



Sandy Jury Foreman Explains Manslaughter, Not Murder

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10/11/2007

As the jury of seven men and five women considered John Fox's guilt or innocence in the 2006 Michael J. Sandy homicide they quickly decided that the crime, whether felony murder, manslaughter, or robbery, was a hate crime.

"The very first thing we wanted to do was consider the hate crime," said Jason Lenitsky, 29, the foreman on the Fox jury. "We wanted to get that out of the way first."

Anna-Sigga Nicolazzi, the Brooklyn prosecutor on the case, asserted that when Fox, 20, and three other men selected the 29-year-old Sandy, thinking a gay man would be easier to rob, that made this a hate crime. That was an easy decision for the jury.

"Honestly, it didn't take long at all," Lenitsky said. "She proved that they had targeted Michael Sandy because he was gay."

Fox, Anthony Fortunato, 21, and Gary Timmins, 17, used a gay Internet chatroom to lure Sandy, 29 at his death, into agreeing to a supposed sexual encounter on October 8 last year. They were joined by Ilya Shurov, 21, prior to meeting up with the victim. During an attempted robbery at Plumb Beach, Fox and Shurov chased Sandy onto the Belt Parkway where he was struck by a car and killed.

On October 5, the jury convicted Fox of manslaughter and attempted robbery as hate crimes, but acquitted him on a felony murder charge that alleged that during the course of a robbery, Fox caused Sandy's death.

The defense argued that the young men merely wanted to con Sandy out of money or marijuana and convinced Jill Konviser, the judge in the case, to include attempted petit larceny as a charge for the jury to consider.

"It was a ludicrous idea that it was petit larceny," Lenitsky said. "We knocked out petit larceny."

The verdict endorsed the view that Fox tried to rob Sandy, that he caused Sandy's death, and that he did so recklessly. It also contained all the elements necessary to convict Fox on felony murder, but the jury declined to do that.

One prosecution witness, Susan Vaillant, said she saw Fox and Shurov on the parkway attacking Sandy just before he was hit by a car. Lenitsky said the jury was not clear on which man pushed Sandy into the path of the car.

"There was not enough evidence to prove who actually knocked him into that lane," he said. "We weren't going to convict somebody on that high of a count based on that."

The fact that Fox and Shurov were also in traffic indicated their state of mind to the jurors.

"We were thinking of the fact that it wasn't only Michael Sandy's life that they put in jeopardy," Lenitsky said. "The recklessness was there."

Recklessness is an element jurors must find to convict on a manslaughter charge.

Jurors also thought the car's driver, who has never been found, had some responsibility for Sandy's death.

Though they were instructed not to, they considered the sentence that might come with felony murder.

"We did originally when we went in there," Lenitsky said. "We discussed what Fox would end up with."

The jurors wrestled with their own "moral dilemmas," as Lenitsky put it, in reaching what they thought was a fair verdict. That is typical of jurors.

"A lot of times jury verdicts end up being compromise verdicts," said Daniel Richman, a professor at Columbia University's law school. "There is a high degree of not just tolerance, but almost an embrace of compromise verdicts."

Speaking after the verdict was announced, Sandy's parents, Denise and Ezekiel, approved and said they had never sought a particular verdict or sentence.

"We're not looking for anything specific," Ezekiel said. "We'll leave it up to the law."

Tony Bruce, a friend of Michael's, said that friends generally approved of the verdict. It was "a moment of closure and a real clear sign that this is not going to be tolerated," Bruce said.

The maximum sentence for felony murder is 25-to-life. The sentence for manslaughter ranges from five up to 25 years with the requirement that the defendant serve six-sevenths of the sentence before becoming eligible for parole.

Konviser will sentence Fox on October 24.

Like Sandy's family and friends, gay advocates approved of the jury's inclusion of the hate crime charge.

"They clearly understood the hate crime element to this case which is very important," said Clarence Patton, executive director of the New York City Gay and Lesbian Anti-Violence Project.

"It's gratifying to see that they understood that hate was an essential element of this crime," said Matt Foreman, executive director of the National Gay and Lesbian Task Force. "I do believe that it's a vindication of the hate crimes statute and I think it's important."

Foreman headed the Empire State Pride Agenda, the statewide gay lobbying group, from 1997 to 2003 and was involved in passing the 2000 state hate crime law.

Fox, Shurov, and Fortunato faced the same charges though only Fox and Fortunato were tried together, but with separate juries. Shurov will be tried later. Timmins testified for the prosecution in exchange for a four-year sentence after pleading guilty to attempted robbery as a hate crime last year.

The Fortunato jury began deliberating the afternoon of October 5. After roughly three hours they sent a note to Konviser asking to be released for the weekend and wrote, "Tensions are getting high."

They deliberated for three or four hours on October 9 and on the morning of October 10 sent

Konviser another note saying, "A number of jurors are having serious personality conflicts with juror number one, making it difficult to continue our deliberation."

As Gay City News went to press on October 10, the jury had not reached a verdict.