

# Steven A. Cole Exonerated Of Child Sexual Assault In “American Horror Story”

By Hans Sherrer

Steven A. Cole’s convictions related to the possible sexual assault of a young child [were overturned](#) by the Illinois Court of Appeals on May 7, 2015. In a concurring opinion one of the justices noted, “the evidence in this case established Steven Cole’s innocence, not his guilt,” and he was the victim of an “American horror story that even Stephen King could not have written.”

In January 2009 Cole and his wife Janet Cole lived in Peoria, Illinois. Their friend Karissa Miles considered them as second parents to her. Miles and her 20-month-old daughter lived in Peoria with a roommate, Jonathan Duncan. Miles’ daughter is identified in court documents by her initials M.A.

Cole and Janet regularly babysat M.A., and on January 7 they watched her at their home while Miles was at work from 2:30 p.m. to 9 p.m. M.A. was sleeping and didn’t seem to be in any distress when the Coles picked Miles up at work and took her and M.A. home.

Duncan was home when Miles arrived with M.A. Duncan later went to work and Miles went to bed after she had six to eight beers. About 7 a.m. Miles awoke and noticed M.A. was pulling on her diaper. Miles noticed blood in the diaper when she changed it, and there seemed to be a tear in her vagina. Miles did not call 911. What she did was call Duncan at work and ask him to return home. She also texted him there would be questions about M.A. and it would be better if they answered them together.

Miles and Duncan took M.A. to a hospital emergency room, where she was admitted and underwent surgery. M.A. was in the hospital for four days.

The police went to Miles home the day M.A. was taken to the hospital, and took photographs and collected a number of diapers, including from the trash. They later went to the Coles’ home and collected two diapers.

When questioned by the police Miles said she did not know what caused her daughter’s injuries or when they occurred. Duncan also told the police he didn’t know what caused the injuries.



Steven A. Cole  
(Ill. Dept. of Corrections)

Duncan was a CNA attending nursing school. Although he was a mandatory child abuse reporter, he did not notify the Department of Child and Family Services of M.A.’s injuries.

The Illinois State Police Crime Lab’s tests of M.A.’s oral, vaginal and anal swabs were negative for semen or sperm. However, one of the diapers recovered from the trash at Miles’ home contained a baby wipe, and blood was found on both the diaper and the wipe. A sperm cell was found on the wipe, and five areas of the diaper tested positive for semen, but they tested negative for sperm. The crime lab could not identify a DNA profile from any of the six areas that tested positive on the wipe and the diaper.

Miles’ statement to the police did not identify that Cole had been in Miles’ home for days prior to M.A. being taken to the hospital. So it wasn’t possible it was his sperm on the discarded diaper. In addition, Cole had a vasectomy prior to when M.A. was taken to the hospital, and follow-up tests showed it was successful — which meant he couldn’t excrete sperm.

The Coles denied in their police statements to ever abusing or witnessing abuse of M.A.

Cole was indicted in March 2009 with predatory criminal sexual assault of a child, aggravated battery of a child, and aggravated criminal sexual abuse. Janet was charged with obstruction of justice.

During Cole’s trial three years later, in 2012, the prosecution didn’t present any physical, forensic, eyewitness or confession evidence linking him to M.A.’s injuries.

Dr. Channing Petrak, the medical director of the Pediatric Resource Center in Peoria, examined M.A. in the emergency room and recommended immediate surgery. Petrak testified that in her opinion, the injury was not accidental, and because there were no signs of healing it was recent and could have occurred as soon as two hours before M.A. arrived at the emergency room. That was many hours after Miles picked her up from the Coles.

Dr. Amy Stanfill testified as a defense ex-

pert medical witness by way of her deposition played for the jury. She performed the surgery on M.A. and sutured the tears, and testified her injury could have been accidental or non-accidental. Stanfill testified the injury was recent because there were no signs of healing.

