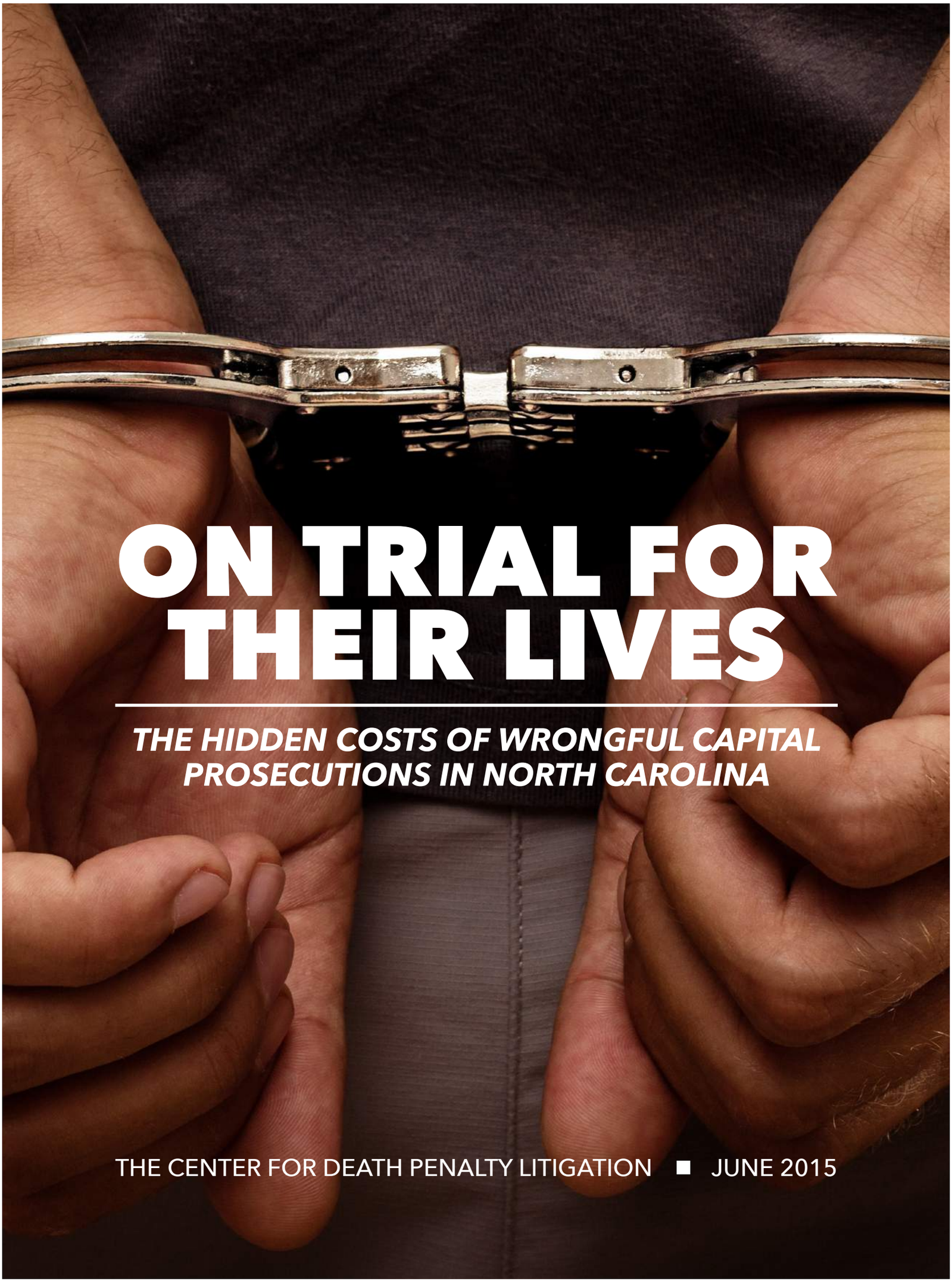


ON TRIAL FOR THEIR LIVES

THE HIDDEN COSTS OF WRONGFUL CAPITAL PROSECUTIONS IN NORTH CAROLINA

THE CENTER FOR DEATH PENALTY LITIGATION ■ JUNE 2015

ACKNOWLEDGMENTS

Thanks to the following groups who provided funding for this report:

Proteus Action League

The Z. Smith Reynolds Foundation

Atlantic Philanthropies

Immaculate Conception Catholic Church of Durham, Social Justice Committee

The many individual donors who support CDPL's work

Thanks also to those who provided data or research assistance:

N.C. Office of Indigent Defense Services

University of North Carolina School of Law

Duke University School of Law

Attorneys, clerks of court, the wrongly prosecuted, and many other members of the community who took time to speak with us or provide records and data

TABLE OF CONTENTS

EXECUTIVE SUMMARY

JERMAINE SMITH was tried for his life based on debunked arson science and the false accusations of a 14-year-old girl, who was coerced into implicating Smith during 15 hours of police interrogation.

LESLIE LINCOLN was pressured to confess to the murder of her mother and, when she refused, presented with State Bureau of Investigation lab results showing her DNA in a bloody handprint found at the crime scene. The death penalty was taken off the table only after Lincoln's attorney discovered that her DNA sample had been switched with her mother's DNA, and the forensic evidence against her was false.

CHRIS GORDON BROOKS spent 17 months in jail on capital murder charges, based solely on the statements of two people: a jailhouse informant hoping for a light sentence and a paid police informant.

Smith and Lincoln were acquitted by juries, and the prosecutor dismissed Brooks' charges just before a scheduled trial—but not before they spent a combined six years and two months in jail and faced the possibility of execution, despite the thinnest of evidence connecting them to the crimes of which they stood accused.

Prosecutors and lawmakers insist that the death penalty is necessary to punish "the worst of the worst," in cases where evidence of the defendant's guilt is overwhelming and the circumstances of the crime are more heinous than most. Yet, the reality is that the death penalty in North Carolina is used indiscriminately and with little regard for the strength of the evidence. While police and prosecutors may not intend to convict the innocent, they often face enormous pressure to solve and prosecute crimes. In that environment, they rely on the threat of the death penalty to solicit information and confessions from suspects, or to pressure suspects to accept plea bargains. The frequency with which state officials use the death penalty in this manner makes it inevitable that innocent people get caught up in the capital punishment system.

For the first time in North Carolina, the Center for Death Penalty Litigation (CDPL) has conducted a study of cases in which people were accused of capital murder but never convicted, which we refer to in this report as wrongful capital prosecutions. We wanted to explore why people were prosecuted capitally when the state did not have enough evidence to convict, as well as determine the harm caused by such cases. This group of people has been largely ignored, even as North Carolina has seen several high-profile exonerations of death row inmates. There is no registry that tracks the cases of those wrongly charged with capital murder, and no group that advocates for them. We know of no other study in the United States that has asked these questions or tracked this group.

We pored over case files, court records and news reports, contacted attorneys, and interviewed the accused to find cases during the period from 1989 to 2015 in which a person was charged with capital murder and was eventually acquitted or had all charges related to the crimes dismissed. We identified 56 cases in which the state abused its power in seeking a death sentence, because prosecutors did not have enough evidence to prove beyond a reasonable doubt that the defendant was guilty. This means that over the past 26 years, an average of two people each year have been targeted for the death penalty even though there was very little evidence of guilt, let alone evidence that they were worthy of the state's harshest punishment. The database of cases presented in this report is reliable but not comprehensive, because there is no centralized tracking of such cases. Doubtless, there are cases we did not find.

Our research uncovered the same types of errors and misconduct in these cases that have been uncovered in cases where innocents were convicted and sent to death row. We found cases in which state actors hid exculpatory evidence, relied on junk science, and pressured witnesses to implicate suspects. In several cases, there was no physical evidence and charges were based solely on the testimony of highly unreliable witnesses, such as jail inmates, co-defendants who were given lighter sentences in return for cooperation, and paid informants. Reliance on such witnesses was a factor in more than 60 percent of the cases we studied.

The state incarcerated these people, who were never convicted of any crime, for an average of two years each. All told, the 56 defendants spent a total of more than 112 years in jail. Gregory Chapman in Duplin County served the longest jail term: nearly seven years. Those who are indicted on capital charges and later cleared are not eligible for compensation, even though many of them spend years in jail, lose their jobs, and are bankrupted by legal expenses. In addition to leaving many in financial ruin, the state does not even do these exonorees the favor of clearing their criminal histories. They must request a court order to expunge their criminal records, an expensive and lengthy process. Those who were already living at the margins of society often struggled to find jobs, and some fell into homelessness after they were released from jail.

FAILED PROSECUTIONS LEAVE CRIMES UNSOLVED AND TRUE CULPRITS FREE TO MURDER AGAIN. PURSUING THE DEATH PENALTY IN WEAK CASES WASTES TAXPAYER MONEY.

There is also a tremendous public cost to such mistakes. Failed prosecutions leave crimes unsolved and true culprits free to murder again. Pursuing the death penalty in weak cases wastes taxpayer money. Research shows that capital prosecutions cost taxpayers at least four times as much as non-capital ones.[1] Our researchers calculated the additional defense costs for the 56 cases in this report at more than $2.4 million, all of which could have been saved if the death penalty had never been on the table in these cases.[2]

In any criminal justice system, innocent people will occasionally be swept up in investigations. However, a functioning system seeks truth and endeavors to find errors as quickly as possible. The system North Carolinians expect should use the death penalty only in the strongest, most egregious cases. Our state's capital punishment system is failing to

live up to that basic standard. Instead of punishing the most culpable, it is too often used to threaten the lives of the innocent. Nine innocent people have been exonerated after being sent to North Carolina's death row. If the death penalty continues to be used in this way, more innocent people will be sentenced to die—and possibly executed.

OUR RESEARCH UNCOVERED:

- 56 cases where prosecutors sought the death penalty despite a clear lack of evidence, resulting in acquittal or dismissal of charges.
- 112 years spent in jail by wrongfully prosecuted people.
- An average of two people per year targeted for the death penalty despite little evidence of guilt.
- 60 percent of wrongful capital prosecutions involve the testimony or statements of unreliable witnesses.
- Nearly $2.4 million spent on pursuing weak cases capitally.

DEATH PENALTY HISTORY

The modern era of the death penalty began in the United States in 1976, when the Supreme Court ruled that the practice was constitutional so long as states used "objective criteria" to impose it and ended the arbitrary and biased executions that marked the death penalty's history. Until that point, the death penalty had been imposed for both rape and murder—and was used largely as a tool to punish African-Americans accused of crimes against whites. Since the death penalty was reinstated under new rules, North Carolina has sentenced more than 400 men and women to death. Since 1976, the state has made considerable efforts to erase the stain of the past and create an impartial death penalty.

THE CAPITAL PUNISHMENT SYSTEM CONTINUES TO BE USED SO BROADLY AND INDISCRIMINATELY THAT INNOCENT PEOPLE ARE INEVITABLY CAUGHT UP IN ITS NET.

However, despite decades of legal reform and millions of dollars in taxpayer money spent on high-quality legal representation, investigators, and experts for the accused, the death penalty remains stubbornly arbitrary and error-prone. It continues to be used disproportionately against people who are poor and mentally ill.[3] Whether a defendant receives a death sentence continues to depend more on the politics of the county where the trial takes place than on the facts of the crime.[4] Racial bias continues to play a role in capital trials.[5] Cases are still marred by lost and mishandled evidence, false testimony, and coerced confessions. Perhaps most troubling, the capital punishment system continues to be used so broadly and indiscriminately that innocent people are inevitably caught up in its net.

ATTEMPTS TO REFORM THE DEATH PENALTY IN N.C.

- The creation of a sentence of life without the possibility of parole for first-degree murder, giving jurors an option other than death when they want to ensure that a defendant will never be released from prison.

- Legal bars on death sentences for children and people with significant intellectual disabilities.

- Laws guaranteeing defendants access to evidence that could prove their innocence, including the prosecutor's file and DNA testing.

- The creation of the N.C. Office of Indigent Defense Services, which ensures qualified attorneys for defendants who are unable to pay.

- The elimination of laws requiring district attorneys to seek death sentences in all first-degree murder cases where an aggravating factor is present, without regard for mitigating factors.

- A requirement that confessions be videotaped to ensure that defendants are not pressured into signing false confessions, and that police lineups are conducted according to protocols that do not contribute to false identifications.

CASE PROFILE: *LESLIE LINCOLN*

THINGS WERE COMING TOGETHER FOR LESLIE LINCOLN. AT 46, SHE WAS RECOVERING FROM A PAINFUL DIVORCE. SHE HAD JUST BOUGHT A HOUSE ACROSS THE STREET FROM THE LAND WHERE HER THREE HORSES GRAZED. SHE HAD A NEW BOYFRIEND. SHE HAD RECENTLY LANDED A GOOD JOB AS AN ADMINISTRATOR AT AN ASSISTED LIVING FACILITY MAKING $42,000 A YEAR, THE MOST SHE HAD EVER EARNED.

Then, in March 2002, her mother, Arlene Lincoln, was found beaten and stabbed to death in her home in Greenville, N.C. Leslie, who lived nearby and visited her mother often, had been the last known person to see her alive. Over the next six months, Leslie Lincoln watched the investigation slowly zero in on her. Police finally arrested her in September 2002, despite no physical evidence linking her to the crime, and the prosecutor said she would be tried for her life.

It would take five years—during which she was falsely implicated by flawed DNA evidence—before Lincoln was finally acquitted by a jury. During that time, she lost her home, her savings, and her stability. Since her acquittal in August 2010, she has been diagnosed with Post-Traumatic Stress Disorder and has drifted in and out of homelessness. She admits that she has been unable to cope with her wrongful arrest and its aftermath.

"It takes a hole out of your heart, and you just can't fill it back up again," she says. "You try to pour good memories in, but the bad ones get in."

In the months leading up to her arrest, she says a police investigator badgered her in five-hour interrogation sessions, almost persuading her that maybe she had killed her mother and didn't remember.

Lincoln's mother had clearly struggled and fought against her killer, and on the day of her murder, Lincoln and other family members had all rolled up their sleeves for police to show that they had no defensive wounds. Her interrogator said there was no record of that.

When she was arrested, she believed the mistake would be sorted out in a few days. Instead, she soon found out that the prosecutor planned to seek the death penalty against her. Lincoln spent just over three years in jail while she awaited her trial—during which she was never allowed outside and saw the outdoors only through a frosted window. Lincoln then spent almost another two years on house arrest. She still cries when she

photo by Jenny Warburg

remembers her first days in jail, which she spent in isolation, weeping ceaselessly, shivering with cold. She eventually made friends and learned to pass the hours doing crossword puzzles, playing Spades and working in the laundry room, but as the years went by, she suffered blow after blow: the sale of her horses, the death of her beloved dogs, the loss of her house, her truck, and her boyfriend.

