

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 Tuesday, June 5, 2018

No. 58 Matter of People v Conrado Juarez; Frances Robles

In 1991, highway workers found the body of a four-year-old girl in a picnic cooler near the Henry Hudson Parkway in Manhattan. She had been sexually abused and suffocated. Police investigators, who were unable to identify the girl for 22 years, called her Baby Hope. The victim was finally identified in 2013 and the police questioned her cousin, Conrado Juarez, as a suspect. After several hours of interrogation, Juarez said in a videotaped statement that he had smothered the girl with a pillow during a sexual encounter and disposed of her body in the cooler with his sister's help. He was charged with murder. Two days later, New York Times reporter Frances Robles interviewed Juarez at Rikers Island. In a story published the next day, Robles reported that Juarez said the girl had died after falling down the stairs and he had only helped his sister dispose of the body. He recounted his statements to the police, but said his confession to killing her was false and had been coerced, according to the story.

Juarez moved to suppress his confession as involuntary, and the prosecution subpoenaed Robles to testify at the hearing and to turn over her notes on the interview for in camera review. Robles moved to quash the subpoenas based on New York's Shield Law (Civil Rights Law § 79-h[c]). Supreme Court quashed the subpoenas. The court ultimately denied Juarez's motion to suppress his confession, finding it was voluntary. The prosecution then sought to enforce the subpoenas to compel Robles to testify and produce her notes at trial; and Robles again moved to quash based on the Shield Law.

Supreme Court denied her motions to quash the subpoenas, saying Juarez's "statements to law enforcement and Ms. Robles are the only evidence linking him to the crime. Since voluntariness may be raised before the jury regardless of the pretrial decision, it is critical that the People present all possible evidence corroborative of his statements to the police in their efforts to prove beyond a reasonable doubt that the statements were voluntary and truthful.... The testimony and notes are material, relevant and critical to the People's case."

The Appellate Division, First Department reversed and granted Robles's motions to quash, saying "the People have a videotaped confession by the defendant that has been found admissible at trial and that includes statements consistent with other evidence in the case. Under the circumstances, and in keeping with 'the consistent tradition in this State of providing the broadest possible protection to "the sensitive role of gathering and disseminating news of public events"...., we find that the People have not made a 'clear and specific showing' that the disclosure sought from Robles (her testimony and interview notes) is 'critical or necessary' to the People's proof of a material issue so as to overcome the qualified protection for the journalist's nonconfidential material (Civil Rights Law § 79-h[c])."

Addressing a threshold issue, the prosecution argues that this Court lacks jurisdiction because the trial court's order denying a nonparty's motion to quash subpoenas in a criminal action is not appealable. It says, "Since no [Criminal Procedure Law] provision authorizes an appeal from such an order, the appeal should be dismissed, and the matter remitted to the Appellate Division ... with directions to dismiss the appeal taken to that court," which would leave in place the trial court's denial of the motion to quash. Robles argues that "the determination of a motion to quash, as it relates to a non-party to a criminal proceeding, has been appealable in this state for 80 years and that rule should not be changed.... In sum, as this Court and the Appellate Division have repeatedly held, and the District Attorney and other prosecutors' offices have acknowledged to this Court, because the determination of a motion to quash a subpoena brought by a non-party is a final order on the civil side of the Supreme Court, which is vested with both criminal and civil jurisdiction, it is an appealable order in a criminal action."

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For nonparty respondent Robles: Katherine M. Bolger, Manhattan (212) 850-6100

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No. 35 People v Lawrence Parker

No. 36 People v Mark Nonni

Six police officers responded to a radio report of a burglary in progress at the Westchester Country Club in the Bronx in January 2008. They arrived at the private, gated facility five minutes later and saw two men walking down the driveway from the clubhouse toward a public road. When an officer called out "please, stop, we want to ask you a question," one of the men, Mark Nonni, ran away with three officers in pursuit. They tackled and handcuffed Nonni, after a struggle, and recovered a foot-long knife, a smaller butcher knife, and duct tape from his backpack, and found \$1000 in cash in his pocket. An officer said the other man, Lawrence Parker, "briskly walked" across the street and, despite being told to stop, continued to walk away. After officers handcuffed Parker, they found a sledgehammer and crow bar in his backpack and a steak knife in his coat pocket. The club's caretaker, who had been robbed of \$3000 at knife point and left bound with duct tape, identified Parker and Nonni as the perpetrators.

Supreme Court denied motions to suppress evidence obtained at the scene, finding the officers' conduct justified under People v De Bour (40 NY2d 210), and the defendants proceeded to a joint trial. On the second day of deliberations, the jury sent out three notes before the lunch recess. The court read the first note into the record, responded to it, and told the jury "we'll leave the other two for after lunch." As soon as it returned from lunch, the jury announced it had reached a verdict. The court took the verdict without addressing the two remaining notes. Parker and Nonni were each convicted of second-degree robbery and sentenced to 20 years to life.

