

## Theodore White Jr. Settles Wrongful Conviction Lawsuit For \$15.5 Million

Theodore (Ted) White Jr. is being paid \$15.5 million by the City of Lee's Summit, Missouri to settle his federal lawsuit that alleged his constitutional rights were violated when he was wrongly prosecuted and convicted in 1999 of molesting his minor step-daughter.

In April 1998 White, a 37-year-old businessman in Lee's Summit, was arrested after charges were filed alleging he raped, sexually molested, sodomized and provided pornographic material to his adopted daughter in 1993 when she was 12-years-old. The charges followed an investigation that was initiated after his estranged wife Tina made allegations against White.

White's defense was the charges were all fabricated by his wife as part of their troubled relationship, but with his daughter testifying as a prosecution witness White was convicted of the charges in 1999 after a three-day trial. The judge allowed to remain free on bail pending his sentencing. Claiming he had been convicted of crimes he didn't commit, White fled a week after his conviction. White was spotted in Arkansas, Florida and South America before dropping out of sight.

While on the run White was sentenced in absentia to 50 years imprisonment.

White settled in Costa Rica where he sold real estate to support himself. A client turned him in after seeing him on an episode of the television program America's Most Wanted. While jailed in Costa Rica for five months while he fought extradition to the U.S., White learned that his wife was involved in a sexual relationship with Detective Richard McKinley while McKinley was investigating the charges against White. During White's trial McKinley testified about his investigation. Tina subsequently divorced White, and after his conviction she married McKinley.

White also learned the prosecution knew of the relationship and didn't disclose it to his attorneys. Based on his belief the new evidence would result in him getting a new trial White waived his extradition. After arriving back in Missouri he began serving his sentence. His lawyers filed a motion for a new trial based on new evidence that the prosecution failed to disclose the relationship between White's wife and the lead detective in the case. In April 2002 the Missouri Court

of Appeals ordered a new trial.

The prosecution decided to retry White, again relying on the testimony of his former adopted daughter. However, an investigation by White's lawyers resulted in the discovery of evidence, including that he was out of town on business during periods of time when he allegedly molesting his daughter, and defense witnesses who directly contradicted many aspects of her testimony about her relationship with White. In addition, White's lawyers were able to introduce evidence that McKinley was involved with White's wife during his investigation, and they argued that the two of them had cooked up the charges against White as a way to get him out of the way so they could be together, and convinced her daughter to go along with the ploy. After a six day trial, in June 2004 a mistrial was declared after the jury deadlocked 11 to 1 for White's acquittal.

After the trial four jurors publicly spoke out that there was no credible evidence of White's guilt, but that one juror refused to participate in deliberations or change his guilty vote even though he admitted he had "doubts" about White's guilt. Juror Jill Miller [told reporters](#), "He is not guilty, for sure. There is not one bit of evidence the state brought us to prove his guilt. When it was over we just cried. It was so outrageous, there are no words to describe it. ... After the verdict, (several jurors) went out together, and said, "We want to do anything we can to help them out. We just can't let it end like this — we have to do something to help them.'" Miller and several jurors began advocating on White's behalf, including writing letters to Missouri's Attorney General Jay Nixon encouraging him to intervene and encourage the Jackson County Prosecuting Attorney's Office to dismiss the charges so White could go free.

An investigation by White's lawyers after the trial found that the juror who refused to deliberate had lied on his juror form when he stated he had lived in Missouri for 29 years when it had only been 2 years, and he lied that he had never been involved in a civil or criminal action when he had been sued by landlords, credit-card companies and filed bankruptcy. His lawyer's motion to disqualify the juror after the verdict was denied.

Jackson County's prosecutor decided to try White a third time. In a case that was largely a rerun of his second trial -- albeit without a juror who lied on his juror form — White was acquitted in April 2005. He was re-



Theodore (Ted) White Jr. (KMBCTV, Kansas City, MO)

leased after serving about five years of his 50-year sentence.

A month later White filed a federal civil rights lawsuit against the City of Lee's Summit, its chief of police, Detective McKinley, and his ex-wife, alleging among other things false arrest, conspiracy and malicious prosecution. The city and White then signed an agreement in 2006 that he would drop the city and its police chief as defendants in exchange for the city agreeing to pay any judgment that White won against McKinley.

On August 30, 2008 an eight person jury in U.S. District Court in Kansas City [awarded White](#) \$14 million in compensatory damages and \$2 million in punitive damages after finding that Detective McKinley and White's wife Tina conspired to convict White of false charges and deprive him of his right to a fair trial.

Lee's Summit appealed, and in July 2010 the federal 8th Circuit Court of Appeals upheld the judgment.

Faced with paying White \$16 million, in August 2010 the City of Lee's Summit informed White that it wouldn't pay the judgment as it had promised because it would violate a city ordinance that forbids it from indemnifying a city employee who violates a person's constitutional rights.

White's lawyer then filed a motion alleging that the city had committed fraud by inducing White to drop the city and the police chief as defendants as a strategy to avoid paying any judgment awarded against McKinley. There was a hearing in March 2011 during which the city's attorneys claimed attorney-client privilege in refusing to answer questions or provide documents to U.S. District Court Judge Nanette Laughrey related to the 2006 agreement between the city and White. [It was reported](#) in April 2011 that Judge Laughrey was considering ordering an investigation to determine if the city committed fraud when it entered the 2006 agreement with White.