Dr. James Kenny, a board certified urologist and associate professor at the University of Illinois also testified as a defense expert witness. He explained the vasectomy procedure and stated the one Cole had was successful, which generally means three consecutive samples of ejaculate are negative for sperm. He also testified that in 2011 Cole had testicle tenderness and as a part of his treatment he underwent a semen analysis to determine if there was a potential to output sperm. A series of three monthly tests were negative for sperm in his semen. Kenny testified that in his expert medical opinion Cole could not emit sperm and could not have done so in January 2009, and that the sperm cell found on the baby wipe could not have been emitted by Cole.

The prosecution’s closing arguments for Cole’s guilt focused on the repulsive nature of M.A.’s injuries, [referring to](#) the crimes he was charged with as “disgusting,” and stating “We like to think those things don’t happen, especially not in Peoria, right?” The prosecution also invited the jury to find Cole guilty by disregarding the un rebutted expert evidence that he couldn’t emit sperm because of his successful vasectomy.

The jury found the 59-year-old Cole guilty of all three offenses. The judge later sentenced Cole to 25 years in prison.

Cole appealed.

The Illinois Court of Appeal on May 7, 2015 unanimously reversed Cole’s convictions on the basis of the prosecution’s misconduct of shifting and minimizing the burden of proof during the State’s closing arguments, and that the prosecution introduced insufficient evidence to prove Cole’s guilt beyond a reasonable doubt. The Court’s ruling in *People v. Steven Cole*, 2015 IL App (3d) 120992-U (5-7-2015) [states in part](#):

The State criticized the defense’s medical expert and presented the following argument:

“The last line in his report was the Defendant cannot produce sperm. ... Can you really trust fully his opinion? And if

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you can't, if you can't trust it, if you can't think I am sure, I am positive that he, the Defendant, could not have spit out that sperm that was in the diaper, if you can't be positive, then you have to go back to the other evidence. ... The other evidence is the Defendant is guilty."

We consider that the State's comments constituted an attempt to shift and diminish the burden of proof. First, the State improperly argued that the jury must be "positive that he, the Defendant, could not have spit out that sperm" and that if it was not positive about that fact, it had to go back to the other evidence that "Defendant is guilty." These comments suggest that it was Cole's burden to prove that he could not emit sperm. It was not Cole's burden to prove his innocence and it was improper of the State to suggest the burden was Cole's.

Secondly, the State's comments improperly suggested that the jury could disregard the testimony of Kenny, Cole's expert witness. ... he could not emit sperm and could not have emitted the single sperm found on the baby wipe. The State failed to produce an expert to dispute Kenny's conclusion, ... it may not urge that the jury is free to disregard expert testimony that is un rebutted. ... Kenny explicitly stated that it was his opinion to a reasonable degree of medical certainty that Cole could not emit sperm. ... it was error for the State to attempt to rebut his opinion in closing argument without presenting contrary evidence during trial.

Thirdly, the State's comments ... served to diminish the burden of proof. The State's burden was to prove beyond a reasonable doubt that Cole assaulted M.A. By arguing that it was more likely Cole committed the offense than the "mystery person," the State improperly evoked the preponderance of the evidence standard.

Because Cole's trial lawyer failed to object to the prosecution's arguments the appeals court evaluated them to determine if they violated his right to due process under the plain error doctrine. The [Court ruled](#), "We find the errors substantially prejudiced Cole and denied him a fair trial."

Regarding Cole's assertion the evidence was not sufficient, the Court stated:

A conviction cannot be based on guess, speculation or conjecture, but must be based on evidence presented. Unrebut-

ted expert medical testimony cannot be disregarded by the finder of fact. Expert medical testimony and evidence by their nature are too complicated to be refuted by non-medical testimony.

...  
Based on our review of the record, we find the evidence so unsatisfactory that it creates a reasonable doubt of Steven's guilt. The State did not present any physical evidence tying the sperm or semen to Steven. ... The State did not present any expert testimony to counter Kenny's medical expert opinion that Steven did not emit the sperm. The jury was not free to reject the uncontradicted medical testimony presented by Kenny, the sole medical expert to testify at the trial [regarding the sperm].

