

# Family fights for son's freedom

By Jimmie Ferguson

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HARKER HEIGHTS Questionable testimony in the sexual assault conviction of one Harker Heights man may be enough to get him a new trial and an opportunity for a jury to hear the victim say "it didn't happen."

That's what the family of Michael Arena is counting on after a recent disclosure by the Texas Board of Examiners of Psychologists that the testimony of one key witness in their son's trial was false.

For more than four years, Robert and Betty Arena have lived what they call a nightmare.

In 1999, their two children, John and Michael, were imprisoned for sexual assault a crime the victims now say never happened.

When the offense was reportedly committed, May 1, 1997, Michael Arena was 14 and his brother, John, was 15.

The case involved the sexual assault of their cousins then a 5-year-old boy and a 7-year-old girl, the children of Stephan Arena and his ex-wife, LaVonna Arena.

Before the trial on Oct. 12, 1999, John Arena, then 17, was convinced to plea bargain, ostensibly to prevent his younger brother from going to jail. He is now serving a seven-year sentence in Texas Youth Commission facility in Sugarland.

But Michael Arena, then 16, was found guilty Oct. 14, 1999, and was sentenced to 20 years in prison. Presently he is serving his time at a TYC facility in San Saba. Because he refuses to admit he committed the crime, his family believes Michael will most likely serve the entire 20 years.

The Arenas believe the testimony of Dr. Frederick Willoughby Ph.D., was key to the jury's decision and the sentencing of both of their sons.

According to the State Office of Administrative Hearings docket, Willoughby is scheduled to appear June 25-26 before an administrative judge to determine whether he violated the Psychologists Licensing Act, the Texas Occupation Code and Rules and Regulations of the Texas State Board of Examiners of Psychologists.

The Texas State Board of Examiners of Psychologists determined Willoughby had committed eight violations when interviewing the Arena brothers. Among the violations was the use of an invalid testing instrument, the Abel Assessment, to determine sexual interest in the juvenile patients.

The board also determined that Willoughby failed to inform John and Michael's parents of his relationship with the Bell County Probation Office, the voluntary nature of the evaluation and he did not detail any foreseeable limits of confidentiality.

In the course of the evaluation, Willoughby administered several tests, including Dr. Gene Abel's assessment. Some of the tests were visual in nature and required a tightly controlled testing environment, which the board contends Willoughby did not provide. The board also accuses Willoughby of failing to weigh any pre-existing neurological conditions the boys had prior to the test.

Betty Arena said her son Michael has a form of attention deficit disorder, and throughout the testing he consistently lost interest and went and stood in front of the window. The longer a visual is on the screen supposedly reflects the patient interest in that particular sexual act.

The Abel Assessment is designed to assess sexual interest in this case, sexual interest in children. At the time the Abel Assessment was administered, scientific literature had not established the test's accuracy in predicting sexual interest in adolescents, the board said.

The scientific literature at the time called the instrument a "non-validated instrument" for adolescent subjects. Rebuttals to the article critical of the assessment were not published prior to the test being administered on Michael, the board said.

The trial transcript shows Willoughby testified that the article critical of the Abel Assessment's use with adolescents actually supported his work.

However, the State Board of Examiners of Psychologists said that at the time of Willoughby's testimony the instrument had not been independently validated by scientific literature outside of the originator of the Abel test. In addition, the board alleges that Willoughby misrepresented in his testimony the accuracy rates for the assessment.

Willoughby also allegedly erred in making a diagnosis of "pedophilia" for Michael because the Abel test is not designed to produce that kind of diagnosis, the board said.

If found guilty in the eight counts, Willoughby could lose his license to practice psychology for six months, followed by an extended period of probated suspension with the conditions of additional continuing education. His practice will be monitored by an outside professional, and he will be required to retake the board's mail-out Jurisprudence Examination. The hearing, board could also impose an administrative penalty of \$1,000 on each charge.

Judge Edward Johnson of Bell County Court-at-Law No. 1, who presided over the case, said last month that he knew nothing about the board's findings against Willoughby.

Because the case was under investigation, Johnson said he was prohibited from making any comments.

"It would be in violation of the code of ethics if I did that," said Johnson said.

Bell County Attorney Rick Miller, whose office prosecuted the case, also said it would be unethical for him to comment on the case now because Michael's case is coming up for a transfer hearing and Willoughby had testified in that trial.

