



Benjamin N. Cardozo School of Law, Yeshiva University

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DNA EXONERATES LUIS DIAZ AS “BIRD ROAD RAPIST” AFTER 26 YEARS *Eight Mistaken Eyewitness Identifications—Highest Ever in a DNA Exoneration Case*

Citing new DNA test results, Miami-Dade State Attorney Katherine Fernandez Rundle is joining in a motion with the Innocence Project of the Benjamin N. Cardozo School of Law and Co-Counsel Holland + Knight LLP to vacate five 1980 convictions of Luis Diaz and dismiss all charges against him. **Mr. Diaz is expected to be released on Wednesday, August 3rd at a 10:30 a.m. hearing before the Honorable Cristina Pereyra-Shuminer at the Richard E. Gerstein Justice Building, located at 1351 N.W. 12th Street.** A press conference will follow at 2:00 p.m. at the Miami offices of Holland + Knight at 701 Brickell Avenue, Thirtieth Floor.

Luis Diaz, now 67 years old, was convicted as the notorious “Bird Road” rapist in 1980. These new DNA test results support Mr. Diaz’s assertion that he was mistakenly identified by *eight* different victims who were attacked in *eight* different incidents, each with a substantial opportunity to see, hear, and smell their attacker. Never before, in 160 post-conviction DNA exoneration cases, have there been so many mistaken eyewitness identifications in a single case.

“This should be a landmark case in the history of eyewitness reform,” said Barry Scheck, Co-Director of the Innocence Project. “There are reforms police and prosecutors are using across the country that reduce error, protect the innocent, and help apprehend the guilty. It’s just good law enforcement. We hope in light of a case like Mr. Diaz’s that they are adopted rapidly everywhere.”

Mr. Diaz served 26 years in prison. In only two other DNA exoneration cases have exonerees served more time. “The teenage children of Luis Diaz, now adults, testified as alibi witnesses – they *knew* their father was innocent. Finally, a 26-year ordeal for the Diaz family is ending,” said Colin Starger, a lawyer for the Innocence Project.

Between 1977 and 1979, over 25 women were sexually assaulted in the Bird Road area of Coral Gables. Multiple victims described their attacker as a Latin male, weighing approximately 200 lbs, between 6’ and 6’2 inches tall. When the first victim thought she recognized her attacker’s car at a gas station, Mr. Diaz became a suspect. At the time, he was 5’3 inches tall and weighed 134 lbs. Because of his alibi and the striking differences in the physical description, police released him.

When the attacks continued, however, Mr. Diaz was brought back as a suspect. After victims identified him in several live and video line-ups, he was charged in eight cases. No physical evidence ever tied Diaz to these crimes; the case against him consisted entirely of the victims’ eyewitness identifications. He was convicted of seven rapes in 1980 and sentenced to multiple life sentences.

In 1993, through the work of private investigator Virginia Snyder, two victims came forward to recant their identifications. Eventually, those two convictions were vacated and Mr. Diaz was re-sentenced, but the remaining five convictions remained.



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In 2003, the Innocence Project, the Florida Innocence Initiative, and the Florida offices of Holland + Knight filed a motion for DNA testing in Mr. Diaz's case. An exhaustive search for evidence uncovered two rape kits. One of the rape kits came from one of the victims who had recanted her identification in 1993 and the other came from an uncharged Bird Road rape from 1979. DNA testing on those two rape kits conclusively excluded Luis Diaz as the attacker and proved that the *same* unknown man committed both of these attacks.

The Innocence Project, the Florida Innocence Initiative, and Holland + Knight acknowledge the extraordinary commitment to justice and fairness demonstrated by Miami-Dade State Attorney Katherine Fernandez Rundle and members of her office, especially Gary Winston, Michael Gilfarb, Penny Brill and Don Horn, in handling the Luis Diaz case. Procedural objections could have been raised. Instead, the Miami-Dade State Attorney's Office vigorously pursued DNA testing and even took the unusual step of tracking down evidence from an uncharged crime. The team examined with great care every aspect of an old, complicated record and is working tirelessly to protect the victims and apprehend the real assailant. In an era when the cynical expect less and less from their public servants, the Miami-Dade State Attorney in this case delivered more.