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Digest: People v. Nelson

Brian S. Thomley

Opinion by Chin, J., expressing the unanimous view of the Court.

Issues

(1) Did a twenty-six year delay in charging defendant with first-degree murder, when the DNA forensic technology existed for years before it was used in defendant's case, violate his state and federal constitutional rights to a fair trial and due process?

(2) Does the methodology for assessing the statistical significance of a "cold hit" from a DNA database require proof of general scientific acceptance under *People v. Kelly*?

Facts

On February 23, 1976, Ollie George, a 19-year old African-American college student, disappeared.¹ She was raped and murdered and her body was discovered two days later.² At the time she disappeared, eyewitnesses placed her in a car later traced to defendant with a man who fit his description.³ Other eyewitnesses described a person with a different description.⁴ Having insufficient evidence to focus the investigation on one person, the case was left "cold . . . unsolved but inactive."⁵

Years later, a DNA sample was obtained from defendant after an unrelated conviction and entered into a convicted offender database.⁶ In October 2000, the state allocated funds to law enforcement agencies to use DNA to solve cold sexual assault cases.⁷ In July 2001, the county reviewed Ollie's murder and, comparing the DNA from a semen stain found on her with a database containing 184,000 individual profiles, found a potential match with defendant's DNA.⁸ In 2002, defendant's DNA was taken and was found to match several samples, including a vaginal swab, from the

¹ *People v. Nelson*, 185 P.3d 49, 53 (Cal. 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

crime scene.⁹ He was charged with first-degree murder.¹⁰

Defendant attempted to dismiss the case because the delay in charging him with the murder prejudiced his defense.¹¹ He also objected to the prosecution's introduction of statistical evidence that the DNA profile on the vaginal swab would occur at random among unrelated individuals in about one in 950 sextillion African-Americans, one in 130 septillion Caucasians, and one in 930 sextillion Hispanics.¹²

The jury convicted defendant of first-degree murder.¹³ The Court of Appeal affirmed.¹⁴ The Supreme Court of California granted review.¹⁵

Analysis

1. Delay in Bringing Charges

The Court stated that, in determining whether a criminal defendant's due process rights to a fair trial are violated by a delay in bringing charges, the court must balance the prejudice resulting from the delay with the justification for the delay.¹⁶ Applying this test, the Court found that the overall prejudice to defendant resulting from precharging delay was minimal.¹⁷

The Court observed that the federal and state constitutions differ on when delay is unjustified.¹⁸ The Court said that the federal standard requires addition to showing of prejudice, an examination of the reasons for the delay.¹⁹ The Court explained that there are many legitimate reasons that the government may delay rather than to obtain a tactical advantage over the accused.²⁰ Under California law, on the other hand, prejudicial delay may be unjustified when there was no legitimate reason for the delay, such that negligent, as well as purposeful, delay may violate due process.²¹ The Court clarified that purposeful delay may violate due process under the balancing test with a relatively weak showing of prejudice, while delay that is merely negligent would require a greater showing of prejudice to establish a due process violation.²²

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 54.

¹⁴ *Id.*

¹⁵ *Id.* at 54, 66.

¹⁶ *Id.* at 54.

¹⁷ *Id.* at 55.

¹⁸ *Id.*

¹⁹ *Id.* at 55-57 (discussing *United States v. Marion*, 404 U.S. 307 (1971); *United States v. Lovasco*, 431 U.S. 783 (1977)).

²⁰ *Id.* at 56 (citing *United States v. Lovasco*, 431 U.S. 783 (1977)).

²¹ *Id.* at 57-58 (discussing *Penney v. Superior Court*, 105 Cal. Rptr. 162 (Ct. App. 1972); *People v. Hannon*, 564 P.2d 1203 (Cal. 1977)).

²² *Id.* at 58.

Applying these principles to the present case, the Court concluded that the justification for the delay in bringing charges against defendant was strong.²³ The Court declined to second-guess the prosecution's belief that it lacked sufficient evidence to charge him until 2002.²⁴ The Court also concluded that the delay was "investigatory" rather than negligent by declining to second-guess how the state allocates its law enforcement resources.²⁵

2. Admissibility of the DNA Evidence

The Court began by noting that the general use of forensic DNA evidence passed the test under *People v. Kelly* requiring that a new scientific technique be proven reliable by its general acceptance in the scientific community.²⁶ The Court explained that the statistical significance of the DNA match in this case was gauged by the "product rule," which calculates the odds that a random person from the relevant population would have a similar match.²⁷

Defendant argued that the fact that the match came from a cold hit from a database and not from comparison with the crime scene evidence was a new scientific technique that must pass the *Kelly* test.²⁸ Defendant reasoned that, when a single suspect is compared to the crime scene evidence, the probability statistic reflects a randomly selected person.²⁹ But in a cold hit case, he said, the suspect is never "randomly" selected from the general population because the authorities have already compared the DNA profiles in the database to find him.³⁰ Thus, he argued, in a cold hit case the chance of a match is increased.³¹

The Court, however, reasoned that experts have endorsed four different methods for calculating the statistical significance of a match, including the method used in this case.³² The only debate between experts was which of these methods is the most relevant in determining the significance of a match.³³ Thus, the Court concluded, the product rule met the *Kelly* test for admissibility for establishing the rarity of the genetic profile in a population in a cold hit case.³⁴ The only question before the trial court, the Court said, was to determine this method's relevance.³⁵

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 59.

²⁶ *Id.* at 59-60 (citing 549 P.2d 1240 (Cal. 1976)).

²⁷ *Id.* at 60-61.

²⁸ *Id.* at 61.

²⁹ *Id.* at 84.

³⁰ *Id.* at 61-62.

³¹ *Id.* at 62.

³² *Id.*

³³ *Id.* at 64.

³⁴ *Id.*

³⁵ *Id.* at 65.

The Court concluded that the product rule was relevant to determining the rarity of a genetic profile in a cold-hit case.³⁶ The Court explained that the “product rule ‘represents two concepts: (1) the frequency with which a DNA profile is expected to appear in a population (‘rarity statistic’); and (2) the probability of finding a match by randomly selecting one person from the population (‘random match probability’).”³⁷ The Court said that, even if the product rule in a cold hit case no longer accurately reflects the random match probability, it still accurately reflects the rarity of the DNA profile.³⁸

Holding

The Court held that the delay in bringing charges against defendant did not violate his due process rights to a fair trial.³⁹ The Court also held that the trial court correctly admitted the DNA evidence under the standard in *People v. Kelly*.⁴⁰

Legal Significance

This decision upholds criminal defendants’ due process claims involving prosecutorial delay by allowing them to proceed when the delay is merely negligent. But when the delay is for a proper purpose, courts will show considerable deference to the state’s discretion in how it allocates its investigative resources and whether it decides to bring charges. The Court’s establishment of the admissibility of methods of DNA forensic analysis in cold hit cases will boost the role of DNA evidence stored in database in prosecuting crimes left unsolved for decades.

³⁶ *Id.*

³⁷ *Id.* (internal citations omitted).

³⁸ *Id.* at 66.

³⁹ *Id.* at 59.

⁴⁰ *Id.* at 66.