

IN THE  
**United States Court of Appeals**  
FOR THE FOURTH CIRCUIT

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RONNIE WALLACE LONG,

*Petitioner-Appellant,*

—v.—

ERIK A. HOOKS, SECRETARY, NC DEP'T OF PUBLIC SAFETY,

*Respondent-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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**BRIEF FOR *AMICI CURIAE***  
**IN SUPPORT OF PETITIONER-APPELLANT**

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## **INTEREST OF AMICI CURIAE<sup>1</sup>**

This brief is signed by scholars representing a variety of disciplines, including law, ethics, forensic science, medicine, and statistics. The scholars have an interest in the quality and improvement of forensic science. Amici believe that forensic analyses should be disclosed, no matter whether the results are inculpatory, exculpatory, or non-probative, as a matter of professional ethics, sound science, and law. Amici are also interested in improving the administration of justice in general and the quality of evidence presented at criminal trials in particular. Amici are concerned that failure to disclose forensic conclusions can contribute to wrongful convictions.

## **STATEMENT OF FACTS**

Ronnie Long was convicted in October 1976 for burglary and rape in Concord, North Carolina. A variety of physical evidence was collected from the crime scene and subjected to forensic testing, but the overwhelming majority of the forensic analysis was not disclosed to Long's defense counsel and never introduced to the jury at trial. Indeed, the only physical evidence introduced involved a shoe

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<sup>1</sup> The amici certify that no counsel for a party authored this brief in whole or in part; no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than the amici or their counsel made a monetary contribution to its preparation or submission. The views expressed herein reflect those of Professor Brandon L. Garrett and the Amici Curiae but not those of any academic or other institution to which they belong, such as Duke University.

print comparison with “inconclusive” results. It is now agreed that the bulk of the forensic evidence in this case actually *excludes* Ronnie Long as the source, firmly supporting his claim of actual innocence.

At Mr. Long’s trial, the officer who physically delivered material collected at the crime scene to the State Bureau of Investigation (SBI) Laboratory in April 1976 was asked during cross-examination what evidence he had collected for analysis, and he initially testified that the evidence was comprised of a pair of shoes: “I took the pair of shoes which I had received from Mr. Long in Kannapolis. I took two inked impressions, one of the left shoe and one of the right shoe which I had made on May the tenth, and I took the latent lift . . . .” Trial Tr. at 297, *North Carolina v. Long*, 76 CRS 5708-9 (Sup. Ct. 1977). The officer then testified that he asked the SBI analyst to examine the shoe impressions and mentioned that other items, such as a pair of black gloves and a leather jacket, were also taken into evidence. *Id.* at 300-01.

Critically, nothing was said at trial about any testing conducted on the jacket or gloves. Nothing was said at trial about testing of any hair, matchbooks, or other physical evidence collected at the crime scene. And nothing was said at trial about an examination of the victim’s clothing and any forensic evidence found there. As to the shoes, the SBI analyst testified that the shoe impressions “could have been made” by the defendant’s shoes but that he could not make any positive

identification. *Id.* at 311-12. His prior written report similarly stated that “there were an insufficient number of distinct characteristics noted by which to effect any identification.” State Bureau of Investigation Lab Report, File No. 76-04-R-203 (May 19, 1976). The analyst did not indicate that forensic testing of any additional evidence had ever taken place.

In fact, a range of additional forensic tests *had been* conducted and each produced an exculpatory result that might have tipped the jury in Mr. Long’s favor. In addition to the inconclusive shoe comparison, the withheld SBI reports that have come to light include:

- (1) An SBI analyst report on Mr. Long’s jacket and gloves, finding no evidence of paint or fibers from the crime scene;
- (2) An SBI report regarding a hair found at the crime scene, concluding that the hair excluded Mr. Long;
- (3) An SBI report on the results of an examination of the victim’s clothing, finding no hairs consistent with Mr. Long; and
- (4) An SBI report on three burned matches found at the crime scene, argued to have been lit by the assailant to see in the dark, which were not consistent with five matchbooks found in Mr. Long’s car.

*Id.*

Beyond the failure to disclose these exculpatory findings, it has also come to light that Mr. Long's defense counsel was not informed of the existence of a sexual assault evidence kit, which included vaginal swabs and secretions taken from the victim, as well as latent fingerprints taken from the crime scene. Indeed, to this day, the sexual assault evidence kit is not known ever to have been tested, and analysis of the fingerprints has excluded Mr. Long as the source.<sup>2</sup>

In short, the limited and inconclusive forensic evidence presented at trial consisted solely of the shoe print testimony and omitted the substantial remaining forensic analyses, all of which excluded—or, at a minimum, tended to exclude—Ronnie Long as a potential source.

