

## John Duval Dies Six Years After Exoneration

In 1973 John Duval and Betty Tyson were convicted of murdering a businessman visiting Rochester, New York.

There was no physical evidence or eyewitnesses linking and Duval and Tyson to the murder. Their convictions were based on confessions that both later retracted, saying they were beaten out of them.

In 1998 Tyson's conviction was overturned on the basis of the prosecution's failure to disclose two witnesses to Tyson and Duval prior to their trial. One of the witnesses saw Tyson being beaten by police interrogators, and the other excluded them from being with the murdered man. The prosecution also secretly jailed the two witnesses for seven months until after Tyson and Duval's trial, so their lawyers wouldn't learn of the witnesses existence. It was also discovered that the detective who interrogated Tyson and Duval had been accused of physical brutality in numerous cases.

The prosecution declined to retry Tyson and she was released after 25 years wrongful imprisonment. A suit she filed against the city of Rochester for violation of her civil rights was settled for \$1.25 million.

Duval's conviction was overturned on the same new evidence that freed Tyson. However, prior to discovery of the concealed witnesses, Duval had told the Parole Board on two occasions that he was guilty. Based on those two statements, the prosecution decided to retry Duval. He was released on bail in 1999. At his February 2000 retrial Duval testified that he falsely told the Parole Board he was guilty because he thought it was what they wanted to hear before they would agree to his release on parole.

After his acquittal, Duval sued Rochester for violation of his civil rights and wrongful imprisonment for 26 years. The city was successful in getting the suit dismissed based on his two admissions of guilt to the Parole Board.

Duval continued living in Rochester, working at low-paying odd jobs. His prospects were looking up after he received an associate's degree in accounting from Rochester Business Institute in September 2005. Those hopes were short-lived. Four months later, on January 19, 2006, a friend found him dead in his apartment. The medical examiner determined he died of natural causes. John Duval was 53-years-old.

Sources: Man wrongfully imprisoned 26 years Is found dead, By Gary Craig, *Rochester Democrat and Chronicle*, January 20, 2006. Wrongfully imprisoned man didn't die bitter, By Gary Craig, *Rochester Democrat and Chronicle*, January 20, 2006.

## Ex-Prosecutor Acquitted Of Taking Bribe To Support New Trial

By JD Staff



Carl Marlinga after his acquittal on September 27, 2006.

Macomb County Prosecutor Carl Marlinga wrote a brief filed with the Michigan Supreme Court in January 2002 that acknowledged Jeffrey Moldowan "may have suffered 'actual prejudice'" from insubstantial expert bite mark testimony during his 1991 kidnapping and rape trial.<sup>1</sup>

The Court granted Moldowan's habeas petition and ordered a new trial. Moldowan was acquitted after his retrial in February 2003, and his co-defendant, Michael Cristini, was acquitted after his retrial in April 2004.

Two weeks after Cristini's acquittal, Marlinga, state Senator Jim Barcia, and realtor Ralph Roberts were indicted on federal charges that included bribery and federal campaign finance law violations related to Marlinga's January 2002 Supreme Court brief in Moldowan's case. Federal prosecutors alleged that Roberts, who employed Moldowan's sister, made a bribe to Marlinga, who ran for the U.S. Congress in 2002, that was in part masked as a campaign contribution to Barcia in order to avoid federal contribution limits and reporting requirements.

In February 2005 a Detroit federal judge ruled the indictment was structurally defective for failing to detail how the defendants were linked together in what the government alleged was a *de facto* conspiracy. Faced with trying the three defendants separately, federal prosecutors dropped the charges against Roberts in June 2005, and against Barcia in July 2005.

Marlinga was re-indicted in September 2005, on two counts of bribery, one count of wire fraud, one count of making a false report to the Federal Election Commission, and one count of violating federal campaign finance laws.

Marlinga's trial began on September 13, 2006. His defense included that the charges were based on legitimate campaign contributions that were only a small fraction of the total contributions of a million dollars plus that he raised during his 2002 congressional campaign, and that he had intervened to the benefit of a defendant in at least five

cases prior to Moldowan's without any political contributions being involved.

