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Hinton v. Alabama: Effective Counsel and Forensic Expertise

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On February 24th, the United States Supreme Court issued a per curiam reversal in the case of Alabama death row inmate Anthony Ray Hinton. Applying “a straightforward application of [its] ineffective-assistance-of-counsel precedents,” the Court held that “it was unreasonable for Hinton’s lawyer to fail to seek additional funds to hire [a forensic] expert where that failure was based not on any strategic choice but on a mistaken belief that available funding was capped at \$1,000.” The Court remanded the case back to the state court to determine if that deficient performance prejudiced the outcome of Mr. Hinton’s trial.

Given our evolving understanding regarding the reliability of certain forensic disciplines—like firearms and tool-mark analysis—and the use of such evidence in cases like this one in which the government’s case relies exclusively on forensic evidence, this case is emblematic of the critical need for counsel to procure and courts to permit only qualified scientific experts to testify in criminal cases. As Hinton’s counsel and amici point out, “the testimony of expert forensic witnesses has a powerful impact on jurors.” Thus, courts must be absolutely vigilant in ensuring that defendants receive effective assistance and they must steadfastly guard against the admission of unreliable scientific evidence.

Some background

Hinton was arrested in 1985 and charged with two separate shooting murders that occurred during robberies at two fast food restaurants near Birmingham, Alabama. Mr. Hinton had no history of violent crime. There were no eyewitnesses to either murder. The fingerprints lifted from each crime scene did not match Hinton’s. A polygraph test administered by police exonerated Hinton of any involvement, but the court refused to admit it into evidence. Witnesses also testified that, due to Mr. Hinton’s work assignment the day of the murders, it would have been physically impossible for him to have been at the crime scene when one of the shootings occurred. In short, there is ample evidence indicating that Mr. Hinton is innocent—a position he has steadfastly maintained in the 28 years he has been on death row.

In fact, the “only evidence linking Hinton to the two murders were forensic comparisons” of the bullets recovered from the crime scene to a gun owned by Hinton’s mother. Although the type of ballistics evidence presented at Hinton’s trial—in which a firearms and tool- mark examiner purported to definitely determine that a particular gun must have fired a particular bullet—“is not supported by science,” the capital murder charge hung entirely on this piece of forensic evidence.

The Defense’s Forensic Expert

To refute the state’s expert on this critical issue, Hinton’s court-appointed lawyer sought a ballistics expert. The trial court pre-approved only \$500 for hiring a defense toolmark expert. Mr. Hinton’s counsel was ignorant of the fact that Alabama law and United States Supreme Court precedent permitted him to seek additional funding for such critical expert assistance. He soon complained to the court that no expert was willing to even consider assisting him for this amount, to which the trial court responded that the lawyer speak with Andrew Payne, a civil engineer with military artillery experience.

Payne agreed to do the case for free and it appears that Mr. Hinton got what the state paid for: Payne admitted under cross-examination that he did not know how to use a microscope and that, in fact, he was physically incapable of performing the needed testing in the case because he had only one eye. The prosecutor at trial characterized the defense expert as a charlatan and “no expert at all,” and said he was shocked that the defense would attempt to present such a person as an expert.

Hinton's lawyer, for his part, recognized prior to trial that the expert he had retained to challenge the prosecution's critical forensic evidence was not competent to do so, but wrongly believed he could not obtain the funds necessary to hire a better one. In fact, had he researched Alabama law, the lawyer would have found that the court was required to provide him with reasonable fees for an expert.

Hinton was convicted and by a 10-2 verdict, sentenced to death.

On appeal

The Equal Justice Initiative began representing Mr. Hinton during state post-conviction proceedings. At an evidentiary hearing in state circuit court, Mr. Hinton presented un rebutted evidence from firearms and tool- mark examiners, to whose qualifications the State stipulated, that bullets obtained from the crime scenes could not be linked to a single weapon. The new experts' conclusion that the bullets could not be linked to a single weapon discredited the State's theory at trial, destroyed the State's only link between the robberies, and was powerful evidence of Mr. Hinton's innocence. The new experts additionally concluded that none of the bullets recovered from any of the crimes can be matched to Mr. Hinton's mother's revolver, and two of the experts excluded this weapon as mechanically incapable of firing two of the bullets recovered from one crime scene.

Nonetheless, the post-conviction court found Hinton's ineffectiveness claims without merit because the expert's testimony at trial met the minimal standards of admissibility under Alabama evidentiary rules – i.e., the expert had more knowledge than “the average man on the street.” The appellate court and Alabama Supreme Court affirmed and Hinton then applied for a writ of certiorari to the U.S. Supreme Court.

Hinton's petition, the state's response, and an amicus brief by The Constitution Project were submitted last fall. Today, the Court held that, under the first “performance” prong of the Strickland test to determine if Hinton received ineffective assistance of counsel, “the trial attorney's failure to request additional funding in order to replace an expert he knew to be inadequate because he mistakenly believed that he had received all he could get under Alabama law constituted deficient performance.” 571 U.S. ____ (2014).

With respect to the second Strickland inquiry concerning whether this failure prejudiced the outcome of Hinton's trial, the Court raised a few questions concerning the reliability of the state's experts. It opines that “[p]rosecution experts, of course, can make mistakes,” and that the Court has “recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts...” The Court notes that this threat is minimized through the provision of a competent defense expert. In state post-conviction proceedings, Hinton produced ample evidence regarding how his expert witness prejudiced the outcome of his trial, however, the Supreme Court has now placed that question back in the hands of the Alabama courts to determine.

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