State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

April 19 thru April 21, 2022

State of New York
Court of Appeals

To be argued Tuesday, April 19, 2022 (arguments begin at 2 pm)

No. 17 People v Cesar Garcia

Cesar Garcia was arrested by two plain clothes officers who followed him as he traveled on the Lexington Avenue subway line in Manhattan in June 2015, after they saw him masturbate on a platform at Union Square, rub up against a woman on a northbound subway car, and rub up against another woman on a southbound train. He was charged with five class-B misdemeanors: two counts each of forcible touching and sexual abuse and one of public lewdness.

Garcia, an undocumented immigrant from Mexico, moved for a jury trial. Although B misdemeanors are generally "petty offenses" that do not require a jury trial under the Sixth Amendment because the maximum sentence is less than six months, Garcia argued that he would be subject to deportation under federal immigration law if he were convicted, a "serious" consequence that should entitle him to a jury. Criminal Court denied his motion. After a bench trial in August 2016, Garcia was convicted of public lewdness and acquitted of the other four counts. He was sentenced to seven days of community service.

In 2018, while his appeal was pending at the Appellate Term, the Court of Appeals held for the first time in People v Saylor Suazo (32 NY3d 491) that "a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation – i.e. removal from the country – is entitled to a jury trial under the Sixth Amendment."

The Appellate Term, First Department, affirmed Garcia's conviction in 2019, saying he "is not entitled to a jury trial, since he failed to meet his burden to establish that a conviction for public lewdness carries the potential for deportation (see People v Suazo ...). Even assuming that public lewdness ... is a crime of moral turpitude" under federal law, "an issue that has not yet been categorically decided..., defendant would still not be deportable ... because that provision requires convictions for two or more crimes involving moral turpitude to subject an individual to deportation.... Moreover, even if we now consider all the crimes for which defendant was tried, including the offenses of which he was acquitted, as two or more crimes of moral turpitude, he would not have been subject to deportation by a conviction because the charges arose out of a single scheme of criminal misconduct." The federal statute "makes deportable any alien who has been convicted of 'two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct' (emphasis added)."

Garcia argues that he "faced trial for an assortment of charges relating to three incidents: public lewdness on the subway platform, and forcible touching and third-degree sexual abuse against" different victims on different trains. "Each one of these offenses was a crime involving moral turpitude under federal immigration law subjecting noncitizen defendants to the potential penalty of deportation. A showing that a crime is classified as a crime of moral turpitude alone is enough to establish jury-trial entitlement for a noncitizen. More, because the charges here involved three separate incidents, a conviction arising from any two of those incidents would have mandated Mr. Garcia's deportation. That Mr. Garcia was ultimately convicted of only the public lewdness charge does not change this result, because entitlement to a jury trial is measured by the potential penalty defendant faces when the trial begins, not the ultimate penalty imposed."

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For respondent: Manhattan Assistant District Attorney David M. Cohn (212) 335-9000

State of New York
Court of Appeals

To be argued Wednesday, April 20, 2022 (arguments begin at 2 pm)

No. 36 Columbia Memorial Hospital v Hinds
No. 37 Schoch v Lake Champlain OB-GYN, P.C.
Nos. 38-43 Maple Medical, LLP v Scott (and five other cases)

The primary issue here is whether the cash consideration paid as part of the conversion of a mutual insurance company to a stock insurance company belongs to medical employees who were the named policyholders or to the hospitals and clinics that employed them and paid the premiums for the insurance policies. The cases involve medical professionals whose employment agreements required their employers to pay for their malpractice insurance. The employers obtained malpractice policies from the Medical Liability Mutual Insurance Company (MLMIC), named their employees as the sole insured on each policy, and paid the premiums.

In 2016, MLMIC sought permission to convert from a mutual insurance company to a stock insurance company under Insurance Law § 7307. Its conversion plan provided that a total of $2.502 billion would be distributed to eligible MLMIC policyholders, or their designees, in consideration for the extinguishment of their policyholder membership interests. When MLMIC completed its demutualization in 2019, the medical professionals and their employers began to litigate the question of who was entitled to the proceeds. The amounts at stake in these eight appeals range from a high of $412,418.93 in Case No. 36 to a low of $20,000 in Case No. 43.

