

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, September 16, 2014

People v Tyrone Sweat

Tyrone Sweat and his brother, Michael, were charged with possession of stolen property in Buffalo in 2011. Sweat was granted transactional immunity after testifying against Michael before the grand jury. When the prosecutor called him as a witness at his brother's trial in 2012, Sweat refused to testify. County Court explained that, since he had immunity, he had no Fifth Amendment right to remain silent, but he still refused. The prosecutor asked that Sweat "be cited for civil contempt and confined until he agrees to testify or until the end of the proceeding, and also we'll charge him with criminal contempt for refusing to be sworn and testify." The court found him in contempt, placed him in custody, and appointed counsel to represent him. After conferring with counsel, Sweat again refused to testify and refused to explain why. The court returned him to custody, saying, "I find you're in contempt in my immediate view and presence for engaging in conduct which has obstructed and threatened to obstruct these proceedings and impair ... my authority to preside over these proceedings and, therefore, I will issue a mandated commitment." Sweat was brought to court the next day and still refused to testify. His lawyer said he was "morally opposed to testifying against his brother." Sweat was held until the end of the two-day trial, when his brother was acquitted and the court ordered Sweat released.

Three weeks later, Sweat was arrested on two misdemeanor counts of criminal contempt. Buffalo City Court dismissed the charges, finding further prosecution was barred by double jeopardy.

Erie County Court affirmed. It said prosecution for criminal contempt would be barred by double jeopardy only if the prior contempt proceedings were criminal, rather than civil, in nature, and it found "the proceedings amounted to a hybrid combination of both criminal and civil characteristics." It held, "[A]lthough the court never formally pronounced sentence upon [Sweat], it clearly confined him pursuant to a Mandate of Commitment (Judiciary Law 752) upon a finding that his conduct obstructed the proceedings and impaired the court's authority to preside (Judiciary Law 750[1] ...). By the court's own language, then, the proceedings were perforce criminal in nature and under these circumstances, this court is compelled to conclude that the defendant's release at the conclusion of the trial was tantamount to a sentence of time served."

The District Attorney's Office argues that prosecution on the criminal contempt charges is not barred because the prior contempt proceedings were intended "to compel defendant's testimony rather than to punish him" and, therefore, "the contempt proceeding was not 'criminal' for double jeopardy purposes. The lack of an unconditional sentence (or any sentence for that matter) or a fine, combined with the court's returning defendant to court on three occasions and the release of defendant immediately when the opportunity to testify had passed, indicates that the purpose was remedial or coercive rather than punitive."

For appellant: Erie County Assistant District Attorney Nicholas T. Texido (716) 858-2424
For respondent Sweat: David M. Abbatoy, Jr., Rochester (585) 348-8081

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No. 160 Ramos v SimplexGrinnell LP

In this federal case, Roberto Ramos and 14 other workers who installed, maintained, repaired, tested and inspected fire alarm and suppression systems for SimplexGrinnell LP brought a third-party breach of contract action against their employer to recover unpaid prevailing wages for their work on public works projects in New York. They claimed SimplexGrinnell violated Labor Law § 220 and its contracts with state and city agencies by failing to pay prevailing wages for testing and inspection work since at least February 2001. While the litigation was underway, SimplexGrinnell on its own sought clarification from the New York Department of Labor (DOL) regarding whether the prevailing wage law applied to testing and inspection work. On December 31, 2009, DOL issued an opinion letter stating that section 220 covered testing and inspection of alarm systems, requiring payment of prevailing wages. However, due to "much confusion" about its past position on the issue, DOL said it would apply its interpretation only to future test-and-inspect contracts put out for bid after January 1, 2010.

U.S. District Court for the Eastern District of New York granted summary judgment to SimplexGrinnell and dismissed the workers' claims based on the DOL's opinion letter. "[W]hen SimplexGrinnell took on public works projects, it knew it would be required to pay prevailing wage rates, and it at least implicitly agreed to do so when it entered into a contract to perform work at a public site," the court said. "According to the DOL, though, SimplexGrinnell did not have reason to believe it would be required to pay prevailing wages for testing and inspection work it contracted to perform. Thus, absent a provision in a particular contract explicitly requiring that testing and inspection work be compensated at prevailing wages, there simply is no basis for concluding that SimplexGrinnell agreed to pay prevailing wages for such work."

