

Broward's electronic court-reporting system criticized

By Tonya Alanez
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Muffled discussions, inaudible testimony and other glitches caused by the county's electronic court-reporting system are irritating attorneys who say their work is being hindered.

Attorney Carlos Canet wanted to appeal his client's misdemeanor driving-under-the-influence conviction, but a chunk of the transcript was missing.

"The part that is missing is the utmost, most important part of this trial," Canet said. "It was the state's strongest evidence."

With no record to challenge, Canet said he couldn't form the basis for an appeal. Instead, he is asking for a new trial, which costs more.

"This shouldn't happen," he said.

Many laud the court's electronic court-reporting system, introduced five years ago at about \$20,000 per courtroom, saying it's cost-effective and addresses a stenographer shortage.

Contracted stenographers working criminal cases can earn about \$200 a day for in-court appearances. The electronic system paid for itself after about four years, said Tom Furst, Broward's chief deputy court administrator.

It is unclear how often glitches arise or how many cases have been affected. The head of Broward's court-reporting program reports only two recent cases that could warrant new trials, but some attorneys contend there are more.

Sarah Sandler, a Broward assistant public defender in the appeals division, says she has seen numerous defendants get new trials because of bungled transcripts. She cited at least six instances in the last year, ranging from misdemeanor cases to felony robbery and burglary.

Those retrials cost money, though no one is sure of the price tag.

The system has gradually replaced in-court stenographers in Broward's county courtrooms, general magistrates' chambers and some felony courtrooms. It digitally records audio, which a court reporter can later transcribe from a CD or DVD.

Debbie Garr, who runs Broward's court-reporting program, loves the state-of-the-art system. She says problems are rare and it has eased her daily scramble to find enough stenographers to fill the courtrooms.

She knows of no cases being retried because of bungled electronic transcripts, she said, but conceded it could have happened.

"It's hard for me to imagine that nobody brought it to our attention," Garr said.

Attorney Stephen J. Hammer thinks his client, sentenced to 60 years on sex charges, is on the road to a new trial.

Large portions of the trial transcript were marked "inaudible," including critical sidebar discussions, where attorneys make arguments to the judge out of earshot of the jury.

"The sidebar conferences are the legal challenges and legal discussions," Hammer said. "That's the most important thing, because those are the legal grounds you're challenging on appeal."

In Canet's case, a corrupted DVD was the culprit. For Hammer, a judge leaned on the sidebar microphone, muffling the sound, and several people spoke at once, making what they said undecipherable.

Running a backup recording system, Garr said, could have prevented the corrupted DVD. And making sense of several people talking over one another could be remedied by isolating what's recorded by each of the four microphones in the courtroom. Hammer said he tried that. It didn't work.

To get a new trial, an attorney must convince an appeals court or judge that critical parts of a proceeding cannot be reconstructed.

Reconstruction entails bringing all the parties together to remember what transpired during critical arguments and testimony.

"It's absurd to think that that could happen," Hammer said.

The cost of a new trial falls to taxpayers, though the amount depends on the case. Costs for one trial could reach into the thousands, if not tens of thousands, with salaries for judges, prosecutors, defense attorneys and expenses for witnesses and pricey experts.

Almost every circuit in the state has switched to electronic court reporting, Furst said.

Attorney Richard Rosenbaum said he encountered more troubles in the days before the electronic system when he would hear stenographers use excuses from "the dog ate my homework" to "the hurricane flooded my notes."

Rosenbaum said he likes the immediacy of getting a same-day DVD recording.

But those dealing with botched transcripts and stalled appeals remain frustrated, saying it has been "a huge mistake to do away with live court reporting."

"I think the defendants' rights are being compromised every day because of it," Hammer said.

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<http://www.dispatch.co.za/2007/04/19/Easterncape/abest.html>
April 19, 2007

David Best trial testimony lost as recorder goes on blink

By CHANDRÉ PRINCE

High Court Reporter

FAULTY recording equipment in the East London High Court yesterday stopped the trial in which 27-year-old David Best is accused of masterminding the murder of his unborn child.

Instead of the much-anticipated testimony of Quigney Baptist pastor David Gernetsky, to whom Best allegedly confessed, the second day of the trial was characterised by court officials running around trying to "sort out" the recording problem.

Best stands accused of orchestrating an attack on his heavily pregnant former girlfriend, Melissa Shelver. With him in dock is Ludwe Mashumpa, 21, the alleged hired gunman.

While the delay afforded the two accused more time to interact with family and friends, Deputy Director of Public Prosecutions in the Eastern Cape, advocate Malherbe Marais, and stenographer Marie van Oordt organised technicians.

Shortly before 10am, Marais requested the family and friends of Best, Mashumpa and Shelver and curious members of the public in the public gallery to leave the court room while the recording devices were tested.

After a few hours of waiting, court was adjourned until 2pm. More failed attempts eventually resulted in the case being postponed until 10am today. "I apologise for the delay. The technician was not able to fix the machine," said Marais, adding that he was "hoping that all would be in order for today's proceedings".

Presiding Judge Johan Froneman apologised for what he termed the "unacceptable" delay. "It was not the fault of any court officials," he said.

Van Oordt said microphones from the newly installed recording device were not functioning properly. Apparently all of Tuesday's gripping testimony was lost.

It included evidence by Shelver telling of her ordeal at the hands of the man who shot her in the stomach, the alleged and uncontested written confession by Mashumpa to the planned murder plot, testimony from Best's other girlfriend, Tanya Jakobi, and her mother, Hettie Jakobi, who he allegedly also planned to have killed.

