

Karling cont. from p. 17

the forensic evidence. In carrying out these instructions, the defender required to advise whether the pathological evidence enabled a cause of death to be established with any degree of certainty. The defender required to advise on whether further investigations were appropriate to ascertain or confirm the likely cause of death.

...
It was his duty to advise of other potential causes of death including epilepsy. It was his duty to emphasise the lack of any pathological signs of suffocation. It was his duty to advise that the toxicology tests should be independently verified It was his duty to advise that further investigations were required....”

...
The pursuer has suffered loss and damage as a consequence of fault and negligence on the part of the defender. ... In carrying out his instructions, he owed a duty of care to the pursuer.” *Karling v Purdue* [2004] ScotCS 221 (29 September 2004)

In September 2004, Karling’s suit against the pathologist was dismissed on the general defense that irrespective of any provable breach of contract or negligence, “... a forensic expert is immune from suit where he is engaged in the course of ongoing criminal proceedings.”

Then about a year later, in late 2005, as compensation for Karling’s miscarriage of justice, the Scottish government agreed to an *ex-gratia* payment of \$1,670,584 (£891,717 English pounds). Karling was satisfied with the award: “I am really happy the Executive did the right thing. They gave me a really good settlement that reflects the level of the miscarriage of justice.”

In June 2006, Karling requested dismissal of his suit against the police. The 52-year-old Karling indicated to the Glasgow *Daily Record* that the ongoing legal fees and the lawsuit’s uncertain outcome were why he decided to end it. He said, “a fair chunk” of his compensation had “disappeared in legal” expenses. He also said, “I just have to live on the interest from what’s left.”

Sources:

Pancake Murder Accused Got £900K, *Daily Record* (Glasgow, Scotland), June 7, 2006.
Wrongly convicted man wins £490 For Each Day In Prison, *The Scotsman* (Glasgow, Scotland), June 7 2006.
Karling v Purdue [2004] ScotCS 221 (29 September 2004).

Third Trial Ordered For Derek Tice

By James F. Love

In Norfolk, Virginia, in 1997, seven men were arrested for the rape and murder of a young Navy wife. Three of the men were released after charges against them were dropped for lack of evidence. Derek Tice was one of the four men charged with the rape and murder of 18-year-old Michelle Moore-Bosko. Three of those men, including Tice, were convicted of all the charges and sentenced to life in prison without possibility of parole. One defendant, Eric Wilson, was convicted only of rape and sentenced to 8-1/2 years in prison. He was released in September 2005 after serving his sentence.

The Virginia Court of Appeal overturned Tice’s conviction in May 2002, and ordered a retrial. Tice was re-convicted in January 2003 after a retrial, and again sentenced to life in prison without parole.

Virginia’s Court of Appeals affirmed Tice’s reconviction in August 2003, and the state Supreme Court denied Tice’s appeal in July 2004. Tice subsequently filed a state habeas petition. On November 27, 2006, state Circuit Court Judge Everett Martin Jr. ruled that Tice had received ineffective assistance of counsel during his retrial, vacated his convictions and sentences, and ordered a new trial.

Judge Martin found that Tice’s trial counsel, James Broccoletti and Jeffrey Russell, failed to file a motion to suppress Tice’s statement and confession that was made during a police interrogation after his June 1998 arrest. Tice made the statement after he clearly asserted his right to remain silent under the Fifth Amendment, but his assertion was disregarded by the police who continued interrogating him. Notes included in Tice’s case file show Norfolk Police Investigator Randy Crank memorialized that Tice stated to him, “He told me he decide (sic) not to say any more; that he might decide to after he talks with a lawyer or spends some time alone thinking about it.” Judge Martin held this was an “unambiguous and unequivocal” invocation of Tice’s right to remain silent that should have been honored by the police.

Judge Martin noted that except for Tice’s statement, the only evidence pointing to his guilt is the testimony of co-defendant Joseph Dick Jr. No physical, forensic or scientific evidence was adduced against Tice at either of his two trials. Judge Martin held that, without

the unconstitutionally obtained confession, there was a reasonable probability the jury would have acquitted Tice of the charges.

Stephen McCullough, from the State Attorney General’s Office, stated Judge Martin’s decision will be appealed. At a December 20, 2006, bail hearing, Judge Martin ruled in favor of the state’s position that Tice should remain in custody while the State appeals the order for Tice’s new trial.

Omar Ballard, one of the five men convicted of charges related to Moore-Bosko’s rape and murder, has confessed multiple times (first in February 1999) that he acted alone. Tice and the other three convicted men have claimed their confessions were false and coerced by police. Supporting their claims of false confessions and Ballard’s repeated voluntary admissions of guilt, is that all the crime scene evidence (including DNA evidence) only implicates him — as the lone assailant. None of the other four men’s confessions are consistent with details of Moore-Bosko’s murder or the crime scene.

Deborah Boardman, one of the attorneys representing Tice, said in response to Judge Martin’s ruling, “We are thrilled. This is terrific news. James Broccoletti, one of the trial attorneys found as ineffective, stated that he had always thought Tice was innocent and expressed his hopes that now Tice would get the chance to prove it.

Tice’s father, Larry Tice, told Michelle Washington, a reporter from *The Virginian-Pilot*, during a telephone interview, “I’m still about three-feet above the ground,” he said, “I’m still in a state of disbelief that we won it.”

The four defendants claiming their confessions were coerced, including Tice, have filed petitions for clemency with Virginia Governor Timothy M. Kaine. A spokesman for Governor Kaine stated the Virginia Parole Board was monitoring Tice’s case as part of its clemency review process.

The most recent of several *JD* articles about the ‘Norfolk Four’ is: The ‘Norfolk Four’ Convicted of Brutal Rape And Murder Committed By Lone Assailant, by Larry Tice, *Justice:Denied*, Issue 30, Fall 2005, pp. 6.

The Norfolk Four’s website is:
<http://norfolkfour.com>

Source:

“Judge: Man convicted in rape could be released from prison,” by Michelle Washington, *The Virginian-Pilot*, November 30, 2006.
Tice v. Johnson, No. CL05-2067-00, Fourth Judicial Circuit of Virginia – Circuit Court of the City of Norfolk, November 27, 2006.