http://truthinjustice.org/recent.htm

Fernando Bermudez

Fernando has been in New York's infamous Sing Sing Prison since 1992, convicted in the fatal shooting of a teenager following a dispute on Union Square in New York City. There was no forensic evidence, no fingerprints, no motive, no blood or DNA evidence linking Fernando to the crime. He had a solid alibi and didn't know any of the people involved in the dispute. His conviction rests on his identification by six eyewitnesses, four of whom viewed mugshots together and picked out Fernando by consensus.

UPDATE: 11/13/09 -- Friday the 13th was a lucky day for Fernando Bermudez. After 18 years in prison, he was found innocent of a murder he always said he did not commit. "I find no credible evidence connects Fernando Bermudez to the homicide of Mr. Blount," Justice John Cataldo of New York State Supreme Court wrote. "All of the people's trial evidence has been discredited: the false testimony of Efraim Lopez and the recanted identifications of strangers. I find, by clear and convincing evidence, that Fernando Bermudez has demonstrated he is innocent of this crime." Found Actually Innocent.

http://news.lawreader.com/?p=795

By **PAUL von ZIELBAUER** New York Times , April 13, 2007
After five young people identified him in court as the murderer, Fernando Bermudez was convicted in 1992 of killing a 16-year-old youth in Greenwich Village. No other evidence — a gun, a fingerprint or a clear motive — tied him to the crime.
Skip to next paragraph **Witness Recantation Statements**
Okpa Iyesi (PDF)
Witness and friend of Raymond Blount, the victim. (July 23, 1993)
Frank Kent (PDF)
Witness and friend of Mr. Blount. (July 22, 1993)
Efrain Lopez (PDF)
Witness, punched by Mr. Blount prior to the shooting. (Aug. 6, 1993)
Michael Thompson (PDF)
Witness and friend of Mr. Blount. (July 14, 1993)
Jamie Velasquez (PDF)
Witness and friend of Mr. Blount. (Aug. 21, 1993)

He has been jailed ever since, despite the fact that for 14 years, the same five witnesses have insisted their testimony was false.

The five gave sworn statements in 1993 that Mr. Bermudez was not the killer and that their testimony had been manipulated by the police and prosecutors. They did so at the risk of being charged with perjury, and they have stuck with those accounts even as they have approached middle age, taken on steady jobs and raised families.

Nonetheless, the recantations have had little impact. The same judicial system that once relied on the witnesses now no longer believes them.

“What does it take, with the system that we have, to reinvestigate a wrongful conviction?►►? said Scott Christianson, a supporter of Mr. Bermudez and a former state criminal justice official. “It’s really beyond me.►►?

The reason is based in the prevailing wisdom of the American justice system, which views recantations as untrustworthy, acts not of conscience, but of sympathy or bribery or coercion. That view is so deeply ingrained that one judge, rejecting one of Mr. Bermudez’s appeals in 1995, said candidly that five recantations were simply too many to believe.

In recent years, though, the reliability of recantations is being re-evaluated, driven in part by the growing number of cases in which DNA evidence has cleared people who had been locked behind bars for years. In several recent cases, DNA evidence has shown not

only that people were innocent, but that witnesses who had recanted really were telling the truth.

“Blanket suspicion of recantations is clearly not warranted,“? said Rob Warden, executive director of the Center on Wrongful Convictions at the **Northwestern University** School of Law. “We know now that many of the traditional precepts that have been held by the courts are not warranted, and yet the courts continue to cling to them.“?

Mr. Bermudez, 38, a husband and father of three, has no exculpatory DNA evidence in his corner. He is serving a sentence of 23 years to life and has watched appeal after appeal fail.

Yet he has never wavered from the account he first told investigators: He did not know the victim, Raymond Blount, he had no motive to shoot him and he was elsewhere with friends at the time of the murder in August 1991.

Two friends who were with Mr. Bermudez that night have given accounts that support his own. Their versions also have not wavered since the crime.

Mr. Bermudez’s supporters say he was a victim of the crime wave that beset New York in the early 1990s. They say that the police and prosecutors, overwhelmed in the face of a near record number of murders, seized on bad evidence, settled for easy answers, ignored looming contradictions and bullied impressionable young witnesses into testifying against Mr. Bermudez.

The Manhattan district attorney’s office rejects those assertions. It notes that the conviction of Mr. Bermudez has been upheld several times, most recently by a federal court in 2006.

“A federal magistrate found after an extensive hearing,“? said Barbara Thompson, a spokeswoman for the district attorney, **Robert M. Morgenthau**, “that the recantations of the eyewitnesses were incredible, that the conduct of the trial prosecutor with respect to the witnesses was proper and that the defendant’s due process rights had not been violated.“?

The same magistrate judge, however, noted missteps in the case, among them allowing the people who identified Mr. Bermudez as the killer to view his mug shot as a group, a prejudicial blunder that in New York is nearly always grounds for ordering a retrial. The police also failed to look for the man whom the main witness had first implicated.

The police investigation was led by a detective who had been involved in an earlier homicide case in which a young man had been mistakenly identified as a killer only to have his conviction overturned. The detective was suspended from the force after being

charged in a drunken-driving accident in 2004 in which two women were critically injured.

Mr. Bermudez's situation has attracted a legion of supporters, including lawyers, law professors, a retired detective and a former federal judge. "The evidence powerfully shows that Bermudez is innocent,►►? said Bennett L. Gershman, a professor at **Pace University** Law School.

Mr. Bermudez's hopes now rest on an appeal before the United States Court of Appeals for the Second Circuit. In an interview at Sing Sing prison, he recalled the faith he once had in the system.

"I believed that it was as simple as telling the truth,►►? he said, "and the truth prevailing.►►?

Now, he says, the truth doesn't matter.

The Recantations

Years later, one witness, Mr. Thompson, says he still struggles to explain why he testified against Mr. Bermudez.

"When you're not educated or you just don't know, when the cops tell you to do something, you do it,►►? said Mr. Thompson, 34, a married father who works at a private clinic for the mentally ill. "You figure they got the guy, he must have done it.►►?

Another witness, Okpa Iyesi, is now an elder at a church in Maryland. In his recantation, he said the prosecutor had lied to him, telling him that ballistics evidence already pointed to Mr. Bermudez as the killer, according to court records.

Ms. Velazquez, the witness, said she told Mr. Rodriguez on the eve of the trial that she did not think Mr. Bermudez was the killer, the court records show.

And Mr. Lopez said he knew all along that Mr. Bermudez was not Wool Lou. But he said the authorities threatened to charge him with murder if he didn't cooperate. And he said Detective Massanova had made it obvious that he wanted him to pick out the Bermudez photograph.

"He didn't tell me, 'Pick him,' but he was like, pick him,►►? Mr. Lopez said in an interview.

Detective Massanova, in an interview, denied coaxing Mr. Lopez. He and the prosecutor have denied any improprieties.

Some judges have ruled that recantations should be given more weight in cases where the original testimony constituted the only evidence. Few trials, though, have had five witnesses identify someone as a murderer, only to attest later that their testimony had been false. The very number upset Justice John A. K. Bradley, the Bermudez trial judge, who dismissed the first motion for a retrial without a hearing.

“It strains credulity to believe that five unshaken trial witnesses would suddenly claim that they had testified falsely under oath,”? he wrote in a 1995 decision. Had Mr. Bermudez presented fewer than five, he said, it would have been more believable.

In 1997, a state appeals court, citing “the inherent unreliability of recantations,”? affirmed the conviction.

Appeals Pile Up

At first blush, the Bermudez case seems fertile ground for appeal, with a last-minute delivery of evidence, a conviction that relied on testimony from teenagers with legal problems of their own, and police work that the defense has characterized as slapdash.

But appeals courts tend not to look at mistakes in the aggregate. Rather, they consider whether any one error represents a violation of an appellant’s constitutional rights or a basic miscarriage of justice.

Appeals courts also generally limit their reviews to what happened on the record at trial and avoid delving into evidence that was not presented to a jury. It is a process that favors appellants whose lawyers aggressively raise objections and exploit gaps in evidence at trial, something Mr. Bermudez’s lawyer, Mr. Kenyon, acknowledges he did not do enough of — in part, he said, because the family lacked the money to fully investigate the case.

In 2002, though, a federal magistrate, Kevin Nathaniel Fox, finally agreed to hear testimony from the five recanting witnesses, as well as from the prosecutor, police detectives and Mr. Bermudez’s alibi witnesses.

He concluded that the prosecutor’s summation had included improper remarks, and that the police never should have allowed witnesses to discuss the mug shot as a group, a blunder he called “impermissibly suggestive and conducive to irreparable misidentification.”?

But he discounted the recantations as unbelievable. He rejected the account of one witness because, he said, her testimony reflected a more precise recollection of events than she had exhibited at trial. On Judge Fox's recommendation, a judge in Federal District Court, Loretta A. Preska, turned down Mr. Bermudez's bid.

Now Mr. Bermudez awaits the judgment on his latest, perhaps final, appeal.

He has a clean disciplinary record and spends evenings reading legal briefs. His wife, whom he met through correspondence, and his children visit him every few weeks. In 15 years his story has not changed.

"I sometimes have to manufacture hope,►►? he said, "because this is a very depressing, dangerous, evil place.►►?

Detective Massanova is now battling his own problems. He is on trial on charges related to the off-duty car accident in 2004 that injured the two women. In an interview, he declined to say whether he still thought Mr. Bermudez killed Mr. Blount.

