

Allowing Evidence of 'Uncharged Complaints' Means New Trial for Queens Teacher Convicted of Child Sex Abuse

Simon Watts, a former elementary school teacher who was sentenced to 35 years in prison, will get a new trial. He was convicted of various sexual crimes involving five of his third- and fourth-grade students in Queens.

By **Jason Grant** | October 18, 2019 at 11:23 AM

In what is being called an extraordinary reversal of a former teacher's conviction on 11 counts of abuse involving young students, a state appeals court has ruled that a Queens judge wrongfully allowed at trial an "unfettered passageway for the [prosecution] to elicit extensive and prejudicial evidence regarding alleged uncharged complaints" of other student sexual abuse allegedly committed by the teacher.

"The high risk of unfair prejudice ... as a result of the jury hearing that more than 10 students allegedly made complaints against [the teacher] outweighed any potential probative value of such evidence," wrote the Appellate Division,

Second Department [in the decision](#). “We hold that the Supreme Court’s ruling deprived the defendant of his right to a fair trial.”

The effect of the Appellate Division’s reversal, issued in an opinion released Wednesday, is that Simon Watts, a former New York City school teacher who was sentenced to 35 years in prison, will get a new trial. He was charged in 2010 with various sexual crimes against five of his third- and fourth-grade students at the Jackie Robinson Elementary School. In 2013, Watts was convicted on 11 counts involving those five students including first-degree sexual abuse, second-degree course of sexual conduct against a child, forcible touching and endangering the welfare of a child, the Second Department wrote.

On Thursday, Watts’ appellate lawyer, Donna Aldea, said in an email to the Law Journal that Watts’ family, after being told of the panel’s reversal, was “relieved, happy and very grateful.”

Watts, who has been in prison for the last six years, could not be reached, Aldea said, because his upstate prison would not grant her request for an emergency call with him until Oct. 23.

Aldea, a named partner at Barket Epstein Kearon Aldea & LoTurco in Garden City, added in the email, “It is quite rare for the Appellate Division to reverse a criminal conviction; even more so on the basis of evidentiary error, which rarely suffices to clear the harmless error standard. In this case, however, the improperly-admitted, unsubstantiated, and wholly unreliable suggestion that Mr. Watts had abused a dozen other children was so extremely prejudicial as to make it virtually impossible for a jury to fairly weigh the evidence in this case.”

The Queens District Attorney's Office, which handled both the prosecution and the appeal, could not be reached on Thursday. But in response to a request for comment and an inquiry about whether the office would seek leave to appeal the Second Department's decision, spokeswoman Ikimulisa Livingston said on Friday, "We are still evaluating the decision and looking at our options."

The major evidentiary issue that led to the unanimous panel's reversal centered on Watts' lawyers at his 2013 trial alluding to, and eventually discussing on cross-examination, the fact that certain complainants were also pursuing a civil case against both him and the Queens school district where he'd taught.

The question for Supreme Court Justice Michael Aloise, as he presided over a jury trial, was whether—and how much—the raising up of that civil lawsuit, and suggestions from the defense that its existence showed that certain complainants had a monetary interest in the criminal case's outcome, should in turn allow prosecutors to bring into evidence that the young complainants and their families may have lodged the civil action because there had been previous complaints about Watts' alleged abuse and the school district knew about them.

The case before Aloise, meanwhile, was set to grab headlines. For example, after Watts, then a 41-year-old married father, was convicted in 2013, the New York Post [ran a article](#) with the headline, "Perv teacher convicted after turning 8 and 9-year-olds into 'personal sex toys.'" The Post reported that at trial, some of Watts' former students had "testified that Watts called them to the back of the classroom and forced their hands to rub his penis while he sometimes groped them," and documented other graphic allegations. Watts,

according to the article, “appeared shocked when the foreperson read ‘guilty’ on eleven counts.”

But before the jury deliberated for two days and reached its verdict, Aloise faced evidentiary questions revolving around complaints reportedly made against Watts by additional young students, who were not part of the case, and that had not been leveled by prosecutors as criminal charges. And soon dovetailing with that was the critical legal question of whether Watts’ defense counsel realized that wanting to introduce into evidence the civil case’s existence meant that Watts would be, in effect, “opening the door” to trial evidence of the uncharged accusations, wrote the Second Department panel.

