

A tragic event on February 14, 1993 resulted in the death of a 13-year-old girl and shattered the life of her mother: thirty-year-old Lynn DeJac discovered her daughter Crystallynn's dead body in their Buffalo, New York home

Crystallynn's autopsy revealed injuries to her face, eyes, neck and hands. Dr. Sungook Baik, the associate chief Erie County medical examiner, determined that Crystallynn had been manually strangled and ruled her death a homicide.

Ten months after the murder twice-convicted felon Wayne Hudson, was indicted for a felony. Facing a third felony conviction and a mandatory sentence of 25 years to life in prison, he told police that many months before DeJac had confessed murdering her daughter to him.

In December 1993 DeJac was charged in her daughter's murder.

DeJac's trial

The prosecution's case was based on the supposition that after a night of drinking DeJac strangled her daughter while in a drunken rage. During DeJac's trial Baik testified that Crystallynn was strangled, but he made no mention that a toxicology test detected a trace amount of cocaine in her body. The testimony of Hudson, Keith Cramer, an ex-boyfriend of DeJac, and Dennis Donohue, another ex-boyfriend, were keys to the prosecution's contention that when drinking DeJac had an unpredictable temper. In exchange for his grand jury testimony, Donohue was given transactional immunity from prosecution and a reduced sentence for an unrelated crime. Neighbors provided testimony that DeJac left her son in the care of Crystallynn when she went out drinking and that they didn't like her.

DeJac said in her police statement that she had dated Donohue, but she broke up with him the night before Crystallynn's death. She also said he stalked her when she went out later that night and he got into a physical confrontation with her and the man she was with at a bar. After a night of bar hopping she went home about 5 a.m. and Crystallynn was sleeping when she looked in her room. She then left to go to the home of a man she had met that night. When she returned home about 2 p.m. she found an outside door open and Crystallynn's naked body in her bedroom.

On April 20, 1994 the jury found DeJac guilty of one count of second-degree murder. She was later sentenced to 25 years to life in prison.

Forensics Exonerates Lynn DeJac In Her Daughter's Death After 13 Years Imprisonment

By Larry Schlee and Hans Sherrer

Erie County District Attorney Frank Clark denied he made a deal with Hudson in exchange for his key grand jury and trial testimony against DeJac. However, it is somewhat suspicious that after Hudson testified at her trial DA Clark dismissed the felony indictment and substituted a misdemeanor to which Hudson was sentenced to probation – instead of the 25-year minimum prison sentence he was facing after a third felony conviction.

New evidence leads to overturning DeJac's conviction

Buffalo cold case detective Dennis Delano wasn't convinced of DeJac's guilt, and years after her conviction he began investigating her case on his own time. By the fall of 2007 Cramer had recanted his testimony, saying he had been angry at DeJac for breaking up with him and that the detectives who interviewed him led him to believe that she had murdered Crystallynn. Additionally, DNA testing unavailable at the time of DeJac's trial revealed in September 2007 that Donohue's DNA was found on the bedding Crystallynn's body was laying on, it was mixed in with her blood on the wall, and it was found inside her (that DNA was believed to be from Donohue's skin cells). The DNA evidence incontestably placed Donohue, but not DeJac, in Crystallynn's bedroom at the time of her death.

Based on the new DNA evidence DeJac filed a motion in state court to vacate her conviction and for a new trial.

Interviewed by Buffalo television station WGRZ in mid-November, detective Delano said he was absolutely convinced of DeJac's innocence: "There's no doubt in my mind. Based on the facts I see, she's a hundred percent innocent." Delano also provided WGRZ-TV with police video footage of Crystallynn's bloody and upended bedroom and some case documents that had never been publicly released. The video suggests there was a violent struggle between Crystallynn and someone immediately before her death, which is consistent with the defensive injuries documented in her autopsy report. Armed with the video and documents, the Buffalo media's coverage of DeJac's case was favorable to her bid for a new trial, which influenced public opinion to support her.

DeJac's motion to vacate her conviction was vigorously opposed by Erie County District Attorney Frank Clark, but it was granted on November 28, 2007. After 13-1/2 years of imprisonment, she was released later that day on bail pending her retrial. DeJac, 43, became the first woman in the United States to have a murder conviction overturned based on new DNA evidence.