"Bermudez is in jail because a number of people said he was the shooter,►►? he said. "I can't use a lie detector test on everybody who comes in

http://abcnews.go.com/US/fernando-bermudez-sues-ny-30-million/story?id=12985414

Wrongfully Convicted man Sues New York for $30 Million

By JULIE STRAUS
Feb. 23, 2011
Fernando Bermudez's life story is a tale of injustice and inspiration. He was wrongfully convicted of murder and spent 18 years in prison, sustained by his belief that the truth would prevail.
Over a year after his exoneration, Bermudez, 41, has filed a $30 million lawsuit against the city and state of New York.
"We want to hold the city of New York, its detectives and the New York County District Attorney's Office accountable for the continued injustice dealt to Fernando. They violated his 4th Amendment rights for an unlawful arrest and 14th Amendment rights for due process of law," said his attorney Michael S. Lamonsoff.
Now a free man, Bermudez is determined to bring justice to the judicial system that took nearly two decades of his life. "I want the world to know what happened to me so this doesn't happen to anyone else," he said at the press conference.
Bermudez was 22 when he was convicted in 1991 of murdering a teen outside of a nightclub in New York City. The most damning evidence against him: His photo was misidentified by five teenage witnesses.
The youngsters who put him behind bars later recanted their testimony, however, saying that prosecutors and police had pressured them into pinning Bermudez as the killer. There was no evidence to prove such allegations.

ABCNEWS.com
View Full Size

ABCNEWS.com
Falsely Accused and Wrongly Convicted Watch Video

Toyota Flaws Could Free Convict Watch Video

Wrongfully Convicted Man Freed Watch Video

But at the very least, his pro-bono attorney, Mary Ann Di Bari, said, "The trial was so lopsided. The stories the witnesses gave did not make sense, they were inconsistent with one another."
With no DNA evidence to prove his innocence, Bermudez's fate was left in the hands of the eyewitnesses. His legitimate alibi was too little to spare him a sentence of 23 years to life, the bulk of which he served upstate at the Shawangunk Correctional Facility in Wallkill.
Eyewitness testimonies are the primary source of evidence in cases such as his that lack forensic evidence. Eyewitness misidentifications are the number one cause of wrongful convictions in the United States, according to the New York City-based Innocence Project.

Fernando Bermudez Served Someone Else's Time

Eyewitness mistakes are also the leading factor in 75 percent of post-conviction exonerations in the United States, according to the public policy organization.

Bermudez's case is an example of how difficult it is to overturn convictions without forensic evidence. But after 11 attempts to overturn his conviction, Bermudez's supporters finally succeeded Nov. 9, 2009, when New York State Supreme Court Justice John Cataldo overturned Bermudez's 1991 conviction.

After the ruling, Cataldo said, "I hope for you a much better future."

His family couldn't agree more.

"I love having my daddy home," daughter Carissa, 9, said. "I like when he picks me up at school and I get to show him off. I like that everybody knows I have a daddy now."

She is one of three children born to Bermudez and his wife, Crystal, 36. They met after she saw him on a news program and began writing him in prison. The couple married in 1998.

As a mental health worker, she is the primary breadwinner because Bermudez is under a doctor's care for prison-related post-traumatic stress disorder, earning whatever he can from speaking engagements.

More than his own situation, Bermudez said, he's still concerned about the path that lies ahead for those who remain incarcerated.

Throughout his two decades in prison, Bermudez said, he maintained an unwavering belief that he would someday be exonerated. So he hit the books for the sole purpose of proving his innocence.

Bermudez wanted to understand every aspect of the judicial system that had wronged him. He became deeply invested in reading and writing about other cases of wrongful conviction.

He earned a college degree behind bars. He listened to books on tape in hopes of learning how to pronounce words and hone his storytelling ability. He became an advocate for social justice.

A history buff, Bermudez began educating fellow inmates about historical events. He quickly became known as the "professor" as he taught a Latin American history course to other inmates and gave various lectures about the power of education.

Bermudez also found solace in reading classical literature and writing about the incompetence that contaminated each attempt to overturn his conviction.

He spent the time in his jail cell preparing to share his story of wrongful conviction. He remained confident that one day the truth would set him free.

He also became an active public speaker for the Latino organization within the prison system.

Courtesy Fernando Bermudez

Fernando Bermudez, pictured at a fundraising event for the Innocence Project in May 2010, was wrongfully convicted of murder in 1991 and spent 18 years in prison.

Falsely Accused and Wrongly Convicted Watch Video

Toyota Flaws Could Free Convict Watch Video

Wrongfully Convicted Man Freed Watch Video

"Initially, I was shy and scared to speak in front of large groups of people, but I knew I had to be bold," he said. "Becoming educated and developing public speaking skills was all I focused on while I was in jail. I knew that if I always told the truth that one day I would get to share my story as a free man."

Bermudez finally has the floor to share his story. Since his release, he has spent his days educating people about the injustice that kept him behind bars for 18 years. He has spoken at schools and hearings to address the issue of wrongful conviction.

He remains deeply committed to helping legislate laws that can help protect the innocent from being incarcerated. "Getting the word out in terms of social awareness has become an important part of my life. I want to prevent what happened to me from happening to anyone else," he said prior to addressing Columbia Law School this fall.

His case has not only highlighted the issue of wrongful convictions but raised broader issues along the way.

Bermudez was given $40 upon his release, for instance. The money was taken from the earnings he made while in jail.

Also, there is no law mandating social service agency help for the wrongly convicted upon their release.

Ironically, though, if Bermudez had accepted a plea deal to lesser charges, he would have been entitled to social services after leaving prison.

"I couldn't drive myself crazy wondering 'what if' I had read enough about the law and knew enough about the details of my case to know I was innocent," he said.

"I was honest from day one until the end of my trial. I couldn't stomach lying after 18 years. I wouldn't lie the first time they gave me an out and I wouldn't do it 18 years later."

Bermudez continues to pray that the truth will prevail. He has filed a lawsuit in hopes of gaining $30 million from the city and state of New York for the unwarranted time he spent behind bars for a murder he didn't commit.

http://www.thevillager.com/villager_343/freeingfernando.html

http://www.thevillager.com/villager_343/freeingfernando.htmlFind People

Volume 79, Number 25 | November 25 - December 1, 2009
West and East Village, Chelsea, Soho, Noho, Little Italy, Chinatown and Lower East Side, Since 1933

Photo by Marc Wishengrad
Fernando Bermudez speaking outside Sing Sing after he was released from prison. He then posted bail related to federal charges he faces that still have to be resolved.

Freeing Fernando; Conviction in ’91 killing overturned

By Claude Solnik

It was going to be a day Fernando Bermudez and his attorneys had waited for — or just another in a long series of disappointments. About 75 people waited in Judge Jonathan Cataldo’s courtroom at 111 Centre St. for a decision on whether he would overturn Bermudez’s nearly 20-year-old homicide conviction.

“There are more lawyers here than in the Gotti case,” said Mike Gaynor, a former New York Police Department homicide detective who investigated the case pro bono.

The city was focusing on the latest Gotti trial. But a crowd including a half-dozen attorneys gathered in this courtroom to find out whether a state judge would throw out Bermudez’s 1991 homicide conviction for the shooting of Raymond Blount on 13th St. Bermudez had been sentenced to 23 years to life after teenagers picked his photo in connection with the crime. But since then everybody who picked the photo recanted. Voluminous evidence not only pointed to someone else, but to the fact that the main witness repeatedly told police and prosecutors before the conviction that someone else committed the crime. Prosecutors never pursued that lead.

To lawyers, the Innocence Project, investigators like Gaynor and many others, the conviction never passed the common-sense test. I wrote an article in the early 1990s for The Villager dubbed “The Wrong Man... .” Scott Christianson put Bermudez on the cover of his book “Innocent: Inside Wrongful Conviction Cases.” The New York Times ran a front-page article; Court TV aired an hour-long show. The Innocence Project filed an amicus brief. And a procession of pro bono attorneys looked at the facts and concluded the same thing: Bermudez was innocent beyond a shadow of a doubt. And yet nearly 20 years after his conviction, Fernando Bermudez, now age 40, was about to be brought into the courtroom in handcuffs.

“Why are we even still going through this?” Lawrence Darden, one of Blount’s friends, who was feet away from him during the shooting, asked weeks ago at Justice Cataldo’s hearings. “He’s not the individual.”

Bermudez’s attorneys argued the only evidence came from witnesses who picked his photo and soon recanted. Yet despite these witnesses’ contention that the wrong man was convicted, Fernando Bermudez remained in jail at Elmira, Shawangunk and then Sing Sing. Gaynor, a hard-boiled homicide investigator, sent him occasional letters with the

words “an innocent man” on envelopes. The truth was the case had crumbled almost immediately after a brief trial. The witnesses who identified Fernando Bermudez’s photo soon said it was obvious he wasn’t the killer: Bermudez is 6 feet 2 inches tall, while the killer was far shorter. You couldn’t tell his height in a photo: Lineups were done with Bermudez seated.

“I couldn’t believe he was that big,” Frank Marchany, who was at the shooting and later picked Bermudez’s photo before recanting, said after seeing Bermudez standing. “The dude I remember wasn’t that big.”

But Bermudez remained behind bars, getting a college degree, earning the nickname The Professor, marrying a woman who saw a TV segment about him and watching years waste away. The case became Kafkaesque to the point where it would have been comic, if it weren’t so tragic. The worst thing — or best for Bermudez — was that Efraim Lopez, a.k.a. Shorty, who got into a fight with the murder victim hours before the shooting, had repeatedly told police someone named “Wool Lou” or “Luis” was the killer. He even gave police Wool Lou’s address — about a hundred blocks north of Bermudez’s. And there was a video of it. But Lopez then struck a deal with the District Attorney’s Office to identify Bermudez at trial in return for not being charged. And that identification somehow had been ignored by courts for decades. Wool Lou somehow vanished into the mist.

