

COVER STORIES

Gyronne Buckley was sent to prison for life on the word of a cop who has been called a disgrace to the state

by David Koon

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AT HOME IN ARKADELPHIA: Gyronne Buckley.

Credit: Brian Chilson


Gyronne Buckley is a free man.

His criminal record reflects that fact. It shows that he has never been tried or convicted of any offense, save a misdemeanor for “inciting a riot” after, he said, he was jumped amidst racial tensions at his high school in 1972. At 60, he lives a quiet life. He mows the grass and takes care of his grandkids while his daughter catches extra shifts. He is free. But he has been rendered un-innocent.

In January 1999, Buckley was arrested for allegedly selling less than a paperclip's weight of crack cocaine to an undercover informant with a checkered past. Within six months, Buckley was sent to prison for two life sentences on the word of Drug Task Force Agent Keith Ray, a cop who resigned after later admitting he'd lied in a similar case. A videotape would later surface of Ray coaching an informant into the right answers the month before Buckley's trial.

In November 2010, after a decade of courtroom wrangling, a special prosecutor dropped charges against Buckley, and he was freed after 11 years and 6 months in prison. With his record expunged, Buckley's attorneys presented a case for wrongful conviction to the Arkansas State Claims Commission in December 2013. The commission unanimously voted to award him \$460,000 — only the second time the commission had awarded money to a wrongfully convicted inmate. The other case also involved task force agent Ray, a man who Arkansas Attorney General Dustin McDaniel would later call a disgrace to the state.


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If the top law enforcement officer of the state believes that, why did a legislative subcommittee ultimately reverse and dismiss Buckley's claim, after McDaniel's impassioned argument that they do so? Buckley attorneys will tell you that the answer to that question likely has a lot more to do with money than with justice.

240 yards

Corey Livsey was a small-time guy with a problem.

A Chicago native who had followed his girlfriend to sleepy Arkadelphia, he'd been in town less than three months when he was caught shoplifting at the local Walmart on Jan. 12, 1999. Having been to the penitentiary in Illinois three times for petty crimes, he ran as the police closed in. When they caught him, the charge was bumped up to robbery because he'd fled. He didn't want to do time in Arkansas. So he told the officers he could help them bust a drug dealer.

Later that day, he met with Arkadelphia police officer Roy Bethell, Linda Card and Keith Ray. Ray and Card were agents with the South Central Drug Task Force, which operated in seven Southwest Arkansas counties, converting federal dollars into drug arrests and convictions. The war on drugs was in full flower in 1999, and a record of sending drug pushers away for long sentences looked a lot like job security for cops and prosecutors all over the state.

By the afternoon of Jan. 12, Livsey had cut a deal, telling the agents that he had bought crack cocaine on at least 10 occasions from Gyronne Buckley, who he met through Buckley's cousin. The cops would wire up Livsey with a hidden microphone, give him money with recorded serial numbers, and send him to Buckley's house on Peake Street to purchase crack as they watched from a distance. In addition to having the charges against him dropped, Livsey later testified, he was paid \$100.

Attempts by the *Arkansas Times* to locate Ray and Livsey were unsuccessful. Former task force agent Card, who now works as an enforcement agent for Arkansas Tobacco Control, replied to an initial inquiry with an email that said, in part, "Mr. Buckley was not an innocent man. He was a dope dealer who finally got caught." She later wrote that because she could not locate a copy of the transcript of Buckley's trial and other documents, she would not be able to answer further questions about Ray and her involvement in the case.

In January 1999, Gyronne Buckley was living in Houston, working construction and driving back to see his mother in Arkadelphia every few months. In a recent interview the *Times*, he said he sold clothes out of his house in Arkadelphia whenever he came home — knock-off purses and flashy clubwear. He still has a tote full of old records from his business — catalogs, receipts and spiral notebooks full of entries in his handwriting. He said that with the traffic in and out of his house, some might have thought he was dealing drugs.

That afternoon, Livsey was wired by the police and searched to make sure he didn't have any other money or drugs on him. Ray dropped Livsey off a few blocks from Buckley's house, while Card and Bethell stationed themselves in an unmarked car at the corner of Hunter and North Peake. Card testified that she monitored audio while Bethell watched through binoculars.

