

## **AS EXECUTION NEARS, LET'S HOPE THE COURTS GOT THIS ONE RIGHT**

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A case for clemency?

Carl Harris claims he committed an armed robbery in the summer of 1978. He was 24 at the time. He was married, but he says he was cheating on his wife, seeing a young woman who worked at Al Smith's restaurant on South Grand.

That's the place he decided to rob. Harris said he hid in some bushes by the parking lot one night at closing. He had a woman's nylon stocking pulled over his face as a disguise. The manager came out with the day's receipts. He was with a waitress.

He told me he never committed another crime. Unless you count perjury, that is. He lied under oath the year after

the robbery.

That last part is the only part of his story I can vouch for. No matter what happened on the parking lot behind Al Smith's restaurant, Carl Harris did indeed lie under oath on May 15, 1979.

He testified that he had spent the night of the Al Smith's robbery at a party with Roy Roberts. The entire night.

That cannot be true. One of the two men was committing the robbery.

Let's hope it was Roberts.

He was 25 at the time of the robbery. He was what's known as a police character. That is, he was often in trouble. He was the fifth of seven brothers, and except for the oldest, who somehow went straight, the brothers were well-known to the local cops.

"They were always stopping us for one thing or another," said Carl Roberts, one of Roy's older brothers.

Mostly stopping the brothers for good reason, too. Carl is 59. He has spent about 25 years in prison.

At the time of the Al Smith's robbery, Roy had already done one short stretch in prison himself. He had done 14 months of a two-year sentence for stealing. He was released in December of 1977.

In July of 1978, the robbery occurred. Two months later, Roberts was arrested for creating a disturbance.

He told me he was into the drug scene. He had bought some capsules of Dilaudid, a heroinlike substance. At least that's what he thought he was buying. Instead, he had been given the wrong kind of capsules.

"I went over and knocked on the guy's door. Kind of rudely, I guess," Roberts said.

The cops were called. A little bell must have gone off in somebody's head. The two victims of the Al Smith's robbery had described the robber as being big. Two hundred pounds, the manager had said. Maybe more, the waitress had said.

Roberts' nickname was Hog. He stood a touch over 6 feet, and he weighed about 280 pounds. (Harris, by the way, is about the same height, and weighed about 240 pounds at the time. He goes about 230 now.)

The two victims of the robbery were called downtown for a lineup. They identified Roberts as the man who had robbed them.

Roberts was convicted in May of 1979. He was given 18 years and sent to Jefferson City Correctional Center. He was transferred to the prison in Moberly in the spring of 1983. In July of that year, there was a riot at Moberly. A guard, Tom Jackson, was killed.

Two inmates were accused of fatally stabbing Jackson. Roberts was accused of holding him while he was stabbed.

One of the alleged stabbers was convicted of murder and sentenced to life. The other alleged stabber was convicted of murder and sentenced to death, but his conviction was overturned. He is scheduled to go on trial next month.

Roberts was convicted of murder and sentenced to death. His appeals have been denied. He is scheduled to be executed March 10.

His last chance lies with the governor.

These final extralegal appeals are taking two forms. The first is the proportionality argument. If one of the two men who actually stabbed Jackson got life, how can you execute the person who simply held him? Maybe Roberts didn't even know the other guys had knives.

The second argument is that Roberts is actually innocent. At his trial, a number of inmates testified on his behalf. A couple of inmates testified against him -- as did three guards -- but these inmates later allegedly told fellows that they had been forced to lie. Meanwhile, Roberts' defense was that he was brawling with a guard a good distance from where the stabbing occurred, and that guard testified that yes, he had been fighting with Roberts.

Furthermore, of the three guards who testified against Roberts, two of them placed him at the scene of the stabbing only after undergoing hypnosis.

But who knows where the truth lies? I certainly don't.

Same deal with the robbery.

The prosecutor who handled the case, John Dockery, said he couldn't remember many details. The defense attorney, Robert Hampe, got in some trouble himself in 1988, and left the area without a forwarding address.

The helpful staff at the circuit clerk's office located the trial transcripts in the attic of the Municipal Court building.

It was a very short trial. Jury selection began on a Monday morning, and the witnesses were done by Tuesday afternoon. The two victims testified that they had been robbed by a large man wearing a nylon stocking pulled over his head, but despite the resultant distortion, they were sure the defendant was the guy. A detective testified that Roberts had more or less admitted his guilt.

Roberts testified that he had not admitted his guilt, because he hadn't robbed anybody. He testified that the detective wanted information about a guy named Jack Lindsey, who was wanted for killing a deputy sheriff in Jefferson County. According to Roberts, the detective had threatened to put a case on him if he didn't cooperate, but he hadn't known anything, anyway.

Roberts then said he had spent the night at a party with Harris. Harris testified that way, too, as did a couple of young women.

They were lying, of course. Harris and Roberts couldn't have both been at the party all night.

One of them was committing a robbery.

Late Friday afternoon, I got a call from Roberts, and a little later from one of his attorneys. Roberts had just taken a lie detector test. A former Kansas City police officer had administered it. The examiner had asked Roberts if he had held Jackson during the riot and if he had participated in Jackson's murder, and Roberts had said no to both questions. No deception, said the examiner.

Again, though, who knows?

But there is a chance -- an outside chance, but a chance -- that Roberts was in prison for a crime he didn't commit when he was accused, convicted and sentenced to death for another crime he didn't commit.

It's enough to make you wish the pope would visit the state again during the second week in March.

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