



You are here: [Home](#) / [Investigations](#) / [Wrongful Conviction](#) / [David Munchinski](#) / Munchinski is Free

Munchinski is Free

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Munchinski walking out of jail flanked by his daughter Raina Tousey and Attorney Noah Geary. Photo by D Natale.

After 25 years in prison in the ‘Bear Rocks Murders,’ Former Latrobe Man Released Pending Outcome of Appeal

By Leah Welch and Darlene Natale

The Innocence Institute of Point Park University

PITTSBURGH—As a bare-headed and graying David Munchinski, still wearing drab blue prison garb, emerged into a steady downpour from prison for the first time in 25 years, he first stumbled across a parking lot to hug his mother, then approached a horde of media.

“The rain feels great,” he said outside the State Correctional Institution at Pittsburgh.

He stood close to his daughter Raina Tousey, continually wrenching his hands behind his back — as if the handcuffs that had just been removed were still attached. The man who has fallen into the grips of Parkinson’s Disease and other health woes during his incarceration seemed to react to every shutter snap, looking uncomfortable but grateful for the physical and emotional support his daughter

provided.



Munchinski wrenching hands while addressing media. Photo by D Natale.

Munchinski first thanked his daughter, who has fought for his freedom for years, and his attorney, Noah Geary, and “higher powers starting with Judge (Lisa Pupo) Lenihan” of the U.S. District Court of the Western District of Pennsylvania, who hours earlier had ordered his release.

He also thanked the Innocence Institute of Point Park University, which has investigated and written stories about him for the past decade.

“They [The Innocence Institute of Point Park University] got the ball started pretty much. And

when they did, they packed a good snowball and rolled it down the hill and it picked up a lot of steam,” Munchinski said.



Munchinski approaches waiting media. Photo by J Stitt.



Munchinski and his daughter embrace while he addresses the media. Photo by J Stitt.

He said his first culinary wish was for a meal of lobster and shrimp. But he also said he quickly wanted to head to Florida to reside with his daughter where he planned to “go swimming.”

They left Pennsylvania on Oct. 3. His daughter said he jumped in her pool as soon as they got there.

What he actually ended up eating Friday night was stuffed cabbages, courtesy of his mother as he reunited with family members in her Monroeville home.

As he devoured the large cabbage leaves rolled around ground meat in tomato sauce, Munchinski admitted he was still trying to get a grip on swift actions that saw him go from a man condemned to prison for life to freedom in a little over five hours. “My head has been spinning,” he happily said about his release on bond in the 1978 double murder known as the “Bear Rocks Killings.”

“I don’t think he should have been convicted,” Judge Lenihan said during an hour-long hearing Friday before she ordered the release of the sickly 59-year-old. Munchinski had been imprisoned since 1986.

“Before this, I never knew how long the legal process was. When this first started I thought 3-5 years tops,” Tousey said while waiting in the courthouse hallway before the bond hearing.

During the hearing, his family sat in the front row while Munchinski was ushered in. His mother, Vilma Demos, sat with her hands tensely grabbing her knees, “I just want to take him home today,” she said.

As Munchinski, who earlier testified about a wide range of medical issues including Parkinson's Disease, back and neck issues, heard the release order and was led shackled down a federal courthouse hall afterwards, he told media: "I think it's good."

Later, he elaborated.

"When she said "yes", she's granting ... bond, right before that I didn't expect her to, for some reason I didn't expect her to, so I just blanked out ...and when she said it. I was very happy," Munchinski said.

His mother broke into tears, tightly hugging her tearful granddaughter after the ruling. They were allowed to spend some time with Munchinski after the judge left the courtroom and before he was led away.

Tousey, of New Port Ritchie, Fla., who has fought for her father's exoneration for many years, was stunned.

"I'm having trouble putting it into words. This is the day we've been waiting for. I can't wait to take him home," Tousey said in the courthouse hallway.

"He's missed out on all these things in life...it's just a shame when you sit down and think about it," she said.

Geary, the lawyer that caused the convictions to be reversed, said: "I don't know if it has sunk in yet."

