State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

Week of January 10 thru 12, 2017

State of New York Court of Appeals

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To be argued Tuesday, January 10, 2017

No. 7 People v Zachary T. Guerin

Zachary Guerin was charged with trespassing in June 2013 by two forest rangers who found him hiking on posted land owned by The Nature Conservancy on the South Branch of Cattaraugus Creek in Cattaraugus County. The rangers arrested him after he twice refused to leave the nature sanctuary, which was posted with "No Trespassing" signs. At trial in Persia Town Court, Guerin argued the charge should be dismissed because the signs did not include the landowner's address as required by Environmental Conservation Law § 11-2111, which states, "Signs shall bear the name and address of the owner, lawful occupant, or other person or organization authorized to post the protected area." Guerin presented a photograph of one of the "No Trespassing" signs, which did not provide any address. Two of the Nature Conservancy's preserve monitors conceded on the witness stand that the photographed sign did not contain an address, but one of them, Stephen McCabe, testified that 32 other signs did bear an address. Guerin was convicted of trespassing in violation of ECL § 11-2113(1).

On appeal, Cattaraugus County Court affirmed the conviction, saying, "Although Defendant is correct that posted signs must list the address of the property owner ... in order for a trespassing charge to be brought for failure to abide those signs..., Stephen McCabe testified for the prosecution that he is familiar with the signage where Defendant was arrested for trespassing and 32 signs in that area bear the address of the property owner.... This proof is legally sufficient to support the conviction. Defendant's attempt to impeach McCabe was ineffective because McCabe testified that Defendant's photograph of a posted sign was not representative of signs in the area where Defendant was charged."

Guerin argues that his photographs were sufficient to prove The Nature Conservancy's signs contained no address and, thus, did not comply with ECL § 11-2111. He says, "The best evidence would be the authenticated pictures of the trespassing signs in question[,] not the testimony of a witness [whose] foundation has not been established and is at controversy with not only a more seasoned member of the nature conservancy. McCabe's testimony did not match what the physical picture evidence shows, the very signs in evidence remain at the scene of the incident to this day, the only difference is post trial someone went and added white sticky labels with an address on them."

For appellant Guerin: Zachary T. Guerin (pro se), Lawtons (716) 803-2321
For respondent: Cattaraugus County Asst. District Atty. Wm. Preston Marshall (716) 938-2222

State of New York Court of Appeals

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To be argued Tuesday, January 10, 2017

No. 8 Tara N.P. v Western Suffolk Bd. of Cooperative Educational Services *(papers sealed)*

This negligence action arose from a sexual assault on Tara N.P. in March 2006, when she was enrolled in a BOCES class provided by the North Amityville Community Economic Council (NACEC) for people pursuing high school equivalency diplomas. NACEC leased premises for its classes from Suffolk County and, in turn, NACEC agreed serve as a work site for the Suffolk Work Experience Program (SWEP), a welfare-to-work program, and to accept participants referred by the County to perform maintenance work. Although the County agreed not to assign SWEP participants with criminal records to NACEC, in 2005 it referred Larry Smith, a Level III sex offender with felony convictions, who sexually assaulted Tara N.P. eight months later. Tara N.P. brought this personal injury action against the County and NACEC, among others, alleging negligence, premises liability, and negligent hiring.

The County moved to dismiss the claims against it, arguing it was entitled to governmental immunity because the decision to assign Smith to NACEC was a discretionary act and because the County owed no duty of care to the plaintiff. Tara N.P. responded that the County owed her a duty because it had agreed not to assign SWEP participants with criminal backgrounds to NACEC. She also argued the referral of Smith was not a purely discretionary act and, regardless, the County had a nondelegable duty as a landlord to protect her from Smith.

Supreme Court denied the County's motion, finding there was a question of fact "as to whether [County agencies] negligently created a dangerous condition -- thereby 'launch[ing] a force or instrument of harm' -- when they referred a known Level III sex offender to a facility which they knew, at a minimum, housed educational programs...." As for the County's liability as a landlord, it said there were triable issues regarding whether the County "created the unsafe condition at the Building or had actual or constructive notice of it and a reasonable time within which to remedy it, and whether Suffolk assumed responsibility to maintain a portion of the premises sufficiently to be held liable herein."

