

Mistrial declared in 38-year-old case

by Neal Putnam



A mistrial was declared Dec. 22 in the murder trial of a 62-year-old Texas man who has admitted killing a man in 1971 whom he met downtown. Jurors deadlocked 8-4 over whether he was guilty of murder or manslaughter.

Eight jurors agreed with the prosecution that Gerald Metcalf was guilty of first-degree murder, while four held with the defense position that Metcalf was guilty of voluntary manslaughter due to his mental condition at the time. They deliberated 12 hours over three days, but on Dec. 22 they told San Diego Superior Court Judge Ronald Frazier they were hopelessly deadlocked.

Metcalf's lawyer, David Lamb, conceded that Metcalf killed Gerald Jackson, 27, on Dec. 29, 1971, after Jackson picked up Metcalf, who was then 24 years old, at a gay bar in downtown San Diego.

Jackson was stabbed 61 times and his nude body was found days later in his Pacific Beach apartment by two friends after he had not shown up for work.

Deputy District Attorney Jill Schall successfully sought to put Metcalf on trial a second time. A new trial has been granted and is scheduled to begin May 21.

Metcalf, who has been diagnosed with paranoid schizophrenia, usually appeared in court as if he was on heavy medication.

After Metcalf heard of the mistrial while attorneys were talking privately with the judge, he turned around and smiled to his wife of almost 30 years.

While deliberating, jurors turned in 10 notes to the judge seeking information or testimony re-reading, but some of the notes were written about other jurors whom a few said were not deliberating and would not budge from their positions.

One note focused on a female psychiatrist who was a member of the jury and who agreed with the defense position that Metcalf's mental state was such that he could not have formed the intent to commit murder.

Most jurors met with attorneys in the hallway after the mistrial was declared, and shared their frustrations. Some said two male jurors looked to the psychiatrist juror almost in guidance.

The defense hired Dr. Mark Kalish, a psychiatrist, who testified that Metcalf must have killed Jackson in a schizophrenic episode and was too mentally impaired to form the intent to commit murder. The psychiatrist on the jury agreed with the defense psychiatrist.

Another problem with this 38-year-old case was that jury instructions from 1971 had to be read to this jury because that was the law then. This allowed Lamb to argue for "diminished capacity," which is a defense that was changed by the state legislature after the 1978 assassinations of Supervisor Harvey Milk and Mayor George Moscone in San Francisco.

Metcalf stole the victim's Ford Torino and the stereo system that Jackson's father gave him for Christmas. Metcalf pawned the stereo for \$30 and used Jackson's identification which was written on the pawn slip. Metcalf left cigarette butts in the apartment including one that was stained with the victim's blood.

Police saved the cigarette butts, and DNA evidence in 2008 matched Metcalf as the smoker. Metcalf's fingerprints, including some in blood, were found and preserved all these years. A police intern matched Metcalf's fingerprints via a shared print database with Texas as Metcalf had been arrested and his prints and DNA were on file.

Metcalf is housed at the Vista Detention Facility on \$1 million bail.