

# Did Columbus Cops Shoot And Jail The Wrong Man? - The David Kibble Story

By Martin Yant

The bewitching hour of midnight is historically viewed as a time of bad luck, and that certainly proved true for David Kibble on June 19, 2004. Because of an unfortunate intersection of unrelated events just after midnight that evening, Kibble was shot and seriously wounded by a Columbus police officer and ended up in prison for a crime the physical evidence and witness statements suggest he didn't commit.

Kibble's bad luck went beyond getting shot when he was charged on June 24 with felonious assault of Officer Adam Hicks even though every statement taken by police until then indicated that Kibble was chased by one or two men into the alley in which Hicks shot him at approximately 12:06 a.m. With gun drawn, Hicks was looking for an armed suspect in a car-jacking who reportedly was wearing a red shirt when Kibble, who also was wearing a red shirt, ran into the alley while pulling a knife out of his pocket in case he had to defend himself from the men chasing him, one of whom he believed had a gun. Doctors said later that two of the bullets went right through Kibble. A third lodged in his upper gastric area and was removed during surgery.

To add insult to literal injury, Kibble was later forced to enter an Alford plea, through which the defendant pleads guilty while maintaining his innocence, as part of a plea-bargain agreement that kept him from risking up to 10 years in prison. Instead, Kibble got a one-year sentence, almost half of which he was credited with having already served while in jail awaiting trial.

Defense attorney Mike Morgan said he recommended that Kibble take the plea bargain because the only witnesses Kibble could count on testifying were two relatives, whose testimony jurors tend to discount. Morgan feared that the only other witness to the shooting — Alan Dukes, who admitted he was chasing Kibble at the time of the shooting — wouldn't show up to testify because there was an arrest warrant out for him. (Dukes said later he planned to testify.)

Kibble's fate seemed to be sealed on July 6, when Officer Hicks gave a prepared statement to detectives in the presence of his attorney. Hicks claimed that Kibble had approached him in a threatening manner while holding a knife and that he continued to come toward Hicks after being told to stop and drop the knife. Although Hicks' statement was at odds with every statement given by those who witnessed the shooting or the events leading up to it as well as the physical evidence found at the scene, the two detectives who took the statement did not ask him about the inconsistencies.

The events leading to the tragedy of errors on June 19 started shortly before midnight, when officers were dispatched to 1271 E. 17th Avenue. According to a cell-phone caller, Melvin Collins, a man Officer Smith Weir and others were looking for concerning a reported car-jacking earlier that evening, was standing in front of the home at that address with a handgun.

Weir said police were also looking for Collins because, according Detective Brian Carney's interview summary, "he was suppose[d] to fight a gentleman named Jamal Lewis AKA J-Rock. Officer Weir indicated that each time they would get close to where the gentlemen were fighting, everyone would run away."

Something close to that apparently happened again when Weir and other officers approached 1271 E. 17th Avenue. Vickie Johnson, who lived across the street at 1296 E. 17th Avenue, told Detective Dana Farbacher that she saw "several

police officers" chase a man from the area. Farbacher's report says "Johnson described this individual as a male black wearing a red shirt." A short time later, Johnson said, she heard what sounded like three gunshots. Johnson told Farbacher that she saw Kibble — who was also wearing a red shirt — and he was not the man police were chasing.

Officer Weir told Detective Carney that he chased Collins southbound into the alley that ran between 17th and 16th avenues but lost him. Weir said officers Hicks and James L. Stover joined him in the alley. Weir said they were told that Collins might be inside a nearby abandoned house. As they approached the house, Weir said, they heard a commotion further down the alley and Hicks said he would go "see who was arguing." Weir said that as he and Stover approached the abandoned house from the back, he heard three gunshots coming from the area that Hicks had walked to. Weir said he immediately aired an officer-in-trouble message, then ran down the alley and saw Hicks standing in the grass on the south side of the alley with his gun pointed at David Kibble, who was lying on the ground in a prone position. Weir said he told Stover to handcuff Kibble while he concentrated on preserving the crime scene.

Stover gave Detective Carney a similar statement. Although Stover and Weir both heard the commotion that Hicks decided to check out, neither officer said they heard Hicks shouting any kind of warning before they heard the gunshots.

---

### ***How can the Columbus Police Department turn a victim of circumstances like David Kibble into a prisoner for a crime that all the evidence it gathered other than a self-serving statement by one police officer indicated did not even occur?***

---

Stover said that, as he approached Kibble to handcuff him, Kibble told him: "I've been shot. I got a knife, it wasn't meant for you, it was meant for somebody else."

