

# Harry Miller Exonerated Of Utah Robbery Committed When He Was In Louisiana Recovering From A Stroke



Harry Miller after his release

By Hans Sherrer

A woman was robbed at knife-point of her purse outside a Salt Lake City, Utah convenience store on December 8, 2000. Her purse contained \$50, and the black robber who fled on foot was not apprehended.

More than two years later, in February 2003, a Salt Lake City restaurant was robbed at gunpoint by a black man. Minutes later Harry Miller, 47 and black, was stopped and searched by police when he was seen walking several blocks from the restaurant. Although Miller didn't have a gun on him or any of the robbery proceeds, he was arrested and subsequently charged with robbing the restaurant. Those charges were later dropped for insufficient evidence. However, his arrest resulted in his picture being in the Salt Lake City PD's mugshot book.

Shortly after Miller's release, the woman robbed in 2000 was with her husband while he was looking through police photos of possible suspects in an unrelated crime. When she saw Miller's mugshot from his false arrest for the restaurant robbery, she told the police, "That looks like the guy who robbed me." The woman identified Miller even though she told police at the scene of the crime that the robber was 18 to 21 years old, while in 2000 Miller was 47-years-old and had gray in his beard.

Based on the woman's identification, Miller was arrested and charged with first-degree felony aggravated robbery. The store clerk later also identified Miller as the robber.



Miller's defense during his trial in 2003 was he couldn't have committed the crime because on December 8, 2000 he was in Louisiana, almost 1,900 miles from Salt Lake City.<sup>1</sup> Miller testified he was living in Louisiana when he suffered a stroke on November 25, 2000, after which he was hospitalized for four days. He then stayed at his sister's home in Donaldsonville, Louisiana while he recovered. He testified that the stroke left him partially paralyzed and unable to speak, and only after a period of time did his movement and speech somewhat return. His alibi testimony was corroborated by hospital and employment records proving that two weeks before the robbery and a week afterwards he was in Louisiana.

The prosecution argued that the robbery victim and store clerk both positively identified Miller, and his alibi evidence didn't establish that on the day of the crime he was in Louisiana, only that he was there before and after the robbery. They further argued that he could have committed the robbery in spite of his stroke caused physical and speech difficulties.

**"Prison is not right for people who've never done nothing."**  
 Harry Miller after his release from 4-1/2 years imprisonment for a Salt Lake City robbery committed when he was 1900 miles away in Louisiana recovering from a stroke.

The District Court jury convicted Miller and he was sentenced to five years imprisonment. Lawyers Margaret Lindsay and Patrick Lindsay were appointed to handle Miller's direct appeal. (The Lindsays are brother and sister.) Prior to filing Miller's appeal brief, the Lindsays came upon information that hadn't been introduced during his trial, corroborating Miller's alibi that he had been in Louisiana when the crime occurred.

Rule 23B of Utah's Rules Of Appellate Procedure allows for a motion to remand a case back to the trial court to determine the facts supporting a defendant's claim of ineffective assistance of counsel, provided there is evidence not in the record supporting the motion. After an evidentiary hearing, the trial court submits its findings of fact to the appeals court, which makes a determination if there is sufficient evidence supporting the ineffective assistance of counsel claim. If they decide the claim is supported, then the defendant can add the claim to his or her direct appeal.

The Lindsays filed a 23B motion alleging Miller's trial lawyer didn't adequately investigate the witnesses and documentation that was available in support of his alibi. However, the motion was denied by the Court of Appeals on the basis there

was insufficient new evidence of ineffective representation by Miller's trial lawyer.

Believing that Miller had in fact been in Louisiana, the Lindsays pursued collecting additional evidence supporting his alibi. Patrick flew to Louisiana and over the course of three days sought additional documentation and witness affidavits corroborating Miller's presence in Donaldsonville on the days around the robbery. One of those witnesses, a home health-care nurse, swore she saw Miller on December 7, the day before the robbery.

