

Introduction

On July 18, 2007, 27-year-old Raye Dawn Smith was convicted of one count of enabling child abuse against her two-year-old daughter Kelsey Shelton Smith-Briggs (“Kelsey”), who died on October 11, 2005. She was sentenced to 27 years in prison.

Kelsey was born on December 28, 2002. Her mother Raye Dawn and her father, Lance Briggs, were divorced. They had a tumultuous marriage during which Lance was charged with domestic abuse, and in 2001 he pled guilty to assault and battery against Raye Dawn.²

Lance’s mother, Kathie Briggs (“Briggs”), and Raye Dawn did not get along. After Lance was deployed with the military, in August 2004 Briggs petitioned the Lincoln County District Court and was granted grandparent visitation rights with Kelsey. Briggs immediately began making accusations to the Oklahoma Department of Human Services (“DHS”) against Raye Dawn.³ The back and forth visitation and Briggs’ bad blood for Raye Dawn took its toll on Kelsey’s physical well being. Raye Dawn repeatedly scheduled appointments with doctors and medical specialists when she attempted to find out what was medically wrong with Kelsey.⁴

On April 18, 2005, Raye Dawn married Michael Porter (“Porter”) and they lived in Meeker, Oklahoma — about 45 miles east of Oklahoma City.⁵ The closest hospital was in Shawnee, about 13 miles south.

Whenever Briggs contacted DHS Raye Dawn had to defend against her accusations. So much energy was spent dotting I’s and crossing T’s, completing evaluations, attending court and scheduling visitations, that the true threat: Michael Porter, slipped by undetected.

Kelsey’s Life

Kelsey was a child full of life and energy.⁶ She climbed on things, leaned on things and jumped off things. She tested the boundaries of her environment and learned the abilities of her body. Like any good mother, when necessary, Raye Dawn sought medical attention for her daughter.

On January 10, 2005, Raye Dawn brought Kelsey to the Unity North Hospital Emergency Room in Shawnee because Kelsey had fallen out of her crib and injured her right shoulder. Dr. Carl Griffin examined Kelsey in the ER for a possible broken

Convicted Of Her Husband’s Crime — The Raye Dawn Smith Story

By Raye Dawn Smith’s Lawyers¹

collarbone. Dr. Griffin did not suspect Raye Dawn of child abuse, or that it was a non-accidental injury.

On January 14 at 6 p.m., Briggs picked up Kelsey from Raye Dawn and took her to a birthday party at Briggs’ house. That night no one changed Kelsey’s diaper until she was given a bath around 8:30 p.m. When what looked like “bruises” were noticed on Kelsey’s buttocks she was taken to the ER by her father Lance and her stepmother. Dr. Griffin once again examined Kelsey.



Kelsey Shelton Smith-Briggs
and her mom Raye Dawn Smith

Briggs notified the Meeker Police Department about the marks on Kelsey’s bottom, and their investigation concluded there was no evidence of abuse. The Lincoln County District Attorney’s Office declined to file charges, but DHS decided to move forward with a separate child abuse investigation — which determined there was no abuse.

On January 24, Briggs filed and received emergency guardianship of Kelsey. Briggs had sole custody of Kelsey until February 11, when Raye Dawn was allowed supervised visits with Kelsey. In March 2005 Kelsey’s hair began falling out, after almost two-months under Briggs’ guardianship. The doctor reported it as alopecia, which is a disease caused by poor nutrition.

On March 11, an agreement was reached under which Raye Dawn had unsupervised visits with Kelsey.

On April 14, Misty Smith, Raye Dawn’s sister-in-law, took Kelsey to the zoo. Kelsey wore purple platform flip-flops, and turned her ankle while playing. Raye Dawn and Misty took Kelsey to the emergency room where she was diagnosed with a sprained

ankle. The next day, Raye Dawn took Kelsey to the DHS office and reported her injury.

At Raye Dawn and Michael Porter’s wedding on April 18, Kelsey was still limping on her right leg.

