

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.: 10 CRS 7851

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STATE OF NORTH CAROLINA
PLAINTIFF

V.

MICHAEL DORMAN, II
DEFENDANT

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DURHAM COUNTY, C.S.C.

**ORDER of DISMISSAL with
PREJUDICE PURSUANT TO
N.C.G.S. §§ 15 A-910 and 954 (a) (4)
and THE UNITED STATES
CONSTITUTION**

THIS MATTER coming on for consideration, before the undersigned Senior Resident Superior Court Judge following a motion filed by Michael Dorman, II to dismiss the charge of first degree murder with prejudice in the above referenced file number. This case is being prosecuted by District Attorney Tracey Cline and Assistant District Attorney Roger Echols on behalf of the State of North Carolina. The Defendant's counsel of record is Lawrence M. Campbell, Chief Public Defender for the Fourteenth Judicial District. After a review of the record to include the filings in the court file, the prior arguments of counsel, and the prior hearings conducted in the above referenced matters, and the applicable law, the Court makes the following findings of facts and conclusions of law as set out below:

FINDINGS OF FACTS

1. The Defendant Michael Dorman, II in file number 10 CR 56864 was originally charged in Durham County with concealing and failing to report a death in violation of North Carolina General Statute §14-401.22(a).

2. North Carolina General Statutes § 14-401.22 (a) defines the legal elements of concealment of death and reads as follows:

(a) Any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body is guilty of a Class I felony.

3. The warrant for his arrest on the charge of concealing and failing to report a death was issued on July 15, 2010. The date of offense on the warrant is listed as occurring between July 14, 2010 and July 15, 2010, and the arresting officer is Christopher Robinson of the Durham Police Department.

4. The language on the warrant in pertinent part indicates that Michal Dorman, II "unlawfully, willfully, and feloniously did CONCEAL THE HUMAN SKELETAL REMAINS OF AN UNKNOWN FEMALE".

5. Mr. Dorman was given a first appearance and declared indigent on July 16, 2010. The Public Defender for Durham County, Lawrence Campbell, was appointed to represent him.

6. On August 5, 2010, District Attorney Tracey Cline, acting on behalf of the State stated the following grounds as her basis for requesting the evaluation of Michael Dorman at Central Regional Hospital:

“Defendant indicated that he found some human bones one day. The next day he got some rubber gloves went back to get the bones and then brought them home. He used the bones for sexual gratification. When questioned by law enforcement officers he indicated that he preferred to be called by another name. He stated that he did tell his friend that he had killed a woman but that was just a fantasy to kill someone. Based on the conversation the defendant had with a friend about murder, his admission to law enforcement that he does fantasize about murder, his admission of using bones for sexual gratification, and his mannerisms when questioned by law enforcement, the State questions this defendant’s capacity to proceed at this time and requests an evaluation be ordered.”

7. The Motion and Order for Commitment was served on Mr. Dorman’s counsel of record, Lawrence Campbell and granted by the Honorable Marcia Morey on August 5, 2010.

8. On September 7, 2010 District Attorney Tracey Cline sought and received a single count indictment for the charge of first degree murder in violation of North Carolina General Statute § 14-17. Also, on September 7, 2010 Latifah White submits an application to Lukas Strout of the Durham Police Department to request the State to pay for the cremation of the remains.

9. The law imposed obligations on the police officers involved in this case through North Carolina General Statutes § 15A-501 and it states in relevant part:

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty.

10. The indictment is issued a new file number of 10 CRS 7851. The date of offense is listed as “between and/or on or about March 1, 2008 and April 20, 2008” and Detective Christopher Robinson presents testimony before the Grand Jury, per the public court file.

11. The charge of concealment and failure to report a death and possession of skeletal remains is not referenced on the indictment. There is no second count added to this indictment. As of August 16, 2011 the court file does not reflect a superseding indictment adding a charge of concealment of human bones or failure to report a death to the State’s prosecution in this matter. The Court takes note that the State through District Attorney Cline has never sought to merge the

two obviously related prosecutions against Mr. Dorman even as both were pending simultaneously and being prosecuted by District Attorney Cline.

12. North Carolina General Statutes § 15-11.1 Seizure, custody and disposition of articles; exceptions reads as follows:

(a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

13. On September 10, 2010 the Capital Defender for the State of North Carolina, Robert Hurley, appoints the Office of the Public Defender for Durham County to represent Mr. Dorman on the charge of first-degree murder.

14. On September 15, 2010 Mr. Campbell in the above referenced file number acting on behalf of Mr. Dorman filed and properly served on the State pursuant to North Carolina General Statute §15 A 902 a document which is captioned as "Request for Voluntary Discovery".

15. On September 15, 2010, eight days after the defendant was indicted on the charge of first-degree murder Mr. Campbell filed and properly served upon the State a motion in the above reference file number entitled "Motion to Preserve Evidence".

16. The above referenced Motion to Preserve Evidence reads as follows:

"NOW COMES the Defendant by and through counsel, and respectfully moves the Court for an entry of an Order directing the State of North Carolina to preserve and retain intact and not to destroy or alter any evidence, tangible, object, or other information relating in any manner to this case, including but not limited to , the matters requested by the Defendant's various pretrial motions, and in particular to preserve any and all tape recordings, investigative reports of potential witnesses, including the informants, who have been involved in the investigation of the above captioned matter. This includes preservation of "rough notes" and

tape recordings, whether or not those notes or tapes form the basis of a formal typewritten report.” (Emphasis added).

17. On September 17, 2010 Mr. Dorman through his counsel filed and served upon the State of North Carolina a lengthy and formal motion for Discovery pursuant to North Carolina General Statutes §§ 15 A -902 and 903.

18. The Motion for Discovery referenced above filed on behalf of Mr. Dorman specifically requested: “That the Office of the District Attorney for the Fourteenth Judicial District as well as **any and all law enforcement involved in any aspect of the investigation of this case:** Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term “file” includes the defendant’s statement, the co-defendant’s statements, witness statements, investigation officers’ notes, results of tests and examinations, or any matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant further moves to be allowed his or her right to inspect and copy or photograph any materials contained therein and, **under appropriate safeguards to inspect, examine, and test any physical evidence or sample contained therein.**”(Emphasis added).

19. On September 15, 2010 Mr. Dorman also filed a request for formal arraignment and serves the same on the office of the Durham District Attorney by lawful service.

20. On September 15, 2010 District Attorney Cline filed a” Notice of Intention” which declared Mr. Dorman’s case as an noncapital first-degree murder and served the same upon Mr. Campbell by lawful service.

21. On September 14, 2010 Mr. Dorman was received at Dorthea Dix Hospital pursuant to the Order of the Honorable Marcia Morey signed on August 5, 2010. He is kept at that facility for five weeks and discharged on October 21, 2010.

22. The discharge summary prepared by Dr. Nicole Wolfe is seventeen pages long. Dr. Wolfe’s report correctly states that Mr. Dorman had been charged with “one count of concealment of death and/or secretly disposing of a human body and one count of first degree murder”. Her report is signed on November 29, 2010.

23. The report of Dr. Wolfe indicates in clear terms that Mr. Dorman is a deeply troubled and mentally ill person who has suffered from a long standing and well documented litany of psychiatric issues which include but are not limited to five different Axis I diagnosis: Mood Disorder, Sexual Disorder, Gender Identity Disorder, Alcohol Abuse and Cannabis Abuse.

24. The report of Dr. Wolfe identifies two Axis II diagnoses: Personality Disorder and Borderline Intellectual Functioning.

25. The report specifies and documents that Mr. Dorman has reported hearing screams and seeing spots, that he prefers to be called "Sarah Ann" and believes himself to be a woman desiring gender reassignment surgery, has attempted to commit suicide by hanging himself (purportedly with a pair of women's panty hose), has great trouble concentrating, suffers from various physical issues, and has a full scale IQ of 74.

26. Dr. Wolfe's report clearly documents a history of criminal behavior, sexual confusion, and self-injurious behavior by cutting, multiple head traumas and seizures as a youth, suicidal and homicidal ideations. Mr. Dorman is discharged with five different prescribed medications.

27. Dr. Wolfe's report is signed on November 29, 2010 and the report indicates she delivered a copy to the District Attorney's Office, Mr. Dorman's attorney and the presiding Judge. A copy in the court file is addressed to the presiding judge. The report of Dr. Wolfe is in fact present in the Superior Court file for the charge of murder and was introduced by District Attorney Cline on a hearing occurring in this matter on August 18, 2011. The Court notes that the report however was generated pursuant to the file number on the charge of concealment of human bones and failure to report a death.

28. On October 7, 2010 a discovery hearing is conducted by the Honorable Kenneth C. Titus in the above referenced file numbers. The transcript from that proceeding is a part of the record in this case and was received into evidence on June 28, 2011 and reflects the following:

a) In the morning session of Court Mr. Campbell is informed by Judge Titus that in his absence District Attorney Cline has moved Mr. Dorman's case from the October 7, 2010 court date to the next session of the case management session of Superior Court to occur November 4, 2010.

b) The following exchange occurred between Mr. Campbell and the Court in the morning session of court:

MR. CAMPBELL: Well it was addressed without me being present. I need to be heard. We filed a motion to preserve evidence in this case and I'm being told now—we haven't received any discovery at all at this point, but I am being told that the bones that form the subject matter of this entire lawsuit have been turned over to someone who is not a law enforcement authority. And that is the entire substance of this case.

The COURT: Turned over to who?

MR. CAMPBELL: Somebody for burial I'm being told this morning.

THE COURT: Burial? That's the basis of this case, then the evidence has to be preserved.

c) In the afternoon session of court after Judge Titus had orally entered an Order preserving the evidence in this case, District Attorney Cline asks to address the court and the following exchange occurs:

DISTRICT ATTORNEY CLINE: Your Honor, this is file number 10 CRS 7851, the State called it this morning, Mr. Campbell was not available and I did learn, I think the Court also learned Mr. Campbell wants to be heard.

MR. CAMPBELL: Judge, this is a case involving some human remains. Originally, the charge was failure to report a death, the allegation against my client—who is in Raleigh at Dorthea Dix at this time, I will tell the Court. The allegation was that was concealing some human remains and had been for some period of time. Since that, Ms. Cline obtained an indictment charging him with murder. There have been a averments or allegations made from the state that they have been able to through some scientific methods, to not only ascertain the identity of those human remains, but also that they've been able to, through some scientific means, determine how that person died. And so we would consider that to be the subject of this entire lawsuit and would argue that that is very critical evidence.

If you note in the file, Judge, there should be a motion that was filed on September 10th, excuse me September 16th of this year, a motion to preserve evidence and within that, of course, we did not list human remains but we asked that all evidence be preserved. My purpose for being heard today was, or when I spoke to Ms. Cline this morning, was to be sure that the evidence, that is the human remains that are the subject matter of this lawsuit, would be preserved so that they would be available for independent testing by the defendant. Ms. Cline then informed me this morning that the remains are no longer in law enforcement custody, that they have been buried. I would argue that there is no way this case can proceed without us being able to have access to that evidence.

DISTRCT ATTORNEY CLINE: Judge, I learned of this this morning that Mr. Campbell wanted the state to preserve what was left of the body and the victim in this matter. And when I learned of that I indicated to Mr. Campbell that I knew that the bones had been returned to the family but I would call the medical examiner and the investigation agency what had been preserved as it relates to this order, since I too was concerned about the cause of death. So the medical examiner, it preserved the portion of her skull that appeared to consistent with being shot with a gunshot wound. However, the other bone fragments were, in fact, parts of it being the skeleton were returned to the family and buried but they did preserve the portion of the skull that the State contends is consistent with being shot with a gunshot – with a gunshot. And so that is my answer to Mr.

Campbell's concern. And I apologize, Mr. Campbell, for leaving so quickly, since I learned of this, I immediately wanted to make sure that we had done to preserve that portion and that portion has been preserved but the other bones—and, Judge, it wasn't a complete skeleton. If the defense thinks it is necessary to exhume the other portions of the body, that were bones they recovered, and they have been buried by the family. I have not called the family myself this morning but I can do that and at the next court hearing I will have that information but I do know that they have preserved the part of the bone that testing was done on to determine whether or not she was shot with a shotgun. That's what I can tell the Court and Mr. Campbell at this time.

MR. CAMPBELL: Judge again, I don't think that satisfies our obligations to my client. I am not --- I'm certainly not a pathologist or forensic expert of any kind but we are going to have someone identify this person..... And they need to be identified and we need to be able to run whatever test, I have no discovery so far, so I don't know what test have been performed, I don't know what tests I'm going to have to refute, but it is my position that we would be entitled to the evidence.

THE COURT: Well, we'll hold off on the exhumation of the body because if you want to know who it is, the skull is an adequate portion of the body to make that determination, and if the state is contending that the cause of death of that person was from the -- a shot to the skull and that was preserved, that may be enough. And it's a double edged sword, it could be bones of some other person, and it could be two murders at that point, if you're exhuming the body and testing all the rest of the bones.... At least at this point, I'll hold off on that until additional discovery.

29. The record reflects that the next court hearing that occurred in this matter was on November 4, 2010. The Clerk's notes and the transcripts from that hearing are included as part of the record in this matter and they reflect the following:

- (a) Judge Titus presided over a hearing in which the issues of discovery and bond were addressed by the court.
- (b) At that hearing Mr. Campbell requested a bond of \$50,000.00 and Judge Titus set the bond at \$750,000.00.
- (c) The State indicated they would not seek the death penalty

(d) **Judge Titus Ordered the State to give Mr. Dorman the entire discovery he was due under the law.** (Emphasis Added.)

(e) The following directive was issued by the Honorable Kenneth C. Titus on November 4, 2010 at a discovery hearing in the presence of District Attorney Cline, Lawrence Campbell and Mr. Dorman:

The COURT: At this point I'll set bond in the presumptive amount of \$750,000.00 and require that whatever discovery the State currently has be turned over to Mr. Campbell. Obviously, there have been a lot of things said here that would indicate there may be additional discovery that is required to be produced in the future and I'm confident that it will. I'll move this case to the second setting and if those issues still arise after your review of the discovery, Mr. Campbell, I am confident that you will bring them to my attention at the December 6th date for the second setting in this case.

(f) District Attorney Cline acknowledged and admitted that the identification of the remains was made using the teeth that have been destroyed:

DISTRICT ATTORNEY CLINE: As it relates to identification, that came from the examination of the teeth on the jaw bone.

(g) The record does not reflect that Judge Titus or Mr. Dorman was relieved of their false belief that the remains released to the family were buried and subject to exhumation by District Attorney Cline on that date or any other prior to June 9, 2011.

30. North Carolina General Statutes § 15A-903 Disclosure of evidence by the State - Information subject to disclosure in pertinent part reads as follows:

a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigational assistant shall not be

required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

31. The record reflects that the next hearing that occurred in this matter was on December 7, 2010 before the Honorable Kenneth C. Titus. On that date Judge Titus signed an Order drafted by District Attorney Cline that purports to grant Mr. Dorman's motion to preserve evidence.

32. The written Order signed by Judge Titus on December 7, 2010 is captioned "Order Requiring the State and Agencies to Preserve Evidence" is a significant part of the State's defense in this motion to dismiss. The Order reads in pertinent part as follows:

"The Court having heard arguments of counsel for the parties pursuant to Motion to Preserve Evidence filed September 16, 2010 hereby ORDERS that the State of North Carolina, by and through the Durham County District Attorney's Office, preserve and protect all evidence collected by any and all agencies that may be relevant to the trial of these matters. Specifically, this ORDER will include the human bones examined by the Office of the Medical Examiner for North Carolina to determine the cause and manner for death. Further, this ORDER will apply to all evidence collected by the Orange County Sheriff's Department, the Durham Police Department, and any known or as yet unknown agencies in possession of evidence that is relevant to these matters."

33. A review of the transcript from December 7, 2010, which is a part of this record, reveals the following events occurred in open court and on the record:

- a) Mr. Dorman's cases were on second setting of the case management system.
- b) Mr. Dorman was present, as was Mr. Campbell. The State was represented by District Attorney Cline and Assistant District Attorney Roger Echols and both were present on that date. The record reflects no prior appearance by Assistant District Attorney Roger Echols. .
- c) Mr. Campbell had been served with the report of Dr. Wolfe and it was discussed in open court in the presence of all parties. Mr. Campbell expressed concern about the competency of his client and the implications to the defense. He specifically noted a finding that Mr. Dorman was unable to recall zero out of three objects at five minutes.
- d) Mr. Campbell noted outstanding discovery problems that he was aware of regarding audio tapes from the Orange County Sheriff's Department and the

Durham Police Department which were present at the SBI, as far as he could decipher.

