

Leroy E. Leubner, Jr.
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September 16, 2004

Winthrop H. Thurlow
Asst. Atty. General in Charge
Syracuse Regional Office
615 Erie Blvd. W., Suite 102
Syracuse, NY 13204

Dear Sir;

On October 18, 2002 I wrote an informal complaint against Cayuga County District Attorney James Vargason, and filed it with your office per the instruction of Attorney General Elliot Spitzer. I have waited patiently for almost two years for a formal response from your office without an answer. My son's murderer, Michelle Davis, is slated for release in May 2005, so there is no time to waste.

As I have previously argued with DA Vargason, there are several reasons why the plea bargain in *THE PEOPLE v MICHELLE DAVIS* must be rescinded, the first being its fraudulent basis. In *LOCKETT v JUVILER* (65NY2d182) it was held that the court may rescind a plea agreement if it were discovered that its basic elements were predicated upon fraud. In the instant case Davis was allowed an "Extreme Emotional Disturbance" plea (and a subsequent reduced sentence on a Manslaughter 1 charge) due to her claim that Danny had raped her the night of the fire. There was absolutely no physical evidence supporting this claim, yet she was allowed this plea after Judge Peter Corning found it to be credible based on an expert diagnosis of "Rape Trauma Syndrome" provided by Ann Burgess. However, both state and federal courts have ruled that "Rape Trauma Syndrome" testimony is inadmissible if its sole purpose is to prove that a rape had occurred (*PEOPLE v TAYLOR* 75NY2d293). Furthermore, Vargason exposed the "thinness" of this argument during the closed "evidence suppression" hearings when he made Burgess admit that the only reason she awarded the "Rape Trauma Syndrome" diagnosis to Davis was that she simply believed her story. Vargason has since gone on record as stating that he did not agree to the Affirmative Defense plea based on the fraudulent rape story, but rather due to "financial hardship, bankruptcy, failed relationships, loss of employment, and overall hardship of trying to raise on her own a severely autistic son". In an attempt to address this argument, I formally requested a complete and accurate copy of the evidence he used in accepting this plea. I have yet to receive a response, probably because this evidence does not exist. I have, however, been able to acquire considerable evidence that rejects this argument. During her interview of September 21, 1999 Davis repeatedly stated that (1) she was the driving force behind her separation with her husband, and that she was happy that it was finally done, (2) she was not in financial trouble, as she had income from her parents, me, unemployment benefits, potential SSI benefits for Danny (I started the application process), and was current on all her bills, (3) she was presently going to school in order to be able to work from home and (4) although it was sometimes hard dealing with Danny, she was coping and had refused my offer to have him live with me (this was also documented in the CPS interview conducted while she was in the Cayuga County jail). In conclusion, there is absolutely no foundation for an Affirmative Defense in this case. Michele Davis did not meet the burden of proof required in order to be allowed this privilege, and must not be allowed to reap its benefit of premature release from prison.

A second basis for the reversal of this plea bargain is that Judge Peter Corning, due to his extensive prior involvement in related Family Court proceedings (and their impact on the instant offense), was STATUTORILY DISQUALIFIED from ruling on any aspect of this case. Judge Corning held a standard practice of refusing to enforce the visitation rights of parents and children in Family Court due to long-held personal feelings (he admitted this in an article published in *THE CITIZEN* June 4, 1999). This practice completely violated the civil rights of those affected, and allowed custodial parents to manipulate their children into alienating the non-custodial parent. This behavior is strictly prohibited in state and federal

law, and is found to question the fitness of the offending parent. Judge Corning repeatedly ignored my pleas for intervention on behalf of my children concerning their mother's interference with visitation, failed to hold hearings into my concerns, and refused to assign a law guardian for my children. In MALLORY v MASHACK (266A.D.2d907) the Fourth Department Appellate Division found that Judge Corning abused his discretion by administering this personal policy (this ruling came as Davis sat in jail awaiting a bail hearing). This ruling exposes Judge Corning to potential civil action under the Family Court Act, Section 145 (Liability of Judge), and quite possibly to negligence charges regarding Danny's murder. Therefore, the fraudulent plea bargain that blamed Danny and myself for causing his death not only protected Corning's professional reputation, but also prevented his involvement in the instant offense from being exposed in open court.

In conclusion, I make the following FORMAL CHARGES; (1) Michele Davis is guilty of FRAUD UPON THE COURT by falsely testifying that Danny had raped her, and must not be allowed to maintain her Affirmative Defense plea bargain, (2) Peter Corning is guilty of OFFICIAL MISCONDUCT by abusing his discretion and ruling in a criminal case that he clearly had a personal and professional interest in, as well as knowledge and information beyond the scope of the criminal investigation, (3) James Vargason is guilty of FRAUD UPON THE COURT and OFFICIAL MISCONDUCT by agreeing to an obviously fraudulent plea bargain, ignoring evidence that refuted this plea, and refusing to address these crimes when brought to his attention. As "Officers of the Court", both Corning and Vargason are duty-bound to uphold and enforce the laws of New York State; clearly that was not the case here.

This long ordeal has brought great stress and sorrow to my family, and myself and has caused enormous suffering. Bringing Danny's murderer to true justice and providing his memory with dignity will mitigate much of this; ignoring this perversion of the criminal justice system will prevent closure and doom us to forever re-live his murder. I realize the political ramifications and costs connected with this case, but truly believe that Danny's memory is worth far more than the protection of corrupt and incompetent public servants. Please help me end this nightmare, and bring Michele Davis back to trial.

I have enclosed a "CD" with extensive documentation regarding this case. I apologize for it's length, but assure you that it completely supports my arguments. I look forward to hearing from you, and hope to receive the courtesy of a formal response.

Sincerely,

Leroy E. Leubner, Jr.