

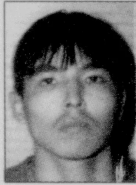
Experts: Jurors erred in murder case

Two of four convicted in teen's beating could seek retrial over jury's 'test'

By BRIAN O'DONOGHUE
For the News-Miner

Jurors in the trial of two of four men convicted of the 1997 murder of Fairbanks teenager John Hartman conducted an unauthorized experiment during deliberations, an act that two former Alaska attorneys general and defense experts say could result in a new trial.

The entire jury in the 1999 trial of Marvin Roberts and Kevin Pease left the courthouse in Anchorage, where the trial had been moved because of publicity in Fairbanks, to test the statements of Arlo Olson, the state's key wit-



ROBERTS



PEASE

ness. Olson at trial identified Roberts, Pease and two others—Eugene Vent and George Frese—as muggers engaged in a distant assault. The state contends that same group raced away in Roberts' car and fatally beat Hartman

roughly a half mile away, in an assault overheard but not witnessed.

The jurors' experiment, uncovered during an 18-month probe by students at the University of Alaska Fairbanks, goes against long-standing legal traditions. While such incidents are reviewed on a case-by-case basis, there is a large body of judicial rulings overturning verdicts influenced by research outside the courtroom.

In this instance at least two jurors say they found Olson's credibility enhanced by going outside

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Jury conducted test outdoors

By BRIAN O'DONOGHUE
For the News-Miner

Here are details on the jury experiment, as documented through interviews with jurors by journalism students at the University of Alaska Fairbanks:

"Basically one of the big contentions in the trial was can a witness see the distance he (Olson) was at," juror Edmund Habza told Tom Delaune, a journalism major and copy edi-

tor at the Sun Star, UAF's campus newspaper.

Habza, in an interview taped by Delaune, said several jurors were looking out a courthouse window, debating the issue, when somebody in the panel suggested the outdoor test. "We got permission to go out with the court guard and we paced off the distance," he recalled.

Habza said Olson's testimo-

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EXPERIMENT

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ny appeared "more credible" afterward. "I guess it kind of defeated what the defense lawyers were trying to say."

Fellow juror Gary Montini found the demonstration persuasive despite his own vision difficulties.

"I don't have really good eyesight," he said in a taped interview with journalist major Sharrice Walker. "I wear glasses. But about more than half of the people looked down there and said, 'Oh yeah, I can tell that's so-and-so.' That convinced me that the guy (Olson) was telling the truth."

Club owner, neighbor trade blame over foam

The Associated Press

WEST WARWICK, R.I.—An owner of the nightclub where 97 people died in a fast-moving fire blames a foam salesman for selling him cheap and highly flammable material to soundproof the walls.

The salesman, who lives next door to The Station club and had complained about noise there, said Saturday that the owners wanted the cheapest option and safety issues were never discussed. He also said that while he consulted with the brothers on the insulation numerous times, he did not handle the details of the purchase.

The option the salesman and the club agreed was used—polyurethane packaging foam—may have been illegal, since Rhode Island law prohibits using flammable acoustic material on the walls of gathering places like bars.

Investigators are testing the soundproofing material and have declined to comment on whether it violated the law.

Town officials inspected the club after the material was installed, and there is no indica-

Students also confirmed the experiment with jurors Kenneth Maynard and Jamie Smykalski. Though both were rather vague on the details, they recalled the experiment took place in daylight.

The jury experiment first came to light in December when Sharrice Walker, a former News-Miner intern, learned the end of her assigned interviews with jurors. She was asking jurors what evidence and testimony proved most persuasive.

Did anybody tell you we didn't do a little demonstration? juror Montini asked.

He then proceeded to explain.

tion they raised concerns. They have refused so far to release a building inspection report from December, although earlier reports never mentioned the foam.

They're seriously concerned they may have missed something," West Warwick Town Manager Wolfgang Bauer has said of building inspectors. "They don't think they have, but nobody is perfect."

Fire investigators suspect sparks from a pyrotechnic display used by the band Great White on Feb. 20 ignited the soundproofing material, triggering a fire that swept through the one-story wooden building, killing nearly 100 people.

More than 100 people were hospitalized and 34 remained in critical condition Saturday.

Fire experts have said that the type of light, porous foam purchased by The Station is not suitable for use as acoustic insulation because it burns very quickly, emitting a dense smoke containing carbon monoxide, cyanide and other toxic gases.

TRIAL: Experts say jury's experiment an issue

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to watch one or two fellow jurors pace off the approximate distance separating the witness from the robbery he alone observed while standing among wedding guests on the steps fronting the Fairbanks Eagles Hall. Olson knew of Vent and Pease from village basketball games but had never met Roberts and Pease.

Experts also take issue with how the experiment was conducted.