A picture of Kelsey standing barefoot on the courthouse steps with Raye Dawn and Porter was admitted during Raye Dawn’s trial. That evening, Kelsey went to stay with Briggs until April 21 at 4:00 p.m. Although Kelsey had been standing hours earlier, Briggs testified that Kelsey took four steps and refused to walk the rest of the time she had her. Briggs did not take Kelsey to the doctor during those four days.

On April 25, Raye Dawn took Kelsey to see Dr. Koons because Kelsey was not walking. Dr. Koons diagnosed Kelsey with two bilateral tibia fractures. Dr. Barrett is an orthopedic surgeon who evaluated Kelsey’s injuries the next day. Dr. Barrett determined her injuries to be consistent with the account of what happened at the zoo. Dr. Barrett believed Kelsey’s right leg was injured at the zoo, and the injury to her left leg likely occurred because she put all her weight on the left leg. Dr. Barrett did not believe the fractured legs were child abuse. Dr. Barrett put casts on both of Kelsey’s legs.

On May 2, Briggs took Kelsey to see Dr. Sullivan in Oklahoma City concerning her legs. Based on Briggs’ “story” to him and additional X-rays he took of Kelsey, Dr. Sullivan decided the leg fractures were the result of child abuse, and he removed Kelsey’s casts. During Raye Dawn’s trial he testified on cross-examination the fractures may have occurred on a date Kelsey was with Briggs.

On May 3, DHS took Kelsey into protective custody, and a deprived child petition was filed the same day. The petition listed an “unknown perpetrator” of Kelsey’s two bilateral leg fractures.

Briggs’ campaign against Raye Dawn

There was limited evidence of abuse of Kelsey and no evidence as to a perpetrator.⁷ Kathie Briggs had the same privileges and restrictions as Raye Dawn. On May 17, 2005 the Meeker Police Department investigated Briggs for harassing and stalking Raye Dawn. In retaliation, Briggs reported Raye Dawn to the police for driving with an expired tag.

During the June 14 and 15 deprived hearing Lincoln County District Judge Craig Key dissolved Briggs’ visitation with Kelsey, and

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ruled the abuse was by an “unknown perpetrator.” He ordered Kelsey returned to Raye Dawn’s home, and also ordered involvement in her case by DHS, Court Appointed Special Advocates (“CASA”), and Comprehensive Home-Based Services (“CHBS”).

Angered by Judge Key’s decision, Briggs began to contact the media, place stories about the Smith family in the public domain, and sponsored a candidate to run against Judge Key. This began the media circus into the life and tragic death of Kelsey Smith Briggs.⁸ For example, on August 19, 2005, Raye Dawn, Porter and Kelsey were involved in a serious motor vehicle accident. The point of impact was so violent that it caused the truck to turn 180 degrees and “totaled” the vehicle. As a precaution, Raye Dawn had Kelsey examined at the hospital. The triage nurse who examined Kelsey advised Raye Dawn to follow up with Kelsey’s pediatrician, which she did. In their continued harassment of Raye Dawn and in the face of direct evidence of the cause of Kelsey’s injuries, the Briggs family released pictures of Kelsey after the car wreck to the news media.

Day of Kelsey’s death

During the noon hour of October 11, 2005, Patti Bonner, a CHBS worker, visited Raye Dawn at her house in Meeker. Ms. Bonner observed that Kelsey had a band-aid on one finger and a sore right toe. Ms. Bonner left the home at 1:30 p.m. According to Porter’s testimony, he arrived home from work around 2:45 p.m. to find Raye Dawn and Kelsey taking a nap in the bedroom. Shortly thereafter, Raye Dawn left Kelsey in bed and went to pick up Porter’s daughter from school.

