

WRONGFUL CONVICTIONS LEADING TO THE DEATH PENALTY

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The death penalty also known as Capital punishment stated in California's Penal Code Section 3600-3607. Generally homicides are committed in moments of anger or unprocessed thinking. Criminals are commonly severe drug and alcohol users, abusers or impulsive individuals. In addition, homicides are usually committed in the heat of anger or deep emotion while either under the influence of substances or mentally ill. Yet in what circumstances could those who are waiting on death row be innocent many men have been killed without the sufficient evidence in order to fully put them at the scene of the crime such as the following cases *Hinton v. Alabama*, *Weary v. Cain*, *Williamson v. Ward*, *Hodgkins v. State of Florida*, & *Brown v. State of Texas*.

When it comes to death-penalty cases, this is not a huge cause for concern. In his concurrent opinion in the 2006 Supreme Court case *Kansas v. Marsh*¹, Justice Antonin Scalia suggested that the execution error rate was minimal. When determining innocence with full certainty is an obvious challenge, if all death row prisoners were to remain under this sentence indefinitely, how many of them would have eventually been found innocent (exonerated)?

One key reason for the contentious debate is the concern that states are executing innocent people. How many people are unjustly facing the death penalty? By definition, it is difficult to obtain a reliable answer to this question. Presumably if judges, juries, and law enforcement were always able to conclusively determine who was innocent, those defendants would simply not be convicted in the first place. When capital punishment is the sentence, however, this issue takes on new importance.

A number of people are claimed to have been innocent victims of the death penalty. Newly available DNA evidence has allowed the exoneration and release of more than 17 death row inmates since 1992 in the United States, but DNA evidence is available in only a fraction of capital cases. Others have been released on the basis of weak cases against them, sometimes involving prosecutorial misconduct; resulting in acquittal at retrial, charges dropped, or innocence-based pardons. The Death Penalty Information Center (U.S.) has published a list of 10 inmates "executed but possibly innocent at least 39 executions are claimed to have been carried out in the U.S. in the face of evidence of innocence or serious doubt about guilt. The Following are some cases which exoneration has been applied.

Problems with expert evidence presented by forensic scientist or forensic examiners is the second leading cause of wrongful convictions; erroneous forensic evidence supported the convictions of 57% two hundred forensic science error. Here's a case that presents such error between February and July of 1985, there were a series of restaurant robberies in Birmingham, Alabama. During the commission of the first two robberies, the manager of each restaurant was shot and killed by a .38 caliber bullet. The manager of the restaurant that was the target of the third robbery, however, survived and identified Anthony Ray Hinton ²in a photographic array. The police arrested Hinton and found in his house a .38

¹ *Kansas V. Marsh* 548 U.S. 163 (2006)

² *Hinton v. Alabama*, 134 S. Ct. 1081 - Supreme Court 2014

caliber revolver. After Alabama's Department of Forensic Sciences analyzed the bullets and found that they had been fired from that revolver, Hinton was charged with two counts of capital murder for the killings during the first two robberies. At trial, the prosecution's case rested on the connection between the bullets located at the scenes of the crimes and the gun located at Hinton's house; no other physical evidence was presented. Hinton's defense attorney filed a motion for funding to hire an expert witness to rebut the prosecution's experts, which the judge granted. Because the judge did not know how much funding he could grant, he invited the attorney to file additional requests for further funding if necessary. Hinton's attorney did not take the judge up on this invitation because he did not know that Alabama law allowed for funding in excess of what the judge had already granted. With this amount of money, the defense attorney was only able to find one expert who was willing to testify, and that expert was badly discredited during cross-examination. Hinton was convicted and sentenced to death. In his post-conviction petition, Hinton argued that his trial attorney was ineffective because he did not seek additional funds to obtain more effective expert testimony. The circuit court denied the petition and held that the jury had not been prejudiced against Hinton due to the testimony. The Alabama Court of Criminal Appeals affirmed. The Alabama Supreme Court reversed and held that the trial court did not rule on whether or not Hinton's trial expert was qualified to testify. On remand, the circuit court held that Hinton's trial expert was qualified to testify, the Alabama Court of Criminal Appeals affirmed, and the Alabama Supreme Court declined to review the case.

