Lakesha Lanika Artis Acquitted By Virginia Court of Appeals Of Involuntary Manslaughter In Death Of Her Daughter

The Virginia Court of Appeals on June 2, 2015 **acquitted** Lakesha Lanika Artis of involuntary manslaughter in the death of her two-year-old daughter Destiney Riddick in 2011. Destiney died from complications related to her accidental ingestion of an unknown quantity of a prescription drug. Although Artis, and her stepmother and her stepmother's boyfriend were convicted of charges and sentenced to prison related to Destiney's death, none of the medical personal who failed to properly treat her after she was rushed to the hospital were charged with any crime.

Lakesha Lanika Artis (Suffolk PD)

On the afternoon of July 16, 2011 Artis' stepmother Kimberly Denise Artis and her stepmother's boyfriend Steven Wade Bullock babysat Destiney. Bullock noticed the Mentos candy container in his bedroom in which he stored his Suboxone was empty. Suboxone is a prescription drug commonly used to treat opiate addictions.

Bullock and Kimberly asked E.A. – another toddler under their care – and Destiney who "ate the candy." E.A. pointed to Destiney. After Destiney could not be made to vomit, poison control was called. Bullock and Kimberly were instructed to immediately take Destiney to the hospital. Artis was called at work and she rushed to the hospital.

Destiney arrived at the hospital at 6:14 p.m., and during the next hour her vitals were checked four times, with her oxygen level was as low as 92% and her respiratory rate dropped from 22 breaths per minute to a low of 13. Her low levels were subnormal for a child, that is expected to have 20 to 30 breaths per minute, and a blood oxygen level between 95 and 100%. Destiney's vitals were last checked at 7:15 p.m.

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sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up.
...
Nonetheless, to repeat, we can assume that if the evidence of Owens' guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was ... himself involved in the drug trade ... could be disregarded as goofy but harmless. But evidence of Owens' guilt was not overwhelming.

Given that the entire case pivoted on two shaky eyewitness identifications, Owens might well have been acquitted had the judge not mistakenly believed that Owens had known Nelson to be a drug dealer and killed him because of it.

The Supreme Court has made clear ... that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever. Just imagine that the judge in our case had said "I know there's no evidence of guilt, but I also know that prosecutors in the City of Markham never prosecute an innocent person."

And so we reverse the judgment denying Owens relief and give the state 120 days in which to decide whether to retry him. If it does not decide within that period to retry him, he must be released from prison.

Click here to read *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015). The Illinois Attorney General's Office represents Stephen Duncan, who is the Respondent-Appellee because he is the warden of Lawrence Correctional Center where Owens is imprisoned.

On March 26 the State filed a Motion to Stay Issuance of Mandate pending final disposition of a petition for a writ of *certiorari* to the United States Supreme Court that the State said it intended to file. On March 30 Judge Posner denied the motion, indicating that he thinks the State's writ will be a futile exercise.

On October 1, 2015 the Supreme Court **granted the State's petition** for a writ of *certiorari*. The petition was accepted to resolve the "Issue:

> Whether the Seventh Circuit violated 28 U.S.C. § 2254 and a long line of this Court's decisions by awarding habeas relief in the absence of clearly established precedent from this Court."

On January 12, 2016 the Supreme Court held its oral argument. Several justices expressed skepticism about the State's position, and the following exchange occurred between Justice Kagen and the State of Illinois lawyer:

> Justice Kagen: But once you say, as I think you said, and I think you properly said, Look, if what the — the judge's various comments on motive was basically taking him over the line, was that that was the basis for the verdict of guilty, that he didn't think that all the evidence, the other evidence was enough and that that was crucial to his finding, then, if I understand you right, you would say that's a due process violation because at that point the verdict of guilty is based on evidence that was never presented.
>
> Ms. Shapiro: If the — if the judge found that the elements had not been proven beyond a reasonable doubt.
>
> Justice Kagen: Well, the judge is just saying it's not — you know, this is not enough, and it's necessary for me to think about motive as the missing piece. (*Duncan v. Owens*, No. 14-1516 (USSC, 1-12-2016) (Oral arguments, transcript)

The Court issued a unanimous 9-0 *per curiam* opinion eight days later, on January 20, 2016. The one-sentence ruling stated: "The writ of certiorari is dismissed as improvidently granted." On February 23, 2016 the judgment was issued allowing the Seventh Circuit's ruling to stand.

