State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

Week of April 24 thru April 26, 2018

State of New York
Court of Appeals

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To be argued Tuesday, April 24, 2018

No. 56 Andino v Mills

New York City Police Officer Niurka Andino was severely injured in 2004, when the patrol car in which she was riding was struck by a Transit Authority vehicle driven by Transit supervisor Ronald Mills in the Bronx. Because she suffered her injuries in the line of duty, Andino was granted accidental disability retirement (ADR) benefits. A Supreme Court jury found the Transit Authority and Mills wholly liable for the accident. Andino was awarded $2,392,512 for future lost earnings and $2,490,829 for future loss of pension, in addition to damages for pain and suffering and for medical expenses. The Transit Authority applied for a collateral source offset pursuant to CPLR 4545, arguing that the awards for future lost earnings and lost pension should be reduced by the amount of Andino's ADR benefits because those accidental disability benefits "replace" the lost earnings she would have received had she been able to continue working as a police officer and the pension she would have received upon retirement.

After a collateral source hearing, Supreme Court denied the defendants' application for an offset from the awards for lost earnings and lost pension. The court relied on Oden v Chemung County Indus. Dev. Agency (87 NY2d 81 [1995]), which held that "only those collateral source payments that actually replace a particular category of awarded economic loss may be used to reduce the insured's judgment," and on Johnson v New York City Tr. Auth. (88 AD3d 321 [1st Dept 2011]). The court said, "To the extent that [Andino's] ADR benefits are guaranteed for life, and not a lost earnings dollar match that ends on her mandatory retirement date at age 63, the court finds that there is no direct match between plaintiff's ADR and the jury's award for lost earnings. In keeping with Oden and Johnson, this court finds that plaintiff's ADR pension is a benefit made available to a public servant who was injured in the line-of-duty, not a substitute for lost earnings."

The Appellate Division, First Department modified by granting the defendants an offset against the jury's award of future lost pension benefits in the amount of Andino's ADR benefits. Citing Oden and Johnson, it said, "The trial court correctly denied defendants' motion to reduce the jury's award for future lost earnings by her accidental disability pension and future medical expenses by the health insurance plan afforded to her as part of her disability retirement.... The jury's award for future loss of pension benefits, however, should have been offset by the total amount that plaintiff was projected to receive under that disability pension, effectively reducing that category of damages to zero (see Oden, 87 NY2d at 89)."

The Transit Authority and Mills argue that the ADR benefits are a collateral source that must be subtracted from the awards for loss of future earnings as well as for loss of pension benefits. Andino argues that her ADR benefits are not a collateral source for either category of economic damages -- lost earnings or lost pension -- and no deductions should be made from the jury's awards.

For appellant-respondent Mills & Transit: Timothy J. O'Shaughnessy, Brooklyn (718) 694-3852
For respondent-appellant Andino: Brian J. Shoot, Manhattan (212) 732-9000

State of New York
Court of Appeals

To be argued Tuesday, April 24, 2018

No. 57 2138747 Ontario, Inc. v Samsung C&T Corporation

In September 2008, the Korean company Samsung C&T Corporation and two of its New Jersey affiliates signed a non-disclosure agreement (NDA) with SkyPower Corp., an Ontario renewable energy developer, and its majority owner LB SkyPower Inc., a Delaware corporation headquartered in New York, in order to explore a potential transaction that would enable Samsung to enter the Canadian renewable energy market. The NDA, which required Samsung to keep all of SkyPower's proprietary information confidential and to use it only for evaluating a potential deal with SkyPower, included a broad choice-of-law provision that said, "This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York." No transaction with SkyPower materialized, but in December 2008 Samsung entered into a secret memorandum of understanding with the Ontario government for the development of a renewable energy project. Samsung and the government later signed a framework agreement for the project, an agreement that was first made public in January 2010. Meanwhile, SkyPower filed for bankruptcy in 2009 and, in October 2014, all of SkyPower's claims against Samsung were assigned to one of its Canadian creditors, 2138747 Ontario, Inc. (plaintiff). Plaintiff brought this action against Samsung in October 2014 for breach of contract and unjust enrichment, alleging that Samsung violated the NDA by using SkyPower's confidential information to negotiate its agreement with the Ontario government.

Supreme Court granted Samsung's motion to dismiss the suit as untimely pursuant to CPLR 202, New York's borrowing statute, because it was not filed until after Ontario's two-year statute of limitations expired, even though it would have been timely under New York's six-year limitations period. Because SkyPower was a nonresident alleging a breach of the NDA in Ontario, the court said, CPLR 202 requires the plaintiff "to satisfy both statutes of limitations." It rejected the plaintiff's argument that the broad language of the NDA's choice-of-law provision reflected the parties' intent to be governed by the substantive and procedural laws of New York, including the state's six-year statute of limitations.

