

Robert Wilcoxson Awarded \$545,591 For 11 Years Wrongful Imprisonment

Robert Wilcoxson has been awarded \$545,591 for almost 11 years of imprisonment in North Carolina for a murder he didn't commit.

Wilcoxson and Kenneth Kagonyera were among six men charged with being involved in the murder of Walter Bowman during an attempted robbery at his home in Fairview, North Carolina on September 18, 2000. The three intruders wore bandanas to conceal their faces and gloves. Three bandanas and four gloves were found near the crime scene. A tip to Crime Stoppers five days after the murder led to the men as suspects, although there was no physical evidence tying any of them to the crime and the witnesses to the crime didn't identify them. However, after intense police interrogations during which they were threatened with life in prison or a death sentence if they didn't cooperate, Kagonyera and three other men made statements implicating themselves and Wilcoxson in the crime.

In March 2001 the North Carolina State Bureau of Investigation (SBI) compared the DNA of all six suspects with DNA recovered from the bandanas and gloves. They were all excluded as the source of the DNA. However, that exculpatory evidence was not disclosed to the lawyers for any of the six suspects.

Although he had recanted his confession and insisted on his innocence, to avoid a possible sentence of life in prison or death if convicted of first-degree murder, Kagonyera pled guilty to second-degree murder in December 2001. During his sentencing hearing in September 2002 Kagonyera's motion to withdraw his guilty plea was denied and he was sentenced to 144 to 182 months in prison.

Faced with having to overcome at trial the statements of his four codefendants and three jailhouse informants who claimed to have heard comments implicating him in the crime, Wilcoxson pled guilty in August 2002 to second-degree murder and he was sentenced to 150 to 189 months in prison. Three of the other defendants also pled guilty to second-degree murder, while the charges were dropped against the sixth defendant.



Robert Wilcoxson hugged by his father after his conviction was overturned on September 22, 2011. (CatholicLane.com)

After Wilcoxson and Kagonyera had pled guilty a federal prison inmate — Robert Earle Rutherford — confessed in 2003 to a federal agent that he was involved in Bowman's murder and he named two accomplices — Lacy Pickens and Bradford F. Summey. None of the three were among the six people charged. Rutherford and his two alleged accomplices were the first people brought to the attention of the police after their names were provided by a Crime Stoppers tip two days after Bowman's murder. However, they were not investigated and their DNA profiles weren't compared to the DNA recovered from the bandanas and gloves.

At some point after he pled guilty Kagonyera became aware the SBI had conducted DNA testing of the bandanas and gloves.

In the spring of 2003 Kagonyera began his efforts to prove his innocence by submitting an application to the North Carolina Center on Actual Innocence (his application was denied in 2004), and writing a letter to the Buncombe County Clerk's Office requesting copies of the SBI's DNA test results in his case. He was referred to his appellate counsel and told there was a charge for copies.

In June 2003 Kagonyera filed a *pro se* motion for DNA testing of "ski masks, bandanas, and gloves" recovered from the crime scene. A judge denied the motion 12 days after it was filed, ruling that Kagonyera "plead guilty and admitted that he was in fact guilty of these charges."

In June 2005 Kagonyera wrote the Buncombe County Sheriff's Office requesting a copy of the SBI's lab results in his case. The

Sheriff's Office responded by telling him to contact the District Attorney.

Kagonyera then wrote the DA's Office in late June 2005 requesting the SBI's DNA report. After the DA's Office didn't respond to Kagonyera's letter, in July 2005 he submitted a request to the DA's Office for the report under North Carolina's Freedom of Information Act. The DA's Office didn't respond to Kagonyera's FOIA request.

In August 2005 Kagonyera wrote the Clerk of the Buncombe County Superior Court requesting a copy of the SBI's DNA report. The Clerk's Office responded by telling him that he needed to contact the District Attorney's Office.

Having hit a dead end at every effort to obtain the SBI's DNA report or to have new DNA testing ordered, in April 2006 Kagonyera filed an affidavit with the Buncombe County Clerk's Office that he and others in his case made false statements implicating themselves in Bowman's murder. Then in September 2006 Kagonyera filed a motion with the Buncombe County Clerk to compel the District Attorney's Office "to release results of DNA Testing of hair and blood samples by defendant." Kagonyera's motion was not responded to by the DA's Office, or ever addressed or ruled on by the court.

Then, unbeknownst to Kagonyera, in 2007 DNA obtained from one of the recovered bandanas was run through the FBI's DNA database and it matched the DNA of Summey.

In February 2008 Kagonyera filed a handwritten Motion For Appropriate Relief based on his claim of actual innocence, that he had falsely pled guilty, and that Rutherford had admitted he and two other men were involved in Bowman's murder. Kagonyera was appointed a lawyer. In its response the DA falsely stated to the Court that one of Rutherford's alleged accomplices — Lacy Pickens — was in the Buncombe County jail on the day of Bowman's murder. Also, the DA failed to include in its response that in 2001 all five defendants were excluded as the source of any crime scene DNA before they pled guilty, and that the SBI's 2001 DNA tests resulted in a hit in 2007 between one of the bandanas and Rutherford's alleged accomplice Summey.

In July 2008 the judge ordered the SBI to compare the DNA of Rutherford, Pickens and Summey to DNA recovered from the

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bandanas and gloves found at the crime scene, and for the Buncombe County DA to provide any orders to the judge necessary for the collection of their DNA. Contrary to the judge's order the DA did not obtain the DNA of Rutherford and Summey, and the DA made no effort to obtain an existing DNA sample of Pickens, who was killed in 2006. Neither did the SBI compare the three men's DNA with the evidence as the judge had ordered.

