

Woman Wrongly Convicted By Mistaken Identity Sues Police

By JD Staff

On April 15, 2002, a security guard at a Sears store in the Detroit suburb of Lincoln Park was severely bitten by a young woman he had stopped to question after observing she was leaving the store with unpaid merchandise — which turned out to be \$1,300 worth of clothes.

The city police were called and the suspect was taken to a police station. When questioned, she told them her address, that she was 15, and that she was Dominique Brim. She was then allowed to leave on her own without being booked — so the police had no fingerprints, photograph, or writing sample from her signing her name.

Two months later the 15 year-old Brim was charged in juvenile court with retail fraud and felony assault with the intent to do great bodily harm less than murder. Because she was being prosecuted as a minor, she faced a maximum sentence of being incarcerated for six years — until she turned twenty-one.

Brim, however, didn't just claim that she had

never attempted to steal from Sears and that she didn't bite the security guard, but that she had not been at the store on April 15 and that she had not been arrested by the police. Her family was so convinced of her innocence that they didn't rely on a public defender — they hired an attorney to defend her

The judge discounted Brim's defense that she had been mistaken for another person, because several Sears employees, including the security guard, positively identified her in court as the person who was apprehended and who bit the guard. She was found guilty of both counts.

However, the vehemence with which Brim claimed she was the wrong person impressed Sears officials enough that they did something they didn't do before her trial: They viewed the store's security tape of the April 15 incident. They discovered that Brim wasn't the person stopped by the guard and who attacked him. After the prosecutor and Brim's lawyer were contacted, the charges were dropped and the judge vacated her conviction before she was sentenced.

The woman in the tape was subsequently identified as Chalaunda Latham — who wasn't 15, but 25. Latham was able to pass herself off as Brim to the police by giving them Brim's name, address and phone number, because she was a friend of Brim's sister. Yet that doesn't explain how the

police mistook her for a 15-year-old.

However due to the odd circumstances of Brim's case, Latham got off scot-free. Prosecutors decided she couldn't be charged because the Sears employees had already positively identified Brim in court as being responsible for the theft and security guard attack. It is unknown if the prosecutors considered filing charges against Latham related to her misuse of Brim's identity for a criminal purpose.

Brim's family hired a lawyer, Gary Blumberg, who filed a civil suit against Sears. That suit was settled in 2004 for an undisclosed amount. On August 4, 2005, Brim filed a lawsuit in Wayne County Circuit Court that named the city of Lincoln Park and four of its police officers as defendants. Among other claims, the suit alleges the city and the police officers were negligent for failing to properly investigate the case, and for failing to properly identify the person on April 15, 2002, who was held in custody for the alleged crimes.

Edward Zelenak, Lincoln Park's city attorney, described Brim's lawsuit as a nuisance suit. He doesn't think Brim, now 19, deserves compensation for being wrongly convicted of two felonies, since her "inconvenience was minimal."

Source: Wrongly Convicted Woman Now Sues Officers, Jason Alley, *The News-Herald* (Southgate, MI), August 21, 2005.



New Evidence of Frances Newton's Innocence Ignored By Courts And TX Governor

Frances Newton was executed by Texas on September 14, 2005. She had been convicted of murdering her husband and two children in 1987. In spite of compelling new evidence casting substantial doubt on her guilt, Newton's pro bono legal team was unable to get any state or federal court to look at that evidence, and Governor Perry failed to either commute her sentence, or grant a stay so her lawyers could continue their efforts to win a new trial that would put the new evidence in front of a jury for the first time.

Two days after Newton's execution, her attorney David Dow, head of the Texas Innocence Network at the University of Houston Law Center, told *Justice: Denied* that the denials of her habeas petition by state and federal courts was based on the procedural ground that it was barred by the rule limiting review of a successive habeas petition to, as Dow put it, "facts that could not have been known at the time of the first petition." Dow was frustrated with the court rulings because some of the facts supporting her petition were plainly "new," since they were not discovered until this year. The Harris County (Houston) DA was fiercely opposed to granting Newton a

new trial, and his spin on the case prevailed.

Dow said the prosecution's case for Newton's guilt was based on three issues: financial motive, gun powder residue on her skirt, and she hid the murder weapon.

Frances Newton told the *Houston Chronicle* during an interview, "For a long time I believed in the death penalty. But now I know that the system can't be trusted to be right. I've been wrongly accused, wrongly convicted."

However, Dow told *Justice: Denied* that none of those issues has any substance as an indicator of Newton's guilt, and the truth about them exculpates her from involvement in the murders.

- The alleged financial motive was a life insurance policy on her family - that a bank employee talked her into purchasing when she went to the bank to open a saving account.
- The alleged gun powder residue on her skirt was actually garden fertilizer.
- The hidden gun was not the murder weapon, but a gun she hid from her husband prior to the murders. Although the Harris County DA ada-

manly denies that a second gun was involved, Dow said, "There were multiple guns involved, and the state mixed-up — or deliberately switched — the murder weapon with the gun that she hid prior to the crime. That accounts for the gun they alleged she had matching the bullets recovered from the victims." Not only did an assistant DA admit to a Dutch reporter during a videotaped interview that more than one gun was involved, but Dow said that the case was originally investigated as a murder of the children by Newton's husband, who police believed then committed suicide by shooting himself. That indicates the investigating officers found a gun either in his hand, or very near his body. Which supports Newton's assertion that the gun she hid couldn't have been used in the crime. Dow said the only crime scene photos he has seen were taken after the bodies — and the gun that would have been laying near the body of Newton's husband — were removed.

Dow also said, "Two weeks after the crime officers told Newton's father that the ballistic tests of the bullets that killed the members of her family didn't match Newton's

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