

Several shots were fired, perhaps four, possibly more, it was hard to be certain. They were fired quickly, close together and unexpectedly. The weapon was a nine-millimeter Uzi semi-automatic. Nineteen year-old Michael Fleming was shot. He lay stretched out on the sidewalk, dead. The body of his cohort, 22-year-old Ricky Warner lay beside him, unconscious. When Warner woke up later in the hospital he was paralyzed from the neck down. A bullet had struck him in the neck severing his spinal chord. Both boys were shot from behind. They had no warning. Fleming was dead instantly and Warner was unconscious before he hit the ground.

Five other young men were there that Fleming and Warner had been trying to sell drugs to. Three of them sustained minor injuries from bullet grazes and the other two were not injured. They gave statements to the police describing the shooter as a medium height dark-skinned black man.

The shooting occurred at 2 a.m. on the morning of February 24, 1990 outside the Exodus, a reggae nightclub on Chicago's North Clark Street. It was early Saturday morning and nightclubs in the area had just closed, so there were many people on the well-lit street near the shooting. A number of witnesses who saw the shooter gave their descriptions to police. The police composite drawing of the shooter depicts a 5'10", 180 lbs., mid-to-late twenties, mustached, flat nosed, dark complexioned black man.

**Ricky Warner was questioned by police two weeks after the shooting**

Two weeks after the shooting, police detectives interviewed Warner for the first time at the hospital on March 9. Although completely paralyzed and unable to move, Warner was mentally alert and articulate. Warner told the detectives he did not know who shot him and he did not see the shooter. However, he mentioned that he owed money to a man that he only knew by his nickname of "Rat." The detectives had no suspects and a lead about the unknown "Rat."

When the detectives interviewed Warner's father, he told them a man had come to his house about a year or so earlier and tried to collect a \$600 drug debt he claimed Ricky Warner owed. Ricky wasn't at home so two weeks later the man came back, trying again to collect.

**Murder Conviction Based On ID By Unconscious Man – The Lathierial Boyd Story**

By John Albert

Warner's father told the detectives he did not know who the man was, but he saw him leave in a car that had a vanity plate with the name "Rat" on it. The detectives checked around and learned that "Rat" was a nickname used by 24-year-old Lathierial Boyd.

When the detectives showed Warner a photo array that included Boyd, he identified Boyd as "Rat." But, he changed his previous statement by claiming to recognize Boyd as the shooter. That should have raised a red flag because unlike the shooter's description from the eyewitnesses, Boyd was light complexioned (not dark); 230 pounds (not 180); 6'-2" (not 5'-10"); he did not have any facial hair (no moustache); and his nose was not flat.

**Lathierial Boyd not identified in line-up**

After Boyd learned the police were looking for him, he voluntarily went to a police station. He agreed to participate in a live line-up. Nine eyewitnesses to the shooting viewed the line-up and none identified Boyd. A police report about the line-up even described Boyd as not matching the composite drawing of the shooter. Warner's father also viewed the line-up, and he selected Boyd as the person who came to his house to collect money owed by Warner.

Boyd did use the nickname, "Rat," but he never had a vanity plate on a car.

**Boyd's alibi was being asleep 20 miles from crime scene**



A is the location of the apartment of Boyd's sister Angela. B is the location of the shooting about 20 driving miles away.

The exclusion of Boyd as the shooter by the eyewitnesses is consistent with his alibi that at the time of the shooting he was 20 miles away asleep in his sister's south Chicago apartment. His sister Angela, her boyfriend Harold Casey, and Boyd were together in Angela's apartment from 8 p.m. Friday evening until 9 a.m. Saturday morning. As it happened Casey, a Cook County Deputy Sheriff for eleven years, awakened at 1:30 a.m. that morning. When he got up to use the bathroom he saw Boyd asleep in the other room.

For the careless Boyd to have committed the 2 a.m. shooting after be-

ing asleep at 1:30 a.m., he would have had 30 minutes to get dressed, leave the apartment unnoticed by the awake Casey, get outside and find some form of transportation to speedily travel 20 miles through Chicago to the exact location of the victims, find the victims in the large crowd, and get close enough to shoot them from behind.

According to Yahoo.com Maps, it takes 43 minutes driving the speed limit to travel from the location of Angela's apartment to the crime scene. <sup>1</sup> So the idea that in 30-minutes he could have done everything necessary to have committed the crime stretches credulity. And of course, Boyd would then have had to return to the apartment without his sister and Casey knowing he had left – which would have been all but impossible because Angela's highly secure apartment building required a pass key to enter, and Boyd did not have a key to either enter the building or open her apartment door. So he could not have returned without his sister and Casey knowing it.

