

JAN 20 1988

Saskatchewan Penitentiary
P.O. Box 160
Prince Albert, Sask.,
S6V 5R6
Jan. 12, 1988

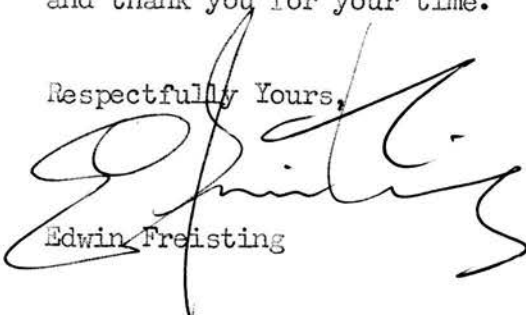
The Honourable Justices of the
Donald Marshall Commission
Law Courts Building
Halifax, Nova Scotia

Dear Justices;

I have sent the attached letter to the listed government agencies and numerous other unlisted agencies soliciting help in my case. The obvious assertion that I am making is that all three cases belong to the genre of " Similar Fact Evidence" as defined in MacWilliams, P.J., Q.C., CANADIAN CRIMINAL EVIDENCE, Edition II, (1984) P.P. 308-351, and that the two acquittals support the defence of mistaken identity. Both the Attorney General and the Crown Attorney of Manitoba have consistently ignored the circumstances. Counsels' informed opinion is that it is too late to include the acquittals as evidence in a further appeal because they were not included in the original trial.

It is my hope that you will be able to enlighten me of any avenue that I may have missed. Was any agency responsible to investigate potential miscarriages of justice? Please respond at your earliest convenience and thank you for your time.

Respectfully Yours,


Edwin Freisting

Saskatchewan Penitentiary
P.O. Box 160
Prince Albert, Sask.,
S6V 5R6
Jan. 12, 1988

The Honourable Justices of
The Donald Marshall Commission
Law Courts Building
Haifax, Nova Scotia

Dear Mr. Justice(s);

I require help to bring my case before Canadians and ultimately before a jury. I am a victim of mistaken identity who was originally arrested for two sexual assaults which happened on the same weekend in 1984. I had no previous involvement and I was arrested merely because I resembled the description as I was leaving a restaurant 23 hours after the last attack. Eight months later, while I was on bail, another sexual assault happened in which they charged me. Since then I was acquitted of the original charges but found guilty of the last one. My contention is that the same man is responsible in each case and each case held evidence that I wasn't guilty of the crime.

I was tried on the first charges together while I was held in custody. Both cases were identical in features but Justice Smith found me guilty of only one. He cited Section 246.4 and added that he didn't require any corroboration for a single witness.

The Court of Appeal acquitted me of that conviction later. They noted that in the first case, I had a strong alibi supported by several people. In the second case I had been at home alone. The court acknowledged the sameness of the two cases and the identical disparities between witnesses in their identifications. They concluded if I wasn't guilty of the first charge, then there must be a doubt about the second charge.

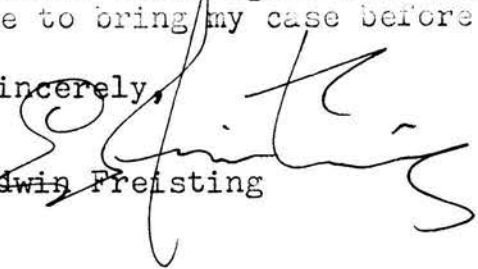
There was no material evidence against me in the last trial either, however, I went on trial before the Court of Appeal had acquitted me of responsibility in the other case. I testified regarding that conviction and my upcoming appeal which I believe hurt my case. Although I had a strong alibi supported once again by several other people and although the only witness significantly changed her description since the preliminary hearing, Justice Hanssen believed she had to be right and my witnesses were mistaken.

I believe that if a jury had heard the evidence of the other two acquittals, it would prove at least two other witnesses were mistaken in identifying me. The jury would also see that all the victims' original descriptions were very similar including disparities that didn't match my characteristics.