- e) **Mr. Campbell noted that he did not have the autopsy report as of that date.**
- f) Additionally Mr. Dorman through his counsel noted that there were other matters absent from the discovery but he did not specify what they were.
- g) Mr. Campbell indicated that the Court had previously entered an oral Order granting Mr. Dorman's motion to preserve evidence and that he had prepared and circulated an order granting Mr. Dorman's motion to preserve all evidence but had not previously submitted an order to Judge Titus for signature and sought permission to do so at that time.
- h) Judge Titus indicates he has previously signed the order to preserve files submitted by the State on the same date.

34. The Court finds that the order prepared by District Attorney Cline submitted to Judge Titus in the absence of Mr. Campbell is the same Order that the State relies on heavily to defend its actions in failing to preserve evidence used by the OCME to determine identity of the decedent and manner of death. The Court notes that the request of Mr. Dorman was never limited to items necessary to determine cause of death, manner of death or identity of the decedent but rather to preserve the complete files and all of the evidence in the possession of the State and its agents.

35. On November 30, 2010 the State filed a supplementary discovery response releasing information on a CD that consists of 124 pages per the disclosure certificate filed by the State.

36. On December 2, 2010 Mr. Dorman filed and served by proper service two filings and supporting affidavits for each entitled: Motion to Suppress Tangible Evidence and Motion to Suppress Statement of the defendant.

37. On December 6, 2010 the State filed a supplemental discovery response and served the same on Mr. Campbell by proper service.

38. On January 5, 2011 the State through Assistant District Attorney Echols discloses the autopsy report of the Medical Examiner issued in the death that is the subject matter of this action to Mr. Dorman through his counsel Lawrence Campbell.

39. On January 7, 2011 the State filed a disclosure certificate and served upon Mr. Campbell a copy of the forensic services file on DVD, a DVD of the video of the crime scene and a CD of the interview of Michael Dorman.

40. On January 10, 2011 Mr. Dorman filed two motions: A Motion to Suppress Tangible Evidence and Motions to Suppress the Statements of Mr. Dorman. Both were served by proper service on the State.
41. On January 12, 2011 Mr. Dorman filed and served on the State by proper service a Motion to Suppress the Statement of the Defendant.
42. On January 19, 2011 the State disclosed CD's of two interviews with Mr. Dorman and served them by proper service.
43. On January 20, 2011 the defense filed and served a motion to suppress the statements of the defendant and to suppress the tangible evidence. He served the same upon the State by proper service.
44. On June 7, 2011, Mr. Campbell on behalf of Mr. Dorman made an oral motion to the Court compelling a response on the record from the State as to whether items that were used by the medical examiner to formulate opinions as to the identity of the decedent and other evidence to include the bones of the decedent were in fact still available for testing and inspection by the defense in the above referenced charge of first -degree murder.
45. On June 7, 2011, the State acknowledged that there had been an Order to preserve evidence entered by The Honorable Kenneth C. Titus at some prior date and that the State did not know if the specific items were in fact still available for inspection and testing by Mr. Dorman and agents acting on his behalf.
46. On June 7, 2011, Assistant District Attorney Echols agreed to make inquiries to the Medical Examiner's Office as to what items of evidence were currently available and which, if any, were no longer available to the defense. The Court assumed exclusive jurisdiction of the case in open court and directed that Assistant District Attorney Echols report back to the Court and Mr. Dorman on June 9, 2011.
47. On June 9, 2011, the Court reconvened Mr. Dorman's inquiry as to whether or not items utilized by the Medical Examiner in formulating his opinions as to identity of the decedent and other conclusions had been destroyed and were no longer available for independent testing and inspection by Mr. Dorman and his agents.
48. On June 9, 2011, the State in fact stipulated that at least some bones and all of the teeth which were used to formulate the opinions of the Medical Examiner as to identity of the decedent, and perhaps other conclusions contained in the autopsy report, were in fact destroyed and no longer available to the defense and its agents in formulating a defense to the charges at issue. The State informed the Court that photographs and radiographs were taken on September 21, 2010 prior to destruction of at least some items via cremation.

49. On June 9, 2011 Mr. Dorman's attorney informed the Court that the autopsy report issued by the Medical Examiner revealed that the State's expert had based his identification on the use of pre-death radiographs to actual remains, not simply a comparison of a radiograph to a radiograph, and that Mr. Dorman had to have access to those items upon which the State's agents had utilized in forming their opinions. At that time there was no explanation tendered as to how the items were released by the Medical Examiner's office and subsequently cremated.

50. On June 9, 2011, Mr. Campbell made an oral motion to dismiss with prejudice due to the destruction of the remains used by the State to formulate the opinions of the State's agents and indicated that the end result was irreparable prejudice to Mr. Dorman's ability to present or formulate an adequate defense.

51. On June 9, 2011 the Court directed that Mr. Campbell prepare a formal motion and serve it upon the State so that they could prepare a defense to the allegations and that the undersigned would retain jurisdiction of the case and preside over a hearing to be held at a convenient time for the parties during the week of June 27, 2011. There were no objections made by the State or the Defense to the schedule and method of proceeding indicated by the Court on June 9, 2011 or on any date prior to June 28, 2011.

52. The Court presided over a hearing based on the Defendant's Motion to Dismiss on June 28, 2011. At such time Mr. Dorman had filed a formal motion to dismiss and the State had filed a formal response to the motion. Neither side requested a continuance, or informed the Court of any scheduling or preparedness issues.

53. On June 28, 2011 Mr. Dorman called a single witness to the stand: Dr. Jonathan David Privette. Dr. Privette testified that he was employed as an Assistant Chief Medical Examiner for the Office of the Chief Medical Examiner, herein after referred to as "OCME". After being duly sworn and called to the stand his testimony included the following:

- a) He began a one year position as a Forensic Pathology Fellow at the OCME on June 30, 2010. Prior to joining that office he was employed as a local medical examiner for Wake, Orange and Durham Counties since 2008.
- b) During the course of his employment he was supervised by one of five persons who were staff pathologist at the OCME and all autopsies he performed were supervised by one of those five persons.
- c) During his orientation to the office he experienced one day training as to the working of the office of the OCME. The office has no policy for recording or tracking phone calls received regarding case work on any particular autopsy.

- d) The OCME received the remains of the person they determined was Ms. Boxley on July 14, 2010 and released them on September 21, 2010. They were not able to determine the cause of death in this case.
- e) He acknowledged receiving a subpoena from Mr. Dorman that required him to appear and testify on June 28, 2011 and to produce and permit the inspection and copying of the following items:
 - 1) The complete medical examiners files for Lakeia Lacole Boxley: B201002946. As to this item Dr. Privette testified that he had a copy of the complete file with him.
 - 2) The written protocol or procedures manual of the Chief Medical Examiner's Office relative to the release of remains to other individuals or agencies from the Chief Medical Examiner's Office. As to this item he testified that such a manual does not exist within the office as confirmed by the Chief Medical Examiner, Dr. Deborah Radisch.
 - 3) Any and all email transmissions to or from the Chief Medical Examiner's Office relative to Lakeia Lacole Boxley and/or Michael C. Dorman II. As to this item he produced two sets of emails for inspection. An email from September, 2010 was relative to whether a death certificate had been filed and noting that the remains were still present at the OCME and his response to the inquiry that he believed the death certificate had been completed in the matter at question. The second email he produced was from a Dr. Samuelson of the UNC School of Dentistry dated June 22, 2011.
 - 4) Any and all telephone logs or messages at the Chief Medical Examiner's office relative to Lakeia Lacole Boxley and/or Michael C. Dorman II; Dr. Privette testified that the OCME does not keep telephone logs and that it was not possible to comply with this request for that reason.
 - 5) Any and all documents, logs, writings or any other items indicating when the Chief Medical Examiner's office was contacted about the release of the remains of Lakeia Lacole Boxley, the name of the person making the contact about the release of the remains of Lakeia Lacole Boxley, the date of the request, the date of the release of the remains of Lakeia Lacole Boxley and the name of the person who collected the remains of Lakeia Lacole Boxley from the Chief Medical Examiner's Office.

- f) Dr. Privette testified that as to manner of death he relied on information provided to him by others which included the details of a confession imputed to Mr. Dorman, he formulated the date of death by using the date law enforcement reported to him as being the date that the bones and teeth were taken from the care custody and control of Mr. Dorman.
- g) Dr. Privette testified that there is nothing on the death certificate or on the release of body or personal effects form that was maintained by his office which indicates some portion of the body or any bone was retained by the OCME after September 21, 2010.
- h) Dr. Privette testified that six days prior to the hearing he decided to get a second opinion from Dr. Samuelson because that was when "he got around to it" and further he had not sought to get a second opinion prior to on or about June 22, 2011, because he did not know that the defense would be questioning the identification he made until that time.
- i) Dr. Samuelson upon receipt of the information acknowledged making the identification based on the information provided "was indeed difficult" and requested more specific images of the bones and teeth used by Dr. Privette in making the identification.
- j) In making the identification of the remains Dr. Privette relied on a comparison of radiographs of Lakeia Boxley to the actual remains and that the bones and teeth he relied on had in fact been burned and reduced to ash on or about September 21, 2010.
- k) In his career he had performed approximately 350 autopsies and purely skeletal remains had occurred in approximately 20 to 25 cases. He further testified that he did not consider the skeletal remains in this case to be evidence in this matter.
- l) That it was the policy of the OCME that once they had completed their investigation of the body, identification had been made and a family came forward they would release the body in every instance and on every occasion.
- m) That there had been no court Order authorizing the release of the bones and teeth in this matter and he believed a court Order was not necessary to release the bones and teeth prior to doing so.
- n) There was no DNA analysis done on any bone or tooth in this case and that much of the content of his conclusions in the autopsy report are the result of information supplied to him by police officers rather than scientific conclusions or testing.

- o) That it is possible to do DNA testing from bones. However bones are not the best source of retrieving DNA and it is not always possible to retrieve DNA from a bone. DNA is a method for possible identification. However, with the destruction of the bones in this matter that were cremated they are no longer sources for the retrieval of DNA to make a possible inclusion or exclusion in this matter as it relates to identification.
- p) That he had no knowledge of any phone calls from the Durham District Attorney's office from July 14, 2010 until September 21, 2010 and he was not advised to preserve any bones or teeth related to this investigation.
- q) The OCME received the court Order signed by Judge Titus related to the preservation of the evidence and files of the State on January 6, 2011 and by that date the bones and teeth had been released to Mr. Roper and cremated.
- r) Had the Durham District Attorney's office requested that they not release the bones and teeth prior to September 21, 2010, even without a court Order the OCME would not have not released the bones and teeth to Mr. Roper on September 21, 2010.
- s) Dr. Privette was present at a hearing in this matter that occurred on June 7, 2011 or June 9, 2011. While his testimony indicated he was present on one of those two dates he was not called by the State to testify either date.
- t) He did not speak with District Attorney Cline at any time between July 14, 2010 and September 21, 2010 and does not recall speaking to her at any other date. He is not able to say whether anyone else in the OCME would have done so. He does not recall telling District Attorney Cline in October of 2010 that any portion of the remains in this matter had been retained by the OCME.
- u) That it is his understanding that a portion of the frontal lobe bone that is between seven and ten centimeters has been kept by the OCME. The retention of that frontal bone was kept not as evidence but rather as remains in case someone wanted to do some testing at some point.
- v) The autopsy report is "incomplete" rather than "inaccurate" in that it fails to document the retention of the frontal bone. He kept the frontal bone as it is the one bone that had metallic particles consistent with the State's theory of this homicide.
- w) There is no more important issue in a homicide investigation than identity of the person who was killed.

- x) The normal procedure would have been to package up the frontal lobe bone by the physician and return it to law enforcement agency but that was not done in this case.
- y) His autopsy report states "Based on the history and investigative findings, it is my opinion that the cause of death in this case is undetermined homicidal violence, with findings suggestive of blunt head trauma consistent with a shot gun blast." He reached these conclusions based on the investigation of the law enforcement agencies, rather than any scientific examinations or findings.

54. At the conclusion of the hearing on June 28, 2011, the parties gave closing remarks and the Court advised it would take the matter under advisement and secured the consent of the state and defense prior to adjourning the proceedings on that date.

55. The gravamen of the defense motion to dismiss for the destruction of evidence claim has to do with the release of bones and teeth by the Medical Examiner's Office and the subsequent cremation of bones and teeth which the defense contends are critical to an investigation and defense of Mr. Dorman on the charge of first-degree murder.

56. The evidence presented at the hearing indicated that for a period of several months after autopsy and days after the defense filed a motion to preserve all evidence in this matter the family of the person that the State contends was the decedent requested return of the remains. Upon receiving the remains on September 21, 2010 they were cremated.

57. The Medical Examiner purportedly released all bones and teeth as requested by the persons believed to be the decedent's family except for one bone that is purportedly seven to ten centimeters. The Medical Examiner allegedly did not release the one bone which was believed to be consistent with the State's theory of the defendant's guilt. The defense disputes that the frontal lobe was retained by the OCME.

58. Subsequent to the matter being adjourned the undersigned Judge did determine based on a review of limited information in the court file that the State of North Carolina had in fact paid for the cremation and subsequent destruction of the remains that are the subject of the defense motion to dismiss.

59. On July 5, 2011 the Court issued an Order to the State of North Carolina to produce its entire un-redacted file related to its decision to pay for the destruction of the remains in this case and delivered it to the same via facsimile. A copy of the Court's Order and a facsimile verification sheet was placed in the public court file on July 7, 2011. Prior to that date neither the state nor its agents had disclosed this information to Mr. Dorman.

60. On July 7, 2011 Jess Mekeel an Attorney acting on behalf of the State of North Carolina contacted the Court and requested an *ex parte* meeting to discuss the Order issued to the state on July 5, 2011.

61. On July 8, 2011 the Court met with Assistant Attorney General Jess Mekeel representing the state and received the un-redacted records later on the same date. The records total 40 pages.
62. On July 11, 2011, the Court notified the state that it would release the records provided to the Court for review to the parties. The state requested the redaction of certain information and that a protective order be issued restricting who the parties could disseminate the information to upon being provided with the records.
63. After consideration of the *ex parte* request of the state, the Court declined to issue any protective orders and further ordered that the records be provided to the parties with the limited redaction of address, telephone and social security number of Latifah White and the EIN number for J Henry Stuhr, Inc. the funeral home that cremated the remains and received \$2,748.38 from the State of North Carolina for doing so.
64. On July 13, 2011, the Court issued written orders, disseminated information to the parties, placed redacted information into the public record and placed un-redacted documents under seal in the court file.
65. On July 14, 2011 the State of North Carolina by and through District Attorney Cline made a filing in which she expressly indicates that her office was previously unaware of the file, consisting of 40 pages disclosed on July 13, 2011 by the Court, and by inference and implication she also denied knowledge of the content of the file prior to July 13, 2011. Specifically, while not expressly stating the same, it appears the state's position is that they were previously unaware that the state had facilitated or assisted in the destruction of some bones and all of the teeth prior to July 13, 2011.
66. On August 15, 2011 the Court reconvened the hearing on the defendant's Motion to Dismiss, heard from witness called by the parties, and received evidence in the above captioned matter as detailed below.
67. District Attorney Cline on behalf of the state called Deputy Tony White who was sworn and offered testimony that included the following:
 - a) He has been employed as a Deputy with the Orange County Sheriff's Office for five years. On July 14, 2010 he had cause to come into contact with bones that he believed to be human remains after receiving information from a person identified as a "citizen".
 - b) When he received possession of the bones they were in a book bag that later was opened at his office. Upon examination of the remains he testified "there was a top of the skull, you could see the eye portion, there was a couple of rib bones, a femur, and there was just miscellaneous other broken up bones in the bag."

- c) After receiving information from a citizen he observed Mr. Dorman hand the book bag to this person and the person then gave Deputy White the same bag. Upon receipt of the bag he determined the presence of what he believed to be human bones that he described as laid out above.
- d) After he inventoried the contents of the book bag he and another officer photographed the items, sent the photos to the Office of the Medical Examiner's Office and contacted law enforcement in Durham County as the information he ascertained had led him to believe the circumstances surrounding the death occurred in Durham.
- e) Neither he nor any person working on behalf of the Orange County Sheriff's Office ever contacted the Office of the Medical Examiner to discuss releasing the remains to anyone or the cremation of the remains.
- f) In his work as a homicide investigator in other cases he has been contacted by Victim Compensation Services and asked pointed questions regarding the facts of a case, the motive of persons involved and the status of the case. In the past he has provided information to that agency without inquiring about why they wanted to receive the information from him.
- g) He did not believe Victim Compensation Services to be a law enforcement or prosecutorial agency and had not included their information or reports in his investigative files.
- h) He did not believe upon initial receipt of the bones that the remains were part of a homicide or murder investigation but did subsequently form that opinion.
- i) As part of his investigation the bones were evidence and he treated them accordingly while they were in his care, custody, and control.
- j) Initially Orange County was going to charge Mr. Dorman with concealment of the bones and he set in on a briefing in which he believed the Durham Police would charge Mr. Dorman with murder. He was not aware that the Durham Police Department had charged Mr. Dorman with concealment of human remains and/or failure to report a death.

