

With dreams of playing in the NFL, Nate Lewis began classes in the fall of 1996 as a freshman at the University of Akron. Two months later he was hit by a bigger blow than he'd ever experienced on the playing field: A female student he was friends with – Christina Heaslet – accused him of raping her in her dorm room.

Charged with rape, Lewis admitted that he and the young woman had sex together. However, he claimed that contrary to her accusation it had been consensual. Asserting his innocence, Lewis turned down a plea bargain that would have resulted in a short jail term.

Then several weeks prior to his trial, Lewis received an anonymously mailed envelope. The envelope contained photocopied excerpts of Heaslet's diary. The excerpts corroborated Lewis claim that she was a willing participant in their sexual encounter, and that she was motivated to falsely accuse Lewis by a combination of being "sick of men," and as a way to get money from him to help with her financial difficulties.

Lewis gave the photocopies to his lawyer, who disclosed their contents to the prosecutor and the judge. His lawyer then requested an order for Heaslet to produce her entire diary. The prosecutor obtained the diary, and after an in camera review by the judge, the prosecutor made a motion *in limine* to exclude most of the diary, including the excerpts anonymously mailed to Lewis — which were marked Exhibits A, B, C and D. Lewis' lawyer argued for their admissibility on the grounds "they were relevant to Heaslet's veracity and motive to lie and spoke directly to the issue of consent." ¹ Exhibit B was particularly important for Lewis' defense that Heaslet consented:

"I can't believe the trial's only a week away. I feel guilty (sort of) for trying to get Nate locked up, but his lack of respect for women is terrible. I remember how disrespectful he always was to all of us girls in the courtyard . . . he thinks females are a bunch of sex objects! And he's such a player! He was trying to get with Holly and me, and all the while he had a girlfriend. I think I pounced on Nate because he was the last straw. That, and because I've always seemed to need some drama in my life. Otherwise I get bored. That definitely needs to change. I'm sick of men taking advantage of me . . . and I'm sick of myself for giving in to them. I'm not a nympho like all those guys think. I'm just not strong enough to say no to them. I'm tired of being a whore. This is where it ends." ²

\$662,000 Awarded Man Imprisoned 5 Years For Phantom Rape of Woman "Sick Of Men"

By Hans Sherrer

The prosecution argued the excerpts constituted Heaslet's opinion and evidence of her past sexual activity, and were thus excludable under Ohio's rape shield law (Ohio Revised Code § 2907.02(D)). The judge agreed to bar the jury from hearing the passage — which was the one most favorable to Lewis' defense of consent — ruling that its probative value was outweighed by its prejudicial effect to Heaslet's reputation.

As for Heaslet's financial motive, she wrote in a passage,

"Yesterday morning I went to see two lawyers (partners) about a civil suit against Nate. . . . I know that suing him is wrong, but what else is there for me to do? I know I'm not an evil person normally, but Nate pissed me off, and took advantage of me. Sorry for him that I'm so revengeful. I'll probably feel guilty about this someday." "Speaking of money, I'm suing Nate. I'm desperate for money! My conscience (sic) wouldn't allow me to do that before, but I'm going to do whatever I have to to get out of debt." ³

She also wrote, "I can't wait to go to Charlotte. I want to start all over. I refuse to make the same mistakes that I've made in Akron. For one thing, I'll be honest." ⁴

Even though Lewis' prosecutors knew from Heaslet's diary that her rape allegation was false, they did not pursue criminal charges against her for filing a false rape report. Instead, they proceeded with Lewis' trial. Without being told about the critical passages in Heaslet's diary, Lewis' jury was faced with a choice between 'he says it was consensual, and she says it was rape'. The jury chose the woman's story, and Lewis was sentenced to eight years in prison.

After Lewis' conviction was affirmed by both Ohio's Court of Appeals and Supreme Court, he filed a federal habeas corpus petition in July of 1999. The petition's primary claim was that Lewis' Sixth Amendment right to confront his accuser had been denied by the trial judge's specific exclusion of Exhibit B that supported his defense that Heaslet consented.