But Lopez on video could still be heard telling police that “Wool Lou” or “Luis” was the killer and giving police his address. Prosecutors didn’t pay attention. Instead, they made a deal in which Lopez wouldn’t be prosecuted in return for identifying Bermudez, whose photo had been picked, as the shooter. So Lopez went into court, saying “Wool Lou” was simply the name he called Bermudez. The defense said Bermudez’s nickname was “Most.” But the defense couldn’t show who Wool Lou was. And so Bermudez was convicted after what a witness repeatedly said stood up in court, calling him by a name he had never heard. All of this might have been avoided if the defense had brought in the real Wool Lou. That didn’t happen.

There are reasons the defense couldn’t find the real Wool Lou. Prosecutors gave written information regarding Wool Lou to the defense about a day before trial. The video prosecutors gave the defense in which Lopez identifies the shooter as “Wool Lou” and “Luis” was redacted: Wool Lou’s address was removed. I have never understood a reasonable explanation for that. The D.A. argued Bermudez was Wool Lou. Why, then, remove Wool Lou’s address — if they’re the same person? The trial judge denied the defense’s request for more time to find Wool Lou. And so at trial, Lopez insisted Bermudez was Wool Lou and himself was allowed to go free. Bermudez denied he ever heard the name, and insisted Lopez had implicated someone else. But with no one else to show as the real Wool Lou, Bermudez’s denials didn’t have much weight. All statements the main witness made about Wool Lou as the shooter were used to implicate Fernando Bermudez, even though that simply wasn’t his name. In retrospect, it all seems insane. But it happened.

Bermudez passed a lie detector test, had alibi witnesses, no motive and no connection to anyone at the scene — beyond the fact that a few picked his photo. But the fact that several people picked his photo was proof enough, especially when you had a main witness who also said he was the shooter. Soon the witnesses who picked the photo came forward, saying they felt pressured to pick the picture. One witness only testified at trial

after being arrested, handcuffed and taken to court — where he said he testified as he was told. Other witnesses said other charges were dropped against them in return for their testimony.

Despite all this, the verdict stood. One reason is in New York State, cases return to the initial trial judge, who in this instance, repeatedly refused to consider recantations. He argued they were incredible since all witnesses recanted. That seemed absurd to me, because if one witness didn't recant, the judge could challenge the others, since one still implicated Bermudez. The cards seemed stacked against efforts to overturn a conviction. The facts really didn't matter.

"I know who did it," the prosecution's main witness said in a Court TV show, when he thought the cameras were turned off. "And it isn't Bermudez."

But the D.A.'s Office seemed to accept guilt after conviction as an article of faith rather than considering facts. A federal judge finally granted a hearing, saying the state judge should have let witnesses go back into court to recant. The federal judge then handed off the case to a magistrate, who heard testimony and waited two years before issuing a brief decision. By the time a decision was rendered, the recantations were buried beneath a pile of paperwork. It was fairly clear the magistrate wouldn't overturn. If someone's innocent, you don't wait two years to let them go. The magistrate seemed to shut the door by refusing a new trial. Another door had closed, not even with a thud. Or had it?

The federal judge rubber-stamped the magistrate's decision without hearing evidence herself in what seemed verdict by correspondence. I couldn't understand how she could sign her name without hearing testimony, even if she read the trial transcripts and documents, which I doubt she did.

The federal courts, which freed Ruben "Hurricane" Carter, declined to overturn. But maybe the doors hadn't completely closed. The federal magistrate ruled the identification process was "impermissibly suggestive" and "conducive to irreperable misidentification," even though he declined to overturn. The magistrate found that witnesses who picked Bermudez's photo sat together, passed the photo around and discussed it — before being shown the photo in a photo array. In other words, by the time they were picking the photo out of a series, they had already seen Bermudez's picture. They were simply picking a photo they had already seen. They had produced one collective identification rather than independent selections. Witnesses not in the room with those people did not pick Bermudez's photo.

It seemed that William Hellerstein, Bermudez's lead attorney in the federal case, won on facts, but lost in outcome. At that point, Bermudez's defense was in disarray. A return to state court seemed a tough road. The state judge who heard the initial case and — in my view, made a mistake by not allowing the defense time to find Wool Lou and then refusing to let witnesses recant — could swat facts like flies. Nobody seemed to know what to do. The facts were there. But there seemed an absolute failure of the system to absorb information after conviction.

After the loss in federal court, Lesley Risinger, a tall, thin, frail, sole practitioner, took the case. Her mother, Prescilla Chenoweth, had overturned the conviction of Kevin Luis Rojas, another Hispanic man convicted of homicide in Greenwich Village's Sixth Precinct, also based on eyewitness testimony. Chenoweth argued Rojas's identification was hopelessly tainted: Police dragged him from a train — where he was found wearing a jacket the same color as the main suspect — to the crime scene. Several witnesses seeing

Rojas in cuffs and wearing that jacket at the scene identified him, as well as other witnesses that police rounded up from among hundreds in the stopped trains.
A police officer later said Rojas couldn't possibly have committed the crime, because of the time he boarded the train. A witnesses also identified someone else in a stopped train as connected with the crime. That person couldn't possibly have committed the crime because he had boarded the train uptown and never left the train. Bermudez was convicted on a haircut; Rojas, on a jacket. In the end, a judge set Rojas free. Bermudez languished in jail.
Chenoweth wrote a letter to the district attorney arguing these cases were "two peas in a pod." She got no response. Assemblymember Adriano Espaillat, the first statewide official in New York of Dominican heritage, called for further investigation. Paul Von Zielbauer's front-page article in The New York Times attracted additional interest to a case that had fallen through the cracks.
At some point, after crafting lengthy motions, Risinger traveled to Washington, D.C., where she convinced Barry Pollack, an attorney at Washington, D.C.-based Miller & Chevalier, to take the case. Pollack had successfully defended an Enron executive, but also had overturned the conviction of Martin Tankleff for a Long Island homicide. Pollack, Risinger and her husband, Michael, a law professor at Seton Hall University, helped craft a case. Alan Kaufman, at Kelly Drye Warren, also signed on. A team was ready to go. By now, however, the judge who handled the initial case had retired. Fernando Bermudez would have his first hearing before a state judge other than the one who presided over his initial conviction. The new judge, Jonathan Cataldo, seemed, if not shocked, startled by what he heard.
He soon indicated that the improper initial photo identification by itself could be grounds to overturn. Even more important, Pollack, Risinger et al. for the first time had something new on their side: The prosecution's reinvestigation. The district attorney in 2007 commissioned an investigation to find Wool Lou. The prosecution was required to turn over the results of its inquiry, confirming Wool Lou was the man Bermudez's attorneys insisted had done it — and that Wool Lou's alibi didn't hold up. He had left for Kentucky days after the shooting and changed his name. The D.A. had to acknowledge that its main witness repeatedly before trial said someone else — not Bermudez — committed the crime. Not only was someone else undeniably Wool Lou: Wool Lou and Lopez were friends. The kicker was that Fernando Bermudez and Wool Lou looked similar.
Then came one of the must terrifying turns in a terrifying case. I was on vacation when I found out the D.A.'s Office offered Bermudez a plea deal. He could walk free if he admitted guilt to a lesser homicide charge. Bermudez refused, something I think only an innocent man could possibly do. How could he say he was guilty of something he didn't do after serving 18 years in jail? How could he end a case with a lie after lies caused so much pain? Bermudez didn't simply want to walk free. He wanted to be vindicated. He wanted justice.
So here we were waiting for the judge and Fernando Bermudez to enter a courtroom crammed with cameras, minutes away from resolving this case or seeing it plunge back into judicial purgatory. A few people wore "Fernando Bermudez is Innocent" T-shirts beneath jackets. Marc Wishengrad, who made videos of the case crucial in explaining it, and Mickey Garcia, Bermudez's friend, who ran a small printing company, made them. Hopeful lawyers looked on, except for Mary Ann DiBari, who led the investigation that

produced recantations and identification of the real Wool Lou. She was in Israel on a trip with nuns, praying for a miracle, probably, among other things. She wanted to be at the hearing, but her son gave her the trip before the hearing date was set. I thought it was fitting that she was in a land of miracles (and problems) while we waited for a miracle. The truth coming out shouldn't be a miracle. But somehow, it felt like it would be.

The judge entered the courtroom. Cameras clicked as Bermudez arrived. Then came the sound of handcuffs opening as Bermudez sat beside Lesley Risinger and Barry Pollack. The judge spoke briefly at 10:30 a.m, crisply ticking off the defense's requests followed by the words "motion granted." Then he said he "regretted" Bermudez had been put through this and wished him a happier life ahead and left the courtroom. Many people in the courtroom sobbed. Even Gaynor shed a few tears. So did I. The headline that ran in The Villager nearly 20 years ago had been vindicated. Fernando Bermudez was officially the wrong man. He was officially innocent.

Despite a 78-page decision vindicating him, however, Bermudez wasn't a free man. After winning the case, he was cuffed and led back into the system to face a 20-year-old federal charge that was never adjudicated. Bermudez was accused of leading an undercover cop to someone else to buy drugs: A man who had been arrested hooked Bermudez up with the undercover cop, in order to get himself out of trouble. The courts hadn't let Bermudez serve the time simultaneously. Bermudez walked out of the courtroom an innocent man, but not a free one.

A few minutes later, everybody left the courtroom. People talked outside and tried to understand why this moment had been so long in coming. Then calls came in that the D.A. was deciding whether to appeal. The D.A.'s own investigation, in the end, had provided important proof.

But even before anyone knew what the D.A. would do, Fernando Bermudez would get some more good news. He would be released from state prison and finally walk beyond the razor wire, which marked the four corners of his world for so long.

"Fernando's free," Marc Wishengrad said to me from a car, after Bermudez and some others drove away from Sing Sing and all those years of tragedy.

Fernando Bermudez had just left prison, walking into the arms of his wife and some others who had been part of his life, and his legal team, for years. To me — as I looked at him in a photo Wishengrad e-mailed to me at work — he appeared at once like the person who had been arrested so long ago and a little bit more like his own father, who had come into The Villager's office years ago, arguing the case for a son who he insisted was innocent — and providing evidence — at a time when few listened.

