Five Men Convicted Of Financial Crimes Committed By Con Artist – The David Cawthon Story

By David Cawthon

I have received *Justice Denied* for several years. I've read about many people wrongly convicted of murder or rape. I felt that my wrongful conviction somehow wasn't worthy or as bad as what happened to those people. But the realization finally hit me; I am serving 210 months – 17-1/2 years – for a crime about which I still know very little. While conspiracy to launder monetary instruments may not seem as "bad" as rape or murder, the time in prison is just as real, the horror of being wrongly convicted just as sickening, and just as repressive.

Years before my conviction, seemingly in another life, I was a financial planner and insurance broker. I had built up a client base and over about 14 years had secured contracts with 102 insurance companies. In early 1997 I was told about a financial opportunity by a business associate, who was later to be a codefendant. Global Financial Investments (GFI) was planning to issue short-term corporate promissory notes to individuals much like banks issue certificates of deposit. The notes matured (came due) in 9 to 12 months and paid a higher interest rate than banks and insurance companies.

Virgil Womack was president of GFI, its chief executive officer and he controlled the company. I met Womack maybe twice. Yet even though I had little contact with Womack and no involvement in GFI's management, the federal prosecutor would later imply I was one of the schemes "kingpins."

There were three primary "selling points" for the promissory notes. First they were insured by a company, Keyes International, which was in turn reinsured by Lloyds of London. Second, we had a "due diligence" letter from an attorney stating the insurer (Keyes) was stable. Third, GFI claimed assets of $1.2 billion. Finally, we had Womack, the man behind GFI, checked by the FBI. The FBI reported that while they could not actively approve of doing business with someone, nothing detrimental could be found regarding Womack or GFI. As brokers we were furnished with numerous documents that verified GFI could perform exactly as Womack represented.

My codefendants and I soon sold almost $6.5 million in notes to clients, acquaintances and family members. I sold about $1 million in notes. Our clients included lawyers, retired teachers and certified public accountants (CPA). One client was a federal assistant United States attorney (AUSA) who invested $100,000 in GFI notes. Conventional wisdom would dictate that if someone is running a scam the absolute last person on Earth he or she wants involved is an AUSA! Furthermore, that AUSA was the brother of one of my codefendants who invested his family's life savings in GFI notes. That codefendant's parents also purchased GFI notes. Simple logic dictates a person involved in a scam isn't going to jeopardize *his* family's money *and* that of his brother and parents!

But we thought all was on the "up and up." We had no reason to think otherwise. A CPA would later testify that he thought Womack was a "billionaire philanthropist who could most certainly do what he said." In the end, we were all hustled by Womack. At trial, the federal prosecutor asserted that involvement of the CPA and the AUSA was all part of our "master plan." Our prosecutor

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Federal Prosecutor Indicted For Frame-up Of Four Men Innocent Of Terrorism

By Hans Sherrer

What became known as the '"Detroit sleeper cell" terrorism case began six days after September 11, 2001, when a Detroit apartment was searched by federal agents looking for a person on the FBI's Terrorist Watch List. That man, Nabil al-Marabh, was not found. However, the discovery of fake identity documents during the search led to the arrest of the three men from northern Africa who were in the apartment.

Ten days after the raid, on September 27, 2001, a federal indictment alleging fraud and misuse of visas, permits and other documents, was issued against two of those men, Karim Koubriti and Ahmed Hannan, and a third man, Youssef Hmimssa, whose fake I.D. was found during the apartment search. Koubriti and Hannan worked as dishwashers, and Hmimssa was an illegal Moroccan immigrant arrested on September 28.

The three men denied any involvement in terrorism, nothing seized during the search plainly linked them to terrorism, and when interviewed by the FBI, a former roommate of Koubriti and Hannan described them as lazy pot-smoking drunks who didn't practice any religion. He also said he never heard them talk about anything related to terrorism. Hmimssa also described the two men to interrogators as heavy drinkers who smoked hashish and didn't seem religious.

Assistant United States Attorney Richard Convertino was assigned as lead prosecutor in the case. About a month after the indictment Convertino induced Hmimssa to cooperate by using the threat of the 81 years in prison he was facing in three unrelated federal theft and fraud cases. However, during the next four months Hmimssa consistently denied that any of the men were involved in terrorism. Then beginning in March 2002 he suggested Koubriti and Hannan were terrorists, and he provided "details" during many meetings with investigators conducted without his attorney present.