Lewis' petition was denied by the U.S. District Court, which issued a Certificate of Appealability to the federal Sixth Circuit Court of Appeals on the issue of "[W]hether failure to admit specific portions of the victim's diary at trial effectively denied Lewis his Sixth Amendment [right] to confront a witness." ⁵

In October 2002 the Sixth Circuit reversed the District Court's decision, and ordered Lewis' release "from custody, unless he is retried within a reasonable period of time." (*Lewis v. Wilkinson*, 307 F.3d 413 (6th Cir. 10/07/2002)).

The Sixth Circuit's decision stated in part,

Appellant was denied his Sixth Amendment right to confrontation when the trial court excluded several statements from the alleged victim's diary. The statements at issue, especially when read with the diary entry in its entirety, can reasonably be said to form a particularized attack on the witness's credibility directed toward revealing possible ulterior motives, as well as implying her consent. . . . The trial court . . . did not adequately consider the defendant's constitutional right to confrontation. The jury should have been given the opportunity to hear the excluded diary statements and some cross examination, from which they could have inferred, if they chose, that the alleged victim consented to have sex with the appellant and/or that the alleged victim pursued charges against the appellant as a way of getting back at other men who previously took advantage of her." ⁶

Faced with no physical evidence a rape had occurred and the alleged "victim's" tacit admission she had consented, the prosecution dropped the charges and Lewis was released after five years of wrongful imprisonment.

In January 2003 Lewis filed a civil suit seeking a declaration that he was wrongly imprisoned, which was the predicate for him to file a claim under Ohio's wrongful conviction compensation statute. (Ohio Rev Code Ann § 2305.02 & §2743.48)

The office of the Ohio Attorney General vigorously opposed Lewis' lawsuit. However, the Summit County Court of Common Pleas found after a trial at which both Heaslet and Lewis testified, that he had met the statutory requirement, and "proven by a preponderance of the evidence that he was wrongfully imprisoned." ⁷ The State appealed. In May 2005, Ohio's Court of Appeals upheld the lower court's decision. (*Lewis v. State*, 2005 -Ohio-2400 (Ohio App. Dist.9 05/18/2005)) In its

Lewis continued on page 17

'Hurricane' Carter Receives Honorary Degree

By Simona Siad

With graciousness and exuberance Rubin "Hurricane" Carter swept into fall convocation to receive an honorary doctor of laws degree from York University.

The award culminates Carter's lifelong battle for innocence and justice in what was one of history's most widely publicized cases of wrongful conviction.

"The light shines in the darkness but the darkness will not overcome," said Carter to a packed room of York graduates and alumni on October 14, 2005.

Many know Dr. Carter as the former boxer who was wrongly convicted by an all-white jury for the murder of three white American citizens in the 1960s. He was convicted and sentenced to three life-terms.

Throughout that time, he continued to fight for his innocence, penning an autobiography entitled *The 16th Round* that garnered national and international attention. The book, along with celebrity supporters, protestors and two recantations of key witnesses helped secure a retrial. Once again, the state overturned the evidence and handed down another wrongful conviction.

In 1988, after 22 years of legal battles and imprisonment, all indictments were finally dropped. Dr Carter admits that it took incred-

ible mental strength, passion and perseverance to survive the time he spent in prison.

"Hopelessness belongs to the lowest level of human existence. That is what prison is, the lowest level of human existence," says Carter. "But I was not a prisoner, I had committed no crime. So I refused to go down there. I knew in order for me to survive, I would have to remain above the level of a prisoner."

During the ceremony, the dean of Osgoode Hall Law School, Patrick Monahan, praised Carter for his continuing work with the wrongfully convicted.

"Dr. Carter has been a tireless advocate for justice and the cause of the wrongfully convicted. He was instrumental in the creation of an organization called the Association for the Defence of the Wrongfully Convicted," said Monahan.

He went on to note that Carter has worked extensively with York University in the past.