With the granting of Owens' habeas petition and the reversal of his convictions, the State of Illinois will have to decide whether to dismiss the charges against Owens or attempt to retry him without credible evidence of his guilt.

Source:

Lawrence Owens v Stephen Duncan, No 14-1419 (7th cir. 3-23-2015) (granting state prisoner's federal habeas and ordering new trial)

Appeals court judge overturns "nonsense" murder conviction, By Tina Sfondeles (Staff writer), *Chicago Sun-Times*, March 24, 2015

Lawrence Owens v. Marc Hodge, No. 08 C 7159 (USDC ND IL, Eastern Div.) (2-11-14, Memorandum Opinion and Order denying federal habeas petition)

Duncan v. Owens, No. 14-1516 (U.S.S.C.) (Docket page)

Duncan v. Owens, 577 U.S. ___ (2016) ("The writ of certiorari is dismissed as improvidently granted.")

Lakesha cont. from page 7

Hospital personnel decided not to admit Destiney and discharged her at 9:00 p.m. Artis was given a set of *generic* Discharge Instructions that **stated in part**: "*Nontoxic* Ingestion: *Your exam shows your ingestion is not likely to cause serious medical problems*. Further treatment is not needed at this time."

In the section of the discharge papers entitled "ED Course/Medical Decision Making," **the note read** as follows: "Pt. here for possible ingestion of Suboxone . . . Pt has remained awake, alert with No respiratory difficulty during her ED course. Pt is stable discharge. Parents re-assured."

Artis took Destiney home. About 8:30 a.m. the next morning when Destiney didn't respond to her call, she found that Destiney was cold to her touch. Her husband immediately began to administer CPR and emergency personnel were called and she was transported to the hospital. Efforts to resuscitate Destiney were unsuccessful.

Destiney's autopsy determined her cause of death was buprenorphine poisoning. (Destiney ingested Suboxone that is a commercial name for buprenorphine.)

In June 2012 Bullock, 51, and Kimberly, 39, **were indicted** for felony murder, felony child abuse or neglect and drug possession charges. The drug charges were related to their illegal possession of the Suboxone that Destiney ingested.

In September 2012 Bullock **pled guilty** to involuntary manslaughter, felony child abuse and neglect, and possession and conspiracy to possess a Schedule III controlled substance. He was sentenced to 7 years 9 months in prison, to be followed by 20 years of probation. In October 2012 Kimberly pled guilty to the same charges, and she was sentenced to 7 years 6 months in prison.

In March 2013 Artis was indicted for second-degree murder, involuntary manslaughter, and child abuse and neglect. She was released in April on $200,000 bail pending her trial.

During Artis' jury trial in February 2014 the prosecution's case was based on its contention she was criminally negligent for failing to take Destiney back to the hospital after her discharge, which was asserted as the reason she died.

Artis' defense was she wasn't negligent because when the hospital discharged Destiney she was informed Destiney's condition wasn't serious and she didn't need additional medical care.

Dr. Richard Hamilton, an emergency medicine and toxicology expert, testified as a defense expert **that Destiney** "showed signs and symptoms of Suboxone overdose and . . . should have been admitted to the hospital." His opinion was based on the deterioration of her blood oxygen level and respiratory rate after arriving at the hospital, and she was displaying signs of Suboxone poisoning that included lethargy, drowsiness, and her pupils had minimal reaction.

