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Wrongful Convictions Just Keep Coming Out, Part 6

Wrongful convictions are defined as when innocent people are sent to prison for crimes that they are innocent of. Such instances are not rare. Across the country there have been 225 DNA-proven wrongful convictions. That figure, however, is barely the tip of the iceberg.

There are many systemic causes of wrongful convictions: prosecutorial misconduct such as withholding evidence from defense attorneys, suborning perjury and allowing perjury to go uncorrected; coerced false confessions; misidentifications; incentivized witnessing, which is when witnesses get a reward for testifying, whether that reward is financial or a break in their sentence.

Additional causes of wrongful conviction include junk science, which is the use of techniques and methods that have no scientific basis or empirical data to back it up but, nonetheless, masquerades as scientific; bad public defenders; compounded sometimes by judges who are not vigilant in ensuring that trials are fair and that no miscarriages of justice go forward in their courtrooms.

In order to prove the point that wrongful convictions are not rare, and to emphasize the need for legislative remedies to improve the accuracy of our criminal justice system, I embarked upon this series of articles some months ago. This is the sixth installment in the series. In the intervening time since the last installment, there have been FIVE more wrongful convictions exposed.

Steven Barnes

Steven Barnes spent 20 years in prison in New York State before being proven innocent by DNA. His exoneration makes him the 24th proven wrongfully convicted individual in New York as proven by DNA. The following press release was issued by **The Innocence Project**, who represent Barnes:

"Innocence Project client Steven

Barnes was released from prison on November 25th, nearly two decades after he was wrongfully convicted of rape and murder in Oneida County. New DNA test results support Barnes' longstanding claim of innocence in the 1985 rape and murder of a high school student for which he was convicted in 1989. Barnes' conviction highlights the pressing need for national standards in forensic science, the Innocence Project said.

Eyewitness testimony at his trial was shaky, but forensic testimony linked him to the crime. The forensic evidence included testimony that soil on Barnes' truck tires was similar to soil at the crime scene and testimony that an imprint on the outside of Barnes' truck matched the fabric pattern on a particular brand of jeans the victim wore when she was killed. Neither soil comparison nor jean pattern imprinting is scientifically valid, and they should not be relied on in court without proper bounds and/or experts testifying for both parties, the Innocence Project said.

The Innocence Project began representing Barnes in 1993 and the Oneida County District Attorney agreed to conduct DNA tests on evidence from the crime scene. Those tests were inconclusive because the DNA technology at the time could not yield a profile. In 2007, the Innocence Project reopened the case, and Oneida County District Attorney Scott McNamara agreed to conduct more advanced DNA testing (not available in the 1990s).

New DNA test results on material collected from the victim's body and clothing do not match Barnes, leading to today's joint motion to throw out his conviction and release him from custody. 'Unvalidated and exaggerated science convicted Steven Barnes and cost him nearly two decades, but real science finally secured his freedom,' said Barry Scheck, Co-Director of the Innocence Project, which is affili-

ated with Cardozo School of Law.

'This is the latest in a long line of wrongful convictions based on improper or invalid forensic science that were ultimately overturned through DNA testing. Until there are clear national standards about what kind of forensic science can be allowed in court, more people like Steven Barnes will be wrongfully convicted while the actual perpetrators of violent crime remain at large.'

Barnes was 19 years old when 16-year-old Kimberly Simon's body was found near the Mohawk River in Whites-town, New York. She had been raped and strangled. Four years later, when Barnes was 23 years old, he was tried and convicted for the crime. Eyewitnesses testified that they saw Barnes in town on the evening of the murder, and that they may have seen Barnes and Simon together – but no witnesses could say with certainty that Barnes ever met Simon, let alone that they saw him with her on the night of the murder.

The lack of other evidence put particular weight on the forensic testimony. A criminalist testified that an impression on Barnes' truck was similar to the fabric pattern and fibers in the jeans the victim wore when she was attacked. She testified that she compared the evidence to other brands of jeans, and determined that they were not similar. The victim wore black Zena brand jeans, which were called "tuxedo jeans" because of their style.