### **SUMMARY OF ARGUMENT**

Forensic analysis is oftentimes a significant factor in determining the course of criminal investigations and, when admitted into evidence, the outcome of criminal trials. Beyond forensic evidence as a general matter, exculpatory forensic results are highly probative to fact-finders at criminal trials. That conclusion is

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<sup>2</sup> Apparently, at the time of trial, the prosecution had also not been informed that any forensic evidence existed apart from the shoe comparison. Petition for Writ of Habeas Corpus, ECF No. 1 at 4, *Long v. Perry*, 1:16-cv-539 (M.D.N.C. May 26, 2016). According to the prosecution, at the time of trial they maintained an open-file policy under which the SBI's exculpatory reports would have been provided to the defense, had they only been provided to the prosecution by the Concord Police Department.

buttressed by the fact that *concealed* exculpatory forensic results have played a devastating role in enabling wrongful conviction cases nationwide, including in cases where DNA testing ultimately proved an individual's innocence. Indeed, the hundreds of DNA exonerations to date demonstrate that flawed or incomplete forensic evidence can have a calamitous effect on the truth-seeking function of the criminal justice system and, more fundamentally, that what appears to be evidence of guilt oftentimes paints an incomplete picture. For these reasons, it is crucially important that exculpatory forensic analyses be disclosed to counsel and to the court.<sup>3</sup>

In Ronnie Long's case, a series of forensic tests was conducted on evidence found at the crime scene, but the existence of that analysis was not disclosed to the defense at the time of Mr. Long's trial and was never presented to the jury. Such conduct is not only constitutionally suspect, but it violates the basic norms of sound science and professional ethics.

In this brief, Amici Curiae respectfully seek to provide context for the Court in evaluating the State's failure to disclose its forensic analysis and the resulting

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<sup>3</sup> In the United States alone, DNA evidence has thus far been used to exonerate 362 people who were wrongfully convicted. Faulty and misleading forensic evidence contributed to the underlying conviction in approximately half of these cases. *See* Innocence Project, *DNA Exonerations in the United States*, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>.

catastrophic impact on Mr. Long. To that end, amici make three key points. First, forensic analysis that excludes a defendant from being a contributor of evidence found at a crime scene is highly probative in the eyes of jurors. Second, on a foundational level, the tenets of basic science mandate that forensic evidence, especially exclusionary evidence like that withheld from Mr. Long, be presented in criminal cases. Third, the failure to disclose forensic evidence is an important cause of wrongful convictions.

For all of these reasons, amici write to emphasize the importance of firm post-conviction judicial intervention in order to reopen cases like that of Mr. Long in which exculpatory forensic evidence was concealed.

## ARGUMENT

### **I. THE RESULTS OF FORENSIC ANALYSIS DEMONSTRATING AN EXCLUSION, LIKE THOSE CONCEALED FROM RONNIE LONG, ARE PROBATIVE AND CAN BE POWERFUL EVIDENCE OF INNOCENCE.**

Research on how jurors evaluate evidence at criminal trials consistently has found that laypeople place a great deal of weight on forensic evidence. For example, laypeople may assume—oftentimes incorrectly—that all forensic evidence is highly reliable and that error rates are extremely small. Jonathan J. Koehler, *Intuitive Error Rate Estimates for the Forensic Sciences*, 57 *Jurimetrics J.* 153 (2017) (“[C]ourts should take seriously the possibility that jurors will overweight various types of forensic evidence because they mistakenly believe that

the risk of error is infinitesimal.”). Indeed, research indicates that most jurors start with a “default view” that common forensic evidence, like DNA and fingerprints, “are at least somewhat reliable, if not nearly infallible.” Brandon L. Garrett & Gregory Mitchell, *Forensics and Fallibility: Comparing the Views of Lawyers and Judges*, 119 W. Va. L. Rev. 621, 636 (2016). The proper weight to be accorded such evidence must depend on the type of forensic evidence and how it is evaluated.

