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Man Says Bogus 'Doctor' Cost Him Eight Years

By KEVIN KOENINGER

CLEVELAND (CN) - A man claims in court that he served eight years in prison after Franklin County used "fabricated, concocted and scientifically unreliable" evidence to convict him, from a toxicologist who lied about his credentials.



Benjamin Uselton sued Franklin County, the County Coroner's former chief toxicologist James Ferguson, and Unknown Employees of Franklin County, in Federal Court.

Uselton claims that in 2002, he sold two friends "a small number of Xanax (alprazolam) pills," and that the men died 8 to 10 hours later, "after having smoked marijuana and ingested cocaine," when one of them crashed his car into a stone wall.

Killed were Adam Howell, 19, the driver, and his passenger, Mike Roberts, 16, according to the complaint.

"As per standard protocol, their bodies were sent by the Ashland County Coroner to the Cuyahoga County Coroner for autopsies and toxicological reports, with the specific instruction by the Ashland County Coroner to test the blood of the decedents for alprazolam. While the decedents' blood tested positive for marijuana and cocaine, no alprazolam was detected in the blood of either, particularly Howell," the complaint states.

It continues: "Three months after the negative test result, a detective from the Ashland County Sheriff's Office delivered a blood tube marked with the name of 'Adam Howell' to Ferguson, then the chief toxicologist at the Franklin County Coroner's Office. According to Ferguson, the request by the Ashland County Prosecutor was for him to conduct a drug analysis 'for screening and quantification' for alprazolam.

"Ferguson then obtained additional information supplied by the Ashland County Prosecutor, including the height and weight of the decedent driver, Howell, which Ferguson claimed he needed in order to calculate the dosage of alprazolam in Howell's system at the unknown time of death.

"Ferguson generated a report a few weeks later, claiming -- despite the timely testing conducted at the Cuyahoga County Coroner's Office by qualified Ph.D.s who did not detect alprazolam in Howell's body -- that Howell's blood was negative for cocaine metabolites, negative for cannabinoids (marijuana), but positive for alprazolam. Ferguson then, using unspecified information provided by the Ashland County Prosecutor, claimed to compute what he contended was the 'total number of tablets worth of alprazolam' in Howell's body (at an unspecified time).
[Parentheses in complaint.]

"Based upon the sworn trial testimony of Ferguson, who had previously referred to himself as 'Dr. Ferguson' but whom we now know barely obtained a bachelor's degree after twenty-five years of college, Uselton was

convicted of two counts of involuntary manslaughter and three counts of selling alprazolam.

"Uselton was sentenced to two consecutive five-year prison terms for the involuntary manslaughter, in addition to a nine-month sentence for the sale of alprazolam, for a total of 10 years, 9 months. On January 7, 2011, outgoing Ohio Governor Strickland granted Uselton's Petition for Commutation of Sentence, reducing his sentence to '8 years to 10.75 years.' Uselton was later judicially released from prison in July, 2011, after having served more than eight (8) years of his sentence.

"In late-October, 2010 Uselton first learned that Ferguson had been convicted of falsifying his credentials, of giving perjurious testimony involving his credentials, and was not qualified to render the opinions which he gave leading to Uselton's conviction (and the convictions of others as well). Neither Ferguson nor Franklin County ever produced or provided the underlying test results for the purported analysis which Ferguson claimed he had done, upon which Uselton was convicted."

Uselton, who was 19 when he sold the Xanax to his friends, claims that "Although neither Ferguson nor Franklin County could ever subsequently produce any actual test results, including CG/MS print-outs of the calibrations or standards used in the analysis of the specimen, print-outs of the quality control sample or print-outs from the analysis of the specimen, Ferguson nevertheless generated a two-page letter opinion dated August 15, 2002, which he sent to the Ashland County Prosecutor.

"In his written opinion produced for the Ashland County Prosecutor, Ferguson, fully aware of the Cuyahoga County Coroner's Office threshold detection level for alprazolam of 50 ng/ml, coincidentally found that the alprazolam level for Howell was 49.5 ng/ml which was the highest possible level of alprazolam in Howell's blood without reaching the 50 ng/ml detection level used by Cuyahoga County. This was a contrived result." Uselton adds that "at all times relevant, Ferguson referred to himself as 'Dr.

Ferguson," although "Ferguson's academic record at the Ohio State University was so poor that a veteran biochemistry professor there has testified that someone with Ferguson's credentials should have had zero chance of obtaining even a bachelor's degree. Not only did Ferguson never have a Ph.D., or a graduate degree, he was fortunate to have eked out a bachelor's degree after 25 years.

"By way of example, we now know that Ferguson failed to take 6 of the 15 courses required for his degree. Ferguson failed chemistry courses seven (7) times, and received D's in other classes. Indeed, Ferguson was on academic probation for 8 of his quarters while attending Ohio State."

Useton claims that Ferguson's testimony was crucial in sending him to prison, and that "since the 1960's, Ferguson has testified as an 'expert witness' at hundreds of criminal trials, where he consistently lied under oath about his qualifications."

Ferguson was fired in 2003, after Useton's trial, according to the complaint. Useton claims "that Ferguson was fired following [his] testimony and bogus test results which he concocted, perhaps in conjunction with the Ashland County Prosecutor, not a party to this action." Useton adds that he learned in October 2010 "that Ferguson was convicted of lying under oath, and was sentenced to 180 days in jail, with 150 days suspended. He served 30 days and was then placed on probation. The judge in Ferguson's criminal proceeding characterized Ferguson's lying as to his academic record to be a 'material fact.'"

Useton claims that he himself "was ineligible for judicial release because his sentence exceeded ten years. On January 7, 2011, then-Governor Strickland granted Useton's petition for clemency by way of commutation, where only around 5 out of more than 700 such petitions were granted. Former Governor Strickland reduced Useton's 10.75 year sentence to an indefinite sentence of '8-10.75 years.'

"Useton then became eligible for judicial release. He filed his motion on

May 6, 2011, the Ashland County Court of Common Pleas granted it following a hearing, and Uselton was finally released from prison on July 25, 2011, after having served 8 years, 2 months.

"Without Ferguson's testimony in Ashland County, Ohio, Uselton would not have been convicted."

Uselton seeks compensatory and punitive damages for due process violations, unlawful prosecution, unlawful imprisonment and fraud. He is represented by Brian Halligan with Halligan and Lang, of Ashland, Ohio.