AS THE YEARS WENT BY, SHE SUFFERED BLOW AFTER BLOW: THE SALE OF HER HORSES, THE DEATH OF HER BELOVED DOGS, THE LOSS OF HER HOUSE, HER TRUCK, AND HER BOYFRIEND.

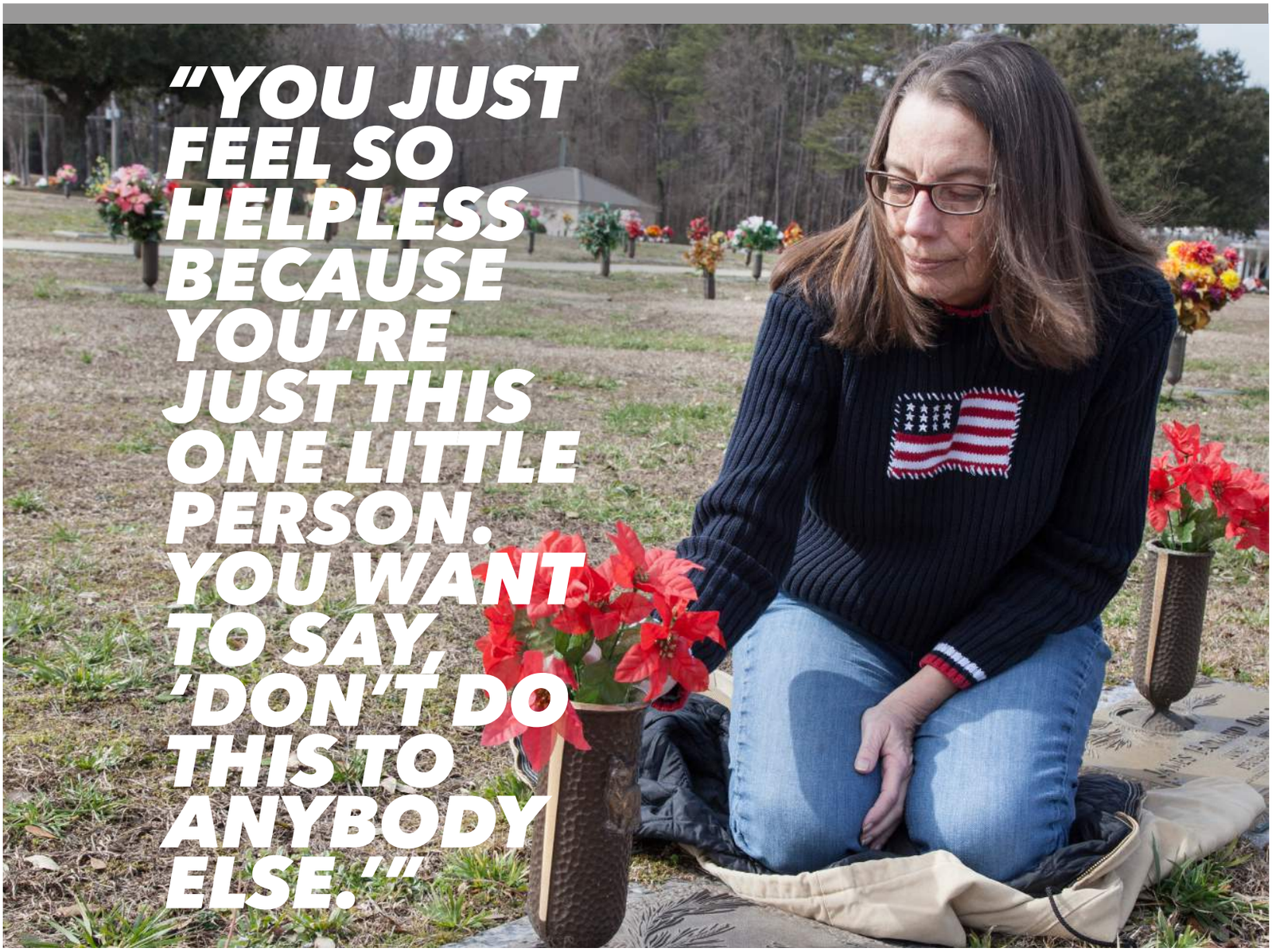
Perhaps the biggest blow came on the day, a few months after her arrest, when Lincoln was informed that her DNA was found in a bloody handprint left at the crime scene. She reeled with disbelief.

Her lawyer requested that the sample be retested, but the state lab refused. He went to a private lab instead, and new tests uncovered a shocking mistake: the DNA samples had been switched, and the DNA identified as Leslie Lincoln's had actually belonged to her mother. None of Leslie's DNA was found in the blood or other evidence collected at the crime scene. Lincoln says she will never be sure whether the incorrect results were the result of an error or an intentional effort to implicate her.

After the bungled DNA testing, prosecutors and police agreed to take the death penalty off the table, but they continued to pursue first-degree murder charges against her. They began offering to dismiss charges against other jail inmates, in return for testimony against Lincoln. They used the testimony of two snitches at trial. The jury took less than an hour and a half to find her innocent.

By the time she was exonerated, Lincoln had little to return to. She couldn't find a good job, and had to take part-time work in fast food restaurants. She moved into an apartment, but couldn't earn enough to hold on to it. Her grief over her mother's death, pent up for five years, began to overtake her. She saw a psychiatrist and was prescribed medications for anxiety and depression, but still wore out the patience of close family members. She ended up moving into a homeless shelter and, in 2013, she spent several months living in her truck with a boyfriend she met at the shelter.

Her family members stood behind her through her trial, but they say they struggle to continue to help her. A couple years ago at Christmas, her brother and niece gave her the gift of expunging her crim-



inal record. But they haven't been able to expunge the psychological trauma of her wrongful arrest. They say the person who helped Lincoln through her personal trials in the past was her mother. Now that she is gone, they don't know whether Lincoln will ever recover.

Since her exoneration, Lincoln says police have made no efforts to find her mother's killer. She is haunted by the knowledge that a murderer is still free. Lincoln says she cannot get over the feeling of being vulnerable and alone. She has never received an apology from the police or prosecutors who tormented her.

"You just feel so helpless because you're just this one little person. You want to say, 'Don't do this to anybody else.'"

INNOCENCE AND THE DEATH PENALTY

HENRY MCCOLLUM

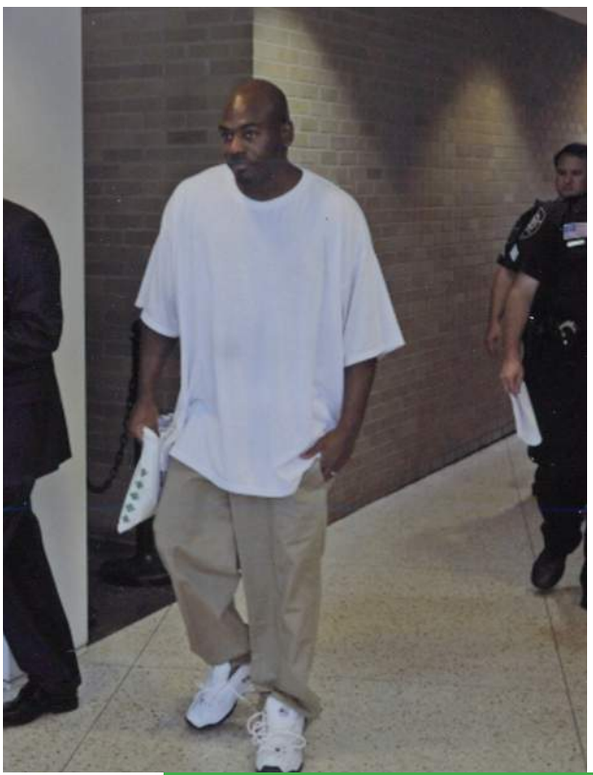
photo by Jenny Warburg

North Carolina's most dramatic death row exoneration happened in September 2014. The state's longest serving death row inmate, **HENRY MCCOLLUM**, and his brother, **LEON BROWN**, were freed after DNA testing showed that a serial rapist and murderer was the true perpetrator of the crime. In 1983, police pressured a 19-year-old McCollum and 15-year-old Brown, both of whom are intellectually disabled, into signing false confessions. Through two trials and 30 years of appeals, their guilt went largely unquestioned—despite serious inaccuracies in the brothers' confessions. While Brown had his sentence converted to life without parole, the state was still seeking to execute McCollum.

McCollum and Brown are among nine death-sentenced people who have been exonerated in North Carolina, seven of them since 1999.[6] In every case, serious errors and even corruption came to light: witnesses secretly compensated for their testimony, exculpatory evidence hidden, leads that pointed to other suspects ignored, junk science and false testimony presented at trial. One hundred forty-nine people remain on North Carolina's death row, and nearly three-quarters of them were sentenced to death before most of the state's key reforms were enacted. One hundred twenty of those on death row were tried in 2003 or earlier, an era during which the State Bureau of Investigation has admitted it routinely withheld or distorted forensic evidence in order to secure convictions.[7]

THE SCOPE OF THE PROBLEM EXTENDS MUCH FURTHER, TO ALL THE INNOCENT PEOPLE WHO ARE CHARGED WITH MURDER AND FIND THEIR LIVES THREATENED BY THE STATE.

North Carolina's death penalty is not only a threat to innocent people on death row. The scope of the problem extends much further, to all the innocent people who are charged with murder and find



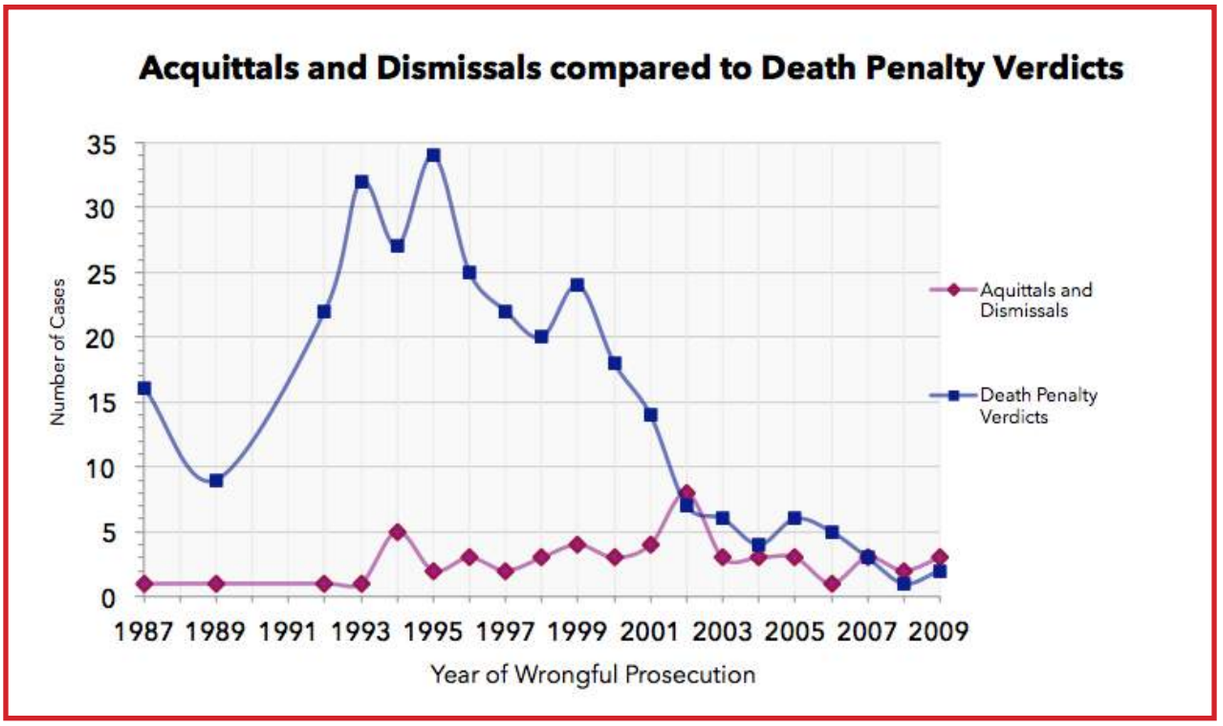
KENNETH KAGONYERA

DARRYL HUNT

their lives threatened by the state. Some go on trial for their lives and are convicted, but the jury spares them a death sentence. **DARRYL HUNT**, who spent 18 years in prison for a murder he did not commit, avoided a death sentence only because a single juror refused to vote for execution. Others plead guilty to crimes they did not commit in order to avoid capital trials, as in the case of **KENNETH KAGONYERA** and **ROBERT WILCOXSON**, who each served 11 years before being exonerated by DNA.[8] In civil suits, both said they pled guilty only after being held in jail for more than a year and being repeatedly threatened with the death penalty. Lastly, there is the group on which this report focuses—those "lucky" few who are able to prove their innocence either at trial or before one starts.

Such mistakes are to be expected in a state that uses capital punishment as broadly and indiscriminately as North Carolina. North Carolina law allows the death penalty for a larger range of murders than most states, and prosecutors are permitted to pursue the death penalty in most any case they choose, with little regard for the strength of the evidence.

RECKLESS OVERUSE OF THE DEATH PENALTY



The popular perception is that the death penalty is a punishment sought only for the worst crimes committed by the most culpable offenders. The reality of how the death penalty is used in North Carolina is nowhere close to that vision. In fact, the vast majority of people charged with an intentional killing face the possibility of the death penalty at some point. The people who are ultimately tried capitally are sometimes chosen with little deliberation or oversight, despite the enormous consequences of that decision—both for the defendant facing execution and for the taxpayers of North Carolina, who foot the bill for capital prosecutions.

North Carolina's overuse of the death penalty starts as soon as a defendant is charged with murder. In the case of an intentional killing, and some unintentional killings, prosecutors have the option of charging a defendant with first-degree murder, second-degree murder, or voluntary manslaughter, depending on the circumstances. However, common practice is to almost always choose the initial charge of first-degree or undesignated murder, making the defendant eligible for the death penalty. In its 2008 study,[9] the N.C. Office of Indigent Defense Services (IDS) found that more than 85 percent of murders were charged as first-degree or

undesignated, forcing those cases to proceed as potentially capital.

There are few checks to prevent death penalty prosecutions, even in cases where evidence of guilt is weak. At some point before trial, a judge must agree to allow each case to proceed capitally. However, that process, known as a Rule 24 hearing, is typically perfunctory and requires little more of the state than an affirmation that there are aggravating factors present. Frequently, the prosecutor does not even detail what those factors are.

