

“I’m not dead” — Man Proclaims After NV Woman Arrested For His Murder

Krystal Yvette Warbington, a 22-year-old resident of Elko, Nevada was arrested on August 24, 2006, for the first-degree murder of David Scott in Navajo County, Arizona.

The fugitive warrant executed by the Elko police alleged that on June 3, 2006, Warbington murdered Scott by pushing him out of her car and running over him. Her bail was set at \$250,000. The next day the *Elko Daily Free Press* published a front-page story titled, “Elko woman arrested in Arizona killing.”

Long cont. from page 13

Memorandum related to Long’s vacated conviction and dismissed indictment.

On August 18, 2003, the New York State Court of Claims granted the State’s motion to dismiss Long’s claim on three grounds:

- The statute requires that a claim must personally be verified by the claimant, and not his or her attorney – as Scheck had done. (“... the claim must be personally verified and that an attorney’s verification for an out-of-county claimant is fatally defective.”) *Long v. State*, 2 Misc.3d 390, 768 N.Y.S.2d 552 (N.Y.Ct.Cl. 08/18/2003) 2003.NY.0010213 ¶43 <www.versuslaw.com>.
- The statute of limitations for filing a claim is within two years after dismissal, and Long’s indictment was dismissed on June 23, 2000 – so Scheck filed Long’s claim three days late when he did so on June 26, 2002. (“... the statute of limitations had run before the claim was filed ...”) *Id.* at ¶43.
- Verification of the claim by Long five months after it was filed could not cure Scheck’s defective verification, because the statute of limitations had expired. (Long verified the claim in a letter dated November 20, 2002) (“... a corrected verification could not replace the defective one.”) *Id.* at ¶43.

Scheck appealed the ruling on Long’s behalf.

The New York Supreme Court, Appellate Division unanimously (5-0) denied Long’s appeal, but they ruled in favor of the State on a ground different than had the Court of Claims. In their decision of June 20, 2005, the Court ruled that Long’s indictment was dismissed in the “interests of justice,” when the compensation statute requires that a claim must state the dismissal is based on “newly discovered evidence.” Therefore Long did not make a viable claim. (“... both

Several days later the newspaper received a phone call from Scott during which he informed a reporter, “I’m not dead.” Scott had learned of the news report that Warbington had been arrested for his murder, and he wanted to set the record straight that there had been a major mix-up.

When contacted, the Navajo County Attorney’s Office said that the warrant was erroneous, and Warbington was actually charged with attempted murder.

Sources:

Elko woman arrested in Arizona killing, by Marianne Kobak, *Elko Daily Free Press*, August 25, 2006.
‘Murder victim’ not dead; calls newspaper, by Marianne Kobak, *Elko Daily Free Press*, August 30, 2006.

the decision dated June 26, 2000, and the order dated May 28, 2002, specifically indicated that the court was dismissing the indictment in the interests of justice. ... Accordingly, ... the claimant failed to make out a viable Court of Claims Act § 8-b claim...” *Long v. State*, No. 2003-09245 (N.Y.App.Div. 06/20/2005) 2005.NY.0006427 ¶21 <www.versuslaw.com>.

Prior to the state Supreme Court’s issuance of its decision, Long fired Scheck and his firm, and hired NYC attorney Joel Berger.

In May 2005 Berger filed an attorney malpractice suit in federal court against Scheck. Long sued Scheck for \$3 million in compensatory and punitive damages, plus treble damages and attorney fees. In October 2005, a federal judge denied Scheck’s motion for summary judgment, paving the way for Long’s suit to go to trial.¹

Berger also took over as the attorney of record for Long’s federal civil rights lawsuit against New York City and the NYPD.

After the state Supreme Court’s adverse decision in June 2005, Long appealed to the New York Court of Appeal.

On July 5, 2006, the Court of Appeal issued a unanimous (6-0) decision against Long. The Court ruled that Scheck’s verification of the claim was fatal, because the statute requires it to be verified by the claimant only. (“... claimant’s failure to verify his claim in compliance with the statute mandates its dismissal.”) *Long v. State*, No. 90 (N.Y. 07/05/2006) 2006.NY.0006809 ¶30 <www.versuslaw.com>. The Court also awarded the State “costs.”

Although the Court’s published decision went against Long, it did clarify several is-

Conviction Of Barking At Dogs Tossed

Kyle Little, 19, of Newcastle, England was arrested in August 2006 and charged with violating the public order when two policemen saw him barking and growling at two barking dogs.

At Little’s trial the officers testified they thought he was causing the dog’s owner distress. Convicted of causing harassment, alarm or distress, Little was fined \$100 (£50) and ordered to pay court costs of \$300 (£150).

Little appealed, and the Court quashed his conviction, stating, “growling or barking at a dog does not amount to an ... Offence.” Little’s lawyer Chris Mitford quipped, “I think the police were barking up the wrong tree.”

There was public outrage that while the police complain about a money shortage, \$16,000 (£8,000) was spent on Little’s prosecution.

Source: He might be barking, but he’s not breaking the law, by Michael Horsnell, *The Times* (London, UK), April 28, 2007.

issues that may be of benefit to future litigants seeking compensation in New York state.

- The court ruled that the statute of limitations began tolling when the dismissal of the charges against Long was actually filed by the court clerk on June 28, 2000, not when the judge ordered the dismissal on the 23rd, or when he issued his Memorandum on the 26th. That means Long’s claim was timely filed on June 26, 2002.
- The Court also ruled that the statute (Court of Claims Act § 8-b) only requires that a conviction be vacated on one of the designated specified grounds – regardless of the basis upon which the indictment is dismissed. That means Long’s claim was valid since his conviction was vacated on the basis of “newly discovered evidence.” Which is one of the statute’s designated grounds for compensation.

Although Long’s claim for state compensation was denied, on November 20, 2006, he agreed to a settlement of the malpractice suit against Scheck and his firm for \$900,000. Long also agreed to settle his lawsuit against New York City and the NYPD for \$50,000.²

The 47-year-old Long now lives in Alabama.

Endnotes:

1 Brooklyn: Case Against Lawyer To Go Ahead, *New York Times*, Metro Briefing, October 12, 2005.

2 Innocence Project Co-Founder Settles Malpractice Claim, by Tom Perrotta, *New York Law Journal*, November 21, 2006.