The U.S. Court of Appeals for the Second Circuit said it is unclear, under New York Law, "whether deference is due, or even appropriate, not only to the DOL's substantive construction" of what a statute covers, "but also to its administrative decision to apply that construction in its own enforcement prospectively only." And it is unclear "whether contracts committing parties to pay prevailing wages ... need to specify -- when the scope of the statute's coverage is unclear to the parties -- what particular work the prevailing wages will be paid for." The Second Circuit is asking this Court to resolve those issues in a pair of certified questions:

"1. What deference, if any, should a court pay to an agency's decision, made for its own enforcement purposes, to construe section 220 ... prospectively only, when the court is deciding the meaning of that section for a period of time arising before the agency's decision? 2. Does a party's commitment to pay prevailing wages ... bind it to pay those wages only for work activities that were clearly understood by the parties to be covered by section 220, or does it require the party to pay prevailing wages for all the work activities that are ultimately deemed by a court or agency to be 'covered' by that portion of the statute?"

For appellants Ramos et al: Raymond C. Fay, Washington, DC (202) 263-4604

For respondent SimplexGrinnell: Peter O. Hughes, Morristown, NJ (973) 656-1600

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No. 161 People v William O'Daniel

(papers sealed)

William O'Daniel, found guilty of sexually abusing a five-year-old girl in Ausable Forks during a three-day period in 2005, contends he was denied his right to retained counsel of his own choosing. When he was indicted in 2009, O'Daniel retained James Martineau Jr. as his defense counsel. After a series of adjournments, two of which were necessitated by Martineau's health problems, Clinton County Court suggested that Martineau ask another attorney to serve as second chair for O'Daniel's trial in October 2010. Attorney Keith Bruno accepted the job about two weeks before the trial was to begin and was given O'Daniel's case file to review. When Martineau was hospitalized, Bruno agreed to serve as replacement counsel for the trial. At O'Daniel's request, Bruno moved for an adjournment at a pre-trial conference and on the first day of trial. He said O'Daniel "believes that the legal system ... is being unfair to him because of Mr. Martineau's health," but O'Daniel did not explicitly object in court to Bruno serving as trial counsel. County Court denied both motions. O'Daniel was convicted of first-degree rape, attempted rape, sexual abuse, and endangering the welfare of a child and was sentenced to 19½ years in prison.

The Appellate Division, Third Department affirmed, saying, "Bruno, who was no stranger to defendant, entered the case at Martineau's request and, ultimately, assumed the role of trial counsel due to Martineau's ongoing health issues. Although defendant now contends that this turn of events effectively denied him the right to be represented by counsel of his choosing, noticeably absent from the record is any indication that defendant was unwilling to proceed to trial with Bruno as counsel or, more to the point, that he sought further adjournment of the trial date for the express purpose of retaining another attorney.... Under these circumstances, we cannot say that County Court either interfered with an existing attorney-client relationship..., denied defendant a reasonable opportunity to retain counsel of his choosing ... or abused its discretion in denying defendant's request for further adjournments...."

O'Daniel argues, "The Third Department ignored the extensive evidence in the record showing that Bruno was not O'Daniel's choice of counsel, including (1) the court's initial letter 'suggesting' that Martineau get another attorney to take over in the event of his illness, (2) the agreement between Martineau and Bruno to which O'Daniel was not a party, (3) the statements by Bruno to the court that 'Martineau remains the attorney of record', and (4) O'Daniel's strenuous objection that 'the legal system ... [was] being unfair to him because of Mr. Martineau's health.'" This placed the trial court "under an affirmative duty to inquire into the complaint to assure that the defendant's constitutional right to choice of counsel is not being violated..., " he says. "[T]he court should have asked O'Daniel what was his choice of counsel and whether he wished to proceed with Bruno. It did not. There was also no legitimate basis for the court to interfere in the attorney-client relationship between O'Daniel and Martineau in the name of trial management."

For appellant O'Daniel: Bruce R. Bryan, Syracuse (315) 476-1800

For respondent: Clinton County Assistant District Attorney Jaime A. Douthat (518) 565-4770

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No. 162 Motorola Credit Corporation v Standard Chartered Bank *(papers sealed)*

