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Another part of the JFAA that cosmetically looks like a step forward is Section 431's increase in compensation for an unjustly imprisoned federal prisoner from a flat $5,000 payment, to a maximum of $50,000 per year of "unjust imprisonment" in non-capital, and $100,000 per year of "unjust imprisonment" in capital cases. However that change will likely mean little in actual practice, because a microscopic percentage of federal prisoners will be found to have satisfied the compensation requirement of having been "unjustly imprisoned."

Still another provision of the JFAA, Section 204, could prove ominous if applied to cases that don't involve DNA evidence, since it alters the tolling of the statute of limitations from the date of a crime's commission, to the date a suspect is implicated by an inculpatory DNA test.

Furthermore, there is one glaring omission from the JFAA that would have provided meaningful assistance to innocent death row prisoners: Reestablishment of state level Death Penalty Resource Centers, for which funding was cut in 1996.

One the other hand, a glaring inclusion in the JFAA that can harm an innocent person, is Section 411's specific exclusion of its provision acknowledging the exculpatory value of DNA evidence from being applicable to a habeas corpus proceeding. A provision in the JFAA mandating that Federal courts consider the exculpatory value of DNA evidence in a habeas petition by a federal or state prisoner would have provided an additional measure of protection for the innocent. Particularly since there is no consensus in Federal court as to the evidentiary value of exculpatory DNA evidence.

The JFAA does however, have several provisions that may help the innocent. Section 202 provides for funding the testing of DNA samples at the state level, particularly in several hundred thousand untested rape kits, that could potentially prove to include exculpatory evidence for a wrongly accused or convicted person. Section 411 establishes clear and important guidelines for the preservation, testing, and consideration of DNA evidence in Federal cases. Section 412 authorizes a nominal amount of money ($5 million per year) "…to help States to defray the costs of post-conviction DNA testing."

The miracle that the JFAA has any teeth at all is indicated by the fact that when the House of Representatives passed it, the White House (President Bush), the U.S. Department of Justice (Attorney General John Ashcroft) and two influential Republican Senators (Jeff Sessions and Jon Kyl) were adamantly opposed to its enactment. Given the overwhelming support for the JFAA in both the House and Senate, the Bush Administration's determined efforts to block it failed. However President Bush did wait until the last day that he had available to sign the bill, which he might have vetoed if he hadn't known Congress would have overridden it.

The Justice For All Act of 2004 can be read, downloaded or printed (34 pgs) from *Justice:Denied's* website at: http://justicedenied.org/jfaa.pdf

Endnotes:

[1] Justice For All Act of 2004: Section-By-Section Analysis, U.S. Senator Patrick Leahy, http://leahy.senate.gov/press/200410/100904E.html
[2] *Id.*
[3] Justice For All Act of 2004. Sec. 411. Federal post-conviction DNA testing.
[4] *Id.*
[5] *Id.*
[6] Justice For All Act of 2004: Section-By-Section Analysis, *supra*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Justice For All Act of 2004. Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

Convictions Tossed For Talking Suggestively On Telephone

Seventeen year-old Anthony McKenzie made several collect phone calls in June and July 2003 from Georgia's Forsyth County jail to a 14-year-old girl he met over the Internet. During the jail monitored calls the couple carried on sexually suggestive conversations.

McKenzie was then prosecuted and convicted of two counts of violating a Georgia state law (OCGA § 46-5-21(a)(1)) that criminalizes "indecent, lewd, lascivious, and filthy, as well as obscene, telephonic communication made by private individuals or commercial entities regardless of the speaker's intent." (*McKenzie v. State*, No. S05A0298 (Ga. 04/26/2005); 2005.GA.0000544 ¶ 9 <http://www.versuslaw.com>).

On April 25, 2005 the Georgia Supreme Court tossed McKenzie's convictions when it unanimously ruled:

> "Instead of applying only to obscene speech, it [the statute] applies to speech that is merely indecent. Instead of making illegal such speech only when directed at minors, it makes such speech illegal when heard by adults. Instead of applying only to speech not welcomed by the listener and spoken with intent to harass, it applies to speech welcomed by the listener and spoken with intent to please or amuse. Because the statute is an overbroad infringement on the First Amendment's guarantee of freedom of speech, appellant's convictions for violating the unconstitutional statute must be reversed." (*Id.* at ¶ 11)

Source: *McKenzie v. State*, No. S05A0298 (Ga. 04/26/2005)

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from below-upward. Dr. Cohle was then given PX #14 (a photo of the victim lying on the floor) and asked if the path of the bullet would be consistent with that photo, if a person was standing at the victim's feet and shooting her. He replied that it was consistent with what he previously said. He stated that there was little bleeding from this wound, which would indicate that it was one of the last or the last wound. He was told that Priscilla had last been seen alive about 7:00 p.m. and found dead at 10:00 p.m., so he determined that she was shot about 7:15 p.m. Dr. Cohle's testimony was used to corroborate Peters' testimony. But, Dr. Cohle's testimony is contrary to the physical facts contained in Autopsy Reports (A-95-480) which state the path of direction of this bullet is slightly from above-downward and testimony and physical evidence shows Priscilla was lying on her back. Therefore, this wound could not have been inflicted as was testified to, nor could it have been one of, or the last shot fired. The autopsy reports were not offered into evidence by either my lawyer or the prosecutor. Evidence shows that this wound would have been the first or one of first inflicted, before Priscilla ended up on her back.