Finally, I would like the Canadian people to be enlightened about the dangers of Section 246.4. The statute, which was passed in January of 1983, precluded my innocence and allowed my conviction based on the mistaken evidence of a single witness; twice. Simply, if it is easier to convict a guilty suspect, then it is just as easy to convict an innocent suspect.

Please investigate the validity of what I have written and help me to bring my case before the Canadian people.

Sincerely,


Edwin Freisting

Sexual assault conviction overturned because of 'doubt'

By Murray McNeill

About a half dozen supporters of Freisting were in court when the decision was announced. One, a woman, broke down crying and hugged him, while several others shook his hand and congratulated him.

However, the acquittal didn't mean Freisting is now a free man.

Last June, he was convicted of sexually assaulting another woman in June, 1983, and received a six-year prison term.

Although he has appealed the conviction and sentence in that case as well, a date for the appeal bearing

has not yet been set. In yesterday's case, Mr. Justice Kerr Twaddle noted that although the Queen's Bench court judge convicted Freisting on the one charge of sexual assault with a weapon, he acquitted him of two other charges stemming from an attack less than two days earlier on another woman.

Similar descriptions

Court was told the attacks took place on Sept. 28 and 30, 1984, in the Fort Rouge area. The two victims gave similar descriptions of their attacker, and both later identified Freisting as the culprit.

However, Freisting claimed he was in a Donald Street restaurant at the time of the first attack, and

several witnesses supported that claim at his trial.

Because of that, and because of doubts he said he had about the reliability of that victim's identification evidence, Mr. Justice James Smith said he had a reasonable doubt as to whether Freisting was the attacker in the first instance.

Accordingly, he acquitted him of the charges arising out of that incident.

However, Smith said he didn't believe Freisting's claim that he was home alone at the time of the second attack, in which a teenage girl was grabbed and sexually assaulted at a knife-point on the Midtown Bridge on Donald Street.

Although Freisting's lawyer also challenged the reliability of that

victim's identification evidence, Smith said he was satisfied Freisting was the attacker in that instance and convicted him.

However, the appeal court judges said the discrepancies in both victims' identification evidence were significant enough to raise a reasonable doubt as to its reliability.

They noted that both victims said their attacker had acne on his face, but Freisting's face was blemish-free when he was arrested several hours after the second attack.

Twaddle said if only one of the victims had said that it might be dismissed as a mistake on her part.

But when both said it, it raises a doubt as to whether Freisting was the culprit.

Raises doubts

The fact that it appears the same man committed both crimes, and the fact there was evidence Freisting was somewhere else at the time of the first attack, raises further doubts about his guilt, Twaddle added.

"If the accused did not attack the first victim, then there must be some doubt he attacked the second victim," Twaddle said.

The June, 1985 offence for which Freisting is now serving a six-year term was committed while he was on bail on charges stemming from the two September, 1984 assaults.

In that case, he was found to have grabbed a 19-year-old woman from Osborne Street, dragged her into a nearby cemetery, and raped her.

SUIT No. 88/86
Nov 14, 1986

Sentence reduced by two years for assault

The Manitoba Court of Appeal yesterday reduced to four years a prison term imposed on a man last July for a sexual assault conviction.

Mr. Justice Alan Philp said substantially changed circumstances required the six-year term imposed on Edwin Arnold Freisting to be reduced.

Since Freisting's sentencing last July, the Court of Appeal overturned an earlier sexual assault conviction so he was no longer to be treated as second-time offender, Philp said.

Aquitted in November

Freisting, 34, was acquitted in November of a 1984 sexual assault on a woman crossing the Midtown bridge.

But yesterday Court of Appeal judges upheld his conviction for a June 1985 rape of a woman in St. Mary's Cemetery on Osborne Street.

A three-member panel said there was no reason for them to interfere with a lower court judge's findings.

Freisting's lawyer, Jeff Gindin, said there were many points in the case which should have raised doubts about his client's guilt.

