# 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 Dominque 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 adamantly 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

**Newton continued on next page**

# Wife 'Blinded by Love' Spends $200,000 Proving Husband Innocent of Rape

By Hans Sherrer

In January 2000 a woman in her mid-20s accused a family friend, David Luxford, of raping her on several occasions in 1988 when she was 13 years old. A month later the 33-year-old Luxford was arrested and charged with raping the woman 12 years earlier.

During his July 2000 trial, the woman testified that Luxford, then twenty-one, raped her on the couch of her family's home in Kent, U.K., and also forced her to perform oral sex. The prosecution neither presented any physical or medical evidence, nor any family or medical witnesses that corroborated her claim of having been sexually assaulted. The prosecution's entire case was the woman's testimony. Luxford protested his innocence and testified he had never touched the girl.

Faced with a "he said - she said" case, the jury sided with the woman. By an 11-1 vote Luxford was found guilty of two counts of rape and one count of indecent assault. He was subsequently sentenced to 18 years in prison.

In May 2001 the Court of Appeals quashed Luxford's conviction and ordered his retrial. So ten months after his imprisonment he was released on bail pending his retrial. After a carbon copy retrial in November 2001, Luxford was found guilty a second time. His bail was revoked and he was again sentenced to prison.

In spite of having her husband public branded as a rapist, Greer Luxford believed in his innocence. She gained a valuable ally after the local newspaper, the *News Shopper* published an account of her husband's second trial written from the prosecution's perspective. Greer contacted Deputy Editor Jean May and offered to provide evidence of his innocence. Knowing that two juries had found Luxford guilty, May was initially skeptical, thinking that Greer was a naïve wife blinded by love to the truth about her husband. However she agreed to read the transcript of Luxford's first trial. She later wrote that it caused her to have an epiphany, "By the time I finished it at 2 a.m., I was convinced David Luxford had suffered two miscarriages of justice." [1] May then visited Luxford in prison, wrote an article about the injustice of his case, and contacted Michael Mansfield, a well-known attorney who had handled other cases of wrongful conviction. She speculated that Luxford's convictions were due to a "paedophilia witch-hunt" that followed the murder of a local girl. [2]

Knowing her husband's freedom depended on finding proof that his accuser's claims were untrue, in May 2002 Greer hired a private investigation firm that specialized in miscarriages of justice and false allegations. The investigators learned right off the bat that in spite of Luxford's two convictions, the police did not conduct an investigation into the woman's allegations (although neither did his lawyer). They proceeded to rectify the lack of an investigation by interviewing everyone — including Luxford's co-workers, and family members and acquaintances of him and his accuser — who could aid in reconstructing the alleged crime scene depicted by his accuser. After four months they had accumulated enough information to use a computer program to compare what they had learned about Luxford and his accuser's whereabouts and behavior, with her scenario of how and when the alleged attacks occurred. They determined the evidence proved the alleged rapes could not have happened.

The investigator's fee of about $200,000 (£100,000) was paid by a loan obtained by Greer, dozens of fund raising events she organized, and donations from about 250 people who believed in Luxford's innocence.

Luxford appealed based on the new evidence. The U.K.'s Court of Appeals unanimously quashed his convictions on November 5, 2003. It also barred his retrial and ordered his immediate release. The Court stated, "The fresh evidence leads us to conclude these convictions are not safe and they should be quashed." [3]

At 4 o'clock on the afternoon of November 5, David Luxford was permanently released after 34 months of wrongful imprisonment. He readily acknowledged that his exoneration was due to his wife's determination and the many people who supported her efforts. Greer said their relationship had been severely tested, but "Our love for each other has deepened and that is something no one can take away from us." [4]

A happy David Luxford and his wife Greer after his release from 3 years of wrongful imprisonment. (News Shopper)

Although there was talk of seeking perjury charges against Luxford's accuser, she was not prosecuted. Consequently, even though she fabricated the accusations against Luxford, under the U.K.'s sexual victim identity shield, she enjoys lifetime immunity from having her identity publicly disclosed.

The lead investigator for the firm — legalappeal.co.uk — that found the evidence substantiating Luxford's innocence said after his release, "I'm so glad we won this for him. It couldn't have happened to a nicer man. To say David was taken to the lowest depths is an understatement. He had his life taken away." The investigator continued, "Is it right that the police should allow things like this to go ahead? These false allegations have got to stop." [5]

End notes:
1 Dad Wrongly Jailed For Rape Is Freed, Richard Simcox, *News Shopper*, November 19, 2003,
2 *Id.*
3 Mum Blasts 'Rape' Woman As Selfish, *Croydon Guardian*, November 21, 2004.
4 Dad Wrongly Jailed For Rape Is Free, *World Association of Professional Investigators*, Nov. 21, 2003
5 *Id.*

*JD* Note: In Sept. 2005 *Justice:Denied* was unsuccessful in contacting legalappeal.co.uk. It is not known if its business name has changed or if it is no longer in operation.

gun [that she had hidden]."

If the case had been anywhere else but Harris County, Dow thinks Newton would have had a good chance of being granted a new trial. In response to the question of why they would want to execute a woman who in all likelihood was innocent, Dow relied, "They are eager to get on with it in every case."

Dow said he would like to continue developing evidence of Newton's innocence, but he can't get into court representing a dead client.

## John Spirko Update

John Spirko's story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of the crime was in *Justice Denied*, Winter 2005, Issue 27.

Spirko's execution scheduled for September 20, 2005, was stayed by Ohio Gov. Bob Taft until November 15, 2005, who also ordered a second clemency hearing to be held on October 12, 2005. The governor acted after Ohio newspapers reported that Senior Deputy AG Tim Prichard grossly misrepresented evidence that casts doubt on Spirko's guilt during Spirko's clemency hearing on August 23.

Paul Hartman is the US postal inspector who provided key testimony against Spirko. Days after the execution was stayed, one of his former co-workers cast doubt on Hartman's integrity and professionalism. In a Sept. 2005 letter to superiors the co-worker said Hartman had been forced to retire early, and his conduct was "bordering on criminal." The co-worker wrote in regards to Spirko, "it appears an individual who did not commit the crime is going to be executed."