**Boyd charged and tried for the shooting**

Relying on Warner's new statement identifying Boyd as the shooter, prosecutors charged him with Fleming's murder and Warner's attempted murder. For reasons unknown, Boyd's lawyer advised him to waive his right to a jury trial. His bench trial began in October 1990.

There was no physical or forensic evidence tying Boyd to the crime scene, and none of the more than a dozen witnesses to the shooting identified Boyd. So the prosecution's case rested solely on Warner's testimony:

Q. (By prosecutor) Do you know what Rat's real name is?

A. (By Warner) Boyd.

Q. Do you know what his first name is?

A. Lathierial. Lethoadus (sic).

...

Q. What happened about 2:00 o'clock in the morning on that day?

A. I was walking. We was walking on the same side. We was walking and I heard a gunshot and I turned around and he shot me.

Q. Who shot you?

A. Rat shot me. I know Rat. (Examination of Ricky Warner, October 16, 1990, p. 167.)

Warner also testified that after Boyd shot him he saw him run across the street and jump into a car. He denied ever telling the police he did not see who shot him, however, Detective Andrew Sobolewski had testified:

Q. Did you ask Ricky Warner who shot him?

A. Yes, I did.

Q. Did he answer?

A. Originally he answered he didn't know.

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## Boyd cont. from page 8

(Examination of Andrew Sobolewski, August 2, 1990, p. 15.)

A nurse also testified (for the defense) that she was present when Warner told the detective he didn't see the shooter or know who shot him. She also testified he was "alert and oriented and understood what the police were asking him."

After the prosecution rested its case, Angela Boyd and Casey testified about Boyd's alibi of being at her apartment from the evening before, until the morning after the crime. However, Boyd's lawyer did not elicit Casey's testimony about waking up and seeing Boyd at 1:30 a.m., even though he knew about it. Casey's testimony about that would have exposed the prosecution's theory of Boyd committing the crime as being implausible.

The prosecution had a weak case, and Boyd's attorney only needed to make four points clear to win Boyd's acquittal: He needed to show that Warner's identification of Boyd was not medically credible because Warner was shot from behind without warning and rendered immediately unconscious; that Warner's identification contradicted the many unimpaired witnesses who did not identify Boyd in the line-up; that Boyd did not fit the description of the shooter by witnesses at the scene or match the composite drawing; and that Boyd's alibi was reliable and compelling. Boyd's attorney had the evidence available to accomplish those proofs, but he failed to do so. None of the nine eyewitnesses that excluded Boyd after viewing the line-up was brought forward to testify by Boyd's lawyer, and he did not introduce as evidence the composite drawing of the shooter that didn't match Boyd.

### Boyd convicted and his appeals denied

In spite of the poor defense showing, the judge said his decision could have gone either way. The tipping point for the judge in finding Boyd guilty was Warner's identification of Boyd, that the judge considered reliable because Warner said he knew Boyd on sight. Boyd was sentenced to 82 years in prison – 55 years for Fleming's murder and 27 years for Warner's attempted murder – with his earliest parole date in 2031 after completing 50% of his sentence, when he would be 65.

Boyd's trial lawyer handled his direct appeal. After his conviction and sentence were affirmed by the Illinois Court of Appeal in March 1993, Boyd filed a post-conviction petition *pro se* that was denied by the trial court. In June 1996 the Illinois Supreme Court denied review of the dismissal. In 1998

Boyd filed a successive post-conviction petition *pro se* that was denied by the trial court, and in November 2000 the Illinois Supreme Court denied review of his case.

### WGN-TV investigates Boyd's case

In 2001 Chicago television station WGN-TV believed there were enough doubts about Boyd's case to warrant investigating it. Their reporters interviewed dozens of people, and they were able to find seven of the nine eyewitnesses who viewed the police line-up in 1990. Jennifer Bonanno was one of those witnesses. She knew nothing about Boyd's trial because she was not subpoenaed to testify and she had lived away from Chicago for years. When the reporters told her they were investigating Boyd's case she exclaimed, "Don't tell me they convicted the preppy guy!" Bonanno had stood only three feet from the shooter, and in a February 28, 2002 affidavit she swore that after she was finished viewing the line-up she asked a detective which one was the suspect. When told it was the man to the far-left, she told the detective there is "no way in the world" he was the man they were looking for because he looked "nothing like the shooter." When WGN broadcast its report on Boyd's case, his now retired trial judge said in an interview that he would want to hear Bonanno's testimony if he was still a judge and had the case.

