

Exhibit A

WESTLAW**People v. Danielson**

Supreme Court, Appellate Division, Third Department, New York. | March 28, 2019 | 170 A.D.3d 1430 96 N.Y.S.3d 754 | 2019 N.Y. Slip Op. 023

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170 A.D.3d 1430

Supreme Court, Appellate Division, Third Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

William H. DANIELSON, Appellant.

108633

Calendar Date: February 15, 2019

Decided and Entered: March 28, 2019

Synopsis

Background: Defendant was convicted in the County Court, Chenango County, Revoir Jr., J., of murder. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that:

1 defendant's waiver of right to appeal was knowing, voluntary, and intelligently made in murder prosecution;

2 defendant's guilty plea on charge of murder foreclosed his right to challenge the legal sufficiency of the evidence submitted to the grand jury on the charge; and

3 defendant's guilty plea foreclosed his right to challenge the court's denial of his motion to disqualify the District Attorney's office from prosecuting his murder case.

Affirmed.

Appellate ReviewPlea Challenge or Motion

West Headnotes (5)[Change View](#)**1 Criminal Law**  Plea of Guilty or Nolo Contendere

Defendant's waiver of right to appeal was knowing, voluntary, and intelligently made in murder prosecution, although court did not use specific language of separate and distinct; at the outset of the plea colloquy, defendant's counsel indicated that he had discussed the appeal waiver with defendant, including the fact that, notwithstanding the appeal waiver, defendant retained certain rights to appeal, such as challenging the voluntariness of his guilty plea, the County Court thereafter distinguished defendant's right to appeal from the panoply of other trial-related rights that are automatically forfeited by entering a guilty plea, and defendant executed a written waiver of appeal, indicating that he had read same and discussed it with counsel prior to signing it.

2 Cases that cite this headnote

2 Criminal Law  Plea of Guilty or Nolo Contendere

There is no particular litany or catechism that a court must use during its allocution of a plea regarding waiver of right to appeal.

3 Criminal Law  Issues considered

Defendant's guilty plea on charge of murder foreclosed his right to challenge the legal sufficiency of the evidence submitted to the grand jury on the charge.

4 Criminal Law  Issues considered

Defendant's guilty plea foreclosed his right to challenge the court's denial of his motion to disqualify the District Attorney's office from prosecuting his murder case.

5 Criminal Law  Issues considered

Defendant forfeited his ineffective assistance challenge to defense counsel's motion practice in murder prosecution, where defendant entered a guilty plea. U.S. Const. Amend. 6.

Attorneys and Law Firms

**755 Paul J. Connolly, Delmar, for appellant, and appellant pro se.

Michael D. Ferrarese, Acting District Attorney, Norwich (Lauren D. Konsul, New York Prosecutors Training Institute, Inc., Albany, of counsel), for respondent.

Before: Egan Jr., J.P., Clark, Mulvey, Devine and Aarons, JJ.

MEMORANDUM AND ORDER

Egan Jr., J.P.

***1430** Appeal from a judgment of the County Court of ***1431** Chenango County (Revoir Jr., J.), rendered December 18, 2015, convicting defendant upon his plea of guilty of the crime of murder in the second degree.

In January 2014, defendant was charged in a five-count indictment with murder in the second degree (two counts), robbery in the first degree, assault in the first degree and assault in the second degree. The charges stemmed from an incident occurring in the early morning hours of December 27, 2013 in which defendant brutally beat the victim, causing mortal injuries from which she would succumb the next day. Following jury selection, defendant elected to forgo a trial and, instead, pleaded guilty to one count of murder in the second degree in satisfaction of the indictment and waived his right to appeal. Defendant was thereafter sentenced, in accordance with the terms of his plea agreement, to 20 years to life in prison. Defendant now appeals.