IN A SYSTEM WHERE THE DEATH PENALTY SERVES AS A TOOL TO ENCOURAGE CONFESSIONS AND PLEA BARGAINS, THE WEAKEST CASES ARE OFTEN THE ONES WHERE PROSECUTORS MUST RELY MOST HEAVILY ON THE DEATH PENALTY.

For prosecutors, the benefit of keeping a potential death sentence in play is clear: It gives them powerful leverage. Suspects are more likely to confess if they think it will spare them the death penalty. Defendants who have spent months in jail under the threat of a capital prosecution are more likely to plead guilty and accept plea bargains. In a system that is starved for resources, and where prosecutors face huge dockets, striking plea bargains is essential to avoid a hopelessly clogged court system.

However, using the threat of death to secure pleas is a dangerous practice. A 2015 report published in the University of Richmond Law Review[10] analyzed some of the risks of using the death penalty as a bargaining chip. Virginia is in an identical situation to North Carolina: While the number of death sentences has decreased significantly, capital charges have not. The vast majority of cases that are initially charged capitally are resolved by plea bargains, and the defendants do not receive death sentences. The report found that this practice raises two significant concerns. It makes the imposition of the death penalty arbitrary, because elected prosecutors in different areas of the state often make very different decisions about charging and plea negotiations. It also increases costs by treating most murder cases as capital for a significant period of time.

Our research raises additional concerns about the practice of bargaining with death. In a system where the death penalty serves as a tool to encourage confessions and plea bargains, the weakest cases are often the ones where prosecutors must rely most heavily on the death penalty. If the state doesn't have strong

physical evidence or witnesses, a defendant's admission of guilt becomes essential to avoid trying a weak case before a jury. While prosecutors may believe a defendant is guilty, sometimes the threat of execution persuades even the innocent to admit to crimes, as in the case of Kagonyera and Wilcoxson. Even in those cases where defendants do not confess, the practice can result in innocent people being threatened with death, despite questionable evidence.

Our analysis reveals a troubling pattern of the death penalty being sought in cases where the state lacked enough evidence to secure a conviction. There has been at least one wrongful capital prosecution in North Carolina every year since 1987. The number of wrongful capital prosecutions has remained constant, even as use of the death penalty has fluctuated.

THE COST OF WRONGFUL CAPITAL PROSECUTIONS

COSTS OF THE DEATH PENALTY IN N.C.[11]
$11 million: The amount N.C. would save each year, just in defense costs, by abolishing the death penalty.[12]
$2.4 million: The cost of pursuing capital charges against the 56 defendants included in this report, none of whom were convicted.
$58,600: The average cost of a proceeded capital case in North Carolina.
$14,200: The average cost of a case in which life imprisonment without parole is the maximum punishment.
85 percent: The share of murders in N.C. that are charged as potentially capital.
$26,000: The additional cost to the state every time a defendant is charged with a potentially capital murder. The cost is 14 times greater than in cases charged as second-degree murder or less.

For defendants, being wrongly charged with capital murder was often a financially and emotionally devastating experience. The majority spent months or years in jail, unable to work or pay bills. Many had their credit destroyed and lost jobs, homes, or businesses. In interviews, defendants described having their homes foreclosed upon or their assets auctioned off by banks while they were incarcerated. The few who were released on house arrest were required to pay for their electronic monitoring, a cost that climbed into the thousands of dollars. They were also left with murder charges on their criminal records, which can be expunged only through a lengthy and costly process. The state offers no compensation or services to defendants who are wrongly charged but never convicted. Their only recourse is to file a civil lawsuit, which requires hiring an attorney and is rarely successful. Some emerged from jail with no employment or home, and a few fell into homelessness.

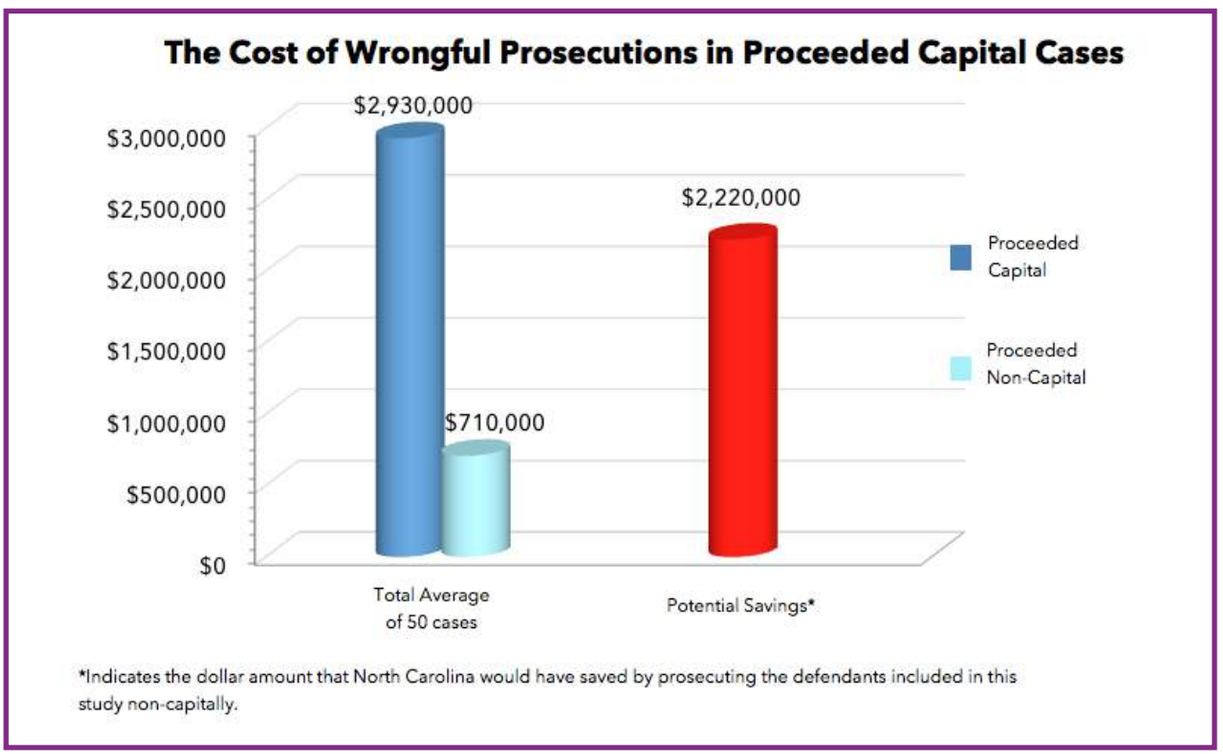
The public also pays a high price for the state's practice of using the threat of execution in almost every case, and those costs are incurred even if the prosecutor does not ultimately seek the death penalty at trial. A potentially capital case entitles the defendant to two attorneys who are paid at higher rates than attorneys appointed in non-capital cases, and requires the appointment of specially trained investigators and other experts. According to the IDS study, the average cost of a potentially capital case was nearly $28,000, more than 14 times that

of a second-degree murder case, which averaged less than $2,000. (In most potentially capital cases, the extra money is wasted, because more than 80 percent of them end in a conviction of second-degree murder or less, the study found.)

THE AVERAGE COST OF A POTENTIALLY CAPITAL CASE WAS NEARLY $28,000, MORE THAN 14 TIMES THAT OF A SECOND-DEGREE MURDER CASE, WHICH AVERAGED LESS THAN $2,000.

Once a judge agrees that the case can proceed capitally, the costs rise higher still. IDS says the average cost of a case that proceeds capitally with a judge's approval is nearly $59,000, more than four times that of a first-degree murder case in which a defendant faces a maximum punishment of life imprisonment without parole. This average includes both cases that go to trial and those that are settled before trial.

Of the 56 cases included in our study, the State proceeded capitally in 50. Pursing the death penalty in those cases cost the state an additional $44,400 per case, on average, according to the IDS study. (The study's averages were for the years 2002-2006. Because they are the only published estimates of the costs of pursu-



ing capital charges, we applied those averages to all years included in this study.) Had the state chosen to pursue these weak cases non-capitally, taxpayers would have saved more than $2.2 million. These numbers are based on defense costs, and do not include additional prosecution and court costs incurred in capital cases, which take longer than other trials and use a more complex jury selection process. The remaining six cases in the report were considered potentially capital, meaning the defendants were charged with crimes that made them eligible for the death penalty but the state never officially pursued a death sentence. Because the possibility of the death penalty was left open, the cases were initially treated as capital, and two attorneys were appointed at higher rates of compensation. IDS says potentially capital cases cost the state, on average, an additional $26,000 each, meaning that capital charges in those six cases cost the state an estimated $156,000. This brings the total estimated cost of charging and pursuing the cases in this report capitally, rather than non-capitally, to nearly $2.4 million.

CASE PROFILE: *MIKE MEAD*

MIKE MEAD WAS NEWLY ENGAGED AND ABOUT TO HAVE A CHILD. THEN, ON JULY 16, 2008, HE GOT A CALL: HIS FIANCÉE, LUCY JOHNSON, HAD BEEN SHOT TO DEATH AND HER HOUSE SET ON FIRE.

Mead immediately thought of Johnson's ex-boyfriend—the two were involved in a bitter custody fight over their infant son—but months went by and no one was arrested. Six months after Johnson's death, police finally made an arrest, but they didn't go after the ex-boyfriend. Instead, they went after Mead.

"It's like a light switch was flicked, and my entire world came crumbling down," Mead wrote shortly after his arrest, in a letter to friends and family. "I loved Lucy very much and was looking forward to a life of happiness with her."

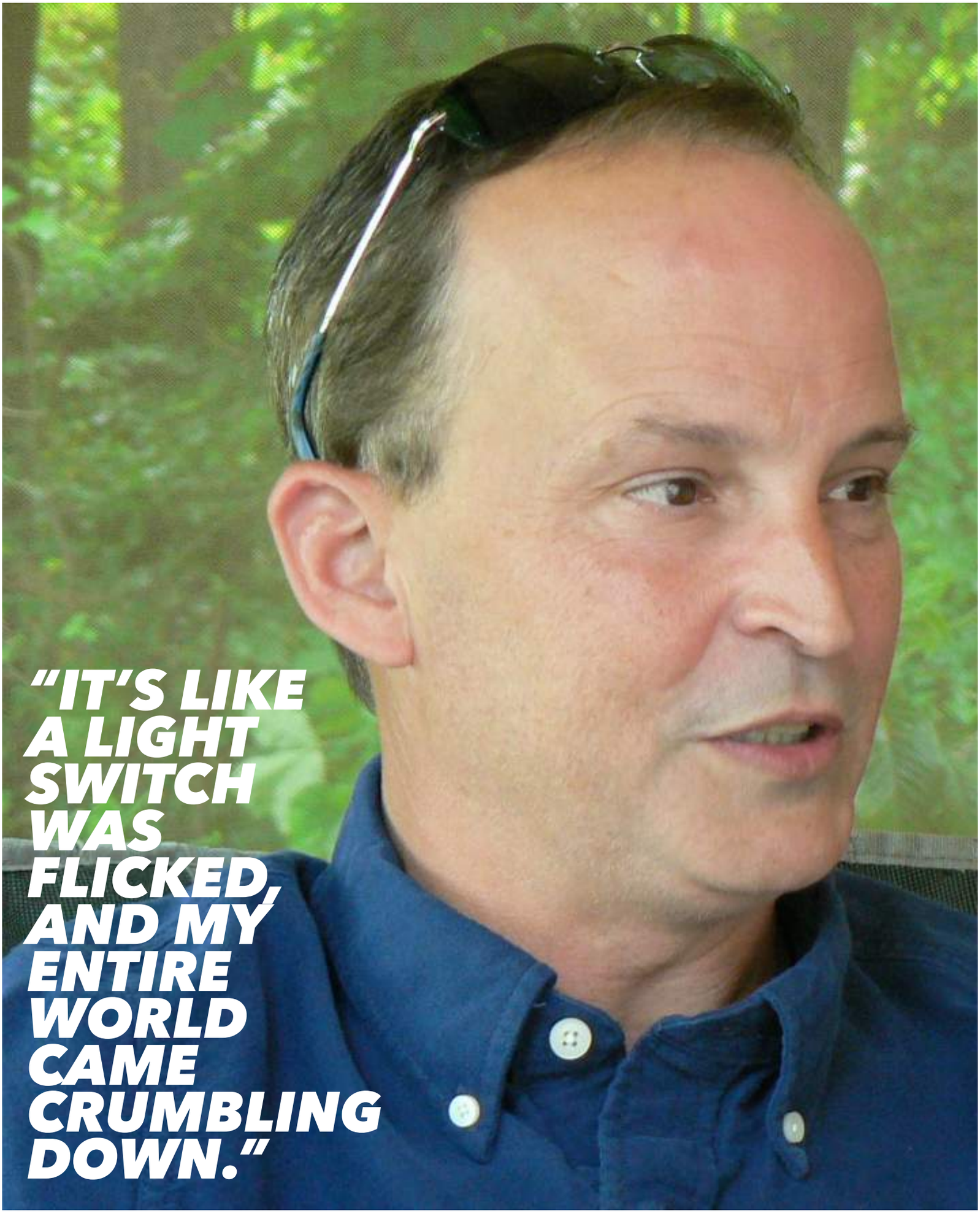
In 2011, Mead was tried for his life in Gaston County and acquitted by a jury. After the verdict was read, he left the courthouse and found the jurors gathered in the hotel bar across the street. They cheered for him, bought him drinks, and laughed about the weakness of the state's case. There was not a shred of physical evidence linking Mead to the murder.

Three years later, Mead says he still can't fathom why police went after him, and why the prosecutor sought the death penalty. Why did they focus on him, a person with no history of violence and a happy relationship with Johnson, and fail to investigate a man with a clear motive? Why did they ignore and hide evidence of his innocence?

AFTER THE VERDICT WAS READ, HE LEFT THE COURTHOUSE AND FOUND THE JURORS GATHERED IN THE HOTEL BAR ACROSS THE STREET. THEY CHEERED FOR HIM, BOUGHT HIM DRINKS, AND LAUGHED ABOUT THE WEAKNESS OF THE STATE'S CASE.

Mead has gotten no answers, and Johnson has gotten no justice. Johnson's killer has never been arrested.

Like many modern couples, Mead and Johnson met on an online dating site. Mead lived in Fort Mill, S.C., and Johnson in Gaston County, N.C. They knew each other only three months, but Mead says they felt an immediate connection. By the time Johnson died, she was pregnant with Mead's child. He says they were both excited about the baby, and less than a week before her death, he asked her to marry him.


