

Confronted with DNA, Alabama offers theory that ‘defies logic’ to keep man on death row

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Christopher Barbour’s entire adult life has hinged on words he uttered when he was 22.

More than 30 years ago, Barbour confessed to police that he killed a 40-year-old single mother in Montgomery and helped another man rape her. Almost immediately he [tried to take back the confession](#) — he said later that he didn’t do it nor even know the woman — but it was too late.

Barbour remains on Alabama’s [death row](#).

But now, new DNA testing points to someone else — a man who’s already in prison for an unrelated murder. Yet there is no cinematic rush to release Barbour. Instead, there is a push by prosecutors to explain away the DNA.

“It’s a refusal to admit error, not to accept the science,” said Robert Dunham, the director of the Death Penalty Policy Project.

Back in 1992, Barbour was homeless. Police found him living behind the mall across town, and Barbour said he was pressured to falsely confess to the grisly crime that had happened a few weeks prior.

State prosecutors now acknowledge that the only DNA at the scene belongs to someone else, but they argue that doesn’t clear Barbour.

Now 55 years old, Barbour isn’t the only person who remains in Alabama’s prison system despite evidence suggesting he didn’t do the crime. Alabama’s legal system has a complicated relationship with science, one that often plays out however is most advantageous for the state’s case.

The state, often through the Alabama Attorney General’s Office in its criminal appellate work, has a history of defending [junk science](#), of relying on old, now-debunked theories to keep people locked in prison for a crime there is little evidence they committed.

They often choose those old theories over new, updated science.

“One of the things you hear about the [death penalty](#), which is true, is that the facts don’t matter once somebody has been sentenced to death,” said Dunham.

In the case of Barbour, U.S. District Judge Emily Marks in an order last year wrote that the state’s version of the crime is hard to accept “because the theory defies logic, common sense, and science.”

She said the state should consider the DNA. It's something prosecutors would do if seeking to convict someone now, she wrote. But here, Alabama Attorney General Steve Marshall's office only offers an improbable tale to explain away the only scientific evidence.

"It is puzzling that in this case, the State downplays the significance of the new DNA evidence when the State otherwise relies on similar DNA evidence to secure convictions and clear cold cases," the judge wrote.

'DNA doesn't lie'

Barbour was just 22 when he was arrested for the brutal rape, beating and stabbing death of Thelma Roberts, a single mother of two. The crime rocked Montgomery's Chisholm neighborhood, as investigators looked into the slain woman's family and friends but came up empty.



Christopher Barbour has spent more than thirty years on Alabama Death Row for the murder and

rape of Thelma Roberts, a Montgomery woman, in 1992. (Provided photo| AL.com) Contributed photo

After weeks without solid leads, police zeroed in on several homeless men living in the woods behind a mall and eventually arrested several of them. Barbour had no connection to the victim or her family, but he confessed to the slaying — a confession he quickly recanted.

But his words stuck. He was convicted of capital murder and sent to Alabama Death Row in 1994.

Three decades later, after Barbour grew into a middle-aged man, [DNA testing revealed no traces of him](#) on the battered victim. It turned out that the only person who left any DNA on Roberts was a young man who lived across the street at the time of the murder.

That man, Jerry Tyrone Jackson, is currently serving a life sentence for a separate murder committed in another part of the state several years after Roberts' slaying.

And yet, Alabama prosecutors contend that doesn't matter much.

"The new DNA evidence identifying Jackson's DNA as the sole male DNA in Mrs. Roberts' rape kit is powerful evidence that Barbour's confession is false," the judge wrote, "and that Mrs. Roberts' murder did not occur as the prosecution presented it at trial."

When representatives from the Alabama Attorney General's Office and Barbour's team visited him in prison to ask about the Roberts case, Jackson wasn't keen to talk.

When asked in a deposition if he knew Thelma Roberts or the Roberts family, Jackson said: "On the advice of counsel, I plead the Fifth."

He repeated the answer about 50 times throughout his deposition to any questions that revolved around the Roberts family or the murder.

"I am through. I plead the Fifth to whatever else you got to say," Jackson told Barbour's lawyers at one point. "That is what I am going to say. So, we can go on and cut through the chase. Whatever your questions is, I plead the Fifth to the answers you are going to get. So, that's — Get it over with."

Barbour's confession never made much sense to some. It was a winding tale of a homeless man and his homeless friends going across town, being invited in for beer by a working, sober single mother before one of the men raped her, with Barbour and another man (who was identified but never charged in the case) holding Roberts down. The tale ended with Barbour killing her. It was a tale where the men left behind no DNA or physical evidence before heading back to a makeshift campsite in the woods.

Barbour also didn't mention several details of the case in his confession, including that a plastic bag was left over Roberts' head.

While Barbour’s lawyers call the new DNA match proof of his innocence, Alabama Attorney General Steve Marshall’s office said Barbour is where he belongs.

The state’s latest theory — though they write that it’s not their responsibility to offer one — is laid out in court records. The state said a “likely theory” is that the single mother also had sex with Jackson, who was a neighbor and a teenage friend of her son, that same day. That was just before being raped and killed by a group of homeless men hours later.



Thelma Roberts was murdered in her home in 1992. Roberts lived at this home on Manley Drive, in Montgomery’s Chisholm neighborhood. (Tamika Moore | AL.com) Tamika Moore | tmoore@al.com

The judge said “any reasonable jury” would doubt that a 40-year-old churchgoing woman would have consensual sex with a boy younger than her own son.

“Applying Occam’s Razor, the physical evidence, DNA test results, expert testimony, and common sense would cause reasonable jurors to doubt the veracity of the State’s theory,” the judge wrote.

Judge Marks said the DNA is “objective, reliable, and undisputed.”

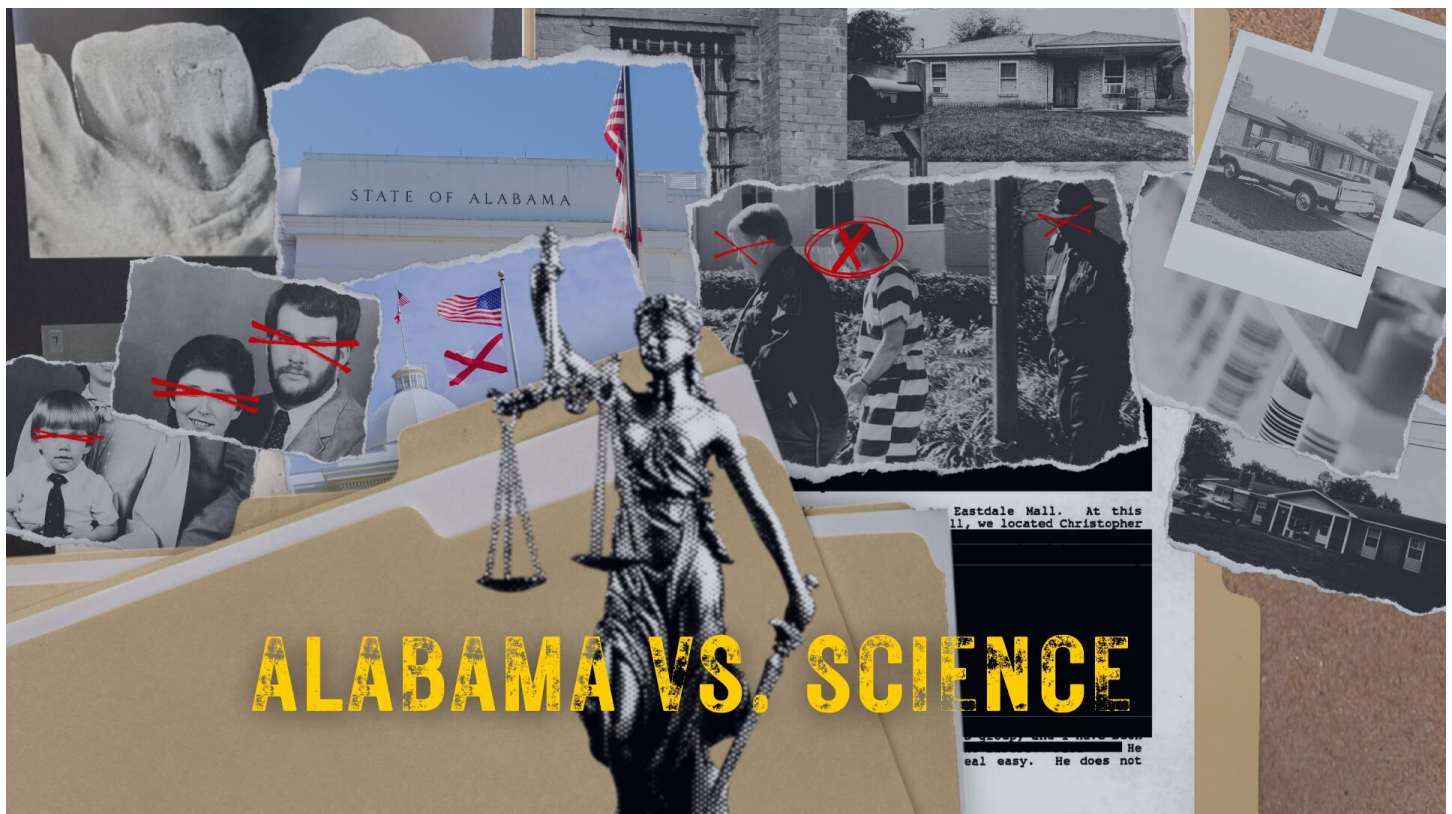
“And unlike people, ‘DNA doesn’t lie.’”

Alabama vs. Science

Being allowed to retest DNA evidence is a challenge in the legal world, especially in cases from decades ago when people had no idea how forensic testing would advance.

“It makes it easier to convict people” without DNA, said Robert Goodwin, a lawyer and longtime professor emeritus at Cumberland School of Law.

“I think they just think they’re sure somebody’s guilty. The police know the person they arrest usually and they know if they didn’t do this, they did something else, or they would have done it. They get that attitude, ‘This is a bad guy...’ And I think they convince themselves.”



Alabama has a complicated relationship with science. It's criminal courtrooms are no exception. Illustration by Mila Oliveira | mila@redclaymedia.com

While Alabama does have a [state law allowing](#) DNA to be retested in older cases, it's incredibly narrow and only applies to capital murder cases. Other states, like Texas, [have broader laws](#) surrounding junk science and allow more cases to be re-examined.

Barbour's is not the only case in Alabama where law enforcement officials are hoping that old theories and science that's long since been updated or even entirely abandoned will keep someone in prison.

In Barbour's case, to explain the only DNA left at the scene, the state said another man must have had

sex with the victim shortly before Barbour happened to drop in and kill her.

Yet, in another Alabama Death Row inmate's case, the state's top prosecutors argued that common sense suggests just the opposite.

[Gregory Hunt](#) was convicted of a brutal 1988 murder and sexual assault of a Jasper woman. While he didn't dispute that he killed the woman, Hunt in May argued that he didn't sexually assault her.

The Alabama Attorney General's Office fought back. They said that semen on the body, while never tested for DNA decades ago, is obviously from the killer. There was "simply no evidence" that another man would have entered the victim's home, sexually assaulted her, and left before Hunt happened to murder her.

