

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.

To be argued Tuesday, October 8, 2013

No. 174 & 175 People v Martin Heidgen

(papers in no. 174 sealed)

No. 176 People v Taliyah Taylor

(papers sealed)

No. 177 People v Franklin McPherson

The common question in these appeals, arising from fatal accidents caused by intoxicated drivers, is whether a defendant's intoxication can negate the mental state of depraved indifference to human life. All three defendants were convicted of second-degree murder under Penal Law § 125.25(2), as well as other charges including driving while intoxicated or under the influence of drugs. Section 125.25(2) applies "when, under circumstances evincing a depraved indifference to human life, [a defendant] recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person."

Martin Heidgen is serving 18 years to life for his actions in July 2005. After drinking for nearly ten hours at a Manhattan bar and then at a party in Nassau County, he drove his pickup the wrong way on the Meadowbrook State Parkway for about 2½ miles and collided with a limousine, killing driver Stanley Rabinowitz and 7-year-old Katie Flynn and injuring five other passengers. Heidgen's blood alcohol content (BAC) was 0.28%.

In October 2006, hours after taking one Ecstasy pill, smoking marijuana and drinking a beer, Taliyah Taylor stripped off her clothes during a dispute with her mother and drove away naked in a friend's car. Witnesses saw her speed down Forest Avenue in Staten Island at 80 to 90 miles per hour without headlights, on the wrong side of the street, and run a red light before she struck and killed a pedestrian, Larry Simon. She ran another red light and struck a car, injuring both occupants. Initially found unfit for trial, she was ultimately convicted and sentenced to 22½ years to life.

Franklin McPherson was drinking at a Hempstead nightclub for several hours in October 2007, shortly before witnesses saw his car traveling the wrong way on the Southern State Parkway at 70 to 75 miles per hour for about five miles. He collided with a Jeep driven by Leslie Burgess, who was killed. Just over an hour after the collision, McPherson's BAC was 0.19%. He was sentenced to 25 years to life.

The Appellate Division, Second Department affirmed the convictions by votes of 3-1 in Heidgen and McPherson and unanimously in Taylor, rejecting the defendants' arguments that their intoxication rendered them incapable of forming the mental state of depraved indifference. In McPherson, the majority found there was legally sufficient evidence, saying, "... the testimony of the witnesses who observed the defendant speeding directly at them on the parkway, causing those witnesses to swerve in order to avoid a collision, demonstrates that the defendant's mental state was one of depraved indifference to human life.... [T]he record supports a view of the evidence that the defendant was coherent and able to form the requisite mens rea prior to leaving" the nightclub. The dissenter said McPherson, "who had a blood alcohol content more than twice the legal limit, drove at night on a parkway for several miles in the wrong direction," but there was no evidence "which demonstrated, beyond a reasonable doubt, that [he] understood he was driving the wrong way ... with utter disregard for the consequences...." He said the evidence showed McPherson, "by reason of his severe intoxication, acted recklessly by failing to perceive that he was driving the wrong way...."

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For appellant McPherson: Jonathan I. Edelstein, Manhattan (212) 871-0571

For respondent: Nassau County Assistant District Attorney Maureen McCormick (516) 571-3800

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No. 179 Eujoy Realty Corp. v Van Wagner Communications, LLC

Beginning in December 2000, Eujoy Realty leased a roof-top billboard facing the Long Island Expressway in Queens to Van Wagner Communications, an outdoor advertising firm, for a 15-year term. The lease entitled Van Wagner to terminate it if new construction were to substantially obstruct views of the sign from the expressway. The lease also required Van Wagner to pay the full annual rent in advance on January 1st of each year and provided that, "Should this Lease be terminated for any reason prior to the date of its expiration, Tenant shall not be entitled to the return of any additional rent theretofore paid or any basic rent paid in advance...." When construction on a nearby site obstructed motorists' views of the billboard, Van Wagner terminated the lease as of January 8, 2007. It also sent Eujoy a check for \$96,243, the full year's rent for 2007. Van Wagner notified Eujoy that it had sent the check in error and had stopped payment, then sent a replacement check to Eujoy for \$2,109.43, the prorated rent for January 1 through 8, 2007.