“IT’S LIKE A LIGHT SWITCH WAS FLICKED, AND MY ENTIRE WORLD CAME CRUMBLING DOWN.”

Johnson was killed in the early hours of the morning. Mead says he was home alone with his dog. He had an alarm system, which he armed around midnight and did not disarm until the next morning. He had cell phone records showing his phone was used at his house, which was nearly an hour's drive from Johnson's home, at the time of the murder.

Mead also had a neighbor with a video camera trained on the street. If Mead had left the neighborhood that night, he would have had to drive by the camera. His neighbor offered the videotape to the police, but Mead says they refused it.

Mead submitted to interrogation without an attorney, searches of his home, gunshot residue tests, and a polygraph test—believing that police would eventually recognize his innocence. Instead, in January 2009, they issued a warrant for his arrest. The prosecutor announced he would seek the death penalty.

Mead spent 49 days in solitary confinement before a judge, in an unusual move for a capital case, granted him house arrest while he awaited trial. He spent the next two and a half years isolated in his home, tethered by an electronic ankle band, playing video games to fill the hours, watching his bills mount. On top of his legal bills, he had to pay monthly for his electronic monitoring bracelet. By the time of his trial, the cost topped $15,000, and he was never reimbursed.

At the time of his arrest, he owned a successful business as an engineering consultant. But as soon as he was arrested, his clients abandoned him and his business collapsed. He could no longer afford the mortgage on the home he had owned for 11 years. He sold his possessions and declared bankruptcy. The bank foreclosed on his house a few months after he was acquitted.

During 29 months on house arrest, Mead says, he spent a lot of time thinking about "taking a needle in the arm for something I didn't do." He pictured himself in the execution chamber, with Johnson's mother—who believed the police's version of events—standing over him.

THE BANK FORECLOSED ON HIS HOUSE A FEW MONTHS AFTER HE WAS ACQUITTED.

When he was finally declared indigent, he was assigned a new attorney, who found that police had virtually no evidence to support their case. The attorney focused on the father of Johnson's 6-month-old son, James Spelock, who had become enraged when Johnson refused to name the child after him. Since the child's birth, the pair had been fighting

over custody and child support. Johnson had told friends she was afraid of Spelock, and she wrote in her diary that if anything were to happen to her, Spelock would be the culprit.

At trial, Mead's defense team presented a strong case that Spelock was the person with motive and opportunity. They also tore apart the state's case against Mead, and caught investigators in a lie. At trial, police claimed that, after Johnson was found shot to death, they never tested Mead for gunshot residue. On cross examination, police finally admitted that a gunshot residue test had been performed; they then claimed the test results had been lost.

At the end of the trial, with no physical evidence and their case unraveling, the state put a jailhouse snitch on the stand to testify that Mead had confessed to him during the few weeks he spent in jail. Mead says he had never met the snitch. The man's testimony was so unbelievable that, by the time the snitch left the stand, the judge and jury were laughing at him.

Three years later, Mead has mostly rebuilt his life. He has a successful new business and a picturesque lakeside home, which he shares with his two dogs. He maintains a close relationship with Johnson's father, who he says always believed in his innocence. Mead is now pursuing a civil lawsuit against the Gaston County Police Department and the N.C. State Bureau of Investigation, which he sees as the only option left to get a semblance of justice for Johnson and his unborn child.

THE CAUSES OF WRONGUL CAPITAL PROSECUTIONS

Types of Errors found in the 56 Wrongful Prosecution Cases	
Unreliable Witness Testimony	34
Tunnel Vision	15
State Misconduct	12
Tainted Forensic Evidence	5
Self Defense Charged as Murder	4
False Confessions	2
*Many cases fell into multiple categories	

Cases in which innocent people escape conviction are often seen as examples of a justice system functioning as it should. However, our research found serious, systemic problems in the prosecutions included in this report. The majority of the cases studied for this report had at least one of the following flaws:

- *Investigators relied heavily on the statements of unreliable witnesses such as co-defendants, jailhouse informants, or people who were being compensated for their testimony.*
- *Police or prosecutors engaged in misconduct, for example, by withholding evidence, pressuring witnesses into giving false testimony, or secretly compensating witnesses.*
- *The state used flawed or fraudulent forensic science in an attempt to prove guilt.*
- *Investigators focused on the most obvious suspect, such as the spouse or last known visitor, and failed to investigate other suspects or consider evidence that did not point to the suspect's guilt.*
- *Defendants falsely confessed under extreme pressure from police.*

These are the very same problems that are known to lead to wrongful convictions. The Innocence Project, a nationally known law clinic that works to exonerate the innocent, says the use of jailhouse informants, government misconduct, improper forensic science, and false confessions are four

of the six most common causes of wrongful convictions.[13]

They are also the same problems that have been exposed by North Carolina's seven death row exonerations during the past two decades. McCollum and Brown were pressured into signing false confessions. Levon Jones was sentenced to death because a witness made false statements and did not disclose that she was paid by prosecutors for her testimony. During Glen Edward Chapman's death penalty trial, police hid evidence that could have proven his innocence, including the confession of another man. In Alan Gell's case, prosecutors ignored evidence showing that the victim died at a time when Gell could not possibly have committed the crime.[14]

POLICE OR PROSECUTORIAL MISCONDUCT

While most state officials are honest, any system run by individuals will have instances of negligence or corruption. For police and prosecutors, the tremendous pressure to solve crimes and convict perpetrators can be a corrupting influence. We found evidence of state misconduct in 12 instances, or more than 20 percent of the cases included in this report. They included cases where exculpatory evidence was withheld by prosecutors, where witnesses were coerced by police, and most frequently, where people were charged despite evidence of their innocence, in an effort to secure their testimony against others involved in the crime.

This type of misconduct is not unique. Across the country, instances of misconduct have been uncovered in thousands of cases, many of which resulted in exonerations.[15] Even if misconduct is present in only a tiny percentage of cases, it can have devastating consequences in capital prosecutions.

LORENZA KNIGHT was charged with murder in Pitt County in 1999. Knight's defense attorney said the lead police investigator told him at their first meeting that Knight was not guilty but was being charged because he was a witness to the crime—and police wanted to ensure Knight's testimony against the perpetrators. The attorney managed to get bond for his client, but the potentially capital murder charge remained outstanding against him for more than six years before the prosecutor finally dismissed charges with no explanation.

Brothers **JOHN COLLINS** and **DAVID HAMMACK** spent nearly two years in prison accused of a 2000 murder that shocked Buncombe County. Eighteen-

year-old Mary Elizabeth Judd disappeared on her way to catch the school bus, and was later found raped and murdered. Collins and Hammack were arrested after Collins' girlfriend, Lynette Smith, signed a statement saying she saw them putting a body wrapped in trash bags into the trunk of a car. Eventually, Smith recanted, saying she had never seen the men with a body. She said Buncombe Sheriff Bobby Medford forced her to make a false statement implicating the two men, by threatening to arrest her as an accessory to murder and have her children removed from her custody.[16] (Medford is now in prison for taking bribes while in office.) Smith's statement had been the only evidence linking Collins and Hammack to the crime. After their release, another suspect was charged with the murder.

USE OF UNRELIABLE WITNESSES WHO PROVIDED FALSE STATEMENTS OR TESTIMONY

The case of John Collins and David Hammack was one of several in which investigators had no physical evidence and relied heavily on the statements of witnesses or informants. Even in cases where witnesses were not pressured or intimidated, there were often obvious reasons to doubt their credibility, such as the fact that they were receiving cash payments or plea bargains in return for their statements. Yet, their statements were used to justify capital prosecutions and keep people in prison for years. Reliance on such incentivized witnesses—including co-defendants seeking sentencing leniency, fellow jail inmates, and eyewitnesses—was by far the most common problem uncovered by our research. Unreliable witnesses were a factor in 34, nearly two-thirds, of the 56 cases included in this report.

The pitfalls of relying on witness testimony are clear. Even the most well-meaning eyewitnesses have been known to identify the wrong person. Nationally, eyewitness misidentification has played a role in three-quarters of the wrongful convictions that have been overturned through DNA testing since 1989.[17]

NATIONALLY, EYEWITNESS MISIDENTIFICATION HAS PLAYED A ROLE IN THREE-QUARTERS OF THE WRONGFUL CONVICTIONS THAT HAVE BEEN OVERTURNED THROUGH DNA TESTING SINCE 1989.

Just as suspect are the statements of people who have a vested interest in testifying for the state. Co-defendants often receive lighter sentences in return for their cooperation. Jailhouse informants, who testify that the defendant confessed

to the crime while in jail, are also typically given leniency at their trials in return for their testimony, and some receive financial compensation. Fellow jail inmates are a frequent tool used by prosecutors looking to bolster weak evidence in death penalty trials, despite their notorious unreliability. A 2005 study found that false informant testimony played a role in nearly half of wrongful convictions.[18] A 2007 study said "snitch testimony is widely regarded as the least reliable testimony encountered in the criminal justice system."[19]

STEPHANIE GRAY DAVIS spent 19 months in the Columbus County Jail awaiting a death penalty trial based solely on the false statements of a co-defendant. Davis was charged with capital murder in the 2003 stabbing death of a Whiteville man. The only evidence linking her to the crime was the statement of Janice Thomas, an intellectually disabled woman who admitted to being involved in the killing. Thomas was offered a plea to second-degree murder, and a reduced sentence of less than 15 years, in exchange for her testimony against Davis. Despite Thomas' clear motive to point the finger at Davis, police and prosecutors waited until the eve of Davis' trial to give Thomas a polygraph test. Before the test even began, Thomas admitted she had committed the murder alone and that Davis was not present. At the time of Davis' release in 2004, the prosecutor told the newspaper, "She didn't do anything."

In Cleveland County, **CHRIS GORDON BROOKS** was charged with murder because a police drug informant was paid for his false statement placing Brooks at the crime scene. Brooks was jailed for 17 months on charges that he murdered Judy McMurray, who was found stabbed to death in 1993 in her office. There was no physical evidence linking Brooks to the murder, but the paid informant said he had seen Brooks leaving McMurray's office on the day of the crime. The only other evidence was the testimony of a jail inmate who said Brooks confessed the crime to him. That inmate later wrote a letter to Brooks' defense lawyer saying Brooks should be exonerated. After nearly a year and a half, the prosecutor dismissed the case because of a lack of evidence.

JERMAINE SMITH was charged with setting one of the most notorious fires in Raleigh's history. In 1996, a home where a pregnant mother and her seven children slept went up in flames in the middle of the night. Three children died in the fire and a fourth, a 4-year-old boy, lingered in the hospital for three months before dying of

his injuries. Smith, the mother's boyfriend, went on trial for his life after one of the surviving children, 14-year-old Ebony, told police she saw Smith in her closet with a gas can just before the fire started. At trial, it became clear that the state was relying on junk arson science and could not even prove that the fire had been intentionally set. More troubling, it was revealed that Ebony initially told the police–told them 27 times, in fact–that Smith did not set the fire. Ebony pointed the finger at him only after police interrogated her for 15 hours, badgered her to admit that Smith set the fire, and falsely told her that he had confessed to setting it. The jury acquitted him. Smith spent 20 months in jail, most of it in solitary confinement because of threats from other inmates.

USE OF QUESTIONABLE SCIENCE OR TAINTED FORENSIC EVIDENCE

In 2010, the N.C. State Bureau of Investigation admitted that, over a 16-year period, analysts in its crime lab systematically withheld or distorted blood evidence in an attempt to secure convictions in at least 230 cases, including 10 in which the defendants were sentenced to death and three that resulted in executions.[20]

However, problems with forensic evidence go far beyond improper blood evidence. For decades, the policy and practice in the State Crime Lab was not to conduct unbiased tests, but to seek results that helped prosecutors win cases and to suppress evidence that worked in favor of the defense.[21] This practice was clearly at play in several of the cases we studied, while in other cases, individual law enforcement agencies relied on outdated or improper scientific techniques in an attempt to secure convictions. We found five cases where incorrect forensic evidence came into play, including four in which flawed science led to wrongful arson charges.

LESLIE LINCOLN was charged with the 2002 murder of her mother in Pitt County. Her arrest came six months after the murder, and despite a lack of any physical evidence linking her to a crime scene where fingerprints and bloody handprints had been left behind. However, a few months

JERMAINE SMITH

after her arrest, devastating results came back from the State Bureau of Investigation: Lincoln's DNA matched the bloody handprint found on her mother's sheets. Her attorney said he pleaded with the SBI to retest the handprint, but officials at the SBI told him they would not perform any tests for the defense. The attorney hired a private firm to test the samples, and the only DNA found in the handprint belonged not to Lincoln, but to her mother. It was eventually determined that the SBI had switched Lincoln's sample with her mother's. If not for a zealous defense attorney, the mistake might never have been caught.

In 1996, **TERRI HINSON** was charged with setting a fire in her home that killed her 17-month-old son, Josh. State and federal fire investigators said a V-shaped burn pattern in the closet of Josh's bedroom proved that the fire had been intentionally set. Hinson had no known motive to set a fire that also put the lives of herself and her young daughter Brittany at risk, but the investigators said the science was definitive. Unlike most defendants charged with capital crimes, Hinson was released from jail on bond. While on house arrest, she did her own internet research and discovered that her arrest was based on flawed, outdated science. Three internationally recognized arson experts took her case at no charge, and said that the most likely cause of the fire was a faulty wire in the attic above Josh's closet. Their evidence persuaded the district attorney to drop all charges. The same debunked arson science was used in Jermaine Smith's trial.

FALSE CONFESSIONS MADE BY DEFENDANTS FACING THE THREAT OF THE DEATH PENALTY

In two cases, innocent defendants confessed to crimes they did not commit. Most likely, this contingent was small not because false confessions are rare—but because the vast majority of people who confess to crimes are eventually convicted. About one in five people exonerated by DNA have falsely incriminated themselves, usually during intense police interrogations.[22] False confessions are a particular problem among vulnerable groups such as teenagers and those with mental illness or disabilities, who are most likely to buckle under pressure from police.[23] This was borne out in our small sample, as well.

BEUT THONGPHOUNPHIM was 18 when he falsely confessed after six hours of police interrogation during the middle of the night, without his parents or a lawyer present. His attorney said Thongphoun-

phim was afraid and told police what they wanted to hear. He said police fed Thongphounphim the details of the crime for his confession. He spent 16 months in jail facing the death penalty, and was released after another person confessed to the crime. However, charges against him were not dismissed until more than two years after the crime. Three other men were eventually convicted, and they said Thongphounphim had no involvement.