1 2 We affirm. Contrary to defendant's contention, his waiver of the right to appeal was knowing, voluntary and intelligent. At the outset of the plea colloquy, defendant's

counsel indicated that he had discussed the appeal waiver with defendant, including the fact that, notwithstanding the appeal waiver, defendant retained certain rights to appeal, such as challenging the voluntariness of his guilty plea. County Court thereafter distinguished defendant's right to appeal from the panoply of other trial-related rights that are automatically forfeited by entering a guilty plea (see *People v. Sanders*, 25 N.Y.3d 337, 341–342, 12 N.Y.S.3d 593, 34 N.E.3d 344 [2015]; *People v. Lopez*, 6 N.Y.3d 248, 256, 811 N.Y.S.2d 623, 844 N.E.2d 1145 [2006]; *People v. Khan*, 139 A.D.3d 1261, 1262, 31 N.Y.S.3d 671 [2016], *lvs denied* 28 N.Y.3d 932, 934, 40 N.Y.S.3d 360, 362, 63 N.E.3d 80, 82 [2016]). In addition, at sentencing, defendant executed a written waiver of appeal, indicating that he had read same and discussed it with counsel prior to signing it.

Accordingly, although County Court may not have specifically used the language "separate and distinct" during its plea colloquy, we note that there is no "particular litany or catechism" that a court must use during its allocution (*People v. Bradshaw*, 18 N.Y.3d 257, 264–265, 938 N.Y.S.2d 254, 961 N.E.2d 645 [2011] [internal quotation marks and citation omitted]; see *People v. Walker*, 166 A.D.3d 1393, 1393–1394, 86 N.Y.S.3d 920 [2018]). Upon review, we find that defendant knowingly, voluntarily and intelligently waived his right to appeal (see *People v. Sanders*, 25 N.Y.3d at 339–341, 12 N.Y.S.3d 593, 34 N.E.3d 344).

3 4 Given defendant's valid appeal waiver, he is precluded from challenging County Court's adverse ruling on his pretrial suppression motion (see *People v. Sanders*, 25 N.Y.3d at 342, 12 N.Y.S.3d 593, 34 N.E.3d 344; *People v. Daniels*, 167 A.D.3d 1088, 1089, 89 N.Y.S.3d 436 [2018]; ****756** *People v. Saunders*, 162 A.D.3d 1217, 1218, 78 N.Y.S.3d 790 [2018], *lvs denied* 32 N.Y.3d 1128, 93 N.Y.S.3d 267, 117 N.E.3d 826 [2018]), as ***1432** well as his claim of judicial bias (see *People v. Debberman*, 113 A.D.3d 929, 929, 978 N.Y.S.2d 448 [2014]; *People v. White*, 81 A.D.3d 1039, 1039, 916 N.Y.S.2d 652 [2011]) and his various challenges to the sentence and sentencing proceedings (see *People v. Daniels*, 167 A.D.3d at 1089, 89 N.Y.S.3d 436; *People v. Williams*, 163 A.D.3d 1172, 1173, 81 N.Y.S.3d 636 [2018], *lvs denied* 32 N.Y.3d 1009, 86 N.Y.S.3d 768, 111 N.E.3d 1124 [2018]; *People v. Collier*, 71 A.D.3d 909, 910, 895 N.Y.S.2d 848 [2010], *lvs denied* 15 N.Y.3d 773, 907 N.Y.S.2d 461, 933 N.E.2d 1054 [2010]; *People v. Schwepppe*, 250 A.D.2d 881, 881, 672 N.Y.S.2d 267 [1998], *lvs denied* 92 N.Y.2d 905, 680 N.Y.S.2d 69, 702 N.E.2d 854 [1998]). Defendant's challenge to the legal sufficiency of the evidence before the grand jury is precluded by his guilty plea (see *People v. Wilburn*, 158 A.D.3d 894, 894–895, 71 N.Y.S.3d 181 [2018], *lvs denied* 31 N.Y.3d 1123, 81 N.Y.S.3d 383, 106 N.E.3d 766 [2018]), as is his claim that the court erred in denying his motion to disqualify the District Attorney's office from prosecuting his case (see *People v. Ball*, 152 A.D.3d 973, 974, 55 N.Y.S.3d 915 [2017], *lvs denied* 30 N.Y.3d 978, 67 N.Y.S.3d 580, 89 N.E.3d 1260 [2017]). Although defendant's further contention that the grand jury proceedings were jurisdictionally defective survives his appeal waiver and guilty plea, we have reviewed the provided grand jury minutes and find said contention to be without merit (see *People v. Busreth*, 167 A.D.3d 1089, 1090, 87 N.Y.S.3d 406 [2018]; *People v. Bonds*, 148 A.D.3d 1304, 1305, 47 N.Y.S.3d 916 [2017], *lvs denied* 29 N.Y.3d 1076, 1081, 64 N.Y.S.3d 166, 86 N.E.3d 253 [2017]).

