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 or gspencer@nycourts.gov.

To be argued Thursday, April 18, 2024

No. 57 People v Mark Watkins
No. 58 People v Antwyne Lucas

The appellants in these single-eyewitness cases, Black men who were convicted of attacking white complainants, argue they received ineffective assistance of counsel because their defense attorneys failed to request a jury charge on the potential fallibility of cross-racial identification. Both convictions occurred before this Court ruled in People v Boone (30 NY3d 521 [2017]) that in such disputed identification cases where "the identifying witness and defendant appear to be of different races, upon request, a party is entitled to a charge on cross-racial identification."

In No. 57, a Black man approached David Pena on a Manhattan sidewalk in October 2016. The man held what looked "like a piece of cement" in his hand and struck Pena in the left cheek with it. The men faced each other at a distance of about two car lengths for 10 or 11 seconds before the assailant walked away. Pena reported the incident to police three days later and reviewed 462 mugshots, but did not see his assailant. Mark Watkins was arrested six days after the attack, when Pena saw him smoking on the street and pointed him out as his assailant. Based almost solely on Pena's identification, Watkins was convicted of charges including second-degree assault and sentenced to 13 years in prison.

In No. 58, two Black men approached Rev. Marc Rosselli as he arrived at his Staten Island church in June 2016. Rosselli said the man in a white t-shirt pulled a gun and demanded his keys, wallet and cell phone, while the other in a dark shirt "hemmed" him in on the other side. After taking his property, the gunman knocked him to the ground and both men left in his car. Later that day, the police went to an abandoned house where they found Antwyne Lucas in a blue hoodie, Kerry Pack in a white t-shirt, and Rosselli's cell phone case. Rosselli picked Lucas out of a lineup; A detective testified at the suppression hearing that Rosselli said Lucas "could have been the one with the gun," but "he wasn't too sure." Rosselli could not identify Pack. At trial, the prosecutor argued the men acted in concert, but did not identify either one as the gunman. Rosselli testified that he picked the gunman out of the lineup, but could not identify Lucas in court. At the charge conference, Lucas's attorney requested the jury charge for one-witness identifications. The court agreed but, regarding the cross-racial portion of the charge, said "the difference in the race ... was not an issue during the trial." Lucas's attorney consented to omitting the cross-racial identification charge. Lucas was convicted of first-degree robbery and sentenced to 25 years in prison.

The Appellate Division affirmed in both cases, finding the defendants received effective assistance. The First Department said in Watkins that the claim "is unreviewable on direct appeal because it involves matters not fully explained by the record...," but in the alternative, it said Watkins "has not shown that it was objectively unreasonable for counsel to refrain from requesting a jury charge on cross-racial identification," and noted that Boone had not yet been decided.

The appellants argue their attorneys were ineffective in failing to request – or in Lucas's case, consenting to the omission of – a jury instruction on cross-racial identification. Since their primary defense was misidentification, they say there could be no reasonable strategy for failing to request the charge.

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For respondent: Manhattan Assistant District Attorney Michael J. Yetter (212) 335-9000
No. 58 For appellant Lucas: Anders Nelson, Manhattan (212) 693-0085 ext 269
For respondent: Staten Island Asst. District Attorney Timothy Pezzoli (718) 556-7068

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No. 55 People v Freddie T. Wright

Freddie Wright was charged with holding up a Queens Taco Bell in March 2017. With a bandana over his face, he allegedly entered the restaurant with an accomplice and forced an employee to remove the cash drawers from two registers while he held a sharp object at her neck. The police arrested him a block away, hiding in a stranger's house, and held him in handcuffs for separate show-up identifications by two Taco Bell employees minutes after the robbery.

During jury selection for his trial, Wright's counsel raised Batson challenges to the prosecutor's use of peremptory strikes against two prospective jurors, C.C. and K.C., contending they were removed from the panel because they are Black. When questioned by the court, the prosecutor said she struck C.C. because he had cousins who had been arrested and because "he rents, and he has no children. He is not married." She also said she had a note that C.C. had other friends who were arrested, but that was later shown to be incorrect. Defense counsel responded "there were jurors that are on this panel that are not African American who meet every one of those criteria.... There are people who have been crime victims, people who rent." The prosecutor said she struck K.C. "because of her line of work. She works for the Department of Probation in the family court which is obviously within the legal field. And on top of it, she works for probation with juveniles. So the reason I'm using a peremptory challenge is because... I do think that sympathy might come into play for her based on her line of work." Defense counsel responded that K.C. "made it very clear that she wouldn't be sympathetic" and said, "There have been other people with law enforcement backgrounds that have not been challenged by the prosecution."