Detective Renhawitz testified that he saw a bruise under one of Peters eyes and that was contrary to Peters' testimony. Her mug shot, taken at the time of her arrest, showed there was no bruise, but the mug shot was not offered into evidence by my lawyer.

Several of Priscilla's neighbors testified to seeing Peters in the neighborhood of Priscilla's house, and around the house itself. Several forensic experts testified that the fingerprints and footwear impressions found at the crime scene and in the victim's car did not match mine, nor was the murder weapon traceable to me. The fabric, tape, plastic, and steel wool samples from the crime scene did not match the items taken from my apartment or the device from my car. No physical evidence links me to Priscilla's murder. The prosecution's case hinged on its star witness — Peters. The judge observed, "If Ms. Peters didn't testify against him, I wouldn't think the prosecution would have an awful lot of case." The judge added, "The prosecution would have a real tough time convicting you without that evidence."

Mr. Hanner, a co-worker of Priscilla's, alleged that Priscilla told him that I had called her the morning of this homicide, and threatened to kill her. The judge ruled prior to my trial that his testimony concerning the phone call was inadmissible, but during the trial he changed his mind and decided to allowed it under MRE 803(2), as an excited utterance. When my lawyer tried to elicit Hanner's entire statement, the prosecution objected that it was hearsay. The judge ruled the jury couldn't hear, "Ms. Peters might kill her," because it was neither material nor relevant. However the judge did allow the statement, "Mr. Davis threatened to kill her." After Hanner left the stand, the judge told the jury the reason he allowed this testimony was because it served to identity the perpetrator. At that point the judge effectively expressed to the jury the belief that I was the perpetrator, and the prosecution capitalized on that in his closing argument. Hanner's handwritten statement and his police interview support that his alleged conversation with Priscilla was not an excited utterance. The statements also conflict with his testimony and indicate he told the jury his own words and not those of Priscilla. My lawyer didn't present Hanner's previous statements to strengthen his objection to the judge's ruling allowing Hanner's testimony.

I took the stand on my own behalf and testified that I did not kill my wife, nor was I involved in her murder. I was with our 4-year-old daughter when I received a page on my pager. I then made a phone call from the town of Paw Paw at 7:01 p.m. for 2 minutes to Priscilla's house. That call was answered by the answering machine. I was not even in Berrien County that evening. The only corroborating evidence my lawyer presented was the phone bill showing the call I made from Paw Paw. Also, I had not seen Peters since about 1:00 p.m. until I picked her up at about 8:20 p.m.

On rebuttal, testimony was given that it took a police officer 24 minutes to drive the 27 miles from Paw Paw to the Benton Harbor Exit 33, on I-94, traveling at 71 mph, which was still 5-6 miles, 4 stop signs, and reduced city speed limits from the crime scene. The undisclosed phone records for (616) 927-6068 would have established that Priscilla was home before 7:00 p.m., and that she paged me. That is critical because Priscilla's Certificate of Death states her time of death was 1915 hrs. (7:15 p.m.). It is physically impossible that I, or anyone, could drive from Paw Paw to the crime scene in 12 minutes, which is half the time it took the police to just drive from Exit 60 (Paw Paw) to Exit 33.

The prosecutor misstated crucial evidence and testimony in his closing argument and presented his own version of the alleged phone conversation between my wife and I that was not in evidence or testified to at trial.

My conviction was affirmed by the Michigan Court of Appeals on June 5, 1998. The Michigan Supreme Court denied an application for leave to appeal on March 30, 1999. A Motion for Relief from Judgment was denied on October 24, 2000, by my trial judge, who indicated that I failed to satisfy the "actual prejudice" and "good cause" requirements set forth in MCR 6.508(D)(3)(A). My trial judge denied a Motion for Subpoena for Phone Records stating that there was no meritorious basis for granting the motion, even though it is exculpatory evidence that would help establish my innocence. On September 30, 2002 the U.S. District Court, Eastern District denied a habeas corpus petition. On April 9, 2002 the federal Sixth Circuit Court of Appeals denied my appeal of the District Court's decision. On August 5, 2004 the U.S. Supreme Court rejected my petition for a writ of certiorari. To date, no state or federal court has considered the importance of my claims of actual innocence.

Thank you for reading about my case and my current legal predicament. I can be contacted at:
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