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Wrongful Convictions in North Carolina:

Lessons Learned and Recommendations for Continued Reform

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Executive Summary

Guilt beyond a reasonable doubt is the bedrock principle of the American criminal legal system, and yet, thousands of innocent people have been convicted of crimes they did not commit. These wrongful convictions undermine the integrity of our criminal legal system. The National Registry of Exonerations (National Registry) has tracked every known exoneration since 1989 and reports that there have been 3,348 exonerations amounting to 29,950 years lost to wrongful incarceration.¹ This includes 75 exonerations in North Carolina since 1989, representing a combined 963 years of wrongful confinement.²

In response to high-profile cases and exonerations, North Carolina implemented significant reforms in the early 2000s and became a leader in preventing wrongful convictions. During this time, North Carolina implemented open file sharing and established the North Carolina Innocence Inquiry Commission (“Commission”). North Carolina also enacted the Electronic Recording Act, the DNA Databank Act, and the Eyewitness Identification Reform Act. Several Innocence Project organizations were also established in North Carolina to represent individuals with wrongful convictions claims. One of those organizations, the Duke Wrongful Convictions Clinic, went on to become a founding member of the Innocence Network, which is a network of innocence organizations that work to combat wrongful convictions.³ Since 2006, however, there have been 58 exonerations, 11 of which had their underlying conviction occurring after 2006, despite having these reforms in place.⁴ These most recent wrongful convictions could result from the stall in reforms in North Carolina since the early 2000s.

This report describes the wave of legislation that occurred in North Carolina in the early 2000s, considering both the improvements that were made and the gaps that remain. It then analyzes the 11 documented cases of wrongful convictions since the establishment of the Commission in 2006 to identify the reforms that North Carolina still needs. This report emphasizes that to reclaim its role as a national leader in conviction integrity, North Carolina should amend its open-file discovery policy, police interrogation practices, plea process, use of eyewitnesses and police informants, and use of forensic evidence. Finally, this report offers recommendations on ways to prevent wrongful convictions and make relief more accessible for those with plausible claims of factual innocence to ensure that those who have been wrongfully convicted have a genuine opportunity to prove their innocence. Overall, this report underscores the importance of taking proactive steps to prevent wrongful convictions and providing relief to those who have been wrongly convicted.





Summary of Recommendations

1. Revise the state's open-file discovery procedures to make disclosure requirements automatic rather than requiring the defense to submit a formal request.
2. Establish professional integrity programs in District Attorney's Offices to serve as a quality assurance and compliance program embedded in each of their local offices.
3. Adopt interrogation policies to reduce the occurrence of false confessions, including prohibiting officers from using promises of leniency during an interrogation, prohibiting officers from lying about evidence, mandating that officers be trained on nonconfrontational interview techniques, and requiring annual training of officers on how to recognize and properly question vulnerable suspects.
4. Increase transparency into the plea negotiation process.
5. Eliminate the use of bond tables based on punishment class and require counsel's presence at the first appearance and the detention bond hearing.
6. Protect non-English speakers by providing an interpreter at all hearings and mandating a checklist for interpreters, defense, and prosecuting attorneys to review the terms of the plea agreement before entering the plea in court.
7. Implement policies to improve the reliability of eyewitnesses and informants by following requiring that all agreements between informants, police, and prosecutors be reduced to writing and made available for review by supervising agencies and opposing counsel; requiring that courts hold a pretrial hearing to corroborate informant testimony and vet an informant and witness credibility; implementing a practice of documenting every conversation between police and informants via written documentation or electronic recording when feasible; creating and maintaining an informant database to prevent the repeated use of unreliable informants; and creating a suitability report and cross-benefit analysis where the value of using a particular informant is weighed against the risk.
8. Adopt legislation to mandate the practice of documenting eyewitness identification through video and audio recording.
9. Mandate that the defense team have the right to use the assistance and testimony of an expert in eyewitness testimony.
10. Define a duty for the Attorney General's office to review and investigate all cases it will defend and divest that duty into a conviction integrity unit.
11. Reform the North Carolina Innocence Inquiry Commission by eliminating the requirement for applicants to waive all protections and procedural safeguards, allowing an applicant's personal attorney to continue their investigations and claims while the Commission reviews the innocence claim, and eliminating the requirement for unanimous consent in cases where an applicant's conviction was the result of a plea deal.

North Carolina's Reform Efforts

Inspired by the advancement of DNA technology and the subsequent identification of cases where the accused was wrongfully convicted, in 2002, Chief Justice I. Beverly Lake of the North Carolina Supreme Court gathered a bipartisan group of representatives, including members from law enforcement, the criminal legal field, and academia, together to discuss growing concerns surrounding wrongful convictions.⁵ Chief Justice Lake believed changes to the justice system were necessary to prevent wrongful convictions and ensure an objective review of credible claims of innocence without compromising the conviction of the guilty.⁶ Ultimately, the group formed the North Carolina Actual Innocence Commission, the purpose of which was to identify the common causes of wrongful convictions, identify potential solutions, and make recommendations to prevent future wrongful convictions.⁷ As a result of these efforts, North Carolina enacted several pieces of legislation to advance the integrity of the North Carolina criminal legal system.

Preservation of Biological Evidence

Preserving biological evidence is important to ensure that evidence is available for testing in potential future post-conviction proceedings.⁸ North Carolina enacted N.C.G.S. § 15A-268 in 2001 to establish guidelines for preserving biological evidence. This law follows the guidelines recommended by the National Institute of Standards and Technology (NIST) working group.⁹ The statute mandates the automatic preservation of biological evidence for specified periods based on the type of sentence. The statute states that evidence for a person sentenced to a death must be preserved until the person is executed, until the person dies if sentenced to life, while the person remains on the sex offender's registry, or while the person is incarcerated for an enumerated list of other felonies.¹⁰ In any guilty plea, the evidence must be preserved for three years from the date of conviction or until release from prison, whichever



is earlier.¹¹ Additionally, any biological evidence collected during a criminal investigation of a homicide or rape, where no charges are filed, must be preserved as long as the crime remains unsolved.¹²

Open-File Discovery

Open file sharing is designed to prevent prosecutors from withholding exculpatory or impeachment evidence from the defense so that defendants may properly assess the strength of the case against them and mount a strong and accurate defense.¹³ In 2004, North Carolina became the first state to adopt full open-file sharing with N.C.G.S. § 15A-902.¹⁴ Governor Mike Easley signed this statute was signed into law after prosecutors were found to have withheld significant exculpatory and impeachment evidence in the capital murder case of Alan Gell.¹⁵ The law requires prosecuting attorneys to furnish certain documents like police investigator notes, statements from the defendant and witnesses, test results, and a list of potential witnesses to the defense before trial.¹⁶ However, such material must be requested by the defense because the disclosure requirement is not automatic.¹⁷ This can be problematic when defense counsel is short on time or for defendants who are representing themselves and do not know to ask for the material.

The North Carolina Innocence Inquiry Commission

After the North Carolina Actual Innocence Commission reviewed the issues with North Carolina's post-conviction process, including the cost and length of the process, the Actual Innocence Commission drafted a bill establishing the North Carolina Innocence Inquiry Commission that the North Carolina General Assembly later passed.¹⁸ The North Carolina Innocence Inquiry Commission was established in 2006 by N.C.G.S.

§ 15A-1475.¹⁹ The Commission provides a forum for individuals claiming factual innocence to seek a review of their conviction.²⁰ The Commission's process is distinct and separate from the traditional appeals process. When it was established, the Commission became the first state agency in the United States with the power to investigate, review, and refer claims of factual innocence for judicial review.²¹ The Commission has several full-time dedicated staff, including an Executive Director, an eight-member voting panel, and an annual budget of almost 1.5 million dollars.²² Since its creation, the Commission has received 3,373 claims, held 18 hearings, and contributed to 15 people being exonerated.²³

Despite its impactful work, the Commission requires an applicant to meet certain criteria that significantly limit the number of people who can be eligible for relief. First, the applicant must submit a claim of factual innocence, meaning there is evidence that the applicant did not commit the crime.²⁴ This evidence must be credible, verifiable, and not previously heard at trial or post-conviction proceedings.²⁵ To have a claim formally investigated by the Commission, the applicant must waive all privileges related to attorney-client communication.²⁶ The applicant must also agree to be prosecuted for any wrongdoings that might be discovered during the Commission's investigation.²⁷ This requirement could have a chilling effect on those falsely accused of a crime with little to no trust in the judicial process. Additionally, if an applicant's conviction stems from a guilty plea, they must receive a unanimous vote from the panel before proceeding.²⁸ This is higher than the majority standard for those convicted at trial.²⁹ While this standard may seem warranted in that a person admits guilt when they plead guilty, it ignores the reality that "plea bargains are not confessions" and "that very little is admitted in plea bargaining."³⁰

The Eyewitness Identification Reform Act

The North Carolina Eyewitness Identification Reform Act was enacted in 2007 to prevent witness misidentification.³¹ Witness misidentification is a leading cause of wrongful convictions, contributing to approximately 56% of known wrongful convictions.³²

Scientists who study misidentification have identified certain practices that increase the likelihood of misidentification. These include having a lineup administered by someone who knows the suspect's identity which could lead to the intentional or unintentional influence of the witness's identification or not having sufficient non-suspects included in the lineup. The Eyewitness Identification Reform Act adopted certain best practices, including requiring that lineups be blinded or double-blind. In a double-blind lineup, the lineup is administered by someone who is not otherwise working on the investigation and has no prior knowledge of the suspect's identity. In a blinded procedure, the administrator *does* know the suspect's identity but cannot see which lineup member is being viewed by the witness. The Eyewitness Identification Reform Act also requires that line-ups have five additional non-suspect members, known as "fillers," who match the perpetrator's description.³³ The use of show-ups, where only one person is presented to the witness, is prohibited except under specific circumstances.³⁴ The Eyewitness Identification Reform Act also establishes requirements for specific instructions that must be given to the eyewitness.³⁵ Further, it sets out remedies for failure to comply with the Act, including using the failure to comply as evidence in motions to suppress eyewitness identification. Additionally, failing to comply can be included in jury deliberations when determining witness credibility.³⁶ The Eyewitness Identification Reform Act does not, however, set a limit for how many

photos can be shown to a witness. This gap allows police to show a witness an unlimited number of photos, which may influence the witness's recollection of events or pressure the to identify a potential suspect.

The Electronic Recording of Interrogations Act

North Carolina's Electronic Recording of Interrogations Act was enacted in 2007 and amended in 2011. One of its goals is to prevent coercion during the interrogation process, thereby reducing false confessions. To that end, the Electronic Recording of Interrogations Act mandates that "any law enforcement officer conducting a custodial interrogation in an investigation relating to any of the following crimes shall make an electronic recording of the interrogation in its entirety: any Class A, B1, or B2 felony; and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury."³⁷ Like the Eyewitness Identification Reform Act, failing to comply with the Electronic Recording of Interrogations Act can be used as evidence in court. If an interrogation should have been recorded but is not, a judge can consider it when ruling on a motion to suppress, or it can be used as evidence during a jury's deliberation.³⁸ Despite the Electronic Recording of Interrogations Act being in place, six of the known wrongful convictions since 2007 have involved false confessions. In five of those cases, the interrogation was recorded. Thus, while recording the interrogation may not be sufficient to prevent the false confession, the recording is helpful in subsequently challenging the validity and reliability of the confession.

