

## More mistakes of the Court / DA

Between reading the decisions of the Wyoming Supreme Court that relate to the Laramie County District Court and reviewing specific files I'm direct to in the local District and Circuit Court offices, it's hard to have a high opinion for justice.

I have repeatedly written about the Jessica Venable case and another case involving a guy who killed his brother by whacking him at least six times across the throat, chest and abdomen but those two do not even touch the surface of the files I have reviewed - either at someone else's request or my own initiative.

About a week ago, I was called by a relative of a man who had pled guilty on a plea bargain that the family thought was ill-advised. The caller thought the guy was innocent of any crime and had been poorly represented by a local attorney. This one not even a public defender.

A lot of money changed hands for the representation and the caller described the attorney's assistance as being nil - that he had basically told the DA he could deliver his client to a guilty plea and he did.

When one who accepts a plea agreement later professes to me, through intermediaries, that they are innocent of the charges, I always inquire about the allocution made before the judge - when they tell the judge exactly what they did and why they are guilty of the crime for which they are accepting a plea arrangement.

The caller told me the defendant had not been given an opportunity to allocute. *More on that later in this story.*

After the guilty plea and some time in Rawlins, new counsel filed for a sentence reduction. As usual, Laramie County District Attorney Scott Homar opposed a sentence reduction and filed his boilerplate motion in opposition.

I had recently seen Homar's filing against Jessica Venable's motion for sentence reduction so I am familiar with the verbiage in it. Not unexpectedly, Homar uses the same repetitious language in all objections to a sentence reduction motion. He should at least get the facts right about the case in which he is filing his objection. In the one of this story, he had the major details wrong. He had the charges wrong. He had the ages of the victims wrong. And he had the sex of the victims wrong. He was against the sentence reduction but he didn't know what case he was objecting to. When his serial mistakes were brought to his attention by opposing counsel, he filed a corrected version. Nice touch, Scott.

Recently, the Wyoming Supreme Court reversed a case out of Laramie County because the judge had not afforded the defendant an opportunity for allocution. In *Presbury v. State of Wyoming (2010 WY 32)*, Justice Hill wrote for the Court: "Jovan Dovante Presbury pleaded guilty to one count of aggravated robbery. After not being given the opportunity to address the court during sentencing, he appeals. We reverse, and remand for resentencing."

The case was heard by Judge Ed Grant.

In the case in which Homar did not know the details but still opposed a sentence reduction, Laramie County District Court Judge Michael K. Davis wrote in his denial of the sentence reduction: "The manner in which the factual basis for Defendant's guilty plea was taken was not in accordance with the Court's usual practice. A defendant is normally required to answer detailed questions put by the Court, the responses to which must establish each and every element of each and every count to which a guilty plea is offered beyond a reasonable doubt."

Davis did not afford this defendant that opportunity. And that is reversible error.

Davis wrote on: "This process serves the purpose of allowing the Court to assure itself that the State could prove its case, and gives the Defendant an opportunity to accept responsibility for his actions."

Also, by Davis: "In this case, defense counsel requested that the District Attorney provide the factual basis. At the time, the Court believed this was intended to spare Defendant the embarrassment of admitting ... in front of his entire family. In the context of a stipulated plea, this was allowed. Defendant was given the opportunity to disagree with the District Attorney's description of what he could prove, and did not do so. The Court is thus in the position of having reluctantly deviated from its customary procedures at the request of the defense."

Because of that grievous error from the bench, the judge was then in the embarrassing position of having to deny the reduction in sentence. Because the defense attorney, a private attorney by the way, directed his client to stand mute before the Court, the defendant in this case could not claim he was innocent of the charges and had been pressured into signing the plea agreement because his attorney had told him his family urged him to do so - which was a lie.

In *Presbury*, Justice Hill referred to handling of allocution in federal courts. He wrote that "in the absence of an opportunity to allocute being given, it is almost impossible to ascertain what the effect of the opportunity would have been had the error not occurred. Had the ERROR not occurred. In *United States v. Prouty*, "prejudice must be found if a defendant has not been given the opportunity to speak to the court when the possibility of a lower sentence existed." And, in *United States v. Jarvi*, "The government concedes that a denial of allocution is per se prejudicial and requires a remand without an investigation of prejudice."

Justice Hill also wrote that Wyoming Rules of Criminal Procedure requires, "before imposing sentence, the court shall also address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence." **Shall** be, Judge Davis. Not, **may** be.

Laramie County cannot afford poorly informed judges on top of a poorly prepared District Attorney. This defendant is entitled to an opportunity to allocute - not to have a district attorney do that for him.

## The Tea Party

One of the great things about living in this country is that you can claim importance when you have none. You can claim size when you're small. And you can post threateningly anonymously on the internet. All without repercussions.

You can even hijack the term used for one of the greatest acts of civil defiance in American history - the [Boston] Tea Party. You can adopt it for use by an unorganized, ragtag group of dissidents who have endless problems with living in the United States - none having to do with tea or taxation without representation.

In Wyoming, of course, those who would align themselves with the ad hoc group called the Tea Party are right wing Republicans or other radicals without party designation who believe our three national "representatives" are among the best in Washington. In their minds, it is everyone else who is weak and at fault - all others in Washington D.C., including the White House, who have usurped their rights and now want to provide health care to those who may not be able to afford it.

Never mind that many of those in the Tea Party are already on government provided health care - Medicare, Title 19, military retirement, disability, etc. - they don't like the idea that those who don't want to pay for health care until they need it may have to pay for it before that day arrives. It is comical to watch the elderly who are Tea Partiers now use youth with the piercings and tattoos as their cause celebre. In the past, they would have thrown those same young people under the bus for their

permissive lifestyles, lackadaisical attitudes about work, etc., now hold them up as those put upon by forced health care premiums.

The worst thing that will happen to those who support the Tea Party will be the upcoming elections. Until people actually vote, the outsiders can claim influence, power and control. Once voters start to be heard, they will be discounted as another, albeit new, group with loud voices and no influence. Kind of like the Wyoming Tribune-Eagle.

In Indiana the other day, the Republican Party dusted off former U.S. Senator Dan Coats and he returned to Indiana to run in the Republican primary against a state senator, Marlin Stutzman, a tea party darling, and former Rep. John Hostettler, who was backed by the diminutive but loud Ron Paul. Stutzman also had the endorsement of South Carolina Sen. Jim DeMint, whose political leanings are just to the right of Attila the Hun.

The election was not close. Coats won.

The Tea Party has not yet learned the critical lesson of national politics. "Money talks, ...". Gathering on state capital grounds with a hundred or so like-minded folks, as recently happened in Cheyenne, listening to a handful of radicals who would attract no support themselves if they were candidates rail about the dismal job others are doing, does not and will not win elections. If one of the Wyoming governor candidates become the favorite of the Tea Party, he/she is doomed.

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