"Please excuse my unironed shirt," he reportedly said, although I wasn't there to hear it. "At least my problems have been ironed out."

Fernando Bermudez was free in time for Thanksgiving, although any day might have felt like Thanksgiving. He was headed home to see his children — including Fernando, Jr., who had never seen his father out of jail.

As I write this, Fernando Bermudez is a free, as well as an innocent, man. The great cloud over this case, in addition to Fernando Bermudez's years in jail, is the fact that there must be other Fernando Bermudezes incarcerated, even though the facts paint a clear and convincing picture of innocence.

I only hope the next time a future Fernando makes an argument and presents evidence, that prosecutors, judges and others listen, look, weigh the facts and consider that

innocence isn’t just a fiction, but a real issue in our system, before deciding what to do next.

http://www.nytimes.com/2009/11/23/nyregion/23innocence.html

November 23, 2009

Hope for the Wrongfully Convicted

By JOHN ELIGON

In a recent 79-page decision, a Manhattan judge could well have stopped after the first four sentences of his concluding paragraph and still conveyed his main point: that Fernando Bermudez was no longer guilty of murder.

Instead, the judge, Justice John Cataldo of State Supreme Court in Manhattan, tacked on a fifth sentence that ended with two powerful words: "actual innocence."

By going further than merely finding that the murder conviction was wrongfully obtained — and by ruling unequivocally that Mr. Bermudez, of Washington Heights, did not commit the crime he had spent the past 18 years in prison for — Justice Cataldo injected hope into a movement.

To the layperson, the distinction might seem nuanced, if not trivial. But to advocates for the wrongfully convicted, Justice Cataldo's decision, which was released Nov. 12, clawed toward what they viewed as a groundbreaking push to get New York State courts to focus more on the content of evidence, rather than procedural roadblocks.

"The Bermudez case, this dramatizes the need to ensure that actual innocence is established as a legitimate ground for a hearing," State Senator Eric T. Schneiderman, a Manhattan Democrat, said.

Mr. Schneiderman is one of the sponsors of a bill introduced in the Senate last month that would add a provision to state law allowing judges to overlook procedural errors in a defendant's case and overturn a conviction when the evidence before them "conclusively establishes" innocence.

State law generally allows wrongful-conviction appeals on two grounds. Either new evidence would have to have been discovered, or a defendant's constitutional rights would have to have been violated at trial. The problem, experts say, is that these claims are shrouded in hefty procedural rules.

In a claim of newly discovered evidence, for instance, the defendant must show, among other things, that the evidence could not have been found during the trial. If a judge rules that it could have, then the judge can uphold the conviction, regardless of how compelling the evidence is.

An "actual innocence" statute, experts said, would give judges the leeway to excuse procedural violations, missed deadlines and other mistakes if the evidence is strong enough.

"It elevates substance over form," said Glenn A. Garber, a Manhattan defense lawyer and founder of the Exoneration Initiative, an organization that focuses on innocence claims that lack DNA evidence. "If they know they're required to engage in actual innocence analysis, it sends a message to courts that they have to do more when they're confronted with compelling evidence of innocence."

Opponents of the actual innocence doctrine, however, have stressed the importance of finality in the justice system and fear that these statutes could lead to myriad frivolous claims by desperate prisoners.

The statute would not apply to cases in which there is DNA evidence, as those are governed by their own laws, experts said. But most cases lack DNA evidence.

One of Mr. Garber's cases could be the next litmus test for actual innocence claims in New York. On Monday, his client, William McCaffrey, is scheduled to appear in State Supreme Court in Manhattan on a claim that he is not guilty of the rape for which he has been imprisoned for the past four years. In addition to appeals based on DNA and newly discovered evidence, Mr. McCaffrey's petition also includes an actual innocence claim.

Advocates of the actual innocence doctrine have been riding a swell of momentum over the past several months.

In July, a State Supreme Court justice in Brooklyn ruled that Jonathan Wheeler-Whichard was innocent of a murder he had been convicted of in 1996, and experts said they believed it was the first time a judge in the state had overturned a conviction based on an actual innocence petition.

In August, the United States Supreme Court made the rare move of ordering a federal trial court in Georgia to consider the case of Troy Davis, who is on death row in state prison for the 1989 murder of an off-duty police officer. Mr. Davis made a direct habeas corpus appeal to the Supreme Court on actual innocence grounds. Federal courts have been especially skeptical of actual innocence claims and do not recognize them as a ground for overturning a conviction.

“This court has never held that the Constitution forbids the execution of a convicted defendant who had a full and fair trial but is later able to convince a habeas court that he is ‘actually’ innocent,” Justice Antonin Scalia wrote in his dissent to the Davis decision.

Although no New York appellate court has ever recognized actual innocence as a ground for an appeal, the judges in the Bermudez and Wheeler-Whichard cases spelled out what they believed it meant in their decisions.

“I am now prepared to rule that, at least under the circumstances of this case, such a claim of actual innocence may be brought and the standard of proof for determining it is ‘by clear and convincing evidence,’ ” Justice Joseph K. McKay of State Supreme Court in Brooklyn wrote in deciding the Wheeler-Whichard case.

In Mr. Bermudez’s case, Justice Cataldo found that there was newly discovered evidence as well as a constitutional violation that led him to overturn the conviction.

But Justice Cataldo did not stop at those findings.

“I find the due process clause of our state Constitution requires a procedural mechanism be provided for an incarcerated defendant to bring a post-conviction motion upon a claim of actual innocence,” the judge wrote.

And so he ruled that the new evidence established that Mr. Bermudez was innocent, a step that experts said was important because it prevented the prosecution — short of a reversal by an appellate court — from retrying him. It also helped Mr. Bermudez’s chances of collecting money from the state.

Mr. Bermudez had been petitioning since 1994 for a state court to grant him a hearing to consider the evidence of his innocence, according to Lesley Risinger, one of his lawyers. But procedural roadblocks prevented him from getting a hearing until this year.

As he left Sing Sing prison on Friday, Mr. Bermudez said he was hoping his release would stand for something more.

“This is a day,” he said, “for other people to have hope that justice is possible in this country.”

http://truthinjustice.org/fernando-bermudez.htm

www.nytimes.com
The New York Times
ON THE WEB

November 13, 2009

Man Jailed for ’91 Murder Is Cleared by Judge

By JOHN ELIGON

A Manhattan judge ruled on Thursday that a man who had spent 18 years in prison for murder was innocent of the crime, sending a cathartic jolt through a courtroom packed with his friends and family members.

The prisoner, Fernando Bermudez, was not immediately released, however, as his lawyers must still sort out with federal authorities the status of a sentence on a drug distribution charge that he pleaded guilty to after he was arrested in the murder case. The time he served in state prison does not count toward his federal sentence of 27 months, but Barry J. Pollack, one of Mr. Bermudez’s lawyers, said he would appeal for his client’s release.

Mr. Bermudez, 40, broke down as Justice John Cataldo of State Supreme Court overturned his conviction. He whispered “thank you” to his lawyers, the judge and his supporters, who sobbed and applauded. He turned toward the gallery and whispered, “I love you,” then hugged his lawyers before being taken away in handcuffs.

“I hope for you a much better future,” Justice Cataldo told Mr. Bermudez.

Prosecutors continue to maintain that Mr. Bermudez is in fact guilty of the murder, in which Raymond Blount, 16, was gunned down on the street after a fight inside a Greenwich Village club in 1991. Mark Dwyer, the chief assistant Manhattan district attorney, said his office was deciding whether to appeal.

In his ruling, Justice Cataldo did more than overturn the conviction, dismissing the charges altogether. Short of a reversal by an appellate court, prosecutors cannot retry Mr. Bermudez for the crime, Mr. Pollack said.

James Estrin/The New York Times

Fernando Bermudez at Sing-Sing in 2007

A year after Mr. Bermudez’s 1992 conviction, five witnesses who had identified him as the killer at trial recanted, saying in sworn affidavits that, they were coerced or manipulated by the police and prosecutors to identify Mr. Bermudez as the killer. Several of those witnesses reiterated their recantations in September at a hearing before Justice Cataldo.

This was the 11th attempt to overturn his conviction by Mr. Bermudez, whose case had received a lengthy examination by The New York

Times in 2007.

Lawyers and advocates for the wrongfully convicted said the significance of Thursday's ruling was twofold. They said it was one of the rare instances in New York in which a judge had ruled that a defendant was innocent without the presence of exonerating DNA evidence. They also said that by ruling that Mr. Bermudez was innocent, Justice Cataldo had bolstered the prisoner's chance of collecting compensation from the state.

"This case, like the overwhelming number of wrongful convictions, does not have the advantage of DNA," said Scott Christianson, the author of "Innocent: Inside Wrongful Conviction Cases." "So for this judge to assess all the evidence in the case and come to this decision is quite unusual."

In his 79-page decision, Justice Cataldo wrote that Mr. Bermudez's rights were violated because the police had allowed prosecution witnesses to view Mr. Bermudez's mug shot as a group and to discuss his resemblance to the killer. Justice Cataldo also found that the prosecution should have known before sentencing that one of its cooperating witnesses, Efraim Lopez — a teenager whom Mr. Blount had punched at the club — had given false testimony.

"I find no credible evidence connects Fernando Bermudez to the homicide of Mr. Blount," Justice Cataldo wrote. "All of the people's trial evidence has been discredited: the false testimony of Efraim Lopez and the recanted identifications of strangers. I find, by clear and convincing evidence, that Fernando Bermudez has demonstrated he is innocent of this crime."

But prosecutors have contended that witnesses may have been pressured into changing their testimony.

"We don't think the defense has shown anything wrong with the verdict," Mr. Dwyer said.

