

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA,

Plaintiff-Appellee,

-v-

KEVIN ALPHONSO ALEXANDER,

Defendant-Appellant.

From: Mecklenburg County

No. 92CRS1839-40

**BRIEF OF *AMICUS CURIAE* THE INNOCENCE NETWORK,
IN SUPPORT OF DEFENDANT-APPELLANT**

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If this guy—if he didn't do it, and he said, if you're gonna plea, we're gonna give you two years, but if you don't plea, we're gonna give you 20 years—hell, they're gonna jump for two years, you know, and not take a chance on a jury trial.

Q: People can be under a lot of pressure to avoid a long sentence or maybe even a death penalty.

A: Sure.

Q: And plead guilty to something they didn't do just to avoid that possibility, would you agree with that?

A: It's been done a lot of times.

— BOBBY MEDFORD, FORMER SHERIFF OF BUNCOMBE COUNTY, N.C.¹

I. INTRODUCTION

“Modern DNA testing can provide powerful new evidence unlike anything known before.”² It has “exonerated wrongly convicted people,

¹ See Jennifer Emert, *Deposition Footage of Former Sheriff Bobby Medford Released*, ABC 13 News (May 16, 2016), <https://wlos.com/news/local/exclusive-deposition-footage-of-former-sheriff-bobby-medford-released>.

² *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 62 (2009).

and has confirmed the convictions of many others.”³ When a miscarriage of justice occurs and an innocent individual is wrongly convicted of a crime, access to DNA evidence is often critical to establish innocence.

The Innocence Network respectfully submits this brief as *amicus curiae* to address the State of North Carolina’s anticipated argument that North Carolina’s post-conviction DNA testing statute, N.C.G.S. § 15A-269, is unavailable to a defendant like Mr. Alexander because he pleaded guilty to avoid a possible death sentence. Decades of experience with wrongful convictions has shown that innocent individuals often enter false guilty pleas for a variety of reasons, including as the result of coercive police conduct, ineffective assistance of counsel, or to avoid the risk of a severe sentence (including capital punishment, as Mr. Alexander faced here). For this reason, the vast majority of States do not limit post-conviction DNA testing to only those who have legally maintained their innocence.

This Court should not depart from the will of the North Carolina legislature and principles of justice by unnecessarily limiting access to

³ *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 62 (2009).

DNA testing, which would foreclose an important avenue for wrongfully convicted defendants to obtain evidence of their innocence. *Amicus curiae* therefore urges the Court not to adopt a categorical rule depriving defendants from obtaining DNA testing in appropriate cases solely because they pleaded guilty.

II. INTERESTS OF AMICUS CURIAE

The Innocence Network (the Network) is an association of independent organizations dedicated to providing pro bono legal and/or investigative services to incarcerated people for whom evidence discovered post-conviction can provide conclusive proof of innocence.

The 69 current members of the Network represent hundreds of prisoners with innocence claims in all 50 states, the District of Columbia, and Puerto Rico, as well as Australia, Argentina, Brazil, Canada, Ireland, Italy, the Netherlands, New Zealand, the United Kingdom, and Taiwan.⁴

⁴ The member organizations for amicus brief purposes include the Actual Innocence Clinic at the University of Texas School of Law, After Innocence, Alaska Innocence Project, Arizona Justice Project, Boston College Innocence Program, California Innocence Project, Center on Wrongful Convictions, Connecticut Innocence Project, Duke Law Center for Criminal Justice and Professional Responsibility, Exoneration Project, George C. Cochran Innocence Project at the University of

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The Network and its members are also dedicated to improving the accuracy and reliability of the criminal justice system in future cases.

Drawing on the lessons from cases in which the system convicted innocent persons, the Network advocates study and reform designed to enhance the truth-seeking functions of the criminal justice system to ensure that future wrongful convictions are prevented.

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Mississippi School of Law, Georgia Innocence Project, Hawai'i Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Indiana University McKinney Wrongful Conviction Clinic, Innocence Canada, Innocence Project, Innocence Project Argentina, Innocence Project at the University of Virginia School of Law, Innocence Project Brasil, Innocence Project of Florida, Innocence Project London, Innocence Project of Minnesota, Innocence Project New Orleans, Innocence Project New Zealand, Italy Innocence Project, Innocence Project of Texas, Justicia Reinvidicada Puerto Rico Innocence Project, Loyola Law School Project for the Innocent, Manchester Innocence Project, Michigan Innocence Clinic, Mid-Atlantic Innocence Project, Midwest Innocence Project, Montana Innocence Project, New England Innocence Project, New Mexico Innocence and Justice Project at the University of New Mexico School of Law, New York Law School Post-Conviction Innocence Clinic, North Carolina Center on Actual Innocence, Northern California Innocence Project, Office of the Ohio Public Defender Wrongful Conviction Project, Ohio Innocence Project, Oklahoma Innocence Project, Oregon Innocence Project, Osgoode Hall Innocence Project, Rocky Mountain Innocence Center, Taiwan Innocence Project, Tennessee Innocence Project, University of Baltimore Innocence Project Clinic, University of Miami Law Innocence Clinic, Wake Forest University School of Law Innocence and Justice Clinic, Washington Innocence Project, West Virginia Innocence Project, Wisconsin Innocence Project, and the Wrongful Conviction Clinic at the University of Arizona.

