

Baumgartner, POLI 203 Fall 2014

Ken Rose and Bo Jones, part 4: The
exoneration

Reading: Second half of *Last Lawyer*

October 29, 2014

OK, fine, bad ruling from the defense perspective, needs to be appealed

- Six years later, NC SC review: No.
- OK, appeal to federal courts
- Judge Boyle, US District Court, Republican appointee, good or bad luck?

Judge Boyle

- Denies 12 claims
 - Bible in the jury room not linked to the outcome and therefore inconsequential
 - Conflict of interest for Graham Phillips similarly ruled not to have affected his behavior...
 - A series of rulings against...
- Accepts 2 claims however
 - Ineffective assistance of counsel at the sentencing hearing
 - Mental capacity

Death, not innocence, on the line

- Judge Boyle accepted arguments about the sentencing hearing
- Can they use that to convince the judge that there were *ALSO* problems of the guilt phase?
- Tall order...

IQ tests and the rule of 70

- Above 70, you are fit to be killed
- Below 70, you are “mentally retarded” and can’t be executed.
- USSC just recently ruled that any such hard numeric rule is unconstitutional

Boyle's rulings

- No proof Bo Jones is mentally incompetent
 - IQ tests must be below 70
 - Bo's were a mix, and often just above
 - Note how difficult this argument is
 - USSC has just ruled no hard numerical rule can be used, but that does not mean psychologists and experts will not argue that inmates are above, or below, some line.

Lovely Lorden as witness

- Judge amazed at her willingness to say almost anything.
 - DA leads her in questioning
 - Defense leads her in questioning
 - Judge: This woman will agree to anything...
- And the defendant was found guilty based on that.

No to mental issue, yes to hearing on guilt

- We move from ineffective assistance of counsel at the penalty phase to the guilt phase: he could get out.
- Judge notes Lorden got \$4000 in reward money, was afraid of Bo returning from prison
- Spaulding: (p. 210): “the law does not require that you always get the best trial lawyer”

Three potential criminals

- Larry Lamb (found guilty in trial, 1st degree murder, sentenced to life in prison)
- Ernest Matthews (pleads guilty, gets 2nd degree murder, serving jail time)
- Bo Jones – is supposed to get the message and plead guilty and take a reduced term. Refuses.
- Lovely Lorden is the only person saying these three went into the house, and who knows which of them supposedly pulled the trigger.

Conviction vacated

- Jan 2007 deadline passes, state does not appeal Judge Boyle's ruling on ineffective assistance of counsel
- Bo Jones remains in prison but not on death row, as the DA believes he is guilty and therefore will be tried again. At this point he is a suspect being held in jail pending trial.
- Lamb and Matthews still in jail...

DA offers a deal

- Bo: Take a plea, plead guilty to 2nd degree murder and armed robbery, serve 20 years, get out in about 4 years (2012)
- Lovely Lorden is the only witness, will have to testify again.

Can the DA convict?

- Based on *Lovely Lorden*, can he convict Bo Jones in 2008 for a crime that took place in 1987? If not, he will be acquitted? So, proceed with trial and take the chance, or drop the charges?

Lovely Lorden's affidavit

- December 2007 the statement everyone on the legal team wanted comes in. She says:
 - Testified for the state because she was afraid of the sheriff's office
 - She and Bo sometimes bought liquor at LG's house
 - She did not know if they had done so that night
 - She never heard gunshots, ever
 - Deputy Sheriff Dalton Jones fed her details
 - "Much of what I testified to was simply not true. Dalton Jones let me know what he wanted me to say in my testimony for both Bo Jones's trial and Larry Lamb's trial."

May 2008

- Two weeks before the trial is to begin, charges are dropped, Bo Jones is free.
- Note: DA believes he is guilty but he can't prove it.
- This is not uncommon. No DNA connected him to the crime in the first place...