

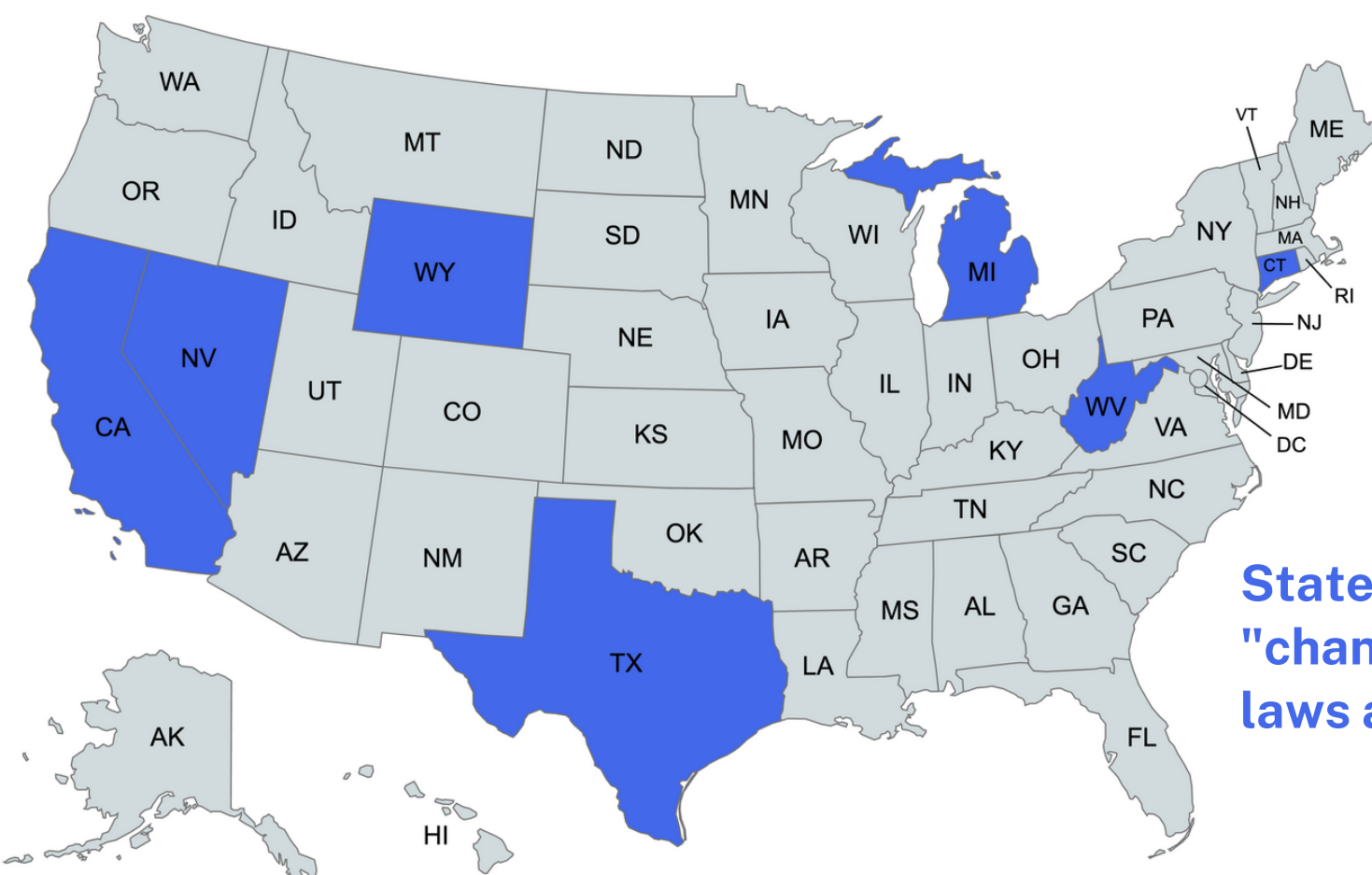
MISAPPLIED FORENSIC SCIENCE CONTINUES TO STEAL THE LIVES OF INNOCENT PEOPLE, DENY JUSTICE TO VICTIMS, AND COST STATES MILLIONS

FLAWED FORENSICS

The integrity of our criminal justice system depends on accurate and reliable information. Forensic evidence is often heavily relied upon to deliver just outcomes in criminal cases, but bad science was a contributing factor in nearly a quarter of all exonerations nationwide.

