, but the Law said it was to (sic) late for a (sic) Attorney now. So that's why I lied about the murder." (Ex. 60 at 1-2.)
- h. Coffey then told an entirely new version of events, which he claimed, once again, was the truth. He wrote that Bragg and Coffey were with Coy drinking beer, Coffey took a nap, and when he woke up he went to the store to buy vodka for Hartley. When he came back Bragg and Hartley were arguing on the porch. Coffey left and Hartley was alive when he left. (Ex. 60 at 2.)

- i. This story, again, conflicts with the trial testimony of Rene and Jeffrey Nelson and the other residents of Winter Drive who did not see or hear anyone arguing.
 - ii. It is also not possible, as we now know Hartley's blood was on Coffey's clothing.
- i. Coffey stated, "I know it was rong (sic) to lie about [Hartley's] murder but I was scard (sic) and confussed (sic) and the police kept telling me over and over that me and Bobby Bragg killed [Hartley]. Had me scard (sic) for my life and would not let me call a Lawer (sic)." (Ex. 60 at 3.)
 - j. He ended his letter stating. "Please help two innocent men find justice." (Ex. 60 at 3.)

169. On December 30, 1998, Coffey was interviewed by NCPLS. The memorandum of the interview reflects that Coffey stated that neither he nor Bragg killed Hartley and that they were framed. (Ex. 61 at 1.)

- a. The memorandum further reflects that part way through the conversation "Coffey appeared to talk to someone who was not in the room . . . It was gibberish and did not relate to [the] conversation at all." Coffey explained that he was on medications for hearing voices and on psychotropic drugs for depression and mental illness. Coffey told them he never should have been found competent to stand trial and several doctors told him that. (Ex. 61 at 1.)
- b. Coffey stated that law enforcement told him that Bragg was going to turn on Coffey, so Coffey better say Bragg did it if he wanted to save himself. He was also threatened with the death penalty and life in prison. He was frightened and exhausted after five or six hours of interrogation, so he gave the statement they wanted to hear. He told law enforcement, "you want me to say that Bobby did it...we didn't,...ok I'll say it, if you'll just leave me alone. I'll sign the paper!" (Ex. 61 at 1-2.)

170. On December 14 2006, UNC law students working with the Center interviewed Coffey. An email memorializing the conversation explains that Coffey is still hearing voices. Coffey told the students he heard voices at the time of his arrest and when he gave the statements. He implicated Bragg because the voices in his head told him Bragg was going to put him in jail. He also asserted the statements he gave Det. Harrison and Det. Shook were inaccurate but he was told to sign them. (Ex. 62.)

- a. One of those law students, Corey Santos, is now the lead Assistant District Attorney in Alamance County.

171. On April 6, 2010, Coffey was again interviewed by the Center. His mental health issues were still apparent and at times he made nonsensical comments. At other times, he understood what was being said and answered appropriately. He came in and out of reality. (Ex. 63.)

- a. He stated he was not there when Hartley was killed and does not know if Bragg was there. (Ex. 63 at 1.)
- b. He repeatedly stated he never hung out with Bragg. (Ex. 63 at 2.)
- c. He stated he did not know why Greg Richardson had hurt Hartley, but then changed his statement to saying he didn't know "if" Greg Richardson had hurt him. (Ex. 63 at 2.)
- d. He reiterated that he only said Bragg committed the murder because he was told Bragg was pinning the murder on him. He recalled writing the Clerk of Court after the trial saying Bragg did not commit the murder. (Ex. 63 at 2.)
- e. Coffey said his statements were signed as a result of being coerced after initially refusing to sign them. (Ex. 63 at 3.)
- f. Without any rationale for doing so, he suggested his brother, Larry Coffey, committed the murder. (Ex. 63 at 4.)

172. On October 20, 2011, Coffey was interviewed by the Commission. The transcript of the interview makes clear that Coffey's mental health has continued to deteriorate. (Ex. 64.)