On September 27, 2006, Marlinga was acquitted of all five counts after a two-week trial. One juror said afterwards that the federal prosecutors "showered us with evidence," but after sifting through it during two days of deliberations the jury didn't seriously consider convicting Marlinga. The jury forewoman said during closing arguments U.S. Attorney Robert Cares told the jury, "Connect the dots," but that the government failed to do exactly that with any evidence. She also said, "They put one dot here, one dot over here, but they didn't connect them."<sup>2</sup>

After Marlinga's acquittal, his one-time co-defendant Roberts said that after he was indicted federal prosecutors offered to drop the charges against him if he agreed to testify against Marlinga. When he refused, they told him they would drop the charges if he simply agreed not to testify as a defense witness. Roberts said, "I told them I couldn't testify to anything but the truth and the truth was we did nothing wrong. This is the end of four years worth of wasted taxpayer money."<sup>3</sup> Roberts said of the federal prosecutors and investigators involved in the case, "They were just trying to further their careers by bringing down a politician and a prominent businessman in Macomb County."<sup>4</sup> Roberts has written a book about his experience in drawing attention to Moldowan's case, and his subsequent investigation by the FBI and federal prosecution. The books working title is *Justice Miscarried*.

Prior to his April 2004 indictment, Marlinga had been the Macomb County Prosecutor for 20 years, and prior to that had been a federal prosecutor. There have been allegations that the prosecution of Marlinga, a Democrat, was politically motivated since after his resignation a Republican replaced him as Macomb County Prosecutor.

Having experienced what he had put thousands of people through as a prosecutor for more than 20 years, the 59-year-old Marlinga said outside the courthouse after his acquittal, "The last four years have been sheer agony. The emotional cost is not something you can possibly imagine."<sup>5</sup>

The day after his acquittal Marlinga commented "My one continuing criticism of the U.S. Attorney's Office was they had this unbelievably thin case. ... they had all of the information they needed to simply dismiss and yet

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# Five Men Imprisoned For Four Years At Guantanamo Bay Acquitted Of Terrorism By Kuwaiti Court

By JD Staff

In the fall of 2001, the U.S. military in Afghanistan seized five Kuwaiti men. In exchange for a payment of \$10,000 each, the men had been identified by bounty hunters as Taleban fighters. The five men were Abdul Aziz Al-Shimmari, Abdullah Al-Ajmi, Adel Al-Zamel, Saad Al-Azmi and Mohamed Al-Dihani.

The five Kuwaitis were transported to Guantanamo Bay, Cuba, where they were interrogated during more than four years of imprisonment. In November 2005 the five men were released from U.S. custody and immediately deported to Kuwait, without charges being brought against any of them.

The five men were arrested upon landing in Kuwait City, and charged with:

- Joining the al-Qaeda organization on behalf of the Taleban government.
- Carrying out hostile actions against a foreign country thus harming Kuwait's political standing.
- Collecting donations for al-Wafaa, an Afghan charity the U.S. military claims provides money to al-Qaeda.
- One of the men, Abdullah Al-Ajmi, was also charged with fighting alongside the

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they persisted." When talking about the trial affect on him, Marlinga said, "It was the closest I think I will come to any mental illness."<sup>6</sup>

See previous JD articles:

Prosecutor Indicted For Bribery After Two Men Exonerated Of Kidnapping And Rape, *Justice:Denied*, Issue 27, Winter 2005.  
Marlinga Bribery Prosecution Update, *Justice:Denied*, Issue 28, Spring 2005.

### Sources and Endnotes.

- 1 Jury Indicts Marlinga Again, by David Shepardson, *The Detroit News*, September 15, 2005.
- 2 Marlinga: the rape cases, Staff article, *Detroit Free Press*, April 23, 2004.
- 3 Marlinga not guilty, by Jameson Cook, *The Macomb Daily*, September 28, 2006.
- 4 Marlinga cleared, by Paul Egan, *The Detroit News*, September 28, 2006.
- 5 Marlinga not guilty, *supra*.
- 6 Acquittal sinks in for the Marlingas, by Peggy Walsh Samecki, *Detroit Free Press*, September 30, 2006



Taleban in Afghanistan against the U.S. supported Northern Alliance.