In Oregon, more than 50% of wrongful convictions involved false or misleading forensics. This includes the use of unreliable or insufficiently validated methods (e.g., microscopic hair comparisons or bite mark comparisons), misleading expert testimony, human error, and explicit misconduct.

Because shifts in scientific understanding often take decades to emerge, people whose conviction rely on bad science face enormous procedural barriers that keep them out of the courthouse. **Oregon does not recognize discredited scientific evidence as "new" evidence that can overcome those procedural barriers. The wrongfully convicted need a reliable mechanism to get back into court** if the forensic evidence used to convict them is undermined by scientific advancements, guidelines, or repudiations of expert testimony. **Seven states have already implemented this important reform.**



**States where
"changes in science"
laws are in effect**

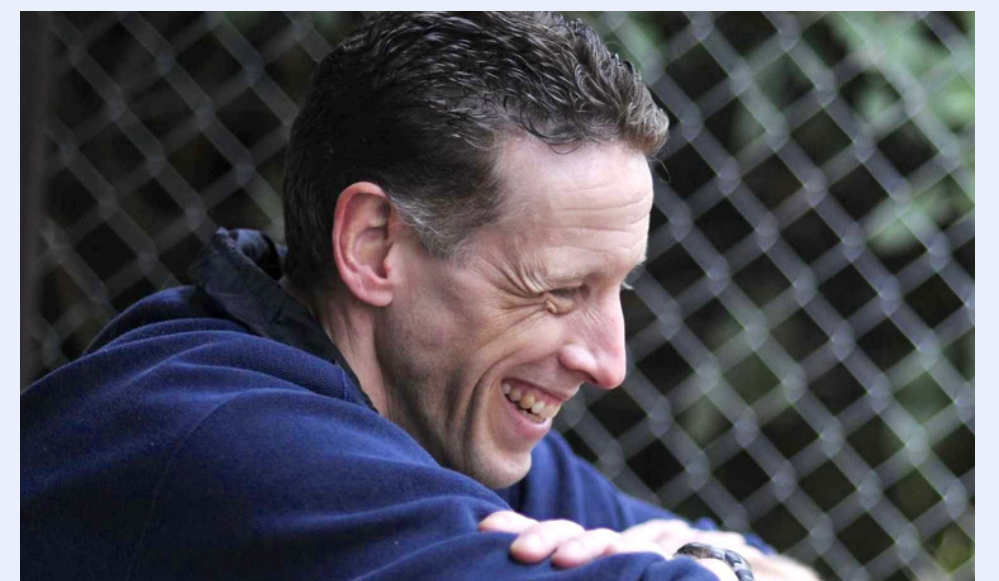


Photo: Associated Press

Philip Scott Cannon

Polk County, Oregon Exoneree

Sentence: Life Without Parole

Date Exonerated: 2009

Age at Time of Reported Crime: 32

Philip Scott Cannon was wrongfully convicted of a 1998 murder. Prosecutors and ballistics experts testified that comparative bullet lead analysis proved the bullets in the victims came from Cannon's home.

The FBI stopped using CBLA in 2005 after a National Academy of Sciences report found significant issues with the field. Cannon was eventually granted a new trial because his attorney had failed to challenge the analysis. The charges were then dismissed. Evidence later surfaced that the Oregon State Police crime lab had declined to conduct CBLA in the case because it did not consider it scientifically reliable.

Philip Scott Cannon spent 9 years in prison for a crime he did not commit.



Christopher Boots, Photo: KGW-TV

Christopher Boots & Eric Proctor

Lane County, Oregon Exonerees

Sentence: 20 to Life

Date Exonerated: 1995

Age at Time of Reported Crime: 16

Civil Settlement: \$2 million

Springfield teenagers Christopher Boots and Eric Proctor were wrongfully convicted of murdering a gas station clerk primarily on the basis of expert testimony regarding bloodstain pattern analysis (BPA) and gunshot residue found on the two boys.