5 With regard to defendant's ineffective assistance of counsel claim, initially we find that his challenge to defense counsel's motion practice was forfeited upon the entry of his guilty plea (see *People v. Gorman*, 165 A.D.3d 1349, 1350, 85 N.Y.S.3d 614 [2018], *lvs denied* 32 N.Y.3d 1125, 93 N.Y.S.3d 263, 117 N.E.3d 822 [2018]; *People v. Duggins*, 161 A.D.3d 1445, 1446, 77 N.Y.S.3d 765 [2018], *lvs denied* 32 N.Y.3d 937, 84 N.Y.S.3d 863,

109 N.E.3d 1163 [2018]). To the extent that defendant's ineffective assistance of counsel claim impacts the voluntariness of his plea, although such claim survives the appeal waiver, "it is unpreserved for our review in the absence of a[n appropriate] postallocution motion" (*People v. Walker*, 166 A.D.3d at 1393, 86 N.Y.S.3d 920). Moreover, even assuming that certain postplea statements made by defendant implicated the voluntariness of his plea, thereby triggering the narrow exception to the preservation rule (see *People v. Brassard*, 166 A.D.3d 1312, 1313, 87 N.Y.S.3d 738 [2018]), the record establishes that County Court satisfied any duty that it had to make further inquiry. Defendant's remaining contentions in this regard involve matters outside of the record on appeal and, therefore, are more appropriately raised in a CPL article 440 motion (see *People v. Gorman*, 165 A.D.3d at 1350, 85 N.Y.S.3d 614; *People v. Williams*, 163 A.D.3d at 1173, 81 N.Y.S.3d 636). To the extent not specifically addressed, defendant's remaining claims have been reviewed and found to lack merit.

Clark, Mulvey, Devine and Aarons, JJ., concur.
ORDERED that the judgment is affirmed.

All Citations

170 A.D.3d 1430, 96 N.Y.S.3d 754, 2019 N.Y. Slip Op. 02388

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Exhibit B

COPY

State of New York
Court of Appeals

BEFORE: HON. EUGENE M. FAHEY,
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

WILLIAM H. DANIELSON,

Appellant.

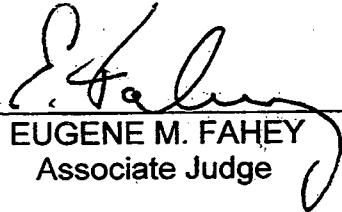
ORDER
DENYING
LEAVE

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: MAY 21 2019
at Buffalo, NY


EUGENE M. FAHEY
Associate Judge

*Description of Order: Order of the Supreme Court, Appellate Division, Third Department, entered March 28, 2019, affirming a judgment of the County Court, Chenango County, rendered December 18, 2015.

Exhibit F

1 STATE OF NEW YORK

2 COUNTY COURT COUNTY OF CHENANGO

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 Plaintiff,

6 -vs- Indict. 2014-1

7 WILLIAM DANIELSON,

8 Defendant.

10 ARRAIGNMENT in the above-entitled matter,
11 held in Chenango County Court at Norwich,
12 New York, on January 22, 2014, before the
13 HON. FRANK B. REVOIR, JR., County Court Judge.

