

KILLER COULD GET A LUCKY BREAK - THEFT COULD OVERTURN HIS CONVICTION

Detroit Free Press (MI) - Thursday, March 22, 2007

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The middle name may be somewhat fitting for a convicted **killer** from Detroit.

He's **lucky** .

Or he might be, anyway.

Elroy **Lucky** Jones may have caught a **break** Monday when someone smashed a rear window of a court reporter's SUV in a Detroit drugstore parking lot on East Jefferson and snatched her briefcase, police said. Inside the briefcase were two to four trial tape transcripts.

Among them are tapes from Jones' 2006 trial, in which he was convicted in the shooting death of Cleo McDougal, 26, of Detroit.

Police did not provide details of the murder case Wednesday, but Jones' appellate lawyer, Craig Tank, said the case stemmed from a drug-related shooting over money.

"It's been my position that my client wasn't even there," Tank said.

Tank, who was not the trial attorney, said that under state law, his 27-year-old client will be granted an automatic reversal of his conviction if the tapes are not recovered.

Circuit Judge Cynthia Hathaway sentenced Jones to life on Jan. 22.

Wayne County Chief Circuit Judge Mary Beth Kelly said she is not certain that Tank is right, but she is concerned about the situation.

"I can't speak to what the outcome would be," Kelly said Wednesday.

The chief judge said the court reporter, Glenda Merritt, is a veteran reporter and that the incident is under investigation.

"We certainly don't want our court reporters to take home more than one transcript at a time," Kelly said. "The court is investigating any possible violations of court policy."

Kelly said she is worried that the reporter was targeted by someone connected to one of the files.

"I have no factual basis for that, but I'm concerned because of the coincidence," she said.

Merritt did not return calls seeking comment Wednesday. Kelly said the reporter has been instructed not to talk to the news media.

Debbie McGinnis, chief reporter for Wayne County Circuit Court, declined to comment.

Tank said that without a complete transcript, state law mandates a trial reversal. If Tank prevails, his client would get a new trial.

Tank said he plans to file a motion for reversal by Friday. In that motion, it will be up to a judge to decide whether the facts of the four-day trial can be resolved without a transcript.

"It's coming back - automatic instantaneous reversal," Tank said. "An appellate record can't be based on someone's memory. What a mess."

Kelly disagreed.

"As a legal proposition, it's not clear that automatic reversal will be the outcome," she said.

Tank said he has been trying to get the transcripts for an appeal of the murder conviction since November, when he paid \$600 for a copy.

Jones' trial lawyer, Joel Dorf, did not return a call seeking comment Wednesday.

Also upsetting to Tank is that he learned of the theft of the tapes through the news media.

"We're talking about a murder trial here," Tank said. "It is personally disconcerting to me that I would find out about the loss of this transcript - about something I've been asking about since November - from the Detroit Free Press."

"An appellate record can't be based on someone's memory. What a mess." Craig Tank, attorney for convicted **killer** Elroy **Lucky** Jones, who **could** get a new trial

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ILLUSTRATION: Photo

CAPTION: Elroy Jones of Detroit - whose middle name is **Lucky** - was sentenced to life in prison on Jan. 22 after being convicted of a shooting possibly tied to drugs.

MEMO: DETROIT

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Edition: METRO FINAL

Section: NWS; NEWS

Page: 1B

Index Terms: robbery; transcript; court

Record Number: dfp0000406613

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