Later, after the real perpetrator was identified, DNA testing proved the BPA testimony was wrong, and further testing showed there was never any gunpowder on either boy. A comprehensive 2009 National Academy of Sciences report concluded that "the uncertainties associated with bloodstain pattern analysis are enormous," and that purported bloodstain pattern experts' opinions are "more subjective than scientific."

Christopher and Eric each spent 8 years in prison for a crime they did not commit. They settled a civil lawsuit for \$2 million in 1998.

HOW WOULD THIS BILL HELP

This bill will help individuals wrongfully convicted in Oregon by:

- allowing innocent people back into court after the existing two-year statute of limitations has expired for post-conviction claims, and
- allowing courts to decide whether the original conviction was based on flawed science that has since changed and should justify a new trial.

TYPES OF INVALIDATED METHODS

Major flaws have been revealed in many forensic disciplines used to convict people around the country:

- **Hair comparisons:** In 2015 the FBI announced that its hair microscopy experts overstated the probability of a match between hair evidence and the defendant's hair in 95 percent of the cases it reviewed.
- **Arson:** A 1992 National Fire Protection Association (NFPA) report concluded that many of the physical signs previously used to indicate that a fire was intentionally set — such as "alligatoring" of wood, crazed glass, and sagged furniture springs — could actually occur in accidental fires.
- **Comparative Bullet Lead Analysis (CBLA):** In 2005 the FBI stopped using comparative bullet lead analysis. The technique was thought to be able to match a specific crime scene bullet with a specific bullet in the possession of the defendant, based on the assumption that each batch of lead used for bullet manufacturing has a unique makeup. That assumption was proved to be wrong and scientifically invalid.

*"With the exception of nuclear DNA analysis...no forensic method has been rigorously shown to **have the capacity to consistently**, and with a **high degree of certainty**, demonstrate a connection between evidence and a specific individual or source."*

- 2009 National Academy of Sciences report on forensic sciences and need for reform

FOR MORE INFORMATION CONTACT:

Amanda Hess, NW Public Affairs - amanda@nwpublicaffairs.com

Laura Curtis, NW Public Affairs - laura@nwpublicaffairs.com

Laurie Roberts, Innocence Project - lroberts@innocenceproject.org

ENTERED
MAY 30 1995
#16

FILED

MAY 25 1995

STATE OF OREGON
MARION COUNTY COURTS

90C10191

CIRCUIT COURT OF OREGON

MARION COUNTY

ERIC A. PROCTOR,

Petitioner,

v.

CARL ZENON, Superintendent,
Oregon State Correctional
Institution,

Defendant.

No. 90C-10191-2

JUDGMENT

The above case came on for trial on October 5, 1994 and April 11, 1995 before the Honorable Paul J. Lipscomb. Petitioner appeared in person and by his attorney, Noel Grefenson, and defendant appeared by and through his attorney, Katherine M. Blaser, Assistant Attorney General.

The court considered the files and records herein, the exhibits of petitioner and defendant, and the arguments of counsel.

The court finds that petitioner has established that there was a substantial denial of his rights as set out in ORS 138.530(1)(a) which denial rendered his conviction in Lane County Circuit Court Case No. 10-86-04013 void.

NOW, THEREFORE, IT IS HEREBY ADJUDGED that petitioner is granted post-conviction relief from his conviction in Lane County Case No. 10-86-04013 and is remanded to the Lane County Circuit

1 Court for trial or further proceedings consistent with this
2 judgment.

3 DATED this 25th day of May, 1995.

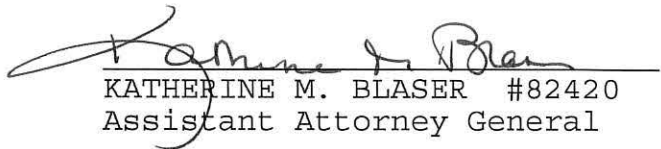
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8 PAUL J. LIPSCOMB
9 CIRCUIT COURT JUDGE

10 Submitted by: Katherine M. Blaser
11 Assistant Attorney General
12 of Attorneys for Defendant
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CERTIFICATE OF SERVICE

I certify that on May 24, 1995, I served the foregoing proposed *Judgment Granting Post-Conviction Relief* upon the parties hereto by hand delivering, a true, exact and full copy thereof to:

