



## Arthur Stewart

In August 1995, a Queens County New York jury convicted Arthur Stewart of a home invasion robbery and he was sentenced to 7-to-14 years in prison.

At trial, several of Stewart's acquaintances testified as eyewitnesses to the crime and identified Stewart at the robber. Stewart denied involvement in the crime and testified that he was on a flight to North Carolina with his girlfriend at the time. A flight attendant, who could have supported his account, never testified, nor was his boarding pass presented as evidence; however, several other witnesses supported his alibi.

Following his conviction, Stewart appealed based on his attorney's failure to present a convincing alibi defense, but the court ruled that these were reasonable choices by his attorney. Stewart then filed a federal habeas corpus petition, prompting the prosecution to investigate the case.

After Stewart passed a polygraph and presented an affidavit from the flight attendant, who had been unable to testify at his original trial due to illness, the prosecution did not oppose Stewart's motion to overturn his conviction.

In July 2001, the Supreme Court of New York in Queens County vacated Stewart's conviction and he was released. Stewart filed a claim for wrongful conviction against the state, but it was dismissed after the court found that he did not present the "clear and convincing proof of innocence" required for a claim.

- *Stephanie Denzel*

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<b>State:</b>	New York
<b>County:</b>	Queens
<b>Most Serious Crime:</b>	Robbery
<b>Additional Convictions:</b>	Burglary/Unlawful Entry
<b>Reported Crime Date:</b>	1993
<b>Convicted:</b>	1995
<b>Exonerated:</b>	2001
<b>Sentence:</b>	7 to 14 years
<b>Race:</b>	Black
<b>Sex:</b>	Male
<b>Age:</b>	
<b>Contributing Factors:</b>	Mistaken Witness ID, Inadequate Legal Defense

**Did DNA evidence contribute to the exoneration?:** No

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Notes from Innocent: Inside Wrongful Conviction Cases, by Scott Christianson  
pages 98

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(searching Google Scholar for polygraph and “wrongful conviction”

Mentions polygraph



## New York State Court of Claims

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**STEWART v. THE STATE OF NEW YORK, #2004-028-555, Claim No. 106315, Motion Nos. M-67990, CM-68099**

### Synopsis

### Case Information

<b>UID:</b>	2004-028-555
<b>Claimant(s):</b>	ARTHUR STEWART
<b>Claimant short name:</b>	STEWART
<b>Footnote (claimant name) :</b>	
<b>Defendant(s):</b>	THE STATE OF NEW YORK
<b>Footnote (defendant name) :</b>	
<b>Third-party claimant(s):</b>	
<b>Third-party defendant(s):</b>	
<b>Claim number(s):</b>	106315
<b>Motion number(s):</b>	M-67990
<b>Cross-motion number(s):</b>	CM-68099
<b>Judge:</b>	RICHARD E. SISE
<b>Claimant's attorney:</b>	PAUL A. CHIN, ESQ. HON. ELIOT SPITZER, ATTORNEY GENERAL
<b>Defendant's attorney:</b>	BY: Leslie Stroth, Esq. Assistant Attorney General
<b>Third-party defendant's attorney:</b>	
<b>Signature date:</b>	August 30, 2004
<b>City:</b>	Albany
<b>Comments:</b>	
<b>Official citation:</b>	
<b>Appellate results:</b>	
<b>See also (multicaptioned case)</b>	

## Decision

In reaching its decision on the instant Motion and Cross-Motion, the Court has read and considered the following papers:

(1) Notice of Motion to Dismiss the State's Affirmative Defenses dated January 24, 2004, filed on January 26, 2004;

(2) Affirmation in Support of Paul A. Chin, Esq., dated January 24, 2004 and filed on January 26, 2004 together with Exhibits 1-2 (*Chin Affirmation*);

(3) Notice of Cross-Motion dated February 25, 2004 and filed on February 27, 2004;

4. 4) Affirmation of Leslie A. Stroth, Assistant Attorney General, in Support of Cross-Motion and in Opposition to the Motion, dated February 25, 2004 and filed on February 27, 2004, together with Exhibits A-M (*Stroth Affirmation*);

(5) Reply Affirmation of Brandon Garrett, Esq., dated March 1, 2004 and filed on March 1, 2004, together with one exhibit (unmarked) (*Garrett Reply*);

(6) Defendant's Reply of Leslie A. Stroth, Assistant Attorney General dated March 31, 2004 and filed on April 2, 2004 (*Stroth Reply*);

(7) Claimant's Memorandum of Law dated January 24, 2004 together with Exhibit 1;

Filed papers: (1) Claim; (2) Answer.

The present claim is for wrongful conviction and imprisonment. On August 28, 1995 after a jury trial, the Claimant, Arthur Stewart, was convicted of burglary in the first degree and four counts of robbery in the second degree. He was sentenced to concurrent indeterminate terms of imprisonment of seven to fourteen years on the burglary charge, and four to eight years on each count of the robbery charge.

