

Subject: [JIT] News: Fairlawn man's homicide convictions overturned --
Hearing-impaired woman should not have been on jury, court says

From the Akron, Ohio /Beacon Journal/:

The juror received a transcript of the 911 call, but the court determined that wasn't good enough.

"To evaluate the tape as evidence and determine its value . . . , the jury had to listen to [Speer's] speech patterns, the inflections in his voice, the pauses in the conversation and many other audio clues that would only be meaningful if actually heard," the court wrote.

<http://www.ohio.com/news/36956789.html>

*Fairlawn man's homicide convictions overturned *

* Hearing-impaired woman should not have been on jury, court says*

By Rick Armon
Beacon Journal staff writer

POSTED: 08:02 p.m. EST, Dec 31, 2008

An appeals court has overturned the homicide convictions of a Fairlawn man, saying a hearing-impaired woman should not have been seated on the jury.

A key piece of evidence used to convict Scott Speer was a 911 tape that the juror, who needed to read lips, could not fully understand, the 6th District Court of Appeals in Toledo concluded in a unanimous decision released today.

The juror received a transcript of the 911 call, but the court determined that wasn't good enough.

"To evaluate the tape as evidence and determine its value . . . , the jury had to listen to [Speer's] speech patterns, the inflections in his voice, the pauses in the conversation and many other audio clues that would only be meaningful if actually heard," the court wrote.

By allowing the woman to remain on the jury, visiting trial Judge Richard Markus damaged Speer's ability to receive a fair trial, the court concluded.

"It's an issue that they should have avoided, but they didn't," said Columbus attorney Bradley Davis Barbin, who handled Speer's appeal. "It's a case that defines how important jurors are in criminal cases."

Ottawa County Prosecutor Mark Mulligan plans to appeal to the Ohio Supreme Court, saying the issue has statewide importance and that the woman was a more attentive juror than others.

Speer, 43, was convicted of involuntary manslaughter and aggravated vehicular homicide in October 2007 in Ottawa County in the drowning death of 39-year-old James Barnett of Barberton in Lake Erie.

The two men, who had known each other since they were teens, were leaving Put-in-Bay on Speer's 24-foot powerboat about 2 a.m. on Aug. 6, 2002, in poor weather.

Speer told investigators that Barnett, who was not wearing a life jacket, fell overboard into the dark water. His body was found the next day.

Prosecutors and some of Barnett's family believe that Speer pushed Barnett off the boat. The Speer family has maintained Barnett's death was an accident.

The jury acquitted Speer of aggravated murder and murder and convicted him on the lesser charges in a trial that was broadcast nationally by the cable network channel Court TV.

Speer was sentenced to four years in prison.

In its decision, the appeals court said the hearing-impaired juror apparently didn't read sign language, so an interpreter wasn't brought into the courtroom. Other courts have dismissed hearing-impaired jurors if special arrangements, such as a sign-language interpreter, could not be made.

The juror was moved to the front row of the jury box, but still had to ask attorneys to turn toward her several times so she could read their lips.

"As a result, it is unknown whether the juror received all the testimony," the appeals court said.

Mulligan disagreed.

"She demonstrated a remarkable ability to apprehend what was going on in the courtroom," he said. "It would be my contention that she was one of the most, if not the most, attentive of the jurors I've seen in my career."

Mulligan said he has seen jurors nod off and daydream, but she "had to concentrate fully on the speakers in the courtroom."

The juror, who is identified by name in the defense appeal, could not be located for comment.

Neither Speer nor Barnett family members could be reached for comment.

It's unclear whether Speer will remain in prison or not. Barbin said Speer will be returned immediately to Ottawa County for a new trial. Speer plans to ask to be released on bond in the meantime.

Barbin said he believes a deal will be worked out with prosecutors, making a new trial unnecessary.

Mulligan, however, said there's "no need to discuss resolving the case" because of the upcoming Supreme Court appeal.

The jury's decision had to be unanimous for the conviction, so it is unfair to overturn it based on the question surrounding the hearing-impaired juror, Mulligan said.

When picking the jury, defense attorneys didn't dismiss the juror with one of their four peremptory challenges --- the ability by the defense or prosecution to dismiss a juror without giving any reason. After excusing four other jurors, the defense asked the judge to dismiss the hearing-impaired juror.

