

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA

v.

RAYSHAWN DENARD BANNER,
NATHANIEL ARNOLD CAUTHEN,
CHRISTOPHER BRYANT, &
JERMAL TOLLIVER

From Forsyth County
02 CRS 38883 (Banner)
02 CRS 38884 (Cauthen)
02 CRS 38886 (Bryant)
02 CRS 38882 (Tolliver)

DEFENDANTS' RESPONSE TO
STATE'S PETITION FOR WRIT OF SUPERSEDEAS

Through undersigned counsel, pursuant to Rule 23(d) of the North Carolina Rules of Appellate Procedure, Defendants respectfully request that this Court Deny the State's Petition for Writ of Supersedeas and Lift the Temporary Stay of the Order entered in Forsyth County Superior Court by the Honorable Robert A. Broadie granting Defendants' Motions for Appropriate Relief on 8 August 2025.

HISTORY

1. On the evening of 15 November 2002, Nathaniel Jones was attacked in the carport of his home in Winston-Salem, North Carolina, and died during the struggle.

2. On 19-20 November 2002, Defendants and Dorrell Brayboy, all 14 or 15 years old at the time, were rounded up, interrogated, and charged with first-degree murder and robbery. At the time, Defendants all suffered from varying levels of

intellectual disability, learning disability, and cognitive impairment. All were operating within the bottom 2-14% range of intellectual functioning for their age group, or in the intellectual functioning range of elementary school children. Because the boys said they were with Jessica Black, 16 years old at the time, on the afternoon and night of the attack on Mr. Jones, she was also interrogated.

3. At least 17 Winston-Salem Police Department (WSPD) officers were involved in the round-up and interrogations. They deployed interrogation tactics against the six teenagers that are among the most common denominators of false confessions by juveniles with mental impairment, including: prolonged detention and isolation at the police station, interrogator presumption of guilt, aggressive accusations of lying and shutting down of denials, disclosing details from the investigation, lying about evidence, using parents against their children, bribing them with going home if they confessed, and engaging in intimidating physical contact. The interrogators even threatened the boys with the death penalty and Jessica with life without parole until they all told “the truth,” i.e., confessed.

4. At the beginning of Defendants’ interrogations, they all maintained their innocence. But by the end, they confessed. WSPD recorded none of the preceding hours of denials and interrogation tactics, only the final moments of them: the confessions. However, even those final recorded statements revealed additional common indicators of false confessions: they were wildly inconsistent with each other, the physical evidence, and other witness statements.

5. After extracting the confessions, WSPD charged the five teenage boys with first-degree murder and robbery. They did not, however, charge Ms. Black with anything; instead, they let her go home to assume the role of star witness for the prosecution. They also abandoned or ignored any leads or evidence inconsistent with the boys' guilt, including multiple eyewitness accounts of a single perpetrator and a Crimestoppers tip specifically naming three suspects.

6. Following their confessions, and every day since then, Defendants have maintained that they are innocent and their confessions were false and coerced.

7. On 9 December 2002, Defendants were bound over from Juvenile Court to Superior Court to be tried as adults. Because they were indigent, they were appointed lawyers to represent them.

8. On 3 November 2003, they were indicted on charges of first-degree murder and robbery with a dangerous weapon, exposing them to the harshest punishment available for juveniles at the time: life without the possibility of parole.

9. On 5 November 2003, they were offered pleas to reduced charges that would have limited their prison exposure to as low as 13-14 years in the presumptive range of sentencing. Because they were innocent, they rejected the offers.

10. On 21-23 March 2004, the Forsyth County Superior Court held hearings on their motions to suppress their confessions and denied the motions.

11. In August of 2004, Defendants Banner and Cauthen were tried jointly in Forsyth County. The jury convicted them of first-degree murder and robbery with

a dangerous weapon, and the trial court sentenced them to life without the possibility of parole.

12. On 9-20 May 2005, Defendants Bryant and Tolliver were tried jointly with Dorrell Brayboy in Forsyth County. The jury convicted them of second-degree murder and common law robbery, and they were sentenced to consecutive active punishments of 157-198 months and 13-16 months.

13. On 18 July 2006, this Court found no error in Defendants Banner and Cauthen's trial and upheld their convictions and sentences.

14. On 16 January 2007, this Court found no error in Defendants Bryant and Tolliver's trial and upheld their convictions and sentences.

15. Starting in 2015, Defendants began filing claims of actual innocence with the North Carolina Innocence Inquiry Commission, and the Commission began investigating those claims.

16. On 3 February 2017, having served their entire active sentences, Defendants Bryant and Tolliver were released from prison.

17. On 23 January 2018, having served his entire active sentence, Dorrell Brayboy was released from prison. Tragically, he was murdered on 29 August 2019.