The Innocence Network includes three member organizations located in North Carolina: the Duke Law Center for Criminal Justice and Professional Responsibility, the North Carolina Center on Actual Innocence, and the Wake Forest University School of Law Innocence and Justice Clinic—all of which support this brief.

III. ARGUMENT

A. Innocent defendants' access to post-conviction DNA testing should not be eliminated by a guilty plea.

This Court should not impose a rule that limits or restricts access to DNA testing for defendants who have pleaded guilty. First, factually innocent defendants often plead guilty for reasons unrelated to actual guilt. Second, the issue of false guilty pleas has occurred in North Carolina: in at least eleven known cases of wrongful conviction, the defendant entered a guilty plea despite their innocence. Eight of those defendants were later exonerated through the use of DNA evidence. It is essential that this Court preserve individuals' access to post-conviction DNA testing to ensure that those who are wrongfully convicted can prove their innocence.

1. **Factually innocent defendants often plead guilty.**

It is not unusual for a person to plead guilty to a crime he did not commit. Available data shows a substantial rate of false guilty pleas among known instances of wrongful conviction. According to the National Registry of Exonerations, which compiles detailed information about all known exonerations in the United States since 1989, 542 of 2,679 exonerees pleaded guilty.⁵ In other words, of recorded cases of wrongful conviction, the innocent defendant has entered a guilty plea approximately 20% of the time.

There are many reasons an innocent person may plead guilty. In some cases, a false guilty plea may be involuntary, because, for example, it is the result of unduly coercive police tactics, ineffective assistance of counsel, or the defendant's failure to understand the charges and the evidence against him. An innocent defendant may also voluntarily plead guilty for the same reason many defendants do: to avoid the risks and uncertainty of a severe sentence associated with a

⁵ See National Registry of Exonerations, *Exoneration Detail List*, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7BF6AF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=Group&FilterValue1=P> (last accessed Oct. 26, 2020).

conviction. According to a 2002 report by the North Carolina Sentencing and Policy Advisory Commission:

It is the defendant who must ultimately decide whether or not to accept a plea. Respondents indicated that a defendant may agree to plead for several reasons. He may be getting a break from the sentence he could receive at trial. The defendant may get a shorter active sentence or avoid active time altogether by getting probation. Whether or not the defendant gets a break, he will gain more control over the sentence by pleading. The outcome is more predictable than what a judge and jury may decide to do. Respondents listed several other reasons why a defendant may plead including the strength of the case against him, a particularly bad prior record, a sympathetic victim who will testify against him, or pressure from his attorney or his family. Many respondents indicated that a defendant who has been detained in jail prior to trial is often more willing to plead in order to get out of the local jail. Some defense attorneys also indicated that defendants are penalized for proceeding to trial. For example, prosecutors are more likely to seek an aggravated sentence or to ask for consecutive sentences in cases that proceed through trial.⁶

⁶ North Carolina Sentencing and Policy Advisory Commission, Sentencing Practices Under North Carolina's Structured Sentencing Laws at 24 (March 2002), https://www.nccourts.gov/assets/documents/publications/disparityreportforwebR_060209.pdf?1iTr9wYxjAeDSGBuk5MdRLfgFq0ELkz.

Critically, many of these considerations are not dependent on the actual (or factual) guilt or innocence of the defendant.⁷ The practical effect is that in many cases, a plea bargain does not represent a sincere confession of guilt, but rather is the result of a risk/benefit calculation, or of relenting to the machinery of criminal prosecution. *See also Schmidt v. State*, 909 N.W.2d 778, 786-89 (Iowa 2018) (“A plea does not weed out the innocent We know people plead guilty for all sorts of reasons. Many of those reasons are unrelated to whether the defendant actually committed the crime.”) (collecting authority).