The Appellate Division, First Department affirmed, saying the "broadly drawn" choice-of-law provision did not preclude the application of CPLR 202. "We do agree with plaintiff's argument, that the language of the choice-of-law provision in this NDA, and in particular the use of the word 'enforcement,' is broad and should be interpreted as reflecting the parties' intent to apply both the substantive and procedural law of New York State to their disputes.... But even this broad reading of the NDA choice-of-law clause does not require that the borrowing statute be ignored in favor of New York's domestic, six-year statute of limitations. The borrowing statute is itself a part of New York's procedural law and is a statute of limitations in its own right, existing as a separate procedural rule within the rules of our domestic civil practice, addressing limitations of time...."

The plaintiff argues, "By agreeing that the contract would be enforced by New York law, the parties intended that New York's six-year statute of limitations would govern all contract claims arising out of the NDA, regardless of who asserted them," and "New York should honor the parties' choice." It says, "The outcome reached below makes no sense at all: it dictates a scenario in which five sophisticated parties negotiated a single forum and single set of procedural rules to govern their disputes (New York's), but intended that the limitations period for resolving their disputes would depend on whether the party asserting that claim had its principal place of business in Ontario, Korea, New Jersey, or New York." It says, "New York public policy does not prevent parties from contracting for New York's own legislatively approved six-year statute of limitations."

For appellant 2138747 Ontario: Jacob Buchdahl, Manhattan (212) 336-8330
For respondent Samsung: Grant A. Hanessian, Manhattan (212) 626-4100

State of New York
Court of Appeals

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To be argued Tuesday, April 24, 2018

No. 58 Matter of People v Conrado Juarez; Frances Robles

In 1991, highway workers found the body of a four-year-old girl in a picnic cooler near the Henry Hudson Parkway in Manhattan. She had been sexually abused and suffocated. Police investigators, who were unable to identify the girl for 22 years, called her Baby Hope. The victim was finally identified in 2013 and the police questioned her cousin, Conrado Juarez, as a suspect. After several hours of interrogation, Juarez said in a videotaped statement that he had smothered the girl with a pillow during a sexual encounter and disposed of her body in the cooler with his sister's help. He was charged with murder. Two days later, New York Times reporter Frances Robles interviewed Juarez at Rikers Island. In a story published the next day, Robles reported that Juarez said the girl had died after falling down the stairs and he had only helped his sister dispose of the body. He recounted his statements to the police, but said his confession to killing her was false and had been coerced, according to the story.

Juarez moved to suppress his confession as involuntary, and the prosecution subpoenaed Robles to testify at the hearing and to turn over her notes on the interview for in camera review. Robles moved to quash the subpoenas based on New York's Shield Law (Civil Rights Law § 79-h[c]). Supreme Court quashed the subpoenas. The court ultimately denied Juarez's motion to suppress his confession, finding it was voluntary. The prosecution then sought to enforce the subpoenas to compel Robles to testify and produce her notes at trial; and Robles again moved to quash based on the Shield Law.

Supreme Court denied her motions to quash the subpoenas, saying Juarez's "statements to law enforcement and Ms. Robles are the only evidence linking him to the crime. Since voluntariness may be raised before the jury regardless of the pretrial decision, it is critical that the People present all possible evidence corroborative of his statements to the police in their efforts to prove beyond a reasonable doubt that the statements were voluntary and truthful.... The testimony and notes are material, relevant and critical to the People's case."

The Appellate Division, First Department reversed and granted Robles's motions to quash, saying "the People have a videotaped confession by the defendant that has been found admissible at trial and that includes statements consistent with other evidence in the case. Under the circumstances, and in keeping with 'the consistent tradition in this State of providing the broadest possible protection to "the sensitive role of gathering and disseminating news of public events"'..., we find that the People have not made a 'clear and specific showing' that the disclosure sought from Robles (her testimony and interview notes) is 'critical or necessary' to the People's proof of a material issue so as to overcome the qualified protection for the journalist's nonconfidential material (Civil Rights Law § 79-h[c])."

Addressing a threshold issue, the prosecution argues that this Court lacks jurisdiction because the trial court's order denying a nonparty's motion to quash subpoenas in a criminal action is not appealable. It says, "Since no [Criminal Procedure Law] provision authorizes an appeal from such an order, the appeal should be dismissed, and the matter remitted to the Appellate Division ... with directions to dismiss the appeal taken to that court," which would leave in place the trial court's denial of the motion to quash. Robles argues that "the determination of a motion to quash, as it relates to a non-party to a criminal proceeding, has been appealable in this state for 80 years and that rule should not be changed.... In sum, as this Court and the Appellate Division have repeatedly held, and the District Attorney and other prosecutors' offices have acknowledged to this Court, because the determination of a motion to quash a subpoena brought by a non-party is a final order on the civil side of the Supreme Court, which is vested with both criminal and civil jurisdiction, it is an appealable order in a criminal action."

