State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

MARCH 18 - 21, 2013 CALENDAR

State of New York Court of Appeals

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To be argued Monday, March 18, 2013

No. 58 Commonwealth of the Northern Mariana Islands v Canadian Imperial Bank of Commerce

In this federal case, the Commonwealth of the Northern Mariana Islands is trying to enforce judgments for delinquent taxes it obtained in 1994 against William and Patricia Millard, former residents of the United States territory. The two judgments originally totaled $36.6 million, but with interest have grown to more than $118 million. After learning the Millards had renounced their U.S. citizenship and were residing in the Cayman Islands, the Commonwealth registered the judgments in the Southern District of New York in 2011 and moved for a turnover order under CPLR § 5225(b) against the Canadian Imperial Bank of Commerce (CIBC), alleging the Millards had accounts at CIBC's Caribbean subsidiaries. Section 5225(b) authorizes courts to order an entity that has "possession or custody" of a debtor's assets to turn the assets over to a judgment creditor. The Commonwealth alleged the Millards had accounts at CIBC FirstCaribbean International Bank (FirstCaribbean) or at FirstCaribbean's subsidiaries in the Caymans. CIBC owned 92 percent of FirstCaribbean, and the Commonwealth asserted that CIBC had the authority and control to order FirstCaribbean to turn over the Millards' assets.

U.S. District Court denied the Commonwealth's motion, holding that section 5225(b) limits turnover proceedings to entities that have actual possession or custody of a debtor's assets. Rejecting the Commonwealth's argument that constructive possession is sufficient, the court said CPLR provisions permitting discovery of documents in a party's constructive possession use the phrase "possession, custody or control," while provisions related to the disposition of property use the phrase "possession or custody." "Clearly, then, the Legislature persistently chose to set a higher standard for instances where property is at issue than for disputes involving discovery," it said, concluding the omission of the word "control" from section 5225(b) "was deliberate and meaningful." However, the court acknowledged "the paucity of state-law decisions" on the scope of the statute and said it "considers [the Commonwealth's] argument to have sufficient force amidst admittedly murky concepts to eventually have a fair chance of success on the merits." It issued an injunction to prevent dissolution of the Millards' assets pending appeal.

On appeal, the U.S. Court of Appeals for the Second Circuit is asking the New York Court of Appeals to resolve a pair of certified questions: "1. May a court issue a turnover order pursuant to [section] 5225(b) to an entity that does not have actual possession or custody of a debtor's assets, but whose subsidiary might have possession or custody of such assets.? 2. If the answer to the above question is in the affirmative, what factual considerations should a court take into account in determining whether the issuance of such an order is permissible?"

For appellant Commonwealth: Michael S. Kim, Manhattan (212) 488-1200
For respondent CIBC: Scott D. Musoff, Manhattan (212) 735-3000

State of New York Court of Appeals

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To be argued Monday, March 18, 2013

No. 84 People v Marvin Byer *(papers sealed)*

Marvin Byer was charged with murdering Eleanor Jackson in the Bronx apartment of his estranged domestic partner, Phyllis Howard, in March 2005. Byer admitted to the police that he stabbed Jackson to death, dismembered her body, and disposed of her remains in garbage bags. At trial, however, he testified that Howard killed Jackson before he arrived and that he helped her dispose of the body in an effort to protect her. Howard succumbed to illness and died before the trial. Supreme Court allowed a detective to testify that, when Byer confessed to killing Jackson, he also said "this was not his first body." The detective asked how many and Byer answered "nine," then said he would tell the detective about them after the trial. Defense counsel had objected that all such testimony "serves to do is make my client look like a serial killer" and it would cause "tremendous prejudice," but the court ruled the testimony was relevant to proving that Byer's confession was voluntary. The court also admitted hearsay testimony by Jackson's nephew, who said Jackson told him days before the murder that Byer made "threats about cutting her up," and by a social worker who said Howard told her Byer had physically abused her. Byer was convicted of second-degree murder and sentenced to 25 years to life in prison.

The Appellate Division, First Department affirmed. The testimony about Byer's allusion to nine other murders and the hearsay statements that he threatened Jackson and abused Howard were improperly admitted, the court said, but "the evidence of defendant's guilt was so overwhelming that these errors were harmless." Regarding the "nine" bodies testimony, it said, "[T]here is no reasonable probability that this error contributed to the conviction. In detailed oral, written and videotaped confessions, defendant described how he became enraged at the victim, stabbed her to death, and dismembered and disposed of her body. Moreover, defendant's trial testimony was more inculpatory than exculpatory. He testified that he dismembered and disposed of the body, but that he was not the killer. His explanation for this behavior was utterly implausible and had no hope of convincing the jury."

Byer argues, "Harmless error should not apply to the errors here because appellant was denied his self-standing right to a fundamentally fair trial," citing People v Crimmins (36 NY2d 230). "Moreover, even under non-constitutional analysis, the errors were not harmless. The jurors improperly heard evidence that appellant was a serial killer who had admitted to murdering ten people. They improperly heard that he had threatened to cut up the victim before the incident" and that he "had committed acts of domestic violence against his wife." He says, "All the People could firmly establish was that appellant had participated in the removal of the body.... Without the hearsay evidence, and the statements about nine other murders, the jury could have properly weighed appellant's defense that he had confessed only to protect the person he loved, who was very ill. The jury verdict could easily have been different...."

For appellant Byer: Bruce D. Austern, Manhattan (212) 577-2523 ext. 514
For respondent: Bronx Assistant District Attorney Justin J. Braun (718) 590-2000

State of New York Court of Appeals

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To be argued Monday, March 18, 2013

No. 59 People v Alex Echevarria
No. 60 People v Andrew Moss
No. 61 People v Martin Johnson

These three defendants were arrested for selling crack cocaine to undercover officers during unrelated buy-and-bust operations in Manhattan, and all were convicted of drug sale charges at separate trials. Alex Echevarria and Andrew Moss were sentenced to ten years in prison and Martin Johnson to three years. The common question in these appeals is whether the trial judge violated the defendant's right to a public trial by closing the courtroom to the general public during testimony of the undercover officer.

After holding Hinton hearings in each case, Supreme Court granted the prosecution's application to close the courtroom to the public during testimony of undercover officers on the ground that public testimony would compromise the officers' safety and effectiveness, but made an exception for admission of some of the defendant's close family members. The court in Moss said "the family should be here, as long as they're not living in the area" where the undercover officers were operating.