While inculpatory forensic evidence can be influential in the context of a criminal trial, forensic evidence demonstrating the opposite—that is, evidence that excludes the defendant as a potential source—can also be powerful and persuasive in the eyes of a jury. Joel D. Lieberman, Courtney A. Carrell, Terance D. Meithe & Daniel A. Krauss, *Gold Versus Platinum: Do Jurors Recognize the Superiority and Limitations of DNA Evidence Compared to Other Types of Forensic Evidence?*, 14 Psychol. Pub. Pol’y & L. 27, 27 (2008) (finding that DNA evidence strongly influences verdict decisions, whether the evidence is incriminating or exculpatory); *see also* William C. Thompson, Nicholas Scurich, Rachel Dioso-Villa & Brenda Velasquez, *Evaluating Negative Forensic Evidence: When Do Jurors Treat Absence of Evidence as Evidence of Absence?*, 14 J. Empirical Legal Stud. 569 (2017) (finding jurors give weight to an absence of forensic evidence). The weight that jurors give to exculpatory forensic evidence is all the more

important where jurors face difficulties drawing inferences from an absence of information. Thompson, et al., at 571. Without a narrative to contrast the prosecution's story, a jury will have little reason to give any weight to the defense.

As Dan Simon and other experts have described, jurors use a coherence-based reasoning method, in which they integrate the whole of the evidence that they receive. Dan Simon, *In Doubt* 175-76 (Harvard University Press 2012). That is, a piece of strong inculpatory evidence can “make the entire evidence set appear inculpatory.” *Id.* at 176. By the same token, “including an *exculpating* item can push the evidence towards a conclusion of innocence.” *Id.* (emphasis added). Critically, evidence is not independent: it is related, and thus the exclusion of evidence of innocence can make an entire case against a defendant seem far more compelling than it is.

Indeed, forensic evidence is so powerful that courts have expressed concerns that overstatement of forensic inclusions may bias jurors. *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) (“[E]xpert testimony may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse.”); *United States v. Hines*, 55 F. Supp. 2d 62, 64 (D. Mass. 1999) (“[A] certain patina attaches to an expert's testimony unlike any other witness; this is ‘science,’ a professional's judgment, the jury may think, and give more credence to

the testimony than it may deserve.”). Such concerns are warranted unless forensic analysts are required to minimize the importance or the definitive nature of the inclusion.

## **II. THE TENETS OF BASIC SCIENCE AND THE CONSTITUTION MANDATE THAT FORENSIC EXCLUSIONS BE PRESENTED IN CRIMINAL CASES.**

It could not be more fundamental to any valid and reliable scientific work that all evidence and results be disclosed, whether the results are favorable or unfavorable to a particular party. Courts in North Carolina have unequivocally endorsed this axiom:

Because of the extraordinarily high probative value generally assigned by jurors to expert testimony, of the need for intensive trial preparation due to the difficulty involved in the cross-examination of expert witnesses, and of the inequality of investigative resources between prosecution and defense regarding evidence which must be analyzed in a laboratory, federal Rule 16 has been construed to provide criminal defendants with broad pretrial access to a wide array of medical, scientific, and other materials obtained by or prepared for the prosecution which are material to the preparation of the defense or are intended for use by the government in its case in chief.

*North Carolina v. Cunningham*, 423 S.E.2d 802, 807-08 (Ct. App. 1992). As discussed in Point I above, the fundamental mandate for the disclosure of exculpatory evidence is particularly important in cases involving forensic exclusions, which can be highly probative and extremely powerful to fact-finders.

In a wide range of pattern disciplines, the forensic work consists of an examination of evidence to reach a conclusion as to whether certain items have a connection with a person who is a suspect: in this case, whether the physical evidence found at the crime scene could have originated from Mr. Long. As a part of that process, “the examiner compares the items, looking for distinguishing features that would rule out the hypothesis that the items have a common source.” William Thompson, *How Should Forensic Scientists Present Source Conclusions?*, 48 Seton Hall L. Rev. 776, 776 (2018). In the end, “[w]hen distinguishing features are found, the examiner reports that the items do not have a common source—which is often called ‘exclusion.’” *Id.* at 776-77. In a criminal case, there could not be anything more fundamental than accurately reporting whether the analysis resulted in an inclusion or an exclusion.

Compared to analyses that find consistencies between items, a forensic exclusion can actually be far more definitive and, therefore, probative. For example, with respect to *inclusions* or consistencies, it sometimes is not possible to draw a definitive conclusion because there may not exist population data sufficient to even calculate the probabilities underlying a comparison. Put differently, it oftentimes is not scientifically possible to identify the size of the set of individuals in the population who would provide the same degree of consistency with the forensic evidence as the defendant. Thus, the probative value of an inclusion is

usually limited, generally because a large percentage of the population shares similar characteristics. And of course the probative value of an inclusion is particularly stunted if the percentages in question are unknown.

