New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888
WWW.NYLJ.COM
An ALM Publication
VOLUME 257—NO. 83
TUESDAY, MAY 2, 2017

Outside Counsel

Expert Analysis

The Slow Decline Of 'People v. LaFontaine'

By **Benjamin Rosenberg**

And **Amanda Rios**

CPL 470.15(1) provides that intermediate appellate courts "may consider and determine any question of law or issue of fact involving error or defect in the criminal court proceedings which may have adversely affected the appellant." The Court of Appeals has the same restriction. See CPL 470.35(1). The interpretation of these provisions has important implications for the administration of the state's appellate courts, and is currently the subject of dispute.

The Story Begins

People v. LaFontaine, 92 N.Y.2d 470 (1998) arose from the arrest of the defendant in his apartment by New Jersey police officers, who had federal arrest warrants for crimes committed in New Jersey. Once in the apartment, the police saw cocaine and drug paraphernalia in plain view, and the defendant was charged for possession of those materials. The defendant moved to suppress on the grounds that the arrest was unlawful, but the trial court held that the officers had the authority to execute the federal warrant, and were thus lawfully in the defendant's apartment, and the evidence was properly seized. The appellate court affirmed the trial court's suppression decision, but on a ground—that the arrest was a "citizen's arrest" pursuant to CPL 570.34—that had been expressly rejected by the trial court. Id. at 473.

> Whereas 'LaFontaine' had been a unanimous opinion, 'Concepcion' provoked a strong dissent from Judge Robert Smith, joined by Judge Eugene Piggott Jr.

The Court of Appeals found that the appellate court had violated CPL 470.15(1) because it had "determined[d] an issue that had *not* "involve[ed]" an error that "adversely affected the appellant" below. On a defendant's appeal, the appellate court (and the Court of Appeals itself) were limited to only those issues decided by the trial adversely to the defendant, and could not affirm a trial court on a ground on which the court ruled (erroneously) in the defendant's favor, even if that ground had been presented, developed, and fully briefed below. Id. at 473-75.

The Court of Appeals recognized that its conclusion led to appellate courts deciding cases on a piecemeal basis, thus limiting the "sensible management" of cases, and "contradict[ing] the nostrum that a court should be able to preserve a result from a lower court by sometimes applying an independent alternative rationale where, as here, the issue was properly raised before the nisi prius court." Nevertheless, the court felt compelled to

BENJAMIN E. ROSENBERG *is a partner at Dechert. He served as the General Counsel for the New York County District Attorney's Office from February 2014 to December 2016.* AMANDA RIOS *is an associate of the firm.*

its conclusion by the language of CPL 470.15(1). Id. at 473-75.

'Concepcion' Dissent

LaFontaine was reaffirmed 13 years later in *People v. Concepcion*. 17 N.Y.3d 192 (2011). The trial court had denied the defendant's suppression motion, relying on the "inevitable discovery" doctrine and rejecting the People's argument that the defendant had consented to the search that led to the contraband. The Appellate Division found that the inevitable discovery doctrine was inapplicable, but that the defendant had, in fact, consented to the search. The Court of Appeals reversed: "The outcome of this appeal is dictated by our decision in *People v. LaFontaine*." Id. at 194.

Whereas *LaFontaine* had been a unanimous opinion, *Concepcion* provoked a strong dissent from Judge Robert Smith, joined by Judge Eugene Piggott Jr. Judge Smith called *LaFontaine* "a mistake, and a serious one," that made it "impossible" for the Appellate Division to affirm a lower court judgment "on a ground other than the one the lower court relied on," which appellate courts "do all the time." Judge Smith observed that the restriction amounted to "a gross waste of judicial resources" because the Appellate Division would instead have to remit back to the trial court for further proceedings "where the lower court has reached the right result, even if it did so for the wrong reason." Id. at 201, 202, 206 (Smith, J., dissenting).

Judge Smith argued that *LaFontaine* had misinterpreted the word "involving" in CPL 470.15(1). According to Smith, the term allowed appellate courts to decide any issue that was "necessary to decide a claim" of error or defect that may have adversely affected the appellant. Under that standard, it was appropriate for the appellate court to decide the consent issue because "[i]f—as the Appellate Division decided—[the appellant] did consent to the search, he was not 'adversely affected' by any error." Id. at 204 (Smith, J. dissenting).

Hope for End of 'LaFontaine'?

LaFontaine continued in force, barring appellate consideration of issues not ruled adversely to the appellant. See, e.g., *People v. Thompson*, 118 A.D.3d 922, 925 (2d Dep't 2014). Then came *People v. Garrett*, 23 N.Y.3d 878 (2014).

