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.

MAY 31 through JUNE 2, 2016

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

State of New York Court of Appeals

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To be argued Tuesday, May 31, 2016

No. 103 People v Glenn S. Smith
No. 104 People v Norman E. Ramsey

The issue in these cases is whether low-level offenders, appealing convictions obtained in local justice courts where the proceedings were recorded electronically, must file an affidavit of errors instead of a transcript in order to comply with Criminal Procedure Law § 460.10.

Glenn Smith was arrested for allegedly causing a disturbance and struggling with court officers at the Orange County Courthouse in October 2011. After a jury trial in Goshen Village Court, he was convicted of misdemeanor counts of resisting arrest and disorderly conduct and sentenced to a year in jail.

Norman Ramsey was charged with misdemeanor counts of forcible touching and unlawful imprisonment based on an alleged sexual assault on a neighbor in Hudson Falls in September 2014. After a series of appearances in Hudson Falls Village Court, he pled guilty to forcible touching and was sentenced to four months in jail.

The proceedings in both cases were recorded electronically pursuant to a 2008 Order of the Chief Administrative Judge, which requires Town and Village Courts "to mechanically record all proceedings." Neither defendant submitted an affidavit of errors in taking their appeals, but instead filed a transcript of the audio recording of their proceedings.

Prosecutors in both cases moved to dismiss the appeals for failure to comply with CPL 460.10(3), which applies when "the underlying proceedings were not recorded by a court stenographer" and requires the appellant to file an affidavit of errors describing the alleged errors or defects in the proceedings. The trial court then files a return summarizing "evidence, facts or occurrences" relating to the alleged errors. The defendants argued that their transcripts of the audio recordings obviated the need for an affidavit of errors and that their appeals were properly perfected pursuant to CPL 460.10(2), which applies when "the underlying proceedings were recorded by a court stenographer" and the stenographer's transcript provides the record.

The Appellate Term, Ninth and Tenth Judicial Districts, denied the prosecutor's motion to dismiss Smith's appeal based on its 2013 ruling in People v Finklea (41 Misc 3d 41), which held that "the process of recording court proceedings electronically is the functional equivalent of a 'record[ing] by a court stenographer.'" The court then reversed Smith's conviction "due to multiple deficiencies in the trial court's charge regarding the presumption of innocence, reasonable doubt, and the elements of the crime of resisting arrest."

Washington County Court granted the motion to dismiss Ramsey's appeal, rejecting the view that electronic recordings "are the functional equivalent of stenographic transcripts." It said CPL 460.10 requires "either the stenographer who actually recorded the proceedings or the court that presided over them" to authenticate the record. "Only the person, present in court when the record was made, can attest to [its] accuracy on appeal." The court also said some "critical" portions of the recording were inaudible, rendering the record incomplete.

For appellant: Orange County Assistant District Attorney Andrew R. Kass (845) 615-3640
For respondent Smith: Richard N. Lentino, Middletown (845) 342-4866
For appellant Ramsey: Robert N. Gregor, Lake George (518) 222-1535
Respondent: Washington County Asst. District Attorney Brandon P. Rathbun (518) 746-2525

State of New York Court of Appeals

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To be argued Tuesday, May 31, 2016

No. 105 People v Jamell R. McCullough

Jamell McCullough and four other men were charged with robbing a Rochester barbershop and fatally shooting the owner, Vincent Dotson, in December 2008. An eyewitness testified he was sitting in the shop when the first man entered, asking for a haircut, and three more soon followed. He later identified the last man to enter, wearing an orange jacket and cap, as McCullough. He said the men forced him and Dotson to the floor at gunpoint and pistol whipped them, demanding money and drugs. After taking about $200 from Dotson, one of the men shot him and the group fled. The shooter returned briefly and the witness, who closed his eyes, heard a "clicking sound" over his head before the shooter left. Willie Harvey, the getaway driver, was arrested the same evening. He initially denied knowing about the crime and failed to identify McCullough's photograph in an array, but he identified McCullough as a participant more than a year later, just before Harvey accepted a favorable plea bargain. Harvey testified at trial that he drove McCullough and the others to and from the barbershop.

Supreme Court denied McCullough's request to present expert testimony on the reliability of eyewitness identifications and denied his motion for a Frye hearing, saying the expert "is not needed" because the eyewitness's testimony was corroborated by that of Harvey and other witnesses. McCullough was convicted of second-degree murder, first-degree robbery and attempted robbery, and was sentenced to 25 years to life.