- a. He claimed he and Bragg are innocent at different times in the interview.
- b. He stated that Bragg never gave him any money. (Ex. 64 at 11–12.)
- c. He claimed that he does not know who killed Hartley. (Ex. 64 at 13.)
- d. He believes Bragg said he (Coffey) committed the crime. (Ex. 64 at 16.)
- e. He again claims Rhonda Carson was on the porch when the murder was committed. (Ex. 64 at 18–19.)

173. On August 11, 2016, the Commission interviewed Coffey a second time. The interview was transcribed and again shows Coffey's mental health worsening. (Ex. 65.)

- a. He states that he knows Bragg has been claiming innocence and that "if you see the tape, that proves it wasn't him." (Ex. 65 at 12.)
- b. He states that he believes he testified against his brother, Larry Coffey, not Bragg. He also believes his father, Jack Coffey, killed Hartley and Coffey has kept his father out of prison all of these years. (Ex. 65 at 14–15, 23.)

174. On May 10, 2017, undersigned counsel interviewed Coffey at Maury Correctional. His behavior was consistent with the 2010 interview and subsequent interviews in that he came in and out of reality. However, he was also consistent in his statements that Bragg was not involved in the murder of Hartley and that Rhonda Carson was on the porch.

iv. Rene Nelson

175. While Rene Nelson has continued to stand by the essence of her trial testimony, her initial statement to law enforcement differs greatly from the statement she gave after Bragg's picture appeared in the paper. She has also given other inconsistent statements over the years, including several under oath.

176. In a September 22, 2014 interview, Rene basically told the same story as her trial testimony, but stated that she also saw Bragg and Coffey *leave* from Hartley's and come down the road. She adds that they had an object they were swinging in a sock or something brown and handing it back and forth. She said it could have been liquor. (Ex. 66 at 6–7.) She made similar statements, under oath, in an October 6, 2014 deposition. (Ex. 67 at 10, 14.)

- a. Coffey testified at Bragg's trial that when he left Hartley's trailer he did *not* go back down Winter Drive. He cut between the trailers and went to the A&P to call Shirley Faircloth. (Trial Tr. 286–287.)

177. When confronted about why she initially only stated she saw Coffey the day of the murder and later implicated Bragg, Rene has said that law enforcement initially only asked about Coffey, so she only told them about Coffey. (Ex. 66 at 13–14; Ex. 68 at 127–128, 143–146.) The clear implication is that she was not telling law enforcement “what she knew,” but rather only what they asked about.

178. In 2014, Rene also stated that she told law enforcement Bragg and Coffey were carrying something brown. Law enforcement used the word “sack”. (Ex. 67 at 23–24.)

179. At the 2016 Commission hearing, Rene testified, under oath and for the first time, that she first saw Hartley walking towards his trailer with mail in his hands.³⁷ She previously stated that Bragg and Coffey were behind Hartley, but added that she assumes they met Hartley at the bottom of the road (which would be near the mailboxes). She testified that Bragg and Coffey were cussing at Hartley all the way to his trailer. She repeated again that she saw Bragg and Coffey slinging something in their hand as they came back down the road a little later and states that the item they were slinging could have been a sock. (Ex. 68 at 107–109, 122–124.)

180. Further investigation revealed that no one else in the neighborhood corroborated Rene's story, despite her insistence that others were outside. At the Commission hearing, she testified to specific individuals seeing Bragg and Coffey but said they did not want to come forward. (Ex. 68 at 153–154, 120.) The Commission staff contacted thirteen neighbors, including some Rene mentioned during her Commission testimony, who disputed her account.

³⁷ The mailboxes for the Greenway Trailer Park are at the end of Winter Drive, where it intersects with Leola Street.

181. Interviews conducted by Commission staff and the SBI, in addition to the 1996 trial testimony of Shaun Delp, confirm that Rene was given reward money after her testimony, despite her continued insistence that she never received any money for her testimony in this case.

