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 Wednesday, October 21, 2015

No. 171 People v Daniel Israel

Daniel Israel was arrested for murder and assault in June 2007 when he reacted to a brawl in the middle of Fifth Avenue in Harlem -- a fight in which his friend was being chased -- by firing a handgun point-blank into the melee. Warren Dandridge was killed and two other men wounded. Israel also fired repeatedly at two uniformed police officers who witnessed the shooting. The officers returned fire and wounded Israel.

At trial, Israel raised a defense of extreme emotional disturbance based, in part, on a claim that he suffered from post-traumatic stress disorder (PTSD) after he was stabbed during a street fight in October 2005. He presented the testimony of a psychiatric expert, who opined that Israel suffered from PTSD and the sight of his friend being threatened in the midst of the brawl caused him "to relive his own stabbing back in 2005, looking for his friend ... in the middle of this crowd, fearing for [his] safety." As for the shots he fired at the police, the expert said Israel was not "rational" and "was on automatic pilot at that point because of the PTSD." A long-time friend testified that Israel had been "loving, caring, gentle, charismatic, driven" before the stabbing, but afterward started drinking heavily and became "aggressive," though not "violent."

In rebuttal, the prosecutor presented a psychiatric expert who agreed Israel suffered from PTSD, but said PTSD did not cause "any significant impairment [of] his behavior" at the time of the shootings. The court also allowed the prosecutor to present evidence of two uncharged crimes. A police officer testified that in May 2005, five months before Israel was stabbed, he saw Israel punch a fast food worker in the face, but the officer did not see or hear anything leading up to the altercation. A correction officer testified he saw Israel, as he was awaiting trial in this case at Rikers Island in August 2010, pull a phone off the wall and smash it on the floor, but did not see what triggered the incident. When the officer asked why, he said, Israel responded, "Because I felt like it," then threatened him. Israel was convicted of second-degree murder, first-degree attempted murder and related charges, and was sentenced to 35 years to life.

The Appellate Division, First Department affirmed, saying evidence of the phone incident at Rikers was properly admitted. "Evidence that [Israel] destroyed an inmate telephone because he 'felt like it' was relevant to rebut the evidence he presented that he was a calm, nonviolent person, and that the charged crimes were the product of extreme emotional distress triggered by his [PTSD]. Defendant's statements to the testifying Correction Officer provided sufficient context to establish the relevance of this evidence, which was more probative than prejudicial," it said, citing People v Santarelli (49 NY2d 241) and People v Cass (18 NY3d 553). It said Israel "did not preserve his similar challenge to evidence of another uncharged crime."

Israel says neither of the officers who gave rebuttal testimony "had first-hand knowledge that appellant had acted without provocation ... and thus, their testimony was without context. Consequently, neither witness served to rebut appellant's [emotional distress] defense or to support the prosecutor's alternate theory that appellant was a hothead who acted violently without provocation." He argues the evidence of uncharged crimes was "utterly devoid of a 'natural tendency to disprove appellant's claims' of extreme emotional distress," as required by Santarelli.

For appellant Israel: Jan Hoth, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney Deborah L. Morse (212) 335-9000

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To be argued Wednesday, October 21, 2015

No. 172 Matter of Echevarria v Wambua

The five-member Andermanis family and the five-member Echevarria family were shareholders in a Mitchell-Lama cooperative building in Manhattan and each resided in a two-bedroom apartment. The Echevarrias were second on an internal waiting list for the next available three-bedroom unit and the Andermanises were listed third. When the Andermanises learned in December 2011 that a four-bedroom unit was vacant, they asked the building owner, East Midtown Plaza Holding Company, if the New York City Department of Housing Preservation and Development (HPD) would waive its occupancy requirement and approve their transfer to the larger apartment. HPD rules reserve four-bedroom apartments for families of six or more members, but there were no families that large living in the building at the time. East Midtown approached HPD, which waived its occupancy requirement and awarded the four-bedroom unit to the Andermanis family in April 2012.

