

Puerto Rican Pride and Bronx Prejudice

In one of the city's less publicized bias trials, Puerto Rican art professor Rafael Rivera Garcia beat an attempted murder rap and spotlighted subtle discrimination and segregation in New York's neighborhoods.



Bronx assistant district attorney Angelo MacDonald began his summation to the attempted murder trial of Professor Rafael Rivera Garcia with this thought: "Have you ever heard the children's saying 'Sticks and stones may break my bones, but words will never hurt me'?" Well, who got hurt? The complainant did. The defendant sits there unscathed." But although he lacked physical scars, Rivera's defense was that he experienced something more pervasive than what befell Yusuf Hawkins. Racism without mobs, baseball bats, without cross burnings—a racism that requires a leap of faith, and maybe a personal experience to understand. A racism that isn't easily proven in a court of law.

For five weeks in a courtroom right out of *Bontire of the Vanities*, Rivera supporters, ranging from construction workers to religious leaders and university administrators, packed the courtroom. The jury heard testimony about a quarrel between two neighbors over loud music that escalated into a shooting. Rivera, 61, claimed that he acted in self-defense when he shot Nicholas DeMatteis in the parking lot behind their building a year ago. He felt his life was threatened because DeMatteis had waged an eight-month harassment campaign to get him out of the building. From his first encounter with DeMatteis, Rivera sensed what he called *desprecio*, a denial of his equality.

Last Saturday, Rivera was acquitted of the eight counts of his indictment, which included charges of attempted murder, possession of a deadly weapon with intent to

use, causing serious injury with a loaded pistol, and depraved indifference to human life. He was convicted of the least serious gun possession charge, for which he may only receive probation. Sentencing has been set for September 14.

The prosecution's position was that racism had no bearing on the trial, that it, and the harassment campaign, was something "in [Rivera's] mind," blurring the facts of the case. In his opening remarks, MacDonald, 31, argued that the shooting was a "vicious, callous, yet thoughtful act, not self-defense... a deliberate act to kill Mr. DeMatteis." Aside from the antagonists, there were no witnesses to the shooting. The mirror-image stories told by Rivera and DeMatteis about what happened that night were a major focus of the trial.

Both men claimed the other was lurking in the parking lot, waiting, on the night of May 2, 1989, at about 10:30 p.m. Both said they hesitated as they got out of their cars, hoping the other one would go inside, preventing a confrontation. Each claimed the other had spat at him near the stairs leading up the building. Each man said he was attacked by the other. But on the shooting itself, the story diverged: DeMatteis claimed to be a passive victim of a silent triggerman flashing "cold, blank stares." Rivera said the shots were fired as they struggled for the gun.

DeMatteis, 34, a muscular five-foot-five, would display an impressive set of pectorals to the jury when asked by MacDonald to take off his shirt and point to his bullet wounds. His description of the shooting

was equally dramatic. "I turned around and said, 'Did you spit at me?' and bang! he had the gun out, takes it to my groin area, and bang! he shoots me again... then the shoulder, bang! I started screaming, 'You're killing me!'" Then, with a look of horror and disgust on his face, he pointed at Rivera, and shouted, "He tried to murder me that night. You're a nut!"

Rivera came off like a gentle, middle-aged art professor, and broke into tears several times. Anguished and stuttering, he claimed DeMatteis screamed "You dirty spic, what do we have to do to get you out of this building?" This was the only epithet, the only overt instance of prejudice entered into evidence. According to Rivera, DeMatteis grabbed him by the collar, and the professor, fearing his life was in danger, pulled a gun from his sport coat. DeMatteis grabbed at the semiautomatic pistol and tried to wrest it from him. They struggled over the weapon and it swung back and forth wildly. Then, five shots rang out. The sixth, which hit DeMatteis in the back, discharged as they disengaged, and Rivera went spinning to the ground.

The location of DeMatteis's wounds, spread about the neck, thigh, wrist, hip, and shoulder, would seem to support the struggle theory. As borough president Fernando Ferrer said in a statement at the trial's opening, Rivera's was "not the behavior of a trained assassin. They were the acts of a desperate man. But it's also hard to believe that DeMatteis continued to grapple with the gun after five shots rather than grab at his wounds. "He's not Superman, you

know," said MacDonald. And then there was that problematic shot in the back.