The Appellate Division, Second Department reversed and dismissed the claims against the County, ruling the County was entitled to governmental immunity because it "did not voluntarily assume a special duty to the plaintiff" and "the plaintiff does not allege that [it] violated any statutory duty." It said the plaintiff's claim that the County could be liable in its proprietary role as a landlord did "not allow her to avoid the attachment of governmental immunity, as the essential act complained of, i.e., that the County negligently referred Smith to NACEC, was a governmental act...."

For appellant Tara N.P.: Mary Ellen O'Brien, Franklin Square (516) 354-1570
For respondent Suffolk County: Christopher A. Jeffreys, Hauppauge (631) 853-4055

State of New York Court of Appeals

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To be argued Tuesday, January 10, 2017

No. 9 Oddo v Queens Village Committee for Mental Health for Jamaica Community Adolescent Program, Inc.

On July 17, 2010, Sean Velentzas assaulted Anthony Oddo in Queens, stabbing Oddo in the shoulder. Until that day, Velentzas had been residing at a drug treatment facility run by Queens Village Committee for Mental Health for Jamaica Community Adolescent Program, Inc. (JCAP), where he was sent as an alternative to incarceration under the Treatment Alternatives for Safer Communities (TASC) program after he was charged with robbing a cab driver at gunpoint. JCAP discharged him on July 17 for violating its rules by pushing another resident to the ground and drinking alcohol on the premises. Because it was a Sunday, JCAP staff began preparing paperwork to transfer Velentzas to a holding facility until TASC could be notified of his discharge the next day, but he became angry and disruptive. JCAP's incident report states, "Staff called 911 and he was escorted by police officers off the property." The police then released him, and Velentzas assaulted Oddo about half an hour later. Oddo sued JCAP for negligence. JCAP moved for summary judgment dismissing the suit, arguing that it had no duty to protect third parties from discharged residents and, even if it did, its duty was extinguished when it released Velentzas into police custody.

Supreme Court denied the motion, saying, "There is not a scintilla of evidence that Velentzas was ever in police custody.... In fact, [JCAP's] incident report ... only states that the police 'escorted' Velentzas off the property..., [which] is not the equivalent of being 'taken into police custody.'" It also found JCAP "had the necessary authority, or ability, to exercise such control over [Velentzas'] conduct so as to give rise to the duty on their part to protect a member of the general public."

The Appellate Division, Second Department affirmed on a 4-1 vote, saying JCAP failed to show that it owed no duty of care to Oddo. "There is no question that [JCAP] had 'an existing relationship' and sufficient authority to control Velentzas's actions." While residents were not "prisoners," it said, residents were not free to leave without permission and an escort; and leaving without permission would result in "the resident's return to the criminal justice system." It said, "No ... evidence was submitted to support [JCAP's] allegations that Velentzas was, in fact, taken into custody.... We make no suggestion that it had any obligation ... to ensure that the police kept Velentzas in custody. We simply observe that ... there is no proof ... that the police ever took Velentzas into 'custody,' thereby extinguishing any further duty on defendant's part."

The dissenter said a drug treatment facility "may discharge its residents at any time for rule violations," and the residents "are not prisoners, and may simply leave the facility at will.... From these two essential facts, it follows as a rule of law and a statement of common sense that these facilities cannot properly be saddled with a duty to protect the general public from a discharged resident on the theory that he may possibly become violent toward some unknown third party.... [E]ven if any such duty existed in law, it would be fulfilled when that resident was turned over to police custody; the facility has neither the right nor the obligation to ensure that the police thereafter prevent the resident's release."

For appellant JCAP: Amy S. Weissman, Manhattan (212) 619-4444
For respondent Oddo: Brian J. Isaac, Manhattan (212) 393-1000

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To be argued Wednesday, January 11, 2017

No. 10 People v Hao Lin

Hao Lin was arrested for driving while intoxicated and related charges in Brooklyn in January 2008. A chemical breath test determined that his blood alcohol content was .25 percent. Prior to trial, the officer who administered the breath test -- with an Intoxilyzer 5000 device -- retired out of state and was not available to testify. In place of the operator, the prosecutor offered the testimony of another police officer who was certified to operate the Intoxilyzer 5000 and who videotaped Lin's breath test. Lin objected to admission of the test results unless he could cross-examine the actual operator. Criminal Court overruled the objection and admitted the results based on testimony by the officer who observed the test. Lin was convicted of two counts of DWI and placed on probation for three years.