Two cases. Two contradictory theories. In one, the DNA must have been from someone else in an earlier encounter, since it didn't match the suspect. In the other case, the evidence was obviously from the suspect — because who else would have left it there?

"One of the things you hear about the death penalty, which is true, is that the facts don't matter once somebody has been sentenced to death."

Robert Dunham of the Death Penalty Policy Project

UAB forensics professor Elizabeth Gardner said: "There's two errors you can make in forensic science. "You can make a mistake that lets someone who's guilty free, and you can make a mistake that lets someone innocent go to jail."

"Sending an innocent person to jail is the more egregious error."

Who killed Thelma Roberts?

In the spring of 1992, Roberts was trying to make it work as a single mother with two teenagers. Her husband, whom she was separated from, was still involved in her life, and everyone who testified in court or talked to police said she wasn't dating at the time of the murder. The 40-year-old didn't drink or smoke and was a regular at church.

Roberts' teens — a boy and a girl — spent the night of March 20, 1992, with a friend down the street. When the kids walked home the next morning, Roberts' son found her body on the floor with a butcher knife protruding from her chest and a plastic bag over her head. Someone had set several small fires, too.

Authorities initially focused on Roberts' estranged husband and even her son, before changing course and looking into a group of neighborhood teenagers, interviewing kids as young as the eighth grade. Eventually, after an endless string of tales that pointed the finger at other teens and left police scrambling to distinguish fact from fiction, they focused on Barbour and another homeless man

named Christopher Hester.

Barbour was 22 and living behind Montgomery's Eastdale Mall. He was struggling with the death of his mother and, despite a brief stay with his grandparents, Barbour wound up homeless. He and his friends caught the attention of police as people of interest in a string of grocery store fires — police thought they may have been involved in a group that set small fires in supermarket aisles as a distraction to steal food.

Roberts' killer had also attempted to set her body on fire.

Investigators from the Montgomery police and fire departments talked to Barbour several times. When they brought him down to the local fire station weeks after the murder for a polygraph, his lawyers said Barbour thought the test was about the small grocery store fires — not about the charred scene on Manley Drive. In court records, Barbour said he only agreed to the test after police threatened him. (Roberts' ex-husband [also said the police beat him until they ruled him out](#), and other people testified to similar tactics.)

After the polygraph — the results are still disputed — Barbour confessed to the murder.

That confession, and what led up to it, wasn't recorded. But detectives showed Barbour the fire station, let him sit on a fire truck and fed him dinner. And after the words were out, detectives sat Barbour down for a formal, taped confession.

Case 2:01-cv-00612-ECM-CWB Document 1-3 Filed 05/21/01 Page 71 of 99

**MONTGOMERY POLICE DEPARTMENT
SUPPLEMENTARY OFFENSE REPORT**

04362

Victim Name as on Original Report: (Last, First, Middle)		Date, Time of Offense:	Date, Time of Supplement:
Roberts, Thelma Bishop		3/20-21/92	4/23/92 0835
Has arrest been made: Yes or No	Date of Arrest:	Offense as Reported:	
		Murder	
Has warrant/petition been signed: Y or N	Date Warrant/ Petition Signed:	Offense after investigation:	
		Murder	

FOLLOW-UP INVESTIGATION:

The roundup still continues. We are still trying to locate people

were trying to find one Christopher Barbour. When we arrived at

40 years.

Elizabeth Gardner and Jason Linville said science has evolved, but so too has the understanding of how to explain science and its limitations.

Linville said modern forms of DNA testing allow courts to take a fresh look at possible wrongful convictions. “It allowed these specific cases to be reexamined,” he said, and caused “everybody involved to look at these cases and say, ‘Why did this innocent person go to jail?’”

One argument Barbour’s lawyers have presented is that even with the rudimentary DNA testing available in the early 1990s, a trained scientist could have excluded both Barbour and his so-called accomplice Hester at trial. If jurors knew that, maybe Barbour wouldn’t have spent the last three decades in a cell.



District Judge Emily Marks is overseeing Barbour's lawsuit in the U.S. District Courthouse for the Middle District in Montgomery shown here on Oct. 1, 2024. (Ivana Hrynkiw | AL.com) Ivana Hrynkiw | ihrynkiw@al.com

Linville said forensic science has always had limitations, but professionals usually thought if explained properly in court, then the methods were reliable. But what happened, he said, was that a lot of trials included “improperly presented” forensics rather than inherently faulty science.

Sometimes that was caused by a forensic scientist being too close to an investigator and wanting to

help the state's case. Sometimes, defense lawyers didn't know the right questions to ask to poke holes. Other times, prosecutors didn't get a proper explanation, either.

"It's really that question of explaining the limitations of the evidence may have been presented improperly, or not thoroughly explained in court, or it may have been unknown."

Gardner cautioned that not believing or understanding science typically isn't the only factor in wrongful convictions.

"Part of that is that we can get better answers now," she said. "Part of it also, I think, in the wrongful convictions, it was very seldom just one factor. Very seldom was it just the forensic science."

Marks, the federal judge in Barbour's case, wrote that "the new DNA evidence would likely cause reasonable jurors to believe that Jackson was present at the crime scene and involved in the rape, murder, and arson."

Last fall, Barbour's lawsuit was the first of its kind in Alabama to be allowed to proceed through the federal courts.

Less than a year after the judge issued her blistering order, the state attorney general's office met for settlement talks with Barbour's team, who is fighting to get him out of prison, court records show. As of May 21, according to a filing, "no settlement was reached."

Protecting convictions

It's not that Alabama prosecutors don't understand science, said one national researcher. It's that they find it more important not to admit error than to be truthful.

"They are more interested in not admitting to their misconduct or their incompetence than they are in getting it right," said Dunham, the director of the [Death Penalty Policy Project](#).

"There is such an investment in protecting the 'integrity' of a conviction that has no integrity."

Since 1972, forensic evidence has led to the exoneration of 200 people who were awaiting executions across the country, said Dunham, who conducts independent research and analysis of death penalty issues. In 62 of those cases, or nearly a third, the person was convicted due to false or misleading forensic evidence.

Eleven of those exonerations included convictions obtained using false confessions.

"People do not end up wrongfully convicted and sentenced to death by accident," said Dunham. "In the majority of the cases, there is official misconduct and perjury. And in the majority of cases, there's not just one thing that went wrong."

DNA evidence contributed to exonerations in 22 of those 62 death row cases.

The way the legal system is set up, even if new DNA evidence is found, so much still rides on who argued what during the original trial. If a lawyer doesn't challenge a piece of evidence at a specific time, they can't ever bring it up again. If a lawyer raises an argument and loses, it can't be brought up again. It's not easy to get legal wins for an incarcerated person, especially one already on death row.

"It is structured in a way that it's more important not to disturb a conviction than to get to the truth," said Dunham.

Florida leads the national list with 30 death row exonerations, while Alabama has 7.

'Red flag of innocence'

Today, faced with the DNA results, the state stands by their conviction. Prosecutors say it's also possible that Barbour and Jackson, the man who left behind the DNA, worked together.

But there's no evidence the two ever met.

In fact, Alabama prosecutors recently argued that the case for Jackson having been involved in the killing is "speculation." They suggested the judge put less emphasis on the new scientific evidence and lean on the decades-old confession.

Prosecutors wrote in a court filing earlier this year that "although there is much speculation on Barbour's part, there is no actual evidence — outside of the DNA test results — to suggest that Jackson may have been involved in Roberts's murder."

They continued: "In other words, there is no evidence presented that Barbour did not commit the crime to which he confessed and for which he was convicted by a jury of his peers."

Barbour's lawyers asked for DNA testing for decades. The Alabama Attorney General's Office fought that, too, saying there was no need for retesting because they had their man.

MORE BY IVANA HRYNKIW

But what would have been the harm to the state had that DNA been tested decades ago?

"What I can never understand is why prosecutors ever oppose DNA testing," Dunham said.

"And why opposition to DNA testing isn't a red flag of innocence."

Bite marks sent Alabama man to prison for life. Now the expert says he was wrong

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Four decades ago, two little marks, each a few millimeters long, sent Charles McCrory to prison for the rest of his life.

Prosecutors told a jury he bit his wife [during a bloody and brutal murder](#). But there was no other physical evidence. No matching DNA. No clear motive. No blood on his clothes. No confessions or eyewitnesses or jailhouse snitches.

Yet, there were those two small marks, which a dental expert said matched his teeth.

That same expert now says he can't match the marks to McCrory's teeth — if the marks are from teeth at all.

"I no longer believe the individualized teeth marks comparison testimony I offered in his case was reliable or proper," said Dr. Richard Souviron, taking back his expert testimony decades later.

In fact, the science has changed so much that matching a bite mark to an individual's teeth is now viewed as junk science.

That change alone attracted a new group of lawyers to take up the case. "Among the forensic disciplines that have been discredited," said Mark Loudon-Brown, one of McCrory's lawyers today, "bite marks is one of the poster childs, if not *the* poster child."

And yet, Alabama has argued that it doesn't matter. It doesn't matter what the dental expert says now, or that the [science changed](#) while McCrory sat in prison.

"Even assuming that Dr. Souviron's testimony was 'false,' it is undisputed that the State did not know that," reads the written argument signed by Alabama Attorney General Steve Marshall and put before the U.S. Supreme Court last year. "That should be the end of it."

In May of 1985, McCrory's wife, Julie Bonds McCrory, was found partially naked, murdered in her small south Alabama home with their toddler son just a few feet away in another room. She had been beaten to death, her body riddled with cuts and bruises and punctures.

[Charles McCrory](#), a 26-year-old tech worker and volunteer paramedic, was always the main suspect. It didn't seem to matter that none of the physical clues left behind matched him.

Julie's family hired private lawyers to prosecute Charles. The father and son duo were designated as

special prosecutors under a rarely used Alabama law. They hired a Florida dentist who had recently made a name for himself as the expert who secured a conviction for Ted Bundy.

They brought him to the small town of Andalusia, just north of the Florida line. There, despite initial hesitations, he told a jury that two of the small puncture marks on 24-year-old Julie's arm were indeed bite marks.

And, that they matched the mouth of her husband.

That, and small-town questions about an open marriage, saw Charles McCrory convicted of his wife's beating death and sent to prison to die.

"The police keyed in on the suspect they decided was guilty, and they decided he was guilty in part because they did this weird stuff... sexual affairs and stuff," said Loudon-Brown.

"That fact is a big part of why this became a wrongful conviction, because they keyed in on him for that reason incorrectly."

As time went on, dentistry advanced. That Florida dentist officially recanted his testimony years ago, and several dental experts now say those two punctures aren't bite marks at all.

Across the country, McCrory is now one of just a few still in prison on bite mark testimony, according to both the Southern Center for Human Rights and the Innocence Project. Most others have been granted new trials or exonerated.

And yet, Alabama won't back down.

"McCrory cannot show that he is actually innocent," wrote assistant attorney general Kristi Wilkerson in a recent filing to the federal court, arguing McCrory does not deserve a new trial. "The balance of the evidence presented at his 1985 trial, though circumstantial, was independently sufficient to convict McCrory of his wife's murder."





