

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, September 8, 2016 (arguments begin at noon)

No. 144 People v Louis Speaks

Louis Speaks and an accomplice were charged with robbing a Brooklyn fast food restaurant at gunpoint in August 2010. The thieves took money from the cash registers and a safe and also took cash and cell phones from five restaurant employees, three of whom testified against Speaks two years later. Two of the witnesses identified Speaks for the first time at trial. Supreme Court allowed the prosecutor to elicit testimony from Detective Michael Henry about a description of the robbers that he obtained on the day of the crime from the restaurant's assistant manager, who did not testify at trial. The court said, "I will not allow it for the truth, I am just allowing it to explain why this witness did whatever he may have done." The detective also testified about a similar description he obtained from a cashier, who did appear as a witness and identified Speaks for the first time at the trial. The detective said that, after he spoke with the two witnesses, he went "to do an investigation to find if there was any video." Speaks was convicted of first- and second-degree robbery and sentenced to eight years in prison.

The Appellate Division, Second Department affirmed on a 3-1 vote, saying the detective's testimony about descriptions he obtained at the crime scene was properly admitted "for a limited nonhearsay purpose." Regarding the assistant manager's description, it said, "The jury was specifically instructed not to consider this description for its truth, and the description was properly admitted for the relevant, nonhearsay purpose of 'establishing the reasons behind the detective's actions, and to complete the narrative of events leading to the defendant's arrest....'" The prosecutor established a sufficient connection between the "general description" and subsequent events because it "led to successive police investigatory conduct such as interviewing other witnesses, including a witness who identified the defendant at trial, and procuring the surveillance video of the defendant...." It said Speaks' hearsay and bolstering challenges to use the cashier's description were unpreserved and, on the merits, said the detective's testimony was properly admitted for similar reasons.

The dissenter argued the detective's testimony about the pretrial descriptions was inadmissible hearsay because the prosecutor "failed to connect" them "to any subsequent course of action taken by the police." Regarding the assistant manager's description, she said, "[W]here there is no connection between the out-of-court statement and subsequent police action, it cannot be said that the out-of-court statement was offered for a nonhearsay purpose.... Without this connection, there was no purpose for the introduction of [the] description, other than for its truth." She said the detective's testimony about the cashier's description also constituted improper bolstering because it "served to implicitly bolster her identification testimony. Such testimony was of little or no probative value, and the danger of such bolstering testimony was 'especially acute,' since it was provided by a law enforcement officer...."

For appellant Speaks: Nao Terai, Manhattan (212) 693-0085

For respondent: Brooklyn Assistant District Attorney Lori Glachman (718) 250-4943

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To be argued Thursday, September 8, 2016 (arguments begin at noon)

No. 145 People v Lerio Guerrero

(papers sealed)

In November 1998, police investigating the rape and robbery of a woman in lower Manhattan recovered blood and semen of her attacker, which enabled them to obtain the perpetrator's DNA profile, but it did not match any profile in their database. They also recovered a fingerprint, but because it was made by the joint of the attacker's index finger it could not be matched through the automated identification system and had to be compared manually to the print of a known suspect. The police released surveillance video and circulated a sketch of the attacker, but closed their investigation eight months later without identifying a suspect.

In April 2005, to forestall expiration of the statute of limitations, prosecutors obtained a "DNA indictment," which charged "John Doe, with the following DNA profile," with the rape and robbery. In May 2011, the police obtained a DNA sample from Lerio Guerrero, using a cigarette he smoked while they questioned him in an unrelated case. His DNA profile matched the perpetrator's profile in the 1998 rape case. The police then matched the finger joint print to Guerrero. In June 2011, the prosecutor moved to amend the indictment to name Guerrero as the defendant in place of "John Doe," and submitted an affirmation in which she described the DNA and fingerprint matches.

Supreme Court granted the motion to amend the indictment. Guerrero moved to dismiss, arguing the indictment "is defective in that it does not ... provide an adequate description of the accused;" the prosecutor's motion to amend "contains improper hearsay and double hearsay;" and the scientific evidence linking the DNA profiles was never presented to a grand jury. The court denied the motion, ruling the indictment and amendment were valid. It also rejected his statute of limitations and speedy trial claims. Guerrero pled guilty to first degree counts of rape, sodomy, robbery and burglary, in return for a 15-year prison sentence, and waived his right to appeal. The Appellate Division, First Department affirmed.

Guerrero argues, "[T]he identification of any perpetrator is an essential element of proof that must be established before a grand jury for an indictment to be legally sufficient; it is of no moment that the identification is made through DNA or more traditional means such as a fingerprint or lineup." The evidence linking his DNA profile and fingerprint to the perpetrator were not presented to a grand jury, but were contained in the motion to amend the indictment "which set forth this evidence in the form of hearsay allegations," he says, violating his constitutional right to prosecution by indictment and "circumventing" the statute of limitations.

The prosecution argues that Guerrero waived his claims with his guilty plea. On the merits, the prosecution argues the indictment was valid because "the DNA evidence presented to the grand jury, which identified defendant based on the unique DNA profile developed from the vaginal swabs collected from the victim, provided compelling, indeed definitive, proof of the identity of the person -- *i.e.*, defendant -- who had attacked" the victim. And it was properly amended because "the amendment did not result in a new or different person being charged" nor did [it] alter, in any way, the charges or the People's theory of the case."

