

Headline: Unpopular defense

Intro: **Erdahl's long crusade wins retrial in Quad Cities murder case**

Byline: Lynn M. Tefft, Source: Gazette staff writer

Iowa City Gazette

IOWA CITY - From the minute he met convicted murderer Sherman White in the Fort Madison penitentiary in 1983, Iowa City attorney Clemens Erdahl was convinced White shouldn't be there. So, for the last 16 years, Erdahl has advanced a tedious and time-consuming appeal to win White's release.

"When Sherman told me what had happened, how he'd been railroaded, forced to be there and is spending the rest of his natural life in prison, I believed then and believe now that it was an injustice," Erdahl said.

That belief has fueled Erdahl through a case so complicated he's devoted whole weeks at a time to it, so intensive he's retreated to a monastery to work on it, so exhausting he had to hand it off to his partner for a couple of years.

He's received the court-appointed attorney rate - about one-third his normal hourly rate - for about two-thirds of his work.

Erdahl's work paid off last month, when a panel of judges from the Eighth Circuit Court of Appeals ruled that White, 45, is entitled to a new trial because the state withheld crucial evidence in his 1972 Scott County case.

Bob Brammer, spokesman for Iowa Attorney General Tom Miller, declined to comment on the ruling except to say that the state has asked for a rehearing by all nine circuit court judges.

Advancing the same arguments he had in lower courts, Erdahl prevailed after he won access to new evidence that buttressed one of his key points - police memoranda that showed investigators influencing the testimony of a witness who labeled White as a key participant in the crime.

But Erdahl's work on White's behalf likely is not over. If the nine judges agree to review the case, another years-long round of briefs and arguments will begin.

If the judges decline, the state must decide whether to try White again or release him. Erdahl said he will be one of the attorneys who will represent White if there is a new trial.

The case has put Erdahl at the center of whirlwind in the Quad Cities, where the recent turn of events has resurrected ugly memories of one of the area's bloodiest rampages.

Not that Erdahl is unaccustomed to being a lightning rod for controversy. Clients in his 20-year law career have included Lary Morgan, a 38-year-old Missouri man found guilty of the abduction, sexual assault and murder of 9-year-old Anna Marie Emry of Grinnell in 1994.

A magistrate appointed Erdahl to represent Morgan, citing the attorney's experience in defending people accused of serious crimes.

Other high-profile clients include accused armed robber Michael Constantino in 1995 and Robert Sirovy, accused in the kidnap and sexual abuse of a prison guard in 1990. Erdahl currently is defending James Frank Miller, 17, who is accused of helping beat Frank Boyd to death last summer and burn his body.

Iowa Citizens also know Erdahl from his time on the City Council, from 1977 to 1985.

Erdahl was an undergraduate at the University of Iowa when one of the Quad Cities' most infamous crimes happened. Five men busted into the Shamrock bar in Davenport on Jan. 19, 1972, killing a bartender and two patrons and injuring three other patrons.

White, 18 at the time, maintains to this day that he was forced to participate in the robbery and ran as soon as shots were fired. The state argued that White in fact had "cased" the bar before the robbery.

Erdahl said he believes White was convicted of murder, robbery and assault, despite substantial evidence to support his innocence, because prosecutors bore "understandable pressure" from the Quad Cities community to get convictions.

Glen McGhee and Tommy Cunningham also were convicted of murder. McGhee remains incarcerated at a high-security prison in Marion, Ill. Cunningham was killed in prison. Eugene Orr and Clayton Vesey each spent about 12 years in prison after being convicted of lesser charges.

The man driving the car that night, Michael Mann, also argued he had been coerced and was never charged. Mann - who has told Erdahl that White was essentially in the same situation as he - had parents to stand up for him, Erdahl said. White's parents had died some years before. White's three sisters and brother were supportive, he said, but limited in their ability to advocate for White.

Moreover, it seemed to Erdahl that even those in a better position to defend White were letting him down. By the time Erdahl met White in 1983, White's post-conviction appeal was about to be dismissed for lack of action by a previous court-appointed attorney, who saw no use in pursuing it.

"It was an 11th hour problem at that point," Erdahl said.

The day he met White, Erdahl was in Fort Madison on behalf of a client and a case he doesn't remember. But he was so convinced by White's story that he took over that case and persuaded the Iowa Supreme Court to remand the case back to the post-conviction trial stage.

It would be years before White was vindicated in the federal courts, however. All state remedies had to be exhausted before the case could be appealed.

Erdahl dug deep into the state appeal, taking depositions from the attorneys who had represented White at the trial, the jurors and the witnesses who testified.

At the trial for post-conviction relief, Erdahl argued that the prosecution during the trial alluded to a statement White allegedly made to police about "killing all the witnesses," after agreeing not to introduce the statement.

Erdahl also argued that the jury was tainted because a juror was observed talking to a family member of one of the victims.

Denied at the post-conviction trial, Erdahl again appealed the case to the Iowa Court of Appeals. That court also denied the appeal but noted it did not necessarily approve of the way the jury matter was handled.

Thus the state proceedings ended in 1986, sending the case into the federal courts. Erdahl began fighting an even more protracted fight.