Using a range finder, Buckley's lawyers — including Little Rock attorney Patrick Benca and University of Arkansas at Little Rock William H. Bowen School of Law Professor J.T. Sullivan — later determined that the corner of Hunter and North Peake is 240 yards from Buckley's house; almost two and half football fields. In addition, Buckley's house also has a privacy fence along the side that would have further blocked the officers' view from their position — a fence that was already in place in 1999.

When *Arkansas Times* went to Arkadelphia last month to view the scene from the corner of Hunter and North Peake, a mailbox beside the privacy fence next to Buckley's house registered to the naked eye as a tiny gray dot, unrecognizable at that distance. Neither the house nor Buckley, wearing a white tank top, standing in the street, could be seen through *Arkansas Times* photographer Brian Chilson's telephoto lens on his camera. While July isn't January, Sullivan said that a person standing on the porch still isn't visible even when the leaves are off in the winter.

At Buckley's eventual trial, both Bethell and Card testified that they watched from Hunter and North Peake as Livsey walked up to Buckley's house, walked onto the porch and knocked, and that a man they said they recognized as Buckley came to the door and lingered a bit on the porch before inviting Livsey briefly inside.

After confirming under questioning that she had no binoculars, Card testified, "On the 12th, I observed Buckley reach up into the rafters [of the front porch]. I watched Livsey walk up onto the porch and knock and there was some conversation. Buckley appeared at the door and reached up into the rafters and then both of them went back into the residence." In addition to the testimony at trial, Card's observations would be used to get the warrant to search Buckley's house.

The police surveillance audio of the interaction between Buckley and Livsey that day is full of pops and hisses. There's a nervous, staccato knock. A voice is heard and then Gyronne Buckley speaks, asking Livsey what's going on. Buckley then says what sounds like "don't pull your money out."

Going by the audio, Livsey was in the house less than a minute, but drugs are never mentioned. The rest of the conversation is about Livsey's women troubles, with Buckley telling him he better "put that other woman down," and asking Livsey to hook him up with a female friend. During that encounter, Livsey later testified,

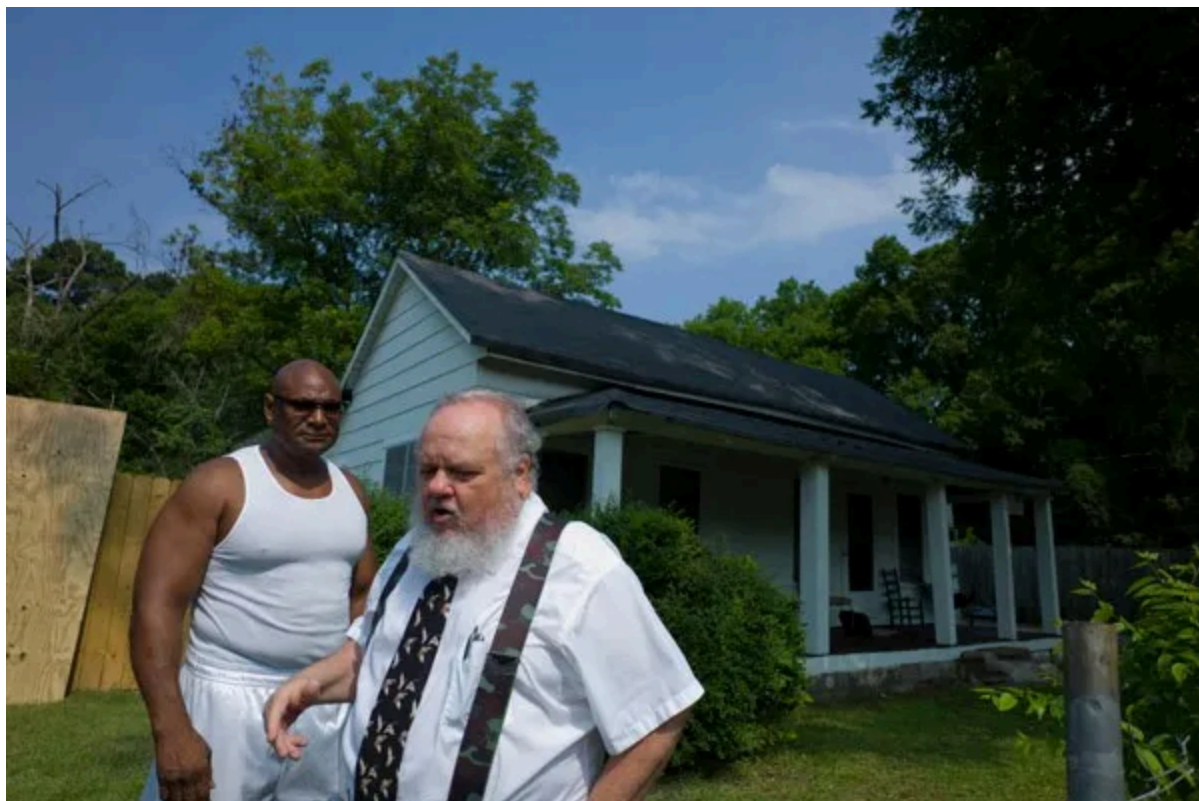
he used police money to purchase two \$20 rocks of cocaine, which he later returned to officers. Walking away, Livsey can be heard to mumble, “I ain’t never been so scared in my motherfuckin’ life.”

