

Innocence Project Reaches Landmark Civil Rights Settlement with City of Cincinnati, Allowing Independent Investigators to Review Homicide Cases for Suppressed Evidence in DNA Database

The agreement was reached in a civil rights suit filed on behalf of a wrongfully imprisoned man

(Cincinnati, OH — September 14, 2020) The New York-based Innocence Project and Cincinnati law firm Gerhardstein & Branch have negotiated a [settlement](#) with the City of Cincinnati for an unprecedented audit of Cincinnati Police Department's (CPD) DNA-based homicide cases. This marks the first time that a police department has agreed to turn over years of DNA database reports and homicide case records to a court-appointed, independent auditor to determine whether DNA evidence identifying alternate suspects was properly disclosed.

The settlement arises from a civil rights lawsuit filed in 2018 by the Innocence Project and Gerhardstein & Branch against the City and two police officials on behalf of Joshua Maxton. In June 2015, 26-year old Maxton, a Black man, was arrested for the murder of an eighteen-year-old Black woman who was shot and killed while sitting in a parked car in the North Avondale neighborhood of Cincinnati. Maxton was charged with murder and jailed for a year before trial. At all times, he maintained his innocence and turned down plea offers. Ultimately, he was unanimously acquitted by a jury in June 2016.

In the middle of Maxton's trial, his defense attorneys learned for the first time that the Cincinnati Police Department had been notified seven months earlier, while Maxton was in jail, that key DNA evidence found at the crime scene yielded a DNA databank "hit" to an alternate suspect: Dante Foggie. The defense had always contended that Foggie was the lone shooter responsible for the murder because two neutral eyewitnesses contacted the Police Department to identify Foggie as the killer after Maxton's arrest. Yet the database search showing that Foggie's DNA was on a soda can dropped where the fatal bullet was fired was never disclosed to the defense. It only emerged by chance in the middle of the trial when a crime lab witness testified about it.

In addition to the historic audit, Maxton will receive a financial settlement as compensation for the seven months he spent in jail between the date that the CODIS database report was generated and the date of his acquittal.

The audit will be overseen by a "Special Master" appointed by the court. Federal Magistrate Judge Stephanie Bowman has [appointed Chicago lawyer Ronald Safer](#), a former federal prosecutor and an experienced criminal defense and civil rights attorney, to serve in that role. Safer, who is donating his time to the audit, will work with a team of *pro bono* attorneys and students from the Ohio Innocence Project to review the cases in question.

Under the settlement agreement, the audit team will conduct a comprehensive investigation into a subset of homicide cases to determine whether DNA database evidence obtained by the CPD was properly disclosed to convicted persons, as is required by the law. The audit criterion covers cases from June 2011 to June 2018. The cases must involve DNA test results obtained during the investigation where the identified DNA did not come from the convicted person or the victim. Specifically, the auditors will determine whether a search of the FBI's CODIS DNA database identified another individual, or a cross-match between crime scenes, as the source of this DNA -- known more commonly as a "CODIS hit." In any case where the CPD obtained a CODIS hit to someone other than the convicted person or the crime victim, the audit team will review CPD case files and correspondence to determine whether that information was

disclosed. The Special Master will have the authority to provide any undisclosed CODIS information to the convicted person or their last-known counsel.

“This settlement is historic. It acknowledges that Josh Maxton sat in jail for more than seven months on a wrongful murder charge, even after police were notified of DNA evidence that supported his longtime claim of innocence,” said Nina Morrison, Senior Litigation Counsel for the Innocence Project. “It also provides a novel and rigorous process to determine if other innocent people in Cincinnati were convicted of crimes they did not commit. Ultimately, this settlement is a powerful tool that protects public safety in Cincinnati -- since any undisclosed DNA database ‘hit’ may well mean that the real perpetrator of a crime was identified, but never brought to justice.”

The FBI’s CODIS database is an electronic compilation of over [18 million DNA profiles](#) taken from people arrested for and convicted of crimes throughout the United States. It is regularly used by law enforcement to identify suspects and prosecute crimes, and it is a powerful tool for exonerating the wrongly accused and convicted. While other police agencies have made certain CODIS “hit” reports available to lawyers for the wrongly convicted as part of more limited DNA reviews, this settlement marks the first time an outside team of attorneys will have the opportunity to review CODIS hit reports along with the underlying paper trail and records of police homicide investigations. The settlement also provides that the Special Master will confer with a range of stakeholders in Hamilton County, Ohio, to review and recommend improved procedures for timely disclosure of DNA/CODIS evidence going forward.

“What happened to Josh Maxton was an unconscionable breakdown of due process. Josh Maxton was innocent, yet he nearly went to prison for the rest of his life for a murder he did not commit,” said Jennifer Branch, a partner at Gerhardstein & Branch and one of Mr. Maxton’s lawyers. “We commend the City Solicitor and Mayor of Cincinnati for recognizing that the audit to identify if DNA/CODIS evidence was not disclosed is critical to determine whether any other Cincinnati citizens were wronged in a similar fashion. We appreciate their cooperation in this truly historic settlement, one that will only further a joint search for the truth.”

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