State of New York
Court of Appeals

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To be argued Thursday, March 14, 2024

No. 40 People v Yasif Sims

Facing three felony charges stemming from his involvement in a drug trafficking ring in St. Lawrence County in 2016-17, Yasif Sims agreed to a plea bargain in which he would plead guilty to one count of criminal possession of a controlled substance in the second degree in exchange for a six-year prison sentence. County Court imposed a condition that, until the sentencing, "you have got to comply with the jail rules. You break the jail rules, get involved in a fight, promote some contraband..., disrespect the corrections officers, whatever it may be, I am no longer bound" by the agreement and could sentence him to up to 14 years. Defense counsel informed the court that Sims was reluctant to accept the condition because jail guards had threatened to write him a disciplinary ticket if he pled guilty. The court then clarified the condition, saying, "Simply because a jail ticket is written doesn't mean that you are going to lose the benefit of your bargain. What is going to happen, if you get in trouble, is they are going to send me the information. I'm going to take a look at it" and defense counsel "is going to get a chance to address it.... [I]f it turns out ... that you got in a fight with another inmate..., well, then, I'm going to look at that and say, you lost your right to the commitment. But, if it is something close, I'm going to take a look at it." Sims accepted the condition and pled guilty as agreed.

As soon as he was returned to jail that day, guards issued him tickets charging four infractions. A disciplinary board found him not guilty of two infractions, but guilty of two others: verbal harassment and disrespecting facility staff. He received no more tickets for the next four months. At sentencing, defense counsel asked the court to abide by the sentencing agreement, arguing that Sims's alleged conduct did not violate the plea condition as clarified by the judge. "[T]he example the court gave ... was a serious misconduct of getting in a fight with another inmate or punching someone...," he said. "While I understand it is the court's position that that was illustrative," Sims's infractions did not involve "any sort of violence towards a corrections officer." The court concluded it was not bound by its sentencing commitment and sentenced Sims to seven years in prison.

The Appellate Division, Third Department affirmed, saying "County Court made clear that a condition of the plea was that he 'comply with the jail rules' by, among other things, respecting the correction officers and that, if he failed to do so, the court would no longer be bound by the promised sentence." It said the court heard from defense counsel and Sims on the jail infractions and the plea condition, and found that "the court conducted a sufficient inquiry before determining that there was a legitimate basis for the charges."

Sims says he "remains in prison despite a clear violation of his due process rights. His plea and sentence should be vacated. At a minimum, the plea agreement should be enforced and his sentence immediately reduced to six years." He argues, among other issues, that the disparity between the court's clarification of the plea conditions and its determination that he violated those conditions, "based on unsworn, unsigned, and uncorroborated hearsay allegations" by jail guards, rendered his plea involuntary.

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State of New York
Court of Appeals

To be argued Thursday, March 14, 2024

No. 41 People v Kenneth E. Fisher

Kenneth Fisher's trial on drug charges in Chemung County Court began on a Monday with jury selection. When the jury began its deliberations three days later, it sent the judge a note that read, "Confidential, one juror feels she may have been followed home Monday by Mr. Fisher." The court determined the note referred to Juror No. 6 and held an inquiry, with Fisher and both attorneys present. Juror No. 6 said she believed he had followed her home "Because I could see him in my rearview mirror." He was in a maroon Lincoln, "an older model," she said, and "may have been six or eight car lengths behind me." She said she was "95 percent" certain the driver was Fisher. When the court asked, "Is there a reason why you are bringing this up to us now...?," she replied, "Because other juror members were scared for their own safety, because of certain people that were sitting watching the trial through the week." The court then asked if she could be fair and impartial. She replied, "I can be a fair and impartial juror, yes. I say that, because the other juror members encouraged me, because their safety may be at risk." After conferring with Fisher, defense counsel moved for a mistrial on the ground that Juror No. 6 was grossly unqualified to serve. He raised concerns about her delayed disclosure, said she appeared to still believe that Fisher had followed her home, and said her statements that she only came forward because other jurors feared for their own safety suggested a possible racial bias among the jurors. The court denied the motion, relying on Juror No. 6's statement that she could be fair and impartial, but granted defense counsel's request that it question the other jurors. They raised more generalized concerns that "you're dealing with drug dealers" and "there's always a drug ring, there's always somebody looking out for the other guy," but all of them assured the court that they could be fair and impartial. Fisher was convicted of three counts third-degree criminal sale of narcotics, acquitted of two possession counts, and sentenced to nine years in prison.

