

Judith Ann Lummis reported on September 16, 1998 that she had been kidnapped at knifepoint from a Springfield, Missouri Sonic Drive-in, and raped and sodomized. She described her attacker as a Hispanic in his early 20s. When 45-year-old Armand Villasana was arrested nine days later for an unrelated warrant, he became a suspect because he faintly resembled a sketch made from Lummis' description of her attacker's face. Lummis subsequently identified Villasana in a photo line-up, even though he was taller, thinner and twenty years older than the man she described to police in her statement only days earlier.

## Woman Admits Fabricating Rape Accusation Against Armand Villasana – Seven Years After His Release From Prison



Armand Villasana

By Hans Sherrer

with the test results that excluded Villasana as the source of any DNA on those three items. Furthermore, and just as significant, a DNA profile was identified as originating from a person other than Lummis, her husband, or Villasana.

Based on the new evidence that excluded Villasana as Lummis' attacker, the prosecution dismissed the charges against him and he was released after spending 21 months in the Greene County Jail. Villasana said at the time, "All I know is, I didn't do it. The DNA says I didn't do it." Greene County Prosecutor Darrell Moore still insisted that he believed Villasana was guilty, he just couldn't prove it.

### Villasana sues crime lab personnel

After his release, Villasana filed a federal civil rights lawsuit (42 USC §1983) that named six crime lab employees as defendants.

The lab's official report in Villasana's case only referred to the absence of semen, and made no mention that there was additional biological evidence that could be DNA tested. Villasana's lawsuit "alleged that [serologist Joseph] Roberts and five Crime Laboratory supervisors violated Villasana's due process rights under *Brady* by failing to disclose or cause to be disclosed the underlying test documents and by failing to adopt policies and to train Roberts and other personnel to ensure "production of exculpatory or potentially exculpatory evidence." (*Armand Villasana v. Weldon Wilhoit*, No. 03-2266 (8th Cir. 06-01-2004))

In 2004 Villasana appealed to the Eighth Circuit Court of Appeals after "the district court granted the defendants' motion for summary judgment, concluding they are entitled to qualified immunity from these claims. The court reasoned that no case has extended liability under *Brady* to crime laboratory technicians and therefore Villasana failed to show "that defendants had a clearly established obligation under *Brady* to disclose exculpatory or potentially exculpatory evidence to the prosecution or to the plaintiff." *Id.* In affirming the lawsuit's dismissal the appeals court expanded on the district court's rationale by asserting the responsibility to turn over the exculpatory evi-

dence to Villasana was borne by his prosecutors, and the doctrine of absolute prosecutorial immunity shielded them from civil liability: "The *Brady* doctrine imposes an absolute duty on the prosecutor to produce all materially favorable evidence in the State's possession. ... When acting in those capacities, the prosecutor has absolute immunity from *Brady* damage claims under §1983." *Id.*

### Source of crime scene DNA identified

Missouri law requires the comparing of DNA samples collected from prison inmates with the DNA evidence in cold cases. In November 2005, more than five years after Villasana's release, a DNA sample taken from a prisoner at the Ozark Correctional Center was matched with the unknown DNA profile detected from the evidence in Lummis' case.

In June 2006 the Greene County Sheriff's Department was notified of the DNA match, and after additional testing confirmed the result, the Lummis kidnapping/rape case was reopened in January 2007.

The prisoner identified by the DNA was interviewed, and he provided a twist that no one expected. He told investigators that in 1998 he was having an affair with Lummis. After her husband questioned why she was late getting home on September 16, 1998, she made-up the kidnapping and rape story on the spur of the moment so he wouldn't find out she was cheating on him. He said that he had sex with Lummis the night she reported the attack, and that is why his DNA was detected.

Investigators then tried to find Lummis to question her about the man's claims. They were initially unsuccessful because she was on probation and she had skipped reporting. However, in checking her background, detectives discovered that she had made a nearly identical kidnapping report in Aurora, Missouri against another man that was proven to be false prior to his trial.

