

Jury to hear of false confessions

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An expert on false confessions will be allowed to testify at the retrial of John Kogut, who served 17 years in prison for the rape and murder of a Lynbrook woman before being released in 2003 based on DNA evidence.

The Friday decision by Acting State Supreme Court Justice Victor Ort is one of just a few of its kind ever to be issued in New York, and is a major victory for Kogut, whose attorneys have long argued that he was coerced into confessing to police after his 1985 arrest.

"We're extremely happy about this because we want the jury to understand what sort of situations can lead a person to confess falsely," said Kate Germond, an investigator with the nonprofit Centurion Ministries who has worked to exonerate Kogut. "When you look at the whole picture, it seems probable that something went on during the interrogation process that most of us wouldn't be very happy about."

Kogut's attorney has said police held his client for 17 hours with no food, rest or phone calls to obtain his confession to the crime. They also have said police told Kogut he had failed his lie detector test when, in fact, he had passed it.

Jurors may not realize how people can be persuaded during an interrogation to confess to something they didn't do, the judge wrote.

"It cannot be said that the typical juror is familiar with psychological research concerning the voluntariness of confessions or the tendency of certain techniques to contribute to a false confession," Ort wrote.

Kogut and two others were freed after new DNA evidence showed none of them were the source of the DNA found on the body of Theresa Fusco, 16, of Lynbrook. Kogut is to be retried later this month. The other two are not, but they are still under indictment.

In addition to Ort's decision Friday, he is expected to rule soon whether to allow expert testimony on hair banding. Kogut's defense team wants to use such evidence, which aims to show whether a person was alive when a hair sample was taken, to show that Fusco's hair was planted in Kogut's van by police after she was already dead.



Kogut's attorney, Paul Casteleiro, of Hoboken, N.J., was recovering from minor surgery and could not comment.

Assistant District Attorney Bob Biancavilla said the decision is disappointing, but not unexpected.

"We don't think it's going to have any effect on the outcome of trial," he said, noting that testimony by Saul Kassin, the expert that the defense is expected to call, has not swayed juries in other, similar cases.

Biancavilla had argued research done on false confessions is faulty and amounts to a "pseudo science."

Ort said in his decision the science of false confessions is legitimate, and should be considered by the jury in Kogut's retrial.

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