

Vouching – New York Cases

A few examples:

- “This case is simple.”
- “I submit to you that his testimony is credible and accurate.”
- “The defendant’s story is unbelievable and absurd.”
- “The victim was perfectly candid and forthright.”
- “The officer has no motive to lie.”
- “He told you the truth.” “
- “She told you exactly how it happened.”
- “The officer wouldn’t risk his job by lying.”

What is vouching?

“A prosecutor may not . . . express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence.” *People v. Bailey*, 58 N.Y.2d 272, 277 (1983). Some problems with vouching are that it constitutes a form of unsworn “testimony” without any opportunity for cross or confrontation; the prosecutor’s opinion is not relevant; and it leverages the prestige of the prosecutor’s office.

Some New York cases finding prosecutorial vouching to be improper

- *People v. Oathout*, 21 N.Y.3d 127, 131 (2013) (“the police would not keep using her as a confidential informant if she were not credible”)
- *People v. Beck*, 196 A.D.3d 697, 698-99 (2d Dept. 2021) (reversing conviction where prosecutor “argued that this case ‘will be a very quick deliberation’”; “argued that the evidence presented ‘one scenario, there is not a shadow of a doubt’”; “argued that ‘I absolutely one hundred percent believe the defendant came out of that window’ of the complainants’ house, thus expressing his personal opinion of the defendant’s guilt”; and “argued that ‘there is absolutely no doubt in anyone’s mind’ that the defendant was the person fleeing from the complainants’ house”)
- *People v. Robles*, 174 A.D.3d 653, 655 (2d Dept. 2019) (“the prosecutor improperly argued to the jury that there were ‘no coincidences,’ that the defendant was not the ‘unluckiest guy’ in Brooklyn, that ‘the evidence fits together . . . all the pieces connect,’ that ‘all the evidence points directly at the defendant . . . because he’s guilty. Because he did these crimes,’ and that the jury would have to do ‘a lot of mental gymnastics to believe the defendant did not commit this crime’”)

- *People v. Powell*, 165 A.D.3d 842, 844 (2d Dept. 2018) (prosecutor told jury that, “in talking about this case in detail” with the defendant, the defendant “told me what he did,” and other comments)
- *People v. Case*, 150 A.D.3d 1634, 1637 (4th Dept. 2017) (“Perhaps most egregiously, in arguing that the jury should reject defendant’s testimony that he confessed falsely to the police because he needed to use the bathroom, the prosecutor gave her personal opinion regarding defendant’s credibility by stating that she would sit in her own urine rather than falsely admit that she committed a crime”)
- *People v. Ramirez*, 150 A.D.3d 898 (2d Dept. 2017) (“During summation, the prosecutor argued to the jury that defense counsel had ‘selected certain portions out of context in the grand jury minutes,’ and that the jury ‘didn’t get the entire grand jury minutes’”)
- *People v. Casiano*, 148 A.D.3d 1044, 1045 (2d Dept. 2017) (“the witnesses who came before you provided truthful testimony that makes sense”; they gave “the kind of truthful and credible testimony that you can rely on”; one witness had “no reason to be anything but truthful with the 911 operator”; the complainant was “exactly what you hoped to see from someone who had troubles with the law in their youth” but had “changed his life”)
- *People v. Redd*, 141 A.D.3d 546, 549 (2d Dept. 2016) (describing the witness who testified to hearing screams as “a sharp-eared woman” whose hearing had been well developed from “listening to her asthmatic son breathe”); *People v. Griffin*, 125 A.D.3d 1509, 1510 (4th Dept. 2015) (“I submit to you the complainant’s statements are truthful” and “examples of the ring of truth,” and characterized the prosecution’s case as “the truth”)
- *People v. Casanova*, 119 A.D.3d 976, 978 (3rd Dept. 2014) (witnesses were “honest” and “told the truth,” and informant was “more than credible”).