68. On August 15, 2011 the second witness called by District Attorney Tracey Cline Chris Upchurch, was sworn and offered testimony which included the following:

- a) He has been employed as an Investigator for the Orange County Sheriff's Department for twelve years and has investigated homicide cases as part of his employment.

- b) He assisted Officer White on July 14, 2010 in a case that dealt with human remains or bones by being in the near vicinity when the book bag containing the bones was taken into custody by Deputy White and by photographing the contents of the bag. He sent the photos to Dr. Oliver who is an archeologist at North Carolina State University. He testified that Dr. Oliver after viewing the photographs indicated they were human remains after viewing photos of the skull, a jaw bone with teeth, and a couple of leg bones.
 - c) He and Deputy White left the contents of the book bag with an evidence technician and directed they be transferred to the Medical Examiner's Office.
 - d) On or before July 16, 2010 Deputy White informed him of the identity of the person whose bones he had photographed but he never contacted the family of the decedent or discussed with the Medical Examiner's Office that the remains would be released to anyone. He has dealt with the State Victim Compensation Services and received request for information and forms to be filled out in his work.
 - e) He has never known the Victim Compensation Services to help investigate a crime, present evidence in court to help solve crimes or be associated with a prosecutorial agency.
 - f) He was not involved in the decision to cremate the remains in this case nor did he assist in the destruction of the remains in this case in any manner. He knew of no one in the Sherriff's Department who would have contacted the Office of the Medical Examiner.
 - g) The entire time that the bones and teeth were in his possession he treated them as evidence. They were transported to the Office of the Chief Medical Examiner by an evidence custodian working for the Orange County Sherriff's Department.
69. On August 15, 2011 the third witness called by District Attorney Tracey Cline Christopher Allen Robinson, was duly sworn and gave testimony that included the following:
- a) He has been employed by the Durham Police Department for thirteen years, has been assigned to homicide investigations for the last five years, and was assigned to this case in the summer of 2010.
 - b) He and the Sergeant of the homicide division traveled to Orange County to interview Tony White but the remains had already been transferred to the OCME.
 - c) In cases involving bones, as in this one the first priority is establishing the identity of the person and in this case his investigation led to an identification of Lakeia Boxley.

- d) He gave the OCME a synopsis of the evidence, "so that they can have an understanding of what we think the cause of death might have been". He gave the synopsis to the OCME prior to obtaining any medical records for Lakeia Boxley.
- e) Once he made that identification he obtained a court Order so he could receive medical records from either Duke or Durham Regional. Duke took the Order and gave him a CD, an x-ray CD to give to the Medical Examiner and the CD was given to the medical examiner.
- f) Prior to obtaining the court Order he spoke with the Medical Examiner's Office and determined what type of information should be addressed in the Order and the Order was for any type of "head x-rays, jaw bone, or dental type x-rays", so that the OCME could identify the individual.
- g) After delivering the CD to OCME he was contacted by Clyde Gibbs of that office and he subsequently returned the phone call and was informed of the following:
 - 1) The identification of the remains was determined to be Lakeia Boxley using the medical records provided to the remains they were given.
 - 2) There was evidence of a gunshot wound to the skull by metallic fragments on the skull.
- h) He contacted the next of kin for Lakeia Boxley, Latifah White and made a death notification. He provided the contact information for Ms. White to the OCME and never recommended cremation to Ms. White.
- i) He never contacted Victim Compensation Services about this case other than to have Lukas Strout contact Ms. White to see what services may be of assistance to her, as Ms. White inquired of him what type of services might be available to help her out. He is not certain what Mr. Strout does as part of his employment.
- j) Victim Compensation Services has never helped him as part of an investigation, been a part of a prosecutorial team, or produced any information from their agency as part of discovery.
- k) He had "no knowledge" of any conversation he had with Ms. White regarding the funeral services for the remains and did not tell her to cremate the body.
- l) When he learned the family had been released the remains he had no further contact with them and did not know the remains had been cremated in Durham.

- m) The Durham Police Department is part of the prosecution team; they investigate deaths and are responsible for preserving evidence.
- n) He contacted Ms. White within a day or two of July 15, 2010 to inform her of the death of her sister.
- o) The initial charge on Mr. Dorman was concealment of remains and failure to report a death. The bones and teeth would have been evidence of that crime that he would have wanted to preserve.
- p) The bones and teeth would have also been evidence of the crime of murder.
- q) He testified to the grand jury on the charge of murder in the above referenced file numbers.
- r) He was not aware of the Order to preserve evidence entered in this matter until "way after" the remains had been released by the Medical Examiner.

70. On August 15, 2011 the fourth witness called by District Attorney Cline was Lukas Strout who was duly sworn and offered testimony which included the following:

- a) He has been an employee of the Durham Police Department for seven years as a victims advocate in the Victim Services Unit. His direct supervisor is a law enforcement officer and in the summer of 2010 it would have been Sergeant Francis or Sergeant Gibbons of the Durham Police Department. As a regular part of his employment he "acts as liaison between families, investigators, the court personnel, victim compensation." He indicated that he regularly performs needs assessment, outsourcing referrals and basic family needs. He also indicated he helps fill out any paperwork to help the family. He does not investigate crimes on behalf of the Durham Police Department.
- b) He has access to the database of the Durham Police Department pursuant to his employment and checks it regularly to determine if victims of violent crimes are in need of his assistance. Violent crimes that he seeks to offer his services to are defined as aggravated assaults, armed robbery, rape and homicide. Investigators assigned to those type cases also refer victims' families to him for services.
- c) His routine practice would be to obtain the reports of the Durham Police Department and then attempt to contact the family. In this instance Latifah White, the sister self-initiated contact with him. He wrote Ms. White a letter on August 26, 2010 on the letter head of the Durham Police Department regarding her filling out the victim compensation form based on information he was given from the State Victim Compensation Services after he self-initiated contact with them.

- d) The application submitted on behalf of Latifah White contained two different incidents regarding the person the State identifies as Lakeia Boxley: a missing persons report from 2008 and a murder investigation in 2010. He indicated that it was an unusual case because he “never had a homicide that has a missing person’s component” and needed to know what information to include in the application.
- e) In addition to the letter of August 26, 2010 he also sent to Ms. White a homicide package which contained the following information: Victim Compensation application, information on how to testify in court and coping mechanisms for dealing with death and bereavement and his contact information. He noted that Ms. White called him numerous times for various reasons to include questions about the investigations of the above referenced murder case. He answered her questions as best he could without being an investigator assigned to the case and used the media to help glean information.
- f) Pursuant to his employment he helped her fill out the application to Victim Compensation Services which led to the State’s payment for the cremation of the bones and teeth which are the subject of the motion to dismiss filed by Mr. Dorman. The applicant must have a financial hardship in order to qualify for compensation from Victim Services. Upon receipt of the application the State Victim Compensation Services contacts him to obtain the incident police reports from the Durham Police Department necessary to process the application.
- g) Ms. White contacted him at least twice concerning the release of the body by the Medical Examiner at the end of August or early September, 2010. Mr. Strout placed a phone call and left his contact information with the OCME to help Ms. White receive the remains that are the subject matter of Mr. Dorman’s motion. He was aware that it was possible Ms. White was going to cremate the remains upon her possession of them. He notified Ms. White when the remains were ready to be released by the OCME.
- h) To the “best of his knowledge” no one from the Durham Police Department or the Durham District Attorney’s Office ever advised him to recommend cremation in this case.
- i) The correspondence that he sent to the family members and to Victims Compensation Services were all sent on the letterhead of the Durham Police Department, he is identified in the correspondences as an employee of the Durham Police Department by his title, phone number and email address. He wrote three letters introduced into evidence dated August 25, 2010, August 26, 2010 and a letter to Melanie Palzatto dated September 10, 2010 that actually forwarded an application he filled out to the Victims Compensation Services.

- j) He received an order from District Attorney Cline to deliver over to her his complete "confidential file" related to Lakeia Boxley. He gave her his entire file and had received it back only recently prior to his testimony. He did not tell the DA's office about any communications he had with Latifah White because they were confidential communications with the family.
- k) Within his confidential file reviewed by District Attorney Cline were two applications containing the notarized signature of Latifah White dated September 7, 2010 and September 22, 2010 and an email from Clyde Gibbs of the OCME to Lukas Strout dated September 19, 2010 which reads as follows, "Per Detective Robinson, we are free to let Ms. Boxley be released. The family just needs to make arrangements with funeral home slash crematory in South Carolina and have that service either call us or have them select a transporter to pick her up. They can call us at 1-800-672-7024."
- l) He felt that he had no choice other than to comply with a directive to District Attorney Cline to turn over his complete files when ordered to District Attorney Cline.

71. On August 15, 2011, District Attorney Cline called as its fifth witness, Melanie Palzatto, who was duly sworn and offered testimony that included the following:

- a) She has been employed as an administrative assistant for the North Carolina Victims Compensation Program located in Raleigh for five years and the office is a state agency. She is cross trained to perform many functions in the office to include entering applications, processing appeals for the denial of claims and scheduling meetings for the director of the agency. All applications for victim compensation are determined by her office.
- b) Upon receipt of an application her routine would be to check the application to make sure the required information necessary for processing the application is included in the package and that it meets the statutory requirements. If they need information they contact law enforcement via faxing a form requesting the same, they may contact the actual applicant to receive medical bills, funeral expenses, or a death certificate. Most of their referrals for assistance contact their office at the suggestion of law enforcement officers who will give them a card and inform the person that there may be financial assistance available to them.
- c) In order to process the application they do a claim investigation but do not consider themselves to be part of a criminal investigation or a part of a prosecutorial team.

- d) In February of 2011 the Director of her agency met with the Durham Police Department because the agency was hesitant to release the requested police reports to their agency upon request.
- e) She received an application from Latifah White and began to open a file but the application was rejected as it had been altered. When a second application arrived minus alterations or corrections she considered that the original application. The application upon arrival in her office had the funeral expenses and a death certificate but was lacking police reports. The second application, which she considered the original application, arrived in her office on September 27, 2010 and contained a notary seal dated September 22, 2010. She was not aware if the funeral services had been conducted as of that date or not and had not approved the payment of any services at that time. She has no recollection of any conversations with Latifah White and did not recommend cremation of the remains to anyone.
- f) When she had gathered a notarized application, a death certificate and an incident report she would have handed the reports over to a claims investigator who in this case was named Liddie Shopshire. After Ms. Shopshire completed her claims investigation, she returned the file with a recommendation for approval sometime in October, 2010. Her practice would have been to contact the funeral home for a final bill and to inquire if any payments had been made for the services.
- g) Most of the homicide applications they approve are persons who have no insurance to cover the expenses or there is a need in assistance for paying the deductible.
- h) In this instance she contacted the funeral home and received on October 18, 2010 a revised bill for expenses connected to the cremation and the selection of an urn. She verified that there was no insurance to pay for this claim for cremation of Lakeia Boxley. At that point the completed information was submitted to the Director for a ruling on whether to award the expenses requested to pay for the cremation of the remains.
- i) In this instance the Director approved the request to pay for the cremation and the award of funds notification would have been sent by letter and a check released directly to the funeral home. The letters of notification were sent on

January 5, 2011 and would have been the first "official notice" to anyone that the claim would be paid.

- j) The amount of the award issued by the State of North Carolina for the cremation and purchase of an urn for the remains the State believes to be Lakeia Boxley is \$2, 748.38.
- k) On July 5, 2011 she received a fax in her office from the Honorable Orlando Hudson for the production of the complete file maintained by her office and was directed to send the Order to Jess Mekeel who is legal counsel for her department and an Assistant Attorney General. She copied the entire file and sent it to Mr. Mekeel.
- l) She is a State Employee, the Victims Compensation Fund is a State Agency located within the Department of Crime Control and Public Safety. The check that was issued to pay for the cremation for the bones and teeth that are the subject of Mr. Dorman's motion to dismiss was issued out of the Department of Crime Control and Public Safety which is a law enforcement agency but she was unsure if it were a prosecutorial agency.
- m) On September 22, 2010 she received a phone call from the funeral home and the intention to submit a complete application is recorded. On September 28, 2010 the law enforcement report was received, which detailed the State's theory of Mr. Dorman's guilt.
- n) In order to obtain records in violent offenses and cooperation from the Durham Police Department her office does not require a court Order or a subpoena to access the same.

72. On August 15, 2011, District Attorney Tracey Cline called as its sixth witness Liddie Denise Shopshire who was duly sworn and offered testimony that included the following:

- a) She has been employed for eleven years at the North Carolina Department of Crime Control and Public Safety with the Victims Compensation Services Division as a claims investigator. She is one of four claims investigators in the office. Her position requires that she review claims for financial assistance to determine their eligibility. Her normal practice and procedure is to take in the claim information, review what is submitted and contact law enforcement. Her goal is to ensure that they have innocent victims of crime to assist and

that they meet the qualifications under Chapter 15B. She contacts law enforcement officers to determine whether they meet the qualifications under the statute and relies on their investigation of the criminal investigation in making her determinations.

- b) It is possible to make an award when no arrest has been made, and she does not focus on the state's chances of proving guilt beyond a reasonable doubt when determining when to recommend approval of an award. She does not assist in an investigation to determine the identity of any suspects.
- c) She was the claim investigator for the cases involving the alleged decedent Lakeia Boxley. She received the claim in October, 2010, there was never a decision to pay the claim made prior to that date and "to the best of her knowledge" she never spoke with Latifah White prior to October, 2010. She never spoke to any state prosecutor about the cremation of the remains in October, 2010.
- d) Her claims investigation for a homicide investigation requires that she learn how a murder occurred and the initial reports supplied by the Durham Police Department were insufficient to yield that information. Accordingly, she contacted Investigator Christopher Robinson on or about October 22, 2010 and was provided with the following information by him:

"... that this victim had been reported missing in 2008, March of 2008. That remains were found and that the circumstances were that the offender in this case had told another person that two years ago he had killed a person in Durham. And that the victim died due to a gunshot wound to the head."
- e) Her receipt of this information from Detective Robinson was sufficient for her to recommend approval of the award to the director of her agency that led to the cremation of all of the teeth and almost all of the bones in this case.
- f) Upon her recommendation the request for assistance then went to a financial examiner for claims examination, and that person is responsible for reviewing the expenses submitted to determine what amount needs to be paid.
- g) The conversation she had with Christopher Robinson was all the information she needed to determine there was an innocent victim present and approve the award of fees to pay for the cremation. She had no knowledge as to how

much of what he told her was based on his own personal knowledge as opposed to the credibility of some third person.

73. On August 15, 2011 District Attorney Cline called as her seventh witness, Janice Wilson Carmichael, who was duly sworn and did offer testimony that included the following:

- a) She is employed as the Director of Victims Compensation Services and has been for the last eleven years. She receives about 4,700 applications per year and she alone makes the final decision on who receives an award. She does not speak to a prosecutor prior to making a decision, nor does she speak to the funeral home about cremation or guarantee a payment to anyone.
- b) She made a decision to pay for the cremation and burial expenses as requested by Latifah White on January 5, 2011. She sent a copy of the award to the Clerk of Superior Court so that Mr. Dorman could be ordered to pay for the cremation upon his conviction and her agency reimbursed for the funds they extended to pay for the cremation of the remains in question.
- c) Her agency is funded by the State of North Carolina and receives a sixty percent federal match by the Federal Government.
- d) Upon receipt of the court Order by Judge Hudson she forwarded the same to her attorney Jess Mekeel who is an Assistant Attorney General for the North Carolina Department of Justice.
- e) Mr. Mekeel represents her agency in appeals from denials of claims taken by victims and offers her legal advice independent of appeals from denials as well. She has never received advice from him regarding prosecuting someone or trying to find a suspect in a case.
- f) The files that are maintained in her office are not shared with any prosecutor's office and require a court order to release the same, as they are confidential files.
- g) The maximum award for compensation is \$30,000.00 for medical bills and \$5,000.00 for funeral expenses.
- h) The only award made by her agency was for the cremation and urn expenses related to the above referenced file numbers.

- i) She never spoke to Detective Robinson, anyone from the funeral home or Latifah White and based her decision solely on the documents collected by her agency and presented to her by her staff. She did not ask any law enforcement officer or prosecutorial agency whether she should pay for the cremation prior to doing so and did not notify them thereafter that she had done so.
- j) She was present in court for all testimony occurring on August 15, 2011. Her employees performed consistent with her expectations and she conducted no independent investigation prior to making her decision.
- k) Her office in every case contacts the lead investigator assigned to the case related to the application. It is normally a police officer or a deputy sheriff but they always contact and gather information from a law enforcement officer who is a part of a law enforcement agency in this State.

