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SBI ignores years of warnings on confession called 'fiction'

First of four parts

On July 16, 1993, SBI Agent Mark Isley hauled Floyd Brown to jail. The charge: beating a retired schoolteacher to death.

The proof: a six-page confession that Isley said Brown uttered word for word in a single telling, one elaborate detail stacked on another.

Then and now, Brown can't get past the letter K when reciting the alphabet. He is a 46-year-old man with the mind of a 7-year-old boy, his IQ hovering at about half that of a person with average intelligence.

"The confession is a work of fiction," said Mike Klinkosum, a Raleigh attorney who represented Brown until his release in 2007. "It's that simple."

Doctors employed by the state were skeptical about Brown's confession as early as 1993, and they sounded alarms in court in 2005. In court documents and arguments, those warnings became more convincing as years passed, reaching Attorney General Roy Cooper's most trusted advisers. The Charlotte Observer and national media pressed Cooper for answers in 2007. But for four years, SBI leadership and the Attorney General's Office failed to investigate Isley's work.

Cooper, a Democrat, didn't act until 2009, in the face of a lawsuit that will likely cost taxpayers and their insurers millions of dollars. He ordered a special review of the Brown case, but the agency has refused to provide any conclusions or results.

The Brown case stands out, but it is hardly the State Bureau of Investigation's only troublesome work. SBI agents have cut corners, bullied the vulnerable and twisted reports and court testimony when the truth threatened to undermine their cases, a News & Observer investigation of the SBI's work, policies and practices reveals.

The SBI sends agents to help local law enforcement agencies solve their most complicated cases. But agents sometimes lock on to the wrong suspect and stick to their story for years, as they did with Alan Gell, a Bertie County man who collected \$3.9 million after an SBI agent ignored evidence that pointed to his innocence in a 1995 murder.

At the bureau's crime lab, agents charged with using science to solve crimes have hidden test results or withheld notes that suggested the opposite of findings presented to the courts, as they did in the case of Greg Taylor. Taylor was exonerated of a 1991 murder in February. Firearms and blood analysts have stretched the boundaries of science and aligned themselves so fully with police and prosecutors that the examiners manipulated evidence to fit their theories.

Many agents don't cheat. But even those following the rules work within policies, practices and state laws that bias the agency and its scientists toward the side of prosecutors and away from basic fairness.

"The documented policies and practices of our state lab support the long-held concern that North Carolina's lab is the prosecution's lab, not the justice system's lab," said Christine Mumma, executive director of the N.C. Center on Actual Innocence, which works to free wrongly convicted prisoners such as Taylor. "Public confidence, judicial confidence and the lives of innocent citizens have been destroyed. It is past time for change."

High-profile cases have shown problems for years, and the bosses at the SBI and Attorney General's Office - who allowed Floyd Brown to be locked away at a state mental hospital - typically have done nothing.

Only in the last year, after the agency's public humiliation from Taylor's exoneration, did Cooper act. In March, he began an independent audit of the blood analysis unit. That review did not include other sections of the lab.

All the while, SBI leaders have defended questionable work. Occasionally, they promoted agents whose performance had come under fire.

Robin Pendergraft was replaced as SBI director days after an N&O interview. She defended Isley, saying that she has no concrete facts to suggest wrongdoing.

Pendergraft and her boss, Cooper, declined to talk about the case, citing Brown's lawsuit against the bureau.

The key agent in the case, Isley, has risen through the ranks of the SBI during the past 12 years. He now supervises a team of more than a dozen agents who investigate Medicaid fraud. He did not respond to multiple requests for an interview.

While Isley climbed, Brown languished. He spent 14 years locked away at Dorothea Dix Hospital in Raleigh. He was caught in the limbo brought to those charged with serious crimes who can't be tried because they lack the mental capacity to understand the charges against them.

Superior Court Judge Orlando F. Hudson Jr. set Brown free in 2007. Hudson ruled that the confession offered by Isley failed to convince him that Brown murdered anyone. The ruling capped a struggle documented by interviews and records from the SBI, courts and a state mental hospital.

A local character

In 1993, Isley was an SBI field agent assigned to Wadesboro, a rural community of 5,700 about 50 miles southeast of Charlotte. Isley joined the bureau fresh out of college, following his father, a highway patrolman, into law enforcement.

The bureau dispatched Isley, as it does most rookies, to a remote community to help local law enforcement solve its biggest crimes. Every day, Isley would report to his office within the sheriff's department, tucked just behind the Anson County Courthouse.

