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Officials file to overturn conviction in 1978 murder

BY SPENCER S. HSU

Federal prosecutors on Friday acknowledged errors in the scientific evidence that helped send a District man to prison for 28 years for murder and took the extraordinary step of agreeing to have his conviction overturned.

U.S. Attorney Ronald C. Machen Jr. cited DNA evidence in also agreeing to drop the murder charge against Santae A. Tribble and never try him again. But even as the prosecutor said the evidence that convicted Tribble was flawed, Machen stopped short of declaring him innocent.

Tribble, 51, was found guilty of murdering a District taxi driver in an early-morning robbery on July 26, 1978. His case was featured in articles last week in which The Washington Post reported that Justice Department officials have known for years that flawed forensic work might have led to convictions of potentially innocent people.

In Tribble's case, prosecutors and the FBI laboratory were incorrect in linking a hair found near the murder scene to Tribble, according to recent DNA test results.

As the U.S. attorney's office filed court papers late Friday, three former senior FBI lab experts and a national civil liberties group joined calls for the bureau and the Justice Department to review testimony in all convictions nationwide that depended on FBI hair evidence before 1996. Such a review would determine whether the evidence should be retested using DNA.

The Post reported last week that the Justice Department never reviewed thousands of cases that relied on potentially flawed hair comparisons, resulting in men like Tribble staying in prison. In many of the

cases that the agency did review and found to have problems, prosecutors never notified defendants or their lawyers of the issues uncovered.

Machen has agreed to review all District convictions obtained with hair evidence and will ask the Mid-Atlantic Innocence Project to assess whether any old evidence should be retested with modern DNA techniques. Justice Department and FBI officials said they still were considering a similar review nationwide.

Rep. Frank R. Wolf (R-Va.) this week urged the Justice Department to review its handling of about 250 questionable convictions identified by The Post, most of which relied on hair comparisons.

"It is hard to quantify the hardship that those who have been wrongfully convicted have suffered," Wolf wrote to Justice Department Inspector General Michael E. Horowitz on Thursday.

"A justice system that fully protects the constitutional rights of criminal defendants is essential to the integrity of our republic. I urge you to move quickly on this review," said Wolf, who chairs the House appropriations subcommittee that funds the Justice Department.

Tribble wants exoneration

Even with Friday's moves by prosecutors, Tribble's fight to clear his name is not over. He has asked a court for full exoneration. Tribble would become the 290th person cleared by post-conviction DNA testing in the United States if a D.C. Superior Court judge grants his motion under the D.C. Innocence Protection Act.



JAH CHIKWENDIU/THE WASHINGTON POST

Santae A. Tribble at his home in March. Tribble was accused of killing a cab driver in 1978, when he was 17. The FBI's conclusion that a hair recovered from a stocking cap near the crime scene was Tribble's helped lead to his conviction. DNA testing showed the FBI was wrong.

"The government's motion stops well short of acknowledging that Mr. Tribble is actually innocent," Sandra K. Levick, head of special litigation for the District's Public Defender's Service and Tribble's attorney.

"If the United States will not agree to join him in his request for a declaration that he is innocent ... then Mr. Tribble will insist on his right to present the compelling evidence of his actual innocence to the court," she said.

Machen's office declined to comment. But in a court filing Friday, prosecutors said the DNA results raise "substantial doubt about the defendant's guilt."

The Public Defender's Service has pushed for the nationwide review of convictions that relied on hair comparisons before 1996, when the FBI lab stopped declaring matches based on visual comparisons alone.

In separate interviews, Bruce Budowle, a scientist who developed the FBI's DNA testing standards; Mark R. Wilson, an agent who led the FBI's adoption of DNA testing for hair; and Myron T. Scholberg, the chief of the lab's hair and fiber unit until 1985, said FBI testimony should be reviewed in all

hair convictions. If the testimony was scientifically invalid and hair evidence was key to convictions, the evidence should be retested using DNA, they said.

"If you know errors may have been egregious ... and you were a law enforcement agency doing the right thing, I would think you'd want to do it," said Budowle, who retired from the FBI in 2009 after 26 years and now directs the University of North Texas Health Science Center's Institute of Investigative Genetics.

Calls for a nationwide review

One former FBI lab director called for an even wider review, to include cases when testimony was proper. The FBI learned through DNA testing in 2002 that hair matches were wrong 11 percent of the time, regardless of whether the testimony was flawed, said Dwight E. Adams, director of the FBI lab from 2002 to 2006.

The Constitution Project, a bipartisan legal group, urged a nationwide review of hair convictions.

"Obviously, if there are problems in D.C., there are problems across the country,"



MARK GAIL/THE WASHINGTON POST

Tribble walks with his son, Santae Jr., in November. Tribble has asked a court for full exoneration in the 1978 killing.

said Virginia Sloan, president of the project. “To think this kind of testimony or potentially flawed evidence is limited to a particular location makes no sense.”

In a statement, the Justice Department said it “is evaluating the potential for future ... reviews” in cases where FBI hair exams resulted in convictions.

“If there is evidence that such a review is warranted, we will work closely with the FBI to ensure that necessary steps are taken, but it would be premature at this time to speculate,” the statement continued.

The FBI declined to estimate how many convictions might be involved. The FBI lab’s hair and fiber unit handled tens of thou-

sands of examinations per year in the 1970s and 1980s, most of them for state and local cases. Even if only a fraction resulted in positive findings and convictions, the cases could reach the thousands.

There is a precedent for a such a review.

In 2007, two years after scientific criticism forced the FBI to abandon the forensic practice of tracing bullets to a specific manufacturer’s batch by analyzing their chemical composition, the bureau agreed to release an estimated 2,500 bullet-lead case files to the Innocence Project and to review testimony so that prosecutors might alert courts and defendants of problems.

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