



*State of North Carolina*  
*General Court of Justice*  
*Fifth Prosecutorial District*

WILMINGTON, NC 28402

Website: <http://www.mydistrictattorney.com>

**BENJAMIN R. DAVID**  
DISTRICT ATTORNEY

POST OFFICE BOX 352  
PHONE: (910) 772-6610  
FAX: (910) 772-6611

September 8, 2016

To: Members of the Media

From: District Attorney Ben David **BRD**

Re: Dismissal of State v. Johnny Small

A prosecutor is sometimes referred to as a minister of justice or a servant of the law. By either definition the responsibility of the prosecutor carries with it the specific obligations to see that a defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. My duty is to seek justice, not merely to convict.

The 1988 murder of Pamela Dreher resulted in a jury finding the defendant Jonny Small guilty of First Degree Murder and Robbery with a Dangerous Weapon. During the week of August 8, 2016, the Honorable Judge W. Douglas Parsons presided over a post-conviction Motion for Appropriate Relief hearing in this case. At the end of that hearing Judge Parsons made specific findings of fact and conclusions of law, vacating the convictions. As a result, the case became an open investigation at the Wilmington Police Department and a pending case in my office.

On August 30, 2016, Judge Parsons signed his Order in the Motion for Appropriate Relief. At line 62 of this Order, Judge Parsons wrote that, "This Court does not find actual innocence in this case." Additionally, Judge Parsons, in his remarks from the bench, stated, "I don't know if Mr. Small did this or not. Whoever did this is a monster. I don't know that he did or didn't. What I am here to decide is did he receive a fair trial according to the North Carolina and United States Constitutions and it is more than abundantly clear to me that he did not."

On September 6, 2016, the Attorney General's Office, which handled the Motion for Appropriate Relief hearing due to a conflict of interest in my office, made the final determination that the State would not be seeking appellate review of Judge Parsons' ruling. Today, I am announcing that I have filed a dismissal of this case. My office has conferred with Pamela Dreher's family, which has been a part of the process leading to this decision.

Ultimately, the challenge of retrying a 28-year-old homicide in which there is no physical evidence and where two material witnesses have been discredited by the Court proved to be too great to overcome. Mr. Small has been placed on house arrest since the rulings made by Judge Parsons. This dismissal releases him from house arrest.



The goal of every investigation and trial is the search for the truth. There is no statute of limitations that precludes charges being brought against anyone should any additional evidence come to light. Those with information about the case should contact the Wilmington Police Department at (910) 343-3600.

I will not deter others from coming forward with information about this case by reprimanding those who contributed to the original flawed 1989 process, which is now seen through a 2016 lens. I notified Mr. Small's attorney of this decision earlier today and she concurs that the recanting witness should not face criminal prosecution at this time.

Every case must stand on its own. Where, as here, the process that was in place to search for the truth is determined to be so fundamentally compromised that we cannot know it, the truth remains elusive.

After discussing the matter at length with investigators and Pamela Dreher's family, we have determined that taking this dismissal is the right thing to do.

Attachments: Order Granting Defendant's Motion for Appropriate Relief, August 30, 2016  
Dismissal of State v. Johnny Small, 88CRS 025911/12



FILED

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 88 ~~CRS 25911-25912~~

16 AUG 30 AM 10:39  
NEW HANOVER CITY C.S.C. CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: Sherri S. Redmond  
Deputy Clerk

STATE OF NORTH CAROLINA

BY



v.

JOHNNY MICHAEL SMALL  
Defendant

ORDER GRANTING DEFENDANT'S  
MOTION FOR APPROPRIATE RELIEF

NOW COMES the undersigned Superior Court Judge, having been designated to hear this matter by the Honorable W. Allen Cobb, Jr., Senior Resident Superior Court Judge for New Hanover County, upon review of a Motion for Appropriate Relief filed pursuant to N.C. Gen. Stat. § 15A-1411 *et seq.* on behalf of the above-named Defendant, Mr. Johnny Michael Small. Having heard the evidence and testimony presented during the August 8, 2016 Special Session of Superior Court, considered the arguments of counsel, and reviewed the entire record and materials provided by the parties, the Court enters the following:

