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JOHNNIE O' NEAL

Other CIU Sexual Assault Exonerations



Photo by New York Daily News

On March 16, 1984, a 21-year-old woman returning to her Manhattan apartment was forced from an elevator at knifepoint and taken to the roof of the 20-story building where she was robbed and raped.

The nude victim walked down a stairwell to the 19th floor where she sought help from a resident who took her to a police station. She described her attacker as a black man

in his twenties, about 5 feet four inches or five feet five inches tall, wearing a hat and a leather jacket. She said her attacker said he had just gotten out of prison.

The victim refused to go to a hospital and no rape kit was ever prepared.

About two weeks later, the victim and her mother told police they had identified the rapist as 25-year-old Johnnie O'Neal, who lived in the same apartment building. O'Neal was arrested on April 1, 1984 and put in a lineup where the victim identified him as her attacker.

Three similar rapes had occurred in the vicinity in the past year, two of which were on the same apartment building roof. The victims of those attacks also reported that the rapist was wearing a leather jacket and armed with a knife, and that he claimed to have been recently released from prison. As a result, O'Neal was placed in lineups viewed by the victims of the two rapes on the apartment building roof. Neither identified him as their attacker. In fact, one victim told police she knew O'Neal and that he was not her attacker—but this information was not provided to O'Neal's defense lawyer.

After refusing an offer to plead guilty in return for a sentence of two to four years in prison, O'Neal went on trial in New York County Supreme Court in January 1985.

The victim's mother testified that her daughter told her that she had spotted her rapist on the street when looking out the window of their 10th floor apartment a few days after the attack. The mother testified that she went downstairs and followed the man for several hours around the neighborhood until he returned to the front of their apartment building.

She testified that she called her daughter from a pay telephone and told her to come downstairs to make sure the man was her attacker. The daughter did so and the mother then followed the man into the building, rode with him on an elevator and saw that he went into apartment 5B using a key. The mother said she returned asked a resident of the building to name the residents on the fifth floor and was told that Johnnie O'Neal lived in 5B. The mother then informed police.

The victim corroborated her mother's account and said that she was shown a photographic lineup and selected the photograph of O'Neal as

State: New York

County: New York

Most Serious Crime: Sexual Assault

Additional Convictions: Robbery

Reported Crime Date: 1984

Convicted: 1985

Exonerated: 2013

Sentence: 10 to 20 years

Race: Black

Sex: Male

Age at the date of crime: 25

Contributing Factors: Mistaken Witness ID, Perjury or False Accusation, Official Misconduct

Did DNA evidence contribute to the exoneration?: No

her attacker. After O'Neal was arrested, she identified him in a live lineup.

O'Neal, who was between 5 feet six inches and five feet seven inches tall, had a mustache and was missing a front tooth, testified and denied committing the rape. He said he was home watching television at the time of the attack—an account confirmed by the testimony of family members. He said he did not have knife or a leather jacket or hat like those described by the victim.

On January 29, 1985, a jury convicted O'Neal of rape and robbery and he was sentenced to 10 to 20 years in prison.

While in prison, he refused to admit to his crime and was denied parole several times before he was finally released in 1998. He was returned to prison on several occasions for parole violations and on one occasion was cited for visiting his mother because she still lived in the same building and his parole barred his return to the building where the crime occurred.

In 2005, The Legal Aid Society in New York was assigned to handle the appeal of a court order designating O'Neal as a Level III sex offender (the highest risk level). In response to O'Neal's claim of innocence, his lawyers began re-investigating the case.

The victim's mother was interviewed in May 2008 and denied that she had trailed O'Neal around the neighborhood for several hours. The mother said that she suspected O'Neal was the rapist because another woman who lived in the building had told her that her daughter had been raped three or four years earlier by O'Neal—although that victim had not reported the rape to police. The mother told the Legal Aid lawyer that she knew that O'Neal always left the building around 10 a.m. and so told her daughter to wait by a pay telephone. When O'Neal passed by, the daughter was on the telephone with her mother and said that O'Neal was the rapist, the mother said.

In 2010, at the urging of the Legal Aid Society, O'Neal requested that the Conviction Integrity Unit of the New York County District Attorney's Office re-investigate the case based on the mother's recantation about the nature of the identification. In 2011, O'Neal's Legal Aid lawyers met with prosecutors and provided evidence from interviews with the victim's mother and the victim, who claimed she did not remember much about the attack and when shown a photograph of O'Neal said she recognized him, but would not say why she recognized him. The Legal Aid lawyers also presented evidence that it was physically impossible for the victim to have recognized her attacker from the 10th floor window of her apartment.

O'Neal's lawyers also provided a letter that O'Neal had received while in prison claiming that a man named "Pee Wee" had told people that he had committed the rape for which O'Neal had been convicted.

The Conviction Integrity Unit investigation confirmed that the victim's mother disavowed her trial testimony about her trailing O'Neal and the circumstances of his identification. Housing records for the apartment building showed that the victim had lived in the building as far back as 1977—not the few months that the victim claimed at trial. This undermined the victim's claim that she had never seen O'Neal prior to the rape, because O'Neal had lived in the building virtually his entire life.

The prosecution identified "Pee Wee" as Gregory Smith, a drug dealer who had since died. Smith lived near the apartment building, and owned a leather jacket and a knife matching the description given by the victim who accused O'Neal and the victims of the other unsolved rapes. Smith also bore a physical resemblance to O'Neal.

In 2013, lawyers for O'Neal filed a motion to vacate his conviction. The District Attorney's Office filed a motion supporting the defense motion and on July 15, 2013, New York State Supreme Court Justice Marcy Kahn vacated O'Neal's convictions and the charges were dismissed.

– *Maurice Possley*

Report an error or add more information about this case.

Posting Date: 8/26/2013
