

Introduction

In 1985, Erskine Leroy Johnson was convicted and sentenced to death for a crime that he didn't commit. After 20 years on death row, his death sentence was overturned and he was resentenced to life in prison with the possibility of parole. In overturning the death sentence, a unanimous Tennessee Supreme Court found that the State had improperly withheld critical evidence from the defense pertaining to the penalty phase of the trial.

The Crime

On the morning of October 2, 1983, Joe Belenchia, a white storeowner, was shot and killed by a black man while tending the cash register at his Memphis supermarket. It was a Sunday morning and there were at least ten people in the store who witnessed the attempted robbery and shooting. Witnesses said that two black men and a black woman entered the store. The woman and one of the men held the store security guard at gunpoint while the main perpetrator approached Belenchia's register and demanded money.

The car used in the crime had been stolen from a rental car agency at the St. Louis, Missouri airport. Concluding that the perpetrators were from St. Louis, the police immediately began investigating suspects from the area.

The Prosecution's Case Against Johnson

• Eyewitness testimony. None of the more than 10 eyewitnesses to the crime could positively identify Johnson as one of the perpetrators of this robbery/homicide. At trial, the state did call one eyewitness, Tommy Perkins, who testified that Johnson kind of looked like the shooter. Perkins admitted under cross-examination that he was not more than 80 percent sure of his identification. In Johnson's case the best the police could do was get one eyewitness to say that Johnson resembled the person who committed this crime. Perkins further testified that the police and prosecutors repeatedly showed him "several photos" of Johnson and told him "this person had been caught."

The prosecution presented another eyewitness, David Johnson, who saw the shooting at close range and was able to describe in detail the shooter's actions and words. David Johnson testified that he did not recognize Johnson as the shooter. Investigators working on Johnson's behalf found and interviewed David Johnson in 2006. He

Erskine Johnson Convicted Of Memphis Murder When He Was 300 Miles Away In St. Louis

By Erskine Johnson

stated that prior to his testimony the police and prosecutors showed him photographs of the victim's autopsy and several photos of Johnson, and tried to coerce him into identifying Johnson.

• Immunity in Exchange for Testimony. The prosecutor made a deal with two witnesses the police learned about after they received an anonymous tip that the perpetrators were from out of town and had been visiting those witnesses — Elizabeth Starks and Dennis Williams — the weekend of the homicide.

Elizabeth Starks gave three different statements to police before my trial. In her first statement, she made no mention of Johnson. The police withheld this first statement from Johnson's trial lawyer. By the time the trial began, Starks had changed her story dramatically. Before the jury, she testified that Johnson was at her house in Memphis the night before and morning of the crime and that he and some of his companions left her home to take Williams to the store around the time that the crime occurred. Starks admitted, however, that she was able to "identify" Johnson only after police repeatedly put his picture, Johnson's picture alone, in front of her four of five times.

Defense investigators have discovered that Starks had a strong motive to lie: she had a strong connection to the group of individuals that are likely responsible for this crime. One of the members of this group was a close childhood friend of Starks. Accordingly, Starks may have identified Johnson as a means of diverting attention from the actual perpetrators and thus protecting herself and her friends.

Williams gave a statement prior to trial in which he supported Starks' final version of events. In short, he stated that Johnson was at Starks' house the weekend of the crime and was talking about committing a robbery. At the trial itself, however, Williams refused to cooperate with the prosecution and responded to all of the prosecutor's questions with the same response, "I don't recall." Williams has recently given a statement to defense investigators, admitting that he identified Johnson only because police pressured him to do so. He insists that Johnson was not one of the visitors at

Stark's house that weekend.

• A Last Minute Witness. Seeking to shore up its weak case, the prosecution called a surprise witness, Beverly Batts. Batts was a convicted felon who several years earlier had falsely accused Johnson's niece of committing a crime that Batts had actually committed.

Batts testified at trial that Johnson had confessed to her that he had committed a murder in Tennessee. She was able to provide little detail of this alleged confession.