FLOYD BROWN, a severely intellectually disabled man, was coerced into signing a confession he did not understand. In 2013, he received a $7.85 million dollar settlement from the state for his wrongful imprisonment. During a daylong interrogation in 1993, Brown signed a six-page confession to the murder of an 80-year-old woman in Anson County. Brown did not match the description of the killer given by witnesses, and no physical evidence linked him to the crime—but an SBI agent claimed he had written down Brown's confession verbatim. Brown spent the next 14 years locked up in a mental hospital in Raleigh without a trial, because he has the mental capacity of a 7-year-old child and was ruled incompetent. In 2007, a judge agreed with Brown's doctors, who said the confession was fabricated. It contained complex sentences and elaborate details, including exact times and addresses.[24] Brown, who has an IQ of 50, is unable to read, speak in complete sentences, tell time, or learn his own address.

FLOYD BROWN

LAW ENFORCEMENT TUNNEL VISION

In more than one quarter of cases, it appeared that defendants were victims of tunnel vision—a well-established phenomenon in law enforcement, in which investigators identify a suspect and then structure their investigation around proving that person's guilt, rather than conducting an unbiased inquiry. Once a suspect is identified, police and prosecutors tend to favor information pointing to that person's guilt and discard information that supports other theories. Our research uncovered 15 cases where the defendants appeared to be victims of tunnel vision.

Research shows that tunnel vision is a natural tendency, rooted in human psy-

chology, and that it can cause even well-intentioned investigators and prosecutors to make mistakes.[25] Police and prosecutors who succumb to tunnel vision likely do not intend to target innocent people, yet there is clear evidence that tunnel vision has been a factor in wrongful convictions across the country.[26] Law enforcement and other state officials often fail to implement strategies to diminish the effect of tunnel vision, resulting in innocent people being targeted while the true perpetrators remain free.

JERRY ANDERSON was tried for his life in Caldwell County in 2007 for the murder of his wife, Emily, despite no physical evidence linking him to the crime. Law enforcement focused on Anderson early in the investigation, and failed to track down several pieces of information that might have led to other suspects in Emily's murder. A rape kit taken from Emily's body was never processed, even though it would have been an important clue if it had shown evidence of DNA other than Anderson's. Hairs from the truck where Emily's body was found were never tested for identification. People who reported seeing Emily alive days after the date when police said Anderson killed her were never interviewed, nor were people who reported seeing Emily with a strange man shortly before her disappearance. Charges against Anderson were dismissed after his jury hung, 11-1, in favor of his innocence. Police never found the killer.

LAW ENFORCEMENT AND OTHER STATE OFFICIALS OFTEN FAIL TO IMPLEMENT STRATEGIES TO DIMINISH THE EFFECT OF TUNNEL VISION, RESULTING IN INNOCENT PEOPLE BEING TARGETED WHILE THE TRUE PERPETRATORS REMAIN FREE.

MIKE MEAD was charged with his fiancée Lucy Johnson's 2008 murder after Gaston County Sheriff's Department detectives became convinced that he had murdered Johnson because she was pregnant and refused to have an abortion. They had no evidence to prove their theory, but were so attached to it that they refused to consider evidence that supported his alibi. Mead said he was home alone the night of her killing, and he offered the police three pieces of evidence to prove it: cell phone records showing the phone was used at his house, records showing his alarm system was armed at midnight and not disarmed until the next morning, and footage from his neighbor's video camera, which filmed

the street Mead would have had to drive down to leave his neighborhood. Prosecutors refused to consider the evidence and would not even accept the video footage. Instead, they sought the death penalty at trial, despite a lack of evidence. Late in the trial, sensing the weakness of their case, the prosecution used a jail inmate who claimed Mead had admitted the murder to him during the few weeks he spent in jail. (Mead was on house arrest for most of the time he awaited trial.) Mead said he had never even met the other inmate, and the man's testimony was so unbelievable that the jurors laughed during cross examination. The jury acquitted Mead.

CHARGING PEOPLE WHO KILLED IN SELF DEFENSE WITH CAPITAL MURDER

Under the law, a person acting in self defense cannot be guilty of first-degree murder. The United States has a long history of allowing people to protect themselves, even with lethal force, in cases where their lives are at risk. Despite this, our research found that the state has repeatedly pursued the death penalty in cases that involve self defense. It is particularly troubling that many of the cases that we found involved minority defendants.

In four cases studied for this report, defendants were cleared after it was determined they were acting in self defense. In several cases, the defendants appeared to be engaged in armed battles and fighting for their lives.

In 2003 in Robeson County, **DOLAN LOCKLEAR** was tried capitally for shooting his next door neighbor to death and firing shots that paralyzed the man's nephew from the waist down. At trial, the only evidence that Dolan was the aggressor was the testimony of the surviving victim, Welton Locklear. On the stand, Welton repeatedly changed his story about such key details as when and how the shooting occurred, claiming he had previously given false accounts because he was recovering from surgery. In fact, it appeared that Welton was trying to save himself from a murder charge. The jury found for Dolan, who said that Welton shot his uncle and, when Dolan tried to intervene, took shots at Dolan as well. Dolan shot Welton in an attempt to save his own life.

There is no doubt that self defense cases can be complex, and the defendant's guilt may ultimately be a question for a jury. However, it does not comport with our legal norms and community values to hold defendants in jail for years, and try them for their lives, when there is significant evidence that they acted in self defense. In these cases, there are other

charging options available to prosecutors, including second-degree murder and voluntary manslaughter.

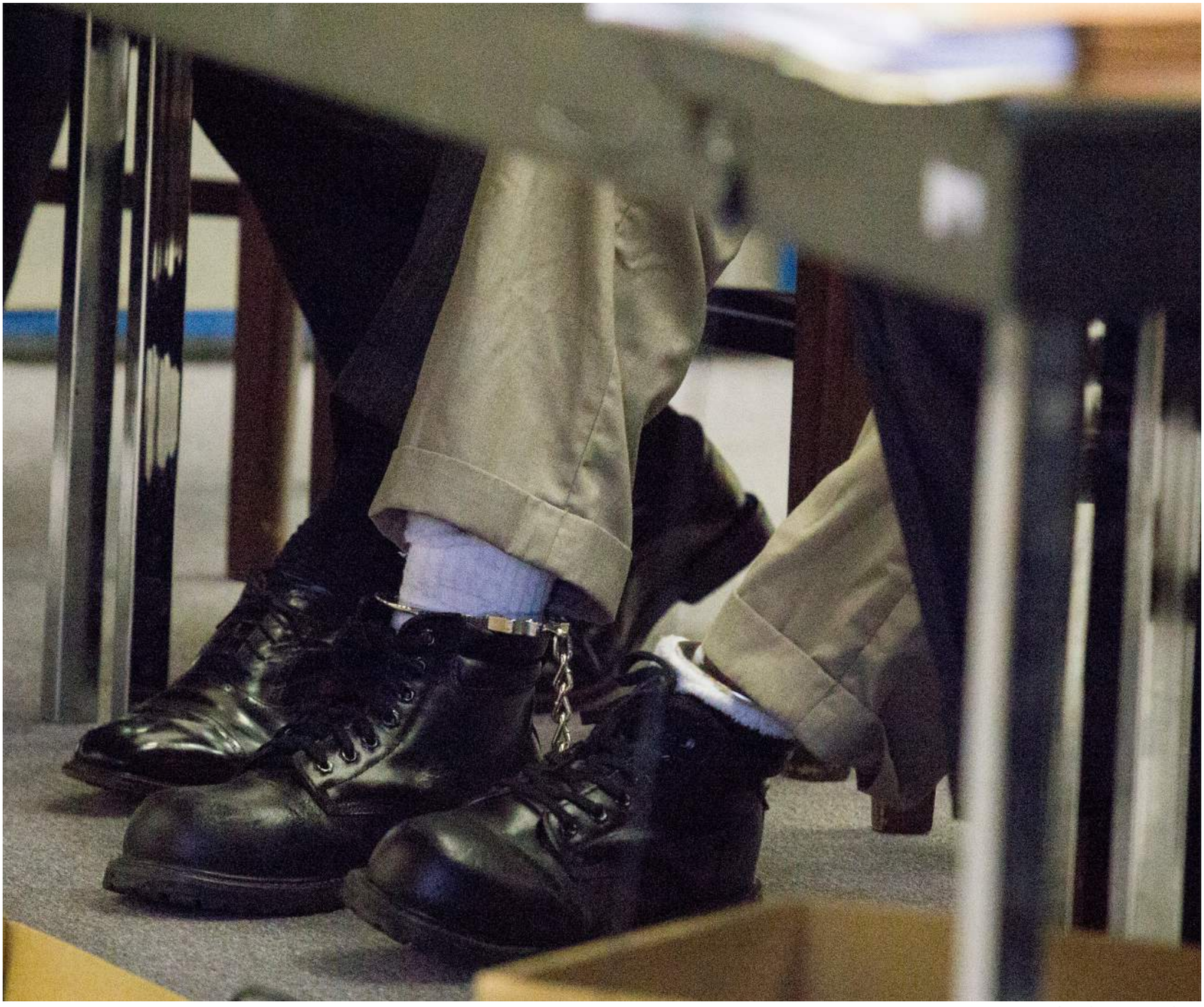


photo by Jenny Warburg

METHODS

This project collected data about criminal defendants who were charged with capital murder, but had their charges dismissed before conviction or were acquitted at trial. All defendants were eligible for the death penalty at some point during their prosecution. This list of cases is distinct from the wrongful convictions databases maintained by the National Registry of Exonerations and The Innocence Project. The defendants in this study were never convicted of the capital murder charged or of any related offense. This project is not an exhaustive study of all North Carolina capital cases ending in acquittals or dismissals. While we attempted to be as thorough as possible, we may have failed to find any number of capital acquittals or dismissals.

The project is designed as an assessment of North Carolina capital cases from 1989-2015 that meet the following criteria:

1. *The case involved the possible imposition of a death sentence;*
2. *The defendant was relieved of all related legal consequences;*
3. *The defendant was never convicted of murder or lesser included or related crimes;*
4. *The defendant did not plead guilty to a related crime; and*
5. *The case was resolved by acquittal or dismissal of charges with prejudice, meaning that the defendant can never be retried on that charge.*

Data was collected from IDS records, state databases, court records, internal records at CDPL, interviews with defendants and attorneys, and internet searches. IDS, which opened in 2001 and oversees legal representation for indigent defendants, has kept the most complete body of information on capital cases in North Carolina. However, there are limitations of time and specificity with which inquiries may be made in the IDS database, so researchers also collected information from other sources.

Researchers searched cases logged in CDPL internal records, which tracked N.C. capital cases from 1990 to 2013. Researchers also contacted capital defense attorneys across North Carolina, asking them to submit lists of cases that ended in acquittal or dismissal. Additional cases were found through internet searches. All cases were examined to determine if they met the criteria for inclusion in this study. CDPL staff verified the disposition of all cases in the study using the North Carolina Administrative Office of the Courts Automated Criminal/Infractions System. The facts of particular cases were verified from news articles and court documents, as well as interviews with defense attorneys and the accused.

RESULTS

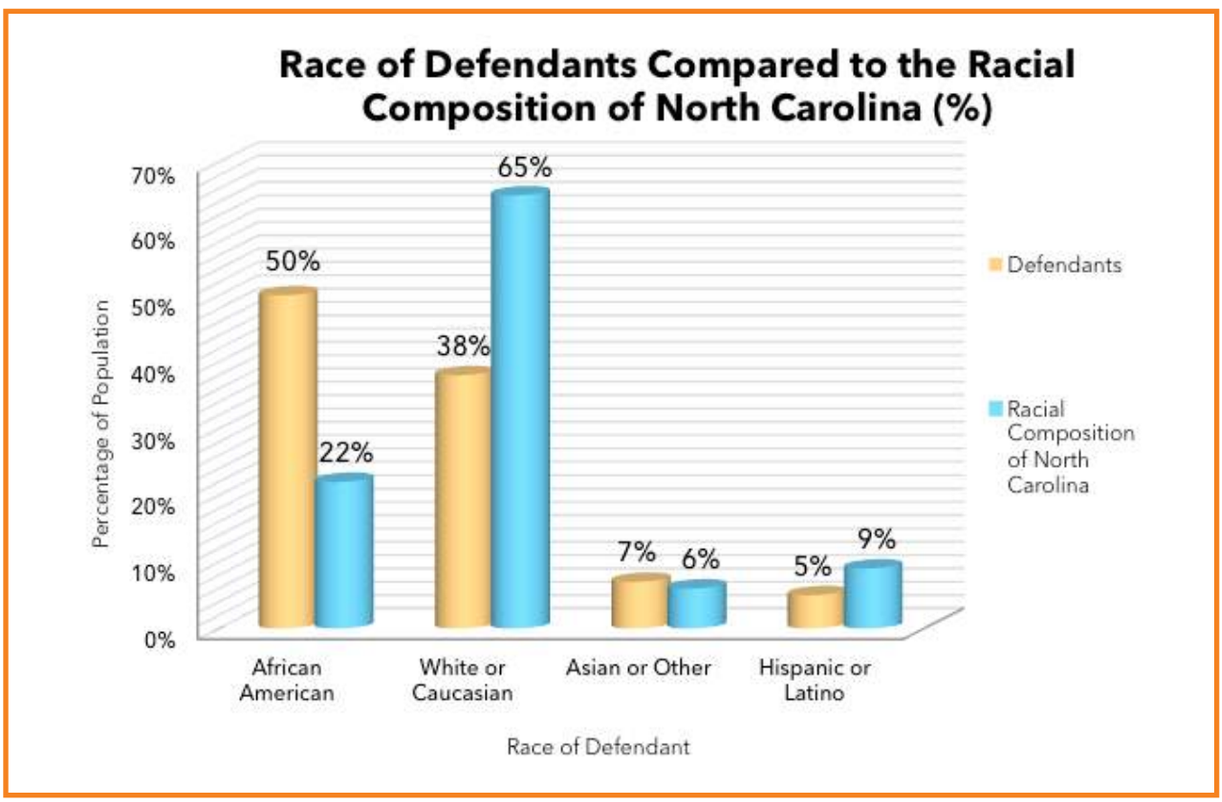
*CDPL IDENTIFIED 56 CASES FROM 1989 TO 2015 THAT FIT THE STUDY CRITERIA.**

DEMOGRAPHICS OF THE DEFENDANTS

Wrongful capital prosecutions affected people of all races and genders, but they fell disproportionately on men and minorities. African-Americans represent only about 22 percent of North Carolina's population, but 50 percent of defendants in this study were African-American.