Hinton was convicted of the 1985 murders of two fast-food restaurant managers based upon the testimony of a state forensic examiner that the bullets in the two murders came from a gun found in Hinton's house. The prosecutor, who had a documented history of racial bias, said he could tell Hinton was guilty and "evil" just by looking at him. Hinton was arrested after a victim in a similar crime identified him in a photo lineup, even though Hinton had been working in a locked warehouse 15 miles away when that crime was committed. Hinton's lawyer did not know the law and mistakenly believed that funding to hire a qualified firearms expert was not available. Instead, he hired an expert he knew to be inadequate, and as a result failed to present any credible evidence to rebut the state's claim that the bullets were fired from Hinton's gun. In 2002, three top firearms examiners testified that the bullets could not be matched to Hinton's gun, and may not have come from a single gun at all. In 2014, the U.S. Supreme Court unanimously held that Hinton had been provided substandard representation and returned his case to the state courts for further proceedings. Anthony Ray Hinton was exonerated after spending nearly 30 years on Alabama's death row. He was released on April 3, 2015.

Perjury is common in wrongful convictions. Informant perjury is 49% of the first 111 death penalty exonerations. In most capital cases the real perpetrator is often considered a suspect, and in several cases police generalize their focus on an innocent person, the actual killers could lead an investigation further amiss with false testimony. Witnesses frequently lie to the police for a number of reasons, police tend to believe that they are capable at detecting a witness by deception certain studies show that investigators do no better at detecting liars. In the case of *Weary v. Cain*³ Eric Walber an honor student and football player was killed in Hammond, Louisiana after he left his job as a pizza delivery driver. A total of five people were indicted, based on the information provided by a sixth person who was reportedly involved, Eric Brown. The first time that Weary was identified as being involved was in a

³ *Weary V. Cain*, Dist. Court, ED Louisiana 2013

story related by Sam Scott, who was in jail on other charges. Scott claimed that Wearry had confessed to him that he had shot Walber and dumped his body on Blahut Road. This went on for four more statements to the police by Scott, all of which varied from the previous statements, until it got to the statement that was told at trial.

In that statement, Wearry and Randy Hutchinson allegedly stopped Walber and Hutchinson threw Walber in the cargo area. What wasn't covered was that Hutchinson had just had knee surgery nine days earlier, and was likely physically unable to manhandle Walber in that manner. The same was the true for the statements given by Brown, who acknowledged during cross-examination that his story had changed several times. Wearry claimed that he was at a wedding reception in Baton Rouge, 40 miles away. That was corroborated by Wearry's girlfriend, her sister, and her aunt. The all-white jury convicted Wearry in just over two hours. On direct appeal, Wearry raised a Batson claim, alleging that the State had prevented any blacks from being seated on the jury, along with a claim of insufficient evidence. The Louisiana Supreme Court affirmed the conviction and Wearry sat on death row at Angola.

There were several factors were not exactly lawful about the conviction such as the police had information that two inmates who were in jail with Scott said he wanted to make sure that Wearry was executed because of a personal issue between them. One inmate had come forward and made a statement against Wearry, but then recanted the next day, stating that he had been pressured to make the statement by Scott. This information was not released to the defense team for Wearry. Secondly police had promised Brown that they would "talk" to the DA if Brown would help them—yet at the trial the prosecutor stated that Brown had not sought any kind of a deal. Brown had asked for a deal at least twice before the trial. Lastly the State had the medical records of Hutchinson but did not provide them to the defense, and a later expert-witness stated that Hutchinson could not have run and struggled with Walber on that surgically repaired knee so soon after the surgery.

The Supreme Court granted him a new trial following the retrial of *Wearry v. Cain*ⁱ the U.S. Supreme Court reversed the conviction, in a per curiam decision and without hearing oral arguments. Per curiam decisions from the Court are handed down without an oral argument or briefing from the parties on the merits and typically "signal that a case was uncontroversial, obvious, and did not require a substantial opinion; the State and the Louisiana courts below that endorsed the State's position suffered the rebuke. It compared the State's case to a "house of cards" and noted, citing *Smith v. Cain*ⁱⁱ, that: Even if the jury—armed with all of this new evidence—could have voted to convict Wearry, we have "no confidence that it would have done so." The Supreme Court noted in its opinion that Louisiana courts had "egregiously misapplied settled law" in ruling against the defendant.

