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WLF Seeks Supreme Court Review of Erroneous Hazardous “Waste” Conviction

(Evertson v. United States)

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WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately overturn) the conviction of a small businessman in Idaho for alleged technical violations of the Resource Conservation and Recovery Act (RCRA), the law that governs disposal of hazardous waste. WLF’s client, Krister Evertson, was convicted and sentenced to 21 months in prison for storing chemicals that prosecutors deemed “hazardous wastes.” The evidence indicates that the chemicals were not abandoned “waste” at all but rather were valuable materials that Evertson planned to use in his manufacturing business.

To obtain a conviction under RCRA, prosecutors had to show that the defendant abandoned the hazardous chemicals. If allowed to testify, Evertson would have explained that he safely stored the chemicals and left Idaho to earn money needed to restart his business, but he always intended to return and put his temporarily-stored materials to good use. However, his defense attorneys did not permit him to testify, and the jury convicted him without ever hearing him explain this.

Evertson seeks to overturn his conviction on the ground that he was denied effective assistance of counsel, in violation of his Sixth Amendment rights. WLF’s petition noted that the final decision whether a defendant should take the witness stand belongs to the defendant, and defense counsel acts unethically in overruling a client’s decision to testify. WLF argued that his lawyers’ decision deprived Evertson of the ability to respond to prosecutors’ claims that he abandoned his chemicals. The Ninth Circuit U.S. Court of Appeals held that Evertson waived his right to testify when he failed to stand up in open court to challenge his counsel’s statement that the defense would rest without calling additional witnesses. That waiver rule conflicts with decisions from five other appeals courts, and WLF asked the Supreme Court to review and resolve the conflict.

After filing its petition, WLF issued the following statement by Chief Counsel Richard Samp: “Criminal prosecutions for violations of the environmental laws should focus on those who intentionally cut corners and foul the environment in order to avoid compliance costs, not those who in good faith are doing all they can to comply with the law. Fundamental fairness requires that before the government incarcerates someone for alleged environmental violations, he ought to have an opportunity to testify and attempt to demonstrate his good faith.”

WLF is a public interest law and policy center that litigates to vindicate individual rights and opposes use of criminal law where civil enforcement could adequately ensure compliance with environmental laws.

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