

Federal Appeals Court Declares Lawrence Owens' Murder Conviction Is "Nonsense"

The U.S. Seventh Circuit Court of Appeals [has overturned](#) Lawrence Owens murder conviction in Cook County, Illinois on the basis the judge's reason for finding him guilty in 2000 after a bench trial is "nonsense", because it was based on evidence the judge made up out of thin air.

After dark on the evening of September 22, 1999, 17-year-old Ramon Nelson was riding his bike away from a liquor store in Markham, Illinois when he was struck on the head by a wooden stick that could have been a baseball bat. Markham is in Cook County about 20 miles south of Chicago. There was some light from street lamps and nearby buildings.

After hitting Nelson the assailant fled. Nelson was unconscious when he was transported to a hospital. Without regaining consciousness he died the next day as the result of his fractured skull.

In Nelson's coat pockets police found 40 small plastic bags of crack cocaine. The cocaine appeared packaged for individual sale.

Police obtained statements from two persons who claimed to have seen the murder. Maurice Johnnie and William Evans identified Owens from a photo array of six men, and then from a five-man line-up after Owens' arrest. Owens was the only person in both the photo array and the line-up.

When interrogated by the police Owens insisted he did not assault Nelson.

The police investigation discovered no evidence tying Owens to the murder other than the eyewitness evidence, which was relied on to charge him with first-degree murder.

Owens' waived his right to a jury trial. During his bench trial on November 8, 2000 there were significant discrepancies between the testimony of Johnnie and Evans. Evans testified there were two assailants while Johnnie said there was only one, and Evans testified Nelson spoke with his assailants before the assault, while Johnnie testified he didn't. Also, during Evans' testimony he twice pointed to someone else in the photo



Lawrence Owens
(Ill. DOC)

array as the assailant — even though Owens was sitting in the courtroom at the defense table.

Evans testified during cross-examination that he had a prior drug conviction for which he was on probation, and he was in custody on another drug charge. He admitted he agreed to testify in exchange for the State recommending probation on his pending drug charge, and continuation of probation on his previous drug conviction.

The prosecution presented no physical or forensic evidence tying Owens to the crime, and no evidence that Owens was involved with drugs or knew Nelson.

Owens' lawyer did not present any evidence in his defense, instead relying on his closing argument the prosecution introduced insufficient evidence to prove Owens guilty beyond a reasonable doubt.

Judge Joseph M. Macellaio found the 27-year-old Owens guilty of first-degree murder, and sentenced him to 25 years in prison.

Owens conviction was affirmed on direct appeal.

In 2003 he filed a state post-conviction petition that raised a number of issues he asserted warranted a new trial. His petition included an Affidavit in which [Owens asserted](#) "he was actually innocent of Nelson's murder and that he repeatedly informed his attorney, Frank Rago of that fact. According to Owens, he told Rago that he had an alibi for the night Nelson was murdered and that he had two witnesses who could corroborate that alibi. ... But, Owens says, Rago failed to investigate or interview his alibi witnesses and "forb[ade] [Owens] to testify [sic] in [his] own defense." Owens' petition included affidavits from the two alibi witnesses detailing he was with them at the home of one of the witnesses the evening of the murder.

While his state petition was still pending, Owens filed a federal habeas corpus petition in December 2008. The State moved to dismiss Owens' federal petition based on his failure to exhaust his state court remedies.



Judge Joseph M. Macellaio

Owens countered that through no fault of his own his state petition had been languishing undecided for five years. Owens' federal petition was not dismissed and the State was ordered to answer it, although no action was taken to make a ruling on it until the state proceedings had been concluded.

In 2010 the trial court denied Owens' petition, the Illinois Court of Appeal affirmed that ruling, and in September 2011 the Illinois Supreme Court refused to hear his appeal.

The way was cleared for consideration of Owens' federal petition. An evidentiary hearing was held in March 2013 during which Owens' alibi witness and other persons testified. Owens' petition was denied on February 11, 2014 by U.S. District Court Judge Thomas M. Durkin.

The U.S. Seventh Circuit Court of Appeals allowed Owens to appeal Judge Durkin's ruling on the [single issue of whether](#) "the state trial judge who convicted him based his decision on evidence that did not exist, thus denying him due process of law in violation of the Fourteenth Amendment."

On March 23, 2015 a three-judge panel of the U.S. Seventh Circuit Court of Appeals reversed Judge Durkin's ruling and granted Owens' petition. In *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015), the opinion authored by Circuit Judge Richard A. Posner [stated in part](#):

"Owens was the only person in the lineup who also was in the photo array, thereby diminishing the probative value of the second identification. ... There were [] discrepancies between the two witnesses' testimony.

No evidence was presented that Owens had known Nelson, used or sold illegal drugs, or had any gang affiliation.

For at the end of the parties' closing arguments the judge said: "I think all of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off. I think the State's evidence has proved that fact. Finding of guilty of murder."

That was all the judge said in explanation of his verdict, and it was nonsense. No evidence had been presented that Owens knew that Nelson was a drug dealer or that he wanted to kill him ... or even knew him—a kid on a bike.

