

## New Zealand Man Cleared Of Rape When DNA Corroborates Alibi



Aaron Farmer

Aaron L. Farmer was sentenced to eight years in prison after being convicted in April 2005 of raping a 22-year-old woman in Christchurch, New Zealand. The jury relied on the woman's identification of Farmer as the man who jumped off his motorcycle and drug her into the bushes as she was walking to her brother's house after a night out drinking with friends in September 2002.

There was no physical or forensic evidence suggesting the 32-year-old Farmer committed the crime. He insisted he had been mistakenly identified as the woman's attacker, but he wasn't helped by the inconclusive result of a pre-trial DNA test of semen on a cervical swab in the victim's rape kit.

In sentencing Farmer, the judge seemed unsure of his guilt. The judge criticized the reluctance of the police to disclose evidence to Farmer's attorney, deficits in the transcript of a video interview with Farmer, and that no identity parade was conducted so the victim could compare Farmer with similar appearing men. The judge bluntly said, "when it comes to the investigation of serious crime, the community is entitled to expect better."

New Zealand's Court of Appeal quashed Farmer's conviction in June 2007, and ordered his retrial based on his trial lawyer's failure to present alibi evidence that significantly narrowed the "window of opportunity" of when he could have committed the crime. The Court ruled the evidence against him was so "weak" that he was prejudiced because the alibi evidence could have tipped the scale and influenced the jury to acquit him.

Farmer was released on bail after 26 months imprisonment to await his retrial.

There were DNA tests more sensitive than the ones available prior to Farmer's 2005 trial, so his new lawyer, Simon Shamy, pressed for retesting of the cervical swab and the attacker's skin recovered from under the victim's fingernail. The tests were conducted, and in early April 2008 Farmer was excluded as the male whose DNA was detected.

Shamy filed a motion to dismiss the rape charge. The prosecution agreed not to oppose the motion, and less than a week before

Gene Bibbins was sentenced to life in prison in 1987 after being convicted of raping a 13-year-old in Baton Rouge, Louisiana. There were allegations that the police falsified evidence to obtain Bibbins conviction. The allegations of evidence tampering gained credibility in 2002 when DNA testing unavailable at the time of Bibbins' trial excluded him as the girl's rapist. The 46-year-old Bibbins' conviction was vacated in 2003 and he was released after 16 years of wrongful imprisonment.

Three weeks after Bibbins release he was arrested for his alleged rape of a 22-year-old acquaintance in 1985. Bibbins claimed the sex with the woman was consensual, but to settle the matter in 2004 he entered an Alford plea to a non-sex crime. He was given a six-year sentence that was applied to the time he had already spent in prison, so he served no additional time.

Bibbins plea to the 1985 incident didn't change the fact that he had been convicted of a rape he didn't commit. He subsequently filed a federal civil rights lawsuit against the City of Baton Rouge, several police officers and the crime lab personnel involved in his case, alleging his conviction was caused by unconstitutional wrongdoing by the defendants. Among other things Bibbins claimed the investigating police officers ignored the victim's description of the rapist as having long curly hair, while he had short hair.

In 2005 Louisiana enacted a wrongful conviction compensation statute that permits an award of up to \$15,000 per year of wrongful incarceration, for a maximum of 10 years. Bibbins filed a claim for his false 1987 rape conviction, and in February 2006 he was awarded the maximum of \$150,000.

Farmer's retrial was scheduled to start on April 28, 2008, the charge was dismissed. Publicly the prosecutor said the charges were dropped because the victim didn't want to go through another trial. However, the decision not to proceed was likely influenced by the DNA evidence excluding Farmer that corroborated his alibi of being elsewhere at the time of the rape, and the questionable circumstances of the victim's identification of him.

After learning he had been exonerated of being a rapist, Farmer told reporters, "She was attacked – I believe that – which means that someone who attacked her is out there walking free and I did the time for their crime. The police should put a proper effort into finding who did. They had a description back then and they should have done their job."

## Gene Bibbins Awarded \$1.15 Million For False Rape Conviction



Bibbins lawsuit was scheduled to go to trial in June 2008, but after U.S. District Judge James Brady ruled the jury could not be informed about his plea to the 1985 incident, the city began serious negotiations with Bibbins' attorney. The city was also motivated by its potential multi-million dollar liability because Judge Brady ruled the jury could hear testimony concerning that the city "provided its officers with practically no training whatsoever in conducting identification techniques."

In early May the city and Bibbins agreed to settle the lawsuit for \$1 million. On May 14, 2008 Baton Rouge's Metro Council unanimously approved the payment to resolve the case. One council member, Lorri Burgess, thought the \$1 million settlement was too low compared to other compensation awards around the country, but she had no support to increase it from other members. The money will be paid in three annual payments of \$333,333.33. Bibbins will only receive about \$600,000, with the rest going to his attorneys and a payment to the Innocence Project in New York for their work on his case that resulted in his exoneration.

Bibbins total gross compensation for his wrongful rape conviction is \$1.15 million.

### Sources:

Man to get 150,000 for 17 years in prison, *New Orleans Times-Picayune*, February 7, 2006.  
Council advised to settle, *The Advocate* (Baton Rouge), May 4, 2008.  
Metro council OKs \$1 million settlement, *The Advocate* (Baton Rouge), May 15, 2008.

The Christchurch police said the case would not be reopened, even though a person with a police record might be able to be identified as the woman's assailant from the DNA profile and her description of him.

Farmer is the first New Zealander whose exoneration is attributable to DNA evidence.

### Sources:

Man freed after fresh DNA tests, *New Zealand Herald* (Auckland, NZ), April 26, 2008.

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