Given the risks and costs associated with taking a criminal case to trial and verdict, it may come as no surprise that guilty pleas are the overwhelming manner in which criminal cases are resolved. In North Carolina, only 2% of all felony convictions statewide are the result of a jury trial.⁸ Ninety percent of all criminal felony prosecutions end with a

⁷ *See* Hon. Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. Rev. of Books (Nov. 20, 2014), <https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/> (“[T]he prosecutor-dictated plea bargain system, by creating such inordinate pressures to enter into plea bargains, appears to have led a significant number of defendants to plead guilty to crimes they never actually committed.”).

⁸ North Carolina Sentencing and Policy Advisory Commission, *Structured Sentencing Statistical Report for Felonies and*

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guilty plea.⁹ The pressure to plead guilty is substantial in many criminal cases and even an innocent defendant will often conclude that a guilty plea is the more prudent path.

This risk is especially acute in death penalty cases. When the crime at issue is death-penalty eligible (as it was in this case), the innocent defendant must make an impossible choice: falsely plead guilty and serve time in prison, or risk execution. Faced with that dilemma, many understandably choose the guilty plea.¹⁰ Innocent defendants should not be denied access to potentially exculpatory DNA evidence solely because they chose to avoid the risk of a death sentence.

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Misdemeanors at 5 (Jan. 2019),

<https://www.nccourts.gov/assets/documents/publications/statisticalrpt-fy18.pdf?YTPJvi7g9H0zwNo1JCfLM6wUaI.ldf6q>.

⁹ North Carolina Sentencing and Policy Advisory Commission, Structured Sentencing Statistical Report for Felonies and Misdemeanors at 5 (Jan. 2019),

<https://www.nccourts.gov/assets/documents/publications/statisticalrpt-fy18.pdf?YTPJvi7g9H0zwNo1JCfLM6wUaI.ldf6q>.

¹⁰ See North Carolina Sentencing and Policy Advisory Commission, Structured Sentencing Statistical Report for Felonies and Misdemeanors at 5 (Jan. 2019),

<https://www.nccourts.gov/assets/documents/publications/statisticalrpt-fy18.pdf?YTPJvi7g9H0zwNo1JCfLM6wUaI.ldf6q>. (“Presumably they did so because, even though they were innocent, they faced the likelihood of being convicted of capital offenses and sought to avoid the death penalty, even at the price of life imprisonment.”).

Recognizing this dilemma, the vast majority of states do not limit access to post-conviction DNA testing when a defendant has entered a guilty plea. Indeed, approximately 42 states do not prohibit individuals who plead guilty from filing petitions for post-conviction DNA testing.¹¹ Similarly, the North Carolina Innocence Inquiry Commission, which is “charged with providing an independent and balanced truth-seeking forum for credible post-conviction claims of innocence in North Carolina,” does not limit its inquiries based on whether a defendant has pleaded guilty.¹² The Innocence Commission reports that approximately 41% of the inquiries it receives come from cases involving a guilty, no contest, or *Alford* plea.¹³ The State of North Carolina’s desired outcome contravenes the logic of the vast majority of States, and North Carolina’s own Innocence Commission, which have all recognized the importance of maintaining access to post-conviction DNA testing for those who have pleaded guilty.

¹¹ See Colin Miller, *Why States Must Consider Innocence Claims After Guilty Pleas*, 10 U.C. Irvine L. Rev. 671 (2020)

¹² *About*, North Carolina Innocence Inquiry Commission, <http://innocencecommission-nc.gov/about/>.

¹³ *About*, North Carolina Innocence Inquiry Commission, <http://innocencecommission-nc.gov/about/>.

2. **At least eleven wrongfully convicted North Carolinians have pleaded guilty to crimes they did not commit.**

It is not speculation or conjecture that within the modern criminal justice system, which heavily incentivizes the use of plea bargaining, wrongfully accused individuals in North Carolina will plead guilty despite their innocence. The National Registry of Exonerations identifies eleven wrongful convictions involving plea bargains in North Carolina—eight of whom were ultimately exonerated through the use of DNA evidence.¹⁴ Their stories include:

- In 1993, Keith Brown pleaded guilty to sexual assault in Wilson County and was sentenced to 35 years in prison. Four years into his sentence, DNA testing of evidence from the crime scene implicated a different perpetrator who was later convicted of the assault. Mr. Brown was released from

¹⁴ See *Exoneration Detail List*, Nat'l Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7BF6AF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=Group&FilterValue1=P&FilterField2=ST&FilterValue2=NC> (last accessed Oct. 26, 2020).

prison in 1997 and received a pardon of innocence from then-Governor James B. Hunt in 1999.¹⁵

- In 1988, police suspected Edward McInnis for the robbery and rape of an elderly woman in Scotland County based on an informant tip. Mr. McInnis initially denied involvement and provided an alibi confirmed by his family members. Following police interrogation, McInnis confessed to the attack—even though details he provided were inconsistent with the facts of the case, including where in the home the attack took place, details about the attack, and the amount of money taken in the robbery. Afraid to risk a death sentence at trial, Mr. McInnis pleaded guilty and was sentenced to life in prison plus 20 years. In 2015, DNA testing excluded Mr. McInnis as the possible assailant. Mr. McInnis was released from prison after serving 27 years for a crime he did not commit.¹⁶

¹⁵ *Keith Brown*, Nat'l Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3062>.