Outside the courthouse, Mr. Bermudez's supporters beamed and waved shirts that read "Fernando Bermudez Is Innocent" for television cameras.

When Justice Cataldo declared Mr. Bermudez to be innocent, emotion flooded the tense courtroom.

"I couldn't even breathe," Christine Bermudez, Mr. Bermudez's sister, said. "My heart just stopped."

But Mr. Bermudez's father, Frank, who lives in Washington Heights, was so nervous he could not stick around to watch. He left before the start of the proceeding and returned to find his daughter weeping in the courthouse lobby. She told him that his son had been exonerated. "I was crying, too," Frank Bermudez said.

http://www.kelleydrye.com/news/press_releases/2201

November 12, 2009
Manhattan Supreme Court Justice John A. Cataldo vacated the conviction of Fernando Bermudez for the 1991 murder of Raymond Blount at the Marc Ballroom in New York City.

Kelley Drye & Warren LLP partner **Alan R. Kaufman**, who is the former chief of the criminal division of the U.S. Attorney's Office for the Southern District of New York, New Jersey attorney Lesley Risinger, the Innocence Project at the Benjamin N. Cardozo School of Law, and Barry J. Pollack of Miller & Chevalier in Washington, D.C. provided *pro bono* representation for Mr. Bermudez.

In a complete victory for the defendant, Judge Cataldo wrote the following in his decision and order:

"I find no credible evidence connects Fernando Bermudez to the homicide of Mr. Blount. All of the People's trial evidence has been discredited: the false testimony of Efraim Lopez and the recanted identification of strangers. No other evidence supports a finding that Mr. Bermudez committed this crime.

I find by clear and convincing evidence, that Fernando Bermudez has demonstrated he is innocent of this crime.

Accordingly, the judgment of the conviction is vacated, and the indictment is dismissed."

The defendant's motion to vacate his conviction was granted on the grounds of newly discovered evidence; that material evidence at the trial was false or should have been known by the prosecutor to be false; and unduly suggestive identification procedures took place which violated the defendant's state and federal constitutional rights.

Mr. Bermudez has been in prison in Sing Sing for 18 years for the murder. He consistently maintained that he was never at the scene of the crime. He had presented multiple alibi witnesses. No forensic evidence, no blood, no fingerprints, no DNA evidence connected Mr. Bermudez to the murder. The conviction was based solely on the evidence of eyewitnesses who later recanted their testimony. Four of the eyewitnesses jointly viewed Mr. Bermudez's mug shot with one identifying him and the others then agreeing the photo resembled the killer.

Alan R. Kaufman said, "We are overjoyed that Fernando Bermudez's conviction for a crime he did not commit has been finally overturned. Justice Cataldo's decision unequivocally demonstrates that the authorities mishandled the investigation and ignored clear indications that the wrong man was being

charged and prosecuted. It is unfortunate that the New York District Attorney's Office, which I hold in high esteem, inexplicably chose to oppose Mr. Bermudez's legal challenge in the face of such clear evidence that an innocent man was in prison. Thankfully, that continuing injustice has now been ended."

To read the Fernando Bermudez decision and order, click here.

Contact:

Alan R. Kaufman, Esq.
(212) 808.5195
akaufman@kelleydrye.com

http://www.nytimes.com/2009/08/14/nyregion/14retrial.html?emc=eta1

August 14, 2009

On 11th Try, Man Convicted in ’91 Killing Gets Hearing

By PAUL von ZIELBAUER

After 11 legal attempts to overturn a 1992 Manhattan murder conviction that was based on testimony since recanted or found to be false, Fernando Bermudez will have a day in court next month that his defenders say could free him from an upstate prison.

A state judge has ordered a hearing on Sept. 1 to determine, in effect, whether Mr. Bermudez deserves a new trial on charges that he fatally shot a man on a Greenwich Village street corner nearly two decades ago.

Last week, Justice John Cataldo of State Supreme Court in Manhattan indicated his concern that witnesses who placed Mr. Bermudez at the scene of the shooting may have conferred before identifying him and, further, that the prosecution’s only witness to the actual shooting lied in parts of his testimony.

“The People’s only trial witness who testified to having known the shooter prior to the night of the crime, is now conceded by the People to have committed perjury throughout his trial testimony,” Justice Cataldo wrote in an Aug. 5 decision.

Mr. Bermudez, now 40, was a young man living with his parents in Upper Manhattan when he was convicted in 1992 in the murder of Raymond Blount on the corner of University Place and 13th Street. Several of Mr. Blount’s friends picked Mr. Bermudez’s photo from an array of suspects after the police improperly allowed them to openly discuss his resemblance to the man they saw pull the trigger, a federal magistrate later found. But that magistrate found in 2004 that the impropriety was not sufficient to overturn the conviction.

Mark Dwyer, the chief assistant district attorney in Manhattan, said in an interview that if Justice Cataldo ordered a new trial, his office would vigorously appeal the order. Mr. Bermudez has always maintained that he did not know Mr. Blount and had never met the witnesses who picked out his photo. He and his friends who were with him that night said they had not been at the crime scene at any time on the night of the killing.

Since his conviction, he has married, become a father and earned two associate’s degrees through correspondence programs at the Sing Sing Correctional Facility in Ossining, N.Y.

This month, he began his 19th year as New York State Prisoner No. 92A8325. His lawyers have spent most of that time pressing 11 appeals or motions to set aside his conviction. None have led a judge to question the conviction, until last week.

In ordering a hearing, Justice Cataldo said in his 13-page decision that the 2004 magistrate's finding that witnesses had conferred before collectively picking Mr. Bermudez's mug shot "cannot be ignored." If he comes to the same conclusion as the magistrate, Justice Cataldo wrote, state law would require a reversal of the conviction and a new trial.

Mr. Dwyer said prosecutors would present Justice Cataldo with "additional evidence" not seen by the federal magistrate in 2004, to argue that witnesses did not discuss and collectively pick Mr. Bermudez's photo.

"We will continue to represent the evidence that has persuaded triers of fact in the past that there is no merit to defendant's claim," Mr. Dwyer said. But Justice Cataldo said evidence presented to him by Mr. Bermudez's lawyers raised "a viable claim of actual innocence" that would be explored at the Sept. 1 hearing. Justice Cataldo also ordered an inquiry into whether prosecutors should have known before Mr. Bermudez's sentencing that the prosecution's only witness to Mr. Blount's killing had lied on the stand.

That witness, Efraim Lopez, identified Mr. Bermudez at trial as someone he had known for years, a familiar figure who sold drugs in the neighborhood around West 92nd Street. Mr. Lopez told the court that he knew Mr. Bermudez by his street name, Wool Lou, because he said Mr. Bermudez sold "wools," slang for crack cocaine.

None of those assertions were true, prosecutors have since acknowledged. In fact, Mr. Lopez was describing another man, Luis Munoz — the real Wool Lou. In 1993, Mr. Lopez signed a sworn affidavit recanting his testimony and saying that before the trial, he had been coerced by police detectives to identify Mr. Bermudez as the killer.

In late 2007, after The New York Times published an examination of the Bermudez case, investigators from the Manhattan district attorney's office interviewed Mr. Munoz for the first time. In court papers, they described him as "quite cooperative" and having no knowledge of the 1991 killing.

The Sept. 1 hearing could signify an extraordinary turning point in a 18-year effort among numerous criminal defense lawyers to clear Mr. Bermudez's name and overturn his conviction, said one of his lawyers, Barry J. Pollack.

“The facts keep getting stronger and stronger,” Mr. Pollack said in an interview Tuesday, “and the conviction keeps getting weaker and weaker.”

Prosecutors have acknowledged in court that given the recantations and false testimony, there is virtually no evidence to prosecute Mr. Bermudez again.

http://www.snitching.org/2009/08/in_the_newsrecantation.html

August 13, 2009

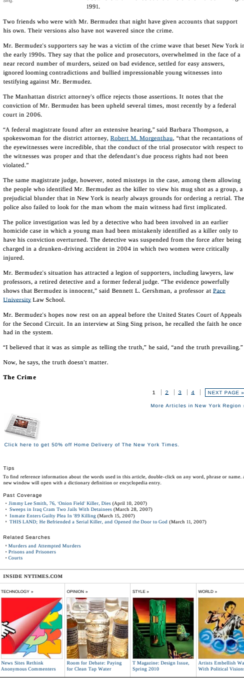
Posted by Alexandra Natapoff at 12:59 PM

In the News--Recantation

When a criminal informant recants his testimony after a defendant has already been convicted, it is typically very difficult for that defendant to get a new trial. This happens more often than you might think--informants change their stories all the time, but the rules of criminal procedure and habeas corpus make it very hard to upset the original conviction. Today's New York Times reports on Fernando Bermudez, a man who tried 11 times to get his 1992 murder conviction overturned after the main witness recanted. A new judge has finally held that he might be entitled to a new trial. Mr. Bermudez also has the good fortune to be represented by my exceptionally skilled former colleague Barry Pollack, partner at Miller Chevalier.

HOME PAGE | MY TIMES | TODAY'S PAPER | VIDEO | MOST POPULAR | TIMES TOPICS
Get Home Delivery | Log In | Register Now
The New York Times
N.Y. / Region
N.Y. / Region | All NYT | Search
WORLD | U.S. | N.Y. / REGION | BUSINESS | TECHNOLOGY | SCIENCE | HEALTH | SPORTS | OPINION | ARTS | STYLE | TRAVEL | JOBS | REAL ESTATE | AUTOS
THE CITY | IN THE REGION | N.Y./REGION OPINIONS
THE DNA ANCESTRY PROJECT — Travel back in time 150,000 years... Trace your ancestry with DNA — powered by genebase — www.dnaancestryproject.com
Ads by Google
Advertise on NYTimes.com

Accusers Recant, but Hopes Still Fade in Sing Sing



New York City Police Department

Police tape marked the crime scene at 13th Street and University Place in August 1991.

