



WRONGFUL CONVICTIONS CLINIC

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Shawn Giovanni Massey
Charlotte, North Carolina
DOB: March 23, 1973 (37 years old)

The Duke Wrongful Convictions Clinic pursued Shawn's claim of actual innocence from the Fall of 2006, until Shawn's release on May 6, 2010. Three teams of Duke Law students worked on the case:

2006 - 2007	Kim Kisabeth '07 and Alex Kopec '07
2007 - 2008	Susan Pourciau '09 and Emily Sauter '09
2008 - 2009	Toby Coleman '10 and Jessica Neiterman '09

Ms. Kisabeth also worked on the case during the period 2008 - 2010, as a Criminal Justice Fellow with the Duke Law School Center for Criminal Justice and Professional Responsibility. Clinic co-directors James E. Coleman, Jr., and Theresa A. Newman supervised the investigation.

SUMMARY OF KEY FACTS AND EVENTS

1. The crimes for which Shawn was convicted occurred on May 22, 1998, between 10:00 a.m. and 10:20 a.m. at 5206 B Cherrycrest Ln., Charlotte, North Carolina. The victims were Samantha Wood and her two young children. He allegedly forced Ms. Wood and her children into their apartment at gunpoint and robbed Ms. Wood.
2. Shawn was arrested on May 29, 1998, and charged with armed robbery with a deadly weapon, three counts of kidnapping in the second degree, and felonious breaking and entering.
3. Shawn's trial began on September 13, 1999, in North Carolina Superior Court in Charlotte. On September 17, 1999, the jury convicted Shawn of all charges and Superior Court Judge James L. Baker sentenced him to a minimum term of 103 months and a maximum term of 133 months for the armed robbery with a dangerous weapon charge, and a minimum of 34 months and a maximum of 50 months for the consolidated kidnapping and breaking and entering charges. Judge Baker ordered that Shawn serve the sentences consecutively.

4. Eric H. Cottrell, currently in private practice in Charlotte, is the former Assistant District Attorney who prosecuted the case against Shawn.
5. Janet C. Thomas, a Charlotte attorney, represented Shawn in his criminal trial.

The Charlotte Mecklenburg Police Department's Investigation

6. Officers J. J. Ojaniit and G. J. Esposito of the Charlotte-Mecklenburg Police Department (CMPD) were the principal investigators in the case. Their supervisor was T. G. Ledford. These officers conducted only a very limited investigation of the crimes. They immediately settled upon Shawn as their only suspect, apparently believing he wore his hair in braids:
 - a. In a May 22, 1998, statement, written by Officer JJ Ojaniit, Samantha Wood described the perpetrator as a "B/M 5' 09" 180 lbs with his hair pulled back from his face and (4) small braids on the back of his head. He was wearing a red shirt and blue jean shorts." (Emphasis added). Ms. Wood later said the red jersey worn by the suspect had a Carolina Hurricanes logo on the front.
 - b. On May 23, 1998, Officers Ojaniit and Esposito interviewed Theresa Savall, manager of the apartment complex where Ms. Wood lived. Ms. Savall told police she had seen a man at around the time Ms. Wood was robbed on May 22 (between 10 and 11 a.m.) wearing an orange basketball jersey and jean-type pants. The man was wearing a cap of some type and Ms. Savall did not see his hair. Ms. Savall told police that the man had come from the direction of April Pride Thompson's apartment, located in the complex.
 - c. After speaking with Ms. Savall, Officer Esposito subsequently had what he described as a "casual conversation" with Ms. Thompson, outside her apartment. He later wrote that Ms. Thompson described Shawn as being 25 years-old, living with his grandmother, and that he wore "his hair pulled back with 4 or 5 braids," almost the exact words Ms. Wood had used to describe the suspect. As far as the Clinic knows, the CMPD did not interview any other witnesses about how Shawn wore his hair, the key issue in dispute in trial.
 - d. After interviewing Pride, Esposito and Ojaniit met with Samantha Wood. They showed her a photo lineup that included Massey's photograph. Wood identified Massey's photograph. Officer Ojaniit wrote for Ms. Wood that, "I looked at the photos and told the officer that one of the subjects looked like the suspect except the suspect had longer hair with braids and he did not have a beard." Ms. Wood wrote on the lineup, under Shawn's photograph, "This looks like the [suspect], except for the

braids.” Ledford subsequently contacted Wood, who “told [him] that she believes that the person whom she identified in the lineup is the person who robbed her, and that she could be certain if she saw him in person.” Ms. Wood did not see Shawn in person until the first day of his trial, almost a year later.