Post Conviction Discovery

North Carolina General Statute § 15A-1415(f) outlines the rights that defendants have and the necessary procedures required to obtain post-conviction

discovery.³⁹ Section (f) of this statute was amended in 2009 to provide all defendants represented by counsel in a post-conviction proceeding in superior court with complete access to all files, documents, and evidence pertaining to their case.⁴⁰ Before this 2009 amendment, only defendants convicted of a capital offense and sentenced to death were allowed to access such information.⁴¹ This change enables attorneys preparing motions for appropriate relief (MARs) to access pertinent information to establish a violation of the defendant's constitutional rights or to prove the defendant was wrongfully convicted. However, the provisions regarding when an attorney may request documents under section (f) and the standards for judicial review can make it more difficult to obtain material.

Section 13.8 of the North Carolina Rules of Criminal Procedures states that an attorney should request discoverable material under North Carolina General Statute § 15A-1415 (f) before filing an MAR to avoid any chance of an issue being discovered after the motion is filed.⁴² However, the North Carolina Supreme Court ruled in *State v. Atkins*, 349 N.C. 62, that section (f) does not apply to defendants who choose to file a MAR before they have completed their direct appeal.⁴³ The North Carolina Rules of Criminal Procedure highlight the importance of having discoverable material before filing a motion. In practice and case law, the discoverable material is denied until a motion is filed, which leaves the door open for evidence to be missed.

Moreover, § 15A-1415(f) permits the prosecution to challenge a defendant's request for material by petitioning the court to inspect and withhold material that would not serve the best interest of justice.⁴⁴ This process, however, is done without an evidentiary hearing and gives the court the discretion to withhold requested material.⁴⁵ Furthermore, material that would be discoverable under § 15A-1415(f) can be withheld under



a procedural violation like having the opportunity to raise the issues complained of in the motion previously but failing to do so.⁴⁶

Section 15A-1415(f) would better serve its purpose of providing discovery to defendants if the NC General Assembly amended portions of the statute to create a right to discoverable material irrespective of where the defendant is in the appeal process, a right to an evidentiary hearing when evidence is challenged and making a review of discoverable material mandatory despite procedural bars.

Forensic Sciences Act of 2011

In response to the wrongful conviction of Gregory Taylor, North Carolina enacted the Forensic Science Act of 2011 (FSA). Mr. Taylor was wrongfully convicted of murder and given a life sentence after a witness with a substance

use disorder, a jailhouse informant, and a lab technician all linked Mr. Taylor to the murder.⁴⁷ Most notably, the lab technician's report indicated that there was blood present in Mr. Taylor's truck, but subsequent DNA testing showed that this was false.⁴⁸

The FSA established the North Carolina Forensic Science Advisory Board, which is a board that reviews the operations of State crime labs and makes recommendations for improving lab methods, programs, and standards.⁴⁹ The Forensic Science Advisory Board operates as an independent review board with the power to review policies, procedures, and existing casework. The board's authority, however, is limited to the review of the Raleigh, Triad, and Western State Crime labs and, therefore, has no regulatory control over county, independent, or non-accredited crime labs.⁵⁰ The FSA also requires that every forensic scientist be certified as a forensic science professional and created the position of ombudsman to ensure that the best forensic processes and procedures are being followed.⁵¹ The FSA clarified statutes that allow for the admissibility of forensic analysis into evidence, clarified the state's obligation to disclose all forensic-related information, and noted that state crime laboratory personnel serve the public and the criminal justice system.⁵²

The DNA Database and Databank Act

North Carolina also amended the DNA Database and Databank Act (Databank Act) in 2009 and again in 2013. Concerning wrongful conviction, this statute cuts both ways. On one hand, it provides the defense access to DNA databases, which may help establish that someone other than the person facing criminal charges committed the crime. On the other hand, the law permits DNA collection from people *arrested but not convicted* of certain crimes. Allowing arrestee sampling can leave

people included in databases in a perpetual suspect status and can lead to wrongful convictions when a false match is made from the Database. Arrestee sampling is felt disproportionately by Black and brown people since their communities are disproportionately policed.

A 2009 amendment included “fingerprints and human biological material” under the biological evidence term and expanded DNA samples to include all samples provided by the convicted person, including cheek and mouth samples.⁵³ This amendment created a requirement that, upon request, physical evidence be provided to criminal defendants and required that the State Bureau of Investigation (SBI) search the Combined DNA Index System (CODIS) and upload any DNA profiles relevant to a defendant's defense.⁵⁴ The Act was also amended to require that the SBI adopt guidelines for preserving DNA evidence and establish a chain of custody for handling evidence.⁵⁵ The 2009 amendment aimed to establish a DNA database and databank that would create access to a database with a wide variety of DNA samples of criminal defendants. This amendment requires that the evidence being used against the defendant is adequately preserved to avoid the possibility of contamination. These changes aim to ensure that defendants have access to the DNA evidence to test and challenge its credibility.

The 2013 amendment to the DNA Act expanded the time in which the State has to determine if a defendant qualifies to have their DNA record expunged and whether their DNA samples should be destroyed.⁵⁶ In North Carolina, once a person is placed under arrest for a wide array of qualifying crimes ranging from first-degree murder to secretly peeping into an occupied room, a sample of their DNA is taken, and a DNA record is established.⁵⁷ The amendment removed the opportunity for defense attorneys to request that DNA records be expunged and instead created a mandate



for prosecuting attorneys to review records for possible expungement within 30 days.⁵⁸ The prosecution is then required to submit a verification form to the State’s crime laboratory, where the laboratory is then given 90 days to determine if statutory requirements for expungement are met.⁵⁹ A defendant qualifies to have their DNA record expunged if the arrest results in a dismissal, acquittal, or charge of a lesser offense that doesn’t qualify for DNA collection.⁶⁰ This amendment removes the opportunity for defense attorneys to advocate for DNA expungement and gives the State more time to determine DNA expungement eligibility, which would effectively keep DNA records and samples that qualify for expungement in the state database for a longer period of time.

First Appearance Before District Court

Effective December 1, 2021, North Carolina revised its first appearance law, N.C.G.S. § 15A-601, to mandate the first appearance for misdemeanor and felony charges.⁶¹ Previously, for misdemeanor offenses, the accused was only guaranteed an initial appearance before a magistrate, where bail and release conditions were set. However, the revision now allows misdemeanor defendants to appear in front of a judge before the trial. This change allows misdemeanor defendants to have their charges and pretrial conditions reviewed by a judge in a timely manner. The revised law also shortened the time limit for holding the first appearance from 96 hours to 72 hours.⁶² This update ensures that individuals charged with a misdemeanor also get a chance to have their first appearance in court in a timely manner, thereby avoiding the possibility of extended detention while they await trial. Since North Carolina’s Judicial District 2 implemented a first appearance requirement for pretrial release, 38.10% of misdemeanor detainees were released without a secured bond.⁶³

11 Wrongful Convictions Since 2006

Despite the wave of reforms implemented in the early 2000s, North Carolina's criminal legal system still has significant gaps in legislation and practice that result in wrongful convictions of innocent individuals. Not only is there a need to revise existing laws, but there is an urgent need for the State to implement new reforms to protect vulnerable populations, including individuals with cognitive deficits, low socioeconomic statuses, those not fluent in English, and people with ongoing behavioral health conditions. Laws like open-file sharing, although groundbreaking, fall short of genuinely requiring open-file sharing by failing to make the disclosure automatic. Similarly, North Carolina established an Innocence Inquiry Commission, which is the first of its kind, but its strict eligibility guidelines, such as having to forfeit certain constitutional protections, could make it more difficult for individuals with an innocence claim.

The Eyewitness Identification Reform Act and the Electronic Recording of Interrogation Act attempt to implement best practices, but noncompliance does not automatically result in the exclusion of evidence. Evidence of noncompliance is only used as evidence in a motion to suppress or evidence in a jury deliberation. Thus, there is often no consequence for noncompliance, which disincentivizes police departments from ensuring they comply. Likewise, the DNA Database keeps the DNA of innocent individuals on file for a longer period of time, which can lead to false matches. North Carolina is also lagging behind other states, such as Illinois



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and Texas, which have enacted policies to regulate the use of informants, and Florida, which has modified its interrogation practices.

It is also essential to improve the legal system to reduce the likelihood of false confessions, coerced plea deals, false informant testimony, witness misidentification, unreliable forensic practices, and prosecutorial and

police misconduct. Moreover, it is crucial to address the limited resources available to indigent services to ensure that defendants have access to effective legal representation that would enable them to challenge faulty convictions properly. Lastly, bail reform is necessary to address the harmful effects of pretrial detention that can lead to false confessions and coerced plea deals.

North Carolina has exonerated 58 people, 11 of whom were convicted after the Commission was established in 2006. These 11 cases underscore the ongoing issues with wrongful convictions in the State and the need for reforms. These cases reveal the criminal legal system's lack of supervision and oversight. Police frequently depend on unreliable informants and witness statements, prosecutors have extensive discretionary power that may result in coerced plea agreements, defense attorneys offer insufficient legal advice, and forensic analysts present inaccurate and/or misleading interpretations of forensic analyses. The aforementioned deficiencies predominantly impact individuals who possess limited resources to contest them. While these exonerations are enlightening in many ways, it is essential to remember that they are atypical. These individuals successfully navigated the post-conviction process and were exonerated, but most wrongfully convicted people never triumph in having their convictions overturned.

Timothy Britt

Mr. Britt was wrongfully convicted of the 2011 sexual molestation of a 10-year-old and sentenced to 25 to 30 years in prison.⁶⁴ While being questioned by police, Mr. Britt repeatedly denied the



allegations. However, after more than 90 minutes of aggressive questioning, Mr. Britt, who had limited reading capabilities, signed a pre-written confession that a detective gave him in hopes it meant he could go home.⁶⁵ During the trial, police and prosecutors withheld, and Mr. Britt's attorney failed to request, information about the witness's mental health and history of making false accusations.⁶⁶ After being convicted, Mr. Britt appealed, but the conviction was upheld by the North Carolina Court of Appeals.⁶⁷ Mr. Britt then hired a private attorney who investigated his case and filed a motion for appropriate relief (MAR). The MAR made three main points: 1) the victim, who had been the main witness in the case, had later recanted and told a friend that Britt had never molested her; 2) the prosecution withheld exculpatory information that went to the credibility of the witness; and 3) Mr. Britt's trial attorney had been ineffective in not properly investigating the case. The Court granted his motion, and Mr. Britt was released after five years in prison.⁶⁸

Noe Moreno

Mr. Moreno was wrongfully convicted of second-degree murder, assault with a deadly weapon with intent to inflict serious harm, and driving while impaired following a 2006 car accident that caused the death of one person and injury to five others.⁶⁹ Because the crash threw Mr. Moreno from the vehicle's passenger side towards the driver's seat, police incorrectly identified him as the driver.⁷⁰ Despite Mr. Moreno's claims that he was not the driver, his attorney did not investigate the accident and instead advised Mr. Moreno, who did not speak English and was barely literate, to plead guilty.⁷¹ After reviewing the case, the Duke Law Innocence Project



and the Duke Law Wrongful Convictions Clinic filed a MAR that argued the original investigation was inadequate.⁷² The District Attorney agreed to release Mr. Moreno after two accident reconstructions showed he was not the driver.⁷³ Mr. Moreno was wrongfully incarcerated for six years before he was released in 2012.⁷⁴

Willie Shaw

Mr. Shaw was working as a certified nursing assistant at a retirement living facility when he was wrongfully accused of patient abuse and neglect after a patient he was treating was found bleeding in bed and ultimately died from her injuries.⁷⁵ Mr. Shaw consistently denied any wrongdoing, but after being interrogated by police for several hours, he conceded that it was possible that he could have accidentally caused an injury while caring for the patient.⁷⁶ In order to maintain his innocence but avoid being charged with first-degree murder, on June of 2016, Mr. Shaw entered an *Alford* plea.⁷⁷ On April 12th, 2017, Mr. Shaw filed a *pro se* MAR, which the Court denied.⁷⁸ In 2018, the Duke Law Wrongful Convictions Clinic took the case and initiated a new investigation that found that Mr. Shaw's attorney did not adequately investigate the case and that the medical examination did not support the State's claims.⁷⁹ Mr. Shaw's motions argued that 1) his attorney had but did not share evidence with him showing the patient was healthy after Mr. Shaw saw her and 2) the State withheld information suggesting an alternative theory of how the patient could have been injured.⁸⁰ After a three-day hearing, the State signed onto the MAR and on January 19, 2021, a judge vacated Mr. Shaw's conviction. Mr. Shaw spent five years in prison before he was released.