One of the most reliable methods can produce incorrect results DNA evidence since 1989, there have been thousands of cases where the prime suspects were identified and pursued until DNA testing proved that they were wrongfully accused such as the case of *Williamson v. Ward*ⁱⁱⁱ. On December 8, 1982, Debbie "Debbie Sue" Carter was found sexually assaulted and murdered in her apartment in Pototoc County, Oklahoma. Fritz and Williamson were known to frequent the restaurant where the victim worked and allegedly the victim had complained to a friend that they "made her nervous." Williamson had also been seen at the restaurant the night of the murder, according to a man named

Glenn Gore. Williamson and Fritz were not charged until five years after the murder (the charge was delayed by state exhumation of the victim after an incorrect analysis of fingerprints at the scene was noted). An inmate that Fritz was paired with eventually came forward and stated that Fritz had confessed to the murder. This confession came one day before the prosecution would have been forced to drop the charges against Fritz. Another informant testified that she had heard Williamson threaten to harm the informant's mother as he had the victim. Additionally, police said that Williamson told them he had a dream about committing the crime. He allegedly told police that he dreamed that he stabbed and strangled the victim. This statement was treated as a confession. Forensic testing was performed on various items of evidence. Seventeen hairs were recovered and were "matched" to both Fritz and Williamson, though we now know that this type of hair analysis is not a validated forensic science practice. Furthermore, the semen evidence found at the crime scene was subjected to blood testing, and the results suggested that the perpetrators were non-secretors, and both Fritz and Williamson are non-secretors. Williamson was sent to death row and Fritz was sentenced to life in prison. After their convictions, Fritz and Williamson filed separate appeals. Upon the denial of his claim, Fritz contacted the Innocence Project and learned that Williamson's lawyers were planning to test the physical evidence. The Innocence Project filed an injunction to make sure that the cases were joined with regard to DNA testing and were granted testing in 1998. The test results proved conclusively that neither Fritz nor Williamson was the source of the semen found and that none of the "matched" hairs belonged to them. Further testing of the evidence matched to Glenn Gore, the state's main witness at trial. Williamson and Fritz were released and exonerated in April 1999, after spending 11 years in prison for a crime they did not commit. Williamson had, at one point, come within five days of execution.

In *Hodgkins v. State of Florida*^{iv} the prosecution relied on insubstantial DNA evidence leading to the wrongful conviction of "Derral Wayne Hodgkins in September 2011 for the murder of Teresa Lodge in Land O'Lakes, Florida sometime from the afternoon of September 27, 2006 to the early morning of September 28.. Hodgkins was an ex-boyfriend of Lodge. On November 1, 2007 the Florida Department of Law Enforcement Crime Lab reported that DNA consistent with Hodgkins' profile was detected under fingernails on her left hand (Lodge was left handed). When questioned by police, Hodgkins told the officers that he and Lodge had at one time been a couple, and in 2004 she told him she was dealing cocaine and she didn't want him to be involved if she was arrested for it. He said they remained friends and that whenever Lodge hugged him she scratched his back with her fingernails. He said she hugged him when they saw each other several days before her murder. With no evidence to link Hodgkins to Lodge's murder except for the DNA, he was arrested and charged on November 18, 2007 with premeditated first-degree murder. After awaiting trial for more than three years in the Pasco County Jail, his trial that began in January 2011 ended in a mistrial. His retrial began in August 2011. The prosecution didn't present any evidence that blood was found in the DNA sample, that Hodgkins' blood was on Lodge or in her apartment, and none of the 18 fingerprints lifted from the crime scene belonged to Hodgkins. Furthermore, a beer bottle found in her apartment with her blood on it was the likely murder weapon, but it didn't have Hodgkins' fingerprints or DNA on it. After the prosecution closed its case that was based on the circumstantial DNA evidence, the trial judge denied the motion by Hodgkins's lawyers for a judgment of acquittal because the prosecution failed to present sufficient evidence to prove his guilt beyond a reasonable doubt: and specifically, no evidence disproving that the DNA was deposited underneath Lodge's fingernails was from her hugging Hodgkins several days before

