

Leila M. Dekker Found Guilty Of Improper Medical Conduct After Her Acquittal In Two Criminal Prosecutions

After being acquitted in two separate criminal prosecutions, Dr. Leila Maria Dekker has been found guilty by the Western Australia State Administrative Tribunal of improper conduct for failing to stop and render medical assistance to a woman who died at the scene of a traffic accident in April 2002.

Dr. Leila Dekker graduated with a [medical degree](#) from the Universidade Federal Fluminense in Rio de Janeiro, Brazil and became a doctor in 1974. She speaks Portuguese, Spanish, French, and English. She immigrated to Australia and became registered as specialist in diagnostic radiology in 1996. In the spring of 2002 Dr. Dekker was living in the area of Karratha, a city of about 16,000 that is 950 miles north of Perth in Western Australia. She was working for the Kinetic Health Group in Karratha.

Dekker's life changed forever on April 27, 2002 when she went to the garbage dump outside the nearby town of Roebourne. At about 6:30 p.m. she was returning from a trip to the dump that is on Cherratta Road. Dekker was stopped where Cherratta Road makes a 90 degree turn at a T-intersection, when an oncoming vehicle on the wrong side of the road began veering toward her. (Australian's drive on the left side of the road.) To avoid a collision Dekker pulled her Toyota pickup forward into the brush across the road and the oncoming vehicle passed behind her. Although Dekker heard what sounded like a crash, she couldn't see anything because it was dark and there was no street lighting. (Sunset was an hour earlier at about 5:30 p.m.) Dekker had no flashlight, no cell phone, no medical supplies or even a first-aid kit with her, so she immediately drove to the Roebourne police station that was less than a 1/4 mile away and re-

ported the incident. Police officers promptly went to the intersection and found the vehicle had run off the road and rolled over. The driver, Marshall Bobby, wasn't seriously injured, but his passenger Josie Tumbler was thrown from the Land Rover. She died at the scene from severe internal injuries.

When interviewed Dekker [told the police](#), "as a medical doctor I know there would be a bad injury and I know it was a waste of time, so I go to police so they can get help." (JD Note: As a non-native English speaker Dekker apparently mixed her diction.) She later [made a statement](#) that immediately "After the near miss incident on 27 April 2002 in Roebourne, I was in a state of shock. I was terrified as I thought I had almost been killed."

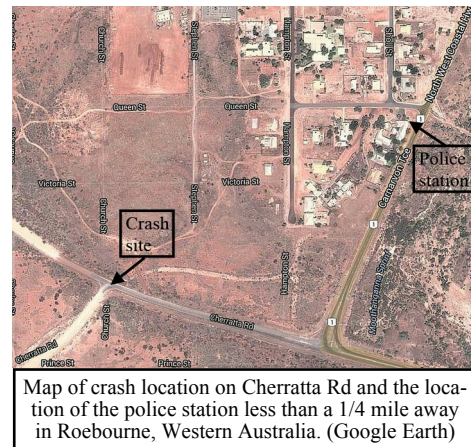
Dekker was charged in the Karratha District Court with dangerous driving causing death.

During her trial in December 2005 the prosecution's opening statement and closing argument were based on the testimony of the wrecked vehicle's driver that Dekker pulled out in front of him and the evasive action he took resulted in him running off the road and rolling over. Police officers at the scene and officers who later investigated the incident, testified that tire marks left by the crashed vehicle began some distance before where it left the road. There was also police testimony about the deficient condition of the crashed vehicle's tires, steering, and brakes, that it lack of seat belts, and that its front seat could tip because it wasn't securely fastened.



Cherratta Rd. intersection where Leila Dekker barely missed an out of control vehicle that crashed. (Google Streetview)

Dekker testified in her defense she was stopped at the intersection when the oncoming vehicle was on the wrong side of the road and headed to broadside her car on the



driver's side, so she pulled out to avoid a collision. Dekker's passenger, a neighbor who accompanied her to the dump, also testified that Dekker was stopped at the intersection when the oncoming vehicle going upwards of 45 m.p.h. was on the wrong side of the road and on a collision course with Dekker's Toyota.

After Dekker was convicted by a jury she was sentenced to pay a fine of AUSS\$10,000 and her driver's license was suspended for two years.

Although she immediately instructed her lawyer to file an appeal, it wasn't done. She changed lawyers several times who she also talked with about filing an appeal.

In the Roebourne Magistrates Court Dekker was separately charged with dangerous driving causing bodily harm.