...  
Other than the fact that M.A. was undisputedly at the Coles' house, the State did not present evidence linking Steven to the offense any more than the other adults who had access to M.A. in the injury time frame.

We find the State's evidence was not enough to sustain Cole's conviction.

For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and Cole's sentence is vacated.

Justice Daniel L. Schmidt wrote an impassioned special concurring opinion that [explained his](#) dismay that Cole was prosecuted, and convicted, because "the evidence in this case established Steven Cole's innocence, not his guilt." Schmidt wrote in part:

"While there is no doubt that we have the best legal system on earth, it is not perfect. Sometimes it fails, as it did here. Quite frankly, I believe that such a failure is more likely to happen when one is charged with such a heinous crime as the one involved here. The nature of the crime itself is bound to put blood in the eyes of good men and women.

When a reviewing court reverses a criminal conviction, it is common to hear phrases such as, "Well, those judges reversed this on a technicality," "The defendant got away with the crime," or "Some critical evidence must have been suppressed." No such excuses apply here. No evidence was suppressed. In my view, the evidence in this case established Steven Cole's innocence, not his guilt.

This is the type of charge that will ruin a defendant's life, acquittal or no acquittal. After spending untold hours examin-

ing every piece of evidence in this case, I am left baffled as to why the State even accused defendant of this crime. At trial, the jury was led down the primrose path as the result of a confluence of errors by the trial judge, prosecutors, and defense counsel. As a result of this perfect storm of errors, an innocent man stands convicted of an unspeakably heinous offense.

Steven and Janet Cole, through no fault of their own, have become characters in an American horror story that even Stephen King could not have written. I could go through the trial line-by-line and point out all of the defects, but that does not seem practical and Steven Cole has sat in prison long enough.

Schmidt related a number of egregious errors during the trial by the judge, the prosecutor, and Cole's attorney that contributed to Cole's conviction. [Schmidt then wrote](#):

Of course, there was no evidence as to whether any of Karissa's male friends had been over that night because there was no [police] investigation into it.

During closing argument, defense counsel appropriately argued that "the only person that's got more to lose than Steve Cole is Karissa." ... Karissa [Miles] *did* have everything to lose.

...  
I cannot understand the State's Attorney's office charging Steven and Janet in light of the total lack of evidence to suggest that they actually committed this crime. Even had Steven been found not guilty, as he should have been, his life would have been ruined by the charge.

So why did the State charge Steven Cole? Because Karissa, with every motive in the world to lie to protect herself, said that nothing happened to M.A. after she brought her home from the Coles' house.

I also understand that the jury was unaware of evidence produced at sentencing. ... It is normally the case that if you want to dirty a fellow up, find an ex-wife and she will often oblige. In this case, Steven Cole's ex-wives both wrote to the trial judge that there is no way this man could be guilty of this crime.

...  
I cannot understand how this man found himself charged, let alone sitting in a penitentiary convicted of this horrific crime.

I suggest that the law-abiding citizens of Illinois, or anywhere else, have no inter-

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# 1,317 Exonerations In China In 2014

There were 1,317 exonerations in China [by courts](#) nationwide in 2014.

On March 12, 2015 Zhou Qiang, Chief Justice of China's Supreme People's Court (SPC), delivered a report on the state of the nation's courts during the 12th National People's Congress in Beijing.

Zhou reported there were 1,317 exonerations nationwide, and reasserted his commitment to stopping wrongful convictions. Regarding the exonerations Zhou [told legislators](#), "We deeply reproach ourselves for letting wrongful convictions happen. Courts of all levels should learn a serious lesson from these cases.

As an example of Zhou discussed the case of an 18-year-old man named Huugjilt, who [was convicted](#) in a 1996 rape-murder case and executed. Huugjilt was posthumously acquitted after a retrial in December 2014. His acquittal was based on the new evidence that a serial rapist and murderer confessed to the crime, and was convicted and sentenced to death in February 2014.

Zhou said the Supreme People's Court will improve the mechanism to effectively prevent and correct wrongful convictions.