18. On 21-22 October 2019, as part of its investigation of Defendants' innocence claims, Commission staff deposed Jessicah Black over two days. She testified for the first time, under oath, after being warned about the penalty of perjury, that she did not see or hear Defendants do or say anything relating to

Nathaniel Jones's murder; that her confession to police was false and coerced; and that her testimony implicating them at their trials was false.

19. On 9-13 March 2020, the Commission heard the surviving Defendants' claims of innocence and found sufficient evidence of factual innocence to merit judicial review by a Three-Judge Panel.

20. On 28 April 2022, the Three-Judge Panel, statutorily limited in the claims it could consider, held that Defendants had not met the high burden of a unanimous finding of clear and convincing evidence of innocence, but the Panel's ruling left open all other avenues for post-conviction relief. *See* N.C. Gen. Stat. § 15A-1411(d), 1460 (1), and 1470(b).

21. In 2023, Defendants filed Motions for Appropriate Relief ("MARs" or "Defendants' MARs") under N.C. Gen. Stat. § 15A-1415, raising the following claims:

- a. Newly discovered evidence: Jessica Black's recantation;
- b. Newly discovered evidence: DNA evidence at the crime scene, including on the material used to bind the victim's hands, that belonged to an unidentified person and that did not belong to Defendants or Ms. Black;
- c. Newly discovered evidence: Advancements in the science of adolescent psychology and police interrogations since the trials;
- d. Newly discovered evidence: Advancements in standards for evaluating footwear impressions like those found at the crime scene;

- e. Ineffective assistance of counsel based on trial counsel's failure to investigate the educational and intellectual background of Defendants; and
- f. Ineffective assistance of counsel based on trial counsel's failure to present evidence relating to the science of false confessions.

22. Defendants Banner and Cauthen also raised additional claims of newly discovered evidence through Christopher Bryant and Jermal Tolliver affidavits and ineffective assistance of counsel: *Harbison* error at their trial.

23. Defendants prayed that their convictions be vacated and the charges dismissed, or for any other relief the court deemed appropriate.

24. On 1 December 2023, the State filed Responses to Defendants' 2023 MARs. The State argued all claims were procedurally barred, except for the newly discovered evidence claim based on Ms. Black's recantation, and that the claims were substantively insufficient.

25. On 19 January 2024, Defendants filed Replies.

26. On 13 August 2024, the presiding judge, the Honorable Robert A. Broadie ("Judge Broadie" or "the MAR Court"), conducted a status conference and heard arguments from the parties about whether Defendants were entitled to an evidentiary hearing.

27. On 4 September 2024, Judge Broadie ordered an evidentiary hearing.

28. On 6-24 January 2025, Judge Broadie conducted the evidentiary hearing.

29. Defendants' offer of proof included the testimony of 19 witnesses, including the surviving Defendants and Ms. Black; the surviving trial counsel; four DNA experts; a forensic psychology expert; an expert in adolescent psychology and police interrogations and confessions; an expert in the prevailing norms of practice for indigent defense lawyers at the time of Defendants' trial; and an investigator who worked on the investigation for the North Carolina Innocence Inquiry Commission.

30. Defendants' offer of proof further included over 100 exhibits, including transcripts of both trials and all four pre-trial suppression motion hearings, totaling thousands of pages.

31. The State called *no* witnesses to counter Defendants' evidence.

32. At the end of the hearing, Judge Broadie took the claims, evidence, and arguments of counsel under advisement and reviewed them for over six months.

33. On 8 August 2025, Judge Broadie entered an order granting all but two of Defendants' claims ("MAR Order," attached to the State's Petition). Specifically, the MAR Court granted the following claims:

- a. Newly discovered evidence: Jessicah Black's recantation;
- b. Newly discovered evidence: DNA evidence at the crime scene, including on the material used to bind the victim's hands, that belonged to an unidentified person and that did not belong to Defendants or Ms. Black;
- c. Newly discovered evidence: Advancements in the science of adolescent psychology and police interrogations since the trials;

- d. Ineffective assistance of all Defendants’ trial counsel based on trial counsel’s failure to investigate the educational and intellectual background of Defendants; and
- e. Ineffective assistance of all Defendants’ trial counsel based on trial counsel’s failure to present evidence relating to the science of false confessions; and
- f. Ineffective assistance of Defendants Banner and Cauthen’s trial counsel based on *Harbison*.

34. Having granted five of Defendants Bryant and Tolliver’s claims and six of Defendants Banner and Cauthen’s claims, the MAR Court vacated Defendants’ convictions and dismissed the charges against them with prejudice, on the merits, as the court is expressly empowered to do by N.C. Gen. Stat. § 15A-1417(a)(2).