The Appellate Division ruled for the employees in each case -- the Third Department in Nos. 36 and 37, the Second Department in Nos. 38-43 – declaring they were entitled to the funds regardless of who paid the premiums. In No. 37, the Third Department said the employee was "solely entitled" to the $74,747 distribution based on the language of Insurance Law § 7307(e)(3), which directs that the proceeds be distributed to "each person who had a policy of insurance," and the conversion plan, which provides for payment to "policyholders" and defines "policyholder" as "the Person identified on the declarations page of the Policy as the insured." It rejected the employer's claim that the employee would be unjustly enriched, saying, "The reality is that neither party here bargained for the demutualization proceeds" in the employment contract. The proceeds "were unexpected and will be a windfall to whichever party receives them. The fact that one party will receive these benefits does not mean that such party has unjustly enriched itself at the other's expense."

The employer-appellants rely, in part, on a conflicting decision by the Appellate Division, First Department in Matter of Schaffer, Schonholz & Drossman v Title (171 AD3d 465), which ruled the employer was equitably entitled to the demutualization proceeds. It said, "Although [the employee] was named as the insured on the relevant MLMIC ... insurance policy, [the employer] purchased the policy and paid all the premiums on it" and the employee did not "bargain for the benefit of the demutualization proceeds. Awarding [the employee] the cash proceeds of MLMIC's demutualization would result in her unjust enrichment...."

No. 36 For appellant Columbia Memorial: Andrew Zwerling, Great Neck (516) 393-2200
For respondent Hinds: Seth A. Nadel, New Hyde Park (516) 627-7000
No. 37 For appellant Lake Champlain: James R. Peluso, Albany (518) 463-7784
Nos. 38-43 For appellant Maple Medical: Carl L. Finger, White Plains (914) 949-0308
Nos. 37-43 For respondents Schoch and Scott et al: Justin A. Heller, Albany (518) 449-3300

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To be argued Wednesday, April 20, 2022 (arguments begin at 2 pm)

No. 44 People v Marc Mitchell

A police officer approached Marc Mitchell in February 2016 as he stood on a street corner in Times Square, asking passersby to help the homeless. In a misdemeanor complaint, the officer said Mitchell stood next to a pair of milk crates he had set up as a table, with a black box for donations on top and a laminated sheet of paper with information about city shelters. The officer said Mitchell told him the donations "go to a church on 116th Street," though he could not name the church, and later conceded, "Most of the proceeds actually go to me, because I'm homeless." The officer said, "From my training and experience, I know that the defendant'[s] actions are of a kind commonly used to defraud people of money through a trick or swindle." He also observed that the milk-crate table "blocked the movement of approximately seventy-five pedestrians in that they had to walk around the defendant to continue walking on the sidewalk."

Mitchell was charged with a class A misdemeanor of fraudulent accosting under Penal Law § 165.30(1), which states, "A person is guilty of fraudulent accosting when he accosts a person in a public place with intent to defraud him of money or other property by means of a trick, swindle or confidence game. The Penal Law does not define "accosting."

In Criminal Court, Mitchell pled guilty to fraudulent accosting in exchange for a sentence of time served. Rejecting the prosecutor's request for a 90-day jail sentence, the court said, "I would understand if there were some threatening behavior done to another individual to get an individual to give money. I understand it is a crime, but there is nothing here. It says the only one that even went up to him was the officer...." The court said "there is nothing in this complaint that even says he went up to a tourist, and just used the word accosting. It says he asked pedestrians. I don't know if that rises to the level of accosting."

The Appellate Term, First Department affirmed, rejecting Mitchell's argument that the complaint was jurisdictionally defective because it did not allege facts establishing reasonable cause to believe that he was accosting people by asking passersby to help the homeless. The court said the complaint was jurisdictionally valid because it "recited that defendant was observed ... trying to obtain money from pedestrians by falsely representing that the funds would go to charitable organizations supporting the homeless, when in reality defendant would keep the money himself. Defendant's intent to defraud ... may be inferred from his statements, conduct and the surrounding circumstances.... The accosting element of the offense was satisfied by allegations that defendant 'ask[ed] passing pedestrians to "Help the Homeless"'...."

Mitchell argues, "The plain meaning of the word 'accost' ... contemplates both a physical approach and an element of aggressiveness or persistence, according to dictionary definitions and common usage. The language of the statute, with its express requirement that an offender accost 'a person' with the intent to defraud that particular person, reinforces that accosting requires an approach directed toward a specific individual, rather than the public at large.... Because he was not accused of aggressively or persistently approaching another person – or of approaching anyone at all – the prosecution failed to plead the essential element of 'accost[ing] a person." He also argues the complaint failed to allege sufficient facts supporting an intent to defraud.

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To be argued Thursday, April 21, 2022 (arguments begin at 2 pm)

No. 45 Batavia Townhouses, Ltd. v Council of Churches Housing Development Fund Company, Inc.

