


MEMO

To: Mayor and City Council
From: Patrick W. Baker, City Manager 
Date: May 14, 2008
Re: In re State v. Lawrence Lovett 07CR054500

On March 24, 2008, Mayor Bell requested that I conduct a review of the investigation and prosecution of the matter of State v. Lovett 07CR054500. This particular criminal matter arose out of the apparent burglary of the home and the breaking and entering of a motor vehicle of a Durham resident. While this matter drew little to no media attention during the pendency of the case, the prosecution of the matter has since received considerable attention due to the fact that shortly after he received a suspended prison sentence in the above-captioned criminal matter, the defendant, Lawrence Lovett, was subsequently indicted in two very high profile murders of Duke University graduate student Abhijit Mahato and the University of North Carolina at Chapel Hill undergraduate student Eve Carson.

On or about March 16, 2008, the homeowner and prosecuting victim in the underlying criminal matter forwarded to the City Council a three page memo titled "Chronology of Errors Related to the Release of Laurence Lovette." In this memo, the homeowner opines that had her matter against Mr. Lovett been properly prosecuted and adjudicated, Mr. Lovett would likely have been incarcerated at the time of the murder of Mr. Mahato and Ms. Carson. A copy of the homeowner's memo is attached. The memo in essence raises questions about the overall prosecution of this matter and in particular, the degree of communication between the Durham District Attorney's office and the prosecuting witness and the Durham Police Department. The homeowner alleges that the felony charges for which Mr. Lovett was arrested should have resulted in an active prison sentence rather than being plead down to misdemeanor charges and a suspended prison sentence for Mr. Lovett.

The purpose of this review is to provide you with a chronology of the relevant actions in the underlying criminal matter and to address several of the concerns raised by

the homeowner in her e-mail as it relates to the Durham Police Departments role in this matter. The role or performance of the District Attorney's office in this matter is beyond the purview of this report.

Chronology

- November 7, 2007: The Kinney home is reported by the homeowner to have been burglarized. (by definition a burglary is the unlawful breaking and entering of an occupied residence at night with the intent to commit a felony therein). A vehicle parked at the home is also alleged to have been entered unlawfully.
- November 7-9, 2007: Durham Police (then Cpl. Patrice Vickers) commenced an investigation into the matter. Through the recovery and examination of a latent fingerprint, Lawrence Lovett is identified as a suspect in the matter.
- November 13, 2007: Court records reveal a warrant for the arrest of Lawrence Lovett was issued and served by the Durham Police Department. He was charged with felonious breaking and entering, larceny and breaking and entering a motor vehicle.
- November 14, 2007: Court records reveal Mr. Lovett made his first court appearance. He was assigned a public defender and bond was set at \$20,000.00. (Mr. Lovett was unable to post bond and remained incarcerated through the pendency of this matter.)
- January 16, 2008: Court records reveal in an apparent plea arrangement between the District Attorney and the public defender, Mr. Lovett plead guilty to misdemeanor breaking and entering and was given a 45 day sentence which was suspended for 2 years (also given probation and ordered to pay restitution, court fees, and comply with all terms of probation (including requirement not to engage in criminal activity)). Shortly thereafter, Lovett was released from jail.
- January 18, 2008 (on or about): Duke graduate student Abhijiit Mahato was allegedly murdered.
- February 2, 2008: Court records reveal Lawrence Lovett was arrested again by the Durham Police Department for possession of stolen vehicle and resisting,

delaying and obstructing a police officer. He posted \$2,500 dollar bond and was released the same day.

- February 4, 2008: Court records reveal Lawrence Lovett was arrested yet again by the Durham Police Department this time on burglary and felony theft charges. A \$10,000 dollar bond was posted on his behalf and he was released the same day.
- March 5, 2008 (on or about): UNC student Eve Carson was allegedly murdered.
- March 13, 2008: Court records reveal Mr. Lovett arrested again by the Durham Police Department and charged with first degree murder and other counts relating to the deaths of Mr. Mahato and Ms. Carson.

Questions

1. Why was Mr. Lovett charged with felonious breaking and entering rather than burglary?

In speaking with the investigating officer, the failure to charge Mr. Lovett with burglary was a mistake. The evidence collected in her investigation suggested that a burglary had been committed at the home and Mr. Lovett confessed to committing a burglary. The investigative notes prepared by the officer and subsequently turned over to the District Attorney's office reflect the commission of a burglary. The most appropriate charge based on the evidence collected in this matter was burglary.