Testifying about photos of Zena tuxedo jeans and a slide with the imprint from Barnes' truck the criminalist testified, '[Y]ou can hold it up to the light and the high contrast will help you to see that the patterns are similar.' Another prosecution witness worked as a salesman for manufacturers, including Zena jeans, and he testified that 24 to 36 pairs of the Zena tuxedo jeans were sold to stores in Oneida County 1985. He claimed that the jeans

were 'a very unique kind of garment.'

Analysis of jean patterns and comparison of soil have not been tested to determine their scientific validity; as a result, it is impossible to know how many other soil samples might be similar to soil from the crime scene or the likelihood that other jeans have the same pattern (assuming the marks on the truck were from jeans).

'Even though these disciplines are not rooted in solid science, they could be used in courtrooms across New York and the country to this day. Much more research is needed to validate the probative value of pattern and impression evidence like bite marks, toolmarks and fabric comparison,' Scheck said. At the request of Congress, the National Academy of Sciences is preparing to release a major report on forensic science nationwide. A blue-ribbon commission has spent 18 months closely examining forensic disciplines that are used in courtrooms nationwide, and the unprecedented report will outline their findings and recommendations for how to ensure that the criminal justice system relies on sound science.'

Miguel Roman

Miguel Roman served 20 years in a Connecticut prison for murdering his pregnant girlfriend before being proven innocent by DNA. He was convicted based upon on circumstantial evidence and witness testimony. That circumstantial evidence consisted of prosecutors arguing that Lopez was pregnant with Roman's child and that he had tried to have Lopez abort the child or go elsewhere to give birth. Prosecutors also presented evidence that Roman gave conflicting information about when he was last with Lopez, and asked a friend to lie to police about his whereabouts at the time of Lopez's death.

At trial, DNA test results showed that the DNA from the crime scene did



not match Roman, yet he was convicted anyway.

Two weeks after overturning Roman's conviction, authorities arrested Pedro Miranda for the crime. The following details are taken from *The Hartford Courant*:

"Pedro Miranda faces three counts of murder, two counts of felony murder, two counts of capital felony and a single count of first-degree kidnapping. He could face the death penalty.

Besides Cruz's murder for which Roman was wrongfully convicted, Miranda is charged with the 1988 murder of Carmen Lopez, 17, and the presumed death of Rosa Valentin, 16, who disappeared in 1986 and whose body has never been found.

It was DNA evidence found on Lopez that led police to Miranda more than 20 years after the last killing. Miranda has had a long criminal history. If police had checked Miranda's background, they would have discovered a man with a history of sexual attacks on young Hispanic women dating to 1977 when he was convicted of having sex with a 14-year-old girl.

Three years later, he was charged with assaulting a 17-year-old girl who was nine months pregnant; he was convicted and received a six-month suspended sentence.

In 1981 he was convicted of kidnapping charges after he and two other men abducted a 22-year-old Hispanic woman, took her to an apartment and tried to gang rape her, records show. Miranda was given a sentence of five to 10 years for that crime. It is not clear how much of that sentence he served.

His last arrest was in 1998 when he abducted a 24-year-old woman, drove her to West Hartford and choked and raped her. The woman told police, 'She felt he was going to kill her because of the way he was choking her.' Miranda pleaded guilty to sexual assault and was sentenced to 57 months in prison. He also was ordered to

register as a sex offender and provide a DNA sample. It was that sample that ultimately led police to him now."

Chaunte Dean Ott

The facts of this case are taken from *The Chicago Tribune*, written by Associated Press writer Todd Richmond:

"A jury convicted Ott of first-degree homicide in Payne's death in 1995. Prosecutors built their case around testimony from two men, Richard Gwin and Sam Hadaway, who said they and Ott picked up Payne and drove to an abandoned building.

Hadaway, who testified to avoid a charge of being a party to homicide, told jurors Ott tried to rob and sexually assault Payne before cutting her throat. The Wisconsin Innocence Project, a group of law students and professors from the University of Wisconsin-Madison took up Ott's case in 2002. The project asked the state crime lab for new DNA tests on swabs taken from Payne's genitals. The tests revealed a DNA profile that didn't match Ott. It did, however, match a profile taken from the bodies of Joyce Mims and Ouithreaun Stokes.