Gender of Defendants		
	Number of Cases	**Total**
Men	51	91%
Women	5	9%

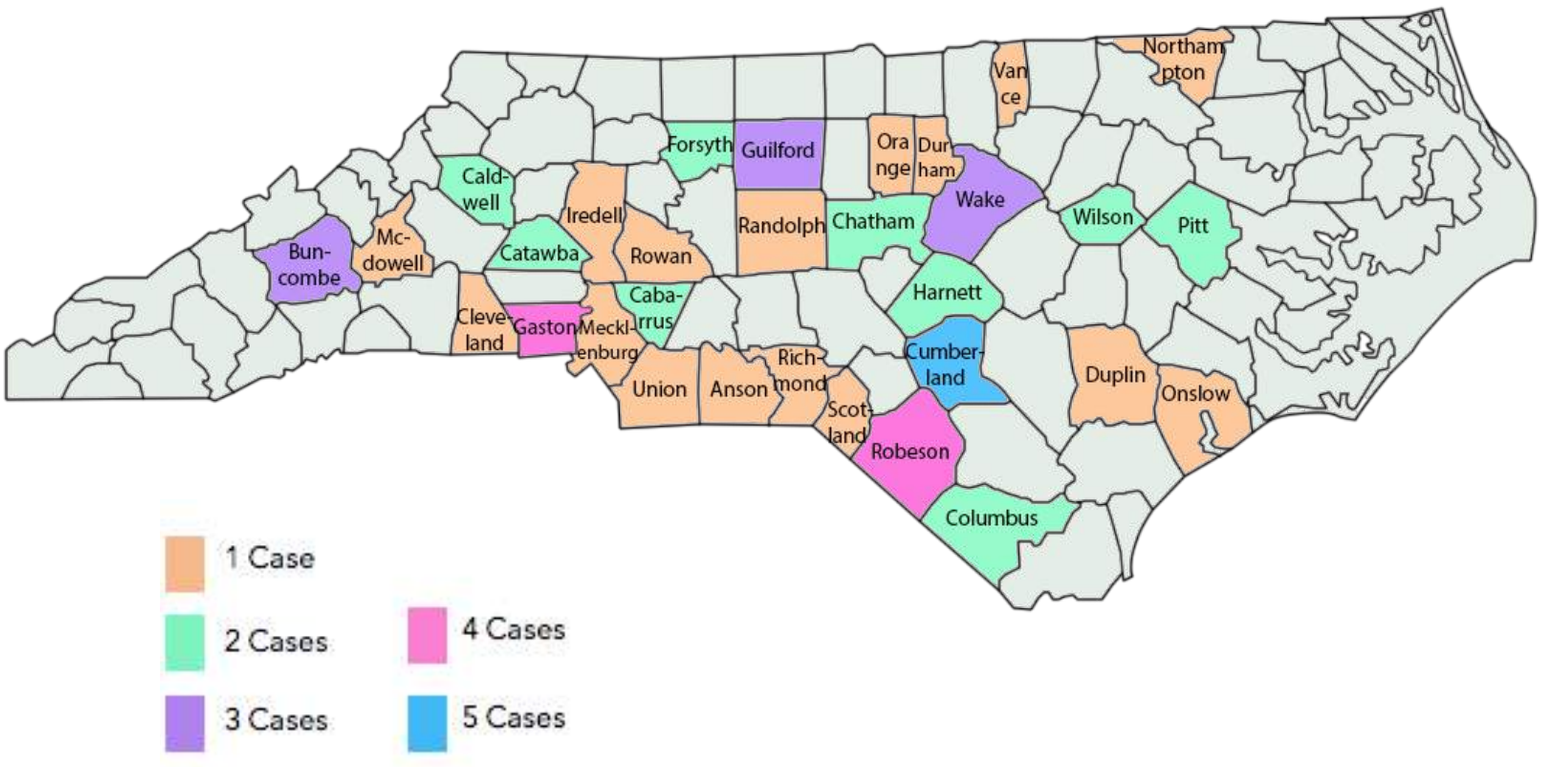
Racial/Ethnic Backgrounds of Defendants		
	Number of Cases	**Total**
African-American	28	50%
White or Caucasian	21	38%
Asian or Other	4	7%
Hispanic or Latino	3	5%



* SEE THE *LIST OF CASES* ON PAGE 52 FOR A DETAILED LISTING OF EVERY CASE

GEOGRAPHY OF THE CASES

Wrongful capital prosecutions are a widespread problem in North Carolina. The 56 cases included in this report occurred in 31 counties covering every region of the state, including some of the state's most urban areas and some of its most rural.



TYPES OF CASES

Cases in our report fell into two categories, as defined by IDS: proceeded capital and potentially capital. Proceeded capital cases are those in which two attorneys worked on the case, either because a judge allowed the case to proceed capitally or the prosecutor formally announced his or her intention to pursue the death penalty. These cases represent the vast majority, 50 of 56 cases included in this report.

In a potentially capital case, the defendant was charged with a crime (first-degree murder or undesignated murder) that was eligible for the death penalty but the prosecutor never pursued a death sentence. Six potentially capital cases were included in this report.

ACQUITTALS

33 cases proceeded to trial despite weak or limited evidence pointing to the defendant's guilt. In all but two cases, the defendants were acquitted by juries. In the remaining two cases, trials ended in hung juries and charges were later dismissed by the prosecutor. One of those defendants had two trials, one capital and one non-capital, both of which ended in hung juries.

Of those 33 defendants, 26 were held without bond before trial. The average amount of time in jail for defendants whose cases went to trial was just under two years. The longest-serving defendant spent seven years in jail awaiting trial.

31 of the 33 cases that went to trial were officially declared capital at some point before trial and two defense attorneys were assigned.

The remaining two cases were treated as potentially capital at the time of arrest, but were never officially declared capital and resulted in non-capital trials.

Researchers were able to verify that 17 of these trials were capital trials, meaning that a capital jury was selected with the expectation that if the defendant were convicted, there would be a separate sentencing proceeding where the jury would determine whether the defendant lived or died. It is highly likely that more than 17 proceeded to capital trials, but researchers could not confirm that from available documents.

Other cases resulted in non-capital trials, despite being initially declared capital. In those cases, the district attorney decided—often on the eve of trial—not to seek a death verdict from a jury. However, these cases are still considered capital because a judge allowed the case to proceed capitally, two attorneys were appointed, and in some cases, a co-defendant was tried capitally for the same crime.

DISMISSALS

23 cases were voluntarily dismissed by the district attorney before reaching trial. A voluntary dismissal means the charge may not be reinstated at a later date, and the defendant is relieved of all legal consequences for the charge.

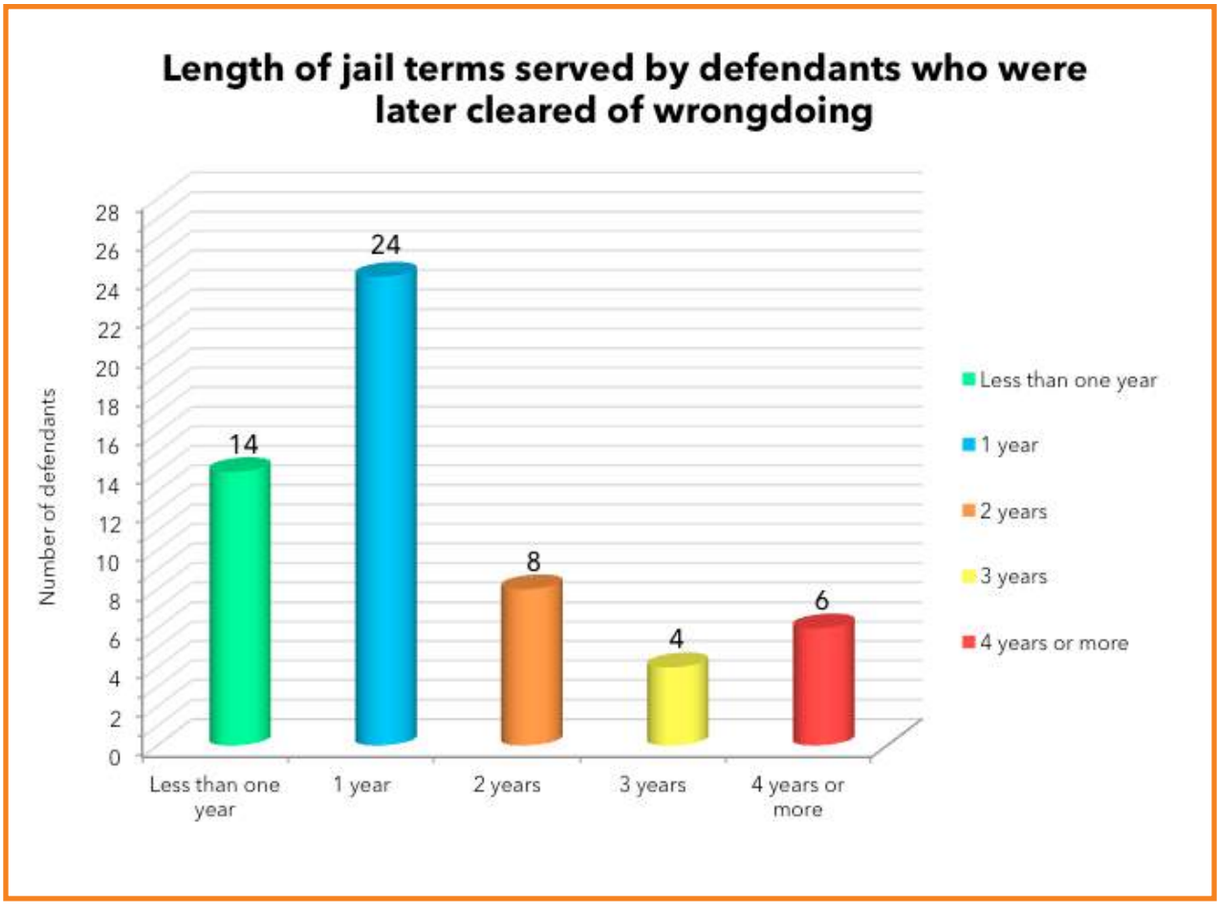
19 of those 23 cases were qualified as proceeded capital, and the death penalty was formally pursued prior to dismissal.

Four cases were potentially capital, because the defendant was charged with first-degree or undesignated murder and was eligible for the death penalty.

All but three defendants served at least 100 days in jail, and 16 of them served more than one year. Six of those served more than two years.

LENGTH OF INCARCERATION

While all 56 defendants included in this study were eventually cleared of wrongdoing, three-quarters (42) served at least one year in jail. One-third (18) served two years or more, and six defendants spent more than four years each in jail. All told, the 56 defendants spent a combined 112 years in jail. The longest serving exoneree, Floyd Brown, spent 14 years imprisoned in a mental hospital without a trial, because he was deemed incompetent. The longest jail term was served by Gregory Chapman, who spent seven years in Onslow County jail before being exonerated in a shooting that killed unborn twins. Another defendant, Michael Keith Lee, spent five years in jail before being acquitted by a Cumberland County jury.



JURY DELIBERATIONS

In 24 cases, researchers were able to determine how long the jury deliberated before acquitting the defendant. In a typical capital trial, juries deliberate for a full day, or even multiple days. Yet, in two-thirds (17) of the 25 cases, juries reached a not guilty verdict in four hours or less. In six cases, the jury decided in one hour or less. The shortest deliberation time was 22 minutes, and the longest a jury took to reach a verdict was two days. (In Jerry Anderson's case, the jury deliberated seven days before being declared a hung jury, split 11-1 for a not guilty verdict.) These short deliberation times indicate that juries found it relatively easy to acquit the defendants, and suggest that there was weak evidence presented against the defendants.

RUFUS MCMILLAN was charged with murder after two co-defendants testified against him in exchange for pleas to second degree murder. Their testimony failed to convince the jury, which acquitted McMillan in less than 50 minutes. Before his trial, McMillan spent more than 3 years in jail.

A white pickup truck identified by a witness at the crime scene was the only evidence police had linking **BOBBY RAY DIAL** to murder. Dial spent two years and eight months in jail, and it took the jury a mere 22 minutes to acquit him of all charges.

ROY ANTHONY MCALLISTER spent three years and two months in jail, and the jury took just 30 minutes to acquit him. McAllister was charged with a six-year-old murder, based solely on the testimony of his nephew, who wanted vengeance on McAllister for having a relationship with the nephew's girlfriend.

CASE PROFILE: *JERRY ANDERSON*

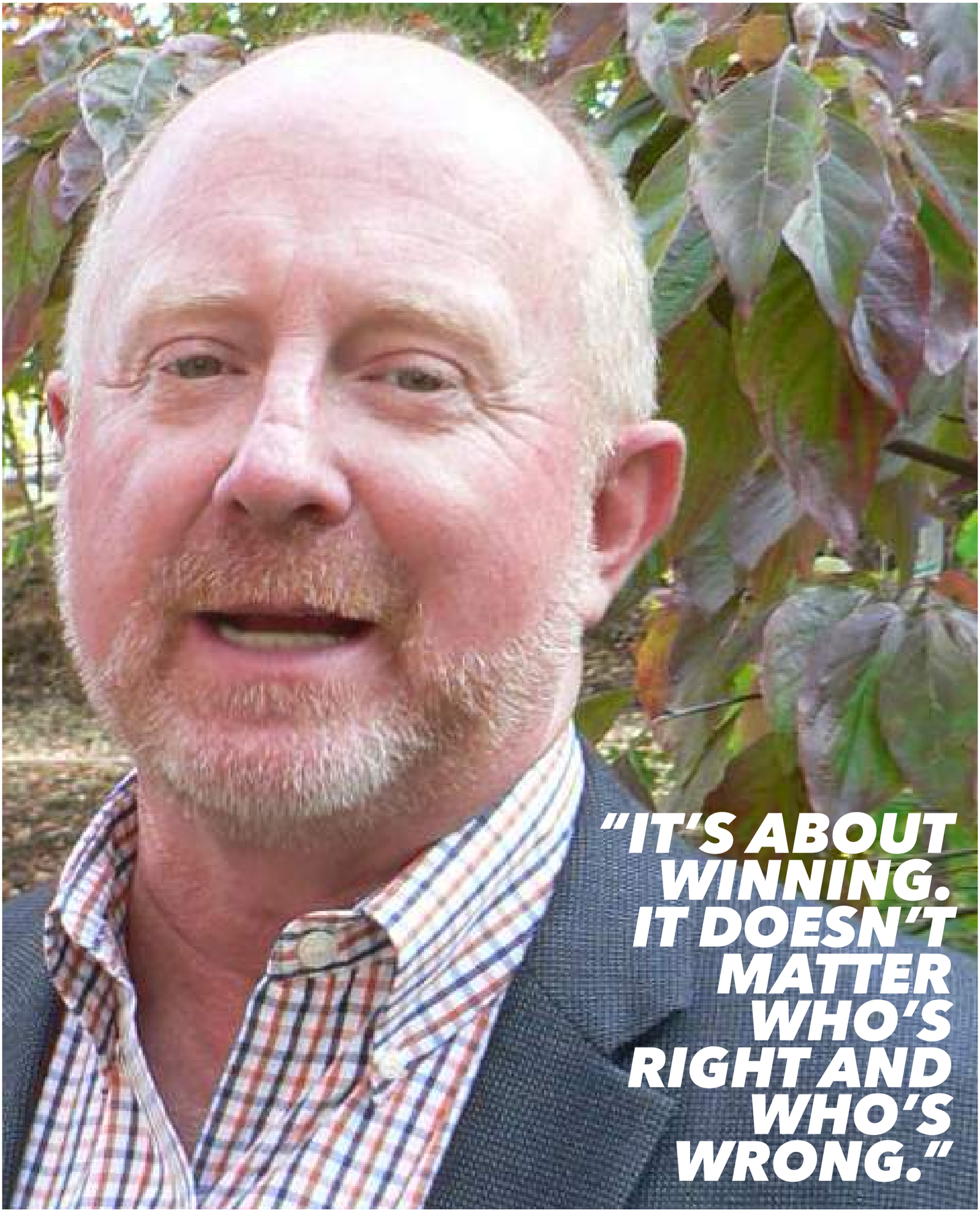
JERRY ANDERSON SPENT A LIFETIME BUILDING THE 1,500-COW DAIRY FARM HE OWNED IN RURAL CALDWELL COUNTY. AT AGE 46, HE LOST IT ALL IN THE SPACE OF A FEW MONTHS, AFTER HE WAS ARRESTED FOR THE MURDER OF HIS WIFE, EMILY ANDERSON. HE SPENT 18 MONTHS IN JAIL AND WAS TRIED FOR HIS LIFE, DESPITE A LACK OF ANY CREDIBLE EVIDENCE CONNECTING HIM TO THE CRIME.

