

On the morning of January 26, 2006, Texas State District Court Judge Kathleen Hamilton ordered Arthur M. Mumphrey released after he had served 18 years for a crime he did not commit.

Troubles Begin

On the night of February 28, 1986, two men repeatedly sexually assaulted a 13-year-old girl near the small southeastern Texas town of Dobbins. While Arthur Mumphrey was standing silent nearby, a man heard Steve Thomas brag on the night of the assault that he had sex with a young girl. The man reported what he heard to the police. Mumphrey and Thomas were arrested, and even though the victim did not identify either of the men as her attackers, they were charged with aggravated sexual assault on the basis of Thomas' braggadocio and Mumphrey's failure to deny involvement when he did so. In a plea-bargain deal with Montgomery County Assistant District Attorney Wilbur Aylor, Thomas confessed to the assault and accepted a 15-year prison sentence in exchange for his testimony against Mumphrey. Steadfastly maintaining his innocence, Mumphrey demanded a jury trial.

In the summer of 1986, Mumphrey stood trial in Montgomery County's 359th District Court in Conroe, about 50 miles northwest of Houston. The technology to make comparisons of DNA from bodily fluids was not then available. So the testing of biological evidence that included semen stains on the victim's panties and her vaginal swab, was limited to blood group analysis. Mumphrey's type O blood did not exclude him as the assailant.

Following lengthy deliberations, the jury returned a verdict of guilty. On August 12, 1986, Arthur Mumphrey was sentenced to 35 years in prison.

Following his trial, Arthur Mumphrey unsuccessfully pursued the usual post-conviction remedies available to Texas prisoners. His final appeal was denied in June 1989.

Didn't Give Up

Mumphrey and his wife Angela didn't give up. Almost two decades after his conviction, they hired Houston attorney Eric J. Davis to find the new evidence necessary to re-open Mumphrey's case. During his investigation, Davis learned that blood tests had been done on Mumphrey, Thomas, and the girl, and that the biological material from these tests had been collected and may have been preserved. With an eye towards having DNA testing conducted, Davis contacted the Texas Department of Public Safety (DPS) and asked if the biological evidence from the Mumphrey case was

Arthur Mumphrey Freed After 18 Years Wrongful Imprisonment For Sexual Assault

By C. C. Simmons

still available. After DPS officials reported they did not have the evidence, Davis contacted the Montgomery County DA's Office. They also said the evidence was not available.

Disappointed but unwilling to give up, Davis again contacted the DPS. A helpful employee searched and found that the biological evidence had been stored in a refrigerator. Davis then filed a motion for DNA testing. Judge Hamilton granted the testing in the fall of 2005. The results were released on January 17, 2006. They showed that DNA from Mumphrey's blood and saliva conclusively excluded him as the source of the assailant's semen on the girl's panties and vaginal swab.

Mumphrey Released

Judge Hamilton subsequently ordered a hearing for January 26, 2006. On the morning of the 26th, Mumphrey entered Judge Hamilton's courtroom wearing a yellow plaid shirt, khaki trousers, and boots. He seemed relaxed and calm. Family members looked on with smiles and barely restrained joy as the brief proceeding got underway.

"We are here because I have found that because of technology we have now, justice was not done 20 years ago. I am ordering your release," said Judge Hamilton.

Mumphrey Pardoned

After Mumphrey's release, Marc Brumberger, an Assistant District Attorney for Montgomery County said, "The District Attorney's Office deeply regrets that something like this happened. I would like to take this opportunity to apologize. We feel terrible about what happened to you. We offer you best wishes for your future."

The Montgomery County DA's office didn't oppose the DNA testing and since the results conclusively exclude Mumphrey as the perpetrator, Brumberger said his office would file a request for a pardon with the Texas Board of Pardons and Paroles.

The Board responded to the request by submitting a recommendation to Texas Governor Rick Perry that he grant Mumphrey a pardon.

On March 17, 2006, only two months after his release, Gov. Perry pardoned Mumphrey.

When he signed Mumphrey's pardon Perry said, "My action today cannot give back the time he spent in prison, but it does end this miscarriage of justice."

While it was well meaning, Gov. Perry's statement didn't tell the whole story. By the peculiarities of Texas law Mumphrey's pardon doesn't erase his rape conviction. Even with a pardon in his pocket, unless and until Mumphrey is granted a new trial and acquitted, his record will not be cleared of the sexual assault conviction.

Aftermath

Former District Attorney Aylor, who is now retired, is unwilling to admit that that he prosecuted the wrong man in 1986. Aylor doesn't think the exclusionary evidence that freed Mumphrey proves his innocence, because Aylor thinks the evidence presented at his trial pointed to his guilt. Without explaining how it supported Mumphrey's guilt, Aylor noted there was evidence Mumphrey and Thomas had been drinking the night of the assault, and a wine bottle and the girl's shoes were found at the crime scene. Aylor said, "The fact that his DNA was not found doesn't prove to me that he didn't do it." Aylor's closed-minded attitude toward the new evidence proving Mumphrey's innocence may be indicative of how Aylor erroneously prosecuted him in 1986.

Further supporting Mumphrey's innocence, is that in a peculiar twist of events, Arthur's younger brother, Charles Ray Mumphrey, confessed to the crime in 1986 shortly after it occurred. Charles, now 34, admitted that it was he who had assaulted the young girl. However, he changed his story after investigators accused him of lying to protect his older brother. Charles is currently serving a one-year prison sentence for unauthorized use of a motor vehicle. In spite of his confession, it is unlikely Charles will be prosecuted for the 1986 crime because the statute of limitations has expired. Charles' confession and Mumphrey's exoneration also casts serious doubt on the truthfulness of Thomas' boast in 1986 and his guilty plea. Additional testing may also prove Thomas was wrongly convicted of the assault, and pled guilty and falsely implicated Mumphrey solely to obtain a drastically reduced sentence.