The agents sent Livsey back to the house again the next day, wired, with marked money. A visit at around 10 a.m. found Buckley still sleeping. Livsey returned again a little before 5 p.m. to find Buckley fixing a leaky faucet in his mother’s house across the street. The audio of the encounter is also mostly garbled, and includes the voices of kids playing basketball in the street. Again, drugs are never mentioned, but Livsey said he used \$40 of police money to purchase two rocks of crack.

At one point near the end of the conversation, it sounds like Buckley says, “Like the other day, I don’t want no [inaudible] to them white folks. I don’t want to have to send you back in a box now. But I ain’t gonna let ’em find nobody though.” The quality of the audio leaves some room for interpretation. The official police transcript of the recording, as provided by the Arkansas Attorney General’s Office, has that line as: “But I ain’t gonna mess a thing with whitey, you know?”

Though Livsey is laughing all the way through the conversation, he later told officers that Buckley’s statement was a threat — that Buckley was saying he’d kill him if he found out he was talking to white drug cops. Buckley, on the other hand, says it was a continuation of the conversation from the previous day, and a warning: that Livsey was messing around with a white woman, and that a black man could get “sent home in a box” for doing that in small-town Arkansas.

Whatever the case, the audio and the testimony of the officers were enough for a search warrant. The next day, Jan. 14, the police swooped. Buckley was arrested and his home thoroughly searched.



BUCKLEY AND

SULLIVAN: At Buckley's house in Arkadelphia.

What's remarkable, given the outcome at his trial, is what wasn't found in Gyronne Buckley's house: drugs of any kind. No large amounts of money. No scales. None of the recorded money provided to Corey Livsey. In short, no evidence whatsoever that Buckley was a major, longtime drug dealer who finally got caught. Outside, in the top of a metal fence post near the street, officers found a piece of aluminum foil containing marijuana seeds. In the rafters of the porch, where Linda Card testified she saw Buckley place his hand as he spoke to Livsey, Card retrieved a pair of tweezers and a medicine bottle containing white residue that later tested positive for cocaine. The only other thing seized by police during the search was a small baggie. It, too, was found outside the house.

These people

At Buckley's trial in Clark County Circuit Court in May 1999, prosecutors offered as witnesses Bethell, Card, Livsey and Ray, who testified to a textbook drug sting against Buckley. The defense put on the stand Buckley, Buckley's cousin and Buckley's mother. Buckley denied selling drugs to Livsey. After a two-day trial and a brief deliberation, the jury found Buckley guilty of two counts of delivery of cocaine.

In the sentencing phase, prosecutor Henry Morgan put on the stand Keith Ray, who told the jury that the drug task force had used confidential informants to make drug buys from Buckley in 1988, 1994, 1995 and twice in 1996. "None of those cases were prosecuted," Ray told the jury, "because the witnesses failed to show up for court and we could not locate them." Buckley was never tried or convicted in any of those cases.