Dr. Hamilton **opined it was** "absolutely incorrect" for the hospital to conclude that Destiney did not have respiratory difficulty. He also testified that Destiney "was not stable and should never have been discharged," and that it was"misleading to the parents" to give reassurances that Destiney would be okay.

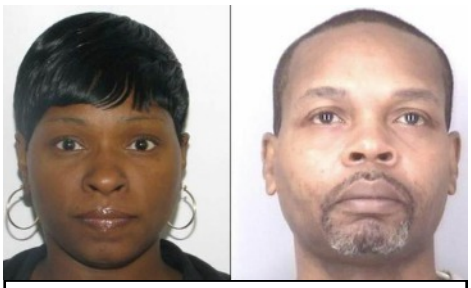
Prior to the beginning of deliberations the judge granted the defense motion to dismiss the second-degree murder charge as unsupported by the prosecution's evidence.

The jury convicted Artis of involuntary manslaughter, and the judge showed considerable leniency in sentencing her to six months in prison.

Artis appealed, arguing that the prosecution introduced insufficient evidence to prove her conduct prior to calling 911 on July 17 was criminally negligent, and that her conduct was the proximate cause of Destiney's accidental death.

On June 2, 2015 the Virginia Court of Appeals unanimously reversed Artis' conviction and ordered dismissal of her charges on the basis the prosecution introduced insufficient evidence to prove her guilt beyond a reasonable doubt. In *Lakesha Lanika Artis v. Commonwealth of Virginia*, No. 1020141 (Vir. Ct. of Appeals, 06/02/2015) the appeals **court stated**:

> Appellant's decision not to take Destiney back to the hospital during the next few hours that elapsed during the night after the hospital had just released her at 9:00 p.m. ... simply did *not* amount to criminal negligence.
>
> First, the evidence does not show that appellant could have known that failure to take Destiney back to the hospital so soon after her discharge would pose a danger to Destiney's life. ... the discharge instructions stated that "[y]our exam shows your ingestion is not likely



Kimberly Artis (l.) and her boyfriend Steven Bullock (r.) (Suffolk PD)

> was entitled to rely on these assurances, and we certainly cannot say that appellant knew or should have known the probable result of not taking Destiney back to the hospital that night so soon after returning home with her.
> ...
> Finally, ... there is nothing to indicate that Destiney was experiencing significant discomfort during that relatively short twelve-hour time period [between her discharge and death]. For all these reasons, it strains credulity to say that appellant's decision not to seek additional medical care for Destiney – but to instead care for her at home over the few hours since the hospital discharged her – constitutes a callous disregard for human life.
> ...
> The evidence in this case simply does not support a finding beyond a reasonable doubt that appellant's decision not to take Destiney back to the hospital was *criminally negligent*. Accordingly, we must reverse appellant's conviction for involuntary manslaughter.

Click here to read the court's opinion in *Lakesha Lanika Artis v. Commonwealth of Virginia*, No. 1020141 (Vir. Ct. of Appeals, 06/02/2015).

Artis remains in prison serving a two year sentence for her child abuse conviction in an incident unrelated to Destiney's poisoning.

Source:

Lakesha Lanika Artis v. Commonwealth of Virginia, No. 1020141 (Vir. Ct. of Appeals, 06/02/2015) (Insufficient evidence to prove beyond a reasonable doubt that Artis' conduct was criminally negligent; conviction of involuntary manslaughter reversed and dismissed.)

Jury verdict overturned, By Tracy Agnew, *Suffolk News-Herald*, June 4, 2015

Mother guilty in child's death, By Tracy Agnew, *Suffolk News-Herald*, February 13, 2014

Bond granted for Suffolk mother charged in 2-year-old's drug death, *WVEC TV* Chnl 13 (Hampton Roads, VA), April 3, 2013

Stepgrandmom sentenced in Suffolk toddler's death, By Jeff Sheler, *The Virginian-Pilot*, January 14, 2013

Toddler dies after eating pills kept in candy dish; grandmother wanted on murder charges, By Philip Caulfield, *New York Daily News*, July 2, 2012