David Weaver

Mr. Weaver was arrested on August 23, 2018, for possession within 1,000 feet of a public park, selling and trafficking cocaine, as well as possessing marijuana.⁸¹ Mr. Weaver's arrest came after a confidential informant provided an officer with false information that Mr. Weaver sold him 2.8 grams of cocaine for \$40.⁸² After being held in jail for 16 months on a \$250,000 bond, Mr. Weaver pled guilty to trafficking cocaine and received a 35-50-month sentence.⁸³ The officer and informant involved in Mr. Weaver's case were also involved in other drug cases that relied on false informant testimony and drug evidence.⁸⁴ Because prosecutors found the officer and informant unreliable, Mr. Weaver's attorney and the District Attorney joined in a MAR.⁸⁵ On March 14, 2022, a judge granted the motion and vacated his conviction after Mr. Weaver had already completed his prison sentence.⁸⁶

Curtis Logan

Mr. Logan was arrested on January 2, 2020, for allegedly selling 20 grams of heroin to a confidential informant.⁸⁷ The informant and the arresting officer were later found to have provided false testimony and evidence in at least 12 other drug cases.⁸⁸ Despite the Bureau of Investigation's drug analysis determining that the substance Mr. Logan allegedly sold was not a controlled substance, the District Attorney used information gathered by a police officer from an informant to charge Mr. Logan with possession with intent to sell or distribute a counterfeit controlled substance.⁸⁹ The District Attorney then offered Mr. Logan a plea deal of 18 months of supervised probation, which he accepted.⁹⁰ The arresting officer and informant involved in Mr. Logan's case were later found to have used false information to obtain the arrest and conviction.⁹¹ Mr. Logan's case was then reviewed by the prosecutor's office and his conviction was vacated by the Wake County Superior Court.⁹²

Israel Grant

Mr. Grant was convicted on August 17, 2007, of two counts of armed robbery and one count of illegal possession of a firearm after two witnesses testified



that he robbed them at gunpoint in a Circle K parking lot after they withdrew money from an ATM.⁹³ Following his conviction, Grant filed two appeals and a MAR, which were unsuccessful.⁹⁴ One of the witnesses then recanted their account in an affidavit, which resulted in one of Mr. Grant's charges being vacated. This led Mr. Grant to file a subsequent motion and file an application with the Commission.⁹⁵ On January 16, 2013, the Commission opened an investigation into Mr. Grant's claim of innocence and found that the two victims had never used the ATM at Circle K and were never robbed.⁹⁶ The investigator for the Commission also found out that one of the victims in the case fabricated the story because he felt that Mr. Grant and his friends were going to harm him.⁹⁷ After reviewing the evidence, the Commission forwarded the case to a three-judge panel, which ruled in Mr. Grant's favor.⁹⁸ After spending 11 years in prison, Mr. Grant was released on January 18, 2019.⁹⁹

Knolly Brown

In January 2008, a 12-year-old girl was sexually assaulted in an abandoned home.¹⁰⁰ The victim was taken to the police station, where she looked through over 2,600 mug shots and identified five men as possible suspects.¹⁰¹ The next day, however, before police officers could question any potential suspects, the victim spotted Mr. Brown in her neighborhood and identified him as her attacker.¹⁰² Police arrested Mr. Brown, and the victim identified him in a show-up

style identification procedure.¹⁰³ Police then used the identification to obtain a search warrant for Mr. Brown's home, where they found clothing and shoes that allegedly matched the attacker's description.¹⁰⁴ Facing a much lengthier sentence if he went to trial, Mr. Brown accepted a plea offer of five to six years in prison.¹⁰⁵ On May 4, 2010, the Commission reinvestigated Mr. Brown's case and found DNA and forensic evidence that excluded Mr. Brown as the perpetrator.¹⁰⁶ After spending seven years in prison, on June 16, 2016, the Commission vacated Mr. Brown's conviction.¹⁰⁷

Mark Carver

Mr. Carver was convicted of first-degree murder after the body of a University of North Carolina-Charlotte student was found on the embankment of the Catawba River.¹⁰⁸ The victim had been strangled near where Mr. Carver and his cousin had been fishing.¹⁰⁹ After being questioned by police and let go, Mr. Carver agreed to be interviewed again and voluntarily provided police with a DNA sample from a mouth swab and fingerprints.¹¹⁰ The North Carolina State Bureau of Investigation laboratory then matched Mr. Carver's prints to a DNA profile mixture that was pulled from the victim's car.¹¹¹ Mr. Carver unsuccessfully appealed his conviction. In 2013, the North Carolina Center for Actual Innocence filed a MAR based on several investigative flaws, including exculpatory information of witnesses seeing another suspect running from the scene, Mr. Carver's physical limitations, making it difficult for him to commit the murder, his cognitive limitations that should have been considered during questioning, and the scientific limitations of identifying suspects from samples containing multiple profiles.¹¹² After spending 11 years in prison, the State granted Mr. Carver's motion due to the ineffective assistance of his counsel and the new evidence presented.¹¹³

Horace Shelton



Mr. Shelton was convicted of three counts of writing bad checks, charged as a habitual felon, and sentenced to 10 to 13 years in prison.¹¹⁴ The first two checks were used at a grocery store, and the third was used at a car repair shop, Jerry's Garage.¹¹⁵ The checks were made payable to Mr. Shelton and had his driver's license number written on the back.¹¹⁶ Mr. Shelton was also identified by the owner of Jerry's Garage and matched to suspects in a security tape.¹¹⁷ Mr. Shelton filed an appeal to the North Carolina Court of Appeals, where he argued that the courts failed to dismiss his charge of writing a bad check.¹¹⁸ He then raised his claim of innocence in a *pro se* petition to the North Carolina Supreme Court, which was denied without hearing.¹¹⁹ After his appeal was denied, Mr. Shelton reached out to North Carolina Prisoner Legal Services, who reinvestigated the evidence and found that Mr. Shelton's former coworker stole his license and was using it to write bad checks.¹²⁰ North Carolina Prisoner Legal Services filed a motion for appropriate relief, which was granted on June 12, 2014, allowing Mr. Shelton to be released after two years in prison.¹²¹

Barshiri Sandy & Henry Surpris

Co-defendants Mr. Sandy and Mr. Surpris were both found guilty of assault, robbery, and conspiracy.¹²² The charges stemmed from an April 2013 incident where Mr. Sandy, Mr. Surpris, and Bryant Baldwin approached Marcus Smith in an alleged attempted robbery.¹²³ Mr. Smith then grabbed a gun to defend himself against the attackers and shot Mr. Sandy and Mr. Surpris, and all three men fled the scene in a car driven by Mr. Baldwin.¹²⁴ At trial, the State presented evidence that Mr. Sandy and Mr. Surpris approached Mr. Smith to rob him because he was a club promoter who carried large amounts of money.¹²⁵ The defense, however, argued that Mr. Smith was a drug dealer and the co-defendants, Mr. Sandy and Mr. Surpris, were confronting Mr. Smith about marijuana they purchased from him, but he never delivered.¹²⁶ A jury returned a verdict of guilty on three felony counts, and both Mr. Sandy and Mr. Surpris filed a motion to appeal.¹²⁷ However, before their motion could be heard, Mr. Smith was indicted on federal drug trafficking charges.¹²⁸ Because of this indictment, defense counsel for Mr. Sandy and Mr. Surpris learned that the State knew about Mr. Smith's drug activity at the time of the trial, did not disclose this to the defense, and allowed Mr. Smith to lie about his drug activity on the stand.¹²⁹ The defense then filed a motion for appropriate relief, and the Court of Appeals vacated Mr. Sandy's and Mr. Surpris' sentences.¹³⁰ After two years in prison, Mr. Sandy and Mr. Surpris were released.

Key Factors Contributing to Wrongful Convictions after 2006

Wrongful convictions have devastating consequences for both the wrongfully convicted individual and society as a whole; when the wrong person is convicted, the true perpetrator remains at large, without consequence, and may commit additional crimes. This section examines the 11 known wrongful convictions in North Carolina since 2006 to understand how and why wrongful convictions happen, including issues such as prosecutor misconduct, ineffective defense counsel, eyewitness misidentification, false confessions, and unreliable forensic evidence, and then provides recommendations to remedy those issues and prevent additional wrongful convictions in the future.



Failing to Share Evidence

An open-file policy is crucial for defendants to have access to exculpatory material during the plea negotiation phase to make a balanced and informed

decision. In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court established a due process right for defendants to receive all favorable and exculpatory evidence that is material to the defendant's guilt or innocence.¹³¹ In the years since *Brady* was established, courts have expanded the scope of what evidence is required under *Brady* and have created a right for defense attorneys to automatically receive evidence in the State's possession, including all evidence obtained by police.¹³² *Brady* requires that materials be provided to the defense in a timely manner to ensure the evidence can be used at trial.¹³³ Despite the United States Supreme Court's requirement, *Brady* has been "the most common and serious type of prosecutorial misconduct."¹³⁴ Although a *Brady* violation can occur when a prosecutor mistakenly withholds information or when police withhold information from the prosecution, in many cases, prosecutors have intentionally withheld *Brady* material.¹³⁵ Nevertheless, judges and state bar disciplinary boards have consistently failed to hold prosecutors who violate *Brady* accountable.¹³⁶

As discussed above, in 2004, North Carolina enacted an open-file policy for felony cases, pursuant to which the defense has the right to view all evidence the prosecution has after making a formal written request.¹³⁷ The defendant's rights to exculpatory material under the North Carolina statute are more expansive than *Brady* in that the file sharing applies after a probable cause hearing, which determines

whether there is enough evidence to believe a crime has been committed. This statute essentially extends the *Brady* rule to the pretrial phase. However, unlike *Brady*, the disclosure is not mandatory: the defense attorney or prosecutor must formally request the material. Moreover, if the prosecution refuses to provide the material, the defense must file a motion with the court to compel pretrial discovery.¹³⁸ This additional step to obtain information serves as an unnecessary barrier to evidence the defense is entitled to, and it creates more opportunities for the prosecution to pressure a defendant into a plea deal.

