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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 47

ANGELA V.V.,

Appellant.

20 Eagle Street
Albany, New York
April 9, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Angela V.V.

3 MR. KESSLER: Good afternoon. May it - - - may
4 it please the court. I would like to reserve three minutes
5 for rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MR. KESSLER: Thank you, Your Honor.

8 JUDGE SINGAS: What do you think the standard is?

9 MR. KESSLER: I'm sorry?

10 JUDGE SINGAS: What do you think the standard is?

11 MR. KESSLER: I'm sorry?

12 JUDGE SINGAS: The standard of review?

13 MR. KESSLER: The standard of review? That's a
14 good question. And - - - and one thing that hampers us is
15 that the Appellate Division decision is not a model of
16 clarity. It's not really - - - it seems to me that they
17 found that my client's evidence was legally insufficient,
18 and she was incredible as a matter of law.

19 If that's the case - - -

20 JUDGE RIVERA: But in your view, what should be
21 the standard? Is it your view that that is the correct
22 standard?

23 MR. KESSLER: Well, if the - - - if the - - -

24 JUDGE RIVERA: The measure of insufficiency?

25 MR. KESSLER: - - - Appellate Division is - - -



1 is saying the evidence was legally insufficient, then yeah,
2 that's the standard. If it's saying weight of the evidence
3 in the - - - in either case, the question is are they
4 relying on nonexistent facts, which I believe they are.
5 And if they're not reversed, you know, what does that say
6 about the burden of proof that domestic violence survivors
7 will now have to meet if they're seeking relief under DV -
8 - - DVSJA?

9 CHIEF JUDGE WILSON: So could you give us an
10 example - - - right in front of you. Could you give us an
11 example of a nonexistent fact that the - - -

12 MR. KESSLER: Well - - -

13 CHIEF JUDGE WILSON: - - - Appellate Division
14 relied on?

15 MR. KESSLER: - - - frankly, I don't even know
16 where to begin, but I'll - - - I'll - - -

17 CHIEF JUDGE WILSON: Just one. You can bring
18 whatever you want.

19 MR. KESSLER: One?

20 CHIEF JUDGE WILSON: Just one.

21 MR. KESSLER: Okay. Let's talk about Dr.
22 Lesswing's report.

23 CHIEF JUDGE WILSON: It exists.

24 MR. KESSLER: Sorry?

25 CHIEF JUDGE WILSON: The fact - - - the report

1 exists.

2 MR. KESSLER: He - - - he - - - he spent twenty
3 hours - - -

4 CHIEF JUDGE WILSON: Yeah.

5 MR. KESSLER: - - - with my client. He did
6 psychological testing. He spoke with collateral sources,
7 including people who testified in the hearing and other
8 people. Among them, the brother of the decedent who talked
9 at length about the - - - the decedent's violent
10 disposition. And he read the - - - he read my client's
11 statements to the police shortly after her arrest. He
12 considered all of this. He made a determination whether
13 she was feigning or malingering. He said she was not.
14 Psychologists are trained to - - -

15 JUDGE TROUTMAN: So is that a credibility - - -

16 MR. KESSLER: I'm sorry?

17 JUDGE TROUTMAN: Is that a credibility
18 determination?

19 MR. KESSLER: I don't think - - - well, here's
20 the problem. The appellate - - - the trial judge and the
21 Appellate Division is saying, well, he didn't have
22 sufficient data because he was relying almost entirely on
23 the client, which is not true. There are no facts in the
24 record supporting that. And that's legal error. You - - -
25 you can't make a decision based on nonexistent facts.

1 JUDGE RIVERA: What - - - what's not - - - not
2 true? That he's saying, "almost entirely", not saying
3 "only relying"?

4 MR. KESSLER: Well, that's what - - - that was
5 what they said, "almost entirely".

6 JUDGE RIVERA: Right. So that's not - - -

7 MR. KESSLER: And that's not true.

8 JUDGE RIVERA: Well, that's your opinion of that
9 reading of the report, no?

10 MR. KESSLER: Well, don't forget - - -

11 JUDGE RIVERA: I won't.

12 MR. KESSLER: - - - in any - - - in any
13 psychological evaluation, who's the primary source of
14 information? The subject of the evaluation. That's not
15 unusual.

16 JUDGE GARCIA: Right. But they don't have - - -

17 MR. KESSLER: And when - - -

18 JUDGE GARCIA: - - - they don't have to accept
19 that. I mean, because the doctor interviews this defendant
20 and other people, the court isn't bound by those
21 conclusions. Right?

