

**FILED**

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

JUL 18 2006

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

STATE OF MISSOURI

Plaintiff,

vs.

JOHNNY BRISCOE

Defendant.

Cause Number: 482307

Division Number: 4

**MOTION FOR RELEASE**

Comes now the State of Missouri, through its Prosecuting Attorney Robert P. McCulloch, in accordance with Section 547.037, RSMo., and Moves this Court to release Johnny Briscoe from the sentence for the crimes for which he was convicted under this cause number. The State also waives any hearing in this matter and acknowledges that the following facts, to which the State stipulates, demonstrate that Johnny Briscoe is innocent of the crimes for which he was charged:

1. On October 21, 1982, victim ("V") was raped and sodomized in her apartment by an unknown intruder ("Rapist").
2. After the attack, the Rapist asked the V for a cigarette. V handed him a pack of KOOLS and the Rapist lit one and handed it to V. Rapist then lit one cigarette for himself.
3. The Rapist engaged V in general conversation and eventually asked her name. She told him her name and asked his. Rapist identified himself as Johnny Briscoe and asked if he could call her on the telephone later.
4. Rapist continued to converse with V and finally left her apartment after approximately one hour. During that time, V was almost always in the presence of the Rapist and the lights were on in various rooms of her apartment.
5. After the Rapist left, V called the police and reported the rape. The police arrived at her apartment and began the investigation. While the police were in V's apartment, the Rapist telephoned and spoke with V. He called two more times while the police were present and each time identified himself as Johnny Briscoe.

*File*  
*Bohannon*

6. As part of the investigation, the police seized various items from V's apartment as possible evidence, including three cigarette butts in an ashtray. V had indicated that the butts might have been the ones the Rapist lit for her and himself.
7. A photo lineup was prepared and shown to V sometime later and V identified Johnny Briscoe as the Rapist.
8. The items of evidence, including the aforementioned cigarette butts, were packaged and stored in the County Police evidence locker and/or freezer in the County Lab.
9. Johnny Briscoe was indicted on November 19, 1982 for Rape (Count 1), Sodomy (Count 2), Robbery in the Second Degree (Count 3), Burglary in the Second Degree (Count 4), Stealing Credit Cards (Count 5), and for three Counts of Armed Criminal Action (Counts 6-8).
10. Several items of physical evidence seized from V's apartment were used during the trial. The cigarette butts mentioned above were not used. The butts were not subjected to any type of testing but were simply packaged and stored away.
11. Briscoe presented an alibi defense, which was completely debunked by the State during cross-examination.
12. On May 4, 1983, defendant was found guilty by a jury of all eight counts.
13. On June 22, 1983, the defendant was sentenced to 30 years on Count 1 consecutive to 15 years on Count 2, concurrent with 15 years on Counts 3, 4, 6, 7 and 8, and concurrent with 5 years on Count 5.
14. During 2000, the Office of Prosecuting Attorney requested St. Louis Crime Police Laboratory to search for evidence in this matter. After the laboratory conducted a search it informed the Prosecutor's Office that all of the evidence had been destroyed. At the request of the Office of Prosecuting Attorney a search for the evidence was again conducted by County Police personnel but no evidence was located. Again the Police indicated that all evidence in this case had been destroyed.
15. On October 4, 2001, defendant, through his attorney, filed his "Rule 29.17 Motion for Post-Conviction Forensic DNA Testing." Again at the request of the Prosecuting Attorney a third search of the Police Lab and evidence locker was conducted by Police Department personnel. The search was specifically for the aforementioned cigarette butts and the freezer in the Lab was specifically searched. The purpose of the search for the butts was to subject them to potential DNA testing that was not available in 1982 but was possible beginning in about 1996. All searches met with negative results and as part of Briscoe's Rule 29.17 Motion, an Affidavit was filed with the Court executed by the Commander of the

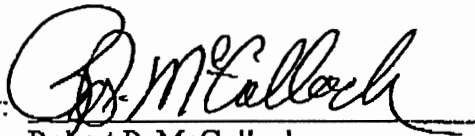
St. Louis County Crime Laboratory stating that the freezer within the County Lab was searched for the cigarette butts but none were located and the evidence had been destroyed. (A copy of the Affidavit is attached to this Motion).