During her trial in February 2008 Dekker presented the defense that she pulled into the road to avoid a collision with the oncoming vehicle. However unlike her 2005 trial in the District Court, Dekker's defense was bolstered by Robert Davey, who is considered Western Australia's foremost expert in traffic crash examination and reconstruction. Davey testified that photos taken of tire marks on the road showed that the oncoming vehicle had reached 'critical

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Bergwall cont. from page 10

Bergwall's blog translated into English is, www.sturebergwallsblogg.wordpress.com.

Bergwall's Facebook page is, www.facebook.com/stureragnarbergwall.

Bergwall's Twitter page is, www.twitter.com/StureBergwall.

Endnote:

1. The amount was SEK245,000. The value of the Swedish Kroner was .15121 to the U.S. Dollar on Nov. 16, 1995, and .15422 to the U.S. Dollar on April 9, 2014. So the Kroner's longterm value appears to be fairly stable related to the U.S. Dollar. Nov. 16, 1995 is the oldest historical currency date available on the webpage www.xe.com/currencytables.

Sources:

Sture_Bergwall, Wikipedia.org (Swedish webpage translated into English by Google Translate)

[Swedish man once considered serial killer is FREED](#) after it's revealed his eight murder convictions are based on false confessions, *Daily Mail* (London),

March 20, 2014

Wrongly Convicted Swedish 'Hannibal Lecter' To Sue For Damages, *BusinessInsider.com*, March 21, 2014

[The Serial Killer Has Second Thoughts](#): The Confessions of Thomas Quick, *GQ magazine*, August 2013

[Swedish 'Serial killer' Released](#) After Convictions Overturned, AFP Story, March 19, 2014, NTD.TV

[Special investigator named for 'Quick' case](#), Radio Sweden, Nov. 26, 2013

"Thomas Quick is Dead," by Sture Bergwall and Sten-Ove (2011)



Dekker cont. from page 11

speed' and was 'out of control' some distance before the tire marks depicted on a *drawing* introduced as evidence during Dekker's District Court trial. Police Officer Troy Pillage, a major crash investigator testified in agreement with Davey's conclusion. That testimony of when the oncoming vehicle was out of control corroborated the testimony of Dekker and her passenger that she pulled into the road at the T-intersection to avoid a collision. Dekker was acquitted.

Dekker's lawyer filed a notice of appeal for her 2005 conviction on June 18, 2008 -- 2 years and 5 months after time expired for her to file an appeal. Because her notice of appeal was filed late, it was accompanied by an application for extension of time within which she could appeal. Dekker's appeal claimed her conviction was a miscarriage of justice based on new evidence discovered after her trial and favorable evidence that wasn't disclosed by the prosecution. Her new evidence consisted of affidavits of by Robert Davey, her trial counsel, and the trial prosecutor. The State's counsel conceded in its written response Davey's expert evidence was 'new evidence.'

The Western Australia Court of Appeals held a hearing on February 17, 2009 during which Dekker's lawyer offered a second ground for her appeal: Her conviction was a miscarriage of justice because the prosecution introduced insufficient evidence at trial to support her conviction beyond a reasonable doubt.

On April 3, 2009 the appeals court issued its written ruling in *Dekker v The State of Western Australia* [2009] WASCA 72. The court granted Dekker leave to file her appeal late, and quashed her conviction on the basis the prosecution failed to introduce sufficient evidence at trial to justify her conviction. Justice Miller [stated in his ruling](#):

... the prosecution case was predicated on Mr Bobby having control of his vehicle at all relevant times and having driven around the back of the appellant's vehicle. This was not what the evidence led by the prosecution established. It established that Mr Bobby's vehicle was out of control from a point near the 60 km per hour sign, when it was observed by Mr Abell on the incorrect side of the road. On the prosecution case, the appellant's vehicle was then stationary at the intersection. [¶172]

It is unnecessary and inappropriate to conjecture why Mr Bobby may have lost

control of his vehicle. But lose control he did, and at a time when (on the prosecution case) the appellant's vehicle was stationary at the intersection. [¶173]

The prosecution case proceeded on an incorrect thesis. The evidence did not support what the prosecutor said in opening and closing. [¶174]

In the present case, the evidence was insufficient to justify a conviction. [¶179]

Because there would be a miscarriage of justice if an extension of time within which to appeal was not granted, I would extend time for the filing of the notice of appeal. [¶181]

I would allow the appeal on ground 2 and quash the conviction of the appellant. [¶182]

The Court also ruled the prosecution wouldn't be allowed to retry Dekker, and ordered remittance of what she had paid on her \$10,000 fine within 28 days.

The Court's ruling makes it clear the jury convicted Dekker of causing the accident based on the prosecution's opening statement and its closing argument, while disregarding the factual evidence of the prosecution's police witnesses that established the oncoming vehicle went out of control while Dekker's Toyota was stationary at the intersection.

