

Jailed 10 months, acquitted woman sues

The initial description of a store robber was of a hooded male. Upper Darby police had other ideas.

By William Bender STAFF WRITER



Bryonna Mack spent months in prison before a trial of about two hours. MONICA HERNDON / Staff

Shoaib Mahmood told a 911 dispatcher and police officers that the person who had robbed his Sunoco A-Plus in the early morning hours of Oct. 4, 2017, was an unknown male with a handgun.

“He was shouting and threatening me,” Mahmood wrote in a statement taken by Upper Darby police later that day.

The perpetrator, who stole about \$700 from the cash register and back room of the convenience store on West Chester Pike, wore a hoodie and a balaclava-style mask, concealing everything but the robber’s eyes and hands, and occasionally the nose when the mask slid down slightly.

The robbery took less than a minute.

Detectives who viewed the surveillance footage, however, suspected that the robber was not a man but might be a 21-year-old woman, Bryonna Mack, a former standout basketball player at Upper Darby High School with whom they were familiar from previous criminal investigations. Her mother’s house is less than half a mile from the A-Plus.

They placed Mack in a photo array with seven other Black females and showed it to Mahmood. When he saw it, he recognized Mack as a customer he’d argued with before. His description of the perpetrator changed completely.

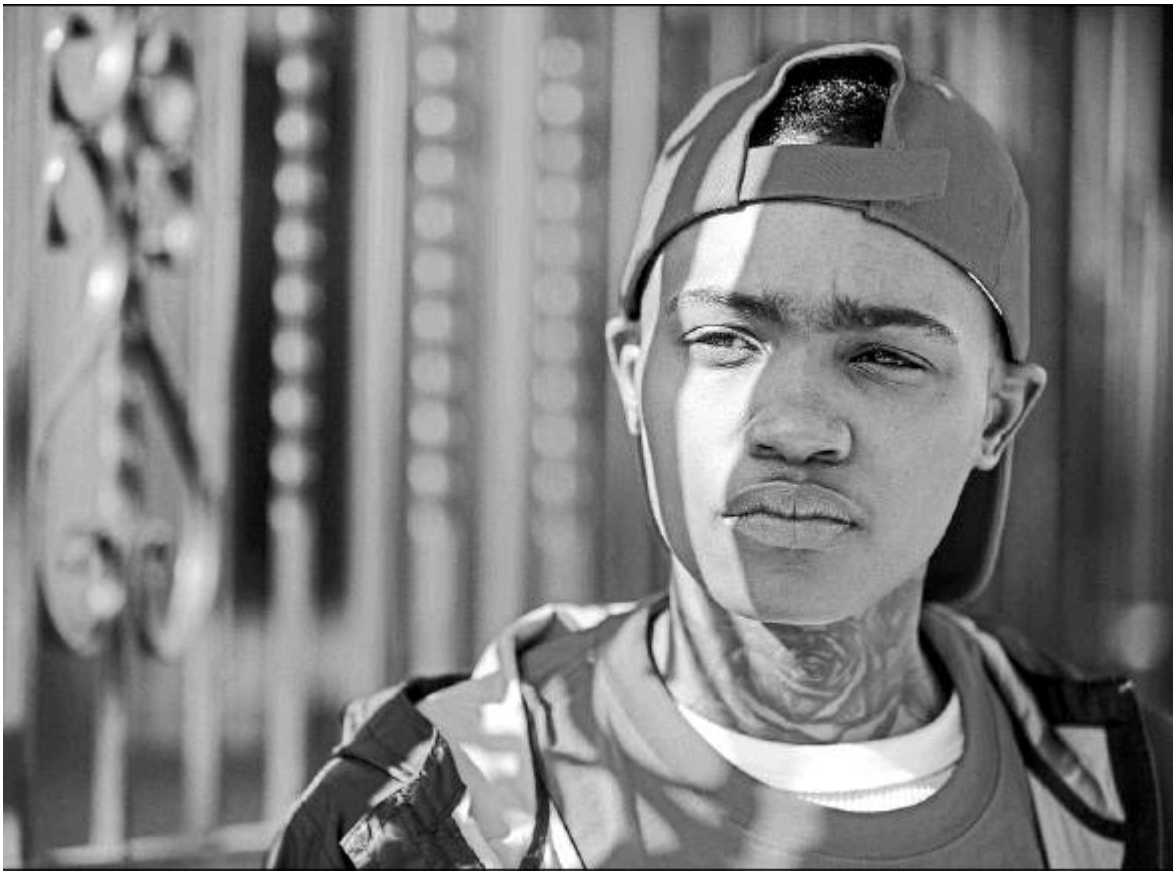
Mahmood circled Mack’s photo. He was sure of it.

“This is the girl [who] robbed me ... ,” he wrote next to the photo.