By PAUL von ZIELBAUER
Published: April 13, 2007

SIGN IN TO E-MAIL OR SAVE THIS
PRINT
SINGLE PAGE
REPRINTS
SHARE
OFFICIAL SELECTION SUNDANCE FILM FESTIVAL

After five young people identified him in court as the murderer, Fernando Bermudez was convicted in 1992 of killing a 16-year-old youth in Greenwich Village. No other evidence — a gun, a fingerprint or a clear motive — tied him to the crime.

He has been jailed ever since, despite the fact that for 14 years, the same five witnesses have insisted their testimony was false.

The five gave sworn statements in 1993 that Mr. Bermudez was not the killer and that their testimony had been manipulated by the police and prosecutors. They did so at the risk of being charged with perjury, and they have stuck with those accounts even as they have approached middle age, taken on steady jobs and raised families.

Nonetheless, the recantations have had little impact. The same judicial system that once relied on the witnesses now no longer believes them.

"What does it take, with the system that we have, to reinvestigate a wrongful conviction?" said Scott Christianson, a supporter of Mr. Bermudez and a former state criminal justice official. "It's really beyond me."

The reason is based in the prevailing wisdom of the American justice system, which views recantations as untrustworthy, acts not of conscience, but of sympathy or bribery or coercion. That view is so deeply ingrained that one judge, rejecting one of Mr. Bermudez's appeals in 1995, said candidly that five recantations were simply too many to believe.

In recent years, though, the reliability of recantations is being re-evaluated, driven in part by the growing number of cases in which DNA evidence has cleared people who had been locked behind bars for years. In several recent cases, DNA evidence has shown not only that people were innocent, but that witnesses who had recanted really were telling the truth.

"Blanket suspicion of recantations is clearly not warranted," said Rob Warden, executive director of the Center on Wrongful Convictions at the Northwestern University School of Law. "We know now that many of the traditional precepts that have been held by the courts are not warranted, and yet the courts continue to cling to them."

Mr. Bermudez, 38, a husband and father of three, has no exculpatory DNA evidence in his corner. He is serving a sentence of 23 years to life and has watched appeal after appeal fail.

Yet he has never wavered from the account he first told investigators: He did not know the victim, Raymond Blount, he had no motive to shoot him and he was elsewhere with friends at the time of the murder in August 1991.

Two friends who were with Mr. Bermudez that night have given accounts that support his own. Their versions also have not wavered since the crime.

Mr. Bermudez's supporters say he was a victim of the crime wave that beset New York in the early 1990s. They say that the police and prosecutors, overwhelmed in the face of a near record number of murders, seized on bad evidence, settled for easy answers, ignored looming contradictions and bullied impressionable young witnesses into testifying against Mr. Bermudez.

The Manhattan district attorney's office rejects those assertions. It notes that the conviction of Mr. Bermudez has been upheld several times, most recently by a federal court in 2006.

"A federal magistrate found after an extensive hearing," said Barbara Thompson, a spokeswoman for the district attorney, Robert M. Morgenthau, "that the recantations of the eyewitnesses were incredible, that the conduct of the trial prosecutor with respect to the witnesses was proper and that the defendant's due process rights had not been violated."

The same magistrate judge, however, noted missteps in the case, among them allowing the people who identified Mr. Bermudez as the killer to view his mug shot as a group, a prejudicial blunder that in New York is nearly always grounds for ordering a retrial. The police also failed to look for the man whom the main witness had first implicated.

The police investigation was led by a detective who had been involved in an earlier homicide case in which a young man had been mistakenly identified as a killer only to have his conviction overturned. The detective was suspended from the force after being charged in a drunken-driving accident in 2004 in which two women were critically injured.

Mr. Bermudez's situation has attracted a legion of supporters, including lawyers, law professors, a retired detective and a former federal judge. "The evidence powerfully shows that Bermudez is innocent," said Bennett L. Gershman, a professor at Pace University Law School.

Mr. Bermudez's hopes now rest on an appeal before the United States Court of Appeals for the Second Circuit. In an interview at Sing Sing prison, he recalled the faith he once had in the system.

"I believed that it was as simple as telling the truth," he said, "and the truth prevailing."

Now, he says, the truth doesn't matter.

The Crime

1 | 2 | 3 | 4 | NEXT PAGE »
More Articles in New York Region »

Click here to get 50% off Home Delivery of The New York Times.

Multimedia

FEB. 6, 1992 Mr. Bermudez is convicted of second-degree murder after an 11-day trial.
Fernando Bermudez | Luis Muñoz ("Wool Lou")
Graphic
Aftermath of a Shooting

Related

Witness Recantation Statements

Okpa Iyesi (PDF)
Witness and friend of Raymond Blount, the victim. (July 23, 1993)

Frank Kent (PDF)
Witness and friend of Mr. Blount. (July 22, 1993)

Efrain Lopez (PDF)
Witness, punched by Mr. Blount prior to the shooting. (Aug. 6, 1993)

Michael Thompson (PDF)
Witness and friend of Mr. Blount. (July 14, 1993)

Jamie Velasquez (PDF)
Witness and friend of Mr. Blount. (Aug. 21, 1993)

Enlarge This Image

James Estrin/The New York Times

Fernando Bermudez, 38, at Sing Sing.

Tips

To find reference information about the words used in this article, double-click on any word, phrase or name. A new window will open with a dictionary definition or encyclopedia entry.

Past Coverage

- Jimmy Lee Smith, 76, 'Onion Field' Killer, Dies (April 10, 2007)
- Sweeps in Iraq Cram Two Jails With Detainees (March 28, 2007)
- Inmate Enters Guilty Plea In '89 Killing (March 15, 2007)
- THIS LAND; He Befriended a Serial Killer, and Opened the Door to God (March 11, 2007)

Related Searches

- Murders and Attempted Murders
- Prisons and Prisoners
- Courts

More Articles in New York Region »

Politics E-Mail
Keep up with the latest news from Washington with the daily Politics e-mail newsletter.
Sign Up
See Sample | Privacy Policy

Ads by Google what's this?
"Six Sigma" Certified? 100% Online-Six Sigma Certificate From Villanova -Find Out More Now. www.VillanovaU.com/SixSigma
Delicious Recipes Find Thousands of Recipes and Menu Ideas - Visit KitchenDaily Now! KitchenDaily.com
VOIP For $8.33 / Month Unlimited Calling, Voice Mail, Free Setup & 2nd Line. No Contract www.PhonePower.com
Resurrection of Jesus Did Jesus Rise From the Dead? Discover the Facts From Scholars www.y-Jesus.com/Resurrection
High-Touch Customer Care Find out why the world's top brands outsource their customer care to us www.GlobalResponse.com
Online MS in Finance Earn a Master of Science in Finance Online at Northeastern University. OnlineMSF.NEU.Edu
Advertise on NYTimes.com

MOST POPULAR
E-MAILED | BLOGGED | SEARCHED | VIEWED
1. Hallucinogens Have Doctors Tuning In Again
2. Steven Strogatz: Change We Can Believe In
3. Maureen Dowd: Worlds Without Women
4. Paul Krugman: Georgia on My Mind
5. Ross Douthat: The Better Pope
6. San Francisco Detours Into Reality Tourism
7. Mangia, Mangia!
8. 10 Simple Google Search Tricks
9. Tormented Doctor Turns to Directing
10. Study Finds a 1.2 Percent Increase in Faculty Pay, the Smallest in 50 Years
Go to Complete List »

The career of Dennis Hopper
ALSO IN MOVIES »
- Married? A bit bored? See a shootout
- Conversion of movies to 3-D
nytimes.com MOVIES

ADVERTISEMENTS
Follow us on Twitter
Find your dream home with The New York Times Real Estate
Watch today's top videos
Fan us on Facebook
The New York Times The Weekender Friday, Saturday, Sunday GO
Missed a day of The New York Times? With TimesReader 2.0, you'll always have the past 7 issues on hand. LEARN MORE
Get your small business big-time attention. Introducing Self-Service Advertising on NYTimes.com. An easy and affordable way to create your own online ads. Get Started »
Ads by Google what's this?
Restaurants For Sale The source for buying and selling restaurants, bars and nightclubs. www.restaurants-for-sale.com

INSIDE NYTIMES.COM
TECHNOLOGY » News Sites Rethink Anonymous Commenters
OPINION » Room for Debate: Paying for Clean Tap Water
STYLE » T Magazine: Design Issue, Spring 2010
WORLD » Artists Embellish Walls With Political Visions
OPINION » Strogatz: Change We Can Believe In — Differential calculus can show you the best path from A to B, and Michael Jordan's dunks can help explain why that is.
TELEVISION » The Doctor Is In (the Director's Chair)

Home | World | U.S. | N.Y. / Region | Business | Technology | Science | Health | Sports | Opinion | Arts | Style | Travel | Jobs | Real Estate | Autos | Back to Top
Copyright 2007 The New York Times Company | Privacy Policy | Search | Corrections | RSS | First Look | Help | Contact Us | Work for Us | Site Map

Kowloon Bowloon Nelson Hong Kong - Sun 19 Dec

Hong Kong Sunday, December 19, 2010 Sunset: 16:29 Hong Kong Time

N. Y. Times Sunday, December 19, 2010 Sunset: 16:29 New York Time

Hong Kong Weather: 15 °C, Partly Cloudy, Humidity: 77%, Wind: 19 km/h, Visibility: 10 km, Pressure: 1018 mb, Dew Point: 10 °C

N. Y. Times Weather: 3 °C, Partly Cloudy, Humidity: 71%, Wind: 19 km/h, Visibility: 16 km, Pressure: 1018 mb, Dew Point: -8 °C

Home Page

Hong Kong Weather

Hong Kong Sunset

Hong Kong Sunrise

Hong Kong Time

Hong Kong Time Zone

Hong Kong Time Zone Map

Hong Kong Time Zone Map

Hong Kong Time Zone Map

THE Great Courses by THE TEACHING COMPANY
BUILDING GREAT SENTENCES: EXPLORING THE WRITER'S CRAFT
On Sale Now—Save up to 70%
Find Out More >>
Available on CD or DVD!
Order Now
www.teach12.com
Ads by Google
Advertise on NYTimes.com

Accusers Recant, but Hopes Still Fade in Sing Sing

Published: April 13, 2007

(Page 3 of 4)

SIGN IN TO E-MAIL OR SAVE THIS
PRINT
SINGLE PAGE
REPRINTS
SHARE

Witnesses had said the gunman was light-skinned, thin, Hispanic, 5 feet 11 inches tall and 165 pounds, a description that the defense later argued matched that of the man listed in police files as Wool Lou. Mr. Bermudez was darker, and he stood a muscular 6-foot-1 and weighed 205 pounds.