22 MR. KESSLER: Not automatically. But there were
23 - - - there was no contradictory opinion - - -

24 JUDGE TROUTMAN: When you say, "not
25 automatically", that presupposes that there is a

1 credibility determination - - -

2 MR. KESSLER: Well - - -

3 JUDGE TROUTMAN: - - - and just because someone
4 is an expert, you don't have to accept them.

5 MR. KESSLER: No. But - - -

6 JUDGE TROUTMAN: You consider.

7 MR. KESSLER: - - - but when there's no
8 contradictory evidence, and when you're mischaracterizing
9 the report, and when the people didn't even cross-examine -
10 - -

11 JUDGE GARCIA: They - - - they - - - they
12 observed the defendant testify. They can make their own
13 credibility determinations.

14 MR. KESSLER: Yeah. But here's the problem.

15 JUDGE GARCIA: Do the people have to - - -

16 MR. KESSLER: The way it was done - - -

17 JUDGE GARCIA: - - - call their own expert?

18 MR. KESSLER: - - - they're appointing them - - -
19 judges are appointing themselves psychology experts. There
20 was - - -

21 JUDGE TROUTMAN: But oftentimes, there - - -
22 criminal defendant - - - criminal defendants are tried,
23 they don't offer evidence, but there are credibility de - -
24 - finding - - - findings that are made as to even the
25 people's evidence. Both sides don't always have to offer

1 evidence for a determination - - -

2 MR. KESSLER: No.

3 JUDGE TROUTMAN: - - - to be made as to whether
4 the person who had the burden, offered evidence that should
5 be accepted or that it lacks credibility.

6 MR. KESSLER: No. I'm not saying that.

7 JUDGE TROUTMAN: Okay.

8 MR. KESSLER: But what I'm saying is, don't
9 mischaracterize the facts in the record. And that's what
10 the lower court - - -

11 JUDGE RIVERA: Okay. Let's say - - - let's say
12 the report says only or - - - or the expert says, my
13 conclusion is based on interviews with this individual.
14 That's - - - that's all I'm basing this on. Can then, the
15 Appellate Division disagree with the ultimate conclusion?

16 MR. KESSLER: It - - - it depends. You know - -
17 -

18 JUDGE RIVERA: What does it depend on?

19 MR. KESSLER: Well, it - - - it depends on the
20 quality of - - - of the report, whether the psychologist
21 follows established protocols. And there was no indication
22 in this case that Dr. Lesswing failed to follow any
23 established protocol.

24 JUDGE RIVERA: But - - - but in my hypothetical,
25 doesn't it boil down to the expert is basing their

1 conclusion on what information they've received from a
2 particular individual, and the court may feel that that
3 individual is not credible?

4 MR. KESSLER: Well, that ties in with another
5 issue, which is - - - you know, my client's credibility.
6 And - - - and don't forget, what Dr. Lesswing said, was
7 trauma affects memory and that's why the client did not
8 give a completely consistent account of the offense over
9 time.

10 JUDGE TROUTMAN: But is it not the - - - is it -
11 - - is it not a requirement that there be a finding of
12 facts? So who - - - who makes that determination as to
13 accept or reject?

14 MR. KESSLER: Well, that's made by the - - - by
15 the trial court. But it - - - it - - -

16 JUDGE TROUTMAN: So the trial court does have the
17 right, if it - - - if it - - -

18 MR. KESSLER: Certainly.

19 JUDGE TROUTMAN: - - - if it feels or finds that
20 it's not credible, to reject? Just because something's
21 offered, the court doesn't have to accept it, correct?

22 MR. KESSLER: Of course.

23 JUDGE TROUTMAN: Okay.

24 MR. KESSLER: But the - - - consider this: the
25 trial court in its decision said that the corroborating

1 witnesses were quote-unquote, "not incredible". Which is
2 just a backhanded way of admitting that they were credible.
3 So if the corroborating witnesses are credible and then
4 testimony demonstrates that my client was a domestic
5 violence victim, then how do you find, well, she's not a
6 domestic violence victim? I - - - it - - - it makes no
7 sense. It's having it both ways.

8 JUDGE CANNATARO: Counsel, can you connect any of
9 this to an articulable legal error? Because it's - - - it
10 sounds, to me anyway, that - - - that you're making a lot
11 of cogent arguments for why we should credit this
12 psychologist's report more than the Appellate Division did
13 or more than the trial court did. But what - - - what's
14 the legal error here?

15 MR. KESSLER: No, the - - - I'm not asking you to
16 - - - to make your own factual determination.

17 JUDGE CANNATARO: Because you know we can't.

18 MR. KESSLER: What I'm asking you to do is find
19 legal error because the lower courts did not base their
20 decisions on facts. Because the facts did not support the
21 findings that were made as a matter of law.

