

BODY of evidence

The rush to bury Deputy John Bananola's body back in 1995 raises questions in Eggleston case.

By Frank Driscoll

Brian Eggleston, 32, is on trial for second-degree murder, charged with killing Pierce County Deputy Sheriff John Bananola during a drug raid at Eggleston's east Tacoma home seven years ago.

Either Eggleston shot Deputy Bananola to protect his small-time marijuana operation, or he killed the young officer in self-defense, believing that he was an intruder. There is no middle ground.

Eggleston has tried to claim self-defense twice before, with varying degrees of success. In 1997, the jury in his first trial deadlocked on the aggravated murder charge but found him guilty of assault and several drug-related offenses. A 1998 retrial for aggravated murder resulted in a second-degree murder conviction.

In September 2001, the Washington Court of Appeals reversed Eggleston's second-degree murder and assault convictions.

Now he's back in court.

Don't look too closely at the Eggleston case. It'll make you cynical.

Last Thursday, as the defense's case in chief was winding down, Eggleston's

lawyers were trying to cast doubt on the prosecution's theory of the case. King County's former Chief Medical Examiner, Donald Reay, was testifying for the defense.

It took Reay about as long to recount his credentials as it did for him to speak to the issues in the case. Suffice to say he's very well qualified, and he knows his way around a corpse.

The thrust of Reay's direct testimony was that John Bananola's head was *not* in contact with his right arm when he was shot in the head, three times. That's important because the prosecution insists Eggleston, who'd been shot in the cojones with a .45, chased Bananola into the living room of the tiny bungalow and shot him down like a dog, pumping three rounds into the helpless deputy's head.

Reay testified that his opinion was based on a review of the autopsy report prepared by former Pierce County Medical Examiner Emmanuel Lacsina, as well as photographs of Bananola's body that were taken at the time of the autopsy—October 17, 1995.

On cross-examination, deputy prosecutor Jim Schacht made much of the fact that Reay never actually viewed Bananola's body. Reay's conclusions and opin-

ions—which contradict the prosecution-friendly opinions of Lacsina and the current Medical Examiner, John

Howard—are based upon a review of the autopsy reports and photographs.

Reay had to admit he hadn't done the autopsy himself and, yes, of course the pathologist who actually performed the autopsy would be in a better position to render an opinion than he.