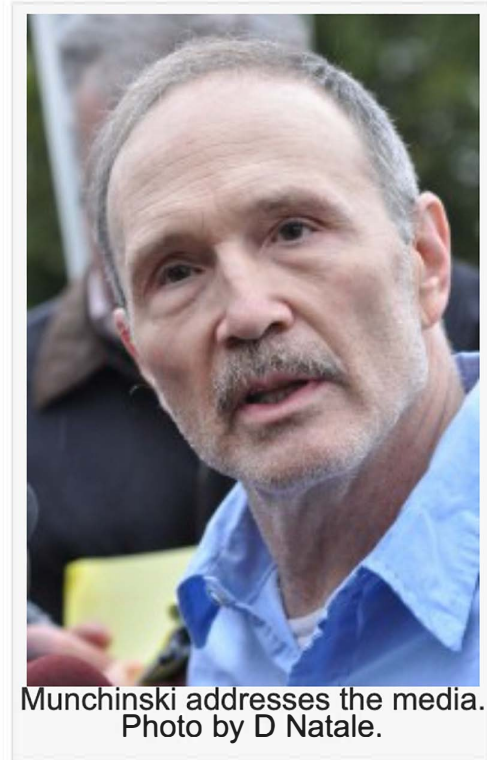
"They took the best years of his life away from him," Geary said.

Gregory Simantic, a deputy attorney general who has handled various appeals in the matter, offered little rebuttal during the hearing and said afterwards he was not surprised by the outcome.

The Pennsylvania Attorney General's office did not appeal the release order and did not respond to a request for comment.

At 4:43 p.m. Friday, Sept. 30, after prison officials ensured he did not have any outstanding warrants against him and stalled the release until it was sure prosecutors were not going to appeal the release order, he emerged.

"When I walk out here my head is spinning...bouncing off everything around here. I have no focus...because this is so new I'm still adapting to it," Munchinski said.



Second Favorable Ruling

In August 2011, in an 80-page opinion filled with stinging admonishments of the practices of state police, Fayette prosecutors and judges on Pennsylvania's Superior Court, Judge Lenihan listed a litany of unconstitutional actions in the case that compelled her to reverse the convictions of Munchinski, which she said were "unworthy of confidence."

She said state police investigators and Fayette prosecutors hid key tapes and other reports documenting contradictions of testimony from an admitted liar to convict Munchinski, illegally altered police reports, hid key exculpatory evidence, and among other things, failed to adequately investigate suspects other than Munchinski.

Ultimately, she concluded that Munchinski demonstrated that "the prosecution of his 1986 murder trial suppressed favorable evidence that was material to the determination of his guilt or innocence."

Adding new evidence discovered since Munchinski's 1986 trial to the mix, the judge concluded, "Additionally, (Munchinski) has adduced new, credible evidence of his innocence, and it is clear that, no reasonable trier of fact could have convicted (Munchinski) of the crimes with which he was charged, but for the multitude of constitutional violations that occurred in this case," Judge Lenihan wrote in granting Munchinski's petition for a new trial.

The Pennsylvania Attorney General's office, which took over the case several years ago after Fayette prosecutors were removed from it, filed a notice of appeal on Friday, Sept. 2. A brief supporting the appeal will be filed by mid-October 2011.

The Bear Rocks Murders

For almost five years after James Peter Alford, 24, and Raymond Gierke, 28, were found dead in a Laurel Mountain cabin, state police investigated numerous suspects, but were frustrated until a vagabond, drug and alcohol-addled misfit from Greensburg was caught in petty burglaries and immediately offered evidence in the Bear Rocks slaying for a deal.

In his September 1982 statement, the full text of which would not surface for many years, Richard Bowen told police he met Munchinski and the now deceased Leon Scaglione in a Greensburg bar where they drank shots of whiskey chased with beers and smoked marijuana before Bowen says he was hired to be the getaway driver in a drug rip-off.

Despite his heavy intoxication and the fact that blizzard-like conditions existed, Bowen initially told police he drove the two men to Gierke's cabin where he sat in Scaglione's lime green Ford while they committed the crimes. Among many subsequent changes in his stories, Bowen later said he left the car, walked down a driveway and watched through a window as Munchinski and Scaglione anally raped and murdered the victims during a cocaine heist.

He told police Scaglione tossed the murder weapons into a pond as they drove back to Greensburg. Despite Bowen's background as a burglar and thief who was caught lying on numerous occasions, police used his singular statement and a collection of circumstantial evidence to charge Munchinski and Scaglione with the murders.

Questionable Testimony and Egregious Misconduct

Bowen's testimony grew repeatedly from his first statement to the last. Even then, his sworn testimony didn't jibe with forensic evidence and the fact that Alford was found over 100 yards from the murder scene. While he said the victims were raped, and during Munchinski's trial prosecutors linked him to it through blood grouping tests, a subsequent analysis proved the DNA did not match Munchinski. The guns were never found in the pond Bowen said they were tossed into. The car Bowen said he drove was not purchased by Scaglione until several months after the killings.

