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Summarizing recent significant
New York appellate cases

When may a convicted individual obtain post-conviction relief of additional DNA testing of evidence? The First, Second, and Fourth Departments have generally held that they can't. But the Third Department dug into the statutory history underlying Criminal Procedure Law § 440.30 (1-a) recently, and held that the statute does not categorically prohibit DNA retesting of evidence. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

SECOND DEPARTMENT

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT, DUE PROCESS

***People v Allen*, 2026 NY Slip Op 04880 (2d Dept August 5, 2026)**

Issue: **Did Supreme Court exceed its authority and violate the defendant's right to due process when, after designating the defendant a level three sex offender following a hearing held in accordance with the Sex Offender Registration Act, it, *sua sponte*, reopened the SORA hearing to reconsider its initial findings and make a new determination of the defendant's risk level designation?**

Facts: Defendant was convicted of rape of a 17-year-old victim, in satisfaction of an 18-count indictment that included allegations of a second rape of a 15-year-old victim. At the end of Defendant's sentence, "the Board of Examiners of Sex Offenders prepared a case summary and risk assessment instrument in accordance with SORA. The case summary detailed the circumstances of the defendant's actions with respect to the 18-year-old victim in September 1989, as well as his alleged actions with respect to the 15-year-old victim in November 1988, both of which involved a forcible rape at either gunpoint or knifepoint. The Board assessed the defendant a total of 160 points on the RAI, which placed the defendant above the 110-point threshold required to designate him as a presumptive level three sex offender, and recommended that the defendant be designated as a level three sex offender." Following a SORA hearing, Supreme Court adopted the Board's recommendation, except for factors 3 and 5, "assessed the defendant 120 points on the RAI, which still rendered him a presumptive level three sex offender, denied the defendant's pro se motion for a downward departure from the presumptive risk level, and designated the defendant a level three sex offender . . . With respect to risk factor 3, the court found that no points should be assessed because the crime to which the defendant pleaded guilty involved only one victim, and not two. With respect to risk factor 5, the court found that no points should be assessed because the crime to which the defendant pleaded guilty involved a victim who was older than 16 years old."

"Thereafter, . . . the Supreme Court, believing that it had made an error in its determination of the defendant's risk level designation, *sua sponte*, reopened the SORA hearing so that it could 're-adjudicate' its findings with respect to risk factors 3, 5, and 9. The defendant appeared with counsel at the reopened hearing. The court explained that it had, on its own accord, requested and obtained the grand jury minutes following the initial SORA hearing. Based on the contents of the grand jury minutes, as well as the contents of evidence received at the initial SORA hearing, the court found that it had erred in failing to assess the defendant 20 points under risk factor 3 and 20 points under risk factor 5. The court also found that it had improperly assessed the defendant 15 points under risk factor 9. As a result, in an order dated June 10, 2019, the court assessed the defendant a total of 145 points rather than 120 points, a presumptive level three risk designation, again denied the defendant's pro se motion for a downward departure from his presumptive risk level, and redesignated the defendant a level three sex offender."

Holding: The Appellate Division, Second Department affirmed the Supreme Court's reopened SORA designation order, using these unique circumstances to explain whether "the inherent authority of a court to reconsider its own intermediate determinations allows a SORA court to, sua sponte, reconsider its determination of a defendant's presumptive risk level designation." Noting that both the First and Fourth Departments have held that a SORA court could reopen risk level determinations to reconsider or correct its prior determinations, the Second Department agreed, reasoning that "[p]reventing the Supreme Court from, *sua sponte*, exercising its inherent authority to correct its own errors of fact and law in failing to assess the defendant points under risk factors 3 and 5 at the initial SORA hearing would undermine the very purpose and objective of SORA and otherwise prevent the expeditious correction of the erroneous determination."