PROCEDURAL POSTURE

1. On October 29, 1988, law enforcement arrested Johnny Small ("Defendant"), age 15, and David Bollinger ("Bollinger"), age 19, for charges related to the murder of Ms. Pamela Dreher ("Ms. Dreher").
2. Defendant was tried as an adult and convicted of First Degree Murder and Robbery with a Dangerous Weapon during the April 7, 1989 Criminal Session of New Hanover County Superior Court.
3. Defendant was sentenced to life in prison for the murder and an additional twenty years for the robbery.
4. On February 7, 1991, Defendant's conviction was upheld by the Supreme Court of North Carolina, but remanded for resentencing where the robbery sentence was reduced to fourteen years.
5. Bollinger's related accessory after the fact charge was dismissed on September 5, 1991.
6. Defendant filed three *pro se* post-conviction motions in this case, which were all denied without a hearing.
7. Defendant filed a Motion for Appropriate Relief with this Court on July 10, 2015 and an Amended Motion for Appropriate Relief on July 8, 2016. The State filed an Answer and Motion to Strike on December 18, 2015. After the matter was re-assigned to the undersigned on January 14, 2016, the undersigned notified the parties on February 14, 2016 that a full and plenary evidentiary hearing would be conducted in the matter.
8. The Court held an evidentiary hearing on all claims before the Court and has carefully considered the evidence, including the testimony of twenty witnesses and the arguments presented by both the Defendant and the State, as well as the parties' pleadings and stipulated notebooks of exhibits.



9. For the reasons that follow, the Court finds that the trial testimony given by a material witness, Bollinger, was false and there is more than a reasonable possibility that had his testimony not been admitted, a different result would have been reached at trial.
10. This Court further finds *Brady* violations on behalf of the State of North Carolina in 1988 and 1989 by the Wilmington Police Department ("WPD") and that those violations were prejudicial, as there is more than a reasonable probability that the jury would have reached a different result had the evidence been disclosed.

### FINDINGS OF FACT

The Court therefore finds as facts the following:

1. Only the appropriate evidence, based upon the law of North Carolina and the Constitutions of North Carolina and the United States, has been considered in this ruling.
2. Matters such as hearsay, polygraph examinations, irrelevant evidence, or evidence whose probative value was outweighed by the prejudicial effect pursuant to Rule 403 of the North Carolina Rules of Evidence were not considered.
3. At 5:38 p.m. on July 13, 1988, Ms. Dreher was alive in her place of business in the Delgado Square Shopping Center on Wrightsville Avenue in Wilmington, North Carolina.
4. At 5:46 p.m. and 5:49 p.m., the cash register in her place of business was opened and "no sale" entries were made.
5. That the cash register was opened at the time of these "no sale" entries by her at the order of the perpetrator or by the perpetrator.
6. That Ms. Dreher was shot, execution style, by an unknown assailant using a .25 caliber gun at or about the time the "no sale" entries took place.
7. That Ms. Dreher's body was found by Joseph Bryant, the owner of an adjacent business, who looked in the window of the shop and saw Ms. Dreher's body on the floor.
8. That it was lightly raining when 911 was called and began raining heavily after emergency responders arrived.
9. That after discovering the body, Joseph Bryant returned to his business and notified authorities through a 911 call received at 6:21 p.m. by rescue personnel.
10. Subsequently, Defendant was arrested and charged with the murder of Ms. Dreher, brought to trial, and convicted.
11. The State presented a three-pronged case based upon the testimony of Bollinger, a friend of the Defendant who testified that he was at the scene of the murder and was subsequently told by the Defendant of his complicity in the murder; the testimony of witness Nina Raiford, a young woman who testified that she was returning home from her work at McDonald's on Oleander Drive and saw the Defendant leave the store where the crime occurred; and circumstantial evidence that the Defendant had access to a .25 caliber handgun which had been stolen from Defendant's friend Ray Brigman, Jr. ("Brigman").
12. Additionally, several teenagers between the ages of 15 to 19 provided background for the State's case.
13. During the evidentiary hearing, several of the teenage witnesses at the time of trial, now in their 40s, testified that they were leaned on heavily by law enforcement, questioned without their parents present, told that Defendant was coming to get them, told that the shell casings taken from the crime scene were a "perfect match" to the casings collected from the gun



Small was alleged to have in his possession, and told that their testimony would only help send a murderer to prison.