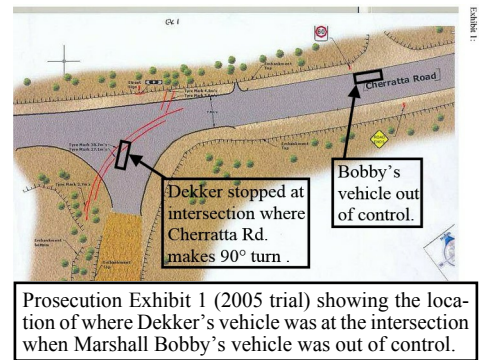
Since the court found the prosecution introduced insufficient evidence at trial, it didn't harm Dekker that the court rejected the exculpatory expert evidence by Davey was "fresh" evidence, because it "could, with reasonable diligence, have been discovered" at the time of trial by her counsel.

Thus seven years after the traffic incident Dekker had been cleared of both her criminal prosecutions.

The irony of Dekker's multiple prosecutions was the evidence by the police officers and Davey supported that the driver of the wrecked Land Rover -- Marshall Bobby -- was the person who actually should have been tried for the crimes Dekker was charged with committing. The death of Bobby's passenger Josie Tumbler was apparently caused by his reckless driving that included crashing after trying to take a sharp 90 degree corner at more than 40 m.p.h.

Dekker's criminal cases were resolved, but her ordeal wasn't over.

In July 2006 the Medical Board of Western Australia [filed a complaint](#) against Dekker



with the Western Australia State Administrative Tribunal under Section 13(2) of the Medical Act 1894(WA) (Medical Act) based on her being a "Medical practitioner convicted of [a criminal] offence."

After the Court of Appeals quashed her conviction the Medical Board amended their complaint with the Tribunal [to allege she](#) committed 'infamous or improper conduct in a professional respect' in violation of Medical Act Section 13(1)(a), as a result of her failure to stop and render assistance after the 'near miss' incident in Roebourne on April 27, 2002.

Dekker and the Medical Board participated on August 6, 2009 in a compulsory conference with a Tribunal administrative member. The conference resulted in an agreed to statement of facts and exhibits. The facts detailed that Dekker had no responsibility for the vehicle crash, and that after leaving the scene she immediately reported the incident in person to the police. Dekker argued that based on the facts of the incident she had acted responsibly, while the Medical Board argued the facts supported she violated the Medical Act. On August 8, 2009 the Administrative Tribunal [member issued](#) his findings that Dekker should be reprimanded and pay the Medical Board \$35,000 to cover its costs of pursuing its complaint.

Dekker appealed. On November 14, 2013, more than eleven years after the accident, a four-judge panel of the Administrative Tribunal [issued its decision](#) in *Medical Board of Australia and Dekker* [2013] WASAT 182:

The practitioner's conduct in failing to stop and render assistance immediately after the 'near miss' incident involving her vehicle and a second vehicle on 27 April 2002, but instead leaving the scene of the accident and reporting the incident and the possibility that the second vehicle had driven off the road to the police, would reasonably be regarded as improper by professional col-

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leagues of good repute and competency. Although the practitioner's conduct did not occur in medical practice, there is a sufficiently close link or nexus between her conduct and the profession of medicine for the conduct to be 'in a professional respect'. The practitioner is therefore guilty of 'improper conduct in a professional respect' within the meaning of s 13(1)(a) of the Medical Act.

The Administrative Tribunal rejected that Dekker's conduct was "infamous" because she immediately reported the incident to the police. The Tribunal did not consider there was no evidence Dekker could have done anything to have saved the injured woman from dying at the crash scene from her extensive internal injuries. A hearing to determine Dekker's penalty and costs was set for February 2014.

There was considerable reaction by medical practitioner's in Western Australia criticizing the ruling in Dekker's case. It set the precedent that no doctor can leave the scene of a possible injury accident — even if they have no way to meaningfully assist an injured person — without facing the possibility of jeopardizing their medical career. One criticism was by Dr Sara Bird [who commented](#): "I think this is a very unreasonable decision. It is an extraordinary and an unrealistic expectation to place on doctors."

[Click here to read](#) the appeals courts ruling in *Dekker v The State of Western Australia* [2009] WASCA 72.

[Click here to read](#) the ruling in *Medical Board of Australia and Dekker* [2013] WASAT 182.

