

SC Supreme Court Acquits Roger Bostick's Of Murder After 10 Years Imprisonment

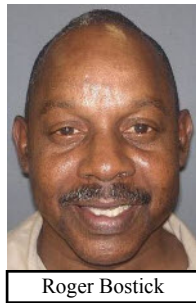
Roger Bostick was convicted in 2001 of murdering 69-year-old Sarah Polite in her Pineland, South Carolina home in March 1999. The prosecution also alleged the 46-year-old Bostick set her house on fire with gasoline after the murder, but he wasn't convicted of arson.

Prosecutors alleged his motive was robbery. Polite was the treasurer and secretary of her church and she typically brought money home from the church on Sunday, which she deposited at the church's bank on Monday. She was murdered on a Sunday after church.

Bostick was targeted by police when two days after the murder several items belonging to Polite were found in a burn pile at the home of his mother, who lived near Polite.

Bostick cooperated with the police, providing a DNA sample, and clothing and shoes they asked to inspect. Even though none of Bostick's DNA or fingerprints was linked to the crime, none of the church's money was found in his possession, and he didn't make an incriminating statement, he was charged in March 1999 with Polite's murder.

After the prosecution presented its case during his trial in September 2001, the judge denied Bostick's motion for a directed verdict



Roger Bostick

of not guilty based on the lack of evidence he had any involvement in Polite's murder.

Bostick's third-party culprit defense was that Rudy Polite, the victim's adult son, was her likely murderer. Rudy wasn't seriously investigated even though a witness testified she saw him entering his mother's house shortly before the fire was reported, and that when her body was carried out of the house and placed on the ground, he "looked at his mother, he started to smoke a cigarette and 'didn't express any emotion or feeling.'"

Another witness testified that a few hours before the fire she heard Rudy and his mother arguing and she was so angry that she threw her keys at Rudy.

Testifying in his own defense Bostick told, "the jury he drank at a cookout before the fire and returned to his mother's house to take a nap before the fire engine sirens woke him up."

Bostick made a motion for a directed verdict of not guilty after he finished presenting his evidence, which the judge denied.

The jury convicted Bostick and he was sentenced to 30 years in prison. Bostick told his daughter in the courtroom, "Don't worry, I'll get a appeal, don't worry."

However, Bostick's lawyer did not file a notice of appeal or advise him about filing an appeal. With his direct appeal right waived, in March 2002 Bostick filed a *pro se* petition for post-conviction relief (PCR) that claimed his lawyer was ineffective for failing to either file an appeal or advise him about his appeal rights. After the judge denied his petition in August 2004 and the South Carolina Supreme Court denied *certiorari* in January 2007, Bostick filed a federal *habeas corpus* petition on the ground his lawyer was ineffective for not consulting with him about appealing his conviction. The federal District Court judge summarily denied Bostick's petition as procedurally defaulted. The Fourth Circuit Court of Appeals issued a certificate of appealability.

The appeals court ruled on December 17, 2009 that Bostick's petition wasn't procedurally defaulted, and it further ruled "we find that the performance of Bostick's trial counsel was constitutionally deficient because counsel did not consult with Bostick about an appeal following his conviction. ... We remand this case to the district court

with instructions that it issue the writ of *habeas corpus* and that it order Bostick released from prison unless the state grants him a direct appeal within a reasonable time." (*Roger Bostick v. FNU Stevenson*, No. 08-6331 (4th Cir, 12-17-2009))

The State agreed to allow Bostick a direct appeal. It had taken Bostick seven years of effort against the State of Carolina's intense opposition to even have a chance to have his conviction overturned.

On April 11, 2011 the South Carolina Supreme Court unanimously reversed Bostick's conviction and ordered the circuit court to issue a directed verdict of not guilty, which bars his retrial. (*State v Bostick*, No 26961 (SC Supreme Court, 4-11-2011)) The Court's opinion stated:

"Analyzing the evidence presented by the State in the light most favorable to it, we believe the State's evidence here raised only a suspicion of guilt by Bostick. No direct evidence linked Bostick to the crime scene or the items found in the burn pile. Moreover, there was no testimony tending to establish that Bostick had control over the burn pile. ... In addition, the weapon used to beat Polite in the head was never introduced into evidence. Finally, no evidence was introduced concerning Bostick's knowledge that Polite may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday. The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. Therefore, we find the circuit court erred in failing to direct a verdict in favor of Bostick.

South Carolina's Attorney General has 15 days to file a motion for reconsideration. If it doesn't contest the ruling Bostick, now 58, could be released within days after expiration of the deadline.

The failure of Bostick's lawyer to file a notice of appeal in 2001 compounded the tragicness of his situation of being convicted of a murder without any evidence he committed the crime, because his conviction would have been reversed years ago, and he would have been released after a year or two of wrongful imprisonment and not ten.

Source:

State v Bostick, No 26961 (SC Supreme Court, 4-11-2011)
Roger Bostick v. FNU Stevenson, No. 08-6331 (4th Cir, 12-17-2009)

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ris wasn't allowed to go to her son Patrick's funeral; a baby she gave birth to as she was starting her sentence was taken away for adoption; and while she was in prison her partner left her and both of her parents died. In addition Harris was denied compensation under England's wrongful conviction compensation scheme.

Sources:

R. v. Lorraine Harris, Raymond Rock, Alan Cherry and Michael Faulder [2005] EWCA Crim 1980
Baby death case mum loses compensation fight, *Yorkshire Post*, July 16, 2008

At least half of all parents tried over shaken baby syndrome have been wrongly convicted, expert warns, *Daily Mail* (London), May 1, 2011

Met accused of 'campaign' against shaken baby witnesses, BBC News, February 8, 2011

"The Whiplash Shaken Infant Syndrome: Manual Shaking by the Extremities With Whiplash-Induced Intracranial and Intraocular Bleedings, Linked With Residual Permanent Brain Damage and Mental Retardation," *Pediatrics*, Vol. 54 No. 4 October 1974, pp. 396-403