Issues with evidence sharing are present in many wrongful convictions in North Carolina. When Timothy Britt was wrongfully convicted of sexually molesting a minor, the State had evidence showing that the minor suffered from mental health disorders and had a history of making false reports.¹³⁹ The prosecution, however, failed to provide the defense with this information and proceeded to prosecute Mr. Britt. Similarly, in the

cases of Barshiri Sandy and Henry Surpris, the men were convicted of assault and armed robbery after the prosecution withheld evidence that they were investigating the alleged victim of drug trafficking.¹⁴⁰ This evidence would have supported Mr. Sandy and Mr. Surpris' version of events and allowed them to better challenge the veracity of the State's key witness's claim. Finally, Mr. Shaw, who pled guilty to abuse and neglect charges after a patient in his care died from physical injuries, was not given evidence that undercut the prosecution's theory of events until three years after his conviction.¹⁴¹ The prosecution had both security footage showing the patient was healthy after Mr. Shaw last saw her, as well as evidence that showed the patient had a history of self-harm.¹⁴² Mr. Shaw's attorney had not requested access to the prosecution's files before Mr. Shaw pled guilty.¹⁴³ Had Mr. Shaw known there was evidence supporting an alternative theory of how the patient was injured, Mr. Shaw could have made a better-informed decision as to whether to go to trial or accept a plea offer.



Recommendations

- The State General Assembly should revise the State's open-file discovery procedures to make disclosure requirements automatic rather than requiring the defense to submit a formal request. The statute should be amended to allow pro se individuals the right to discovery and state that a MAR is not necessary for discovery to be granted. This would mirror the compulsory nature of the disclosure requirements under *Brady*. While courts are split on whether or not *Brady* applies prior to the defendant accepting a plea, the Seventh Circuit Court of Appeals has held that failing to disclose *Brady* material in the plea bargaining process is a violation of due process.¹⁴⁴ Additionally, the Tenth Circuit Court of Appeals has found that the prosecution has a duty to disclose *Brady* material before a guilty plea can be entered.¹⁴⁵ While the Fourth Circuit has not yet held the same, North Carolina should take this step via legislative action. While this may increase the workload on prosecutors to some extent, there is no principled reason that a defendant's access to potentially exculpatory material should rest on whether their defense counsel submits a request. Furthermore, in the same way that prosecutors should be required to share these files, defense counsel should be required to review them. Failure to do so should create a presumption of ineffective representation.

- District attorneys should establish a professional integrity program to serve as a quality assurance and compliance program embedded in each of their local offices.¹⁴⁶ Professional integrity programs have been established in 108 counties across 28 states and the District of Columbia; however, there are no local prosecutorial professional integrity programs established in North Carolina.¹⁴⁷ These programs work to track errors made in the conviction process and provide non-punitive corrections and guidance.¹⁴⁸ The program would provide a clear *Brady* standard, staff training, and audits.¹⁴⁹ The program would also provide a “pre-trial checklist and a disclosure conference,” which follows ABA-recommended best practices, as is required in Federal Courts in Massachusetts.¹⁵⁰ The program will then provide a “post-arraignment checklist and disclosure conference.”¹⁵¹ The program would coordinate between local and state law enforcement officers and prosecution offices to document when evidence was obtained by police and prosecutors and when it was turned over to the defense. This document would then be turned into an itemized disclosure list that the prosecution and defense could use to sign off on. This program would not only work to catch intentional and unintentional *Brady* violations but would also build systems that can prevent the violations from occurring.

Deceptive and Aggressive Interrogation Practices with Vulnerable Individuals

In an interrogation, certain factors can make people more vulnerable to police questioning, such as sleep deprivation, isolation, fatigue, threats, or drug/alcohol withdrawal.¹⁵² A person may also become more vulnerable due to cognitive impairments, developmental or intellectual disabilities, or mental health disorders.¹⁵³ These individuals are more susceptible to falsely confessing when under pressure.¹⁵⁴ Police officers are also trained to use various psychological techniques and strategies to elicit information or confessions from the person being interrogated. While some suspects may be able to understand these tactics as efforts specifically designed to elicit self-incriminating statements, many cannot.¹⁵⁵

One such deceptive method is the use of minimization tactics, which are used by the police to minimize the perceived severity of the situation. Police have used these tactics to explicitly or implicitly promise leniency in

exchange for a confession. Studies from false confession cases, research in human psychology, and experiments in minimization support the idea that these promises can lead a suspect to believe that the only way to reduce the severity of the situation is to comply and confess.¹⁵⁶

In *Lynumn v. Illinois*, 372 U.S. 528 (1963), the Supreme Court rejected a bright-line rule that a promise of leniency would constitute a coerced confession and instead adopted a totality of the circumstances approach to determine if a suspect's confession is voluntary.¹⁵⁷ This approach looks at multiple factors, such as whether or not the suspect was restrained or how familiar the suspect is with law enforcement, to gauge the voluntariness of the suspect's statement.¹⁵⁸ The use of deceptive tactics is weighed by the court along with other circumstances to determine whether the statement was voluntary. This means that deceptive tactics are still allowed, even when these tactics are particularly harmful to suspects.¹⁵⁹

Timothy Britt's confession resulted from using minimization tactics coupled with his limited learning

ability.¹⁶⁰ Mr. Britt was made to endure an aggressive 90-minute unrecorded interrogation where officers used isolation, threats, and intimidation to increase the stress associated with maintaining his innocence.¹⁶¹ Police then used minimization tactics by apologizing for their actions and handing Mr. Britt a pre-typed confession with the promise that he could leave if he signed.¹⁶² Mr. Britt was never asked about his ability to read, nor were the documents read to him.¹⁶³

Promises of leniency are only one form of deception that has been employed in the interrogation room. A number of states have recently moved to ban the use of deception during juvenile interrogations, and other

states are considering not only similar statutes but an expansion of the deception ban to adult interrogations. In North Carolina, however, it is legal for law enforcement to lie about evidence in an effort to compel a confession. Wrongful convictions across the country have included instances of law enforcement explicitly lying to suspects in various ways, including about the performance of forensic tests that were never done or statements by co-defendants that were never made. This type of deception creates feelings of hopelessness and inevitability in suspects, often coercing them to falsely confess. Young people are particularly vulnerable to these types of deception.

Recommendations

North Carolina's police departments and State legislators should adopt interrogation policies to reduce the occurrence of false confessions, including the following:

- Prohibit officers from using promises of leniency during an interrogation. While many courts have found promises of leniency to be harmful or even coercive, there is no established rule to determine what promises are so problematic that they should be impermissible.¹⁶⁴ This lack of clarity has resulted in case-by-case litigation to determine the validity of a confession when such promises have been used.¹⁶⁵ To avoid the harm caused by this ambiguity, the State should enact legislation that prohibits the use of implicit or explicit promises of leniency given their propensity to induce unreliable confessions.
- Prohibit officers from engaging in the false presentation of evidence, including lying about either the existence or results of forensic analyses or deceiving suspects about statements made by witnesses or other suspects/defendants. Multiple studies have shown that when false evidence is presented during an interrogation, it often leads to false confessions.¹⁶⁶ Moreover, those who falsely confess due to the use of such evidence have little protection during trial.¹⁶⁷ This is because judges and juries are not convinced when the use of false evidence is challenged by expert testimony.¹⁶⁸ To prevent such instances of false confession, the State should prohibit the use of false evidence during interrogations.
- Mandate that officers be trained on nonconfrontational interview techniques. These methods are non-guilt-presumptive and instead employ cognitive interviewing techniques that reject the use of deception or promises of leniency, which encourages officers to ask questions that engage in fact-finding rather than interrogating to encourage a confession regardless of its veracity.¹⁶⁹ Organizations such as Wicklander-Zulawski & Associates, Inc have provided nonconfrontational training to more than 100,000 law

enforcement professionals.¹⁷⁰ Currently, they train 20 police departments, including the Chicago Police Department, Broward County Sheriff’s Office, and San Antonio Police Department.¹⁷¹

- Adopt policies that require annual training of officers on how to recognize and properly question vulnerable suspects. Such a policy was enacted by the Florida Broward County Sheriff’s Office.¹⁷² Broward County detectives are instructed to ask open-ended questions to gauge a suspect’s reasoning ability instead of closed “yes or no” questions.¹⁷³ This form of questioning allows the suspect to provide an explanation and allows the officer to determine the suspect’s level of comprehension.¹⁷⁴ In Broward County, if the suspect cannot explain their rights, then the officer is instructed to notify a superior so the suspect can undergo further evaluations. The county requires that a psychologist evaluate the suspect and that an assistant state attorney and a criminal investigator corroborate their confession.¹⁷⁵

Coercive Plea Negotiations

Likewise, during the plea negotiation process, vulnerable suspects may accept plea agreements without fully understanding the details or consequences due to coercive negotiation tactics. Although the Sixth Amendment of the United States Constitution grants each person the right to a speedy trial, the reality is that the American legal system is not designed, nor does it have the capacity, to guarantee each person accused of a crime their day in court. As a result, more than 90% of criminal cases end in a plea deal negotiated between the prosecution and the defense.¹⁷⁶ This system leaves the accused, who lack financial resources or are vulnerable to undue influence, open to pleading guilty to crimes they did not commit.¹⁷⁷ This occurs because, in the plea bargaining process, prosecutors have broad discretion over the outcome of a case.¹⁷⁸ While negotiating a plea, prosecutors have several coercive tools at their disposal to encourage defendants to opt out of going to trial in exchange for a plea offer.

Trial Penalty

The practice of a prosecutor offering a plea that has more lenient terms than would be offered if the

defendant had gone to court in order to discourage a defendant from exercising trial or other procedural rights is commonly referred to as the “trial penalty.” Because prosecutors have broad discretion in what they charge and what plea they offer, they can effectively punish a defendant for exercising their right to a trial by creating a wide gap between the sentence they face if convicted at trial versus if they accept a plea offer. For example, in 2015, the average sentence for breaking and entering in the U.S. was nearly eight times longer for defendants who went to trial than it was for those who took a plea.¹⁷⁹ In the same year, the average post-trial sentence was three times more than post-plea sentencing for most other federal crimes.¹⁸⁰ The National Association of Criminal Defense Lawyers (NACDL) has found that the trial penalty gives the state a disproportionate advantage in the plea negotiation phase of litigation, which can influence even innocent defendants to plead guilty.¹⁸¹ Likewise, data from the National Registration of Exonerations shows that since 1989, 25% of almost 3,400 wrongful convictions were from guilty pleas.

The accused should not have to risk being convicted of a more serious crime and being subjected to a lengthier jail or prison sentence in order to have an opportunity to

prove their innocence.¹⁸² Sentencing should be based on the facts of the crime, and all similarly situated suspects should be treated the same regardless of whether the accused decides to go to trial or not. The prevalence of the practice of trial penalty has tipped the scales of justice and made the state the most powerful party in the room.¹⁸³ This imbalance of power can lead to a lack of fairness and accountability.¹⁸⁴

In Willie Shaw's case, the prosecutors used their charging discretion to incentivize a guilty plea. Mr. Shaw pled guilty to abuse and neglect charges in exchange for having a sex abuse charge dismissed.¹⁸⁵ Mr. Shaw entered an *Alford* plea, which allows defendants to maintain their innocence while acknowledging that the

prosecution has enough evidence to convict.¹⁸⁶ If Mr. Shaw had not accepted the plea, the prosecutor would have added an additional charge of first-degree murder based on the felony murder rule.¹⁸⁷ Although there was little evidence to support any charge, the felony murder rule permits charging a person with first-degree murder if a killing occurs during the commission of a dangerous felony. Prosecutors also used their discretion to pressure a guilty plea from Knolly Brown, who pled guilty to second-degree forcible rape in exchange for having first-degree rape and kidnapping charges dismissed. Mr. Brown avoided a trial and potential decades-long sentencing by pleading guilty. He received a five- to six-year prison sentence.