Another discrepancy in the stories was exactly where the shooting took place. DeMatteis claimed it happened in an enclosed walkway leading to the stairs, while Rivera said it happened at the top of the first landing of the stairs. This was more important to the defense's contention that there was a struggle, since, as Franco said, "If the incident occurred... in an enclosed area... we would have found some shells or bullets. Three [policemen]... after an exhaustive search... found one spent shell."

Lacking in forensic evidence—Rivera dropped the gun running to the police station and DeMatteis's telltale shirt was never recovered—MacDonald kept the focus on the blood. As many as nine wounds were found in the man. At the hospital, they had to pierce a hole in his chest to drain the blood because his lung had collapsed. Witnesses had him bleeding everywhere. Throughout the trial, over the objections of defense attorney Ruben Franco, MacDonald kept the bloodstained trousers DeMatteis wore that night on prominent display at the prosecutor's table, a few feet from the juror's box.

MacDonald also waved before the jury a snapshot taken in the precinct station after Rivera had given himself up. In it, Rivera appears natty as ever, his tie straight, no rips or stains on his clothing. "Is this after a violent, horrendous, monstrous struggle for the gun?" pleads MacDonald. But alternate juror Daphne Dyce, after she had been dismissed, said, "[Rivera] is a meticulous

By Ed Morales

man. He would knot his tie even to take a mug shot." Franco argued that the lack of blood on Rivera's clothing supported his claim that the struggle took place at arm's length, and that Rivera was not pressed tightly against his assailant, as DeMatteis had described during cross-examination. ("He was on me like white on rice," he contended.)

Still, the physical evidence was formidable. "You can't gloss over six gunshot wounds," said MacDonald. "Was it a struggle, or was it in his mind? You can't let the defendant paint broad strokes of racism over the truth of this case." Although Rivera admitted lying to the grand jury about exactly how the gun was transported to New York, there is no doubt he intended to use it for defense. The fear that drove Rivera, a man with no previous criminal record, to carry a gun in his sport coat that night, was deep, something that pushed him to the brink.

MacDonald opened his case by claiming that this was a story of "a relationship gone sour, not for racial reasons, but because two grown men could not solve an everyday problem." The problem was the noise from DeMatteis's \$4000 stereo that Rivera said was making it impossible for his wife, who was teaching in Co-op City, and son to prepare for school.

Rivera wasted no time in complaining to the owners of the complex, Peter and Marie Ruffalo. In a *Voice* interview, he said that soon afterward, DeMatteis came knocking on his door, in a conciliatory mood. "Gee, I didn't realize that you could hear it here," Rivera recalled him saying. "So we went to his apartment, and he asked me, 'Where are you from?'" Rivera, who is olive-skinned, said that many in the neighborhood thought he was Greek. "I said, 'I'm a professor at the University of Puerto Rico.' And then he asked me, 'No, what are you?' I said, 'I told you, I'm a professor at the University of Puerto Rico. I'm Puerto Rican.' He said, 'Oh.' But he didn't give me a dirty look or anything." It didn't occur to him at the time, but in retrospect, Rivera

saw this to be the first instance of subtle prejudice. "You could sort of tell."

DeMatteis, an appliance repairman, who had been convicted of petty larceny in 1975, and of driving while impaired and possession of marijuana in 1985, insisted his taste in music was mellow rhythm and blues. Aretha Franklin. Of their first meeting, DeMatteis recalled, "He complimented me on my apartment. I found out he had a son the same age as mine. I was under the impression that everything was okay." But Rivera began sending over his son to complain about the noise, something that annoyed DeMatteis, who grew "tired of seeing" Rivera's son. "I don't know why he didn't come over himself so we could talk about it man-to-man."

The two men's stories diverged drastically at this point. DeMatteis claimed that he kept his 100-watt amplifier tuned to reasonable levels, and that Rivera became aggressive in his complaints, to the point where one day Rivera's wife held him back from attacking DeMatteis, as he shouted, "If I come over there, there's going to be big trouble." Rivera reversed the claim, saying DeMatteis challenged him to fight, calling him a peasant because he rented his apartment rather than owning it. According to Rivera, Nick threatened, "I don't want you sending your kid anymore. If you don't like the noise, move!"

