

**STATE OF NORTH CAROLINA
COUNTY OF ROBESON**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
ROBESON COUNTY 83 CRS 15822 – 823
BLADEN COUNTY 92 CRS 2492**

STATE OF NORTH CAROLINA)	
)	MOTION FOR RELIEF
vs.)	BASED UPON POSTCONVICTION DNA TESTING
)	N.C.G.S. §15A-270
LEON BROWN)	

Defendant, Leon Brown, respectfully moves this Court to vacate with prejudice the judgment in 92 CRS 2492 and to order his immediate discharge based upon the evidence of innocence provided by recent DNA testing which has identified the true perpetrator of the crime.

On June 10, 1992, a Bladen County jury convicted Leon Brown of the 1983 first-degree rape of Sabrina Buie in Robeson County. The trial court sentenced him to life in prison. Leon Brown, who is mentally disabled, made a false confession. There never has been any physical evidence linking Leon Brown to the 1983 rape and murder of Sabrina Buie in Robeson County.

Leon Brown has consistently maintained his innocence since 1983 and recent DNA testing supports his claim. DNA evidence proves that Roscoe Artis raped and murdered Sabrina Buie on September 26, 1983 in Robeson County. Roscoe Artis later raped and murdered Joann Brockman in the same county on October 22, 1983.

In support of his motion, the Defendant shows the Court the following:

1. In October of 1984, Defendant Leon Brown (Brown) and Defendant Henry Lee McCollum (McCollum), Brown's half-brother, were tried jointly in Robeson County for the September 24, 1983 rape and murder of 11-year old Sabrina Buie (Robeson County File Numbers for McCollum: 83 CRS 15506-07). They were both convicted of first-degree rape and first-degree murder and sentenced to death on October 8, 1984. They were placed on Death Row at Central Prison in Raleigh, North Carolina.
2. The murder occurred in the small town of Red Springs, located in Robeson County. At the time, Brown and McCollum, who were fifteen and nineteen years old respectively, lived with their mother, Mamie Brown, and their half-sister, Geraldine Brown, at 104 Malpass Street in Red Springs.

3. On September 24, 1983, Sabrina Buie went missing. She was last seen by her parents around 3:00 that Saturday afternoon. On Monday, September 26, 1983, searchers found her body in a soybean field behind Hardin's Grocery. She had been raped, sodomized, and murdered. The cause of death was asphyxiation. During Sabrina's autopsy, the pathologist found Sabrina's panties stuffed down her throat with two sticks.

4. The Robeson County Sheriff's Department, the North Carolina State Bureau of Investigation, and the Red Springs Police Department conducted a joint investigation of Sabrina's murder.

5. The facts are more fully set forth in Brown and McCollum's Joint Memorandum in Support of Motion for Relief Pursuant to N.C.G.S. §15A-270. The Defendant prays the Court to adopt the Joint Memorandum in its entirety in support of this motion.

6. On September 26, 1983, North Carolina State Bureau of Investigation Special Agent Leroy Allen examined and processed the area where Sabrina's body was found. Allen also examined an area of trees and thick brush at the opposite end of the soybean field behind Hardin's. There was a section of stained plywood on the ground where Sabrina was raped and murdered. There was a cleared area just across an old path from the plywood. Allen collected evidence from this area, including three Schlitz malt liquor cans, one Newport cigarette butt, and two wood sticks.

7. Allen collected nine latent prints from the beer cans. Of these nine, only two were of value. Of these two, one matched the victim, Sabrina Buie. The remaining print of value was compared against all suspects at that time: Brown, McCollum, Darrel Suber (Suber), and Chris Brown, with no identification.

8. On Tuesday, September 27, 1983, in response to a tip from a "confidential informant," Robeson County Detective Garth Locklear interviewed McCollum at McCollum's home on Malpass Street. McCollum denied any involvement in Sabrina's murder and did not implicate himself or anyone else, including Brown.

9. On Wednesday, September 28, 1983, Officers took McCollum from his home to the Red Springs Police Department. SBI Agent Kenneth Snead, Robeson County Sheriff's Investigator Kenneth Sealey, and Agent Allen interrogated McCollum at the Red Springs Police Department. At the conclusion of the interrogation, Snead wrote out a statement that McCollum signed, implicating himself, his brother Leon Brown, and three other boys, Chris Brown, Darrel Suber (Suber) and Louis Moore (Moore).

