Rodney Roberts Can Proceed With Federal Lawsuit Against Police & Prosecutor For Frame-up

On August 12, 2016 U.S. District Court Judge Kevin McNulty in Newark, New Jersey ruled that Rodney R. Roberts **could proceed** with his federal civil rights lawsuit related to his wrongful conviction for kidnapping. Roberts was incarcerated for almost 17 years based on evidence fabricated by the police and the prosecution. Roberts was released in 2014 after a thirteen year legal odyssey during which adverse post-conviction rulings by his trial Judge Eugene Codey were overturned three times by the appeals court.

On the dark rainy night of May 8, 1996 17-year-old Sheronda Atwell was walking alone in East Orange, New Jersey. A man came up behind Atwell and dragged her into an empty lot where he raped her. He ejaculated inside her.

Atwell went to a nearby residence where the police were called. Atwell was taken for a medical examination. Her rape kit of evidence that was collected included a vagina swab.

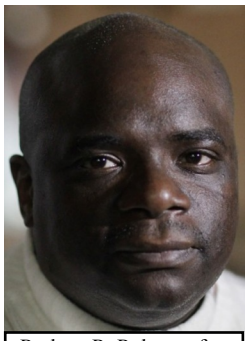
East Orange borders Newark, and the Newark police investigated the crime. Atwell didn't clearly see her assailants face, but she described him as a black male who was 20 years old, 5'7" and about 185 pounds.

Rodney Roberts was arrested for theft on May 25, 1996 in Newark. Roberts was 29. At the time he was on parole for a 1986 sexual assault conviction, and he was held without bail.

On June 12, 1996 Roberts pled guilty to the theft charge, and he was then charged with a violation of his parole for his 1986 conviction.

Because of Roberts' decade-old sexual assault conviction, Newark Police Department Detective Derrick Eutsey suspected Roberts in Atwell's rape. Eutsey represented to the Essex County Prosecutor's Office that Atwell had positively identified Roberts from a photo array that included a 1986 mug shot photo of Roberts when he was 19-years-old. Eutsey claimed that Atwell signed and dated the back of the photo.

Eutsey's claim was the basis for the Essex County Prosecutor's Office to charge Roberts with the aggravated sexual assault and kidnapping of Atwell. (When Roberts later requested to be provided with the photo, the prosecution failed to produce it and claimed it "lost" the photo.)



Rodney R. Roberts after his release (John O'Boyle, The Star-Ledger)

Roberts was unrepresented when he pled not guilty during his arraignment on June 26, 1996. He was scheduled to have an appearance on the case three weeks later, on July 16, 1996. On the day of that hearing public defender Charles Martone informed Roberts that he had been assigned to represent him. Martone explained the victim had positively identified him, and that the prosecution was offering a plea deal that if Roberts pled guilty to kidnapping and a seven year prison sentence -- with early release on parole -- the sexual assault charge would be dropped, and he would be sentenced to concurrent three year prison terms for both the theft conviction and the parole violation. Roberts would be facing decades in prison if he was convicted after a trial, so he agreed to go along with Martone and accept the plea deal. However, during his plea hearing before Essex County Superior Court Judge Eugene Codey, Roberts stated on the record that he didn't know his alleged victim and he didn't commit the crime.

Judge Codey sentenced Roberts on October 17, 1996 to seven years in prison.

Roberts was denied parole in 1998 and again in 2000, because he refused to admit his guilt, and his unconvicted charge of rape, and his 1986 sexual assault conviction were considered to make him a high risk for recidivism.

On January 12, 2001 Roberts filed a *pro se* petition for post-conviction relief (PCR) asserting his innocence and to withdraw his guilty plea. Roberts claimed Martone provided ineffective assistance of counsel by advising him to plead guilty and that the dismissed sexual assault charge would not be used to penalize him in future proceedings. Judge Codey summarily denied Roberts' motion on January 18, 2001 — only six days after Roberts had filed it.

In 2002 Roberts requested DNA testing of Atwell's rape kit, but the Attorney General's Office informed him there was no evidence to test.

On June 24, 2003 Roberts was again denied parole. He appealed that decision arguing the parole board improperly considered his dismissed sexual assault charge. The appeal board denied his appeal, stating the parole board "must consider the information provided by the Department of Corrections."

In May 2004 Roberts completed his prison term.

