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SAVING ANTHONY HARRIS

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An unsolved murder. A wrongfully convicted boy. And a ten-year battle to hold police and prosecutors responsible for their actions. 'It's scary how little it takes for people in power to screw things up,' says one lawyer on the case. 'And how much it takes to correct it.'

DEVAN DUNIVER WAS A LITTLE GIRL WHO LIVED IN NEW Philadelphia, Ohio, in the summer of 1998. She was 5 years old, Caucasian, with blond hair and blue eyes. Devan lived in a modest two-story apartment complex with her mother and older brother, and was supposed to enter kindergarten in the fall. She liked it when her mom read books to her, especially Dr. Seuss's One Fish Two Fish Red Fish Blue Fish .

In the summer of 1998, Anthony Harris was a 12-year-old boy who lived with his mother and two brothers in the same apartment complex. Anthony was supposed to enter the seventh grade in the fall. He liked playing with Legos and toy trains and had a favorite stuffed monkey that he brought to sleepovers. He was African American and tall for his age. His teachers considered him polite and well-mannered.

New Philadelphia is a town of about 18,000 residents, located 80 miles south of

Cleveland. Much of the town has the look of a Norman Rockwell painting: Stately homes from the 1800s and majestic old trees line the streets. In 1998, African Americans made up 1 percent of the county's population.

On the morning of Saturday, June 27, 1998, Anthony Harris and his best friend went to Ernie's Bicycle Shop. At 2 p.m. Anthony walked home to check in with his mother, as she had told him to do. He ran into Devan Duniver's mother, Lori, who was looking for her daughter. Lori offered Anthony \$5 to help her look. Anthony searched with Lori Duniver for several hours, then went home. Later he stayed over at his friend's house and they watched television. At 8:11 p.m. Duniver called the police to report that her daughter was missing.

The town came out to look for the child. In the midst of heavy storms and tornado warnings, roughly 400 people searched into the night. The next day, around 2:30 p.m., two searchers found the little girl's 40-pound body in a small wooded area less than 150 feet from Devan's home. She had been murdered--;stabbed in the throat.

For more than two weeks, the police didn't arrest any suspects. The town police chief vowed that they'd catch the killer. On July 15, 1998, the police asked Anthony's mother to bring him to the station.

What happened that day started a ten-year legal saga that highlights the best and worst aspects of our criminal justice system. Lives were forever altered, and despite the efforts of a passionate public defender, it ultimately took an Ohio appellate court, two federal courts, and the extraordinary commitment of two large law firms to repair some of the damage. When a person's future is at stake, what kind of a system depends on the chance rescue efforts of volunteer lawyers? And does it really have to be so hard to hold public officials accountable for their misconduct--;or to get them to say they're sorry?

IN 1998 TARIN HALE was one of six public defenders for Tuscarawas County, working parttime and handling felonies. When he heard that the police had a juvenile in custody who had confessed to murdering Devan Duniver, Hale volunteered for the case. He met his new client before the preliminary hearing inside the nineteenth-century county courthouse that looms over New Philadelphia's public square. Anthony Harris was

handcuffed to a bar on the floor. 'He was just a skinny kid,' Hale recalls. 'He looked lost and confused.'

Hale, then 32, had handled more than 400 felonies, and one murder. This case, he figured, would be straightforward: 'I thought a 12-year-old wouldn't be able to cover up a murder.'

After the hearing, Hale went to the police station to hear a tape of Anthony's confession. He met with New Philadelphia police officer Jeffrey Urban, who was heading his second murder investigation. New Philadelphia doesn't have many murders. Some years there are none; other years, one or two. Urban claimed that Anthony was a likely suspect because the boy had given him differing accounts of the route he'd taken home during the time Devan went missing.

Urban played the confession, which had been captured poorly on a pocket tape recorder. The interrogation had been conducted the day before by Thomas Vaughn, the police chief of nearby Millersburg, a town of roughly 4,000. Anthony had been placed alone in an interrogation room with Vaughn; his mother, Cynthia Harris, could watch through a one-way mirror, but could not hear what was said.

