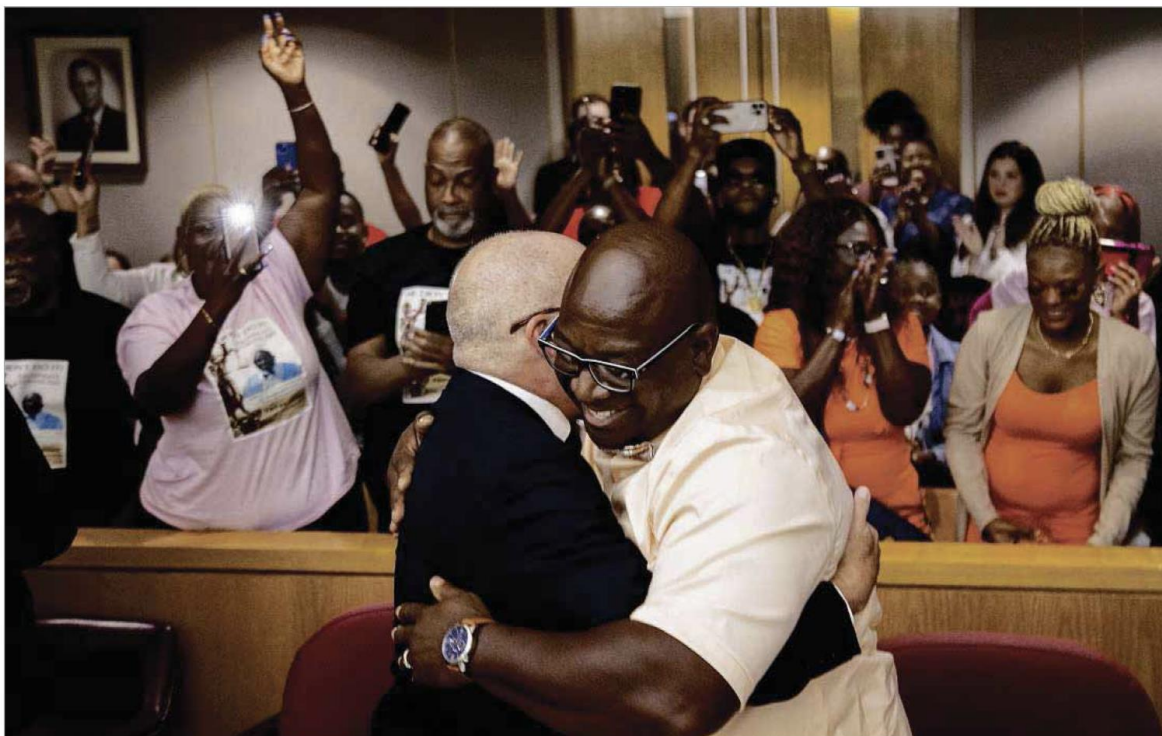


DALLAS



Photos by Juan Figueroa/Staff Photographer

Tyrone Day (right) hugged Gary Udashen of the Innocence Project of Texas after he was officially declared a free man Wednesday in Dallas. Day was wrongly convicted in 1990 of sexual assault. He said he took a plea deal expecting freedom in about four years. He served 26 years.

‘I am thankful for this day’

Man officially exonerated in '89 sexual assault for which he served 26 years

By **LANA FERGUSON**
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When Tyrone Day put a hat on before leaving his house in 1989, he didn't know it held the power to change his life.

The hat would be one of the few key pieces of evidence connecting him to a sexual assault he didn't commit but would spend more than two decades in prison for.

"It's been a struggle, but I made the best of my life since being out. It's been a success so far," Day, 52, said in a Dallas County courtroom after a hearing on Wednesday that formally exonerated him. The hearing came more than eight years after Day was released from prison on parole.

Before dozens of Day's family members, friends and "exoneration brothers" filled the courtroom past capacity, he snuck a quiet, private moment with his mother, Shirley Day, and wife, Terry Lee-Day.

The women sat in the front row, Lee-Day rested her hand on her mother-in-law's back. Day, in a light orange button-down and pristine bowtie, stood in front of them.

They exchanged some soft words of comfort. Day leaned over the partition and placed a gentle



Day celebrates with his wife, Terry Lee-Day (left), and daughter, Tyronda Frost (center) after the exoneration hearing.

kiss on his mom's cheek.

"Thank you for coming to support me not only today but all the days before," he said, waving his hand.

