

NATIONAL

## Wrongfully accused

By Julie Szego

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**Seduced by DNA "evidence", but with precious little to corroborate it, a jury was quick to convict Farah Jama of rape. Julie Szego reports on a miscarriage of justice.**

Stephanie Johnstone, nightclub supervisor, had been doing laps around Venue 28, in the Melbourne suburb of Doncaster, picking up glasses and plates and issuing orders to staff, when at 10.50pm a security guard approached her. There was a problem in the female toilets near Bar Three and the DJ booth. Johnstone went to check it out.

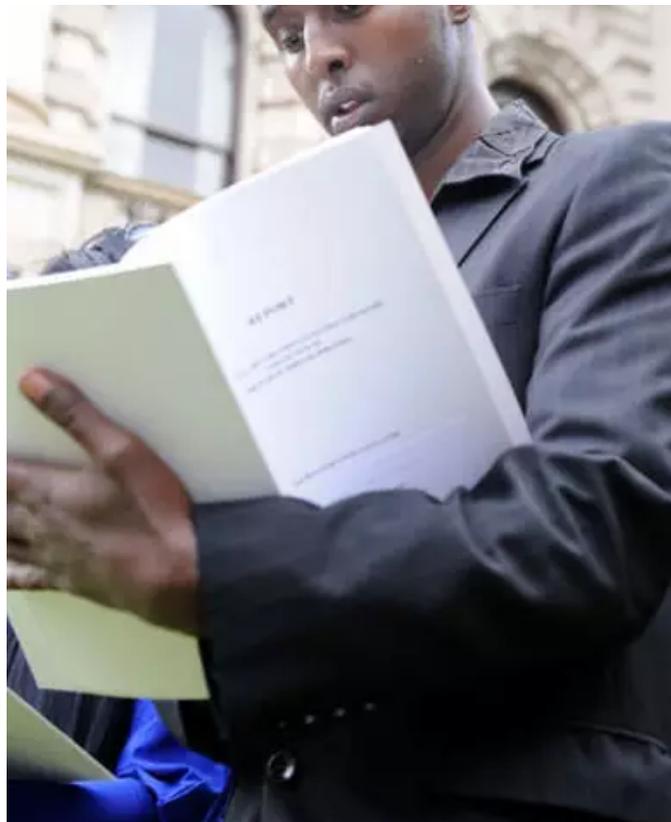


Ordeal by jury: After serving almost 18 months in prison for a crime he did not commit, Farah Jama is now back home, having received compensation of half a million dollars. JULIAN KINGMA

Walking into the toilet block, she saw a woman's leg poking out beneath the door of the first cubicle on the left. There was no sound from inside. Johnstone bent down. In the gap between the door and the floor she could see the woman sitting motionless on the floor. She tried to push open the cubicle door, but it was locked. She tried speaking to the woman, but there was no response. So Johnstone went into the adjoining cubicle, climbed onto the toilet seat and stepped on the sanitary napkin disposal unit. Springing up on her toes, she peered over the other side. The woman was slumped at an angle, her back against the wall and door, the button and zip of her pants undone. Immediately, Johnstone hoisted herself over the wall and into the cubicle where she grabbed hold of the woman and tried unsuccessfully to drag her away from the door.

"I need to get someone out of the toilets," Johnstone yelled to a guard outside. A female patron arrived and also climbed over the wall. The two grasped the woman firmly under the arm and managed to slide her across the floor, away from the door so that it could be opened. Johnstone called out to three security guards who had been waiting outside the toilets. They rushed in and hauled the woman up, one on either side holding under her armpits, the third grabbing each ankle. Johnstone picked up the woman's handbag and followed.





Vindicated: Farah Jama reads from the 2010 report by Frank Vincent, QC, into his case. AAP

The men lumbered down past the DJ booth and along the dance floor, backtracking and shifting course to avoid bumping into patrons. They carried the unconscious woman up three lots of stairs to the band room in the backstage area. At one point, the guard holding the woman's feet lost his grip and a heel thumped to the floor. The band room, its carpet criss-crossed with silvery duct tape to hold down electrical cords, was virtually the only part of the club that offered some calm and privacy. The guards laid the woman down on her side. By this time, her pants had slipped down to her hips.

Johnstone sent another employee to ring for an ambulance. The woman was regaining consciousness. Johnstone gave her some water. The woman murmured, over and over, "I'm sorry."

"You have nothing to be sorry about," said Johnstone, trying her best to soothe the woman whose name she now knew as Maria, stroking her head as it rested on her knees.

In the ambulance, a female paramedic asked Maria more questions, but she could only repeat, "I'm sorry. I just don't know what happened."