Erie County DA has forensic evidence reevaluated

DA Clark announced he would retry DeJac based on Hudson's unrecanted testimony, and in January 2008 she was charged with depraved indifference murder, which carries a sentence of 25 years to life in prison. However, with the Buffalo media and a firestorm of callers to talk radio programs openly questioning why a new trial was being pursued, Clark quietly hired nationally renowned forensic pathologist Dr. Michael Baden to review the autopsy and toxicological reports, crime scene photos and physical evidence. After conducting his review Baden determined that Crystallynn died from "acute cocaine intoxication" rather than strangulation. Baden's finding was completely contrary to the opinion of the ME in 1993 who disregarded the cocaine because he thought it was too small of an amount to be a relevant factor in her death. Baden also estimated that Crystallynn died at 5:30 a.m., which was 30 minutes after DeJac said she checked on her that morning and left the house.

Two weeks after Baden reported his finding to the DA, the current Erie County ME, Dr. James Woytash, reported to the DA that after a review of the evidence he determined Crystallynn died from a cocaine overdose and a head injury of unknown origin. Woytash subsequently issued a new death certificate reflecting Crystallynn's revised cause of death.

Charges dismissed against DeJac based on new cause of death

On February 13, 2008 Clark held a press conference and announced the findings of Baden and Woytash. He said that the bruises on Crystallynn's head could have resulted from a fall after an overdose, which would explain the overturned table in her bedroom. Clark said that because he no longer believed that Crystallynn was murdered, the charges would be dropped against DeJac. Clark told reporters, "this woman has spent a lot of time in jail which she shouldn't have served. Is the system perfect? No, it isn't perfect. But the important thing is that the justice system discovered the error and cor-

DeJac cont. on p. 13

DeJac cont. from p. 12

rected it. It's unfortunate it took 14 years to do it."

After Clark's press conference, Baden, who is the co-director of the New York State Police Medicolegal Investigation Unit, told *The New York Times*, "There was sufficient cocaine in her blood to cause death and there was no other competing cause of death." Baden also said that the ME's original ruling of death by strangulation was arrived at even though there were no typical signs like bruising of the neck or damage to the windpipe. He continued, "Medical examiners also make mistakes. It should be a wake-up call for defense attorneys to have their own experts examine the evidence."

On February 28, 2008 the charges were formally dismissed against DeJac. When she appeared on NBC's *Today* program, she said that she felt suicidal at times while imprisoned, "but I felt that if I did that it would go down that I was the killer of my daughter. So, that would bring me out of it."

Donohue charged with 1993 strangulation

DeJac has always considered Donohue to be her daughter's killer, and the evidence supports that what likely happened is what she has always alleged. A dejected Donohue stalked her and a male friend that night. He followed them back to DeJac's home at 5 a.m., and angered when DeJac left with her friend, victimized Crystallynn and somehow introduced a trace amount of cocaine into during the attack. However, regardless of the evidence against Donohue, he cannot be prosecuted because he was given transactional immunity from prosecution in exchange for his testimony in DeJac's case.

The magnitude of the DA's error in giving Donohue immunity is not only suggested by the DNA evidence that supports he had a direct role in Crystallynn's death. In September 2007 he was charged with the strangulation murder of Joan Giambra only seven months after Crystallynn's death, based on DNA testing of evidence in the case. Donohue is also being investigated for his possible role in the 1975 strangulation murder of his then girlfriend Carol Reed.

Detective Dennis Delano suspended for leaking DeJac case info to media

The same week the charges were dismissed against DeJac, the Buffalo Police Department filed six charges against detective Delano for insubordination. He was accused of repeatedly ignoring direct orders from superiors to cease investigating the DeJac case,

and of releasing the crime scene video and other case material to the media, including the results of Donohue's lie detector test. If found guilty of the charges, Delano could be dismissed from the police force. Suspended until resolution of the charges, Delano has requested a formal hearing that could be held sometime in 2008. After preliminary hearing in March, Delano told reporters, "I did what I thought I had to do at the time. I don't think I did anything wrong."



Detective Dennis Delano

When she appeared on the *Today* program, DeJac defended Delano. "Detective Dennis Delano, God bless him. If it weren't for him, I wouldn't be sitting here and I'd still be sitting in prison."

