

A PERFECT STORM OF INJUSTICE

May 10, 2004 was a day that began like any other, but by day's end, my husband of 31 years would lie dead on the floor of our home and I, Nancy Seaman, would be charged with his homicide. A verbal altercation over my attempts to leave the abusive marriage had turned violent and I defended myself against my husband's final assault on my life - with deadly and unintended consequences.

For 52 years, I had lived an ordinary existence as a law-abiding citizen, so I was ill prepared for the harsh realities of the criminal justice system. I would soon discover that the trial process is far from fair and justice isn't always served. Few ordeals in my life were as terrifying as having to stand trial for first degree premeditated murder and watching helplessly as any hope for a jury's fair and just determination of my guilt or innocence was slowly eroded by a confluence of trial errors over which I had no control. Prejudicial pretrial publicity that tainted the prospective jury pool, a hostile trial venue, limitations on expert witness testimony that denied my jury evidence critical to my defense, prosecutorial misconduct, ineffective assistance of counsel, and flawed jury instructions all converged to create the "perfect storm of injustice". Singularly, any one of these circumstances would be detrimental to a defendant's Constitutional right to a fair trial, but collectively these factors had such a prejudicial impact in my case that there could be no fair and just verdict rendered. I was doomed from the onset.

Pretrial Publicity

My trial should never have been held in Oakland County. The failure of my trial attorney to move for a change of venue forced me to face the most serious criminal charges in an arena inundated with unfair, extensive, and inflammatory publicity that so saturated the community that the entire jury pool was tainted. Neither I nor my attorney talked to the media before trial, but the prosecutor and police chief repeatedly did. They described my case in the most brutal and graphic of terms, misrepresented the forensic evidence, and portrayed me as a monster. My attorney's decision to wait until trial to present my side of the story was a poor strategic decision because by then, it was too late. Jurors cannot detach themselves from the atmosphere of which they are a part. After months of highly prejudicial publicity, jurors were unable to set aside their hostile and negative feelings toward me and objectively assess the actual evidence in the case. A fair trial was an impossibility.

Limitations on Expert Witness Testimony

Michigan law which severely limits the testimony of Battered Woman Syndrome expert witnesses had a detrimental effect on my ability to present a defense. As a result, my jury would never hear the evidence that could prove that I acted in self-defense. Dr. Lenore Walker, my expert witness and the foremost authority on Battered Woman Syndrome, was prepared to present a clinical diagnosis that I was a battered woman suffering from Post-Traumatic Stress Disorder as a result of long-term battering and explain how that affected my state of mind, behaviors, and perception of imminent danger, however, Michigan law prohibited her from doing so. Her trial testimony was restricted to a generic description of the Syndrome and nothing more, denying the jury evidence which could

have refuted the prosecutor's claim that I acted with premeditation. Without my expert's testimony, I simply could not defend against the charges brought against me.

Contributing to the injustice was the fact that the prosecutor faced no similar restrictions. Prosecutor, Lisa Gorcyca, announced to the jury that she was the Head of the Domestic Violence Unit in Oakland County and under the guise of an expert on domestic violence she gave her own unsworn testimony to the jury using every myth, misconception, and stereotype about battered women to discredit my claims of abuse. The prosecutor mocked my religious convictions, ridiculed my reasons for staying in the marriage, and unfairly asserted that because I was an educated woman with a career and the means and opportunities to leave the relationship that I couldn't possibly be a battered woman. My jury waited for my expert witness to present evidence to the contrary, unaware that Michigan law prevented the witness from doing so. Understanding this instance of misconduct illuminates how the jury came to disregard the great weight of the evidence which supported the defense on every material issue at trial, including Dr. Walker's testimony and the testimony of the prosecutor's own nurse examiner who testified that my injuries at the time of arrest were "defensive injuries", and it explains the hostile post-trial juror comments like "she wasn't the battered little housewife that she claimed to be".

Prosecutorial Misconduct

My attorney was simply no match for the unscrupulous tactics of prosecutor, Lisa Gorcyca. The trial record documents that prosecutorial misconduct was pervasive, but the misconduct in closing argument was the most egregious. On appellate review of my case,

the Michigan Court of Appeals ruled that the prosecutor committed an act of misconduct in her closing argument when she put "facts not in evidence" before the jury, minutes before jury deliberations, with the intent to mislead the jurors on the central and controlling issue of premeditation and deliberation. The prosecutor showed the jurors a hatchet blade cover that had never been admitted into evidence and may never have even existed since not all hatchets are sold with blade covers. In a dramatic demonstration, the prosecutor stated that I had taken time to remove the blade cover and, therefore, had time to deliberate. Prosecutors are not free to fabricate facts. This misconduct was reprehensible because it was timed to ensure that my attorney would have no opportunity for rebuttal and that any instruction to the jury from the judge to disregard the remarks would come too late to mitigate the damage. The prosecutor's improper and highly prejudicial conduct would be the last thing the jury would see before they rendered a guilty verdict of first degree murder.