22 JUDGE CANNATARO: So there's no record support
23 for the credibility determinations made by the courts
24 below; is that it?

25 MR. KESSLER: Well, if you look at the amicus

1 brief by Drs. Goodman and Raghavan, they're telling us that
2 my client's - - - you know, different presentations on
3 different occasions, is actually a sign of truthfulness.
4 Because what happens when a domestic violence victim commit
5 - - - finally lashes out at the abuser is they enter a
6 dissociative state. And later on, the memory gets clouded
7 because trauma affects memory. This is all established by
8 science and - - -

9 JUDGE HALLIGAN: Counsel, so couldn't - - -
10 couldn't - - -

11 MR. KESSLER: I'm sorry?

12 JUDGE HALLIGAN: Couldn't the trial judge take
13 that submission and - - - you know, credit it as far as it
14 goes, but - - - but still make a different determination
15 with respect to - - - you know, the facts that are actually
16 before us?

17 MR. KESSLER: Well, but if there are facts in the
18 record supporting it, yeah. But I'm arguing there aren't
19 facts in the record that - - -

20 JUDGE HALLIGAN: So that goes to Judge
21 Cannataro's formulation I think, of the argument which is
22 the argument I - - - I take it, as there are no facts in
23 the record that could support the trial court's credibility
24 determination, in your view?

25 MR. KESSLER: That is what I'm arguing. If - - -

1 look at it this way. If she had told the exact same
2 account over a period of years, every detail exactly the
3 same, I think any court would say that's not credible,
4 that's rehearsed.

5 JUDGE HALLIGAN: But the fact that this - - -

6 MR. KESSLER: So she's damned if she do - - - she
7 does and damned if she doesn't.

8 JUDGE HALLIGAN: The fact that there's an amicus
9 brief or an expert report can't be dispositive of those - -
10 -

11 MR. KESSLER: No. But it doesn't - - -

12 JUDGE HALLIGAN: - - - credibility findings.
13 They might inform those - - -

14 MR. KESSLER: Yes.

15 JUDGE HALLIGAN: - - - findings.

16 MR. KESSLER: And - - - and which brings me to
17 another point. The - - - the archaic notions of behavior
18 domestic violence victims that permeate the trial court's
19 decision and the Appellate Division's decision.

20 JUDGE TROUTMAN: What about the nexus between the
21 abuse and the homicide? Was there - - - was that provided
22 to the court?

23 MR. KESSLER: Well, I - - - I think that should
24 be obvious. And Dr. Lesswing, even though he didn't phrase
25 it that way, I think the - - - the clear import of his

1 report is, it was an outgrowth of the domestic violence the
2 - - - the - - -

3 JUDGE TROUTMAN: What does that mean? How is the
4 court to make that determination if it's not - - -

5 MR. KESSLER: Based on the evidence.

6 JUDGE TROUTMAN: - - - framed?

7 MR. KESSLER: Based on the evidence.

8 CHIEF JUDGE WILSON: The court actually
9 contrasted his report in this case with the one he gave in
10 Brenda, right?

11 MR. KESSLER: I'm sorry?

12 CHIEF JUDGE WILSON: The court contrasted his
13 report in this case with one that he gave in Brenda W.W.
14 And said in that case he actually connected the two, and in
15 this case he didn't, and they took something from that.

16 MR. KESSLER: Well, interestingly enough, in this
17 case, Dr. Lesswing generated his report before the DVSJA
18 even existed. So how do you fault someone for not phrasing
19 his report in - - - you know, along the lines of a statute
20 that doesn't even exist?

21 JUDGE RIVERA: But that was true in the prior
22 case.

23 MR. KESSLER: I'm sorry?

24 JUDGE RIVERA: But that was true in the prior
25 case.

1 MR. KESSLER: All right. Maybe so but still, it
2 - - - you know, you can't just rely on the fact that he
3 didn't explicitly say that. It's clear from his report
4 that that's his conclusion. And it's clear from the
5 evidence from the other corroborating witnesses that that's
6 the - - -

7 CHIEF JUDGE WILSON: So let - - - let me turn you
8 briefly to the third prong. Right? Which is whether it's
9 harsh? The sentence is harsh?

10 MR. KESSLER: Yeah. Well - - -

11 CHIEF JUDGE WILSON: The Appellate Division
12 concluded it was not; the majority, correct?

13 MR. KESSLER: I'm sorry?

14 CHIEF JUDGE WILSON: The Appellate Division
15 concluded - - - there's a separate area in the Appellate
16 Division decision, that says - - - the majority decision,
17 that says we find this sentence is not harsh.

18 MR. KESSLER: Yeah.

19 CHIEF JUDGE WILSON: Right? So what - - - is
20 that done under their interest of justice jurisdiction?
21 And if so, is that reviewable by us?

