

After a two-week trial and six hours of deliberations, on May 5, 2006, a U. S. District Court jury in Charlottesville, Virginia awarded Earl Washington, Jr. \$2.25 million for his wrongful conviction and 18 years of imprisonment, that included 9-1/2 years on death row. At one point Washington came within nine days of execution.

Washington won a civil suit against the estate of a State Police Agent Curtis Reese Wilmore. Jurors decided Wilmore, who died in 1994, fabricated Washington's "confession." Before the jurors could award damages, U. S. District Court Judge Norman Moon advised them they had to make three findings: that Wilmore fabricated evidence against Washington; that Wilmore did so deliberately; and that his actions resulted in Washington's conviction and death sentence.

Peter Neufeld, one of Washington's lawyers, believes the jury's verdict is the largest civil-rights award for one person in Virginia history. He said, "The State of Virginia is morally and financially responsible for this miscarriage of justice." ¹ Debi Cornwell, another one of Washington's attorneys, said the monetary award would come from insurance held by the Virginia State Police.

The State of Virginia accepted responsibility for defending Wilmore's estate because he was working as a state employee when the events alleged in Washington's lawsuit occurred. The law firm representing Wilmore's estate billed the state for over \$530,000 for work done prior to the two-week trial and post-trial challenges to the jury's verdict. ² Their final bill may approach \$1 million, particularly since they are contesting the jury's verdict on the basis that the trial judge erred by refusing their use of a peremptory challenge to remove the only remaining person of color in the jury pool – who happened to be a police officer and a former prison guard. ³ Although it hasn't yet been resolved, Washington's lawyers intend to argue that their considerable fees should be paid from the state's insurance, and not from Washington's award.

After the verdict was announced Neufeld said, "We provided overwhelming evidence ... that a false confession was fabricated by a Virginia State Police officer who put an innocent man on death row." ⁴

When the original criminal investigation began, Washington repeatedly gave Wilmore wrong answers about details of the crime in his "confession" to a gruesome rape-murder in Culpeper, Virginia south of Charlottesville.

Earl Washington Awarded \$2.25 Million For 18 Years Wrongful Imprisonment

By Douglas Arey

ville. In 1982 victim Williams was stabbed 38 times in her apartment. In his efforts to "confess" Washington described Williams, who was white, as black, and claimed he had only stabbed her a few times.

The civil trial was predicated on the jurors being successfully convinced that Washington, who is mildly retarded, was fed details about the murder that only the killer and Wilmore (and other investigators) would have known, such as the removal of a halter top from the victim, and the location of a blood-stained shirt. The jury's award demonstrates how effectively they were convinced that Washington's confession was coached.

This victory concluded a remarkable run of good luck and fortunate interventions for Washington over the last two decades. Washington was nearly executed in 1985 but spared when a lawyer volunteered to take his case. Then Governor L. Douglas Wilder commuted his sentence to life in prison in 1994 when DNA testing, unavailable when the murder was investigated, strongly suggested Washington's innocence. In addition, Governor Jim Gilmore pardoned Washington in 2002 when more sophisticated testing matched the crime scene DNA with a convicted rapist in sperm on a blanket, but failed to find any forensic evidence of Washington at the crime scene.

Washington's exoneration shook up Virginia's judges, politicians and officials and led to major changes in Virginia statutes, which now give prisoners the right to request DNA testing to prove their innocence.

Perhaps the best assessment of the impact of this case came from an Editorial in *The Virginian-Pilot* that asked several unsettling questions:

- Why did the state refuse to declare Washington innocent of the rape-murder for which he received an unconditional pardon from Governor Gilmore?
- Why did special prosecutor Rick Moore, who is supposedly still investigating the case, never retract the statement that Washington remains a suspect?
- Is there another case in the history of Virginia in which the semen of a convicted



ed rapist has been found on both the body and bed of a dead woman, and yet Virginia allows a shadow of guilt to hover over another man? ⁵

Just as the very first prisoner in the nation cleared from death row by DNA evidence, Kirk Bloodsworth of Maryland, was denied the prosecutor's recognition of his innocence for a decade, until later DNA testing verified another Maryland prisoner was the perpetrator, so too was Washington denied recognition of his innocence of the rape/murder when Governor Gilmore granted him a pardon on October 2, 2000. Although DNA tests excluded Washington as the perpetrator, they weren't considered to conclusively prove Washington's innocence.

It was only in 2004 that further testing by an independent expert identified convicted rapist Tinsley's DNA matched the sperm found at the crime scene, and it was only through a stipulation in court, prior to the 2006 trial that Virginia finally agreed Washington was factually innocent. Neufeld said the stipulation was the first time Virginia publicly acknowledged Washington is innocent.

In effect, it was only the persistence of Washington's lawyers and other advocates over the past years that finally cleared Earl Washington of this gruesome crime.

Neufeld posited the verdict sent a larger message. Wilmore did not record his interrogation of Washington and during the first hour he didn't even take any notes. "What this case proves is that Virginia should join all the states that require all police interrogations to be recorded." ⁶ He hopes the state will require all interrogations are tape-recorded, warning: "If they don't do it, there's going to be more Earl Washingtons." ⁷

Endnotes:

1 "\$2.25 million verdict for Washington in false confession," by Frank Green, *Richmond Times-Dispatch*, May 6, 2006

2 Fees in civil case footed by taxpayers, by Frank Green, *Richmond Times-Dispatch*, May 31, 2006

3 New trial sought in death-row civil case, Frank Green, *Richmond Times-Dispatch*, May 24, 2006

4 "\$2.25 million verdict for Washington in false confession," *supra*.

5 "Kangaroo court for Earl Washington," Editorial Staff, *The Virginian-Pilot*, May 1, 2006

6 "Federal jury awards Earl Washington Jr. \$2.25 million," *The Virginian-Pilot*, May 6, 2006

7 "Freed man's lawsuit says confession was coached," *The Virginian-Pilot*, April 26, 2006