At a pretrial conference, prosecutors “indicated that they would not be introducing evidence of certain alleged uncharged complaints made against [Watts] by additional students,” the panel wrote in a detailed opinion.

The panel also wrote that before jury selection, Aloise “was advised that the defendant and the school district ... had been the subjects of civil actions commenced by three of the complainants involved in the instant criminal action.” In addition, said the panel, Queens County assistant district attorneys prosecuting the case also had “asserted [to Aloise] that, if the defendant made inquiries regarding the civil actions, ‘the [prosecution] witnesses should be allowed to discuss the fact that the reason they brought the [civil] suit[s] is because this defendant had done it before and the school was on notice, not just that he did it on these particular occasions’” that were the subject of the trial.

But Watts’ trial counsel, who in 2013 were other lawyers from Aldea’s law firm (then called Barket Marion Epstein and Kearon), vigorously objected to the prosecutors’ position.

Aloise then ruled that if Watts “choose[s] to bring it up [the civil suit] on cross-examination, I will allow [the People], on redirect, to explore any factor that’s the impetus for the lawsuit,” the panel wrote, quoting Aloise.

As the trial opened, a lawyer for Watts, during her opening statements, “mentioned that some of the [criminal] complainants had ‘lawyers’ and ‘lawsuits,’” the panel said, and “when cross-examining one of the complainants, defense counsel inquired if the complainant had a lawyer for ‘a case about this.’”

“Thereafter, over objection and a motion for a mistrial by the defendant, [Aloise] permitted [prosecutors] to elicit from that complainant’s mother that she had called a lawyer in relation to a civil action because the principal of the school told her that he ‘knew about something going on like two years ago’ and, upon reading newspapers, she learned that, in 2005, the defendant was ‘molesting two little girls in another school,’” the panel wrote.

Moreover, prosecutors “were permitted to elicit from another witness that, following an ‘inappropriate touch assembly at the school,’ eight more complaints were made regarding the defendant,” the panel also said.

“This witness further stated that ‘definitely over 10 children came forward with complaints relating to’ Watts, added the panel.

In next addressing the central issue on appeal, Second Department Justices Reinaldo Rivera, Sheri Roman, Robert Miller and Valerie Brathwaite Nelson wrote that “as correctly contended by the defendant, he [and his counsel] did not open the door to the evidence regarding the alleged uncharged complaints.”

“The Court of Appeals has recognized that a party who simply broaches a new issue on cross-examination does not thereby run the risk that all evidence, no matter how remote or tangential to the subject matter opened up, will be brought out on redirect,” the justices wrote, citing *People v. Melendez*.

They added, citing in part *People v. Wallace*, that the trial court “should only allow so much additional evidence to be introduced on redirect as is necessary to meet what has been brought out upon the cross-examination ... particularly where the subject matter of the People’s inquiry concerns prejudicial evidence of prior uncharged criminal acts.”

“Here,” at Watts’ criminal trial, wrote the justices, “defense counsel asked questions regarding the civil actions in an attempt to impeach credibility and establish that a motivation for some of the complainants’ testimony against the defendant was monetary gain or a pecuniary interest.

“This line of inquiry did not open an unfettered passageway for the People to elicit extensive and prejudicial evidence regarding alleged uncharged complaints,” the justices said.

In addition, the panel pointed out that the “admission of evidence of alleged uncharged complaints violated the basic principle ... ‘a criminal case should be tried on the facts and not on the basis of a defendant’s propensity to commit the crime charged,’” quoting *People v. Rojas*.

And the justices added, based on *Rojas* and similar case law, that “the high risk of unfair prejudice to [Watts] as a result of the jury hearing that more than 10 students allegedly made complaints against him outweighed any potential probative value.”

Aldea, the head of appellate and postconviction litigation at Barket Epstein and formerly an appellate attorney at the Queens County DA's Office, wrote in her email to the Law Journal that "a defense attorney very often navigates a difficult path in providing the client a vigorous defense and effective cross-examination, while at the same time avoiding areas of argument or inquiry that 'open the door' to harmful, and otherwise inadmissible, prosecution evidence."

Continuing, she said that the Appellate Division's reversal "was an important clarification of the limits and proper application of this principle, providing valuable guidance to both judges and lawyers. Not only did it achieve the correct and just result for Simon Watts, but it will serve as important precedent on countless cases in the future."