

# Summers & Schneider's Law Blog

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## The case of Kevin Rios and a defense perspective

Kevin Rios was a former client of mine and on June 20th his trial will be featured as part of a documentary airing on HBO. I wanted to give some background on the case as it was an extremely interesting and disturbing case that shows just how flawed our justice system can be. As you may be aware, attorney-client privilege is an extremely important and crucial part of our jobs and therefore I want to preface this post by saying that all information contained herein is a matter of public record and in no way violates the clients privilege.

### The 2006 Case

Mr. Rios was charged with two counts of predatory sexual assault, which is essentially aggravated rape with a weapon, as well as robbery, sexual assault, sexual misconduct, and several other charges. The first allegation stemmed from a 2006 case where it was alleged that he and another individual picked up a prostitute and, driving separate cars, went to a parking lot behind a storage facility close to the West Side Highway. When they arrived the woman went into the van owned by Mr. Rios where they raped her repeatedly while threatening her with a gun. Once the rape was completed they stole her car. The woman immediately called the police and kept Mr. Rios's semen in her mouth until the police arrived.

Here is where the case gets even worse. When the police arrived on the scene the prostitute gave the police Mr. Rios's license plate number as well as the semen, from which a DNA sample was obtained. The lead detective never ran the license plate number into the system. Several months later the DNA matched a previous sample Mr. Rios had given when arrested as a juvenile for a driving offense. A letter indicating a match from the scene to Mr. Rios was then sent to this detective and still the detective did nothing. Approximately 4-5 months after the rape allegation was made, the detective wrote up a report stating that the complainant (the prostitute/victim) met with an investigator from the District Attorney's Office but that the investigator did not find the complainant credible and therefore the detective was closing the case. This meeting never took place and the report was completely wrong (or fabricated, depending on who you believe).

### The 2008 Case

In 2008 Mr. Rios was again accused of rape. In this incident it was alleged that he followed a babysitter from the subway to the home where she worked in Harlem, and at approximately 8 am on a weekday, he held a knife to her throat

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while in the elevator of the building, his foot in the door keeping it open, and repeatedly raped her. DNA was recovered from the scene, entered into CODIS (the DNA databank) and matched to Kevin Rios. This time he was arrested and labeled "the babysitter rapist".

The first trial actually dealt with the 2008 charge and, with DNA and an identification by the victim weighing heavily against him, he was convicted and sentenced to 15 to life. The second trial (dealing with the 2006 rape) took place in March of 2010 and Mr. Rios took the stand in his own defense stating it was consensual sex with a prostitute. The other individual alleged to be involved with Mr. Rios still has not been identified. He was again convicted and sentenced to 12 to life to run concurrently with the sentence in the 2008 case.

### The Documentary

The documentary airing on HBO focuses on the 2006 case from the District Attorney's point of view and shows how they prepared the case for trial. However, there is no mention of the detectives actions, or inactions, which made this case even more interesting and disturbing so I wanted to just provide everyone with the background and context in which the trial took place. On Wednesday night, following the pre-screening and reception of the film, I ran into two other detectives that were involved in the case who were equally disgusted with the lead detectives actions but who would only say "he was transferred". They were not so forthcoming as to admit that he was "transferred" to homicide which is effectually a promotion. Ah, nepotism at its finest (i believe his father was also on the police force).

The detective aside, the film really is an interesting look inside the District Attorney's Office and many of the prosecutors shown in the film, Coleen Balbert, Melissa Penabad, Jen Sculco, and Lisa Friel, are some of the best and most ethical ADA's I've had the pleasure to work with and whom I hope all other ADA's will aspire to conduct themselves.

### A Defense Perspective

Most sex crimes cases do not involve DNA and identifications as the Rios case did. It's important to remember that a good number of cases deal with a he said/she said situation that hinges on the credibility of the parties involved and not all ADA's disregard the "win at all costs" approach and instead focus on justice. Just last year I tried a case where a 40 year old man, with no criminal history, was accused of molesting the friend of his 13 year old daughter. The ADA, who was one of the worst I have ever dealt with, screamed at my client in the hall of the courthouse that "no jury would ever acquit him" and repeatedly called him a variety of disparaging names. This ADA did not have the insight and ability to realize that there were dozens of lies and inconsistencies told by the complainant and her family but yet she continued to prosecute the case. This man was found not guilty of all charges in 5 minutes. The judge actually commented that it was the fastest verdict he'd ever had and I had several jurors afterwards approach me with sympathy for my client, telling me that the case never should have gone to trial.

But what if he had been convicted? What if they hadn't believed him and instead had believed the baseless disparaging remarks the ADA kept slipping in to the jury? He would have had to register as a sex offender for a minimum of 20 years, he would have lost his green card and been deported, and he would have likely gone to jail. Just waiting for trial he lost his job because he had to take so much

time off to go to court, the stress on his family caused problems between him and his wife, and this wonderful man, who always helped out his neighbors, stopped doing so because he was so afraid someone else could easily make such an accusation.

Keep in mind that while a defendant will likely be persecuted for false statements they make during trial, a complainant almost never is. I have never had a case, even where the complainant was clearly lying and making false allegations, where the DA's office filed perjury charges against the complainant. All a person has to do is say "that man raped/assaulted me" and often charges are filed and a defendant's life is turned upside down. The media convicts many of these people even before trial and it's hard for wrongly accused defendants, and there are people wrongly accused, to move on with their lives.

So I guess the point I'm trying to make is that there are always two sides of every story. We have "presumed innocent" and "guilt beyond a reasonable doubt" standards for a reason. Please keep an open mind in cases until you have all the facts and recognize where your information is coming from. Not every defendant is guilty, not every prosecutor is playing by the rules, and not all cases are what they seem on the surface. Sex Crimes Unit is a great documentary and a great model for other DA's offices but it is only a look at one side of a trial, and while the case of People v. Rios was a difficult one from the defense side, there are many cases that aren't so simple. Thanks for reading!

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Posted by Kimberly at 2:12 PM



## 1 comment:

**Anonymous** July 9, 2012 at 12:16 PM

It is so sad that it is the our police system that was created to protect and serve us that actually failed the victims of Kevin Rios. Had the right steps been taken the first time that he raped the first victim, this man would have been off the streets and unable to continue to do harm to others. Of course, the detective pre-conceived judgment affected the outcome since he probably believed that since she was a prostitute, she did not merit to be trusted, even if she had evidence. Rape is rape, no matter who it is done to. This detective should find a new career, where his bias and pre-conceived judgments can't cause harm to others. Unfortunately, both Rios and this detective have caused years of therapy and pain for these women and their friends and family who have to watch them rebuild their lives as they try to forget this horrible rape that they probably re-live everytime they have a nightmare. The fact that Rios will probably be free in his 30's or 40's to continue committing crime is no relief to the victims and any woman who Rios can come across in the future. His smirk in court and lack of remorse is a sure sign that he still does not understand what he did wrong, because he was probably raised feeling that he can do no wrong. Fortunately, the DA's in this case were committed to seeing him behind bars and it was this commitment that got him off the streets and locked up behind bars where he belonged in since 2006. Bravo for their wonderful work and I am glad that their dedication and hard work is on film.

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