After making some small talk, Vaughn suggested to Anthony that the police had evidence linking him to Devan's murder, such as finding Devan's blood on his clothes and his footprints near Devan's body. Anthony denied that he did anything wrong, but Vaughn, according to the transcript, kept pressing. 'You're sorry you did this, aren't you? You didn't mean to kill her, did you?'

'I didn't kill her,' Anthony replied.

Vaughn threatened that if Anthony didn't confess, he would have to do a 'voice stress test,' a technique that could tell whether he was lying, and then the child would be stuck with the results in court. 'You know you did this crime,' Vaughn told the little boy, suggesting that he understood why he might be angry enough to kill Devan. 'A lot of African Americans got a lot of hate built up over the years.'

After Anthony repeatedly denied harming Devan, the boy finally relented.

'You stabbed her in the throat, didn't you Anthony?' Vaughn insisted. 'You did, didn't you, Anthony?' 'Yes.'

'Do you know how many times you stabbed her?'

'No.'

'More than once? Five or six times?'

'No.'

'Once or twice?'

'Probably twice.'

After 80 minutes, Vaughn asked Anthony to write down his confession, and Anthony started to cry. 'Can I talk to my mom?'

Anthony's mother who had been outside the room, walked in, and Vaughn started to tell her that Anthony had confessed. But Anthony stopped him.

'Wait. I'll tell her that if I did it, I would have done it, but I didn't do it, but I said I did it,' said the boy, seemingly confused by what had happened.

'You didn't do it?' Cynthia Harris asked.

'No.'

'Then why did you tell him that you did?'

'Because I, I was just scared.'

As Hale listened to the tape he kept shaking his head: 'I thought something is terribly wrong. Anthony is just repeating back what is said to him. He's just trying to say anything to get the guy to leave him alone.' Hale began to worry: 'This is not going to be the open-and-shut case I volunteered for.'

IN THE SUMMER OF 1998 Amanda Spies was the prosecutor for Tuscarawas County. The daughter of a local judge, she had held the elected post for a year and a half. Spies (who then went by the name Amanda Bornhorst) had been at the police station the day of Anthony's confession, although she didn't observe it. Urban brought her the tape after the session with Anthony ended. After listening to the part where Anthony confessed, she instructed Urban to arrest the boy.

After doing some research, Hale believed that he had strong grounds for challenging the confession. First, the Miranda warning was suspect. When Cynthia Harris brought Anthony to the police station on July 15, officer Urban told her that the police wanted to do a 'relaxing' interview with her son, and that it would be better if she wasn't in the room. As soon as Anthony was separated from his mother, Chief Vaughn read him his Miranda rights, according to the transcript.

Chief Vaughn had been brought into the case at the urging of prosecutor Spies. Vaughn had never before been involved in a murder investigation, but he was certified in the questionable voice stress analysis technique. (These tests, considered by some experts to be useless, are not admissible in court.) Although the police chief had threatened to perform a voice stress test on Anthony, he never did.

There was also an issue of coercion. Chief Vaughn was also trained in manipulative interrogation techniques designed to elicit confessions. These techniques, called the John Reid and Glen Foster techniques (after their creators), are to be used only when police feel certain that a suspect is guilty and have independent evidence of guilt. The approach involves telling the suspect that there's an airtight case against him, and offering leniency if he confesses. The organization that trains people in the Reid technique warns that it may compel false confessions in children.

Vaughn followed the Reid and Foster techniques when he questioned Anthony. To try to

convince the boy that the police had a solid case, he lied. They hadn't found Devan's blood on Anthony's clothes, and they didn't find his footprints near her body. In fact, there was no physical evidence whatsoever linking Anthony to the crime.

After studying the confession, Hale requested another hearing. He argued that the confession was coerced and attached a transcript: 'I thought, surely, if [the judge] reads the confession, she'll realize the prosecution is wrong.' Judge Linda Kate denied the motion.

As Hale investigated the crime, he believed that the prosecution's theory wasn't credible. The only opportunity Anthony had to kill Devan was between 1:45 and 2 p.m. on June 27. But when Lori Duniver saw Anthony at 2 p.m., she didn't notice any blood on him, even though he had supposedly just finished stabbing Devan in the neck seven times, severing her carotid artery. None of Devan's DNA was ever identified on Anthony's clothes, and none of Anthony's DNA was found on Devan.

