

Running Header: WRONG PLACE

Wrong Place, Wrong Time

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A person cannot understand the danger of being in the wrong place at the wrong time, until they end up in the wrong place at the wrong time. On the early morning February 11, 1987 Timothy Masters hit a bump in the road that would take 19 years to put behind him. At the ripe age of 15, Masters walked a familiar path through the field near his trailer. He walked this path the same way every morning to catch his bus. It was on this momentous morning that Masters saw what appeared to be a large mound of trash dumped in the middle of the field. Curious, Masters moved in closer. Before him, the mass took shape. It appeared to be a mannequin toppled over. The figure was pale and appeared to characterize a woman. It was so life-like that Masters was filled with fear, before reminding himself that it was *just* a mannequin. Little did he know he was standing right in the middle of a horrendous crime scene. He ran to the bus, leaving the deceased woman's body in the snow dusted field behind him.

Later, the police investigated the scene and confirmed that the helpless figure was that of 37-year-old, 5' 2", 120 pound Peggy Hettrick. After asking around the nearby residences, the police were directed to Timothy Masters. That same evening the police questioned Masters, as well as the next day at school, and in the weeks following the murder. The police continued popping up in Masters life over the next eleven years. Each time it included endless hours of interrogation, accusations, and false testimony of criminalizing evidence. Finally, on March 18, 1999 the police put Masters on trial for the murder of Peggy Hettrick. Masters entered the court room an intimidating, muscular man who had been built up by many years spent in the Navy. His appearance was far greater than the little boy he was at the time of the murder. The man in the court room appeared to the jury as capable of murder, even if he was just a small boy when the murder occurred. All things considered, the jury was convinced, and convicted him of the crime. Masters, an innocent man, was sentenced to life in prison.

During Masters time in prison he became committed to learning about the justice system that had failed him. His research informed him that he needed to file a 35 (c) in order to receive a motion for a reconsideration with the state court. Hours upon hours Masters spent researching, writing, and editing his motion. Masters meticulous work paid off, and the court approved his motion in 2003. His new attorney, Maria, was very impressed by the quality of his motion. She said, "...my motion was the best she had ever seen filed by an inmate without an attorney" (326). Now with a new attorney, the normal trial process was repeated. It featured opportunities of discovery and new evidence testing as a result of improved technologies. DNA evidence finally released him from prison on January 28, 2008. While Masters may have finally proved his innocence, the injustice continued through to its conclusion, even when a more perfectly suited suspect became known to the police. In *Drawn to Injustice*, Timothy Masters shares his enraging experiences and highlights the larger issues in today's justice system. He illustrates the entire spectrum of bad science, he details the shortcomings of expert testimony, and he spotlights the disastrous power of misconduct in criminal cases.

The phenomenon of bad science takes many forms in the criminal justice system. The first form arises when science that showed merit to be true, turns out to be bad, and therefore is no longer viewed as reliable. This is epitomized in the "Shaking Baby Syndrome" (SBS). This science originally concluded that when three specific symptoms were found in an infant (alive or deceased) the only explanation was that the child had been shaken in a purposeful act. This science was originally seen as bullet proof. This science resulted in countless numbers of wrongful convictions that left many innocent family members, friends, and caretakers behind bars. It's simple. The science changed and experts had to shift the way they evaluated this injury. Any expert who still jumps to this conclusion is indulging in bad science.

A second form of bad science is fraudulent science. This term defines the circumstance when science is misrepresented on purpose. Fraudulent Science has been a part of various cases in the criminal justice system beyond Masters' case. One of the more famous examples of fraudulent science was in Glendale Woodall's conviction. Woodall was wrongfully convicted of Sexual Assault, Sexual Abuse, Kidnapping, and Aggravated Robbery. Fred Zain's expert testimony persuaded the jury that Woodall was guilty. Zain was highly regarded as an expert witness. He falsely testified that he evaluated the blood found at the crime scene. Further, he declared that the combination of blood traits he identified are found in 1 out of every 1,500 people. He stated that Woodall's blood traits put him in that group. After Woodall's conviction, it was brought to light that the tests Zain claimed to have conducted, were ones that

he didn't have the equipment to execute. After DNA evidence finally exonerated Woodall, West Virginia reinvestigated a random sample of 36 cases that used Zain as an expert witness. The data in every single case was fake! They were full of fabrications! Zain presented them as calculated truths.