35. On 8 August 2025, after the parties received notice of the MAR Order, the State filed a Motion to Stay the MAR Order.¹ The State cited no legal authority and provided no factual basis in support of its Motion to Stay. The State articulated no ground and forecast no path to reversal of any aspect of the relief granted by Judge Broadie – not on any of the 11 claims granted, nor the remedy granted.

36. On 11 August 2025, Defendants filed their Opposition to State’s Motion to Stay.² In addition to pointing out the State’s failure to articulate a factual or legal basis

¹ See Exhibit 1 (“Motion to Stay”).

² See Exhibit 2 (“Opposition to the Motion to Stay”).

to stay an order they did not even believe they had a right to appeal,³ Defendants directed the State's and MAR Court's attention to the plain language of N.C. Gen. Stat. § 15A-1451(b), partially titled "no stay when State appeals": "[t]he effect of dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges unless they are subsequently reinstated as a result of the determination upon appeal."

37. After reviewing the parties' filings, the MAR Court notified the parties that it was denying the Motion to Stay.

38. Shortly after that, the State filed notice of appeal to this Court, and then filed the instant Petition for Writ of Supersedeas and Emergency Application for Temporary Stay ("Petition and Application").

39. The State did not articulate a factual basis in support of its Petition and Application other than that Defendants Banner and Cauthen would, absent a stay, be released from prison after nearly 23 years of incarceration that the MAR Court found to be wrong on so many levels that, without any credible evidence left to retry Defendants, the court dismissed the charges with prejudice.

40. The only laws cited by the State in its Petition and Application are the provisions in Subchapter XIV of Chapter 15A that allow the parties to petition for discretionary review of an MAR order, N.C. Gen. Stat. § 15A-1422(c), and allow the

³ See Exhibit 2 at ¶ 7 (In public comment, the District Attorney State conceded that the MAR Court's "decision to dismiss the convictions with prejudice was particularly startling because it would block any appeals of the ruling.")

State to appeal a dismissal of charges “unless the rule against double jeopardy prohibits further prosecution,” N.C. Gen. Stat. § 15A-1445(a)(1).

41. On 12 August 2025, the Court of Appeals allowed the Motion for Temporary Stay pending Defendants’ response to the State’s Petition for Writ of Supersedeas.

**REASONS WHY THIS COURT SHOULD
DENY THE STATE’S PETITION**

42. The party seeking a writ of supersedeas must demonstrate both a likelihood of success on the merits and that it will face irreparable injury absent a stay. *See Abbott v. Town of Highlands*, 52 N.C. App. 69, 79, 277 S.E.2d 820, 827 (1981). The State has failed in both respects.

43. Although a temporary stay has been granted by this Court, Defendants note that under Subchapter XIV of Chapter 15A, “the effect of a dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges, unless they are subsequently reinstated as a result of the determination upon appeal.” N.C. Gen. Stat. § 15A-1451(b).

44. If the law provides that there is no automatic stay during appeal when charges are dismissed, there certainly should not be a stay when the State has to petition this Court for review, and would have no grounds to justify that petition.

45. The State has given notice under N.C. Gen. Stat. § 15A-1445(a), which allows for appeals in certain circumstances “[u]nless the rule against double jeopardy prohibits further prosecution.” In this case, the MAR Court’s dismissal of charges

with prejudice functioned as an acquittal based on insufficiency of the evidence; thus, the rule against double jeopardy prohibits further prosecution.

46. “The prohibition on review of acquittals is one of the most fundamental rules in the history of double jeopardy.” *State v. Robinson*, 375 N.C. 173, 185, 846 S.E.2d 711, 720 (2020). If a conviction is overturned due to insufficiency of evidence, the defendant may not be retried. *Burks v. United States*, 437 U.S. 1, 18 (1978); *State v. Callahan*, 83 N.C. App. 323, 325 (1986); *see Robinson*, 375 N.C. at 185, 846 S.E.2d at 720 (“If jeopardy is terminated by an acquittal, the State is barred from appealing any decision that might subject the defendant to another trial for the same offense.”).

47. As the U.S. Supreme Court has clearly articulated, a court’s decision constitutes an acquittal if it is “a ruling by the court that the evidence is insufficient to convict, a factual finding that necessarily establishes the criminal defendant’s lack of criminal culpability, [or] any other ruling which relates to the ultimate question of guilt or innocence.” *Evans v. Michigan*, 568 U.S. 313, 319 (2013) (quoting *United States v. Scott*, 437 U.S. 82, 91, 98, and n. 11 (1978)) (emphasis added; cleaned up).

