

'The issue is not what occurred, it's why it occurred.'

ARTHUR L. KELLY
Lawyer for defendant Jason Rivers, on his acquittal yesterday

Man found not guilty in killing of officer

Fitchburg shooter deemed delusional

By Milton J. Valencia
GLOBE STAFF

In a rare legal decision, a Fitchburg man was found not guilty by reason of insanity in the killing of a Westminister police officer a decade ago.

Jason Rivers, 36, who has been under mental evaluation since his arrest in May 1999, was a delusional, paranoid schizophrenic when he shot Westminister police officer Lawrence Jupin three times during a chase into the woods of that town, Worcester Superior Court Judge Peter W. Agnes Jr. ruled.

In the decade since, Rivers has on multiple occasions been declared incompetent to stand trial because of his mental illness. But yesterday, Agnes ruled that Rivers was competent enough for the trial to proceed, and within two hours ruled that he had been delusional when the crime occurred.

Agnes, citing a mental health doctor, declared that Rivers lacked responsibility, "because his options were severely limited by his delusional understanding of his situation," according to his lawyer, Arthur L. Kelly.

Kelly said three doctors — including an independent doctor based at Bridgewater State Hospital — concluded Rivers suffered from paranoia and schizophrenia when the shooting occurred. He said Rivers, 27 at the time of the shooting, had been briefly hospitalized but was never officially diagnosed and received no treatment for mental illness before the crime.

He called the decision proper, given the defendant's condition. "The issue is not what occurred, it's why it occurred," he said.

Timothy Connolly, a spokesman for the Worcester district attorney's office, said yesterday that "this was a tragic case for everybody. In light of the evidence, the district attorney's office respects the judge's decision."

Following a request by the district attorney's office, Rivers will undergo a 40-day evaluation at Bridgewater State Hospital, and if ordered held, he will undergo a regular six-month review.

Jupin's mother, who handled his estate while he was in a coma and after his death, could not be reached for comment yesterday. Westminister police Chief Salvatore Albert did not respond to requests for comment. Several Westminister police officers were in the courtroom yesterday.

Police had attempted to question Rivers in May 1999 after an officer noticed him dressed in camouflage and carrying a hunt

Appeals Court overrules '08 kidnapping, rape verdict

By Milton J. Valencia
GLOBE STAFF

A Berkshire Superior Court judge and prosecutor erred in the conviction last year of a Williamstown man on charges of kidnapping and raping his girlfriend, the state's second-highest court decided yesterday, citing "serious and fundamental improprieties" in vacating the conviction and calling for a new trial.

The state Appeals Court ruled that the jury in the case was tainted by the prosecutor's call in closing arguments to "vindicate" the victim and that the judge did not do enough to warn jurors to keep emotions or sympathy from

deliberations.

At one point in the case, according to the ruling, the prosecutor indicated the woman had been "revictimized" by having to recount her story to police and other witnesses and, eventually, to the jury.

"Talk about revictimization," the prosecutor said. "How many times did she have to tell that story?"

The prosecutor told the jury that "your guilty verdicts today will acknowledge and affirm that what [the complainant] said, what she did, how she acted, how she reacted, will be accepted and understood."

In its ruling, the Appeals Court cited case law, saying, "The prosecutor's closing argument, 'was the equivalent of an exhortation that the jury had a duty to the victims to render verdicts of guilty.'"

In addition, the Appeals Court ruled the judge in the case, Judge Daniel A. Ford, did not do enough to properly instruct the jury to keep emotions aside, in spite of the defense lawyer's objections to the closing arguments.

"[T]he trial judge delivered a generalized and inadequate instruction, stating only that 'emotion or sympathy for one side or

the other has no place in these proceedings," according to the Appeals Court. "There was no instruction tailored to the excesses in the prosecutor's closing."

The Appeals Court overruled the verdict in the case and called for further court proceedings. Berkshire County District Attorney David F. Capeless will decide whether to retry the case. A spokesman could not be reached for comment last night.

The decision centers on the case of David E. Garcia, who was convicted last year in the May 2006 rape, kidnapping, and assault and battery of his girlfriend, who was 22 at the time. Based on

a lengthy criminal history, he was sentenced to 10 to 12 years in state prison.

The woman told the court Garcia raped her after an argument over his infidelities, and that he would not let her leave his home. He would not let her use her phone, at times hitting her and punching her, and he delayed bringing her home the next day, according to published news accounts at the time.

Garcia, acknowledging the argument, contended that the sex was consensual.

Milton Valencia can be reached at mvalencia@globe.com.

Group struggles to find needy horses a new home

HORSES
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the animals, many of them in need rehabilitation and medical care.

Individuals can also donate funds for medical care or participate in the equine center's fundraising events, including a beach ride Oct. 4.

