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Press Release

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*For Immediate Release*

## **CITY PREVAILS IN BRONX FALSE ARREST AND MALICIOUS PROSECUTION CASE**

***1997 INCIDENT HAD BEEN WIDELY PUBLICIZED AT THE TIME***

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New York, Dec. 9, 2005 – A Bronx Supreme Court justice dismissed all the monetary claims of a Bronx man who had previously been acquitted by a Bronx criminal jury after pleading misidentification and self-defense in the shooting of a police officer. This two-week trial involved the 1997 shooting of a then-police captain, Timothy Gavin, who was executing a search warrant in a Bronx apartment that turned up a large cache of weapons. The case received wide media attention at the time.

The plaintiff, Tawfiyq Amir Abdul-Aziz, formerly known as Tremayne Armstrong, had sued New York City for damages for his two-and-a-half-year incarceration while awaiting trial. Aziz, now 31, alleged that he had been unlawfully arrested and maliciously prosecuted.

After hearing all the evidence – but before submitting the case to the six-woman jury – Justice Alan J. Saks granted the City's motion to dismiss the plaintiff's claims. He found that the City had met its burden of proving that the police, after its investigation, had "probable cause" to arrest Aziz in 1997, and that the plaintiff had failed to introduce proof that the subsequent grand jury indictment had been procured with malice through intentional suppression of evidence.

On Feb. 5, 1997, then-Captain Timothy Galvin was leading a plainclothes team in the execution of a search warrant in an apartment on the Grand Concourse. The search of a locked closet yielded pistols, a submachine gun, grenades, silencers, spears, listening devices and ammunition. Although the apartment was that of a friend of Aziz's, it was undisputed that Aziz had keys to the building and the apartment.

As the search was ending, Captain Galvin heard someone, later identified by him as Aziz, trying to use a key in the apartment door. After warning his colleagues, the captain opened the door partially and was immediately shot in the face and hip. Between the two .25-cal. shots, Galvin saw shooter's face. The shooter fled, managing to avoid being struck by return police fire. The captain was badly wounded.

The tenant – ultimately sentenced to a lengthy federal prison term for the weapons – was first also held for Captain Galvin's attempted murder. By that evening, however, detectives were able to corroborate his alibi that he had been at his workplace in the Metropolitan Transportation Authority (MTA) yards in Inwood.

Based on anonymous tips, messages on the apartment's answering machine, telephone logs, and descriptions by two witnesses who claimed to have seen Aziz at the time and near the place of the shooting, the investigation homed in on Aziz, who denied the shooting but turned himself in 12 days later at an attorney's office. Pleading both misidentification and a self-defense justification, Aziz was acquitted of all charges – attempted murder, assault, and weapons possession – after a highly publicized Bronx

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trial in October 1999.

In introducing the jury to the civil trial, Justice Saks stressed the different standards of proof in a criminal trial and emphasized that the “not guilty” verdict was irrelevant to the issues in the civil damages suit. Aziz’s attorney, Jon L. Norinsberg, promised to prove that it was the tenant who had shot the captain.

(Legal Note: In the earlier trial, Aziz’s criminal attorney alleged that Aziz had not been the gunman – thus, the “misidentification” defense. However, the attorney also argued, as allowable in criminal trials, that “if” Aziz in fact had been the shooter, then the shooting was justified as an act of “self defense.” In press interviews afterward, criminal case jurors told reporters that although they had found Aziz not guilty, they had split on which defense they accepted. In the latest trial, Aziz’s civil attorney argued that Aziz was not the shooter, and Aziz testified to that on the stand as well.)

Detective Luis Pinero, now a 23-year veteran who had shepherded the investigation, laid out to the civil jury the many leads followed in the investigation prior to Aziz’s arrest, and read the statements of the MTA employees who had been with the tenant at work when the shooting occurred. The assistant district attorney, Cindy Elan-Mangano, who had presented the case to the grand jury walked the civil jury through the indictment process and demonstrated that, in securing the indictment, she had even given the grand jurors exculpatory evidence in Aziz’s favor. (At the time, Aziz was still known by the name Armstrong.)

The civil jury also heard all of the grand jury testimony, including that of the eyewitnesses and a friend of Aziz’s, who testified that Aziz had admitted the shooting to him in detail the same day.

The final witness was Captain Galvin, now retired because of the injuries suffered in the shooting. (Bullet fragments remain in his head.) Asked if he could identify the shooter, he pointed to Aziz. With all the evidence considered, the judge found for the City.

Senior Counsel Joseph E. Mohbat of the Law Department’s Tort Division was lead attorney, assisted by Jacquelyn Williams. “We’re very pleased that the court upheld the thoroughness and legality of our police officers’ actions,” Mohbat said.

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