

On December 21, 1976, two young African-American men walked into the Ohio National Bank in Columbus, Ohio, stole \$1,207 and shot and killed 74-year-old bank guard Berne Davis.

## 29 Years And \$2,500,000 Later – The Timothy Howard And Gary James Story Continues

By James Love

Columbus police said that Robert Simpson, a key prosecution witness, immediately after the crime identified one of the robbers as a man named “Tim”, who had been in Simpson’s tire shop across from the bank. Yet Simpson gave a statement to the FBI six days later in which he did not mention any “Tim”, and stated he “did not recognize...the two Negro males” leaving the bank.

Simpson’s FBI statement was not disclosed to the two men who were charged with the crime, Timothy Howard and Gary James, prior to their trial. It was only discovered several decades later after Freedom of Information Act requests were responded to by the FBI.

Physical evidence of the crime was minimal. The murder weapon and stolen money were never recovered, and there were no pictures of the assailants because the bank’s security camera did not contain any film. Detective Harry Coder testified he found only a partial palm print at the bank that didn’t match either Howard or James. However, it was not disclosed to the defense prior to trial that three fingerprints found at the crime scene did not match either Howard or James.

Bank employee Michaela M. Hollenbach initially told police she could identify the gunman who killed Davis. When shown a photo lineup she was unable to identify James. This impeachment evidence was not disclosed to defense counsel before trial.

With their attorneys unaware of the exculpatory evidence, Howard and James were convicted in 1977 and sentenced to death. In 1978 Ohio’s Death Penalty statute was declared unconstitutional, and both men were re-sentenced to life in prison.

After Centurion Ministries, the nation’s oldest innocence project, accepted Howard and James case, the exculpatory evidence that had not been disclosed to their defense attorneys at the time of their trial was eventually discovered.

The men filed motions for a new trial based on the new evidence undisclosed by the prosecution. Franklin County Common Pleas Judge Michael Watson granted Howard’s motion and he was released in April 2003. Then after James passed a state-administered polygraph test, Franklin Coun-

ty prosecutor Ron O’Brien agreed to dismiss his charges “in the interest of justice.” James was released in July 2003. While acknowledging the 27-year-old murder and robbery became an unsolved crime with the release of James and Howard, O’Brien said, “We don’t want anybody in prison serving time for something they didn’t do.”<sup>1</sup>

After their release, Howard and James filed separate lawsuits seeking compensation under Ohio’s wrongful conviction compensation statute. The Court of Common Pleas must find that a claimant for compensation is innocent by a preponderance of the evidence.



Timothy Howard  
after his 2003 release



Gary James after  
his 2003 release



Timothy Howard  
1976 mugshot



Gary James  
1976 mugshot

The office of Ohio’s attorney general contested Howard’s claim, and on March 15, 2006, a jury found Howard was actually innocent. Howard then filed a claim for damages with Ohio’s Court of Claims. It was confirmed on April 21, 2006, that Howard’s claim would be settled for \$2.5 million. It was the largest wrongful conviction settlement in Ohio history, and amounted to \$96,153 for each of the more than 26 years Howard was imprisoned. After deductions for attorney’s fees and expenses, and taxes, Howard will receive less than 2/3rds of the settlement. Howard’s award uses up 50% of the \$5 million Ohio has set aside in an emergency fund to compensate wrongfully convicted Ohio prisoners.

James’ lawsuit is still pending, but is expected to involve similar compensation.

While in their stories about the case of Howard and James *The Columbus Dispatch* credited attorney Jim Owen of the Ohio Public Defender’s Office and Jim McCloskey of Centurion Ministries with obtaining the men’s release, Columbus investigator and author Martin Yant also played a critical role.

Contrary to the reports in *The Columbus Dispatch*, it was Yant who convinced James’ sentencing judge, Judge William Gillie, to sign an important affidavit suggesting both James and Howard should receive new trials at which they could “present newly discovered evidence that supports their claims of innocence.”<sup>2</sup> In addition to getting some of the details wrong about how the men’s release came about, the paper also under-reported or outright ignored the culpability of the Columbus Police in the men’s wrongful convictions.

James and Howard were 23 years old when they were wrongfully convicted and imprisoned 29 years ago. Both are now over 50. When he learned that Howard settled his lawsuit for \$2.5 million, James told *The Columbus Dispatch*, “If they gave him \$26 million, it wouldn’t be enough.”<sup>3</sup>

Note about the author. James Love has written numerous articles about wrongful convictions. Many of those articles are posted on the Innocent Inmates of Ohio website at, <http://www.innocentinmates.org>. Love’s story of being wrongly convicted of several rapes alleged to have occurred in Cincinnati, Ohio when he was 2,000 miles away in Mexico and Belize, was featured in *Justice: Denied* Issue 30, Fall 2005, p. 5. Love is currently at Allen Correctional Institution in Lima, Ohio, the same prison Gary James was released from in July 2003. Prisoners who knew James told Love that he was well liked and stayed to himself.

### Endnotes:

1 Wrongly Convicted Now Free as a Bird, *Columbus Dispatch*, July 18, 2003.

2 Justice Shirked, by Martin Yant, *Columbus Dispatch*, February 10, 2002.

3 \$2.5 Million Deal: Man gets payback for years in prison by Alan Johnson, *Columbus Dispatch*, April 22, 2006.

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