That's where Isley would see Brown. Most days, Brown lingered near the jail and courthouse, bumming cigarettes from anyone he could.

When he drank too much, as he often did, police would find a bunk at the local jail and let him sleep it off. Kindly court clerks sent Brown on errands, paying him in sodas and spare change to run to the bank and cash their weekly paychecks.

Brown spoke a few words at a time to those he met, usually repeating the same phrases. He froze up outside public restrooms, unsure which sign signaled men. When Brown got excited or nervous, he'd rock from side to side and grin.

"Floyd was as sweet as they came, and we all knew he was special," said Jane Brown, an Anson County court clerk who sent Floyd Brown on errands. "We looked after him as we could."

Death shakes community

In the days after Katherine Lynch's slaying, court records show that Isley and two Anson County sheriff's deputies, Robert Poplin and Bud Hutchinson, were hunting clues.

Lynch's death shook the community. She was 80 years old, feeble as she trudged along the streets of Anson County with her shoulders hunched forward.

Sometime early on July 9, 1993, an intruder entered her home and brutally beat her with a stick.

Detectives collected names of those they thought might have killed Lynch. On the list: a neighbor of Lynch's who abused his wife and two men who had beaten Lynch unconscious two years before during a home invasion.

Isley interviewed Wade Albert Horne, who sometimes lived at T. Willie's, a liquor house in Wadesboro. According to Isley's handwritten report, Horne said that the day before the interview, a stranger visited the liquor house. He told a story of two men attacking Lynch. Horne described the fellow for Isley: black, mustache, about 150 pounds, big lips.

It's not clear why investigators thought Horne was describing Brown. Brown had never worn a mustache, and he weighed at least 20 pounds less than the visitor Horne described.

Still, that night detectives came for Brown at his mother's house. They seized his spare change of clothes to test for blood and took him on a drive. Brown told his sister, Frances Staton, that they climbed the hill to Lynch's house, a bloodied, tattered crime scene, and invited Brown inside for a look.

A verbatim confession?

The next morning, Brown reported as usual to the McLaurin Vocational Center in Richmond County, a workshop for adults who have developmental delays. There, he learned rudimentary skills, such as wrapping silverware in napkins and brushing his teeth.

Midmorning, Isley and sheriff's deputies came for him, according to court records and testimony.

At the Anson County Sheriff's Office, Isley filled out a waiver of rights to speak without an attorney for Brown to sign. Brown signed, misspelling his last name: "BWN."

What happened over the next several hours is a mystery. Isley and fellow agent Bill Lane have testified that they questioned Brown for more than two hours but took no notes.

Brown's own memory of that day is a blur of hands slamming down on tables and threats that he could be executed for his crime. Brown says he told detectives over and over that he didn't kill "that lady." He says Isley told him to watch his attitude.

"I never would have murdered that woman in my whole life, never would," Brown said this summer.

Nearly three hours after bringing Brown to the station, Isley wrote the first and only notes he says he took that day.

Isley strayed from SBI protocol. Instead of the third-person format ordered by the bureau, Isley scribbled an elaborate first-person account. At a 2005 hearing in which Brown's attorney attempted to get the confession thrown out, Isley said: "I'm alleging that's what he told me."

Klinkosum, Brown's attorney, pressed: "Verbatim?"

"Yes," Isley said.

Isley has said that Brown was coherent and easily understandable. He said he never knew Brown was mentally impaired.

Fact or fiction?

The narrative confession begins with an unlikely scenario: Brown said he awoke at 6 a.m. and took a bath before walking outside.

In 1993, Brown couldn't tell time, despite years of practice with his teachers in a class for mentally retarded students, according to affidavits from three former teachers. And, at the time of his arrest, Brown lived with his mother and siblings, in a house without a bath or shower, his sister said. Brown was careless about grooming, never washing himself unless ordered by his mother or sister.

In the confession, Brown refers to Katherine Lynch as a cousin; his family says they are not related. Brown said he had seen Lynch out walking from time to time but knew her only to wave.

The intricate details continued: Brown took \$20 from Lynch after bludgeoning her with a stick. He then checked to see if she was alive.

Soon after Brown's arrest, he was sent to Dorothea Dix Hospital so doctors could determine whether he was mentally competent to stand trial.

There, doctors met a Floyd Brown too limited to have performed the acts described in the confession, let alone explain them.