2. What is the practical difference between burglary and felonious breaking and entering?

In essence, burglary is the unlawful breaking and entering of an occupied residence at night for the purpose of committing a felony therein. The distinguishing characteristic of burglary is that the crime is committed in an occupied residence at night. Burglary is treated as the more serious property crime of the two.

3. *Would Mr. Lovett have received an active prison sentence (rather than a 45 day suspended sentence and probation) had he been correctly charged and prosecuted for burglary rather than felonious breaking and entering?*

That is unclear. Both charges are felony crimes. Had he been convicted of either felony, it is certainly possible that he could have received an active jail sentence. Ultimately, however, despite his confession to the crimes for which he was charged, a plea agreement was reached between his attorney and the prosecutor that allowed him to be convicted of misdemeanor breaking and entering and he was sentenced accordingly.

4. *What role did the investigating officer play in the prosecution of this matter and in particular the plea agreement?*

The investigating officer states she was not contacted or consulted by the District Attorney's office during the pendency of this matter and played no active role whatsoever in the decision to enter into the plea agreement. The investigating officer states that she was in court for Mr. Lovett's court date on January 16, 2008 but the plea arrangement was reached and entered without her input.

5. *What lessons can be learned in this matter?*

All DPD investigating officers need to be cautious in making sure that the most appropriate charges are filed in all cases. Regardless of the practical impact of not charging Mr. Lovette with felony burglary at the outset, the failure to not file the most appropriate charge is not acceptable as a matter of course. Police Chief Jose Lopez has been apprised of this situation and has taken the appropriate corrective actions. I have also asked Chief Lopez to work with the District Attorney's office to assure open and effective communication between investigating officers and prosecuting attorneys in all criminal matters. I believe that charging issue in this matter could have been addressed and amended had the investigating officer and prosecuting attorney been in contact with one another prior to the entry of the plea agreement.

Finally, I strongly believe that the NC General Assembly should review and revise current laws that prevent or impede the consideration of juvenile records in “adult” cases. This and other related issues were articulated quite effectively by District Court Judge Marcia Morey in a recent article which is attached to this memo.

If you have any other questions or followup item on this matter, please contact me at your convenience.

Prepared by Brenda C. Kinney
March 16, 2008

Chronology of Errors Related to the Release of Laurence Lovette

Since learning that Laurence Lovette had been released from jail two days prior to killing the Duke graduate student, I have tried to piece together how this could have happened.

November 7, 2007

Laurence Lovette breaks into our cars in our garage and breaks into our house after midnight while my husband and I are asleep in our bedroom. When we awoke on the morning of November 8, we realize that my purse, my husband's wallet and two sets of car keys have been stolen from our kitchen counter. The police investigate and CSI obtains a finger print from one of the cars. Corporal Patrice Vickers, District 3, does excellent police work and identifies that the finger print belongs to Laurence Lovette. (Case Number: 07-038028). She informs us that Mr. Lovette's finger print was on file as he had a serious juvenile record. She tells us to make sure that we change our car locks and notify our security system company to deactivate our remote locking/unlocking home security system devices as she has reason to believe he will return and try and steal our cars. Mr. Lovette is arrested within three days at his Shepard Street home. Mr. Lovette confessed to the burglary of our home and claimed to have acted alone. Corporal Vickers informs us that she personally will speak to the D.A. or Magistrate to argue for the highest possible bond because she believes that Mr. Lovette is a dangerous person. She did not tell us the specifics of his juvenile records, but indicated it was extensive. Corporal Vickers told us Mr. Lovette would be indicted on first degree burglary, the most serious level because he broke into our home after midnight while we were in the house. Mr. Lovette's bond was set at \$35,000.

December 2007

Mistake #1

In mid December 2007, Assistant District Attorney, Francis Watkins, begins to work on a plea bargain for Mr. Lovette. She claims that the paper work she had in front of her showed that Mr. Lovette had been charged with felony breaking and entering, and there was no indication that the crime occurred at night while we were asleep in the house. I personally spoke with Ms. Watkins on Friday, March 14, 2008 and she said she had no idea we were asleep in the home. If she had known this, she would have been looking at a first degree burglary charge.