- a. At Bragg’s trial, Shaun Delp testified he was playing basketball with Jeffrey Nelson sometime before Coffey’s trial when they got into an argument. Jeffrey said he was getting a new bicycle. When Delp asked him how, Jeffrey said “his mother was getting money from the Crime Stoppers for putting Bobby Braggs (sic) and Kenneth Coffey away.” Jeffrey told Delp that his mother was getting one thousand dollars. (Trial Tr. 1233.) During a 2015 interview, Delp again remembered Jeffrey telling him that they were getting Crime Stoppers money. (Ex. 69 at 6–7.)
- b. In a 2016 interview, Det. Harrison stated that he was the police coordinator of Crime Stoppers. He said that the Crime Stoppers tip in the case “had stated that – that the two of them were seen walking down to the trailer and went in.” When asked if anyone was given a reward in this case, he said “[t]here is a good possibility that . . . I’m thinking that it was done – that there was a reward given, yeah.” He then stated “I think if anything was done, what it was was down the road, based upon their cooperation, we may have gave some reward money.” He went on to state, “Yeah. We discussed it, but I’m not sure as to how far we went through it, you know. And, of course, there was no incentive. You know, they – they probably didn’t even know about Crime Stoppers.” (Ex. 70 at 21, 24)³⁸
- c. In a 2016 interview, Gerald Wilson (DA Wilson), the Assistant District Attorney who prosecuted Bragg in 1996, recalled a woman and her young son had information on the case and agreed to be witnesses. Det. Harrison told him that the woman was given a reward after the trial. (Ex. 71) DA Wilson signed an affidavit in 2016 stating, “Jim Harrison . . . told me after the trial that this witness would receive a reward through Crimestoppers.” (Ex 72.)
- d. In a 2016 interview with the SBI, former District Attorney James Rusher (DA Rusher), who was the DA during Bragg’s trial, stated that he “thought that Jeffrey had gotten some form of reward and that Jim Harrison had ‘pushed’ for it.” DA Rusher “concurred that the family should have gotten the reward, adding that this conversation took place after the trial.” DA Rusher further “stated that he recalled that Jim Harrison felt that Jeffrey should have gotten the reward and that he and Jerry Wilson concurred with this. Rusher said that it was his understanding that the family had received a reward, but he could not recall how he knew this.” (Ex. 73 at 5.)

³⁸ In subsequent interviews, Det. Harrison stated he did not believe a reward had been paid and expressed concern over the Crime Stoppers program being blamed if there was a problem. He also stated that he may have given Rene Nelson’s mother (Linda Wilcox) Crime Stoppers money after Bragg’s trial.

- e. Notably, despite denying receiving Crime Stoppers money, Rene did acknowledge, for the first time, during her Commission testimony that she had called Crime Stoppers after seeing Bragg's photo in the newspaper. She mentions calling Crime Stoppers repeatedly during her 2016 testimony. (Ex. 68 at 109–110, 120–121, 125, 143.)

182. Interestingly, Rene Nelson testified before the Commission that she had “many more conversations with officers” between Coffey and Bragg's trials. (Ex. 68 at 129, 151–152.) There is no documentation in the file of these conversations.

v. Jeffrey Nelson

183. On July 13, 2015, Jeffrey Nelson, now an adult, was deposed, under oath.³⁹ The pertinent parts of his deposition are below:

- a. Jeffrey stated, “I was a child and I was always told not to talk about it. So any time anything was ever brought up I was just, you know.” When asked who told him not to talk about it, Jeffrey responded, “I mean, Mark Shook, the Sheriff at the time – or was he the lawyer at the time.” (Ex. 74 at 8.)
- b. “I mean, here I am trying – trying to – not to deal with this. I was told when I was a kid I would never have to – have to deal with this again and then here I am having to do it again as an adult. I don't think it's right.” (Ex. 74 at 10.)
- c. When shown his 1994 statement to police, he responds, “I don't remember any of that.” (Ex. 4 at 10.)
- d. “Hell, I didn't even think I played soccer – I mean I never liked it. When I got older I don't – so I don't know. But I played, you know, football and basketball so I was reading it like why would I play soccer?” (Ex. 74 at 15–16.)
- e. “I don't know if my mother received anything. I don't know. I mean, I don't really get along with my mother. I don't really, you know. I didn't even know she came and talked to you guys until – 'cause she's – she's like a habitual, pathological liar and so, I don't – I don't really get along with her too well.” (Ex. 74 at 16.)
- f. Jeffrey explained that right around when this happened, he was taken to a professional basketball game and to Carowinds water park by someone connected to Det. Shook, possibly an intern. (See Ex. 74 at 17–19.)