Council of Churches Housing Development Fund Company (Council), a non-for-profit corporation, borrowed $4.7 million in 1971 to develop and operate Birchwood Village Apartments, an affordable housing complex in Batavia. Council defaulted on the loan in 1979 and, in order to bring in a cash infusion from private investors, it formed Batavia Townhouses, Ltd. (the Partnership) with itself as general partner and two limited partners: Arlington Housing Corp. and Batavia Investors, Ltd. The Partnership bought Birchwood Village from Council in 1979 for $5.5 million and executed a wraparound mortgage in that amount in favor of Council. From 1979 to 2012, the Partnership used income from Birchwood to make payments to Council on the wraparound mortgage, and Council used those funds to pay off its original loan, which was fully satisfied in February 2012. The Partnership's wraparound mortgage, the only remaining encumbrance on Birchwood, matured on March 1, 2012. The Partnership made no further payments on that debt for the next seven years, and Council did not foreclose. Relations between the partners deteriorated in 2018 and in February 2019, as an effort by the limited partners to remove Council as managing general partner was in litigation, Council directed the Partnership to resume making payments on the wraparound mortgage without the consent of the limited partners. The Partnership made a total of $330,000 in such payments to Council.

In May 2019, the limited partners brought this derivative action on behalf of the Partnership against Council seeking a declaration that the wraparound mortgage was unenforceable because the six year limitations period for foreclosure expired in March 2018. Council responded that the statute of limitations had been tolled under General Obligations Law §§ 17-101 and/or 17-105 because the Partnership's annual financial statements and tax returns for 2012 to 2018 listed the mortgage as an outstanding liability. Section 17-101 provides that an "acknowledgment" of a contractual debt is "competent evidence of a new or continuing contract" that tolls the limitations period for commencing actions "other than an action for the recovery of real property." Section 17-105(1) states, "A waiver of the expiration of the time limited for commencement of an action to foreclose a mortgage of real property ... or a promise to pay the mortgage debt ... is effective ... to make the time limited for commencement of the action run from the date of the waiver or promise."

Supreme Court granted the Partnership's motion to cancel the wraparound mortgage, finding that foreclosure was time barred, and ordered Council to return all mortgage payments it had received from the Partnership since February 2019.

The Appellate Division, Fourth Department affirmed, ruling that only section 17-105 applies here based on the "plain language" and legislative history of the statutes. While the "mere 'acknowledgment'" provision of section 17-101 applies "to all types of contractual debts," section 17-105 "was enacted specifically to address the waiver of the statute of limitations applicable to mortgage debt and ... provided that an express promise to pay such debt ... would be sufficient to revive the otherwise expired statute of limitations." It said the Partnership's financial statements and tax returns could not revive the limitations period because they "do not constitute an express promise to pay the mortgage debt."

Council argues that sections 17-101 and 17-105 both apply to mortgage foreclosures based on Petito v Piffath (85 NY2d 1), which considered both statutes in concluding that a time-barred foreclosure had not been revived. Council also contends that "acknowledgment" of a mortgage debt is sufficient to toll the limitations period under either statute because a promise to pay should be inferred from the acknowledgment.

For appellant Council of Churches: William E. Brueckner, Rochester (585) 546-2500
For respondent Batavia Townhouses: Steven D. Gordon, Washington, D.C. (202) 457-7038

State of New York
Court of Appeals

To be argued Thursday, April 21, 2022 (arguments begin at 2 pm)

No. 46 People v Dashawn Deverow

Dashawn Deverow and a co-defendant, Jamane Yarbrough, were charged with murder after they fired into a group of people, including members of the "40 Boys" gang, who were gathered in front of an apartment building in Far Rockaway, Queens, in December 2012. A bullet fired by Yarbrough struck and killed 17-year-old Xavier Granville. Deverow raised a justification defense, claiming that the 40 Boys fired first and that he and Yarbrough returned their fire in self defense.

Raeqwon Moton, a prosecution witness who was the only eyewitness to testify at trial, said Deverow and Yarbrough fired the first shots. Moton testified that he had walked his girlfriend, Resha Johnson, to her home across the street from the gathering and, just after they parted, he encountered Deverow and Yarbrough, whom he knew. Moments later, a car skidded to a stop and Deverow and Yarbrough drew handguns, he said. When he began to run he heard two shots behind him, looked back, and saw Deverow and Yarbrough shooting into the gathering of people, Moton said. Deverow sought to call Johnson as a witness to contradict Moton's account. She was prepared to testify that she was not with Moton on the day of the shooting and that she lived about a mile away from the scene, not across the street. The prosecution objected that Johnson's proffered testimony would improperly impeach Moton on a collateral matter, the circumstances that led to his eyewitness testimony, and not on what he saw of the shooting. Supreme Court precluded Johnson's testimony. Deverow was convicted of second-degree murder and weapon possession.