48. Here, based on her extensive testimony at the evidentiary hearing, the MAR Court found Jessica Black’s recantation to be credible, and that there is “a reasonable *probability* that but for the admission of Ms. Black’s false testimony [at trial], a different result would have been reached at the Defendants’ trials.” (MAR Order COL #13) (emphasis added). Likewise, the MAR Court credited the Defendants’ newly discovered DNA evidence and concluded that it “is of such a compelling nature that a different result will *likely* be reached at a new trial.” (MAR

Order COL #20) (emphasis added). The MAR Court further credited the Defendants’ newly discovered evidence on developments in adolescent psychology and the psychology of police interrogations and confessions, and concluded that it “is of such a compelling nature that a different result will *probably* be reached at a new trial.” (MAR Order COL #25) (emphasis added). These determinations are clearly rulings “which relates to the ultimate question of guilt or innocence,” and thus constitute an acquittal. *See Evans*, 568 U.S. at 319.

49. Moreover, the MAR Court’s intent is clear from the relief it granted. If the MAR Court thought the State had sufficient evidence to proceed with further prosecution, the MAR Court could have merely vacated the convictions and ordered a new trial, N.C. Gen. Stat. § 15A-1417(a)(1); but it instead chose to go further and dismiss the charges “with prejudice,” as permitted under § 15A-1417(a)(2). Thus, “it is plain that the trial court evaluated the State’s evidence and determined that it was legally insufficient to sustain a conviction.” *Evans*, 568 U.S. at 320 (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572 (1977)) (cleaned up).

50. It does not matter that the MAR Court did not use a particular term: “we know the trial court acquitted [the defendants], not because it incanted the word ‘acquit’ (which it did not), but because it acted on its view that the prosecution had failed to prove its case.” *Evans*, 568 U.S. at 325. The MAR Court’s thorough review of the record and the evidence presented at the MAR evidentiary hearing led it to a determination that the State lacked sufficient evidence even to sustain the charges against Defendants.

51. The State does not articulate, and could not articulate, how, with all evidence from the original trials completely discredited and all of the newly discovered evidence properly considered, any of the Defendants could possibly be found guilty beyond a reasonable doubt. There is *no* key state witness, there is exculpatory DNA, and given the evidence of intellectual disabilities of Defendants, there are *no* confessions that could plausibly be credited.

52. Therefore, the MAR Court's dismissal of the charges with prejudice was proper, the constitutional bar against double jeopardy prohibits any appellate review, and the State's appeal—and any petition for writ of certiorari it may file—cannot be permitted to proceed. Without a viable appeal, a writ of supersedeas plainly cannot be granted.

53. Even assuming *arguendo* that the rule against double jeopardy did not apply to this case, the State does not even attempt to demonstrate a likelihood of successfully persuading this Court to reverse any one of the 11 claims granted by the MAR Court, much less the reversal of all the claims, if certiorari is granted, which would be necessary to prevent a review of this Court from being moot.

54. The insurmountable hill the State would have to climb would require it to meet this Court's standard of review: whether the MAR Court's "findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court." *State v. Stevens*, 305 N.C. 712, 720, 291 S.E.2d 585, 591 (1982). If competent evidence supports the findings of fact, even when there is conflicting evidence, those findings

are binding on appeal and cannot be disturbed unless the court abused its discretion. *State v. Lutz*, 177 N.C. App. 140, 142, 628 S.E.2d 34, 35 (2006). *See also State v. Rook*, 304 N.C. 201, 212, 283 S.E.2d 732, 740 (1981).

55. The claims granted by the MAR Court include multiple counts of ineffective assistance of counsel and multiple categories of newly discovered evidence, including exculpatory DNA evidence and the recantation of the State's critical witness at trial, Ms. Black, whom the MAR Court had the opportunity to observe testify across two days. The State has provided this Court with no reason to question any of the 20 pages of findings of fact, nor any of the eight pages of conclusions of law, made by the MAR Court after spending 21 days hearing the testimony of 19 witnesses and the arguments of five lawyers, followed by six months of reviewing thousands of pages of exhibits and hearing transcripts.

56. Likewise, the State has articulated no irreparable injury that it will suffer absent a stay in this case. The State has only stated the obvious: that Defendants Banner and Cauthen will be released from prison as a result of the MAR Court's decision to grant six of their MAR claims and its conclusion that the proper relief is a dismissal of their charges with prejudice, as MAR courts are empowered to grant under § 15A-1417(a)(2).

57. In short, despite providing no legal authority or factual basis to support suspending the MAR Court's judgment while an appeal is pending, despite articulating no grounds to reverse any aspect of the MAR Order, despite having no credible evidence with which to retry Defendants, and despite the plain language of § 15A-1451(b) and §

15A-1445(a), the State asks this Court to prolong the wrongful imprisonment of two innocent men who have been incarcerated for nearly 23 years for a murder they did not commit. Because that request is unsupported, meritless, and contrary to statutory law and United States Supreme Court precedent, it should be denied.

