

# Two Men Awarded \$1 Million Each After False Arrest For Baseball Game Explosion — Third Man Fights Wrongful Conviction

By James F. Love

Clinton Oliver, Donald Krieger and Andrew Mendez, felt they had a stroke of luck when Oliver's younger sister gave them three tickets to attend a June 2002 Cleveland Indians baseball game at Jacobs Field. Oliver's sister had won the tickets for being the MVP on her softball team at Elyria High School. Unable to attend the game, she gave the tickets to her older brother. Little did her brother and his friends know, as they bounced into the stadium, that they would be subjected to a false arrest, wrongful prosecution, and for at least Mendez, what now appears to be a wrongful conviction.

On June 11, 2002, Oliver, Krieger and Mendez entered Jacobs Field and began watching the game from the upper level. After the game began Oliver and Krieger moved to box seats at ground level, while Mendez stayed in the upper deck. In the top of the ninth inning, an

explosion in the lower-level smoking area shook the stadium and injured four people. Witnesses provided contradictory statements about the device causing the explosion. One witness described it as a "small soup can," thrown from the upper level. No one saw who threw it,

but Mendez was seated in the upper deck above the explosion. Stadium authorities arrested all three young men because their tickets had adjoining upper level seat numbers.

Oliver and Krieger were held for four days in the Cuyahoga County Jail in Cleveland, Ohio before a stadium security camera tape showed that they were seated at ground level when the explosion occurred. They were released, but Mendez wasn't as fortunate. Even though no one saw him throw the explosive device, he was charged and convicted after a bench trial of aggravated arson, assault, three counts of negligent assault, and sentenced to spend three years in the Ohio prison system. He was paroled after seven months.

Krieger and Oliver filed a civil suit in the Cuyahoga County Common Pleas Court against the city of Cleveland that alleged

malicious prosecution, false arrest and intentional infliction of emotional distress.

During the trial in November 2006, Oliver testified he was a Marine home on medical leave when he was arrested, and he was prevented from re-enlisting because of the charges. Now an auto salesman, Oliver told the jury, "I was devastated. They took my career." Testimony at the trial was the three men were kept in a holding cell that smelled like urine and they had to sleep with toilet paper in their ears to keep roaches from entering their ears. In addition they were deprived of showers, toothbrushes, soap, mattresses, blankets or pillows, and given paper coveralls to wear. They slept on bare steel bunks, and the cell they were held in was so filthy their feet stuck to the floor when they walked. Oliver testified that the time he spent in the holding cell was the longest 96 hours of his life.

John Spellacy, Krieger's attorney, told the jury that the men "were falsely accused, but what happened to them in jail compounded this miscarriage of justice." Oliver's attorney, John Chambers, compared the men's jail stay to a "prisoner of war situation" that the police hoped would squeeze confessions out of them.

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pened in this case that shouldn't have and that's why Anthony Graves has been on death row for more than a decade."

After the state did not act to retry Graves or move for a bond hearing within 120 days of the 5th Circuit's decision, in October 2006, U.S. District Judge Samuel Kent set Graves bond at \$50,000, with a \$5,000 cash payment. His pro bono attorneys posted the bond, but the Texas Attorney General's Office appealed to the 5th Circuit Court of Appeals. Although the appeals court upheld Kent's authority to set the bond, they stayed Graves' release until January 4, 2007, to give the AG the opportunity to request a state court bond hearing. On December 20, without holding a hearing, Burleson County District Judge Reva Towslee-Corbett set Graves' state bond at \$1 million. One of Graves' attorneys, Jeff Blackburn, said the bond was, "a ridiculous amount designed to do nothing but keep him locked up."

Graves attorneys petitioned the U.S. District Court to order his release on the grounds that the federal bond had been paid and the state bond was excessive. On January 5, 2007, U.S. Magistrate John Froeschner decided that the federal court lacked

jurisdiction to interfere the state bond, "I can agree with you that it sounds pretty excessive and pretty oppressive, but that's the business of the state court."

Graves is being held in Burleson County's jail awaiting a decision by the special prosecutor on whether he will be retried, or released of a crime that he has unwaveringly claimed he didn't commit, and that Carter went to his grave insisting he was innocent of committing.