Charles McCrory, Julie Ann Bonds McCrory and their son, Chad. Charles McCrory was convicted of murdering Julie Ann Bonds in 1985, but has maintained his innocence for four decades. Contributed Before the Supreme Court last year, Alabama argued that the bite mark was just one piece of evidence, even if the key piece. State lawyers cited McCrory's "strange" behavior, noted that he admitted to having an affair and that a neighbor reportedly saw his car, or a car just like it, the night of the crime. McCrory's supporters disagree, as does he.

"If it was not for the bite mark testimony, I don't believe it would have ever even went to trial. Not even then," McCrory said through a prison phone.

"That was the lynchpin of the case."

But while the state won't let him out or agree to a new trial, they did offer McCrory a deal: He could have left prison after four decades if he would say he did it.

The McCrorys

Charles and Julie started dating when they were 16 and 14, after meeting through friends. They dated for five years and married in May of 1980. Julie was 19, Charles 21.

Charles' two sisters, Renay Smith and Laura Grissett, described Julie as more of a sister than an in-law.

"I got along better with Julie than I did Renay at the time," Grissett said, laughing.

Julie was fun to be around and funny, Charles said. "She had a laugh that, when she laughed, everybody laughed." He told AL.com: "Sometimes you might get tickled over something and realize that you're probably laughing at her laughing more so than what was said or done."

A few years after the couple married, they moved into a home on Lori Lane in Andalusia and had a son, Chad. They were settling into life as a family, and Charles described Julie as a wonderful mother.



Photos from the McCrory home are laid out on Renay Smith's kitchen counter on Tuesday, May 20, 2025. Will McLelland | WMcLelland@al.com

There were toys littered across the home, and Charles remembered coming around the corner to find his wife and son rolling on the floor of the living room, playing and tossing pillows. The two were together "like glue."

"I look back on this and I think the greatest loss of all of it, of course Julie's life, but the greatest loss secondly is that Chad never really knew his mom."

The McCroys appeared to be a typical young couple. But behind closed doors, they liked to invite other couples from around town into their bedroom, sometimes videotape their sexual experiences and experiment. Everyone involved consented to the sexual encounters, but it would feed the small-town rumor mill.

After having their son, the McCrorys started having marital issues. Charles moved to an apartment a few minutes away but was at the Lori Lane house often with Julie and Chad.

Looking back, Charles said those issues were his fault. He had an affair and said he didn't put the time and effort into his marriage that he should have.

"That's a great regret, is an understatement, and something to be honest that I still struggle with," he said.

"In hindsight, you're young, you're moving up the career ladder. You got your mind everywhere, except probably where it ought to be."

On the edge of divorce

In the spring of 1985, Charles and Julie were trying to work things out. They took their son on a trip to the beach the weekend before her death, and a note from Julie's date book showed the possibility of Charles moving back in.

His sister, Smith, read aloud from Julie's date book in her living room earlier this summer. It said that Julie had asked a lawyer to "hold the papers." Julie documented Charles spending the night with her often in May 1985.

And Charles said the couple were talking about getting back together.

But at his trial, prosecutors read letters between Charles and his girlfriend. He was straddling a line between his marriage and his life with her, he wrote in one of those letters.

"We had kind of got up on the edge of divorce, realized that's really not what we want to do," Charles told AL.com. "Then we were kind of, both of us, backing down, let's work this out type of thing."

"We went to counseling that night with that intention to, you know, let that be the step that, you know, turns it around."

The murder

The events of May 30, 1985, are detailed through Charles' testimony and his conversations with police. On that day, Charles said that he went to work at the local power company. Julie brought him some breakfast from a nearby Hardee's, and then the two met up later for a session with their marriage counselor.

After the session, Charles stopped by the family home — it was just down the street from the therapist's office and on the way back to his apartment, he told AL.com. He and Julie talked, and she left to go get their son from Charles' parents. Charles had a headache, and left for his apartment, too. Julie got his laundry to wash at her house so Charles wouldn't have to go to the laundromat.

Later in the evening, Charles went back to the Lori Lane house. He said he had dinner with his family, had sex with Julie, grabbed his laundry and headed home. When he got into his car to pull out of the

driveway, he honked his horn for their 3-year-old son.

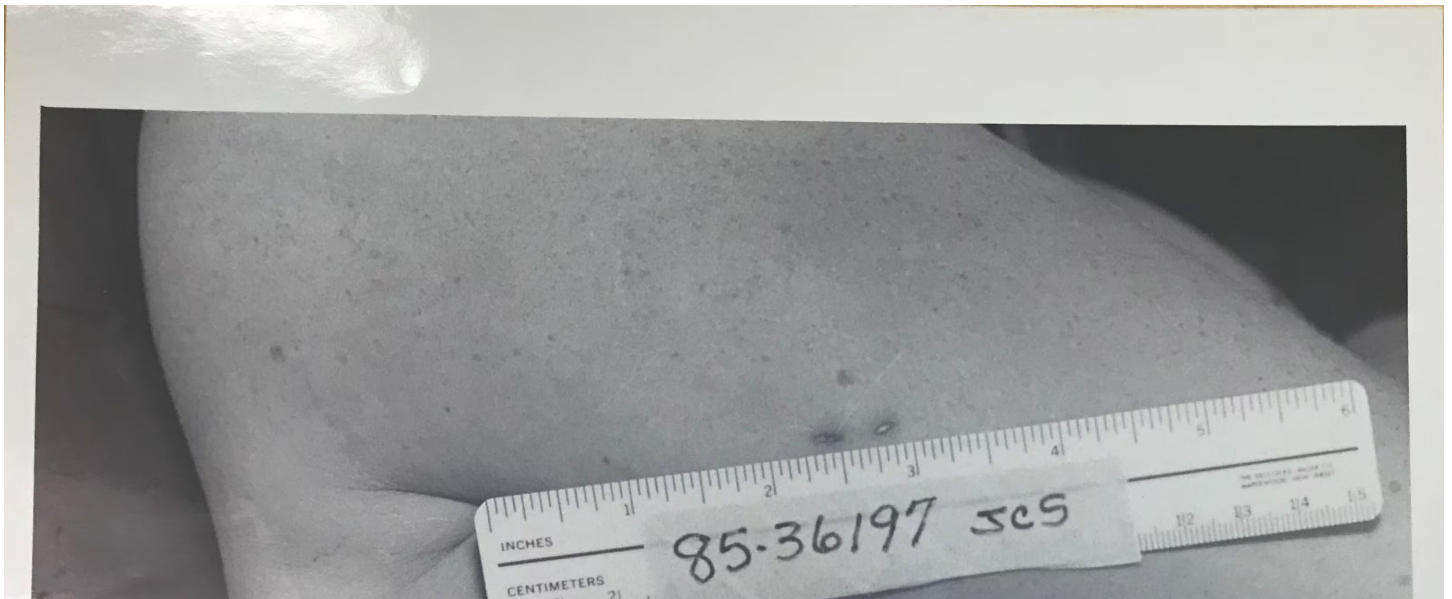
When Charles got back to his apartment, he called his girlfriend. They talked and then, Charles said, he went to sleep.

The next morning, according to Charles' testimony, started off normally. He woke up and was at work by 7:30 a.m. He called Julie to ask if she could drop off breakfast again, but she didn't answer.

He dialed again. Julie still didn't pick up. "I thought nothing of it, to be honest," Charles told AL.com.

Charles called his mother to see if Julie had come by to drop off their son, as she usually did around 8 a.m. Charles' mother kept Chad while Julie worked during the day. But Charles' mother said Julie hadn't shown up and she hadn't been able to get in touch with her. Charles' mother was worried and sent her husband to go check on her daughter-in-law.

Charles went, too. "She was really upset about it," Charles said. "So I told mother, I said, 'OK, I'll go.' So that's why I left the power company and went over there."



Charles McCrory was convicted 40 years ago of brutally murdering his wife, Julie, in Andalusia. Prosecutors said two marks on her shoulder proved that McCrory bit his wife during the attack.
Special to AL.com

After he got in his car, Charles said, he heard on his two-way rescue squad radio that an ambulance was needed "beside Charles McCrory's house."

He had been on the volunteer rescue squad for years. Charles had joined when he was 18 and got his EMT license, and later earned his paramedic training. He'd risen to second in command on the squad and ranked as a lieutenant.

Charles said he was relieved at the call — Julie must be helping whoever was hurt, and that's why she

wasn't answering the phone. He radioed in to let them know that he, too, was en route.

Charles' father beat him there.

The elder McCrory found Julie's body lying right inside with the front door slightly ajar, according to court records. He ran to check on his toddler grandson, who was safe and unharmed in another room, sitting up in bed.

Charles ran into his dad on the sidewalk. Then, he walked in and saw Julie's body.

"You look at it, but you can't believe what you're seeing," said Charles. "It just doesn't register at the time. I don't know how to describe it other than you're seeing it, and your mind is like, 'This can't be what I'm seeing.' And even after all these years, there's times you walk around and just shake your head. It's just still unbelievable."

"When you look back on that time that morning, so much happened so fast. You can't comprehend, you can't really get a grip on it... None of it makes any sense," Charles told AL.com.

Julie was lying in a pool of blood, a soaked nightgown partially on her and a stocking tied to one of her wrists. Investigators collected fingernail clippings, hoping there was DNA from Julie defending herself against the attacker. Police found hair in Julie's hand, and took it for testing along with two clumps of hair found near her body.

At some point during the chaotic morning, Charles made a comment that would haunt him for the rest of his life.

According to police records, to testimony and to Charles himself, he asked: "Did licks on the back of her head kill her?"

Police notes showed Julie was found lying on her stomach, with the back of her head facing the front door. Her short hair was sodden with blood. Autopsy reports later showed five "chop" wounds to her head.

Police said they found the comment unnerving, that only the killer would know Julie had such wounds.

But Charles, his lawyers and his family disagree.

"Well, hell, you can see the photograph," said Larry Grissett, one of Charles' original lawyers. "It's not something like she was covered up or something, but they used that against him."

Charles told AL.com that he asked the question because he simply wanted to know what happened to his wife. He said he didn't know about the stab wounds yet, which were located on her chest — police didn't tell him about those until the next day.

"You're looking at her head when you walk in the door, it was obvious," he said about the injuries.

When asked about the police theory that one could only know about the head injuries from lifting up Julie's hair, Charles called it "ridiculous."

"You can see it a mile away. Anybody who walked in there saw it... It wasn't something you had to go lean over and look for a little cut on the head. These were long gashes, several of them."

The arrest

Those on the scene on May 31, 1985, testified that McCrory didn't show the emotion they would expect of a grieving husband.

McCrory went to stay with his parents after the murder and his sisters said he did show emotion when he was with his family.

Those comments bothered his sister, Renay Smith. "We both remember, and mother used to wake me up at night to come sit with Charles because he was crying. He was crying and just bawling."

"Even when we were doing her funeral, he would hold it together, like when we were at the funeral home or when we were at the flower shop. But when we got back home, even transferring between places, he would just bawl all the way there. And then he would pull it together. But, nobody can say how they would act."



Renay McCrory Smith said her family has waited decades for justice for her brother Charles and his late wife. Will McLelland | WMcLelland@al.com

Laura Grissett, his other sister and of no relation to his lawyer with the same last name, said she, too, remembers seeing her brother cry.

Both sisters also said they saw him shirtless on the night after Julie's body was found, and saw no wounds on his body.

