

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 Thursday, October 10, 2013

No. 188 People v Carl D. Wells

A police officer, responding to a report of a car accident in the Bronx in December 2006, found Carl Wells slumped over the wheel of a stolen car that was stopped on the sidewalk, its lights on, facing the wrong direction on a one-way street. The officer, who said Wells exhibited signs of intoxication after he was awakened, arrested him and took him to the precinct, where she found seven rocks of crack cocaine in his pocket. His blood alcohol level was .09. After he was given Miranda warnings, Wells admitted driving the car and said, "I have been smoking cocaine and drinking for weeks. I've been smoking cocaine all morning, this afternoon and this evening. I have been smoking all week, for 4-5 days. I passed out, I don't know what happened. I don't know how I got here." The officer searched the car and found a crack pipe and an open bottle of Baccardi on the floor.

Supreme Court denied Wells' motion to suppress his statements and the physical evidence. Regarding the search of the car, the court said, "Having arrested the defendant and impounded the vehicle in which he was seated, the police had the right to inventory the contents of the vehicle.... Accordingly, the crack pipe and the bottle of Baccardi were legally seized by the police." Wells then accepted a plea bargain, pleading guilty to driving while ability impaired by drugs and/or alcohol in return for a sentence of six months in jail.

The Appellate Division, First Department affirmed, though it found the search of the car was improper. "The court erred in relying on the inventory search doctrine in denying suppression of physical evidence recovered from the car defendant was driving, because the People did not introduce any evidence to establish a valid inventory search..." it said. "However, there was overwhelming evidence of defendant's guilt, independent of the physical evidence at issue. Although the harmless error rule regarding suppression issues does not normally apply to cases where a defendant pleads guilty (People v Grant, 45 NY2d 366, 378-380 [1978]), the particular circumstances of this case warrant a finding of harmless error (see People v Lloyd, 66 NY2d 964 [1985]...)."

Wells argues the Appellate Division improperly applied harmless error analysis to his guilty plea in violation of Grant, which explained that harmless error generally does not apply to pleas because, "when a conviction is based on a plea of guilty an appellate court will rarely, if ever, be able to determine whether an erroneous denial of a motion to suppress contributed to the defendant's decision, unless at the time of the plea he states or reveals his reason for pleading guilty." Wells says that, prior to his plea, he "affirmatively stated that he would have taken his case to trial if he had secured a favorable suppression ruling" and "stated that the impetus for his decision to plead guilty was the negative suppression ruling by the hearing court. Thus, the record conclusively establishes that appellant's decision to plead guilty ... was predicated on the negative suppression ruling that he received." Wells, who had stolen the car at gunpoint in Manhattan, is now serving 20 years to life in prison for first and second-degree robbery.

For appellant Wells: Harold V. Ferguson, Jr., Manhattan (212) 577-3548

For respondent: Bronx Assistant District Attorney Megan R. Roberts (718) 838-7085

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No. 189 People v Malik Howard

No. 190 People v Hilbert Stanley

Malik Howard and Hilbert Stanley were charged with robbing Domingo Lopez at gunpoint near his home in the Bronx in April 2006. Lopez said Howard stood in front of him and put a gun to his head while Stanley stood behind him. At trial, Lopez testified, "... I felt the other person [Stanley] was touching me with something else on my back.... I cannot say if it was a gun or something else." Police arrested the defendants a short time later and called Lopez for a showup identification, which was conducted an hour and a half after the robbery and five miles from the scene. Officers recovered a black BB gun from the trunk of the defendants' car. Lopez testified that it looked like the type of gun that was pointed at his head during the robbery.

Howard and Stanley were convicted of first-degree robbery under Penal Law § 160.15(4), which applies where a defendant "[d]isplays what appears to be a pistol ... or other firearm." The statute provides an affirmative defense that reduces the charge to second-degree robbery if the defendant can prove the object displayed was not a loaded firearm, but the defendants' attorneys did not raise that defense at trial. Howard was sentenced to 14 years and Stanley to 15 years in prison. They argued on appeal that because the object Howard displayed was a BB gun and not a firearm, the affirmative defense was established as a matter of law and their convictions should be reduced to second-degree robbery. They also said Lopez's testimony that Stanley placed something against his back was insufficient to support the convictions.

The Appellate Division, First Department affirmed in a 3-2 decision. The majority said their claims were unpreserved because the defendants did not ask for a jury instruction on the affirmative defense nor argue that the evidence failed to satisfy the "display" element of first-degree robbery, and it declined to review the claims in the interest of justice. As an alternative holding, the majority found the verdict was supported by legally sufficient evidence. "... Lopez could reasonably have perceived Stanley's object to be a gun, particularly since Lopez saw Howard holding a gun and at the same time felt Stanley place something against his back.... The fact that Lopez acknowledged that the object Stanley placed against his back could have been something other than a gun is of no legal consequence." The court held the showup identification was valid.

The dissenters argued the convictions should be reduced to second-degree robbery in the interest of justice since "the prosecution's case hinged upon the display of what appeared to be a weapon" and "the only gun recovered or even discussed during the trial was the BB gun." They said the majority's alternative holding was not supported by the evidence because there was "only one statement made during the entire trial referring to what the majority relies upon" -- Lopez's testimony that Stanley touched "something else" to his back. "[A]n ambiguous statement about feeling 'something' should not be sufficient to establish the display element under Penal Law § 160.15(4). In all of the cases cited by the majority, the victim perceived the item at issue to be a gun. In this case, the victim made only one reference to 'something' and specifically stated he did not know if it was a gun."

For appellant Howard: Rebekah J. Pazmiño, Manhattan (212) 402-4100

For appellant Stanley: Alan S. Axelrod, Manhattan (212) 577-3470

For respondent: Bronx Assistant District Attorney Lindsey J. Ramistella (718) 838-7667