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## Citing Withheld Evidence, Judge Orders Third Trial in 1977 Slaying

By Joel Stashenko  
October 22, 2009

Exculpatory evidence unearthed by pro bono attorneys that was not turned over at trial to a defendant convicted of a 1977 murder has persuaded a judge to reopen the case.

Acting Dutchess County Court Judge James T. Rooney ([See Profile](#)) granted defendant Dewey Bozella's Criminal Procedure Law §440.10(1) motion to set aside his conviction and ordered a new trial in the killing of 92-year-old Emma Crapser as she returned to her Poughkeepsie home after a night of bingo.



Judge James T. Rooney

"Upon a thorough and careful review of the record, the court, without reservation, is firmly and soundly convinced of the meritorious nature of the defendant's application," Judge Rooney determined. "The legal and factual arguments advanced in support of the motion are compelling, indeed overwhelming."

Dutchess County District Attorney William V. Grady said yesterday he did not know yet if Mr. Bozella, now 50, who has been in prison more than 25 years, will be prosecuted a third time for Ms. Crapser's slaying.

"We are in the process of locating witnesses, trying to locate evidence that would be necessary to pursue the case a third time," Mr. Grady said in an interview.

The passage of 32 years since Ms. Crapser was killed "makes it extremely difficult on both sides to resurrect the necessary facts and gather the evidence" to conduct a coherent prosecution or defense, Mr. Grady said.

Judge Rooney stressed in his ruling in *People v. Bozella*, 102/83, that he was not passing judgment on Mr. Bozella's guilt or innocence. Nor does the ruling "ascribe intentional misconduct or bad faith to the police or the prosecution" the judge said.

But Judge Rooney outlined a series of instances where Mr. Bozella's trial defense attorneys were unaware of information gathered by police and prosecutors that should have been turned over to them under *Brady v. Maryland*, 373 U.S. 83 (1963).

The judge determined that use of the evidence by Mr. Bozella could have affected the outcomes of his trials, especially considering that the prosecution's two key witnesses against him were "rife with credibility problems."

The non-disclosed *Brady* materials were discovered by a team of pro bono attorneys from WilmerHale. Ross E. Firsenbaum, a senior associate at the firm's New York office, said Mr. Bozella had initially written to the Benjamin N. Cardozo School of Law's Innocence Project in 2007.

After determining that there was no physical evidence remaining — Mr. Firsenbaum said the evidence in the case had been destroyed by police in a space-saving move — the Innocence Project asked WilmerHale, then known as Wilmer Cutler Pickering Hale and Dorr, to pursue the matter pro bono.

### Files Unearthed

According to Judge Rooney's ruling, *Brady* materials discovered by WilmerHale attorneys included statements by Ms. Crapser's neighbors indicating the killer entered her apartment through a broken rear window. Witnesses against Mr. Bozella contend he entered through her apartment's front door.

Lawyers also discovered a 1978 police interview with a man, also not turned over to defense lawyers, implicating another man in the slaying. The witness described hearing the suspect and his brother planning the burglary of another elderly residence near the Crapser apartment and saying that they had done "one of these jobs before."

The police officer cut short the interview when the witness began talking about how the suspect, Donald Wise, started to describe the other crime scene and what happened when "the lady came home."

"Well, I don't want to get into that because we're liable to get confused," the officer replied.

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According to Mr. Firsenbaum, the neighbors' statements were produced by Arthur Regula, a retired Poughkeepsie police lieutenant who surprised the WilmerHale lawyers during an interview at Mr. Regula's home by producing the files of the Crapser case.

Mr. Regula explained to the lawyers that he was never satisfied that Mr. Bozella had committed the killing and that the file had been the only one he took with him when he retired, said Mr. Firsenbaum.

"He said, 'I saved the file because I knew someday someone like you would be asking me about this case,'" Mr. Firsenbaum said.

Other materials, such as the taped interview with the witness who implicated Mr. Wise, were discovered through Freedom of Information Law requests filed through the Poughkeepsie City Police and Dutchess County District Attorney offices, according to Mr. Firsenbaum.

Taken as a whole, the non-disclosed *Brady* materials would surely have been used by the defense at trial to bolster its theory that Mr. Wise, who was convicted of killing another elderly Poughkeepsie resident in her apartment around the time, killed Ms. Crapser, Judge Rooney concluded.

Use of the other materials would also have offset the impact of statements made by the two chief witnesses against Mr. Bozella implicating the defendant in the killing, the judge concluded.

"Clearly, the evidence against Dewey Bozella was far from overwhelming," Judge Rooney ruled. "The heart of the People's case consisted of the testimony of two career criminals, who repeatedly changed their stories during the long history of this case, who admittedly were under the influence of mind-altering substances the day of the murder and who finally testified for the prosecution only after receiving favorable deals in exchange for their testimony, years after Emma Crapser was murdered."

Mr. Bozella was first convicted of second-degree murder in Ms. Crapser's killing in 1983. The Appellate Division, Second Department, ordered a new trial for him on *Batson* grounds in *People v. Bozella*, 161 AD2d 775 (1990).

The same witnesses found by Judge Rooney to have "credibility problems" testified against Mr. Bozella at his second trial, which ended with a second conviction for second-degree murder and the reimposition of a 20-year-to-life sentence in 1990.

#### **Pro Bono Hours**

Mr. Firsenbaum said WilmerHale partners Peter Macdonald and John Hintz and associate Shauna Friedman also worked on the case.

Mr. Firsenbaum estimated the firm's lawyers had spent 2,500 hours worth \$950,000 at customary rates on the Bozella case since it took the matter over late in 2007.

He said the case highlights the lack of a prohibition in New York state law barring police and prosecutors from destroying evidence that, thanks to advances in forensic science, should be preserved for later evaluation.

A New York State Bar Association task force recommended earlier this year that evidence be better preserved in criminal cases and that *Brady* violations, when they have been discovered, be redressed immediately by courts to assure defendants of fair trials.

#### **[Read the Task Force's report.](#)**

Mr. Firsenbaum said the WilmerHale attorneys did not claim intentional misconduct on the part of prosecutors or police because "it wasn't an element of what we had to prove for the 440 motion."

Professor Bennett L. Gershman of Pace Law School, who has written widely on prosecutorial misconduct, said he has a sense the legal community in general and judges in particular are becoming more attuned to the inherent abuses to defendants' rights posed by non-disclosure of *Brady* materials.

But he said it remains difficult to know when defendants are being fairly given access to the materials they are entitled to.

"It is a rule more honored in the breach than the observance," Mr. Gershman said in an interview. "It is just so difficult to expose, because if you don't know what records have been prepared, you don't know what is missing, you don't know what you haven't gotten, what has been suppressed."

Mr. Firsenbaum also argued that the Bozella case highlights problems with the parole system and the continuing reluctance of parole boards to release inmates based on the nature of their crimes.

He said Mr. Bozella has had an exemplary record in prison, including earning two college degrees. But he has been denied parole four times by boards that have cited the extreme nature of the violence against Ms. Crapser and the refusal of Mr. Bozella, who has always maintained his innocence, not to express remorse for a crime he contends he did not commit.

Ms. Crapser was hit in the head with a blunt object, bound with an electrical cord, suffocated by a handkerchief and had a length of crocheted lace stuffed down her throat.

@|Joel Stashenko can be reached at [jstashenko@alm.com](mailto:jstashenko@alm.com).

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