Police searched Charles McCrory's car and apartment and took his clothes, but they didn't find any blood. There was no blood throughout the rest of the house on Lori Lane, either. None in the sinks, none on the doorknob or trailing from room to room.

But the town was talking, and rumors were swirling about the young, tragic couple. Most of the rumors were about their sex life.

Larry Grissett, one of the original lawyers, said the case was a perfect storm. "He'd already been tried in the court of public opinion somewhat," he said.

And McCrory himself knew people were talking. "Everybody cared," he said over the phone. "Small town, Bible Belt, all the things that go with that... The rumor mill was so rampant, everything was stirred." Affairs and bedroom experiments were perfect fodder for small town gossip.

McCrory was quickly arrested, and no other suspects were taken into custody. Both his current and former lawyers said the police had "tunnel vision."

McCrory was well known in the small community. He had been a teacher at the local college and was a member of the town rescue squad.

Loudon-Brown, one of McCrory's current lawyers with the Southern Center for Human Rights, said police zeroed in on McCrory for the wrong reasons.

"I sort of thought, OK, you know, sure, the immediate suspect is the husband. That makes sense. Right?" Loudon-Brown told AL.com. "But then there was no motive ever produced and there was no evidence to corroborate this."

A different kind of trial

Before McCrory went on trial in October of 1985, a Covington County judge had ruled that most of the evidence regarding the couple's sex life couldn't come into court. Though most people in the town had already heard about it anyway.

McCrory was represented by well-known Mobile lawyer M.A. "Bubba" Marsal and a young lawyer from Opp, Larry Grissett. Grissett was about 30, he recalled, and had just started practicing on his

own.

Grissett, 40 years after this courtroom showdown, described the trial.



The Covington County Courthouse in Andalusia, Ala. Will McLelland | WMcLelland@al.com

“To start out,” he said, “this case was a little bit different in that the case was not actually prosecuted by the district attorney’s office.”

“Let me just tell you the story, OK?”

Julie’s family hired two local lawyers — a father and son named Frank and Harvey Tipler — to prosecute the case under a little-known Alabama law.

“Now there’s a problem with that, an inherent problem,” said Grissett. “Under our current system of laws, the district attorney does not have a duty to seek convictions, (he) has a duty to do justice. Lawyers, on the other hand, like myself, I have a duty to my client. I’m supposed to advocate for my client as best I can. So when you go to hire your own lawyer, then you get rid of that duty to do justice.”

He had never heard of the law before.

The Alabama Supreme Court [ruled in 1926](#) that a lawyer can “appear in the prosecution as an

assistant to the solicitor and with the consent of the court.” That ruling has been [upheld](#) over the years.

The Tiplers led the prosecution, paid by Julie’s family.

With the couple’s sex life excluded, Grissett said he and his late co-counsel Marsal remained “somewhat confident.”

“I knew there was no evidence, real evidence, to connect him with it.”

The two little marks

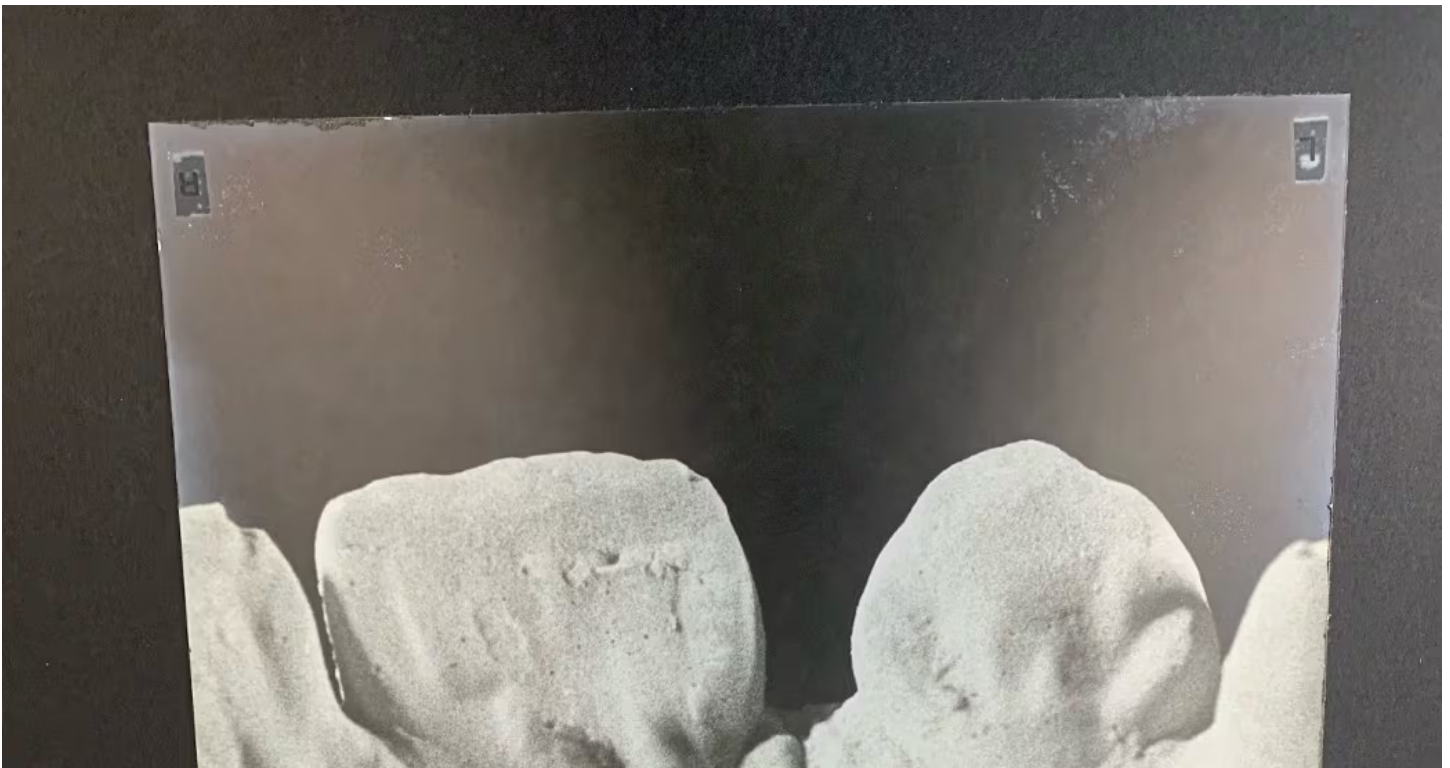
The trial began like most murder trials, with police describing their investigation. An investigator described the eight fingerprints he took, which were all from children’s cups with Snoopy and Care Bears on them and a tea pitcher. Those matched to Charles and Julie McCrory.

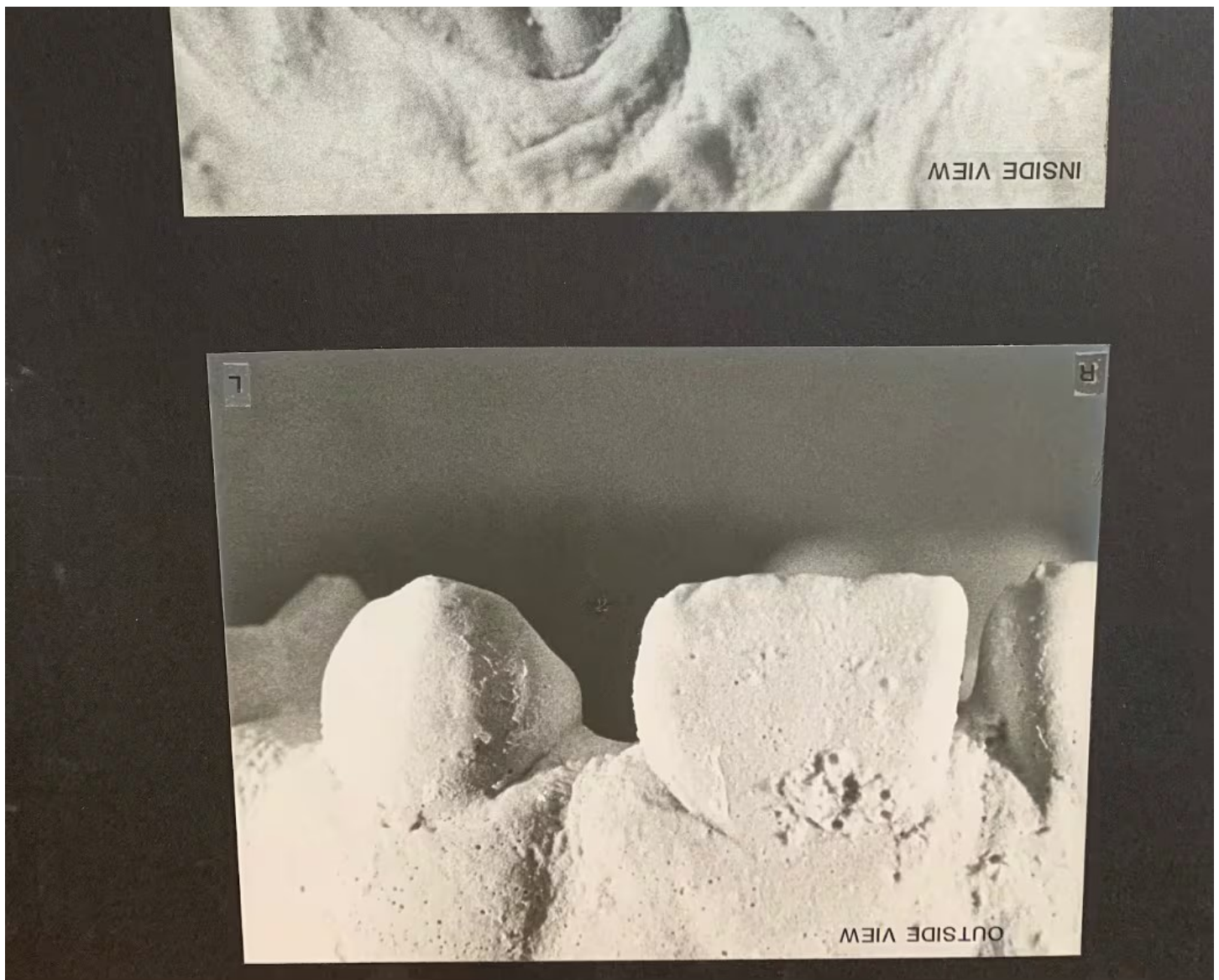
He took none from the opened door, the cracked bedroom window or the back fence, where another officer found a fresh footprint. Investigators did not attempt to match that footprint to anyone, they testified.

And then came the marks.

Julie’s autopsy showed four “chop” wounds to the back of her head, one to the side of her head, blunt force trauma to her skull, 11 puncture wounds to her chest, fractures of the jaw bones, various bruises and two other small marks on the back of her upper right arm.

The pathologist who testified called them “bite marks.”





Charles McCrory has always maintained he did not murder his wife. His lawyers hope new revelations about bite mark evidence could set him free. Special to AL.com

The Tiplers retained a Florida dentist, Dr. Richard Souviron. He testified at serial killer Ted Bundy's 1979 trial that Bundy's crooked teeth matched the impressions left on a victim.

Souviron told the jury in Andalusia, according to trial transcripts, that he specialized in forensic odontology and bite marks. At the time, Souviron said he had testified in over 50 cases in more than a dozen states.