22 MR. KESSLER: Well, here's a - - - a couple of
23 points I want to make on that. First of all, the trial
24 court never reached that factor. So there's a - - - there
25 might be a - - - People v. LaFontaine question here. But

1 even so that factor is necessarily informed by the first
2 two factors: nature and circumstances of the offense.
3 Well, as Senator Persaud said during debate on the bill,
4 and he was the chief sponsor in the Senate, that you have
5 to take into account the circumstances in which the
6 defendant was living at the time of the offense. So I
7 don't think you can review that factor in isolation.

8 CHIEF JUDGE WILSON: But the question is whether
9 we have the power to review that prong?

10 MR. KESSLER: Well, you have the power to review
11 whether - - - you know, the evidence was legally
12 sufficient.

13 CHIEF JUDGE WILSON: Even on an interest of
14 justice determination?

15 MR. KESSLER: Well, no, this court doesn't have
16 interest of justice jurisdiction.

17 CHIEF JUDGE WILSON: I understand that. But if -
18 - - if the Appellate Division has made a determination
19 based on its interest of justice jurisdiction, and has done
20 that based on a misreading of the factual record, can we
21 review that?

22 MR. KESSLER: I think you can - - - I think it's
23 legal error if there are no facts in the record supporting
24 that decision. So I think this court can review it to that
25 extent. I - - - I'm not saying this court can say, we

1 disagree with the Appellate Division and we're going to
2 grant sentencing leniency to this defendant, but it can
3 certainly remand the case for further fact-finding. So
4 that's where - - -

5 CHIEF JUDGE WILSON: Thank you.

6 MR. KESSLER: I'd like to reserve, if I have any
7 time left, for rebuttal. Thank you.

8 MS. STANCZAK: Good afternoon. And may it please
9 the court. My name is Alyx Stanczak. I'm an assistant
10 district attorney for the Franklin County District
11 Attorney's Office. I represent respondent.

12 The court here must determine the appropriate
13 standard of proof at the trial and appellate levels. I
14 think that's a question that was rapid-fire asked to my
15 opponent here - - -

16 JUDGE GARCIA: And what's your answer?

17 MS. STANCZAK: I'll give you my opinion.

18 JUDGE RIVERA: Standard of proof or standard of
19 review?

20 MS. STANCZAK: I'm sorry. I did misspeak. It is
21 the standard of review.

22 JUDGE RIVERA: Thank you.

23 MS. STANCZAK: I apologize, Your Honor. So my
24 argument is that it is an abuse of discretion standard. I
25 understand that in my brief, I did argue it was a light

1 most favorable to I argued, the people as the nonmoving
2 party. I understand that was the main point of contention
3 in our briefs. But I think that the source of me coming
4 before the court and arguing now that it's an abuse of
5 discretion is based on the legislative history.

6 I think that a review of the People v. Addimando
7 case shows that a large part of the question and answer
8 dictating the legislative history underpinning the DVSJA
9 deferred to the court's discretion. And the courts - - -

10 JUDGE GARCIA: I took that - - - I took that back
11 and forth, and I haven't read it a while. But to be at the
12 end of the factor test, the court still has discretion to
13 say yes or no. So even if you meet these three prongs and
14 you get through that litany with "and" or not "and". At
15 the end, you may - - - the sentencing judge - - - may
16 instead impose a sentence in - - - according with the
17 statute.

18 So I thought the discretion they were concerned
19 about in the history was that discretion. So that even at
20 the end of the initial analysis, the court - - - sentencing
21 court retained discretion at that level to say yes or no.
22 Doesn't really speak, as far as I can tell, to what the
23 appellate review of that decision would be.

24 MS. STANCZAK: I understand. And I understand
25 that reading, and I think that's a fair reading. But then,



1 if not relying on the legislative history and the back and
2 forth between the parties, I would rely on the standard
3 that's been long used for CPL 440 hearings, as well as
4 suppression hearings as it relates to evidentiary issues at
5 the trial level, which I believe, those are abuse of
6 discretion standards as well. So I think that there is a
7 good basis for me coming before the court and modifying
8 what I relied upon in my brief.

9 JUDGE RIVERA: What's - - - what's analogous
10 between what the statute requires here and those hearings
11 that you're saying the same standard that applies there
12 should apply here?

13 MS. STANCZAK: I don't think the statute requires
14 anything. And that's - - - that's why I think we're here.
15 Is I - - -

16 JUDGE RIVERA: Well - - - well, let's start with
17 the first - - - first part, right? The first prong. It
18 requires a finding that, indeed, the individual is a victim
19 of domestic violence, correct?