The Appellate Division, Fourth Department reversed in a 3-2 decision, ruling the trial court abused its discretion in precluding the expert testimony. "Here, the People concede that this case hinges upon the accuracy of the eyewitness's identification of defendant, and we agree with defendant that there was little or no corroborating evidence connecting him to the crime" due to the "dubious credibility" of Harvey, it said. "The only testimony corroborating the eyewitness's identification ... came from Harvey, who even the prosecutor characterized as 'a liar'.... Harvey only identified defendant as one of the perpetrators minutes before he pleaded guilty to robbery in the first degree in exchange for the minimum sentence of 10 years." It also found the proposed expert testimony "'satisfies the general criteria for the admissibility of expert proof'.... [W]e 'must assume on this record' that [the expert's] proposed testimony is based on principles that are generally accepted in the scientific community because 'defendant sought, and was denied, a Frye hearing on that issue'...."

The dissenters argued that "the identification of defendant by the eyewitness was corroborated by the reliable testimony of the accomplice." They said Harvey explained on the stand that "he recognized defendant but did not identify him" in the first photo array "because he did not know at that time what part his brother played in the crimes," and his "dubious credibility" did not otherwise prevent him from providing sufficient corroboration. The trial court, "which observed Harvey and heard his testimony, is in the best position to determine whether the testimony with respect to Harvey's ability to identify defendant was sufficient to establish the reliability of that identification, and thus to constitute sufficient corroborating evidence of the eyewitness identification...." They also argued it has not been established that "expert testimony regarding the impact of 'event violence,' 'event duration,' and 'weapon focus' on the reliability of eyewitness identification is generally accepted in the scientific community."

For appellant: Monroe County Assistant District Attorney Scott Miles (585) 753-4541
For respondent McCullough: Brian Shiffrin, Rochester (585) 423-8290

State of New York Court of Appeals

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To be argued Tuesday, May 31, 2016

No. 106 Matter of State of New York v Dennis K.
No. 107 Matter of State of New York v Anthony N. *(papers sealed)*
No. 108 Matter of State of New York v Richard TT.

These defendants are sex offenders who, as their prison terms expired, were found to be dangerous sex offenders and were confined at secure treatment facilities after civil management proceedings under Mental Hygiene Law article 10. Among other issues raised, the common question is whether a diagnosis of borderline personality disorder (BPD) or paraphilia not otherwise specified (NOS) is legally sufficient to support a finding of mental abnormality under the statute. It defines "mental abnormality" as a condition "that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her" to commit sex offenses and "results in that person having serious difficulty in controlling such conduct."

The defendants cite Matter of State of New York v Donald DD. (24 NY3d 174 [2014]), which held that a diagnosis of antisocial personality disorder (ASPD) alone cannot support a finding of mental abnormality because, if it "is not accompanied by a diagnosis of any other condition, disease or disorder," the diagnosis "proves no sexual abnormality." This Court said, "The problem is that ASPD establishes only a general tendency toward criminality, and has no necessary relationship to a difficulty in controlling one's sexual behavior." The defendants argue that BPD and paraphilia NOS, like ASPD, are not sexual disorders.

Before Donald DD. was issued, a jury found Dennis K. suffered from a mental abnormality based on testimony of the State's psychologist, who diagnosed him has having "paraphilia NOS nonconsent" -- because he derived gratification from overpowering nonconsenting women -- and ASPD. Supreme Court ordered him confined in 2012, crediting the testimony of State experts that he posed a high risk of re-offending. The Appellate Division, Second Department affirmed, saying that paraphilia NOS and ASPD are legally sufficient bases for a finding of mental abnormality, and that clear and convincing evidence supported the court's conclusion that he posed a high risk of re-offending.

A jury found Anthony N. suffered from a mental abnormality based on diagnoses by State experts that he had BPD and ASPD, and on his history of forcible sex offenses. Supreme Court ordered him confined in 2013. The Fourth Department affirmed, ruling BPD could support a finding of mental abnormality because there was evidence the condition "predisposed him to commit sex offenses."

A State psychologist diagnosed Richard TT. with BPD, ASPD and psychopathy, which she said "predispose [him] to the commission of sex offenses." Supreme Court found he had a mental abnormality and ordered him confined in 2014. It vacated its confinement order after Donald DD. was issued nine months later, but said it still believed Richard TT. "suffers from a mental abnormality and that his disorders predispose him to commit sexual misconduct...."

The Third Department reversed on a 3-2 vote, saying "nothing in [Donald DD.] would bar" the lower court from relying on the State expert's testimony that Richard TT. "had a mental abnormality that seriously impaired his behavioral control." The expert's "portrait shows an individual whose various disorders create a toxic mix that have not only caused him to objectify women and feel 'entitled to sex regardless of impact,' but have also impelled him to satisfy those desires." The dissenters said "civil confinement is not justified" under Donald DD. The expert's admission "that she did not diagnose [Richard TT.] with a sexual disorder" and her failure to "testify that any of the three diagnoses had any sexual component" left the court without an "'independent mental abnormality diagnosis to ground a finding of mental abnormality within the meaning of ... article 10...."