Armed with the new evidence, the Lindsays filed a second 23B motion. Based on that motion's additional new evidence the Court of Appeals ordered the trial judge to hold an evidentiary hearing. The home health-care nurse who saw Miller on the 7th, and Miller's niece who cared for him after his stroke, were among the witnesses who traveled from Louisiana to Salt Lake City for the September 2005 hearing.

After the hearing the judge didn't find that Miller's lawyer had been ineffective, because there was no evidence specifically establishing that on December 8 Miller was in Donaldsonville. Consequently, the judge found it is possible Miller could have been in Salt Lake City and committed the crime during the approximately 24-48 hours when he couldn't "prove" he was in Donaldsonville.

The judge's ruling was inexplicable because when Miller traveled to Salt Lake City he did so by bus. The round-trip by Greyhound from Baton Rouge (closest depot to Donaldsonville) and Salt Lake City takes 3 days and 8 hours – plus whatever time Miller would have needed to commit the robbery and go to and from the bus station, and then wait for the next bus to leave.<sup>2</sup> Thus it was not only physically impossible for Miller to have traveled round-trip by bus between Louisiana and Utah in 24-48 hours – but his debilitating stroke may have made the trip medically impossible for him to undertake in early December 2000. On top of those considerations is the absurdity of believing Miller, or anyone else, would travel 3,800 miles to rob a woman of \$50 — which wouldn't even cover his bus fare.

The Court of Appeal reviewed the record of the evidentiary hearing *de novo*, which meant the court freshly looked at the evidence without being bound by the District Court judge's opinion. However, prior to issuing a decision, in May 2007 the appeals court vacated Miller's conviction and ordered a new trial, based on a stipulation between his lawyers and the prosecutors.

**Miller cont. on p. 5**

## Convictions Based Solely On Co-defendant's Self-serving Testimony Tossed

*State of Tennessee v. William Joshua Harwood*, No. E2006-01483-CCA-R3-CD (Tenn.Crim.App. 09/04/2007); 2007.TN.0001286<<http://www.versuslaw.com>>

The defendant, William Joshua Harwood, appeals as of right from his Hamilton County Criminal Court convictions for attempt to manufacture methamphetamine and two counts of theft of property valued at over one thousand dollars. (¶7)

Elizabeth Martin testified that she returned home from a two-week trip to Italy to discover her home in disarray and smelling "like cat urine." She contacted authorities who discovered that someone had been manufacturing methamphetamine in the home. She stated that her daughter, Elsie Martin, had access to the home while she was in Italy. She also recalled that several items were missing from her home and that a pile of women's and men's clothing was found on her kitchen floor. She did not mention the defendant in her testimony. (¶17)

Judith Martin, Elsie Martin's grandmother, testified that she had traveled to Italy with her daughter, Elizabeth, only to return home to find her home ransacked. She stated that Elsie also had access to her home. Several items, including a blank check, were discovered missing from the home. Investigators later learned that the blank check had been cashed for \$5700. She did not mention the defendant in her testimony. (¶18)

Lieutenant William Lewis of the Signal Mountain Police Department, testified that when he was called to the scene of Elizabeth Martin's home he became concerned that the house had been used to manufacture methamphetamine. ... He did not mention the defendant in his testimony. (¶19)

Officer Russell Craig of the Signal Mountain Police Department testified that he is certified in clandestine methamphetamine lab processing. ... He did not mention the defendant in his testimony. (¶20)

William Harwood's theft and methamphetamine manufacturing convictions were based solely on the testimony of a co-defendant, who admitted that she testified as a prosecution witness in exchange for being sentenced to rehabilitation instead of prison. Ruling uncorroborated co-defendant testimony is insufficient evidence, the appeals court overturned Harwood's convictions and dismissed the charges. Excerpts of the decision follow.

