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26 Years Later, Justice for Men Imprisoned for a Bogus Rape

By Jan Ransom

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The woman, dirty, disheveled and in tears, ran over to a patrol car parked along a Harlem street in the early morning of Jan. 18, 1991. She told police officers she had been kidnapped at knife point near her home in Queens and raped by three black men, whom she identified.

Before the end of the month, the police arrested two of the men she had named — Gregory Counts, then 19, and VanDyke Perry, then 21. They were charged with rape, sodomy, kidnapping and criminal possession of a weapon, according to court records. The third man was never caught.

Investigators had no physical evidence. Semen recovered from the woman did not match the two accused men. The prosecution's case relied heavily on her testimony, which was inconsistent. The defense argued the woman, a recovering crack addict, fabricated the story to protect her boyfriend, who had shot Mr. Perry two months earlier and was wanted by the police, court records show.

Yet, in 1992, a jury convicted Mr. Counts and Mr. Perry on all counts except for the weapons charges. Mr. Perry ended up serving 11 years in prison, Mr. Counts 26.

On Monday, both men walked into a packed courtroom to hear the Manhattan district attorney, Cyrus R. Vance Jr., ask a judge in State Supreme Court to vacate their convictions based on newly discovered DNA evidence and the woman's decision to recant her testimony.

"This wrongful conviction destroyed my life," Mr. Perry said, wiping away tears. "But I never gave up my fight."



Gregory Counts, who was in prison for 26 years, speaking outside court on Monday. He wrote to the Innocence Project, asking it to check DNA samples to help prove his innocence.

Jeenah Moon for The New York Times

Mr. Counts broke down in tears as he entered court and hunched over a railing. “I can’t be angry,” Mr. Counts said, referring to his accuser. “If I waste a minute being angry it’s a waste of time. That’s a minute I could have been happy.”

Last month, the woman, who has not been identified, told investigators from the district attorney’s office and the Innocence Project the rape “never happened.” Her admission came after DNA testing connected the semen found on her body to another man through an F.B.I. database.

“At the end of the day, nothing will give these men back the years away from family, or the years spent in prison,” Mr. Vance said. “No apology can make them whole.”

The exonerations were the result of a collaborative investigation started in 2017 by the Manhattan district attorney’s Conviction Integrity Program, the Innocence Project and the Office of the Appellate Defender’s Reinvestigation Project. The three entities filed a joint motion on Monday asking Justice Mark Dwyer to vacate the convictions and dismiss the original indictments.

“This was a particularly dark time in New York City during the crack epidemic,” said Barry Scheck, co-founder of the Innocence Project, a nonprofit that uses DNA evidence to exonerate wrongly convicted prisoners. “At this point in time in New York City, people were scared of teenagers who looked like my clients.”

These were the eighth and ninth convictions to be vacated since the creation of the Conviction Integrity Program in Manhattan in 2010. Similarly, the Brooklyn district attorney's office overturned 24 convictions since 2014, and the Bronx district attorney's office vacated three since 2016.



Barry Scheck, co-founder of the Innocence Project, in court on Monday.
Steven Hirsch for New York Post, via Pool

Lawyers for Mr. Perry and Mr. Counts said the case was flawed from the start. When the trial began in 1992, the woman testified that she lived in a house in Queens with her boyfriend, who was a recovering addict, and their two children. Mr. Perry was dating a teenage girl who lived in the same house, and he eventually moved in, according to court records. The woman's boyfriend began using drugs again and selling them from her home along with Mr. Perry, Mr. Counts and a third man. But in September 1990, the men assaulted the boyfriend for failing to pay back a debt.

Two months later, she said, her home was burglarized and she told the police she believed it was the three men. Sometime after that incident, the woman testified that Mr. Perry confronted her boyfriend at their home and that he shot Mr. Perry.

She told a jury that on Jan. 18, 1991, she was leaving her home in Queens when Mr. Counts, Mr. Perry and a third man forced her into a car at knife point and demanded to know where her boyfriend was. When she refused to tell them where he was, she testified that they drove around and raped her multiple times in the vehicle and in Central Park.

During the trial, the defense argued that she was not a reliable witness, and that her stories shifted often.

The defense also argued that the woman had a motive to retaliate against the men and to help her boyfriend avoid charges that he had shot Mr. Perry.

Mr. Counts and Mr. Perry spent years fighting their convictions despite a number of failed appeals.

While in solitary confinement, Mr. Counts read “Actual Innocence: Five Days to Execution, and Other Dispatches From the Wrongly Convicted,” and then wrote to the Innocence Project asking that it conduct a DNA database check of the samples collected in his case, according to Seema Saifee, a senior staff lawyer with the nonprofit.



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“He never gave up,” she said.

In 2012, attorneys with the Innocence Project contacted the district attorney’s office requesting physical evidence in the case. In 2015, the DNA was retested. It matched the profile of a man who had been about 40 years old in 1991 and died in 2011, according to court records.

Investigators with the prosecutor's office interviewed the woman in 2016 with a photo of the person who may have been the attacker, but the woman told them she did not recognize him. She explained to investigators that she had used drugs at that time and that she would sell herself to support her habit. She refused to talk further.

In February, investigators found and interviewed the third man, who denied the rape and explained that the car in which the woman said she was attacked was not running at the time, court records show.

Investigators returned to the woman, who this time admitted that the story was a lie. She told investigators that her boyfriend forced her to make the fake accusations and that she had been haunted by what she had done.

After his release, Mr. Perry moved to Portland, Ore., married and had six children. He struggled with the label of "sex offender," but found work building houses and cars, and started a landscaping business to support his family.

"He didn't want to go back to the place where he had been treated so unfairly," said Mandy Jaramillo, senior staff lawyer with the Office of the Appellate Defender. He returned to New York City for the first time on Monday.

Since his release, Mr. Counts has struggled to find a job — many employers were put off by his record — but he said he has the support of his family.

"This case is a tragedy for everyone involved," Mr. Vance said in an interview. "It is every district attorney's nightmare that any innocent man or woman would go to jail."

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