

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2014 AUG 29 A 8:41

STATE OF NORTH CAROLINA ROBESON COUNTY, N.C. v. Robeson County File #s 1983 CRS 15506-07
(Cumberland County File # 1991 CRS 40727)

v.

BY _____

HENRY LEE MCCOLLUM

And

LEON BROWN

Robeson County File #s 1983 CRS 15822-23
(Bladen County File #s 1992 CRS 2491-92)

**THE STATE'S RESPONSE TO THE DEFENDANTS' MOTIONS FOR
RELIEF PURSUANT to N.C. GEN. STAT. 15A-269-270.**

Now comes the State by and through, District Attorney Johnson Britt, District 16B (Robeson County) and responds as follows:

1. The defendants were arrested on September 29, 1983 and charged with first degree murder and first degree rape of 11-year old Sabrina Buie and convicted in a joint trial in 1984 and sentenced to death.
2. The facts of these cases are reported in the opinions *State v. McCollum and Brown*, 312 NC 557 (1988) and *State v. McCollum* 334 NC 208 (1994) and *State v. Brown* 112 NC App 390 (1993).
3. In *McCollum and Brown*, 312 NC 557 (1988), the North Carolina Supreme vacated the defendants' convictions and ordered new trials.
4. The court of original jurisdiction and venue is Robeson County Superior Court. Pursuant orders entered in Robeson County Superior Court, venue in both cases was changed with McCollum's case being transferred to Cumberland County Superior Court and Brown's case being transferred to Bladen County Superior Court.
5. The evidence against both defendants centered on confessions made by each to law enforcement and the testimony of witness, L.P. Sinclair, Jr.
6. In both of McCollum's trials he was convicted of first degree murder and first degree rape and sentenced to death. He is currently housed on Death Row at Central Prison.
7. In Brown's first trial he was convicted of first degree murder and first degree rape and was sentenced to death. In his second trial, the first degree murder charge was dismissed

- by the court at the close of the State's evidence and he was convicted of first degree rape and was sentenced to life. He is currently housed in the North Carolina prison system.
8. At the time of their arrests and subsequent convictions no physical evidence linked the defendants or anyone else to the commission of these crimes.
 9. Prior to the DNA testing that is the subject matter of the defendants' motions for relief the only forensic evidence developed linking anyone to these crimes was a single fingerprint lifted from a beer can identified as that of the victim Sabrina Buie.
 10. Of the nine (9) latent fingerprints lifted from items of evidence collected at the crime scenes only two (2) lifts were sufficient for purposes of identification. As previously stated one (1) fingerprint lift was identified as being Sabrina Buie's and the other was not and has not been identified.
 11. The defendants, McCollum and Brown, and their alleged and uncharged accomplices were eliminated as the sources of the unknown and potentially identifiable fingerprint.
 12. In 2004, defendant McCollum filed a "Motion for Post-Conviction DNA Testing" pursuant to NC Gen. Stat.15A-269 and with the consent of the State received an order for DNA testing of physical evidence introduced at trial that included a Newport brand cigarette butt collected at the crime scene.
 13. In the prior prosecutions of the defendants, it was the prosecutors' theories that the killer or one of the killers dropped/left the cigarette butt at the crime scene.
 14. Information from the investigative reports that alleged and uncharged accomplice Darryl Suber smoked Newport brand cigarettes.
 15. Pursuant to the consent order for post-conviction DNA testing, the Newport brand cigarette butt was submitted to the SBI Crime Lab (now the State Crime Lab) for DNA testing. The SBI Crime Lab reported there was an insufficient amount of DNA to conduct testing.
 16. In 2010 the defendant, Leon Brown filed a claim of innocence with the North Carolina Innocence Commission.
 17. Based upon Defendant Brown's claim and the subsequent investigation by the Innocence Commission new forensic testing including new DNA testing has been conducted by Cellmark Forensics (LabCorp) a private testing laboratory.
 18. Cellmark developed a DNA profile from the Newport brand cigarette butt previously submitted to and examined by the SBI Crime Lab.

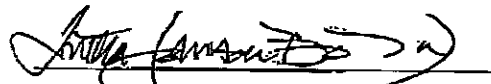
19. The profile developed by Cellmark on behalf of the Innocence Commission was then by court order submitted to the State Crime Lab for comparison with the State DNA database maintained by the Crime Lab.
20. That comparison against the State database resulted in a CODIS hit with a DNA profile. The individual identified was not one of the named defendants or the alleged and uncharged accomplice Darryl Suber. A DNA sample was provided by Suber.
21. The CODIS hit was with Roscoe Artis, an inmate serving a life sentence for first degree murder and first degree rape of teenage victim Joann Brockman that occurred in Robeson County on the outskirts of Red Springs, NC in October 1983 and a short distance from the scene of the September 1983 Sabrina Buie murder and rape crime scene.
22. Confirmatory testing of the CODIS hit was performed utilizing a known DNA sample obtained from Roscoe Artis and submitted by investigators with the Innocence Commission to Cellmark. That confirmatory testing utilizing Y-STR DNA testing matched with the known Artis sample.
23. The Y-STR DNA testing eliminates the defendants, McCollum and Brown as sources of the cigarette butt DNA.
24. *Subsequent confirmatory testing of the DNA profile from the cigarette butt and the DNA profile of Roscoe Artis conducted by the State Crime Lab utilizing STR DNA testing resulted in a finding that the DNA profile is consistent with Artis, and the probability of selecting an unrelated individual with a DNA profile consistent with the partial DNA profile 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 population in the NC Lumbee population and 1 in 89.9 billion in the NC Hispanic population.*
25. Additional DNA testing of other items of evidence has excluded the defendants and their alleged and uncharged accomplice Darryl Suber as the sources of the DNA profiles developed.
26. Artis has also been excluded as the source of DNA profiles developed on items of evidence other than the cigarette butt.

**MOTION FOR RELIEF BASED ON N.C. GEN. STAT. 15A-269 and 270
DNA EVIDENCE**

27. *N.C. Gen. Stat. 15A-269 authorizes post-conviction DNA testing and 15A-270(a) provides that upon receiving the results of DNA testing, the Court shall conduct a hearing to evaluate the results and determine if the results are unfavorable or favorable to the defendants.*

28. *Under 15A-270(b) if the DNA results are not favorable to the defendants the motions are to be dismissed.*
29. *Under 15A-270(c) if the DNA results are favorable the court shall enter an order in 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; or (4) grants a new trial.*
30. *The DNA test results based upon the 2004 consent order are not favorable to the defendant, McCollum, but the DNA test results conducted as a result of the defendant Brown's innocence claim and conducted for the Innocence Commission by Cellmark are favorable to both defendants in that a third person, Roscoe Artis, is identified as the source of the DNA found on the cigarette butt collected at the crime scene, and additional test results exclude the defendants as the sources of DNA.*
31. *The State concedes that the CellMark DNA test results are favorable to both defendants, and if the Court so finds, the defendants are entitled to relief as is available under the statute and that furthers the interests of justice.*

This the 29th day of August, 2014.



Luther Johnson Britt III
District Attorney
District 16B/Robeson County
NC State Bar #14161

Certificate of Service

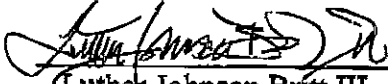
The undersigned certifies that I served a copy of this pleading on counsel for the defendants by electronic mail and by hand delivery as follows:

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Electronically mailed on August 28, 2014

Hand Delivered on September ____, 2014.



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RE: MCCOLLUM/BROWN

DATE: AUGUST ²⁹~~28~~, 2014

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