

TN Theft Conviction Tossed

By JD Staff

In late 1999 Linda Maples and her husband took their 1982 Chevrolet Silverado to McMahan's Garage in Pigeon Forge, Tennessee for refurbishing. The Maples' also delivered a new engine for installation in the truck. McMahan's didn't finish the refurbishing before the death of Mr. Maples in April 2001. When she inquired about her Silverado, Ray McMahan told her it had disappeared from his storage lot. She then reported it stolen.

About two years later, when her vehicle still hadn't been found, Maples began investigating on her own. In November 2003 she found that the serial number of an engine in a truck owned by Rod Mills, a former employee of McMahan's Garage, matched the engine she had delivered to McMahan's almost four years earlier. Mills' truck was inoperable at the time Maples matched the engine serial number.

Maples provided the information to the Pigeon Forge Police Department, which conducted an investigation. In January 2004 Mills and McMahan were each indicted on "one count of theft over \$10,000."

McMahan died in November 2004, prior to his trial. Mills elected to have a bench trial, which was held in May 2006. He was found guilty and sentenced to five years imprisonment. Mills appealed to Tennessee's Court of Criminal Appeals.

Mills' trial strategy had been that the prosecution didn't have sufficient evidence to prove he committed a crime. That is why, after the prosecution presented its case, Mills' lawyer rested without Mills testifying or presenting any witnesses in his defense. Mills' appeal was based on the same strategy by relying solely on the insufficiency of the evidence.

The appeals court issued its ruling on June 5, 2007. (*State v. Rod Mills*, No. E2006-02207-

Thompson Endnotes cont. from p. 17

7 *Id.*

8 *Id.*

9 Federal appeals court orders Thompson released from prison, By Ryan J. Foley, *The Janesville Gazette* (Janesville, WI), April 6, 2007.

10 Court orders ex-state employee freed from prison, *WISN Channel 12* (Milwaukee, WI), April 6, 2007.

11 *Id.*

12 *United States v. Thompson*, 484 F.3d 877 (7th Cir. 04/05/2007); 2007.C07.0000350 ¶28 <www.versuslaw.com>

13 *Id.* at ¶ 27.

14 *Id.* at ¶ 29-30.

15 *Id.* at ¶ 31-33, 35.

16 *Id.* at ¶ 37.

17 *Id.* at ¶ 40-41.

18 *Id.* at ¶ 41.

19 *Id.* at ¶ 42.

20 Conviction may cost Thompson \$300,000, By Steven Walters and Patrick Marley, *Milwaukee Journal-Sentinel*, April 6, 2007.

21 *Id.*

22 Georgia Thompson case warrants congressional probe, Editorial, *The Tomah Journal*, April 16, 2007.

23 State worker files claim, By Patrick Marley, *Milwaukee Journal-Sentinel*, June 15, 2007.

CCA-R3-CD (Tenn.Crim.App. 06/05/2007))

The Court recounted the basic facts of the case, including that Mills told the police investigator that McMahan gave him the vehicle in June 2001 as payment for money he was owed by McMahan for mechanic work, and that McMahan didn't tell him he didn't own the truck. Mills said he didn't make any attempt to transfer the title because he parted out the Silverado, and he only put the engine in his own truck. McMahan told the investigator the same thing: he gave the truck to Mills for back wages and he never told him the truck belonged to Maples.

The Court explained that the theft statute (Tenn. Code Ann. * 39-14-106(20) (2003)) requires that a "... person knowingly obtains or exercises control over the property without the owner's effective consent." The Court stated that in regards to the theft statute's *mens rea* requirement, to have acted "knowingly" Mills would need to have had "actual or constructive knowledge that the truck was stolen."

Since it was undisputed that Mills had control over McMahan's Silverado without her consent, the question was if the prosecution had presented proof beyond a reasonable doubt that he had done so "knowingly."

The Court recited that the serial number hadn't been altered or removed from the engine; that Mills fully cooperated during the police investigation; that McMahan confirmed Mills' explanation that he was given the truck for back wages; that McMahan confirmed he never told Mills that the vehicle belonged to someone other McMahan; and that McMahan had been truthful in confidential information he had provided the Pigeon Forge PD about automobile thefts throughout Sevier County.

The Court concluded by deciding: "The entirety of the evidence is not consistent with the defendant's guilt and does not exclude every other reasonable hypothesis except the guilt of the defendant. The evidence produced at trial did not prove, beyond a reasonable doubt, that the defendant had actual or constructive notice that the truck was stolen at the time he was found with the truck in his possession. As such, the defendant's conviction must be reversed.

Since Mills' conviction was reversed for insufficient evidence he committed a crime, the indictment was dismissed and he was released from custody after 13 months of wrongful imprisonment.

Fingerprint Doesn't Stop Quashing Of Conviction

Three masked men stole more than \$50,000 (£30,000) after overpowering 60-year-old Neil Bateman outside his Bodenham, England home in April 2004.

In February 2006 two brothers, Khalid and Mohammed Khan, pled guilty to the robbery.

A third man charged with the robbery was auto mechanic Sirfraz Ahmed. The Khan brothers didn't implicate Ahmed in the robbery, but his fingerprint was found on a black plastic bag left at the crime scene after it had been worn as a mask by one of the robbers.

At his October 2006 trial, Ahmed testified that at the time of the robbery he was almost 50 miles away in Birmingham, where he lived, attending a birthday party at this mother's house. Several witnesses corroborated Ahmed's alibi. He also testified that he knew the Khan brothers, and that he had helped Khalid fix cars at the house the brothers shared.

Ahmed said that they would put plastic bags on the seat of a car to prevent oil stains, and that he could have touched the bags, so that is how his fingerprint could have gotten on the bag found at the crime scene.

The jury rejected Ahmed's alibi and convicted him. He was sentenced to four years imprisonment.

In June 2007 the Court of Appeal heard arguments in Ahmed's appeal. Afterwards the three-judge panel unanimously quashed his conviction on three grounds: The judge failed to properly instruct the jury about the sufficiency of evidence necessary to convict Ahmed; there was insufficient evidence to sustain Ahmed's conviction; and the jury may have been overly influenced to infer Ahmed's guilt from the guilty pleas of his friends and co-defendants, the Khan brothers.

The Court stated in regards to the fingerprint evidence: "The jury could not properly be sure that the fingerprint found on such a common item as a plastic bag was sufficient evidence on which to conclude that this appellant was involved in the robbery."

Since Ahmed's conviction was quashed due to the insufficiency of the evidence, the Court didn't order a retrial. He was immediately released from custody after eight months of wrongful imprisonment.

Source: Conviction quashed, *Hereford Times* (Hereford, England), June 29, 2007.

