

Washington Supreme Court orders new trial for cop killer's driver

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Dorcus Allen addresses the court prior to his sentencing in Pierce County Superior Court in Tacoma on June 17, 2011.

JANET JENSEN — Staff photographer file, 2011

Read more here: http://www.thenewstribune.com/2015/01/15/3589674_washington-supreme-court-orders.html?rh=1#storylink=cpy

Over and over again during closing arguments in the aggravated murder trial of Dorcus D. Allen, deputy prosecutor Stephen Penner told jurors Allen “should have known” that his friend and employer, Maurice Clemmons, intended to kill four Lakewood police officers on Nov. 29, 2009.

On Thursday, the Washington Supreme Court ruled Penner should have known better.

In a 9-0 decision, the state’s high court reversed Allen’s convictions, saying Penner misstated the law in his closing arguments by telling jurors they could convict Allen for what he should have known instead of for what he actually knew about Clemmons’ plans that sad Sunday.

“The sheer amount of instances where the prosecuting attorney misstated the law heavily indicates that Allen was prejudiced,” Justice Mary Fairhurst wrote for the court.

“The jury was required to find that Allen actually knew Clemmons would murder the four officers. Absent this finding, Allen’s conviction cannot stand.”

The high court returned the case to Pierce County for a new trial.

Prosecutor Mark Lindquist said Allen would be re-tried.

“As the getaway driver, Allen knew Maurice Clemmons’s plan. This is what the jury found and the court of appeals affirmed their verdict,” Lindquist said. “The deputy prosecutor should have phrased his argument more artfully so it was not open to misinterpretation, but it was the evidence that convicted Allen, not the deputy prosecutor’s words. I’m sorry the families and the community have to endure another trial. Sometimes the pursuit of justice can be a long and arduous path, but I’m confident we will get there.”

Pierce County prosecutors in 2010 charged Allen, who is also known as Darcus Allen, with four counts of aggravated first-degree murder in the wake of the murders of Sgt. Mark Renninger and officers Tina Griswold, Ronald Owens and Gregory Richards.

Clemmons walked into a Parkland coffee shop and gunned down the four officers as they gathered that morning to discuss their upcoming work day. He was angry with police and had made threats to kill officers and school children in the days leading up to the attack. A Seattle police officer later shot Clemmons dead as authorities searched two counties for him.

Prosecutors alleged Allen served as his driver the day of the massacre, dropping him off in front of the coffee shop and then waiting at a nearby car wash to pick him up and drive him away. They said Allen knew his boss’ plan all along and therefore was an accomplice.

Allen denied knowing Clemmons’ intentions, despite having witnessed him make threats against police and brandish a gun in days before the shooting.

Allen’s knowledge of Clemmons’ plans was a key part of the prosecution’s case, and Penner, who tried the case with former deputy prosecutor Phil Sorensen, hammered at that point during his closing argument, at one point telling jurors:

“... really, the question in the case is did he know or should he have known? Did he know or would a reasonable person have known? Well, did he know? Should he have known.”

Allen’s defense attorneys, Peter Mazzone and Mary K. High, objected during Penner’s argument, saying he was misstating the law by intimating their client could be convicted for what he should have known.

Judge Frederick Fleming, now retired, overruled their objections, ruling that Penner's comments were argument, not evidence, and that jurors should consult the written jury instructions for the proper statement of the law.

The jury convicted Allen, and he was sentenced to more than 400 years in prison.

The state ultimately conceded during the appeals process that Penner "misstated the standard upon which the jury could find Allen had actual knowledge."

The question then became whether Allen was prejudiced by that mistake.

The high court said yes.

It was telling, Fairhurst wrote in the opinion, that jurors sent out a question during their deliberations that asked, "If someone 'should have known,' does that make them an accomplice?"

"This question indicates that the jury was unsure whether it could convict Allen using the incorrect 'should have known' standard," she wrote. "It is possible that the jury believed Allen did not know Clemmons would commit murder but nevertheless convicted him because he 'should have known,' which is the wrong standard."

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