In his closing argument during the sentencing phase, Morgan told the jury that Buckley had been a drug dealer for years. “No telling how many countless hundreds of stories of wrecked lives from our city from this man,” Morgan said. “No telling how many houses have been robbed to get money to go to this man in the course of these years. And for this reason, and I don’t normally do this, I am going to ask you to consider writing the word ‘life’ in there.”

There were “people” watching the case, Morgan told the jury. “We need to let these people know, in Clark County, we’re not going to put up with this stuff and that there is a price to pay for ruining those hundreds of lives for those many years that we were unable to catch him.”

On May 17, 1999, the jury returned from their deliberations and sentenced Gyronne Buckley, a man with no other felony record, to spend the rest of his life in prison for allegedly selling an amount of crack cocaine that weighed less than a restaurant sweetener packet.

XOM 157

There were two important things that not many people knew about when Gyronne Buckley was convicted in 1999 — not Buckley’s attorney, not the jury, not the court or prosecutors.

<https://www.youtube.com/watch>

The first was that a month before the trial, Keith Ray brought Livsey in to talk about what his testimony would be in court, recording the conversation on a videotape that wasn't disclosed to the defense for almost a decade.

On the black-and-white video, shot by a camera high on the wall, Ray, with Card looking on, questions Livsey about his recollections of how he came to work as an informant, and the buys he made from Buckley. Livsey seems jittery, talking rapid fire. At times, Ray noticeably nudges Livsey toward the right answer when Livsey makes a mistake, as he does at one point when Livsey says he went to Buckley's house at around 1 p.m. on the second day of the sting, even though the police surveillance audio timestamp says it was 4:50 p.m., Ray takes a long pause and then says, "Are you sure about the time?"

"I'm not sure about the time," Livsey says. "No."

"Could it have been later in the afternoon?" Ray asks, at which point Livsey says it was after school let out.

Though the video would eventually be the key to Gyronne Buckley's release from prison, the existence of the tape was not revealed to the defense until Linda Card made an offhand mention of it while being questioned in court in 2005. Even then, it still wasn't turned over for examination to the defense until February 2009, when a federal judge ordered the Attorney General's Office to release it to Buckley's attorneys. A magistrate determined that it contained 38 instances where Livsey's recollection of events differed from his eventual trial testimony.

The second thing nobody but Keith Ray knew in 1999 was the truth about Arkansas license plate number XOM 157, which had once been affixed to a smoke gray 1987 Ford Mustang owned by a man named Rodney Bragg. (Professor Sullivan also worked on Bragg's case with attorney Patrick Benca. Sullivan became involved in the Buckley case after the Buckley family reached out to him following his success in winning Bragg's release from prison.)

In March 1993, Ray was working undercover in Prescott when he said he went to a house there and bought \$50 worth of cocaine. Ray didn't recognize the man who sold him the drugs, but said he kept him in mind.

On March 1, 1994, in Clark County, Ray witnessed another buy. He would later tell prosecutors that he recognized the drug dealer as the unknown man who had sold him cocaine in Prescott a year earlier. Ray would testify that during the March 1, 1994, drug purchase, he wrote down the number of the license plate on the dealer's car — XOM 157 — saying he later used that plate number to identify the owner of the car as Rodney Bragg. After obtaining a photo of Bragg, Ray said, he positively identified Bragg as the man who had sold him cocaine in Prescott in March 1993.

In January 1996, Bragg was put on trial for the March 1993 cocaine sale in Prescott. He professed his innocence, but he was convicted after testimony by Keith Ray. Like Buckley, Bragg had no prior drug convictions. Also like Buckley, the jury sentenced him to life in prison. To add insult to injury, Bragg's Mustang was forfeited to the state because it had allegedly been used in a drug transaction.

