

NEW YORK COURT OF APPEALS

People v. Caldavado

26 N.Y.3d 1034 (2015) · Decided November 23, 2015

SUMMARY

The New York Court of Appeals reversed and remitted the case for a hearing on the defendant’s claim that trial counsel was ineffective for failing to investigate and present expert testimony challenging the prosecution’s shaken-baby-syndrome evidence. The court held that the defendant’s submissions raised factual questions concerning counsel’s strategy and adequacy of investigation, while rejecting or declining to reach her newly discovered evidence and freestanding actual innocence claims.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Pigott; Judge Rivera; Judge AbdusSalaam; Judge Stein; Judge Fahey
JURISDICTION	New York
DECIDED	November 23, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from an order affirming the denial, without an evidentiary hearing, of her CPL 440.10 motion to vacate her convictions based on newly discovered evidence, ineffective assistance of counsel, and actual innocence.
STANDARD OF REVIEW	Whether defendant's CPL 440.10 submissions raised a factual question requiring an evidentiary hearing on ineffective assistance of counsel.
PRECEDENTIAL VALUE	Published Court of Appeals memorandum; binding New York appellate precedent to the extent of its holdings.
PARTIES	Caldavado v. People of the State of New York

TOPICS

[ineffective assistance](#) [state post-conviction relief](#) [evidence](#) [actual innocence](#) [criminal procedure](#)

PRACTICE AREAS

[Criminal procedure](#) [Post-conviction relief](#) [Ineffective assistance of counsel](#) [Evidence](#)

QUESTIONS PRESENTED

1. Whether defendant's CPL 440.10 submissions raised a factual question requiring an evidentiary hearing on whether trial counsel provided ineffective assistance by failing to pursue available lines of cross-examination and failing to call a defense medical expert.
2. Whether defendant's submissions constituted newly discovered evidence under CPL 440.10(1)(g).
3. Whether defendant established a freestanding actual-innocence claim, assuming such a claim is cognizable.

HOLDINGS

1. An evidentiary hearing was required because defendant's submissions raised factual questions about whether counsel's failure to pursue certain defenses and call a medical expert resulted from reasonable trial strategy or inadequate investigation and representation.
2. Defendant's submissions did not constitute newly discovered evidence within the meaning of CPL 440.10(1)(g) and did not warrant further inquiry on remand.
3. The Court did not decide whether a freestanding actual-innocence claim is cognizable, but held that defendant failed to demonstrate factual innocence regardless of the applicable standard of proof.

KEY QUOTATIONS

“On this record, defendant established that “there were sufficient questions of fact as to whether [counsel] had an adequate explanation” for his failure to pursue certain lines of defense on cross-examination or for his failure to call an expert on defendant’s behalf, and defendant “is therefore entitled to an opportunity to establish that [s]he was deprived of meaningful legal representation”” (26 N.Y.3d at 1036)

“a decision that it would be futile to call an expert based solely on the volume of expert testimony presented by the People is not a legitimate or reasonable tactical choice.” (26 N.Y.3d at 1036)

“Thus, a hearing is necessary to resolve defendant’s claim of ineffective assistance of counsel” (26 N.Y.3d at 1037)

FACTUAL BACKGROUND

Defendant was convicted of assault in the first degree and endangering the welfare of a child after a trial concerning injuries to a seven-month-old infant in her care. The prosecution relied on a shaken-baby-syndrome diagnosis and presented 13 medical professionals, including nine experts. Defense counsel cross-examined the prosecution experts using a physician's brief opinion but did not call a defense expert. In her post-conviction motion, defendant submitted statements from two experts and an affidavit indicating that counsel declined to call an expert because doing so would be pointless given the number of prosecution experts.

PROCEDURAL HISTORY

Defendant was convicted in Supreme Court, Queens County, of first-degree assault and endangering the welfare of a child after a 2009 trial. The Appellate Division affirmed the convictions, and the Court of Appeals denied leave. Supreme Court later denied defendant's CPL 440.10 motion without a hearing, and the Appellate Division

affirmed. The Court of Appeals granted leave, reversed, and remitted for an evidentiary hearing on ineffective assistance of counsel.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to Supreme Court, Queens County, for an evidentiary hearing and further proceedings concerning defendant's ineffective-assistance claim. The newly discovered evidence and actual-innocence grounds did not warrant further inquiry.

CASES CITED

- People v. Zeh, 22 N.Y.3d 1144, 1146 (2014)
- Harrington v. Richter, 562 U.S. 86, 106 (2011)
- People v. Ross, 119 A.D.3d 964, 965 (2d Dep't 2014)
- Hinton v. Alabama, 571 U.S. 263, 134 S. Ct. 1081, 1089 (2014)
- Strickland v. Washington, 466 U.S. 668, 690 (1984)
- People v. Baldi, 54 N.Y.2d 137, 147 (1981)
- People v. Oliveras, 21 N.Y.3d 339, 348 (2013)
- People v. Jenkins, 68 N.Y.2d 896, 898 (1986)
- People v. Hamilton, 115 A.D.3d 12 (2d Dep't 2014)
- People v. Caldavado, 78 A.D.3d 962, 963 (2d Dep't 2010)
- People v. Caldavado, 116 A.D.3d 877, 877 (2d Dep't 2014)
- People v. Caldavado, 23 N.Y.3d 1060 (2014)