The Appellate Division, First Department affirmed all three convictions, ruling the trial courts complied with Waller v Georgia (467 US 39) and Presley v Georgia (558 US 209) by considering alternatives to full closure. In Echevarria, the First Department said, "By limiting courtroom closure solely to the duration of the trial testimony of two undercover police officers, and by noting that it would separately consider opening the proceeding to defendant's family members if any requested access to the courtroom during the period of closure, the trial court discharged its duty to consider reasonable alternatives to closing the proceeding...."

The defendants argue they were deprived of their constitutional right to a public trial when the judge closed the courtroom without considering alternatives to complete closure and without adequate proof that the safety and effectiveness of the undercover officers was likely to be jeopardized. Echevarria says, "[N]either limiting closure to the testimony of one or more witnesses, nor excluding family members from a general closure order, constitute prong-three 'alternatives' to closure. Rather, those actions go to Waller's second prong, the breadth of the closure," and so the trial court "never fulfilled Presley's mandate to consider 'all reasonable' alternatives to closure." Echevarria and Johnson also argue the trial court gave improper jury instructions on the agency defense.

(59) For appellant Echevarria: Robert S. Dean, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney David E.A. Crowley (212) 335-9000
(60) For appellant Moss: Justin M. Ross, Manhattan (212) 859-8000
For respondent: Manhattan Asst. District Attorney Christopher P. Marinelli (212) 335-9000
(61) For appellant Johnson: Lauren Stephens-Davidowitz, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney David P. Stromes (212) 335-9000

State of New York Court of Appeals

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To be argued Monday, March 18, 2013

No. 62 Roulan v County of Onondaga and the Assigned Counsel Program, Inc.

Timothy Roulan, a panel attorney of the Onondaga County Bar Association Assigned Counsel Program, Inc. (ACP), brought this action against Onondaga County and the ACP to challenge the validity of the assigned counsel plan as a whole and various specific provisions of the plan, claiming they violate right to counsel provisions of the state and federal constitutions, usurp the authority of the courts to assign and compensate counsel for indigent criminal defendants and violate the letter and spirit of County Law article 18-B, among other things. Supreme Court granted the defendants' motion for summary judgment dismissing the complaint in its entirety.

The Appellate Division, Fourth Department modified by reinstating Roulan's declaratory judgment cause of action and declaring unconstitutional one section of the plan, which "prohibits attorneys from representing nonincarcerated criminal defendants until there has been a determination of their eligibility [for assigned counsel], and thus it requires attorneys to violate the indelible right to counsel that attaches at arraignment...." The court upheld a provision that bases the eligibility of defendants under age 21 on their parents' finances, saying parents of unemancipated children "are responsible and chargeable for the support of those children..., including the payment of their legal fees...." On a 3-2 vote, it also upheld a provision prohibiting payment to an attorney who was previously retained or accepted any fee for representation in the same case. The majority said invalidating the provision "would allow 18-B plan attorneys to 'unfairly compete with private practitioners' inasmuch as they could accept lower-paying clients and later seek compensation from the county.... As a matter of public policy, previously retained attorneys should not be able to seek compensation in the event that their clients run out of money."

In a partial dissent, two justices argued the provision denying ACP compensation to retained attorneys is invalid. They said, "[R]estricting the authority of the court to assign an attorney who is otherwise eligible for assignment simply because that attorney was previously retained by the defendant, who has since become indigent and thus eligible for assigned counsel, circumvents article 18-B and unduly restricts the inherent power of the court to assign an attorney to indigent defendants.... The concerns of the majority with respect to article 18-B attorneys competing with private practitioners can and should be addressed by the trial court, which has the authority to assign and compensate counsel."

For appellant Roulan: Jeffrey Parry, Fayetteville (315) 424-6115
For respondents Onondaga County et al: Jonathan B. Fellows, Syracuse (315) 218-8000

State of New York Court of Appeals

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To be argued Tuesday, March 19, 2013

No. 64 Matter of Bryan R. Hedges *(papers sealed)*

Bryan R. Hedges was a Family Court Judge in Onondaga County from 1985 to April 2012, when he resigned a week before he was served with a complaint by the State Commission on Judicial Conduct. The complaint alleged that in 1972, when Hedges was a 25-year-old law student, he engaged in a sexual act with a five-year-old girl while her family was visiting a home in Albany where he was staying overnight. Hedges admitted that the girl, who was deaf, walked into his bedroom while he was masturbating on the bed and touched his hand. He said he continued to masturbate for two to four seconds, with her hand on top of his hand, before he stopped and covered himself.

The Commission found Hedges had engaged in an act of moral turpitude and was unfit to hold judicial office, voting 7-2 to remove him. "The nature of [Hedges'] conduct involving an admitted sexual act with a defenseless child is abhorrent and not attenuated by the passage of time," the majority said. "It thus reflects adversely on his fitness to perform the duties of a judge and is prejudicial to the administration of justice notwithstanding that it predates his ascension to the bench.... Since [his] resignation from the bench leaves us with only two options -- closing the matter without action or issuing a determination of removal, which renders him ineligible for judicial office in the future ... -- we determine that the sanction of removal is warranted."

Two members concurred as to misconduct, but dissented as to sanction and voted to close the matter in view of Hedges' resignation. They argued that removal would serve no purpose as a deterrent. "Given ... the alacrity with which he resigned his judgeship when he was first apprised of the Commission investigation, it is inconceivable that he will allow himself to face any publicity over this sordid matter" by seeking a judgeship again, they said. "Since 'the purpose of judicial disciplinary proceedings is "not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents"'..., we should be comforted by his prompt resignation... -- not further punish that resignation by basically rejecting it."

Hedges is asking the Court to overturn the Commission's determination in its entirety. "After a hearing and oral argument laden with prejudice, a divided Commission determined that Petitioner should be removed from an office he had already resigned, finding that the Petitioner had committed an act of moral turpitude based on his testimony alone," he says. "The finding is against the weight of the evidence.... [A]pplying the statutory standards for culpability as defined in Article 15 of the Penal Law, Petitioner's actions were not criminal and did not involve moral turpitude...." He also argues, "The procedures of the Commission violate due process, the hearing was prejudicially conducted, and the Commission was adversely impacted by the violations and prejudice."