Since Johnson's trial, his new lawyers have developed significant evidence discrediting Batts' testimony, and that the police participated in the fabrication of her testimony.

• Physical Evidence. The prosecution claimed that they were able to match a palm-print of Johnson's purported to be lifted from the getaway car. But according to the police own reports, they did **not** lift any prints from the area of the car where they claim to have found Johnson's palm-print. The prosecutors also withheld a print examiner's report that stated that Johnson's prints were checked and they didn't match. It is also suspicious that the police did not make this "match" until nearly a year after they had access to his print file.

Johnson's Alibi Defense

In 1983, the year the crime occurred, Johnson was living in St. Louis, Missouri — the city where he was born and raised. St. Louis is about 300 miles from Memphis.

The crime occurred in Memphis on the early morning of Sunday, October 2. The Saturday evening before the crime, Johnson and his brothers, sisters, family and friends were attending a surprise birthday party in honor of his mother at her home.

Prior to trial, the family provided Johnson's defense lawyer with a list of more than twenty five people who were at the birthday party and could testify that Johnson was there. Johnson's lawyer failed to interview many of these witnesses and only called six to testify at trial. Those who testified all swore that Johnson was at his mother's birthday party (whose birthday was on October 1) in St. Louis until the early morning of Sunday, October 2. Some of the witnesses also testified to seeing Johnson in St. Louis at various points during the day on Sunday. Additionally, a man who helped Johnson with some yard work testified he

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saw Johnson at his St. Louis home at the very hour the crime was taking place 300 miles away in Memphis.

Evidence Of Johnson's Innocence Withheld By Prosecution

In every criminal trial, the prosecution has a constitutional obligation to turn over all exculpatory evidence to the defense. In other words, the prosecution must turn over any information or evidence in the police or prosecution possession/files that establishes the defendant's innocence or that may be helpful to the defense. In violation of this constitutional mandate, the prosecution in Johnson's case withheld a shocking amount of exculpatory evidence from the defense. Deprived of this evidence pointing to an entirely different group of suspects, Johnson was certainly denied a fair trial.

The withheld evidence — comprised of several interlocking pieces of evidence from independent sources — all pointed to the Brown Gang as the true perpetrators of the Belenchia robbery/homicide. The Brown Gang — comprised of Michael Brown, his brother Eric Brown, Charles Keller (the Brown's cousin by marriage), Betty Jo Ford, (Eric Brown's girlfriend), and Darvi Cunningham — all of whom were involved in a range of criminal activity, including car theft and prostitution.

Because this evidence was improperly withheld, the jury who convicted Johnson never heard any of the following:

- Two eyewitnesses — Johnnie Wilburn and Harold Quarles — identified Michael Brown after the police showed them a group of 24 photographs that included Johnson's picture.

Wilburn witnessed the shooting at close range. The police report specifically notes that Wilburn "picked out a photograph of Michael Brown, and identified this photograph as looking like the [black male] that shot Belenchia."

Quarles witnessed the perpetrators changing the license plate on their getaway car. Before looking at the photo spread Quarles told police that he would probably be able to recognize "the one who change the license plates and the one who got out of the white car to get in the maroon car." Quarles was right. When shown the 24 photographs, he quickly picked out photographs of Michael Brown and Keller. The police report states: "While looking through the large

group of photographs, Harold Quarles pulled out [the photographs of] Brown and Keller "without hesitation."

- The getaway car — a maroon station wagon — is linked to Michael Brown and Keller. In the early stages of their investigation, the police recovered the getaway car, a maroon station wagon after it was abandoned by the perpetrators. The police quickly determined that the station wagon had been stolen from the Hertz rental car agency at the St. Louis, Missouri airport.

- The Memphis police discovered the Brown Gang had a history of stealing rental cars from the Hertz agency at the St. Louis airport.

- The St. Louis police notified Memphis detectives that Michael and Eric Brown, and Keller were suspected of regularly stealing rental cars from Hertz at the St. Louis airport, and using them in their criminal enterprises.

