

# Indiana Ct. of Appeals Overturns Burglary Conviction That Was Based On Perjured Testimony

The Indiana Court of Appeals [has overturned](#) the conviction of Antonio Smith for a burglary the prosecution knew was committed by the witness who testified against Smith.

On December 19, 2012, a Dollar General store in Mishawaka, Indiana was burglarized by a person wearing a mask, two hooded sweatshirts, and gloves. Approximately \$3,500 in cash was stolen. Video surveillance revealed the burglar was a white female, although she couldn't be identified.

During the police investigation employees of the Dollar General store were questioned because it was apparently an inside job: the store's outside door had been opened and the alarm system disarmed. One of the store's employees was Nicole Greenlee, a white female. On December 28 she confessed to the burglary. The initial police investigation concluded Greenlee acted on her own, even though at one point she named Antonio Smith, her boyfriend at the time, and another woman as accomplices in the burglary. Smith is black.

Greenlee was charged with burglary. She pled guilty and during her plea hearing on May 6, 2013 she testified under oath that she opened the store's outside door to get inside, and then she disarmed the alarm system using the code. Greenlee did not testify that Smith or anyone else helped her in any way to commit the burglary. Greenlee was convicted based on her guilty plea.



Nicole Greenlee (St. Joseph County Sheriff's Dept.)

After Greenlee pled guilty, but before she was sentenced to probation, Smith was charged with being the person who committed the Dollar General store burglary.

Smith denied committing the burglary. Greenlee was the prosecution's key witness during his trial that began on July 30, 2013. St. Joseph County Deputy Prosecuting Attorney Micah Cox admitted during his opening statement that Greenlee was going to testify about two different versions of the burglary: the first was that she pled guilty and was convicted of committing the burglary alone;



Antonio Smith (St. Joseph County Sheriff's Dept.)

during Greenlee's guilty plea hearing she "made a factual basis under oath that she was the one who went into the store." He argued Greenlee would commit perjury if she testified Smith was the person who entered the store and committed the burglary. Cox told the judge the State was granting Greenlee "use immunity" from prosecution for perjury regarding her guilty plea testimony. The judge allowed Greenlee to testify that it was Smith who entered the store and committed the burglary.

After Greenlee concluded her direct testimony, Smith's lawyer moved for a mistrial on the basis she committed perjury during her testimony; the prosecution knew she intended to commit perjury; and that "a case with perjury that is known about will be overturned on appeal." The judge denied the motion, agreeing with Cox that Greenlee's sworn testimony during her plea hearing that she alone committed the crime was merely inconsistent with her trial that Smith entered the store and committed the burglary.

The jury convicted Smith even though the surveillance video was played for the jurors that showed a lone white female was inside the store committing the burglary. On November 15, 2013 Smith was sentenced to four years in prison. Greenlee had been sentenced to probation for committing the same crime.

Smith appealed, arguing that his due process right to a fair trial was violated by the State's knowing use of Greenlee's perjured testimony. On November 24, 2014 the Indiana Court of Appeals reversed Smith's conviction in [Smith v. Indiana](#), No. 71A04-1312-CR-609 (Ind. COA, 11-24-2014). The Court's ruling states in part:

"At her guilty plea hearing, Greenlee testified under oath that she had knowingly broken and entered the Dollar General store with the intent to commit theft. ... But at Smith's trial, Greenlee testified under oath that it was Smith who had broken and entered the store while she waited outside and acted as a

and the second was that she was outside in the bushes while Smith was inside the store committing the burglary.

After the State's opening statement Smith's lawyer advised the judge during a sidebar that

lookout. These two versions of the burglary that Greenlee gave under oath, first at her guilty plea hearing and then at Smith's trial, are inconsistent to the degree that one of them is necessarily false. Accordingly, we hold that Greenlee committed perjury as a matter of law..." (p. 9)

... the State knowingly proffered perjured testimony. And after Greenlee had testified, the State knew with certainty that she had committed perjury. At that point, the State had a duty to correct the perjury. ... The State should have joined in Smith's motion for a mistrial. (p. 12)

The knowing use of perjured testimony violates due process, impeaches the verdict, and undermines the integrity of the judicial system. Greenlee's testimony poisoned the well and denied Smith a fair trial. (p. 14)

We hold that Smith's conviction was obtained by the State's knowing use of perjured testimony, and we reverse his conviction. (p. 15)

The Indiana Supreme Court accepted the St. Joseph County Prosecutor's request to review the appeals court's ruling. [The Court determined](#) the issues in Smith's case are important enough to warrant oral argument, which was scheduled for April 2, 2015.

A copy of the Court's ruling is being sent to the Supreme Court Disciplinary Commission, and it could decide to initiate an investigation of DPA Micah Cox's conduct during the trial.

[Click here to read](#) the appeals court's ruling in *Smith v. Indiana*, No. 71A04-1312-CR-609 (IN COA, 11-24-2014).

Source: [Antonio Smith v. State of Indiana](#), No. 71A04-1312-CR-609 (Indiana Ct. of Appeals, 11-24-2014) (vacating conviction on basis of prosecution witness perjury)

[Conviction overturned because of alleged perjury](#), deputy prosecutor blamed, WSBT-TV (Mishawaka, IN), Nov. 26, 2014



## Visit Justice Denied's Facebook Page

Justice Denied's Facebook page is regularly updated with information related to wrongful convictions. Justice Denied's homepage has a link to the Facebook page.

[www.justicedenied.org](http://www.justicedenied.org)