In July 2012, Alicia Echevarria brought this article 78 proceeding against HPD's commissioner, East Midtown and the Andermanises, contending that HPD acted in violation of her rights and its own rules, which require that apartments be awarded in chronological order to eligible residents on a waiting list. East Midtown and the Andermanis family moved to dismiss the suit on the ground that Echevarria lacked standing to challenge HPD's determination because she was not first on the waiting list and would not have been entitled to the disputed apartment. HPD cross-moved for a remand to permit it to rescind its transfer to the Andermanises and to process the transfer in accordance with its rules, including the creation of an external waiting list for eligible applicants.

Supreme Court ruled Echevarria had standing. "Even if she was not at the top of the list, petitioner is harmed when another tenant family is jumped to the front of the line ... because it delays her eventual ascension to the top of the list. For standing purposes, it is sufficient that the award of apartment 6D was given to an applicant outside of the chronological order set forth in HPD rules...." It granted Echevarria's petition to the extent of remanding the matter to HPD.

The Appellate Division, First Department reversed and dismissed the suit for lack of standing, based in part on HPD's intention to conduct an external search for applicants meeting the six-person occupancy requirement for the apartment. It said Echevarria "remains ineligible for the four-bedroom apartment and cannot show that she has suffered an injury that is personal and distinct from that of the general public, or that she has an actual legal stake in the outcome of this proceeding."

While this appeal was pending, the Andermanis family moved out of the four-bedroom apartment and the Echevarria family moved into a three-bedroom apartment at East Midtown Plaza. HPD, East Midtown and the Andermanises argue the appeal should be dismissed as moot. Echevarria argues the matter is not moot and, in any case, the exception to mootness should be invoked. She also argues she has standing to pursue the suit.

For appellant Echevarria: Kevin J. Smith, Manhattan (212) 634-3052
For respondent NYC HPD: Assistant Corporation Counsel Karen M. Griffin (212) 356-0845
For respondent East Midtown: Robert J. Bergson, Manhattan (212) 201-1170
For respondent Andermanises: Jeffrey R. Metz, Manhattan (212) 825-0365

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To be argued Wednesday, October 21, 2015

No. 173 Matter of Estate of Fizzinoglia

After her estranged husband, Anthony Fizzinoglia, died without a will in September 2009, Josephine Paradiso Fizzinoglia brought this SCPA 1001 proceeding to obtain letters of administration for his estate and to invalidate a prenuptial agreement in which she waived her right to elect an intestate share of his estate. Her husband's father, Frank Fizzinoglia, objected on the ground that the prenuptial agreement disqualified her as a distributee of the estate. The estate included half-ownership of a gas station and garage her husband owned with his father, where he worked as a mechanic, and more than $300,000 in cash found in his bedroom.

At a non-jury trial in Putnam County Surrogate's Court, Josephine Fizzinoglia testified that, about nine days before their wedding in August 2005, her husband called to ask her to come to the garage to sign some paperwork. Her husband, his father and an accountant were present when she arrived, she said, and she was handed a seven-page prenuptial agreement that she had never seen, although Frank Fizzinoglia's attorney had drafted it six months earlier. She looked it over quickly, then executed two copies notarized by the accountant. The meeting took no more than five minutes. Her husband had never disclosed his financial circumstances to her, she said. Although the agreement said each party "has separate property, the nature and extent of which is fully disclosed in the statements annexed hereto," and required them to attach a "statement of assets and liabilities," no such statements were attached. She argued the prenuptial agreement was invalid because the omission of the financial statements rendered it incomplete, because she was given no opportunity to review the agreement or consult an attorney before signing it, and because her husband was financially superior to her at the time it was signed.

Surrogate's Court granted Frank Fizzinoglia's motion to dismiss her petition for letters of administration, finding that Josephine Fizzinoglia "has not met her burden of proof to establish that the prenuptial agreement is invalid or unenforceable."

