

NY Rape Conviction Overturned Because Judge Barred Testimony The “Victim” Was Lying

Luis Gomez was tried in Queens, New York in 2008 on charges of allegedly sexually abusing his underage sister-in-law while she lived with him and his wife in Florida. He was tried in New York because he kept an apartment in Queens, and she alleged he raped her in 2002 when she was at that apartment.

The prosecution’s case was based on the girl’s testimony, because there was no other witness or physical evidence supporting her claims. Gomez’s defense was that the girl fabricated her story because she was upset with him after he and his wife sent her to live with her mother in New York in 2006.

During the trial the judge barred the jury from hearing testimony by a husband and wife that while staying at their house in

North Carolina the girl told them that she made up the story that Gomez had abused and raped her, and she only said he did because he and his wife (her sister) sent her to live with her mother in New York. The judge granted the prosecution’s motion to exclude the couple’s testimony as collateral because when the girl testified she described the husband as an “old family friend” and that when she stayed at their house she only talked about things like “how are you and how was school.”

The jury convicted Gomez of rape, sexual abuse, and endangering the welfare of a child. He was sentenced to 9 years in prison.

Gomez argued in his appeal that the judge violated his constitutional right to present a complete defense by not allowing his two witnesses to testify. Furthermore, appeals courts have ruled that evidence that tends to “establish a reason to fabricate” should never be excluded as collateral.

The appeals court agreed with Gomez. In overturning his conviction on December 21, 2010, the court ruled:

Here, the defendant sought to elicit testimony which would have contradicted the child’s previous answers regarding what was discussed on the stopover visit in North Carolina. The testimony also would have tended to buttress the defendant’s contention that the child fabricated her allegations soon after the defendant and his wife sent the child back to New York to live with her mother. Accordingly, under these circumstances, the Supreme Court improvidently exercised its discretion in precluding the witnesses from testifying. Furthermore, since the evidence against the defendant was not overwhelming and there is a reasonable possibility that this error contributed to the verdict of guilt, it cannot be deemed harmless.”

(People of New York v Luis Gomez, No. 2008-00977 (NY Sup Ct, App Div., 2nd Dept., 12-21-2010))

Sources:

People of New York v Luis Gomez, No. 2008-00977 (NY Sup Ct, App Div., 2nd Dept., 12-21-2010)



Massachusetts Judge Acquits Man Three-Months After Finding Him Guilty

On Christmas Eve 2009 Paul Daley was driving in Quincy, Massachusetts around midnight when he spilled his coffee and momentarily looked down. It felt like his truck struck something so he stopped and looked around. He didn’t see anything in the dark and he resumed driving home.

Later that day Daley saw a news report that a man had been found dead in a snowbank beside the same road on which he had been driving when he spilled his coffee and stopped. He called the police and when they inspected his truck they saw that his right side mirror that stuck out from the side of his truck had been damaged.

Daley was arrested and charged with motor vehicle homicide, negligent driving, and felony leaving the scene of an accident.

Daley waived his right to a jury trial. During the six-day bench trial Daley, a 62-year-old retired fireman, testified that he didn’t know that he had hit a person otherwise he would have tried to give assistance and summoned help. Supporting Daley’s testimony was

that he immediately called the police when he found out a man had been killed on the road where he had been driving.

After a six day trial Norfolk County Superior Court Judge Kenneth Fishman found Daley not guilty on October 1, 2010, of motor vehicle homicide and negligent driving. However, Judge Fishman found Daley guilty of felony leaving the scene of an accident based on the prosecution’s argument that it was a strict liability offense that didn’t require them to prove Daley had knowledge that he hit a person before he continued driving home. Daley faced a sentence of from 1 to 10 years in prison.

Prior to Daley’s sentencing scheduled for November 4, 2010, his lawyer filed a motion for a judgment of acquittal under Rule 25(a). The motion stated that contrary to the prosecution’s arguments the judge relied on to convict Daley, the law in Massachusetts is that an essential element of felony leaving the scene of an accident is that the prosecution had to prove beyond a reasonable doubt that Daley had knowledge that he hit a person before he continued driving home.

At the sentencing hearing Judge Fishman agreed that he had erred, and Daley was not guilty of felony leaving the scene of an accident. However, Daley’s motion did not file the motion under Rule 30(b) that would

allow him to grant a judgment of acquittal, so he granted his lawyer a two day extension to file the proper motion. In the interim the judge sentenced Daley to one year in prison, which was the minimum allowed under the law, and he suspended that sentence.

Daley’s lawyer subsequently filed a motion for a judgment of acquittal under Rule 30(b).

During a hearing held on January 3, 2011, Judge Fishman granted the motion acquitting Daley. In his four-page ruling Judge Fishman stated that not only did the prosecution fail to prove beyond a reasonable doubt the essential element that Daley “knowingly” left the scene of the accident, but that since the prosecution didn’t present sufficient evidence of his guilt at trial his retrial was barred by double-jeopardy.

After the hearing Daley’s attorney, George McMahon, said Judge Fishman’s ruling was “unbelievable and courageous.” He also said, “The judge said he shouldn’t have found him (Daley) guilty, and he had applied the wrong law. He made a mistake, and he wasn’t afraid to admit it.”

Sources:

Commonwealth v. Paul M. Daley, No. 2010-00158, Norfolk County Superior Court, Memorandum Of Decision And Order, January 3, 2011.

Judge reverses own decision in hit-and-run death, *The Patriot Ledger* (Quincy, MA), January 4, 2011.