Supreme Court denied Wright's Batson challenges. He was convicted of second-degree robbery and criminal trespass, and was sentenced to 10 years in prison.

The Appellate Division, Second Department affirmed. Without addressing preservation of the Batson claims, it said Wright "failed to satisfy his burden of demonstrating, under the third prong of the Batson test, that the facially race-neutral explanation given by the prosecutor was a pretext for racial discrimination...."

Wright argues that the prosecutor's race-neutral reasons for striking the two Black jurors are unsupported by the record and clearly pretextual because other jurors in the pool who met the same criteria were not challenged or even questioned by the prosecutor. The district attorney argues that the lower courts' findings that the prosecutor did not discriminate in striking the two jurors "are fully supported by the record" and, further, argues that Wright failed to preserve the issue for appeal because, although he alleged there were "unchallenged, similarly situated non-African American jurors" in the pool, he failed to identify any of them with sufficient specificity. Wright responds that his claims were preserved by his counsel's Batson challenges making out a prima facie case of discrimination for both peremptory strikes and by his arguments that the prosecutor's reasons were pretextual. He also argues that his show-up identifications were unduly suggestive.

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To be argued Thursday, April 18, 2024

No. 56 People v Dwane Estwick

After a mugging in Queens in May 2015, police officers canvassed the area with a witness who had seen the perpetrator knock the victim unconscious with a brick or stone and then rifle through his pockets. About two blocks away, the witness saw Dwane Estwick standing between two houses and identified him as the assailant. Estwick was arrested in the yard behind one of the houses, and the victim's wallet was later found there.

During jury selection, Estwick's attorney raised Batson challenges to the prosecutor's use of peremptory strikes to remove four non-Caucasian women from the jury pool, saying the prosecutor "did not challenge any of the white males.... [A]ll his challenges were against women and all against women of color." The court asked the prosecutor for race- and gender-neutral reasons for striking K.S., a black woman working for the Police Department who had served on a criminal jury in Brooklyn 19 years earlier. Before receiving a response, the court said the prosecutor was "not happy with the way" she answered questions about her prior jury service and "got a bad vibe" from it, "making the People nervous about her being a juror on this case." The prosecutor did not confirm that he struck K.S. for that reason, and the court did not explain specifically what the juror said or did that might concern the prosecutor. Regarding another prospective juror, M.G., the prosecutor said he struck her because she "raised her hand and said that she would require scientific evidence" to convict. Defense counsel did not respond to the explanation. The prosecutor had offered the same reason to strike M.G. for cause, which the court rejected as unsupported by the record. The court denied Estwick's Batson challenges. He was convicted of first- and second-degree robbery and sentenced to 12 years in prison.

The Appellate Division, Second Department affirmed, saying Estwick "failed to satisfy his burden of demonstrating, under the third prong of the Batson test, that the facially race-neutral explanation given by the prosecutor was a pretext for racial discrimination...."

Estwick argues "the peremptory challenges of [K.S. and M.G.] violated the equal protection rights of both appellant and those of the stricken prospective jurors, requiring reversal and a new trial." He says "the prosecutor failed to give any reason at all for striking [K.S.].... [T]he court speculated that the prosecutor nonetheless struck her because he got a 'bad vibe' that she had voted to acquit when empaneled in a robbery case 19 years earlier. The prosecutor remained silent, failing even to confirm the court's assumption" and, thus, "failed to sustain his step two burden of providing" a neutral reason for the challenge. He says "the totality of the circumstances further suggested the prosecutor struck [K.S.] for discriminatory reasons. Not only did her background of employment with the NYPD suggest she was a juror with whom the prosecution 'would have been happy...,' but the purported 'bad vibe' that she might have acquitted in a prior criminal case was not applied to two other panelists with prior criminal jury service who were identified as white men. The prosecutor struck neither of them...." Although he did not respond to the prosecutor's explanation that he struck M.G. because she wanted scientific evidence, Estwick argues that the trial court's rejection of that rationale for a for-cause challenge shows it was pretextual.

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