

I Object!

– James Eckert, Esq.

Post-Hearing Argument

Now that the seas have stopped rising, it's useful to consider what happens at the end of a pretrial hearing, any pretrial hearing.

The trouble with pretrial hearings is that judges know what the fuss is about at the hearings. When you focus your questions on whether the ID witness could hear the cop's radio and descriptions being broadcast, you know the Judge knows that's your pitch - the ID was suggestive because the witness heard how the defendant was arrested, transported or whatever. When you focus on the refusal of police to allow the minor defendant's parent to speak to him, or on the fact that the defendant asked for counsel, but perhaps not in Latin, we all know what the issue is.

Well, the Appellate Division (or County Court on a local court appeal) might not. However, judges generally hate to be reversed. So even though it happens rarely, if you can convince the judge that you have a chance on appeal, you increase your chances of a favorable ruling. A partial success at a pretrial hearing can be extremely valuable, getting you better shot at trial, a better offer.

A post-hearing written submission helps greatly in the appeals process. I am confident that it helps at the hearing level as well - it improves your odds and cannot hurt. You don't need to do hours of original research on each hearing, just lay out your arguments and the support you have, either generally applicable cases, or even the same ones used in your original motion. If your judge refuses to allow written argument after the hearing, denying your request may not be reversible error on appeal, but it might help if the people are arguing that our issue is unpreserved. Especially if something unexpected has come up, a request to submit written arguments should buy you time to consider your arguments and run them by other people, in addition to doing research on the point. You'd be surprised the number of issues that someone else has litigated before.

If you cannot get that time, make an argument before the decision is made. Remember, just because everyone in the room knows why you asked certain questions does not mean that the appellate court will consider the issue preserved if there has not been an explicit argument made on that point. The more the judge thinks you could win on appeal, the more likely you are to get some relief. Even if the opinion is entirely against you, raising the specter of reversal might make your judge more amenable to any deal which might be worked out some time down the road. Close might just be good enough.

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