For petitioner Hedges: Robert F. Julian, Utica (315) 797-5610
For respondent Commission: Robert H. Tembeckjian, Albany (518) 453- 4613

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To be argued Tuesday, March 19, 2013

No. 65 Matter of Bezio v Dorsey

State prison inmate Leroy Dorsey is appealing an order authorizing the Department of Corrections and Community Supervision (DOCCS) to force feed him and perform other involuntary medical treatment. Dorsey, who had engaged in two prior hunger strikes in 2010, began another hunger strike at Great Meadow Correctional Facility in October 2010 in order to call attention to his allegations of abuse by DOCCS personnel and obtain a transfer to another prison. He refused all solid food, drinking only juice, milk and water, and lost about 20 pounds over the first month. In November 2010, DOCCS brought this proceeding (through Great Meadow Superintendent Norman Bezio) for an order allowing involuntary feeding and treatment. DOCCS conceded that Dorsey was mentally competent to care for himself, but presented testimony of Great Meadow's medical director that his hunger strike was causing serious organ damage and, absent intervention, he would suffer organ failure and death. The medical director conceded that the nutritional supplement Ensure would alleviate Dorsey's health problems, but said he denied Dorsey's request for it based on a DOCCS policy that forbids giving Ensure to hunger striking inmates because it would enable them to prolong their strikes. Under the policy, DOCCS will allow an inmate to have Ensure only after it obtains a force-feeding order.

Supreme Court issued an order authorizing DOCCS to force feed Dorsey unless he consumed "available food" or nutritional supplements voluntarily. He initially chose nutritional supplements and, after his transfer to another facility in May 2011, he began eating solid food. The force-feeding order expired in November 2011.

The Appellate Division, Third Department invoked the mootness exception and affirmed. "Where ... an inmate's refusal to eat has placed that inmate at risk of serious injury and death, we hold ... that the State's interest in protecting the health and welfare of persons in its custody outweighs an individual inmate's right to make personal choices about what nourishment to accept...," it said. "[B]y candidly admitting that his hunger strike was designed to manipulate [DOCCS] and that he would eat if he got what he wanted, i.e., transfer to another facility, [Dorsey] undermines any argument that the hunger strike was the exercise of any fundamental right." The court said DOCCS's "legitimate interest in maintaining rational and orderly procedures in its facilities is implicated where, as here, an inmate is attempting to manipulate the penal system."

Dorsey argues that, because he had capacity to make his own medical decisions and the State did not prove its interests were superior to his privacy interest, the force-feeding order violated his common-law and constitutional right to refuse unwanted medical treatment. "While the State may have a compelling interest in preventing suicide, the record in this case does not support a finding that [Dorsey] was indeed suicidal," he says, but instead that he "engaged in his hunger strike to effect his transfer to another correctional facility in an effort to preserve his life." He says there was no proof his hunger strike affected "rational and orderly procedures" at Great Meadow or that the State's interest in preserving health and safety were superior to his own, since he "was not actually suicidal, but merely interested in having his day in court."

For appellant Dorsey: Shannon Stockwell, Albany (518) 451-8710
For respondent Bezio (DOCCS): Deputy Solicitor General Andrea Oser (518) 474-8352

State of New York Court of Appeals

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To be argued Tuesday, March 19, 2013

No. 66 Schlessinger v Valspar Corporation

Lori Schlessinger and Brenda Pianko separately purchased furniture from a Fortunoff department store and each bought a furniture protection plan offered by Valspar Corporation, under the trade name "Guardsman," that promised repair or replacement for certain kinds of damage. Each plan contained a clause that provides, "If the particular store location where you originally purchased your furniture ("Store") has closed, no longer carries Guardsman as a supplier, changed ownership, or has stopped selling new furniture since your purchase, Guardsman will give you a refund of the original purchase price of this Protection Plan." Fortunoff declared bankruptcy and ceased operation in 2009. When Pianko made a claim for furniture damage in April 2010, Valspar rejected it based on the store closure provision.

Pianko and Schlessinger brought this federal class action against Valspar in the Eastern District of New York, alleging the store closure provision violates General Business Law § 395-a, a New York statute that generally prohibits service providers from terminating maintenance agreements. They argued the store closure provision must be read out of the protection plan and claimed that Valspar would then be in breach of the remaining terms of the contract. They also claimed Valspar violated General Business Law § 349, which prohibits deceptive business practices aimed at consumers, by including the store closure provision in the plan and by denying Pianko's damage claim based on the provision. They argued that by including the provision in the contract, Valspar deceived them about their legal rights.

U.S. District Court dismissed the suit, ruling that section 395-a does not provide a private right of action. The statute authorizes the New York Attorney General to bring an enforcement action and provides that a violation "shall be punishable by a civil penalty of not more than three hundred dollars." While recognizing a private right of action "would seem to further the Legislature's purpose in protecting such buyers by providing a second means of enforcement," the court said, other sections of the General Business Law "explicitly provide for a private right of action where one is intended." It concluded that "reading an implied right of action into section 395-a would not comport with the Legislative scheme of that statute" and ruled the plaintiffs could not use breach of contract and section 349 claims to assert violations of the statute, which would be "an impermissible end run around section 395-a's lack of a private right of action."

The U.S. Court of Appeals for the Second Circuit, finding no clear New York precedent governing the availability of either claim, said the case raises a conflict between "the doctrine that courts will not enforce illegal contracts and the doctrine that courts should follow clearly expressed legislative intent." It is asking this Court to answer two certified questions: "1. May parties seek to have contractual provisions that run contrary to [section] 395-a declared void as against public policy? 2. May plaintiffs bring suit pursuant to [section] 349 on the theory that defendants deceived them by including a contractual provision that violates [section] 395-a and later enforcing this agreement?"

For appellants Schlessinger and Pianko: Lawrence Katz, Cedarhurst (516) 374-2118
For respondent Valspar: David Jacoby, Manhattan (212) 753-5000

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To be argued Tuesday, March 19, 2013

No. 67 People v Miguel Mejias
No. 68 People v Antonio Rodriguez

Miguel Mejias and Antonio Rodriguez were among the targets of an investigation by the New York Drug Enforcement Task Force of a conspiracy to transport a large shipment of cocaine from California to the Bronx in a tractor-trailer. In June 2008, members of the task force seized the truck in the parking lot of a Pathmark store on Leland Avenue in the Bronx, recovering about 400 pounds of cocaine. Mejias and Rodriguez were arrested at the scene with two other suspects.

