

Even a wrongful misdemeanor conviction can change someone's life forever

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BY KEVIN DAVIS

Early on the morning of Dec. 15, 2018, in the small Michigan town of Lake Orion, a burly middle-aged man came upon an unlocked walk-in cooler behind a restaurant while wandering through downtown. He sneaked into the cooler and slinked off with two six-packs of beer.

In the annals of crime, the theft would hardly be considered noteworthy. But it turned into what some believe to be an unfortunate case of mistaken identity that has had years of repercussions for one man and inspired a group of law students to try to correct what they see as a miscarriage of justice.

After the beer was reported stolen from Lockhart's BBQ restaurant, police reviewed grainy still images from a surveillance camera and showed them around to local business owners. No one was able to identify the thief, who was wearing a cap and white hoodie. A month later, while looking at the full video with better resolution, Lake Orion Police Officer Christopher Mires thought he recognized the man from previous encounters. His name was Richard Leach. Mires went to Leach's home with some still photos from the surveillance camera.

Leach invited Mires inside. The officer laid the photos on a table. Mires wrote in his report that Leach said it was him, but he did not know when or where he was when the images were

taken. The officer asked whether he might have been so drunk he didn't remember. Leach responded, "I have my moments."

In his report, the officer wrote, "I explained to him that he had stolen beer ... He stated he didn't remember." Mires issued Leach a notice to appear in court on a misdemeanor theft charge.

Later, on further reflection, Leach said it wasn't him in the video, and he decided to fight the charge. He hired a defense attorney, and the case went to a bench trial on June 10, 2019. Mires testified to recognizing Leach in the video. When he went to Leach's home to ask about the theft, Mires said, he noticed a Merchant Marine cap that resembled the cap worn by the man in the video.

Leach was found guilty and sentenced to 90 days in jail. He served his 90 days, but he was not going to let the matter slide. The consequences of his conviction—even for such a minor charge—had already taken a toll.

"After I got out of jail, I lost my home, my job ... there is a ripple effect," says Leach, who received assistance from a local church to help him get back on his feet. "I had to file for bankruptcy."

Leach, who worked for 17 years in the Merchant Marine and is now 55 years old, was a groundskeeper at a country club at the time of his arrest. "Because of my conviction for theft, they had to let me go," he says. Leach has since been working landscaping jobs and moved into his own apartment. "I can't get any type of retail job because of the theft conviction."

After Leach was released from jail, a friend told him police posted a crime alert on Facebook about another theft at a restaurant near Lockhart's just a few months later. There was a photo of a suspect who looked like Leach, prompting him to revisit his case. He did some digging around on the internet and learned about the Michigan Innocence Clinic at the University of Michigan Law School. He filled out an online form seeking help.

It was a long shot. Innocence clinics usually don't work with clients convicted of minor offenses. They focus on more serious crimes where the stakes are much higher: people on death row or those serving life sentences for murder or sexual assault.

