State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 48 Matter of Nemeth v K-Tooling

Kuehn Manufacturing Co. and K-Tooling operate manufacturing businesses as a nonconforming use on residentially zoned property in the Village of Hancock, Delaware County. Rosa Kuehn owns the property and Kuehn Manufacturing. Her son, Perry Kuehn, owns K-Tooling. In 2001, they built an addition on the property to expand their manufacturing operation, but neighboring landowners obtained an injunction in 2012 that prohibited them from using the addition for nonresidential purposes. In 2013, Kuehn Manufacturing and K-Tooling obtained a use variance from the Village of Hancock Zoning Board of Appeals (ZBA) that allowed them to use the 2001 addition for manufacturing. Three adjacent property owners – Joseph and Donna Nemeth and Valerie Garcia – sued Rosa and Perry Kuehn, their companies, and the ZBA to annul the variance. The Appellate Division, Third Department granted their petition in 2015 and annulled the ZBA's determination. In 2016, the Kuehn companies obtained another variance from the ZBA to use the addition for manufacturing, based on an application signed by Rosa Kuehn. The Nemeths and Garcia then filed this suit against the Kuehn companies and the ZBA to annul the second variance, but this time they did not name Rosa Kuehn as a respondent. Supreme Court dismissed the suit for failure to join a necessary. The Appellate Division agreed Rosa Kuehn was a necessary party as owner of the property, but it remitted the case to Supreme Court to summon her. The Nemeths and Garcia then amended their petition to add Rosa Kuehn as a respondent more than three years after the 30-day statute of limitations expired.

Supreme Court ruled the claims against Rosa Kuehn were untimely and dismissed the suit, rejecting the petitioners' argument that the new claims were rendered timely by the relation back doctrine. The doctrine would deem the new claims timely if the petitioners could satisfy a three-part test including, as the third prong, that Rosa Kuehn knew or should have known that, but for a mistake by the petitioners as to the identity of the proper parties, the proceeding would have been brought against her as well. The court said the petitioners' failure to name her in the original petition was "a mistake of law" – a failure to recognize that the landowner was a necessary party – and not a mistake of identity. The court said it was "bound by precedent to hold that a mistake of law cannot satisfy the third prong of the relation back doctrine.

The Appellate Division, Third Department affirmed on a 4-1 vote, saying the petitioners could not satisfy the third prong because they could have had no about Rosa Kuehn's identity or status as a necessary party. "Indeed, Rosa Kuehn was appropriately named as a respondent and identified as the landowner of the subject property in petitioners' successful challenge to the use variance issued in 2013," it said.

The dissenter said she would "overrule our prior case law" by holding that a mistake of law can satisfy the third prong, "thereby aligning the Third Department more closely with the federal approach and the Court of Appeals' holding in Buran v Coupal (87 NY2d 173 [1995]). In Buran, the Court emphasized that the New York rule is 'patterned largely after the [f]ederal relation back rule'..., the 'linchpin' of which is 'notice to the defendant within the applicable limitations period'.... Rosa Kuehn cannot complain of any lack of notice or prejudice here."

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State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 68 People v Rakeem Douglas

Police officers stopped Rakeem Douglas in October 2015 as he drove a rental car in Manhattan after they saw him commit a series of traffic violations. They arrested him for possession of a gravity knife, which was clipped to his pocket, and impounded the car when they learned it was rented in his girlfriend's name and he was not an authorized driver. During an inventory search of the vehicle they found a handgun hidden between the trunk and the rear seat. Douglas moved to suppress the gun on the ground the search was improperly conducted.

At the suppression hearing, the officers testified that they adhered to the procedures set out in the NYPD Patrol Guide. They said they placed all items removed from the car into a large plastic bag, but they did not create a contemporaneous list of those items. They did not complete their written inventory of recovered items until the next day, about 11 hours after the search, and there was no testimony about the location or custody of the plastic bag during that period. The officers said the 11-hour delay was due in part to the discovery of the handgun, which required them to call in the Evidence Collection Team to process it for DNA and fingerprints, and to the need to complete required paperwork for the arrest. The inventory lists did not specify whether seized items were recovered from the car or from Douglas' person.

Supreme Court denied the motion to suppress, saying, "Based upon the written NYPD policy..., this court concludes that the officers were in fact guided by a set of policy and procedural guidelines which limited their discretion, safeguarded the defendant's constitutional rights, and fulfilled the purposes of a lawful inventory search." It also found the search was properly conducted in compliance with the Patrol Guide procedures. Douglas then pled guilty to second-degree criminal possession of a weapon and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying "the officers followed a valid procedure for an inventory search of defendant's car.... The forms used by the police were sufficient to create a meaningful inventory list and there is no indication that the inventory search was a ruse for searching for incriminating evidence.... The delay in completing the inventory procedure was satisfactorily explained by the particular circumstances of the police investigation."

Douglas argues the NYPD's inventory search procedures fail to meet constitutional standards and his conviction must be reversed "because police recovered the gun under the authority of a protocol that failed to limit the officers' discretion and that undermined the purposes of an inventory search." Due to "the NYPD's inadequate inventory search protocol," he says "the police threw [his] property in a bag, left it unsecured in a busy police precinct for 11 hours, and then created an inventory – without the benefit of any list of the property made at the time of the search – on vouchers that provided no information about where or how the property was recovered." Without a contemporaneous list, he says, officers "have nothing to reference when later vouchering property that may have been stolen, lost, or contaminated during any delay...." He says a valid search protocol should also set a time frame for completing an inventory and require officers to secure seized property during any delay.

