

Johnny's last chance for exoneration within our system

Sitting in the austere surroundings of the Wyoming Supreme Court chambers is a sobering experience. Having never been there before for an appeal on a criminal conviction had a dramatically different feel than the civil action appeals I've attended. In those matters, all having to do with illegal annexations on the part of the City of Cheyenne, when the Supreme Court eventually ruled, everyone still went home that night and slept in their own beds, to be awakened by their own alarm clocks the following morning.

by Dave FEATHERLY

But this appeal would bring a different outcome. The oral arguments made by the public defender, Marion Yoder, representing incarcerated John Kenneth Lopez, "Johnny," and Mike Causey of the Attorney General's office for the State, would forever affect a man's life. If they agreed with his appeal, he would be a free man. If they agreed with the State, his appeals are probably gone and he will be confined until he is released on parole. Oddly, he comes up for a parole hearing at the end of May and could conceivably be released before the Supreme Court could rule that he was convicted on insufficient evidence.

For the High Court to reverse and remand for a third trial on the same incident would border on cruel and inhumane punishment.

Johnny has sent me a tablet-full of letters on yellow ruled paper - carefully printed and always referring to me as "Mr. Featherly." He has made the same points on multiple occasions - as though he wants to solidify my belief that he was wrongly convicted.

And that is my position. I strongly believe that the evidence was insufficient for a conviction of any crime and that the testimony was contradictory at best, and possibly perjured at worst.

On this day, Wednesday, March 15, 2006, there were about ten or so people sitting

on the uncomfortable wooden chairs in the gallery. Some were there for other appeals - this one was the first of the day. It began at 9 am and controlling lights, green, yellow and red, strictly regulate the time each attorney is allowed. At any point in the attorney's presentation, a justice can interrupt with a question or comment. On this day, all five justices at one point or another did just that.

Ms. Yoder came across as passionate in her defense of Johnny Lopez. Mr. Causey seemed less prepared and almost ambivalent in his presentation. Ms. Yoder went first and again last, after Mr. Causey had made his longer presentation. It is difficult to get the justices to put themselves in the stead of juries who have heard all of the evidence and seen attorneys conduct the proceedings.

I have asked attorneys the importance of oral arguments (all appeals do not get oral arguments, some cases are decided on only the briefs). One said that you cannot win on oral arguments but you can lose. It seems to me that, with the multitude of cases and the complexity of many of them, the justices and their staffers have to rely on the briefs to make their rulings.

I am biased in this case and freely admit to being. So I suppose I was listening closer for inconsistencies in the State's presentation than in Ms. Yoder.

From reading the trial transcripts, some testimony more than once, I have a pretty fair knowledge of what was testified to in the second trial of Johnny Lopez for the same incident in a Casper apartment. His first conviction, for second degree murder, was reversed and remanded to District Court for retrial on voluntary manslaughter charges.

There were misstatements of the testimony by Mr. Causey but I hope the justices do not rely on the verbal representations. He stated that Johnny had called the victim in this case, "Bondo" Herman,

at 4:00 am to see "if he had alcohol they could drink." The purpose was to establish in the justice's minds that Johnny was drinking heavily from the time of his arrival at the apartment complex - at 3:00 am. My recollection of Johnny's testimony was that he had called Bondo to see if he wanted to join them. These guys got together frequently, including holidays, and jawed as men do. There is no denying that alcohol played a large role in their gatherings but that is not what the only person who could know, Johnny, said was the reason he tried to reach his "best friend" that early in the morning. Bondo did not hear or did not answer the phone so it is moot what the purpose was.

When Chief Justice Hill asked the State if they knew Mr. Lopez' blood alcohol content, instead of saying that was unknown, Mr. Causey erroneously told the Chief Justice that, "Mr. HERMAN didn't have any alcohol in his system when tested."

That is just plain wrong or a deliberate lie. There are pages of testimony in the transcript which established that Bondo's BAC was three times the legal drunk driving limit and an attorney and witness sparred at length as to what the BAC might have been at 11:00 am that morning had Bondo quit drinking then. There was testimony about the rate of metabolism of alcohol in a chronic alcohol, as testimony established Mr. Herman was.