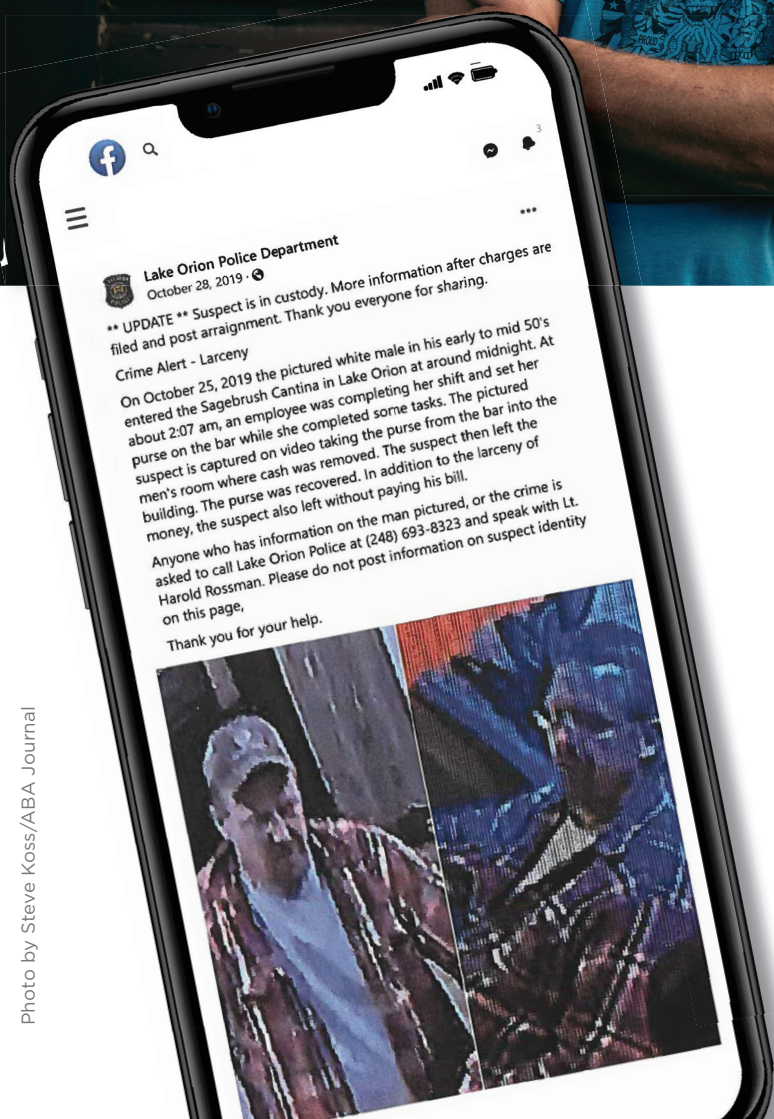
David Moran, the clinic's co-director, says he's received more than 6,000 applications since its inception in 2009, but nothing like the one from Leach. "This was the very first time we got a misdemeanor case," he says. "They are overwhelmingly serious crimes."

The clinic reports exonerating 41 clients since it began taking cases. It's different from other innocence clinics in that it does not handle cases involving DNA evidence, the first such clinic in the country.

After some of Moran's students began digging a little further, they were convinced they had a strong case for overturning the conviction, and Moran gave them the go-ahead to pursue it.



Top left: Richard Leach wears the Merchant Marine cap his lawyers say does not resemble the cap worn by the man in the surveillance video image (top right) taken during the beer theft.



Leach stayed at the Hope Shelter in Pontiac, Michigan, (inset) after losing his Lake Orion apartment. After Leach served jail time, friends helped find him a cabin to live in. Lake Orion Police posted an image (below) of this man, who admitted taking the beer that Leach was convicted of stealing.