74. On August 15, 2011, the eighth witness called by District Attorney Cline was Jess Mekeel with the Attorney General's Office who was duly sworn and gave testimony that included the following:

- a) He was presented with a court Order signed by the Honorable Orlando Hudson on July 5, 2011 releasing the records for an in camera inspection of records maintained by his client.
- b) Upon receipt of the Order he requested a copy of the agency's complete files, reviewed them and discussed it with a Special Attorney General and a Senior Deputy Attorney General and then contacted the Court to request a meeting.
- c) He met with the Court on or about July 8, 2011 and later on that date supplied the information Ordered by the Court.
- d) On or about July 11, 2011, he was contacted by Judge Hudson's administrative assistant and told that after reviewing the documents provided to the Court he had decided to release the information to both sides. The Court's inquiry requested that Mr. Mekeel state what information should be redacted from the documents that would assist in protecting the confidentiality concerns articulated by Mr. Mekeel on July 8, 2011.

- e) On July 11, 2011 via a written letter and proposed Order he requested a protective Order from the Court and objected to the release of the victim compensation information on behalf of his client.
- f) On July 14, 2011, his request for a protective Order was denied, however the information that he requested be redacted by the Court containing confidential information related to Latifah White was allowed by the Court prior to dissemination to the parties or the same being placed in the public record.
- g) The State of North Carolina's request to restrict the manner in which the prosecution and defense were allowed to use the information disclosed to the parties was presented to the Court in the form of a request for a protective order. This request was denied by the Court via a written Order of the court dated July 14, 2011.
- h) He represents the Department of Crime Control and Public Safety and all of its constituent divisions to include Victim Compensation Services as in house counsel. He will go to court to represent them on civil and administrative hearings that can ultimately be appealed to Superior Court and through the appellate courts respectively.
- i) He saw no evidence upon the review of the Victim Compensation fund file that any law enforcement officer ordered, recommended or suggested that Ms. Boxley's body be cremated.
- j) He has never known a prosecutor to have access to a Victim Compensation file or known the file to be used in the prosecution of a criminal defendant.
- k) "To his knowledge" the prosecutor had no prior access to the Victim Compensation file released by the Court.

75. North Carolina General Statutes § 15B-3 is entitled Crime Victims Compensation Commission states as follows:

(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of seven members as follows:

- (1) One member to be appointed by the Governor;

(2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(4) The Attorney General or the Attorney General's designee;

(5) The Secretary of the Department of Crime Control and Public Safety or the Secretary's designee; and

(6) Two members to be appointed by the Secretary of the Department of Crime Control and Public Safety.

(b) Members shall serve terms of four years. A member shall continue to serve until his successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term.

(c) In case of a vacancy on the Commission before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (a). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(d) The Commission shall elect one of its members as chairman to serve until the expiration of his term.

(e) A majority of the Commission constitutes a quorum to transact business.

(f) Members shall receive compensation and reimbursement for expenses as provided in G.S. 138-5.

(g) The Commission shall name a Director upon the recommendation of the Secretary of Crime Control and Public Safety. The Director shall serve at the pleasure of the Commission. The Department of Crime Control and Public Safety shall provide for the compensation of the Director and shall provide professional and clerical staff necessary for the work of the Commission.

76. North Carolina General Statutes § 15B-7 is entitled Filing of application for compensation award; contents and reads as follows:

(a) A claim for an award of compensation is commenced by filing an application for an award with the Director. The application shall be in a form prescribed by the Commission and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;

(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(4) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(6) The total amount of the economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct, without regard to the financial limitations set forth in G.S. 15B-11(f) and (g).

(7) The amount of benefits or advantages that the victim, a dependent, or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(8) Whether the claimant is the spouse, parent, child, brother, or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(9) A release authorizing the Commission and the Commission's staff to obtain any report, document, or information that relates to the determination of the claim for an award of compensation;

(10) Any additional relevant information that the Commission may require. The Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a State officer or employee who knowingly and

willfully participates or assists in the preparation or presentation of a false or fraudulent application is guilty of a Class 1 misdemeanor if the application is for a claim of not more than four hundred dollars (\$400.00). If the application is for a claim of more than four hundred dollars (\$400.00), the person is guilty of a Class I felony.

77. North Carolina General Statutes § 15B-14 is entitled Effect of prosecution or conviction of offender and states in relevant part:

a) An award of compensation may be approved whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or a writ of certiorari is pending, or a rehearing or new trial has been ordered.

(b) Upon a request of the Attorney General, the proceedings in a claim for an award of compensation may be suspended pending disposition of a criminal prosecution that has been commenced or is imminent.

(c) In making an award, any specific statement of loss to a victim that a trial court has included in its judgment in the case may be considered.

78. North Carolina General Statutes § 15B-15 is entitled Clerks of court to be notified states in relevant part:

The Director shall notify in writing the clerk of superior court of the county in which the offense occurred of any award made from the Crime Victims Compensation Fund to the victim. The clerk shall place the notice in the case file of any defendant charged with the offense that gave rise to the award to the victim.

79. At the close of court on August 15, 2011 at 4:58 p.m. the State announced an intention to call an agent Sharon Hinton from the State Bureau of Investigation. District Attorney Cline indicated that she would testify that "if there was a bone left that the- there can be an analysis done for a DNA profile."

80. Further the State forecast the importance of this testimony of Agent Hinton as being relevant and probative to the issue of whether the destruction of all of the teeth and allegedly all of the bones save one was destroyed, whether they were destroyed in good or bad faith by the State, and whether they were intentionally destroyed.

81. On August 16, 2011 the ninth witness called by District Attorney Cline was Scott Pennica who was duly sworn and offered testimony that included the following:

- a) He has been a law enforcement officer since 1999. He has been employed as Sergeant of the homicide unit of the Durham Police Department since March of 2011. Prior to being promoted as Sergeant of homicide he worked as an investigator in the homicide unit.
- b) In a typical murder investigation the police will arrive at the scene and if they suspect that a crime has occurred related to a death and there is a body on the scene they will make contact with the OCME.
- c) Before the police touch or have any interaction with the body whatsoever they contact the OCME.
- d) If they arrived at a scene and a person has been transported to a hospital and subsequently expires they will contact the OCME to notify them of the death of an individual. He and his officers have attended autopsies at the OCME; normally it is the decision of the Medical Examiner as to what items to collect as evidence. His officers perform the death notifications to a family. He has never recommended that a family cremate the body.
- e) He has never used Victims Compensation Services to arrest or apprehend a suspect, or used their files as part of his investigative file.
- f) Victim Compensations Services normally receives basic information through Victim Services Department of the Durham Police Department and through the homicide department of the Durham Police Department.
- g) He had no personal knowledge of the investigation of this homicide. His only contact with the DA's Office was a two minute conversation with District Attorney Cline prior to court on August 16, 2011. The sole subject of their conversation was Victim Compensation and Victim Services.

82. On August 16, 2011 District Attorney Cline called its tenth witness Martha Ann Archibald who was duly sworn and offered testimony that included the following:

- a) She has been employed as the Managing Director of J. Henry Stuhr Funeral Chapels in Charleston, South Carolina for the last four years.
- b) Latifah White contacted the funeral home in August of 2010 via telephone and she advised Ms. White to come into her office which she did.

- c) Ms. White was very upset over the phone and in person and explained that she did not have the funds to pay for any type of burial for the remains that are in question but that there was in North Carolina a Victims Compensation Services.
- d) Ms. Archibald was familiar with a similar program in South Carolina and assured Ms. White that they would help her under those conditions.
- e) At this time she was informed that the remains consisted of a skeleton. Ms. White decided on cremation and Ms. Archibald contacted Quality Mortuary in the Durham area to act as their agent.
- f) In August of 2010 she had some contact with Victim Compensation Services about how to file the paperwork to be reimbursed and she proceeded on the good faith that they would be paid for the services performed regarding the cremation of the remains in question.
- g) Quality Mortuary picked up the remains from the OCME and once Ms. Archibald had the proper documentation, the necessary authorization to proceed, she forwarded the information to them and Quality Mortuary performed the cremation at the direction of Latifah White.
- h) Latifah White received the cremated remains from her office on September 24, 2010.
- i) She had several conversations with Lukas Strout of the Durham Police Department regarding Victims Compensation.
- j) Her file reveals a letter she wrote to Harry Royster regarding a notification to her when he actually picked up the remains at the OCME dated September 21, 2010. She was not aware of any written releases or documents that were executed to facilitate the transfer of the remains from the OCME to Quality Mortuary.

83. District Attorney Cline called the eleventh witness Latifah White to the stand. Upon being called to the stand Mr. Dorman objected and requested that Ms. White prior to testifying relieve herself of a large cross that she was carrying and remove large dark eyeglasses from her face. The size and tint of the shades prevented others from observing her eyes and evaluating many of her facial expressions

84. In response District Attorney Cline noted the absence of a jury who would be influenced by her possession of a cross and that it was her right to bear the cross in her hand and informed the Court that Ms. White was legally blind and the dark shades were necessary due to a medical condition related to her eyes.

85. The Court, in its discretion, denied the motion of Mr. Dorman and allowed Ms. White to wear dark glasses and carry her cross.

86. The eleventh witness called by District Attorney Cline was Latifah White who was duly sworn and offered testimony that included the following:

- a) She is married and a resident of South Carolina. She is the oldest of three sisters, Lakeia Boxley was the middle child and the youngest sister is named Stariesha Boxley. Their mother is still alive but is in a mental institution.
- b) She was notified in the summer of 2010 that Lakeia Boxley's body had been found by Detective Christopher Robinson. He provided her with the "graphic details" regarding her sister's death over the phone. She was told that her sister had been shot in the back of the head and that there was only skeletal remains left.
- c) In January of 2010 she followed up with a missing persons report previously filed by her mother regarding Lakeia Boxley. She spoke with a police officer who led her to believe that her sister was still alive and doing better based on their last interactions with her.
- d) She initially thought her sister Stariesha would be arranging to get the remains of their sister but eventually began to call and "beg" Detective Robinson and Lukas Strout to release her body. She indicated she never called the Medical Examiner's Office.
- e) She did not want her sister buried in Durham because she had been murdered here and she wanted her cremated so that when she expired they could be buried together.
- f) She had not seen her sister in the prior seven years. She wanted to be with her sister for the remainder of her life and in her death and misses her sister to this date.

- g) No police officer or prosecutor told her to cremate the remains that are the subject of this motion.
- h) Lakeia Boxley suffered from mental health problems and if she had insurance it was Medicaid based on her disability. Ms. White had no resources to pay for cremation of the remains in question.
- i) She was aware that Mr. Dorman was questioning whether the identity of the remains was Lakeia Boxley and that was very upsetting to her.
- j) She was never told by anyone from the District Attorney's Office that all of the remains may not have been cremated and returned to her.
- k) She was never told by any one at the Medical Examiner's Office that she did not have all of the remains of the person she believed to be her sister Lakeia Boxley and she believed that all of the remains of her sister were cremated and returned to her. She learned that may not be the case from reading the media accounts.
- l) Lukas Strout told her that her sister's remains were at the Office of the Chief Medical Examiner from the middle of July 2010 to September 21, 2010 and she knew that he worked for the Durham Police Department.
- m) She spoke with Lukas Strout over fifty times and begged him to have the Medical Examiner's Office release her body. She was told the Medical Examiner's Office had to release the body when they were ready.
- n) She was told her request to release the remains would have to go through a lot of hands. The police department made the release of her sister's remains happen. The only explanation she was given about why the remains were not being released by the Medical Examiner was that they were "waiting on the family".
- o) She only spoke with Detective Robinson one time and he gave her the name of the prosecuting attorney, District Attorney Tracey Cline and the name of Zandra Ford who is her legal assistant.
- p) She spoke with Zandra Ford who is employed as the legal assistant to District Attorney Tracey Cline over twenty times and in her conversations

with Ms. Ford they discussed who killed her sister and why. Ms. Ford called Mr. Strout and told him to send her a big pamphlet that she read.

- q) She spoke with Sgt. Perkins of the Durham Police Department over fifty times in August 2010 and she was told it was still an ongoing investigation and her body was still being examined. No one at the police department or the District Attorney's Office ever told her who was responsible for releasing her sister's body and to this day she still does not know who released the remains. But she believed that Mr. Strout or someone in this courthouse told the Medical Examiner's Office to release the remains. She contacted Sergeant Perkins because Detective Robinson was not returning her phone calls and she reached him by her own initiative.
- r) She speaks frequently with a person named Bryant and he informs her that per Mr. Dorman the remains in question belong to Lakeia Boxley. Bryant is the person who handed the remains of her sister over to the Orange County Sheriff's Office and they speak frequently.
- s) Over the recess she had a discussion with Ms. Zandra Ford and Mr. Lukas Strout. They did not discuss the content of her testimony only her need for her panic medications.
- t) The cremation of the remains occurred in this case on September 22 or 23 of 2010.

87) The twelfth witness called by District Attorney Tracey Cline was Doctor Deborah Radisch who was duly sworn and did offer testimony that included the following:

- a) She is employed as a forensic pathologist as the Chief Medical Examiner for the State of North Carolina. She has held that position since June 29, 2010. Prior to that she was employed as the Associate Chief Medical Examiner for the preceding twenty years.
- b) Upon arrival of the remains in question in this cases on July 14-15, 2010 there had been a proposed identification of the decedent. If remains arrive in her office without identification they will proceed to determine a manner or cause of death. She assigned Dr. Jonathan Privette to perform the autopsy in question in this case. She both supervised and assisted his work and his final report did not go out until she approved it.

- c) The remains in this case were strictly bones and teeth, devoid of any flesh or muscle tissue on the bones. Photographs were taken under the supervision of Dr. Privette.
- d) In an autopsy involving skeletal remains to determine identification of the decedent they will obtain dental records and past x-rays of a person believed to be the decedent for comparison to the remains before them. If the skeletal remains include prosthetics, her office will retrieve the serial number which are present on the prosthetics and use that as a source of identification. If none of those things work "you can resort to getting DNA testing."
- e) In this case they used a CT scan of her teeth and compared those to the X – Rays they took of the bones and teeth they took at autopsy and made the identification as Lakeia Boxley. As far as the release of the remains to the family the law requires that upon a completion of examination and inspection by her office the remains are to be released to the next of kin and if that is not possible to an interested party.
- f) On July 11, 2011 District Attorney Cline wrote to her and asked her to not release any bodies from Durham County that were suspected as the result of criminal behavior. Dr. Radisch indicated to her that the letter from her was insufficient for multiple reasons. However, upon receipt of a court Order for specific cases she could consider retention of remains under those circumstances.
- g) No portion of the remains was retained as evidence in this matter. However, a portion of the skull was retained because it contained information that was suspicious to them. The OCME cannot say with certainty that the residue present on the frontal lobe bone portion of the skull is wipe off from pellets.
- h) Her office followed the statute in returning the remains to the family. The court Order addressing the preservation of remains arrived four months after the remains were released to the family on September 21, 2010. She received no court Orders from the Defense or the State prior to September 21, 2010 and maintains an open door policy for defense attorneys. She has "no knowledge" of a directive from the District Attorney or the police requesting that the remains be released. Her office did not know the remains were going to be cremated upon release.
- i) She does not consider her office to be part of the prosecution team.

- j) She was aware of the subpoena served on Dr. Privette and of the hearing that occurred on June 28, 2011. As to items requested on the subpoena served by Mr. Dorman there was no written policy or protocol related to the release of remains to a person or entity for the Office of the Chief Medical Examiner's Office.
- k) Dr. Clyde Gibbs is an employee of the Office of the Chief Medical Examiner. She first saw the email Dr. Gibbs wrote to Lukas Strout on September 19, 2010 on the morning of August 16, 2010. Despite the subpoena served on Dr. Privette to produce all emails, the email from Dr. Gibbs was not provided to Mr. Dorman on June 28, 2010. She did not know why Dr. Privette did not produce the email from Dr. Gibbs on June 28, 2011. Her testimony indicated that in order to determine why Dr. Gibbs' email was not disclosed then Mr. Dorman would need "to ask somebody else."
- l) As of June 28, 2011 the OCME had no policy for ensuring that all emails related to a case ended up in the case file. They have recently created one.
- m) As of June 28, 2011 the OCME had no policy for ensuring that all telephone communications related to a case could be tracked and attached to a file. There remained no such system for tracking and attaching the phone calls made or received in connection to a file as of August 16, 2011.
- n) The remains were received at the OCME on July 14-15, 2010. A positive identification was made by the OCME on July 29, 2010 using dental records and a comparison to the remains that were released on September 21, 2010.
- o) Dr. Samuelson was contacted to render an opinion as to whether he could make an identification using the dental x-rays and a comparison of the remains. Dr. Samuelsson requested to see the actual teeth that were used to make the identification. The OCME was not able to provide Dr. Samuelson with the teeth as requested because they had been destroyed in the cremation process.
- p) On August 5, 2010 Dr. Clyde Gibbs filed an anthropology report regarding the remains in question. The files of her office do not document anything further occurring with the remains by OCME from August 6, 2010 until they were released on September 21, 2010.