For appellant Dennis K.: Timothy M. Riselvato, Mineola (516) 493-3975
For respondent State: Assistant Solicitor General Karen W. Lin (212) 416-6197
For appellant Anthony N: Mark C. Davison, Canandaigua (585) 394-5222
For respondent State: Assistant Solicitor General Jonathan D. Hitsous (518) 776-2044
For appellant Richard TT.: Shannon Stockwell, Albany (518) 451-8710
For respondent State: Assistant Solicitor General Allyson B. Levine, Albany (518) 776-2018

State of New York Court of Appeals

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To be argued Wednesday, June 1, 2016

No. 109 People v Charles Smith
No. 110 People v Tyrell Ingram
No. 111 People v Isma McGhee

These appeals raise the issue of whether and under what circumstances criminal defendants should be allowed to use allegations made in civil rights lawsuits against police witnesses to question their credibility during cross-examination.

Charles Smith was arrested in 2011 by narcotics officers who said they saw him sell a bag of crack cocaine on a street corner in Manhattan. He sought to cross-examine two of the officers about allegations in civil rights suits that they had fabricated drug sale charges in prior cases. Supreme Court barred the questioning and the Appellate Division, First Department affirmed Smith's conviction, saying, "Although defendant was entitled, assuming good faith, to ask the officers about acts of misconduct bearing on their credibility, the proposed line of questioning went into accusations, subsequent remedial changes in police procedures, and other irrelevant or collateral matters...."

Tyrell Ingram was arrested in 2008 by Bronx narcotics officers who said they saw him running and gave chase, exchanged gunfire with him, and recovered an illegal handgun. When his attorney asked one of the arresting officers "... have you ever been sued?" the court sustained the prosecutors's objection. Defense counsel explained at a sidebar that she wanted to ask about allegations in a federal suit against the officer and other members of his team that they fabricated evidence, made a false arrest, and used excessive force in a prior case. The court denied the request. The First Department affirmed Ingram's weapon possession conviction, saying the trial court "correctly precluded inquiry regarding the existence of a federal lawsuit ... because the mere existence of the lawsuit was not a proper subject for cross-examination.... Defendant did not seek to ask the officer anything about the underlying facts of the lawsuit ..."

Isma McGhee was arrested on drug sale charges in 2012, after a year-long investigation of drug trafficking in Manhattan. His attorney sought to question the lead detective about allegations in three lawsuits that he and other officers "arrested people who committed no crimes" in prior cases. "It is my position in this case that my client was falsely arrested." He said the lawsuits "give me a good faith basis to ask the questions," but he would ask only about the allegations and not the suits themselves. The court precluded the questions and the First Department affirmed, saying McGhee "failed to establish a good faith basis for eliciting the underlying facts of these lawsuits..., as defendant did not specify any factual allegations supporting the assertion that this detective had participated in false arrests."

The defendants argue the preclusion of valid impeaching evidence of the prior bad acts of crucial prosecution witnesses deprived them of their rights to confront witnesses and present a defense. They say the Second Department, in People v Jones (193 AD2d 696), and the Third Department, in People v Daley (9 AD3d 601), have held that allegations made in civil rights suits may be used in cross-examination of law enforcement witnesses when there is a good faith basis for it.

For appellant Smith: Claudia B. Flores, Manhattan (212) 577-2523 ext 535
For respondent: Manhattan Assistant District Attorney Patricia Curran (212) 335-9000
For appellant Ingram: Elsa Mitsoglou, Manhattan (212) 790-0410
For respondent: Bronx Special Assistant District Attorney Raffaelina Gianfrancesco (914) 995-3496
For appellant McGhee: Mark W. Zeno, Manhattan (212) 577-2523 ext 505
For respondent: Manhattan Assistant District Attorney Sylvia Wertheimer (212) 335-9000

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To be argued Wednesday, June 1, 2016

No. 112 Pasternack v Laboratory Corporation of America Holdings

Fred Pasternack was a physician and pilot for Northeastern Aviation Corp. and a Senior Aviation Medical Examiner for the Federal Aviation Administration (FAA) in 2007, when he reported to a Laboratory Corporation of America (LabCorp) facility in Manhattan for an FAA-mandated random drug test. He produced a urine sample, but LabCorp's specimen collector told him it was too small to test and asked him to wait. He said he had an appointment elsewhere and would return later. She said she would have to advise Northeastern that he left the lab, but did not tell him his leaving would be deemed a "refusal to test." Pasternack returned three hours later and Northeastern authorized LabCorp to take a second sample, which tested negative. A Medical Review Officer (MRO) at ChoicePoint Inc., which administered Northeastern's drug testing program, determined from Pasternack's chain-of-custody form that he left the lab before the test was completed and notified the FAA that Pasternack refused a drug test.

