



## **Judge Dismisses Case Based on Government's Outrageous Misconduct**

**SANTA CLARA, Calif.**, August 25, 2020—A nearly thirty-year saga has finally ended for Robert Fenenbock, who was wrongfully convicted of a 1991 murder that he did not commit. On August 23, 2019, the Solano County Superior Court reversed Fenenbock's conviction based on newly discovered evidence, including the confession of the true killer. The Trinity County District Attorney's Office attempted to retry Fenenbock, based on the same unreliable and coerced evidence upon which it relied to secure the original conviction.

The Northern California Innocence Project (NCIP), James Bennett of Morrison & Foerster, and George Harris of the Norton Law Firm defended Fenenbock and argued the government's persecution of Fenenbock and violations of his rights must stop.

Yesterday, Judge Carlos R. Gutierrez of the Solano County Superior Court dismissed all charges against Fenenbock, who served 28 years of his prison sentence after being wrongfully convicted of murder.

### ***The background***

On September 30, 1991, rumors began to spread around the Hawkins Bar campground in Trinity County 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 a nine-year-old boy in the back. They learned that MacCarlie had driven Bob Fenenbock, a 38-year-old Army veteran, to his Hawkins Bar home using the white Ranchero. Four days later, a family looking for firewood found Summar's partially buried body. The autopsy reported that he had been stabbed over 70 times. MacCarlie's knife was left at the scene, covered in blood later determined to be Summar's.

After Summar's body was found, police questioned the nine-year-old, who told them nothing had happened on his ride in the Ranchero to take Fenenbock home and he had not seen anything happen to Summar. But police, who believed a vigilante mob had conspired to kill Summar, took the child to the crime scene, showed him blood and drag marks and a picture of MacCarlie's bloody knife, told him Summar had been stabbed to death, and told him they believed it had happened during his ride in the white Ranchero with MacCarlie and Fenenbock and others. They then asked the child to "play detective" and tell them what he thought happened, 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. The State, who had taken custody of the child, then placed the child in therapy. The nine-year-old told his therapist that he had not really seen anything and knew about the murder from the police, but the therapist told him that he had to testify to the story as if he had really seen it so that the child would be safe and Fenenbock would stay in jail, as that was "the most important thing."

The State ultimately tried eight people for the murder, relying on the child to implicate Fenenbock and three others as direct participants in the murder. No physical evidence implicated Fenenbock (or the white Ranchero) in the violent murder.

Fenenbock was tried first, convicted of murder, and sentenced to 26 years to life in prison based primarily on testimony of the child, who—after coaching by a therapist—testified 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." After the murder, he returned to the campground, and, later that night, drove Fenenbock and a friend home in the white Ranchero, with Randy in the back. MacCarlie was convicted and sentenced to life in prison.

MacCarlie was tried with the other two men that the child testified he had witnessed stab Summar. Neither was 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 he 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 heard. The California Supreme Court, without explanation, found MacCarlie's confession insufficient by that standard. For 27 years, Fenenbock sat in prison, 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" have changed the outcome of the trial. He filed another writ 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. In October of 2018, NCIP accepted the case and began representing Fenenbock.

Over the next year, NCIP, Morrison & Foerster, and investigator Grant Fine 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. Judge Mattice noted how the physical and forensic evidence supported MacCarlie's version of the murder and contradicted the child's. Notably, the red truck was covered in Summar's blood and matched the tire tracks at the crime scene, while the white Ranchero had no human blood and did not match the tire tracks at the scene.

Still, the Trinity County District Attorney's Office announced that it intended to retry Fenenbock. On August 30, 2019, Solano County Superior Court Judge Ellis released Fenenbock on his own recognizance pending the retrial. After 28 years of incarceration, Fenenbock was finally free and has spent the last year being the best father and grandfather he can be to his four daughters and 12 grandchildren. But he still faced another trial based on the same coerced evidence upon which it obtained the first wrongful conviction.

Fenenbock's legal team filed a motion to dismiss the case based on the government's outrageous conduct and Judge Gutierrez ordered a hearing on the motion. The hearing was conducted from January through August. The child, now an adult with his own young children, testified at the hearing that he never had a memory of witnessing the murder. Rather, he remembers being taken to the crime scene, told a story of the murder, and then told that he had to testify to that story in order to keep himself and his family safe. He described other violent incidents that he recalled witnessing, including a different stabbing by MacCarlie, and believed that Summar's would have been seared into his memory had he actually seen it. After reading the transcripts of his initial police interviews wherein he told them repeatedly that he had not seen the murder and they insisted he was lying until he was in tears, he hired a lawyer and filed a suit to try to stop this from happening to anyone else.

On August 24, 2020, a year and a day after Fenenbock's conviction was reversed, Judge Gutierrez found that government actors had provided a narrative to the child, and then placed unimaginable pressure on him to testify to that narrative. Their manipulative tactics caused the child to be a more compelling witness at Fenenbock's trial. Moreover, the lead investigator had lied to the child, lied to Fenenbock's jury, and lied to the court. The Court held that to retry Fenenbock on this evidence that, "in the court's view was tainted by instances of untruth, coercion, and lies, is grossly shocking to the conscience, outrageous, and violates a universal sense of justice." The Court further found that the government's outrageous conduct had denied Fenenbock a fair trial in the first place, and would prevent him from obtaining a fair trial in the future. The Court dismissed the case to prevent any further violations of Fenenbock's rights.

“Bob has endured far too much for far too long, and yet done so with grace and a grin on his face. Today, the Court told the government that they cannot simply trample the rights of innocent people and must themselves follow the law.” said NCIP’s attorney on this case, Paige Kaneb. “Given everything that’s happening, this ruling means more than just the life of one man, it means a certain level of protection from abuse of power that we all so desperately need.”

**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 31 wrongfully convicted individuals. Learn more at [www.ncip.org](http://www.ncip.org).

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