However, instead of being released, the New Jersey Attorney General filed a petition for Roberts indeterminate civil commitment under the New Jersey Sexually Violent Predator Act. Pending his civil commitment hearing, on June 1, 2004 Roberts was transferred to the Special Treatment Unit for sex offenders at the Adult Diagnostic and Treatment Center in Avenel, New Jersey.

John Douard with the New Jersey Office of the Public Defender was assigned to represent Roberts. Douard interviewed Atwell, who told him that she never made a photo identification of her assailant, she never signed or dated the back of a photo of Roberts (or anyone else), and she did not even know that a person had been arrested and convicted for her assault.

During the commitment hearing that began on December 9, 2004, Douard learned a rape kit had been prepared from Atwell's medical examination after her assault, and that an analysis of that evidence conducted on July 18, 1996 — two days after Roberts pled guilty — noted the presence of sperm. The analyst requested blood and saliva samples from Roberts to compare with DNA testing of the rape kit. However, the analyst's request was ignored and the comparison of Roberts' DNA with testing of the rape kit for male DNA evidence was never performed.

Douard wrote a letter to the Essex County Assistant Prosecutor Robert D. Laurino requesting comparison of Roberts' DNA with DNA recoverable from the rape kit.

Roberts' submitted a cheek swab, but his DNA was only compared with the DNA of a vaginal slide in the rape kit -- not the actual swabs or a control saliva sample from Atwell. Laurino had informed the lab that everything the Newark P.D. had was sent to the lab for testing. The lab's report dated August 29, 2005 concluded that all the DNA on the vaginal slide was female -- so it excluded the presence of Roberts' DNA.

During that period of time, Atwell informed Essex County prosecutor investigator Michele R. Bolan that she gave birth to a son in February 1997 — nine months after her

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rape — and she requested a paternity test to determine if Roberts was the father. Bolan discussed the situation with Laurino, who refused to authorize the paternity test.

On September 27, 2005 Douard obtained an affidavit from Atwell in which she stated she had never identified her attacker to the police, and she did not know anyone had been arrested. (Two years later, on June 22, 2007 Atwell recertified the truth of her 2005 statement.)

Roberts filed a *pro se* PCR petition on February 15, 2006, and sought to withdraw his guilty plea. Judge Codey summarily denied the motion on the basis it was identical to the motion denied in 2001 and that it was time-barred.

Roberts appealed.

The Superior Court Appellate Division (SCAD) reversed Codey's ruling and remanded the case back to Codey. The appeals court ordered that Roberts be assigned counsel for consideration of the issues of his motion's timeliness and if it was procedurally barred. (See, *State v. Roberts*, 2007 WL 1468631, *1 (N.J. Super. Ct. App. Div. May 22, 2007))

On remand, Assistant Public Defender Stefan J. Van Jura was assigned to represent Roberts. The prosecution's brief filed on July 23, 2007 **asserted that** DNA testing on August 29, 2005 of Atwell's swabs and rape kit "did not provide conclusive results." Essex County Assistant Prosecutor Clara Rodriguez repeated those claims during the oral arguments before Judge Codey. Van Jura did not challenge the truthfulness of the prosecution's statements, even though Roberts was excluded as a contributor of DNA on the slide that only contained female DNA. Van Jura also didn't challenge Rodriguez' misrepresentation of the truth because the slide was only evidence in the rape kit DNA tested.

On July 30, 2007 Judge Codey denied Roberts' PCR petition. He dismissed the evidentiary value of Atwell's 2005 and 2007 **statements as being** "riddled with inconsistencies," and he found them "inherently suspect and untrustworthy" because Atwell claimed that after she was unable to identify her assailant in her hospital room, no one had ever contacted her again. Codey also ruled that Martone provided adequate counsel because he obtained a "very favorable plea bargain" for Roberts.

Roberts appealed. On July 17, 2009 the SCAD reversed Codey's ruling and remanded the case back to him for an evidentiary hearing regarding two issues: First, to resolve the conflict between Atwell's 2005 and 2007 statements she never Identified her assailant and the prosecution's claim she positively identified Roberts in 1996; and, Second, to determine what advice Martone gave Roberts regarding his guilty plea. (See, *State v. Roberts*, 2009 WL 2059583, *6_7 (N.J. Super. Ct. App. Div. Jul. 17, 2009))

Van Jura represented Roberts during the evidentiary hearing on October 27, 2009. Atwell testified that she never identified anyone as her assailant and did not sign the back of a photograph of Roberts. Roberts testified Martone persuaded him to plead guilty by telling him that he had spoken to Atwell and she positively identified Roberts. Roberts also testified his DNA was not found on the slide that was tested. Martone testified he never talked with Atwell. Investigator Bolan testified that in 2005 Assistant Prosecutor Laurino told her not to pursue a paternity test. At the conclusion of the hearing Judge Codey ordered Assistant Prosecutor Rodriguez to locate the missing biological evidence and also ordered a paternity test for Atwell's son.