The FAA conducted an investigation, during which LabCorp's specimen collector allegedly made false statements about Pasternack's conduct. The FAA revoked his pilot licenses and his Aviation Medical Examiner designation. His licenses and examiner designation were restored and the test refusal expunged from his record five years later, after a final ruling in his favor by the D.C. Circuit Court of Appeals in 2013.

Meanwhile, in 2010, Pasternack brought this action in U.S. District Court for the Southern District of New York against LabCorp and ChoicePoint (which had become LexisNexis Occupational Health Solutions Inc.). He asserted claims for negligence based on the companies' alleged violation of FAA and Department of Transportation regulations in conducting "shy bladder" procedures after his initial inadequate sample, determining he refused the drug test, and informing the FAA; and claims for fraud based on the false statements allegedly made by LabCorp's collector to FAA investigators, which led to the loss of his licenses.

District Court dismissed the negligence claims, saying they were "premised solely" on alleged violations of federal drug testing regulations and guidelines and, under New York law, the companies owed Pasternack no duty of care to properly apply the regulations. It dismissed the fraud claims because the complaint alleged that "only the FAA -- and not Pasternack -- relied on LabCorp's alleged misrepresentations." It held that under New York law a fraud claim cannot be based on a false representation made to and relied upon by a third party, whose reliance injures the plaintiff.

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the key issues in a pair of certified questions: "First, whether drug testing regulations and guidelines promulgated by the FAA and DOT create a duty of care for drug testing laboratories and program administrators under New York negligence law; and Second, whether a plaintiff may establish the reliance element of a fraud claim under New York law by showing that a third party relied on a defendant's false statements resulting in injury to the plaintiff."

For appellant Pasternack: Cynthia S. Arato, Manhattan (212) 257-4880
For respondent ChoicePoint (LexisNexis): Frederick T. Smith, Atlanta, Georgia (404) 885-1500
For respondent LabCorp: Robert I. Steiner, Manhattan (212) 808-7800

State of New York Court of Appeals

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To be argued Wednesday, June 1, 2016

No. 113 People v Dennis J. Sincerbeaux *(papers sealed)*

In 2013, Dennis J. Sincerbeaux pled guilty in Wayne County Court to one count of incest in the third degree, admitting he had sexual intercourse with the victim in 2007. The victim told investigators in a statement that he began forcibly raping her in 1994, when she was 13 years old, and this continued until 2009, when she was 28. Investigators found that he fathered three of her five children. Sincerbeaux was sentenced to six months in jail and required to register under the Sex Offender Registration Act (SORA).

The State Board of Examiners of Sex Offenders prepared a Risk Assessment Instrument (RAI) and assessed Sincerbeaux 30 points under risk factor nine (prior criminal history) based on his 1992 conviction for violating Penal Law § 260.10, then called "failure to exercise reasonable control of a child" and now called "endangering the welfare of a child." The board also assessed 10 points under risk factor one, for use of forcible compulsion, and 20 points under risk factor five, for a victim under the age of 16. Sincerbeaux's total score was 115 points, making him a presumptive level three (highest risk) offender.

Sincerbeaux argued he should be assessed only five points under risk factor nine because his 1992 endangerment conviction was not sexual in nature, but was instead based on excessive corporal punishment of his son. He also contested the points under risk factors one and five because "the sole proof of those is statements made by the alleged victim." He said he did not admit to using forcible compulsion or to having intercourse with the victim before she was 19.

County Court adopted the board's RAI and designated Sincerbeaux a level three sex offender. The Appellate Division, Fourth Department affirmed, concluding that "'[i]t was within the court's discretion to [classify defendant as a level three risk] ... based upon clear and convincing evidence of the facts in support thereof'...." It ruled he was properly assessed points under risk factors one and five because the prosecution "presented 'reliable hearsay evidence, in the form of the victim's statement,' that she was 13 years old when the sexual abuse began and that defendant had used forcible compulsion...."

The District Attorney now concedes the 1992 endangerment conviction was not sexually related and Sincerbeaux should have been assessed only five points under risk factor nine, but says he will move for reassessment of Sincerbeaux's risk level based on his subsequent conduct, including failure to comply with requirements of SORA and his sex offender treatment program.