Though he was in jail for life, Bragg sued to get his car back in March 1998. In the course of that lawsuit, it was revealed that, though Ray said he saw the car and jotted down the plate number on March 1, 1994, which led him to identify Bragg as the man who sold him cocaine in 1993, Bragg hadn't actually purchased the Mustang until March 22, 1994. Documents later revealed that the license plate Ray claimed to have seen and used to link Bragg to the cocaine sale in Prescott wasn't issued to Bragg by the state until March 23, 1994, three weeks after the date when Ray claimed to have seen Bragg driving the car with plate number XOM 157.

Later, after being confronted by prosecutor Henry Morgan about his testimony in the Bragg case, Ray resigned from the South Central Drug Task Force. Under questioning by Sullivan in federal court in Texarkana, Ray later admitted he'd lied under oath about the plate and other evidence, though he continued to insist Bragg had conducted both drug sales. Ray has never been arrested or tried for filing a false report or perjury in Bragg's case. Sullivan said that doesn't surprise him.

"If they had gone after him and filed perjury charges, they would have convicted him," Sullivan said. "There's no question about that because he'd already admitted too much stuff on the stand. But every one of their cases he had made would have been busted wide open. There's no telling how many people are in prison — maybe still — who Keith Ray put there. Maybe they did it, or maybe he made it up."

Former task force agent Card said via email that she hadn't talked to Ray in several years. Asked about her opinion of Ray, she added, "As far as my personal/professional feeling about Agent Ray, he is not the bogeyman he got painted to be."

Bragg, meanwhile, was ordered released from prison in 2000. In 2006, the Arkansas State Claims Commission awarded Bragg \$200,000 for the years he spent in jail. Other than the award the commission later made to Gyronne Buckley, it's the only Claims Commission award ever made to a wrongfully convicted person. That award was ultimately confirmed by the legislature.

'A man-made hell'

For Buckley, meanwhile, life in prison ground on.

“It’s a cruel place,” he said. “You have to see things you normally won’t see. It’s a man-made hell, and I prayed every day that God would release me from that place.”

Anger, he said, is a cancer that can destroy a man, so he eventually just had to let it go and give it to God. He had to fight several guys over the years. Once, he said, he saw a young man slit the throat of his sleeping cellmate, the kid reaching in and pulling out the man’s windpipe. Working in the prison kitchen, Buckley slipped and separated his shoulder on the concrete. “You think they took me to the doctor?” he said. “They gave me some ibuprofen, and that was it.” He still can’t straighten that arm.

In 2000, the Arkansas Supreme Court upheld Buckley’s convictions but ordered him resentenced after ruling Ray’s allegations about the drug buys that produced no charges during the sentencing phase shouldn’t have been considered by the jury. After largely the same information was presented to a different jury, Buckley was resentenced to 28 years on each count. In 2002, the Arkansas Supreme Court affirmed that sentence.

In 2009, after the tape of Livsey being questioned by Ray was finally turned over to Buckley’s defense, the federal habeas corpus proceeding in the case gathered steam. After viewing the tape, a federal judge ruled that had the defense had the tape at Buckley’s original trial, it could have potentially been used to impeach the credibility of Livsey and other witnesses, which meant it should have been turned over.

In 2010, the Arkansas Supreme Court ruled that Buckley deserved a new trial that included the admission of evidence contained on the videotape. With the prosecutor of Clark County recusing himself because of previous work with the public defender’s office when Buckley was originally convicted, Pulaski County Prosecutor Larry Jegley was appointed as a special prosecutor in the case. Believing that Buckley had already served enough time on the charges, Jegley initially offered Buckley a deal: time served and immediate release from prison in exchange for a guilty plea. Buckley turned it down, over the objections of almost everyone in his life.

“I told him take the deal and get out,” Sullivan said. “[I told him] you may not get out. Technically, if we’d gone back to trial, he could have gotten life again. There was no impediment to that. He knew that. His family, his sisters, everybody was telling him to take the deal. His mother was asking him to please come home. ... Everybody in the family is telling him to take the deal, and he says, ‘I just can’t get up and swear an oath before God that I did something I didn’t do.’ ”

With Buckley unwilling to take the deal, Jegley dropped the charges in the case. Buckley was released from prison on Nov. 1, 2010. Jegley said that the linchpin of his decision to drop the charges was that the 11 years Buckley had already served was a satisfactory punishment given the small amount of cocaine he was convicted of selling. “Would it have been a difficult retrial?” Jegley said. “Perhaps. But the bigger issue is that I don’t think it would have served any purpose.”

