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Ex-Fugitive Beau Dodges Witness Stand At NJ Judge's Trial

By Bill Wichert

Law360 (February 28, 2018, 9:54 PM EST) -- A New Jersey state appeals court ruled Wednesday that a state judge's former boyfriend cannot be compelled to testify at her trial on charges of hindering his apprehension when he was wanted for armed robbery, saying he asserted a legitimate claim of his constitutional right against self-incrimination.

The two-judge appellate panel reversed a trial court's Feb. 14 order compelling Jason Prontnicki's testimony at the trial of suspended Superior Court Judge Carlia M. Brady, finding that taking the witness stand would put him at risk while he continues appealing his robbery conviction.

"Turning to the merits, there is no dispute that despite his conviction, Prontnicki's privilege against incriminating himself as to the robbery case remains viable pending the disposition of his direct appeal," the panel said.

"Prontnicki faces the real risk that clearly incriminatory evidence would be used against him in a prosecution that already exists, and in which the appellate process has not been concluded," the panel added.

Judge Brady, who became a judge in April 2013 and was assigned to Middlesex County's Civil Division, is facing two counts of hindering the apprehension or prosecution of Prontnicki in June 2013, when he was being sought for the armed robbery of a pharmacy. He was ultimately convicted and sentenced to 10 years in prison.

Judge Brady was indicted in 2015 on a count of official misconduct and two counts of hindering the apprehension or prosecution of Prontnicki. A trial court later dismissed the official misconduct charge and upheld the hindering charges, which was affirmed by a state appellate panel last September.

Jury selection in her trial began on Feb. 12.

Prontnicki, who was subpoenaed by the state to be a witness that same day, said he would invoke his Fifth Amendment right against self-incrimination if called upon to testify in the matter. Prosecutors sought to question him about his alleged conversations with Judge Brady, among other activities.

The following day, Superior Court Judge Robert B. Reed said at a hearing that he determined Prontnicki's assertion of his Fifth Amendment right against self-incrimination **to be invalid**.

Judge Reed found that Prontnicki "clearly appears to be a non-culpable participant" in the alleged crimes of Judge Brady, saying he could not be charged with those offenses. The judge added that Prontnicki "has not set forth a legitimate basis for fear of criminal prosecution."

Prontnicki will be required to testify if called upon to do so in the matter, Judge Reed said.

The state's Appellate Division on Feb. 16 agreed to review Prontnicki's emergent appeal of Judge Reed's order as well as a related application from Judge Brady with respect to the scope of her cross-examination of Prontnicki. The Appellate Division said jurors could not be sworn in and the trial could not commence until the emergent motions were decided.

In granting Prontnicki's motion and reversing the trial court's order — and dismissing Judge Brady's motion as moot — the appellate panel noted Wednesday that Prontnicki's testimony about his activities and conversations while inside Judge Brady's house on the days in question "could disclose substantial evidence of flight."

"Regardless of whether he may be prosecuted for flight ... evidence of flight could in turn establish consciousness of guilt of the robbery for which he was wanted at the time," the panel said.

The panel rejected the state's argument that "the evidence anticipated from Prontnicki is cumulative and unlikely to be used, even if his conviction is reversed."

"Even if that were so, that is no reason to demean as 'imaginary' Prontnicki's fear that his statements could be used against him. A witness must 'reasonably believe' the disclosure 'could be used in a criminal prosecution,'" the panel said, quoting from the U.S. Supreme Court's 1972 opinion in *Kastigar v. U.S.*

Prosecutors also suggested that immediate review of the matter is unnecessary, saying that if Judge Reed erred, Prontnicki would be "adequately shielded from harm" under the New Jersey Rules of Evidence, according to the appellate opinion.

The state contended that that Rule 351, which forbids the admissibility of wrongfully compelled self-incriminating statements, would bar prosecutors from using Prontnicki's compelled statements in the event that his conviction is reversed and he is retried, the opinion said.

But the panel said "the harm from compelled testimony is not limited to the use of the incriminatory statements in subsequent criminal proceedings."

"Harm arises from the coercion, from the violation of human dignity and integrity, and from the state 'pry[ing] open one's lips ... making him [or her] a witness against himself [or herself]," the panel said, citing the U.S. Supreme Court's 1956 opinion in *Ullmann v. U.S.*

"Although [NJRE Rule] 531 provides an important remedy for the wrongful compulsion of self-incriminating statements, it is no excuse for compelling Prontnicki to incriminate himself," the panel added.

One of Judge Brady's attorneys, Timothy R. Smith of Caruso Smith Picini PC, told Law360 on Wednesday in an email that "throughout this case the State has treated the Constitution as if it was an afterthought as opposed to the cornerstone of our society. It was refreshing to see it once again validated by the Appellate Division."