Mejias and Rodriguez were tried jointly, along with co-defendant Junior Lantigua. After the close of evidence, but before summations, Juror No. 10 sent the judge a note that had been written by another juror. The note said, "We want to know how/when and under what pretext Junior met Miguel Mejias." Defense counsel asked the court to question Juror No. 10 individually to determine whether any jurors had disregarded its instructions by discussing the evidence before deliberations, but the court said it did not want to "isolate particular jurors." Addressing the entire jury, the court said, "So this juror handed me a note, but I assume even though the first word is 'We,' that everyone has been following my instructions and not discussing anything about the trial amongst yourselves, or with any third-party. If that's not the case, and there is anyone who has started discussing the evidence, could you please raise your hand?" There was no response. The court then said it would "disregard this note" and proceed with the trial. Mejias and Rodriguez were both convicted of criminal possession of a controlled substance in the first degree and conspiracy in the second degree.

The Appellate Division, First Department affirmed, saying the trial court responded properly to the jury note "that allegedly suggested the possibility of premature deliberations. The court did not abuse its discretion when it declined to conduct any individual inquiries, but instead addressed the problem by way of inquiries directed to the jury as a group, along with careful instructions.... Given the circumstances, there is no reason to believe there were actually any premature deliberations, and the court's actions were sufficient to avoid any prejudice."

The defendants argue the trial court committed reversible error when it refused to conduct an individual, in camera inquiry of a juror who sent a note "indicating that at least two jurors had prematurely discussed the evidence and formed conclusions," violating their constitutional right to trial by an impartial jury. They also argue the court erred in admitting testimony about the international drug trade and a map of South America, which were prejudicial and irrelevant to "the single drug transaction in this case."

For appellant Mejias: John R. Lewis, Sleepy Hollow (914) 332-8629
For appellant Rodriguez: David Touger, Manhattan (212) 608-1234
For respondent: Manhattan Assistant District Attorney Timothy C. Stone (212) 335-9000

State of New York Court of Appeals

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To be argued Tuesday, March 19, 2013

No. 69 Roman Catholic Diocese of Brooklyn v National Union Fire Insurance Company of Pittsburgh, PA

In a lawsuit filed against the Roman Catholic Diocese of Brooklyn and Reverend James Smith in 2003, the daughter of a church employee alleged that the priest had sexually molested and assaulted her over a period of seven years, beginning shortly after her tenth birthday in August 1996 and continuing until "in or about March to May 2002." The suit was settled in 2007 for $2 million and "additional consideration."

During the first six years of the period of alleged abuse, the Diocese had commercial general liability (CGL) insurance policies with a liability limit of $750,000 per occurrence, subject to a self-insured retention (SIR) of $250,000 per occurrence that the Diocese was required to absorb before coverage was provided. In the seventh year, the Diocese had only an umbrella policy covering losses in excess of $1 million. When its insurers disclaimed coverage, the Diocese brought this breach of contract action against National Union Fire Insurance Company of Pittsburgh, PA, seeking coverage solely under the two National Union CGL policies for 1995-96 and 1996-97, and against its umbrella insurer for the same two policy years.

Supreme Court denied National Union's motion for partial summary judgment, rejecting its arguments that the incidents of sexual abuse alleged in the underlying lawsuit constituted a separate occurrence in each of the seven policy periods and that the Diocese must allocate the $2 million settlement and other costs on a pro rata basis over all seven policy periods. Applying New York's "unfortunate event" test, the court found "... Smith's repeated acts of abuse ... over a sustained period of several years establishes the requisite temporal and spatial relationship which serves as a predicate for finding a single occurrence." It ruled the Diocese could allocate all of its settlement costs to just two policy periods, saying allocation to all seven policies was not required due to the "clear interrelationship" among the CGL policies, all but one of which were issued as renewal policies by National Union or related companies. The court also ruled the insurer had waived its right to assert that the Diocese must satisfy more than one $250,000 SIR because it did not raise that affirmative defense "until more than three years after its initial disclaimer letter."

The Appellate Division, Second Department reversed, declaring that the alleged acts of sexual abuse constitute multiple occurrences, that the settlement costs must be allocated over seven policy periods, and that the Diocese must exhaust a $250,000 SIR for each CGL policy implicated. "[T]he sexual abuse allegedly occurred over a seven-year period, at different times, and at multiple locations," it said. "Thus, it cannot be said that there was a close temporal and spatial relationship between the acts of sexual abuse," they therefore "constituted multiple occurrences" and the Diocese must exhaust a $250,000 SIR for each of the two CGL policies implicated. It found allocation over all seven policy periods was required because "it cannot be determined to what extent the bodily injury allegedly sustained occurred during a particular policy period." The court also reinstated the insurer's affirmative defenses.

For appellant Diocese: David B. Hamm, Manhattan (212) 471-8514
For respondent National Union: John D. Hughes, Manhattan (212) 308-4411

State of New York Court of Appeals

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To be argued Wednesday, March 20, 2013

No. 70 Verizon New England, Inc. v Transcom Enhanced Services, Inc.

Verizon New England, Inc. obtained a $57,716,714 federal court judgment against Global NAPs, Inc. (GNAPS) in January 2009. On March 30, 2009, Verizon sought to enforce its judgment by serving a restraining notice and information subpoena on Transcom Enhanced Services, Inc. and other customers and business partners of GNAPS. The restraining notice directed Transcom not to sell, assign, transfer or interfere with "any property in your possession" in which GNAPS had an interest. In response to the subpoena, Transcom eventually disclosed that it had an agreement to buy telecommunications services from GNAPS since 2003. The agreement, as orally modified, required Transcom to pay GNAPS in advance on a weekly basis, but did not require it to continue using GNAPS' services.

When Transcom continued to make its weekly payments of $61,500 to GNAPS, Verizon brought this turnover proceeding in March 2010 to seize from Transcom the $2.4 million it had paid to GNAPS since receiving the restraining notice and to hold Transcom in contempt. After a hearing, Supreme Court denied the turnover, dismissed Verizon's petition and vacated all restraints, holding that prepayment for services yet to be rendered is not a form of property or debt that would be subject to a restraining notice.

