

Father's Indecent Act Conviction Overturned When It Is Learned His Daughter Is a Serial False Accuser

After his third trial AJ was convicted in October 2009 of one count of committing an indecent act with or in the presence of his minor daughter in Australia's state of Victoria. He was sentenced to 20 months in prison.

His first trial ended in a mistrial for a procedural error and his second trial ended in a mistrial when the jury was unable to reach a verdict.

The only evidence against the father, only identified in court papers as AJ to protect his privacy, was the testimony of his daughter. His minor daughter is only identified as XN in court papers to protect her privacy. AJ shared custody of his daughter with his ex-wife. When AJ's daughter testified during his trial she denied sending a text message to his girlfriend that read, "Can you tell Dad that I didn't mean for this to happen. As it never happened. Mum is making me do this. Can you tell Dad I'm so sorry."

More than a year after AJ's trial, his lawyer was notified by a lawyer in the Attorney General's Office not involved in AJ's prosecution that his trial lawyer had not been provided evidence that his daughter had falsely accused one neighbor of sexual assault, and another neighbor had been convicted in November 2008 of the rape, attempted rape and sexual penetration of his daughter.

The convicted neighbor, Mark Raymond Pollard, relied on the defense that XN was a sexually precocious girl who made up the accusations. The only evidence against him was the girl's testimony. When the girl testified during Pollard's trial his lawyer introduced a pornographic photo of an unidentifiable girl sent to Pollard by a mobile telephone that he believed was of XN. XN denied the photo was of her or that she had sent it to Pollard. She also denied sending a large number of sexually oriented text messages to Pollard that he neither solicited nor responded to.

AJ also discovered that Pollard's prosecutor did not believe XN was truthful in denying that she didn't send the text messages, but the prosecutor didn't disclose that to Pollard's lawyer or the jury.

After being provided with the pornographic photo of the girl sent to Pollard, AJ discovered that the necklace she wore was identical to a necklace his daughter wore during a court hearing.

AJ sought leave to appeal based on the prosecution's failure to disclose the exculpatory evidence that Pollard's prosecutor believed XN committed perjury during Pollard's trial when she denied sending the text messages. AJ argued the jury's verdict could have been different if it had known that evidence undermining his daughter's credibility – which was the key issue at trial.

Victoria's Court of Appeals agreed that the undisclosed evidence could have enabled AJ's lawyers to more effectively cross-examine his daughter in an effort to undermine her credibility, and it could have resulted in him being "acquitted." In its ruling setting aside, AJ's conviction the Court of Appeals relied on both Australian and international authorities supporting the general principle in countries with an accusatorial legal system, "that the prosecution must ... disclose all relevant evidence to an accused and that a failure to do so may, in some circumstances, require the quashing of a verdict of guilty."

In a January 2011 interview after his conviction was overturned, AJ said that he believed his ex-wife used their daughter to set him up for a false sex charge as revenge for him telling the police about a crime she planned to commit. AJ also said they discovered that his daughter told the police after his arrest that nothing had happened, but they weren't interested since the charges had already been filed against him.

AJ served 19 months of his 20 month sentence before he was released on bail pending the outcome of his appeal.

Read the Court's ruling in *A J v The Queen*, [2010] VSCA 331 at, www.austlii.edu.au/au/cases/vic/VSCA/2010/331.html.

Mark Raymond Pollard has filed an appeal based on the new information undermining XN's credibility discovered by AJ's lawyers.

Sources:
A J v The Queen [2010] VSCA 331 (7 December 2010)
"I was innocent but went to jail," *Herald Sun* (Melbourne, AUS), January 2, 2010.

The Seattle PD Conceals Evidence Favorable To Defendants In Cases Of Alleged Domestic Violence

The Washington Association of Criminal Defense Lawyers filed a lawsuit against the Seattle Police Department (SPD) in 2010 that alleged the SPD was withholding information from defense attorneys about its investigation and handling of cases that involved alleged domestic-violence. During discovery the Seattle City Attorney's Office turned over a document that detailed the SPD's policy of instructing "citizen volunteers in a victim-assistance program to not put in writing some information that could be used by defense attorneys."

After disclosure of the document the city agreed to settle the lawsuit for \$32,000.

However, the disclosure that the SPD as a matter of policy conceals exculpatory evidence from criminal defendants in domestic violence cases could have implications for the city beyond settlement of the lawsuit. The SPD's policy constitutes a possible violation of the civil rights of defendants.

As a result of numerous fatal police shootings and beatings of non-resisting persons by SPD officers, on March 31, 2011, the U.S. Department of Justice began an investigation of the SPD's excessive use of force and mistreatment of minorities. James Lobenz, who represented the WACDL in the lawsuit, stated when the lawsuit settlement was announced that review of the SPD's handling of domestic violence cases should be added to the U.S. DOJ's investigation.

Source:
"SPD agrees to pay \$32,000 for withholding domestic-violence advice," *The Seattle Times*, April 6, 2011.
Appropriate federal probes of the Seattle Police Department, *The Seattle Times*, April 3, 2011.

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