- q) On August 8, 2010 Lukas Strout contacted Dr. Clyde Gibbs inquiring as to what the family had to do to get access to the remains.
- r) Included in her file maintained by the OCME were emails not previously disclosed to Mr. Dorman. They include an email dated September 10, 2010 sent by Dr. Clyde Gibbs to Detective Robinson Dr. Gibbs' question sought to determine if there was any reason to hold on to the remains by the OCME any longer. Also included in the OCME file was another email dated September 10, 2010 from Lukas Strout to Dr. Gibbs thanking him for his assistance and indicating that Mr. Strout would notify the family once they heard from Detective Christopher Robinson.
- s) There is nothing in the autopsy report indicating that a portion of the skull bone was retained. They did not tell the family members that portions of the remains were retained.
- t) The OCME is not able to render a scientific conclusion as to cause of death in this matter.
- u) Doctor Samuelson's opinions regarding an identification of the remains were disclosed to her office on June 24, 2011 via an email.

88. The Court notes that North Carolina General Statutes § 130A-383 addresses the release of a body by the Medical Examiner and states in relevant part as follows:

- (c) Upon completion of the investigation and in accordance with the rules of the Commission, the medical examiner shall release the body to the next of kin or other interested person who will assume responsibility for final disposition.

89. The Court after reviewing the entire record in this case, to include prior transcripts, applicable statutes, and the court files maintained in this judicial district, and the grand jury list maintained by the Clerk of Superior Court for Durham County makes the following determinations which are laid out below:

- a) The state's case against Mr. Dorman rests almost entirely upon the credibility of Michael Dorman. The evidence in the strongest light to the state requires that a trier of fact believe that Mr. Dorman is a lucid and credible person whose statements to a person identified in the testimony as "citizen" indicate that Mr. Dorman made inculpatory statements to him. It is that accounting imputed to Mr. Dorman that forms the foundation of the law enforcement investigation. This same information is then wholly adopted by the OCME and the Victim Compensation Services Fund.

b) The inherent and obvious problems with the state's prosecution are twofold: 1) Mr. Dorman gave an equally plausible explanation regarding how he came into possession of the remains that were destroyed by cremation that if believed by the trier of fact completely acquit him of the charge of first-degree murder and 2) there is no scientific method that was undertaken prior to the permanent destruction of the remains that would allow a rational trier of fact to have any reasonable certainty as to which version of events imputed to Mr. Dorman is more credible. With the destruction of the remains by cremation it is now impossible for the state or the defendant to conduct additional testing to give credibility to one scenario or another regarding his possession and involvement with the remains pre-mortem or post-mortem.

c) The third and equally troubling problem with the foundation of the state's case is the scope and extent of Mr. Dorman's mental illness. Mr. Dorman's illnesses were known to the state at the earliest stage of his arrest based on District Attorney Cline's request to have him evaluated as of August 5, 2010. Mr. Dorman's mental health issues introduce the very real possibility that neither of the accounts imputed to Mr. Dorman are accurate and reliable. The state's doctors at Dorothea Dix Hospital have determined that he has multiple Axis I and Axis II diagnosis's that include: Mood Disorder, Sexual Disorder, Gender Identity Disorder, Alcohol and Cannabis Abuse, Personality Disorder and a full scale IQ of 74. He readily admits to hearing screams, seeing spots, suffered head injuries as a child and prefers to be called "Sarah Ann". When the state rested the integrity and strength of their prosecution on such a flawed foundation it was obvious to them that their case was flawed at the core.

d) In this circumstance in which the strength and the value of the state's case rest upon the credibility of a deeply sick and troubled young man, the extreme importance of the value of any and all independent and objective forensic testing to determine identity of the decedent, cause of death, and manner of death was obvious to the state and its agents. A fair and objective forensic investigation in this case is critical because it would offer significant guidance to the credibility or impossibility of any scenario evaluated by critical parties in our system of jurisprudence. This evaluation of the state's case has to be undertaken not only by any potential jurors but judges, the state and its agents, Mr. Dorman's counsel and Mr. Dorman.

e) Considering the nature and quality of the evidence that the state seeks to offer against Mr. Dorman, the actions of the state and its agents in failing to protect and preserve information that is material and favorable to Mr. Dorman is especially egregious and concerning. This is all the more so because the state and its agents were aware that N.C.Gen. Stat. § 15 A 11.1 required that the remains be retained as a matter of law, unless released by District Attorney Cline or a judge. This protective measure is designed to prevent the very issues that Mr. Dorman is now complaining of and experiencing.

f) The state has never presented any explanation for why they did not pursue the felony charge of failure to report a death and concealment of remains in Superior Court or

why the charge was dismissed by District Attorney Cline in spite of what is compelling evidence against Mr. Dorman.

g) The Court specifically finds that OCME is an investigatorial agency and an agent of the State of North Carolina. The Court specifically finds that state had a responsibility to preserve and disclose material and favorable evidence in the possession of its files and its agent's files and disclose the same to the defense in a timely manner.

h) The Court finds that the timing of the destruction of the remains, which occurred months before Mr. Dorman had received any discovery and /or the autopsy results from the state are particularly concerning and troubling because it made it impossible for Mr. Dorman to even know which questions to lodge or objections to make to the state or any tribunal.

i) Essentially the motion to preserve all evidence, the request for discovery, and specific request for the disclosure of all exculpatory information from the state and its agent's files which were filed less than ten days after indictment is all that even the most zealous advocate could do to avail Mr. Dorman of the protections guaranteed by our system.

j) The Court finds that the failures of the state are in opposition to long standing case law established by the United States Supreme Court based on *Brady* and its progeny, statutory protections guaranteed by the legislature as laid out fully herein, and repeated and intentional violations of multiple direct court orders entered by Superior Court judges.

89. The Durham Police Department had formed the opinion that the remains in question belonged to Lakeia Boxley and that Michael Dorman had murdered her on or before July 18, 2010.

90. Christopher Robinson notified the OCME on or before July 18, 2010 who the next of kin was for the person they concluded was Lakeia Boxley. The OCME reached its opinion regarding the identity of the remains as being Lakeia Boxley on July 29, 2010.

91. Christopher Robinson provided Latifah White with the name and phone number for Zandra Ford who is the legal assistant to District Attorney Cline and the phone number for District Attorney Cline on or before July 18, 2010.

92. Zandra Ford in turn provided Ms. White with the name and phone number for Lukas Strout of the Durham Police Department. Ms. White contacted Mr. Strout repeatedly in an effort to gain access to the remains.

93. There was no investigation by the Durham Police Department or the OCME that was occurring between August 6, 2010 and September 21, 2010.

94. Without the financial assistance provided to Latifah White by the State of North Carolina she could not have paid for the cremation that occurred on or about September 21, 2010.

95. Lukas Strout is employed by the Durham Police Department. The Durham Police Department is an agent of the State of the North Carolina. The Durham Police Department is a prosecutorial agency. Lukas Strout knew that Latifah White was considering cremation and had access through his work computers to note the charges pending against Mr. Dorman. The Durham District Attorney's office is appropriately and lawfully imputed with Lukas Strout's knowledge regarding the possibility of the permanent destruction of material and favorable evidence that occurred in this case. Mr. Strout's direct supervisors are high ranking law enforcement officers in the Durham Police Department. Once Christopher Robinson approved the release of the remains by the Medical Examiner's Office, Mr. Strout notified Ms. White that the remains were ready to be released by the OCME.

96. Lukas Strout's testimony never included a flat denial that he was not directed by a member of the Durham Police Department or the Durham District Attorney's Office to recommend cremation to Ms. White.

97. The email from Clyde Gibbs dated September 19, 2010 was not produced on June 28, 2011 to Mr. Dorman and it should have been pursuant to the subpoena issued by Mr. Dorman on June 23, 2011. The email Clyde Gibbs sent on September 10, 2010 to Detective Christopher Robinson inquiring whether the remains needed to be held by the OCME for any reason was not produced on June 28, 2011 to Mr. Dorman and it should have been pursuant to the subpoena issued by Mr. Dorman on June 23, 2011. The email from Lukas Strout dated September 10, 2010 thanking Dr. Gibbs for his assistance and indicating that Mr. Strout would notify the family as to the status of the remains as soon as they heard from Detective Robinson. The failure to disclose the substance of all three of those emails and the conversations they reflect by District Attorney Cline is a discovery violation pursuant to N.C.G.S. § 15 A 903 and a flagrant violation of his due process rights pursuant to the Fourteenth Amendment of the United States Constitution.

98. Detective Christopher Robinson did not disclose his role in authorizing the release of the bones and teeth by the Medical Examiner during any part of his testimony on August 15, 2011. The failure to disclose this information by District Attorney Cline is a discovery violation pursuant to N.C.G.S. § 15 A 903 and a flagrant violation of his due process rights pursuant to the Fourteenth Amendment of the United States Constitution.

99. Detective Robinson's role in the release of these items and the knowledge of his agency that they were to be cremated is highly material to the issues being decided by the Court on June 28, 2011, August 15, 2011 and August 16, 2011. The state and its witnesses had an obligation to disclose that information in a timely manner to the Court and Mr. Dorman. The failure to disclose this information by District Attorney Cline is a discovery violation pursuant to N.C.G.S. § 15 A 903 and a flagrant violation of his due process rights pursuant to the Fourteenth Amendment of the United States Constitution.

100. Michael Dorman was in custody under a bond that he was unable to make from July 14, 2010 until August 16, 2011 on charges related to remains that have been destroyed by cremation. The cremation was facilitated and paid for by multiple agents of the State of North Carolina

101. Michael Dorman was in custody from July 14, 2010 until September 23, 2010 when the remains in question were intentionally destroyed via cremation that was enabled and facilitated by the state and its agents. The remains that were intentionally destroyed with the assistance of state actors were material and favorable to Mr. Dorman.

102. The Durham County Grand Jury met on July 19, 2010. District Attorney Cline, or no other person with authority to do so, presented for consideration an indictment on the charge of first degree murder or concealment of human remains. This action prevented the Superior Court from obtaining jurisdiction of the case and by law prevented Mr. Dorman from seeking access to statutorily required compulsion of discovery.

103. The Durham County Grand Jury met on August 2, 2010. District Attorney Cline or no other person with authority to do so presented for consideration an indictment on the charge of first degree murder or concealment of human remains. This action prevented the Superior Court from obtaining jurisdiction of the case and by law prevented Mr. Dorman from seeking access to statutorily required compulsion of discovery.

104. The Durham County Grand Jury met on August 16, 2010. District Attorney Cline or no other person with authority to do so presented for consideration an indictment on the charge of first degree murder or concealment of human remains. This action prevented the Superior Court from obtaining jurisdiction of the case and by law prevented Mr. Dorman from seeking access to statutorily required compulsion of discovery.

105. District Attorney Cline did seek an indictment of first-degree murder on September 7, 2010. Also on September 7, 2010 Latifah White, in what the state apparently contends is an unrelated coincidence, submits her request to Lukas Strout of the Durham Police Department and the Victims Compensation Fund to begin the process to seek payment for the cremation of the bones and teeth that are a large part of the gravamen of Mr. Dorman's motion to dismiss.

106. District Attorney Cline or no other person with authority to do so presented for consideration an indictment on the charge of concealment of human remains or failure to report a death on September 7, 2010 or any date since then.

107. The charge of possession of human remains and failure to report a death does not require that the state prove the identity of the person who is deceased.

108. The charge of possession of human remains and failure to report a death does not require that the state prove the cause of death for the person who is deceased.

109. The charge of possession of human remains and failure to report a death does not require that the state prove the manner of death of the person who is deceased.

110. The state had a compelling and overwhelmingly strong case against Mr. Dorman on the charge of concealment of human remains and failure to report a death. However, the state never sought an indictment necessary to procure a conviction of this charge in Superior Court.

111. The court files and records maintained by the Clerk of Superior Court for Durham County indicate that on October 15, 2010 District Attorney Cline **after** securing an indictment on first-degree murder took a voluntary dismissal on the charge of concealment of human remains and failure to report a death. The Court specifically finds as a fact that until October 15, 2010 date those charges were pending against Mr. Dorman in the Durham County courts.

112. At the time of the dismissal on October 15, 2010 evidence necessary to prove the state's case had been destroyed via cremation sometime between September 21, 2010 and September 23, 2010. This action was in violation of N.C.G.S. § 15 A 11.1.

113. At the time of the cremation the bones and teeth were evidence that the State and its agents had a responsibility to preserve pursuant to N.C.G.S. § 15 A -11.1. The Court specifically and expressly finds that by taking a voluntary dismissal on these charges the state sought to avoid a statutory requirement that they not destroy the human remains which the Court finds under the unique circumstances of this case were evidence. At the time of cremation the statute required that those remains which have been permanently destroyed be preserved as evidence.

114. The state has repeatedly denied that it authorized release of the remains and there is no evidence in the court file nor did any prosecutor in this matter indicate that they sought permission from a judge to release the remains. The Court specifically finds that the state did not seek nor receive permission from a judge prior to releasing the remains on September 21, 2010 which rendered the remains permanently unavailable to Mr. Dorman.

115. The court finds the release of the remains which were evidence of a crime pending at the time of their destruction via cremation to have been the intentional destruction of evidence that was material and favorable to Mr. Dorman. The Court finds this intentional destruction of material and favorable evidence to Mr. Dorman to be a flagrant violation of Mr. Dorman's rights pursuant to the Fourteenth Amendment to the United States Constitution.

116. The Court finds that Mr. Dorman has suffered irreparable prejudice as a result of the flagrant violation of his constitutional and statutory rights. Mr. Dorman's irreparable prejudices have had a substantial negative effect on his ability to erect and implement a coherent defense in ways that include but are not limited to the following:

- a) He is not able to determine by his own testing any evidence inconsistent with the opinions and conclusions made by Dr. Privette, Dr. Samuelson, Dr. Gibbs, Dr. Oliver or Dr. Radisch.
- b) He is not able to inspect the remains and determine the presence of any information which would indicate a cause of death inconsistent with a shot gun blast to the head.
- c) He is not able to inspect the remains and determine the presence of any information which would indicate a manner of death inconsistent with homicidal violence as indicated by the Medical Examiner.
- d) He is not able to inspect the remains for the possibility that more than one person's remains were contained in the bag. This may result in the location of other suspects he should pursue.
- e) He is not able to inspect the destroyed evidence for the presence of DNA on the bones which belong to neither him nor Ms. Boxley. Such information would be evidence that is consistent with his prior statement that the remains were a skeleton when he first discovered and that he played no role in causing the death of anyone.
- f) He is not able to prove the absence of his DNA in these remains. The State's theory of the crime is that he used the remains for his sexual gratification. Therefore, Mr. Dorman may well have sought to procure DNA analysis to show the absence of his DNA in the form of semen, saliva, or other secretions.
- g) Any DNA material that could have been revealed on the destroyed remains would be material on the charges of murder and or concealment of human remains.
- h) Any DNA material that could have been revealed on the destroyed remains would be material in determining the identity of the decedent and the number of persons whose remains are in question.
- i) The State's experts who handled and preserved and evaluated the actual remains would have a clear advantage and increased credibility with a jury and trier of fact adjudicating questions of fact and law in this matter. The state's agents could always correctly inform the jury or any trier of fact that unlike any defense expert they alone actually physically examined the remains of the decedent(s).
- j) The Defendant is precluded from obtaining successful avenues for impeachment evidence for the state and its agents who will offer testimony in this matter.

- k) The state and its agents have destroyed, facilitated the destruction of, and/ or failed to disclose in a timely manner all of the material and favorable evidence necessary for him to craft, implement or create a coherent or effective defense or even a defense strategy in this matter.

117. Durham County Superior Court has a case management system that addresses the disposition of felony cases. The rules were enacted by the undersigned Superior Court Judge pursuant to his title as the Senior Resident Superior Court Judge for Durham County with the consent of the elected District Attorney for Durham County. The rules will be referred to hereinafter as "CMS". The most current version of CMS was adopted by the undersigned Superior Court Judge and the elected District Attorney on January 26, 2007.

118. CMS sessions are administrative sessions of court that occur only once a month to address cases that have been previously and recently indicted by a Durham County Grand Jury.

119. The Durham County Grand Jury meets on alternating Mondays to decide which indictments shall be returned. In this matter the Grand Jury returned an indictment on September 7, 2010 and a session of CMS may have been occurring during that week. However, it has never been the practice of this judicial district to have indictments returned while CMS is occurring to be added to that administrative session. Rather the habit and practice of this judicial district would be to carry forward an indictment returned on September 7, 2010 to the CMS session beginning in the next month or in this case the October, 2010 session of CMS.

