

The Columbus Dispatch

PRIVATE EYES CAN MAKE OR BREAK A CASE

Investigators' legwork can uncover information to aid accused's defense

Sunday, September 28, 2003
NEWS 01B

Illustration: Photo

By Tim Doulin

THE COLUMBUS DISPATCH

Julius Carson isn't on Death Row today, in part, because of Kathy Koch.

Prosecutors had a witness -- a woman who said Carson admitted robbing and killing Isaac S. Robinson in January 2002 as Robinson left a Cleveland Avenue carryout in South Linden.

But when Koch, a private *investigator* who was working for Carson's attorneys, interviewed Cecily Peck, she backed off her claim.

"What she told me was nothing like what the prosecutors were telling the defense lawyers she had said," Koch said.

Peck also made inconsistent statements to another private *investigator* representing co-defendant Michael Lee Jefferson, attorneys said.

When Peck testified at Carson's trial last December, defense attorneys questioned her about the conflicting statements.

Peck told them that she'd changed her story because she was being threatened on the streets. But Franklin County Common Pleas Judge Nodine Miller didn't buy that.

Miller took the case out of the jury's hands and found the 20-year-old Carson not guilty of aggravated murder and aggravated robbery, saying the state failed to present enough evidence to convict him. Four months later, the charges against Jefferson were dismissed.

"Kathy did a lot of good work on that case," said Jeff Liston, one of Carson's attorneys. "She helped us challenge the state's primary witness."

Not all criminal-defense lawyers use private *investigators*, but those who do swear by them.

Investigators locate and interview witnesses, deliver subpoenas, check backgrounds, collect police reports on witnesses and photograph crime scenes.

The more serious the case, the more likely lawyer Donald C. Schumacher will use an *investigator*.

"Every death-penalty case and most murder cases, I use one," Schumacher said. "Other times, it depends on the resources that are available.

"In a routine case, you have to ask, 'Can a family afford to pay for one?' In a court-appointed case, you have to go to the judge and say, 'I need to find this witness and I need money for an *investigator*.' "

Some *investigators* charge as much as \$90 an hour, one lawyer said.

An *investigator* is a necessary component in cases where witnesses have to be interviewed, lawyer Sam Shamansky said.

Lawyers can interview witnesses, "but then you run into the situation of what happens if the witness changes his testimony from what he told you in the interview?" Shamansky said.

Lawyers can't question themselves about a witness' conflicting statements, but they can call an *investigator* to testify about what a witness told him or her.

Witnesses can be difficult to find and reluctant to talk. *Investigators* often need to be persistent, following people and wearing them down.

"We are trying to ask people to do us a favor," said Gary Phillips, a private *investigator* for 23 years. "We don't have the authority to force someone to cooperate with us. You have to ask people in a nice way to please tell us what you know."

Some lawyers say people will readily talk to police or prosecutors but refuse to talk to the defense.

"All we want to know is what happened, what's the truth and what have you told police," said Gerald Simmons, a lawyer and Koch's husband. "The defense has as much right to investigate a case as police do."

Investigators never know where the job will take them.

Koch, a former legal secretary who started doing investigative work in the late 1970s in Texas, needed to interview an alleged victim of a sex offense and was told the young man was working in a cornfield.

"I just went to the middle of this cornfield and stood there and waited until I heard this rustling and he appeared. He didn't want to talk to me, but I was standing right there."

The job can be dangerous. The angry husband of a woman who had been assaulted fired a gun at Koch when she showed up at their home

"I said, 'A simple no will do. You don't have to shoot at me,' " Koch said.

Phillips, a former Columbus police officer and son of a police officer, said police do a good job investigating cases but are not infallible.

"The police have a lot of cases, they are overworked," he said. "They may have a tendency to charge somebody on a thread of evidence rather than to build a case. I think it is because of the caseload. I'm sympathetic."

Often, the *investigator's* review will confirm the prosecution's case.

"Sometimes the biggest help these *investigators* can provide to you is letting you know if you don't have a case," said lawyer Fred Benton.

"There are times that a client will say, 'I'm absolutely innocent,' and then I go out and investigate and there are five eyewitnesses who say, 'That guy did it,' " Koch said.

"And once the client sees that, it will help in maybe getting a plea for him. It is not just the fight in court for not guilty, but it can help break down the client if he did it, to avoid a trial and save him time in prison."

tdoulin@dispatch.com

Caption: Private *investigator* Gary Phillips says he is sometimes able to find information that overworked detectives missed.

[Back to Search Results](#)

All content herein is © 2003 The Columbus Dispatch and may not be republished without permission.