

New Evidence Overturns Virginia Murder Conviction

By Brooke A. Masters
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A Virginia court ruled yesterday that a Richmond man has been wrongly imprisoned for 11 years, basing its decision on evidence that surfaced long after the state's shortest-in-the-nation deadline for bringing such information to light. With the ruling, Jeffrey David Cox becomes the first Virginia inmate to have his conviction overturned based on evidence discovered after the state's 21-day deadline.

Richmond Circuit Court Judge Walter W. Stout III erased Cox's murder conviction after an unprecedented motion from the Virginia attorney general saying that "reliable information has been developed . . . that the interest of justice requires" that Cox's appeal be granted.

Stout ordered the state prison system to bring Cox to court this morning for a hearing. "We expect that as of 11:30 [this] morning, Jeff will be a free man," said Steven D. Benjamin, one of Cox's attorneys. "We thought this day would never come."

Attorney General Randolph A. Beales said in a statement that his staff made the motion "to resolve this extraordinary case in a just and fair way."

Since 1989, Virginia has freed five inmates after DNA testing cast doubt on their guilt, but all five were released through gubernatorial clemency rather than the courts. The Virginia attorney general's office also has agreed in the past that a post-conviction appeal, called a writ of habeas corpus, should be granted, but those cases have involved procedural errors, such as a biased juror, rather than new evidence of innocence.

"The approach before has always been, 'Evidence of innocence? Take it to the governor,'" said University of Richmond law professor Ron Bacigal. "They've been under pressure a lot lately. Maybe things are starting to change."

Cox, 33, was sentenced to life plus 50 years for the Aug. 31, 1990, slaying of Ilouise Cooper, 63, based largely on the testimony of two of Cooper's neighbors, who said Cox and another man had dragged her from her apartment at 3 a.m. Her body, with three stab wounds, was found later.

Cox, an air conditioning repairman from New Kent, maintained his innocence, but his appeals never succeeded, even though his attorneys turned up information that cast doubt on the fairness of his trial. Human flesh from beneath Cooper's fingernails was lost before it could be tested for DNA, and jurors did not know that two police sketches did not look similar to each other or to Cox.

Then the FBI and a federal prosecutor became interested in the case. In May, Assistant U.S. Attorney Robert Trono, on special assignment as a local prosecutor, charged another man, Stephen Hood, with Cooper's death. During the summer, Trono filed court papers saying that a witness had told investigators that a man named William Madison, who has not been charged, said "he and Stephen Hood committed the Cooper murder and Jeffrey Cox was innocent."

Attorneys for Hood and Madison did not return phone calls. At the request of the attorney general's office, Cox took and passed an FBI polygraph, his attorneys said.

Faced with mounting evidence that something had gone wrong, the attorney general's office agreed to yesterday's unusual settlement. In theory, the judge's decision would allow prosecutors to try Cox again, but Richmond Commonwealth's Attorney David M. Hicks said: "We have reliable and compelling evidence that it was not Mr. Cox. An innocent man spent 11 years in jail."

Benjamin and his partner, Betty Layne DesPortes, said they told Cox on Monday that he might soon be released. "He was so stunned that he could only utter single-word comments. . . . Then he broke down sobbing," Benjamin said.

Last winter, the General Assembly created an exception for scientific evidence, such as DNA, to the state's 21-day deadline for proof of innocence. But other evidence, such as the new witness statements in the Cox case, is still legally barred if discovered more than three weeks after sentencing.

Until now, the attorney general's office has defended that legal precedent. In the early 1990s, then-Attorney General Mary Sue Terry (D) once said in a death row case, "Evidence of innocence is irrelevant," and the office still generally adheres to that line when defending criminal convictions on appeal.

The Cox case could represent a significant shift, legal analysts said. But because his conviction was thrown out with the agreement of the attorney general's office, it is not entirely clear what impact this case will have on other inmates' claims of innocence.

"I think this would be a significant precedent," Bacigal said. "Though the attorney general's office can recommend that the writ be granted, it's still the court doing something it has never done before."

But University of Virginia law professor George Rutherglen said state officials may be able to limit the impact of Cox's case and continue to argue that such evidence is irrelevant in other appeals.

"It's better to settle a case that is a clear loser rather than go down in flames and have the constitutional principle established that you have a right to be free if you are innocent," Rutherglen said.

But DesPortes said she hopes the state has learned a lesson from this case. "Truth is never irrelevant," she said.