

Wisconsin Man Exonerated of 1990 Rape Based on New DNA Testing Proving FBI Hair Analyst Provided False Testimony

**Charges dismissed after additional DNA testing points to
unidentified male as the perpetrator.**

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(Madison, WI – May 17, 2018) Today the Dane County District Attorney’s Office dropped all charges against Richard Beranek, finally exonerating him of a 1990 home-invasion rape that new DNA evidence proves he did not commit. Circuit Court Judge Nicholas J. McNamara immediately granted the State’s motion to dismiss.

Mr. Beranek’s case was one of the many cases identified through a landmark review finding that FBI analysts nearly always provided erroneous testimony on cases where microscopic hair analysis was performed. At trial the FBI analysts falsely claimed that a hair found on crime scene evidence was “microscopically the same” as the hair of Beranek. Pursuant to the FBI and DOJ review which began in 2013 and involved thousands of cases handled by FBI analysts from 1985 to 2000, the FBI notified the prosecution in May 2015 that an agent had provided erroneous testimony regarding the only physical evidence linking Beranek to the crime. Subsequent DNA testing has proven that the hair did not come from Beranek. He was also excluded from all other crime scene evidence including underwear the state maintained were worn by the assailant. Based on this new evidence, a Dane County Circuit Court vacated Beranek’s conviction on June 9, 2017, and Beranek was released on bail. Mr. Beranek remained on bail while the district attorney reinvestigated the case over the past eleven months.

Charges Dropped After New DNA Test

The District Attorney’s decision to dismiss the case came only days after a new DNA test of underwear left by the rapist in the victim’s bed revealed a distinct male DNA profile that was not Mr. Beranek’s. Counsel for Mr. Beranek have been informed that the profile was compared to profile in a local DNA database, but the profile did not match a known offender. It is unclear whether this DNA profile has been compared to any of the other suspects developed during the Dane County Sheriff’s Office’s original two-year investigation.

Despite DNA evidence implicating another man in the crime and the victim’s unreliable identification made two years after the fact, the District Attorney’s Office did not concede Mr. Beranek’s innocence in its motion to dismiss. Instead, the District Attorney discounted the relevance of the DNA evidence and attempted to bolster the victim’s unreliable identification based on the victim’s “high confidence” in her identification of a stranger made two years after the fact. However, the district attorney also cited the victim’s reluctance to testify as a factor in the decision to dismiss the case. Eyewitness misidentification is the leading cause of wrongful conviction in the 356 DNA exonerations nationwide.

“Although we certainly welcome the decision to dismiss the case, we are dismayed that the District Attorney appears unable or unwilling to admit a serious mistake was made here,” said Bryce Benjet, Staff Attorney with the Innocence Project which is affiliated with Cardozo School of Law. “When we send the wrong man to prison, the guilty party remains free to commit other crimes. The recently obtained DNA evidence is capable of identifying the man who committed this crime, and we hope that law enforcement will pursue this investigative lead so that the right person can be brought to justice.”

Cristina Bordé, a staff attorney with the Wisconsin Innocence Project, explained, “Mr. Beranek would likely still be fighting for his freedom if not for the decision by the FBI and DOJ to review past cases where agents provided erroneous testimony regarding microscopic hair analysis. Hopefully this case will serve as a powerful reminder to all law enforcement of the need to correct past mistakes.”

The testimony of an FBI agent who claimed that a hair found on male underwear left at the scene was “microscopically the same as the known head hairs of the defendant” was the only physical evidence linking Beranek to the March 2, 1987 rape of a woman in her home. In its letter to the prosecution, the FBI acknowledged that the agent testified in a misleading fashion that exceeded the limits of science.

Innocence Project Staff Attorney Bryce Benjet contacted Mr. Beranek, who now lives on his family’s farm looking after his elderly mother, and gave him the good news. “When informed of the dismissal, he thanked God and expressed his gratitude for the work of everyone who has supported him over the years.” Mr. Benjet reported.

“This has been a long day coming for Mr. Beranek,” said Keith Findley, Co-Founder of the Wisconsin Innocence Project. “He is relieved that this long ordeal is finally over and looking forward to making up for lost time with his family.” Beranek spent 19 years wrongfully incarcerated for this crime.

Beranek Was Identified Through a Suggestive Photo Lineup Two Years After the Crime Despite Witnesses and Documents Placing Him in North Dakota at the Time

Beranek always maintained his innocence of the crime which had gone unsolved for two years before Beranek was charged based on an identification by the victim. Mr. Beranek’s photo was placed in a lineup only because he had plead guilty to an unrelated crime in Chippewa County, roughly 200 miles away. The identifications procedures utilized at that time were suggestive and unreliable and have since been disavowed in guidelines promulgated by the Office of the Attorney General.

At trial, Beranek presented six witnesses who confirmed that he was in North Dakota, hundreds of miles away from the scene, on the day that the crime occurred. In addition to family members, the witnesses included an unrelated couple who had hired Beranek to paint their house. Their testimony was corroborated by a contemporaneous food stamp application listing him as

residing in North Dakota. Despite his alibi, Beranek was convicted on the strength of the FBI's false hair comparison testimony.

DNA Testing Disproved the FBI's Flawed Hair Comparison

The Innocence Project and the Wisconsin Innocence Project agreed to represent Beranek and sought DNA testing of the hair as well as the underwear and other articles of clothing. DNA testing proved that the hair does not belong to Beranek. Beranek was also excluded from every other interpretable DNA profile detected on the evidence. Based on this evidence, a Dane County circuit court vacated Beranek's conviction on June 9, 2017.

Before mitochondrial DNA testing was used to analyze hair in criminal cases, prosecutors throughout the country routinely relied on microscopic hair comparison to link a criminal defendant to a crime. The practice was deemed "highly unreliable" in the 2009 National Academy of Sciences report on forensic science, *Strengthening Forensic Science in the United States: A Path Forward*. In April 2015, the FBI announced that agents provided erroneous testimony or reports in more than 90 percent of the cases that had been reviewed at that time. To date, four people (including Beranek) have had their convictions reversed at least in part because of the review. Erroneous hair comparison testimony contributed to nearly 25 percent of the nation's 356 DNA exonerations.

Beranek is represented by Bryce Benjet of the Innocence Project, which is affiliated with the Cardozo School of Law in New York, NY, Keith Findley and Cristina Bordé of the Wisconsin Innocence Project, which is affiliated with the University of Wisconsin; and Dean Strang of the law firm Strang Bradley, LLC.

Wisconsin Exoneree Jarrett Adams assisted in the case while working as a postconviction fellow at the Innocence Project in New York. Mr. Adams graduated from law school after his conviction was overturned with the help of the Wisconsin Innocence Project.

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