The Appellate Division, First Department affirmed in a 3-2 decision, finding that Transcom "owed no debt, but rather held a credit balance with GNAPS" as a result of its weekly prepayments. The court said, "[W]e must conclude that GNAPS does not have any rights under the modified agreement: there is simply no obligation for Transcom to purchase services from GNAPS. Thus, GNAPS has no right to payment that it could assign or that could be attached by its judgment creditors." Verizon argued Transcom could have stopped payment on the first check it sent GNAPS after receiving the restraining notice, but the court said that "almost certainly would result in GNAPS declining to provide the weekly service for which the check had been sent.... The net result is that Verizon might gain $61,500 ... in partial satisfaction of a $57 million judgment; but it would have caused a loss to, and disrupted the business of, an innocent bystander garnishee."

The dissenters said, "Transcom should not be allowed to ignore the restraining notice when it had every reason to predict that it would continue to do business with [GNAPS]. Transcom and [GNAPS] had a highly regular and predictable business relationship which was all but certain to, and in fact did, continue to generate revenues after Transcom received Verizon's restraining notice." Therefore, they argued, GNAPS "had a 'future interest' in payments from Transcom that constituted property pursuant to the plain language of CPLR 5201(b), and which was subject to restraint." While Transcom might have lost GNAPS as a business partner if it redirected its weekly payments to Verizon, "so too might a valued employee stop working for an employer forced to garnish his or her wages.... These are simply accepted risks of the collection system," they said, arguing that the majority's "narrow view of what constitutes property" provides "a virtual road map for frustrating the efforts of judgment creditors."

For appellant Verizon: Robert L. Weigel, Manhattan (212) 351-4000
For respondent Transcom: Hunter T. Carter, Manhattan (212) 484-3900

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To be argued Wednesday, March 20, 2013

No. 71 Matter of Dashawn W.

New York City's Administration for Children's Services (ACS) brought these Family Court Act article 10 proceedings against Antoine N. and his wife in February 2007, charging them with abuse and neglect of four children living with them in Manhattan. One petition alleged Antoine inflicted "severe abuse" on the youngest child, five-month-old Jayquan N., who had been admitted to Bellevue Hospital three days earlier with a freshly broken collarbone. Hospital personnel also discovered Jayquan had previously suffered four fractured ribs on his left side, which had partially healed. He and the other children, ranging from two to five years old, were removed from the home and placed in custody of ACS.

Family Court entered findings of ordinary abuse and neglect of all four children by Antoine, but it dismissed the allegation of "severe abuse" which, under the definition in Social Services Law § 384-b(8)(a)(i), occurs when a child suffers "serious" injury "as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life." The court found Jayquan suffered "protracted, painful, horrible injuries," but said that in view of People v Suarez (6 NY3d 202), it could not determine whether a parent acted with depraved indifference without an eyewitness to describe how the injuries were inflicted.

The Appellate Division, First Department reversed, saying Suarez did not preclude a finding of depraved indifference in this case because "Social Services Law § 384-b(8)(a) encompasses conduct which is either intentional or reckless, unlike Penal Law §§ 125.25 (1) and (2), which, pursuant to Suarez, are almost always mutually exclusive. In any event, Suarez recognized that in cases involving abused children, conduct evincing depraved indifference to human life may be present in a one-on-one situation." It found clear and convincing evidence of severe abuse by Antoine, but remanded the case for Family Court to determine, as required by Social Services Law § 384-b(8)(a)(iv), whether ACS made diligent efforts to strengthen the parental relationship or whether such efforts should be excused.

On remand, Family Court ruled that "the statutory efforts to strengthen the parental relationship should be and are hereby excused as they would be detrimental to the best interests of the child(ren)." Taking notice of a 1994 determination that Antoine had abused another son, four-month-old Antoine Jr., who suffered a fractured skull, wrist, and four fractured ribs, the court said, "The prognosis for change in the [father's] indifferent behavior is poor...." The Appellate Division affirmed.

Antoine argues the severe abuse finding should be vacated because there was insufficient evidence that he acted with depraved indifference to Jayquan's life, saying, "Other than his position as father and an adult in the home in charge of the children, there is no evidence linking Antoine N. with Jayquan's injuries." He also argues that a finding of severe abuse requires a determination that ACS made diligent efforts to reunite his family or that it was excused, but "there was no evidence of diligent efforts [and] no evidence that ACS had moved to be excused or could have moved to be excused pursuant to the statutes at the time of trial."

For appellant Antoine N.: Elisa Barnes, Manhattan (212) 693-2330
For respondent ACS: Assistant Corporation Counsel Deborah A. Brenner (212) 788-1039
Attorney for the children: Claire V. Merkine, Manhattan (212) 577-3505

State of New York Court of Appeals

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To be argued Wednesday, March 20, 2013

No. 72 Matter of Granger v Misercola *(papers sealed)*

Petitioner Granger, who is serving an eight-year sentence for felony drug possession, commenced this Family Court Act article 6 proceeding in May 2011 seeking visitation at the prison with his son, who was born in September 2008. Granger and the boy's mother, respondent Misercola, never married and were separated before the boy was born, but Misercola obtained an order of filiation and support against Granger and he acknowledged paternity. Granger was arrested and jailed on the drug charges in 2009, but said he had already established a relationship with his son. At a hearing in November 2011, he testified that he was present at the boy's birth, visited him about a dozen times during the six or seven months before his incarceration, and thereafter sought to maintain a relationship with him by telephone and by sending letters, cards and gifts. He said his mother and sisters were willing to drive the child to the prison for visits. Misercola opposed visitation, saying she thought the child, then three, was too young for the long drive and she feared that visiting a prison might have negative effects on his development. She said Granger had little contact with his son before he was jailed, and she objected to Granger's family transporting the boy because they were strangers to him.

Family Court granted the petition and ordered visitation at the prison once every other month, after an initial six-month period of more limited visits to familiarize the child with Granger's mother and sisters. "The concerns raised by [Misercola] are certainly valid, but ... the law in New York presumes visitation with a non-custodial parent to be in the child's best interest and the fact that such parent is incarcerated is not an automatic reason for blocking visitation," it said. "Losing contact for such a long period is felt to be detrimental to an established relationship." The court said Granger "demonstrated that he was involved in a meaningful way in the child's life prior to his incarceration and seeks to maintain a relationship with him" and his son "is of sufficient age to make the trip and benefit from the visitation with his father."

