

Prosecutors come to defense in appeals

Robert Gavin, Law Beat

Albany County prosecutors are about to sing the praises of defense attorneys to the state's highest court.

OK, that might be a stretch, but they will tell the Court of Appeals two opposing attorneys — one of whom ran against District Attorney David Soares in 2012 — were anything but ineffective.

The Court of Appeals will hear the unrelated cases of Dennis O'Kane and Joseph Sposito back-to-back on Wednesday, Jan. 10.

Both cases are disturbing. Both involve defendants police and prosecutors said were predators who targeted and traumatized unsuspecting women. In both cases, the victims gave passionate victim impact speeches asking for justice.

Sposito, 33, is serving a 20-year sentence in maximum-security Great Meadow Correctional Facility in Washington County for the Oct. 3, 2010 rape and sodomy of a woman in a Loudonville home. Sposito and the woman were out with a group of people at Albany bars during Oktoberfest on Oct. 2, 2010. The woman had a 0.266 blood alcohol level that caused her to be unconscious.

What makes the Sposito appeal especially awkward is Soares' office must defend the lawyering of Albany attorney Lee Kindlon, who unsuccessfully ran

against Soares in a nasty 2012 Democratic primary. In April 2012, Sposito wrote to Law Beat complaining that during the trial Kindlon had been consumed with his DA campaign. And Soares' chief investigator, Christian D'Alessandro, asked Sheriff Craig Apple to investigate the time sheets filed by Kindlon, who was defending Sposito as an assistant alternate public defender. Soares was critical of Kindlon's harsh cross-examination of the victim. Kindlon told the jury in his opening statement the sex was consensual and the woman had "asked for it."

Sposito's appeal is being waged by high-profile Long Island defense lawyer Bruce Barket, who won acquittal in Schoharie County last year for the previously twice-convicted Binghamton-area car dealer Cal Harris of the murder of his wife. Donna Aldea, a former top appellate lawyer for Queens District Attorney Richard Brown and a key member of Barket's defense team, will argue on behalf of Sposito.

Sposito's lawyers will contend Kindlon failed to watch the entire recording of his interview with police before Kindlon waived a challenge to its admissibility. Soares will send Assistant District Attorney Michael Wetmore to handle the appeal.

Soares' office is the appellant in the case of O'Kane, who was convicted in City Court in 2010 of charges he tormented his former landlord by, among other bizarre actions, impersonating her deceased ex-husband. Prosecutors said O'Kane left her love notes, besieged her with emails and phone calls and referenced personal details of her relatives.

A City Court jury convicted O'Kane of stalking, harassment and criminal contempt. City Court Judge Gary Stiglmeier sentenced O'Kane to two years in jail and said he wished he could have imposed more time.

But Albany County Judge Peter Lynch dismissed the case, finding issues with the verdict sheet.

Soares' special counsel, Christopher Horn, contends Lynch must be overturned because he decided the issue was based on arguments that were not raised, that he was wrong on the merits and that the ineffective assistance of counsel argument does not add up because O'Kane's lawyer, Carolyn George, did not preserve the argument and waived it.

Defense attorney Paul Edwards is arguing on behalf of O'Kane.