The paternity test determined Roberts was not the father of Atwell's son.

Judge Codey denied Robert's PCR petition on May 19, 2010. He ruled the fact Robert's was not the father of Atwell's son did not exclude him as her rapist; that Martone was credible in denying he told Roberts that Atwell told him she ID Roberts; and that Atwell's testimony was "riddled with inconsistencies." **Codey stated**: "It is obvious to even the most casual observer that this application by [Roberts] is a blatant attempt to withdraw a voluntarily entered plea, whose sentence has already been served, solely to enhance his efforts to have his status as a Sexually Violent Predator reconsidered."

Roberts appealed.

On March 8, 2013 the SCAD for the third time reversed a ruling by Codey in Roberts' case. The appeals court decided that Van Jura erred in not presenting Douard or investigator Price who could have bolstered the credibility of Atwell's statements, that he erred in not arguing that the **2005 DNA results** "on its face, excluded defendant's DNA," and that he should have called an expert to explain the significance of the DNA evidence. The court remanded the case to the Superior Court for another evidentiary hearing. (See, State v. Roberts, 2013 WL 844573 (N.J. Super. Ct. App. Div. Mar. 8, 2013))

Roberts was assigned a new lawyer — Michael Pastacaldi.

The case also was assigned to a new judge -- Sherry Hutchins-Henderson -- who ordered Rodriguez to locate Atwell's rape kit. Four years had passed since Rodriguez failed to produce the rape kit after being ordered to do so by Judge Codey. (Codey retired on Sept. 1, 2011 after 20 years as a judge.)

On June 17, 2013 Rodriguez reported that the entire original rape kit had been located, and Judge Hutchins-Henderson ordered DNA testing of the rape kit. On October 24, 2013, the forensic unit reported Roberts was excluded as the source of the sperm on Atwell's vagina swab.

Based on the new exculpatory DNA evidence, Roberts' guilty plea was vacated on November 21, 2013, and a new trial was ordered. The Essex County Prosecutor's Office opted not to retry Roberts, and their motion to dismiss the charges was granted on February 20, 2014 by Judge Hutchins-Henderson.

The New Jersey Attorney General's Office agreed to the setting aside of the finding that Roberts was a sexual predator. On March 10, 2014, the petition for Roberts' civil commitment was dismissed, and **he was released** from the STU on March 12, 2014. Roberts had been wrongly in custody for 17 years, 9 months, and 16 days (6,501 days) -- 7 years for his prison sentence and the balance for his civil commitment.

After his release Roberts **told reporters** about his ordeal trying to prove his innocence, "It was like being in the middle of a storm shouting and nobody hears you."

On September 24, 2015 **Roberts filed** a federal civil rights lawsuit (42 USC 1983) in Newark seeking $72 million in damages as compensation. The complaint named as defendants: Essex County; City of Newark; Newark PD; Eutsey; Essex County Prosecutor's Office (ECPO); Laurino; Bolan; Martone; and, Van Jura.

On August 12, 2016 U.S. District Court Judge Kevin McNulty ruled on the defendant's motions to dismiss the claims against them, and determined the following claims could proceed to trial: Fabrication of evidence, negligence, and due process violations by Laurino and Bolan; Laurino's

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99.8% Conviction Rate In U.S. Federal Courts Can Make Japanese Prosecutors Jealous

The presumption of innocence is often touted in the United States as the fundamental principle shielding an accused person from being unjustly convicted of a crime. The basis of that claim is that to overcome the presumption of innocence the government is required to present substantial evidence that proves beyond a reasonable doubt the defendant's guilt of every essential element of his or her accused crime(s).

There is, however, a sharp disconnect between the reality of how the legal system actually works, and the theory that the presumption of innocence provides a protective shield to a defendant.

A defendant who goes to trial forces the prosecution to present the evidence proving its case to a jury or a judge. However, that process is short-circuited by a defendant who enters a plea of guilty.[1] For judges the gold standard of evidence is a public confession of guilt. Consequently, a guilty plea effectively relieves the government of having to present independent evidence a defendant is actually guilty.