Boyd's trial lawyer never questioned the murdered Fleming's brother James. WGN's reporters talked with him, and in April 2001 he executed an affidavit in which he states that about five months after the shooting Warner told him that he never saw who shot him. (Affidavit of James Fleming, April 16, 2001, ¶¶3-4.)

### Post-conviction petition filed based on new evidence

Boyd filed another post-conviction petition in 2002. It was based on the new evidence uncovered by WGN-TV that the prosecution failed to disclose to Boyd's trial lawyer that two weeks after the shooting, eyewitness Bonanno had categorically excluded Boyd as the shooter. After an evidentiary hearing Boyd's petition was denied in September 2004. In May 2006 the Illinois Court of Appeals affirmed the dismissal of Boyd's petition, and four months later the Illinois Supreme Court denied review of his case.

### Prime suspects not investigated by police

Once Boyd was arrested all investigation of the case stopped. So other suspects and motives for the crime were not investigated by the police or raised during Boyd's trial. On the

day of Fleming's murder his girlfriend told the police that "he had a problem with three (3) black guys to whom he had sold some fake cocaine, and that he had some altercation with some white guys for the same reason." (Supplementary Police Report dated February 24, 1990.) It is believed that Fleming and Warner were trying to sell fake drugs outside the Exodus Club when they were shot.

Yet the police did not pursue this solid lead. WGN's investigation team focused on a prime suspect who was never questioned by the police – Yuri "Cheesy" Smith. Smith was a well-known drug dealer and a leader in the "Solid Gold Posse," a violent Jamaican street gang that controlled the territory around the site of the shooting. Smith had warned Fleming and Warner to stay away, not just because they were violating his turf, but they were hurting his business by selling fake drugs. Smith bragged on the street about shooting Warner and Fleming, and it is known that his gang was in the area on the morning of the shooting because the owner of the Booga Lou Tavern on Clark Street told police that he "was chased by a group of Jamaicans at the time of the incident."

When Bonanno was shown a photograph of Smith she said that she could not say with 100% certainty that he was the shooter, but he definitely looked a lot like the shooter. This is significant because Smith and Boyd look nothing alike, and Smith's appearance fits the shooter's description by the witnesses and the police composite drawing.

However, Smith is now dead so he can never be questioned.

### Boyd files clemency petition

Boyd has been imprisoned for more than 18 years based on what can at best be described as Warner's unreliable identification. With his legal challenges to his conviction exhausted, on February 6, 2008 Boyd filed a petition for executive clemency with the Illinois Prisoner Review Board. The petition is based on the argument that the evidence supports the pardoning of Boyd based on his actual innocence of the Exodus shootings.

The clemency petition includes many letters written by various people on Boyd's behalf. One of those letters is by WGN-TV reporter Muriel Clair and former producer Jason Jedlinski. They wrote in their letter dated Feb. 4, 2008: "We are not detectives, prosecutors or judges. But we are citizens of the State of Illinois, which prosecuted Mr. Boyd for crimes he allegedly committed against the community. After an exhaustive

### Boyd cont. on page 10

Harold David Buntin's quarter-century saga is one of the most unusual wrongful conviction cases in American legal history ... and it isn't over yet.

Buntin was 15 in 1984 when he was identified as the lone person who raped and robbed a 22-year-old dry cleaning clerk in Indianapolis, Indiana. The victim, who has impaired vision and hearing, first identified a different suspect before settling on Buntin as her assailant. Buntin protested his innocence, claiming that on the day of the assault he was in Texas, more than 800 miles from Indianapolis. After being charged with the rape Buntin was released on bail.

During Buntin's 1986 trial prosecutors introduced evidence that he had the same blood type as the rapist. Fearful of being convicted, the 17-year-old Buntin fled. The jury convicted him *in absentia* of robbery and rape and he was sentenced to 50 years in prison.

Eight years later Buntin was arrested in Florida on an unrelated charge. The police discovered he was a fugitive, and the 25-year-old was extradited to Indiana to serve his 50-year prison sentence. Buntin's conviction was affirmed two years later, in 1996.

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## Boyd cont. from page 9

examination of the record and our own firsthand reporting, we firmly believe that this case represents a miscarriage of justice and appeal to you to set this man free."

