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Incentivized Witnessing: A Cause Of Wrongful Convictions

in another sentence of death for Cruz and 80 years for Hernandez.

In all, six snitches testified at the trials. Four, Stephen Ford, Steven Pecoraro, Dan Fowler, and Robert Turner, claimed Cruz had admitted the crime, and the others, Jackie Estremera and Armindo Marquez Jr., claimed Hernandez had.

After Ford came forward, prosecutors dismissed burglary charges against him. Pecoraro, Fowler, and Turner denied being offered or receiving anything in return for testifying, but one of the prosecutors later testified on Turner's behalf at a re-sentencing hearing. Estremera was facing contempt sanctions at the time he implicated Hernandez, and Marquez received leniency on pending burglary charges.

Shortly after the first trial, Brian Dugan, a repeat sex offender, confessed that he alone committed the crime. Although his confession was detailed and compelling, prosecutors insisted he and Cruz and Hernandez had committed the crime together. They clung to that theory even after DNA linked Dugan but not Cruz and Hernandez to the rape after the second trial.

In 1995, Cruz and Hernandez were exonerated when it became obvious that sheriff's deputies had fabricated an inculpatory statement that they attributed to Cruz at both trials. Cruz and Hernandez received pardons based on innocence in 2002.

One of the most extreme examples of incentivized witnessing leading to a wrongful conviction was that of Larry Peterson, who was convicted based upon the testimony of four incentivized witnesses. Peterson served 16 ½ years in New Jersey for felony murder and aggravated sexual assault. The following account of the Peterson case is taken from The Innocence Project's website:

"On the morning of August 24, 1987, the victim's body was found on a dirt road in Burlington County, New Jersey, by a woman walking her dog. She had been manually strangled and sexually assaulted. Sticks were in her mouth and vagina and on the ground near her. She was partially nude and some of her clothing had been torn. Both the victim's best friend and a former boyfriend called the prosecutor's office to report that Larry Peterson, who also lived

in the area, had fresh "fingernail" scratch marks on his arms.

Peterson went to the police voluntarily and denied committing the murder. Three men interviewed by police said that they were with Peterson at approximately the same time as the victim was found. The three men, after a number of interrogations, told police that Peterson had confessed to them while they were in the car together on the way to work. In this confession, Peterson allegedly told them that he ripped the victim's clothing off, had oral and vaginal sex with her, choked her, and put sticks in her. A jailhouse snitch with charges pending in three counties also testified at trial that he had heard Peterson admit that he had killed the victim.

A forensic scientist with the New Jersey State Police Laboratory System testified that her hair comparison analysis linked Peterson to the murder. She identified three foreign pubic hairs in the victim's pubic combings that she said exhibited the same physical and microscopic characteristics as Peterson's. She also linked a head hair fragment recovered from the bag that the victim was transported in to Peterson. Lastly, she examined a stick found 40 feet away from the victim and concluded that there were three of the victim's pubic hairs, one of her head hairs, and three of Peterson's pubic hairs on the stick.

Because the victim had sex with two consensual partners on the night of the murder, the forensic scientist also got samples of the partners' hairs. She concluded that neither of the consensual partners were the donors of the hairs. Another forensic scientist with the New Jersey State Police testified that there was seminal fluid on the victim's jeans and sperm on her underwear. No seminal fluid or sperm was found in her rape kit. All tests on these items of evidence were inconclusive at the time of trial.

Peterson testified in his own defense at trial. Alibi witnesses supported his whereabouts during the time of the crime. Work records also showed that he did not work on the day that the victim was found - the day he supposedly confessed on his way to work. The jury convicted Peterson of felony murder and aggravated sexual assault in March 1989. He was sentenced to Life, plus twenty years, in prison

Peterson sought access to DNA testing in the early 1990s. In 1995, the Innocence

Project began working on Peterson's case. Peterson won a motion for DNA testing in 2003. The hairs, rape kit, clothing, and fingernail scrapings were sent to the Serological Research Institute (SERI), where STR and mitochondrial DNA tests were performed. In 2005, SERI reported the results of testing: Peterson was excluded as a contributor of any and all of the biological evidence.