The victim's description of her attacker did not match Freisting, Gindin said.

For example, the victim, 19 at the time, told a preliminary hearing she was sure her attacker had a moustache even though Freisting was clean shaven at the time, Gindin said.

Also, Freisting, who claimed he was at a downtown restaurant at the time of the early-morning rape, had a strong alibi, Gindin said.

However, Mr. Justice Charles Huband said the victim was very certain in her identification of Freisting, made through photographs within 12 hours of the attack.

When viewing a police photo lineup of possible suspects, she picked out Freisting's picture after looking at only three photographs, Huband noted.

SUIT No. 332/86
JAN 30, 1987

COPIES SENT TO THE FOLLOWING:

The Rt. Hon. M. Brian Mulroney
Office of the Prime Minister
Langevin Block, Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Rt. Hon. M. John Turner, Lib.,
Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. M. Ed Broadbent, N.D.P.
Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. Donald Frank Mazankowski
Deputy Prime Minister
Langevin Block, Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. Ramon Hnatyshyn
Minister of Justice/
Attorney General of Canada
Justice Bldg.,
Wellington and Kent Streets,
Ottawa, ON
K1A 0H8

The Hon. James Francis Kelleher
Ministry of the Solicitor General
Sir Wilfred Laurier Building,
Ottawa, ON
K1A 0P8

The Hon. Mr. Justice Allen M. Linden
Law Reform Commission of Canada
800 Varette Bldg.,
130 Albert St.,
Ottawa, ON
K1A 0L6

The Hon. Roland Fenner, Q.C.
Attorney General of Manitoba
9th Floor, Woodsworth Bldg.,
405 Broadway,
Winnipeg, MB
R3C 3L6

CORROBORATION NOT REQUIRED.

246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration. 1980-81-82, c. 125, s. 19.

NOTE: This section came into force on January 4, 1983. The transitional provision, s. 33 provides as follows:

"33. An offence committed prior to the coming into force of this Act against any provision of law affected by this Act shall be dealt with in all respects as if this Act had not come into force."

JAN 20 1988

Saskatchewan Penitentiary
P.O. Box 160
Prince Albert, Sask.,
S6V 5R6
Jan. 12, 1988

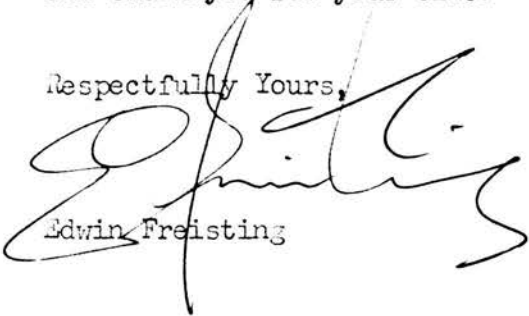
The Honourable Justices of the
Donald Marshall Commission
Law Courts Building
Halifax, Nova Scotia

Dear Justices;

I have sent the attached letter to the listed government agencies and numerous other unlisted agencies soliciting help in my case. The obvious assertion that I am making is that all three cases belong to the genre of " Similar Fact Evidence" as defined in MacWilliams, P.J., Q.C., CANADIAN CRIMINAL EVIDENCE, Edition II, (1984) P.P. 306-351, and that the two acquittals support the defence of mistaken identity. Both the Attorney General and the Crown Attorney of Manitoba have consistently ignored the circumstances. Counsels' informed opinion is that it is too late to include the acquittals as evidence in a further appeal because they were not included in the original trial.

It is my hope that you will be able to enlighten me of any avenue that I may have missed. Was any agency responsible to investigate potential miscarriages of justice? Please respond at your earliest convenience and thank you for your time.