Recommendations

To balance the plea negotiation phase and ensure the accused are not punished with substantially longer sentences for exercising their right to trial, local prosecutorial offices should:

- Increase transparency into the plea negotiation process. This requires both documentation and review. One way offices can do this would be to implement a plea tracking system such as the one that was piloted in the Durham County District Attorney's Office. Together with the Wilson Center for Science and Justice, the Durham District Attorney's Office documented data from felony cases that resulted in a plea deal to create transparency in the plea negotiation process.¹⁸⁸ The District Attorney's office recorded information the defendant, the victim, and the charges.¹⁸⁹ The tracker includes demographic information as well as the amount of time that elapsed between the initial and final plea offers.¹⁹⁰ Additionally, it includes details on the plea negotiation process, such as the frequency of charges being reduced or dismissed and the factors that were taken into consideration during the negotiation.¹⁹¹ This tracker can be used to monitor the discrepancies in sentencing.
- Use the data collected in the plea tracker system to create policies to regulate prosecutors' discretion. District Attorneys' offices should establish clear policies that define inappropriate charging practices, such as prohibiting District Attorneys from using their charging power to gain an advantage in plea negotiations, mandating that prosecutors receive approval from their supervisor after a good cause showing in order to change a defendant's charges, and prohibiting using the accused's refusal to accept a plea deal as a factor in determining charges.¹⁹²



The Impact of Pretrial Detention on the Plea Process

Prosecutors frequently advocate for the denial of bond or higher bonds. This practice increases the pressure on a defendant to accept a plea offer because defendants who cannot afford or have been denied bail are detained in jail while their case is pending despite not having been found guilty. Often, for these defendants, accepting a plea deal is the fastest way to resolve their case and be released from jail.¹⁹³

North Carolina's procedures for determining conditions for pretrial release, NCGS § 15A-534(b), provide that a written promise to appear, custodial release, or unsecured bond must be imposed unless the judicial official determines that release on those conditions "will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses."¹⁹⁴ Advocates have reported, however, that non-monetary conditions are not being imposed, and suspects are detained under secured bonds without a reasonable determination being made.¹⁹⁵ The deviations from the conditions set in North Carolina's procedures for determining conditions for pretrial release could

be due to the discretion given to local jurisdictions in NCGS § 15A-534(b) and NCGS §15A-535(a), which allow judicial officials the discretion to deviate from non-monetary conditions without a written explanation.¹⁹⁶ While state law requires judicial officials to consider many factors when determining bonds, some districts use bond tables that set bonds based solely on the crime committed punishment level.¹⁹⁷ Stakeholders believe that reliance on bond tables increases the occurrence of secured bonds where a non-monetary bond would have been appropriate.¹⁹⁸

Furthermore, in 2023, North Carolina implemented the Pretrial Integrity Act, which aimed to tighten regulations on the state's pretrial release law.¹⁹⁹ Prior to the act, defendants, except for defendants in capital and domestic violence cases, could see a magistrate and have pretrial release determinations made without delay.²⁰⁰ However, under the new law, judges are required to be given 48 hours to set release conditions for most driving while impaired violations.²⁰¹ A magistrate can only set conditions for these violations if a judge is unable to do so within 48 hours.²⁰² The Pretrial Integrity Act holds defendants arrested for driving while impaired in jail for longer periods of time before their pretrial conditions are set. This recent legislation has the potential to exacerbate the pressures created by pretrial detention.

This pretrial detention strongly affects the decision to offer and accept plea deals. Research published in the *British Journal of Criminology* found that those detained before trial have fewer resources at their disposal than the accused who are released and, in turn, are more likely to accept a plea.²⁰³ Likewise, research published in *American Economic Review* showed that pretrial release "decreases the probability of being found guilty by 14%," in part because being released before trial increases an accused person's bargaining position.²⁰⁴

David Weaver was detained under a \$250,000 bail agreement and declined a plea deal the prosecutor offered him.²⁰⁵ Mr. Weaver remained in Wake County jail for 16 months and was represented by three different attorneys until he decided to plead guilty to cocaine trafficking and accept a 35- to 51-month prison sentence.²⁰⁶ Mr. Weaver's plea, like many pleas,

resulted from a combination of problematic practices. Mr. Weaver was in a difficult situation. He was facing several charges that had not yet gone to trial and was being held under a high bond that he could not afford to pay.²⁰⁷ Furthermore, he had gone through three different attorneys, and all the evidence against him was based on false testimony from an unreliable informant.²⁰⁸



Recommendations

To reduce the effect that pretrial detention has on the integrity of the judicial process, the State and local Superior Court judges should:

- Eliminate the use of bond tables based on punishment class. This has been done in NC Judicial Districts 2, 21, and 30, which cover Anson, Richmond, Scotland, Hyde, Tyrell, Washington, Martin, Beaufort, Haywood, and Jackson counties. In those judicial districts, they have replaced bond tables with a new decision-making framework that requires judges to consider punishment level as only one of many factors when handing out a bond.²⁰⁹ Other judicial districts should adopt the same approach. The tool used in Judicial District 30B allows judicial officials to consider other factors in addition to punishment class and charged offense when determining bonds.²¹⁰ The tool requires that a judicial official consider the ability to pay and the safety risk to the community.²¹¹ The tool also requires documentation for imposing secured bonds as well as a bond hearing for secured bonds.²¹²
- Require counsel's presence at the first appearance and the detention bond hearing.²¹³ Having individuals represented at the earliest stages of litigation ensures that their rights are protected and that they are not unnecessarily detained.²¹⁴ North Carolina Judicial District 30B accomplished this reform by retaining NC IDS contract attorneys to represent defendants in first appearances and bond hearings.²¹⁵ After adopting these best practices, Judicial District 30B experienced an "18% decrease in the use of money bail and a 17% increase in non-financial conditions."²¹⁶ Additionally, counties in Judicial Districts 21 and 2 reported a decrease in the jail population and an *increase* in court appearance rates.²¹⁷

Language Barriers in the Plea Process

In *Brady*, it was established that a plea deal is only constitutional if the defendant enters into it knowingly and intelligently with a complete understanding of the circumstances and potential outcomes. However,

language barriers have raised concerns about whether non-English speakers can fully comprehend the plea they are agreeing to in complying with *Brady*.²¹⁸ Issues like inadequate interpretation or lack of explanation from court officials about what the accused's rights are and what waiver of those rights means may wrongfully induce

non-English speakers to plead guilty. Although the Court provides interpreters when a defendant is not proficient in English, language barriers still present issues when they do not fully understand the situation and the investigator's questions. According to the National Registry of Exonerations, 12 of the 29 Latinx exonerees who falsely confessed to a crime reported not being proficient in English.²¹⁹ Therefore, protections must be put in place to ensure these individuals are knowingly and intelligently accepting a plea deal and not falsely confessing or accepting an ill-advised—or coerced—plea offer.²²⁰

Noe Moreno, a Spanish-speaking man with only a second-grade education, was pressured into pleading

guilty to a crime he did not commit. His attorney failed to investigate his claims of innocence and misled both Mr. Moreno and his interpreter about the terms of the prosecution's plea deal.²²¹ Additionally, the attorney falsely promised Mr. Moreno that he could appeal for a reduced sentence after entering his plea.²²² During the court session, Mr. Moreno was asked if he comprehended the agreement, and he responded by saying he did not. However, instead of explaining the agreement, the Judge asked the question again, and Mr. Moreno then replied that he understood.²²³ Mr. Moreno's comments about not understanding were never addressed.²²⁴



Recommendations

To ensure that defendants who are not proficient in English fully understand the terms of a plea agreement before entering into the agreement, courts should take these necessary measures to reasonably protect non-English speakers:

- Local superior court resident judges should ensure that defendants who are not proficient in English are provided an interpreter at all hearings. Additionally, judges should modify the way they assess the understanding of such defendants. Judges should be trained on best practices for protecting non-English speaking defendants. Such practices include posing open-ended questions to defendants, as opposed to yes or no inquiries.¹⁴⁵ By giving non-English speaking defendants the opportunity to explain their understanding of their legal rights, judges would be better equipped to determine whether the defendant is entering into the plea deal knowingly and intelligently.¹⁴⁶ *United States v. Osborne*, 402 F.3d 626, 631 (6th Cir. 2005), outlined similar requirements when a defendant's attorney is facing a potential conflict of interest.
- To ensure a fair legal process, local superior court resident judges should mandate a checklist for interpreters, defense, and prosecuting attorneys to review the terms of the plea agreement before entering the plea in court. The interpreter should read every term to the defendant, and the defendant should be required to summarize each term to the interpreter and attorney present and then initial each term to confirm that it has been read and understood.¹⁴⁷

Unreliable Witness Testimony

False Informant Testimony

The use of informants can be an effective tool for police and prosecutors to obtain information to which they otherwise would not have access.²²⁵ In exchange for this access, informants are granted benefits, including money or reduced punishment.²²⁶ Although using informants to gather information to obtain evidence is an accepted practice, very little is typically presented during trials about how the information was obtained.²²⁷ Oftentimes, there is no information about the criminal history of the informant or the informant's role in providing information or testimony in other cases.

Although the use of informants is vital in penetrating certain criminal enterprises, the unregulated nature of using informants fosters an environment where criminal informants and police detectives are motivated to act in their best interests.²²⁸ False informant testimony is one of the leading causes of wrongful convictions, with false testimony from informants representing 49.5% of wrongful convictions since the 1970s in capital cases.²²⁹ Thus, while informants provide critical evidence in crucial parts of an investigation and subsequently at trial, the misuse and unregulated use of informants as witnesses have proven to be a costly contributor to wrongful convictions.

To address the problems associated with informant and witness testimony, it is important to implement reforms that prevent their misuse. By establishing proper procedures, people can have confidence that the State is taking steps to minimize the occurrence of false testimony. Additional measures are needed to verify evidence and investigate potential links between the witness and the accused to ensure a witness did not intentionally provide false information for personal gain. The American Law Institute (ALI) addressed this reliability issue in their publication, *The Principles of the Law*

and Policing. ALI recommends that all information from informants be corroborated and vetted to ensure that the informant's information couldn't have come from a public source.²³⁰ ALI also recommends that the circumstances under which the information was received be vetted.²³¹ Although ALI drafted these recommendations for the use of informants, ALI defines an informant as a "person who provides police with information in return for a covertly arranged tangible benefit."²³² This definition of informant can easily apply to non-informant witness who provide false information to police for a benefit not known to the police.

