

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Thursday, October 7, 2021 (arguments begin at noon)

## No. 63 People v Tyrone Wortham

When New York City police officers executed a search warrant at a Brooklyn apartment in May 2011, Tyrone Wortham and his two young children were the only civilians present. Wortham was handcuffed and, while other officers conducted the search, a detective asked him for his name, address, and other pedigree information without administering Miranda warnings. Wortham responded that his girlfriend let him stay at the apartment, where he slept on a bed in the living room. The search ultimately recovered two loaded weapons, an assault rifle and a pistol, as well as crack cocaine, drug packaging materials, and ammunition.

Wortham moved to suppress his statement that he lived in the apartment, arguing that the pedigree exception to Miranda does not apply when a pedigree question is likely to elicit an incriminating response. Since he was not being questioned in a routine booking process at a precinct, but in a targeted apartment where officers were searching for contraband, he said the police should have known that asking where he lived was likely to elicit an incriminating response. He also sought a Frye hearing to determine whether the medical examiner's Forensic Statistical Tool (FST), a new method of analyzing mixed DNA samples that was used to link him to one of the guns, is accepted as reliable in the relevant scientific community.

Supreme Court denied the motion to suppress, saying Wortham was questioned in accordance with NYPD procedure, in which "every adult inside the apartment must be handcuffed and pedigree taken" when a search warrant is executed. "Under the general rule, even if a defendant is arrested inside the apartment and handcuffed, he can be asked pedigree questions.... This defendant was not under arrest. In fact, there was no evidence, according to [the detective's] testimony, that anything had been recovered at the time the defendant spoke to the detective. So clearly the questions in this case were not designed to elicit an incriminating response from the defendant. And no ulterior motive can be attributed to [the detective] since he wasn't even aware at the time he spoke to the defendant whether there was any contraband in the apartment." The court also denied his request for a Frye hearing.

Wortham was found guilty of multiple counts of weapon and drug possession and endangering the welfare of a child. He was sentenced to nine years in prison.

The Appellate Division, First Department affirmed. "Although defendant acknowledged that he resided in the apartment where contraband was found, he was responding to a routine administrative question that was not a 'disguised attempt at investigatory interrogation' (People v Rodney, 85 NY2d 289 ...) and was not designed to elicit an incriminating response...."

Wortham argues that, in refusing to suppress his statement, "the courts below applied an erroneous legal standard, focusing on the detective's subjective intent. The hearing court found that his question was not 'designed to elicit an incriminating response' and had 'no ulterior motive.' The Appellate Division affirmed on the same improper basis.... Applying the correct objective standard pursuant to Rodney, appellant's statements should have been suppressed, because the detective's question was reasonably likely to elicit an incriminating response." He cites a line of Fourth Department cases, which has suppressed statements in similar circumstances when a pedigree question about a defendant's residence, while "facially appropriate," was "likely to elicit an incriminating admission." He also contends the refusal to grant him a Frye hearing violated his due process rights.

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For respondent: Manhattan Assistant District Attorney David M. Cohn (212) 335-9000

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**No. 64 Matter of Verneau v Consolidated Edison Co. of New York, Inc.**

**No. 65 Matter of Rexford v Gould Erectors & Riggers, Inc.**

The question raised by these appeals is whether Workers' Compensation Law (WCL) § 25-a(1-a), a 2013 amendment to phase out a special fund that pays benefits to injured workers whose cases are closed and later reopened, prohibits imposing liability on the Special Fund for Reopened Cases for death benefit claims filed after the cut-off date where liability for the deceased workers' underlying disability cases was transferred to the Special Fund prior to the cut-off date. The amendment (subdivision 1-a) provides, "No application by a self-insured employer or an insurance carrier for transfer of liability of a claim to the [special] fund for reopened cases shall be accepted by the [Workers' Compensation Board] on or after" January 1, 2014.

In case No. 64, Frances Verneau's husband was diagnosed with asbestos-related lung disease and, after the disease was found to be a result of his work, he established a claim for disability benefits as of June 1, 2000. In 2011, before the January 1, 2014 cut-off date in subdivision 1-a, liability for his claim was transferred from his self-insured employer, Consolidated Edison Co., to the Special Fund. He died in 2017 and Verneau applied for workers' compensation death benefits after the statutory cut-off date. ConEd denied coverage of the claim, contending the Special Fund remained liable for the case.

In Case No. 65, Kristen Rexford's father established a lifetime workers' compensation claim as a result of a heart attack he suffered in 1987 while working for Gould Erectors & Riggers, Inc., which was insured by the State Insurance Fund (SIF). In 1997, before the statutory cut-off date, liability for his claim was transferred from SIF to the Special Fund. He died of cardiac arrest in 2016 and Rexford applied for death benefits, alleging the 1987 heart attack contributed to his death. The SIF argued the Special Fund remained liable after the cut-off date.

The Workers' Compensation Board (WCB) ruled in both cases that the employer or its insurer was liable for the death benefits, not the Special Fund. It cited American Economy Ins. Co. v State of New York (30 NY3d 136), in which this Court rejected a constitutional challenge to the 2013 amendment.

The Appellate Division, Third Department reversed, saying in Verneau "the imposition of liability on the Special Fund ... is not precluded by the [2013] statutory amendment, given that liability was transferred to the Special Fund in December 2011, well before the January 1, 2014 closure date." It cited its prior decision in M/O Misquitta v Getty Petroleum (150 AD3d 1363) which held that, while a consequential death claim is separate and distinct from a decedent's original claim, "where ... liability for a claim has already been transferred ... to the Special Fund and the employee thereafter dies for reasons causally related to the original claim, the Special Fund remains liable for the claim for death benefits." It said American Economy "does not compel a contrary result" because "[t]he only issue before the Court ... was the constitutionality of the 2013 amendment."

The WCB and Special Fund argue that WCL § 25-a(1-a) bars imposing liability on the Special Fund for death benefit claims filed after January 1, 2014. Such claims "constitute new claims that are distinct from any related awards made during a worker's lifetime" and therefore require a new transfer of liability, which is barred by the "plain language" of the statute, they say, and the Appellate Division's decisions "undermine the Legislature's goal to close the Special Fund as promptly as possible."

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