Multimedia

FEB. 6, 1992 Mr. Bermudez is convicted of second-degree murder after an 11-day trial.
Fernando Bermudez
Luis Muñoz ("Wool Lou")
Graphic
Aftermath of a Shooting

Related

Witness Recantation Statements

Okpa Iyesi (PDF)
Witness and friend of Raymond Blount, the victim. (July 23, 1993)

Frank Kent (PDF)
Witness and friend of Mr. Blount. (July 22, 1993)

Efrain Lopez (PDF)
Witness, punched by Mr. Blount prior to the shooting. (Aug. 6, 1993)

Michael Thompson (PDF)
Witness and friend of Mr. Blount. (July 14, 1993)

Jamie Velasquez (PDF)
Witness and friend of Mr. Blount. (Aug. 21, 1993)

Nonetheless, he was brought to the Sixth Precinct station for questioning by Detective Daniel Massanova.

Mr. Bermudez told the detective and an assistant district attorney, James G. Rodriguez, that he and three of his buddies had spent the night of the shooting driving around Manhattan looking for girls.

At 2 a.m. they ate at a restaurant a few blocks from the shooting, he acknowledged. But he said they had left the area by 2:30, a half-hour before the shooting, and were back in Inwood by 3 a.m.

Mr. Bermudez was then placed in a police lineup in which he and several "fillers" were told to sit down instead of standing. His supporters say it had the effect of reducing the disparity between his height and that of the gunman described by witnesses.

One witness, Nkosi Boyce, later told a federal magistrate that detectives at the lineup had repeatedly asked him about Mr. Bermudez.

"They said, 'Is that him?' " Mr. Boyce testified. "I said, 'It's not him.' They asked me again, 'Is that him?' I said, 'That's not him.' "

The prosecution did not ask Mr. Boyce to testify at trial.

Mr. Bermudez was represented by Barry Kenyon, a lawyer who hired a retired detective to help him prepare for trial. But they had little time. The district attorney's office did not turn over its evidence until the last business day before the trial's start in January 1992.

With only a weekend to study thousands of pages of witness statements, autopsy reports and grainy videotape of Mr. Lopez's statement, Mr. Kenyon did little to challenge the credibility of the five witnesses. Four of the five, it turned out, had arrest or conviction records. One, Michael Thompson, had a gun possession charge that was dropped by the district attorney just before trial. That fact was never presented to the jury.

The key witness, Mr. Lopez, seemed the most troubled of all, a convicted car thief who said he routinely smoked marijuana. He was aware, he acknowledged later, that he might be charged if he did not cooperate with authorities.

At trial, Mr. Lopez's role was crucial. On Jan. 28, 1992, he pointed to Mr. Bermudez and identified him as the killer. Four other witnesses did the same.

Still, the prosecutor, Mr. Rodriguez, lacked a clear motive to explain the killing, since Mr. Bermudez did not know anyone involved. Instead, he depicted Mr. Bermudez as a spoiled brat who dealt drugs, slept late, thought highly of himself and, thus, thought nothing of killing someone on a whim. And he suggested that Mr. Bermudez had suddenly begun wearing eyeglasses during the trial to confuse witnesses about his appearance.

It was enough, even without physical evidence. On Feb. 6, 1992, after an 11-day trial, a jury convicted Mr. Bermudez, then 22, of second-degree murder.

The Recantations

Years later, one witness, Mr. Thompson, says he still struggles to explain why he testified against Mr. Bermudez.

"When you're not educated or you just don't know, when the cops tell you to do something, you do it," said Mr. Thompson, 34, a married father who works at a private clinic for the mentally ill. "You figure they got the guy, he must have done it."

Another witness, Okpa Iyesi, is now an elder at a church in Maryland. In his recantation, he said the prosecutor had lied to him, telling him that ballistics evidence already pointed to Mr. Bermudez as the killer, according to court records.

Ms. Velazquez, the witness, said she told Mr. Rodriguez on the eve of the trial that she did not think Mr. Bermudez was the killer, the court records show.

And Mr. Lopez said he knew all along that Mr. Bermudez was not Wool Lou. But he said the authorities threatened to charge him with murder if he didn't cooperate. And he said Detective Massanova had made it obvious that he wanted him to pick out the Bermudez photograph.

"He didn't tell me, 'Pick him,' but he was like, pick him," Mr. Lopez said in an interview.

Detective Massanova, in an interview, denied coaxing Mr. Lopez. He and the prosecutor have denied any improprieties.

« PREVIOUS PAGE | 1 | 2 | 3 | 4 | NEXT PAGE »
More Articles in New York Region »

Click here to get 50% off Home Delivery of The New York Times.

Tips

To find reference information about the words used in this article, double-click on any word, phrase or name. A new window will open with a dictionary definition or encyclopedia entry.

Past Coverage

- Jimmy Lee Smith, 76, 'Onion Field' Killer, Dies (April 10, 2007)
- Sweeps in Iraq Cram Two Jails With Detainees (March 28, 2007)
- Inmate Enters Guilty Plea In '89 Killing (March 15, 2007)
- THIS LAND; He Befriended a Serial Killer, and Opened the Door to God (March 11, 2007)

Related Searches

- Murders and Attempted Murders
- Prisons and Prisoners
- Courts

More Articles in New York Region »

Today's Headlines Daily E-Mail

Sign up for a roundup of the day's top stories, sent every morning.
Sign Up
See Sample | Privacy Policy

MOST POPULAR

E-MAILED | BLOGGED | SEARCHED | VIEWED

1. Hallucinogens Have Doctors Tuning In Again
2. Steven Strogatz: Change We Can Believe In
3. Maureen Dowd: Worlds Without Women
4. Paul Krugman: Georgia on My Mind
5. Ross Douthat: The Better Pope
6. San Francisco Detours Into Reality Tourism
7. Mangia, Mangia!
8. 10 Simple Google Search Tricks
9. Tormented Doctor Turns to Directing
10. Study Finds a 1.2 Percent Increase in Faculty Pay, the Smallest in 50 Years

Go to Complete List »

What you get for ... $350,000
ALSO IN REAL ESTATE »
• In Brazil, a jungle home
• A painter's six-room canvas
nytimes.com REAL ESTATE

ADVERTISEMENTS
Watch today's top videos
The new issue of T is here
Follow us on Twitter
Watch today's top videos
The New York Times The Weekender Friday, Saturday, Sunday GO

SEE THE NEWS IN THE MAKING. Don't miss TimesCast. Behind the Scenes in the Newsroom. nytimes.com/timescast

Ads by Google what's this?
Delicious Recipes
Find Thousands of Recipes and Menu Ideas - Visit KitchenDaily Now!
KitchenDaily.com
"Six Sigma" Certified?
100% Online-Six Sigma Certificate From Villanova -Find Out More Now.
www.VillanovaU.com/SixSigma
VOIP For $8.33 / Month
Unlimited Calling, Voice Mail, Free Setup & 2nd Line. No Contract
www.PhonePower.com
Resurrection of Jesus
Did Jesus Rise From the Dead? Discover the Facts From Scholars
www.y-Jesus.com/Resurrection
High-Touch Customer Care
Find out why the world's top brands outsource their customer care to us
www.GlobalResponse.com
Online MS in Finance
Earn a Master of Science in Finance Online at Northeastern University.
OnlineMSF.NEU.Edu
Advertise on NYTimes.com

Ads by Google what's this?
Restaurants For Sale
The source for buying and selling restaurants, bars and nightclubs.
www.restaurants-for-sale.com

INSIDE NYTIMES.COM

TECHNOLOGY » News Sites Rethink Anonymous Commenters
OPINION » Room for Debate: Paying for Clean Tap Water
STYLE » T Magazine: Design Issue, Spring 2010
WORLD » Artists Embellish Walls With Political Visions
OPINION » Strogatz: Change We Can Believe In — Differential calculus can show you the best path from A to B, and Michael Jordan's dunks can help explain why that is.
TELEVISION » The Doctor Is In (the Director's Chair)

Copyright 2007 The New York Times Company | Privacy Policy | Search | Corrections | RSS | First Look | Help | Contact Us | Work for Us | Site Map

HOME PAGE | MY TIMES | TODAY'S PAPER | VIDEO | MOST POPULAR | TIMES TOPICS
Get Home Delivery | Log In | Register Now
The New York Times
N.Y. / Region
N.Y. / Region | All NYT | Search
WORLD | U.S. | N.Y. / REGION | BUSINESS | TECHNOLOGY | SCIENCE | HEALTH | SPORTS | OPINION | ARTS | STYLE | TRAVEL | JOBS | REAL ESTATE | AUTOS
THE CITY | IN THE REGION | N.Y./REGION OPINIONS
THE Great Courses by The Teaching Company — BUILDING GREAT SENTENCES: EXPLORING THE WRITER'S CRAFT — On Sale Now—Save up to 70% — Find Out More >> — Available on CD or DVD! Order Now
www.teach12.com Ads by Google
Advertise on NYTimes.com

Accusers Recant, but Hopes Still Fade in Sing Sing

Published: April 13, 2007

(Page 4 of 4)

SIGN IN TO E-MAIL OR SAVE THIS
PRINT
SINGLE PAGE
REPRINTS
SHARE

Approached by Mr. Bermudez's first appeals lawyer in 1993, each witness submitted a sworn affidavit retracting the identification of him as Mr. Blount's killer. But recantations have long been regarded with skepticism. Jury verdicts are meant to offer finality, legal experts say. Recantations undermine that certainty, if all it takes to reopen a case is to get witnesses to revise their testimony.

