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### A Descent into Wrongful Convictions

Any professional whether in law, having a PHD, or the common layman has knowledge that the prison population is growing rapidly. Even greater is the amount of Americans that realize the spike in cases where convictions are based on faulty DNA evidence. Yes, the Nation is a World Leader in many things and incarceration tops the list, which are mostly due to wrongful convictions.

I predict that nearly two-thirds of this Nations population will either be locked up, will know someone that has been or still is locked up, or has had a first hand experience with the legal process themselves. And the situation is not getting any better. Scientific evidence is suppose to exonerate or inculcate, not just seal the fate of those charged with the crime in order to get a conviction. This is where error is made, and for toadys topic I would like to present the State that incarcerates more people (per capita) than anywhere else in Our Nation. . . Kentucky.

This State is foremost in sending its citizens to prison, so it stands to reason that a percentage (whether great or small) are wrongfully convicted. Justice is a broken legacy that is not an ample prescription for errors in todays trial courts. Even those escaping Kentucky's wrath are mesmerized by the indecisive hand of justice.

Now we are facing the media and the endless stream of instant information that is received and sent by the stroke of a finger. So if your story is not news worthy, then your conviction may already be in place, depending upon your counsel of course: public defender or private attorney. What makes it worse is the fact that the Courts will ignore injustice and allow the defendant to be tried by the media. Here is a helpful source:

"There are four (4) types of 'Bad Evidence' that may lead to false convictions:

- 1) Police occasionally badger or threaten suspects to get them to confess, especially people with lesser intelligence and poor mental health.
- 2) Jailhouse snitches are rewarded with lighter sentences if they say that they heard suspect confess.
- 3) Eyewitness testimony is notoriously inaccurate but juries treat it with deep respect, as if the average person possessed a photographic memory. In particular, studies show that people of different races can have a difficult time identifying each other on facial characteristics.
- 4) 'Junk Science' such as hair analysis and hypnosis is allowed in some courts, but proves little." <sup>1</sup>

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<sup>1</sup> The source of this information came from the Lexington Herald-Leader [Pg. C3, Sunday Paper, February 4, 2001]. Contributors to this article are Nikki Adcock, Lawyer; Chris Turner, part-time worker and John Cheves.

The misconception being that whenever the four types of 'Bad Evidence' comes about, the states attorneys will correct the errors. This creates a false sense of justice within the average citizen. Because Commonwealth Attorney Ray Larson's hyperbole statement suggests that there are few to no errors within the system, as seen by this quote from the same article:

"I don't think anybody wants someone imprisoned for a crime they didn't commit. . . However, I don't think it's a widespread problem at all. It is not something that I think occurred h. Not that I know of." Id, same as above.

Now let us delve into the paradox of that statement, which seems to be true, but is contradictory in nature. We will analyze the statement in two (2) categories: 1) "The Widespread Problem" and 2) "The Prosecutor's Jurisdiction".

### The Widespread Problem

First, let us take a glimpse at the widespread problem in Kentucky. For the sake of anonymity, when making references to actual cases other than my own, I will employ the use of initials, County and/or City. I will also name any articles and case law if at all applicable.

1. In Louisville, Kentucky (Jefferson County) one of the States most profound cases was overturned in 2000. W.G. had been convicted of a sex offense and served nine (9) years before he was exonerated, even though the evidence in his case was enough to substantiate an acquittal. Also see 44 F.3d 725, this may in fact be the first person exonerated by the Kentucky Innocence Project (KIP).

2. On May 5, 2006, two (2) more wrongful convictions were set aside. One case came from Kenton County, Kentucky, which involved T.S. and the other came from Benton County, Kentucky, which involved B.K.

In T.S.'s case there was a statement made by Elizabeth Keller, former KIP student and now Ohio Public Defender which read: "The lack of evidence in this case was glaring. . . Mr. S. should never have been found guilty by a jury." <sup>2</sup>

There is an excerpt that came from the same article, wherein then Project Coordinator, Gordon Rahn stated, in part: "Fortunately, our justice system provides procedural rules and mechanisms that allow wrongs to be made right." *Id.*, at 18.

3. On January 18, 2008, another wrongful conviction was overturned, this time from Whitley County, Kentucky. S.P. had his case overturned by the Kentucky Court of Appeals. Wherein the Court stated, in part: "He (the victim) also veered, into an extraordinary imaginative flight of fancy calling into doubt his reliability as a witness." 2008 Ky.App.Unpub.LEXIS. 162 at 10.