In addition, if Anthony killed Devan in this small wooded area, it seemed implausible that waves of searchers could have combed the spot for hours and never seen the girl's body, including her red shorts. Hale maintained that Devan must have been killed somewhere else and her body moved at night.

'Kids can't make a peanut butter and jelly sandwich without leaving a trail of evidence,' Hale, a father of four, kept insisting. 'How could a 12-year-old boy commit a murder without leaving any evidence?'

As the trial approached, Hale got assistance from a prominent African American lawyer from Cleveland, George Forbes, and his partner, Dennis Loconti, who became involved at the request of the local NAACP chapter. Loconti, who has represented many juvenile defendants, remembers his first impression of Anthony: 'This is no streetwise kid.'

Anthony spent the first three months after his arrest incarcerated at a 'juvenile attention center.' Judge Kate refused to release him until 90 days had passed; at that point she said the law compelled the release of a juvenile. Shackled to an electronic ankle monitor, Anthony joined his mother and brothers in Canton, Ohio, where they had moved. When

he tried to enroll in school there, the superintendent said that he wouldn't admit him without a court order, according to an article at the time in The Akron Beacon Journal. The school instead sent a teacher to teach Anthony at home.

IN 1998 LINDA KATE was the lone juvenile and probate court judge in Tuscarawas County. Kate had become a judge the year before, after working as a magistrate for six years, and before that, serving as an assistant prosecutor in Massillon, Ohio.

When the trial began in January 1999, New Philadelphia was riveted. The case topped the front page of the local paper, The Times-Reporter, for days, and was a lead story on local television. Ohio, unlike most states, does not protect the privacy of juveniles in criminal proceedings. Judges have the discretion to decide the public's access. In a highly unusual move, Judge Kate gave the press full access, and let them take photographs in the courtroom. She even let the trial be broadcast over the radio.

Because this was a juvenile proceeding, there was no jury. Judge Kate would decide Anthony's fate. There was already tension between Hale and the judge and prosecutor. Before the trial began, Hale had moved to disqualify Kate, claiming she had shown bias against Anthony. Ohio Supreme Court justice Thomas Moyer, who considers these motions, denied Hale's request. As for Hale's relationship with Spies, he had run against her for county prosecutor in 1996, and the loss still stung the public defender.

Spies's main evidence against Anthony was the confession. She also presented testimony by Devan's stepmother and a few children, who claimed that the girl was afraid of Anthony and that he had hit her. One girl claimed that once when they were playing, Anthony said he would kill Devan.

In the midst of the trial, Hale moved for a mistrial, and for the second time asked Justice Moyer to disqualify Kate. Hale asserted in an affidavit that before the defense had started its case, Kate had walked into a defense conference and pushed for the case to be 'resolved' to avoid having some children testify as witnesses. Kate did not dispute this, but asserted in court papers that she had not prejudged Anthony's guilt. Chief Justice Moyer rejected Hale's request: 'I find nothing in the record that remotely demonstrates a predisposition [against Anthony].'

Two days after Moyer's ruling, in February 1999, Judge Kate rejected a defense motion to suppress Anthony's confession. She ruled that the police weren't even required to give Anthony a Miranda warning; she reasoned that the boy was not in custody when he was interrogated at the police station because he was never told he was in custody and could leave at any time. In any event, Kate wrote, Anthony understood the Miranda warning, and his confession was not coerced.

For Anthony's defense, Hale had worked hard to line up some of the nation's top experts. Richard Ofshe, a sociology professor at the University of California at Berkeley who is one of the leading experts in false confessions, testified that he believed Anthony's confession was coerced and false. Forensic expert Dr. Charles Petty, the former chief medical examiner of Dallas, testified that he was sure that Devan's body had been moved. Eleven of the local searchers insisted that they had thoroughly examined the small wooded area and had not seen a body. Two of Anthony's teachers vouched that he was a good kid and had never been disciplined for behavior problems. Anthony's lawyers pointed out that the police barely investigated other suspects. And they repeatedly stressed that there was no physical evidence linking the boy to the murder.

