Washington justices blast racist questioning by prosecutor

By Gene Johnson | AP

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SEATTLE — The Washington Supreme Court on Thursday unanimously overturned a man's conviction for assaulting police officers, blasting a series of racist remarks by the prosecutor who handled the case.

During jury selection in the trial against Joseph Zamora, Garth Dano, who was then the elected prosecutor in central Washington's Grant County, repeatedly asked prospective jurors how they felt about illegal immigration, border security and crimes committed by illegal immigrants — even though Zamora was a U.S. citizen and the case had nothing to do with those topics.

The questions invoked racist stereotypes that violated Zamora's right to a fair trial, the justices said. They also expressed concern with the vicious beating officers gave Zamora, which left him comatose. Chief Justice Steven González noted that "the jury was asked to decide, among other things, whether Joseph Zamora, a United States citizen, assaulted a police officer's knuckles with the back of his head."

"This case was not remotely related to immigration — lawful or unlawful," Justice Charles Johnson wrote for the court. "The apparent purpose of the remarks was to highlight the defendant's perceived ethnicity and invoke stereotypes that Latinxs are 'criminally' and 'wrongly' in the country, are involved in criminal activities such as drug smuggling, and pose a threat to the safety of 'Americans.'"

The decision introduced a new rule in Washington that when a prosecutor "flagrantly or apparently intentionally appeals to a juror's potential racial or ethnic prejudice, bias, or stereotypes," it requires automatic reversal of any conviction.

Previously, prosecutors had a chance to demonstrate that race-based misconduct did not affect the outcome of the case and was "harmless."

Dano was elected in 2014 as the prosecutor of Grant County, a fruit-growing region with large populations of migrant workers. A critic of Democratic Gov. Jay Inslee's coronavirus restrictions, he resigned in December, citing personal reasons.

At the trial court level, Dano told the judge, who expressed concern about his line of questioning, "I in no way intimated or was suggesting to the jury that the defendant is not a citizen of the country or is here illegally."

He did not immediately return an email from The Associated Press seeking comment on the ruling.

Zamora's encounter with Moses Lake police came on the night of Feb. 5, 2017, when he was walking through a foot (30.5 cm) of snow to his niece's house. A neighbor saw him, thought he looked suspicious and called police to report a possible car prowler; there was no evidence that any cars had been broken into, and the justices said Zamora was guilty of nothing more than "walking while high."

Officer Kevin Hake responded and stopped Zamora in his niece's yard. When Zamora did not respond to Hake's questions and turned to walk away, Hake grabbed him, fearing he might have a weapon.

The officer shoved him to the ground and jumped on him, putting him in a chokehold, shooting pepper spray into his mouth and eyes, and punching him about 100 times before shoving the barrel of his gun down Zamora's throat, according to an account filed by Zamora's attorney. The officer said Zamora tried to take his gun.

Several other officers arrived, further pepper-spraying, punching and using a Taser on him, and said Zamora had resisted and kicked at them. A neighbor testified that Zamora had not resisted or fought with Hake, and that he was face-down in the snow as other officers beat him.

The neighbor testified that he saw one officer using a chokehold on Zamora even after he had been hog-tied, and he heard Zamora use words that have become familiar since the murder of George Floyd, a Black man, by Minneapolis police in 2020: "I can't breathe."

When paramedics arrived, Zamora had no pulse. It took them seven minutes to revive him; he was taken to a hospital and remained in intensive care for about four weeks. He tested positive for methamphetamine and marijuana, and a search of his jacket following his arrest turned up a pocketknife.

A use-of-force review by the Moses Lake Police Department found no wrongdoing by the officers. Hake left the department four months after the incident and was no longer working in law enforcement by the time of the trial.

The Supreme Court said it had serious concerns that "a citizen's mistaken report of vehicle prowling led to a violent altercation with police officers that almost resulted in the death of the defendant who was guilty of nothing more than walking while high on drugs."

But the reason it overturned Zamora's convictions for two counts of third degree assault of a law enforcement officer was the prosecutor's questioning of potential jurors. Dano repeatedly asked members of the jury pool if they thought the U.S. had enough border security and how they felt about crimes committed by unlawful immigrants.

When one responded that she did not think it was just illegal immigrants who were committing crimes, he asked a follow-up.

"Could you make room for the possibility that someone who — a loved one or family member of somebody who was either killed or had problems with somebody that's been previously deported or criminally is wrongly in the country, that that happens to them, and that they feel like we need more border security, can you make room for that?" he asked.

The Superior Court trial judge, John Antosz, was so concerned with such remarks that he asked Zamora's defense attorney, outside the presence of the jury pool, why he wasn't objecting. The attorney responded that he didn't think the prosecutor's questions helped the state's case. In his opening statement, the attorney told jurors that Zamora was not an immigrant.