

August 12, 2010

## Cleared, and Pondering the Value of 27 Years

By JAMES C. MCKINLEY Jr.

HOUSTON — Since a judge let him out of prison for a rape that prosecutors now say he did not commit, Michael A. Green has had trouble sleeping.

Late at night, he walks the neat, quiet sidewalks in the neighborhood where he is staying with an aunt, chain-smoking cigarettes, his mind spinning furiously with questions about why he was convicted 27 years ago and how to spend what is left of his life.

He also ponders, he says, whether to take a \$2.2 million compensation payment from the State of Texas or file a civil lawsuit in the hope of exposing the truth about the investigation that led to his incarceration. To receive the compensation, he must waive the right to sue.

“What I really need to do is to make them pay for what they done to me,” he says. “Two-point-two million dollars is nothing when it comes to 27 years of my life, which I spent with mental torture and physical abuse.”

Mr. Green, 45, was set free by a state judge two weeks ago after DNA tests on the rape victim’s clothing proved that he could not have been responsible for the crime. His exoneration was the work of a new unit in the Harris County district attorney’s office dedicated to reviewing claims of innocence.

The story of Mr. Green’s nightmarish imprisonment — and how a prosecutor, Alicia O’Neill, eventually unearthed biological evidence that led to the real culprits — throws a harsh spotlight on an uncomfortable reality in American justice: the identification of a suspect in a lineup or in an array of photos is not always reliable.

More than three-quarters of the 258 people exonerated by DNA tests in the last decade were convicted on the strength of eyewitness identifications, according to the Innocence Project, the Manhattan-based organization dedicated to freeing innocent prisoners.

In Texas, the problem is even more acute: identifications by eyewitnesses played a pivotal role in 80 percent of the 40 people who have been exonerated with [DNA evidence](#).

Some states, among them North Carolina and Ohio, have passed legislation changing the way lineups are conducted to reduce the possibility of an error, but similar bills in dozens of other states, including Texas, have failed in the face of stiff opposition from prosecutors and law enforcement agencies, defense lawyers say.

In 1983, Mr. Green was a high school dropout who slept late every day, played video games at an arcade in the afternoons and stole cars at night to make money. "Life was one big party," he recalled.

He was walking home on April 18, 1983, the night a white woman was abducted and raped in his neighborhood by four black men in a stolen Camaro. He was one of several young men stopped by the police, but the victim could not identify him.

A week later, however, he was arrested after stealing a car and smashing it up. Detectives showed the victim Mr. Green's mug shot, along with several other photos, and she said he might be one of her attackers. Later the same day, she picked him out of a lineup of five men.

He heard her scream from behind the mirrored glass when it was his turn to step forward in the lineup. He began cursing and yelling at the police.

"I got so mad, because I recognized it was a setup," he said. "Then one of the police said: 'I don't know what you are mad about. I didn't rape her. You did.'"

Mr. Green spit in the officer's face, the first of many defiant acts.

A few days later, he turned down an offer from a prosecutor to plead guilty and serve five years for the rape, Mr. Green said. He recalls the trial as a surreal experience. It was the victim's word against his. On the stand, she pointed him out again. He told the jury that he was innocent, but they did not believe him.

At 18 years old, he was sentenced to 75 years.

In prison, he fought nearly every day with other inmates at the Ferguson Unit, in Midway, where he earned the nickname "Two-Gun" for his boxing skills. He was filled with rage, he said, and fought often with the guards, too, earning vicious reprisals. In 1985, he was placed in a segregated unit for unruly and dangerous prisoners, mostly gang members. "I was considered one of the bad boys," he said.

In 1986, a white inmate tried to stab him, but wounded a guard instead. Mr. Green said the attacker, who belonged to a white supremacist gang, had wanted to kill him because he had allegedly raped a white woman.

Confined alone in a cell for all but two hours a day, he would ruminate endlessly about his trial, he said. "I lay back and thought over and over and over again, why did they find me guilty?" he said. In the late 1980s, he began to request books from the law library, looking for a way to overturn the conviction.

But he lost every appeal, and a public defender told him in 1988 that his case was hopeless, given the vehemence of the victim's testimony. He saw no glimmer of hope until 2001, when Texas passed a statute granting inmates the right to request DNA tests on old evidence under certain conditions.

He wrote the motion himself on a typewriter in his cell and sent it to the trial judge in July 2005. The judge assigned a public defender to handle the request, but the motion languished for three years in a backlog of requests before the Harris County district attorney's office.

Then in 2008, Patricia Lykos, a former judge and police officer, was elected district attorney, and one of her first acts was to reverse the office's longstanding reluctance to admit mistakes. She assigned two assistant district attorneys and an investigator to do nothing but comb through about 185 cases involving requests for DNA tests as well as about 75 other innocence claims. So far, the unit's work has led to the release of three men, including Mr. Green.

Ms. Lykos has been pushing for a new regional crime lab to help expedite the cases. Not only were innocent men imprisoned, she said, but the victims were denied justice and the actual culprits remained free to commit other crimes. "Whenever you have an innocent person convicted, you have a triple tragedy," she said.

Ms. O'Neill immediately zeroed in on Mr. Green's tale as one of the few in the stack of cases in which DNA testing could make a difference. "It was just a perfect case to see what the science had to say," Ms. O'Neill said.

The trouble was that the county clerk said the records showed the evidence in the case had been destroyed, a standard practice for old investigations in which there are no pending appeals. But Ms. O'Neill kept searching, and it turned out one box of evidence had been preserved by mistake, and inside were the victim's jeans. There were 32 semen stains on the denim.

It took a year and a half for a state crime laboratory to untangle the DNA markers on the jeans, but when it was done, Ms. O'Neill and her colleague, Baldwin Chin, had hit pay dirt. Two of the profiles found on the pants matched those of men who had been arrested for other crimes — Michael A. Smith, who was in prison, and David Elder, who was on parole. What is more, none of the three profiles matched Mr. Green's genetic code.

Under questioning, Mr. Elder named two other people involved in the rape, writing the names on the back of a business card. One of the men, Lawrence Mosley, was serving time in Amarillo for another crime, and he confirmed that the fourth person was Timothy Washington. None of the four will be charged in the rape because the statute of limitations has expired, prosecutors said.

But the new evidence was enough to persuade a judge to release Mr. Green on \$500 bond while the Texas Court of Criminal Appeals considers a final ruling on his innocence.

"It's what you go to law school for," Ms. O'Neill said of the moment Mr. Green walked out of jail.

Mr. Green, in the meantime, said the experience of freedom had "been a trip." Just stepping in a grocery store or shopping for clothing at a mall overwhelms his senses, he said.

But the best years of his life are lost forever, he says. He wonders what happened to his girlfriend, whom he lost contact with after being sent to prison. He breaks down when talking about his mother's death in 2006 and how he missed the funeral.

Then he pulls himself together. He has been offered a job as a paralegal with the Innocence Project of Texas, he says, and will dedicate his time to "getting more innocent dudes out."