

## CASE SUMMARY

**CATEGORY:** Exoneration

**DEFENDANT'S NAME:** Alejandro Hernandez

**JURISDICTION :** DuPage County, Illinois

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

**DATE LAST REVISED:** February 7, 2001

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## FACTS

<b>Date of crime:</b>	February 25, 1983
<b>Convicted of:</b>	Murder, intent to kill, criminal sexual assault, aggravated kidnaping residential burglary, deviate sexual assault
<b>Death-qualifying factor(s):</b>	Victim was a child, murder committed in the act of committing another crime
<b>Date sentenced:</b>	March 15, 1985 (first time), May, 1991 (second time).
<b>Date released:</b>	December 8, 1995 (all charges against dismissed)
<b>Months lapsed sentence to release:</b>	117
<b>Defendant's age at time of crime:</b>	19 — born October 5, 1963
<b>Defendant's sex:</b>	Male
<b>Defendant's race:</b>	Hispanic
<b>Victim(s):</b>	Jeanine Nicarico
<b>Age of victim(s):</b>	10
<b>Sex of victim(s):</b>	Female
<b>Race of victim(s):</b>	White
<b>Relationship of victim(s) to defendant:</b>	None

<b>Trial judge:</b>	Edward W. Kowal
<b>Prosecutor(s):</b>	Thomas L. Knight (first trial), Brian Kilander and Rick Stock (second trial)
<b>Defense attorney(s):</b>	Frank Wesolowski (first trial), Michael Metnick (second and third trials)
<b>Defendant's plea:</b>	Not guilty
<b>Did defendant have an opportunity to plead guilty in exchange for a lesser sentence?</b>	No
<b>Was guilt phase bench or jury?</b>	Jury
<b>Was sentencing bench or jury?</b>	Bench (first trial and third trial)
<b>Summary of state's theory of case at trial:</b>	Alejandro Hernandez had three trials. At the first, in 1985, he was tried together with Rolando Cruz and Stephen Buckley. The state's theory was that the three men abducted 10-year-old 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, Hernandez received a hung jury. At the third trial, he was convicted and sentenced to 80 years in prison.
<b>Defense:</b>	Hernandez claimed complete innocence. All three defendants offered alibi witnesses at the first trial. At the second trial, Hernandez sought to show that Dugan alone committed the crime. At the third trial, rested without putting on defense witnesses.
<b>Did the defendant confess or make an inculpatory statement?</b>	An issue of controversy: Authorities alleged Hernandez said "I held her down" in monitored conversation with a friend. Hernandez argued he did so because he had been instructed by the police to say that in an effort to persuade the friend to confess.
<b>Did the defendant testify at trial?</b>	Not in the guilt phase. He did in the sentencing phase.
<b>Was there eyewitness testimony?</b>	None other than two witnesses who claimed to have seen co-defendant Buckley driving a car that could have been involved in the crime.

<b>Was there serological evidence?</b>	Yes, but none linking Hernandez or his co-defendants to the crime.
<b>Was there hair or fiber evidence?</b>	Yes, but none linking Hernandez or his co-defendants to the crime.
<b>Was there other physical evidence?</b>	None linking Hernandez to the crime.
<b>Was there informant testimony?</b>	Yes. Two informants, Jackie Estremera and Armindo Marquez, Jr., testified that Hernandez had told them he had been involved in the crime.
<b>Did the informant(s) receive anything of value for testifying?</b>	Estremera faced possible felony contempt sanctions for having failed to appear as ordered before the special grand jury investigating the Nicarico murder. The charges were not pursued. Marquez was in jail, charged with multiple counts of residential burglar; he was suspected of more than 100 unsolved burglaries in Kane and surrounding counties. But in exchange for a guilty plea, following his testimony against Hernandez, he was given a minimum sentence of four years in exchange for a guilty plea. The Kane County State's Attorney's office cited his cooperation in recommending the minimum sentence.
<b>Was there accomplice testimony?</b>	No
<b>If so, does it appear that the accomplice(s) received anything of value for testifying?</b>	Not applicable
<b>Was there a <i>Batson</i> issue?</b>	No
<b>Was there a <i>Brady</i> issue?</b>	Yes
<b>Was there evidence of mental illness, retardation, or neurological damage?</b>	A defense expert, Dr. Ralph Mesenbrink, testified that Hernandez tested in the "dull-normal" range — formerly known as the "borderline mentally retarded range."
<b>Principal exculpatory evidence at trial:</b>	At the second trial, evidence was introduced indicating that someone else — Brian Dugan — committed the crime.
<b>Evidence introduced in mitigation:</b>	Court found nothing in mitigation sufficient to preclude imposition of the death penalty.

<b>Was there any indication of bias on the part of the trial judge?</b>	
<b>Defendant's criminal history:</b>	Burglary conviction, burglary arrests
<b>Was police misconduct an issue?</b>	Yes
<b>Was prosecutorial misconduct an issue?</b>	Yes
<b>Other major issues on appeal:</b>	Hernandez argued that his trial should have been severed from that of the others.
<b>Evidence of actual innocence:</b>	In 1995, a DNA test matched semen in the victim to Brian Dugan, who in 1985 said that he alone had committed the crime.
<b>Was the conviction ever affirmed by an appellate court?</b>	Yes
<b>Did any appellate judge ever raise doubt about guilt?</b>	
<b>What was the status of the case at time of exoneration?</b>	Hernandez was awaiting a fourth trial when all charges were dropped
<b>How did exoneration come about?</b>	After Hernandez's original co-defendant Rolando Cruz was acquitted at his third trial, all charges were dropped against Hernandez.
<b>Was anyone else ever charged in the crime?</b>	No
<b>If others were charged, briefly describe outcome:</b>	Not applicable
<b>Appellate counsel:</b>	Lawrence J. Essig (first appeal), Scott Turow (second appeal)
<b>Summary of appeals:</b>	<i>People v. Hernandez</i> , 121 Ill. 2d 293 (Jan. 19, 1988) — unanimously reversed and remanded on ground that the defendants' trials should have been severed.