In contrast, an exclusion can be truly definitive. Where a forensic analysis reveals that the item in question shares no consistencies with the defendant, the conclusion is clear and unambiguous.

Due in part to the number and publicity of DNA exonerations resulting from problematic forensic evidence, Congress tasked the National Academy of Sciences (NAS) with evaluating the scientific validity and reliability of various forensic techniques and examining ways to improve the quality of those forensic sciences in criminal investigations and trials. The work by the NAS culminated in the publication of a landmark report that revealed fundamental flaws with many common forensic disciplines and their use in criminal cases. Comm. on Identifying the Needs of the Forensic Sci. Cmty., Nat'l Research Council of the Nat'l Acads., *Strengthening Forensic Science in the United States: A Path Forward* (2009). The NAS Report demonstrated the importance of carefully documenting forensic results and revealed that serious misconduct had taken place where labs across the country had not disclosed exculpatory evidence. *Id.* at 45. Moreover, the report acknowledged that “[n]ew doubts about the accuracy of some forensic science practices have intensified with the growing number of

exonerations resulting from DNA analysis (and the concomitant realization that guilty parties sometimes walk free).” *Id.* at 7.

The Presidential Council of Advisors on Science and Technology released a report in 2016 that shed further light on the serious problems at laboratories “concerning the handling and processing of evidence,” including where agents at the North Carolina State Bureau of Investigation “consistently withheld exculpatory evidence or distorted evidence” over a sixteen-year period.<sup>4</sup>

Industry rules and guidelines governing forensic science professionals consistently emphasize the scientific and ethical obligation to disclose all information as part of the legal process. Forensic scientists are uniquely concerned with the introduction of evidence in courtrooms, particularly in the criminal context. *See* Peter D. Barnett, *Ethics in Forensic Science: Professional Standards for the Practice of Criminalistics* 125 (2001) (noting that criminalistics “has as its primary objective a determination of physical facts which may be significant in legal cases”). For that reason, professional bodies in the forensic sciences have adopted formal codes of ethics that require full disclosure of all results and

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<sup>4</sup> Exec. Office of the President, President’s Council of Advisors on Sci. & Tech., *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* 33 (Sept. 2016) (hereinafter, the “PCAST Report”) (citing Chris Swecker & Michael Wolf, *An Independent Review of the SBI Forensic Laboratory*, at <http://images.bimedia.net/documents/SBI+Report.pdf>.)

findings. For example, the American Board of Criminalists underscores the importance of disclosure of all forensic evidence, including all results and reports.<sup>5</sup> The American Academy of Forensic Sciences states that “[n]o member or affiliate of the Academy shall materially misrepresent data or scientific principles upon which his or her conclusion or professional opinion is based.”<sup>6</sup> The National Commission on Forensic Science made the recommendation, adopted by the Department of Justice in 2016, that as part of the professional conduct of forensic professionals, “reports and other records shall not be altered and information shall not be withheld for strategic or tactical advantage.”<sup>7</sup> ABA Model Rule 3.8(d), which every state has adopted, has been interpreted by the ABA to require pretrial disclosure of exculpatory evidence without regard to materiality.<sup>8</sup>

The Constitution also clearly requires that exculpatory results be provided to the defense in criminal cases. The Supreme Court has repeatedly held that police

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<sup>5</sup> ABC Rules of Professional Conduct, [http://www.criminalistics.com/uploads/3/2/3/3/32334973/090001f\\_v1.0.1\\_abc\\_rules\\_of\\_professional\\_conduct.pdf](http://www.criminalistics.com/uploads/3/2/3/3/32334973/090001f_v1.0.1_abc_rules_of_professional_conduct.pdf).

<sup>6</sup> American Academy of Forensic Sciences, *Bylaws*, Article II, Code of Ethics and Conduct, § 1(c), <https://www.aafs.org/wp-content/uploads/2015AAFS-Bylaws.pdf>.

<sup>7</sup> U.S. Department of Justice, *Code of Professional Responsibility for the Practice of Forensic Science*, [https://www.justice.gov/sites/default/files/code\\_of\\_professional\\_responsibility\\_for\\_the\\_practice\\_of\\_forensic\\_science\\_08242016.pdf](https://www.justice.gov/sites/default/files/code_of_professional_responsibility_for_the_practice_of_forensic_science_08242016.pdf).

