

# THE SUN

Friday, January 4, 2002

Baltimore, Maryland

## Jessamy says she'll drop case against Austin



ANDREY CHUNG/SUN STAFF  
**It's over:** Baltimore State's Attorney Patricia Jessamy announces her decision at the Mitchell courthouse.

### More inside

**Surveillance:** Jessamy proposes legislation that would make it easier for police to tap phone lines. [Page 1B]

Statement concludes 27-year ordeal of former inmate

Reversal by state's attorney

By SARAH KOENIG  
SUN STAFF

In a striking turnaround, Baltimore State's Attorney Patricia C. Jessamy announced yesterday that she was dropping the case against Michael Austin, finally ending the ordeal of a man who spent 27 years in prison on a faulty murder conviction.

The announcement came one week after Baltimore Circuit Judge John Carroll Byrnes overturned a jury's 1975 verdict and Austin's life sentence, saying his trial was "plagued" by errors.

Austin has always maintained his innocence, and in the past year attracted influential supporters who criticized Jessamy for opposing his release. Because virtually no evidence against Austin remains, retrying the case would have proved difficult for Jessamy. However, she could have challenged Byrnes' ruling.

At an afternoon news conference at the Clarence M. Mitchell Jr. Courthouse, Jessamy did not explain how she came to her decision and made no mention of his guilt or innocence.

In a statement that lasted just under 1½ minutes, she said: "I have carefully reviewed Judge Byrnes' decision and have met with my staff relative to all aspects of the case. It is my decision not to retry this matter and I will not seek an appeal of Judge Byrnes' decision. My office will have no further comment on this." [See Austin, 6.]

# Jessamy says she will drop case against former inmate

(Austin, from Page 1A)  
case."

Her only hint as to what motivated her came in her opening sentence: "We're meeting here today in this spot because, for over a century, this courthouse has served as a symbol for the protection of an individual's precious liberties," Jessamy said.

The brief statement was a carefully worded request for Jessamy, whose office had argued against reopening Austin's case after his attorneys filed a motion to do so in March.

Austin was at the office of Centurion Ministries in Princeton, N.J., the organization that took up his case in 1996, when he got the news yesterday that he was officially free. Minutes after Jessamy's announcement, he removed his name from a large magnetic board listing Centurion's open cases, and his lawyers were planning a big celebration party in Baltimore next week.

"I'm excited, I'm very excited," Austin said. "You know, all along I knew that justice would prevail."

Austin said he had tried not to worry too much about what Jessamy would do. "I had enough on my mind as it was," he said. "The fact that Jessamy made the statement, well, it'll all be processed whenever it connects with me. I do know that I'm out, and I do know that I'm free. I'm just trying to take it one day at a time."

He sounded calmer than James C. McCloskey, Centurion's president. "Where does one begin, I mean, I'm just... I'm delighted, I'm elated, but it was 27 years in coming," he said. "It closes a circle. Justice has finally come. Pure, true justice."

## Imprisoned for 74 murder

Austin, 53, was imprisoned for the 1974 murder of Roy Kellam, who was working as a security guard at the Crown Food Market in East Baltimore when two gunmen came in, shot Kellam in the heart and robbed the store of \$3,670.

The case against Austin consisted of one eyewitness testimony and a business card that purportedly linked Austin to the crime.

A Crown Food clerk named Jackie Robinson said Austin was the shooter. Robinson died of a heroin overdose in 1997, but his family said that before he died he admitted to falsely identifying Austin. In addition, at the trial the prosecution had presented Robinson as an earnest college student. But Austin's lawyers said that Robinson had been in trouble with police, and that he used and sold drugs and was a high school dropout.

The other evidence against Austin was a card that a detective said he found in Austin's wallet. Written on the back of the card was the name Horrace Herbert, Austin's supposed accomplice. Austin had testified that he didn't know Herbert, making him look like a liar. But prosecutors eventually declared Herbert innocent and dropped their case against him, meaning Austin's alleged connection to him was irrelevant.

These evidentiary problems, among others, led Byrnes to write that Austin's case presented "the inescapable conclusion that he was denied a fair trial."

