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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

September 12 thru September 14, 2023

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 59 Nitkewicz v Lincoln Life & Annuity Company of New York

In 2011 the Lincoln Life & Annuity Company of New York issued a universal life insurance policy to the Joan C. Lupe Family Trust to insure the life of Joan C. Lupe for $1.5 million. Unlike term life insurance, the universal life policy combines regular life insurance with an investment component, an interest-bearing "Policy Account" that can build cash value, which the policyholder may withdraw or use to secure a loan. The policyholder pays premiums into that account and once a month Lincoln Life deducts money from it to pay for insurance coverage and other expenses. The insurer offered a flexible payment schedule and Lupe chose to pay an annual "Planned Premium" of $53,878 once a year. She paid her last premium in May 2018 and she died five months later. Lincoln Life paid out the policy death benefit of $1.5 million, but refused to refund any part of the last annual premium Lupe had paid.

Andrew Nitkewicz, as trustee of the Lupe Family Trust, brought this breach of contract action again Lincoln Life in federal court, alleging that the insurer's refusal to refund a prorated portion of the last premium payment violated New York Insurance Law § 3203(a)(2). The statute states that "if the death of the insured occurs during a period for which the premium has been paid," the insurer must provide "a refund of any premium actually paid for any period beyond the end of the policy month in which such death occurred...." Nitkewicz contended that Lincoln Life must refund a prorated share of the last annual premium for the seven months remaining in the coverage period after Lupe's death, a total of $31,428.83.

U.S. District Court granted Lincoln Life's motion to dismiss the suit, holding that section 3203(a)(2) did not apply to Lupe's annual payment into the interest-bearing account because it was not a "premium actually paid for any period." It said Lupe's Planned Premium was not "paid for any specific period" because it could be "less than or greater than the monthly cost of insurance." The court also found the premium was not "actually paid" for a period of coverage because Lupe's payments into the interest-bearing account "do not actually pay for any insurance until they are taken from the Policy Account via the monthly deduction" by Lincoln Life. It rejected Nitkewicz's arguments that the premiums were "actually paid" by Lupe and that, because she paid them annually, they were made for a year of coverage.

The U.S. Court of Appeals for the Second Circuit, noting that "no New York court has interpreted Section 3203(a)(2) or discussed the meaning of the phrases 'actually paid' or 'for any period,'" is asking this Court to determine whether Lupe's annual premium payment falls within the scope of the statute by answering a certified question: "Whether a planned payment into an interest-bearing policy account, as part of a universal life insurance policy, constitutes a 'premium actually paid for any period' under the refund provision of New York Insurance Law Section 3203(a)(2)."

For appellant Nitkewicz: Seth Ard, Manhattan (212) 336-8330
For respondent Lincoln Life: John LaSalle, Manhattan (212) 446-2300

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 7 Matter of Brookdale Physicians' Dialysis Associates, Inc. v Department of Finance of the City of New York

The New York City Department of Finance (DOF) is appealing a decision that requires it to reinstate a property tax exemption for a two-story Brooklyn building owned by the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund (Schulman Fund), a not-for-profit corporation that provides funding for two other non-profits, Brookdale Hospital Medical Center and the Schulman and Schachne Institute for Nursing and Rehabilitation (Nursing Institute). Since 1996, the Schulman Fund has leased the first floor and basement of its building to Brookdale Physicians' Dialysis Associates (Brookdale Dialysis), a for-profit corporation that is staffed by physicians and other employees of Brookdale Hospital and pays the hospital a fee for the staffing. Brookdale Dialysis also pays for and provides all dialysis services for patients at the hospital and Nursing Institute. The lease required Brookdale Dialysis to pay 60.9 percent of any property taxes that "become payable" and, when DOF revoked the building's tax exemption for the 2015-16 tax year, the company applied to DOF to reinstate it pursuant to Real Property Tax Law (RPTL) 420-a, which provides a tax exemption for property owned by a charitable organization and "used exclusively" for its charitable purposes. DOF denied the application, saying the building was not eligible for the exemption because the Schulman Fund was making a profit through its rental income under the lease and Brookdale Dialysis was profiting by operating its for-profit business in a tax-exempt building. Brookdale Dialysis and the Schulman Fund brought this proceeding to annul the determination.

