

# Positive ID Sent An Innocent Alejandro Dominguez To Prison For 12 Years

By Rob Warden



## The Vindication

Alejandro Dominguez, a Mexican national, was convicted in 1990 of raping a Caucasian woman the previous year in Waukegan, Illinois.

The only evidence purporting to link Dominguez to the crime was a dubious identification by the victim and forensic results that did not exclude him as the source of biological material recovered from the victim.

Although Dominguez was only 16 at the time of the crime and had no criminal record, he was tried as an adult. On advice of counsel, he waived a jury in favor of a bench trial before Lake County Circuit Court Judge Harry D. Hartel.

## The Evidence

Hartel found Dominguez guilty, even though: The victim had told police that her attacker wore a diamond earring in a pierced ear – but Dominguez had no pierced ear. The victim had told police her attacker had a tattoo – but Dominguez had no tattoo. The victim had told police her attacker addressed her in English – but witnesses testified that Dominguez spoke only Spanish.

The victim's testimony was additionally suspect because the identification procedure employed by the Waukegan Police had been suggestive; the victim acknowledged on cross examination that the lead detective in the case told her before she made the identification, "Watch the one sitting on the chair. Tell me if that is the one . . ."

William Wilson, a forensic serologist from the Northern Illinois Crime Laboratory, testified that he could not eliminate Dominguez as a source of the biological material – semen – recovered from the victim. Wilson did not volunteer what portion of the male population was included among the possible sources. Had he been asked, or had he chosen to fairly portray his findings, the answer would have been 67% – or more than two-thirds of all men in the world.

Despite the flimsy evidence, Hartel deemed Dominguez guilty and sentenced him to nine years. With day-for-day good time and credit for time served in jail before trial, Dominguez was released from prison in December 1994.

Six years after his release, by which time he had married and fathered a child, the U.S. Immigration and Naturalization Service threatened to deport Dominguez for failing to register as a sex offender. At this point, he retained defense lawyers Jed Stone and John P. Curnyn to seek DNA testing of the supposedly inculpatory biological evidence in the case.

In 2001, Lake County Circuit Court Judge Raymond McKoski granted a motion for DNA testing at Dominguez's expense. And in March 2002, the results of the testing by the Serological Research Institute in Richmond, California, positively excluded Dominguez as the source of biological material recovered from the woman who had positively identified him and sent him to prison 12 years earlier.

Dominguez was officially exonerated on April 26, 2002, when Judge McKoski granted a motion in which prosecutors joined Stone and Curnyn in asking that the conviction be set aside.

## No Apology

However, the prosecution was unapologetic for the error that cost the innocent youth more than four years of his life. "I won't apologize for the original conviction," Michael G. Mermel, chief of the felony trial division at the Lake County State's Attorney's Office, told the *Chicago Tribune*. "At the time, the science didn't exist, and we had a credible witness."

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# Dominguez "Free Like A Bird" After Pardon

In August 2005, Illinois Governor Rod Blagojevich pardoned Alejandro Dominguez of a 1990 rape conviction.

Dominguez's conviction was based on his positive identification by the victim and an inconclusive test of the assailant's semen. DNA tests of the semen in 2002 excluded Dominguez, and his conviction was set aside in April 2002. (See, Positive ID Sent An Innocent Alejandro Dominguez To Prison For 12 Years on this page.)

However Dominguez's conviction was still on his record, and it interfered with getting jobs paying enough to support his wife and two children above subsistence level. As he put it, "I was out of jail, but the record still put me in a hole." The pardon acts to expunge the conviction from Dominguez's record, so that problem for him will be removed.

The pardon also enables Dominguez — who was 16 when tried as an adult for the rape — to apply to the Illinois Court of Claims to receive compensation for his four years of wrongful imprisonment.

Dominguez was elated at the news of his pardon — "After all these years, I'm free like a bird."

Source: Governor Pardons Man DNA Cleared, by Steve Mills, *Chicago Tribune*, August 4, 2005.



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identified is a house painter who the witness also claims was the tarp's owner. That witness — whose information has been ignored for years by law enforcement authorities — passed a polygraph examination on October 26, 2005.

On September 6, 2005, U.S. District Court Judge James Carr dismissed Spirko's federal habeas petition, ruling that during a previous habeas proceeding before Judge Carr, there was no fraud perpetrated on the court by the State's non-disclosure that the lead investigator and star witness in Spirko's case, U.S. Postal Inspector Paul Hartman, had told people (including Spirko's trial prosecutor) that Spirko's co-defendant and friend, Delaney Gibson, had nothing to do with Mottinger's abduction and murder.

At the time of Spirko's trial the prosecutors claimed Gibson wasn't in custody because he hadn't been apprehended. Spirko was tried alone and presented an alibi defense — sup-

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