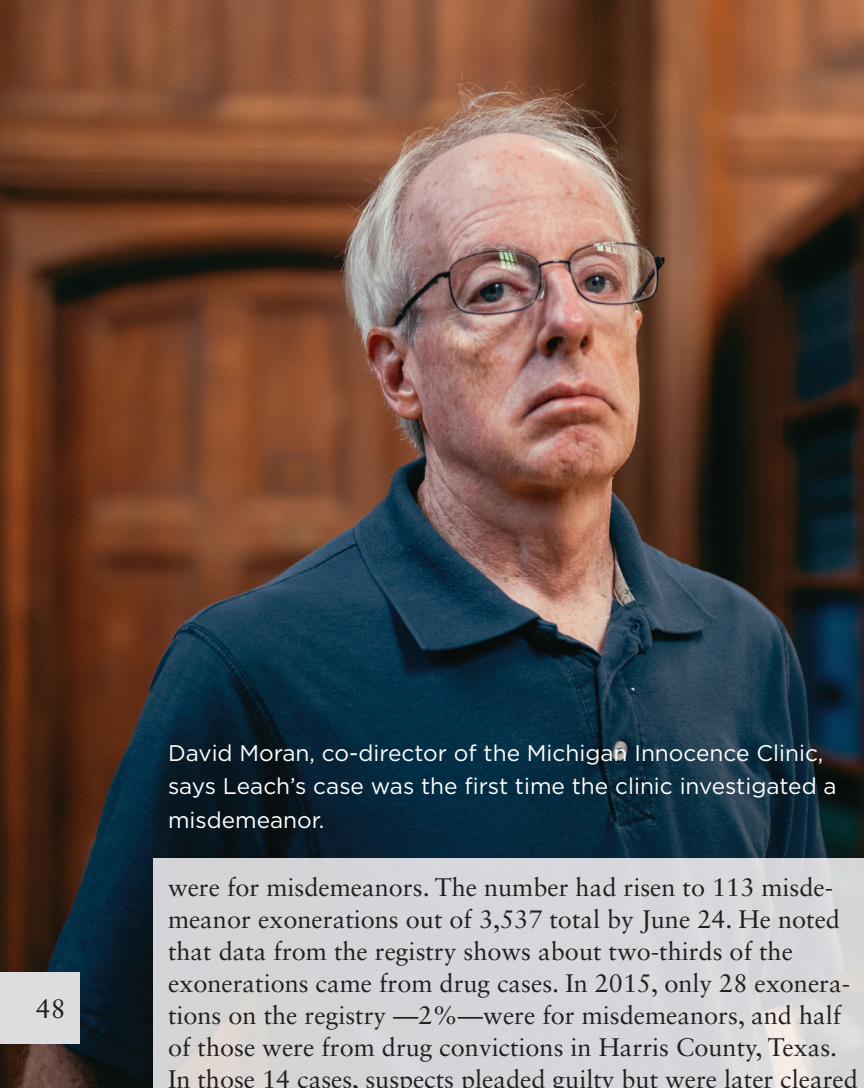
The innocence movement is born

The so-called innocence movement was sparked by the success of the New York City-based Innocence Project, founded by Barry Scheck and Peter Neufeld in 1992. Their clinic focuses on the use of DNA evidence, and it has helped free more than 200 people. Since its founding, law schools around the country have formed their own innocence projects, most of which focus on helping clients convicted of serious crimes.

Just how many innocent people have been convicted or are languishing in America's prisons—whether for serious or minor crimes—is unknown, but studies have estimated that between 2.3% and 5% of prisoners were wrongly convicted, which would total about 20,000, according to the Innocence Project.

"This issue is a big deal and likely affects many more cases than we know," says Samuel Gross, a professor at the University of Michigan Law School and co-founder of the National Registry of Exonerations. Gross says misdemeanors is the most important area of wrongful convictions.

In 2018, Gross published a study that found of the registry's 2,145 documented exonerations through the end of 2017, 85



David Moran, co-director of the Michigan Innocence Clinic, says Leach's case was the first time the clinic investigated a misdemeanor.

were for misdemeanors. The number had risen to 113 misdemeanor exonerations out of 3,537 total by June 24. He noted that data from the registry shows about two-thirds of the exonerations came from drug cases. In 2015, only 28 exonerations on the registry —2%—were for misdemeanors, and half of those were from drug convictions in Harris County, Texas. In those 14 cases, suspects pleaded guilty but were later cleared when routine post-conviction lab tests found no drugs.

Gross says the defendants most likely couldn't make bail and pleaded guilty to avoid lengthy prison sentences. "If they went to trial and were found guilty, they faced significant prison time."

Paul Cassell, a professor at S.J. Quinney College of Law at the University of Utah, believes most estimates of wrongful convictions are overblown and are somewhere in the range of 0.016%–0.062%. "No one would deny that innocent people are being convicted," Cassell says, adding he believes "it is rare."

Cassell authored a paper, "Overstating America's Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions," in which he lays out his argument.

He's concerned that inaccurate estimates of wrongful convictions have fueled a criminal justice reform movement that makes it more difficult to convict those who are actually guilty.