During Anderson's death penalty trial in July 2007, all the evidence against him was discredited. It became apparent that Emily had died days after Anderson last saw her, during a time when he had an ironclad alibi. The trial ended with a hung jury—eleven jurors voting not guilty and the lone holdout telling the press that he had a vision in which God told him to vote guilty. Prosecutors dropped the charges and never retried Anderson.

Anderson regained his freedom and is rebuilding his life, but he says he will never be able to repair all the damage from being accused of a murder he did not commit. He has moved back to his home state of Kentucky, leaving his home in Sawmills where, before his wife's death, he had built a successful business, a wide network of friends, and a deep connection to his church. While many friends and church members stood by him after his release, his pastor told him that some members asked that he not be allowed to return.

He now owns a more modest beef cattle farm with 500 animals. He enjoys his new work, but some days he still gets frustrated at having to rebuild his business when he should be planning for retirement. He has settled into a mostly solitary existence, unsure how new people will respond to his story. "You're branded with it," Anderson says. "To a lot of people, you're guilty and they couldn't prove it. You're never innocent. In some people's eyes, once you're charged with it, you will be guilty until you die."

Emily disappeared on Dec. 29, 2005. Anderson called police to report her missing after she failed to show up for a dinner party with friends from her church choir. For days, Anderson and fellow church members searched the county, and Anderson communicated with law enforcement regularly. He allowed officers to search his farm and interview his employees. He even submitted to a polygraph test, which he passed, confirming that he had nothing to do with Emily's disappearance. During those days and nights that they searched for Emily, Anderson was never alone. Friends, family, and his pastor and fellow parishioners at Dry Ponds Baptist


"IT'S ABOUT WINNING. IT DOESN'T MATTER WHO'S RIGHT AND WHO'S WRONG."

Church descended on the Anderson home, plastering the county with fliers, searching the rural roads, and helping Anderson with tasks on the farm.

Nine days after her disappearance, on January 7, 2006, Emily's truck was discovered at a Quality Inn in Duncan, South Carolina, 120 miles away. Officers from the Caldwell County Sheriff's Department went to pick it up, but failed to conduct a thorough search for evidence. It was the tow truck driver, after hauling the abandoned vehicle back to North Carolina in an open wrecker, who forced open the large toolbox in the truck bed and discovered Emily's body. She had been shot twice.

The sheriff's department's blunder made the news, and the sheriff, who was facing a contentious reelection campaign, had to admit to reporters that he had no suspects. Soon after, Anderson felt the investigation close in on him. Anderson was arrested on January 27 and sent to the Caldwell County Jail. In the first 30 days,

JERRY'S WIFE, EMILY

his cows, tractors, trucks and all his farm equipment were auctioned off by creditors. The down payment on a new home and dairy he had been preparing to build in Tennessee was also lost, along with the rental home where he and Emily had been living. He says that what little was left of his farm was plundered by neighboring farmers, who figured he was never coming back. Creditors and members of Emily's family filed lawsuits against him.

At the Caldwell County Jail, where he spent most of the next 18 months behind bars, Anderson says he felt as if officials tried to break his spirit. "They're wanting to drive you into a plea bargain," he says. "They want to make things so bad that you'll do anything to get out." Shortly before his trial, prosecutors offered him a plea deal. If he had pled guilty to second-degree murder, he would have had to serve only five years with credit for time served. He refused.

He was kept in a windowless two-man cell, which sometimes housed as many as six prisoners. He ate his meals in his cell and was not allowed any time in the common room or outdoors. He was also not allowed any reading material. Anderson says he often went a week or more without being allowed to shower; his longest stretch without bathing was two and a half weeks. He was never given clean sheets, and was only allowed to shave and cut his hair when his attorney got a court order allowing him to clean up for his trial. He was allowed to brush his teeth only occasionally, and eventually a tooth became so abscessed and painful that he pulled it out with his fingers. Anderson never saw or spoke to his son, who was in sixth grade and lived with Anderson's ex-wife in Asheville. "I didn't want my son to see me shackled and chained," he said.

HE WAS ALLOWED TO BRUSH HIS TEETH ONLY OCCASIONALLY, AND EVENTUALLY A TOOTH BECAME SO ABSCESSED AND PAINFUL THAT HE PULLED IT OUT WITH HIS FINGERS.

At his 2007 trial, one piece of evidence after the next was debunked:

- *Two different medical examiners, including North Carolina's Chief Medical Examiner, concluded that Emily died two to four days before her body was discovered. The state's theory of Anderson's guilt hinged on Emily having been dead for at least nine days, but the prosecutor produced no medical experts to support that theory.*
- *Prosecutors speculated that Anderson had taken out a $4 million insurance policy on Emily's life because he planned to kill her. However, the evidence showed that Emily and Jerry were in the process of expanding*

their farm, and that the insurance was required by their creditors. They had also recently purchased a $10 million life insurance policy for Jerry.

- *Evidence from one of the two cadaver dogs who supposedly "hit" on a spot beneath a tree at Anderson's farm, bolstering the state's theory that Jerry killed Emily at the farm and then transported her body to South Carolina (despite there being not a shred of evidence of that 240-mile journey), was thrown out by the judge. Testimony showed that the dogs' handler, a private business owner, used improper techniques, fed the dogs treats to entice them to "hit" on the spot, and failed to videotape the search.*

Meanwhile, it became clear that important evidence that might have helped identify the killer was ignored. A rape kit was taken from Emily's body but never tested. Witnesses, who reported that they saw Emily alive in South Carolina after her disappearance, were never interviewed. Hairs found in her truck were never tested, and reports from people who said they saw Emily with a strange man were not investigated.

When the trial ended, Anderson was homeless and unemployed. For months, he stayed with a friend. A lifelong workaholic, he struggled to fill his days; he took long walks and ruminated over his case. His son, now attending college on a full scholarship, says his father talked endlessly about the case, obsessively rehashing every detail. Gradually, he started reassembling his collection of tools and working on tractors in a rented storage shed. He rented an apartment in Morganton, and began the process of buying a farm in Kentucky.

Now, eight years after his trial, Anderson says he has come to the conclusion that the criminal justice system is not about seeking truth. Rather, it's about each side trying to prove its own theory, sometimes in spite of the evidence. "It's about winning," Anderson says. "It doesn't matter who's right and who's wrong." He has many unanswered questions about the last days of his wife's life, and he still struggles sometimes with anger and depression, but he says he no longer allows the ordeal of his wrongful prosecution to dominate his life. "If they say anything about me," he says, "I want it to be that I survived."

JERRY WITH DAIRY PLANS

CONCLUSION

Public awareness of wrongful convictions in North Carolina has grown considerably over the past two decades. Since 1999, seven innocent people who were sentenced to death in North Carolina have been freed. However, this report reveals that there is another, much larger group of people who suffer serious harm at the hands of the capital punishment system – those who are charged and prosecuted capitally, despite evidence too weak to prove their guilt. This group of 56 people who were charged with capital murder but never convicted spent a total of 112 years in jail. Most suffered financial ruin, and had their reputations and criminal records permanently marred.

Their prosecutions also came at a high public cost. We estimate that charging and pursuing these cases capitally cost the state nearly $2.4 million more than if the cases had been prosecuted non-capitally. More disturbing, in many cases these faulty investigations and wrongful charges left the true perpetrators free and endangered public safety.

A punishment as serious as execution should be pursued only in the most ironclad cases: those with the strongest evidence of guilt and in which the circumstances of the crime make the defendant more culpable than most—the "worst of the worst." Yet, the reality is entirely different. This report uncovers a system in which the threat of execution is used in the majority of cases, regardless of the strength of the evidence. It also shows that common practice is to use the possibility of a death sentence to pry confessions and guilty pleas from suspects. This practice has an unintended consequence: murder cases that are never fully investigated.

Despite years of reforms intended to make the death penalty fair, capital punishment remains a threat to the innocent and, in many cases, an impediment to finding the truth. Considering the serious problems documented in this report and our system's poor track record of sorting the innocent from the guilty, continuing to pursue the death penalty is certain to result in more innocent citizens sentenced to die.

CAPITAL CASES RESULTING IN A DISMISSAL BEFORE TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	ANSON	FLOYD BROWN	7/16/93	10/8/07	5198	NO	–	B	FALSE CONFESSION; STATE MISCONDUCT	KATHERINE LYNCH
POTENTIALLY	BUNCOMBE	DAVID WAYNE HAMMACK	12/29/01	9/28/03	639	NO	–	W	UNRELIABLE WITNESS TESTIMONY; STATE MISCONDUCT	MARY ELIZABETH JUDD
POTENTIALLY	BUNCOMBE	JOHN TYLER COLLINS	12/29/01	7/9/03	558	NO	–	W	UNRELIABLE WITNESS TESTIMONY; STATE MISCONDUCT	MARY ELIZABETH JUDD
PROCEEDED	CABARRUS	MELVIN WEST	5/6/04	2/7/06	643	NO	–	B	UNRELIABLE WITNESS TESTIMONY	TARA NICOLE CHAMBERS AND HER UNBORN CHILD
PROCEEDED	CATAWBA	DEREK MORRIS COLSON	3/23/06	9/15/09	1064	YES	2/18/09	B	STATE MISCONDUCT	BETSY DICKENS, BEVERLY LINEBARGER, CYNTHIA LAIL
PROCEEDED	CLEVELAND	CHRIS GORDON BROOKS	12/14/94	5/22/96	526	NO	–	W	STATE MISCONDUCT: UNRELIABLE WITNESS TESTIMONY	JUDY MCMURRAY
PROCEEDED	COLUMBUS	STEPHANIE GRAY DAVIS	4/11/03	11/5/04	575	NO	–	B	UNRELIABLE WITNESS TESTIMONY	DOUGLAS SASSER
PROCEEDED	COLUMBUS	TERRY LOUISE HINSON	11/20/96	4/17/98	61	YES	1/19/97	W	TAINTED FORENSIC EVIDENCE	JOSHUA CADE HINSON
PROCEEDED	DURHAM	BRENDA COPELAND	8/26/98	4/21/99	190	YES	3/3/99	B	TAINTED FORENSIC EVIDENCE	KATHERINE GUY
PROCEEDED	GASTON	JOHNNY DALE MILLER	7/19/04	12/29/06	894	NO	–	W	UNRELIABLE WITNESS TESTIMONY; STATE MISCONDUCT	JERRY BARNETTE

CAPITAL CASES RESULTING IN A DISMISSAL BEFORE TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	GUILFORD	JEFFERY BERNARD COBB	7/8/07	12/8/09	885	NO	–	B	UNRELIABLE WITNESS TESTIMONY	ABBAS ELTAIB ELSHIKH
PROCEEDED	GUILFORD	BEUT THONG-PHOUNPHIM	1/31/95	2/26/97	501	YES	6/14/96	O	STATE MISCONDUCT: FALSE CONFESSION	KEITH MCCLINTOCK
PROCEEDED	MECKLEN-BURG	MARSHALL RAY NICHOLSON	4/8/04	9/16/08	1623	NO	–	B	UNRELIABLE WITNESS TESTIMONY	EDDIE KEARNEY
PROCEEDED	NORTHAMP-TON	AARON ORLANDO FORREST	10/19/02	4/28/04	558	NO	–	B	UNRELIABLE WITNESS TESTIMONY	JOHN HICKS
PROCEEDED	ONSLOW	ALMARIO MILLANDER	8/26/94	6/3/96	648	NO	–	B	UNRELIABLE WITNESS TESTIMONY	ERNEST MICHAEL LINN
PROCEEDED	PITT	LORENZA BRASHNAV KNIGHT	4/26/99	12/28/05	100	YES	8/3/99	B	STATE MISCONDUCT	JAE MICHAEL KIRBY
PROCEEDED	RANDOLPH	FRANCISCO LUVIANO	11/16/07	4/12/10	609	YES	7/16/09	H	UNRELIABLE WITNESS TESTIMONY	CHARLES WINIFRED WARD
PROCEEDED	RICHMOND	FILIBERTO REYES GAYTAN	7/16/08	3/20/09	248	NO	–	H	UNRELIABLE WITNESS TESTIMONY; STATE MISCONDUCT	JOSE GONZALES
POTENTIALLY	ROBESON	DARYL LAMONT GLOVER	3/11/2002	6/18/04	3	YES	3/13/02	B	UNRELIABLE WITNESS TESTIMONY	ROBERT GRAHAM
PROCEEDED	SCOTLAND	QUATRELL DAMAR NICHOLSON	10/22/09	1/21/14	1553	NO	–	B	STATE MISCONDUCT	CHRIS MCKOY

CAPITAL CASES RESULTING IN A DISMISSAL BEFORE TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	UNION	MARRON FREDRICK MURCHISON	9/8/04	6/30/08	14	YES	9/21/04	B	STATE MISCONDUCT	JOHN HENRY STAFFORD
POTENTIALLY	WAKE	JOSE HERNANDEZ	11/16/07	3/27/09	498	NO	–	H	UNRELIABLE WITNESS TESTIMONY	NGUYEN TRUONG
PROCEEDED	WAKE	DERRICK DONTA BELL	8/16/02	10/29/03	440	NO	–	B	TUNNEL VISION	PIERRE WILLIAMS

- **WARRANT DATE:** THE DAY POLICE WERE AUTHORIZED TO TAKE THE DEFENDANT INTO CUSTODY.
- **DISPOSITION DATE:** THE DAY CHARGES AGAINST THE DEFENDANT WERE DROPPED.
- **DAYS IN JAIL:** DETERMINED BY WARRANT DATE UNTIL DATE OF BAIL. IF BAIL WAS NOT GRANTED, DAYS IN JAIL WAS CALCULATED BY WARRANT UNTIL DISPOSITION DATE.
- **TIME DELIBERATED BY JURY:** DETERMINED IN 28 OUT OF 39 CASES, TAKEN FROM NEWS REPORTS.

