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Police Drop Rape Charges; Wrong Man, Victim Says

BY SUSANNAH A. NESMITH
snesmith@herald.com

MIAMI—Miami police abruptly dropped rape charges Thursday against a man whose DNA linked him to the 1996 crime - because the victim swore they had the wrong person.

Jorge Garc a, 49, an unemployed laborer, has been behind bars since Tuesday, when a state crime database matched his DNA to evidence from the 7-year-old case. Garc a voluntarily gave Miami investigators a sample swab of his DNA recently in an effort to help their search for a serial rapist.

On Thursday, the victim told The Herald she and Garc a had been involved in a long-term relationship. She said police found his DNA because the couple had had consensual sex shortly before she was raped by a stranger.

"He is innocent," she said of Garc a, with whom she broke up years ago. "When I was raped, he was very angry about it."

She also insisted she told police - in 1996 and again Thursday - that her attacker was black, which Garc a is not.

Though police are dropping the case, they insisted there was legal cause to arrest Garc a based on the DNA evidence.

"If I pick up a guy on a DNA match, I have the probable cause to arrest him," police spokesman Delrish Moss said. "It's not unusual to find more facts that change what that probable cause tells you. That's why we have a court system. That's why there are opportunities to drop this even before it gets to trial."

Police also said the victim has changed her story.

"She told us [in 1996] she had had no consensual sex," Moss said. "She pointed us to all the places where we'd find the DNA evidence. The DNA says it's him - Garc a. Unless the DNA lies, she's wrong."

But the victim said police tried to pressure her Thursday into saying Garc a raped her.

"They told me, 'The DNA doesn't lie' " she said. "They tried to stick that in my head, but it can't be true because he [Garc a] didn't rape me."

Moss called her accusation "absurd" and said detectives never would try to coerce a victim into telling them anything other than the truth.

Miami Commissioner Tom's Regalado, a frequent police critic, said the department bungled the Garc a case in a rush to produce positive news amid criticism of its handling of the serial-rapist investigation.

"They have created a nightmare for a perfectly legal person," Regalado said. "These are the things that happen when you want to generate good news and you worry first about the media and then the case. . . ."

"For the city, this is a lawsuit that has 'loser for the city' all over it," said Regalado, who represents the district where the rapist has struck seven times since September 2002.

Fellow Commissioner Johnny Winton said he wasn't fully briefed on the Garc a case, but worried that it was "symptomatic of the kinds of mistakes that we've made for a long time in a lot of areas." He said, however, he supports new Chief John Timoney's efforts to turn the department around.

Nick Navarro, a former Broward County sheriff, agreed with the depart-

ment that police had legal cause to arrest Garc a based solely on the DNA match.

"They had the results of the DNA test," he said. "That to me shows probable cause. That's what they went on."

But he warned that while DNA testing can be a relatively exact science, it is not completely understood yet.

"We've got to be extremely careful how we handle these things because the slightest mistake could create a situation where we are going to try to convict an innocent person who hasn't committed the crime," he said.

When evidence is collected in rape cases, victims are routinely asked if they have recently had consensual sex, said Dr. Karen Simmons, director of the Rape Treatment Center at Jackson Memorial Hospital. The victim in the 1996 case said she doesn't remember anyone asking her that.

Though center doctors do their best to get complete information, some victims aren't always able to tell the full story, Simmons said.

"If the patient comes right away, they could be confused, upset," she said.

Wednesday night, after police announced Garc a's arrest, The Herald interviewed the victim then raised questions with police on whether they had the right suspect.

Moss said detectives had trouble locating the victim until Thursday morning. The woman, who called The Herald after detectives finished interviewing her, said police should have contacted her before putting Garc a in jail.

On Thursday afternoon, The Herald made a written request for a copy of

the 1996 police report to verify the victim had said a black man raped her. Police said Thursday night they had not been given enough time to produce the report. Moss did say the victim told police that the attack happened at night and the rapist covered his face.

García's arrest evolved from the department's efforts to catch a serial rapist described as a Hispanic man with a mustache or goatee. More than 120 men were asked to voluntarily give DNA samples, which were checked against a Florida Department of Law Enforcement database that includes evidence from unsolved rapes.

García's DNA did not match DNA from the serial rapist.

The victim said the whole ordeal has been hellish.

"This is like a soap opera," the victim said. "It's been horrible to return to all this that happened . . . years ago."

Herald staff writer Charles Savage contributed to this report.