State of New York
Court of Appeals

To be argued Thursday, September 12, 2024

No. 82 Matter of Jeter v Poole

In June 2019, a 13-year-old girl in New York City told her teacher that her adoptive mother, Shani Jeter, had beaten her with an extension cord the previous day to punish her for defacing a family computer screen. A school aide took the girl to a local precinct, where a police officer interviewed her and observed cuts and bruises on her upper body. The officer arrested Jeter on a charge of second-degree assault the same day and reported the matter to the State Central Register of Child Abuse and Maltreatment (SCR), initiating an investigation by the City Administration for Children's Services (ACS). The next day, ACS filed a neglect proceeding against Jeter under Family Court Act article 10 alleging excessive corporal punishment, which Jeter denied. In July 2019, ACS classified the SCR report as "indicated," meaning it found "some credible evidence" of the alleged abuse. Criminal Court dismissed the assault charge in September 2019 and Family Court dismissed neglect petition in February 2020.

Jeter requested a fair hearing by the State Office of Children and Family Services (OCFS) to clear her name by amending the "indicated" SCR report to "unfounded." Prior to her hearing in August 2020, OCFS advised her that she had "the right to hire an attorney" and, if she could not afford one, she "may be able to obtain free legal assistance" from a legal aid group. She appeared at the hearing without counsel, denied the abuse allegation, and sought without success to introduce a letter from her adopted daughter recanting her accusation of abuse. In September 2020, OCFS denied Jeter's request to reclassify the abuse report as unfounded. It said ACS established that the "indicated" report was supported by a fair preponderance of the evidence.

Jeter filed this suit to challenge the OCFS determination in January 2021, asserting that OCFS and ACS violated her right to due process by failing to provide her with appointed counsel for the hearing. In her opening brief to the Appellate Division, she added a new claim that Family Court's dismissal of the neglect petition entitled her to a presumption that the SCR abuse report was unfounded, based on Social Services Law (SSL) § 422(8)(b)(ii) which took effect on January 1, 2022, while her court challenge was pending. The amendment, approved in April 2020, states that when a neglect petition is based on an SCR abuse report and the petition is dismissed, "there shall be an irrebuttable presumption in a fair hearing" challenging the SCR report "that said allegation ... has not been proven by a fair preponderance of the evidence."

The Appellate Division, First Department confirmed the OCFS determination and dismissed the suit, finding there was no due process violation. "In administrative proceedings before OCFS, the individual need only be 'provided with an adequate opportunity to obtain legal representation,'" which it said she was given. It said SSL § 422(8)(b)(ii) "does not impact her case" because the fair hearing was held and the OCFS decision was rendered before it took effect and it found no basis to apply the amendment retroactively.

Jeter argues that due process required the State to provide her with counsel for her OCFS hearing in view of the consequences "of being branded a child abuser." She says, "The liberty at stake for Ms. Jeter and the millions of others listed on the Register includes 'some of life's most important interests, earning a livelihood in one's chosen field and establishing a family'.... That liberty interest must be protected by counsel for individuals at name-clearing hearings." She says SSL § 422(8)(b)(ii) should apply retroactively to her case because it is a remedial statute that "makes much-needed reforms to how accusations [of child abuse] are handled;" and because it took effect while her case was pending at the Appellate Division.

For appellant Jeter: Carolyn A. Kubitschek, Manhattan (212) 349-0900
For respondent State: Assistant Solicitor General Elizabeth A. Brody (212) 416-6167
For respondent ACS: Assistant Corporation Counsel Amy McCamphill (212) 356-2317

State of New York
Court of Appeals

To be argued Thursday, September 12, 2024

No. 83 People v Codie Hayward

In March 2018, Police officers surveilling an apartment building in Gloversville for drug activity saw a driver park and go inside. When he drove away, they followed him to a nearby parking lot and took him into custody after he told them he had just bought heroin from Codie Hayward at his apartment in the building. The officers obtained a search warrant, which did not contain a no-knock provision that would have allowed them to enter without warning. Officers later testified that, after one of them breached the door with a battering ram, they shouted "Police. Search warrant" as they rushed in, but they were not asked what had transpired prior to the breach. During the search, the officers found large amounts of heroin, cocaine and cash.

Hayward moved to suppress the drug evidence, contending the search warrant was based on unreliable information from an admitted drug user. Fulton County Court denied the motion and Hayward was convicted at trial of third-degree criminal possession of a controlled substance and a related misdemeanor. He was sentenced to ten years in prison.

The Appellate Division, Third Department affirmed in a 3-2 decision. The court agreed unanimously that Hayward failed to preserve his claim that police violated the "knock-and-announce rule" by ramming open his door without first announcing their presence; but it split on whether his defense attorney provided ineffective assistance of counsel by failing to move for suppression on that ground.

The majority said Hayward failed "to establish that a no-knock violation occurred in the first place.... [T]he record is silent as to what the police said or did prior to effectuating entry into the apartment.... [T]he fact that officers yelled out 'Police. Search warrant' as they entered and that occupants of the apartment were surprised ... sheds no meaningful light on what occurred before that point in time, as those things ... likely would have occurred whether or not the police had first announced their presence." It also said a no-knock provision would have been justified because the warrant application provided probable cause to believe the apartment contained "saleable quantities" of drugs "which could be quickly destroyed.... [B]ecause 'authorization for a [no-knock entry] would have been given had the proper request been made,' suppression would not have been an appropriate remedy...." The court concluded that, in light of a U.S. Supreme Court ruling that the exclusionary rule does not apply to knock-and-announce violations, Hayward's attorney "cannot be faulted for failing to raise a speculative and meritless claim."

