

ASHEVILLE CITIZEN-TIMES INNOCENT



Robert Wilcoxson, right, is embraced by his father, Robert Wilcoxson-Bey, after being released from prison on Thursday.

PHOTOS BY ERIN BRETHAUER/STAFF

Murder convictions overturned, men freed

By Clarke Morrison and Jon Ostendorff

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ASHEVILLE — Video evidence taped over with a segment from a daytime soap opera. A dismissed confession from a man never charged. A defense attorney's admission that he put on too much pressure to accept a plea deal.

All added to a case fraught with errors — from the day a sheriff later convicted of corruption stepped into an interrogation room to revelations that DNA evidence that might have cleared two Asheville men of murder never made it to defense attorneys.

The weight of those mistakes and others convinced three judges Thursday that Buncombe County deputies and prosecutors botched the murder investigation.

The panel ordered both men set free — almost 11 years after being jailed for a killing in which they had no part. Their decision marked only the second case in North Carolina in which convictions were overturned under a law that created the N.C. Innocence Inquiry Commission in 2006.

Family of Kenneth Kagonyera and Robert Wilcoxson wept and smiled as Superior Court Judge Erwin Spainhour announced the unanimous ruling — done in the same courtroom where the men were sentenced.

Defense attorneys presented evidence over seven days of testimony that Kagonyera and Wilcoxson were

WHAT WENT WRONG

» The first CrimeStoppers tip to the Sheriff's Office after the slaying offered the name of a man who later confessed to the crime from prison and named two others as accomplices. Investigators discounted them.

» Deputies collected three bandanas and four gloves found on the roadside near the crime scene the day after the murder. Defense attorneys said prosecutors never told them DNA from the bandanas didn't match the suspects.

» The SBI later found that the DNA matched another man implicated but never charged. Investigators for former Sheriff Bobby Medford — later jailed on unrelated corruption charges — and District Attorney Ron Moore took no action.

» Defense attorney for Kenny Kagonyera pressured him to plead guilty to second-degree murder to avoid a possible death sentence. The attorney later acknowledges he applied too much pressure.

» A three-minute segment of video surveillance tape taken around the time of the murder from a convenience store near the crime scene was taped over with an episode of "The Guiding Light" after being taken as evidence. The tape would have offered a closer look at faces of men implicated but never charged.

'It was a long time coming'

By Jon Ostendorff

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ASHEVILLE — Kenneth Kagonyera had braced himself for the possibility that the judges wouldn't believe him.

He tried not to dwell on the idea as he waited in his cell Wednesday night and into Thursday.

But the his fear did not come to pass.

At 5:45 p.m. — nine years and 12 days after his prison door closed — he walked down the hall and out the door of the Buncombe County jail a free man.

His mother and grandmother hugged and kissed him as his family broke into applause.

"It was a blessing," he said. "It was a long time coming."

He thanked his attorney, Noell Tin, and the N.C. Innocence Inquiry Commission.

The commission ruled in April that there was evidence

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wrongly prosecuted for the murder of Walter Rodney Bowman during a home invasion on Sept. 18, 2000.

"I trust in God, but man is flawed," Charlene Holmes, Kagonyera's mother, said just after announcement of the decision. "But I'm so happy. We're going home."

"We praise God, and then we'll feed Kenny whatever first meal he wants," Holmes said.

Wilcoxson's father, Ronald Wilcoxson-Bey, said that justice was at last served.

"I miss my son. I'm going to take him home now," he said. "I'm just happy to get him back. He said he was innocent from the beginning."

But for Evita Bowman, the victim's daughter, the ruling was bittersweet.

"I give my best to their family, and I'm glad that they were released and found innocent," she said. "But for us as a family, there is still not closure because we don't know what actually happened to my father."

The hearing was held at the direction of the N.C. Innocence Inquiry Commission, which ruled in April there was enough credible new evidence that Wilcoxson, 32, and Kagonyera, 31, didn't commit the murder. The commission's finding led to the hearing in Asheville.

In the only other Innocence Commission case that led to a conviction being overturned, Greg Taylor, a Cary man convicted of murdering a prostitute in 1991, was declared innocent by a three-judge panel in February 2010.

Attorney Chris Fialko, who represented Wilcoxson, said he was thrilled by the verdict.

"It's been a long haul, and North Carolina should



Kenneth Kagonyera leaves the Buncombe County Detention Facility with his grandmother Alice McLean on one arm and his mother, Charlene Holmes, on the other after being jailed for 11 years on murder charges.

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be proud of its Innocence Inquiry Commission," he said. "Not many states have this vehicle for exonerating people who didn't commit the crime they were convicted of."

But Fialko said he had been uncertain how the judges would rule, particularly given that the defendants had the burden of proof by clear and convincing evidence.

"We were confident in our evidence, and the Innocence Inquiry Commission staff did an amazing job in investigating this case and handing it off to us," he said. "But it's an unusual situation for a defendant to have the burden of proof, and I wasn't sure how the strong evidence would jive with that particular burden of proof."

District Attorney Ron Moore, whose office prosecuted Kagonyera and Wilcoxson on the murder charges, watched the entire hearing from a seat near the back of the courtroom.

"We accept the ruling of the court," he said.

Moore said he has no plans now to pursue charges against anyone else.

But Moore said he's concerned the decision is going to make it harder for prosecutors to accept guilty pleas because there will be no way of knowing if a defendant is going to recant later.

Kagonyera and Wilcoxson pleaded guilty to second-degree murder in Bowman's slaying but later said they were under intense pressure from prosecutors, investigators, family members and their own attorneys for fear they could spend life in prison or be sentenced to death.

Each was sentenced to 12-15 years in prison.

Defense attorneys presented evidence that a confession by a man who was never charged or seriously investigated and DNA evidence that tied another man to the slaying showed that investigators and prosecutors targeted the wrong suspects.

According to witness testimony, three men stormed into Bowman's Church Road house in Fairview, their faces covered by bandanas. At least two of the men had guns.

Bowman, who had been sleeping, awoke from the commotion and opened his bedroom door. Seeing a man with a shotgun, he slammed the door shut. The gunman then fired through the door, hitting

Bowman in the abdomen.

The assailants fled, and Bowman died on the way to the hospital.

In the weeks after the slaying, Buncombe County detectives charged six men, including Kagonyera and Wilcoxson, with first-degree murder.

Bandanas and gloves were found on the side of the road not far from the crime scene the day after the shooting. Considered by detectives to be potential evidence in the case, the items were sent to the State Bureau of Investigation crime lab for DNA testing.

The lab found that saliva on the bandanas couldn't be matched to any of the suspects.

But according to testimony by Sean Devereux, Kagonyera's former attorney, and Jack Stewart, who represented Wilcoxson, Moore's office never passed along the SBI lab report.

Devereux said that had he known about the results excluding the suspects, he might not have urged his client to accept a plea bargain.

Then in 2003, a U.S. Drug Enforcement Administration agent got a call from federal inmate Robert Rutherford. The agent said Rutherford confessed to the home invasion, providing extensive details about how the crime was carried out.

He named Bradford Summey and Lacy "J.J." Pickens as his accomplices and said Summey was the triggerman.

Attorneys for Wilcoxson and Kagonyera said Rutherford's confession was corroborated in 2007 when Summey's DNA was matched to one of the bandanas found near Bowman's home.

Summey, who was recently released from prison after serving four years for a string of convenience store holdups in the Asheville area, testified he had nothing to do with the slaying.