But Souviron was first contacted by the state medical examiner about the McCrory case. He wrote a letter, dated Aug. 14, 1985, saying that two of the marks on Julie's arm — one mark 6 millimeters long and the other 4 millimeters — were from teeth. He said that the marks "could have been made by" Charles McCrory.

But then Souviron continued, "It is impossible in my opinion, unless very unusual circumstances exist

to make a positive identification from two teeth of a bite mark.” He wrote that he saw no other marks that could be from teeth, which he remarked was odd, because lower teeth are usually the ones that grab and hold in a bite. One could also say the marks were made by the same instrument that left puncture marks on the rest of Julie’s body, Souviron wrote.

“My final conclusion and opinion,” the dentist wrote that August, “if there is substantial amount of additional evidence such as fingerprints, blood, hair, semen, etc., that would work in conjunction with these two marks, then I feel it would be of some value. However, if these two marks, which I believe are made by upper teeth, are the sole means of identification of the perpetrator, I feel that this is not in the best interest of justice.”

But when Souviron took the stand a few months later, after being retained by the Tiplers, he told jurors that Charles McCrory made those marks.

Looking back, McCrory says that’s when he knew the case had taken a sharp turn.

“When you’re sitting there and Souviron walks in, you know, this polished, highly educated guy ... he comes in there and shows these big blown-up pictures and says, in effect, ‘This is him,’ and when that happened, I knew we were sunk.

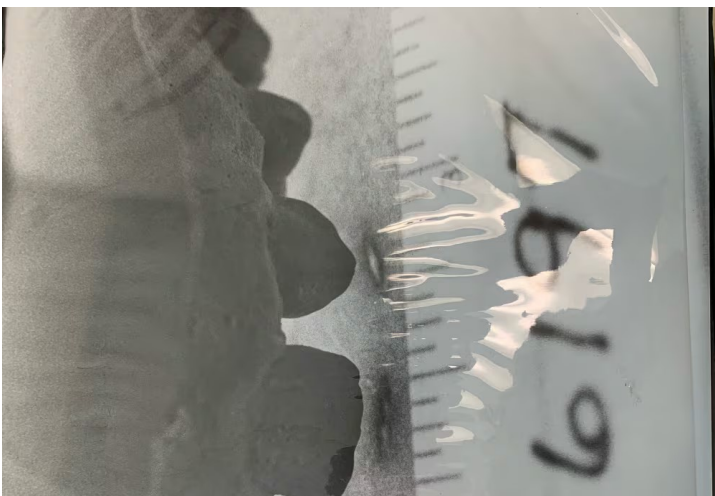
“It was just like, they bought it hook, line and sinker. And I can understand that. I don’t really fault them for that,” McCrory said.

Grissett, McCrory’s attorney, said he was floored by the dentist’s statements.

“Right before he testified, we went back in the library with him and sat down and said, ‘Can you say that Charles McCrory’s tooth made this mark?’”

“[Souviron said] ‘No, I cannot do that.’ Walk into the courtroom, gets on the stand. What does he do?”

McCrory’s attorneys had seen the letter from a few months prior. They knew that the expert had said he had doubts. “We went into the trial with him with that letter thinking, ‘OK, they can’t show this,’” he said.





Charles McCrory's teeth molds compared to photos of his murdered wife's injuries. These molds were used at the 1985 trial. Special to AL.com

Marsal questioned the dentist, putting him on the spot about the discrepancies.

“I said it’s not positive for Charles McCrory,” Souviron answered, according to trial transcripts. He explained how the marks could have gotten there, with Julie swinging her arm backward and hitting her attacker’s teeth.

“I wasn’t there,” Souviron said at one point. “I didn’t see it.”

But the damage had already been done.

“There’s no dispute that’s why he was convicted,” said Loudon-Brown, one of McCrory’s attorneys today.

On Oct. 23, 1985, the jury convicted McCrory of killing his wife. He was sentenced to spend the rest of his life in prison.

The dentist says he got it wrong

McCrory went on to lose his appeals and tried to adjust to life behind bars.

He said his background in computer science helped him find jobs in prison. He became close with several of the wardens and eventually became the go-to computer person for the entire state corrections system.

He’s worked various jobs for years outside of prison walls, returning to sleep in prison each night.

As McCrory worked and tried not to lose hope, a lawyer from a prominent law firm across state lines was about to reignite his case.

Loudon-Brown was litigating a bite mark case in Georgia. At one point in 2019, he did an internet search for similar cases and found a mention of McCrory’s case.

So, he went to meet McCrory in prison.

Three things stood out to Loudon-Brown, he said. First, it was a bite mark case. And bite mark testimony was discredited.

Secondly, “There was no other evidence. And that’s not often the case. You know, often there’ll be some sort of corroborating piece ... there just wasn’t. So it really did rise and fall with the bite mark.”

And thirdly, he believed McCrory.

McCrory’s team approached Souviron after the dentist recanted testimony in another bite mark case in another state and asked him to take another look.

Souviron submitted an affidavit in 2019, where he said that he “would not” and “could not” give the same testimony today in McCrory’s case.

“I no longer believe the individualized teeth marks comparison testimony I offered in his case was reliable or proper.”

Dr. Richard Souviron

He fully recanted his testimony, adding that he no longer believes there is a scientific basis for saying the injury— “assuming that the injury is in fact teeth marks” — could be matched to McCrory.

The dentist also said he only ever looked at photographs of Julie’s body all those years ago. “Had I been able to examine the actual tissue in this case, I might have offered a different opinion altogether.”

“My experience has taught me that human dentition is not totally unique,” he said. “I also believe that only in certain, very limited circumstances — not present in Mr. McCrory’s case — can the features of human dentition accurately be recorded in human skin.”

‘Junk science’

Five years ago, McCrory had the chance to walk out of prison.

But only if he’d say that he killed his wife.

McCrory remains steadfast, saying throughout the decades that he had no involvement in the slaying. He didn’t have to think when his son finished explaining the offer: He could choose to plead guilty to the murder and walk out with a sentence of time served.

“I kind of chuckled,” he recalled in an interview with AL.com. “I said, ‘That’s ridiculous, Chad. I’m not going to plead guilty to something I didn’t do.’”

“What am I going to do, make up a story?” McCrory said. “You know, then I tell them details or I make up something that doesn’t fit the scenario, you know, and they would know that.”

The offer came on the eve of a court hearing in 2021, after his lawyers asked a Covington County judge to order a new trial the year prior.

Loudon-Brown wasn't surprised that McCrory refused, and called the offer "incredibly frustrating."

In the spring of 2021, a judge in Andalusia finally heard McCrory's request for a new trial. The judge heard that the dentist had recanted and that bite mark evidence in general has since been discredited. Two other forensic dental experts took the stand.

Those dentists said they once believed in bite mark analysis, but their opinions have changed over time with advances in science and a mounting number of wrongful convictions.

[Bite mark evidence](#) first became popular in American criminal trials in the '70s. But by 2009, the [National Academy of Sciences](#) issued a report saying no scientific studies supported the idea that bite marks contain enough detail to match a suspect and that "experts diverge widely in their evaluations of the same bite mark evidence."

Texas later conducted a six-month study. In 2016, the Texas Forensic Science Commission found [bite mark testimony](#) doesn't "meet the standards of forensic science." The same year, the [President's Council of Advisors on Science and Technology](#) issued their own report and said the "observed false positive rates were so high" for bite mark identification "that the method is clearly scientifically unreliable at present."

By 2022 the National Institute of Standards and Technology held that bite mark analysis is not supported by data.

At McCrory's 2021 hearing, one of the dentists, Dr. Adam Freeman said he was speaking without being paid because "it's the right thing to do ... and it's important for people to understand what's going on with wrongful convictions, the science behind bite marks, what we know today, what's at stake."

He called it "junk science."

Freeman is a former president of the American Board of Forensic Odontology. The group, which certifies forensic dentists, also changed its guidelines in 2019 to, among other things, say an expert can't "match" an injury believed to have come from teeth to a specific person's mouth.

At the hearing, both dentists said they couldn't even be sure those were bite marks at all.

State prosecutors didn't deny that the star witness had taken back his identification. They didn't offer any new testimony on that key piece of evidence.

"Even assuming that Dr. Souviron's testimony was 'false,' it is undisputed that the State did not know that. That should be the end of it."

Alabama AG's office, writing to the Supreme Court

Instead, the only witness the state presented was a man who was a teenager at the time of the slaying. He had been staying with his grandparents down the street from Julie McCrory. He has long been part of the case after identifying what he believed to be Charles' Bronco leaving Julie's home early one morning. The witness said at the time that he was outside around 5 a.m., checking the garden when he spotted the car.

Other neighbors have conflicting stories, saying they were getting their newspapers or outside for other reasons and didn't see the car. And another man, who some thought could be of interest in the case, drove a Bronco, too.

The state took a different approach to defending the case: They said that jurors themselves could have analyzed the photographs of Julie's injuries and matched those markings to Charles McCrory's teeth all by themselves, without an expert.

McCrory's team found the suggestion preposterous.

"This unprecedented, unjustifiable and unreasonable decision is belied by common sense and the modern scientific consensus," Loudon-Brown later wrote. He also argued that, since there would be no expert who could offer similar opinions today, any evidence regarding teeth and dental casts wouldn't come into the courtroom at all.

The state also argued that the marks were not bite marks at all, but instead "teeth marks" and that the new guidelines don't apply.

Covington County Circuit Judge Charles Short sided with the state and declined to give McCrory a new trial, writing that he was "unconvinced" that the outcome would be different if Souviron hadn't testified.

His order was nearly identical to the state's proposed order.

The [Alabama Court of Criminal Appeals agreed with the state](#), too.

Loudon-Brown disagreed in a federal court document with the state's "bizarre claim that a jury could somehow have decided for itself that the injury ... was a bite mark and was made by Charles McCrory and was inflicted at the time of murder."

One of the criminal appeals judges had, in a previous job at the Alabama Attorney General's Office, worked on the case and fought a prior appeal by McCrory. The judge recused after McCrory's team pointed out the conflict.

But the appeals court's newly issued opinion was identical, including a typo.

McCrory's team [appealed to the U.S. Supreme Court](#).

They, too, sided with the state in July 2024.

Justice Sonia Sotomayor [wrote an opinion](#) saying she voted to deny the petition on procedural grounds as the issue “has not yet percolated sufficiently in the lower courts to merit this Court’s review.”

But she summed up the problem facing Alabama judges.

“What should a court do when faced with a 40-year-old conviction resting on science that has now been wholly discredited?” [Sotomayor wrote](#). She said the case raised “difficult questions” about old cases that rested on “faulty science.”

The justice wrote that state courts “sometimes decline to find that changed science is new evidence that requires a new trial.”

But, she added, maybe this sort of case shouldn’t wait for the slow-moving wheels of a federal court system that isn’t designed to handle changing science. Maybe, she suggested, Alabama officials could act.

“There is no reason, however,” she wrote, “for state legislatures or Congress to wait for this Court before addressing wrongful convictions that rest on repudiated forensic testimony.”

The next shot

In April 2024, McCrory’s team asked a federal judge to throw out his conviction, and the lawyers leaned heavily on how bite mark evidence has been discredited.

