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The View From Here

Arguments in Carroll case were vexing

By CARL STROCK

I sat through oral arguments in the case of Jack Carroll at the Court of Appeals the other day, and it was a frustrating experience.

The main question that occupied the judges was whether a certain tape recording should have been admitted into evidence during the original trial, and the main reason they seemed to think it might have been admissible was to amplify the testimony of a Troy police officer.

This was a tape recording I have written about before - of a telephone call made by Carroll's accuser, a 13-year-old girl, at the prompting of a state police investigator. The idea was to trap Carroll into admitting he had sexual relations with the girl, but it didn't work. Carroll reacted with incredulity and came across sounding innocent.

Later that day the police interrogated him directly but this time did not hobble themselves by making a tape. Instead, they just went into court and testified that Carroll had, in effect, confessed.

"He never said he didn't do it," was one crucial statement by Detective Steve Weber of the Troy Police Department.

Of course Carroll *had* said he didn't do it, at the very least in the tape-recorded conversation earlier. So the argument before the court was whether the jury should have heard this bit of evidence indicating Weber was not telling the whole story.

Judge Richard Wesley was insistent on the importance of the tape to straighten out a misimpression left with the jury.

Chief Judge Judith Kaye, for her part, seemed dubious that a conversation lasting as long as 12 minutes could be considered an "excited utterance," which is another way the tape could get into evidence.

I say this was frustrating because the assumption throughout the discussion was that Weber and his partner, state police Senior Investigator Ed Girtler, were at least telling the truth when they testified that Carroll never denied the charge during their interrogation of him. The dispute was simply about whether they should have acknowledged he had denied the charge earlier.

But as I have reported, Steve Weber freely admitted to me in an interview last year that in fact Carroll repeatedly denied the charges during the interrogation. "We tried every way we could to get him, and he wouldn't go for it," Weber told me.

It was all I could do to keep from standing up in the august hall of the Court of Appeals and saying, "But wait a minute, your honors . . ."

It was also frustrating because there was no consideration of whether Jack Carroll's spontaneous reaction to the charges against him, tape-recorded without his knowledge, should have been admitted into evidence in its own right. Not because it was an "excited utterance," and not to impeach the testimony of another witness, but simply because it would be a reasonable thing for a jury to hear.

I mean, if it were up to you to decide someone's guilt or innocence, wouldn't you like to hear how that person initially reacted to the accusation against him, especially if he didn't know he was being recorded?

But that was not an issue. "The tape as a prior self-serving statement is inadmissible," said Judge Albert Rosenblatt, without challenge.

Self-serving, I wanted to holler out? He's not the one who made the call. He's not the one who ran the tape recorder.

That still drives me nuts, just as it drives me nuts that the cops were allowed to testify at trial as to what Jack Carroll supposedly said without anything to back up their word.

Weber told me he was convinced of Carroll's guilt right from the get-go, before even talking to him, and took his job to be to nail the guy.

In court, cops are often treated as impartial representatives of justice, but these guys, Weber and Girtler, were not impartial. They were crusaders against child sexual abuse, and when they heard the accusation against Carroll, no matter how hesitant or rudimentary it might have been, they went to work, freely employing what Weber called "trickery and deceit" to get a conviction.

To listen to the judges of the Court of Appeals discuss their testimony as if it had the weight of incorruptible authority was more vexing than I can describe.

I understand that courts must work with the law, not with what any damn fool already knows, and surely not with newspaper reports, but it was still vexing.

Jack Carroll, age 45, is locked up in the dungeon-like confines of Clinton Correctional Facility in Dannemora, facing the prospect of not getting out till he's 67, and the question before the state's highest court is not so much if he's innocent or guilty but whether a misimpression left with the jury that convicted him could have been corrected with a certain line of cross-examination or if admission of an otherwise inadmissible tape recording was required.

It was tough to listen to.

But that said, let me hasten to add that the proceeding still sounded pretty good for Carroll.

Judge Wesley was especially aggressive in questioning the prosecutor about how Carroll could have been convicted of rape when the supposed victim "never testified at trial about having intercourse" and "has no recollection she ever took her clothes off," during some four years of alleged sexual activity.

Chief Judge Kaye also sounded skeptical about the particulars of sexual intercourse.

Judge Albert Rosenblatt was the only who seemed dubious of overturning the conviction, though I have learned from experience not to try to predict the court's decisions from the tone of the judges' questions.

The odds for Carroll are not good - last year the court reviewed 62 criminal convictions and overturned only nine - but there is something besides odds in this world, I like to think, and something besides lies.

We should know the court's decision in a month or two, and in the meantime I'll be keeping my fingers crossed.