

CASE SUMMARY

CATEGORY: Exoneration

DEFENDANT'S NAME: Rolando Cruz

JURISDICTION : DuPage County, Illinois

RESEARCHED BY: Thomas Frisbie and Randy Garrett
Authors and Volunteer Researchers
Center on Wrongful Convictions

DATE LAST REVISED: February 7, 2001

FACTS

Date of crime:	February 25, 1983
Convicted of:	Murder, intent to kill, criminal sexual assault, aggravated kidnaping residential burglary, deviate sexual assault.
Death-qualifying factor(s):	Victim was a child, murder committed in the act of committing another crime
Date sentenced:	March 15, 1985 (sentenced first time). February, 1990 (second time)
Date released:	November 3, 1995
Months lapsed sentence to release:	128
Defendant's age at time of crime:	19 — born May 26, 1963
Defendant's sex:	Male
Defendant's race:	Hispanic
Victim(s):	Jeanine Nicarico
Age of victim(s):	10
Sex of victim(s):	Female
Race of victim(s):	White

Relationship of victim(s) to defendant:	None
Trial judge:	Edward W. Kowal (trials one and two), Ronald B. Mehling (third trial)
Prosecutor(s):	Thomas L. Knight (first trial), Brian Kilander and Rick Stock (second trial)
Defense attorney(s):	Thomas J. Laz (first trial), Jed Stone (second trial), Thomas M. Breen (third trial)
Defendant's plea:	Not guilty
Did defendant have an opportunity plead guilty in exchange for a lesser sentence?	No
Was guilt phase bench or jury?	Jury
Was sentencing bench or jury?	Bench (first trial); jury (second and third trials)
Summary of state's theory of case at trial:	Rolando Cruz had three trials. At the first, in 1985, he was tried together with Alejandro Hernandez and Stephen Buckley. The state's theory was that the three men abducted Jeanine Nicarico from her Naperville, Illinois, home and took her to a nature trail, where they raped and murdered her. All three defendants were from Aurora, Illinois, which is near Naperville. Buckley received a hung jury, and charges against him eventually were dismissed, but Cruz and Hernandez were convicted and sentenced to death. At the second trial, in 1990, Cruz was tried alone, convicted, and sentenced to death. The state's theory at the second trial was that another man, Brian Dugan, also was involved Cruz and Hernandez, but that Cruz was the rapist. At a third trial in 1995, Cruz was acquitted.
Summary of defense:	Cruz consistently claimed complete innocence. He and his co-defendants offered alibi witnesses at the first trial. At his second trial, Cruz sought to show that Dugan alone committed the crime. At the third trial, Cruz was acquitted in a directed verdict before putting on a defense.
Did the defendant confess or make an inculpatory statement?	Authorities claimed Cruz made a "vision" statement describing some details of crime, but there was no contemporaneous police report of such a statement.
Did the defendant testify at trial?	Not during the guilt phase, but he did during the sentencing phase.

Was there eyewitness testimony?	No
Was there serological evidence?	Yes — but none linking Cruz to the crime
Was there hair or fiber evidence?	Yes — but none linking Cruz to the crime
Was there other physical evidence?	There was no physical evidence linking Cruz to the crime.
Was there informant testimony?	<p>Stephen Ford, who had been incarcerated with Cruz in the DuPage County jail, testified at both trials. At the first trial, he had said he was unsure what Cruz had said. At the second trial, however, Ford claimed that Cruz had confessed that he “kind of killed” a girl in Aurora. Ford then claimed that he had given the earlier testimony because Cruz had threatened to kill him.</p> <p>Steven Pecoraro, who also had been a DuPage prisoner with Cruz, testified that Cruz admitted breaking into a Naperville home with Hernandez and Buckley, kidnaping a little girl, taking her to an abandoned drug dealer’s house in Aurora, and killing her. According to Pecoraro, Cruz said the child had to be killed because she could identify him.</p> <p>Dan Fowler, a convicted felon, testified that in the spring of 1983 Cruz admitted that he had been “involved” in the crime, but had not killed the child. Fowler claimed Cruz had said the murder weapon had been a bat. Fowler was impeached with inconsistent testimony he had presented to the grand jury.</p> <p>At the second trial, Robert Turner, a convicted murderer and sex offender, who had been housed with Cruz in the condemned unit at Menard Correctional Facility, testified that Cruz had told him that he, Hernandez and “someone named Dugan” had killed the Nicarico child. Turner also claimed to have information concerning seven other Death Row prisoners’ cases. On cross examination, Turner denied the contention of another Death Row prisoner that he had said it was possible to “get time” (obtain a sentence other than death) by learning a few facts about a case and other information.</p>

