

## Cal Law Article of 17 August 2007, Regarding Jason Cai:

### No Retrial in Pool Death

After successfully fighting for the right to retry a murder defendant, a Santa Clara County prosecutor has decided to drop the case entirely.

In the end, Deputy DA Jeffrey Rosen said he didn't think he'd be able to secure a manslaughter conviction for Jason Cai, who faced a second trial for the [mysterious death](#) of his new wife in 2003. Cai's wife, Ying Deng, had just moved from Shanghai to live with Cai a few weeks before she was found dead in her swimming pool.

Last year, a jury acquitted him of murder after the defense reconstructed a scenario in which Deng accidentally fell into the pool. But the jury hung on voluntary manslaughter — which technically left the case open for another trial. Yet the prospects for the prosecution didn't look good: The jury hung 8-4 in favor of acquittal on the manslaughter charge.

At first, Rosen appeared ready for round two on manslaughter. In addition to arguing double jeopardy, Cai's lawyers argued that Rosen had told the first jury that a manslaughter conviction wouldn't be appropriate. The trial judge sided with Rosen, and neither the Sixth District Court of Appeal nor the California Supreme Court intervened.

According to Rosen, who dropped the case Wednesday, "the grounds were frivolous."

Still, he didn't believe he could convince another jury that Cai was guilty of manslaughter based on the same evidence presented at the first trial. "At the first trial our theory was that [Cai and his wife] weren't getting along, they had an argument, and he killed her," Rosen said. "My argument at the second trial was that they weren't getting along, they had an argument, and he killed her."

Cai's defense team — made up of solos from the San Francisco Pier 5 Law Offices — see Rosen's decision as a victory.

"It's very refreshing to see justice prevail short of a retrial," said defense attorney Shari Greenberger.

Last month, Greenberger filed two motions. The first sought to suppress evidence from Cai's computer that she argued was illegally accessed without a warrant. Another sought to exclude expert testimony from criminalist Mark Moriyama, the fiber expert who was taken off casework from the crime lab earlier this year after it was discovered that his faulty conclusions led to the 2003 conviction and five-year imprisonment of an apparently innocent man.

Rosen had not yet filed a response to either motion when he dropped the prosecution.

"I truly believe that these pending motions had some impact because without the criminalist and the computer evidence, the case continued to weaken," Greenberger said.

Rosen, however, said those motions had nothing to do with his decision and were similar to *in limine* motions filed in the first trial which the defense lost.

The DA added: "It's a difficult case to prove, obviously."

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