- This article is primarily based on the first-hand information of Erika McDonald, a former student of Professor Nicole Casarez's investigative journalism class at the University of St. Thomas that researched Anthony Graves case.

### Secondary sources:

Judge calls bond for former death-row inmate 'excessive', by Harvey Rice, *Houston Chronicle*, January 5, 2007.

New prosecutor named to retry anthony graves, by Melissa Phillip, *Houston Chronicle*, January 10, 2007

Texas prisoners claiming innocence can write the Texas Innocence Network at:

Texas Innocence Network  
University of Houston Law Center  
100 Law Center  
Houston, TX 77204

On November 9, 2006, the jury deliberated for an hour and a half before awarding both Oliver and Krieger \$400,000 in compensatory damages and \$600,000 in punitive damages. The jury forewoman said of the eight person jury as she left the courthouse, "We were all in agreement that the plaintiffs were wronged." Spellacy expressed his thoughts, "The jury spoke loud and clear about how these innocent guys were treated. Obviously, they were disgusted and wanted to send the message so this doesn't happen to other people."

Ohio's Court of Appeals affirmed Mendez's conviction in June 2004. Among Mendez's many arguments was that a stadium surveillance video filmed the explosive device falling 16 feet in one second. In his brief Mendez included physics calculations that if it had been thrown from the 63' height of the upper level where he was sitting, it would have been falling at four times that velocity – thus it had to have been thrown from the level below where he was sitting. The Court rejected that science based argument without even considering it, stating that the calculations Mendez provided "requires explanation in order to apply. It contains terms that are not generally known such as "final velocity," "average velocity," and the "acceleration of gravity." The Court then stated, "Judicial notice

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cence Project that aided in having the DNA tests conducted that led to Mayes' release.<sup>1</sup> They presented evidence that when Frank Dupey was appointed police chief in 1976, he was a former patrolman without any experience in supervising police or investigating crimes. He had been a clerk for Hammond City Judge Ed Raskosky, and when Raskosky was elected mayor, he had asked Dupey to head the department of 200 employees. Knowing he had no experience, Dupey passed his responsibilities to oversee the department down the line to a captain, also without experience, who then passed the responsibilities down to Detective (Lieutenant) Mike Solan. Solan had been in charge of the investigation into the crimes Mayes was convicted of committing.

None of the detectives involved in the rape and robbery investigation, had any training in identification procedures to be used in a rape case. In a lawsuit deposition given by Solan, he stated in response to a question by Mayes' counsel, "Identification procedure is so common. I mean, its not something that I

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will not be taken of such scientific facts and matters, however, unless they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person."

Although Mendez's argument that it is scientifically impossible for him to have thrown the firecracker relied on the understanding of physics pioneered by Sir Isaac Newton in 1679, the Court decided that because Mendez relied on a scientific formula beyond a layperson's expected knowledge, "we decline to take judicial notice. Consequently, Mendez's first assigned error is overruled."<sup>1</sup> In November 2004 the Ohio Supreme Court declined review of Mendez's conviction.

Oliver is so convinced of Mendez's innocence that after the jury awarded him \$1 million, Oliver said he was going to use the money to hire an attorney for his friend's fight to exonerate himself. Oliver said of Mendez, "I swear on my life he didn't do it," he said, "No, I take that back - I swear on my Marine reputation."

### Endnote and Sources:

1 (*State v. Mendez*, 2004 -Ohio- 3107 (Ohio App. Dist.8 06/17/2004); 2004-ohio-3107, 2004.OH.0002907 ¶¶43-45 <<http://www.versuslaw.com>>)

"Two win Jacobs Field bomb suit. Jury awards each \$1 million for false accusation," By James F. McCarty, *Cleveland Plain Dealer*, November 10, 2006.

"Jury Awards Fan \$1 Million," by Matt Suman, *Cleveland Morning Journal*, November 11, 2006.

have to sit there and tell my detectives, you know, get six pictures that are similar and make sure they're all the same race. I mean, we don't have to go to 101 academics here. They know this stuff counselor."