Did the informant(s) receive anything of value for testifying?	Ford conceded that numerous burglary charges against him were “possibly” dropped less than two weeks after he reported his conversation with Cruz to authorities. Pecoraro, Fowler, and Turner denied that they had received or been offered anything in return for their testimony. On appeal, however, Cruz’s lawyers supplemented the record with the Supreme Court’s opinion in <i>People v. Turner</i> , 156 Ill. 2d 354 (1993) referring to the fact that Assistant State's Attorney Robert Kilander testified on behalf of Turner at his resentencing hearing, saying that Turner had “voluntarily provided testimony in the trial of Rolando Cruz” and was cooperative, posing no problem during transport for Cruz’s trial.
Was there accomplice testimony?	No
Was there a <i>Batson</i> issue?	No
Was there a <i>Brady</i> issue?	Yes
Was there evidence of mental illness, retardation, or neurological damage?	No
Principal exculpatory evidence at trial:	At second trial, evidence was introduced indicating that someone else — Brian Dugan — committed the crime.
Evidence introduced in mitigation:	Court found no mitigation factors.
Was there any indication of bias on the part of the trial judge?	The Illinois Supreme Court held, upon rehearing following Cruz’s second conviction, that the exclusion of evidence concerning other crimes committed by Brian Dugan had been an abuse of discretion. The Supreme Court also found that Kowal erred in allowing the state to admit a police dog trainer’s testimony to the effect that a bloodhound had established that more than one person had been involved in the crime and, therefore, that Dugan was lying when he claimed to have committed the crime alone. The ruling flew in the face of Illinois precedent dating to 1914 that “testimony as to the trailing of either a man or an animal by a blood-hound should never be admitted in evidence in <i>any</i> case.” [Emphasis original in <i>People v. Cruz</i> , 162 Ill. 2d 314 (1994).]
Defendant’s criminal history:	Conviction for criminal trespass, several burglary arrests
Was police misconduct an issue on appeal?	Yes

Was prosecutorial misconduct an issue?	Yes
Other major issues on appeal:	Cruz argued that his trial should have been severed from that of the others.
Evidence of actual innocence:	In 1995, a DNA test matched semen in the victim to Brian Dugan, who in 1985 said that he alone had committed the crime.
Was the conviction ever affirmed by an appellate court?	Twice.
Did an appellate judge ever raise doubt about guilt?	Yes. The first conviction was reversed on technical grounds in which no opinions as to guilt or innocence were expressed. When the Illinois Supreme Court affirmed the conviction and death sentence following the second trial, however, Justices Benjamin Miller, William G. Clark, and Charles Freeman dissented, saying they found the evidence of Cruz's guilt less than "overwhelming."
What was the status of the case at time of exoneration?	Cruz was on trial for the third time when he was acquitted in a directed verdict.
How did exoneration come about?	A DuPage County, Illinois, sheriff's detective admitted that he actually had been in Florida at a time when police testimony at both trials had placed him in Illinois receiving a key phone call implicating Cruz in the case.
Was anyone else charged in the crime?	None other than Hernandez and Buckley
Appellate counsel:	Timothy M. Gabrielsen, and John J. Hanlon (first appeal), Lawrence Marshall, John Hanlon (second appeal)
Summary of appeals:	<p>Reversed and remanded for new trial on the ground that the Cruz and Hernandez trials should have been severed. <i>People v. Cruz</i>, 121 Ill. 2d 321 (Jan. 19, 1988).</p> <p>Conviction and death sentence affirmed. <i>People v. Cruz</i>, 1992 Ill. LEXIS 221 (Dec. 4, 1992) by a four-three majority; "The evidence adduced at trial implicating defendant in the murder of Jeanine Nicarico was overwhelming," said the majority.</p> <p>On a petition for rehearing, the Illinois Supreme Court reverses conviction by a four-three majority on grounds that Kowal erred in excluding evidence of Dugan's other crimes and in admitting testimony concerning bloodhound tracking. <i>People v. Cruz</i>, 162 Ill. 2d 314 (July 14, 1994).</p>