

State of New York Court of Appeals

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

To be argued Wednesday, February 8, 2017

Nos. 19 & 20 People v Richard M. Leonard

(papers sealed)

Richard Leonard was charged with sexually molesting an 18-year-old woman in the Town of Parma, Monroe County, after she was rendered unconscious by alcohol in October 2007. The victim and her boyfriend testified that Leonard had been serving them liquor. The girl had no memory of the abuse, but her boyfriend testified that he saw Leonard with his hand on her vagina. The boyfriend drove the victim away, then returned with a baseball bat and struck Leonard on the head. The deputy sheriff who questioned the boyfriend the same day recorded that he said he "didn't see anything specific, but believed that Leonard was doing something inappropriate to his girlfriend ... while she lay passed out on the sofa." Leonard's defense attorney did not cross-examine the boyfriend about his initial statement that he "didn't see anything specific." When County Court allowed the prosecutor to introduce evidence of an uncharged crime -- the victim's claim that Leonard had sexually abused her in 2005 after he served her alcohol and she fell unconscious -- defense counsel did not request a limiting instruction that jurors were not to consider the incident as proof of Leonard's criminal propensity.

Leonard was convicted of first-degree sexual abuse, for having sexual contact with the victim when she was physically incapable of consent, and unlawfully dealing with a child in the first degree, for serving her alcohol when she was under the age of 21. County Court sentenced him to three and a half years in prison. Leonard filed a CPL 440.10 motion to vacate the judgment on the ground, among others, that he was denied effective assistance of counsel. The court denied the motion.

The Appellate Division, Fourth Department affirmed his conviction and the order denying his motion to vacate it. "[E]ven assuming, arguendo, that the evidence of the [boyfriend's] prior statements to the police would have been admissible, either to impeach that witness or on defendant's direct case, we conclude that defendant has not established that trial counsel's failure to utilize those statements demonstrated a lack of strategy. Rather, we conclude that defendant's contention reflects a mere disagreement with trial strategy, which does not amount to ineffective assistance of counsel..." it said. "[A]ny error on trial counsel's part in not requesting a limiting instruction regarding the evidence of past uncharged crimes does not rise to the level of ineffective assistance of counsel when that error is viewed in light of trial counsel's 'entire representation of defendant'..."

Leonard, saying the boyfriend "was the only witness to testify to having observed the charged sexual abuse," argues that "a conscious decision to fail to try to impeach [the witness] with his statements that he had not seen anything specific would be wholly contrary to reasonable professional competence. It could only have helped Mr. Leonard for counsel to take all steps to have the jury learn what [the witness] had told the police on the day of the alleged sexual abuse -- he had not seen anything specific. Whether counsel's failings were the product of ignorance or ineptitude, or a doomed strategy that fell outside the scope of professional norms, his performance was deficient." He also argues, "[B]y failing to seek a limiting instruction to insure that the jury did not consider the testimony about Mr. Leonard's alleged 2005 sexual abuse of [the victim] as proof of [his] propensities, and by not objecting to the prosecutor's arguments in summation about the significance of this testimony, counsel displayed an ignorance of the law which ... prejudiced Mr. Leonard's constitutional rights."

For appellant Leonard: Brian Shiffrin, Rochester (585) 423-8290

For respondent: Monroe County Assistant District Attorney Robert J. Shoemaker (585) 753-4810

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No. 21 Matter of East Ramapo Central School District v King

The East Ramapo Central School District brought this CPLR article 78 proceeding against the New York State Department of Education to challenge its 2012 determination that the District was in violation of the federal Individuals with Disabilities Education Act (IDEA), which requires that students with disabilities receive a free public education in the "least restrictive environment" suitable for them. The Education Department found the District had a "pattern" of placing disabled students in private schools and one out-of-district public school, the Kiryas Joel Union Free School District, to meet parental demands that their children be placed in Yiddish bilingual education programs. The Department said the placements were more restrictive than necessary and there was no documented need for such services. The Department also found the School District violated the IDEA by routinely allowing a single District representative to override the findings of its Committee on Special Education, which had recommended the students be placed in public school programs.

Supreme Court dismissed the School District's suit on the merits, finding the Education Department's determination was not arbitrary, capricious or an abuse of discretion. It found the Department's determination that the District violated the IDEA "was reasonable and rational."