Supreme Court annulled DOF's decision to revoke the tax exemption and the Appellate Division, First Department affirmed, saying the lower court "correctly determined that the building owned by [the Schulman Fund] and used for the provision of a critical healthcare service qualifies for tax-exempt status, notwithstanding the for-profit status of the provider of the service." The Appellate Division said the three non-profits "participate in an arrangement by which Brookdale Dialysis renders a critical healthcare service ... to Brookdale Hospital and the Nursing Institute at little to no direct cost to the non-profit entities. Although the non-profit entities received an ostensible financial benefit, and Schulman's rent receipts exceed its building maintenance expenses, no benefit exists because Schulman placed the profit back into its healthcare-provider affiliates. The provision of dialysis services for Brookdale Hospital and Nursing Institute patients qualifies the building for tax-exempt status, because it is 'reasonably incident' to Schulman's purpose of funding and supporting its healthcare affiliates...."

The DOF argues, "The decision of the Appellate Division directly contravenes the plain language of [RPTL] 420-a, Court of Appeals precedent, and the mandate of the Legislature to construe 420-a tax exemptions strictly and narrowly because it has improperly granted a tax exemption to a not-for-profit entity that does not use or occupy the building, but instead leases it to a for-profit dialysis center which uses the exempt property for its own pecuniary gain."

For appellant Dept. of Finance: Assistant Corporation Counsel Andrea M. Chan (212) 356-2133
For respondent Brookdale Dialysis: Menachem J. Kastner, Manhattan (212) 509-9400

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 60 Matter of Celinette H.H. v Michelle R.

Celinette H.H. and Willie R., who were never married, are the biological parents of three children, a daughter born in 2010 and twins born in 2011. The children lived with their mother in Manhattan while their father resided in South Carolina. The children's paternal grandmother, Michelle R., lived in New York and in 2018 she brought a proceeding against both parents seeking custody of the children. Instead, with the parties' consent, Family Court granted the grandmother visitation rights that entitled her to pick up the children from school each day and take them to their mother's home by 5:30 p.m. In April 2020, the grandmother took all three children, with their mother's consent, on a vacation to visit their father in South Carolina. She returned to New York in July 2020 without the children.

In September 2020, the mother filed this habeas corpus proceeding against the father and grandmother, seeking to compel them to return the children to her. Family Court denied the petition and dismissed the proceeding in July 2021, holding, "This case is not properly before this court as [the mother] has failed to file a petition for custody with this court.... [Mother] never petitioned this court for custody."

The Appellate Division, First Department affirmed without opinion, implicitly rejecting the mother's argument that under Domestic Relations Law §§ 70 and 240)(1) and Family Court Act § 651(b) "a mother doesn't need a prior custody order or a pending custody petition ... to successfully reclaim custody on the writ of three children" who had lived with her in New York for nine years before the habeas petition was filed. The court granted the grandmother's cross-motion to "dismiss the aforesaid appeal on the grounds that the [mother] has no standing to seek habeas corpus relief without an order of custody in place."

Celinette H.H., the mother, is arguing here that the 2018 visitation order granted to the grandmother, allowing her to pick the children up after school and requiring her to return them to their mother's home by 5:30 p.m., "was simultaneously a physical custody order" granted to the mother that can serve as the basis for this habeas corpus petition. She also contends that Family Court abused its discretion by failing to convert her habeas proceeding into a custody proceeding under Family Court Act § 651(b) and CPLR 103(c).

For appellant Celinette H.H. (mother): Carol Kahn, Manhattan (212) 744-7365
For respondent Willie R. (father): Geoffrey P. Berman, Larchmont (914) 419-8407
Attorney for the child: Philip Katz, Manhattan (212) 385-1373

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 61 Matter of Hon. Robert J. Putorti, a Justice of the Whitehall Town and Village Courts

Whitehall Town and Village Justice Robert Putorti is asking this Court to reject a determination of the Commission on Judicial Conduct that he should be removed from office for brandishing his loaded handgun at a criminal defendant in his courtroom in late 2015. Putorti was licensed to carry the gun. The Commission further found that Putorti, who worked as an equipment operator for the town, violated his ethical obligations by promoting fundraisers for himself and for the Whitehall Elks Lodge on his Facebook page, which did not identify him as a judge.