Noel Grefenson
Attorney at Law
1415 Liberty Street SE
Salem, Oregon 97302


KATHERINE M. BLASER #82420
Assistant Attorney General

JTT083CD/KGB/ajd

Page

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF MARION

3 Case No. 90C10191

4 ERIC ANTHONY PROCTOR,)
5 Petitioner,)
6 vs.)
7 CARLTON ZENON, Supt., Oregon State)
8 Correctional Institution,)
9 Defendant.)
10)

11 SECOND AMENDED PETITION FOR POST CONVICTION RELIEF

12 Petitioner alleges:

13 1.

14 Defendant, Carl Zenon, is the duly appointed, acting superintendent of the Oregon
15 State Correctional Institution.

2.

Petitioner is presently imprisoned and restrained of liberty by the above-named defendant in the Oregon State Correctional Institution, located at 3405 Deer Park Drive S.E., Salem, Oregon pursuant to an unlawful conviction and is thereby restrained of liberty by the above-named defendant.

3.

The conviction petitioner is attacking is by virtue of a judgment and sentence imposed by the Lane County Circuit Court in the criminal case of State v. Proctor, Lane County Case No. 10-86-04013. As a result of such convictions, petitioner was sentenced to serve Life with a 20 year minimum.

4.

An appeal was thereafter taken to the Oregon Court of Appeals wherein petitioner was represented by Sally Avera. Petitioner's conviction was affirmed in State v. Proctor, 94 Or App 720, 767 P2d 453 (1989); rev. den 308 Or 33, 774 P2d 1108 (1989).

5.

No prior proceedings have been undertaken by petitioner with respect to the above-referenced convictions.

6.

Said imprisonment and restraint, to the best of petitioner's knowledge and belief, are unlawful under ORS 138.530 and the illegality thereof consists of the following:

A. Petitioner's rights to a speedy trial under Article I, section 10 of the Oregon Constitution and the Sixth and Fourteenth Amendments to the United States Constitution were violated by the prosecution resulting in the destruction of evidence favorable to the defense.

Said imprisonment and restraint, to the best of petitioner's knowledge and belief, are unlawful under ORS 138.530 and the illegality thereof consists of the following:

A. Petitioner was denied effective and adequate assistance of trial counsel under Article I, Section 11 of the Constitution of the State of Oregon and the Sixth and Fourteenth Amendments to the Constitution of the United States when his trial counsel, John Halpern, failed to exercise professional skill and judgment in the following particulars:

1) Failed to adequately investigate the facts and circumstances underlying petitioner's criminal charges. Trial counsel failed to conduct and/or arrange to have conducted all necessary tests regarding fingerprint analysis, blood spatter evidence, gunpowder analysis and DNA testing. Counsel's failure precluded rebuttal of the prosecution's contention, developed through expert testimony, that forensic tests linked petitioner to the crime.

2) Failed to ensure that the defense expert Ray Grimsbo was timely hired so that he could personally observe the blood particles allegedly seized from petitioner's pants in order to determine whether those particles were consistent with the prosecution's theory of the murder.

3) Counsel failed to call Shannon Briggs to testify on petitioner's behalf regarding attempts by investigating officers to coerce her into altering her testimony to comport with their theory of the case.

4) Counsel failed to move to exclude witnesses from the courtroom. As a result prosecution witnesses were allowed to remain in the courtroom and tailor their testimony to fit with the prosecution's theory of the case.

5) Counsel failed to call a witness known to petitioner only as "Diggie" to

1 impeach the testimony of Theodore DeCelles that petitioner had confessed to the crime.

2 6) Counsel stipulated to the introduction of autopsy reports which were
3 inadmissible for lack of foundation as the author of said reports did not testify at trial.

4 7) Counsel failed to adequately investigate the facts and circumstances of the
5 case. Counsel attributed a shirt found at the crime scene to the actual perpetrator of the
6 crime when in fact the shirt belonged to the victim's brother. This mistake discredited the
7 defense theory of the case and was used by the prosecution to attack the validity of the
8 defense's entire case during closing arguments.

9 8) Counsel failed to adequately investigate the facts and circumstances regarding
10 all of the favorable treatment provided to prosecution witness Theodore DeCelles in return
11 for his providing testimony against petitioner.

