

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.

Dimitrov cont. from page 8

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.*