

Court rejects ex-cop's appeal

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NEWBURY — A former Newbury police officer's attempt to have rape and indecent assault convictions tossed failed earlier this month after the Massachusetts Appeals Court ruled against him.

In 2005, Lt. Gary Clifford, then of Salisbury and once the department's lead sexual assault officer, was convicted of two counts of rape of a child and four counts of indecent assault and battery on a child under 14 and sentenced to 5 to 7 years in prison. He was also sentenced to lifetime parole upon his release from prison, must undergo sex offender treatment, have no contact with the family and register as a sex offender.

A jury found Clifford guilty of repeatedly assaulting a 9-year-old girl, starting in 2001 and continuing until 2003, inside his Salisbury home. Four days after the abuse ended, the victim disclosed the ongoing incidents to her baby sitter and, thereafter, to her mother. The mother took the victim to the state police barracks in Newbury, and the defendant was later indicted on the charges. Prosecutors had argued for a 12- to 15-year sentence. The victim was not related to Clifford, but the two did know each other.

Almost immediately following his conviction, Clifford and his lawyers filed multiple appeals including a motion for a required finding of not guilty after discharge of the jury or, in the alternative, a motion for a new trial. Thereafter, the defendant filed a second motion for a new trial that was denied by the judge.

He also filed a motion to dismiss the convictions due to delay in the appeal. That motion was also denied. The defendant filed timely appeals from the denial of those motions and the appeals had been consolidated for hearing in court.

On appeal, the defendant argued that the judge erred in admitting opinion testimony of the prosecutor's medical expert and that his trial lawyer rendered ineffective assistance of counsel by failing to sufficiently argue against admitting the testimony without a hearing first.

His appeal also argued that portions of the prosecutor's closing argument were improper; that he failed to receive a fair trial because one juror was asleep during portions of the trial; that outside noise prevented the jury from hearing all of the trial testimony; and that a delay in obtaining the trial transcripts and appellate record denied him the right to a timely appeal.

In its decision, the appeals court rejected every motion, saying prosecutors had properly conducted their case including the calling of a medical expert and its closing argument.

"We also reject the defendant's claim for a new trial based on his remaining claims of improper argument by the prosecutor — namely, arguing facts not in evidence, and use of improper metaphors — because the challenged remarks were either within the bounds of

proper argument, cured by the judge in his closing jury instructions or could not have prejudiced the defendant,” the court’s decision reads.

In terms of dismissing the convictions based on a juror falling asleep and outside noise interference, the appeals court said neither claim had merit. The trial judge personally observed that the allegedly sleeping juror was in fact awake; and although defense counsel informed the judge at different times that he had trouble hearing the victim testify, when so informed, the judge instructed the victim to speak louder.

“There is no evidence in the record that the judge’s response to the problem failed to cure it. Rather, it appears that counsel was diligent in informing the judge that he could not hear the witness, and the judge responded accordingly,” the decision reads.