

DA declines to reopen case of woman found dead in garbage tote

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By Dan Herbeck

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The frozen body of Amanda Wienckowski, 20, was found in a garbage tote on Buffalo's East Side in January 2009.

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The third district attorney in eight years has told Leslie Brill Meserole that there is insufficient evidence to file criminal charges in the death of her daughter, whose body was found stuffed into a garbage tote on Buffalo's East Side.

But Meserole says she will not stop searching for answers and will not give up her quest to prove that a Buffalo man now serving a prison term for other violent crimes killed her troubled daughter, Amanda L. Wienckowski.

The City of Tonawanda woman said that she soon will soon file a lawsuit against Erie County authorities for their handling of the investigation. She said she also will ask the

U.S. Justice Department to investigate Amanda's death and the how local authorities investigated.

"I have a real, real issue with the Erie County DA's office and I will never give this up," Meserole said. "Never."

Her comments came one day after District Attorney John J. Flynn Jr. told Meserole's family that he finds no basis for criminal charges in Amanda's death.

Flynn confirmed that he met in his office on Thursday with Frank S. Falzone, an attorney for Meserole, and turned down Falzone's request to reopen the investigation.

"I told him that I believe this case has been thoroughly investigated and that it has been reviewed by a committee of experts, and that we have no proof that this death was a homicide, or that it was an intentional act," Flynn said in a Friday interview with The News. "I would reopen the investigation, but only if we had strong, credible new evidence, such as a confession or an eyewitness who saw a murder committed."

Flynn also said that all the evidence on Wienckowski's death was reviewed last June – at the request of Michael Flaherty, former acting district attorney – by a committee of experts from the state District Attorneys Association.

"Unknown to me until I took office, Mike Flaherty had asked the DA's Association Mutual Assistance Committee to review the entire case. The committee was made up of five prosecutors and a medical examiner from other parts of the state," Flynn said. "They pored over the entire file."

The committee sent Flaherty a report agreeing with former District Attorney Frank Sedita's conclusion that there was not enough evidence to pursue a homicide case, Flynn said.

Flynn said he agrees with the report made by the committee.

"At this point, this is a closed case," Flynn said.

Meserole insists that her daughter was killed by Antoine Garner, 30, a known criminal whom police believe was the last person to see Wienckowski alive. Garner is now serving a prison term for other violent crimes that he was convicted of in 2013.

Meserole pointed out that Joseph A. Agro, who was Garner's defense lawyer, now is a top aide to Flynn in the DA's office.

"I believe that, because Mr. Agro represented Garner, the DA's office has a conflict of interest in this case, and Mr. Flynn should turn the case over to another DA's office," Meserole said. "I am appalled by this situation."

Flynn said he is aware of Agro's former representation of Garner. He said it does not cause any conflicts for his office.

"Mr. Agro has had nothing to do with this investigation since joining our office in January. If we ever do have a case against Mr. Garner, Mr. Agro will be isolated from the case," Flynn said. "If needed, I could appoint a special prosecutor for the case."

| Witness comes forward on 7th anniversary of Amanda Wienckowski's mysterious death

Similar situations have arisen many times over the years in the DA's office, where some of the prosecutors have been active as defense lawyers in the past, Flynn said.

Wienckowski's frozen body was discovered before in a trash tote on Spring Street on Jan. 9, 2009.

Authorities said Wienckowski, a 20-year-old Kenmore woman with a heroin addiction, had at times worked as a prostitute. She disappeared in December 2008 after receiving a ride to a residence on Spring Street for what authorities described as a paid sexual encounter. Her relatives disputed that claim.

Her mother said Wienckowski had been addicted to narcotics for three years but had recently stopped using drugs.

Police said her body was found across the street from the residence of Garner, and authorities said Garner was a "person of interest" in the investigation. But no charges were ever filed against Garner in connection with the death, and police said he denied any involvement in it.

Garner had a known history of choking a woman on at least one other occasion, and her family claims Wienckowski died of strangulation at Garner's hands. In an unrelated case, a jury in 2013 convicted Garner of choking and assaulting a prostitute during a sexual encounter in 2011. He also was convicted of raping a 16-year-old girl and carrying out a home invasion in Clarence. Garner is serving an 18-year prison term.

Police have speculated that Wienckowski may have died from positional asphyxiation while having sex with a man much larger than she.

Amanda Wienckowski's mother finds reassurance, but no answers, in crime scene photos

Retired homicide detective Mark J. Lauber, who had interviewed Garner, told The News in a February 2013 interview that he and other detectives believed that Wienckowski was choked to death during rough sex with the stocky Garner and did not die of a drug overdose. Lauber said a county toxicologist told him that the death was listed as a drug overdose because medical examiners could find no other explanation.

Garner told detectives that he called Wienckowski for paid sex in response to an advertisement, according to police. He also claimed that she was alive when she left his home after the sexual encounter.

After the initial autopsy, Wienckowski's family hired a West Coast pathologist to do a second autopsy, and he determined she was strangled. After that, a pathologist hired by former DA Sedita to review the case again determined that the cause of death should be changed to "undetermined."

Last year, Meserole told The News that a new witness had come forward and told her family that he observed Wienckowski's body, still warm, in Antoine Garner's apartment and later frozen inside the tote. She said the witness told her that Garner asked him to help dispose of the body and told him that Wienckowski "got what she deserved."

Meserole said she has never stopped thinking about her daughter, or the horrible circumstances of her death, since the day her body was found.

"I've been keeping journals ever since. I write something about her every day. I've filled two bins with journals," said Meserole, 55, who has seven other children, two stepchildren and two foster children. "I'll keep pursuing this."

"As a father of five, including two daughters, I would do the same thing," Flynn said. "I would never stop looking for answers."