### Lummis admits crime was a hoax

Lummis was finally arrested for violating her probation. When confronted with the DNA test results and the statement of her ex-lover, she admitted on August 7, 2007 that to conceal her extra-marital affair from her husband, she fabricated the kidnapping and rape that she accused Villasana of committing.



Judith Ann Lummis

Villasana cont. on p. 6

Villasana was charged based on Lummis' identification. Even though a pre-trial challenge was successful at barring the prosecution from using Lummis' line-up ID – the judge ruled it was "suggestive" because Villasana was the only Hispanic in the photo line-up – the charges against Villasana were not dropped.

The Missouri Highway Patrol crime lab informed the prosecution and Villasana's counsel prior to his trial that no semen was found in Lummis' rape kit, and no DNA testing was conducted.

### Villasana's conviction and post-conviction proceedings

The jury disregarded Villasana's protestations of innocence, and instead relied on Lummis' in-court identification (without mention of the line-up) to find him guilty on November 10, 1999 of rape, kidnapping and forcible sodomy. The jury recommended a sentence of 70 years in prison.

After Villasana's conviction, but before his sentencing, family and friends hired two defense attorneys to replace his public defender. One of Villasana's supporters, Kathy Moore, told a reporter, "You just sit and think, how can the justice system be this way when you know he's innocent?"

The attorneys hired were Shawn Askinosie and Teresa Grantham. In researching Villasana's case they discovered that his trial lawyer had been misinformed: the crime lab in fact had evidence that could be DNA tested. The untested evidence was a vaginal swab, Lummis' sweat pants and the hospital sheet stained by her fluids. The lawyers were successful in getting a court order for DNA testing of those items. In June 2000, on the day scheduled for Villasana's sentencing, Askinosie and Grantham presented the judge

In September 1988 17-year-old Martin Tankleff's parents, Seymour and Arlene, were murdered in their Long Island, New York home. Tankleff immediately accused his father's business partner, Jerard Steurman, of the crime. However, under intense questioning by detectives, the distraught teenaged Tankleff confessed to the murders, which he immediately retracted, and he refused to sign a statement written by a detective. Relying on the oral confession, the homicide detectives did not seriously investigate Steurman as a suspect.



Martin Tankleff the day of his release

## Martin Tankleff's Murder Convictions Overturned After 17 Years Imprisonment

By JD Staff

Tankleff's 1990 trial was a media sensation. It was one of the first trials broadcast live, and it resulted in the founding of Court TV. Tankleff insisted on his innocence, but he was found guilty by a jury, and sentenced to 50 years to life in prison.

Tankleff's conviction was affirmed on direct appeal. However, family and friends believed in his innocence, and in 2000 *Justice:Denied* published an article about Tankleff's case (Issue 12). In 2001 private investigator Jay Salpeter began digging for new evidence.

Salpeter discovered damning evidence supporting Tankleff's original accusation that Steurman was the person behind the murders. Three men were identified as being directly involved in the crime under his direction. One of the men, Glenn Harris, admitted in an affidavit to being the getaway driver and he provided details of the crime, including the roles of his two accomplices. Supporting the new evidence against Steurman is that he owed Seymour Tankleff \$500,000, he quarreled with him over repayment of the money, he was in the house the night of the murders, he left suicide notes a week after they occurred, and he changed his appearance and fled to California where he lived under an assumed name.

Salpeter's investigation resulted in Tankleff filing a motion in October 2003 to vacate his convictions based upon the newly-discovered evidence of his actual innocence. An evidentiary hearing, during which 23 witnesses testified, commenced on May 12, 2004 in Suffolk County. Almost two years later, on March 17, 2006, the judge denied Tankleff's motion on four grounds. Two of those grounds were Tankleff didn't exercise "due diligence" in finding his new evidence, and the judge did not agree that the new evidence proved his claim of "actual innocence. Tankleff was granted leave to appeal the judge's ruling. *Justice:Denied* published another article about Tankleff's case in the summer of 2006 (Issue 33).