After Mumphrey's release, his original appeal lawyer George Renneberg said, "I was never really satisfied he was guilty ... I thought he was innocent."

Mumphrey's current lawyer Davis observed, "If we had given up, he'd still be in

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The Wisconsin Innocence Project (WIP) located at the University of Wisconsin Law School was instrumental in Steven Avery's exoneration of involvement in a 1985 rape. Avery was released in September 2003 after serving 18 years of a 60-year sentence. DNA testing had established the truthfulness of Avery's 16 alibi witnesses who supported his claim that he had been over 40 miles from the rape scene. Another man, convicted of another rape, has been implicated as the actual perpetrator of the 1985 rape. The WIP proudly showed Avery's case on its website.

On November 15, 2005, Avery was arrested for suspicion of murdering 25-year-old Teresa Halbach two weeks earlier. Halbach was a photographer for *Auto Trader* magazine, and on October 31 she had been at the Avery family auto salvage business in Manitowoc county photographing a car for the magazine.

At the time of Avery's arrest he and Manitowoc county authorities were locked in battle over a \$36 million federal civil rights lawsuit he had filed against the county and several of its law enforcement agents over his wrongful conviction and imprisonment for the 1985 rape. Avery's arrest was fortuitous for the county's position in the lawsuit. Faced with a \$500,000 bail and the desire to retain a private defense lawyer, Avery agreed to what can charitably be described as the county's "sub-ball" offer of \$400,000 to settle the lawsuit. Avery's arrest likely saved the county untold millions of dollars, because he had compelling evidence there had been unconscionable wrongdoing in his case.

Avery's arrest is the kind of story that is used to attract television viewers and newspaper readers. The Manitowoc County DA's office has taken full advantage of the media's thirst for salacious news about Avery's case. They have effectively used the press to smear Avery and have him portrayed as guilty. His jury pool will likely be comprised of people who, in spite of their assurances of impartiality during *voir dire*, will be predisposed to a guilty verdict.

Let's be clear. The Manitowoc County DA isn't doing anything in Avery's case that isn't done by prosecutors in cases all over this country every day. After all, prosecutors are like the house in Vegas; they'll do whatever it takes to stack the odds in their favor. It's all about winning.

While the disdain of Avery's prosecutors for the presumption of innocence is to be expected, the reaction of the WIP to Avery's arrest is disturbing. They removed his photo from their website and references to his case except for seven paragraphs on a single page. They

Wisconsin Innocence Project Needs To Show Backbone In Steven Avery's Case

JD Editorial

were released ... by the prosecution of course.

Avery claims he is being framed in retaliation for having filed his lawsuit. At this point it is unknown if Avery had anything to do with Halbach's murder – just as his innocence was unknown at this point of his prosecution for the 1985 rape. We now know he was innocent of that crime.

The core principle of this country's due process, that includes reasonable doubt, trial by jury, right to counsel, confrontation of one's accuser, etc., is the idea that an accused person is presumed innocent. Otherwise there would be no need for a trial. Just go straight from indictment to sentencing. The WIP ought to know from helping free innocent people what happens when the presumption of innocence intended to cloak Avery from prejudice is disregarded.

Although if asked Avery's prosecutors would give lip service to respecting Avery's presumption of innocence, their actions infer they think his guilt is obvious without having a trial. However, skipping a trial and imprisoning Avery indefinitely on the suspicion he is guilty would be too obvious a violation of the law. So the Manitowoc County DA is willing to settle for the public spectacle of a trial intended to confirm his guilt.

By distancing itself from their efforts on Avery's behalf in the 1985 case, the WIP conveys the underlying message that it agrees with the prosecution's assumption of Avery's guilt in his current case. That position is incompatible with due process. That position is incompatible with the very idea of justice. By failing to unabashedly defend Avery's presumption of innocence the WIP aids his prosecutors; indeed, they become part of his prosecution.

Even if the prosecution achieves a guilty verdict in Avery's current case, it does not alter the fact that he was innocent of the 1985 rape. He spent 18 years in prison for a crime he did not commit. Anything that came later doesn't diminish that fact.

The WIP has earned an outstanding reputation and is much respected for its commitment to the innocent. It does a disservice to itself and its supporters by sully that reputation. Avery's presumption of innocence is sacrosanct. The WIP should restore its website.

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jail. It's by the grace of God."

When asked how he got through the 18-year ordeal, Mumphrey said, "Personal determination to clear myself and move on with my life."

Under Texas law, Mumphrey will be eligible for compensation for wrongful imprisonment. At the current rate of \$25,000 per year as allowed by law, Mumphrey stands to be awarded almost a half-million dollars.

Sources: Fort Worth *Star-Telegram*, *Houston Chronicle*, Denton *Record-Chronicle*, and Associated Press reports.



John Spirko Update

John Spirko's first-person story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of Elgin, Ohio Postmistress Betty Jane Mottinger's 1982 abduction and murder, was in *Justice Denied*, Winter 2005, Issue 27.

Ten days before his scheduled January 19, 2006, execution, Ohio Governor Bob Taft granted Spirko a third stay of execution. The governor granted a six month stay until July 19, 2006, so that the painting tarp and duct tape wrapped around Mottinger's body, and a cinder block found near her body can be tested for the presence of the killer's DNA — who a witness has identified is a house painter who the witness also claims was the tarp's owner. That witness is willing to testify. His information has been ignored for years by law enforcement authorities even though it is credible, and he passed a polygraph examination conducted by a former FBI examiner on October 26, 2005.