

Mashelle Bullington Cleared 13 Years After Burglary Conviction

Luke Gaumond read with much interest a 2006 series of articles in the San Jose, California *Mercury News* titled, "Tainted Trials, Stolen Justice." The newspaper series reported on a number of probable wrongful convictions that occurred in Santa Clara County. The paper did not just examine cases of people whose convictions were suspect, it also delved into how they occurred, including that prosecution friendly county judges and prosecutors were more concerned with winning than convicting a crime's actual perpetrator. Gaumond knew about a case that wasn't included in the *Mercury News*' series ... two innocent people had been convicted in 1995 of a burglary he had committed in Campbell, a city bordering San Jose.

Gaumond confessed to the police and testified as a defense witness at the trial of Kenneth Foley and Mashelle Bullington that he alone committed the January 1995 burglary that they had been charged with. However, the business owner testified that it was Foley that he surprised breaking into a truck on his parking lot, and that Bullington pointed a gun at him from the "getaway" car she was sitting in.

During his closing argument Deputy District Attorney Charles Slone told the jurors he was "sickened" by the defense's "fraud" of having Gaumond testify that he committed the crime. Slone argued that Gaumond, who had a criminal record, was an unreliable witness. Slone explained to the jury, "I believe in God. I'm not here trying to convict innocent people."

The jury believed the businessman in convicting Foley and Bullington of second-degree burglary with the personal use gun enhancement. As a first-time offender the 28-year-old Bullington was sentenced to 4 years and 4 months in prison. Foley, 27, had been convicted of several burglaries as a teenager, so he was sentenced to 25 years to life under California's three-strike law. Gaumond was never charged with the burglary.

After Bullington completed her sentence she regained custody of her two children. By the time of the *Mercury News*' series she was a project manager with a local audiovisual supplier.

After reading the "Tainted Trials, Stolen Justice" series, Gaumond contacted Foley's attorney. Gaumond had previously contacted the attorney and explained that he committed the burglary alone, but the *Mercury News*'



Mashelle Bullington
(San Jose Mercury News photo)

series gave more weight to what he said, so the Santa Clara County DA's Office was contacted. They agreed to re-investigate the case to determine if Gaumond's claim was valid.

During the re-investigation Gaumond, who now owns a garage door business in San Jose, didn't deviate from his trial testimony of what happened, and Bullington confirmed it. To look for recycling materials he could sell for drug money, Gaumond offered to pay Bullington for use of her car. She agreed, but went with him to keep an eye on her car. After driving around for a while Bullington fell asleep. When the business owner armed with a pistol caught Gaumond breaking into the truck he also saw Bullington in a nearby parked car. Unbeknownst to him she had just awakened. The owner told them to leave. A few hours later he reported the burglary and the car's license plate number to a police officer he knew.

About 12 hours after the parking lot incident Foley was driving Bullington's car after his wife had borrowed it. He was stopped by the police for making an illegal left turn and ticketed for not having a valid driver's license. That tied him to driving Bullington's car. Foley and Bullington were arrested and charged after the business owner identified them from a photo lineup.

Working on Foley's case *pro bono*, the Northern California Innocence Project (NCIP) filed a writ of habeas corpus to overturn his conviction based upon newly discovered evidence, the prosecution's failure to disclose exculpatory evidence, and the ineffectiveness of his trial lawyer for failing to adequately investigate the case.

After the Foley's habeas was filed, the Santa Clara County DA's Office agreed to remove the burglary from being a three-strike offense, and support his resentencing for time served, based on their conclusion that the business owner had mistakenly testified about seeing a gun. Foley, 39, was released in November 2006 after 11 years and 7 months of imprisonment. During that time his wife divorced him, and his mother and grandmother died.

The DA's Office responded to Foley's habeas petition by acknowledging "a strong showing of actual innocence had been made." Foley's habeas was granted on April 5, 2007. The DA's office subsequently dropped the charge.

Although it had been ten years since Bullington's release from prison, the NCIP filed a writ of habeas corpus on her behalf. The DA's Office did not oppose the petition,

Justice:Denied Begins Its 11th Year

This issue marks the beginning of *Justice:Denied*'s 11th year. This milestone couldn't have been reached without the efforts of the many volunteers who have contributed their time and talents over the years since preparation for the first issue and the website began in the summer of 1998. The first issue was published in January 1999.

In addition to the magazine, *JD*'s website is important in providing information and promoting awareness about wrongful convictions. The website gets over four million visitors per year. The online Innocents Database that includes information about more than 2,500 exonerated people, receives almost another million visitors annually.

Wrongful convictions are a world-wide problem, and that is reflected in the visitors to *JD*'s website. In the last two years it has received visitors from more than 11,000 cities in 172 countries.

The need for *JD*'s independent reporting and editorial perspective has not diminished since 1999. *JD* can not even begin to cover all the stories and issues related to the difficulty of the legal system in the U.S. and other countries to distinguish the innocent from the guilty at trial, and to correct the erroneous conviction of an innocent person.

Justice:Denied has also published three books and in the coming year expects to publish several more. *JD* is a volunteer non-profit organization that receives no institutional support, so its magazine, website and book publishing depend on the financial support provided by subscribers, book purchasers and donors.

and joined in requesting that it be granted. Deputy DA David Angel wrote, "Ms. Bullington is innocent of the arming allegation. There is no harm in recognizing this truth. She deserves to have her name cleared. Our criminal justice system deserves the opportunity to correct this wrong."

Bullington's writ vacating the gun enhancement and reducing her conviction to a misdemeanor was granted on November 22, 2008. Now 41, she had been a drug user at the time of her 1995 arrest, and Angel said "It is inspirational how she turned her life around."

Sources:

Almost 14 years after Campbell burglary, woman's conviction overturned, San Jose *Mercury News*, November 29, 2008.

As One Atones, One Walks Free, San Jose *Mercury News*, November 22, 2006.