



Benjamin N. Cardozo School of Law, Yeshiva University

15 Years After Wrongful Conviction, DNA Shows that Roy Brown Is Innocent – and that He Solved the Crime from Prison

Hearing set for Thursday afternoon in extraordinary case; Innocence Project says wrongful conviction based on ‘bite marks’ shows need for state commission

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(CAYUGA COUNTY, NY; December 21, 2006) – DNA tests show that Roy Brown did not commit a brutal 1991 murder for which he was convicted – and that, instead, the murder was likely committed by a man who killed himself three years ago after Brown wrote to him to say he had uncovered evidence that he was the actual perpetrator. Brown was convicted of the murder in January 1992 and sentenced to serve 25 years to life in state prison, where he remains today.

“This is unlike any case we’ve ever seen. It’s a Gothic Tale of a wrongly convicted man who breaks the case from his prison cell and confronts the likely villain, who in turn lies down on the tracks in front of a high-speed train,” said Peter Neufeld, Co-Director of the Innocence Project.

At a hearing in state court in Cayuga County this afternoon, the Innocence Project will argue that Brown’s conviction should be vacated and he should be released from custody. If, for some reason, the Cayuga County District Attorney (who tried the original case against Brown himself) opposes the motion to vacate the conviction and the Court does not grant the motion over the state’s objection, the Innocence Project will request a full evidentiary hearing in the case. The hearing is set for 2 p.m. Thursday, December 21, in front of Judge Peter Corning at the Cayuga County Courthouse, 157 Genessee Street, Auburn, NY. Brown’s attorneys and family will speak to reporters at the courthouse immediately following the hearing.

Brown was convicted of stabbing and strangling Sabina Kulakowski in the small town of Aurelius, New York. She was assaulted, bitten in several places, and dragged several hundred feet from the farmhouse where she lived. Brown always maintained his innocence, and a decade after he was convicted he began using the state’s Freedom of Information Law to try to solve the crime. In 2003, Brown wrote to the Sheriff’s Department to request a copy of a “hidden” police statement that he thought a jailhouse informant had given at the time of his trial. (An informant had testified against him, and he had been told by a source that the informant had provided an earlier statement contradicting his testimony.) No such statement was found, but (pursuant to the law) a clerk sent Brown a list of all other police statements in his case – a list that included 11 affidavits that Brown and his trial attorneys had never seen. Four of the newly discovered affidavits caused Brown to suspect that a man named Barry Bench, whose brother was the victim’s boyfriend for 17 years until shortly before the murder, was the actual perpetrator. With no money to hire an attorney, Brown represented himself in a motion to overturn his conviction based on the new evidence, but he lost. On December 24, 2003, he wrote a letter to Bench –



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confronting Bench with evidence of his guilt, and telling Bench that he was going to seek DNA testing that would prove Bench committed the crime. Brown's letter urged Bench to confess to the crime and "find God before he finds you." Five days after the letter was mailed, Bench committed suicide by lying down in the path of an oncoming Amtrak train.

In 2004, the Innocence Project took Brown's case and sought DNA testing on several pieces of evidence. DNA tests on seven saliva stains on the victim's shirt (several of which correspond with areas where she was bitten during the murder) all excluded Brown as the perpetrator – and all pointed to a single, then-unidentified male. The Innocence Project then worked with Bench's daughter to obtain a DNA sample that could be compared to the profile from the victim's shirt – and testing revealed that her father, Barry Bench, was the source of the saliva on the shirt.

"It took him more than 13 years, but Roy Brown solved the crime for which he was wrongly convicted. Armed only with a notebook, stamps and a copy of the state's Freedom of Information Law, he identified the true perpetrator from a prison cell in Elmira, New York," said Nina Morrison, staff attorney at the Innocence Project.

In addition to the jailhouse snitch testimony, Brown was convicted largely based on so-called "bite mark" analysis, comparing his teeth to several bites on the victim. Bite mark analysis is among the most controversial and disputed areas of forensic science nationwide, since it is not subject to the scientific rigor that other disciplines are and is not regulated uniformly. In Brown's case, the bites on the victim appear to show a continuous line of upper teeth – and even though Brown was missing two upper teeth, an expert testified that his teeth "matched" the victim's wounds.

"When unvalidated forensic science and palpably false testimony from a jailhouse snitch converge in a courtroom, justice is dead on arrival. It takes DNA to bring it back to life," said Neufeld, Co-Director of the Innocence Project, which is affiliated with Benjamin N. Cardozo School of Law at Yeshiva University in New York. "Today it is clearer than ever that we need an Innocence Commission in New York State that will investigate the causes of wrongful convictions and craft legislation that can prevent future miscarriages of justice." Several states have such commissions, and legislation to create one in New York State will be reintroduced when the legislature reconvenes. Brown's case raises key issues that a commission could address – including reliance on unvalidated scientific analysis, the use of jailhouse informants, and evidence that is withheld from the defense at trial.

The police affidavits that led Brown to confront Barry Bench were all made the day after the murder, and they were from Bench's longtime girlfriend, the fire dispatcher (the home the victim lived in was set on fire after the murder, and Bench was a volunteer firefighter) who also lived across the street from the victim, and the dispatcher's wife. The statements showed:

- Bench was already under an order of protection and had a physical altercation with his girlfriend on the evening of the murder before leaving their home;



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- Bench then went to a local bar and arrived home between 1:30 and 1:45 a.m., just as the victim's neighbors reported that the house was on fire;
- He left the bar (which was less than a mile from his home), highly intoxicated, at 12:30 a.m., leaving 60-75 minutes (at the time during which the murder was committed) unaccounted for;
- When Bench arrived home, he immediately went inside to "wash up" his face and arms, then turned off his fire monitor and went to bed;
- When Bench and his girlfriend went to the house where the victim lived on the night of the crime (after repeated calls to their home from the fire dispatcher), Bench left the search party and went to a nearby road – where the victim's body was later found.

In April 2006, after lengthy negotiations asking the District Attorney to consent to DNA testing without a court order, the Innocence Project filed a motion seeking DNA testing on several pieces of evidence. Two months later, the state crime lab said it could not obtain a DNA profile on some of the evidence, and the District Attorney opposed efforts to conduct DNA testing on remaining items of evidence. In August 2006 a court ordered the DNA testing, and in November 2006 the lab said it obtained a DNA profile from saliva stains on the shirt – and that Roy Brown was not the source of the saliva. Earlier this month, Bench's daughter provided a DNA sample, which matched the paternity profile of the DNA on the shirt.

"When Roy Brown wrote to Barry Bench three years ago on Christmas Eve, he told him the truth would eventually come out, and it finally has," Neufeld said. "Roy Brown hasn't only proven his own innocence, but he has identified the actual perpetrator – and now his conviction should be vacated and he should go home."

In addition to Neufeld and Morrison of the Innocence Project, Brown is represented on a *pro bono* basis by Katy Karlovitz and James McGraw of the McGraw Law Firm in Syracuse. Mr. McGraw represented Brown at his original trial, and, convinced of Brown's innocence, has continued to volunteer his firm's services to clear Brown's name.

According to the Innocence Project, 188 people in 32 states – including 21 in New York – have been exonerated through DNA testing. In more than one-third of the DNA exonerations nationwide, DNA also helped identify the true perpetrator.

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Supplemental Material:

- [Motion to vacate conviction](#)
- [Letter from Roy Brown to Barry Bench \(and news report on Bench's subsequent suicide\)](#)
- [Background on flawed bite mark analysis](#)
- [Background on legislation to create an Innocence Commission in New York State](#)
- [Facts on DNA exonerations in New York State](#)