During his testimony, Bowen said he was only promised marginal help in his own legal problems, another statement that was also discredited later. Despite his constantly changing testimony, both of them were eventually convicted after two trials.

Years later, Munchinski's daughter took up the case, conducted a detailed probe into Bowen and other witnesses and eventually contacted the Innocence Institute of Point Park University, which after a two year probe of the case, wrote a two part series, "A Question of Innocence" in the Pittsburgh Post-Gazette and on its web site "[A Question of Innocence" Pittsburgh Post-Gazette, June 23, 2002](#), "[A Question of Innocence: Star witness's story full of inconsistencies" Pittsburgh Post-Gazette, June 24, 2002](#)," and "[A Question of Innocence: Witness recanted testimony in another case" Pittsburgh Post-Gazette June 24, 2002](#)."

They documented a police report discovered in another case suggesting Bowen was in Oklahoma on the exact day of the killings. Then they learned Bowen recanted his testimony at least four times, once to an FBI agent and another time under oath.

Also found was documentation Bowen received money and other deals from prosecutors in exchange for his testimony that juries never knew about.

Most importantly, Munchinski discovered a police report stating Bowen's first statement was taped. Under evidentiary rules in criminal cases, commonly called "discovery," a prosecutor is supposed to turn over any evidence it has that would tend to benefit a defendant.

In her opinion, Judge Lenihan said: "Because the prosecution relied heavily upon this witness' testimony to support its case of first and second degree murder, and because of the utter lack of physical evidence tying (Munchinski) to the crimes, this Court is constrained to hold that the withheld evidence resulted ...in convictions...that are unworthy of confidence."

During questioning at one hearing by Geary, Munchinski's most recent lawyer, the lead prosecutor who is now Fayette County Common Pleas Judge Ralph Warman admitted he removed two paragraphs from the original Bowen police report which stated a tape was made.

Judge Warman said he did it with the approval of District Attorney Gerald Solomon, now President Judge of Fayette County. While he said he removed the paragraphs and cut and pasted the paperwork to disguise his actions because no tape was made, other reports and testimony suggested that critical interview was recorded. The tape has never surfaced.

All of that misconduct became the basis for a visiting judge's scathing opinion in October 2004, where citing intentional prosecutorial misconduct, he reversed the convictions against Munchinski and ordered the tape of Bowen turned over within 10 days or he would dismiss the case. He also referred the Fayette prosecutors for criminal prosecution. No one has been charged.

Reversal of Fortune

Munchinski was never released because the state attorney general's office filed an immediate appeal to the Pennsylvania Superior Court, arguing the misconduct did not affect the case, that Munchinski filed his petition late, was simply re-litigating issues he already lost and that despite Bowen's constantly changing testimony, there was still enough evidence to bring a conviction.

A year later, a three judge panel of the Superior Court reinstated Munchinski's conviction, stating his appeal was filed late. Normally, if a petition is filed late, that court will simply deny the petition in a single sentence or phrase, but in this matter, it filed a 119-page unpublished opinion challenging almost every element of Munchinski's appeal.

Judge Lenihan questioned that action because the Superior Court's job is not to hear or determine evidence, but only to see if the law was applied correctly in cases before it. In the Munchinski case, she said it assumed things outside the court record.

"It is disturbing to this Court that, in its rejection of the factual findings and credibility determinations of the ... trial court, despite support existing for them on the record, the Superior Court apparently overstepped the bounds of the applicable standard of review of factual and credibility determinations for this type of proceedings," she wrote.

Final Argument

During three hours of arguments in July 2011 that ended with Judge Pupo Lenihan's new trial order, Geary argued Munchinski's conviction should be reversed, and a retrial barred because officials hid or altered reports documenting questions about whether Bowen was telling the truth (or even in Pennsylvania on the night of the murder) as well as a long list of other misconduct and misapplied evidence in the case.

Among many other pieces of new evidence, Geary provided the court with another hidden report suggesting another man confessed to the killings.

"What they did was outrageous and it is criminal," he said. Geary also asked the judge to appoint a special prosecutor to probe the Fayette prosecutors.

"It is mindboggling. They did it, I proved it and the barring of a retrial is the only appropriate remedy," he argued.

Simantic argued the case was filed outside of statutory deadlines, which Geary was over dramatizing the actions of prosecutors and suggested none of the hidden documents, or other questionable issues, had an impact on the jury's findings.

For Judge Lenihan, misconduct at trial and afterwards forced her hand.

"The outrageous misconduct in which the prosecution engaged during the criminal trials and the (appeals) further undermines Bowen's testimony and casts a pall of doubt over every single piece of evidence presented by the prosecution in support of the case," she wrote.