<sup>8</sup> See also American Bar Association Criminal Justice Section, *Achieving Justice: Freeing the Innocent, Convicting the Guilty: Report of the ABA Criminal Justice Section’s Ad Hoc Innocence Committee to Ensure the Integrity of the Criminal Process* (Paul Giannelli & Myrna Raeder eds., 2006).

and prosecutors have a fundamental *Brady* obligation to provide the defense with exculpatory material and impeachment evidence. *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (“We now hold 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.”) Moreover, the prosecutor bears the burden to learn of exculpatory evidence from investigators. As the Supreme Court held in *Kyles v. Whitley*, “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” 514 U.S. 419, 437 (1995). The Court has more broadly emphasized the importance of exculpatory forensic evidence to the defense, including in rulings likewise highlighting the obligation of defense lawyers to consult experts or introduce their own expert evidence on forensics. *Hinton v. Alabama*, 571 U.S. 263, 272 (2014). Obviously, the defense cannot meet that obligation if the existence of forensic evidence or testing is not, in the first place, disclosed to the defense by the prosecution—as was the case for Mr. Long’s counsel.

State statutes sometimes require even broader discovery. North Carolina, for example, requires the disclosure of all “results or reports” of examinations or tests, patterned after the approach set out in Federal Rule of Criminal Procedure 16(a)(1)(D). *Cunningham*, 423 S.E.2d at 807-08. Courts in North Carolina have

ruled that state law “must be construed as entitling a criminal defendant to pretrial discovery of not only conclusory laboratory reports, but also of any tests performed or procedures utilized by chemists to reach such conclusions.” *Id.*

### **III. WRONGFUL CONVICTIONS OCCUR WHEN EXCULPATORY FORENSIC RESULTS ARE CONCEALED.**

Wrongful convictions have occurred time and again where exculpatory forensic results are concealed from the court and the defense. The NAS committee confirmed as much when it observed that wrongful convictions have resulted from the “suppression of exculpatory evidence.” NAS Report at 45.

As mentioned in Point II above, the Presidential Council of Advisors on Science and Technology identified serious problems at laboratories, including North Carolina’s SBI, where agents “consistently withheld exculpatory evidence or distorted evidence.”<sup>9</sup> In the end, the SBI’s practice of withholding exculpatory evidence resulted in, among other things, the convictions and eventual exonerations of innocent people, an investigation initiated by North Carolina’s Attorney General, and, in the end, (fortunately) changed lab practices.<sup>10</sup>

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<sup>9</sup> PCAST Report, at 33 (citing Chris Swecker & Michael Wolf, *An Independent Review of the SBI Forensic Laboratory*, <http://images.bimedia.net/documents/SBI+Report.pdf>).

<sup>10</sup> In Mr. Long’s case, the SBI did not withhold exculpatory results—the SBI properly documented in its reports the exculpatory analysis in his case. Instead, it was the police agency that failed to disclose those reports to prosecutors and, critically, to Mr. Long’s defense counsel.

Cases in North Carolina involving the SBI highlight the harm that can occur when forensic reports are not disclosed. Indeed, the case of Greg Taylor, a man who spent seventeen years in prison for a murder he did not commit, sparked an independent review of the SBI by former FBI agents. In Mr. Taylor's case, it turned out that blood test results had been concealed and never introduced at his trial. *Id.* Mr. Taylor was exonerated in 2010. In another case, an SBI laboratory report omitted that two of the hairs found at a crime scene excluded the defendant, Dwayne Dail. In contradiction to the actual lab results, the prosecution's forensic analyst testified at trial that the hair evidence *could* have originated with Dail. Nancy Ritter, *Postconviction DNA Testing Is at Core of Major NIJ Initiatives*, 262 NIJ J. 18, 23, <https://www.ncjrs.gov/pdffiles1/nij/225761.pdf>. After serving eighteen years in prison, Dail was exonerated by DNA evidence.

