

A two-win Tuesday

Top court sides with trial lawyer in separate cases decided on the same day

By DANIELLE ULMAN

Danielle.Ulman@TheDailyRecord.com

Workdays don't get much better than the one criminal lawyer Andrew V. Jezic had last Tuesday.

The **Court of Appeals** issued two opinions in unrelated cases Jezic had handled at trial. In each case, the court found that an error by the trial judge had denied his client a fair trial.

"Both deserve, in my view, a second chance at a not guilty, because there's substantial doubt about their guilt in my view, especially Tejada," said Jezic.

Emanuel Tejada is serving a 110-year sentence for armed robbery of an armored truck outside a bank, a crime Tejada said he did not commit.

Jezic has worked out a plea deal with the state for his other client, James Earl Goldsberry Jr. Goldsberry will plead guilty to armed robbery with a maximum sentence of 12 years, rather than the original 50-year sentence he received for second-degree felony murder.

Both cases were tried at the appellate level by John Kopolow, a retired member of the Maryland Office of the Public Defender, who was assigned the cases because of conflicts of interest for the public defender's office.

"It's always nicer to win than to lose," Kopolow said. "I think in each of these cases that the trial wasn't fair and that they should be entitled to a new trial."

Goldsberry involved the defendant's right to choose his attorney as well as distinctions between degrees of felony murder. The Court of Special Appeals found for the state on the first point and for Goldsberry on the second. In the Court of Appeals, the result was exactly the opposite.

The case stemmed from the shooting of Vincent Chamberlain during a robbery at Chamberlain's home. A witness implicated Goldsberry and a third man, James Myers Jr.

Myers and Goldsberry were tried jointly, and then-Prince George's County Circuit Judge Richard H. Sothoron dismissed one of



MAXIMILIAN FRANZ

Andrew V. Jezic represented two men at trial in unrelated cases that the Court of Appeals decided in their favor last week. "Both deserve, in my view, a second chance at a not guilty," Jezic said.

Goldsberry's attorneys because the lawyer had discussed the facts of the case with Myers before Myers was indicted or retained counsel.

The Court of Appeals ruled that the circuit court failed to develop a factual record supporting its decision to take the "undeniably drastic action" to not allow Rockville attorney Joseph McKenzie to represent him.

The decision, Judge Mary Ellen Barbera wrote, denied Goldsberry his Sixth Amendment right to counsel of his choice and entitled him to a new trial.

The contact was "not problematic," McKenzie said in a brief interview Friday. "I think in order to make things convenient and not to stretch out time, he removed me, but you [can't] do that when someone's constitutional rights hang in the balance."

Judge Joseph F. Murphy Jr. dissented in part, writing that he agreed with the Court of Special Appeals that the circuit court did not err "in determining that [Goldsberry's] right to counsel of choice was outweighed by countervailing interests of fairness, maintaining ethical standards, and avoiding conflicts of interests."

The top court did rule for the state on another point: it reversed the Court of Special Appeals' decision to throw out Goldsberry's second-degree felony murder conviction. The lower court had said the underlying felony — attempted armed robbery — could support only a first-degree murder conviction.

Not so, the Court of Appeals held.

Raquel Guillory, a spokeswoman for the attorney general's office, said in an email that the office was still reviewing the opinion and could not comment on either aspect of the case.

An extra panel

The court, in a unanimous decision also written by Barbera, found that Tejada did not have a fair trial because of an issue with picking jurors.

Tejada was accused of being the ringleader in the 2006 armed robbery of an armored Dunbar truck outside of a Bank of America in Aspen Hill. (By coincidence, it happened to be steps away from Jezic's home.)

During jury selection in **Montgomery County Circuit Court**, the venire of 60 prospective jurors was cut to 43 after dismissals for cause.

Thirty-two more were dismissed by challenges from Tejada (14), his co-defendant (12) and the state (6).

Judge Eric M. Johnson realized that, in his words, the parties had "more strikes than we have jurors left. He suggested keeping the jurors already selected and bringing in a new pool the next day to add to the chosen group.

Jezic, a partner at **Jezic, Krum & Moyses LLC** in Wheaton, objected to that option, but his objection was overruled.

The trial proceeded; Tejada was found guilty and appealed.

The Court of Special Appeals agreed that the trial judge erred by conducting a bifurcated jury selection process, because it denied Tejada the right of informed and comparative rejection.

The state argued that, under Rule 4-312(g), Jezic should have objected to the size of the venire before he exercised his peremptory challenges.

The Court of Appeals, however, said the rule "read in its entirety" contained no such requirement.

"Had we intended such a requirement, we would have said so explicitly ...," Barbera wrote.

Jezic preserved his objection to the jury selection by raising it before the jury was impaneled, the court held.

"This ruling is very, very important for jury selection, especially in big cases where you have large panels come into the courtroom," Jezic said. "It's really important for the lawyers to look over the entire set of potential jury members because you need to look to the back of the line in order to analyze whether you want to get rid of somebody at the front of the line."

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WHAT THE COURT HELD

Case: *State of Maryland v. James Earl Goldsberry Jr.*, No. 141, Sept. Term 2008. Reported. Opinion by Barbera, J. Filed April 26, 2011.

Issue: Did the trial court violate the respondent's Sixth Amendment right to representation of his choice? Did the Court of Special Appeals err in holding that the petitioner was improperly convicted?

Holding: Yes; the court failed to develop a factual record supporting its decision to disallow his attorney to act as his lawyer. Yes; the verdict reflects the jury's finding that the victim was killed during respondent's commission of a robbery. Those facts make it a felony murder.

Counsel: Daniel J. Jawor for petitioner; John Kopolow for respondent.

RecordFax#11-0426-21 (56 pages)

WHAT THE COURT HELD

Case: *State of Maryland v. Emanuel Tejada*, No. 103, Sept. Term 2009. Reported. Opinion by Barbera, J. Filed April 26, 2011.

Issue: Did the Court of Special Appeals err in determining that a complaint that there were not enough jurors before peremptory challenges is preserved if a defendant who has not used all peremptory challenges objects before the jury is sworn?

Holding: No; state rules do not require an objection before the exercise of any peremptory challenges.

Counsel: Gary E. O'Connor for petitioner; John Kopolow for respondent.

RecordFax# 11-0426-22 (27 pages)