The pubic hairs collected from the victim's pubic combings and stick from the crime scene all matched the victim. Although the New Jersey State Police Laboratory had reported that there was no semen in the victim's rape kit, SERI identified sperm on her oral, vaginal, and anal swabs. Two different male profiles were found. One of the males was one of the victim's consensual partners, and his profile was found on her underwear, jeans, and rape kit.

The other unknown male was found on all of the swabs in her rape kit. Significantly, this unknown male profile was not found on the victim's underwear or jeans, indicating that she did not put these items of clothing back on before she was killed, consistent with the fact that she was found partially nude. Further, the victim's fingernail scrapings were subjected to testing and SERI found the profile of the same unknown male that deposited the sperm found in the victim's mouth, vagina, and anus. Based on this evidence, Peterson's conviction was vacated in July 2005.

Despite evidence demonstrating that none of the hairs attributed to Peterson belonged to him and the presence of an unknown male's sperm on the victim's oral, vaginal, and anal swabs, the prosecution indicated that they would re-trial Peterson. Peterson was released in August 2005 after borrowing thousands of dollars to post bail. On May 26, 2006, the prosecution decided to drop all charges against Peterson and his conviction was vacated.

The problem of incentivized witnessing causing or helping to cause a wrongful conviction is not limited to other states. It has occurred a number of times in New York.

Roy Brown was wrongfully convicted of murder and served 15 years until proven innocent by DNA. The details of Brown's case are taken from The Innocence Proj-

The following cases are taken from the report *The Snitch System* that was produced by The Center On Wrongful Convictions:

"Rolando Cruz and Alejandro Hernandez were twice convicted of the 1983 abduction, rape, and murder of 10-year-old Jeanine Nicarico in DuPage County. They initially were tried together and sentenced to death in 1985. After their convictions were reversed in 1988 on the ground that their trials should have been severed, separate re-trials ended



ect's website:

"On May 23, 1991, the victim, a social service worker, was found beaten, strangled and stabbed to death near the upstate New York farmhouse where she lived. The victim had been bitten numerous times all over her body. At the scene, police collected a bloody nightshirt and swabbed the bite marks for saliva.

The victim's farmhouse had also been set on fire. Roy Brown became a suspect because he had recently been released from a short jail term resulting from a series of threatening phone calls to the director of the social services agency where the victim worked.

A year earlier, the agency had placed Brown's daughter into a residential care facility. The victim was not involved in the case. A man that Brown was incarcerated with testified that, after his release, Brown called him and confessed to the crime over the phone.

The prosecution relied on the testimony of a bite mark analyst who stated that the seven bite marks on the victim's body were "entirely consistent" with Brown. A defense expert stated that six of the bite marks were insufficient for analysis and the seventh excluded Brown because it had two more upper teeth than he had. Saliva from the nightshirt and bite mark swabs were analyzed with inconclusive results. In 1995, Brown sought testing on the bite mark swabs, but they had been consumed during previous testing. Brown was also told that the saliva from the nightshirt had been consumed.

Brown then took it upon himself to try and find the victim's true killer. After a fire destroyed all of his court documents at his step-father's house, he asked for copies of his documents under the Freedom of Information Act. He found documents that had not been disclosed to the defense implicating another man, Barry Bench.

Bench had acted oddly around the time of the murder and was upset at the victim because the farmhouse that she lived in belonged to the Bench family (she had dated Bench's brother up until two months before the murder). In 2003, Brown wrote to Bench, telling him that DNA would implicate him when Brown finally got testing.

Bench committed suicide by stepping in front of an Amtrak train five days after the letter was mailed. In 2005, the Innocence Project took on Brown's case and discovered that there were six more saliva stains on the nightshirt that could be tested. In 2006, DNA testing proved that the saliva on the shirt did not match Brown.

After this exclusion, the Innocence Project located Barry Bench's daughter, who gave a sample of her DNA. Half of her DNA matched the saliva on the shirt: exactly what you would expect from a daughter. Roy Brown was released from prison on January 23, 2007. The prosecution formally dropped all charges on

March 5, 2007."