Not only did the Kentucky Court of Appeals realize that the victim's testimony was faulty, it also recognized the importance of the motions and affidavits submitted. This is what the Court had to say:

<sup>2</sup> The Advocate [Volume 28, No. 3; May 2006]. Kentucky Innocence Project. By Melanie Lowe, DPA Kentucky Innocence Project, and Marguerite Thomas, Post Conviction Branch Manager.

"We next consider the CR 60.02 aspect. . . we believe it would merit an evidentiary hearing. . . her allegation to the effect that the Commonwealth's Attorney had threatened to see to it that her children were taken . . ." 2008 Ky.App.Unpub.LEXIS. 162 at 18.

As you can see this is a widespread problem that spans the State, as well as what appears to be a decade. The common denominator in 'all' of these cases, is that KIP was involved with every case, at every stage, which deserves applause. With this type of assistance one can see how the Courts have responded and how the prosecution has responded when it came to the administering of justice.

Now the question becomes, what happens when the KIP are not involved and the evidence used to convict is a combination of all four types of 'Bad Evidence'? Could this occur within the same prosecutor's jurisdiction? And if so, would the Commonwealth's Attorney turn a blind eye and allow someone to be imprisoned for a crime they did not commit?

I believe the answer is yes!

### The Prosecution's Jurisdiction

There is one case that unravels the concept of the Fayette County Prosecutor, and that is my case. As unfortunate as it may be for me, this is an excellent example of a conviction gone bad.

This has every ingredient of Bad Evidence, and some. When taking a careful examination, this is what's revealed:

1. The Commonwealth's identifying witness was threatened into the identification, and into testifying against his cousin (Adams) as one of the attackers;

2. The Commonwealth produced a co-defendant for Adams, through a re-indictment, and bolstered his testimony, although it was known that the witness had lied;

3. The Commonwealth's eyewitnesses testimony did not cooperate with the evidence, and it was inaccurate; and,

4. The Commonwealth knew that there was 'Junk Science' employed to convict Adams.

Eventhough this may be a difficult pill to swallow, this is the normal for the Lexington Commonwealth's Attorney Office. Here are eight (8) key points that the Commonwealth knew of , which lead to Adams' conviction:

1. Assistant Commonwealth Attorney (Hon. West) expressly told the trial court that there was no scientific evidence to use against Adams and that there would be none used in trial.

2. The Commonwealth knew of contradicting testimony given by both eyewitnesses prior to trial, and when it occurred during trial.

3. The Expert Witnesses for the Commonwealth stated that there was no fiber or scientific evidence that linked Adams to the crime.

4. When the identifying witness began to explain why Adams was not one of the attackers, he was made out to be a hostile witness by the Commonwealth.

5. The Commonwealth knew that the female victims testimony describing the location, was not Adams' home. There was an identification of two homes that belonged to someone else.

6. The Commonwealth withheld a video of the alleged crime scene until the female victim (who had made a detailed description) had left the stand. This video of Adams' home debunks the theory of the Commonwealth. This is within the Court Record.

7. The Commonwealth excused an exculpatory witness from trial, one that would impeach the testimony of all the witnesses of the Commonwealth. This witness also had exculpatory evidence to show as well.

8. The Commonwealth knew that the Co-defendant had lied when he took the stand to testify. This was stated during the closing arguments.

The shameful portion of this fiasco is that the Commonwealth and any other lawyers are not suppose to commit such atrocities according to the ABA Standards, and according to the U.S. Supreme Court ruling on how a prosecutor is suppose to "seek justice rather than seek a conviction". Kentucky's Supreme Court does not follow far behind from the U.S. Supreme Court, when one reviews the Supreme Court Rules for the State of Kentucky, this is even as strict when it comes to an attorney falsifying evidence or testimony when it comes before a tribunal.

In short, the Commonwealth Attorney is suppose to be a paragon of integrity, not a vacuous attorney lacking purpose. So how could something like this happen? Is the Court aware?

Adams

The Courts are aware of these actions, and there is nothing a pro se litigant can do about what is happening in this State. The only recourse is to continue the fight and hope that the Courts maintain some level of integrity and rule on the scale of justice 'sometimes'.

For me to say that I am wrongfully convicted, is an understatement to say the least. I am innocent. I am also reminded of "Invictus":

"Out of the night that covers me dark as the pit from pole to pole. I thank whatever gods may be for my unconquerable soul. In the tall clutch of circumstance I have not winced or cried aloud under the bludgeoning of chance, my head is bloody but unbowed. Beyond this place of wrath and tears looms, but the horror of the shade and yet the menace of the years finds me unafraid. It matters not how straight the gate, how charged with punishment the scroll. I am the master of my fate, the captain of my soul." -William Ernest Henley-

All I can do is fight, there is nothing left for me!°

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