20 MS. STANCZAK: Yes. Yes.

21 JUDGE RIVERA: Is that not a fact-finding?

22 MS. STANCZAK: It is a fact-finding, yes.

23 JUDGE RIVERA: Okay.

24 MS. STANCZAK: So I apologize. I misunderstood
25 Your Honor's question. I thought you implied that the

1 standard review was written into the statute as - - - as it
2 is.

3 JUDGE RIVERA: Well, if it was, we'd be in a
4 different place; would we not?

5 MS. STANCZAK: We would not be here. Yeah.

6 JUDGE RIVERA: Well, maybe we'd be here.

7 MS. STANCZAK: I do think that there's a fact-
8 finding that has to go on as it relates to the first two
9 prongs, and then I think - - -

10 JUDGE RIVERA: Okay. So when the Appellate
11 Division then gets whatever finding of fact has gone on,
12 whatever conclusion has gone on in the - - - in the trial
13 court or the resentencing court, based on that first prong,
14 what - - - what's the standard of review?

15 MS. STANCZAK: I would argue the abuse of
16 discretion. If not the abuse of discretion, then I would
17 alternatively argue - - - I - - - I know that the case
18 before me, the court was inquiring about interests of
19 justice. I didn't brief that. But the alternative that we
20 have here, which both of the parties argued, is that it
21 should be in the light most favorable to the nonmovant.
22 Here, I argue that - - -

23 CHIEF JUDGE WILSON: So ordinarily, with a fact-
24 finding, wouldn't the Appellate Division - - - and we'd
25 started with this in the prior case. Wouldn't it

1 ordinarily have its own fact-finding power, and it can
2 replace its judgment about the facts?

3 MS. STANCZAK: I would agree if there are record
4 facts that are - - - that require the Appellate Division to
5 substitute their judgment.

6 CHIEF JUDGE WILSON: That require? Or that - - -
7 I mean, why is it required?

8 MS. STANCZAK: That - - -

9 CHIEF JUDGE WILSON: Can't they just - - - can't
10 they just look at the record and say: here's what the facts
11 are, we view them differently? We weigh them differently.
12 We reach a different result. Isn't that the ordinary fact-
13 finding power of the Appellate Division?

14 MS. STANCZAK: Yes.

15 CHIEF JUDGE WILSON: So is there something about
16 this statute that displaces that, as regards prongs 1 or 2?

17 MS. STANCZAK: I don't believe it's written into
18 the statute.

19 CHIEF JUDGE WILSON: Or even implicit in its
20 structure or its legislative history, or anything you can
21 point to that would move us away from the normal power of
22 the Appellate Division?

23 MS. STANCZAK: I mean, the DVSJA is written
24 differently than ordinary 440s. One of the factual - - -

25 CHIEF JUDGE WILSON: Well, you were just arguing

1 that it was the same as the 440.

2 MS. STANCZAK: It - - - but I mean, insofar as in
3 - - - in CPL 440s, there's no inherent right to appeal.
4 Whereas it's written into the DVSJA that you do have an
5 inherent right to appeal.

6 JUDGE RIVERA: Then one - - - one would
7 anticipate that if it was not the - - - the usual standard
8 of review, if I can say that without too much controversy
9 here, that they would have said so?

10 MS. STANCZAK: That the legislative - - -

11 JUDGE RIVERA: Yes.

12 MS. STANCZAK: - - - the legislative - - -

13 JUDGE RIVERA: Yes.

14 MS. STANCZAK: I can't speak for them. But the
15 way that it is drafted - - -

16 JUDGE RIVERA: Well, as a legal matter? We're -
17 - - we're trying to figure out what standard applies to the
18 Appellate Division's determination on the appeal regarding
19 the application of this statute.

20 MS. STANCZAK: Correct. Yes.

21 JUDGE CANNATARO: Counsel, can I ask you now that
22 you've conceded that at least two of those prongs do
23 constitute fact-finding at the trial level, what is the
24 standard of proof at the trial level for those two prongs?
25 Because to my mind, that may actually impact the standard

1 of review.

2 MS. STANCZAK: Yes. So it's a preponderance of
3 the evidence review. So there has to be enough - - -

4 JUDGE HALLIGAN: Preponderance of the evidence of
5 the evidence review - - - over here - - - review or
6 standard - - -

7 JUDGE CANNATARO: It's standard.

8 JUDGE HALLIGAN: - - - of proof - - -

9 MS. STANCZAK: Standard.

10 JUDGE HALLIGAN: - - - at the trial level? Okay.

11 MS. STANCZAK: Standard. Yes. Again, I
12 misspoke. I apologize, Judge. So that requires enough
13 evidence to produce a reasonable belief in the truth of the
14 matter asserted.