The Appellate Division, Fourth Department affirmed, citing the presumption in favor of visitation and saying "the fact that a parent is incarcerated will not, by itself render visitation inappropriate." It concluded "there is a sound and substantial basis in the record to support" the visitation order, saying "the father made, and continues to make, efforts to establish a relationship with the child, and it cannot be said that he is 'a stranger to the child.'" It rejected Misercola's argument that it should consider Granger's recent transfer to a more distant prison, saying any change in circumstance should be raised in a modification petition.

Misercola, supported by the attorney for the child, argues the lower courts applied an improper standard: "Rather than first considering what was in [the child's] best interests and then balancing that against the concerns of the parties, both lower courts applied a presumption in favor of visitation and imposed a burden on [her] to rebut that presumption." She also argues the record "lacks a sound and substantial basis to support the Family Court's determination" and that the Appellate Division "erred in failing to consider the impact of [Granger's] change in location on the child's best interests."

For appellant Misercola: Mary P. Davison, Canandaigua (585) 905-0164
Attorney for the child: Melissa L. Koffs, Chaumont (315) 681-8468
For respondent Granger: Charles J. Greenberg, Amherst (716) 695-9596

State of New York Court of Appeals

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To be argued Wednesday, March 20, 2013

No. 73 Matter of Sagal-Cotler v Board of Education of the City School District of the City of New York
No. 74 Matter of Thomas v New York City Department of Education

The common question here is whether the petitioners, paraprofessionals employed by the New York City Department of Education (DOE), are entitled to legal representation and indemnification by the City in civil suits brought by students alleging the petitioners struck them for misbehavior at school.

Deborah Sagal-Cotler was escorting a class of special needs students to the cafeteria of a Brooklyn school in December 2008, when one of the students began singing and ignored three requests to come along with her. She later admitted, "I lost it and I slapped his face." She was suspended without pay for ten days and reassigned. A complaint was filed against Josephine Thomas in May 2009, when a kindergartner at a Bronx school reported she hit him on the head with the back of her hand when he "was doing the wrong thing" during math instruction. Thomas denied the charge, but DOE found the charge was substantiated by another witness. The finding was placed in her personnel file and she was reassigned. Both students sued.

The City Law Department denied the petitioners' requests for defense and indemnification based on General Municipal Law § 50-k, which requires the City to provide legal defense to an employee for conduct "while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency...." Education Law § 2560(1) requires defense and indemnification of DOE employees "subject to the conditions, procedures and limitations" of section 50-k, and DOE rules forbid striking students. The petitioners filed these article 78 proceedings to challenge the denials under Education Law § 3028, which requires school districts to defend employees against suits "arising out of disciplinary action taken against any pupil ... while in the discharge of his duties within the scope of his employment."

In Sagal-Cotler, Supreme Court found the statutes were in conflict and Education Law § 3028, which specifically addresses "disciplinary action in an education context," should apply. It ruled Sagal-Cotler was acting in the scope of her employment and was entitled to defense and indemnification. In Thomas, Supreme Court found the statutes "can be harmonized" and section 2506, which "specifically applies to New York City schools," should control. Since "corporal punishment by a school employee violates specific regulations," the court said, the City had a rational basis to deny her a defense.

The Appellate Division, First Department, in separate decisions issued by the same panel, ruled in favor of DOE on a 3-2 vote. Finding the statutes "do not conflict and should be read together," the majority ruled section 2560(1) applies to DOE employees and they are not entitled to a defense if they were in violation of DOE rules or regulations, which prohibit corporal punishment. The dissenters argued the statutes' "plain language renders them irreconcilable" and section 3028 is controlling, as the more specific one, because "it applies only to claims arising from disciplinary action taken against students." They said the claims against both petitioners arose from the discharge of their duties.

For appellant Sagal-Cotler: Ariana A. Gambella, Manhattan (212) 533-6300 ext. 121
For appellant Thomas: Stuart Lichten, Manhattan (646) 588-4872
For respondent DOE: Assistant Corporation Counsel Paul T. Rephen (212) 788-1200

State of New York Court of Appeals

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To be argued Wednesday, March 20, 2013

No. 75 People v Jacob Milton

Jacob Milton was arrested in October 2007 and charged in two felony complaints with numerous crimes, including first-degree grand larceny and scheme to defraud. One complaint alleged that he obtained Social Security numbers and other personal identifying information from mortgage applicants through his work for the Griffin Mortgage Company in Jackson Heights and then used that information to obtain fraudulent mortgages totaling more than $1 million in their names. The other complaint charged that he used the information to open credit card accounts in the names of other mortgage applicants. Each of the felony complaints named four individuals as victims. Milton entered into a cooperation agreement, waived indictment, and pled guilty to first-degree grand larceny under a superior court information (SCI) that named two financial institutions "and others" as the victims. He was sentenced to two to six years in prison.

The Appellate Division, Second Department reversed, vacated the guilty plea, dismissed the SCI, and remitted the matter for further proceedings on the felony complaint. The court said the first-degree grand larceny count in the SCI "was not an 'offense for which the defendant [had been] held for action of a grand jury' (CPL 195.20), in that it was not an offense charged in the felony complaint or a lesser-included offense of an offense charged in the felony complaint.... The designation of the alleged victims in the [SCI] differed from those named in the felony complaint.... Thus, the [SCI] to which the defendant pleaded guilty did not 'include at least one offense that was contained in the felony complaint' ... and, consequently, the [SCI] was jurisdictionally defective...."

The prosecution argues the SCI was valid because the charges in it "were previously charged in a specific felony complaint referenced in the SCI, with limited permissible factual variations. Indeed, the only differences between the SCI charges and the felony complaint were that the SCI narrowed the time frame for the offenses and, as to one count involving a complex mortgage fraud, substituted, at the request of the defendant, the names of the banks involved as complainants rather than individuals. Because the factual differences were minor, because the SCI could unquestionably have been amended immediately upon filing to reflect these same changes, and because no prejudice accrued to the defense, the differences between the SCI and the felony complaint did not change the nature of the charge previously alleged so as to render the SCI jurisdictionally defective."

