



When you speak to the press on my behalf - speak of embarrassing me and my innocents...

Conviction overturned for man jailed in 2003

By NICOLE ORNE, Reformer Staff

BRATTLEBORO -- The man found guilty in 2003 of chasing a Brattleboro man's car down Marlboro Road, firing shots from a sawed-off shotgun, had his case overturned this week.

Friday, January 11

Vito Russo, 41, of Brattleboro, had been sentenced to 15 to 21 years in prison for charges of aggravated assault, DUI, unlawful trespass and driving with a suspended license.

Following a petition for post-conviction relief, Vermont Superior Court ruled Monday that his attorney, Eileen Hongisto, had neglected to represent Russo properly by failing to bring in expert testimony to testify on aspects of the case.

"There is a likelihood of a different result had counsel performed at the required standard," Judge David Howard wrote in his decision. "The court also finds that counsel's efforts made the results of the trial so suspect or unreliable as to require a new trial."

Russo and his new attorney, public defender Chris Montgomery, have repeatedly filed claims to overturn the conviction. Montgomery said a post-conviction relief, which would challenge his conviction, is "about the hardest way of getting relief," with a "very tiny minority of them ever approved."

The court needed to find that the attorney in the initial case had been negligent and that the jury would have ruled differently otherwise, Montgomery said.

Russo has been housed in a facility out-of-state, but will be brought back to be re-arraigned.

"It's back to square one," Montgomery said, adding that the state may request that Russo be held without bail.

The charges stem from an incident on Nov. 17, 2002, in which Russo allegedly confronted John McKay, with whom he had a financial dispute.

McKay had sold Russo the Unique Vermont Motel and Gift Shop in Brattleboro, but had foreclosed the property earlier that year, citing delinquent payments.

McKay testified that he saw Russo coming and drove his plow truck to the Brattleboro Police Department, with Russo allegedly following and shooting out of his window at him.

When police arrested him later that day, Howard's decision stated, they allegedly found a rifle and bullet casings in the vehicle and Russo was allegedly "substantially intoxicated," according to a police officer's testimony.

The state needed to prove that Russo had a gun, fired the gun and fired it at McKay with the intent to cause harm.

Russo, the decision states, denied that he fired a weapon at McKay. Hongisto believed it was better to go with a diminished capacity defense, which Montgomery explained was similar to temporary insanity, and would have conceded that Russo had shot at McKay with the intent to hurt him but,



No I was shot!

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because he was drunk and upset, should not be held responsible.

"She made a tactical decision and that was against the wishes of the client, and by choosing to go to diminished capacity, she failed to put the case to the test," Montgomery said.

One attorney testified in the relief hearing that Hongisto "ended up jumping between denial of shots being fired and an intent defense that focused on intoxication and emotional distress."

The main issue was the decision not to bring in a gun expert, Montgomery found.

"The only evidence he was actually shooting at Mr. McKay was Mr. McKay's testimony," he said. "The attorney failed to put that evidence to the test."

If she had, Montgomery said, she may have been able to demonstrate that the gun would likely not produce a muzzle flare when shot, which McKay reportedly testified to seeing.

It would not be used!

"He could have believed it honestly," Montgomery said, "but, in fact, that might not have been the case. Our claim was that maybe he was mistaken."

Nicole Orne can be reached at norne@reformer.com or 802-254-2311, ext. 277.

Danah - you keep on your toes with this press girl - she's on our side! I got her to report all this - Thank you!

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