As of mid-July 2008 the clemency petition is pending. You can write to Lathierial Boyd at: Lathierial Boyd B-10106  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

Boyd's outside contact is:  
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About the author. John Albert has followed Lathierial Boyd's case for more than six years. He publishes cases of injustice on his website, <http://crimeandpunishment.org>

### Endnote:

1 The shortest route is 19.41 miles between Angela Boyd's apartment at 4820 West Ford City Drive in Chicago, and the shooting scene at 3500 North Clark Street in Chicago, and it can be expected to take 43 minutes to travel between them driving the speed limit according to Yahoo.com Maps.

# Convicted In Absentia, Cleared By DNA Testing, Harold Buntin Spent Two Extra Years In Prison Because of "Lazy Judge"

By Douglas Scott Arey

## Buntin files post-conviction petition

In 1998 Buntin filed a Petition for Post-Conviction Relief based on the prospective testing of evidence by DNA techniques unavailable at the time of his trial. While Buntin's petition was pending the lawyer hired by his mother and two sisters was successful in obtaining a court order for DNA testing of a towel that was believed to have the rapist semen on it. Unfortunately for him, the September 1999 test was only able to identify a female's DNA on the towel.

In December 1999 Buntin fired his lawyer and hired Indianapolis attorney Carolyn Rader. Buntin's PCR Petition remained on the back-burner for years until the rape kit – the contents of which had never been tested – was found in the police evidence room. Rader filed a motion for DNA testing of a vaginal swab and a swab of the rapist's skin cells recovered from the victim. The motion was granted, and Buntin's mother and sisters paid for the tests that cost more than \$4,000. On June 30, 2004 the testing of both swabs resulted in identification of the rapist's DNA profile – and Buntin was excluded as being that man.

## Buntin seeks hearing after DNA clears him

Based on the exclusionary test results Buntin was able to get a hearing scheduled to consider his PCR Petition that had been filed in 1998. The hearing was rescheduled nine times before finally being held on March 16, 2005. Although Buntin's case was assigned to Marion County Superior Court Judge Grant W. Hawkins, Court Commissioner Nancy L. Broyles presided over the hearing. A month after the hearing she took his case under advisement.

Buntin then waited, and waited, and waited for a decision. He repeatedly wrote the court about a decision without receiving a response. At his wits end, in January 2007 Buntin filed a "lazy judge" complaint with the Indiana Commission on Judicial Qualifications (Commission), "alleging that his post-conviction case had been pending for nearly twenty-two months." He also com-

plained that "Rader had not communicated with him since 2005."

As surreal as Buntin's two-decade long ordeal had been to that point, it then entered *The Twilight Zone*.

## Indiana's Judicial Commission investigates Buntin's case

The Commission opened an investigation into Buntin's complaint. In February 2007 an investigator contacted Judge Hawkins. After conducting a search of court files, Hawkins reported to the Commission that Buntin's case file could not be located.

Then about March 7, 2007 Buntin's file appeared, allegedly after being found by an unidentified court employee. The next day Commissioner Broyles issued an Order that was backdated to May 20, 2005, granting Buntin's petition for post-conviction relief.

Since the delay in issuing a ruling was under investigation by the Commission, on March 8 Judge Hawkins and Commissioner Broyles also filed a "Notice Explaining Delayed Ruling." They wrote that on May 20, 2005 Broyles granted Buntin's petition, but that a staff member or clerk's employee failed to process the Order as a post-it note on it instructed, and instead closed the file and placed it in storage (archives). So the Order was not entered into the record and copies were not provided to the prosecution and Buntin's lawyer. They also wrote the file was retrieved from storage because of the inquiry by the Commission, and that was when the error was discovered.

Even after issuing the Order on March 8, and knowing they were under investigation for delays in Buntin's case, neither Hawkins nor Broyles made an effort to promptly have the Order entered into the Court's docket, or to schedule a hearing to consider Buntin's release from prison on bail pending his retrial. So even though according to Hawkins and Broyles his petition to overturn his convictions had been granted almost two years previously, Buntin continued to languish in prison. Hawkins and Broyles did nothing in spite of being regularly reminded of Buntin's case by phone calls from his family.

## Judicial Commission prods Judge Hawkins into releasing Buntin

On April 12, 2007 the Commission contacted Hawkins and Broyles inquiring why there had been no progress in Buntin's case, and urged that they take immediate action. That same day Hawkins scheduled a release hear-

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