

Oswind David Released After 4-1/2 Years Imprisonment For A Non- Existent Assault Charge

Oswind David was indicted in March 2006 on two counts of first-degree assault with a box cutter and several other charges that resulted from an altercation

with family members in 2005 outside a relatives' Brooklyn home in New York City. A judge later dismissed the first-degree assault charges based on insufficiency of the evidence.

However, the Brooklyn Assistant District Attorney who presented the charges to the grand jury proceeded with David's prosecution for the dismissed first-degree assault charges without encountering any opposition by David's public defender or the trial

judge — who was different than the judge who had dismissed the charges. In December 2006 a jury acquitted David of all the charges except for first-degree assault charges. He was sentenced to 18 years in prison.



Oswind David on May 25, 2011 after his release from prison (WABC-TV, NYC)

After David's direct appeal was denied, lawyer Rita Dave agreed to handle his post-conviction appeal *pro bono*. She was unaware that David had been convicted of first-degree assault charges that had been dismissed until the spring of 2011 when she read a brief by the Brooklyn DA's Office that noted the "mistake" on page 19. Dave investigated and discovered that David had indeed been prosecuted and convicted for non-existent first-degree assault charges.

Dave filed a motion to set aside David's convictions and for his immediate release on bail. The Brooklyn DA's Office opposed the motion on the basis that first-degree assault automatically includes second-degree assault, and those charges weren't dismissed. However, the DA's argument ignored that the jury acquitted David of second-degree assault.

When interviewed by WABC-TV, Dave said about the case, "It was just a bunch of errors that were compounded. This was just a complete utter mess-up, on every level."

A New York Appellate judge agreed that you can't keep someone in prison on charges that don't legally exist, and on May 24, 2011 ordered David's release on a \$75,000 bond. Relatives put up the bond money and David, now 31, was released from Sing Sing prison the next day after 4-1/2 years imprisonment.

The Brooklyn DA's Office announced it will appeal the order releasing David and oppose setting aside his convictions.

Oswind's brother Osbert is a Marine just back from two overseas tours. He helped post the \$75,000 bond and he said his family is ready to fight the DA's legal efforts to send his brother back to prison, "If they DA wants to fight, let's fight."

Sources:

Injustice is undone, *New York Post*, May 25, 2011, Investigation: Charged dismissed, but still in jail, WABC-TV, New York, May 24, 2011

Raymond Towler Awarded \$2.59 Million For 28 Years Wrongful Imprisonment

Raymond Towler was tried in September 1981 for the May 1981 rape, assault, and kidnapping of an 11-year-old girl in a Cleveland, Ohio park, and the assault and kidnapping of her 12-year-old male cousin who was forced to lie on the ground at gunpoint while the rape took place.

A composite sketch was made of the perpetrator from the victim's description.

About three weeks after the crime Towler was stopped for running a red light near the park where the crime occurred. The park ranger who stopped Towler noticed he resembled the composite sketch of the young victim's assailant, so Towler was arrested and his photo was taken at the police station.

Several days later both victim's identified Towler from a photo array, and he was also identified by two other people who had been in the park and saw the perpetrator. Towler was charged based on those identifications.

There was no physical evidence tying him to the crime, so during his September 1981 trial the prosecution's case was based on the victim's testimony he was their assailant and the testimony by the two witnesses he was the man they saw in the park that day.

Towler testified he was home at the time the assault took place, and his alibi was corroborated by several witnesses.

The jury believed the victims and the two other witnesses. He was convicted of all the charges.

The 24-year-old Towler protested his innocence when he was sentenced to life in prison for the crimes against the girl, and an additional 12 to 40 years for his assault and



Raymond Towler on May 5, 2010 when was released. (Gus Chan, Cleveland Plain Dealer)

kidnapping of her cousin.

In 2004 the Ohio Innocence Project accepted Towler's case and filed an application for DNA testing under Ohio's new law authorizing post-conviction DNA testing.

The testing was granted and some clothing worn by the two victims was sent to a lab. No semen was detected so there was nothing to test for the presence of DNA.

Towler's case was revived in 2008 after the *Columbus Dispatch* published a series of article that featured the cases of 30 prisoners whose innocence could possibly be proven by DNA testing. The Ohio Innocence Project subsequently filed a new request for DNA testing by more sophisticated techniques than were available in 2004. The testing was eventually approved by a judge, and on May 3, 2010 it was learned that Towler was excluded as the source of the perpetrator's DNA recovered from the girl's underwear. Two days later Towler's convictions were overturned, the charges were dismissed with prejudice, and his convictions were ordered expunged from his record. The 52-year-old Towler walked out of the courtroom as a free man after almost 29 years of incarceration from the time of his arrest in June 1981.

Towler filed a claim under Ohio's wrongful conviction compensation law, and on April 25, 2011 it was announced that he was awarded \$2.59 million by the State Controlling Board. His attorneys were awarded \$78,000 in legal fees.

Sources:

Raymond Towler, freed after 29 years in prison, wants a new life and a good pizza, *Cleveland Plain Dealer*, May 5, 2010
Ohioan gets \$2.59 million for serving 30 years in wrongful conviction, *The Columbus Dispatch*, April 26, 2011