For appellant: Queens Assistant District Attorney Jessica L. Zellner (718) 286-6102
For respondent Milton: Jonathan T. Latimer, South Hempstead (917) 733-4039

State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 76 Sanchez v National Railroad Passenger Corp.

Teresa Sanchez, a custodian employed by American Building Maintenance (ABM), filed this personal injury action against the National Railroad Passenger Corp. (d/b/a Amtrak) on February 6, 2008, seeking damages for injuries sustained in a fall that she contends occurred on February 10, 2005, while she was working at Penn Station. Amtrak moved for summary judgment dismissing the complaint as time-barred, contending the accident occurred on February 5, 2005 and, therefore, the three-year limitations period had expired. Amtrak submitted an affidavit from Sanchez's supervisor at ABM, Angela Mendez, who said Sanchez reported on February 6, 2005 that she had fallen the previous day. Attached to the affidavit were Mendez's injury report dated February 6; payroll records showing Sanchez worked on February 5 and 6, but not on February 10, 2005; and ABM's C-2 report of a work related accident on February 5, 2005, which it filed in her workers' compensation case. The Workers' Compensation Board's decisions in Sanchez's case say the accident occurred on February 10, 2005.

Supreme Court granted Amtraks's motion to dismiss, saying, "[I]n view of Ms. Mendez's accident report and the plaintiff's inability at her deposition to recall the date of the accident, the court is constrained to find the accident occurred not on February 10, 2005, but on February 5."

The Appellate Division, First Department affirmed in a 3-2 decision, saying, "Plaintiff's complaint fails to raise a question of fact as to whether the accident occurred, as she contends, on February 10, 2005. It conflicts with unequivocal documentary evidence, completed within days of plaintiff's accident by an objective third party, that the accident occurred on February 5, rendering the action time-barred. Plaintiff's deposition testimony is similarly insufficient to raise a triable issue of fact since it is both equivocal and self-contradictory as to the date of the accident.... The totality of plaintiff's submissions create only a feigned issue of fact, and they are therefore insufficient to defeat defendant's motion."

The dissenters said, "In the complaint and bill of particulars, which plaintiff herself verified in January and April 2008 respectively, the date of occurrence is recited as February 10, 2005.... Citing CPLR 105(u), this court has held on a number of occasions that a verified pleading is the statutory equivalent of a responsive affidavit for purposes of a motion for summary judgment.... Accordingly, the verified complaint and bill of particulars suffice to raise an issue of fact as to the date of the occurrence." They said Sanchez's "uncertainty" about the date at her 2009 deposition "does not invalidate plaintiff's verified pleading as the statutory equivalent of an affidavit ... and does not eliminate an existing issue of fact. The majority improperly engages in a credibility determination by rejecting plaintiff's verified pleadings simply because they conflict with documents generated by her employer."

For appellant Sanchez: Arnold E. DiJoseph, III, Manhattan (212) 344-7858
For respondent Amtrak: David Samel, Manhattan (212) 587-9690

State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 77 People v Terrance Monk

Terrance Monk was charged with robbing a woman at knife point in the driveway of her home in Harrison, Westchester County, in March 2004. He agreed to a plea bargain in which he would plead guilty to attempted robbery in the first degree in return for a sentence of ten years in prison. At Monk's plea allocution, County Court informed him that his prison term would be followed by a mandatory five year period of post-release supervision (PRS), but said nothing more about PRS.

Prior to sentencing, Monk moved to withdraw his plea on various grounds, including a claim that the plea was not knowing, intelligent and voluntary because the court had not advised him that a violation of any of the conditions of PRS could subject him to as much as five more years of incarceration beyond his ten-year prison term. County Court denied the motion, saying that while a defendant who pleads guilty must be informed of the PRS component of the sentence under People v Catu (4 NY3d 242) because PRS is a direct consequence of the plea, "the consequences of a defendant's violation of [PRS] are collateral to a defendant's plea" and need not be explained. The court later imposed the promised sentence.

The Appellate Division, Second Department affirmed, ruling that trial courts "need not allocute on the ramifications of violating the conditions of [PRS], as those ramifications are mere collateral consequences of the conviction and the court's failure to explain them to the defendant does not render the plea infirm. This result makes sense, since the ramifications of violating the conditions of [PRS] are subject to the discretion of the Board of Parole, rendering them, by nature, merely collateral to pleas and sentences."

Monk argues that PRS "increases the maximum permissible term of incarceration well beyond the underlying determinate sentence. The increased sentencing exposure is a direct consequence of a guilty plea to a violent felony offense and the range of exposure can be determined at the time of the guilty plea. Accordingly, since the exposure to an increased term of incarceration was a direct penal consequence, the trial court was duty bound, as a matter of due process, to ensure that ... Monk was aware of the fact, length and effect of [PRS] on his determinate sentence before accepting his guilty plea." Even if the court's failure to explain did not violate due process, he says, it erred in summarily denying his motion to withdraw the plea before "it made an appropriate finding that Monk's claimed ignorance of this significant consequence did not impact on his decision to plead guilty."

For appellant Monk: Scott B. Tulman, Manhattan (212) 661-3080
For respondent: Westchester County Assistant District Attorney Laurie Sapakoff (914) 995-3497

State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 78 Hastings v Sauve
No. 79 Bloomer v Shauger

The common issue here is whether owners of large domestic animals may be held liable for injuries caused by their livestock without proof the owner had actual or constructive notice that their animal had a propensity for the kind of dangerous behavior that caused the injury. Both plaintiffs ask the Court to adopt a common law negligence standard of liability.

Karen Hastings was injured in September 2007 when, driving at night, she struck a black cow on County Route 53 in North Bangor, Franklin County. The cow had wandered onto the road after escaping from a fenced pasture on a farm owned by Laurier Sauve, who allowed others to keep cattle on his property. Hastings sued Sauve and two alleged owners of the cow, William Delarm and Albert Williams, claiming they had been negligent in not properly confining the cow. Supreme Court granted motions by Sauve and Delarm for summary judgment dismissing the complaint based, in part, on Hastings' failure to prove they had actual or constructive knowledge "of the cow's 'vicious' propensities to escape and wander into the road."

