

Longtime convict awaits another trial

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"Essentially, what I was claiming was that the jury instruction was harmless error. But the appeals court could not find that it was harmless error," said Horenstein, who took the case to the U.S. Court of Appeals in Cincinnati.

But Lawrence, Merlo's attorney, said the jury instruction was harmful.

"The federal courts have already performed a very thorough analysis. It was concluded that if (jury instruction) was harmful to him, she (Horenstein) is disputing what the federal courts have ruled."

LAWRENCE TARES issue with

those who maintain Merlo's new trial is the result of a legal technicality. "It went to the appeals courts to determine whether it is a technicality. This is the type of constitutional error that if it amounted to a technicality, a new trial would not have been granted," Lawrence said.

But Horenstein maintains it was

the evidence and witnesses' testimony that helped convict Merlo — not the jury instructions.

Prosecutors have been fighting Merlo's latest round of attempts for a new trial for more than a year.

An avid student of the law, Merlo has attempted several times — both through the Michigan Supreme Court and the federal courts — to win a new trial. On his second attempt, U.S. District Judge Steven Newblat granted Merlo's request — based on the jury instruction — on Dec. 27, 1985.

As the new trial was beginning in early 1986 before Oakland Circuit Judge Mester, Chopp requested an adjournment while the federal appeals court ruled on his appeal requesting the court to overturn Newblat's order for a retrial.

BUT THE U.S. Court of Appeals in Cincinnati later affirmed Newblat's ruling. Prosecutors continued to fight and Horenstein asked the U.S. Supreme Court to hear the case. Last week, the high court refused to hear the case — meaning Newblat's ruling for a new trial stands.

Whether Merlo killed his wife was never a major question in the

first trial and won't be in the new trial.

"The issue is not whether Mr. Merlo did the killing but the degree of the crime committed," Lawrence said.

Merlo shot his wife before six beauty shop customers, including a 5-year-old boy. The couple apparently argued and as Merlo's wife returned to her customer, he followed her, pulled out a .32-caliber revolver and shot her four times, investigators said.

Sharon Merlo was later pronounced dead on arrival at Botsford General Hospital. Following the shooting, Sharon Merlo's parents, who are now both dead, took custody of her 3-month-old son.

The judge at Merlo's first trial told jurors Merlo had to be convicted of first-degree murder — rather than a choice of second-degree or manslaughter — unless they felt he had proved he did not intend to kill his wife when he entered the beauty shop.

"THERE is a lot at stake here. He has already done 20 years. The difference between first-degree and second-degree is a big degree," Lawrence said.

rence said. "The intent is the issue, not whether he killed her."

First-degree murder carries a mandatory life sentence, without parole. Second-degree murder offers an opportunity for parole after 10 years in prison; manslaughter is a maximum 10-year prison sentence, Lawrence said.

If Merlo had been convicted of second-degree murder — based on his argument that when he entered the shop he did not intend to kill his wife, but later did so after becoming enraged — he could be out of prison today on parole, Lawrence said.

"The judge instructed the jury that he (Merlo) intended, contemplated and designed the killing — unless he could prove himself innocent," Lawrence said.

But the result of the judge's instructions swayed the burden of proving guilt from the prosecutor to Merlo to prove himself innocent, he added.

"It relieved the prosecutor of coming up with a very heavy burden, possibly 99 percent of the evidence. You go in with the prosecutor having the burden of proof. Then the burden was shifted to Mr. Merlo," Lawrence said.

Attorney says 'Precedent was already set'

By Joanna Mallawski staff writer

Defense attorney Frank Lawrence doesn't believe a new trial for Merlo — the Farmington Hills man convicted 20 years ago of shooting his wife to death — will set legal precedent.

"Whether Mr. Merlo is successful or not, the outcome of his trial will not set precedent," Lawrence said. "Any precedent was already set."

The decision to award Merlo a new trial is based on a 1979 ruling that said the type of instructions given to the jury in Merlo's 1967 murder trial were incorrect.

The judge at Merlo's trial told the jury the defendant had to be convicted of first-degree murder unless jury members felt he had proved he did not intend to kill his 16-year-old estranged wife when he entered the beauty shop where she worked.

Called a "sandstorm error," the type of instruction given by the judge was repeated in many criminal cases before the 1979 ruling was handed down, Lawrence said.

"A substantial number, if not a majority of the first-degree convictions before 1979, were constitutionally infirm," Lawrence said.

Margaret Horenstein, appellate attorney for the Oakland County Prosecutor's Office, said "the implication has not changed. Other prisoners would have to still go through the same appellate procedures."

GARY CHOPP, Oakland County assistant prosecutor who has been assigned to Merlo's case, believes

other convicted murderers could have the same opportunity as Merlo for retrial.

The federal court relied on a certain U.S. Supreme Court case when they said he gets a new trial. If there are similar cases where people are convicted of crimes before the Supreme Court case in the mid-1970s,

they could potentially have the same opportunity he (Merlo) is having now," Chopp said.

"The so-called error falls into a niche — those in the same situation are in the same possibility," Chopp continued. "But it doesn't mean everyone who has ever been convicted has the opportunity."

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campus pipeline

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DEAN'S LIST

The following Farmington-area students were named to the dean's list at Albion College: Sara Cline, James Funkhouser, Matthew Kramer, Dwayne Krait, Gregory McCoy, Leland Rebeck and Dennis Sobey.

Denise Galoreau, Carole Marie Nowacki and Diane Schumacher, all of Farmington Hills, were named to the dean's list at Ferris State College, Big Rapids.

NEW GRADS

The following students from the Farmington area graduated from Ferris State College, Big Rapids: Kathryn Spangenberg, Scott Spencer and Juliet Penn.

HE PERFORMS

James Nelson of Farmington Hills is a cast member in the Alma College Players' production of the classic comedy, "You Can't Take It With You." Nelson plays one of three clown agents from the Department of Justice.

Nelson, a 1985 graduate of Harrison High School, is a junior majoring in biology.

OU ENROLLMENT

Ansburn Hills-based Oakland University draws the largest numbers of students from nearby communities, as expected, but that draw is channeled more heavily in favor of communities east of the university and less to the west.

University officials say the enrollment patterns reflect a number of influences including the fact that OU is basically a commuter institution and that access to it by major highways is easier from the east than from the west.

Among the top 25 cities in Farmington Hills with 177 students.

HONOR ROLL

Bethany Mary Garrison of Farmington was named to the President's Honor Roll at Washington State University, Pullman.

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