Detectives later traced the license plate on the Oldsmobile driven by the men involved in the altercation to Victor Dukes. Victor told them that his brother Alan was driving the car the night of the shooting. When Detective Gillette interviewed Alan Dukes on June 24, he told a story very similar to everyone else's. Not that it mattered. Although every statement on the record at that point indicated that, by a strange quirk of fate, David Kibble was the innocent victim of a police shooting, Gillette had filed charges against Kibble for the felonious assault of Officer Hicks earlier that day.

If Gillette thought Dukes would bolster his case, he was sorely mistaken. Dukes told Gillette that after he had parked behind 1237 E. 17th Avenue, the men standing there started an argument with him and Donnell Broomfield then took a swing at him and Dukes swung back. After the fight ended, Dukes said, David Kibble came up behind him and hit him in the mouth. Dukes said he then went after Kibble, who started backpedaling as he reached into his pocket.

As they entered the alley, Dukes said, he saw a police officer shining a flashlight on Kibble and heard three to five shots fired. Dukes said the shooting scared him and he took off. Dukes said he did not hear the officer say anything before the shooting.

Gillette did not ask Dukes about his purported passenger and Dukes did not volunteer anything because, he said later, the man had just gotten out of prison and didn't want to get involved. But a videotape taken minutes after the shooting obtained by this writer contains a scene in which a man matching the description of Dukes' passenger walks up to the camera and shows where a bullet appeared to have gone through his baggy shorts without causing an injury.

After he was released from the hospital and arrested on June 25, Kibble gave a recorded statement that explains how a bullet could have gone through the shorts of Dukes' apparent associate: He was also chasing Kibble along with Dukes when Hicks fired his weapon.

"The reason the officer shot me was because I was running from two guys," Kibble said. "I saw the officer in the alley and decided to go to where the police officer was standing. ... As I got closer to the officer, I had the knife out and the police officer said, put your hands up and drop the knife! As I was putting my hands up and dropping the knife, I was shot. I was yelling officer, officer but he was so far from me he couldn't hear what I was saying."

Kibble also said what everyone else did — that the fight that attracted Hicks' attention was between Dukes and Donnell Broomfield, not Dukes and Kibble. According to Gillette's summary, Kibble admitted that he probably "scared the hell out of [Hicks]" because he had a red shirt on, as did the man they were looking for. Although Adams had previously arrested suspect Melvin Collins, court records show that Kibble and Collins have approximately the same height and weight, which could lead to temporary misidentification in a dark alley on a star-crossed night.

But that is something to which Hicks — after three weeks to develop 20-20 hindsight — was not about to admit. Instead, Hicks gave Gillette the ammunition he needed to back up the charges he had filed against Kibble when he read a prepared statement to Gillette and another detective on July 6 with his attorney, Grant Shaub, by his side.

Hicks first told how he had walked down the alley, with his gun drawn, to check out a fight. "After walking about 40 or 50 yards, I could see that two male blacks were fighting in the back of the alley and a third black male appeared to be watching the fight," Adams said. (There actually were three men watching the fight.) "I knew what Melvin Collins looked like and he was not one of the three people in the alley," Hicks said in an apparent attempt to undercut the argument that he thought Kibble was Collins.

At this point, Hicks' version of events diverges radically from the statements of every other witness and the physical evidence. For starters, Hicks said the two men stopped only after he had yelled at them three or four times to do so. No one else reported Hicks yelling anything at this time. In fact, the only person who reported hearing Hicks shout anything at any time was David Kibble, who said he started to drop his knife when Hicks ordered him to. Hicks said he was only 15 to 20 feet away from them at that point.

"One of the men who had been fighting then reached with his right hand into his pants pocket and pulled out of a knife," Hicks said. "He quickly flicked his wrist and the knife blade opened up. The man with the knife began heading toward the man he had just been fighting with yelling, 'I'm going to f\*\*\*\*\* kill you.' I immediately ordered the man to drop the knife. . . . At this point, I tucked my flashlight in my pants and held my gun with both hands, pointed it at the man with the knife and order[ed] him to drop it."

Instead, Hicks claimed, the man with the knife began heading toward him as Hicks continued to yell at him to drop the knife. Hicks said he then took a couple of steps back, but the man continued to come toward him until he had entered what Hicks believed was "the zone of danger" even though Hicks had kept shouting at the man to stop.

At this point, Hicks said, he believed the man "intended to attack me with his knife in an attempt to seriously wound or kill me." Hicks said he then "fired three shots at his

**David Kibble continued on page 5**

## David Kibble continued from page 4

center mass in rapid succession” and the man “immediately dropped the knife and fell to the ground.”

