

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 Wednesday, March 15, 2023

No. 23 Grady v Chenango Valley Central School District

No. 24 Secky v New Paltz Central School District

In these cases, two public school athletes were injured at practice in 2017 while participating in drills that did not adhere to the standard rules of their sport, and both sued their school and coaches for negligence. Both are appealing decisions of the Appellate Division, Third Department, which ruled that the assumption of risk doctrine barred their claims.

Kevin Grady was an 18-year-old varsity baseball player at Chenango Valley High School when the varsity and junior varsity teams combined at practice for what they called the “Warrior Drill.” Two coaches stood near home plate and one of them hit grounders to the third baseman, who threw the ball to the first baseman. At the same time the other coach hit balls to the shortstop, who flipped them to the second baseman, who relayed the balls to a player at “short first base,” a few feet from the first baseman and in a direct line between him and second base. A screen was placed between the two players to protect the first baseman from balls thrown from second base, since he would be focused on throws from third base. Grady was playing behind the screen at first base when an errant throw from second missed the screen and struck him in the right eye, causing a permanent loss of vision.

Jaxson Koebel-Secky was a 14-year-old junior varsity basketball player at New Paltz High School when he was injured at practice during a rebounding drill. The coach told the players that they were to disregard the court’s boundary lines and use the entire gym floor and that only hard fouls would be called. The bleachers were retracted against the wall. Koebel-Secky was chasing a ball outside the court boundary when another player struck him from behind and knocked him into the bleachers, injuring his shoulder.

The Appellate Division, in separate decisions, ruled that both players had assumed the risks inherent in their sport and dismissed their suits. The 3-2 majority in Grady said, “Having more than one ball in play may not be an inherent risk in a traditional baseball game, but the record indicates that it is a risk inherent in baseball team practices.” It said Grady “was an experienced baseball player” who was familiar with the Warrior Drill from previous seasons, and his testimony established that “he did not rely upon the screen for safety but, rather, thought that the drill was unsafe even in the presence of the screen. Thus, the conditions were ‘as safe as they appear[ed] to be’....” The 4-1 majority in Secky said eliminating boundary lines for the Warrior Drill “did not unreasonably increase the inherent risks of the drill or playing basketball.”

One dissenter in Grady said there was “a question of fact as to whether plaintiff could have assumed the risk of participating in the Warrior Drill due to the use of an inadequate safety measure, specifically, the deflecting screen,” while the other argued more broadly that “the risks assumed must be risks inherent to the sport itself, not risks inherent to the drill.” The dissenter in Secky said “whether the elimination of boundaries and the relaxation of foul calls unreasonably enhanced the risk of the drill ... is a question of fact to be determined by a jury.”

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No. 25 People v Yermia Solomon

Yermia Solomon was a 24-year-old police officer with the Monticello Police Department in November 2016, when he allegedly engaged in oral sex with a 15-year-old girl. He was indicted by a grand jury on three counts of third-degree criminal sexual act and two counts of third-degree rape, crimes that apply where the victim is under the age of 17. The indictment alleged that Solomon had engaged in sexual misconduct with a person less than 17 years old, but it incorrectly stated that the victim's date of birth was June 2, 1999, which would have made her 17 at the time of the crimes. She was actually born in March 2001.

Sullivan County Court granted the prosecution's motion to amend the indictment to correct the victim's birth date, saying the amendment was permissible under CPL 200.70 because it "corrects a typographical error and does not change the People's prosecutorial theory.... Amending the date of birth conforms the Indictment to the evidence that was presented to the Grand Jury to accurately reflect the criminal acts for which the Grand Jury indicted the Defendant...." Solomon subsequently waived prosecution by indictment and agreed to plead guilty under a superior court information (SCI) to a misdemeanor count of endangering the welfare of a child, which also applies where the victim is under the age of 17. The SCI, however, repeated the same error that was contained in the original indictment, stating that the victim was born in June 1999 rather than in March 2001. Solomon pled guilty to child endangerment, waived his right to appeal, and was sentenced as promised to three years of probation and a \$1,000 fine. He argued on appeal that the SCI was defective, due to the incorrect birth date, because consensual sex with an 18-year-old is not a crime in New York.

The Appellate Division, Third Department reversed and dismissed the superior court information, ruling it was jurisdictionally defective because its inclusion of the incorrect birth date for the victim negated its allegation that the victim was under the age of 17. It said, "Inasmuch as the offense of endangering the welfare of a child requires that the victim be less than 17 years old, we find that the [SCI] was jurisdictionally defective because it failed to effectively charge defendant with the commission of a crime where the date of birth indicated that the victim was 17 at the time of the offense." It said the jurisdictional issue "survives his unchallenged appeal waiver and is not subject to preservation rules." The court further held that County Court was not authorized to correct the victim's birth date in the original indictment under CPL 200.70, which states that an indictment may not "be amended for the purpose of curing ...[a] failure thereof to charge or state an offense ... or ... [l]egal insufficiency of the factual allegations."

The prosecution argues, "Where a superior court information charged the defendant with a crime, and alleged acts constituting every material element of that crime, and sufficiently provided the defendant with precise notice of the crime for which he stood accused, a typographical error regarding the victim's date of birth, an error that defendant had actual knowledge of, should not constitute a nonwaivable jurisdictional defect that can be raised for the first time on appeal."

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