Officer James Fletcher of the Signal Mountain Police Department testified that he transported evidence recovered from Elizabeth Martin's home to the Tennessee Bureau of Investigation Crime Lab. Agent Ashley Cummings of the TBI Crime Lab confirmed that the items contained evidence of methamphetamine. Agent David Shelton of the Drug Enforcement Administration estimated the amount of methamphetamine manufactured to be about twenty-three grams of "fairly high purity" ... None of these law enforcement agents mentioned the defendant in their testimony. (¶21)

Elsie Martin, an indicted co-defendant, stated that she was testifying in exchange for serving her sentence in rehabilitation. (¶23)

The defendant contends that the evidence is insufficient to prove his guilt for the convicted offenses because it is based upon the uncorroborated testimony of an accomplice, Elsie Martin. The state concedes and asks this

court to reverse and dismiss the defendant's convictions. (¶25)

In *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994), our supreme court explained the requirement that a conviction may not be based solely upon the uncorroborated testimony of an accomplice when it ruled that: "[T]here must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity." (¶27)

Our review of the evidence presented at trial reveals that the only evidence implicating the defendant with any criminal activity was presented solely through the testimony of Elsie Martin. ... Accordingly, the defendant's convictions are reversed and the cases are dismissed. (¶28)

## Miller cont. from p. 4

The Lindsays were then replaced as Miller's counsel by a public defender assigned to represent Miller during his retrial, that was scheduled to begin on July 12, 2007. The prosecution, however, offered to immediately free Miller for the time he had served if he would plead guilty to a misdemeanor. Miller refused, asserting he was innocent. Facing a retrial with the victim's shaky identification exposed by the credible evidence that Miller was almost two thousand miles from the crime scene, the prosecution dropped the charges on July 6. Miller was released later that day after almost 4-1/2 years of wrongful imprisonment.

Miller was overcome with emotion, later saying to *The Salt Lake Tribune*, "It was like I was a little kid and somebody slapped me upside my head. I started crying like a little baby." He was unapologetically critical of his public defender's failure to adequately investigate that he was in Louisiana, saying, "He just

stopped trying." In his southern drawl, Miller said somewhat philosophically, "Prison is not right for people who've never done nothing."

Trying to make sense of how the jury convicted Miller when only his skin color matched the victim's original description of her attacker, and there was documentary proof he had experienced a debilitating stroke in Louisiana only 13 days before the robbery, Patrick Lindsay told *The Salt Lake Tribune*, "I think sometimes juries here, and across the nation, don't come into court with an 'innocent until proven guilty' attitude."

Miller wasn't given any money when he was released from prison, so he stayed with relatives and friends in the Salt Lake City area. To get together enough money to return to Louisiana he started working as a laborer for a moving company. After *The Salt Lake Tribune* ran a story that Miller was too destitute to return home to Louisiana, local defense attorney Andrew McCullough started a fund to raise money for him. After

about a week McCullough had raised \$690. The first week-end in August 2007, Miller left for New Orleans where he had arranged to stay with his daughter until he got situated.

Utah doesn't have a wrongful conviction compensation statute. So Miller's only financial recourse may be to file a federal civil rights lawsuit (42 U.S.C. §1983) against the public defender who represented him at his trial, the Salt Lake Legal Defender Association, and Salt Lake County, for the harm he suffered because of his ineffective trial representation.

### Sources:

"Wrongful Prosecution," by Stephen Hunt (staff), *The Salt Lake Tribune*, July 23, 2007.  
"Vindicated ex-prisoner to return home," by Stephen Hunt, *The Salt Lake Tribune*, August 3, 2007.  
Telephone interview of Patrick Lindsay by Hans Sherrer, August 8, 2007.

### Endnotes:

1 It is 1,881 miles from Donaldsonville, Louisiana to Salt Lake City, according to mapquest.com, and the driving time is 27 hours and 25 minutes, less time for stops. (Last checked on August 8, 2007.)  
2 Baton Rouge to Salt Lake City takes, 1d, 16h, 30m. Salt Lake City to Baton Rouge takes 1d, 15h, 35m. Information from Greyhound's website, <http://greyhound.com> (Last checked August 8, 2007.)