The Trial

8. Shawn was convicted based upon Samantha Wood’s erroneous in-court identification of him as the person who robbed her and the testimony of Officer G. J. Esposito that April Pride Thompson, Shawn’s friend, allegedly told him that on the day of the crime Shawn wore his hair “pulled back with 4 or 5 braids at the back,” which matched exactly Ms. Wood’s description of the perpetrator. At trial, however, Ms. Thompson testified that Shawn’s hair was cut short on the day in question and denied that she told Officer Esposito that Shawn had braids. Numerous witnesses also testified for the defense that Shawn’s hair was cut short at the time of the crimes and that he had never worn his hair long enough to braid.
 - a. At trial, Ms. Wood purported to identify Shawn by appearance and voice. She confidently and unequivocally identified Shawn as the person who had robbed her, but said at trial he no longer had braids and appeared smaller than he did on May 22, 1998. In her testimony, Ms. Wood said the man who robbed her had braids that “went through” his hair and not just on the back or on the sides. On cross-examination, she confirmed that the braids were “woven into his hair.” These descriptions clearly indicate the man wore his hair in “cornrows,” which the Clinic therefore assumed throughout its investigation. Ms. Wood also told the jury that at some unspecified time and place after the robbery, she had heard Shawn talk and consequently also had been able to identify him by his voice.
 - b. Theresa Savall, Manager of Apartment Complex in which Samantha Wood and her family lived, testified that she saw Shawn in the complex at about the time Ms. Wood was robbed on May 22, 1998. The man she saw was dressed differently than the suspect who attacked Samantha Wood and was wearing a cap.
 - c. April Pride, testified that Shawn stayed at her apartment the night before Ms. Wood was robbed. She testified that he wore his hair cut short at the time and denied that he wore his hair braided. In an attempt to impeach her testimony, the prosecutor asked Ms. Thompson a question that implied she had told him in a pretrial interview that Shawn had braids. The implication was false; Ms. Thompson denied having made such a statement to the prosecutor.
 - d. Shawn did not testify. Numerous witnesses, including members of his

family, testified that Shawn wore his hair cut short at the time of the crimes and that they had never seen his hair long enough to be braided. The defense lawyer also introduced three photographs into evidence to show that Shawn wore his hair cut short. Unfortunately, all of the photographs were outdated: one was a high school prom photograph; one was a photograph of Shawn taken when he was in middle school; and the third was a six year-old photograph taken of Shawn and his newborn son.

- e. A man for whom Shawn did day labor testified that he had driven Shawn to a work site on the morning of the crime and that Shawn had not left the site until the mid-afternoon. This was corroborated by a co-worker, who also testified that Shawn's hair was cut short. The supervisor also produced disputed pay records to show that Shawn had been paid for working on May 22, 1998.
- f. The prosecutor disputed the defense's evidence. He told the judge, "Most of the evidence that the defendant has offered was just that the defendant did not have braids at that time. Well, that has been contradicted, Your Honor, by the victim's testimony and her identification of the defendant. And also, in the testimony . . . by Officer Esposito, as to what Ms. April pride [Thompson] told him, the day after the incident occurred." Trial Transcript at 172.

The investigation by the Duke Wrongful Convictions Clinic

- 9. In the course of its six-year investigation, the Wrongful Convictions Clinic uncovered new evidence clearly demonstrating that Shawn did not and could not have had braids on May 22, 1998, and therefore that he was innocent of the crimes for which he had been convicted. Our investigation also found that the prosecutor withheld key evidence from the defense, which the District Attorney has conceded in a newspaper interview would have lead to Shawn's acquittal in 1999. The Clinic discovered this evidence as a result of the decision of District Attorney Peter Gilchrist to give the Wrongful Convictions Clinic full access to his files, the cooperation of the former Assistant District Attorney who prosecuted Shawn, and the cooperation of the victim.
- 10. Susan Pourciau and Emily Sauter inspected the files of the District Attorney on January 28, 2008. In their review, they found seven 8" by 10" color photographs of Shawn, all with short hair. Their subsequent investigation determined that the photographs were taken by the Mecklenburg County Sheriff's Department, over the period April 18, 1991, through May 29, 1998. One photograph was taken on March 9, 1998, eleven weeks before Ms. Wood was robbed. In the photograph, Shawn's hair was cut very short. Two professional barbers, with experience braiding hair, provided affidavits to the Clinic asserting it was not possible that Shawn's hair could have grown long enough Between March 9, 1998, and May