Eujoy brought this action to recover the balance of the full year's rent, \$94,133.57, plus counsel fees. Supreme Court granted Van Wagner's cross motion for summary judgment dismissing the suit. While the lease allowed Eujoy to keep any basic rent that was paid in advance, the court said, Van Wagner "did not pay any such rent because [it] stopped payment on the rent check before plaintiff cashed it."

The Appellate Division, First Department reversed in a 3-2 decision, awarded summary judgment to Eujoy for \$94,133.57 in unpaid rent, and remanded for an assessment of counsel fees. The parties later stipulated to counsel fees of \$50,000.

The majority ruled that Van Wagner remained obligated to pay the full year's rent after it terminated the lease on January 8, 2007. "One provision simply makes clear that the rent paid in advance will not be returned upon termination of the lease, while the other plainly provides that the entire year's rent is due on January 1st. It is a contortion of these two provisions to argue, as defendant does here, that if defendant had paid the annual rent on January 1st it would not be entitled to a refund but that since defendant did not pay as required, plaintiff is not entitled to recover the full year's rent. While recovery of the full year's rent under these circumstances is a windfall to plaintiff, it is a result mandated by the lease."

The dissenters argued that Eujoy improperly raised a new claim on appeal that it was entitled to the full year's rent based on the terms of the lease, since at the trial court it sought recovery for the "wrongfully stopped payment." They also said the claim failed on the merits. "[A] tenant is obligated to pay rent, including advance rent, on the date stipulated in the lease. However, the obligation to pay is contingent on the tenant's right to use and occupy the premises, and when that right is terminated the rent obligation thereby ceases.... When [Eujoy] accepted [Van Wagner's] surrender of the premises upon termination of the subject lease, rent ceased to accrue, removing any basis to apply the money advanced by [Van Wagner] to further payments due under the lease."

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No. 193 Matter of the Council of the City of New York v The Department of Homeless Services of the City of New York

In November 2011, the New York City Department of Homeless Services (DHS) adopted the Single Adults Eligibility Procedure (SAEP) to establish a new application process for single adults seeking temporary housing assistance in the City's shelter system. DHS said it adopted the procedure to carry out its obligations under the 1981 consent decree in Callahan v Carey, State Social Services Regulation 18 NYCRR § 352.35 and related state administrative directives. The SAEP requires applicants to show, by clear and convincing evidence, that they have neither a "viable housing option" nor "sufficient financial resources" (defined as assets in excess of \$2,000) to obtain shelter on their own. Applicants must provide a one-year housing history, document their financial assets, and sign a release allowing DHS "to disclose and collect medical and other personal information in conducting its eligibility investigation." Applicants who do not comply are denied shelter "unless the reason for non-cooperation is mental or physical impairment." DHS had not previously required a showing of need and related documentation as a prerequisite for emergency shelter.

The City Council brought this article 78 proceeding against DHS, contending the SAEP is void because the agency failed to comply with the rule-making requirements of the City Administrative Procedure Act (CAPA). DHS argued the SAEP is not a "rule" subject to CAPA because the procedure is discretionary and, in any case, it falls within the CAPA exception for policies that have "no legal effect" because the SAEP merely embodies pre-existing state law.

Supreme Court held the SAEP is a rule adopted in violation of CAPA and declared it void. "A plain reading of the SAEP makes it clear that it mandates certain results under certain circumstances.... [W]hile DHS has certain discretion in weighing factors before making a finding of eligibility for temporary housing, that discretion is not unfettered. There are a considerable number of mandated outcomes which leave DHS with no discretion about whether to deny temporary housing. While in some cases there are exceptions to outcomes, the exceptions do not ... otherwise make a mandated outcome discretionary." The court ruled the CAPA exception for policies with "no legal effect" does not apply because the SAEP "is not simply a strict interpretation of the existing State Regulation or the State Administrative Directives, with a filling in of the interstices.... [T]he SAEP imposes many new obligations on applicants, with a concomitant creation and denial of substantive rights." The Appellate Division, First Department affirmed without opinion.

DHS argues the SAEP "does not constitute a rule within the meaning and intent of CAPA because it invests significant discretion in agency decision makers. Utilizing the Procedure's guidelines, DHS investigates and evaluates each application.... The agency bases individual eligibility determinations on the totality of each applicant's circumstances, with an analysis of the applicant's situation in accord with all relevant factors." It also argues that, "because the [SAEP] has no legal effect but is merely explanatory of existing State law, it falls within a stated exception to CAPA's definition of a rule."

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