

Appeals court upholds use of recorded witness statements in trial

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YAKIMA, Wash. — Ruling in a Yakima gang case, a state appeals court has expanded the use of unsworn tape-recorded statements to police where witnesses later vacillate or even try to recant at trial about what they saw or heard.

The ruling Tuesday by the Division III Court of Appeals upheld the 2009 conviction of Salvador Nava now serving 43 years in prison for the 2001 murder of Antone “Tony” Masovero.

By publishing its decision, however, the court acknowledged that it was expanding one of several exceptions to complicated hearsay rules that are designed to ensure the credibility of witness testimony.

Several witnesses at Nava's trial vacillated or even disavowed incriminating statements they gave police shortly after Masovero's murder, but Yakima County Superior Court Judge Michael Schwab explored the circumstances and decided to let the jury hash it out.

Prosecutors praised the appellate decision, saying it would prove useful predominantly in cases such as domestic violence and gang violence where reluctant witnesses are a common problem.

"There's an anti-snitch mentality on the street," said Troy Clements, a Yakima County deputy prosecutor who handled the office's gang unit. "This is kind of a remedy."

In addition to upholding the conviction, the appeals court remanded the case for resentencing, determining Schwab undercalculated Nava's sentence of 520 months. A date is pending.

Nava was accused of shooting Masovero, 21, in revenge for the fatal shooting days earlier of Victor Serrano, a VSL Sureño better known on the street as "Smurf." Masovero, a Norteño who had been linked to Serrano's slaying, was shot twice in the head as he and several friends sat in a car outside a taco stand on Nob Hill Boulevard. At his autopsy, authorities noted he was wearing a red belt with the number 14 on it — the 14th letter of the alphabet being the letter "N."

Nava, now 31, fled the area and evaded capture until 2008, when he was caught trying to re-enter the United States in El Paso, Texas. Notably, it was the third time in three years that a murder suspect from Yakima was caught trying to sneak back into the U.S.

At trial, several witnesses who had initially cooperated with police tried in various ways to disavow their statements. They said they were under pressure or drunk or on drugs. One was afraid authorities would take her children.

After exploring the circumstances surrounding their initial statements, however, including testimony by investigators, Schwab allowed some of the witness statements to be used.

Schwab has since retired. The appeals court liked the way he handled the trial.

Wrote appellate Judge Laurel Siddoway, "Substantial evidence supports the trial court's determination of the preliminary questions required to establish the foundation for admitting the ... recorded statements whose admission is challenged on appeal.

"It did not abuse its discretion in admitting them."

In an ongoing corollary to the Masovero slaying, a compatriot of Nava's named Lance Nanamkin was convicted of second-degree manslaughter and sentenced to six years in prison for his role in Masovero's slaying.

Nanamkin has since been released, and in 2011, he was seriously wounded in a **shootout with Yakima police**.

His case remains unresolved as authorities struggle to determine the extent of his injuries.



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"Notably, it was the third time in three years that a murder suspect from Yakima was caught trying to sneak back into the U.S."

And this is the problem that has plagued the U.S. for decades - the "revolving door" or our Southern Border.

I find it encouraging that this decision was handed down. It seems our luck is changing with this court some. I am particularly glad to read where they thought Schwab was too easy on him when pronouncing his sentence. Now, the court gets to increase it. Lets hope Federspiel get the case for that.

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