

Three women working at a Sprint telephone store in Detroit, Michigan were accosted by two men on the morning of March 7, 2002. The armed men, who didn't wear masks, said they wanted money from the store's safe.

Tevya Urquhart was the senior staff person, and she was ordered to open the safe while the other two women, Kimberly Sykes and Kimberly Holmes, were forced to lay face down on the floor. After Urquhart tossed a money bag to the robbers, they locked the women in the safe room and ran out of the store. The women then called the police using a cellphone.

It was later determined that the robbers made off with \$27,762, but they were unaware that there was a second money bag in the safe that Urquhart did not give them. There was about \$14,000 in that bag.

Store employees charged with robbery

Two of the officers assigned to the case were Detroit Police Department detectives Derrick Anderson and Carol Nichols. All three women provided similar statements about the robbery. The store's 24-hour surveillance tape was given to the police without being viewed by the security company or any Sprint employee.

The same Sprint store had been robbed at gunpoint three weeks earlier when Urquhart and a different woman were working. The earlier robbery plus the similarities in the statements by the three women – who had experienced the exact same event – made the detectives so doubtful that there had been a robbery that they didn't perform a typical armed robbery investigation. They didn't dust the store for fingerprints that may have been left by the two men, they didn't have composite sketches made of the robbers, they didn't canvass the area for possible witnesses, and they didn't interview the Sprint employee that was with Urquhart during the previous robbery to explore the possibility that the robberies were related. It was learned later that the surveillance camera recorded a facial shot of at least one of the robbers that could have been blown up to identify him – but the detectives made no effort to do so.

After their investigation, the Detroit PD submitted a request to the Wayne County Prosecutor's Office to file charges against all three women for larceny by conversion of more than \$20,000, and the false report of a felony. The warrant request was based on the assumption that the three women stole the money, and it stated that "no robbery took place." After the three women

Two Women Awarded \$2.58 Million For Robbery Convictions Based On Speculation

By Hans Sherrer

were arrested and released on bond, they pled not guilty when arraigned.

October 2002 trial

Urquhart and Sykes were tried together in October 2002. The prosecution's theory was that Holmes masterminded the theft by concocting the cover story of an armed robbery, and she enlisted the other two women to aid and abet her in exchange for a share of the stolen money. The prosecution's key evidence was information that a large amount of money was processed through Holmes' account at Detroit's Motor City Casino in the days following the robbery.

The Detroit PD edited the store's 24-hour surveillance video into a 14-minute version that was played once during the trial. The prosecution contended the video supported the women's guilt, because it showed Urquhart opening the safe and removing the money bag. Although it did show a man wearing a baseball cap standing near the safe room's door, he was not in the room or holding the money bag.

On cross-examination detective Anderson acknowledged there was no evidence the three women conspired to steal Sprint's money and there was no evidence that any of the women came into possession of any of the stolen money.

Even though the prosecution's case was based on speculation that it is possible the three women stole the money, and not evidence that they actually did so, the jury convicted Urquhart and Sykes of both charges. Sykes was considered a passive participant in the robbery since her role was to keep her mouth shut, so she was sentenced in October 2002 to three months in the county jail, three years probation, and 120 days of community service. Urquhart was given the much more severe sentence of serving up to ten years in prison because of her active role of opening the safe and taking out the money bag. While at Scott Correctional Facility her appeal lawyer was successful in getting her a resentencing hearing. On December 20, 2002 Urquhart was given a sentence more in line with Sykes' sentence – five months in the county jail and three years probation. Two days after the hearing she was released after spending a total of about 2-1/2 months in custody.

Although Holmes was the alleged mastermind of the robbery, the felony charges against her were dismissed when in September 2003 she pled guilty to a misdemeanor and was sentenced to probation.

Women appeal convictions

Urquhart and Sykes appealed their convictions, but it was long after they had served their jail sentences that the Michigan Court of Appeals issued separate rulings on May 4, 2004.