Jurors conducted their outdoor vision test on a sunny summer day in Anchorage. Olson, who had been drinking for hours, was gazing some 450 feet down a shadowy Fairbanks street after midnight in October when he noted the characteristics of four muggers and the getaway vehicle used in a seconds-long assault.

"That's the very reason why this type of extra-judicial process is not allowed," said former Attorney General Bruce Botelho. "You've got jurors that have, on their own, tried to reconstruct a situation that clearly could not approximate the setting."

Roberts' lawyer, Dick Madison, finds the experiment ramifications mind-boggling. "Let's say I'm astounded. The state can't even respond to this. They (Roberts and Pease) have to get a new trial."

The mother of the murdered teenager, Evelyn Thomas, finds the prospect of another trial grim. "The worst thing about these trials is reliving my son's death. Each time I go through everything all over again," she said. "Do you know what that's like?"

Investigative reporting students at the University of Alaska Fairbanks documented the jury experiment during a probe into the fatal beating of Hartman, a 15-year-old home-schooler with ambitions of landing a football scholarship. Seven jurors and one jury alternate in the Roberts-

Pease trial were interviewed by the students. Four jurors confirmed the panel's vision experiment.

Shortly before 3 a.m., Oct. 11, 1997, a passing motorist discovered Hartman sprawled unconscious near the intersection of Ninth Avenue and Barnette Street. Within 36 hours Fairbanks Police had four suspects in custody, including 19-year-old Roberts and Pease, then 18.

Police say both were implicated by "confession" statements made during the questioning of Vent, 17, and Pease, then 20. All four were former basketball teammates from Howard Lake Academy, Fairbanks' alternative high school. Three of them, Roberts, Vent and Pease, came from Alaskan village families, making their arrests and subsequent prosecutions a matter of regional interest in Interior Alaska.

All four were convicted in the course of three separate trials and received sentences ranging from 33 to 79 years for their roles in Hartman's murder and the earlier robbery near Eagles Hall. The Court of Appeals has upheld several challenges to the verdicts.

All four profess innocence. Roberts, who had been dancing at the wedding reception, appeared to possess the best alibi. An older acquaintance from his home village of Tanana, Eileen Newman Moore, testified she saw him alone in the Eagles Hall as a 911 call was being placed on behalf of the victim.

Police observed by Olson. Police logged that call at 1:35 a.m., approximately the same time detectives estimate Hartman suffered his brutal assault.

Roberts alone among the defendants had a clean juvenile record. He'd earned the highest grades in his graduating class.

He was offered a plea bargain that would have reduced the charge against him to manslaughter in return for testifying against his old teammates. He spurned the deal.

"I never question that decision," Roberts told students in a

November 2001 interview videotaped at Fairbanks Correctional Center. "I know I'm innocent. I'm going to live with that till the day I die. God knows I'm innocent. I just wish the justice system did."

Roberts and Pease were convicted in the third and final trial in the Hartman case. Roberts was sentenced to serve 33 years. Pease, who had a history of juvenile scrapes with the law, received a 79-year term.

It's uncertain who, if anyone, granted permission for the jury's excursion. Juror Edmund Habza said a "court guard" accompanied the panel. Juror Gary Montini said jurors had the "judge's permission." But no reference of any kind appears in the volumes of court records students were able to obtain.

Nome Superior Court Judge Benjamin Esch presided during the three-week trial. He left Anchorage while the jury was in deliberation, arranging for another judge to hear the verdict.

Before leaving town, Esch announced in court that he planned to handle any requests from the jury by telephone, and he pledged to keep all parties informed.

Apprised of the experiment in late February of this year, the judge reacted with surprise. "What?" Esch blurted over the telephone from Nome. "I have no recollection and knowledge of that. That's the first I've heard of anything like that."

The opening day of the trial, according to transcripts, Esch cautioned jurors against playing detective.

"The way our system works," the judge explained then, "is we decide cases on the evidence that's heard here in court. That's the reason I ask you not to, you know, go check the newspaper morgue to see what the papers said, or look for maps for Fairbanks, or do those sort of things."

Fairbanks attorney Lori Bodwell, who is defending Pease, said she was in the dark concerning the jury experiment until UAF students began asking questions.

"We had no idea," Bodwell said.

said. "If jurors even send a note to the judge asking for more pencils, you're supposed to be notified about it."

If the jury experiment is substantiated, top state lawyers from the past two administrations said an appeal of the issue should prevail, leading to a retrial for Roberts and Pease.

"It's totally improper," said Charlie Cole, attorney general for Gov. Walter Hickel and a prominent Fairbanks lawyer. "I suspect it's grounds for a new trial. Precedence clearly they considered evidence not before the court, and it is apt to have influenced the jury's deliberations."

