State of New York
Court of Appeals

To be argued Thursday, January 11, 2024

No. 11 Bazdaric v Almah Partners LLC

Srecko Bazdaric, a commercial painter, was injured while working on a renovation project in lower Manhattan in August 2019. He had been assigned to paint the walls and ceilings around an escalator. Heavy-duty plastic sheeting had been placed on the steps of the escalator to protect it from paint spatters. Bazdaric slipped on the plastic sheeting and fell backward, striking his head, back, neck and shoulder on the escalator steps and a large bucket of paint. He brought this action against the contractors and owners of the project to recover for his injuries under Labor Law § 241(6), which requires employers to "provide reasonable and adequate protection and safety" for workers and to comply with safety regulations of the Department of Labor.

Supreme Court granted Bazdaric's motion for summary judgment based on violations of two Industrial Code regulations. Section 23-1.7(d) states, "Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing." The court said the plastic sheeting clearly "was a slippery condition." It also found a violation of section 23-1.7(e)(1), which states, "All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping."

The Appellate Division, First Department reversed and dismissed the suit on a 3-2 vote. It found Bazdaric could not recover under Industrial Code § 23-1.7(d), prohibiting slipping hazards, because the plastic sheeting "does not constitute a foreign substance under the regulation.... Sensibly interpreted, the heavy-duty plastic covering is not similar in nature to the foreign substances listed in the regulation, i.e., ice, snow, water or grease.... Further, it is not disputed that the covering was intentionally placed on the escalator to protect it from paint. In other words, the covering was part of the staging conditions of the area plaintiff was tasked with painting, making it integral to his work" and barring his recovery. It found the defendants were not liable for a tripping hazard under section 23-1.7(e)(1) for the same reason, "namely that the plastic covering was an integral part of the work being performed," and also because "the escalator was not serving as a 'passageway' but rather was a work area."

The dissenters said, "The majority interprets a statute designed to protect workers' safety in a way that imperils workers' safety." The plastic sheeting "was 'intentionally placed' to protect the escalator from paint spots. However, it provided no protection to the painter. To the contrary: the plastic sheeting introduced to the worksite a slippery condition that caused plaintiff's injuries.... As the plastic sheeting was a physical material not normally present on an escalator, it constitutes a 'foreign substance'" under section 23-1.7(d). They said the defendants were also liable for a tripping hazard under section 23-1.7(e)(1) because "the plastic sheeting was a condition in a 'passageway' that 'could cause tripping.'" They argued that "the integral to the work defense" did not apply because "[t]he unsafe plastic covering was not a necessary part of the structure, it was not a condition that Bazdaric was charged with removing or installing, and it was not specially designed and required for the task at hand.... I do not see how plastic sheeting can possibly be considered integral to the work where the uncontroverted evidence demonstrates that it was dangerously unsuited for the work."

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State of New York
Court of Appeals

To be argued Thursday, January 11, 2024

No. 3 People v Gonzalo Aguilar

Gonzalo Aguilar was charged with murder and assault after fatally stabbing one man and slashing the neck of another during a late night brawl outside a Manhattan nightclub in March 2000. Aguilar raised a justification defense at trial, testifying that he and his friend were fighting with as many as six other young men and, when he was struck from behind in the side of his head, he pulled out his knife and began swinging it around in self defense. Supreme Court charged the jury on justification. It also instructed jurors that Aguilar "is an interested witness because he stands to gain or lose directly as a result of the outcome of this case. You should not reject his testimony merely because of his interest. However, his interest in the outcome of the case is one factor for you to consider when you evaluate his credibility." During its deliberations, the jury sent a note asking the court to re-read "All Definitions discussed: Murder II. Manslaughter I, Depraved Murder II, etc" The court repeated its instructions on the elements of the crimes. It denied a defense request to also repeat its instruction on justification, saying "they didn't ask for that." Aguilar was convicted of second-degree murder, attempted murder, and first-degree assault. He was sentenced to 25 years to life in prison.

The Appellate Division, First Department affirmed, saying, "The court responded meaningfully to a note from the deliberating jury ... by rereading its instructions on the elements of the offenses submitted to the jury, without mentioning the defense of justification.... The jury did not ask for reinstruction on justification, which was not included in the elements of the crimes, or for 'definitions' of anything but the crimes." It said Aguilar did not object to the trial court's "interested witness charge," and so failed to preserve his argument that it violated his right to due process and the presumption of innocence for appellate review. In the alternative, it held that "the interested witness charge was not constitutionally deficient."

Aguilar argues the trial court "erred in refusing to recharge justification in response to the jury's note seeking to rehear 'all definitions discussed.'" He says the court treated the jury request as more open-ended by rereading its charge on all submitted offenses, "including counts that had not been specifically listed in the note," as well as "its definitions of intent, serious physical injury, recklessness, attempt, dangerous instrument..., and the difference between intent and motive.... Indeed, the only part of the court's instructions that was not reread was its justification charge – no less of a 'definition' than those concepts." This response "unduly emphasized the prosecution's theory of the case while disregarding the defense claim of self-defense" and "was so unbalanced it cannot be considered meaningful." He contends his claim that the interested witness charge violated due process and the presumption of innocence is "reviewable by this Court because any objection would have been futile."

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State of New York
Court of Appeals

To be argued Thursday, January 11, 2024

No. 13 People v Fernando Ramirez

In November 2017, a red light camera in Suffolk County recorded Fernando Ramirez's blue Subaru speeding through a steady red light and colliding with an oncoming vehicle, killing its passenger and injuring its driver. Ramirez, who had a suspended license and a pending DWI charge in Queens County, was also injured and had a BAC level of .19 percent.