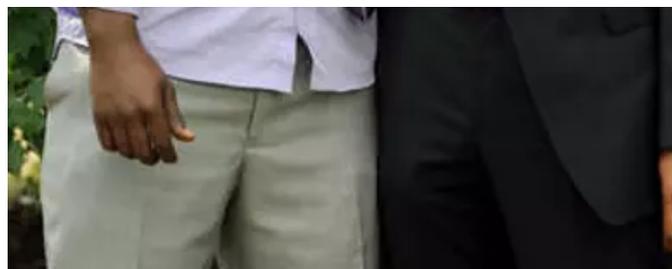
At 12.30am the ambulance pulled in at the Emergency Department of the Austin Hospital at Heidelberg, in the city's northeast. The triage nurses at reception saw a middle-aged woman brought in on a stretcher. They were told she had been found unconscious on the floor of a nightclub toilet cubicle, hardly an unusual scenario on a Saturday night in Melbourne. But this woman seemed worse than the norm. She was unresponsive, vomiting over and over.

Later, as Maria was carried through the hospital, she realised she had something stuck to her buttock. "You've got tape on your bottom," a nurse said, ripping the strips from her skin.

**On July 14, 2008, a young Somali man** stood trial in the County Court of Victoria for the rape of a 48-year-old woman while she was unconscious at a Doncaster nightclub called Venue 28. The man, 21-year-old Farah Abdulkadir Jama of Preston, pleaded not guilty to the crime. The jurors saw in the dock an athletic-looking African youth with strong features. Eyebrows raised, head tilted slightly back, he appeared dismissive and defiant.



He appeared defiant even as the Crown presented DNA evidence of Jama having had sex with the woman without her consent. Samples taken from the woman's body were found to contain DNA from a male, and a routine check of the police database established that male to be Jama. It was the only evidence the Crown had against the youth, but it was nevertheless devastating. In the prosecutor's words, the evidence was "rock solid".



Justice is served: Jama and his appeal lawyer, Kimani Boden, on the steps outside court after Jama's 2009 acquittal. AAP

Jama said he had never even seen the woman before, and raised an alibi in his defence. Witnesses called on Jama's behalf claimed the youth had spent the night in question with his family, at the bedside of his gravely ill father, reciting the Koran.

His counsel, Ian Crisp, told the jury that Jama had co-operated with police. He had raised his alibi at the outset. He had offered his DNA sample, offered his fingerprints and even offered to do a test to prove he was a virgin. What more could an innocent person do? And what more could the alibi witnesses do? After all, if anyone asked them, the members of the jury, what they had been doing on a certain date six months earlier, they too would have trouble remembering. It was "easy sport", said Crisp, for the prosecution to cross-examine these people. The alibi witnesses were "relatively simple people, people without guile of any sort".

Nonetheless, the trial was regarded by the judge and the barristers as a relatively straightforward affair, save for one complication, one rather delicate problem. It arose when the jury tackled the elephant in the room and asked the judge how Jama's DNA profile had come to be on the police database in the first place. In other words, why was the young man known to police at all? The judge, constrained by the rules of evidence under which prejudicial information is withheld from the jury, gave the "inevitable" question short shrift. The answer was irrelevant, he told the jurors, and they were "not to speculate" about it.

On Friday, at the end of a long week in court, Judge Lacava told the jury they should not feel pressured into a fast verdict. On Monday morning, the jury asked for Maria's evidence to be read out again. They retired to deliberate at 10.43am. Half an hour later they had reached a verdict.

In the dock, Jama stood up to meet his fate. At the word "guilty", he would later recall, his legs went numb and his body became so limp he nearly keeled over. For years, he would endure flashbacks of this moment.

It was only after Judge Lacava had discharged the jury, thanking them for their diligence and forbearance, that the barristers launched into an argument about what sentence Jama ought to receive. Jama's counsel tried to impress upon Judge Lacava his client's previously clean record. His client had never been in trouble with the police, barrister Ian Crisp said, save for one incident, the incident that led the police to obtain Jama's DNA in the first instance.

Crisp said his knowledge of the incident was scant because he didn't have any of the documents, though he had discussed the matter briefly with the prosecution. His client was at a pool hall, Crisp told the judge, with two "associates". They apparently went off in a car with a girl they'd met there. The allegation was that sexual acts had occurred in the car. When Jama was interviewed by police he had admitted taking part in some acts, which apparently did not include vaginal penetration, and had claimed they were consensual.

The matter did not proceed as far as committal, Crisp said. Actually, the charges did not proceed at all - they weren't authorised by the Director of Public Prosecutions, or even by police. Crisp stumbled to the punch line, "The matter did not proceed. However, that appears to be the explanation for the authorities having a DNA sample and that's how it found its way to the database, if I am correct about all that."

And Crisp was indeed correct about all that.

