

PRISON CALL REVIEW LEADS TO DISMISSAL OF 13 YEAR REVERSE CONVICTION LAWSUIT



By Justin Fenton | MAR 16, 2021

BALTIMORE MAN FORGED A POLICE MEMO TO GET OUT OF PRISON ON MURDER CHARGE, JUDGE RULES IN TOSSING HIS WRONGFUL ARREST SUIT

A Baltimore man convicted of killing a 16-year-old girl forged the document that helped win his freedom, a federal judge ruled while tossing out his wrongful arrest lawsuit and ordering him to pay potentially six-figures in attorneys fees to the city.

The outcome was a stunning turnabout for Tony DeWitt, who was freed from prison in 2015 and sought to be compensated. Instead, U.S. District Court Judge Deborah Chasanow ordered that he should pay the city's attorney's fees, after those attorneys uncovered evidence of a forged document and jail calls in which DeWitt was recorded trying to organize payments to witnesses.

"Such brazen actions make a mockery of the truth-seeking objectives of the judicial system and weaken its credibility as an institution deserving of public trust," Chasanow ruled. "In one fell swoop Plaintiff's actions undermined the public confidence in the integrity of law enforcement and the competence of state and federal courts."

DeWitt remains free. He could not be reached for comment.

DeWitt always maintained his innocence in the 2002 killing of a 16-year-old girl and wounding another man. A court finally listened in 2015, only after he produced a police memo — which he claimed to have received in a public records request — showing that a witness identified someone else as the shooter and told detectives at the time. DeWitt's conviction was thrown out by a judge, city prosecutors dropped his case and he walked free after 13 years behind bars.

The memo used to document the witness interview, which is no longer in use, has a unique serial number. The city's attorneys retrieved the original form with that serial number from police and prosecutors. It showed the back side of the original document was blank, according to the city's filing.

DeWitt's copy contains typos — "homicide" is purportedly misspelled as "homocide" — and the detective's signature is not even close to a match, city attorneys argued. Forensic document examiners also determined that a supervisor's signature was forged, they wrote in their report.

"The existence of two copies of the original report, in the prosecutor and police files, is irrefutable, and uncontradicted, evidence that someone took the copy from the prosecutor's office and clumsily added to the blank second page," Chasanow said.

The city's attorneys also listened to DeWitt's recorded phone calls from jail and found conversations in which DeWitt could be heard arranging to bribe the surviving shooting victim and the victim's brother, according to the city's filing. In another call, they say, he discussed bribing the purported witness and coaching him for his testimony, the filing alleges.

"Me and you and my lawyer, we gonna work something out as far as a contract where as though I give you and your brother ten stacks a piece because that's when I can sue their ass for a lot of their bulls--- they did in my trial," DeWitt was recorded saying, according to the transcript. "I can lace your pocket and your brother pocket for real."

DeWitt's attorney, Charles H. Edwards IV, told the court in December that he did not believe any payoffs were made, but said it would be acceptable to pay for someone's "incidental expenses" to get them to court. In a filing, he claimed that the forged document was not key to the lawsuit.

Chasanow was not convinced.

"The gravity of Plaintiff's misconduct demands application of the strongest penalty available," she wrote, saying dismissal was in the public interest "because it deters others from engaging in similar misconduct by sending the clear message to potential offenders that attempts to game the system will not be tolerated."

Baltimore's lawyers, Avi Kamionski and Shneur Nathan, are based in Chicago and have carved out a niche in defending wrongful conviction cases. They have turned up purportedly forged documents in several cases, and opponents have accused them of using bare-knuckle tactics.

One Baltimore case where such claims were raised ended with a \$125,000 settlement, far below what the city might have had to pay.

Last week, the attorneys filed a motion alleging they uncovered fabricated

evidence in another case, brought by eventual exoneree Jerome Johnson in his quest to be released. The State's Attorney's Office calls the claim a red herring, because that was not part of their eventual case for Johnson's innocence.

Johnson was released in 2018 after spending 30 years in prison for a murder he denied taking part in. Johnson, who received \$2.3 million in compensation from the state in late 2019, filed a lawsuit against the city earlier that year seeking unspecified damages.

"That was not [among] what I presented as a summation of the state's investigation that resulted in the exoneration of Mr. Johnson," said Lauren Lipscomb, of the prosecutors' Conviction Integrity Unit, in an interview. "This case rested on the information provided by new witnesses as well the interview of witnesses that had testified at trial."

Johnson's attorneys at the Mid-Atlantic Innocence Project had argued primarily that a key witness had been pressured to implicate Johnson. But earlier in his efforts, Johnson also presented an affidavit from the convicted shooter in the case, Alvin Hill, who said a different man had handed him the gun, as well as an affidavit from that man. But prison records show the man was incarcerated at the time, and could not have been involved in the shooting. Hill also denied signing an affidavit.

"As such, both" affidavits "are false," Kamionski and Nathan wrote, claiming Johnson "successfully gained his release from prison, in part by misleading the SAO and the court."

Johnson's suit doesn't advance the affidavits, but rather claims that detectives pressured a 15-year-old witness to falsely add Johnson to the account of her cousin's murder. The lawsuit alleges officers suppressed her earlier statement that left Johnson out of it as well as other information that would have pointed to his innocence.

Kamionski and Nathan also say city prosecutors are failing now to comply with subpoenas to get more information about the exoneration investigation, and suggest they should be held in contempt.

"Defendants, therefore, seek an order compelling SAO to show cause as to why it should not be held in contempt for failing to produce unredacted documents in response to the record subpoena of Individual Defendants and the SAO's failure to produce a responsive audiotaped witness statement," the city attorneys said.