



School of Law
UNIVERSITY OF GEORGIA

Digital Commons @ University of Georgia
School of Law

Popular Media

Faculty Scholarship

1-21-2004

Exonerated by DNA After 16 Years in Prison

Donald E. Wilkes Jr.

University of Georgia School of Law, wilkes@uga.edu

Repository Citation

Wilkes, Donald E. Jr., "Exonerated by DNA After 16 Years in Prison" (2004). *Popular Media*. 112.
https://digitalcommons.law.uga.edu/fac_pm/112

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Popular Media by an authorized administrator of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#)
For more information, please contact tstriepe@uga.edu.

EXONERATED BY DNA AFTER 16 YEARS IN PRISON

Published in slightly different form in Flagpole Magazine, p. 13 (January 21, 2004).

Author: Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.

Exit to Freedom

Calvin C. Johnson, Jr. with Greg Hampikian

University of Georgia Press, 2003

286 pp., hardcover, \$24.95

Since 1973 a total of 114 innocent persons sentenced to death in 25 states have been exonerated and released from death row, many after being imprisoned for a decade or more, and some after narrowly avoiding execution by only a few days. (Five of the exonerees--Jerry Banks, Earl Charles, James Edward Creamer, Gary X. Nelson, and Robert Lewis Wallace--were Georgia death row inmates.) In addition, since 1989 no less than 138 innocent convicted persons (including some of the 114 death row exonerees) have been exonerated and released from prison due to the efforts of the New York-based Innocence Project, a legal clinic at Cardozo law school which litigates cases where DNA testing of evidence can yield conclusive proof of innocence.

In addition to reigniting robust public debate about the fairness of the death penalty and flaws in the criminal justice system, the recent exonerations have led to the publication of important new books. In 2000, Barry Scheck and Peter Neufeld, founders of the Innocence Project, published Actual Innocence: Five Days to Execution and Other Dispatches From the Wrongly Convicted, a harrowing account of how 10 innocent persons were convicted, imprisoned (some on death row), and, due to the efforts of the Project, subsequently exonerated. (The present author's review of that book appeared in *Flagpole* on Dec. 27, 2000.) In 2003, The Innocents, containing the photographs and stories of 45 of the recent exonerees, appeared. Also published in 2003 was journalist Margaret Edds's An Expendable Man: The Near Execution of Earl Washington, Jr., the saga of an innocent man who spent 18 years in prison in Virginia (including over nine years on death row). Released in 2001, Earl Washington at one point had been within nine days of execution.

Calvin Johnson's Exit to Freedom is thus far the only firsthand account of an exoneree whose conviction was overturned by DNA evidence. Johnson is one of 3 Georgians sentenced to long terms of imprisonment but subsequently exonerated and released with the help of the Innocence Project.

In 1983 Calvin Johnson, a black man, was wrongly convicted in the Superior Court of Clayton County of breaking into the apartment of, and raping and committing aggravated sodomy on, a white woman. (Johnson was in fact at his parents's College Park home, where he lived, at the time these crimes occurred.) He was sentenced to life imprisonment and to two concurrent 15-year imprisonment terms. He was incarcerated in prisons or jails on the charges from Mar. 14, 1983 until his exoneration and release on June 15, 1999—over 16 years. The factors contributing to his erroneous convictions include factors which scholars who study the problem of convicting the innocent traditionally associate with wrongful convictions: racism, mistaken eyewitness identification, and overzealous police and prosecutors.

The charges against Calvin Johnson should never have even been brought to trial, much less resulted in a conviction.

In the pretrial proceedings, the victim identified Johnson as the rapist at a photographic lineup, but at a court hearing said the photos she looked at were color when in fact they were black and white. At a live lineup that included Johnson she identified one of the other men in the lineup as her assailant. A black male's pubic hair found in the bed where the assault took place did not match Johnson's hair. Nevertheless, the grand jury indicted him. (Grand juries are notorious for being rubber stamps for prosecutors.)