When he was asked to draw on the crime-scene sketch where the men were when they were fighting and where Kibble was when he shot him, Hicks indicated that the fighting occurred in a part of the parking lot close to the alley and that Kibble was in the middle of the alley when he shot him. No blood was found at either of these locations. But that wasn't the only oddity about Hicks' statement. Among the other questions it raised were:

- If Kibble “immediately dropped the knife and fell to the ground,” when Hicks shot him in the middle of the alley, how did both Kibble and the knife end up in the grass by a fence more than 10 feet farther south?
- If Hicks shouted several times at the men to get them to stop fighting and several more times for Kibble to drop the knife, why didn't the other police officers or any of the witnesses say they heard his repeated shouts? And why wouldn't the other officers have rushed to his aid as he kept shouting for Kibble to “drop it”?
- If Hicks was standing where he said he was, how did two of the casings from his weapon – which usually only travel a few feet to the side — end up 18 and 22 feet further away?
- Why did Alan Dukes, Donnell Broomfield and Freddie Kibble, the three known witnesses to the shooting, say David Kibble was being chased at the time of the shooting?
- How did a man matching the description of Dukes' passenger turn up on a video taken minutes after the shooting showing how a bullet had gone through his baggy shorts if he wasn't chasing Kibble — or at least reasonably close to him?
- But the biggest question of all is: How can the Columbus Police Department turn a victim of circumstances like David Kibble into a prisoner for a crime that all the evidence it gathered other than a self-serving statement by one police officer indicated did not even occur?

David Kibble, meanwhile, is now Inmate A485895 at the Pick-away Correctional Institution, where he says he is living a nightmare come true. “I didn't do anything wrong that night and I ended up getting shot three times and being sentenced to prison for a crime that didn't happen,” Kibble says. Kibble says he immediately regretted accepting the plea bargain after he entered his Alford plea and was taken back to jail. Then he realized it would take longer to withdraw his plea — a motion that is rarely granted — before he would be released from prison.

Kibble will have to start over from scratch then. He has lost almost everything he owned, including his car, as well as his girlfriend. And he now will have a first-degree felony on his record — all, it would seem, after being shot and almost killed for a crime that never occurred.

“That's crazy,” Alan Dukes, one of the two men chasing David Kibble at the time of the shooting said when he was told of Kibble's conviction. “All he [Kibble] was trying to do was get away from us. I was shocked when I saw the officer start shooting for no reason. It didn't make any sense. That's why I took off. I was scared of what might happen next.”

Given what happened to David Kibble, Dukes may have made a wise decision.

Martin Yant is author of *Presumed Guilty: When Innocent People Are Wrongly Convicted* (Prometheus Books 1991). He is also an investigative journalist and legal investigator. He can be written at:

Martin Yant Investigations  
1000 Urlin Ave. #1821  
Columbus, Oh 43212  
Email: martinyant@aol.com  
Website: <http://www.truthinjustice.org/yant>



## In Memoriam Fred Korematsu (1919-2005)

### He Fought To Free 120,000 People Wrongly Imprisoned In The U.S.

By JD Staff

Fred Korematsu was living in San Leandro, California when a May 3, 1942 U.S. Army directive ordered him to leave his home and self-report within six days to a federal imprisonment facility. Since he had not been convicted, or even accused of committing any crime, he ignored the order. He went on living his life as if the order hadn't been issued. On May 30, 1942 he was charged with failing to obey the order to report to the prison facility and arrested. Represented pro bono by San Francisco attorney Wayne M. Collins, Mr. Korematsu's defense was that as a native-born American the order violated his right to due process of law. Although the facts of his case were that he had not been indicted, tried or convicted of any crime when his imprisonment was ordered, he was convicted in U.S. District Court and his conviction was affirmed by the federal Ninth Circuit Court of Appeals. In December 1944 the U.S. Supreme Court affirmed his conviction by a vote of six to three.

Thirty-seven years later a private researcher, historian Peter Irons, discovered internal government memos proving that federal lawyers and possibly other officials fabricated evidence relied upon by the federal courts to affirm Mr. Korematsu's conviction. Two years later, in November 1983, a federal judge in San Francisco vacated Mr. Korematsu's conviction. However the discovery of that exculpatory evidence was too late to affect the impact of the Supreme Court's 1944 decision: The Court's affirmation of Mr. Korematsu conviction depended on their endorsement of the legality of the order of May 3, 1942, that was authorized by President Franklin Roosevelt's February 1942 Executive Order 9066, 7 Fed. Reg. 1407. That Executive Order (9066) was relied on by the federal government to summarize, and as was proven decades later, wrongly imprison 120,000 U.S. residents of Japanese ancestry. Mr. Korematsu was a native-born American of Japanese descent.