184. During the 2016 Commission hearing, Jeffrey recanted, under oath, the testimony he had given when he was ten.⁴⁰ He testified that he had been manipulated by his mother and coached by law enforcement. The pertinent parts of his Commission hearing testimony follow.

³⁹ Jeffrey Nelson's entire deposition transcript is attached as Ex. 74.

⁴⁰ Jeffrey Nelson's entire Commission hearing testimony is attached as Exhibit 75.

- a. When asked if he recalled the information in the statement he gave in 1994, he testified that he remembered the kids he grew up with, but otherwise, he did not recall the details in the statement. (Ex. 75 at 184.)
- b. He again testified that he was taken to a Charlotte Hornets game, to Carowinds and to a water park on separate occasions. He also got a new basketball goal and bike, but he doesn't know if the goal and bike came from his mother's tax refund. He felt the trips were bribery. He testified, "It just felt like they were trying to buy me things to get me to say stuff." (Ex. 75 at 185–186.) As an adult, Jeffrey now recognizes that these trips were not ordinary, testifying, "I grew up in a trailer park. I was poor. I mean, these random people aren't going to just come up and start taking me places for no reason." (Ex. 75 at 191.)
- c. Jeffrey testified that he remembers Coffey and Hartley, but as far as Bragg goes, "I don't know this man. I've never seen him before." He did not call anyone "Big Bob" and is adamant he has never seen Bragg. (Ex. 75 at 186–188.) Throughout his testimony, he repeatedly states he has never seen Bragg before. He knew who to point out in Court because Det. Shook showed him a photo to prepare him for his testimony. (Ex. 75 at 199–201.)
 - i. As detailed in the sections above, this is consistent with Jeffrey not being able to clearly explain at either Coffey's trial or Bragg's trial how he knew Bragg.
- d. "But like – I don't know, my mom and my grandmother, . . . I felt like I was being pressured to say something that I didn't want to say." When asked who he was being pressured by, he responded, "The law. I mean, I didn't know any better at the time." (Ex. 75 at 188–189.)
- e. He later states, "The two detectives that talked to me. I mean, they would come by quite often . . . And I asked them to stop, say how to answer one thing – like, are you sure you didn't whatever, you know." The detectives would say, "Are you sure? Are you sure?" He felt coached to say what they wanted to hear. (Ex. 75 at 195–196.)
- f. When asked if prior to trial anyone told him what to say, Jeffrey responded, "In a way, yeah . . . I felt like I was being coached in a way, yeah" by Det. Shook. (Ex. 75 at 194.)
- g. When one of the Commissioners asked, "So you didn't see anything happen to [Hartley] that night? . . . At all?", Jeffrey responded, "No, ma'am . . . no." (Ex. 75 at 198.)
- h. Jeffrey testified he was telling law enforcement what they wanted to hear. "Like I said, they would ask me something and I would give them an answer and then they

would sort of coach me to say what, I guess, they wanted me to say. I don't know, you know. I was a child." (Ex. 75 at 199.)

- i. "I mean, I don't recall any of it. I don't recall really giving a statement or whatever. I mean, like I said, I would talk to them and they would ask me things. I would give them answers. I would give them the same answer, like, ten times. Finally, one time, they would ask me, 'Are you sure?' And I would just, I guess, change what I said to make them happy. I don't know." (Ex. 75 at 203.)

185. Seeming to corroborate Rene Nelson's testimony that she had numerous conversations with officers, Jeffrey testified before the Commission that Det. Shook and Det. Harrison would come by their home a lot. (Ex. 75 at 202.) Again, there is no documentation in the file of these interactions.

