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STATE OF OHIO V. WRONGFUL CONVICTIONS

By Alireza Nourani-Dargiri

Last year, Ohio's Eighth District Court of Appeals awarded Michael Sutton and Kenny Phillips a new trial based on newly discovered evidence.¹ Sutton and Phillips were convicted in 2006 on several counts for attempted murder and resisting arrest during a hit-and-run shooting.² Sutton was sentenced to 46.5 years in prison and five years of post-release control.³ Phillips was sentenced to 92 years in prison—effectively life imprisonment.⁴ However, the Eighth District noted that these two men, convicted as minors, may have been imprisoned for more than a decade for a crime they did not commit.

In its unanimous opinion, the Eighth District underscored that the “total lack of physical evidence [used to convict the defendants] is extremely disturbing.”⁵ At the time of conviction, Officers Daniel Lentz and Michael Keane claimed—under oath and under penalty of perjury—that Sutton and Phillips shot at them after the hit-and-run shooting.⁶ In a case involving an alleged hit-and-run shooting, one expects *some* definitive evidence (i.e., bullet casings) at the crime scene linking Sutton and Phillips to the incident. Yet, “[n]ot a single gun, bullet hole, bullet casing, or evidence that any guns were present or fired by the defendants” was found at the scene.⁷

The only evidence the State recovered was a trace amount of gun residue from the front passenger side of Sutton and Phillips's car, and from the left hand of Phillips⁸. Phillips, however, is right-handed and was sitting in the rear driver's side seat.⁹ Tellingly, experts throughout the trial agreed that this residue did not and, more importantly, could not prove that either one ever possessed or fired a gun linked to the hit-and-run incident.¹⁰ Even if Phillips had sat in the front passenger side, experts testified that this amount of residue was so small that it could have been transferred to Phillips when he was transported in the police car.¹¹ Accordingly, expert witnesses for both

parties *agreed* that the “evidence [the State presented] did not prove that Phillips ever possessed or fired a gun.”¹²

The State had no evidence to present to the jury linking the two young men to the incident. The State had no direct evidence linking Sutton and Phillips to the alleged offense. The State had no evidence proving the defendants ever possessed or fired a gun. The State had no evidence to support the testimony of its police officers. Instead, the State attempted to bolster the officers' credibility to the jury to prove its case. The State lauded Lentz and Keane—two white police officers—as “highly decorated veteran



Cleveland officers,” even though these two officers may not have been as upstanding and flawless as the State purported them to be.¹³ On the other hand, the State described the two unconvicted, potentially innocent, Black teenage boys as liars, even though both “zealously, continuously and unequivocally maintained their innocence”¹⁴ from the start, insisting that “occupants of another car committed the shooting.”¹⁵

Recent definitive testimony now directly challenges the little evidence the State used to convict Sutton and Phillips.¹⁶ The Eighth District described how this new evidence “bolster[ed] the account” offered by Sutton and Phillips and presented “potentially exculpatory and impeaching information” that was not provided to the defense during their original trial.¹⁷ Moreover, the Court noted this potentially exculpatory evidence constituted a *Brady* violation—grounds to award the two a new trial.¹⁸

The Eighth District concluded its opinion with a discussion about the criminal legal system’s bias against Black youth. The court discussed “numerous studies confirm[ing] that African Americans are

disproportionately and often wrongfully convicted.”¹⁹ These studies include appalling statistics of innocent, Black defendants asserting they were being framed by police—the exact assertion Sutton and Phillips made.²⁰ Although there is no “one reason” for this discriminatory practice, the Court noted that the result is “approximately half of discovered individual exonerations” are Black.²¹

If found innocent and thereby wrongfully convicted, Sutton and Phillips will be included in a growing list of exonerees in Ohio. Notable examples over the past few years include: Isaiah Andrews (45 years wrongfully imprisoned);²² Ricky Jackson (39 years wrongfully imprisoned);²³ Raymond Towler (29 years wrongfully imprisoned);²⁴ Kwame Ajamu (28 years wrongfully imprisoned);²⁵ Charles Jackson (27 years wrongfully imprisoned);²⁶ Laurese Glover (20 years wrongfully imprisoned);²⁷ and Ru-El Sailor (15 years wrongfully imprisoned).²⁸ If the jury finds Sutton and Phillips innocent, the two will have one main thing in common with the exonerees: they were all innocent Black men.

1. *Ham v. SouthState v. Sutton*, 2021-Ohio-8542 (Mar. 18, 2021).
2. *Id.* at 27–28.
3. *Id.*
4. *Id.*
5. *Id.* at 104.
6. *Id.* at 97, 104.
7. *Id.* at 104.
8. *Id.* at 20, 105.
9. *Id.*
10. *Id.* at 105.
11. *Id.*
12. *Id.* at 21.
13. See Cory Shaffer, *No Felony Charge for Cleveland Police Officer Accused of Breaking Daughter’s Arm*, CLEVELAND.COM (Sept. 16, 2019, 3:30 PM), <https://www.cleveland.com/court-justice/2019/09/no-felony-charge-for-cleveland-police-officer-accused-of-breaking-daughters-arm.html>; Adam Ferrise, *Cleveland Police Officer Wrongfully Arrested Woman, Left Toddler with Man Accused of Child Abuse, Investigators Say*, CLEVELAND.COM (Jan. 13, 2021, 10:09 AM), <https://www.cleveland.com/metro/2021/01/cleveland-police-officer-wrongfully-arrested-woman-left-toddler-with-man-accused-of-child-abuse-investigators-say.html>.
14. *Sutton*, 2021-Ohio-854 at 29.
15. *Id.* at 74.
16. *Id.* at 40.
17. *Id.*
18. *Id.* at 84, 112, 156.
19. *Id.* at 144.
20. *Id.* at 99, 143–47.
21. *Id.* at 149.
22. Cory Shaffer, *Jury Finds Man Not Guilty in Retrial of Wife’s 1974 Killing in Cleveland*, CLEVELAND.COM (Oct. 27, 2021, 3:53 PM), <https://www.cleveland.com/court-justice/2021/10/jury-finds-man-not-guilty-in-retrial-of-wifes-1974-killing-in-cleveland.html>.
23. Ricky Jackson, WITNESS TO INNOCENCE, <https://www.witnesstoinnocence.org/single-post/ricky-jackson> (last visited 2022).
24. Raymond Towler, INNOCENCE PROJECT, <https://innocenceproject.org/cases/rammond-towler/> (last visited 2022).
25. Kwame Ajamu, WITNESS TO INNOCENCE, <https://www.witnesstoinnocence.org/single-post/kwame-ajamu> (last visited 2022).
26. Charles Jackson, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5605> (last visited 2022).
27. Laurese Glover, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4966> (last visited 2022).
28. Ru-El Sailor, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5303> (last visited 2022).