Shih-Wei Su Awarded $3.5 Million For Attempted Murder Convictions

Shih-Wei Su was convicted in 1992 of two counts of attempted murder in a New York City pool hall shooting. Su protested his innocence, but in convicting him the jury relied on the testimony of a jailhouse informant that Su ordered the 1991 shooting. When the informant was questioned during direct examination by the prosecutor, he denied that he made a deal with the prosecution for leniency in exchange for his testimony. Other witnesses, including the pool hall's owner who knew Su and was present at the time of the shooting, said Su wasn't there. The 19-year-old Su was sentenced to 16 to 50 years in prison.

Su was later able to get a court order to unseal the records of the prosecution's star witness, who was a minor when he testified. The records showed that the witness had in fact made a pre-trial deal with the prosecution for leniency in exchange for his testimony.

Su filed a motion for a new trial based on the prosecutions misconduct of concealing the secret deal and knowingly eliciting false testimony from the witness. The motion was denied by New York state courts. Su then filed a federal writ of habeas corpus that was denied by the U.S. District Court Judge.

However, on July 11, 2003 the federal Court of Appeals for the Second Circuit granted Su's habeas petition because the jurors were misled and the outcome of his trial was likely affected by Assistant DA Linda Rosero's elicitation of false testimony from the witness. The Court wrote in their decision: "The prosecution knowingly elicited false testimony from a crucial witness. ... Since at least 1935, it has been the established law of the United States that a conviction obtained through testimony the prosecutor knows to be false is repugnant to the Constitution. (*Mooney v. Holohan*, 294 U.S. 103, 112 (1935)) This is so because, in order to reduce the danger of false convictions, we rely on the prosecutor not to be simply a party in litigation whose sole object is the conviction of the defendant before him. The prosecutor is an officer of the court whose duty is to present a forceful and truthful case to the jury, not to win at any cost." *Su v. Filion*, 335 F.3d 119 (2d Cir. 07-11-2003)

The New York DA's Office subsequently dismissed the charges and Su was released after more than 12 years of wrongful incarceration.

In New York complaints against a lawyer are handled by a grievance committees appointed by the Appellate Division of the State Supreme Court. After Su's release filed a complaint against Rosero for knowingly eliciting false testimony.

The Grievance Committee decided that Rosero's actions were attributable to her being "naïve, inexperienced and, possibly, stupid." Although finding that she wasn't responsible for the false testimony, the committee did issue her a written admonition.

Su angrily wrote the Committee after it's decision: "Is 12 years worth of my life worth only an admonition? Even jaywalking can get prison time. So can stealing a loaf of bread. With all due respect, the message that this committee is sending out is loud and clear: Don't worry about using false evidence; you will only get an admonition if you are stupid enough to admit it."

In February 2006 Su filed a federal civil rights lawsuit demanding $25 million in damages from the City of New York for the prosecutor's action of "knowingly presenting perjured testimony and deceiving a jury into wrongfully convicting plaintiff of attempted murder." Su and NY City settled the suit for $3.5 million in October 2008.

Now 35, Su was pleased the case was resolved, but angry that no prosecutor had been punished for fabricating the case against him. "The settlement doesn't buy back the time I lost and doesn't do real justice, but the amount shows the public something is very wrong here. I did 12 years on a wrongful conviction, and no one was punished for it."

Su's attorney, Joel B. Rudin of New York City, has conducted research showing that about 80 convictions in NYC's Queens borough from about 1988 to 2003 were reversed because of prosecutorial wrongdoing. Yet, not a single prosecutor was disciplined for his or her misconduct.

In December 2003 a lawsuit Rudin filed against New York City on behalf of Alberto Ramos was settled for $5 million. Ramos was one of The Bronx Five: Five men working at day care centers in the Bronx who were prosecuted by Assistant DA Mario Merola. Ramos was convicted in May 1985 of child abuse and sentenced to 8-1/3 to 25 yrs in prison. His conviction was overturned on appeal in 1992 based on the prosecution's concealment of exculpatory evidence that likely would have resulted in his acquittal. He was wrongly imprisoned for seven years.

Sources:
City to pay 3.5 million to wrongfully imprisoned queens man, *The New York Times*, October 18, 2008.
Prosecutorial Misconduct and Official Inaction, at a Cost of 3.5 Million, *The New York Times*, October 22, 2008.

Policeman's Extortion Conviction Overturned

In May 2006 a man reported finding an abandoned stolen 1984 Jeep CJ-7 on his property in Virginia Beach, Virginia. The vehicle belonged to Virginia Beach Police Officer Jesse Spry. Several days later Spry and five of his fellow officers went to the man's home, handcuffed him, and demanded he pay Spry $8,200 or he would be arrested for stealing the vehicle. The man agreed to give Spry the money, but after he was released he filed a complaint with the police department. Spry was charged with extortion.

A jury convicted Spry of extortion after a two-day trial in September 2007. The jury recommended that he serve a six-month jail sentence and pay a $2,500 fine. Spry was released on bail pending sentencing.

Nine months after Spry's conviction and prior to his sentencing, on June 3, 2008 trial Judge A. Joseph Canada granted a defense motion to set-aside the jury's verdict. Judge Canada ruled that the State presented insufficient evidence that Spry's actions constituted extortion. It was the first time in 13 years on the bench that Judge Canada set-aside a jury's verdict.

The Commonwealth's Attorney, Harvey Bryant, was taken aback by the judge's ruling, telling reporters: "Twelve citizens had no problem, after having been given instructions by Judge Canada, in deciding that Spry was guilty of extortion and should go to jail as punishment."

University of Virginia's Law School professor Anne Coughlin said of the judge's ruling, "It's extraordinary." She added, "There is a heavy burden on a defendant once convicted to win such a motion. A judge will have to find that the evidence was clearly inadequate to support a conviction. The judge is saying, 'I saw the same evidence you saw, and I conclude that no reasonable person could convict.'"

Spry, a 28-year veteran of the police force, retired after he was charged. He had not spent any time in jail at the time his conviction was set-aside.

Source: Virginia beach police officer's conviction dismissed by judge, *The Virginian-Pilot*, June 3, 2008.

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