

Death-penalty case a 'house of cards'

Fredrikson team garners rare summary reversal at SCOTUS

By Mike Mosedale

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After more than seven years of investigation, some demoralizing setbacks in state court and repeated visits to the death row at Louisiana's notorious Angola prison farm, a pro bono team from the Minneapolis firm of Fredrikson & Byron scored a rare and unexpectedly swift victory at the U.S. Supreme Court on Monday.

In a per curiam opinion, the high court summarily reversed the first-degree murder conviction of 38-year-old Michael Wearry on the grounds the prosecution failed to disclose key evidence that cast doubt on the claims of its star witness, a jailhouse informant who fingered Wearry and four others in the brutal 1998 slaying of a teenage pizza delivery driver.

"Beyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry's conviction," the court wrote. "The State's trial evidence resembles a house of cards, built on a jury crediting [informant Sam] Scott's account rather than crediting Wearry's alibi."



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Veteran litigator Edward Q. Cassidy was lead counsel on the pro bono Fredrikson & Byron team that won a summary reversal at the U.S. Supreme Court for their client, Michael Wearry, who had been on Louisiana's death row.

In one police report that was withheld from the defense, Scott told a fellow inmate he wanted to “make sure [Wearry] gets the needle ’cause he jacked over me.” Another report showed that Scott had recruited a third inmate to claim, falsely, that he had witnessed the murder.

The court also noted that Scott’s story changed over time as police provided him with key details, including the location where the victim’s body was found.

Gary Clements, director of the Capital Post-Conviction Project of Louisiana, said the Supreme Court has on occasion overturned death sentences by summary reversal. However, he said he was unaware of any other capital case in which the court issued a summary reversal on the underlying crime of conviction.

“To actually get absolute relief without even having to argue is pretty much unheard of. I’ve had scholars from around the country sending me notes saying how unusual this is,” said Clements, whose organization recruited Fredrikson & Byron to partner on the case. “I’ve been doing this for almost a quarter-century and I don’t know any other case that was treated like this.”

Clements said the decision reflected the “overwhelming” strength of the facts assembled by the defense team, which was led by veteran Fredrikson litigator Edward Q. Cassidy and James Mayer, a former Fredrikson shareholder who is now a principal at Mayer Brayer LLP.

“Ed, Jim and our office went out and got the facts to put all the pieces

of the puzzle together,” Clements said. “The key to our work — and they understood this right off the bat — is that it’s all about the facts. We had to rewrite the story of the trial.”

Cassidy, who served as lead counsel, agreed that the voluminous record the team developed during post-conviction proceedings at the state court level was critical.

“After our hearing in front of the trial judge over in Livingston Parish, we went to the Louisiana Supreme Court with transcripts. We had called about 50 witnesses. Our exhibits filled nine and a half banker’s boxes,” he said. By contrast, he said, the public defender who represented Wearry at trial had a case file that was “about an inch thick.”

Because the U.S. Supreme Court reversed on due process grounds, it only touched on the claims of ineffective assistance of counsel, but those arguments were also compelling. Cassidy noted that the chief justice of the Louisiana Supreme Court, in a dissent, said he would have reversed purely based on the quality of Wearry’s representation at trial.

In the petition, Cassidy wrote that the Wearry’s public defender “admitted that he conducted, essentially, no investigation, had no strategic reason for not preparing a defense and met with the petitioner perhaps once before trial.”

The Supreme Court’s decision has not put an end to Wearry’s ordeal. In the wake of the ruling, Scott Perilloux, the district

attorney, told a Louisiana newspaper that he intends to retry Wearry and vowed to again seek the death penalty.

Clements expressed skepticism about his prospects for success.

“He’s asking for a lot of ridicule and criticism if he goes that way,” said Clements. “I think he probably shouldn’t make any more press statements until he takes a more sober look at the case.”

Cassidy echoed that sentiment. “What happens next is not clear because this is an unusual turn of events. But I think that’s going to be a heavy lift,” Cassidy said of any effort to retry the case. While the state convicted four other defendants, Cassidy opined, those cases are similarly tainted by a lack of physical evidence and, now, the discredited testimony of the star witness.

“My own view is that none of these guys were involved in the murder and the court’s analysis applies equally to those four other guys,” he said.

So how does it feel to overturn a death penalty case?

“Great,” said Cassidy. “It’s humbling, too, because Michael has been in an eight-by-nine cell for 23 hours a day since 2002 for a crime he didn’t commit.”

For his part, Jim Mayer, Cassidy’s former partner at Fredrikson, said he was elated when he clicked on SCOTUSblog and saw the court’s decision.

“It’s really nice to have some good news in this case after seven years of bad news,” said Mayer. “It was definitely a once-in-a-lifetime experience.”

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