

# Illinois prosecutors and police acquitted despite evidence they framed defendant

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A DuPage County, Illinois prosecutor and four sheriff's officers were acquitted by a county judge and jury June 4 of charges that they conspired to frame up and convict Rolando Cruz for murder, rape and kidnapping.

If they had been convicted, it would have marked the first time in American history that a prosecutor was convicted of felony charges for intentionally withholding exculpatory evidence or knowingly using false evidence to incriminate a defendant. However, as has happened in every previous case where prosecutors have been brought to trial on these charges, the so-called DuPage 7 were not convicted.

In the weeks leading up to the trial, the *Chicago Tribune* ran a series of articles that demonstrated how widespread prosecutorial abuse is in the US. In its article "The verdict: Dishonor" the newspaper reported, "Since a 1963 US Supreme Court ruling designed to curb misconduct by prosecutors, at least 381 defendants nationally have had a homicide conviction thrown out because prosecutors concealed evidence suggesting innocence or presented evidence they knew to be false. Of all the ways that prosecutors can cheat, those two are considered the worst by the courts. And that number represents only a fraction of how often such cheating occurs.

"The US Supreme Court has declared such misconduct by prosecutors to be so reprehensible that it warrants criminal charges and disbarment. But not one of those prosecutors was convicted of a crime. Not one was barred from practicing law. Instead, many saw their careers advance, becoming judges or district attorneys. One became a Congressman."

Former DuPage County Prosecutors Thomas Knight, Patrick King and Robert Kilander, and Sheriff's Detectives Dennis Kurzawa, Thomas Vosburgh, Lt. James Montesano and Lt. Robert Winkler, were charged with 47 criminal counts, including perjury, and conspiracy to obstruct justice, commit official misconduct and frame up a defendant.

The case involved the prosecution and conviction of Rolando Cruz for the 1983 kidnap, rape and murder of 10-year-old Jeanine Nicarico in DuPage County, an affluent

suburb of Chicago. Cruz was tried three times in the decade from 1985 to 1995, and he was convicted twice. He spent a decade on death row in Illinois before he was finally acquitted in his third trial.

Cruz was first tried along with Alex Hernandez and Steve Buckley. On February 22, 1985 a jury convicted Cruz and Hernandez, but deadlocked over the guilt of Buckley. Cruz and Hernandez were sentenced to death, and Buckley's case was held over for retrial.

On November 13, 1985, Brian Dugan, (who had pled guilty to two other rape-murders, including one where the victim was seven years old, and was facing his sentencing hearing) authorized his attorney to tell prosecutors that he kidnapped, raped and killed Jeanine Nicarico. Dugan offered to confess to the murder if prosecutors agreed not to seek the death penalty.

Dugan's attorney turned his notes over to DuPage prosecutors Patrick King and Robert Kilander, but the pair illegally withheld this exculpatory evidence from the attorneys defending Cruz, Hernandez and Buckley.

By the beginning of 1992 Cruz had been retried, convicted and sentenced to death for a second time, and Alex Hernandez had been retried, convicted and sentenced to 80 years in his third trial. Meanwhile DNA tests had specifically linked Dugan to the crime; had specifically excluded Hernandez, and were inconclusive in regard to Cruz.

Cruz's case was appealed to the Illinois Supreme Court. Assistant Illinois Attorney General Mary Brigid Kenney publicly denounced the DuPage prosecutor's conduct and resigned rather than defend Cruz's conviction and death penalty before the Supreme Court. Nevertheless, the prosecutors filed a 150-page brief with the state Supreme Court insisting that Brian Dugan's claims were not credible.

In December of 1992 the Illinois Supreme Court upheld Cruz's conviction and death sentence. Five months later, under new leadership, the high court reversed itself and granted a rehearing of Cruz's appeal. In July 1994 they granted his appeal and ordered a new trial. By June 1995 the

state Supreme Court had also upheld an appellate decision for a retrial in Hernandez's case.

