

CA Awards Peter Rose \$328,000 For Ten Years Wrongful Imprisonment

By JD Staff



Peter Rose was convicted in 1995 of kidnapping and raping a 13-year-old girl in Lodi, California. He was sentenced to 27 years in prison. The prosecution's key evidence was the girl's identification of Rose. She testified Rose was the man who punched her in the face as she walked to school, and then dragged her into an alley where he raped her.

In 2003 Rose contacted the Northern California Innocence Project at Golden Gate University in San Francisco, and requested their help in testing the attacker's semen found in the victim's underwear. They accepted his case, and in June 2004 secured a court order for a DNA test of the semen. The test excluded Rose as the source. The girl — who didn't identify Rose until three weeks after the attack and after multiple intense sessions with Lodi detectives — also recanted her identification of Rose. In recanting, the victim, now in her early 20s, said she didn't actually see her attacker but was pressured by the detectives to identify Rose. In October

2004, a San Joaquin County Superior Court judge declared Rose was "factually innocent" and ordered his release. Rose had been falsely imprisoned for almost ten years.

Rose filed a claim for restitution under California's compensation law that provides for \$100 per day from the date of a wrongful conviction. San Francisco attorney Ray Hasu represented Rose. He filed a 4-inch-thick claim to meet what he described as the law's "very high threshold" of requiring Rose to independently prove his innocence, to show he didn't do anything that contributed to his conviction, and that he suffered financially.

On October 20, 2005, the Victim Compensation and Government Claims Board voted unanimously to award Rose \$328,000 for the 3,280 days he had been wrongly imprisoned after his conviction. Rose had been unable to post his \$100,000 pretrial bail, and he also claimed compensation for the 318 days he spent jailed prior to his conviction. However, that claim was denied because the state law specifies compensation begins from the day of conviction — not arrest. Before it can be paid the award must be approved by the California legislature and then Governor Schwarzenegger, but in the past they have gone along with the Board's decision.

Rose, now 37, is the father of three children who were taken care of by his mother while he was imprisoned. After his release he worked in construction and on a fishing boat to support his children and mother — who has been diagnosed with bone cancer.

Peter Rose Seeks Millions in Federal Lawsuits

By JD Staff

Less than two weeks after being awarded \$328,000 under California's compensation statute for 10 years imprisonment after a wrongful rape conviction, Peter Rose filed a total of four federal civil rights lawsuits seeking millions in compensatory and punitive damages.

Filed in U.S. District Court in Sacramento in November 2005, the suits name a number of defendants, including the City of Lodi, San Joaquin County, the State of California, Rose's court-appointed defense attorney, two Lodi Police Department officers, and a technician employed by the California Department of Justice Crime Lab in San Joaquin County.

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After notified the compensation was approved, Rose's attorney Hasu said, "There's no way you can compensate someone for having been deprived of their life."

California has awarded compensation to twelve wrongly convicted people out of 55 claims filed since 1981.

Source: Man Wrongly Convicted in Rape to Get \$328,000, AP, *The Mercury News*, October 21, 2005. State Board Give \$328,000 to man for imprisonment, M.S. Enkoji (*Sacramento Bee*), *Contra Costa Times*, October 22, 2005.

Dimitre Dimitrov Acquitted After Murder Retrial

By Katherine E. Oleson

Dimitre Dimitrov was acquitted on October 29, 2005, after his retrial for the February 1996 murder of his friend and landlord, Hristo Veltchev. The trial in Ottawa, Canada lasted 11 days, and the jury deliberated for 12 hours. He is reportedly the first defendant acquitted in Ottawa in seven years.

The decision to charge Dimitrov, a Bulgarian refugee, was logically unsound — there were no eyewitnesses to Veltchev's murder the time of his death was difficult to determine, and Dimitrov did not have a motive. Veltchev's murder seemed to have involved some planning and maliciousness: He was bludgeoned to death in the garage of his home and stuffed into the trunk of his car, which was then driven to a public parking lot where it



Dimitre Dimitrov and his two lawyers, Richard Auger (L) and Vincent Clifford (R), after his acquittal.

was left. The bloodstains on the garage floor had been cleaned up and covered with sand.

Two other Bulgarian immigrants, fellow boarder Dimitre Tzenev and the victim's wife, Faith Veltchev, were initially considered as suspects. Ms. Veltchev phone was wiretapped and she was arrested twice and extensively questioned, once after attempting to claim an insurance policy in the amount of \$50,000 two months following her husband's death, but charges were never brought against her. Tzenev — who had a criminal record, a history of domestic violence, and may have suspected Veltchev was having an affair with his wife — was charged with the

murder as Dimitrov's co-defendant. However, the charge against Tzenev was dismissed for lack of evidence after a preliminary hearing. Dimitrov was convicted by a jury after his 1999 trial and sentenced to life in prison with a minimum of 12 years imprisonment before being eligible for parole.

Dimitrov appealed, and in December 2003 the Ontario Court of Appeals reversed his conviction and ordered a new trial. The three-judge panel ruled "forensic" evidence used in his trial was unreliable and inadmissible. The evidence in question related to testimony about a blood stained pair of boots found in the front hall closet of the victim's boardinghouse. A DNA test concluded the victim's blood was on the boots, as was the blood of another person. Investigators determined that whoever wore the boots could have been standing within three feet of the victim. However the blood on the boot was excluded by the DNA test from matching Dimitrov or the other two suspects.