Sincerbeaux argues, among other things, that he was improperly assessed points under risk factors one and five because the prosecution failed to establish by clear and convincing evidence that he used force and the victim was under 17 years old. The only proof offered was the victim's statements, he says, and it was contradicted by his statements that the victim was 19 and "was a willing participant."

For appellant Sincerbeaux: Mary P. Davison, Canandaigua (585) 394-5222
For respondent: Wayne County Assistant District Attorney Bruce A. Rosekrans (315) 946-5905

State of New York Court of Appeals

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To be argued Wednesday, June 1, 2016

No. 114 Matter of Tonawanda Seneca Nation v Noonan

David Peters, a member of the Tonawanda Seneca Nation, died in August 2011 and left a will that bequeathed real property within the Seneca Nation's sovereign territory to his daughter and his brother, who are both members of the Nation. These properties included a parcel on Sandhill Road, a parcel on Bloomingdale Road, and Peters' business, the Arrowhawk Smoke and Gas Shop. A month later, the estate's executors sought probate of the will in Surrogate's Court, Genesee County, and County Court Judge Robert C. Noonan was assigned to the case because the county does not have a separately elected Surrogate.

In October 2013, the Seneca Nation commenced this article 78 proceeding in the Appellate Division, Fourth Department, seeking a writ of prohibition to enjoin Judge Noonan "from exercising jurisdiction over lands within the Nation's territory." While it was pending, the judge declined to assert jurisdiction over the real property on Sandhill and Bloomingdale Roads, but he concluded in February 2014 that his court could exercise jurisdiction over "the business and personal property" of Arrowhawk because there was no evidence the decedent's business operated as an "arm of the tribe." He later issued orders of assistance directing the estate to take control of Arrowhawk and take control of all personal property at the Sandhill Road house pending his determination of ownership in probate.

Judge Noonan moved to dismiss the article 78 proceeding on the grounds that his February 2014 determination rendered it moot and that the Appellate Division lacked jurisdiction because the suit was not commenced in Supreme Court. While article 78 proceedings must generally be commenced in Supreme Court, the Nation argued that it properly commenced its suit in the Appellate Division because CPLR 506(b)(1) gives that court original jurisdiction when an article 78 proceeding is brought against a judge of Supreme Court or County Court.

The Appellate Division initially denied the motion without decision, but ultimately dismissed the suit on the ground that it lacked subject matter jurisdiction because a '"CPLR article 78 proceeding against a Judge of the Surrogate's Court should be commenced in Supreme Court."' It said, "Even if we assume, arguendo, that [Noonan] was elected as a County Court Judge and was thereafter assigned to 'be and serve as' a Surrogate..., [the Nation] is seeking to prohibit [him] from acting in the role of Surrogate. We thus conclude that jurisdiction remains in Supreme Court."

The Nation argues, [A]lthough ... Noonan may be serving as the Surrogate, he remains a County Court judge whose actions must be reviewed by the Appellate Division in an Article 78 proceeding." It says he only became eligible to serve as Surrogate by virtue of his election to County Court, and his "constitutional and statutory power to sit as the Surrogate ... is derived from his position as a County Court Judge."

For appellant Seneca Nation: Margaret A. Murphy, Orchard Park (716) 662-4186
For respondent Noonan: Assistant Solicitor General Kate H. Nepveu (518) 776-2016

State of New York Court of Appeals

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To be argued Wednesday, June 1, 2016

No. 50 230 Park Avenue Holdco, LLC v Kurzman Karelsen & Frank, LLP

The law firm Kurzman Karelsen & Frank, which had leased offices in the Helmsley Building in Manhattan for decades, in July 2011 signed a lease for new offices in a different building for a term beginning September 1, 2011. Its Helmsley lease did not expire until December 31, 2012. The Helmsley's owner, 230 Park Avenue Holdco, brought a nonpayment proceeding to recover disputed rent escalation charges from Kurzman. The proceeding was settled in August 2011 with a stipulation in which the suit was converted into a holdover proceeding and Kurzman agreed to pay a reduced amount for escalation charges and consented to a final judgment of possession in favor of 230 Park. The stipulation also provided, "Notwithstanding anything herein to the contrary, nothing herein shall prohibit [Kurzman] from locating and/or offering to [230 Park] a potential tenant for the Premises, subject to [230 Park's] approval of any such prospective tenant."

To reduce its liability for rent through the remainder of its lease at the Helmsley, Kurzman retained a broker to list its office space there as available for sublease from September 2011 through December 2012. On September 15, 2011, 230 Park's managing agent directed the listing service to remove Kurzman's sublease listing. In November 2011, 230 Park brought this action against Kurzman and individual guarantors of its lease obligations to recover all rent allegedly due under the lease from September 2011 through December 2012. Among other affirmative defenses, Kurzman argued that 230 Park breached the August 2011 stipulation of settlement by obstructing its search for a prospective tenant and that the landlord had assumed a duty to mitigate its damages through the stipulation.

