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23 Years After Conviction Based on Eyewitness Misidentification, DNA Proves Orlando Boquete's Innocence

Cuban-American Immigrant in Florida Who Escaped Prison and Lived on the Run for a Decade Is Exonerated; Immigration Issues Delay Release

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(MARATHON, FL; May 23, 2006) – DNA tests prove that Orlando Boquete did not commit a burglary and sexual assault in the Florida Keys for which he was convicted in 1983 and sentenced to 65 years in prison, the Innocence Project said today. Boquete began serving his sentence in February 1983, escaped from prison two years later, lived on the run for more than a decade until he was apprehended in 1995, escaped from prison again, and was finally apprehended in 1996. He has remained in prison since then, serving time for one of his escapes concurrent with his initial sentence for the burglary and sexual assault that DNA testing now proves he did not commit.

At a hearing this morning in Florida State Court in Monroe County, Boquete's conviction was vacated. On Monday, Palm Beach authorities dismissed Boquete's conviction for escaping prison in 1985; he has already served time for the 1995 escape. Federal immigration officials are holding Boquete – who fled Cuba for Miami in the 1980 Mariel boatlift – while they review case files from the decade after he escaped.

In January 1983, Boquete was convicted of one count of burglary of a dwelling during which an assault was committed, and one count of attempted sexual battery with slight force. In the early morning hours in June 1982, a Stock Island woman reported that two Latino men broke into her home as she slept. While one was in the living room, the other came into her bedroom and fondled her before masturbating on her. After the men left, she called the police, who issued an all-points bulletin with general descriptions of two Latino men, one of whom had no shirt and no hair (which is how the woman described the man in her bedroom).

Within minutes, an officer stopped several Cuban-American men in a nearby convenience store parking lot; only one of them (Boquete) had little or no hair and was not wearing a shirt. The victim was taken to the area to see whether she could identify her attacker; from 20-feet away, in a police car in the middle of the night, she identified Boquete as the man who was in her bedroom and ejaculated on her clothing. In the subsequent six months before Boquete's trial, the victim was not asked to identify him in any other way (photo array, lineup, daylight identification, etc.). The night before she testified at his trial, the victim was shown a mug shot of Boquete from the night he was arrested. In the photo, Boquete had a large, black moustache.



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Although she had earlier said her attacker had no facial hair, when she testified at the trial the next day, she said for the first time that the perpetrator had a moustache.

In 2003, Boquete filed a motion seeking DNA testing (which was not available when he was convicted in 1983) on semen stains on the victim's clothing. In 2004, Monroe County State Attorney Mark Kohl consented to DNA testing, which a judge ordered and Orchid Cellmark, Inc., conducted pro-bono earlier this year. The DNA test results conclusively show that another, unknown male was the source of the semen on the woman's underwear and pajamas. Kohl agreed to vacate Boquete's conviction once he reviewed the DNA lab report. Kohl also worked with the Innocence Project to help resolve legal issues involving Boquete's escape convictions.

In addition to Boquete's case, eyewitness misidentification played a role in more than 75% of the 177 wrongful convictions nationwide that have been overturned with DNA evidence, according to the Innocence Project. Boquete's exoneration is the sixth post-conviction DNA exoneration in Florida in the last five years, and the fifth that involves eyewitness misidentification.

"One innocent person spending years in prison because of misidentification should create a groundswell to reform eyewitness ID procedures. In Florida, we now have five cases in five years where incorrect eyewitness identification led to wrongful convictions – nobody can look at these cases and credibly say there isn't a problem that needs to be fixed," said Barry Scheck, Co-Director of the Innocence Project and one of Boquete's attorneys.

Earlier this year, Florida legislators passed a bill giving prisoners access to DNA testing that can help prove their innocence. Governor Jeb Bush is expected to sign the bill into law. Boquete's original motion for DNA testing in 2003 was filed shortly before the original October 2003 deadline for all DNA testing requests in Florida. At that time, the deadline hadn't been extended and the Florida Innocence Initiative worked with hundreds of inmates around the state to either find attorneys for them or send them sample motions they could file on their own, as Boquete did.

"Even though Orlando Boquete had no trial transcripts or legal resources, and a limited ability to write legal documents in English, he filed his motion before the initial deadline. This case shows the importance of prisoners having access to DNA testing that can help prove their innocence, and it shows the critical role prosecutors and the courts can play in helping get to the truth once and for all," said Nina Morrison, Innocence Project Staff Attorney.

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