Trial Counsel's Errors

On appellate review of my case, the federal court ruled that I was prejudiced by trial counsel's errors and denied a fair trial. Either through lack of diligence or lack of competence, trial counsel failed to adequately inform himself of the legal standard for the admissibility of expert testimony. He failed to allow my expert witness, Dr. Lenore Walker, to personally interview me before trial, failed to accurately determine the scope of expert testimony allowed under state law, failed to make the appropriate efforts to ensure that all of the expert testimony that was allowed under state law reached the jury, and failed to object or challenge the judge's

pretrial ruling which unduly restricted the expert's testimony and impeded my ability to establish a defense. The federal court determined that all these errors entitled me to a new trial.

Additionally, my attorney failed to object to the onslaught of repeated, extensive, and intentional acts of prosecutorial misconduct which pervaded the trial; failed to move for a change of venue; failed to object to the incomplete jury instructions provided to the jury; failed to present a toxicology report to explain how the interaction of the amphetamines and substantial amounts of alcohol in my husband's system at the time of death could have explained his violent behavior at the time of the homicide; failed to present evidence from the pathology report which showed that the first blow to the front of the victim's head from the blunt end of the hatchet likely incapacitated him and that all stab wounds were post mortem; failed to present evidence from my husband's business partner, Rick Cox, who stated in a signed affidavit that Bob Seaman was "at the end of his rope" financially and emotionally and was not financially secure or optimistic as the prosecutor led the jury to believe, giving Bob Seaman the motive for violence, not Nancy. The jury heard none of this evidence. There is a reasonable probability that had it not been for my attorney's errors, the outcome of the trial would have been different.

Jury Instruction Error

I was denied the right to a properly instructed jury because the jury instructions given for first degree murder was missing the legally essential element which states that "the prosecutor must prove beyond a reasonable doubt that the killing was not

justified, excused, or committed under circumstances mitigating the crime to manslaughter". In other words, the burden was on the prosecutor to prove that justification, excuse, and mitigation did not exist. This instruction is mandatory in cases where a defendant claims self-defense, but in my case it was omitted from the list of elements for the charge of first degree murder so my jury never considered it. It was, therefore, improper for the jury to have rendered a guilty verdict for first degree murder based on a set of instructions which did not contain all of the elements of that crime. Since the great weight of the evidence supported a conclusion that the killing was justified or at least committed under circumstances mitigating it to a lesser crime, the omission of the instruction was not harmless.

The Appellate Process

The perfect storm of injustice has not been limited to the events that transpired in my trial, but extend to the appellate process as well. Appealing a criminal conviction takes decades and a win does not ensure freedom. Over the past 13 years, the verdict in my case has been overturned twice by both a state and federal court. Three judges have ruled that the lack of evidence to support premeditation combined with the omitted Battered Woman Syndrome evidence at trial entitles me to relief from judgment in the form of resentencing on a lesser charge or a new trial. Had I been resentenced as the trial judge ordered when he overturned the verdict in 2005, I would have been sentenced to 12 years or less and would already be eligible for parole. Instead, I remain imprisoned because the prosecutor fought to reverse the rulings

of the appellate judges and preserve a verdict known to be unjust.

The life sentence imposed in my battered woman case is disproportionately severe as compared to the plea-bargain agreements in other battered woman cases such as the 2010 case of Joni Holbrook who shot her police officer husband in the head three times as he slept. Holbrook was sentenced to manslaughter and served six years in prison in what the prosecutor called a "well reasoned decision". Given such disparity in treatment between the Holbrook case and mine, it seems unreasonable for the Michigan Attorney General's office to continue to fight to preserve the first degree murder conviction in my case and deny me the relief from judgment that the appellate courts have ruled I am entitled to.

The criminal justice system is an imperfect system. The U.S. Supreme Court has long cautioned prosecutors that in a criminal case "it is not that the State shall win a case, but that justice be done". Justice has not yet been done in my case, and I pray that the Governor of Michigan will recognize that and grant commutation. All that it takes for injustice to prevail is for good men to do nothing. Please let your compassionate voices be heard and advocate on my behalf. Without a grant of commutation, my fate will be death in prison.

Nancy Seaman

10/8/17