Mistake #2

Ms. Watkins stated that in "every case" her office mails a victim impact statement packet to the victims. We never received these materials in the mail, nor were we ever telephoned. We have lived at our present address for thirty years and the mail is regularly delivered. We are listed in the telephone book. Because of the failure to contact us, this case was processed without our input or knowledge. If we had been



Prepared by Brenda C. Kinney
March 16, 2008

notified, we could have made certain that the Court knew that this was a first degree burglary.

Mistake #3

Ms. Watkins' office did not contact or consult with Corporal Vickers at any time about the plea in this case. If the police had been consulted, they also could have told the Court that this was a first degree burglary.

Mistake #4

Ms. Watkins informed me on March 14, 2008 that the only information she had regarding Mr. Lovette's prior record were three offenses:

- 1. Marijuana possession,
- 2. Driving a vehicle without an operator's license,
- 3. Second degree trespassing which had been dismissed.

His juvenile record and other prior crimes were inexplicably not known by her. For this reason, Ms. Watkins recommended a plea to simple misdemeanor breaking and entering. This case was given to Assistant District Attorney Steven Storch who brought it before Judge Ann McKown on January 16, 2008;

January 16, 2008

Mistake #5

Corporal Vickers was in Judge McKown's court on January 16, 2008 on an unrelated matter. She overheard Mr. Storch and Judge McKown discussing a plea for Mr. Lovette. Corporal Vickers attempted to be heard on the matter, saying that it was her case and a mistake was being made here. Corporal Vickers was told to be quiet. Judge McKown accepted the plea without input from either Corporal Vickers or the victims.

Mistake #6

Judge McKown accepted the plea and gave a sentence of two years probation and released Mr. Lovette.

Mistake #7

It is my understanding from Ms. Watkins that victims are to be notified of the Court's disposition of their case. We were never notified.

January 18, 2008

Duke graduate student Mahato was shot and killed. Mr. Lovette has been charged with first degree murder in this case.

Prepared by Brenda C. Kinney
March 16, 2008

January 28, 2008

In the middle of the night, our garage was broken into and our cars were entered (We had changed the ignition locks after the November 7 burglary). Attempts were made to manually open the automatic garage door. The burglar or burglars also moved furniture on the porch off our home office which is adjacent to our bedroom. A chest was also opened on the porch. We reported this incident to the police. Officer M.N. Miller, District 3, came to our house to investigate (Case # 08-003254). We informed Officer Miller of the prior burglaries and burglary attempts on our home. We also mentioned that Mr. Lovette had been arrested after the November 7 burglary. Finger prints were not requested by the Officer. On this date, we had no knowledge that Mr. Lovette had been released from jail.

I subsequently spoke with Corporal Vickers on March 12, 2008 after reading in the paper that our November 7 burglary had been pleaded down. Corporal Vickers said the police were convinced that Mr. Lovette had returned to our home to steal our cars but had insufficient evidence to charge him.

March 5, 2008

UNC student body president Eve Carson is murdered. Mr. Lovette is charged with this first degree murder.

This chronology demonstrates either the complete incompetence of the District Attorney's Office or an example of criminal corruption. At this point, I do not know which. It is possible that over worked staff members did not follow proper victim notification procedures, did not have access to all prior criminal records, and did not have a copy of the arresting officer's report resulting in a failure to properly charge Mr. Lovette for the November 7, 2007 burglary of our home.

It also is possible that all of the above mistakes were not innocent blunders, but rather a criminal attempt by some unknown person to mislead the court system. If the intent is to plead a case down, this chronology represents a road map of precisely how to do it. The person alters (misplaces) the paper work and creates charges to a lesser crime, making it impossible for the DA's office to know the full circumstances of the case, and subsequently makes sure that the victims and the police are never allowed to participate in the plea bargaining process so the error(s) will not be discovered.

We respectfully request that there be a thorough and impartial investigation into the early release of Mr. Lovette that ultimately resulted in the death of two innocent students.

herald

Marcia H. Morey: The gap between adult, juvenile justice

Apr 19, 2008

In the wake of recent tragic murders and shootings, one long-standing fatal flaw in North Carolina's criminal justice system stands out: It's the chasm between the juvenile delinquency system and the adult criminal system, which puts public safety at increasingly greater risk.

