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Judge throws out rape charge

by: BILL BRAUN World Staff Writer
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A man who was cleared by a jury of burglarizing a woman's Tulsa apartment and sexually battering her had a related rape count dismissed by a judge Friday.

That means that all charges against Derrick Posey linked to a home invasion more than four years ago have been resolved in his favor.

Tulsa County prosecutors charged Posey in December 2008 with the rape by instrumentation of a 29-year-old woman and the first-degree burglary of her apartment in the 8000 block of South Wheeling Avenue on Oct. 2, 2006.

The woman was awakened by a man who entered her bedroom and used his finger to penetrate her sexually, prosecutors maintained.

At a September trial, jurors found Posey, now 27, not guilty of first-degree burglary and sexual battery.

The jury could not reach a verdict on a count of rape by instrumentation.

The panel was deadlocked at a 10-to-2 vote in favor of acquittal after about 10 hours of deliberations, defense attorney Edward Lindsey said.

Prosecutors sought to retry Posey on the count on which the jury did not reach a unanimous decision.

Lindsey maintained that a retrial on the rape count could not proceed under the law based upon circumstances surrounding the burglary acquittal.

At the trial, it was undisputed that a single perpetrator broke into the apartment and sexually battered and raped the woman.

The sole issue was the identity of the perpetrator, according to Lindsey.

There was no testimony that the perpetrator of the rape entered the apartment lawfully.

Since the only factual theory available to the prosecution is that a lone perpetrator committed all of the alleged crimes, Posey cannot be retried on the rape count because he has already prevailed on the issue of identity by being acquitted in the counts where verdicts were reached, Lindsey asserted.

As the issue of identity "has been determined by a valid final judgment, double jeopardy precludes a subsequent trial on that issue," a motion filed by Lindsey states.

District Judge William Kellough on Friday granted a defense motion to dismiss the rape count.

Posey, of Tulsa, was released from jail on bond after last month's trial.

A related count of aggravated assault and battery was dismissed against him in September, records show.

Bill Braun 581-8455
bill.braun@tulsaworld.com

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Derrick Posey: All the charges against him linked to a home invasion more than four years ago have been resolved in his favor. At a September trial, jurors found him not guilty of first-degree burglary and sexual battery. On Friday, District Judge William Kellough granted a defense motion to dismiss the remaining rape count.

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