

trashing the truth

Evidence proves innocence after 24 years

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A cigarette butt set Johnny Briscoe free.

A rapist had smoked the Kool in a suburban St. Louis apartment in 1982 after assaulting his victim at least three times at knifepoint.

He told her his name was John Briscoe.

The real Johnny Briscoe had been at his mother's place 17 miles away watching the World Series the night of the attack.

Police pulled him into a lineup — the only of four men wearing a jailhouse jumpsuit.

"Halloween orange," he notes.

The victim incorrectly identified Briscoe. He refused a plea deal offering 20 years in prison. And then he was convicted, sentenced in his mid-20s to 45 years behind bars.

"How did I become part of that? That nightmare?" he says. "They just walked over me, man."

In prison, Briscoe befriended an inmate named Steve Toney who was prosecuted by the same district attorney and represented by the same defense lawyer for a rape he, too, didn't commit. Toney told him about DNA evidence and its potential to exonerate the wrongly convicted. Missouri freed Toney in 1996 after he proved his innocence through DNA.

Briscoe's appeal also lent itself to testing because police had gathered so much evidence: a rape kit; hairs believed to be the rapist's; a bedsheet, towel and pantyhose stained with semen; and three cigarette butts collected from the victim's ashtray. A St. Louis County Crime Lab report written the week of the rape stated that "the cigarette butts will be retained in the laboratory freezer for possible future comparison."

For three years in the mid-1990s, Briscoe's lawyer tried to prod the St. Louis County district attorney's office to find the items. At first, prosecutors refused even to look.

"We will neither conduct searches of our records nor turn over information unless subsequently ordered by a court to do so," wrote J.D. Evans, St. Louis County's first assistant prosecutor.

Innocence Project attorneys gave up on Briscoe in 1998.

He then turned to Jim McCloskey, founder of the New Jersey-based Centurion Ministries, a group known as the desperate man's Innocence Project because it champions cases even without DNA.

Writing that he would stake his life on Briscoe's innocence, McCloskey persuaded Evans to conduct two evidence searches in 2000.

The St. Louis Police Crime Laboratory reported that "all of the evidence had been destroyed." And the St. Louis County Crime Laboratory claimed it had searched its freezer and also concluded Briscoe's evidence had been tossed.

After another, court-ordered search in 2002, the St. Louis County Police's Bureau of Criminal Identification wrote that workers again "failed to locate any evidence associated with Mr. Briscoe" in the lab freezer.

"Year after year after year after year after year. Nothing. Nothing. No evidence," Briscoe says.

In April 2004, a power failure shut down the lab freezer. That triggered an inventory of the items stored there, including the cigarette butts from Briscoe's case. No one at the lab connected them to the court-ordered search two years earlier. They continued to sit unnoticed in the freezer until November 2005.

That's when Toney spoke at a conference about his experiences as a wrongfully convicted lifer saved by DNA testing. He mentioned his buddy Johnny as one of many innocent convicts wasting away because of lost evidence.

Sitting in the audience was a St. Louis County crime-lab supervisor whom Toney inspired to order yet another search of the freezer. And there they were — three cigarette butts in the same place records show they were stored 23 years earlier.

Testing found that two bore the victim's DNA profile. But the third was a mixture of saliva from the victim and, prosecutors announced, a man named Larry Smith.

Briscoe had known Smith from his neighborhood before his arrest.

Smith, it turns out, was serving time in the same prison for the rape of a woman in the same apartment complex as the victim assaulted in Briscoe's case.

Through the prison grapevine, Briscoe heard he was doing time for Smith.

"I approached him and asked him about it. He said, 'No, man, Johnny, I wouldn't do you like that.' So here in 2006 the record shows that he did do me like that. He did that. Larry did do that," he says.

Last summer, Briscoe hadn't been told that his evidence was found nor, prosecutors said, that DNA tests matched Smith.

By then Briscoe had done 24 years behind bars and been denied parole because he refused to express remorse for a crime he didn't commit. He was slated to go before the parole board once again in September 2006. This time, he was desperate. He told his mother and sister during a visit last July that he would say he was sorry.

"It went against everything I am, my whole being. But I was tired. I was at the edge," he says.

Two months before the parole hearing, two DA's investigators showed up at prison and handed Briscoe an envelope. In it was a long, white swab used for DNA sampling.

Slowly, Briscoe rolled it around his gums and the roof of his mouth and under his tongue.

"They said in 24 hours we'll be back with the results. And the results were beautiful," he says.

He was free the next day.

"They said, 'Mr. Briscoe, pack your stuff. You in the wrong place,'" he says. "And I said, 'Home, man. I'm going home.'"

Though the DNA on the cigarette butts was "good enough" to clear Briscoe, Evans, the prosecutor, said "it had degraded too much to convict Smith."

Now exonerated of all charges, Briscoe is living with his mother on St. Louis' north side and trying to mend his relationship with Lynette Briscoe, his wife at the time of his arrest whom he forced to divorce him so she could move on.

He is trying to make up for time lost with his daughter and son, who were 7 and 2 when he went to prison. He now has four grandchildren.

"I know they missed out on a lot. I did too. So we're trying to rekindle this relationship and just move forward," he says. "My people. I'm trying to know my people, man."

Briscoe lost nearly half his 52 years to a justice system that refused to see his innocence.

A year after his exoneration, he is both tickled by and uneasy with his freedom, leery of walking to the store or wandering too far from home. He remains incredulous of the twists his path has taken and mindful, always, of how fragile fate can be.

"Never in a million years," he says, would he have imagined his life could hinge on saliva soaked into a 24-year-old menthol.

"Cigarette butts?" he laughs. "I didn't think so. But yes, it could happen like that."

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