

State Justices Overturn Man's Conviction In 1996 Murder

Disputed confession was wrongly used against him, court says

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Madison - A sharply divided Supreme Court on Thursday overturned the murder conviction of a Milwaukee man who claimed police forced him to confess to the shotgun killing of his foster father.

Lucian Agnello was convicted of first-degree intentional homicide in the death of Theodore Agnello on Feb. 18, 1996. The victim was found dead in the doorway of his home in the 8100 block of W. Eggert Place. He had been shot twice, at close range, in the head and upper chest.

At the age of 20, Lucian Agnello was sentenced to life in prison with no chance of parole until he turns 75.

But in a 4-3 decision, the Supreme Court ruled that Milwaukee County Circuit Judge Diane Sykes was wrong when she let the state enter Agnello's confession as evidence over his objection that it was coerced.

Prosecutors must now decide whether to hold another hearing on the confession or seek a retrial.

Agnello maintained he did not freely confess to the murder and did so only after a lengthy interrogation in which he was handcuffed to a wall and was denied an attorney.

When Sykes held a hearing on whether Agnello's confession was voluntary, the prosecutor asked Agnello a series of questions about the truthfulness of his signed statement to police.

By a slim majority, the Supreme Court declared the prosecutor's line of questioning improper. Whether Agnello's statements to police were true or false was not the issue, justices said. Rather, the purpose of the hearing was to determine whether his confession was made voluntarily.

Writing for the majority, Justice Ann Walsh Bradley said the truthfulness of a confession can play no role in determining whether that confession was voluntarily given.

Sykes permitted the questioning over a vague objection from Agnello's defense attorney, Stephen Chandler. She also heard testimony from the detectives who questioned Agnello. In weighing their statements against Agnello's, she termed his memory as being selective, found their testimony more credible and rejected his claim of coercion.

An appeals court upheld her decision, but the high court overturned that ruling Thursday.

Although the majority did not rule specifically on the detectives' interrogation of Agnello on Feb. 19, 1996, Bradley noted that he had been taken to police headquarters after midnight and was questioned on and off by detectives working in teams until he confessed at 3:20 p.m.

When Agnello was not being questioned, he was handcuffed to a wall, which hindered his ability to sleep, Bradley wrote. Police let him use the bathroom once or twice and fed him a hamburger.

Agnello had claimed that despite repeated requests, he was denied an attorney, although he did not argue that point in his appeal to the Supreme Court.

Coerced confessions, wrote Bradley, "offend the underpinnings of the criminal law. . . . The state ought not be allowed to use illegal means to combat illegal ends."

Others in the majority were Chief Justice Shirley S. Abrahamson, and Justices William A. Bablitch and David Prosser.

A spokeswoman for the Milwaukee Police Department would not comment Thursday on the ruling or Agnello's allegations.

Spokeswoman Karen Pride Garvin said Police Chief Arthur Jones had not read the decision and was in no position to comment.

"There really isn't anything we can do about it anyway," she said. "That's his allegation, and the court has ruled that he has a right to a new trial, if the information I've been given is correct."

Dissenting in the Supreme Court's opinion were Justices N. Patrick Crooks, Donald W. Steinmetz and Jon P. Wilcox.

"The Circuit Court correctly determined that under the totality of the circumstances, Agnello's confession was voluntary," Crooks wrote.

"None of the police detectives testified to circumstances which even remotely could be characterized as coercive. Based on my review of the transcript, I conclude that these findings of the Circuit Court are supported by the great weight and clear preponderance of the evidence."

Agnello entered a guilty plea after Sykes rejected his claim that police made him confess to the shooting. He later testified at the trial of a co-defendant that he, not his friend, was the trigger man.

Mark Williams, the assistant district attorney who prosecuted the case, said Thursday he is confident Agnello would be convicted based on what Agnello said during the trial of Douglas H. Stream Jr., who also was convicted of murder and sentenced to life.

"He testified in a co-defendant's case and admitted that he did the killing," Williams said. "So he's going to get retried, and we believe we can use that evidence."

Agnello remained behind bars at the state's maximum security prison in Portage, according to Jerome Buting, his attorney on appeal.

Buting said there may be grounds to exclude Agnello's testimony at the Stream trial from a new trial against him.

While he did not represent Agnello before Sykes, Buting said there was evidence that the

confession was coerced, and he noted that the Supreme Court called attention to the interrogation, even though the court did not rule specifically on the detectives' methods.

"They make a point of highlighting all of the facts that we indicated pointed toward coercion," Buting said. "The Milwaukee police practice of chaining someone to the wall for long periods of time. We're talking hours. It conjures up almost medieval images of coercion."