



First CA State Conviction Vacated Due to False Hair Match Testimony

SANTA CLARA, Calif., Jan. 26, 2018— Thanks to scientific advances and a changing understanding of the validity of microscopic hair comparison testimony, Santa Clara County Superior Court vacated Glenn Payne’s 1991 conviction for lewd conduct with a child. This is the first conviction reversed in California state court due to false hair match testimony. The Northern California Innocence Project (NCIP) at Santa Clara University School of Law represented Payne. The Santa Clara County District Attorney conceded that the conviction should be reversed.

Payne’s conviction was based almost entirely on hair matching testimony that has now been repudiated by the analyst who testified at trial, the FBI, and the scientific community. In 2009, the FBI, one of the earliest proponents of microscopic hair analysis, disavowed the type of statistical comparison testimony that was offered in Payne’s trial and in 2015 acknowledged that FBI examiners overstated hair matches in at least 90% of cases.

In 2016, NCIP, in coalition with the California Innocence Project (CIP), the Loyola Project for the Innocent and the firm Morrison & Foerster, began a review of California cases in which microscopic hair comparison contributed to the conviction. NCIP identified that hair comparison testimony was material to Payne’s conviction.

At the 1990 trial, the forensic analyst testified that hair evidence implicated Payne; he was convicted and sentenced to 27 years and served 15 years in prison. Payne has always maintained his innocence.

Payne was able to bring this motion based on the newly-enacted [Penal Code section 1473.7, subdivision \(a\)\(2\)](#), which allows someone who is no longer incarcerated to challenge their conviction when that person provides “newly discovered evidence of actual innocence that requires vacation of the conviction ... as a matter of law or in the interests of justice.”

Evidence that is repudiated by the expert who originally testified or that is undermined by later scientific research, such as the hair matching testimony in Payne’s case, meets the standard. Juries rely strongly on scientific testimony, as was the case in Payne’s trial. NCIP was instrumental in the enactment of Penal Code section 1473.7.

Since his release in 2005, it has been difficult for Payne to secure housing and employment because he had to register as a sex offender. He has suffered from health and sobriety issues as well as homelessness. He currently lives with his mother and is hoping to get his own apartment.

He said, “Now that I won’t have to register as a sex offender, people won’t look at me funny. It will be easier for me to get housing and I can live out my retirement as a proud, decent, and respectful citizen of the United States.”

NCIP volunteer attorney, Catherine Boyle said, “Glenn's continuous gratitude toward everyone who helped him, despite the years of injustice he experienced, was an inspiration.” The legal team was led by NCIP attorney, co-founder, and Executive Director, Linda Starr. According to Starr, “The reversal of Mr. Payne’s case represents 2 very significant developments in criminal justice: 1- what was once relied upon by juries as scientific fact in many of the so-called forensic sciences is now known to be false, and 2- District Attorney’s offices with genuine conviction review units work cooperatively with innocence organizations to achieve justice, not to protect convictions.”

NCIP is still actively pursuing information on convictions that involve hair analysis with funding from the U.S. Department of Justice’s Wrongful Conviction Review Program in all counties in Northern California. To date, NCIP has begun review in nearly 300 cases and will continue to seek justice for those who were wrongly convicted based on this evidence.

About Scientific Advances in Microscopic Hair Analysis

In 2015, the [FBI issued a letter](#) stating that FBI agents/analysts provided erroneous statements in over 90% of the cases reviewed containing microscopic hair analysis. In the 268 cases where testimony on microscopic hair analysis was given at trial, errors were found in 257. Defendants in 33 of the 35 death penalty cases reviewed had erroneous testimony used against them.

About the Northern California Innocence Project (NCIP)

NCIP is a non-profit clinical program of Santa Clara University School of Law whose mission is to promote a fair, effective, and compassionate criminal justice system and protect the rights of the innocent. Since its inception in 2001, NCIP has processed over ten thousand requests for inmate assistance, investigated hundreds of cases, pursued litigation or collaborative resolution in dozens, and obtained the freedom of 20 wrongfully convicted individuals. Learn more at www.ncip.scu.edu

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