

WRONGFUL CONVICTION

From Prevention to the Reversal of Injustice



JOHN A. HUMPHREY

KAITLYN M. CLARKE

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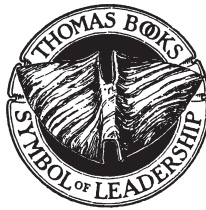
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By

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and

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*To the convicted innocents yet to be exonerated
and their struggle that inspire us to seek justice.*

PREFACE

The precipitants of wrongful convictions are well-documented in the United States and around the world. Eyewitness misidentification, false confessions, flawed forensics, police and prosecutorial misconduct, the use of jailhouse informants, and inadequate defense counsel have been considered in a growing number of research papers, law review articles, and monographs. In addition, the arduous and lengthy exoneration process has been described in books and documentaries dealing with high profile cases of wrongful conviction.

What is missing in the literature on wrongful conviction is a book that provides an understanding of the legal remedies, organizational reforms and policy changes that have been proposed, and implemented, in various jurisdictions to reduce the likelihood of a wrongful conviction. The proposed book does just that.

Legal and organizational reforms and changes in criminal justice policy are considered at three key junctures of the process: (1) the investigation, evidence gathering and forensic analysis, (2) prosecutorial decision-making, and (3) judicial review and the exoneration of a wrongfully convicted defendant.

Each chapter opens with a vignette of a wrongful conviction case that illustrates the reform strategies being considered. For example, the chapter on the investigatory process begins with the case of Ronald Cotton who was identified in a police photo lineup, an in-person lineup, and at two trials by Jennifer Thompson, a college student who was raped in Burlington, North Carolina. Reforms in the manner in which the police process eyewitness identifications are then analyzed in detail. Eyewitness misidentification cases are used throughout the chapter to highlight the procedural errors that led to the conviction of an innocent person.

Each of the key precipitants of wrongful conviction during the processing of a criminal case is considered in separate chapters and discussed in relation to reforms and policy changes that been implemented or proposed in various jurisdiction around the country. Scientific advances and U.S. Supreme Court rulings that led to these reforms and policy changes are also explored.

This book, then, will be of particular interest to the law enforcement

community, prosecutors and defense attorneys, judges, advocates for the wrongfully convicted and criminal justice policymakers. In addition, this book will contribute to academic courses in the fields of criminology, criminal justice, law and society, and social justice. In sum, anyone concerned with how our system of justice functions each day will be interested in this book.

J.H
K.M.C

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PART I

Chapter 1

INTRODUCTION

Mr. Forman, has the jury reached a verdict?

Yes, your Honor. We find the defendant guilty of rape in the first degree.

Is this your verdict so say you all?

Yes, your Honor.

I'm numb—this just can't be. I'm innocent, what happened. I just attended my own funeral. They are all wrong . . . I didn't do anything . . . I'm innocent.

My lawyer is anxious to leave the courtroom. He has been whining about being overworked, too many cases to deal with and far too little time or no help from the Public Defender's Office here. He is mumbling something about what will happen next and that he would try to do what he can. I don't believe a word he is saying.

The bailiff is now leading me to a holding cell in the courthouse. I will soon be transported to the maximum security prison, about 90 miles from here to start a life sentence.

The numbness and confusion are beginning to lift as I am being led to the holding cell in the basement of the courthouse. I'm trying to piece together how I got here.

I certainly am no angel. My friends and I were well-known to the police for a variety of reasons: vandalism, graffiti, shoplifting, groping girls, smoking dope, a lot of "little" stuff. No doubt I was thought by the police to be a constant annoyance — someone who they would like to get rid of.

Things got far more serious after I dropped out of school when I was working as a dishwasher in a restaurant and that girl accused me of sexually assaulting her. I was arrested, booked, and held

overnight in the county jail. A few days later she decided not to press charges against me and I was released.

Now this . . .

A forcible rape occurred in my hometown. The police showed up at my home very early in the morning and asked if I would come with them to the station to answer a few questions. The victim, an innocent, naive, college sophomore, was shown an array of photos to possibly identify her rapist. My picture appeared in most of the photo arrays. She told the police that my picture looked familiar. I was then asked to participate in a lineup with other young black men. Being innocent of any wrongdoing, I agreed to assist the police. Unfortunately, the victim seemed to recognize me. The more she talked to the police, the more convinced she was that I had raped her.

The police then focused on me exclusively as the perpetrator of this horrible crime. I was taken into custody, there was mention of Miranda rights, which I have half-heard in the confusion of being told that I was under arrest for forcible rape, and that arrangements could be made for me to talk to a lawyer.

The media went wild: the suspected rapist has been found, an arrest has been made, and justice will be served.

I was placed in an interrogation room, no windows, door locked, two detectives began questioning me about the rape. I was trapped. They were angry and insisted that I confess. Conviction was certain, a life sentence was inevitable. But if I was willing to confess to the rape, then the police would make sure that the district attorney would accept a plea to a lesser charge and my sentence would be drastically reduced. If I choose not to admit my guilt, all bets were off and I would die in prison.

I was alone, in shock, unable to think, completely intimidated by their hostile accusations and demands that I confess to committing the rape. They made no sense to me, but their unrelenting harassment, was more than I could take. I was told that not only had the victim positively identified me, but the forensic evidence gathered from the victim and the crime scene was conclusive. I was indeed the rapist.

No doubt I became more compliant with the police than I wanted to be. I repeated specifics about the crime that they screamed at me. Things only the rapist would know. My confession

was recorded and presented to me for my signature. I agreed they were my words just to stop their haranguing. It is amazing what you will admit to in your worst nightmare.

My public defender arrived the next day just before my probable cause hearing. It was a rushed meeting; he said bail would probably be too high and that he would try meet me in my jail cell in the next few days. Bail could not possibly be met, and I was returned to jail to think.

It was not too long before a cellmate arrived. He was no stranger to being locked up, a real talker who was very curious about how I got there, and how I planned to beat the rap. I had no idea. But my cellmate seemed to know how best to handle the situation. With an absentee lawyer, I was more than willing to tell him about myself and the mess I was in. He, in turn, talked endlessly about his many “brushes with the law.”

My lawyer showed up a few days after my cellmate was moved to another lockup. My phantom lawyer was nothing but doom and gloom. The evidence against me was overwhelming and the only course of action was to try to strike a plea bargain with the district attorney. The prosecution’s case included: a positive identification by the victim, footprint evidence, hair, and threads from a tee-shirt from the crime scene, my partial confession given to the police, and the testimony of a jailhouse snitch. Yes, my cellmate friend was planted by the district attorney to gather incriminating evidence against me. He is even willing to say that he heard me scream in my sleep that I raped the girl.

My lawyer assured me that, as strange as it seems, jailhouse snitch testimony is very likely to be believed by the jury. He then began to complain endlessly about being overburdened with cases with few if any resources to conduct an independent investigation in the case. He must rely on the prosecuting attorney to provide a list of witnesses, access to police records, and forensic evidence to prepare an adequate defense. Given the situation that we are in the best strategy is to try to strike a deal with the prosecuting attorney and to plead guilty to the charge that carries the shortest prison term. Since I am innocent, admitting guilt and allowing me to be incarcerated for decades made no sense. My solution to the problem was to plead not guilty and go to trial. This angered everyone, including my own lawyer. My strategy failed miserably.