- Six weeks before the Belenchia murder, the police recovered one of these stolen rental cars — a red Ford model — from Cunningham's residence. Witnesses told police that Eric Brown brought the car to Memphis from St. Louis and left it at Cunningham's home.

- Miles McKinny, a neighbor of Cunningham positively identified the car used in the crime, the maroon station wagon, as a car he saw parked at Cunningham's residence. McKinny stated there was not "any doubt" in his mind it was the car he saw at Cunningham's residence and being driven by Cunningham. The car was distinctive, McKinny noted, for the piece of chrome missing from the left side of the vehicle.

- Other evidence found in the stolen maroon station wagon linked the vehicle to the Browns.

- Cunningham and Betty Jo Ford were prostitutes who worked for Eric Brown, said that they regularly traveled from Memphis to Chicago and worked truck stops along the route.

- In the maroon station wagon police found a lottery ticket purchased in Chicago, and a receipt from the Dixie Trucker's Home in McLean, Illinois purchased a mere six days before the Belenchia shooting.

The stolen station wagon had been driven 10,000 miles in the three months between the time it was stolen from the Hertz rental agency in St. Louis and the time of the Belenchia homicide. This significant accumulation of mileage in a short period of time is consistent with the Brown's having driven the car on prostitution excursions to

Chicago.

Newly Discovered Evidence Linking The Brown Gang To The Crime

In the course of investigating the case, Johnson's legal team discovered a critical piece of new evidence linking the Brown Gang to the crime.

- As noted above, Starks testified against Johnson in exchange for immunity from prosecution. In her first statement to police, she said that the visitors, at her home the weekend of the crime, were Shirley, a woman she had previously met at a gospel convention, and Shirley's male friends. She then changed her story and said that it was Johnson and some of his friends — none of whom (including Johnson) she had met before — who visited her that weekend.

- Betty Jo Ford has long used the alias "Shirley."

- Investigators learned that Starks and Ford were longtime friends. They were so close that people often mistakenly believed they were related. As one witness told investigators, when I saw one of them, "the other one was not far behind."

- Williams' sworn affidavit confessing that Johnson was not one of the people he met at Starks' home on the weekend in question is more proof of Starks' cover-up.

The connection between Starks and the Brown Gang is compelling new evidence of Johnson's innocence. This evidence shows that Starks had a compelling motive to falsely implicate Johnson.

The Taint of Racism

Johnson was convicted by an all-white jury in Memphis; a city with a majority black population. In Tennessee, both the prosecution and the defense are allowed to exclude a certain number of jurors without explanation through the use of peremptory strikes. In Johnson's case, the prosecution used all of their peremptory strikes against black jurors, including the two alternates. By using all of their peremptory strikes against black jurors — and none against the white members of the jury pool — the prosecution was able to secure an all-white jury.

New Trial Granted

On December 9, 2011, after this article was accepted for publication in *Justice Denied*, the Tennessee Court of Criminal Appeals overturned Johnson's conviction and grant-

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New Fingerprint Technology Could Result In New Evidence For Innocent People

Dr. Xanthe Spindler has preliminarily developed a new technique that has the capability of recovering usable latent fingerprints from old evidence and difficult surfaces. Dr. Spindler is a forensic science researcher at the University of Technology (UTS) in Sydney, Australia. Dr. Spindler's development is one of the most significant advancements in fingerprint technology since it first began to be used by law enforcement more than a hundred years ago.

Traditional fingerprinting methods either can't detect or accurately identify a latent fingerprint that is aged, dry and weak. Dr. Spindler's method uses antibodies designed

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ed him a new trial. The court ruled in, [Erskine Leroy Johnson v. State of Tennessee](#), No. W2010-01800-CCA-R3-CO (TN COCA, 12-9-2011):

As noted by the trial court and this court, Ms. Starks was a "very important" witness for the State. Although Mr. Perkins's identification and Mr. Williams's trial testimony have not been overcome, Mr. Perkins's testimony was "significantly impeached, and perhaps discredited," while Mr. Williams's testimony now corroborates Ms. Starks, who has likewise been significantly impeached and discredited. We conclude that evidence tending to impeach Ms. Starks's testimony and forge a link between her and the Brown Gang, when considered in conjunction with multiple pieces of evidence implicating the Brown Gang and the evidence at the trial, including evidence that the sole eyewitness identifying the Petitioner as the shooter had his testimony significantly impeached, may have resulted in a different judgment had it been presented at the trial. We conclude that the trial court erred by denying the petition.

