

Court of Appeals overturns murder conviction

by Steve Lash

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Maryland's top court overturned a former U.S. Army ranger's murder conviction Tuesday, saying he was denied sufficient opportunity to pursue his defense that the fellow ex-ranger he allegedly shot to death had actually killed himself.

In remanding for a new trial, the Court of Appeals said unanimously that Gary James Smith must be permitted to introduce testimony regarding Michael McQueen II's purported suicidal depression on Sept. 26, 2006, when he died violently in the Gaithersburg apartment the two men shared.

Montgomery County Circuit Court Judge Eric M. Johnson called the planned testimony, from a Georgia police officer who heard McQueen voice his depression six weeks earlier, too remote in time to be relevant.

During that conversation, which occurred after his arrest for drunk driving, McQueen told officer John Hegger, "This is the last thing I need in my life right now, on top of all the other s— going on in my life."

The intermediate Court of Special Appeals agreed with Johnson that the testimony was inadmissible because too much time had passed.

But the Court of Appeals disagreed, saying that "a homicide victim's state of mind is unquestionably relevant" to a claim that he killed himself. The high court added that suicidal depression can persist far longer than homicidal rage.

"If a person, on day one, is angry enough to intend to shoot another person, it may well be that, because of the cooling off effect of the passage of time, a shooting occurring 30 days later may not manifest a continuation of that intent," Retired Judge Lawrence F. Rodowsky, sitting by special assignment, wrote for the high court.

"We are not persuaded, however, that that rationale applies when the inquiry is the motive for suicide. The latter determination necessarily must consider all of the circumstances bearing on the victim's psyche."

The state, on appeal, argued that McQueen's statement to Hegger was evidence of someone frustrated with being arrested, not contemplating suicide.

But the high court deemed it "unlikely" that McQueen's statement was insincere or designed to gain favorable treatment from the officer.

"The fact that McQueen's statement does not explicitly refer to suicide does not deprive it of the tendency to make suicide more probable," Rodowsky wrote.

Montgomery County State's Attorney John J. McCarthy said Smith "will absolutely be retried." McCarthy also predicted that the suicide defense will not hold up in light of the physical evidence of homicide.

"The blood splatter testimony in the case is extremely important," McCarthy added. "We remain confident that ... the result will be the same."

But Rand W. Lucey, a trial attorney for Smith, hailed the high court's decision and said his client is "100 percent innocent" of killing McQueen.

"It's going to be very clear that he was not guilty of any homicide," said Lucey, of Jezic, Krum & Moyse LLC in Silver Spring.

Smith placed a 911 call in the early morning of Sept. 26, 2006. Montgomery County police arriving at the scene reported seeing an hysterical Smith outside the apartment with blood on his face, hands and

clothing.

They found McQueen seated in the living room with a gunshot wound to his right temple. He had a marijuana grinder on his lap and a bottle of beer was on the floor.

Smith explained the absence of a gun, saying he panicked because the weapon was his and he threw it into nearby Lake Needwood. The police, at Smith's direction, found the gun in the lake.

At his 2008 trial, Smith's defense centered on the argument that McQueen had shot himself after traumatizing life experiences, including having seen combat in Iraq and Afghanistan, breaking up with his girlfriend and his arrest in Georgia.

The Georgia officer's testimony was important to the defense's case to establish McQueen's troubled state of mind so close to his death, according to papers filed with the high court.

The jury, which did not hear the officer's testimony, convicted Smith of second-degree murder and use of a handgun in the commission of a felony. He was sentenced to 35 years in prison.

The Court of Special Appeals upheld the conviction last year, prompting Smith's successful appeal to the high court, which the judges heard Oct. 12.

WHAT THE COURT HELD

Case:

Gary James Smith v. Maryland, CA No. 10 Sept. Term 2011. Reported. Opinion by Rodowsky, J. (retired, sitting by special assignment). Argued Oct. 12, 2011. Filed Nov. 29, 2011.

Issue:

Did the trial judge err in excluding a police officer's testimony that a homicide victim was severely depressed 45 days before his death?

Holding:

Yes; the testimony was relevant to the murder defendant's defense that the victim had killed himself.

Counsel:

Gary E. Bair for petitioner; James E. Williams for respondent.

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