

Introduction

Four-month-old Jessica Syzak died on October 12, 1995 in St. Clair County, Michigan. Almost 16 years later her father, Scott Syzak, was convicted by a jury on May 24, 2011 of one count of first-degree felony-murder, with the predicate felony of child abuse. On July 1, 2011 Circuit Court Judge Cynthia A. Lane sentenced Syzak, 43, to the mandatory prison term of life in prison without the possibility of parole.

Mr. Syzak appealed, and the Michigan Court of Appeals [affirmed his convictions](#) on April 23, 2013.¹

The following account of Mr. Syzak's case is excerpted from his attorney Peter Jon Van Hoek's petition to Michigan Supreme Court for review of the appeals court's ruling.

Case Account

Mr. Syzak's convictions arose from a complicated incident which occurred in 1995. At that time, Mr. Syzak and his wife Candace had a four-month-old daughter named Jessica. She sustained a head injury, later determined to be a skull fracture. She was treated at an emergency room when she was brought there by her parents, and was seen by numerous doctors over the course of the next five weeks. She was never hospitalized, and her medical evaluations over that time did not reveal any degree of worsening medical condition, developmental problems, or eating or sleeping disorders. She was seen by a pediatric neurosurgeon to drain a swelling that arose on her forehead, at the site of the fracture, on the day prior to her death, but sent home from that visit with no warnings of any ongoing danger. She was placed face down in her soft-sided crib or playpen that night to sleep, surrounded by stuffed animals and blankets. The next morning her parents found Jessica in bed, not breathing, called 911 and attempted CPR, but she was pronounced dead that morning.

When Jessica was first brought into the emergency room, Mrs. Syzak told the doctors that she had been bathing Jessica, and that when she picked her up out of the bathtub Jessica was slippery and fell out of her hands, hitting her head on the edge of the tub as she fell.

An autopsy was conducted by the medical examiner Dr. Richard Anderson, who could not determine the actual mechanism that caused death, but concluded she may have died from a seizure related to the skull fracture. There was no evidence presented during the trial that Jessica was seen or

Convicted Of Murdering His Daughter Who Likely Died From Natural Causes – The Scott Syzak Story

By Peter Jon Van Hoek, Esq.*

diagnosed prior to her death with any seizures. In his trial testimony, the medical examiner who conducted the autopsy conceded there was no anatomical evidence of a seizure that he is not a neurologist, that he is not medically qualified to explain a mechanism of death arising from a brain injury, and that his conclusion as to the cause of death was an "exclusionary diagnosis," which means it was reached only because no other objective cause of death was found. He agreed he could not rule out asphyxiation as the cause of death, and found no evidence of any subdural hematoma, intercranial bleeding, or brain stem involvement during the autopsy.

The medical examiner took several slides and sections of the brain during the autopsy, and later, on the advice of Dr. Werner Spitz, a noted pathologist, he had the body exhumed, and took other samples, including from the eyes.

"The defense presented expert testimony from a Board-certified pediatric neurologist ... that the skull fracture did not cause the later death. He testified ... the fracture could not have been the cause or mechanism of death. In his opinion, Jessica Syzak died from Sudden Infant Death Syndrome (SIDS)."

At trial, the defense presented expert testimony from Board-certified pediatric neurologist Dr. Brian Woodruff. *Dr. Woodruff reviewed all of the then-available medical records and autopsy reports, and reached the conclusion that the skull fracture did not cause the later death.* He testified that in the absence of any objective evidence of brain stem involvement, the fracture could not have been the cause or mechanism of death. *In his opinion, Jessica Syzak died from Sudden Infant Death Syndrome (SIDS), as there was no objective cause of death shown by the evidence and the circumstances of her final night showed all the now-recognized danger signals of a SIDS death.*

No arrests or charges were raised in 1995, following the autopsy, even though Mrs. Syzak had admitted to accidentally drop-

ping Jessica and causing her head injury. The matter was considered by the county officials a possible homicide case, and the file remained open, but nothing further occurred until 2007, when a cold case unit of the St. Clair County Sheriff's Department began to look into the matter, at the urging of an employee of the Medical Examiner's Office. Further interviews were conducted with Mr. and Mrs. Syzak, who at that time were living in Indiana. During those interviews, both Mr. and Mrs. Syzak ultimately admitted that in fact Mr. Syzak had been bathing Jessica when she fell and hit her head, and that they had agreed Mrs. Syzak would tell the doctors she was the person doing the bathing because Mr. Syzak had a prior child abuse conviction, not involving Jessica, and feared the police would not believe his assertion that the injury was accidental.