The ruling clearly influenced Jessamy's decision yesterday. For nearly a year she has said, publicly and privately, that Austin should remain locked up.

Austin's lawyers had approached the city State's Attorney's Office many times asking for help. Although the case predated Jessamy's administration, she took a hard-line stance. In court filings, prosecutor Sharon A.H. May opposed Austin's request for a judge's review, writing, "Austin sets forth no smoking gun, no scientific evidence" to prove his innocence.

## Influential voices

Meanwhile, a chorus of influential voices began to pressure Jessamy for Austin's release. In an extraordinary admission, the prosecutor who worked on the case said Austin never should have been tried; another eyewitness surfaced, saying Austin was the wrong man; former Mayor Kurt L. Schmoke said he was "dumb-founded" by Jessamy's position; and Kellam's widow said she doubted that Austin was guilty.

Despite the criticism, Jessamy stayed her course. In a newsletter she wrote in September, Jessamy defended herself, saying that Austin had lied under oath about his co-defendant and that his lawyers had made false claims about the evidence.

Larry Nathans, one of Austin's lawyers, said yesterday that even if Jessamy had elected to appeal Byrnes' ruling, "We believe we would have won there also. We weren't waiting on her decision. We've always believed that we had an incredibly strong case."



ANDREW CHUNG/STUNSTAFF  
**Free:** Michael Austin, shown leaving prison Dec. 28, says he has lined up a construction job and hopes to work with jailed youths.

For the past three days, he has been staying with McCloskey, waiting to appear on the television news program *Good Morning America*. The two have taken long walks together and talked of how Austin will manage his freedom. He has a construction job lined up and hopes to work with incarcerated youth.

Austin said it would have been nice to hear Jessamy declare him innocent. "She had a duty to do a lot of things, but I can't second-guess what Jessamy did," he said. "She don't have to say it, I'll say it. I'll take on that responsibility."

# Jurors are told hockey dad defended himself when he killed another father

## Fight broke out over practice session involving their sons

ASSOCIATED PRESS

CAMBRIDGE, Mass. — A father on trial for beating a man to death at a youth hockey practice was defending himself from the victim, a defense attorney told jurors yesterday.

But prosecutors said Thomas Junta, a 6-foot-1, 270-pound truck driver, lunged at the 160-pound victim, pinned him to the ground and repeatedly pounded his head to the floor.

"Everything in life is not always as it seems," defense attorney Thomas Orlandi Jr. told jurors during opening statements. "I promise you today that there are two sides to every story."

Junta, 42, is charged with manslaughter in the death of Michael Costin, 40, who died after an argu-

ment over rough play at a skating rink in Reading, just north of Boston.

Eleven children, ages 11 to 15, who saw the fight July 5, 2000, are on the prosecutor's list of potential witnesses, including the men's sons.

Junta concedes he became incensed when he saw "hitting, fighting, slasting" during his 10-year-old son's stick practice, Orlandi said. Junta yelled for Costin, who was supervising on the ice, to control the game.

As the practice ended, Junta claims, a player threw an elbow at his son's head. After Junta escorted his son to the locker room, Junta and Costin had two physical confrontations.

Costin walked past Junta after the practice and said something to him about hockey being rough. Junta swore at Costin, and a fight started.

The defense claims Costin, who stood 6-feet-3 in his hockey skates, thrust his chest into Junta and cut him on his face, neck and shins

with his hockey skates. The fight was broken up and Junta left the rink, only to return minutes later.

Prosecutors contend Junta lunged at Costin, knelt over him and repeatedly punched him.

"Some of the witnesses will tell you they saw Mr. Costin attempting to avoid the blows by turning his head to the right but that the blows continued to hit him," Assistant District Attorney Sheila Calkins said.

The defense says Costin blindsided Junta when he walked back into the rink. "He was leaving in the middle and seconds later he tried to sucker-punch" Junta in the face, Orlandi said.

Another fight ensued and, the defense says, Costin hit his head.

The defense admits Junta landed some punches.

Middlesex Superior Court Judge Charles Grabau said he would allow the jury to see photos taken just before Costin's autopsy, but he put off a decision on whether to allow photographs of Costin's internal injuries.