12/30/2016

Kerriann Larmand
2472 Windingbrook dr
Kannapolis, North Carolina 28083

The Honorable Nikki R. Haley
Office of the Governor
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Governor Haley,

I would like to request a meeting to discuss my husband Francis Larmand and brother Leo Lemire's case. I would like to discuss the division that exists in the South Carolina court system. In October 2009 both were convicted of Lynching in the 2nd degree, conspiracy and pointing and presenting a firearm under the hands of one hands of all statute, they were sentenced to ten years by a judge that was just appointed to his seat in York county and my brothers Attorney ran against him. We filed an appeal and oral arguments were heard at the appeals court by two separate panels in 2011. The two panels could not come to a decision and it was then sent to the supreme court. In July 2012 the Supreme court denied the request and sent it back down to the appellate court to be decided on. At that point the cases were then combined and were heard en banc. Frank's case was reversed and overturned for lack of circumstantial evidence, all nine judges agreed unanimously. My brother Leo's case was then sent back to the original three panel of judges because they felt that his case was a mistake and should not have been heard en banc and because his attorney did not object like Frank's did. This was not a unanimous decision, the Chief Justice Few wrote a dissent that said it was basically a violation of his constitutional rights and he would not have a fair appeal. At this point Frank was given an appellate bond and was released on a restricted bond, at first he had to reside in SC so we had to find housing, after five months we were able to have him moved to our home and he was restricted to Mecklenburg an Cabarrus County. Leo's appeal was denied, it was the same case they said that his appeal was not preserved for appellate review. He then filed a Writ to the Supreme court that was denied. He then filed a PCR for ineffective assistance of counsel and that was denied. In the meantime the Attorney General took Frank's case to the Supreme Court. Oral arguments were heard and actually Chief Justice Toal heard the case and contradicted her own decisions that she had published in previous cases, it was clear from the beginning that she had her mind made up, the case can be watched online. Three years of my husband being home the Supreme Court panel reversed the appellate court's decision and sent the case back down to

the appellate court for the rest of the issues to be heard that were not decided. At this point they still did not decide all of his issues but did deny the rest.

NINE judges say there is no evidence then FIVE judges say there is evidence? How is this possible? My husband was then sent back to prison to serve the rest of his sentence. It has been over seven years since the trial. The trial was held in October 2009, the sentencing reform was passed in January 2010. The reform changed the Lynching statute because it was being abused in S.C. The new reform changed the offense to 1st degree lynching and it carries a sentence of maximum one year. One year, this of course did not apply to them because it was before the reform was passed. Both my brother and my husband were business owners with families, first time and received a ten year sentence. I could go on for quite a while just on their case alone. The thing is I would to see some balance in the scales of the South Carolina Justice system. How can the courts be so divided on an issue of evidence, if fourteen justices cannot agree how can a jury of twelve. My husband was in prison for 3 ½ years and home for 3 ½ years now back to prison for five more years. I believe that one day someone will see the injustice and help make it right.

Please consider meeting with me, I would be glad to send you any information on the case. I can be reached at 704-400-9692.

Sincerely,

Kerriann Larmand

SAME PLACE, SAME TIME, NO CRIME

Appeals court clarifies the elements of conspiracy, and two people arriving together at a crime scene isn't one of them

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Two might be company, but it's certainly not enough to prove conspiracy, according to the South Carolina Court of Appeals.

That theory has been hinted at in prior decisions, but it was recently made clear in a ruling that unravels the state's case against a defendant serving a decade in prison for conspiring with his brother-in-law to attack a Rock Hill man.

"This one definitively says that the court is going to require more than [two suspects] showing up at the same place at the same time," said the defendant's attorney, C. Rauch Wise of Greenwood. "You've got to have some indication of premeditation."

