

A Detective Was Accused of Lying. Now 90 Convictions May Be Erased.

The Brooklyn district attorney will move to dismiss old convictions in which a former narcotics detective, accused of perjury in Manhattan, played a key role.

By Troy Closson

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Over nearly two decades as a police officer and narcotics detective, Joseph E. Franco made thousands of arrests, many for the possession and sale of drugs. Mr. Franco often worked undercover, and his testimony secured convictions for prosecutors around the city.

But officials who once relied on Mr. Franco are questioning his accounts. After he was accused of lying about drug sales that videos showed never happened, Mr. Franco was charged with perjury in Manhattan in 2019.

Now, the fallout over Mr. Franco's police work is spreading: As many as 90 convictions that he helped secure in Brooklyn will be thrown out, prosecutors plan to announce Wednesday. Many more cases in other boroughs could follow — a reckoning that lawyers said appears larger than any in the city's legal system in recent history.

On Wednesday, the Brooklyn district attorney, Eric Gonzalez, will ask judges to dismiss years-old drug cases in which Mr. Franco served as a crucial witness. The office did not uncover new evidence of possible misconduct — and none of the people involved still remain behind bars. But Mr. Gonzalez said he had lost faith in Mr. Franco's credibility.

"We're in a moment of talking about criminal justice reform," Mr. Gonzalez said in an interview this week. "It's clear that we couldn't responsibly rely on his testimony to stand by these convictions."

The move represents one of the largest dismissals of convictions in the state over concerns about official misconduct, and comes amid a heightened national conversation about holding police accountable and curbing abuses among officers. In New York City, legislators recently made it easier to sue officers for conducting illegal searches or using excessive force.

Mr. Franco was charged in 2019 with 26 criminal counts, including perjury and official misconduct, after investigators in the Manhattan district attorney's office said that he had testified to witnessing several drug buys that video footage showed did not happen or that he could not have seen.

He has pleaded not guilty to the charges against him.

Mr. Franco's lawyer, Howard Tanner, said his client is presumed innocent and said he would be "vigorously defending" the case in Manhattan.

"I would therefore ask that the public withhold judgment until all the facts are heard," Mr. Tanner added.



Eric Gonzalez, the Brooklyn district attorney, said his office could no longer stand behind convictions that relied on Mr. Franco's testimony. Lev Radin/Sipa USA, via Associated Press

Nearly all of the people whose convictions that Mr. Gonzalez is seeking to dismiss were charged with drug-related crimes, including many for low-level possession offenses. The group — mostly men arrested between 2004 and 2011 — spanned generations: Several were under 20 years old at the time of their arrests, and dozens were older than 40.

Mr. Gonzalez's office was not certain of the racial breakdown, but believed that many were Black and Latino, groups who have represented a disproportionate bulk of many drug charges in the city.

Most of those who faced more serious charges for drug sales — 27 people in total — spent between six months to a year behind bars. It was unclear how often the crime represented their first or only conviction, the district attorney's office and public defenders said.

Even those who did not serve lengthy sentences were left with criminal records, which can have long-term consequences for housing and work prospects. In recent years, attention on those lasting effects has grown. In New York and elsewhere, records of some minor convictions have been expunged — an attempt to make amends for what is now seen as overly aggressive policing of drug crimes in the past.

But erasing records can only go so far, public defenders say.

"The damage is done at the point of arrest," said Tina Luongo, a lawyer who heads the criminal defense practice at the Legal Aid Society. "They likely had bail set on them, spent time at Rikers Island, lost jobs, were separated from their families — no matter what happens, those harms were done."

One man who was arrested three times by Mr. Franco is set to have each case dismissed, lawyers said. The man, who spoke on the condition of anonymity because of privacy concerns, said he was charged with several low-level drug crimes that he did not commit. Confronted with the prospect of a police officer's testimony, he pleaded guilty.

