State of New York
Court of Appeals

To be argued Thursday, April 26, 2018 (arguments begin at noon)

No. 62 People v Natascha Tiger

Natascha Tiger, a licensed practical nurse, was working as a home care nurse for the severely disabled 10-year-old daughter of an Orange County family in November 2011, when she was charged with scalding the girl with extremely hot water while bathing her. In 2012, she pled guilty to endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person, in the first degree (Penal Law § 260.34[2]), and was sentenced to four months in jail. She did not pursue a direct appeal of the conviction. The girl's parents filed a personal injury action against Tiger and, in 2014, the civil jury returned a verdict finding that Tiger had not caused the girl's injuries. Nine days before that verdict, Tiger filed this CPL 440.10 motion to vacate her conviction on the ground that she was actually innocent of the crime. Among other evidence, she submitted an expert report by a physician, who said the child's injuries were not thermal burns but were the result of an adverse reaction to medication. The expert opined that the injuries were caused by toxic epidermal necrolysis (TEN), a reaction to the antibiotic Biaxin that the girl's pediatrician had prescribed to treat pneumonia a week before the incident. This diagnosis was supported by a skin biopsy report from the hospital that treated the girl.

Supreme Court denied her motion without a hearing, saying, "Assuming, arguendo, that a claim of actual innocence may be raised to vacate a conviction based upon a plea of guilty rather than a verdict after trial, the court finds that defendant has not made a clear and convincing showing to warrant such relief.... The fact that defendant's expert and a civil jury found that the defendant's acts were not the proximate cause of the child's injuries do not rise to the level of establishing, by clear and convincing evidence, that defendant is not guilty of the crime to which she pled guilty."

The Appellate Division, Second Department reversed and remitted for a hearing. All four departments of the Appellate Division have held that a claim of actual innocence is legally cognizable under CPL 440.10(1)(h), but have split on whether such relief is foreclosed by a guilty plea. The Second Department ruled the statute is not limited to convictions after trial. "As we stated in [People v Hamilton (115 AD3d 12), the conviction of an actually innocent person 'violates elementary fairness [and] runs afoul of the Due Process Clause of the New York Constitution'.... Thus, such a conviction implicates a right of constitutional dimension that goes to the heart of the criminal justice process, and is not forfeited by a plea of guilty." It also said Tiger had made a prima facie showing of actual innocence and was therefore entitled to a hearing, at which she would have to prove her innocence by clear and convincing evidence.

The prosecution argues the statute does not encompass claims of actual innocence. "CPL 440.10's provisions do not expressly provide for vacatur on the basis of actual innocence.... Neither Hamilton nor Tiger cites to any authority that supports the notion that the Legislature contemplated a stand-alone claim of actual innocence when it enacted the modern CPL 440.10 statute...." Even if it does recognize actual innocence as a ground to vacate a trial conviction, the prosecution says Tiger's guilty plea bars her claim unless she can show the plea was involuntary.

For appellant: Orange County Assistant District Attorney Robert H. Middlemiss (845) 291-2050
For respondent Tiger: John Ingrassia, Newburgh (845) 566-5345

State of New York
Court of Appeals

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

To be argued Thursday, April 26, 2018 (arguments begin at noon)

No. 63 People v Gary Thibodeau

In 1994, 18-year-old Heidi Allen disappeared from an Oswego County convenience store where she was working alone. She has not been found and is presumed dead. Gary Thibodeau and his brother, Richard, were charged with first-degree kidnapping, and prosecutors presented evidence that they abducted Allen in Richard's van. Gary Thibodeau was convicted in 1995 and sentenced to 25 years to life. His brother was acquitted in a separate trial.

In 2014, Thibodeau filed a 440.10 motion to vacate his conviction based on newly discovered evidence and on an alleged Brady violation by prosecutors in failing to disclose evidence that the victim had been a confidential informant (CI) for the police. The new evidence included a sworn statement that Tonya Priest gave to police in 2013 alleging that James Steen told her in 2006 that he, Roger Breckenridge and Michael Bohrer abducted the victim in a van, took her to Breckenridge's house, then killed her and disposed of her body at a nearby cabin. She said Steen also told her Jennifer Wescott was present when they brought the victim to the house. Priest then recorded a phone call in which Wescott seemed to confirm that Steen, Breckenridge and Bohrer brought the victim to the house in a van, but she also made somewhat contradictory statements. When the police interviewed her a few days later, Wescott said she had lied to Priest and she had no relevant information about the case. Other evidence of third-party admissions included testimony by Amanda Braley that Steen told her "I will never see a day in prison for what we did to Heidi;" and testimony by Christopher Combes that Breckenridge told him how the three men disposed of the victim's body. Regarding the Brady claim, Thibodeau's trial counsel testified that he had not seen any of the documents concerning the victim's work as a CI for the police, which he could have used to show that others had a motive to harm the victim. The trial prosecutor testified that all of the CI information was disclosed to the defense prior to trial. County Court denied the 440.10 motion.

The Appellate Division, Fourth Department affirmed, splitting only on the newly discovered evidence issue in a 3-1 vote. The court said that "all of the alleged third-party admissions were hearsay not within any of the exceptions to the hearsay rule and were therefore inadmissible." The exception for declarations against penal interest "is inapplicable. Several of the alleged admissions did not contain enough incriminating detail to show that the declarant was knowingly speaking against his or her penal interest.... More significantly, defendant failed to establish that the alleged admissions were reliable," since "there was no evidence independent of the alleged admissions that tended to link Steen, Breckenridge, or Bohrer to the crime" and "many of them were inconsistent with each other." As for the Brady claim, it said, "The conflicting testimony of defendant's trial counsel and the trial prosecutor ... presented an issue of credibility that [County Court] was entitled to resolve in favor of the People."

The dissenter argued that "the statements of at least Priest, Braley, and Combes would be admissible at trial" and would probably have changed the result. "These statements were against Steen's and Breckenridge's penal interests inasmuch as they admitted abducting and killing Heidi," and since they were not friends of Thibodeau, they "had no reason to exonerate him or implicate themselves.... Finally, I believe a new trial should be granted based simply on the totality of the new evidence.... This is not a case where there was just one off-hand remark about Heidi's abduction, and I conclude that '[t]he sheer number of independent confessions provided additional corroboration for each'...."

For appellant Thibodeau: Lisa A. Peebles, Syracuse (315) 701-0080
For respondent: Oswego County District Attorney Gregory S. Oakes (315) 349-3200