Again, it seemed the objective of Mr. Causey was to portray Johnny Lopez as an out-of-control drunk, looking for alcohol to drink before the liquor stores opened, and Bondo Herman as this stone sober victim of a strike to the side of the head which killed him. That is not what the trial testimony elicited. Johnny was an employed friend of these guys and advanced them money to buy things before their disability or social security check arrived at the first of each month. On the day of the incident, Johnny had driven from Casper to Mills at 7:00 am to pick up his wife so she could join the group. She was a non-drinker, according to repeated testimony.

In fact, after the incident that December, 1999 day, Johnny and his wife took one of the apartment residents, one he supposedly also knocked down during the altercation with Bondo, and that guy's young daughter to a party at the Boys and Girls Club, shopping, and to McDonald's.

As Ms. Yoder again told the justices, testimony at the trial was "all over the place". Judge Sullins at the retrial admitted the same thing when he denied a directed verdict of not guilty. The transcripts do not support a verdict of guilt beyond a reasonable doubt. Even if things happened exactly the way the prosecution portrayed them to happen, the testimony and evidence (virtually none was introduced) was insufficient to support a verdict of guilty. It should have been easy to reach a verdict of not guilty and the other possibility should have been a hung jury.

The State's star witness, other than Dr. Thorpen (the coroner and pathologist), did

not support the prosecution story or Dr. Thorpen's conclusion. He testified that he had seen Johnny "slap" Bondo with a left hand blow to the right side of Bondo's head. Dr. Thorpen testified, and Dr. Doberson (the \$10,000 pathologist from Arapahoe County, Colorado) confirmed that the fatal impact was a blow struck to the LEFT temporal area of Bondo's head.

Mr. Causey spent a disproportionate amount of his allotted time defending the action of adding the habitual criminal enhancement to the voluntary manslaughter conviction - our version of "three strikes and you're out." One of the prior convictions was for a \$100 check fraud. (Below is a review of what was happening to the Natrona County District Attorney during Johnny's first trial. If Mr. Meenan is convicted of another felony, will his successor argue that he is a habitual criminal?)

Chief Justice Hill made a comment that was very inappropriate, it seemed to me. When it was said that Johnny Lopez had four beers to drink during the morning, CJ Hill said that he found it "implausible that Lopez would have only four beers from 3-11 am." I thought cases had to be decided on evidence and testimony. Not conjecture, assumption and speculation. Justice Kite, on the other hand, seemed incredulous when she asked if there were marks on the face of Bondo. Dr. Thorpen had testified that there was a mark the shape of a "figure 8" on the left temple but had no pictures to support that. His inference, of course, was that an open-handed slap with the heel of the hand would leave such a mark. He said the two parts of the figure 8 touched and that doesn't seem to support his theory. There is a gap and an indentation between the two bone areas on the heel of one's palm.

Barry Scheck and Peter Neufeld ride to the rescue of injustice but only when there is DNA evidence involved. Wrong jury decisions have few defenders. Johnny Lopez, according to records and Ms. Yoder, is a model prisoner. That figures. He had been a good friend to Bondo Herman and the others, too. He had found Bondo an attorney to represent him as a hit-and-run victim. That attorney supported Johnny's innocence as does renowned forensic pathologist Glenn M. Larkin. No crime was committed by Johnny Lopez on that day. If Bondo Herman died from violence, it happened later in the day and was perpetrated by another person. I still believe he fell in his apartment because of his intoxication and could not protect his head as it hit a sink or similar blunt object in the room.

Now we wait.

Kevin Meenan was president of the National District Attorneys Association. He is now a convicted felon. He was also disbarred and cannot seek readmission for at least five years from the date of disbarment. Meenan pled guilty to forgery, a felony - Unauthorized Use of Personal Identifying Information, a felony - and Official Misconduct, a misdemeanor. He was sentenced to 1-3 years on Count I, 90 days on Count III, and Count II determination was suspended. Meenan will do no time. But he will suffer the indignity of providing blood, breath or urine samples.

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