186. On July 5, 2017, Jeffrey Nelson signed an affidavit affirming the recantation he gave at the 2016 hearing. (Ex. 76.) He also affirmed the following:

- a. That Det. Shook would question him for hours and coach him when he did not give the answers Det. Shook wanted,
- b. that he wanted to come forward and tell the truth for years,
- c. that he was afraid Bragg would hate him or hurt him for lying at the trial,
- d. that he has been pressured by his mother to retract his recantation, and
- e. that Det. Shook has contacted Rene Nelson and has tried to contact Jeffrey since the 2016 Commission hearing.

187. Jeffrey Nelson steadfastly maintains that he was coached and pressured by his mother and law enforcement into falsely testifying against Bragg. As an adult, he now realizes how he was manipulated and he wants the truth to be known.

vi. Robert Bragg

188. Bragg has always maintained that he was not involved in any way with Hartley's murder. He was not in Boone when the murder occurred. He has also made clear that he does not know if Coffey was involved because the two of them were not together on December 8, 1994.

189. During a 2006 interview with the Center, Bragg again went through his general whereabouts when the crime occurred. He continued to maintain his innocence and explained that a judge in Tennessee had told him that he would appoint a lawyer to fight extradition because there was no probable cause to hold Bragg. Thinking that going back to Boone would allow him to clear his name, Bragg waived extradition and went back to Boone. He turned down what would have been an attractive plea offer, had he been guilty, in order to prove his innocence at trial. (Ex. 77.)

190. Bragg testified to his innocence at the Commission hearing.⁴¹ Bragg explained to the panel where he had been December 6, 1994 through December 9, 1994.⁴² He detailed going from Boone to Mountain City the afternoon of December 7, 1994 and staying there until he was arrested on December 10, 1994. (Ex. 38 at 408–422.) He told the Commission he didn’t know about the murder until he was arrested:

That’s the God’s honest truth. I didn’t know nothing. I did not kill Coy Hartley. I didn’t know nothing about Coy Hartley’s murder until they arrested me in Mountain City, Tennessee, and that was the first knowledge I had of it. I knowed nothing about it. (Ex. 38 at 422.)

He denied participating in the murder, being present during the murder, or receiving any money from the crime. He was not in Boone, North Carolina on December 8, 1994 and does not know who killed Hartley. (Ex. 38 at 421–422.)

191. When Bragg was arrested for Hartley’s murder, he was forty-one years old and had never been charged with a felony as an adult.⁴³

192. The Commission obtained all of Bragg’s prison records, including medical and mental health records. In otherwise confidential discussions, Bragg repeatedly insists, as he always has, that he is innocent of the crime for which he was convicted.⁴⁴

I. State Bureau of Investigation and District Attorney’s Office

i. TJ Carson

193. The SBI spoke to TJ Carson⁴⁵ twice over the phone in late 2016. TJ is incarcerated in the Peoria County Jail and facing thirty years in prison for narcotics and firearms charges. (Ex. 79 at 4.)

194. During the initial, and very brief, phone call, TJ indicated he wanted an attorney because he “could implicate” himself. (Ex. 78 at 1.)

195. A second phone call occurred after TJ was given assurances that the State was not interested in charging him unless he was involved in the murder. (Ex. 79 at 1–2.)

⁴¹ His entire testimony before the Commission is attached as Exhibit 38. His testimony before the Commission was consistent with the two interviews Commission staff had conducted of Bragg previously, on September 30, 2011 and January 6, 2016. Copies of those interviews are available upon request of the panel.

⁴² Bragg appears to confuse some events on December 8 and December 9, 1994, which is not surprising given his intoxicated state at the time and the amount of time that has passed. Regardless of the differences, between his testimony and the statements and testimony of numerous other witnesses, Bragg was clearly in Mountain City throughout December 8 and 9, 1994.

⁴³ Bragg was charged with a felony when he was seventeen years old. (Ex. 38 at 436.)

⁴⁴ Bragg’s prison records are available upon request of the panel.

⁴⁵ TJ Carson was Rhonda Carson’s son. Rhonda dated Coffey until a few days before the murder.