Loudon-Brown and his colleagues from the Innocence Project cited 39 known wrongful convictions and indictments from the outdated technique and added that “bite mark analysis has no scientific foundation, and thus no place in America’s criminal courts.”

Souviron’s past testimonies alone have led to at least two documented wrongful convictions, they added.

In those cases, the dentist said the suspects’ teeth matched marks on the victims. Each man — one in Massachusetts and one in Florida — was later exonerated after DNA proved who the killer was. Each served more than 30 years in prison.

Barry Bonds, Julie McCrory’s brother, said changes in forensic science didn’t change his opinion. He believes Charles is guilty.

“If we had every thread of evidence right now that we had when this took place, I wouldn’t have a problem having another trial,” Bonds said.

He added emphatically, “I know, know, know, know the man’s guilty.”

McCrory is now 66. He spent the majority of his life, and nearly all of his son's life, behind bars.

Currently, the case rests in the hands of U.S. District Judge Austin Huffaker Jr. The Alabama Attorney General's Office told the judge that McCrory's arguments should be denied on procedural rules and they stand by their conviction. Both sides are waiting on the next steps in district court.

The price of not admitting guilt

Grissett, sitting in his worn office chair back in Opp one summer morning in 2025, said he knew Chad McCrory would one day walk into his law office and want to know about his parents. And one day after he graduated high school, he did.



Chad McCrory (right) believes his father is innocent in the slaying of his mother four decades ago. Chad is pictured with his aunt Laura Grissett. Will McLelland | WMcLelland@al.com

When speaking to AL.com, Chad said his paternal grandparents, who raised him, and the rest of his dad's family were always forthcoming about what happened to his mom. But they encouraged him to do his own research and didn't tell him what to believe.

After years digging into the case files, talking to people involved and more, Chad doesn't think his dad was involved in his mom's murder. He said he's always been open to that possibility, but he's never

seen any evidence of it.

“I have no reason to think that (he did it). Can you prove it? Prove it.”

When asked if he thinks sometimes about the plea deal that could have set him free, Charles McCrory said no.

“They’re more worried about covering themselves and covering the past than they are finding the truth now. So, a plea deal will be a way of eliminating that,” he said. “So the idea of accepting the plea was never a serious consideration.

That same unwillingness to say he killed his wife also worked against McCrory’s only other avenue to leave prison.

In February 2023, McCrory was up for parole. At the time there were just two members on the state parole board — Darryl Littleton and former [chairperson Leigh Gwathney](#). McCrory wasn’t there, as prisoners in Alabama don’t get to face the board. Loudon-Brown told McCrory’s story in as detail as much could fit in the board’s two-minute time limit.

During the hearing, Gwathney grilled Loudon-Brown about the plea deal. The lawyer said the state clearly didn’t think Charles McCrory was a threat to the public, if they were fine with him walking out of prison.

Gwathney repeatedly challenged his “interpretation” of the offer.

Chad spoke at that parole hearing, too, asking for his father to be released. He’s a successful businessman now, with several children of his own.

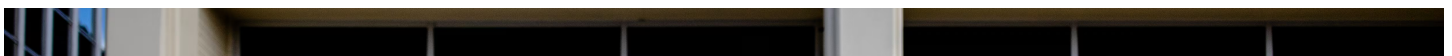
Chad told the board that, as Julie’s only child, he wanted his father to have a shot at freedom.

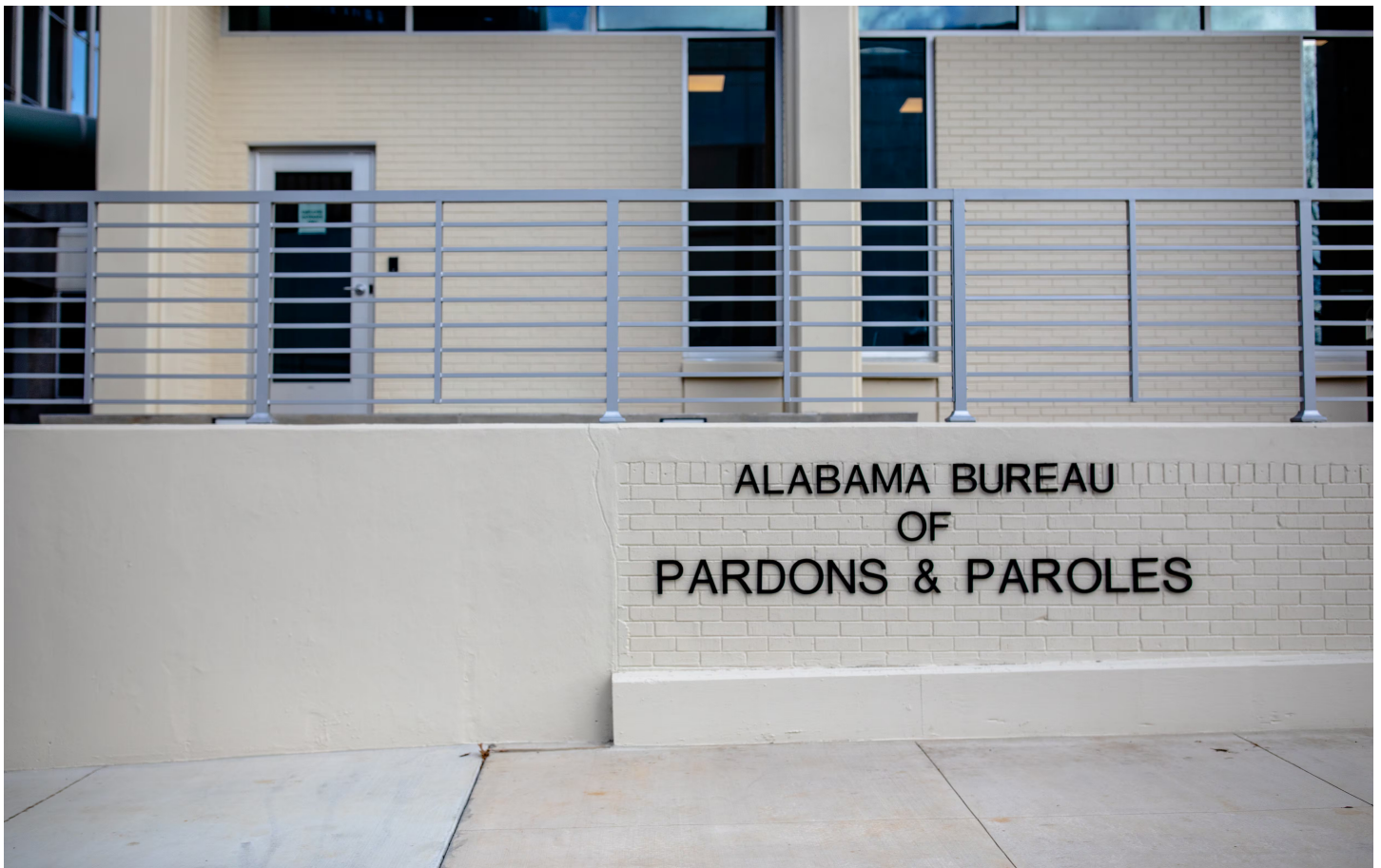
A former prison worker spoke in support of Charles McCrory, too. Several others reportedly mailed letters to the board with similar calls for release.

But none of it mattered. McCrory was [denied, and put off for the maximum amount of time](#) until he could have another hearing- February 2028.

Barry Bonds, Julie’s younger brother, also spoke at the parole hearing. He spoke against McCrory’s release. He mentioned the “sex stuff” but said what’s stuck in his mind for the last 40 years was McCrory’s comment on the cuts to Julie’s head. He thinks only someone that was there when his sister died would know that.

He told the parole board: “If he would write it all down and confess, I might. ... God’s been good to me, and he extended grace to me. Charles has the same right and the same possibility to spend eternity in heaven.”





The outside of the Alabama Bureau of Pardons and Paroles in Montgomery, Alabama. Tamika Moore
| tamika@redclaymedia.com

MORE BY IVANA HRYNKIW

McCrory said he is hopeful that one day, he and his family — and the Bonds family — will know who killed Julie. But he also said he’s hopeful that his name will be cleared.

“I’m not going to sit here and say, it doesn’t matter if I get out. It does matter.

“I ain’t got 40 more years. I would really like some time with my grandkids. I’d like some time with Chad, my sisters and things like that. We could still have some really good quality time.”

Alabama argues for right to execute the ‘mildly disabled,’ takes case to Supreme Court

Ivana Hrynkiw | ihrynkiw@al.com

When Joseph Smith was 27, he was involved in the brutal beating death of a man in Mobile. At the time, he was reading at fourth-grade level.

Is it enough to keep him from being executed?

The federal courts think so. Alabama Attorney General Steve Marshall does not.

And next week, Alabama will ask the U.S. Supreme Court to let the state put Smith to death even though two other federal courts already ruled that he is intellectually disabled.

Lower courts have ruled multiple times that putting him to death would constitute cruel and unusual punishment. It's been the law of the land for decades not to execute someone who has a mental disability, who falls below a scientific threshold for understanding the ramifications of their actions.

But Alabama argues that Smith has an IQ that is just high enough to be put to death.

Alabama objects to the way “the medical community” decides who has an intellectual disability. The state also says the rule is so vague that Alabama won't be able to execute anyone “so long as a court or an expert has even an inkling that the offender may be mildly disabled.”

When it comes to criminal justice, Alabama often [ignores or argues](#) against evolving scientific standards, continuing to stand behind [discredited bite marks](#) to keep an Andalusia man in prison or [ignoring DNA evidence](#) to keep a man [locked up for a murder](#) in Montgomery.

Smith's case is different from those two, as this legal battle isn't about innocence. This is no twisting whodunit.

‘This is not about science’

Smith is currently sitting on Alabama's Death Row for his role in the 1997 robbery and beating death of a man in Mobile County.

The question now is what should be done with him. His lawyers say he's intellectually disabled and cannot be executed. The state argues that Smith's IQ is too high to be considered disabled and even if he's “borderline,” it doesn't really matter.

The state also said clinical standards “mutate” and by relying on psychologists the court “guaranteed

that the standards will ‘never stop’ evolving.”

The issue? Alabama’s lawyers say Smith’s IQ is closer to 75, instead of 70 or below.

But professionals in the field say science is always evolving and IQ is not a simple matter of a test score, especially when it comes to people near the cutoff for being considered intellectually disabled.

“As a public policy matter, it is a black line. If you are intellectually disabled, you don’t get executed,” said Robert Dunham, a lawyer and [death penalty researcher](#). “As a medical matter, it’s a gray line because IQ scores are approximations and you have to use clinical judgement in the close cases.”

Ahead of a [Dec. 10 hearing in Washington D.C.](#), Smith’s lawyers wrote that Alabama is making a “a clear attempt to overturn this Court’s decades of painstakingly crafted (legal) precedent.”

Whatever the Supreme Court decides next week could impact cases nationwide.

“This is not about science,” Dunham said. “This is about politics.”



Joseph Smith is on Alabama Death Row for the 1997 killing of Durk Van Dam. Next week, the U.S. Supreme Court will hear his case. Alabama Department of Corrections

Courts weigh in

The legal fight started with a landmark case.

Years after Smith was sent to death row, the Supreme Court ruled that people with intellectual disabilities could not be put to death.

