

Appeals Court says alleged murder confession not admissible

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The Denver Post

The Colorado Court of Appeals has upheld a lower court ruling that an alleged confession may not be used against a man accused of killing his wife 38 years ago.

Herbert Duane Frye, 86, was indicted in 2006 for the 1973 beating death of his wife, Betty Frye. The charges were filed after Herbert Duane Frye's sister told prosecutors that her mother told her before she died that Frye had confessed to the killing.

An Arapahoe County District Court judge later ruled, however, that the sister could not testify about the confession at trial because it was hearsay. Prosecutors dropped the charge against Frye but appealed the ruling.

Last week, a three-judge appeals court panel agreed with the trial court, saying there was no evidence presented regarding the circumstances under which the alleged confession was made, little information about what Frye allegedly said and no independent verification of the statements.

The court also said it was unclear what the mother's mental state was when she told Frye's sister about the alleged confession, and noted that Frye and his sister were estranged "with ill feelings" for many years.

Prosecutors have not decided whether to appeal to the Colorado Supreme Court.

"Our office will review the matter and make a decision on how to proceed at the appropriate time," said Casimir Spencer, spokeswoman for the 18th Judicial District Attorney's Office.

Frye's attorney, Gary Lozow, called the decision "thoughtful and appropriate."

"Spending further resources on this matter is not justified," Lozow said. "Hopefully, the people will abide by the decision of two courts on this matter."

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