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*****FOR IMMEDIATE RELEASE*****

Legal Aid Lauds Unanimous NYS Court of Appeals Decision Which Upholds New York’s Landmark and Common Sense Discovery Laws

(NEW YORK, NY) – The Legal Aid Society lauded a unanimous [decision](#) rendered today by the New York State Court of Appeals (COA) in *People v. Bay* which upholds New York State’s landmark and common sense discovery laws, reforms that were signed into law in 2019.

In *Bay*, the prosecutor certified with the court that all case evidence was provided to the defense, but failed to disclose a 911 call and other crucial police paperwork, evidence that is commonplace in most criminal cases.

Defense counsel raised this concern with the trial court, and the prosecutor wrongly stated that these basic materials did not exist. Then, without explanation, in the week prior to trial, the prosecutor disclosed this evidence.

The trial court denied the defense’s motion to dismiss, finding that the prosecutor had fulfilled its discovery obligations. An appellate court affirmed that ruling, finding that the prosecutor had acted in “good faith” and declined to consider whether the prosecutor had exercised due diligence.

The Court of Appeals reversed the appellate court’s ruling. It stated that “[t]here is no rule of ‘strict liability’; that is, the statute does not require or anticipate a ‘perfect prosecutor.’ On the other hand, the plain terms of the statute make clear that while good faith is required, it is not sufficient standing alone and cannot cure a lack of diligence.”

In finding that the prosecutor had not properly certified his compliance with the discovery law in this case, the COA wrote, “Under the terms of the statute, the key question . . . is whether the prosecution has ‘exercis[ed] due diligence and ma[de] reasonable inquiries to ascertain the existence of material and information subject to discovery’ . . . Reasonableness, then, is the touchstone—a concept confirmed by the statutory directive to make ‘reasonable inquiries.’”

The Legal Aid Society submitted an *amicus* brief in support of *Bay*, which can be read here: <http://tinyurl.com/msrvscnp>.

“Upon taking effect in 2020, discovery reform has had an immediate positive impact, furthering due process and justice in our criminal legal system by ensuring that defense counsel has early access to pivotal evidence to guide case strategy,” said **Tina Luongo, Chief Attorney of the Criminal Defense Practice at The Legal Aid Society.**

“However, to live up to its full intended promise, funding is needed for both public defender and prosecutor offices to facilitate the sharing of evidence, and we hope that the resources appropriated to our offices in the State’s Fiscal Year 2024 budget can be released soon to assist with this mandate.”

Background

Prior to passage of reform in 2019, New York’s discovery statute - colloquially known as the “[Blindfold Law](#)” - was widely regarded as one of the most restrictive and punitive evidence sharing statutes in the country, which deprived the accused access to critical evidence, contributed to court delays, mass incarceration, and wrongful convictions, among many other problematic outcomes.

In many instances, the accused were forced to take pleas before seeing the entirety of the evidence pending against them, and for cases that went to trial, prosecutors were only required to furnish evidence on the eve of jury selection, impeding defense attorneys' ability to review evidence and make key decisions on how to proceed with their case.

In 2019, the Legislature passed and former Governor Andrew Cuomo enacted discovery reform to modernize evidence sharing practices similar to those in other states.

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