The Appellate Term, 2nd, 11th and 13th Judicial Districts reversed and remitted the case for a new trial, holding that an "Intoxilyzer 5000 test result printout is testimonial" under Bullcoming v New Mexico (564 US 647 [2011]) and that the testimony of the officer who observed Lin's breath test was not sufficient to permit admission of the result. "In Bullcoming, the Supreme Court rejected, on Confrontation Clause grounds, a state's attempt to admit a laboratory report via the testimony of 'another [laboratory] analyst who was familiar with the laboratory's testing procedures,' because the witness 'had neither participated in nor observed the test on [defendant's] blood sample,'" the Appellate Term said, noting that the necessary qualifications for a substitute witness "remain unclear." It said the officer who testified was "a certified and experienced Intoxilyzer 5000 operator" who observed the entire test, but the officer "admitted that he had not observed whether the Intoxilyzer 5000 simulator temperature display indicated that the temperature during the test was within a proper range for testing. As such a determination is an essential part of the 13-step operational checklist, and the record does not indicate whether the ... device shuts itself down and will not perform the test if the temperature is outside the specified range, we are unable to agree that [the officer] satisfied the Bullcoming standard for the qualifications of a substitute witness, and conclude that defendant's Confrontation Clause rights were violated."

The prosecution argues that Lin's right of confrontation was not violated because, "in contrast to Bullcoming, the witness who testified about the test had personally observed the administration of the test and the results of the test, and he was subject to cross-examination regarding those firsthand observations.... [A]ny alleged deficiencies in his observations may affect the weight or persuasiveness of his testimony regarding the test results, but do not support the conclusion that defendant's right to confront a witness was violated." The prosecution also argues the test result printout is not testimonial. "Because the printout of the Intoxilyzer test results was generated entirely by a machine and did not contain a statement of any witness, the Confrontation Clause did not place any restrictions on the admissibility of that document."

For appellant: Brooklyn Assistant District Attorney Anthea H. Bruffee (718) 250-2475
For respondent Lin: Denise Fabiano, Manhattan (212) 577-3917

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To be argued Wednesday, January 11, 2017

No. 11 Lend Lease (US) Construction LMB Inc. v Zurich American Insurance Company

Extell West 57th Street LLC and Lend Lease (US) Construction LMB Inc., the owner and construction manager of a project to build a 74-story high rise on West 57th Street in Manhattan, obtained identical builder's risk policies covering the project from Zurich American Insurance Company and four other insurers. After Superstorm Sandy in October 2012 severely damaged a tower crane that was affixed to the building for use in the construction, Extell and Lend Lease submitted a $6.5 million claim for damage to the crane and building. The Insurers disclaimed coverage on the grounds that the tower crane was not "covered property" as defined in the policies and that coverage for the crane was expressly precluded by an exclusion for contractor's machinery and equipment. The policies provide that covered property includes "Temporary Works," which they define as, "All scaffolding (including scaffolding erection costs), formwork, falsework, shoring, fences, and temporary buildings or structures, including office and job site trailers, all incidental to the project...." The policies exclude coverage for "[c]ontractor's tools, machinery, plant and equipment including spare parts and accessories..., and property of a similar nature not destined to become a permanent part of the INSURED PROJECT...." Extell and Lend Lease brought this action to compel coverage by the Insurers.

Supreme Court denied summary judgment to all parties, saying, "Among other issues of fact is whether the Tower Crane was intended to become a permanent part of the Project, which is relevant to the applicability of the Contractor's machinery and equipment exclusion."

The Appellate Division, First Department modified in a 3-2 decision by granting summary judgment to the Insurers and declaring they had no obligation to cover the loss. The majority, finding the policy language unambiguous, said, "The tower crane was integral, not 'incidental to the project,' and therefore does not fall within the definition of Temporary Works" as a temporary structure. The crane "was integral and indispensable, not incidental, to the construction of the 74-story high-rise, which could not have been built without it." Even if the crane could be considered a temporary structure under the definition of covered property, it said, coverage would be precluded by the exclusion for contractor's equipment. "Notably, the tower crane was provided ... pursuant to a contract that characterizes it as 'heavy equipment.' The tower crane is assembled when the project starts, disassembled and completely removed when the project is complete, and then moved to the next job. Thus..., the tower crane is ... contractor's machinery or equipment that is excluded from coverage."