CAPITAL CASES RESULTING IN AN ACQUITTAL AT TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	APPROX. TIME DELIBERATED BY JURY	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	BUNCOMBE	*CURTIS PORTER	5/8/89	12/1/89	208	1 DAY	NO	–	B	UNRELIABLE WITNESS TESTIMONY	AMOS MILLER
PROCEEDED	CABARRUS	*JULIUS RAY SANDERS	10/14/94	11/9/95	392	1.5 HRS	NO	–	W	TUNNEL VISION; UNRELIABLE WITNESS TESTIMONY	PAMELA SANDERS
PROCEEDED	CALDWELL	*DIRK CHONTOS	3/31/00	11/5/02	950	–	NO	–	W	TUNNEL VISION	JOHN DAVID SAULS
PROCEEDED	CALDWELL	*^JERRY ANDERSON	1/27/06	11/27/07	670	7 DAYS	NO	–	W	TUNNEL VISION	EMILY ANDERSON
PROCEEDED	CATAWBA	*KOVA DUAN WRIGHT	8/10/00	3/21/01	7	37 MIN	YES	8/16/00	B	UNRELIABLE WITNESS TESTIMONY	RONNIE HILL
PROCEEDED	CHATHAM	*MICHAEL DAVID DOWD	11/25/98	5/24/00	547	–	NO	–	W	TUNNEL VISION; SELF DEFENSE	LEE OTIS BALDWIN & JOE DARON GLOVER
PROCEEDED	CHATHAM	*MARIO ALBERTO PERALTA	1/30/98	3/24/99	419	4.5 HRS	NO	–	0	STATE MISCONDUCT	MANUEL GARCIA
PROCEEDED	CUMBERLAND	MICHAEL KEITH LEE	5/27/03	8/28/08	1921	–	NO	–	W	TAINTED FORENSIC EVIDENCE	VERONICA WARD
PROCEEDED	CUMBERLAND	CHARLES TRIPLIN	10/08/03	12/05/07	1520	–	NO	–	B	UNRELIABLE WITNESS TESTIMONY	SHELLY WOOTEN JR.
PROCEEDED	CUMBERLAND	RONALD DOUGLAS MICHAUX	1/26/05	1/25/07	730	2 HRS	NO	–	B	UNRELIABLE WITNESS TESTIMONY	JERMAINE MARCH

CAPITAL CASES RESULTING IN AN ACQUITTAL AT TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	APPROX. TIME DELIBERATED BY JURY	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	CUMBERLAND	DANIEL CARLSON	8/8/03	3/5/07	207	3 HRS	YES	3/1/04	W	TUNNEL VISION	ANDREA CHAVARRIA
PROCEEDED	CUMBERLAND	DANIEL JOHN WALTER	9/2/94	3/14/96	–	2 HRS	YES	9/2/94	W	UNRELIABLE WITNESS TESTIMONY	OSBOURNE WHITE JR.
PROCEEDED	DUPLIN	GREGORY CHAPMAN	7/2/08	3/31/15	2464	30 MIN	NO	–	B	TUNNEL VISION; UNRELIABLE WITNESS TESTIMONY	UNBORN TWINS
PROCEEDED	FORSYTH	TERRENCE ERIC WHITE	7/31/02	3/30/04	609	2 DAYS	NO	–	B	UNRELIABLE WITNESS TESTIMONY	FRANK LEE MYERS
PROCEEDED	FORSYTH	*HENRY WHITE JR.	7/31/02	3/30/04	609	2 DAYS	NO	–	B	UNRELIABLE WITNESS TESTIMONY	FRANK LEE MYERS
PROCEEDED	GASTON	*ANTHONY VIDAL BURRESS	6/13/97	10/4/99	844	3.5 HRS	NO	–	B	TUNNEL VISION; SELF DEFENSE	ANGELA SHANTEA MITCHELL
PROCEEDED	GASTON	*ºDONALD BAXTER WELLS	10/3/98	2/22/02	123	–	YES	2/2/99	W	UNRELIABLE WITNESS TESTIMONY	SARAH MAY MCABEE
PROCEEDED	GASTON	*MICHAEL LANE MEAD	2/3/09	7/12/11	24	9 HRS	YES	2/26/09	W	TUNNEL VISION; UNRELIABLE WITNESS TESTIMONY	LUCY JOHNSON
POTENTIALLY	GUILFORD	JOHN WILLIAM BARE	10/2/87	8/4/89	7	–	YES	10/8/87	W	TUNNEL VISION	JANETT PACE BARE
PROCEEDED	HARNETT	AUSTIN TYLER BORGHERE	4/2/05	3/30/07	728	–	NO	–	W	SELF DEFENSE	DAVID BAREFOOT

CAPITAL CASES RESULTING IN AN ACQUITTAL AT TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	APPROX. TIME DELIBERATED BY JURY	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
POTENTIALLY	HARNETT	JAMES CLEMENTH HICKS	10/21/00	9/26/01	341	1 HR	NO	–	W	UNRELIABLE WITNESS TESTIMONY	SHIRLEY HICKS
PROCEEDED	IREDELL	*JOHN CHRISTOPHER GATTON	1/7/92	9/23/93	626	4 HRS	NO	–	W	UNRELIABLE WITNESS TESTIMONY	ROGER STALEY; JAMES DAVIS
PROCEEDED	MCDOWELL	*NICKY SCOTT WHITE	3/15/96	6/11/97	454	5 HRS	NO	–	W	UNRELIABLE WITNESS TESTIMONY	UNKNOWN
PROCEEDED	ORANGE	ROBERT GATTIS JR.	3/18/02	5/6/03	415	3 HRS	NO	–	B	UNRELIABLE WITNESS TESTIMONY	JAMES "BILL" LONG; NICHOLAS WHITTED
PROCEEDED	PITT	LESLIE ARLENE LINCOLN	9/19/02	3/23/07	1133	–	YES	10/25/05	W	TUNNEL VISION; SELF DEFENSE	ARLENE LINCOLN
PROCEEDED	ROBESON	*DOLAN LOCKLEAR	5/4/99	3/19/03	1416	2 HRS	NO	–	I	TUNNEL VISION; SELF DEFENSE	GEORGE LOCKLEAR
PROCEEDED	ROBESON	RUFUS MCMILLAN	3/31/99	8/1/02	1220	50 MIN	NO	–	B	UNRELIABLE WITNESS TESTIMONY	BILLY HAMMOND
PROCEEDED	ROBESON	BOBBY RAY DIAL	6/18/99	2/22/02	981	22 MIN	NO	–	I	TUNNEL VISION	CHARLES ANTHONY SMILING
PROCEEDED	ROWAN	*KATHY WILSON MILLER	10/27/98	3/7/00	498	4 HRS	NO	–	W	TUNNEL VISION	LEON WILSON JR.
PROCEEDED	VANCE	MICHAEL JEROME PETTAWAY	10/8/01	5/20/03	590	2 HRS	NO	–	B	UNRELIABLE WITNESS TESTIMONY	ABDO H. MOHAMED MOHARAM

CAPITAL CASES RESULTING IN AN ACQUITTAL AT TRIAL

PROCEEDED/ POTENTIALLY CAPITAL CASE	COUNTY	DEFENDANT	WARRANT DATE	DISPOSITION DATE	DAYS IN JAIL	APPROX. TIME DELIBERATED BY JURY	BOND	DATE OF BOND	RACE	CAUSES OF WRONGFUL PROSECTION	VICTIM(S)
PROCEEDED	WAKE	*JERMAINE ANTOINE SMITH	2/16/96	10/17/97	610	2.5 HRS	NO	–	B	UNRELIABLE WITNESS TESTIMONY; TAINTED FORENSIC EVIDENCE; TUNNEL VISION	CHASITY, ASHLEY, SHATONA, AND ROGEDRICK WILDER
PROCEEDED	WILSON	*ROY ANTHONY MCALLISTER	9/30/94	12/5/97	1163	30 MIN	NO	–	B	UNRELIABLE WITNESS TESTIMONY	RUDOLPH HOBBS
PROCEEDED	WILSON	LINWOOD EARL BATTS	12/31/01	4/11/03	467	–	NO	–	B	UNRELIABLE WITNESS TESTIMONY	DERRICK LAMONT LYLES

* CAPITAL TRIALS
^ HUNG JURY AT TRIAL; CHARGES DISMISSED BY PROSECUTOR AFTER TRIAL
° CAPITAL TRIAL ENDED IN HUNG JURY. SECOND TRIAL WAS NON-CAPITAL, ALSO ENDED IN HUNG JURY.

BIBLIOGRAPHY

[1] N.C. Office of Indigent Defense Services, *FY07 Capital Trial Case Study* (Dec. 2008), available at: http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY07CapitalStudyFinal.pdf.

[2] *Id*.

[3] *Mental Illness and the Death Penalty in North Carolina: A Diagnostic Approach,* Charlotte University School of Law (May 2007), available at: https://www.aclu.org/files/pdfs/capital/nc_mental_illness_report2007.pdf.

[4] Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All*, Death Penalty Information Center (Oct. 2013), available at: http://deathpenaltyinfo.org/documents/TwoPercentReport.pdf.

[5] See *generally* Michael Radelet and Glenn Pierce, *Race and Death Sentencing in North Carolina*, 1980-2007, 89 *N.C. L. Rev.* (2011).

[6] Death Penalty Information Center, *Innocence: List of Those Freed from Death Row* (2015), available at: http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110.

[7] Mandy Locke, Joseph Neff and J. Andrew Curliss, *Scathing SBI audit says 230 cases tainted by shoddy investigations*, *News and Observer*, Aug. 19, 2010, available at: *http://www.newsobserver.com/news/special-reports/article10365422.html*.

[8] Death Penalty Information Center, *Innocence: List of Those Freed from Death Row* (2015), available at: *http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110*.

[9] N.C. Office of Indigent Defense Services, *FY07 Capital Trial Case Study* (Dec. 2008), available at: http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY07CapitalStudyFinal.pdf.

[10] See *generally* John G. Douglass, *Death as a bargaining chip: plea bargaining and the future of Virginia's death penalty*, 49 *U. Rich. L. Rev.* 873 (2015).

[11] N.C. Office of Indigent Defense Services, *FY07 Capital Trial Case Study* (December 2008), available at: http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY07CapitalStudyFinal.pdf.

[12] See *generally* Philip J. Cook, *Potential Savings from Abolition of the Death Penalty in North Carolina*, Am. L. and Econ. Rev. Advance Access, Dec. 11, 2009, available at: http://nccadp.org/wp-content/uploads/2013/08/Cook-Cost-Report-2009.pdf.

[13] Innocence Project, *The Causes of Wrongful Conviction*, available at: http://www.innocenceproject.org/causes-wrongful-conviction.

[14] Joseph Neff, *Chapter 4: Evidence points to Innocence*, *News and Observer*, Dec. 11, 2002, available at: http://web.campbell.edu/faculty/bartlett/Forensic%20Entomology/newsobserver_com%20%20Series4.htm.

[15] Center for Prosecutor Integrity, *Registry Database* (2015), available at: http://www.prosecutorintegrity.org/registry/database/.

[16] *Murder witness claims intimidation, Star News*, Nov. 10, 2003, available at: http://www.starnewsonline.com/article/20031110/NEWS/211100351?p=1&tc=pg.

[17] The Justice Project, *Eyewitness Identification: A Policy Review* (2007), available at: https://public.psych.iastate.edu/glwells/The_Justice%20Project_Eyewitness_Identification_%20A_Policy_Review.pdf.

[18] *Rob Warden, The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row*, *Northwestern University School of Law* (2004), available at: http://www.innocenceproject.org/causes-wrongful-conviction/SnitchSystemBooklet.pdf.

[19] The Justice Project, *Jailhouse Snitch Testimony: A Policy Review* (2007), available at: http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/Jailhouse20snitch20testimony20policy20briefpdf.pdf.

[20] Mandy Locke, Joseph Neff and J. Andrew Curliss, *Scathing SBI audit says 230 cases tainted by shoddy investigations*, *News and Observer*, Aug. 19, 2010, available at: http://www.newsobserver.com/news/special-reports/article10365422.html.

[21] Mandy Locke and Joseph Neff, *Witness for the prosecution: Lab loyal to law enforcement*, *News and Observer*, Aug. 11, 2010, available at: http://www.newsobserver.com/news/special-reports/agents-secrets/article17704160.html.

[22] Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard Leo and Allison Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 *Law & Hum. Behav.* 3 (2010).

[23] Richard Leo, *False Confessions: Causes, Consequences, and Implications*, 37 *J. Am. Acad. Psychiatry Law* 332, 335-337 (2009), available at: http://www.jaapl.org/content/37/3/332.full.pdf+html.

[24] Mandy Locke and Joseph Neff, *Part 1: SBI ignores years of warnings on confession called fiction*, *News and Observer*, Aug. 8, 2010, available at: http://www.newsobserver.com/news/special-reports/agents-secrets/article10365317.html.

[25] Keith A. Findley and Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 *Wis. L. Rev.* 291, 293-95 (2006), available at http://hosted.law.wisc.edu/lawreview/issues/2006-2/findley-scott.pdf.

[26] *Id*.

THE CENTER FOR DEATH PENALTY LITIGATION
123 WEST MAIN STREET I SUITE 700
DURHAM, NC 27701

919-956-9545 ■ CDPL @ CDPL.ORG

THE CENTER FOR DEATH PENALTY LITIGATION