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Wassillie L. Gregory Exonerated By CCTV Video Of Harassing Police Officer In Bethel, Alaska

Wassillie L. Gregory's July 2014 harassment conviction in Bethel, Alaska [was vacated](#) and the charge dismissed on May 10, 2015. Gregory's exoneration was based on new surveillance video evidence that shows he committed no crime. Bethel is a city of about 6,000 people 400 miles west of Anchorage, and it is only accessible by air or water.

Being intoxicated in public is not a crime in Alaska. However, police officers are allowed to [provide assistance](#) to people intoxicated in public and who appear a danger to themselves and others.

Owens cont. from page 9

... he [the judge] thought that Owens' knowledge that Nelson was a drug dealer was the fact that dispelled reasonable doubt of Owens' guilt.

...

But there was no factual basis of any sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up.

...

Nonetheless, to repeat, we can assume that if the evidence of Owens' guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was ... himself involved in the drug trade ... could be disregarded as goofy but harmless. But evidence of Owens' guilt was not overwhelming.

Given that the entire case pivoted on two shaky eyewitness identifications, Owens might well have been acquitted had the judge not mistakenly believed that Owens had known Nelson to be a drug dealer and killed him because of it.

The Supreme Court has made clear ... that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever. Just imagine that the judge in our case had said "I know there's no evidence of guilt, but I also know that prosecutors in the City of Markham never prosecute an innocent person."

And so we reverse the judgment denying

At 9:18 a.m. on July 12, 2014 Gregory was walking past the Alaska Commercial Company's ([ACC](#)) Value Center store in downtown Bethel. Police Officer Andrew Reid pulled his police car over next to Gregory who appeared to be intoxicated. During the incident that ensued after Reid got out of his vehicle, Gregory was arrested and charged with disorderly conduct, resisting arrest, and misdemeanor harassment.

An off-duty Alaska State Trooper and a probation officer stopped to help Reid during the incident.

Reid's arrest report describes Gregory — an Alaska Native — as an "Indian" male who was "clearly intoxicated," and that he was verbally combative. Gregory had no weapon.

Two days after the incident, and without

Owens relief and give the state 120 days in which to decide whether to retry him. If it does not decide within that period to retry him, he must be released from prison.

On March 30 Judge Posner denied the State's Motion to Stay Issuance of Mandate pending final disposition of a petition for a writ of *certiorari* to the United States Supreme Court that the State said it intends to file.

On July 29, 2015 Judge Durkin ordered that Owens be released from custody no later than August 4, 2015, since the State had not decided whether to retry Owens. Illinois DOC records after August 4 show Owens was released after more than 15 years in custody.

On November 13, 2015 the U.S. Supreme Court granted the State's writ of certiorari to review the Seventh Circuit's ruling in Owens' case.

[Click here to read](#) the Seventh Circuit's ruling in *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015).

Source:

[Lawrence Owens v Stephen Duncan](#), No 14-1419 (7th cir. 3-23-2015) (granting state prisoner's federal habeas and ordering new trial)

[Appeals court judge overturns](#) "nonsense" murder conviction, By Tina Sfondeles, *Chicago Sun-Times*, March 24, 2015

[Lawrence Owens v. Marc Hodge](#), No. 08 C 7159 (USDC ND IL, Eastern Div.) (2-11-14, District court Memorandum Opinion and Order denying federal habeas petition.)

[Stephen Duncan v. Lawrence Owens](#), No. 15A475 (U.S.S.C.) (Docket)



The Alaska Commercial Company store in Bethel. Gregory was assaulted by the road at the far end of the parking lot.

consulting with an attorney, the 48-year-old Gregory pled guilty in Bethel District Court to 2nd degree misdemeanor harassment (offensive physical contact) in exchange for the DA dropping the disorderly conduct and resisting arrest charges. He was sentenced to two years probation and released after two days in custody.

However, the events on the morning of July 12 were not as cut and dried as Gregory's guilty plea suggested.

Gregory couldn't appear in court the next day, July 13, because he was still in the hospital where he was taken after his arrest. He was diagnosed with a broken collarbone and cuts and bruises.

On the day of Gregory's arrest an eyewitness to the incident [reported to](#) Bethel Police Chief Andre Achee, Interim City Manager Greg Moyer, and to Mayor Joe Klejka, that she had witnessed a man offering no resistance to the police officer who brutally assaulted and then arrested him. She filed a complaint of police brutality with the police department. The officer was Reid and the person being attacked was Gregory.

The witness was Dr. Linda B. Green, [an associate professor](#) of anthropology at the University of Arizona in Tucson. She was doing research in the Bethel area. After Green received no response from the police or the city she went to the local media. What Green witnessed was reported throughout Alaska, and an Associated Press story about her allegation of police brutality in Gregory's case [was reported](#) in other states.

Green said that after the police car pulled up next to Gregory, the officer spoke to him briefly before he (Reid) jumped out of his vehicle, grabbed Gregory's arm, and flipped him face down onto the pavement. [She said](#) the officer was much larger than Gregory, "So he picks the man up horizontally from his backpack and his waistband about three feet in the air and slams him down, puts his knee back on his back, again tries to twist those arms around, unable to do so – three more times he picks that man

Gregory cont. on p. 11