

D.M. cont. from page 16

Almost a year later, in February 2011, 32-year-old Marc P. O'Leary was arrested in Lakewood, Colorado and charged with two rapes and an attempted rape in Colorado. When the police searched O'Leary's home they found a camera that contained more than 100 "trophy" photos of women victimized by his sexual assaults. [One of those photos](#) was of D.M. -- exactly as she had told the police in August 2008 her rapist had taken photos of her.

There were strong similarities between O'Leary's accused crimes in Colorado, the rape of D.M., and the rape of a 63-year-old woman in the Seattle suburb of Kirkland that occurred in 2008 after D.M.'s rape. Kirkland is about 15 miles southeast of Lynnwood.

Investigators discovered that O'Leary lived in Mountlake Terrace, Washington from 2006 to 2009. Mountlake Terrace is a Seattle suburb only a few miles from Lynnwood and Kirkland.

On March 16, 2011 D.M.'s case was reopened and the \$500 she had paid as part of her Pretrial Diversion Agreement was ordered returned to her. Although D.M. had not been convicted of filing a false police report because she successfully completed the Pretrial Diversion Agreement, the fact she had been charged had been reported to state and federal police agencies. On April 14, 2011 an order was entered to delete the record of D.M.'s case from all criminal justice agency files.

O'Leary was charged with the rape of D.M. and the woman in Kirkland. O'Leary pled guilty on June 6, 2012 to those rapes. As part of his plea deal he was sentenced to serve 19 years and 8 months in prison concurrently with his sentence to serve 49 years and 2 months in prison for his convicted crimes in Colorado.

At the time of O'Leary's plea and sentencing Snohomish County Deputy Prosecutor Adam Cornell [said about O'Leary's](#) rape of D.M., "The defendant came into her home and crushed her dignity sense of security and belief in the goodness of people. She suffers still."

On June 7, 2013 D.M. filed a federal civil rights lawsuit in Seattle that named as defendants Marc O'Leary, the City of Lynnwood, Lynnwood police chief Steven J. Jensen,



Marc P. O'Leary at the time of his arrest in February 2011. (Jefferson County Sheriff's Office)

Lynnwood police officers Jeff A. Mason and Jerry Ritgarn, Cocoon House, and its director and D.M.'s case manager in August 2008, Jana Hamilton and Wayne Nash respectively. The case is *D.M. v. O'Leary et al*, No. 2:2013cv00971 (USDC WWA).

Among D.M.'s claims is the City of Lynnwood and its police officers Mason and Ritgarn violated her federal constitutional rights by: Arresting her without probable cause that she filed a false police report; failing to advise her of her *Miranda* rights that she had the right against self-incrimination, she had the right to remain silent, and that she was entitled to assistance of counsel; forcing her to make an involuntary statement that she hadn't been raped; threatening her with jail if she failed a polygraph test; threatening to have her housing benefits revoked; and maliciously prosecuting her in violation of her clearly established constitutional rights.

D.M.'s lawsuit seeks "an appropriate remedy and awarding Plaintiff general and special damages, including damages for pain, suffering, anxiety, humiliation, experienced in the past, the present, and to be experienced in the future pursuant to 42 U.S.C. Section 1983 and Section 1988 in an amount to be proven at trial, including punitive damages."

D.M.'s lawsuit can be read [by clicking here](#).

D.M. currently lives in Wyoming. She only has the police in Colorado to thank for her name being cleared and her criminal record expunged, because they put forth the effort to identify her photo was amongst the photos O'Leary took of his victims.