On July 22, 2011 Lee's Summit announced that it had [reached an agreement](#) with White to pay him \$15.5 million to settle all his claims against the city, its police chief and McKinley. The city also agreed to "make corrections with state and national law enforcement units, including the National Crime Information Center, Kansas City Metro ALERT and the Missouri Uniform

**White cont. on p. 16**

# Federal Judge Denies Habeas Petition By Man Who Claims Surveillance Video Will Prove He Is Actually Innocent

The U. S. Supreme Court has never ruled that evidence in a habeas corpus petition proving a person is actually innocent is sufficient by itself to overturn his or her conviction. What the Supreme Court has done is consistently rule that to vacate a conviction there must be a constitutional defect in a trial such as ineffective assistance of counsel, or the prosecution's failure to disclose exculpatory evidence. Although the Supreme Court has considered several cases that involved a habeas petitioner claiming actual innocence, the Court has failed to decide if a compelling free-standing claim of innocence warrants

## White cont. from p. 15

Law Enforcement System to reflect White's acquittal on all child molestation charges."

The agreement also includes as an exhibit a [statement by White](#) that reads in part:

"One could not ever imagine what my family has had to endure throughout this whole ordeal of false allegations and wrongful imprisonment as a result of my Constitutional rights being ignored by people elected or hired to defend the Constitutional rights of its citizens.

...

"My hope is that my case will bring about changes in the criminal justice system and cause law enforcement and elected officials to make sure that the Constitutional rights of the citizens they serve will never be ignored. We, as citizens, have to stand up for our rights even when people try and abuse the system to their own benefit. The abuse ran rampant in my case and should have never been allowed to happen."

White's ordeal is legally over thirteen years after it began. White, now 50, lives in Utah.

### Sources:

[Terms of White's \\$15.5 million settlement disclosed, Lee's Summit Journal](#), July 22, 2011

[Lee's Summit](#) will pay \$15.5 million to wrongly convicted Ted White, [Kansas City Star](#), July 22, 2011

[Lee's Summit Could Face Fraud Charges In Ted White Case](#), [Fox4kc.com](#) (Kansas City, MO), March 8, 2011

[Jury awards man \\$16 million](#), [The Joplin Globe](#) (Aurora, MO), September 13, 2008

granting a habeas corpus petition. (See e.g., *Herrera v Collins*, 506 U.S. 390 (U.S. 1993); and *House v. Bell*, 547 U.S. 518 (U.S. 2006).)

Larashai Burton was convicted of first-degree assault and first-degree gang assault related to the beating in April 2004 of a man outside a Jim's Steakout restaurant in Buffalo, New York. He was sentenced to two concurrent twenty year prison terms, to be followed by five years of post-release supervision.

Burton's defense was that during the assault he was inside the restaurant and wasn't involved in the crime. Key evidence against Burton was a co-defendant who in exchange for reduced charges testified that he saw Burton stomp the victim in the head twice.

After Burton's convictions were affirmed on direct appeal his post-conviction motion for a new trial was denied by the New York State courts. Burton then filed a *pro se* federal writ of *habeas corpus* based on a single claim: He is actually innocent of his convicted crimes and his innocence is proven by a restaurant CCTV surveillance tape seized by a Buffalo police officer the night of the assault. Burton also alleged that the officer knowingly committed perjury when he testified at trial that he did not retrieve the videotape.

The prosecution did not provide the videotape (or a copy) to Burton's trial lawyer and up to the time Burton filed his federal *habeas petition* it had not been provided to Burton, but he alleged in his petition that it would show he was inside the restaurant at the time of the assault and he was misidentified by the eyewitnesses.

U.S. District Court Judge Michael A. Telesca denied Burton's petition, ruling that "Petitioner has failed to make a "substantial showing of a denial of a constitutional right." (*Burton v. Conway*, No. 09-CV-6065 (MAT), Dist. Court, WD New York, March 7, 2011) Judge Telesca's ruling was based on the lack of a U.S. Supreme Court ruling that a habeas petition can be based on a "freestanding innocence claim." Although Judge Telesca did not order the prosecution to produce the videotape so he could view it, he expressed skepticism of Burton's in-



The outside of Jim's Steakout on Elmwood in Buffalo, NY where the assault Larashai Burton was convicted of took place (Google Street View)

nocence claim because his conviction was based on eyewitness evidence. Judge Telesca also declined to issue a certificate of appealability to the federal court of appeals.

Judge Telesca [also wrote](#), "Following a review of the record, it appears that the alleged videotape was part of petitioner's file from the inception of the prosecution." Even though Burton's lawyer filed a discovery motion for the prosecution to produce

*Brady* (exculpatory) evidence, Judge Telesca blamed Burton's lawyer for failing "to inspect and/or copy" the videotape in the prosecution's possession.

Since Burton told the officer who arrested him that the restaurant's surveillance tape would prove he "was not outside at the time the victim was attacked," Judge Telesca ruled, "Given that petitioner knew of this supposed exculpatory evidence at the time of his arrest, it cannot be said to be "new reliable evidence." So to Judge Telesca the videotape isn't new evidence because the prosecution has successfully concealed its contents, even though Burton has asserted from the time of his arrest in 2004 that what is recorded on the videotape can prove his innocence.

Burton filed a *pro se* [petition for a](#) certificate of appealability with the federal Second Circuit Court of Appeals on April 1, 2011 that is pending.

Burton, 31, has pursued his post-conviction case *pro se*. It is possible a competent lawyer could have successfully framed a *Brady* argument based on the failure of the prosecution to produce the videotape, or an ineffective assistance of counsel ground based on the failure of his lawyer to pursue every avenue to obtain the videotape. If Judge Telesca's ruling isn't reversed by the appeals court, Burton will have to serve his 20-year sentence because of the prosecution's success in not providing the videotape that can establish he wasn't at the scene of the assault — and thus prove he is actually innocent.

### Sources:

[Burton v. Conway](#), No. 09-CV-6065 (MAT), Dist. Court, WD New York, Denial of habeas corpus petition, March 7, 2011

[Burton v. Conway](#), No. 11-1260, 2nd Cir Ct of Appeals