

**STATE OF NORTH CAROLINA
ROBESON COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

STATE OF NORTH CAROLINA

vs.

HENRY LEE McCOLLUM

AND

LEON BROWN

Defendants.

)
)
) **Robeson Co. File Nos.**
) **83 CRS 15506-07**
) **Cumberland Co. File No.**
) **91 CRS 40727**

)
) **Robeson Co. File Nos.**
) **83 CRS15822-23**
) **Bladen Co. File Nos.**
) **92 CRS 2491-92**
)
)

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF

Defendants Henry Lee McCollum and Leon Brown, through counsel, have moved this court pursuant to N.C. Gen. Stat. Sections 15A-269 and 15A-270, Art. I, Section 19 of the N.C. Constitution, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, to vacate the judgments of conviction against Mr. McCollum and Mr. Brown and order their immediate discharge from confinement.

Mr. McCollum has spent the last thirty years in prison, after being sentenced to death at age 19. Mr. Brown has likewise spent thirty years in prison, after being sentenced to death for a crime committed when he was 15, and later resentenced to life imprisonment. Neither Mr. McCollum nor Mr. Brown committed the crimes for which they were convicted. The evidence presented against them at their capital trials was comprised almost exclusively of their confessions, which now have been substantially impeached. No forensic or other physical evidence ever linked Mr. McCollum or Mr. Brown to the 1983 death of Sabrina Buie. In 2005, a

court-ordered laboratory analysis compared a DNA profile obtained from a cigarette butt preserved from the crime scene against a DNA profile developed from a sample provided by Mr. McCollum. The lab results conclusively determined that the DNA profile obtained from the cigarette butt was different from the DNA profile obtained from Mr. McCollum's standard and therefore excluded Mr. McCollum as the source of the male DNA found on the cigarette butt.

In 2010, the North Carolina Innocence Inquiry Commission ("Commission") submitted Mr. Brown's DNA standard to LabCorp. The DNA profile obtained from the cigarette butt in 2005 was compared to the DNA profile of Mr. Brown. Mr. Brown was excluded as the source of the male DNA found on the cigarette butt.

Now, much more recent testing has determined that the DNA profile obtained from the cigarette butt recovered from the crime scene is in fact consistent with the DNA profile of another individual, Roscoe Artis, who is currently serving a life sentence for committing a separate but remarkably similar crime that occurred in the same small town of Red Springs less than a month after the crimes for which Mr. McCollum and Mr. Brown are being punished.¹

This memorandum outlines the facts that led to Mr. McCollum's and Mr. Brown's convictions, the similarities between Sabrina Buie's rape and murder and the crimes committed by Roscoe Artis, the DNA evidence and other facts tending to show that Roscoe Artis was the perpetrator of the rape and murder of Sabrina Buie and that Mr. McCollum and Mr. Brown are innocent of that crime, and the legal reasons why they should be granted relief.

¹ The probability of randomly selecting an unrelated individual with a DNA profile that is consistent with the partial DNA profile obtained from the cigarette butt is approximately 1 in 25.0 billion in the NC Caucasian population, 1 in 1.84 billion in the NC Black population, 1 in 12.6 billion in the NC Lumbee Indian population, and 1 in 89.9 billion in the NC Hispanic population.

PROCEDURAL HISTORY

On September 29, 1983, 19-year-old Henry McCollum and 15-year-old Leon Brown were arrested for the murder of Sabrina Buie. In October 1984, both boys were tried together in Robeson County and convicted of first-degree murder and rape and sentenced to death. *See State v. McCollum*, 321 N.C. 557 (1988). At trial, Mr. McCollum was represented by Earl Strickland and Mr. Brown was represented by Robert Jacobson.

In 1988, both Mr. McCollum and Mr. Brown were granted new trials by the North Carolina Supreme Court. *Id.*

In November 1991, Mr. McCollum was retried, convicted of first-degree murder and rape, and sentenced to death. *State v. McCollum*, 334 N.C. 208, 433 S.E.2d 144 (1993). In June 1992, Mr. Brown was retried and his charge of murder was dismissed, but he was again convicted of first-degree rape.² *State v. Brown*, 112 N.C. App. 390, 436 S.E.2d 163 (1993). At both trials, the trial judge and/or jury made findings that the defendants suffered from mental retardation. *See State v. Brown*, 112 N.C. App. at 393, 436 S.E.2d at 165 (acknowledging the trial court's finding that Brown has an I.Q. variously tested between 49 and 65 and limitations on his ability to read and write); *State v. McCollum*, 334 N.C. at 240, 433 S.E.2d at 161 (noting the jury found as a mitigating circumstance that McCollum is mentally retarded).

Following his second trial and conviction, Mr. McCollum appealed unsuccessfully on a number of grounds. *State v. McCollum*, 433 S.E.144 (N.C. 1993). In the ensuing years, Mr. McCollum and his counsel filed a series of Motions for Appropriate Relief (MAR).

In 1995, Mr. McCollum filed a MAR pursuant to N.C. Gen. Stat. §15A-1415, challenging his conviction on a number of constitutional grounds -- including that the prosecution failed to

² Before his 1992 trial, Mr. Brown was offered a guilty plea to second degree rape which he rejected.

turn over relevant and exculpatory evidence, that the prosecution made inaccurate and misleading statements about the evidence to the jury, that Mr. McCollum's mental retardation rendered him incompetent to stand trial, and that his counsel provided ineffective assistance by failing to contest Mr. McCollum's guilt despite the existence of important mitigating and exculpatory evidence.