Deverow made a CPL 330.30 motion to set aside the verdict, arguing that the preclusion of Johnson's testimony and other alleged evidentiary errors deprived him of his right to present a defense. Supreme Court denied the motion, saying the trial court "properly excluded extrinsic evidence ... that pertained to collateral matters," including Johnson's testimony, because it was "an attempt to impeach Mr. Moton's credibility on the issue of his whereabouts prior to the shooting (as opposed to the shooting itself)." The court said, "His testimony was clear that he was no longer with Ms. Johnson when he witnessed the shooting."

The Appellate Division, Second Department affirmed Deverow's conviction, but reduced his sentence to 17 years to life in prison. The court generally rejected his "contention that certain of the Supreme Court's evidentiary rulings violated his right to present a defense," but it did not directly address the preclusion of Johnson's testimony.

Deverow argues that "the court precluded the defense from calling [Moton's] former girlfriend, who would have denied that she was with him moments before the shooting or at all that night, nor near the scene of the crime. Such testimony went directly to the eyewitness's credibility on whether he witnessed and could accurately recall the shooting, and was not collateral." Among other claims, he argues the court improperly "excluded three 911 calls from disinterested witnesses" that "were relevant, as reports of a chaotic scene with multiple shooters supported appellant's fear that he was being fired upon and acted in self-defense."

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For respondent: Queens Assistant District Attorney Nancy Fitzpatrick Talcott (718) 286-6696

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To be argued Thursday, April 21, 2022 (arguments begin at 2 pm)

No. 51 People v Luis A. Rodriguez

Luis Rodriguez, a 43-year-old high school volleyball coach, was accused of engaging in sexual text message conversations in October and November of 2014 with a 15-year-old female student who was a member of his team. In the texts, Rodriguez described sexual acts he wished to perform with the girl, asked her to send him nude photographs of herself, and sent her a video of himself masturbating, among other things. The conversations ended when the girl's boyfriend discovered the text messages, locked himself in a room with her phone, and took a series of screenshots of the texts. He also sent texts to Rodriquez from her phone, threatening him and demanding money. He came out of the room and assaulted the complainant "to teach her a lesson," and he showed the screenshots to the police when he was arrested for the assault a short time later. The complainant later testified that she deleted all of the messages as soon as she recovered her phone from the boyfriend, but she told the police they were stored in her iCloud account and gave them her password.

At trial, Supreme Court admitted five of the screenshots into evidence based largely on the complainant's testimony that they were accurate copies of messages she received from Rodriguez. Rodriguez was convicted of two felonies – attempted use of a child in a sexual performance and first-degree disseminating indecent material to a minor – and a misdemeanor of endangering the welfare of a child. He was sentenced to two to six years in prison.

The Appellate Division, Second Department reversed on a 3-2 vote, ruling the screenshots were improperly admitted. It said "the text messages themselves were insufficient to establish the defendant's identity as their author.... Nor was the complainant's testimony, standing alone, sufficient to establish this disputed fact, particularly since ... part of the conversation depicted by the subject screenshots allegedly took place while the complainant's unlocked phone was in the possession of her former boyfriend, who had locked himself in a separate room and was texting the defendant...." While the police had the complainant's iCloud password, the court said the prosecution "offered no evidence that the police ever checked either the defendant's phone or the complainant's iCloud account to determine the identity of the participants in the conversation. Under these circumstances, the admission into evidence of the disputed screenshots – all of which were taken by the former boyfriend – was error."

The dissenters said "the People's evidence established that more than 200 communications, which included text messages and telephone calls, were sent between cellular telephone numbers identified as belonging to the defendant and the complainant. The complainant identified the subject screenshots as being text messages the defendant sent to her cellular phone on November 7, 2014. She described, in detail, the criminal events at issue and identified the defendant as the actor/perpetrator who sent the subject messages." This evidence "was sufficient to provide a proper foundation for admission of these screenshots ... and to authenticate the same.... The fact that the complainant's former boyfriend took the screenshots ... does not warrant a different result. The credibility of witnesses and any alleged motive to alter evidence properly go to the weight [of the evidence] ... rather than admissibility."

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For respondent Rodriguez: Samuel Barr, Manhattan (212) 693-0085 ext. 261