

Christopher (Chris) Parish was convicted in 1998 of “robbery as an accomplice” and “attempted murder” by an Elkhart, Indiana Circuit Court jury. He was sentenced

to 30 years in prison. In spite of his conviction and imprisonment, Parish could not have committed those crimes, because they did not occur.

The Prosecution’s Fabricated Robbery and Shooting Story

The prosecution presented the following story about the crime to the jury:

On October 29, 1996, at 9:30 p.m., two men intending to commit a robbery forced their way into apartment F on the third floor of an apartment building located at 729 Monroe street in Elkhart, Indiana. The occupants of apartment F at that time were: Michael Kershner, Nona Canell, Jennifer Dolph, Eddie Love, Jermaine Bradley and Jason Ackley. The taller of the intruders wore a baseball cap with the letter “J” inscribed on the front (“J hat”).

Immediately after these two men forced their way into apartment F, Kershner attempted to grab an SKS assault rifle, that was close at hand. During the ensuing struggle over the assault rifle, which involved the tallest intruder and Kershner, that intruder fired several shots from the handgun he had on him. One of the bullets struck Kershner in the hip and the other bullets came very close to Love’s head and ricocheted off the apartment walls. Also during the struggle, the intruder’s baseball cap fell off. After being shot in the hip Kershner fell to the floor and started rolling back and forward, yelling for someone to call 911.

The two intruders then left the apartment, with the taller one taking the SKS rifle and a taser gun, and the shorter intruder taking \$23 in coins. The baseball cap was left behind because of all the commotion.

After the intruders left, the occupants carried Kershner down three flights of stairs to a car and transported him to a nearby fire station. An ambulance then transported him to a hospital. One of the witnesses, Canell, stated that Kershner was “bleeding profusely from the gunshot injury and that there was blood everywhere.”

Phantom Robbery And Fake Crime Scene Leads To 30-Year Prison Sentence — The Christopher Parish Story

By Christopher Parish

If the above version of events is believed, it appears a serious crime took place in apartment F and the people involved should be prosecuted. However, the prosecution’s story becomes suspect when it is compared to reports by the investigating police officers, police photos of apartment F, analysis of DNA evidence, and the statements of eyewitnesses.

Alleged Courtroom Threat Used To Smear Parish As Dangerous

A problem with linking Parish to the prosecution’s scenario of the alleged apartment robbery and shooting was his solid alibi that on October 29, 1996, from 4 p.m. to 11:30 p.m., he and his wife and children were visiting relatives in Chicago. So the prosecution had to overcome the jury’s possible resistance to convicting a person who could credibly claim to have been 110 miles from the alleged crime scene. [JD Note: According to mapquest.com it is 110 miles from Elkhart, IN to Chicago, IL.] The prosecution was largely able to deal with that problem by seizing on an alleged trial event. During one day of Parish’s trial, at 2:45 p.m. Bradley began his trial testimony as one of the prosecution’s alleged crime scene witnesses. The next morning when the trial resumed at 9 a.m., Bradley testified that Parish had verbally threatened him in the courtroom prior to him beginning his previous day’s testimony. Bradley claimed the incident occurred ten seconds before the jury reentered the courtroom after a short recess, and two minutes before he was called as a prosecution witness.

Bradley’s accusation was absurd on its face. All the prosecution’s witnesses were sequestered in a room until called to testify, so Bradley could not have been loitering in the courtroom next to the defense table prior to testifying. Additionally, no other person in the courtroom, including Parish’s lawyer next to him, heard the alleged threat. Further still, Bradley made no mention of the threat the previous day when he testified immediately after it had allegedly happened.

However, in spite of the absurdity of Bradley’s courtroom threat accusation, prosecutor Christofeno referred to it during his closing argument as proof that Parish was guilty of the apartment robbery and the at-

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Parish’s Conviction Vacated New Trial Ordered!!

By Hans Sherrer

Indiana’s Court of Appeals vacated Christopher Parish’s convictions on December 6, 2005, and ordered a new trial in a published decision. (*Parish v. State*, No. 20A03-0502-PC-74 (Ind.App. 12/06/2005); 2005.IN.0000756 <www.versuslaw.com>)

Parish had been convicted in 1998 of robbery and attempted murder and sentenced to 30-years in prison. The convictions were related to Parish’s alleged October 29, 1996, invasion of an Elkhart, Indiana apartment occupied by six people, and the theft of \$23 and a rifle, and the shooting of one person by Parish’s alleged accomplice. (See, Phantom Robbery And Fake Crime Scene Leads To 30-Year Prison Sentence — The Christopher Parish Story, in this issue of *Justice:Denied*, .)

