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Dueling theories arise in murder trial

By COLBY FRAZIER — June 12, 2009

Convicted murderer Graham Pressley took the witness stand in the capital murder trial of Jesse James Hollywood last week and delivered a stream of testimony that closely traced the statements he made from the witness stand during his own murder trial in 2002.

Many things, however, were different. Like the judge, for instance, who was elected days after Pressley's trial began. But for some, especially Hollywood's defense team, the most glaring difference between now and 2002 was the way prosecutors dealt with the witness.

According to media accounts of Pressley's 2002 trial, the prosecutor at that time, Deputy District Attorney Ron Zonen, fiercely attacked Pressley's credibility and argued that the man was lying about his involvement in the execution-style murder of 15-year-old Nicholas Markowitz.

But over a four-day period last week, Santa Barbara County Chief Trial Deputy Josh Lynn, the prosecutor assigned to the Hollywood case, called Pressley to the stand and rarely, if ever, challenged his witness's perspective.

Once considered a liar by the Santa Barbara County District Attorney's Office, prosecutors, at least so far, appear to be using Pressley's testimony as a key piece of the puzzle in the long-fought effort to prosecute Hollywood, the man they say orchestrated Nicholas's murder.

Far from accusing Pressley of being a liar, prosecutors, after accusations from Hollywood's attorneys that the witness was lying, repeatedly pointed out that they had implored him to tell the truth. When asked by Lynn if he was telling the truth, Pressley answered, "absolutely."

On more than one occasion during Pressley's recent testimony, Hollywood's defense attorneys, James Blatt and Alex Kessel, objected to the prosecution's seemingly new approach, saying the characterization of Pressley as a liar in one trial, and making him out as a truth teller in another, flirts "dangerously close" to a complicated legal theory known as judicial estoppel, or inconsistent theories.

While this theory could well be cited in an appeal as grounds for a mistrial, local defense attorney Joe Allen said he doubts it would get anywhere. Still, in this case, he said it raises an interesting ethical question about what prosecutors say to get a conviction in one case, and later in another.

"The government can't take one position in one case and then take the opposite position in another case where the government is basically arguing against itself and arguing that something is both true and not true," Allen said, "because the government is supposed to act with integrity and take positions they believe in and maintain them."

During Pressley's trial in October of 2002 (he was tried in July of that year but the jury couldn't settle on a verdict), the witness, then 19, said he led the shooter, Ryan Hoyt, to a hiking area off West Camino Cielo Road known as Lizard's Mouth.

Saying he feared for his life, Pressley admitted to digging the boy's makeshift grave. He said he knew Hoyt had a TEC-9 semi-automatic pistol, and when Hoyt told him to "dig if you know what's good for you," Pressley went to work. Hours later, Hoyt fired nine bullets into Nicholas's body with the TEC-9.

In his trial and Hollywood's, Pressley recalled how at the time, he believed he was digging his own grave. He also said during his trial that when he returned to the hiking area in the early morning hours of Aug. 9, 2000, he refused to accompany his friend Jesse Rugge, Hoyt and Nicholas to the grave site.

In a Santa Barbara News-Press story about the trial, Pressley is quoted as saying he was "paralyzed with fear."

But Zonen vehemently argued otherwise. In his closing statements, the prosecutor, who up to that point had successfully prosecuted Hoyt and Rugge, told the jury, despite Pressley's testimony, that the "most significant act was leading Nick Markowitz to his grave."

According to the News-Press story, Zonen argued that Hoyt couldn't have possibly found his way back to the grave site in the middle of the night without Pressley's help.

"He wasn't acting like someone who was scared," Zonen is quoted as saying. "He behaved like a full-fledged member of this enterprise. He was not experiencing fear, except perhaps the fear of getting caught."

Zonen is also quoted as saying: "The reasonable explanation is that [Pressley] was escorting them up there to accomplish this crime. The unreasonable explanation is that he was an unwilling participant."

Although Pressley was tried as an adult, then Superior Court Judge William Gordon, saying he felt the defendant's involvement was less than others, sentenced the boy as a juvenile to five years in a youth detention facility. Zonen requested a sentence of 18 years to life.

The prosecution's recent handling of Pressley is so different from during his own trial, one person familiar with both cases joked that Hollywood's defense, when it came to questioning Pressley, plagiarized Zonen.

Indeed, Kessel, who peppered Pressley with questions and was warned on one occasion by Superior Court Judge Brian Hill to stop "badgering" the witness, appeared intent to pick Pressley apart. In some cases, Kessel did just as Zonen did, attempting to discredit Pressley by highlighting inconsistencies with his current testimony and things he said during early police interviews.

At one point Kessel said: "You probably watched him pull that trigger, didn't you?"

Pressley, as he's always maintained, said he wasn't present when Nicholas was killed.

For the most part, the only thing that appears to have stayed the same over the years, in reference to Pressley, is his testimony.

Due to a gag order, neither the prosecution nor the defense can speak about the case.

While it remains to be seen if the defense's inconsistent theories claim will be a factor in the future, Allen said the prosecution might well have a good reason for changing its tone with Pressley.

The most obvious, he said, is that something in the last six years since his conviction has led prosecutors to believe Pressley was and is telling the truth. This alone would be enough to justify making a U-turn, Allen said.

"Now, they may have good reason to believe that most, if not all of what Pressley is saying is true," he said, adding that if this is the case, the defense's claims of inconsistent theories won't gain traction. "It's going to make an interesting legal argument for a few minutes, but I don't know if it will go much farther than that."

Hollywood's trial resumes in Hill's Dept. 14 courtroom today at 9 a.m. If convicted, Hollywood could face the death penalty.