In 2003, U.S. District Court for the Southern District of New York awarded Motorola Credit Corporation compensatory damages of \$2.1 billion against members of the Uzan family, based on its finding that the Uzans diverted loans Motorola made to a Turkish company they controlled. In 2006, the court awarded Motorola \$1 billion in punitive damages. The Uzans have evaded payment of the judgments and Motorola has engaged in an international hunt for the Uzans and their assets. In February 2013, the District Court issued a restraining order, pursuant to CPLR 5222 and federal law, enjoining the Uzans, their agents, and any third-party receiving notice of the order from selling, assigning, or transferring their property until Motorola's judgments are paid. Motorola served the restraining order on the New York branch of Standard Chartered Bank, a British bank with branches in many countries. Standard Chartered found no Uzan assets in its New York branch, but found about \$30 million in short-term deposits at its branches in the United Arab Emirates (UAE). When Standard Chartered sought to freeze the assets, regulatory authorities in the UAE and Jordan intervened; and when it refused demands by an Uzan entity for payment, the UAE Central Bank debited \$30 million from Standard Chartered's account at the Central Bank to repay the Uzan entity. Standard Chartered then moved in U.S. District Court for relief from the restraining order.

District Court granted the motion, but stayed its order pending appeal. It found New York's "separate entity rule" -- which provides that all branches of a bank will be treated as separate entities for purposes of attachments, restraints and turnover orders, among other things -- precludes Motorola from restraining assets held by Standard Chartered's foreign branches. It rejected Motorola's argument that application of the separate entity rule in post-judgment enforcement proceedings is barred by Koehler v Bank of Bermuda (12 NY3d 533), which held that a court in New York with personal jurisdiction over a bank may order it to deliver assets in a foreign branch to a judgment creditor. The court said, since "Koehler had no reason to address the separate entity rule and ... it is unlikely that the New York Court of Appeals would silently overrule such an important policy and precedent, this court concludes that the Court of Appeals intended no such thing."

The U.S. Court of Appeals for the Second Circuit is asking this Court, in a certified question, to determine "whether the separate entity rule precludes a judgment creditor from ordering a garnishee bank operating branches in New York to restrain a debtor's assets held in foreign branches of the bank."

For appellant Motorola: Howard H. Stahl, Washington, DC (202) 639-7000

For respondent Standard Chartered Bank: Bruce E. Clark, Manhattan (212) 558-4000

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No. 163 People v Thomas Horton

In June 2010, members of the Wayne County Sheriff's Department made a video recording of a drug transaction involving Thomas Horton, his friend Clarence Jackson, and a confidential informant. In April 2011, Horton posted a photograph of the informant on his Facebook page, identifying her as a "snitch" and saying "snitches get stitches," among other things. He also posted a link to the surveillance video on YouTube, saying, "The video is up LOL." Horton was charged with a class A misdemeanor of tampering with a witness in the fourth degree under Penal Law 215.10(a), which provides, "A person is guilty of tampering with a witness when, knowing that a person is or is about to be called as a witness in an action or proceeding, (a) he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding..." The misdemeanor complaint alleged that Horton posted the material while "knowing that [the informant] was or was about to be called as a witness" in the felony drug case against Jackson, and thereby "induced or attempted to induce" the informant not to testify. Horton was convicted of witness tampering in Galen Town Court and sentenced to one year in jail.

Wayne County Court affirmed, rejecting Horton's argument that there was insufficient evidence to support the guilty verdict. "As an initial matter, the court notes that any reliance by [Horton] on the argument that there was no evidence of any threats or intimidation of [the informant] is misplaced as same are not statutory requirements or elements of the crime herein. That is not to say that there was no evidence of such intimidation, merely that the court need not address something that is not an element of the crime before it." It concluded, "From the evidence it could reasonably be determined that the defendant's actions could induce [the informant] not to testify."

Horton argues the prosecutor failed to prove either element of the crime. "[N]one of the evidence indicates that Mr. Horton knew [the informant] was a witness in any pending matter -- rather the opposite, since Mr. Jackson had informed him that he was pleading guilty, which would obviate the need for any testimony from anyone..." he says. "There is nothing threatening directed at [the informant] if she testifies or appears at trial. Indeed..., by 'outing' [the informant] online by posting the video ... and talking about her on Facebook, Mr. Horton would have appeared to have exhausted his quiver of ammunition, and would have nothing left with which to threaten her." He also raises a free speech claim, saying, "The interpretation of the statute ... urged by the People -- ... that the conduct alleged need not be threatening [--] carries with it the implication that anything could be construed as a violation of the statute so long as someone is willing to state that they felt intimidated by it. This is far too broad a reading of the statute."

For appellant Horton: Tyson Blue, Macedon (585) 944-4825

For respondent: Wayne County Asst. District Attorney Christopher Bokelman (315) 946-5905