

"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."

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Did someone get away with murder in Cheyenne?

by Dave FEATHERLY

Is Lady Justice really blind? Or does she sometimes peek under the blindfold to see the color or race of the defendant before her? Wealth? Privilege? Friends or family?



When I was contacted recently about the outcome of a case here in Cheyenne, my first thought was to accept what had appeared to be a very lenient sentence for causing the death of another person.

But, when I looked a little deeper and saw that the plea arrangement was for Manslaughter and the sentence was Probation, I started to remember someone else that I had earlier developed compassion for and his conviction, at a jury trial, was also for Manslaughter and he has spent a decade in prison.

In his case, I reached the conclusion after lengthy review of trial transcripts at both the District Court and Supreme Court levels that the evidence and testimony against him were insufficient for a jury to determine "beyond a reasonable doubt" that a crime had been committed nor that Johnny Lopez, the defendant, had done anything to cause the death of his friend.

After that reflection, I thought, what the hell, at least read the case file. All that would be lost is a couple hours of my time.

So, I did.

And the more I read, the more bewildered I became. It was obvious that this Cheyenne case rendered unequal justice to the accused than what had been meted out to Johnny Lopez. Comparing the circumstances, one would have to conclude that either someone got off easy - got away with murder, basically - or the other someone got treated unfairly and unjustly.

I won't review the Johnny Lopez case in detail here - just enough to make the comparison in the acts which led him to spend a decade behind bars and another here

to avoid incarceration.

Johnny Lopez was first tried and convicted of second degree murder as the result of an altercation that left one he called his "best friend" dead. It occurred after drinking - in the apartment of a mutual friend of Johnny and the victim. That conviction was overturned by the Supreme Court because the elements of the crime did not warrant the charge. It was remanded with the directive that he be retried on Voluntary Manslaughter charges. He was again convicted.

Two trials at District Court and two appeals before the Wyoming Supreme Court provided voluminous written record and I reviewed them all. Basically, the accusation was that Johnny Lopez had been angered by the behavior of the other guy and slapped him, once, on the side of the head. Nobody saw the slap but a passed out occupant of the apartment said he had heard it. The guy slapped walked around Casper after the incident but was found by friends later that night - unconscious in his apartment. He was taken to the hospital, where he died.

Johnny Lopez was employed at the time and had often provided the victim and others with money until their government checks came in on the first of the month. He had joined the rest of them after leaving work at Casper College that morning. He had a wife and children - he went to Mills to get his wife to join the gathering.

Except for the noticeable difference in disposition of the cases, there are striking similarities to the incident in Casper and the one in Cheyenne that I am writing about now.

In Cheyenne, two brothers, age 30 and 34 at the time of the incident in November of 2005, spent the night barhopping with friends and, according to the Sheriff's deputy Probable Cause statement, when they were dropped off at the place the older brother was staying (his mother's house), they were both "loaded."

He went on to tell the investigator that they had gone to a detached garage where he didn't remember if they continued drinking or not but had eventually gotten into

a verbal altercation, which became physical. He initially told the detective that he had parted with his brother at sometime before 2:42 am because he had called his girlfriend in California (he was visiting in Cheyenne to help family "clean up" some things after the recent death of his father) at that time. He said he had set his alarm for 6:00 am and after he arose, he went outside and found his brother laying on the driveway. When he checked on him, he saw what appeared to him to be an injured condition and called 911.

Sheriff's deputies responded and went through their routine. Included in the notes of that initial examination were remarks that the downed man was obviously injured and notations were made in the report of the type injury and that what may have been the weapon causing the injuries was thrown onto nearby grass.

An autopsy performed that same day confirmed that the death was a "homicide" and that the injuries matched what might have been inflicted by the "weapon" - elsewhere described as a 3' long rod, about 1" in diameter, with a gear at one end. An axle from something, obviously.

While the living brother was the last one known to have been with the victim, he was not arrested at the time.

Two days later, an event occurred that led to that arrest. The person who would be charged initially with Second Degree Murder went to a local motel and checked in. He bought stamps from the desk clerk and then delivered two letters to her to be mailed. He went to his room and called a local Catholic priest with whom he was familiar. He told the priest that he had a confession to make. The priest cautioned him that anything said over the phone had to be reported to the police and asked if they could get together - meet - where such a confession might be privileged. The guy told the priest that it didn't matter - he just wanted to tell him that "I did it." The priest later wrote a statement that reflected two telephone conversations. The priest asked him if he had taken pills, hurt himself, etc.? Where was he? He wrote that the guy didn't want him (the priest) to call an ambulance so wouldn't tell him. Eventually the cell phone died.

Somewhat later, the guy in the motel room called for assistance and he was found with towels on his arms and blood in evidence. He was transported to the hospital and was arrested from there and charged with the murder of his brother.

He had told the priest that he mailed two letters from the motel - one to his mother and one to his girlfriend in California. The USPS retrieved those letters but, because of words (called a "lie") used on the search warrant, the letter to his mother was not admitted into evidence.

An important aspect of three occurrences must be noted: In his initial statement to the detective, in his telephone conversation with the priest, and in his letter to his mother, he never described a situation in which he had been struck, in which he felt fear from a larger brother, or one in which his actions were in self-defense.

Only at his allocution for admission of the crime of Manslaughter did he briefly mention "self defense." (More on page 8)

Month after month went by as the trial date was reset again and again. The eventual plea was Guilty to Manslaughter.

The file shows that an ADA filed a Motion for Continuance on April 25, 2006 "for plea negotiations." On June 21, 2006, District Attorney Jon Forwood and the Defendant's attorney met with Judge Edward Grant. At that time, the accused's attorney told the Judge that his client "was offered a plea deal by the district attorney. We accepted. I was then informed that we didn't have a deal."

Forwood: "Crosson (ADA) was assigned the case with the distinct instruction that you could reduce it to a cold-plea manslaughter. I then find out he made it a cold-plea manslaughter probation. I said, 'No, that's not what you were authorized to do'."

Jon went on, "[Defendant's attorney] Mr. Lee, I know, has known my stated disposition in a case will always be no better than a full-plea manslaughter. That's just the best I can do, period, and defer to the Court." Manslaughter, probation-only was the eventual plea agreement.

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