In 2001, the General Assembly enacted N.C. Gen. Stat. §15A-2005, prohibiting the execution of individuals who are mentally retarded as defined under the statute. In 2002, Mr. McCollum filed an Amended MAR (AMAR) pursuant to N.C. Gen. Stat. §15A-2005 et seq., arguing that he was mentally retarded and thus could not be executed.

In 2002, Mr. McCollum also filed a motion for post-conviction DNA testing pursuant to N.C. Gen. Stat. §15A-269. On November 6, 2004, this Court entered a consent order pursuant to N.C. Gen. Stat. §15A-269, mandating DNA testing of physical evidence, including a cigarette butt found next to a bloody stick at the crime scene.

In 2009, North Carolina enacted the Racial Justice Act (RJA) under N.C. Gen. Stat. §15A-2010, by which a defendant on death row could have his death sentence reduced to a life sentence if he could establish that race was a significant factor in seeking or imposing the death penalty in his case. In 2010, Mr. McCollum filed a Second AMAR pursuant to N.C. Gen. Stat. §§15A-2010 to 15A-2012, arguing that his conviction and death sentence violated the RJA. In 2012, Mr. McCollum filed a Third AMAR pursuant to the amended RJA.

In 2010, at the request of Mr. Brown, the Commission began investigating this case. The Commission conducted an exhaustive investigation including retesting of the cigarette butt and other physical evidence. A comparison of the DNA profile developed in 2011 from the cigarette

butt against the Combined DNA Index System (CODIS) database returned a hit to Mr. Artis who is currently incarcerated for an October 1983 rape and murder in Red Springs, North Carolina.

In 2014, a DNA standard for Artis was subsequently submitted to the North Carolina State Crime Lab by the Commission in order to confirm the hit. The DNA profile from the cigarette butt is consistent with the DNA profile of Mr. Artis.

STATEMENT OF FACTS

I. The Multi-Agency Investigation That Resulted in Henry McCollum's and Leon Brown's Arrests

A. Canvassing by Law Enforcement

The search for Sabrina Buie was initiated by Red Springs Police Officer Larry Floyd. Tr. p. 1353³. On September 25, 1983, in response to a missing persons report filed by Ronnie Buie, Ms. Buie's father, Officer Floyd began canvassing the area near Ms. Buie's home on Buie Street. *Id.* Officer Floyd started by asking Mr. Buie and his friends if there was anyone from out of town that Ms. Buie might have gone home with. *Id.* Mr. McCollum was from New Jersey, but was visiting his mother in Red Springs at the time of Ms. Buie's disappearance.

The next morning, Officer Floyd received a phone call from Alice Rogers, a neighbor who lived on Richardson Street in Red Springs. Tr. p. 1350. Ms. Rogers informed Officer Floyd that she had found a stained white sweater in a ditch near her home. *Id.* While Officer Floyd was retrieving the sweater from the location described by Ms. Rogers, James Shaw, another family friend located Ms. Buie's body in the adjoining soybean field. Tr. pp. 1345-47. Ms. Buie was nude except for a bra that was pushed around the back of her neck. Tr. p. 1362.

Officer Floyd stayed on the scene until State Bureau of Investigation (SBI) Agent Leroy Allen arrived. Tr. p. 1362.

³ All transcript references are to the 1991 trial of Henry McCollum, case number 91 CRS 40727, unless otherwise indicated.

On the same day, officials from the SBI, the Red Springs Police Department, and the Robeson County Sheriff's Department joined to canvass the town for information about Ms. Buie's death. *See* Tr. pp. 1469-70. SBI investigator Kenneth Snead interviewed numerous individuals over two days. Tr. p. 1470. While the crime scene was being processed by Agent Allen, Officer Floyd and Sheriff's Deputy Garth Locklear also interviewed numerous people, including L.P. Sinclair and Henry McCollum. *See* Sept. 26, 1983 L.P. Sinclair Interview Memo, Exhibit 4; Sept. 27, 1983 Henry McCollum Interview Memo, Exhibit 5.

B. Witness Interviews

In his first interview with Deputy Locklear on September 26th, L.P. Sinclair did not implicate Mr. McCollum or Mr. Brown in Ms. Buie's death. *See* Sept. 26, 1983 Sinclair Memo, Exhibit 4.

L.P. Sinclair was interviewed twice more following Mr. McCollum's arrest and while his stories changed, he still did not implicate Mr. McCollum or Mr. Brown. *See* Oct. 5, 1983 Interview Memo and Polygraph Impressions, Exhibit 6.

On October 6, 1983, Mr. Sinclair was administered a polygraph examination by SBI Agent Jerry Webster, and was questioned about Ms. Buie's death. *See* Oct. 5 Interview Memo and Polygraph Results, Exhibit 6. Agent Webster concluded that L.P. Sinclair was being truthful and did not know anything about the death of Sabrina Buie. *Id.*⁴

On September 27, 1983, Deputy Locklear interviewed Mr. McCollum at his home at 104 Malpass Street. *See* Sept. 27, 1983 McCollum Memo, Exhibit 5. In that interview, Mr. McCollum stated that he last saw Ms. Buie walking to a store around noon on September 24th.