Robert Bloomer was injured in March 2008 while helping a neighbor, Christine Shauger, bury a horse named Topper in a paddock on her property in West Hurley, Ulster County. Topper had been put down by a veterinarian earlier in the day. Another horse in the paddock, Whiskey, had been Topper's companion for more than 20 years and was visibly upset. As Bloomer crouched next to Topper, Whiskey rested her chin on his shoulder and Bloomer grasped her halter. Shauger approached with a lead line, which Whiskey was known to dislike, and when Shauger tried to attach the lead to the halter, Whiskey spooked and pulled her head back sharply. Bloomer's finger was caught in the halter and was severely injured, requiring surgery. Supreme Court dismissed the suit on summary judgment, saying Shauger proved "that she was unaware of any propensity" of Whiskey to "violently" pull her head back.

The Appellate Division, Third Department affirmed both rulings under the strict liability standard for injuries inflicted by domestic animals. But in Hastings, a unanimous panel said, "[W]e must note our discomfort with this rule of law as it applies to these facts -- and with this result. There can be no doubt that the owner of a large animal such as a cow or horse assumes a very different set of responsibilities" than do owners of household pets. It said dangerous propensity "played no role in this accident, yet, under the law as it now exists, defendants' legal responsibility for what happened is totally dependent upon it. For this reason, we believe in this limited circumstance, traditional rules of negligence should apply...."

The court expressed similar "discomfort" in Bloomer, and split 4-1 on whether Shauger could be strictly liable. The majority said she was not liable because "Whiskey's history of avoiding a lead line" did not demonstrate "vicious propensity." It cited a veterinarian's testimony that Whiskey pulling her had back was "normal behavior ... for any animal when a person reaches for the animal's throat or face," and said normal behavior "is not indicia of a vicious propensity." The dissenter argued, "The horse had previously 'walked away' to avoid the lead line because it had apparently been free to do so. Here, however, plaintiff was restraining the horse with his hand in the halter; as it was unable to walk away, the horse instead 'spooked' and 'violently ripped [her] head back.' The behavior at issue -- avoiding lead lines -- is nonetheless 'the very behavior that resulted in plaintiff's injury'...."

No. 78 For appellant Hastings: Matthew H. McArdle, Malone (518) 481-5000
For respondent Delarm: Danielle N. Meyers, Albany (518) 465-0400
For respondent Sauve: John W. VanDenburgh, Albany (518) 862-9292
No. 79 For appellant Bloomer: John G. Rusk, Kingston (845) 331-4100
For respondent Shauger: P. David Twichell, Syracuse (315) 424-7209

State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 80 People v Tyrone Prescott

Tyrone Prescott and three co-defendants were charged with beating a man outside a Buffalo nightclub in April 2004. One of the co-defendants, Calvin Martin, took a plea bargain and testified against Prescott at his non-jury trial. Prescott was convicted of assault and gang assault in the first degree and sentenced to 20 years in prison.

Prescott obtained appellate counsel in 2005 for his appeal to the Appellate Division, Fourth Department. About four weeks later, Prescott's appellate counsel represented Martin at sentencing, seeking leniency based on Martin's testimony at Prescott's trial, among other things. Prescott's appeal was perfected in 2009. The Fourth Department affirmed Prescott's conviction, rejecting the arguments of his appellate counsel that the verdict was against the weight of the evidence and that Prescott was denied due process at sentencing.

Prescott filed a pro se motion for a writ of error coram nobis to vacate the Appellate Division order on the ground of ineffective assistance of appellate counsel. He alleged that his appellate counsel never informed him that he represented Martin at sentencing at the same time he was representing Prescott on appeal. The Fourth Department denied his application without opinion.

Prescott argues he is entitled to a new appeal because an actual conflict of interest arose from his appellate counsel's simultaneous representation of Martin, who was both "an important prosecution witness" and "a co-defendant." He argues reversal is also warranted because his appellate counsel and the prosecutor "failed in their absolute duty to disclose the conflict" to him and the Appellate Division, depriving the court of the opportunity to determine that he was aware of the risks of proceeding with conflicted counsel and knowingly waived the conflict.

For appellant Prescott: Thomas F. Gleason, Albany (518) 432-7511
For respondent: Erie County Assistant District Attorney Matthew B. Powers (716) 858-2424

State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 81 People v Christopher Oathout

Robert Taylor was strangled and stabbed to death in his Albany apartment in October 2006. Christopher Oathout had been living in the same building and was questioned several times by the police, but he was not arrested until two months later, when Oswaida Lugo told investigators that she saw Oathout kill Taylor. Lugo, a police informant with a record of prostitution and drug crimes, initially denied any knowledge of the murder, but ultimately said that she and Oathout went to Taylor's apartment to perform an act of prostitution to get money to buy crack and that Oathout killed Taylor during a fight over the payment.

During pretrial proceedings, the prosecutor made a motion asking County Court to inquire into defense counsel's competence in criminal law and to consider appointing stand-by counsel, citing the defender's apparent lack of experience in criminal cases. The court did not decide the motion on the record, did not appoint stand-by counsel, and only briefly inquired of defense counsel if Oathout wanted to continue with his representation, to which he answered yes. No physical or forensic evidence connected Oathout to the murder, but the prosecutor presented the testimony of Lugo and of a jailhouse informant who said Oathout had admitted the crime. Oathout was convicted of second-degree murder and sentenced to 25 years to life in prison.

On appeal, Oathout argued that he was denied effective assistance of counsel and raised an array of alleged shortcomings, including defense counsel's failure to object to testimony of several prosecution witnesses that Oathout was a habitual crack user and "a gay prostitute for old men," which he said bolstered Lugo's testimony. Defense counsel also raised no objection during summation when the prosecutor theorized that the murderer was left handed and pointed out that Oathout took notes with his left hand during the trial, although no evidence had been presented to show that Oathout or the murderer were left handed.

The Appellate Division, Third Department affirmed the judgment. "While we agree that counsel's representation of defendant may, at times, have been unorthodox, it was not, when the record is viewed as a whole, ineffective," the court concluded.

Oathout reiterates his allegations of deficient representation by his trial counsel and contends, "Counsel's errors and omissions, some individually, but certainly in totality, deprived defendant of meaningful representation and violated his constitutional right to the effective assistance of counsel."

For appellant Oathout: Cheryl Coleman, Albany (518) 436-5790
For respondent: Albany County Assistant District Attorney Steven M. Sharp (518) 487-5460