

Many times the prosecution wants to leave the jury with the impression that the arrest of the defendant was brought about by the combined efforts of every law enforcement officer in the area. Under the rubric of "completes the narrative" the jury learns about the search warrant (implying prior criminal acts by the defendant, or other proof of the charged criminality, or both), about the week-long surveillance of the defendant's house, about the fact that the defendant was the object of the investigation, about an alias not referenced by any witness, about the police being fully familiar with the defendant in a professional capacity.

Some of these examples are objectionable on a variety of bases, but I want to discuss what to do when the prosecution offers irrelevant material because it "completes the narrative". First, ask yourself, does it *complete* the narrative? If instead the proof merely falls into a convenient time frame for the prosecution, and has little relevance to the crimes charged, then we must deal with the fact that the jury is hearing evidence whose admission is not so much justified on a legal basis as it is on the need to satisfy the presumed curiosity of the jury. Does the proof complete the narrative of the crime, or does it complete the narrative of the investigation? One is typically relevant, the other is typically not relevant.

There are times when investigative "completes the narrative" have been held legitimate. If the claim is that a witness confronted the defendant with uncharged sex abuse, causing the complainant to make similar accusations, the fact of the claim of uncharged abuse is a proper part of the testimony (*People v Workman*, 56 AD3d 1155 [4th Dept 2009]). Remember, evidence which "completes the narrative" in this way is a Molineux exception, and typically requires the prosecution to seek a pre-trial ruling under *Ventimiglia* (*People v Orbaker*, 302 AD2d 977 [4th Dept 2003]).

However, "completing the narrative" was originally invoked to allow the complainant to testify to the entire crime. In two cases of robberies accompanied by uncharged rapes, the complainant was permitted to testify to the rapes to establish her capacity to identify the defendant. In other words, "completes the narrative" meant completing the actual narrative of the actual crime charged, not every event involved in the investigation into the events or the apprehension of the defendant. See *People v Gines*, 36 NY2d (1975) and *People v Acevedo*, 32 NY2d 941 (1973) (which affirmed without opinion, but was described and relied on in *Gines*).

Often, proof is offered at trial, not because it is an integral part of the actual events of the offense (which would be a form of *res gestae*), but because it explains aspects of the case the jury might otherwise wonder about. This may well be improper evidence against the defendant. The proof should explain the crime - not the investigation or other extraneous events - to come in. "In this case, the trial court cannot be said to have erred as a matter of law in admitting the background explanation for its **expressly instructed limited purpose**. The evidence of the uncharged robbery established a motive for defendant's attempt to kill or assault the off-duty police officer to avoid capture and punishment. Thus, for the jury to have a thorough appreciation of the interwoven events leading to defendant's culminating criminal conduct and of the competing theories of what

happened and why, the closely antecedent, uncharged robbery in this case was relevant and material." (People v Till, 87 NY2d 835, 837 [1995] [expressly dealing with evidence "needed as background material" or which "completes the narrative"], emphasis supplied). There are two key points in Till. First, that there was a limiting instruction. Second, that the material, while highly prejudicial, was a critical component of the prosecution's case - it was the reason for what the court clearly felt to be an otherwise inexplicable, illogical and probably incredible accusation.

We face many prosecutorial claims that something far less important or relevant should be admitted because it "completes the narrative" ("In any event, that testimony was admitted not for its truth but to complete the narrative of the events leading to the apprehension of defendant with the complainant" People v Singletary, 270 AD2d 903 [4th Dept 2000]). Under this theory, anything the jury might be curious about comes in no matter how prejudicial and irrelevant - like the fact that the defendant was being surveilled, not just the house where the events took place. I'm not saying that there are cases reversing on this basis, but cases allowing the DA to "complete the narrative" do not support introduction of every event between the alleged crime and the defendant's arrest.

Where the proof actually completes the narrative - where it represents relevant evidence that the defendant committed the crime in question - it is admissible as an exception to Molineux, even if it involves prior uncharged crimes. Where the prior crime is the motive for the charges in question (Till) or prompted the reporting of the current charges (Workman), that's one form of completing the narrative, the substantive form. Where completing the narrative represents merely an explanation regarding why the police did what they did, our first argument is that it doesn't come in at all. Jury curiosity is not a Molineux exception, and the probative value has to be weighed against the prejudice. If the probative value consists entirely of allowing police to answer the eternal question "what is my motivation", probative value is nil.

However, if it does come in, we are entitled to a limiting instruction informing the jury what use they can make of the evidence. Where this use is simply explaining the actions of police, or countering an argument that the defendant has not made (e.g. that police actions were improper), the jury should be instructed, at the time the evidence is admitted, that it is not offered as proof of the defendant's guilt, but merely for whatever limited purpose the prosecution is claiming and the court accepting. At a minimum, the People should be required to explain what narrative is being completed so the proper limiting instruction can be given (The People cannot not rely on appeal upon a theory of admissibility that the People did not advance at trial, *People v Jackson* 8 NY3d 869, footnote [2007]). The shallower the explanation (shows why the police did what they did), the more a limiting instruction should communicate to the jury "this is extraneous crap", and the more we should renew our argument that it doesn't come in.

Sample Instruction - "an investigation is the means by which police hope to obtain evidence, it is not itself evidence against the defendant; the actions of the police in trying to obtain proof are offered only to provide context and must not be considered by you as

proof of the defendant's guilt".

Further discussion on what comes in:

Evidence, even if it really does complete the narrative, does not automatically come in. "Our dissenting colleagues contend that the trial court acted within its discretion in allowing the stolen car testimony "to complete the narrative" ... While in a Molineux context we have used this phrase in several cases these decisions should not be interpreted as automatically allowing the prosecution to introduce evidence of uncharged crimes merely because the evidence is said to complete the narrative or furnish background information." (People v Resek, 3 NY3d 385,389 [2004] [where no-billed stolen car evidence was introduced, with a limiting instruction, to explain why the police arrested the defendant]). "In appropriate instances, evidence of uncharged crimes may be allowable as background or narrative because juries might "wander helpless" trying to sort out ambiguous but material facts... Here, however, there was no ambiguity that could not have been easily dealt with by far less prejudicial means. In order to allay the prosecutor's concern that the jury might, without guidance, stray from its appointed task, it would have sufficed to instruct the jurors that the arrest was lawful and that they were not to speculate as to its reasons. Of course, if defendant had placed the propriety of the police action in issue, the events leading up to his arrest ought properly have been admitted to rebut the claim. Here, however, defendant conceded his possession of the recovered drugs he was charged with intending to sell." (Resek)