WHEREFORE, Defendants respectfully ask the Court to DENY the State's Petition for Writ of Supersedeas, LIFT the Temporary Stay, and DENY further attempts by the State to appeal, as double jeopardy prohibits further prosecution and any further attempts to delay justice in this case would result in wasted resources only to reach the same end ordered by the MAR Court.

DATED: August 13, 2025.

**FOR RAYSHAWN BANNER
& NATHANIEL CAUTHEN**

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original Defendants' Response to State's Petition for Writ of Supersedeas has, on this date, been filed in the North Carolina Court of Appeals by electronic delivery as permitted by N.C. R. App. P. 26(a)(2).

I further hereby certify that a copy of the above and foregoing Response has, on this date, been duly served upon the State, by electronic mail as permitted by N.C. R. App. P. 26(c) addressed to:

Ms. Sherri H. Lawrence
Special Deputy Attorney General
North Carolina Department of Justice
slawrence@ncdoj.gov

DATED: August 13, 2025

/s/Christine Mumma
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N.C. State Bar. No. 26103

**STATE OF NORTH CAROLINA
COUNTY OF FORSYTH**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

**FILE NO: 02CRS038883 (Banner)
02CRS038884 (Cauthen)
02CRS038886 (Bryant)
02CRS038882 (Tolliver)**

STATE OF NORTH CAROLINA

v.

**RAYSHAWN DENARD BANNER,
NATHANIEL ARNOLD CAUTHEN,
CHRISTOPHER BRYANT, &
JERMAL TOLLIVER,**

Defendants

**STATE'S MOTION TO STAY THE
ORDER AND ENFORCEMENT OF
THE ORDER OF THIS COURT
PENDING REVIEW BY THE N.C.
COURT OF APPEALS**

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney Mark T. Parent, and respectfully moves this Court to issue a Stay of the Court's Order dated and filed August 8, 2025, allowing Defendants' Motions for Appropriate Relief Vacating and Dismissing Defendants' Convictions with Prejudice, and in support shows as follows:

1. Defendants Banner, Cauthen, Bryant, and Tolliver were charged with First-Degree Murder and Robbery with a Dangerous Weapon for offenses occurring on November 15, 2002.
2. Defendants Banner and Cauthen were jointly tried and convicted on the charges of First-Degree Murder and Robbery with a Dangerous Weapon on August 19, 2004. Defendants Banner and Cauthen were sentenced to Life without Parole on August 19, 2004.
3. On August 19, 2004, Defendants Banner and Cauthen gave notice of appeal in open court and did appeal as a matter of right to the North Carolina Court of Appeals.
4. On May 9, 2005, Defendants Bryant and Tolliver were jointly tried and convicted on the charges of First-Degree Murder and Robbery with a Dangerous Weapon. On May 20, 2005, Defendants

Bryant and Tolliver were convicted of Second-Degree Murder and Common Law Robbery. Defendants Bryant and Tolliver were sentenced on May 20, 2005 to consecutive active punishments of 157 to 198 months and 13 to 16 months.

5. On May 20, 2005, Defendants Bryant and Tolliver gave notice of appeal in open court and did appeal as a matter of right to the North Carolina Court of Appeals.
6. On July 18, 2006, the North Carolina Court of Appeals found no error and affirmed Defendants Banner and Cauthen's convictions. *State v. Banner and Cauthen*, 178 N.C. App. 562, 631 S.E.2d 892 (N.C. Ct. App. July 18, 2006) (unpublished).
7. On December 14, 2006, the North Carolina Supreme Court denied further review for Defendants Banner and Cauthen's cases. *State v. Banner and Cauthen*, 361 N.C. 168 (N.C. 2006).
8. On January 16, 2007, the North Carolina Court of Appeals found no error and affirmed Defendants Bryant and Tolliver's convictions. *State v. Tolliver, Brayboy, and Bryant*, 181 N.C. App. 436, 639 S.E.2d 673 (N.C. Ct. App. Jan. 16, 2007) (unpublished).
9. On October 3, 2008, Defendant Bryant filed a Motion for Appropriate Relief. The Forsyth County Superior Court denied Defendant Bryant's Motion for Appropriate Relief on April 24, 2009.
10. On May 16, 2011, Defendants Banner and Cauthen filed Motions for Appropriate Relief. On November 8, 2012, the Motions for Appropriate Relief were amended to include citations to *Miller v. Alabama*, 567 U.S. 460 (2012). On August 31, 2017, the Superior Court of Forsyth County granted Defendants Banner and Cauthen's Motions for Appropriate Relief and ordered that Defendants Banner and Cauthen be resentenced to Life in Prison with the Possibility of Parole.
11. On March 9, 2020, the North Carolina Innocence Inquiry Commission held a review hearing for Defendants Banner, Cauthen, Tolliver, and Bryant's convictions. On March 13, 2020, the North Carolina Innocence Inquiry Commission referred the Defendants' cases for judicial review. On

April 28, 2022, following an evidentiary hearing that was not bound by the North Carolina Rules of Evidence, the reviewing judicial panel unanimously denied the Defendants' claims of factual innocence.

