

\$320,000 Awarded Man Cleared Of Capital Murder By HBO Video Tape

By JD Staff



Juan Catalan

Juan Catalan and his six-year-old daughter spent the evening of May 12, 2003 having fun at Dodger Stadium watching the Los Angeles Dodgers beat the Atlanta Braves, 11 to 4.

Toward the end of the game a murder was committed 20 miles away in the San Fernando Valley. Four teenagers gave a detailed description of the murderer who shot 16-year-old Martha Puebla in front of her home.

Police investigating Puebla's murder learned she had testified against a defendant in a 2002 murder case. They began operating on the theory that Puebla's murder had been a revenge killing. They found out that Catalan's brother Mario was a co-defendant in the murder case. Even though Puebla had not testified against Mario, the 24-year-old Catalan became their prime suspect in her murder.

The four eyewitnesses didn't identify Catalan – he didn't fit their description of the shooter's height, weight or skin color. However, another witness identified Catalan from a photo lineup. He was arrested in August 2003, and charged with Puebla's murder with the special circumstances of murdering a witness and lying in wait. The special circumstances made Catalan eligible for the death penalty.

Catalan resisted the efforts of interrogators to pressure him to confess, insisting he had nothing to do with the murder. On three separate occasions Catalan's interrogators refused his request to take a lie detector test.

When Catalan's girlfriend learned out the date and time of the murder, she recalled that was when he and his daughter had been at the Dodgers game. She located the ticket stubs and gave them to Catalan's lawyer, Todd Melnik. The prosecutors dismissed the ticket stubs as only providing evidence Catalan may have been at the game when it started, but they didn't prove he was at the game when the murder was committed. Ironically, based on the prosecution's theory of Puebla's murder, the ticket stubs could be considered incriminating "proof" of Catalan's premeditation of planning an alibi.

Knowing that with an eyewitness tagging him

as the shooter Catalan was facing a likely conviction and possible death sentence, Melnik set out to find evidence substantiating Catalan's alibi. Melnik subpoenaed the Fox Network's tapes of the game that they had broadcast, Catalan's cell phone records from Nextel, and the Dodgers' "Dodger Vision" tapes of the game.

The cell phone records established that at about the time of Puebla's murder a call from Catalan's cell phone had been transmitted by Nextel's cell tower serving Dodger Stadium. However, Fox's game tapes of shots where Catalan's ticket showed he and his daughter were sitting weren't clear enough to identify him. Likewise, the "Dodger Vision" tapes for the game didn't distinguish Catalan from the crowd. ("Dodger Vision" is the image shown on the scoreboard during breaks in the game and between innings, which often includes shots of spectator areas.)

When those tapes turned out to be a dead-end, Catalan's girlfriend recalled that Melnik told her an HBO program had been filming at the game in the area where he and his daughter were sitting. That program was "Curb Your Enthusiasm," starring Larry David, co-creator of "Seinfeld."

Melnik contacted David's production company, which agreed to allow him to view the video footage they recorded at the Dodger game. First viewing the program edited for broadcasting on HBO, Melnik didn't see Catalan. He then started viewing the video footage that had been cut from the final version. Melnik said later, "I got to one of the scenes, and there is my client sitting in a corner of the frame eating a hot dog with his daughter. I nearly jumped out of my chair and said, 'There he is!'"¹ The tape was date and time coded, proving Catalan was at the game shortly before Puebla's murder 20 miles away.

Based on the cumulative evidence of the cell phone record and the "Curb Your Enthusiasm" outtake, Melnik filed a motion to dismiss the charge against Catalan. In January 2004 the capital murder charge against Catalan was dismissed for "insufficient evidence." He was released after five-and-a-half months in custody. Catalan said when interviewed, "To hear the words from the judge's mouth, I just broke down in tears. It was the happiest moment in my life."²

When told about Catalan's release, David quipped tongue-in-cheek, "I'm quitting the show to devote the rest of my life to freeing

those unjustly incarcerated."³

Catalan resumed working at his family's machine-tool business. He also hired a civil lawyer, Gary Casselman, and filed a claim against the City of Los Angeles alleging false imprisonment, misconduct and defamation. On March 7, 2007, the LA City Council agreed to settle Catalan's claim for \$320,000.⁴

After Catalan's release the LAPD arrested another suspect, who was subsequently charged with Puebla's murder.

The fortuitous, and near miraculous discovery of the outtake from "Curb Your Enthusiasm" saved Catalan from a very possible capital conviction and a cell on San Quentin's death row. But the storyline of the episode Catalan's image was cut from provides a bit of levity to the entire affair. In the episode David hired a real-life prostitute from the streets of Los Angeles to accompany him to the Dodger game so he could use the carpool lane to bypass the worst of the traffic to Dodger Stadium.

Endnotes and sources:

1 HBO video curbs police enthusiasm, *CBS News*, June 2, 2004.

2 *Id.*

3 'Enthusiasm' saves defendant wrongly accused in murder case, By Lisa Sweetingham, *Court TV*, June 5, 2004.

4 Man with TV show alibi wins settlement from L.A., By Patrick McGreevy, *Los Angeles Times*, March 8, 2007.



Larry David

John Spirko Update

John Spirko's first-person story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of Elgin, Ohio Postmistress Betty Jane Mottinger's 1982 abduction and murder, was in *Justice: Denied* Issue 27, Winter 2005.

At the request of Ohio Attorney General Jim Petro, on March 27, 2007 Governor Ted Strickland ordered a sixth stay of Spirko's execution. The five month stay postpones Spirko's execution until September 18, 2007.

Spirko's lawyers urged A.G. Petro to request the stay to allow time to complete state-of-the-art DNA testing on old evidence in the case. The DNA testing of more than 150 evidentiary items has thus far been inconclusive to either link or exclude Spirko, 60, from the crime.

Sources:

DNA tests fail to solve Spirko case, By Alan Johnson, *The Columbus Dispatch*, March 6, 2007.

Convicted killer gains another reprieve, *Toledo Blade*, March 28, 2007.