¹⁶ Maurice Possley, *Edward McInnis*, Nat'l Registry of Exonerations (last updated Dec. 9, 2018),

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- After the murder of Walter Bowman in Buncombe County in 2000, prosecutors charged six men with first-degree murder for their alleged involvement, including Teddy Isbell, Kenneth Kagonyera, Damian Mills, Robert Wilcoxson, and Larry Williams, Jr. There were a number of errors with the investigation and prosecution of the case, including police misconduct, faulty identification procedures, coercive interrogations, unreliable confessions, and changing and inconsistent stories from witnesses. The five men pleaded guilty—four pleaded guilty to second-degree murder, and Mr. Isbell pleaded guilty to accessory after the fact to murder. They received sentences ranging from 3 to 15 years. Lawyers for Mr. Kagonyera and Mr. Wilcoxson later testified that their clients entered plea agreements to avoid the risk of a death sentence at trial for first-degree murder. In 2007, DNA samples from a recovered bandana were run through

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<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4733>; *Edward McInnis – 27 Years Served For a Crime He Did Not Commit*, N. Carolina Ctr. on Actual Innocence, <https://www.nccai.org/edward-mcinnis/>.

the FBI's CODIS database and matched a man who had been previously identified as an accomplice by another individual who confessed to the crime but had never been charged. All five men were later exonerated after cumulatively spending decades in jail for the false charges.¹⁷

In each of these cases, the State wrongly charged the defendant with a serious criminal offense. Facing a decades-long sentence or execution if convicted at trial, the defendant chose to plead guilty. Exculpatory DNA evidence was later identified and each of these men was exonerated. If the State's argument here were to prevail, however, similarly-situated North Carolinians would be left without the opportunity to prove their innocence through the State's DNA-testing statute. Instead, they would remain in prison for crimes they did not commit, while guilty parties remain free to do more harm. This Court should not reach such a manifestly unjust result.

¹⁷ Ken Otterbourg, *Teddy Isbell*, Nat'l Registry of Exonerations (last updated Nov. 12, 2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4765>.

IV. Conclusion

It would compound injustice to arbitrarily deprive certain criminal defendants of the opportunity to prove their innocence through DNA testing simply because they—like the overwhelming majority of criminal defendants—have resolved their cases through the plea bargaining system. This Court should hold that North Carolina’s post-conviction DNA testing statute is available to defendants who have pleaded guilty.

Respectfully submitted, this 27th day of October, 2020.

JULIE BOYER, ATTORNEY AT LAW

By: /s/Julie C. Boyer

Julie C. Boyer

NC State Bar No: 32593

P.O. Box 21358

Winston Salem, NC 27120

T: (336) 831-1906

F: (336) 842-8232

julie@jcboyerlaw.com

N.C.R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

By: /s/ Kelly M. Dermody

Kelly M. Dermody (*pro hac vice admission pending*)

kdermody@lchb.com

Evan J. Ballan (*pro hac vice admission pending*)

eballan@lchb.com

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

Telephone: (415) 956-1000

Facsimile: (415) 956-1008

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies pursuant to N.C.R. App. P. 28(j)(2) that this brief contains 2,665 words, including footnotes and citations.

/s/ Julie C Boyer

Julie C. Boyer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing brief depositing a copy, contained in a first-class postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

Addressee:

Ms. Kristin Jo Uicker [Primary Attorney]
Assistant Attorney General
kuicker@ncdoj.gov
N.C. DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
(919) 716-6593

Ms. Anne M. Gomez [Primary Attorney]
Assistant Appellate Defender
anne.m.gomez@nccourts.org
Mr. Glenn Gerding
Appellate Defender
Glenn.Gerding@nccourts.org
Mr. Nicholas C. Woomer-Deters [Primary Attorney]
Assistant Appellate Defender
nicholas.c.woomer-deters@nccourts.org

N.C. APPELLATE DEFENDERS OFFICE
123 West Main Street
Suite 500
Durham, NC 27701
(919) 354-7210

Attorneys for Amicus Curiae

This the 27th day of October, 2020.

/s/Julie C Boyer

Julie C. Boyer