⁴ L.P. Sinclair's trial testimony implicating McCollum and Brown in the murder of Sabrina Buie contradicted his prior statements to police. At McCollum's retrial, L.P. Sinclair's prior testimony was introduced but substantially impeached by evidence of Mr. Sinclair's criminal record amassed since the first trial, and by the testimony of District Court Judge Stanley Carmical that as an attorney, he had represented Sinclair in April 1989 and that in his opinion Mr. Sinclair "was not a truthful person." *McCollum*, 334 N.C. at 238, 433 S.E.2d at 160-61.

Id. He did not implicate himself or Mr. Brown in her death. *Id.* Mr. McCollum's statements to Deputy Locklear on September 27th were not raised during Mr. McCollum's 1984 or 1991 trials. *See State v. McCollum and Brown* 1984 Trial Transcript, case no. 83 CRS 15506-07, 15822-23; *State v. McCollum* 1991 Trial Transcript, case no. 91 CRS 40727.

C. Evidence Collected from the Crime Scene

The evidence in this case was found in two primary locations: the back of an uncut soybean field off Richardson Street and a field closer to Hardin's Store. Tr. pp. 1373, 1379. Hardin's Store sits directly west of Richardson Street, which runs north to south and marks the western edge of a residential community. Between Hardin's Store and Richardson Street is a wooded area that contains the two fields where the evidence was found. The opposite side of Richardson Street intersects with Malpass Street to the south and Buie Street to the north.

Officer Floyd and Agent Allen observed Ms. Buie's body in the soybean field near Richardson Street. Other than Ms. Buie's clothing, no other physical evidence was collected from the soybean field. Tr. pp. 1371-74.

After processing the body, Agent Allen walked to the separate field behind Hardin's Store and found the additional physical evidence clustered there. Tr. p. 1379. In that field, Agent Allen collected two blood-stained sticks next to one Newport cigarette butt, a blood-stained piece of plywood, match sticks, three Schlitz beer cans, and one plastic beer can holder. Tr. p. 1379.

D. The Purported Confessions of Henry McCollum and Leon Brown

At 9:10 p.m. on September 28, 1983, Agent Snead, Sheriff's Deputy Ken Sealey, and Agent Allen took Mr. McCollum from his house on Malpass Street to the police station to question him. Tr. pp. 1417, 1469. At the station, Mr. McCollum was fingerprinted and

questioned about unrelated incidents for almost an hour. Tr. pp. 1424, 1472. Once Agent Snead finally confronted Mr. McCollum about Ms. Buie's death, he read him his rights. Tr. p. 1474.

Over four hours, Agents Snead and Allen, and Deputy Sealey used the detailed information they already had about the crime scene to prompt one confession from Mr. McCollum, then a second more detailed confession which Agent Snead reduced to writing. *See* Tr. p. 1503.

At 1:30 a.m., at the conclusion of a four-and-a-half-hour interview with Agent Snead, Deputy Sealey, and Agent Allen who had processed the crime scene, Mr. McCollum signed a statement implicating himself, his brother Leon Brown, Chris Brown, Darrel Suber, and Louis Moore in the rape and murder of Sabrina Buie. Tr. pp. 1487-89. Accompanying the statement was a map drawn by Mr. McCollum and Agent Allen. Tr. pp. 1490-96.

The signed statement includes details from the crime scene, including, the brand of cigarette found next to the blood-stained stick – Newport – that was attributed falsely to Chris Brown and Darrel Suber, the brand of beer can that was found, the color of Ms. Buie's underwear⁵, the flower pattern on Ms Buie's clothing, and the presence of dig and drag marks near Ms. Buie. *See* Sept. 28, 1983 Henry McCollum Statement, Exhibit 8; Tr. pp. 1486-88.

At around 10:45 p.m., while Mr. McCollum was being questioned by Agent Snead, Agent Allen, and Deputy Sealey, Mr. Brown and their mother, Mamie Brown, arrived at the police station. Once there, Deputy Locklear and Chief Luther Haggins talked to Mr. Brown. *See* 1984 Tr. pp. 1390-1400. At 2 a.m., after Mr. McCollum signed a statement, Agent Snead asked Mr. McCollum to tell Mr. Brown to tell the truth which Mr. McCollum then did. Tr. p. 1493.

⁵ The statement erroneously describes Sabrina's underwear as being pink. According to the autopsy report produced by Dr. Deborah Radisch, Ms. Buie's underwear were white but blood-soaked. *See* Autopsy Report, Exhibit 7.

Thirty minutes later, in the presence of Agent Snead, Chief Haggins, and Deputy Locklear, Mr. Brown signed a statement implicating himself, Mr. McCollum, Chris Brown, and Darrel Suber. *See* Sept. 29, 1983 Leon Brown Statement, Exhibit 9.

Mr. McCollum remained at the Red Springs Police Station until 8 a.m. when he was transported to jail in Lumberton by Officer Floyd. 1984 Tr. p. 1600. While transporting Mr. McCollum, Officer Floyd asked him about discrepancies between his and Mr. Brown's statements. 1984 Tr. p. 1743. According to Officer Floyd, Mr. McCollum said that Ms. Buie's body must have been moved after someone left. 1984 Tr. p. 1601.

