

CASE SUMMARY

CATEGORY: Exoneration

DEFENDANT'S NAME: Gary Gauger

JURISDICTION: McHenry County, Illinois

RESEARCHED BY: Rob Warden
Center on Wrongful Convictions

DATE LAST REVISED: December 8, 2000

FACTS

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| Date of crime: | April 8, 1993 |
| Convicted of: | Double murder |
| Death-qualifying factor(s): | Multiple murder |
| Date sentenced: | January 11, 1994 |
| Date released: | October 4, 1996 |
| Months lapsed sentence to release: | 33 |
| Defendant's age at time of crime: | 41 — born January 21, 1952 |
| Defendant's sex: | Male |
| Defendant's race: | Caucasian |
| Victim(s): | Morris and Ruth Gauger |
| Age of victim(s): | 74/70 |
| Sex of victim(s): | Male/Female |
| Race of victim(s): | Caucasian |
| Relationship of victim(s) to defendant: | Parents |
| Trial judge: | Henry L. Cowlin |

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| Prosecutor(s): | Philip A. Prossnitz, assistant McHenry County state's attorney |
| Defense attorney(s): | Russell Miller and William T. Davies (privately retained) |
| Defendant's plea: | Not guilty |
| Was guilt phase bench or jury? | Jury |
| Was sentencing bench or jury? | Judge |
| Summary of state's theory of case at trial: | Gary Gauger bludgeoned and slashed the throats of his elderly parents. During interrogation, Gauger allegedly told sheriff's deputies that he came upon his parents from behind, pulled their heads back by their hair, and cut their throats. |
| Summary of defense: | Total innocence; alleged confession not actually a confession but rather a hypothetical statement. |
| Did the defendant confess or make an inculpatory statement? | Police claimed Gauger made inculpatory statements in which he stated that he came upon his parents from behind, pulled them back by their hair, and cut their throats. Gauger denied having confessed. |
| Did the defendant testify at trial? | Yes. He denied that he committed the crime. He testified similarly at a hearing on a motion to suppress his alleged inculpatory statements. |
| Was there eyewitness testimony? | No |
| Was there serological evidence? | No |
| Was there hair or fiber evidence? | Yes. A forensic scientist, Lurie Lee, testified that the hairs found near Ruth Gauger's body and presumed to be hers had been broken and stretched in a manner that would be consistent with her son's alleged confession, although Lee acknowledged that the hairs also could have been broken during combing or brushing. |
| Other prosecution evidence: | There was no physical evidence linking Gauger to the murders other than the purported hair evidence mentioned above. The only evidence introduced to corroborate Gauger's alleged confession was the testimony of a pathologist, Dr. Lawrence Blum, who performed the Gauger autopsies. Blum said the fatal wounds were consistent with the possibility that the killer had come upon the victims from behind and cut their throats. He acknowledged, however, that it was equally possible that the victims had been bludgeoned before their throats were cut. |

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| Was there informant testimony? | Raymond Wagner, a twice-convicted felon, testified that, while he and Gauger were incarcerated together in the McHenry County Jail, Gauger repeatedly admitted killing his parents. |
| Did the informant(s) receive anything of value for testifying? | There is no record of whether Wagner did nor did not receive favorable treatment. |
| Was there accomplice testimony? | No |
| Was there a <i>Batson</i> issue? | No |
| Was there a <i>Brady</i> issue? | No |
| Was there evidence of mental illness, retardation, or neurological damage? | None, other than the testimony of a McHenry County corrections officer who was allowed to testify as a rebuttal witness that Gauger had stated at the time he was booked that he had previously suffered from blackouts. |
| Principal exculpatory evidence at trial: | Character testimony from family members who believed Gauger was incapable of violence. |
| Evidence introduced in mitigation: | No prior record of violence |
| Defendant's criminal history: | Four convictions for driving while intoxicated (two in Illinois in the 1990's, one in Texas in 1988, one in Wisconsin in 1978) |
| Was police misconduct an issue on appeal? | Only as it pertained to arresting Gauger without probable cause, which was the principal issue on appeal. |
| Was prosecutorial misconduct an issue? | The prosecutor commented to the jury that Gauger stopped talking at some point (an impermissible comment on post-Miranda silence) and distorted the medical evidence during closing argument. |
| Other major issues on appeal: | The main issue was whether there had been probable cause to arrest Gauger, in which case his alleged confession should have been suppressed. Other issues were whether the prosecution's failure to turn over one statement made by Gauger was a Brady violation and whether certain comments made by the prosecution distorted the evidence. |
| Evidence of actual innocence: | Federal convictions in Milwaukee of Outlaws Motorcycle Club members Randall E. Miller and James Schneider for acts of racketeering, including the murder of the Gaugers. |
| Was the conviction ever affirmed by an appellate court? | No |

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| Did any appellate judge ever raise doubt about guilt? | Not until the case was reversed |
| What was the status of the case at time of exoneration? | On remand to trial court after winning new trial on direct appeal. |
| How did exoneration come about? | Lawrence Marshall took the case pro bono, securing Gauger's freedom after prevailing in the direct appeal. Evidence of Outlaws Motorcycle Club involvement came to light in June of 1997 as a byproduct of a federal investigation into other alleged criminal activity of the gang. |
| Was anyone else charged in the crime? | Yes — Randall E. Miller and James Schneider were indicted in 1997 by a federal grand jury in Milwaukee, Wisconsin, on 34 counts of racketeering, including acts relating to the Gauger murders. |
| If others were charged, briefly describe outcome: | Schneider pleaded guilty in 1998 and Miller was convicted in 2000 of the racketeering charges in U.S. District Court in Milwaukee. At Miller's trial, prosecutors played tape recordings in which Miller was heard to say that the authorities had nothing to link him to the Gauger murders because he had been careful not to leave any physical evidence. The recordings had been made by an Outlaw who turned government informant. |
| Appellate counsel: | Lawrence C. Marshall, Northwestern University School of Law |
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| Summary of appeals: | Unanimously reversed and remanded by Second District Appellate Court in an unpublished opinion on March 8, 1996, on the ground that the trial judge erred in failing to grant a motion to suppress Gauger's allegedly inculpatory statements; the statements were the fruit of an arrest made without probable cause and, therefore, had been illegal. The Supreme Court denied leave to appeal on October 2, 1996, and charges were dropped two days later by the McHenry County State's Attorney. |