

# Prosecution faces steady slope in Chicago police shooting case

Related Stories

Six QCA Police Officers injured on duty since Thursday



By KWQC Staff | Posted: Wed 6:06 AM, Sep 27, 2017

**CHICAGO (AP)** — The last time the Chicago police officer charged with murder in the shooting death of black teen Laquan McDonald was in court, the judge told two teams of lawyers that he wanted one to return to court Wednesday and the other on Thursday so there was no chance they would “cross paths.”

The peculiar scheduling aims to ensure that the attorneys prosecuting Jason Van Dyke are kept out of court while the judge discusses with the other attorneys, as well as Van Dyke’s defense team, what evidence the first group can use.

“If it’s found that the prosecution used (protected) information, it can disqualify the whole prosecution team or get a conviction thrown out,” said Jennifer Joyce, who headed the prosecutor’s office in St. Louis for 16 years before retiring this year. She’s now with an organization called the Prosecutors’ Center for Excellence.

As more police officers face criminal charges, courts have to find ways to control or even stop the flow of information about such cases. This was much simpler the last time a Chicago police officer was charged with first-degree murder for an on-duty fatality 35 years ago, when the technology that facilitates the fast and easy movement of information today didn’t exist.

“The fact that everybody has a camera and in this current environment when these cases attract a lot of attention from the public and pundits, that has elevated cases where officers are charged with a crime up to a new level,” said Joyce. “It makes everybody approach (such a case) differently, and you have to be extremely careful about managing the information coming in.”

What is happening in Chicago stems from two decades-old U.S. Supreme Court decisions: One prohibits the use of statements by public employees in criminal cases made under the threat of being fired; and the other requires prosecutors to demonstrate that none of the evidence they’re using is the result of testimony given under a grant of immunity.

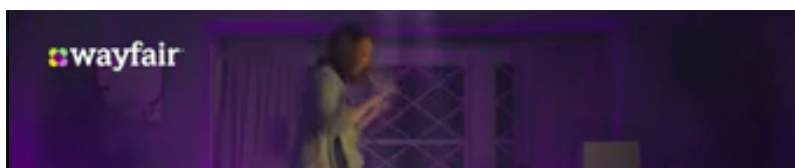
That means one group of attorneys — the “filter team” — has the job of poring over scores of interviews, documents and other evidence to make sure prosecutors don’t try to use or even see anything they’re not entitled to. Overseeing their effort is a judge who must make sure such evidence never reaches prosecutors.

That team’s job was laid out in a 2016 motion in the case of a Baltimore police officer charged in the 2015 death of Freddie Gray, who died after suffering a spinal cord injury in a police van. In the motion, the “filter team” was responsible for making sure the “clean team” of prosecutors was not “exposed to any immunized testimony during the clean team’s trial preparation.”

Not only that, but the motion explained that the “clean team” had been instructed to stay away from any news coverage of the officer’s testimony. In Chicago, Joyce said Special Prosecutor Joseph McMahan told her that before he reads a newspaper, the other attorneys read it and redact anything about the case that McMahan shouldn’t read. Attorneys in the Van Dyke case have been prohibited by the judge from talking about it outside of court.

The effort to filter out such evidence led to the surprise appearance on the witness stand of Van Dyke to explain to the judge who he talked to and why after he shot McDonald 16 times the night of Oct. 20, 2014.

“I don’t remember exactly what was said, but it was my understanding that if you didn’t cooperate or speak ... that you could be fired,” said Van Dyke.





00:19 / 00:30

AD

SKIP AD >

Judge Vincent Gaughan ruled that statements Van Dyke made to a deputy chief were off-limits to prosecutors, but that they could use statements Van Dyke made to a detective.

If it all seems so orderly, legal experts say untangling a chaotic scene of police officers, investigators, union reps and witnesses is incredibly difficult. That's because not only is there evidence that prosecutors can't present, but the judge must make sure the evidence they uncovered and witnesses they found didn't come from a prohibited source.

"How do you know someone in IAD (Internal Affairs) didn't hear something that was said to a detective?" asked David Erickson, a former state appellate judge who teaches at Chicago Kent College of Law. "How does the detective unknow something that was not supposed to come out? How do you separate the comingling of information used to prosecute this guy?"

"It can get messy," said Joseph Murtha, who represented one of the officers in the Freddie Gray case. "You have to prove the source of your information was not tainted by compelled statements and it's hard to separate information because sometimes a case originates as an internal investigation that morphs into a criminal investigation."

That's what happened in the case of Linda Tripp, whose secretly recorded tapes triggered the Monica Lewinsky scandal that led to President Bill Clinton's impeachment.

In 2000, a judge dismissed a wiretapping case against Tripp after determining Lewinsky's identification of a tape that Tripp had made was based on her knowledge of Tripp's previous grand jury testimony under immunity from federal prosecution.

"The state prosecutor used the transcript of the grand jury proceedings to refresh Monica Lewinsky's memory," said Murtha, who represented Tripp.

Get the latest updates from kwqc.com delivered to your browser

**SUBSCRIBE TO PUSH NOTIFICATIONS**

---

---