For appellant: Manhattan Assistant District Attorney Diane N. Princ (212) 335-9000
For nonparty respondent Robles: Katherine M. Bolger, Manhattan (212) 850-6100

State of New York
Court of Appeals

To be argued Wednesday, April 25, 2018

No. 59 White v Schneiderman

Eric White, a member of the Seneca Nation, and Native Outlet, his convenience store in the City of Salamanca on the Senecas' Allegany reservation, brought this action against New York's Attorney General and Commissioner of Taxation and Finance to challenge the validity of Tax Law § 471, which imposes a tax "on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians." They contended the tax law violates Indian Law § 6, which states, "No taxes shall be assessed, for any purpose whatever, upon any Indian reservation in this state, so long as the land of such reservation shall remain the property of the nation, tribe or band occupying the same;" and the Buffalo Creek Treaty of 1842 between the Senecas and the United States, which provides that the Seneca Nation would retain the Allegany and Cattaraugus reservations and states, "The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York..., from all taxes, and assessments for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians...." White also argues that taxing cigarette sales to non-Indians violates the federal Commerce and Due Process Clauses because the reservation belongs to a sovereign nation.

The state officials moved to dismiss the suit on the ground that Indian Law § 6 and the Treaty of 1842 prohibit only state taxation of reservation land or real property. Supreme Court granted the motion to dismiss "for the reasons set forth in their papers."

The Appellate Division, Fourth Department modified by declaring "that Tax Law § 471 is not inconsistent with Indian Law § 6, the Treaty of 1842," or the federal Due Process or Commerce Clauses. It adhered to its 1997 decision in M/O NYS Dept. of Taxation & Fin. v Bramhall (235 AD2d 75) "that the Treaty of 1842 and Indian Law § 6 bar the taxation of reservation land, but do not bar the imposition of ... sales taxes on cigarettes ... sold to non-Indians on the Seneca Nation's reservations." It said the "plain language" of the treaty and the legislative history of the statute support its conclusion that they bar only state taxes "on the 'lands,' i.e., the real property, of the Seneca Nation." Even if it read the treaty and statute too narrowly, it said, "It is well established that '... States may impose on reservation retailers minimal burdens reasonably tailored to the collection of valid taxes from non-Indians'...."

White argues that enforcement of Tax Law § 471 violates "the plain language of Indian Law § 6, which codified the State's obligation to refrain from taxing '*for any purpose whatever*, upon any Indian reservation,'" and "the plain language of the State's solemn promise to 'protect such of the lands of the Seneca Indians ... *from all taxes*, and assessments for roads, highways, *or any other purpose*'" in the Treaty of 1842. "Regardless of whether the Supreme Court has allowed states to impose such taxes as a matter of *federal* law, this State has unique barriers to the application and enforcement of its tax laws upon Indian reservations because the State is bound by the terms of Indian Law § 6, which expressly prohibits taxation '*for any purpose whatever*,' and the nearly identical prohibition found in the [Treaty of 1842], which preceded it."

For appellants White and Native Outlet: Paul J. Cambria, Jr., Buffalo (716) 849-1333
For appellants Schneiderman et al: Deputy Solicitor General Andrew D. Bing (518) 776-2015

State of New York
Court of Appeals

To be argued Wednesday, April 25, 2018

No. 60 People v Bryan Henry

This case arises from a series of crimes and arrests in Nassau County in December 2010, all but one involving a black Hyundai Sonata with tinted windows. First, two masked gunmen robbed a tattoo parlor in Carle Place and took a Blackberry cell phone, among other items. The Sonata was recorded on surveillance video at the scene. Two days later, James McClenic was shot to death as he sat in a parked car at a Hempstead gas station. An eyewitness said the gunman rode in a black Sonata. Five days after that, Bryan Henry was stopped in a black Sonata and arrested on a misdemeanor charge of marijuana possession. Officers searched the car and found a Blackberry, which they later learned had been stolen at the tattoo parlor. Henry was assigned counsel to represent him on the marijuana charge and was released on bail. Three days later, during another traffic stop, Henry was arrested for possession of the stolen Blackberry. Detectives questioned him for about six hours about the robbery and the murder, and he admitted in written statements that he was the getaway driver for both crimes.

Supreme Court granted Henry's motion to suppress his statements about the robbery, but not the murder. The police violated his indelible right to counsel when they questioned him about the robbery in the absence of his assigned attorney for the marijuana charge because the cases were related, it said, since the Blackberry stolen at the tattoo parlor was recovered during the marijuana stop. "The police knew or should have known that that phone was related to the marijuana stop. [Henry] had counsel and they had reason to notify that counsel or not question him, one or the other." It refused to suppress his statements about the murder because that was "completely unrelated" to the marijuana charge. Henry was convicted of second-degree murder and acquitted of all charges related to the robbery. He was sentenced to 20 years to life in prison.