Prior to jury selection for his trial in 2021, Ramirez's attorney objected to proceeding with voir dire while COVID-19 precautions were in place. The potential jurors wore masks and clear face shields and they were widely spaced around the courtroom. They were instructed to lower their masks while they were personally questioned, but continued to wear their face shields. The other potential jurors wore their masks when they were not being personally questioned. Defense counsel asked County Court to delay the trial until the safety procedures were no longer required, saying, "I would point out ... that the case of People v Antommarchi [80 NY2d 247] says that I have the right to see every grimace, every smile, every frown of a potential juror and actually selected juror, and under the current circumstances there's just no way that I could do that." The court denied the request, saying, "The jurors are given face screens, which you can see their faces so that won't be a problem. This is the fourth trial that I've conducted post-COVID, and we haven't had a problem yet with respect to those objections that you're making." Ramirez was ultimately convicted of aggravated vehicular homicide, second-degree manslaughter, and multiple counts of driving while intoxicated and related charges. He was sentenced to 12 ½ to 25 years in prison.

The Appellate Division, Second Department affirmed, rejecting Ramirez's claim that the trial court's COVID precautions "deprived him of the ability to meaningfully participate in jury selection. While a defendant has the right to participate in jury selection..., which is generally understood to include an 'opportunity "to assess the jurors' facial expressions, demeanor and other subliminal responses as well as the manner and tone of their verbal replies so as to detect any indication of bias or hostility"'..., the record here does not support the notion that either face coverings, or spacing due to social distancing, interfered with, or deprived, the defendant of the ability to observe potential jurors, or to otherwise assess their facial expressions and demeanor during voir dire...." It also rejected Ramirez's claim that he was deprived of a fair trial because the victim's widow was crying during the prosecutor's opening statement.

Ramirez argues "the voir dire process is more than just a question-and-answer session; and the interactions that inform whether the parties request a potential juror's disqualification for cause – and whether the court grants that request – are more than purely verbal. In fact, studies have shown that between 60 and 70 percent of communication is nonverbal. By paying attention to theses nonverbal cues, lawyers can uncover the underlying opinions, feeling and biases of potential jurors...." He says County Court "failed to narrowly tailor the interest in stemming the spread of COVID-19 thereby causing undue prejudice to the defendant's right to a fair and impartial jury.... [T]here is no way to know what grimaces or smiles were expressed by members of the jury panel during the jury selection process. Prejudice should therefore be presumed."

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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, January 11, 2024

No. 14 People v Jayquaine Seignious

Jayquaine Seignious accosted multiple female students outside of New York University's Lipton Hall dormitory late one night in October 2016. He came up behind two students and touched them near their buttocks, then threw one of them against a parked car. She got away and both students ran into Lipton Hall. He confronted a third student in the middle of the street as she walked toward the dorm, grabbed her by the neck with one hand and slid the other under her dress, groping her breasts, buttocks and vagina. An NYU security officer heard her screams and shouted at Seignious to let her go. She broke free and ran into the dorm. Seignious remained outside, flailing his arms and following people, then grabbed another student by the arm. She broke free and entered the dorm and he followed her inside, confronting students in the vestibule and then struggling with the security officer in a restricted area of the lobby. He grabbed the arm of another woman before more officers arrived and took him outside, where he was arrested by the police.

Among other crimes, Seignious was charged with second-degree burglary as "a sexually motivated felony" under Penal Law § 130.91, which applies to a defendant who "commits a specified offense," such as burglary, assault, or kidnapping – "for the purpose ... of his or her own direct sexual gratification." At a mid-trial charge conference, the prosecutor asked the court to submit second-degree burglary – which requires only that the defendant unlawfully entered a dwelling to commit a crime of any kind – as a lesser-included offense of sexually motivated burglary. Supreme Court granted the request over the defense objection that prosecutors had "explicitly limited their theory of the crime" to a sexually motivated burglary, thus depriving him of notice that they might also pursue an ordinary burglary theory. The jury acquitted Seignious of the sexually motivated burglary count and convicted him of second-degree burglary, first-degree sexual abuse, and lesser counts. He was sentenced to 13 years in prison.

The Appellate Division, First Department modified by dismissing the second-degree burglary count, which left him with a 7-year sentence. It acknowledged that second-degree burglary satisfied the requirements for submission as a lesser-included offense under CPL 300.50(2) because "the jury could have come to the rational conclusion that defendant intended to harass and menace people in the building, in a way that was not necessarily for his own sexual gratification. However, the court improperly charged the lesser-included offense because the People, through the way they presented their case, deprived defendant of notice of the possibility that the jury would be asked to consider a lesser-included." It said the prosecution "focused only on the theory that defendant entered the dorm to satisfy his own sexual urges," and thereby "so constricted their theory of the case that a defendant would be lulled into defending against that crime only, and not any potential lesser included crimes."

The prosecution argues that, because all elements of CPL 300.50 were satisfied as the Appellate Division found, the statute required the trial court to submit ordinary burglary as a lesser-included offense. It further argues that charging burglary as a sexually motivated felony gives notice to a defendant of the underlying ordinary burglary, since the prosecution must prove both that the defendant committed a burglary and the "additional component" of sexual motivation. It says its efforts to prove the sexual motive did not "renounce any reliance on the theory" that Seignious committed an ordinary burglary. Such a result "would effectively nullify CPL 300.50, which exists precisely to allow the submission of a lesser-included offense even though the prosecutor has been pursuing a greater offense."

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