Mack, who says she was with two friends watching her 11-year-old brother at the time of the robbery, was arrested based on Mahmood’s identification.

At trial, Mahmood would testify that he was certain Mack was the perpetrator, despite not mentioning anything about her — or any woman — to police after he was robbed.

“Her eyes, her walking style, her body posture, language. Each and every thing I’m familiar [with],” he testified.



Mack, who spent 10 months in the Delaware County prison after she was arrested, was acquitted in July 2018 in a nonjury trial that lasted about two hours. Delaware County Common Pleas Court Judge George A. Pagano noted that the surveillance footage appeared to show no

Bryonna Mack is suing an Upper Darby detective and a former Sunoco manager after she says she was wrongly arrested for a robbery in 2017. MONICA HERNDON / Staff Photographer

tattoos on the robber's right hand, while Mack has her last name tattooed on her fingers.

"I just don't think the commonwealth has proven beyond a reasonable doubt that Ms. Mack was the perpetrator of these crimes," Pagano said. "So ... I find the defendant not guilty."

Mack, 24, is now suing the Upper Darby detective who placed her in the lineup, as well as Mahmood, Sunoco, and others, for malicious prosecution and false imprisonment.

Mack, who sometimes dresses in a way that could be perceived as masculine, said the manager was aware that she was a woman because he had previously harassed her about being gay.

"Somebody is saying 'he,' and they put a female in the lineup? I don't get it," Mack said.

While awaiting trial in the George W. Hill Correctional Facility, Mack lost the job she had recently started at Target.

"I was locked up for so long, there was no getting that job back," Mack said in an interview last week.

Jason Javie, who filed the lawsuit on behalf of Mack, said he believes she was misidentified by the store manager.

"A lot of people don't understand how easy it is for somebody to be caught up in exactly what happened here," Javie said. "She doesn't want this to happen to anybody else."

The District Attorney's Office, Upper Darby police, and an attorney representing Sunoco declined to comment. Mahmood could not be reached for comment.

If Mack was incorrectly identified as the perpetrator, even unintentionally, there are several possibilities for how it could have occurred, based on the latest research. Eyewitness misidentification is often a factor in wrongful convictions.

"There are a lot of red flags here," said Marissa Bluestine, the former head of the Pennsylvania Innocence Project and now an assistant director of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School.

Bluestine noted that the store manager was unable to see most of the robber's face during the brief encounter, except for the eyes, yet was asked to identify an unobstructed face in a photo array — which happened to include a person he had seen before as a customer.

"On lots of levels, that's a problematic identification," Bluestine said, "notwithstanding the fact that he didn't [initially] say: 'I know the person. It's a woman and she's been in here before.' "

Temple law professor Jules Epstein, a member of the Third Circuit Task Force on Eyewitness Identifications, which recently published an extensive report, said seeing a familiar face grouped with unknown faces can cause a person to misremember an event.

"Whenever you see a familiar face in a photo spread or lineup, you run the risk the mind will play tricks and we will have what is called 'transference,' " Epstein said. "That is, my mind sees the person in the picture and transfers that face to my memory of the perpetrator."

Upper Darby detectives might have had a reason to suspect Mack. In addition to the proximity of her mother's house to the A-Plus, Mack has a juvenile criminal record and was on probation for a simple-assault conviction at the time of the robbery.

But Mack says she didn't know anything about the armed robbery until detectives came to her mother's house looking for her.

The same day of the crime, police searched the house and took a backpack from Mack's room that they believed to be the same one used by the robber in the video. But Upper Darby Detective Thomas Thompson conceded under cross-examination during Mack's trial that the recovered backpack "to my knowledge ... does not resemble" the backpack used by the robber.

Also recovered from Mack's room were a pair of tan boots with colorful drawings on them that Thompson said he believes were the ones worn by the robber. Mack's attorney disagreed during the trial. They appear to be different boots than those seen on the store surveillance footage.

No gun or money was ever recovered.

William Davis, a defense attorney and former Philadelphia prosecutor who represented Mack at her criminal trial, said police should have examined the video more closely and compared it with Mack's appearance, specifically her hand tattoos.

"I believe that should have been done, if not prearrest then certainly shortly thereafter, to make sure they didn't have the wrong person," Davis said. (At trial, the Delaware County prosecutor argued that the video might not have been clear enough to show the tattoos.)

Mack said last week that she just started a new job at a restaurant and recently moved into a house with her girlfriend in West Philadelphia. She said she continues to experience anxiety and can be quick to “snap” as a result of her time in jail. The felony arrest, which is still on her record, has also limited her employment opportunities.

“I’ve been doing real good, but that year in jail did a lot to me,” Mack said. “There are a lot of things I wanted to do that I can’t.”