120. On September 7, 2010, when Mr. Dorman was indicted for murder invoking the jurisdiction of superior court and triggering his right to discovery, the earliest conceivable court date that Mr. Campbell could have sought to have a ruling on his discovery and preservation motions absent an extraordinary use of the District Attorney's exclusive scheduling authority would have occurred during the first full week of October, 2010 in what is known as the October session of CMS.

121. The record reflects that during the week of October CMS District Attorney Cline addressed the court in Mr. Dorman's absence and unilaterally sought to avoid that hearing by moving to continue his cases until the November session of CMS. Upon discovery of this Mr. Dorman objected and sought relief from Judge Titus to preserve the evidence by exhumation of the remains.

122. The Court finds that the representations made to Judge Titus on October 7, 2010 by District Attorney Cline regarding the location of the remains in this matter to have been material and favorable to Mr. Dorman as it relates to issues of law and fact relative to the defense motion to dismiss heard on June 28, 2011, August 15, 2011, and August 16, 2011.

The Court also finds that these same representations by the State made to Judge Titus on October 7, 2010 to have been material and favorable to Mr. Dorman's preparation and use at any trial that is to occur.

123. The Court further finds that the state and its agents intentionally facilitated, assisted and enabled the permanent destruction of material and favorable evidence in Mr. Dorman's cases relative to the motion to dismiss heard by the Court and at any trial that would occur. The Court further finds that Mr. Dorman did not receive the discovery disclosures outlined herein in a timely manner by the state and accordingly he has sought redress and protection from the courts.

124. The Court further finds that Mr. Dorman was not informed until June 9, 2011 that the remains had been destroyed via cremation and that the disclosure was not timely made to the defense.

125. The Court further finds that the following information was known to the state as a result of the direct actions or inaction of the Durham District Attorney's Office or is properly imputed to the District Attorney's Office by the action or inaction of the state's agents. The information should have been disclosed based on the law and the lawful directives of a Superior Court Judge with personal and subject matter jurisdiction of the case and the parties associated to it. These specific findings are laid out more fully below and throughout the order:

A. Particular findings of fact regarding the conversation Detective Christopher Robinson had with Victim Compensation Services which led to the authorization of the payment for the cremation of the bones and remains in this case.

1. This conversation was not disclosed in discovery to the defendant in a timely manner and was only discovered as a result of information released by the Court on July 13, 2011 after the motion to dismiss hearing had been concluded on June 28, 2010. This information was not provided to Mr. Dorman in a timely manner.
2. The failure to document and disclose this conversation in the files of the Durham Police Department is a violation of N.C.G.S. § 15 A 903.
3. The intentional and willful failure to disclose the substance of this conversation in a timely manner is a violation of the direct court Order issued by Judge Titus on November 4, 2010.
4. The intentional and willful failure to disclose the substance of this conversation in a timely manner was a violation of the direct court Order issued by this Court on June 7, 2011.

5. The failure of the State to disclose the substance of this conversation and the role of its agents in the destruction of material and favorable evidence is a material omission to the Court and Mr. Dorman.
6. The Attorneys representing the state had an obligation to discover and disclose the role its agents took in the destruction of evidence that was material and favorable to issues of law and fact. This duty included an obligation to exercise a reasonable diligence to discover and then disclose the information to Mr. Dorman and the Court. There was no evidence presented that prior to July 13, 2011 they inquired of its agents of any role they may have played in the destruction of material and favorable evidence. Nor did the attorneys representing the state ever offer an explanation to the Court or Mr. Dorman as to why they did not disclose the information or what level of diligence they exercised to prevent the issues that are documented herein.

B. Particular findings of facts regarding the conversation on September 19, 2010 between Christopher Robinson of the Durham Police Department and Dr. Clyde Gibbs of the OCME in which Robinson authorized that the remains be released to the family and that a funeral home or crematory needed to be contacted:

1. The Court finds that this conversation was only discovered upon cross examination of Lukas Strout by Mr. Dorman. The conversation contains information that is material and favorable to Mr. Dorman. The substance of the conversation contains information that is critical to many issues for which the defendant bears the burden of proof at the instant matter before the Court.
2. The conversation reveals that contrary to multiple witnesses' testimony the Durham Police Department and the Office of the Chief Medical Examiner were aware that the bones and teeth were to be destroyed, and that the same would not be available to Mr. Dorman as required by law.
3. The substance of this conversation and the email were not disclosed to the defendant in a timely manner as it relates to the critical issues of law and fact. The undersigned Judge and Mr. Dorman should have been informed of the substance of the email and a copy of it prior to the close of the hearing on June 28, 2011. The Court finds that the substance of these conversations were disclosable to the defendant pursuant to N.C.G.S. § 15 A 903. The Court finds that the order of Judge Titus on November 4, 2010 affixed a time frame as to the delivery of discovery from the State and its agents. The Court finds

it was the specific intent of Judge Titus that the State immediately release all of the information in the possession of the State and its agents to Mr. Dorman. The Order of Judge Titus was entered as a result of the motion to compel discovery filed by Mr. Dorman. The Court finds that the failure to disclose material and favorable evidence to Mr. Dorman as outlined herein to be a flagrant and willful violation of a direct court order by Judge Titus pursuant to N.C.Gen.Stat. § 15 A 910.

4. The substance of this conversation and the email contain material and favorable information to Mr. Dorman and were not disclosed to the defendant in a timely manner as it relates to the critical issues of law and fact that Judge Titus decided on October 7, 2010 and should have been disclosed to the court and the Defendant on that date. The Court finds that the substances of these conversations were disclosable to the defendant pursuant to N.C.G.S. § 15 A 903. The Court finds that the Order of Judge Titus on November 4, 2010 affixed a time frame as to the delivery that he intended to be immediate as it was a directive based on the defendant's motion to compel the release of discovery. The Court finds the failure to disclose this information is a violation of N.C.G.S. § 15 A 903 and a flagrant violation of his Fourteenth Amendment to the United States Constitution.
5. The Court finds that in light of the highly material and favorable information only disclosed to Mr. Dorman upon cross examination that the State's decision to not recall Christopher Robinson or Jonathan Privette or to elect to call Dr. Gibbs, who was under subpoena for this hearing, leads the Court to determine that they would not have denied the testimony admitted through Mr. Strout and that the State was aware of their anticipated responses.
6. The failure to document and disclose the substance of these conversations is a violation of N.C.G.S. § 15 A 903.
7. The failure to disclose the substance of this conversation and the email that confirms their occurrence in a timely manner is a violation of the direct court Order issued by Judge Titus on November 4, 2010.
8. The failure to disclose the substance of this conversation in a timely manner is a violation of the direct court Order issued by this Court on June 7, 2011.
9. The failure of the State to disclose the substance of this conversation and the role of its agents relative to the destruction of the remains was an intentional

omission of favorable and material information to the Court and Mr. Dorman. Accordingly, this is a flagrant violation of the Fourteenth Amendment to the United States Constitution.

10. The attorneys representing the state had an obligation to discover and disclose information in their files that was material and favorable to issues of law and fact relative to this case. This duty included an obligation to exercise a reasonable diligence to discover and then disclose the information to Mr. Dorman and the Court in a timely manner. There was no evidence presented that prior to July 13, 2011 that they inquired of its agents of any role they may have played in the destruction of material and favorable evidence. Nor did the attorneys representing the state ever offer an explanation to the Court or Mr. Dorman as to why they did not disclose the information or what level of diligence they exercised to prevent the issues that are documented herein.
11. Mr. Strout indicated that District Attorney Cline was aware of the content of the emails from Dr. Clyde Gibbs detailing Detective Robinson's directive. District Attorney Cline learned this information after obtaining and reviewing Mr. Strout's file that contained the email. The Court finds this portion of his testimony to be credible. The Court finds that District Attorney Cline had an affirmative obligation to disclose the contents of the emails to the Court and Mr. Dorman in a timely manner and that District Attorney Cline did not do so. The Court notes that the acquisition of Mr. Strout's file by District Attorney Cline required no more than her request and a court order was not required to secure his total compliance.
12. District Attorney Cline and any prosecutor with knowledge of the substance of the emails had an ethical obligation to correct the testimony of Christopher Robinson and Jonathan Privette. The State offered no corrections and the court finds this to be a flagrant violation of Mr. Dorman's due process rights of the United States Constitution as determined by the case of *Napue v. Illinois*.
13. District Attorney Cline had an ethical obligation to correct testimony of Lukas Strout if she knew his testimony was false. The State offered no corrections of his testimony and the Court specifically determines that Christopher Robinson contacted Clyde Gibbs on September 19, 2010 and the substance of their conversation is accurately contained in the email sent by Clyde Gibbs on that same date and admitted in the hearing on August 15, 2011.

C. Particular findings of facts regarding the substance and number of phone calls made by Latifah White to law enforcement agencies and members of the prosecutorial team.

1. The Court finds the fifty phones call made to Sgt. Perkins and the substance of those conversations to have been discoverable information. The substance of those conversations and her complaints about Detective Robinson's work on this case were disclosable to the defense pursuant to N.C.G.S. § 15 A 903 and *Kyle's v. Whitley*, and the Fourteenth Amendment of the United States Constitution.
2. The Court finds the thirty phone calls she placed to Lukas Strout of the Durham Police Department and the substance of those conversations was disclosable to Mr. Dorman pursuant to N.C.G.S. § 15 A 903 and *Kyle's v. Whitley* and the Fourteenth Amendment of the United States Constitution.
3. The Court finds that the twenty phone calls placed to Zandra Ford the personal legal assistant to District Attorney Cline and the substance of those conversations to have been discoverable information and the substance of those conversations and her complaints about Detective Robinson's work on this case were disclosable to the defense pursuant to N.C.G.S. § 15 A 903 and *Kyles v. Whitley*, and the Fourteenth Amendment of the United States Constitution.
4. The Court specifically determines that the motivation of Latifah White during her phone calls to Mr. Strout, Sgt. Perkins and Zandra Ford was to obtain what she believed to be the complete remains from the Medical Examiner's Office.
5. The Court specially finds from the cumulative weight of the evidence that it was Latifah White's intent from the time she contacted the funeral home in South Carolina to have the remains cremated and that the State was aware of the same.
6. The Court specifically finds that the reason that she did not place a single call to the Office of the Chief Medical Examiner to obtain the release of the remains is because she knew and understood that the Office of the Chief Medical Examiner would not release the remains until Detective Robinson of the Durham Police Department authorized them to do so.

7. The Court further finds that the cumulative weight of the evidence indicates that the Durham Police Department made the determination as to when the Medical Examiner would release the body and that approval was given on September 19, 2010.
8. The Court finds that the Durham Police Department would not authorize the release of the body until such time as Latifah White ensured the remains would be cremated by submitting an application to the Victims Compensation Fund via Lukas Strout of the Durham Police Department on or about September 7, 2010.
9. The Court finds that Ms. White testimony that the remains would not be released by the OCME because they were “waiting on the family” to be probative of the State’s requirement that the next of kin not simply requests the remains but that the family take the additional step of cremation of the remains upon receipt.
10. The Court finds that Latifah White loves her sister Lakeia Boxley and has a lot of guilt and angst due to their apparent estrangement. The Court finds that the State and its agents have persuaded and convinced her that Mr. Dorman murdered her sister. Ms. White believed that if she did not cremate the remains and testify that no one encouraged her to do so that it would allow the person she believed to be her sister’s murderer to escape punishment.
11. The Court finds that aspects of her testimony regarding her conversations with Christopher Robinson, Lukas Stout and Zandra Ford were not fully disclosed during her testimony and that many of her representations regarding the same were not credible. Latifah White is a biased witness. She does not want Mr. Dorman’s cases dismissed by the Court. The Court specifically finds that in providing incomplete and false testimony to the Court her intent was not disrespect for the Court and its authority but loyalty and love for her sister.
12. The failure to document and disclose the substance and number of phone calls that Latifah White had with Sgt. Perkins, Lukas Strout and Zandra Ford is a violation of N.C. G. S. §15 A 903.
13. The failure to disclose the substance of the conversation Latifah White had with Sgt. Perkins, Lukas Strout and Zandra Ford in a timely manner was an intentional and willful violation of the direct court order issued by Judge Titus on November 4, 2010.

14. The failure to disclose the substance of the conversations Latifah White had with Sgt. Perkins, Lukas Strout and Zandra Ford in a timely manner was a violation of the direct court order issued by this court on June 7, 2011.
15. The failure of the State to disclose the substance of the conversations Latifah White had with Sgt. Perkins, Lukas Strout and Zandra Ford in a timely manner and the role its agents played in the destruction of the remains was an omission of favorable and material evidence to the Court and Mr. Dorman that was not timely disclosed. Accordingly, this is a flagrant violation of Mr. Dorman's Fourteenth Amendment Rights of to the United States Constitution.
16. The Attorneys representing the State should have been aware of the role its agents took in arranging, assisting, and facilitating the destruction of the bones and teeth in this matter. They had a duty to exercise a reasonable amount of due diligence to disclose the information to Mr. Dorman and the Court. There was no evidence presented that prior to July 13, 2011 they inquired of its agents nor did they offer an explanation to the Court or Mr. Dorman as to why they did not disclose the information that reveals the substance of conversations that document how these remains came to ultimately be destroyed as a result of influence and payment by state actors.

D. Particular findings of facts regarding the Office of The Chief Medical Examiner and its employees and its role in the destruction of the remains in this case.

1. The Office of the Chief Medical Examiner was an agent of the state of the North Carolina at all relevant times to issues of fact and law in this case for purposes of N.C.G.S. § 15A-903.
2. The Office of the Chief Medical Examiner was acting as a prosecutorial agency for the State of North Carolina in the circumstances of this particular case for purposes of N.C.G.S. § 15A-903. In reaching this conclusion the Court considered factors that included but were not limited to the following:
 - a) Many of the conclusions reached by the OCME in the autopsy report are lifted directly and wholly from the law enforcement investigation in this case. They were then accepted as true without regard to whether independent scientific validation can be reached or even the credibility of the source of the information.

- b) By their own admission the OCME cannot determine a cause of death in this matter.
- c) In order to reach their conclusions as to manner of death they rested that finding on law enforcement investigation. Nothing about the remains they allowed them to reach a scientific conclusion that the remains they examined appeared in their condition as a result of homicidal violence.
- d) In making their identification they only requested that the Durham Police Department obtain the CATT SCANS and X-Rays that would allow them to include Lakeia Boxley. This is so even as they indicate an almost complete skeleton cumulatively appeared before them and other X-Rays of different parts of her body were in existence.
- e) From a scientific and legal perspective a proper evaluation should have included as many possible different and independent sources of identification as could reasonably be achieved. This would have allowed an objective evaluator to consider factors for inclusion or *exclusion* of the remains to Lakeia Boxley and allowed for the elimination of the real possibility that the skeleton was that of a single person as opposed to the remains of multiple persons.
- f) The Court finds that the OCME objective was to prove that the remains were Lakeia Boxley consistent with the conclusions of the Durham Police Department. This is not the same objective as making an identification of the remains at issue. It is precisely that bias and perspective that in part allows the Court to determine that in this case the OCME was acting not only as an agent of the state but also as a part of the prosecution team.
- g) Because of the bias indicated above Dr. Jonathan Privette and the employees of the OCME did not comply with the lawful subpoena served by Mr. Dorman to produce information on June 28, 2011. Specifically the Court finds that Dr. Privette did not disclose the actual knowledge of the OCME regarding whether the remains were to be cremated by Latifah White

upon their release to her. The Court also finds that the OCME did not disclose that they had delegated its statutory obligations to release the remains of the body to Detective Robinson of the Durham Police Department.

- h) The Court also notes that the final autopsy report was not released to Mr. Dorman until January 5, 2011. This is the exact date that the director of Victim Compensation Services, Janice Carmichael gave formal written notice of the approval to pay for the cremation of the bones and teeth in question.
- i) The Court also notes that on January 6, 2011, one day after the events noted in 2(h) above the state chose to inform the Office of the Chief Medical Examiner of the court Order of Judge Titus entered on October 7, 2010 and reduced to writing on December 7, 2010.