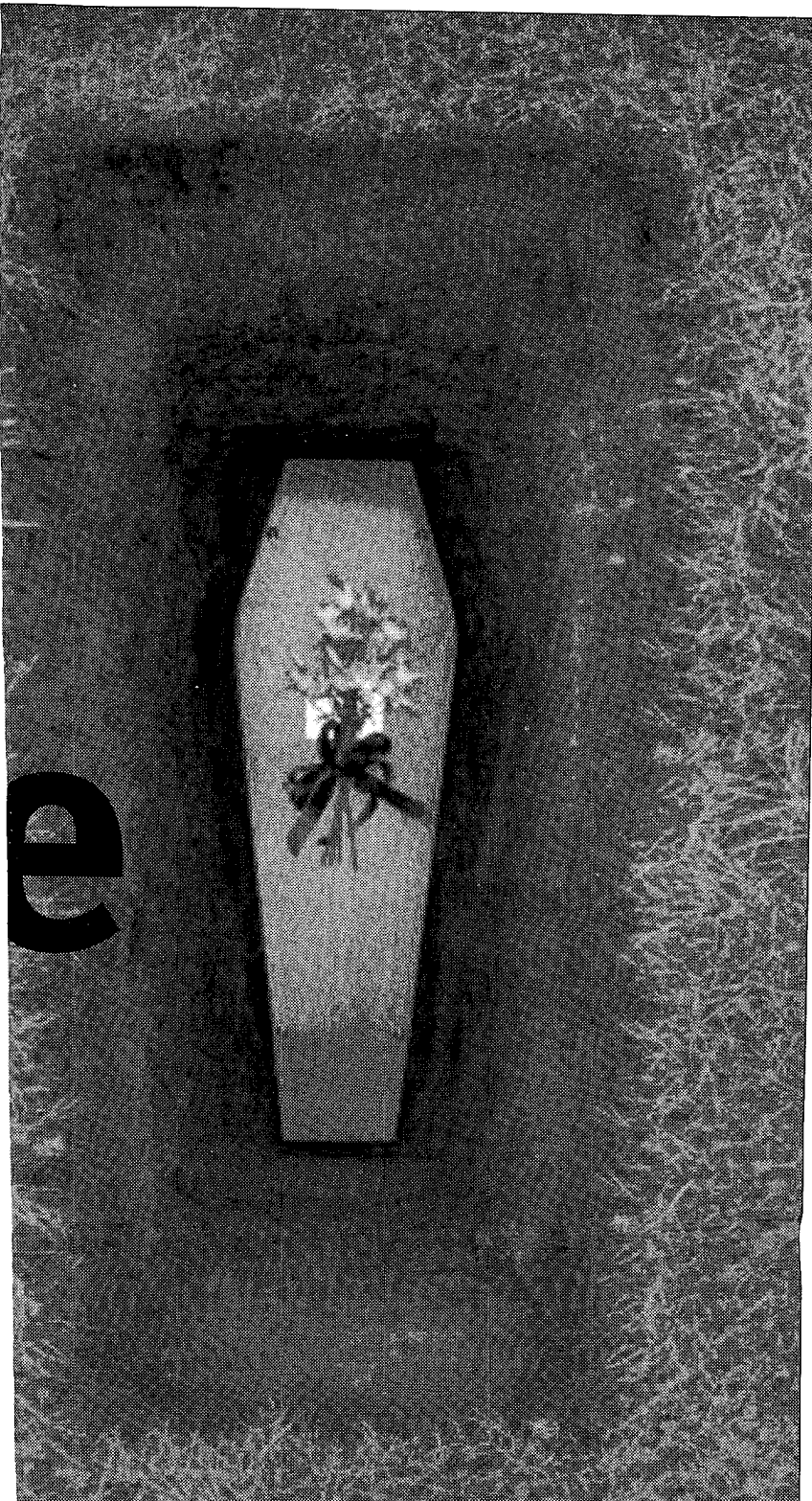
"No question," said Reay, "absolutely.

"I would have loved to have done the autopsy."

What Reay *didn't* know is that he almost got his wish. Unknown to him—and, of course, to the jury which is hearing Eggleston-III—he came within a court order of having a chance to do an autopsy on John Bananola.

A Little History

The only way to look at the Eggleston case is backwards. What's happening in Judge Stephanie Arend's courtroom today is just the latest episode in



a long-running drama that has divided this community for seven years and counting. Only by analyzing what happened *then* in light of what we know *now* can we ever hope to connect the dots.

In the *very* beginning, there was no such thing as *The People vs. Eggleston*. Brian Eggleston lay comatose on the seventh floor of St. Joseph's Hospital, recovering from his wounds, and a deputy sheriff was posted outside his door in case he tried to flee. Perhaps a confederate might wheel him out on a gurney, suction machines and all. Who could know? In any case, Eggleston got no visitors, no mail, no telephone calls. In effect, he was under arrest for killing Bananola. The County Prosecutor, John Ladenburg, was already talking about filing an aggravated murder charge—which meant the death penalty was on the table.

There have been good lawyers on both sides of this case from the outset. Ladenburg assigned the case to Gerry Horne, his chief criminal

deputy. Meanwhile, Jack Hill, who directs the Department of Assigned Counsel, realized that Eggleston desperately needed representation, even though Horne was saying that Eggleston wasn't under arrest . . . yet. As a consequence, Horne and his assistants maintained, Eggleston couldn't challenge the removal and possible destruction of a crucial piece of evidence—namely, John Bananola's body.