Unfazed, the DuPage prosecutors began Cruz's third trial in October 1995. However, Cruz was quickly acquitted after the prosecutors' story began to unravel. Sheriff's Lieutenant James Montesano admitted on the witness stand that he was actually on vacation on the date he supposedly discussed an incriminating statement made by Cruz with another officer. Additional DNA tests excluded Cruz and confirmed Dugan's guilt in the case.

In the aftermath of the collapse of the third Cruz prosecution, public sentiment that the prosecutors had been conspiring to frame Cruz became so pervasive that former Cook County Assistant State's Attorney William Kunkle was appointed to investigate the DuPage sheriffs and the prosecutor's office. In December, the prosecutors announced they would not prosecute Alex Hernandez for a fourth time.

In June 1996 a grand jury was convened to hear evidence of possible crimes committed by the DuPage prosecutors and sheriffs. Despite an internal sheriff's department investigation that found no evidence of false testimony by detectives the grand jury returned a 47-count indictment against three DuPage prosecutors and four sheriff's officers.

A major issue in the case against the DuPage 7 was the fact or fiction of an alleged "dream statement" made by Cruz on May 9, 1983. Prosecutors claimed Cruz had described a dream to sheriff's officers about the kidnapping and disclosed elements that had not been made public and could only be known by the real killer. However, this alleged statement was never reported in the sheriffs' record of the discussion written up a day later. In fact it was never documented, and it only emerged as a critical part of the case immediately before the 1985 trial.

During the trial against the DuPage prosecutors and sheriff's officers, Special Prosecutor William Kunkle gave a half dozen reasons why jurors should conclude that the reports of a dream statement was concocted by the authorities to frame Cruz.

Kunkle cited the testimony of Officer Kurzawa, who admitted he had never been told not to write a police report about information like the "dream statement" before May 9, 1983, or afterwards. Kurzawa and another officer who allegedly heard the statement testified they got in touch with Prosecutor Knight on the evening of May 9, who told them not to include the statement in a police report because he was going to use it in front of the grand jury a couple of days later. But during the grand jury questioning, prosecutor Knight never mentioned Cruz's alleged dream statement.

The defense attorneys argued that the prosecutors and police had made some foolish mistakes, but these were not intentional criminal acts or a criminal conspiracy. They also

denounced Cruz as a compulsive liar who may very well have been involved in the crime or known who was involved. "To say they don't have a smoking gun is a gross understatement of this case," defense attorney Terry Ekl said of Kunkle. "My client [former prosecutor Thomas Knight] is a smart guy. If he wanted to frame Rolando Cruz, he would be dead right now."

Despite a compelling case establishing the frame up of Rolando Cruz, the jury did not convict the defendants. This, no doubt, has something to do with the weight of a law-and-order atmosphere that has been cultivated by right-wing politicians for some 20 years. From this viewpoint, no methods employed by prosecutors or police can be considered too extreme because these forces are supposedly the "thin line" that defends society from uncivilized criminals. In such an atmosphere concern for the democratic rights of those in the clutches of the police and prosecutors is denounced as coddling criminals.

The jury in the wealthy DuPage County suburb appeared to accept such a position. After their innocent verdict was delivered, the jury left the courtroom, but many of them returned to join the celebration of the indicted lawmen. A number of reporters commented that they have never seen such a demonstration. Some jurors even continued the celebration with the prosecutors and police at a steak lounge until early the next morning.

The defendants were also aided by the favorable rulings of trial judge William Kelly, who dropped charges against prosecutors King and Kilander and then acquitted Officer Winkler in a bench trial that coincided with the jury trial.

Rolando Cruz reacted to the acquittal four days later at the federal courthouse in downtown Chicago where his lawyers were filing papers to re-start his civil suit that had been put on hold during the criminal proceedings. "It is not over, and they know it is not over by a long shot," Cruz told a gathering of reporters.



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