

Herman Atkins Awarded \$2 Million For 12 Years Wrongful Imprisonment

Herman Atkins was convicted in 1988 and sentenced to 45 years in prison for raping and robbing a shoe store clerk in Lake Elsinore, a Riverside County town about 70 miles southeast of Los Angeles.

Atkins, 22, proclaimed his innocence, claiming he had never been to Lake Elsinore. His claims were vindicated, and he was released in 2000, after DNA testing of semen found on the victim's sweater eliminated him as the women's attacker.

After Atkins' release a private investigator working on his behalf tracked down Eric Ingram. The lead sheriff's detective in Atkins case, Danny Miller, testified at Atkins' trial that Ingram told him he knew Atkins was a gang member and that he had seen him around Lake Elsinore in early April 1986. This tie of Atkins to being near the crime scene around the time of the attack was used in both the warrant for his arrest, and later at his trial, to corroborate the victim's identification of Atkins.

Ingram told the investigator, and signed a sworn statement, that he didn't know Atkins

and had not told Miller he had seen Atkins in the crime's vicinity. In 2002 Atkins filed a federal civil rights lawsuit whose defendants included Riverside County and Miller. The lawsuit alleged that Miller had fabricated evidence and withheld exculpatory information. After much pre-trial maneuvering, including unsuccessful efforts by the defendant's attorneys to prevent the jury from being informed that the DNA tests excluded Atkins, his suit went to trial in August 2006. After a two-week trial, a mistrial was declared after the jury deadlocked.

After the 9th Circuit Court of Appeals took the unusual step of ordering the trial judge removed for displaying bias against Atkins, the lawsuit was retried in April 2007. The jury awarded Atkins \$2 million, finding "that Miller failed to disclose favorable information to the prosecutor; specifically that he fabricated the Ingram statement."

Afterwards Atkins said, "When I was in prison, one thing that motivated me was something my grandmother often said to me. She said, 'A lie will die, but the truth lives on.' Today, Detective Miller's lies were not only exposed but put to rest."

Source: Riverside County must pay wrongly convicted man, By Henry Weinstein, *Los Angeles Times*, May 1, 2007. *Atkins v. County of Riverside*, 151 Fed.Appx. 501 (9th Cir. 09/14/2005) [U]

Bank Video Proves Man Isn't A Golf Course Flasher

On May 3, 2006, a female security officer saw a man standing with his trousers around his ankles on the edge of a golf course in South Croydon, England.

Seven days later the officer saw a man near the golf course that she recognized as the flasher. The man, Robin Lewis, 35, was arrested and charged with indecent exposure.

Lewis was tried in January 2007. The prosecution's case was based on the officer's eyewitness identification and the circumstantial evidence that he lived near the golf course. Lewis' defenses were that he was misidentified as the flasher, possibly because he lived near the course and the officer may have seen him walking near the course at a different time, and that he had the alibi of being at a local bank at the time of the flashing incident. The jury gave more credence to the testimony of the officer than that of Lewis, and convicted him by a 10-2 majority. He was fined \$3,000 (£1,500), and although spared a jail sentence, he had the stigma of a sex crime conviction.

After his conviction, Lewis obtained the closed circuit television video (CCTV) from the bank where he said he had been about the time of the flashing incident. It not only proved his alibi, but it established his clothing was different than the flasher's clothing described by the officer. It also confirmed that he was wearing his eyeglasses, which the officer didn't mention in her detailed description of the flasher.

Lewis also obtained police reports about flashing incidents at the golf course after he was arrested. The flasher wasn't apprehended, but his description by witnesses was similar to the person described by the officer who testified against Lewis.

The new evidence was incorporated into Lewis' appeal. In July 2007 England's Court of Appeal quashed his conviction, ruling "the evidence casts great doubt, in our view, on the prosecution's case." In support of not ordering a retrial and dismissing the charge on the basis of insufficient evidence, the Court wrote, "Taking all into account, we have reached the conclusion without hesitation that there was no case for Mr. Lewis to answer."

Source: Flasher has conviction squashed by 3 judges, *Croydon Advertiser* (Croydon, England), July 20, 2007.

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Acquittal After Retrial Results From Prisoner's Legal Studies



Mike Murphy after his July 2007 acquittal.

Fifty-year-old Mike Murphy was sentenced to five years imprisonment after his conviction in February 2006 of damaging property and possessing a shotgun with the intent to cause fear of violence. During the July 2004 incident in Croydon, England, two cars were damaged by a shotgun blast that frightened people in the nearby Two Brewers pub.

The jury didn't believe Murphy's defense that he was mistakenly identified. Murphy lived in Carshalton, about five miles from the pub. He testified that he was neither in the area of the pub at the time of the shooting, nor did he have a shotgun.

After his imprisonment Murphy began studying law books he obtained from the prison library, in an effort to find a legal basis to support the appeal of his conviction. He discovered legal precedents that the

judge had improperly allowed the prosecution to influence the jury by informing them that 20 years earlier Murphy had been convicted of illegal possession of a firearm.

In December 2006 the Court of Appeal quashed Murphy's conviction. The Court recognized that the prosecution heavily relied on Murphy's decades old gun possession conviction to convince the jury of his guilt, and then ruled there was too remote of a nexus between that conviction and the charges against him. The Court ordered Murphy's retrial, with the gun possession conviction excluded. He was granted bail pending his retrial and released after ten months imprisonment.

Murphy was acquitted of all charges after his retrial in July 2007. Afterwards he said, "Justice at last. When I read up on the law in jail I could see straight away something was wrong. The first jury should never have been told of that conviction. It had nothing to do with what I was facing."

Murphy also said he was considering filing a claim for money damages against the Croydon police for what he claims was false evidence given against him during his trials.

Source: "Studying helps man overturn conviction," *Croydon-Guardian* (Croydon, England), July 6, 2007.