E. Facts Suggesting Both Confessions Were False

First, the statements that Mr. McCollum and Mr. Brown signed both implicated people who could not have participated in Ms. Buie's murder. Mr. McCollum's statement implicated Chris Brown, Louis Moore and Darrell Suber. *See* Sept. 28, 1983 McCollum Statement, Exhibit 8. Mr. Brown also implicated Darrell Suber and Chris Brown. *See* Brown Statement, Exhibit 9. Police discovered that Mr. Moore and Mr. Suber had reliable alibis asserting they could not have been at the scene of the crime. *See* Sept. 29, 1983 Interview with Darrell Suber, Exhibit 10. Mr. Moore was not in the State of North Carolina during the operative time period. Tr. pp. 1366. Further, the trial judge noted at the conclusion of Mr. Brown's retrial that Darrell Suber and Chris Brown "have never been charged because there was no evidence that could be presented against them." 1992 Tr. p. 309.

Mr. McCollum's statement also reads that "Darrell was smoking Newport cigarettes. Chris [Brown] smoked Newports, also, and had a box of small stick matches." Tr. p. 1486. This part of the confession was heavily emphasized by the prosecution at trial; Officer Floyd and Agent Allen separately identified the cigarette butt found at the scene of the crime as the "Newport brand." 1984 Tpp. 1031, 1075. Aside from the fact that the individuals implicated

had alibis and by every indication were not present on the night of the murder, reliable DNA evidence (as discussed below) now makes clear that a different individual – Mr. Artis, who was never mentioned in the statements of either Mr. McCollum or Mr. Brown – was smoking the Newport cigarette found at the crime scene. *See* July 29, 2014 Cellmark Report, Exhibit 11.

F. Law Enforcement Officials Falsely Characterized McCollum’s Confessions During Testimony

The State relied upon facts from the crime scene to corroborate the false confessions of Mr. McCollum and Mr. Brown. In Mr. McCollum’s 1991 trial, the prosecutor stated that “there’s physical evidence corroborating everything he said [in the purported confession].” Tp. 1329. Because the confessions were unrecorded, law enforcement officials were able to represent to the juries that detailed information regarding the crime scene came first from the defendants and not from law enforcement officials who had personally viewed the crime scene and the autopsy. This was false.

Law enforcement officials falsely conveyed to the jury that Mr. McCollum originated the facts about the crime scene contained in the confessions. After recounting the details of Mr. McCollum’s purported confessions, the prosecutor presented the following testimony from Agent Ken Snead:

Q. Did you write down what the defendant told you happened?

A. I did, sir.

Q. Did you write down anything concerning information you had received from anyone else?

A. No sir. What I wrote down was what the defendant, Henry Lee McCollum, related to me on September 28, 1983.

Q. The details of the statement concerning Newport cigarettes, the stick matches, three beer cans that was later found by Agent Allen, did you have any knowledge about those items before the defendant told you about them?

A. I didn't - -

MR. DAVIS: Objection to leading.

THE COURT: Overruled.

A. I did not. I had never been to the crime scene.

Tp. 1487. While Agent Snead had not been to the crime scene, Agent Allen was intimately familiar with the crime scene and with the results of the autopsy,⁶ and it was he who provided the crime scene details contained in this false “confession.”

In the end, it took little effort for Agents Snead and Allen, and Deputy Sealey to persuade intellectually disabled nineteen-year-old Mr. McCollum to sign and initial a false confession with a promise that he could leave.

II. Roscoe Artis's Relevant History

A. The Rape and Murder of Joann Brockman and Conviction of Roscoe Artis

On October 22, 1983, less than four weeks after Sabrina Buie was killed, 18-year-old Joann Brockman went missing in Red Springs, N.C. *See State v. Artis*, 325 N.C. 278, 288-89, 384 S.E.2d 470, 475-76 (1989). While looking for her, two of her family members found Ms. Brockman's wig and her shoes by a pear tree near her home. *Id.* Early that evening, Deputy Sheriff McLean found Ms. Brockman's body in a field near the same pear tree. *Id.* Her body was covered partially with dirt and brush, naked except for a sweater and bra pushed up above her breasts. *State v. Artis*, 325 N.C. at 289, 384 S.E.2d at 476. There was blood on her nose, mouth, sweater, and hands. *Id.* There was a large bruise on her head – evidence suggested she had been bludgeoned with a large stick – and neck abrasions, hemorrhaging, and other physical

⁶ On September 26, 1983, Agent Allen found and collected the large and small wooden sticks, the three matches and the Newport cigarette butt, the plywood board, the Schlitz Malt Liquor beer cans, the holder, and a red hair braid. Tpp. 1386-96. On September 27, 1983, Agent Allen attended the autopsy of Sabrina Buie's body at the medical examiner's office. T. pp. 1400-1408. On September 28th, Agent Snead, assisted by Agent Allen and Deputy Sealey, wrote the false confession of Henry McCollum.

indications that she had been strangled to death. *Id.* at 289, 384 S.E.2d at 476-77. Her vagina was dilated; consistent with Ms. Brockman's having died during sexual intercourse. *Id.*