Parish’s convictions were affirmed on direct appeal, and he had appealed the October 2004 denial of his post-conviction petition for a new trial that he filed in 2000, and amended in 2004.

The appeals court noted in its decision that the Findings of Facts adopted by Superior Court Judge Stephen Platt after Parish’s August 2004 post-conviction hearing included several significant errors that could have contributed to the denial of his petition. Two of those errors were:

- Parish was cited as the shooter during the alleged October 1996 robbery and shooting at an Elkhart apartment, when the record actually shows his alleged accomplice was the shooter.
- The State’s star eyewitness, Eddie Love, had testified during Parish’s trial that Parish was at the crime scene, when the record actually shows that Elkhart Detective Steve Rezutko testified about what he claimed Love told him.

Judge Platt relied on those fundamental errors of fact in denying Parish’s petition, even though he wrote, “... the Court has re-read the entire transcript of the cause” (*Id.* at ¶ 28)

Those significant factual errors, and their possible influence on Judge Platt’s decision opened the door for the appeals court to closely review Parish’s case. Although Parish raised numerous issues, the ap-

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tempted murder of Kershner. The damage to Parish from the courtroom threat allegation didn't stop with its use in helping secure his conviction. During Parish's sentencing hearing the judge declared it was proof of his guilt, and relied on it to enhance his sentence.

Parish's Lawyer Admits "Failing As An Attorney"

During Parish's sentencing hearing, his attorney made the following admissions when addressing the Court:

I feel that, perhaps due to some of my failing as an attorney, maybe I didn't do as good a job as I – as I could have. There were a number of alibi witnesses that we – a number of more witnesses that we could have called. There was much mentioned at the -- at the trial, much cross-examination of the alibi witnesses; why didn't they go to the police right away? I didn't tell them to, and that's why they didn't.

And perhaps that was a failing of mine, but I guess being jaded by the system, I didn't see the value in that, given that – you know, it may have been a mistake that my client has to pay the price for. (Trial Transcript p. 760)

Indeed Parish did pay ... with a 30-year sentence.

Parish's Post-Trial Investigation Discovers His Prosecutors Failed To Disclose Exculpatory Evidence

Parish had claimed his innocence from the time of his arrest two days after the alleged crime. After Parish's trial, his family hired private investigators Tina Church and Mike Swanson to find evidence supporting his claim of actual innocence.

Swanson and Church's investigation found that exculpatory information had not been disclosed to Parish by the prosecution prior to his trial. Among the non-disclosed information was Elkhart City Police Department Technician Report, Case No. 96-303-0189. According to that report, at 9:53 p.m. on October 29, 1996, crime technician Joel Bourdon arrived at 729 Monroe St, Apt. F to investigate the reported shooting. The report states, "Upon arrival, I walked inside looking for a crime scene, but one was never located." The technician found no blood "whatsoever" in the apartment. Officers M. DeJong and Wargo were the first police to arrive at apartment F, and they found no one

there. In his report, DeJong describes his inability to find a crime scene in the apartment:

Photographs were taken inside the apartment. I looked through the entire apartment looking for a shell casing or any type of bloodstain. I searched inside the apartment looking on the floor and looking up near the ceiling trying to find even a bullet hole in the plaster, but one was never found. I also looked down the stairwell since I was told the shooting took place near the inside of the front door, but a casing was never located. I did locate a SKS rifle that had a cylinder type belt that appeared to be loaded lying upright in the living room. When I was clearing the room, I unloaded the gun and removed the cylinder of bullets to make the weapon safe. No round was in the chamber. Photos were taken of everything I just got done talking about. Officer M. DeJong #194.

Investigator Swanson also discovered there were two witnesses to Kershner's shooting, Stellana Neal and Bryant Wheeler, who claimed it occurred in a laundromat parking lot across the street from the apartment complex. Those witnesses had also told the police that Kershner was a known drug dealer who owned a lot of guns and operated his drug business out of Apartment F.

The Prosecution Failed To Disclose Exculpatory DNA Test Result

In September of 1997, Keith Cooper, Parish's alleged accomplice, the alleged shooter, and the alleged wearer of the "J hat," was convicted after a bench trial of the robbery that allegedly occurred in apartment F. He was acquitted of attempting to murder Kershner. Cooper was sentenced to 40 years in prison and is currently imprisoned.