According to an agreed statement of facts, Putorti was interviewed about the gun incident by a cousin, a journalism student at Hofstra, shortly after it occurred and he showed the resulting article to his courthouse colleagues, telling them he had pulled his gun on a "big Black man" who approached him too quickly at the bench. The incident came to wider attention in 2018, when he described it at a meeting of the Washington County Magistrates Association during a discussion of courthouse security, telling other judges that he pulled his gun on a "large black man" who rushed past the "stop line" where defendants are supposed to stand. A police officer was present to provide security. After a colleague raised concerns, Putorti was counseled by his supervising judge and agreed to never display his gun in court unless he or others were facing deadly force.

The first of the fundraisers Putorti used his Facebook page to promote was a spaghetti dinner in November 2019, which raised $9,400 for medical expenses he incurred after a motorcycle accident two months earlier. In 2020, he helped promote seven small fundraisers for the Elks Lodge, of which he was an officer.

The Commission determined Justice Putorti should be removed on a 10-1 vote, saying he "engaged in highly inappropriate conduct when he brandished his loaded gun in the courtroom at a litigant. Respondent acknowledged that his repeated mention of [the litigant's] race when recounting the gun incident may have created the appearance of racial bias. In addition, respondent compounded his misconduct and exhibited a serious lack of judgment when he boasted about brandishing his gun in the courtroom.... Respondent also showed his lack of attention to his ethical obligations when he engaged in improper fundraising. Given the seriousness of his conduct and the totality of the evidence, we find respondent's misconduct to be egregious."

The dissenter said, "The sanction of removal is unjust, unwarranted, and overly harsh for respondent's conduct. Based on the Agreed Statement of Facts..., the appropriate sanction for both charges should be admonition, or at the very worst, censure. The single isolated courtroom incident ... in 2015, when the respondent briefly displayed a gun to a criminal defendant (who was previously sentenced by respondent in connection with a violent knife assault on two people) who rushed the bench and crossed over the 'stop line' in the courtroom, constituted at worst, poor judgment." Putorti's Facebook activity "does not warrant removal either, particularly since respondent has no prior disciplinary history."

For petitioner Putorti: Nathaniel V. Riley, Syracuse (315) 422-8769
For respondent Commission: Robert H. Tembeckjian, Albany (518) 453-4600

State of New York
Court of Appeals

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To be argued Wednesday, September 13, 2023

No. 63 People v Pablo Pastrana
No. 64 People v Jose M. Rivera
No. 62 People v Sebastian Telfair
No. 65 People v Ramon Cabrera
No. 66 People v George Garcia
No. 67 People v Carlos L. David

These six appeals, which are otherwise unrelated, all raise claims that the conviction and sentencing of the defendants for illegal weapon possession under Penal Law § 265.03 violated their Second Amendment rights in the wake of the U.S. Supreme Court's 2022 decision in New York Rifle & Pistol Association, Inc. v Bruen (142 SCt 2111). The Bruen decision invalidated a portion of New York's gun licensing laws, holding that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." All six defendants were convicted of criminal possession of a weapon in the second degree under Penal Law § 265.03, which criminalizes possession of a loaded firearm outside of one's home or place of business, and the defendants contend that Bruen clearly rendered the statute unconstitutional. The State Attorney General's Office intervened in all six cases pursuant to Executive Law § 71 to defend the constitutionality of the statute. It argues, "In Bruen, the Supreme Court struck down only one provision of New York's firearms licensing scheme: the requirement that a person applying for a license to carry a concealed firearm in public for self-defense must show 'proper cause,' interpreted to mean a special need for self-protection distinguishable from that of the general community."

