

Kansas Court Of Appeals Hears Area Cases

Three judges from the Kansas Court of Appeals heard oral arguments Tuesday in six cases that originated in southwest Kansas. Judges Michael B. Buser, the presiding judge, Patrick D. McAnany, and Anthony J. Powell heard the presentations at the Finney County Courthouse.

In the criminal case of the state of Kansas v. Scot Lansford, Lansford is appealing his Haskell County convictions on two counts of aggravated indecent liberties. "With only a single prior misdemeanor possession of marijuana conviction, under Jessica's Law, Scott was sentenced for this first time, non-injury, fondling felony to two consecutive sentences of life in prison," Lansford's attorney Daniel E. Monnat said.

Monnat argued that two involuntary confessions made by his client should have been suppressed and that the trial court made an error in not allowing an expert witness to testify.

Monnat claimed his client was coerced into confessing to the sexual abuse of a longtime friend's 5-year-old child after he allegedly consumed an abundance of alcohol while at the friend's home.

Monnat said that Lansford was led to believe that his friend only wanted the truth, and that if he confessed, his friend would not pursue criminal charges against him because he didn't want to subject his daughter to a traumatic physical examination.

Buser told Monnat that he had a "pretty steady hill to climb to say that the defendant is going to say, 'Yeah I admit to molesting a little girl because I don't want you to go to the police.'"

Monnat also said Lansford was suffering from the effects of alcoholism that hindered his free and independent will during both the interrogation made by his friend and a subsequent interrogation made by an undersheriff.

When it was his turn to make oral arguments, Haskell County Attorney Lynn Koehn said, "In that interview, the undersheriff is quoted as saying something along the lines of 'I'm not trying to make you say something you didn't do. I want to know the truth, and I want to get your side of the story ... I submit to the court that neither of those confessions were involuntary; both were admissible,'"

Monnat also argued that an expert witness should have been allowed to testify on Lansford's behalf to establish that alcoholism caused him to suffer memory loss on the night of the incident.

"Both parties filed briefs during the jury voir dire where the jurors were asked what they know about alcoholics and blackouts ... and each of you came up with circumstances where individual citizens said, 'yes,' or 'no,'" Judge McAnany observed. "Seems to me that shows the common knowledge of people who come to the jury is conflicting, and this would be the perfect case where you need some expert testimony as to what in the world is confabulation."

Carlos Moral and Julie Moral v. Telegram Publishing Company Inc., et al., is an interim appeal from the district court's dismissal of a lawsuit claiming malicious prosecution, abuse of process, and intentional infliction of emotional distress against the Finney County prosecutor's office. Claims against other defendants in this civil suit are on hold pending the outcome of this particular appeal.

Carlos Moral and his wife, Julie Moral, previously were charged with theft of services from The Garden City Telegram for allegedly giving a worthless check in the amount of \$4,130.

That case was dismissed by Finney County Judge Michael L. Quint due to insufficient evidence in March 2011, but Moral filed a civil action against The Telegram in September 2010, alleging malicious prosecution and abuse of process in response to a criminal case. That suit was later dismissed.

Moral then filed a complaint against Finney County Prosecutor Tamara Hicks in November 2011, after his criminal case was dismissed, in which he alleged that Hicks, who was the prosecutor on the criminal case, committed perjury and defamation. The complaint alleged the information Hicks wrote in the complaint against Moral in The Telegram case was inaccurate. That case was dismissed by Senior Judge John Sanders, El Dorado, in December 2011 and most recently appealed by Moral.

Moral's attorney, Razmi Tahirkheli, presented oral arguments Tuesday to the appellate judges stating that Hicks was outside her prosecutorial immunity and capacity when she signed a complaint against Carlos Moral charging him with theft of services, among other charges, in the 2010 case.

During Tuesday's oral arguments, Buser asked Tahirkheli, "Isn't it one of the most basic duties of the prosecutors to prepare and file a complaint to be presented to the court?"

Tahirkheli clarified by claiming that Hicks presented evidence knowing there was no probable cause, which he said is the basis of malicious prosecution.

Allen Glendenning, Great Bend, represented Hicks and presented arguments demonstrating, according to the law, that Hicks acted within prosecutorial immunity.

"The only claim being made against Miss Hicks, in this case, is that she 'filed the charges, initiated the prosecution.' That's clearly within prosecutorial immunity" based on the Kansas common law and the Kansas Tort Claims Act, Glendenning said.

The judges also heard oral arguments in a Stevens County case involving an oil and gas royalty dispute; a Comanche County case involving a business dispute; a Ness County probate appeal; and a Seward County criminal appeal case.

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