



### E28 Miscarriage of Justice: Peter Montoya - The Shooter Who Didn't Shoot

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The goal of this presentation is to provide insight into the value of utilizing expert witnesses to review and rebut inaccurate and misrepresentative theory and firearms evidence, and how the failure to do so resulted in the conviction and imprisonment of man which was overturned based on ineffective assistance of counsel at trial and new evidence proving that he could not have been the shooter, and that the prosecution's expert ballistics opinions should have been challenged prior to trial via *Daubert* or similar motion.

This presentation will impact the forensic science community by showing how police testified to scientifically invalid ballistics theory, misrepresented their own police training, and failed to apply the generally accepted standards for firearms investigations in order to obtain a wrongful conviction. This presentation will illustrate how the witness statements and the physical evidence were not adequately challenged by defense counsel at trial.

In February 1999, a shooting took place in Salt Lake City, Utah which resulted in a young man being accused of firing a semi-automatic pistol into the rear of a Honda which contained three young men. The driver was killed, the rear passenger was wounded, and the front passenger was not injured. Prosecutors presented evidence that three or more shots were fired; two entering the back window and one entering the right rear quarter panel.

At trial in 2000, Peter Montoya was convicted of homicide and two counts of attempted homicide in a Utah court. The state presented firearms and ballistics testimony from the lead detective and a Utah State Trooper which purportedly proved that Montoya, who was seated in the front passenger seat of a Ford Pickup truck, leaned out the window and fired gunshots from a 9mm semi-automatic pistol as the driver of the truck was turning right and accelerating.

Police had information that the shooter was the driver of the truck, not Montoya; however, this was not pursued by defense counsel nor was a ballistics expert hired to review the evidence and theory of police.

To offset any claim by the defendant that the driver was the perpetrator, a Utah Trooper testified that police are trained to use their weak hand to shoot only if the strong hand is injured and that accuracy while shooting with the weak hand was limited to five feet and inferred to the jury that it was impossible for the driver to have been shifting, turning, and shooting simultaneously.

The police version of events went unchallenged until 2005 when a Salt Lake City attorney took the case seeking a new trial based on inadequate defense by trial counsel.

The initial goal was to ascertain if the number of purported shots fired was accurate. However it was found that there were many more significant misrepresentations of the ballistics evidence which were scientifically invalid and witness statements provided a different version of events including that the driver of the truck was the shooter. The driver had been killed in a shootout with police shortly after the shooting which left police with only Peter Montoya to accuse of being the shooter.

A reconstruction based upon data contained in the crime scene diagram, photos, and witness statements revealed that only the driver could have fired the pistol at the Honda and that it was scientifically impossible for the gunshots to have come from the passenger side of the truck.

Critical factors in the reconstruction were:

1. Location of the vehicles in relation to each other at the time of the gunshots.
2. Physical attributes of both vehicles.
3. Entrance angle of gunshots on the Honda.
4. Location of glass fragments on the roadway.
5. Location of discharged cartridge cases.
6. Victim witness description of truck acceleration noise.
7. Trajectory of gunshots.

The testimony of the Utah Trooper that accuracy was limited to a distance of five feet when shooting with the weak hand was impeached by learning that in his own training he was required to qualify using his left (weak) hand at a distance of seventy five feet or fifteen times the distance he stated would be inaccurate.

Had the passenger fired the pistol, the discharged cartridge cases would have been on the right side of the truck not on the driver's side.

The angle of entry and the continuing trajectory of the gunshots was scientifically impossible to have come from the truck's passenger side due to the relative location, height, and position of both the truck and Montoya.

Using an exemplar manual shift vehicle and driver, a shooting reconstruction was video recorded showing the driver was capable of shooting with either hand while driving and turning the truck without shifting.



## Jurisprudence Section – 2010

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In December 2006, testimony was given in a Utah Court on behalf of Montoya's Motion for Post Conviction Relief. The state did not introduce any rebuttal evidence to the new findings.

The court overturned the conviction on the new scientific evidence, the ineffective assistance of counsel at original trial, and ordered Mr. Montoya released after seven years behind bars for a crime he did not commit.

This case illustrates the importance of ensuring that the theory and evidence involved in shooting incidents be evaluated for reliability and validity and presented at trial in an objective manner based on scientific principles and not in an inaccurate or misrepresentative manner. It is clear and convincing that this conviction was based on invalid, unscientific, and subjective theory and testimony which was disproven by the real facts.

### **Angle & Trajectory, Discharged Cartridge Case Ejection Pattern, Location of Shooter From Physical Evidence**