

CONVICT HAD NO CHANCE, LAWYER SAYS - HE SEEKS NEW TRIAL, CALLS KALAMAZOO MURDER CASE FLAWED

Detroit Free Press (MI) - Monday, September 15, 2003

Author: DAWSON BELL FREE PRESS STAFF WRITER

Martin Tieber has a theory about how **Willie Sanders** ended up serving a life sentence for a murder Tieber is convinced Sanders did not commit.

Inertia.

It's what happens when a black kid grows up without a father on the south side of Chicago. Drops out of school. Takes up with a drug gang. Hangs around Kalamazoo when the gang goes to war with its local rivals. And someone gets killed.

It's what happens when the prime suspect skips town and someone with Sanders' profile gets picked up driving on a suspended license in a car that matches the description of one seen in the area where Clarence McFerrin Jr. was gunned down.

It's what happens when a traffic criminal -- Sanders -- lies to the police about his identity and ends up in jail while they're looking for a murder suspect.

Tieber, a well-respected, veteran criminal appeals lawyer, thinks it's what happens when almost everybody involved -- police, prosecutors and witnesses -- act as if the hard facts of McFerrin's murder are less important than the general outlines of **Willie Sanders** ' life.

From everything they knew about him, he could have done it. So who is to say he didn't?

When you're **Willie Sanders** , now 30 and languishing in an Upper Peninsula prison, the answer to that question is: pretty much nobody.

But Sanders kept saying it himself. Eventually, his lawyers believed him. The Kalamazoo Police Department's polygraph examiner, who administered a test to him on the eve of trial, believed him.

Perhaps most importantly, his brother and sister, Myron and Veretta Knox, believed him enough to pay for a legal defense.

Tieber is Sanders' latest attorney and perhaps his last, best hope. On Tuesday, Tieber plans to file a request for a new trial with Kalamazoo Circuit Judge Philip Schaefer.

Schaefer was the judge who found Sanders guilty and sentenced him to life without parole in 1997. He has denied a request for a new trial before.

Tieber said he thinks this time could be different.

He thinks that sooner or later a court will look and see:

- * A case in which the only firm evidence is from dubious eyewitnesses who didn't identify Sanders until two weeks after they were first questioned.
- * A case in which the defendant and those who vouch for him have passed repeated lie detector tests.
- * And a case in which the defense wasn't told when the police received a detailed anonymous statement during trial which contradicted the basic premise of the prosecution.

Tieber, who worked for more than 20 years in the state appellate defenders office, said he's "never seen a case this bad in my entire career."

"It is just unthinkable to convict on this evidence," the East Lansing-based lawyer said. "It's clear that this guy didn't do it."

The problem for Tieber and his client is that so far it hasn't been clear to the courts.

Annette Nickel, a former Kalamazoo County assistant prosecutor who handled the McFerrin murder, said last week that there were unusual elements in the case; it was the only time in her career she recalled a murder trial without a jury, for instance.

Still, she doesn't feel the result was an injustice.

"The prosecutor has a duty not only to the victim, but to the rights of the defendant as well," she said. "I think we met that."

Kalamazoo County Prosecutor James Gregart could not be reached for comment last week, and the police detective who handled the case did not return phone messages.

But no one claims that the McFerrin murder investigation was clear-cut. According to police and court records, he was shot at the wheel of a car on a dark street on Jan. 8, 1997. The killing culminated weeks of tension between groups of loosely affiliated gangs, including the Chicago-based Gangster Disciples, with which Sanders was associated.

Other gang members were initially identified as potential suspects. Eyewitnesses gave conflicting statements, or picked out of a lineup a suspect who was in jail at the time of the killing. Nearly two weeks after the shooting, a group of witnesses, several of whom recanted earlier statements, identified Sanders as the shooter.

Then, on the eve of trial, Sanders took and passed a lie detector test. Gregart told the Kalamazoo Gazette in 1998 that he was "leaning toward dismissing" the charges, but instead sent Sanders to Chicago for a second polygraph. That examiner said Sanders failed. When Sanders' lawyer asked to have the second set of exam charts submitted to a third expert, they were misplaced.

While polygraph results are not admissible as evidence at trial, lawyers can and often do use testimony from examiners to bolster the credibility of a witness when a lawyer wants a new trial.

Further confusing the picture were tips and allegations that another member of the Chicago gang was believed to be the real killer. The most specific information about his involvement came from an anonymous informant who phoned police in the middle of Sanders' trial.

She claimed to know the identities of three gang members who planned the attack and described how they test-fired their weapon and disposed of it later. Former assistant prosecutor Nickel said the claims could not be substantiated.

But Tieber said the prosecution had an absolute obligation to tell Sanders' lawyer about them and did not. This week, he'll argue that Sanders deserves a new trial.

"My client is no angel," Tieber said -- something Sanders has confirmed by racking up 23 major rules violations in Michigan prisons.

"But he didn't do this crime."

Contact DAWSON BELL at 313-222-6604 or dbell@freepress.

Caption: Photo PETER THOMPSON/Special to the Free Press

Willie Sanders

Willie Sanders ' brother, Myron Knox, center, sits with his mom, Maxine Knox, left, and sister Veretta Knox, in Dalton, Ill. Gang member **Willie Sanders** was convicted in a 1997 Kalamazoo slaying in Kalamazoo.

Edition: METRO FINAL

Section: NWS

Page: 1A

Index Terms: WILLIE SANDERS; CONVICT ; IDENTITY ; KALAMAZOO ; HOMICIDE ; DEMAND ; TRIAL ; DISPUTE ; EVIDENCE ; GUILT

Record Number: 0309150265

Copyright (c) 2003 Detroit Free Press