

Finding Actual Innocence, Court Tosses Part of Sex Abuse Conviction

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Mounting an effort that spanned from Long Island to the Middle East, defense attorneys have convinced a judge that their client could not have committed two sex crimes involving a child for which a jury had convicted him.

Acting Nassau County Supreme Court [Justice Teresa Corrigan](#) applied the evolving doctrine of actual innocence to vacate convictions of aggravated sexual abuse in the second degree and sexual abuse in the first degree against Jalal Abodalo—an unusual win for the defense.

However, the judge's ruling in *People v. Abodalo*, 01818N-2008, represented only a partial victory for Abodalo and his attorneys at Barket Marion Epstein & Kearon, because Corrigan upheld the defendant's guilt on seven other charges.

The decision, issued Friday, came after a hearing that Barket attorney Donna Aldea called "quite an ordeal." The judge heard 39 days of testimony between April 14, 2015 and May 7, 2016—19 witnesses from defense and three in rebuttal from the prosecution.

In addition, the defense supplemented its 120-page main brief with 108 exhibits consisting of 700 pages of witness affidavits from nearly 20 alibi and medical witnesses, as well as copies of receipts, photographs, passports, and travel documents. The prosecution offered 72 exhibits.

One reason why the proceedings were so complicated was because some witnesses were in the Middle East and could not travel to the United States. Over the objections of the prosecution, Corrigan allowed testimony via a live two-way video feed ([NYLJ, April 7, 2015](#)).

Amy Marion, who handled the hearing for the defense, said that two citizens of Saudi Arabia and two from Syria testified from Abu Dhabi, where the law firm had to pay a U.S. consular official to attend and swear them in.

In addition, medical testimony was elicited from witnesses in British Columbia and Pennsylvania.

After reviewing the evidence, Corrigan concluded that the defense had presented clear and convincing evidence that Abodalo had been out of the country for the convictions related to Dec. 31, 1994, invalidating the counts 2 and 3 of the indictment, which she vacated.

The judge found the defense's arguments for vacating the other charges did not meet the stringent standards of actual innocence, as outlined just 2 1/2 years ago by the Appellate Division, Second Department, in *People v. Hamilton*, 115 AD3d 12.

"The court notes that much of the testimony received at the CPL 440 hearing casts some doubt on the defendant's guilt on those counts for which the court has not found him actually innocent," she wrote.

"However, such doubt, or even a preponderance of conflicting evidence as to defendant's guilt, is insufficient for the court to make a finding of actual innocence."

She also found that Abodalo had been out of the country in September 1998, rendering him innocent of one instance of sexual contact with a child cited in the first count of the indictment. But she said that, since the defense had not presented sufficient evidence that he was innocent of all incidents in the indictment, the conviction remained.

Corrigan also rejected Abodalo's claim that he had received ineffective assistance of counsel, saying that the "totality of the representation" provided by Dennis Lemke, his trial attorney, was both "reasonable and meaningful."

Aldea said in an email that the judge's decision was "far too narrow," and that Abodalo would appeal.

The defendant already has spent \$250,000 for the firm's fee and \$114,000 for expenses.

Aldea argued the fact that the complainant's testimony was false regarding three incidents "casts a pall on all the charges and creates a significant probability that had the jury heard such evidence it would have acquitted Mr. Abodalo on the remaining counts."

She also faulted what she called Lemke's failure to investigate and present a "compelling" case for actual innocence.

Abodalo is serving a 12-to-15 year sentence at the Eastern Correctional Facility, with terms on the nine counts of the indictment running concurrently. If he doesn't prevail on appeal, it is unlikely that his sentence would be reduced.

Assistant District Attorney Barbara Kornblau and Rob Cavallo represented the prosecution. Miriam Sholder, a spokesman for the office, said that the agency is pleased with the decision and does not intend to appeal.