12. On April 27, 2023, Defendant Banner, by and through counsel, filed a Motion for Appropriate Relief wherein he argued several grounds of relief including: newly discovered evidence for Jessica Black's recanted testimony; newly discovered evidence for Jessica Black's new testimony; newly discovered evidence for unidentified DNA evidence from a string from Nathaniel Jones's hand; newly discovered evidence for unidentified DNA evidence from tape under Nathaniel Jones's porch; newly discovered evidence for psychological research into false confessions; newly discovered evidence for standards when evaluating footwear impressions; newly discovered evidence for affidavits of Defendants Bryant and Tolliver; ineffective assistance of counsel by Defendant Banner's attorney committing a *Harbison* error; and ineffective assistance of counsel for failing to investigate an intellectual disability.
13. On July 13, 2023, Defendant Cauthen, by and through counsel, filed a Motion for Appropriate Relief wherein he argued several grounds of relief including: newly discovered evidence for Jessica Black's recanted testimony; newly discovered evidence for Jessica Black's new testimony; newly discovered evidence for unidentified DNA evidence from a string from Nathaniel Jones's hand; newly discovered evidence for unidentified DNA evidence from tape under Nathaniel Jones's porch; newly discovered evidence for psychological research into false confessions; newly discovered evidence for standards when evaluating footwear impressions; newly discovered evidence for affidavits of Defendants Bryant and Tolliver; ineffective assistance of counsel by Defendant Banner's attorney committing a *Harbison* error; and ineffective assistance of counsel for failing to investigate an intellectual disability.

14. On September 28, 2023, Defendants Bryant and Tolliver, by and through counsel, filed Motions for Appropriate Relief wherein they argued several grounds of relief including: newly discovered evidence for Jessica Black's recanted testimony; newly discovered evidence for science regarding adolescent development and confessions; newly discovered evidence for post-conviction DNA testing; newly discovered evidence for science on footwear impression analysis; ineffective assistance of counsel for failing to investigate and present evidence of mental and cognitive impairment; and ineffective assistance of counsel for failing to investigate and present evidence on false confessions.
15. That on December 1, 2023, the State filed a response denying and refuting each of the Defendants' alleged grounds for relief.
16. On January 6, 2025, the Honorable Robert A. Brodie, Superior Court Judge Presiding, conducted an evidentiary hearing on all claims of newly discovered evidence and ineffective assistance of counsel represented by the Defendants' in their Motions for Appropriate Relief.
17. At the conclusion of the evidentiary hearing, Judge Broadie entered an Order granting Defendants' Motions for Appropriate Relief and vacated the Defendants' convictions on the following claims: claims that pertain to Jessica Black's recantation; claims related to the DNA profiles as newly discovered evidence; claims related to developments in the fields of adolescent developmental psychology and the psychology of police interrogations and confessions as newly discovered evidence; claims for ineffective assistance of counsel for failure to investigate the Defendants' mental disabilities; claims for ineffective assistance of counsel for failure to put on evidence related to the science of false confessions; and claims for ineffective assistance of counsel for the commission of a *Harbison* error.

18. The State of North Carolina, after consulting the North Carolina Attorney General's Office, is seeking appellate review of the Court's Order granting the Defendant's Motion for Appropriate Relief that dismissed and vacated the Defendants' convictions.
19. The State requests a stay of the Court's Order so that the State has adequate opportunity to seek a review of this matter in the North Carolina Court of Appeals.
20. The State requests that the Stay remain in effect for the duration of the appellate review by the North Carolina Court of Appeals.

WHEREFORE the State respectfully requests this Court enter a Stay of its Order granting relief pursuant to Defendants' Motions for Appropriate Relief so that the State has adequate opportunity to seek review of this matter before the North Carolina Court of Appeals and that this Stay remain in effect during the pendency of the appellate review before the North Carolina Court of Appeals.

Respectfully submitted, this the 8th day of August, 2025.



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Bar #54945

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **STATE'S MOTION FOR STAY OF THE ORDER AND ENFORCEMENT OF THE JUDGMENT OF THIS COURT GRANTING MAR RELIEF PENDING REVIEW BY THE N.C. COURT OF APPEALS** upon defendant by U.S. Mail upon defendant's attorney(s), as follows:

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This the 8th day of August, 2025.