Anthony was overwhelmed by the proceedings, according to defense lawyer Loconti: 'I don't think he could follow everything that was going on. He just sat there scared.' During the trial, Hale's frustration and anger grew: 'I felt I had a front row seat to a horrible play before my eyes. I could not stop it. I tried everything, and it seemed to be pointless. But I was going to make a record [of all the evidence].'

At the end of the six-week trial, on March 10, 1999, Judge Kate found Anthony guilty. A week later she gave him the maximum sentence for a juvenile: incarceration until he turned 21. 'I am very sure you committed this act,' Kate told Anthony as he stood before her. 'A malevolence has filled your soul.' The judge then appeared to show Anthony a photograph of Devan's body, according to an account by The Akron Beacon Journal. 'This is what you left behind in your wake.'

The judge then asked Anthony if he had anything to say. 'Yes, Your Honor. I did not commit this crime.'

IN 1999 DANIEL WARREN and Geoffrey Mearns had adjoining offices at Cleveland's Thompson Hine. The two were friends, but also intensely competitive litigation partners. Both men were interested in social justice issues, but they approached them from different perspectives. Warren had immersed himself in pro bono criminal cases throughout his career, which he started at Jenner & Block in Chicago. Mearns was a former federal prosecutor who had helped convict Oklahoma City bomber Terry Nichols.

With the help of Northwestern Law School's Center on Wrongful Convictions, Anthony's plight was brought to their attention, and they agreed to handle the boy's appeal. Hale was thrilled. When he took them to meet the boy in detention, Hale started crying. 'I really think we've found lawyers who can help you,' Hale told the boy.

As Warren and Mearns examined the record, they were relieved to see that Hale had done a good job preserving issues for appeal. They also had one strong fact in their favor: Anthony's confession had been taped. Cases like this can come down to a swearing match between a child and a police officer, and the child usually loses. One of their toughest tactical decisions involved Spies's claim that Anthony's confession contained details that only the killer would know. Warren and Mearns scoured the record and couldn't find anything in the confession fitting that description. They took a chance and called Spies's bluff. 'In our brief, we literally challenged the prosecution to identify even one statement that only the killer could have known,' Mearns recalls. 'We debated a long time. If we miss something, we're sunk.'

Their appeal, filed in November 1999 with Ohio's Fifth Appellate District, accused Judge Kate of prejudging Anthony's guilt and erring by not suppressing the confession. It also maintained that the evidence was insufficient to support a conviction. Their gamble worked. The prosecution couldn't cite one fact given by Anthony that only the killer would know.

Mearns and Warren met with Anthony at the maximum security facilities where he was held, and tried to encourage him. 'We thought there was hope,' says Mearns. But Warren, who would make the oral argument, was concerned about the prospects of getting such a notorious case overturned.

The appellate court held the oral arguments in March 2000 in New Philadelphia, in the same courthouse where Anthony had been tried. A lottery was held for seats in the gallery. Tarin Hale and Cynthia Harris sat together. Lori Duniver was also present. During the two-and-a-half-hour hearing, the judges asked lots of questions and seemed engaged. Warren was encouraged. 'I walked out of there feeling very good about our chances.'

Three months later, on June 7, 2000, in an opinion written by Judge John Wise, the court unanimously overturned Judge Kate's decision. The police had violated Anthony's Fifth Amendment rights: He had been in custody, the Miranda warning was improper, and the confession had been coerced. To the defense team's disappointment, the court didn't address the sufficiency of the evidence used to convict Anthony. If the court had found it insufficient, Spies would have been barred from retrying him. The court remanded the case to Judge Kate.

Hale, Mearns, and Warren drove to the detention center to tell Anthony. 'He had a huge grin,' Hale recalls. 'He could not believe it.'

The next day, when Anthony was released, Spies announced at a press conference that she planned to retry him: 'Frankly, in my heart and in my gut, I feel that Anthony is responsible for the murder of Devan Duniver.'

That night Anthony sat on the porch at his home and looked at the stars, which he hadn't seen for a long time.

DESPITE HER PLEDGE, Spies didn't immediately recharge Anthony. Without the confession, her case had collapsed.

With the criminal case seemingly behind them, Warren and Mearns thought about taking the battle in a different direction. They talked to Anthony and his mother about filing a wrongful prosecution civil lawsuit. Initially, the family declined, wanting to put these terrible events behind them. In early 2003, Warren checked with them again, and they decided to sue.