Supporters of Delano in Buffalo organized a campaign for him to be honored with Fox TV's "America's Most Wanted" All-Star First Responders award. He didn't win the award, but he was one of eight finalists for the annual award that is selected from police officers throughout the United States.

Delano's problems with his superiors isn't just due to the embarrassment DeJac's exoneration caused the Buffalo PD for its botched investigation of Crystallynn's death. He also played a key role in the exoneration of Anthony Capozzi of two Buffalo rapes, and his release in April 2007 after almost 22 years of wrongful imprisonment. (In March 2008 Capozzi filed a \$41 million claim against New York State for his wrongful imprisonment.)

DeJac files \$14.5 mil. compensation claim

On March 28, 2008, DeJac filed a claim with New York's State Court of Claims for \$14,479,043. New York's wrongful imprisonment compensation statute doesn't place a cap on claims, and an economist hired by DeJac's lawyer calculated her economic damages at \$1 million per year for her 13 years, 7 months and 8 days of wrongful imprisonment, plus \$873,792 for loss of earning and benefits over that same period of time. DeJac gave birth to twin boys only months before her conviction, and she also had an 8-year-old son. She said after the

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Forensic pathologist Dr. Michael Baden

claim was filed, "I didn't get to tuck my children into bed at night. I didn't get to tell them a bedtime story. I didn't get to kiss their boo-boos. I didn't get to do any of that." Her lawyer, Steven Cohen told *The Buffalo News*, "The system failed Lynn DeJac miserably," and "the only way the system can" repay her for her ordeal of being wrongly convicted and imprisoned for allegedly strangling her daughter is by financially compensating her."

DeJac's prosecutor upset at criticism over her 1994 prosecution

Although some people might have a hard time sympathizing with him, the man who put DeJac in prison for almost fourteen years, former Erie County prosecutor Joseph Marusak, was so stung by the overwhelming public opinion in Buffalo favorable to dropping the charges against DeJac that he set-up a website to defend his prosecution of her in 1994.

Aftermath

For more than 13 years the legal system branded DeJac as a child-killer. Now free to pick up the pieces of her life, she has vowed to clear her daughter's name, asserting her honors student daughter was not a drug user.



Lynn DeJac after her release

Likewise, Delano doesn't believe Crystallynn died from a drug overdose. After Clark announced the charges would be dropped and before his suspension, in late February 2008 Delano flew to Washington D.C. to attend the annual meeting of the American Academy of Forensic Sciences. He wanted to get opinions about Crystallynn's cause of death from some of the forensic experts attending the conference. Dr. Lawrence Kobilinsky, chairman of the Forensic Sciences Department at the John Jay College of Criminal Justice, was one of the experts who reviewed the autopsy report, photos, videos, and other documentary evidence. He expressed the opinion that there is no way at this point in time that anyone can come to a definitive conclusion as to how Crystallynn died. Kobilinsky thinks the only way to determine Crystallynn's cause of death is to do a thorough investigation that includes a reconstruction of events from the evening before she died until her body was discovered, and who may have had contact with her.

DeJac cont. on p. 14

DeJac cont. from p. 13

So the four experts who have taken the closest examination of the evidence – the two Erie County MEs, Dr. Baden, and Dr. Kobilinsky – have all expressed a different opinion about Crystallynn's death.

Scott Greenfield, a New York criminal lawyer, wrote on his *Simple Justice* Internet blog that DeJac's case is a classic example of the fallacy of the non-fact based inductive reasoning prevalent in law enforcement decision making. Investigators first decide who committed a crime, and then proceed to collect and place undue importance on evidence that supports their supposition, while at the same time rejecting as insignificant all evidence that undercuts it.

Until Delano began looking at the importance of the evidence disregarded simply because it didn't support DeJac's guilt, she was destined to die in prison because of the Buffalo police investigator's inductive assumption that she was guilty. Delano's open-mind enabled him to pursue leads and forensic testing that wasn't deemed important at the time of DeJac's prosecution because the investigators were blinded by their assumption that she was her daughter's killer. It was Delano's fact based view of the case that led to DeJac's exoneration.