The court held that "the Supreme Court's failure to assess points under risk factors 3 and 5 at the initial SORA hearing was affected by errors of fact and law and was erroneous." The assessment of points for a SORA risk determination is not limited to the crimes for which the defendant was convicted or admissible evidence, but rather may consider reliable hearsay evidence as well as the defendant's entire course of conduct. "Here, the case summary prepared by the Board, which the People submitted at the initial SORA hearing, and which the Supreme Court relied upon in correcting its initial failure to assess points under risk factors 3 and 5, provided clear and convincing evidence to establish that the defendant raped both the 18-year-old victim for which he entered a plea of guilty to rape in the first degree, as well as a second 15-year-old victim." "Given the Supreme Court's error, and considering the inherent power of a court to reconsider its own intermediate determinations, together with the overriding purposes and objectives of SORA, we find no wrong in the Supreme Court's sua sponte correction of its initial failure to assess points under risk factors 3 and 5. There is no benefit to a defendant, the People, or the public in prohibiting a SORA court tasked with determining an offender's presumptive risk level from, *sua sponte*, correcting its own erroneous determination." The court did note, however, that the SORA court "erred in, sua sponte, obtaining the grand jury minutes and relying on those minutes at the reopened SORA hearing. Nevertheless, given that the case summary provided ample evidence to support the imposition of points under risk factors 3 and 5, under the circumstances of this case, the court's error was harmless."

Nor was defendant denied due process, the court held. Because a SORA proceeding is civil in nature, rather than criminal, and the protections afforded under due process are thus less extensive, the court explained that a SORA defendant was entitled to "notice of points sought to be assessed against him or her and an opportunity to be heard regarding the assessment." He received both here, the court held.

THIRD DEPARTMENT

CRIMINAL LAW, DNA TESTING

***People v Mosley*, 2026 NY Slip Op 04454 (3d Dept July 16, 2026)**

Issue: **When may a convicted individual obtain post-conviction relief of additional DNA testing of evidence?**

Facts: "In January 2002, Sam Holley — a known gang member and crack cocaine dealer — and his girlfriend, Arica Schneider, were found fatally stabbed in the living room of their apartment. Each victim's body had at least 30 stab wounds, inflicted by household kitchen knives recovered from throughout the apartment, and extensive blunt force trauma with few or no defensive wounds. There was also evidence to suggest that Schneider was tortured at some point prior to her death. Signs of forced entry were attributed to Holley's brother, who admitted that he broke into the apartment when he had not heard from his brother for days and stole thousands of dollars before contacting the authorities." The State Police generated a DNA profile of the killer, but "the lab was unable to fully identify, or thus meaningfully compare, a multitude of mixed-source DNA profiles generated from other evidence collected from the crime scene due to issues with the quantity and/or quality of the genetic material that was able to be extracted. The 'John Doe' DNA profile was uploaded to available databases but returned no hits."

Following a lengthy investigation that considered 50–100 suspects, two suspects the FBI identified as the "Stick Men" were charged with the murders. Days before their trial, however, the defendant's DNI was uploaded to the State database and returned as a hit for the John Doe DNA profile. Other evidence indicated that the defendant had been present at the crime scene, including that he had once been a drug runner for Holley and his palm print was found in the blood at the scene. He was charged with the murders and went to trial. At trial, the People relied on the DNA evidence, indicating that the "science had solved the case," even though they could not present a motive for why defendant would have killed Holley and his girlfriend. Defendant testified in his own defense at trial, admitting that he had been at the scene because Holley had asked him for a ride that morning, "he entered through the unlocked front door of the apartment into the kitchen and proceeded into the living room, where he discovered the victims. He shook the victims' blood-covered bodies to see if they were still alive and potentially braced himself against a wall upon realizing that they were not . . . Defendant then fled the residence and decided not to contact the authorities out of fear that he or his family would become implicated in what he believed to be drug- or gang-related violence." Defendant was convicted and sentenced to life in prison without the possibility of parole, which was affirmed on direct appeal.

Following a first unsuccessful post-conviction motion, Defendant filed this second post-conviction motion seeking "additional DNA testing be performed on specified items of evidence recovered during the investigation that, upon initial testing, yielded mixed-source DNA profiles containing one or more unidentified contributors that could not be fully interpreted or meaningfully compared due to limitations in DNA testing then available. That evidence included, among other items, a knife blade recovered from underneath Schneider and other samples that, according to defendant, 'nobody but the killer could have left.' Defendant further sought comparative analysis of that evidence against known alternate suspects and first-time testing of a handgun that evidence logs show was recovered from the crime scene but apparently maintained under a separate case number and therefore not previously subjected to forensic analysis in connection with defendant's prosecution. In support of his application, defendant proffered an affidavit from a forensic scientist excluding defendant as a contributor to those mixed-source profiles, largely in conflict with the trial testimony concerning same, and further asserting that advances in DNA science since the original testing, including expanded loci analysis, probabilistic genotyping and enhanced low-template testing methodologies, warrant reexamination of the evidence."

