

# *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 Tuesday, September 3, 2013

## **No. 141 People v Scott F. Doll**

In February 2009, a Genesee County sheriff's deputy approached Scott Doll shortly before 9 p.m. in the Town of Pembroke because he fit the description of a suspicious person reported by a 911 caller. Doll was carrying a car jack and lug wrench and he had what appeared to be wet blood on the legs of his pants, his shoes and hands. He told the deputy he had worn the clothing while butchering deer. After the 911 caller and another witness identified Doll as the suspicious person they had seen hiding between parked cars, the deputy handcuffed Doll and said he would detain him until he could sort out what had happened. The deputy drove Doll to his van and found blood inside and outside the vehicle and on the ground beside it. Other deputies arrived and they interrogated Doll for several hours without Miranda warnings and despite his request for counsel, repeatedly asking if someone was injured and indicating they would release him if he could show them the deer. Doll replied that he could not take them to a deer nor explain the source of the blood. At about 1:30 a.m., deputies went to the nearby home of Doll's friend and business partner, Joseph Benaquist, and found him in his driveway, beaten to death. Doll was then formally arrested. Deputies later allowed a friend to speak with him at the Sheriff's Office, in the presence of an investigator, and Doll made additional incriminating statements.

County Court denied Doll's motion to suppress his statements to the deputies based on the emergency exception to Miranda adopted in People v Krom (61 NY2d 187), saying the deputies "had reasonable grounds to believe that there was an emergency at hand and an immediate need to intervene for the protection of life which justified the continued detention and questioning of the defendant without counsel or Miranda warnings." The court ruled Doll's statements to his friend were admissible because she was not acting as an agent of the police. Doll was convicted of second-degree murder and sentenced to 15 years to life in prison.

The Appellate Division, Fourth Department affirmed on a 3-2 vote, saying, "The deputies possessed specific information establishing that one or more persons had been injured to the point where he, she or they had lost a significant amount of blood. Consequently, the deputies did not violate defendant's right to counsel by continuing to question him despite his request for an attorney. We respectfully disagree with the dissent's conclusion that the exception does not apply because the deputies lacked knowledge that there was a victim... The deputies did not know the name of the victim or victims, but they possessed enough information about his/her/their condition to justify the continued questioning of defendant despite his request for an attorney."

The dissenters argued the exception did not apply because "the police in this case were not aware that there was even a victim who needed police assistance." While the deputies "did not need to know the victim's identity..., they at least had to know that there was a victim of a crime. The majority relies on the fact that the defendant had blood on his clothes to support the inference that there was a victim somewhere, but defendant explained that the blood on his clothes was from butchering deer, which is certainly a reasonable explanation. To allow the police to disregard a person's invocation of the right to counsel based on the mere fact that the person has blood on his or her clothing is an unwarranted expansion of the emergency exception."

For appellant Doll: Timothy M. Murphy, Buffalo (716) 849-1333

For respondent: Genesee County Assistant District Attorney William G. Zickl (585) 344-2550

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## **No. 142 Landon v Kroll Laboratory Specialists, Inc.**

Eric Landon was serving a five-year term of probation for a forgery conviction in Orange County when his probation officer ordered him to submit to a random drug test in December 2007. His sample was sent to Kroll Laboratory Specialists, Inc., a Louisiana company that had a contract with the County Probation Department to perform drug screening of probationers. On the same day his sample was taken, Landon obtained an independent blood test that found no drugs were present, but Kroll informed the county that the sample it analyzed was positive for marijuana. Based on Kroll's report, the Probation Department filed a petition to revoke Landon's probation. At the revocation hearing, Landon presented the results of his independent blood test and submitted to a new urine test, which was also negative for drugs. The department finally withdrew its petition in March 2008, nearly three months after his probationary sentence was to have ended. Landon filed this negligence action against Kroll, alleging that the laboratory failed to exercise reasonable care in analyzing his sample and that, as a result of its false positive report, his sentence was extended for months beyond its original term.

Kroll moved to dismiss the complaint for failure to state a cause of action, arguing that Landon could not show that Kroll owed him any legal duty or that he suffered any damages. Supreme Court dismissed the suit.

The Appellate Division, Second Department reversed and reinstated the complaint, holding that "a drug testing laboratory may be held liable in tort to the subject of a drug test for failing to use reasonable care under the circumstances, notwithstanding the absence of a formal contractual relationship between the drug testing laboratory and the subject of the drug test." It said a positive drug test "may have far-reaching, permanent, and devastating effects on, among other things, an individual's livelihood, family life, and liberty.... Given the importance drug testing holds in the management of modern affairs and the costs that inaccuracies may exact on society, it is paramount that incentives exist to minimize the risk of erroneous test results. However, we are unaware of any legislative remedies extended to test-subjects who are victims of negligent drug testing.... Nor do we perceive adequate incentives in the operation of market forces." Since more accurate testing is more expensive, the court said, "the test subject's preference for increased accuracy may be outweighed by the contracting parties' cost concerns."

