

Convict alleges evidence not turned over in attempted murder case

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A man convicted of attempted murder contends his prosecutor, now a Monterey County judge, failed to turn over key evidence in his case. His attorneys are also asking that all local judges be barred from presiding over a hearing to investigate why a potentially exonerating videotape never surfaced at trial.

Judge Pamela Butler, who prosecuted Pedro Jesus Gomez more than a decade ago, has denied the allegation in a court declaration and said she handed over all potential evidence in the case.

Her fellow Superior Court judge Russell Scott delayed a hearing scheduled for Wednesday because an appeals court is now considering whether he and all of the Monterey County bench should be barred from hearing the case because Butler is likely to be a key witness.

Scott had written in a March order that "it is not clear whether the people failed to produce the videotape, or whether the people made the tape available and defense failed to obtain it." He ordered the hearing to get to the bottom of the matter.

Defense attorney Miguel Hernandez has filed a declaration saying he never received the tape and would certainly have used it at trial if he had. He also wrote that his former client's cousin Carlos Gomez had admitted to being the shooter who left a 33-year-old man seriously injured in a fight outside a Salinas restaurant in September 2000.

Pedro Gomez, now 35, was convicted in 2001 of attempted murder and other charges, and received a life sentence.

"I believe there's been a miscarriage of justice," said Salinas attorney Tom Worthington, who has worked on the case.

Butler, a former deputy district attorney then known as Pamela Ham, was responsible for turning over police videotapes of witnesses to defense attorneys in the case that made headlines.

The tape shows a key eyewitness identifying someone other than Gomez as the shooter in photo lineups, a fact that never came out in trial testimony, court documents show.

The tape was made just hours after the shooting occurred, and "strongly impeached" trial testimony that Gomez was the gunman, his lawyers said in court filings.

The tape's existence only came to light several years ago, when Monterey Peninsula attorneys Joel Franklin and Courtney Shevelson were sifting through the evidence because Gomez petitioned to reopen the case.

A police report noted that the tape had been made, but the lawyers couldn't find the recording among evidence amassed by Gomez's original defense attorney Hernandez.

Franklin and Shevelson eventually requested and received a copy of the tape from Butler, who was still a

prosecutor.

But no written record of the tape's hand-over at the time of the trial has been uncovered, court filings allege.

In addition, trial testimony from the eyewitness and police detectives appears to be contradicted by the videotape, which shows the witness identifying Gomez as someone who seemed familiar, but ultimately pointing to two other suspects as the shooter and an accomplice.

When a detective then pointed to Gomez's picture in the No. 2 slot, the witness said, "No, I have to say that No. 1 is more, more of what I saw," according to court documents.

Worthington said attorneys are "leaving no stone unturned to try to right this wrong."

The petition to disqualify all Monterey County judges from hearing the matter was approved earlier this month in a California Supreme Court order.

Now the county has to go along with the order or file an opposition brief to the Sixth District Court of Appeal by Nov. 15.

If Gomez's request is ultimately granted, the state's Judicial Council can either appoint a visiting judge or transfer the hearing to another county.

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