The Appellate Division, Third Department affirmed on a different ground, ruling the IDEA does not grant local districts a right of action to challenge the Education Department's enforcement actions. It said, "Since the IDEA includes an express right of action in favor of a specific class of persons," aggrieved students and parents, "it is logical to assume that, had Congress intended to bestow upon [local districts] a right of action to challenge [a state educational agency's] regulatory and enforcement actions, it would have expressly done so...." The court said, "The delegation of regulatory and enforcement power to the [federal] Secretary of Education and the states, but not to [local districts], suggests that Congress specifically intended to deny [local districts] a right of action to challenge [a state agency's] compliance with the IDEA.... Moreover, it would be inconsistent for Congress to implicitly create this right of action, as doing so would divest the Secretary of Education and the states of their regulatory and enforcement authority and would transfer that power to the judiciary...."

The School District argues that it has an "independent right to judicial review" under article 78, and the Third Department's ruling to the contrary "effectively immunizes the Education Department's decisions in this sensitive area from any judicial scrutiny. School districts have no recourse to the courts even for Education Department decisions that are arbitrary, irrational, or inconsistent with the law." It says the IDEA does not control its right to challenge the determination because article 78 "provides an aggrieved party an independent right to seek judicial review of decisions by New York administrative agencies. Article 78 is a fundamental limitation on the powers New York grants to its administrative officials that neither depends upon nor requires federal authorization.... The only way that federal law could compel a different result would be by preempting article 78.... Nothing in the IDEA suggests congressional intent to preempt article 78 in this context."

For appellant School District: Randall M. Levine, Washington, DC (202) 373-6000

For respondents Education Dept. et al: Asst. Solicitor General Jeffrey W. Lang (518) 776-2027

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To be argued Wednesday, February 8, 2017

No. 22 People v Thomas Jackson

(papers sealed)

A woman accused Thomas Jackson of raping and sodomizing her in a Schenectady motel room after she met him at a nightclub in March 2011. A second woman, who worked at the same Schenectady nightclub, accused him of raping her in her SUV in Vale Park one month later. Jackson's defense at trial was that his sexual encounter with the first complainant was consensual and that he did not have sexual intercourse with the second complainant.

At a pre-trial Sandoval hearing, Supreme Court ruled that it would allow the prosecutor to cross-examine Jackson about eight prior criminal acts if he took the witness stand, including "the fact that the defendant was adjudicated as a juvenile delinquent in response to the charge of robbery in the second degree and it resulted in a year of probation." Jackson chose not to testify at trial. He was convicted of predatory sexual assault and criminal sexual act in the first degree and sentenced to 25 years to life in prison.

The Appellate Division, Third Department affirmed. It found the trial court erred in allowing Jackson to be impeached with his juvenile delinquency adjudication "because it is not a conviction for a crime," but it ruled the error was harmless. "[H]armless error analysis in the Sandoval context 'does not involve speculation as to whether a defendant would have testified if the legal error had not occurred'.... Defendant extensively attacked the credibility of the victims by other means and, given the overwhelming evidence of his guilt and the absence of any 'significant probability that the jury would have acquitted had the error not occurred,' we find that the error was a harmless one," it said, citing People v Grant (7 NY3d 421). The court also found he validly waived his right to be present at sidebar conferences during jury selection.

Jackson argues that, in applying harmless error analysis to a Sandoval error under Grant, the "decisive factor" is whether his decision not to testify "deprived the trier of fact of significant material evidence." He says his "decision not to testify certainly did deprive the jury of significant material evidence" in a case where "there was no physical evidence of forcible compulsion" in his encounter with the first complainant and "no physical evidence of sexual intercourse or forcible compulsion" in the encounter with the second complainant. "The proof of guilt was far from overwhelming," he says, and "there's no reasonable basis to conclude that Mr. Jackson lacked a viable defense or that the jury would invariably have discredited testimony by him disputing the complainant's claims...." He also argues his waiver of his right to attend sidebar conferences was invalid because the trial court did not explain that it included sidebars held to question prospective jurors about potential bias.

For appellant Jackson: Mitch Kessler, Cohoes (518) 235-6312

For respondent: Schenectady County Assistant District Attorney Peter H. Willis (518) 388-4364