Source:

[DM v. O'Leary et al](#), No. 2-2013cv00971 (USDC WWA) (complaint filed 6-7-2013)

[Convicted rapist pleads guilty to rapes in Lynnwood, Kirkland](#), KOMOnews.com (Seattle, WA), June 6, 2012



Visit the Innocents Database

Includes details about more than 3,300 wrongly convicted people from the U.S. and other countries.

www.forejustice.org/search_idb.htm

Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

www.forejustice.org/biblio/bibliography.htm

Lorenzo Johnson Rally Held In Harrisburg, Pennsylvania on December 18, 2013

On December 18, 2013 [A Call to Action to Free Lorenzo Johnson](#) was held at 11:30 a.m. outside the Office of the Pennsylvania Attorney General in Strawberry Square, at 3rd St. and Walnut St. in Harrisburg, Pennsylvania. The event included a press conference and rally in support of Johnson, and to submit petitions to AG Kathleen Kane encouraging her to support Johnson's post-conviction petition and dismissal of his charges.

Participating were Johnson's lawyer Rachel Wolkenstein; exoneree and wrongful conviction activist Jeffrey Deskovic; Derrick Hamilton, an advocate for family and victims of wrongfully conviction; Bret Grote, Director of the Abolitionist Law Center, the Pennsylvania Human Rights Coalition-Fed-Up, and Johnson's wife Tazza and other family and friends.

Lorenzo Johnson was released from prison on January 18, 2012 after 16 years of incarceration, when the federal Third Circuit Court of Appeals reversed his convictions on the basis there was insufficient evidence Johnson was guilty of being an accomplice and coconspirator in the December 1995 murder of Taraja Williams in Harrisburg. Johnson's alibi defense



Lorenzo Johnson at the party celebrating his release on January 18, 2012. He was taken back into custody on June 14, 2012. (Lorenzo Johnson, Facebook.com)

was he was in New York City 170 miles from Harrisburg at the time of the murder. However, the jury relied on the key prosecution testimony of a drug addict who testified that on the night of the shooting she was drinking alcohol and had consumed a large quantity of crack cocaine. She also admitted that when first questioned by the police she told them she didn't know anything about the shooting.

Johnson was taken back into custody on June 14, 2012 to resume serving his life sentence after the U.S. Supreme Court reinstated his convictions.

In August 2013 Johnson filed a state post-conviction petition that includes the new evidence the prosecution's key witness has recanted her trial testimony as false, and new evidence pointing to the actual murder-

Johnson cont. on page 18

William DePalma Was Framed For Bank Robbery By A Policeman Faking His Fingerprint

The conviction of innocent persons in state and federal courts isn't a recent phenomenon, but is an ongoing feature of the legal system in the United States. A police officer's framing of William DePalma for a bank robbery he didn't commit was such an egregious case that it was [national news](#) in the fall of 1975.

On November 16, 1967 a police officer stopped William DePalma while he was walking on a sidewalk in Whittier, California, where he lived. The officer thought DePalma resembled the description of the man who earlier that day robbed a local bank with a pistol and put the money in a brown bag. DePalma agreed to go to the police station for questioning and while he was there his photograph was taken. All the witnesses shown DePalma's photo said he wasn't the bank robber. There was no evidence he committed the robbery, but a report about his interview and his photograph were included in the case file.

Twelve days after the Whittier robbery, the Mercury Savings and Loan in Buena Park was robbed of \$2,400. Buena Park and Whit-

tier are in Orange County, which adjoins Los Angeles County. The method operandus was similar to the earlier robbery in Whittier, so the file for that still unsolved crime was reviewed by the Buena Park police. The file included the report about DePalma and his photograph. Shortly after that the head of Buena Park's crime lab — Sergeant James D. Bakken — reported that DePalma's left index fingerprint matched a fingerprint found on a counter at the savings and loan. DePalma's fingerprint and the crime scene fingerprint were sent to the FBI lab in Washington, D.C. — which confirmed the match.

DePalma was arrested in December 1967 and charged with committing the Buena Park robbery.

During his federal court trial in 1968 the prosecution's case was based on the testimony of two bank employees who identified DePalma as the robber, and an FBI fingerprint examiner and Bakken both testified DePalma's fingerprint matched the fingerprint found on a counter at the crime scene. DePalma alibi defense that at the time of the crime he was working 15 miles away in the City of Commerce selling food from his catering truck, was supported by the testimony of 13 witnesses.