When doctors at Dix asked Brown how to figure out whether someone was dead or alive, he was confused, according to hospital records.

Dr. Robert Rollins, the former chief of the forensic psychiatry unit and superintendent of the hospital, testified in 2005 that the confession Isley captured was implausible.

"That's not Mr. Brown," said Rollins, explaining the statement was "too educated, too sophisticated, too relevant, too cohesive for Mr. Brown."

Rollins declared Brown incompetent in 1993, saying he lacked the mental capacity to proceed to trial. He added that Brown didn't have the wits to sign away his legal rights when asked to do so by Isley.

Not fit for trial

Doctors prevented him from standing trial until he understood the legal system. Prosecutor Michael Parker considered Brown dangerous and protested every attempt to send him back to Anson County to live in a group home.

For the next 14 years, staff at Dix Hospital worked for hours each day to get Brown fit for trial. They told him about trials and pleas and putting his hand on a Bible and swearing to tell the truth. Occasionally, Brown could answer their questions about the courts, mimicking the exact words they'd told him minutes before. When quizzed later, he had forgotten, Klinkosum said.

Twenty-two times, doctors tested Brown and declared him incompetent to stand trial.

None of the physical evidence initially tested at the SBI crime lab implicated him. Over the years, the sheriff's department lost the evidence, and with it, the chance that more sophisticated testing could identify the culprit.

Brown pined for home, babbling to social workers about needing to see his mother before she died. Wadesboro seemed a million miles away, and his family struggled to travel to Raleigh for visits, according to notes in Brown's medical files by social workers at Dix hospital.

Dix staff tried to help him cope. They let him run errands around Dix's campus, delivering fresh linens from the laundry. They sought passes to take him on group field trips to the State Fair. At every request, the district attorney refused, saying if he were well enough to go to the fair, he should be well enough to face a judge and answer to the charges against him.

Bosses back Isley

Year after year, more questions arose about Isley's performance in the Brown case. At each turn, his climb continued.

By 2003, a new set of defense lawyers had been assigned to Brown's case. In 2004, they asked a judge for Isley's personnel records and alleged during a hearing that Isley had a reputation for falsifying confessions and planting evidence on suspects. The

attorney for the SBI, Deputy Attorney General John Watters, came to court to argue against opening Isley's personnel file.

In 2005, Brown's attorneys asked a judge to throw out the confession, saying it was bogus. Isley insisted Brown had uttered the entire statement and never displayed signs of mental impairment.

Later that year, Isley was put in charge of the bureau's Medicaid fraud unit, a job he still holds. He received a \$20,000 salary bump then; today, he earns \$85,193.

Pendergraft said she had no reason to move Isley out of his position.

"Up to this point, I am not aware of any concrete, definitive ... we work with facts and with facts we can substantiate ... I know of no reason to change that," Pendergraft said. "As of today, I don't have any information to make that change."

Pendergraft, the former SBI director, is still Isley's boss. She was put in charge of the Medicaid fraud unit in late July. Cooper said it is up to Isley's supervisors to determine whether he is the right person for the job.

Allegations against Isley were not reviewed until the last year, when an attorney who represents Brown alerted Cooper that he intended to sue the agency and Isley.

The attorney general's staff will not provide a copy of any report and summary of the review of Brown's case that was ordered last year by Cooper, citing pending litigation; the lawsuit was filed in June. Chris Swecker, a former FBI agent who was hired in March to audit the SBI's crime lab, performed the review of Isley's work.

Still fearful today

Brown stiffens every time he sees a police car.

It has been three years since he was released from Dix. He is safe in a foster home about a half-hour from his native Wadesboro. Klinkosum, his attorney, tries to assure Brown that police don't mean him any harm and that not all cops are bad.

Brown doesn't buy it.

"Crooked police tried to set me up," Brown said. "They's dirty police."

He works two days a week cleaning at Smart Start, a program for children. He scrubs the toilet, washes windows and mops the floor. His foster mother stands near, praising his good work. Brown has also returned to the McLaurin Vocational Center, where he mingles a few days a week with other adults with developmental delays, giggling like a schoolboy when a young woman smiles at him.

Brown spends an allowance on sodas and Burger King Whoppers. At night, he watches music videos and catches up on soap operas.

Now and again, he remembers that some still think he's a killer.

He gets quiet, tenses his face. Then he'll remind you: "I didn't kill that lady."

Coming Tuesday: Twisting science to please prosecutors.

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