- 22, 1998, to be braided into cornrows.
11. Our investigation showed that both the police and prosecutor erroneously assumed that the perpetrator had braids only at the back of his head, and not cornrows that ran throughout the person's head. As a result, they assumed that Shawn could have cut off the braids after robbing Ms. Wood or that the braids at the back of his head would not have been visible in photographs of Shawn showing only his face and the front of his head.
 12. A prosecutor's notes of his interview of Officer Esposito on May 7, 1999, during which "[h]e spoke from memory," indicate that Esposito spoke to April Pride under the pretense that there had been a complaint about noise coming from her apartment for which she was responsible. Our investigation found that Officer Esposito misrepresented both the circumstances and substance of his "interview" of Ms. Pride. According to Ms. Pride, in her brief encounter with Officer Esposito, she mentioned two men who might have been in her apartment, her husband, Earl Thompson, and a friend, Shawn Massey. Although her husband at one time had worn his hair in dreadlocks, in May 1998 he had a regular haircut and no braids. Ms. Pride did not tell the officer that Earl or Shawn wore his hair "pulled back." The officer told her that the man staying at her apartment had left the patio door open, that he saw children's toys through the window, and wanted to make certain that everything was okay. The officer said he was looking for a man with braids who was seen coming from the apartment, and asked April who "stayed" there. Ms. Pride told him that Earl, her husband stayed there, but he didn't have braids. She also said that Shawn sometimes stayed overnight, but that, as far as she knew, he didn't have braids either. Ms. Pride said she was upset with the officer for lying to her, and just wanted him to leave.
 13. Documents found in the District Attorney's files clearly revealed that the police likely assumed the perpetrator had braids only at the back of his head.
 - a. A CMPD Supplement Report, prepared by T. G. Ledford on June 1, 1998, stated, "Ms. Wood described the suspect as follows: B/M, 5'8" - 5'9", 175-180 lbs, with his hair pulled back from his face and braided at the back, wearing a red shirt with blue jean shorts." (Emphasis added).
 - b. Undated police notes state that Wood described the perpetrator as "Black Male, 20, 5'8", 175 lbs. black hair, brown eyes, "braids at back of head."
 14. Notes found in the files of the District Attorney suggest that prosecutors also were under the erroneous impression that the perpetrator had braids only at the back of his head. An undated chart comparing Victim's two descriptions of the perpetrator and Shawn's actual description.

- a. Victim's description to CMPD:
 - Black male
 - 20 years old
 - 5' 8"
 - 175 lbs.
 - black hair
 - brown eyes
 - red shirt
 - blue jean shorts
 - hair pulled back from face
 - braids at back of hair

- b. Victim's statement
 - Black male
 - 5' 9"
 - 180 lbs.
 - red shirt
 - blue jean shorts
 - hair pulled back from face
 - 4 small braids on back of head

- 15. Ms. Pourciau and Ms. Sauter interviewed Eric Cottrell on March 7, 2008, in the offices of the Mecklenburg County District Attorney. Mr. Cottrell is the former Assistant District Attorney who prosecuted Shawn. During the interview, Mr. Cottrell disclosed that, upon seeing Shawn for the first time in September 1999, at the start of Shawn's trial, Ms. Wood approached Mr. Cottrell and said, "I don't know if that's him or not." Following a brief hearing on a pretrial motion, Mr. Cottrell met with Ms. Wood to discuss her uncertainty. At that time, Ms. Wood told Mr. Cottrell that she now was confident that Shawn was the man who robbed her, although he was skinnier than he was in May 1998. She also told Mr. Cottrell that Shawn had the same voice as the man who robbed her. Mr. Cottrell did not disclose this information to the defense. Nor did Ms. Wood indicate during her testimony that she ever had any doubts about whether Shawn was the man who robbed her. To the contrary, she told the jury that she also had identified Shawn by his voice, without explaining the circumstances under which she claimed that happened.
- 16. After further investigation, which included interviewing several witnesses in Charlotte, interviewing expert barbers, and obtaining affidavits from witnesses, Toby Coleman and Jessica Neiterman drafted a letter to District Attorney Gilchrist, setting out the reasons we believed Shawn was innocent and identifying several legal claims on which we thought a court would grant Shawn relief from his conviction. The Clinic sent the letter to Gilchrist on March 19, 2009.
- 17. Gilchrist responded to the letter on April 6, 2009. He said he would ask the court

to overturn Shawn's conviction if Shawn took and passed a polygraph examination. Shawn agreed to take the examination. Although we were skeptical of the use of a polygraph examination for this purpose, we did not believe there was any downside because the evidence of Shawn's innocence was so clear. If Shawn "passed" the examination, it would result in his immediate release, avoiding the potentially long delay that would result if Shawn had to seek relief in court.

