

## Twin's Conviction Of Murdering Brother Overturned

*Philip Littler v. State of Indiana*, No. 71S03-0704-CR-151 (Ind. 08/08/2007) [Opinion excerpts]

Eighteen-year-old Neal Littler died from a gunshot injury suffered in a fight with his twin brother, Philip Littler. Convicted of Neal's murder, Philip's direct appeal challenges the trial court's exclusion of their mother's testimony regarding Neal's prior conduct. (§10)

Defending against the murder charge at trial, Philip asserted self-defense and claimed that Neal was threatening and attacking Philip with a knife. Philip sought to present evidence of certain events and specific acts committed by Neal in the past upon which Philip claimed he reasonably relied for his belief that Neal posed a threat of serious bodily injury or death. Among his proposed witnesses, Philip listed the mother of Philip and Neal. ... The trial court granted the State's motion and refused to permit Philip to call the twins' mother to corroborate his testimony. (§§11-12)

Philip Littler's conviction was overturned and a new trial ordered by the Indiana Supreme Court in August 2007, based on the trial judge's failure to allow Philip's mother to provide testimony corroborating his testimony that he had reason to be in fear of his life when he shot and killed his twin brother in self-defense. Excerpts of the decision follow.

In this appeal, Philip seeks reversal on grounds that the trial court erroneously prevented him from presenting his mother's testimony. The State's response does not dispute that the exclusion was erroneous but argues only that any error did not affect Philip's substantial rights, appealing to what is often referred to as the "harmless error" doctrine. (§13)

Neal's death occurred when Philip and Neal got into an argument that escalated into a physical altercation. At one point, Neal brandished a knife and Philip pulled out a handgun. In his trial testimony, Philip stated that Neal then threatened to kill him and that Neal, armed with the knife, made an abrupt movement toward Philip, prompting him to fire the handgun at Neal from about three feet away, because he thought that Neal was going to stab him. Philip explained that this belief was fueled by his awareness of previous incidents in which Neal had stabbed Philip and oth-

er people, including their stepfather ... The incident was observed by Neal and Philip's fourteen-year-old cousin, who testified that Neal had pulled a knife, threatened to use it against Philip, and was moving as if to stab Philip when Philip fired the handgun at Neal. (§14)

Following Philip's testimony, the defense attempted to call their mother "for the purpose of testifying to the fact that the various instances of bad acts by Neal that Philip has testified to did in fact happen and his testimony in that regard is true." (§15)

The applicable version of the self-defense statute states: "[A] person is justified in using deadly force only if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony." Ind. Code 35-41-3-2(a) (2004). (§18)

... [T]he phrase "reasonably believes," as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under

the circumstances. (§20)

Philip clearly asserted self-defense and provided evidence in support of this claim. Philip testified to his actual fear that Neal was about to stab him and to his knowledge of Neal's prior conduct and circumstances warranting Philip's belief that he needed to use force to prevent Neal from inflicting serious bodily injury. The cousin provided testimony that tended to corroborate Philip's version of the fight, Neal's attempt to stab Philip, and Philip's firing of the handgun in self-defense. But Philip was not permitted to provide any corroboration of his allegations of facts supporting his belief that deadly force was necessary. ... The mother's testimony confirming Neal's numerous prior stabbings, his mental condition, and his history of violent behavior would be very probative and relevant to the jury's evaluation of the objective reasonableness of Philip's belief that he needed to use force against Neal and would also lend substantial credibility to Philip's assertions. We cannot conclude that the exclusion of the mother's testimony did not affect Philip's substantial rights. The harmless error doctrine does not apply here ... (§21)

We reverse [Philip's] conviction for murder and remand for a new trial and such other further proceedings as are consistent with this opinion. (§24)

## The Public Thinks Lawyers Lie

A Harris Poll® found that three out of four adults in the U.S. don't trust a lawyer to tell the truth. The only occupation trusted less are actors — who are paid to make-believe.

Doctors (85%) and teachers (83%) are considered the most likely people to be honest. Police officers rank fourth at 76%. Ordinary people encountered in daily life are considered to be truthful by 66% of the poll's respondents — just below judges (70%) and just above civil servants (62%), that includes prosecutors.

A separate nationwide Harris Poll® found that only 21% of adults think lawyers have

"very great prestige," just above entertainers (18%). In contrast, the most prestigious professions are firefighter (63%) and doctor (58%). Even more telling, 20% of adults think lawyers have "hardly any prestige at all" — whereas only 1% have the same low opinion of doctors. Police officers are considered to have "very great prestige" by 43% of adults.

The findings suggest that doctors, police officers and government employees such as crime lab technicians, can be very effective witnesses in court because of the trust the general public has in what they say.

Sources:  
"Doctors and Teachers Most Trusted Among 22 Occupations and Professions," The Harris Poll® #61, August 8, 2006, www.harrisinteractive.com  
"Firefighters, Doctors and Nurses Top List as 'Most Prestigious Occupations,'" The Harris Poll® #58, July 26, 2006, www.harrisinteractive.com

## Vermont Enacts Wrongful Conviction Law

Vermont Governor Jim Douglas signed a law on May 30, 2007, that compensates the wrongly convicted, provides for post-conviction DNA testing, and establishes two committees, one to study the preservation of evidence and the other to study eyewitness identification procedures and recording interrogations.

The compensation law provides for \$30,000 to \$60,000 per year of incarceration, plus lost wages, attorney fees, 10 years of

eligibility in the Vermont Health Access Plan, and mental health services. Vermont became the 20th state (plus the Dist. Of Col. and the federal govt.) to enact a law providing for wrongful conviction compensation.

The DNA provisions provides for indefinite DNA testing in serious felonies and 30 months after conviction for other felonies, to applicants who demonstrate DNA evidence may "provide substantial evidence of the person's innocence."

Source:  
"State Legislative Affairs Update," By Scott Ehlers, *The Champion*, July 2007, pp. 59-60.