Kroll argues that "no court in New York has ever recognized a 'duty' and, thus, a negligence claim ... between a non-contracting testing laboratory and a third-party test subject. No court, in any jurisdiction, has ever recognized the right of an individual, in the criminal justice system, to recover 'loss-of-freedom damages,' under a negligence theory, against a private drug testing laboratory under contract with a governmental agency, as a result of drug test results (negligently obtained or otherwise), and reported to that agency as part of the terms and conditions of probation." Kroll says "there was no relationship, actual or legal, between [Landon] and Kroll, and, therefore, no duty owed him by Kroll;" and Landon suffered no harm since he was "afforded his due process rights resulting in the full and complete dismissal of the probation violation charges brought against him." It says, "Given the number of persons tested (estimated to be 54 million), and in all walks of life, it would be hard to overstate the impact the Appellate [Division] decision, if it stands, will have on future litigation in the State."

For appellant Kroll: Mitchel H. Ochs, Manhattan (212) 344-3600

For respondent Landon: Robert N. Isseks, Middletown (845) 344-4322

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## **No. 143 People v James Alcide**

James Alcide was charged with fatally shooting Steven St. Jean in a Brooklyn grocery store in February 2005. At his trial, the jury sent two notes during its deliberations requesting that the testimony of two prosecution witnesses be read back. One witness was a police officer and the other an eyewitness who identified Alcide as the shooter. Supreme Court brought the jury into the courtroom, read the notes into the record and announced that it would participate in the read-back. For the direct examination, the judge read the prosecutor's questions to each witness and the court reporter read the witnesses' answers. They switched roles for the cross-examination, with the court reporter reading defense counsel's questions and the judge reading the witnesses' responses. Defense counsel did not object that he was not given notice or an opportunity to be heard on the proper response to the notes, nor did he object to the judge's participation in the read-back. Alcide was convicted of second-degree murder and weapon possession and was sentenced to 18 years to life.

The Appellate Division, Second Department affirmed, saying Alcide's claim that Supreme Court's procedure for handling the jury notes violated People v O'Rama (78 NY2d 270) was unpreserved for appellate review. "Since the jury merely requested read-backs of certain trial testimony, the alleged error did not constitute a mode of proceedings error which would obviate the preservation requirement," the court said, citing People v Starling (85 NY2d 509). "The defendant's contention regarding the Supreme Court's participation in reading back certain trial testimony is also unpreserved for appellate review...."

Alcide argues, "By personally participating in the readbacks, and especially by doing so in an uneven manner, the trial judge failed to properly execute his supervisory role and to remain a neutral arbiter during deliberations, thereby depriving appellant of his due process rights to a fair trial and a trial by jury.... Because the right to a trial by jury is a fundamental right affecting the organization of the court and established mode of proceedings, no objection was required to preserve this issue for this Court's review." Regarding the trial court's handling of the jury notes, Alcide argues that "the court's surprise adoption of a novel and unfair readback procedure, revealed for the first time in front of the jury, constituted a mode of proceedings error, not requiring preservation."

For appellant Alcide: Melissa S. Horlick, Manhattan (212) 693-0085

For respondent: Brooklyn Assistant District Attorney Keith Dolan (718) 250-2485

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## **No. 144 People v Eddie Thompson, Jr.**

Eddie Thompson, Jr. was charged with murder after shooting his girlfriend, Frances Johnson, twice at close range at her home in Milton, Ulster County, in October 2008. Thompson testified that he shot Johnson accidentally while helping her unload her handgun. During jury selection, a prospective juror informed Supreme Court that he had been a friend of the District Attorney for more than 40 years. The District Attorney agreed to excuse the juror, but the court asked whether the friendship would affect the juror's ability to be fair and impartial, and the juror replied "no." Defense counsel then questioned the juror and, when the court denied his challenge for cause, defense counsel declined to use a peremptory challenge to remove the juror. After the juror was seated, defense counsel said on the record, "I have [the prosecutor's] best friend on the jury. I should have my head examined." Thompson was acquitted of second-degree murder, but convicted of first-degree manslaughter. He was sentenced to 25 years in prison.

The Appellate Division, Third Department affirmed. It said Thompson "waived any argument regarding his unsuccessful challenge for cause to one juror [the District Attorney's friend] by thereafter declining to use an available peremptory challenge to remove that juror.... In contrast, his arguments regarding a prospective juror who lived in the same town as the District Attorney [and was struck with a peremptory challenge] are properly before us. Nevertheless, the juror's 'nodding acquaintance' with the District Attorney amounted to occasional encounters at social events that were not likely to preclude the prospective juror from reaching an impartial verdict...."

Thompson argues the trial court committed reversible error by denying his challenges for cause to both jurors, and he argues that his attorney's failure to use a peremptory challenge to strike the District Attorney's friend from the jury constituted ineffective assistance of counsel. Thompson says his trial attorney -- in remarking that "I should have my head examined" -- "may well have recognized that by not making a peremptory challenge to the seating of [that juror] he had made a major error. This impromptu statement of defense counsel demonstrates that the failure to exercise a peremptory challenge was not part of a legitimate trial strategy." He also argues, among other things, that the trial court erred in refusing to order disclosure of the grand jury testimony of the prosecution's ballistics expert and that there was legally insufficient evidence to support the verdict.

For appellant Thompson: Jack H. Weiner, Chatham (518) 392-2426

For respondent: Ulster County Assistant District Attorney Joan Gudesblatt Lamb (845) 340-3280