

## Donald Wayne Good Settles Wrongful Conviction Lawsuit For \$1 Million

Donald Wayne Good was arrested in June 1983 for a bond forfeiture on a prior DWI charge. While he was in the Dallas County, Texas Jail a woman identified him from a photograph as the man who raped her several weeks earlier in her Irving, Texas home. Good, 23, was charged with aggravated rape, aggravated robbery, and burglary of a habitation. A month later the woman and her 8-year-old daughter who had been home when the attack occurred, identified Good from a line-up.

Good refused to plea bargain and he was tried in 1983. The prosecution's case was based on his identification by the woman and her daughter. There was also expert testimony that the sperm found in the rape kit, on the victim's jumpsuit, and on a blanket came from a Type O secretor, which matched Good's blood type and "one-third of the Caucasian male population." The trial ended in a hung jury.

Good was retried in 1984 with the prosecution relying on the same evidence as the first trial. That trial resulted in his conviction on all charges. He was sentenced to life in prison. A fellow prisoner wrote Good's appeal, and his conviction and sentence were overturned based on prosecutor misconduct. The appeals court ruled Good was denied a fair trial because the prosecutor improperly argued to the jury that they should find him guilty because he did not show enough emotion when the victim testified.

Good was tried for a third time in 1987. Good represented himself but he wanted to be assisted by the "jailhouse lawyer" who wrote his appeal. The judge refused and when Good continued to request the "jailhouse lawyer's" assistance the judge ordered that Good be gagged and handcuffed so he couldn't remove the gag. Under the circumstances it wasn't surprising that Good was convicted, but he was only convicted of the charge of burglary of a habitation with intent to commit rape. He was sentenced to life in prison with the possibility of parole.

His conviction was affirmed on direct appeal and he was paroled in 1993 after being incarcerated for almost 10 years from his June 1983 arrest.



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Good's parole was revoked and his life sentence was reinstated after he was arrested for a minor property crime. In 2002 he was sentenced to serve five years in prison after pleading guilty to the property crime.

After Good's arrest for the parole violation, he filed a handwritten motion for DNA testing of the biological evidence related to the woman's rape in 1983. The Court appointed the Dallas Public Defender's Office to represent Good. The Dallas County DA did not oppose the motion and in August 2003 the court ordered testing of the vaginal swabs from the woman's rape kit.

In April 2004 the test results excluded Good and the woman's husband as a contributor to the sperm on the vaginal swab.

Based on the new evidence Good filed a *habeas corpus* petition for a new trial. His petition was not opposed by the Dallas County DA's Office and his conviction was overturned by a Dallas County judge. The Texas Court of Criminal Appeals vacated his conviction and life sentence on November 17, 2004. In December 2004 Good's indictment was dismissed.

Good remained imprisoned for his property crime conviction until his release in April 2007.

In November 2006, while still imprisoned for his property crime conviction, Good filed a federal civil rights lawsuit (42 U.S.C. §1983) in Dallas against the City of Irving; the Irving Police Department; the Chief of Police for the City of Irving, and Irving police officer Fred Curtis. In March 2007, the district court dismissed the claims against the Irving Police Department and the Chief of Police. In June 2009, the district court also dismissed all claims against the City of Irving and some of the claims against Curtis. The judge did not dismiss Curtis' alleged violations of Good's rights under the Fourth and Fourteenth Amendments when he fabricated the probable cause for Good's arrest by manipulating a photographic lineup in an effort to procure the rape victim's false identification of Good.

Curtis appealed to the Fifth Circuit Court of Appeals that the district court erred by denying his motion for summary judgment

and ruling he wasn't entitled to blanket qualified immunity. Curtis didn't deny that he engineered the victim's false identification of Good, but he argued "that the trial court's subsequent approval of the fabricated lineup absolves him of responsibility for the unfair trial and wrongful conviction it produced." In February 2010 the Fifth Circuit affirmed the district court's ruling that Curtis wasn't entitled to qualified immunity and Good's lawsuit could go to trial. On March 23, 2010 the Fifth Circuit denied Curtis' request for a rehearing. The Court wrote in *Good v Curtis*, No. 09-10341 (5th Cir. 3-23-2010):

"... we conclude that knowing efforts to secure a false identification by fabricating evidence or otherwise unlawfully influencing witnesses constitutes a violation of the due process rights secured by the Fourteenth Amendment. ... Moreover, we find that any reasonable official would know that framing an individual for a crime they did not commit by securing such an identification represents a constitutional violation. Accordingly, the appeal must be dismissed on his Fourteenth Amendment claim.

With respect to the Fourth Amendment, Curtis's efforts to secure Good's arrest notwithstanding the fact that Curtis affirmatively knew he manufactured probable cause constituted a clearly established violation of Good's Fourth Amendment rights at the time of the arrest such that the appeal on this claim must also be dismissed."

Faced with defending Good's lawsuit in front of a jury when Curtis had admitted he fabricated the photographic evidence the victim relied on to identify Good, and that identification was the basis for him being charged with committing the crimes in her home, the Irving City Council agreed on March 24, 2011 to settle Good's lawsuit for \$1 million. \$700,000 will be paid by the city and \$300,000 will be paid by its insurer. Good is now 51-years-old. His settlement amounts to about \$100,000 for each year of his imprisonment for the crime he didn't commit.

Sources:

*Good v Curtis*, No. 09-10341 (5th Cir. 3-23-2010)

Council approves lawsuit settlement, By Brandon Formby (staff), *Dallas Morning News*, March 25, 2011