Several states have taken steps to regulate the use of informants. In 2017, Texas passed notable reforms on the use of informants to combat its trend of more than 300 wrongful convictions over the past 30 years.²³³ Texas prosecutors are now required by law to keep records of their dealings with jailhouse informants, including the informant's statements, criminal history, incentives offered, and benefits provided.²³⁴ This information is then disclosed to defense attorneys, who can challenge the informant's credibility.²³⁵ Similarly, Illinois requires the disclosure of a jailhouse informant's complete criminal history and any promises of a deal or benefit made to the informant.²³⁶ Illinois also requires the disclosure of the time and location where the informant provided statements to law enforcement, information on whether the informant retracted their statements, any other instances where the informant testified, and any other details that pertain to the informant's credibility.²³⁷ Likewise, California requires that all testimony from in-custody informants be corroborated.²³⁸

False Eyewitness Identification

Additionally, eyewitness identification can be an extremely powerful tool for investigators trying to piece together a series of events and ultimately find the

perpetrator of a crime. Mistaken identification can occur unintentionally, even among well-meaning witnesses trying to assist police investigations. On the other hand, false identifications can occur when a witness provides misleading or false information intentionally and for self-serving reasons. It is imperative that procedures are put in place to safeguard innocent people from misidentifications, both intentional and unintentional.

Mr. Weaver and Mr. Logan's arrests, bonds, and eventual pleas were based on false information provided by a confidential informant named Dennis Williams, who was working with now-former Detective Omar Abdullah.²³⁹ Mr. Abdullah used Dennis' alleged drug buys from Mr.

Weaver, Mr. Logan, and 13 other defendants to convict them of selling drugs. Likewise, for Mr. Grant, two alleged victims identified Mr. Grant as the person who robbed them at gunpoint. The alleged victims had information about Mr. Grant's vehicle and were able to pick him out of a lineup.²⁴⁰ After further investigation, however, it was found that the robbery did not occur.²⁴¹ It turned out that the alleged victims intentionally falsely identified Mr. Grant and guided the police to Mr. Grant in order to have him wrongfully arrested. Had there been measures in place to monitor officer use of informants and validate eyewitness information, their information would not have been used in multiple cases to wrongfully convict innocent people.



Recommendations

The state General Assembly, state and local police departments, and local prosecutorial offices should implement policies to improve the reliability of eyewitnesses and informants by following the recommendations of the ALI and the informant reforms implemented in Illinois, Texas, and California.

- Prosecutors' offices and police departments should follow ALI guidelines and require that all agreements between informants, police, and prosecutors be reduced to writing and made available for review by supervising agencies and opposing counsel.²⁴² When informants work with police and prosecutors, agreements should be required to establish a formal relationship between the informant and the state. These agreements should provide clear guidelines for informant benefits, continued criminal activity, informants' rights, and penalties for any violations.²⁴³ By establishing clear agreements with informants, all parties can prioritize safety and accountability.²⁴⁴ The U.S. Department of Justice has also changed its practice and now strongly recommends prosecutors take notes during all proffer sessions so that, among other reasons, such notes will be available to the defense at any trial where the cooperator testifies.²⁴⁵
- The state should require that courts hold a pretrial hearing to corroborate informant testimony and vet an informant and witness credibility. During the pretrial hearing, the judge should have an opportunity to assess the reliability of the informant's testimony.²⁴⁶ Illinois, Pennsylvania, and Connecticut already conduct such hearings to corroborate informant and witness information.²⁴⁷ In Illinois, a reliability hearing must be held and the prosecutor must show reliability beyond the preponderance of the evidence unless the defense waives the requirement.²⁴⁸ In Pennsylvania, the court requires prosecutors to provide information corroborating the informant's reliability to the defense.²⁴⁹ Likewise, in Connecticut, courts require a reliability hearing upon motion from the defense.²⁵⁰

- The state should require police departments to implement a practice of documenting every conversation between police and informants via written documentation or electronic recording when feasible.²⁵¹ These writings and recordings should then be disclosed to defense counsel during a pretrial hearing to ensure the credibility of the informant's information.²⁵²
- Local district attorneys' offices should create and maintain an informant database to prevent the repeated use of unreliable informants. This database should collect information about the informant, including their criminal history, the number of cases in which they have previously been an informant, benefits promised and/or received in exchange for information or testimony, and any information that relates to the informant's credibility.²⁵³ The Los Angeles County District Attorney's office implemented a similar tracking model to combat occurrences of unreliable informant testimony.²⁵⁴ In L.A. County, before using an informant, the prosecution must submit information on informant incentives and reliability and corroborating evidence to a supervisory committee. The information is then added to a database that prosecutors can use to evaluate informant reliability.
- Local district attorneys' offices should create a suitability report and cross-benefit analysis where the value of using a particular informant is weighed against the risk.²⁵⁵ The report should include information regarding the informant's criminal activity, information the informant is providing, risks and benefits to the community, and alternatives to obtaining the information.²⁵⁶ The International Association of Chiefs of Police identified factors to consider when using an informant. Those factors include, but are not limited to, the informant's age, risk to the community, and current and past criminal history.²⁵⁷ North Dakota has banned the use of juvenile informants under the age of 15 and limited the use of informants under the age of 18 to minors who are emancipated, married, active-duty military, or subject to criminal charges.²⁵⁸ This information and factors should then be weighed to consider whether the cost of using the informant is greater than the benefit.

Mistaken Identification

It is important to note that not all witnesses who provide a false narrative of events do so intentionally to benefit themselves. In some cases, external biases or the addition of new information to their recollection can lead to mistaken identifications. It is well-known that memory can be frail and unreliable, as evidenced by situations where one might forget why they entered a room or misplace their keys. In the case of witnesses, their memory of the perpetrator may be incomplete, inaccurate, or altered as a result of post-event information being added.²⁵⁹

Post-event Information

Post-event information has the potential to influence an identification. Exposure to post-event information can come in the form of an "interview question, news report, or photograph."²⁶⁰ If the post-event information is correct, the witness's accuracy in response to subsequent questions will increase, but if the post-event information is incorrect, the witness's accuracy will decrease.²⁶¹ Moreover, the more information that is added, the more the memory about the suspect changes.²⁶² According to research, the number of inaccurate photos shown to the victim could have

affected what the victim remembered about their attacker and reduced the victim's likelihood of accurately identifying the correct suspect.²⁶³

Social Influence

Likewise, a victim's confidence and accuracy can be affected by the witness's willingness to assist the police in finding the right person.²⁶⁴ An officer's behavior can influence the performance of an eyewitness, according to an article on eyewitness evidence and social influence published in the *Arkansas Law Review*.²⁶⁵ A witness can become more eager in wanting to find a match due to the inferred social context.²⁶⁶ For instance, a witness may deduce that the investigators are confident they have caught the perpetrator based on their eagerness, comments, or effort to conduct a lineup.²⁶⁷

In Mr. Brown's case, inserting more details about potential suspects might have affected the 12-year-old victim's memory, leading to the misidentification of her attacker.²⁶⁸ In this case, the victim was shown 2,600 images of men with similar features.²⁶⁹ This constant flow of information could have built a profile and altered the victim's memory of her perpetrator, causing her to wrongfully identify a man in her neighborhood. Likewise, the vast number of photos being shown to the victim and the time it took to go through them may have influenced the victim.²⁷⁰ After viewing 2,600 photos and only selecting five potential suspects, the victim may have been influenced by social pressure to identify a suspect. This pressure to succeed, coupled with the number of images shown the day before, may have led the victim to view a man in her neighborhood as the culprit.



Recommendations

It is essential to address the factors that can affect the reliability of eyewitness identification and to inform juries about the fallibility of memory and potential harm by identification procedures.²⁷¹ To achieve this, the state must:

- Adopt legislation recommended by ALI and mandate the practice of documenting eyewitness identification through video and audio recording.²⁷² These recordings would enable the judge and jury to review the procedures followed by the officer interviewing the witness.
- Amend N.C.G.S. § 8 C-1, R. 706, which allows the district court to appoint an expert witness either on its own or on the motion from either party to mandate that the defense team have the right to use the assistance and testimony of an expert in eyewitness testimony. Florida has a similar law that mandates the appointment of an expert in cases where there is a belief that the defendant is incompetent to stand trial.²⁷³ It is crucial to have an eyewitness expert review the recordings and provide an expert legal opinion on subtle cues like the officer's comments, the time taken by the witness to identify, the way the officer presented the photographs, the possible influence of the officer's body language on the witness, and how the witness expresses confidence in their identification.

Unreliable Forensic Evidence

Forensic scientists assist investigators and prosecutors in criminal cases by providing analyses of evidence collected at crime scenes.²⁷⁴ Many people may not know that some methods used by forensic sciences examiners are not based on traditional scientific methods to determine reliability.²⁷⁵ Though historically, many types of forensic evidence have been accepted by courts, the emergence of DNA testing has revealed limitations in the reliability and accuracy of many types of forensic science.²⁷⁶ According to the Innocence Project, which tracks both DNA and non-DNA-based exonerations, the misapplication of forensic science has contributed to 52% of the wrongful convictions handled by the Innocence Project, and false or misleading forensic evidence contributed to 24% of all wrongful convictions nationwide.²⁷⁷

Hair and Shoeprint Analysis

Hair comparison and shoeprint analysis both rely heavily on subjective methods. In forensic hair analysis, a microscope is used to compare hair strands found at a crime scene with hair samples provided by the police.²⁷⁸ Hair analysis, however, has been deemed unreliable by the FBI due to flawed microscopic analysis in at least 90% of cases.²⁷⁹ Similarly, footprint analysts examine shoeprints at a crime scene to determine the suspect's

shoe size, and the shoe's brand and wear patterns. However, the National Academy of Sciences Committee has concluded that there is no scientific basis for definitively identifying an individual solely based on these marks.²⁸⁰

After Mr. Brown was wrongfully identified as the victim's attacker, police used unreliable forensic techniques to corroborate the identification.²⁸¹ Police matched hair found on the victim to hair taken from Mr. Brown.²⁸² A later DNA analysis, however, determined that the hair found on the victim was either from the victim, themselves, or from the victim's relative.²⁸³ Likewise, an analyst determined that a shoe found in Mr. Brown's house matched a shoeprint found at the crime scene, but a subsequent review of the print determined that the shoe that made the print was of a different brand.²⁸⁴

Inaccurate DNA Interpretations

Although DNA evidence is widely viewed as the gold standard and was crucial to Mr. Brown's exoneration, DNA evidence is prone to inconsistent interpretations across agencies and jurisdictions. One area of contention in DNA testing is evaluating and interpreting DNA mixture evidence, which is a "biological sample originating from two or more donors."²⁸⁵ This mixture can result from people readily shedding DNA into the environment and potentially transferring DNA between surfaces when touching objects or other people.²⁸⁶ Because highly sensitive methods are more likely to detect small quantities of DNA, DNA mixtures occur more commonly in current forensic investigations.²⁸⁷ However, interpreting these DNA mixtures, where the DNA of more than one individual is present in a sample, is more difficult than interpreting a single-source DNA sample.²⁸⁸ Likewise, crime laboratories are increasingly tasked with analyzing DNA mixtures that are of poor quality and complex.²⁸⁹



In Mr. Carver's trial, prosecutors used the widely debated DNA mixture evidence to wrongfully identify and convict Mr. Carver of murder.²⁹⁰ The analyst incorrectly interpreted the DNA mixture evidence in this case as a "match" and provided inaccurate statistics stating that

DNA found at the crime scene was a million times more likely to be Mr. Carver's, rather than someone else.²⁹¹ Despite evidence of his innocence, the prosecution focused on the DNA mixture, which ultimately wrongfully convicted Mr. Carver.