Indictment and trial of alleged Detroit "sleeper cell" terrorists

On August 28, 2002, a superceding four count indictment was issued against Koubriti, Hannan, and two other men, Farouk Ali-Haimoud (who worked at an ice cream shop) and Abdel-Ilah Elmardoudi. The case was known as *United States v. Koubriti, et al*. [1] All four men were accused of fraud and misuse of visas, permits and other documents; conspiracy to commit those offenses; fraud related to identification documents; and providing material support or resources to terrorists. The terrorism charge was the most serious. It was largely based on information provided by Hmimssa, and the alleged similarity between a sketch in a day planner found during the September 2001 apartment search and a military hospital in Amman, Jordan. Convertino and his team speculated the hospital was a possible terrorist target.

Six days before the trial's scheduled start the U.S. launched its invasion of Iraq. The judge denied a defense motion to delay the trial so the possible inflammation of prejudice by jurors against Muslims accused of terrorism could subside. The motion was denied and the trial began on March 26, 2003. It was the first post-9/11 terrorism trial in the U.S.

Under a plea agreement recommending he would serve no more than 46 months imprisonment if he testified as a friendly government witness, Hmimssa pled guilty on April 3, to 10 counts of identity theft and credit card fraud charges resulting from federal indictments in

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also argued that our FBI inquiry before we began selling the notes was also somehow part of our "master plan."

Master plan? Right. For the $1 million of GFI notes I sold over a period of about six months, I was promptly paid some $27,000 in commission via company checks that I did not try to hide in any way. I deposited the checks into my checking account and paid bills. The deal was for me to receive the remainder of my commission ($27,000) over the next 6 months. Hence, the total commission was $54,000, or 5.4%, over a 12-month period. Some contracts I had with major insurance carriers at that time would have paid me up to *18%* commission in a *lump sum* for investments of $1 million plus. So according to the prosecution my "master plan" was to be paid $54,000 over 12 months illegally, when selling the same total amount for top insurance companies I could have made $180,000 paid all at once – legally.

Yet at our trial the prosecutor insisted with a straight face that making less commission on GFI's promissory notes was part of our grand conspiracy to somehow make millions. As a salesman, the advantage of selling GFI's notes was they were in denominations of $10,000, so they were easier to market than opportunities with the insurance companies I represented that required a larger investment.

Five of us who sold GFI's notes were indicted for everything but the proverbial kitchen sink: Conspiracy to defraud; mail fraud; wire fraud; securities fraud; and conspiracy to launder monetary instruments. The most serious charge was the alleged money laundering.

Indictment irregularity

According to the President's Commission the purpose of money laundering is to "conceal and disguise" funds, and that they be used to "promote" an ongoing criminal enterprise. Yet promotion was only mentioned in our indictment as it relates to our personal assets, while concealment and/or disguise was not mentioned at all. It wasn't mentioned because since we weren't committing crimes, we didn't attempt to "conceal and disguise" our actions. An indictment is supposed to track the statutory language and include all essential elements of the alleged crime(s). That requirement helps guard against the erroneous indictment of innocent persons, and that it wasn't followed in our case contributed to our wrongful convictions.

Two trials

We went to trial in U.S. District Court in Macon, Georgia. Twice. For all of us, these were our first and only felony charges. We were businessmen accused of white collar crimes that didn't involve any drugs, guns, or violence. The broadness of the money laundering and conspiracy statutes allows the government to characterize practically any business activity as a crime. In my case I sold some promissory notes that I had every reason to think were completely legitimate, and collected a commission for their sale.

The first trial was declared a mistrial in November 2001. The trial was an eye-opening education for the five of us into how ruthless federal prosecutors are and how little regard they have for the truth.

Our second trial began in January 2002. The prosecutor's zeal to ensure our conviction intensified during the second trial, as did the judge's open bias against us. A blow to our defense was when the judge upheld the prosecution's objection to allowing our key witness to testify. The witness wasn't a shady character with a long criminal rap sheet and zero credibility. He was Georgia Superior Court Judge John D. Crosby, of the Tifton Judicial Circuit.

