

at that point. (Grieber Dep. at 7) Grieber's report stated that,

He talked to us about leaving in the next few days to go with his mother to Alabama. We served him with a subpoena and told to him about how important it was for him to appear. He still indicated he did not want to testify.

(Grieber Dep. At 13) Grieber testified that he did not observe anyone serve McCoy with a subpoena, but that McCoy knew he had been served with a subpoena. (Grieber Dep. at 15) Consequently, McCoy was served at least once, if not twice, to appear at the October 27, 2003 trial.

On February 24, 2004, Sommers sent correspondence to Verhoff asserting that, "It appears that Mr. McCoy was never subpoenaed for the trial the week of October 27, 2003." Sommers requested a copy of the served subpoena. Sommers' correspondence attached an affidavit from McCoy, which failed to state that McCoy was not served with a subpoena for the October 27, 2003, trial. (See Falk Affidavit, Appendix E) Verhoff responded on March 15, 2004, stating that,

I am unable to produce for you at this time a copy of the subpoena served to Kevin McCoy for the trial week of October 27, 2003, as I am unable to locate a copy of it in the case file. I would note, however, Detective Janet Anderson recalls serving the subpoena on Mr. McCoy on October 7,