

State urges second look at reversal of conviction/Jury never heard testimony from judge Shaver

JULIE MASON Staff

TUE 03/31/1992 HOUSTON CHRONICLE, Section A, Page 10, 2 STAR Edition

The state Monday asked an appeals court to reconsider its ruling that reversed an aggravated robbery conviction because jurors never heard testimony from a judge that the defendant may have been beaten into confessing.

Calvin Hartmann, chief of the Harris County district attorney's legal affairs division, said his office is asking for a rehearing of the 1st Court of Appeals' March 19 ruling.

If the court declines, the case could be headed for the Court of Criminal Appeals.

"We're not just going to let this one die on the vine," Hartmann said.

Roger Rodela drew a 52-year sentence in 1990 for his alleged participation in a brutal 1989 burglary in which his partner, Robert "Lizard" Salazar, received a life sentence for raping an elderly Denver Harbor woman and stabbing her to death.

State District Judge Doug Shaver removed himself from Rodela's trial following a barroom conversation with Houston police Sgt. S.H. Kennedy, where Shaver developed the impression that Kennedy had struck Rodela to obtain the confession.

The written confession was the only evidence linking Rodela to the crime.

Shaver wrote in an affidavit to special crimes investigators in the district attorney's office that he went drinking with Kennedy and a defense attorney following the jury's decision on Salazar's punishment.

"During the brief conversation concerning Roger Rodela, I was left with the impression that during the investigation of the case that Sgt. Kennedy had struck Rodela," Shaver said in the sworn statement.

At trial in state District Judge Brian Rains' court, Rodela testified that he signed the confession only after being slapped by Kennedy and punched

in the ribs by Sgt. Dennis Gafford. Rodela blamed the crime on Salazar and denied being at the victim's house at all.

Both officers denied Rodela's claim the confession was coerced. Prosecutors argued in their appellate brief that, by his own admission, Shaver was drunk and therefore not a reliable witness to the conversation with Kennedy.

Shaver was subpoenaed by Rodela's attorney to testify about that conversation at Rodela's trial, but he never showed up.

"Judge Shaver would have been the only witness to testify that (Rodela's) confession was involuntary," wrote Justice Sam Bass in the appeals court opinion. "(Shaver's) testimony further shows that (Rodela) raised this claim (of coercion) before he knew about the conversation between Judge Shaver and Sergeant Kennedy."

Allen Isbell, who wrote the appeal of Rodela's conviction, said it was Rodela's right to put on testimony that the incriminating confession was coerced.

Hartmann, however, said Shaver was never properly subpoenaed by the defense, and that the appeals court erred in reversing the case due in part to the absence of Shaver's testimony to the jury.

"The record does not reflect that Shaver was never personally served," Hartmann said. The subpoena was "dropped off" with Shaver's court coordinator when the judge was out of town, he said.

The appeals court also found Rains erred in refusing to let the court reporter read the jury Shaver's testimony from a hearing on the motion to suppress Rodela's confession.

Copyright notice: All materials in this archive are copyrighted by Houston Chronicle Publishing Company Division, Hearst Newspapers Partnership, L.P., or its news and feature syndicates and wire services. No materials may be directly or indirectly published, posted to Internet and intranet distribution channels, broadcast, rewritten for broadcast or publication or redistributed in any medium. Neither these materials nor any portion thereof may be stored in a computer except for personal and non-commercial use.