



11 Park Place, Suite 1601, New York, NY 10007 | Tel. 212 402 4100 | Fax 212 402 4199

[www.appellatedefender.org](http://www.appellatedefender.org)

## **OAD Client Exonerated of 1991 Rape Charges**

*A joint investigation between defense counsel and prosecutors revealed that VanDyke Perry and Gregory Counts were convicted of a crime that never happened.*

New York (May 7, 2018) – OAD client VanDyke Perry and Innocence Project client Gregory Counts were exonerated today after a joint reinvestigation by OAD’s Reinvestigation Project, the Innocence Project and the Manhattan District Attorney’s Conviction Integrity Unit revealed that their accuser falsely claimed that the men raped her in Central Park in 1991.

Mr. Perry served 10 years in prison and was paroled in 2001. Mr. Counts served 26 years in prison and was paroled last year.

“Justice for Mr. Perry is long-overdue. Not only did a senseless lie cost him his young adulthood, Mr. Perry spent the last 17 years labeled a sex offender,” said OAD Senior Staff Attorney Mandy Jaramillo, who represents Mr. Perry. “The stigma and restrictions of our sex offender laws were, for Mr. Perry, a second sentence.”

“For twenty-seven years, VanDyke Perry has proclaimed his innocence,” said Christina Swarns, President and Attorney-in-Charge of OAD. “Today, the criminal justice system acknowledges that truth and Mr. Perry rightly reclaims the integrity of his name and reputation.”

In 1991, a woman claimed that then 21-year-old Mr. Perry, then 19-year-old Mr. Counts, and a third man abducted her in Queens, drove her to Central Park, and took turns sexually assaulting her. The woman alleged that the attack was an attempt to force her to reveal the location of her boyfriend who, she claimed, was involved in a dispute with the men over drug money. At the time of the alleged rape, the boyfriend was also being sought by the police for shooting Mr. Perry.

From the beginning, the woman offered wildly inconsistent accounts of the alleged attack. Nonetheless, her statements were the only evidence against the men. DNA testing on the woman’s underwear excluded both Mr. Perry and Mr. Counts, and there was no physical evidence of rape or trauma.

By the time of the 1992 trial, the woman had completely stopped cooperating with law enforcement and prosecutors had to secure a material witness order in order to ensure her testimony. The prosecutor argued to the jury that the DNA in the complainant's underwear probably belonged to her boyfriend. It also came out during the trial that charges against the woman's boyfriend for shooting Mr. Perry were dropped, even though the boyfriend confessed to the shooting, and gave police the weapon.

Mr. Perry and Mr. Counts were found guilty of first degree rape and other charges. After their convictions were affirmed on appeal, they continued their efforts to prove their innocence.

In 2014, the Innocence Project, with the consent of Manhattan prosecutors, had additional DNA testing done on a sample from the complainant's underwear. A genetic profile was developed and entered into the FBI's national offender database. That profile matched a man, now deceased, who was 20 years older than the complainant and who lived near the apartment where the complainant was staying when she reported the alleged attack. When confronted with the DNA test results, the complainant explained that in 1991 she sold sex for drugs and the semen in her underwear may have been from a john.

After this revelation, attorneys from the Innocence Project and OAD's Reinvestigation Project began a joint reinvestigation of the case with Manhattan CIU. In a series of meetings over a year, the attorneys and prosecutors reviewed and discussed the evidence and collaboratively identified potential witnesses, lines of inquiry and additional evidence.

This collaboration resulted in a joint defense-prosecution interview with the unapprehended alleged third perpetrator, where investigators learned critical evidence that further undermined the complainant's account.

At a recent interview with investigators, the complainant completely recanted her trial testimony, and said that her boyfriend coerced her into making the false accusation.

"This case powerfully demonstrates the unique value of collaborative defense-prosecution conviction review efforts," said Anastasia Heeger, Director of OAD's Reinvestigation Project, who, along with Ms. Jaramillo, represented Mr. Perry in the joint reinvestigation. "By working together, the defense and the prosecution can ensure that questionable convictions receive fresh, critical review. Because you can't have meaningful conviction review without competing views, informed, zealous defense counsel is an essential component of the effort to get at the truth."

Mr. Perry and Mr. Counts were in court today where, with the consent of prosecutors, their convictions were vacated by Justice Mark Dwyer of New York County Supreme Court.

“This really destroyed my life,” said Mr. Perry about his wrongful conviction and incarceration. “I couldn’t get decent jobs. But I’m determined. I have kids, and I had to strive for them. Even when my back was hurting, and I started getting gray hair too young from working so hard, I had faith.” Mr. Perry, who describes himself as a jack of all trades, is a landscaper, a general repairman, and a talented baker—a skill he learned from his mother as a child. He plans to go to college and study business management and the law, and he hopes to one day establish a program to mentor children at risk of incarceration.

For More Information Contact:

Mandy Jaramillo, OAD Senior Staff Attorney  
Anastasia Heeger, Director, OAD Reinvestigation Project  
212-402-4100

*The Reinvestigation Project is a program of the Office of the Appellate Defender, an indigent appellate and post-conviction defense office formed in 1988. Since 2007, the Project has relied on a unique early intervention model to ensure that every OAD case is thoroughly scrutinized for possible wrongful conviction. The Project reviews hundreds of cases and, where appropriate, reinvestigates and litigates claims of innocence soon after conviction and before initiation of the lengthy appellate review process.*