

Zackary Lee Stewart Released After 4 Years Of Wrongful Incarceration For Murder

Zackary Lee Stewart was an 18-year-old high-school senior in Hurley, Missouri when he was charged with the first-degree murder of 50-year-old David Dulin during a burglary of his home in November 2006.

Dulin was able to call 9-1-1 and he told the dispatcher that two men in their 20's and 30's broken into his house and shot him in the head with his own .22 pistol. He said he didn't know either man. Dulin was dead when the emergency vehicles arrived.

The prosecution's primary evidence was two jail house snitches who shared a cell with Stewart when he was jailed on an unrelated misdemeanor in March 2007. The two informants testified during Stewart's 2008 trial that he confessed to Dulin's murder. There was no physical, forensic or eye-witness evidence tying Stewart to the crime.

During the trial there was testimony that a hat with blood on it was found near Dulin. Family members told the Stone County prosecutor that they had never seen Dulin wearing that hat. In the middle of the trial the hat was rushed to the Missouri State Crime Lab for immediate DNA testing. The results were stunning: the hat did not have any of Stewart's DNA on it. But it did have the DNA of Dulin from his blood, Stewart's brother-in-law Tim Seaman, and another unknown person.

Prosecution witnesses testified they saw a light tan or white vehicle in the area of Dulin's house the night of his murder.

Stewart's sister testified as his alibi witness that he was at home the entire evening the



Zackary Lee
Stewart

murder occurred.

During closing arguments, the prosecutor argued the DNA results from the hat identifying other people was not important because the informants testified Stewart confessed. The

prosecution also argued that Stewart was driving the light tan or white vehicle.

The jury found Stewart guilty and he was sentenced to life in prison without the possibility of parole.

Stewart filed a motion for a new trial based on evidence discovered by a detective shortly after his trial. The detective received a tip that Tim Seaman told his brother before Stewart's trial that he had "taken someone's life."

During the motion's hearing, Seaman's brother testified that he didn't take his brother's comment seriously until after he heard about the bloody hat found by Dulin's body, because Seaman had had a hat identical to the one found at the murder scene. Seaman's brother also testified that at the time of Dulin's murder his brother drove a vehicle that matched the one seen near Dulin's house. A nephew of Seaman's also testified during the hearing that Seaman told him the morning after Dulin's murder that he and his friend, John Mills, were at Dulin's house when he was killed. The police couldn't locate Seaman to question him.

Stewart's motion argued that the new evidence from Seaman's brother and nephew was supported by the DNA tying him to the crime scene. The trial judge denied the motion, ruling that Seaman's statements were not exculpatory.

On May 25, 2010, the Missouri Supreme Court overturned the trial judge's ruling and ordered a new trial. The Court stated in part:

Pittsburgh that named Allegheny County and 7 individuals as defendants. Whitley's lawsuit was dismissed by the federal judge who denied all of his claims.

Whitley appealed to the federal 3rd Circuit Court of Appeals, which upheld the dismissal of his lawsuit. (*Drew Whitley v. Allegheny County et al*, No. 10-1723 (3rd Cir. 11-22-2010) Their ruling cited that Whitley couldn't sue for malicious prosecution because the trial court ruled in 1989 that there was probable cause for his arrest; in 1989 there was no clearly established constitu-

"Zackary's new evidence meets the criteria of being reasonably sufficient to raise a substantial doubt in the mind of a reasonable person as to the result if he is retried.

The newly discovered evidence offered by Zackary [Stewart] in support of his motion for a new trial warrants a new trial. The trial court's judgment is reversed, and the cause is remanded."

State v. Stewart, 313 S.W.3d 661 (Mo. 05-25-2010)

Stone County Prosecutor Matt Selby insisted he was going to retry Stewart and he was held in the county jail awaiting his trial scheduled to begin in February 2011. Then without any notice to Stewart's lawyer, Selby announced on the afternoon of Friday, December 3, "based on information currently available, I do not believe it is appropriate to continue Zachary Stewart's prosecution. Accordingly, I have dismissed the pending charges."

A couple hours later Stewart was released after being incarcerated for 3 years and 9 months. He told reporters outside the jail, "It's still kind of hard to believe at this moment right now." His lawyer Stacie Bilyeu said, "When you've been wrongly convicted of murder, and now you're released and innocent and going home, it's an unusual and good day."

On December 20, 2010, Tim Seaman was arrested and charged with the first-degree murder of David Dulin.

Sources:

State v. Stewart, 313 S.W.3d 661 (Mo. 05-25-2010). Charges against Hurley man dismissed in homicide case, *News-Leader* (Springfield, MO), December 4, 2010.

New suspect charged in 2006 southwest Missouri killing, *Kansas City Star*, December 22, 2010.



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testing. DNA testing of hairs recovered from the mask worn by the perpetrator to conceal his face from eyewitnesses was completed on February 28, 2006. Whitley was excluded as the source of the hairs. Additional DNA testing also excluded Whitley.

The charges were dismissed on May 1, 2006, and Whitley was immediately released after 17-1/2 years incarceration.

Whitley filed a federal civil rights lawsuit in

tional right of a defendant to a careful police investigation; and none of the defendants violated any of Whitley's clearly established constitutional rights.

Pennsylvania does not have a wrongful conviction compensation statute, and to date Drew Whitley has not received any compensation for his almost 18 year ordeal.

Sources:

Drew Whitley v. Allegheny County et al, No. 10-1723 (3rd Cir. 11-22-2010).

Whitley free after 17-year fight, *Pittsburgh Tribune-Review*, May 2, 2006.