The dissenters argued "the crane is a 'temporary structure' within the meaning of the definition of 'temporary works.'" They said, "[T]he 'temporary works' definition should be construed as comprising all of the items that are specifically mentioned, in addition to any similar, unmentioned temporary structures that are 'incidental to the project'.... [T]he crane was 'incidental' to the project, notwithstanding its critical role in erecting the structure. I accept plaintiffs' definition of the term 'incidental,' meaning appurtenant to something else that is primary, but still necessary to that primary thing." They said the exclusion for contractor's equipment should not be enforced because it is "so broad" it would "render coverage for temporary works illusory" and "unfairly deprive[] plaintiffs of the benefit of their bargain."

For appellant Lend Lease: Matthew J. Lodge, Manhattan (212) 252-0004
For appellant Extell: Richard J. Lambert, Manhattan (212) 688-1900
For respondent Insurers: Philip C. Silverberg, Manhattan (212) 804-4200

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To be argued Wednesday, January 11, 2017

No. 12 People v Fernando Maldonado

Fernando Maldonado had been the first president of the 242 South Second Street Housing Development Fund Corporation (HDFC) when New York City converted his Brooklyn apartment building to a low-income cooperative and sold it to its tenants in 1985, but he was no longer a resident of the building in 2007, when he began holding himself out as the building's owner and president of the HDFC. He put up posters to that effect and sent letters to residents promising improvements and telling them to contact him about building management issues. He showed the building to prospective buyers, although it was not for sale, and he put his name on the building's water service account, which building managers switched back to HDFC's name the next day. After HDFC obtained a Department of Buildings (DOB) permit to perform roof repairs, Maldonado sent the agency a letter asserting he had not authorized the work and DOB issued a stop-work order, which was lifted 10 months later. In 2008, Maldonado executed and filed with the City Register a quitclaim deed that purported to transfer ownership of the building from HDFC to himself and HDFC. He also applied for a construction loan secured by a mortgage on the building. The lender ultimately rejected his loan application.

Maldonado was convicted of first-degree grand larceny by false pretenses and possession of a forged instrument, based on his execution and filing of a deed to the building; and attempted first-degree grand larceny, based on his pursuit of a loan secured by a mortgage on the building. He was sentenced to concurrent terms of three to nine years in prison on the larceny counts. The Appellate Division, Second Department affirmed.

Maldonado says his grand larceny conviction must be reversed because he never exercised "dominion and control over the building" and "the owners did not transfer the property, or any funds relating to the property, to Mr. Maldonado or another in reliance on any of his misrepresentations -- a necessary element of larceny by false pretenses." He says his "efforts to convince the residents that he was its 'owner' were ignored and his vexatious actions were countered at every step by the Board. He never gained a legal interest in the building because the document he filed, a homemade 'quitclaim' deed..., was void ab initio and conveyed nothing.... [T]he mere appearance of a transfer is not sufficient under the larceny statute to constitute a completed crime." He argues for reversal on the forgery count because "when a person signs his own name there has been no forgery;"and on the attempted grand larceny count because the lender "was never 'dangerously close' to issuing an actual loan and thus Mr. Maldonado was never 'dangerously close' to receiving any money."

The prosecution argues Maldonado's claims are unpreserved and, in any case, meritless. "[L]arceny is committed even where only a purported transfer of property occurs...," it says. Even though "a forged deed is void ab initio," Maldonado committed grand larceny "because, by filing the forged deed with the City Register, defendant unlawfully brought about through false pretenses a purported transfer of the ownership of the property, or of a legal interest therein, to himself."