Tom Seigman, the prosecuting attorney, has since left Miller's office and is now in private practice in Killeen.

Since this nightmare began, Robert Arena, 53, and Betty Arena, 51, said they have had to sell their home and are now living with Robert's sister. They lost their restaurant, the Gasthof in Morgan's Point Resort, their sole source of income. And they lost their car.

But the Arenas have drawn the support of Laretta Matthews, a child's advocate and research analyst who has embedded herself with the family since April 2000 when she learned about their sons' case.

"I not only see Michael and John being hurt out of this," said Matthews, referring to the violations filed against Willoughby "I see all these other children whom I can't get to, because they are juveniles and their records are sealed."

Matthews believes up to 50 other children may have been institutionalized because of Willoughby's testimonies.

"And that's scary," Matthews said. "The scary part of this is that in his court testimony Willoughby stated that 25 to 30 percent of his practice is juvenile assessment, and the Abel Assessment was not even a valid test back then."

"Matthews said the Arenas' case has taken her twice to Iowa, where they believe the source of the accusations originated from the victims' mother, LaVonna Arena. "We are not being revengeful," said Betty Arena, noting the court told them the victims initiated the charges, not the mother. "We just want the evidence and the facts to come out that this case should never have gone to trial."

"And the only reason it did get to trial was because of these experts who were willing to go by what the state wanted them to do," interjected Matthews. "They were out to convict no

matter the truth. No matter that they didn't even investigate. These poor boys were never arrested, were never taken before a magistrate and never before convicted of any crime.

"The Arenas said their sons were treated like criminals even before the trial. They have several letters dated prior the trial from the Bell County Juvenile Probation Department directing them to bring their sons to the probation department to have monitoring devices put on their legs.

"They were telling us that it was mandatory for us to bring our sons to see Dr. Willoughby stating the court ordered it," Betty Arena said. "Then, we find out that the court didn't order it. We did what we were supposed to do because we had nothing to hide."

When the victims' father initially found out about the sexual offense, Betty Arena said her brother-in-law was irate and had threatened to "bury" her family.

During Michael's trial, Stephan Arena said he learned from his son that the sexual assault claim was fictitious and had been concocted by the children's mother. He said he was prohibited from presenting that information to the jury.

In response, the court dropped the charge against Michael, the father said, "Yet, the court didn't tell the jury that it had been dropped, and the prosecuting attorney continued to mislead the jury during his closing arguments," said Stephan Arena, who was scheduled to testify in the trial.

But after I told the prosecuting attorney and the judge that it didn't happen the prosecuting attorney dropped me from the witness list," Stephan Arena said. "In fact, the prosecuting attorney threatened me if I took the stand. It was like they had already made up their minds Michael and John were guilty and getting in their way. It was a railroad job."

On Jan. 16, this year, Stephan Arena wrote a letter to each of the jurors in that case, saying newly discovered evidence or evidence that was known but withheld from them shows that "my children were used in a bizarre divorce/child custody battle by my ex-wife."

Before the sexual assault charges were filed against the two boys, Stephan Arena said his ex-wife had their children repeatedly seen by multiple counselors until the children were able to say what she wanted them to say.

"One counselor in 1998 stated in a report that the interview was halted when (his daughter) could not continue until she found out what her mother wanted her to say," Stephan Arena said.

Since the trial, Stephan Arena said his children have been able to talk about what occurred.

"During a 2001 hearing, my daughter testified, even under the threat of going to prison for 10 years, that she lied at the 1999 trial, Stephan Arena said. Due to the judges conduct, I would not allow my son to testify. However, he has made written statements to the fact that he lied over two years ago.

"This is only the tip of the iceberg of the evidence that was known, withheld or discovered after the trial," Stephen Arena told the jurors. "My children had the courage, even knowing that they could be punished for lying. They told the truth."

Stephan Arena said he wrote the letter to the jury in the belief that they will see the injustice that has been done. He asked them if they now had any doubt about the conviction of Michael Arena to speak up.

"Michael has served over three years of a 20-year sentence," Stephan Arena said. "He continues to claim his innocence and due to this, he will serve the remaining of the 20 years in prison, even with the evidence that shows he is innocent. A new trial is the only way to bring these facts to light and uncover the fact that the state did not allow you to know."

As of a week ago, Stephan Arena said none of jurors had responded to his letter.

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