In consideration of the foregoing and the record as a whole, we reverse the judgment of the trial court, vacate the Petitioner's felony murder conviction, and remand the case for a new trial.

Johnson now goes by Ndume Olatushani, and he remains imprisoned as he awaits his retrial.

to target amino acids that are present in sweat which is deposited in most fingerprints. In an announcement about Dr. Spindler's research on the UTS website she explained, "... existing methods are most effective recovering fresh fingermarks that contain a reasonable level of moisture. That has meant that people with dry skin are weak donors and evidence is rapidly degraded in dry conditions or after long storage."

Dr. Spindler stated that her immunogenic technique can be expected to enable the reliable recovery of latent fingerprints more than three hours old from human skin. She said, "Current techniques of powdering and fuming have never worked well on skin, with the ability to only enhance fingermarks less than three hours old."

Dr. Spindler also stated: "We've been able to successfully target amino acids on non-porous surfaces for the first time, with promising results in enhancing aged and degraded fingermarks that typically give poor results with traditional powdering and cyanoacrylate fuming. The potential is there to go back to old cases to see what might now be recovered."



Latent fingermarks identified on aluminium foil using the immunogenic method developed by Dr. Xanthe Spindler (Dr. Xanthe Spindler)

Robbery Conviction Tossed For Man Walking Near Crime Scene

Ryan Omar Butler was convicted on September 9, 2010 of the attempted robbery of an armored truck on December 21, 2007 in Nassau, The Bahamas. Butler was shot in the parking lot where the attempted robbery took place. He claimed he was caught in cross-fire between the robbers and the police as he was walking to a grocery store to purchase milk for his girlfriend who was recuperating from surgery. The store was in the shopping center where the attempted robbery took place.

Witnesses said two men were involved in the robbery and they didn't wear masks. No eyewitnesses identified Butler as one of the robbers, and he didn't have a gun on him.



Dr. Xanthe Spindler (Terry Clinton)

actual perpetrator.

An article about Dr. Spindler's research was recently published in *Chemical Communications*, a journal of the Royal Society of Chemistry.

In addition to Dr Spindler, investigators and personnel involved in the new fingerprint identification research include Professor Claude Roux the Director of the UTS Centre for Forensic Science, Professor Chris Lennard from the University of Canberra, Professor Oliver Hofstetter from Northern Illinois University and Dr Andrew McDonagh from UTS.

It is not known when the new fingerprint technique will be available for general use by laboratories.

Source:

"[A step towards a revolution in law enforcement](#)," UTS: Sydney, June 2, 2011.

"[Enhancement of latent fingermarks](#) on non-porous surfaces using anti-L-amino acid antibodies conjugated to gold nanoparticles," Xanthe Spindler, Oliver Hofstetter, Andrew M. McDonagh, Claude Roux and Chris Lennard, *Chem. Commun.*, 2011, 47, 5602-5604.

He was charged with being one of the robbers solely based on his wound. Butler, who represented himself during his trial, called as a witness a woman who was also shot in the shopping center. She testified that she believed a police officer shot her. The jury convicted Butler.

Another man accused in the robbery, Raymond Bastian, was free on bail when he was gunned down in a drive-by shooting two days before the start of his trial.

The Bahamas Court of Appeals quashed Butler's conviction on March 16, 2011, ruling there was insufficient evidence Butler was involved in the crime. He was released after six months imprisonment.

Sources:

[Verdict expected](#) today in attempted armed robbery case, *The Nassau Guardian*, September 9, 2010.

[Man convicted](#) of armoured truck robbery attempt has conviction quashed, *The Tribune* (Nassau, Bahamas), March 17, 2011.