The third contour of bad science is the "junk." Junk Science encompasses all science that should never have been considered as valid. Although the errors with these examples is obvious in hindsight, they were used incorrectly, with no malice. Junk Science includes all types of evidence from bite marks and bullet lead, to shoe prints and tool marks. One of the most notable forms of Junk Science is fingerprint matching. For a long time, fingerprint evidence was thought to be strong evidence. In 2002 research was conducted to identify the rate of error in latent fingerprint identifications in crime labs throughout the United States. Latent fingerprint matching was a practice where an unknown fingerprint from a crime scene was compared to a known print. The study reviewed 238,135 latent fingerprints. The results found that 1,905 of the prints were incorrectly declared a match. That is .8% of all the cases! It is not that the people behind these original determinations were malicious, rather they were practicing a science that should never have been considered trustworthy. Simply stated: it was and is bad science.

In Timothy Masters' case, the use of Junk Science proved to be horribly detrimental. Timothy Masters was a sophomore in high school and he did not fit in with the mainstream. After his mother passed away, he was left at home with just his father. His father had spent twenty years in the navy, and operated a strict schedule in his home life. With a strict father back home, Masters spent little time socializing amongst his classmates. As a result, Masters spent a significant time alone. During this time Masters enjoyed watching horror movies, and found refuge in drawing gory images. After learning that the figure in the field was a real human being, he needed an outlet to cope. Masters recalls, "It had really disturbed me to see the body, and I couldn't get it out of my mind. Since I was always drawing, it was only natural that I would draw what I had imagined had happened" (page 23). Masters coping mechanism would eventually become the primary evidence used to get Timothy Masters convicted.

The man behind the junk science in Timothy Masters case was Dr. Reid Meloy. Dr. Meloy was a forensic psychologist whose arrogance presumed he was capable of proving Masters had committed the crime based solely on the images Masters drew and the writing Masters had documented. Dr. Meloy believed his skills were so foolproof that he did not even need to interview Masters. Dr. Meloy took it upon himself to fill in the gaps. The finished product was a convincing story-line that spoke to Masters horrors, motives, and final actions. To create this montage, definitions were stretched, the context of photos were manipulated, and assumptions shadowed the truth. One prominent example of Meloy creating an entire storyline with little proof to back it was Masters drawing of a knife cutting through a flat surface. Dr. Meloy testified that this image proved Masters had a fascination with genital mutilation. It was only during cross-examination that Meloy admitted that the picture featured no pubic hair, or legs, and in fact, didn't include anything to suggest that it was even a body. Upon further questioning, Meloy spoke to his assumption that Masters drawings were unique to only him and admitted that the diagnosis he tried to pin on Masters was inaccurate. Dr. Meloy's work was complete junk science.

The best person to pay ode to this science as junk is forensic psychologist John Yullie of the University of British Columbia. Yullie was brought in as an expert by Masters' attorneys. Yullie was well renowned in forensic psychology, and was director of the largest practicing program in this field. Yullie testified, "there is no evidence that sexual fantasies by themselves are either sufficient or a necessary condition for committing a sexual offense" (page 268). Yullie went on to explain that the science of forensic psychology was still very new, and it would be naïve to consider it as fact. This evidence was junk. The defense saw it as junk. Other experts saw it as junk. Yet, it not only was upheld as expert evidence by the judge, but it also persuaded the jury, without a shadow of a doubt, that Masters was guilty.

In all of the above mentioned cases, including Timothy Masters, the bad science resulted in many wrongful convictions. The question now becomes; how does it manage its way into the courtroom? The standard for getting evidence in the court room was defined in the United State Supreme Court ruling in *Daubert v. Merrel Dow Pharmaceuticals*. Jason Daubert was born with birth defects. While Daubert's mother was pregnant with Daubart, she was prescribed Bendectin. The mother argued that the Bendectin

caused the birth defects and filed a suit against the pharmaceutical company. In the suit, Daubart's legal team found scientific evidence that linked this medication to birth defects. The evidence featured may have found a link to birth defects and this medication, but the methodology used to discover this science was not generally accepted, and therefore it was not allowed in the court. In the end, it was decided that a trial judge can allow scientific evidence into the court based on four questions. 1. Has the methodology been tested? 2. Has the methodology been subject to peer-review and publication? 3. Does the methodology have a known error rate? And 4. Is the methodology applied through consistent standards? With these seemingly high standards, bad evidence constantly ends up in the court. This happens because the evidence is presented to the judge through expert testimony. The expert testifies and is questioned by either the prosecution or defense, and then cross-examined by the opposing side. The judge then evaluates the information and decides whether evidence should be admitted. In this sense the judge becomes the "gate keeper." The issue with this process is that the judge is almost never trained in the scientific techniques being debated. This reality leads to judges making decisions on evidence that they cannot fully understand, nor the unfamiliar methodology. The end result: bad science still finds its way into the court room.