Attempting to craft airtight arguments on a number of ways White was wronged, including that his statement to the police was involuntary and inadmissible at trial because it was induced by a promise of leniency, Erdahl combed documents and conducted hours of interviews. He spent days at a time at the University of Iowa College of Law library conducting research.

It was a tug of war in slow motion - Erdahl would advance an argument or make a motion and the state would ask for a reconsideration. Each step took two or three years.

"Both sides want to make sure things are right because there's so much finality to it," Erdahl said.

Ironically, some of the evidence most crucial to Erdahl's victory was the result of an argument forwarded by the Iowa Attorney General's office. Responding to the allegation that the prosecution had illegally used information from White's statement to police, the attorney general's office asserted that prosecutors could have obtained that information elsewhere.

A judge granted Erdahl's motion to see the files that contained that information. Erdahl found police memoranda indicating that Al Stouffer had been coached into fingering White as an assailant, when previously he had named Cunningham.

The prosecution had withheld the memoranda from White's attorneys at trial, thus denying White a chance to fairly defend himself. Erdahl had the evidence that ultimately would persuade the court that White deserved a new trial.

But such victories came with a price. Erdahl actually gave up the case for a couple years in the early 1990s. He was replaced for a short time by another court-appointed attorney, then his partner Bruce Nestor took over.

"There's a lot of tension and anxiety with a case like this. At times it seems pretty hopeless," Erdahl said.

"Both Sherman and I thought new blood would be helpful."

Erdahl took on the case full time again five years ago.

He said White is "cautiously optimistic and apprehensive" about the court's latest ruling.

"There's still the possibility of his not being released," Erdahl said. "One can only imagine how it feels to come this close and not get one's freedom after this many years. And to be re-entering society - a lot has changed in 27 years."

"It won't be over until I shake Sherman White's hand outside the penitentiary," he said.

On March 19, 2003, Clemens Erdahl and the Reverend Ed Mutum met Sherman White, Jr., outside the Newton Correctional Facility. He was given a ride home to the Quad Cities a free man for the first time in 31 years and two days. Clemens had worked on Sherman's case for 20 years by that time.

Sherman White, Appellant, v. James Helling, Acting Warden, Iowa State Penitentiary, Appellee.

No. 98-3604SI

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

194 F.3d 937; 1999 U.S. App. LEXIS 25834

**June 15, 1999, Submitted
October 19, 1999, Filed**

SUBSEQUENT HISTORY: [**1] As Corrected October 21, 1999. Rehearing En Banc and Rehearing Denied December 6, 1999, Reported at: *1999 U.S. App. LEXIS 32034*.

PRIOR HISTORY: On Appeal from the United States District Court for the Southern District of Iowa. 86-cv-50599. Honorable Donald E. O'Brien.

DISPOSITION: Judgment of the District Court reversed and cause remanded with instructions.

LexisNexis(R) Headnotes

COUNSEL:

Counsel who presented argument on behalf of the appellant was Clemens Erdahl of Iowa City, IA.

Counsel who presented argument on behalf of the appellee was Thomas J. Miller, AAG, Des Moines, IA. Mary Tabor, Attorney General, also appeared on appellee's brief.

JUDGES: Before RICHARD S. ARNOLD and LOKEN, Circuit Judges, and BYRNE, n1 District Judge.

n1 The Hon. William Matthew Byrne, Jr., United States District Judge for the Central District of California, sitting by designation.

OPINIONBY: RICHARD S. ARNOLD

OPINION: [*939] RICHARD S. ARNOLD, Circuit Judge.

A jury convicted Sherman White of two counts of robbery with aggravation, three counts of murder, and two counts of assault with intent to commit murder. White was sentenced to three terms of life imprisonment without parole, two terms of thirty years' imprisonment, and three terms of twenty-five years' imprisonment, all to run concurrently. White's conviction and sentence were affirmed in his initial appeal, and upheld again when he sought postconviction relief. See *State v. White*, 223 N.W.2d 173 (Iowa 1974); *White v. State*, 380 N.W.2d 1 (Iowa App. 1985).

White then filed a petition for habeas corpus relief. The District Court denied the petition, and later denied White's motion to reconsider. [**2] White now appeals. He raises a number of issues in his appeal, including a claim that material, exculpatory evidence was withheld by the state and a claim that he received ineffective assistance of counsel. We hold that material exculpatory evidence was withheld from White, the state trial court, and the jury. White must be released or given a new trial.

I.

On January 19, 1972, White and five other men were involved in a robbery at the Shamrock Tavern in Davenport, Iowa. n2 The bartender and two of the bar's patrons were shot and killed during the robbery. Other patrons at the bar were also injured. White himself did not shoot or assault anyone. White was tried separately from the other defendants and raised a coercion defense at his trial. The jury apparently did not believe that White had been forced to participate in the robbery, however, and found him guilty of eight felonies.

n2 The five other men involved in the robbery were Glenn McGhee, Tommy Cunningham, Eugene Orr, Clayton Vesey, and Michael Mann. Mann was the only one not charged. The State