In the Fourth Circuit, the problem of wrongful convictions stemming from concealed exculpatory forensics is not limited to the State of North Carolina. In one murder case in which the defendant's conviction and death sentence were initially affirmed on appeal and on habeas review<sup>11</sup>, Earl Washington, Jr. was exonerated years later by DNA tests. Only after his exoneration was it uncovered

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<sup>11</sup> *Washington v. Murray*, 4 F.3d 1285 (4th Cir. 1993) (conviction affirmed on appeal and in federal habeas petitions).

that pre-trial serology testing had *excluded* him as a possible contributor.<sup>12</sup> The forensic report documenting the exculpatory serology testing was never provided to the defense at the time of trial; instead, the defense received an amended report that lacked this critical part of the analysis. Washington’s wrongful conviction—and near-wrongful execution, as he came within nine days of being executed—could perhaps have been averted if the original forensic report had not been concealed from the defense. Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 108 (Harvard University Press 2011).

These examples of wrongful conviction cases are, unfortunately, not uncommon. In a 2009 study of DNA exonerations, thirteen cases were identified in which it came to light, post-conviction, that exculpatory evidence had been previously concealed. Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1, 76 (2009); *see also Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 319 (2009). These examples included cases virtually identical to that of Mr. Long, in which laboratory reports, analysis, or even the existence of evidence were withheld from defense counsel. In some cases, forensic analysts not only concealed evidence of a defendant’s innocence, but also concealed evidence pointing to alternative suspects, whose

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<sup>12</sup> *Washington v. Buraker*, 322 F. Supp. 2d 692 (W.D. Va. 2004).

guilt was confirmed by post-conviction DNA testing. Garrett & Neufeld at 83.

Put simply, concealing forensic reports and results sends innocent people to prison and allows guilty people to remain free from punishment.

In a 2011 analysis examining the first 250 DNA exonerations in the United States, twenty-one cases were identified in which exculpatory forensic evidence was not disclosed to the defense, including cases in which evidence was concealed, analysis was withheld, or results were fabricated. Brandon L. Garrett, *Convicting the Innocent*, at 108. For example, in the case of William Gregory, the forensic analyst testified that crime scene hair affirmatively matched that of Gregory; however, the analyst failed to disclose that at least one hair was found to be inconsistent. *Id.* at 109. In the case of Gene Bibbins, a forensic analyst stated that latent fingerprints were unidentifiable, when in fact the crime lab had concluded that the defendant had been excluded. *Id.* Both Gregory and Bibbins were convicted of crimes they did not commit and were eventually exonerated by DNA evidence.

Another troubling lesson from the cases litigated by DNA exonerees is that many post-conviction courts denied relief to exonerees who had asserted claims regarding forensic errors in their cases. In general, although suspect forensic evidence was found to be the second-leading type of evidence supporting the wrongful convictions of DNA exonerees, few individuals were able to obtain

reversals of their convictions regarding invalid, overstated, or concealed forensic evidence. *Id.* at 189. In the 2011 analysis of DNA exonerations, only six of the 36 exonerees with written appellate or post-conviction decisions and unreliable but admitted forensic trial evidence ultimately obtained reversals. In the remaining cases, judges denied relief, including in cases with outright scientific misstatement or misconduct. *Id.* at 190.

Fortunately, in response to the revelations about North Carolina's SBI, the state enacted a series of reforms, including a measure making it a crime to willfully omit or misrepresent information subject to disclosure in a criminal case. N.C. Sess. Laws 2011-19 (amending N.C. Gen. Stat. § 15A-903(d) (2010)).

Unfortunately, for individuals like Ronnie Long, whose exculpatory forensic evidence was never introduced at trial, these reforms came decades too late.

### **CONCLUSION**

In Ronnie Long's case, a range of exculpatory forensic tests were conducted, but the existence of the forensic analysis and the exclusionary results were concealed from Mr. Long's counsel and never shown to the jury at trial. The concealment of the forensic evidence and analysis in this case violates basic norms of sound science and professional ethics. Further, such conduct implicates core constitutional concerns, particularly given the degree to which exculpatory forensic results are probative and critical to jury decision-making. Concealed exculpatory

forensic results have played a troubling role in wrongful conviction cases across the country, including in cases with remarkable similarities to that of Mr. Long.

For all of these reasons, both specific to Mr. Long’s case and because of the scientific, ethical, constitutional, and policy implications of the conduct involved, amici respectfully write to emphasize the importance of firm post-conviction judicial intervention in cases—like that of Mr. Long—in which exculpatory forensic evidence was wrongfully concealed.

Respectfully submitted,

Dated: October 1, 2018

By: /s/ Mark D. Harris

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No. 18-6980      Caption: Ronnie Long v. Erik Hooks

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Party Name Brandon L. Garrett, et al.

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I certify that on October 1, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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