18. On May 19, 2009, Jim Coleman and Gilchrist met the polygraph examiner in Gilchrist's office to discuss the procedure. At the meeting, the examiner advised that because of factors relating to the length of time that Shawn had been in prison and the fact that he had been convicted even though he claimed to be innocent, it might not be possible to get a reliable result.
19. The examiner administered the polygraph examination on June 2, 2009, at the Pender Correctional Institution in Burgaw, North Carolina, where Shawn was incarcerated at the time.
20. On June 4, the polygraph examiner informed Gilchrist and the Clinic that Shawn had shown deception in response to several relevant questions including whether he had braids in May 1998 and whether he had cut his hair between May 22, 1998, the day Ms. Wood was robbed, and May 29, 1998, the day Shawn was arrested. Because we knew that the person who robbed Ms. Wood had cornrows, and, because the photographs that we discovered in the District Attorney's files showed that Shaw's hair could not have been long enough to braid on May 22, 1998, we dismissed the results of the polygraph examination.
21. After the polygraph examination, the Clinic assumed that Shawn would have to obtain relief in court. We obtained the pro bono assistance of a Charlotte law firm to prepare a motion for appropriate relief on Shawn's behalf. In the course of working with the firm, however, we discovered that neither pro bono counsel nor the former assistance district attorney understood the significance of the fact that the perpetrator had cornrows. They thought that if Shawn had braids only at the back of his head, which they assumed Ms. Wood meant, the braids could not be seen in the photographs found in the District Attorney's files, and therefore, the photographs were irrelevant. As a result of this extraordinary discovery, we decided to find and interview Ms. Wood to confirm that the perpetrator had cornrows and not just braids at the back of his head. We also decided to go back to Gilchrist and try to convince him to release Shawn, without a polygraph examination.
22. In September 2009, Kim Kisabeth located Ms. Wood. On October 8, 2009, she and Susan Pourciau, who now lives in Tallahassee, Florida, went to the town where Ms. Wood was living and found her, with the help of a local sheriff. Ms. Wood agreed to meet with Kim and Susan and submitted to an interview. Ms.

Wood confirmed that she had expressed doubts about whether Shawn was the perpetrator when she saw him in person for the first time. She said, however, that she had identified Shawn's voice when she overheard him talking to his mother before the trial started. (The person with whom Shawn was talking would have been his grandmother.) Ms. Wood also confirmed that the perpetrator had cornrows. Kim asked whether her attacker's cornrows were visible from the front, like those of the rapper, Ludicris. Ms. Wood nodded and said "yes." Ms. Wood also said she had identified Shawn's voice when she overheard him talking to a woman whom she thought was Shawn's mother.

23. On November 11, 2009, Kim sent Ms. Wood an email attaching five photographs of African American men wearing their hair in cornrows and asked her to confirm that this was the hairstyle worn by the man who attacked her. On November 17, 2009, Ms. Wood responded, "that's (sic) is the way it was done . . . straight back braided."
24. On December 10, 2009, Kim Kisabeth and Jim Coleman interviewed Eric Cottrell in his office. We confirmed that he did not understand that the perpetrator had cornrows, and not just braids at the back of his head. He agreed that if the perpetrator had cornrows, the photographs found in the District Attorney's files called into question Shawn's guilt. He agreed to join us in a meeting with Peter Gilchrist as soon as it could be set up.
25. On December 22, 2009, Kim Kisabeth, Eric Cottrell, and Jim Coleman met with Peter Gilchrist in his office. They discussed all of the evidence that the Clinic had developed indicating that Shawn was innocent, and explained the significance of the perpetrator having cornrows, and not just braids at the back of his head. Gilchrist agreed that if Ms. Wood confirmed to him personally that the perpetrator had cornrows, he would ask the court to overturn Shawn's conviction and order his immediate release from prison. Subsequently, Gilchrist decided to ask the CMPD to interview Ms. Wood and ask her to sketch how the perpetrator wore his hair.
26. On March 16, 2010, a CMPD detective interviewed Ms. Wood. She confirmed that the person who robbed her had cornrows and used a form provided by the detective to sketch the way the braids went through the perpetrator's head, front to back and on the sides.
27. On April 14, 2010, Gilchrist informed the Clinic that he would ask the court to vacate Shawn's conviction and order his immediate release. He also said he would dismiss the charges against Shawn.
28. On May 6, 2010, Gilchrist informed the Clinic that the judge had signed an order vacating Shawn's conviction and directing the prison to release Shawn immediately. Gilchrist also dismissed the charges against Shawn. Theresa Newman and Jim Coleman, co-directors of the Clinic, picked up Shawn at the

Maury Correctional Institution in Maury, N.C., and drove him to Charlotte where they were joined by Kim Kisabeth and Shawn was reunited with his family.

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