Witnesses recalled seeing Ms. Brockman with 43-year-old Roscoe Artis, and no one else, just before she went missing. *Id.* at 288-89, 384 S.E.2d at 475. Mr. Artis later confessed to raping and murdering Ms. Brockman alone. *Id.* He was found with blood on his shirt which he acknowledged was Joann's. *Id.* He also admitted to dragging her to where her body was later found when she resisted his attempt to beat and rape her. *Id.* at 292, 384 S.E.2d at 477. Mr. Artis was convicted of first-degree murder and rape and sentenced to death for Ms. Brockman's murder⁷. *See id.*

B. Pattern of Assaults on Girls Committed by Roscoe Artis

Mr. Artis has a record of assaults dating back to 1957. *See id.* at 288-89, 384 S.E.2d at 475. In 1957, Mr. Artis was convicted of assault with intent to commit rape against Alma Edwards of Hoke County. *See id.* For that conviction, he was sentenced to twelve to fifteen years in prison. *Id.* Upon his release for his assault on Ms. Edwards, Mr. Artis was again convicted of assault on a female in 1967. *Artis*, 325 N.C. at 315, 384 S.E.2d at 491.

Ten years before his 1984 trial for the rape and murder of Joann Brockman, Mr. Artis attacked another victim, 16-year-old Billie Ann Woods, alone, in a manner also characterized by an apparent attempted rape, manual strangulation, and Mr. Artis's stated intent to kill Ms. Woods.

Ms. Woods testified that at the time of the incident she was sixteen years old. She related that on the way from her parents' apartment to the store she was approached by defendant, that he grabbed her from behind by the arm and told her she was "going to the woods" with him. She responded, "No, I ain't." Defendant insisted, "You're going to give me some," and threw her onto the ground,

⁷ Mr. Artis' death sentence was later vacated following the United States Supreme Court ruling in *McKoy v. North Carolina*, 494 U.S. 433 (1989). He was resentenced to life and is currently serving that sentence at Warren Correctional Institution.

straddled her, put his hands around her throat, and started choking her. Ms. Woods testified that she started saying "I will, I'll go," but defendant continued to choke her, saying, "No, I'm just going to kill you, now." As long as she could breathe, Ms. Woods recounted, she told defendant she would accompany him to the woods, hoping that he would believe her to be sincere and let go of her. The choking continued, however, and she started to lose her breath and was convinced she was dying. Fortuitously, a friend of her sister's walked by and spoke to defendant, prompting him to jump up and say to Ms. Woods, "What's wrong with you, girl, are you crazy?" As she ran towards the store, Ms. Woods heard defendant yell after her, "Give me my money back!" She testified that she had not that night or any other time received money from defendant.

Id., 325 N.C. at 298-300, 384 S.E.2d at 481-82. For his conduct that night, Mr. Artis was convicted of assault on a female. *Id.* Soon after his assault on Billie Woods, Mr. Artis was convicted of a separate assault with a deadly weapon in 1975. *Id.*

When Mr. Artis moved to Red Springs in 1983, there was a warrant out for his arrest in connection with the 1980 rape and murder of Bernice Moss in Gaston County, North Carolina. Upon information and belief, when Ms. Moss's body was found, she was nude except for a bra and shirt, had something lodged in her throat, and had been beaten beyond recognition with a stick. Mr. Artis was never prosecuted for Ms. Moss's murder. Instead the charges against Mr. Artis remained pending until 1990 when they were dismissed because he was on death row for Ms. Brockman's murder.

His record of convictions suggests that Mr. Artis committed all of his assaults alone, without any accomplices. *See id.*

C. Mr. Artis's Physical Proximity to Sabrina Buie

Ms. Buie's body was found within feet of the house where Mr. Artis lived. In September 1983, Mr. Artis lived with his sister, Pauline Smith in Red Springs. Ms. Smith's house was located directly adjacent to the soybean field where Ms. Buie's body was found.

D. Mr. Artis's Statements That Henry McCollum Is Innocent

Before his sentence was commuted to life, Mr. Artis spent more than ten years on death row. During those years, Mr. Artis confided in another inmate, Andrew "Sonny" Craig, about Mr. McCollum's case. Mr. Craig recounts:

While we were both at Central Prison, Mr. Artis and I talked approximately once a week. *Mr. Artis repeatedly stated that he knew Mr. McCollum did not commit either the rape or the murder of Sabrina Buie.* It appeared that Mr. Artis wanted to talk about Mr. McCollum's case, and get something off his chest. It seemed to be weighing on his heart, and he needed to tell somebody, so he told me. *Mr. Artis knew a lot about the victim. He knew some obscure facts about the crime, including the color of the victim's underwear and how she was killed.* I understood Mr. Artis to be admitting his own involvement in the crime.

During my conversations with Mr. Artis, he seemed burdened by living with guilt for so long.

Affidavit of Andrew Craig, October 5, 2012, ¶¶ 8-9 (emphasis added), Exhibit 3.

III. Forensic Testing Results

A. Pre-Trial Forensic Testing

The State introduced physical and biological evidence collected from the crime scene including blood, hair, and fingerprint lifts at Mr. McCollum's and Mr. Brown's trials. None of the forensic evidence, however, implicated Mr. McCollum or Mr. Brown. Tr. pp. 1423-67. In particular, Dr. Deborah Radisch collected a rape kit from Ms. Buie's body. Tr. p. 1529. The SBI tested the evidence from the kit, and did not identify any evidence linking Mr. McCollum, Mr. Brown, or anyone named in their confessions to the crime. Tr. pp. 1411-12.