Legislators must examine the loophole that allows serious, repeat juvenile offenders to slide through the cracks into "first-time offender" status in the adult criminal system. Two bold steps can be taken to bridge this chasm between juvenile and adult criminal court:

- 1) Raise the age of juvenile jurisdiction from 16 to 18 years.
- 2) Allow certain juvenile records to be used in subsequent adult prosecutions.

These proposals focus on two objectives: Public safety and stopping young offenders from going through the revolving door from juvenile to adult court.

I speak from my experience of almost 10 years as a judge who presides in both juvenile and adult district criminal courts. When I preside in adult criminal court, occasionally I see a familiar 16- or 17-year-old who has been before me in juvenile court on felony cases. But because juvenile records are confidential, the prosecutor in adult court will inform me the "kid" is a "first time" offender. The prosecutor may suggest an unsecured bond or offer a lenient plea bargain, reducing a felony charge of armed robbery to a misdemeanor assault by pointing a gun, for example.

Because juvenile records are confidential, leniency is often presumed. For judges who do not preside in juvenile court and who are not privy to juvenile records, the plea offer to the 16-year-old might seem reasonable.

A similar situation arises with juveniles who have one foot in the juvenile system (meaning they are still under juvenile court supervision, having been released early from a training school or who are on probation for crimes committed before they turned 16) and one in the adult system. Too often the logic has been: If they are now 16 or 17, "let the adult system handle these kids." The flaw to this reasoning is that there are more serious consequences in the juvenile court system than if they are treated as "first-time" adult offenders.

Juvenile law requires curfew checks, parental involvement, drug and anger management, psychotherapy, educational mandates, no gang-related affiliations and other intensive rehabilitation efforts. For those who do not comply, judges can impose sanctions of electronic house arrest, detention and the possibility of training school, or as some call it juvenile prison, up until the youth's 19th birthday. It is anything but "kiddie court."

The truth is the juvenile system is much more intensive than the adult criminal system, which is grossly understaffed and overworked. The juvenile system often offers more intensive supervision with caseloads of 30 youth per court counselor, compared to adult probation officers who monitor caseloads of 130 defendants and who prioritize compliance with payment of monetary fines and probation fees.

It is well-documented that 16-and 17-year-olds are at the height of their immaturity, impulsivity and aggression. Brain

imaging studies confirm their brains are not fully developed. Civil laws take this into account: Youth under the age of 18 can't vote, purchase alcohol or cigarettes, marry, enlist in the Army or enter into contracts. They are "minors" subject to parental authority.

If the age of juvenile jurisdiction is raised, North Carolina laws presently allow that any juvenile 13 years or older can be transferred to the adult system for serious, violent felonies. This provision should not be subject to change and should remain the law.

Forty-eight other states see the wisdom of juvenile jurisdiction to include youth who are 16 and 17. It is time for North Carolina to do the same. Last year, State Rep. Alice Borden introduced such legislation. It should be debated and passed. This proposal does not "coddle" young offenders, but holds them accountable and prevents them from skipping from one system into another.

Raising the age of juvenile jurisdiction will require an increased allocation of funding for the Department of Juvenile Justice. But it would be a prudent move for public safety. Money will be saved in the long run for would-be victims and the reduction in adult incarceration costs. Youth who are supervised in the juvenile system are proven to have lower recidivism rates.

Finally, there should be immediate reform to the laws that restrict the use of juvenile felony records. A juvenile with an extensive history of felonious or violent behavior should not be able to hide behind the veil of a confidential juvenile record.

Current juvenile confidentiality laws are ambiguous and conflicting. Prosecutors do not have clear guidelines as to what offense information may be obtained from juvenile court proceedings for use in subsequent adult charges. Probation officers have no idea if a teenager they are ordered to supervise has a prior juvenile violent felony offense. When setting bonds or accepting pleas in adult court, judges have no information about prior serious juvenile offenses.

Nonviolent juvenile offenders must have the protection of confidentiality in juvenile court. Most of them can be rehabilitated. But for known, violent juvenile offenders, swift legislative change is needed to stop them from revolving into the adult system as first-time offenders while wreaking havoc upon victims in the community.

Marcia H. Morey is a Durham district court judge.

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