# *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.**

To be argued Thursday, October 17, 2013

**No. 202 Matter of Beth V. v New York State Office of Children and Family Services**

Beth V. was a youth division aide at Camp Cass juvenile detention center in Rensselaerville in December 2004, when a detainee assaulted and raped her at knifepoint. She had a dispute with the detainee several days before the incident and had reported to her superiors that she "felt unsafe" around him. After the rape, the detainee kidnapped her in her own car, driving over her foot in the process. She escaped when he stopped in Albany to make a call from a payphone. The Workers' Compensation Board ruled the rape, post-traumatic stress disorder and physical injuries, including to her foot, were work-related, found her permanently partially disabled, and awarded her weekly benefits of $155.44.

Meanwhile, Beth filed a federal civil rights action against her employer, the State Office of Children and Family Services (OCFS), and several co-workers, claiming she suffered constitutional deprivations as well as physical, psychological and emotional damages. The suit was settled for $650,000, with Beth receiving $429,186 after attorney's fees. In the stipulation of settlement, the parties acknowledged that "the entire settlement sum is allocated to plaintiff's physical injuries and the loss of enjoyment of life and emotional response related thereto."

The State Insurance Fund, the workers' compensation carrier for OCFS, asserted a right under Workers' Compensation Law § 29 to take a credit for future benefits against her settlement. Beth challenged the Fund's right to a credit, and her attorney in the federal suit testified that "the thrust of the claim was for ... the constitutional deprivation" and that physical injuries were not a major part of it. He said the parties referred to physical injuries in the stipulation for tax purposes. A Workers' Compensation Law Judge ruled the Insurance Fund was not entitled to a credit, saying section 29 does not apply to recoveries against a claimant's employer and, alternatively, that the settlement "was for violation of claimant's civil and constitutional rights, recovery not included in" section 29. The Workers' Compensation Board reversed, ruling the Fund can take a credit against the settlement. It said section 29 applies to a civil suit against an employer, and the lien created by the statute "applies to any recovery" by a claimant.

The Appellate Division, Third Department affirmed, saying the stipulation "and the testimony of the attorney who represented claimant in the federal action constitute substantial evidence supporting the Board's conclusion that the injuries for which claimant recovered in the settlement were the same injuries for which workers' compensation benefits were awarded. Accordingly, the carrier is entitled to a credit against the settlement recovery...."

Beth V. argues the decision creates "a windfall for the carrier" because her "worker's compensation benefits and settlement proceeds address different injuries.... The settlement was based primarily on constitutional deprivation involving a pattern of conduct that injured [her] constitutional rights" throughout 2004, while the worker's compensation benefits "were based on a single event -- the few minutes it took for [her] to be raped and beaten, and the few hours it took for her to escape after being kidnapped." She also argues section 29 does not apply to her suit against her employer.

For appellant Beth V.: James E. Buckley, Albany (518) 449-3107
For respondent State Insurance Fund et al: Thomas A. Phillips, Albany (518) 437-6965
For respondent Special Funds Conservation Committee: Jill B. Singer, Albany (518) 438-3585

# *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.**

To be argued Thursday, October 17, 2013

**No. 203 People v Robert L. Worden** *(papers sealed)*

In December 2007, a woman told police that Robert Worden, her former boyfriend, had raped her three days earlier at her home in Rochester. She said she had fallen asleep after taking anti-depressant medication and awoke to find him having intercourse with her. She said he stopped when she shouted "get the hell off me," they argued, then she went back to her bedroom and fell asleep. She said she again woke up to find Worden penetrating her. Worden told investigators that he and the complainant had consensual sex, but he ultimately pleaded guilty to third-degree rape (Penal Law § 130.25[3]) in exchange for a sentence of ten years probation.

Less than three weeks after the guilty plea, the complainant called defense counsel and told him she had not been raped and Worden "should not have to do time for something he didn't do." In a signed statement, the complainant said she did not remember having intercourse with Worden on the date of the alleged rape, but if she did, it was consensual because they were in a relationship. She said she made the accusations because her family and friends, who disliked Worden, "were pushing me to press charges."

County Court denied Worden's motion to withdraw his plea without a hearing. It said the complainant's statement is "equivocal, at best" and Worden's plea colloquy "is consistent with the victim's sworn testimony before the grand jury." Citing People v Nichols (302 AD2d 954), it said "recantation evidence is inherently unreliable and is insufficient alone to require setting aside a conviction."

The Appellate Division, Fourth Department affirmed, saying Worden's "motion was based on a purported recantation by the victim. We conclude that the court properly denied defendant's motion to withdraw his plea on that ground because, as the court properly noted, recantations are inherently unreliable (see People v Nichols...). In any event, the court further noted that the victim's recantation was 'equivocal at best.'"

Worden argues that "it was an abuse of discretion as a matter of law" for County Court to deny his motion "without first conducting a hearing at which the victim could testify in person" about her recantation. While Nichols held recantations are inherently unreliable, he says, the Appellate Division in this case "ignored that the trial court in Nichols had granted the defendant a hearing at which the complainant recanted her recantation, and testified that she had been pressured to change her testimony by the defendant's niece and girlfriend." Worden also argues that his plea colloquy revealed that he did not understand the nature of the charge to which he was pleading guilty and, thus, his plea was not knowing, voluntary and intelligent.

