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Haunted by a 7-year ordeal

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Even now, more than a year after he was freed from prison and seven years after the flawed trial that sent him there, Damon Auguste's thoughts are regularly interrupted by scenes from a nightmare.

It starts with the bedroom door flying open Nov. 2, 1997, and police officers asking him about a 15-year-old girl named Monique. It moves to rape and sodomy charges, a guilty verdict at trial, and his time in prison — including a year in maximum security that Auguste considers the worst of his life.

And it features a recurring character, the man Auguste blames for his wrongful conviction and the long, bitter battle to find justice: Deputy District Attorney Benjamin Field.

"There's nothing you can ever do about what's already happened," Auguste said in a recent interview, explaining that he tries hard not to dwell on his ordeal. "Of course, every now and then, you can't help that things flash into your mind."

As difficult as the memories are, Auguste was lucky. His family had the money to hire a cadre of skilled lawyers whose vigorous investigation helped expose Field's questionable judgments and tactics during and after trial.

Field withheld the details of a key scientific examination, misstated evidence, and arranged invasive police searches of the homes of Auguste's mother and aunt. And he trusted the testimony of Monique, whose lies — when ultimately exposed — persuaded Superior Court Judge James Emerson to throw out the convictions of Auguste and a friend, Kamani Hendricks, who had been tried with him.

Field today says that he has taken criticisms of his conduct by Emerson to heart, though he insists he did not intentionally act improperly.

Fallout lingers

But even as the years pass, the ramifications of Auguste's ordeal linger.

The case derailed the ambitions of Field, a star within the Santa Clara County District Attorney's Office who had hoped to win this year's election to succeed his boss, District Attorney George Kennedy. And it left Field and Kennedy entangled in a Colorado lawsuit contending the district attorney's office acted illegally in searching the home of Auguste's aunt while she was in Africa on a charitable mission.

The case began with a chance meeting. In October 1997, Hendricks, an aspiring musician, chatted with a girl working the drive-up window at a Jack in the Box in Milpitas. According to trial testimony, the girl, Monique, lied and told him she was 17. The Mercury News is not printing her full name because of her age and the nature of the allegations.

Days later, Monique accompanied Hendricks to a house rented by Auguste, who owned a small music company. The three talked and drank vodka and champagne.

About 2:30 a.m., two hours after her curfew, the two dropped the girl off at a friend's house. There she called the police to say she had been raped.

Auguste made no statement to police. Hendricks told police he had not engaged in sex with Monique. But DNA evidence established that both men had intercourse with her, and analysts said it also suggested sodomy. There were microscopic flecks of blood on Monique's underwear, and small abrasions that a hospital nurse thought could be from forced sex.

Members of the Auguste family, who were not immediately aware of the facts, presumed Damon had done nothing worse than have consensual sex with an underage girl. "I was in disbelief that it was a serious matter," recalled aunt Donna Auguste, a computer engineer who helped raise her nephew. Inexperienced in criminal matters, Donna Auguste and Karen Auguste, Damon Auguste's mother, found their first lawyer through the recommendation of a bail bond company; Karen Auguste chose an investigator based on the size of the advertisement in the Yellow Pages.

The trial came down — as such cases often do — to a credibility contest.

Monique testified that she had little experience drinking liquor before that night. And she said the incident inflicted emotional trauma: She was unable to go to school and became afraid of people. She said she had to stop work for about two months; when she returned, she had to be reassigned away from customers.

As inconsistencies became apparent during Monique's cross-examination, Field persuaded the judge to allow some expert testimony that rape victims often suffer confusion.

Auguste took the stand and insisted the intercourse was voluntary. Hendricks did not testify.

In his closing argument, Field emphasized that the girl should be believed because she had cut off social contacts — exactly the way a rape victim would be expected to behave.

The jury convicted both men. On Oct. 27, 1998, Judge Robert Ahern sentenced Auguste to 18 years in prison. Hendricks, who had prior convictions for domestic abuse and discharging a firearm, was sentenced to 37 years.

In August 2000, a panel of the 6th District Court of Appeal affirmed the verdict.

But unlike most legal proceedings, which tail off after a conviction and a rejected appeal, this one was just getting started.

Donna Auguste, who recalls being stunned when the first lawyer she talked to wanted more than \$15,000 for her nephew's case, opened her pocketbook to win a new trial. In the end, she would spend \$900,000 on lawyers, investigators and experts — and she and her sister would invest six years of their lives.

Even before the sentencing, Donna Auguste wrote to Ahern, complaining the family had not received from Field the technician's notes for the DNA reports offered at trial. Ahern ordered Field to turn over the material immediately.

Defense experts soon concluded that the DNA notes raised questions about whether sodomy occurred.

Defense investigators gathered statements from 17 people who contradicted Monique's trial testimony — witnesses who had seen her drinking, young men who said they had sex with her, classmates who said her social life had not changed, and her fast-food manager, who said she had not altered her work habits. Most important was Stephen Smith, another sex partner who said Monique told him she had falsely accused Auguste and Hendricks.