Since the women were jointly tried and convicted of the same charges based on the same prosecution theory and evidence, the opinions were very similar. In Sykes' opinion the appeals court wrote, "A thorough review of the record finds no evidence, beyond speculation, to support defendant's conviction of larceny by conversion under an aiding and abetting theory. ... The conclusion that defendant aided and abetted [the robbers] in taking the money was supported only by impermissibly layered inferences and not by evidence." (*Michigan v Kimberly Sykes*, c245079, MI Ct of Appeals, May 4, 2004, 2,3 (unpublished).)

The appeals court judge's also wrote, "With regard to defendant's conviction of false report of a felony, defendant's cell phone records, which were admitted at trial, indicated that defendant called the police to report the robbery. She also gave a statement to the police that the Sprint store was robbed by two armed men. However, as discussed *supra*, there was no evidence, besides the layers of impermissible inferences built upon the fact that [money] was processed through Holmes' account at the Motor City Casino in the three days after the robbery, to establish that the robbery was faked. ... The testimony by the store manager was that defendant, who usually had a calm demeanor, was distraught when she was let out of the safe room. *In fact, the prosecutor, in closing argument, acknowledged that defendant and [Urquhart] may not have known that the robbery was faked.* Without some indication that she knew the robbery was a sham, defendant's conviction of false report of a felony cannot withstand a challenge on sufficiency of evidence grounds." (*Id.* at 3. emphasis added)

Similarly, the appeals court wrote in Urquhart's opinion, "The detective admitted that he had no evidence that [the three women] conspired to take Sprint's money and there was no evidence that defendant ever came into possession of any of the missing

Two women cont. on p. 9

Two women cont. from p. 8

money. The prosecution's assertion that defendant took the money is based on pure speculation." (*Michigan v Tevya G. Urquhart*, c246001, MI Ct of Appeals, May 4, 2004, 2 (unpublished).) Thus the judges decided, "The conclusion that defendant aided and abetted [the robbers] in taking the money was supported only by impermissible inferences and not by evidence." (*Id.* at 3.)

Regarding Urquhart's conviction of a false report of a felony, the appeals court wrote, "There was no statement by defendant that she knew the robbery was faked. The videotape showed her being walked back to the safe, removing a white bag/envelope and sliding it towards an unidentified man. The videotape then showed that she was very upset, crying, and ill. [Sykes] testified that defendant was hyperventilating after the robbery under the counter and the police officer who interviewed defendant conceded that it was difficult to take defendant's statement because she was so upset.... there was no evidence that defendant knew it was a faked robbery." (*Id.* at 4.)

Having found insufficient evidence to support the charges against either Urquhart or Sykes, the appeals court unanimously reversed their convictions. In the fall of 2004 the charges against both women were dismissed with prejudice in the Wayne County Circuit Court.

Women file separate civil rights lawsuits

Sykes then retained a civil attorney to look into suing the city. In November 2004 the lawyer submitted a state Freedom of Information Act request to the Detroit Police Department for an unedited copy of the Sprint store's 24-hour surveillance video. They responded by turning the video over to the city attorney's office – which did not provide Sykes' attorney with a copy of the unedited video. However, in February 2005 they did provide a copy of the edited version that was shown to the jury.

In 2005 Urquhart and Sykes (who had hired different lawyers) filed separate civil rights lawsuits in Detroit's federal district court. The defendants were six Detroit police officers and the city of Detroit. The two suits, which were later joined, claimed that the defendants caused the women to be falsely arrested and maliciously prosecuted without probable cause, that the defendants intentionally or recklessly misrepresenting the facts of the crime by improperly tampering with or editing the Sprint store's surveillance videotape of the robbery, and that the defendant's actions violated the women's right to a fair trial and to due process of law. The suit's allegations against Detroit included that it failed to

adequately train its police officers to perform their constitutional duty to disclose exculpatory evidence. The lawsuits requested compensatory and punitive damages to be determined by a jury. (*Tevya Grace Urquhart v City of Detroit, et al*, No. 05-73725, EDMI; and, *Kimberly Sykes v. Derrick Anderson, et al*, No. 05-71199, EDMI.)