DeJac feels abused by the legal system, and rightly so. Her door to freedom has been opened into yet another room in a vast cave of horrors. Justice was denied her in 1994. It is again being denied her 14 years later by closing the case of her daughter's death by branding her as a drug user who accidentally killed herself, when the known evidence raises troubling questions about how she actually died.

Lynn DeJac is the first woman to have a murder conviction overturned by DNA evidence, although the charge wasn't dropped until the medical examiner ruled her daughter's death was not a homicide.

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Jerry Frank Townsend Awarded \$2.2 Million For False Murder Convictions

Jerry Frank Townsend was branded as a serial murderer after being convicted in 1980 and 1982 of six murders and one rape in south Florida.

Townsend was 27 when arrested by Miami police in September 1979 as a suspect in the rape of a pregnant woman. After that arrest Townsend was questioned about several Dade County murders. Townsend has an IQ of around 50 and the mental capacity of an 8-year-old, so police interrogators had little difficulty pressuring him to confess to two 1973 murders. In 1980 a jury convicted him of committing the murders and rape. He was sentenced to three terms of life in prison.

While imprisoned Townsend was interrogated about four Broward County murders that he subsequently confessed to committing. He was sentenced to four more life terms after pleading guilty to those murders in 1982.

Townsend's convictions were all based on his confessions, since there was no physical or forensic evidence, or eyewitness identification linking him to any of the crimes.

Townsend's claims of innocence fell on deaf ears until 1998, when the mother of 13-year-old Sonja Marion, one of the murder victims, convinced a Fort Lauderdale police detective to review Townsend's case file. His investigation led to DNA testing in 2000 of a semen sample on Marion's shorts that excluded Townsend, and implicated another man. Testing of evidence in another case also excluded Townsend and implicated the same man — Eddie Lee Mosely,

Mosely was dubbed "Rape Man" by the media because he was linked to more than a dozen rapes and murders. Mosely was indefinitely confined in a mental facility after being charged in two cases.

Since the MO of all the crimes was similar and Townsend's confessions to two of the murders were known to be false, prosecutors conceded substantial doubt about the truthfulness of all of Townsend's confessions to the Broward County murders. Without the confessions there was no evidence Townsend committed the crimes, and the perpetrator of two of the murders was known to be Mosely — a career violent criminal. In April 2001 additional DNA testing confirmed the previous results, and Townsend's four convictions were dismissed on June 8, 2001. Afterwards, Broward



Jerry Frank Townsend in June 2001 after being cleared of four Broward County murders.

County Sheriff Ken Jenne personally apologized to Townsend. Jenne later told reporters, "I told Mr. Townsend that I regretted, was sorry he spent the past 22 years incarcerated."

A week later Dade County prosecutors moved to dismiss Townsend's murder and rape charges. Dade County Circuit Court Judge Scott Silverman dismissed those charges on June 15, 2001, saying: "Given the preferred deficiency in the state's evidence, a lack of trust in its evidence including the obtained confessions, and in some cases what may very well be Mr. Townsend's outright innocence, it is abundantly clear that he is the victim of an enormous tragedy." The 49-year-old Townsend was immediately released after 22 years of wrongful imprisonment.

A lawyer hired by Townsend's guardian filed a federal civil rights lawsuit against the City of Miami, the Broward County Sheriff's Office, and several police officers. Among the lawsuit's claims were malicious prosecution, and that Townsend's rights were violated by his coerced confessions, the altering of interview tapes, and the withholding of exculpatory evidence.

In December 2006 the federal Eleventh Circuit Court of Appeals upheld the District Court's denial of summary judgment to the defendants, which paved the way for the case to go to trial. In May 2008 the City of Miami agreed to settle its portion of the suit for \$2.2 million.

Facing significant liability because of the four false murder convictions in its jurisdiction, Broward County did not settle its portion of the lawsuit at the same time. As of early July 2008 the case is unresolved.

Townsend was not the only man wrongly convicted of Mosely's crimes. Frank Lee Smith, was cleared of murder by DNA evidence eleven months after he died of pancreatic cancer while awaiting execution on Florida's death row. That DNA matched Mosely, who was in the victim's neighborhood and he fit the assailant's description.

Previous *JD* Story: "Innocent Man Imprisoned for 22 Years as a Serial Killer," *Justice:Denied*, Vol. 2, Issue 7.

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