10. On September 28, 1983, Brown, his mother Mamie and his half-sister Geraldine went to the Red Springs Police Department to ask why McCollum was being held. Allen and Snead, along with Red Springs Police Chief Luther Haggins and Robeson County Sheriff's Detective Garth Locklear took that opportunity to interrogate Brown at the Red Springs Police Department. At the conclusion of the interrogation, Locklear wrote out a statement, which Brown signed. In the statement, Brown implicated himself, McCollum, Chris Brown, and Suber.

11. Although Brown and McCollum allegedly made detailed statements, there were a number of inconsistencies in their statements. Investigators found that both Suber and Moore had credible alibis. Suber, Moore, and Chris Brown were never charged.

12. During the course of their investigation, detectives also interviewed a boy named L.P. Sinclair, who made a number of inconsistent statements but never implicated Brown or McCollum.

13. Brown and McCollum were arrested and charged on the basis of their "confessions" to investigators, despite the fact that there was no physical evidence linking either to the crime.

14. At the time of his arrest, Brown was fifteen-years old and was in the seventh grade. He was functioning at the intellectual level of a second grader and could barely read or write. At Brown's retrial, the trial court found as a fact that Brown had an IQ variously tested between 49 and 65 and has been generally classified as suffering from mild mental retardation.

15. In 1988, the cases were remanded for a new trial based upon the trial court's erroneous instructions to the jury. *State v. McCollum and Brown*, 321 N.C. 557, 364 S.E.2d 112 (1988).

16. In June 1992, Brown was retried in Bladen County. The trial court dismissed the first-degree murder charge at the close of the State's evidence; however, on June 10, 1992, the jury convicted

Brown of first-degree rape. Brown was sentenced to life in prison. *State v. Brown*, 112 N.C. App. 390, 436 S.E.2d 163 (1993). Brown was transferred from Death Row and has remained in prison facilities since his retrial in 1992.

17. In August 1995, in response to McCollum's Motion for Appropriate Relief, Assistant Attorney General Thomas Hicks of the Special Prosecutions Division requested all reports, notes, and evidence from every law enforcement officer involved in Brown and McCollum's case. Each officer involved in the case from Red Springs Police Department, Robeson County Sheriff's Office, and the North Carolina State Bureau of Investigation asserted that the law enforcement agency was not in possession of any reports, notes, or evidence related to the case.

18. On November 6, 2004, McCollum's motion for postconviction DNA testing under the provisions of N.C.G.S. §15A-269 was granted. LabCorp developed a DNA profile from the Newport cigarette butt found at the crime scene. McCollum was excluded as the source of the DNA. The LabCorp analyst concluded that the profile was consistent with originating from an unknown male source. No further testing was conducted.

19. In 2010, Brown commenced a Claim of Innocence with the Innocence Inquiry Commission (Commission) in Raleigh, North Carolina and in July 2010 executed a Waiver of All Safeguards and Protections. In 2011, Brown executed two affidavits of Actual Innocence.

20. Commission Associate Director Sharon Stellato (Stellato) has been the lead investigator since Brown commenced his claim. Stellato and other Commission staff have conducted an exhaustive investigation since 2010. The ongoing investigation has included extensive testing of biological evidence, all of which was collected during the original investigation into Sabrina's murder in 1983, but some of which has only recently been discovered through the Commission's efforts.

21. On December 31, 2010, LabCorp extracted a partial DNA profile from the Newport cigarette butt. Brown was excluded as a source of the DNA from the cigarette butt. The profile was from an unknown male. A copy of LabCorp's December 31, 2010 Certificate of Analysis, marked as Attachment A, is attached hereto and fully incorporated by reference herein.

22. On August 1, 2011, LabCorp conducted analyses of several more items of evidence related to Sabrina Buie's murder. Brown was excluded as a source of DNA from a beer can and a five-inch stick from the crime scene. Brown was also excluded as a source of DNA from Sabrina Buie's panties. A copy of LabCorp's August 1, 2011 Certificate of Analysis, marked as Attachment B, is attached hereto and fully incorporated by reference herein.

23. On May 16, 2014, Cellmark Forensics, a LabCorp Specialty Testing Group in Dallas, Texas, tested a nine and a half inch stick from the crime scene. Brown was excluded as a source of DNA from the stick.