- 3. The failure to document and disclose the substance of the conversations detailed in 2 (g) above is an intentional and willful violation of N.C.G.S. § 15 A 903.
- 4. The failure to disclose the substance of the conversations detailed in 2 (g) above in a timely manner was a violation of the direct court Order issued by Judge Titus on November 4, 2010.
- 5. The failure to disclose the substance of this conversation in a timely manner was a violation of the direct court Order issued by this Court on June 7, 2011.
- 6. The failure of the state to disclose the substance of the conversation detailed in 2(g) above was a material omission to the Court and Mr. Dorman and as such constitutes a discovery violation pursuant to N.C.G.S. §15 A 903 and a due process violation pursuant to *Napue v. Illinois* and the Fourteenth Amendment of the United States Constitution.
- 7. Mr. Strout indicated that District Attorney Cline was aware of the content of the emails after obtaining and reviewing his file that contained the email. District Attorney Cline had an affirmative obligation to disclose the contents to the Court and Mr. Dorman in a timely manner and that was not done.
- 8. The attorneys representing the State should have been aware of the role its agents took in arranging, assisting, and facilitating the destruction of the bones

and teeth in this matter. They had a duty to exercise a reasonable amount of due diligence to discover and disclose the information to Mr. Dorman and the Court. There was no evidence presented that prior to July 13, 2011 they inquired of its agents nor did they offer an explanation to the Court or Mr. Dorman as to why they did not disclose the substance of conversations that document how these remains came to ultimately be destroyed as a result of influence and payment by state actors.

9. District Attorney Cline had an obligation to correct or explain the testimony of Christopher Robinson and Jonathan Privette. The state offered no corrections and the Court finds this to be a flagrant violation of his due process rights as determined by the case of and the Fourteenth Amendment of the United States Constitution and *Napue v. Illinois*.
10. The OCME through neither Dr. Radisch nor Dr. Privette ever presented an explanation for why Latifah White was not given the remains in question from August 6, 2010 through September 21, 2010.
11. As noted above the statute requires that the body be released to the next of kin upon completion of the investigation by the OCME. The Court concludes that neither the Durham Police Department nor the OCME was performing any investigation during the period of time between August 6, 2010 and September 20, 2010 and that the sole reason that the body was not released was because the family had not sought and secured funding that would guarantee the cremation and destroy the remains.
12. After Lukas Strout received the applications for the cremation of the remains, it is then and only then that the Medical Examiner agrees to release the remains as their email says "Per Detective Robinson."

E. Particular findings of fact regarding what the State contends is the retention of the frontal lobe bone by the Medical Examiner's Office:

1. Mr. Dorman in his cross examination of Dr. Privette and others has indicated that he suspects that the OCME did not retain the frontal lobe bone as indicated by the state and its agents.
2. His suspicions are based in part on factors that include the following:

- a) The failure of the autopsy report to indicate that the frontal lobe bone was being retained while specifically enumerating all of the other items that were retained by the OCME
 - b) Latifah White was never told that all of the remains were not returned to her.
 - c) While District Attorney Cline first indicated on October 7, 2010 that the OCME had retained the frontal lobe bone no person at the OCME ever acknowledged passing that information to her on that date or any other date during their sworn testimony. Additionally, District Attorney Cline did not correct the testimony of any person on that point in the course of any of the hearings on the defense motion to dismiss.
 - d) The indication of the retention of the frontal lobe bone was a convenient argument which successfully convinced Judge Titus to withdraw his order of exhumation. The state's argument appears to have changed Judge Titus's inclination as to Mr. Dorman's Motion to Preserve the Evidence by ordering an exhumation. On October 7, 2010, neither Mr. Dorman nor Judge Titus was aware that the remains had in fact been reduced to ash in this case and had never been buried as indicated by the state.
 - e) The failure of the OCME to return the bone to the law enforcement agency after it was properly packaged as required by their own policy per Dr. Privette.
 - f) The failure of District Attorney Cline to ever inform Judge Titus, the undersigned Judge, or Mr. Dorman that the remains had been cremated and the circumstances leading to the cremation at any date between October 7, 2010 and June 7, 2011 is a material misrepresentation to Mr. Dorman and the Court. This is a violation of N.C.G.S. § 15 A 903 and the due process clause of the Fourteenth Amendment to the United States Constitution.
3. The Court finds that it is unable to determine for certain whether the frontal lobe bone was retained by the OCME. The Court does find that Mr. Dorman's concerns are reasonable based on the issues noted within the body of this Order.

4. The Court further finds that if the bone exists and DNA can be extracted from it than the State through the OCME and the SBI should have conducted that analysis long ago given the gravamen of the situation.
5. The Court does infer from the failure of the State and its agents to determine if DNA can actually be retrieved from the frontal lobe bone they purportedly possess that neither the State nor its agent's view this as a realistic possibility. The Court notes that the testimony from the OCME and the proffer of what Agent Hinton of the SBI testimony would have testified to only spoke in terms of what is "possible" to do as it relates to retrieval of DNA from the frontal lobe bone.
6. The Court notes the other glaring and significant problems with retrieval of the DNA from the bone to cure any prejudice from the destruction of the remains in this case, is that not a single witness ever testified there was a known sample from Lakeia Boxley that could be used for comparison to any DNA that may be retrieved from the bone.
7. Ms. Boxley per the testimony was not a felon and any children she had were adopted outside of the family. Without a known sample to compare it to DNA retrieval from the frontal bone even if it were retrieved would not be helpful to identify Lakeia Boxley. However any DNA that could have been retrieved from the remains maybe helpful towards the elimination of Lakeia Boxley based on a gender profile or the inclusion of another if the profile matched another in the databank.

F. Particular findings of fact related to Victim Compensation Services:

1. This Organization is a state agency as defined by N.C. Gen. Stat. § 15 A 903 and in the facts of this particular case was acting as a prosecutorial agency as well.
2. In reaching this determination the Court considered factors that included but are not limited to the following:
 - a) The cooperation and access to law enforcement records that the agency has.
 - b) It's operation under the Division of Crime Control.

- c) It's absolute reliance on the summary of the arresting officer.
- d) The formation of its Board of Director which has a majority of members from the Attorney General's Office and the Secretary of the Division of Crime Control.
- e) The fact that the Attorney General is the Chief Law Enforcement Officer for the State. The statute specifically allows him or his designee on the Victim Compensation Services Board to unilaterally halt the director of Victim Compensation Services decision on an award in connection to the timing of a criminal prosecution.
- f) The director's decision in this case greatly served the interest of the state in securing a conviction. The Court finds that Lukas Strout and the Durham Police Department worked with this organization to jointly accomplish a goal that imputed a direct benefit to the Office of the Durham County District Attorney as it had the specific result of eliminating the evidence necessary for Mr. Dorman to demonstrate, document, and investigate the weaknesses of the State's case on the charge of first-degree murder.

G. Particular findings of facts regarding the State's position that they had no reason to recognize that the remains in this case should not be released to the family by the OCME.

1. Unlike the vast majority of cases the State and its agents should have known that these remains must be preserved for reasons that included the following:

- a) These remains arrived from the Orange County Sheriff's Department not via an ambulance or hearse but via an evidence technician.
- b) The remains themselves were required elements of an offense that Mr. Dorman was charged with when the bones arrived at the OCME and when they were destroyed.
- c) The State recognized the value of the alleged retention of a bone that was beneficial to the State's case: i.e. the frontal lobe bone. If they were proceeding with an eye towards proving the State's case, they should have recognized the value and importance of securing evidence that was material and favorable to the defense as well.

d) Detective Christopher Robinson, Dr. Privette and all of the state's agents at the OCME specifically recognized the importance of identification, cause of death, and manner of death in every homicide case.

126. The Court finds that the Office of the District Attorney for Durham County, the Durham Police Department, and the Office of the Chief Medical Examiner for the State of North Carolina were aware of the importance of establishing the identity of the decedent, the cause of death of the decedent, and the manner of death of the decedent in this case from July 14, 2010 through the present. When collectively they allowed, facilitated, and arranged for the permanent destruction of the remains in this case they knew they were destroying information that would deprive Mr. Dorman of the ability to obtain and investigate information that would be material and favorable to his defense, damaging to the strength of his case, increase the evaluation of any tier of facts' assessment of the State's case and increase the likelihood he would waive his rights to trial and enter a plea of guilty to an offense that would likely save him from the possibility of incarceration for the remainder of his natural life.

127. The Court finds that the Office of the Durham County District Attorney and its agents to include the Office of the Chief Medical Examiner and the Durham Police Department intentionally failed to document appropriately, preserve information and disclose information that they knew had to be disclosed to Mr. Dorman as required by statutes, case law, court orders and the Constitution of the United States of America.

128. The Court finds that the failure to recognize, preserve and maintain evidence of obvious material benefit to Mr. Dorman in the possession of the State and its agents is conduct that does not comport with the Rules of the Professional Responsibility, the North Carolina General Statutes §15 A 903, and a string of long standing case law from the United States Supreme Court that includes, *Brady v. Maryland*, *Kyles v. Whitley* and *U.S. v. Agurs*.

129. The Court finds the motivation for the failure to disclose to the defense that the remains had been destroyed until June 9, 2011 and the role the state's agents assumed in facilitating and paying for the permanent destruction of the remains was an intentional suppression of *Brady* information by the Durham District Attorney's Office and was intended to deprive the defendant of knowledge that would have enabled his attorney to prepare a successful cross examination of multiple witness they knew to be critical to the state's case. Additionally this suppression of *Brady* information was designed to influence Mr. Dorman and his counsel's assessment of the strengths and weakness of the state's case as he decided whether to enter a plea of guilty or proceed to trial, and make arguments to the Court to determine whether his bond should be reduced based on the facts of his case.

130. The Court finds that any and all impeachment information related to the identity of the decedent or decedents, the cause of death and the manner of death was *Brady* information that the state should have produced absent any court Order or request from the Defendant. The

state's failures are aggravated by the fact that Mr. Dorman made a specific request for the information and obtained a court Order seeking the exhumation of the remains for the very reasons identified above and that there were false material misrepresentations made to Mr. Dorman and Judge Titus. This led to the Court revoking the Order of exhumation previously entered and lulled Mr. Dorman into a false feeling that the state was protecting his rights and complying with the law. The Court finds these actions to be a material failure pursuant to N.C.G.S §15 A 903 and the Fourteenth Amendment of the United States Constitution and *Napue v. Illinois*.

131. The Court finds that the release of the information from the state's files on July 13, 2011 by the Court to not have been a timely release of exculpatory information within the state's files and that such a release has revealed the role of the state's agents in the intentional destruction of material and favorable evidence and information to his defense. The passage of time has likely led to the destruction of records and loss of memory on the part of many critical witnesses in this case. The destruction of the evidence in this case has permanently and irreparably prevented Mr. Dorman's counsel from providing the effective defense he is entitled to by the Sixth and Fourteenth Amendments of the United States Constitution.

132. The Court finds the incarceration of Mr. Dorman under a bond that the State knew would keep him incarcerated, the intentional suppression of information by the Durham Police Department, the Office of the Chief Medical Examiner and the Durham County District Attorney's Office and the permanent destruction of evidence that is obviously material and favorable to his defense is a flagrant violation of Mr. Dorman's Fifth, Sixth, Eighth and Fourteenth Amendment Rights contained in the United States Constitution

133. The District Attorney's Office in Durham and the attorneys prosecuting the case on their behalf were aware of its obligations pursuant to *Kyles* and *Agurs* to seek out exculpatory information in its files and disclose it as ordered by the Court and they failed to do so.

134. The Office of the District Attorney in Durham knew that some information they intentionally failed to disclose was exculpatory. They further knew that exculpatory information was *Brady* material and that the intentional failure to release the same in a timely manner was a violation of Mr. Dorman's rights stemming from the Constitution of the United States of America.

135. The State also knew that it had failed to comply with the Orders of the Honorable Kenneth C. Titus entered on November 4, 2010 which the court finds imposed upon them an obligation to release the discovery due Mr. Dorman by law as it came into the possession of the state and its agents.

136. The Court finds that if Mr. Dorman thought that receiving discovery disclosures from the State on the eve of trial or at a time table that the State found acceptable was in his best interest then he was under no obligation to file motions to compel the release of discovery and motions to preserve evidence. The Court further notes that Mr. Dorman filed these motions within days of indictment. The Court finds that Mr. Dorman had able counsel who was aware of the

protections afforded him via the North Carolina General Statutes and the United States Constitution and sought redress from the court in a timely manner and repeatedly.

137. The Court further finds that if Judge Titus wanted the State to disclose discovery at its leisure he could have denied the motions filed by Mr. Dorman or deferred ruling on them to the trial judge and he did not do so on November 4, 2010. Accordingly, Mr. Dorman sought an Order of the court that imposed an obligation on the State to pay special attention to the disclosures and preservation of evidence in this case and a time frame for doing so. The Court finds the state's failure to do so to be an intentional and willful violation and that those decisions have caused irreparable prejudice to Mr. Dorman.

138. The Court finds that the destruction of the bones and teeth in this case to be material in the assessment of any trier of fact or law evaluating the state's case and/ or the defense motions. This is so because the destruction of the remains goes to the heart of this murder case: 1) identity of the decedent, (2) cause of death of the decedent and 3) the manner of death of the decedent.

139. The Court finds that the release of information from the state's files that revealed the involvement of the state and its agents in the permanent destruction of material and favorable evidence were only revealed to Mr. Dorman as a result of obtaining court orders on June 7, 2011, being released information related to the payment for the cremation on July 13, 2011, and information discovered as a result of cross examination by his counsel. This is so even as the information was present in the files of the state and known to the state or its agents from September of 2010 until the disclosures were revealed to Mr. Dorman.

140. The case of *North Carolina v. Cunningham* 108 N.C. App. 185 (1995) was decided based on North Carolina General Statutes and the North Carolina Constitution and was binding upon the State of North Carolina and its agents at all points of this litigation .

141. The failure to preserve and in fact to facilitate the intentional permanent destruction of material and favorable evidence in this case used by the experts and agents of the state was a flagrant violation of Mr. Dorman's constitutional rights under the Sixth and Fourteenth Amendment to the United States Constitution. The intentional suppression and destruction of this information has caused an irreparable prejudice to the preparation of his defense. The Court finds that in the presence of the intentional and willful destruction of evidence that is material and favorable to his defense by the State and its agents that there exist no other appropriate remedy but to dismiss all charges with prejudice pursuant to North Carolina General Statutes §15 A 954 (a).

142. The failure to provide Mr. Dorman with all of the information he was entitled to receive as a matter of law as required by the Honorable Kenneth C. Titus in November 4, 2010 was a violation of the discovery statutes pursuant to North Carolina General Statutes §15 A 903 that intentionally deprived the defendant of material and favorable information he needed in order to make critical decisions about his case.

143. The cases of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976) and *Kyles v. Whitley* 514 U.S. 419 (1995) were all well-established case law and cited in discovery requests made by Mr. Dorman.

144. The case law was binding on the State of North Carolina at all points of this litigation and the failure of the State of North Carolina through the Office of District Attorney to ascertain whether there was exculpatory information in its files and its agents files and preserve and disclose the same in a timely manner to the defense as required by law is a flagrant violation of his Fifth, Sixth, Eighth and Fourteenth Amendments Rights pursuant to the United States Constitution that has caused an irreparable prejudice to his defense that has no other appropriate remedy other than a dismissal of all charges with prejudice as required by North Carolina General Statutes § 15 A 954 (a).

145. The case of *North Carolina v. Canady*, 335 N.C. 242 (2002) has been binding on the State of North Carolina since it was decided by the North Carolina Supreme Court. Since such time the State had a duty to timely disclose all exculpatory information to the Defendant as required by the United States Constitution. The Court finds that the State has failed to do so in this instance and that the failures constitute a flagrant violation of Mr. Dorman's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitutions. The Court finds that such failures are a flagrant violation of Mr. Dorman's constitutional rights that has caused irreparable damage to his defense that there exists no other remedy other than to dismiss the charge with prejudice pursuant to North Carolina General Statutes § 15 A 954 (a) (4).

146. The case of *Napue v. Illinois*, 360 U.S. 164 (1959) is a unanimous decision of the United States Supreme Court. The Supreme Court held that an intentional misrepresentation by the District Attorney and/ or the failure to correct testimony that the District Attorney knows to be false is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The case law is binding on the State of North Carolina at all points of this litigation. The Court finds that the material misrepresentation made by the state or any witnesses called on behalf of the state were ever corrected or even explained and that the failures to correct the false testimony and misrepresentations laid out fully above are a flagrant violation of Mr. Dorman's due process rights of the Fourteenth Amendment to the United States Constitution. These failures have caused an irreparable prejudice to Mr. Dorman's defense that has no other appropriate remedy other than a dismissal with prejudice as required by North Carolina General Statutes § 15 A 954 (a) (4).

147. The Court finds that due to the destruction of the remains Mr. Dorman cannot investigate, erect and present an adequate defense. He cannot seek to meaningfully challenge the opinions and action of the prosecutors, the police officers and the medical examiner's office. The Court finds that it is not possible for Mr. Dorman to receive a fair trial under the conditions created as the result of the destruction of evidence that had to be maintained as a matter of law at the time of its destruction.

