

'Fair play' ruling may be an N.C. first

Hudson held DA's office to promise made by police

BY JOHN STEVENSON
jstevenson@heraldsun.com

When Durham's senior judge ruled this week that murder suspect Lemuel Sherman must be tried for a much lesser crime, he set in motion some apparently unprecedented and powerful legal dynamics, igniting a possible clash between police and prosecutors in the process.

The ruling, made orally on Monday and signed Wednesday, requires the Durham District Attorney's Office

to live up to a police promise even though it contended the promise was not legitimate.

An attempt to ignore the promise was unconstitutional and "violated traditional notions of substantial justice and fair play," according to Wednesday's court order from Judge Orlando F. Hudson.

Police assured Sherman that if he helped them catch the actual triggerman, he would be prosecuted only as an accessory to the December slaying of



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Marlon Rand, the judge noted.

Relying on that assurance, Sherman waived his Fifth Amendment right against self-incrimination and provided information that led to the prompt arrest of Angel Luis Richardson.

As a result, the District Attorney's Office must abandon its effort to try Sherman for first-degree murder and cannot seek the death penalty against him, Hudson concluded.

It reportedly was the first judicial mandate of its kind in North Carolina.

"It's unique," Hudson said in an interview Wednesday. "It's a very interesting legal point. This was the right case for it."

Assistant District Attorney Tracey Cline had contended the promise made to Sherman by Police Sgt. Jack Cates was not binding, since Cates had no authority to make it.

Cline refused to stand by Cates even when he urged her to honor the deal, court documents alleged.

But Hudson decreed Wednesday that promises made by police and other law-enforcement officers are "just as capable of implicating [a] defendant's constitutional rights as a promise made by a prosecutor."

Because of that, such assurances must be honored, Hudson said.

When defendants have raised verifiable complaints of broken promises in the past, judges have remedied the situation merely by throwing out — or suppressing — any confessions or statements made by the suspects.

But Hudson said a more substantial remedy was needed in Sherman's case because he implicated not only himself in a murder, but he also incriminated Richardson.

"Suppression would not

have been enough to bring all the parties back to the status quo," the judge added.

Hudson's ruling is subject to appeal.

Lawyer Dan Shatz of the Durham-based N.C. Appellate Defender's Office agreed Wednesday that the decision probably was a first.

"I don't know of any precedents for this," he said.

The way Shatz sees it, the ruling was correct.

"If police make a promise even without authority to do so, I view it as a binding promise," he said. "The defendant is entitled to enforcement of it. It's like a contract."

Seconding Hudson, Shatz said merely throwing out Sherman's statement to police would not have been good enough, particularly since Sherman may have endangered himself by cooperating with authorities.

"When you snitch someone else out, you're putting your well-being and maybe your life on the line," he said.

Beyond that, Shatz said any other ruling by Hudson might have had a chilling effect on police work.

"A lot depends on the ability of police to deliver on promises," according to Shatz. "Police need to be able to give people an accurate assessment of what they're getting for the information they provide. Otherwise, everyone will clam up."

Defense lawyer Bill Thomas said the Sherman case marked the first time in his lengthy experience that the Durham District Attorney's Office attempted to renege on a police promise.

John Fitzpatrick, president of the Durham Criminal Defense Lawyers Association, agreed Wednesday that such conduct was unheard of.

"Most of the time, the DA's Office is straightforward and honest," he said. "I have never had any major concerns, issues or problems that dealt with broken promises."