"The trade-offs are skewed to the risk of people not being convicted who are guilty," he says. "Are we going to create more rules to safeguard against wrongful convictions or rules to get more convictions? There are competing concerns that need to be balanced. The risk of victimization far outweighs the risk of wrongful conviction."

Jenny Roberts, the dean and a professor at the Maurice A. Deane School of Law at Hofstra University, who has studied

misdemeanors extensively, analyzed cases in which misdemeanors were overturned or vacated in a 2018 paper, "The Innocence Movement and Misdemeanors."

She found that people are exonerated for misdemeanors primarily for two reasons: First, many suspects plead guilty under pressure because drug tests falsely show the presence of controlled substances (as in Harris County); second, some are exonerated because of contradictions between official police accounts and police body camera or citizen video footage.

But few fight back. She notes that many defendants feel pressured to plead guilty and be done with it. In most cases, if they have not posted bond, they can leave jail with time served.

"There is very little opportunity to truly have your case heard," Roberts says. "The reality is that there are no resources."

For those who choose to fight charges or challenge wrongful convictions, the time it takes diminishes its worth. "It's way too little too late. You're talking about years later," she says. "For misdemeanors, it's a lot to expect people to do that."

Roberts advocates for reforms that would bring about fewer prosecutions altogether for misdemeanors, many of which wind up with guilty pleas regardless of guilt or innocence. The way to address it, she says, is "fix the problem up front. There are way too many misdemeanors being prosecuted. The whole system needs revision," says Roberts, who also authored "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," published in the *University of California at Davis Law Review* in 2011.

Justin Brooks, a professor at the University of San Diego School of Law, is the author of the book *You Might Go to Prison, Even Though You're Innocent*. He's probably best known for securing an exoneration for former NFL player Brian Banks, who was wrongfully convicted of rape as a teenager and whose story became the subject of a feature film.

Banks already was out of prison when Brooks took his case. As a result of his rape conviction, Banks was forever marked as a convicted sex offender. Brooks worked to secure his exoneration to erase that scarlet letter.

"It was really a life sentence that was going to ruin the rest of his life, which made it much more impactful," Brooks says.

Like many lawyers who consider taking on clients who claim they were wrongfully convicted, Brooks says those convicted for lesser crimes face long battles and many barriers, including uncooperative district attorneys.

"And even when we get cooperation, those cases seem to take a couple of years just for them to process and find a court date and get a judge—and then wait for the judge's rulings."

Brooks says the system needs to have safeguards in place to prevent wrongful convictions in the first place. "That's the frustration when you do this work," he says. "After a few years, I realized I've got to get into policy work, and we started working on improving identification procedures, getting recordings of confessions, doing all of these things that on the front end would allow defense attorneys to build a case against the charges or even that people not be charged to start with."



Trying to right a wrong

Back at the Michigan law school innocence clinic, students began working with Leach to try to uncover the truth. Leach told them about the other nearby theft in which police released a video on Facebook that showed a man with similar features.

“It seemed like a simple case. He had done a lot of the work beforehand,” says Brittany Warren, one of the students who worked on the case. “All we needed was the video.”

The incident on video occurred Oct. 25, 2019, in Lake Orion, just three months after Leach was sentenced. Police said a man skipped out on his bill and took cash out of an employee’s purse at Sagebrush Cantina, just down the street from Lockhart’s. Leach, after seeing the video online, thought the man appeared to be the same one who stole the beer.

Not long after police posted the video of the man in the Sagebrush Cantina theft, a suspect turned himself in and confessed. His name was Leonza Tipton. He was convicted of larceny and defrauding an innkeeper and sentenced to one to 15 years in prison.

