

Nancy Smith & James Allen Acquitted Of Rape After 15 Years Imprisonment

Nancy Smith and Joseph Allen were convicted in November 1994 of multiple charges related to the alleged rape of children attending a Head Start program in Lorain, Ohio.

Smith was a Head Start school bus driver. The prosecution's theory was that after dropping off most of the kids at school she drove the bright yellow school bus to Allen's home in a residential neighborhood, where sexual abuse occurred in the front yard and inside his home.

The prosecution's case was based on the testimony of several children, and hearsay testimony by several adults about what other children had said. There was no incriminating physical or medical evidence, and no adult eyewitness corroborated the children's claims.

The jury rejected Smith and Allen's protestations of innocence, and their claim that prior to being charged they had never met. Smith was sentenced to 15 to 90 years in prison. Allen was sentenced to 20 years to life in prison.

In May 1996 Smith's family hired Columbus private investigator Martin Yant to look into the case. He became convinced of the innocence of Smith and Allen, and after his retainer was exhausted he continued to work *pro bono* on the case. Canadian researcher and writer Lona Manning became interested in the case, and she wrote "The Shame of Lorain, Ohio" for *Crime Magazine* (Dec. 2002). *Justice:Denied* published an updated version of Manning's article in Issue 29 (Summer 2005).

In 2005 the National Center for Reason and Justice awarded Yant a grant to work on the case. Yant then convinced the Ohio Innocence Project to accept Smith and Allen's cases. After Smith's parole was denied in February 2007, the OIP pursued the filing of a motion for a new trial.

Days prior to a scheduled hearing on February 4, 2009, supporters rallied outside the courthouse, and Smith told a reporter she would die in prison fighting to clear her name before confessing to crimes she did not commit. During that hearing Lorain County Common Pleas Court Judge James Burge unexpectedly vacated the convictions and sentences of both Smith and Allen. Smith was immediately released on \$100,000 bail. She told reporters, "I can't believe I'm sitting here. Sometimes I

didn't know if I'd ever see this day. I'm just in shock right now. I know it's not over. But now I can go home and clear my name." Allen was released on April 14 on \$100,000 bail.

The prosecution appealed, but the Ohio Court of Appeals upheld Judge Burge's authority to vacate the convictions and sentences.

During a hearing on June 24, 2009 Burge explained flaws he found in reviewing Smith and Allen's trial:

- Their right to cross-examine their accusers was denied by the adult's hearsay testimony about what the children told them, and that hearsay testimony would not be admissible in a retrial.
- The pretrial interview techniques used with the children who testified during their trial "was so suggestive that the children's in-court testimony would be inadmissible" in a retrial.
- The testimony of the children who did testify was presented in a prejudicial manner.
- Smith and Allen's right to cross-examine the children was impaired by the prosecution's failure to provide pretrial interview tapes until after the children testified on direct examination. Judge Burge ruled the tapes revealed the children's trial testimony was inconsistent and contradictory with their pretrial statements, but the delayed access of Smith and Allen's lawyers to the tapes did not allow the children to be effectively cross-examined.
- The children's pre-trial taped statements were so damning for the prosecution's case that they could have been relied on as substantive exculpatory evidence if they had been provided to the defense prior to the trial.
- Smith and Allen's trial lawyers failed to introduce exculpatory attendance records for the children that established they were in class during the times that the crimes were allegedly being committed miles away.

Judge Burge then announced, "I have absolutely no confidence that these verdicts are correct." He then *sua sponte* ordered judgments of acquittal entered for Smith, 52, and Allen, 56, and the return of their bonds.

Sources:

Nancy Smith, Joseph Allen acquitted by Lorain County judge in Head Start sex abuse case, *Cleveland Plain-Dealer*, June 25, 2009.

Judge James Burge's June 24, 2009 oral ruling in the case of Nancy Smith and Joseph Allen is available at, www.youtube.com/watch?v=eKTQVv7PUQA

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DNA Excludes Thomas Arthur

Thomas Arthur's case was first featured in *Justice:Denied* 10 years ago (Vol. 1 Issue 7, Fall 1999). Arthur has spent more than 20 years on Alabama's death row for a 1982 murder. The State of Alabama has opposed for more than a decade forensic/DNA testing of blood, hair, sperm and other evidence recovered from the crime scene that Arthur claims will prove he is innocent of the murder.

No physical evidence links Arthur to the crime, two alibi witnesses place him an hours drive from the crime scene, and the State's only eyewitness is the victim's wife, who didn't identify Arthur until she was offered the incentive of parole from her life sentence for murdering her husband.

Finally, in April 2009 a state judge ordered DNA testing of several crime scene items, including the wig worn by the murderer. The testing was conducted by the Alabama Department of Forensic Sciences. In July 2009 the test results excluded Arthur's DNA from being on the crime related evidence.

The judge denied the request of Arthur's *pro bono* lawyers for more state of the art DNA testing of the wig and other as yet untested evidence, to not just further exclude Arthur — but to identify the killer's DNA profile. The judge returned the case to the Alabama Supreme Court, and on September 3, 2009 Alabama Attorney General Troy King requested that the court set a new execution date.

Arthur's court-appointed trial lawyers were paid \$1,000. Due to missed filing deadlines, Arthur has not had either state or federal post-conviction review of his capital conviction or sentence. As a death row inmate claiming innocence, Arthur may be able to seek habeas review of his case under the US Supreme Court's ruling in Troy Davis' case on August 17, 2009. Arthur has had four stays of execution, twice being hours from execution. Extensive information about Arthur's case is on his website, www.thomasarthurfightforlife.com

For a copy of the USSC's 8-17-2009 ruling in Troy Davis' case, send \$2 or 5 first-class (44¢) stamps to: Justice Denied; PO Box 68911; Seattle, WA 98168

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