15 JUDGE CANNATARO: That's the same standard they
16 use for most noncriminal proceedings at the trial level.

17 MS. STANCZAK: I would agree with that.

18 JUDGE CANNATARO: Right?

19 MS. STANCZAK: Yes.

20 JUDGE CANNATARO: And that - - - that might
21 suggest to me that then the same review standard would
22 apply at the Appellate Division, as would apply in the
23 myriad other places where preponderance of the evidence is
24 - - - is the standard below. But you seem to say that's
25 not the case. That it's more what interest of justice; is

1 that what you said?

2 CHIEF JUDGE WILSON: Abuse of discretion.

3 MS. STANCZAK: No.

4 JUDGE CANNATARO: I'm sorry.

5 MS. STANCZAK: Yes.

6 JUDGE CANNATARO: Abuse of discretion.

7 MS. STANCZAK: Abuse of discretion. If not abuse
8 of discretion that the court - - -

9 JUDGE CANNATARO: And - - -

10 MS. STANCZAK: - - - has to - - -

11 JUDGE CANNATARO: - - - in the light most
12 favorable to the nonmoving party?

13 MS. STANCZAK: Which I say is me, so.

14 JUDGE CANNATARO: That - - - and that's - - -
15 that's - - - that's sort of atypical. What is it in the
16 statute that leads you to that?

17 MS. STANCZAK: I think it's atypical as it
18 relates to civil cases, but I think that's par for the
19 course as it relates to criminal cases. And actually in my
20 brief, I look at State v. Kenneth II, which is a SOMTA
21 adjudication which I think is relatively similar to civil
22 proceeding that follows - - -

23 JUDGE CANNATARO: So preponderance of the
24 evidence standard here?

25 MS. STANCZAK: I believe so.

1 JUDGE CANNATARO: Burden. Excuse me. Not
2 standard.

3 MS. STANCZAK: I apologize for confusing the
4 court. But yeah, I - - - I believe it's the same burden.
5 And the court in that case utilized the light most
6 favorable to the nonmoving party, which in - - - in that
7 proceeding, even though it was a civil proceeding, it was
8 the light most favorable to the people. So I jus - - -
9 juxtapose that to my opponent's position. He utilized a
10 use of force civil case, or - - - I apologize. It's a
11 malicious prosecution case that's based on a use of force,
12 where he cites a decision by this court where the standard
13 is a review of the case and the evidence in the light most
14 favorable to the plaintiff.

15 But as I pointed out in my - - -

16 JUDGE RIVERA: And- - - and then the Appellate
17 Division does what?

18 MS. STANCZAK: And the Appellate - - -

19 JUDGE RIVERA: The Appellate Division then does
20 what? Does fact-finding - - -

21 MS. STANCZAK: The Appellate - - -

22 JUDGE RIVERA: - - - through this lens of you -
23 you have to look at all these facts as favorably - - - and
24 all the inferences, as favorably as possible to the
25 nonmovant; is that your point?

1 MS. STANCZAK: That is my point. Yes. Yes.

2 JUDGE RIVERA: So they're still doing fact-
3 finding?

4 MS. STANCZAK: Yes. I thought I already conceded
5 that. Yes, I believe that the Appellate Division can do a
6 fact-finding. I do believe that it's in the light most
7 favorable to the nonmoving party. I argue that the
8 nonmoving party is the people in relation to this case.

9 CHIEF JUDGE WILSON: Doesn't that standard just
10 equate to legal sufficiency?

11 MS. STANCZAK: Yes.

12 CHIEF JUDGE WILSON: Okay.

13 MS. STANCZAK: So that was what was proposed by
14 my opponent. I responded to it. But that's why I again
15 come to you and say, if not the standard that I argued in
16 my brief, I would also argue abuse of discretion, as the
17 court considered in the case before mine.

18 So I think that the court was talking to my
19 opponent, and I wanted to take some time to address this,
20 relating to the credibility analysis that was conducted at
21 the trial court. And I can also address that - - - this as
22 it relates to the credibility analysis that was conducted
23 at the Appellate Division. And my opponent spoke a lot
24 about Dr. Lesswing's report. I think it is dangerous to
25 delegate the credibility determination of a defendant to an

1 expert witness. I think that a credibility determination
2 is the sole purview of the finder of fact and law, which in
3 this case is the judge. I think that the judges who have
4 sat on this case, both the trial level judge as well as the
5 Third Department justices, are fully familiar with how to
6 evaluate credibility of an individual who is before them.

7 There is a criminal jury instruction that
8 outlines how to analyze an individual's credibility.

9 JUDGE TROUTMAN: What do you say about the fact
10 that the defendant says, well, there was nothing to rebut
11 that offer of proof?