Mims was killed in 1997 and Stokes in 2007, both within a few blocks of where Payne's body was found. Both slayings remain unsolved. Ott, now 35, argued on appeal that the common DNA on Payne, Mims and Stokes and the geographical proximity of their bodies suggest the same person killed all three. It couldn't have been him because he was in prison when Mims and Stokes were killed, he contended.

State Department of Justice attorneys, who handled the appeal for Milwaukee prosecutors, dismissed Ott's arguments as speculation. There's no proof the DNA on Payne came from her killer and the three slayings were separated by wide gaps in time and the victims' ages and race, they said.

But the First District Court of Appeals agreed with Ott. The court said the slayings were similar, pointing to the common DNA profile, the possible sexual component in each slaying and the geographical

area. The time gaps don't outweigh the DNA profile, the court added.

The evidence would be enough to potentially create doubt in jurors' minds about Ott's guilt, the court said, and ordered the new trial.

Ott's attorney John Pray said that the evidence shows that there is definitely a serial killer on the loose in Milwaukee. The same man's DNA is on the scene of all three of those. This guy's been out there for a long time and he's still murdering as of 2007,' Pray said. However, Milwaukee Police spokeswoman Annie E. Schwartz conceded a serial killer is a possibility, but said all the DNA tests conclusively show is the same man was with all three females and detectives still believe Ott killed 16-year-old Jessica Payne. 'We certainly have unsolved homicides from those years, but there's not enough evidence to link them all together,' she said."

Richardo Rachell

Richardo Rachell was wrongfully convicted of sexual assault. The following report was published in *The Houston Chronicle*:

While serving a 40-year sentence for the 2002 sexual assault of an 8-year-old boy, which DNA evidence now shows he did not commit, Rachell vehemently pressed his innocence, according to a *Houston Chronicle* review of court records. He wrote letters to his lawyer and the judge. He warned that another man in his own neighborhood was still assaulting other children. He found newspaper clippings published in 2002 and 2003 that described those attacks — eerily similar to the one for which he was accused. For six years, one month and 19 days, Rachell pressed on. Even when no one seemed to listen.

That changed last year when a judge cleared the way for tests to be performed on biological evidence that Houston police gathered in 2002 but never examined. Those tests, completed last month, exonerated Rachell and point to another suspect whom, so far, prosecutors have refused to identify.

Within eight months after his arrest, and without any forensic evidence, Rachell went to trial. Testimony from the 8-year-old victim and one of his friends served as the core of the case against him. While in custody, Rachell repeatedly urged prosecutors and his own defense attorneys to investigate similar attacks that occurred on children in the neighborhood south of downtown where Rachell and the victim in his case both lived, attacks that continued after he was in custody.

Clemons, the arresting officer, is quoted in one article detailing similar attacks that took place in the neighborhood after she arrested Rachell. Clemons, through HPD spokesman John Cannon, declined a request for comment about the case. Cannon cited the possibility of future litigation.

In another story, published in the *Chronicle* Oct. 25, 2003, that Rachell sent authorities, police described a man riding around the same neighborhood on a gray bicycle who repeatedly used the promise of chore money to lure boys to secluded spots and then molest them. The facts in those attacks closely mirrored the complaint by the 8-year-old in that same neighborhood that led to Rachell's imprisonment for sexual assault. Rachell was accused of riding around on a bicycle, promising money for a chore and then assaulting the boy at knifepoint on Oct. 20, 2002."

In a 2003 *Chronicle* story, police described the attacker as having assaulted his first victim on Nov. 16, 2002, offering an 8-year-old \$15 to throw newspapers and then taking the child to an apartment and molesting him. The next assaults were on boys aged 6 and 10 — all within a few miles of each other. In each case, a juvenile investigator said the boys were threatened with knives or box cutters. In one of several letters complaining about the handling of his case to his own lawyers and to the courts, Rachell repeatedly claimed that "a man was out there in the same neighborhood doing the same thing that I was alleged to have done." ■

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