

# State v. Justin Jackson

by Susan Elizabeth Reese

**Case:** *State v. Justin Jackson*

**Defense Counsel:** Jason Thompson

**Defense Investigator:** Peter De Muniz

**Defense Experts:** Dr. Stephen Guertin, Dr. Wendy Bourg

**Court:** Marion County Circuit Court

**Judge:** Vance Day

**Prosecutor:** Nicole Theobald

**Date:** November 13–15, 2013

**Charges:** Rape in the first degree (5 counts); Sodomy in the first degree (5 counts); Unlawful Sexual Penetration in the first degree (5 counts)

**Verdict:** Not guilty on all counts

On February 8, 2013, 28-year-old Justin Jackson agreed to speak with Salem police officers. He thought they had contacted him to discuss issues involving child support which he owed to Bethany Masters, the mother of his 12-year-old daughter, Amy.

To Justin's horror, the officers were investigating Amy's claims that he had repeatedly raped and sexually abused her from January 1 of 2007 through November of 2012.

The officers arrested Justin that day.

Justin's nightmare actually began in the spring of 2006. Amy was about five years old then, and Justin had decided he wanted to be involved in the life of the youngster he fathered as a very young man. He filed for custody on March 31, 2006. When Bethany learned about it that same night, she went to police and claimed that Amy had told her that her dad had been "doing things" to her.

After the police took the report, they sent Amy to CARES Northwest for an evaluation. There, Amy said, among other things, "Mom told me to say my daddy hurt me because he doesn't need me anymore." The CARES evaluator concluded with a report that the agency was "unable to determine" whether abuse had occurred or not.

Once Bethany understood that Justin did not plan to take Amy out of her life, she and Justin negotiated an amicable parenting plan. This included regular visits between Amy and her father at his home in Salem.

On February 6, 2013, a Gresham teacher intercepted a note that Amy and a boyfriend had been passing back and forth. The note contained a statement something like, "I wanted to be your



From left, Elyse Grossman, top left, Jason Thompson, top right, Peter DeMuniz, bottom left, Justin Jackson, and bottom right, Samantha Jackson.

first... Sorry your dad was your first." When questioned about the content of the note, Amy then claimed that every weekend her father had been having sexual relations with her during his parenting time in Salem.

The next day, Amy again went to CARES Northwest for an evaluation. The physician's assistant conducting the physical examination portion of that evaluation said she saw "a notch in the hymen at the five o'clock position." She claimed that this "notch" was diagnostic of sexual abuse. Amy and Detective Sean Kelly from the Salem Police Department were the only witnesses who testified before a grand jury. That body returned the 15 count indictment on February 19, 2013. Each count was subject to the so-called 'Jessica's law' which would require a mandatory minimum 25 year prison term, if convicted.

*Continued on next page*

OCDLA Life Member **Susan Elizabeth Reese** practices law in Portland. She serves on OCDLA's Education Committee.

OCDLA Life Member **Jason Thompson** practices law in Salem.

OCDLA member **Peter De Muniz** is an investigator in Salem.

Counsel for Mr. Jackson, Jason Thompson, included many OCDLA members as well as experts he had met through OCDLA conferences, in his preparation and presentation of the defense at trial.

With financial assistance from OPDS, Mr. Thompson was able to retain Dr. Stephen Guertin, a renowned pediatrician from Michigan. Dr. Guertin reviewed the colposcopic photographs and explained to the jury that the “notch” was actually a “fold.” He testified that Amy’s hymen was perfectly normal.

The defense team had learned that Amy told no one about these allegations until her good friend, Sophia Cappa, told Amy that she, Sophia, had been abused by her father. This revelation led Mr. Thompson to involve Wendy Bourg in the case. Dr. Bourg, a clinical psychologist formerly with CARES Northwest, testified about how youngsters describe claims of sexual abuse. Dr. Bourg explained to the jury that children can sometimes make statements about intimate details in their lives simply for purposes of “social acceptance.” Dr. Bourg also discussed the development of memory and the factors which can contaminate a memory.

Samantha Jackson, Justin’s wife, described the floor plan of the home. She pointed out that the small rooms in the dwelling offered little privacy for this busy family, which included a loud family dog, the couple and their two young daughters, with Amy on regular visits with her father. Each of these factors cast doubt on Amy’s claims of repetitive abuse.

Mr. Thompson cross-examined Detective Kelly about his training with DNA and forensic analysis. He pointed out that the officer never tried to examine or test Mr. Jackson’s clothes, the carpet in the home, or any of the locations in which Amy claimed her repeated sexual assaults had taken place. Mr. Thompson developed a theme for the case which he described as the notion that, “domestic contamination led to fictionalized sensationalism.”

Mr. Thompson provided an OEC 803(18) notice, then offered and introduced the CARES interview Amy had provided in 2006. This videotape demonstrated both Bethany’s over-reaction to the custody proceedings and Amy’s prior false accusation – critical pieces of the history for the jury. Mr. Thompson also introduced many photographs of Amy having a wonderful time with her half-sisters, Madison and Destiny, as well as her father and his wife in the small Jackson home.

By the time of trial, the state had “lost” the note which had generated the investigation and subsequent accusations. The state did offer the young boy who had passed the note to describe its

content, but Mr. Thompson was successful in convincing the judge to give the jury an instruction on “less satisfactory evidence.” The state argued that the note showed Amy’s claim of abuse was “accidentally” disclosed. Mr. Thompson, however, argued that the allegations were certainly not an accident. Indeed, he told the jury, it was part of a “historical revision” concocted by Bethany and her husband, Jason Masters. Taking the state to task for its failure to perform any DNA testing, Mr. Thompson pointed out in closing, “They found no evidence where it should have been, and they didn’t look for evidence where it could have been.”

Mr. Thompson credits Cynthia Roseberry, a speaker at the recent Newport conference whose materials gave him ideas for jury selection. His investigator, Peter De Muniz, was invaluable in organizing the witnesses and meeting regularly with Justin, his family and the defense team over the many months needed to prepare for trial. Mr. Thompson also drew on thoughts and suggestions from many other OCDLA members throughout this time.

On Friday, November 15, about 9:00 in the evening, the jury returned its verdict, awarding Mr. Jackson Beautiful Words on all 15 counts. Even though the Marion County Sheriff’s deputies wanted to keep Justin longer, to “process” his release from the jail, Judge Day granted Mr. Thompson’s request for Justin’s immediate release. After nine long months, Justin Jackson finally walked out of the courtroom, a free man. 📖



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