

## THE DALLAS MORNING NEWS

THE QUALITY OF JUSTICE: They had the wrong man, but no one believed him  
He says preventable error cost him job, car, home

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07/16/00

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Henry Earl Clark kept telling them they had the wrong man.

But the truth meant nothing without an attorney, which he was too poor to hire. And he waited six weeks in jail last summer for his constitutional right to get one - the sort of delay that's common in this state and rare elsewhere. Mr. Clark's court-appointed lawyer was no quick fix. So he spent seven more weeks locked up, a prisoner of misinformation that could have been corrected almost instantly. The East Texas drug warrant that named him was meant for someone else.

"Down there you're guilty when you're arrested," the 52-year-old Dallas man says. "You have to prove yourself innocent."

Mr. Clark lost three months of freedom, his bucket manufacturing job and the '77 Oldsmobile he was restoring, among other things. Smith County's taxpayers, meanwhile, spent about \$2,600 to house and feed him.

Now they're facing a civil rights lawsuit, as are their counterparts in neighboring Gregg County and two police officers. The defendants' attorneys declined to comment on the case, which is pending in federal court and seeks unspecified damages.

The seeds of Mr. Clark's nightmare were planted in October 1997, when a police informant bought a rock of crack cocaine in rural Smith County, near the Gregg County line, from a dealer nicknamed Hendog.

According to a Gregg County drug task force report, an officer "was familiar with that name and knew the person to be Henry Earl Clark." He was another black man named Henry Earl Clark, who had a criminal record in Gregg County and was 14 years younger.

Shown a mug shot, the informant identified that man as the dealer. So far, so good. Then another officer ran a Texas criminal history check, inexplicably entering the wrong birth date - that of Mr. Clark of Dallas, who was in the state computer because of some old misdemeanors, none from Gregg County.

Nonetheless, data from that criminal history check went into an arrest warrant for the drug sale. It lay dormant until Aug. 11, 1999, when the Dallas man was driving to work and got pulled over on a traffic stop.

He told the officer he'd never been to Smith County. He told the sheriff's deputy who hauled him off to Tyler a week later, and he told the jailers when he got there.

Next he told the magistrate, who set bail at \$10,000 and assured him he could get a court-appointed attorney.

But that judge didn't make the appointment - that's not the way the system works in Smith or most other Texas counties. Nor did the judge say when or how legal representation would become available.

Four more days passed without any sign of help. From his cell, Mr. Clark submitted a written request for counsel. One month later, the state district judge assigned to his case appointed former Smith County prosecutor Richard Kennedy to defend him.

It took seven more weeks to free Mr. Clark; it's not clear why. But there is no sign in court records that Mr. Kennedy or anyone in law enforcement ever compared his client's fingerprints with those of the Gregg County man with the same name. Nor, apparently, did they compare public documents on the two.

"Didn't my arrest record show you and the D.A. where I've been for the past 30 years?" Mr. Clark wrote to his defense attorney about two weeks after Mr. Kennedy was appointed. "Why didn't they send this ugly guy's prints, along with photo?"

He pleaded for quick action so "I can get out of this godforsaken jail, get back to my job. ... I am not a drug user or dealer. I am a tax-paying American, just as you are."

Charge dismissed

Mr. Kennedy, who declined to comment, focused his legal efforts instead on getting the prosecution to turn over a video that the informant had secretly shot of the crack transaction.

Judge Cynthia Kent ordered it surrendered on Oct. 22, but the district attorney's office did not comply for nearly three weeks. On Nov. 11, the judge saw the tape - its quality was poor, but enough to convince her - and dismissed the charge.

That was too late for Mr. Clark, whose prized car had been auctioned by the Dallas auto pound; there were no relatives he could count on to rescue it. These days, he rides the bus to a job that pays several dollars an hour less than his old one. He recently moved into a boardinghouse after spending months in a homeless shelter.

A national expert on criminal identification procedures expressed amazement at how authorities handled the case.

"Standard operating procedure everywhere is if you're in doubt, check the fingerprints," said Charles "Bud" Meeks, an Indiana state senator and former sheriff who is interim executive director of the National Sheriffs' Association. "That would have cleared it up immediately."

Smith and Gregg counties can send prints by fax or electronically to the state's central repository in Austin for quick comparison, said Department of Public Safety spokeswoman Tela Mange.

"They have the resources there," she said, "if they choose to use them."