

Court reverses officer's murder conviction



Joseph F. Yeckel

By DONNA WALTER
donna.walter@molawyersmedia.com

The Missouri Supreme Court overturned the conviction of a Jefferson County man serving a life sentence for murder, stating that his constitutional rights were violated when the prosecutor made repeated references to the defendant's decision to remain silent.

A Jefferson County jury convicted Robert R. Brooks in 2007 for second-degree murder and armed criminal action in connection with the shooting death of his fiancée, Amanda Cates. Brooks was sentenced to life and to 75 years in prison; the sentences were to be served concurrently.

Brooks will be retried, Jefferson County Prosecutor Forrest Wegge said. He declined to comment further.

Brooks' appellate attorney, Joseph F. Yeckel, of Webster Groves, said his client is incarcerated out of state for his own protection. Brooks is a former police officer, who last worked for Calverton Park, a village in St. Louis County. Cates was a Normandy police officer.

Tuesday's Supreme Court decision is an important one, "defining the right to re-

main silent, clarifying the circumstances that may give rise to a waiver in Missouri," Yeckel said.

"When you're advised of your right to remain silent and you don't say anything, it shouldn't be used against you. The Supreme Court reaffirmed that principle today," he said.

At trial, Brooks claimed self-defense, but he didn't talk to the Crystal City police, either at the scene or at the police station. The only things he did say was: "I don't have nothing to hide" and "I didn't do nothing at all."

That was enough, the state argued, to allow the prosecution to make sure the jury knew about Brooks' silence, which is what assistant prosecutor Steven Jerrell did.

But the Supreme Court said that such a general denial isn't enough to waive the right to silence.

Yeckel said Brooks' case is the first that he's aware of to say this.

If the state's argument had prevailed, he said, "anybody who makes any type of statement that was exculpatory in a slight degree would waive their right to remain silent."

It would've been different if Brooks had made statements to the police and then made different statements at trial. Then the prosecution would have had the right to expose those inconsistencies, Yeckel said.

But the statements he did make are "not inconsistent with saying 'I'm not guilty,' which was his position at trial," Yeckel said.

Missouri Attorney General Chris Koster's office didn't have an immediate comment, said spokeswoman Nanci Gonder.

The state failed to prove that the error was harmless beyond a reasonable doubt, the court said. Working its way through a four-step analysis, the court first found that the prosecution made repeated violations and that the trial judge's curative efforts were

minimal and had little effect.

The court then determined that Brooks' defense – that he was struggling with Cates over the gun when it discharged – was plausible. The court pointed out that the trial judge gave a self-defense instruction and that an expert's testimony supported Brooks' argument that Cates was shot during a struggle.

Finally, the court said evidence of Brooks' guilt was "not overwhelming."

In its unanimous opinion, written by Judge Zel Fischer, the Supreme Court detailed errors that had been preserved for review as well as errors that had not been preserved.

The state had argued that any error resulting from the admission of a tape recording of a police interview had been waived because the defense counsel stated "no objection" when it was offered into evidence.

In a footnote the court rejected that argument: "This Court always has the discretion to engage in plain error review of issues concerning substantial rights, especially constitutional rights such as the one at issue here."

That's a change from last year when the court in *State v. Johnson* said there was no plain error review when the defense lawyer said he had "no objection" to the playing of a video the prosecution introduced, Yeckel said in an e-mail.

"The evidence challenged on appeal in Brooks was the same in Johnson – the propriety of admitting a video of the defendant's interview by the police," he said in the e-mail. "The ruling is significant because it clarifies that appellate courts have discretion to consider all error – whether preserved or not – in determining whether manifest injustice or miscarriage of justice has occurred."

The case is *State v. Brooks*, SC90347.