148. In considering the relief sought by Mr. Dorman for violations of N.C. General Statutes § 15 A 903 the Court prior to finding if any sanction should be issued pursuant to N.C. Gen. Stat § 15 A 910 has considered the subject matter and the totality of circumstances surrounding any

failures of the State. After conducting such a consideration the Court determines that the totality of the circumstances present compelling and ample evidence that the State and its agents intentionally and repeatedly failed to comply with the directives issued by Judge Titus on November 4, 2010 and the undersigned Judge on June 7, 2011. Specifically the state did not disclose information to Mr. Dorman or the Court that was in the possession of the state and obviously material and favorable to the defense as to issues of law and fact to be decided in the instant matter in a timely manner.

149. The Court finds that the information subpoenaed by Mr. Dorman from the OCME on June 23, 2011 to have been wholly and completely discoverable based on North Carolina General Statute §15 A 903 and disclosable based on the time frame established by Judge Titus on November 4, 2010. The Court pursuant to N.C. Gen. Stat. §15 A 910 finds that an appropriate sanction for the failures of the State to disclose the information required to be disclosed to Mr. Dorman captured within the requests of the subpoena dated Jun 23, 2011 and his motions to compel discovery is that any and all testimony of Dr. Jonathan Privette at trial is prohibited and any prior statements imputed to him is suppressed. The Court finds Dr. Privette and the State to have intentionally and willfully failed to comply with the subpoena from Mr. Dorman and to have intentionally provided incomplete and inaccurate disclosures to a tribunal. The Court finds that the information that was not disclosed was material and favorable to issues of fact and law as laid out fully above.

150. The Court finds pursuant to N.C. Gen. Stat. § 15 A 910 that an appropriate sanction for the failures to disclose the information to the Court that he knew he had an obligation to provide on August 15, 2011 by Christopher Robinson is that his testimony at trial is prohibited and any prior statements suppressed as the Court finds him to have intentionally and willfully failed to comply with the oath he took prior to his testimony and to have intentionally provided incomplete and inaccurate disclosures to a tribunal and that the information that was omitted was material and favorable to issues of fact and law as laid out fully herein.

151. The Court further finds that it would be manifestly unfair and unjust to allow any employee of the OCME or the Durham Police Department to offer any testimony to a trier of fact that stems from the advantage they have as a result of eliminating the remains that have been destroyed and any testimony stemming from a personal impression or professional opinion of the State and its agents is suppressed pursuant to the remedies provided for within N.C. Gen. Stat. § 15 A 910.

152. The Court finds that for the balance of the statutory errors identified above that no other remedy other than a dismissal with prejudice could cure the many repeated flagrant violations that are identified herein.

153. The Court throughout the body of this order has taken judicial notice of certain information that was not necessarily presented directly within the bounds of the evidentiary hearing or within the formal record. Those matters are limited to the General Statutes of North Carolina, Administrative Orders enacted by the undersigned Judge with the consent of the elected District Attorney for this judicial district and the records maintained by the Clerk of Superior Court for Durham County. This information is appropriately included as an act of the

Court's discretion pursuant to the North Carolina Rules of Evidence 201 and N.C. Gen. Stat. § 8.4.

154. The Court has created for the aid and assistance of the parties and appellate courts examining the records two exhibits which are marked as Court's Exhibit A and Court's Exhibit B. These exhibits both depict the same information. Court's exhibit A represents the information in a table form and Court's exhibit B represents the same information in visual display in the form of a timeline. Both exhibits indicate significant events that occurred in the course of this litigation. Both exhibits are incorporated specifically and by direct reference into this order.

CONCLUSIONS OF LAW

1. The State's willful failure to provide Mr. Dorman in a timely manner with access to the information necessary to establish identity, cause of death, and any information necessary to evaluate the determination of manner of death by the OCME has flagrantly violated Mr. Dorman's constitutional rights pursuant the Fourteenth Amendment to the United States Constitution.
2. The State's willful failure to provide Mr. Dorman in a timely manner with access to the information necessary to establish identity, cause of death, and any information necessary to evaluate the determination of manner of death by the OCME has flagrantly violated Mr. Dorman's constitutional rights pursuant to the Sixth Amendment to the United States Constitution.
3. The State's act of failing to discover and disclose to Mr. Dorman the role its agents took in assisting, facilitating, and paying for the permanent destruction of material and favorable evidence in a timely manner flagrantly violated Mr. Dorman's constitutional rights pursuant to the Fourteenth Amendment to the United States Constitution .
4. The State's willful failure to provide Mr. Dorman in a timely manner with the emails received and initiated by the Office of the Chief Medical Examiner on June 28, 2011 when the information was lawfully compelled via a subpoena served on Dr. Jonathan Privette in his role as a state agent flagrantly violated Mr. Dorman's constitutional rights pursuant to the Sixth Amendment Right to Compulsory Process and Effective Assistance of Counsel and the Fourteenth Amendment to the United States Constitution.
5. The State's failure to correct misrepresentations of material facts made by District Attorney Cline to the Honorable Kenneth C. Titus on October 7, 2010 at any date before June 9, 2011 flagrantly violated Mr. Dorman's constitutional rights pursuant to the Fourteenth Amendment to the United States Constitution.
6. The State's failure to correct misrepresentations of material fact to the Court on June 28, 2011 regarding the testimony of Dr. Jonathan Privette flagrantly violated Mr. Dorman's

constitutional rights pursuant to the Fourteenth Amendment to the United States Constitution.


7. The State's failure to correct misrepresentations of material fact to the Court on August 15, 2011 regarding the testimony of Detective Christopher Robinson flagrantly violated Mr. Dorman's constitutional rights pursuant to the Fourteenth Amendment to the United States Constitution.
8. Mr. Dorman's pretrial incarceration from July 14, 2010 until August 16, 2011 under a bond of \$750,000.00 which he was unable to make due to his indigent status while simultaneously suppressing the disclosure of material and favorable information to Mr. Dorman and the Court, failing to preserve and disclose *Brady* information in the possession of the State and its agents, failing to disclose and document information that it had a statutory and constitutional obligation to disclose in a time frame established by direct court order flagrantly violated Mr. Dorman's constitutional rights pursuant to the Eighth Amendment to the United States Constitution.
9. The flagrant violation of Mr. Dorman's constitutional rights as set out above in paragraphs 1-8 and throughout the body of this order, has caused such irreparable prejudice to his case that a dismissal with prejudice is the only appropriate remedy under N.C. Gen. Stat. §15A-954(a)(4). Each of the aforementioned violations has individually caused such irreparable harm to Mr. Dorman's case as to require a dismissal with prejudice and the violations have cumulatively caused such irreparable harm to Mr. Dorman's case as to require a dismissal with prejudice.
10. The State's willful failure to fully and completely disclose the substance of conversations between Dr. Clyde Gibbs and Detective Christopher Robinson violated Mr. Dorman's statutory right to discovery pursuant to N.C. Gen. Stat. §15A-903 as ordered by Judge Titus on October 7, 2010. The Court, in the exercise of its discretion, has determined pursuant to N.C. Gen. Stat. §15A-910 that the appropriate remedy for this violation is the suppression of any testimony or statements taken from Detective Christopher Robinson at any future hearings in the above reference file number.
11. The State's willful failure to fully and completely disclose the substance of conversations and emails as required by lawfully issued subpoena served upon Dr. Jonathan Privette and which were discoverable as a matter of law violated Mr. Dorman's statutory right to discovery under N.C. Gen. Stat. §15A-903 as ordered by Judge Titus on October 7, 2010. The Court, in the exercise of its discretion, has determined pursuant to N.C. Gen. Stat. §15A-910 that the appropriate remedy for this violation is the suppression of any testimony of Dr. Privette in any and all future proceedings in this matter and the suppression of any testimony by any witness that includes any opinions in which Dr. Jonathan Privette facilitated or enabled based upon his work in this case at any future proceedings in this matter.
12. The State's willful failure to fully and completely comply with the substance of the discovery statute is a violation of Mr. Dorman's statutory right to discovery under N.C.

Gen. Stat. §15A-903 as Ordered on October 7, 2010 and June 7, 2011 by a Superior Court judge with personal and subject matter jurisdiction over the parties at the time of entry. The Court, in the exercise of its discretion, has determined pursuant to N.C. Gen. Stat. §15A-910 that the appropriate remedy for the cumulative and individual violations as found herein and enumerated throughout the body of this Order stemming from claims based on N.C. Gen. Stat. §15A-903 is that the charge of first-degree murder against Mr. Dorman is to be dismissed with prejudice. The specific remedies set out above in paragraphs 9 and 10 of the decretal portion are individually and cumulatively consistent with the Court's directives set out in this paragraph.

NOW THEREFORE based on the foregoing FINDINGS of FACTS AND CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The charges of First Degree Murder against Michael Dorman are Dismissed with Prejudice.

This 14th day of November, 2011, *nunc pro tunc* to August 16, 2011.


THE HONORABLE ORLANDO F. HUDSON, JR.
SR. RESIDENT SUPERIOR COURT JUDGE PRESIDING

COURT'S EXHIBIT

A

State v. Dorman

Fact Chronology

Authored by:

**The Honorable Orlando F. Hudson, Jr
Sr. Resident Superior Court Judge**

Sunday, November 13, 2011

Fact Chronology

Date & Time	Fact Text	Source(s)	Material +	Status +	Linked Issues
Sat 03/01/2008	Missing person report filed with the Durham Police Department for Ms. Boxley by her mother.	COLOR CODE RED			
Wed 07/14/2010	Bones are given to the Medical Examiner's Office and Dorman is arrested on the same date.	COLOR CODE BLUE			
Sun 07/18/2010	Christopher Robinson identifies the remains as belonging to Lakeia Boxley.	COLOR CODE RED			
Thu 07/29/2010	OCME makes a positive identification of the remains	COLOR CODE BLUE			
Sun 08/01/2010	Martha Archibald of J. Henry Sturh Funeral Chapel meets with Ms. White and calls the State Victim Compensation Fund. Ms. White has decided to cremate the remains by the time this conversation occurs. Testimony indicated the conversation occurred in early August 2010 but no specific date was provided.	COLOR CODE ORANGE			
Thu 08/05/2010	District Attorney Cline request that Mr. Dorman be evaluated at Dortha Dix Hospital	COLOR CODE GREEN			
Thu 08/05/2010	Dr. Clyde Gibbs filed an anthropology report by the OCME.	COLOR CODE BLUE			
Wed 08/25/2010	Lukas Strout contacts Latifah White and sends her the application to secure payment for the cremation of the remains. Ms. White is given Mr. Strout's number by Zandra Ford of the Durham District Attorney's Office.	COLOR CODE RED			
Mon 08/30/2010	Strout contacts the OCME on behalf of Ms. White seeking the release of the remains.	COLOR CODE RED			
Tue 09/07/2010	Dorman is indicted for First Degree Murder by District Attorney Cline.	COLOR CODE GREEN			
Tue 09/07/2010	Latifah White sends the application for	COLOR CODE			

Fact Chronology

Date & Time	Fact Text	Source(s)	Material +	Status +	Linked Issues
**	assistance to cremate the remains to Lukas Strout of the Durham Police Department.	RED	**	**	**
Fri 09/10/2010	Lukas Strout forwards the application to Victim Compensation Services on behalf of Ms. White to have the items cremated.	COLOR CODE RED			
Fri 09/10/2010	Dr. Clyde Gibbs from the OCME sends an email to Detective Robinson asking if there is any reason to keep the remains	COLOR CODE BLUE			
Fri 09/10/2010	Lukas Strout sends an email to Dr. Gibbs thanking him for his assistance and saying he will notify the family once they hear from Detective Robinson regarding the release of the remains.	COLOR CODE RED			
Tue 09/14/2010	Mr. Dorman arrives at Dorthea Dix Hospital for his evaluation.	COLOR CODE BROWN			
Wed 09/15/2010	Motion to Preserve Files and Motion for Discovery are filed by Mr. .Campbell	COLOR CODE BROWN			
Sun 09/19/2010	Clyde Gibbs writes to Lukas Strout that Detective Robinson has given the okay to release the remains to the family for cremation.	COLOR CODE BLUE			
Tue 09/21/2010	Medical Examiner releases the remains for cremation.	COLOR CODE BLUE			
Wed 09/22/2010	Latifah White sends a second application for assistance to Lukas Strout.	COLOR CODE RED			
Wed 09/22/2010	J. Henry Sturh Funeral Home contacts Victims Compensation and states an intention to submit a complete application.	COLOR CODE ORANGE			
Fri 09/24/2010	Latifah White receives the cremated remains from J. Henry Sturh Funeral Home in South Carolina.	COLOR CODE ORANGE			
Thu 10/07/2010	Mr. Campbell request a ruling from Judge Titus on the motion to preserve evidence via	COLOR CODE BROWN			

Fact Chronology

Date & Time	Fact Text	Source(s)	Material +	Status +	Linked Issues
**	exhumation and District Attorney Cline informs him the remains have been buried but asks that they not be exhumed.	**	**	**	**
Thu 10/21/2010	Mr. Dorman is released from Dorthea Dix Hospital after completion of his evaluation for competency by their staff.	COLOR CODE BROWN			
Fri 10/22/2010	Claims Investigator Liddie Shopshire speaks with Detective Robinson and recommends approval of the claim submitted by Mr. Strout on behalf of Liddie Shopshire.	COLOR CODE ORANGE			
Thu 11/04/2010	Judge Titus orders District Attorney Cline to comply with discovery as requested by Mr. Dorman.	COLOR CODE PURPLE			
Mon 11/29/2010	Dr. Wolfe releases and signs her report regarding Mr. Dorman's competency to the parties and the Court.	COLOR CODE BROWN			
Tue 12/07/2010	DA Cline presents the order to Preserve Evidence to Judge Titus for signature. Mr. Campbell alerts Judge Titus to the absence of specific information from the discovery and specifically notes the absence of the autopsy report.	COLOR CODE GREEN			
Wed 01/05/2011	The State discloses the Autopsy report to Mr. Dorman	COLOR CODE GREEN			
Wed 01/05/2011	Notification of an award for payment of cremation is officially made to Latifah White from the State Victims Compensation Fund.	COLOR CODE ORANGE			
Thu 01/06/2011	Durham District Attorney's Office forwards a copy of the Order to Preserve signed by Judge Titus on December 7, 2001 to the OCME for the first time.	COLOR CODE GREEN			
Tue 06/07/2011	Mr. Campbell makes an oral motion to the Court compelling that the State disclose what	COLOR CODE BROWN			

Fact Chronology

Date & Time	Fact Text	Source(s)	Material +	Status +	Linked Issues
**	evidence is still available to the defense from the items once in the possession of the Medical Examiner. The State is ordered to disclose the information and are ordered to report back to the Court and Mr. Dorman on June 9, 2011.	**	**	**	**
Thu 06/09/2011	State stipulates that all of the teeth and some of the bones have been destroyed. Mr. Dorman through his counsel immediately makes an oral motion to dismiss. Judge Hudson directs that a written motion be filed and sets a date for hearing.	COLOR CODE BLUE			
Thu 06/23/2011	Mr. Dorman serves Dr. Privette with a subpoena to testify and produce certain items from the Office of the Chief Medical Examiner.	COLOR CODE BROWN			
Fri 06/24/2011	Doctor Samuelson sends his opinion to the OCME via an email.	COLOR CODE BLUE			
Tue 06/28/2011	Defendant's Motion to Dismiss is heard. The Court takes the matter under advisement with the consent of the parties.	COLOR CODE BROWN			
Tue 07/05/2011	Judge Hudson issues an order to the North Carolina Victims Compensation Fund to disclose its entire file related to the application of Latifah White to secure funding for the cremation of the remains in this case.	COLOR CODE PURPLE			
Fri 07/08/2011	Judge Hudson receives the victim compensation fund from Assistant Attorney General Jess Mekeel.	COLOR CODE PURPLE			
Wed 07/13/2011	Judge Hudson releases redacted information to the State and the Defense regarding the State's payment for the destruction of the bones and teeth in this case.	COLOR CODE PURPLE			
Thu 07/14/2011	DA Cline files a motion to reopen evidence	COLOR CODE			

Fact Chronology

Date & Time	Fact Text	Source(s)	Material +	Status +	Linked Issues
**	citing the disclosures by the court. Her motion is granted in part and denied in part by Judge Hudson via a written order.	GREEN	**	**	**
Mon 08/15/2011	Motion to Dismiss hearing is reopened by the Court and the State calls multiple witnesses over two days.	COLOR CODE PURPLE			
Tue 08/16/2011	Court enters an oral order dismissing the charge of first degree murder with prejudice. District Attorney Cline gives notice of appeal.	COLOR CODE PURPLE			
Thu 08/18/2011	State requests a Stay from Judge Hudson their request is denied.	COLOR CODE GREEN			
Wed 08/24/2011	State files a Petition for Writ Supersedeas at the North Carolina Court of Appeals.	COLOR CODE GREEN			
Thu 08/25/2011	Court of Appeals Grants the State 's Petition.	COLOR CODE PURPLE			