24. As part of its testing in August of 2011 (as described in Paragraph 22), LabCorp reamplified the unknown male DNA profile from the cigarette butt. The Commission had the unknown DNA profile uploaded into the Combined DNA Index System (CODIS). On July 10, 2014, the DNA profile was identified as belonging to Roscoe Artis (Artis).¹ When the CODIS hit was returned, the Commission obtained a DNA standard from Artis and confirmed that Artis' DNA matched the profile obtained from the cigarette butt. The Notification of CODIS hit, marked as Attachment C, is attached hereto and fully incorporated herein.

25. On August 20, 1984, Artis was convicted in Robeson County Superior Court of the first-degree rape and murder of 18 year old Joann Brockman (Brockman). Artis was sentenced to death. *State v. Artis*, 325 N.C. 278, 384 S.E.2d 470 (1989). Artis murdered Brockman on October 22, 1983, less than one month after the murder of Sabrina Buie on September 24, 1983. Brockman and Buie were both murdered in Red Springs and the cause of death for both was asphyxia due to manual strangulation. There were other striking similarities between the two murders. The same Robeson County detective investigated both murders. During Artis' trial, the State presented the testimony of Billie Ann Woods (Woods). Artis was convicted of assaulting Woods nearly ten years before he murdered Brockman. Artis was convicted of the rape and murder of Brockman on August 20, 1984. McCollum and Brown were convicted of the rape and murder of Sabrina Buie on October 8, 1984, less than two months after Artis'

¹ Please see the following paragraph relating to Artis.

trial. Artis' death sentence was later vacated due to a *McKoy* error and he was removed from Death Row. *State v. Artis*, 329 N.C. 679, 406 S.E.2d 827 (1991).

26. During its investigation, the Commission discovered a submission from the Red Springs Police Department to the SBI Lab requesting a comparison of the unknown fingerprint from the beer can found at the crime scene as described in Paragraph 7 above. The request was submitted on October 5, 1984, three days prior to the beginning of Brown and McCollum's joint trial. The Red Springs Police Department asked for a comparison of the unknown print to those of L.P. Sinclair and Roscoe Artis.² No comparison or testing was ever done. On October 5, 1985, the request for the Sinclair/Artis comparison was cancelled. This report was never provided to District Attorney Johnson Britt nor was it in the discovery provided to Brown or McCollum. A copy of the report, marked as Attachment D, is attached hereto and fully incorporated by reference herein.

27. On June 10, 2010, after the Commission initiated its investigation into Brown's innocence claim, Nash County Senior Resident Superior Court Judge Quentin T. Sumner signed an Order to Preserve and Produce Evidence related to Brown's case on all law enforcement agencies that assisted in the investigation, including the Red Springs Police Department. A copy of the Order, marked as Attachment E, is attached hereto and fully incorporated by reference herein.

28. On August 10, 2010, Red Springs Police Department Captain Kevin Locklear sent a letter to Robeson County District Attorney Johnson Britt regarding Brown's case.

29. Locklear's letter reads in part: "In the case concerning Leon Brown 83 CRS 15823 and 83 CRS 15822, I have searched our Evidence files and have found no evidence that was retained by our agency." A copy of Captain Locklear's letter, marked as Attachment F, is attached hereto and fully incorporated by reference herein.

30. On October 21, 2010, Judge Sumner signed an Order directing the Red Springs Police Department to "produce a complete copy of its investigative file maintained by the Department in the

² Thus directly supporting the fact that the State both knew of the Artis connection and was sufficiently concerned that the "confessions" were false and that the State suspected that Artis may have been the true perpetrator.

murder of Sabrina Buie including all documents related to Leon Brown and/or the codefendant, Henry McCollum.” A copy of the Order, marked as Attachment G, is attached hereto and fully incorporated by reference herein.

31. Since the Commission began its investigation into Brown’s case in 2010, Stellato has spoken with the Red Springs Police Department on a number of occasions. The Department has always maintained that all evidence and files were turned over to the SBI and that no evidence was in its possession.

32. In July of 2014, Stellato reviewed a file which indicated that Red Springs was in possession of some evidence in 1995, well after Brown and McCollum’s trials.

