

Lynn DeJac Sues For \$30 Million For Wrongful Murder Conviction

Lynn DeJac was convicted in 1994 of a second-degree murder in the 1993 death of her 13-year-old daughter Crystallynn in Buffalo, New York. DeJac was sentenced to 25 years to life in prison.



Lynn DeJac's daughter Crystallynn Girard

The prosecution's theory was that after a night of drinking DeJac strangled her daughter while she was in a drunken rage. DeJac's prosecution was based on the testimony of three men. Wayne Hudson had two felony convictions and was facing a mandatory 25 years to life sentence

as a three time loser. A felony indictment against Hudson was dismissed in exchange for his testimony that DeJac confessed to him. Keith Cramer, an ex-boyfriend of DeJac, and Dennis P. Donohue, another ex-boyfriend, testified 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.

Buffalo cold case detective Dennis Delano wasn't convinced of DeJac's guilt and diligently worked on her case. By September 2007 Cramer had recanted his testimony and DNA testing unavailable at the time of DeJac's trial revealed that Donohue's DNA was found on the bedding Crystallynn's body was laying on, it was mixed in with her blood on the bedroom wall, and it was found inside her. The DNA evidence did not place DeJac in Crystallynn's bedroom at the time of her death. Based on the new evidence DeJac filed a motion to vacate her conviction.

DeJac's motion was granted on November 28, 2007, over the opposition of Erie County District Attorney Frank Clark. After 13 years and 7 months of imprisonment, the 43-year-old DeJac was released later that day on bail pending her retrial.

DA Clark announced he would retry DeJac, but with the Buffalo media and a firestorm of callers to talk radio programs openly questioning why a new trial was being pursued, Clark hired nationally known forensic pathologist Dr. Michael Baden to review the medical evidence. Baden determined that Crystallynn died from "acute cocaine intoxication" and not strangulation. The Erie County Medical Examiner then reviewed the evidence and determined Crystallynn died from a cocaine overdose and a head injury of unknown origin. The ME issued a new death certificate reflecting Crystallynn's revised causes of death.

DA Clark held a press conference on February 13, 2008, and announced the findings of Baden and the medical examiner. 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. He said DeJac wouldn't be retried, and the charges were dismissed against her two weeks later.

DeJac's exoneration was a mixed bag. She vigorously denied that her daughter used cocaine, and even though the DNA evidence suggests Donohue was involved in her death, he can't be prosecuted because of the immunity he was granted for his grand jury testimony, and even if he could be prosecuted, the revised cause of death doesn't identify Crystallynn's death as a homicide. Donohue was convicted in 2008 of strangling a woman to death in South Buffalo in 1993, and he is serving a sentence of 25 years to life. The judge told Donohue at his sentencing that he is a, "cold-blooded murderer. You brutally murdered a woman you knew. You're smart,



Lynn DeJac in November 2008

but DNA technology caught up with you." Donohue's DNA matched skin cells found under the dead woman's fingernails.

In 2008 DeJac filed a claim with the New York's State Court of Claims for almost \$14.5 million. Her claim is pending.

On November 24, 2010, DeJac (now Lynn DeJac Peters) filed a \$30 million dollar federal civil rights lawsuit that names Erie County, former District Attorney Frank J. Clark and former Deputy District Attorney Joseph J. Marusak, the City of Buffalo and the Buffalo Police Department as defendants. The lawsuit alleges that the Erie County DA and the Buffalo police knew at the time of DeJac's prosecution that she did not murder her daughter, and that all the evidence pointed to Donohue, which was why he was granted immunity for his grand jury testimony.

In June 2010 Anthony J. Capozzi settled his claim against New York State for \$4.25 million. Capozzi was wrongly imprisoned for almost 22 years after being erroneously identified as Buffalo's notorious Bike Path Rapist. Buffalo PD Detective Dennis Delano also assisted in overturning Capozzi's convictions.

Justice Denied published a detailed article about Lynn DeJac's case in Issue 40.

Sources:

- DeJac Peters sues police, county for \$30 million, *Buffalo News*, November 24, 2010.
- Capozzi gets \$4.25 million from state in settlement, *Buffalo News*, August 20, 2010.
- Forensics Exonerates Lynn DeJac In Her Daughter's Death After 13 Years Imprisonment, *Justice Denied*, Issue 40, Summer 2008

Federal Court Dismisses Drew Whitley's Lawsuit For 17 Years Wrongful Imprisonment

Drew Whitley was convicted in 1989 of the August 1988 murder of Noreen Malloy, a 22-year old McDonald's restaurant night manager in Duquesne, Pennsylvania. Ms. Malloy was confronted in the McDonald's parking lot at 3 am by a



Drew Whitley after his release in May 2006 (Carrell Sapp, Pittsburgh Post-Gazette)

masked man who demanded money. She was shot in the back when she ran to her car. The shooter took off his mask, hat and coat as he fled the scene.

A neighbor of Whitley's worked at the McDonald's and even though he didn't see the killer's face, he told police he recognized his voice as Whitley's.

Whitley, 32 was charged with Malloy's murder. At his trial his neighbor and two other witnesses identified Whitley as the killer. A jailhouse snitch also testified that Whitley confessed to him while he was in jail awaiting trial. Whitley was convicted and sentenced to life in prison.

In 2001 The Innocence Institute of Point Park University began working on Whitley's case, and in November 2005, the court approved Whitley's motion for DNA

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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.



Whitley cont. from p. 9

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.