And while Field at trial insisted that the girl had no motive to lie, the defense learned that in the previous school year she had been forced to move for a time to San Diego, after her stepfather walked into her room and found the girl and a classmate engaged in sex. Because the girl had broken her curfew the night of the alleged rape, it seemed there was a possible motive: to avoid trouble at home.

Cliff Gardner, whom the Auguste family hired to handle the request for a new trial, still marvels at the success of the investigation.

"It was one of the only times I've ever had the resources to do everything I wanted," Gardner recalled. "I thought to myself, how many other defendants had names like Rodriguez, Jefferson, Hernandez, and were unable to raise these issues" because they couldn't afford to?

Prosecutor labors on

But Field was not about to let his case crumble. Stoking his suspicion that the defense was orchestrating false evidence was a letter Damon Auguste wrote from jail to a friend. In it, he urged her to say she had been in his house the night of Nov. 2 and knew Monique was lying. In the story Auguste laid out, someone named Steve let her in.

”Rarely do you come up with a piece of evidence so damaging,” Field said recently of that letter.

Field was especially curious about the mysterious Steve in Auguste’s plotting and whether he was Stephen Smith — the defense’s crucial witness.

In 2003, as the two sides were preparing for a hearing on whether the new evidence merited a new trial, Field issued a series of search warrants seeking to establish that a nefarious connection existed.

Authorities raided the San Diego home of Smith, where they found no links to Auguste but did discover a small amount of an illegal drug; Smith later was convicted for possession. They also searched the homes of Smith’s mother, of Smith’s girlfriend, and of Karen Auguste.

It is unclear whether Field had the legal authority to order these searches — search warrants are used to seek evidence of crimes, while both sides in a post-conviction proceeding such as this one normally would use subpoenas, which offer the other party advance notice and the opportunity to object.

In July, at a conference with Emerson, defense lawyers raised their own concerns about Smith, whom they had interviewed in Fort Knox, Ky. Smith had left the military, and the defense could not locate him.

Field did not disclose that he had found Smith in San Diego. Nor did he react when the conversation turned to Emerson’s concern about Field’s use of a warrant to search the home of Auguste’s mother. Emerson directed Field to turn to Emerson if he sought any further search warrants.

But Field did not slow his pace. In the search of Karen Auguste’s home, authorities had found a copy of a letter that Damon Auguste had sent to his aunt shortly after the guilty verdict, suggesting possible ways to get out of jail by almost any means — including paying jurors, breaking out, even silencing Monique. Four days after the conference with Emerson, with the authorization of a judge in Colorado, a district attorney’s investigator joined local authorities to search the Lyons, Colo., home of Donna Auguste for additional evidence of the alleged plot.

Donna Auguste was not home at the time. She and her husband were in Tanzania distributing medical supplies on behalf of the foundation she had created after selling her company, Freshwater Software.

Four months later, Emerson issued a scathing order regarding Field's conduct. Not only had Field violated his order on the search warrants, Emerson ruled, but his failure to disclose Smith's whereabouts was "disturbing."

Then, months after that, Emerson ordered a new trial for Auguste and Hendricks. This time he found that Field had improperly withheld exculpatory evidence when he failed to turn over the DNA notes. He noted that Field had overstated other evidence, referring to the girl's underwear as "blood-soaked" when the blood was not even visible. Most importantly, Emerson concluded that the girl had lied to the jury repeatedly in her testimony — and that these lies offered strong reason to doubt her accusation of Hendricks and Auguste.

"Given that the evidence at trial was essentially a credibility contest between petitioners and the victim, this new evidence severely undermines [the girl's] credibility and suggests that petitioner's version of events was credible," he wrote.

After the order for a new trial, defense attorneys immediately sought Auguste's release on bail. But Field countered by filing a motion seeking bail to be set at more than \$8 million. He referred again to the girl's "blood-soaked clothing."

Another review

Days afterward, the motion was withdrawn after Field's superiors received questions from the Mercury News about the case. Karyn Sinunu, the chief assistant district attorney, assigned a new attorney to review the case; after that review, the district attorney's office dropped the rape and sodomy charges and settled for a plea agreement to sex with a minor.

Field continues to insist that the case appeared to be strong and believes to this day that Auguste and Hendricks are guilty. He called the contradictions in Monique's testimony minor, adding, "The details are not as important as the strength of her testimony. It is a difficult thing for anyone in that situation. It wouldn't surprise me if she made misstatements" about such matters as the amount of time she was off work, or the amount of alcohol she drank in her life.

He also insisted that he had no intention to withhold any information from the defendants. And the search warrants, he contended, were justified and appropriate.

But Field, who has been reassigned to the office's "three-strikes" team, dropped his plans to run for district attorney after the case ended. Sinunu is now a leading candidate in that contest. Field is seeking a judicial post.

These days, Damon Auguste is spending his energy trying to establish his music company, which recently issued an album by a local rap artist.

Meanwhile, the lawsuit in Colorado is pending, though prosecutors have won early motions over the issue of whether they enjoy immunity under the law for the searches.

"This sequence of events was so wrong on so many levels," Donna Auguste said in an interview in Colorado. "At every turn, it seems justice was buried under actions that were unfair, unjust, boldly inaccurate. I thought our system was better than that."

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