14. Documents in the Wilmington Police Department ("WPD") file corroborated much of their testimony.
15. In reply to questions about that testimony, lead detective James J. Lightner ("Det. Lightner") neither confirmed nor denied the veracity of some of their statements but responded some fifteen times, "I don't recall." With regards to the testimony that the teenage witnesses had been leaned on heavily, Det. Lightner testified opposite of that, stating that none of that took place. However, the evidence supports that it did happen.
16. No physical evidence has ever been tied to the Defendant and the murder weapon has never been found.
17. Small testified at the evidentiary hearing and maintained his innocence.

A. Ray Brigman's .25 Caliber Handgun

18. During the prosecution of Defendant, the State went to great lengths, based on the evidence provided by the WPD, to show that Defendant in all likelihood had the .25 caliber handgun stolen from Brigman and could have used it to murder Ms. Dreher.
19. However, the WPD had evidence in its file that contradicted the State's assertions and the WPD failed to disclose that information to the District Attorney's Office, thereby preventing disclosure to the Defense.
20. Included in the WPD files was a note which stated: "Bo found [the] gun under the bed. Joe told Ray about this last week." At the end of the note was the name "Officer Blakley" written in Det. Lightner's handwriting. Def.'s Evid. Hr'g Ex. 6.
21. The "Ray" referenced in this note was Ray Brigman.
22. The Charlotte City Police Department informed the WPD, prior to Defendant's trial, that a .25 caliber handgun was recovered in Charlotte in the course of a domestic violence call.
23. The prong of the State's case based upon the inference that Defendant had access to the .25 caliber handgun stolen from Brigman was false and without evidentiary value.

B. Nina Raiford's Crime Stoppers Tip and Testimony

24. The Court has reviewed the McDonalds' time card used by Nina Raiford ("Raiford") on the day of the murder to clock in and out of work, as well as the McDonalds' employee schedule, Raiford's trial testimony, and her testimony during the evidentiary hearing. The Court also has reviewed the testimony of Donna Blevins, McDonalds' manager.
25. Further, the Court, pursuant to its authority as the finder of fact, drove the route from Raiford's 1988 place of employment to the site of the murder.
26. Based upon the evidence of the time card and the trial testimony of Blevins, Raiford clocked out of work at 5:53 p.m. Def.'s Evid. Hr'g Ex. 7.
27. Raiford's testimony was that it would take her about 45 minutes to walk from McDonald's to her home on Hudson Drive.
28. Raiford's testimony at the evidentiary hearing was that it would take her 30-35 minutes to reach Delgado Square from the McDonald's.



29. On or about August or September 1988, Raiford, told her teacher Mittie Parker ("Ms. Parker") that she walked into the store and found Ms. Dreher lying on the floor. Def.'s Evid. Hr'g Ex. 8.
30. Raiford did not tell Ms. Parker that she saw Johnny Small at or near the crime scene.
31. Raiford called Crime Stoppers on September 27, 1988, and stated that she saw Defendant come out of the store at the time of the murder, and referenced the reward for information about the murder of Ms. Dreher. Def.'s Evid. Hr'g Ex. 9.
32. Based upon the evidence presented, Raiford could not physically have been at Delgado Square when the crime was committed, sometime in the 5:46 p.m. or 5:49 p.m. timeframe.
33. Raiford had the motive to collect the Crime Stoppers reward by providing information leading to the arrest of Defendant.
34. Based upon the physical impossibility of being near the crime scene at the time of the murder; the statement to Ms. Parker, which was inconsistent with her trial testimony; and her motive to provide information in order to obtain the reward, this Court finds Raiford's testimony to be lacking in credibility. This Court discounts Raiford's trial testimony in its entirety.
35. The second prong of the State's original case against the Defendant fails for a lack of credible evidence.

C. David Bollinger's Trial Testimony and Subsequent Recantation

36. Bollinger was the key witness for the State in its prosecution of Defendant. Bollinger was 19 years old and one of Defendant's best friends.
37. Bollinger testified at trial that Defendant asked to be driven to a location to make a telephone call and instructed him to pull into Delgado Square.
38. Bollinger further testified that Defendant turned the radio all the way up after they parked, got out of the car, and came back about five minutes later wearing a different shirt. They then went to Defendant's home.
39. Bollinger testified that shortly thereafter, Defendant tried to give him a small amount of cash, admitted to the murder, and held a gun to Bollinger's neck while threatening to kill him if he told anyone.
40. The charges for accessory after the fact against Bollinger were dropped by the State subsequent to the Defendant's conviction and final appeal. Def.'s Evid. Hr'g Ex. 36.
41. Bollinger contacted the North Carolina Center on Actual Innocence ("Center") in May 2012 and informed the Center that he had lied in his trial testimony implicating Defendant in the murder.
42. Bollinger testified at this hearing about the circumstances leading to his testimony at the Defendant's trial.
43. Bollinger testified that he had been arrested by Det. Lightner, accused of the murder of Ms. Dreher, and threatened with the death penalty. He testified that he initially denied his involvement but was eventually pressured by Det. Lightner into implicating Defendant in order to spare himself.
44. Bollinger has recanted his trial testimony and stated under oath that he lied at Defendant's trial and probable cause hearing, that he and Defendant were never together at the Delgado Shopping Center on the day of the murder, that he was on his way to an automobile auction