15 APPEARANCES:

17 JOSEPH A. McBRIDE, ESQ.
Chenango County District Attorney

18 SCOTT CLIPPINGER, ESQ.
Attorney for Defendant

DEFENDANT, Present in Person

Reported by

Helen F. Hagen
Sr. Court Reporter

1 (The following takes place on January 22, 2014.)

2 THE COURT: We are on the record this morning
3 in the matter of the People of the State of New York
4 versus William H. Danielson under Indictment 2014-1.
5 Mr. Danielson is here this morning with his attorney,
6 Scott Clippinger. The Court has before it a five count
7 Indictment. The first count of the Indictment charges
8 Mr. Danielson with the Class A-1 violent felony of
9 murder in the second degree. The second count of the
10 Indictment also charges Mr. Danielson with the Class A-1
11 violent felony of murder in the second degree. The
12 third count of the Indictment charges Mr. Danielson with
13 the Class B felony of robbery in the first degree. The
14 fourth count charges Mr. Danielson with the Class B
15 felony of assault in the first degree. And the fifth
16 and final count of the Indictment charges Mr. Danielson
17 with the Class D felony of assault in the second degree.

18 At this time, Mr. Clippinger, would Mr.
19 Danielson like the Court to read the allegations under
20 each count of the Indictment, or will he waive a
21 reading?

22 MR. CLIPPINGER: Judge, at this time we'd waive
23 a reading of the Indictment and enter a plea of not
24 guilty to each of the five counts.

25 MR. McBRIDE: Can we approach briefly?

1 THE COURT: Yes.

2 (Off-the-record discussion bench.)

3 THE COURT: At this time, Mr. Clippinger,
4 notwithstanding that your client is willing to have the
5 Court waive a reading of the specific allegations
6 contained under each count, at this time the Court will,
7 for purposes of making a record, read each count of the
8 Indictment. The first count --

9 MR. CLIPPINGER: Judge, first of all, the
10 Indictment is part of the record. It's already in the
11 record. The only reason I can see the request from the
12 D.A. is to further inflame the public with the
13 information that's involved in this matter. It is part
14 of the record. It isn't necessary to read it to the
15 public. It's been waived by the defendant. This is not
16 the public's trial of this case. This is the
17 defendant's trial of this case.

18 MR. McBRIDE: Judge, actually I take strong
19 offense to that. My understanding of the law is that
20 the Court is required in homicide murder cases to read
21 the entire Indictment to the defendant because of the
22 nature of the offense. Counsel knows that's the only
23 reason that I asked the Court to be aware of that and
24 make the decision as to how the Court wanted to proceed.

25 MR. CLIPPINGER: And just for the record, I

1 would note that when that was requested, I asked for the
2 authority. And I haven't been provided with that
3 authority.

4 THE COURT: Well, I do know there is some
5 conflicting case authority out there on that issue. I'm
6 not certain in the Third Department exactly what that
7 is. But in the spirit of doing everything correctly
8 here, Mr. Clippinger, I will read the underlying
9 allegations.

10 The first count accuses Mr. Danielson of
11 committing the Class A-1 violent felony in violation of
12 Section 125.25(1) of the Penal Law of the State of New
13 York, which is murder in the second degree, alleges that
14 the defendant, William H. Danielson, on or about
15 December 28th, 2013, in the Town of Norwich, County of
16 Chenango, and State of New York, with intent to cause
17 the death of another person, he did cause the death of
18 such person or of a third person.

19 Specifically, on December 27th, 2013, at the
20 aforesaid time and place, at approximately 6:30 o'clock
21 in the forenoon at 110 Bourbon Street, the defendant did
22 intentionally cause the death of one Lucinda Knoll on
23 December 28th, 2013, date of birth May 23rd, 1974, by
24 striking her numerous times on the head.