The police also collected from the crime scene nine latent lifts, two of which were suitable for identification. Tr. p. 1463. Both lifts were obtained from the beer cans that were left at the scene, and one of the lifts matched Ms. Buie. Tr. p. 1462. The second lift was not consistent with Mr. McCollum, Mr. Brown, nor was it consistent with the fingerprints of anyone else named in the confessions. Tr. pp. 1424, 1467. Thus none of the physical evidence collected

linked Mr. McCollum, Mr. Brown or anyone else named in either of their confessions, to the crime scene.

Significantly, on October 5, 1984, three days before the start of Mr. McCollum's and Mr. Brown's 1984 trial, the Red Springs Police Department submitted a request to the SBI for fingerprint comparison between the other fingerprint lift and Roscoe Artis and L.P. Sinclair.⁸ *See* SBI Submission Printout, Exhibit 12. There is no documentation reflecting that the comparison was carried out. Instead, the comparison request was canceled one year later on October 5, 1985. *Id.*

In 1995, post-conviction counsel filed a Motion for Discovery including all files maintained by the State Bureau of Investigation. As recently as March 2014, undersigned counsel for Mr. McCollum filed a Motion for Discovery of All State Bureau of Investigation Materials and has since attempted to contact the State Crime Lab (formerly SBI) about a response to that motion. The Crime Lab has yet to respond to any of Mr. McCollum's requests for discovery.

B. Post-Conviction DNA Testing and Results

On November 6, 2004, this Court ordered that biological evidence, specifically a cigarette butt and a rape kit, be made available for DNA testing and comparison to the SBI DNA database pursuant to N.C. Gen. Stat. §15A-269. *See* Nov. 6, 2004 Order for DNA Testing, Exhibit 1. Laboratory Corporation of America (LabCorp) conducted DNA testing on the rape kit and the cigarette butt. Jan. 26, 2005 LabCorp Report, Exhibit 2. The DNA profile the lab obtained from the cigarette butt "is consistent with originating from a male source and is different from the DNA profile obtained from the reference sample from Henry McCollum. . . .

⁸ Roscoe Artis's trial for the murder of Joann Brockman occurred in August of 1984, less than two months before Mr. McCollum and Mr. Brown were originally tried.

Therefore, Henry McCollum is excluded as the source of the genetic material in this sample.”

Id. at 2. No other samples submitted to the lab identified Mr. McCollum or Mr. Brown as a DNA hit.

In 2010, the Commission staff had the same DNA profile from the cigarette butt compared against Mr. Brown’s DNA sample. Mr. Brown was excluded as the source of the DNA on the cigarette butt. *See* Dec. 31, 2010 LabCorp Report, Exhibit 13.

The evidence in the rape kit only contained DNA profiles consistent with Sabrina Buie⁹. *See* Exhibit 2.

C. Commission Staff Discovery of Previously Undisclosed Evidence

Physical evidence and documents collected during the initial investigation in this case were not turned over to all parties at trial or in post-conviction in a timely manner or consistent with constitutional requirements. Only through the diligence of the Commission staff have all the records and evidence in this case finally been fully examined.

Since 2010, the Commission staff has been piecing together the evidence in this case and uncovering materials that are relevant to Mr. McCollum’s and Mr. Brown’s innocence. For instance, the Commission discovered that, on October 5, 1984, the Red Springs Police Department requested a comparison between the one unidentified lift found at the crime scene and Mr. Artis and L.P. Sinclair. Exhibit 12. The Commission staff also made the connection that the comparison request was never carried out but instead canceled one year later. *Id.*

The Commission staff also located physical evidence that undersigned counsel previously understood to be missing. In August 2010, the Red Springs Police Department stated that they had not retained any evidence from Mr. Brown’s case. August 31, 2010 Letter from Captain

⁹ The lab was unable to isolate sufficient quantities of DNA from the rape kit samples to conduct a proper comparative DNA analysis. Exhibit 2 at 2.

Kevin Locklear, Exhibit 15. In October 2010, the Commission staff served on the Red Springs Police Chief a Motion for the Production of Law Enforcement Files Maintained by Red Springs Police Department for Mr. Brown's case. October 12, 2010 Motion for the Production of Law Enforcement Files Maintained by Red Springs Police Department, Exhibit 16. The Department maintained that all of the evidence and files were turned over to the SBI and that no evidence was in its possession. Yet, in August 2014, Sharon Stellato, Associate Director of the Commission, located an entire box of physical evidence being held at the Police Department. The box had been in the Department's possession since the early 1990s.¹⁰

D. Commission Post-Conviction DNA Testing Results

Over four years of testing, the Commission staff received DNA testing results for several items of physical evidence obtained in the course of their investigation. The Commission's testing confirmed that the partial Y-STR DNA profile obtained from the cigarette butt found at the crime scene is consistent with the Y-STR DNA profile obtained for Mr. Artis. Cellmark Report, p. 3, Exhibit 11.

The Commission's testing also shows that none of the physical evidence from the crime scene is consistent with the DNA profiles of Mr. McCollum or Mr. Brown.