12 MS. STANCZAK: Dr. Lesswing's offer of proof?

13 JUDGE TROUTMAN: Yes.

14 MS. STANCZAK: I don't think that a DVSJA hearing
15 is intended to be a battle of the experts. I don't think
16 that there's - - -

17 JUDGE TROUTMAN: Could the people have offered an
18 expert?

19 MS. STANCZAK: In Angela V.V.?

20 JUDGE TROUTMAN: Yes.

21 MS. STANCZAK: Okay.

22 JUDGE TROUTMAN: No, I'm asking could they have?
23 You said - - -

24 MS. STANCZAK: Could they have?

25 JUDGE TROUTMAN: - - - you didn't expect it - - -

1 MS. STANCZAK: Yeah.

2 JUDGE TROUTMAN: - - - to be.

3 MS. STANCZAK: No. I don't think it's necessary.
4 And I think it's actually an abuse of discretion for the
5 court to defer to an expert on matters of credibility. I
6 think that determinations of credibility are the sole
7 purview of the finder of fact.

8 JUDGE TROUTMAN: Okay.

9 MS. STANCZAK: I think that - - - and - - - and
10 that would be my position, is that there doesn't need to be
11 an expert witness or dueling experts, so to speak.

12 JUDGE TROUTMAN: So you're saying the experts
13 serve no purpose here?

14 MS. STANCZAK: I think the expert witness did
15 serve a purpose for the defendant to outline her story, as
16 well as to provide psychological analysis of it, and I
17 think that was helpful to the court. But the court took
18 the statements and essentially looked at them independently
19 through their own lens, as it related to the rest of the
20 evidence in Angela V.V.

21 JUDGE SINGAS: But experts do that all the time.
22 I - - - I'm sorry, I'm missing your point here.

23 MS. STANCZAK: There is a CJII that juries are
24 instructed with, where they can - - - where they can accept
25 or discredit - - -

1 JUDGE TROUTMAN: Correct. But they can - - - she
2 had the right to offer it.

3 MS. STANCZAK: She did, yes.

4 JUDGE TROUTMAN: And the finder of fact could
5 reject it?

6 MS. STANCZAK: Could reject it as they did in
7 this case. So ultimately, I don't think that the court is
8 stuck with accepting Dr. Lesswing's credibility analysis as
9 it related to Angela in this case.

10 JUDGE HALLIGAN: But you're not suggesting that
11 it was inappropriate or impermissible to offer it, are you?

12 MS. STANCZAK: I would say it's not inappropriate
13 to offer it. I'm saying if the court - - -

14 JUDGE HALLIGAN: The - - - so just to make sure,
15 the double negatives. It was - - - it was permissible - -
16 - appropriate to offer it in the first instance, for
17 whatever probative value the court might take it to have?

18 MS. STANCZAK: I agree. But I would also, as a
19 corollary to that, say, if the court was deferring to the
20 expert's credibility analysis, that would be an abuse of
21 discretion. Absolutely.

22 JUDGE HALLIGAN: You mean the expert's analysis
23 of Angela V.V., yes?

24 MS. STANCZAK: Correct. I think if we had a
25 situation where Dr. Lesswing came forward and said, I spoke

1 with Angela V.V. for twenty hours; I found her to be
2 credible; I found that - - -

3 JUDGE HALLIGAN: Can I ask you a little bit what
4 you mean by that? Because I think as a general matter,
5 courts look at expert testimony, and they do so to help
6 them formulate a lens through which to analyze evidence.
7 Right? That - - - that - - - that's not just - - - that's
8 perfectly acceptable, isn't it?

9 MS. STANCZAK: It is.

10 JUDGE HALLIGAN: And so how is that distinct from
11 what you are objecting to?

12 MS. STANCZAK: Yes. So I would compare and
13 contrast if we're thinking about a particular type of
14 expert. So child sexual abuse accommodation syndrome
15 expert testimony is permissible as to the elements that are
16 available there. Experts in child sexual abuse
17 accommodation syndrome cannot opine on the facts of the
18 case themselves. What those experts do is, they come
19 before a jury or a fact finder, which can be a judge if
20 it's a bench trial, they state what child sexual abuse
21 accommodation syndrome is. They indicate, I have not
22 spoken with this child. And then, the finder of fact
23 determines number one, whether to accept child sexual abuse
24 accommodation syndrome in general. And number two, how to
25 apply it to the case at hand.