The dissenters said the police testimony about shouting "Police. Search warrant" and their other conduct as they entered "confirms that the officers effectuated a no-knock entry, despite lacking the authority to do so.... In a situation so fraught with danger, dealing with the forcible entry into the sanctity of the home, the failure to abide by the knock-and-announce rule is not a mere technical violation" and "the evidence seized as a result should be suppressed." They concluded, "Despite having made a motion to suppress, defense counsel completely failed to challenge the no-knock aspect of the officers' entry into the apartment. There is no apparent strategic or other legitimate explanation for this omission.... In our view, counsel's failure to do so deprived defendant of his constitutional right to meaningful representation."

For appellant Hayward: Kristin Bluvas, Plattsburgh (518) 477-7137
For respondent Fulton County D.A.: Bridget Rahilly Steller, Albany (518) 432-1100

State of New York
Court of Appeals

To be argued Thursday, September 12, 2024

No. 84 People v Jorge Baque

Jorge Baque was charged with second-degree manslaughter after his five-month-old daughter, Alaia, was found dead in her crib in the family's Queens apartment in July 2016. An autopsy determined that she died of neck injuries that were consistent with violent shaking and that she would have died within minutes of being shaken. Since no one had witnessed Baque or anyone else shaking the child, the evidence against him was circumstantial. Alaia's mother testified that the girl woke up crying at 2 a.m. and Baque tried to console her, got her to stop crying, and placed her back in her crib in the couples' bedroom about 4 hours before she was found dead. A police officer testified that Baque told him that he heard the girl crying at about 2 a.m., picked her up, and rocked her until she fell asleep.

Supreme Court instructed the jury that, in order to convict, "it must appear that the inference of guilt is the only one that can fairly and reasonably be drawn from the facts and the evidence excludes, beyond a reasonable doubt, every reasonable hypothesis of innocence." The jury acquitted Baque of manslaughter and convicted him of the lesser included offense of criminally negligent homicide. He was sentenced to 1⅓ to 4 years in prison.

On appeal, Baque argued that his conviction was not supported by the weight of the evidence because the circumstantial evidence did not exclude "to a moral certainty" the possibility that someone else had shaken Alaia. He contended the Appellate Division was required to apply the same "moral certainty" standard of proof as the jury. The prosecution argued the moral certainty standard applies to jurors in a case based on circumstantial evidence, not to an appellate court assessing the weight of the evidence.

The Appellate Division, Second Department affirmed without applying the moral certainty standard. "Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence...," it said. "[B]ecause Alaia lost consciousness and died after the defendant cared for her, it was reasonable for the jury to conclude beyond a reasonable doubt that the defendant violently and forcefully shook Alaia, causing her death...."

Baque argues that the Appellate Division, "like any other fact finder, must apply the circumstantial-evidence [or moral certainty] rule when it weighs the evidence in a circumstantial case. It must do so because the rule is obligatory upon the finder of fact; it must do so to uphold the standard of de novo factual review that a weight analysis requires; and it must do so to effectuate this State's policy of subjecting circumstantial convictions to heightened judicial scrutiny on appellate review."

For appellant Baque: Sean H. Murray, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney Charles T. Pollak (718) 286-5984

State of New York
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No. 85 People v Eric D. Sharp

In December 2016, Eric Sharp was arrested for weapon possession in Rochester after police officers, responding to the scene of a domestic dispute, saw him pull out a pistol and hide it in a brick retaining wall before trying to run away. Sharp was apprehended after a brief chase and the officers recovered a defaced semiautomatic handgun from a crack in the retaining wall.

Prior to trial, Supreme Court held a conference with the prosecutor and defense counsel – in chambers, off-the-record, and without Sharp present – which included discussion of the prosecutor's Sandoval application to cross-examine Sharp about his prior criminal history if he took the stand to testify. At a subsequent court appearance, with Sharp present, the court said it would rule on the application and asked defense counsel if he wanted to be heard. Defense counsel declined, saying "I would stand by our discussion in chambers," and the prosecutor did not raise any issues. The court then ruled the prosecutor could cross-examine Sharp about three prior misdemeanor convictions and one felony. Sharp was convicted at a bench trial of second- and third-degree criminal possession of a weapon and was sentenced to five years in prison.

The Appellate Division, Fourth Department affirmed on a 4-1 vote, rejecting Sharp's claim that the in-chambers discussion of the Sandoval issue, held in his absence, violated his right to be present at a material stage of his trial. The majority said, "Although defendant was not present at the in-chambers conference, the court held a subsequent proceeding in open court in defendant's presence, at which the court offered defendant an opportunity to be heard on the People's application. Defense counsel declined. The court then made, and explained, its ruling on the People's application. Under those circumstances, we conclude that defendant was afforded a meaningful opportunity to participate at the court's subsequent de novo inquiry and his absence from the initial conference does not require reversal...."

The dissenter said Sharp was entitled to a new trial "because, after improperly conducting a Sandoval hearing in his absence..., Supreme Court did not give defendant an opportunity to meaningfully participate in the purported de novo Sandoval hearing it conducted in his presence. In my view, the court's mere offer to defense counsel of an opportunity to be heard on the Sandoval application in defendant's presence – standing alone – was insufficient to constitute a de novo hearing on the issue. Consequently, defendant was denied his right 'to be present during proceedings that involve factual matters for which the defendant possesses peculiar knowledge of the salient facts'.... [T]he record demonstrates that the court's ultimate Sandoval ruling was based entirely on the 'discussion in chambers,' conducted outside of defendant's presence."

For appellant Sharp: David R. Juergens, Rochester (585) 753-4093

For respondent: Monroe County Assistant District Attorney Lisa Gray (585) 753-4591