In August 2008 Kagonyera submitted a handwritten claim of factual innocence to the North Carolina Innocence Inquiry Commission (NCIIC). His case was accepted in March 2010. Wilcoxson submitted a claim to the NCIIC in November 2010. His case was accepted in February 2011, and it was consolidated with Kagonyera's case and the investigation that had already been done. At the time Wilcoxson submitted his claim only he and Kagonyera remained in prison, since the other three men who pled guilty to Bowman's murder had already been released from prison.

The subsequent investigation discovered that since 2001 the DA's Office had concealed that the SBI's DNA tests excluded the five convicted defendants, while corroborating Rutherford's confession by matching Summey's DNA to one of the bandanas.

False confessions expert Steven A. Drizin provided the NCIIC with a [detailed Report](#) that stated in part:

"After reviewing the statements of Isbell, Williams, Wilcoxson, Mills, and Kagonyera, and other documents related to the police investigation and comparing their statements with Rutherford's statement, it is my opinion that the statements of the five convicted defendants are highly unreliable. They are internally inconsistent, are inconsistent with each other, are uncorroborated, did not lead police to the discovery of any new evidence related to the murder, and are further undermined by newly discovered evidence, including DNA evidence which corroborates Rutherford's confession." Opinions Regarding Reliability of Statements of Kenneth Kagonyera, Robert Wilcoxson, Teddy Isbell, and Larry Jerome Williams Jr., By [Steven A. Drizin](#), April 6, 2011, p. 1-2.

Since Kagonyera and Wilcoxson had pled guilty the members of the NCIIC were required to unanimously vote that there is "credible, verifiable evidence of innocence

that has not been previously presented at trial or considered at a hearing granted through postconviction relief." N.C.G.S. § 15A01460; and that, "there is sufficient evidence of factual innocence to merit judicial review." N.C.G.S. § 15A-1468(c).

During the NCIIC's hearing that began on April 28, 2011 both Wilcoxson and Kagonyera testified they falsely confessed and pled guilty to second-degree murder because they had been threatened by their prosecutors with a sentence of life in prison or the death penalty if convicted of first-degree murder after a trial. After the hearing the NCIIC unanimously voted on April 29, 2011 to refer the case for a special session of the Buncombe County Superior Court to consider the new evidence in Kagonyera and Wilcoxson's case. [Read their written ruling](#) here.

After a seven day hearing during which the Buncombe County DA's Office [vigorously argued](#) that Wilcoxson and Kagonyera "were and are in fact guilty," on September 22, 2011 the three-judge panel issued [their ruling](#) that stated in part:

"The unanimous decision of the three-judge panel of Superior Court Judges is that the defendants, Kenneth Manzi Kagonyera and Robert Wilcoxson III, the convicted persons, have proved by clear and convincing evidence that they are innocent of the murder of Walter Bowman on September 18, 2000." *State v Kagonyera and Wilcoxson*, No. 00-CRS-65086, 65088 (Buncombe County, Gen. Ct of Justice, 9-22-2011).

Wilcoxson and Kagonyera were released from custody that same day.

Wilcoxson filed a claim for compensation under North Carolina's law that provides for \$50,000 per year of wrongful incarceration. Wilcoxson, now 32 and living in Michigan, [was awarded](#) \$545,591 by the North Carolina Industrial Commission for his almost 11 years of wrongful incarceration.

Kagonyera, 31, has a compensation claim pending. His claim is clouded by the fact he was concurrently serving a sentence for unrelated crimes with his sentence for Bowman's murder — so he would have been



Kenneth Kagonyera leaving the Buncombe County Detention Facility with his grandmother Alice McLean (left) and his mother Charlene Holmes. (CatholicLane.com)

imprisoned even without having been wrongly convicted of Bowman's murder.

Wilcoxson was only exonerated because he rode on the coattails of Kagonyera's persistent efforts over many years to es-

tablish his innocence, so it is ironic that Wilcoxson received full compensation while Kagonyera may not receive any compensation or limited compensation for their ordeal.

The same evidence proving Wilcoxson and Kagonyera's actual innocence also clears their three co-defendants — Damian Mills, Larry Williams Jr., and Teddy Isbell — of involvement in Bowman's murder. They could make claims to the NCIIC since the NCIIC isn't limited to considering the cases of imprisoned persons — an applicant must only be a living person convicted of a felony in North Carolina who is claiming complete factual innocence. ([NCIIC Rules and Procedures](#), Article 2(A))

Although there is no statute of limitations on murder and there is compelling evidence Rutherford and Summey (and the deceased Pickens) may have been involved in Bowman's murder, there is no indication the Buncombe County DA has any intention of pursuing their prosecution. Rutherford (Fed. Id. No. 16668-058) was released from federal prison on May 8, 2012, while Summey was released from state prison in North Carolina in September 2011 after completing a four-year sentence for robbery.

Background information about Kagonyera and Wilcoxson's case is in the N.C. Innocence Inquiry Commission's Brief, that can be read [by clicking here](#).

Sources:

[State v Kagonyera and Wilcoxson](#), No. 00-CRS-65086, 65088 (Gen. Ct of Justice, 9-22-2011)

[State v Kagonyera and Wilcoxson](#), No. 00-CRS-65086, 65088 (NCIIC Opinion, 4-29-2011)

[North Carolina Innocence Inquiry Commission Brief](#) for State v. Kenneth Kagonyera, Buncombe County 00CRS065086; and, State v. Robert Wilcoxson, Buncombe County 00CRS65088.

[Opinions Regarding Reliability of Statements](#) of Kenneth Kagonyera, Robert Wilcoxson, Teddy Isbell, and Larry Jerome Williams Jr., April 6, 2011, p. 1-2.

[More than \\$500,000 awarded](#) for wrongful Buncombe County conviction, *Citizen-Times* (Asheville, NC), April 27, 2012

