

New York Law Journal

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Do Prosecutors Struggle With Innocence?

A prosecutor should be a skeptic about guilt. A prosecutor should rigorously test the hypothesis of guilt. A prosecutor should take an active role in confirming the truth of a defendant's guilt and struggle to resolve contradictory evidence. A prosecutor should not assume that her witnesses are truthful.

By **Bennett L. Gershman** | October 22, 2021



Credit: Tracy King/Adobe Stock

Anthony Sims has been incarcerated in a New York state prison for over 23 years for a murder in Brooklyn he very likely didn't commit. The evidence strongly points to another man, Julius Graves, as the killer. The prosecutor who tried and convicted Sims – and who later became head of the District Attorney's wrongful conviction unit – must have known that proof of Sims' guilt was weak and that more potent proof pointed to Graves as the killer. But once the police quickly arrested Sims, the case lurched forward and it became easier to prosecute Sims and use Graves and his friends as witnesses. It is hard to believe that the prosecutor who brought Sims to trial was not skeptical of Sims' guilt. And this raises the unsettling question: Do prosecutors who bring defendants to trial struggle with whether they may be prosecuting an innocent person?

Li Run Chen, a young employee at a Chinese restaurant in Brooklyn, was killed on May 18, 1998, by a shotgun blast to his chest. Two persons knew for certain who killed Mr. Chen—Anthony Sims and Julius Graves—because they both entered the restaurant together and ran out together, after one of them committed the murder. The ensuing police investigation was rushed, aggressive, and skewed. Some witnesses were pressured to make an identification, and some witnesses had an interest in the case that shaded their recollections. For example, the homicide detectives learned that Graves had returned to his apartment with the shotgun after the killing, wiped the gun of prints, and gave it to a young boy to dispose of. The police also knew that the shotgun used in the killing had been kept in the brownstone where Graves lived. Graves resided in the same apartment with his fiancée, her mother, her children and grandchildren. Several of these persons, albeit with many inconsistencies and contradictions, supported Graves' testimony that Sims was the killer.

Graves was the key witness for the prosecution. He testified that he never actually entered the restaurant but from the doorway could see Sims shoot the victim and that he then fled with Sims from the restaurant, after which Graves disposed of the weapon. Graves claimed that Sims shot the victim because he had disrespected Sims. According to Graves, this encounter happened four or five months earlier (Graves' trial testimony), or maybe two weeks earlier (Graves' grand jury testimony), or maybe two hours earlier (Graves' contemporaneous version to a prosecutor). Graves had his own motive to shoot the victim; he heard that the victim had made physical advances to his fiancée. And in an affidavit four years later, Graves recanted his testimony that Sims was the killer albeit not acknowledging his own guilt.

The jury deliberated for four days and reported it was deadlocked despite a strong admonition from the judge to reach a verdict. The jury finally compromised, finding Sims not guilty of intentional murder but guilty of depraved-mind murder, a theory of murder that New York appellate courts subsequently found inapplicable to a one-on-one person killing, as in this case.

The prosecution used aggressive tactics to force some witnesses to testify. This was a time in New York City when law enforcement, inspired by Mayor Rudolph Giuliani's "tough on crime" approach, used abusive methods to "solve" murder cases. It was common knowledge that Brooklyn homicide detectives, directed by former Brooklyn District Attorney Charles Hynes, forcibly brought witnesses to hotels ("Hotel Hynes" program) and coerced them to testify, using the threat of revoking probation. Since the late Brooklyn District Attorney Kenneth Thompson took office, over 30 persons in Brooklyn convicted of murder have been exonerated.

Sims is seeking a new trial claiming his first trial was constitutionally defective. A hearing has been ordered. The most glaring violation, as in so many criminal trials, is the prosecutor's failure to disclose exculpatory evidence to the defense, a constitutional mandate under *Brady v. Maryland* (1963). This familiar due process violation is pervasive because prosecutors, focused on winning convictions, know

that by disclosing favorable information to the defense they might lose the case. The prosecutor in the Sims case violated *Brady* in the following ways:

- Did not disclose an eyewitness's statement to the police, which was later corroborated by one of Graves' witnesses, that she saw Graves running out of the restaurant with a gun.
- Did not disclose that the police browbeat another witness to say that the man carrying the gun more closely resembled Sims than Graves, and that the prosecutor had to use a material witness order to force this witness to testify.
- Did not disclose a statement by the person to whom Graves gave the shotgun that "his friend" shot the victim. Graves was this individual's friend; Sims was not.
- Did not disclose that Graves had violated probation repeatedly for three years, after having been convicted on a gun charge.
- Did not disclose that the police arrested Graves's fiancée to force Graves to testify.
- Elicited false testimony from Graves that he was testifying voluntarily and that he regularly checked in with his probation officer.
- Did not disclose that after Graves testified, his probation violation was resolved in his favor and in the ensuing months, Graves, his fiancée, and members of her family entered a witness relocation program and received over \$25,000 from the District Attorney's office for rent and living expenses.

It is not uncommon for prosecutors to engage in cognitive and confirmation biases that impair an objective assessment of the evidence. Evidence that contradicts a prosecutor's theory of guilt is typically rejected, especially when the evidence suggests that a defendant may be innocent. In the Sims case, after only three days of investigation, during which time Graves and his friends had time to collaborate on a story, the police charged Sims with the murder, based exclusively on information from Graves and his friends. The prosecutor should have been skeptical of this dubious and self-interested information. Instead, the prosecutor concurred, indicted Sims, and tried him for the murder even though the proof was tenuous and likely fabricated. Even today, after being presented with powerful exonerating evidence, the District Attorney's office refuses to reconsider its decision.

No prosecutor wants to acknowledge a mistake. No prosecutor wants to admit the hard and uncomfortable truth that she may be prosecuting an innocent person and have to face the awful consequences of that decision for the defendant and his family. And as demonstrated in the Sims trial, a prosecutor who seeks a defendant's conviction and rejects contradictory evidence that the defendant may be innocent may seek to manipulate the narrative and undermine the truth by hiding exculpatory evidence from the defense.

Prosecutors may comfort themselves into believing that it's the jury, not their own actions, that is responsible for the result. But should a prosecutor bring a case to a jury if the prosecutor is not morally convinced of a defendant's guilt? Prosecutors tell the jury that a trial is a search for the truth. But prosecutors have a duty to prejudge that truth before going to trial. A responsible prosecutor's informal adjudication of guilt is far more trustworthy than that of a jury. A responsible prosecutor can maintain a neutral and objective mindset while a jury may be readily influenced by a variety of prejudicial and non-evidentiary factors. And importantly, juries look up to the prosecutor; jurors are impressed by the prosecutor's prestige and expertise. By presenting a dishonest portrait of Graves, the prosecutor unfairly engineered the jury's verdict.

A prosecutor should be a skeptic about guilt. A prosecutor should rigorously test the hypothesis of guilt. A prosecutor should take an active role in confirming the truth of a defendant's guilt and struggle to resolve contradictory evidence. A prosecutor should not assume that her witnesses are truthful. Prosecutors

know that some witnesses are unreliable—eyewitnesses, cooperating witnesses, vulnerable witnesses such as children, and police witnesses. Indeed, the prosecutor in the Sims trial had powerful reasons to believe that several of his witnesses were untrustworthy.

Is Sims innocent? The prosecutor in the Sims trial really didn't appear to have asked that question and if he did, to answer it honestly.

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