in Conway, South Carolina at the time of the murder, and that Defendant has never confessed any guilt for the murder.

45. Bollinger was thoroughly cross-examined by the State after his recantation testimony at this hearing. In addition, the Court reviewed his affidavit, his trial testimony, and his transcribed interview with the Attorney General's Office. Def.'s Evid. Hr'g Exs. 1, 4-5.
46. This Court is more than reasonably satisfied that Bollinger's testimony at the probable cause hearing and trial was false, thus eliminating the last prong of the State's case.

#### NEWLY DISCOVERED EVIDENCE – RECANTATION OF DAVID BOLLINGER

47. A defendant can file a motion for appropriate relief based upon newly discovered evidence if he meets the preliminary requirements set out in N.C. Gen. Stat. § 15A-1415(c), which states:

. . . [A] defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendants . . . guilt or innocence.

48. Pursuant to the standards as set forth in *State v. Britt*, 320 N.C. 705, 360 S.E.2d 660 (1987), this Court finds, after a careful consideration of all the evidence pertaining to the recantation testimony of Bollinger, that Bollinger's testimony at trial and probable cause hearing was false and that he was a material witness for the State in its prosecution of Defendant.
49. This Court further finds that there is more than a reasonable probability that had Bollinger's testimony not been admitted, the jury would have reached a different result at trial.

#### VIOLATIONS OF *BRADY V. MARYLAND*

50. Over half a century ago, the Supreme Court of the United States issued a landmark decision in *Brady v. Maryland*, 373 U.S. 83 (1963). The Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87.
51. A year after *Brady*, the Fourth Circuit found that "police officer's suppression of evidence also violates the Constitution." *Barbee v. Warden, Md. Penitentiary*, 331 F.2d 842, 846-47 (4th Cir. 1964).
52. In subsequent cases, the Supreme Court further held "that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government, 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).
53. Further, "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Id.* at 434.



54. The evidence shows that relevant shell casings were collected by the WPD and submitted to Jim Bailey for elimination, but reports were not prepared and the results were not disclosed. Def.'s Evid. Hr'g Ex. 19.
55. The evidence further shows that the WPD had no notes or reports of its interviews with several young witnesses, including Brigman, Jennifer Long, Anna Florentis and the State's key witness, Bollinger. This greatly troubles the Court.
56. The note regarding Bo Puttman and Joe Hunt, located in the WPD file, indicating "Bo found [the] gun under the bed" and "Joe told Ray [Brigman] about this last week," is incredibly material and was not turned over to the District Attorney's Office or the Defense prior to the 1989 trial. Def.'s Evid. Hr'g Ex. 6.
57. That document supports a finding that law enforcement knew the gun had been recovered before Small's trial.
58. This Court additionally finds numerous exculpatory and/or impeaching documents were not disclosed to the District Attorney's Office by the WPD and, therefore, they were not disclosed to the Defense.
59. This Court cannot ignore the cumulative effect of the *Brady* violations.
60. This Court finds those documents material and the violation prejudicial. But for this evidence being withheld, it is more than likely that a different result would have been reached at trial.

INEFFECTIVE ASSISTANCE OF COUNSEL,  
ACTUAL INNOCENCE, AND *NAPUE* CLAIMS

61. Although Defendant withdrew his ineffective assistance of counsel claim at the commencement of the evidentiary hearing, this Court, for the record, finds that Defendant's trial attorney was vigorous in his cross-examinations of witnesses, prepared, and effective.
62. This Court does not find actual innocence in this case.
63. This Court does not find a *Napue* claim.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes as a matter of law, that:

1. Defendant's MAR on grounds of recanted testimony and *Brady* violations is granted.
2. Defendant's MAR on grounds of ineffective assistance of counsel, *Napue* violations, and actual innocence is denied.
3. Defendant has established the necessary facts by a preponderance of the evidence.
4. Defendant has shown the existence of the asserted grounds for relief.
5. Defendant has set forth the prejudice required for relief in accordance with N.C. Gen. Stat. § 15A-1443.
6. Defendant's Motion for Appropriate Relief is meritorious and is genuine and material.



