

Select '**Print**' in your browser menu to print this document.

©2004 National Law Journal Online

Page printed from: <http://www.nlj.com>

[Back to Article](#)

Judging innocence

Brandon L. Garrett and Jason M. Solomon
Special to The National Law Journal

01-09-2006

This winter, the U.S. Supreme Court will take a legal journey through the foothills of the Blue Ridge Mountains, from eastern Tennessee to northern South Carolina—the sites of two gruesome deaths that led to two questionable death sentences. In each of the two cases—*House v. Bell* and *Holmes v. South Carolina*—the defendant claims that he is innocent, forensic evidence was fabricated and the jury never heard evidence that another person committed the crime.

Justice Antonin Scalia called the question of whether the Constitution might permit execution of an innocent person "embarrassing" in a 1993 decision. Now the Supreme Court faces two fresh embarrassments. So far, the appellate courts have all regarded the evidence of guilt as "overwhelming," but only by discounting the evidence of innocence.

When Carolyn Muncey was found murdered in her eastern Tennessee home in 1985, the police quickly focused on her husband, Hubert, who had a history of serious domestic abuse, and Paul House, a convicted sex offender who recently moved to town. When witnesses told police they saw House emerge from woods near where Muncey's body was found, police settled on House. The prosecution's theory was that House raped Muncey, as evidenced by the semen stain on her nightgown, before murdering her. House maintained his innocence and attacked the forensic evidence. He was convicted and sentenced to death.

House brought a federal habeas claim, arguing that Hubert Muncey was the real killer. House's lawyers proffered testimony from four witnesses who said that Hubert Muncey had confessed to them; two witnesses who contradicted Muncey's alibi; and the state's medical examiner, who stated that blood on House's jeans must have come from the sample taken from the victim—half a vial was unaccounted for. Most striking, new DNA evidence demonstrated that semen on Carolyn Muncey's nightgown came not from House, but from her husband. The full 6th U.S. Circuit Court of Appeals nevertheless determined in an 8-7 decision that House had not met his burden of showing that "no reasonable juror" would vote to convict.

Eighty-six-year-old Mary Stewart was robbed, raped and murdered in her home in York County, S.C. The police arrested Bobby Lee Holmes. Holmes' planned defense was to discredit forensic evidence and provide evidence that someone else did it. Holmes proffered 14 witnesses who would testify that another man, Jimmy White, had confessed to them or was on the victim's block around the time of the murder. Holmes also had evidence that the officer in charge of the investigation fabricated forensic evidence. The trial judge excluded most of this evidence, and Holmes was convicted and sentenced to death. On appeal, the South Carolina Supreme Court upheld the decision to exclude the evidence of White's guilt, finding the evidence against Holmes to be "overwhelming."

What the juries didn't hear

In both of these cases, though the forensic evidence was suspect, the appellate courts nonetheless regarded evidence of guilt as "overwhelming," and the jury never heard evidence that another person committed the crime. The legal inquiries are similar as well: Both cases require justices to rerun the trial in their heads and predict what a jury would do with the new evidence.

The justices will ask about causation, a question familiar from tort law: Did the lack of such evidence before the jury cause the conviction? This inquiry can appear deceptively easy. But appellate judges are forced to speculate on the impact of evidence the jury never heard.

New evidence might undercut other evidence that appellate courts found so "overwhelming." If links in the

prosecution's narrative are cut by contrary evidence, the jury may doubt the entire chain. If a jury heard evidence that police fabricated blood evidence, they may tend to distrust other aspects of the officers' testimony. If a jury heard evidence incriminating Muncey's husband, they might discount circumstantial evidence of House's guilt or the "aggravating circumstance" of a rape.

With Holmes questioning the forensic evidence, the jury undoubtedly wanted to know-well, who did it then? Worse, the prosecutor said in his summation: "[I]f [the police] are going to frame [someone] . . . , and it's going to be Bobby Holmes, where is this raping, murdering, beating fellow that actually did this thing?" But the court did not let the jury hear Holmes' answer.

In 170 cases to date, DNA testing has proven defendants actually innocent though appellate courts often found "overwhelming evidence" of guilt. We may never know for sure if House and Holmes were wrongfully convicted, but we can find out what a jury would do with the new evidence-only if the court sends the cases back for retrial. The Supreme Court should use these cases to create a national conversation on how to avoid "embarrassing" wrongful convictions from investigation to trial to appeal. We believe our system demands no less.

Brandon L. Garrett is an associate professor of law at the University of Virginia School of Law. Jason M. Solomon is an assistant professor of law at the University of Georgia School of Law.