

**STATE v. GILBERTO MARRERO-ALEJANDRO, AC 37165**

*Judicial District of New Britain*

**Criminal; Prosecutorial Impropriety; Whether Defendant's Oral Statements and DNA Sample Should Have Been Suppressed; Whether Uncharged Misconduct Evidence Properly Admitted to Prove Motive.** The defendant was charged with murder in connection with the August 10, 2010, shooting death of Jose Cruz-Diaz. Cruz-Diaz was shot nine times outside of his Bristol apartment. The state alleged that the defendant was a drug runner and that he agreed to assassinate the victim, a competing drug dealer, in return for a \$1000 payment from his boss. Prior to his arrest, the defendant was interviewed by Bristol police officers at the district attorney's office in Springfield, Massachusetts. At the end of the interview and after indicating that he wished to speak to an attorney, the defendant consented to the police taking a sample of his DNA by a buccal (cheek) swab. At trial, a DNA analyst testified that the defendant could not be eliminated as a contributor to the DNA profile found on a sweatshirt that the shooter shed not far from the scene of the crime. The defendant was convicted of murder and he appeals. First, he claims that several instances of prosecutorial impropriety denied him a fair trial. He claims that the state relied heavily on scientific evidence at trial and that the prosecutor misstated the importance of the DNA evidence by essentially arguing to the jury that the chance that the DNA found on the sweatshirt belonged to someone other than the defendant was virtually zero. The defendant also claims that the prosecutor argued facts that were not in evidence and that, during closing argument, the prosecutor improperly denigrated the defendant and his defense counsel's theory of the case. Next, the defendant contends that the trial court erred in denying his motion to suppress statements he made while being interviewed by the Bristol police. He claims that he was in custody when the police interviewed him in that a reasonable person would not have felt at liberty to terminate the interrogation and leave and that his statements were not voluntary because, while there was no evidence of police coercion, the interrogation was long and continuous and took place in the police-dominated atmosphere of the district attorney's office. The defendant also argues that his DNA sample should have been suppressed because it was taken after he invoked his right to counsel. While he concedes that both the United States Supreme Court and the Connecticut Supreme Court have ruled that the admission of physical, non-testimonial evidence does not implicate constitutional privileges against self-incrimination, the defendant argues that the sixth amendment right to the assistance of counsel is not limited to testimonial evidence and that the Connecticut constitution should be interpreted as prohibiting the warrantless taking of his DNA sample after he had invoked that right. The defendant also argues that the trial court erred in allowing the state to present evidence of his uncharged misconduct through the testimony of Carrie Skinner. Skinner was allowed to testify that the defendant was a member of an organization involved in the sale of drugs, that he stole money and drugs from his boss, and that he made threats against Skinner because of her relationship with the victim. While the trial court allowed the testimony on concluding that it was admissible under § 4.5 (b) of the Connecticut Code of Evidence because it was relevant to prove the defendant's motive to kill the victim, the defendant claims that the fact that he had a motive to kill was never in serious dispute and that the relevance of the disputed testimony was far outweighed by its prejudicial effect. Finally, the defendant argues that the trial court erred in denying the motion for the appointment of new counsel that he made during jury selection. He claims that he established exceptional circumstances warranting new counsel in that he showed that his attorney was disinterested in his case and unprepared to go to trial.