

Third trial ordered for R.I. man accused of murdering ex-girlfriend

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PROVIDENCE — A Superior Court judge on Tuesday ordered a new trial for a man accused of murder after it was discovered that at least one juror had access to information from the Internet about the case prior to deliberations. Judge Robert D. Krause granted a new trial to Juan L. Diaz, making it the third time Diaz will be tried for allegedly killing his ex-girlfriend, 26-year-old Mayra Cruz, in June 2008.

A jury first convicted Diaz of Cruz's shooting death in 2010. Krause sentenced him to serve two life terms in prison for second-degree murder and discharging a firearm while committing a crime that resulted in death.

The state Supreme Court vacated that conviction and sent the case back for a new trial. The high court found that Krause's instructions could have misled jurors "to the prejudice of the defendant."

A second trial took place last summer, with Diaz taking the stand. He has contended that he accidentally shot Cruz in the face during a struggle for a gun.

That jury, again, found Diaz guilty of second-degree murder and discharging a firearm while committing a crime of violence that resulted in death. The verdict called for an automatic consecutive life sentence for the firearm charge. Diaz's lawyer, Mark L. Smith, said he received a phone call in late November from a distraught juror as he prepared for Diaz sentencing. She told him she couldn't sleep at night because one of the jurors mentioned three to five times during the trial that Diaz had previously been convicted — a fact the jurors were not supposed to know.

Smith immediately challenged the verdict.

Smith, Krause and Assistant Attorneys General Maureen Keough and Daniel Carr Guglielmo brought the jurors in and questioned each under oath over the past few days, Smith said.

Two jurors, including the foreperson, denied hearing anyone discuss the case at all, he said. Several others confirmed that a juror had information about the 2010 conviction, but that they told him not to talk about it. The juror told them just after they reached a verdict that he had a friend look the case up on the Internet.

"There was a crack in the foundation. It gets bigger, then the building starts to crumble," Smith said. Such information was clearly prejudicial to Diaz, he said.

Judges routinely instruct jurors not to research cases on the Internet or speak among themselves or to others about the case throughout the trial.

"From my view, it stands for the proposition that they're not going to listen," Smith said of jurors. "You have to browbeat them."

The state did not oppose Diaz's motion to invalidate the conviction.

"We understand the judge's decision," said Amy Kempe, spokeswoman for the attorney general's office.

"It is always the priority of the office that every defendant gets a fair trial and that a jury verdict is based solely on the evidence presented at trial, not on extemporaneous information that was obtained outside official court proceedings," she said.

The state is fully prepared to prosecute Diaz again, Kempe said. "Our continued thoughts go out to Mayra's family, who deserve a final resolution of this matter in order to move forward in the healing process."

According to Pawtucket police records, Diaz phoned the police the night of June 25, 2008, and said he had shot Cruz accidentally during a struggle over a gun.

But Diaz fled before officers arrived at the apartment, setting off a manhunt that led to Albany, N.Y., where he has family. He was arrested in Albany after detectives traced a cellphone call he made to a girlfriend.

According to the police, Cruz had been attacked by Diaz twice before. On Jan. 18, 2008, he allegedly broke into her apartment in Galego Court, struck her several times and choked her.

A month later, despite a no-contact order, he allegedly returned, and was later charged in a warrant with domestic assault.

Cruz was survived by a then 6-year-old daughter.

Diaz, 30, remains held at the Adult Correctional Institutions.