Porter testified during Raye Dawn’s trial that while she was gone he heard a noise from the bedroom that caused him alarm, and upon walking into the bedroom he noticed Kelsey was blue. He said he picked Kelsey up and circled the living room holding her and trying to resuscitate her by asking her what was wrong. Sometime between 3:10 and 3:15 p.m. he called Gayla Smith, Raye Dawn’s mother. Gayla told Porter to call 911, which he did. Porter testified he called Gayla first because he “didn’t want to believe how bad it was.” [P.Tr. 281.] Porter testified he laid Kelsey on the kitchen island and he tried to give her a couple of breaths, and that he put a diaper on her because he didn’t want anyone to see her without one.

Volunteer firemen were dispatched at 3:16 p.m. by the Lincoln County Sheriff’s Office, and they arrived at Kelsey’s home at 3:27

p.m. and began performing manual CPR. An ambulance dispatched from the Prague Community Hospital arrived approximately four minutes later. They intubated Kelsey and placed her on an EKG monitor, and she arrived at the hospital at 3:59 p.m.

Physician’s Assistant Melissa Gibson was in charge of the ER. She estimated Kelsey had been “down” for about 45 minutes when she arrived at the hospital. Therefore, Kelsey’s injuries occurred around 3:15 p.m. when Raye Dawn was not home.

The ER staff continued to “code” Kelsey for 45 minutes before her death was declared at 4:45 p.m.

Raye Dawn’s pastor Charles Percy went to the hospital to lend support. Percy spoke with an emotional Raye Dawn about losing her baby. They prayed together. Raye Dawn held Kelsey and rocked her. According to Percy, Porter provided no comfort to Raye Dawn. PA Gibson also observed that Porter did not console Raye Dawn. Porter told Percy he blamed himself and said, “I just hope I wasn’t too rough with her.” [Trial Tr.VII 1608-09] Porter was seen slamming his fist into the bed of his pickup and nervously pacing back and forth saying, “She’s never going to forgive me.” [Trial Tr.VII 1616-17.] Raye Dawn wanted an autopsy performed on Kelsey to find out what happened to her, while Porter objected to an autopsy.

On October 12, Dr. Yacoub from the Oklahoma City Chief Medical Examiner’s office, conducted an autopsy of Kelsey. He determined her manner of death was homicide, resulting from blunt force trauma to her abdomen, and he also found trauma to her genital area. During Raye Dawn’s trial Dr. Yacoub testified all of Kelsey’s injuries appeared recent.

On October 13, Raye Dawn and her family made Kelsey’s funeral arrangements.

When OSBI questioned Porter about the case, he almost passed out. Porter told the OSBI that he had never seen Raye Dawn beat Kelsey or ever lose control with her. When asked by investigators whether Raye Dawn could beat Kelsey until she died, Porter said, “Never, never. She would never hurt her.” [P.Tr. 288-89.] The agents asked this over and over again, and Porter always gave the same answer.



Kelsey Shelton Smith-Briggs

On October 17, six days after Kelsey’s death, Porter’s seven-year-old daughter, W.P., made statements about her father to her school counselor, Ms. Gibson. She said she heard Kelsey getting a spanking upstairs, and when she looked inside the doorway she found her father spanking Kelsey “real hard.” [H.C. Ex. 3, “W.P. Interview.”] W.P. said her dad spanked Kelsey until she threw up and it left her bottom “real red.” [Id.] W.P. also said her dad was nice to

Kelsey when people were around, but when no one was looking he would be mean to her. W.P. also told Ms. Gibson she saw her dad hit Kelsey’s head up against a brick wall outside on the house.

Charges against Porter and Raye Dawn

On October 20 — nine days after Kelsey’s death — Porter was charged with first-degree-murder.

Briggs, an endorsed witness by the State, and her daughters began e-mailing Porter in January 2006. Porter was sent dozens of e-mails. Briggs set up a meeting with Porter in January 2006. Subsequently, Briggs told Lincoln County D.A. Richard Smothermon the State could use Porter as a witness to prosecute Raye Dawn.

During this time, Briggs and her supporters relentlessly picketed the D.A.’s Office to pressure Smothermon into prosecuting Raye Dawn. Briggs’s tactics were successful. On February 24, 2006, Raye Dawn was charged with enabling child abuse. That charge was amended on March 16, 2007, with alternative counts of enabling child abuse and child abuse.