From there the dispute escalated—Rivera kept a record of 116 incidents of harassment. Although most of these were continued stereo blasting, a few were forms of verbal and psychological abuse. Rivera testified that DeMatteis had nearly struck him with a van, had challenged him to fights, strewn garbage in front of his door, grabbed his son by the throat and threatened to "kill your father [Rivera]," poured mud into his wife's gas tank, arranged for his motorcycle to be stolen and torched, turned off the electricity to his apartment, and etched "Fuck you" into his front door. DeMatteis denied all of these accusations.

Rivera, whose many character witnesses indicated that he came from a privileged

stratum of Puerto Rican society, had complete faith in the legal system to provide a solution. After the van incident, Rivera was referred by the police to the Institute for Mediation and Conflict Resolution to solve the dispute with DeMatteis. It was here that he got the impression from the mediator that DeMatteis's actions were racially motivated. In an earlier interview, Rivera said the mediator told him, "This man doesn't want Puerto Ricans living in this building." She insisted that he shouldn't move and that the system would make DeMatteis comply.

But as the incidents mounted, he found himself returning endlessly to the police precinct. Assemblyman Guy Velella's office, the city's Commission on Human Rights, and the Bronx Criminal Court. There he got an order of protection forbidding DeMatteis from "harassing, intimidating, threatening or otherwise interfering with Rafael Rivera." When DeMatteis continued to violate those orders, the Bronx D.A.'s office decided to prosecute him for harassment.

In an extraordinary moment of the trial, A.D.A. Sylvia Souto, who works in MacDonald's office, testified for the defense. She characterized DeMatteis as a "very hostile" and "irrational" person who belligerently challenged the authority of the court. "I recommended that [Rivera] minimize his losses and move," said Souto. On the same day Rivera and his family arrived home from a court date that DeMatteis missed, they were horrified to find the obscenity, which the Ruffalos confirmed existed, etched into their door.

DeMatteis, who looks dark enough himself to be mistaken for a Latino, insisted that he was not a racist. After all, he had been married for 14 years to a woman who was part Puerto Rican. When asked by Franco whether they had divorced because he physically abused her, DeMatteis said their arguments were all verbal. "We fought a lot. We made love a lot."

Germana Correa Oehlschlager, a short, feisty Puerto Rican woman, is a Throg's

Neck resident who showed up at the trial every day, often approaching Rivera to offer encouragement. Correa, 63, has been living in the neighborhood since 1964. "The same thing happened to me," she said. "My son and I had to confront our neighbors because they didn't want Puerto Ricans there. They let their dogs run over my garden and said, 'If you don't like it, you should go back to the South Bronx.'" In one encounter, when she began to fight with a neighbor who tossed a firecracker at the family dog, the police were called and wound up breaking her son's arm in the ensuing struggle.

Although there are some marriages between European Americans and Puerto Ricans in Throg's Neck, Correa's German-American husband, William, said that "[Latino] people are supposed to keep their place. If you have an outspoken woman like Germana, who don't take no shit, you get problems." "I don't have any friends in the neighborhood," asserted Correa.

In his closing argument, MacDonald tried to reshape the race issue into a class one. Realizing that Rivera had impressed the jury with his stature and refinement, MacDonald, on the eve of Independence Day, lectured that "laws don't discriminate between black and brown, strong and weak, the important and the not important. The defendant is no different from you and me. It doesn't matter how long your résumé is. Even the president of the U.S. can commit crimes."

But this was a Bronx jury, consisting of eight blacks, two Latinos, and two whites, who didn't seem to swallow it. It took them just two days to vindicate the professor, despite the considerable evidence against him. When asked if the turmoil in Rivera's life was all "in his head," alternate juror Dye, a black middle-class corporate woman who lives in mostly white Riverdale said, "I think the charges of racism are actual. Lots of things can collectively make for racism. Attitudes, things that are done. All these things that happened were no coincidence."

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