Following these interviews, Mr. Syzak was arrested and charged with felony-murder.

In these circumstances, it became evident the major factual issue at the trial in 2011 was whether the skull fracture caused the death of Jessica Syzak. There was no real dispute, after the statements from Mrs. and Mr. Syzak were found admissible, that he was bathing Jessica when she hit her head and sustained the injury. An extensive amount of expert testimony was presented, from medical examiners, child abuse experts, radiologists, and the defense's expert.

The primary issue in the case concerns the fact that in the intervening years between the autopsy and the charges being made against Mr. Syzak, the county medical authorities lost the physical slides, samples, and other medical specimens collected by the pathologist both during and after the initial autopsy. Even though the file was officially kept open as a possible homicide, and the policy was to retain all physical evidence, that evidence in this case was lost and could not be located, after repeated searches, prior to the trial. For that reason, this physical evidence was never available for the defense expert to examine or take into consideration in reaching his conclusions as to the cause and mechanism of death. The expert testified that he would have examined that evidence had it been available to him, as it could have significantly bolstered his medical conclusion that Jessica did not die from any complications of the skull fracture.

On appeal, Mr. Syzak has argued that the trial judge reversibly erred in denying his motion to bar the testimony of the prosecution's med-

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Virginia Prosecutors Contempt Of Court Conviction Overturned

The contempt of court conviction of prosecutor Catherine Marie Paxson by a Norfolk, Virginia General District Court judge [has been overturned](#) on appeal. Catherine Paxson is a 2010 graduate of Regent University School of Law in Virginia Beach, Virginia. [She works](#) as a Norfolk Assistant Commonwealth's Attorney.

On January 7, 2014 Paxson was an hour and 20 minutes late for a hearing in the courtroom of Norfolk District Court Judge S. Clark Daugherty. She kept defense attorneys, police, and about 15 people waiting for her to show up. When she appeared Judge Daugherty asked Paxson why she shouldn't be held in contempt for her extreme lateness. [Paxson told](#) Judge Daugherty she had been attending to a "brief matter in circuit court."

Judge Daugherty considered her excuse inadequate for delaying court proceedings for almost an hour and a half, and he held Paxson in criminal contempt of court and fined her \$250. With mandatory court fees Paxson was ordered to pay \$345.

Norfolk Circuit Court Clerk George Schaefer [told The Virginian-Pilot](#), "To hold somebody in contempt for being late is highly unusual." A spokesperson for the Commonwealth Attorney's Office said Judge Daugherty's ruling was surprising.

Paxson appealed her conviction. She was the defendant in the case while her employer was in the position of representing the State's interests. To resolve the appearance of a conflict of interest, Portsmouth Commonwealth's Attorney Earle C. Mobley was appointed as special prosecutor. Mobley filed a motion to overturn Paxson's conviction and dismiss the contempt charge with prejudice. The motion argued Paxson's conduct didn't constitute contempt of court. Paxson's preferential treatment as a prosecutor was demon-

strated by the motion that for a typical defendant would have been filed by Paxson's attorney, and not the prosecuting attorney.

A hearing concerning Mobley's motion [was held on](#) February 7, 2014. Norfolk Circuit Court Judge Charles E. Poston summarily [granted the motion](#) 15 seconds after the hearing began at 9 a.m. without hearing any arguments and without making a statement of his reasons for granting the motion. In overturning Paxson's conviction and dismissing the contempt charge Judge Poston only commented that Judge Daugherty's contempt ruling was "unusual."

