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.

To be argued Thursday, November 16, 2023, in Buffalo

No. 8 Suzanne P. v Joint Board of Directors of Erie-Wyoming County Soil Conservation District

In June 2012, a 14-year-old boy was wading and swimming with friends in Buffalo Creek in the Town of West Seneca when he was washed over a low-head dam, held underwater by the strong current flowing over the dam, and drowned. The boy's mother, Suzanne P., brought this wrongful death action on behalf of her son's estate against the Joint Board of Directors of Erie-Wyoming County Soil Conservation District (Joint Board) alleging that it was the owner and operator of the dam and had been negligent. The estate also sued Erie County, the Town of West Seneca, and the separate Soil & Water Conservation Districts of Erie and Wyoming Counties (the Districts) on various grounds, including that they shared responsibility for the Joint Board's actions or they failed to warn of a dangerous condition at the dam. The low-head dam was designed and built in the 1950s by a federal agency now known as the Natural Resources Conservation Service (NRCS). The Joint Board, as sponsor of the project, has operated and maintained the dam under contracts and agreements with the NRCS, which the estate contends vested ownership of the dam in the Joint Board.

Supreme Court denied the Joint Board's motion for summary judgment dismissing the suit, saying there were issues of fact about whether the Board owned the dam, "especially in light of the operation and maintenance agreement" with the NRCS. The court dismissed all claims against the other defendants, finding that the Districts were "separate entities" from the Joint Board and were not responsible for the dam; that the County did not own the dam; and that the Town did not own or control the creek. The Appellate Division, Fourth Department affirmed.

After a bifurcated trial on the issue of the Joint Board's ownership of the dam, Supreme Court granted a directed verdict that the Joint Board was an owner of the dam. It said the operation and maintenance agreement between the Board and NRCS vests structures, including the dam, in the project sponsor. "The Sponsor is the Joint Board per the agreement.... This court believes that it's spelled out that the dam vests with the Sponsor, and the conditions to vest are still met to this day.... They may not know that they own it but it vests with them."

The Appellate Division, Fourth Department reversed and dismissed the suit, ruling the Joint Board did not own the dam. It said that "NRCS constructed the dams, which were permanently affixed to land underlying Buffalo Creek.... Thus..., the dams are structures that constitute fixtures annexed to the realty and are part thereof.... Inasmuch as the trial evidence also established the NRCS had no ownership interest in Buffalo Creek or the abutting land, no transfer of ownership of the subject dam by NRCS could have occurred under the terms of the agreement given that '"[a] grantor cannot convey what the grantor does not own"'...."

The estate argues that this Court should reinstate its claims against all of the defendants. Under the language of the contracts between the Joint Board and NRCS, it says ownership of the dam "automatically vested in the Joint Board" upon its completion, without regard to who owned the creek bed or abutting land and with no need for a transfer of ownership, making the Board responsible for posting signs warning about the dangers posed by the dam.

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For respondent Erie County: Jeremy C. Toth, Buffalo (716) 858-2204
For respondent West Seneca: Paul F. Hammond, Buffalo (716) 856-1344
For respondent Joint Board: Mark P. Della Posta, Buffalo (716) 856-1636
For respondent Erie Soil & Water: Justin L. Hendricks, Buffalo (716) 853-3801
For respondent Wyoming Soil & Water: Philip C. Barth III, Buffalo (716) 856-1300

State of New York
Court of Appeals

To be argued Thursday, November 16, 2023, in Buffalo

No. 94 Stoneham v Joseph Barsuk, Inc.

Mark Stoneham was injured in August 2018 while working on a heavy-duty trailer owned by David Barsuk at Barsuk's scrap yard in Batavia. Stoneham used a front-end loader to lift the trailer so he could replace a leaking air tank in its air brake system. While he was under the trailer completing the installation, the front-end loader rolled backward and dropped the trailer on top of him. Stoneham brought this action against Barsuk to recover damages for his injuries under Labor Law § 240(1), which requires owners and contractors to provide "proper protection" against elevation-related risks to workers engaged in the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." Stoneham argued the statute applied because the trailer is a "structure" that he was "repairing."

