



04/13/2008

Petit case may be in court for years

By Adam Wittenberg , Record-Journal staff

Almost nine months after a triple homicide in Cheshire that riveted the state, the two defendants aren't anywhere close to going to trial.

Details of the pretrial are scant, thanks to a gag order on those involved by New Haven Superior Court Judge Richard Damiani, but experts said it could be years before the trial itself starts.

Joshua Komisarjevsky, 27, and Stephen Hayes, 44, are both charged with capital felony murder in the deaths of Jennifer Hawke-Petit and her two daughters, Hayley, 17, and Michaela, 11.

The crime is punishable by either life in prison without the possibility of parole or death by lethal injection.

Since life is on the line, both the prosecution and the defense are likely cutting no corners as they prepare. A seemingly small error could jeopardize the case and give grounds for an appeal.

"In general, with death penalty cases nothing is waived," said state Rep. Michael Lawlor, D-East Haven, a former state prosecutor. "Every single step of the process is as elaborate as possible. Nothing is skipped. There are no shortcuts ... That's what drags this out."

And the workload is doubled since the men will likely be tried separately, said Lawlor, a criminal justice professor at the University of New Haven.

"I'm sure both (sides) have countless investigators and lawyers investigating this," he said. "It takes years to get to trial. Once they start, the trials themselves can take a year or so."

State Sen. Edward Meyer, D-Guilford, a former federal prosecutor in New York, said he expects the defense attorneys to request separate trials. This would allow them to try to shift the blame onto the other defendant.

The trial costs are expected to run into the millions of dollars, which is common among death penalty cases - and taxpayers are paying both sides: the prosecutors and the public defenders assigned to the men.

The excruciating attention to detail is necessary to avoid appeals. Issues that might be overlooked at a conventional trial are raised because the defense has nothing to lose, Lawlor said, so "they litigate every single little thing."

This could include whether the police adequately informed the men of their Miranda rights prior to taking statements.

Even though the police apprehended the two men fleeing the Petits' house in a family vehicle, the case is still largely circumstantial, Meyer said.

Dr. William A. Petit Jr. escaped after being beaten up and bound in the basement, but he is not presumed to have witnessed the deaths of his wife and children. Hayes and Komisarjevsky are likely the primary witnesses to what took place inside, which places extra weight on their statements to investigators.

If police didn't tell the men they could refuse to answer questions without an attorney present, the defense could move to have their statements excluded.

"From what I've read, both made incriminating statements," said Meyer. "There will have to be very clear evidence the Miranda warnings were given."

The multiple officers present at the interviews could be called to testify, Meyer said.

If there's any discrepancy in their statements about Miranda, the defense would seize on that, but if the officers use exactly the

same words, "the defense lawyers will say they've gotten together and plotted, they've rehearsed this."

The state requires two trials in order to sentence someone to death, another factor that lengthens the process. The first trial determines guilt and the second is for the sentence.

If the defendants are convicted, which many expect, another court battle would ensue.

"With death hanging over their heads, the state still has to build a case as to why they have to be put to death, and the defense a case as to why they should be spared," said Robert Nave, executive director of the Connecticut Network to Abolish the Death Penalty. "From their neonatal development to the time of the crime, it's all on the table."

Factors including Komisarjevsky's adoption and alleged sexual abuse as a child would be weighed against the heinous nature of the crime.

Nave said the state could shorten the proceedings dramatically by arranging a plea bargain of life in prison without the possibility of release in exchange for guilty pleas. Otherwise, the trials and ensuing appeals would likely go on for 20 or more years.

Nave's group doesn't get involved in the legal proceedings, but he has observed them.

There has been one execution in Connecticut since the death penalty was reinstated in 1973, "and he was a volunteer," Nave said.

Convicted serial killer Michael Ross died in 2005, giving up his fight after more than 20 years behind bars. The media attention surrounding his court battles and eventual execution actually traumatized his victims' families, Nave said.

When a victim's mother was asked if she was glad Ross was finally dead, the woman, through sobs, said she was glad it was over because she wouldn't have to see him in court anymore, Nave said.

Connecticut could streamline the appeals process, as states with high execution rates like Florida and Texas have done, but that could lead to more instances of exoneration, said Nave. Those states are also facing charges of executing innocent people.

"We try to get it right, as we should - it's a matter of life and death," Nave said.

Lawlor, co-chairman of the legislature's Judiciary Committee, also praised the state's prosecutors and public defenders as "the best in the country."

The proceedings come at a price, however.

Thomas Ullmann, an attorney for Hayes and a death penalty opponent, said at a 2005 rally that it costs \$2.5 million to \$8 million for a death penalty trial, compared to \$1.5 million to imprison someone for 40 years.

The money is less important to Lawlor than what Dr. Petit wants. Petit has not publicly stated his desires, although it's been reported that his wife may have opposed the death penalty.

Nave said it's a matter of public record that her parents in Pennsylvania oppose the death penalty.

"I'm not sure about Dr. Petit," said Rep. Alfred C. Adinolfi, R-Cheshire, who supports the death penalty. Adinolfi lives a few doors away from where the killings took place on Sorghum Mill Drive and has kept in contact with Petit about criminal justice reforms at the state Capitol.

The time to decide on a position is not in the months following the crime, Nave said.

"If anybody at this point, (eight months) out, was at the point of healing where they could embrace compassion or non-vengeful punishment, I'd be amazed," he said. "Dr. Petit and his family need time to heal and get their heads on straight."

And sound reasoning doesn't necessarily mean opposing the death penalty.

"If 'heads on straight' means they want the death penalty, that's fine," Nave said.

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