The Appellate Division, Third Department affirmed on a 3-2 vote, saying the trial court conducted the required "probing and tactful inquiry" before finding Juror No. 6 was not grossly unqualified. "County Court was in the best position not only to assess the juror's oral assertions but also her demeanor – which cannot be assessed via perusal of a trial transcript," the majority said. "Moreover, we recognize that in questioning the juror, the trial court walks a fine line and must 'avoid tainting a jury unnecessarily. In this endeavor, sometimes less is more....' [D]eferring to County Court's ability to observe the jury and assess juror No. 6's state of mind..., we cannot say [its] denial of defendant's motion for a mistrial constituted an abuse of discretion."

The dissenters said the trial court failed to conduct a proper inquiry. "The court observed that the Monday incident probably did not happen, but juror No. 6 clearly thought otherwise.... In response, the court inquired as to the reason for the late disclosure, only to learn that other jurors had safety concerns. Disregarding that factor, the court further concluded that juror No. 6 could be fair and impartial, ignoring her explanation that she could be fair 'because the other juror members encouraged [her], because their safety may be at risk.' That extraordinary qualifier necessitated further inquiry by the court, but there was none.... The operative point here is not what the court thought about the Monday incident, but whether and to what extent that experience affected juror No. 6's state of mind in her deliberations, not to mention the impact on the other jurors."

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State of New York
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To be argued Thursday, March 14, 2024

No. 42 People v Corey Dunton

Corey Dunton was 16 years old in November 2013, when he tried to steal a jacket from a 17-year-old skater in Manhattan's Bryant Park. The skater resisted and Dunton shot at him five times, wounding him. One of the shots struck a 14-year old bystander, paralyzing him from the waist down. Dunton was charged in a seven-count indictment with second-degree attempted murder and related charges. He spent three years awaiting trial at Rikers Island, where he repeatedly engaged in altercations including violence against correction officers. The trial judge took note of several of these incidents and warned Dunton that if his out-of-court misbehavior prevented him from appearing, the trial would proceed without him, but also observed that he had been "a gentleman in the courtroom."

When the jury concluded its deliberations, the court had Dunton remain handcuffed for the reading of the verdict. Dunton remained quiet as the foreperson read the jury's guilty verdicts on the first five counts, then he laughed. After the foreperson read the guilty verdict on the sixth count, he interjected: "You thought that was gonna break me? I don't care about sentencing.... Y'all didn't break me." The court told defense counsel to "control your client," but Dunton continued, "I'm good. You all didn't break me. Give me the whole 50 years.... All 12 of y'all can sit there and say you all did the right thing. That's what I want y'all to know. Live with that." The court ordered the officers to "take charge" while Dunton said, "Live with that.... What y'all done ain't gonna break me. You ain't gonna see me cry. I'm walking out the same way I came in, immaculate," and ended with a vulgar suggestion. After he was removed from the courtroom, the foreperson read the guilty verdict on the seventh count and the jury was polled, confirming its verdict. Dunton was sentenced to 25 years in prison. The Appellate Division, First Department affirmed on direct appeal.

Two years later, Dunton moved for a writ of error coram nobis, contending that his attorney provided ineffective assistance of counsel by failing to argue that the trial court violated his right to be present at trial when it removed him, without warning, before the entire verdict had been read and the jury polled. The Appellate Division granted the motion and ordered a new trial. "By failing to issue the requisite warning, the trial court violated defendant's Sixth Amendment rights" and state statutes, it said. "Here, there is no evidence that defendant engaged, or even threatened to engage, in any violent behavior in the courtroom prior to his removal.... Other warnings given by Supreme Court did not satisfy the court's responsibilities ... because they were based upon defendant's actions outside of the courtroom and did not address removal." It said appellate counsel had no strategic reason for not raising the issue on direct appeal.