The women's lawyers submitted a discovery request to the Detroit city attorneys office for the unedited surveillance video. After they didn't comply, the federal magistrate overseeing the case ordered the city's attorneys to produce the video. They responded that the video had disappeared. Among the discovery the women did receive was a cautionary letter from the Motor City Casino that the prosecution had failed to disclose to Sykes and Urquhart prior to their criminal trial. The letter showed Holmes' gambling wagers in the days after the robbery had been misrepresented to the jury. The amount of money the casino reported for Holmes' transactions was cumulative winnings and losses – which meant she could have actually wagered much less money and simply churned it over as her luck changed. The letter also explained the reported figure of Holmes' wagers was unedited, so it may have been incorrect.

In August 2007 U.S. District Court Judge Bernard Friedman denied the defendant's summary judgment motion to dismiss the lawsuit. However he did rule that Urquhart's false imprisonment and false arrest claims were time-barred because she did not file her lawsuit within three years of her arrest. After Friedman became ill the case was assigned to Judge Nancy Edmunds for trial.

Judge Edmunds ruled against the women on every substantive pre-trial issue, and even barred the jury from being informed that the city had failed to turn over the 24-hour surveillance video in spite of being ordered to do so by the Court. Judge Edmunds, who was described by a courtroom observer as openly hostile to the women's attorneys, also declined to sanction the city for its failure to comply with the Court's discovery order to turn over the unedited video.

Jury awards total of \$2.58 million

Although hamstrung by Edmunds' rulings, during the trial Sykes and Urquhart's lawyers were effective in presenting their case against the defendants by techniques that included a PowerPoint presentation. After a trial that extended over three weeks, the jury deliberated about seven hours before arriving at a verdict. On February 25, 2008 the jury found detectives Anderson and Nichols liable for malicious prosecution and violating the

women's right to a fair trial. The jury awarded 28-year-old Sykes \$1.063 million in compensatory damages and \$250,000 in punitive damages for a total of \$1.313 million. Urquhart, 37, was awarded \$1.02 million in compensatory damages and \$250,000 in punitive damages for a total of \$1.27 million. Afterwards, Julie Hurwitz, Sykes' lawyer, said of the women, "They feel tremendously vindicated."

The trial's outcome was somewhat ironic for the defendants. During a pre-trial mediation conference the women's lawyers submitted a settlement figure that Judge Edmunds thought was excessive and which the defendants rejected, but that figure was less than the jury awarded.

No one outside the Detroit Police Department or the city attorneys office has ever seen the full surveillance video, and the extraordinary lengths to which the city has gone to prevent its public release suggests that it may provide conclusive visual proof of the women's innocence.

Additional sources:

2 get million in false prosecutions, *The Detroit Free Press*, February 26, 2008.

Bad cops cost city millions, *The Michigan Citizen*, March 2, 2008.

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Cuba Commutes Death Sentences

Cuba has been heavily criticized for its legal process that has been used to imprison a number of people who claim to be innocent. Prisoners on death row who may be innocent were spared execution by Cuban President Raul Castro: He announced on April 28, 2008 that all but three death sentences were being commuted to terms of 30 years to life in prison. The three death row prisoners whose sentences were not commuted, are all still on appeal from terrorism related convictions. The Cuban government's official announcement said the commutations were taken for "humanitarian" reasons. However, it may have been to bring Cuba in conformance in spirit with two United Nations human rights agreements that Cuba signed in early March. Former President Fidel Castro had opposed Cuba being a signatory to those human rights agreements.

Source: Cuba's Raul Castro commutes most death sentences, *Reuters*, April 28, 2008