Respectfully Yours,


Edwin Freisting

Saskatchewan Penitentiary
P.O. Box 160
Prince Albert, Sask.,
S6V 5R6
Jan. 12, 1988

The Honourable Justices of
The Donald Marshall Commission
Law Courts Building
Halifax, Nova Scotia

Dear Mr. Justice(s);

I require help to bring my case before Canadians and ultimately before a jury. I am a victim of mistaken identity who was originally arrested for two sexual assaults which happened on the same weekend in 1984. I had no previous involvement and I was arrested merely because I resembled the description as I was leaving a restaurant 23 hours after the last attack. Eight months later, while I was on bail, another sexual assault happened in which they charged me. Since then I was acquitted of the original charges but found guilty of the last one. My contention is that the same man is responsible in each case and each case hold evidence that I wasn't guilty of the crime.

I was tried on the first charges together while I was held in custody. Both cases were identical in features but Justice Smith found me guilty of only one. He cited Section 246.4 and added that he didn't require any corroboration for a single witness.

The Court of Appeal acquitted me of that conviction later. They noted that in the first case, I had a strong alibi supported by several people. In the second case I had been at home alone. The court acknowledged the sameness of the two cases and the identical disparities between witnesses in their identifications. They concluded if I wasn't guilty of the first charge, then there must be a doubt about the second charge.

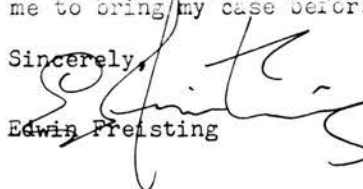
There was no material evidence against me in the last trial either, however, I went on trial before the Court of Appeal had acquitted me of responsibility in the other case. I testified regarding that conviction and my upcoming appeal which I believe hurt my case. Although I had a strong alibi supported once again by several other people and although the only witness significantly changed her description since the preliminary hearing, Justice Hanssen believed she had to be right and my witnesses were mistaken.

I believe that if a jury had heard the evidence of the other two acquittals, it would prove at least two other witnesses were mistaken in identifying me. The jury would also see that all the victims' original descriptions were very similar including disparities that didn't match my characteristics.

Finally, I would like the Canadian people to be enlightened about the dangers of Section 246.4. The statute, which was passed in January of 1983, precluded my innocence and allowed my conviction based on the mistaken evidence of a single witness; twice. Simply, if it is easier to convict a guilty suspect, then it is just as easy to convict an innocent suspect.

Please investigate the validity of what I have written and help me to bring my case before the Canadian people.

Sincerely,


Edwin Freisting

Sexual assault conviction overturned because of 'doubt'

By Murray McNeill

About a half dozen supporters of Freisting were in court when the decision was announced. One, a 14-year prison term imposed last February on a Winnipeg man who overturned yesterday by the Manitoba Court of Appeal.

In a unanimous decision, the court ruled there was a reasonable doubt whether Edwin Arnold Freisting, 33, committed the Sept. 20, 1984 assault. They overturned the verdict of the Manitoba Court of Queen's Bench judge who convicted Freisting for a trial last December and sentenced him to the charge.

Suit No. 88/86
Nov 14, 1986

Last June, he was convicted of sexually assaulting another woman in June, 1985, and received a six-year prison term.

Although he has appealed the conviction and sentence in that case as well, a date for the appeal hearing

Similar descriptions

Court was told the attacks took place on Sept. 28 and 29, 1984, in the Fort Rouge area. The two victims gave similar descriptions of their attacker, and both later identified Freisting as the culprit.

However, Freisting claimed he was in a Donald Street restaurant at the time of the first attack, and

several witnesses supported that claim at his trial.

Because of that, and because of doubts he said he had about the reliability of that victim's identification evidence, Mr. Justice James Smith said he had a reasonable doubt as to whether Freisting was the attacker in the first instance.

Accordingly, he acquitted him of the charges arising out of that incident.

However, Smith said he didn't believe Freisting's claim that he was home alone at the time of the second attack, in which a teenage girl was grabbed and sexually assaulted at a knuipoint on the Midtown Bridge on Donald Street.

Although Freisting's lawyer also challenged the reliability of that

victim's identification evidence, Smith said he was satisfied Freisting was the attacker in that instance and convicted him.