The man was fresh out of high school, with a young son and a second child on the way, when he was arrested in 2005, he said. He spent several years behind bars. The man, now 35, said the transition home was rocky, and the arrests continue to affect him.

"I got the call that this was happening and it was supposed to be good news," he said. "But honestly, I don't know that I feel any better. It affected my whole way of thinking. That stuff changes you."

Mr. Gonzalez said that his office could not fully reinvestigate many of the 90 cases: Video evidence had often long been lost, and potential witnesses from over a decade ago could not be tracked down.

After charges were brought against Mr. Franco in Manhattan, it was not immediately apparent that the detective also had worked in Brooklyn, Mr. Gonzalez said. The office eventually pulled together a list of cases Mr. Franco was involved in and flagged those that could not have been prosecuted without his accounts, he said.

The concern over officers making false or misleading statements about crimes is not new. Between January 2015 and March 2018, an investigation by The New York Times found more than 25 instances in which judges or prosecutors determined that a central aspect of a New York City police officer's testimony was likely untrue.

The fallout has echoed the Brooklyn district attorney's office's reassessment of dozens of murder cases investigated by Louis Scarella, a former homicide detective who handled some of the borough's most notorious crimes, after one of his investigations unraveled. In that instance, however, the office threw out only a handful of cases and said in 2017 that Mr. Scarella broke no laws.

Other states have confronted similar problems in recent years. In Massachusetts, for example, thousands of low-level drug cases were dropped in 2017 after prosecutors said a state chemist mishandled drug samples and returned positive results on ones she never tested.

Christopher Slobogin, the director of the criminal justice program at Vanderbilt Law School who has studied false testimony by the police, said the issue is most common in low-level drug cases.

The Police Department fired Mr. Franco, 48, last April. But discipline is often rare.

Major questions first surfaced around Mr. Franco's record in New York in the summer of 2018, when the Manhattan district attorney's office launched a review after finding inconsistencies between Mr. Franco's statements and evidence in certain cases, said Danny Frost, a spokesman for the district attorney.

In one episode on the Lower East Side, a man was arrested in February 2017 after Mr. Franco said he witnessed the man selling drugs inside the lobby of a building. But prosecutors said security video showed the transaction never took place — and Mr. Franco had never even entered the building.

In a similar arrest four months later, Mr. Franco said he saw a woman selling drugs in a building's vestibule on Madison Street. He had not gone into the vestibule, however, and was too far from the woman to observe any sale, prosecutors said after reviewing security footage.

Both people were serving sentences at state prisons for the crimes when the new evidence was discovered — and both convictions were thrown out by the Manhattan district attorney's office.

In a third case, Mr. Franco said he witnessed a man selling cocaine to another woman. Prosecutors said new video evidence showed the man — who was not in prison at the time, but whose case was also dismissed — had only held open a door for her.

The three people each pleaded guilty. Prosecutors later identified another case with two arrests in which they said evidence showed Mr. Franco had made false statements.

In Brooklyn, Mr. Franco also worked undercover in narcotics, buying drugs and arresting the people who sold them. All but one of the 90 people entered guilty pleas. The district attorney's office did not find evidence of innocence in its limited investigation, but Mr. Gonzalez and public defenders noted that blameless defendants may take guilty pleas for a host of reasons.

"People understand that when it's their word against the word of an officer, the system is not designed to give them the benefit of the doubt," said Maryanne Kaishian, a senior policy counsel at Brooklyn Defender Services, which represents several of the cases. "Many people will decide that it's not worth it to them."

The steps by the Brooklyn district attorney's office intensify pressure on district attorneys in other boroughs to re-examine Mr. Franco's cases. Shortly after joining the department in 2000, Mr. Franco was an officer for several years in the Bronx.

The Bronx district attorney's office has been reviewing about 150 cases in the borough that Mr. Franco was involved in between 2011 and 2015 to determine if the convictions are still reliable, Patrice O'Shaughnessy, a spokeswoman for the office, said on Tuesday.

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