**WHEREFORE**, based on the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. That the Defendant's convictions for First Degree Murder and Robbery with a Dangerous Weapon be vacated;
2. That pretrial release conditions are set at \$100,000 unsecured bond and 24/7 electronic house arrest and in the event there is a violation of this house arrest, Defendant is to be immediately arrested and held with no bond pending further orders by this Court;
3. That Defendant shall have no contact with Ms. Dreher's family or any individuals on the witness lists for the State or Defense, with the exception of Defendant's own family members;
4. That jurisdiction in this matter is retained pursuant to Chapter 15A of the North Carolina General Statutes;
5. That a filed copy of this order be forwarded by the Clerk of Superior Court of New Hanover County to District Attorney Ben David, Assistant District Attorney Lillian Salcines Bright, Special Deputy Attorney General Sandra Wallace-Smith, Assistant Attorney General Jess Mekeel, and counsel for the Defendant, Christine C. Mumma, Robert F. Orr, and Cheryl A. Sullivan.

IT IS SO ORDERED, this the 30 day of August, 2016, *nunc pro tunc*, the 11th day of August 2016.



W. Douglas Parsons  
Senior Resident Superior Court Judge, District 4-A



# STATE OF NORTH CAROLINA

File No.

88CRS25911/12

New Hanover County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

NOTE: Do not use this form for cases covered by G.S. 20-138.4. Use form AOC-CR-339 instead.

## STATE VERSUS

Defendant Name

Johnny Michael Small

## DISMISSAL NOTICE OF REINSTATEMENT (For Offenses Committed On Or Before Nov. 30, 2013)

G.S. 15A-302(e), -931, -932, -1009

File Number	Count No.(s)	Offense(s)
	1	First Degree Murder
	2	Robbery with a Dangerous Weapon

### ☒ DISMISSAL

NOTE: Recall all outstanding Orders For Arrest in a dismissed case.

The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

- ☐ 1. No crime is charged.
- ☒ 2. There is insufficient evidence to warrant prosecution for the following reasons:  
28 year old homicide/no physical evidence/two material witnesses having been discredited by the Court at post conviction hearing week of 8-08-2016.
- ☐ 3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

- ☐ 4. Other: (specify) ☐ See additional information on reverse.

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.)

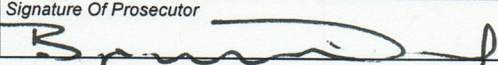
### ☐ DISMISSAL WITH LEAVE

The undersigned prosecutor enters a dismissal with leave to the above charge(s) and assigns the following reasons:

- ☐ 1. The defendant failed to appear for a criminal proceeding at which the defendant's attendance was required and the prosecutor believes that the defendant cannot readily be found.
- ☐ 2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.
- ☐ 3. The defendant has entered into a deferred prosecution agreement with the prosecutor in accordance with the provisions of Article 82 of G.S. Chapter 15A.
- ☐ 4. The defendant has been found by a court to be incapable of proceeding pursuant to Article 56 of G.S. Chapter 15A.
- ☐ 5. Other: (specify) ☐ See additional information on reverse.

NOTE: This form must be completed and signed by the prosecutor when the dismissal occurs out of court. The better practice is for the prosecutor to complete and sign the form when the charges are orally dismissed in open court.

Also, in accordance with G.S. 15A-931(a1), unless the defendant or the defendant's attorney has been otherwise notified by the prosecutor, a written dismissal of the charges against the defendant must be served in the same manner prescribed for motions under G.S. 15A-951. If the record reflects that the defendant is in custody, the written dismissal shall also be served by the prosecutor on the chief officer of the custodial facility where the defendant is in custody.

Date 8 September 2016	Name Of Prosecutor (type or print) Benjamin R. David	Signature Of Prosecutor 
--------------------------	---	---

### ☐ REINSTATEMENT

This case, having previously been dismissed with leave as indicated above, is now reinstated for trial.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
------	------------------------------------	-------------------------