No. 63 – For appellant Pastrana: Mark W. Zeno, Manhattan (212) 577-2523 ext 505
For respondent: Bronx Asst. District Attorney Nicole Neckles (718) 838-6150
For intervenor: Deputy Solicitor General Nikki Kowalski (212) 416-8370
No. 64 – For appellant Rivera: Guy A. Talia, Rochester (585) 753-4967
For respondent: Monroe County Asst. District Attorney Lisa Gray (585) 753-4591
For intervenor: Assistant Attorney General Margaret Cieprisz (212) 416-8620
No. 62 – For appellant Telfair: Barry Krinsky, Brooklyn (917) 496-6302
For respondent: Brooklyn Asst. District Attorney Jean M. Joyce (718) 250- 3383
For intervenor: Deputy Solicitor General Ester Murdukhayeva (212) 416-6279
No. 65 – For appellant Cabrera: Barbara Zolot, Manhattan (212) 577-2523 ext 509
For respondent: Bronx Asst. District Attorney Joshua P. Weiss (718) 838-6229
For intervenor: Deputy Solicitor General Ester Murdukhayeva (212) 416-6279
No. 66 – For appellant Garcia: Matthew Bova, Manhattan (212) 577-2523
For respondent: Manhattan Asst. District Attorney Steven C. Wu (212) 335-9000
For intervenor: Asst. Deputy Solicitor General Andrew W. Amend (212) 416-8022
No. 67 – For appellant David: Guy A. Talia, Rochester (585) 753-4967
For respondent: Monroe County Asst. District Attorney Lisa Gray (585) 753-4591
For intervenor: Asst. Deputy Solicitor General Andrew W. Amend (212) 416-8022

State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 48 Matter of Nemeth v K-Tooling

Kuehn Manufacturing Co. and K-Tooling operate manufacturing businesses as a nonconforming use on residentially zoned property in the Village of Hancock, Delaware County. Rosa Kuehn owns the property and Kuehn Manufacturing. Her son, Perry Kuehn, owns K-Tooling. In 2001, they built an addition on the property to expand their manufacturing operation, but neighboring landowners obtained an injunction in 2012 that prohibited them from using the addition for nonresidential purposes. In 2013, Kuehn Manufacturing and K-Tooling obtained a use variance from the Village of Hancock Zoning Board of Appeals (ZBA) that allowed them to use the 2001 addition for manufacturing. Three adjacent property owners – Joseph and Donna Nemeth and Valerie Garcia – sued Rosa and Perry Kuehn, their companies, and the ZBA to annul the variance. The Appellate Division, Third Department granted their petition in 2015 and annulled the ZBA's determination. In 2016, the Kuehn companies obtained another variance from the ZBA to use the addition for manufacturing, based on an application signed by Rosa Kuehn. The Nemeths and Garcia then filed this suit against the Kuehn companies and the ZBA to annul the second variance, but this time they did not name Rosa Kuehn as a respondent. Supreme Court dismissed the suit for failure to join a necessary. The Appellate Division agreed Rosa Kuehn was a necessary party as owner of the property, but it remitted the case to Supreme Court to summon her. The Nemeths and Garcia then amended their petition to add Rosa Kuehn as a respondent more than three years after the 30-day statute of limitations expired.

Supreme Court ruled the claims against Rosa Kuehn were untimely and dismissed the suit, rejecting the petitioners' argument that the new claims were rendered timely by the relation back doctrine. The doctrine would deem the new claims timely if the petitioners could satisfy a three-part test including, as the third prong, that Rosa Kuehn knew or should have known that, but for a mistake by the petitioners as to the identity of the proper parties, the proceeding would have been brought against her as well. The court said the petitioners' failure to name her in the original petition was "a mistake of law" – a failure to recognize that the landowner was a necessary party – and not a mistake of identity. The court said it was "bound by precedent to hold that a mistake of law cannot satisfy the third prong of the relation back doctrine.

The Appellate Division, Third Department affirmed on a 4-1 vote, saying the petitioners could not satisfy the third prong because they could have had no about Rosa Kuehn's identity or status as a necessary party. "Indeed, Rosa Kuehn was appropriately named as a respondent and identified as the landowner of the subject property in petitioners' successful challenge to the use variance issued in 2013," it said.

The dissenter said she would "overrule our prior case law" by holding that a mistake of law can satisfy the third prong, "thereby aligning the Third Department more closely with the federal approach and the Court of Appeals' holding in Buran v Coupal (87 NY2d 173 [1995]). In Buran, the Court emphasized that the New York rule is 'patterned largely after the [f]ederal relation back rule'..., the 'linchpin' of which is 'notice to the defendant within the applicable limitations period'.... Rosa Kuehn cannot complain of any lack of notice or prejudice here."