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State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 69 People v Sergio Cerda

Sergio Cerda was charged with sexually abusing an 11-year-old girl, who was related to him, at his home in Port Washington, Nassau County, in November 2016. The girl testified at trial that Cerda penetrated her vagina with his finger and then fondled her breast while she was sitting on a couch watching television with him and two younger girls. One of those girls testified that she did not see Cerda touch the complainant. The prosecution presented records of the complainant's sexual assault examination, which showed two petechiae (burst blood vessels) on her hymen. The prosecution's expert witness testified that such petechiae result from "pressure or force" and that they could have been caused by digital penetration. He noted that they may have been a result of masturbation or accidental injury, but said it was unlikely.

Cerda moved to admit evidence from a forensic report, which found the complainant's own saliva in her underwear and a vulvar swab. It also found a mixture of DNA from at least two males in a stain on her underwear, but the sample was insufficient to generate DNA profiles to identify the contributors. A vaginal swab contained prostate specific antigen, which is found in several bodily fluids including semen, but no sperm were present on the swab. The prosecutor argued the evidence should be excluded under the Rape Shield Law (CPL 60.42) because it did not exonerate Cerda and it could be used to imply the complainant was promiscuous. CPL 60.42 provides, "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for" specified sex offenses "unless such evidence" fits within one of five of the statute's enumerated exceptions. Cerda argued the forensic evidence was admissible under three of the exceptions because it provided alternative explanations for the petechiae, including that the complainant had injured herself by masturbating or by sexual contact with a third party. Those exceptions allow evidence to rebut prosecution evidence that the victim did not engage in sexual conduct during a given period of time; rebut evidence "that the accused is the cause of pregnancy of disease of the victim, or the source of semen found in the victim; and defense evidence the trial court finds "to be relevant and admissible in the interest of justice."

Supreme Court precluded the forensic evidence, saying it "is very speculative. I think it's going to confuse the jurors. I think there's a risk that the jurors might conclude" the victim had sexual contract with a third party, "and I think that's exactly what the rape shield law is designed to prevent." The prosecutor argued in summation that "there's nothing in the medical record to support" Cerda's "alternate theories" that the complainant's injuries were self-inflicted. Cerda was convicted of first-degree sexual abuse and sentenced to three years in prison.

The Appellate Division, Second Department affirmed, saying Cerda "was not denied his constitutional rights to due process and to confront witnesses by the Supreme Court's application of the Rape Shield Law (CPL 60.42) to prohibit him from introducing into evidence portions of a laboratory report. The defendant was given ample opportunity to develop evidence at trial to support his defenses...."

Cerda argues, in part, "The trial court's evidentiary rulings, exploited by the prosecutor on summation, cumulatively crippled the defense, providing the jury with an inaccurate and unfair view of complainant's credibility, and depriving Mr. Cerda of his constitutional rights to present a defense, to confront witnesses, and to a fair trial. He says the precluded evidence would have provided "clear and direct evidence of at least two alternative sources for the observation of petechiae on [the complaint's] hymen" and "dispelled the prosecution's repeated attempts to cast [her] as a sexually innocent and naive child" who lacked the knowledge and experience to fabricate her claims.

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State of New York
Court of Appeals

To be argued Thursday, September 14, 2023

No. 70 Matter of Stevens v New York Division of Criminal Justice Services

Terrence Stevens and Benjamin Joseph are challenging the constitutionality of regulations adopted by the Division of Criminal Justice Services (DCJS) in 2017 to expand the use of the state's DNA Databank for familial (or kinship) DNA searches, which enable investigators to determine whether someone who left forensic DNA at a crime scene is likely to be a close relative of an offender whose genetic profile is in the database. Stevens and Joseph do not have their own genetic profiles in the databank because they have not been convicted of a crime, but each has a brother convicted of a felony and their profiles are in the databank. They say the regulations subject them to a heightened risk of being targeted for investigation solely because they share family genetics with a convict, and they argue that DCJS usurped the Legislature's authority by adopting the regulations, thus violating the separation of powers doctrine.

Supreme Court found the petitioners had suffered sufficient injury to have standing to sue, saying they "should not need to wait until they are approached by the police, on the basis of a lead generated by the Regulations, in order to have standing to challenge the Regulations." But it dismissed their suit on the merits, ruling DCJS acted within its statutory authority. When the Legislature created the databank in 1994, it said, DCJS "was delegated vast regulatory authority to create and maintain all aspects of the Databank.... For more than a quarter of a century, the Legislature has deferred regulation of the Database to [DCJS] without much intervention," concluding that DCJS "'filled in details of a broad policy' when it adopted the Regulations."

The Appellate Division, First Department reversed on a 3-2 vote. The majority said the petitioners have standing "because the regulation subjects them to the peculiar risk that they will be targets of criminal investigations for no other reason than that they have close biological relatives who are criminals." However, it ruled DCJS acted beyond its authority and vacated the kinship search regulation. Under the enabling statute, it said DCJS's "mandate is to ensure the accuracy, efficiency, and integrity of the DNA databank operation, in other words, provide 'quality control'.... Decisions regarding whether and under what circumstances the database should be used for familial DNA testing go well beyond science and quality control; they are driven primarily by social policy." The need to balance "the civil liberty interests of citizens to be free from unreasonable governmental interference against the societal interest of law enforcement in investigating crimes" show that authorizing kinship searches "is an inherently legislative function," it said.

The dissenters said they would dismiss the suit solely on the ground that the petitioners lack standing. They "do not allege that law enforcement has approached them to provide a DNA sample or that they have been affected by the familial search rule. Instead, petitioners contend that they may, at some time in the future, be adversely affected by such a search," a concern that "is too speculative and hypothetical to support standing," the dissenters said.

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