1 So I think that differs from what Dr. Lesswing
2 did here. So I think, doctor - - - I mean, domestic
3 violence or intimate partner violence, as the amicus briefs
4 call it, is not so far outside the ken of ordinary finders
5 of fact that we need an expert to tell us what - - -

6 JUDGE RIVERA: What - - - what about - - -
7 putting aside the expert. What about the - - - the
8 Appellate Division's statement that it's deferring to
9 county court's credibility determinations as they pertain
10 to the defendant?

11 MS. STANCZAK: So my understanding there is that
12 - - - and that's from the majority?

13 JUDGE RIVERA: Yes.

14 MS. STANCZAK: They did not find that county
15 court's determination were so incredible, as a matter of
16 law, that they should disregard them. So that's my
17 understanding of that phrase.

18 JUDGE RIVERA: But I don't see that in the
19 phrase. It says, "We hereby defer," I will grant you that
20 before that they say, "given what we see in this record, we
21 defer." But that's - - - I mean, that's a term of art. We
22 understand that "we defer".

23 MS. STANCZAK: And - - -

24 JUDGE RIVERA: Does that mean that they chose not
25 to make their own independent credibility determination, or



1 is it is it your position they could not? That they must
2 defer?

3 MS. STANCZAK: I think they can make - - - my
4 position is they can make their own credibility
5 determinations. I think the dissent was very clear in the
6 fact that they could. But I would also say that the
7 situation in which the Appellate Division can make their
8 own credibility determinations is when the trial court made
9 such an incredible credibility determination. So something
10 that was so against the evidence that was presented to that
11 court.

12 CHIEF JUDGE WILSON: Thank you.

13 MS. STANCZAK: Thank you.

14 MR. KESSLER: Thank you.

15 Again, we're - - - we're hampered by the lack of
16 clarity in the Appellate Division decision, but I will say
17 this. What sense would it make, given the remedial nature
18 of the DVSJA, to adopt an abuse of discretion standard
19 instead of the ordinary standard for determining legal
20 sufficiency of the evidence and the process by which the
21 Appellate Division has to go - - - through which the
22 Appellate Division has to go on as to exercising its weight
23 of the evidence review? It - - - it - - - it seems
24 counterintuitive, at the least, to say that the legislature
25 intended that in review of a DVSJA decision the facts have

1 to be reviewed in a light most favored to the people.

2 It - - - it does - - - doesn't make any sense.

3 CHIEF JUDGE WILSON: Do you think the Appellate
4 Division here did that?

5 MR. KESSLER: I'm sorry?

6 CHIEF JUDGE WILSON: Do you think the Appellate
7 Division here did that?

8 MR. KESSLER: I - - - I think they did. And I
9 think that was the wrong application of the legal
10 sufficiency standard. That, if the standard is, you view
11 the light - - - the facts in the light most favorable to
12 the party having the burden of proof, then the Appellate
13 Division completely failed in that regard to the extent
14 that they were making a determination based on legal
15 sufficiency of the evidence. The - - - the Appellate
16 Division - - - you know, cannot make credibility
17 determinations in a legal sufficiency review, except to the
18 extent that the evidence is incredible as a matter of law.
19 And in this case, it's not incredible as a matter of law
20 because there was corroborating evidence. Incredible as a
21 matter of law, that's only when you have a witness who
22 gives hopelessly contradictory testimony. That's not the
23 case here.

24 My client never wavered in saying she was an
25 abused woman, and that she felt she was acting in self-

1 defense when she committed the offense conduct. She never
2 wavered in that. Maybe some of the details changed, but as
3 the dissent in the Appellate Division said, she was
4 steadfast over time on those points.

5 And even - - - I'm sorry? Someone asked a
6 question?

7 JUDGE CANNATARO: That was a cough. You just
8 heard someone coughing.

9 JUDGE HALLIGAN: Sorry, I was coughing.

10 MR. KESSLER: Oh, okay. As far as credibility
11 determinations and delegating to the psychologists, we're
12 not - - - I'm not asking the court to - - - that - - - to
13 say that the Appellate Division and the trial court had to
14 delegate. All I'm asking is, if they're going to reject
15 that opinion, it has to be based on facts in the record,
16 not on supposition. Which is, I think, exactly what
17 happened here.

18 And as one of the judges pointed out, courts make
19 decisions based on expert opinions all the time. It - - -
20 it - - - it's nothing unusual about that. And I don't see
21 what role the CJI plays, because those are instructions on
22 the law. And we're - - - here we're talking about how a
23 court evaluates facts.

24 CHIEF JUDGE WILSON: Your red light is on. Thank
25 you.

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MR. KESSLER: I'm sorry?

CHIEF JUDGE WILSON: Your red light is on. Thank
you.

MR. KESSLER: Oh, okay. Thank you very much for
your time and attention.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Angela V.V., No. 47 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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