Recommendations

To ensure consistent and reliable DNA interpretation and strengthen the use of forensic and DNA analyses, the General Assembly should take the following actions:

- Ban the use of flawed and unreliable forensic techniques, such as forensic hair analysis due to the large error rates discovered in the FBI's report on microscopic hair analysis. Likewise, the state should ban the use of forensic shoeprint analysis because of its unknown validity and reliability.²⁹² The state should then implement a standardized approach that prohibits forensic analysts from using unvalidated methods and requires the use of scientifically sound and reliable techniques. Using sound forensic techniques with low error rates will ensure that the evidence being used to convict a defendant is valid and accurate.
- Mandate that forensic evidence be accompanied by the error rate of the scientific method used, as well as the error rate of the practitioner who performed the method. If the nature of the error rate is unknown, then the forensic analyst should acknowledge this. Including information about the error rate can assist the juror in determining the reliability of the forensic evidence.⁶³
- Replace conclusory language such as "match," "uniquely associated with," "source attribution," "individualization," "conclusive," "positive," "absolute," and similar terms with testimony that clearly distinguishes data from interpretations, opinions, and conclusions.²⁹⁴ Using language that overstates the examiner's certainty can mislead the jury and, therefore, should not be used.²⁹⁵
- Establish a quality assurance and control policy to implement best practices, including oversight as well as a process to correct errors and rehabilitate analysts through evaluations and proficiency testing.²⁹⁶ Similar processes like double-blind testing and independent blind verification have been used in biopharmaceutical clinical trials of treatment protocols and drugs to eliminate bias and ensure accuracy.²⁹⁷
- Establish an independent State Forensic Science Commission with statutory authority to review casework, implement corrective actions, and establish best practices for all crime labs and investigatory units operating in the state. By implementing best practices like the DNA interpretations standards drafted by the Organization of Scientific Area Communities for Forensic Science (OSAC) throughout the State, the State can ensure uniformity across jurisdictions and avoid variations in scientific standards.



Paths to Exonerations and Their Limitations

In North Carolina, there are three ways to be exonerated. The first involves filing an appeal to have the court review the initial case for errors. The second is proving complete factual innocence through the North Carolina Innocence Inquiry Commission. The third is showing an error surrounding the conviction in a motion for appropriate relief (MAR). Each path can be utilized during designated stages of the criminal process, with one usually preceding the other. However, each path has its own limitations that may leave some wrongfully convicted individuals unable to find relief. For example, opposition from appellate prosecutors, restrictions on the application process, and access to resources may pose challenges.

Direct Appeal

The process of appealing a judgment or order rendered in a district or superior court is available to any party by law, as an initial path towards exoneration.²⁹⁸ The appellant has the right to appeal issues properly preserved at trial or those constituting plain error.²⁹⁹ The legal system allows individuals to appeal cases to protect their constitutional rights and is an important component of a fair and impartial judicial system.

N.C.G.S. 114-1 Sec. 2.1 outlines the Attorney General's responsibility to defend all actions in the appellate division in which the state is involved and to represent

the state where the state has an interest or is a party.³⁰⁰ Some have interpreted this language to mean that in the interest of justice, it is the Attorney General's job to raise any legal argument the state may have in a criminal case on appeal.³⁰¹

This interpretation, however, creates a situation where defendants continue to be prosecuted in cases that are constructed on deceptive evidence, poor representation, or official wrongdoing that would come to light if there was more investigation or impartiality in the appellate prosecutor's review of the underlying case. The American Bar Association (ABA) states in section 3-8.1 under the duty to defend a conviction that a prosecutor's duty to defend is not absolute and that the prosecutor should use "independent professional judgment and discretion."³⁰² The ABA goes on to say that a "prosecutor

should not defend a conviction if the prosecutor believes the defendant is innocent or was wrongfully convicted, or that a miscarriage of justice associated with the conviction has occurred."³⁰³ The ABA says in 3-8.2 "that prosecutor's handling a criminal appeal who was not counsel in the trial court should consult with the trial prosecutor, but should exercise independent judgment in reviewing the record and the defense arguments."³⁰⁴

When appellate prosecutors do not review the underlying case impartially to assess errors that may have been made or evidence that might be faulty, and instead defend all convictions regardless of the merits of the case or the arguments made on appeal, it is a disservice to justice and to the State. Prosecuting a claim without thoroughly reviewing the evidence's validity enables district-level prosecutors to prosecute with impunity.



Recommendations

To allow for a genuine impartial appellate process, North Carolina should amend N.C.G.S. 114-1 Sec. 2.1 to clearly define a duty for the Attorney General's office to review and investigate all cases it will defend and divest that duty into a conviction integrity unit. A conviction integrity unit refers to an office with a set of procedures to assist in the review of plausible claims of factual innocence.³⁰⁵ This unit would work with public defender offices to review new claims on their first appeal and partner with the Innocence Inquiry Commission to investigate older innocence claims. The conviction integrity unit should be independent of the Attorney General's offices and properly resourced with an experienced defense attorney as the director. The conviction integrity unit should have subpoena power and reinvestigation power to review all claims before writing recommendations to the Attorney General for prosecution. The Attorney General's office and Appellate Court should then review the recommendations for appropriate relief. A similar program was put in place in the Dallas prosecutor's office.³⁰⁶ This unit provides innocence organizations with the entire prosecutor's file if the organization presents a plausible claim of actual innocence. The unit investigates leads from parties claiming innocence and conducts joint investigations with the public defender's office.³⁰⁷ North Carolina's Taskforce for Racial Equity in Criminal Justice made a similar recommendation for the establishment of a conviction integrity unit in its 2020 report.³⁰⁸

Innocence Inquiry Commission

After a defendant is convicted of a felony charge, they can apply to have their conviction overturned by showing complete factual innocence through the North Carolina Innocence Inquiry Commission (Commission).³⁰⁹ The claim must be a new one that has not been previously considered.³¹⁰ To apply through the Commission, the

individual must be contesting a felony conviction and must forfeit all rights and procedural protections. They must assert their factual innocence and provide evidence to support their claim. The applicant must waive their rights against self-incrimination and attorney-client privilege.³¹¹ The Commission is also required by statute to turn over evidence of any new crimes to law enforcement.³¹²



Recommendations

Although the commission is a first-of-its-kind agency with immense power to open new investigations and overturn old convictions, it is not without flaws. According to the Commission, only 2% of claims proceed to the formal inquiry stage, with 14% of questionnaires not returned.³¹³ The Commission can reduce the number of applicants who do not proceed to the formal inquiry process by eliminating the requirement for applicants to waive all protections and procedural safeguards. Additionally, an applicant's personal attorney should be allowed to continue their investigations and claims while the Commission reviews the innocence claim. The Commission should also consider eliminating the requirement for unanimous consent in cases where an applicant's conviction was the result of a plea deal.³¹⁴ This is because 41% of claims brought before the commission resulted from a plea deal, and 15% of known exonerees pled guilty.

Motions for Appropriate Relief

Lastly, the defendant can, on their own behalf or with the help of an attorney, file a MAR under N.C.G.S. § 15A-1414, in which they can request relief from the Court for a number of errors resulting in their conviction.³¹⁵ A motion can be filed for errors such as lack of court jurisdiction or constitutional violations in state or federal convictions.³¹⁶ In North Carolina, private appellate attorneys of nonprofit organizations like North Carolina Prisoner Legal Services (NCPLS) and the North Carolina

Center on Actual Innocence (NCCAI) will assist their clients with drafting motions for appropriate relief. According to appellate attorneys interviewed for this report, the biggest drawback to motions for appropriate relief is the number of applications organizations receive and the amount of money it takes to take a case from start to finish. For example, NCCAI receives 600 claims annually, but investigating and litigating each claim can cost up to \$70,000.³¹⁷

CASE STUDIES:

When the Wrongfully Convicted Cannot Find Relief

At the appellate stage of litigation, the Attorney General defended the convictions of Mr. Grant, Mr. Shelton, and Mr. Carver despite the possibility of exculpatory evidence and ineffective representation. Fortunately, Mr. Grant's case was accepted by the Commission, and Mr. Shelton and Mr. Carver received support from the legal organizations NCCAI and NCPLS. These organizations provided crucial resources and assistance to mount a successful post-conviction challenge. In each case, obtaining necessary resources and finding new information was pivotal in overcoming the State's reliance on misleading or circumstantial evidence. Unfortunately, in some instances, legal assistance is not available, or new exculpatory evidence does not give the Attorney General adequate pause to consider whether justice is served by defending the conviction. In these cases, innocent people are sent to prison, sometimes for decades or the rest of their lives, without an avenue to bring their claim and find relief. In this section, we will discuss the convictions of Ronnie Long and Lamont McKoy, who both spent years in prison based on wrongful convictions. These cases took place before the legislative reforms we examine in this report, but they illustrate the difficulties many people with strong innocence claims face in finding relief even after those reforms have been implemented. Mr. Long was ultimately exonerated, but it took decades longer than it should have. Mr. McKoy is still fighting to clear his name despite persuasive evidence that he is innocent.

On April 25, 1975, in Concord, North Carolina, Sarah Bost was held at knifepoint by an intruder who broke into her home, robbed, and sexually assaulted her.³¹⁸ Later, at the hospital, police provided Ms. Bost with a "photo array of 13 black men."³¹⁹ She was unable to make an identification but was able to provide police with a description of her attacker.³²⁰ Ms. Bost described her attacker as a light-skinned Black man who was 5'5" to 5'9" and spoke plain, correct English.³²¹ She also described her attacker as wearing a dark leather jacket, toboggan, and possibly gloves.³²²

During the initial investigation, the police found used matches near Ms. Bost's bedroom window and a shoe print on her porch banister.³²³ Given this limited information, investigators made Ronnie Long a person of interest because he was a suspect in a similar crime where the witness couldn't make an identification.³²⁴ Police then requested that Ms. Bost attend a session of court where Mr. Long would be appearing on a separate trespassing charge, to see if she could identify him as the perpetrator.³²⁵ Ms. Bost waited until Mr. Long, who was wearing a similar jacket as Ms. Bost's attacker, was called by the judge and then notified police that he was the suspect.³²⁶ She later selected Mr. Long's picture out of a photo array of six to eight photos, of which Mr. Long was the only one wearing a leather jacket.³²⁷ During questioning, police searched Mr. Long's car, where they found a toboggan, gloves, and several matchbooks.