The jury convicted DePalma and the 31-year-old father of three was sentenced to 15 years in prison. He was allowed to remain free pending the outcome of his appeal.

DePalma was broke from paying his legal expenses of \$13,000, so after the federal 9th Circuit Court of Appeals [affirmed his conviction](#) he began calling Los Angeles area lawyers and private investigators in a desperate attempt to find someone willing to investigate his case *pro bono* for evidence proving his innocence. Only one person agreed to meet with him: P.I. John Bond. Skeptical of DePalma's claim he had never been in the Mercury Savings & Loan, Bond had him take a lie detector test. DePalma passed so Bond agreed to look into his case at no charge. Bond began trying to solve the mystery of how DePalma's fingerprint could have been at the crime scene when he wasn't there, by seeking to discover the identity of the robber.

After the U.S. Supreme Court declined to review DePalma's case he began serving his sentence in August 1971 at McNeil Island Federal Penitentiary near Tacoma, Washington. Imprisoned a thousand miles north of Los Angeles, DePalma's impoverished



William DePalma in August 1975. (AP)

wife and three children weren't able to visit him.

Bond was able to obtain documents proving the prosecution had failed to disclose to DePalma's trial lawyer that the teller who had been robbed did not identify DePalma when shown his photo 10 days after the robbery. The teller then positively identified him as the robber during his trial. The prosecution also failed to disclose that both tellers told police at the scene that the robber was "Mexican" — while DePalma was Italian-Russian. The prosecution also failed to disclose there was a third witness — a woman saw the robber walk into the bank and she didn't identify DePalma.

Lawyer Joe Ball agreed to represent DePalma *pro bono* and filed a motion for a new trial based on the prosecution's *Brady* violations for failing to disclose the exculpatory evidence, new expert evidence that there were irregularities in the appearance of DePalma's fingerprint that had alleged been found at the crime scene, and that his employer had been with him 15 miles from the robbery at the time it occurred, but he had not been able to testify at DePalma's trial because he was out of the country. DePalma's motion was denied by Judge Charles Carr -- who had presided over DePalma's trial -- based on the reliability of the fingerprint testimony during the trial. [Judge Carr said](#): "I read the chances of fingerprints being duplicated are one out of millions." In May 1972 the federal 9th Circuit Ct of Appeals [affirmed the denial](#) of a new trial.

Bond had begun working for the Federal Public Defenders Office in Los Angeles on the condition he could continue working on DePalma's case, and in September 1972 the FPDs were assigned to represent DePalma.

Bond had not been successful in discovering the robber's identity, so he began looking into Bakken's background. Bakken testified during DePalma's trial that he worked for four years in the "records bureau" of a rural Minnesota sheriff's office — but when Bond called the sheriff [he was told](#), "I've got a three-man department. I don't have a record bureau, and I've never heard of a man named Bakken." Bakken also testified that he had taken criminology courses from the University of Minnesota, but when contacted by Bond the university said Bakken had never taken any classes.

After the Buena Park PD was informed in the fall of 1973 that Bakken — who still worked there -- had testified falsely about

DePalma cont. on p. 19

Johnson cont. from page 17

ers. The State's response to Johnson's petition is due to be filed in January 2014.

On October 15, 2013 the federal Third Circuit Court of Appeals denied Johnson's request to file a second or successive federal habeas corpus petition. Although Johnson's petition was based on his new evidence supporting his actual innocence, the court ruled it did not make "a prima facie showing that his claims satisfy the applicable standard" for filing a second or successive petition.

Detailed information about Lorenzo Johnson's case is at, www.freelorenzojohnson.org.

Previous *Justice Denied* articles about Lorenzo Johnson's case are:

[U.S. Supreme Court Reinstates Lorenzo Johnson's Convictions Even Though He May Be Innocent](#)

and, [Lorenzo Johnson Back In Custody After U.S. Supreme Court Reinstates His Murder Conviction](#)