In the summer of 1997 Georgia's Secretary of State filed suit against GFI and Womack claiming the notes he was marketing were unregistered securities. After a bench trial, in October 1997 Judge Crosby issued a permanent restraining order against GFI barring its sale of the promissory notes (unregistered securities), and appointed a receiver to take over GFI's assets and operation. Womack appealed Judge Crosby's decision, and it was upheld unanimously by the Georgia Supreme Court in September 1998. (*Womack v. State*, 270 Ga. 56, 507 S.E.2d 425 (Ga. 09-14-1998)) If Judge Crosby had been allowed to testify about what he knew of GFI's operation and Womack, he would have proven without a doubt our innocence.

Why didn't Judge Crosby testify? He traveled from Tifton to Macon (105 miles one-way) to testify, but when we were ready to call him as a witness our judge said there wasn't enough time for him to complete his testimony that day, and he didn't want his testimony interrupted. So Judge Crosby returned to the federal courthouse the next morning expecting to be the first witness called. However, overnight our judge had a change in attitude: He refused to allow Judge Crosby to testify, saying, "I will not allow another judge in my courtroom." Out lawyer's objections to barring Judge Crosby from testifying were futile.

Another egregious breach of our rights during both trials was the prosecutor withheld important exculpatory evidence that would have impeached the testimony of a critical witness representing the Georgia Secretary of State's office. The withheld information was that an agent with the Secretary of State's office had called Womack several times and told him that for $150,000 Georgia's investigation of him and GFI would "all go away." The agent later pled guilty to solicitation of a bribe. All the calls to Womack were recorded and verified to have been by this particular agent. During both trials this key information establishing Womack's culpability in GFI was concealed from us by the prosecution, even as agents from the Secretary of State's office testified against us.

Another witness that didn't testify was Womack's secretary. She did testify as a defense witness in our first trial that ended in a mistrial. Our judge, however, discouraged her testimony during our second trial, telling our lawyers, "There is no need to bother this young lady yet again." Yet Womack's secretary could not only have provided valuable testimony about how Womack operated his fraudulent "business," and how we knew nothing about it being a scam, but she also could have disclosed during her testimony that she had an affair with the Georgia Secretary of State agent who attempted to shake down Womack for a $150,000 bribe.

Also, even though a viable defense to the charges against us was that we had an innocent "state of mind" and thus lacked criminal intent at the time the alleged events occurred, repeated attempts by our lawyers to establish our lack of knowledge or intent were rejected by the judge. At one point when I asked my attorney why the judge was so extremely hostile toward us, he said, "Looks like we got a new prosecutor today." The "new" prosecutor being the judge who didn't seem interested in even attempting to appear unbiased.

Since Womack had made a sweetheart plea deal with the US Department of Justice, somebody else had to be cast as the "bad guys" to take the fall for his scam. Tag. We were it.

Trial judge kept the jury in the dark about what happened to $2.8 million

Besides disallowing our key witness to testify and preventing the introduction of evidence proving our lack of criminal intent, the judge also prejudiced us by answering a question by the jury during its deliberations in an "affirmative pregnant" manner. During their deliberation the jury asked a question about what had happened to $2.8 million that had been removed from GFI's corporate bank account about the time Judge Crosby issued the restraining order against GFI.

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An "affirmative pregnant" answer is an answer to an unasked question implying a negative. Essentially, the jury asked the judge, "Your honor, we have heard about this $2.8 million dollars. *What exactly happened to that money*?" Rather than simply tell the jury what took place, the judge told the jury that what happened to the money was not an issue in the case. But that was an answer to a question the jury didn't ask. Ironically, if Judge Crosby had been allowed to testify the jury wouldn't have needed to ask the question, since he could have explained what happened to the money during his testimony.

What the jury wasn't told is that after the Secretary of State's investigation of GFI and Womack became known, two signatories to GFI's corporate bank account (who were codefendants of mine) withdrew the money in question ($2.8 million) without Womack's knowledge and turned it over to an attorney to be deposited into an interest bearing trust account for safekeeping. Although Womack threatened those two men if they didn't return the money to him, it wasn't, and the receiver appointed by Judge Crosby eventually took possession of the money for distribution to investors scammed by Womack/GFI. Our trial judge knew all of this. But if he told (or had allowed Judge Crosby to tell) the jury the truth that the $2.8 million had only been returned to purchasers of GFI's notes because of my two codefendants, it would have made us look less culpable, less guilty. So our judge chose to deceptively respond to the jury's question, and consequently in weighing our fate, the jury was kept in the dark that largely because of that $2.8 million, Womack's "marks" were lucky as victim's of scams go: the actual over-all loss to purchasers of GFI's notes was less than 50%. The five of us codefendants weren't so lucky.

