

MiamiHerald.com 

Posted on Thu, Jun. 14, 2007

Wilk jurors were against death all along

BY WANDA J. DeMARZO

Long before prosecutors argued to execute Kenneth Wilk for the murder of a Broward sheriff's deputy, jurors charged with deciding the killer's fate held staunch beliefs against the death penalty.

It took the panel of eight women and four men seven hours more than two days to decide Wednesday that Wilk, 45, should get life in prison for the murder of BSO Deputy Todd Fatta, 33.

After the verdict was announced by U.S. District Judge James Cohn, Wilk, a former car salesman who has AIDS, turned to his family sitting several rows behind him and nodded and smiled.

Fatta's mother, Josephine, left the courtroom in tears. The deputy's brother, Joe Fatta Jr., said they were disappointed with the jury's decision.

"We were hoping they would sentence him to death," Fatta Jr. said.

But most of the jurors could not find it within themselves -- either because they were opposed to the death penalty or they felt in their hearts that Wilk didn't plan to kill Fatta.

In fact, a number had second thoughts about convicting him of first-degree murder last week, a juror told The Miami Herald.

"The definition of premeditation is very vague. We didn't know exactly what it meant," said juror Serge Augustin, 25, of Coral Springs. "And there were about 10 people that were strongly opposed to the death penalty."

He said a number of jurors held strong religious beliefs against capital punishment. Because it is a federal case, the 12 jurors had to reach a unanimous decision.

During jury selection, jurors in a capital case are asked about their views on the death penalty to make sure they are "death-qualified" -- in other words, open to the possibility of sentencing the defendant to death.

'VERY BIZARRE'

That jurors opposed to the death penalty could be death-qualified is incredible, a former federal prosecutor said.

"That is the strangest thing I've ever heard of," said Allan B. Kaiser, who worked as a federal prosecutor for 16 years. "Maybe the jurors thought that if there was enough evidence, they could vote for the death penalty -- very bizarre."

Most of the jurors declined to comment, leaving the courthouse quickly after Wednesday's proceedings.

"We based our verdict according to the law and on the evidence presented in court," said juror Nelson Rivera of Sunrise, who declined to elaborate. Augustin said that when deliberations began in the first phase of the trial, only four of the 12 thought Wilk intentionally murdered Fatta.

"A number of us wanted to find him guilty of a lesser charge, like second-degree murder," Augustin said.

Ultimately, they found him guilty of first-degree murder, conspiracy, obstruction of justice and possession of child pornography. They did convict him of a lesser count of attempted second-degree murder in the shooting of BSO Lt. Angelo Cedeño.

Fatta was part of a federal task force serving arrest and search warrants at Wilk's Fort Lauderdale home on Aug. 19, 2004.

During the trial, U.S. Attorney John Kastrenakes argued that the crime was premeditated because Wilk had been stockpiling arms in anticipation of a police raid. That morning, he crouched behind a kitchen counter and opened fire as Fatta entered the house. Wilk fired at least two rounds, one hitting Fatta in the chest, near the heart, and the other wounding Cedeño in the hand.

But during the trial, Wilk's attorney, Bill Matthewman, told jurors physical, medical and mental evidence raised reasonable doubt about whether Wilk planned to kill Fatta. Wilk contended he suffered from AIDS-related dementia and did not know officers were entering his home.

As Cohn read the verdict, a number of deputies entered the courtroom, including Sheriff Ken Jenne.

"Wilk ambushed Deputy Fatta," Jenne said. "If there was ever justification for the death penalty, this was it."

RETRIAL POSSIBLE?

Jenne raised the possibility that State Attorney Michael Satz could prosecute Wilk in state court, with the death penalty a possibility. Unlike in a federal case, a jury's decision about the death penalty in a state case does not have to be unanimous. Wilk could be retried because the federal court and state court are considered two distinct sovereigns, Kastrenakes said.

"It is ultimately Mr. Satz's decision, but federal prosecutors are going to broach the subject with him," Jenne said.

Ron Ishoy, spokesman for the state attorney, said that if asked to review the case by Fatta's family or law enforcement, "we certainly will meet with them and discuss that option."

Prosecutors and defense attorneys, however, said they would not question the jury's decision.

"This is about a deputy who gave his life for the community," Kastrenakes said. "This day is about Deputy Fatta and his family."

Matthewman said he feels sympathy for the Fatta family. "This is a tragedy that should never have happened," he said.

© 2007 Miami Herald Media Company. All Rights Reserved.
<http://www.miamiherald.com>