The Appellate Division, Second Department affirmed. Although the financial statements mentioned in the agreement were not attached, it said, "'[a] failure to disclose financial matters, by itself, is not sufficient to vitiate a prenuptial agreement'...." Regarding the claim of overreaching, Josephine Fizzinoglia "failed to establish any fact-based particularized inequality with the decedent so as to shift the burden to the objectant to disprove fraud or overreaching," the court said, citing Matter of Greiff (92 NY2d 341).

Josephine Fizzinoglia argues that the failure of the parties to attach financial disclosure statements, "expressly required" by the language of the agreement, renders it invalid due to the "omission of material and essential terms." She also argues that she "satisfied her preliminary burden under Greiff, shifting the burden of persuasion to respondents to disprove fraud or overreaching." She says the Appellate Division "failed to address [her] lack of counsel and the coercive environment where she was confronted with and asked to sign the prenuptial agreement," as contemplated by Greiff.

For appellant Josephine Paradiso Fizzinoglia: Sondra M. Miller, White Plains (914) 946-3700
For respondent Frank Fizzinoglia: Robert C. Lusardi, Carmel (845) 225-8404

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To be argued Wednesday, October 21, 2015

No. 174 People v Julio Negron

Julio Negron was charged with shooting Mervin Fevrier in the leg with a .45-caliber handgun during a traffic dispute near Negron's apartment house on Woodward Avenue in Queens in 2005. Several eyewitnesses identified Negron's car as the one driven by the shooter and his apartment building as the one the shooter entered after the incident, but only Fevrier identified Negron as the shooter at trial. When the police arrived the next day to arrest Negron and search his apartment, a man living in the same building, Fernando Caban, fled from his own apartment with a cache of weapons and ammunition and discarded them on the roof of a neighboring building. Caban was arrested on weapon possession charges. Prior to trial, the prosecution disclosed that Caban had been arrested, that one of his weapons was a .45-caliber handgun, and that testing showed it was not used in the shooting.

A trial, Negron's attorney sought to introduce evidence in support of the theory that Caban was the shooter, arguing they were similar in appearance, lived in the same three-floor building, and Cabran was arrested for weapon possession the day after the shooting. Supreme Court denied the motion, saying the defense had not established a "clear link" between Caban and the shooting. Although the "clear link" test has been rejected in New York, defense counsel raised no objection. Negron was convicted of second-degree attempted murder, first-degree assault and related charges and was sentenced to 12 years in prison.

After his conviction was affirmed on appeal, Negron filed this CPL 440.10 motion to vacate the judgment, arguing the prosecution violated is obligations under Brady v Maryland (373 US 83) by failing to disclose evidence of Caban's "guilty behavior" in fleeing with his weapons cache or that the cache included .45-caliber ammunition. He also argued that he received ineffective assistance of counsel when his attorney failed to raise the correct standard for admission of evidence of third-party culpability, among other things. Supreme Court denied the motion without a hearing.

The Appellate Division, Second Department affirmed, rejecting Negron's ineffective assistance claim without mentioning the "clear link" test. The evidence of Caban's culpability "was of slight, remote, or conjectural significance, and was not sufficiently probative to outweigh the countervailing risks of trial delay, undue prejudice, confusing the issues, or misleading the jury," it said, citing People v Primo (96 NY2d 351). Since the trial court "properly denied" his motion to admit the evidence, "defense counsel cannot be considered to have rendered ineffective assistance of counsel by failing to object to the denial of that motion." It said there was no Brady violation because "the undisclosed material was not exculpatory.... Caban's flight and attempt to discard weapons and other contraband ... upon the arrival of the police showed only consciousness of guilt as to the possession of illegal guns...." It said "there was no ballistics evidence conclusively linking the shell casings recovered from the crime scene to the .45-caliber ammunition found in Caban's cache, or to any weapons found in the cache."

For appellant Negron: Joel B. Rudin, Manhattan (212) 752-7600
For respondent: Queens Assistant District Attorney Laura T. Ross (718) 286-7033