

Two New York City Police Officers Acquitted of Rape

By John Eligon

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A jury acquitted two New York police officers on Thursday of charges that they raped a drunken woman after helping her into her apartment while on patrol.

The woman had described snippets of a harrowing night in which the officers, called to help her because she was extremely intoxicated, instead abused her. They insisted no rape occurred, with one allowing only that he snuggled with her while she wore nothing but a bra.

The verdict brings to an end a criminal case that drew outrage across the city when the officers were indicted in 2009, and provides some measure of vindication for the officers, Kenneth Moreno and Franklin Mata.

The officers were convicted of three counts of official misconduct for entering the woman's apartment, but the jury found them not guilty of all other charges, including burglary and falsifying business records. The Police Department said the officers were fired Thursday.

For Cyrus R. Vance Jr., the Manhattan district attorney, the verdict was an unsatisfying conclusion. The decision, after a trial that lasted almost two months, also comes at a critical juncture for an office that is navigating the biggest case of Mr. Vance's brief tenure: the sexual-assault charges against Dominique Strauss-Kahn, the former managing director of the International Monetary Fund.

The jury's decision also underscores the difficulty of obtaining favorable results for women who say they were sexually assaulted, and who often are subjected to scrutiny and skepticism that keep many of them from speaking out. In this case, defense lawyers pounced on the credibility of the woman because she was very drunk on the night in question and did not remember many details.

After the verdict, Officer Moreno said outside the courthouse that his accuser, who has a \$57 million lawsuit pending against the city and the officers, was "mistaken and confused," and that "she made the whole thing up."

But the officer, who appeared tense and tight-faced, also said he was not angry.

"I'm glad it's over," he said. "It's a lesson and a win."

When a reporter asked Officer Moreno what he meant by lesson, his lawyer, Joseph Tacopina, interjected, saying, “Well, we’ll just leave it at that.”

Both officers could face up to a year in jail on each count when they are sentenced on June 28 before Justice Gregory Carro of State Supreme Court in Manhattan.

The case presented a formidable challenge for prosecutors: there was no DNA evidence suggesting that either officer had committed a sexual act.

The jurors, who reached their verdict on their seventh day of deliberations, left the courthouse without commenting, and most reached for comment later declined to do so.

One juror, Richard Schimenti, said there was not enough evidence to prove that a rape had occurred.

“I did think that they might have had sex, but that doesn’t mean that they did have sex,” he said. “There is nothing to substantiate this. There’s no DNA, there’s no proof in any way that they had sex.”

Mr. Schimenti said he believed the prosecution was hampered by the accuser’s memory loss.

“It was very hard to make a leap to charge people with rape when the principal person in the trial didn’t remember so many things,” he said.

As the verdict was read, Officer Mata looked straight ahead, while Officer Moreno cast his eyes downward, placing his fingertips on his lips.

After the verdict was delivered, Officer Moreno’s mother, Aida Moreno-Ruiz, called a relative from her cellphone. “Hey, Freddy,” she said. “It’s over. It’s over. Not guilty.”

She said in an interview that she knew her son was “not capable of doing something so ugly.”

“Thank God it’s over and the truth came out,” she said.

Mr. Tacopina, who tried the case along with Chad Seigel and Officer Mata’s lawyer, Edward J. Mandery, called it one of his biggest victories.

“These guys were publicly presumed guilty more so than any other case I’ve been involved in,” Mr. Tacopina said in an interview. “These guys were called ‘rape cops’ before the trial even started.”

While many people thought a conviction would be a formality, Mr. Tacopina added, “I believed in this guy and we believed in these guys since Day 1.”

Nonetheless, the police commissioner, Raymond W. Kelly, said Thursday that the officers would be fired immediately. (They had been suspended with pay.)

“The guilty verdicts involved violations of the officers’ oaths of office and, as a result, warrant immediate termination,” Mr. Kelly said.

More than 35 witnesses testified at the trial, which was highlighted by combative, dramatic cross-examination between Coleen Balbert, an assistant district attorney, and the officers.

Prosecutors had accused Officer Mata, 29, of standing guard while Officer Moreno had sex with the woman. She was so sick that the officers should have called an ambulance, prosecutors said, while the defense argued that the woman, though drunk, was walking and talking.

After initially helping the woman into her apartment, the officers were captured by surveillance cameras as they re-entered the woman’s East Village building three times.

Officer Moreno, 43, testified that he was a recovering alcoholic and had developed a rapport with the woman that night, when she confided in him that her friends were angry at her because she drank too much. The two flirted, he sang Bon Jovi’s “Livin’ on a Prayer” to her and she actually came onto him, wearing nothing but a bra, he said. He testified that he kissed the woman on the forehead and snuggled with her in her bed, but insisted they did not have sex.

But the woman, now 29 and living in California, told a much different story of what happened on that night in December 2008.

The woman, who was drinking heavily at a Brooklyn bar to celebrate a job promotion, conceded that she had blacked out many details of the evening, although she insisted she did not have a drinking problem. Still, she testified to vivid memories of hearing police radios crackling and Velcro tearing open, of feeling her tights being rolled down, and then of being penetrated as she lay dazed, face down on her bed.

Susan Xenarios, director of the Crime Victims Treatment Center at St. Luke’s-Roosevelt Hospital Center, said she was unhappy but not surprised by the verdict. She said she felt that the jurors placed some responsibility for what happened on the woman, a common hurdle in rape cases.

“I know that these cases are so” complicated, said Ms. Xenarios, who has worked with rape victims for about four decades. “Because of her incapacitation, it just made everything so much more complicated.”

Joseph Goldstein, Anemona Hartocollis and Noah Rosenberg contributed reporting.