The Appellate Division, Second Department modified by vacating his murder conviction and remitting for a new trial, ruling his statements about the murder should also have been suppressed. "In light of the [trial court's] determination that defendant's right to counsel was violated when he was questioned with regard to the robbery charges, we further find that his right to counsel was violated by questioning on the factually interwoven homicide matter. Indeed, the robbery and the murder cases were so closely related that questioning about the gas station shooting 'would all but inevitably elicit incriminating responses regarding' the robbery," it said, citing People v Cohen (90 NY2d 632). "Furthermore, with regard to the second category of cases in which the attachment of counsel on one crime may preclude interrogation on another crime, the ... impermissible questioning of defendant on the robbery charges was not fairly separable from questioning on the murder charge, and 'was purposely exploitive in the sense that it was calculated to induce admissions' on the murder charge...."

The prosecution argues the Appellate Division misapplied Cohen by examining the relationship between the murder and the robbery, for which Henry did not have counsel, instead of between the murder and the marijuana charge, for which he did. Based on the trial court's conclusion "that the robbery charges were 'related' to the marijuana charge for which defendant had counsel, the Appellate Division improperly analyzed the interrogation under the Cohen tests as if defendant were actually represented by counsel on the robbery charges themselves. This was not the case, and the resulting holding improperly extended the right to counsel, by proxy, far beyond that which this Court provided in Cohen."

For appellant: Nassau County Assistant District Attorney Cristin N. Connell (516) 571-3800
For respondent Henry: Judah Maltz, Kew Gardens (718) 544-8840

State of New York
Court of Appeals

To be argued Wednesday, April 25, 2018

No. 61 People v Roque Silvagnoli

In April 2008, David Machedo was fatally shot at the Campos Plaza housing project in Manhattan, and Detective Eric Ocasio was assigned to investigate. Roque Silvagnoli quickly became a suspect, but police were unable to apprehend him until December 2010, when he was arrested in an unrelated case. Ocasio, who was aware that Silvagnoli was facing a drug sale charge from 2007 and that he was represented by counsel on that charge, interviewed him about the homicide on the day of his arrest. In the course of about three and a half hours of questioning, Ocasio referred at least once to the 2007 drug case, telling Silvagnoli that "you could say nothing, but that was kind of a dumb thing you did selling drugs to an undercover back in 2007." Silvagnoli replied, "[T]hat was just drugs. I'm talking about drugs, right. I didn't have anything to do with this murder." By the end of the interview, Silvagnoli confessed to shooting Machedo, who owed him a drug debt of $220.

Supreme Court denied his motion to suppress the confession, ruling that Ocasio's reference to the 2007 drug case did not violate Silvagnoli's right to counsel. Ocasio's "single, flippant, comment was part of his interrogation strategy during which the detective discussed with defendant the evidence he had amassed against him" and it did not run afoul of People v Cohen (90 NY2d 632), the court said. Silvagnoli's "narcotics case was easily separable from the homicide. That the crimes occurred within the same geographical area and are, generally, drug-related ... does not make them so intertwined that they are not discrete occurrences." Silvagnoli later pled guilty to first-degree manslaughter and was sentenced to 18 years in prison.

The Appellate Division, First Department reversed and suppressed the confession on a 3-2 vote, saying, "Although the reference to the drug charges on which defendant was represented was brief and flippant, it was not, in context, innocuous or discrete and fairly separable from the homicide investigation. The detective told defendant during the questioning that he knew defendant was involved in selling drugs at the location of the murder and that the killing was over a drug debt. The remarks regarding the pending drug case went to defendant's alleged participation in the drug trade at the location of the homicide, the very activity out of which a motivation for killing the victim arose. Indeed, it succeeded in eliciting from defendant a response that may fairly be interpreted as incriminating himself in dealing drugs at the location, the alleged motivation and context out of which the homicide occurred."

The dissenters said that, while Ocasio "testified that he discussed 'drug dealing at Campos' with defendant numerous times, there is no basis in the record to conclude that Ocasio brought up the [2007 drug crime] more than once," and "it is clear ... that this was an effort to signal to defendant that he knew defendant had a motive to shoot the victim." Since the reference to the 2007 drug charge was "a 'single, flippant, comment,'" they said, "the questioning about the charged crime could not have been 'completely interrelated and intertwined and not discrete and fairly separable' from the questioning about the homicide.... Further, because the statement was so isolated, it could not have comprised a strategy 'designed to add pressure on defendant to confess....'"

For appellant: Manhattan Assistant District Attorney Stephen Kress (212) 335-9000
For respondent Silvagnoli: William B. Carney, Manhattan (212) 577-3447

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

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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