

Georgia **INNOCENCE** project

ISSUES IN THE CASE: MICHAEL MARSHALL

EYEWITNESS IDENTIFICATION

The primary factor leading to Mr. Marshall's decision to plead guilty in this case was misidentification by one of the victims. This identification was allowed into evidence despite the fact that the other victim, who got a closer look at the truck thief, failed to identify Mr. Marshall in a photo line-up after his arrest.

Mr. Marshall is Georgia's eighth DNA exoneree; all eight were wrongly convicted based on mistaken eyewitness testimony. Nationwide, more than 75% of the 246 DNA exonerees were convicted based on mistaken eyewitness identification. (Mr. Marshall becomes #247).

In late 2008, responding to information about mistaken identification brought forth by the Georgia Innocence Project, the Georgia Peace Officer Standards and Training Council increased its training on eyewitness identification procedures.

"SHOW-UPS"

"Show-ups," one-on-one identifications done at or near the scene of a crime, are inherently prejudicial. Not only is the suspect surrounded by police, the atmosphere is usually highly emotionally charged.

In the case of Mr. Marshall, a show-up wasn't even necessary. Mr. Marshall was picked up for sleeping in an apartment complex hallway ten days after the crime in question. Police could have taken Mr. Marshall into custody and put him in a live line-up. In fact, according to police reports, an officer on the scene had a digital camera. Police could have taken photo of Mr. Marshall and provided it to the victim.

The judge in Mr. Marshall's case noted the fact that the show-up was not necessary but still allowed the identification into evidence. This misidentification is what prompted Mr. Marshall to take a plea. If he had not done so, he faced up to 25 years in prison.

FAILURE TO INVESTIGATE

Most of the 246 other DNA exonerations in the United States came in cases where the wrongly-convicted had spent decades in prison. Innocence organizations investigate cases where DNA testing was not available during investigation or trial because it was not technologically available.

The first DNA exoneration in the U.S. occurred in 1991. DNA testing is now standard practice in criminal investigation. However, the physical evidence recovered in this case (a cell phone, cell phone case and t-shirt) was not tested for DNA until GIP requested the testing in 2009.

In fact, there is no record to indicate that police tried to determine the owner of the cell phone through other, more “low-tech” methods. There is also no indication that investigators dusted the stolen truck for fingerprints.

In short, there appears to have been absolutely no investigation of the physical evidence in this case. That lack of investigation led to the incarceration of an innocent man.

LIFE AFTER EXONERATION

Michael Marshall becomes the sixth exoneree GIP has served through its Life After Exoneration (LAE) program. The LAE program began organically, as GIP recognized issues clients faced as they tried to rebuild their lives. Mr. Marshall faces an additional challenge in that, before his 2007 arrest, he was homeless. Mr. Marshall has agreed to work closely with GIP.

GIP requires its LAE clients to sign a contract pledging that they will participate in transitional counseling and spend at least twenty hours per week in school or employed. In exchange, GIP offers to secure, free of charge, medical, dental, and psychological services as well as job training, job placement, and any other service the client legitimately requires. A nonprofit organization with only two full-time staff members and an annual budget of less than \$225,000, GIP works to secure these services with the help of the general public and large law firms who partner with GIP to serve its exonerated clients.