**With four days of prison life behind him**, Jama returned to the dock on Friday to be sentenced. "The circumstances of your offending," Judge Lacava told him, "involved you introducing your penis into the vagina of a woman at Doncaster on 15 July 2006, without her consent." The judge told him his conduct was reprehensible, a rape of the most serious kind. He told him the absence of any evidence that he had spiked Maria's drink or had planned the rape was more than outweighed by his repugnant opportunism. "You raped her when she was in a most vulnerable state. You obviously saw her and sized up the situation as she presented to you. Instead of assisting her and making sure of her safety, you raped her for your own immediate and short-lived sexual gratification.

"The jury," Judge Lacava added, "cannot have viewed the facts any other way."

He told Jama that the sentence had to reflect the community's disgust with this sort of crime as well as the victim's suffering. He had taken into account Jama's youth, his turbulent childhood and his otherwise clean record. He had also taken into account the fact that Jama probably wasn't responsible for Maria's bruising - the injuries most likely occurred when the security guards carried her from the toilets in an "undignified" manner.

He told Jama that his complete absence of remorse meant he had little prospect of rehabilitation. Moreover, having seen Jama's father and brother give evidence - evidence rejected by the jury - the judge was sceptical that close support from family would do much to assist his chances of turning over a new leaf.

He made Jama stand to receive his sentence: six years with a minimum of four. "Remove the prisoner."

With the trial having been reported in the media, the Jama family could no longer keep their son's predicament "in the backyard", as one of their friends had put it to me. What had previously been the family's private trauma now became the community's collective burden. The Jamas were at last forced to set aside their pride and ask for help. And help came, even if many people harboured serious doubts about the boy's innocence.

Shortly after Jama's conviction, a delegation of Somali women had visited his mother at the family home. They found her in an acute state, inconsolable with grief, but also vehement in her desire to clear her son's name. Just as she had wept outside the courtroom every day of her son's trial, so she cried every day of his incarceration.

When the women next visited Jama's mother, she told them about a recent visit to her son in prison. She had looked him directly in the eye and asked him to tell her the truth. He returned her gaze and said, "Mum, I didn't do it." Of course he didn't do it, his mother told the women. Her son was no rapist. She knew that, and she would shift heaven and earth until the rest of the world knew it, too.

Within three months of the conviction, Kimani Boden, the handsome lawyer who would later be at Jama's side on the day his innocence was proclaimed, had agreed to run the prisoner's case almost on faith alone. The Jama family had settled on Kimani Boden because he agreed the evidence against Jama seemed flimsy and the circumstances strange.

Boden would later tell the media that the first thing he did was ask the police for the file on the first complaint against Jama, the pool hall incident. The police refused to hand it over - it was an investigation only, not a completed file. Boden then sought to have the original sample implicating Jama retested at a laboratory independent of the police.

Once Boden was informed of the result, he applied for Jama to be released on bail pending the appeal.

**By the end of a criminal trial**, the prosecution file invariably takes on a worn appearance. The cream manilla folders heave with documents that have been steadily accumulated as the case moves from charges to verdict and beyond.

At the appellate stage, the file is stripped bare. Once Victoria's Office of Public Prosecutions is notified by the court registry that an appeal has been lodged, a law clerk opens a new file. This file - slim and blue, containing the appeal document and little else - is then handed to the Appeals Unit manager.

It is a neat metaphor for the process by which Farah Jama was cleared, and the truth finally revealed. That process entailed a fresh set of eyes and an unsullied mind looking over the material. In this instance, the eyes - blue, assured and occasionally mischievous - belonged to Brett Sonnet, a baby-faced solicitor whose job was to oversee the Crown case against Jama's appeal.

For Jama to be granted bail, he would have to point to a reasonable prospect of winning his appeal. This meant that before Sonnet could prepare a bail submission, he had to know everything about the case. So, for the first time, Sonnet called for the transcript of the five-day trial. Still, he wasn't expecting this - shadows and smoke shrouding an implausible, empty core.

The fact that the young man was convicted without a shred of evidence to place him at the nightclub - no eyewitnesses or security footage, no phone or car records - was one thing. Quite another was the sheer absurdity of the proposition that Jama had executed the rape, with lightning efficiency, in under half an hour.

To believe the prosecution's case was to believe Jama to be a predator of extraordinary stealth and cunning. This was the case of a man who slipped unseen into a nightclub, chatted up his victim, spiked her drink, dragged her to the women's toilets, pulled up her pants after he was done violating her, jumped over the locked cubicle and managed to flee the crime scene without catching the eye of a single witness. So cunning was this man, he had pulled up the woman's pants in the hope she might not even realise what had been done to her. So calculating, he had even left the door locked, daring instead to scale the wall, to ensure his victim not be found straight away. By any measure, it was a breathtaking performance. An utterly improbable performance.