Minutes later, Day sat at the front of the room surrounded by lawyers. His family stood behind

them. Their pride and joy was evident in their smiles and custom T-shirts, which had photos of themselves with Day and messages like "HE DIDN'T DO IT!"

Day had waited more than three decades for this moment.

In 1990, Day, then 19, was convicted of sexually assaulting a woman in the Fair Park area of Dallas in 1989. He maintained his innocence but accepted a plea deal that sentenced him to 40 years in prison and to register as a sex offender for the rest of his life. Since 2004, he's worked with the Innocence Project toward exoneration.

Reflecting, Day and his lawyers said he was led to think taking a plea offer and falsely admitting guilt would get him released from prison in about four years. Day took his chances of being able to come home to his 2- and 3-year-old daughters, Tyronda and Dametra, much sooner than risking a trial that could end with a possible 99-year sentence.

That promised parole release didn't happen until 2015, after he'd spent roughly 26 years in prison.

Day's legal team said he didn't know until af-

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Juan Figueroa/Staff Photographer

Paul Genender (right), a member of Tyrone Day's legal team, wiped away tears at Day's exoneration hearing Wednesday in Dallas while Day listened to the proceedings.

Despite years lost to prison, exoneree maintains gratitude

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ter his conviction that police arrested him because the victim said her assailant wore a similar hat. No other physical characteristics were taken into account, and the woman was never offered the chance to identify Day in a photo lineup.

The woman recanted her testimony and identification of Day after his conviction, and DNA tests conducted decades later excluded him as a suspect. The tests, according to the district attorney's office, linked the DNA on evidence back to two men, but the statutes of limitation on the case have long expired.

The Dallas County Criminal Court ruled in March that Day's due-process rights had been violated and called for the guilty plea to be vacated. The Texas Court of Criminal Appeals ruled in agreement last month.

'Miscarriage of justice'

Wednesday's hearing came after the conviction integrity unit in the District Attorney John Creuzot's office reinvestigated Day's case. It marked the 44th exoneration in Dallas County since 2001, when the post-conviction DNA statute went into effect.

"We're pleased to be able to right this wrong, and while we know Mr. Day can't get back the years lost, we hope he finds some solace in seeing that justice has finally been done today," Creuzot said.

He said Day's case was not properly investigated and should not have gone before the grand jury.

"We're dismissing this case because he didn't do it," Creuzot said.

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The conviction integrity unit, led by Cynthia Garza, worked closely with Innocence Project attorneys at Weil, Gotshal and Manges, and Gary Udashen of the Innocence Project of Texas. The Innocence Project took on Day's case in 2004 after he first reached out to them in 2000.

Garza stood before Judge Carter Thompson and asked that Day be exonerated due to "actual innocence."

Then she turned to make eye contact with Day.

"The state apologizes for the miscarriage of justice against you and the time you lost," she said.

Day nodded. His attorneys, Paul R. Genender and Jenae D. Ward, also addressed the judge. They said their work on the case had been a humbling experience in the fight for justice.

Then, Day got his turn.

He looked at the judge and around the room as he thanked a litany of people. He finished the thank-yous with one to God.

"I lost a lot of years, but I am thankful for this day," he said, adding that justice would prevail.

Thompson softly smiled.

"You're a free man," he said after declaring the exoneration official. "I hope the next 26 years are better than the last 26."

The courtroom erupted with claps and cheers. The onlookers pointed their phones at the front of the courtroom to take photos and craned their necks to get their first look at Day finally being recognized as the innocent man they knew him to be all along.

"We are here today because at the core of this is [Day's] incredible persistence," Vanessa Potkin, Innocence Project director of special litigation, said after the hearing. She said his determination to prove his innocence has also shown in the way he's been able to do so much after getting out of prison: rebuild his life, get married and work to deliver food.

Work since release

Day's efforts with Restorative Farms as system manager and lead horticulturist earned him recognition as one of *D Magazine's* Front Line Heroes of 2020 after he donated 220 portable gardens to the community and over 40,000 plants to community gardens. He co-founded the farm with Brad Boa, Owen Lynch and Doric Earle, who were all in the courtroom supporting Day on Wednesday.

Day gave the crowd advice that he's reminded himself of over the 33 years his case has been going through the justice system.

"Never give up. Keep pursuing your justice, your freedom, the truth," he said. "Keep pursuing the truth."

As Day worked his way to the exit, he continued to shake hands and share embraces and thank everyone.

Outside the room he was greeted by another round of applause and cheering. He did a little shimmy and twirled with a smile and small jazz hands.

"I made it by the grace of God," he said.

"Amen," the crowd responded.

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