On October 24, Hill appointed well-known defense attorney Sverre Staurset to represent Eggleston. It was a logical choice. Staurset is not known for his tact. He's a pit-bull of a lawyer, who doesn't mind calling a spade a spade, who likes nothing better than giving prosecutors the blues. It is fair to say he is a bit abrasive.

The very next day, Staurset was in Pierce County Superior Court, filing an emergency motion, seeking access to Medical Examiner Emmanuel Lacsina's autopsy report and the photographs of Bananola's body that were taken when the autopsy was performed. Staurset had contacted Reay, King County's»

» Chief Medical Examiner at the time, and asked him to review the autopsy results. Only by reviewing the autopsy results, Staurset argued, could the defense expert decide if a second, independent, autopsy should be performed—to determine, among other things, if Bananola had been hit by friendly fire . . . two words, often whispered but rarely spoken aloud, that have hung over this case from day one.

Staurset's motion was heard by visiting Judge David Foscue on October 25 and recorded by court reporter Karen A. Anderson. Foscue, who normally sat in Gray's Harbor County, presided over the hearing because no Pierce County judge would touch the Eggleston case. Bananola had worked courtroom security, and everybody in the courthouse knew him. Or so it was said.

"Mr. Bananola was hit ten times," Staurset told Foscue. "It is our belief, from the scientific evidence that we have looked at and the bullet holes that are at the scene and the information that we have from the other witnesses that the state has already interviewed, that Mr. Bananola may have been hit by lots of friendly fire.

"Because the autopsy report will give the primary evidence about where the body was," Staurset continued, "the ballistic tracing through the body can only through the autopsy.

"That is the critical evidence that we need to protect now."

Assistant chief criminal deputy prosecutor Michael Johnson represented the Prosecutor's Office at the hearing. "The rules say he gets discovery at the omnibus hearing," Johnson insisted, "and we are still in an investigative stage in this matter.

"Nobody has been charged yet."

Foscue wanted to know if Eggleston was in custody.

"He is in the hospital, in no condition to be placed in the custody of the authorities in the jail or come before a court."

Foscue repeated the question. "Is he in custody?"

"He is in the hospital, Your Honor," Johnson said.

"Is he in custody?" Foscue demanded.

"There is a deputy sheriff there who, if he gets up and walks out of the bed, is going to arrest him," said Johnson. "I don't consider him to be in custody until he is brought to the jail."

Johnson went on to argue that DAC Director Jack Hill lacked the authority to appoint an attorney for somebody who hasn't been charged with anything, but Foscue wasn't buying it.

"It looks very much like he is in custody," said Foscue. "His access to other people is controlled, and he is not free to leave.

"There is the possibility of the

loss of evidence," Foscue continued, "and the only way the defense has a fair chance at determining whether there is a fear of a loss of evidence is to view evidence that's in possession of the state, and that is the autopsy reports and the photographs."

Staurset prevailed. On October 26 Judge Foscue issued an order directing the Pierce County Prosecutor's office and/or the Pierce County Medical Examiner to disclose the autopsy results and photographs to the defense. The prosecution must turn over the autopsy report and photographs, Foscue ruled, so Reay could "render an opinion on cause of death . . . (and) whether he believes he needs to examine the body of Deputy Bananola."

Foscue duly noted that his order was being entered over the objection of the Pierce County Prosecuting Attorney.

The Prosecutor didn't just object, though. He appealed. Ladenburg's senior appellate deputy, Barbara Corey-Boulet, filed notice that she would seek discretionary review of Foscue's order in the state Court of Appeals. Staurset was served with the notice in open court that same day.

"In the instant case," Corey-Boulet argued, the state "needs to seek an emergency stay of the trial court order" while the state filed its petition for discretionary review.

The case went to Division II as Case Number 19991-2-II, *In re the Investigation of the Death of John Bananola*, and was heard on October 27.

In granting the prosecution's emergency stay, Court Commissioner Donald Meath, who has since retired, noted that although Eggleston may have been a suspect he was not a defendant, and "there is no direct authority to elevate his status above a private citizen." Private citizens, Meath noted, are "not entitled to autopsy reports as a matter of right."