Zhou also reported on weaknesses in China's court system, and denounced that problems with judges that include incompetence, lack of conscience, and dis-



Zhou Qiang, Chief Justice of China's Supreme People's Court in Beijing on March 12, 2015 (Xie Huanchi, Xinhua)

regard for professional ethics. [He stated](#), "Some judges lack conscience and integrity, violate professional ethics and bend the law to serve personal interests, in exchange of favor and money." Zhou stated that in 2014 about 1,937 judges and court staff were punished for violating law and regulations, including 863 punished for abuse of power, and 138 of them were criminally prosecuted.

Zhou stated the SPC will boost transparency in the legal system to enhance public scrutiny, impose zero tolerance for judicial corruption, and the court will begin to blacklist officials who interfere in judicial activities. Zhou [told the legislators](#), "Judicial reforms have entered deep water. We must be courageous in breaking down the barriers of vested interests, including those within our own system. We are ready to crack a hard nut and make sacrifices if necessary."

Procurator-General Cao Jianming (equivalent of the U.S. Attorney General) also [delivered his report](#) to the People's Congress on March 12. He stressed that preventing wrongful convictions is a bottom line that prosecutors must always strive toward achieving.

He reported the Supreme People's Procuratorate (SPP) will perfect the protocol for

prosecutors to supervise police investigations and expand the channels for suspects in custody and inmates to appeal. To minimize prosecutor bias in reviewing appeals, Cao said the SPP is researching implementation of a system in which appeals from suspects in custody and convicted persons will be handled by prosecutors in a jurisdiction different than the one in which they were arrested or prosecuted.

Cao stated that law enforcement officers whose actions lead to wrongful conviction and death of suspects, such as obtaining a confession through breach of duty, will face serious prosecution.

He also said that prosecutors will be expected to strictly follow the protocol of collecting, examining and using the evidence in a case. He said prosecutors should both work to stop a case from going to court and work to correct a conviction, that is "tainted" by unclear facts, lack of evidence or unlawful procedure. Cao said the SPP will blacklist and punish prosecutors who abuse their power.



Cao Jianming, Procurator-General of China's Supreme People's Procuratorate in Beijing on March 12, 2015 (Xie Huanchi, Xinhua)

Sources: [Chief Justice Expresses Self-Reproach](#) for Wrongful Convictions, By Wang Wei, CRJEnglish.com, March 12, 2015  
[Chief Justice Denounces Corruption](#), Lack of Professionalism at Court, By Wang Wei, CRJEnglish.com, March 12, 2015

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est in wrongful convictions. ... prosecutors have a special place in the system and must be sure that they "should" charge someone with a crime, not just "can" they do it.

In my 12 years on the appellate court, I have never seen anything like this case. I hope In ever do again.

Cole's retrial is barred by double jeopardy. He has been released according to the Illinois Department of Corrections website that doesn't list him in custody.

Perhaps the worst aspect of Cole's case is no crime may have occurred: Dr. Stanfill testified at trial it is possible M.A.'s injuries were accidental.

Future defendants subjected to a prosecu-

tion as baseless as Coles' will not be able to cite the appeals court's strenuous ruling reversing his convictions, because the ruling in his case was released as an "unpublished" opinion and is not precedential in Illinois.

[Click here to read the ruling](#) and Justice Daniel L. Schmidt's concurring opinion in *People v. Steven Cole*, 2015 IL App (3d) 120992-U (5-7-2015).

Source: [People v. Steven Cole](#), 2015 IL App (3d) 120992-U (5-7-2015) (Reversing conviction on basis of insufficient evidence, which barred Cole's retrial.)

[Appellate court tosses](#) South Peoria man's 2012 conviction for sexually assaulting a child, *Star Journal* (Peoria, Ill.), May 19, 2015

[Peorian gets 25 years](#) in child sex assault, *Star Journal* (Peoria, Ill.), November 21, 2012

[Peorian guilty in child sex assault](#), *Star Journal* (Peoria, Ill.), September 7, 2012

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