

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Tuesday, May 1, 2018

*(papers sealed)*

## No. 65 Matter of Natasha W. v New York State Office of Children and Family Services

Natasha W. was arrested for shoplifting at a Bloomingdale's store in Manhattan in December 2012. A store detective, who detained her when she emerged from a fitting room with her five-year-old son, found an unpurchased coat hidden beneath her own coat and several concealed cell phone cases. He also found that two coats were hidden under her son's clothing and that he was wearing boots that were not paid for. Before she was taken into custody, she called her sister to pick up the child. Natasha ultimately pled guilty to disorderly conduct, a violation, which was later sealed. After an investigation, the New York City Administration for Children's Services (ACS) found the child maltreatment report against her was "indicated" because she had used her son in shoplifting and was arrested in his presence. It also concluded that the child was not "likely to be in immediate or impending danger of serious harm" and that "No Safety Plan/Controlling Interventions are necessary at this time." The State Office of Children and Family Services (OCFS) determined the report was relevant to employment in childcare, which could make it more difficult for Natasha to pursue her chosen career in early childhood education. An administrative law judge upheld the determinations, saying her conduct "creates an imminent risk to the child's emotional condition in that [he] will not control his impulses and will proceed from accompanying his mother in shoplifting to doing it on his own."

Supreme Court granted Natasha's petition to annul the indicated maltreatment report. It said her reported conduct did not meet the standard set in Nicholson v Scopetta (3 NY3d 357), which said the Family Court Act "requires proof of actual (or imminent danger of) physical, emotional or mental impairment to the child," a standard that "ensures that [officials] will focus on serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior." Supreme Court said, "The danger described by the ALJ was not 'imminent'..., but was more in the realm of merely possible, the showing which the Nicholson court expressly rejected as inadequate."

The Appellate Division, First Department affirmed on a 3-2 vote, saying, "[T]here was no evidence before the ALJ that the child suffered any injury or required any treatment as a result of petitioner's conduct, and no evidence that petitioner had ever engaged in the behavior at issue at any other time. Instead, the only evidence at the hearing with regard to harm ... was the ACS finding that the child had not suffered any harm and that petitioner was not a danger to the child.... Instead of applying the correct legal standard to determine whether there was serious potential for harm requiring the aid of a court, the ALJ substituted his conjecture that the child might commit crimes in the future, even though the record reveals that the mother had no criminal history, that the child understood that his mother was arrested because she tried to steal, and that he was, by all accounts, calm, happy, well cared for, well behaved in school and not in need of any medical or mental health intervention."

The dissenters said the ALJ "rationally concluded that petitioner's actions in exploiting her five-year-old son to steal caused the child's mental and emotional condition to be in imminent danger of impairment. There can be no doubt that exploiting a child to steal and teaching a child that such behavior is acceptable has long-lasting consequences for that child's mental and emotional development at an age when the child primarily learns from observation of the parent's actions." They also said Natasha's conduct was "reasonably related to a position in childcare. As a matter of common sense, it should go without saying that an individual who utilizes her own child to commit a crime and teaches the child how to steal lacks the necessary judgment to care for children, and would serve as a poor role model for them."

For appellants OCFS et al: Assistant Solicitor General Matthew W. Grieco (212) 416-8014  
For respondent Natasha W.: Audra J. Soloway, Manhattan (212) 373-3000

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To be argued Tuesday, May 1, 2018

**No. 66 Brown v State of New York**

**No. 67 Brown, as administratrix, v State of New York**

These claims against the State arose from a fatal collision in April 2003 at the intersection of State Route 350 and Paddy Lane in the Town of Ontario, Wayne County. Linda Brown was riding on a motorcycle with her husband on State Route 350, where the speed limit was 55 miles per hour. Henry Friend was driving his pickup on Paddy Lane, which had a stop sign at the intersection. He testified that he came to a full stop and looked both ways, saw no oncoming vehicles, then drove into the intersection in the path of the Brown's motorcycle, which struck his truck. Linda Brown was injured and her husband was killed. Friend pled guilty to failing to yield the right-of-way. Brown brought these actions against the State on behalf of herself and her husband's estate, alleging that the intersection was dangerous due to restricted sight lines from Paddy Lane, an excessive speed limit on Route 350, and inadequate signage.

The Court of Claims found that the intersection was dangerous and the State had prior notice of the hazards based on an Ontario Town Board resolution, which the Department of Transportation (DOT) received in 1999, and DOT data showing there had been at least 17 right-angle collisions involving failure to yield the right-of-way at the intersection between August 1996 and June 2002. However, the court dismissed Brown's claims because she did not prove that the State's failure to complete a safety study and take corrective action was a proximate cause of the accident.