In pre-trial motions the men's lawyers objected that the charges were based on a single report

provided by the U.S. military that summarized alleged statements of the detained men that was neither signed by any of the defendants nor their interrogators. The men's lawyers argued that under Kuwaiti law such an undocumented report is inadmissible as evidence. They also argued the charges should be dismissed because the court lacked jurisdiction, since the men were not accused of doing anything illegal in Kuwait.

The court rejected the lack of jurisdiction argument and the men's trial began in early May 2006. The men's defense was that they were in Afghanistan doing charity work, and the only evidence to the contrary was the U.S. military's anonymously written and uncorroborated report.

## Exonerated People May Sue For Libel After Being Called "Criminals"

By JD Staff

British Prime Minister Tony Blair publicly apologized on February 9, 2005, to eleven people wrongly convicted in 1975 and 1976 of being Irish Republican Army bombers.

The media dubbed the four of those people convicted in 1975 as the Guildford Four, and the seven convicted in 1976 as the McGuire Seven. The Guildford Four were exonerated in 1989 and the McGuire Seven in 1991. One of the Guildford Four was Gerry Conlon, whose autobiography, *In The Name of the Father*, was made into a successful 1993 movie starring Daniel Day Lewis and Emma Thompson.

It became a matter of public contention that numerous other people exonerated in England during the past several decades were not included in Blair's 2005 apology.

During a radio interview in early May 2006 that was reported on by the press, Home Office Minister Fiona MacTaggart discussed the government's decision to cap compensation to a person whose wrongful conviction is quashed. She referred to those people as "criminals."

The five men were acquitted of all charges on May 21, 2006.

At the time of their release from U.S. custody in November 2005, Al-Dihani, 39 and the father of six, had been on a three-month hunger strike. According to an affidavit, Al-Dihani had been on his hunger strike at Guantanamo Bay for two months when in September 2005 his lawyer brought him a vegetarian pizza. Al-Dihani refused it, expressing sentiments perhaps shared by his four co-defendants: "The American justice system is like this pizza box. It looks very good on the outside but is empty on the inside. It is nothing but air."

As of late September 2006, six Kuwaitis remain indefinitely imprisoned without charges at Guantanamo Bay.

### Sources:

- 5 Kuwaiti detainees returned home, *Seattle Times*, World Digest Section, November 4, 2005.
- Kuwait criminal court acquits 5 former Guantanamo prisoners, *Arab Times*, May 22, 2006.



Within days, a letter was sent to Minister MacTaggart demanding that she retract her characterization of exonerated men and women as "criminals." The letter was written by Michael O'Brien, wrongly convicted of murder and robbery for 11 years before his exoneration in 1999. The letter was co-signed by Paddy Joe Hill, wrongly imprisoned for 16 years before his 1991 exoneration, Gerry Conlon, apologized to by Prime Minister Blair in 2005, and several other people wrongly convicted of murder.

All the signers of the letter had been exonerated of the crimes they had been convicted of committing by having their respective convictions quashed, and they contended MacTaggart's description of them as "criminals" was libelous under British law.

As of the fall of 2006, Minister MacTaggart had not responded to the demand for retracting her description of exonerated people as "criminals."

### Sources:

- British P. M. Tony Blair Apologizes To Guildford Four and Maguire Seven, *Justice:Denied*, Issue 31, Winter 2006, p. 45.
- Miscarriage of justice victims may sue for libel, By Eric Allison, *Guardian Unlimited* (UK), May 4, 2006.
- Wrongly convicted men claim libel, *BBC News*, May 3, 2006.
- See also, British P. M. Tony Blair Apologizes To Guildford Four and Maguire Seven, *Justice:Denied*, Issue 31, Winter 2006.

