

Accused shooter's appeal heads to state Supreme Court

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The Daily World

The state Attorney General's Office has asked the state Supreme Court to review the appeal of the man accused of shooting Pacific County Sheriff Scott Johnson.

Martin A. Jones was convicted in 2011 of attempted murder for shooting Johnson, at that time a Washington State Patrol trooper, in the head. He was sentenced to 50 years in prison after a seven-week trial.

Jones won an appeal in June based on a procedural error during the trial. The appeals court vacated his conviction and ordered a new trial.

At the start of the trial, 16 jurors were selected, with the four alternates to be determined by random drawing at the end of the trial. A clerk drew the four names at random during an eight-minute break in closing arguments, and the judge read the names aloud in open court.

The appeals court ruled Jones' due process rights were violated because the names were not drawn during open court.

The state asked the appeals court to reconsider its decision, which the court rejected without comment. The state then filed a substantially similar motion to the Supreme Court on Sept. 26.

"The courtroom remained open throughout the break," Assistant Attorney General John Hillman wrote. "There is no evidence that Jones was absent during the break. There is no record that any spectators were excluded or even left the courtroom during the break."

Review by the Supreme Court is more restrictive than an appeals court.

According to the state's rules of appellate procedure, petition for review will only be accepted if: The decision of the Court of Appeals conflicts with a decision of the Supreme Court or another Court of Appeals decision, if there is a "significant question of law" under the state or federal constitution, or if the petition "involves an issue of substantial public interest that should be determined by the Supreme Court."

The state calls the drawing of the names itself an administrative function of the court, and is asking the high court to consider whether that's attached to a defendant's right to a public trial.

It also asks whether the drawing during the break constitutes a structural error in the trial.

"Trial courts and their staff need guidance on how far the public trial reaches into the administrative components of jury selection," Hillman wrote.

On Monday, Jones filed his response to the state's petition, along with his own cross-petition asking the court to look at several items the appeals court dismissed.

Jones' attorney, Thomas Kummerow, quoted from the appeals court's own decision in his argument on why the Supreme Court should not consider the state's petition.

The appeals court said the issue was not with the clerk, but that there's no record of the drawing.

"Where such a drawing occurs during a court recess of the record, the defendant and the public lack the assurance of a truly random drawing that they would have if the drawing were performed in open court on the record. This lack of assurance raises serious questions regarding the overall fairness of the trial, and indicates that court personnel should be reminded of the importance of their duties," the appeals court wrote.

The opinion of the appeals court was written by state Supreme Court Justice Charles Wiggins, serving at the time as a pro tem appeals court judge. Hillman said Wednesday Wiggins has already recused himself from the Supreme Court's consideration of the case.

"He will not participate in the decision whether to grant review," Hillman said.

In the cross-petition, Kummerow asks the high court to consider several other factors the appeals court dismissed.

Kummerow argued Johnson's identification of Jones based on his driver's license photo was suggestive and was likely to result in misidentification.

According to court documents, Johnson looked at several photo arrays while recovering in the hospital and did not recognize his assailant.

He then asked to see a photo of Martin Jones, the husband of the woman Trooper Jesse Greene had stopped for driving under the influence. Johnson was cataloguing items in her van when he was shot.

The appeals court agreed the process was unduly suggestive, but disagreed it was substantially likely to lead to misidentification.

"...(I)f the identification is reliable, it cures the suggestive nature of the confrontation procedure," the appeals court wrote.

Kummerow argues Greene's testimony that he saw a white man near the scene of the shooting about 40 minutes beforehand should have been allowed during the initial trial, and that it would have questioned the reliability of Johnson's identification.

"The prosecution theory was that there was no other person who could have committed the crime — a theory that Mr. Jones was entitled to rebut once the prosecution relied upon it," he wrote.

The appeals court also addressed that, saying that while defendants have the right to call witnesses in their favor, "this right is not absolute. ... A criminal defendant has no constitutional right to present irrelevant evidence."

An email from Washington State Patrol Crime Lab supervisor Chris Sewell calling the overall investigation "haphazard" was also submitted by the defense at Jones' trial as impeachment of a fingerprint analyst, but rejected as evidence. Kummerow argues that email shows the investigation was not perfect as the prosecution implied.

The appeals court wrote that the email would have served to impeach a collateral matter, not the fingerprint analysis, and was overly general and likely to prejudice or at least confuse the jury at a late stage of the trial.

There is no timeline under which the Supreme Court must decide whether it will consider the petition for review. If it denies the petition, the appeals court's order for a new trial would stand.