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Kenan Gay not guilty

Jurors say lack of evidence on whether defendant used excessive force swung verdict

T. ORTEGA GAINES - ogaines@charlotteobserver.com

Kenan Gay and his wife, Liz, are escorted by sheriff deputies from the Mecklenburg County courthouse Friday after the jury found him not guilty. Through their attorney, they declined to comment.

By Michael Gordon

mgordon@charlotteobserver.com

Three seconds inside a bar changed Kenan Gay's life. Three murky seconds outside of it gave him his life back.

On Friday, a Mecklenburg County jury found the 25-year-old law school graduate not guilty of second-degree murder and involuntary manslaughter in connection with the March 2012 death of Robert "Robb" Kingston outside of Ed's Tavern.

Kingston

The verdict from the seven women and five men of the jury came just before noon, ending what the judge and attorneys for both sides said was among the most extraordinary murder cases with which they've been associated.

In the end, weeks of testimony swung on three seconds of inconclusive evidence.

On March, 3, 2012, Gay rushed the drunken Kingston. He pushed him out of the Dilworth bar after he tried to kiss Gay's girlfriend, Liz Wicker, now his wife.

Within moments, Kingston, 30, was struck and killed by a passing car on Park Road. The entire incident lasted six seconds.

Prosecutors said Gay, a 6-foot-4 former walk-on football player at UNC Chapel Hill, had launched Kingston into the road, then ran.

Gay's attorneys say their client only wanted to get Kingston off his girlfriend and stopped pushing him some 20 feet from the Park Road travel lanes. From there, Kingston's momentum

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TODD SUMLIN - tsumlin@charlotteobserver.com

Kenan Gay's father, Doug, wipes his brow as defense attorneys David Rudolf and Sonya Pfeiffer speak at the Mecklenburg County courthouse Friday. "There are no winners in this case," Doug Gay would later say.

Kenan Gay not guilty

VERDICT

[*from 1A*]

to the street.

Who told the truth? In the end, the jury couldn't tell, foreman Larry Williams said Friday.

In particular, Williams said he and other jurors did not have the evidence they needed to know what happened in the last three seconds of Kingston's fatal journey – outside the bar where patio umbrellas blocked surveillance cameras from catching what happened in the 41 feet between the front door and the street.

"The case took place outside the bar," Williams said. "Three seconds. We could never determine what happened, and we could never get our questions answered."

While Williams praised prosecutors Jay Ashendorf and Anna Greene, he said the holes in their case became apparent in the first hour of jury deliberations. A secret straw vote taken Wednesday afternoon showed two votes for acquittal, one vote for involuntary manslaughter, and nine votes undecided.

In other words, Gay's original second-degree murder charge, which could have sent him to prison for more than a decade, was off the table within minutes.

The stalemate continued all Thursday and up until jurors took their midmorning break Friday. At that time, Williams and juror Roy Wallace said, three members still wanted to convict Gay on the manslaughter charge, feeling that he had used excessive force.

But after some fresh air, jurors began to reach unanimity after one last review of the prosecution's burden of proof. Could the jury say beyond a reasonable doubt that Gay had committed a crime? Williams and Wallace said they could not.

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"Robb" Kingston's parents, Lori Kingston, right, and Robert Kingston, rear, leave court after the verdict.

Williams said the deliberations had been as draining on the jury as the emotion-packed trial. Some members were already crying before the court clerk took the few moments needed to read their decision aloud.

When "not guilty" rippled across the courtroom, Robert Kingston, the dead man's father, bent at the waist and held his knees. His wife, Lori, stared straight ahead. Prosecutor Ashendorf, seemingly stunned, mumbled a few words to his colleague Greene.

A few feet away on Gay's side of the courtroom, the verdict brought a few gasps and sobs. Gay, who if convicted, faced everything from probation to a long prison term, turned to attorneys David Rudolf and Sonya Pfeiffer. "Thank God," he said.

After Superior Court Judge Forrest Bridges closed the monthlong trial, Gay's family and friends erupted in pent-up emotion. Many of them had made five-hour round trips each day to pack Gay's side of the courtroom. Now men and women cried, and Gay's parents went group to group to celebrate.

Gay's first move as a free man was toward his wife, Liz.

For weeks, their relationship had been a matter of court record. Bar surveillance videos showed the couple spending very little time together, which prosecutors said contributed to Kingston's repeated advances.

During the trial, when they sat only a few feet apart, the couple often seemed detached, rarely talking or even exchanging glances.

That changed as soon as the trial ended. The Charlotte couple, who celebrated their first anniversary last month, swallowed each other in a full embrace.

For 15 seconds, as their friends and family smiled, hugged and sobbed around them, the Gays were face to face, kissing, whispering, pulled so tightly to each other that their tears fell to the floor together.

Through their attorney, the couple declined to comment, then walked stone-faced from the courthouse.

On the other side of the building, Gay's father, Doug Gay, asked for a minute to compose himself before walking out into a battery of cameras.

"There are no winners in this case," he said, adding that his son had lived under a cloud for more than two years "falsely accused of a serious crime." He noted the Kingstons' loss of a son and brother but then finished on this note:

"My son was defending his girlfriend. During this trial, he was defending his character."

For three weeks, Kingston's family had heard him described as a drunk who groped women. Fifteen minutes after the verdict, they walked single file to the courthouse elevators. Robert Kingston stopped to hug two Charlotte-area friends. They left the courthouse without comment.

The Kingstons have sued Gay and Ed's Tavern in connection with their son's death. Gay and the state's prized witness against him, bar owner Alan Cole, now may be on the same side.

Outside before the cameras, Rudolf said the Kenan Gay saluted by character witnesses "is the Kenan Gay that existed before March 3, 2012, and it will be the Kenan Gay that exists after today," Rudolf said.

Ashendorf, a veteran prosecutor, said the case was "one of the most unusual homicide cases" any of the participants had ever been in.

Asked to explain, Ashendorf turned to a familiar place, the last three seconds: "It's what happened," he said, "outside the bar."

— CLAIRE WILLIAMS AND HANNAH JEFFREY CONTRIBUTED.

Gordon: 704-358-5095