

Wrongly Convicted Man Crippled By Police Awarded \$6.5 Million

By JD Staff

Javier Francisco Ovando was shot by two Los Angeles police officers on October 12, 1996, as he walked unarmed into a vacant apartment that they were using as an observation post to monitor gang activity.

The two officers, Rafael Perez and Nino Durden, then planted a rifle on Ovando and claimed they shot him in self-defense. The 19-year-old Ovando was paralyzed from the waist down from the shooting.

Ovando was prosecuted for assaulting the officers. He repeatedly insisted to his lawyer, Deputy Public Defender Tamar Toister, that the officers planted the rifle after shooting him unprovoked. She didn't investigate his claims, and Perez and Durden's testimony at Ovando's 1997 trial that they fired to protect themselves went unchallenged. Ovando was convicted and sentenced to 23 years and four months in prison.

About a year later, Perez was prosecuted for stealing \$1 million worth of cocaine from the LAPD evidence room. In exchange for prosecutors agreeing to recommend a lighter sentence, Perez told them about widespread corruption in the LAPD's Ramparts gang unit that he and Durden were assigned to. Among other things he told prosecutors that unprovoked beatings and shootings, and planting of drugs on suspected gang members was common. He also told them that he and Durden had shot an unarmed Ovando, and to cover it up, they planted the rifle on him.

Perez's revelations led to what is known as the LAPD's Ramparts scandal, that resulted in the overturning of more than 100 convictions. One of those was Ovando's. In September 1999 he was released after serving 2-1/2 years of his prison sentence.

Perez was sentenced to two years in prison after being prosecuted and convicted for

violating Ovando's civil rights. He was also sentenced to three years in prison for the cocaine theft. Durden was convicted of crimes that he and Perez had committed. He was sentenced to five years in prison.

In 2000 the California State Supreme Court lifted a broad grant of immunity to state-appointed counsel from civil liability. Ovando subsequently filed a suit in Los Angeles Superior Court against Deputy PD Toister and her employer, Los Angeles County, for ineffective assistance of counsel related to his wrongful conviction in 1997.

Ovando claimed Toister was negligent for failing to "check the personnel files of the officers, interview witnesses who would have contradicted their stories and explore inconsistencies in the officers' statements."

One of Ovando's witnesses was Perez. He testified in detail how he and Durden shot Ovando, planted the rifle on him, and then fabricated police reports and perjured themselves during Ovando's trial that they shot him in response to his assault.

Ovando's attorney, Gregory W. Moreno, argued to the jury that his client's wrongful conviction could have been prevented if Toister and LA County had simply performed their legal responsibility to vigorously defend him.

On May 25, 2005, the jury returned a verdict that found Toister and LA County 100% liable for compensatory damages to Ovando. The damages: \$6,500,000.

After the verdict, LA County Chief Deputy PD Robert Kaluniian said, "We're shocked at the verdict and do not believe that Ms. Toister committed malpractice or was negligent."

In response Moreno said, "How could so many people be victimized by dirty cops? The reason is because the legal protections in the system failed them. They are supposed to catch the lies. They were supposed to be the firewall." Yet instead of doing that, Ovando's lawyer, Toister, assumed he was lying that the police had planted the rifle to frame him for a crime he didn't commit.

Ovando, now 28 and wheel-chair bound for life, had previously been awarded \$15 million in damages from the city of Los Angeles for the conduct of Perez and Durden. Altogether, Los Angeles has paid out more than \$70 million in settlements for the lawless actions of the LAPD's Ramparts anti-gang unit.

Sources: Jury Awards \$6.5 Million in Frame-Up, Andrew Blankstein, *Los Angeles Times*, May 26, 2005. Disgraced Officer Testifies For Victim, Paul Chavez (AP), *Inland Valley Daily Bulletin*, May 2005.

Charges Dropped Against Man Who Falsely Confessed To Kidnap and Murder Of 10-Year-Old Girl

Murder charges were dropped on May 20, 2005, against a 21-year-old man who falsely confessed to being involved in the death of 10-year-old Katlyn "Katie" Colman on January 25, 2005. Charles Hickman confessed that Katie was abducted by several other people to scare her into not talking about a methamphetamine lab that she accidentally discovered. He told police that her abductors took her to a creek 15 miles north of her Crothersville, Indiana, home, and that while he was watching her she accidentally fell into the creek and drowned. Hickman was charged with Katie's murder on February 2, eight days after her disappearance.

However a cigarette butt found at the creek was linked to another man — Anthony Stockelman. Then DNA tests of semen found on Katie's body excluded Hickman as her attacker. Those same tests implicated Stockelman, who had been arrested on April 6 for allegedly molesting Katie about the time of her death. Based on the test results, all charges were dropped against Hickman. Stockelman was then charged with murdering Katie after abducting her while she was running an after-school errand near her home. Prosecutors also filed a motion that they will seek the death penalty against Stockelman.

Jackson County prosecutor Stephen Pierson expressed bafflement as to why Hickman confessed to an elaborate scenario of non-existent events when he was innocent of any involvement in Katie's death. Pierson said, "It is unusual for persons to confess to a murder they did not commit, but certainly not unheard of."¹ Pierson also said he was considering filing a "false-informing charge against Hickman" for misleading law enforcement authorities with his false confession.²

Sources: Charges Dropped In Child Murder Case, *The Seattle Times*, May 21, 2005, p. A4. Murder Charge Switched in Crothersville Girl's Death, (AP and Staff), *The Courier-Journal*, May 20, 2005.

¹ Murder Charge Switched in Crothersville Girl's Death, *The Courier-Journal*, May 20, 2005.
² *Id.*

JD Note: Prosecutor Pierson is incorrect that "It is unusual for persons to confess to a murder they did not commit." It was explained in a series of articles in *Justice Denied* Issue 27 that standard law enforcement interrogation techniques predictably result in the false confession to heinous crimes by innocent men and women. What was unusual in Charles Hickman's case is that unlike most of the people who falsely confess, he was saved by an exclusionary DNA test from being wrongly convicted and sentenced to a very long prison term that could have resulted in him

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