25 The second count of the Indictment also

1 charging the Class A-1 violent felony of murder in the
2 second degree in violation of Section 125.25(3) of the
3 Penal Law of the State of New York, alleges that the
4 defendant, William H. Danielson, on or about
5 December 27th, 2013, in the Town of Norwich, County of
6 Chenango and State of New York, acting either alone or
7 with one or more other persons, did commit robbery. And
8 in the course of and in the furtherance of such crime or
9 of immediate flight therefrom, he or another
10 participant, if there be any, caused the death of a
11 person other than one of the participants.

20 The third count of the Indictment charging Mr.
21 Danielson with the Class B felony of robbery in the
22 first degree in violation of Section 160.15(1) of the
23 Penal Law of the State of New York, alleges that the
24 defendant, William H. Danielson, on or about
25 December 27th, 2013, in the Town of Norwich, County of

1 Chenango and State of New York, did forcibly steal
2 property and, in the course of the commission of the
3 crime or of immediate flight therefrom, he or another
4 participant in the crime caused serious physical injury
5 to any person who's not a participant in the crime.

6 Specifically, at the aforesaid time and place,
7 at approximately 6:30 o'clock in the forenoon at 110
8 Bourbon Street, the defendant did forcibly steal
9 property from Lucinda Knoll and, during the commission
10 of the robbery, did strike Lucinda Knoll numerous times
11 on the head, causing serious physical injury to the
12 victim.

13 The fourth count of the Indictment alleging the
14 Class B felony of assault in the first degree in
15 violation of Section 120.10(4) of the Penal Law of the
16 State of New York, alleges that the defendant, William
17 H. Danielson, on or about December 27th, 2013, in the
18 Town of Norwich, County of Chenango, and State of New
19 York, in the course of and in furtherance of the
20 commission or attempted commission of a felony or of
21 immediate flight therefrom, he or another participant,
22 if there be any, causes serious physical injury to a
23 person other than one of the participants.

24 Specifically, at the aforesaid time and place,
25 at approximately 6:30 o'clock in the forenoon at 110

1 Bourbon Street, the defendant, /-RG during the commission
2 of the crime of robbery against Lucinda Knoll, did cause
3 serious physical injury to Lucinda Knoll; the defendant
4 did strike Lucinda Knoll numerous times on the head
5 causing serious physical injury. On December 28th,
6 2013, Lucinda Knoll succumbed to the serious physical
7 injuries she received during the commission of the
8 robbery.

9 And the fifth and final count of the Indictment
10 alleging the Class D felony of assault in the second
11 degree in violation of Section 120.05(1) of the Penal
12 Law of the State of New York, alleges that the
13 defendant, William H. Danielson, on or about
14 December 27th, 2013, in the Town of Norwich, County of
15 Chenango and State of New York, with intent to cause
16 serious physical injury to another person, he caused
17 such injury to such person or to a third person.

18 Specifically, at the aforesaid time and place
19 at approximately 6:30 o'clock in the forenoon at 110
20 Bourbon Street, the defendant, with intent to cause
21 serious physical injury to Lucinda Knoll, did so by
22 striking her numerous times on the head which resulted
23 in her death on December 28th, 2013.

24 So with that, Mr. Clippinger, you've already
25 entered a not guilty plea to each and every one of those

1 five counts. That not guilty plea has already been
2 noted for the record. I will direct that motions shall
3 be filed within 45 days of today's date.

4 Mr. Danielson, relative to this Indictment, you
5 do have the following rights: You have the right to
6 remain silent. You also have the right to make pretrial
7 motions to test the legal sufficiency of the evidence
8 which the People claim they have against you. You also
9 have the right to a speedy trial by a jury of your
10 peers. And at that trial, you would have the right to
11 cross-examine and confront any witnesses the People
12 bring against you. And at that very same trial, sir,
13 you would have the right to subpoena witnesses to
14 testify on your own behalf.