The Appellate Division, First Department affirmed in a 3-2 decision, saying Parker and Nonni "were first seen on private property where a burglary had just been reported, in a suburban area, with nobody else visible anywhere in the vicinity. This gave rise to a founded suspicion of criminality, justifying a level-two common-law inquiry under the De Bour analysis. The police did not exceed the bounds of a common-law inquiry when they requested defendants to stop so that the police could 'ask them a question,' because such a direction does not constitute a seizure." Since Nonni "immediately ran, and ... Parker immediately made what officers described as a 'hurried' and 'evasive' departure..., the record supports the conclusion that both defendants 'actively fled from the police'.... Defendants' flight elevated the existing level of suspicion to reasonable suspicion, justifying pursuit and an investigative detention...."

The dissenters said, when the officers arrived at the club, they "had no description of the alleged suspects and no information concerning the 911 caller. Defendants were observed ... leaving the driveway of the club and walking down the street at an unhurried pace. The entry and exit of individuals from a commercial establishment during normal business hours cannot be deemed out of the ordinary.... Given the limited information conveyed by the radio run, the officers had, at best, sufficient cause to conduct a level-one request for information.... They said the police were unjustified in pursuing Nonni, who ran away, and Parker, "who did not even flee but merely walked at a 'hurried pace'.... The majority's conclusion that the police were justified in pursuing defendants is based on the faulty premise that the circumstances gave rise to a founded suspicion of criminality."

Parker and Nonni, in addition to arguing the police pursuit and detention were illegal, contend their convictions must be reversed because the trial court committed a mode of proceedings error by failing to give defense counsel meaningful notice of the contents of two substantive notes from the jury.

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For respondent: Bronx Assistant District Attorney Ryan P. Mansell (718) 838-6239

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No. 37 People v William Morrison

William Morrison was charged in 2006 with raping a 90-year-old dementia patient in the nursing home section of Rome Memorial Hospital, where he worked as a certified nurse's aid. At his trial in Oneida County Court, late on the second day of jury deliberations, the jurors sent out a note saying they had reached agreement on two lesser counts, but not on the top count of first-degree rape. The note said, "We have arrived on decision on [counts] 2 and 3, but we have a lot of work to do on #1. I don[']t see it being quick. Not sure what to do. We ar[e] starting to make way." The trial judge marked the note as court exhibit 9, but did not read it into the record. The court instructed the jury to continue working to try to reach a unanimous verdict, then at the juror's request sent them home for the night. The following day, the jury returned a verdict convicting Morrison of rape and sexual abuse in the first degree and endangering the welfare of a vulnerable elderly person in the second degree. He was sentenced to 25 years in prison.

The Appellate Division, Fourth Department initially affirmed the judgment, but subsequently granted Morrison's motion for a writ of error coram nobis based on his claim that he was deprived of effective assistance when his appellate counsel failed to challenge the trial court's handling of jury notes.

The Appellate Division ultimately reversed and ordered a new trial in a 4-1 decision, finding the trial court "violated a core requirement of CPL 310.30" and committed a mode of proceedings error "in failing to advise counsel on the record of the contents of a substantive jury note" marked court exhibit 9. "Our dissenting colleague concludes that the jury's statement, '[n]ot sure what to do,' was a ministerial inquiry concerning the logistics of the jury's deliberations, i.e., the jury was asking whether it should continue deliberating that evening considering the late hour. We agree that the note could be interpreted that way, but we conclude that it also could be interpreted as it was interpreted by the court, i.e., the jury was having difficulty reaching a unanimous verdict and was making a substantive inquiry for guidance concerning further deliberations. In response to the note, the court issued an Allen-type charge. Quite simply, even if we consider all the surrounding circumstances, the jury note was ambiguous, and we must resolve that ambiguity in defendant's favor...."

The dissenter argued the jury note "was ministerial in nature, and defendant was therefore required to preserve his challenge to County Court's handling of that jury note.... [C]onsidering the full text of court exhibit 9 and all of the surrounding circumstances, 'the only reasonable interpretation' ... of the jury's statement that it was '[n]ot sure what to do' is that the inquiry concerned the logistics of the jury's deliberations.... Consistent with the late hour and the court's practice of giving the jury a choice of whether to break for the evening or continue deliberating based on the status of the jury's deliberations, the record establishes that the jury raised a question of scheduling when it indicated that it was '[n]ot sure what to do'.... To the extent that the court provided a more robust response to the jury note than was required, I agree with the People that the court could not transform a ministerial inquiry regarding the logistics of a productive, continuing deliberation into a substantive deadlock announcement by merely exercising caution and reiterating the jury's deliberative obligations. Nor is the court's prudence indicative of an ambiguity."

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