

Rachel Jernigan was arrested on November 10, 2000 and charged with the September 2000 robbery of a Bank of America branch in Gilbert, Arizona, a few miles east of Phoenix. She was also charged with two other Phoenix area bank robberies committed in October 2000. She was not released on bail.

Based on grainy bank surveillance video and witness statements the robber of all the banks was described as a very short (5') Hispanic woman with severe acne or pock-marked skin. The robber said nothing and demanded money from the teller with a handwritten note that said she had a firearm.

The 31-year-old Jernigan was about 5', Hispanic, and she acne, but when questioned by the FBI she denied being the robber or knowing anything about the robberies. She told the FBI she was a homemaker and mother of four children, not a bank robber.

Within weeks of Jernigan's arrest Bank of America branches in the Phoenix suburbs of Chandler and Tempe were robbed by a woman fitting Jernigan's description and using the same method of operation as the three robberies she was charged with. Then less than a month after Jernigan's arrest a different Bank of America in Gilbert was robbed by a silent woman of the same description and using the same M.O.

The judge granted s defense motion to sever the September 2000 bank robbery charge from the other two robberies. Her federal court trial for the September 2000 robbery began in March 2001. Neither prior to nor during Jernigan's trial did the prosecution disclose to her lawyer that at least three banks were robbed in the greater Phoenix area after her arrest by a woman fitting her physical description and using the same M.O. as the robberies she was charged with.

The prosecution did not present any physical or forensic evidence during Jernigan's trial linking her to the September 2000 bank robbery. Their only evidence was the grainy bank surveillance video and the testimony of five eyewitnesses – none Hispanic – who identified Jernigan in court. Not knowing about the bank robberies after Jernigan's arrest, the jury rejected her mistaken identity defense. Jernigan was convicted and sentenced to 14 years in prison and five years of supervised release. The government agreed to dismissal of Jernigan's indictment for the two October 2000 bank robberies.

Nine months after Jernigan's conviction something remarkable happened. In De-

## Mother Of Four Mistaken For Bank Robber Freed After Seven Years Imprisonment

By Hans Sherrer

ember 2001 a woman fitting Jernigan's description robbed the same bank that Jernigan had been convicted of robbing in September 2000, and she robbed it using a similar note and she said nothing. Less than an hour after the robbery the woman was arrested. The physical description of the woman – Juanita Rodriguez-Gallegos – was nearly identical to Jernigan. Gallegos was charged with three bank robberies, but she pled guilty to a firearms charge in exchange for the bank robbery charges being dropped.

Jernigan eventually learned of Gallegos' arrest from fellow prisoners. She immediately informed her attorney who investigated and discovered the prosecution failed to disclose the three bank robberies that were committed after her arrest and before her trial. Since less than three years had elapsed since her conviction, in January 2004 Jernigan filed a motion for a new trial based on new evidence under Federal Rule of Criminal Procedure 33, and the U.S. Supreme Court's ruling in *Brady vs Maryland* (1963). The *Brady* decision requires the prosecution to disclose potentially exculpatory evidence to a defendant. Her motion alleged she was denied a fair trial because the prosecution failed to disclose to her lawyers that a similar looking woman using the same M.O. robbed a number of Phoenix area banks after her arrest.

**"The government has deprived Jernigan of a fair trial and placed a possibly innocent woman behind bars."  
Federal 9th Circuit Court of Appeals**

To prove a *Brady* violation Jernigan had to establish that the non-disclosed evidence was material, i.e., that if her jury had known about the continuing bank robberies there is a "reasonable probability" her trials' outcome would have been different. Jernigan's trial judge denied her motion, ruling the evidence of the bank robberies wasn't material because even though they were the same size, Hispanics and had skin problems, Jernigan and Gallegos were not look-a-likes and the eyewitnesses had identified Jernigan as the robber. Since the judge ruled the new evidence wasn't material, it didn't support a new trial under Rule 33 or *Brady*.

The Ninth Circuit Court of Appeals agreed to review the denial of Jernigan's motion. A



three-judge panel upheld the lower court's ruling by a two to one vote, agreeing that the new evidence wasn't material so it didn't support granting a new trial.

The Ninth Circuit agreed to review the panel's decision *en banc*. The Court overturning Jernigan's conviction by a vote of 13-2. *U.S. v. Jernigan*, No. 05-10086 (9th Cir., July 9, 2007) The opinion stated the prosecution's case was solely based on the "inaccurate or inconsistent" eyewitness testimony, and the witnesses identification of Jernigan were "questionable" because four of the five witnesses weren't asked to identify Jernigan until about the time of her trial six months after the robbery. The identifications of Jernigan were "particularly suspect" because none of the witnesses was Hispanic, and psychology research by psychologist Elizabeth Loftus and others has demonstrated the tendency for cross-racial identifications to be inaccurate.

The Court's opinion also emphasized the remarkable similarity of how all the robberies were executed, and that FBI statistics reveal that women and Hispanics rarely rob banks: "The likelihood of two short, Hispanic female robbers with pockmarked skin holding up banks in the same area is therefore extremely low." The opinion concluded:

The existence of another bank robber for whom Jernigan may well have been mistaken also magnifies the significance of the gaps and inconsistencies in the prosecution's case. The most obvious gap, as noted earlier, was the complete lack of physical evidence connecting Jernigan to the crime. Even after Jernigan was arrested, the police failed to produce any physical evidence connecting her to the crime: a fingerprint lifted from the victim teller's window did not match Jernigan's print, and, after Jernigan was arrested, the police failed to find the stolen money, the firearm used to conduct the robbery, or any clothing resembling that worn by the robber.