12 8.

13 Said imprisonment and restraint, to the best of petitioner's knowledge and belief, are
14 unlawful under ORS 138.530 and the illegality thereof consists of the following:

15 A. Petitioner's rights under the Fifth, Sixth and Fourteenth Amendments to the
16 United States Constitution were violated when the prosecutor intentionally engaged in
17 misconduct as follows:

18 1) The prosecution intentionally engaged in misconduct for the purpose of
19 negating the defense theory of the case. During its final rebuttal arguments the prosecution
20 performed a scientific test before the jury for the purpose of explaining away the defense
21 theory knowing that such test was inadmissible and that defendant would have no
22 opportunity to rebut the accuracy of the test in violation of his rights to confrontation under
23 Article I, Section 11 and the Sixth and Fourteenth Amendments to the United States
24 Constitution.

1 B) The prosecution intentionally sought, and succeeded, in coercing Jerry
2 Anderson Sr. to provide false testimony regarding petitioner's involvement in the crime.

3 3) The prosecution intentionally withheld favorable evidence from the defense.
4 As an additional claim for relief, alternative from those asserted above, petitioner's
5 alleges:

6 9.

7 Petitioner is entitled to a new trial under the Fifth and Fourteenth Amendments to
8 the United States Constitution on the basis of newly discovered exculpatory evidence, which,
9 through no fault of the petitioner, was unavailable at the time of the proceedings resulting
10 in petitioner's conviction and the appellate review thereof as follows:

11 A. During petitioner's trial, the prosecution produced expert witnesses who
12 opined that blood seized from items belonging to petitioner and his co-defendant, linked
13 them to the decedent and thereby to the commission of the crime of conviction.

14 B. The expert testimony referenced in paragraph 9A above was argued
15 extensively by the prosecution and the defense at trial. The defense produced experts
16 regarding the nature of blood spatter evidence, but was unable to refute the connection
17 between the victim's blood and the petitioner and his co-defendant.

18 C. On July 11, 1994, the Oregon State Police Crime laboratory conducted a
19 number of DNA tests on the blood referenced in paragraph 9A above. These tests were
20 performed pursuant to a Court Order issued in the criminal action of petitioner's co-
21 defendant. The results of those tests indicate that all but one of the blood spots relied upon
22 by the prosecution experts to link petitioner to the crime did not come from the victim.

23 D. At the time of petitioner's trial, DNA testing was unavailable as a scientific
24 technique. As such, petitioner could not have obtained the DNA results through the

1 exercise of due diligence.

2 E. Because the DNA test results derive from new scientific procedures evidence
3 of the same at a new trial would not be cumulative of evidence introduced during
4 petitioner's original trial.

5 F. It is more probable than not that if petitioner is granted a retrial, the
6 introduction of the DNA test results will change the outcome of that proceeding from that
7 of his first trial.

8 WHEREFORE, on the foregoing grounds, petitioner prays that this court grant him
9 relief in the form of an order:

10 1. Finding petitioner's conviction void on the basis of a deprivation of his
11 constitutional right to effective assistance of counsel, in violation of his rights under Article
12 1, § 11 of the Constitution of the State of Oregon and the Sixth and Fourteenth
13 Amendments to the United States Constitution.

14 2. Finding his conviction void on the basis of prosecutorial misconduct in
15 violation of petitioner's rights under Article 1, § 11 of the Constitution of the State of
16 Oregon and the Fifth and Fourteenth Amendments to the United States Constitution.

17 3. Granting petitioner a new trial based upon the newly discovered evidence as
18 set forth in paragraph 9 above.

19 Dated September 8, 1994.

20 
21 Noel Grefenson, OSB No. 88216
22 Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Noel Grefenson, hereby certify that on September 8, 1994 I served a certified true copy of the enclosed Second Amended Petition for Post-Conviction Relief upon counsel for the Defendant by placing said copy in the United States Mail, postage prepaid and addressed as follows:

Kate Blaser
Assistant Attorney General
Department of Justice
240 Justice Building
Salem, Oregon 97310

Noel Grefenson
Noel Grefenson, OSB No. 88216
Attorney for Petitioner