"In 1997, he was instrumental in the establishment of the Innocence Project here at the Osgoode School of Law, which has garnered international attention for its work," said Monahan.

Upon receiving his award, Dr. Carter reminded the audience that there is a new generation of people being wrongfully convicted and that the fight for a fair justice system is far from over.



"During this time, these organizations of which I am a part of helped secure the release of many innocent people who were sentenced to death, or sentenced to long terms in prison," said Carter. He alluded to some of the problems these cases still face.

"Many of them were victims of prosecutorial misconduct, or the deliberate falsification of forensic evidence."

Dr. Carter also mentioned a new program he is the founder of called Innocence International that will "expose the abuses of criminal justice in attempts to free the innocent". He adds, "We will be civil but we won't be silent. There is no greater good than the saving of an innocent life."

The man that has been a middleweight championship contender, a civil rights activist, author, screenwriter and lecturer can now add doctor of laws to his long list of remarkable accomplishments.

When asked if he ever felt hopeless while he was in jail, he remarked with a smile, "I never lost hope. I had to dare to dream. I had to act like I was already free while I was locked down in prison. I knew I would be free. And it's been 20 years next month that I have been free. So dare to dream."

Reprinted with permission. Originally published in, *Excalibur* – York University's Newspaper, October 19, 2005. York University is in Toronto, Ontario, Canada.

Simona Siad is Sports Editor of *Excalibur*. Photo by Joyce Wong, *Excalibur*.

Lewis cont. from page 16

ruling, the appeals court focused much more on Heaslet's financial motive for falsely accusing Lewis, than the federal Sixth Circuit had in reversing his conviction.⁸

Lewis then filed a claim for compensation with Ohio's Court of Claims. In September 2005 Lewis was awarded a total of \$662,000 — \$412,000 to him and \$250,000 in fees to his lawyers. Lewis' award included the statutory maximum of \$40,330 for each of the five years he was imprisoned.⁹

Lewis, now 28, lives near Ann Arbor, Michigan and he was working for a car rental company. After being notified of the settlement, Lewis said, "It's not really what I wanted, but it's better than nothing. You can't put a price on the years I lost."¹⁰

Lewis plays semi-pro football and still dreams of playing in the NFL, musing,

"We'll see what happens. Something has to crack sooner or later for me."¹¹

With his settlement decided, Lewis was glad that that he would finally be able to focus solely on his future, "It's over for me now. Thank God."¹²

Endnotes and Sources:

- 1 *Lewis v. Wilkinson*, 307 F.3d 413 (6th Cir. 10/07/2002); 2002.C06.0000352, ¶29 <<http://www.versuslaw.com>>
- 2 *Id.* at ¶30
- 3 *Lewis v. State*, 2005 -Ohio- 2400 (Ohio App. Dist.9 05/18/2005); 2005.OH.0002492, ¶38 <<http://www.versuslaw.com>>
- 4 *Id.* (Emphasis in original).
- 5 *Lewis v. Wilkinson*, *supra*, at ¶22
- 6 *Id.* at ¶64 <<http://www.versuslaw.com>>
- 7 *Lewis v. State*, *supra*, at ¶17
- 8 *Id.* at ¶37-40
- 9 "Wrongful Conviction Ordeal Ends: Court grants Belleville man damages for five years he spent in prison," Amalie Nash, *Ann Arbor News*, September 29, 2005.
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*

Spirko cont. from page 13

ported by witnesses and phone records — that he was over 100 miles from Elgin. No physical, forensic or eyewitness evidence implicates Spirko in the crime, and he has not confessed.

A witness positively identified Gibson as the man she saw the morning of Mottinger's abduction. However, the prosecution elicited her testimony knowing Gibson had been in Asheville, North Carolina — 600 miles from the crime scene. In spite of knowing Gibson's innocence, the prosecution presented the jury with the crime theory that Spirko and Gibson jointly abducted and murdered Mottinger. So the prosecution's duplicity ensured Spirko's jury had no opportunity

Spirko cont. on page 20