

June 3, 2009

# Civil rights case verdict reversed over jury instructions

## APPEALS COURT SENDS INMATE'S SUIT OVER CELL ATTACK BACK FOR RETRIAL

By DENNY WALSH  
dwalsh@sacbee.com

A verdict in a Sacramento civil rights case was reversed Tuesday by an appeals court that found one of its own model jury instructions is legally flawed.

A three-judge panel of the 9th U.S. Circuit Court of

Appeals ruled that the trial judge erred when he refused to give the jury an instruction proposed by the plaintiff and chose instead a 9th Circuit model instruction.

Even though the instruction given by U.S. District Judge James K. Singleton was published by the circuit only two

years ago, it is at cross-purposes with a 1994 U.S. Supreme Court opinion, the circuit panel stated. Finding it was not a harmless error, the panel sent the case back to Sacramento for retrial.

State prison inmate James Anthony Clem, acting as his own attorney, sued Correctional Officer Gabriel Lomeli, alleging his cellmate John Godman, viciously attacked him after Lomeli ignored a

drunken Godman's threat to kill Clem.

The 41-year-old Clem, who is an inmate at Mule Creek State Prison in Loma, serving 24 years to life for second-degree murder and false imprisonment, returned to his cell on Feb. 3, 2004, and found Godman in the cell drunk, according to Tuesday's opinion. Godman, who is doing life for a murder, had apparently consumed a large quantity of

homemade wine.

Clem asked Lomeli to move him "because Godman was drunk and threatening to kill him," the opinion says.

"Deal with it," Lomeli reportedly advised Clem, and walked away.

Lomeli testified Clem merely claimed he was "afraid" of his living quarters and needed to be moved.

APPEAL, Page B2

# Appeal: Jurors sided with officer

FROM PAGE B1

The officer left, and "Godman began severely beating Clem, breaking his jaw and knocking him unconscious," according to the opinion. "Minutes later, officers ... found Clem convulsing on the floor of the cell."

He spent a month in the infirmary with his mouth wired shut, the opinion says.

He sued Lomeli in October 2005, alleging the officer violated his Eighth Amendment right to be free from cruel and unusual punishment.

Before the trial, Clem asked Singleton to instruct the jury Lomeli could be liable if it was determined he knew Clem "faced a substantial risk of serious harm and disregarded that risk by failing to take measures to abate it."

On behalf of Lomeli, Deputy Attorney General Christopher Becker submitted the model instruction.

At the conclusion of a three-day trial in September 2007, an eight-member jury found in favor of Lomeli.

Singleton had adopted the model instruction, telling the jury Clem had to prove some act of Lomeli was the "moving force" that directly "caused the ultimate injury." But the Supreme Court's 1994 opinion in *Farmer v. Brennan* "could not be more clear ... that direct causation by affirmative action is not necessary," the circuit panel declared.

Tuesday's opinion was authored by Judge Michael Daly Hawkins and joined by Judges Proctor Hug Jr. and Richard C. Tallman.

In a concurring opinion, Hug noted the high court said the key inquiry "is whether the defendant acted with 'deliberate indifference.' Yet the model instruction ... never mentions or defines the term 'deliberate indifference.'"

"I can fully understand why the district judge in this case was misled by following our new model jury instruction," Hug wrote. "The purpose of this concurrence is to ensure that others do not rely on this erroneous model instruction in the future."

Call The Bee's Denny Walsh, (916) 321-1189.



COURTS

9/7/2011

# Inmate's on trial in prison slaying of his brother's killer

By ANDY FURILLO  
afurillo@sacbee.com

A prosecutor flashed the gruesome pictures on the courthouse screen Tuesday - a man in a prison cell who had been brutally beaten, stabbed and strangled by his cellmate.

The victim depicted hogtied and bloodied in his lower bunk at California State Prison, Sacramento, was a convicted murderer. And the suspect in his killing is the older brother of

the teenager the dead man had shot and killed.

Robert Grajeda Canchola, now 38, sat and looked at the screen from the defense table in Sacramento Superior Court. And he listened while Deputy District Attorney Roxanne Ball told jurors about the discovery of the body of Julian Joseph Barajas Jr., 27, while the officers made their 11:30 p.m. rounds the night of Sept. 20, 2004.

"The evidence will show this was a

killing for revenge," Ball told the jury in her opening statement. "The defendant tricked the victim into becoming his cellmate, knocked him unconscious or semiconscious, and then was able to hogtie him. Then he stabbed him 19 times in the neck.

"The evidence will show that his brother was 19 years old at the time he died," Ball continued. "And finally, the defendant strangled the victim with force enough to break the hyoid

bone and his thyroid cartilage."

Defense attorney Russell W. Miller did not dispute his client twisted the life and breath out of Barajas, after bashing him over the head hard enough to open a massive cut over his right eye. Nor did Miller dispute who was responsible for the 19 flesh-wound incisions that circled Barajas' neck.

The issue at trial won't be about  
CANCHOLA | Back page, B8

## Canchola: Lawyer claims self-defense

FROM PAGE B1

"what," Miller told the jury. It's going to be "why," he said. Part of the answer, Miller said, will be that Canchola, who entered into prison and is being tried under the name of Robert Rodriguez, acted in self-defense.

"Photographs taken of my client show pictures of 10 stab wounds to his lower and middle back," Miller said. "The evidence will show there's a struggle between the two men."

Miller didn't answer the question of why. Before he posed it, he raised a serious question about quality control in the California Department of Corrections and Rehabilitation - how it came to be that one man who killed the other's brother wound up in the same cell.

It was Celso P. "Zap" Zamudio, a correctional officer at what's called New Folsom, who put the two together, Miller said. It was Zamudio, according to Miller, who "selected" Barajas to move in with Canchola after the defendant's previous cellmate

asked for a transfer.

Corrections officials have cleared Zamudio of any wrongdoing in the death. He has been subpoenaed to testify as a defense witness.

Ball put full responsibility for the planning and execution of Barajas' death on Canchola. He faces allegations of lying in wait and torture, which could put him in prison for the rest of his life. Canchola is incarcerated for robbery. He has a 2028 parole date.

The prosecutor told the jury some of her best evidence will be what prison investigators found in the cell of the inmate who transferred out of Canchola's quarters.

For one thing, they found Canchola's legal paperwork in the new prison home of Ramiro Quiles, Ball said. More intriguing, she said, were the pictures in a photo album of his little brother's grave site.

Call The Bee's Andy Furillo,  
(916) 321-1141.