Getting junk science through a judge is the first battle a prosecutor or defense attorney must win. However, it is equally important to convince the jury that the science, with little proof to back it, is in fact accurate. Juries often defer to expert witnesses. In 1961 the Milgram Shock experiment was conducted to test an individual's obedience. The study tested the question: how much pain will someone inflict on another person, if ordered to do so by an authority figure? This study required one subject to inflict pain on a stranger. During the experiment a scientist dressed in an official lab coat was present. This scientist was there to order the subjects to continue shocking the strangers, even after they screamed and demanded to be released. Despite the fact that the majority of subjects were uncomfortable with the situation, most deferred to the authoritative figure for orders to move forward. The presence of a powerful person leads people to agree to do things that are contrary to their values. Although the circumstances of a court situation are different, human behavior is consistent. Trials are murky by design. If the cases in court rooms were black and white, there would be no need for a trial. When jurors feel lost and confused by the details, they defer to the experts. In relation to Masters' case, jurors sentenced a man to life in prison based on the expert testimony about the drawings in his textbook! When jurors feel lost and are in uncharted territory, they find steady ground in the truths presented by experts.

Masters' case was also filled with many actions that an outside observer may have considered to be prosecutorial misconduct. When asked if the prosecutor did anything wrong in Tim Masters' case, a person must seek wisdom from other court cases. In *Brady vs. Maryland*, Brady and his accomplice Boblit committed a robbery-murder. Brady admitted that he was present, but said he was not the one who committed the murder. In an effort to find some answers, Brady's attorney sought out the records of Boblit's statements. In return, the other attorney handed over a portion of the records, but withheld the ones that included Boblit's confession to committing the murder. Both Brady and Boblit were sentenced to death. After their sentencing, Brady learned of the information withheld from him during his trial. Upon this realization, Brady raised a Fourteenth Amendment due process claim. The supreme court ordered a new trial on the punishment Brady received, because of the suppression of evidence. The Supreme Court disclosed, "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material wither to guilt or punishment, irrespective of good faith or bad faith of the prosecution."

The second case came in the wake of a horrendous crime committed to a young boy. David Leon was ten years old when he was abducted outside of a church from taken to a different location, and raped repeatedly for over an hour, before being returned to the church from which he was taken. After explaining to his mom what happened, and going to the hospital to complete a rape kit, David was brought into the police station to identify a line-up that was compiled based on his description of the attacker. A most traumatized David chose Larry Youngblood. Youngblood had some similarities to the description David gave, but he also had stark differences from the one provided. These differences were ignored and Youngblood was taken to trial. The only evidence that presented DNA from the crime were

David's underwear. The underwear was not properly stored, which disabled the defense from testing the semen because it had degraded. Had the underwear been put in a refrigerator the evidence could have exonerated Youngblood. Without this evidence, Youngblood was convicted and sentenced to ten years behind bars. In the appellate ruling for the *Arizona v. Youngblood* case of 1988, Youngblood appealed his conviction on the grounds that his Fourteenth Amendment rights had been violated because of the mishandling of the prime evidence. Arizona later reversed the conviction. The Arizona courts decided that without proper preservation of evidence by police, a fair trial could not be conducted. This reversed conviction was short lived because soon after the Supreme Court determined that mishandling of evidence is not a violation unless it was done in "bad faith." Youngblood would spend more years in prison until advances in DNA technology exonerated him in 2000.

These two cases provide necessary insight into the details that must be evaluated to accurately answer the question regarding police and prosecutorial misconduct in Timothy Masters' case. Both cases fought their convictions on the ground of a violation of their Fourteenth Amendment rights. The Fourteenth Amendment states: "nor shall any state deprive any person of life, liberty, or property without due process of law" (LOC). The library of Congress goes on to define due process as, "due process includes both procedural standards that courts must uphold in order to protect peoples' personal liberty and a range of liberty interests that statutes and regulations must not infringe" (LOC). These court decisions added two prominent details that further specify the requirements to prove this violation. First the evidence must be material. "The evidence is only material if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different" (*United States v. Bagley* 1985). Secondly, the violations of the Fourteenth Amendment had to be done in "bad faith."

In the Timothy Masters case there were obvious violations to his rights that are protected by the Fourteenth Amendment. The police forces' investigation into this case kept highlighting the same issue. The head Detective on the case, Broderick, fell into a dangerous pattern: "when he encountered someone who disagreed with his opinion, "he would ignore them and find someone else who agreed with him" (page 247). Eight years after the murder of Peggy Hettrick, Doctor Richard Hammond, a renowned Plastic Surgeon in Fort Collins, was caught in the middle of a scandal. In March of 1995, Dr. Hammond was caught recording his house guests during their most personal moments, in the bathroom. Dr. Hammond had cameras stationed in the toilet and camouflaged in the shower. Hammond also harbored a secret room behind the bathroom. Inside the room were hundreds of tapes post marked with a date and the names of the victims featured in the recording. Masters goes on to describe the attention to detail in the tapes. Masters disclosed, "the camera was focused so tightly that it amounted to a close up of the subject's vagina" (page 131). Broderick was the head detective on this case as well. This case should have put up some red flags. This man not only had a fascination with genitalia, but he also lived directly next to the field where Hettrick's body was found. In fact, the view of Hettrick's body was so clear from his window that the police staked out in Hammonds bedroom on the anniversary of Hettrick's murder. Broderick never pursued this man as a suspect. The evidence found in the Hammond case, under the "record retention policy," were required to be kept for two years. Broderick managed to find a way around this and had all the tapes destroyed a short six months after their discovery.