By this time Warren and Mearns had moved to a new firm, the Cleveland office of Baker & Hostetler. The wrongful prosecution case would rest primarily on [42 U.S.C. 1983](#), which provides redress for civil rights violations by government officials. '[Section 1983](#) cases are almost always losers,' says Baker & Hostetler partner Stephan Schlegelmilch, who did a lot of work on the case. But, he adds, 'if [section 1983](#) doesn't protect Anthony, it's meaningless.'

The biggest hurdle would be the immunity that federal law gives police and prosecutors. Police have 'qualified immunity' from lawsuits arising from their official duties. That immunity disappears, however, if their conduct violates a reasonable person's notion of clearly established legal rights. Prosecutors are shielded by absolute immunity for anything they do as prosecutors, no matter how unethical. The U.S. Supreme Court in 1976 held in *Imbler v. Pachtman* (where a prosecutor knowingly presented perjured testimony) that prosecutors need this immunity to protect them from 'harassment by unfounded litigation' [see 'No Consequences,' page 79]. To develop their argument that the police actions weren't reasonable, the Baker & Hostetler team hired a former agent from the Federal Bureau of Investigation to examine the criminal investigation. To get around Spies's absolute immunity, they focused on actions that arguably fell outside her prosecutorial duties, such as instructing officer Urban to arrest Anthony. They also believed they had a defamation claim for her 'heart and gut' comment after Anthony was released.

After going through 27 drafts of the complaint, they filed it in August 2003 in federal district court in Akron. They accused the defendants--;Spies, Urban, Vaughn, New Philadelphia police chief Thomas Staggers, the cities of New Philadelphia and Millersburg, and Tuscarawas County--;of 'eviscerating Anthony's constitutional rights.' They also included state law claims for malicious prosecution and defamation. The case was assigned to federal district court judge John Adams, a former local prosecutor and common pleas judge who had been appointed to the bench just that year by President George Bush.

AGAINST THE ODDS, Anthony managed to resume the semblance of a normal life. After his release from incarceration, he started high school in Canton, played on the football team, and graduated on time. He then set his sights on becoming a Marine.

In January 2004 Anthony applied to join the U.S. Marine Corps, and disclosed his wrongful conviction. A recruiter came to New Philadelphia to get his juvenile court record. When Spies learned why the recruiter was there, she exclaimed to him, 'You've got to be fucking kidding me!,' according to the recruiter. The prosecutor told the recruiter that Anthony would always be a suspect in Devan's murder. The Marines rejected Anthony's application.

In June 2004 the Baker & Hostetler lawyers amended the complaint to sue Spies for those comments, charging her with defamation and tortious interference with business relationships.

They also later added claims alleging that Spies had committed 'Brady violations' by withholding exculpatory evidence. Although Spies had absolute immunity from Brady claims, her employer, the county, didn't. In one example, Spies's notes from her files said that Devan's blood would have been 'splurting like crazy' during her killing. At the trial, Spies had maintained that Anthony didn't have any visible blood on him because Devan wouldn't have bled much.

When Judge Adams issued his decision in August 2004 rejecting the defendants' motions to dismiss, his words conveyed barely contained outrage: 'Despite the lack of any physical evidence to link Anthony to Devan's murder, the police defendants consciously elected to pursue a confession from 12-year-old Anthony through unconstitutional means... Chief Vaughn resorted to tactics that would compel a 12-year-old boy's confession, regardless of his guilt or innocence.' As for Spies, her absolute immunity would not protect her against claims arising from her role in the investigation, including her instructions to arrest Anthony.

That fall the Baker & Hostetler lawyers sparred with the defendants in depositions. Anthony, when he was deposed, reluctantly talked about the toll the prosecution and imprisonment had taken on him, saddling him with serious emotional issues. 'They ripped my family and [me] apart,' he testified. 'It's like they just stomped a hole in my life.'

