

LEGAL STUDIES

Media Report

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Date: 8/5/10

Article Title: Man convicted in fatal Toyota crash goes free

Legal issue addressed: Access to the law

Synopsis

In 2006, Koua Fong Lee's possibly faulty Toyota approached an intersection and hit a car, killing two and paralysing another. Lee had applied the brake but failed to prove this in his case and was subsequently sentenced to a maximum of eight years imprisonment. Lee had recently come from Hmong and spoke very little English and hired an attorney who was not overly expensive and couldn't understand his client without a translator. Two and a half years later, the case was reconsidered after many Toyota drivers had experienced unintended accelerating and Lee managed to prove that he had tried to stop the car.

Discussion

This legal issue is a negative example of access to the law as Koua Fong Lee had only recently arrived to Australia with his family from Hmong and could speak limited English and had very little knowledge of the Australian legal system. People need access to the law to be given a fair trial and avoid being given a wrong verdict; Lee didn't have this right as he was unable to present a solid defence without the use of a translator, find an attorney who would be suited to this area of law, afford to pay an experienced one and had little understanding of the Australian legal system as he had just recently arrived to the country from Hmong.

Also because of his poor English skills he couldn't do research to decide what lawyer would be the best to defend him and was likely stuck with one who was working well out of his field, as he gave such a poor defence. His lawyer actually said to the court that his client may have just mistaken the accelerator for the brake.

Lee had only recently started a family and his wife had just had a fourth child shortly before Lee's conviction. He was under financial hardship at the time, as he had to care for his four children and wife, and didn't have the money to spend on a lawyer – especially after he was trying to come to terms feeling somewhat responsible for the death of two people and incapacitation of another.

As Lee had only recently arrived to a completely different country, he was unsure of his rights as a citizen in Australia and assumed that his lawyer would have been able to prove him innocent of a crime he knew he shouldn't be found guilty for. Because he had to leave it to his attorney (who had no idea of what he was doing) the court was never given any facts and found him guilty.

Lee's inability to thoroughly express his opinion directly to the court also severely limited his ability to present a defence in the hearing so subsequently he was wrongly convicted of a crime that a person who could afford a better lawyer and speak English strongly would have been found not guilty for.

MAN CONVICTED IN FATAL TOYOTA CRASH GOES FREE

ST. PAUL, Minn. — A Minnesota man who spent nearly 2½ years in prison for a fatal Toyota crash walked free Thursday and said he wants to get to know his children.

Koua Fong Lee of St. Paul was granted a new trial over a 2006 crash that killed three people, but a prosecutor said she wouldn't prolong the case.

The case was reopened in the wake of the Toyota's sudden acceleration problems in newer models. Lee jumped up and hugged his attorney after Ramsey County District Judge Joanne Smith said she had seen enough new evidence to warrant a retrial. Soon after, county attorney Susan Gaertner said there wouldn't be one.

"I think it's time to bring this very sad situation to a close," Gaertner said.

Lee's wife, Panghoua Moua, sobbed when the judge announced her decision. The couple has four children, ages 8, 5, 3 and 2, and Moua said her husband barely knows the youngest two because of his time in prison.

"I'm just happy that the judge made the right decision," a radiant Moua said afterward.

Lee said he wants his children to know what the word "Daddy" means.

Lee was convicted of charges including criminal vehicular homicide in the 2006 crash. He was exiting a freeway ramp in St. Paul when his 1996 Camry plowed into the back of an Oldsmobile stopped at a red light.

Lee's car was travelling somewhere between 70 and 90 mph. He insisted at trial that he was trying to brake before the collision, but was convicted. Smith, who presided over that trial, sentenced him to the maximum eight years.

His case received a new look after Toyota acknowledged sudden acceleration trouble in newer-model Toyotas, even though Lee's Camry hadn't been recalled.

Over four days of testimony this week, Lee's attorneys didn't prove his car had a sudden acceleration problem. But they argued evidence backed up Lee's account he was trying to brake. They also argued his defense attorney did a poor job. And they called a parade of witnesses who testified they had sudden-acceleration experiences in Toyotas similar to Lee's.

Smith said if that testimony from the other Toyota drivers had been introduced at his trial, it would "more likely than not, or probably, or even almost certainly" have resulted in a different verdict for Lee.

Smith also said Lee's limited English was a factor in her conclusion, as well as the work of his defense attorney, who suggested to the jury that Lee might have stepped on the accelerator.

"There were multiple errors and omissions by his attorney that necessitate this result," Smith said.

Prosecutors had opposed a new trial, saying there was no compelling new evidence. But after Smith ruled Thursday, Gaertner said the ineffective counsel was a compelling reason not to try the case again.

"He's walking out of jail tonight and will have no retrial," Gaertner said. "This is it."

Lee's release capped a dramatic day during which he earlier rejected prosecutors' offer to set him free and vacate his sentence. But that offer had included several conditions, including a stayed remainder of his sentence that meant he could face prison for a new violation in the future.

Javis Trice Adams, 33, and his 10-year-old son, Javis Adams Jr., died in the 2006 accident. Adams' 6-year-old niece, Devyn Bolton, was paralyzed from the neck down and died shortly after Lee was convicted. Two others were badly hurt.