Raye Dawn and Porter were divorced after Kelsey’s death.

Six months after the first autopsy, the State had Kelsey’s body exhumed for a second autopsy, which was conducted on April 25, 2006 by Dr. Dean Hawley with the Indiana University School of Medicine. Dr. Hawley determined Kelsey’s body demonstrated injuries of forcible sexual assault.

On July 21, 2006, an Amended Information was filed against Porter charging him with first-degree murder or in the alternative child abuse or sexual abuse of a child. Five days

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before Porter was set to go to trial, he pled guilty to enabling child abuse in exchange for a 30-year prison sentence, and his agreement to testify against his ex-wife Raye Dawn. Porter's plea agreement allowed him to avoid a possible death sentence or life in prison if convicted after a trial, and it also allowed him to bypass the requirement to register as a sex offender upon his release.⁹

Raye Dawn's trial

Due to intense pretrial publicity Lincoln County Judge Paul Vassar granted a change of venue for Rae Dawn's trial. However it was more symbolic than substantive because he ordered it moved to Bristow — only 40 miles away — in Creek County where his brother served as judge.

Raye Dawn's trial began on July 9, 2007. Bristow is a small town of 4,500 and it's municipal building housed the small courtroom where witnesses, parties, lawyers, jurors, and the media constantly mixed with each other during the trial. Everyone, including the jurors, were able to mingle during meals because of the limited number of restaurants in town.

The prosecution's strategy at trial was to present evidence and testimony to try and establish a pattern of abuse against Kelsey that Raye Dawn had to be aware of. However, the State's "abuse theory" was not supported by the factual evidence presented because: (1) Kelsey sustained illnesses, bumps and bruises in the care of numerous individuals (Raye Dawn, Kathie, Miste and Gayla); (2) the medical evidence did not support the theory there was a pattern of abuse; and (3) the circumstances surrounding Kelsey's injuries, including the opinions of Kelsey's doctors, showed Raye Dawn's state of mind was of a mother constantly seeking medical treatment and answers for her daughter's injuries.

Porter was presented as a prosecution witness, even though D.A. Smothermon had stated on the record that he believed Porter murdered and sexually assaulted Kelsey. When Porter testified that Raye Dawn was "responsible" for Kelsey's death, and that he was only "indirectly" responsible, [P.Tr. at 252.] Smothermon again stated that he disagreed with Porter. [*Id.* 253-259] A key part of Porter's trial testimony is it supported he was home alone with Kelsey during the 30 minutes before he called Raye Dawn's mother to ask her what to do about Kelsey not breathing.

After an eight day the jury acquitted Raye

Dawn of child abuse, but found her guilty of "enabling child abuse" — the same charge D.A. Smothermon allowed Porter to plead to. The jury recommended a 27-year sentence of imprisonment, which the judge imposed on September 10, 2007.

Raye Dawn appeals conviction

Ten days later, on September 20, Raye Dawn filed a motion for a new trial in the Creek County District Court. After her motion was denied on December 6, 2007 she filed her notice of intent to appeal to the Oklahoma Court of Criminal Appeal ("OCCA").

After years of legal maneuvering, on January 31, 2011 the OCCA affirmed Raye Dawn's conviction, and their ruling became final on May 1, 2011.

On April 27, 2012 Smith filed a timely writ of habeas corpus in federal court in Oklahoma City. Smith's federal petition asserts eight grounds for relief. Her brief in *Raye Dawn Smith v. Millicent Newton-Embry*, No. 5-12-cv-00473-C (USDC WDOK) was filed on September 28, 2012, and the page numbers below in brackets (p. __) refer to that brief.

Grounds 1 and 2 relate to Raye Dawn's constitutional right to due process was violated by the jury's inability to render a fair verdict.