For appellant Worden: Timothy S. Davis, Rochester (585) 753-4213
For respondent: Monroe County Asst. District Attorney Nicole M. Fantigrossi (585) 753-4618

# *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.**

To be argued Thursday, October 17, 2013

**No. 204 People v Hector Santiago**

Manhattan narcotics detectives were conducting surveillance of Giovanni Gonzalez on Amsterdam Avenue in May 2008, when he entered the rear of a minivan and it drove away. The detectives stopped it a few minutes later, finding Hector Santiago in the front passenger seat, Gonzalez in the rear seat, and the owner of the van at the wheel. Searching the van, they found nearly a kilogram of cocaine in a hidden compartment, or "trap," under the floor on the front passenger side.

Santiago was charged with possession of the cocaine based, in part, on the automobile presumption in Penal Law § 220.25(1), which states, "The presence of a controlled substance in an automobile is presumptive evidence of knowing possession thereof by each and every person in the automobile." Defense counsel stipulated that the brick of cocaine weighed 991 grams. At trial, Santiago requested a circumstantial evidence charge, which instructs the jury that "it must appear that the inference of guilt is the only one that can fairly and reasonably be drawn from the facts, and that the evidence excludes beyond a reasonable doubt every reasonable hypothesis of innocence." Supreme Court denied the request, and instructed the jury on the automobile presumption and constructive possession. Santiago was convicted of criminal possession of a controlled substance in the first degree and sentenced to 14 years in prison.

The Appellate Division, First Department affirmed, ruling the request for a circumstantial evidence instruction was properly denied. "The case was not based on circumstantial evidence," the court said. "Instead, it was based on direct evidence of defendant's presence in the car in close proximity to a large quantity of cocaine. From that evidence, the jury could infer possession under the automobile presumption, the theory of constructive possession, or both. The court properly instructed the jury on those theories, and there was no need for the court to give a circumstantial evidence charge as well...."

Santiago argues he was entitled to a circumstantial evidence charge because the proof that he knowingly possessed cocaine "was entirely circumstantial. Appellant was not in actual physical possession of the cocaine, which was secreted in a trap beneath the floor of a minivan.... Both the cocaine and trap were physically undetectable to anyone in the passenger compartment. To conclude that appellant knowingly possessed the cocaine, the jury had to infer guilt from these directly established facts." He argues the error was not harmless because the evidence of knowing possession "was decidedly weak. Appellant was neither the minivan's owner nor driver, and he did not act suspiciously before, during, or after police stopped the minivan. No evidence connected appellant to the man under police surveillance or to the driver-owner."

For appellant Santiago: Svetlana M. Kornfeind, Manhattan (212) 577-3478
For respondent: Manhattan Assistant District Attorney Beth Fisch Cohen (212) 335-9000

# *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.**

To be argued Thursday, October 17, 2013

**No. 205 People v Daniel Boyer**
**No. 206 People v Equan Sanders**

The question here is whether a defendant can be subject to enhanced sentencing as a persistent violent felony offender for a crime committed before he is resentenced at the request of the State on a predicate offense, pursuant to People v Sparber (10 NY3d 457), to address the issue of post-release supervision (PRS). Lower courts disagree on whether the date of the original sentencing or the Sparber resentencing determines the defendant's eligibility for an enhanced sentence under the predicate felony offender statutes. It is a question the Court of Appeals left open in People v Acevedo (17 NY3d 297 [2011]), which held that the original sentencing date applies when Sparber resentencing for a predicate offense is sought by the defendant rather than by the State.

Daniel Boyer was charged with committing a burglary in Albany County in 2008 and pled guilty to a reduced charge of second-degree attempted burglary. He was sentenced as a persistent violent felony offender to 13½ years to life in prison based, in part, on a prior attempted burglary conviction in 2002, for which the sentencing court failed to pronounce a term of PRS. To correct the error in the 2002 sentence, the State Department of Corrections and Community Supervision sought a Sparber resentencing in 2009. The Appellate Division, Third Department upheld the 2008 sentence, rejecting Boyer's argument that his 2002 conviction could not serve as a predicate offense because he was resentenced in that case after he committed the 2008 crime. The court said the original sentencing date for the predicate conviction controls regardless of who initiates the Sparber resentencing.

Equan Sanders was charged with weapon possession in 2007 and pled guilty to a reduced charge of attempted criminal possession of a weapon in the second degree. Supreme Court sentenced him as a second violent felony offender to seven years in prison, rejecting the prosecution's request to adjudicate him a persistent violent felony offender. The court held that one of his prior offenses, a 2002 conviction of attempted weapon possession, did not qualify as a predicate offense for enhanced sentencing because he had been resentenced in that case in 2008, at the request of the State Division of Parole, to address the issue of PRS. The Appellate Division, First Department affirmed, holding that where the State seeks a Sparber resentencing for a prior offense, "the resentencing date controls whether the conviction meets the sequentiality requirement for sentencing as a persistent violent felony offender...."

No. 205 For appellant Boyer: Mark C. Davison, Canandaigua (585) 394-5222
For respondent: Albany County Asst. District Attorney Steven M. Sharp (518) 487-5460
No. 206 For appellant: Manhattan Assistant District Attorney Dana Poole (212) 335-9000
For respondent Sanders: Elon Harpaz, Manhattan (212) 577-3300