At trial, Officer Taylor testified that the matchbook found at the scene and the matchbook found in Mr. Long's car were similar, although he stated outside the presence of the jury that the matchbook, in fact, did not match.³²⁸ Ms. Bost was also called to identify Mr. Long. Ms. Bost testified that her attacker had facial hair that matched that of Mr. Long, although she had not mentioned this characteristic before identifying Mr. Long in a photo array.³²⁹ An SBI latent print examiner testified that the shoe print found on Ms. Bost's banister could belong to Mr. Long, but the identification was not positive.³³⁰

Mr. Long, however, presented evidence that during the suspected time of the crime, he was home with his mother and had participated in a family group call.³³¹ Other witnesses testified to seeing Mr. Long on the day of the crime dressed in different clothing than what Ms. Bost described and without any visual bruising or cuts.³³² At the close of arguments, the State relied on Ms. Bost's identification, which was supported by the matchbooks and shoe print analysis.³³³ On October 1, 1976, Mr. Long was convicted and sentenced to life by an all-white

jury.³³⁴ For the next 44 years, Mr. Long would fight to prove his innocence, which would uncover decades of prosecutorial and police misconduct. Mr. Long enlisted the help of private counsel as well as assistance from the North Carolina Center of Actual Innocence, the North Carolina Innocence Inquiry Commission, and the Wrongful Convictions Clinic at Duke University School of Law, to file two series of appeals, two Motions for Appropriate Relief (MARs), two motions for evidence, two habeas corpus petitions, and a petition for en banc review.³³⁵ Mr. Long's first direct appeal argued that the witness identification was improperly suggestive, his car was searched without consent, and the latent shoe print evidence should not have been submitted.³³⁶ This appeal, however, failed, and Mr. Long filed an MAR alleging that the search of his car was improper and the jury pool was improperly composed of a majority of white jurors.³³⁷ This petition was denied. For the next 44 years, Mr. Long continued to fight to prove his innocence.

Mr. Long then filed a *pro se* petition for a writ of habeas corpus, raising the same claims that were raised in



his previous MAR. This petition was dismissed by the court.³³⁸ Next, the North Carolina Center for Actual Innocence filed a motion for evidence that uncovered the first batch of evidence suppressed by police and the District Attorney's office.³³⁹ This evidence included a master file that included two police reports. The first report showed that the detective tested only the latent shoe print; the second report showed that the detective actually tested 13 items.³⁴⁰ The items included clothing from Ms. Bost and Mr. Long, hair samples from Mr. Long, carpet fibers from Ms. Bost's home, and matchbook samples.³⁴¹ Results showed that the hair found at the scene was different from Mr. Long's, there was no fiber or paint on Mr. Long's clothing that matched the fiber of paint at Ms. Bost's home, and there was no match or similarities between the shoe print or matchbooks.³⁴² Based on this new evidence, Mr. Long filed a second MAR in 2008 requesting a new trial based on *Brady* violations.³⁴³ This motion however was denied, although the prosecuting attorney testified that had he had the information, he would have provided it to the defense.³⁴⁴ The court held that Mr. Long did not meet the *Brady* standard because he failed to show that the evidence would have impacted the trial court's decision. Mr. Long then appealed this decision to the North Carolina Supreme Court, which reached a split decision and, therefore, upheld the denial of his MAR.

Mr. Long then reached out to the North Carolina Innocence Inquiry Commission, which opened an investigation that uncovered the second set of suppressed evidence.³⁴⁵ The Commission found 43 prints taken from the crime scene, which excluded Mr. Long as a potential contributor.³⁴⁶ The Commission, however, ultimately decided not to proceed with Mr. Long's claim due to missing evidence from a DNA sexual assault forensic exam.³⁴⁷

Mr. Long then worked with the Wrongful Convictions

Clinic at Duke Law and filed another motion alleging *Brady* violations. The State filed a motion for summary judgment in opposition, alleging that *Brady* standards were not met because Mr. Long failed to show how the evidence would cause the trial court to reach a different result.³⁴⁸ The State's motion for summary judgment was ultimately granted. Mr. Long again appealed this decision, which again failed due to lack of materiality of the evidence.³⁴⁹ In a minority dissent, Judge Stephanie Thacker criticized the prosecutors who argued that Mr. Long's attorney should have tested the evidence themselves or asked the state's witness what evidence was tested.³⁵⁰ She went on to say that this thinking would incentivize the state to lie and withhold evidence.³⁵¹ Finally, Mr. Long's 1976 conviction was reversed in a long-shot petition to the Fourth Circuit Court of Appeal for en banc review, which is a review reserved for extremely complex cases.³⁵² The Court determined that the lower court erred when it determined that the newly discovered evidence was immaterial.³⁵³

Over a span of 44 years, North Carolina's criminal legal system failed Ronnie Long. There were multiple opportunities to correct an injustice that were missed because the district attorney and appellate prosecutors failed to conduct a comprehensive review of all the evidence. For 44 years, numerous attorneys defended Mr. Long's original conviction despite evidence that should have given a reasonable person reason to believe that Mr. Long may be innocent. Instead of taking an honest look at all the evidence, especially new evidence that the district attorney should have been aware of, the district and appellate prosecutor blindly defended the original conviction.

Similar to Mr. Long's situation, the discovery of new evidence in Lamont Mckoy's case did not dissuade the prosecution from continuing to pursue a conviction. In 1992, Mr. McKoy was convicted of murder in the first

degree of Myron Hailey.³⁵⁴ Mr. McKoy, 18 years old at the time, was convicted of killing Mr. Hailey after selling him fake cocaine.³⁵⁵ During his trial and subsequent appeal, the prosecution presented evidence that identified Mr. McKoy as the shooter.³⁵⁶ Subsequent evidence has, however, refuted significant facts used to convict Mr. McKoy and calls into question whether the prosecution truly believed that Mr. McKoy was the shooter.

The prosecution used evidence that should have been reviewed before it was presented to obtain Mr. McKoy's conviction. One of the witnesses who identified Mr. McKoy as the shooter was 16 years old and only identified Mr. McKoy after he was "handcuffed to a chair for hours." This witness later recanted his statement.³⁵⁷ Likewise, another witness that identified Mr. McKoy "was on parole for robbery and manslaughter and made inconsistent statements concerning Mr. McKoy's clothing and whether or not there was a passenger in the car."³⁵⁸

Moreover, the weapon Mr. McKoy had when he was arrested fired a .22 caliber round, but Mr. Hailey was killed with a .357 caliber round, which was the same type of caliber pistol that was found when officers arrested a different person, William Talley.³⁵⁹ Mr. Talley was a Court Boys gang member in the area whom four other witnesses named as being the actual shooter.³⁶⁰ In a subsequent trial in which Mr. Talley was convicted of selling drugs, prosecutors named Mr. Talley as the killer in a murder whose facts resembled Mr. Hailey's killing.³⁶¹

Over the next decade, despite mounting evidence that showed Mr. McKoy's innocence, including more witnesses coming forward naming Mr. Talley as the shooter, North Carolina prosecutors continued to defend the State's conviction, and the courts continued to dismiss his appeals.³⁶² After spending 27 years in prison, Mr. McKoy was released on parole but is still fighting to clear his name through a formal exoneration.³⁶³



Conclusion

The impact of wrongfully convicting someone of a crime costs innocent people years of their lives, creates a danger to the community by having the true culprit free to continue to commit crimes, and creates a distrust between the community and the judicial system. Although North Carolina has taken bold steps toward resolving the issue, wrongful convictions still remain a critical issue that needs to be addressed. While the state has made significant progress in improving its laws to prevent the occurrence of wrongful convictions, more could be and should be done. The 11 exonerations analyzed in this report serve as an example of the continued attention needed to keep North Carolina at the forefront of conviction integrity.

This report has analyzed the main gaps in North Carolina's policies that lead to wrongful convictions

and recommended comprehensive best practices to prevent them. These recommendations cover several areas, including file-sharing policies, police interrogation techniques, gaps in plea bargaining and the pretrial process, protections available for vulnerable populations, informant and eyewitness protocols, and forensic procedures. This report also identified ways to not only prevent wrongful convictions but also to create avenues for the wrongfully accused to profess their innocence. There are opportunities to create a system where the community can trust the outcomes of judicial proceedings. By using best practices developed to target the cause of wrongful convictions, like holding reliability hearings for witness testimony and standardizing forensic practices, the public can be reassured that the State is taking every measure to address the occurrence of wrongful convictions.

Policymakers, criminal justice practitioners, and stakeholders must take action on the recommendations outlined in this report to limit wrongful convictions and ensure that those who have been wrongfully convicted have access to relief. North Carolina has made significant progress in improving its laws to prevent wrongful convictions, but more work needs to be done. We call on all those who care about justice and fairness to come together and work towards preventing wrongful convictions and restoring trust in our criminal justice system. North Carolina must prioritize innocence and fairness in the criminal justice system to ensure justice is served for all.



Exoneree	Years Lost	Description	Reason for Wrongful Conviction	Path to Exoneration
Timothy Britt	4 years	Mr. Britt was wrongfully accused of sexually molesting a 10- year- old girl. The alleged victim had a history of making false allegations of sexual assault and a history of behavioral problems stemming from mental health issues which prosecutors failed to disclose and Mr. Britt's attorney failed to discover. Mr. Britt, who had limited educational capacity, falsely confessed.	Prosecutorial misconduct, ineffective assistance of counsel, Improper interrogation tactics, false confession, false testimony	Appeal to NC Court of Appeals – Failed Motion for appropriate relief from a private attorney – Succeeded
Noe Moreno	5 years	Mr. Moreno was wrongfully convicted of second-degree murder following a fatal car accident where Mr. Moreno was mistaken as the driver.	Ineffective assistance of counsel, inadequate investigation, plea bargaining	Motion for appropriate relief from the Duke Law Wrongful Convictions Clinic – Succeeded
Willie Shaw	4 years	Mr. Shaw was wrongfully convicted of and pled to patient abuse and neglect charges after a patient in his care suffered injuries that led to her death.	Ineffective assistance of counsel, inadequate investigation, plea bargaining	Pro se motion for appropriate relief – Failed Motion for appropriate relief– Succeeded
David Weaver	2 years	Mr. Weaver was arrested and pled guilty to drug trafficking charges based on information from an unreliable confidential informant.	Unreliable Informant, plea bargaining	Motion for appropriate relief – Succeeded
Curtis Logan	5 month probation	Mr. Logan was arrested and pled to possessing and selling a counterfeit controlled substance based on information from an unreliable confidential informant.	Unreliable Informant, plea bargaining	Review of cases based on informant testimony – Succeeded
Israel Grant	11 years	Mr. Grant was wrongfully convicted of armed robbery and possession of a firearm by a felon after two witnesses falsely accused him of robbery.	Ineffective assistance of counsel, inadequate investigation, false testimony	Two appeals – Failed Motion for appropriate relief – Failed Innocence Inquiry Commission – Succeeded
Knolly Brown	7 years	Mr. Brown was arrested and pled no contest to second-degree forcible rape after a 12-year-old victim misidentified Mr. Brown as her attacker.	Witness misidentification, faulty forensic analysis, plea bargaining	Innocence Inquiry Commission – Succeeded
Mark Carver	11 years	Mr. Carver was wrongfully convicted of murder after he was found fishing near the scene of a murder investigation.	Ineffective assistance of counsel, faulty DNA analysis, prosecutorial misconduct	Appeal to NC Court of Appeals – Failed Center for Actual Innocence motion for appropriate relief – Succeeded
Horrace Shelton	2 years	Horrace Shelton was wrongfully convicted on three counts of writing a bad check after his Id was stolen and used.	Ineffective assistance of counsel, inadequate investigation	Appeal to NC Court of Appeals – Failed Petition to NC Supreme Court – Failed North Carolina Prisoner Legal Services – Succeeded
Henry Surpris, Barshiri Sandy	2 years	Co-defendants Mr. Surpris and Mr. Sandy were wrongfully convicted of attempted armed robbery following an altercation between the defendants and the alleged victim.	Prosecutorial misconduct	Appeal to NC Court of Appeals – Never heard Motion for appropriate relief – Succeeded

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