Supreme Court denied the motion, holding that CPL 440.30(1-a) "does not authorize 'retesting' of evidence previously subjected to DNA analysis and that the handgun had no apparent evidentiary significance."

Holding: The Appellate Division, Third Department reversed. Although noting that the First, Second, and Fourth Departments have generally summarily rejected requests for DNA "retesting," the court explained that existing case law has not extensively addressed the statutory question concerning whether and when CPL 440.30 (1-a) authorizes the retesting of DNA evidence. "CPL 440.30 (1-a) is, by its nature, a postconviction statute, requiring courts to engage in a retrospective hypothetical inquiry concerning whether evidence, had it been available and admitted at trial, could have affected the verdict. The statute's backward-looking phrasing is thus at least as consistent with the procedural posture of the inquiry itself as with an affirmative intent to prohibit relief with respect to evidence that had previously been subjected to some form of DNA testing . . . The interpretive question here is what is meant by 'a DNA test' and whether different forms of 'forensic DNA testing' unavailable or unutilized at the time of initial testing fall within the scope of the statute."

Because the plain language of the statute does not answer that question explicitly, the court looked to its legislative history to aid in its interpretation. "The history of CPL 440.30 (1-a) counsels against the rigid construction employed by Supreme Court. Subdivision 1-a was originally enacted in 1994 as part of broader legislation establishing DNA testing procedures, including the state DNA Identification Index, or DNA databank, at a time when the science remained comparatively novel and was still rapidly evolving. As initially enacted, CPL 440.30 (1-a) was principally directed toward convictions predating the widespread use of DNA testing and required testing where requested by defendants convicted prior to the statute's effective date upon the specified showing. The provision was thus a remedial mechanism intended to harness emerging technology in the service of justice, and accuracy, anticipating that judgments of conviction would be set aside based upon such new evidence." Indeed, following subsequent amendments to the statute, the Court noted, "the Legislature understood advances in DNA science to warrant renewed or additional forensic examination of previously analyzed evidence in appropriate circumstances and did not regard CPL 440.30 (1-a) as categorically limited to evidence that had never undergone any form of forensic DNA testing."

In particular, the 2012 amendments to the statute showed, the court explained, that "[i]n extending postconviction DNA remedies to certain pleas, the Legislature expressly directed courts to consider whether the defendant unjustifiably failed to request testing prior to the entry of the plea. Thus, when confronted with circumstances patently implicating concerns of finality, the Legislature elected to impose a case-specific inquiry rather than a categorical prohibition. This further suggests that the Legislature did not view prior opportunities for testing as automatically dispositive of a defendant's entitlement to seek postconviction forensic relief. The authorization of keyboard searches is also particularly instructive as that relief necessarily contemplates renewed forensic engagement with previously tested evidence. The 2012 amendments also notably added CPL 440.10 (1) (g-1), creating an independent DNA-specific postconviction mechanism with a standard different from that applied to motions to vacate based on newly discovered evidence."

Thus, the court reasoned, "these enactments reflect a legislative understanding that forensic DNA testing may continue to evolve after trial and that CPL 440.30 (1-a) functions as an innocence-oriented remedial statute designed to accommodate meaningful advances in the science. Had the Legislature understood the statute to categorically prohibit any renewed forensic analysis once some form of DNA testing had previously occurred, it is difficult to reconcile that restrictive understanding with the Legislature's repeated expansion of postconviction DNA procedures in the service of demonstrating innocence." "To be clear, we do not construe CPL 440.30 (1-a) as authorizing endless repetitive retesting whenever forensic methodologies marginally evolve, and the statute does not contemplate serial or cumulative testing unsupported by a meaningful showing of changed scientific capability. Rather, where a defendant demonstrates that materially advanced forensic techniques unavailable at the time of prior testing may now yield materially different evidentiary results bearing upon the applicable probability inquiry, renewed or additional testing may fall within the meaning of 'a DNA test' not previously conducted. This interpretation accords with both the remedial purpose of the statute and the Legislature's evident recognition that major advances in DNA science can fundamentally alter the probative value of previously examined evidence."

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