What historian Irons found were misplaced and mislabeled records related to the federal government's strategy and legal briefs opposing Mr. Korematsu's appeal. U.S. Solicitor General Charles Fahy headed the government's legal team, and in one memo Justice Department lawyers accused Fahy of lying to the Supreme Court in his briefs and oral arguments. To justify Roosevelt's order as militarily necessary for the country's national security Fahy argued, for example, that Japanese-Americans on the West Coast were communicating with Japanese ships by “extensive radio signaling and in shore-to-ship signaling.” However it was known to government lawyers that the alleged “signaling” was actually the light of a flashlight used by people living near the coast to see the way to an outdoor toilet at night. The Justice Department contended in the internal memos that there were no known acts of treason (much less

## Report Downplays Wrongful Convictions in U.S.

By Hans Sherrer

*Exonerations in the United States: 1989 through 2003* is a report by University of Michigan staffers and law students. The report analyzed data from 328 cases during that 15 year period in which the defendant was officially declared, “not guilty of a crime for which he or she had previously been convicted.”

The report concentrates on rape and murder convictions,

widespread activities) by Japanese-Americans on the West Coast supporting the orders for their summary imprisonment.

Relying in part on the records Irons discovered, in 1983 a federal commission unanimously approved the conclusion that Roosevelt's imprisonment order was not based on any actual threat by Japanese-Americans to national security or justifiable as a military necessity. Rather, it was a response to “race prejudice, war hysteria and a failure of political leadership.”

In 1988 federal legislation was approved authorizing \$20,000 in compensation to each surviving Japanese-American wrongly imprisoned as a consequence of Roosevelt's Executive Order 9066.

The Justice Department memos revealing that there was no factual basis for the wrongful imprisonment of 120,000 legally innocent Japanese-Americans would not have been written if Mr. Korematsu had meekly assented to the federal government's desire to indeterminately imprison him without so much as an accusation of criminal wrongdoing. So thanks to Mr. Korematsu's moral courage, more of the truth is known about that episode in U.S. history than if he had kowtowed to the order for his summary imprisonment for the non-crime of having Japanese ancestors. The treatment he declined to accept was described by U.S. Supreme Court Justice Murphy in another case as bearing “... a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe.” *Hirabayashi v. United States*, 320 U.S. 81, 63 S. Ct. 1375, 1389, 1390. (J. Murphy concurring)

In April 2004 Mr. Korematsu once again stood up for the wrongly imprisoned. He filed a friend-of-the-court brief with the U.S. Supreme Court on behalf of the many hundreds of people indeterminately imprisoned at the Guantánamo Bay Naval Station in Cuba without being charged with any crime. The federal government mimicked its position in his case sixty years earlier, by contending that the military necessity of protecting the nation's security justified indeterminately imprisoning uncharged people without having their case reviewed in federal court. Mr. Korematsu's brief stated in part, “The extreme nature of the government's position is all too familiar.” However unlike his case, in June 2004 the Supreme Court ruled that the people from dozens of countries imprisoned at Guantánamo Bay were entitled to a legal review of their case that could possibly result in their release. See, *Rasul v. Bush*, 124 S.Ct. 2686 (U.S. 06/28/2004). That is particularly important because international human rights organizations have estimated that upwards of 90% of the people imprisoned by the federal government as alleged “terrorists” since September 11, 2001 are innocent of any wrongdoing. Those people were swept into a state of indeterminate imprisonment due to simply being of a disfavored ethnicity or being in the wrong place at the wrong time.

Fred Korematsu died of respiratory failure on March 29, 2005. He was 86 years old.

Source: Internment foe finally won: Fred Korematsu fought relocation of Japanese Americans, Claudia Luther (Obituary writer, Los Angeles Times), The Seattle Times, April 3, 2005, News A23.  
*Korematsu v. U.S.*, 140 F2d 289 (9th Cir. 12/02/1943)  
*Korematsu v. U.S.*, 323 U.S. 214 (12/18/1944)



since 319 of the 328 cases studied involved a defendant convicted of one or both those crimes. One of two areas the researchers focused on, was how often several factors known to contribute to a wrongful conviction - eyewitness misidentification, perjury and a false confession - were present in those cases. It was found that 64% of the people exonerated of rape and/or murder had been misidentified, 15% had falsely confessed, and a prosecution witness had committed perjury in 44% of the cases.

The other area reported on is how race relates to exonerations. It was found that people of various races are exonerated at about the same rate as they are convicted — unless the person was under 18 at the time of arrest. Almost eight

Report continued on page 25