On December 18, 2007 the New York Court of Appeals released its written opinion. *People v Tankleff*, 2006-03617 (NY Ct of Appeals 12-18-2007)

The lower court's ruling that Tankleff did not exercise "due diligence" was the one

most fatal to his motion, and the appeals court strongly rejected the judge's rationale: "The defendant's investigation resulted in a body of new evidence which required time to accumulate. He should not be penalized for waiting to amass all of the new evidence and then presenting it cumulatively to the County Court. Such conduct avoided separate motions upon the discovery of each witness, obviated the squandering of resources, and preserved judicial economy."

After an extensive analysis of the arguments of Tankleff and the prosecution, the appeals court ruled that "the newly-discovered evidence is "of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant." The court then ordered the vacating of Tankleff's two murder convictions and his sentences, and that a new trial be conducted "with all convenient speed."

Tankleff was released on bail on December 27, 2007. Two days later *The New York Times* published an article that for a year New York's State Investigation Commission had quietly been conducting an official inquiry into Suffolk County law enforcement's handling of the investigation into the murder of Tankleff's parents.

Four days after the *Times*' revelation that his office was under official investigation for its handling of the Tankleff case, Suffolk County District Attorney Thomas Spota announced on January 2, 2008 that Tankleff would not be retried, and that the murder charges would be formally dismissed against him on January 18, 2008.

Martin Tankleff was wrongly imprisoned for more than 17 years for the murder of his parents.

### Sources:

- Convicted of Killing His Parents Even Though He Tried to Save His Father's Life!, *Justice:Denied*, Issue 12.
- Will The Frame-up Hold Up? The Martin Tankleff Story, *Justice:Denied*, Issue 33, Summer 2006.
- <http://www.martytankleff.org> (Extensive case documentation is on Tankleff's website.)
- Out on bail, Tankleff's goal is acquittal, *Newsday*, December 28, 2007.
- New York is said to have inquiry in Tankleff case, *The New York Times*, December 29, 2007.
- Suffolk DA drops Martin Tankleff murder case, *Newsday*, January 2, 2008.

### Villasana cont. from p. 5

Several weeks later Greene County Prosecutor Darrell Moore publicly revealed that Villasana had been convicted of a hoax crime. He said, "It's outrageous. I cannot apologize to Mr. Villasana - that belongs to the complaining witness in this case. I can tell Mr. Villasana that I'm sorry." Moore said he would like to prosecute Lummis for perjury, but, "Unfortunately, the statute of limitations has run out on this case." Moore also said of Lummis' admission, "The statement she gave to the detective, there's nothing contrite about it. She just admits that she lied to protect herself."

After Moore finished his statement, Villasana told reporters, "I just thank God that I'm out free and I'm glad that everybody knows that I was innocent from the beginning." His attorney Gregory Aleshire said that a civil suit against Lummis is possible. However, Lummis has had a checkered life, and it is questionable if she could ever pay any significant amount of any judgment.

### Lummis sentenced to four years in prison

Prior to falsely accusing Villasana, Lummis pled guilty in April 1998 to forgery and fraudulently attempting to obtain prescription diet pills. She was released on probation with a four-year suspended prison sentence, but she skipped out on her probation after Villasana's November 1999 trial. After Lummis' arrest in August 2007 and her admission that she fabricated her testimony against Villasana, her probation was revoked. In late August she was sentenced to serve her original four-year prison term. Lummis is currently incarcerated in a Missouri prison.

### Sources:

- Revelation clears Villasana's name: A DNA match with a Missouri inmate uncovers 1998 rape accusation as a lie, by Amos Bridges, *News-Leader* (Springfield, MO), August 24, 2007.
- Convicted man freed by DNA tests, *News-Leader* (Springfield, MO), June 22, 2000.

Anyone seeking to overturn a wrongful conviction needs to take to heart the observation of Winston Churchill:

"Success is going from failure to failure without losing enthusiasm."