In the years since, inmates in Alabama and across the country asked to be taken off death row and moved to spend their lives in prison without a chance of parole.

According to research by Dunham, the director of the [Death Penalty Policy Project](#), courts have overturned death sentences of at least 162 death row prisoners nationwide due to these lawsuits. More than 150 of those have been officially resentenced to life in prison, and at least six of the men exonerated from death rows nationally have an intellectual disability.

His data shows that seven Alabama inmates have been removed from death row since 2006.

Several others in the state, including Smith, are on appeal.

A federal judge declared Smith to be intellectually disabled, and so did a federal appeals court, twice.

Yet, the Alabama Attorney General's Office disagrees and argues Smith would qualify for execution if his five IQ scores were averaged.

"Instead of relying on objective evidence, courts are invited to consult 'the medical community,' which usually means picking out snippets from the latest diagnostic manuals," wrote the attorney general's office.

Alabama appeared to take issue with the way scientific thinking changes, moving the baseline of intellectually disabled to a wider range. State prosecutors wrote that "our Eighth Amendment 'evolves' every time the (American Psychological Association) relaxes its diagnostic criteria."

"This is not about science. This is about politics."

Robert Dunham, lawyer and death penalty researcher

The state says there should be clear rules for lawsuits based on someone's IQ before a court can consider expert opinions on someone's mental status and behavior.

Smith's lawyers said Marshall's office "distorts the facts and the law."

Joseph Smith

Smith was raised in south Alabama and his family moved frequently. He didn't go past the eighth grade in school, and his childhood was plagued with physical and psychological abuse.

According to court records, Smith struggled with school and social interactions from the time he was a child. An expert who reviewed his records testified that Smith did all right in first grade, but didn't progress in the next few years. That prompted a referral to special services, where he was given an IQ test for children and scored a 75.

Smith was then placed in "emotionally conflicted resource" classes.

In 1982, when Smith was 12, he took another IQ test and got a 74. He had to repeat the sixth grade and was placed in classes that were called "educable mentally retarded" at the time. The next year, he transferred from those classes and into a self-contained EMR classroom.

At the time of the crime, records show, 27-year-old Smith was doing math at a kindergarten level, spelling at a third-grade level, and reading at a fourth-grade level.

Smith's lawyers said he also had significant problems with behavior and maturity. When the crime happened, Smith was dating a girl who was just 15 years old.

When he went on trial in 1998, Smith took another IQ test. This time, he scored a 72. Accounting for margin of error, an expert testified that a score of 72 could be between a 69 and a 75, and a 69 "is considered clearly" disabled.

Current testing by both Smith's experts and the state's experts put his IQ at 78 and 74, respectively and on different tests.

Mobile County Circuit Judge Chris Galanos wrote in his 1998 sentencing order that Smith "is the product of an abusive environment woefully lacking in nurturance and emotional support." He also wrote that Smith's "lack of intelligence is not an excuse for murder."

Smith had several prior offenses, including for receiving stolen property and third-degree burglary, at the time of the murder and had spent most of his adult life behind bars.

He was released from prison just days before Van Dam was murdered.

The murder

Back in 1997, when Smith was 27, he didn't have a steady job and listed "carpenter" as his occupation on arrest forms. He bounced between his mother's house in Theodore and living at a motel called the Highway Host.

Smith told police two different versions of what happened on Nov. 23, 1997, but both stories begin with Smith at the motel when the victim, Durk Van Dam, drove up.

During his [second interview](#), which police called a more accurate version of events, Smith said he and a man he knew from the motel, Larry Reid, got into Van Dam's car and drove to a utility road with a

dead end. There, Smith said, Reid attacked Van Dam and beat him with a circular saw blade, and Smith joined in the fight.

Slaying victim called caring, hard worker

► *The former area resident was attacked in Alabama where he was doing carpentry.*

ROCKFORD

By Scott Leith
The Grand Rapids Press

A longtime West Michigan resident who'd moved south recently to take a new job, was killed a week ago in Mobile County, Ala., after he was attacked and brutally beaten by two robbers.

Durk D. Van Dam, a 42-year-old Rockford native, was found dead Tuesday in a wooded area of Mobile County, near a town called Tillman's Corner.

Van Dam had been living in Mobile County for the past month, where he was working as a carpenter, said his sister, Linda Greenfield of Sand Lake.

Until last summer, Van Dam had spent his whole life in West Michigan. He moved to Knoxville, Tenn., to take a new job.

According to the Mobile Press

some money, and they lured him into the area so they could rob him," Tillman said.

After receiving a tip, deputies found Van Dam's body Tuesday, nearly two full days after the Sunday night murder. According to news reports, Van Dam was sprawled in the cab of a red Ford Ranger that was sunk to its door panels in a muddy, wooded area.

The vehicle was spattered with blood. Inside the cab, investigators found a Michigan license plate. They weren't able to identify Van Dam's body immediately because he wasn't carrying identification. Eventually, a cousin who happens to live in the Mobile area saw Van Dam's pickup on a television report.

An Alabama medical examiner determined that Van Dam died from "multiple blunt force injuries."

Greenfield said her brother had just been paid, so he was carrying a large amount of cash. He was a kind man, she said.

Greenfield last talked to her brother shortly before his death. His last visit to Michigan was about a month ago.

"He was a very caring, hard-working individual," Greenfield said. "His family meant every-

According to the Mobile Press Register, an Alabama newspaper, two suspects were arrested Tuesday within hours of the discovery of Van Dam's body. Both are 27 years old and from Mobile.

One of the suspects is a felon who was released from prison earlier this month due to overcrowding. He was on a work-release program.

Greenfield and other surviving relatives are angry about the violent end to Van Dam's life.

"It was a totally senseless crime," Greenfield said. "They didn't have to take his life."

According to news reports from Alabama, Mobile County Sheriff Jack Tillman said the slaying started out as a robbery.

"We think he was flashing

said. His family meant everything."

Before moving south, Van Dam's last Michigan home was in the Croton-Hardy Dam area of Newaygo County, Greenfield said.

Van Dam's survivors include his sons, Elliot of Rockford, and Derrick and Ryan, both of Croton-Hardy area; his father, Henry of Croton-Hardy; his mother, Betty of Cedar Springs; his sisters, Linda Greenfield of Sand Lake, Cynthia Brown of Croton-Hardy and Wendy Lang of Sand Lake; and nieces and nephews.

Van Dam's funeral will be 1 p.m. Monday at Pederson Funeral Home in Rockford. Visitation is scheduled for 2-4 p.m. and 7-9 p.m. today at the funeral home.

CITATION (AGL) STYLE

The Grand Rapids Press published a story about the crime and the victim, Durk Van Dam, on Nov. 30, 1997. File

Smith told police the two men took Van Dam to a wooded area, where the beating continued. Reid confronted Van Dam and stole less than \$200 before hitting him with a hammer and a wooden board. The two men left Van Dam severely injured, Smith said. Then, they stole tools from his truck and Smith took Van Dam's shoes.

The two men hitched a ride back to the motel and left the tools nearby for a third man to pick up later and pawn.

Van Dam's battered body was found lying in his pickup truck. He had been beaten and cut, and "suffered a plethora of additional blunt force injuries," a Mobile County judge wrote. A medical expert testified Van Dam suffered around 35 injuries across his body and head.

The state explained the case simply to the Supreme Court Justices: Smith "brutally beat Durk Van Dam to death with a hammer and saw so that he could steal \$140, the man's boots, and his tools."

Reid pleaded guilty to murder and robbery and was sentenced to life in prison.

'Not a number'

Smith's case was decided in the late 90s. But years later, the laws would change.

The Supreme Court ruled in 2002 that executing people who are intellectually disabled is barred by the Eighth Amendment. The court [noted at the time](#) that “‘mild’ mental retardation is typically used to describe people with an IQ level of 50–55 to approximately 70.”

In a footnote, the court wrote that up to three percent of people have an IQ between 70 and 75 or lower, “which is typically considered the cutoff IQ score.”

The justices wrote in the decision, [called Atkins](#), that most states didn't even want to execute a disabled person and “a national consensus has developed against it.”



The execution chamber at William C. Holman Correctional Facility in Atmore, Alabama. Alabama Department of Corrections

The landmark case bans execution of intellectually disabled people with a general formula of three parts, but lets the states decide how to interpret those prongs and how to prove it. States have different legal definitions for determining if someone is intellectually disabled – some have a law, and other states rely on court precedent.

The basic Atkins rule is that someone classifies as intellectually disabled if they have “significant subaverage intellectual functioning,” have deficits in their adaptive functioning, and that the disability presented before they turned 18.

Often, IQ scores can satisfy the first part of that rule. While the court drew no line of 70 as a cutoff, it’s long been understood that someone with an IQ in the 80s or 90s wouldn’t fit the criteria. Legally, a score of 70 was thought of as fair game for a case.

For psychologists, there’s a formula to calculate the first part of the Atkins rule. And the manual used to diagnose mental disorders, the DSM, now puts that number between 65-75.

Smith’s team told the high court, “intellectual disability is a condition, not a number.”

Even with a 70 or close to it, intellectual disability doesn’t hinge on one IQ score, said clinical and forensic psychologist Dr. Catherine Boyer. She’s worked in the court system since the 1980s, taking the stand for both prosecutors and defense attorneys.

Boyer said IQ is “one piece of the puzzle” and not a perfect indicator whether someone has an intellectual disability.

In the 23 years since Atkins was decided, the Supreme Court has made several rulings clarifying the law. The justices ruled that a state doesn’t have total discretion and can’t have a single strict IQ cutoff score, and that a state must use updated clinical criteria.

“Intellectual disability is a condition, not a number.”

Lawyers for Joseph Smith

The justices have also ruled that someone with a score over 70 can be intellectually disabled if they have severe behavioral issues. The district judge in Smith’s case wrote that his intelligence and behavior had been “deficient throughout his life.” His adaptive functioning was low enough his “actual functioning” was lower than what IQ tests showed, wrote Senior U.S. District Judge Callie V. S. Granade.

But the attorney general’s office said the courts have “let Smith off the hook.”

Smith’s Supreme Court case

The federal court in south Alabama ruled that Smith was disabled and the Eleventh Circuit Court of Appeals agreed — twice finding that he shouldn’t be executed.

Smith has five IQ scores relevant to his case: A 75, 74, 72, 78, 74. The scores have been done over the years and on different tests.

But with the standard margin of error in those tests, experts said Smith could have scored as low as a

In her 2021 order, Judge Granade said because Smith's scores were on the border of 70, she turned to his behavior to make her decision. The judge called it a "close case."

Alabama disagreed. They argued that Smith needed a lower IQ— a "true IQ" of 70 or lower— to make a case at all. And, they said, he was just over the line. His behavior shouldn't have even been considered, prosecutors said.

"Even adjusting for error, there is no way to combine his scores—not the average, median, mode, nor any composite metric—to find an IQ of 70 or less," wrote prosecutors.



Attorney General of Alabama Steve Marshall speaks to members of the press after the oral argument of the *Merrill v. Milligan* case at the U.S. Supreme Court on October 4, 2022 in Washington, DC. Photo by Alex Wong | Getty Images

The five tests would average at 74. But psychologists said averaging isn't an accurate system of measurement on these tests, and neither is selecting the highest or lowest score nor throwing out the margin of error. And, professional groups said IQ scores from different tests are not interchangeable.