Ground 1's assertion that a female juror identified as L.E. slept continuously throughout the trial is supported by affidavits executed by four jurors — in addition to an affidavit by L.E. herself in which she states:

I served as a juror in the above-styled case. During the trial, I continually fell asleep and the woman next to me was told to nudge me to keep me awake. Several jurors nudged me off and on during the trial to keep me awake. Later, I discovered I was low on potassium. During the trial over the intervening weekend, my granddaughter took me to the Indian Hospital in Okeema. It was discovered that I was low on potassium, and my physician reminded me that I needed to remember to take my supplement. I have a prescription for potassium, but I never can remember to take it. I have been on potassium supplement and other medications since my open

heart surgery in December 2006. (p. 34)

The Affidavit of Juror D. B. states:

L.E., a fellow juror, slept continuously throughout the trial. I voiced concern to the judge's bailiff that L.E. was not staying awake and was not paying attention. I was told by the bailiff to nudge L.E. to keep her awake. I believe she should have been removed from the jury because she slept and did not pay attention. (p. 33)

Ground 2 asserts that because the jury was not properly sequestered during the trial and in various recesses, it was permitted to be exposed to extraneous media coverage and to conversations with the Briggs family, thereby receiving evidence outside of court. It states in part:

There can be no doubt that Raye Dawn's trial was conducted in an atmosphere of a "Roman Holiday" for the news media. Certainly all that is implicit in the bacchanalia of a "Roman holiday" is directly out of phase with the serious and ordered decorum which is supposed to be the controlling environment of our American criminal trials. From the date of Kelsey's death on October 11, 2005, through the conclusion of Raye Dawn's sentencing, Oklahoma was saturated with publicity prejudicial to Raye Dawn. [] All of the newspapers and media coverage were critical of her, and whetted the public appetite for her conviction. [] Much that was never offered at trial, and would not have been admissible if offered, was published as fact by newspapers, the media and on the Kelsey's Purpose website. [] Briggs instituted a calculated campaign with the assistance of the media to have Raye Dawn arrested, charged and convicted, and her campaign was eminently successful. [] Despite a court imposed gag order and repeated violations [], the media onslaught by Briggs and her supporters was relentless. (pgs. 40-41)

Moreover, while the court allowed for a change of venue, it declined to sequester the jury during Raye Dawn's trial, refused trial counsel's request for individual voir dire, and ultimately conducted a limited and superficial half-day voir dire despite the existing media circus. (p. 42)

It would be "blinking reality" in Petitioner's [Raye Dawn's] case not to recognize the prejudice inherent in the continual association of jurors, news media and members of the Briggs family as they congregated at the front en-

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trance to the courthouse in the mornings, on breaks, at lunch time and at the end of the day. (pgs. 51-52)

Ground (Proposition) 5 that asserts “There Was Insufficient Evidence to Support the Verdict Reached by the Jury,” states in part:

There is absolutely no evidence in the record to prove beyond a reasonable doubt that Petitioner [Raye Dawn] permitted anyone to abuse Kelsey ... Under the above cited statute, it logically follows that for someone to enable abuse another must commit the abuse. Yet, no one has confessed and/or been convicted of abusing Kelsey. ... (pgs. 85-86)

The State’s strategy at trial was to present evidence and testimony that established a pattern of abuse against Kelsey that Raye Dawn had to be aware of. However, the State’s “abuse theory” is not supported by the factual evidence for the following reasons: (1) Kelsey sustained illnesses, bumps and bruises in the care of numerous individuals (Raye Dawn, Kathie, Miste and Gayla); (2) the medical evidence does not support the theory that there was a pattern of abuse; and (3) the circumstances surrounding Kelsey’s injuries, including the opinions of Kelsey’s doctors, show that Raye Dawn’s state of mind was not to enable abuse, but rather was a mother seeking medical treatment and answers for her daughter’s injuries that were consistent with her doctor’s explanations. (p. 86)