For appellant Maldonado: Louis O'Neill, Manhattan (212) 819-8200
For respondent: Brooklyn Assistant District Attorney Solomon Neubort (718) 250-2514

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To be argued Thursday, January 12, 2017

No. 13 People v William Flanagan *(papers sealed)*

William Flanagan was convicted of three misdemeanor charges -- two counts of official misconduct, one alleging malfeasance and the other nonfeasance, and sixth-degree conspiracy -- for allegedly joining with other supervising officers of the Nassau County Police Department to prevent the arrest of a 17-year-old high school student in 2009, when Flanagan was a deputy police commissioner. The student's school, John F. Kennedy High School in Bellmore, accused him of stealing electronic equipment worth more than $10,000 and it sought his arrest. The student's father, who was a friend of Flanagan and a benefactor of the police department, sought the officers' assistance in returning the stolen property in hopes it would induce the school to drop the charges. The student was not arrested until 2011, after The Long Island Press published an article about the matter. Flanagan was convicted at trial and two other police officials entered guilty pleas. The Appellate Division, Second Department affirmed Flanagan's conviction.

Flanagan's official misconduct conviction for malfeasance, under Penal Law § 195.00(1), requires proof he committed "an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized." Flanagan argues that his actions were not criminal because he was authorized to return the stolen equipment to the school at the school's request. The prosecution argues his actions were unauthorized because he arranged to return the stolen property "for a corrupt purpose: to avert [the student's] arrest and thus benefit [his] influential father -- not for the legitimate purpose of assisting JFK high school." Flanagan responds that the statute "does not permit conviction for an 'authorized' act committed for an illegitimate purpose" and, "in any event, the People failed to prove the existence of any nexus between the return of the property and the police's ability to arrest" the student.

The nonfeasance charge under Penal Law § 195.00(2) requires proof that Flanagan "knowingly refrain[ed] from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office." The prosecution argues that his failure to arrest the student despite having probable cause and a victim willing to press charges "was an abuse of discretion that rose to the level of corruption." The Police Department Manual leaves decisions on whether or not to make an arrest to the "reasonable discretion and sound judgment" of officers, according to Flanagan, and he argues, "The failure to perform a discretionary duty cannot form the basis for criminal liability" for nonfeasance under the statute.

Flanagan also argues the trial court improperly admitted hearsay statements made by his alleged co-conspirators before and after his own involvement. The "agency-based co-conspirator exception to the hearsay rule logically precludes the admissibility of such statements; for under the rules of agency, one cannot speak as the agent of, and bind, another before the agency relationship begins or after it is terminated." The prosecution argues the statements are admissible based on "the notion that upon entry into a conspiracy, a conspirator adopts his coconspirators' pre-existing verbal acts that 'enhance the enterprise of which he is taking advantage.'"

For appellant Flanagan: Donna Aldea, Garden City (516) 745-1500
For respondent: Nassau County Assistant District Attorney Yael V. Levy (516) 571-3800

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To be argued Thursday, January 12, 2017

No. 14 People v Michael Pena *(papers sealed)*

Michael Pena was a New York City police officer in August 2011, when he sexually assaulted a 25-year-old school teacher at gunpoint in upper Manhattan. Pena approached the woman, whom he had never met, on a street corner as she was going to her first day of work at an elementary school at about 6 a.m. He showed her his service weapon and dragged her into a courtyard, where he committed three criminal sexual acts while holding the gun to her head.

Pena was convicted at trial of three counts of predatory sexual assault and three counts of criminal sexual act in the first degree. A defendant is guilty of predatory sexual assault under Penal Law § 130.95(1) when he commits the crime of first-degree criminal sexual act and, during the commission of that crime, "[u]ses or threatens the immediate use of a dangerous instrument." Supreme Court sentenced him to the maximum term of 25 years to life on each count of predatory sexual assault and ordered the sentences to run consecutively, resulting in an aggregate prison term of 75 years to life.

The Appellate Division, First Department affirmed, saying Pena failed to preserve his claim that the aggregate sentence was unconstitutionally excessive. It also held that consecutive sentences were lawfully imposed. "Although defendant's convictions on three counts of predatory sexual assault involved a single transaction and shared the dangerous instrument element, consecutive sentences were permissible because the three criminal sexual acts were separate and distinct...," it said.

Pena acknowledges that his crime was "extremely serious," but he argues his aggregate sentence "is grossly disproportionate" and violates the prohibitions against cruel and unusual punishments in the federal and New York State constitutions. His sentence of 75 years to life is "the equivalent of 3 murder terms for a first-time offense that ... did not result in any physical impairment to the victim.... [H]e did not beat or even strike his victim, who thankfully did not even require inpatient hospitalization...," he says. "Even-handed justice has clearly not been accomplished when both the most-recent Federal and New York State statistical studies ... show without question ... that the average sentence for rape crimes -- including those committed in a brutal manner, those committed by serial rapists, and those committed on child victims -- is 12-years imprisonment...." He says his 75-year minimum term "is a full 50 years longer than the average minimum sentence imposed for murder in our state."