196. During the second call, TJ alleged that he was skipping school around 1:00 p.m. or 2:00 p.m., two to three months after the murder, when he saw Bragg. TJ alleged to the SBI that Bragg confessed his involvement in Hartley's murder at that time. (Ex. 79 at 2-3.)
- a. There is no afternoon where TJ could have seen Bragg, as he claims, as Bragg was continuously incarcerated after his arrest on December 10, 1994, two days after the murder.
197. TJ also stated that when the crime happened, Bragg and Coffey were living with Rhonda and TJ Carson at the Greenway Trailer Park. (Ex. 79 at 2, 7.) This is false. Coffey was living with Shirley Faircloth in another area of Boone when the murder happened. Coffey and Rhonda had been kicked out of Greenway months before the murder and had broken up a few days prior to the murder. (Ex. 31.)
198. TJ further told the SBI that he later saw Bragg in prison, while both were incarcerated, and Bragg denied all involvement in the murder. (Ex. 79 at 6.)
199. TJ also acknowledged that his "brain is a sponge" due to his drinking. (Ex. 79 at 4.)
200. Additionally, the information TJ is now providing directly contradicts the information he provided to law enforcement in 1994.
- a. On December 16, 1994, TJ was interviewed by Det. Harrison and Det. Shook. TJ indicated that after learning law enforcement was looking for Coffey, he called the Sheriff's Department and told them Coffey was at Shirley Faircloth's house. (Ex. 52 at 1.)
 - b. On December 15, 1994, TJ had seen Coffey at the courthouse for an unrelated matter. When asked by TJ if Coffey was there when Hartley was killed, Coffey first told him he was not there and that he (Coffey) had proof he was with Shirley Faircloth when the murder occurred. Coffey then said he saw blood and ran behind the A&P and that Bragg told Coffey if he said anything, he would kill him. (Ex. 52 at 1.)
 - c. About an hour later, in a courthouse breakroom, TJ again saw Coffey. Coffey pulled out his wallet and had a lot of money in it. Others TJ knew had also seen Coffey with a lot of money in the week after the crime. (Ex. 52 at 2.)
201. TJ's 2016 statement is completely inconsistent with his December 15, 1994 statement to law enforcement, and is a complete fabrication.

ii. Darlene Laney

202. On November 11, 2016, the SBI interviewed Darlene Laney. According to the interview, Laney “has had health issues with seizures and [has] a limited memory of the events in 1994.” (Ex. 80 at 1.)
203. She did recall speaking to a private investigator about Bragg coming through her checkout line at the Harris Teeter about the time she got off work. She got off work around 3:00 p.m. so she could go pick up her son. (Ex. 80 at 2.)
204. Gary Edwards had gave her a ride home for a few days around that time, including the day in question, because her car was broken down. (Ex. 80 at 2.)
205. Laney only rerecalled Bragg was a “big guy”, but could not recall his clothing or any further description of him. (Ex. 80 at 2.)

iii. Gary Edwards

206. The SBI also interviewed Gary Edwards, the man who drove Bragg to Tennessee on December 7, 1994.
207. Edwards recalled testifying at Bragg’s trial that he gave him a ride to Tennessee. His testimony was needed to fill in some of Bragg’s time that day. (Ex. 81 at 1–2.)
208. Edwards knew Bragg for two or three years prior to giving him the ride to Tennessee. Edwards volunteered at a shelter in Boone where Bragg frequented. He had given Bragg rides around fifteen times, but only the one time did he take him to Tennessee. Edwards believed he dropped Bragg of at Bragg’s brother’s home. (Ex. 81 at 2–3.)
209. Bragg “did not act strangely or nervous” during the ride and “nothing about [Bragg] stood out to him . . .” (Ex. 81 at 3.)
210. Although Edwards did not recall many details, he was consistent that he drove Bragg to Tennessee before the murder.

iv. Jay Manuel

211. On December 1, 2016, the SBI interviewed Jay Manuel at his home in Galax, Virginia. Although in the mid-1990s, Manuel would drink often, as did Bragg, Manuel is now sober. (Ex. 82 at 1, 5.)
212. Manuel recalled Bragg staying with him prior to his arrest. Manuel believes Bragg was there for two to three weeks. (Ex. 82 at 2.)
213. Manuel recalled Bragg would show up, buy his own beer, and they’d drink and hang out. Bragg carried his old guitar and just enjoyed himself. He was peaceful. Manuel remembered

Bragg sitting on the couch and throwing the trailer hitch ball in the air and catching it. (Ex. 82 at 3.)