The State primarily relied upon two injuries — the broken collarbone and the two leg fractures — to show that there was a pattern of abuse. However, the State’s own witness, Dr. Griffin, testified that the collarbone is the most commonly broken bone in the human body. [] The Meeker Police Department investigated Kelsey’s broken collarbone and did not file charges against Raye Dawn, ruling out abuse. [] DHS also ruled out abuse to the collarbone. [] Without more, a collarbone break from a child climbing out of her crib is not concerning at all. Such an injury is common to a child Kelsey’s age. Raye Dawn’s older sister, Janet Gragg, testified at trial that her child had suffered not one, but two broken collarbones. [] (pgs. 86-87)

Second, the State relied on Kelsey’s leg fractures as evidence of prior abuse. Trial evidence established that Kelsey was not with Raye Dawn on April 14 when she sprained her right ankle at the zoo. [] Kelsey was with her Aunt Miste. [] Miste and Ray Dawn took Kelsey to

the emergency room that afternoon, and Kelsey was diagnosed with a sprained ankle. [] ... Miste testified that on April 16 she could not get Kelsey to sit down and Kelsey wanted to jump on the trampoline. [] ... On April 18, Kelsey was standing in a photo taken on the courthouse steps at Raye Dawn and Michael Porter’s wedding. (p. 87)

Witnesses testified at trial that Kelsey was walking on her right foot while at the shopping mall later that day (April 18). [] ... Four days later, when Briggs returned Kelsey to Raye Dawn, Kelsey was not walking. [] Briggs did not seek medical attention ... [] On April 25, Raye Dawn brought Kelsey to the doctor and she was diagnosed with bilateral tibia fractures consistent with her previous fall at the zoo, and then overcompensating on the left leg. [] ... (pgs. 87-88)

... She [Raye Dawn] was not with Kelsey during the initial sprain and was not with her during the subsequent fracture. The time line suggests that it is more likely that Kelsey was under Briggs’ control when the fractures occurred. [] (pgs. 88-89)

... Additionally, if one follows the theory that Porter murdered Kelsey, which is what the evidence at trial suggested, Raye Dawn could not have known or reasonably should have known that Kelsey would be placed at risk by leaving her with Porter on October 11, 2005. Simply put, Raye Dawn could not have predicted Porter’s homicidal tendencies, and no one else suspected him either. [] (p. 90)

Briggs testified that she had no specific concerns about Porter. [] ... The background check performed by DHS on Michael Porter came back clean. [] (pgs. 90-91)

... In summary, the medical evidence indicates a number of reasons, aside from abuse, for the cause of Kelsey’s failing health and injuries. Moreover, as evidenced in the trial transcript, Kelsey’s health began to fail while Briggs had guardianship of Kelsey. ... Kelsey received injuries while with many different people on both sides of the family. ... Without a pattern of abuse, Raye Dawn cannot be guilty of enabling child abuse. (pgs. 93-94)

Additionally, there is no medical evidence to support abuse by the hand of Raye Dawn or that she had knowledge of an abuser. Both the Meeker Police Department and DHS ruled out abuse as the cause of the collarbone break, and

Dr. Griffin testified that it is the most commonly broken bone in the body. Second, Kelsey sprained her right ankle under the exclusive control and custody of her aunt, Miste Smith. Raye Dawn was at work. Third, the leg fractures date back to a time when Kelsey was under Briggs’ control. (p. 94)

In conclusion, for months, Raye Dawn was under the careful eye and watch of numerous individuals, state agencies and her all-intrusive ex-in-laws, the Briggs family. ... Raye Dawn did not abuse Kelsey and/or enable Porter’s abuse of Kelsey, as no one suspected that Michael Porter, a man with two healthy children of his own, would abuse Kelsey. (p. 94)