The circumstances argue for "setting aside the verdict," agreed Botelho, who succeeded Cole as the state's top lawyer, retaining the post through Gov. Tony Knowles' eight years in office.

It doesn't mean that another trial won't result in convictions," he said, "but at least it will be based on the evidence put forward during trial subject to cross-examination. This clearly was not."

Assistant District Attorney Jeff O'Bryant, the chief prosecutor in the Hartman case, wants to see a legal motion from the defense before speculating on the outcome. "I don't have any information in front of me other than what you just told me," O'Bryant said Tuesday. "I'll have a more refined, defined comment when I have information, and when it's necessary."

Police investigator Aaron Ring, lead detective in the case, said Thursday that city police have begun their own investigation.

"We are looking at these issues you've raised," Ring said.

Jury alternate Gerrie Estes heard everything presented in court during the three-week trial, but was released before deliberations began and therefore unaware of the experiment.

"I didn't think that the evidence was, in my mind, strong enough to convict them," she said. "There was an eyewitness, but my feeling was the distance that he saw them at was a long ways. I found it difficult to believe he recognized someone at that distance."

Brian O'Donoghue, a former News-Miner reporter and editor, teaches journalism at University of Alaska Fairbanks. Reporting on this story was assisted by UAF students Sharrice Walker, Tom Delaune, Gary Moore and Laurel Ford.

HOSPICE OF THE TANANA VALLEY is seeking volunteers.

Hospice of the Tanana Valley is dedicated to helping terminally ill patients, their families and loved ones to cope with the dying and bereavement process, and providing support for anyone in the community who has lost a loved one through death.



Spring training programs for Hospice volunteers will take place April 12 through May 10, 2003.

We are seeking:

Patient Care Volunteers who will provide support and care for dying patients and their loved ones.

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474-0311 for further information.

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The Regional Councils advise the Federal Subsistence Board on subsistence hunting, trapping, and fishing management on Federal public lands in Alaska.

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March 18, 2003
9 a.m.-5 p.m.

March 19, 2003
8:30 a.m.-5 p.m.

Aniak Community Hall,
Aniak

Call Vince Mathews 1-800-267-3997 for more information.
Visit us on the web at <http://alaska.fws.gov/asm/home.html>.

Wisdom Series

PLEASE BE ADVISED

THERE HAS BEEN A SCHEDULE REVISION!!
Howard Luke and Kay Wilson have switched speaking dates. The below schedule reflects the updates lecture changes. Thank you.

March Sixth

March Thirteenth

March Fourteenth

SPECIAL DATE

March Twentieth

March Twenty-seventh

April Third

Howard Luke

Athabaskan Elder, founder of Gaa'lee ya Spirit Camp and author of "My Own Trail" will speak on "Respect/Love/Culture/Community - Gaa'lee ya Spirit Camp."

Kay Wilson

Kay is a Reiki practitioner. She will speak on "Shadow Dance."

Geshi Dawa

Tibetan Lama from the Nechung Monastery in India. Will speak on "Serenity in Times of Crisis." **Friday night lecture.**

Devta Khalsa

Devta will speak on "Developing the Sensory Self: Evolving into our Aquarian consciousness and creating frequency adjustments in Body, Mind and Spirit."

Debra Chesnut

Debra will speak on "Spirit Possession."

Ken Steinnard

Ken will speak on "Our Journey to Leading a Spiritually Balanced Life."

Location:
All lectures to be held at Four Winds Foundation (previously Moose Mt. B&B) unless specially noted.

Time:
Doors open at 8:30 pm. Lectures start promptly at 7:00 pm.

Event Sponsor:
Spiritual Crossroads (www.spiritualcrossroads.net) in conjunction with The Four Winds Foundation

For more information: Call 452-4197

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Planned Parenthood of Alaska
New Fairbanks Clinic Opens March 3rd
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1867 Airport Way
Separate entrance located on far right side of Northern Lights Medical Center.
Clinic Hours:
Monday 2pm-7pm
Tuesday 8am-3pm
Wednesday 2pm-7pm
Thursday 8am-3pm
Friday 10am-2pm
UNTESTED • EMERGENCY CONTRACEPTION • VASECTOMIES • PREGNANCY TESTS AND OPTIONS

North Pole High School announces
TERRA NOVA ACHIEVEMENT TESTS
March 4, 5, 6 All 9th Grade
Alaska High School Graduation Qualifying Exams
March 4, 5, 6
All 10th and 11th - 12th not tested proficient
Tests will begin at 7:45 a.m. each day.
According to the federal *No Child Left Behind* act all schools must have 95% participation. **Daily incentives will be provided.**
Questions? See the North Pole page for additional information or contact Patricia Jacobson 488-3761, x1262