Supreme Court denied 230 Park's motion for summary judgment dismissing the defense, saying Kurzman "clearly raised an issue of fact" regarding the alleged breach of the stipulation. "While Kurzman failed to present a prospective tenant, 230 Park says little to contradict the evidence that it prevented Kurzman from locating one. If ... the Stipulation does not obligate 230 Park to at least allow Kurzman to find a prospective tenant, then it is meaningless," it said.

The Appellate Division, First Department affirmed on a 3-2 vote, saying, "Although the stipulation prohibits [Kurzman] from subletting or assigning any of its rights or interests under the lease, it also provides that [Kurzman] is not prohibited 'from locating and/or offering [230 Park] a potential tenant for the Premises'.... [T]he import of this provision was clearly to provide [Kurzman] with an opportunity to cover all or some of the damages that [230 Park] is claiming are due under the lease. Otherwise the provision would have no meaning. There are triable issues of fact as to whether [230 Park] improperly interfered with [Kurzman's] efforts, in violation of the stipulation, to find a tenant, which would ... affect [its] liability for future rent."

The dissenters argued the stipulation "merely provided that it *did not prohibit* Kurzman from locating or offering potential tenants subject to [230 Park's] approval. This language does not provide for a right to do so." Because the stipulation was entered into "solely for the purpose of adjudicating [230 Park's] right to possession of the Premises...," they said, it did not impose "an obligation to mitigate damages consisting of rent unpaid for the balance of the lease term. Kurzman's vague assertions that [230 Park] otherwise sabotaged its efforts to identify prospective tenants and resisted [its broker's] efforts to show the premises to interested parties are insufficient to raise a triable issue of fact...."

For appellant 230 Park: Jay B. Solomon, Manhattan (212) 661-9400
For respondents Kurzman et al: Charles Palella, Manhattan (212) 867-9500

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To be argued Thursday, June 2, 2016

No. 116 People v Dayshawn Crooks

Dayshawn Crooks was arrested in January 2013 after police officers executed a search warrant at his Albany apartment and seized more than a half-ounce of crack cocaine. Probable cause for the search warrant was based on two previous controlled drug buys, in which the police used a confidential informant wearing an audio transmitter to purchase cocaine from Crooks. The first purchase took place inside Crooks' apartment, where the police could not see the transaction, but monitored the audio transmission as it occurred. The second purchase occurred outdoors, where the officers could visually observe some of the interactions between Crooks and the informant in addition to their audio surveillance.

Crooks sought a Darden hearing to verify the existence and reliability of the informant. County Court denied the motion, finding a Darden hearing was not necessary because "there was sufficient reasonable cause for issuance of the search warrant based upon the two controlled buys, wherein the informant was searched before the buys and found not to be in possession of cocaine, the police monitored the buys through audio and visual surveillance, and the informant turned over cocaine to the police immediately after the buys. Thus, reasonable cause existed independent of any statements the informant made to the police...." The court also denied Crooks' motion to suppress the cocaine seized from his apartment. Crooks was convicted of two counts of criminal possession of a controlled substance in the third degree and sentenced to eight years in prison.

The Appellate Division, Third Department affirmed, saying "a Darden hearing was not necessary inasmuch as probable cause for the search warrant was established, in part, by the independent observations of the police ... [and] independent of any information directly provided by the [informant] alone...."

Crooks argues he was entitled to a Darden hearing because "the communications from the [informant] were necessary to establish probable cause. No police officer involved in this investigation visually observed appellant do anything unlawful. The proof that appellant was engaged in the sale of cocaine came entirely from the [informant]." He says there was no visual monitoring of the first controlled buy in the apartment and, regarding the second buy, "no police officer testified ... that they observed appellant sell cocaine to the [informant]. At best, [a detective's] testimony showed that other police officers observed some interaction between" Crooks and the informant.

For appellant Crooks: Matthew C. Hug, Troy (518) 283-3288
For respondent: Albany County Assistant District Attorney Brittany L. Grome (518) 487-5460

State of New York Court of Appeals

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To be argued Thursday, June 2, 2016

No. 117 People v Sparkle Daniel
No. 118 People v Nadine Panton

Sparkle Daniel and Nadine Panton were charged with murder in 2007, four years after the body of 91-year-old Nellie Hocutt was found asphyxiated in her Bronx home, tied to a chair with a plastic bag over her head. Daniel and Panton were questioned separately at the Bronx Homicide Task Force office.