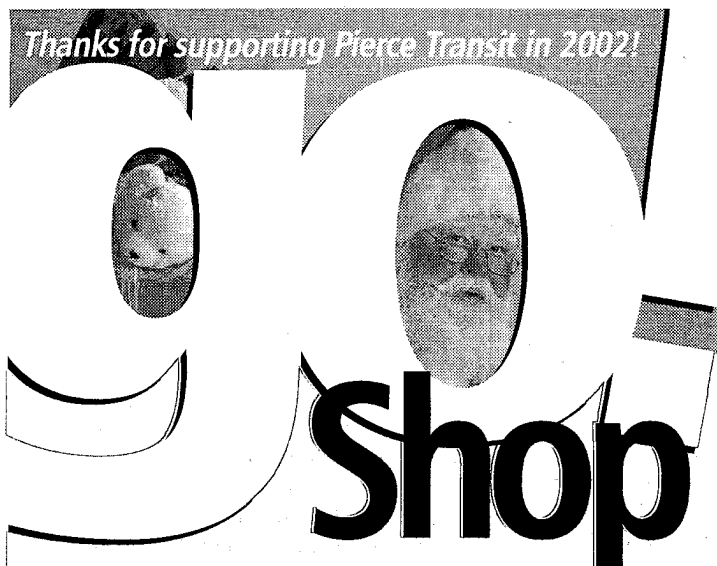
"The fruits of the State's motion for discretionary review (would) be lost of a stay is not granted," Meath continued. That is, the prosecution's right to keep Dr. Lacsina's autopsy report and the photographs secret would be compromised if the court did not act.

"In the absence of a stay," he wrote, "the State must make the autopsy report available, thereby obviating a challenge to the trial court's order."

Meath said he had been informed "that Deputy Bananola was buried in Hawaii on Thursday, October 26, 1995.

"Thus," Meath reasoned, "(the) defense cannot claim that destruction of evidence is imminent, (and) the equities in

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this case militate in favor of a brief stay.”

The equities in this case.

Meath ordered the prosecution to file its motion for discretionary review by the close of business on November 1, and gave the defense until November 6 to file its response. Oral arguments were set for November 6. By then, however, the case was moot.

According to Ron Messenger, of Lakewood’s Mountain View Funeral Home, Deputy John Bananola’s body was flown to Hawaii on October 24, the same day Sverre Staurset was appointed to represent Brian Eggleston.

Beverly Dodo of the Dodo Funeral Home in Hilo, Hawaii, said she handled the arrangements at that end. “His body was shipped over,” Dodo said. “There was a service on October 25 and a Mass at St. John’s Catholic Church in Kealahou on October 26.

“He was buried at Hualalai Memorial Park in Kona,” said Dodo, adding that Kona is about 100 miles from Hilo.

Bananola’s body was never exhumed, and the defense’s expert never got a chance to perform an independent autopsy. Sverre Staurset was replaced as defense counsel at the Eggleston family’s request, and the autopsy report prepared by Dr. Lacsina remains the only record of the officer’s wounds.

It may have been one of the more

disingenuous snippets of lawyering seen around here recently, but Schacht’s cross-examination of Reay may have had the intended effect. Despite Reay’s assurances that forensic pathologists routinely form expert opinions based upon photographs and other doctors’ autopsy reports, the jury may well conclude that Lacsina and Howard’s version of events is more persuasive than Reay’s. He didn’t do an autopsy, after all.

Contacted after his testimony last Thursday, Reay said he was amazed that the prosecution had gone to such lengths to prevent him from reviewing the autopsy results and photographs.

“I never knew that,” said Reay, adding that he was unaware of Staurset’s motion, Judge Foscoe’s ruling, or the prosecution’s emergency motion for a stay in the Court of Appeals.

“Hell, they routinely hang onto the bodies of child-abuse victims for weeks,” he said.

“I don’t understand what their hurry was,” said Reay. “This was a high-profile case, and everybody knew that *everything* was going to be questioned.”