The defendant, Francis Larmand, was convicted of conspiracy, lynching and a related gun charge after jurors heard evidence that he and brother-in-law Leo Lemire had taken an hour-long drive together from the Charlotte area

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> This one definitively says that the court is going to require more than [two suspects] showing up at the same place at the same time.
>
> **Defendant's attorney, C. Rauch Wise**

questions affecting only individual be proven before certification. Absent to the trial-by-the-market theory. ...

CONSPIRACY / State's case was too flimsy, court decides

Continued from 1 ▸

to the victim's Rock Hill residence, where a potentially deadly confrontation ensued.

While Larmand was arguing with the victim outside his house, Lemire emerged from a vehicle parked nearby and pulled a gun on the victim, who wrestled away the weapon with the help of his neighbors and chased off the two men.

Larmand testified at trial that he had no idea Lemire was armed and had asked him to stay back while he talked with the victim. Lemire, who was tried alongside Larmand, corroborated that testimony.

Although both defendants denied they planned to hurt the victim, prosecutors contended that the evidence showed otherwise. The fact that they had not only driven a long distance together to the victim's house but also did so late at night and while wearing dark clothing pointed to premeditation, the state argued in its appellate brief.

Assistant Attorney General Deborah R.J. Shupe added in the brief that "their subsequent attack on [the victim] undoubtedly evinced their guilty intent and purpose," as did their attempt to flee after the incident.

The Court of Appeals disagreed, determining in its unanimous per curiam opinion that the state's case was too flimsy to support the verdict against Larmand. The judges said the "only evidence the State presented was that Larmand and Lemire arrived at the same place together."

"We find no evidence was presented from which the jury could infer Larmand and Lemire had a common agreement and understanding to injure [the victim] or point a firearm at [him]," the court concluded.

It reversed the lower court's denial of Larmand's motion for a directed verdict on all charges, including the charge of pointing and presenting a firearm, which hinged on the lynching and conspiracy convictions.

The lynching statute that Larmand was sentenced under has been amended since his conviction – he would have faced about a year in jail under the new law – but the basic elements of the crime were untouched, meaning that the court's ruling remains relevant, Wise said.

The holding also could be applicable in other types of conspiracy crimes, such as conspiring to sell drugs, said Charleston defense lawyer Donald L. McCune Jr. of the Savage Law Firm, who was not involved in Larmand's case.

"This says in stronger terms than I've ever seen before that they're going to require the state to prove more than mere association," he said of the opinion. "I think it was sort of unclear up to this point."

Shupe, the prosecutor, declined to discuss the ruling, but wrote in an email that the state intends to file a petition for rehearing and, if that is denied, will ask the state Supreme Court to review the matter.

Unfinished business

A forthcoming appellate decision in Lemire's case could clarify a jury instruction issue that was not reached in *Larmand*.

Lemire was convicted of the same three crimes as Larmand and presented similar arguments on appeal, including an assertion that all jurors should have received a copy of the charges when they asked for the information during deliberations.

Instead, the judge gave the jury foreman a single copy to share with the other jurors, according to Wise, who does not represent Lemire. He believes the court's move was improper because some jurors might not get a chance to read the foreman's copy.

"This should help define the definitive procedure," he added.

The eight-page decision is *State v. Francis Larmand*, Lawyers Weekly No. 011-033-13. The full text of the ruling can be found at sclawyerweekly.com.

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OPINION BRIEF

Case name: *State v. Francis Larmand*

Court: S.C. Court of Appeals

Judge: Per Curiam

Attorneys for state: Assistant Attorney Generals Deborah R.J. Shupe and Salley W. Elliott (Columbia)

Attorney for defendant: C. Rauch Wise (Greenwood)

Issue: Was the defendant entitled to a direct verdict during his trial for second-degree lynching and conspiracy?

Holding: Yes, because the state failed to present sufficient evidence to support the charges.

Potential effect: The ruling definitively shows that two defendants arriving at the same place together is insufficient to prove conspiracy. While this case involved allegations of a premeditated attack, the ruling also could be applied to other conspiracy crimes, such as conspiracy to sell drugs.