While Jegley concedes that Ray was a bad cop and the tape of Ray talking to Livsey should have been turned over to the defense, he said that after reviewing the entire case file, he believes Buckley was guilty of selling narcotics. Even if the sentence in the case was out of whack and he was wrongfully convicted because the tape wasn't disclosed to the jury, Jegley believes, that doesn't mean Buckley was framed.

"I realize [Buckley] has advocates who say, 'Oh no, he's an innocent man, wrongly convicted, dirty cops, blah, blah, blah,' " Jegley said. "But you know, it's a free country."



FOR THE DEFENSE:

Attorney Mark Hampton

Pure luck

Looking to the precedent of Rodney Bragg's successful \$200,000 claim for wrongful conviction, Sullivan and Buckley's attorney Mark Hampton filed a claim in March 2013 seeking \$460,000 from the state: \$40,000 per year Buckley spent in prison.

The hearing before the Claims Commission was held Dec. 17, 2013. In that hearing, Hampton and Sullivan were able to extensively lay out the case for Buckley's innocence, including information about the activities of Keith Ray in the Bragg case, the 240-yard distance between Buckley's home and where officers were stationed during the initial buy, the seeming impossibility of the police seeing what they testified they did, and more.

In the end, the commission voted unanimously to award Buckley the total amount of his claim. Their ruling called Ray's behavior "shameful," saying his actions "cast a shadow on all good law enforcement personnel in Arkansas." Attorney General Dustin McDaniel said that he would appeal the judgment to the Arkansas Legislative Council Claims Review Subcommittee of the Arkansas General Assembly.

This is where it gets complicated yet again, however.

In 2006, when the \$200,000 was awarded to Bragg, the claims review subcommittee recommended that Bragg's award should be taken from the statewide fund for deputy prosecutors' salaries. With many prosecutors' offices across the state already living close to the bone, there was a fear that the salary fund might be at risk again if the Buckley decision were allowed to stand. Jegley, for one, voiced his concerns to both Buckley's attorneys and the Claims Commission.

"Back when the Bragg thing went down and they granted the claim, they were going to take it all out of deputy prosecutors' salaries in one fiscal year, and we didn't have it to give," Jegley said. "Again, let's talk fairness: Why should a deputy prosecuting attorney in Benton or Craighead County be furloughed or otherwise disadvantaged because of something that went on [in another jurisdiction]? Nobody ever said that any of the prosecutors did anything." Jegley said that a compromise was eventually reached that took the award from the deputy prosecutors' salary fund in two \$100,000 payments in consecutive years.

McDaniel told *Arkansas Times* that while he can't recall specific calls from prosecutors about the Buckley award, his staff spoke to the state prosecutor coordinator's office about it. He said the money coming out of a specific part of the budget, however, was "not the primary concern" in his decision to fight the Buckley award.

At the hearing before the legislative subcommittee, McDaniel came out swinging from the start, telling the subcommittee in no uncertain terms, "Gyronne Buckley was a crack dealer in Arkadelphia. He had a long criminal history and he sold crack cocaine to undercover informants repeatedly." McDaniel went on to characterize Buckley as "a general bad guy." Referencing Buckley's criminal record other than the 1999

conviction, Sen. Linda Chesterfield asked, “If he hasn’t been convicted, why is he labeled a repeat offender?” but her question was never answered.

McDaniel also had harsh words for Keith Ray, though he called him a “minor player” in Buckley’s conviction. “Keith Ray is and was a dirty cop,” McDaniel said. “Wherever that man is, to this day, he should be ashamed of himself. He is a disgrace to his badge, he is a disgrace to law enforcement, he is a disgrace to Arkansas, because he did perjure himself and fabricate evidence and do all kinds of things that officers should never do. But it wasn’t in this case. It was the Bragg case, which we’ve already paid out for.” McDaniel called Ray’s involvement in the Buckley case “pure luck” for Buckley. But, McDaniel added, “It doesn’t mean that [Buckley is] innocent. It certainly doesn’t mean there was any evidence fabricated in this particular case.”