Bridgette Trice, Devyn Bolton's mother, welcomed the judge's ruling. The victim's families had supported Lee's effort for a new trial, but Trice was crying outside the courthouse as she spoke to reporters.

"I'm happy for him but I'm still sad for us, cause he's going back to his but ours are never coming back to us," Trice said.

Media Report

<http://www.smh.com.au/news/national/einfeld-faces-jail-over-77-ticket/2007/03/29/1174761669484.html>

Date: March 20, 2009

Article Title: Former judge Einfeld gets at least two years' jail... all for lying about a \$77 traffic fine

Legal issue addressed: equality

Synopsis

Former Federal Court judge Marcus Einfeld was clocked going 10km/h over the speed limit in Mosman, Sydney in 2006. He took the matter to the Downing Centre Local Court after presenting a statutory declaration claiming he had lent his car to an American friend who was later found to have been dead for over three years. Einfeld continued lying to authorities and changing his story, saying that the friend he had referred to was actually living in Bangladesh, not the deceased American. Einfeld was given two numerous other crimes including perverting the course of justice and perjury.

Discussion

This is a positive example of equality as Marcus Einfeld was charged just as any other person of society would have been and was not able to get out of the fine by using his position of a Federal Court judge to his unfair advantage.

Although Einfeld believed that because of his high position in law he would be able to use his knowledge and superiority of local court judges to be able to get out of the fine, he just ended up getting in more trouble as he continued to attempt to avoid the traffic violations.

This is a great example of equality because Einfeld was unable to pervert the course of justice to get an advantage over other people. The law states that all people are equal and that nobody is above the law, getting an unfair advantage over other citizens of the country.

It was also found that Einfeld had evaded at least nine previous infractions, caught by speed cameras, red light cameras and for parking in bus zones. Because he knew all the loop holes in the legal system he was able to evade all of these fines by giving a statement that somebody else was driving his car at the time, and succeeded in doing this because the courts never looked into it at depth.

Einfeld was stripped of his position as a Federal Court judge and all of his qualifications as well as being banned from working in the legal system because of his unfair use of his position so that he could not continue to get an advantage over others.

Einfeld was worried that if he collected enough traffic infractions, demerit points and fines that it would affect his social standing as people would think that he was unreliable but rather than just slowing down, he felt that he was above the law so he just tried to get out of all of his violations, without considering that it was not the right thing to do as other people would have to pay a fine. He did not figure that by doing this he would eventually get exposed.

EINFELD FACES JAIL OVER \$77 TICKET

THE former Federal Court judge Marcus Einfeld faces the prospect of a long jail term after being charged yesterday with 13 offences relating to giving false evidence to avoid speeding fines.

In theory, the charges attract a total of 154 years' jail.

Also arrested and charged yesterday was Angela Liati, 54, who provided a statement to Einfeld's lawyers earlier this year saying she was driving his silver Lexus in Mosman at 4.01pm on January 8 last year when it was photographed speeding.

Einfeld had his \$77 speeding fine dismissed in Downing Centre Local Court on August 7 after presenting a statutory declaration claiming he had lent his car to an old friend, the US-based academic Professor Teresa Brennan, and she had been driving.

The following day The Daily Telegraph reported that the professor had died in a car crash in the US three years earlier.

Einfeld then said he was out of Sydney on January 8, and that although he was uncertain who was driving, he had "authorised an old acquaintance to use [my car] while I was out of town".

He later told police that the Professor Brennan he was referring to was from Bangladesh.

"If I had committed this offence I would have paid the \$77 fine like any other responsible citizen," Einfeld said in a statement issued after the death of the American Professor Brennan was revealed. "I would not even think of misleading a court. The suggestion that I have done so is hurtful because it contradicts everything I have always stood for."

The Herald has previously revealed that Einfeld went to extraordinary lengths to avoid at least nine traffic fines incurred during his four years on the Federal Court bench. They were for speeding, running red lights, and parking at bus stops.

Einfeld, 67, now working as a barrister, was taken from his Woollahra home to the Sydney Police Centre in Surry Hills yesterday morning. At midday, fraud squad detectives from Strike Force Chanter charged him with three counts of perjury, six counts of perverting the course of justice, two counts of making a false instrument and two of using a false instrument.

The false instrument charges relate to statutory declarations that were allegedly submitted to various courts to avoid traffic infringement charges.

Although police did not name Einfeld yesterday, the commander of the fraud squad, Detective Superintendent Colin Dyson, said the charges related to a number of statutory declarations presented to various courts over a six-year period.

"It will be alleged the offences relate to four separate camera-detected traffic infringement notices," Mr Dyson said.

Liati was charged with perverting the course of justice and hindering a police investigation.

Doubt was cast on her version of events when it was revealed last month that Vivian Schenker, once an adviser to Mark Latham, the former federal Labor leader, had told police she was in the car with Einfeld when it was clocked doing 60kmh in a 50kmh zone.

Liati and Einfeld have been granted conditional bail and are scheduled to appear in Downing Centre Local Court on April 19.