Garrett was convicted after trial of killing a teenage girl, and on a collateral (440.10) motion he alleged that the government had committed a *Brady* violation because it had not informed him of certain information about the police officer who had taken his confession and testified about it. The trial court rejected Garrett's motion on the ground that the prosecution had neither actual nor constructive knowledge of the information; it thus never considered another element of the *Brady* test—whether the information was material. The appellate court, however, ruled that the prosecution might have had actual or constructive knowledge of the information *and* that the information was material. The case was appealed to the Court of Appeals. 12 Id. at 880-85.

The trial court had not ruled adversely to the appellant on the materiality issue, but the appellate court found the arguably-withheld information material. "One might think that this was obvious *LaFontaine* error." Id. at 898 (Smith, J., concurring). But the court found that it was not, explaining that the materiality issue and the constructive knowledge issue that the trial court had decided "are not separate alternative grounds for decision" as both are part of the analysis of whether there was a *Brady* error. Thus, where there is a "single multi-pronged legal ruling," the appellate court can consider any of the "prongs" that are preserved, regardless whether the "prong" was decided adversely to the appellant by the trial court. Id. at 885 n. 2.

Judge Smith concurred, and rejoiced. He questioned the validity of the distinction between (1) separate alternative grounds for decision and (2) single "prongs" of a multi-pronged ruling, but did not push the issue, for he felt that the majority's decision demonstrated a clear disavowal of *LaFontaine*. He "welcome[d] the majority's limitation of the [*LaFontaine*] rule—a limitation which perhaps amounts to an effective overruling of *LaFontaine*." Id. at 899 (Smith, J., dissenting).

'Nicholson': Further Limits

But *LaFontaine* was not dead, and it continued to be cited in the

appellate divisions. See, e.g., *People v. Scott*, 133 A.D.3d 794, 797-98 (2d Dep't 2015) (citing cases). In *People v. Nicholson*, 26 N.Y.3d 813 (2016), the Court of Appeals found another way to avoid it. The prosecution alleged that the defendant had engaged in a multi-year course of sexual abuse of his young daughter. The defendant called his ex-girlfriend (Marincic), who had been romantically involved with the defendant during at least part of the time that he allegedly engaged in the sexual assaults, and lived with him in the house where the sexual assaults allegedly took place. Marincic testified that "she never witnessed or heard any violence against [the daughter] during her stays in the house," and that she and the defendant had ceased their romantic relationship, but had remained friendly, even after the defendant married another woman (from whom he had divorced by the time of the trial).

The prosecution called the defendant's recent ex-wife as a rebuttal witness to testify that the defendant and Marincic had had no contact with one another after the defendant and the rebuttal witness were married, directly contradicting Marincic's testimony of a post-relationship friendship with the defendant. The defendant objected that the existence of the friendship between Marincic and the defendant was a collateral matter as to which no extraneous evidence should be admitted, but the trial court overruled the objection. The trial court admitted the evidence simply on the theory that it tended to show that Marincic had lied. Id. at 821-24

The Appellate Division affirmed the defendant's conviction, but on a different theory: The rebuttal testimony was relevant to Marincic's "bias or motive to fabricate" because it allowed the implication that Marincic and the defendant were still romantically involved.

The first issue for the Court of Appeals was whether the fact that the Appellate Division "based its decision that the People's rebuttal witness testimony was admissible on a ground different from that of the trial court" meant that the Appellate Division had run afoul of *LaFontaine*. Under any robust reading of *LaFontaine*, the answer would have to be "yes"—after all, the trial court had never decided the prosecution's "implications of a romance" argument adversely to the defendant. In fact, the argument had never been presented to the trial court.

Whatever one thinks of the results in any of the cases discusses, it is abundantly clear that 'LaFontaine' is an unfortunate case in that it reached a result that no one (not even the court that announced it) thought was efficient or wise.

But the court answered "no." It said: "Where a trial court does not identify the predicate for its ruling, the Appellate Division acts appropriately in considering the import of the trial judge's stated reasoning." Id. at 825. And thus, as in *Garrett*, *LaFontaine* is relaxed in a complicated way: Not only can various "prongs" of the trial court's ruling be fodder for the appellate courts even if not ruled on below, but so can the "import of the trial judge's stated reasoning." Like Judge Smith in *Garrett*, we might not by persuaded by the court's analysis, but recognize that it is yet another limitation on the *LaFontaine* doctrine.

Whither 'LaFontaine'?

Whatever one thinks of the results in any of the cases discussed above, it is abundantly clear that *LaFontaine* is an unfortunate case in that it reached a result that no one (not even the court that announced it) thought was efficient or wise. As a consequence, it has been limited in ways that are welcome but unclear. A legislative re-write of CPL 470.15(1) and 470.35(1) is called for, see Report of the Advisory Committee on Criminal Law and Procedure to the Chief Administrative Judge of the Courts of the State of New York (January 2017) at 141, but given the other tasks that confront the legislature one could hardly expect that to be forthcoming.