

## John Duval Dies Six Years After Exoneration

In 1973 John Duval and Betty Tyson were convicted of murdering a businessman visiting Rochester, New York.

There was no physical evidence or eyewitnesses linking and Duval and Tyson to the murder. Their convictions were based on confessions that both later retracted, saying they were beaten out of them.

In 1998 Tyson's conviction was overturned on the basis of the prosecution's failure to disclose two witnesses to Tyson and Duval prior to their trial. One of the witnesses saw Tyson being beaten by police interrogators, and the other excluded them from being with the murdered man. The prosecution also secretly jailed the two witnesses for seven months until after Tyson and Duval's trial, so their lawyers wouldn't learn of the witnesses existence. It was also discovered that the detective who interrogated Tyson and Duval had been accused of physical brutality in numerous cases.

The prosecution declined to retry Tyson and she was released after 25 years wrongful imprisonment. A suit she filed against the city of Rochester for violation of her civil rights was settled for \$1.25 million.

Duval's conviction was overturned on the same new evidence that freed Tyson. However, prior to discovery of the concealed witnesses, Duval had told the Parole Board on two occasions that he was guilty. Based on those two statements, the prosecution decided to retry Duval. He was released on bail in 1999. At his February 2000 retrial Duval testified that he falsely told the Parole Board he was guilty because he thought it was what they wanted to hear before they would agree to his release on parole.

After his acquittal, Duval sued Rochester for violation of his civil rights and wrongful imprisonment for 26 years. The city was successful in getting the suit dismissed based on his two admissions of guilt to the Parole Board.

Duval continued living in Rochester, working at low-paying odd jobs. His prospects were looking up after he received an associate's degree in accounting from Rochester Business Institute in September 2005. Those hopes were short-lived. Four months later, on January 19, 2006, a friend found him dead in his apartment. The medical examiner determined he died of natural causes. John Duval was 53-years-old.

Sources: Man wrongfully imprisoned 26 years Is found dead, By Gary Craig, *Rochester Democrat and Chronicle*, January 20, 2006. Wrongfully imprisoned man didn't die bitter, By Gary Craig, *Rochester Democrat and Chronicle*, January 20, 2006.

## Ex-Prosecutor Acquitted Of Taking Bribe To Support New Trial

By JD Staff



Carl Marlinga after his acquittal on September 27, 2006.

Macomb County Prosecutor Carl Marlinga wrote a brief filed with the Michigan Supreme Court in January 2002 that acknowledged Jeffrey Moldowan "may have suffered 'actual prejudice'" from insubstantial expert bite mark testimony during his 1991 kidnapping and rape trial.<sup>1</sup>

The Court granted Moldowan's habeas petition and ordered a new trial. Moldowan was acquitted after his retrial in February 2003, and his co-defendant, Michael Cristini, was acquitted after his retrial in April 2004.

Two weeks after Cristini's acquittal, Marlinga, state Senator Jim Barcia, and realtor Ralph Roberts were indicted on federal charges that included bribery and federal campaign finance law violations related to Marlinga's January 2002 Supreme Court brief in Moldowan's case. Federal prosecutors alleged that Roberts, who employed Moldowan's sister, made a bribe to Marlinga, who ran for the U.S. Congress in 2002, that was in part masked as a campaign contribution to Barcia in order to avoid federal contribution limits and reporting requirements.

In February 2005 a Detroit federal judge ruled the indictment was structurally defective for failing to detail how the defendants were linked together in what the government alleged was a *de facto* conspiracy. Faced with trying the three defendants separately, federal prosecutors dropped the charges against Roberts in June 2005, and against Barcia in July 2005.

Marlinga was re-indicted in September 2005, on two counts of bribery, one count of wire fraud, one count of making a false report to the Federal Election Commission, and one count of violating federal campaign finance laws.

Marlinga's trial began on September 13, 2006. His defense included that the charges were based on legitimate campaign contributions that were only a small fraction of the total contributions of a million dollars plus that he raised during his 2002 congressional campaign, and that he had intervened to the benefit of a defendant in at least five

cases prior to Moldowan's without any political contributions being involved.

On September 27, 2006, Marlinga was acquitted of all five counts after a two-week trial. One juror said afterwards that the federal prosecutors "showered us with evidence," but after sifting through it during two days of deliberations the jury didn't seriously consider convicting Marlinga. The jury forewoman said during closing arguments U.S. Attorney Robert Cares told the jury, "Connect the dots," but that the government failed to do exactly that with any evidence. She also said, "They put one dot here, one dot over here, but they didn't connect them."<sup>2</sup>

After Marlinga's acquittal, his one-time co-defendant Roberts said that after he was indicted federal prosecutors offered to drop the charges against him if he agreed to testify against Marlinga. When he refused, they told him they would drop the charges if he simply agreed not to testify as a defense witness. Roberts said, "I told them I couldn't testify to anything but the truth and the truth was we did nothing wrong. This is the end of four years worth of wasted taxpayer money."<sup>3</sup> Roberts said of the federal prosecutors and investigators involved in the case, "They were just trying to further their careers by bringing down a politician and a prominent businessman in Macomb County."<sup>4</sup> Roberts has written a book about his experience in drawing attention to Moldowan's case, and his subsequent investigation by the FBI and federal prosecution. The books working title is *Justice Miscarried*.

Prior to his April 2004 indictment, Marlinga had been the Macomb County Prosecutor for 20 years, and prior to that had been a federal prosecutor. There have been allegations that the prosecution of Marlinga, a Democrat, was politically motivated since after his resignation a Republican replaced him as Macomb County Prosecutor.

Having experienced what he had put thousands of people through as a prosecutor for more than 20 years, the 59-year-old Marlinga said outside the courthouse after his acquittal, "The last four years have been sheer agony. The emotional cost is not something you can possibly imagine."<sup>5</sup>

The day after his acquittal Marlinga commented "My one continuing criticism of the U.S. Attorney's Office was they had this unbelievably thin case. ... they had all of the information they needed to simply dismiss and yet

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