A detective testified that he asked Daniel if she knew why she was here, and she said no. He told her he was investigating the death of an elderly woman, and she said nothing. He was called away for several minutes and when he returned he told her she knew what he was talking about, and Daniel said, "Yes." She said she and Panton saw "Miss Nellie" outside her home and asked to use her phone. The detective stopped her at that point and gave her Miranda warnings for the first time. Daniel then said that, after Hocutt let them into her home, Panton robbed and killed her by herself. The detective questioned her story and Daniel gave a second statement admitting she participated in the murder, but claiming she was coerced by Panton. After a break of nearly three hours and fresh Miranda warnings, Daniel made a similar statement on videotape.

In questioning Panton, a detective asked if she knew why she was there and Panton said no. The detective showed her a crime scene photograph of Hocutt, with the plastic bag over her head, and Panton began to cry. When she composed herself about 18 minutes later, Panton was given Miranda warnings for the first time. She then admitted that she helped to rob Hocutt, but said it was Daniel's idea and said Daniel tied and gagged the victim and poured wine down her throat. Panton repeated the statement on video, after new Miranda warnings.

Supreme Court denied their motions to suppress their statements after a joint hearing, finding no violations of Miranda. In separate trials, Daniel and Panton were convicted of second-degree murder and sentenced to 25 years to life in prison.

The Appellate Division, First Department affirmed Panton's conviction, saying she failed to preserve her Miranda claim. Alternatively, it said, "Even assuming that the detective's display ... of a crime scene photograph of the murder victim ... constituted the functional equivalent of interrogation, defendant made no incriminating statements until after the warnings were administered, and her post-Miranda statements were attenuated from the display of the photo...."

A different First Department panel reversed Daniel's conviction on a 4-1 vote, saying her "two written statements, although produced after she had been Mirandized, were 'part of a single continuous chain of events' that included the detective's initial pre-warning inquiries and statement [and] defendant's pre-warning acknowledgment that she knew why she had been brought in" and that she and Panton "had asked to use the victim's phone." It said "her unwarned statements plainly tended to incriminate her by acknowledging that she knew something about the murder of an elderly woman and by placing herself at the scene of the crime with the victim and [Panton]."

The dissenter argued Daniel "had not confessed or admitted to any wrongdoing" before she was Mirandized. "[C]onsidering the brevity of the pre-Miranda questioning and the inconsequential information obtained by the police, I find that the taint of the pre-Miranda statement was sufficiently dissipated."

For appellant in 117 & respondent in 118: Manhattan Asst. Dist. Atty. David P. Stromes (212) 335-9233
For respondent Daniel: Natalie Rea, Manhattan (212) 577-3300
For appellant Panton: Robin Nichinsky, Manhattan (212) 577-2523

State of New York Court of Appeals

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

To be argued Thursday, June 2, 2016

No. 119 Mazella v Beals

Dr. William Beals treated Joseph Mazella for depression, anxiety and other mental disorders from 1993 to August 17, 2009, for the last decade of that period prescribing Paxil and other psychiatric medications without seeing Mazella in person. Mazella usually visited his family physician for treatment, including prescriptions for psychiatric medications. After his treatment by Beals ended on August 17, Mazella was treated by other medical professionals, including Dr. Elisabeth Mashinic, and was admitted to psychiatric facilities in Syracuse and Auburn three times in less than four weeks. After Mazella committed suicide on September 12, 2009, his estate brought this medical malpractice action against Beals and Mashinic.

Evidence at trial showed Beals did not see Mazella in person from August 1998 until his last treatment on August 17, 2009. Supreme Court denied Beals' motion to preclude the introduction of a consent order settling charges brought against him by the State Office of Professional Medical Conduct (OPMC), which alleged he negligently prescribed medication for Mazella and 12 other patients without seeing them in person. Beals signed the order in 2012, agreeing not to contest charges relating to the 12 other patients, but not those relating to Mazella. After August 17, Mazella was admitted to psychiatric facilities twice for overnight stays and once for a week, during which he tried to kill himself with the belt of his hospital gown, and was treated by Mashinic, another psychiatrist and other clinic staff, who repeatedly changed his medications. The plaintiff's expert testified Beals was negligent in prescribing Paxil without seeing Mazella and said this lack of monitoring likely contributed to his suicide. He also said Mazella's perceived abandonment by Beals after the August 17 visit was a significant factor in the suicide. Beals' expert testified that his failure to see Mazella for years while issuing prescriptions did not cause the suicide because the medications were subsequently changed by others, and that the August 17 visit was not a factor because his subsequent psychiatric admissions were intervening medical treatments.