At one point while discussing the resentencing of Buckley, McDaniel told the subcommittee: “So they went back and they resentenced him in front of another jury, and the other jury saw the evidence from the trial, they heard the audio tape of him taking money in exchange for selling crack cocaine and they heard him making threats to kill whitey for whatever police action may come against him and all that kind of stuff, and the jury gave him 28 years to serve.”

While the police surveillance recording McDaniel is referring to features Buckley talking about “white folks,” and the court transcript does have the last sentence as “I ain’t gonna mess a thing with whitey,” there is no audible threat by Buckley to “kill whitey” on that tape. Sullivan said, “I think he was playing the race card.” The subcommittee McDaniel was addressing is majority white.

McDaniel told *Arkansas Times* that his statement that Buckley was heard on tape “making threats to kill whitey for whatever police action may come against him” was an accidental misquote of Buckley’s statement on the police surveillance audio. He added that Sullivan has known him since law school and “should know better” than to suggest he would play the race card.

“I would be deeply offended if anyone were to suggest I was attempting to race-bait anyone,” McDaniel said. “That’s not my record, that’s not my person, that’s not who I am. I didn’t make up the word. I was quoting Mr. Buckley, though I did misquote him.”

In his argument before the subcommittee, McDaniel went on to make the case that wrongful conviction and actual innocence are not the same thing, noting that no court has ever found Buckley not guilty of the offense with which he was charged.

“Let’s be clear,” McDaniel said. “Nobody has ever said this guy is actually innocent. Not guilty, wrongfully convicted, and actually innocent are all completely different things. No jury has ever found him not guilty.”



‘BUCKLEY WAS A

CRACK DEALER’: McDaniel.

Though Sullivan and Hampton sought to argue for the actual innocence of Buckley as they did before the Claims Commission, the parties involved were eventually told by the chair to wrap up their arguments because the subcommittee had to get on to other business. In the last few minutes of the hearing, Hampton said the subcommittee might be missing the point.

“You’re sending a message if we don’t award something to Mr. Buckley,” Hampton said, “that cops can do whatever they want to. ... As a legislative body, if you want to say it’s OK for dirty cops to do things, to violate your constitutional rights, you put yourself in jeopardy of that, [and] you put your children in jeopardy of that. That’s why you’re here.”

Soon after, a motion and second were made to reverse the Claims Commission award. The motion carried on a voice vote.

Things unseen

Gyronne Buckley talks a lot about God, and the plans the Almighty might have for all of us. Sixty years old now, he spent more than 11 years sleeping on a steel rack. That steel, he said, can sap the life right out of a man. His father grew sick soon after he went to jail, and died in 2001. Some days then, Buckley hated waking up — hated that he had been given another day of life in that place.

He did some reading in prison. He read some about slavery. Sitting in Mark Hampton's office a few blocks from the state Capitol, he said that one thing that stuck with him were the torments those slaves who disobeyed would be put through as a warning to others. "That would put fear into all the other peoples' hearts," he said, "to make them not do like this buck. That was the same way they did me when they took me to trial. They get one of the strongest people. They say, 'We don't want none of them growing up to be like Gyronne Buckley.' So they're going to make an example out of me." A modern lynching in the guise of the law, he called it.

"When you've got a small town and people want to keep control of you," he said, "that's what they do. A lot of people is not going to let go of the past."

He has his freedom now, and it's good. A free man can take a woman out on a date, or not. He can go to the refrigerator and get something to eat, or not. He can watch TV, or not. Buckley said some days, though, it's hard to make himself go outside the house. Those are the days when he remembers the old men in prison, the ones who had been there so long that it got inside of them.

As for the \$460,000, Buckley said it's no money compared with what he might have accomplished with 11 years in the prime of his life. But, then again, he said, he can't miss what he never really had.

"I try not to let things unseen become my heart," he said. "Those things unseen that you allow to become your heart will destroy you. I never had that money. It would be a different thing if they gave me the money, and I had it in my hand, then they come take it away."

"Life goes on," he said. "I'm still living."

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