



Judge Overturns Conviction in 1991 Murder Based on New Evidence

SANTA CLARA, Calif., August 23, 2019— A man wrongfully convicted of a 1991 murder in Trinity County has had his conviction reversed based on newly discovered evidence, including the confession of the true killer.

In October 1991, in Hawkins Bar, a small hamlet in Trinity County, a man was stabbed to death by an assailant who thought he was avenging the molestation of his girlfriend's four-year-old daughter. Police erroneously believed the killing to have been the act of a vigilante mob which they believed included Bob Fenenbock, a 38-year-old Army veteran who owned a mining claim and operated a wood-cutting business in the beautiful countryside surrounding Hawkins Bar.

It took nearly 28 years to have a court hear the evidence of Fenenbock's innocence, with help from lawyers from the Northern California Innocence Project (NCIP) at Santa Clara University School of Law, the law firm Morrison & Foerster, and attorney Jolie Lipsig.

The background

On September 30, 1991, rumors began to spread around the Hawkins Bar campground that Gary "Hop" Summar had molested a four-year old girl, the daughter of his roommate's girlfriend. The roommate, girlfriend, and her three children moved out of their trailer and into the Hawkins Bar campground, where a number of people including various drifters, began to have discussions about what to do because law enforcement was not acting.

On October 2, 1991, police heard that Summar was in danger, but were unable to find him. That night, police arrested the roommate, Bernard MacCarlie, on different charges, while he was in a white Ranchero with his girlfriend's nine-year-old son in the back. They learned that MacCarlie had dropped off Fenenbock at his house the same night using the white Ranchero. Three days later, a family looking for firewood found Summar's partially buried body. The autopsy reported that he had been stabbed over 70 times. Law enforcement found MacCarlie's knife at the scene, covered in blood.

After Summar's body was found, police questioned the nine-year-old, who told them nothing had happened on the drive in the Ranchero to take Fenebock home and he had not seen anything happen to Summar. But police, who believed a mob had conspired to kill Summar, took the child to the crime scene, showed him blood and drag marks, told him that Summar had been stabbed and was dead, pointed to the area where his body was found, and told him they believed it had happened during his ride in the white Ranchero. They then asked the child to "play detective" and tell them what he thought happened based on what he had learned, whereupon he provided a story implicating MacCarlie, Fenenbock, and two other men—while also reminding them six times that he was making it all up.

After obtaining this "evidence," and the statements of some of the drifters regarding conversations in the campground, police arrested and charged nine people - six men and three women - for the murder, including Fenenbock.

Fenenbock was tried first, convicted of murder, and sentenced to 26 years to life in prison based primarily on testimony of the nine-year-old. By the time of trial, the child— after coaching by a therapist—had begun testifying to the story that was previously made up as if it were fact.

Shortly after Fenenbock's conviction, however, MacCarlie admitted to stabbing the victim alone. He explained that he had been molested as a child and snapped when he heard that Summar had molested the young child living with them. He testified that he drove Summar in a red truck, not the white Ranchero, and he beat and stabbed Summar during an out-of-body experience. The physical evidence, including blood found throughout the red truck and tire tracks that matched the red truck, was consistent with MacCarlie's testimony and inconsistent with the testimony of the nine-year-old. MacCarlie was convicted and sentenced to life in prison.

The other defendants were not convicted of murder. One co-defendant whose case matched Fenenbock's in almost every way except that he was tried with MacCarlie and thus his jury heard MacCarlie's confession that MacCarlie had killed Summar alone, was acquitted of all charges.

Fenenbock, however, sat in prison because MacCarlie's confession had not been heard at his trial, and was considered "post-conviction evidence," which, at the time, had to point "unerringly" to innocence to be successful. The California Supreme Court, without explanation, found MacCarlie's confession insufficient by that standard. Fenenbock's attorney Jolie Lipsig tried to litigate the evidence of his innocence in federal court as well, but federal law is unsettled and unclear about a convicted person's constitutional right to present evidence of their innocence after conviction

For 27 years, Fenenbock remained incarcerated until he learned about the California law NCIP had helped enact that went into effect January 1, 2017: that newly discovered evidence can be presented if it "more likely than not" would have changed the outcome of the trial. He called Lipsig and begged her to help him write another writ to the Superior Court, which he filed in August of 2017. The Court issued an order to show cause and appointed a lawyer for Fenenbock. The system almost failed Fenenbock again when the appointed attorney refused to act, but this time, the Court intervened, and sent Fenenbock an application form to enlist the help of NCIP. Lipsig also called NCIP and relayed her belief in Fenenbock's innocence.

In October of 2018, NCIP accepted the case and began representing Fenenbock.

Over the past year, NCIP re-investigated the case, filed multiple briefs, presented witnesses at an evidentiary hearing, and argued the new evidence—especially MacCarlie's confession—more likely than not would have changed the outcome of Fenenbock's original trial, as it did for his co-defendants.

On August 23, 2019—nearly 28 years after Fenenbock's arrest—his conviction was reversed by Judge Mattice in the Superior Court of the State of California for Solano County.

The State now has 60 days to either retry Fenenbock or appeal the Court's decision. Fenenbock, who had already been found suitable for parole and eligible for elderly parole was declared immediately eligible for release on the same day the court reversed his conviction. He should be released pending any such action.

"This case shows how easily a wrongful conviction can happen, and how hard it is to fix one." said NCIP's lead attorney on this case, Paige Kaneb. "It took nearly three decades, a team of lawyers, an amazing investigator, a new law, and a great judge to set Bob free, even though all they had against him was a kid who had been asked to make up a story that was completely contradicted by the physical evidence."

NCIP's legal team for this case included Paige Kaneb, Melissa O'Connell, and Aaron Aguas-Rao, with pro bono support from Morrison & Foerster attorney George Harris and investigator Grant Fine, and support from NCIP clinic students. "Bob wants nothing more than to be reunited with his daughters and to walk in the forest again. His unwavering persistence for justice will now allow him to do so." said Aguas-Rao.

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 27 wrongfully convicted individuals. Learn more at www.ncip.org.

NCIP Case Contact

Paige Kaneb | NCIP | (408) 551-3258 | pkaneb@scu.edu

Media Contact

Lori Stone | NCIP | (408) 551-3254 | lstone@scu.edu

###