The jury found that Beals and Mashinic were negligent, but determined that Beals' negligence was the sole cause of Mazella's suicide. It awarded $1.2 million in damages.

The Appellate Division, Fourth Department affirmed on a 3-1 vote, saying the evidence was legally sufficient because "there is a valid line of reasoning supporting the jury's verdict" that Beals was negligent and his negligence was a proximate cause of Mazella's death. Regarding Mazella's subsequent treatment by other physicians and clinics, it said "we respectfully note that there may have been more than one proximate cause of decedent's injuries..., and that the jury was entitled to credit plaintiff's theory that [Beals'] actions constituted one of those proximate causes." It said any error in admitting the OPMC consent order would have been harmless.

The dissenter argued the plaintiff "failed to establish that [Beals'] negligence was a proximate cause of decedent's suicide" because "the psychiatric treatment provided to decedent after [Beals'] involvement in the case ended constituted an intervening act that severed any causal connection between [Beals'] negligence and decedent's suicide." She also argued Beals was deprived of a fair trial by admission of the "highly prejudicial" OPMC consent order, in which he "admitted that he failed to provide proper care to 12 patients other than decedent." She said this "undoubtedly contributed to the legal error of the jury's determination of [Beals'] liability."

For appellant Beals: Kevin T. Hunt, Syracuse (315) 637-3663
For respondent Mazella: Alessandra DeBlasio, Manhattan (212) 321-7084

State of New York Court of Appeals

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To be argued Thursday, June 2, 2016

No. 91 Matter of Brooke S.B. v Elizabeth A. C.C. *(papers sealed)*
No. 92 Matter of Estrellita A. v Jennifer D.

These appeals involve former same-sex couples who, while they were together, used artificial insemination to have a child. The biological mother in each case, Elizabeth A. C.C. and Jennifer D., opposes a petition for visitation by her former partner, who did not adopt the child. A difference between the cases is that only in Case No. 92 did the biological mother obtain court-ordered child support from her former partner.

In Case No. 91, Elizabeth A. C.C. gave birth in 2009 and raised the child jointly with Brooke S.B. until they ended their relationship in 2010. Elizabeth continued to allow Brooke regular visitation with the child until 2013, when their relationship deteriorated further and Elizabeth denied Brooke any access to the child. Brooke then brought this proceeding for joint custody and visitation in Chautauqua County Family Court. Her petition was supported by the attorney for the child.

Family Court denied Brooke's petition, saying, "Without adopting the child the petitioner has no legal standing" to seek visitation. The Appellate Division, Fourth Department affirmed. "It is well settled 'that parentage under New York law derives from biology or adoption,'" it said, citing Debra H. v Janice R. (14 NY3d 576), and, "as the Court of Appeals unequivocally stated, 'any change in the meaning of "parent" under our law should come by way of legislative enactment rather than judicial revamping of precedent'...."

In Case No. 92, Jennifer D. gave birth to a daughter in 2008 and raised her jointly with Estrellita A. until they ended their relationship in 2012, although Estrellita continued to visit the child several days a week. Jennifer filed a petition in Suffolk County Family Court seeking child support from Estrellita. The court granted the petition, saying "the uncontroverted facts establish that" Estrellita "is a parent to" the child and, thus "is chargeable with the support of the child." Estrellita, who had commenced a proceeding for visitation, amended her petition to note she had been "adjudicated" a parent of the child.

Family Court denied Jennifer's motion to dismiss the visitation proceeding for lack of standing, ruling she was "judicially estopped from asserting that [Estrellita] is not a parent based upon her sworn petition and testimony" in the support proceeding. It said Jennifer "deliberately sought to involve her former partner in her child's life at least until her financial majority." The court subsequently granted visitation to Estrellita, and the right to be consulted "on all matters of importance" concerning the child.

The Appellate Division, Second Department affirmed, saying, "The concerns expressed ... in Debra H. are not implicated in the present case, where [Estrellita] invoked the doctrine of judicial estoppel, not equitable estoppel. No hearing was required to decide whether the doctrine of judicial estoppel applies.... Moreover, just as in second-parent adoptions, the adjudication of [Estrellita] as a parent of the child required the biological mother's affirmative legal consent...."

No. 91 For appellant attorney for the child: Eric I. Wrubel, Manhattan (212) 984-7700
For respondent Brooke S.B.: Susan Sommer, Manhattan (212) 809-8585
For respondent Elizabeth A. C.C.: Sherry A. Bjork, Frewsburg (716) 450-1974
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For respondent Estrellita A.: Andrew J. Estes, Manhattan (212) 715-9100
Attorney for the child John B. Belmonte, Central Islip (631) 439-2450