Giving evidence that the judge's response to the jury was done with a "guilty mind," his interaction with the jury in regards to their question about the money wasn't conducted in open court. He secretly answered the jury's question behind closed doors. We weren't present, nor were we allowed an opportunity to rebut or object to the judge's "affirmatively pregnant" answer to the jury! What happened to the principle of a "public" trial?

The second trial ended in January 2002 with guilty verdicts against the five of us as to all counts. I was sentenced in March 2002, to 210 months – 17-1/2 years – in prison, the same as my four codefendants. I began my sentence on March 19, 2002, and with the BOP's 15% good-time credit I'm scheduled for release on June 26, 2017.

My judge was feebleminded

There has been a lot of talk regarding the mental agility and acumen of judges once they start aging. In our case that originally included Womack as a codefendant, the indictment had a total of 72 counts. I was named in 18 of those counts, the last being count 52. Count 52 was conspiracy to launder money. Although it carried a maximum sentence of 20 years in prison, it included a lesser sentencing provision of "only" 10 years. My four codefendants were also named in count 52. Count 53 was a different and more serious money laundering charge that only Womack and his wife were charged with violating. Yet even though we were not named in count 53, our judge, born in 1930, instructed our jury on count 53 as if we were charged with violating it!

Consequently, the jury mistakenly voted us guilty of the money laundering allegations in count 53 that us five codefendants weren't even alleged by the government to have violated! That was a serious mistake because count 53 involved a much more serious penalty under the sentencing guidelines.

The *indicted* crimes that the jury found us guilty of committing carried sentences of from 24 to 30 months under the mandatory federal sentencing guidelines (remember this was pre-*Booker*). However, with the prosecutor's approval, the judge relied on a crime of which we weren't convicted (Count 53), and facts not proven by the prosecution beyond a reasonable doubt to the jury, and to "enhance" our sentence by 700% to 800% – to 210 months.

11th Circuit orders resentencing

We were disappointed when on direct appeal the federal 11th Circuit affirmed our convictions. However, the appeals court did get the problem with our sentences right by ordering our trial judge to re-sentence us pursuant to the less stringent (up to 10 year) portion of the money laundering statutes – which supported our contention that the guideline sentencing range was 24-30 months. At our re-sentencing hearing, the judge simply disregarded the 11th Circuit's ruling, and sentenced us to the same 210 months! We are now in our second direct appeal due to the judge's failure to comply with the appeal court's mandate. Our briefs were filed in January 2005 – 18 months ago. As this is written we await our fate.

If the 11th Circuit rules as it did previously, and we are sentenced accordingly to 24-30 months, we would be released with time served since we have been imprisoned for more than four years. Whether released or not, I will file a Writ of Certiorari with the Supreme Court seeking to overturn my convictions, and if that is not successful, I will be pursuing a §2255 motion to challenge my conviction on multiple grounds.

Womack the King Pin was "more equal" than the other defendants

For more than four years, five innocent businessmen have languished in federal prison for crimes they did not commit and can prove they didn't commit. In contrast with our treatment, the actual criminal, Womack, came out "smelling like a rose." He pled guilty to laundering some $52 million, of which $6.5 million was the money involved in the GFI note scam. While five of us received 17-1/2 years on fabricated charges, Womack slid by with 60 months in a federal prison camp for his role as the King Pin in his money laundering scheme. He's now free. [JD Note: Womack was released from BOP custody on December 27, 2005.] Womack's wife was treated even more royally than he was. Although indicted for crimes far more serious than me and my four codefendants, the U.S. Attorney's Office offered her a "too good to be true" deal that allowed her to slide by with a one year sentence.

Other than the $2.8 million my two codefendant's removed from GFI's account for safekeeping and any money seized by the government, Womack has not paid back any of the $52 million he admitted stealing. The figure could be a lot more. That is just all the government admitted it found out about.

George Orwell wrote in *Animal Farm* (1945): "All animals are equal – some are just more equal than others." For reasons unknown to me, Womack and his wife were considered "more equal" than some of the other animals named on the indictment. Could Womack's stolen millions buy more equality? Sure seems so.

The conduct of the federal investigators, prosecutors and our trial judge were so totally skewed toward ensuring our convictions in spite of our innocence, that at the end of the day the nagging question remains: "Quis custodiet ipsos custodes?" – "Who shall guard the guards themselves?"

Thank you for reading about our plight. I can be written at:

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