John Kogut, Dennis Halstead, and John Restivo- codefendants, all served 17 years for a murder which DNA proved that they were innocent of. In addition to the prosecution using a false confession against them, they also used incentivized witnesses.

The Center On Wrongful Convictions suggests the following measures: 1) Snitches be wired to electronically record incriminating statements made by suspects, at least when the relevant conversations occur in jails or prisons. 2) Law enforcement authorities electronically record their discussions with potential snitches and provide copies of the recordings to the defendant. Prosecutors disclose to defendants whether snitches—be they jailhouse informants, purported accomplices, or eyewitnesses—have received or been promised leniency, immunity from prosecution, cash, or anything else of value.

From my perspective, although I could see how the measures advocated for by The Center On Wrongful Convictions could help things, I think that the better way to go would be to eliminate giving rewards in exchange for testimony. People who have knowledge of a crime should come forward on a moral basis, and not for a reward.

A reward poses too great a risk that they will fabricate. I don't think that a jury being told that a witness has been given a benefit in exchange for testimony is enough for the jury to view the testimony with the amount of skepticism that is warranted. As support for that theme, I would like to give some thumbnail sketches of some of the cases in which innocent people were sent to death row based upon incentivized witnessing. I take the details of the cases from the above mentioned report by The Center On Wrongful Convictions:

- Larry Hicks was sentenced to death in 1978 for a double murder in Indiana.

Snitches: Two women who claimed to be eyewitnesses.

Exonerated By :The women's recantations .

Years lost: 2.

- Madison Hobley was sentenced to death in 1990 for an arson fire that claimed seven lives in Chicago.

Snitch: A suspect in another arson fire in the same neighborhood.

Exonerated by: Pardon based on innocence.

Years lost: 13.

- Verneal Jimerson was sentenced to death in 1985 for a double murder in Illinois.

Snitch: A purported accomplice promised release for testifying.

Exonerated by: DNA and convictions of three actual culprits.

Years lost: 11.

- Richard Neal Jones was sentenced to death in 1983 for a murder in Oklahoma.

Snitch: One of the actual killers.

Exonerated by: Confession of one of the snitch's confederates.

Years lost: 4

- Curtis Kyles was sentenced to death in 1984 for a murder in New Orleans.

Snitch :The actual killer.

Exonerated by: Evidence that the snitch lied.

Years lost: 14.

- Fredrico M. Macias was sentenced to death in 1984 for a double murder in Texas.

Snitch: A purported accomplice who testified pursuant to a plea agreement.

Exonerated by: A solid alibi.

Years lost: 10

- Steve Manning was sentenced to death in 1993 for a murder and armed robbery in Illinois.

Snitch: A jailhouse informant.

Exonerated by: Dismissal of charges.

Years lost: 10

Walter McMillian was sentenced to death in 1988 for a murder in Alabama.

Snitch: The actual killer.

Exonerated by: Exculpatory documents withheld at the trial.

Years lost: 10

- Juan Roberto Melendez was sentenced to death in 1984 for a murder and armed robbery in Florida.

Snitch: A convicted felon who testified in anticipation of leniency.

Exonerated by: Withheld police reports.

Frequently prosecutorial misconduct accompanies incentivized witnessing, in that sometimes witness's lie by claiming that they have not received or will not receive a benefit in exchange for their testimony when in fact they have. Prosecutors, being aware that they are lying, have a moral obligation to correct that testimony, but too often aid and abet the perjury by allowing the perjured testimony to go uncorrected, or fail to turn over information that the witness has received a benefit in exchange for testifying.

As already shown, sometimes the persons who are testifying against the defendant are the very people who themselves committed the crime!!! The following are two more cases in which that has happened, taken from the aforementioned report:

- Randall Dale Adams, sentenced to death in 1977 for the murder of a police officer during a traffic stop in Dallas, Texas.

- Gary Beeman, served 3½ years on death row in Ohio.

- Anthony Siliah Brown, sentenced to death in 1983 in Florida.

- Joseph Burrows, sentenced to death in 1989 for the robbery and murder of an elderly farmer in Illinois.

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