It began to gnaw at him, at first an inkling, then an obsession: Farah Jama was truly innocent. And, as both an officer of the Crown and an officer of the court, it was Sonnet's duty to ensure that the prosecution exercised its powers with the utmost integrity, to honour the truth above all else.

But then, why was Jama's DNA present? How to explain that? For three nights in a row he couldn't sleep.

**On Monday, December 7, 2009**, the Farah Jama case was listed in the Court of Appeal. At 9.30am, Crown solicitor Brett Sonnet rose to his feet before the three justices to tell them that the likely contamination of a DNA sample had resulted in a "substantial miscarriage of justice".

After the three justices declared they were "satisfied" from the Crown's submissions that it was "appropriate" to order the original conviction be set aside and a verdict of acquittal entered, Jama and his solicitor, Kimani Boden, gave a triumphant media door-stop outside the court. They posed for the cameras with their arms draped round one another's shoulders, Jama looking dazed and characteristically defiant, Boden beaming at the end of what he described as a "momentous" day. Jama briefly addressed reporters. He said he felt "angry and depressed". What had happened to him was "very, very bad".

Meanwhile, Victoria's Director of Public Prosecutions, Jeremy Rapke, QC, was working furiously at damage control. The legal experts and civil libertarians were already taking to the airwaves, criticising prosecutors for failing to warn jurors bedazzled by "the CSI effect" - the portrayal of forensic science in pop culture, including the eponymous TV franchise - of the limitations of DNA evidence.

"They see television shows," one lawyer said, "and the television shows fix everything in an hour, and they say that DNA's the be-all and end-all of the case." Rapke decreed that future cases based solely on DNA evidence would need his authorisation to proceed.

A report of the inquiry into the Jama case by Frank Vincent, QC, gave a cursory account of the pool hall incident. The account did not mention that other men, besides Jama, had been involved in the sexual encounter with a woman called Taylah. It simply related that the night before the Doncaster incident, Jama had declined the opportunity to engage in penile intercourse with an "apparently enthusiastic" young woman. After a series of errant, throwaway remarks and subtle hints from numerous individuals, I finally confirmed that the sexual encounter in the back seat of the car had been a free-for-all.

This salacious twist bolstered my theory about Jama's reluctance to tell his family, and possibly even his lawyers, the whole truth about the night before. After all, spilling the beans would also have meant outing his friends for taking part in unseemly antics.

In the process of fitting all the pieces together, I also learnt a new word - "bukkake", a term originating from porn culture. I was in the chambers of a criminal law barrister. We had been chatting about the "lessons", from the legal profession's point of view, to emerge from the Jama case when we veered off on a tangent. The barrister fished for a definition of the term online. "Variety of fetish that involves repeated ejaculation on a female by many men," he read from the Urban Dictionary website. "And here it says, 'Some authors have argued that bukkake involves the implied or overt humiliation of the person ejaculated upon.'" He turned to face me, eyebrows raised studiously above his spectacles. "So there's an element of contempt built into it."

I later discovered that an earlier draft of the Vincent report contained a fuller account of the pool hall incident. That draft had been edited at the behest of counsellors from Centres Against Sexual Assault (CASA) to "protect" Taylah. In reality, though, she was already well protected: she may have withdrawn her police complaint, but the law still forbade me to identify her.

By contrast, the young men who were in the car have no such privileges and the imbalance disturbed me. If a rape complainant is entitled to anonymity in the wider domain, wouldn't basic fairness demand the same right be extended to the accused until a conviction is secured? Should I be allowed to expose these men for a teenage indiscretion they might well look back on with acute embarrassment, if not remorse? To which another voice responds, if these young men wish to keep their sex acts private, they ought to beware of young women who appear up for everything and everyone. Real life seldom pans out like a porn flick.

**Jama received half a million dollars** in compensation for his false imprisonment. His lawyer had demanded \$5 million, and I guess perfect justice would command at least that. What monetary sum could possibly compensate for the indignity and the shame, for robbing a man of almost a year and a half of his youth? I was told that after Jama's compensation payment came through, his mother travelled overseas. She visited relatives in the region of Puntland in Somalia.

On hearing this I smiled, sharing quietly in a sweet catharsis. How wonderful that she could visit the homeland. Not the fantasy land that could have been, or should have been, but the real homeland, where real people were trying to salvage from the wreckage of the past a better future.

How wonderful to go home. I was told she also went to Saudi Arabia, for a pilgrimage to Mecca. There had been deaths in the family, a sick child, a son imprisoned and finally set free. She had some hefty accounts to settle with God, the ultimate judge, and in his courtroom, at least, she would be speaking her mind.

***Edited extract from The Tainted Trial of Farah Jama by Julie Szego, published next week by Wild Dingo Press.***