Markus denied that request.

"It's sort of a hollow protest when they have four chances to bump the person off the jury and they didn't do it," Mulligan said.

Barbin disagreed.

"Everybody gets a fair trial and this one was flawed," he said.

Rick Armon can be reached at 330-996-3569 or رارمون@thebeaconjournal.com <<mailto:رارمون@thebeaconjournal.com>>.

An appeals court has overturned the homicide convictions of a Fairlawn man, saying a hearing-impaired woman should not have been seated on the jury.

A key piece of evidence used to convict Scott Speer was a 911 tape that the juror, who needed to read lips, could not fully understand, the 6th District Court of Appeals in Toledo concluded in a unanimous decision released today.

The juror received a transcript of the 911 call, but the court determined that wasn't good enough.

"To evaluate the tape as evidence and determine its value . . . , the jury had to listen to [Speer's] speech patterns, the inflections in his voice, the pauses in the conversation and many other audio clues that would only be meaningful if actually heard," the court wrote.

By allowing the woman to remain on the jury, visiting trial Judge Richard Markus damaged Speer's ability to receive a fair trial, the court concluded.

"It's an issue that they should have avoided, but they didn't," said Columbus attorney Bradley Davis Barbin, who handled Speer's appeal. "It's a case that defines how important jurors are in criminal cases."

Ottawa County Prosecutor Mark Mulligan plans to appeal to the Ohio Supreme Court, saying the issue has statewide importance and that the woman was a more attentive juror than others.

Speer, 43, was convicted of involuntary manslaughter and aggravated vehicular homicide in October 2007 in Ottawa County in the drowning death of 39-year-old James Barnett of Barberton in Lake Erie.

The two men, who had known each other since they were teens, were leaving Put-in-Bay on Speer's 24-foot powerboat about 2 a.m. on Aug. 6, 2002, in poor weather.

Speer told investigators that Barnett, who was not wearing a life jacket, fell overboard into the dark water. His body was found the next day.

Prosecutors and some of Barnett's family believe that Speer pushed Barnett off the boat. The Speer family has maintained Barnett's

death was an accident.

The jury acquitted Speer of aggravated murder and murder and convicted him on the lesser charges in a trial that was broadcast nationally by the cable network channel Court TV.

Speer was sentenced to four years in prison.

In its decision, the appeals court said the hearing-impaired juror apparently didn't read sign language, so an interpreter wasn't brought into the courtroom. Other courts have dismissed hearing-impaired jurors if special arrangements, such as a sign-language interpreter, could not be made.

The juror was moved to the front row of the jury box, but still had to ask attorneys to turn toward her several times so she could read their lips.

"As a result, it is unknown whether the juror received all the testimony," the appeals court said.

Mulligan disagreed.

"She demonstrated a remarkable ability to apprehend what was going on in the courtroom," he said. "It would be my contention that she was one of the most, if not the most, attentive of the jurors I've seen in my career."

Mulligan said he has seen jurors nod off and daydream, but she "had to concentrate fully on the speakers in the courtroom."

The juror, who is identified by name in the defense appeal, could not be located for comment.

Neither Speer nor Barnett family members could be reached for comment.

It's unclear whether Speer will remain in prison or not. Barbin said Speer will be returned immediately to Ottawa County for a new trial. Speer plans to ask to be released on bond in the meantime.

Barbin said he believes a deal will be worked out with prosecutors, making a new trial unnecessary.

Mulligan, however, said there's "no need to discuss resolving the case" because of the upcoming Supreme Court appeal.

The jury's decision had to be unanimous for the conviction, so it is unfair to overturn it based on the question surrounding the hearing-impaired juror, Mulligan said.

When picking the jury, defense attorneys didn't dismiss the juror with one of their four peremptory challenges --- the ability by the defense or prosecution to dismiss a juror without giving any reason. After excusing four other jurors, the defense asked the judge to dismiss the hearing-impaired juror.

Markus denied that request.

"It's sort of a hollow protest when they have four chances to bump the person off the jury and they didn't do it," Mulligan said.

Barbin disagreed.

"Everybody gets a fair trial and this one was flawed," he said.