The prosecution says Pena's constitutional claims are unpreserved and, in any event, his "aggregate sentence is plainly constitutional." The consecutive terms imposed "fit within the statutory range proscribed by the Legislature. Thus, as this Court has consistently held, those sentences are afforded a strong presumption of constitutionality." It says Pena "repeatedly lumps together his separate and distinct acts of sexual assault to suggest that he should be punished as if he committed a 'single offense' or 'crime.' However, the logical result of defendant's assertion ... is that a sexual predator commits only one crime no matter how many times and ways he violates his victim," which "clearly violates common sense and New York law."

For appellant Pena: Ephraim Savitt, Manhattan (917) 885-5753
For respondent: Manhattan Assistant District Attorney Joshua L. Haber (212) 335-9000

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To be argued Thursday, January 12, 2017

No. 15 People v Kevin Fisher

Kevin Fisher and Clovis Roche were jointly indicted after a fatal altercation with four other men in Roche's Manhattan apartment in January 2009. The other men, led by Rodney Lewis, had come to reclaim a television set and Roche resisted. During the ensuing struggle, Roche fatally shot Lewis. Fisher then took the gun from Roche and they fled the apartment. The gun was never recovered. Roche was charged with second-degree murder, a class A felony. Fisher was charged with hindering prosecution in the first degree under Penal Law § 205.65, which provides that a defendant is guilty "when he renders criminal assistance to a person who has committed a class A felony, knowing or believing that such person has engaged in conduct constituting a class A felony."

On the eve of their joint trial, Fisher pled guilty to hindering prosecution in the second degree in return for a promised sentence of one and a half to three years in prison. Roche proceeded to trial and the jury acquitted him of all felony charges, convicting him only of a misdemeanor weapon possession charge. Prior to Fisher's sentencing for hindering prosecution, he moved to withdraw his guilty plea on the ground that Roche's acquittal rendered him innocent.

Supreme Court denied the motion, rejecting Fisher's claim that the People should be collaterally estopped from prosecuting him by the acquittal of Roche. "If [Fisher] had not pleaded guilty already, the People would not be barred by collateral estoppel from trying him for hindering prosecution of Roche's murder even though Roche was acquitted of that same murder...," it said. "[A] defendant whose own interests were not put directly in issue at a prior trial ... 'may not utilize the doctrine of "collateral estoppel" as a bar to his own prosecution.'"

The Appellate Division, First Department affirmed saying "a person may validly plead guilty to hindering prosecution in the first degree without knowing whether or not the assisted person will be convicted of the underlying felony at the subsequent trial. Indeed, as the Court of Appeals has noted, the hindering prosecution statute does not require proof that the assisted person was ever arrested or convicted of the underlying felony (see People v Chico, 90 NY2d 585, 588 [1997])."

Fisher argues he should have been allowed to withdraw his guilty plea after Roche, "whose guilt was an element of [his own] offense, was acquitted at trial," rendering Fisher "actually innocent of hindering prosecution." While the Court of Appeals said in Chico "that proving a defendant's guilt of hindering prosecution 'does not require proof that the assisted person was ever arrested or convicted'..., it has never suggested that an individual may be convicted of hindering prosecution notwithstanding the *trial and acquittal* of the assisted person. Such as unfair result was neither addressed in, nor dictated by, Chico." He says collateral estoppel barred further prosecution of him once Roche was acquitted. "Roche's trial afforded the prosecution 'a full and fair opportunity to litigate the precise issue involved' in the prosecution of Fisher for hindering prosecution -- whether Roche committed a felony, specifically second-degree murder -- when he shot Lewis.... [T]he jury's verdict of acquittal ... meant that the jurors made a factual determination that Roche did not commit a crime when he shot Lewis."

For appellant Fisher: Matthew A. Wasserman, Manhattan (212) 402-4146
For respondent: Manhattan Assistant District Attorney Luis Morales (212) 335-9000