For appellant Guerrero: Glenn A. Garber, Manhattan (212) 965-9370

For respondent: Manhattan Assistant District Attorney Malancha Chanda (212) 335-9000

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No. 162 Matter of Brandes

Joel Brandes, a specialist in matrimonial law and the author of "Law and the Family New York," was disbarred in 2002 for misconduct in representing his ex-wife in a fee dispute with her counsel in their divorce. In the disbarment order, the Appellate Division, Second Department directed Brandes to "desist and refrain from ... practicing law in any form, [and] giving to another an opinion as to the law or its application or any advice in relation thereto." He moved to Florida and in 2003 formed Joel R. Brandes Consulting Services, Inc., which offered legal research and drafting services to attorneys. His website stated that his corporation "is not a law firm and does not give legal advice." His first two motions for reinstatement to the bar in 2009 and 2011 were denied by the Appellate Division. Brandes then removed all references to paralegal services from his website and, in 2013, filed his third motion for reinstatement. At a hearing, he told members of the Committee on Character and Fitness that he worked only for lawyers, not clients, and provided research primarily on matrimonial issues. He said attorneys used him because he "had more expertise" than they did. The Committee recommended that he be reinstated.

The Appellate Division denied his motion, saying Brandes "engaged in the unauthorized practice of law ... when he provided paralegal services via the Internet," thus violating Judiciary Law § 90(2) and the disbarment order. It said, "Under the guise of being a paralegal, Mr. Brandes, a noted authority and expert on New York family law and divorce..., would give advice to an attorney, who had a difficult case.... Upon presentation of the particulars of the case or problem, Mr. Brandes would guide the attorney to the applicable statutes and precedent cases, and offer his past experience. Such rendering of legal advice or opinion constitutes the practice of law, since Mr. Brandes ... exercised professional judgment directed at the legal problem of a particular client, notwithstanding the fact that Mr. Brandes had no direct contact or relationship with the client." Regarding his drafting services, it said, "Given the fact that Mr. Brandes was vastly more experienced in matrimonial and domestic relations matters than the attorneys..., the provision of such services can be deemed to be performing legal services for a client, namely, the attorney for whom he drafted the brief and documents."

Brandes argues the order "singles Mr. Brandes out from other disbarred lawyers seeking reinstatement because of his expertise and denies him equal protection of the law, due process of law and freedom of speech. It is arbitrary and capricious. It is also punitive in that Mr. Brandes is now prohibited from working as a paralegal for any New York divorce or family lawyer who is less knowledgeable than him, without offering any objective criteria to determine who is less knowledgeable...." He says he was not practicing law because he did not represent or have a fiduciary relationship with any of the clients of the lawyers who employed him, who used their own judgment to decide how much of his advice to take. "Implicit in the decision is that if Mr. Brandes did not have special skills and experience, and was not more knowledgeable than the attorneys he served, he would have been deemed to have properly acted as a paralegal....," he says, complaining the order prohibits him "from doing that which he could do ... were he never a lawyer in the first place."

For appellant Brandes: Chris G. McDonough, Garden City (516) 387-0266

For respondent Character and Fitness Committee: Robert H. Cabbie, Hauppauge (631) 231-3775

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No. 147 People v Charles K. Wilson

Charles Wilson and a co-defendant, Kenneth Boykins, were accused of a home invasion robbery and shooting in Rochester in September 2006. After two of the victims identified Wilson in photo arrays and a lineup, the police arrested him and advised him of his Miranda rights. Wilson invoked his right to remain silent, saying, "No. I have nothing to say." The police informed him that he was being charged along with Boykins and, when Wilson looked puzzled, they said he must know Boykins because he had shot and injured himself shortly after the robbery. Wilson denied knowing Boykins. When they repeated that Boykins shot himself, the police said, Wilson "became upset and said that ... he didn't shoot himself, nobody shoots themselves there like that. And he indicated that he knew who he was." One of the investigators acknowledged at the suppression hearing that, while information obtained through questioning after a defendant invokes Miranda cannot be used in the prosecution's direct case, he was aware from his training that it may be used for cross-examination or rebuttal if the defendant chooses to testify. The prosecutors indicated they would use Wilson's post-Miranda statements to impeach him if he took the stand.

County Court denied Wilson's motion to preclude any use of statements he made to the police after invoking his Miranda rights. "It has long been held that statements obtained from a defendant in violation of any aspect of his Miranda rights may still be used to impeach a defendant who chooses to take the stand and testify inconsistently with his illegally obtained statement," it said, citing Harris v New York (401 US 222 [1971]). It said Wilson's statements "were voluntarily made, and thus may be used by the prosecution on cross-examination of the defendant." Wilson did not testify at his trial. He was convicted of charges including first-degree robbery, assault and burglary, and was ultimately sentenced to 25 years in prison.

The Appellate Division, Fourth Department affirmed, saying Wilson's post-Miranda statements to the police "were voluntary and thus were admissible for impeachment purposes." It also rejected his claims that the identification procedures were unduly suggestive.

Wilson argues that a "bright line rule" barring any use of evidence obtained in violation of Miranda should be adopted under the New York Constitution, "which offers greater protection to its citizens." "[T]he voluntariness of unlawfully obtained statements should not be a factor to be considered by the state court.... A simple, clear rule excluding any statements for any purpose that are extracted from the defendant subsequent to his invoking his Miranda rights supports the policy behind the Constitutional mandate, that is, the curbing of improper tactics to extract information by law enforcement." He says, "The investigators in this case unabashedly admitted that they were aware continued questioning despite defendant's invocation of his rights could result in statements" that might be used against him if he testified. "By seeking to prevent or limit defendant's right to present a defense, the police could rightfully be accused of a premeditated attempt to violate the defendant's constitutional rights."

For appellant Wilson: Kathleen P. Reardon, Rochester (585) 753-3472

For respondent: Monroe County Assistant District Attorney Robert J. Shoemaker (585) 753-4810