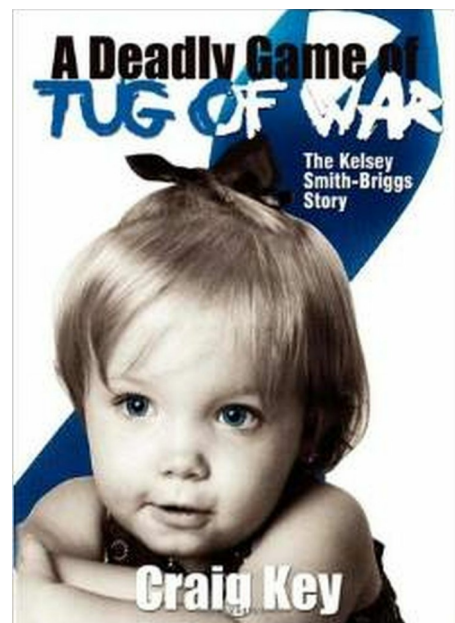
The briefing in Smith’s habeas case was completed on January 28, 2013, and she is awaiting the federal court’s ruling.

Raye Dawn’s federal habeas corpus brief can be read online at, www.justicedenied.org/cases/ravedawnsmithhabeasbrief9-28-12.pdf.

Numerous documents related to Raye Dawn’s case — including DHS reports, Arrest Charges, Witness affidavits, and other exhibits — can be read at, www.freekelseysmom.com.

A Facebook page about Raye Dawn’s case is, www.facebook.com/pages/Free-Innocent-Raye-Dawn-Smith-From-The-LIES/370421349781.

Websites about Raye Dawn’s case are: www.ravedawnsmith.com/ www.thetruthaboutkelsey.com/



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The Naked Truth Bound in Scorn: an Oklahoma story, by Judy Ortiz (2010), 610 pgs., is a true crime story of Raye Dawn Smith's case. The book is available from:

www.boundinscorn.com/ and, Amazon.com at:

www.amazon.com/The-Naked-Truth-Bound-Scorn/dp/1453846425/ref=as_sl_pd_tf_mfw?&linkCode=wev&tag=jodort-20

Bashboard Bullies, by Jody Ortiz, 2011 (682 pgs. paperback, 717 pgs. Kindle ed.). This book is Judy Ortiz' follow-up to *The Naked Truth Bound in Scorn*. Available in softcover from:

www.boundinscorn.com/, and, as Kindle E-book from Amazon.com at: <http://www.amazon.com/Bashboard-Bullies-Jody-Ortiz-ebook/dp/B0080DCMNC>

Former Judge Craig Key's book about the case is, *A Deadly Game of Tug a War: The Kelsey Smith-Briggs Story*, (Morgan James Pub. Co. 2007) (145 pgs. h/c). It is available in softcover, hardcover, and Kindle E-book from Amazon.com at, www.amazon.com/Deadly-Game-Tug-War-Craig/dp/1600373119/ref=tmm_pap_swatc_h_0?encoding=UTF8&sr=&qid=

Raye-Dawn Smith can be written at:
Raye-Dawn Smith 562251
Mabel Bassett Correctional Center
29501 Kickapoo Road
McLoud, OK 74851

Endnotes:

[1] This article is an edited version of the Statement Of The Facts (pgs. 14-28), and Proposition V (pgs. 84-94) in the "Brief In Support Of Petition For Writ Of Habeas Corpus By A Person In State Custody Pursuant To 28 U.S.C. § 2254 (filed Sept. 28, 2012), signed by Raye Dawn Smith's attorney Stephen Jones, in the case of *Raye Dawn Smith v. Millicent Newton-Embry*, No. 5-12-cv-00473-C (USDC WDOI). Mr. Jones; contact info is: Stephen Jones; Jones, Otjen & Davis; P.O. Box 472 Enid, Oklahoma 73702-0472.

[2] See, *State of Oklahoma v. Raymond Briggs*, CM-2001-143, District Court of Lincoln County, State of Oklahoma.

[3] See Craig Key, *A Deadly Game of Tug a War: The Kelsey Smith-Briggs Story*, note 4 at pp. xi, 40, 51-52 (Morgan James Pub. Co. 2007). Judge Craig Steven Key presided over the deprived child petition regarding Kelsey filed in Lincoln County, Case No. JD-2005-10. The trial court did not allow former Judge Key to testify as a fact witness on Ms. Smith's behalf during her criminal trial. The defendant offered a proffer at trial (O.R. 1105), and former Judge Key provided herein an affidavit of what his testimony would have been. See H.C. Ex.44, "Affidavit of Craig Key."

