

David Prock rape and incest case dismissed on a technicality

[Tweet](#) 3[Like](#) 29

Posted: Wednesday, October 5, 2011 9:00 am

By Mary Faith Bell |

Editor's Note: The following contains an account of a sexual assault.

The rape trial of former Tillamook County deputy sheriff David Prock was abruptly dismissed Sept. 27 on a technicality before it had begun.

Prock was accused of first-degree rape and incest. After hearing a motion from defense attorney Alex Hamalian to dismiss the charges against the defendant, visiting Marion County Judge Dale Penn signed the order to dismiss based upon a change in the law regarding the statute of limitations.

The statute of limitations is the period of time in which a crime can be tried after it occurs. In his explanation, Judge Penn stated, "Other than murder and treason sometimes, every other crime does have a finite statute of limitations."

In Oregon, the statute of limitations for sex crimes against children is 12 years from the date of the crime, or until the victim turns 30 years of age. In this case, David Prock's relative, "Jane," (not her real name), turned 30 on Oct. 8, 2010, two weeks after the Tillamook County Grand Jury indicted Prock for crimes alleged to have occurred in 1997, when Jane was 17. It appeared that the case fell within the statute of limitations, and both sides prepared for trial over the course of a year.

But prior to 2006, the statute of limitations in Oregon for sex crimes against children was six years from the date of the crime, or until the victim was 24 years of age. In 2005, Oregon legislators doubled the statute of limitations to its current limits.

Herein lays the technicality upon which the Prock case was dismissed: the extended statute of limitations, which came into effect in January 2006, stipulated that the new law cannot be used to revive a previously time-barred prosecution. Because Jane turned 24 in 2004, the statute of limitations had run out on the crimes against her when the new law came into effect in 2006.

"We focused on the crime, and the new statute of limitations," explained visiting Clatsop County prosecutor Dawn Buzzard. "There was a small window of time between the old statute and the new one, and it didn't occur to me."

In his conclusion of the trial, Judge Penn acknowledged, "Legal termination of this case is probably distasteful to everyone involved; but I am convinced" it is the correct reading of the law.

David Prock cannot be tried in a criminal court for these crimes again. According to Hamalian, "this is a two edged sword for Mr. Prock. He has maintained his innocence all along. And while it is a relief to have the charges dismissed, Mr. Prock will have to live with the stigma of getting off on a technicality."

Prior Bad Acts

Before Judge Penn dismissed the case, he heard testimony from Prock's daughter, Aimee Finel, regarding Prock's "prior bad acts," a legal term which means that the accused has a history of the kind of criminal behavior for which he was accused.

Aimee was not the victim in the case before the court. She was already older than 30 when the crimes were reported to the police, so the statute of limitations had expired in her case. It was a different relative whom Prock was accused of raping.

The prosecution argued successfully for admission of "prior bad acts," testimony claiming Prock had sexually abused his oldest daughter, Aimee.

Judge Penn found Aimee a "very credible witness," and said, "I am convinced that the events (she described) took place."

Aimee's sworn testimony, and the judge's response to it, are a matter of public record.

The following is excerpted from Aimee's sworn testimony, printed with her permission. It is with Aimee's permission that the Headlight Herald is printing her real name.

"The first time it happened I was 13. It was just after my knee surgery. I was rehabbing my knee and I was so very sick that day, I had bronchitis. I was throwing up and I took a shower to make myself feel better.

"I was wearing my purple bathrobe. I was asleep. He came in, in the middle of the night. He stopped at the end of my bed. He was wearing a T-shirt and his uniform pants that had the stripe down it, before they changed the uniforms...

"I couldn't see out the bedroom window. I had to see out the bedroom window so that I could escape just a little bit. He was on top of me in my bed and I shifted my body so I could see out the window, he lost his balance and he fell off me and I pushed him the rest of the way and got out of the way and stood over by the wall in my bedroom trying to figure out what to do. I was actually really scared. I didn't know what he would do at that point. He had hit his head on my dresser.

"He started to cry. I didn't understand why he was crying. If nothing else, he should be angry that I didn't obey or lay still or something. I was confused as to why he was crying. I sat down on the the edge of my bed trying to think what this all meant... He put his hand on my leg and he just kept saying he was so sorry, he was so sorry, and to forgive him. I got angry and I said, 'You don't need my forgiveness, you need God's forgiveness for that! It wasn't OK.'

"He crawled over to me and he just kept asking for forgiveness and I said 'We need to pray about this and ask for God's forgiveness. We prayed together. I told him it would never happen again and he needed to leave me alone and he needed to get out.'

"The last time he scared me I was 19. I'd just gotten back from the fair. I had taken a hot shower, and I had a towel wrapped around my head and around my body. I swear I had shut that door, but the door was open and he was standing inside it. He was wearing sweats at the time. I couldn't move.

"He came in and I ended up on the floor. His eyes were very dark...I just said, to think about what you are doing. It seemed like it took forever, but he did get off me and he went into the living room. I shut the door and I put my hutch in front of it and got dressed. When I was calm and I was packed I moved the hutch and went into the living room and talked to him.

"He let me know at the time that he was just trying to show me what the real world might be like."