Yet the procedure Solan defended was that the witness was asked to reconsider identifying a person in a regular line-up who wasn't Mayes, and the witness was then hypnotized before finally identifying Mayes in a six-picture photo-lineup that included several pictures of him. So contrary to Solan's claim that the detectives involved in the investigation did not need a course in "101 academics," Mayes' misidentification was predictable because the procedures used by the detectives are well known to result in an unreliable identification. In spite of the shady identification procedures used in Mayes' case, there use wasn't disclosed to him until his conviction was overturned in 2001 - 19 years after his trial.

Prior to the start of Mayes' civil trial, lawyers for the city of Hammond unsuccessfully attempted to call into question the certainty of the DNA evidence that freed him. They suggested that before the DNA testing in 2001, the evidence may have been compromised while stored in the court evidence vault. It is not well known to the general public, but police and prosecutors who are only too eager to use DNA evidence to convict a criminal suspect, have for the past 15 years attempted to call that same certainty of DNA evidence into question when it exonerates a person convicted by non-DNA evidence.

Jury selection for Mayes' civil trial began on August 7, 2006. The potential jurors were asked if they would have any difficulty awarding millions of dollars in damages to an African-American who had been wrongfully imprisoned for several decades.

Mayes took the stand on August 16. He described what it was like to be confined for 19 years in a maximum security prison convicted of a rape and robbery he had not committed - which had followed him being jailed for two years awaiting trial. The jurors were not permitted to hear evidence that Mayes had a prior conviction for rape and robbery. That prior unrelated conviction was why Mayes was targeted by police for the crimes against the gas station attendant that he didn't commit.

Two weeks after the trial began, the case was submitted to the jury on August 22. After only 4-½ hours of deliberation the jury returned a verdict against the city of Hammond and retired Detective Solan. They awarded Mayes \$9 million.

Hammond's attorney announced the city would appeal the jury's decision based on the exclusion of evidence about Mayes' prior convictions.

In the years since Mayes' conviction Solan has been promoted from lieutenant to captain in Hammond's Police Department. Before the civil trial the city of Hammond told Solan they would pay any damages awarded against him, and they paid for his attorney during the trial. After the jury's verdict they reneged and said they would only pay the first \$300,000 of his portion of the award. Solan's lawyer Nick Brustin said of the city, "They have never disciplined him, never investigated him (for misconduct in Mayes' case). Now, rather than pay Larry Mayes, they are going to force (Solan) into bankruptcy."

On December 8, 2006, a hearing was held in the U.S. District Court to determine how much of the \$9 million award Solan was liable to pay. Solan testified his assets were very modest. After the hearing Hammond's mayor, Thomas McDermott Jr., said the city would have to sell municipal bonds to pay their portion of the award, which would be levied as a small tax on city residents. In addition to the judgment, the city's legal fees continue to mount. They totaled more than \$788,000 before their appeal was filed. Although it is unknown if they will be successful, Mayes' attorneys are likely to request that their legal fees and expenses be added to the money he was awarded. If granted, that would add an additional \$3.6 million plus to the award. Otherwise the legal fees will be paid out Mayes' \$9 million.

After the jury returned the \$9 million award, the 57-year-old Mayes said that he still remembers Solan taunting him 25 years ago, telling him that he "would be an old man before he ever saw the outside again." Mayes told reporters, "I just want to let him know: 'How you like me now?'"

### Sources:

"Hypnotism, withheld evidence highlighted in \$21M lawsuit," by Joe Carlson, *The Times* (Munster, IN), July 17, 2006.  
"Hammond defends police practices," by Joe Carlson, *The Times* (Munster, IN), August 9, 2006.

"Defense firm fights to include DNA evidence in Hammond trial," by Joe Carlson, *The Times* (Munster, IN), August 10, 2006.

"Mayes takes stand in suit against copes," by Susan Brown, *The Times* (Munster, Indiana), August 17, 2006.

"Jury says city must pay \$9 million in wrongful conviction suit," by Joe Carlson, *The Times* (Munster, IN), August 23, 2006.

"Police officer faces paying part of \$9 million lawsuit," By Andy Grimm, *Post-Tribune* (Merrillville, IN), December 9, 2006.

1 Scheck and Neufeld publicize themselves as co-directors of The Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University, but The Innocence Project's IRS Form 990 (2005) doesn't list them as having any official association with the organization.