State of New York
Court of Appeals

To be argued Wednesday, September 9, 2020 (arguments begin at 2 pm)

No. 45 People v Robin Pena

As Robin Pena was driving in the Bronx in November 2015, police officers pulled him over when they saw the center brake light on the rear of his Dodge van was not working. After telling the officers he "had a few beers" and failing sobriety tests, Pena was charged with driving under the influence of alcohol.

Pena moved to suppress the evidence on the ground that it was the result of an illegal stop, contending that Vehicle and Traffic Law (VTL) § 375(40)(b) does not require a functioning middle brake light. The statute states, "Every motor vehicle ... shall be equipped with at least two stop lamps, one on each side, each of which shall display a red to amber light visible at least five hundred feet from the rear of the vehicle when the brake of such vehicle is applied." At a suppression hearing before a judicial hearing officer (JHO), the arresting officer testified he stopped Pena solely because he was "driving with a broken brake light." The officer explained that only the "middle brake light" was out and the "right brake light and left brake light worked." The prosecutor argued the stop was permissible because the officer made a reasonable mistake of law in thinking the VTL required the middle brake light to be in working order.

The JHO recommended suppression of the intoxication evidence, finding the stop was illegal. He said Heien v North Carolina (574 US 54 [2014]) held "that a mistake of law may be objectively reasonable and therefore permissible in situations when the statute at issue is one that is so ambiguous that it is objectively reasonable for a police [officer] to be confused as to its application." However, he said, "New York's brake light section, VTL § 375(40)(b), is clear as to the exact number of lights required and their location on the vehicle.... Additionally, a review of the various sections of the VTL relating to lights does not detract from the clarity of § 375(40)(b).... Accordingly, there is no ambiguity in the New York statute that would support a mistaken belief of law argument for the officer's stop of the defendant's vehicle. Criminal Court adopted the JHO's recommendations and suppressed the evidence.

The Appellate Term, First Department affirmed, saying, "Defendant's vehicle, though having working brake lights on the right and left sides as required by section 375(40)(b) of the [VTL], was stopped by police because a third brake light located in the center was defective. Since such defect is not a traffic violation under the unambiguous language of section 375(40)(b) and it was 'not an objectively reasonable mistake of law' for the officer to conclude otherwise, the stop violated the Fourth Amendment...."

The prosecution argues "the courts below should have found that the entire New York statutory scheme regulating automobile lights invites mistaken interpretation. Given the complicated nature of the VTL and the undefined terms of art it uses in describing lighting equipment, the officer's mistake of law was reasonable here." Citing VTL 376(1)(a), which requires "Lamps, signaling devices and reflectors" to be in "good working order," and a regulation requiring some passenger cars to have a center brake light to pass inspection, the prosecution argues it should be "objectively reasonable" for an officer to stop a car with a broken brake light "to investigate further, and to at least advise the driver" of the problem.

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To be argued Wednesday, September 9, 2020 (arguments begin at 2 pm)

No. 61 Matter of Hon. Richard H. Miller, II

Broome County Family Court Judge Robert H. Miller, II, is challenging a determination of the State Commission on Judicial Conduct that he should be removed from office for misconduct, which included making "extremely inappropriate and sexist remarks" to the female chief clerk and berating a court assistant in open court. The Commission said that in 2017, when the chief clerk apologized for using a fan while having a hot flash, Miller replied, "It's nice to know I still have that effect on you." Later that month, it said, Miller stepped into the clerk's office and said, "You look really hot in that outfit. You should always wear that outfit." The Commission further found that Miller, who became a Family Court judge in 2015, violated the Rules Governing Judicial Conduct by allowing his court secretary to prepare a letter to collect legal fees owed for work in his prior private law practice. It found he also violated the Rules by failing to timely disclose his outside income from legal fees and rental properties to the court system's Ethics Commission, to the Family Court clerk, or on his federal and state income tax returns for 2015 and 2016.

The Commission split 7-2 on the issue of sanction, with the majority determining Miller should be removed for a pattern of "serious misconduct." It said, "Most troubling were [his] unwanted sexual comments to a female court employee." The majority also cited a censure the Commission imposed on Miller in 2002 for misconduct when he was a part-time town and village court justice. It said, "While there was some indication in the record that [Miller] is an effective judge, our mandate is to protect the integrity of the courts.... Given [his] three categories of current misconduct, his apparent failure to learn from his previous discipline, his failure to take responsibility for his actions and the unfortunate message another censure would send to the public, we believe that [he] should be removed from the bench to protect the integrity of the courts."

The dissenters concurred with the findings of misconduct, but argued "the draconian sanction of removal of an elected judge is not warranted in this case" and said Miller should instead be censured. Although Miller's remarks to the chief clerk were "crude and vulgar," they said, "The record supports the referee's conclusion that [Miller's] inappropriate statements ... constituted an extremely poor attempt at humor.... Commission precedent demonstrates that censure or admonition would have been held to be appropriate punishments for significantly worse conduct." While Miller failed to disclose his outside income to court officials and tax authorities, they said he filed the disclosures and amended tax returns during the Commission's investigation, which is "a mitigating factor." They cited testimony that Miller "is a hardworking judge" who "treated all who appeared before him, both men and women, with respect."

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