ARGUMENT

I. Legal Standard

The statute governing post-conviction DNA-testing procedures, passed as "An Act to Assist an Innocent Person Charged With or Wrongly Convicted of a Criminal Offense in

¹⁰ The box purported to contain: nine evidence envelopes of hairs and slides which include pubic hair combings and head hairs from Sabrina Buie, hair found on Sabrina's blouse, hair from an anal swab, hairs of Chris Brown and Darrell Suber, inked prints from McCollum, Brown, two latent prints, fingernail clippings from Sabrina, a beer can, a Vaseline jar, a paper bag, sheets used to wrap Sabrina's body, and a gum wrapper. See Exhibit 14, List of Evidence Purported to be in Box Obtained by the N.C. Innocence Inquiry Commission in August 2014.

Establishing the Person's Innocence," 2001 N.C. Sess. Laws 282, sets forth (in its entirety) the following standard:

(a) Notwithstanding any other provision of law, upon receiving the results of the DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court shall dismiss the motion and, in the case of a defendant who is not indigent, shall assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are *favorable* to the defendant, the court *shall* enter any order that serves the interests of justice, including an order that does any of the following:

(1) Vacates and sets aside the judgment.

(2) Discharges the defendant, if the defendant is in custody.

(3) Resentences the defendant.

(4) Grants a new trial.

N.C. Gen. Stat. § 15A-270 (emphasis added); *State v. Brown*, 170 N.C. App. 601, 605, 613 S.E.2d 284, 286-87 (2005) (citing N.C. Gen. Stat. § 15A-270(c)), *superseded on other grounds* by N.C. Gen. Stat. § 15A-270.1. There is thus no provision in the statute for any secondary showing of prejudice or materiality; the singular test is whether the results of DNA testing are *favorable* to the defendant. If they are, the court *shall* grant relief that serves the interests of justice.

II. Results of DNA Testing Are Favorable to Mr. McCollum and Mr. Brown and Support Their Claims of Innocence

The results of the court-ordered DNA testing pursuant to N.C. Gen. Stat. § 15A-269 are clearly "favorable" to Mr. McCollum and Mr. Brown.

This Court ordered DNA testing in 2004, finding pursuant to N.C. Gen. Stat. §15A-269 that "[i]f the DNA testing being requested had been conducted on the evidence, there exists a

reasonable probability that the verdict would have been more favorable to the defendant.”

Exhibit 1 at 2. The only change that has occurred since then is that the comparison of the DNA profile of the cigarette with the database produced results *even more significant and favorable*. Not only has DNA analysis revealed that Mr. McCollum’s and Mr. Brown’s profiles were not consistent with any of the DNA preserved from the scene of crime, the analysis has also now shows that the DNA profile obtained from the cigarette butt found there is consistent with the DNA profile of another individual, Mr. Artis, who may have been a suspect in Sabrina’s murder before the start of Mr. McCollum’s and Mr. Brown’s trial.

The content of Mr. McCollum’s confession suggests that many of the critical factual details about the crime were introduced and dictated by law enforcement officials, and that the scared, confused, mentally retarded Mr. McCollum merely acquiesced to the authority figures, as was his tendency. There is also no other satisfactory explanation for why Mr. McCollum’s statement contained so many inconsistencies compared with Mr. Brown’s, or why either boy would implicate men who were not there, while neglecting to mention the presence of the *one man* whom we now know by reliable scientific evidence was at the scene of the crime.

Mr. McCollum and Mr. Brown have *never* been linked to the scene of the crime by a single piece of objective physical evidence. That a new suspect has been placed at the scene is surely relevant, probative, and helpful to Mr. McCollum’s and Mr. Brown’s defenses and claims of innocence. The new DNA evidence becomes significantly more favorable to Mr. McCollum and Mr. Brown when viewed in light of the other circumstances surrounding Mr. Artis and his thirty-year history of committing assaults, rapes, and murders.

Indeed, when viewed in the present context – the lack of evidence implicating Mr. McCollum and Mr. Brown, Mr. Artis’s criminal history, the close proximity of the crime scene

to Mr. Artis's home, and Mr. Artis's statements to Mr. Craig and the Commission staff expressing knowledge of the crime and of Mr. McCollum's (and by logical extension Mr. Brown's) innocence – the DNA testing results placing Mr. Artis at the scene of the crime *more* than satisfy the standard under §15A-270.

The standard under § 15A-270 is *far* more lenient than the standard for newly discovered evidence under Article 89 of the North Carolina General Statutes. *Compare State v. Britt*, 320 N.C. 705, 712-13, 360 S.E.2d 660, 664 (1987) (recognizing that in order to prevail on a claim of newly discovered evidence, a defendant must establish that the newly discovered evidence is of “such a nature as to show that on another trial a different result will probably be reached[.]”). By contrast, as discussed above, §15A-270 only requires Mr. McCollum and Mr. Brown show that new DNA testing results are *favorable* to them and their cases. Nothing more.

While Mr. McCollum is not required to prove that the results of the DNA testing would actually produce a different result at a new trial, those results dramatically change the picture that was presented by the prosecution at Mr. McCollum's capital trial.¹¹ The State's theory was that there were five perpetrators. Yet, only two suspects (Messrs. McCollum and Brown) were prosecuted, and neither of them could be physically linked to the crime scene. By contrast, the present picture shows a single suspect, forensically placed at the scene of the crime, who (1) has a record of violent sexual assaults, (2) just weeks later committed a remarkably similar rape-murder in Red Springs, and (3) years later knew alarming details about Ms. Buie's death and proclaimed Mr. McCollum's and Mr. Brown's innocence of that crime.