The Claimant subsequently appealed his conviction, which was affirmed by the Appellate Division, Second Department on March 2, 1998 (*People v Stewart*, 248 AD2d 414). His application for leave to appeal was denied by the Court of Appeals on June 10, 1998 (*People v Stewart*, 92 NY2d 861).

Eventually, the Claimant filed a petition for a writ of *habeas corpus* in the U.S. District Court for the Eastern District of New York, as well as a motion to vacate the judgment of conviction in Supreme Court, Queens County. After reinvestigating the issues raised in the petition, the District Attorney's Office in Queens County consented to the granting of the motion brought in the Supreme Court, Queens County to vacate the judgment of conviction in the interest of justice. [1] On July 3, 2001, Mr. Stewart was released from jail.

The Claimant argues that his pleading complies with the pleading requirements of the Court of Claims Act §8-b and more specifically that his conviction was dismissed and the indictment vacated on one of the enumerated grounds (*Chin Affirmation*, p 5). The State contends that neither the judge's decision nor the argument of Gayton P. Gomez, Mr. Stewart's counsel on the motion to vacate, sets forth the particular section of CPL 440.10 upon which the vacatur and dismissal were to be granted. [2] (*Stroth Affirmation*, pp 12-13). In response, the Claimant's attorney presents an argument woven of hole cloth to state why Judge Roman's Order must have been on an enumerated ground – nowhere does he cite the language of the Order to substantiate his hypothesis.

The courts, in applying Section 8-b have been unanimous in holding that it must be strictly construed. Accordingly, in order for the claimant to succeed, he must establish that the accusatory instrument was dismissed on one of the enumerated grounds, the failure to do

so is a fatal defect (*Stewart v State of New York*, 133 AD2d 112, *lv denied* 72 NY2d 807). After reviewing all of the documents, the Court finds that the Claimant has failed to identify the enumerated ground, therefore, the Claim must be dismissed. Were the Court to find otherwise, would be for it to engage in sheer speculation as to Judge Roman's reasoning.

On the second ground argued for dismissal, the Court finds that contrary to the requirements of Section 8-b (4) of the Court of Claims Act, the Claimant has failed to submit clear and convincing evidence of a likelihood of success at trial.

In assessing that burden, this Court has noted:

[u]nder the Unjust Conviction and Imprisonment Act, a claimant must prove innocence by clear and convincing evidence, a "heavy burden" which makes the task facing a claimant "certainly not a simple one." (*Reed v State of New York*, 78 NY2d 1, 11 [1991].) Clear and convincing evidence is evidence which satisfies the trier of fact that it is "highly probable" that what the party with such burden contends happened is what actually occurred (PJ13 1:64). It is a standard which serves to " 'impress the factfinder with the importance of the decision.' " " Such proof cannot be " ' "loose, equivocal or contradictory. " ' " [footnote omitted] ( *Morales v State of New York*, 183 Misc 2d 839, 848).

In arguing that his client has submitted clear and convincing evidence that he is likely to succeed at trial, the attorney for the Claimant points to the two alibi witnesses (Ms. Chenessia West, a former girlfriend of Claimant and her mother), as well as an Affidavit of Mr. Buchanan, a flight attendant, two other witnesses who can no longer be located (Notice of Cross-Motion, Exhibit "I" (*Testagrossa Affirmation*, p 3 [paginated]), and a polygraph of the Claimant and of an alibi witness. He also downplays the identification of the Claimant by two eyewitnesses, who had known him from childhood.

A review of the evidence that is likely to be admitted at trial leads the Court to find that the Claimant has again failed in his burden. Both the testimony of the alibi witnesses and the eyewitnesses are subject to challenge on cross examination. The former, because of their relationship to the Claimant, and the latter because of possible inconsistent statements. [3] The polygraph results and the Affidavit are unlikely to be accepted into evidence. [4] Any remaining witnesses cannot be located. Accordingly, the Court does not believe that Claimant has demonstrated that he has clear and convincing proof of innocence.

Therefore, the Claimant's Motion to Dismiss the State's affirmative defenses is denied; and the State's cross-motion to dismiss the claim is granted.

August 30, 2004  
Albany, New York

HON. RICHARD E. SISE  
Judge of the Court of Claims

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[1] This consent was given notwithstanding the fact that eyewitnesses in the original trial, who had known the claimant since childhood, still insisted that the claimant was guilty (*Testagrossa Affirmation*, Exhibit "I" annexed to Notice of Cross Motion, p 4 [paginated]; Exhibit 1 annexed to Garrett Reply, pp 1-2 [unpaginated]).

[2] Mr. Gomez's Affidavit states that the motion to vacate the conviction and dismiss the indictment was based upon the "interest of justice" (Exhibit "H" annexed to Notice of Cross-Motion, p 1 [paginated]).

[3] These witnesses all testified at the criminal trial and the jury decided that the eyewitnesses were more credible.

[4] The Defendant had stated that it will not stipulate to permitting the results of the polygraph to be admitted, and Mr. Buchanan was unable to state with certainty that the man on the flight was the Claimant.