16. Based upon the Affidavit this Honorable Court found, on March 21, 2002, defendant's motion moot and dismissed the motion without prejudice. The Court also entered "Findings of Fact, Conclusions of Law, and Order and Judgment." The Court found that because the evidence was not located defendant's motion was moot.
17. On July 6, 2006, the Office of Prosecuting Attorney inadvertently became aware that the St. Louis County Police Crime Laboratory had found some of the evidence in this case. On July 7, 2006, the Prosecuting Attorney and several staff members met with officials from the Crime Laboratory. During that meeting it was learned that all items within the Lab were inventoried and catalogued during a true thorough search of the Lab in May 2004. In the Fall of 2005, a supervisor in the Lab was informed that some question about the existence of the physical evidence in this case had been raised and he asked Lab personnel to search the inventory list. Lab employees did so and located the cigarette butts that had been seized from V's apartment in 1982.
18. At the meeting with Lab officials the Prosecutor also discovered that after the Lab found the evidence, the Crime Laboratory extracted DNA from the evidence. The DNA profile on two of the butts were that of the same female. The DNA sample on the third butt was a mixture of the same female DNA and an unknown male. The partial profile of the male DNA was entered into CODIS. On approximately June 27, 2006 the laboratory was informed of a possible match of evidence with another individual, not Johnny Briscoe.
19. On July 10, 2006, members of this office obtained DNA samples from the victim. On July 11, 2006 members of this Office obtained DNA samples from the individual preliminarily identified by CODIS. The samples were submitted to the County Police Lab and a private Lab in Columbia, MO for testing.
20. On July 14, 2006 this office was informed that the female DNA evidence on the three cigarette butts is that of the Victim and the male DNA evidence on the third butt was that of the person identified by CODIS and was not that of Johnny Briscoe.
21. On July 17, 2006 members of this Office obtained a DNA sample of Johnny Briscoe and delivered same to the above mentioned Labs.
22. On July 18, 2006 this Office was informed that testing of Johnny Briscoe's DNA sample absolutely eliminated him as the contributor of the DNA found on the cigarette butt.

23. V does not know the individual who contributed the male DNA sample on the cigarette butt. The individual contributing the sample is currently confined in the Missouri Department of Corrections. He is serving a Life sentence and a consecutive term of 20 years for a burglary and rape committed near the location of the rape in this case and only a short time after this rape.
24. The individual contributing the male DNA, is known to Johnny Briscoe and they knew each other well in 1982.

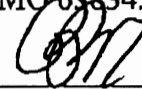
WHEREFORE, based upon the above stipulated evidence the State of Missouri prays this Court enter an order finding that Johnny Briscoe is innocent of the charges of which he was convicted in this matter and further order his immediate release from the custody of the Missouri Department of Corrections.

Respectfully submitted,

By:   
Robert P. McCulloch  
Prosecutor Attorney for St. Louis County  
100 South Central Avenue  
Clayton, MO 63105  
(314) 615-2600

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing was mailed, via first class mail, postage prepaid, this 18<sup>th</sup> day of July, 2006, to Johnny Briscoe, Inmate Number 47484, Southeast Correctional Center, Highway 105, Charleston, MO 63834.



STATE OF MISSOURI       )  
                                  ) SS.  
COUNTY OF ST. LOUIS    )

AFFIDAVIT

I, Captain Jack Webb, have concluded the review for the physical evidence documented in St. Louis County Police report #82-267969 and Laboratory #49644. A thorough search has been conducted by my staff. My staff has been unable to locate the listed evidence in the Crime Laboratory or the Property Control Unit.

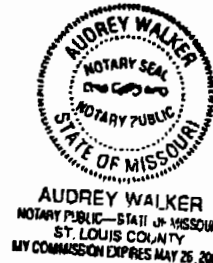
A search of the biology evidence storage freezers was conducted by Forensic Scientists Ms. Peggy Walsh, DSN 2493, and Ms. Lisa Sapetti, DSN 3185, in an attempt to locate the three cigarette butts, which had previously been identified as Q-4. The search failed to locate or identify any evidence associated with Mr. Johnny Briscoe, report #82-267969 or Laboratory #49644.

Examination of the copies of the evidence receipts associated with this investigation revealed the remaining evidence was forwarded to the Property Control Section on 12/15/82. A search of the Property Control Unit by Supervisor Doug Fite, DSN 2453, was made and none of the listed evidence as located.

Capt. Jack Webb  
Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this 19th day of March, 2002.

Audrey Walker  
Notary Public



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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND  
JUDGMENT CONCERNING THE STATE'S MOTION FOR RELEASE OF  
JOHNNY BRISCOE**

This matter is before the Court on the State's Motion to Release Johnny Briscoe. Upon thorough review of the files and records, the Court finds as follows:

1. On October 21, 1982, victim ("V") was raped and sodomized in her apartment by an unknown intruder ("Rapist").
2. After the attack, the Rapist asked the V for a cigarette. V handed him a pack of KOOLS and the Rapist lit one and handed it to V. Rapist then lit one cigarette for himself.
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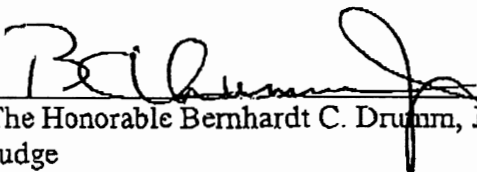
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24. The individual contributing the male DNA, is known to Johnny Briscoe and they knew each other well in 1982.

For all these reasons the State's motion to release Johnny Briscoe (inmate number 47484 (prior #29725)) from the Missouri Department of Corrections is granted. Therefore, it is Ordered, Adjudged and Decreed that defendant is innocent of the crimes contained in this cause number: Rape (Count 1), Sodomy (Count 2), Robbery in the Second Degree (Count 3), Burglary in the Second Degree (Count 4), Stealing Credit Cards (Count 5), and for three Counts of Armed Criminal Action (Counts 6-8). It is further Ordered, Adjudged and Decreed that the Missouri Department of Corrections release Johnny Briscoe immediately.

So Ordered:



The Honorable Bernhardt C. Drumm, Jr., Div 4  
Judge

cc: Defendant  
Robert P. McCulloch  
Prosecutor