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Court upends fines put on prosecutors

Change of crime date irked judge

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The Washington Supreme Court has erased penalties levied against prosecutors who changed the date of a suspected robbery on the day the case was set for trial.

The unanimous court ruling Thursday is the latest twist in the case of three men who were convicted of a home-invasion robbery and drive-by shooting only to have another man say after the trial that it was he who had committed the crime and then helped implicate the other three men. The case stemmed from a robbery and drive-by shooting trial against Tyler W. Gassman, Robert E. Larson and Paul E. Statler.

On the day their trial was set to start in 2009, Spokane County Deputy Prosecutor Eugene Cruz changed the date of the alleged crime from Aug. 15 to Aug. 17, 2008, sparking protests from defense attorneys because they had prepared defenses based on alibis for the suspects on the day investigators originally said the robbery occurred.

As a result, Superior Court Judge Tari Eitzen sanctioned the Spokane County prosecutor's office \$8,000 – \$2,000 for each defense attorney – for the time needed to prepare for trial under the new date of the offense. The prosecutor's office appealed in the case of Gassman, but the sanction was upheld by the Division III Court of Appeals. The decision Thursday by the state's high court reverses that ruling.

"Based upon the trial judge's specific finding that the State's conduct was careless and not purposeful ... the record provides no basis for this court to infer bad faith or conduct tantamount to bad faith," Justice Tom Chambers wrote. "We therefore conclude the trial court abused its discretion and reverse."

Defense attorney David Partovi, who represented Gassman, said it remains unclear if he and other counsel must now repay the \$2,000. He said he spent that money.

Deputy Prosecutor Brian O'Brien said he will seek to have Partovi repay the funds.

"We don't donate money to people," O'Brien said. "We are not a charity. That money will have to come back."

The case was further complicated in 2009 when Anthony Kongchunji came forward after the three men were convicted and apologized in a letter to Statler's father for conspiring with another man ... to blame Gassman, Statler and Larson for crimes that they didn't commit. Upon learning this, attorneys sought a new trial.

Superior Court Judge Michael Price denied their requests because the attorneys did not call Kongchunji to testify. Price then sentenced Gassman to about 26 years, Statler to 41 1/2 years and Larsen to 20 years in prison.

While attorneys have exhausted most appeal options, the case has now been taken up by the Innocence Project Northwest Clinic, both Partovi and staff attorney Anna Tolin said.

“This is the worst thing I have ever seen in my entire career,” Partovi said. “It was a shell game. They convicted these men on the uncorroborated testimony of a jailhouse snitch.”