Supreme Court dismissed the suit on summary judgment, ruling that Stoneham was not engaged in a protected activity within the meaning of the statute. "The plaintiff's work was limited to the replacement of a leaking air tank on the trailer's brake system," it said. "This kind of work is performed every day on trucks and trailers outside of a construction setting.... It ... is well settled that Labor Law § 240(1) does not apply to routine maintenance in a non-construction, non-renovation context."

The Appellate Division, Fourth Department affirmed in a 3-2 decision, saying that "individual statutory terms such as 'repairing' or 'structure' cannot be considered in isolation. Instead, any activity must be considered in light of the text of Labor Law § 240(1) as a whole and the statute's 'central concern[, which] is the dangers that beset workers in the construction industry'.... Here, plaintiff, a certified diesel technician, was injured while installing an air tank on a flatbed trailer on the premises of a recycling plant. Inasmuch as plaintiff was 'engaged in his "normal occupation" of repairing [vehicles]..., a task not part of any construction project or any renovation or alteration to the [recycling plant] itself,' he was not engaged in a protected activity within Labor Law § 240(1) at the time of the accident...."

The dissenters argued that the trailer qualified as a "structure." They said this Court's 1909 decision in Caddy v Interborough R.T. Co. (195 NY 415) "made clear that the meaning of the word 'structure,' as used in the Labor Law, is not limited to houses or buildings.... The Court stated, in pertinent part, that 'the word "structure" in its broadest sense includes any production or piece of work artificially built up or composed of parts joined together in some definite manner.'" They cited subsequent Fourth Department decisions that found a crane and a van were structures. "Here, the flatbed trailer upon which plaintiff was working also fits 'squarely within' the definition of a 'structure.'" They said there were triable issues of fact concerning "whether plaintiff was engaged in routine maintenance – which falls outside the protections of Labor Law § 240(1) – or a repair of the flatbed trailer, a protected activity."

For appellant Stoneham: John N. Lipsitz, Buffalo (716) 849-0701
For respondent Barsuk: James M. Specyal, Buffalo (716) 566-5400

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To be argued Thursday, November 16, 2023, in Buffalo

No. 95 People v Devon T. Butler

In March 2017, two undercover detectives investigating drug activity in Binghamton observed what they considered a suspicious interaction between Devon Butler and a man who briefly entered his car in a parking lot, touched hands with Butler, and quickly departed. The officers followed Butler out of the lot and eventually stopped him when he made several evasive maneuvers – a U-turn, speeding, and running a stop sign. At their request Butler got out of his car, leaving the door open. Detective Christopher Bracco brought his narcotics detection dog out of his vehicle and, as he walked him around Butler's car, the dog jumped into the driver's seat and "alerted" to the scent of drugs. Bracco then decided to "see if there's any odor" on Butler and allowed the dog to approach. The dog "put his nose in the groin/buttock region of [Butler], and then he sat," signaling drugs were present. Butler bolted, the officers gave chase and saw him reach down the back of his pants – as if to discard something – before they caught and arrested him. They found a package with 76 bags of heroin along the path of his flight. Butler admitted the drugs were his.

Broome County Court denied Butler's motion to suppress the drug evidence, finding the officers had "a founded suspicion that criminality was afoot, and lawfully permitted the K-9 search of the vehicle." It also found the K-9 search of Butler's person was legal because "there is not a reasonable expectation of privacy in the air surrounding a person.... It was therefore perfectly acceptable for [the dog] to approach defendant in an effort to 'sniff' the air surrounding defendant." Butler pled guilty to third-degree drug possession and evidence tampering and was sentenced to four years in prison.