Sources:

[Judge overturns prosecutor's contempt conviction](#), *The Virginian-Pilot*, February 7, 2014

[Norfolk judge holds missing prosecutor in contempt](#), *The Virginian-Pilot*, February 5, 2014

[RE: Catherine M. Paxson](#), No. CR14000237-00, Fourth Judicial Circuit Court of Virginia (Cir. Ct. of the City of Norfolk), Criminal Court Docket, Feb. 7, 2014

[Catherine Paxson](#) (Prosecutors), Staff Directory, City of Norfolk, Virginia



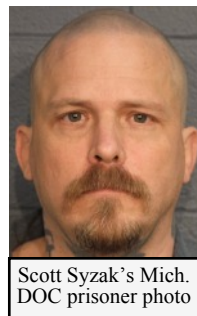
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ical examiner on the basis that the defense expert did not have an equal opportunity to review **all** of the relevant evidence in the case. This issue focuses on the standards to be applied by a reviewing court when crucial evidence is lost or destroyed prior to trial, and thus unavailable to the defense.

The Appeals Court's Ruling

In their opinion, the Court of Appeals held that when the prosecution fails to maintain or preserve evidence that is potentially useful to the defense or would tend to exonerate the accused, there is a Due Process violation only if the defense can establish bad faith on the part of the state. In this case, the Court held the defense at the pre-trial suppression hearing did not show evidence of a bad faith suppression or loss of the physical evidence, and could not prove that this evidence was in fact material exculpatory evidence but rather merely potentially useful evidence to the defense. Accordingly, the appeals court held that the loss of the evidence, and its unavailability to be considered by the defense expert, was not a constitutional violation and provided no basis for suppression of the testimony of the prosecution expert who had collected and viewed that evidence.

Given the severity of the charge in this case, the strongly disputed fundamental issue of the actual cause and mechanism of death in the matter, and the passage of 16 years from the date of the death until the trial, this case



Scott Syzak's Mich. DOC prisoner photo

highlights crucial questions concerning the preservation of evidence and the inability of the defense to have equal access to critical evidence due to the passage of time. Requiring the defense to prove that lost or destroyed evidence was materially exculpatory, rather than only potentially useful, is essentially an impossible burden for the defense to meet where, as here, the evidence cannot be located and thus its exculpatory nature cannot be evaluated. *Clearly that evidence was of significant importance to the medical examiner who conducted the autopsy and later needed to have the body exhumed, at the direction of a nationally recognized pathologist, to gather further evidence.*

The defense expert, who was without question far more qualified and experienced than the county medial examiner to determine whether the skull fracture caused the death, was hamstrung in his review of the 16-year-old evidence in the case. Only a medical expert could determine the exculpatory nature of that physical evidence, and that opportunity for review was denied to the defense. Requiring the defense to prove bad faith on the part of the county officials in losing the evidence was an impossible hurdle to overcome. In the context of this case, where there was an obvious potential of reasonable doubt over whether Mr. Syzak was criminally responsible for

his daughter's death.

MI Supreme Court Denies review

On November 25, 2013 the Michigan Supreme Court stated, "we are not persuaded that the questions presented should be reviewed by this Court," in [denying review](#) of the appeals court's ruling.² With the end of direct review, Mr. Syzak can pursue post-conviction review of his conviction that can include claims of ineffective assistance of his trial counsel. Scott Syzak can be written at:

Scott Syzak 215189
Macomb CF
34625 26 Mile Rd.
New Haven, MI 48048

Since a prisoner can be moved at any time, you can check Mr. Syzak's current location by looking up his name – Scott Syzak – on the Michigan Department of Corrections Inmate Search webpage at, <http://mdocweb.state.mi.us/OTIS2/otis2.aspx>

Endnotes:

1. [People v. Syzak](#), No. 305310 (Mich. Ct. Of App. 4-23-2013) (Unpublished opinion)
2. [People v. Syzak](#), No. 147247 (Mich. Sup. Ct., 11-25-2013) (Denying review)

* Peter Jon Van Hoek is an attorney with the State Appellate Defender Office in Detroit, Michigan. Mr. Van Hoek represented Scott Syzak for his direct appeal to the Michigan Court of Appeal and the Michigan Supreme Court. This article is based on Mr. Van Hoek's submission to the Michigan Supreme Court dated June 11, 2013 in support of Mr. Syzak's writ of review. The substance of what Mr. Van Hoek wrote is unchanged, but for the reader's clarification the names of several people have been added.

