

"Wagner Sided Too Fast..." DDN 7/20/08

Roger Dean Gillispie should have a new trial or at least a hearing about whether he should have a new trial. Montgomery County Common Pleas Judge A. J. **Wagner** has denied him even a hearing in a decision that ignores too much, a ruling that's too dismissive of the possibility that an innocent man has been in jail for almost two decades.

Mr. Gillispie, who has Fairborn roots, was convicted in 1991 of rapes committed in 1988. Then, later in 1991, he got a new trial, because new evidence was found. He was convicted again.

Three victims identified him as the man who forced them to perform oral sex. There was no physical evidence against him. The convictions depended on the victims identifying him.

Some people noted that the women's identifications were odd, because Mr. Gillispie did not match the physical descriptions the victims had given immediately after the rapes. He was, among other things, quite light skinned, with much chest hair, whereas the perpetrator was described as dark, with no chest hair. The defendant was a nonsmoker, while the victims noted the rapist smoking.

Moreover, the victims first identified Mr. Gillispie two years after the crimes; and not in person, but from photographs that defense lawyers argued were presented in a leading way, designed to get Mr. Gillispie chosen.

These matters were disputed and litigated at trial. The victims stuck to their stories, and the juries — though originally divided in favor of acquittal in the second trial — ultimately were apparently influenced by the identifications.

Mr. Gillispie, who had not been in serious trouble before, has continued to insist for 17 years that he's innocent. He is still in prison. He has been a model prisoner, but has apparently been hurt in his pursuit of parole by his refusal to admit guilt. Parole boards want evidence of contrition.

His case has been taken up by the Ohio Innocence Project, an organization that is associated with the use of DNA testing to clear people who were convicted before such testing was used. However, DNA is not an issue in this case. There is no physical evidence.

Working with the Innocence Project on this case without pay is former Republican Ohio Attorney General Jim Petro.

Mr. Gillispie's new defenders make three basic points:

- The police force involved — Miami Twp. — at first cleared Mr. Gillispie. The photo lineup only happened after experienced officers left and a young officer took over.

The defense says that this information was kept from the court back then. That is arguably a violation of a court ruling known as Brady that says that if information that might well have resulted in a different verdict is withheld by the prosecution, a new trial is required.

- Important information has surfaced about another possible suspect since the second trial (though his name came up before that trial). When questioned about the crime, this individual reportedly referred to "ladies" before anyone had mentioned multiple victims. And he refused to take a lie-detector test (though Mr. Gillispie volunteered for one and passed).

The second individual's former girlfriend has said he is interested in oral sex almost exclusively, that he asks people for cigarettes when he's drunk (as the perpetrator did), that he refers to himself as a contract killer (as the perpetrator did), and that he talks and behaves in other ways the rapist did. Additionally, Mr. Gillispie's lawyers say the individual "later committed a copycat attempted rape by abducting a woman from a parking lot after posing as a law enforcement officer — just like what happened in the rapes in this case."

- Much new information has arisen about the reliability of eyewitness testimony since 1991. The Innocence Project lawyers note that often when DNA evidence results in convictions being overturned, those convictions often were based on victims' testimony.

To all the above and more — presented in legal briefs — Judge **Wagner** responds that there's not much new here. He approvingly quotes the

Montgomery County Prosecutor's Office as saying the defense just wants to "put a fresh coat of paint on issues that have been fully litigated."

But anybody who reads the briefs and the decision must be left with haunting questions. For example, Judge **Wagner** insists — as the prosecutors did — that Mr. Gillispie's lawyer in 1991, Dennis Lieberman, must have known back then about the first police investigation of Mr. Gillispie being kept secret. (That would put the information in the "nothing new" category.) They argue that Mr. Lieberman's investigator had to notice that the documents about that investigation were missing from the police files.

But new affidavits from Mr. Lieberman and his investigator both address this point powerfully, rejecting it. Judge **Wagner** does not take note of those statements.

The Innocence Project and Mr. Petro say they will appeal to the Second District Court of Appeals. They should. Even if the decision is again not to have a hearing, that decision will have more legitimacy as the result of needed — and more thorough — scrutiny.

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