In July 2023, one of the law students contacted Tipton at the Oakland County Jail where he was being held on other charges. He admitted to stealing the beer at Lockhart’s. He reviewed the video and signed an affidavit that it was him. He said he was dumpster diving that night because he was hungry. He said he had earlier found some pizza in a box, which he had with him, and walked to Lockhart’s. He saw the cooler was open and went inside hoping to find food, but there was none, so he instead took the beer. A video still shows him walking out of the cooler holding the pizza box and bottles of beer and a cap with a logo, but not a Merchant Marine cap.

Recent law school graduates Hannah Cumming (left) and Robin Peterson (right) argued Richard Leach’s case in June, along with David Moran (center).

The students contacted the Oakland County Prosecutor’s Office Conviction Integrity Unit, which agreed to review the case. Investigator Tracey Walton went to visit Tipton in the jail. Tipton again confessed to stealing the beer from Lockhart’s and signed a sworn statement.

“He stated that he wanted to apologize to Richard Leach, and he is willing to plead to a misdemeanor charge and pay any restitution on the matter,” Walton wrote in a report.

Oakland County agreed that Leach’s conviction should be vacated. But that was not enough for the Lake Orion prosecutor to agree to vacate the charges and erase the conviction.

So they went to court. In December 2023, more than four years after Leach served jail time for stealing beer, the innocence clinic filed a motion to vacate his conviction and sentence in Michigan Judicial District Court.

Lake Orion prosecutor Tracy Gaudenzi responded. She questioned the veracity of Tipton’s confession and said the man in the Lockhart’s and the Sagebrush Cantinas video do not appear to be the same person. Tipton was wearing glasses and Skechers shoes; Leach had no glasses and was wearing

Nike shoes. Further, Gaudenzi argued, the district court does not have authority to grant a new trial, and “the people do not believe that clear and convincing evidence exists that defendant is innocent.”

Moran and the students were disappointed. “We’ve encountered over the years some really unreasonable resistance to overturning murder convictions, armed robbery convictions and the like,” Moran says. “But you’d think that for such a for such a little thing that the system would be much more willing to say, ‘OK, yeah. We got this one wrong. Let’s let it go.’”

The case would be continued.

Police and prosecutor responsibility

According to the Innocence Project, police or prosecutorial misconduct are among the leading contributors to wrongful convictions. Police abuse of their authority, disregard of the constitutional rights of suspects or use of coercive tactics to extract confessions can lead to unjust prosecutions.

While official misconduct is a significant factor that leads to wrongful convictions, there’s a movement to train police to avoid it. The Police Training Institute at the University of Illinois Urbana-Champaign is at the leading edge. The institute teamed up in 2016 with the Illinois Innocence Project at the University of Illinois Springfield to develop a Wrongful Conviction Awareness and Avoidance course for police recruits.

Michael Schlosser, a retired police officer who ran the training institute, came up with the idea after taking a graduate school class about wrongful convictions. “I had no idea to the extent of how many people this happened to,” he says.

He decided that police cadets should be educated to avoid making such mistakes. “Even good officers with good intentions may not be using best practices,” Schlosser says. “We want to make sure they don’t get tunnel vision.”

He recruited a former colleague on the police force, Marcus Beach, who is now director of the Illinois Innocence Project’s Wrongful Conviction Awareness and Avoidance Program. “The innocence projects and the police have the same goal in mind: to find the truth,” Schlosser says.

Beach says the class starts with everyone agreeing on one thing: “No innocent person belongs in prison.”

The course identifies common factors that lead to wrongful convictions: misidentification, false or faulty witness statements and false confessions. “We present a case study along with each one of those about a person who is impacted by that particular contributing factor,” Beach says. “And then we talk about ways that they can do their best to make sure that those contributing factors don’t play a role we talk to them about.”

The trainees get it, Beach says. “The thinking of a lot of police officers is that these innocence networks just go out and try to get people out of prison, and that’s not the case at all,” Beach says. “Nobody wins getting a guilty person out of prison. What we want is the truth, and what law enforcement wants is the truth.”

Beach also believes wrongful arrests and convictions are the exception, and police work with good intentions.