This article shows a similar situation; although, not exactly ER in the courts.

TheDay.com
Connecticut

NL Police Lose Week Of 911 Call Tapes
Recordings, often used as evidence in criminal cases, are wiped out

by Karen Florin, 8/14/07

New London — New London police said Monday they have lost about a week's worth of recorded 911 calls, including those made after a June 21 murder outside of Ernie's Café, due to a mechanical failure of the department's voice recording archive system.

Calls made approximately between June 14 and 21 are missing, leaving attorneys in some upcoming court cases without key evidence.

Defense attorney W. Theodore Koch said he learned of the missing recordings when he filed a motion in New London Superior Court seeking to preserve a recording of the 911 call made concerning his client, John Orr, on June 14.

City police charged Orr with breach of peace after staff at the Community Mental Health Center at Shaw's Cove called 911 to report that Orr, 58, of New London, was being "threatening and abusive toward staff," according to his court file.

Judge James W. Abrams granted Koch's motion and ordered the police department to produce the recording, but police Capt. Michael Lacey said in a phone interview the department would not be able to comply.

The department's 911 calls are digitally recorded for 30 days on a hard-drive system, then they are removed from the hard drive and stored on a digital archive. The 30-day recording system worked but the archive did not, Lacey said, adding that he could not provide information on how many 911 calls might be missing or how many calls the city typically receives in a week.

"If he had requested it within 30 days, it would have been there," he said of Koch's motion.

Lacey said he does not know the specifics of the malfunction or how many calls were involved.

"There was no human intervention whatsoever," Lacey said. "It mechanically failed. Occasionally any system is going to have a failure."

During the same time period, 23-year-old city resident Vernell Marshall was gunned down outside of Ernie's Café on Bank Street. The department has recordings of radio dispatches from the June 21 crime scene but does not have recordings of the 911 calls, Lacey said. The detective division is still investigating the shooting, and nobody has been charged.

Recordings of the 911 phone calls made in the wake of violent crimes often play a key role in court proceedings, including murder trials.

"The fact that they lost them is very serious," said Attorney Mark S. Solak, who has practiced as both a prosecutor and a criminal defense lawyer.

“It's serious evidence,” he said. “It's a statement of a witness, and the defense is entitled to all statements of witnesses.”

Solak, who was the state's attorney for Windham County in the 1990s, said it is standard procedure for investigators to obtain copies of 911 records when homicides occur.

Lacey said he could not comment on why there were no copies of the 911 recordings preserved following the Marshall murder. He deferred questions to the department's detective captain, who was not available Monday. A representative of the New London State's Attorney's office declined to comment, saying the investigation is ongoing.

At trial, prosecutors often set the scene for jurors by playing the recorded 911 calls on the first day of testimony. The New London jury that convicted Brady Guilbert on two counts of murder earlier this year listened to several minutes of 911 calls and to recordings of police radio dispatches.

A year ago, the dramatic 911 calls made by the hysterical ex-wife of Kurtulus Kalican when Kalican came after the woman and her boyfriend with a gun helped convict Kalican of murdering his ex-wife's boyfriend, David Romero.■

Homeless man found guilty of felony battery

http://www.bonitanews.com/news/2007/aug/31/homeless_man_found_guilty_felony_battery/

By Aisling Swift

Friday, August 31, 2007

A homeless Immokalee man accused of helping three others kick and stomp on another homeless man -- beating him with a stick, shovel and a machete before ordering him into a shallow grave -- was found guilty of felony battery Friday after the defendant denied any involvement.

A three-man, three-woman jury deliberating the fate of 56-year-old Jose Santos Chavez were stuck 5-1 and had asked Circuit Judge Elizabeth Krier whether they could hear portions of Santos' two-hour testimony, when the court recording system went down for the night and jurors were asked to leave the court until the system was turned back on.

The following shows difficulties when the court reporter is not present at the trial/proceeding.

August 22, 2007

Trial of home invasion suspect interrupted, then adjourned a day

By Lisa Roose-Church

DAILY PRESS & ARGUS

Livingston MI

The second day of trial for a Putnam Township man accused of home invasion was interrupted Tuesday after his attorney questioned whether the prosecutor's office gave him his client's complete statement to police.

After a brief recess in proceedings, Livingston County Circuit Judge David Reader adjourned the trial of David Michael Hughes to today so a complete transcript of the defendant's statement to police can be made.

Hughes, 20, is charged with second-degree home invasion for breaking into a Williamsville Road home during Labor Day weekend and stealing a 1-year-old girl's piggy bank, her siblings' cash, knives and cameras. He also is charged with safe-breaking.

During a break, defense attorney Mark Gatesman and Assistant Prosecutor Shawn Ryan reviewed a videotape, which was made from a microcassette taped conversation between Officer Ryan Hamlin and the defendant in December.

The microcassette tape had two sides taped, but Gatesman thought only one side was shared with him on the re-recorded videotape he was given by the prosecutor's office.

However, the attorneys discovered that there was a 10-minute break — commonly referred to as "snow" — before the second side of the microcassette tape begins on the videotape.

It's possible the court transcriber did not know there was a second part after the snow and transcribed only part of Hughes' statement.

Gatesman was using the transcript to question Hamlin about Hughes' statement, which the prosecution asked the jury to pay attention to because Hughes allegedly changes his story as police confront him with evidence, including his palm print left on a window at the home.

The defense maintains that Hughes was at the home that day, but he did not break into it.

Prosecutors say a co-defendant, who has already entered a plea in the case, will testify that he, Hughes and a third male broke into the home to personal items.

If convicted, Hughes faces life in prison.