At the trial the prosecution's case against Calvin Johnson was tenuous. There was no scientific evidence linking him to the crimes, and no confession. The victim, evidently consumed with inhuman hatred of Johnson based on her mistaken belief that he was the rapist, gave the jury a preposterous explanation of why she pointed out the wrong man at the pretrial lineup, changed her story from her previous versions, and in other ways tailored her testimony to facilitate a conviction. While on the stand three other prosecution witnesses admitted that prior to the trial they, like the victim, had identified Johnson at a photo lineup but then picked out someone else at a live lineup. The courtroom identifications of Johnson—one of the two black men sitting at the defense table—by the victim and prosecution witnesses were, as Johnson notes, “a sham” and “a farcical formality.” Police detectives, thoroughly convinced that Johnson was the rapist, were, when they testified, “willing to bend the truth (or be forgetful) in order to convict me.” Their repeated evasions and shiftings while testifying was, Johnson says, “almost comic.”

The defense, on the other hand, put on a strong case at the trial. Johnson and members of his family testified without contradiction that he was at home when the crimes occurred. During the prosecution's presentation of its case, it had come out that the victim had told police that she did not recall any facial hair on her attacker and that he had no full beard. During the defense presentation it was proved that

Johnson had been full-bearded at the time of the assault, and that he possessed a full beard when he was arrested five days after the assault. The defense also called to the stand a hair and fiber expert from the GBI Crime Laboratory who testified that the Negroid hair found in the victim's bedsheets did not match Johnson's hair. (During his cross-examination of the expert the prosecutor endeavored to explain away this exculpatory fact by "concoct[ing] a wild tale about how this random Negro pubic hair ended up in the bedsheet of a woman who had just been raped by a black man." According to this "laundromat theory," which Johnson justly labels "wild speculation" and "utter nonsense," the sheet might have acquired the hair when it was washed at a public laundry. This cross-examination convinced Johnson that the prosecutor was "playing to win, not to uncover the truth.")

During the trial two incidents occurred, either of which should have entitled Johnson to a mistrial. On one occasion when court was not in session jurors saw Johnson being led down a hallway in jail garb and restrained with chains, handcuffs, and leg irons. Johnson's defense attorney did not, however, move for a mistrial. On another occasion, in open court in front of the judge and jury, a vengeful, furious prosecution witness from another county who mistakenly thought that a man who had entered her home and raped her was Johnson, and who was stepping down from the witness box after testifying, suddenly lunged at Johnson, flailing at him and screaming "stupid bastard!" She had to be restrained by bailiffs. The trial judge refused to grant a mistrial.

At his trial Johnson and his attorney were the only black faces in the front of the courtroom; the judge, the prosecutor, the jurors, and the court officials were all white. From the very beginning it was evident to Johnson that the jury assumed he was guilty: "On their faces I see only scowls of disgust. The trial has not even begun, and already they have decided that I am worthy of scorn.... Every one of them looks back at me with righteous indignation." The jury's hostility continued throughout the trial, and the jurors would "scowl" and otherwise display "utter contempt ... when [they] occasionally glance at me." They returned their guilty verdicts after only 45 minutes of deliberation.

Calvin Johnson was exonerated because forensic DNA testing, arranged by the Innocence Project in 1998 and 1999, showed that the bedsheet hair and the rapist's sperm were a perfect DNA match and that neither the hair nor the sperm came from Johnson. Johnson was indescribably lucky that the biological evidence still existed. The box containing the evidence had, when Johnson's trial judge retired, been thrown into a courthouse trash can and then retrieved at the last moment and placed on a storage shelf. "If that box had been lost or compromised, my reputation, my freedom, and my hope would have vanished. Two cotton swabs, some pubic hairs, a sheet, and a stained pair of panties, sealed in a plastic container that [had]

remained unopened since my day in court. That box contain[ed] my only hope of freedom.... If you have never had your fate sealed in a dusty container on someone else's shelf, it is impossible to imagine my relief.... I imagine the hands of angels protecting that box."

Calvin Johnson's erroneous conviction and long imprisonment is one of numerous case studies confirming the astute but politically incorrect observation of law professor Anthony G. Amsterdam: "To a mind-staggering extent—to an extent that conservatives and liberals alike who are not criminal trial lawyers simply cannot conceive—the entire system of criminal justice ... is solidly massed against the criminal suspect."