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War is not yet won, but a key battle ends in victory

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Sometimes it happens: A lawyer fresh out of school takes on a "sure loser" case and wins.

"I was definitely not alone in working on the Davis appeal," said the young attorney, Edward M. Shin of Butler, Rubin, Saltarelli & Boyd.

But, added Shin, "Obviously, I like to rise to a challenge."

His challenge was to get a murder conviction reversed even though the Cook County public defender's office had said there were no issues warranting an appeal.

Shin persuaded the Illinois Appellate Court to reverse the conviction of George Davis for a 1991 murder, and to remand the case to Cook County Circuit Court for a new trial.

The action also is an apparent vindication, at least for the moment, of a seemingly failed campaign by attorney Locke E. Bowman, legal director of the MacArthur Justice Center.

In 2000, Bowman accused the Cook County public defender of abandoning the appeals of nearly half of its indigent clients.

In an effort to force a change in that practice, Bowman filed a complaint on behalf of one murder defendant and sought class-action status and injunctive relief. His complaint alleged that the public defender used so-called *Anders* motions to "reduce its backlog of unbrieffed cases and ease the work load...."

In *Anders v. California*, 386 U.S. 738 (1967), the U.S. Supreme Court provided a vehicle for an appointed attorney to withdraw from criminal appeals that are "wholly frivolous."

In July 2001, the late Circuit Judge Lester D. Foreman threw out Bowman's lawsuit. Foreman asked why he should sit in judgment over the Illinois Appellate Court.

Foreman also agreed with the state's attorney's argument that the Appellate Court reviewed each case before allowing the public defender to withdraw.

"My argument was, 'Yes, but they're ruling on these without the benefit of advocacy for the defendant,'" Bowman said.

Davis' case was among those that the public defender said offered no issues that would warrant an appeal.

In 2001, the MacArthur Justice Center located a young man to work on an appeal of Davis' case — namely Shin, who had just graduated that year from the Washington University School of Law.

Shin at first shared the pro bono case with David J. Bradford, a partner at Jenner & Block where Shin was an associate in his first job. In April 2002, Shin moved to Butler, Rubin, Saltarelli & Boyd. Bradford "let me take it with me," Shin said.

"I believed that, A, the client was innocent and, B, this was a clear case of prosecutorial misconduct," said Shin, 29.

This was his first appeal. His normal focus is commercial litigation.

"A partner oversaw me here," Shin said, referring to Michael A. Stick, "and there was also help from two other associates here," Kristen E. Brown and Richard Miller. The firm of only 33 attorneys has "a very strong pro bono initiative," according to Shin. The firm dedicated 440 hours to the Davis case.

The case has a long history. On May 29, 1991, Lethon Rogers was shot to death in Chicago, and Davis was later convicted of the murder.

In 1997, the Appellate Court reversed the conviction on the ground that the prosecution used peremptory challenges to potential jurors in a racially discriminatory manner. On retrial, a new jury again convicted Davis.

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In its ruling on the appeal that followed the second conviction, the Appellate Court wrote on Sept. 29 that the evidence against Davis, based primarily on the testimony of a single eyewitness, was "narrowly sufficient to sustain the conviction."

But the justices said the prosecutor made "highly improper" closing arguments. The prosecutor had argued that out-of-court statements by people who never testified corroborated the eyewitness, according to the opinion. The prosecutor also suggested, without evidence, that the defendant intimidated other witnesses to keep them from testifying, and the prosecutor drew attention to the defendant's decision not to testify.

"We fervently hope that the prosecutor on remand will refrain from all improper argument," states the opinion written by Justice Jill K. McNulty with Justices Joseph Gordon and Margaret Stanton McBride concurring. *People v. George Davis*, No 1-99-4339.

Shin said the state has filed notice that it will seek an appeal before the Illinois Supreme Court.

"This is a good example of why the court needs briefing in all but the rarest of cases that are truly frivolous," Bowman said.

Since January, the Office of the State Appellate Defender has taken over all of the criminal appeals for indigent defendants in Cook County, a role that it was already performing in the other 101 counties.

Previously, the public defender had handled the majority of such appeals in Cook County, while the appellate defender took on the remainder.

Deputy Defender Michael J. Pelletier, head of the 1st District office, said that office has historically sought to withdraw from direct appeals or post-conviction appeals in only about 10 percent of its cases.

"Seat of the pants, that seems reasonable," Bowman said Tuesday.