Across Greater Boston, the recession has orphaned scores of horses.

The increase is particularly notable in semi-rural communities with enough land to keep horses or private facilities where city dwellers can board them.

Already this year, Nevins Farm is scheduled to receive six more horses than it did last year, when 39 horses were turned in. In 2007, just 21 were turned over to the MSPCA.

Officials worry that even more horses will be turned over as temperatures fall and the cost of hay rises.

The farm, which sits on 30 acres wedged between two strip malls on Route 28, cares for an assortment of barnyard pets, including chickens, sheep, and a cow named Thunder. It also has an adoption center for traditional pets.

The rising number of horses is straining capacity at Nevins, which has only 27 stalls. Twenty-



MARK WILSON FOR THE BOSTON GLOBE

To keep the pasture fresh, Karim Johnson moved a temporary fence at Nevins Farm, with Captain in the background. The farm has plans to take in 45 horses already this year.

four of the horses are at Nevins and seven are in foster care, Ghareeb said.

So far this year, 21 horses have been adopted, including some that were turned over in previous years. Fourteen were adopted last year and 18 in 2007, she said.

The average cost to care for

each horse at Nevins is \$320 a month, officials said.

Many of the horses need simple vaccines, while others need costly surgeries. Shorty needs to be castrated — a \$2,000 procedure needed to prevent breeding and to better socialize the horse.

Shorty arrived at the farm from a private South Shore location and not much is known about his history. MSPCA officials said his owner worked with the organization's law enforcement unit to move him to Nevins after he was found severely malnourished. Unlike ponies his age

and size, which are typically curious and rambunctious, Shorty could hardly move.

For now, the pony has been quarantined to the back of Nevins, where he grazed lazily on thick grass. He is given medicine for the parasites and a special diet.

"You've got to be slow and careful with how you feed a horse like this," said Ghareeb. "It's like dealing with an anorexic. You have to give it small amounts of food because if they start eating too much rich food right away then their bodies can't handle it."

Shorty has picked up weight in the week he's been on the farm. Late last week he grazed inside his pen, which is next to one occupied by Captain, a gaunt 20-year-old quarterhorse whose owners had given him up because they fell on hard times, Ghareeb said.

Many families are still afraid to come forward to turn over their horses, Ghareeb said, because of the stigma attached to doing so.

Some wait a little too long to get their horses the care they need or a new home, she said.

That is what happened to Captain.

"He was a children's horse whose family had to hand him over," she said. "They did the best they could."

Coakley takes out papers needed for Senate bid

COAKLEY
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Former US representative Joseph P. Kennedy II is said to be eyeing a run, but it is not at all clear he will. Some associates say he is sounding like a candidate; others say he is expressing some reservations.

Those close to him say that Kennedy is content in his private life and in running his energy companies, where his salary reached \$544,792 in 2007, according to federal tax filings. That includes \$77,000 he earns from his nonprofit operation, Citizens Energy, which provides discounted heating oil to low-income households. A US senator's salary is \$174,000.

Kennedy's pondering has put something of a freeze on the campaign, with several other candidacies hinging on his decision. Three members of Congress — Edward J. Markey, Stephen F. Lynch, and Michael Capuano — are also considering running, though Markey and Capuano have told people they would be unlikely to run if Kennedy did.



READY TO RUN

The AG has said she will run for the seat even if a

Kennedy family member enters the race, according to associates.

ford Democrat, has not been shy about her political ambitions, consistently saying she would entertain running for higher office — including Senator John F. Kerry's seat, when he was rumored to be on the short list for the nation's secretary of state, or for Governor Deval Patrick's seat, very likely to accept an appoint-

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Jupin's mother, who handled his estate while he was in a coma and after his death, could not be reached for comment yesterday. Westminster police Chief Salvatore Albert did not respond to requests for comment. Several Westminster police officers were in the courtroom yesterday.

Police had attempted to question Rivers in May 1999 after an officer noticed him dressed in camouflage and carrying a hunting knife as he walked along Route 31 near the Fitchburg line. The officer attempted to check Rivers for outstanding warrants, and Jupin arrived as backup. When the officers learned that Rivers was wanted for assault and battery in Fitchburg, he fled into the woods.

Jupin was shot in the hand, thigh, and jaw.

He fired back, hitting Rivers in the abdomen.

Kelly said he did not contest what had occurred, but the court proceeding was based on the three doctors' opinions that Rivers was delusional before the shooting.

"It was a very tragic event for the Jupin family, no question," he said, but Rivers "was harboring his disease at the time of the incident, and unable to conform his behavior."

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*Milton Valencia can be reached at [mvalencia@globe.com](mailto:mvalencia@globe.com).*