214. Manuel recalled Bragg walking with him to the store. Manuel had too much to drink and got arrested. Bragg hid somewhere. When Manuel got out of jail the next morning, Bragg was in his trailer drinking beer. About two days later, BPD came and arrested Bragg. (Ex. 82 at 4.)

215. Manuel told the SBI,

Yeah. What I heard, he was with me when that guy in Boone was supposed to get killed while he was with me (inaudible) that night. That's what I hear. Those investigators in Boone, 2 or 3 of 'em come talk to me but (inaudible) the day he got killed, he was with me. He called his sister this that and the other. (Ex. 82 at 5.)

216. Manuel stated that Bragg would leave for 15-25 minutes at a time, but was never gone long. Bragg did not have access to Manuel's vehicle. (Ex. 82 at 9.)

217. When Bragg was staying with him, just before Bragg's arrest, Bragg didn't have a lot of money on him. Manuel never knew Bragg to have a lot of money. (Ex. 82 at 13.)

218. Although Manuel's memory was not perfect after two decades, he was clear that Bragg was with him in Mountain City prior to, the day of, and the days after the murder. (Ex. 82 at 5-6.)

CONCLUSION

219. Robert Bragg is now sixty-four years old and has spent over twenty-two years incarcerated for a crime he did not commit. He has maintained his innocence from the moment he was aware he was a suspect. He waived extradition from Tennessee knowing he had an alibi and believing his innocence would be apparent.

220. The facts pled establish by clear and convincing evidence that Robert Bragg is factually innocent of the murder of Marvin "Coy" Hartley on December 8, 1994 and that he is entitled to a declaration of innocence. *See* N.C. Gen. Stat. § 15A-1469(h).

221. Wherefore, Robert Bragg respectfully requests pleads that the three-judge panel enter an Order declaring that he has established his innocence by clear and convincing evidence and dismiss, with prejudice, the charge against him.

Respectfully submitted the 10th of July, 2017.

Attorneys for Robert Charles Bragg:

N.C. Center on Actual Innocence
P.O. Box 52446 Shannon Plaza Station
Durham, North Carolina 27717-2446
Phone: (919) 489-3268



Christine C. Mumma
Executive Director
cmumma@nccai.org
N.C. State Bar No. 26103



Cheryl A. Sullivan
Senior Staff Attorney
csullivan@nccai.org
N.C. State Bar No. 42489

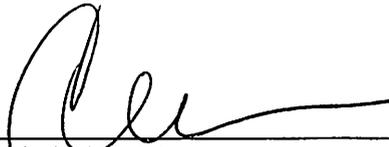
Certificate of Service

I hereby certify that, via electronic mail and by the United States Postal Service, I caused to be served a copy of the above **Plea for Declaration of Innocence** upon District Attorney R. Seth Banks, in whose prosecutorial district this case was tried:

The Honorable R. Seth Banks
District Attorney's Office
Prosecutorial District 24
Watauga County
842 W. King Street, Suite 201
Boone, North Carolina 28607
Robert.S.Banks@nccourts.org

Mr. Matthew J. Rupp
District Attorney's Office
Prosecutorial District 24
Watauga County
842 W. King Street, Suite 201
Boone, North Carolina 28607
Matthew.J.Rupp@nccourts.org

This the 10th day of July, 2017.



Christine C. Mumma
Attorney for Robert Charles Bragg
Executive Director
N.C. Center on Actual Innocence
P.O. Box 52446 Shannon Plaza Station
Durham, North Carolina 27717-2446
(919) 489-3268
cmumma@nccai.org
N.C. State Bar No. 26103

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