State of New York
Court of Appeals

To be argued Wednesday, February 12, 2020

No. 15 People v Cadman Williams
No. 16 People v Elijah Foster-Bey

In these cases, trial courts denied defense requests to preclude genetic evidence or to hold a Frye hearing to determine the reliability of evidence provided by the use of "low copy number" (LCN) DNA testing and the New York City medical examiner's proprietary "Forensic Statistical Tool" (FST), which were developed recently to analyze very small samples of crime scene DNA. Both courts based their decisions on rulings of other trial courts that had admitted similar evidence. The defendants contend the courts abused their discretion by denying them Frye hearings in view of debates over the reliability of the LCN/FST methodologies within the scientific community and the conflicting results reached by other trial courts.

Cadman Williams was charged with the murder of Kenneth Sackey, who was shot to death during a street altercation in the Bronx in 2008. In 2010, police recovered a handgun they believed to be the murder weapon and found a mixture of DNA from at least two people on the handle and trigger guard. The samples were too small for standard DNA testing, but the Office of the Chief Medical Examiner (OCME) applied LCN analysis and its own FST, a software program the OCME developed to calculate likelihood ratios, and said they provided "very strong support" for a finding that Williams was a likely contributor to the DNA mix. Denying Williams' motion to preclude the evidence or hold a Frye hearing, Supreme Court relied on a Queens Supreme Court ruling in People v Megnath (27 Misc 3d 405), which found after a Frye hearing that LCN testing was generally accepted as reliable by the scientific community. The Bronx court found "unpersuasive" Williams' reliance on a Brooklyn Supreme Court justice's oral decision, followed by a written decision in People v Collins (49 Misc 3d 595), which found after a Frye hearing that neither LCN nor FST were generally accepted within the relevant scientific community. Williams was acquitted of murder, but convicted of first-degree manslaughter and sentenced to 20 years.

Elijah Foster-Bey was accused of shooting and wounding a police officer in the stairwell of a Brooklyn apartment building in 2010. Officers found the revolver on the stairs and recovered a very small sample of DNA from the ridges of its trigger. The OCME said LCN and FST analysis showed the DNA came from at least two people and provided "very strong support" for finding Foster-Bey was one of them. Denying his motion to preclude the evidence or hold a Frye hearing, Supreme Court relied on Megnath. Collins had not yet been decided. Foster-Bey was convicted of first-degree assault and weapon possession and sentenced to 30 years in prison.

The Appellate Division affirmed in both cases. The Second Department said in Foster-Bey that the trial court properly relied on Megnath "as well as the determinations of other courts of coordinate jurisdiction accepting that LCN DNA testing and the FST are not novel and are generally accepted by the relevant scientific community."

The defendants argue that the trial courts abused their discretion and denied the defendants due process by admitting the LCN and FST evidence without a Frye hearing, where there is disagreement within the scientific community about the reliability of these "novel" techniques and the few courts that have held Frye hearings reached conflicting results. Williams says "there was a single post-Frye-hearing decision on each process that found general acceptance" at the time of his trial. "The absence of other court decisions showed novelty, not general acceptance...." Foster-Bey says, "Judicial notice should be the result of, not a substitute for, general acceptance by the relevant scientific community."

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State of New York
Court of Appeals

To be argued Wednesday, February 12, 2020

No. 17 People v George Tsintzelis
No. 18 People v Jose Velez

A key question raised in these appeals is whether the electronic raw data that the New York City Office of the Chief Medical Examiner (OCME) relied on in linking the defendants' DNA to the crime scenes is subject to discovery under Criminal Procedure Law § 240.20(1)(c), which provides that "the prosecutor shall disclose to the defendant ... [a]ny written report or document ... concerning a ... scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity...."

George Tsintzelis was accused of breaking into a car that a police officer left parked near her apartment in Astoria, Queens, in April 2013. When the officer returned to her car the next morning, she found a window broken, her GPS device missing, and blood inside the vehicle. The OCME determined that DNA in the blood from the car matched Tsintzelis' genetic profile in the state's DNA database and also matched a DNA sample obtained from Tsintzelis after his arrest. He demanded discovery of the underlying data used in the DNA analysis for review by his own forensic expert. Supreme Court denied the motion, saying the data he sought "is not 'a written report or document'" within the meaning of CPL 240.20(1)(c) and, further, finding "the raw data is not within the People's control in that OCME is 'not a law enforcement agency' and its duties are 'independent of and not subject to the control of the office of the prosecutor'....". Tsintzelis was convicted of criminal mischief in the third degree and petit larceny and was sentenced to two to four years in prison.

Jose Velez was charged with burglarizing a Queens home in July 2012 by breaking a window in the back door and stealing laptops and other items. Blood was found inside the house, which the OCME matched to Velez's genetic profile in the state's DNA databank. Denying Velez's demand for discovery of the raw data used in the testing, Supreme Court said the data was a "written document" within the meaning of CPL 240.20(1)(c), but found it was not in the possession of prosecutors but of the OCME. Velez was convicted of second-degree burglary and related crimes and was sentenced to 20 years to life in prison.

The Appellate Division, Second Department affirmed in both cases, resolving the discovery issue with identical language: "Supreme Court providently exercised its discretion in denying his discovery request ... for material that was not in the possession or control of the People...." It also rejected claims the defendants were entitled to reversal under the Confrontation Clause because the OCME analysts who testified did not conduct the DNA tests. It said the clause was violated in Tsintzelis, but the error was harmless. It found no error in Velez because the analyst who testified had "independently" verified the results.

The defendants say the language of the statute makes disclosure mandatory, not discretionary. They argue the raw DNA data is subject to discovery under the statute, Tsintzelis because it was generated "at the request or direction" of the NYPD and Velez because "the OCME acts as an arm of the People and they, therefore, had *de facto* control of the electronic raw data." They also pursue their Confrontation Clause claims.

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