

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.)