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Dallas County DA recommends 1982 conviction be overturned because prosecutors did not turn over evidence

The Dallas County District Attorney's Office Conviction Integrity Unit is recommending a 1982 conviction be overturned because prosecutors did not turn over evidence of another suspect to defense counsel, District Attorney John Creuzot announced Tuesday.

Mallory Vernon Nicholson, 74, was convicted in September 1982 of burglary of a habitation and two counts of aggravated sexual abuse of a child. Nicholson was released from prison in June 2003 after serving 21 years of his 55-year sentence but remains on sex-offender parole.

The Innocence Project brought Nicholson's case to the Conviction Integrity Unit [CIU].

He was accused of sexually assaulting two boys, which Nicholson denied. He had attended his wife's funeral 35 miles away a few hours before the attack and multiple friends said he was with them after the funeral and into the night. His defense attorney argued during his trial that he was mistakenly identified. No physical evidence linked him to the crimes.

The suspect was consistently described in initial investigative documents as a 14-year-old male nicknamed "CoCo" who lived across the street from the offense location. In contrast, Nicholson was 35 years old at the time of the offense.

Nearly four decades later, after reviewing the case, the Dallas County District Attorney's Office has decided to recommend habeas corpus relief for Nicholson. Prosecutors and defense attorneys submitted agreed findings in the case, which a state district judge signed this month. The case will be sent to the Texas Court of Criminal Appeals.

"There's no time limit on seeking justice," said Creuzot.

The CIU determined that evidence pointing to another suspect was not turned over to defense attorneys in violation of *Brady v. Maryland*.

CIU Chief Cynthia Garza said the case is a "clear-cut" example of a *Brady* violation.

In 1982, the gold standard of prosecutions was eyewitness testimony. Nicholson was convicted solely based on such testimony.

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“The outcome would’ve been different if they tried the case now,” Garza said.

On June 12, 1982, a male approached a 9-year-old boy and his 7-year-old cousin outside their grandmother’s apartment. The male offered the boys \$5 to help him break into a nearby apartment. He lifted the boys into an adjacent apartment through a window and kicked through drywall to get into the unit.

Once inside, the male stole items such as food, clothes and a TV. He went in and out the front door with the stolen items before going back inside, where he sexually assaulted the boys. After the assaults, the boys told their aunt, who called police. They boys were taken to Parkland Memorial Hospital for sexual assault exams, where the suspect was described as a 14-year old male.

The detective took the 9-year-old boy and his mother in a patrol car to look at the crime scene. While driving, the boy saw Nicholson sitting on a porch and said he was the attacker. Nicholson was arrested, and his photo was placed in a six-picture lineup and shown to the 7-year-old boy, who did not pick out Nicholson. The boy’s mother later called the detective and said the boy recognized his attacker but was afraid to pick him out. The next day, the boy picked Nicholson in a live lineup.

Before trial, Nicholson’s defense attorney requested to review any evidence of innocence, known in legal terms as exculpatory evidence. The court granted the defense motion, but there is no record that prosecutors turned over the information about an alternate suspect.

During the post-conviction investigation, the lead prosecutor said he does not recall whether the reports were turned over to the defense. He said that because of his practices and understanding of *Brady* at that time, it’s likely that any information about the 14-year-old suspect was ignored or not provided to Nicholson’s counsel.

“It is our job as prosecutors to turn all evidence of innocence over to the defense counsel. And it remains our job to correct our past wrongs,” Creuzot said.

The CIU was established in 2007 and primarily reviews cases involving allegations of actual innocence but also investigates possible wrongful convictions in instances where such claims are connected to claims of actual innocence. The investigation into Nicholson’s conviction was funded by a federal post-conviction grant, which helped expand the CIU in 2019 and funds DNA testing.

The Texas Court of Criminal Appeals will decide whether to overturn the conviction. If so, the case will be sent back to the DA’s office. At that time, prosecutors will determine whether to re-try the case or dismiss the charges against Nicholson.