The Appellate Division, Third Department affirmed on a 4-1 vote, with one justice concurring in result. The majority rejected County Court's analysis of the K-9 sniff of Butler's person, saying the "contact sniff ... intruded upon his personal privacy" under the state and federal constitutions, but it held for the first time that a reasonable suspicion standard should govern such a search and that the standard was satisfied. "A canine sniff is a minimal intrusion compared to a full-blown search of a person, intended only to detect the possession of narcotics...," it said. "Given the necessity for prompt action, it was not unreasonable for Bracco to allow the canine to approach defendant." The "contact was brief and the canine quickly alerted. In these circumstances, we conclude that the search was valid...."

The concurrence argued the majority, by adopting a constitutional standard and finding it was satisfied, two issues that County Court did not address, "exceeded its jurisdiction" under CPL 470.15(1), which limits review to issues "involving error or defect in the criminal court proceedings which may have adversely affected [the defendant]." However, she agreed with the majority that Butler "forfeited any expectation of privacy by abandoning the recovered heroin while being pursued," so suppression was properly denied.

The dissenter argued that "the more stringent probable cause standard should apply and..., because that standard was not met here, the canine sniff of defendant's person constituted an illegal search. The physical evidence obtained thereafter was tainted by the improper police conduct and should have been suppressed." He noted that "a canine sniff of an individual's groin area is not minimally intrusive."

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State of New York
Court of Appeals

To be argued Thursday, November 16, 2023, in Buffalo

No. 96 People v Joshua Messano

In August 2020, a detective patrolling in Syracuse saw a Mercedes move erratically through traffic and stop next to a Pontiac driven by Joshua Messano. The two drivers conversed through their windows and then pulled into the parking lot of a closed business. Messano walked over to the Mercedes and put his head in through the passenger window to speak with the driver. He stood back up, looked around and texted on his cell phone, then leaned back into the Mercedes to continue talking. The detective said this appeared, to him, to be a drug transaction, although he could not see a hand-to-hand exchange. A second Mercedes soon pulled into the lot and the detective recognized the driver as a man with prior arrests for drug possession. The detective called for back-up and several deputies responded. As one of them approached the Pontiac, Messano got out and walked toward him. The deputy frisked him for weapons, finding none, then ordered him to wait behind his car with a fellow officer. The deputy looked through the window of the Pontiac and saw a rolled-up dollar bill and white powder on the driver's seat. Messano was arrested and deputies searched his car, recovering a handgun.

Onondaga County Court denied Messano's motion to suppress the handgun, finding the pat frisk was permissible and the discovery of the white drug residue was lawful under the plain view doctrine. Messano pled guilty to second-degree weapon possession and was sentenced to five years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, rejecting Messano's claim that he was illegally detained when he was briefly held behind his car before the drug residue was discovered. It said, "[B]ased on the totality of the observations by the detective, which he communicated with the deputy..., the deputy had a reasonable suspicion that defendant was involved in a drug transaction." It also found that discovery of the drugs "was not the result of the allegedly illegal detention.... Even if the deputy had not detained defendant, he could have simply walked up to the vehicle, looked in the window, and observed the drugs in plain view on the driver's seat. Contrary to defendant's further contention, the deputy's observations of the rolled-up dollar bill and white powdery substance provided probable cause to arrest defendant for possession of drugs...."

The dissenters argued the frisk and detention of Messano was unjustified, saying the detective "admitted at the suppression hearing that he did not actually observe a hand-to-hand drug transaction" and the other circumstances were insignificant and not unusual. "Inasmuch as the actions observed by the law enforcement officers were 'at all times innocuous and readily susceptible of an innocent interpretation'..., the law enforcement officers lacked the requisite reasonable suspicion to detain defendant." They also argued the discovery of the drug residue was not attenuated from the improper detention, saying "there were no intervening circumstances. Instead, upon completing the pat frisk of defendant, the sheriff's deputy directed a fellow officer to detain defendant at the back of the vehicle, resulting in a continuation of the initial seizure that permitted the sheriff's deputy an unobstructed view of the driver's seat."

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