At Parish's June 1998 trial, Christofeno introduced the "J hat" into evidence. Kershner and Nona Canell both testified that the "J hat" belonged to Cooper, and Christofeno used it to link Cooper as Parish's accomplice. However, Parish's post-trial investigation discovered that prosecutor Christofeno had not disclosed to Parish, the trial judge and the jury that DNA tests of biological material recovered from the "J hat" excluded Cooper as the hat's wearer.¹

August 2004 Post-Conviction Hearing

The Indiana Court of Appeals affirmed Parish's conviction in 1999. In 2000 Parish filed a post-conviction petition for a new trial based on new evidence of his actual innocence and claims of

ineffective assistance of counsel during his trial.

On August 26, 2004, a hearing related to Parish's post-conviction petition for a new trial was held in Elkhart Superior Court before Judge Stephen Platt.² At the hearing Indiana State Police laboratory DNA expert Lisa B. Black testified that prior to Parish's trial she compared the DNA recovered from the "J hat" with Cooper's DNA. She determined that they did not match. She also testified that the first test result was confirmed by a second test that also excluded Cooper's DNA from matching the DNA recovered from the "J hat." Yet prosecutor Christofeno not only failed to disclose that exculpatory information to Parish, but he argued during Parish's trial that the "J hat" belonged to his alleged accomplice – knowing that assertion wasn't true.

On March 8, 2004, a match was made between the DNA recovered from the "J hat" and a DNA sample in the FBI's National DNA Database. The match was to Johlanis Cortez Ervin, who is currently imprisoned by the Michigan DOC. [JD Note: According to the Michigan DOC website Ervin was convicted in 2002 of second degree murder and a firearm charge. He is serving a 62-year sentence. Ervin's 2002 convictions are unrelated to the alleged October 29, 1996, apartment F robbery and shooting.]

Parish's trial lawyer testified at the hearing that he was completely unaware of any exculpatory pre-trial DNA test results, the "crime scene" photographs that showed there was no crime scene, and the "crime scene" police reports that disclosed no crime scene was found in apartment F. He contended that the prosecution did not disclose that exculpatory information to the defense. In addition, he testified that he would have definitely used the exclusionary DNA test results, as well as the "crime scene" photographs and reports, because they undermined the prosecution's entire theory of the crime, including Parish's identification as one of the alleged perpetrators.

Parish's trial lawyer admitted to incompetently representing Parish, and that he had no excuse for failing to produce alibi witnesses, for failing to hire experts, for failing to tender defense favorable jury instructions, for failing to take depositions, or for failing to object to prosecution evidence, arguments and testimony. He frankly stated, "Had I done a good job, my client would not have been convicted." Those admissions were consistent with the lawyer's statement six years earlier during Parish's sentencing hearing, "I feel that, perhaps due to some of my failing as an attorney, maybe I didn't do as good a job as I – as I

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dealing drugs — including from apartment F — was not disclosed to Parish's jury.

Parish Is Innocent Of Committing A Crime That Never Happened

The evidence in Parish's case clearly establishes there was no crime scene, and therefore there was no crime. There is conclusive evidence Kershner was not shot in apartment F, that Parish was over 100 miles away in Chicago when Kershner was shot in a parking lot across the street from the apartment complex, and that the Kershner drug gang collaborated with certain Elkhart police personnel in fabricating the apartment shooting story in order to conceal illegal drug and gang activity.

The evidence uncovered by Parish's investigators clearly demonstrates the fraud, perjury, and official corruption engaged in by the police officers and the prosecutors involved in the wrongful conviction of an innocent man. Their actions were inadvertently aided by the admitted inaction of Parish's trial lawyer. He has acknowledged Parish's conviction was attributable to his failure to con-

duct a pre-trial investigation, his failure to conduct discovery, his failure to conduct interviews of his client and defense witnesses, his failure to adequately prepare for trial, and his failure to make timely objections.

Parish's trial was a mockery of justice, as was the denial of his petition for post-conviction relief. There is absolutely no substantive evidence the alleged robbery and shooting in apartment F occurred, while there is compelling evidence those crimes didn't happen. That evidence includes: the police "crime scene" investigation reports, the police photos of apartment F, eyewitnesses, DNA evidence, the lack of physical evidence, and Parish's alibi of being over 100 miles from the alleged crime scene. The prosecution has never disproved Parish's alibi of being in Chicago at the time Kershner was shot — in the parking lot. Which also means Parish is innocent even if Kershner had been shot in apartment F as the prosecution contends.