[4] See Key at pp. 43, 51-53, 64, 67, 70.

[5] See Key at p. 8.

[6] See Key at pp. 2, 41, 52.

[7] See Key at pp. 70-72.

[8] See Key at pp. 99-105.

[9] Porter was sentenced to 30 years in prison on August 3, 2007 — about two weeks after Raye Dawn was convicted. Porter acknowledged during his plea/sentencing hearing that he would have to serve at least 25-1/2 years in prison before he could be released. See, "Plea made in Kelsey's death," By Kim Morava, *Shawnee News-Star*, Aug. 03, 2007.

England Seeks To Restrict Who Is Eligible For Wrongful Conviction Compensation

England's Home Secretary Theresa May is [backing a change](#) to the legal standard a person must meet before qualifying for compensation after their conviction has been overturned and the charges dismissed.

Currently a person whose conviction has been overturned can qualify for compensation from the British government if they can prove "beyond reasonable doubt that there has been a [miscarriage of justice](#)." In 2013 Home Secretary May proposed changing the standard to a person qualifies "if the new or newly discovered fact shows beyond reasonable doubt that the person was [innocent of the offence](#)."

Proponents of the change to the wording said it was necessary to clarify who qualified for compensation. Opponents to the change argued that the new standard eliminated the presumption of innocence and created an impossibly high standard for anyone to meet who didn't have new scientific evidence of their innocence or who was convicted of a crime that didn't happen.

The changed definition is part of the Anti-Social Behaviour, Crime and Policing Bill that was passed in 2013 in the House of Commons (roughly equivalent to the House of Representatives in the U.S.). In January 2014 the Bill was rejected in the House of Lords (roughly equivalent to the Senate in the U.S.), in part due to the changed wording of who will qualify for compensation.

The Bill was returned to the House of Commons and to placate the opposition the new standard was amended to a person would have to prove: "if the new or newly discovered fact shows beyond reasonable doubt that the person [did not commit the offence](#)."

During debate in the House of Commons on February 4, 2014 opponents argued the change was merely semantics because a person would still have to prove their innocence, i.e., they "did not commit the offence."

Opponents also argued that under the proposed new standard the people would not

have been compensated who were wrongly convicted in some of England's most outrageous wrongful conviction cases. John McDonnell (Hayes and Harlington, Labour) for a number of years chaired the campaign to free the [Guildford Four](#). McDonnell [stated during debate](#) on the bill:



John McDonnell (Longtime chair of the campaign to free the Guildford Four)

"Let us take the Birmingham Six as our example. As soon as the confessions were seen to be completely false, they were released on the basis that their prosecution was unsound. However, to gain compensation they will now have to go out and prove they "did not commit" or they were "innocent", whichever terminology is decided on."

Damian Green is the Minister for Policing and Criminal Justice, and a staunch advocate of the more restrictive wording. He didn't dispute the Birmingham Six (freed in 1991) and the Guildford Four (freed in 1989) wouldn't have been compensated under the proposed new compensation standard. However, [Green defended the change](#) by arguing: "In our view compensation should be paid only to applicants where it is shown beyond reasonable doubt that they did not commit the offence."

The fate of the Anti-Social Behaviour, Crime and Policing Bill and the change to the standard of who will qualify for compensation is yet to be decided. However, Home Secretary May's advocacy for the more restrictive standard mirrors the Home Office's staunch opposition to almost all compensation claims under the existing standard where an exonerated person must only prove he or she was the victim of a "miscarriage of justice."

Sources:

[Clause 151](#) — Compensation for miscarriages of justice, Anti-Social Behaviour, Crime and Policing Bill, theyworkforyou.com (Programme) (No. 3), February 4, 2013

[UK law](#): Renewed bid to make it difficult for those wrongfully convicted to claim compensation, *The Irish Times*, February 3, 2014

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www.justicedenied.org