“The majority of law enforcement in this country are doing things exactly the way they should be done,” Beach says. “They’re doing them for the right reason. They’re treating people correctly. They’re building those bridges within their communities. Unfortunately, the bad apple is the one that gets all the coverage and makes all of us look bad.”

The course has become such a hit that as of 2023, all police recruits in Illinois are required to take it. Beach and Schlosser believe they’ve created the only such course in the country, and they’ve have had many inquiries about replicating it. “We’ve had requests from as far away as Canada wanting to duplicate this,” Beach says. “And so that’s definitely a goal of mine.”

Prosecutors, who must approve charges brought by police before moving forward, are also playing a role in avoiding



Yes, this is me
Leonza L. Tipton
at Lockhart's BBQ
unlawfully taking
2 six packs of beer
out of outside walk-
in cooler.

[Signature] 8/10/2023

Leonza Tipton (above) signed a confession that he stole the beer for which Leach was convicted, and said he wanted to apologize to him. Leach (right) awaits a ruling.

wrongful convictions, Charlie Smith, immediate past president of the National District Attorneys Association and the state’s attorney for Frederick County, Maryland, says prosecutors have been working harder to screen weak cases brought by police. “In the last 35 years, prosecutors have gone through a much higher level of screening,” he says. “We’ve gone through a different level of scrutiny, and we often send back cases to police for insufficient evidence.”

Smith has been in the unpopular position of declining cases, including a recent murder arrest.

“It’s not easy. But we shouldn’t allow the process to play out with insufficient evidence in the first place,” he says.

That means avoiding the need to clean up a mess later. “I believe we should never have to focus on wrongful convictions,



Photo by Steve Koss/ABA Journal

but on wrongful prosecutions,” he says. “That is where the real scrutiny needs to lie.”

Smith knows that a misdemeanor conviction, no matter how small, can have a profound effect on a person. “I think people underestimate the emotional impact of a conviction on a misdemeanor,” he says. “It’s a very big deal.”

Still trying to right a wrong

And that’s how it is for Richard Leach. Clearing this conviction remains a very big deal to him.

On a Monday morning in June, Robin Peterson and Hannah Cumming, who had graduated from law school just two weeks earlier, came to court with Moran to argue their case before Oakland County District Judge Laura E. Polizzi. The judge agreed to allow the new graduates, who had yet to take their bar exams, appear before the court with Moran.

Leach arrived looking sharp and well-groomed in a navy blue suit and tie, hopeful about having his case resolved. He sat on a courtroom bench for nearly two hours, patient but eager while about a dozen other cases were called before his was ready to be heard.

As their professor looked on, Peterson and Cumming made brief arguments on the evidence and jurisdictional issues. Lake Orion prosecutor Gaudenzi challenged their arguments, saying the district court did not have the authority to overturn the conviction.

Judge Polizzi was not ready to rule, and she took the case under advisement without setting a date for another hearing.

So for now, Leach’s conviction stands, and he says he will continue to work landscaping jobs and try to move forward with his life.

“It’s still very much sort of a scarlet letter on his name, on his ability to continue to remain gainfully employed,” Cumming says. “How many people are wrongfully convicted out there of misdemeanors and they just don’t have any way of proving it? And yet, it’s still having this huge impact on their lives.”

Peterson says Leach is not shy about admitting he already had a police record and a past problem with alcohol. “He really wants to be able to clear his name of this conviction more than anything, and he knows his record won’t be clear entirely,” Peterson says. “But even though this is a municipal ordinance violation, it means a lot to him. I think I’ve developed an appreciation for how much misdemeanors really matter.”

Cumming finds it frustrating that the case has lingered so long.

“It’s a reflection of some of the broader brokenness in our justice system,” she says. “And the overcriminalizing and overlitigating of issues that really should be addressed in much more civil and out-of-court-mediation-type scenarios that could save immense cost to the court and could also protect people from having these harms and injuries to their livelihood.” ■