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FILED
DATE: August 11, 2025
TIME: 12:41:51 PM
FORSYTH COUNTY
CLERK OF SUPERIOR COURT
BY: Z. Lindley

EXHIBIT

2

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
FORSYTH COUNTY SUPERIOR COURT DIVISION
02 CRS 38882 (Tolliver), 38883 (Banner),
38884 (Cauthen), & 38886 (Bryant)
FORSYTH COUNTY

STATE OF NORTH CAROLINA

v.

JERMAL TOLLIVER, RAYSHAWN
BANNER, NATHANIEL CAUTHEN, &
CHRISTOPHER BRYANT
Defendants.

**OPPOSITION TO
STATE'S MOTION TO STAY**

Through undersigned counsel, pursuant to N.C. Gen. Stat. § 15A-1451(b), Defendants oppose and respectfully request that this Court deny the “State’s Motion to Stay the Order and Enforcement of the Order of this Court Pending Review by the N.C. Court of Appeals” (“Motion to Stay”). In support, Defendants show the following.

1. In 2023, Defendants filed Motions for Appropriate Relief (“MARs”) raising multiple claims under N.C. Gen. Stat. § 15A-1415(b) and (c) and seeking dismissal of the charges against them, which this Court is expressly empowered to grant under § 15A-1417(3).

2. In January 2025, this Court conducted an evidentiary hearing that lasted most of the month. Defendants called multiple witnesses and introduced over 100 exhibits in support of their claims and request for relief. The State called no witnesses in opposition.

3. On August 8, 2025, this Court entered an order granting four claims raised by Defendants Tolliver and Bryant and five claims raised by Defendants Banner and Cauthen in their MARs and dismissing the charges against them pursuant to § 15A-1417(3).

4. Less than three hours after the Court's Order was made available to the parties, undersigned counsel received an email from the Forsyth County District Attorney's Office providing notice and a copy of the State's Motion to Stay the Order.

5. The State cited no legal authority and provided no factual basis in support of its Motion.

6. The State articulated no ground and forecast no path to reversal of any aspect of the relief granted by the Court's Order – not on any of the *nine* claims or the remedy the Court granted.

7. The State further conceded in public comments, after consulting with the Attorney General's Office, that it *does not even have a right to appeal the Court's Order*. Under the subheading "Ruling cannot be appealed," in an article titled "Dismissed with Prejudice," the *Winston-Salem Journal* reported Forsyth County District Attorney Jim O'Neill's statement to the *Journal* that the Court's "decision to dismiss the convictions with prejudice was particularly startling because it would block any appeals of the ruling."¹

8. Our General Assembly has also made it clear that, even in limited instances when the State is allowed to appeal a dismissal, "[t]he effect of dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges unless they are subsequently reinstated as a result of the determination upon appeal." N.C. Gen. Stat. § 15A-1451(b).

9. In short, despite providing no legal authority or factual basis to stay the Court's Order, despite articulating no grounds to reverse any aspect of the Order, despite conceding in public comments that it does not even have a right to appeal the Order, and despite the plain language of § 15A-1451(b) that forecloses the request, the State asks this Court to enter a stay that would prolong

¹ See Exhibit 1, *Forsyth County district attorney expresses 'shock' over dismissal of convictions in killing of Chris Paul's grandfather*, https://journalnow.com/news/local/crime-courts/article_f20e13f6-adce-4b2c-b404-b0e3aaf2c341.html#tracking-source=home-top-story, last accessed at 10:19 a.m., August 10, 2025 (emphasis added).

the wrongful imprisonment of two innocent men who have been incarcerated for over 22 years for a murder they did not commit.

10. Because the State's Motion is meritless and foreclosed by the plain language of the law, it should be denied by this Court.

WHEREFORE, Defendants respectfully ask the Court to DENY the State's Motion to Stay.

DATED: August 11, 2025.

**FOR RAYSHAWN BANNER
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CERTIFICATE OF SERVICE

I certify that I served the foregoing **Opposition to State's Motion for Stay** on the State of North Carolina through transmittal to Forsyth County Assistant District Attorney Mark Parent via email and filing in Odyssey.

DATED: August 11, 2025.

/s/ Christine Mumma

Christine Mumma

WINSTON-SALEM JOURNAL

Sunday, August 10, 2025

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DISMISSED WITH PREJUDICE



Nathaniel Cauthen, one of the men convicted as teens of killing Nathaniel Jones in 2002, cries during a 2022 hearing. A judge dismissed the convictions this week.