The prosecution argues that Dunton's ejection "was fraught with enough factual and legal difficulties that appellate counsel cannot be said to have been constitutionally ineffective in declining to raise it," saying counsel could have believed the trial judge "properly exercised his discretion" to "protect those in the courtroom – particularly jurors ...– from not just harm and threatening behavior, but also any sort of undue influence." Counsel could have reasonably thought that any violation was harmless, since only the seventh guilty verdict remained to be read, it says; and "appellate counsel was not ineffective for choosing to press other, more comprehensive claims. The claims that counsel did present on appeal had the added virtue of focusing on alleged police or prosecutorial misconduct, rather than on defendant's violent and intransigent behavior."

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State of New York
Court of Appeals

To be argued Thursday, March 14, 2024

No. 39 People v Cid C. Franklin

In May 2016, a driver told police that another driver had just brandished a handgun at him during a traffic dispute in Queens and gave them the driver's plate number. Officers traced the plate to a house on 168th Street, where the vehicle was registered, and found Cid Franklin outside the house, which belonged to his stepmother. Franklin ducked into the basement and locked the door. Officers arrested him soon after when he came out the front door. They searched the basement, with the owner's permission, and recovered a loaded .25 caliber pistol. Franklin was charged with weapon possession. That same night, a Criminal Justice Agency (CJA) employee interviewed him at Queens Central Booking about his background, employment, financial resources and community ties in order to complete a "CJA form," which is submitted to arraignment courts with recommendations on pretrial release. Franklin told the CJA interviewer he had lived in his stepmother's basement for three years.

At trial, seeking to establish that Franklin resided in the basement where the handgun was found, the prosecution moved to admit the CJA form into evidence through testimony of a CJA supervisor who had not interviewed Franklin or prepared the form. Franklin objected that admitting the CJA form through an employee who did not create it would violate his right to confront witnesses under the Sixth Amendment and Crawford v Washington (541 US 36). Supreme Court admitted the CJA form under the business records exception to the hearsay rule and overruled Franklin's Crawford objection, saying "there is no Crawford violation in that this was not made specifically for prosecution purpose.... [T]his is made as an aid to the Judge to [decide] if any bail should be set at arraignments." Franklin was convicted of second-degree criminal possession of a weapon and sentenced to four years in prison.

The Appellate Division, Second Department reversed the conviction and ordered a new trial. "A statement is testimonial even where it is 'inculpatory only when taken together with other evidence' or made by a non-accusatory witness.... Here, the testimony of the CJA employee and the CJA form were admitted in order to establish an essential element of the charges..., in violation of the defendant's right of confrontation.... The defendant was never given the opportunity to cross-examine the CJA employee who prepared the CJA form, and, in admitting the CJA form through an employee who did not prepare the form, the Supreme Court failed to ensure that the defendant's Sixth Amendment right of confrontation was protected."

The prosecutors concede the CJA form provided the only direct proof that Franklin lived in the basement, but argue the form is not testimonial. "CJA is not a law enforcement agency – it is a nonprofit organization funded by the City of New York – and its aims are not investigatory or prosecutorial. Indeed, CJA employees do not ask defendants about the crimes of which they are accused. Perhaps inevitably, though, sometimes information that a defendant provides during the CJA interview ... becomes useful to a criminal prosecution.... As the trial judge ... correctly recognized, defendant's [CJA] interview did not serve prosecutorial or investigatory ends – quite to the contrary, the purpose of these interviews is to minimize unwarranted pre-trial detention – accordingly, the statements defendant made during it were not testimonial." They also say Franklin "was the declarant for Confrontation Clause purposes, rather than the CJA employee who interviewed him and then transcribed his responses. And ... a criminal defendant has no Sixth Amendment right to confront himself."

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