Parish remains imprisoned after being convicted of committing crimes that didn't occur. If you are interested in assisting Parish to correct this injustice, he will appreciate hearing from you. You can write him at:

Christopher Parish 985050
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

His outside contact is:
Sharmel Gary
30988 Riverbend Circle #8
Osceola, IN 46561

Endnotes:

1 [JD Note: "The DNA report regarding the hat was available at the time of Parish's trial. Doty claimed that he was not aware of it..." *Parish v. State*, No. 20A03-0502-PC-74 (Ind.App. 12/06/2005); 2005.IN.0000756 ¶ 41 <<http://www.versuslaw.com>>.]

2 The Courtroom audience was packed full of Parish's family and friends. Attorney William Polansky from Indianapolis, IN and Attorney Kelly Schweingzer from Elkhart, IN were also in attendance.

3 Evidence to corroborate Parish's innocence is a matter of public record. i.e. trial transcripts, court files, affidavits, police reports, witness statements and DNA test results.

4 Disciplinary Record, Stephen Rezutko #057, The City of Elkhart, June 13, 2005. RE: Request for access to public record.

5 Disciplinary Actions, Steven Ambrose, The City of Elkhart, June 13, 2005. RE: Request for access to public record.

6 Towns Accused of Staling Gun, Drugs, \$9,000, Justin Leighty and Tom Dolan, *The Truth*, Elkhart, IN, May 18, 2004.



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peals court keyed on two related to ineffective assistance of counsel.

One was that Parish's trial lawyer "failed to conduct any meaningful pretrial investigation." Parish presented "substantial evidence" at the post-conviction hearing supporting his alibi that he had been in Chicago over 100 miles from Elkhart at the time of the alleged crime on October 29, 1996, (12 alibi witnesses) and that the crimes he had been convicted of didn't happen as alleged by the State's eyewitnesses (Eyewitnesses admitted to being coerced by the police to perjure themselves.). The appeals court determined that if Parish's lawyer had conducted a meaningful pre-trial investigation he could have presented that evidence undermining the State's case at Parish's trial, and it is reasonable that the jury might have then arrived at a different verdict. Since the lawyer's failure to conduct a pretrial investigation likely affected the trials outcome, it couldn't be considered harmless error attributable to "trial strategy."

The other issue was that Parish's lawyer failed to object to the trial judge issuing an *Allen* charge to the jury before it began deliberations. The appeals court stated, "An *Allen* charge is an instruction given to urge an apparently deadlocked jury to reach a

verdict. Such additional instructions are closely scrutinized to ensure that the court did not coerce the jury into reaching a verdict that is not truly unanimous. Here, the trial court did not give an additional instruction to an apparently deadlocked jury; it gave the challenged instruction before deliberations even began." (*Id.*, at ¶ 48) The Indiana Supreme Court ruled in 1997 that "the general pattern instruction regarding jury deliberations" was "preferable and adequate" to address "the possibility of juror disagreement" without "supplementation" by an *Allen* charge. (*Bowen v. State*, 680 N.E.2d 536 (Ind. 1997))

If Parish's lawyer had objected to the *Allen* charge, the trial judge would have been legally bound by precedent to omit it. The appeals court ruled the failure of Parish's lawyer to object to the initial *Allen* charge pressuring the jury not to deadlock wasn't harmless error, because the jury expressed doubts about the State's case after it began deliberations. The jury asked several questions about the prosecution's case after it began deliberating, including why Love "did not testify at trial" instead of Rezutko testifying about what he said Love told him. The judge's initial *Allen* charge could have short circuited their full deliberation of those doubts, and that error was compounded by the lawyer's failure to conduct a meaningful pretrial investigation.

Consequently, the Court of Appeals determined that Parish was deprived of his Sixth Amendment right to effective assistance of counsel.

There are at least two noteworthy aspects of the appeals courts decision. First, Parish filed his case pro se. The facts substantiating Parish' claims are so persuasive that the appeals court didn't overlook, or otherwise dismiss his appeal as being the rantings of a jailhouse lawyer. The three-judge panel carefully considered his issues and accepted the proposition that Parish may have been in Chicago at the time of alleged crime, and that the alleged robbery and shooting didn't occur as portrayed by the prosecution witnesses during his trial. Second, is that Parish's trial lawyer took the full brunt of the prejudicial effect the prosecution's suspect case had on causing Parish's conviction. Although the defense lawyer didn't meaningfully investigate Parish's alibi claim or uncover that the prosecution's theory of the crime was full of gaping holes — neither did the Elkhart County Prosecuting Attorney demand a meaningful and honest investigation by the Elkhart police of the shooting on October 29, 1996, before filing charges against Parish.

The Elkhart County Prosecuting Attorney didn't respond to *Justice:Denied's* requests for comment about Christopher Parish's case.