The Sixth Amendment to the U.S. Constitution guarantees a defendant has the right to a jury trial.[2] That looks good on paper and makes for a good sound bite in a 4th of July speech. However, in 2015 *only 1.6%* of federal court defendants whose case was adjudicated had a jury trial. and 0.8% of defendants waived their right to a jury trial and elected to be tried by a judge.[3] Consequently about 1 of every 63 defendants in federal court is convicted by a jury -- and 1 out of 42 is convicted after a trial of any kind. State courts aren't appreciably different, since about 4% of state court defendants are convicted after a jury or bench trial.

Federal Court House with 'Abandon hope all ye who enter here' inscribed above entrance.

Whether tried by a jury or a judge, it is a shaky roll of the dice for a defendant to go to trial in federal court. Only 258 of the 3,024 defendants who went to trial in 2015 were acquitted. Thus a federal defendant who decides to go to trial has about a 1 in 12 chance of an acquittal.

The 41 out of 42 (97.6%) of federal defendants in 2015 whose case was adjudicated without a trial, were convicted by a plea of guilty -- a public confession. The federal judge or magistrate were minor participants with the U.S. Attorney's Office relying on the defendant's mouth to obtain those convictions.

Between guilty pleas and trials, the conviction rate was 99.8% in U.S. federal courts in 2015: 126,802 convictions and 258 acquittals. That wasn't an anomaly. In 2014 the conviction rate was 99.76% and in 2013 it was 99.75%.

There is nothing new about the high conviction rate in federal courts, although it has been consistently rising since 1973. The conviction rate has been above 99% since 2003, above 98% since 1995, above 97% since 1985, above 96% since 1982, above 95% since 1975, and above 94% every years since 1955.[4] As the conviction rate has increased, the number of acquittals has precipitously declined. The 2,371 defendants acquitted in federal court in 1973 was *more than* the 2,362 defendants acquitted in the *six years* from 2010 to 2015. That was the case even though in 1973 40,493 defendants were convicted, compared with the 850,365 defendants convicted from 2010 to 2015. Even more graphically, in 1973 there were 17 convictions for every defendant acquitted in federal court, while in *2015 there were 493 convictions for every acquittal*. So a federal defendant is now about 2,900% more likely to be convicted than in the early 1970s.

Although overall federal courts generate convictions at a remarkable rate, there were twenty federal judicial districts that had a *100% conviction rate* in 2015. Not a single defendant was acquitted in:

- Colorado: 466 convictions, 0 acquittals.
- Delaware: 88 convictions, 0 acquittals.
- District of Columbia: 262 convictions, 0 acquittals.
- Illinois, Central: 346 convictions, 0 acquittals.
- Illinois, Northern: 898 convictions, 0 acquittals.
- Illinois, Southern: 412 convictions, 0 acquittals.
- Indiana, Northern: 266 convictions, 0 acquittals.
- Indiana, Southern: 386 convictions, 0 acquittals.
- New Hampshire, 154 convictions, 0 acquittals.
- North Carolina, Eastern: 529 convictions, 0 acquittals.
- North Carolina, Western: 791 convictions, 0 acquittals.
- Pennsylvania, Middle: 392 convictions, 0 acquittals.
- Pennsylvania, Western: 495 convictions, 0 acquittals.
- Tennessee, Eastern: 722 convictions, 0 acquittals.
- Texas, Eastern: 1,071 convictions, 0 acquittals.
- Vermont: 201 convictions, 0 acquittals.
- Washington, Western: 518 convictions, 0 acquittals.
- West Virginia, Southern: 301 convictions, 0 acquittals.
- Wisconsin, Eastern: 336 convictions, 0 acquittals.
- Wisconsin, Western: 98 convictions, 0 acquittals.

It is particularly notable that in 2015 there were *zero* federal court acquittals in Illinois -- the fifth most populous state with 12.9 million people.[5]

Twenty-eight other federal judicial districts had one defendant acquitted in 2015:

- Alabama, Middle: 162 convictions, 1 acquittal.
- Alaska: 183 convictions, 1 acquittal.
- Arkansas, Western: 262 convictions, 1 acquittal.
- California, Northern: 470 convictions, 1 acquittal.
- Georgia, Southern: 445 convictions, 1 acquittal.
- Guam: 100 convictions, 1 acquittal.

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supervisor liability; Vicarious liability against the ECPO and City of Newark; and legal malpractice by Martone. Eutsey's motion to dismiss the claims against him was still pending.

Sources:

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