For appellants Nemeth et al (petitioners): Jonathan R. Goldman, Goshen (845) 294-3991
For respondents K-Tooling et al: Alan J. Pope, Binghamton (607) 723-9511

State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 68 People v Rakeem Douglas

Police officers stopped Rakeem Douglas in October 2015 as he drove a rental car in Manhattan after they saw him commit a series of traffic violations. They arrested him for possession of a gravity knife, which was clipped to his pocket, and impounded the car when they learned it was rented in his girlfriend's name and he was not an authorized driver. During an inventory search of the vehicle they found a handgun hidden between the trunk and the rear seat. Douglas moved to suppress the gun on the ground the search was improperly conducted.

At the suppression hearing, the officers testified that they adhered to the procedures set out in the NYPD Patrol Guide. They said they placed all items removed from the car into a large plastic bag, but they did not create a contemporaneous list of those items. They did not complete their written inventory of recovered items until the next day, about 11 hours after the search, and there was no testimony about the location or custody of the plastic bag during that period. The officers said the 11-hour delay was due in part to the discovery of the handgun, which required them to call in the Evidence Collection Team to process it for DNA and fingerprints, and to the need to complete required paperwork for the arrest. The inventory lists did not specify whether seized items were recovered from the car or from Douglas' person.

Supreme Court denied the motion to suppress, saying, "Based upon the written NYPD policy..., this court concludes that the officers were in fact guided by a set of policy and procedural guidelines which limited their discretion, safeguarded the defendant's constitutional rights, and fulfilled the purposes of a lawful inventory search." It also found the search was properly conducted in compliance with the Patrol Guide procedures. Douglas then pled guilty to second-degree criminal possession of a weapon and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying "the officers followed a valid procedure for an inventory search of defendant's car.... The forms used by the police were sufficient to create a meaningful inventory list and there is no indication that the inventory search was a ruse for searching for incriminating evidence.... The delay in completing the inventory procedure was satisfactorily explained by the particular circumstances of the police investigation."

Douglas argues the NYPD's inventory search procedures fail to meet constitutional standards and his conviction must be reversed "because police recovered the gun under the authority of a protocol that failed to limit the officers' discretion and that undermined the purposes of an inventory search." Due to "the NYPD's inadequate inventory search protocol," he says "the police threw [his] property in a bag, left it unsecured in a busy police precinct for 11 hours, and then created an inventory – without the benefit of any list of the property made at the time of the search – on vouchers that provided no information about where or how the property was recovered." Without a contemporaneous list, he says, officers "have nothing to reference when later vouchering property that may have been stolen, lost, or contaminated during any delay...." He says a valid search protocol should also set a time frame for completing an inventory and require officers to secure seized property during any delay.

For appellant Douglas: Stephen R. Strother, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Stephen J. Kress (212) 335-9000

State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 69 People v Sergio Cerda

Sergio Cerda was charged with sexually abusing an 11-year-old girl, who was related to him, at his home in Port Washington, Nassau County, in November 2016. The girl testified at trial that Cerda penetrated her vagina with his finger and then fondled her breast while she was sitting on a couch watching television with him and two younger girls. One of those girls testified that she did not see Cerda touch the complainant. The prosecution presented records of the complainant's sexual assault examination, which showed two petechiae (burst blood vessels) on her hymen. The prosecution's expert witness testified that such petechiae result from "pressure or force" and that they could have been caused by digital penetration. He noted that they may have been a result of masturbation or accidental injury, but said it was unlikely.

Cerda moved to admit evidence from a forensic report, which found the complainant's own saliva in her underwear and a vulvar swab. It also found a mixture of DNA from at least two males in a stain on her underwear, but the sample was insufficient to generate DNA profiles to identify the contributors. A vaginal swab contained prostate specific antigen, which is found in several bodily fluids including semen, but no sperm were present on the swab. The prosecutor argued the evidence should be excluded under the Rape Shield Law (CPL 60.42) because it did not exonerate Cerda and it could be used to imply the complainant was promiscuous. CPL 60.42 provides, "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for" specified sex offenses "unless such evidence" fits within one of five of the statute's enumerated exceptions. Cerda argued the forensic evidence was admissible under three of the exceptions because it provided alternative explanations for the petechiae, including that the complainant had injured herself by masturbating or by sexual contact with a third party. Those exceptions allow evidence to rebut prosecution evidence that the victim did not engage in sexual conduct during a given period of time; rebut evidence "that the accused is the cause of pregnancy of disease of the victim, or the source of semen found in the victim; and defense evidence the trial court finds "to be relevant and admissible in the interest of justice."

