

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



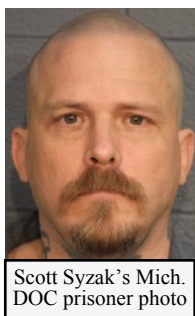
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ical examiner on the basis that the defense expert did not have an equal opportunity to review **all** of the relevant evidence in the case. This issue focuses on the standards to be applied by a reviewing court when crucial evidence is lost or destroyed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