The Appellate Division, Fourth Department reinstated the claims in a 3-2 decision, saying the trial court applied an improper standard in requiring Brown to prove the State's failure to complete a safety study was a proximate cause. "The appropriate inquiry was whether defendant was made aware of a dangerous condition and failed to take action to remedy it and whether the dangerous condition was the proximate cause of the accident." It said the trial court "properly determined with respect to defendant's negligence that claimant established that defendant had notice of the dangerous condition of the intersection and failed to take remedial action," thus establishing the State's "failure to maintain ... the intersection in a 'reasonably safe' condition." It remitted the matter for a determination of proximate cause.

The dissenters said Brown "was required to show more than that the potentially dangerous condition of the intersection was a proximate cause of her injuries and decedent's death. Rather, she was required to show what corrective action should have been taken by defendant and that such corrective action would have been completed before and would have prevented the accident." They agreed with the trial court that "it was pure speculation to conclude that a four-way stop -- the corrective action suggested by [Brown's] expert -- would have been in place before [her] accident even if defendant had undertaken a timely and adequate study."

On remittal, the Court of Claims found the State 100 percent liable, awarding Brown \$3,963,292 for her injuries and \$3,085,955 for her husband's death. Rejecting the State's claim that Friend was at least partially at fault, it said testimony "established that Mr. Friend carefully entered the intersection after looking both ways, but simply was unable to see the motorcycle ... at any time before the accident occurred." The Appellate Division affirmed.

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For respondent Brown: Michael Steinberg, Rochester (585) 295-8544

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To be argued Tuesday, May 1, 2018

## No. 68 People v Theodore Wilson

When an ambulance was called to the Queens home of Theodore Wilson in 2011, the emergency medical technicians found that his live-in girlfriend had suffered numerous serious injuries, old and new. They took her to a hospital and notified the police, who arrested Wilson. He was indicted on two counts of first-degree assault, one alleging that he acted intentionally and the other alleging that he acted with "depraved indifference to human life" under Penal Law § 120.10(3), which applies when a defendant "recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury...." He was also charged with attempted murder and second-degree intentional assault.

At trial, one of the victim's doctors testified that she had multiple fractures of her ribs, spine, face, and sternum, and that she had suffered a life-threatening brain injury. He said the injuries had most likely been inflicted over a period of months. Wilson was convicted of first-degree depraved indifference assault and second-degree intentional assault. He was acquitted of attempted murder and first-degree intentional assault. He is serving 21 years in prison.

The Appellate Division, Second Department affirmed, saying, "Contrary to the defendant's contention..., the People adduced legally sufficient evidence to support the defendant's conviction of assault in the first degree under Penal Law § 120.10(3) beyond a reasonable doubt, as the evidence of the defendant's conduct supported a finding of depraved indifference (see People v Suarez, 6 NY3d 202, 212 [2005] ... )."

Wilson argues the evidence was insufficient to prove depraved indifference "because this incident involved a single adult victim whose injuries were solely the result of intentional conduct." The victim "suffered repetitive, non-accidental trauma that produced a variety of serious physical injuries, one of which, brain damage, could have resulted in death.... According to the People, these injuries were all caused by appellant's multiple physical beatings. On these facts, not only was appellant's alleged conduct clearly intentional, not reckless..., but this assault against an adult does not fit within the extremely narrow set of circumstances under which depraved indifference can be proven in a one-on-one offense." Suarez held that depraved indifference may be found where a defendant engages in "a brutal, prolonged ... course of conduct against a particularly vulnerable victim," but he said the Court "restricts this fact pattern to one-on-one assaults against children."

The prosecution argues, "This Court's precedents and common sense dictate that a defendant can intentionally cause serious physical injuries at the same time that he recklessly creates a grave risk of the victim's death.... Thus, defendant's contention that intentional conduct necessarily negates a finding of depraved indifference is incorrect. Equally unconvincing is defendant's assertion that an adult can never be a vulnerable victim.... [A] rational juror easily could have determined that defendant ... engaged in a prolonged campaign of brutal abuse -- which created a grave risk of death -- and that [the victim], initially because she was a recovering drug addict living in a new city without a support network, and later because she was physically and psychologically terrorized, was a particularly vulnerable victim."

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For respondent: Queens Assistant District Attorney Eric C. Washer (718) 286-5826