

Pierce County deputy prosecutor's outbursts overturn 2009 convictions

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A Pierce County deputy prosecutor's behavior during a 2009 trial was so unprofessional and prejudicial that a man and woman convicted of multiple felonies did not get a fair hearing, the Washington State Supreme Court has ruled.

In a decision released Thursday, the high court overturned the convictions of James Leroy Lindsay Sr. and Jennifer Sarah Holmes and ordered new trials.

Justice Sheryl Gordon McCloud, writing for the unanimous court, said deputy prosecutor John Sheeran and Holmes' attorney, Barbara Corey, behaved badly during the trial. They sniped at each other, interrupted the judge and made sarcastic comments in front of the jury and outside its presence, Gordon McCloud wrote.

She cited one exchange in which Sheeran complained that Corey was repeating herself.

Corey replied, "Kindly shut up."

Sheeran then asked Superior Court Judge Brian Tollefson to instruct Corey to stop repeating herself.

Corey replied, "Maybe (Sheeran) could borrow your honor's gown and tell us all how to run this trial."

Wrote the justice: "The prosecutor and defense counsel for one of the defendants in this case behaved unprofessionally and disrespectfully towards each other, towards the defendants and towards the court throughout the trial."

But Sheeran's conduct in particular tainted the proceedings, Gordon McCloud wrote.

"Against that background, the prosecutor, in his closing arguments, denigrated defense counsel, misstated the burden of proof, expressed his personal belief as to one of the defendant's veracity and whispered to the jury so that no one else in the courtroom could hear him," the justice wrote.

"There is a substantial likelihood that those actions, in context, affected the jury's verdict."

Lindsay, 53, and Holmes, 43, were charged with multiple crimes in 2006 after they allegedly tied up Holmes' ex-boyfriend, beat him and stole items from his house. Lindsay and Holmes, who were engaged, contended they were just trying to reclaim property that belonged to Holmes.

It took nearly two years for the case to get to trial, and the trial itself lasted almost a year, interrupted by attorney vacations, illness and legal maneuvering.

When all was said and done, Holmes and Lindsay were convicted of multiple counts, including robbery, burglary and assault.

Lindsay was sentenced to eight years, six months in prison; Holmes to seven years, five months.

They appealed. Lindsay served his time while the appellate process was underway. Holmes remained out of custody after posting an appeals bond.

The defendants' appellate attorneys argued several things, but the Supreme Court honed in on the disrespectful attitudes displayed by both attorneys and what the justices deemed to be Sheeran's misconduct, especially during his closing arguments.

At one point during his closing, Sheeran referred to Corey's arguments as "a crock."

The "crock" comment was particularly egregious and unfairly impugned Corey's integrity, Gordon McCloud wrote.

"The term 'a crock' is commonly understood to be a shortening of an explicitly vulgar phrase," the justice said. "Describing defense counsel's argument with that full phrase would certainly impugn defense counsel's integrity. Calling counsel's argument 'a crock' is not much different."

The high court also took issue with Sheeran opining during his closing argument that Holmes' testimony was "the most ridiculous thing I've ever heard."

Prosecutors are permitted to comment on the evidence and point out contradictions between it and a witness' testimony, but expressing an opinion about a witness' credibility is a no-no.

"It constitutes misconduct and violates the witness-advocate rule, which 'prohibits an attorney from appearing as both a witness and an advocate in the same litigation,' □" Gordon McCloud wrote. "Given that comment, in context with the 'crock' accusation and the 'sit here and lie' argument, we hold that the prosecutor in this case impermissibly expressed his personal opinion about the defendant's credibility to the jury."

The state argued during the appeals process that Sheeran's arguments and comments were "either not objected to or were made in response to goading by Holmes' counsel," court records show.

The high court disagreed.

“Most of the improper arguments in this case occurred during the prosecutor’s closing,” Gordon McCloud wrote. “They are not directly preceded by any statements from defense counsel to which the prosecutor was responding.”

Corey said Thursday she regretted some of her behavior during the trial.

“I’m not proud that I said some of those things,” she said.

But she believes the Supreme Court made the right call in overturning her client’s convictions.

“The trial was tainted by prosecutorial misconduct,” said Corey, a former Pierce County prosecutor. “No one goaded Mr. Sheeran into committing those instances of misconduct.”

Pierce County Prosecutor Mark Lindquist issued a statement regarding the Supreme Court decision.

“We expect the highest level of professionalism from our deputy prosecutors,” Lindquist said. “In this case, the deputy prosecutor recognized his conduct was unacceptable. The trial was five years ago, and his performance since then has been exemplary.”

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