However, the appeal court judges said the discrepancy in both victims' identification evidence were significant enough to raise a reasonable doubt as to its reliability.

They noted that both victims said their attacker had acne on his face, but Freisting's face was blemish-free when he was arrested several hours after the second attack.

Twaddle said if only one of the victims had said that it might be dismissed as a mistake on her part. But when both said it, it raises a doubt as to whether Freisting was the culprit.

Raises doubts

The fact that it appears the same man committed both crimes, and the fact there was evidence Freisting was somewhere else at the time of the first attack, raises further doubts about his guilt, Twaddle added.

"If the accused did not attack the first victim, then there must be some doubt he attacked the second victim," Twaddle said.

The June, 1985 offence for which Freisting is now serving a six-year term was committed while he was on bail on charges stemming from the two September, 1984 assaults.

In that case, he was found to have grabbed a 19-year-old woman from behind as she was walking down Osborne Street, dragged her into a nearby cemetery, and raped her.

Sentence reduced by two years for assault

The Manitoba Court of Appeal yesterday reduced to four years a prison term imposed on a man last July for a sexual assault conviction.

Mr. Justice Alan Philp said substantially changed circumstances required the six-year term imposed on Edwin Arnold Freisting to be reduced.

Since Freisting's sentencing last July, the Court of Appeal overturned an earlier sexual assault conviction so he was no longer to be treated as second-time offender, Philp said.

Aquitted in November

Freisting, 34, was acquitted in November of a 1984 sexual assault on a woman crossing the Midtown bridge.

But yesterday Court of Appeal judges upheld his conviction for a June 1985 rape of a woman in St. Mary's Cemetery on Osborne Street.

A three-member panel said there was no reason for them to interfere with a lower court judge's findings.

Freisting's lawyer, Jeff Gindin, said there were many points in the case which should have raised doubts about his client's guilt.

The victim's description of her attacker did not match Freisting, Gindin said.

For example, the victim, 19 at the time, told a preliminary hearing she was sure her attacker had a moustache even though Freisting was clean shaven at the time, Gindin said.

Also, Freisting, who claimed he was at a downtown restaurant at the time of the early-morning rape, had a strong alibi, Gindin said.

However, Mr. Justice Charles Huband said the victim was very certain in her identification of Freisting, made through photographs within 12 hours of the attack.

When viewing a police photo line-up of possible suspects, she picked out Freisting's picture after looking at only three photographs, Huband noted.

SUIT No. 332/86
JAN 30, 1987

COPIES SENT TO THE FOLLOWING:

The Rt. Hon. M. Brian Mulroney
Office of the Prime Minister
Langevin Block, Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Rt. Hon. M. John Turner, Lib.,
Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. M. Ed Broadbent, N.D.P.
Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. Donald Frank Mazankowski
Deputy Prime Minister
Langevin Block, Parliament Bldgs.,
Ottawa, ON
K1A 0A2

The Hon. Ramon Hnatyshyn
Minister of Justice/
Attorney General of Canada
Justice Bldg.,
Wellington and Kent Streets,
Ottawa, ON
K1A 0H8

The Hon. James Francis Kelleher
Ministry of the Solicitor General
Sir Wilfred Laurier Building,
Ottawa, ON
K1A 0P8

The Hon. Mr. Justice Allen M. Linden
Law Reform Commission of Canada
800 Varette Bldg.,
130 Albert St.,
Ottawa, ON
K1A 0L6

The Hon. Roland Fenner, Q.C.
Attorney General of Manitoba
9th Floor, Woodsworth Bldg.,
405 Broadway,
Winnipeg, MB
R3C 3L6

CORROBORATION NOT REQUIRED.

246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration. 1980-81-82, c. 125, s. 19.

NOTE: This section came into force on January 4, 1983. The transitional provision, s. 33 provides as follows:

"33. An offence committed prior to the coming into force of this Act against any provision of law affected by this Act shall be dealt with in all respects as if this Act had not come into force."