Judge throws out convictions in 2002 murder of NBA star Chris Paul's grandfather

JOHN DEEM
Staff Writer

Citing recanted testimony, poor legal representation, questionable police tactics and DNA evidence, a judge has thrown out the convictions of four men in the high-profile 2002 killing of basketball star Chris Paul's grandfather in Winston-Salem.



Jones

Forsyth County Superior Court Judge Robert Broadie dismissed the convictions with prejudice, 21 years after Nathaniel Arnold Cauthen, Rayshawn Denard Banner, Christopher Levon Bryant and Jermal Matthew Tolliver were found guilty in the murder of Nathaniel Jones.

The suspects were all 14 or 15 years old when they and another teen were



Rayshawn Banner is questioned by Attorney Christine Mumma on the witness stand during a 2022 hearing to determine if the four men convicted of killing Nathaniel Jones in 2002 are innocent. A judge dismissed the convictions this week.

Please see **DISMISSED**, Page A4

Dismissed

From A1

arrested for the killing of Jones, who was found dead with his hands tied behind his back and his mouth taped shut outside his home in an apparent robbery the day after the 17-year-old Paul had committed to play basketball at Wake Forest University.

Banner, 36, and Cauthen, 38, are brothers and were serving life sentences for first-degree murder and robbery with a dangerous weapon in relation to the killing.

Bryant and Tolliver, now 37, and Dorrell Queshane Brayboy were convicted of second-degree murder in a separate trial and released from prison in 2017 and 2018. Brayboy was stabbed to death in 2019.

Ruling cannot be appealed

Forsyth District Attorney Jim O'Neill ripped Broadie's ruling on Saturday.

"After nearly 30 years of prosecuting criminal cases, it is difficult to surprise and shock me, but the ruling in this case, that came in Friday afternoon, has done just that," O'Neill said in a statement to the Journal.

He added that the judge's decision to dismiss the convictions



ALLISON LEE ISLEY, JOURNAL

Forsyth County District Attorney Jim O'Neill speaks in 2023.

with prejudice was particularly startling because it would block any appeals of the ruling.

"I have never seen that happen before in a court of law," O'Neill said. "Most judges welcome scrutiny and appellate review of their decisions, especially when it concerns five convicted murderers whose convictions were recently upheld during a lengthy North Carolina Innocence Commission inquiry hearing."

After eight days of testimony at that hearing in April 2022, a three-judge panel denied the men's claims of innocence.

'Trial counsel failed'

Friday's decision follows a Jan-

uary hearing at which attorneys representing the men sought to have the charges dropped and prosecutors argued that the convictions should stand.

In his 113-page ruling, Broadie emphasized the testimony of Jessica Black, a friend of the boys who was the key prosecution witness.

Black initially claimed that the boys planned to rob Jones and that she heard them attack him while she sat on a bench at Belview Park, near Jones' home. Six years ago, Black recanted her testimony.

"It was a complete lie," she said at the time. "I kept changing my story until I got around

to what (investigators) wanted to hear."

In the January 2025 hearing, prosecutors argued that Black's new testimony should be disregarded.

Broadie's ruling cited state law that declares recanted evidence as admissible if "the court is reasonably well satisfied that the testimony given by a material witness is false, and there is a reasonable possibility that, had the false testimony not been admitted, a different result would have been reached at the trial."

Broadie also noted that DNA samples from the crime scene, analyzed years after the trial, did not match those of the defendants.

"Neither the DNA profiles, nor the conclusions drawn therefrom, could have been procured at trial," Broadie explained. "The DNA profiles were developed from kits which were not available until approximately 2015 to 2017."

According to prosecutors, the suspects admitted to roles in the killing after their arrests, but attorneys argued the confessions were forced through aggressive and manipulative questioning by investigators.

Broadie found that later expert testimony and "advancements in adolescent developmental psychology and the psychology of police interrogations and con-

fessions" supported the men's claims that their admissions of guilt were coerced.

The judge also found that defense attorneys were negligent for failing to consider how the cognitive states of the defendants may have impacted their interactions with police.

School records revealed that "some of the Defendants were classified as mentally disabled, some were shown to have low IQ scores, and some of them had problems understanding cause and effect," which called their confessions into question, Broadie wrote.

"Trial counsel failed to provide effective assistance of counsel by failing to put on evidence of false confessions," the judge concluded.

O'Neill, the district attorney, said Saturday that he was grateful that the North Carolina Attorney General's Office has agreed to intervene and work with local prosecutors in an effort to uphold the convictions.

"I can promise you this much," he declared. "Together, our two offices will seek to appeal this decision and continue to pursue justice on behalf of Nathaniel Jones and his family, until he can rest in peace."

John Deem covers Winston-Salem, Greensboro and beyond. Contact him at John.Deem@Lee.net