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Harris County DA Finally Agrees to \$118,000 Compensation For Josiah Sutton

By JD Staff



Sixteen year-old Josiah Sutton was arrested and charged in October 1998 with the rape at gunpoint of a Houston, Texas woman. At his January 1999, trial a Houston PD Crime Lab technician testified Sutton's DNA matched the assailant's DNA recovered from the victim. He was convicted and sentenced to 25 years in prison.

In March 2003, after irregularities in the testing of DNA evidence by the HPD's crime lab during the time of Sutton's trial became public, a sample of the assailant's DNA was retested. Sutton was excluded as the source, and he was released after 4-1/2 years of wrongful imprisonment.

After considering all the evidence in Sutton's case, the Texas Board of Pardons and Paroles recommended that the governor issue him a pardon. Texas Governor Rick Perry Sutton responded in May 2004 by granting Sutton a full pardon, based on his innocence of the crime.

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In spite of the DNA test results, a Royal Canadian Mounted Police officer testified as an expert witness that he had developed a method of analyzing foot impressions left in footwear, and that Dimitrov was "likely" the person who had worn the blood stained boots. The expert likened the accuracy of his process of analyzing footprint impressions – which he called "barefoot morphology" – to the accuracy of a fingerprint identification.

The expert's testimony was the only evidence tying Dimitrov to the murder. Dimitrov's lawyer Richard Auger argued to the appeals court that Dimitrov's conviction was based on the prosecution's presentation of "erroneous, factually wrong" information to the jury.¹ The appeals court agreed. They found that foot impression analysis was such a scientifically unreliable form of identification that the expert's testimony should not have been admitted as evidence. They quashed Dimitrov's conviction, ruling that

Sutton then filed a claim under Texas' wrongful conviction compensation statute. The law provides for the payment of \$25,000 per year of incarceration if a person: (a) Served all or part of their sentence, (b) Received a pardon of innocence or relief

from a court based on their innocence, and (c) Can document the amount of time served. However, Sutton found that the law had been changed during the 2003 legislative session to include an additional requirement: a person claiming compensation must obtain a letter from the district attorney whose office prosecuted them certifying the claimant's "actual innocence."

Harris County (Houston) District Attorney Chuck Rosenthal refused to provide Sutton with the necessary letter. He rejected the DNA evidence excluding Sutton as the woman's assailant as proof of his innocence, because she refused to admit she had mistakenly identified an innocent man as her attacker. Displaying a severe case of 'sore loser syndrome' in the face of incontrovertible evidence of Sutton's innocence, Rosenthal said, "The complainant in the case still believes that he is not innocent, and I do not know that she is incorrect."¹ (See, Sutton's Pardon Not Enough For Compensation, *Justice:Denied*, Issue 29, Summer 2005, p. 17.)

the experts testimony had the potential of "distorting the fact-finding process."²

Dimitrov was then released on bail pending his retrial. He had been imprisoned for 4-1/2 years.

Dimitrov's attorneys stressed during his retrial that he lacked a motive, that the prosecution's only forensic evidence (the boots) did not contain his DNA, and witnesses described Dimitrov as a kind and gentle man who had never shown anger toward Veltchev or anyone else. They also argued that Ms. Veltchev had the motive and opportunity to arrange her husband's murder and couldn't be ruled out as the perpetrator. In summing up the case, attorney Clifford argued to the jury that "the defence had proved Mr. Dimitrov innocent beyond a shadow of a doubt."³ The jury agreed.

Dimitrov's acquittal vindicated the faith of his two lawyers, Vince Clifford and Richard Auger, who believed in his innocence from the time he was charged. After the verdict,

Rosenthal's opposition to compensating Sutton resulted in a chorus of editorial condemnation by the media in Texas. After a stalemate of over a year, Rosenthal caved-in and agreed to a compromise in August 2005: He would provide the state comptroller's office with a letter that he wasn't opposed to compensating Sutton. After it was determined that Sutton qualified for a payment of \$118,749.97, in late September a check for half that amount was mailed to Sutton. As part of the compromise, the balance will be paid to Sutton after a year if he has not been convicted of a felony.

Sutton said after being notified of the impending payment, "I have been running into roadblocks since I got out, because I didn't know how to be an adult and people didn't want to hire me. I have been through hell and back trying to get things together, but this is enough to get me and my family a foundation and to start living my dreams."²

Justin Waggoner, Sutton's lawyer, said, "The record was so abundantly clear that his was a pardon on the basis of innocence, that there wasn't any basis for denying him the money. I am hopeful this compensation will benefit him, but I certainly wouldn't trade 4 1/2 years of my life for this level of compensation."³

Endnotes and Source:

1 Pardoned Prisoner to Get \$118,000 In Reparations, *Austin American-Statesman*, October 1, 2005.

2 *Id.*

3 *Id.*

Clifford told reporters, "Justice was not done in 1999 because an innocent man was convicted. But justice was done here today. This demonstrates the system can work when an individual has a fair trial."⁴

Dimitrov was overwhelmed with emotion after the verdict and didn't make a public statement. It had been more than ten years since the forty-eight year-old man had seen his wife and children in Bulgaria. Clifford said, "He has just spoken with his family in Bulgaria. He's looking forward to seeing his wife and two children and to following through with the future he had hoped he would have in 1996."⁵

Endnotes and Sources:

1 *Canadian Broadcasting Corporation*. Wrongfully convicted murder suspect freed. Oct. 31, 2005.

2 Rupert, Jake. Dimitrov 'overwhelmed' after acquittal. *The Ottawa Citizen*. Oct. 30, 2005.

3 *Ibid*

4 McKibbin, Sean. A bittersweet acquittal: Dimitrov not guilty of murder after living under pall of suspicion nearly 10 years, *The Ottawa Sun*, October 30, 2005.

5 *Ibid.*