

Case Study: “Coping with Innocence After Death Row”

To be used with “Coping with Innocence After Death Row.” By Sandra D. Westervelt and Kimberly J. Cook. *Contexts*. Fall 2008.

Factual background: In two separate incidents in July 1984, a male assailant broke into an apartment, severed phone wires, sexually assaulted a woman, and searched through her belongings, taking money and other items.

On August 1, 1984, Ronald Cotton was arrested for the rapes. In January 1985, Cotton was convicted by a jury of one count of rape and one count of burglary. In a second trial in November 1987, Cotton was convicted of both rapes and two counts of burglary. A County Superior Court sentenced Cotton to life plus 54 years.

Prosecutor's evidence at trial: Cotton's alibi was supported by family members. The jury was not allowed to hear evidence that the second victim failed to pick Cotton out of either a photo array or a police lineup. The prosecution based its case on several points:

- A photo identification was made by one of the victims.
- A police lineup identification was made by one of the victims.
- A flashlight in Cotton's home resembled the one used by the assailant.
- Rubber from Cotton's tennis shoe was consistent with rubber found at one of the crime scenes.

Post-conviction challenges: Cotton's attorney filed an appeal. The North Carolina Supreme Court overturned the conviction because the second victim had picked another man out of the lineup and the trial court did not allow this evidence to be heard by the jury.

In November 1987, Cotton was retried for both rapes. The second victim had decided that Cotton was the assailant. Before the second trial, a man in prison who had been convicted for crimes similar to these assaults stated to another inmate that he had committed Cotton's crimes. The superior court judge refused to allow this information into evidence, and Cotton was convicted of both rapes and sentenced to life.

The next year Cotton's appellate defender filed a brief that did not argue the failure to admit the second suspect's confession. The conviction was affirmed. In 1994, two new lawyers, at the request of the chief appellate defender, took over Cotton's defense. They filed a motion for appropriate relief on the grounds of inadequate appeal counsel. They also filed a motion for DNA testing that was granted in October 1994. In the spring of 1995, the Burlington Police Department turned over all evidence that contained the assailant's semen for DNA testing.

DNA results: The samples from one victim were too deteriorated to be conclusive, but the samples from the other victim's vaginal swab and underwear were submitted to PCR testing and showed no match to Cotton. At the defense attorneys' request, the results were sent to the State Bureau of Investigation's DNA database containing the DNA patterns of convicted, violent felons in North Carolina prisons. The State's database showed a match with the convict who had earlier confessed to the crime.

Conclusion: After Cotton's attorneys received the DNA test results in May 1995, they contacted the district attorney, who joined the defense attorneys in the motion to dismiss the charges. On June 30, 1995, Cotton was officially cleared of all charges and released from prison. In July 1995, the governor of North Carolina officially pardoned Cotton, making him eligible for \$5,000 compensation from the State. Cotton had served ten and one-half years of his sentence.

Discussion Questions:

1. Do you think Cotton's wrongful conviction could have been prevented? In what stages of the investigation and trial? How?
2. Do you think the use of DNA evidence can prevent wrongful conviction? Why or why not?
3. Do you think Cotton should receive any monetary compensation from the state? Why or why not?
4. If you are in favor of monetary compensation, what would be a reasonable amount of compensation?
5. Does Cotton deserve any non-monetary compensation (e.g. formal apology from the victim who mistakenly identified him as the offender)?