Supreme Court precluded the forensic evidence, saying it "is very speculative. I think it's going to confuse the jurors. I think there's a risk that the jurors might conclude" the victim had sexual contract with a third party, "and I think that's exactly what the rape shield law is designed to prevent." The prosecutor argued in summation that "there's nothing in the medical record to support" Cerda's "alternate theories" that the complainant's injuries were self-inflicted. Cerda was convicted of first-degree sexual abuse and sentenced to three years in prison.

The Appellate Division, Second Department affirmed, saying Cerda "was not denied his constitutional rights to due process and to confront witnesses by the Supreme Court's application of the Rape Shield Law (CPL 60.42) to prohibit him from introducing into evidence portions of a laboratory report. The defendant was given ample opportunity to develop evidence at trial to support his defenses...."

Cerda argues, in part, "The trial court's evidentiary rulings, exploited by the prosecutor on summation, cumulatively crippled the defense, providing the jury with an inaccurate and unfair view of complainant's credibility, and depriving Mr. Cerda of his constitutional rights to present a defense, to confront witnesses, and to a fair trial. He says the precluded evidence would have provided "clear and direct evidence of at least two alternative sources for the observation of petechiae on [the complaint's] hymen" and "dispelled the prosecution's repeated attempts to cast [her] as a sexually innocent and naive child" who lacked the knowledge and experience to fabricate her claims.

For appellant Cerda: Donna Aldea, Garden City (516) 745-1500
For respondent: Nassau County Assistant District Attorney Donald Berk (516) 571-3800

State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 70 Matter of Stevens v New York Division of Criminal Justice Services

Terrence Stevens and Benjamin Joseph are challenging the constitutionality of regulations adopted by the Division of Criminal Justice Services (DCJS) in 2017 to expand the use of the state's DNA Databank for familial (or kinship) DNA searches, which enable investigators to determine whether someone who left forensic DNA at a crime scene is likely to be a close relative of an offender whose genetic profile is in the database. Stevens and Joseph do not have their own genetic profiles in the databank because they have not been convicted of a crime, but each has a brother convicted of a felony and their profiles are in the databank. They say the regulations subject them to a heightened risk of being targeted for investigation solely because they share family genetics with a convict, and they argue that DCJS usurped the Legislature's authority by adopting the regulations, thus violating the separation of powers doctrine.

Supreme Court found the petitioners had suffered sufficient injury to have standing to sue, saying they "should not need to wait until they are approached by the police, on the basis of a lead generated by the Regulations, in order to have standing to challenge the Regulations." But it dismissed their suit on the merits, ruling DCJS acted within its statutory authority. When the Legislature created the databank in 1994, it said, DCJS "was delegated vast regulatory authority to create and maintain all aspects of the Databank.... For more than a quarter of a century, the Legislature has deferred regulation of the Database to [DCJS] without much intervention," concluding that DCJS "'filled in details of a broad policy' when it adopted the Regulations."

The Appellate Division, First Department reversed on a 3-2 vote. The majority said the petitioners have standing "because the regulation subjects them to the peculiar risk that they will be targets of criminal investigations for no other reason than that they have close biological relatives who are criminals." However, it ruled DCJS acted beyond its authority and vacated the kinship search regulation. Under the enabling statute, it said DCJS's "mandate is to ensure the accuracy, efficiency, and integrity of the DNA databank operation, in other words, provide 'quality control'.... Decisions regarding whether and under what circumstances the database should be used for familial DNA testing go well beyond science and quality control; they are driven primarily by social policy." The need to balance "the civil liberty interests of citizens to be free from unreasonable governmental interference against the societal interest of law enforcement in investigating crimes" show that authorizing kinship searches "is an inherently legislative function," it said.

The dissenters said they would dismiss the suit solely on the ground that the petitioners lack standing. They "do not allege that law enforcement has approached them to provide a DNA sample or that they have been affected by the familial search rule. Instead, petitioners contend that they may, at some time in the future, be adversely affected by such a search," a concern that "is too speculative and hypothetical to support standing," the dissenters said.

For appellants DCJS et al: Sr. Assistant Solicitor General Matthew W. Grieco (212) 416-8014
For respondents Stevens et al (petitioners): Doran J. Satanove, Manhattan (212) 351-4000