Sources:

[Dekker v The State of Western Aust.](#) [2009] WASCA 72
[Medical Board of Australia and Dekker](#) [2013] WASAT 182 (11-14-2013)

[Medical Board Of Western Australia](#) (Applicant), Leila Dekker (Respondent); SAT VR:127/2006 (6-8-2009)

[Medical Board Of Western Australia](#) (Applicant), Leila Dekker (Respondent); SAT VR:127/2006 (7-28-2006)

[Dr Leila Maria Dekker](#) (Health Practitioner), Australian Health Practitioner Regulation Agency, [www.ahpra.gov.au](#) (last visited 1-10-2014)

[Crash doctor decision 'unreasonable'](#), By Paul Smith, Australian Doctor, December 3, 2013

[Leila Maria Dekker](#) (Reg. No. 10635), Western Australian Government Gazette, List of Medical Practitioners Registered 30 June 2008, State of Western Australia Government Printer, July 31, 2002

[Leila Maria Dekker](#) (Reg. No. 10635), Western Australian Government Gazette, List of Medical Practitioners Registered 30 June 2008, State of Western Australia Government Printer, August 22, 2008

[Western Australia State Administrative Tribunal](#), Public Register (2005-2014)



Utah Supreme Court Acquits Barton Bagnes For Showing His Sesame Street Diaper To Two Girls

Barton Jason Bagnes [has been acquitted](#) by the Utah Supreme Court of charges related to showing the Sesame Street diaper he was wearing to two girls in White City, Utah. Bagnes had been sentenced to 15 years in prison. Under the Court's ruling Bagnes' activity was unusual but it wasn't criminal.

White City is about 15 miles south of Salt Lake City. Bagnes was 31 and living with his parents when in May 2009 he was walking in a White City neighborhood sucking on a candy binky. Bagnes is a small man, 5'-3" tall and weighing 100 pounds. Two nine-year-old girl's riding their bikes saw Bagnes and greeted him. One of the girls saw the top of a diaper he was wearing, and asked him about it.

Bagnes was wearing shorts, which he partially lowered to show the girls the diaper, which had an image of the Sesame Street character Elmo on it. The diaper completely covered Bagnes' pubic area, and showed less skin than a skimpy swimsuit. The girls had found a paper airplane made from a piece of paper containing images of children and adolescents wearing diapers. Bagnes told the girls he made the airplane and they asked him for another copy of the flyer. The flyer included the address for two websites that weren't pornographic.



Elmo, the Sesame Street character shown on Barton Bagnes' diaper

One of the girls took the flyers home, where her mother found them several days later. The mother called the police to report finding the flyer.

The mother again called the police when several days later her daughter told her that she and her friend again saw Bagnes. Bagnes was arrested and charged with two counts of lewdness involving a child for showing his diaper to the girls, and one count of sexual exploitation of a minor for showing the girls the flyer depicting children and adolescents wearing diapers.

During Bagnes' trial in July 2010 the prosecution didn't introduce any evidence he exposed himself to the two girls, or any evidence the



Barton Jason Bagnes

girls had looked at the two non-pornographic websites listed on Bagnes' flyer. No evidence was presented the two girls who had approached Bagnes felt afraid or threatened by him.

Bagnes testified in his defense that he had an incontinence problem since childhood and he had been ridiculed because of it. He also testified he showed children his diaper to let them know adults "do indeed wear diapers," and to help children who might be struggling with incontinence or similar problems to be open about it. He acknowledged showing part of his diaper to the two girls, but he denied completely pulling down his shorts. Since Bagnes testified the prosecution was allowed to cross-examine him about his lewdness conviction in 2000 for showing his diaper to children.

The jury convicted Bagnes of all charges.

During his sentencing hearing in September 2010 Bagnes told Judge Terry Christiansen that kids who have an incontinence problem aren't allowed to be open about it. [Bagnes acknowledged](#) his approach to public education about diaper wearing "clearly wasn't working," but "I couldn't think of any other way that would work."

Bagnes' lawyer Kimberly Clark argued that he should be sentenced to no more than a year in jail and undergo court ordered mental health treatment.

Judge Christiansen followed the prosecutor's recommendation and ordered Bagnes to serve a sentence of up to 15 years in prison on his sexual exploitation of a minor conviction, and up to five years on his two convictions of lewdness involving a child. He ordered the sentences to be served concurrently, for a total sentence of up to 15 years in prison.

Bagnes appealed. On February 14, 2014 the Utah Supreme Court unanimously overturned his convictions on the basis "the evidence was insufficient to sustain convictions for lewdness or sexual exploitation of a minor." In *State of Utah v. Barton Jason Bagnes*, 2014 UT 4 (UT Sup Ct., 2-14 2014) [the Court stated](#):

¶1 Bagnes's conduct was strange, and socially inappropriate. But it did not fall to the level of criminal lewdness or sexual exploitation under the criminal defi-

Bagnes cont. on page 14