**Jernigan cont. on p. 4**

## Mikhail Khodorkovsky Tells Judge The Case Against Him Is “Utter Rubbish”

Mikhail Khodorkovsky was Russia’s richest man and the 16 wealthiest man in the world when he was arrested in 2003 and charged with tax evasion. There was widespread speculation the charges were politically motivated because he was publicly critical of then Russian President Vladimir Putin and he funded opposition parties. Khodorkovsky’s prosecution neutralized his influence on the 2004 Russian Presidential election.

Khodorkovsky was the largest stockholder in the oil company Yukos. Khodorkovsky’s partner and Yukos’ second largest stockholder, Platon Lebedev, was also charged with tax evasion. The two were held without bail. After an 11 month trial they were convicted in May 2005 and sentenced to 9 years in prison, which was later reduced to 8 years.

Khodorkovsky’s conviction made news in the U.S. when it was reported that President George Bush expressed concern to Russian President Putin that Khodorkovsky “had

been judged guilty prior to a fair trial.” Khodorkovsky and Lebedev were several months from being eligible for parole in 2007 when they were charged with embezzlement and money laundering. The new charges prevented their release prior to the 2008 Russian Presidential election. If convicted of the new charges they would be imprisoned during both the 2012 and 2016 elections that Putin is expected to participate in.

The men’s trial began in March 2009 and the close of evidence didn’t end until 19 months later in October 2010. Khodorkovsky, 47, gave his own closing argument on October 26. It lasted for three hours. The men are accused of stealing oil worth \$27 billion and Khodorkovsky told the judge that if that amount of oil were placed in freight trains they would circle the equator twice. He then told the judge, “I am sure that you are competent enough to understand that the allegations made by the prosecution are utter rubbish” that hadn’t been proven, and he urged the judge to dismiss the charges.

When Khodorkovsky was brought handcuffed into the courtroom dozens of his supporters, including former World Chess



Mikhail Khodorkovsky (left) and Platon Lebedev in 2004 during their first trial. In Russia defendants are kept in a cage in the courtroom. (Life magazine)

Champion Garry Kasparov, cheered and chanted “Freedom, freedom!” Kasparov told reporters, this “political trial will determine the configuration of the future government in Russia.”

The verdict in Khodorkovsky and Lebedev’s case is expected on December 27, 2010.

Once a multi-billionaire, *Forbes* magazine has estimated that because of his legal troubles and the collapse of Yukos that Khodorkovsky has only a fraction of his wealth left.

Khodorkovsky and Lebedev’s official website is, <http://www.khodorkovskycenter.com>

## Jernigan cont. from p. 3

... As we view the withheld evidence in the context of the entire record, it is apparent to us that the evidence [of other bank robberies] was material and that Jernigan was prejudiced by its suppression. Withholding knowledge of a second suspect conflicts with the Supreme Court’s directive that “the criminal trial, as distinct from the prosecutor’s private deliberations, [be preserved] as the chosen forum for ascertaining the truth about criminal accusations.” *Kyles*, 514 U.S. at 440. By suppressing this evidence, the prosecution arrogated to itself a central function belonging to the criminal jury and pursued its role as adversary to the exclusion of its role as architect of a just trial. The government has deprived Jernigan of a fair trial and placed a possibly innocent woman behind bars. Because the evidence withheld by the government was material, we reverse the decision of the panel and district court, and remand to the district court for further proceedings consistent with our opinion. *U.S. v. Jernigan*, No. 05-10086 (9th Cir., July 9, 2007)

For seven months Jernigan remained im-

prisoned in a limbo-land. She did not know if the government was going to drop the charges or retry her. Then on February 5, 2008, the government submitted a motion to dismiss Jernigan’s indictment. The motion detailed that two days earlier Gallegos confessed to federal law enforcement officials that she robbed the three banks Jernigan had been indicted for robbing. Due to the unusual circumstances the judge immediately granted the motion and ordered Jernigan’s release from custody after 7 years and 4 months of imprisonment.

The night of her release she had dinner at a Phoenix area McDonald’s with her husband, children and other family members. Two days after Jernigan’s release she told reporters she needed a job. “I don’t care what it is. I’ll work at McDonald’s, I’ll work at Jack in the Box, Circle K, whatever. I’ll do whatever they’ll let me do.”

Jernigan’s attorney was Alan Simpson, who represented Ray Krone when he was released from Arizona’s death row in April 2002 after new DNA evidence proved he did not commit a Phoenix murder. Simpson told reporters about Jernigan, “This is a classic misidentification. Misidentifications do happen. (Witnesses) aren’t being mean or nasty, but psychologically, if you have a

bad lineup, that can taint what happens in the courtroom.”

Gallegos remained in federal prison until her release on November 27, 2009. She was not charged with the bank robberies she confessed to committing.

Jernigan filed a federal civil rights lawsuit in December 2008 that named as defendants the FBI agents involved in her case, the city of Gilbert, and several other people. In June 2010 the judge denied Jernigan’s motion to amend her complaint. As of November 2010 her lawsuit has not been resolved.

Sources:

*U.S. v. Jernigan*, No. 05-10086 (9th Cir., July 9, 2007).  
 “Mom freed; served 7 years for heist she didn’t commit,” *Arizona Republic*, February 7, 2008.  
*Jernigan v. Richard et al*, No CV-08-2332-PHX-GMS (filed December 23, 2008).

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