Multimedia

FEB. 6, 1992 Mr. Bermudez is convicted of second-degree murder after an 11-day trial.
Fernando Bermudez — Luis Muñoz ("Wool Lou")

Graphic
Aftermath of a Shooting

Related

Witness Recantation Statements

Okpa Iyesi (PDF)
Witness and friend of Raymond Blount, the victim. (July 23, 1993)

Frank Kent (PDF)
Witness and friend of Mr. Blount. (July 22, 1993)

Efrain Lopez (PDF)
Witness, punched by Mr. Blount prior to the shooting. (Aug. 6, 1993)

Michael Thompson (PDF)
Witness and friend of Mr. Blount. (July 14, 1993)

Jamie Velasquez (PDF)
Witness and friend of Mr. Blount. (Aug. 21, 1993)

Some judges have ruled that recantations should be given more weight in cases where the original testimony constituted the only evidence. Few trials, though, have had five witnesses identify someone as a murderer, only to attest later that their testimony had been false. The very number upset Justice John A. K. Bradley, the Bermudez trial judge, who dismissed the first motion for a retrial without a hearing.

"It strains credulity to believe that five unshaken trial witnesses would suddenly claim that they had testified falsely under oath," he wrote in a 1995 decision. Had Mr. Bermudez presented fewer than five, he said, it would have been more believable.

In 1997, a state appeals court, citing "the inherent unreliability of recantations," affirmed the conviction.

Appeals Pile Up

At first blush, the Bermudez case seems fertile ground for appeal, with a last-minute delivery of evidence, a conviction that relied on testimony from teenagers with legal problems of their own, and police work that the defense has characterized as slapdash.

But appeals courts tend not to look at mistakes in the aggregate. Rather, they consider whether any one error represents a violation of an appellant's constitutional rights or a basic miscarriage of justice.

Appeals courts also generally limit their reviews to what happened on the record at trial and avoid delving into evidence that was not presented to a jury. It is a process that favors appellants whose lawyers aggressively raise objections and exploit gaps in evidence at trial, something Mr. Bermudez's lawyer, Mr. Kenyon, acknowledges he did not do enough of — in part, he said, because the family lacked the money to fully investigate the case.

In 2002, though, a federal magistrate, Kevin Nathaniel Fox, finally agreed to hear testimony from the five recanting witnesses, as well as from the prosecutor, police detectives and Mr. Bermudez's alibi witnesses.

He concluded that the prosecutor's summation had included improper remarks, and that the police never should have allowed witnesses to discuss the mug shot as a group, a blunder he called "impermissibly suggestive and conducive to irreparable misidentification."

But he discounted the recantations as unbelievable. He rejected the account of one witness because, he said, her testimony reflected a more precise recollection of events than she had exhibited at trial. On Judge Fox's recommendation, a judge in Federal District Court, Loretta A. Preska, turned down Mr. Bermudez's bid.

Now Mr. Bermudez awaits the judgment on his latest, perhaps final, appeal.

He has a clean disciplinary record and spends evenings reading legal briefs. His wife, whom he met through correspondence, and his children visit him every few weeks. In 15 years his story has not changed.

"I sometimes have to manufacture hope," he said, "because this is a very depressing, dangerous, evil place."

Detective Massanova is now battling his own problems. He is on trial on charges related to the off-duty car accident in 2004 that injured the two women. In an interview, he declined to say whether he still thought Mr. Bermudez killed Mr. Blount.

"Bermudez is in jail because a number of people said he was the shooter," he said. "I can't use a lie detector test on everybody who comes in."

« PREVIOUS PAGE | 1 | 2 | 3 | 4 |
More Articles in New York Region »

Click here to get 50% off Home Delivery of The New York Times.

Tips
To find reference information about the words used in this article, double-click on any word, phrase or name. A new window will open with a dictionary definition or encyclopedia entry.

Past Coverage
- Jimmy Lee Smith, 76, 'Onion Field' Killer, Dies (April 10, 2007)
- Sweeps in Iraq Cram Two Jails With Detainees (March 28, 2007)
- Inmate Enters Guilty Plea In '89 Killing (March 15, 2007)
- THIS LAND; He Befriended a Serial Killer, and Opened the Door to God (March 11, 2007)

Related Searches
- Murders and Attempted Murders
- Prisons and Prisoners
- Courts

More Articles in New York Region »

Today's Headlines Daily E-Mail
Sign up for a roundup of the day's top stories, sent every morning. Sign Up
See Sample | Privacy Policy

DO YOU KNOW THE SECRET TO THE PERFECT SWING? SCIENTIFICALLY PROVEN TECHNIQUE USED BY PGA TOUR PROS... WATCH NOW CLICK HERE PeakPerformanceGolfSwing.com
Advertise on NYTimes.com

MOST POPULAR
E-MAILED | BLOGGED | SEARCHED | VIEWED
1. Hallucinogens Have Doctors Tuning In Again
2. Steven Strogatz: Change We Can Believe In
3. Maureen Dowd: Worlds Without Women
4. Paul Krugman: Georgia on My Mind
5. Ross Douthat: The Better Pope
6. San Francisco Detours Into Reality Tourism
7. Mangia, Mangia!
8. 10 Simple Google Search Tricks
9. Tormented Doctor Turns to Directing
10. Study Finds a 1.2 Percent Increase in Faculty Pay, the Smallest in 50 Years
Go to Complete List »

The career of Dennis Hopper
ALSO IN MOVIES »
- Married? A bit bored? See a shootout
- Conversion of movies to 3-D
nytimes.com MOVIES

ADVERTISEMENTS
The new issue of T is here
Fan us on Facebook
Vote for the collectible car of the year
The new issue of T is here
The New York Times The Weekender Friday. Saturday. Sunday. GO

Missed a day of The New York Times? With TimesReader 2.0, you'll always have the past 7 issues on hand. LEARN MORE

Ads by Google what's this?
Restaurants For Sale
The source for buying and selling restaurants, bars and nightclubs.
www.restaurants-for-sale.com

INSIDE NYTIMES.COM
TECHNOLOGY » News Sites Rethink Anonymous Commenters
OPINION » Room for Debate: Paying for Clean Tap Water
STYLE » T Magazine: Design Issue, Spring 2010
WORLD » Artists Embellish Walls With Political Visions
OPINION » Strogatz: Change We Can Believe In — Differential calculus can show you the best path from A to B, and Michael Jordan's dunks can help explain why that is.
TELEVISION » The Doctor Is In (the Director's Chair)

Home | World | U.S. | N.Y. / Region | Business | Technology | Science | Health | Sports | Opinion | Arts | Style | Travel | Jobs | Real Estate | Automobiles | Back to Top
Copyright 2007 The New York Times Company | Privacy Policy | Search | Corrections | RSS | First Look | Help | Contact Us | Work for Us | Site Map

Fernando Bermudez

In August 1991, at a nightclub in New York City, Raymond Blount punched Efrain Lopez. Lopez told a man from his neighborhood about the incident, and when Blount and his friends came out of the club prepared for a fight, the man shot and killed Blount. Police showed mug shots of Hispanic men to a group of Blount's friends, and left them to deliberate together about the identification. The men identified Fernando Bermudez as the shooter.

Lopez initially told police that the shooting was committed by a man named "Wool Lou," a former classmate. Though police could have identified "Wool Lou" as Louis Munoz, they failed to follow up on this statement. Bermudez was brought in for a lineup, although he was taller and heavier than the descriptions originally provided by witnesses. Police told the men in the lineup to sit down so their height was not noticeable. All but one witness identified Bermudez as the shooter. The witness who did not identify Bermudez was not asked to testify. Lopez, fearing that he himself would be charged with Blount's murder, eventually told police that Bermudez was "Wool Lou," although Bermudez was not a former classmate of his and did not live in his neighborhood.

After testimony from Lopez and four of Blount's friends, a jury convicted Bermudez of second-degree murder in February 1992, and he was sentenced to 23-years-to-life. In 1993, all five witnesses recanted their identifications, saying they were pressured by police to identify Bermudez. Bermudez's post-conviction appeals failed until November 2009 when a state Supreme Court judge overturned Bermudez's conviction and dismissed the charges with prejudice because the new evidence undermined the conviction, and because the collective identification procedure used by police damaged any possible identification testimony from the eyewitnesses.

- Stephanie Denzel

Report an error or add more information about this case.

State:	New York
County:	New York
Most Serious Crime:	Murder
Additional Convictions:	
Reported Crime Date:	1991
Convicted:	1992
Exonerated:	2009
Sentence:	23 to Life
Race:	Hispanic
Sex:	Male
Age:	22
Contributing Factors:	Mistaken Witness ID, Perjury or False Accusation, Official Misconduct
Did DNA evidence contribute to the exoneration?:	No

EXONERATION NEWS

MORE NEWS...

We welcome new information from any source about the exonerations that are already on our list and about new cases that might be exonerations. And we will be happy to respond to inquiries about the Registry.

+ Tell us about an exoneration that we may have missed
+ Correct an error or add information about an exoneration on our list
+ Other information about the Registry

The National Registry of Exonerations is a joint project of the University of the Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law.

Follow Us:

Copyright 2012. All rights reserved.