Furthermore, the use of false testimony, the suppression of material and favorable evidence – the October 5, 1984 Artis fingerprint comparison request by the Red Springs Police

¹¹ Mr. McCollum and Mr. Brown have presented ample evidence of third-party guilt that raises a reasonable inference as to their own innocence. *See Holmes v. South Carolina*, 547 U.S. 319, 327-331 (2006); *Hamlette*, 302 N.C. 490, 276 S.E.2d 338 (1981).

Department - before Mr. McCollum's and Mr. Brown's October 1984 trial, and the subsequent suppression of material and favorable physical evidence by the Red Springs Police Department in post-conviction proceedings constitute a violation of the due process rights of Mr. McCollum and Mr. Brown. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Based on these due process violations alone, Mr. McCollum and Mr. Brown are entitled to have their convictions vacated. *See id.*

III. The "Interests of Justice" Compel Relief for Mr. McCollum and Mr. Brown

Once new evidence of DNA testing results is determined to be favorable, N.C. Gen. Stat. § 15A-270(c) requires this Court to order relief in the interests of justice, including an order to accomplish any of the following: (1) vacate and set aside Mr. McCollum's and Mr. Brown's judgments, (2) discharge Mr. McCollum and Mr. Brown, (3) resentence Mr. McCollum and Mr. Brown, or (4) grant Mr. McCollum and Mr. Brown a new trial. N.C. Gen. Stat. § 15A-270(c)(1)-(4).

In this case, the interests of justice compel that the Court vacate the convictions and death sentence of Mr. McCollum and the life sentence of Mr. Brown and discharge them. The DNA results from the cigarette butt are favorable under section 15A-270 because they directly implicate Mr. Artis in Ms. Buie's rape and murder and substantially impeach what little evidence was relied upon by the State at trial. When those testing results are then viewed in conjunction with the other facts and circumstances surrounding Mr. Artis, the lack of evidence of Mr. McCollum's and Mr. Brown's guilt, and the critical evidence previously undisclosed by law enforcement, they eviscerate the reliability and justice of their convictions and sentence. After thirty years in prison for a crime they did not commit, the only fair remedy is Mr. McCollum's and Mr. Brown's discharge based on evidence of their innocence.

CONCLUSION

In view of this favorable DNA evidence tending to establish Henry McCollum's and Leon Brown's innocence of the crimes for which they were convicted and sentenced to die, Mr. McCollum and Mr. Brown request that this Court grant them the following relief:

1. Vacate and set aside Mr. McCollum's convictions for first-degree murder and first-degree rape, and Mr. Brown's conviction for first-degree rape;
2. Dismiss the murder and rape charges with prejudice;
3. Discharge Mr. McCollum and Mr. Brown from confinement;
4. Order any other relief that this Court deems just under the circumstances.

Respectfully submitted this the 25th day of August 2014.

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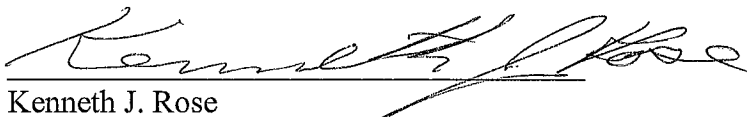
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CERTIFICATE OF SERVICE

I, Kenneth J. Rose, hereby certify that I served a copy of the foregoing pleading by depositing a copy with the United States Postal Service, first-class postage prepaid, and addressed to:

Mr. L. Johnson Britt
District Attorney for Robeson County
Robeson County Courthouse, Box 19
Lumberton, NC 28358

This the 25th of August 2014.


Kenneth J. Rose

**EXHIBIT LIST TO
MOTION FOR RELIEF
and
MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF**

1. November 6, 2004 Consent Order for Release of Evidence for Post-Conviction DNA Testing
2. January 26, 2005 LabCorp Certificate of Analysis for Henry McCollum
3. October 5, 2012 Affidavit of Andrew “Sonny” Craig
4. September 26, 1983 Garth Locklear and Larry Floyd Interview with L.P. Sinclair
5. September 27, 1983 Garth Locklear Interview with Henry McCollum
6. October 5, 1983 Lee Sampson Interview with L.P. Sinclair & October 6, 1983 L.P. Sinclair Polygraph Impression by SBI Agent Jerry Webster
7. September 27, 1983 Autopsy Report of Sabrina Buie
8. September 28, 1983 Henry McCollum Signed Statement
9. September 29, 1983 Leon Brown Signed Statement
10. September 29, 1983 Interview with Darrell Suber
11. July 29, 2014 Cellmark Report of Laboratory Examination
12. State Bureau of Investigation Record of Fingerprint Testing Requests for Roscoe Artis and L.P. Sinclair
13. December 31, 2010 LabCorp Certificate of Analysis for Leon Brown
14. List of Physical Evidence Purported to be In Box Obtained by the N.C. Innocence Inquiry Commission in August 2014.
15. August 31, 2010 Letter from Captain Kevin Locklear.
16. October 12, 2010 Motion for the Production of Law Enforcement Files Maintained by Red Springs Police Department.