A few months after the depositions, which lay bare deficiencies in the police investigation, the Baker & Hostetler team reached a settlement with officers Urban,

Vaughn, and Stagers, and the cities of New Philadelphia and Millersburg. In February 2005 their insurers agreed to pay \$1.5 million. For Warren and Mearns, the money wasn't enough. They wanted an apology. The three officers signed a letter to Anthony stating: 'We regret that you were wrongfully convicted of this crime. We apologize to you and your family for the events that led to your conviction.' Spies refused to settle.

Anthony reapplied to the military in the spring of 2005. This time Judge Kate resisted clearing his name. Responding to a letter from an Army recruiter seeking information, she stressed in a June 2005 letter that the appeals court never acquitted Anthony. She characterized the reversal as a technicality, and noted, 'Mr. Harris remains eligible for prosecution.' Anthony never joined the Army.

The civil suit against Spies dragged on. In May 2006 the Baker & Hostetler team suffered its first big setback. Ruling on a summary judgment motion, Judge Adams dismissed with prejudice all the claims against the prosecutor, noting that Anthony's confession gave her probable cause to have him arrested.

The head of Baker & Hostetler's appellate practice, Thomas Warren (no relation to Dan Warren), helped brief the appeal to the U.S. Court of Appeals for the Sixth Circuit. (Mearns had left the firm to become dean of the Cleveland-Marshall College of Law in 2005.) A year and a half later, in January 2008, the Sixth Circuit reversed. In a 2-to-1 decision it reinstated most of the claims against Spies. Judge Karen Nelson Moore, writing for the majority, stated that 'any reasonable prosecutor. . . would have known, after listening to the tape of the confession, that it was involuntary as a matter of law.'

In late September 2008, with Spies's trial just a few weeks away, finally, after ten years, the legal saga that began with Devan Duniver's death ended. The case against Spies and her employer, Tuscarawas County, settled for \$2.2 million, bringing the recovery to \$3.7 million. Warren could not extract an apology from the prosecutor.

The settlement came at a bad time for Spies. She was running for reelection in November, challenged by a former public defender. After The Times-Reporter backed her opponent, she was voted out of office by a significant margin. She did not respond to requests for interviews.

The other defendants have fared better professionally. Urban was promoted to police chief of New Philadelphia in 2002. He declined to say much about the case, but he noted that it was Spies, not he, who decided to arrest Anthony after the confession. 'I would not have arrested him at that point,' he says. In his defense, Urban also says he didn't know that Vaughn would conduct an aggressive interrogation. Asked if his apology to Anthony was sincere, he pauses and says, 'You should talk to [my lawyer].' Former New Philadelphia police chief Stagers, who retired in 2002, asserts that the police conducted a good investigation and complains that the insurers pushed him to settle. The apology in particular bothered him: 'I was not happy with that.' Vaughn is still chief of the Millersburg police department. He did not return calls.

Judge Kate continues as the sole juvenile court judge in New Philadelphia. She was reelected this fall without opposition. She declined to comment.

Dan Warren estimates that Thompson Hine and Baker & Hostetler devoted \$2-3 million of time to Anthony. The criminal case was pro bono, but Baker & Hostetler did take a contingency fee from the civil settlements. (Warren declined to reveal the fee, but notes that it didn't cover all their time.) Warren and Mearns praise the two firms' commitment. 'Both firms were extremely supportive,' said Mearns.

In an interview this winter, Warren admitted that he misses the case, which was a big part of his life for years. 'You could say the system worked ultimately--;criminally, civilly, politically. But it took ten years and an incredibly compelling set of circumstances and an extraordinary effort. And still it seems the system worked just by the skin of its teeth. . . . It's scary how little it takes for people in power to screw things up, and how much it takes to correct it. I don't mean to sound immodest, but not everyone gets to hire us. Not everyone gets our effort.'

Former public defender Hale puts it more bluntly. 'The system works? That's a joke. When a 12-year-old serves two years in prison for something he didn't do?' Hale, who moved away from New Philadelphia in 2001, still gets emotional discussing the case: 'It was the case of a lifetime, and it was hard to move on.'

Anthony Harris is now 23 years old and finally joined the Marines in 2006. He declined

to talk about his case. He is a lance corporal and has served seven months in Iraq, and at press time was scheduled to go to Afghanistan.

No one else has ever been arrested for the murder of Devan Duniver.

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