

OAKLAND COUNTY

Oakland County judge to decide if Farmington Hills man can be resentenced for 2011 murder



Kara Berg

The Detroit News

May 24, 2023, 5:05 p.m. ET

Pontiac — An Oakland County judge is considering a request from prosecutors and defense attorneys to vacate a Farmington Hills man's first-degree murder conviction and resentence him for second-degree murder after two key witnesses recanted testimony they gave at trial.

Oakland County Circuit Court Judge Mary Ellen Brennan said Wednesday she plans to watch the entirety of the original trial, the surveillance video that captured part of the murder and will go over all relevant evidence in Hayes Bacall's case.

Bacall, 63, was sentenced to life in prison in 2011 for killing his nephew, 33-year-old Saif Jameel. Each of his four appeals — to the Michigan Court of Appeals, the Michigan Supreme Court, the U.S. District Court for the Eastern District of Michigan and the U.S. 6th Circuit Court of Appeals — was denied or not heard by the court.

Now, prosecutors and Bacall's attorneys are trying to get Bacall resentenced for second-degree murder due to prosecutorial misconduct and lies two witnesses told during the trial. Neither witness is being prosecuted for perjury at this time, said Assistant Prosecutor David Williams, though it remains an option.

"What we have in this case is a first-degree murder conviction that hangs by a thread," Williams said.

Conviction Integrity Unit Director Beth Greenberg Morrow said the unit looked at emails sent to and by Bacall from prison and checked his visitor and phone log to see who he had been talking to to ensure he hadn't influenced witnesses. She said what the witnesses told them in interviews last year matches more closely to what they told police immediately after the shooting than it does to their trial testimony.

"We recognize this is family," Greenberg Morrow said. "This has divided this family so drastically and so tragically that there's going to be interaction (between parties). Our investigation did not show there was undue influence by Bacall or people who have sided with Bacall on the witnesses."

Brennan expressed concerns that neither witness answered questions about how Bacall's family knew they wanted to recant their testimony. Bacall's attorney, David Gorcyca, said some of Bacall's family members called him and mentioned the two witnesses who wanted to recant their testimony, which he passed along to the prosecutor's office.

Brennan will have to determine the credibility of the witnesses and if the new information would make a different result probable on retrial.

"An inability to hear unfettered testimony would've certainly impacted the trial," Gorcyca said. "Had they heard truthful testimony, it could've been manslaughter, it could've been an acquittal."

The Oakland County Conviction Integrity Unit reviewed the case in 2022 and determined that prosecutorial misconduct related to lies the prosecutor told during closing arguments, as well as witnesses recanting their testimony, resulted in a weak conviction. The prosecutor said several times during closing arguments that Bacall had never brought up a self-defense case before the trial began, which was not true.

"The lawfulness of Hayes Bacall's first-degree murder conviction has been questioned for more than a decade," Oakland County Prosecutor Karen McDonald's office wrote in a statement. "Upon review, it became clear that the meager evidence in support of a deeply flawed conviction had been undermined, and that the conviction of first-degree murder could no longer stand. Instead, the CIU determined that the remaining evidence was only sufficient to support a conviction for second-degree murder."

With the newly discovered evidence, it would be a "miscarriage of justice" to allow Hayes Bacall's conviction and sentence to stand, according to the motion filed by prosecutors and Gorcyca. This testimony was "central" to the prosecutor's case because Bashi was the only eyewitness, and Samir Bacall laid the foundation that Hayes Bacall acted with the required premeditation, according to the joint motion.

Taking away Bashi's story that portrayed Jameel as a calm actor who was abruptly shot by Bacall "materially alter(s)" the facts, as does taking away Samir Bacall's testimony about previous threats to kill Jameel and his son, the joint motion from Bacall's attorneys and the Oakland County Prosecutor's Office said.

Jameel's widow, Genniver Jameel, has expressed concerns that Bacall's family is making campaign donations to McDonald in an effort to sway the decisions in this case.

Hayes Bacall's three brothers, his son, the Chaldean Chamber of Commerce's political action committee, 15 other people connected to the chamber and three others donated \$86,000 to McDonald's reelection campaign over a two-day period, May 17-18, 2022. The influx of donations represented 94% of McDonald's total fundraising in the first seven months of 2022, a Detroit News analysis of campaign finance reports shows.

McDonald's office and Bacall's son, Maher Bacall, said the donations have nothing to do with Hayes Bacall's case.

"The Conviction Integrity Unit is independent and bases its decision on the evidence," the prosecutor's office said in a statement. "Any suggestion that the Conviction Integrity Unit's review of this case and subsequent conclusion was based on anything other than the facts is absolutely false and deeply offensive."

kberg@detroitnews.com