15 You have the right to post bail, which we'll
16 discuss momentarily, and the right to make motions
17 addressed to this particular Indictment.

18 At this time, Mr. McBride, do the People wish
19 to be heard?

20 MR. McBRIDE: Judge, at this time I'd like to
21 file my Affidavit of Service and Certificate of
22 Readiness for the Clerk of the Court. Judge, I'd ask
23 the defendant be remanded pending a disposition of this
24 matter.

25 THE COURT: Thank you, Mr. McBride. Mr.

1 Clippinger, do you wish to be heard?

2 MR. CLIPPINGER: Judge, at this immediate time,
3 we're not requesting bail. But we reserve our right to
4 make an application for bail at some time in the future.

5 THE COURT: All right. Thank you, Mr.
6 Clippinger. Then the Court will continue to remand Mr.
7 Danielson to the correctional facility without bail.
8 Motions shall be made within 45 days of today's date.

9 MR. CLIPPINGER: Judge, while we're on the
10 record, I have one question, and it has to do with Mr.
11 McBride. I have been told -- there's a rumor that Mr.
12 McBride has appeared in Family Court sessions in which
13 my client has been present and that Mr. McBride appeared
14 in chambers, in conferences, and made certain
15 representations to you as the sitting Judge in that
16 Family Court matter. And I'd like to confirm whether
17 that has happened or not.

18 MR. McBRIDE: First off, I have the absolute
19 right to be in any Family Court proceedings. They're
20 open in the State of New York. Second off, I did appear
21 at a custody hearing and sat in the audience when the
22 matter was proceeding. And the issue came up as to
23 whether or not the child had witnessed a homicide, and
24 the answer to that question was absolutely yes. And
25 that information was disclosed to the Court, as the

1 Court's well aware.

2 MR. CLIPPINGER: Was that done in --

3 MR. McBRIDE: And none of this is relevant.

4 MR. CLIPPINGER: Is --

5 MR. McBRIDE: None of this is relevant to
6 today's proceedings.

7 THE COURT: And that is correct, Mr.
8 Clippinger, that, first of all, there have been no
9 in-chambers sessions, conferences in the custody matter.
10 There was a court appearance earlier this week. And as
11 you know, Family Court is open to the public, unless the
12 Court chooses for a particular reason to close the
13 courtroom. Mr. McBride is correct. He has the right,
14 as does the general public, to sit in the back of the
15 family courtroom, which he chose to do.

16 MR. CLIPPINGER: And so -- I want it clear on
17 the record he did not appear in chambers for a
18 conference?

19 THE COURT: That's correct.

20 MR. CLIPPINGER: And there was nothing said in
21 chambers by Mr. McBride with regard to this event?

22 MR. McBRIDE: Judge, I've never appeared in
23 chambers.

24 THE COURT: There has been nothing on the
25 Family Court case in chambers.

1 MR. CLIPPINGER: With regard to the Family
2 Court appearance, did he make statements to the Court
3 with regard to this matter?

4 MR. McBRIDE: First off, this is clearly
5 inappropriate. If he has some motion he'd like to bring
6 or if he wants to hold some --

7 MR. CLIPPINGER: I want it clarified before I
8 bring the motion.

9 MR. McBRIDE: No.

10 THE COURT: All right.

11 MR. McBRIDE: And Judge, he has no authority to
12 do anything, and counsel can make any grandstand that
13 he'd like. But the facts are the facts. I have the
14 right to appear.

15 THE COURT: Mr. Clippinger, you do have the
16 right to make any application you wish to do, but you
17 need to do so in writing on notice so that the District
18 Attorney's Office can appropriately respond, if they
19 deem it to be necessary.

20 MR. CLIPPINGER: Thank you.

21 THE COURT: All right. At this time, unless
22 there's anything further, we're concluded.

23 MR. McBRIDE: Thank you, Judge.

24 THE COURT: And the defendant is remanded back
25 to the correctional facility.

**Additional material
from this filing is
available in the
Clerk's Office.**