33. On August 6, 2014, Stellato and Commission Legal Investigator Sarah Riney went to the Red Springs Police Department, where they located and seized missing evidence. The evidence was contained in a banker’s box with a manila envelope taped to the outside. This evidence has been at the Red Springs Police Department since the early 1990s. The box contained physical evidence, court documents and exhibits from McCollum’s second trial, crime scene photographs, latent lifts, and empty envelopes. Among the evidence was an unsealed SBI envelope containing nine evidence envelopes of hairs and slides which include pubic hair combings from Sabrina Buie, hair found on Sabrina’s blouse, hair from an anal swab, and known head and pubic hairs from Sabrina. The box contained an envelope labeled “Enclosed inked prints McCollum/Brown/Victim & 3 latent prints.” The envelope contained two business cards from (former) SBI Director Haywood Starling, with latent lifts on the back of the cards. The lifts are labeled as “Beer can in envelope” and “Beer can in paper bag.” These are dated 10/9/91, immediately prior to McCollum’s second trial. The Commission inventoried the contents but the victim’s fingerprints were not in the envelope. The box also contained an unsealed envelope labeled as containing “wrapper from victim’s body.” This envelope contained a small sealed envelope containing the wrapper from Sabrina’s body; a sealed plastic bag labeled left nails of Sabrina Buie; and a sealed plastic bag labeled right nails of Sabrina Buie. The banker’s box also contained one envelope containing a beer can, a Vaseline jar, and a gum wrapper. None of these items were ever submitted for testing.

34. On August 22, 2014, Cellmark tested fourteen hairs collected from Sabrina's shoes and clothing. There was insufficient DNA for testing on nine of the hairs. Cellmark developed a mitochondrial DNA (mtDNA) sequence on four hairs and a partial DNA profile from one hair. Brown was excluded as a contributor to the DNA profile on all five hairs. A copy of Cellmark's August 22, 2014 report, marked as Attachment H, is attached hereto and fully incorporated by reference herein.

35. The Red Springs Police Department did not, at any time, make this evidence available to District Attorney Johnson Britt or Brown's attorneys. The Red Springs Police Department did not, at any time, make the existence of such evidence known to District Attorney Johnson Britt. The discovery of this and other potentially exculpatory evidence has come to light only because of the Commission's investigation. Neither Brown's attorneys nor District Attorney Johnson Britt could have or would have known of the existence of this evidence but for the Commission's investigation and ability to conduct its own search.

36. Brown and his attorneys were clearly entitled to this evidence in order to prepare and present an effective defense. Such evidence was and is material to Brown's guilt or innocence and the suppression of such evidence violated Brown's due process rights.³

37. Given all of these facts, the only appropriate Order that "serves the interests of justice," N.C.G.S. §15A-270(c), is an Order that vacates and sets aside the judgment of conviction, completely discharges the Defendant, and declares the Defendant innocent of the rape and murder of Sabrina Buie.

BASED UPON THE FOREGOING, Defendant Leon Brown submits and contends the following:

1. Leon Brown's "confession" is demonstrably unreliable and cannot be considered in a determination of his guilt or innocence.
2. The DNA tests prove that Leon Brown is innocent of the rape and murder of Sabrina Buie.
3. The DNA tests prove that Roscoe Artis is guilty of the rape and murder of Sabrina Buie.

³ *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

4. From 1984 until 2014, the Red Springs Police Department was in possession of exculpatory evidence which is material to Leon Brown's innocence.
5. The Red Springs Police Department withheld exculpatory evidence from the State and from Leon Brown and his attorneys.
6. Regardless of the State's good or bad faith, suppression of such exculpatory evidence is an egregious violation of Leon Brown's rights under the Due Process Clause of the United States Constitution.

WHEREFORE, Defendant Leon Brown prays the Court vacate the judgment entered in 1992 with prejudice, declare his innocence, and order his immediate discharge from custody.

Respectfully submitted this the 27 day of August, 2014.

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Certificate of Service

I, W. James Payne, hereby certify that I have caused a true and correct copy of the foregoing pleading to be mailed, by first class U.S. mail, postage prepaid, to:

The Honorable L. Johnson Britt, III
Robeson County District Attorney
Courthouse Box 19
500 North Elm Street
Lumberton, North Carolina 28358

This 27 day of August 2014.

W. James Payne by
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