her death. After the jury found Hodgkins' guilty of first-degree murder on September 7, 2011, he was sentenced to death on May 1, 2013. A key issue in Hodgkins appeal was the insufficiency of the prosecution's evidence. On June 18, 2015 the Florida Supreme Court issued its ruling that stated: "In this circumstantial case, the State simply has not pointed to legally sufficient evidence establishing a nexus between Hodgkins' DNA and any criminal conduct on his part. Furthermore, we find that the State's evidence is wholly consistent with Hodgkins' hypothesis of innocence that someone else killed Lodge. Preliminarily, we conclude that the timeframe within which Lodge could have been killed was far too lengthy to reasonably infer that only Hodgkins made contact with Lodge. ... Lodge was murdered between approximately 2:30 p.m. that Wednesday and 5:30 a.m. the following day—a fifteen-hour window. ... Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence.... Because we find that the record lacks competent, substantial evidence to sustain the conviction, we reverse and vacate Hodgkins' conviction and sentence." The case was remanded to the trial court "with directions that a judgment of acquittal be entered." (Derral Wayne Hodgkins v. State of Florida, No. SC13-1004 (Flor. Sup. Ct., 6-18-2015)) On September 24, 2015 the Supreme Court denied the State of Florida's Motion for Rehearing. On October 12, 2015 the Supreme Court issued a Mandate to Pasco County Circuit Court commanding it to act in accordance with the Court's opinion of June 18, 2015. Hodgkins was released directly death row to the street on October 12, 2015. A judgment of acquittal was entered by the Pasco County Circuit Court on October 20, 2015."

Prosecutorial misconduct, whether or not it leads to wrongful convictions is common. In-court misconduct includes making inflammatory comments or mischaracterizing evidence to the jury, allowing witnesses perjury, or permitting snitches to lie about payoffs with their testimony. Prosecutors have been known to destroy evidence or even withhold it as in the following case of *Brown V. State* of Texas occurred in Harris County, Texas where prosecutors have announced on June 8, 2015 that they have dismissed charges against Alfred Dewayne Brown, who had been sentenced to death in 2005 for the murders of a Houston police officer and a store clerk during a robbery. The Texas Court of Criminal Appeals had overturned Brown's conviction last year because prosecutors withheld a phone record that supported Brown's alibi. Prosecutors in 2013 said that the phone record had been inadvertently misplaced. Brown had long maintained that he had been alone at his girlfriend's apartment at the time of the murder, and that he had called her after seeing reports of the shooting on television. Defense lawyers argued that the time of the phone call established that Brown could not have been at the store when the murder occurred. There was no physical evidence against Brown, and a series of Pulitzer prize-winning columns by Houston Chronicle writer Lisa Falkenberg disclosed irregularities in the grand jury process, that Brown's girlfriend had faced intimidating questioning and threats of perjury by a police officer who was the grand jury foreman, and that she had been jailed for seven weeks until she changed her testimony to implicate Brown. Since 2007, Brown's attorneys have compiled strong evidence that the murder was committed by another man with a history of robbery and connections to the co-defendants in the crime. Despite a 2008 motion to test the alternate suspect's DNA, such a test has not been carried out.

Many of the releases of innocent defendants from death row came about as a result of factors outside of the justice system. Society takes many risks in which innocent lives can be lost. We build bridges, knowing that statistically some workers will be killed during construction; we take great precautions to reduce the number of unintended fatalities. But wrongful executions are a preventable risk. By substituting a sentence of life without parole, we meet society's needs of punishment and protection without running the risk of an erroneous and irrevocable punishment.

ⁱ *Wearry V. Cain*, Court of Appeals, 5th Circuit 2014

ⁱⁱ *Smith v. Cain* 132 S. Ct. 627 (2012)

ⁱⁱⁱ *Williamson v. Ward*, 101 F 3d 1508- Court of Appeals, 10th Circuit (1997)

^{iv} *Hodgkins v. State of Florida* 613 So. 2d 1343 (Fla. Dist. Ct. App. 1993)

^v *Brown v. State of Texas* 270 SW 3d 564- Tex: Court of Criminal Appeals 2008