While the high court has already said states can't have a strict IQ test score cutoff of 70, Alabama argues the justices haven't been clear about how to analyze multiple IQ scores jointly. And, according

to the Yellowhammer state, someone is just as likely to score on the higher end of a margin of error as they are the lower. Smith could have a result in the mid to high 70s, they argue.

“Moving the line from 70 to 75 to ‘account for the margin of error’ ignores half the range, i.e. the equal chance that a test score underestimates the taker’s true IQ,” wrote Marshall’s team.

The prosecutors said that, as Smith’s appellate ruling stands, “every 75 would be ‘consistent with mild intellectual disability’ and count in favor of the inmate.”

Smith’s lawyers fired back. They argued the state “seeks is a precise math equation where, as this court previously determined, none can exist... legal intellectual disability determination is not precise math.”

The science

In its filing to the Supreme Court, the state said that Alabama’s definition of intellectual disability isn’t unusual. The state said the American Psychiatric Association has “loosened the definition of intellectual disability with each new edition of its manual.”

But Dunham, who conducts independent research and analysis of death penalty issues, said most people who are intellectually disabled fall in that borderline range.

“If you are fighting over IQs at the margin, you’re actually dealing with a large percentage of the population who are intellectually disabled,” he said. “By trying to establish a threshold IQ limit, you are actually excluding the largest number of intellectually disabled people.”

Yet, the state said the appeals court ruling “has no limit.”

In a brief to the high court, professional psychological groups point out that the same diagnostic criterion is used in thousands of other situations for programs like Medicaid and Social Security, in schools and in hospitals. Its use for death penalty cases is minor in comparison.





The Supreme Court is seen on Capitol Hill in Washington, D.C. in this June 29, 2020 file photo. AP Photo/Patrick Semansky

Boyer, the court psychologist who hasn't worked on the Smith case, said professionals must look at someone's adaptive behavior when making a diagnosis, especially for those whose scores fall in the range of 70 to 79.

"I think the mistake is thinking about an IQ score as representing someone's intelligence," she said over a Zoom call. "An IQ score is the best way we have to estimate intellectual abilities... IQ tests are one way to get at human intelligence. But it's not everything."

She explained that someone with a score of 71 would likely have a 'true score' of anywhere between 66 and 76 (taking into account measurement error). A person with that score could have issues engaging in daily activities, counting money or working a steady job.

And the IQ scale is a continuum, Boyer said. Someone with a score of 70 isn't significantly different from someone who scores 72.

Taking sides

The federal government and 20 other states have backed Alabama against the courts and psychologists. In a joint brief, the group of states wrote that they "wish to restore their authority to choose and apply their own penological policies and rules."

America First Legal Foundation wrote in support of Alabama too, asserting that "ideological rot" has infested professional psychological groups' manuals.

The American Psychological Association, American Psychiatric Association, and Alabama Psychological Association have supported Smith.

The medical groups wrote that diagnoses based solely on IQ scores "are faulty and invalid." The scores are estimates, the groups wrote, not absolute measures. Intellectual disabilities are multi-faceted and if one looks only at test scores, "their diagnosis will be flawed, risking both false positives and false negatives."

“Every field of science and medicine develops over time... Refinement of the diagnostic criteria, including the criteria for intellectual disability, is evidence of the scientific method at work—not politics or ideology.”

Several other organizations have also jumped in to support Smith, including the American Association on Intellectual and Developmental Disabilities and the Arc of the United States.

‘Established science’

According to Marshall’s office, more and more criminals will escape capital punishment nationwide if the Smith ruling stands.

“The problem will only worsen as courts import the latest clinical standards, expanding the set of eligible claimants,” wrote state prosecutors. The case “threatens to disturb state sentences of violent murderers around the country.”

But Boyer, the longtime psychologist, said this science isn’t new.

Professionals have never relied solely on IQ, and she said it’s “always been the bigger picture. Why would continuing to do the bigger picture change anything?”

MORE BY IVANA HRYNKIW

Boyer said the ruling could be a blow to the use of scientific research in court. Established science is used in DNA evidence and other areas where scientific expertise is relevant, she added.

“It’s like exempting the criminal justice system from an established, validated scientific approach that’s used,” Boyer said.

“Why would you exempt the criminal justice system from established science?”

Judge grants new trial for Alabama Death Row inmate whose DNA did not match

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After recent DNA testing raised questions, a Montgomery man who Alabama has kept on a death row for 31 years will get another shot at justice. A federal judge has ordered a new trial in the 1992 murder case that landed [Christopher Barbour in prison](#).

The ruling comes as Alabama prosecutors have pushed to [explain away the DNA found on the victim](#), which points to someone already in an Alabama prison for an unrelated rape and murder.

Barbour, 55, was convicted more than three decades ago of the brutal slaying of Thelma Roberts, a single mother of two, when he was a homeless teenager living behind the mall in Montgomery. He confessed to the crime initially, although he said he was beaten by Montgomery police, and immediately tried to take back the confession. He has maintained his innocence in the more than three decades since.

In 2023, new testing revealed that evidence left on Roberts' body wasn't Barbour's DNA, nor that of the two friends also implicated in the crime. Instead, the new testing shows that the only DNA at the scene of the murder and rape was that of a young neighbor, Jerry Tyrone Jackson.

Faced with the new evidence, Alabama Attorney General Steve Marshall argued that the victim must have had sex with the neighboring teenager before being raped and murdered by a group of homeless men from across town who did not leave any physical evidence.

That did not sway a federal judge.

In an order over 150 pages, U.S. District Judge Emily Marks ruled on Friday that Barbour must receive a new trial. "The fundamental problem with the (state's) position is that DNA was left behind," wrote Marks.

Jackson, the neighbor, was a teenager at the time of the murder and was close with the Roberts family. He's currently serving time in another Alabama prison for a separate murder, which happened several years after Roberts' death. In that case, records show he stabbed and beat a north Alabama woman after she denied his sexual advances.

The DNA from Jackson "is powerful evidence that Barbour's confession is false," Marks wrote in an order from last year, "and that Mrs. Roberts' murder did not occur as the prosecution presented it at trial."

The Alabama Attorney General's Office, who has been prosecuting the case, has 90 days to begin a new trial for Barbour.

The state's top prosecutors did not respond to a request for comment.

The crime

In the spring of 1992, Roberts lived in Montgomery's Chisholm neighborhood with her two teenage children. The 40-year-old was married, but she and her husband were separated. She went to church often, didn't drink or smoke, and wasn't dating, according to her family. She worked as a housekeeper at the hospital on Maxwell Air Force Base.

On March 20, 1992, Roberts' two children met up with some friends after school, including their neighbor, Jackson. Jackson was 16 at the time, and the Roberts kids were 16 and 17.

The teens went to a neighbor's house down the street, and both spent the night. According to court records, Jackson was at the house off and on throughout the night: First, he exposed himself to a 13-year-old girl. He left the party at some point, but returned later and acted strangely, partygoers testified.

The next morning, the Roberts teens walked back to their house, where they found their mother dead on the bedroom floor.

An autopsy report revealed Roberts had been stabbed nine times, beaten, strangled and raped. A butcher knife from the kitchen was left protruding from her chest, and there was a plastic bag over her head. She had been partially burned, and several small fires had been started throughout the home.

After police ruled out the slain woman's husband and son, they changed course and looked into a group of neighborhood teenagers. Jackson was never interviewed.

Eventually, they focused on Barbour and another man named Christopher Hester.

Barbour was 22, homeless and taking shelter behind Montgomery's Eastdale Mall. He was struggling with the death of his mother and, despite a brief stay with his grandparents, Barbour wound up on the streets. He and his friends caught the attention of police as people of interest in a string of grocery store fires — police thought they may have been involved in a group that set small fires in supermarket aisles as a distraction to steal food. The murderer had also attempted to set fire to Roberts' body.

Investigators from the Montgomery police and fire departments talked to Barbour several times. They first found him at the mall's food court, before taking him to police headquarters.

"We questioned him intently," the lead detective at the time wrote in police notes. "He is a whimpie little thing, and scares real easy."

The detective continued, "We did not get anything concrete from this individual... he denies emphatically."

Police visited Barbour again in his campsite behind the mall, and on May 1 of that year administered a polygraph test.

"According to Barbour, the officers were verbally and physically abusive at times," the judge wrote in her 2024 order, "and (the detective) repeatedly slapped Barbour in the face when he did not know the answers...."

That evening, Barbour was fed dinner at the local fire station and allowed to sit on a fire truck. That night, he gave three confessions. None were in the presence of an attorney. Of the three, one was audiotaped and one was videotaped. One was not recorded at all.

According to court records, the FBI was, at the time, investigating Montgomery police for "using

physical abuse to induce confessions.” Records do not reflect how that investigation ended.

After the confessions, Barbour was arrested and charged with murder.

He implicated two other men in his tale, Hester and a juvenile boy who was never prosecuted. According to police at the time, Barbour said Hester raped Roberts, while he and the boy held Roberts down. Barbour said after the rape, he stabbed the 40-year-old.

The new ruling

Marks used dozens of pages in her Friday ruling to cite case law on the various claims Barbour presented in his lawsuit, which has been going on for more than 20 years.

She ordered the new trial in response to his claims about the original prosecutors in Montgomery County using false information during his trial and withholding evidence from his original defense team.

Barbour’s current lawyers argue that Montgomery prosecutors knew the DNA found on the victim didn’t match either Barbour or Hester, which would prove his confession was false.

“The relevant questions are whether Barbour’s statement that Hester raped Mrs. Roberts was false, and whether the prosecutor knew the statement was false. The answer to both questions is yes,” the judge wrote.

The Alabama Attorney General’s office doesn’t dispute the new DNA results. But prosecutors argue it doesn’t necessarily exonerate Barbour, either.

They argue that just because Jackson had sex with Roberts doesn’t mean she couldn’t have been raped by a different man later.

The state’s latest theory — though they write that it’s not their responsibility to offer one — is laid out in court records. The state said a “likely theory” is that the single mother also had sex with Jackson that same day. That was just before being raped and killed by a group of homeless men who she invited into her house hours later.

Marks said in her 2024 order and her latest one that the state’s theory “defied logic and common sense.

“Applying Occam’s Razor, the physical evidence, DNA test results, expert testimony, and common sense would cause reasonable jurors to doubt the veracity of the State’s theory,” the judge wrote previously. The DNA is “objective, reliable, and undisputed.”

“And unlike people, ‘DNA doesn’t lie.’”

The state also said it’s also possible that Barbour and Jackson worked together.

There’s no evidence the two ever met.

“It is puzzling that in this case, the State downplays the significance of the new DNA evidence when the State otherwise relies on similar DNA evidence to secure convictions and clear cold cases,” Marks wrote last year.

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As for Barbour's claims about his false confession, Marks said in her latest order that state courts long ago ruled that it was usable in court and she did not have the power to overturn that ruling.

"The Court does not take lightly Barbour's allegations of serious verbal and physical abuse by law enforcement," she wrote on Friday. "Yet, Supreme Court precedent prevents this Court from overturning a state court's decision merely because it finds that the decision was incorrect or because it would have reached a different conclusion."

She also ruled his lawyers at the time of his 1993 trial were not ineffective.