

# Judge bends law to toss out convictions of Los Angeles police

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A Los Angeles trial judge has overturned the criminal convictions of three Los Angeles anti-gang officers. The Los Angeles District Attorney's Office must now decide whether to appeal the ruling, retry the officers or drop the prosecution.

This was the first criminal case brought against LAPD cops in the corruption and frame-up scandal that has rocked the Rampart Division. The prosecution put on a weak if not botched case, which the trial judge, Jacqueline Connor, did her best to undermine. Many legal observers had predicted a defense verdict.

On November 15 a unanimous jury nevertheless convicted Sergeants Edward Ortiz and Brian Liddy and Officer Michael Buchanan on charges of conspiring to fabricate evidence and filing false police reports in a 1996 incident. The officers had claimed in police reports, and on the witness stand, that gang members drove a car at Liddy and Buchanan, causing them injury. The legal significance of the unanimous jury verdict is that the jurors disbelieved the officers' story that the car had hit them, instead believing that they had framed the youth in the car.

Following the guilty verdicts, outraged defense attorneys sent an investigator to interview members of the jury and obtained affidavits from five of the twelve jurors. The affidavits indicated that several jurors had expressed uncertainty about whether the vehicle had struck the officers, and that they had agreed to go along with the guilty verdicts because they believed the officers had lied on the police report about the extent of their claimed injuries.

The police report in question stated that the car's occupants had committed an assault "w/GBI," or an assault with great bodily injury. According to the written decision of Judge Connor overturning the convictions, this was police shorthand for an assault by

means likely to cause great bodily injury, rather than an actual claim that such egregious injuries had been suffered.

Based on the affidavits, Judge Connor concluded that the jurors had convicted based on a charge not brought against the officers—that they had lied about suffering great bodily injury—and ruled that the officers were convicted on insufficient evidence. She also ruled that the trial was unfair because she had refused to permit a read-back during jury deliberations of the testimony of Sergeant Ortiz about the language on the police report.

Judge Connor's ruling is unprecedented, representing a marked departure from legal rules, which shield the deliberations of jurors from scrutiny. Jurors often change their positions during the course of deliberations or assert positions for the purpose of argument (precisely the sort of give and take it is believed will result in the considered judgment of a cross-section of the community).

Thus, in terms of the final verdict, it is not particularly significant or reliable to claim that a juror asserted or held a certain position during deliberations. Moreover, after a case is concluded jurors may be susceptible to persuasion or argument by lawyers or their investigators that would not be permitted at trial, and at a time when their fellow jurors, and opposing lawyers, are not present to debunk such appeals.

Because of such considerations the California Evidence Code specifically precludes looking into the mental processes of jurors when considering a motion to overturn a verdict. Judge Connor's ruling is thus a highly dubious and unprecedented departure from this statutory rule.

In her ruling Connor purports to get around the bar created by the Evidence Code section by claiming that the jurors' affidavits consistently showed that some

jurors convicted on the basis of an incorrect understanding that the police report had claimed great bodily injury had been suffered.

Connor's argument is sophistry and plainly involves a finding concerning the mental processes of the jurors at the time they reached a verdict. Judge Connor's ruling also in effect assumes that the seven jurors who did not give the defense investigator affidavits would not have contradicted the statements of their fellow jurors.

Jury foreperson Victor Flores told the press he strongly disagreed with Connor's ruling. He said the jury reached its conclusion based substantially on a news helicopter video, which showed that the incident could not have occurred as the officers had claimed.

Flores told the press that all the jurors rejected the officers' claims that they were struck by the car. He added that the jury had spent only a couple of hours during their several days of deliberations talking about the extent of physical injury to the officers.

Before the ruling throwing out the convictions, foreperson Flores and other jurors had also told the press that they believed the officers had lied on the witness stand, and that the police "code of silence" had been operating before them in the courtroom. Connor's ruling effectively invaded and gutted the longstanding province of the jury to judge witness credibility.

Rafael Perez, the former cop whose statements broke open the Rampart scandal in 1999, was not called by either the prosecution or defense to testify about the 1996 incident, or about these defendants' usual modus operandi in framing suspects and fabricating evidence. In her ruling Connor also claimed it was somehow unfair that the prosecution did not formally announce until near the end of their case that they would not be calling Perez, despite prosecution statements and press reports that it was unlikely they would do so.

Acting virtually as the cops' lawyer, Connor claimed this had caused the defense to spend unnecessary time and effort trying to undermine Perez's credibility. This is a flimsy charge, as the highly experienced and high-priced defense lawyers made their own decision to attack Perez. They repeatedly boasted to the press of their eagerness to tear Perez to shreds on the stand, and they would have had every opportunity to attempt to do so had Perez testified.

As icing on the cake, Judge Connor pointed to the publicity over the Rampart case as her final basis for

overturning the jury's verdict. But any potential unfairness because of pretrial publicity could have been addressed by a defense motion for a change of venue, which the defendants never requested.

After Connor's ruling, juror foreperson Flores also told the press that he felt that Judge Connor had been biased in favor of the cops throughout the trial. This charge was amply supported by numerous trial and pre-trial evidentiary rulings that Connor made in favor of the defendants. Her decision throwing out the convictions substantiates Flores' observation.

Judge Connor in fact for years presided over a criminal courtroom where, as in most such courtrooms in Los Angeles, defendants were railroaded by false testimony by LAPD cops. Only three years before this case Connor had praised Rafael Perez as an exemplary officer.



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