These details about Hammond were brought even closer to Hettrick's murder in the years that followed. Later, in the course of the investigation, Broderick sought expert testimony to better understand the skill needed to conduct the genital mutilation as it had been done to Peggy Hettrick's body. The plastic surgeon he went to was amazed by the precision of the cuts and declared confidently that such precision could only be conducted by a surgeon. Masters was only a fifteen-year-old boy at the time of his arrest. This testimony should have made Broderick stop and consider Masters ability to conduct such technique. After considering Masters' abilities, he should have connected the dots back to Dr. Hammond. Hammond was: a.) a plastic surgeon, b.) had a fascination with female genitalia, and c.) lived walking distance from where Hettrick's body was found. Dots that seems so easily connected, were left disjointed. It was wrong of Broderick to suppress this, and it was wrong of the prosecutorial team, who was aware of this information, not to turn it over to the defense when they were asked for all evidence.

The evidence displayed here, could have been considered material. As decided in the *Brady v Maryland* case, evidence would *have* to be material to be allowed in. If the jury had known about this man, it could have swayed the way they considered the case. But, would it have swayed them enough to change Masters conviction? I believe so. A main argument of the jury in the Masters case was a point made by one of the prosecutors that the jury became fixated with. Based on the lack of evidence, and the lack of other suspects, their main point became, “Nobody else could have done this!” (page 281). Had the jury known that there was another man who had more criteria pointing him to the murder, as opposed to just an adolescent’s macabre doodles in a notebook, they may not have come to this verdict so confidently.

Second, proving that the suppression of this evidence was done in “bad faith.” “Bad faith” is hard to prove. The only person who knows this, is Broderick and the Prosecutorial team. The destruction of the Dr. Hammond case video tapes so soon after the closing of his case is the primary reason I believe “bad faith” was practiced. As mentioned above, the detectives and prosecutors became so consumed with tunnel vision on Masters that it seemed any other evidence presented that refuted their beliefs, needed to be removed. (Although arguments could be made that the actions by Broderick and the Prosecution potentially saved their co-workers and women of Fort Collins of embarrassment, I believe the deletion disserved these women). By deleting the tapes, these citizens’ opportunities to file a suit against Hammonds actions were destroyed. Masters confesses, “the nature of the evidence they withheld from us indicated that they knew all along I had not killed Peggy Hettrick” (page 346). He goes on to explain what was kept hidden not only pointed to other subjects, such as Dr. Hammond, but also exemplified the disorder, and endemic to the investigation. I believe that the motives that point to “bad faith” in this case could have been sufficiently substantive to overturn the verdict.

Another right of Timothy Masters’ case that was obviously violated during this whole ordeal was his right to a speedy trial. Timothy Masters was first spoken to and accused of murdering Peggy Hettrick in February of 1987, and his trial began in March 1999. What happened to his right to a speedy trial? In the twelve years between the accusation and the trial, not much additional evidence against Masters was discovered. In twelve years, all the prosecution had against Masters was his notebook. The other possible motive for the violation was clear to Masters. He recalls, “Broderick intentionally delayed arresting me and charging me with this crime...by bringing me to trial later, they presented the jury with a grown man, not a skinny fifteen-year-old kid” (page 321). The delay also cost Masters his sole witness. His father passed away in the interterm of the accusations and the trial. For both the violation of due process in this case and the violation to the right to a speedy trial, it is clear to me that there was both prosecutorial and police misconduct in this case.

Timothy Masters’ experience with the criminal justice system was one that was poisoned with bad science, troubled by expert testimony, and filled with police and prosecutorial misconduct. The issues with this case are unbelievable. The life altering affects that occur when a person ends up in the wrong place at the wrong time is enraging. When I started this book, I felt Masters hostility, and feared I would have trouble getting through it. Masters’ tone took that of a deep vent. His anger felt fresh. Upon continuing through the book, the anger I was once put off by, filled me as well. I felt angry at a system that would cut corners and use a “bully” method to get the wrong man convicted. Masters puts it simply, “bad things happen to anyone, and they happen without warning” (page 13). The bad things that happened to Masters were allowed because of a system that is full of short-comings. This saga must remind everyone that a person’s due process should always be upheld and no state, “shall deprive any person of life, liberty, or property, without due process of law” (LOC). When the justice system fails one person, it fails us all.

Works Cited

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